

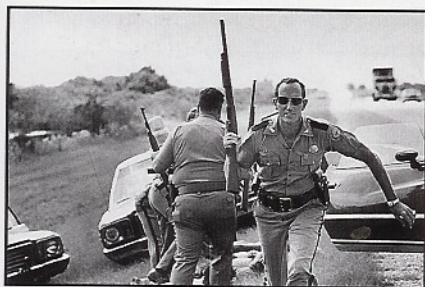


Law

WHERE PHOTOJOURNALISTS CAN TAKE PICTURES

You may photograph in most public places and in a wide variety of publicly owned property across the United States. You can take pictures on Main

Street, on the sidewalk next to Main Street, in Golden Gate Park, as



well as at a city-owned zoo. You can

photograph in a city-owned airport

like Logan in Boston or O'Hare in



Chicago. Some restrictions, such as

not going onto an airplane runway,

apply. You also can take pictures in

A state trooper illegally tried to block the cameras of two photographers from the *Palm Beach Post* who were covering the arrest of an armed robber.

Opposite page, C.J. Walker.
Near left top and bottom photos,
Ken Steinhoff, *Palm Beach Post*

the New York, New Jersey, Washington, and San Francisco subways despite the attempts of some transit authority police and city councils to ban photography in these places.

City officials and police are on high alert in part due to elevated security after the September 11, 2001, terrorist attacks in the United States. The Patriot Act and Homeland Security Act, however, do not prevent photography in public places or around public buildings. Structures such as bridges, industrial facilities, and trains remain perfectly legal to photograph.

You can photograph on the campus of a publicly owned institution of higher education like Florida State University or the University of Michigan. The law does not forbid taking pictures in a lab, a classroom, or a gym. However, without the teacher's permission, you can't take pictures of Mr. Weintraub's physics class or Mr. Knowlton's journalism class while they are in session.

Photographing in the university's dorm sets up a different situation even if a public university owns the dorm. Dorm management has the right to restrict entry into the building for security reasons. Students' dorm rooms as well as common bathrooms are considered private, which means you need the permission of the student renter to take pictures in these locations.

Your rights to take pictures in the dorm's dining hall are less clear. Is the dining space open to all students on campus and therefore

to the press—or is it more like a dining room in someone's home in which case the residents would have the expectation of privacy?

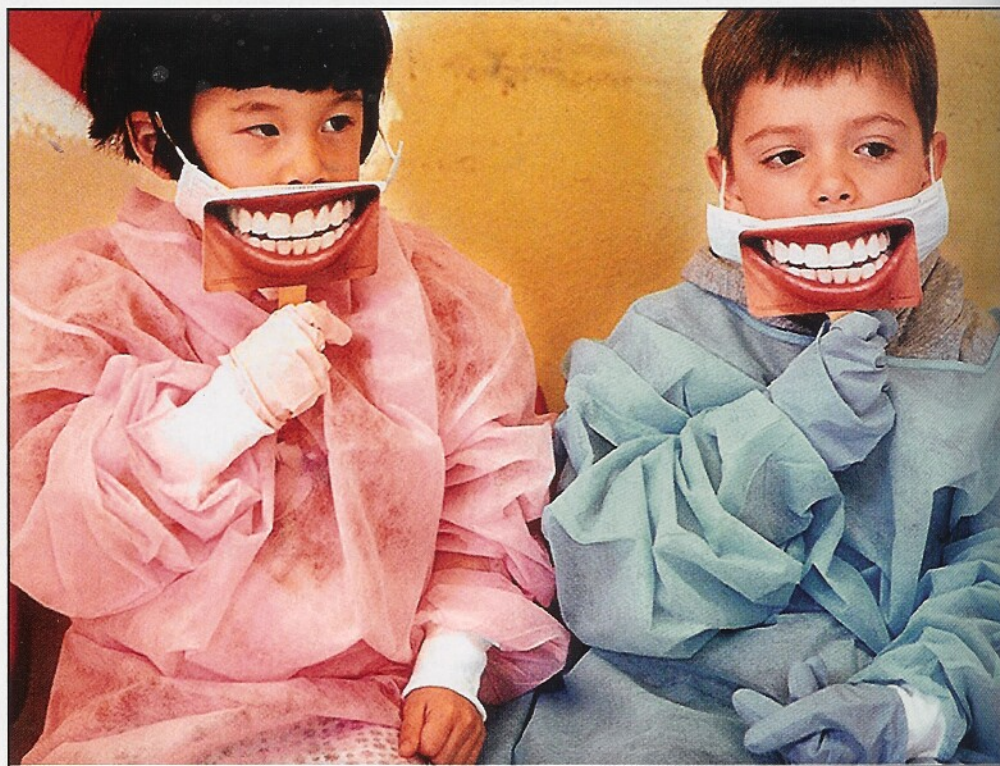
In any event, when you take pictures in a dorm, even if you live there, you should announce yourself as a journalist so other students know you are not taking pictures just for your own pleasure and that the pictures you snap might be published. Telling everyone that you are a working photojournalist warns those who don't wish to be photographed to stay beyond the reach of your lens in order to preserve their privacy.

TAKING PICTURES IN PUBLIC PLACES

Although a public grade school or high school is publicly owned, it falls under its principal's jurisdiction. While there is no law against photographing inside public schools, the principal has the authority to determine who comes and goes on school grounds, effectively granting or denying access to photojournalists. Typically, you can gain access to these buildings with permission from someone in authority who works in the principal's office.

You may take pictures of elected officials or private citizens in public places, such as on the street or in the park. They may be the center of interest in your photo, or just part of the crowd. If a news event occurs on public property, you may cover that event as long as you do not interfere with police or the flow of traffic.

You can take pictures of children in public places, such as at the community center where these children were photographed. At a school, you would need permission of the principal to enter the school grounds.
Chris Riley, *Gilroy* [California]
Dispatch



There are times when bystanders try to physically prevent photographers from taking pictures. In such instances, the courts have generally protected photographers shooting in public places, according to George Chernoff and Hershel Sarbin in their book *Photography and the Law*. They note that, some years ago, the state of New York even made it illegal to damage the equipment of news photographers engaged in their occupation in public places.

Difficulties arise when police authorities try to stop photographers from shooting on public property. In many situations, an overeager police officer may block a photographer's lens.

In Iowa, highway patrol officers and the National Guard once prevented photographers from taking close-ups at the scene of a civilian airline crash. Once airline officials arrived, photographers were given a free hand. In Philadelphia, police forcibly prevented photographers from taking pictures as officials bounced a heckler from a political rally. Philadelphia's city solicitor issued a formal opinion in which he told the police commissioner, "Meaningful freedom of the press includes the right to photograph and disseminate pictures of public events occurring in public places."

Police and fire officials have the right to restrict any activity of a photographer that might interfere with the officials' actions. In ordinary circumstances, taking pictures and asking questions do not constitute interference. However, police and fire officials are permitted to restrict newsgathering conduct if the photographer disrupts the pending investigation or activity.

Unfortunately, if an insistent police officer stops you at the scene of a breaking-news event, you might find it hard to argue a fine point of law. Photographers who disregard police directives—even if the shooters have the right to be where they are—can be arrested for disorderly conduct or for interfering with the performance of a police officer's duty. Continuing to take pictures or failing to move after a policeman gives you a direct order could constitute a possible felony.

The National Press Photographers Association (NPPA) and some of its chapters have for years worked with fire and police academies to improve the graduates' understanding of the role of the news media in society. NPPA members have written police/press guidelines designed to reduce the conflict between working photojournalists and law enforcement officers. The result has been improved cooperation between photographers and fire and police personnel.

WHERE AND WHEN A PHOTOJOURNALIST CAN SHOOT				
	ANYTIME	IF NO ONE OBJECTS	WITH RESTRICTIONS	ONLY WITH PERMISSION
PUBLIC AREA				
Street	X			
Sidewalk	X			
Airport			X	
Beach	X			
Park	X			
Zoo	X			
Train Station	X			
Bus Station	X			
IN PUBLIC SCHOOL				
Preschool			X	
Grade School			X	
High School			X	
University Campus	X			X
Class in Session				
IN PUBLIC AREA—WITH RESTRICTIONS				
Police Headquarters			X	
Government Buildings			X	
Courtroom				X
Prisons				X
Military Bases				X
Legislative Chambers				X
IN MEDICAL FACILITIES				
Hospital				X
Rehab Center				X
Emergency Van				X
Mental Health Center				X
Doctor's Office				X
Clinic				X
PRIVATE BUT OPEN TO THE PUBLIC				
Movie Theater Lobby		X		
Business Office		X		
Hotel Lobby		X		
Restaurant		X		
Casino				X
Museum			X	
Shopping Mall				X
Store in Mall				X
PRIVATE AREAS VISIBLE TO THE PUBLIC				
Window of Home	X			
Porch	X			
Lawn	X			
IN PRIVATE				
Home		X		
Porch		X		
Lawn		X		
Apartment		X		
Hotel Room		X		
Car		X		

GOVERNMENT BUILDINGS: PUBLIC BUT UNDER SPECIAL RULES

Although facilities may be publicly owned, a photographer does not have unlimited access to government buildings, such as the U.S. Senate and House of Representatives, the state legislature, or the chambers of the city council. The mayor's office and city hospital also fall under the special-rules category. Military bases and jails also are strictly controlled, especially in the aftermath of the 2001 terrorist attacks in the United States.

A college football stadium or a downtown baseball park might be publicly owned, but access to these venues is completely controlled. At a college football game, sideline access is legally restricted by the school's athletic department. The athletic director or designee wants to control the number of photographers covering a game. The athletic office usually issues press passes to both the working and the credentialed student press. However, the National Collegiate Athletic Association (NCAA) restricts photographers from shooting any video of the "March Madness" basketball playoffs. The NCAA has sold the rights to televise these games and they don't want unauthorized footage available. Likewise, NASCAR controls access and usage of all stills and video shot at their races, even if they are using a publicly owned track.

Hospitals, even if they are publicly owned, publicly supported, and publicly operated, occupy a special place under the law. The admission list to hospitals is usually public information, but that's about all. You might be allowed to photograph scenes in a hospital for, say, a feature story. But check your pictures. Are there people in the pictures? Yes. Are some of them patients? Yes. Are they identifiable? Yes. Do you have a release? No. You say the people in the photo are "incidental?" For instance, a picture taken of a corridor or waiting room shows several people sitting and reading magazines. Don't even think about it. You must either get a release or not run the picture.

PRISONS AND JAILS

Your rights to photograph in a city, county, or state jail are subject to the discretion of the warden, who may or may not permit you to enter and who then may determine everything you may or may not shoot once you are inside. Even if a riot is taking place inside, the warden still controls all access. Unfortunately, the Supreme Court in *KQED vs Houchins* ruled that the press has no more rights than the general public when it comes to photographing prisoners.

MILITARY BASES

Like prisons, military bases are controlled by a government agency. You may enter at the invitation of the officer in charge. In the 1991 Iraq War, the military carefully controlled all combat photos. This attitude changed for the 2003 invasion of Iraq, when the Pentagon allowed a number of photojournalists to "embed" with military units fighting their way to Baghdad. While the military reserved the right to censor images taken by the embedded photojournalists, photographers reported that local commanders did not block images as long as they did not show a dead American soldier. Commanders asked the journalists to hold the images until the next of kin had been notified.

The Pentagon, however, did impose a policy prohibiting photography of the caskets of slain American soldiers arriving at Dover Air Force Base in Delaware.

OTHER GOVERNMENTAL INSTITUTIONS

Not surprisingly, public institutions such as the Central Intelligence Agency (CIA) and the National Security Administration (NSA) are off limits without permission. Even the meetings of the Securities and Exchange Commission and the Nuclear Regulatory Commission require advance approval. Presidential libraries require permission for photos intended for publication.

Photographers often have been hassled in recent years at such places as public airports, train stations, and subway terminals. Few of these public places have formal regulations restricting photography, according to Ebert Krages in his book *Legal Handbook for Photographers*.

LAWMAKING VENUES

The halls of the U.S. Congress are certainly public places, as are meeting rooms of state legislatures and city councils. But such places are generally run by their own unique rules. Even though the House of Representatives does allow television cameras limited access to debates, this legislative body will not allow photographers to take still pictures at a regular session of Congress. Photojournalists can photograph legislators in committee meetings, elected officials in the halls of Congress, or legislators in their offices.

However, certain buildings—the Capitol and its grounds, all House and Senate office buildings, the Library of Congress, and the General Accounting Office—are controlled entirely by rules passed by Congress. The Constitution grants Congress the right to formulate the rules for operating these buildings. These rules are not subject to judicial review.

Senators and congressmen are afraid that the photographers' uncensored images will catch one of the members of this august body taking a nap, reading the newspaper, or, as is more often the situation, absent from his or her seat. Photographers are usually allowed in the U.S. House or Senate chambers only during ceremonial sessions, such as the opening day of Congress.

TRIBAL LANDS

Tribal lands are considered separate nations. Native American tribes can impose any restrictions they like, including fees on photography or outright bans on photographing homes and ceremonies.

THE COURTROOM: ANOTHER SPECIAL SITUATION

The U.S. Supreme Court does forbid the presence of photographers in federal but not in state courtrooms.

The effort of photojournalists to obtain access rights to both federal and state courtrooms has had a turbulent history. A low-water mark in photographing in the courtroom occurred during the trial of Bruno Richard Hauptmann for the kidnapping and

murder of Charles Lindbergh's baby. Lindbergh had captured the world's imagination and admiration for his nonstop solo, transatlantic flight. The kidnapping and murder of his child attracted international interest, and an estimated 700 reporters, including 129 photographers, came to the old courthouse in Flemington, New Jersey, to cover the trial. Photographers were allowed to take pictures in the courtroom only three times each day: before court convened, at noon recess, and after court adjourned. Early in the trial, however, a photographer took unauthorized pictures of Lindbergh on the stand. The photographer claimed that he was "new on the job, having been sent as a relief man, and he did not know the rulings."

Another illegal picture was taken at the end of the trial. Dick Sarno of the *New York Mirror* concealed a 35mm Contax camera when he entered the courtroom on February 13, 1935, the day the verdict and sentence were announced.

At the key moment of the proceedings, Sarno, who had wrapped his camera in a muffler to conceal the noise, took a one-second exposure of the courtroom. Sarno later related, "As Hauptmann stood up and faced

During Bruno Richard Hauptmann's trial for kidnapping and killing Charles Lindbergh's baby, the judge prohibited photographers from taking pictures while court was in session. On January 3, 1935, Lindbergh himself took the stand. Despite the judge's orders, a photographer snapped this picture during the trial. Following this incident, with only a few exceptions, cameras were barred from the courtrooms until the 1970s.



the jury, you could hear a pin drop. I tilted the camera, which I had braced on the balcony rail. The judge was directly in front and below me. If he looked up, I was sure he could see me."

As the foreman of the jury stood to recite the verdict, Sarno recorded the instant.

Prejudicial press reports, contemptuous statements by trial attorneys and police, the rowdy behavior of the 150 spectators and numerous reporters added to the holiday atmosphere of the proceeding, according to extensive research by Sherry Alexander in her report, "Curious History: The ABA Code of Judicial Ethics Canon 35." The raucous atmosphere created by journalists covering the trial outside the courtroom as they mobbed each witness, as well as indiscretions by still and newsreel cameramen inside the courtroom, shocked a committee of the American Bar Association (ABA) that reviewed the legal proceedings in 1936.

Nevertheless, Alexander found, the original ABA Committee did not recommend a total exclusion of photography and broadcasting in the courtroom. Instead, it was the 1937 convention of the group that adopted a flat ban on cameras in court as the 35th Canon of Professional and Judicial Ethics. Many states, but not all, adopted these canons, effectively slamming the courtroom door shut on photographers for 40 years.

COURTROOM RESTRICTIONS EASING

Florida's judicial system and legal code are viewed as the model to follow by many states. In the late 1970s, when the Florida Supreme Court opened the courtroom to photographers and television equipment on a limited basis for a one-year period, the event was significant. The Florida test allowed nationwide broadcast of the trial of 15-year-old Ronnie Zamora, who was charged with killing his 82-year-old neighbor.

Zamora's attorneys tried to blame television for the murder committed by their client. Noting that he avidly watched *Kojak*, a popular detective program, defense attorneys claimed the boy was under "involuntary subliminal television intoxication."

While the defense proved unsuccessful, the experiment allowing photographers to cover the trial worked well. With modern fast films and compact electronic television cameras, photographers did not require excessive lighting, and their behavior did not interfere with the trial's progress. Florida permanently opened its courts to the camera.

In 1980, the U.S. Supreme Court upheld the constitutionality of Florida's open courts law.

In *Chandler vs Florida*, two police officers convicted of burglarizing a restaurant claimed that the presence of TV cameras denied them a right to a fair trial because local stations broadcast only highlights of the

Accused of bending over to bare it all during their show, exotic dancers demonstrated for the judge that their underwear covered up anything "illegal." Pictures are now possible in most courtrooms. The photographer in this instance got a tip that an interesting performance might take place in court. Jim Damaske



prosecution's case. But when the Supreme Court considered the officers' appeal, the justices ruled unanimously that states are not prohibited from allowing still and television cameras in their courts. The decision was a major victory for photojournalists' First Amendment rights.

In spite of research indicating that most state Supreme Court justices dislike cameras in the courtroom, almost all states have opened their trials to camera coverage. There is even a cable television channel devoted to covering trials.

Each state, however, continues to have unique and individual restrictions. Some states permit only coverage of criminal trials and then only with the defendant's permission. Other states prohibit coverage of sex-crime trials or divorce proceedings. Some states allow coverage of first trials but not appeals. Verify your state's regulations before shooting. Phone cameras and other new technologies will undoubtedly result in fluctuation of these rules. In some cases they may be tightened; in others, the rules might be significantly relaxed.

At a minimum, every state will place a restriction on photographing jurors in the courtroom so as to protect their privacy.

Check with the presiding judge before taking pictures in a given courtroom. The presiding judge usually has a court clerk who will be able to share with you the local rules governing a given jurisdiction or courtroom.

While cameras are still banned in federal trial courts and in the U.S. Supreme Court, you can shoot on the sidewalk or street outside a courtroom, city hall, or jail.

Keep in mind that the police or other officials cannot restrict photojournalists from taking pictures while allowing other members of the public to continue doing so. "Thus, when a government official attempts to remove media personnel from a public sidewalk, the media personnel should (politely) inquire whether the ban extends to the general public as well. If not, the government's actions probably violate the First Amendment," according to a report by Covington and Burling law firm for the National Press Photographers Association.

Also note that the police do not have the right to discriminate against you if you work for an alternative paper or a web site and not a major daily. Police at the scene of a plane crash, for example, cannot bar a photographer from the *Boston Phoenix* while admitting the photographer from the *Boston Globe*.

TAKING JOURNALISTIC PICTURES IN PRIVATELY OWNED PLACES

Without going onto a person's property, you may, from the street, photograph someone in her yard, on her porch, or even inside her house if you can see the person. You don't need the subject's permission. For instance, the courts consider people sitting on their verandas, mowing their lawns, or standing behind a picture window in their living rooms to be in "public view" and therefore legitimate subjects for photography.

The photographer, however, still should be somewhat cautious when shooting onto private property and should not step onto the grounds to get the picture. Nor should the photographer use an extremely long telephoto lens, which would capture more than the naked eye could see.

In fact, the court says you shouldn't go to any extra trouble to get this porch-sitting, lawn-mowing, or window-standing shot. You shouldn't even climb a tree to gain a better view. Although not all photographers follow these guidelines, all are limited essentially to the view of an average passerby, according to the courts.

ACCESS VERSUS TRESPASS

Cindy Fletcher, 14 years old, died in a house fire in Jacksonville, Florida. Her mother, away at the time, learned about the tragedy in the next day's edition of the *Times-Union*. Alongside the story appeared a picture that showed where her daughter's burned body had left a silhouette scorched on the floor. Newspaper photographer Bill Cranford had entered the Fletcher home to take the photo. Mrs. Fletcher sued the Florida Publishing Company, owner of the *Times-Union*, on grounds that the photographer had invaded her home, hence her privacy.

This actual court case serves to illustrate the problem of access for the working photographer.

- Did the photographer, as a representative of the news media, have the right to enter the house?
- Could the fire chief invite the photographer to enter private property to take a news photo?
- Which right comes first: the right of Mrs. Fletcher not to have someone trespass in her house, or the right of the public to know what happened in that house?

This is a classic test of the strength of opposing rights: private property and personal privacy rights versus the First Amendment freedom of the press.

Would you have entered the Fletchers' home if you were the photographer?



Cindy Fletcher's burned body left a silhouette on the floor of her home. The girl's mother, who wasn't home when the picture was taken, sued for trespass when she saw the published photo. At the time, the courts said that it was common custom to allow photographers to cover news on private property if the owner does not object. Over the years, that interpretation has changed. Bill Crawford (Jacksonville *Florida Times-Union*)

In *Florida Publishing Co. (Times-Union) vs Fletcher*, the court found in favor of the photographer. He had the right to enter the house and take the pictures.

Trespass generally means entering someone's home, apartment, hotel, motel, or car without permission. This right of private ownership prohibits someone from walking in and taking pictures inside a house, without the permission of the resident. The court holds that a person, in his or her home or apartment, has a reasonable expectation of privacy.

Why, then, did the court find that the *Times-Union* photographer had the right to enter the Fletcher house and take pictures of the silhouette left from Cindy Fletcher's burned body?

Why was this not a case of trespass?

In the Fletcher case, the police and the fire marshal had invited the news photographer into the home, and no one objected to the cameraman's presence. In fact, the authorities had asked the photographer to take pictures because they needed photos for their investigation, and the fire marshal's camera was out of film.

Mrs. Fletcher's suit was dismissed because it was "common custom" for the fire department or police department to permit the press onto private premises for the purposes of covering such newsworthy events.

First, the court found that a government official had the authority to invite a press photographer to enter someone's home without the owner's permission. The fire department office had invited the *Times-Union* photographer into the house to take the pictures of the burned body.

Note, however, the Fletcher case turns out to be an exception. According to Bert Krages's *Legal Handbook for Photographers*, "most if not all other courts that have faced this issue have ruled the other way."

In other words, the general rule of law is that government officials do not have the authority to allow the media to enter private property without the owner's permission. The Fletcher case would appear to be an exception to this general rule. Such exceptions may typically be relied upon only when the later situation is virtually identical.

UNREASONABLE SEARCH AND SEIZURE

Take the case of a CBS documentary called "Street Stories."

The facts: a CBS camera crew was shooting an episode for "Street Stories," a reality cop show, when police invited the news team to "ride along" for a raid on a suspect's home to look for evidence of credit-card fraud.

However, the suspect was not at home when the raid occurred. Only his wife, Tawa Ayeni, and her small child were there when the police officers pushed their way into the apartment—with the CBS video crew right behind them. The woman, clad only in her nightgown, implored the all-male crew, "Please don't take my picture."

She cowered, covered her face with a magazine, and directed her preschool-aged son not to look at the camera. "Why do you want to take a picture?" she asked. When the raid was over, law enforcement officials found nothing they had sought, but the CBS crew had footage of the raid, including shots of personal letters and paycheck stubs.

Tawa Ayeni sued CBS and won at both the trial level and in the U.S. Court of Appeals. Judge Jack Weinstein wrote, "Allowing a camera crew into a private home to film a search-and-seizure operation is the equivalent of a rogue policeman using his official position to break into a home in order to steal objects for his own profit or that of another."

Although law enforcement officials generally have a right to enter private property to conduct a reasonable search, Judge Weinstein maintained that this privilege does not extend to photojournalists invited along for the ride. Judge Weinstein wrote that inviting a camera crew into a private home is a violation of the Fourth Amendment, which protects citizens against "unreasonable searches and seizures."

Note that this finding runs counter to the "common custom and practice" concept that was established in the Fletcher case, where fire officials had invited the photojournalist into a private home to shoot the aftermath of a fatal fire. In the ruling against CBS, Judge Weinstein's views are more in line with contemporary court opinions that generally find little support for a police officer's right to invite photojournalists and reporters onto private property.

Supreme Court: Ride-alongs Violate Fourth Amendment with Illegal Search and Seizure

The question of ride-alongs finally reached the Supreme Court. In the early morning hours of April 16, 1992, a special team of U.S. Marshals called the "Gunsmoke Team" had invited a reporter and photographer from the *Washington Post* to accompany them as part of a Marshals Service ride-along policy.

At around 6:45 A.M. with media representatives in tow, the officers broke into Charles and Geraldine Wilson's home while the couple was still in bed. The Marshals were looking for Charles Wilson's son, who was not at home. The father, dressed only in a pair of briefs, ran into his living room to investigate

the noise. Discovering at least five men in street clothes with guns in his living room, he angrily demanded that they state their business and repeatedly cursed the officers. Believing he was the subject of the warrant, the officers quickly subdued Wilson on the floor. Geraldine Wilson next entered the living room to investigate, wearing only her nightgown.

When the protective sweep was completed, the officers learned that Dominic Wilson, the couple's son, was not in the house. They left. During the time that the officers were in the home, the *Washington Post* photographer took pictures, although the newspaper never published those photographs.

Mr. and Mrs. Wilson sued the law enforcement officials (*Wilson vs Layne*). They contended that the officers' actions in bringing members of the media to observe and record the attempted execution of the arrest warrant violated their Fourth Amendment rights.

The case wound its way to the Supreme Court, which came to unanimous agreement in 1999. "While executing an arrest warrant in a private home, police officers invited representatives of the media to accompany them," wrote Chief Justice William Rehnquist. "We hold that such a 'media ride-along' does violate the Fourth Amendment."

In all probability, this Supreme Court finding will have a discouraging effect on opportunities for photographers and other members of the media to accompany police when they enter a house to execute a search warrant. Most police will not want to violate the

Fourth Amendment, or have their cases thrown out of court in the future, because they invited or allowed photographers to go along on a drug bust or police raid inside someone's home.

However, the ruling does not stop the police from allowing photographers to cover their activities on public property such as streets and sidewalks.

NON-POLICE AUTHORITY

Can you photograph a newsworthy event in a person's home if the owners are not there to object and the police have not yet arrived?

If you were riding down the street, for instance, and heard a gunshot followed by a scream coming from a house, could you park your car, enter the house, and begin photographing the victim and the assailant?

If you walk into a private home, you will have trespassed on private property even if your purpose is to cover a crime under way.

If the homeowner walked in and objected to your taking pictures, the owner could ask you to leave. You would have to obey or be arrested for trespassing. Even if the police were there, you would have to leave if the homeowner objected to your presence. In a real situation, most likely, the homeowner would be more worried about the gunshots than your presence.

PRIVATE PROPERTY OPEN TO THE PUBLIC

Do you have the right to take pictures on private property that is open to the public, such as a restaurant or grocery store? This area of



A photographer has the legal right to take this picture because the accident occurred on a public street.

Carolyn Cole, for the *Sacramento Bee*

the law is murky. Some authorities hold that you can take pictures unless the management has posted signs prohibiting photography or unless the owners object and ask you to stop.

However, CBS was sued when its photographer entered Le Mistral restaurant in New York, with cameras rolling, to illustrate a story about the sanitation violations of the establishment. The management objected, but CBS kept filming.

Although no signs prohibiting photography were posted, CBS lost the suit on the grounds that the photographer had entered without the intention of purchasing food and was therefore trespassing. Although CBS was covering a legitimate news story in a private establishment open to the public, the network was found guilty of trespassing.

In a 1972 case (*Lloyd Corp., Ltd. vs Tanner*) the court ruled that “the public’s license to enter a private business establishment is limited to engaging in activities directly related to that business and does not normally extend to the pursuit of unrelated business, e.g., news gathering.”

Camera journalists have no right to enter a property, even in a spot-news situation, if the owners of the establishment prohibit them from doing so. Photographers must take their pictures from the public street, or they can be arrested for trespass.

This means that even if a fire is raging inside a business the management can exclude photographers. If the management asks you to leave, you must comply with the request or risk arrest for trespass.

In some, but not all states, large shopping malls are considered traditional public forums if they have long-established common areas that invite the public onto the property for purposes other than shopping. Many malls have a Santa at Christmas time. Choirs and bands sometimes perform. Photographers in many states can photograph these public events without special permission from the mall owners.

Casinos and restaurants are located on private property. Some establishments object to photography while others allow it.

You may always publish any pictures you have already taken. The owner can stop you from taking more pictures but can’t prevent publication of the ones you already have.

Retired California Appeals Court Justice John Racanelli points out that penalties for trespass are usually “nominal” if there is no intent to “do actual harm or injury.”

Sometimes the owner or manager of a store will demand that you turn over film or erase a memory card to eliminate images you have taken inside a shop.

On this point the law is clear. You do not have to do either. The owner or manager can ask you to stop taking pictures but can’t take away personal property. Touching you or your camera to take away your property may constitute battery against you.

PRIVACY: WHEN DOES A JOURNALIST’S CAMERA ILLEGALLY INFRINGE?

When people talk about “privacy,” they usually mean the “right to be left alone.” But privacy is simply not a broad constitutional right basic to American citizens.

The U.S. Constitution does not explicitly grant us any explicit right of privacy—this general right to be left alone. In fact, most analysts believe that there never will be an explicit, expressed constitutional right of privacy similar to the rights outlined in the First Amendment that protects and guarantees free speech and a free press.

Over the years, however, some commonly recognized legal principles of privacy have evolved, based on federal and state laws and court cases. As applied to photography, these principles protect individuals from anyone:

- intruding by taking pictures where privacy could be reasonably expected. In legal

TIPS FOR AVOIDING JAIL

The following suggestions come from Lucy A. Dalglish, executive director of the Reporters Committee for Freedom of the Press, a nonprofit organization dedicated to protecting journalists’ First Amendment rights.

- Carry your credentials at all times.
- Do not trespass onto property that is clearly private or marked with a police line.
- Do not take anything from the crime scene—you will be charged with theft.
- Do whatever a police officer orders you to do, even if it seems unreasonable or ridiculous or interferes with your job, unless you’re willing to live with the consequences of being arrested.
- Do not call the arresting officer names or get into a shoving match.
- If covering a demonstration or other event likely to result in arrests, keep \$50–\$100 cash in your pocket to purchase a bail bond.
- Give your memory card, if possible, to another journalist who can get it to your newsroom promptly.
- Keep a government-issued photo ID (in addition to a press pass) in your pocket at all times. It may speed up your release from custody.
- Know the name and phone number of a criminal lawyer, bail bondsman, and the police department spokesperson.

terms, this is called the "tort of intrusion upon seclusion."

- using a picture to sell a product or service without consent;
- unfairly causing someone to look bad; and
- taking truthful but embarrassing photos.

At first glance, this list might appear somewhat intimidating. You may ask yourself, "May I ever take a picture of anyone, anywhere?" In practice, though, the courts have severely limited the meaning of each of the four principles of privacy.

INTRUDING WHERE PRIVACY CAN BE EXPECTED Shooting Surreptitiously Inside Someone's Home

Do you need an invitation into someone's home to take pictures? Take the case of Antone Dietemann, a West Coast herbalist who had achieved a considerable amount of public recognition and was newsworthy, but who declined to be photographed in his home-laboratory garden.

Life photographer Bill Ray posed as the husband of a patient and visited the herbalist along with Ray's wife-for-a-day, also a *Life* staffer. She complained of a lump in her breast and asked to be examined. With a hidden camera, the photographer snapped pictures of the herbalist as he became engrossed in his therapy. Dietemann placed his hand on the patient's breast. He claimed that he could cure people by simply laying hands upon them. Bill Ray discreetly and quietly clicked off several frames. *Life* editors published the photos without Dietemann's permission. He sued the magazine because he claimed his privacy was invaded. He won on the grounds

that the photographer took the pictures surreptitiously. Dietemann had not given his permission for the pictures to be taken. Individuals do have privacy rights in their own homes.

As this book goes to press, 13 states have statutes that specifically ban the surreptitious use of cameras in private places. People have the right to expect that within their homes they can let down their guard and not find their picture in the next edition of the local paper or on the Internet.

A student at San Francisco State University ran into a problem when he was a resident of a university-owned dorm and photographed his fellow dormies during their normal activities.

Could he publish pictures of his friends cavorting in the halls late at night, perhaps smoking an illegal substance or drinking while under age? On the other hand, could the resident counselor stop him from shooting pictures where he lived?

Bottom line, the would-be photojournalist needed to identify himself as a news photographer and explain to his fellow residents that he might publish their pictures in the school's weekly. Dorm students, like anyone else, have the expectation of privacy while they are in their rooms.

Once the future photojournalist had explained that his purpose was to document the experiences of university freshmen, and once the students agreed, he was free to shoot and publish his photographs.

From dormitory residents to prisoners, everyone has certain privacy rights. You might not think of prisons as places where



Dietemann, attended by investigator Karen Easke, holds a pair of turtles which he studies. "Because they are

reptiles, and are not a great source of my patients." Below, in his office, he tells Mrs. Masoff why he believes

hand while wearing his magic coat with his right hand over an array of bottles that contain body tissues.

An Agent Works Undercover To Get the Goods

In California, where the problem is worse than elsewhere, the authorities are also... "I told her I had a lump in my breast," says Mrs. Masoff. "He asked by the Epsom... made me feel like I was... A year ago, I had a lump in my breast... in Antone Dietemann's office... in an interview, experienced... makes me feel like I was... with a magic wand and... containers that hold... One patient he recently... named Jack. Masoff... animal father, who was... a temporary audience... the state of California... Bill, a Life Correspondent... Bill was making notes... everything via a radio... hidden in her sleeve. Presumably other keep patients from be... treated by competent doctors.



A *Life* photographer took pictures of Antone Dietemann in his house without his knowledge. Dietemann sued the magazine and won. Courtesy, *Life* magazine

someone has the right to privacy, but the courts recognize this limited right. Judges have ruled that news and documentary photography can violate the privacy rights of inmates who do not consent to being photographed while they are in areas of prisons or jails that are generally secluded from the view of outsiders. If you are allowed to take pictures in a prison, you must then get inmates' permission to photograph them.

Outside the House

In the United States, you can take pictures of anyone, including politicians and celebrities when they are in public, even if they don't like it. The case of Ron Galella, self-styled paparazzo and pursuer of Jacqueline Kennedy Onassis for most of her public life, indicates how far the courts have extended this right. The case exemplifies the problem of intruding into someone's privacy outside the home. The former First Lady was newsworthy. Almost anything she did appeared in newspaper gossip columns.

Like Princess Diana a generation later, any photo of Onassis a photographer could grab soon appeared on the cover of a national magazine.

Galella was a full-fledged, full-time paparazzo who specialized in photos of Jackie. The word paparazzo in Italian means an insect similar to a mosquito. Director Federico Fellini, in his movie "La Dolce Vita," named the freelance photographers

who covered the movie stars and other celebrities paparazzi "because they buzzed like mosquitoes."

Galella, who made his living buzzing after the stars, started incessantly tracking Onassis in 1967. He hung around her New York City apartment and waited for her to step outside the door. When she bicycled in Central Park, he and his camera were tucked into the bushes. As she pedaled by, he took pictures of her. When she shopped at an exclusive ladies' apparel store, he ducked behind a counter and snapped away. When she ate at a restaurant in New York's Chinatown, he hid behind a coat rack to get the first photographs of the former First Lady eating with chopsticks. He even dated her maid for a few weeks in an attempt to learn Onassis's schedule.

Onassis sued Galella, charging him with inflicting emotional distress. The court had to balance Onassis's right of privacy against Galella's right to take pictures.

The court found in favor of Onassis.

Galella was ordered to stay 300 feet away from the Onassis and Kennedy homes and the schools of the Kennedy children, 225 feet from the children in public places and 150 feet from Onassis. The ruling was later modified to prohibit Galella from approaching her within 25 feet.

Note that the court did not stop Galella from taking and selling pictures of the former First Lady, as long as the pictures were used for news coverage and not advertising. Few



▲ After Marlon Brando broke photographer Ron Galella's jaw, Galella began wearing a football helmet to protect himself whenever he snapped pictures of the actor.

Paul Schmultbach

◀ The late Jackie Kennedy Onassis sued Ron Galella, self-styled paparazzo photographer, for harassment, and she won. The court eventually restricted Galella from taking pictures within 25 feet of Onassis. Joy Smith

cases of this kind have arisen since the Galella-Onassis proceeding.

In June 1998 California's highest court concluded that two people injured in a car accident could sue for invasion of privacy based on the fact that a photographer recorded emergency aid given in a rescue helicopter. The accident victims, the court held, could claim a reasonable expectation of privacy in the rescue helicopter. Based on this case, the same argument would apply to photographs taken in an ambulance, but the ruling does not prohibit photographing the victims before they enter the rescue vehicles.

Hidden Cameras and Recorders

Courts have been less protective of the rights of photojournalists when they use surreptitious methods in newsgathering, says First Amendment attorney James M. Wagstaffe of Kerr Wagstaffe in San Francisco. Courts have allowed invasion of privacy lawsuits to go forward when a broadcaster used a hidden camera to videotape the conversation of workers who were giving psychic advice on the telephone from private cubicles. (*Saunders vs American Broadcasting Co.*).

"If the hidden camera work is used on confidential communications and are deemed highly offensive to reasonable persons, liability can be found," he says.

"The result might be different if a hidden camera and microphone were being utilized to record a conversation in a public place with someone who identified themselves as a journalist—as occurred when a news person's conversation with a flight attendant who was

on the O.J. Simpson flight to Chicago was secretly recorded."

By the same token, Wagstaffe points out, courts and juries have been unsympathetic when reporters use fraudulent methods to get on the inside of a newsworthy subject, such as occurred in *Food Lion vs Capital Cities-ABC*. "Famously," Wagstaffe recalls, "a jury awarded millions of dollars to the Food Lion supermarket chain when two Prime Time Live reporters took jobs in the meat department under false pretenses and without disclosing their identities as newsmen."

"Although the story aired by the broadcaster about tainted meat and health dangers was a matter of immense public interest, the reporters' conduct still was found actionable as fraud and trespass."

USING SOMEONE'S IMAGE TO SELL A PRODUCT OR SERVICE

The law holds that you cannot publish a photo of a person for commercial purposes without obtaining that person's consent. This is generally known as the individual's Right of Publicity.

There is statutory protection for this right under the laws of most states. What this law means is that neither a company nor an individual can use the name or image of any other person to try to sell a product or service without getting the person's permission first.

Publishing someone's picture on the cover of a magazine, or the home page or front page of a news publication is permissible if it is newsworthy.



There are no problems publishing this picture of former President Bill Clinton in a newspaper or magazine story. But without Clinton's written permission, the photo could not appear in an ad selling saxophones.

P.F. Bentley, for *Time*

The court does not consider the newspaper or magazine itself a product. However, printing the same picture as part of an advertisement, without the subject's prior consent, is a violation of one of the person's rights of privacy—their Right of Publicity. Celebrities make most Right of Publicity court claims since celebrities make a good part of their income from product endorsements and licensing of their images.

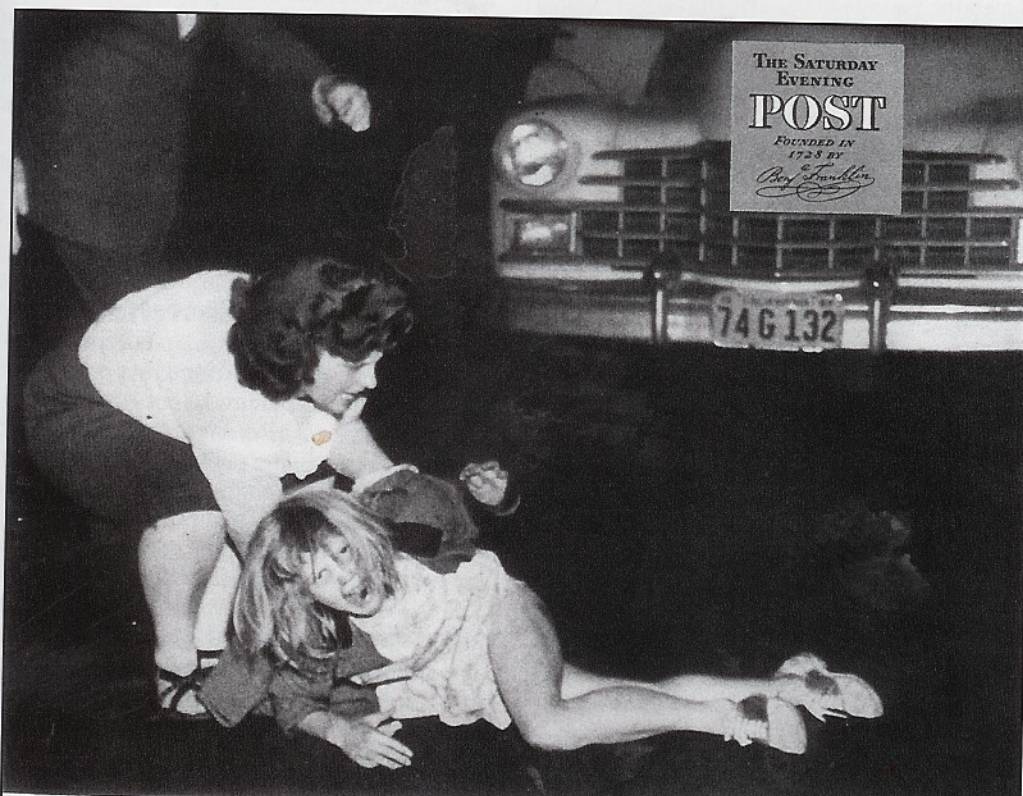
Say that famous movie personality John Starstruck is driving down the street in a new Ford Thunderbird. Thinking your editor at the *Daily Sunshine* might want to use the photo because no one knew Starstruck was in town, you snap a picture of the movie star. You were right. Your editor runs the picture of Starstruck in his new car on page one. No problem. You've done nothing wrong, nor has your editor done anything illegal.

Ford Motor Company, however, seeing the picture, recognizes its advertising value because the photo shows a famous movie star driving a Thunderbird. After legally obtaining a copy of the photograph from your

newspaper, Ford uses the picture in an advertisement. If Starstruck is recognizable in the Ford advertisement, then the movie star's privacy—in the sense of commercial appropriation—is violated because Ford is using Starstruck's image to sell its cars. Starstruck may sue the Ford Motor Company, and unless Ford can produce a consent form—called a model release—in court, the movie star will win. The model release, signed by the subject, gives the photographer or publication the right to use the photo in an ad.

The right to control the commercial use of one's image is not limited to the famous. All individuals have the right to protect themselves from this form of commercial exploitation.

Except for certain situations (see pages 394, 404, 407, and 408), when you take a picture for a media outlet for newsworthy purposes, you do not need a model release from the subject, famous or unknown. But when you take a picture that you want to sell to a company for use in an advertisement, brochure, fundraiser, or the like, then you



Safety education in schools has reduced child accidents measurably, but unpredictable darting through traffic still takes a sobering toll.

They Ask to Be Killed

By DAVID G. WITTELS

Do you invite massacre by your own carelessness? Here's how thousands have committed suicide by scorned laws that were passed to keep them alive.

The parents of this child claimed that the combination of words and pictures implied that they were careless, thus placing them in a false light. When they sued the *Saturday Evening Post*, the court decided in their favor. Reprinted from the *Saturday Evening Post*, © 1949, The Curtis Publishing Co.

must get a model release signed, even if the subject is unknown.

UNFAIRLY CAUSING SOMEONE TO LOOK BAD

The law holds that people have the right not to be placed in a "false light." In other words, photos can't make a person look bad without cause. For example, a photographer took a picture of a child who had been struck by a car, and the photo appeared in a newspaper. No problem so far. Two years later, the *Saturday Evening Post* ran the same picture under the title, "They Ask To Be Killed," with a story about child safety. The original use of the picture was a legitimate publication of a newsworthy event. But when the *Saturday Evening Post* used the headline with the picture and placed the subhead "Do You Invite Massacre with Your Own Carelessness?" next to the photo, the parents claimed that the words and photo implied carelessness on their part. The words and photo gave the impression that the child had willingly run out in front of the car. The court decreed that the photo/headline combination placed the parents in a "false light." The parents won the lawsuit.

Saturday Evening Post editors used an old picture from their photo file to accompany this new story. They used the old picture as an illustration of a general, ongoing problem. Often, this use of file photos provides the grounds for later lawsuits.

In another such incident, even a legally obtained photograph was found defamatory. John Raible signed a model release allowing *Newsweek* magazine to publish his picture

with a story about "Middle Americans." The editors, however, chose the headline "Troubled American—A Special Report on the Silent Majority," and printed Raible's picture below the headline. Raible felt that the headline, associated with his picture, implied he was troubled, thus putting him in a false light. He sued and collected damages. Both the *Saturday Evening Post* and the *Newsweek* cases show a picture's meaning can be affected drastically by the words associated with it. Although the picture itself might have been legal when it was taken, after captioning or headlining, the photo-plus-word combination when published can be considered illegal. Robert Cavallo and Stuart Kahan, in their book *Photography: What's the Law?*, say that "Pictures, standing alone, without captions or stories with them, generally pose little danger of defamation. However, an illustration is usually accompanied by text, and it is almost always that combination of pictures and prose which carries the damaging impact."

The *Newsweek* case points up a second legal danger for the photographer. The model release signed by Raible did not protect the photographer. The model release is not a carte blanche; it is a limited authorization given by the subject to the photographer, warning the photographer to use the picture in an understood and agreed-upon manner. A model release does not necessarily give photographers or picture editors the right to use a picture in any way they see fit.

TRUTHFUL BUT EMBARRASSING PHOTOS

The right of privacy does include some restrictions on printing truthful but private or embarrassing information about a subject. Generally, the media may publish newsworthy information in the public interest. The courts have liberally interpreted "public interest" to mean anything interesting to the public—and there are few things that won't interest at least some people.

PUBLIC BUT EMBARRASSING

The courts, however, have put certain limitations on the right of the public to know and see true but confidential facts about a person. Photographs, even if taken in a public place, should not ridicule or embarrass a private person unless the situation is patently newsworthy. The photos should not be highly offensive to a reasonable person and must be of legitimate concern to the public.

A Ms. Graham went to the Cullman, Alabama, county fair. After several rides, she entered a sideshow fun house. In the fun house, she walked across a grate that blew up

It is legal to take pictures at accident scenes in public places because accident victims have what is called a "public medical condition." Below, once the woman on the stretcher was moved into an ambulance, her medical condition became private. The photographer would have needed her permission to continue taking photos. Dan Poush, *Statesman-Journal* [Salem, Oregon]



her dress. At that unlucky moment, a photographer from the *Daily Times Democrat*, Bill McClure, was on his first photo assignment for the paper—looking for “typical” features at the fair. With his Speed Graphic camera, he snapped Graham’s picture just as her skirt blew up around her hips, exposing her underwear. After the picture was published, Graham called and complained. Getting no satisfaction from the photographer with an apology or retraction, Graham hired an out-of-town lawyer and successfully sued the *Democrat* for damages. The picture was truthful, but the jury found that the photo was embarrassing and contained no information of legitimate concern to the public.

Media lawyer Bo Bogatin of Bogatin, Corman and Gold cautions that a kind of libel known as trade libel can arise with truthful images that subject a company’s logo or trademark to disparagement.

PHOTOGRAPHING CHILDREN

There are no legal restrictions that prohibit you from photographing children. Although unauthorized photography of youngsters can arouse suspicions of a nearby parent or guardian, the photojournalist does have the legal right to photograph little ones playing in a public park.

A school principal has the authority to block a photojournalist’s access to the school’s building and grounds, but administrators actually don’t need a parent’s permission to allow photography of the students. Although many administrators do say they need parents’ permission, the courts do not require parental permission to take pictures of children in schools.

While you can take and publish pictures of children in schools and public parks, you are open to suit only if the photo might be considered embarrassing or derogatory. Because of concern over kidnapping and sexual molestation, however, be cautious when photographing children you do not know. Always try to explain to a parent or other responsible adult at the scene who you are and what you are doing. While you might have the legal right to take and publish the picture, dealing with an irate parent can distract you from your original assignment.

Special Children

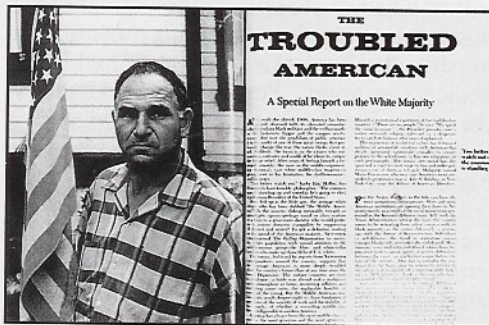
Photographing children in special education classes is another story. The parents of these children may consider that photo truthful but embarrassing. They could successfully sue you and your news organization. Getting a teacher’s permission is not sufficient. To publish a picture of a mentally or physically

disabled child, you must have the consent of the parent or legal guardian.

MEDICAL SITUATIONS

In 1942, an International News Photo photographer entered the hospital room of Dorothy Barber, who was in the hospital for a problem with an eating disorder.

Without Barber’s consent, the photographer took a picture of her, which *Time* magazine bought and ran under the headline “Starving Glutton.” Barber sued the



Even though John Raible had signed a consent form, he sued *Newsweek* and won because he felt the headline and this picture put him in a “false light.” Reprinted from *Newsweek*



Ms. Graham was in a public place and her face wasn’t even visible when she was photographed at the Cullman County Fair. She said her children were recognizable, and the courts agreed with her that this picture, though truthful, was embarrassing, and therefore, she could collect damages. Reprinted from the [Alabama] *Daily Times Democrat*



Without Dorothy Barber’s permission, a photographer took her picture in her hospital room. When the photo ran in *Time* magazine, Barber sued for invasion of privacy and won. International News Pictures

magazine, and *Time* lost the case. A Missouri court said, "Certainly if there is any right of privacy at all, it should include the right to obtain medical treatment at home or in a hospital without personal publicity."

Barber had what the court considers a "private medical condition." Therefore, a photographer could not take her picture without her permission.

ACCIDENTS

If someone is injured in an automobile accident or plane crash, falls out of a tree, nearly drowns, or is struck by lightning on public property, that person would have a "public medical condition." People who are victims of a crime, accident, or an "act of God" are considered newsworthy, and they can be photographed outside the hospital.

If an accident happens at the corner of Pacific and Hyde Streets, the photographer can begin taking pictures of the victim upon arriving at the scene, because the victim has a public medical condition and is not in the hospital. As the rescue team places the victim on the stretcher and slides the injured person into the ambulance, the photographer is still within legal rights to continue to photograph.

Once the victim enters the emergency van, however, the person is covered by the right of privacy and is off limits to photographers (see page 407). The same off-limits rule inhibits photographers once the victim enters the hospital.

If a person's condition is newsworthy, interesting, and historic, but was not caused by crime, accident, or an act of God, the person's medical condition is considered private. Barber's treatment was private. The first heart and kidney transplants and the first test-tube baby were both private medical conditions, even though they were newsworthy. Photographers could take pictures inside the hospital only if the patients involved granted permission.

PRIVACY LAWS OUTSIDE THE UNITED STATES

Not surprisingly, other countries employ different laws regarding photojournalists' rights to take pictures.

France

Surprisingly, France—where the master of the decisive moment, Henri Cartier-Bresson, was born and photographed for much of his life—has enacted what many photographers consider to be some of the most restrictive laws in the world. Martin Parr, a member of the respected photo agency Magnum, has

said that he refuses to photograph at all in France given what he and other professionals call the law's absurdity.

The laws require permission from the subject of any photograph taken anywhere, regardless of whether it is in a public space or at a news event. The law protects individuals' "droit de l'image," or the right of an individual to own his or her own image. Some have interpreted this to mean images of their property, as well.

Another law forbids publishing images "that would infringe the dignity of the individual," particularly criminal suspects who have not yet been sentenced. This law bans images from crime scenes or accidents that might make a subject look "undignified."

French media outlets resort to blocking out recognizable faces in candid photos even if the picture was taken during a news event.

Elisabeth Guigou, who introduced the legislation protecting "dignity," has said that these enhanced privacy safeguards show that France remains the home of human rights, *The New York Times* reported. Critics see them as signs of the privatization of public space.

Canada

The French-speaking province of Quebec in Canada has imitated the privacy laws of France. Quebec is the only place in North America where photojournalists are required to seek permission from the subjects of photographs. The only situations where such a permission is not mandatory is when the photo is of a crowd, if it's considered legitimate news, or considered to be in the public interest, according to Kristian Gravenor of the *Montreal Mirror*.

LIBEL AND THE PHOTOGRAPHER

Libel is a printed, written, or pictorial statement that is defamatory, meaning harmful to somebody's good name, character, or reputation. The image must have been published or shown to another individual due to negligence on the part of the photojournalist or due to a willful disregard for the truth.

Since truth is a defense in libel cases, and since photos historically have represented actual scenes and so were truthful, it might seem that a person should not be able to win a libel suit against a photographer.

However, a number of successful libel suits have been based on photographs, which can subject someone to ridicule, contempt, or hatred just as effectively as words can.

Of course, photographs can at least appear to lie, and photos in conjunction with print may form the basis for a libel suit. Indeed, in this age of digital enhancement,

manipulation, and "morphing," warns attorney Bogatin, there is greater likelihood than ever that claims might be made against a photographer on these grounds, and the defense of "truth" must entail a demonstration that a given image was not manipulated.

Usually, a photo alone is not libelous, although such cases have occurred. The most famous involved a Mr. Burton, who was paid for a cigarette endorsement below

For the advertisement, Burton was photographed holding a saddle. In the photograph, quite by accident, the saddle's wide girth strap appeared to be attached to Burton, giving, in the court's words, a "grotesque, monstrous, and obscene" effect. The photo was deemed libelous.

In some situations, when words have been added to photos via headlines, captions, or stories, the combination has resulted in libel. The photograph itself may be harmless, but the accompanying words may add the damaging element.

For example, the *New York American* printed a photograph of a wrestler, a Mr. Sbyszko, next to that of a gorilla, with the caption: "Not fundamentally different in physique." The photo-plus-word combination was libelous. As in cases involving privacy, photographers must be particularly careful how their pictures are associated with words.

Many photographic libel suits have involved individuals arrested as suspects, according to Michael Sherer of the University of Nebraska at Omaha. In his report, "No pictures please: It's the law," Sherer notes that individuals allegedly involved in murder, illegal drugs, smuggling, police corruption, financial misdealing, illegal gambling, organized theft rings, and organized crime have sued for libel when their pictures appeared in print. In addition, he notes, people have sued because they felt photos of them implied sexual promiscuity or abnormal or illegal sexual activity.

To prove that a photo is libelous, the defendant must show that the photojournalist acted with willful disregard for the truth or was unprofessional and/or negligent. By using proper reporting procedures in gathering and publishing the photos, several media defendants have successfully survived such libel cases.

Sherer notes that problems arise when courts discover that proper reporting techniques were not used to obtain the photos. For instance, photographers failed to verify that individuals who were photographed during arrests were indeed suspects in the robberies or suspects accused of prostitution.

Finally, Sherer cautions, if you have any doubt that the subjects pictured are not the same people as those mentioned in the accompanying caption or news story, find another way of illustrating the story.

BREAKING A PROMISE OF ANONYMITY TO A SUBJECT

Cornell Anderson was a patient of Dr. William Valenti, an AIDS specialist who was being profiled in the *Rochester Democrat and Chronicle*. Promising a photo for the story would not reveal the patient's identity, the photographer nonetheless allowed a picture in which the patient was recognizable to be published.

Upon seeing Anderson's photograph in the paper, his family recognized him. Anderson sued and won the case. The court found that the photographer had made a verbal contract with his subject; further, there was no value in the public knowing the man's identity.

In a review of cases like this, "Negative Identification: Photographer's Consequences for Breaking Promises of Confidentiality to News Subjects," Laurence Alexander found few involving still photographers. Still, he recommends sidestepping the problem by not making confidentiality promises whenever possible. Once you agree, you have made a



Although truth is an absolute defense for libel, and this picture was "true," Mr. Burton sued when he saw what he looked like in this portion of a Camel cigarette ad. Burton had given permission for the ad, yet the court found publishing the picture was libelous.

legal binding contract not to show the subject's face.

PRESS CREDENTIALS USEFUL BUT LIMITED

Press credentials issued by the newspaper or magazine for which you work are a means of identification and nothing more. Press passes entitle you to nothing. Authorities use press credentials to determine if you are an official media representative and then may invite you to the scene of a crime or disaster.

Essentially, your press pass gives you no more rights than those enjoyed by the public. The press credential does not give you a right to break the law, even if you are in hot pursuit of a big news story. Sergeant Carl Yates of the Louisville, Kentucky, police department works regularly with the media. He characterizes the situation this way: "You have no more right of access than the general public. What you do have, and what you hope the police will recognize, is that you have more of a reason to be there than the general public."

Press credentials provide identification but do not supply any special legal rights. © Wide World Photos



Credentials issued by the highway patrol or the state police carry no legal weight other than providing proof you work for a media outlet. Official credentials can be ignored or recalled at any time by the law enforcement agencies that issued them.

On the other hand, authorities cannot discriminate against you or your newspaper at the scene of a crime or disaster. All reporters, photographers, and TV camera operators must have an equal opportunity to cover the story.

The police cannot select one newspaper photographer and reject another. Nor can police choose to let in television camera crews and keep out still photographers. If the crime scene is crowded, however, they can ask photographers to cooperate and form a pool. One pool representative will photograph in the restricted area, and then share the pictures with the other photographers.

SUBPOENAS FOR IMAGES

A reporter for the *Louisville Courier-Journal* wrote a story about making hashish from marijuana. The article included a photograph of a pair of hands working over a laboratory table with the caption identifying the substance in the photo as hashish. After the article and photograph were published, the reporter was subpoenaed to appear before a grand jury and ordered to testify about whose hands had appeared in the photograph. The reporter claimed that both the First Amendment of the U.S. Constitution and a state law protected his confidential source of information. The U.S. Supreme Court said the reporter had witnessed a crime and that the sources did not deserve special protection (*Branzburg vs Hayes*).

While a number of states have laws that, to some extent, shield reporters and photographers from courts subpoenaing negatives and notes, each state's laws are different. To date, unfortunately, the federal government has enacted no shield law that protects journalist-source confidentiality. And existing state laws provide only limited protection, especially when the photojournalist witnesses a crime. As the U.S. Supreme Court ruled in the marijuana and hashish case, "The crimes of news sources are no less reprehensible and threatening to the public interest when witnessed by a reporter than when they are not."

While 30 states have shield laws that protect journalists when they gather information, including photographs, many of these laws do not cover freelancers or student journalists even if they are reporting on a major news event. A subpoena for images, surprisingly, is the number one legal problem faced by news

photographers, according to a survey of NPPA members by Michael Sherer.

He found that 25 percent of the survey respondents had been subpoenaed for photographic materials in street riots and other law-breaking incidents. Sherer recommends first consulting with a lawyer and your editor before complying with a subpoena. Finally, he cautions against destroying photographs sought by a subpoena. This can result in a contempt-of-court citation.

To avoid becoming an investigative arm of the police—who otherwise might rummage through all of a newspaper's files from such events—some publications destroy all images except the one that was published and perhaps the frames immediately adjacent to it. If asked, these newspapers need only turn over the published picture.

COPYRIGHT: WHO OWNS THE PICTURE? WHEN AN EMPLOYER OWNS YOUR IMAGES

When you are an employee, your employer owns the copyright to your photos, regardless of whether they are still images or video. The employer holds the rights to the pictures and can reprint or resell them. Protecting those rights is the employer's concern. Usually an entire newspaper or magazine is copyrighted, including all material contained in each issue.

For your company to own your work, your employer must pay benefits as well as give you specific assignments. If you fit this definition, you probably have a "work-for-hire" arrangement with your employer, whether you are a full-time or part-time employee.

Of course, you may form other specific contractual arrangements with your employer. For example, when a company hires you for a staff position, you can agree to take the job on the condition that you own your images, along with the rights to sell the photos after the company has published the originals.

In fact, you can negotiate any contract you like with your employer as long as you arrange the details before you sign on the dotted line. Often, such details will include a license for the company to use your photos in any manner it wants in perpetuity.

Your right to sell pictures you originally took for your employer differs among companies. Among those organizations that keep the images permanently, some license or sell a picture and retain the profits but give the photographer a credit line. Others give the photographer a percentage of the profits from any license or sale income. Some give the images to the photographer after a period of time; others let the photographer retain the

images immediately after publishing the photos the first time.

As a freelancer, though, remember that if you agree in writing to a "work-for-hire" contract, your client can reuse or resell the photos without your permission. You no longer own the images. Without a written contract, the images remain yours.

However, in some states, like California, statutes require the contracting party in a work-for-hire agreement to pay Workman's Compensation and Unemployment Insurance for the benefit of the work-for-hire contractor, since they are treating the fruits of the photographer's labor as if the photographer were an employee. When pressed to pay such premiums, advises attorney Bogatin, the contracting party often will give up the work-for-hire demand and take an appropriate license. (For more on work-for-hire issues, see Chapter 18, "Turning Pro," pages 465, 466, and 467.)

WHEN YOU RETAIN THE COPYRIGHT

If you are not a full-time employee, however, and have not signed a "work-for-hire" agreement, the company does not own the copyright to your images. Unless you make a special agreement, you own the copyright.

When you accept an assignment from a newspaper, magazine, web site, CD-ROM manufacturer, or any kind of company, you are not an employee of that organization. When you turn over your photos to the assigning editor or art director, you automatically are granting one-time rights, but the pictures can be published or used only once. Any other use the company wants to make of your photos is entirely up to you.

If you take pictures on your own time without an assignment, even if you are a full-time employee, you own your images and the copyright to them.

When you sell a picture that was shot on your own time, you can form several arrangements with the organization buying the picture—as long as you form the agreement at the time of the sale.

If you sell one-time rights, you can resell the image elsewhere after it has run.

In a second type of arrangement, you can sell the picture along with exclusive rights to it for a specified period of time.

In a third type of agreement—for a lot more money, one hopes—you can sell your copyright. This means that only the agency or publication has the right to distribute and sell the photo. You no longer have that right.

Remember, if you made no specific agreement when you sold the photograph, you automatically retain your copyright.

AUTHOR'S NOTE

Laws differ from state to state. States pass new laws and drop old ones as courts set new precedents. These laws and precedents are fairly clear about what is restricted, but they are usually unclear about what is permissible. No chapter on photojournalism law can be totally comprehensive or definitive. This chapter should be read as a guide to your rights as a photojournalist. For more specific information about the laws in your state, check with a media specialist from your local bar association.

On assignment for *People*, the photographer took this picture of buff brothers who made the career transition from hog farming in Nebraska to modeling for a New York talent agency. The magazine has the right to use the picture one time but the photographer retains the copyright. Three months after the picture first appeared, the photographer could sell the picture to other publications. Keith Philpott, for *People*

The agency or publication has first rights to use the image, but you can resell the photo to other outlets the first publication.

COPYRIGHTING YOUR OWN PHOTOS

If you don't work full-time for a news organization, how do you protect yourself from someone reprinting your photos and not giving you credit or paying you? How do you prove the printed photo is yours if it does not carry your credit line? These questions are addressed in the U.S. Copyright Act.

If you are a freelance photographer you have copyright protection of your work as soon as you take a picture and develop the film or save it to a digital file.

To protect your rights, put your copyright notice on the back of each print with either of the following notations: © or the word Copyright, with the year you shot it followed by your name. Although not required, it is a common practice to include a statement that reflects the concept of "all rights reserved" or "permission required for use."

After you've placed the copyright notice, you can register the image with the U.S.

Copyright Office in Washington, D.C. Do this by completing the form you will find online and sending your images, along with the stated fee. The fee covers all the material you are sending, not just one image (see www.copyright.gov).

Although technically your photograph is protected at the moment you press the shutter, collecting damages is far easier if you have legally registered it.

Media attorney Bogatin suggests doing this every quarter for all your published work. You can also register your work in bulk—a body of work, tear-sheets, videotapes of your slides, contact sheets, etc.

"Visual artists are at the eye of a perfect storm, and copyright is at ground zero," says Eugene Mopsik, executive director of the American Society of Media Photographers (ASMP).

"Both Congress and the public need to know that you value your intellectual property, and the best way to do that is to register your work... Don't wait until you are infringed and then possibly lose the available remedies," Mopsik says.



ASMP has posted a thorough step-by-step tutorial on how to register both published and unpublished works: www.asmp.org/commerce/legal/copyright/

Keep in mind that if someone publishes your image without permission, and you have not registered your copyright within three months of your publication of the image, or before the infringement, you will still be required to register before the courts will let you proceed with an action. If you have a preregistration infringement action, you are likely to win the fee you would have charged for the picture as well as compensatory damages (the infringer's profits, if any). For example, if *Train Lovers* magazine published your photo of a train wreck without your permission, you may have lost sales from other magazines that would have purchased the image. With the image registered, you can sue for the money the publication should have paid you, as well as the money you can prove you lost from possible future sales.

You can also sue to stop *Train Lovers* magazine from using the picture again or featuring it in their upcoming calendar.

However, if you have a preinfringement registration before *Train Lovers* magazine publishes your photo, you can elect to pursue a judgment of up to \$150,000 if you can prove the magazine willfully published the image without your consent. The additional statutory benefit under the Copyright Act is that you can possibly recover legal fees. However, if you have not registered your copyright within three month of publication or before the infringement occurs, you cannot recover your fees and costs, and will likely lose the prospect of retaining legal counsel on a contingency-fee basis, which otherwise is often available.

RESPECTING THE COPYRIGHTS OF OTHERS

The ease of taking images off the Internet or scanning photos and incorporating them into photo illustrations makes it easy to forget that other photographers or artists enjoy the same copyright protection you do. Remember not to use "found" images from newspapers, magazines, or the web without express permission to do so, or unless you have established with confidence that the underlying image as well as the photograph of it are in the public domain.

Just as no one can legally make a painting or sculpture from your photograph, you may not photograph someone else's copyrighted painting or sculpture. Your photo becomes a derivative work, which only the copyright owner—usually the creator of the work—can create or license to be created. ■

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