

Film: Like Reporter's Notes?

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Again the immediacy: right there in America's living rooms, the swirling turmoil of faces in a crowd, an arm thrust forward with a gun pop-pop-popping, the falling figure . . . George Wallace had been shot.

The Columbia Broadcasting System's Laurens Pierce had every second of it on 16 mm. color film. He was standing right behind Wallace. American Broadcasting System's Charlie Jones was next to Pierce with his camera turned off but he turned it on in time to record the last few shots and the subsequent action. National Broadcasting System's Fred Montague was in the crowd, missed the actual shooting scene, but moved fast after that.

The U.S. attorney's office in Baltimore also moved fast after Alabama Gov. George C. Wallace was gunned down in a suburban Maryland shopping center May 15. Seeking some of the most important evidence a prosecutor could have, U.S. Attorney George Beall asked for the television film taken on the spot and any other relevant film.

While Beall told reporters that the three national networks and two Washington television stations he asked were "completely cooperative," spokesmen for the networks and stations said that in some cases Beall met with a flat refusal to turn over "outtakes"—the word used to describe film taken but never put on the air.

"The FBI came and said we want it all," said WTTG's news director Ed Turner, who had a camera crew at Wallace's earlier May 15 rally in Wheaton. "I said no outtakes. Philosophically, I didn't want our film crews to be an extension of the investigatory arm of the government. It's like (a reporter's) notes."

Turner did give the FBI

films of Bremer at that earlier rally—but not until the films had appeared on the air. None of the networks and stations had any problem with turning over material that had been aired.

The question of turning over outtakes, however, raises the delicate constitutional question of whether the freedom of the press guaranteed in the First Amendment will be violated

if federal authorities can require television news networks to let them view film that was not actually used on the air.

The three national networks all have general policies against releasing outtakes, but spokesmen for each said there are exceptions to the policies in cases where violations of the law have occurred.

"We've never taken the position that the press has an absolute privilege not to turn over outtakes," said ABC news attorney Sam Antar.

He said, "There are limited exceptions, like this case, where it's pretty clear that a violation of law has probably taken place and we have evidence that is very relevant and there's really no confidentiality involved."

Noting that ABC turned over outtakes to Beall without question, Antar added, "We think in a case like this there is a compelling interest in justice that is the reason we turned it over."

CBS declined to turn over outtakes—but a spokesman added that they were not significant because everything significant had appeared on the air. NBC also turned over only footage that had appeared on the air.

"We never said in any of

our previous arguments that there were no circumstances where outtakes would not be given out," said Gordon Manning, CBS vice president for news.

The key cause for concern, he said, was the possibility of "being second-guessed on your editing procedures or your news policies" by federal authorities.

Sidney Eiges, NBC's vice president for information, indicated the network might have turned over outtakes if everything important hadn't been on the air.

"When the commission of a serious crime is involved," he said, "out of a sense of good citizenship we do make the film available." NBC would draw the line, he said, on giving out "outtakes of closed news events or our own interviews with people."

WTOP in Washington, part of a wholly-owned subsidiary of The Washington Post Co., flatly refused to turn over outtakes. Said vice president for news James Snyder: "We don't go out to collect evidence for trials,

we go out to cover the news."

Beall said he was not about to quibble with what he was given.

"We have pretty much everything we think we want," he said. "I'm not going to fight the battle of outtakes on this one—we don't need 'em."

However, some network and station spokesmen described a process of cooperative negotiation, in which the networks and stations voiced their resistance to a general policy of giving outtakes and in which federal authorities pressed gently for what they could get and were ultimately satisfied with very limited outtakes—or none at all in some cases.

While most of the Laurel film was broadcast—thus virtually eliminating the problem of federal access to the film footage—the problem could become critical should federal authorities attempt to get access to the mountain of outtakes that the national networks have acquired in months of filming political candidates in the current Presidential campaign.

There has been no indica-

tion that federal authorities will attempt this, but their interest in film footage of crowds at political events has become intense since the accused assailant in the Wallace shooting, Arthur H. Bremer, has been identified in crowd photos at several political events in this country and Canada.

The question of federal access to outtakes has never been settled by the Supreme court. The issue came to national attention a year ago when Congress considered citing CBS for contempt for refusing to make available the unused film in the controversial documentary, "The Selling of the Pentagon."

CBS president Frank Stanton maintained at the time that the First Amendment shields television from government surveillance just as the newspapers successfully contended in the Pentagon papers cases that the Constitution protects them against prior restraint from publishing.

Some congressmen, led by Rep. Harley Staggers (D-W. Va.), wanted to see outtakes from the "Selling of the Pentagon" program in order to support their contention

that CBS was biased in its editing of interviews.

A number of congressmen also contended — as have many other critics—that the airwaves are a public resource already regulated by Congress with Supreme Court approval and that therefore the First Amendment guarantee of a free press does not extend to them as it does to privately owned print media.

Congressional leaders ultimately decided not to press the point to a constitutional showdown. The Supreme Court has before it now three cases dealing with whether grand juries may require reporters to testify and produce their notebooks —though the ramifications for film crews and their outtakes of any decision probably will be a source of legal debate.