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Burger Urges Press Restraint In Criticizing the Judiciary

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Chief Justice Warren E. Burger has called on the American press to use restraint in criticizing the judiciary and to expose "all the facts" when judges are attacked.

In an interview with the U.S. Information Agency, Burger said the press, possessing "virtually unreviewable" power, has a special obligation when the judiciary is attacked, because, traditionally, "judges never respond."

Burger said the judiciary has been the target of "irresponsible attacks... from time to time, particularly in the last 20 or 25 years."

The chief justice yesterday declined to specify what attacks he had in mind or to expand on the interview, which was recorded in July and broadcast last month by the Voice of America. A transcript was released at the Supreme Court.

According to the transcript, Burger told an interviewer, "When the media make attacks on judges—I'm speaking now not of criticism, necessarily, of the opinions, but criticism in the broad sense—by a long tradition in this country, judges never respond."

At another point in the interview Burger said "someone must respond" to unwarranted attacks on the judiciary. He did not say who should respond, but, ethical canons since 1908 have stated that the duty falls on the lawyers who practice before the court under attack.

Burger contrasted criticism of the judiciary with criticism of the executive branch and Congress. The other branches, he said, "may and do and should respond to press attacks," but judges can't.

Therefore, he said, "there is at least some obligation on the media to act with the same kind of restraint (with) which

the media expect judges to act."

He called the First Amendment right of a free press "not an absolute right, but it is as near to an absolute right as we have in our system."

Asked whether there was any current threat to a free press, he replied, "I think history shows that there's never been a time in our 200 years when the press did not think its freedom was being threatened"—nor a time when some did not see a threat to an independent judiciary.

Burger said he was sure the news media would not agree that a free press is adequately safeguarded. He cited a conflict over court orders requiring reporters to divulge their sources, which was resolved against the press in 1972, with Burger voting with the 5-to-4 majority. He said any future solution would have to be worked out in the legislatures, not the courts.