POPULAR GOVERNMENT

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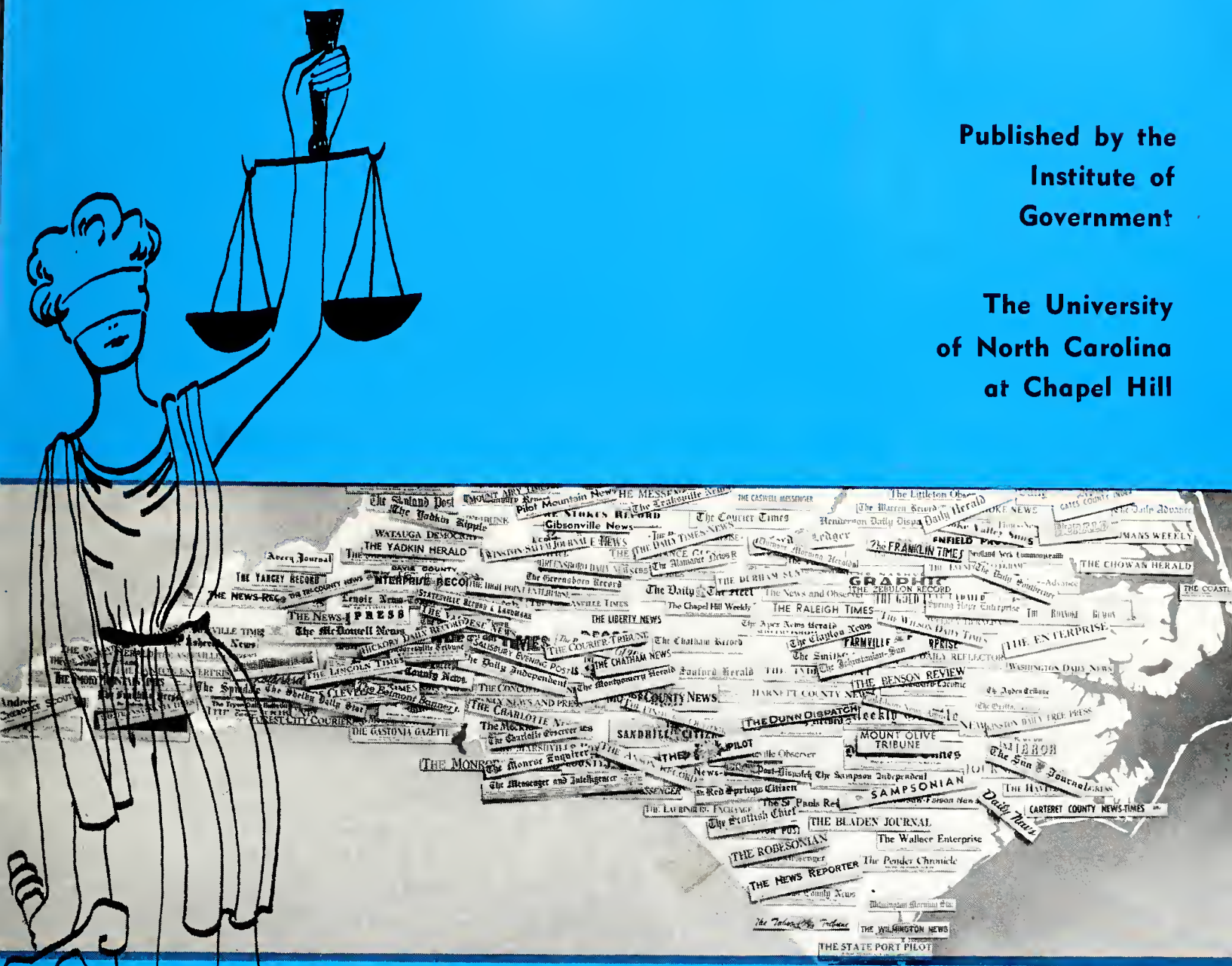

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THE FIRST PRESS COURT REPORTING SEMINAR

Judges, Editors, Lawyers analyze "Free Press and Fair Trial"

THE AMENDMENT THAT PASSED:

Property Rights of Married Women

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COVER

Our cover design has the traditional figure of Justice standing athwart a map of North Carolina showing the bannered names and locations of 48 daily and 149 weekly newspapers published in the State. The design symbolizes the vital challenge of "Free Press and Fair Trial," important aspects of which are analyzed in this issue in articles based on presentations at the ground-breaking Press Court Reporting Seminar *and published for the first time. (See Page 1 ff.)*

Press Court Reporting Seminar:

A PROMISING BEGINNING FOR A NEW PROGRAM TO ADVANCE PRESS-GOVERNMENT RELATIONS

The author presides over the panel on "The Press and the Judge." He is flanked by editor Sam Ragan (left) and Judge Hamilton H. Hobgood.

By Elmer R. Oettinger, Assistant Director, Institute of Government

The first "Press Court Reporting Seminar" was a rewarding occasion for all concerned. It was the source for most of the articles in this issue of *Popular Government*. It marked a highly successful collaborative venture, co-sponsored by the Institute of Government and the North Carolina Press Association with the co-operation of the University of North Carolina Schools of Law and Journalism. It brought together in Chapel Hill for three November days some forty newsmen from all over North Carolina (whose responsibilities include press coverage of our courts) and selected judges, attorneys, editors, and University faculty (whose responsibilities equip them for instruction in court matters). It marked an auspicious beginning to a program designed to advance press-government understanding, relationships, and performance.

The results were reflected in accolades. *The North Carolina Press*, publication of the North Carolina Press Association, sounded the general theme with its headline: "First Court Reporting Seminar Given High Praise; Others Planned Later." And, indeed, the Press Association's Board of Directors and membership, under the leadership of President Elizabeth Swindell, voted in January to join with the Institute of Government in continuing the program. Professor John B. Adams, who represented the University School of Journalism on the program, called it "a good seminar" and reported hearing "many favorable references." The three Superior Court judges who participated in the occasion expressed their pleasure. So did the practicing attorneys and professors from the University Law School. And the Institute of Government staff members who served in instructional capacities for the Seminar were much impressed with the spirit and desire to learn of the reporters in attendance.

Editor Weimar Jones, panel member, wrote his "congratulations" and called the Seminar a "great contribution to North Carolina." Typical comments from the court reporters who were sent by their papers to the Seminar included the following: ". . . Every moment of the several meetings was packed with the best things I've ever been privileged to hear as newspapering goes. . . . It was just what all the boys needed." (Steve Wall, *The News Reporter*, Whiteville.) "Additional programs on this subject would be good news for those in the business and the reading public too." (Fred Flagler, *Winston-Salem Journal*). "Please accept my thanks for the most informative Press Court Reporting Seminar. I enjoyed it immensely and I am sure it was beneficial to everyone in attendance." (George Lougee, *Durham Morning Herald*). "Dow Shepherd told our staff meeting Tuesday of his fine impression gathered from your Institute for court reporters and I was glad to see your suggestion that it be carried forward through the years." (Holt McPherson, editor, *High Point Enterprise*). In addition, the Judicial Administration Section of the American Bar Association wrote to express its approval of the Seminar and its interest in spreading the idea to other states. Attorney Irving Carlyle feels that "the interest of the American Bar Association of the project is very significant."

Such encomiums, of course, are encouraging. To put the occasion in perspective, however, it is necessary to recognize that it represents only a beginning. It is important that newsmen and public officials explore together the concepts underlying such mutual concerns as free press and fair trial; access to information; cameras and tape recorders in the courtroom; libel, contempt, and privilege. Yet press-government relations involve all facets of government—executive and legislative as well as judicial. There are problems at state and local as well as national and international levels. And the sources of trouble tend to be similar or related.

Research and teaching programs and conferences are logical approaches to these problems. This breaking of new ground, then, is the start of efforts to raise standards to which others may repair and to set directions which may be meaningful and useful to press and government alike.

It should be noted that the articles published in this issue are simply representative of some of the matter presented at the Seminar and do not constitute a "proceedings." The process of selection was dictated in part by availability of materials. It was not possible to include all of the presentations nor any of the informal question and answer sessions which followed each lecture and panel discussions and were vital and informative parts of the whole.

No consideration of this first "Press Court Reporting Seminar" should be closed without reference to the history and climate of press-government relations in North Carolina which make this occasion possible. In this connection a tradition of service and co-operation has marked the relationship between the Institute of Government and the North Carolina press, bringing mutual and public benefit.

The Institute of Government has served the press since the early 1930's through publications, research, teaching, and information about public law and government. Since 1933 the press of North Carolina has received certain Institute legislative publications, which include daily and weekly legislative bulletins and final analyses and summaries of legislation. In fact, the weekly legislative summary was begun in 1941 primarily as a special service to smaller daily and non-daily newspapers throughout the state which were unable to maintain direct coverage of the North Carolina General Assembly. Since its first issue in 1931 the Institute of Government magazine, *Popular Government*, has been sent to the press of the state, providing a readily accessible source of information and ideas about public law and government. At one time a member of the Institute staff taught the course in "The Press, the Constitution and the Law" in the University of North Carolina School of Journalism. Institute staff members have been invited to address press meetings and occasions and have made themselves available for consultation by individual newsmen.

On its part, the North Carolina press has given editorial approval and encouragement to the Institute of Government. Research, publications, and training programs and findings of

the Institute have been accorded careful analysis and treatment in the news and editorial columns of North Carolina newspapers. An exchange of publications between press and Institute has proved valuable. Members of the press have covered and appeared on Institute panels and programs and have joined with the Institute in dedications and ceremonies.

Although this appears to be the first time the Institute of Government and the North Carolina Press Association have served as co-sponsors for a program, it may mark the beginning of an exceedingly important advance in their joint relationship. Similar seminars may prove feasible in other areas: municipal government reporting, police reporting, legislative reporting—to name a few. A concerted effort to explore problems inherent in the responsibilities and relationships of government and press may open frontiers of shared knowledge and understanding.

Those who participated in this first "Press Court Reporting Seminar" have become part both of a healthy tradition of public service and an advance guard exploring new realms of joint endeavor in the interest of attaining ever higher standards of performance in press and government, in keeping with our free democratic concepts, traditions and processes.

No account of the Seminar would be complete without a final word of appreciation to all of those who gave of their time and energy: judges, attorneys, law and journalism faculty members, Institute staff, newsmen in attendance. And special mention should be made of three Press Association presidents: Mrs. Swindell, whose leadership brought wholehearted press co-operation and her predecessors, H. Clifton Blue and Bob Bunnelle, who first carried the Institute proposal for the Seminar to the Press Association and helped to secure its approval. Through the efforts of many dedicated people, new paths have been broken toward the goal of a better informed and more responsive press and government in fulfilling their important responsibilities.

PROGRAM: 1963 Press Court Reporting Seminar

Thursday, November 7

9:00-11:00 a.m. REGISTRATION

11:00-11:30 a.m. WELCOME AND ORIENTATION
John L. Sanders, Director, Institute of Government

11:30-12:20 p.m. THE BASIC NATURE OF COURTROOM PROCEEDINGS
Clyde L. Ball, Assistant Director, Institute of Government

12:20- 2:00 p.m. LUNCH

2:00- 2:50 p.m. THE PRESENT COURT SYSTEM IN NORTH CAROLINA
C. E. Hinsdale, Assistant Director, Institute of Government

3:00- 4:50 p.m. FREE PRESS AND FAIR TRIAL: I. THE PRESS AND THE JUDGE
Speaker: Honorable Hamilton H. Hobgood, Judge of the Superior Court, Ninth Judicial District
Panel: Sam Ragan, Executive Editor, Raleigh *News and Observer*; John W. Scott, Professor, University of North Carolina School of Law

Friday, November 8

9:00- 9:50 a.m. BASIC LEGAL TERMINOLOGY
C. E. Hinsdale, Assistant Director, Institute of Government

10:00-10:50 a.m. ACCESS TO INFORMATION
Elmer Oettinger, Assistant Director, Institute of Government

11:00-11:50 a.m. THE PRESS AND THE LAW ENFORCEMENT OFFICER
Jesse R. James, Assistant Director, Institute of Government

12:00 noon-2:00 p.m. LUNCH

2:00- 2:50 p.m. LIBEL — QUALIFIED PRIVILEGE OF REPORTING JUDICIAL PROCEEDINGS
William C. Lassiter, Attorney at Law, Raleigh, North Carolina; General Counsel, N. C. Press Association

3:00- 4:50 p.m. FREE PRESS AND FAIR TRIAL: II. THE PRESS AND THE DEFENDANT
Speaker: James R. Nance, Attorney at Law, Fayetteville, North Carolina
Panel: John B. Adams, Professor, University of North Carolina School of Journalism; Charles Hauser, Carolinas Editor, *The Charlotte Observer*

6:00- 7:00 p.m. SOCIAL HOUR

7:00- 9:00 p.m. BANQUET
Schrafft's Country Inn, Chapel Hill-Durham Blvd.
COURTROOM PHOTOGRAPHY
Speaker: Honorable Leo Carr, Judge of the Superior Court, Fifteenth District
Remarks: Irving E. Carlyle, Attorney at Law, Winston-Salem, North Carolina; Mrs. Elizabeth Swindell, President, North Carolina Press Association and Editor, *Wilson Daily Times*

Saturday, November 9

9:00- 9:50 a.m. JUVENILE COURTS AND THE PRESS
Roddey M. Ligon, Jr., Assistant Director, Institute of Government

10:00-11:50 a.m. FREE PRESS AND FAIR TRIAL: III. THE PRESS AND THE PROSECUTION
Speaker: Honorable E. Maurice Braswell, Judge of the Superior Court, Twelfth Judicial District
Panel: Thomas W. Christopher, Professor, University of North Carolina School of Law; Weimar Jones, Editor, *The Franklin Press*

11:50 a.m.-12:15 p.m. SUMMATION
Elmer Oettinger, Director, Press Court Reporting Seminar

Press Court Reporting Seminar:

"An Outstanding Success"

By Elizabeth G. Swindell, President, North Carolina Press Association

(Editor's Note: The author is the first woman president of the North Carolina Press Association. Editor of the Wilson Daily Times, *she has served as vice-president and director of the N. C. Press Association, president of both the Association for afternoon dailies and the Eastern North Carolina Press Association, and director of the North Carolina Associated Press Club. She is also president of Havelock Progress Publishing Company and formerly served as vice-president and director of Greenville television station WNCT. Her alma mater is Saint Mary's Junior College in Raleigh. Now a proud grandmother, she learned about newspaper operations from her late father, John D. Gold, founder and for many years editor of the* Daily Times.*)*

This Press Court Reporting Seminar, like all worthwhile programs owes much to so many. We know the public will be the benefactor and that is the objective of those who have contributed so much in time and effort to make the seminar a success.

The idea is another first for the Institute of Government that is in itself the first of its kind in the nation. And now the North Carolina Institute of Government, the brain child of Albert Coates, is serving as a pattern for other states, which hope to duplicate the work being accomplished here.

The Institute of Government put the court seminar on the calendar after Mr. Irving Carlyle suggested such a program in a speech to the Associated Press News Council at their meeting in Durham in 1962. Mr. Carlyle's idea was immediately taken up by the Institute of Government through Elmer Oettinger, an assistant director, who personally planned and coordinated the program. And here I proudly remind you that Elmer is a Wilson County boy.

He first took the idea to the then president of the Press Association, Clifton Blue, who, in turn, brought it before the Board of Directors of the North Carolina Press Association at the meeting in Morehead City in 1962. And from the beginning there has been enthusiastic response, for we know from this Seminar will come a better understanding of the problems of both the court and the press. Each needs the other as our work is more closely related than many realize. The objective can be said to be the same, "to establish law and justice in the land." This was the code of the King of Babylon about 2250 B.C.

The light of publicity is a major deterrent of crime. I have had personal experience as to its effectiveness. A case in point goes back to the day when my father, John D. Gold was the editor of the young and struggling *Daily Times*. In the early days he did just about anything that came to hand on the newspaper. It was Monday morning and he was covering Mayor's court as it was then called. The case was the usual family affair, the Negro man had hit his wife over the head with the frying pan and she had him arrested. By Monday morning they had made up. So the judge just fined the wife the cost. She called out "Judge, Judge, add 25 cents to the cost and give it to Mr. Gold to keep my name out of the paper." Then I could cite you other examples of a more serious nature to show that it is the light of publicity that many dread more than the fines they have to pay.

Let us work together to give the public factual, accurate, reporting that demands respect because it is the news of the record of a government founded on the principles of eternal justice, justice in the court, in the press, justice for the rich and the poor, the obscure and the prominent.

Institute Director John Sanders addresses guests at the Press Seminar banquet. Others pictured, from left to right, are Elmer Oettinger, Assistant Director of the Institute of Government and Director of the Press Seminar; Mrs. Elizabeth G. Swindell, President of the North Carolina Press Association and editor of the Wilson Daily Times; *the Hon. Leo Carr, Judge of the Superior Court, Fifteenth District; and Mrs. Irving E. Carlyle. With backs to the camera are Pat Carter, Assistant City Editor of the Durham* Morning Herald *and Mrs. Carter.*

The press also knows the law is a jealous mistress. As Blackstone said, it is true that this profession, like all others, demands of those who would succeed in it an earnest and entire devotion. This also can be said of the press. That is one reason the press court reporting seminar will bear fruit over the years. It will open new avenues of understanding. For, as you of the law have strived through the years to maintain stability in the society of man, we of the press shall continue to enlighten, to inform the public and to bring respect for the principles of eternal justice which is the foundation of our freedom.

So on behalf of the North Carolina Press Association, I want to thank everyone who has had a part in making this first press court reporting seminar an outstanding success. I hope some way can be found to summarize the proceedings so the newspapers not present can derive some benefit from the deliberations. For these sessions will continue to bear fruit in the years ahead.

Press Court Reporting Seminar:

"A Significant First Step"

By Irving E. Carlyle, Attorney at Law

(Editor's Note: As the author indicates, his suggestion to the North Carolina Associated Press News Council served both as fount and catalyst for the proposal by the Institute of Government of the Press Court Reporting Seminar. A partner in the law firm of Womble, Carlyle, Sandridge and Rice, he has practiced law in Winston-Salem since 1922. Mr. Carlyle was born at Wake Forest, where his father was a professor of Latin, and received his undergraduate degree there and his legal education at Wake Forest College and the University of Virginia Law School. He has left his mark of distinction on the fields of law, government, education, and health. He has served as president of the North Carolina Bar Association and as a member of the Board of Law Examiners for eleven years. He represented Forsyth County in the North Carolina House of Representatives for four terms and in the State Senate. He served as chairman of the Governor's Commission on Education Beyond the High School, and at present, is chairman of the board of trustees of Wake Forest College and a trustee of Goucher College in Baltimore and East Carolina College. He also is a member of the National Advisory Neurological Diseases and Blindness Council of the United States Public Health Service, dealing primarily with medical research. His evaluation of the Press Court Reporting Seminar as "very significant" adds emphasis and meaning to the occasion.)

Once before this it was my privilege to speak in support of a Court Reporting Seminar at Chapel Hill. I was invited to speak on May 5, 1962, to the North Carolina Associated Press News Council in session at High Point. This is what was said among other things: "Once each year the School of Journalism at Chapel Hill, in conjunction with the Law School there and the Institute of Government, should conduct for reporters an intensive seminar on what the reporter should look for and should report in courtroom proceedings. The trial of cases in court is a very complex matter. It is a vital part of our democratic process. The public is avidly interested in the newspaper stories about what goes on in this area of the public business. They are entitled to receive accurate reports beyond what they are now receiving."

I am both honored and pleased if the brief words just quoted helped to produce this seminar.

And what has taken place at this Institute of Government through the years is a reminder that all of us are keenly interested in government because it is indispensable to our welfare and to the safety of our country. The single most important function performed by government is to insure justice for its citizens. And even more important than the preservation of law and order is the establishment of justice—the giving to every man his due.

Even so, one great belief in this country that must not perish is that government and all its citizens are under and not above the law. When that takes place, justice will follow in due course.

The chief function you have as courtroom reporters is to inform the public how the machinery of justice operates in a given case. You are the eyes through which the public must see and understand how justice is shaped and dispensed.

One of the important features of American jurisprudence is that court trials shall be public. This is for the protection of the parties, the courts and the public. The trial of cases, civil and criminal, is a critical area of the public's business, and the public is both entitled and anxious to know exactly what goes on in the courts.

The rare instances of corruption, chicanery and injustice in the courts will vanish under the public gaze as focused by the press. Also, the exposure of wrongdoing in the trial of a case is a strong safeguard to law and order and a deterrent to misconduct.

But all of this is true only to the extent that the newspapers do their full duty in reporting accurately and intelligently upon the progress and results of court proceedings. Public opinion in support of the courts is essential, but it will be ineffectual unless the press informs the people what the courts have done. Therefore, the role of the reporter in the administration of justice is far more valuable than some may think.

This seminar is a significant first step, and I offer my congratulations and best wishes to those who are leading and to those who are participating in this worthwhile undertaking. May it be expanded and grow and succeed through the years ahead.

THE PRESS IN ATTENDANCE

Listed below are members of the press who attended the first Press Court Reporting Seminar November 7-9, 1963.

L. Barron Mills, Randolph *Guide*, Asheboro; Jim Crawford and Lewis Green, Asheville *Citizen-Times*; Connor Jones, Burlington *Times-News*; Roland Giduz, *News of Orange County*, Chapel Hill; L. M. Wright, Jr., James K. Batten, and John York, Charlotte *Observer*; John W. Kennedy and Mrs. Helen C. Arthur, Concord *Tribune;* Pat Carter, George Lougee, Jr., and Alan K. Whiteleather, Durham *Morning Herald*; Richard B. Barkley and Wilson A. Morgan, Durham *Sun*; Lyle Edwards, Ray Jimison, and Gary Martin, Gastonia *Gazette*; John Rains, Goldsboro *News-Argus*; Mrs. R. G. Bailey, free lance reporter, Graham; Benjamin W. Taylor, Greensboro *Daily News;* Wilson Davis, Greensboro *Record;* Stuart Savage, Greenville *Reflector*; Dow Sheppard, High Point *Enterprise;* Joe S. Sink, Jr., *The Dispatch*, Lexington; Guy M. Leedy, Lincoln *Times*, Lincolnton; Mrs. Rosamond L. Braly, The McDowell *News*, Marion; Taylor Jeffrey Jones, Carteret County *News-Times*, Morehead City; Ed Dupree, The *News Herald*, Morganton; Robert Lynch, Raleigh *News & Observer*; June Grimes, Raleigh *Times*; Mrs. Pat Poston, Shelby *Daily Star*; Steve Wall, *The News Reporter*, Whiteville; Jack Adams, Wilson *Daily Times*; Fred Flagler, Winston-Salem *Journal*; and Sid Bost, Winston-Salem *Sentinel*.

The Basic Nature of Courtroom Proceedings

By Clyde L. Ball, Assistant Director, Institute of Government

I. Introduction

My topic—the nature of courtroom proceedings—is sufficiently broad and indefinite that I think I may be able to talk about a great many things without wandering too far from the subject.

I shall not attempt to analyze in depth any legal question, nor shall I spend a great deal of time on courtroom procedure. Other persons will discuss with you some of the more urgent legal problems involved in reporting news of judicial proceedings, the relationship between the judge and the press, and some of the details of judicial practice and procedure.

You have, I am sure, your own more or less well formulated concept of the meaning of freedom of the press. This concept as it relates to a fair trial is the subject of three sessions of this seminar, and I am sure that these sessions will produce an inquiry into the nature of a free press, and what action by court authorities amounts to infringement of the freedom of the press. I shall not intrude upon the subject matter of these later sessions.

What I am here to do is to examine with you just what it is which is taking place in a courtroom. How does the judicial function of government differ from the executive and legislative functions, and what is there of legitimate news interest in the proceedings which transpire in the courtroom?

When I use the term "legitimate news interest" I do not intend to preach to you as to what matter belongs in a newspaper and what does not. This is a matter for you to decide. Your decision may be based upon such factors as the law of libel, the extent of the right of privacy, the function of a newspaper, and your personal and professional ideas as to the limits imposed by decency and good taste. My purpose is not to suggest to you the ideal content of any of these factors, but to help to make you aware of various courtroom situations to which the various factors are relevant—to enable you to apply your standards to the reporting of courtroom proceedings.

At the outset, I want to pose a question. Freedom of the press—whatever its meaning—is guaranteed by both the United States Constitution and the North Carolina Constitution. It is generally accepted as one of the great freedoms which are the bulwarks of liberty. Frequently coupled with this freedom is a claim of right to access to information and a right to publish whatever is learned from official records and proceedings; this is commonly phrased as "The Right of the People to Know." This Right of the People to Know, as it relates to the right of the press to access to information, will also be examined later in this seminar. At this time I want to add one word to this right and make it "The Right of the People to Know What?" With this question in mind, we may take a meaningful look at what it is which takes place in a courtroom.

II. The Courtroom Setting

First of all, let us look for a moment at how a case is tried in court, as distinguished from what is being tried. In general, a trial is designed (1) to ascertain the facts which give rise to the controversy, and (2) to apply the appropriate law to those facts. The facts may be determined by a jury, or in some cases they will be determined by the judge. The judge will apply the law to the facts. In the course of making this determination and application, certain obvious features distinguish the judicial proceeding from legislative or executive action.

A. *The judge is a governmental official of extraordinary power and official dignity.* If you are present in a room when the Governor enters, it is customary to show your respect for the office by rising. You may, however, choose to show your low opinion of a particular incumbent of that high office by remaining seated with a scowl on your face. If you do remain seated, you may later be privately or publicly criticized for a discourtesy, but nothing more. When members of the General Assembly enter the legislative chambers, they would be quite astonished if the galleries rose in respect. But when a judge, who is one of a great many like officers in the state, enters the courtroom, you are directed by an official to rise. Should you refuse to do so, and seek to make an issue of it, you would no doubt be ordered to leave the chamber.

If you interrupt an executive conference or a legislative session you may be escorted from the meeting; for the same conduct in a courtroom you may be summarily thrown into jail.

B. *Many of the participants in courtroom proceedings are present involuntarily.*

In executive and legislative meetings, the participants are present voluntarily; that is, they are performing the duties of their official position—a position which each voluntarily assumed and in many instances a position which the individual sought actively and vigorously. In a court the situation is quite different. The judge and the lawyers are there by reason of their official positions. But the jurors are there by court order and not by any voluntary act of their own—indeed, they are frequently there because all of their efforts to avoid service have been defeated by the court. The same is true of witnesses—many are frightened half to death and view the prospects of testifying with considerable distress. Even the parties—the defendant at least—may be involuntary actors in the suit. Thus, there is a coercive atmosphere in a court.

C. *Proceedings in court are solemn.* Executive and legislative meetings are frequently interspersed with humor. Indeed some light touch is welcome as a relief from constant concern with serious matters of government. Furthermore, individual participants may present their information coupled with their impressions, their ideas, their desires, and their antagonisms. Rules of relevancy and accuracy are not strictly applied, and there is no legal accountability for erroneous statements. In a courtroom, the participants—judge, jury, witnesses, parties, attorneys—are under oath. Outbreaks of levity are sternly suppressed. Rules of relevancy are strictly applied, and factual accuracy is probed immediately. Deliberate misrepresentation of fact may result in criminal responsibility.

D. *Courtroom proceedings are generally adversary in nature.* In executive and legislative meetings, differing points

of view are regularly presented. But proponents of every side of a question base their argument upon the thesis that their particular position is the one best calculated to promote the public interest. However limited the point of view of an individual, he will claim to be, and in most instances he actually is, motivated by what he conceives to be the best interests of the whole group.

Not so of proceedings in court. The judge is neutral, interested only in seeing that proceedings are conducted according to the rules—rules of substance and procedure which are designed to produce a just result. But the parties and their attorneys are concerned with presenting their side. They make no claim to disinterestedness. Our theory of justice is based upon the common experience that a human being cannot be expected to take a detached and wholly impartial view of matters which directly affect his personal rights and obligations. Our courts recognize this characteristic, and proceed on the theory that the trier of fact—judge or jury—is more likely to arrive at the true facts if each party to the controversy openly and avowedly presents the evidence and makes the argument which presents his own case in the most favorable light, leaving to the adversary the task of marshalling his own supporting material. Proceedings are not cluttered by protestations that a party is presenting both sides of the controversy fairly. Each presents his own side. The lawyer is seeking to obtain the best possible result for his client, and his every move is directed to that end.

This adversary theory of justice explains how a perfectly ethical lawyer can vigorously defend a client whom he believes or knows to be guilty. Our society has established its rules of conduct which define crimes. The same society has established the rules by which guilt or innocence shall be determined. These rules do not say that every person who breaks the rules of proper conduct shall be punished; instead the rules say that every person whom society—the State—proves beyond a reasonable doubt to have broken the rules of conduct shall be punished. And the adversary theory proceeds upon the premise that protection of the innocent and punishment of the guilty are best guaranteed when an accused is represented by counsel who contests the State's proof at every legitimate turn.

Under the adversary theory, it follows that adducing evidence must necessarily consist for the most part of examination and cross-examination. The whole idea is that one must present his own strong points and probe for the weaknesses of the adversary. A trial is not a game, but it is a contest.

E. *Courtroom proceedings take place within a formal and rather rigid procedural framework.* Court procedures, including rules of evidence, are not—as is sometimes suggested—the products of a distorted mind, ingeniously devised to defeat the discovery of truth. They are, rather, the distillation of centuries of experience. Sometimes, no doubt, a rule has been retained when its reason has disappeared—courts are notoriously conservative in such matters—but the rules have been formulated to create the highest possible likelihood that truth will be revealed and that falsehood will be exposed. I shall not attempt to discuss procedural rules or rules of evidence, but let us take one rule as an illustration: Generally, hearsay evidence—evidence based upon statements of an absent person relayed through another witness—are rejected. One reason for this rejection is the fact—easily demonstrated by a children's parlor game—that even the simplest statements can become badly garbled in transmission through other persons. But more important, the adversary principle

The author launches the first Press Seminar with an introduction to courtroom proceedings.

requires that a party who is damaged by the statement of any witness is entitled to cross-examine the witness—to determine exactly what the statement was; whether or not the witness meant to say exactly what he did say; whether or not the witness had an opportunity to know the facts purportedly reflected in the statement; whether or not the witness has any personal bias against any party or point of view; whether or not he is a careful observer, or disposed toward exaggeration or downright falsehood. To admit the statement as proof of a fact, and to deprive the opposing party of his right to cross-examination thus defeats the adversary principle. Therefore, the statement will be excluded.

Non-lawyers are sometimes prone to criticize the judges and lawyers for their insistence upon technicalities. But judges and lawyers know that the surest way to obtain justice is to follow the rules. If a court applies the rules selectively "so that justice may be done" we have the very stuff of which injustice is made. Modification of the rules in particular cases to satisfy the individual judge's concept of justice—an application of the theory that the end justifies the means—is no more acceptable in judicial proceedings than in legislative or other types of governmental activities. Concern with the method by which an end is reached distinguishes liberty from tyranny.

III. *Judicial Proceedings—Public or Private?*

Now let us take a look at the kinds of situations which may bring citizen John Doe into court. There are many different types of cases and special proceedings; we will consider only enough to illustrate the varying degrees in which private, as distinguished from public, interests are at stake.

A. *Criminal cases.* John Doe does an act which violates the standard which the political community—the State—through its established policy-making institutions has declared must be observed by all of its members—that is, he has committed a crime. The community moves to hold Doe accountable for his sub-standard actions, and the court is the governmental institution which is charged with the duty of inquiring into the nature of the offense and of assessing appropriate punishment. [I speak in terms of "punishment" for crimes, as this is the commonly accepted idea with respect to criminal sanctions; I have no quarrel with those who would use some other term to describe the function of criminal sentencing.] In the process of apprehension, arrest, preliminary hearing, arraignment and trial, Doe may suffer acute embarrassment and his associates and family may also be shamed. Doe has, however, by his own misconduct, provoked the State to act against him. Whenever the State acts against an individual there is a public interest in seeing that the State acts according to the rules; that Doe is afforded a proper opportunity to present his defense; that counsel for the State is diligent. Furthermore, the community has an interest—the interest of self-protection—in knowing that one of its members, Doe, has been guilty of specific misconduct. Doe, then, is not in a very strong position when he complains that newspaper reporting of the facts of his misconduct and the consequent criminal proceedings have increased his distress by publicizing his private affairs.

But Doe may be before the same criminal court, on exactly the same charge, even though he is entirely innocent of any misconduct. It is rare for an innocent person to be convicted of a

criminal offense, but it is not at all unusual for an innocent person to be charged with such an offense. If a charge is made under appropriate procedures, the court is still the governmental institution which is charged with inquiring into the nature of the offense and assessing appropriate punishment; in this latter case, however, the court is also charged with the responsibility of determining whether or not Doe has committed the offense. Thus Doe, an innocent man, is subjected to the same embarrassment and distress as was his counterpart, the guilty man. True, at some stage of the proceedings—possibly at the preliminary hearing; possibly at the trial; or at some other time—the State's action against Doe will be dismissed or will fail, but until this occurs Doe is inevitably subjected to humiliation and distress for himself and his family. Now, under these circumstances, does Doe have a legitimate complaint (I am not talking about a legal right of action) against a newspaper which has publicized his plight? If we had some way of making certain that only the guilty are ever charged with a crime, we could eliminate the problem; but if we had that ability we could eliminate the trial as well. The newspaper has no way of making certain whether Doe is guilty or not guilty when Doe is charged. Under these circumstances, when Doe is accused, but before the question of his guilt has been determined, what legitimate interest, as distinguished from curiosity, does the public have in the proceedings? Again, the public interest demands that the State act according to the rules, and that its agents be diligent; and that Doe is afforded a proper opportunity to present his defense—that Doe gets a fair trial. How does publicizing the more lurid details recounted by a prosecuting witness or an investigating official contribute to these legitimate ends?

But perhaps you take the position that it is a proper part of the function of a newspaper to satisfy the idly or maliciously curious, so long as the newspaper stays on the safe side of civil liability. This may be an entirely defensible position, but it places the newspaper—to the extent that it is performing this particular function—in the class of an ordinary medium of entertainment. The People's Right to Know in this situation gets somewhat fuzzy around the edges, and the claim of the newspaper to official cooperation in obtaining news—the claim based upon the right of a free press—can be pressed with a little less than complete conviction.

B. *Tort Cases.* Doe may have had the misfortune to be involved in an automobile accident with Richard Roe. If the two can agree between themselves as to who is responsible, and how much should be paid by way of damages, the community has no interest in the controversy between them. They may make such settlement as they deem proper, and it is not required that they reveal to anyone the details or even the fact of that settlement. But if the two cannot agree as to responsibility and damages, the community has decreed that they may not settle the issue by fighting each other. The community has decreed that disputes between individuals which cannot be settled amicably by the persons concerned shall be resolved in the governmental institution known as the civil court. When Roe sues, Doe has no choice but to reply, unless he is willing to concede that the charges and claims made in Roe's complaint constitute a fair statement of the facts and of Doe's liabilities under the circumstances.

What is the public interest, as distinguished from the public curiosity in this case? Two private individuals, with no necessary prior connection or acquaintance, are required to resort to a public forum to determine their private rights. Neither has been guilty of any wilful action which the community condemns. They did not voluntarily enter into a relationship in which each sought to create in himself and the other any legal rights and duties; there was no contract. The interest of the State is in preserving public order and in protecting the weak against oppression by the strong. This interest is served by providing a forum in which the disputed issues can be resolved in accordance with accepted principles of justice, and by requiring that this forum be used if the dispute cannot be settled by private negotiation. What elements of public interest are here? (1) a convenient court, (2) a competent judge, (3) a fairly chosen jury, (4) efficient conduct of the trial according to accepted procedures—all matters having to do with the court as a governmental institution, not with the private issue between the parties. The State has no interest in whether judgment goes for Roe or for Doe. Therefore, when a newspaper centers its report on the respective claims of the parties and the evidence adduced in support of each, it is reporting private affairs. Mind you, I am not suggesting that such reporting is appropriate or inappropriate. I am merely asking whether a newspaper, when it reports these private matters, has any right to claim any particular privilege or standing as guardian of the Right of the People to Know.

C. *Contract cases.* When Doe and Roe enter into a contract they create a relationship which gives rise to certain rights and duties on the part of each. The extent and nature of these rights and duties may become the subject of dispute. If they can settle the dispute privately, the public has no right to be informed as to the arrangement. In fact, at the outset of the relationship the parties may agree to submit disputes to arbitration in a sort of private court, chosen in any way agreeable to the parties. If the parties are satisfied with the functioning of this private court, the State has no concern with the matter. But if there is no such private arrangement, and there is disagreement, here again the State's interest in preservation of order and protection of the weak against oppression brings the parties into court to settle the dispute. Note, however, that there is one difference in the contract situation as distinguished from the tort situation. In the case of the automobile accident, no intentional action by the parties created a relationship which brought them into court. In the contract situation, however, the parties voluntarily assumed a relationship with each other, with respect to their private business, which each knew might possibly lead to resort to the courts to resolve differences. In a sense they might be said to have assumed the risk that their private affairs would be exposed to public view when they entered into the contract. To what degree, if any, this affects the private nature of the relationship and of the suit involving it, I am not certain, but I think it is worth noting.

D. *Probate cases.* Not all court pro-

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BASIC LEGAL TERMINOLOGY

C. E. Hinsdale, Institute of Government Assistant Director, taught "Basic Legal Terminology" at the November "Press Court Reporting Seminar." Here are some of the common legal terms defined or explained for the assembled reporters. How many of them do you know?

1. *General:* Criminal law, civil law, common law, jurisdiction (territorial and subject matter), jurisdiction (appellate, concurrent, exclusive, original, limited, general and trial), acknowledgment, affidavit, clerk of court and magistrate (J.P.).

2. *Criminal:* Presumption of innocence, burden of proof, and beyond a reasonable doubt.

3. *Civil:* Complaint, answer, demurrer, summons (civil), preponderance of evidence and deposition.

Press Court Reporting Seminar:

Free Press and Fair Trial: I

THE PRESS AND THE JUDGE:

Free Press Can Guarantee Better Government

By Hon. Hamilton, H. Hobgood, Judge of the Superior Court, Ninth Judicial District

(Editor's Note: This author has served as a North Carolina Superior Court Judge for the past nine years. A native of Franklin County, he received his undergraduate degree from the University of North Carolina in Chapel Hill, where he was president of his Senior Class, and his law degree from Wake Forest College. He has been a trustee of Louisburg College for more than a decade. In World War II he served almost four years in the U. S. Marine Corps, seeing duty in the Pacific and winding up a Major. A former president of the Ninth District Bar Association and attorney in Louisburg, he served four two-year terms as Judge of the Franklin County Recorder's Court and was elected twice to the State Senate prior to his present judicial service.)

When my friend, Elmer Oettinger, invited me to participate in this seminar presented by the Institute of Government and sponsored by the North Carolina Press Association I accepted with alacrity as I have strong convictions both for a free press and for a fair trial. If I didn't have such convictions I would doubt my capabilities to be a public official.

I believe that all court proceedings, with rare exceptions involving custody of small children, should be public. The unvarnished truth or the lying witness exposed to the public eye help keep the courts clear of suspicion. So the Court Reporter on the job at trials, provided he knows his duties and responsibilities, guarantees an informed public, thus better government.

A public official, and this could apply to a judge or solicitor, is more subject to be bribed by his own personal ambitions and friendships than by money—so a reporter on the scene is also a good brake on any public official who may be playing high, wide and fast with the powers of his office. I am very thankful to state that I do not know a solicitor or a Supreme or Superior Court judge in North Carolina who is not a dedicated official. The duty of the Courts is to decide cases impartially insofar as humanly possible. The duty of the Court Reporter is to report the facts. Now certain facts are not permitted to be published at certain stages of a trial as those facts are not legal evidence for the jury and their publication could prevent a fair trial. My purpose here today is to aid you in distinguishing between those things you legally may report and those things you are prohibited by law from reporting or doing during the pendency of a trial.

There is one "rule of thumb" I will give you in the beginning in reference to jury trials. You are free to report those court happenings which occur in Court while the jury is in the jury box and you *must not* report those happenings which occur while the jury is out of the courtroom during the pendency of a trial. If you follow that simple rule you will most likely save yourself embarrassment and possible citation for contempt and you will save the Court from headaches and possible mistrials. After these general preliminary remarks let us take a look at the law and the problem of the Court Reporter and the Judicial Process, with the optimistic hope that at the conclusion of this session you will have a clearer conception of the problems involved and perhaps a more tolerant view of this problem as seen from the eyes of the judiciary.

We will consider the technical law, the rules imposed by the Courts, some of my personal experiences with this problem during my seven years as a County Judge and eight years as a Superior Court Judge, plus some general observations. At the conclusion, please feel quite free to put any questions to me you have on your mind—I may not come up with a satisfactory solution but I shall give you either a frank answer or confess my inability to answer your query.

> *First:* A Free Press is guaranteed in North Carolina by our State Constitution, Article 1, Section 20 Freedom of the Press: Freedom of the Press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of same.

Under this section, in the case of *Yancey vs. Gillespie and the Spindale City Publishing Company,* 242 N.C. 227, an editorial attacked the Mayor and City Council in the *Gaston Citizen* stating that the amount paid for a certain lot was "wasteful" the lot "shabby" and that "the deal smells." The Court held that a newspaper enjoys a qualified privilege in commenting upon public affairs and the manner in which public officials carry on public business, and such comments and criticisms are not libelous, however severe or sarcastic, unless they are written maliciously.

In the case of *Pentuff vs. The Raleigh Times, O. J. Coffin, Editor and John A. Park, Publisher,* 194 N.C. 146, the plaintiff was a Baptist minister and he requested damages because of an editorial in reference to his opposition to the teaching of *Evolution.* The editorial, among other things, charged him with being an "immigrant ignoramus" he was also "unmannerly," "discourteous," "ignorant," and "uncharitable." The newspaper refused to publish a retraction when demanded by the plaintiff. The trial Court non-suited the case, but the Supreme Court held it was a question for the jury to determine whether or not the words were libelous and sent the case back for a new trial.

In other states and jurisdictions the Court has held it is libelous to refer to a physician as a "blockhead or fool;" to say of a minister that "he preacheth nothing but lies and malice in the pulpit." To call a person a "rascal" and a "villain," to say that a person is a "swindler," "hypocrite" or "itchy old toad." (All cited in 194 N.C. 146.)

In the case of *Osborn vs. Leach and The News and Observer,* 135 N.C. 628, the Court held that the publication by the newspaper that the Director of the State's Prison was guilty of receiving money illegally is a libelous statement on its face and the newspaper must prove the truth of the statement to escape liability.

So you see that ever though we have a free press guaranteed by our State Constitution it does not mean freedom to slander a person. You must prove the truth of the statement (Mr. Justice Black of the United States Supreme Court to the contrary notwithstanding.) As Mr. Justice Holmes of the United States Supreme Court so aptly stated many years ago in

an analogous situation we have free speech in this country but it does not mean one can yell fire in a crowded theatre.

Second: Let us look at the *Fair Trial* side of the picture for a few minutes from a technical view:

Every person who comes into Court as a plaintiff or defendant is due an unbiased trial free of outside influences insofar as humanly possible. Some trials are charged with electric sensationalism, some trials have a man's liberty or life's earnings riding on the outcome. In any event, all trials should be decided from competent evidence presented in Court, free of other influences. I know we all agree to that principal. So the Court is given the authority to summarily deal with the Press (or other news media) if it steps out of line.

> N. C. General Statutes 5-1—*Contempts Ennumerated*
> Any person guilty of any of the following acts may be punished for contempt:
> (7) The publication of grossly inaccurate reports of the proceedings in any Court, about any trial, or other matter pending before said Court, made with intent to misrepresent or to bring into contempt the said Court; but no person can be punished as for a contempt in publishing a true, full and fair report of any trial, argument, decision or proceeding had in Court.
>
> N. C. General Statutes 5-6—*Court and Officers Empowered to Punish*
> Every justice of the peace, referee, commissioner, Clerk of the Superior Court, Inferior Court, Criminal Court, or judge of the Superior Court, or justice of the Supreme Court, or Board of Commissioners of each county, or the Utilities Commission, or members of the Industrial Commission, has power to punish for contempt while sitting for the trial of causes or engaged in official duties.
> (This section also includes Mayors)
>
> N. C. General Statutes 5-4—*Punishment*
> Punishment for contempt for matters set forth in the preceding sections shall be by a fine not to exceed $250.00 or imprisonment not to exceed thirty days, or both, in the discretion of the Court.

Now as to some general statements of the law under the contempt section.

Publication of articles about *pending cases* which attack the integrity and character of the Court, jury, parties to the action, attorneys or officers of the Court may amount to contempt of Court. If these same statements are published *after* the case is concluded, the publisher may be held responsible for libel but it would not be contempt of Court. The publishers of newspapers have a right to bring to public notice the conduct of the Court and parties after the decision has been rendered, provided, of course, that the publication is true or otherwise it might be libelous.

The Court has the authority to forbid the taking and publication of a photograph of a prisoner during the trial and if a photographer takes such a picture and refuses to surrender the negative, he is guilty of contempt. The liberty of the press does not include the privilege of taking advantage of the incarceration of a person accused of a crime to photograph his face and figure against his will.

The attempt to influence jurors by publication attacks on some of the parties to a lawsuit or the defendant—pending the trial of a case—is contempt of Court. Also, the publication of amounts offered in attempts to compromise lawsuits by the parties involved, pending the trial of the cause, amounts to contempt of Court. You understand, of course, that publications can be other than in newspapers. For instance, hand-bills, pamphlets, bulletin board notices, advertisements and similar methods. (*American Jurisprudence* Vol. 12, pages 412-418.) I must reiterate and emphasize the point that what is published after a trial is completed may not be in contempt of Court as the pending trial or trials have been completed. Even what you say about a judge who continues to preside over other Courts might subject you to an appropriate lawsuit by the judge but would not be in contempt of Court. For instance, in the case of *In Re Brown*, 168 N.C. 495, Judge Peebles had completed a term of Court in Wayne County and the defendants as editors of the *Weekly Record* published an editorial stating among other things that the judge "frequently went to sleep on the bench and woke up suddenly and played hell" that he was "full of whiskey" that "he played setback and pitch at night and took a drink every ten minutes" and that "he was unfit to occupy the high and responsible position of judge of the Superior Court of North Carolina." Thereafter, the judge held the editors in contempt of Court in another county where he was then presiding and sentenced them to jail. On appeal, the Supreme Court reversed the trial judge and said that Judge Peebles should seek redress before an impartial tribunal. In brief, he might have a good cause of action against the editors in a lawsuit but he could not summarily put them in jail.

I do not attempt during this presentation to present an exhaustive brief on this subject, but rather to give you a picture of the problems involved. There are rules of The American Bar Association and of various courts, incidentally this includes the North Carolina Superior Court, prohibiting photographs and TV pictures of Court proceedings. Such events not only interrupt the orderly process of trials but in addition tend to cast an unnatural, artificial shadow over the entire proceedings. *You must remember that trials are for the administration of justice, not to provide a story for some news media.*

Interviewing parties to a lawsuit during trial by the reporter is most dangerous if the newspaper prints the interview during the trial. When jurors have read a newspaper during trial where articles or interviews of the parties appear and it appears to the judge that the subject matter is prejudicial a new trial will be granted.

66 CJS Page 166 (Section 52 on New Trial)
89 CJS Page 87 (Trial 457h)

Also, bear in mind that the publication of articles which are judicially construed to interfere with the grand jury while it is actually considering matters before it may be contempt of Court. 17 CJS 86 (Sec. 30 Contempt)

I have had a number of experiences which point up the problems involved of *Free Press vs. Fair Trial* far more clearly than any general statements I might make to you. To prevent any possible embarrassment to any persons involved I shall not repeat names and I am not reducing these experiences to print as I have the previous remarks. I will discuss those happenings which point up the importance of knowing what and what not to report about pending trial orally.[1]

Public relations are important in any endeavor, so when a new judge is in Court the reporter should meet him in an unobtrusive fashion in Chambers or recess time—the same follows for a solicitor. Neither are to be avoided or "buttered up."

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1. Note: The author at this point related informally a number of personal experiences "pointing up the problems involved in *Free Press vs. Fair Trial*." These specifics were discussed under the following main headings:
   a. Reporting court proceedings not in the presence of the jury—"an improper and common place error of newspapers, tv and radio."
   b. Many write-ups have proposed evidence which appear in local papers as much as a week prior to the trial.
      (1) Such write-ups appear in some small county papers
      (2) Some good news stories are not reported at all in small counties
   c. A common practice of getting news stories of a trial not first hand but from a deputy sheriff or other official.
   d. The use of photographs, radio, television in courtrooms.
   e. Telephone reporting by local reporting—i.e., calling the judge for news.
   f. Reporting from former trial proceedings.
   g. Reporting from court minutes, with no reporter on job.
   h. Giving the entire issue of the case in several actions.
   i. Obligations of the court to the press
      (1) Provide working space at specific trials
      (2) Admit to all proceedings (except child custody?)

Press Court Reporting Seminar:

THE PRESS AND THE JUDGE:

Free Press and Fair Trial Are Not Incompatible

By Sam Ragan, Executive Editor, Raleigh *News and Observer*

(Editor's Note: The author has been executive editor of The Raleigh News and Observer *and* The Raleigh Times *since 1957. Born in Berea in Granville County, he is an alumnus of Atlantic Christian College which cited him for his contributions to journalism. His Sunday column and editorials are widely read; his articles, stories, and poems have appeared in publications ranging from* Golden Verse Anthology *to the* Saturday Evening Post *and* Reader's Digest. *Prior to serving as managing editor and state editor of* The News and Observer, *he worked on newspapers in Wilmington, Goldsboro, Concord, and San Antonio, Texas, and edited weekly papers in Moore and Onslow Counties. During World War II Ragan served with Army Military Intelligence Pacific. He currently is president of the Associated Press Managing Editors Association and is listed in* Who's Who in America. *He was the founder of the North Carolina Literary Forum and last year served as chairman on the North Carolina Writers Conference.)*

A free press and fair trial are not incompatible. They are, indeed, necessary to each other. I do not believe a fair trial is possible without a free press—a press free to serve as the eyes and ears of the public. And a free press is possible because of the bulwark of law based on the Constitution and the inherent right of the American people.

We are all aware of our obligations as reporters—to be fair and to be accurate. We are engaged in the same pursuit as the judge, and the jury, and the attorneys and prosecutors of a court—the pursuit of truth, one of the most elusive commodities in the world of man.

Accuracy and objective reporting are far more demanding, however, than appears on the surface. The *who*, *what*, *when* and *where* are, of course, important. But important, too, are the *why* and the *how*—questions which must necessarily go below the surface.

Then, too, the reporter as the ears and eyes of the public must convey as far as possible the feeling by the reader that this is the way it was. His words should take the reader to the scene so that he can see it, hear it, feel it. The basic right of public trial should be truly public. The downfall of democracy would surely come with secret trial.

There are three restraints of the press that are written into the law. What is published must not be obscene, and it must not libel a private citizen, or offend a jurist in court.

What is obscene depends very much on time and place. Ideas on the subject are constantly changing, and decisions of the courts—that of Justice John M. Woolsey in the case of James Joyce's *Ulysses* being the most famous—have helped clarify the definitions for publishers. The Post Office Department has the continuing responsibility of keeping actual obscenity out of the mails. Moreover, in a free state popular government requires that some responsibility for his behavior be left to the individual citizen. Reading is a voluntary act. If a man finds that a newspaper or magazine or book is offensive to him, there is no one to command his reading it.

The freedom of printing has never accorded a writer or publisher the right to injure others. When the Bill of Rights was added to the Constitution, the advocates of a free press expressly stated their reliance on libel laws to protect those injured.

Alexander Hamilton's definition of libel was "a slanderous or ridiculous writing, picture or sign, with malicious or mischievous design or intent." The truth published with good motives and for justifiable ends was, for Hamilton, fair comment. His definition in that long-ago case was about as good as any today.

Fair comment applies to all public officials, but is not limited to them. It applies to those who appeal to the public for favor or patronage and by that act invite comment. In this category would come such personages as actors, musicians, baseball players, writers or wrestlers. It would also, it seems to me, apply as well to those for whom the force of law is brought, in their private behalf or when society uses its own instrument, the law, in its behalf.

Truth, again, is the measure which applies.

A judge, of course, has sole conduct of his court. Every reporter should be constantly aware of a judge's responsibility, not only for upholding the dignity of the law and the decorum of the court, but his vigilance in the interest of fair trial.

On rare occasions judges have excluded the press from courtroom hearings on the grounds that certain testimony is too vile for publication. I do not recall any such recent action in North Carolina, nor the publication of such testimony offensive to common taste by a newspaper in the state. However, I feel that the prohibition of the right to publish such testimony would lead to evils greater than its abuse by a newspaper. I would like to add here that the practice of some newspapers of omitting the names of rape victims is a bad practice. A man on trial for his life should certainly have the name of his accuser made public.

Comment on a court—and this usually involves editorial rather than reportorial comment—should be of such a nature as not to impair the independence of the judiciary or to constitute a clear and present danger to its functions. The Pennekamp case from Florida, in which the Supreme Court reversed a lower court's decision on a contempt charge, clearly defines this area of fair comment.

In that decision, Justice Frankfurter wrote: "Without a free press there can be no free society. Freedom of the press, however, is not an end in itself but the means toward the end of a free society . . . The independence of the judiciary is no less a means to the end of a free society, and the proper functioning of an independent judiciary puts the freedom of the press in its proper perspective."

In North Carolina we have been fortunate in the consistently high caliber of the judges who preside over our courts. The people of the state can take pride in their performance of duty. They can take pride, too, in my opinion, in the general performance of their press. The newspapers measure well in the caliber of their work.

In charging reporters to be accurate and in making a plea to jurists to permit them freedom to function in their

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Press Freedom Is Not Absolute

By John W. Scott, Professor, University of North Carolina School of Law

(Editor's Note: Prior to joining the University of North Carolina Law School faculty as an associate professor in February, 1962, the author was engaged in the private practice of law in New York City and, before that in Washington, D. C. and Birmingham, Alabama. A native of Alabama with law degrees from Auburn and Harvard, he served in the United States Army in World War II; as a faculty assistant at the Harvard Law School; and as attorney in the office of the Chief Counsel of the Internal Revenue Service. He is the author of articles on tax law, a contributing editor to Mertens, Law of Federal Income Taxation, *and a member of the Board of Editors of* Tax Management.*)*

Since I am neither judge nor newspaperman, I find myself with only one topic which I want to mention . . .a topic I believe is sometime misunderstood. I refer to the fact that, where our judiciary and our courts are concerned, freedom of the press is not absolute and should not be absolute. Stated another way, and with a particular eye to this meeting, our Constitution and our laws wisely hold in highest regard the liberty of the press—however, this liberty must be balanced against another great policy of our society, the efficient administration of justice by courts acting independently of all external pressures.

Professor Scott speaks to the Press Seminar as Sam Ragan, Executive Editor of the Raleigh News and Observer, *looks on. Out of camera range were Judge Hamilton Hobgood and Elmer Oettinger, the moderator, in the panel discussion on "The Press and the Judge."*

In much of the law, as in much of life, choices are constantly to be made. A choice between good and evil is an easy choice for honorable men, and for honorable legal systems. The difficult choice is one between two goods. And yet, such a choice often cannot be avoided, and it is peculiarly unavoidable for the press whenever a court proceeding is thought to be newsworthy. Any time our newspapers are not allowed to tell all they know about or think about a pending case, then our laws are depriving our people of some part of the truth and our freedom of the press is partially impaired. Nonetheless, just such a deprivation and impairment is often required; it is required because our society long ago determined, and our legal system demands, that the issues in the pending case be tried in the courtroom and not in the newspapers or over the airways. Our system demands, that is, that judges and jurors be allowed to reach their conclusions on the basis of the evidence and arguments submitted to them in court, free from outside influences.

It has been suggested by some that objectionable comment—in any aspect of life could safely be left to be corrected by contrary comment which would surely be aroused. This might work, and perhaps does work, in many areas; but, it will not work where our judges and our courts are concerned. A judge cannot answer back to a newspaper in anything like the way a newspaper can comment on the case before the judge. A judge is severely limited in the comment he can make, and yet, remember, it is the judge alone who must make good on the American guarantee of a fair trial. I would like to quote Justice Frankfurter:

> "A trial is not a 'free trade in ideas,' nor is the best test of truth in a courtroom . . . the power of the thought to get itself accepted in the competition of the market. A court is a forum with strictly defined limits for discussion. It is circumscribed in the range of its inquiry and in its methods by the Constitution, by laws, and by age-old traditions. Its judges are restrained in the freedom of expression by historic compulsions resting on no other officials of government. They are so circumscribed precisely because judges have in their keeping the enforcement of rights and the protection of liberties which, according to the wisdom of the ages, can only be enforced and protected by observing such methods and traditions." (Bridges v. California, 314 U.S. 252, at 283 (1941).)

The necessity for striking the proper balance between the "good" of press freedom and the "good" of a fully independent court must be looked at in two different aspects. First, there necessarily arises a requirement of voluntary restraint by the press. That is, actions by a newspaper might improperly influence the course of a trial. If that happens, the newspaper and its personnel may be punished; but punishing a newspaper man does not give back the life or freedom of the accused whose trial was thus subjected to outside pressures. In short, even if every contempt of court were punished, still the basic fairness of our system will be injured unless the press recognizes its responsibility and honors it. The "responsibility" to which I refer is, of course, that of exercising self-restraint both in what is reported and how it is reported.

Second, of the aspects of striking a proper balance between our two "goods," is the role of the court—and here, of course, it is the judge to whom we refer. There have been a few instances, a blessed few, in which members of the judiciary have themselves been guilty of improper public comment on pending cases. By and large, however, the role of the judge in this unavoidable balancing of "goods" is to serve as a judge—judge not only of the case pending before him, but also judge of the propriety of the press coverage of that pending case . . . as improper coverage constitutes contempt of court and must be punished as such. I think it all too obvious that this second judicial duty can raise serious problems, at least from the viewpoint of the press, because in this aspect of the problem we have the judge sitting in judgment on his own case. This result obtains when the contempt is subject to summary punishment.

Let me give an example, a paraphrase of an actual case: Suppose a man is on trial for homicide and the crime of which he stands accused was a particularly brutal one which has roused the entire community. Suppose, further, that the prosecution offered certain testimony which the trial judge ruled could not be admitted because it was immaterial—and that this excluded evidence showed the accused to be not only a Communist party member but also a man who had many connections with Vito Genovese

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LIBEL: Qualified Privilege of Reporting Judicial Proceedings

By William C. Lassiter, General Counsel, North Carolina Press Association

(Editor's Note: The author has been general counsel for the North Carolina Press Association since 1938. His book, Law and Press *(1956) has become a sort of Bible for the newsmen in North Carolina. Lassiter received his undergraduate and law degrees at Duke University. He is engaged in the general civil practice of law as senior member of the Raleigh firm of Lassiter, Leager, Walker and Banks. He has served as city attorney for Raleigh. In World War II he spent four years on active duty in the U. S. Naval Reserve, serving in the Asiatic Theatre, and later retired with the rank of Commander.)*

When an unprivileged publication by newspaper, radio or television charges or insinuates a criminal offense, it is libelous per se, and the person concerning whom it is published is entitled to recover whatever damages he can persuade a jury to award him, without proof of the falsity of the charges or of actual malice on the part of the publisher and without proof of any special damages.[1]

Truth as Defense—Risks

Truth becomes the only absolute and complete defense to an unprivileged publication of that type, but when truth is relied upon as a defense to an action for libel, the risks incurred are not only the existence of the truth of the defamatory matter published, but also the burden and the practical problem of *proving* it to a jury by competent evidence. Even when published charges of criminal conduct are actually true, it is often difficult or impossible to bring about its effective presentation in court.

Complete Protection under Qualified Privilege

When the qualified privilege applicable to the publication of reports of judicial proceedings is properly exercised, it affords complete protection from damages in libel actions arising out of published charges of crime, even though the publication is false in fact.[2]

A study of many appellate court decisions in libel actions based upon newspaper reports of judicial proceedings, supplemented by a critical analysis of many news stories (not resulting in libel actions) relating to court cases, both civil and criminal, leads to the conclusion that there is a need for greater familiarity and more technical compliance with the rule of privilege pertinent to this area of reporting.

Statement of Rule

The rule may be stated as follows: The publication of a report of judicial proceedings is privileged, although it contains matter which is false and defamatory, if it is a fair and accurate report of the proceedings and was not prompted or actuated by actual malice on the part of the publisher.

Some courts include in the rule a statement that the report of the proceedings must be full and complete. However, it is pointed out that such requirement does not mean that the proceeding must be reported *verbatim*; a reasonable abridgement or summary is sufficient provided it is fair and impartial and accurate.

Even if the published report involves defamatory matter concerning persons not parties to the proceedings, it is nevertheless privileged if it is a full, fair and accurate report.[3]

Reasons for Rule of Qualified Privilege

An English Judge has recently set forth five reasons for the privilege of reporting judicial proceedings, summarized as follows:

1. Court proceedings are open to the public.
2. The administration of justice is a matter of public concern.
3. Benefit is derived from the education of the public on such matters.
4. Fair and accurate reports, rather than rumors, are desirable.
5. "Most important, there is what may be called the balancing operation—balancing the advantages to the public of the reporting of judicial proceedings against the detriment to individuals of being incidentally defamed."[4]

The basis of the privilege of reporting judicial proceedings has been said by another English judge to be "that, as everyone cannot be in court, it is for the public benefit that they should be informed of what takes place substantially as if they were present."[5]

American courts have stated similar reasons.[6]

The Court of Appeals of Virginia has stated the reason as follows:

> The policy of the law which, under certain circumstances, permits newspapers to publish court proceedings, finds its justification in

1. Roth v. Greensboro News Company, 217 N.C. 13, 6 S.E.2d 882 (1940); Osborn v. Leach, 135 N.C. 628, 47 S.E. 811 (1904); Lay v. Gazette Publishing Company, 209 N.C. 134, 183 S.E. 416 (1936).
2. Restatement of the Law of Torts, § 611; 33 *American Jurisprudence*, pp. 149 - 153; Newell, *Slander and Libel* (4th Ed.), pp. 487-505; see Gattis v. Kilgo 140 N.C. 106, 52 S.E. 249 (1905).
3. Merrill, *Newspaper Libel*, p. 182; Ackerman v. Jones, 37 N.Y. Super. Ct. 42.
4. Pearson, J., in Webb v. Times Publishing Company, 3 W.L.R. 352 (1960); see Gatley, *Libel and Slander* (5th Ed.), p. 282.
5. Sir Gorell Barnes P., in Furniss v. Cambridge News, Ltd., 23 T.L.R. 705 (C.A. 1907); Gatley, *op. cit.*, p. 282.
6. See Post Publishing Company v. Hallam, 59 F. 530 (C.A. Ohio 1893); Metcalf v. Times Publishing Company (R. I., 1898) 40 A. 864; Times-Dispatch Publishing Company v. Zoll, 139 S.E. 505 (Va. 1927); Jones v. Express Publishing Company, 262 pp. 78, 83 (Cal. App. 1927).

its beneficent influence upon those charged with the trial and conduct of litigation, when they know their official acts may be bared to public scrutiny and criticism.[7]

Types of Proceedings to Which Privilege Applies

Under the rule permitting fair and accurate reports of judicial proceedings, it is essential to know what are "judicial proceedings." They include all proceedings in a court of justice, superior or inferior, of record or not of record, when the proceedings are open to the public.[8] These include justice of the peace courts, recorders courts, municipal courts, as well as superior courts.

The proceedings reported may be in a trial court or in an appellate tribunal. They may be "preliminary, interlocutory, or, according to the general rule, *ex parte*."[9] They may be in "open court" or in the judge's chambers.[10]

The rule of qualified privilege applies to a trial, testimony of witnesses, arguments of counsel, the court's charge to the jury, rulings by the trial court, the verdict of the jury, and to the court's judgment, decree or sentence.[11]

Evidence Offered, But Excluded

What is the legal effect of publishing a report of defamatory matter included in testimony or other evidence offered during a court trial but not admitted by the trial judge to be heard or considered by the jury?

The following statement appears in Thayer, *Legal Control of the Press* (4th Ed.), p. 428:

> Qualified privilege does not however protect the story written on the basis of testimony at a trial, when such testimony is ordered stricken from the record by the court. If in such a circumstance, the stricken testimony contains material defamatory of a third party and a newspaper publishes the stricken material, on the basis of the court's original record, it would seem that the newspaper so publishing would be liable. If the newspaper obtained the identical material from other sources, there would not be any issue on the question of qualified privilege.

A similar statement appears in Arthur & Crosman, *The Law of Newspapers*, p. 255. No judicial decision is cited in either of those books for their statements that published reports of excluded testimony containing defamatory matter are not privileged. No decision on this problem by any court in the United States has been discovered in my research. I have in my files a letter dated July 2, 1954, from the late Harold L. Cross, for many years counsel for A.S.N.E. and the author of *The People's Right to Know*, in which he asserts that he knew of no court decision and that he was "quite confident that there is none" holding that privilege does not apply to newspaper reports of testimony excluded by the trial judge.

In one case [12] the plantiff sought to raise the question, but the Court held that incompetent (hearsay) testimony containing defamation, reported by the defendant newspaper, had not actually been excluded from the evidence by the trial court, and it was held that the report was privileged.

The Supreme Court of North Carolina has never decided the question whether a newspaper is privileged, in the absence of actual malice, to publish, without liability, defamatory statements made by witnesses during a public trial or hearing which the trial judge excluded from the evidence to be considered by the jury. No decisions by courts of other jurisdictions have been discovered on this question.

In England, the courts have held that since the trial judge has the duty of excluding irrelevant evidence, it is not the fault of a reporter covering a trial if his report contains irrelevant evidence.[13]

If testimony is actually presented in open court, in the presence or in the absence of the jury, and the trial judge excludes the evidence because irrelevant, impartial or otherwise incompetent, there seems to be no sound reason why a newspaper is not qualifiedly privileged to publish such fact, including a report of the evidence excluded, as a part of the judicial proceeding. The fact that the jury is not allowed to consider such testimony does not eliminate the fact that everyone else present in the courtroom did hear the testimony. Such excluded testimony will be included in the record of the case on appeal to the Supreme Court, if the exception to the exclusion of the evidence is to be preserved and pressed as a basis for reversal of the judgment of the superior court.

The public is entitled to know the nature of rulings made by the trial court as a phase of the judicial proceedings.

Section 5-1 of the General Statutes (sub-paragraph 7) provides specifically that "no person can be punished for contempt in publishing a true, full and fair report of any trial, argument, *decision* or proceeding had in court." (Emphasis supplied.) If the judge rules that certain evidence presented in open court is incompetent, that is a decision of the court and a part of the proceeding which should be entitled to qualified privilege in the law of libel, if the excluded evidence includes defamatory matter.

Until there is a judicial determination of this precise question, newspapers will assume the risk of an adverse decision by publishing reports of evidence offered in open court (containing defamatory matters) which the presiding judge excludes from consideration by the jury. Logic, common sense, and public policy require the application of the rule of qualified privilege.

Existing Proceeding to Report Prerequisite to Privilege

Since the privilege under discussion applies to a published report of a judicial proceeding, *the prime prerequisite is that there be a proceeding to report.* The issuance of a warrant for the arrest of an individual upon charges of crime stated therein is a part of a judicial proceeding. An accurate report of the issuance of the warrant and an arrest thereunder, stating the charges, is privileged. On the other hand, for instance, a news story which quotes a police official as stating that "a warrant *will be issued* tomorrow" for the arrest of a named individual upon charges of some specified crime is NOT a report of any judicial proceeding and the rule of privilege would not be applicable. That kind of reporting is extremely dangerous. It should not be done.

To illustrate this point, let me summarize several instances of published reports of criminal charges when there had been no court proceeding or when no criminal proceeding had been commenced at the time of the publication.

(a) Several years ago, Vincent J. Daley was convicted of criminal libel in Moore County Superior Court. Two women employees of Daley had testified during the trial of that case, and afterwards the three were arrested in Washington, D. C., under warrants charging perjury. A wire service dispatch, published in several North Carolina newspapers, properly reported the pending criminal proceedings in which the arrests had been made and would have been privileged except for a final sentence added to the dispatch which read: "The warrants cover a period since the three were convicted of criminal libel against Mrs. Nicholson, in Moore County recorder's court on April 24, 1956." While Daley had been so convicted, the two women had never been charged or convicted of criminal libel in any criminal proceeding. Thus, the privilege was lost. A civil action for damages was settled, after the Court held that there was no defense of privilege. The incident cost the wire service and a newspaper more than $10,000 in damages paid and expenses incurred defending the action.

(b) Several years ago after superin-

7. Newell, *Slander and Libel* (4th Ed.) p. 341; Times-Dispatch Publishing Company v. Zoll, *supra.*
8. Newell, *Slander and Libel* (4th Ed.), p. 487.
9. Thayer, *Legal Control of the Press* (4th Ed.), p. 425.
10. Metcalf v. Times Publishing Company, *supra* note 6.
11. See Thayer, *Legal Control of the Press* (2nd Ed.), p. 331.
12. Atlanta Journal Company v. Doyal, 60 S.E.2d 802 (Ga. App. 1950).
13. Ryalls v. Leader, L.R., 1 Ex. 296, 4 H. & C. 555, 35 L.J. Ex. 185, 14 W.R. 838, 12 Jur. (N.S.) 503, 14 L.T. 563, 30 J.P. 520.

tendent of county schools N. L. Turner had been investigated by the S.B.I., a wire service news story was published containing the following: "Tyler (the district solicitor) has indicated that Turner will be named in bills of indictment he *will present* to the Superior Court grand jury in August in the embezzlement case." *That was not privileged reporting.* Truth would have been the only defense, if, for some reason, no bills of indictment had been presented. It happened in that case that bills of indictment charging embezzlement were presented, that true bills were returned by the grand jury, and that the trial of Turner was actually commenced. Before it was completed, he committed suicide.

(c) Here is another published news story which was *not privileged* because there was NO PROCEEDING: "R-M-34, of Dunn, was to be charged today with murdering his wife."

A failure by a news reporter to see and examine original court records, such as a warrant for arrest, often results in an after-publication disclosure that there was no criminal proceeding to report. Good faith and reliance upon erroneous statements of a court official or police officer that a criminal warrant has been issued or served will not afford any defense to an action for libel based upon a published report that the complainant had been arrested under a warrant charging a criminal offense.

Thus, the North Carolina Supreme Court held that a newspaper publication of a false report that the plaintiff had been arrested and placed in jail under charges of engaging in a riot was libelous per se, notwithstanding the fact that "all the evidence shows" that the publication "was in good faith and was the result of an honest mistake."[14] The reporter in that case relied upon a statement made by the county jailer.

More recently, a North Carolina publisher was sued for libel on account of a published news story (May, 1961) that the plaintiff, a Jaycee attending a state convention in Asheville, had been arrested under a warrant issued by a justice of the peace charging him with illegal possession of liquor. The same news story reported arrests under similar warrants against some ten or eleven other Jaycees. It later developed that no warrant had been issued against the libel suit plaintiff. There was thus no criminal proceeding to report and there was no privilege. There was a jury verdict against the publisher for $1500, and the expense of defending the action was probably at least twice that amount.

So, the lesson here is clear: Be sure that there is a judicial proceeding in existence to report before publishing criminal charges, if privilege is being relied upon for protection.

14. Lay v. Gazette Publishing Company, *supra* note 1.

Requirement That Particular Judicial Proceeding Is Being Reported Be Shown in Published Report

Another very important principle which has been established by the courts is that the privilege extended to a report of a judicial proceeding applies only if the publisher indicates that a proceeding is being reported and accurately identifies it in the article.[15] This requirement is frequently violated in news stories appearing in North Carolina newspapers covering the issuance of warrants, arrests, and criminal charges generally. Frequently the particular court in which the proceedings have been commenced is not identified, and sometimes, there is no reference to the warrant in which the charges have been officially set forth as a part of criminal proceedings. Thus, it is *bad practice* to publish a report: "John Doe was charged today by city police with larceny of an automobile and will be tried next Friday morning." The story should indicate clearly that the charges were contained in a warrant issued in a particular court by a particular official (e.g., justice of the peace, clerk of municipal court, etc.) and should *name the court* to which the warrant is returnable for trial or preliminary hearing.

Recently, there was a wire dispatch from another state, published in a North Carolina newspaper, which violated the requirement that the news story must make it clear on its face that it is a report of a judicial proceeding. The first two paragraphs of the story contained statements, attributed to the attorney general of another State, that the promoters of a certain movie had "violated" a certain law of that State and that the promoters included a particular named individual. In the remainder of the news article, reference was made to "a court affidavit" which it vaguely appeared had been made and filed by the attorney general in a civil proceeding, as a basis for an order directing the promoters of the movie to appear in court with certain books and records for an examination by the attorney general. It was also reported in the article that the attorney general would seek an injunction against the promoters barring them from engaging in the securities business. There was nothing in the news article which indicated that the charges of law violation against the promoters had been a part of the "court affidavit" or a part of any judicial proceedings. It seems doubtful that a court would hold that the first two paragraphs of the article were privileged as a report of a judicial proceeding, since the article failed to indicate that the statements attributed to the attorney general had been made as a part of such proceedings. (Whether such statements by the attorney general were absolutely privileged from his standpoint, or qualifiedly privileged from the newspaper's standpoint, involves another phase of privilege and presents a serious question which will not be discussed here.)

15. Wood v. Constitution Publishing Company, 194 S.E. 761 (Ga. 1937); Hughes v. Washington Daily News, 193 F.2d 922 (D.C. Cir. 1952).

When a news story is to be published concerning the issuance of a warrant for the arrest of a named individual upon criminal charges, in order to make it clear beyond question that the publication is a report of a judicial proceeding in which the charges have been made, the story should include the following:

(a) The name of the justice of the peace or other court issuing the warrant directing the arrest of the person accused.

(b) The fact that the warrant has already been issued.

(c) Ths specific criminal charge upon which the warrant has been issued. (Verbatim language is recommended.)

(d) The name of the individual who made the affidavit in which the charges are set forth, upon the basis of which the warrant has been issued.

(e) The name of the court before which the accused is directed to be brought for trial.

(f) Whether or not the defendant has been arrested.

Reporting Defamatory Matter in Civil Complaints Prior to Open Hearing

Privilege will attach to documents offered in evidence and to pleadings read in open court, but there is a division of judicial opinion over the question of whether privilege applies to a news report of defamatory matter in pleadings or other papers filed in civil actions before they are acted upon in open court.

The North Carolina Supreme Court has *never* decided the question whether the publication of defamatory matter appearing in a civil complaint or other pleading prior to an open court hearing or trial constitutes a report of a "judicial proceeding" within the meaning of the rule of qualified privilege.

Majority Rule: The rule which has been established at common law by the courts of a MAJORITY of the States DENIES PRIVILEGE under those circumstances.

The leading case in the United States is *Cowley v. Pulsifer.*[16] In that case the Supreme Judicial Court of Massachusetts held that the publication by the defendant's newspaper of a report of the contents of a petition (containing libelous allegations) filed with the Clerk of the Supreme Judicial Court for the disbarment of the plaintiff Cowley, an attorney at law, was not privileged since it ap-

16. Cowley v. Pulsifer, 137 Mass. 392, 50 Am. Rep. 318 (1884).

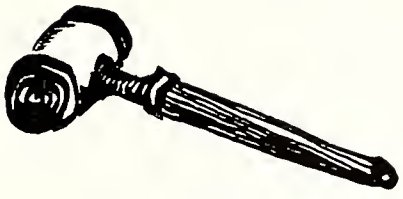
peared that the matter had proceeded no further than the filing of the petition which had never been "presented to the court or entered on the docket." Mr. Justice Holmes, writing the opinion of the Court, said:

> It used to be said sometimes that the privilege was founded on the fact of the court being open to the public.[17] This, no doubt, is too narrow, as suggested by Lord Chief Justice Cockburn in Wason v. Walter, ubi supra; but the privilege and the access of the public to the courts stand in reason upon common ground.[18] It is desirable that the trial of causes should take place under the public eye, not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.
>
> If these are not the only grounds upon which fair reports of judicial proceedings are privileged, all will agree that they are not the least important ones. And it is clear that they have no application whatever to the contents of a preliminary written statement of a claim or charge. These do not constitute a proceeding in open court. Knowledge of them throws no light upon the administration of justice. Both form and contents depend wholly on the will of a private individual, who may not be even an officer of the court. It would be carrying privilege farther than we feel prepared to carry it, to say that, by the easy means of entitling and filing it in a cause a sufficient foundation may be laid for scattering any libel broadcast with impunity . . .

The rule of the Cowley case has been followed by the courts of practically all of the States.

Minority Rule: On the other hand, the courts of a few States have held that the filing of a complaint or other pleading in a civil suit constitutes a part of the "judicial proceeding" and that the publication by a newspaper of the contents of such pleadings is PRIVILEGED if the conditions attached to the privilege are satisfied.

Another case will serve to illustrate the minority rule. In that case,[19] defendent newspaper published an article setting forth the contents of a complaint which had been filed in a civil suit charging the defendants therein with fraud. The newspaper story was published immediately after the filing of the complaint and before any court action had been taken. One of the defendants in the fraud action brought suit for libel against the newspaper, which pleaded that the publication was a fair and true report of judicial proceedings, published without malice, and therefore privileged.



The New York court of appeals held that the publication was privileged. Mr. Justice Pound, writing the court's opinion, said:

> Judicial proceedings have been repeatedly defind as proceedings before a court or judge . . . The privilege has been gradually extended to all matters which have been made the subject of judicial proceedings in any court of record or not of record, and whether such proceedings may be preliminary or interlocutory or even ex parte. . . . A lawsuit from beginning to end is in the nature of a judicial proceeding . . . To publish truly and without malice of one that an action has been brought against him for fraud, seduction, assault, breach of promise, divorce, et cetera, has become so common that the opportunity is seldom passed in silence, except when forbearance or obscurity protects the victim. So general has this practice become that the public has learned that accusation is not proof, and that such actions are at times brought in malice to result in failure. . . . But with us the act of one party institutes the action. The service of the summons begins the suit. To say that privilege protects the publication of the complaint when the summons is served by order of the court on a nonresident and does not protect the publication when the defendant is a resident is to state a distinction that has no basis in common sense. We are not bound to keep up such frivolous legal fictions. Judicial proceedings in New York include in common parlance all the proceedings in the action. We may as well disregard the overwhelming weight of authority elsewhere, and start with a rule of our own, consistent with practical experience.

The Courts of several other States have followed this *minority* rule.

NO ONE CAN PREDICT WITH ANY DEGREE OF ACCURACY which rule will be adopted by the North Carolina Supreme Court in the event the question should be presented for decision. It is believed that the minority rule is more consistent with the needs of modern society, and it is, of course, hoped that the North Carolina Supreme Court will adopt that view. In my book, *Law and Press*, pp. 59-60, I have set forth in some detail reasons why the minority rule should apply in North Carolina.

Until the question is definitely settled by a decision of the North Carolina Supreme Court, the publishers of this State who publish defamatory matter appearing in civil complaints and other pleadings prior to an open court hearing or trial will continue to run the *risks* indicated.

Civil Complaints—Examples of Risk

Here are some examples of risks by North Carolina newspapers by the publication of defamatory matter in civil complaints prior to any hearing in open court which under the majority rule would not be privileged:

(a) A news story, reporting that a husband was being sued by his wife for "legal separation" and that the wife "charges him with infidelity," contained a paragraph as follows: "Named as co-respondents with husband in the action are A, B, and C." (Names of women, two of whom were identified by city of residence.) The story continued: "The complaint charges that the plaintiff has proof that the defendant openly lived with one woman and cohabited with at least two others."

(b) A news story was substantially as follows: "Custody of their two children was asked in a suit filed in Superior Court here yesterday by wife (naming her) against husband (naming him), whom she accused of 'drinking and running around with other women.' . . ."

(c) A news story reported the commencement of a lawsuit by a husband against another man to recover actual and punitive damages for alleged alienation of the plaintiff's wife's affections. The following paragraph appeared in the news item: "It is further alleged in the complaint that the defendant had criminal conversation with the plaintiff's wife at Myrtle Beach, S. C., on Sept. 10 and again in Wilmington, N. C. on Sept. 11."

17. Patteson, J., in Stockdale v. Hansard, 9 A. & 1, 212.
18. Lewis v. Levy, El., Bl. & El. 537, 558.
19. Campbell v. New York Evening Post, 245 N.Y. 320, 157 N.E. 153, 52 A.L.R. 1432 (1927).

If the plaintiff in any of those lawsuits should have taken a voluntary nonsuit without further proceedings after filing the complaint, a libel action could have been maintained by each of the persons concerning whom such defamatory matter was published. And if the majority rule referred to above should be adopted by the North Carolina Supreme Court, none of the reports would be privileged. The publisher would be left with only a defense of truth, which might not be readily provable by the publisher.

Proper Exercise of Privilege

A proper exercise of the privilege of reporting judicial proceedings requires:

(a) A full report;
(b) A fair and impartial report; and
(c) A substantially accurate report.

"Full Report"

The "full report" requirement does not mean that the proceeding must be reported *verbatim*. Sometimes the rule is stated as requiring that the published report be "complete or a fair abridgment" of the proceedings. (Restatement of the Law of Torts, § 611.) Some courts, in stating the rule, omit reference to a "full report" and merely specify that the report of the proceedings must be "fair and accurate."

Regardless of how the rule is expressed, courts generally require that proceedings be reported with sufficient fullness so as to be fair and impartial.

To be privileged, the published report of a court trial must not omit some portion of the evidence which would result in a false and unfair impression; even though the part reported is absolutely accurate, such an omission would cause the privilege to be lost.[20]

In reporting an arrest under a warrant upon charges of a criminal offense, if a news story fails to contain all of the descriptive data shown on the warrant identifying the accused person, so that the report might reasonably be construed to be "of and concerning" an innocent person with a similar name, the published report would not be sufficiently full and such innocent person could maintain an action for libel, and there would be no defense of privilege.

Thus, a man by the name of Harry P. L. Kennedy was arrested in Detroit and returned to Washington and a memorandum of the arrest made by the District of Columbia police department indicated that he was a lawyer, age 40, charged with forgery. A newspaper item reported: "Harry Kennedy, an attorney, 40 years old, was brought back to Washington from Detroit yesterday to face a charge of forgery. According to headquerters detective Vermillion, who trailed Kennedy to Detroit, the man forged the name of a client for $900.00."

20. Gatley, *Libel and Slander* (5th Ed.), p. 289.

The item was held to be libelous as to Harry F. Kennedy, age 37, the only lawyer by that name in the district, although the publisher intended to refer to Harry P. L. Kennedy. Thus, the omission of the middle initials which, if printed, would have disclosed that the plaintiff, Harry F. Kennedy, was not the attorney arrested under the forgery charges, caused the news item to be libelous.[21] The court of appeals of the District of Columbia in that case stated that the descriptive matter omitted in the published report would have clearly distinguished the two Kennedys and the plaintiff Kennedy would not have been harmed. The court referred to the reporting as "inaccurate" rather than "incomplete." (The question of privilege was not discussed by the court.)

News coverage of a court trial must not include a summary of the evidence of one party without publishing also a similar summary of the evidence of the other party. The published report must not include a full account of the direct testimony of a witness containing damaging and defamatory evidence concerning one of the parties and then omit a cross-examination which tended to show that the witness was prejudiced and unworthy of belief. That would be an incomplete report and would not be fair and impartial. Privilege would be defeated.

Where a trial continues for more than one day, the report may cover each day's proceedings, day by day, but if a report of the first day's proceedings is published, additional reports must be published from day to day until the case has been completely reported in a fair and impartial manner.

When a trial in superior court has been covered and reported in which the defendant was convicted, it would seem essential that the case be followed in the appellate court, and the decision of the appellate court should be published, particularly, when the judgment of the trial court is reversed, or modified in a manner favorable to the defendant.

If an appeal is noted by a convicted defendant, a report of the criminal proceedings would not be complete or fair unless it included an account of the notice of appeal.

When published reports of a judicial proceeding are so condensed or abridged that a false and unjust impression to the prejudice of one of the parties is created, there is no "full report" as required by the rule, and there is no privilege.

"Accuracy"

Courts have been strict in requiring accuracy in reports of judicial proceedings as a prerequisite to the defense of privilege. Good faith and good intentions are not substitutes for accurate reporting.

21. Washington Post Company v. Kennedy, 3 F.2d 207 (C.A. D.C. 1925).

The report must not be garbled so as to produce a misrepresentation.

Extremely important is the matter of accuracy in identifying the defendant in a criminal proceeding. Mistakes of that type have been costly in a large number of cases. It is immaterial and of no legal significance that an error in identity was innocently made in absolute good faith without intent to commit libel.

The defense of privilege may be lost by a mispelling of a name, by the use of an incorrect initial, by the failure to use an initial or middle name which would have avoided the involvement of an innocent person, or by publishing a photograph of an innocent person identifying it as the accused in a criminal case, or by confusing the complaining witness with the defendant charged with crime, or by purely typographical error. By transposing a line of type, or by mixing the type of two disconnected news stories in making up the paper, or by inaccurate headlines, a libel may result.

Frequently mistakes in identity occur because of inaccurate reporting. Such mistakes may arise by relying upon oral statements of police officers and other informants rather than by examining the original records on file in a criminal case or otherwise verifying the identification information. They may result from plain carelessness in making notes of names and addresses and other identifying information available. Mistakes in identity frequently occur when a reporter fails to "follow leads" which, if pursued according to sound investigative procedures, would disclose the mistake in identity about to be made prior to writing the story. Another reason for mistakes in identity resulting in libelous publications is careless writing after having developed the true facts.

Reporters, copyreaders, and every member of the editorial staff handling the copy of a story having such potentialities, must constantly keep in mind that probably the most important aspect of handling such a story is the accurate identity of those accused.

Illustrative Cases: Inaccurate Identity

(a) A mistake in the identity of one charged with serious criminal offenses resulted in a verdict and judgment for $5,000 against a North Carolina publisher some years ago. The defense of privilege was not available. A newspaper article stated truthfully that one, Harry Roth, had been arrested in New Jersey on a charge of operating a vice ring—violating the "White Slave Act"—and had been imprisoned in default of bond. The article identified the Harry Roth as one who had previously resided in Greensboro, N. C., and had lived at the Y.M.C.A. and had been the manager of a certain theatre there. It developed there was a mistake of identity. The North

Carolina Supreme Court held the publication to be libelous per se.[22]

(b) In another case[23] the defendant newspaper published a false statement that the plaintiff had been arrested and placed in jail on a charge of leading a riot. The report was inaccurate because the reporter had relied upon oral statements made by the jailer. There was no defense of privilege. The publication was held to be libelous per se.

(c) Several years ago a North Carolina publisher was threatened with a libel action on account of a news report of the conviction of the claimant on charges of drunken driving, because the man had been erroneously identified in the report as a Negro. The claim was denied and no lawsuit followed. Southern courts have held that it is libelous per se to publish falsely that a white man is a Negro.[24] If the North Carolina Supreme Court should follow that rule, there would be liability for a news report of a criminal case in which a white defendant is erroneously identified as a Negro, because such inaccurate reporting would preclude a defense of privilege.

(d) One of the most frequent types of inaccurate reporting of criminal cases which I observe in North Carolina newspapers is the identity of the prosecuting witness as the defendant.

(e) Extremely dangerous inaccuracies in reporting criminal proceedings have occurred in North Carolina on at least two occasions within the past year in which the *given* name of a prominent, reputable citizen, having the same surname as that of a man convicted of crime, was, through carelessness, used in a news story instead of the given name of the convicted man. The innocent victim of those news items had valid causes of action for libel per se, and neither truth nor privilege was available as a defense. He accepted published retractions and apologies.

(f) The plaintiff in a libel action had been identified erroneously in a news report as the complaining witness in a seduction case. The plaintiff had no connection whatsoever with the case. The reporter had written the news article about the proceeding on the basis of information by telephone and a note found on his desk. There was no defense of privilege.[25]

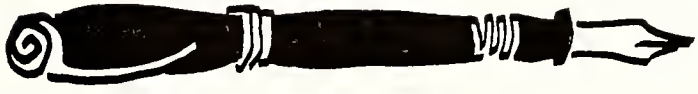
(g) An incorrect address caused a mistake in identity of a person arrested for theft, constituting libel per se as to the innocent person having the same name as the accused.[26]

22. Roth v. Greensboro News Company, *supra* note 1.
23. Lay v. Gazette Publishing Company, *supra* note 1.
24. Flood v. News and Courier, 50 S.E. 637 (S.C. 1905), leading case.
25. Hulbert v. New Nonpareil Company, 82 N.W. 928 (Iowa 1900).
26. Davis v. Marx Hansen, 61 N.W. 504 (Mich. 1891).

Illustration: Inaccurate Cutlines

Another form of inaccuracy in publishing reports of judicial decisions involves transposed cutlines.

One instance occurred several years ago in this State, but no lawsuit resulted. A newspaper published a photograph of a man whose name, let us say, was *Joe* Blow, who had on the previous day been convicted of a serious crime involving moral turpitude. In the same edition of the newspaper there was published the photograph of a reputable citizen by the name of *John* Blow who was speaking at a civic club luncheon that day. By mistake, the cutlines were reversed so that the reputable citizen's photograph was identified as that of the criminal. The publication was libelous per se as to the reputable citizen, and neither truth nor privilege would be available as a defense.[27]



Illustrations: Inaccurately Relating Testimony, Criminal Charges, Pleas, Judgments, Etc.

To be privileged, the published report must be an accurate, factual account of the testimony of witnesses, the charges against a defendant in a criminal case, the pleas made to charges, the judgment of the court, and various occurrences during a court trial. Some illustrations of this type of inaccurate reporting are as follows:

(a) A report that a lady was convicted in court on a charge of drunken driving, when in truth the charge against her was hit-and-run driving.

(b) A news report of a criminal case stated that the defendant pleaded *guilty* to charges of embezzlement, whereas the defendant had actually pleaded *nolo contendere* and had steadfastly denied that he had ever converted funds of his employer to his own use. Three years previously, the same defendant had been acquitted of several embezzlement charges, and his attorney had explained in open court that the *nolo contendere* plea was made to bring the last of the cases to an end.

(c) A defendant in a criminal case was charged and convicted of driving an automobile without the owner's consent. A newspaper reporter failed to note that a charge of theft had been dropped. The news story reported that the defendant had been convicted of theft. It was held by an English Court that the defense of privilege was lost by inaccurate reporting.[28]

27. See Peck v. Tribune Company, 214 U.S. 185, 29 Sup. Ct. 554, 53 L. Ed. 960 (1909).
28. See Gatley, *Libel and Slander* (5th Ed.), p. 288.

(d) A news report that a Grand Jury has returned a "*true bill*" of indictment against a particular individual, whereas, in fact, the return was "*not a true bill*," would not be privileged, because the report was inaccurate. Likewise, if a true bill of indictment was returned against A, and a news report states that it was against B, the privilege is lost by reason of inaccuracy.[29]

(e) "A report which contains an untrue statement as to the *effect* of the judgment in an action is not a fair and accurate report," and there would be no privilege.[30]

A witness while testifying may make a false statement which is libelous of someone not even a party or otherwise connected with the proceedings, but an accurate report of the witness's statement is privileged. However, care must be taken to attribute the statement to the witness and not to publish the statement as a fact.[31]

Fairness of Report

"Not only must the report be accurate but it must be fair. Even a report which is accurate so far as it goes may be so edited and deleted as to misrepresent the proceeding and thus be misleading. Thus, while it is unnecessary that the report be exhaustive and complete, it is necessary that nothing be omitted or misplaced in such a manner as to convey an erroneous impression to those who hear or read it, as for example a report of the discreditable testimony in a judicial proceeding and a failure to publish the exculpatory evidence, or the use of a defamatory headline in a newspaper report, qualification of which is found only in the text of the article. The reporter must make no addition or comment of his own nor impute corrupt motives to any one nor indict expressly or by innuendo the veracity or integrity of any of the parties. . . .

"It is not always necessary that the entire proceedings be reported at one time. However, when a newspaper publishes from day to day the report of a judicial proceeding, it may not, after reporting derogatory parts, fail to publish the further proceedings which vindicate the person defamed. The fact that the report of one side of a trial is not as complete as that of the other side is a factor to be considered in determining whether the report, as a whole, is unfair."[32]

(Continued on page 42)

29. Sweet v. Post Publishing Company, 102 N.E. 660 (Mass. 1913).
30. Gatley, *Libel and Slander* (5th Ed.), p. 292.
31. *Ibid.*, p. 288.
32. Restatement of Torts, § 611, Comment (d), in part.

Press Court Reporting Seminar:

Free Press and Fair Trial: II

THE PRESS AND THE DEFENDANT:

The Rights of the Defendant

By James R. Nance, Attorney at Law

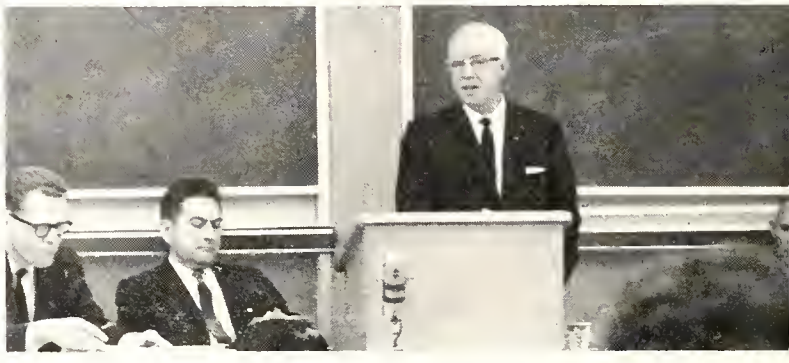
(Editor's Note: The author is well-known as a leading defese attorney in North Carolina. Born in Alabama, he received his undergradnate and law degrees from Wake Forest College. He is a senior member of the Fayetteville firm of Nance, Barrington, Collier and Singleton, and a past president of both the Cumberland County Bar and the Ninth Judicial District Bar.)

In 1954, Frederick J. Ludwig of St. John's University, School of Law, noted that almost 2500 years separate us from the trial of Socrates; that to the American lawyer today, the trial described by Plato may appear as a crude episode in the history of criminal justice yet the gap between law in the books and law in action can become so wide as to revive the trial of Socrates as a frequent 20th century paradox. In this ancient trial the "evidence" consisted of impassioned pleas by accusers to an Athenian mob, who often interrupted with applause or howls of disapproval. The same mob were also triers of the issues of fact. If their verdict was not a product of the emotional proceedings, it was only because they had already made up their minds amidst gossip and rumor in the market place.

The same writer pointed to the fact that one of the most reversed legal fables is that modern trial by jury sprang full grown, like the Boticellian Aphrodite, from the Magna Carta's guarantee to the nobleman of the "judgment of his peers" in a trial at the King's suite in the House of Lords. For the less favored multitude, the institution had to win its spurs in sharp competition with trials by ordeal and oath, and was to assume its current shape only after centuries of development. Reflection upon alternate methods of resolving disputed issues of fact indicates why trial by jury emerged as most popular. Ordeal by fire involved the accused's taking in hand a piece of red hot iron or walking barefoot and blindfolded over nine red hot plow shares laid lengthwise at inequal distances. If the party escaped unhurt, he was adjudged innocent; but if it happened otherwise, as without collusion it usually did, he was then condemned as guilty. The water ordeal required an accused to plunge his bare arm elbow deep in boiling water without being scalded to establish his innocence. There was also the ordeal by battle which survived abolition until 1819, where the accused escaped conviction by avoiding decapitation in day-long judicial combat with double edge Frankish war axes.

The Bill of Rights in the Federal Constitution contains many guarantees against oppressive proceedings in criminal prosecutions. The Fifth Amendment provides generally the right to be met by indictment of a grand jury if charged with a capital or otherwise infamous crime. It also contains the famous Anglo-American concept of justice that no person shall twice be put in jeopardy for the same offense. Further, security against oppression is bulwarked by the provision that no person shall be compelled in any criminal case to be a witness against himself.

Of equal import is the Sixth Amendment which contains many stipulations as to the rights of an accused in criminal matters such as the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and the right to have the assistance of counsel for his defense. The North Carolina Constitution, Article 1, Section 11, provides that in all criminal prosecutions every person charged with crime has the right to be informed of the accusations and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence. Article 1, Section 13, provides for trial by jury in open Court.



The author delivers his address, flanked by moderator L. Poindexter Watts, Assistant Director, Institute of Government and panel members Professor John B. Adams, UNC School of Journalism and Charles Hauser, Carolinas Editor, The Charlotte Observer.

Not inconsistent with such guarantees of individual right are those guarantees found in the First Amendment to the United States Constitution—"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press." Article 1, Section 20, of the Constitution of North Carolina provides, "The freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained, but every individual shall be held responsible for the abuse of the same." It might be noted that at the time the State Constitution was adopted on April 24, 1868, there had developed a need for the language, "but every individual shall be held responsible for the abuse of the same." At an early date Thomas Jefferson, who is referred to as the historic champion of a free press, had been quoted as follows:

> "I deplore . . . the putrid state into which our newspapers have passed, and the malignity, the vulgarity, and mendacious spirit of those who write them. . . . These ordures are rapidly depraving the public taste."

"It is however an evil for which there is no remedy, our liberty depends on the freedom of the press, and that cannot be limited without being lost."[1]

Our highest Courts have repeatedly held and in strong language emphasized the fact that the newspaper, magazine and other news media of the country have shed and continue to shed more light on the public and business affairs of the nation than any other form of publicity; and since an informed public opinion is the most pertinent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. A free press stands as one of the greatest interpretors between the government and the people. "To allow it to be fettered is to fetter ourselves."[2] The freedom of the press consists largely of the right without any previous license or censorship, to publish the truth with good motives and for justifiable ends whether it respects government, magistracy, or individuals.[3]

At present we are concerned with the effect of newspaper reporting on individuals who are faced with criminal prosecution. Please bear in mind that our entire system of justice is predicated upon the so-called presumption of innocence which enshrouds a defendant and remains with him not only during the pendency of the trial but throughout the trial and until the prosecution has convinced the jury beyond a reasonable doubt of the guilt of the accused.

The single factor is at times hard to reconcile with newspaper articles dealing with mere accusations, many of which are dismissed in the preliminary stages of trial. Nevertheless, we must recognize that it makes interesting reading to a vast multitude of people who themselves thrive intellectually and obtain a deep emotional satisfaction from the fact that "it happened to somebody else." I have long been convinced that a vast majority of our people are in favor of a strict law enforcement insofar as it does not apply to them, their families and closest friends.

When we speak of prejudice to a defendant by reason of extensive publicity, we usually think of its influence upon juries—the ultimate finders of the facts. There is no such limitation upon the effect on a defendant of too much of this publicity. In the first instance, it affects the attorney. In the second, it affects the ability of a defendant to obtain a factual investigation of thoroughness approaching that already completed by the prosecution. In the third place, it affects his right to obtain witnesses for his defense. Certainly it affects the jurors and strangely, but truthfully, it affects the judges even on an appellate level.

Self-preservation is the first law of nature and, notwithstanding a different belief on the part of some of my reporter friends, lawyers are human.

Appearances in cases that have become too unpopular by reason of exploitation of either substantiated or unsubstantiated facts can affect the entire future and career of an attorney. They can make it extremely difficult for his family. I recall vividly some 20 years past when one Wall C. Ewing was being tried for first degree murder in connection with the death of his wife. He had been President Pro Tem of the Senate, controlled the local radio station at a time when the newspapers were beginning to feel the bite of its advertising competition and had been the political leader in my county. His case stayed continuously before the public as front page news from the time of his arrest until the conclusion of his trial. I appeared in his defense. During the trial and before, my family received many anonymous telephone calls. The caller simply asked my wife, "Is Jim Nance your husband?" To her answer of "yes," he replied, "Well, I want to tell you he is a — — — —."

Most of us understand the problem that confronts the reporter in matters involving crime and alleged crime. Advertising costs are affected directly by newspaper sales. Headlines dictate what is to be read and, in fact, whether or not the paper will be bought. The average reporter assigned to follow the courts must maintain a close liason with police officials. Police blotters are usually open to public inspection, but without cooperation from investigating officers, they tell little. Many of these police officers are not only competitive, one with the other, but become competitive with defense attorneys, individually and collectively. I know a plainclothes officer in Fayetteville who refuses to take notes—it makes for a more convenient memory. It may be that subconsciously they realize the defense attorney is actually the last bulwark between individual dignity and the oppression of a police state.

These officers give to the press those details which are always inconsistent with innocence. The rest they withhold. There are times when a detective will let a reporter see a purported confession or statement of the person charged. This is, however, usually with the understanding that certain pertinent parts will not be carried by the news media and invariably the request is honored since the reporter views as critical a relationship which will permit him to view statements in succeeding investigations.

The public has a right to be apprised of happenings of interest in the community and throughout the country. If these stories were not slanted and the situation made inflammatory by catch-word headlines, the damage to the accused would be minimal. Those of us who go into the criminal courts, however, are constantly aware of the problem created even when a reporter is seeking basically to present an unprejudiced view. Having been trained in his work, he subconsciously realizes that if an accused has any redress it is not against him and seldom against his publication. While our libel laws were put through the legislative mill by attorneys with some basic concept of the rights of an accused, they were unquestionably dictated by better organized and more influential groups who have profited by the inadequacy of such laws.

There are enough mistakes that may be justly classified as "typographical." The article appearing in a daily newspaper published on October 17, 1963, describing this particular seminar referred to Judge E. Maurice Braswell as a Fayetteville attorney and wisely omitted any reference to my appearance on the program. Sometimes, as you best know, these obvious typographical errors even strike a note of humor. A recent "Dear Abby" reply read as follows:

> "CONFIDENTIAL TO SUE IN PINE BLUFF: Yes, I am married, and have been to the same wonderful man for 2 years. We have a daughter 21, and a son 18, and are healthy, happy, normal, L-U-C-K-Y people living in Southern California."

It prompted the girls in the office to send the item to her with the comment "Who needs advice now?"

If the defendant can obtain counsel, and usually he can, then he is confronted with the problem of obtaining a factual investigation to determine the seriousness of his case. There are a few named as defendants who can afford the services of trained private investigators. As a practical matter the problem generally falls to the attorney and the relatives and friends of the accused. If the initial news accounts have been such as to arouse both opinion and indignation he finds himself with a few friends and only his closest relatives. It is a psychological fact that few persons have the moral courage to align themselves with unpopular causes. The investigating officers have determined the guilt of the accused, have been lauded in the press for their achievements and it is extremely difficult to learn much of the background of the accusers.

Far more difficult is the plight of the accused in his effort

1. Padover, *Democracy*, 150-151. Quoted in Bridges v. California, 314 U.S. 352, 270 N. 17, (1941).
2. Grosjean v. American Press Company, 297 U.S. 233.
3. Masses Publishing Company v. Patton, 246 Fed. 24.

to obtain witnesses once the investigation of his contentions is complete. To be a witness involves a public appearance, to make such an appearance invites the same news treatment that they have seen accorded an accused. In the early days of my practice, I was appointed to defend a young man who had attempted to poison members of a prominent rural family. Death had resulted to the mother and one of her children. Other members of the family had recovered. I felt that some insanity was involved. There were rumors of happenings in another community which would indicate at least questionable sanity. The county paper, however, had not had such a story in ten years and in each publication for weeks the alleged happening, together with statements of various officers and so-called community leaders, had been carried as front page news. This was about the time that an article appeared in *The American Mercury*[4] entitled "The Truth Behind the News:"

> "There is an unwritten law among the thrill papers for the protection of their readers; never admit a killer is insane until you have to, and fight even then for his sanity—it detracts from the menace and brilliant wickedness of the killer, it cheapens the crime, it ruins the lugubrious threat of the last walk to the electric chair. If it is too obvious the trial itself will be lost."

When I went into the community where the young defendant had lived and worked until a few months prior to the happening I found few who would admit they remembered him at all and none who remembered anything in his life that could be classified as eventful. None dared express an opinion that he was not completely sane. I remember, because in those days a defense attorney was paid $25.00 for his work in a criminal case and I dare say this did not pay for the shoe leather used up in an attempt to find witnesses and bring them into court.

In so many instances witnesses who sign statements and are able to furnish information refuting charges suddenly panic over the pressure of neighborhood opinion, all of which has been shaped by the reporter. They frequently call at all hours of the night before a trial, advising counsel that if he insists on using them they will guarantee to hurt. The only way I have ever found to combat this attitude is with the observation that our telephone conversation has been recorded and that perjury is punishable as a felony. Often the witness himself finds that publicity attending his presence at or near the scene of an alleged crime could be made unduly embarrassing and as a defense witness he fears the same treatment that has already been accorded an accused. He realizes that the columnist's barbed comment on credibility hangs like the sword of Damocles over the witness giving unpopular testimony.

A far more serious consequence is the effect of undue slanted and critical publicity on the jurors. As heretofore pointed out the right of trial by jury is of ancient origin. To Blackstone it was "the glory of the English law" and "the most transcendent privilege which any subject can enjoy." In Justice Story's view "the Constitution would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms." Today these views are not universally accepted, and assertions are made that trial by jury is a luxury which can no longer be afforded. In federal courts, at least, the Seventh Amendment writes into the basic charter the belief that trial by jury is the normal and preferable mode of disposing of issues of fact in civil cases involving legal relief as well as in all criminal cases.

"Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given, it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man; that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge."[5]

In the case of *Stroble v California*,[6] Justice Frankfurter observed, "Science with all its advances has not given us instruments for determining when the import of such newspaper exploitation has spent itself or whether the powerful impression bound to be made by such inflaming articles as here preceding the trial can be dissipated in the mind of the average juror by the tame and often pedestrian proceedings in Court."

Prospective jurors are drawn and notified to appear days prior to the time of a trial. In many instances if the accused and his alleged crime have had much publicity, their names are held up in print to their neighbors and business acquaintances. Then immediately before the trial the old news articles are summarized, re-headlined and held out for public endorsement. A prospective juror may think that he has neither formed nor expressed an opinion regarding the guilt or innocence of this particular accused, but in answering the questions propounded by court or counsel he is wont to overlook the opinion of his wife and their mealtime discussions. Today no one wants a juror of such incompetence that he neither hears nor reads.

It is said that the Hauptmann trial was attended by 141 newspaper men and photographers, 125 telegraphers and 40 messengers. During the trial polls of public opinion on the defendant's guilt were published, a practice soundly condemned by the American Bar Association.

Confessions and admissions of persons accused are admissible only when they are freely and voluntarily made. Often they are tainted with fraud or physical and mental oppression. Our North Carolina courts have recognized the inadmissibility of those so-called confessions obtained upon the false premise that others involved have confessed and pointed the accusing finger at this defendant; also, those where there have been threats or promises; and those where there have been physical or mental pressures. The admissibility of these must be determined in the absence of the jury. If they are inadmissible they have no place in the consideration of a jury. Yet, repeatedly the proceedings to determine such admissibility is reported along with the competent evidence. A defendant is guaranteed the right to a speedy and public trial—in North Carolina "trial by jury in open court." It is only in the trial of cases of rape and assault with intent to commit rape and during the taking of the testimony of the prosecutrix that bystanders, including the press may be excluded.[7] It would seem therefore that an accused should have the right to waive public trial in the same manner as he has a right to waive other constitutional guarantees, but such is not the case.

It is well for a presiding judge to caution a jury against reading newspapers or listening at radio or television comments regarding a trial. There are few instances, however, where this operates to safeguard the defendant's right of confrontation. It is seldom today that juries are isolated or segregated from those in their home and surroundings. These individuals have read the contents of the incompetent confession; have corroborated the same with the hearsay, incompetent, privileged or irrelevant evidence, and have associated pictures of the accused with so-called accounts of the trial.

After all, a jury arrives at its findings from an over-all impression created during the trial. At least that is the theory of trial by jury. After days of testimony and judicial rulings

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4. 29 *American Mercury* 139, 141, (1933).

5. Sioux City & P. Ry. Company v. Stout, 1874, 17 Wall, 657, 84 U.S. 657, 21 L. Ed. 745.

6. 343 U.S. 181, 190 (1952), note 11, at 201.

7. North Carolina General Statute 15-166.

Press Court Reporting Seminar:

THE PRESS AND THE DEFENDANT:

Pre-Trial News Coverage

By John B. Adams, Associate Professor, University of North Carolina School of Journalism

(Editor's Note: The author has served on the faculty of the School of Journalism at the University of North Carolina since 1958. He teaches the course in Press Law to journalism students. A native of New Jersey and a graduate of the University of California at Berkeley, Professor Adams obtained his Ph.D. from the University of Wisconsin and taught at Michigan State University before coming to Chapel Hill. He is the author of several articles, including the recent "News Sources: "Three Points of View," Studies in Journalism and Communications [Study Number Three] published by the U. N. C. School of Journalism.

The running debate between the fields of Law and Journalism, at times a gentle murmur, of late has broken out again into charges and counter-charges as both sides try vigorously to establish unassailable positions.

The debate is far-ranging, including the question of the desirability of courtroom photography and flowing through questions of trial coverage before, during and after a case is heard.

While the problems of the enforcement of the American Bar Association's Canon 35 (which urges judges to ban photographers from any communication medium from taking pictures during a trial) are important, perhaps the greatest single area of dispute is in the ways in which pre-trial activities in a case are covered by the Press.

Certainly a recent historic event provides material for renewed debate—the assassination of President John F. Kennedy and the subsequent arrest and detention of Lee Harvey Oswald were covered admirably by all news media, but members of the bar have noted, correctly, that most reports tried and convicted Oswald with little regard for the principles of proper pre-trial coverage.

Perhaps coverage of such a momentous event is done in an atmosphere which makes it difficult for the newsmen to think through the implications of the use of "assassin" in place of "the man *accused* of the assassination." Nevertheless, the principle is the same, and it has been violated in cases much less newsworthy.

Unfortunately, the argument between Press and Bar in the question of proper pre-trial coverage is based, by both sides, on highly valued terms which tend to be incapable of precise definition.

The Press says it has a duty to inform the public about everything that goes on in a community. The Bar says the way the Press sensationalizes some criminal cases is itself just short of criminal. These basic propositions, with infinite variations, are expounded by the two sides in a never-ending battle of confusion.

The problem is, of course, that each side is trying to tell the other side how to conduct its business.

> The Bar's position can be stated simply: Excessive coverage of court actions, particularly in the pre-trial stage, when material not later admissible in evidence is made public before potential jurors; and also particularly in the over-sensational way in which so-called newsworthy minutiae are played up in the Press—these tendencies in the Press are unnecassary and grossly unfair to the administration of justice.

It is true that spokesmen for the Bar often show absolutely no comprehension of the truths of present-day journalism. *No* newspaper, with the possible exception of *The Christian Science Monitor*, would take seriously for one minute a proposal made in a recent *Neiman Reports* article by an Illinois judge.[1]

The judge, with a cavalier disregard for the facts of life, said:

> If it is really the purpose of the press to inform the public about the workings of its courts, that purpose would be much better served by delaying the publication of the day-to-day proceedings of a criminal trial until the trial has terminated.[2]

The Press rejoinder is that the day of the Star Chamber has long since passed; justice cannot operate in a vacuum any more than any other operation of government.

But, the picture is far from one-sided. There have been more than enough examples of irresponsible reporting of trials, but more troublesome in the long run is the situation in which the newsman carries out his role with complete responsibility, as defined by the Press.

Every newsman learns, from the time he begins his career, to select out of a vast range of material only that which is important, or interesting, for publication. When covering courts, only the more significant or entertaining portions of the reams of material are considered newsworthy. That is the way it is. So be it.

Still, a basic conflict develops at the pre-trial stage. Once a case begins, the judge has at his disposal the powers of contempt citation. It is true that over the years the courts have restricted the areas in which contempt citations can be issued; but the trend is only relative—the judge can still protect himself *and* justice from newsmen whose acts present a clear and present danger to the administration of justice.[3]

In the period before a trial begins, however, legal protection for an accused is sparse. "Responsibility," as a concept guiding Press coverage, apparently needs re-defining.

Newsmen stand foursquare behind the First Amendment, in which provisions for Press freedom are somewhat imprecisely noted. It would be helpful if there were as much support for the Sixth Amendment, which provides, among other things, that the accused shall enjoy the right to a trial by an impartial jury.

Presumably, *impartial* connotes the idea that juries should be made up of individuals able and willing to make up their minds about guilt or innocence *after* listening to testimony in a case. In fact, in most instances jurors are unfamiliar with cases they hear and justice, within the limits of human capa-

(Continued on page 46)

1. Will, Hubert L. "Free Press vs. Fair Trial," in *Neiman Reports*, 17:3 (September, 1963), pp. 16-21.
2. *Ibid.*, p. 18.
3. For discussion, see Thayer, Frank. *Legal Control of the Press*, Brooklyn: The Foundation Press, 1962.

Press Court Reporting Seminar:

THE PRESS AND THE DEFENDANT:

Constitutional Rights: Whose Responsibility?

By Charles Hauser, Carolinas Editor, *The Charlotte Observer*

(Editor's Note: The author has been active in the press corps since his student days at the University of North Carolina in Chapel Hill where he was editor of the Daily Tar Heel *and graduated with a degree in Journalism. In a short time "Chuck" has gained prominence among North Carolina newsmen. He was formerly State editor for the* Charlotte Observer. *His present duties as "Carolinas editor" give him responsibility for the* Observer's *coverage in both North and South Carolina.*

There's already been a lot of discussion during this seminar on the responsibility of the press to protect the constitutional rights of a defendant in a criminal proceeding.

I'd like to make the point that that responsibility does not really belong to the press—it belongs to the state . . . to the judicial authorities . . . to the police.

The problem is that the state has fallen down in the performance of its duty. It has fallen down on this job of protecting the rights of the defendant. Because of this, the press has had to step in and take over some of this responsibility that really does not belong to it. We are given the job not by design but by default.

If we agree that we—the press—must concern ourselves with protecting the rights of the defendant, there certainly should be no question in any of our minds as to why. It's because under our system we assume every man to be innocent until he is proven guilty. A lot of people pay lip service to this principle; we should believe it and practice it.

But to get back to my original charge that the state has fallen down on its job of protecting the rights of the defendant.

I say that not to try to shift the blame from the press. As a member of the press I am willing to share the blame. I am willing to admit that—as a profession—we are sometimes guilty of collusion with the state to deny the defendant his right to a fair and impartial jury trial.

Our guilt begins with police reporting, where we describe the circumstances of a crime and the background of the defendant long before the case gets near a courtroom. Starting at the very beginning—with our police reporting—we must keep in mind that what we write can have a very real effect on the outcome of a trial.

I don't believe anybody here can honestly deny that the press—often with the collaboration of the police and sometimes at their urging—has at times convicted a defendant in print before he ever had a chance to defend himself in the courtroom.

The police—who are as public relations-conscious these days as any other government agency—want the taxpayers to know they are doing their job. The reporter wants a good story. The news editor wants a good headline. In collaboration, each with his own motives, these people can damage the cause of justice in spectacular fashion.

The reason I say the state has fallen down in the performance of its duty is that the state could crack down on this business of the police trying a case in the newspapers before it reaches the courtroom. The police—as an arm of government—could be prohibited from encouraging and aiding the press in damaging the chances of a defendant to have a fair trial.

It can be done. The British do it. Sam Ragan has mentioned the English system of restricting pre-trial reporting. I'm going to go into more detail on their system in a few minutes.

But first let's take a look at our own system.

One of the things we do almost automatically when a man is arrested and charged with a serious crime is to tell the public all the lurid details of his past life. If he has a criminal record we hit that fact in the lead of our story: "Two-Fingers Brown, a convicted safe-cracker and extortionist, was charged today with the robbery and murder of a night watchman who was gunned down when he surprised a burglar in the Jones Department Store."

But once the case goes to trial, none of this information about Two-Fingers' past criminal record is admissable as evidence. Even if members of the jury conscientiously and honestly say they have not made up their minds about the guilt or innocence of the defendant, we know that some of them—at least subconsciously—have absorbed the facts in the newspaper about Brown's past convictions.

In the first place, members of the jury may have a strong tendency to believe that Brown is guilty of this murder merely because he is a likely person to commit such an act. Or they may believe that even if he isn't guilty of the murder, he has probably committed other crimes and gotten away with them so he should be convicted of *something* regardless of the evidence. These are some of the reasons why this information is not admissible in court.

I'm sure some of you have heard of the famous American trial lawyer Lloyd Paul Stryker. He had this to say on this problem:

"When facts are printed in the newspapers in our country where there is very little illiteracy, the facts are just as definitely presented to the juror as though the editorial writer went to the juror's home at night and argued with that juror and said, 'Here, you are trying this guy. Don't you know he has a long record? That he has been convicted many times?"

I think that some of the worst abuses we can find in the field of pre-trial reporting—abuses by the press in coalition with the police—involve confessions.

Let me read you a recent story[1] from *The Charlotte Observer* to prove my point:

"OAK CITY—A 23-year-old Oak City

1. Note: Because the trial mentioned in this story may still be in progress, names of the accused, his questioners, and the locality have all been changed. No reference to actual persons, living or dead, is intended.

man confessed Tuesday that he robbed and beat an elderly Oak City merchant last Wednesday but he denied that he shot him.

"John Henry Doe of East Street was charged with murder and is being held without bond in Blank County jail.

"After seven and a half hours of questioning by Detective Lt. Jim Roe of the rural police, Oak City Chief Joe Law and Sam Stone and Bill True of the SBI, Doe confessed to robbing and beating I. M. Dade."

Note the number of law enforcement officials involved in that interrogation. Note the length of time the questioning went on—at least, the length of time we know about.

Now listen to this story from *The Observer*, published last Aug. 29—eight days later:

"OAK CITY—John Henry Doe, 23-year-old Oak City resident, denied Wednesday that he had anything to do with the brutal slaying two weeks ago of elderly merchant I. M. Dade.

"In an interview at the Blank County jail Wednesday afternoon, Doe said that the only reason he confessed to robbing and beating Dade was because questioning officers told him that they would keep him awake for days until he did confess.

" 'I was sleepy and tired and wanted to go to bed,' Doe said. 'They wouldn't let me call my lawyer. . . . They even took the phone book out of the room so I couldn't look up his number.

" 'So I knew that if I was going to get some sleep and rest, I would just have to tell them a lie. Then I thought maybe they would leave me alone and let me go to bed.' "

Now, do you suppose the confession that John Doe made to police on August 21 will be admissible as evidence during his trial, considering his statement that he confessed under duress?

I don't know the answer to that yet, because the case is currently being tried in Superior Court in Blank County. Yet the minds of prospective jurors must have been indelibly stamped with the belief that since Doe confessed, he must be guilty. Many of those jurors may have seen the first story and not the second.

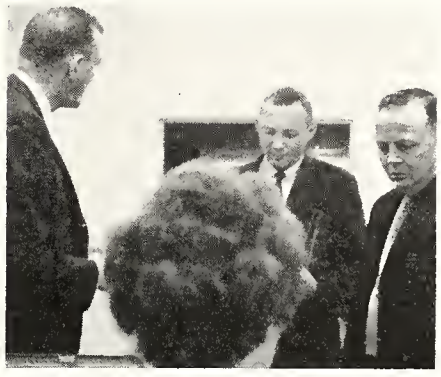
Not only is the first story on Doe's confession a bad piece of reporting and editing—the lead says flatly that Doe confessed instead of attributing that statement to police—but it also tips us off as to how the confession was obtained . . . over at least a seven and a half hour period with numerous police officers, probably working in relays.

Incidentally, Doe had been in police custody since Aug. 16. He "confessed" on Aug. 21. The reporter knew he had been questioned for the last seven and a half hours prior to his confession, but how about the five days prior to that?

Let's turn to another case—Shepherd versus Florida, which was reversed by the Supreme Court of the United States in 1951.

The case involved four Negroes—Shepherd was one of them—convicted of the rape at pistol point of a 17-year-old white girl in Lake County, Florida. The local newspapers were flooded with the most inflammatory stories which branded the four Negroes as the rapists in unmistakable terms. The newspapers also reported that the defendants had confessed . . . and one of them even went so far as to publish—at the time the grand jury was about to consider the case—an editorial cartoon showing four electric chairs. The caption said "No compromise—supreme penalty."

The Supreme Court reversed the convictions primarily on the ground that Negroes were excluded from the jury. But Justices Jackson and Frankfurter decided that the primary issue was that the defendants had been denied due process because of community prejudice, inflamed by the local press.



During registration for the Press Seminar, Charles Hauser (center), the author, and John York (right) of The Charlotte Observer *chat with Jesse James, former Charlottean and now an Assistant Director of the Institute of Government. James addressed the Seminar on the topic of the press and the law enforcement officer.*

Justice Jackson's opinion had this to say:

". . . Prejudicial influences outside the courtroom, becoming all too typical of a highly publicized trial, were brought to bear on this jury with such force that the conclusion is inescapable that the defendants were prejudged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion it generated.

"Newspapers published as a fact, and attributed the information to the sheriff, that these defendants had confessed. No one, including the sheriff, repudiated the story.

"Witnesses and persons called as jurors said they had read or heard of this statement. However, no confession was offered at the trial. The only rational explanations for its nonproduction in court are that the story was false or that the confession was obtained under circumstances which made it inadmissible or its use inexpedient.

"If the prosecutor in the courtroom had told the jury that the accused had confessed but did not offer to prove the confession, the court would undoubtedly have declared a mistrial and cited the attorney for contempt."

Let me say very quickly that I'm not prepared to rule out the reporting of pretrial confessions. But if we are to report them I think we must follow certain guidelines: (1) Always note the source—emphatically and at the very beginning of your story. Name the man who says the confession has been made; (2) always report the circumstances of the confession insofar as you can obtain them (and if the police refuse to tell you how long the defendant was interrogated and by how many people, quote their refusal), (3) If you have reason to believe the confession was obtained illegally—by putting improper pressure on the defendant—don't touch it.

I shouldn't have to remind you that we're dealing here with a touchy problem in personal relations. The police reporter works under subtle pressures. These police officers are not only his prime source of news—they may well be his friends. He's going to think twice before he paints them in a bad light.

Maybe the answer to this is to rotate police reporters frequently—although I'm sure if I proposed this I would draw an immediate argument from the *Observer*'s police reporter, whose long experience on that beat has made him an invaluable member of our staff.

Before my time runs out I want to turn to the subject of how our Anglo-Saxon cousins across the Atlantic handle the problem of pre-trial reporting.

I can state it fairly briefly. Under British law, there is virtually no such thing as pre-trial reporting. There's no such thing as a pre-trial confession. There's no such thing as a defendant with a past criminal record.

I have with me an example of pre-trial reporting from the *London Daily Mail*. The story—at the top of the front page—concerns a tattoed man picked up by police in connection with a murder. A total of 20 policemen went to his flat in West London, knocked on the door, and subdued him after a struggle.

Here's the lead of the story as reported by the *Daily Mail:*

"A man was last night helping police inquiries into the Mitcham Co-op murder."

Under the British system, there were no further reports on this man until he was charged with the crime. Then the story said simply—and briefly—that John

(Continued on page 39)

Press Court Reporting Seminar:

Photographing and Broadcasting Proceedings in Court

By Hon. Leo Carr, Judge of the Superior Court, Fifteenth District

(Editor's Note: The author was first elected as Resident Judge of the Superior Court in 1938. He has been re-elected each eight years since that time without opposition. Prior to his judicial service, he served as solicitor of the tenth district for six years, and earlier practiced law in Burlington. A native of Duplin County, he received his undergraduate degree and studied law at the University of North Carolina. He was in the Armed Forces in World War I, serving as an officer in field artillery. The view that Judge Carr expresses here is that adopted officially by the Superior Court Judges Conference of North Carolina and is followed by a large majority of state courts. However, a small minority of jurisdictions, notably Colorado and Texas, have tended increasingly to permit still photography and television cameras in the courtroom.)

The use of photographs in the English Courts has always been forbidden and this same rule has applied to radio and television broadcasts since they have come into general use. The prohibition of photographs and broadcasts has not been quite as rigid in American Courts as in England. However, their use has been generally regarded as highly objectionable by the Courts and the Bar in America. No concerted action in opposition to their use seems to have been taken until after the Hauptman trial in New Jersey in 1935. The news media in covering that trial started a controversy between the Press and the Bench and Bar that has continued unabated till the present time with the result that as a rule one's views on the subject seem to be determined by whether one's profession is in the field of supplying news to the public or is that of a lawyer or a judge.

Following the Hauptman trial the American Bar Association in 1937 adopted Canon 35 which expresses the Association's disapproval of the use of photographs and radio and television broadcasts in the trial of actions in court.

Rule 53 of the new Federal Rules of Criminal Procedure forbids the use of photographs and broadcasts of court proceedings similar to Canon 35 of the American Bar Association. This rule, I am informed, has been carefully observed since its adoption in all Federal Court proceedings.

In 1950 the Conference of Superior Court Judges in this state in session at Lake Lure adopted a resolution reading as follows: "We approve the policy of prohibiting the taking of pictures and of broadcasting during sessions of court."

Again in 1956 the Conference adopted with only one dissenting vote a resolution as follows: "We reaffim the policy adopted by this Conference at the Lake Lure meeting in 1950 which is restated as follows: 'We approve the policy of prohibiting the taking of pictures, the making of recordings, and of radio and television broadcasting during sessions of the Superior Court.' "

The arguments made by Bench and Bar in opposing photographs and broadcasts in court at first laid great stress upon the fact that such efforts on the part of the news media would tend to disrupt the orderly proceedings of a court, and those who were anxious to use their cameras and recording devices in court accepted that as a challenge to devise means by which such equipment could be secreted in a manner that its use would not be observed to any appreciable degree, with the hope that when it was so controlled no fair-minded person could in good conscience say that its use would have a disrupting effect upon the court. While the news media have not succeeded completely in what they set out to do, it will have to be conceded that tremendous progress has been made in the direction of secreting their equipment so that many of the disrupting features of early photographing and broadcasting have been eliminated, and the news media have high hopes of reducing these objectionable features to such a minimum that they will be inconsequential. The news media are now saying to the Bench and Bar: "We have met your main argument against us and you, therefore, should now let us come in any time we wish to do so and take pictures and broadcast."

This has led to the appointment of a committee by the American Bar Association to make a study of Canon 35 and make recommendation as to whether or not it should be in any respect modified. This committee has conducted numerous hearings and had planned to make its report to the annual meeting of the American Bar Association in August 1962 at San Francisco. However, further time was needed and I am not now informed as to what progress that committee has made.

Although it is difficult to determine what has or has not been done in respect to this problem on a state level, from all available data on the subject it is a fair assumption that the attitude of Bench and Bar in other states is substantially the same as in North Carolina, except in Colorado and Texas, where photographing and broadcasting now are permitted within the discretion of the trial judge. We have seen the Texas approach in a case against Billy Sol Estes and, in my opinion, the television coverage of that trial has further demonstrated the wisdom of the approach of the Superior Court Judges of North Carolina.

In the trial of Adolph Eichmann the Government of Israel under strict supervision permitted photographing and broadcasting of the proceedings. The news media are now pointing to their achievements in that trial as evidence of what they term a colossal success and particularly do they emphasize the minimum disruption to the proceedings of the court. However, it is doubtful that the news media would undertake such an effort again because of the tremendous expense involved.

From the information available it appears that there has been a substantial compliance with the spirit of the resolution on the subject by the Superior Court Judges, with only a few exceptions. In the famous Cutter trial in Charlotte the news media succeeded in persuading the trial Judge to permit some photographing and broadcasting, and there are those who were on the scene who feel that the results of that brief experience offer convincing proof of the wisdom of adhering to the policy which the Judges' Conference adopted at its 1950 and 1956 meetings.

It is apparent that those of the Bench and Bar who have stressed the disturbance argument as the major reason why

photographing and broadcasting should be prohibited in court have inadvertently created a situation which may provoke a charge that we are actuated by prejudice when we offer other reasons for our opposition to such publicity. Nevertheless, we would be remiss in our duty if we did not advance all reasonable arguments why the Bench should continue to advocate and to put into practice the recommendation contained in Canon 35 adopted by the American Bar Association.

I do not want to be understood as conceding that the news media have been able to eliminate all distracting movements and adjustments. Some distracting features will, no doubt, continue to interfere with the orderly handling of the court's work. However, the day of the large cameras requiring much moving around of the camera and the use of flash bulbs has passed. Courts probably could accommodate themselves to the type of distractions which more modern equipment produces, if that were the end of the story. There are, however, reasons perhaps more persuasive than the disturbance or distraction argument which should claim the attention of any one interested in this subject.

In this contest the news media contend that their request is but an attempt on their part to see to it that the constitutional guarantee that courts shall remain open may be made effective under modern methods of carrying the news immediately in picture form to every household in the land, or certainly in the immediate area involved. What, therefore, did the founding fathers mean by requiring that courts shall be open? There are those who contend that this requirement was intended primarily to protect the defendant in a criminal action from oppression that might result from a trial under what the English refer to as a Star Chamber proceeding. With that opinion, I do not agree. The requirement in my opinion was intended not only as a protection to the accused in a criminal action, but as a protection to the public by giving the people information regarding any actions in court, be they criminal or civil, in which the public interest is involved. It is apparent that the interest of both the public and the litigants can be protected by the methods that have been so long in use, and that it is unnecessary in order to accomplish this purpose to transform a trial into a public exhibition of the skill and technique, or lack of skill and technique, of those who are called upon to perform in any capacity during the progress of a trial. Certainly, the constitutional provision that courts shall be open is adequately met so long as there is ample room and opportunity provided for representatives of the news media to take notes on what is being done and said at any time in the course of a trial.

A trial is a search for the truth in a forum open to the public, to be sure, but the main purpose is to find the truth and not to entertain or aid those who would use the proceedings for commercial purposes. When it becomes apparent that those who participate in a trial lose sight of the main purpose of the trial and have their attention directed even partially upon the opportunity to be publicized, it would seem that a trial loses much of the dignity so essential in a search for the truth as that mission has been executed in the past in English and American Courts. The task of finding the truth is very often exceedingly difficult and the courts are entitled to undertake the quest unencumbered by any of the disconcerting factors incident to photographing and broadcasting.

The news media challenge us to be specific in our allegations that their efforts in photographing and broadcasting will make more difficult a search for the truth. To that challenge, I respond:

(1) There is a very noticeable hesitancy in numerous witnesses to testify because of the publicity involved under our present system when only a limited number are present during the progress of a trial. This hesitancy would be immeasurably increased if such witnesses were aware that they were being televised, and many would be inclined to conceal what they know in order to keep off the stand, and if compelled to testify would tell as little as they could and get out of public view as soon as possible.

Judge Carr was a featured speaker at the Press Seminar banquet. Also at the head table were, on the left, Weimar Jones, editor of The Franklin Press; *Mrs. John L. Sanders; Elmer Oettinger, the toastmaster; Mrs. Elizabeth G. Swindell, editor of* The Wilson Times; *and to the right,* Mrs. *Irving E. Carlyle and Institute of Government Director John Sanders.*

(2) Many people who would be willing to tell all they know as a witness under our present procedure would be affected when on the stand by a certain antipathy towards being in range of a camera and on television. Whether people will eventually become accustomed to appearing on television so that it will make no difference to anyone whether a camera is on or off such person I do not know, but I am confident that a majority of people at present are ill at ease when they are aware that a camera is on them and every word they say is being broadcast on television. A witness who is ill at ease and excited cannot be at his best in helping the court in a search for the truth.

(3) We are familiar with the type of person who welcomes an opportunity to exhibit himself or herself and some of those become involved in a trial in various categories and they will undoubtedly have in mind the opportunity for exhibition and the search for the truth insofar as their role in the proceeding is concerned becomes a secondary purpose. Publicity will be their goal. I submit that showmanship has no place in a search for the truth.

One who makes a study of this problem will detect some interest in a policy whereby the use of cameras both for photographing and broadcasting should be left to the discretion of the trial judge. In fact, a member of the Bar from the eastern part of the State who served on a Bar Committee appointed to recommend rules of procedure to be used in the Federal Court for the Eastern District recently informed me that that Committee has recommended that the question of photographing and televising in court be left to the discretion of the court. It will be conceded that there are frequently certain duties and functions of the court not connected with the trial of contested actions in which there is a public interest. As to when the court should cooperate with the news media in a coverage of such proceedings is obviously a matter to be left to the discretion of the court. However, I do not believe that a trial judge should be required to determine when a trial of a contested action should be photographed and televised. This, it seems, would lead to much confusion and possible embarrassment to the trial judge and particularly so in a state that has rotation. The problem should be controlled by a policy adopted by both Bench and Bar.

I am not inadvertent to the growing interest in television coverage of all the experiences of man which, for the moment

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Press Court Reporting Seminar:

Free Press and Fair Trial: III

THE PRESS AND THE PROSECUTION:

The Need for Better Communications

By Hon. E. Maurice Braswell, Judge of the Superior Court, Twelfth District

(Editor's Note: The author served for seven and a half years as ninth district solicitor prior to assuming his present position as Resident Judge of the Twelfth Judicial District of the Superior Court. A native of Rocky Mount, he graduated from the University of North Carolina Law School. Prior to the engaging of study in law, he had professional background in radio. Among his honors was selection by the Fayetteville Chamber of Commerce for its 1954 award as "Man of the Year" for community service.)

The responsibilities of the newspaper reporter covering court proceedings from the point of view of the prosecuting attorney in criminal cases and the plaintiff in civil cases:

A responsibility can best be accepted only when it is understood. As my first impression of the theme of this seminar was that it was to deal with stenographic court reporting—a matter I have to deal with daily as a Judge—I am brought up short to the realization that the prime word is "press." And I submit that here begins the place where the newspaper reporter and the prosecutor get off on the wrong foot; that is, on the matter of communications.

Words and phrases common to all within one profession are yet to be found in another profession, but given a different meaning, and with different results in their application. Thus, I feel it important that we understand several of the words and phrases which will be used in reporting court proceedings.

Two weeks ago I was told by Judge Raymond Mallard that a reporter sent by a news service in another state to cover the Henderson strikers' trials, came up to him and asked: "Just what do you do when you 'charge' the jury?" It developed that the man had never sat through a trial before, and had no conception of its form and procedure. Yet, here he was in the responsible position of trying to report front page news to the nation!

So, I would say that the first responsibility of the reporter in this field is to know and understand the nomenclature of the courts.[1]

I. Identification of Terms:
   - A. Criminal Matters:
     1. Warrant (distribute blank form).
     2. Bill of Indictment (distribute blank form).
     3. Grand Jury—proceedings secret.
     4. Fines and forfeitures—Go to benefit of school fund.
     5. Nolle Prosequi (or Nol. pros.)—The state "will no further prosecute." A dismissal of the case.
     6. Nolo Contendere. "I will not contest it." It has the same legal effect in the trial at hand as a plea of guilty.
     7. Solicitor—The state's prosecuting officer.
   - B. Civil Matters:
     1. Pleadings.
     2. Summons.
     3. Complaint.
     4. Answer.
     5. Reply.
     6. Demurrer—The formal mode of disputing the sufficiency in law of the pleading of the other side. It's effect is about like saying: Even if what you say about me is true, your facts fall short of making me liable to you.
     7. Issues and Judgment.

II. Elements of Crimes:
   - A. Source materials
     1. General Statutes of North Carolina, Vol. 1 B, Chapter 14.
     2. City Ordinances.
     3. Motor Vehicle Code—Vol. 1 C, Chapter 20, of the General Statutes.

III. Releasing Information By the Solicitor to the Press About Pending Criminal Cases:

Ethics opinion of the North Carolina State Bar # 127, dated January 15, 1954: "It is unethical for an attorney who is prosecuting a criminal case, either privately or as solicitor, to divulge for publication any facts having to do with the case for the purpose of influencing or prejudicing the minds of the public. An attorney should never divulge any facts in respect to a case except such facts as may be disclosed by the record proper, and it would be unethical for him to communicate facts of record if such communication is for the purpose of influencing public opinion and prejudicing the public's mind in regard to such case."

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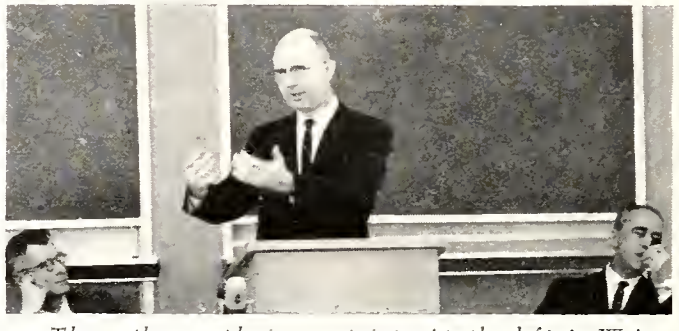

The author emphasizes a point. At the left is Weimar Jones, editor of The Franklin Press; *at right is Professor Thomas Christopher, whose Press Seminar talk appears on the facing page.*

1. The author, in his presentation before the "Press Court Reporting Seminar," spelled out the matter outlined below informally and in detail. His discussion and elaboration was followed by additional discussion in a question and answer period. In view of the fact that this sort of treatment is not possible here, due to limitations of space and mode of presentation, the matter discussed has simply been itemized and, where necessary, brief explanation appended.

The Role of the Prosecutor

By Thomas W. Christopher, Professor, University of North Carolina School of Law

(Editor's Note: The author came to North Carolina as a professor of law at the University of North Carolina Law School following service as professor and associate dean of the Emory University Law School in Atlanta. He is a member of the Alabama, Georgia, and New York Bars and has practiced law in Alabama and New York. A native of South Carolina, he received his undergraduate degree from Washington and Lee University and law degrees from the University of Alabama and New York University. He is the author of several books and many legal articles.)

A court trial is an inquiry or search. In theory it is a search for truth. The ultimate truth sought—guilt or innocence—will depend on the truth to many preliminary questions. Was Joe murdered? Was this the gun? Did the defendant fire the gun? Was the firing deliberate or was it an accident? Is the version of witness A more accurate than that of witness B?

But truth is an awfully hard thing to get at where human actions are involved. Two and two make four. Lyndon Johnson is President. These are facts and not hard to agree on. But even in science, once you pass the obvious, truth is often uncertain and even changing. Does smoking cause cancer? Do saturated fats bring on heart disease? Also, to the scientist, a theory may be true and useful for one purpose and untrue for another. In trials three honest witnesses see the same accident, and on the stand you may hear three different versions. A witness on the stand will positively identify the defendant as the man who held a gun in her face. Later, it may turn out that the real robber bears little resemblance to the defendant.

If we face reality, we must concede that the truth just can't be ascertained in many trials. Lawyers face up to the fact that more often than not truth is too high a goal for all trials. What then is the inquiry or search in a trial? One could take the position that we should find truth or nothing. But such a position means that very often we will get nothing. The middle ground is to do the best we can. This attitude leads to the conclusion that the minimum for the trial, on the average, is to seek a solution which the community in the long haul will accept. In civil trials, at least, this is about the best that humans can do. This approach does not necessarily arrive at the truth as to who caused the car accident. But it settles the fuss. Truth is desirable, but it is essential that the argument be settled in a way that the community will accept.

In a criminal case anything less than the truth is more subject to objection than in civil cases dealing with property. Jail or even death is the end of the criminal search. Thus, in the criminal trial we pay more attention to the individual and less to the community needs than in a civil trial. It is bad to wrongfully require the defendant to pay the plaintiff $4,000 damages. But it is infinitely worse to wrongfully incarcerate the defendant or execute him.

Our technique for searching for truth, with an acceptable result as the minimum achievement, is the adversary system—a system much misunderstood by laymen and sometimes even by lawyers. When a scientist publishes a paper on some new theory—say, Einstein and his paper on relativity—the scientific world checks and tests this theory from every angle before accepting it. It may be years before the scientists will concede that the theory is sound. Thus, scientists test theories by critical examination. Sometimes, it may be fifty years before a theory is considered proved—or disproved. This is a kind of adversary system.

But unlike the testing of a scientific theory, or the search for the answer in some philosophical argument, in a trial time is limited and an answer must be given. In a day, or a week the court must find the answer—settle the dispute. This is a necessary limitation but it limits the ability of a court to achieve the right answer. You can see something of the problem if you will assume that scientists had to forever accept or reject Einstein's theory within two weeks.

The common law uses the adversary system as the best one, pragmatically, to get at truth. The plaintiff does the best he can to show that his side is in the right. The defendant does the best he can to show that he is in the right. The judge sits in the middle as a sort of referee. The jury then reaches a verdict—the solution. Some maintain that an impartial board to look at all the facts and favor neither side would be a better system. But a little thought will demonstrate the fallacy of this position. The scientific paper needs a devil's advocate to test it thoroughly. An opponent of a theory may think of tests and criticisms that a friend would not advance. To really examine any proposition, one must hear what the enemy has to say.

One of the most vital aspects of the adversary system is the right of cross-examination of witnesses. The defendant cross-examines—tests—the plaintiff's witness. There is nothing more fundamental in the search for truth in a trial than the right of cross-examination. No impartial board can perform this function as well as a devil's advocate.

The adversary system, with full right of cross-examination, is not perfect by a long shot, but it is the best method for getting at truth in a trial. Through the years it is the technique that gives the best results.

I have said that it is more important to avoid mistakes in a criminal trial than in a civil one. For this reason, many of the rules for criminal trials are more strict than for civil cases. For example, the amount of proof necessary for a conviction is greater than the amount required for a verdict for the plaintiff. In a criminal trial, to find the defendant guilty, the jury must find that the evidence shows guilt beyond a reasonable doubt. The defendant is presumed innocent and this presumption stands until the state shows beyond a reasonable doubt that he is guilty. In a civil case, the plaintiff need only show by a preponderance of the evidence in order to win. There is a big difference between "preponderance" (the weight is for the plaintiff—or is not for the plaintiff) and "beyond a reasonable doubt" as tests.

It is thus obvious that the prosecutor has a big job. To get a conviction, he has to convince all the jurors beyond a reasonable doubt. There are other differences between the prosecutor and the plaintiff's attorney in a civil suit. The

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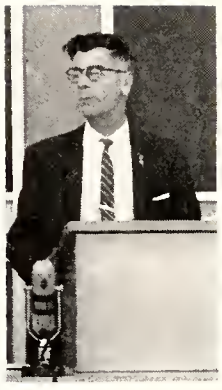
Press Court Reporting Seminar:

THE PRESS AND THE PROSECUTION:

On the Court-Press Relationship



By Weimar Jones, Editor, *The Franklin Press*

(Editor's Note: The author bought the weekly paper in his home town of Franklin in 1945. His experiences as editor are recorded in a delightful book entitled My Affair With a Weekly. *He is past president of the North Carolina Press Association and of the International Conference of Weekly Newspaper Editors. Formally a visiting lecturer in journalism at the University of North Carolina, he now combines lecturing with his editorial work.)*

Why courts of law? Why a free press? And what are the relationships between these two?

Courts are created to do justice and the press is free to the end that there may be an informed, open-minded public opinion. Without the courts and the press, there could be no freedom. Yet they themselves pose a threat to freedom.

Courts, with their great authority, can be tyrannical—sometimes have been. A press that is free can be unfair, misleading, even vicious—sometimes has been.

Moreover, each has a monopoly on its responsibility. Nobody else can do our jobs for us. Imagine physicians dispensing justice or engineers informing the public about all the facets of modern life!

Each is and must be independent of the other. Yet neither could long exist without the other. How long would the press stay free without courts to uphold its freedom, and how long would the courts be allowed to function without a press to report what the courts decide and their reasons for the decisions?

These two, the courts and the press, are a little-noted part of our traditional system of checks and balances. If the rulings of a tyrannical court are fully and objectively reported, the citizen will be alerted to the danger. And if the press uses its freedom irresponsibly, there are remedies at law—such as that for libel.

In the final analysis, though, it is not the courts that will keep the press free and not the press that will preserve the authority of the courts. The ultimate arbiter will be public opinion. In the end, our fate—and that of the democracy of which we are integral parts—will depend upon the average man's answer to this question: Do the courts deserve their authority and does the press deserve its freedom? It is not enough that we say we do—not enough, even, that we really do. It must be so obvious that there can be no doubt in the minds of everyday Americans.

Do the courts always do justice? Do their delays never do injustice? Such exceptions as that recently reported in the *Saturday Evening Post*, the story of what happened not to a man charged with crime, but to a cooperative state's witness—such exceptions stick out like sore thumbs.

Does the press always report fully, accurately, without bias? The state pays a public prosecutor. But aren't there times when it appears that the press, too, is prosecuting? How does that tally with the public's idea of objectivity?

How many exceptions will be accepted as proving the rule, rather than being the rule?

What does the layman really think of us? The answer might not be flattering, but it might galvanize us into greater concern "for the opinions of mankind."

How much confidence has the layman in the courts when many accept as axiomatic the saying that "nobody ever wins in court?" How much confidence in the press, when its reliability so often is belittled by the phrase, "just a newspaper story?"

By asking these questions, perhaps I have placed myself under obligation to come up with something constructive. I offer three small suggestions:

First, neither of us can do our job effectively without some understanding of what the other is trying to do, and how, and why. How many court reporters know as much about the law as they should? And how many lawyers have even an elementary knowledge of journalism?

Second, the courtroom, it seems to me, is no place for interpretive reporting. When a reporter tries to tell the reader the meaning of a bit of evidence, isn't he coming perilously close to appraising motives? to serving as juror?

Third, I suggest that the public opinion upon which we both depend is a sythesis of the individual opinions of plain people. In view of that, isn't it time for both lawyers and reporters to drop the intellectual arrogance some of them often betray toward ordinary folks? After all, it is ordinary folks who make our democratic system work.

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prosecutor has a strong duty to the public to see that the laws are enforced and that society is protected. He has a public obligation to bring those who appear to be guilty to the bar of justice. He has an additional duty not to subject innocent people to trials. It is not his job to be the jury, but he should exercise judgment in dealing with the grand jury, warrants by private parties, and in bringing cases to trial. A man who is tried for rape and acquitted in one minute nevertheless has had the worry and expense that precedes the acquittal. And some stigma seems to follow the man for life. "He was tried for rape once."

This dual role of serving the community and of protecting the innocent makes his role a difficult one, and some prosecutors utterly fail in their responsibility to the individual. You will see the candidate for governor brag about the percentage of convictions he obtained as the prosecutor. It is a terrible thing when a prosecutor works hard to get a conviction so that people will look favorably on him for a high office. A story in the newspaper on last Monday stated that if the prosecutor in a murder trial in the midwest obtained a conviction, he stood a good chance to be elected governor.

One of the interesting questions facing the prosecutor is as to whether he has an obligation to turn over favorable evidence of innocence to the defense. Most prose-

(Continued on page 46)

The Amendment That Passed:

PROPERTY RIGHTS OF MARRIED WOMEN

By Roddey M. Ligon, Jr. Assistant Director, Institute of Government

On January 14 North Carolinians went to the polls to vote on two proposed amendments to the Constitution of North Carolina. The first of these, popularly referred to as the "little federal" plan for legislative representation, failed to pass. The second amendment, relating to property rights of married women, did pass. The latter amendment has not received much attention, having been overshadowed by the greater interest in the legislative representation amendment. As this amendment is felt to be a matter of considerable interest to many people, it is the purpose of this article to attempt to discuss its effect.

The applicable portion of our Constitution, Art. X, §6, prior to the adoption of this amendment, read: "The . . . property of any female in this State acquired before marriage, and all property . . . to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, . . . and may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried." We also have a statute, G.S. 52-1, with identical language. As soon as the Governor certifies the passage of the recent amendment to the Secretary of State, the applicable portions of this section of the Constitution will read: "The . . . property of any female in this State acquired before marriage, and all property . . . to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, . . . and may be devised and bequeathed and conveyed by her subject to such regulations and limitations as the General Assembly may prescribe." Thus, the amendment eliminates, *as a Constitutional requirement*, the requirement that the husband join in conveyances by the wife of her property. But, pending further action by the General Assembly, it is clear that a married woman still may not convey her realty without the written assent of her husband (which is usually evidenced by his signing the deed with her) because of the existence of G.S. 52-1 mentioned above.

Another effect of the amendment is to eliminate from the Constitution the absolute right of a married woman to devise her property free of such restrictions as the General Assembly may prescribe. This raises a very interesting legal question as to whether or not the amendment now makes effective certain restrictions on the right of a married woman to will her property which existed prior to this amendment, and which were held to be in conflict with the Constitution. To understand this question we need to take a look at 1) the Constitution as it existed prior to the amendment, 2) a statute passed by the 1959 General Assembly giving spouses authority to dissent from the will of the other spouse, 3) a case decided by our Supreme Court in 1962 holding the statute, as applied to a husband dissenting from the wife's will, to be contrary to the Constitution, and 4) the amendment to the Constitution just passed. Taking these in order, the Constitution prior to this amendment, as we have noted above, authorized a married woman to devise and bequeath her property as if she were unmarried. The 1959 statute, G.S. 30-1, provided that "A spouse may dissent from his deceased spouse's will" in certain cases. The 1962 case holding this statute to be contrary to the stated constitutional provision was *Dudley v. Staton*, 257 N.C. 572 (1962). The court in that case held that G.S. 30-1, 30-2 and 30-3 giving to a surviving husband the right, in certain cases, to dissent from his deceased wife's will, and thereby to take a specified share of her property, diminish her estate disposed of by her will to that extent, and thereby restrict and abridge her constitutional power to dispose of her property by will as if she were unmarried. This, they held, the General Assembly could not do. Lastly, the amendment specifically authorizes the General Assembly to impose conditions on her right to will her property.

Thus, the question is posed as to whether or not the change in the Constitution makes this statute valid without any further action on the part of the General Assembly. The arguments that could be made in favor of the position that the statute is invalid, unless there is further action by the General Assembly, would probably include the fact that G.S. 52-1 still prohibits restrictions on the wife's authority to will her property; and the argument that the 1962 case holding the statute to be unconstitutional in this regard makes the statute null and void. The arguments in favor of the position that the husband may now dissent from the wife's will probably include the argument that G.S. 52-1 is general whereas G.S. 30-1 is specific and the specific prevails over the general; and the argument that the 1962 case did not make the statute null and void (as it certainly continued to exist insofar as the wife's right to dissent from the husband's will is concerned) but only made it inapplicable to the given fact situation which has now been changed, and therefore that the statute which continued to exist now becomes applicable to this fact situation. Moreover, the legislative act calling for this constitutional amendment contained the following provision: "From and after the date of certification of the amendments set out in Section 1 of this Act, wherever the word 'spouse' appears in the General Statutes with reference to testate or intestate successions, it shall apply alike to both husband and wife." All of the considerations taken together lead the writer to be of the opinion that the husband may now dissent from the will of the wife under the circumstances specified in the statute and receive a share (usually an intestate share) of the wife's property. [For a statement of the circumstances under which a spouse may dissent from his deceased spouse's will, see G.S. 30-1; for the effect of the dissent, see G.S. 30-3.]

Thus, it is the opinion of the writer that a married woman still may not, pending further action of the General Assembly, convey her real property with-

(Continued on page 35)

Members of the State Highway Patrol are attending a series of in-service training schools at the Institute of Government, an annual requirement for all troopers. Major C. Raymond Williams is lecturing.

INSTITUTE SCHOOLS, MEETINGS, CONFERENCES

Assistant Director Roddey Ligon speaks to officials attending a four-day school on Public Utilities Management held at the Institute in January. Ligon was in charge of this program.

Assistant Director Robert Gunn, right, talks across the desk to H. R. Morton, Chief Deputy from Onslow County, during the Sheriffs' School sponsored by the Institute of Government in January. At the end of the desk is Sheriff B. P. Lytch of Scotland County.

For the first time since its inception, the Institute of Government's Sheriffs' School has become an annual affair. Previously the school was offered only in election years to newly elected sheriffs. Cross-section of those attending the 1964 school are shown above.

INSTITUTE SCHOOLS, MEETINGS, CONFERENCES

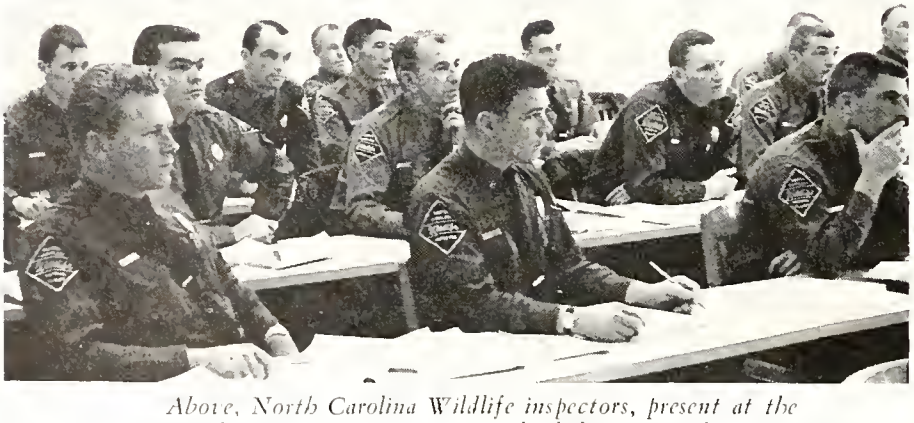
V. L. Bounds, left, and Michael Brooks, right, were among the speakers at the recent meeting of the North Carolina group of the National Association of Social Workers held at the Institute of Government. The statewide meeting, for which the Eastern Chapter was host, was held to inform members of the available resources for attacking basic social problems. Brooks is associated with the North Carolina Fund and Bounds is an Assistant Director at the Institute of Government and Director of the Training Center on Delinquency and Youth Crime. Delegates to the meeting are pictured below.

Personnel at a basic training course for new probation officers attend a class on sentence dispositions and probation selections conducted by Ben Overstreet, Jr., at the Knapp Building. Mr. Overstreet is a specialist in corrections with the Training Center on Delinquency and Youth Crime and a member of The Institute of Government staff.

Pictured above are the principal speakers at the North Carolina Bar Association Conference on Continuing Legal Education, held at the Institute in mid-January. From left to right are Attorneys Kenneth G. Hite, Greenville Bar; William C. Morris, Jr., Asheville Bar; Charles L. Fulton and Basil L. Sherrill, Raleigh Bar; and William Storey, Executive Secretary of the North Carolina Bar Association.

INSTITUTE SCHOOLS, MEETINGS, CONFERENCES

North Carolina members of the Bar (above) attend one of the lecture sessions during the Conference on Continuing Legal Education in the auditorium of the Knapp Building.



Above, North Carolina Wildlife inspectors, present at the Institute for an in-service training school, listen to John Boyd, right, of the State Bureau of Investigation.

Public Welfare Supervisors in Group II of the workshop program ponder comments in a discussion.

TRAINING CENTER ON DELINQUENCY AN YOUTH CRIME:

Two Workshop Series

By Lynn Deal, Editorial Assistant

Workshops and follow-up sessions on "Administration by Objectives" continue at the Training Center on Delinquency and Youth Crime at the Institute of Government. County directors of public welfare are attending the initial workshops in groups of roughly 20 members who return for follow-up sessions at six-week intervals.

Improving the quality of preventive and treatment services for delinquent youth through improved public welfare administration is the prime objective of the training series. The inter-disciplinary approach is being used to focus attention on various aspects of administration.

Faculty for the sessions represent several fields. Dorothy Kiester and Richard McMahon of the Training Center staff are in charge of social work and clinical psychology respectively. Dr. John Reed, assistant professor of sociology and anthropology at the University of North Carolina at Chapel Hill serves the Training Center as a faculty associate in sociology. Dr. Charles E. King, professor of sociology at North Carolina College, Durham, is retained as a consultant in sociology to the Training Center. Institute of Government assistant directors Roddey Ligon and Warren J. Wicker represent law and public administration respectively.

Another workshops series, "The Teaching Aspects of Supervision" is geared to the experienced supervisor of social casework. Emphasis in the course is on the responsibility of public welfare for protective services for children and preventive services for juvenile delinquents, and the development of staff skills to fulfill this responsibility.

Staff for the teaching course includes Geraldine Gourley, Miss Kiester and McMahon. Miss Gourley, associate professor in the UNC School of Public Health, is a medical social worker in the Division of Maternal and Child Health with a broad background of experience in supervision, consultation, and teaching.

Concentration is the key word for those members of Group I of the Public Welfare Supervisors as they take part in a workshop at the Institute of Government.

THE INSTITUTE

in the News

(Editors Note: Below are excerpts from items in Tar Heel newspapers which give some idea of the scope of activities of the Institute of Government and its staff. This is not intended to be a comprehensive listing of all recent activities, but is rather a random sampling of Institute doings.)

Durham *Herald*, September 4

Representatives from more than 50 universities, research companies and governmental agencies attended the Conference on Research in Income and Wealth at the University of North Carolina. Chairmen of various discussion groups included MILTON S. HEATH, assistant director of the UNC Institute of Government.

* * *

Raleigh *News and Observer*, October 11

Seeking to determine the exact status of ambulance service in the state is a two-year research project, officially tagged "Organizing Ambulance Service in the Public Interest." The project is being conducted by the North Carolina Hospital Education and Research Foundation in cooperation with the INSTITUTE OF GOVERNMENT and the Department of Hospital Administration of the School of Medicine at the University of North Carolina. Project funds have come from the Foundation and from the U.S. Department of Health, Education, and Welfare.

* * *

Charlotte *News*, October 30

HENRY LEWIS, the Institute of Government's tax expert, has met privately with the Charlotte Equalization and Review Board. Topics of discussion in the closed session centered around procedural matters, especially concerning the board's role in the forthcoming continuous property revaluation program.

* * *

Raleigh *News and Observer*, November 6

"Registration Systems" was the topic aired by Mrs. Martha McLaughlin, chief clerk of the Wake County Board of Elections, and HENRY LEWIS, assistant director of the Institute of Government at Chapel Hill, in a meeting of the Raleigh League of Women Voters.

Among the questions discussed were voter identification at the polls, use of the "loose leaf" system as a safeguard against fraud, and the desirability of a single system of registration and unified type of record throughout the state.

* * *

Wilmington *Star*, November 8

Members of the National Association of Social Workers, of which there are three North Carolina chapters, held a one day institute on "Resources Available to North Carolina for Attacking Social Problems" at the Institute of Government. Among the speakers were GEORGE H. ESSER, executive director of the North Carolina Fund and on leave from the Institute; and LEE BOUNDS, director of the Training Center on Delinquency and Youth Crime in the Institute of Government.

* * *

Raleigh *News and Observer*, November 22

The State Board of Elections scheduled meetings in Raleigh and Asheville for county elections chairmen to brush up on revisions in the State's absentee ballot law. Several controversial changes in the law were enacted by the 1963 General Assembly.

State Elections Chairman William Joslin, HENRY LEWIS, the Institute of Government's authority on elections, and Raymond Maxwell, the State Board of Elections executive secretary went over the changes with the local officials.

* * *

Chapel Hill *Weekly*, November 24

Four University professors Friday night assessed the implications of President Kennedy's assassination in a quickly-organized panel discussion on WUNC Radio. Their conclusion: the United States can look forward to some relatively unsteady days until President Lyndon Johnson takes hold and gets the country regrouped.

Among the panelists was Institute of Government Director JOHN SANDERS.

* * *

Grady Jefferys in Raleigh *News and Observer*, December 15

Recognizing the dangers of police pursuit driving, the North Carolina Department of Motor Vehicles and the State Highway Patrol have developed a program to reduce accident chances and to develop more proficient officers. Based on a text prepared by Lt. Edward W. Jones, the training program has become a model for many law enforcement agencies in the nation.

Now an integral part of basic patrol training, the pursuit driving course is administered at the INSTITUTE OF GOVERNMENT, where some 48 of the 680 hours of basic training are devoted to the subject.

According to Lt. Jones, at present this is by far the most comprehensive pursuit driving course now conducted in the United States. The course includes both classroom and field work.

* * *

Harry Murphy in *Charlotte News*, December 30

A team of experts apparently believes joint services of the city and county are properly financed for the most part. The staffers from the INSTITUTE OF GOVERNMENT at Chapel Hill studied the jointly-financed operations at the request of Charlotte and Mecklenburg County governments.

They were to determine "if a different basis of cost sharing would be more equitable to the city or county." At various times during the past six months the Institute has studied the financing of the health department, tax supervisor, tax collector, elections board, juvenile-domestic relations court, planning commission and the sanitary land fill.

* * *

Greensboro *Daily News*, January 7

Four members of the Legislature are debating the proposed amendment to the state Constitution over WUNC-TV. CLYDE L. BALL, assistant director of the Institute of Government at Chapel Hill, is presiding.

(Editor's note: In addition to moderating the television panel, Ball prepared for the Associated Press a question and answer primer in an attempt to explain the key issues at stake in the constitutional referendum. The article appeared in a number of Tar Heel newspapers. Both Ball and Institute Director JOHN SANDERS spoke on the ammendment to various groups across the state.)

* * *

Durham *Sun*, January 8

A four-day Public Utility Management School is being held at the Institute of Government in Chapel Hill January 20-23. Jointly sponsored by the N. C. Section of the American Water Works Association, the N. C. Water Pollution Control Association, and the Institute of Government, the school will include lectures and group discussions of management, supervisory, fiscal, legal and public relations problems of municipal water and water treatment personnel.

Institute staff members lecturing during the school include WARREN J. WICKER, RICHARD R. MCMAHON, ROBERT T. DALAND, RODDEY M. LIGON, and ELMER OETTINGER.

* * *

Editorial, Madison *Messenger*, January 9

Because it does not involve the direct clash of personalities found in the usual election, the special election scheduled for Tuesday, January 14, has sneaked up on the public and caught it almost off guard.

In an effort to find out just what are the real issues in this special election on the "little federal plan," the best source of factual material is the latest issue of *Popular Government*, a magazine published periodically by the INSTITUTE OF GOVERNMENT in Chapel Hill. In this issue, the magazine carries a detailed account of the recent history of representative government in North Carolina which lays the facts down in orderly fashion and without bias.

Material from this article was the basis for opinion on the little federal plan expressed in the front page editorial in this issue of *The Messenger*.

* * *

Raleigh *News and Observer*, January 15

Attorneys interested in continuing and broadening their legal education are attending an Institute on Practice Before the Clerk of Superior Court January 17 and 18 at the University of North Carolina's INSTITUTE OF GOVERNMENT.

* * *

Raleigh *News and Observer*, January 15

Capt. Clyde Hooker, who joined the Rocky Mount police department 25 years ago as a rookie officer, is taking over as chief of the 55-man department. He replaces J. I. Nichols who is retiring after heading the department 17 years.

Hooker, a native of Scotland Neck, has headed the department's detective bureau since 1956. He has attended various police schools during his time on the force and presently is enrolled in a municipal administration course at the INSTITUTE OF GOVERNMENT in Chapel Hill. He will complete the course in May.

Editorial, Charlotte *Observer*, January 15

Without just coming out and saying it, four INSTITUTE OF GOVERNMENT reports hint that the consolidation of services by Mecklenburg County and Charlotte has a way to go yet and that the county might lift some more of the financial burden from the twice-taxed Charlotte dweller.

These reports concern garbage collection, public health, the juvenile and domestic relations court and planning. Three more in the series will deal with tax collection, tax supervising and the elections office.

* * *

Assistant Director GEORGE ESSER, on leave to head the North Carolina Fund, has been the subject of two recent biographical sketches in Tar Heel papers: James K. Batten's article in the Charlotte *Observer* and Charles Craven's feature "Tar Heel of the Week" in the Raleigh *News and Observer*.

Property Rights of Married Women

(Continued from page 29)

out the written assent of her husband but that the amendment does now authorize the husband to dissent from the wife's will and receive the statutory share of her property.

It is reasonable to assume, following the passage of this amendment to the Constitution, that the 1965 General Assembly will either repeal G.S. 52-1 or amend it so as to make it read the same as the revised constitutional provision. If this is done, the husband and wife will then be in exactly the same position insofar as the authority to convey and the right to dissent from the spouse's will are concerned. That is, either husband or wife could legally convey their separate realty without the joinder of the other (for reasons noted below this would still not be advisable from the purchaser's standpoint). Also, either spouse could dissent from the will of the other (under certain circumstances) and receive a share of the estate.

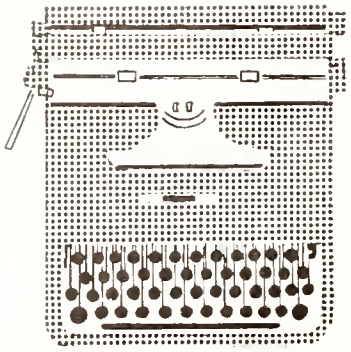
There is still one other effect of this amendment that should be noted. Our law authorizes the surviving spouse (whether husband or wife) to elect not to take an intestate share (if there is no will) or to dissent from the will (if there is a will) and take as his or her share of the estate a life estate interest in one-third of all the real estate of which the deceased spouse was possessed during coverture, except for such realty as was conveyed with the written assent of the surviving spouse. This option makes it possible for a surviving wife to claim a one-third interest in property her husband conveyed during coverture if she did not join in the conveyance. The reverse, prior to this amendment and prior to a repeal of G.S. 52-1, is not true as the wife cannot convey her realty without the husband's joinder. Although a repeal of G.S. 52-1 will allow either spouse to convey without the joinder of the other, it would not normally be advisable for a purchaser to buy the property unless both spouses will sign the deed, as there is a possibility of later losing a life estate interest in one-third of the purchased property if both do not sign.

Finally, the amendment rewrites the last sentence of Art. X, §6 which relates to the exercise of powers of attorney for conveyance purposes. Prior to this amendment the Article read: "Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her or by herself and her husband or by her husband." The amendment deletes the words "her or by" near the end of this sentence. Perhaps it was felt desirable to eliminate her authority to execute deeds to her property on behalf of her husband since (if G.S. 52-1 is amended or repealed) he is no longer required to join in her conveyances. Still, as is pointed out above, the purchaser is going to require (in most instances) that both parties sign the deed. It appears clear that this amendment makes it impossible for the wife to sign for herself and also for her husband through the exercise of a power of attorney. Such power could not be inferred when it has been deliberately eliminated from the Constitution. The wisdom of this deletion may be questioned by some people.

Courts Commission To Hold Hearings

Public hearings will be held in Raleigh on March 13 on proposals to implement the new judicial article of the State Constitution. Announcement of the Courts Commission hearing was made by Senator Lindsay Warren, Jr., of Goldsboro, commission chairman, who urges all individuals and organizations who have an interest in court reorganization to make their views known to the commission. Specific invitations to testify have gone out to a number of organizations which have previously expressed interests in being heard.

Hearings will begin at 9:30 a.m. on March 13 in the State Legislative Building and will continue until all interested parties have been heard.



NOTES FROM . . . CITIES AND COUNTIES

Administration

Henderson voters have agreed to a run-off in city elections. Until now the candidate with the most votes was the winner; the new system calls for a second race between the top vote getters. Henderson voters have rejected a proposed city manager form of government.

* * *

Annexation

Annexation bonds for *Winston-Salem* carried with a four to one ratio. The $10.5 million issue will finance annexation of 13.7 square miles of suburbs which will add nearly 19,000 to the city's population. The bonds include funds for sewer and water system expansion, street improvements, a new fire station, fire trucks and other necessary vehicles.

* * *

Slightly over half the registered voters in *Wilmington* approved six bond issues totaling $3.8 million—signifying their intent to more than double the size of the city. The bonds will finance a fire station, fire alarm system, motor vehicles, storm sewers, sanitary sewers, and water, all part of a program to expand city services to the areas soon to be annexed.

* * *

Two near-by Piedmont towns are concerned with annexation. *Davidson* commissioners have annexed 137 acres on the town's eastern perimeter. Water, sewer and electrical services for the area were approved in a bond issue vote last spring. *Mooresville* is contemplating the most ambitious annexation program in the city's history which would increase the size of the town by 30 per cent and boost its population by more than 1,300.

* * *

Celebrations

Swansboro, the oldest community in *Onslow* county, celebrated its 232nd birthday in December. Commemorative services were held at the Swansboro Historical Association to coincide with the 300th anniversary of the State of North Carolina.

* * *

Two traditional and rather unusual holiday celebrations took place in different areas of the state. Old Christmas, Epiphany, was celebrated in *Rodanthe* January 4—an event which in recent years has drawn more and more visitors to the Outer Banks. The Twelfth Night celebration is common in many European countries.

Across the state in *Cherryville* the legendary new year's speech was again offered at one minute past midnight on the first day in 1964. Two groups of men armed with old-fashioned muskets made their way in and around the Cherryville countryside. Their chant is "Good morning to you, Sir. We wish you a happy new year," and the accompaniment is a round of shots for each household.

GRAVY TRAINS . . .

"Gravy trains" they're called in sanitation circles, and gravy trains they are in *Winston-Salem*. These strings of small garbage trailers pulled by Jeeps are being used in residential districts to cut costs of garbage collection.

Refuse is collected in the trailers and when the train has a full load, a large load-packer arrives, upends the trailers, dumps the contents into its van, and hauls the load away to a landfill. The load packer can serve several trains and the use of smaller equipment will save considerable money.

Downtown Parking

Several Tar Heel cities are experimenting with the removal of parking meters in the central business district in an attempt to inflate downtown business, often hard-hit by the increase of suburban shopping centers.

Hamlet removed parking meters in the downtown area August 1 on a 60-day trial basis and the move seems to have been a shot in the arm for merchants. The meters haven't been reinstalled.

Canton joined the ranks of the meterless cities on November 1 with a two-hour free parking regulation in effect. Town officials are pleased with the decrease in parking violations and merchants are happy with the increase in business.

Reaching a mutually satisfactory solution to the parking situation in *Winston-Salem* is taking a bit longer. In mid-October parking was banned entirely on four major downtown streets at the request of merchants who felt that business might be encouraged by the easier flow of traffic. Other streets had meterless free parking. In December businessmen proposed a reinstatement of parking on the banned streets on the basis that the "piecemeal" parking ban was confusing to shoppers and that they apparently favored parking spaces over access to the downtown area.

* * *

Wilmington may reach another solution to the parking problem. At the request of the Central Business District Development Association, an engineering study is underway to determine the feasibility of constructing a double deck parking garage. The garage would hold 600-700 cars and would be a major weapon against decentralization of the business district.

* * *

In *Chapel Hill* several lots behind the main business street are being cleared for a metered city parking area which may lessen some of the downtown congestion. The central shopping area is adjacent to the University of North Carolina campus and the early morning and late afternoon rush hours create a decided traffic snarl. *Shelby* is also a member of the city owned parking lot school, and offers up to five hours of downtown parking for a quarter. City fathers find the lot a convenience for the public and a satisfactory source of revenue for the city.

* * *

Dunn has recently installed parking meters for the first time. At the same time the thought of a mall in the central business district has been proposed by an official of the State Conservation and Development Commission.

* * *

In *Scotland Neck* the parking problem has taken a different turn. The State Highway Commission has labeled the

Main Street parking layout "highly objectionable" and the result has been a series of different proposals to realign parking areas. The Highway Commission feels that the only real solution is to provide off-street parking and the report is being considered by the Town Board with no immediate action expected.

* * *

Education

Community colleges take star billing in educational news around the state. Rockingham College has been assured by a record vote in favor of a bond issue and tax levy. The voting margin was four to one in *Rockingham* County with the *Wentworth* precinct showing the greatest majority in favor of the college—11 to one. Wentworth has been mentioned as a tentative location for the school. The State Board of Education has given its final approval for the college and it is hoped that the doors can be opened by September, 1965.

Pinehurst has been selected for the site of *Moore* County's community college. County voters approved a $4 million bond issue to finance the college in a seven to one majority. They also approved a $3 bond issue for county school consolidation. Raymond A. Stone, assistant director of curriculum study in the state, will head the college.

In sanctioning their community college, *Columbus* County voters authorized the county commissioners to issue $500,000 worth of bonds and to levy a tax not to exceed 10 cents per $100 valuation. Location of the college will be in the *Chadbourne-Whiteville* area.

* * *

Seven industrial education centers across the state have been granted technical-institute status by the State Board of Education. The centers—*Winston-Salem/Forsyth* County, *Asheville-Buncombe, Burlington, Catawba* County, *Fayetteville, Goldsboro, and Wilson*—will be empowered to award "Associate in Applied Science" degrees to their graduates.

* * *

Consolidation of city and county school systems, a rising trend across the state has met with opposition in *Pasquotank* County. Voters defeated the merger of county and *Elizabeth City* schools by a margin of 113. A long drawn-out fight over consolidation in *Bayboro* wound up in defeat for a half million dollar school bond issue.

* * *

About a fifth of *Mecklenburg* County's 98,000 registered voters have given four to one approval to a $15.6 million bond issue for school construction. The county has more than 70,000 pupils in more than 100 schools.

Finances

A million dollars ahead—that's the report of finances for the city of *Winston-Salem* at the end of the fiscal year. Surpluses were found in the general fund, municipal debt service fund, water fund, and sewer fund. The accomplishment comes from collecting more than anticipated in many fields of revenue; and by spending less than budgeted amounts in almost every field of government.

* * *

Health and Welfare

Cumberland County voters turned out in record numbers to endorse a $700,000 bond issue to acquire Highsmith Memorial Hospital in *Fayetteville*. In this largest of all votes for a bond referendum in the county, voters also agreed to a special hospital facilities maintenance tax of not more than five cents per $100 valuation.

* * *

In an effort to break the poverty cycle in the county, the *Forsyth* board of health voted to establish a family planning clinic by July 1, or as soon after as is practical. *Mecklenburg*'s clinic will serve as a model.

* * *

Morehead City's rescue squad has received a contribution from the *Atlantic Beach* town board. The squad has filled in for Atlantic Beach when the resort's civil defense rescue squad was off duty.

. . . OR SCOOTER SYSTEM

Gastonia is trying another new method of garbage pickup, using a small scooter with a truck bed. The small machines will be able to enter driveways which will both speed up and lower the cost of the sanitation operation. One scooter can serve around 10 houses before having to be emptied into the packer.

As a safety feature, the scooters will be painted white for better visibility. The scooter system itself is expected to reduce the traffic hazard caused by frequent stopping of a large load packer on congested streets, and to reduce the danger of sanitary crew members repeatedly crossing busy streets with heavy loads.

Lincoln County residents are seeking to establish a community hospital which would probably use assets of the existing Gamble Hospital. The initial proposal is for a 120 bed medical facility.

* * *

Hospital renovations and expansions are under way in *Plymouth* at *Washington* County Hospital and in Smithfield at *Johnston* Memorial Hospital. Major improvements made during the past few months at *Bertie* County Memorial Hospital in *Windsor* have resulted in a class one rating from the North Carolina Medical Care Commission.

* * *

Welfare units in the western Piedmont are taking different paths toward expansion. Catawba County commissioners have agreed to increase the present three-member county welfare board to five. *Surry* County commissioners have bid on a clinic building in *Elkin* which would be used as headquarters for its welfare department. In the east, *Franklin* County commissioners have accepted a federal grant to finance construction of a county public welfare office.

* * *

Commissioners in *Alamance* County have okayed the budget for a mental health center in *Burlington* which will be built from state and federal funds.

* * *

Highways

Construction of a bridge across the Roanoke River, connecting *Washington* and *Bertie* Counties east of *Plymouth*, will cost $4,210,000. The figure includes actual cost of the bridge as well as access roads, and approaches.

* * *

Law Enforcement

Guilford County deputy sheriffs are sporting new six-pointed gold badges and officers have new gold bars. The moves were the latest in steps to regimentize and reorganize the Guilford County Sheriff's Department.

* * *

Municipal Bond Issues

Greensboro voters turned down a quartet of proposed bond issues for water, sewer, streets and bridges in November. Only 8,113 of 44,680 voters turned out to voice their opinions on the $14,500,000 issue.

About a fifth of *Tarboro*'s 2,500 registered voters approved a trio of municipal bond issues totaling $710,000. Each of the proposals passed by a 4-1 margin to guarantee improvements to the town's electrical system, street work, and a new fire station.

* * *

Asheville voters have approved a $10.4 million bond issue for improvements to the city's sewer system. Around 66 per cent of the eligible voters went to the polls despite subfreezing temperatures and biting winds.

* * *

Franklin voters have given the nod to a $250,000 bond issue which will finance modernization of sewer facilities. Nearly 50 per cent of the town's 800 registered voters went to the polls.

A scant 11 per cent of the voters turned out in *Goldsboro* to give the go-ahead on a $4.45 million bond issue for water, sewers, and paving.

* * *

Improvements to the *St. Pauls* water system were assured when voters agreed to a bond issue in the $100,000 range. At the same time they okayed a $110,000 bond issue for sewers.

* * *

Only 11 of the 208 votes cast in *North Wilkesboro*'s sewer bond vote were against the $200,000 expenditure. Typical of the recent trend across the state, the voter turnout was exceptionally light.

* * *

Sewer and water bond issues totaling $295,000 were supported by a large margin at *Murphy*. The U.S. accelerated public works project will match that amount.

* * *

In a two to one margin, *Mount Holly* citizens approved an $855,000 water and sewer bond issue which paves the way for annexation of two areas outside the city limits.

* * *

In the usual meager turn-out for such elections, *Wilson* voters put their stamp of approval on a $2 million bond issue to finance a program of crash improvements to the city's electrical distribution system.

* * *

Shallotte met with success in its first bond election when a four to one ratio carried the $121,000 issue to establish a central water system. Perhaps the novelty of the election was responsible for getting 82.5 per cent of the registered voters to the polls.

* * *

Water improvements, a sewage disposal plant, and a community center were approved by *Andrews* voters in a $120,000 bond election.

* * *

Raleigh residents went to the polls in routinely light numbers to give a two to one vote of approval to the city's $14.95 million utility and street bond issue. Approximately a seventh of the registered voters voiced their opinions on this largest city bond proposal ever presented to Raleigh citizens.

* * *

Water system improvement bonds totaling $148,000 have been approved by *Waynesboro* residents. Matching federal tax funds will be used on the project.

* * *

The vote for a sewer bond issue of $140,000 in *Franklinton* was almost unanimous: 319 to 6. The bond money was needed to match federal tax funds amounting to $80,300.

* * *

In *Plymouth* a very healthy majority of 166 to 19 passed a sewage construction bond issue. Less than a seventh of the registered voters made it to the polls.

* * *

In a heavy turnout *Kannapolis* voters approved the sale of $6,354,000 in bonds for water supply and sewage disposal facilities, a $60,000 bond issue for three fire trucks, and a $56,000 bond issue for a firehouse.

WHAT'S IN A NAME?

Fuquay-Varina and or *Fuquay Springs* and or *Varina*. Officially Fuquay Springs and Varina were joined as Fuquay-Varina June 1, 1963, but the United States Postal Service hasn't acknowledged the fact yet. The delay is beginning to bother many residents of the *Wake* County community.

The delay comes from lack of approval for consolidation of the federal post office and the problem has resulted in a mail delay for many residents. Mail addressed to the communities jointly goes to Fuquay Springs, and to get to Varina it takes an additional 12 hours. Some mail from distant parts of the country had been returned to senders since there is no official postal listing for Fuquay-Varina. A communiqué from Washington has solved this latter problem by directing mail with joint address to Fuquay Springs.

In addition to getting their mail on time, residents would like to change letter-heads; merchants to advertise their operation in Fuquay-Varina; and the newspaper to change its masthead. But until federal postal officials decide on consolidating the post offices, the name changes must wait.

Personnel

Municipal employees will get a 12-day paid vacation annually and sick leave under a policy established by the *Carrboro* Board of Commissioners.

* * *

Paul G. Schriever has begun duties as assistant to the *Forsyth* county manager. Special areas in which he will be working include the fields of industrial engineering, management engineering, research in cost reduction, budget analysis, and planning.

* * *

Planning and Zoning

In *Hickory* the half-way mark has been reached in a thoroughfare plan which is a pilot project of its type in North Carolina. The plan is geared for 15-20 years in the future and will show rights of way to be needed for roads, pinpointed to within eight to 10 feet of their future locations. This is insurance against residential or commercial development in an area slated for a thoroughfare.

* * *

Eighteen seniors in the School of Design at North Carolina State in Raleigh are undertaking the detailed, authentic description of 30 buildings in *Beaufort* as they appeared in the late 18th century. The project will eventually lead to construction of a scale model of the historical coastal community which dates back to 1709.

* * *

Looking ahead toward future growth and expansion, three communities are involved with long-range planning. The *Liberty* town board is applying for federal aid for a two-year planning and zoning study. *Nashville* has received a $6,600 federal grant for a long-range study to include annexation, land use, population and economy, land development, thoroughfares, and base mapping. The planning study approved by the *Long Beach* commissioners will include street naming and house numbering.

* * *

Industrial, agricultural and residential development will come under a master plan subscribed to by *Henderson* County commissioners. The Western North Carolina Regional Planning Commission will draft the plan.

* * *

Public Buildings

Wendell's new $110,000 municipal building was dedicated in December. The 9,000 square foot structure houses the administrative, law enforcement and fire department offices and gets these various city departments under one roof for the first time. *Tarboro* also has a new town hall.

* * *

Looking rather like a Japanese tea house is the new $80,000 central fire station in *Chapel Hill*, located a block away from the old out-grown fire station in the town hall building. At the open house held in December the oriental theme was accented by a young Japanese woman serving tea in the traditional fashion.

* * *

New postal facilities are cropping up across the state. *Clyde*'s new building is two and one-half times the size of the former post office and the new building at *Manteo* doubles the size of the former office. Postal operations in *Kinston*, *Teachey*, and *Coolcemee* are in new quarters and facilities at *Jonesville* are expected to be ready for occupancy around March 1. The site for a new $587,800 post office-federal building in *Waynesville* has been approved.

* * *

Constitutional Rights—Whose Responsibility?

(Continued from page 23)

Jones was charged with the Mitcham Co-op murder. The story gave the name of the murdered man and the date the crime occurred. Period.

Next story? Not until Mr. Jones went to trial. Then the bars went down and the press reported the courtroom proceedings just as we do here, although they had to refrain from introducing anything in their stories that was not admitted in evidence at the trial.

How do the English do this? How do they prevent the press from trying a case in print before it goes to court?

They do it through the contempt powers of their judges. And they mean business, too. One slip and a reporter and his editor will find themselves up before a very angry judge—and shortly thereafter they'll be in a place where they won't have to worry about meeting deadlines for a while.

The principle of English law involved here is covered by the phrase *sub judice* . . . which means, roughly, "under legal consideration"—in effect, "already before the court."

Once an individual is charged with a crime, anything involving him is considered *sub judice* from that time on, and is no longer a subject for public discussion.

An important factor in the English system is that the defendant does not have to take the initiative to protect his rights from abuse by a newspaper which violates the *sub judice* principle. The judge will invariably make the move . . . and make it quickly.

I don't recommend that we adopt the English system.

I do recommend that we examine our own system very carefully to discover its weaknesses . . . that we use discretion in dealing with each instance of pre-trial reporting as it comes up . . . and that we begin paying more than lip service to the principle that we presume a man to be innocent until he is found guilty.

Public Housing

Public housing programs are in various stages across the state. Architects have been named in *Durham* for a three-part housing project: 100 units of housing for the elderly, 100 units to be built within a proposed urban renewal area, and 200 units in the southern section of the city.

Sites for 100 units of low rent housing have been purchased in *Smithfield*, and *Wilson* city commissioners have approved the site for 54 units there. Approval was necessary to clarify a possible conflict with the route of a projected thoroughfare in the area.

In *Mount Airy* a 56 building housing project is going up, with 90 dwellings planned for low-income family residences, and 20 units designated for the elderly. Additional projects slated for this year will bring the total to 110 units.

* * *

Public Libraries

Smithfield's public library is instigating the most modern charging system. Patrons will be issued metal library cards, similar to department store "charge-a-plates," which will be used to check out books mechanically. The system offers greater protection against book loss.

* * *

Several new libraries are opening across the state. The *Norwood* Branch of the *Stanly* County Public Library opened in November. A new public library is rising in *Greensboro*, unique with intaglio sculpture and decorative marble panels. A combination library-county welfare building is going up in *Danbury*.

Forest City's town council has officially named the new Mooneyham Public Library which is expected to be completed in February.

In *Red Springs* a campaign to raise funds for books to be placed in the new McMillan Memorial Library netted more than $3,000. Total donations to the library project amount to $25,000. The library opened February 1.

* * *

Southport's Public Library has been named the recipient of a $1,000 Dorothy Canfield Fisher award from the Book of the Month Club.

* * *

Once a livery stable, later an armory, and now a public library—that's the history of the *Hoke* County Library in *Raeford* which has just undergone extensive renovations. Cost of the project, $5,000, was borne in part by the county and public contribution, and much of the success of the renovation is due to the interest and dedication of local citizens.

* * *

In *Onslow* County less than 13 per cent of the 15,000 registered voters dealt a smashing defeat to a proposed tax levy of not more than 15 cents per $100 valuation which would have given support to the county library system. The defeat was by a three to one ratio in one of the smallest turnouts for an election in the county's history. The future seems dim, according to County Librarian Adelaide McLarty, who says that lack of funds may cause the library to close or to sharply curtail its operation.

* * *

Clinton's former Community Building has been remodeled to house the *Sampson* County Public Library. The county system has grown from one room to a large plant with two branch libraries and county-wide bookmobile service.

* * *

The former post office in *Kinston* has been offered to the *Kinston-Lenoir* County Public Library and would be used as a "walk-in" branch if the building is accepted.

* * *

Public Utilities

Several communities are adding up-to-date sewage disposal systems.

Hertford is weighing the advantages of the lagoon type sewage disposal system against the conventional plant. A conventional system is in progress at *Raeford* with completion expected in April. The sewage project underway in *Liberty* will use "package" type pumping stations instead of those built entirely by the contracting construction company. The package stations are in use in seven Tar Heel cities and effect a considerable saving in construction costs.

* * *

Water and sewer improvements are underway in other localities. A $586,000 federal grant has cleared the way for construction of a sewage system in *Morehead City*. Other tax funds plus a loan from the community facilities division of the Housing and Homes Finance agency will provide for the purchase of the existing privately owned water company in the coastal city. Sewer and water lines are being added in *Williamston* with federal tax funds financing half of the project cost.

Selma's town board has approved an assessment ordinance which will finance future extensions of city utilities. The assessments are 100 per cent for out of town residents and a 60-40 split between in-town residents and the city. *Nashville*'s town board has approved installation of a new water line to serve non-resident customers on the west side of the town.

* * *

Residents of *Boger City* are quick to agree that the higher taxes of a sanitary district are more than off-set by lower insurance rates. Until 1962 the town struggled to cope with a totally inadequate water system. A great deal of concentrated effort on the part of the local citizens resulted in obtaining an adequate water system financed by a $225,000 bond issue. In 1958 a volunteer fire department was organized and the combination of water and up-to-date fire protection have brought Boger City into a lower fire insurance category—with some commercial rates dropping as much as 50 per cent.

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The Need for Better Communication

(Continued from page 26)

IV. Removal for a Fair Trial. G.S. 1-84

In all civil and criminal cases, on oath or affidavit by the state or defendant . . . plaintiff or defendant . . . "That there are probable grounds to believe a fair and impartial trial cannot be obtained in the county . . ." the judge may order a removal to an adjoining county at the expense of the originating county.

V. Public Records

Suppose a trial has been finished, and you want to know the results, or you "hear" that someone has been sued in a nice juicy case, and you want to read the factual bases for the same, where do you find the information? and if you find it, can you see it?

G.S. 2-42 provides, in substance, that each Clerk of the Superior Court shall keep the following books, "which shall be open to the inspection of the public during regular office hours . . ." Among them, are: summons docket, judgment docket, criminal docket, and minute docket.

Sometimes there have been cases reported in the press at the completion of the trial that I could not recognize as ever having had any connection with, but by the name of the Defendant. A word of advice with a "don't" to begin it. Don't try to write a detailed account of the evidence offered in a case unless you were there in the courtroom. I have seen final stories based on a rehash of the first run on the story when the case newly broke. Witnesses don't always tell the same thing in open court as when interviewed outside.

Once I remember a reporter chiding a Solicitor about not putting a knife in evidence in the case before the jury on a murder trial—when I had never ever heard from anybody that the deceased had a knife—and the trial had then been finished. It was then that the reporter stated what had been told to him at the scene on the night of the crime—but which no one ever told in the courtroom, nor made a file note on.

In a trial I recently presided over, a woman was being tried for murder by poisoning her husband. A doctor testified to an autopsy he performed, and of giving certain vital parts of the body to a deputy sheriff. The deputy was to, and actually did, carry the exhibits to the S.B.I. Lab in Raleigh. However, on the witness stand, he had a terrible memory. He testified that he got some stuff . . . he didn't know what . . . and carried it to some place in Raleigh . . . he didn't know where . . . and left it with a man . . . he didn't know who, and couldn't remember his name, nor did he get any receipt for it.

In reporting this case, the news reporter could have written that the state just lost another case, or that the presumption of innocence until you are proven guilty is still a grand principle of law. But—is there not a responsibility over and above reporting the story factually, the duty to keep all the related court officials on their toes by there plugging in the press for a better educated and constantly trained law enforcement body. Or . . . for the press to have reported that the officials should better investigate their cases to make sure they are not wasting time with a case that should never have been tried in the first place . . . or, failing to properly prepare for those cases which are of vital public concern? There should be something more than just the sensationalism of the crime reported. After all, isn't it the other kind of reporting that always wins you the Nobel Prizes and the Press Club Awards—and likewise earns you the plaudits of the public.

U. S. Supreme Court Justice Oliver Wendell Holmes had this to say about a fair trial: "The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by outside influence, whether of private talk or public print." And that Court trials should be open to the public . . . "not because the controversies of one citizen with another are of public concern, but because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed."

The Rights of the Defendant

(Continued from page 20)

it is impossible for a juror to determine what he heard as competent evidence and set it apart from what he obtains indirectly through the news media.

I recall some years back when I appeared on the "popular" side of an important criminal case. It was well covered by the press who had, in fact, by side articles, comments and exploitations of rumor, made the case a popular one. During the course of the argument I asked a question and paused with intent to answer the question immediately. Before I could do so, however, a little red headed juror on the back row jumped up, snapped his finger and as he turned around completely said, " you are d—— right."

To emphasize the fact that jurors do render verdicts upon over-all impressions I recall my appearance in the trial of a solicitor of one of our county recorder's courts. He was charged with malfeasance under indictment of the Superior Court. I had had no experience with the particular Superior Court solicitor involved with the prosecution. I did know that he had an exceptional reputation for obtaining convictions. Prior to the trial and during another term I sat quietly and unnoticed in the back of his courtroom. It soon became apparent that he got much more before the jury through his side remarks to and boisterous wrangling with defense attorneys than through the evidence that came from the witness stand. He literally sat in the laps of the jurors and continuously engaged in these side remarks. I did not want this to happen to me so for the first three days of the trial I refused to speak to him in the courtroom and simply addressed all of my remarks to the Court and the Court required that he do likewise. We obtained a better result.

I have mentioned that judges can likewise be influenced by newspaper articles. Not too far in the past one of our state columnists introduced a well publicized trial with descriptions of the defense counsel appearing. He pointed out, among other things, that two of the attorneys were former Superior Court judges; that the others involved were prominent and experienced. He then described the trial judge and stated that he would need to be armed with a bull whip. I cannot afford to state that this had any effect on the trial judge, but I am saying that not a trial day passed when one or more of these attorneys were not made to feel an extra weight of judicial authority.

I recall the early days of my practice with Judge Malcolm Seawell. There was a much publicized murder case being tried before a judge, now deceased. I don't recall any facts that distinguished this case from the the ordinary homicide, except that it and the judge received an unusual amount of front page attention. The jury accepted the defendant's version of the killing and returned a verdict of not guilty. Almost immediately thereafter the solicitor called for trial the case of *State v. One Alverson.* We appeared for the defense and were content to use about seven of the jurors who had served in the preceding case. The trial began, but immediately after the lunch hour the judge called for the press and proceeded to castigate the jurors who had served in the murder case.

This included the seven in the box ready for a resumption of the Alverson trial. Among other things he stated "so long as jurors in Robeson County are so weak-kneed and squeamish, no man's life or property is safe in Robeson County." Alverson was convicted. We appealed to the Supreme Court. They gave us a new trial, but it was for a rather inconsequential cause.

It was my privilege to confer with attorneys who prepared the Supreme Court appeals for Burch and Brewer. I venture to say that the figure $80,000.00 had appeared in the newspaper 25 times. This figure had been exploited by the prosecution during the trial. It was the concensus of opinion of attorneys that in order to get a better test of the constitutional question involving the statute the evidence and figures should not be taken before the appellate court as it might distract from the principal question. The case was carried forward on the bare question of statutory interpretation. During the argument before the Supreme Court one of the defense attorneys referred to the statute and its application to the thing we call "every-day tipping." Spontaneously, one of the Justices asked, "Do you call $80,000.00 a tip?" The Court decided in an opinion consisting of 30 pages that the statute was constitutional.

It is not my purpose to condemn all reporting practices insofar as they affect the defendants. I do feel, however, that there is a great need for a code of ethics that can be strictly adhered to. News reporters are professional people, viewed in the same public light as ministers, doctors, lawyers and as such they have the same public responsibility. It has always been my feeling that one operating in a professional capacity enjoys privileges not accorded others; that with these privileges come definite public responsibilities. I am sure these extend to persons accused, whether guilty or not guilty. Often I am asked how I can, in good conscience, defend a guilty defendant. I simply reply that it is not my right to pass upon his guilt or innocence—for me to do so would be to deprive him of his constitutional right to counsel and trial by jury. I have known many defense lawyers, however, who refused to permit an accused to give known false testimony.

If a minister violates the code of ethics that is set for him he finds himself without church or denomination. When a doctor violates his code he finds himself without a license. The same is true of an attorney, except for the additional latter fact that usually the attorney can be held in criminal contempt. Such is the case when the attorney is responsible for the giving of prejudicial information to press representatives. Such a code adopted by the press representatives must, of necessity, recognize the involvement of more than one constitutional guarantee and must, under a free government, reconcile these as of equal importance and not antagnostic, one to another.

There have been many instances in which the reporters have been more than fair in their efforts "to publish the truth with good motives and justifiable ends." One of the finest acts I have seen from a reporting standpoint came through a recent happening in Raleigh. A prominent young attorney had been accused of gross misconduct against the person of a young woman of questionable character. The original news item had capitalized on the jealousy of the American public—its tendency to delight in the apparent downfall of one who had attained some success. The article that deserved the commendation came after his acquittal at a preliminary hearing. He was given his "day in court" on the front page, but how many accused persons are ever given equal time or space when they are exonerated.

Today when we are vitally concerned with any threat to destroy those things which serve to stabilize the dignity of the individual, I am sure that all professional groups will themselves adopt codes and programs that are calculated to preserve rather than destroy.

Photographing and Broadcasting Proceedings in Court

(Continued from page 25)

may seem unusual or, to say the least, out of the ordinary. To satisfy this interest there has been an invasion of the privacy of the home, weddings, surgical operations, and funerals. Indeed there are those who seem to think that there is hardly any human activity which should not be televised if there is sufficient public interest in the event.

The nearest comparable coverage to proceedings in court are the investigations conducted by committees designed to find the truth regarding transactions and events which legislative assemblies need to aid them in the area in which they function. There is no one so naive, however, as to believe that hearings before legislative committees do not have as one of their primary motives the effect such hearings may have on the voting public on election day.

The courts are in a class to themselves in that there can be no motive or purpose in a proceeding in court but to find the truth and to do so with dignity and decorum that will generate respect and reverence for the courts as an institution. Trials must be conducted in an atmosphere that commands respect to the end that litigants may not only get a fair trial but that they will leave the courtroom recognizing that the trial has been conducted in a dignified manner which assures them that the court has done all that could have been done to guarantee a fair trial. It is the considered opinion of many members of the Bar and Bench that respect for the courts which has suffered some impairment in recent times will undergo further deterioration when trials are put on the same levels as political debates and athletic contests.

Lawyers and judges have been accused of adhering too closely to precedent and of being more hesitant to accept change than any other group. This accusation we cannot in good conscience deny. The law is grounded upon precedent and, therefore, our slowness to accept change is understandable. At the risk of having it said of us that we are too much wedded to custom, I must conclude that there are sound reasons why we should continue the practice of forbidding photographs and broadcasting during the progress of a trial or a hearing in court when the court is conducting an inquiry in search of the truth in a contest between litigants.

Free Press Can Guarantee Better Government

(Continued from page 9)

They are just humans with a job to accomplish to the best of their knowledge and experience; and the reporter can well use the knowledge and experience of the solicitor or judge on specific occasions. Good relationship with the solicitor can be of great value in criminal court and the judge can, in Chambers, clarify complicated civil actions so that the reporter can intelligently report the proceeding. Of course, some judges and solicitors will cooperate and some will not—that is true in all walks of life. Above everything else, do not print a statement made by the judge in private conversation—he is only trying to help you do your own job—and he does not expect or desire his private comments to you to appear in print. It has been my experience that reporters often misinform the public as to civil cases more from the reporter's ignorance of what is actually taking place in the trial than from any desire on the part of the reporter to slant the news story.

Libel—Qualified Privilege of Reporting Judicial Proceedings

(Continued from page 17)

An example of an unfair news report of judicial proceedings is found in the following case.[33] Twin sisters had commenced a civil action against their nephew, named Barrera, and against Gonzalez, the plaintiff in the libel action, alleging that the two men had fraudulently taken land from the two sisters. Later a nonsuit was taken against Gonzalez and after trial a judgment was entered against Barrera in favor of the two sisters ordering restoration of valuable oil lands. On appeal, the judgment in that action was affirmed and the final judgment in the case adjudged court costs against both Barrera and Gonzalez, who had been a surety on a bond for court costs posted by the defendants in that lawsuit. The defendant newspaper in the libel action had published a news story about the land fraud but failed to mention the fact that a nonsuit had been taken as to Gonzalez. The published report stated that the appellate court had held against Gonzalez but did not state that the court had only held against him as to court costs. In the libel action it was held that the newspaper had forfeited the privilege to publish a fair, true and impartial account of the judicial proceedings involving the oil lands for the reason that the published article was not accurate and was unfair to the libeled plaintiff Gonzalez. The Texas court said in the libel case that the news article was "literally true" but in order for a report of judicial proceedings to be privileged it must not only be true but also fair and impartial.

Loss of Privilege by Not Confining Report to Actual Proceedings

When libelous matter has been published in news reports of criminal proceedings, the privilege is frequently lost by a failure to confine the report to the actual proceedings.

Reporters must beware of statements made by various individuals such as police and other law enforcement officers, prosecuting attorneys, judges, litigants and others when those statements are made before or after the proceedings, or even during the proceedings when such statements are not a part thereof.

The following is a judicial statement of the principle:

> "It is an established principle, upon which the privilge of publishing a report of any judicial proceedings is admitted to rest, that such report must be strictly confined to the actual proceedings in court, and must contain no defamatory observations or comments from any quarter whatever, in addition to what forms strictly and properly the legal proceedings."[34]

It is important, in reporting upon the issuance of a criminal warrant or an arrest made under such a warrant, for the reporter to go to the record itself and not to rely upon statements in that respect made by police officers or court officials. In one case the reporter made the mistake of relying upon oral statements made by the jailer and of not obtaining a clear understanding of his statement.[35] In *Roth v. Greensboro News Company*[36] there had been an arrest of one Harry Roth on charges of violating the "White Slave Act," but the newspaper story erroneously identified the plaintiff Harry Roth, a respectable citizen, as the person arrested on such charges. The publication was libelous per se, and no question of privilege was presented. An F.B.I. agent's oral statement to the reporter partially contributed to the mistaken identity. Those decisions illustrate the importance of reporting *proceedings* and avoiding "outside statements" of those connected with criminal actions such as jailers, law enforcement officers, prosecuting attorneys, and the like.

Written statements of witnesses—even in sworn, affidavit form—are not parts of a criminal proceeding; at least, they are not until and unless introduced into evidence during a trial of the case.

While the question has never been decided by the North Carolina Supreme Court, it would appear to be clear that the publication in a newspaper of the contents of a written confession made by a defendant charged with crime, prior to its introduction into evidence at the trial, would not be privileged. Where a Texas newspaper published the contents of a confession prior to the return of an indictment charging several persons with crime, and the confession made by one of those accused persons implicated the plaintiff in the civil action for libel against the newspaper, it was held that "those purely ex parte statements" in the confession, not having been made in the course, or under the sanctity, of a judicial proceeding, were not privileged.[37]

In a libel action against a publishing company it appeared that the plaintiff was a police detective of good repute. Under a headline reading "Claims Cop Took $1,225," the defendant published a news story that included these statements: "According to Miss Roxie A. Henry . . . she saw Detective Sergeant Irving Lubore take $1,225 from her clothes closet. . . . 'I was standing less than five feet from the detective when he took four 50 dollar bills, two 10 dollar bills, a five dollar bill and a $1,000 bill that I had hidden in a fur-trimmed boot in my closet,' Miss Henry said." The court found that "The charge made by Roxie Henry reported in said article was an oral statement made to the United States Attorney for the District of Columbia and was reduced to affidavit form by an Assistant United States Attorney, a copy of which affidavit was given to a representative of the defendant newspaper by Curtis P. Mitchell, attorney for the said Roxie Henry." The court also found that the appellant did not publish the item "with express malice or in reckless or careless indifference to the rights and feelings of the plaintiff." A judgment for the plaintiff against the publisher was affirmed. The Court of Appeals of the District of Columbia held that there was no privilege because the defamatory statement was not made during and was not a part of a judicial proceeding.[38]

In another case, an action for libel was instituted against a publisher and an individual who made statements forming the basis of a newspaper story in which the plaintiff, director of the State Prison, was accused of fraud, incompetence, and a breach of official duty.[39] The North Carolina Supreme Court held that the publication was libelous per se. No question of privilege was discussed, but in holding the publisher liable, the Court (Clark, C. J.) pointed out that "The article was not copied from any paper which had then been filed in any legal proceeding, but was an oral statement by the defendant Leach to the reporter of the *News and Observer* of what he intended to file."[40] It is clear that there was then no pending judicial proceeding, and if there had been one, the published statement was not made by Leach during or as a part of such proceeding.

"Investigations by police officers, officials in the district attorney's office, or the coroner's office, are not privileged communications and so newspaper stories based on such reports or investigations are not accorded qualified privilege, according to the great weight of authority."[41]

33. Express Publishinb Company v. Gonzalez, 326 S.W.2d 544 (Texas 1959).

34. Tindal, C. J., in Delegal v. Highley 3 Bing. N.C. at p. 960 (1837); see Gatley, *Libel and Slander* (5th Ed.), p. 293.

35. Lay v. Gazette Publishing Company, *supra* note 1.

36. Roth v. Greensboro News Company, 214 N.C. 23, 197 S.E. 559, (second appeal—1940) 17 N.C. 13, 6 S.E.2d 882 (1938).

37. Caller Times Publishing Company v. Chandler, 134 Tex. 1, 130 S.W.2d 853, affirming 122 S.W.2d 249 (1939).

38. Pittsburg Courier Publishing Company v. Lubore, 200 F.2d 355 (App. D.C. 1952).

39. Osborn v. Leach, *supra* note 1.

40. 47 S.E. at p. 812.

41. Thayer, *Legal Control of the Press* (4th Ed.), p. 445—citing cases.

The following news items published in recent years in North Carolina newspapers did not result in libel suits, but they are extremely dangerous and are not privileged, because they included defamatory statements not made in the course of a judicial proceeding (truth would be the only defense):

(a) A news story reported the issuance of warrants against certain physicians, named in the article, upon charges of perjury. The individual upon whose affidavit the warrants were issued is then quoted as follows in the news story: "These doctors perjured themselves at the May trial of Drs. X and Y."

(b) A news story reported: A 37-year-old man was held in jail here yesterday on charges of attempting to rape his 12-year-old daughter Friday morning, sheriff's deputies reported. The suspect, John Doe, signed a statement confessing the charges, Deputy Sheriff X said.

(c) A news story included the following: Police said a prominent Gastonia physician admitted stabbing a Negro man to death while in a fit of anger. (The physician and the dead man were named.)

A report of judicial proceedings must not contain insertions or additions which are false and libelous, if the report is to be privileged. The reporter must not add any comments or conclusions of his own in reporting judicial proceedings. His responsibility is to reproduce precisely, within reason, what happened at a particular trial so as to place the readers of the newspaper as much as possible in the position of those present during the proceedings. The reporter must not state his opinion concerning the conduct of the parties or discuss their motives. That kind of reporting is not privileged under the rule presently being discussed.

"The publisher must add nothing of his own. He must not state his opinion of the conduct of the parties, or impute motives therefor; he must not insinuate that a particular witness committed perjury. That is not a report of what occurred; it is simply his comment on what occurred, and to this no privilege attaches. Often such comments may be justified on another ground—that they are fair and bona fide criticism on a matter of public interest, and are therefore not libelous. But such observations, to which quite different considerations apply, should not be mixed up with the history of the case. Lord Campbell said: 'If any comments are made, they should not be made as part of the report. The report should be confined to what takes place in court, and the two things—report and comment—should be kept separate.' And all sensational headings to reports should be avoided."[42]

42. Newell, *Slander and Libel* (4th Ed.), p. 503.

If a newspaper desires to comment upon a judicial proceeding, it should be careful to make the comment in the editorial columns or in some article *separate* from the report of the proceedings. Including the opinion of the reporter or the editor in reporting the proceedings may cause the privilege to be lost. Readers must be readily able to distinguish between the factual report of the proceedings and editorial comment thereon. The rule of "Fair Comment" (or "Privileged Criticism") is different and distinct from the privilege of publishing fair and accurate reports of judicial proceedings.

When a newspaper goes further than a report of the actual proceedings and states as a fact that which is false and libelous, the privilege ceases.[43] Thus, a news report must not assume or imply the guilt of a person accused of crime in a judicial proceeding, either in the body of the article or in the headlines.

It was held in an English case that a news report was not privileged which stated that "it *appeared from the evidence* that the plaintiff had often beaten his wife black and blue, and that witnesses were present to prove it," when there was no evidence given of such facts at the hearing, or they were disproved by the evidence adduced.[44]

In reporting a judicial proceeding, a reporter should never use expressions such as "the plaintiff proved," or "it was established by the evidence," or "the evidence showed" certain facts. In referring to testimony of witnesses, it must be clearly reported *as testimony* without indicating that what was said by a witness is a fact.

A reporter must not give his impression or opinion as to the truthfulness or unworthiness of a witness, but should merely relate accurately what was stated by the witness, including testimony on cross-examination as well as that on his direct examination. If character witnesses testify, the report should summarize what they said rather than to assert, for instance, that the witnesses "proved" the plaintiff to be a man of good character. Let the reader draw his own conclusions from factual reporting.

The Miami *Herald* published an article in which it was stated that the plaintiff police officer offered testimony before a Justice of the Peace "exactly opposite" to his own report, that he "pushed forward in his zeal" to do it, and that the Justice of the Peace acted as if he put little or no reliance in the testimony thus given. The Supreme Court of Florida held that the published statements "tended to subject appellant (plaintiff) to distrust, and since it is a part of the official duty of a policeman to testify, and ergo to testify truthfully, when called, a publication such as this tends to injure him in his trade." The article was held to be libelous per se.[45]

In another case,[46] a libel action was based upon newspaper reports of the trial of a lawsuit in which the plaintiff in the libel suit had sued for damages allegedly sustained when he was struck by an automobile while riding a bicycle. The newspaper story stated that "a skeptical judge" had reduced an award in favor of the plaintiff in the personal injury suit from $3,000 to $500; that the award was made mainly for a chest injury suffered by the plaintiff; that the "skeptical judge" in questioning the severity of the plaintiff's back injury "ordered him to bend down four times," twice to show how the back injury "prevented him from bending properly" and twice to "demonstrate how you bent down before the accident;" that in compliance with the first, plaintiff "squatted twice, each time coming to a standing position slowly;" and with respect to the second, he "squatted" and "came to a standing position quickly." The article described these movements as "calisthenics" which, plaintiff contended, conveyed in that instance "a meaning of joking or ridicule." A sub-title in the article read "Award for Chest Injury," and continued that "Judge Chiaravalli said the award was made mainly for a chest injury also suffered by Bock in the accident," that Dr. Babbitt "testified that he treated Bock for the neck injury 10 days after the mishap" and "did not necessarily imply that the (plaintiff's back) condition resulted from the accident."[46] Upon the first appeal the New Jersey court held that the newspaper article was defamatory on its face, "for it clearly sounds to the disreputation of the plaintiff, as it imputes to him a fraudulent claim for injuries, and makes of him a target for ridicule and contempt." The Court said: "The privilege (to publish a fair and accurate report of a judicial proceeding) extends to all damages inflicted, irrespective of the reported article's defamatory character, unless there is proof that the report was published with actual malice. The publication need not report the proceedings verbatim, but it is required to present a fair, impartial and accurate summary of what took place. The news story may be lively and filled with human interest, but in all matters which materially affect its purport it must be correct, for the privilege does not cover

43. Dorr v. United States, 195 U.S. 138, 24 Sup. Ct. 808, 44 L. Ed. 128 (1903); Cook v. East Shore Newspapers, 64 N.E.2d 751, 760 (Ill. App. 1945).

44. See Gatley, *Libel Nand Slander* (5th Ed.), p. 290.

45. Walsh v. Miami Herald Publishing Company, 80 So.2d 669 (Fla. 1955).

46. Bock v. Plainfield Courier-News, 132 A.2d 523 (N. J. 1957).

false statements of fact nor extend to distorted account."

At the first trial the plaintiff had offered evidence tending to show that certain portions of the article were inaccurate and contained some conclusions and opinions of the reporter. At the retrial of the case the defendant publisher offered evidence tending to show that the newspaper story had been accurate, and included among the defendant's witnesses was the judge who had tried the negligence action, who testified that he thought the story was accurate. The verdict of the jury established the fact that the article was accurate and upon appeal the Court said that "this conclusion on the part of the jury was entirely justified in the light of the defendant's evidence."[47] While the defendant publisher finally won the libel suit, this case illustrates the importance of accuracy in reporting judicial proceedings and that the reporter in such cases should be careful to report what took place factually and not to include conclusions or opinions of the reporter with respect to the proceedings. It happened in this case that the judge who tried the case agreed with the newspaper reporter, but it is obvious that when conclusions and opinions are expressed, they may not necessarily coincide with those of the trial judge and it could be that the judge might not be available as a witness at the trial of a libel suit based upon an alleged inaccurate report of a trial, or such judge might not be a willing witness on behalf of the defendant publisher.

Headlines prefixed to news reports of judicial proceedings must not contain assertions of guilt on the part of persons merely accused. It should be constantly kept in mind that every person charged with crime is presumed to be innocent until guilt has been proved beyond a reasonable doubt. A headline will not be privileged unless it is a "fair index of the matter contained in the report."[48]

In the following cases headlines, which contained conclusions of the publisher or asserted the guilt of the accused person, have resulted in a loss of the defense of privilege:

(a) The headline over a news story reporting that a bank had recovered a judgment on a note against the proprietors of a certain hotel was: "Hotel Proprietors Embarrassed."[49]

(b) A man by the name of Legarda was the prosecuting witness in a criminal libel case against a newspaper editor. A newspaper report of the trial had headlines reading as follows:

"TRAITOR, SEDUCER AND PERJURER," SENSATIONAL ALLEGATIONS AGAINST COMMISSIONER LEGARDA.

MADE OF RECORD AND READ IN ENGLISH—SPANISH READING WAIVED.

"Wife would have killed him." Legarda pale and nervous.

(Held: The quoted parts of the headlines were "certainly the equivalent to a remark or comment unnecessary to a fair and truthful report of judicial proceedings."[50]

(c) A newspaper report concerning the dismissal of a policeman from the police department had a headline:

BLACKMAILING BY A POLICEMAN[51]

Some North Carolina newspapers have in recent years run great risks by publishing headlines in connection with news reports of criminal proceedings, as follows:

(a) A news report of an arrest of a man on a charge of "driving under the influence" (sic) was prefixed with this headline:

DRIVING DRUNK

(b) A news story concerning preliminary proceedings in a securities law case in a New York court mentioned a North Carolina resident, whom we will identify as John Doe, as having been ordered by court to produce certain books and records, and was given the following headlines—libelous per se and not privileged:

PROMOTORS OF MOVIE ABOUT ST. PATRICK VIOLATE THE LAW

John Doe Among Guilty

(c) A news story reporting an arrest upon charges of murder had the following headlines:

HELD FOR MURDER

ANGRY DOCTOR STABS NEGRO MAN TO DEATH

(Note: The doctor, whose photograph accompanied the news article, was later tried and found not guilty by a jury.)

(d) A news story reporting the arrest of an escaped convict (referred to by name) upon charges of murder following the escape had the following headline:

TAR HEEL CONVICT MURDERS MIAMI MAN, IS RECAPTURED

(e) A news story reported that a District Solicitor had stated that 40 or 50 bills of indictment charging a county superintendent of schools (who was named in the article) with embezzlement *"will be* sent to the grand jury" during a coming term of court. The headline was as follows:

SCHOOL HEAD NAMED PROBE IN NORTHAMPTON REVEALS EMBEZZLEMENT

None of those headlines resulted in libel suits. Nevertheless, they represent extremely unfair and unprivileged reporting of judicial proceedings.

Limitations of Common Law Privilege

Even when a published report of judicial proceedings is full, fair and accurate, there are limitations prescribed by the courts which, if not complied with, will result in defeating the defense of privilege. The privilege is not absolute, but qualified.

The principal limitation is that the report must not have been actuated by actual malice on the part of the publisher and "not made solely for the purpose of causing harm to the person defamed."[52]

In a "Note" in the October 1950 issue of the *Virginia Law Review*,[53] the following comment appears:

> Malice may be described as an improper motive as opposed to a sense of duty that induces the publication of a report. If malice in fact is found, the qualified privilege does not attach even when all other prerequisites are present. Malice has disqualified an otherwise privileged report very infrequently, particularly in recent years. *Research discloses only one case in the past two decades.* It is sufficient that the reader be aware of its potentialities. (Emphasis supplied.)

A 1963 survey might not be so favorable to publishers.

Actual malice does not have to consist of personal ill will. Actual malice sufficient to defeat qualified privilege may be shown by proof of an improper purpose in publishing the article or by proof that the publication was made in a reckless and heedless manner so as to exhibit a wanton disregard of the plaintiff's rights.[54]

An English authority on libel and slander gives the following example of evidence of actual malice:

> If a newspaper published every day during an election a fair accurate report of a trial that had taken place, say ten years ago, in which one of the candidates cut a disgraceful figure, here, too, it would be open to the jury to find malice.[55]

Two additional limitations upon the

47. *Editor and Publisher*, Feb. 7, 1959, p. 50.
48. Gatley, *Libel and Slander* (5th Ed.), p. 295.
49. Hayes v. Press Company, 18 A. 331 (Pa. 1889).
50. Dorr v. United States, 195 U.S. 138, 153, 24 Sup. Ct. 808, 814 (1904). (Criminal libel)
51. Privilege destroyed. Edsall v. Brooks, 25 N.Y. Super. Ct. 29.
52. Restatement of Torts, § 611; Gattis v. Kilgo, 140 N.C. 106, 52 S.E. 249 (1905); same case: 128 N.C. 402, 38 S.E. 931 (1901).
53. Vol. 36, p. 779.
54. Roth v. Greensboro News Company, 217 N.C. 13, 6 S.E.2d 882, 887 (1940); Gattis v. Kilgo, 128 N.C. 402, 38 S.E. 931, 933 (1901); Stevenson v. Northington, 204 N.C. 690, 169 S.E. 622, 624 (1933); H. E. Crawford Company v. Dun & Bradstreet, Inc., 241 F.2d 387, 395-396—applying North Carolina Law (C.A. 4 Cir. 1957); 33 Am. Jur., pp. 113-114, "Libel and Slander" § 111.
55. Odgers, *An Outline of the Law of Libel*, p. 146.

privilege of reporting judicial proceedings, have been stated as follows:

> There appear to be two cases in which reports of judicial proceedings, although fair and accurate, are not privileged, and are really illegal.
>
> (1) The first is where the court has itself prohibited the publication, as it frequently did in former days. "Every court has the power of preventing the publication of its proceedings pending litigation." But such a prohibition now is rare.
>
> (2) The second is where the subject-matter of the trial is an obscene or blasphemous libel, or where for any reason the proceedings are unfit for publication. It is not justifiable to publish even a fair and accurate report of such proceedings; such a report will be indictable as a criminal libel.[56]

An interesting illustration of the loss of privilege for publishing blasphemous material in a report of a trial is as follows:

> Richard Carlile on his trial read over to the jury the whole of Paine's "Age of Reason," for selling which he was indicted. After his conviction, his wife published a full, true, and accurate account of his trial, entitled "The Mock Trial of Mr. Carlile," and in so doing republished the whole of the "Age of Reason" as a part of the proceedings at the trial. *Held* that the privilege usually attaching to fair reports of judicial proceedings did not extend to such a colorable reproduction of a blasphemous book; and that it is unlawful to publish even a correct account of the proceedings in a court of justice, if such an account contain matter of a scandalous, blasphemous, or indecent nature.[57]

56. Newell, *Slander and Libel* (4th Ed.), pp. 492-493.

57. R. v. Mary Carlile, 3 B. & Ald. 167 (1819). (Odgers, *Libel and Slander* (First American Edition)) p. 222 (*249-250.)

Free Press, Fair Trial Not Incompatible

(Continued from page 10)

responsibility to the public, I would like to add another plea to the judges. And that is to recognize the right to report with camera as well as pencil. The war of words between the bar and the press over Canon 35 is too well known here to be repeated. But it is my firm belief that Canon 35 contributes nothing to fair trial or free press.

With present-day photographic equipment and film, still pictures—and that is all that is being asked—do not intrude on the dignity or decorum of a court. A photographer can do his work as unobtrusively as a reporter.

The picture report is becoming even more important in the coverage of any news event. The same is true of courtroom reporting.

In North Carolina, the matter of taking pictures in court is left to the discretion of the presiding judge. I am willing to leave it that way. But it is my earnest hope that more judges will be willing to give the photographer a fair trial.

Press Freedom Is Not Absolute

(Continued from page 11)

and Frank Costello and other reputed Mafia members. What is to be done if a newspaper prints this very testimony which the judge has excluded from the trial? (And, of course, I mean a printing of the story *before* the trial is completed) If the jury in our imaginary case has not been strictly confined, and maybe even if it has, there will certainly be prejudicial impact on the trial—an impact practically as directly improper as if the prosecutor were to have a record made of the inadmissible testimony and then get his assistant to play it to the jurors in the jury room. Surely, then, such a printing, during trial, of inadmissible testimony is a most direct contempt of court—not because it is an attack on the judge or a disturbance in the court room, but simply because it is an intentional act performed during a trial which interferes with the very purpose of a trial in our system.

Let us assume, then, that the judge in our hypothetical case has immediately cited the newspaper for contempt. May this contempt be punished summarily, by the judge acting alone and adjudicating his own citation? Or, must the citation of contempt itself be the subject of a later jury trial? At first blush, probably every newspaperman—and most other people as well—will insist that to allow summary punishment by the instant judge will open the door to judicial tyranny or something approaching that. On the other hand, if the only punishment is to come after a jury trial, there are real fears that even the most intentional and prejudicial of acts of contempt will escape punishment. First, a jury may well be so confused by the intricacies of the original case that it will not understand the prejudicial effect of the newspaper article. Second, the jury will be drawn from the same community as that which the newspaper is assumed to have wrongfully influenced and thus the jury in the contempt trial will itself quite likely be prejudiced against our hypothetical accused—with the result that it will not believe the newspaper has done anything very wrong. And, third, the jury in the later contempt action may not even be genuinely aware of the necessity of protecting our judges and our trials from outside pressures.

There is, then, a very real problem as to punishment of contempt by way of newspaper reporting. In most states, and North Carolina is one of them, an attempt is made to draw a line between acts in contempt which take place in the courthouse (these being left subject to summary punishment) and acts of contempt which take place somewhere beyond the bounds of the courthouse (these later being thought, somehow, to be less "direct," and thus are removed from summary punishment and given over to later jury trial).

I would like to turn now to another aspect of the press and the courts. Let us set aside concern for HOW an act of newspaper contempt may be punished, and, instead, consider for a moment what kinds of newspaper articles constitute acts of contempt. First, with few exceptions the law in United States, as in England, holds that there is no contempt unless the comment is made about a pending case. Our newspapers can, and should, stand as a front line to protect us from abuses by any of our courts. But, the time for the newspaper to inform the public about court abuses is after the conclusion of the trial about which the newspaper wants to speak. If newspaper accounts create prejudice during a particular trial, it is not the bad court which is exposed—on the contrary, it is the accused then on trial who may suffer, or the people who may be wronged by having a guilty person freed.

Second, much comment may be made —with complete propriety—even while the case is pending. Such comment, however, should be limited to a temperare examination of the issues involved, to a temperate exploration of the background of the case, to a temperate and very carefully non-prejudicial reporting of the human interest aspects of the accused. In short, the more responsible our newspapers, and the more aware they become of the great necessity for independent and uninfluenced trials, the more sure we may all be that neither the definition of contempt nor the mode of its punishment will in any fashion interfere with freedom of the press.

Pre-Trial News Coverage

(Continued from page 21)

bility, can prevail. But the exceptional cases—Lee Oswald (had he lived), Dr. Sam Shepherd, Dr. Finch and Miss Carol Tregoff—present problems.

Whenever a crime occurs in which there are some out-of-the-ordinary characteristics, or when a crime has been committed on what is otherwise a slow news day, then coverage of the crime, the chase, the arrest, the detention, and so on is often so thorough that it would take an extremely strong-willed person not to be influenced, to some degree at least, by what he has read. And some advocates of civil rights claim that *any* influence, regardless of the degree, tends to reduce the impartiality of a jury, and, by so doing, interferes with the accused's right to a fair trial.

Of particular seriousness is the publication of "confessions," admissions of guilt at the arrest or detention stage. The rules of evidence are such that such statements are often barred from being admitted into evidence during a trial; occasionally the method by which the confession has been extracted is questionable. In any case, newspapers have, in the past, printed confessions which have not appeared in the court record at the time of trial.

The question is whether a potential juror, having read such a statement, can later, on demand, forget he ever read it.

To be sure there is no scientific evidence to support the position that an individual *cannot* divorce himself from what he has read about a case. It is just as true, however, that there is no evidence to support the claim that he *can*. Thus we are forced to infer possibilities from the facts, and it would seem that the side advocating more restraint in pre-trial coverage has a firmer position than that which would open the coverage up. While the approach is negative, it can at least be said that material not available to potential jurors cannot influence them, while such material, if available, might.

A point often overlooked by critics of the Press is that most of the material obtained for publication comes from some source, and in criminal cases, the sources are often members of the Bar whose statements to the Press may be designed to aid the side of the case they are promoting. Therefore, while it might be desirable for the Press to examine closely its practices in pre-trial coverage, it would be well for the Bar to clean house as well.

The answer is not, as has been proposed, that the United States adopt some of the highly restrictive practices found in Great Britain. The principle of democracy cannot be furthered by reducing areas of government which can be watched over by the Press. At the same time, of course, the rights of the individual must be preserved if the principle of democracy is to have any meaning.

What is needed is that most difficult of approaches—greater understanding of mutual problems between Press and Bar, and greater willingness among the members of the two professions to work for the others' goals.

In practice this means that the Press—the individual newsman—should treat each criminal case as if it involved a precious right to be defended—which, of course, it does. And the member of the Bar should be equally protective of rights, including the right of the public to be informed about affairs of the day. Criminal court coverage cannot be restricted to succinct summaries of the findings; nor should it be preceded by the kind of Press coverage which could harm the accused's chance of justice.

There would seem to be an ideal opportunity here for agencies such as North Carolina's Institute of Government to bring together noted prosecutors, judges, defense attorneys, and newsmen to iron out differences and develop a workable Code which would clarify the roles of both Press and Bar in the pre-trial stage of criminal actions. Press, Bar, and Public would gain from such an undertaking.

The Role of the Prosecutor

(Continued from page 28)

cutors probably do not do this. Yet, unless the trial is a sport instead of a serious search for justice, the prosecutor has a high obligation to give such information to the defense.

An accused is presumed innocent. The burden is on the government. As a man is taken to the gallows, the question is not: did he do it? The question originally is: did the state prove beyond a reasonable doubt that he did it? If the answer to this question is in the affirmative, then the substantive question of guilt-in-fact is relevant. Thus, even though you know that the defendant did the act, you cannot under our law imprison him unless he is convicted in a court, with the state proving beyond a reasonable doubt. On the other hand, if the state does so prove and he is convicted, you are not going to imprison or execute him if later it appears that in fact he is not guilty. The point is that one may be convinced beyond a reasonable doubt and still be wrong. An accused gets the break both ways, and he should.

Some understanding of this role of the trial and of the prosecutor will enable the news reporter to do a better job for his readers. And there are some points which I believe reporters should keep in mind. The trial is not a game; the adversary system seeks justice. The single purpose of the criminal trial is to ascertain the guilt or lack of guilt of the accused. Thus, entertainment is not even a side purpose. And it is necessary that nothing interfere with this process. I have mentioned that a too-ambitious prosecutor may send innocent people to jail. The press can do the same. The reporter has a responsibility to report accurately, but he also has a responsibility not to influence the trial. It is less important that the public read over breakfast coffee about the rape testimony than it is that the accused get a fair trial. The trial of Dr. Shepherd some years ago for murder of his wife is a classic example of the press acting as prosecutor, and depriving the defendant of a fair trial.

One final word about evidence which the prosecutor may present. A reporter really needs to learn about evidence. A confession may or may not be conclusive of guilt. Innocent people confess. Positive identification of the accused by an eye witness makes a big impression but it is risky evidence to rely on. I put it almost at the bottom of the list. Too many honest witnesses have been wrong. In a Georgia case a man was sentenced to the electric chair as a result of positive identification by a witness. It later turned out that the real criminal had worn a stocking over his face. An innocent man can be caught in a web of circumstances that makes you dead sure he is guilty. A North Carolina lawyer was recently accused of rape, and he was fortunate enough to have an airtight alibi, with witnesses. But if he had been alone in his office working that night he would have had trouble. In short, the criminal trial is serious business and the prosecutor has an awesome job.

Fuller To Head Water Resources

State Personnel Director Walter E. Fuller shifted over to director of the State Department of Water Resources January 1, succeeding Col. Harry Brown, who has retired.

Fuller has headed the Personnel Department since July, 1962. A graduate of North Carolina State, he served as assistant director of the State Department of Conservation and Development from 1949 to 1951 and as administrative assistant to the State Rural Electrification Authority from 1951 to 1960. He had been executive manager of the Tar Heel Electric Membership Association prior to taking the personnel post.

Basic Nature of Courtroom Proceedings

(Continued from page 7)

ceedings are adversary. The great majority of probate cases are administrative in nature. The community has decided that, subject to specified rights in a surviving spouse and minor children, a person has a right to dispose of his property as he chooses upon his death. If he fails to exercise this right, the State has established rules which determine how the property shall be distributed. In order to make certain that the decedent's wishes are followed, and that statutory rights are observed, the State requires that the administration of decedent's estates be conducted under the supervision of the courts. Incidentally, the State also makes certain that its own take—taxes—is protected in this manner.

The question suggests itself: Is there any difference in the public interest in uncontested probate proceedings than in the filing of income tax returns by a corporation or an individual? If so, what is it? If not, why are probate records open to the public and press, but income tax returns are not?

E. *Condemnation cases.* The state, and other public agencies authorized by the State, may take private property for public use. If the State cannot agree with the owner of the property as to a proper price for it, the State may go into court to establish its right to take and the proper price to be paid. Here the public, as distinguished from the private, interest is different from any of the preceding cases. Here, too, the position of the private individual is somewhat different. Attention is focussed on the value of a piece of his property. There is no cause or pretext to go into his personal relationships. There is no stigma or embarrassment attached to the proceedings. The individual's wealth, character, or position in the community is irrelevant to the issue. The public is interested in the case because its representatives propose to expand the public activity in some manner, and because the public's money is involved. Here there is a public interest in the *result* of the trial, as distinguished from the machinery of the trial.

F. *Adoption cases.* In adoption cases we have a still different kind of public and private interest. The welfare of children is of great concern to the community. In the case of natural families, the community is sometimes forced to allow unsatisfactory conditions to continue to exist, because to move in and forcibly disrupt the natural family as a basic unit of society has such grave consequences and implications that the community is very loath to take such action. But when it is proposed to create a parent-child relationship through legal proceedings, as distinguished from biological, the community is in a position to take preventive steps to avoid the establishment of a family by adults who are not qualified to meet the community's standards for parenthood.

If these preventive steps are to be meaningful, it is neecssary to examine into the personal private lives of the persons seeking to adopt. These persons cannot reasonably complain that their private affairs have become public affairs, because they have, by their own voluntary action, precipitated the events which necessarily produced that result. But note that the records in these adoption proceedings are not freely opened to the public and press as are records in other types of suits where the appearance of a party is purely involuntary. In the case of the true record of the child, there are different considerations. Quite frequently a child who is placed for adoption is illegitimate. In our society illegitimacy is still a stigma which falls upon the totally innocent child. Also, the child has nothing to do with the instituting of the adoption proceedings. His is not a voluntary action calculated to produce a public inquiry into his antecedents. Accordingly, for his protection, the original birth certificate and records may be sealed from public inspection.

G. *Divorce proceedings.* Divorce proceedings offer another different kind of public and private interest. The community is interested in the stability of the family. To protect this interest the community regulates the marriage contract, by prescribing rules as to who may enter into marriage, and by requiring the observance of certain formalities and the maintenance of certain records. The community is equally interested in the manner in which, and the reasons for which, the marriage relationship is terminated. Since the marriage relationship by its nature affects the most intimate and private aspects of one's life, it is inevitable that the disruption of the relationship is accompanied with distressing private incidents. However embarrassing it may be to the principals, and however morbid may be the curiosity of the general public, there is a legitimate public interest in the result and the reasons for the result. Persons who find themselves in the unfortunate position of seeking to terminate the marriage relationship cannot insist that the matter is a purely private one.

The number of variations on this public-private theme is legion, but the instances already discussed illustrate the point: Proceedings in a courtroom vary from those in which the public has an interest, as distinguished from curiosity, in practically every procedural and substantive aspect of the case to those in which the public's only interest is in seeing that a fair trial is had, or that the administrative machinery functions effectively.

IV. *The Public Aspects of Courtroom Proceedings*

All courts shall be open. No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons in open court. So says the Constitution of North Carolina. What is the purpose of these provisions? There seems to be little room for doubt that the purpose was to guarantee the parties a fair trial, free from tyrannical pressures by the State and free from oppressive manipulation by the rich and powerful. To what degree is news reporting of the substance of testimony with respect to private matters essential to the effectiveness of this guarantee? Executive officers hold news conferences. Legislative bodies provide special facilities for news coverage of their proceedings. But have you ever been in a courtroom where there was special provision for press facilities? What would happen if you sought to interview a judge or juror during a trial as to his reaction to the trial at any given point? My point is this: Apparently the guarantee of open trials has not been considered by the authorities to require press coverage. Secondly, the reporting by the press of any extraneous material—that is, material other than that adduced as evidence—or of any subjective reaction to developments at the trial complicates the tasks of preserving the adversary theory—the opposing side gets no opportunity to cross-examine the source of this extraneous material or to combat the subjective reaction. And, in the absence of an incarceration of the jury under security measures greater than that of the convicted defendants, it is hardly possible to shur the jury off from news reports.

What proceedings are secret? Grand jury. Adoption, Juvenile. Why? If the reasons for secrecy in these cases are valid, do not some the same reasons apply to other types of cases? If they are not valid, are they tolerated? Have you, as other professional groups, tended to accept as proper the situation which existed when you came upon the scene, and restricted your efforts to resisting encroachments upon existing rights and privileges, rather than analyzing the rights and privileges to see where they are not necessary, and where they are not sufficient?

And remember this: You claim rights predicated upon your position as the protector of the public. Whenever your action is essentially commercial, you must consider whether or not your claim of right is modified or lost.

BOOK REVIEWS

HOUSING FOR THE ELDERLY, Exchange Bibliography No. 27, by Mary Vance. Eugene, Oregon (P. O. Box 5211), Council of Planning Librarians, November 1963. 154 pp. $3.00.

This comprehensive bibliography covers the literature relating to the provision of housing for the aged. Included are references to background materials on: (1) aging and the aged, (2) special community facilities and services needed by this growing segment of our population; (3) economic aspects of providing housing facilities; and (4) design requirements and standards for such facilities. There are many listings of articles describing developments that have actually been constructed in the United States and abroad.

Earlier issues in this extremely valuable bibliographic series covered such timely topics as planned industrial districts, central business districts, mobile home parks, public library site selection, and urban land use among others. An up-to-date price list is available by writing directly to the council.

CENTRAL BUSINESS DISTRICTS, Exchange Bibliography No. 23, by Mary Vance. Oakland, California (6311 Thornhill Drive), Council of Planning Librarians. January 1963. 116 pp. $3.00.

A goldmine of information about downtown improvement efforts around the country is contained in this comprehensive classified bibliography. It not only provides leads to what is going on in various localities, but also is a useful catalog of who is doing what (this, by means of a seven page author index). References grouped under such headings as design, open spaces (malls, plazas), land values, impact of decentralization, circulation, urban redevelopment, and public buildings, among others, should be particularly helpful to those concerned with various aspects of central business district plans and programs. This book is a must for the bookshelves of public officials and civic and business leaders in North Carolina towns concerned with center city problems.

BOND SALES

From October 24, 1963 through January 21, 1964, the Local Government Commission sold bonds for the following governmental units. The unit, the amount of bonds, the purpose for which the bonds were issued, and the effective interest rates are given.

Unit Cities:	*Amount*	*Purpose*	*Rate*
Asheboro	300,000	Public Library	3.20
Biscoe	180,000	Water	4.05
Brevard	47,000	Water	3.73
Catawba	62,000	Sanitary Sewer	3.82
Durham	2,700,000	Water, Street Improvement, Police Department Building	3.08
Fayetteville	1,600,000	Street Improvement, Electric Light and Power, Sanitary Sewer, Fire Station	3.04
Oxford	385,000	Water and Sewer, Street Improvement	3.62
Princeton	140,000	Water and Sewer	4.01
Raleigh	1,360,000	Water	2.86
Rich Square	14,000	Fire Equipment	3.23
Robbinsville	45,000	Water	4.12
Rocky Mount	600,000	Gas System	2.94
Roxboro	560,000	Sanitary Sewer, Municipal Building	3.53

Unit Counties:	*Amount*	*Purpose*	*Rate*
Bladen	450,000	Courthouse, Jail	3.41
Columbus	1,000,000	School Building	3.51
Forsyth	1,000,000	Public Hospital	2.61
Jackson	70,000	Jail	3.62
Johnston	530,000	Public Hospital	3.03
Lee	631,000	School Building	3.20
Northampton	750,000	School Building	3.29
Onslow	321,000	School Building	3.56
Person	305,000	County Building	3.15
Robeson	2,000,000	School Building	2.98
Wake	4,000,000	School Building	3.03

Notes from Cities and Counties

(Continued from page 39)

Recreation

Senior citizens, Boy and Girl Scouts, and the women's clubs of *Hickory* will benefit from a land gift to the city. The property, to be known as Shuford Memorial Park, includes one of the larger old family homes in Hickory as well as a smaller carriage house.

Senior citizens in *Winston-Salem* are getting settled in the Hanes Recreation Center, recently turned over by the city recreation department for their use.

* * *

Sanitation

County-wide garbage collection has been arranged in *Catawba* County with contracts awarded to three individual refuse collectors. The ordinance provides for the establishment of collection areas, rules, regulations, penalties and fines for violations and for issuance of permits for disposal and collection of garbage and trash for the county.

* * *

Taxation

Harnett County commissioners have ordered a 10 per cent reduction in the values given properties in the new property valuation program. The cut applies to all private property in the county, recently submitted to the revaluation. A 20 per cent reduction has been granted on tobacco acreage.

* * *

Notes From Cities and Counties

Martin and *Wake* County commissioners have voted to make no changes in property tax ratios. Martin has had a 60 per cent ratio, Wake 50 per cent.

In *Onslow* County the $1.20 tax rate remains the same, but a revaluation will bring an additional $40,000 to the county till.

* * *

Thomasville's City Council killed the privilege license tax in the manufacturers category by a vote of 3-2. The tax change will be effective at the beginning of the fiscal year, July 1. A motion that all classes of privilege tax be removed failed because of lack of a second to the motion.

* * *

Traffic Safety

Chapel Hill has received an award from the N. C. State Motor Club and the National Automobile Association for having had no in-town traffic fatalities during 1962. The last traffic death prior to 1962 took place October 9, 1961.

Smithfield has received a similar award for four consecutive years without a traffic death within its city limits. Another award for Smithfield comes from the Carolina Motor Club and the American Automobile Association in recognition of its efforts to save pedestrian lives in traffic. The city has an impressive list of past traffic safety awards.

OF SPECIAL INTEREST

Reprints Available

"Civic Action and Historic Zoning," an article by Institute of Government Assistant Director Robert E. Stipe which appeared in the June-July, 1963, issue of *Popular Government,* is available in reprint form. The article has been widely distributed in the United States by the National Trust for Historic Preservation. Those desiring additional copies of the article are asked to write to The Institute of Government, Box 990, Chapel Hill, North Carolina.

John L. Allen, Jr. Heads Personnel Department

John L. Allen, Jr., became the fifth Director of the State Personnel Department on January 1. Until last March Allen had been Assistant State Budget Officer and prior to that was assistant to the director of Conservation and Development. He began employment with the state as an interviewer with the Greensboro Employment Security Commission in 1946 and in 1952 began a nine-year tenure as business manager for the State ESC.

County Officials Slate Meetings

North Carolina's Association of County Commissioners is scheduling eight district meetings in late February and March. County commissioners, accountants, attorneys, tax supervisors, and other county officials are expected to attend. Because of the full-scale discussion of public welfare planned, welfare board members and directors will also attend.

In addition to welfare, some of the topics on the agenda are the merit system, property taxation, and the possible effects of a new uniform court system on county government.

In the Next Issue

ATTRACTING WIDESPREAD ATTENTION in the state and nation was the first installment of PLANNING IN GREAT BRITAIN: THE SETTING by Philip P. Green, Jr., Assistant Director of the Institute of Government currently in London under a Fullbright Fellowship to study the planning laws of England. The second article of the series, dealing with organization and basic procedures of the British planning system, will appear in the April issue of *Popular Government.*

OF SPECIAL INTEREST to North Carolinians will be a report of the initial considerations of the Courts Commission, moving ahead with proposals for court reform. Institute of Government Assistant Director C. E. Hinsdale is working with the Commission.

ANOTHER APRIL FEATURE will be an article by Ben Overstreet, Jr., A STUDY OF THE YOUTHFUL OFFENDER. Overstreet is a specialist in the field of corrections with the Training Center on Delinquency and Youth Crime.

Credits: Cover photograph courtesy of Pete Ivey and the U.N.C. News Bureau; all other photographs by Charles Nakamura. Cover design, artwork, and layout by Lynn Deal.

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