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This month

A local income tax?

Some thoughts for and
about June graduates

Criminal justice

Free press and fair trial

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*It's summertime—let's go fishing.
This month's cover photo is by
Trina Gentry.*



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A Look at the Local Income Tax

By WILLIAM A. CAMPBELL

In their continuous search for sources of revenue, North Carolina local governments have frequently eyed a local income tax as a possible addition to locally levied taxes. Champions of the local income tax suggest that it might take the place of increased property taxes or local sales taxes. However, the 1967 Tax Study Commission's recommendation that counties be authorized to levy an income tax on individual residents at a rate of 10 per cent of the state income tax¹ got nowhere with the 1969 General Assembly. The purpose of this article is to take a second look at the local income tax, to examine some of its characteristics and problem areas, and to apply various rates against different bases in ten North Carolina counties to demonstrate the amounts of revenue that a local income tax could produce.

One advantage that a well-designed local income tax has over consumer taxes and the property tax is that it can achieve much greater equity than other forms of taxation. Economists speak of two types of tax equity, vertical and horizontal.² Vertical equity requires that persons in different economic circumstances be treated differently insofar as tax liabilities are concerned and that this difference in treatment be fairly related to ability to pay; horizontal equity requires that persons in similar economic circumstances be treated similarly insofar as tax liabilities are concerned.³ An income tax

with a broad base and a progressive rate structure scores higher in both categories of equity than do other types of taxes. The North Carolina state income tax, with its base closely approximating that of the federal income tax and its mildly progressive rate structure, is clearly a more equitable form of taxation than the property tax or consumer taxes. An income tax also has the advantage of being very elastic—that is, it is highly responsive to economic growth or recession.⁴

Although income taxes are frequently imposed by local governments in periods of severe financial strain, a recent study⁵ has shown that in the majority of cities where income taxes have been imposed they have become a substitutive rather than a supplemental source of revenue. For example, in the three-year period 1963-66, the increase in property taxes was less in income tax cities than in non-income tax cities—in many cities as much as 10 per cent less.⁶ The author's conclusion is that:

In general, income-tax cities appear to differ from other cities of similar size in

a number of important respects. Income-tax cities are characterized by lower property taxes as a percent of total taxes, lower per capita property taxes, and lower per capita total taxes. In addition, both per capita property taxes and per capita total taxes have increased at a lower rate in the income-tax cities.⁷

The findings of this study are important to those concerned about the effects that a local income tax might have on locational decisions of large business taxpayers. The lesson seems to be that a local income tax creates a better balanced, more equitable tax structure, is not just another tax in addition to all other taxes, and should have a favorable rather than adverse effect upon locational decisions.

The costs of administering and collecting the local income tax do not appear to be excessive. In Ohio and Pennsylvania they run about 4.5 per cent of revenue collected;⁸ in Detroit, where the tax is administered by the State Department of the Treasury,⁹ collection costs are approximately 3.2 per cent. From the standpoint of

1. POPULAR GOVERNMENT 16 (February, 1969).

2. White, *Economic Evaluation of the Municipal Income Tax in MUNICIPAL INCOME TAXES* 39-40 (Connery ed. 1968).

3. *Ibid.*

4. White, *op. cit. supra* note 2, at 42.

5. Deran, *Tax Structure in Cities Using the Income Tax*, 21 NAT'L TAX J. 147 (1968).

6. *Id.* at 151.

7. *Id.* at 152.

8. Deran, *An Overview of the Municipal Income Tax in MUNICIPAL INCOME TAXES* 23-24 (Connery ed. 1968).

9. Warren *Detroit's Experience in MUNICIPAL INCOME TAXES* 32 (Connery ed. 1968).

both costs and general administration, tying the local tax to the state income tax—where one exists—and having it administered by a state agency, as is done in Maryland¹⁰ and Michigan,¹¹ seem preferable to having it administered at the local level, as is done in Missouri.¹² If the tax is administered by a state agency and the state return is used, an extra line on the form and one additional computation schedule should be the only adjustment required. The 1967 Tax Study Commission's report recommended that the proposed county income tax be administered by the State Department of Revenue.¹³

Where a state income tax is already in existence, as it is in North Carolina, there are three fairly simple means of tying a local income tax to the state tax. The first is to impose as the local tax rate a flat percentage of the state tax liability.¹⁴ This was the method recommended by the 1967 Tax Study Commission—a rate of 10 per cent of the state tax.¹⁵ Both Maryland and New Mexico use this surtax scheme;¹⁶ in Maryland the local unit is required to adopt a rate of not less than 20 per cent or more than 50 per cent of the state tax liability.¹⁷ The strengths of the surtax method are low taxpayer-compliance costs and high responsiveness to changing economic conditions. Its primary weakness is that it is so closely tied to the state income tax that it acquires any inequities of that tax.¹⁸

A second scheme for tying the local tax to the state income tax is to impose a flat-rate levy of 1 per cent or less on state-reported ad-

County	10% surtax on state income tax liability	.5% flat rate against base of adjusted gross income	1% flat rate against base of net taxable income	Property tax levy
Anson	\$ 48,162	\$ 128,482	\$ 127,467	\$ 831,341
Brunswick	36,144	97,977	97,205	1,002,342
Cumberland	333,102	744,933	803,901	7,467,890
Guilford	1,572,977	3,081,986	3,583,611	29,927,909
Lenoir	166,812	376,285	402,103	2,959,989
Lincoln	103,353	266,939	273,163	1,583,044
Pasquotank	82,675	172,306	196,051	1,343,928
Randolph	241,727	613,281	634,960	3,486,944
Rutherford	129,091	353,206	351,401	2,053,216
Wake	1,007,407	2,023,661	2,359,731	17,767,702

justed gross income.¹⁹ This method has the advantage of freeing the local tax from changes in the state tax structure and from changes in the definition of net taxable income.²⁰ It is seriously deficient, however, in terms of both vertical and horizontal equity. It is a proportional rather than a progressive tax: that is, the rate of the tax does not increase as ability to pay increases, and it makes no allowances for medical expenses, business expenses, or other deductions from gross income that are usually allowed.²¹

A third method, one that cures some of these weaknesses but creates others, is a flat-rate local levy of between 1 and 5 per cent on state-reported net taxable income. Such a system would be undisturbed by changes in the state tax rate structure, but it would be subject to changes in the definition of net taxable income. It still scores low on vertical equity because it remains a proportional rather than a progressive tax, but it does better in the horizontal equity category because it allows for the usual deductions. Michigan²² and Missouri²³ local units

may levy a low flat rate against a base of net taxable income, and in Missouri local units have some leeway in shaping the definition of net income.

Two of the most difficult problems when imposing a local income tax are the treatment of non-residents of the taxing unit who commute into the unit to work and the treatment of corporations. The problems regarding nonresident commuters will be alleviated somewhat if the tax is imposed on a county-wide basis, but they will still be troublesome in certain areas. If the commuter also pays an income tax in his county of residence, he should be credited with it when he pays the income tax of his county of employment. If his county of residence levies no income tax and he is not accorded special treatment by the county where he is employed, he may argue that he is being discriminated against because he is paying relatively high property taxes in his county of residence to finance government services while paying a county income tax to the county where he is employed, the residents of which are enjoying relatively lower property taxes as a result of the imposition of the income tax. There is substance in this argument. Maryland exempts

(Continued on page 6)

10. MD. ANN. CODE, art. 81 §283(c) (1969).

11. MICH. STAT. ANN. §5.3194(8) (1969).

12. MO. ANN. STAT. §92.110 *et seq.* (St. Louis) and §92.210 *et seq.* (Kansas City) (Supp. 1969).

13. POPULAR GOVERNMENT, *supra* note 1.

14. G. BREAK, AGENDA FOR LOCAL TAX REFORM 64 (Berkeley: Institute of Governmental Studies, 1970).

15. POPULAR GOVERNMENT, *supra* note 1.

16. BREAK, *op. cit.* *supra* note 14.

17. MD. ANN. CODE, art. 81, §283(a) (1969).

18. BREAK, *op. cit.* *supra* note 14.

19. *Id.* at 68.

20. *Id.* at 69.

21. *Ibid.*

22. MICH. STAT. ANN. §5.3194(41), (42) and (43) (1969).

23. MO. ANN. STAT. §92.140 (St. Louis) and §92.260 (Kansas City) (Supp. 1969).

CHANGE THE WORLD

. . . but do not destroy what is good

By CLIFTON DANIEL

COMPOSING A PUBLIC ADDRESS is at best an ordeal for me. Writing this one was particularly difficult, because I am not at all sure I understand the aspirations of this college generation. At the same time, I do not fully approve of my own generation. Therefore, I wonder whether my experience really has any relevance to the concerns of the Class of 1970. Like John Fischer, the former editor of *Harper's*, I find that the political convictions I have cherished most of my life have suddenly deserted me.^a

A few days ago, I told my wife about the difficulties and uncertainties that I faced in preparing for this occasion. She has inherited a certain capacity for speaking plainly, and she said, "Why don't you tell them this: Dear Graduating Class: Don't burn down any buildings. Don't kill anybody. And don't get killed. Otherwise, go ahead and revolt."

That says it all. Perhaps I should have let her write the speech. She certainly would have written a shorter one than mine.

I ADDRESS MYSELF this evening to the Class of 1970. This is your day. The rest of us are privileged to share it with you.

You are lucky, as I was lucky, to have gone to school in this felicitous place. The world beyond may be more exciting, more challenging. It will not be any lovelier than Chapel Hill in the spring.

This, of course, is a moment of high significance in your lives. You are receiving degrees from one of the great universities of America. It used to be called the best in the South. It is now one of the best in the whole country.

As a proud alumnus, I offer my congratulations on that fact to the government and people of the State of North Carolina, and to the trustees, faculty,

administration, students and alumni of the University. Wherever I travel, Chapel Hill is known, admired, and respected.

I offer my congratulations, as well, on the fact that all of you together have kept the University open and functioning—without bloodshed, without destruction, without the suppression of civil liberties.

If this is a significant moment for you, it is even more so for me. Thirty-seven years ago, I received on this spot a diploma certifying that the faculty of this University had, with some difficulty, succeeded in cramming into my head a certain amount of miscellaneous knowledge. This evening, I have received

^a "To my astonishment, the political convictions that I had cherished for most of my life have suddenly deserted me." John Fischer, "The Easy Chair," *Harper's* (May, 1970), p. 18.

another mark of recognition. The invitation to deliver this address seems to say that I have had some success in putting that knowledge to good use, some success in doing what the University tried to prepare me to do.

It seems to certify that all the effort that went into my education was not wasted—particularly the effort made by my mother, who is here tonight, and my late father, to keep me in school during the terrible years of the Great Depression. And they *were* terrible years.

What did they teach me here in those years between 1929 and 1933? What did I take away from this place, what did I pick up along the way that I can bring back this evening and hand over to you?

First of all, they opened the windows of my mind to a world wider than my own. I came to Chapel Hill as a small-town boy from eastern North Carolina. I left here to become a citizen of the world—the great world of ideas, as well as the physical world that stretches to the far horizons of Europe, Asia, Africa, South America, and the Antipodes.

They taught me—or tried to teach me—to think for myself, but to be tolerant of the opinion of others and respectful of their rights, to be open-minded, to be liberal.

Liberal!

It sounds old-fashioned now—old-fashioned and rather pallid—but in those days it was a fighting word. It was an epithet, an epithet applied to people like Dr. Frank Porter Graham, who was elected President of the University in 1930 at the end of my freshman year.

He is not able to be here this evening, but I had the pleasure of visiting him for a few minutes this afternoon, and I am pleased to report that he still has the same twinkle in his eye that he had the first day I met him here.

Dr. Graham insisted in those days that we be allowed to listen to the voices of dissent. His opponents, those who tried to drive him out of the University, said he was making radicals of us all.

What nonsense that turned out to be! Where are the revolutionaries of the Class of 1933? Alas! We are all so conservative, so square that we are scorned by our own children and grandchildren—your generation.

You say we found the world in a mess and left it that way.

We thought we were going to remake it.

You, no doubt, think *you* are. Well, good luck to you. As my wife says, go ahead and try.

Human institutions must respond to human needs. The buttoned-down, crew-cut, grey flannel values of the '50s and '60s are not immutable. We *can* change our institutions, redefine our social goals, rearrange our priorities, redirect our energies and resources. We can have, and do have, a new agenda for the '70s.

The author—a native of Zebulon, N. C., a graduate of the University of North Carolina, and managing editor of the NEW YORK TIMES—gave the 1970 commencement address in Chapel Hill. He was accompanied by his wife, the former Margaret Truman.

As John W. Gardner, former Secretary of Health, Education and Welfare and chairman of the National Urban Coalition, has said, “That agenda begins with peace.”

PEACE! There must be a better way than unending war. The young are angry about it, the old are weary of it. I have already lived through two world wars, at least six lesser wars—Morocco, China, Spain, Finland, Korea and Vietnam—and uncounted other military enterprises. Last year, I was on one major war front, in the Middle East. Just last week, I returned from another, in South Vietnam.

Yes, the agenda begins with peace. It also “calls for an end to discrimination.”—I am again quoting from John Gardner.—“It calls for a relentless attack on poverty. It calls for major reforms in taxation and allocation of resources among federal, state and local levels. It calls for an end to our shameful tolerance of corruption and decay in state and local government. It calls for new solutions in housing, employment, education, health, pollution control, law enforcement and the administration of justice.”

The most important shift in the agenda, Mr. Gardner says, “is the emergence of a concern for man himself and his natural environment.”

We can change the agenda, but must we destroy the *system*?

In Germany in the '30s, they abandoned parliamentary democracy because it was ineffective and ineffectual. They got Hitler and a holocaust instead.

In Russia they destroyed the capitalist system because it was greedy. They got Stalin, Communism, and the death camps.

Don't imagine that, if our present system is demolished, you will necessarily inherit the wreckage. History tells us that all too often, dictators and tyrants pick up the pieces.

In Chapel Hill in the '30s, they taught us what would now be called, I suppose, working within the system. But they did not teach us that the system was more important than the people it was supposed to serve. They taught us to believe in social justice

and to believe that social institutions could be made responsive to social needs.

They left me at least with an abiding faith in democracy—a faith, that is, in the ability of free people to manage their own affairs and eventually, after much travail, to live in harmony and deal justly with each other. I retain that faith to this day.

I know the processes of democracy are painfully slow. We have reason to be impatient with them, but we abandon them at our peril.

“No one pretends that democracy is perfect or all-wise,” Winston Churchill once said. “Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”

Our democratic institutions are not all that unresponsive and impotent. They have fallen short, but they have not failed. We must sometimes measure them by how far they have come, not by how far they have yet to go.

Our institutions have not failed *us*. We have failed them. We do not need new ideals. We need to be more devoted to the old ones.

I quote again from Mr. Gardner, from his new book, *The Recovery of Confidence*:

“We will not find a way out of our present troubles until we have the courage to look honestly at evil where evil exists, until we call injustice and dishonor by their right names, and until a large number of Americans from all sectors of opinion—right, left and center—are willing to acknowledge their own special contribution to our troubles . . . All of us are somehow implicated. . . .

“The crucial task is to design a society (and institutions capable of continuous change, continuous renewal, continuous responsiveness . . . All kinds of men rage at all kinds of institutions here and around the world. Yet the past three centuries have seen a vast and impressive movement in the direction of institutions that are responsive to the will of man.”

In Chapel Hill in the '30s they taught us to believe not only in the possibility of *changing* our institutions but they also taught us to believe in peaceful change. They taught what I now recognize as the doctrine of nonviolence—the creed of Mahatma Gandhi and Martin Luther King. For us, in that college generation, non-violence was epitomized by the gentle and saintly demeanor of our resident rebel, Dr. Graham.

Do not imagine that the brave new world can be built by terror, rage and destruction. America in her agony needs healers, not killers.¹

Violence rarely brings change—constructive change. It usually invites repression. Repression stifles freedom. And without freedom, democracy dies.

(1) “They do not understand that in her hour of agony, America needs physicians, not executioners.”—John W. Gardner, *The Recovery of Confidence* (New York: Norton, 1970), p. 21.

If the imminent demise of democracy does not dismay you, I invite you to go and live, as I have done, in countries that have never known it—in Russia, for example, where a knock on the door at midnight is the death knell of liberty and justice.

If violence is unleashed in the land, dissent may well be the first casualty.² A man with a gun, a rock, or a bomb in his hand is in no mood to argue. He is past the point of tolerance.

Violence is not only a “tactical mistake,” however. It is in itself “cowardly and immoral.” It “wreaks havoc among the innocents.”

I am recalling the words of Mayor John V. Lindsay of New York, speaking last April on the Berkeley campus of the University of California.

“Reliance on terror,” Mayor Lindsay said, “is one kind of dangerous response to a troubled time. There is another kind of response—equally false but even more dangerous, and that is the turn toward repression, toward repudiation of our rights and liberties—a turn supported by *some* in the highest levels of power.

“Either out of ignorance or out of calculated political cynicism, our citizens are being told that crime will stop if we erase the Bill of Rights—that unity will come if we suppress dissent—that racial conflict will end if we ignore racial injustice—and that protest will cease if we intimidate the people who report it.”

Once again the shadow of repression lengthens across the land. Mayor Lindsay’s fears are justified by a nation-wide survey made a few weeks ago by C.B.S. News, which learned that a majority of American adults are now willing to restrict some of the basic freedoms guaranteed in our Bill of Rights—the very freedoms this nation was created to defend.

“When we have been saved from the radicals,” says Tom Wicker, columnist for *The New York Times* and graduate of this University, “who will save us from the security agents?”

You will, if you love liberty enough.

YOU SEE, amid the follies of one generation, I persist in hoping, and believing, that the next generation will be wiser. Yours is that next generation.

We talk about the generation gap. I doubt whether it is as wide as either children or their parents imagine. I have discovered something unexpected among my middle-aged, middle-class friends: They are proud of their unconventional, iconoclastic offspring—sometimes baffled, often apprehensive, but always proud.

(2) “As a commentary on the Kent State tragedy, President Nixon’s remark that ‘when dissent turns to violence it invites tragedy’ is callously inadequate. His warning, however, carries the weight of history: in a general unleashing of violence, dissent is the first casualty.” “Time Essay,” *TIME* (May 18, 1970), p. 19.

I know, for example, a man who owns three homes; yet his daughter lives in a black slum in Boston—as a social worker. He doesn't understand, but he doesn't disapprove.

We *don't* disapprove. Our sons and daughters may not have all the answers, but we suspect they are asking the right questions, questions about peace and poverty, prejudice and pollution—questions we have too often ignored in our complacent pursuit of profit and pleasure.³

We don't disapprove. We admire idealism, your involvement, your commitment. We merely caution you against the excesses of youthful zeal. We advise you not to destroy what you cannot rebuild, not to bring down the social structure but raise it to higher levels of usefulness, not to defeat your own purposes by inviting repression, not to deprive yourselves of the education you need for the great tasks ahead, and not to set class against class but to build a broader brotherhood of man.

Can you obey all these taboos, heed all these warnings, and still remake the world? I think you can, if you are patient and if you persist.

(3) "It is time that more Americans recognized that their sons and daughters are asking the right questions—questions about poverty and prejudice, pollution and peace that too many complacent adults have ignored or brushed aside in their selfish pursuit of the affluent life."—"Sons and Fathers," editorial from *The New York Times*, Friday, May 8, 1970.

DO NOT BE DECEIVED and disheartened by the discord and deep discontent you see all around you.

"It is the first step in sociological wisdom," says Alfred North Whitehead, "to recognize that major advances in civilization are processes which all but wreck the societies in which they occur. . . ."⁴

We have lately been indulging in an orgy of self-criticism, self-abasement, self-destruction, tearing at the fabric of our society, tearing at each other, tearing at our own flesh. The optimist in me, the man of faith who was bred here in the '30s and nurtured on the hopeful liberalism of the University of North Carolina—that man wants to believe, and wants you to believe, that all this could be the dark prelude to a new birth of freedom, justice and democracy.

This is not our finest hour, but it may be—it could be—the hour before dawn.

(4) "It is the first step in sociological wisdom, to recognize that the major advances in civilization are processes which all but wreck the societies in which they occur:—like unto an arrow in the hand of a child. The art of free society consists first in the maintenance of the symbolic code; and secondly in fearlessness of revision, to secure that the code serves those purposes which satisfy an enlightened reason. Those societies which cannot combine reverence to their symbols with freedom of revision, must ultimately decay either from anarchy, or from the slow atrophy of a life stifled by useless shadows." Alfred North Whitehead, *Symbolism: Its Meaning and Effect*; Barbour-Page Lectures, University of Virginia 1927 (New York: Capricorn Books, 1959), p. 88.

The Local Income Tax (Continued from page 2)

nonresidents from the local income tax.²⁴ Michigan imposes a tax on nonresidents at half the rate imposed on residents,²⁵ and Missouri taxes nonresidents only on money earned in the local taxing unit.²⁶ The Maryland approach gives a bonus to nonresidents, while the Missouri approach gives nonresidents no relief at all when the major source of income is wages—and in any event such treatment is probably required to make the tax constitutional. Perhaps the Michigan solution—arbitrary though it is—is the best way to handle the problem.

Corporations present a problem to local units imposing an income tax because many of them carry on activities in more than one county

and some are active in several states. One approach is to exclude corporations entirely from the local tax. The only other permissible approach to the problem is to employ some sort of allocation formula for apportioning the proper share of corporate income to the local unit. A widely used formula is the ratio of the corporation's property, wages, and gross receipts in the taxing unit to its property, wages, and gross receipts everywhere applied to net profits or income.

Table 1 gives a rough idea of the amounts of revenue that the three different types of income tax discussed above could be expected to produce in ten selected counties. It also shows the total property tax levy for the counties and the municipalities within them. The basic income tax figures against which the rates were applied are

for 1966 and were taken from pages 110-13 of *Statistics of Taxation* (Raleigh: Department of Tax Research, 1968). Only the returns for resident individual taxpayers are included in the base. The property tax levy presented in the table is for 1967-68 and is taken from pages 298-301 of *Statistics of Taxation* (Raleigh: Department of Tax Research, 1968). It will be observed from the table that for most of the counties listed, a rate of 1 per cent against a base of net income yields slightly more revenue than a rate of one-half of 1 per cent against a base of adjusted gross income but substantially more revenue than the 10 per cent surtax. It should also be noted that the tax on net income amounts to between 10 and 15 per cent of the total property tax levy for most of the counties.

24. MD. ANN. CODE, art. 81, §283(a) (1969).

25. MICH. STAT. ANN. §5.3194(3) (1969).

26. MO. ANN. STAT. §92.110 (St. Louis) and §92.210 (Kansas City) (Supp. 1969).

the criminal justice system and public relations at the local level

By **ELMER R. OETTINGER**

Sometimes it becomes necessary to shout "Fire!"—even in a crowded theater. Those times are when there really is a fire, and, without quick alarm, the audience would not be informed in time. When there is no fire, such a shout could perpetrate a ghastly hoax. But where there is fire, the problem of communicating the fact lies as much within the word "shout" as in the word "fire." For the question becomes how best to communicate the danger to the audience to achieve maximum results—i.e., a quick, calm, orderly move to the exits—in order that all may understand and benefit from the mode as well as the content of communication.

The people that our local governments serve are indeed a crowd. In many instances the circumstances and environment in which they live provide a crowded theater. Government, and especially local government, needs constantly to communicate with those people, for if democratic government is to work, the citizenry must be informed. Otherwise, it cannot act, react, or vote with understanding and perspective on public figures and issues. This need to communicate constantly, effectively and in breadth and depth, has special application to criminal justice. This is true because the public is emotionally attuned to this sector of government as to no other, yet it perhaps is less well informed and consequently less equipped to understand basic issues and to appreciate and support creative, forward-looking decisions than in any other single area of government.

The reason is not so much that information is not available or that the public is not exposed daily to

news about criminal justice. The reason lies in the very complexity of the subject, the multiple facets and wellsprings of the criminal justice system. The failure feeds on the fact that little effort has been made to make the public aware of the pattern: of underlying bases and goals, of its diverse aspects and their relationships to one another and to the public. To put it bluntly, no sufficient thought and planning have been given to putting things together in such a way that the public can see and comprehend the component parts and understand wherein they fit and don't fit with one another and the social weal. This failure can be understood. It cannot be condoned.

Our failure to communicate adequately with the public about criminal justice helps explain why the public response and outcry to violent crime, and most recently to violent political protest and campus revolt, has been so violent itself and so sporadic and irrational. Local government, in both legislative and law enforcement aspects, has been hard pressed to keep abreast of what is happening and has been doubly hard pressed to try to put specific groups, incidents, and demands in perspective and come up with appropriate responses. Many officials and officers have had little time to sit back and think of over-all requirements of informing the public. Too, the very nature of confrontation and polarization tends to break the chain of effective communication by eliminating a prime ingredient: the essentiality of listening. Communication is not a one-way street. If either or any side of a controversy fails to listen to the other, there can be no dialogue. Communication requires

The author is editor of POPULAR GOVERNMENT. This address was presented at the Criminal Justice Planning Workshop Program sponsored by the Committee on Law and Order of the Department of Local Affairs.

full and effective participation on all sides, and full and effective participation consists of listening as well as talking, writing, and doing.

The changed nature of communications is another important factor in our problems. We live in a world of rapid change. Like transportation, communication has become rapid, often immediate—to the point that it has shrunk the world and made humanity more interdependent than ever before. In such an environment, an intense competition for the ears and minds of men has developed. Any branch or department or division of local government seeking to inform the public must be aware that that same public is being exposed at virtually every waking hour to other information provided by friends, neighbors, acquaintances, private organizations, public schools, institutions of higher learning, and almost countless other agencies of local, state, and national governments and various international groups. Never have so many sought the individual eye and ear. Never has so much oral, written, printed, audio, visual, and combined information, misinformation, publicity, propaganda, and pap been so constantly spewed in person, through groups, and by media as in our era. As a consequence, never have individual human beings been called upon to reject so much, to discriminate between what they are called upon to read, see, and hear. Never before has the individual been required to decide so constantly what is important; to set up priorities; to distinguish between the worthwhile, the less useful, and the useless; to make quick and lasting judgments about an infinite number of sensory impressions that may or may not have significance in his life.

The official who is concerned with the criminal justice system often is fully aware of information the public needs to know. Only sometimes does he have recourse to the means of spreading that information to the public and know how to use them. To some extent, he is cognizant of the competition he must face in obtaining the eye, ear and mind of the public. But too many times he does not take time or trouble to evaluate the particular bit of information in its relationship to the whole, or the public need for the particular information or the background or for help in understanding, or the desirability of using one medium over another or coordinating the release of information through media, clubs, and personal approach.

Frequently, the official fails to analyze sufficiently his own ability or that of his department or staff to

communicate effectively with the public. At times he does not consider the timing of the release or the occasion. Too much he knows very little about the media themselves and their requirements. Too often he has failed to build a relationship of respect and trust with those who must be his links with the public: Often his performance has not been sufficiently on record or in evidence to inspire the confidence of press or public in his own competence or sensitivity. Sometimes he fails to distinguish the special nature, as well as the variety, of law enforcement problems and the requirement that they be placed in priority and perspective for the public if any sort of public understanding, which is the basis for public support, is to be realized.

My premise is, then, that the complex and controversial nature of the criminal justice system has resulted in rather poor over-all communicating to the public of the nature and depth and interrelationship of its problems. If it has validity, then clearly ways must be found to remedy the situation. I would start with these considerations in mind: 1. Those responsible for our criminal justice system need public understanding, support, and cooperation as never before. 2. Basic steps required to begin to achieve this goal include (a) the establishment of an ever-improved and closer working relationship, based upon mutual consideration and respect, with the news media and the citizenry of the community, (b) the translation of your competence and creativity and that of your staff into terms that the public not only can understand but is willing to accept, (c) the initiation and maintenance of a planned program to make known to all concerned people the challenge, the problems, and the goals of your criminal justice endeavors and to explain their relationship to the larger problems and goals faced elsewhere at state and federal levels of government, (d) the example of leadership in establishing an atmosphere and environment in which your public can think and grow with you in meeting the challenges in all areas of criminal justice. (To establish such an environment requires personal awareness of the fallibility of mankind and a generous and understanding approach to the public manifestations of skepticism and questioning, which reflect ultimately both a healthy desire to know and an assumption of rights guaranteed to every citizen.)

Your basic programs must be worked out at local levels but also at a level consistent with the most advanced state and federal thinking in order to stimu-

late the general public with a desire to know more about the criminal justice system and to seek ways in which they can participate effectively and usefully in making it work.

Let me deal with several of these points more specifically. First, let me try a little test: What is the criminal justice system? (a) Juvenile justice and the training school system? (b) "Free press—fair trial"? (c) Arrest and pretrial process? (d) The court process, including jury selection, actual trial, and sentencing? (e) The law enforcement process (f) The judicial process? (g) The corrections system? (h) Probations and parole? (i) All of these? (k) More than all of these? What is the correct answer? I submit "more than all of these," for the whole is more than the sum of all the parts.

Let me give you another quiz. What is the "public"? (a) The "establishment," consisting of the affluent and the most influential citizens? (b) The governmental structure of the community? (c) The educated? (d) The white community? (e) The black community? (f) The churchgoing people? (g) The civic clubs? (h) Members of the business community? (i) The laboring people? (j) Those across the track? (l) Those who talk the loudest? (m) Those who control your job? (n) All the people?

And now for a third question: What method of communication is most effective in dealing with the public or publics? (a) Person to person? (b) Person to group? (Speeches before a civic club, schools, etc.) (c) Newspapers? (d) Radio? (e) Television? (f) Films? (g) Group or organization conferences? (h) Staff releases and publications? (i) Guidelines? Or (j) Combinations of any or all of these?

Let us go from true-false to discussion questions: Do you and the media work together? How? Regularly? Sporadically? On what basis? Do you provide handouts? Hold news conferences? What faults or inadequacies do you perceive in the news media and their coverage of local governments? What faults or inadequacies do you think the news media might see in your handling of local government? Your press relations? What traits do you see in the people of your community that affect your public relations? What traits do the people in your community see in you that affect your public relations?

It is as important that we recognize the validity and essentiality of these questions as it is to understand that we must have answers—good answers—as a prerequisite to effective communicating. It is not enough to reach only limited segments of the public. It is not enough to denigrate or downgrade the news media. The potential for reciprocity is all too evident. Besides, the press knows it isn't perfect. Let me quote a stipulation made by a well-known member of the

press about himself and his brethren. Writes Clifton Daniels:

First of all, we of the press can readily admit that, in our zeal to publish, we sometimes do violence to the right of defendants—unintentionally, inadvertently, without malice, but, nevertheless, deplorably.

In the second place, we can concede that the *manners* of newspapermen are not always impeccable. We are highly competitive. We work against the clock. We push. We shove. We probe. We ask embarrassing questions. Sometimes we do a little browbeating.

In the third place, we can acknowledge also that the press sometimes swarms over a news story in such a way that the story becomes warped and distorted. Instead of merely covering the news, the press, by its very numbers, its energy and its activity, becomes a participant in the news and transforms it into something it would otherwise never have been. Incidentally, when I speak of the press in this context, I include television and radio.

In the fourth place, we newsmen are ready to agree that there is need for reform and that we must be more conscientious in our concern for the rights of individuals.¹

Would you be able and willing to prepare a similar set of admissions about yourself and local government officials in general?

The important thing to remember here is that newsmen or women, whether they represent newspapers, radio, or television, are human. Like you and me, they are fallible. Their backgrounds in criminal justice may be good, fair, poor, or nil. They are apt to be young. Unfortunately, many newspapers assign new or relatively inexperienced reporters to the local beat. There is a false impression that covering local government is a beginning step. Actually, covering government and, especially, criminal justice requires considerable knowledge and sophistication to do a good job. But young or old, experienced or inexperienced, the reporter will try to test you. If he is experienced, he will ask questions designed to test your competence and credibility and integrity and that of your fellow officials. In effect, he will be scrutinizing the ethical and moral climate and character of government in his locale. And that is a part of his job. None of us should want it otherwise. If there is incompetence or corruption in government, an alert press will weed it out—to the benefit of us all. If the reporter is inexperienced, he is apt to be on the defensive, insecure, uncertain in his questions and quick and harsh in his judgments. He will not want to ascribe his failures to himself, but may find in you a convenient scapegoat. But this is no more than human. He is not unlike the young teacher in this respect. Less experienced officials do the same thing in reverse to reporters—when they can. You will be interested to know that when Professor Kenneth Byerly of the University of North Carolina School of Journalism and I conducted parallel polls of newsmen

1. *Case and Comment*, September-October, 1966.

criminal justice

and local officials a couple of years ago, we found that both groups lodged as their major complaint the inexperience and consequent lack of awareness of the other.

My advice to you, as it is to the newsmen I teach, is to help educate each other. I know city managers and police chiefs who, through their own understanding and tact, have literally helped to teach reporters the most penetrating questions to ask and have, out of a sense of responsibility, often given them more complete and informative answers than their questions would have merited. Conversely, I also have known newsmen who have phrased their questions and supplemented them in a way to help the less experienced official frame his answers in the most revealing terms. Obviously, there are those in both camps who see each other as the natural enemy and do otherwise. I think that they are mistaken and the cause of both an inquiring press and responsive government suffers in the process.

We have room for vast improvement in the relationship between criminal justice officials and personnel on the one hand and the news media on the other. Judges tell me constantly that they wish reporters would come back to chambers and discuss cases with them before writing them up. If they would do so, the judges are convinced that print and broadcast coverage of criminal trials would be vastly more accurate and the public much better informed about the criminal justice process. I have heard in a few rare instances of police who do not want reporters to see their blotters. More often, the police are uncertain as to just what they should tell newsmen about crime and courts, and especially about the accused at the arrest and pre-trial stage. One of the most useful outgrowths of the work of the North Carolina Bench-Bar-People-Broadcasters Law Enforcement Committee, a true liaison of interested groups in the criminal justice process, has been the emergence of projected guidelines at state level and actual guidelines for law enforcement officers in reporting criminal justice information before and during trial. Such guidelines are not a matter for police decision. They are formulated and effectuated by agreement among judges, lawyers, police, editors and radio and television newsmen in a given community or state. Some twenty states now have guidelines of one sort or another. I have mentioned the proposed North Carolina guidelines and their adaptation to local level. The Winston-Salem Police Department provides a laminated pocket-size, two-sided set of guidelines for its entire force. It is entitled "Dissemination of News by Police to News Media," and it reads:

I

The following information generally *should* be made public before any arrest or charge:

- (A) The facts of the crime.
- (B) That an investigation is in progress, some details of same.
- (C) A general description of the suspect or suspects, if any, if needed to assist in the apprehension, aid in the investigation, or warn the public.

II

The following information generally *should* be made public at, or immediately following, the time of arrest:

- (A) The accused's name, age, residence, employment, marital status, and similar identifying information.
- (B) The substance or text of the charge.
- (C) The identity of the investigating and arresting agency, and the length of the investigation.
- (D) The circumstances and details of the arrest (time and place, possession and use of weapons, resistance, pursuit, description of items seized at the time of arrest).

III

The following information *should not* be made public at, or immediately after, the time of arrest:

- (A) Statements as to the character or reputation of an accused person.
- (B) Existence or contents of any confession, admission, or statement given by the accused, or his refusal to make a statement.
- (C) Performance or results of tests, or the refusal to take a test.
- (D) Expected content of testimony, or credibility of prospective witnesses.
- (E) Possibility of a plea of guilty to the offense charged or to a lesser offense, or other disposition.
- (F) Other statements relating to the merits, evidence, argument, opinions or theories of the case.

The certainty that the pocket card affords the individual law enforcement officer cannot be overestimated. It covers virtually the range of free press-fair trial information. And in Winston-Salem, the card is working. Other North Carolina communities have roughly similar guidelines, but for the most part they are still on 8½" x 11" paper, available to be read and, hopefully, understood by the individual officer. The laminated pocket-type cards may be printed and made available to police across the state in the near future through an appropriate use of grant funds. If I were to make one recommendation to increase the value of the cards, it would be that room be found to include the four-point *Miranda* warning. In that way, the police would have before them at all times the most vital information essential to informing press and public of the apprehension and treatment of suspects under the laws of arrest, search and seizure, and

evidence, and the free press guarantee of the First Amendment and the fair trial promise of the Sixth.

This single example of creative progress should suggest two central facets of public information, public relations, and human relations to us. Since they represent different categories, I shall consider them separately. The first is that one key consideration of any effective public relations is keeping the public informed of change. That facet would include change in law, practice, custom, procedures, and reasons. That word "reason" could provide a category of its own, for any public needs to know not only the "who," "what," "when," and "where" of change, but especially the "why." If all elements of the people are informed as to why this is so or that is not so, officials will have gone a long way toward winning both public understanding and respect. —That is, assuming one knows the why and can communicate it.

The second central part of the information process is an awareness of all available present resources, where to get them, how to use them, how they fit into local needs, and what additional resources are needed and how to provide them. Our Task Force on the Criminal Justice System and the Public is presently involved in making an inventory of criminal justice resources as a preliminary step to recommending coordinated future action.

The *impact* of change in criminal justice is felt by the public everywhere. The public is less aware of the *meaning* of change. These two facts contribute to dangerous misunderstandings in criminal justice at a time when we are embarked upon an era of rapid and drastic change. Here is the beginning of a recent article on law, communication, and social change:²

Equality, neutrality and uniformity are fundamental ideals of the American legal system. The law must be neutral, defining a uniform system of rules and procedures, and applying such standards equally to everyone. These ideals, as well as the social system they serve, seem sorely threatened by recent developments in society.

Black power and black separatism have called into question the ideals of equality and neutrality. It has been argued that in order to correct past injustices, the effects of which are perpetuated in the present, different treatment of different groups before the law is not only permissible but necessary. Campus disorders have called into question the entire notion of peaceful change through legal process. The feeling seems to be that traditional methods of social change are not responsive to present social needs. Sudden increases in the crime rate suggest that the law is becoming increasingly irrelevant to a growing segment of society. The result has been a public outcry against the technicalities of due process by which criminals are allowed to go free for reasons having nothing to do with

their crimes. Thus, for one reason or another, respect for the legal system seems to have declined in all segments of society. When faced with such developments, the first reaction is usually to suggest that the legal system needs reinforcement—more judges, more efficient court administration, better police training, more riot prevention and control devices, more lawyers for the poor; in short, more money. Before such investments are made, however, it would be well to stop and consider whether the widespread disrespect for law can be cured by simply reinforcing the basic structure of the legal system so that it can operate more efficiently. Perhaps there are deeper reasons for the disenchantment. It is possible that there has been a shift in the values of the citizenry and that the traditional legal system is not able to accommodate these new values. . . .

The author goes to a new hypothesis in the field of communication on the basis of these recent developments, using Marshall McLuhan's theory that the medium itself "imposes its own bias, quite apart from any bias on the part of the parties involved. Furthermore, a pattern of historical change, based upon changes in such media can be traced."

Our consideration here need not be with these theories so much as with an awareness that the predictions of Franklin D. Roosevelt and Henry Wallace that the twentieth would be the century of the common man have come to fruition with a vengeance. As a result, for the first time perhaps in the history of civilization, the ideas and needs of all elements of our society have begun to be taken into account by public officials. For these ideas to be informed, the varied segments of our community need to be informed themselves. This creates or reinforces a special obligation to reach our entire citizenry with every appropriate means of communication. No longer is it enough to keep the city council or the county commissioners or the ten or fifty most prominent and influential citizens informed. It should never have been that way.

Now it is incumbent upon those concerned with criminal justice, as with leaders in all areas of thought and custom, to write, talk, hear, and be heard in terms understandable and useful to all the people. To do this requires an awareness of people, of media, of total resources. Let's look again for a moment at media. The approximately 200 newspapers, 160 radio stations, and 15 television stations in North Carolina reach almost all our 5,000,000 people. Not all people read or hear or listen to or even care about matters of criminal justice. But many do and are involved with all the media. Even those who do not or cannot read usually listen to radio and watch television.

The point is that we do have and need media—radio and television which can reach people instantly, almost instantaneously, and newspapers, which are

² Mark H. Aultman, *Law, Communication, and Social Change—A Hypothesis*, 38 *FORDHAM LAW REVIEW* 63 (October, 1969).

resources

available to be read and reread morning and night. Criminal justice officials should be aware of the strengths, the requirements, and the availability of each medium. They should know that newspapers, dating back two and a half centuries, have a proud tradition, that they tend to cover governmental proceedings and to report and interpret them to the people. It should be recognized that the newspapers' right to opinion is reflected on the editorial page and in its columns. If these pages tend to jack up officials through their criticism, they also can praise and be of immense usefulness to the good, respected official or department. The news columns are available to any official who recognizes news when he has it. More often than not, where a sound, continuing relationship has been developed, the paper will keep in close touch with the official, inquiring daily as to newsworthy events.

Radio, only fifty years old, is a medium of the ear and of the imagination. It has news on the hour and often on the half-hour. It is an ideal vehicle for quick announcements, assuring widespread public awareness in a minimum of time.

Television adds sight to sound and accentuates the reality and intimacy of a person or idea. A more expensive medium, it has higher overhead and less flexibility in spot programming. However, it, too, is available for news. More than that, both radio and television feature the interview, the panel discussion, and the documentary, which can present your plans, programs, and problems in depth for greater public understanding. Unlike newspapers which are strictly "free enterprise," radio and television belong by law to the people. The Federal Communications Commission is charged with seeing that they operate "in the public interest, convenience, and necessity." Station licenses come up for renewal for the FCC every three years. Individual stations are required to provide a sufficient amount of public service to satisfy the Commission that they are serving the public. Accordingly, most stations are pleased to present matters of public moment, not only on their newscasts but also on their special events programs. Remember, all the mass communications media, including films, which I have not mentioned in any detail here, can mold opinion, influence your public, and have a utility for government that should never be underestimated. I would commend to you the following brief guidelines:

1. Obtain an understanding of mass communication media available in your area and what they can mean to you and your law enforcement program.
2. Get to know appropriate representatives of each of the mass communication media. The news media will send

reporters to see you. (Of this, I am sure you are already aware.) Newspaper reporters may want to see and talk with you daily. Radio and television men will come to you on special occasions and may want to tape or photograph you for presentation on radio and television. It is important that you establish a good working relationship with the media.

3. Set up a schedule of availability which is convenient for you and the news media and which you can follow. Under this schedule, make yourself available to the mass communication media for questions and answers and for presenting news or information which you need to get before the public and which you owe it to the public to reveal.
4. Personal interviews or direct conversations are always more desirable than handouts. However, where printed or written information is desirable or necessary to present precise information or a clear picture, use one or both. Often, the news media will appreciate background information in printed, typed, mimeographed, or written form.
5. Try to let the newspaper and broadcast newsmen know the *why* of what you and your department do. Both they and the public they represent can understand better the meaning and significance of information and events *if* they know the background for them. Therefore, make it a policy to explain *why*.
6. Learn to speak on radio and to make a presentable appearance on television. To do so requires some knowledge of oral communication and some aspects of performance. This does not mean that you should be artificial or in any way other than your natural self. It does mean that there are certain techniques which need to be understood and observed in the use of radio and television.
7. Organize your interviews and your written information. An understanding of outline form can be of great assistance to you.

I have noted that central to your ability to inform the public is an awareness of resources. If the five task forces of the Law and Order Division are to serve well the ultimate goal of an informed, supportive public, they will come up with detailed information about our current resources in criminal justice and how they are being used. More than that, they will provide an assessment of our resource needs in the light of our essential directions in criminal justice. If the task force with which I am working, the Task Force on the Criminal Justice System and the Public, is worthy of its name, and I confidently expect that it will be, it will provide an inventory of resources—personal, group, media—on which the present may be implemented and the future built. Let me illustrate briefly a few of the resources already in existence.

Resources, of course, begin with YOU. Your ability to communicate so as to reach the minds and hearts of people, individually, in eyeball-to-eyeball contact, speeches and panel discussions and conversations with civic, business, and professional clubs and groups, is a primary ingredient in any successful local criminal

justice program. For a decade now, I have had the privilege of working with state and local officials in North Carolina and elsewhere on many aspects of communication. I think that I can see vast growth, and, with it, new awareness and attitudes and up-graded performance. I find a growing body of expertise among judicial, administrative and legislative officials and officers in speaking and writing. Yet I would be less than honest if I did not confess that I still find ample room for improvement.

With this in mind, I initiated an experimental seminar on "The Art of Communication" this year. Twenty people out of more than sixty applicants—city and county managers, state administrative personnel, and public information officers at state and local level—were selected to attend this seminar. The program consists of four two-day seminars over a period of four months. The first seminar dealt with oral communication; the second, with written communication; the third, with the mass media; the fourth, with philosophical and psychological underpinnings of communication, including role-playing and sensitivity training. Some of the arts of communication we have dug into in depth: parliamentary procedure, public speaking, panel and group discussion, writing news releases, editing, illustration, writing speeches, news coverage, newswriting, newscasting, public affairs programming, and radio, television and film writing. But, beyond that, we have worked with the arts of conversation, performing, holding news conferences (including the arts of interviewing and reply), humor, human relations, criticism, interpreting news, creativity in writing, putting together a project, the influence of radio and television on public opinion, news analysis and commentary, and the appropriate relationships for newspapers with government and for radio and television with government. No presentation in this seminar is complete without questions and discussion. This is truly two-way communication and more. And we are having workshops in which each participant tests and enhances his skills in the light of the sessions.

Would you be surprised if I were to tell you that I now believe most of the subjects of this seminar would be useful for just about every type of officials, state and local? I think the potential rewards in better understanding between public, news media, and government would be inestimable. But it will take a lot of doing. My colleagues need to be convinced. The University departments whose faculties have so generously cooperated with me in this experimental program—such departments as Political Science, Journalism, Radio, Television and Motion

Pictures, and the Speech Division of the Department of English—will have to want to participate further with us and find ways and means to do it. Yet here is one road toward improving the first human resource in communicating in government: the official, the officer, the public employee himself.

A second obvious general resource are the media. Newspapers deal in space; radio and television deal in time. All are transitory, ephemeral. Yet each makes an impression on the public. Each provides an assured and continuing audience.

And there is the resource of special publics and the public at large. Special publics include all the multitude of clubs and organizations which form so basic a part of the pattern of our lives. They include our schools. They include our churches. They include our theaters and auditoriums and arenas—in fact, every place where two or more citizens meet. And let us not forget those professional groups which have special expertise in the area of criminal justice—judges and bar and press and broadcasters and law enforcement associations.

Specific illustrations of human and material resources already available abound. If the spread of juvenile delinquency is to be halted and impetus given youthful understanding of criminal justice, it must be achieved in substantial measure through the schools. Already the young lawyers division of the State Bar Association has a program on "Youth and the Law" operating in our public schools. The Kiwanis Club has a program for school children. The office of the Attorney General has just come up with a publication for school children explaining our criminal laws. The Bench-Bar-Press-Broadcasters Law Enforcement Committee is sponsoring a book of illustrated *Fables on Criminal Justice*, designed to put in story form the aspects of criminal law and justice which prove most troublesome to elementary, junior high, and high school students. That program is not yet in our public schools. In fact, most educators may not yet be aware of it. But, under a grant from the Governor's Committee on Law and Order, it is in the works and should be ready for a pilot program in the next school year. All of these projects and publications are designed to influence the course of juvenile justice.

But even beyond that, the very existence of the liaison of judges, lawyers, editors, newscasters and news analysts, and law enforcement leaders can assure the availability of speakers and panelists to every public school in the state. And these speakers and panelists have the professional backgrounds and skills

ombudsman

to talk with our school children and field their questions and comments, no doubt to their mutual enlightenment. The participation of these people might be contemplated in any follow-up to the use of the *Fables* in our school system. The second edition of the publication called the *News Media and the Courts*, also produced by the Bench-Bar-Press-Broadcasters Law Enforcement Committee, could be presented in our high schools as a primary means to bring an awareness of our state-wide criminal justice system to the adolescent mind.

Even beyond all this, the mass media have done much on their own. I am sure you have seen documentaries and interview programs relating to aspects of criminal justice which have been prepared by the major networks. Some of these programs are being made available for our use. I am sure you also have read the impressive if sometimes confusing barrage of comment on criminal justice which enlivens our columns, editorial pages, and feature sections in newspapers, both in and out of the state. Much of this writing is valuable and needs to be organized and made available in more cohesive form through speakers and local editors, of course with permission of the authors. Every bit as impressive is the record of major television stations in North Carolina in producing documentaries and interview and panel programs of their own covering a wide range of criminal justice subjects. Recent documentaries by the Charlotte, Greensboro, and Durham stations on matters ranging from dope addiction to our correctional system have packed enough punch to draw widespread favorable attention. But these are only samples. There also are a number of worthwhile films already in use in our training programs in the state and elsewhere.

The problem is that the available resources remain to be tabulated, categorized, evaluated, and organized into categories. Their nature, purpose and use need to be presented systematically, and the whole range needs to be made available to local government through schools, clubs, and professional groups in careful, orderly form. Local teachers need to be trained to present local materials and conduct local seminars. Soon there will be Task Force recommendations for filling the gaps, for organizing and making available our current resources throughout the state and for building carefully, systematically, and thoroughly in a continuing way on what already has been done. Such recommendations will need the careful attention of the Law and Order Division and, perhaps, in some instances, the next General Assembly.

But this is not enough. In the ultimate, we need to establish local responsibility for seeing that the

people are updated on criminal justice. Within each community, we need people's representatives, individuals whose job it is to keep fingers on the public pulse and try to meet local informational needs on criminal justice personally and through others. What I am proposing is that we adapt the Swedish ombudsman concept to our needs in criminal justice information. Already the number of public information people in our state agencies is approaching one hundred. That total is growing. It is expanding because state agencies have discovered the need for persons with communications skills to assure that they reach the public effectively. So great is the competition for public attention that the less-skilled communicator usually is at great disadvantage without professional help.

As of this date, I am aware of only three cities and one county in North Carolina which have employed public information officers. The cities are Charlotte, Winston-Salem, and Raleigh. The county is Mecklenburg. Obviously the need is beginning to be felt in the large cities and counties. The caliber of the work of the public information officer in Winston-Salem illustrates my point. For it was not a judge or a lawyer or a law enforcement officer or an editor or a news analyst who led the way in putting across the police guidelines in Winston-Salem. It was a woman, a former newspaper reporter, now the city research and public information officer, who led the coordinated effort.

But, individually and altogether, they cannot fill the roles of local ombudsmen. The spread of public information officers to cities and towns and counties will facilitate the job. Some of the public relations people may even become effective ombudsmen for criminal justice themselves. But the job is too great to be wholly entrusted to one whose public information role involves all the areas of community public relations. We need to plan for people with criminal justice backgrounds to operate in the public behalf at regional levels on a coordinated, continuing, creative basis. Without a willingness and a plan to meet people on their home grounds, to discover what they think and feel, what they know and what they do not know, what they half-know and what they need to know, and how they react and how they do not react and how they need to react, we doom criminal justice to temporary and limited understanding at best. The public interest has to be served in criminal justice if we are to be assured of any real broad-based public understanding and support of the criminal justice system.

It should be enough to point to the widespread public interest, excitement, and confusion over the problem of drugs in our schools and universities—confusion, despite the valiant, determined job of informing and prodding now being done at the state and federal level.

An immense effort is required to reorient the thinking of the vast body of our public on corrections. Though corrections is a statewide problem, the information can only be pressed home locally. It is ironic that the Commissioner of Corrections, who has never received much praise or understanding from the general public for his work release and other rehabilitation programs, should have met with wide public commendation for the firm suppression of a riot, with attendant loss of life. The fact is that the most humane and knowledgeable correctional leader usually is popular with the public (which understands the purpose of incarceration as punishment) only when his firm side is showing. That is a sad commentary on one major aspect of criminal justice.

And then consider the dichotomy between our young adults and many of our older ones in their understanding of and attitudes toward criminal justice. It is not enough to say that one or the other age group is half-baked or hard shelled, radical or reactionary, revolutionist or repressive. Polarization is never the answer to disagreement. Ultimately youth and age, government and press, and all the public are on—must be on—the same side: the side of the public weal. This suggests that the job in truly informing the public is not one of emphasizing the phrase law and order in all its eurrent misconception and repressive aspects. It is one of presenting the range and spectrum of criminal justice for what it is—the guiding light to freedom with justice and order in our society. If we understand and use that base, our local and national vocabulary can be switched off polarizing epithets and onto unifying concepts. Then we will see our people less oriented to disrespect for the criminal justice system than to reaffirming the inalienable rights of man.

It is paradoxical that in the most over-organized country in the world, we are inadequately organized to provide public perspective on the criminal justice system. The policeman is going to school. He is receiving special training in community relations, law,

social sciences, history, communication arts, and principles of democracy. Judges and lawyers are returning to academic sites regularly for seminars to make them more knowledgeable and professional. So are juvenile court officials, probation officers, human relations directors, city and county managers, and the whole gamut of public officials.

But something more needs to be done for the general public. They aren't going to school. And, although they are being apprised of aspects of criminal justice, including changes, their access to information is sporadic, spasmodic, and hopelessly haphazard. We need coordinated communicating by capable communicators in criminal justice if the public pulse is to beat in rhythm with those of the vanguard of the scholars, practitioners, and critics in the criminal justice system. We need to plan as never before so that the public will participate in our efforts to prevent juvenile and adult crimes through helping to reshape citizen attitudes and develop programs. When this reorientation becomes a reality, our efforts to bring many more offenders back to useful citizenry through changing their skills and attitudes is assured.

Only when people understand that there is no real gap between the concepts of (1) law and order, (2) justice in the judicial process, (3) affirmation of basic rights, and (4) opportunity for a good life for all will we have achieved the kind and quality of understanding and support necessary to assure brighter horizons for criminal justice. Those horizons can only be approached through a reunited citizenry rededicated to fundamental democratic goals.

We no longer can afford public ignorance of advancement in criminal justice, any more than we can afford the brutal policemen who for so long struck fear in the hearts of poor and dispossessed, both black and white, or the lazy sheriff who took his job as a sinecure, or the corrupt judge who dispensed uneven justice, or the hide-bound editor who ignored the faults in the system. The time is past when we could afford to linger in the backwashes of innocence and ignorance. The challenge of criminal justice in all its complexity is upon us. The struggle to make the system responsive to the people requires that the people be responsive to the system. And responsive the people will be, given understanding and purpose. The challenge is clear. Let us resolve to meet it!

THE AMERICAN UNIVERSITY AND AMERICAN SOCIETY

1970

By J. Carlyle Sitterson

We meet today in difficult times for our nation and for our universities. We, here at the University of North Carolina at Chapel Hill, have been more fortunate than most in the recent weeks of deep distress on college and university campuses all over America.

As is appropriate for the University and as is consistent with the traditions of this place, students and faculty have expressed their deep concerns over the directions and emphases of American policies and American life. Such expressions were made as all of us were deeply distressed by the deaths of students on other campuses.

I am gratified to say that while there have been many peaceful demonstrations and expressions of criticism and dissent, the University has continued open on full schedule. Classes have met, there has been no violence, no building has been destroyed or forcibly occupied, there have been no troops or state police on campus, no shots fired, no personal injury to anyone, and the University has

pursued to the successful conclusion of its academic year. And I may add this has occurred without curtailment of individual freedoms of lawful rights in an atmosphere which, while on brief occasions tense, has for the most part been one of mutual respect among faculty, students, and administration. I want to here express my gratitude to this University community, students, faculty, and staff, for making this record possible.

I shall not spend time today as I usually do on these occasions in giving you something of the highlights of this past academic year other than to say it has been a fruitful one in many ways. For example, after extensive campus discussion in which students and faculty were involved, a student faculty committee recommended and the faculty council voted the retention of ROTC on this campus.

Secondly, after more than a year of campus-wide discussion, a student faculty committee recommended a more extensive revision of the undergraduate curriculum

with special emphasis upon the freshman and sophomore years, than has occurred in my lifetime—a revision that will increase student options, reduce somewhat the non-elective requirements, and include the additional feature of seminars for freshmen. Both of these recommendations, retention of ROTC and this innovative curricular change, were overwhelmingly adopted by the faculty after discussion involving both students and faculty. I mention these two most significant developments of the current year in order that you may get a sense of the continued dynamism of this campus.

I would like to go now to two matters relating to the American University that in my judgment should cause all of us great concern: first, the strong trend toward the politicizing of the University; and secondly, the indication of a widening gap between the American University and the non-campus American society.

Let us remind ourselves of the University's clearly defined and

*Commencement Weekend: The Chancellor of the University
of North Carolina at Chapel Hill addresses the alumni.*

primary responsibility: first, to seek, and hopefully, discover, new knowledge; secondly, to transmit the accumulated knowledge of past generations; and, finally, to educate professional personnel and to apply knowledge to the affairs of man. These functions must be carried on in an atmosphere of complete freedom. If this atmosphere and environment of complete freedom is to be maintained, the University cannot and must not become an instrument for any political faction or party, or instrumentality for any political issue. President Friday made the University's position on this point clear at the Board of Trustees meeting on May 25 and here I quote:

"While individual members of the University community deserve our support as they speak and act in a responsible and constructive manner, 'it must be clearly understood that the University itself, as an institution, must remain non-political.' No one, not even a majority of the members of the University community, can legitimately purport to speak for the University or for any other member of the University community on any political question. Involvement in the moulding and shaping of society through scholarly study and the expression of divergent views and free and responsible discussion of ideas are essential to the University's very existence. Political neutrality of the institutions guarantees these freedoms, and, therefore, must not be violated."

And now I come to the second matter: namely, the relationship of

the University and American society. I do not believe there has ever been a time when there has been more potential for serious alienation of the University and American society, one from the other. Many students and faculty in the academic community are profoundly disillusioned with some present American policies and with some of the emphases of contemporary American life. To be specific, they observe that the nation is now in the seventh year of an undeclared war, a war that has created deep divisions in the social fabric of our country; that our society is polluting our atmosphere and water at an alarming rate; and that many of our citizens still suffer serious deprivation and limited opportunities because of race or class.

In turn, many of our citizens of the non-academic world are shocked at what they perceive to be present on American campuses. They resent what they regard as unwarranted demonstrations; they are hurt by continued criticism of the parental generation and the failings of American society. They cannot understand what they perceive as a lack of perspective on the part of many in the American University in evaluating the achievements and failings of American society. They understandably call for a recognition of the good and the positive along with the bad and the negative. To be specific, they point to the fact that the parental generation overcame the most severe economic depression in history and simultaneously introduced major social

advances; that they joined with the other nations of the free world to turn back the forces of Fascism and thereby preserve human freedom; and that they initiated through established American institutions the most far-reaching advance in our history in opportunities for Negro people, who had too long suffered injustices and indignities.

This kind of alienation, the University versus society, cannot and must not continue. The American University needs the understanding and the support of American society. American society, in the future no less than today, will need the American University. It would indeed be inconceivable that society would dispense with the only institution equipped to provide the educated and professional personnel indispensable to the complex world in which we live, and the leadership so essential to the continued advance of man. I do not suggest that the University and society should always be in harmony. If that were to be the case, the University would not be raising the disturbing questions and making the critical observations that are essential to its role as society's principal intellectual institution.

Rather I am reminding all of us in society that our universities would be failing us if faculty and students remained silent and apathetic in the face of serious national problems. At the same time, society has a right to expect that University critics will bring to their judgments of complex issues
(Continued on inside back cover)

A FREE PRESS AND THE COURTS

By Claude Sitton

HAD THIS PANEL met to discuss this subject several years ago, the high sheriff of Horry County might have had a breach of the peace on his hands. But those were the bad old days. Some editors were charging up and down the land wrapped in the First Amendment. Some judges were proclaiming the Reardon Report as holy writ. We've come a long way since then. We've lowered our voices. We're talking to rather than at each other. Men of wisdom and fairness from both professions have entered the discussion. They're guiding us toward a negotiated peace under which both the First Amendment's guarantee of a free press and the Sixth Amendment's pledge of an impartial trial will be honored. The outlook, in short, is bright.

It is most desirable that we continue this cooperative approach in our state. The understanding and agreement achieved in more than five years of discussion by the North Carolina Bench-Bar-Press-Broadcasters Committee provide a shield against the more troubled times that may lie ahead. True, we have been spared so far from the chaos evident in some other parts of the nation. We have experienced some contention and confrontation. But the incidents of disruption and violence that we have suffered have been fortunately few and seldom deadly. However, we are Americans as well as North Carolinians. Anything that touches the nation sooner or later touches us. Society now faces a threat of revolution from the left and repression from the right. The facts leave no doubt this is so.

And the crisis created by these conflicting forces endangers our fundamental freedoms. Even now the Congress is considering so-called anticrime legislation that Senator Sam Ervin has called "a blueprint for a police state." These bills would permit preventive detention. They would legitimize "no-knock" search and seizure. They would vitiate restrictions on wiretapping. These are but a few examples of the repressive nature of this legislation.

The polarization of opinion and the resort to extremism that often accompanies it even threaten the orderly process of justice. Disrespect and contempt are displayed for and in our courts. There was the ugly spectacle of rampant hoodlumism at the trial of the Chicago Seven. There were the years of vilification and abuse to which former Chief Justice Warren was subjected before he left the Supreme Court.

If you think the courts have been singled out for attention, consider the news media. We are under attack from left and right. Efforts to intimidate press, radio, and television are commonplace. Demands for outright control of television are put forth boldly, with no trace of shame or apology. These, then, are perilous times in our nation for all who love freedom.

The day may come in this runaway world when even in North Carolina society's will and capacity to control its affairs will be challenged. If it does, understanding and communication among bench, bar, and press will stand the state in good stead.

For, to a large extent, the law and journalism share responsibility as protectors of society's most important values. The press has championed a free and independent judiciary. We ask nothing more in return.

I plead no special privilege for the press. Newspapers are entitled only to the fundamental rights given all citizens under the Constitution. In covering criminal trials, we simply serve as the public's representatives. But the public's right to know about the public's business we shall defend. This right, of course, is preserved and protected by the First Amendment:

"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. . . ."

This amendment speaks in absolutes. The Supreme Court has referred to freedom of the press as an absolute freedom. Certain restrictions may be imposed in time of war or national emergency. Barring these, however, the press is free from prior restraint. It can print what it wishes. Should what it prints be libelous, obscene, contemptuous, or treasonous, the printer must answer for his action.

The other fundamental right with which we are here concerned is embodied in the Sixth Amendment. It is important to note what it does and does not say:

"In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury. . . ."

The Sixth Amendment does not call for justice in a vacuum. It specifies an "impartial" jury—not one that is ignorant, empty headed, or uninformed. Yet the latter seems to be the aim of the American Bar Association's Standards Relating to Fair Trial and Free Press. This, of course, is the much-amended report named for Justice Paul C. Reardon of the Supreme Judicial Court of Massachusetts. So broad and vague is that report that it is difficult to summarize. But in this layman's view it simply seeks to virtually gag both defense and prosecution in a criminal case. And it would do so from the filing of a charge through—and in some cases after—the rendering of a verdict. Some lower courts have reacted to the report by assuming that any publicity per se has the potential of denying the defendant a fair trial. The Reardon Report makes no such contention. But that has been its effect even in some jurisdictions in which it has no standing.

Justice Reardon and his supporters show little faith in the character and wisdom of juries. They apparently feel that when one becomes a juror he takes leave of his judgment and common sense. The reverse is true. Jury service often brings out the best in us. The typical juror dismisses any pre-

The author is managing editor of the **Raleigh News and Observer**. This address was presented as part of a panel at the annual meeting of North Carolina superior court judges. An address by Chief Justice Raymond Mallard of the North Carolina Court of Appeals on the same panel will appear in an early issue.

conceived idea about the guilt or innocence of the defendant. Then he tries his best to render a fair judgment on the evidence. The district attorney of Los Angeles County, Calif., Evelle J. Younger, said somewhat the same thing in the February issue of the **ABA Journal**. Younger finds a fallacy in the underlying reasoning of the ABA's Fair Trial and Free Press Standards. Here's what he says: "The standards and orders that are prepared under their aegis are based on a false premise that potential jurors are inherently unable or unwilling to decide cases on the evidence presented in court and to disregard news reports. It has been my experience and the experience of the staff of my office that quite the contrary is true. . . . Too often the legal profession and the appellate courts do not give jurors adequate credit for having the integrity and intelligence they do in fact possess."

PRE-TRIAL PUBLICITY has been with us a long time. It existed long before Gutenberg invented movable type. It was called gossip. As someone has said, this word of mouth can be far more pervasive and virulent, far less accurate and precise than the written word in the hands of a skilled and responsible reporter. And no one has proposed a prior restraint on gossip.

Does publicity given criminal cases cause any real conflict between the First and Sixth Amendments? William C. Lassiter, North Carolina's most knowledgeable man on the law of the press, looked into this question in 1967. He found not a single case in which our Supreme Court set aside a conviction on the ground of prejudicial publicity—not one. Nationally, the picture is quite similar. The American Newspaper Publishers Association made a study of the more than 40,000 jury trials of felony cases in the period from January 25, 1963, to February 11, 1965. The question of prejudice was raised on appeal in only 101 of them. In only 51 of those

cases did attorneys for either side bring up the issue of prejudicial news reports. Out of those 51, relief was granted in only five.

There are exceptional cases in which the right of fair trial has been violated. Sometimes it has been the fault of the bench, sometimes of the bar, sometimes of the press, and sometimes of all three. In the Indiana case of *Irvin v. Dowd*, both radio and newspapers engaged in a flagrant campaign to convict the defendant. The Supreme Court took note of this in due course and reversed the conviction. In the case of *Rideau v. Louisiana*, the defendant's confession to the sheriff was actually broadcast on television. The Supreme Court reversed his conviction. The trial of Billy Sol Estes was televised. The court reversed that one too. Relief from Sixth Amendment violations is certainly available on appeal.

However, most fair-trial violations can be prevented in the trial courts themselves. And this can be done without any denial of the public's right to know. Judges have the authority. It is provided by change of venue, change of venire, continuance, severance, voir dire, blue-ribbon juries, isolation of the jury, and instructions to the jury. The Supreme Court pointed this out in granting a new trial to Dr. Sam Sheppard, the Cleveland osteopath. The court did not call for any prior restraint on the right of the press to publish. This is true even though the request for a new trial was based on the contention that the trial judge had failed to protect Sheppard from pervasive and prejudicial publicity.

Sheppard, oddly enough, was the case that gave so much impetus to the campaign by Justice Reardon for press restrictions. Yet Justice Tom C. Clark, who wrote the opinion, denied these were necessary. He asserted time and again after the **Sheppard** decision that the courts had sufficient power. And he said that power lay in the procedural remedies listed above.

There are other means for assuring that the trial that generates widespread interest does not turn into a circus. There are times when newsmen by their very numbers can disrupt court proceedings. But the problem is not so much their presence as it is the absence of orderly, systematic procedures for them to follow. After all, several hundred reporters routinely cover presidential news conferences. Those assigned to presidential inaugural ceremonies and the moon launchings at Cape Kennedy number in the thousands. But they create no interference. Why? Systematic arrangements are made to permit them to do their work. Most reporters are responsible and cooperative. They do not object to fair and clearly defined ground rules for trial coverage. They actually welcome them.

Let me urge you to establish a working relationship of mutual trust and respect with the reporters

who cover your court. Some of them, believe it or not, are intimidated by judges. They think you are unapproachable. This is especially true of the young and inexperienced, the ones who need your help most. A good relationship will pay dividends not only for you and the newspaper but also for your community. It assures more accurate, more thorough, and more comprehensive coverage of the courts.

This is not to deny that the press is human and therefore imperfect. Reporters sometimes do violence to the rights of the accused—unintentionally and inadvertently but nonetheless regrettably. But the answer to that does not lie in the Reardon recommendations. It can only come from the voluntary restraints on pre-trial publicity worked out between the law and the press. This is the current trend. It is an encouraging and healthy one.

VOLUNTARY STATEMENTS of principles and/or guidelines have been worked out in twenty-two states. Exploratory meetings of press-bar-bench groups are proceeding in eight others. We have such a set of voluntary guidelines in North Carolina. They were developed by the Bench-Bar-Pres-Broadcasters Committee, which meets regularly at the Institute of Government in Chapel Hill. I have no specific objections to these guidelines. They do contain more detail than is necessary. However, they provide a reminder to the press that a man is innocent until proved guilty. They discourage trial by newspaper. This is all to the good.

But guidelines are just that. They are not hard and fast rules. They are not binding. No newspaper delegates to any committee the right to decide what it shall or shall not publish. Don't forget, it is the **public's** right to know, not the newspaper's. It would be the height of presumption for the newspaper to assume that it could bargain away that right.

The safeguards are adequate. They are not fool-proof. Inevitably, violations of the Sixth Amendment's fair-trial guarantee will take place in the future. It is to be hoped that when they do, they will be corrected on appeal. But the price of perfection would be the emasculation of the First Amendment. Even then, it is doubtful that perfection could be achieved. The press, and thus the public, must maintain its right to keep the system of justice under scrutiny.

WHAT WOULD HAVE HAPPENED in Philadelphia, Miss., after three civil rights workers were slain had not the press been free to challenge that system? I was there and I can tell you. Perhaps you know that a deputy sheriff, a policeman, and others with less formal law enforcement ties were involved. Not only that, the community as a whole

positively discouraged any attempt to expose the crime. Threats of violence were made against anyone from within or without who held a contrary point of view. Had there been no newspapermen prying into the disappearance of the three victims, those slayings would be an unsolved mystery today. No bodies would have been found. No one would have been indicted. No one would have been tried. No one would have been convicted.

There are times when the Reardon restrictions could endanger the national security. The assassination of President John F. Kennedy provides a striking example. Suppose no one had been free to tell the nation that one man was the assassin. Suppose no one had been free to make it known that no international conspiracy had been found. This nation could have been plunged into chaos. Criticism of the subsequent handling of the case by the Dallas authorities seems justified. Perhaps they did release an unwarranted amount of information about their investigation of Lee Harvey Oswald. The Warren Commission thought so and blamed the press for publishing it. The commission said a fair trial for Oswald would have been a patent impossibility. And what did the Warren Commission do? It turned right around and tried Oswald in absentia. I think the trial was a fair one.

Consider, if you will, events in another celebrated case—that of Sirhan Sirhan and his trial and conviction for the assassination of Senator Robert Kennedy. The Reardon Report has no standing in California. But the superior court judge trying the case has been infected by it. He evoked a gag rule on all connected with the case—parties to the action, attorneys, the prosecutor and his aides, the police and other public officials, grand jurors, witnesses, and what have you. His reasoning was

that “any out-of-court statements relating to this case may interfere with the right of the defendant to a fair trial.”

The results of the judge’s actions in **Sirhan** were as predictable as they were unfortunate. One example: The press asked District Attorney Younger if there were evidence that President Nasser instigated the assassination. There was none. But, under the court’s gag rule, Younger could only reply “no comment.” This created the impression that such evidence existed. The court placed a premium on the Sixth Amendment. And, as Younger says, “. . . it virtually ignored the right of the people to be informed by responsible public officials.”

Perhaps more and more judges, solicitors, and lawyers are liking the Reardon recommendations less and less. When the public comes to know what those recommendations mean, the public may not like them either. The press will be happy to relay that dissatisfaction to the bench and bar. But, as it now stands, those recommendations have no direct effect upon newspapers. If that situation changes, newspapers will take whatever action they deem necessary. For newspapers do not intend to permit either the bench or the bar to assume the editor’s function, even through judicial censorship.

However, responsible newspapers will continue to work with you toward legitimate ends. These certainly include the balancing of the rights of free press and fair trial so that neither suffers. That balance can be achieved within our present system. We need no radical change. G. K. Chesterton once said of Christianity that it “has not been tried and found wanting. It has been found difficult, and left untried.” The same is true of the system that protects the First and Sixth Amendments. Let’s give that system a fair trial.

The University . . . *(Continued from page 17)*

the fairness, objectivity and perspective rightfully associated with genuine intellectual inquiry and sound scholarship.

May I now be more specific and come closer home. The University of North Carolina and the State of North Carolina were both founded in a revolutionary era almost 200 years ago. In these two intervening centuries their fortunes, sometimes good, sometimes troublous, have been intertwined. The people of

our State have maintained a deep faith in the University and this has been accompanied by a growing support for enlarged educational programs.

The University, in turn, has sent forth into the life of North Carolina scores of thousands who came to this campus as boys and girls and went forth as men and women to play their part in man’s continual quest for a better society, in which human aspirations can have

greater fulfillment.

I will not here detail the record that the State of North Carolina and its University, together, have made over these years. I will say only this: In my judgment, North Carolina is a vigorous, healthy, and dynamic commonwealth, and its University is one of the great Universities of the world.

It is the responsibility of us all to assure the continued progress of our State and our University.

Tobacco is first with us.

As it has been for almost a century, tobacco continues to be the foundation of our business.

We are proud of that fact, and of our tobacco friends who have made it possible. Growers. Dealers. Warehousemen. Wholesalers. Vendors. Everyone in the tobacco industry.

With their help, we are first in tobacco sales in the U.S.A.—and we intend to stay that way.

But, as a modern-thinking company, we have expanded into other areas: Convenience foods and beverages. Aluminum. Packaging. Corn Refining Products. Containerized Shipping.

With tobacco as the foundation, these changes have established a broader base for continued growth. That's why we formed a new company—R. J. Reynolds Industries, Inc.

But we're still the same people, and our tobacco business will continue under the same name that has carried it to leadership of the industry.

R. J. Reynolds Tobacco Company

Winston-Salem, North Carolina