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The cover picture shows the first six chief district judges as they met for their initial conference. Those seated are Judge Felix Alley, 30th Judicial District; Judge Fentress Horner, 1st Judicial District; Judge J. Frank Huskins, Administrative Officer of the Courts; Judge Mary Gaither Whitener, 25th Judicial District; Judge Coy Brewer, 12th Judicial District, Judge Lawson Moore, 14th Judicial District, and Judge R. F. Floyd, 16th Judicial District, are standing.

In the Wake of Miranda *by L. Poindexter Watts*

[EDITOR'S NOTE: *This article is based on several memoranda of the author treating problems the police face in the light of recent decisions of the Supreme Court of the United States placing constitutional limitations on the use of evidence gathered by law enforcement officers. Mr. Watts is an assistant director of the Institute whose fields include the law of arrest.*]

Watts

At the end of a recent day-long session attended by several hundred lawyers, judges, police, and prosecution officials and devoted to exploring the meaning of the *Escobedo*[1] and *Miranda*[2] cases, one panel member protested that up to a third of the audience consisted of police officials and that they were not being helped at all by some of the legal fine points that were at the moment being discussed. Another panel member, challenging this, asked the police officials in the audience to raise their hands. The showing was of something under one fifth of the group. The first speaker—noting that the hour was late and that the size of the audience had dwindled—said, "The smart ones have already gone."

Although this was one of the few humorous moments in a lengthy and serious meeting, it vividly illustrated an important point. At the very center of *Escobedo* and *Miranda* is a distrust of the police. Mr. Justice White put the matter quite clearly in his dissent in *Escobedo v. Illinois*:[3]

> This new American judges' rule, which is to be applied in both federal and state courts, is perhaps thought to be a necessary safeguard against the possibility of extorted confessions. To this extent it reflects a deep-seated distrust of law enforcement officers everywhere, unsupported by relevant data or current material based upon our own experience. Obviously law enforcement officers can make mistakes and exceed their authority, as today's decision shows that even judges can do, but I have somewhat more faith than the Court evidently has in the ability and desire of prosecutors and of the power of the appellate courts to discern and correct such violations of the law.

Any treatment of *Escobedo, Miranda, Mapp,*[4] and a number of other decisions placing restrictions on the use of evidence obtained in an unconstitutional manner must include discussion of claimed police violations of individual liberties and whether there is any alternative to the admittedly drastic remedy of throwing the evidence out of court and thus in many instances letting a clearly guilty man go free.

The speaker at the meeting also implied another point. The Court majority has made its decision, right or wrong, and its pronouncement will almost surely continue to be the law into the indefinite future. It does not help either to kick the Court—or for those sympathetic to the Court majority to continue to kick the police. The ruling must be lived with; there must be a cooperative effort by both court and police officials to find ways of enforcing the law without violating the old-new constitutional rights that are now being taken out of Fourth of July speeches and put into binding court decisions. On September 16 Governor Moore in his State-Wide Meeting on Law and Order put the matter this way:

> [I]n the meantime, we as American citizens must, of course, comply with these Court decisions. Crimes are still being committed and the job of law enforcement has become more difficult and complex than ever before.
>
> However, the job has not become impossible by any means. This fact has been aptly demonstrated in many cases since the Miranda decision was handed down. Careful, effective and scientific methods utilized by trained, capable police officers can still find the guilty. . . .

1. Escobedo v. Illinois, 378 U.S. 478 (1964).
2. Miranda v. Arizona, 384 U.S. 436 (1966).
3. 378 U.S. at 498-99.
4. Mapp v. Ohio, 367 U.S. 643 (1961).

Despite the clear need to go forward with the minimum of recrimination, it is still important to go back into the history that shaped the recent decisions. To do so will help in understanding them and predicting their future reach. Most people, in tracing the legal history of *Miranda*, go back to *Brown v. Mississippi*,[5] as it was the first state criminal case in which the Supreme Court of the United States threw out a confession on constitutional grounds. There the state court had accepted a confession despite the use of shocking physical torture; then, as now, many in police circles said that the decision "handcuffed" the police. In my opinion, however, it is necessary to go back a good deal earlier and to look at a great deal more than just confessions cases to understand *Miranda*. Distrust of the police is very old in Anglo-American society, and its manifestation today is part of one of the great constitutional debates in our history.[6]

History

A Frenchman remarking upon English resistance in the eighteenth century to the idea of a police force such as had been set up in France said:

> [T]hey are afraid of troops, and . . . had rather be robb'd upon the highways than in their houses, and by wretches of desperate fortune than by ministers.[7]

Another commentator set down the following opinion:

> England is a Country of Liberty, every one lives there as he wishes; which, no doubt, is the Source of the many extraordinary Characters among them, Heroes in Evil as well as in Good. . . .[8]

Despite the lack of a police in eighteenth-century England, the serious crime rate, and the large number of public disturbances that occurred especially in crowded London, foreign observers also noted an English attachment to the ideal of law and order. Several commented upon the prestige of the magistrates and near riots which were broken up by their exhortations to the forming mobs.

English ideas of both law and order and liberty —plus the traditional distrust of the police—carried over into the English colonies in America. These English convictions were the backbone of our resistance to the use of royal power in the American colonies and formed one of the leading causes of the Revolutionary War. The fear of oppressive governmental power was so strong that the Constitution replacing the Articles of Confederation and giving the nation a strong central government could not have been ratified but upon the promise that a specific Bill of Rights would be submitted as amendments to the Constitution. And North Carolina, in its conservative fashion, refused to ratify the new federal constitution until the Bill of Rights had been submitted to the states.

The government that emerged was noteworthy not only for its separation of powers among three branches of government but also for its division of total governmental power between state and federal government. There was a distinct preference for limiting the power of the central government and for reserving the major powers of police to the states—the state governments being closer to the people.

The dominant figure in law enforcement for the first century in our history was the county sheriff. It was no accident that in this country the office was usually one gained by election—thus making the sheriff subject to the will of the majority of the voters in his county. With growing urbanization, however, the European concept of a police force for our cities and towns displaced the town or township constable and deputy sheriff. Under the rule of the sheriff, the citizens in their own neighborhoods were the ones essentially responsible for the preservation of order. The sheriff would mainly arrest after the fact; he could deputize citizens; magistrates, majors, and sheriffs could call upon citizens to aid them in suppressing riots and other breaches of the peace. Under the rule of the police, there was more emphasis upon keeping order on a preventive basis. Patrols were open and routine; there was a reason for putting the police in uniforms. With the rise of the police, the duty of law enforcement became a full-time career rather than the part-time activity of an official subject to the hazards of political fortune. Today, of course, most of our sheriffs' departments take the police viewpoint toward law enforcement. There are patrols, detective assignments, and traffic functions; also, there are salaried deputies who do not lose their jobs when the sheriff loses the election.

Given our historical fear of authority, it is surprising that there was not more resistance to the police establishment, but our cities' need in a rowdy, growing country was great—and besides, the police were effectively subject to local control.

Then, in the twentieth century, Henry Ford transformed our country. With the automobile age, crime ceased to be local, and with the onset of Prohibition, organized crime became highly profitable. Thanks in part to the movies, the country in the twenties thrilled to a game of cops and robbers which was usually climaxed with high-speed automobile chases, and this continued into the thirties with G-Men pursuing bank robbers. To meet this change in the patterns of crime, there was of necessity a corresponding change in the patterns of law enforcement. City police departments greatly expanded, and new agencies were created. The following dates tell their own story. The Federal Bureau of Investigation, founded in 1908, began to achieve

5. 297 U.S. 278 (1936).
6. For an excellent brief coverage of confessions cases between 1936 and 1963, see SMITH, CONFESSIONS AND SCIENTIFIC EVIDENCE 84-96 (1963).
7. 1 RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL LAW 725 (1948).
8. *Id.* at 712.

its place as a career law enforcement service with the appointment of John Edgar Hoover in 1924. The North Carolina State Highway Patrol was founded in 1929; the State Bureau of Investigation, in 1937.

Yet the tradition of restricting police jurisdiction has prevailed. The FBI is noted for the care it has traditionally exercised to stay within its jurisdictional limitations. Even today the State Highway Patrol in North Carolina is far from being a state police, though there has been a gradual expansion of its jurisdiction over the years. The jurisdiction of the SBI is limited.

By the end of the twenties it was apparent that this country faced a crisis with respect to law enforcement. Crime commissions became a commonplace in those years. President Hoover appointed the Wickersham Commission,[9] which made the most monumental study of law and order and law enforcement yet undertaken in the United States. The 1931 report of the Wickersham Commission highlighted both abuses by and inadequacies of law enforcement agencies throughout the nation. The country was shocked to find from the official record how widespread were such police practices as physical torture to gain confessions—the "third degree."[10] This situation had grown up without anyone's really noticing it. The old sheriffs in their enforcement had counties with relatively stable populations. Even the poor (at least if white) had their place in society, and abuse of power could lose elections. The police, however, expanded in the cities with a changing population base, where there was an influx of immigrants and others with relatively little political leverage. The police were courteous in their dealings with the dominant middle classes, and there was little heed given to the complaints of the muckrakers during our country's half century of self-satisfaction (roughly 1875-1925).

The *Wickersham Report* was received with hostility by enforcement agencies, yet in a real sense it marked the beginning of serious efforts toward and public support for the professionalization of the police.

Present Problems

After the war years, the 1950's and 1960's continued to be times of great social change. Among our dominant problems now are 1) the population explosion; 2) a technological explosion usually summed up in the word "automation" and denoting a decrease of demand for unskilled and agricultural labor during the greatest boom in our history; 3) a vast migration of the rural poor, many of them Negro, to the cities at the very time that there is a flight of middle-class city workers to suburban residential communities; 4) the far too successful effort by Madison Avenue advertising executives to convince the populace, including the poverty stricken, through radio and television that everyone deserves to share (immediately and on credit) in the "American way of life" and that this consists of a suburban single-family home, two cars in the garage, a color television set, a deep-freeze, and various other luxury appliances, in addition to such comparative necessities as a washing machine, a dryer, a dishwasher, a stove, and a refrigerator.

None of these problems are race problems, but it is clear that the Negro figures prominently in each one of them. When you add to these vexing problems the tensions generated by lingering race prejudice and the growingly militant civil rights movement, stir in the miracle of modern communications which makes events in Little Rock, Selma, Watts, and Harlem front-page news events around the world, and throw in a dash of the new Cold War which is shaping itself into an East-West white-nonwhite power struggle, you have a most explosive mixture.

Decisions of Supreme Court of the United States

Against this background of sweeping social change which is challenging law enforcement today, it is necessary to discuss the part played by the Supreme Court of the United States. It seems fairly obvious that the Court has not caused these vast forces of change and unrest which have troubled and will continue to trouble the police, though the Court undoubtedly has played its part in releasing some of the brakes. Directly in the area of law enforcement, the Court since 1932 has taken an increasingly active role in supervising constitutional aspects of state criminal proceedings. It seems significant to me that *Powell v. Alabama*,[11] the "Scottsboro Case," was handed down the year following the *Wickersham Report*.

The growing role of the Supreme Court in curbing law enforcement practices has been set out again and again. Yet it is necessary to trace at least the broad outlines of this story to understand *Miranda*. Although it leaves out many important cases, a memorandum of mine written in January, 1966,[12] touches most of the bases in brief fashion. Part of it is reprinted below:

> The order-keeping and preventive aspects of work by the police, as well as a number of other community services which are performed, are not usually supervised by the courts. Nevertheless, the chief job of the police—the detection of crime, apprehension of criminals, and gathering of evidence to secure their conviction—is almost completely oriented to the needs of courts in

9. Officially known as the National Commission on Law Observance and Enforcement, the Commission was almost universally known in terms of its chairman, George W. Wickersham.

10. See especially NAT'L COMM'N ON LAW OBSERVANCE AND ENFORCEMENT, REP'T NO. 11, LAWLESSNESS IN LAW ENFORCEMENT (1931).

11. 287 U.S. 45 (1932).

12. Before *Miranda*.

trying persons accused of crime. Police officers take an oath to support the constitutions of their state and of the United States, and are quite literally "officers of the court."

With the rapid growth of crime early in this century and the consequent rapid development of the modern police department (which is probably less than a century old in many places in this country), many local trial courts and local enforcement officers quite naturally reacted as if they were engaged in a war on crime. And in war, of course, anything goes. The countering influences designed to slow the police (and the trial courts) down and make them observe in some part the constitutional rights of individuals has come primarily from the appellate courts of the nation in reviewing convictions in criminal cases. For a long time the appellate courts stood aside and waited for growing professionalization of the police to bring about self-restraint, for the prosecuting attorneys who counsel enforcement officers and in many ways direct their activities to stop oppressive police practices, for the mayor, city manager, and county commissioners with the power to hire and fire enforcement officers to take remedial steps. When it appeared that the others would not do the job, higher courts in a number of states began taking the initiative. In recent years the Supreme Court of the United States has taken the lead and has grown more and more insistent that those enforcing the law must obey the law.

The most effective weapon the higher courts have found is to reduce incentive by excluding from evidence anything gained through a violation of an individual's constitutional rights. The three most important areas in which this approach has been used are:

(1) Excluding the results of unlawful searches and seizures.
(2) Excluding coerced confessions.
(3) Excluding information gained from the defendant at a time when he was being denied his right to counsel.

- *Unlawful Searches and Seizures*

The first important case was *Weeks v. United States*.[13] This held that when *federal* officers obtained property by means of an unconstitutional search the evidence would be excluded from *federal* court. [It should be noted that the Court has restricted federal officers a good many years before state officers in a number of these constitutional areas.]

Wolf v. Colorado[14] held for the first time that the Fourth Amendment protections against unreasonable searches and seizures did apply to the states also (through the due process clause of the Fourteenth Amendment). *Wolf*, however, did not require the states to exclude the unconstitutionally obtained evidence.

[The next significant case was *Rochin v. California*.[15] Here illegally seized evidence was excluded because the conduct of the state officers was shocking enough to violate basic "due process." Later cases indicated, however, that the shock-the-conscience test of *Rochin* was extremely hard for the lower courts to apply.]

Mapp v. Ohio[16] . . . [repudiated *Wolf* and *Rochin* and] held that all courts in the nation must refuse to accept evidence which has been unconstitutionally obtained in violation of Fourth Amendment rights.

Mapp had no immediate impact on North Carolina in 1961 (it was something of a bombshell in a number of other states), for North Carolina already had a statute excluding evidence unlawfully obtained without a search warrant (or with an illegal one).[17] North Carolina enforcement officers had their first serious encounter with *Mapp* when a decision implementing the *Mapp* principle was announced. *Aguilar v. Texas*,[18] held that state search warrants must meet federal constitutional requirements by containing a written description of the *facts* constituting probable cause for making the search.

One other area in which the *Mapp* rule might affect North Carolina police practices is in the exclusion of evidence which indirectly resulted from an unlawful search. (This is sometimes called the fruit-of-the-poisonous-tree doctrine.) For example, in *Preston v. United States*,[19] a confession was obtained when the defendants were confronted with burglar's tools which had been unconstitutionally obtained from the trunk of the defendant's car. The Court excluded the confession and sent the case back for a new trial.

- *Coerced Confessions*

Courts in this country have generally rejected involuntary or coerced confessions because they are not likely to be trustworthy. In *Brown v. Mississippi*,[20] the Court made it clear that confessions gained by torture violated the due process clause of the Fourteenth Amendment as well as the usual rules of evidence law and must be excluded. Since then, the Court has had great difficulty in deciding a number of state cases where apparently no force was used but there were other coercive practices—such as continued "grilling" for hours or days. The Court finally got to the point that its decision whether "due

13. 232 U.S. 283 (1914).
14. 338 U.S. 25 (1949).
15. 343 U.S. 165 (1952).
16. 367 U.S. 643 (1961).
17. N.C. Gen. Stat. § 15-27.1 (1965).
18. 378 U.S. 108 (1964).
19. 376 U.S. 364 (1964).
20. 297 U.S. 278 (1936).

process" had been violated had to turn on an individual evaluation of each interrogation case. Factors such as the age and experience of the defendant, the length of questioning, and other tactics used all had to be taken into account.

In *federal* courts, however, the Court . . . [quite early in *McNabb v. United States*[21]] moved to eliminate the need for these difficult evaluations by ruling that any confession gained after secret interrogation of long duration would be automatically presumed coerced. The *McNabb* decision has since been implemented by *Mallory v. United States*.[22] The *Mallory* rule is built upon the legal requirement that an arrested person must be taken immediately before a committing magistrate; if there is any unnecessary delay (such as to question the prisoner) the custody becomes unlawful and any confession obtained during the period of unlawful custody is excluded.

So far, the *McNabb-Mallory* rule has *not* been applied to state courts, though the *Escobedo* rule to be discussed below may turn this into an academic question.[23]

- *Denial of Right to Counsel*

In the past the cases on right to counsel did not usually have any particular impact on police practices. This was suddenly changed with *Escobedo v. Illinois*.[24] *Escobedo* was essentially one of those very difficult borderline "confessions" cases—but the Court decided it in an unorthodox fashion. It bypassed all former "confession" law and held that the confession of the defendant must be excluded from evidence because it was secured after he had been denied his constitutional right to counsel. *Escobedo* has provoked an avalanche of writing by lawyers, judges, professors, politicians, and others. . . .

Since the above memorandum was written, *Miranda v. Arizona*,[25] has opened a fourth important area for application of the exclusionary rule: exclusion of evidence gained through in-custody interrogation of a defendant in violation of the privilege against self-incrimination. This constitutional provision had not been mentioned in the memorandum because prior cases excluding evidence had generally turned on in-court applications of the rule and did not affect police to any great extent. The seeds of the application of the rule to out-of-court situations, however, had clearly been sown in *Escobedo*. That was part of the reason for all the commotion in the wake of *Escobedo*.

It seems clear, then, that the decisions restricting various law enforcement practices are well within the tradition of the historic English distrust of the police and of strong governmental power. But the Supreme Court of the United States in its decisions enlarging individual constitutional freedoms has *not* singled out the police. State courts, draft boards, legislative investigating committees, professional licensing boards, film-censorship boards, public schools authorities requiring religious ceremonies in school, the Department of State attempting to deport aliens, and other federal and state administrative agencies —all at one time or another have had their procedures vetoed by the Court. Although many thoughtful observers question the wisdom of the Court's taking such an active role in shaping national policy issues, it would be absurd to say that the Court is "for" criminals and "against" law enforcement.

Recent decisions refusing to give retroactive application to certain of the new constitutional rulings bear this out.[26] Another bit of evidence is the decision in *Schmerber v. California*,[27] decided the week following *Miranda v. Arizona*. There the Court refused to extend the privilege against self-incrimination to cover physical evidence. The case appears to announce a rule that will broadly uphold the validity of compulsory state programs for administering chemical tests for intoxication to suspected drunken drivers. In addition, the decisions in the civil rights area increasingly stress that once free expression of ideas and protest cross over into acts of violence or acts which involve a clear and present danger, the police have plenary authority to act.

The Issues Created by Miranda v. Arizona

There has been such an outpouring of discussion on *Escobedo v. Illinois* and *Miranda v. Arizona* that I am loath to belabor these cases.[28]

In the wake of *Miranda* I would make the following suggestions to law enforcement officials:

- (1) There is strong evidence that the net effect of previous appellate court rulings protecting the individual rights of criminal defendants and suspects has been to increase police efficiency. Exclusion of evidence illegally obtained has had the effect of banning police "short cuts" (and sloppy police work); the result has been more thorough police investigations and an increase, if anything, in the conviction rate. The so-called *Horsky Report*[29] from the District of Columbia investigating the results of full implementation of the *McNabb-Mallory* rule is often cited in this connection.[30]

21. 318 U.S. 332 (1943).
22. 354 U.S. 449 (1957).
23. This prediction has been more than fulfilled. *Escobedo* as modified by *Miranda* goes substantially beyond *McNabb-Mallory* in curtailing questioning of prisoners in custody.
24. 378 U.S. 478 (1964).
25. 384 U.S. 436 (1966).
26. See Johnson v. New Jersey, 384 U.S. 719 (1966); Tehan v. Shott, 383 U.S. 406 (1966); Linkletter v. Walker, 381 U.S. 618 (1965).
27. 384 U.S. 757 (1966).
28. For an analysis of *Miranda*, which many people believe essentially supersedes *Escobedo*, see Watts, *Memorandum to Officials Concerned with the Administration of Justice: Decision in the Post-Escobedo Cases*, Popular Government, Sept. 1966, p. 9.
29. D.C. Comm. on Police Arrests for Investigation, Rep't and Recommendations (1962).
30. See also LaFave, *Improving Police Performance Through the Exclusionary Rule* (pts. 1 & 2), 30 Mo. L. Rev. 391, 566 (1965).

• (2) With respect to *Miranda*, the evidence is not in. Most people suspect the reliance on confessions in police work is so central in many classes of cases that extension of the privilege against self-incrimination to confessions will inevitably cut down convictions. My personal feeling is that this is true as to *certain classes* of important cases for the short run, but that eventually courts and juries will modify what they consider evidence "beyond a reasonable doubt" in the critical types of cases in which confessions may no longer be obtained. An illustration of this principle may be found in the fact that courts every day throw out misdemeanor cases for lack of proof, the norm for such cases being almost totally conclusive evidence, when an equivalent amount of circumstantial evidence would be more than sufficient to convict someone of murder.

Despite my conclusion that *Miranda* will handicap the police in certain classes of cases, it is at least clear from the few statistics that have turned up that many of the police statements following *Miranda* were highly exaggerated. I am including some of the figures currently being debated for what they are worth. Frankly, I think it is much too early to tell what the impact of *Miranda* will be. One big reason is this: studies made fairly recently have shown that a large portion of the population believed that there was a legal duty to answer questions put by the police. The publicity surrounding *Miranda* may gradually affect public reactions when it becomes clearly known that though there is a citizen's duty to cooperate with the police, there is no legal requirement to answer incriminating questions.

Brooklyn Supreme Court Justice[31] Nathan R. Sobel has indicated in a pre-*Miranda* study of 1,000 indictments that fewer than ten per cent were cases in which confessions were vital to the conviction.[32] The Sobel figures were widely attacked, and the prosecutor in New York County, Frank S. Hogan:

> observed that in ninety-one homicide cases, confessions were to be offered in sixty-two (or 68% of the cases), and that in twenty-five of the cases (or 27%) the indictments could not have been obtained without the confessions. . . .[33]

Another set of pre-*Miranda* statistics was compiled by Chief of Detectives Vincent W. Piersante of the Detroit Police Department. He sent a letter which went to the commanding officers in the criminal investigation division of the Department in early 1965 requiring that persons under interrogation be given the *Escobedo* warnings. Chief Piersante released figures comparing confessions during a nine-month period in 1965 with his figures for 1961. One writer summarized them as follows:

> In robberies, in 1961, confessions were obtained in 81.8% of the cases, and they were deemed essential in 26% of the cases; in 1965, confessions were obtained in 83% of the cases and deemed essential in 29%. In forcible rapes, in 1961, confessions were obtained in 24.3% of the cases, and in 1965, in 19% of the cases; none of the confessions was deemed essential, because it is the policy of the department not to issue warrants in such cases on the basis of a confession without extrinsic evidentiary support. Lumping all categories of crime surveyed, we find that in 1961 confessions were obtained in 60.8% of the cases, and were deemed essential in 13.1% of the cases; in 1965, confessions were obtained in 58% of the cases, but were deemed essential in only 11.3% of the cases.[34]

The latest set of statistics relates in part to the period following *Miranda*. Evelle J. Younger, District Attorney of Los Angeles County, released in mid-August a statistical study of felony cases following *Miranda*. Of the cases that reached the trial stage after *Miranda* (although a number had been investigated before that decision), fewer than ten per cent were ones in which the trial deputies deemed the confession to be vital. Fifty per cent of the entire bulk of cases which were processed upon police request for formal initiation of prosecution were ones in which the suspect had confessed despite the fact that warnings were given to them.[35]

• (3) Though *Miranda* will make the job of law enforcement more difficult—and at a time when social conditions are increasing the complexity of the job anyhow—the immediate result of the case will be to place more emphasis on (a) police training and (b) scientific methods of law enforcement.[36] *Schmerber v. California* may be cited on this second point.

Like it or not, those who hold the purse strings of local government will be forced by the tide of events to increase salaries of law enforcement officers in order that their agencies may attract and hold qualified men. The new constitutional decisions will demand a level of education, competence, and judgment from individual police officers that, unfortunately, local governments have not always been willing to demand—and pay for—in the past.

31. Equivalent to a superior court judge in North Carolina.
32. See N.Y. Law Journal, Nov. 22, 1965, p. 1.
33. Kuh, *The "Rest of Us" in the "Policing the Police" Controversy*, 57 J. Crim. L., C. & P.S. 244, 245 (1966).
34. Souris, *Stop and Frisk or Arrest and Search—The Use and Misuse of Euphemisms*, 57 J. Crim. L., C. & P.S. 251, 255 (1966).
35. See Younger, Results of Survey Conducted in the District Attorney's Office of Los Angeles County Regarding the Effects of *Dorado* and *Miranda* Decisions Upon the Prosecution of Felony Cases, Aug. 4, 1966.
The total number of cases in this study has been cited in the newspapers as 4,000. This figure includes cases made in a study before *Miranda*. The post-*Miranda* study included 1,437 defendants with cases at the complaint stage (in which the police, after investigation, asked the District Attorney's office to initiate formal prosecution); 665 defendants with cases in the preliminary-hearing stage; and 678 defendants with cases in the trial stage. The interrogation of many defendants in the latter stages occurred before *Miranda*.
It should also be noted that a pre-*Miranda* California case, People v. Dorado, 42 Cal. Rptr. 169, 398 P.2d 361 (1965), substantially anticipated the *Miranda* ruling and may undermine somewhat the general utility of these statistics.
36. One fairly persistent criticism of *Miranda*, however, is that the case will force the police into increased use of what is perhaps the least reliable evidence of all—uncorroborated eyewitness identification testimony.

Eventually we will probably come to state minimum standards for enforcement officers and state-fixed minimum pay schedules. At this point there will likely also be either state or federal salary supplementation or else sufficient state or federal aid to local governments that they can afford to pay the salary scales which have been set. There is a real danger, of course, that law enforcement will cease being primarily a local responsibility. If the local governments do not do their part, the job will be taken away from them. But my belief is that the emerging pattern will be one in which local units of government, sensitive to local needs, will continue in taking primary responsibility and control, subject to uniform standards and financial assistance from higher units of government. Of necessity, however, there will be drastic changes in both pattern and amount of cooperative efforts among law enforcement agencies. They will become much more tightly knit in the common cause of combatting crimes and criminals which will more and more transgress state and local jurisdictional boundaries.

• (4) *Miranda* will probably have its main effect on cases committed by lone criminals in which the victim is either dead, not present,[37] or otherwise not able to identify the criminal. One commentator spoke of the effect on violent "street crimes"—such as mugging, murder, and rape. These are serious crimes which stir up public outcries; this is especially true as to the "street crimes." Yet these are not the cases which present the serious challenge to public order or the moral fabric of society that are encountered in dealing with protest demonstrations that turn into riots or with organized crime. Some of the Court's other decisions restricting police methods, such as limitations on searches or on entering buildings without knocking, may restrict the power to suppress organized crime, but this is a very sensitive area involving the basic right of privacy of the individual versus the state. Up to now, the deliberate policy choice in both law[38] and court decision has been to consider the right of privacy sufficiently valuable to justify the loss of police efficiency.

• (5) The *Miranda* case leaves some room for modification of its more crippling effects by later interpretation.

(a) The case stated that the states had the power to modify the guidelines set by the Court so long as they substituted procedures that adequately protected the right to counsel and the privilege against self-incrimination. It will thus not be possible to go back to old practices, but it may be possible by legislation to allow some needed flexibility that is lacking in the guidelines as presently announced by the Court.

(b) The Court left the door somewhat open with respect to interpretation of the crucial phrase "in-custody interrogation." It clearly covers the locked-room interrogations out of which so many troublesome confessions cases have originated in the past. It is not clear just how the Court's decision applies to a number of investigatory questionings—even of definite suspects or persons on the verge of being arrested—when the surroundings are not isolated or the situation is noncoercive.

• (6) One clear reason for the Court's adopting the rule in *Miranda* was its belief that ignorant, underprivileged, and minority-group defendants have been the ones mainly abused in interrogation rooms. Professional criminals, vice defendants, members of organized crime, and wealthy or well-educated criminal defendants have largely escaped serious abuse. They already knew they had an absolute constitutional right to keep silent. By insisting on having their lawyers—and being able to pay for the service—the favored defendants were already getting everything that *Miranda* says must be given all. The professional criminal and the one connected with organized crime will not be greatly affected by the *Miranda* ruling in the near future. The case and the public ventilation of the issues it raises, however, will undoubtedly have the long-term effect of making the public more conscious of limits on police conduct and of making police procedures more legally unassailable with respect to *all* defendants.[39]

It must be conceded, however, that the strong public and political pressure on the police to solve a crime comes less often with respect to crimes committed by professionals or members of organized crime than to shocking individual crimes of violence and the violent "street crimes." And the latter crimes are typically committed by "disadvantaged" persons. In this regard, the police are men in the middle. The local government officials who are their bosses define a job of order-keeping and crime-solving that they expect of the police. Then the courts prohibit the police from using many of the techniques that they have grown accustomed to using in the past.[40]

37. *E.g.*, theft or burglary.

38. *E.g.*, laws against wiretapping.

39. North Carolina, for example, had by statute an exclusionary rule with regard to evidence obtained from illegal searches prior to the decision of the Supreme Court of the United States in *Mapp v. Ohio*. Yet the national publicity given *Mapp* had the definitely noticeable effect in this state of causing more evidence obtained by search to be challenged than had been challenged before 1961. See Katz, The Supreme Court and the States: An Inquiry into *Mapp v. Ohio* in North Carolina (unpublished ms. of an article scheduled to appear in rev. form in the Dec. 1966 N.C.L. Rev.).

40. Police, for example, once effectively kept order in middle-class neighborhoods by chasing out all those who "didn't belong" and who could not convincingly demonstrate that they had legitimate business bringing them there. In the abstract, citizens of the United States always had freedom of movement, but there never was any way before for the action of the police to be effectively challenged. It seems pretty clear that this is no longer true. Loss of this *de facto* power to exclude persons arbitrarily from various areas will foreseeably present some problems of nightmare proportions in larger cities torn by racial strife.

Conclusion

The effect of *Miranda* and the many other cases of the Supreme Court of the United States freeing individuals from particular types of governmental restrictions and enforcement practices is to present the police—the men in the middle—with a tremendous challenge. They must find new ways of doing the job that the community demands of them yet within the policy guidelines demanded by the community through the courts and legislative bodies. The court decisions clearly represent, on a long-term basis at least, community values. It should further be remembered that the cases in question are plausibly rational decisions based upon statutes and constitutional provisions. To find new ways of doing the job will take imagination, courage, and intelligence. There will be a temporary loss of morale through frustration. There will even be a need felt in some departments for spectacular cases to be lost in order to "prove" the dire pronouncements of the police propagandists as to the effects of the court decisions. But based upon past experience of the ability of popularly based government in this country to adapt to new conditions and especially the past improvements of the police following times of crisis, I firmly believe that law enforcement in the United States will meet the new challenge and emerge stronger and better than ever. □

INSTITUTE CONDUCTS WINSTON-SALEM POLICE TRAINING PROGRAM

The trainees for the Winston-Salem Police Department's Community Service Unit attend class. The instructor is Lieutenant Gene Cherry. First row, left to right: Officer L. Ivester, Officer P. Crosby, Captain William Burton, Officer D. Fulk, Sergeant H. Burton, Dorothy Kimel (Greensboro Police Department). Second row, left to right: Officer R. Pettyford, Sergeant W. Ragsdale, Officer T. Martin, P. Colvard (Greensboro Police Department), Sergeant S. Monk, Sergeant T. Surratt.

A New Approach in Crime Prevention and and Community Service:

WINSTON-SALEM POLICE MOVE AHEAD

by N. E. Pomrenke, C. E. Cherry, and H. A. Burton

[*Editor's Note: This article is a report, written originally for a non-North Carolina audience, on an experimental project of the Winston-Salem Police Department. Mr. Pomrenke is an assistant director of the Institute of Government. His field is police administration. Lieutenant Cherry is Commanding Officer of the Crime Prevention Bureau of the Winston-Salem police force. Sergeant Burton is also a member of the Crime Prevention Bureau of the Winston-Salem Police Department.*]

INTRODUCTION

Winston-Salem, North Carolina, has a great deal in common with cities of similar size. With a population of 143,000 and currently dependent upon the tobacco and textile industries, it is nevertheless growing, moving toward greater industrialization, and it has in miniature the big-city problems of slums, crime, and unemployment. In many ways a remarkable city — beautiful, historic, cultured, wealthy compared with some other places in the South—it has also felt the mark of poverty: 15 per cent of the whites and 45 per cent of the nonwhites fall below the official boundaries of deprivation. Tobacco, its chief industry, is low-pay and partly seasonal. Workers pour in for this limited opportunity and then remain. Some find off-season jobs; the rest survive by other means. Whatever the means, it is certain that the low income level affects the crime rate and the burden of public welfare.

But over the years Winston-Salem has been aware of the interrelated nature of the problems of poverty, and long before the Great Society, the city was carrying on its own small-scale experimental program, under private foundation grants, in neighborhood improvement projects. Since the opening of the Office of Economic Opportunity, it has been aggressive in pursuing the possibilities available under EOA appropriations, and its community-action committee, Experiment in Self-Reliance, has received funds for a series of neighborhood centers to work intimately with the poverty group in a variety of ways.

The Winston-Salem Police Department has been an attentive observer of this neighborhood work. In particular it very early recognized that many of the people in the high-delinquency sectors fall into the poverty bracket. Also, the experience of the Juvenile Unit indicated that people with problems, some of which may be precursors of delinquency, are often not aware of the kinds of assistance that are available to them. Furthermore, for want of staff, social service agencies cannot always keep themselves informed of circumstances that need their attention. The situation suggested to the Police Department the need for a broadly based approach, founded on the neighborhood concept, that would use police facilities in a double-barreled program of crime prevention and liaison service between people with troubles and those who can help them.

THE COMMUNITY SERVICES UNIT PLAN

As part of a plan that grew out of this need, a new Community Services Unit was set up within the Bureau of Crime Prevention under the Chief of Police. This unit differs from that of the Juvenile Unit in its emphasis on crime prevention rather than on post-crime activities. It is staffed by selected men especially trained in recognizing and understanding the symptoms of antisocial behavior, in establishing the kind of rapport necessary to gain the confidence and cooperation of the people with whom they work, and in building communications lines between the target group and both the institutions that can serve them and the public at large.

To put the plan into its experimental stage, the North Carolina Fund, which dispenses money from private foundations and is very much interested in the problems of poverty, made a grant to finance, in cooperation with the City of Winston-Salem, a one-year pilot project. What the project, now in operation, hopes to determine is the effectiveness of an effort by such a specially trained police unit, working in a neighborhood context, to

(1) Anticipate the sources of crime and disturbance, and

(2) Cooperate with social service and other agencies in (a) correcting situations that give rise to disorderly activity, (b) helping people who need help, and (c) bringing particular assistance to those whose personal difficulties make antisocial behavior a possibility.

Immediate Objectives

The Department believed that certain things need to be done before its long-range goals of crime prevention and community assistance liaison can be accomplished, and these have some bearing on each other. The first aim was to utilize police facilities fully as a tool in accomplishing the balance of the objectives. The Police Department is, for example, one of the few places that can be reached at any hour of the day or night. Help is there—either as emergency aid for personal needs or as an authority to whom to report situations of whatever nature that require investigation. Also, by means of two-way radio cars, the police already have a city-wide communications system to make immediate action in any situation possible.

Effective use of police accessibility and facilities can lead to achievement of the second objective—to change the image of the policeman among the target group. An effort is being made by building a personal rapport with these people, by extending aid whenever needed, and by means of educational programs in churches and schools to establish the concept of a policeman as a protector, as a keeper of the peace—in a word, as someone to trust and work with.

Another facet of this same objective is to promote the crime prevention concept among the entire Department. As Sir Robert Peel observed, "The primary function of the police is to prevent crime and public disorder rather than simply to apprehend the criminal."

Also, the Unit aims to reduce activity among both juveniles and adults that might lead to disruptive or criminal behavior by maintaining a general surveillance of the places of public gathering, by being able to recognize predelinquency tendencies, and by keeping abreast of people or situations that are potential sources of trouble.

It has given its men sufficient training and background in the origin of sociological and psychological problems so that they can view these problems with understanding and make constructive decisions about the handling of individual cases.

Finally, it is making an effort to build strong working relationships with other community resources. Because social service agencies are often understaffed, the Community Services Unit, with a strength of fourteen, often comes to know, as the agencies do not, of cases that need to be referred to an appropriate organization, and social service people have been fully informed about the purpose and function of the new unit.

Site Selection

The pilot study involves a single geographical area. This decision to work within a limited confine was grounded, generally, on the fact that use of a single sector affords a basis for comparison with other parts of the city used as controls. Specifically, it presented an opportunity to choose an area that has some very critical factors operating within it: The section chosen (4 square miles, 30,000 population) has had neither the highest crime rate nor the lowest, but it has had a sufficient number of offenses to justify concentration of law-enforcement effort. It has a high percentage of children living well below the defined poverty line; there are approximately 1,200 children in 450 families receiving public welfare assistance. The area has clear-cut boundaries, and more important, it is in transition from white to nonwhite. This movement has come about largely because much of the nonwhite population in Winston-Salem has been displaced by an extensive urban-renewal program. The transition itself—the mixture of social patterns—presents a volatile situation. Furthermore, simultaneous with this movement, the Police Department has noted a shift of crime incidence from the vacated area to the selected area.

Some positive elements are also at work in the district selected, and these are (1) a core of interested residents who would work for neighborhood betterment; (2) the presence of some recreational facilities; (3) the presence of churches that could be used in a crime prevention effort; (4) successfully integrated schools that could be used in a public-service educational program.

Services

The plan of the pilot study makes the Community Services Unit responsible for working with the people of the target area generally, but its primary concern is with the young. Essentially, it keeps an eye on their activities—being alert to the possibility of trouble, looking for ways to involve the antisocial in constructive pursuits, and making it harder for them to get into trouble.

For example, one of the problems with juveniles in this sector of Winston-Salem has centered around the municipal recreation facilities, some of which are open until 10:30 p.m. Recreational personnel report disturbances and interference from nonparticipants, and there are a good many complaints of reckless driving, petting in cars, and beer drinking in the immediate vicinity of the recreation area. Sometimes Recreation Department-sponsored dances that have parental approval become opportunities for girls to drive off for the evening with boys who do not.

The Community Services Unit now works closely with the Recre-

ation Department; it has become acquainted with the personnel and with the programs and schedules, including exact time, places, and estimated number of participants in each program. Appropriate checks of these locations are made by the members of the Unit to prevent the congregation of disruptive influences. Also, by establishing some kind of rapport with those who do not participate in recreation activities, the Unit tries to understand their needs and predispositions and to suggest to the Recreation Department activities of a nature that would attract the nonparticipants.

School attendance represents another matter with which the Community Services Unit is concerned. Within the target area there are 2,000 school-age children (45,000 in the city). In one school year there were 623 drop-outs from the seventh to the twelfth grades, most commonly at the tenth-grade level. The reasons given for dropping out included the usual poor grades, lack of interest, pregnancy, marriage, poor physical condition, and enlistment in the armed forces. The Community Services Unit is becoming familiar with the dropouts, their addresses, their places of employment (if any), and their home situations so that it can assess their potential danger to themselves and to the community in terms of their past records and present activities. At the same time the Unit works with local civic and social groups to encourage a return to school and also to develop a vocational or apprenticeship program for the dropouts. The various federal programs for vocational training, including those sponsored by the OEO, offer other opportunities for referral by Unit members.

Routine Community Service patrol can also help keep children in school. Maintaining a watch during school hours for children on the streets, or in public places, or even in their own yards, discourages truancy. Also, visitation of the places frequented by truants and other students helps reduce absenteeism in that the possibilities for activities outside the school are greatly restricted. The truant does not have the opportunity, or perhaps the desire, to roam the streets. Unit officers on the evening shift are also on the alert for children on the streets or in places of business after a reasonable hour.

Community Services Unit officers also have an opportunity to work more positively with truants. When a child is found out of school, the officer wants to know *why* he is absent from school, and the results of that investigation are forwarded to the school principal and other appropriate agencies.

Similarly, Unit officers maintain as close communication as possible with school personnel on other matters. They keep principals informed about cases under investigation that concern children in school, and also perhaps gain some insight into a child from the teachers who know him very well. School authorities have indicated great willingness to work in this way with the police.

From time to time a case of parental neglect in the target area has been through the Domestic Relations Court. These cases usually have come from neighbors' reports of circumstances that they consider intolerable for the children involved. A great many more cases escape prosecution, however, because the social service agencies and the Police Juvenile Unit simply do not have the personnel to keep informed on family situations or even to maintain the kind of communication between agencies that would help reveal cases that need investigation.

Some people in social work feel that neglect cases, other than those involving criminal neglect that results in serious bodily injury, are not the proper province of the police. The North Carolina General Statutes (Art. 2, Ch. 110, § 42), however, extend the responsibility in this matter to "every state, county, or municipal official or department. . . ." Clearly, the charge is to the police as well as to any other agency.

The Community Services Unit, then, considers itself authorized to investigate cases of parental neglect that come to its attention and make referrals to the agency best equipped to handle the problems of a given case. If the referral brings no satisfactory remedy, the Unit does not hesitate to follow up with procedures through the Domestic Relations Court.

Organization and Duties

These are the areas in which the Community Services Unit works and the responsibilities that it has assumed for itself. Organizationally, it has a special place in the Department, along with the Juvenile Unit, under the Bureau of Crime Prevention. The Juvenile Unit, however, continues to function city-wide while, at least for the one-year pilot project, the Community Services Unit functions only within the confines of the selected area. Liaison with other divisions of the Department is accomplished by the commanding officer of the Crime Prevention Bureau through the other division commanding officers.

The Unit's command officers, who received the same special training as its men, serve the traditional command functions of personnel assignment and communications with higher echelons, and in addition they are the key liaison people with other community agencies and with other divisions within the Department. They are responsible for orienting the entire Department to the purpose and operation of the Unit and maintaining records adequate for administrative purposes. They supervise the training of new personnel and the continued training of those currently assigned to the Unit. Perhaps most important to the success of the program, they are kept informed about cases and are available for consultation with the Unit members, and they plan the direction of the program and help evaluate it.

To attempt to describe the duties of officers assigned to the Community Services Unit is to try to grasp an amorphous mass of possibilities beyond the normal responsibilities of the police officer. Relatively conventional activities include the investigation of conditions reported to be detrimental to the health and welfare of the citizenry, maintenance of a preventive patrol of places of public amusement, a knowledgeable awareness of people in the area who might be the source of criminal activity, and keeping the Department informed, through the supervisory command, of situations that should be checked out by the patrol or detective divisions. In addition, the Community Services officers are charged with working in whatever ways become apparent with interested people in developing community programs or in giving individual assistance that may reduce conditions and causes that tend to create delinquent and criminal behavior. This commission requires both *imagination* and *diligence.*

Communication with the Public

Built into the Community Services Unit is an opportunity for widespread communication with the public. As he carries out his duties, making contracts with people in the target area and working with various agencies and community resources, each man is in effect a liaison agent, but specific responsibilities are also made. For example, one man is assigned to work with the schools, and all patrolmen have been given some training in public speaking so that when called upon they can present the program to outside organizations.

The specific instrument for community liaison, however, is the Police-Community Relations Advisory Committee. This group is composed of representatives of the city's family-service and Economic Opportunity agencies, the school system, the Recreation Department, the newspapers, and the Domestic Relations Court, plus religious leaders—both Negro and white — and other interested citizens from the community at large. The committee's responsibility is to bring to the Police Department any matters that might call for adjustments in the program, and also to interpret the program to the general public and be its channel of communication to the public. The committee is purely advisory and in no way directs the activity of the new unit.

Recruitment

The recruitment of officers for the Community Services Unit was obviously a matter of crucial importance. The men who staff it are people with particular insight, patience, ability to gain confidence, and desire to serve. They were selected from officers currently within the Police Department who expressed a desire to work within the new Unit. The reason for drawing from personnel current in the Department was that the Department's great advantages in initiating this kind of community service activity are its 24-hour accessibility, its already-established communications system, and the fact that it is already well acquainted with the target area. Capitalizing fully on these advantages required that the Unit be staffed by men already experienced in the area and with the communication procedures. (In the selection of female personnel, qualified women from outside the Department were considered, being permitted to submit educational and other qualifications in lieu of police experience; one was selected.)

A volunteer for the Community Services Unit submitted his request for assignment to the Chief of Police in writing, giving his reasons for wanting the post. All officers who were currently members of the force and had served their probationary period were eligible to apply. The Chief, along with other supervisory personnel and at least one person from the community at large, interviewed each applicant, considered his request, and noted his record and personal qualities. The expectation was that there would be more qualified persons than could be accepted. As far as possible, the final assignment to the Unit was to be 50 per cent Negro and 50 per cent white, drawn from those who had volunteered, who had been approved by the Chief of Police, and who had satisfactorily completed the special training program and a special probationary period.

Those who were transferred to the new unit were relieved of all responsibilities in whatever division they formerly served. The vacancies that their transfers created were filled with new police recruits; thus, the establishment of the new Unit involved a ripple effect in which several divisions of the Department lost trained and qualified officers who were replaced by inexperienced men. The number admitted to the training sessions was therefore largely determined by personnel commitments to other divisions of the Department. Even so, two sessions of the training program were required so that the regular-line units were not depleted, for past experience had indicated that some of the best-qualified line personnel would be the ones who would apply for assignment to the Community Services Unit.

Men who decided during the training session that they did not care to remain with the Unit, or whom the instructors decided were not suitable to the program, were permitted to return to their former units without prejudice.

Training

The training, carried out at the Winston-Salem Police Academy, ran for seven weeks, and there were two sessions. As we have just noted, running the training program twice was required by the fact that no more than seven full-time men could well be released

from the regular work of the Department at one time. The number of recruits that could be absorbed into line organizations during any one period was limited. Also, having two sessions permitted some program changes, as the need became apparent, before the entire Unit was trained.

Certain of the Department's supervisory personnel were also included among the trainees so that they might have some understanding of the Unit's purpose and operation, and neighboring police departments were also invited to send a representative.

The training program was a joint endeavor of the Training Division of the Winston-Salem Police Department and the police administration staff of the Institute of Government of the University of North Carolina at Chapel Hill. The Institute of Government accepted responsibility for planning the curriculum and arranging for the teaching personnel. In order to work closely with the Department's Training Division, the Institute assigned one of its staff members to the Police Academy for the duration of the training periods.

• *Curriculum.* The curriculum had an emphasis on the behavioral sciences—psychiatry, psychology, and sociology—plus police work and related fields. Specifically, it covered:

(1) The history and character of control in society.

(2) The statistical patterns of crime and antisocial behavior, including the relationships of age, race, sex, and economics to these phenomena.

(3) An analysis of behavior, both normal and abnormal. This facet dealt with (a) the causes of abnormal behavior, including the origin and symptoms of psychogenic disorders, and (b) alcoholism and drug addiction, including related problems involving both adults and juveniles as well as sources, plus methods of control and treatment.

(4) The relationship between behavior and social institutions, of which the principal ones are the family, with its associated emotional situations, the educational experience, religion, mass - communications media, the peer-group phenomenon, and socio-economic relationships within the community.

(5) Socio-psychological studies of behavior, including the social disorganization of war and economic depression, differential association, gang behavior, and specific theories of crime causation.

(6) Reactions of society to antisocial behavior. This section covered the philosophies of punishment, prevention, and therapeutic action; the types of responses that are made; and the methods of responding, including the judicial system, sentencing, probation, and detention.

(7) A study of society's confinement and correctional response. This included an overview of the types of institutions, their administration and operation; the obstacles to effective correctional work within institutions; and an analysis of the total prison community, its organization and life within it, and ultimate release from it.

(8) The steps that can be taken to prevent antisocial behavior. This covered the principles and possibilities of interviewing, counseling, and psychotherapy; the agencies, both formal and informal, that can be used in preventive work—home, school, peer group, civic groups, organized recreation; total community resources that can be mustered in a preventive capacity—mental health clinics, schools, social service agencies, the judicial structure, recreation agencies, churches, the police, federal and state programs directed at society-related problems.

The curriculum, which is exhaustive and only roughly sketched here, contained much background material, but the general purpose was:

(1) To give the trainee the concept of the police role in its broadest sense, to help them understand the deep relationship of society, individual personality, and community welfare, and to help him appreciate that a proper sphere of police activity is helping to break the chain reaction between shortcomings of the society and personalities (for whatever reason) disposed to antisocial behavior.

(2) To explore with the trainee why people behave as they do, what the interaction is between the individual and the socio-psychological context in which he develops, what normal and abnormal reactions he may use in solving the problems he encounters in his development, what pressures and influences are at work on him from day to day.

(3) To acquaint the trainee with the resources that are available (a) to help people in general who need assistance, and (b) to alleviate problems that may result in antisocial behavior.

• *Faculty and Teaching Methods.* A curriculum of this scope and depth required a broadly based group of highly qualified instructors. The Institute of Government arranged for the faculty, who included experts both from the local area and brought in for particular fields of study.

The complexity of the curriculum also required a variety of teaching techniques. The lecture system was most often used, but seminar-group discussion sessions

were also helpful, plus on-site inspections, panels, films, and other methods. In particular, to become acquainted with the resources available, the trainees visited the social service agencies and heard the directors of these organizations lecture before the training classes about the functions and operations of their agencies.

The literature in the fields to be covered in class was so vast that the material that was most relevant to the purposes of the Community Services Unit was extracted and reproduced in a usable form for the trainees.

• *In-Service Training.* In addition to the seven-week formal training period, there is currently a follow-up in-service training program that is developing as special needs become apparent from the operation of the Unit over a period of time. A basic vehicle for this aspect of training is group sessions in which the trainees discuss among themselves the problems they have met and the solutions they have reached. One man's experience is helpful to another in working out a similar type of problem. As an adjunct, professionals in specific areas sit with the trainees during these sessions to offer their knowledge and insight into a particular situation.

The initial curriculum was reorganized as a result of these discussions. The total experience of the group indicated places where an addition or a different emphasis was needed, and the trainees were asked for their critical assessments of the curriculum.

These in-service training sessions are scheduled for the first hour, for each shift, for each work week, and the Institute of Government's liaison person is available as a consultant.

While the sessions are necessarily unstructured, the necessity still exists to assure that certain areas are covered systematically, and the Unit's command officer and the representative from the Institute of Government are developing a policy file and an in-service training manual.

ANTICIPATED BENEFITS

The ultimate purpose and maximum benefit of the Community Services Unit are, through work with the other forces both local and federal concerned with the problems of poverty, the eradication—or at least reduction—of this pocket of poverty and accompanying crime. How effective the total effort will be rests with many factors far removed from the province of the Winston-Salem Police Department. There are, however, certain manifest benefits that will come from simply doing this local job well.

While the twelve additional specially trained personnel, plus the availability of such support equipment as cars and two-way radios, should provide the strength necessary to maintain adequate investigative and preventive functions, in the end it will be the personal element that is decisive in the success of the Community Services project. This is the kind of job that cannot be done from behind a desk or through the mails. Whether patrolling on foot or in a car, whether in uniform or in plain clothes, whether talking to a teenager or making a speech, the officer must find some common ground with those he deals with if he is to communicate effectively with them, and one of the largest benefits of the project stems from the personal element and the open channels of communication. By being on the scene, by being able to get through to the target group, by becoming known as a source of help, the Community Services officer eventually changes the attitude of people who were formerly unwilling to work with the police. The policeman becomes one who can render a service, who can help make the area a better place to live, rather than essentially a purveyor of punishment.

In their activities, the Community Services officers are learning certain skills and techniques that are effective in accomplishing these goals. Many of these can be adapted for general use by the other divisions. Also, as the men are rotated over the years back into line service, taking with them the concepts of crime prevention that they have learned in the Community Services Unit, they will gradually effect a fundamental change in the entire Department's view of the scope and purpose of police work.

EVALUATION

The Winston-Salem Police Department and those engaged in massive attacks on poverty will watch the Community Services Unit with great interest. The success of any program cannot always be measured by statistics or by clearly visible results. Sometimes an effect may remain, like the iceberg, submerged. Nevertheless, there will be, for those responsible for evaluating the program, certain numerical indications of its success: the impact on the dropout rate in the schools of the target area; the change in the number of complaints coming to the police; the effect on planned leisure-time activity; the level of use of existing recreational facilities.

Comparative statistics in these and other fields will give some notion of ways in which the program is not obtaining the results it hopes for, and will indicate the areas where community resources need to be particularly directed. They will also help Unit supervisors redeploy their personnel to gain maximum effectiveness of the Unit.

Inevitably the Winston-Salem experiment will command the attention of police authorities and social service people elsewhere. A successful project here, founded on a broad view of police purpose and a close cooperation with other agencies that cannot undertake the kind of activity that the Winston-Salem plan proposes, will indicate possibilities that can be adapted for effective use in other communities. □

The Laws of Arrest:
A LAW ENFORCEMENT OFFICERS' GUIDE

by Allan Ashman

[*Editor's Note: This article on the laws of arrest is the first of a series that will appear in* Popular Government. *The second article will be on search and seizure, and the third will cover evidence. Each article is a chapter in a forthcoming booklet intended to serve as a basic refresher for local law enforcement officers.*

Allan Ashman, the author of this article, is a member of the Institute staff. His fields of responsibility include criminal and correctional law.]

Ashman

Foreword

"Most important of all is the right to personal freedom. It is a fundamental principle of the common law that a citizen may not lawfully be imprisoned by a policeman, or any other official merely because the official thinks such action to be for the public good. A policeman, for instance, must be able to point to a specific statute or a specific rule of the common law which authorizes him to arrest and detain a citizen under the circumstances of the particular case. Otherwise the policeman, is, in the eyes of a court, acting merely in the capacity of a private citizen himself, and is considered subject to all the penalties which would be imposed upon a drugstore clerk who undertook to lock up his next-door neighbor. . . ."

[Chafee, Pollak, and Stern,
The Third Degree, Report No. 11 to the National Commission on Law Observance and Enforcement, 32-33 (1931)]

INTRODUCTION

It has been said by the Eighth Circuit Court of Appeals that "the law cannot expect a patrolman, unschooled in the technicalities of criminal and constitutional law, following the heat of a chase, to always be able to immediately state with particularity the exact ground on which he is exercising his authority." While this statement certainly reflects a sympathetic attitude toward one aspect of law enforcement, do not forget that as a law enforcement officer *you* are entrusted by the community with *authority* to make arrests. Therefore, it is necessary that you know when, and under what conditions, you may lawfully arrest, and what your responsibilities are toward the individual arrested. Every time you make an arrest and every time you question a suspect, you brush up against constitutional safeguards designed to protect the individual. Depriving a suspect of his rights by making an illegal arrest not only can prevent you from establishing your case but also will probably affect your personal liability. For his protection and yours, you will find a familiarity with the laws of arrest to be an essential tool.

I. JURISDICTION

Your authority, or *jurisdiction,* as a law enforcement officer is subject to two important limitations. One is *territorial* and the other is *subject matter.* Where you may arrest and what crimes you may arrest for depend upon whether you are a local or a state law enforcement officer. For example, if you are a state highway patrolman you may arrest for *any* crime committed on the highways or committed in your presence, for motor vehicle violations, and for highway robbery, bank robbery, murder or other crimes of violence, *anywhere in the state.* However, if you are a municipal police officer, you may arrest for violations of federal, state, and municipal law only within your city's territorial limits, except where a local law extends your territorial jurisdiction—for example, to one-half mile beyond the city limits or to all city-owned property outside city limits. It would be advisable, then, to familiarize yourself with the relevant state and local laws pertaining not only to

your particular territorial jurisdiction but to those designated offenses for which you are authorized to arrest.

II. WHAT IS AN ARREST

It is 3:00 a.m. and you are patrolling a section of town that has been plagued by auto thefts. You notice a man crouched in the front seat of a parked car. You request that he produce his driver's license and automobile registration and you ask for an explanation of what he is doing in this part of town at such an hour. Up to this point you probably have not made an arrest but are exercising your authority to stop a person who is acting suspiciously and question him as to his identity and actions in order to find a reasonable basis upon which you can make a lawful arrest if necessary.

[It is unlikely that the brief questioning of an individual, with nothing more, could constitute an arrest. However, the *accosting* of an individual by a law enforcement officer is coming under increased scrutiny by the United States Supreme Court, and law enforcement officers should be very careful not to do anything that would in any way impede the suspect's freedom of movement.]

However, if the suspect cannot produce his driver's license and proof of ownership of the automobile, and if he cannot offer a satisfactory explanation for his presence in the neighborhood, you would, in all likelihood, be justified in feeling that you have reasonable grounds to believe that a felony has been committed that authorizes you to make a lawful arrest without a warrant. Note that at this point you probably still have not made an arrest because (a) you have not informed the suspect of your intentions to take him into custody to answer a specific charge, and (b) there has been no submission by the suspect to your authority.

The basic elements of an arrest are an intent on the part of the arresting officer to make an arrest and actual physical submission by the person arrested to the arresting officer. Depending upon whether the intended arrestee resists or submits to your authority without a struggle, actual physical restraint may or may not be required to accomplish the arrest. You need not touch or have any physical contact with the accused to make an arrest if he submits voluntarily to your direction. The arrest can consist of your clear indication to him in some other manner of your intention to take him into custody. Just remember that an arrest consists of exercising control over the person you seek to arrest, and in order to exercise such control you must be close enough to the accused to restrain him physically if he should try to resist arrest. Keep in mind, also, that even though you fully intend to make an arrest, if you abandon your intention—that is, interrupt what you are doing and go off on another assignment or attend to some personal affairs—the arrest is considered incomplete. In such a situation there is no lawful arrest because the intended arrestee was never taken into custody.

III. ACTS NOT CONSTITUTING AN ARREST

A. Stopping Suspicious Persons

Stopping a person who is acting suspiciously to obtain a satisfactory explanation of his conduct is one type of act whereby you, as a law enforcement officer, can legally and temporarily detain a suspect without making an arrest. *Accosting a person who acts suspiciously is not an arrest*, and the authority to stop and question a person who acts suspiciously does not give you the authority to detain him for any length of time on mere suspicion or investigation. [See bracketed section in the column to the left.]

If a person does not give a satisfactory explanation of his conduct and no ground to arrest exists, you may not take the suspect to headquarters against his will. If you do detain a person for an unreasonable length of time or take him to headquarters against his wishes when no ground to arrest exists, such action would probably constitute an unlawful arrest and provide the basis for a civil suit against you for false arrest and false imprisonment. The lesson here is never to use any force or coercion when questioning a suspect and to avoid giving the impression that the suspect must go with you to headquarters to "explain his story."

B. Stopping Motor Vehicles

If you are a law enforcement officer of the state, or of any county, city or municipality, under G.S. 20-183 you are empowered to stop motor vehicles to determine whether they are being operated in violation of the motor vehicle laws of North Carolina. If, after you have halted a vehicle, it appears that the motor vehicle laws have been violated in your presence, then you may make an arrest for such a violation. However, an arrest does not occur automatically when you stop the car because at the time you do so you may not have the intention to arrest.

Your authority to stop motor vehicles does not entitle you to "go fishing"—that is, to pry into what a vehicle is carrying. This does not mean, however, that when you act in good faith and stop a car for a driver's license check or registration check, you must ignore visual evidence that a violation is being committed in your presence—for example, that the vehicle is carrying illicit liquor.

C. Issuing a Citation

Issuing the accused a citation rather than swearing out a warrant for his arrest is often a convenient procedure for getting him before the court to answer

charges of a minor nature. Instead of embarrassing a suspect by arresting him on the spot, you can give him a citation ordering him to appear before a warrant-issuing official at a certain time and place to answer the charge. If the accused fails to obey the citation, then a warrant may be sworn out for his arrest. A citation may also be issued when you have no authority to arrest; it is, in fact, used when no arrest is made. You must, however, be sure that the warrant on which the accused eventually is to be tried is sworn out *before* the case comes up in court.

Note that the citation is usually issued to the accused to answer charges of a minor nature, as in the majority of moving and non-moving traffic violations. Issuing a citation is not an arrest, and failure to accept it or to comply with it is not a crime. (However, failure to obey a citation will usually result in the immediate issuance of an arrest warrant.)

IV. ARREST WITH WARRANT

A. What is a Warrant

An arrest is made either under the authority of a warrant issued by a judicial official or, when circumstances permit, without a warrant. In essence, an arrest warrant is a written judicial command for you to arrest an individual named or described in the warrant and for you to bring that individual before the judicial officer who issued the warrant or some other judicial officer.

A "warrant" must be a *valid* warrant, and it is your responsibility to make sure that the warrant appears valid. Once the warrant is issued and delivered into your hands, it will protect you in your efforts to serve it *provided that the warrant is valid or fair on its face.* (See page 18 for a discussion of what makes a warrant valid on its face.) When a valid warrant is issued, you have no alternative but to serve it on the named individual regardless of your personal feelings about his guilt or innocence. Thus, if time permits, it would always be wise for you to get a warrant *even when you would be acting lawfully without a warrant.*

B. Factors That Are Involved in Making a Lawful Arrest With Warrant

1. *Who Issues a Warrant*

a. Under our *present court system,* arrest warrants may be issued by the justices of the Supreme Court of North Carolina, superior court judges, judges of criminal courts, presiding officers of inferior courts, justices of the peace, mayors of cities, and other chief officers of incorporated towns. Also, judges and clerks of domestic relations courts, municipal recorders' courts, and county recorders' courts and the clerks of superior court acting in their capacity as clerks of a lower county court have authority to issue arrest warrants. No law enforcement officer, as such, has authority to issue an arrest warrant. Unless you are a "desk officer" who has special-act authority, you may not issue an arrest warrant. However, the legality of allowing even "desk officers" to issue arrest warrants has been questioned for many years. Recently a superior court judge held the practice unconstitutional. This ruling has been appealed to the North Carolina Supreme Court, which has not yet rendered its decision on the matter.

Warrants issued by a justice of the Supreme Court of North Carolina, by a judge of the superior court, or by a judge of a criminal court can be executed anywhere in the state. However, warrants issued by judges of municipal recorders' courts, justices of the peace, and mayors of cities and other chief officers of incorporated towns may be executed only within their respective counties *unless the warrants are endorsed or certified.* (Endorsement means that the warrant is given effect in the county where the accused is suspected of hiding by having a local judicial officer attest to the validity of the handwriting of the person who issued the warrant. Certification means that the warrant is given statewide effect by having the clerk of the superior court in the county where the warrant was issued certify that the issuing magistrate lawfully holds the office the warrant represents him to hold and that the warrant bears the issuing magistrate's genuine signature.)

b. Under the *new district court* system, which will go into effect in twenty-two counties in North Carolina in 1966 and in all counties by 1970, arrest warrants will continue to be issued by Supreme Court justices and superior court judges as well as by clerks of the superior court (including assistant and deputy clerks of court). They will have effect throughout the state without the need of endorsement or certification. [The twenty-two counties coming under the jurisdiction of the General Court of Justice on or after the first Monday in December, 1966, are Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans, Cumberland, Hoke, Durham, Scotland, Robeson, Burke, Caldwell, Catawba, Cherokee, Clay, Graham, Jackson, Macon, Swain, and Haywood.] Elected district court judges and appointed magistrates who will also have authority to issue warrants having statewide effect will replace the justice of the peace courts, recorders' courts, and mayors' courts, all of which will be abolished by 1970.

2. *When May a Warrant Be Issued*

Before a judicial officer may issue a warrant, the person who swears out the warrant must be examined under oath. His testimony must contain *facts* from which the issuing judicial officer can find *probable cause* of the defendant's guilt—that is, evidence that

the accused person is probably guilty of the offense charged in the warrant. Probable cause could also be described as the amount of evidence sufficient to create a strong suspicion of guilt. When you present facts to a magistrate from which he must decide whether there is probable cause for the issuance of an arrest warrant, it is advisable that you record these facts on an affidavit or complaint made at the time the arrest warrant is issued.

[North Carolina does not require that the facts from which a warrant-issuing official must decide whether there is probable cause for the issuance of an arrest warrant appear on an affidavit or complaint made at the time the arrest warrant is issued, or that the affidavit be attached to the warrant. However, recent decisions of the Supreme Court of the United States involving federal arrest warrants and search warrants indicate that it will not be too long before the Supreme Court imposes this additional requirement on the states.]

3. *When Is a Warrant Valid on Its Face*

If a warrant is valid on its face—that is, if all the "formal" requirements relating to the form and appearance of a warrant are satisfied—you are protected in serving it even though it may later be proved that the warrant is invalid because, for example, the warrant-issuing official did not have sufficient basis for issuing the warrant or you were not properly sworn before giving your testimony. However, you are presumed to have a certain legal background, and you cannot accept *any* form of warrant that may be given to you, proceed to carry out its order, and then escape liability if the warrant is clearly invalid on its face.

A warrant is "fair" or "valid on its face" if it satisfies certain requirements of form. The warrant must:

(1) Be in writing and signed by the issuing official;

(2) Be issued in the name of the state;

(3) Be directed to a specific officer or class of officers authorized to execute it;

(4) Either name or accurately describe the person to be arrested; and

(5) Charge a particular offense with sufficient clarity to inform the accused of the crime charged.

A "John Doe" warrant—one without a name—is usually invalid, and if you make an arrest under such a warrant you may be liable in a civil action for false arrest. Likewise, when a warrant describes an individual but does not name him, you must use due diligence to determine whether you are arresting the correct person. If the accused person denies that he is the one described in the warrant and it would be a simple matter to check out his story, you may find yourself in trouble if you simply serve the warrant and disregard his protestation.

4. *When May a Warrant Be Executed*

Generally, a warrant may be executed at any time and at any place, subject to whatever territorial limitations are upon it. While a warrant should be executed as soon as possible after it is issued, it remains in effect until it has been served or returned to the official who has issued it. As a practical matter, long-outstanding warrants will usually not be served even though they are still valid and can be served, because the older the unserved warrant is, the less likely that the named defendant will ever be convicted of the offense charged.

Although you are given broad authority as to where and when you may execute a warrant, you must exercise sound judgment in carrying out your official responsibilities. For example, a warrant gives you the right forcibly to enter any house to make an arrest so long as you reasonably believe that the person named or so described in the warrant is inside the dwelling. However, it is highly improbable that you would seek to implement this authority by making an arrest for a violation of a local ordinance in a church during services, in a hospital, or even at a private residence at 3:00 a.m. You must constantly use your own good judgment in such situations by conducting your business in a manner that will enlist respect and support for your work and your agency.

It should be remembered that when you are relying upon a valid arrest warrant as your authority to make an arrest, you must have that warrant in your possession at the time of arrest. In a felony case, to have a warrant in your possession at the time of arrest is not mandatory since it is not your only authority to arrest; you may lawfully arrest for a felony without warrant upon reasonable grounds to believe the arrestee has committed a felony. However, your only authority to arrest for a misdemeanor not committed in your presence is a valid warrant, and it must be either on your person or in the hands of a fellow law enforcement officer assisting you in making the arrest. Do not leave the warrant in your desk back at headquarters or any place where you cannot immediately produce it if so requested by the arrestee, because you must inform the arrestee of the warrant and show it to him or read it to him if he makes a good-faith request and if he does not already know of the warrant.

V. ARREST WITHOUT WARRANT

A. In General

You may often be called upon to make a snap decision as to whether you have the right to make an immediate arrest of a suspect or whether you should first apply for a warrant. Even if you think it might be legal to arrest without a warrant, *whenever the situation permits you to obtain a warrant, you should do so.* While securing a warrant is not always

possible or practical, you must nevertheless be aware of the differences between felonies and misdemeanors and between misdemeanors that are breaches of the peace and those which are not in order to make intelligent decisions.

Generally, you may make an arrest without a warrant for both felonies and misdemeanors if they are committed in your presence. You may also arrest without a warrant if you have reasonable grounds to believe that a felony has been committed and that the arrestee will evade arrest if not immediately taken into custody.

B. Arresting For a Felony Without a Warrant

You may arrest for a felony without a warrant when the felony has been committed in your presence. When the felony has *not* been committed in your presence, you may arrest without warrant when you have *reasonable grounds to believe* that the arrestee has committed a felony and will evade arrest if not immediately taken into custody. Note that it is not necessary that the felony actually have been committed.

The question that you must ask yourself is whether you have before you *facts* or *information* sufficient to form a reasonable belief that the arrestee has committed a felony. It is not enough that another person, perhaps a fellow officer, has reasonable ground to believe that someone has committed a felony and ought therefore to be subject to arrest without a warrant. The test is whether you, the arresting officer, have a reasonable basis for believing in the arrestee's guilt. What *you* have been told or perceive is the important factor. *You* must be in the possession of concrete *facts* or *information* linking the defendant to the specific offense for which you intend to make an arrest. Mere suspicion, standing alone, will not justify an arrest because suspicion does not constitute "reasonable grounds to believe."

1. *Facts Indicating "Reasonable Grounds to Believe"*

What, then, are the *facts* that, as they appear to you, might indicate "reasonable grounds to believe" that a felony has been committed? Assume that you are patrolling at 4:00 a.m. in a residential area where there have been many house-breakings. You come across two men who appear to be prying open a garage window. You call to the men but they run. Would such action on their part provide reasonable grounds for you to believe that these men had participated in the break-ins? Yes, because (a) the *suspicious conduct* of these men could be considered a type of conduct *inconsistent* with innocence; or (b) the men *flee* from you under *suspicious circumstances*; or (c) you are *observing conduct at an hour when honest people are usually not out on the street doing what these two men are doing.*

Another *type of fact* that might indicate to you *reasonable grounds* to believe that a felony has been committed appears (d) when you *answer* to *a specific complaint about a felony.* For example, you receive a call from a householder that someone is breaking into his home, and when you arrive at the home, two men run from the residence and fail to heed your warning to halt.

2. *Information Obtained From Others That Would Indicate "Reasonable Grounds To Believe"*

Information obtained from others that would indicate to you "reasonable grounds to believe" that the suspect has committed a felony would be:

(1) Reliable information that an indictment has been returned against him for a felony;

(2) Information that a felony warrant has been issued for him; or

(3) Information from fellow officers who are conducting the investigation; or

(4) Information from the suspect's victim; or

(5) Information obtained from wanted posters or circulars in which the suspect resembles a felon described on the poster.

If, then, you have no personal knowledge of an outstanding felony warrant but you learn of its existence from a reliable source, you have sufficient authorization to make an arrest without a warrant. Such a source could be a superior officer, a prosecutor, a judge, a clerk of court, or even another law enforcement agency. Would an informer be a reliable source? It would seem that for an informer to be recognized in a court of law as a reliable source, he must be known to you either by name or voice and have given you reliable information in the past.

Remember, also, that while you can arrest for a felony without a warrant when you have reasonable grounds to believe that the person *will evade arrest if not immediately taken into custody,* if the arrestee is unable to go anywhere because of his physical condition or is unaware that you suspect him, you would be wise to obtain a warrant before making the arrest.

C. Arresting For a Misdemeanor Without a Warrant

You may arrest without warrant for a misdemeanor *committed in your presence* or when you have "reasonable grounds to believe" that a misdemeanor has been committed in your presence. You may *not* arrest without warrant for a misdemeanor committed out of your presence.

If the offense must be committed in your presence to constitute justification for you to make an immediate arrest without a warrant, how do you define "committed in your presence"? How is an act "committed in your presence" to be perceived? Ordinarily it would be one that you have *seen* with your own eyes. But what if your vision is obscured by darkness or by an obstruction?

Generally, the requirement that the offense be committed in your *presence* is a requirement that you, yourself, witness the violation through one or more of your five senses—touch, smell, sight, taste, or hear. (Probably you would never perceive an offense through the sense of taste or touch because of the danger of committing an unlawful search.) Note that before you make an arrest, you must not only "perceive" the offense but you must also have reasonable grounds to believe, at the time you perceive, that an offense is being committed. Mere suspicion, luck, or good guessing on your part will not justify an arrest even though you may turn up a cache of liquor, concealed weapons, or narcotics as a result of the arrest.

Thus, if you *hear* screams from inside a house and rush in to find Mr. X sitting peaceably reading a newspaper but Mr. Y sprawled on a couch sporting a black eye and a variety of facial bruises, you may lawfully arrest Mr. X. If, at night, you *hear* pistol shots two blocks away followed immediately by footsteps and you catch sight of a person running toward you, the offense has occurred in your presence so as to authorize you to make an immediate arrest without a warrant.

What if you catch a thief in flight in possession of stolen goods but you did *not* actually *see* or *hear* him take possession of the goods? Has the theft occurred in your presence so that you may arrest without a warrant? For arrest purposes the courts regard the "taking" of the goods as a continuing offense that occurred in your presence even though the thief is in the act of fleeing from the scene of the crime when you come upon him.

But what if you have received an anonymous tip that a suspect, who has a long record of violations, is in the numbers racket? You observe the suspect writing on a "bill" and approach him. He runs away, but you overtake, stop, and search him. You find a concealed weapon and then arrest him. Would this be a legal arrest? No, because you did not have reasonable grounds to believe, at the time you "perceived," that an offense was being committed. You must have reasonable grounds to believe that an offense has been, or is being, committed *before* you make the arrest.

It may often be difficult or impossible for you to determine accurately or certainly whether an offense is occurring in your presence, even though you physically perceive something that makes that person suspicious in your eyes. For this reason, in 1955 the Legislature amended G.S. 15-41 by adding the words "when the officer has reasonable grounds to believe" a felony or misdemeanor has been committed in his presence. This language serves to protect you when you make a good-faith mistake on the basis of your physical perception, or when you make a reasonable mistake of fact, or when the defendant is later acquitted by a jury.

knowledge, adding why you felt the arrestee was probably guilty when you made the arrest, or you have received from a reliable source information that according to your best judgment indicates probable guilt.

D. Arresting Without a Warrant to Prevent a Felony or a Misdemeanor Amounting to a Breach of the Peace

You receive a radio report from headquarters that two men are hiding in a building. You go to the basement of the building and find two men seated on their suitcases reading the latest issue of *True*. One man has a pinch bar sticking out of his pocket. You may therefore arrest these men without a warrant because you are authorized to make an arrest without a warrant in order to prevent the commission of a felony. But since they have made no attempt to commit an *indictable* crime, and therefore no warrant can be issued for their arrest, what do you do with these men? In order to protect yourself, you should take them before a warrant-issuing official to establish the legality of your arrest even though the men are subsequently released.

You may also arrest to *prevent a misdemeanor amounting to a breach of the peace*. The North Carolina Supreme Court has defined "breach of the peace" as "conduct which would disturb the public order, or create public tumult, or incite others to break the public peace, or conduct which would amount to a crime of violence." The following are a few of the wide variety of acts that the courts have regarded as breaches of the peace:

(1) The use of loud and profane language in a public place to an extent so as to disturb others;

(2) A gathering of disorderly persons at a farm to prevent a lawful foreclosure sale of the farmer's machinery and equipment; and

(3) A formation of a parade through the public streets, the participants carrying signs and banners that insult a particular group or religion.

In each of these illustrations, the basic element, apart from the question of violence, was a disturbance of the public order.

E. Informing the Arrestee

When arresting with a warrant, you should *inform* the accused of the fact that you are an officer, that you have a warrant for his arrest for a particular crime (naming it), and that you intend to make the arrest. However, when arresting *without* a warrant, unless the arrest is made under circumstances in which the arrestee may be presumed to know who is arresting him and for what crime or crimes he is being arrested, you must give notice:

(1) That you are a law enforcement officer;
(2) That you are placing him under arrest; and
(3) Of the crime for which he is being arrested.

In arresting without warrant for an offense committed in your presence, you must make the arrest at the time the misdemeanor is committed or *immediately* thereafter. A short delay is permitted if it is connected with the arrest—such as summoning aid or fresh pursuit of the suspect—but an unconnected delay might very well make the arrest improper if you do not have a warrant. The thing for you to remember here is that if you feel that there is no urgency to make an immediate arrest for a misdemeanor when it is committed and time permits, get a warrant before making the arrest later.

If you have made a valid arrest without a warrant and have brought the arrestee before a warrant-issuing official, you should make it clear to that official that either the *facts* are within your personal

If you are an officer in uniform and display a badge, you need not worry about informing the arrestee of the fact that you are an officer. You need only state, "You're under arrest for larceny of an automobile," or "I have a warrant for your arrest for larceny of an automobile. You must come with me."

There are several reasons why you, as a peace officer, must inform a suspect of who you are, of your intention to arrest him, and why you intend to arrest him. When you so inform the suspect, it decreases in great measure the chance of his resisting a lawful arrest. Also, unless an intention to arrest is expressed, the suspect may think that you are acting unlawfully rather than exercising the state's authority. Finally, and perhaps most important of all, the suspect as a *person* is *entitled* to know why he is being arrested.

VI. USE OF FORCE

A. In General

Every arrest that you make involves either a threatened or an active use of force. Force and violence are a part of your profession, and you must know, for your own safety and for the protection of the public, under what circumstances you can use force and the degree allowed. Essentially, you alone are the judge of how much force is necessary under the circumstances to bring the arrestee within your custody and control. However, in making a lawful arrest, you are entitled to use only that amount of force necessary to secure the prisoner, overcome resistance, prevent escape, recapture the prisoner, or protect yourself from bodily injury. You are never permitted to use unnecessary or unreasonable force, or dangerous tactics, when peaceful and harmless means would be sufficient to accomplish your purpose.

The amount of force that you may use depends, in part, upon whether the offense involved is a felony dangerous to life or a misdemeanor. Generally, the more serious the offense, the more latitude you have in using forcible means, including deadly force, to make the arrest. Remember, all that the law requires of you is that you make a *reasonable decision* under the circumstances. That is to say, from the appearance of everything involved—the type of offense, the accused's reputation, his words or actions, whether he is armed, etc.—the amount of force you use must be reasonable and not clearly excessive.

Remember, also, that *no force may be used in any situation if the arrest is unlawful.*

B. If The Arrestee Resists Lawful Arrest

If you make an invalid arrest because the warrant is not valid on its face, or if you arrest without warrant when the misdemeanor has not been committed in your presence, then the arrestee may lawfully resist you and use whatever force may be reasonably necessary to free himself. For an arrestee's *resistance* to be *unlawful*, your original arrest must have been lawful.

If the arrestee resists lawful arrest, you are allowed to use only that amount of force reasonably necessary to overcome resistance and no more, *unless* the arrestee is charged with a felony dangerous to life. When the arrestee is charged with such a felony, you are permitted to use deadly force, if necessary, to make the arrest. Felonies dangerous to life include murder, manslaughter, first-degree burglary, rape, arson, armed robbery, kidnapping, and felonious assault with intent to kill or rape.

When you seek to arrest for a misdemeanor or a felony not dangerous to life and the arrestee resists, you should *not* use deadly force even though you cannot make the arrest without it. This is not to say that you may not use deadly force to defend yourself when you reasonably believe that the accused is about to assault you and your life is in peril. Whether the offense involved is a felony or a misdemeanor, when you are attacked and you believe your life is in peril, you are not required to retreat but are entitled to use whatever force is necessary, even deadly force, to defend yourself.

C. If The Arrestee Flees Lawful Arrest

You have just arrested a man for the illegal sale and possession of lottery tickets. As you prepare to take him to headquarters, he breaks away from you. You shout to him to stop and fire a warning shot over his head. Would such use of your gun constitute an illegal use of force? Yes, because the amount of force that you may use to stop a fleeing arrestee depends upon the nature of his offense. In the case of a misdemeanor (as set out above) or a minor felony, you

may not employ deadly force (shooting over an escapee's head) to halt the arrestee when he flees. The only time that you may employ deadly force to stop a fleeing arrestee is when he is charged with the commission of a felony dangerous to life. Thus, you may not fire at the legs of a fleeing misdemeanant or fire at the tires of an automobile used by a fleeing misdemeanant. Shooting anywhere in the general direction of a fleeing misdemeanant may be construed as the use of deadly force.

Note that the rules relating to the use of force to prevent escape and to rearrest a prisoner who has escaped are practically the same as those rules relating to the use of force when making the original arrest. You must know the offense charged or what the prisoner has been convicted of.

D. Forcible Entry of Dwellings

1. *With Warrant*

If you have stated your authority and purpose, demanded entrance, and been refused, you may forcibly enter a dwelling in order to arrest *with a warrant* for either a felony or a misdemeanor. However, in order to enter a dwelling you must have a reasonable belief that the person you seek to arrest is inside. If the dwelling entered is the arrestee's own home, you will probably be protected unless you have some reason to believe the arrestee is not there. If you enter some other person's home, you must have reasonable grounds to believe that the person you seek is in the house.

2. *Without Warrant*

When you are acting without a warrant your authority to enter a dwelling forcibly is far more limited. If you have stated your authority and purpose, demanded entry, and been refused, you may forcibly enter a dwelling *without a warrant*:

(1) To arrest for a felony that has been, or is then being committed, by a person inside;
(2) To arrest for a misdemeanor amounting to a breach of the peace committed in your presence; and
(3) To prevent a felony about to be committed.

The law is not clear as to whether you may forcibly enter a dwelling of a defendant who has commited only a misdemeanor in your presence. It would be wise to obtain an arrest warrant under these circumstances. Also, in cases involving neighborhood or domestic quarrels, it is advisable to have the complaining party swear out a warrant unless life, limb, or property are in danger.

VII. RIGHTS AND DUTIES AFTER ARREST

A. Securing the Arrestee

You have arrested a suspect with or without a warrant, as the case may be, and you have him in custody. The accused may be peaceful or violent, drunk or sober. Whatever his state or condition, he is your prisoner as the result of your arrest and the law requires that your actions toward him be lawful. What, then, do you do with the prisoner?

First, you may take all measures reasonable to the situation to secure him against escape regardless of whether force was necessary in making the arrest. If you have just arrested a man accused of rape and murder, you would not be forbidden to handcuff him simply because he submitted peacefully to your authority. If a prisoner resists being secured, whatever steps you take to secure him must be reasonable and in proportion to his resistance.

B. Search Incident to an Arrest

Incident to, or in connection with, a lawful arrest —with or without a warrant—you may search the person of the accused and also, to a limited extent, the surrounding premises.

[Another article on search and seizure will appear in a forthcoming issue of *Popular Government*.]

C. Questioning the Accused

To maintain order and preserve the peace, the law gives you the authority to detain a suspect for a short time to make an investigation of the crime and, if necessary, to arrest him for the offense. However, to protect the liberty of the individual, the federal and state constitutions impose certain limitations upon you in your attempts to obtain a conviction. The courts are constantly struggling to balance society's interest in maintaining peace and order against the individual's constitutionally guaranteed private rights. With this end in mind, the United States Supreme Court has recently established new guidelines for questioning the accused. Although these guidelines may at times appear to be designed to hinder rather than to assist you in carrying out your duties (which of course they are not), you must nevertheless know them and work within their framework and intent.

When you make an arrest, you can be held criminally liable, under the general law of North Carolina, if you fail immediately to inform the arrestee of the charge against him or promptly to permit the arrestee to communicate with his attorney and friends. These requirements are probably no longer totally adequate in light of recent pronouncements by the Supreme Court of the United States, but they are still law in North Carolina, and it would seem that you are still subject to criminal liability in this state if you do not comply with these minimum standards.

In a 1964 case, the United States Supreme Court reversed a murder conviction because it was obtained from a confession made after the accused had been denied permission to speak to his attorney. The

Court ruled that every individual who is placed under arrest is entitled to consult with his attorney as soon as a police investigation points to him as a prime suspect. Any incriminating information given by an accused to the police when deprived of his right to counsel would not be admissible into evidence. [A section on evidence will appear in a forthcoming issue of *Popular Government.*]

In another case decided June 13, 1966, the Supreme Court reversed the convictions of four men because their confessions had been improperly obtained. In so doing, it extended its 1964 ruling by declaring that no statement of a suspect may be used to convict him unless his Fifth Amendment *privilege against self-incrimination* has been carefully *protected.* The Court offered some guidelines that you, as a law enforcement officer, must follow in order to have statements resulting from "in-custody interrogation" admitted into evidence. It would appear that "in-custody" interrogation is broader than station-house detention and applies whenever you "deprive a suspect of his freedom of action in any way." Put another way, "in-custody interrogation" seems to cover those situations when you have isolated a suspect and are questioning him in such a manner as to create the impression that he is not free to end the questioning or to leave.

In any case, before any incriminating information obtained during an "in-custody interrogation" can be used against a suspect in court, you must *advise* the accused of his rights. There are four minimum procedural safeguards required by the Court. They are:

(1) An advisement that the suspect has a right to remain silent;

(2) A warning that any statement made may be used as evidence against him;

(3) Advisement that the accused is entitled to have a lawyer present during the interrogation; and

(4) Advisement that if he cannot afford to hire a lawyer, the state will provide him one. [There may be some confusion in North Carolina in implementing this particular procedural safeguard. G.S. 15-4.1 states that a judge "in his discretion" may "appoint counsel for an indigent defendant charged with a misdemeanor" if he feels that such an appointment is justified. The North Carolina Supreme Court, in a recent interpretation of this statutory provision, has stated that a defendant charged with a misdemeanor, petty or otherwise, does not have an absolute right to have court-appointed and paid counsel.]

If, after you have interrogated a suspect for a short period, he suddenly refuses to answer any more questions or states that he wants a lawyer, you must discontinue your questioning immediately. If the suspect wants and gets a lawyer, you may resume questioning him, but only in the presence of the lawyer. If you have fully warned a suspect of his constitutional rights and the interrogation continues without the presence of an attorney, and the suspect makes an incriminating statement, in the words of the Court, "a heavy burden rests upon the Government [the state] to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel."

[*Escobedo v. Illinois*, 378 U.S. 478 (1964), is essentially a "right to counsel" case. It held that the confession of the defendant had to be excluded from evidence because it had been obtained after he had asked for and been denied his constitutional right to counsel. *Miranda v. Arizona*, 384 U.S. 436 (1966), generally is believed to expand upon *Escobedo* by opening yet a new area for the exclusion of evidence. *Miranda* held that statements that are acquired through in-custody interrogation of a suspect in violation of his Fifth Amendment privileges against self-incrimination must be excluded from evidence.]

D. Bringing the Accused Before a Magistrate or Other Judicial Officer

If you make an arrest without a warrant, you must take the accused before a magistrate or other judicial officer at once so that he may issue a warrant and set the appropriate amount of bail. If such an officer is not available, then you may place the accused in jail until you can find one, but you cannot keep an individual in custody for longer than twelve hours if you do not have a warrant for his arrest. If you fail to comply with this requirement, you may be held liable for assault and battery and false imprisonment in a subsequent civil suit brought against you by the arrestee. If it should become necessary, then, for you to release a prisoner because no warrant-issuing official can be found, you should swear out a warrant *as soon as possible* and rearrest the accused. For your own protection, you should not delay in seeking to rearrest the accused. Once the suspect is brought before a warrant-issuing official, he is considered to be *in court* and under the control of the court, and your job is done—except perhaps to appear in court and testify at the trial. □

North Carolina's New District Court Judges

FIRST CHIEF DISTRICT JUDGES MEET

The cover picture of *Popular Government* this month concerns another landmark in North Carolina court reform. On November 14-15, the first six chief district judges met at the Institute of Government after their formal designation on the tenth by the Chief Justice of the Supreme Court. This original group includes Judge Lawson Moore, Durham County (14th Judicial District); Judge Robert F. Floyd, Robeson County (16th Judicial District); Judge Felix Alley, Haywood County (30th Judicial District); Judge Coy Brewer, Cumberland County (12th Judicial District); Judge Fentress Horner, Pasquotank County (1st Judicial District); and Judge Mary Gaither Whitener, Catawba County (25th Judicial District), who was chosen temporary chairman of the conference.

Judge J. Frank Huskins, Director of the Administrative Office of the Courts, talks with two nominees for district court judge at a meeting for candidates in September.

The occasion for this historic gathering was the requirement of the Judicial Department Act of 1965 (G.S. § 7A-148) that the chief district judges meet annually at the call of the Chief Justice. The judges' commission, among other assignments, was to "prepare and adopt a uniform schedule of traffic offenses for which magistrates and clerks of court may accept written appearances, waivers of trial and pleas of guilty, and establish a schedule of fines therefor . . . ." This schedule will be promulgated on December 5 in the twenty-two counties of the State that adopt the new district court system.

Judge Byron Haworth of the High Point Municipal Court spoke to the group about the traffic offense waiver schedule in effect in his court, and also about an experimental pretrial release program that reduces the number of defendants required to post bond as a condition of pretrial release.

Judge J. Frank Huskins, Director of the Administrative Office of the Courts, sat with the conference, and C. E. Hinsdale and Taylor McMillan of the Institute staff served as consultants.

DISTRICT COURT JUDGE CANDIDATES IN HISTORIC BRIEFING

A group of candidates for district court judge

Another first in North Carolina's progress toward total reorganization of its system of lower courts took place at the Institute on September 15-16. The occasion was the first gathering of court officials-to-be under the new Judicial Article of the Constitution and the Judicial Department Act of 1965. Present for the two-day seminar, co-sponsored by the Institute of Government and the Administrative Office of the Courts, were nineteen of the twenty candidates for the office of District Court Judge.

In four of the six judicial districts to be activated in December, the candidates are unopposed, and hence certain of election. These candidates are as follows: in the 1st district, Fentress Horner (Elizabeth City) and W. S. Privott (Edenton); in the 14th district Thomas H. Lee, S. O. Riley, and Lawson Moore, all of Durham; in the 16th district, R. F. Floyd (Fairmont), J. S. Gardner (Lumberton), and S. E. Britt (Lumberton); and in the 30th district, F. E. Alley, Jr. (Waynesville) and R. J. Leatherwood, III (Bryson City). Four of the 12th district candidates attended: D. S. Carter, D. B. Herring, Jr., J. E. Dupree, and Coy E. Brewer (Dupree is from Raeford, the others from Fayetteville). From the 25th district, five candidates, contesting for three judgeships, were present: H. J. Hatcher (Morganton), Mary Gaither Whitener (Hickory), Fate J. Beal (Lenoir), J. H. Evans (Hickory), and K. S. Snyder (Lenoir).

The agenda for the seminar which was conducted by Judge J. Frank Huskins, Administrative Officer of the Courts, and Ed Hinsdale and Taylor McMillan, judicial administration specialists on the Institute staff, included a thorough review of the Judicial Department Act of 1965, particularly the judicial and administrative duties of the chief district judge and the associate judges; the relationship of the judges to the Administrative Officer, the Clerk of Superior Court, and the Magistrate; the problems of courtroom and office space for the new system; budgeting and costs of court; and special problems associated with the transition from the present system to the district court system. A profitable question-and-answer session highlighted the concluding day of the seminar. The judicial candidates unofficially but overwhelmingly voted to adopt the custom of the superior court and wear black robes while presiding in court.

The cover picture and the article on page 24 present the new chief district judges who were selected from this group by the Chief Justice of the North Carolina Supreme Court. □

Clerks of Court Plan New Records System

For the past year the Uniform Courts Committee, a team of seven clerks of superior court, has met regularly at the Institute of Government to work out a plan for updating record-keeping and business methods for the offices of clerks of superior court in all 100 counties.

The committee was elected in July, 1965, by the North Carolina Association of Superior Court Clerks. It consists of D. Marsh McLelland (Alamance), chairman; Alton J. Knight (Durham), vice syth); Ben H. Neville (Nash); chairman; W. E. Church (For-Russell Nipper (Wake); Frances F. Rufty (Rowan); and Joseph P. Shore (Guilford). Robert M. Blackburn, of the Administrative Office of the Courts, and Taylor McMillan, from the Institute of Government, have sat with the group as consultants.

Judge J. Frank Huskins, whose duties as Director of the Administrative Office of the Courts include supervising the operation of the offices of clerks of superior court, requested the committee to make recommendations to him regarding the record-keeping and financial procedures in these offices.

Basically the recommendations will call for the replacement of the traditional bound-volume system with a new file record system supplemented by microfilm. The papers for each case would be kept in a flat file folder, and the persons consulting the record would consult this "hard copy." Microfilm records will not generally be for public use; rather they will guard against loss or destruction of the original papers and provide a permanent record for historical purposes.

Some of the members of the Uniform Courts Committee of the North Carolina Association of Superior Court Clerks look over the committee's recommendations for revised record-keeping techniques. Seated, left to right: Alton Knight, D. Marsh McLelland, Russell Nipper, and Ben H. Neville. Standing, left to right: Max Blackburn of the Administrative Office of the Courts, C. E. Hinsdale, and Taylor McMillan, both of the Institute staff.

The committee's report comments on the virtues of microfilming: "At least 1,000 pages, legal size, the equivalent of two bound record books, can be photographed on one 100-foot roll of film, and the developed roll, including the box in which it is stored, occupies a space four inches square by one inch deep.

"Thirty-six rolls take no more space than a single book, yet they contain the record information that would fill 72 such books. The saving is just as fantastic in cost as the saving in space."

In addition to microfilm record techniques, the committee will recommend standardization of the forms used in offices of clerks of superior court, so that the multiplicity that now exists, each county with its own forms, will be greatly reduced.

The introduction of standard accounting procedures in all clerks' offices is another committee recommendation to update and improve present bookkeeping methods.

If these recommendations are

The full Uniform Courts Committee sits with its two Institute consultants. From left to right: W. E. Church, Alton Knight, C. E. Hinsdale, Russell Nipper, D. Marsh McLelland, Frances Rufty, Joseph P. Shore, Taylor McMillan, and Ben H. Neville.

adopted by the Director of the Administrative Office of the Courts, the new record-keeping and bookkeeping procedures will go into effect this year in those twenty-two counties in which court-reform measures go into effect on December 5. These counties are Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans, Cumberland, Hoke, Durham, Scotland, Robeson, Burke, Caldwell, Cherokee, Clay, Graham, Jackson, Macon, Swain, and Haywood. Most other counties will be affected in 1968. □

D. Marsh McLelland is chairman of the Uniform Courts Committee of the North Carolina Association of Superior Court Clerks.

Two City Managers Honored

Two North Carolinians were among six who recently received plaques indicating 25 years of service at the 52nd Annual Conference of the International City Managers' Association. William H. Carper, manager at Raleigh since 1950, previously held the post at Culpeper, Clifton Forge, and Harrisonburg, Va., and at Burlington. A. B. Sansbury, who has been manager at Lumberton since 1949, formerly served at Goldsboro.

Book Reviews

FOR HISTORY'S SAKE. THE PRESERVATION AND PUBLICATION OF NORTH CAROLINA HISTORY, 1663-1903. By H. G. Jones. The University of North Carolina Press, 1966. 319 pp. $7.50.

Dr. H. G. Jones, State Archivist since 1956, has given us an excellent account of the public records of the Colony and State of North Carolina during its first 240 years. He deals with the records themselves and their making and destruction, dispersal and collection, preservation and publication; with the nineteenth-century public men for whom the preservation and publication of the written records of the State was a major cause; and with efforts to organize state historical societies up to 1900. Anyone with at least a moderate interest in North Carolina history will find this book surprisingly lively and worth reading.—J.L.S. □

JOE DANIELS: SMALL-D DEMOCRAT. By Joseph L. Morrison. Chapel Hill: The University of North Carolina Press, 1966. 316 pages.

This biography of Josephus Daniels will find welcome place in libraries everywhere. It has the advantages of scholarship and warmth, of historical perspective and human understanding. Obviously, the author, a professor in the School of Journalism at the University of North Carolina, found it a labor of love.

The result is a work of rare insights, taking the Tar Heel editor and public servant from the time of his birth in Washington, North Carolina, through his service as Secretary of the Navy in the Cabinet of President Woodrow Wilson, his less-heralded activities in the 1920's, and his Ambassadorship to Mexico in the Administration of his former assistant Secretary of the Navy, President Franklin D. Roosevelt, to his vigorous resumption of the editorship of the Raleigh *News and Observer* at 80.

Professor Morrison has performed especially valuable services in filling gaps left by Mr. Daniels in his autobiography and in capturing on paper the character, humanity, and achievements of a distinguished North Carolinian and his impact upon the life of his State and Nation. —E.R.O. □

POLITICAL PARTIES AND POLITICAL BEHAVIOR. William J. Crotty, Donald M. Freeman, and Douglas S. Gatlin (eds.). Boston: Allyn and Bacon, 1966.

The editors of this book have sought to bring together under one cover a variety of writings that provide insight on the roles played by political parties in the workings of government. They have combined materials which are more or less traditional in their approach to the analysis of parties with others which are more empirically oriented and methodologically rigorous. The individual selections, as a rule, are excellent, and the editors' organization of the topic is equally good. The book is not a good introduction or basic work in either political parties or political behavior. It is essentially a supplementary reader, since it does not inquire into any of its chosen areas of concern with sufficient depth to be entirely satisfying to the serious nonacademic reader. This comment is not really a criticism, since the authors make no claim at having tried to produce anything other than this type of work. Measured in terms of its chosen objectives, the book is a success, and the authors are entitled to state: "The final product has been a book of readings different from any currently available."—S.K.H. □

Attorney General's Rulings *by George Cleland*

COUNTY WELFARE BOARD

Conflict of Interest

3 August 1966
A.G. to Wallace H. McCown

Question: Would a registered pharmacist be prohibited from serving on a county welfare board by reason of the fact that he owned one of a small number of drugstores in the county which fill prescriptions?

Answer: No. However, the county welfare board would be prohibited from entering into any contract for the filling of welfare prescriptions with the store owned by the board member, as such a contract would be against public policy and in violation of G.S. § 14-234.

Residence in Retirement Homes

23 September 1966
A.G. to Isabel Pelton

Question: Several years ago, an elderly person moved from County S to County D in order to reside in a retirement home. Where is the legal residence of this person for purposes of payments under the Medical Assistance to the Aged program?

Answer: In D County. G.S. § 153-159(1) is controlling. When a person moves into a home under circumstances indicating an intent to remain there permanently, he acquires legal settlement in the county where the home is located after he has been there for three months.

MUNICIPALITIES

Municipal Officers

22 September 1966
A.G. to Dan R. Simpson

Question: Are members of a town council personally liable for the expenditure of public funds to construct a road to a recreational facility privately owned by a charitable organization and thought to be within the town limits when, in fact, all or part of the facility is later discovered to be outside the town limits?

Answer: In the absence of any evidence of intentional wrongdoing by the council there is no personal liability on the part of the council members individually.

Public Housing

1 September 1966
A.G. to Irving E. Carlyle

Question: Is it correct to interpret G.S. 157-29(4) to mean that in arriving at the income eligibility of a tenant in a public housing project, all income earned periodically by persons occupying the dwelling shall be counted as income of the tenant?

Answer: Yes. G.S. 157-29(4) is explicit and not susceptible of any other interpretation.

PUBLIC OFFICER

Double Office Holding

26 September 1966
A.G. to John B. Lewis

Question: Must a town policeman be a resident of the town in which he serves?

Answer: Yes. The Constitution is the source of this requirement.

Question: May one person serve simultaneously as town policeman and town constable?

Answer: No. The Supreme Court has held that a constable and a town policeman are public officers, and as one person may not hold two public offices at the same time, one person may not serve simultaneously as town policeman and constable.

PUBLIC WELFARE

Old-Age Assistance Lien

29 September 1966
A.G. to Brent P. Yount

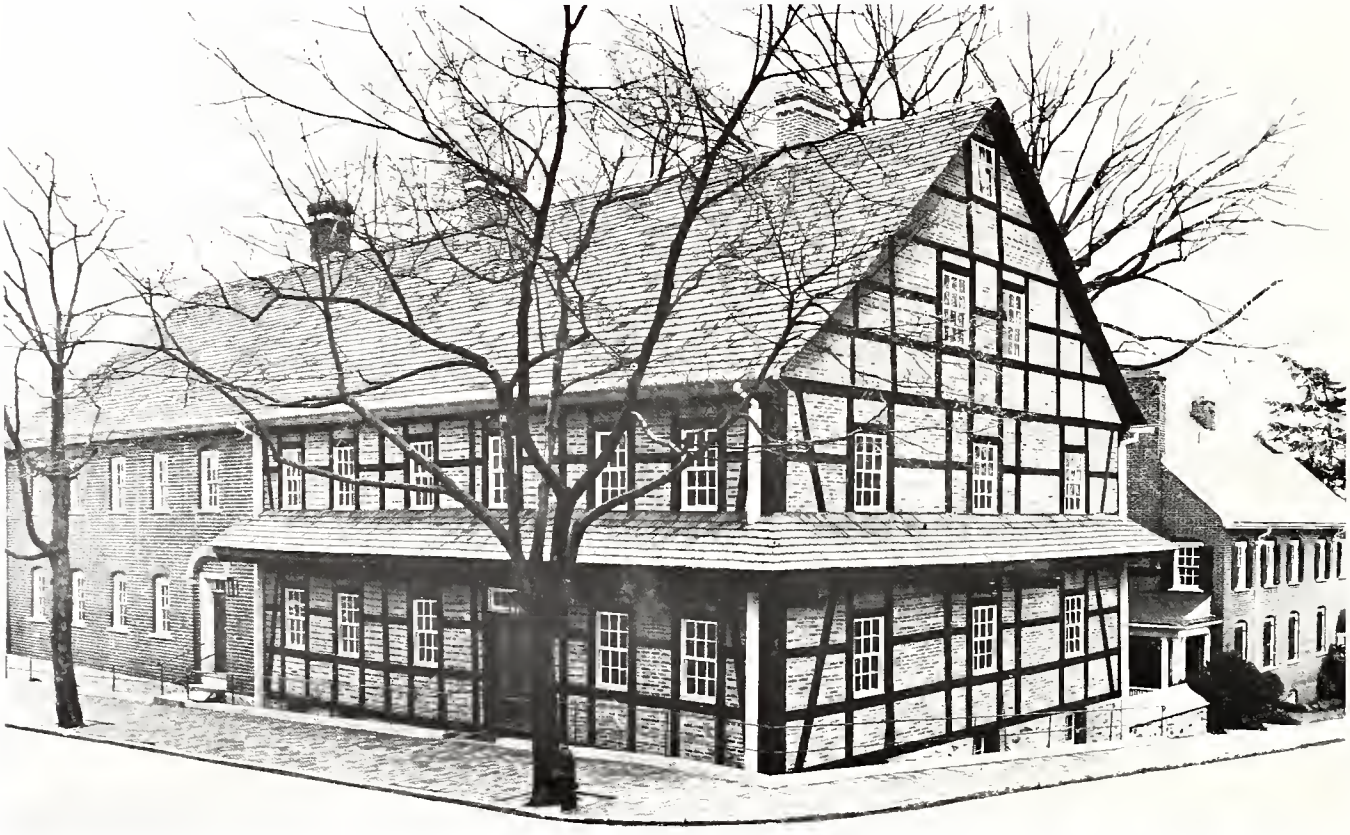
Question: May county commissioners release an old-age assistance lien on real property and take instead a lien on real property purchased out of the proceeds of the sale of the released property?

Answer: Yes. A review of G.S. § 108-30.1 through G.S. § 108-30.3, which relate to old-age assistance liens, indicates that county commissioners have authority to take such actions as are necessary and warranted with respect to old-age assistance liens as long as they do not injure the county by doing so. In allowing such a substitution, the commissioners should require that the property be of equal or greater value than the property released and that the title to the property be in the same owner. Tenancy by the entireties should be avoided in the new real property estate, as previous opinions have indicated that old-age assistance liens do not apply to tenancies by the entireties. □

Credits: Photographs by Charles Nakamura.

Everybody talks about saving our historic landmarks.

Look what the people of Winston-Salem, N.C., are doing about it.



Old Salem's Moravian Single Brothers house was built in 1769. After almost 200 years, neglect had taken its toll, and the half-timbered facade you see above – one of America's most outstanding examples – was hidden behind shabby wooden siding.

Then a handful of civic-minded citizens began a campaign to restore Old Salem's historic buildings. They got everybody into the act. Contributions, from pennies to dollars, came from local industry, businessmen, civic leaders, clubs, housewives – even schoolchildren.

Now, in Salem's 200th anniversary year, 23 historic buildings have been authentically restored. And the good work still goes on.

It just shows what can happen when enough people care enough.

The people who do things make a community go.

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