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Torts -- Libel and Slander -- Liability of Law Enforcement Officers for Defamation Contained in Official Communications

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be noted at this point. It was held there that the retention of the power to terminate by the decedent would not subject the trust to the estate tax, if the trust indenture specified that the trust could be terminated only with the consent of all the beneficiaries. Justice Roberts speaking for the majority said: "The general rule is that all parties in interest may terminate the trust.¹⁵ The clause in question added nothing to the rights which the law conferred. Congress cannot tax as a transfer intended to take effect in possession or enjoyment at the death of the settlor a trust created in a state whose law permits all the beneficiaries to terminate the trust."¹⁶ The Treasury Regulations are now in accord with this holding.¹⁷ Thus, if Lober had not included the power to terminate the trust it would not have been subjected to the estate tax, as under the applicable state law the settlor of a trust can terminate the trust if he obtains the consent of all parties in interest.¹⁸ And, practically speaking, he would still have the same control, as it can be fairly assumed that the consent of the sole beneficiary would be easily obtainable.

The *Lober* decision, thus, seems to be penalizing the less tax conscious settlor. While the fact that the consent of the beneficiaries would be a substantial power where there are contingent beneficiaries who would hesitate in giving away their possibility in the trust, the same would not be true where there was only a single beneficiary who held the whole fee in the trust property. It would therefore seem that the Supreme Court should be concerned with "technical vesting of titles and estates," despite what was said in the principal case.

JOHN G. HUTCHENS

Torts—Libel and Slander—Liability of Law Enforcement Officers for Defamation Contained in Official Communications

One of the many problems arising to confront those engaged in the enforcement of the criminal law is that of the liability of law enforcing officers for libel and slander contained in their reports to superiors and in their communications with other officers.

For example, an investigating officer can often put into his reports not only statements of fact, but also much in the nature of inference, conclusions, surmise, etc., which he is able to draw from his observations, evaluated in the light of his own training and experience. Such things might be characterized as "policeman's hunches." It goes without say-

¹⁵ In so holding the Court cited the RESTATEMENT, TRUSTS §§ 337, 338 (1935).

¹⁶ *Helvering v. Helmholz*, 296 U. S. 93, 97 (1935).

¹⁷ U. S. TREAS. REG. 105, § 81.20(b)(3) (1939).

¹⁸ N. Y. PERS. PROP. LAW § 23; N. Y. REAL PROP. LAW § 118; *McEvoy v. Central Hanover Bank & Trust Co.*, 274 N. Y. 27, 8 N. E. 2d 265 (1937).

See also N. C. GEN. STAT. §§ 39-6, 39-6.1 (1950) for the comparable North Carolina law on this point. It is provided there that the grantor in a voluntary conveyance may revoke the interest of any person not *in esse*.

ing that such material is extremely valuable to other officers, to those guiding the over-all investigation, and to prosecutors.

A fear of civil liability for defamatory statements of this type has led to policies in many law enforcement agencies of allowing only statements of fact to be included in investigative and arrest reports, while matters of opinion are transmitted orally, or in some instances by inter-agency memoranda, access to which is closely restricted. The disadvantages of these methods (particularly the former) from the standpoint of efficiency can readily be seen. In view of the increasing volume and significance of this work, it seems important that some clarification of the situation be attempted, with the view that the service of these agencies to the public should not be unnecessarily restricted, and that these officers should know the extent of their protection from civil liability while engaged in the discharge of their duties.

The law of libel and slander recognizes that statements which would otherwise be defamatory may be made on certain occasions where the defamer should be allowed to speak his mind freely in the furtherance of some important public interest, and it makes the existence of these occasions defenses to suits for libel and slander. Thus defamatory statements published on such privileged occasions are called "privileged communications."¹ They are of two types: "absolute," and "qualified" or "conditional."

In cases of absolute privilege, immunity is granted the defamer regardless of the falsity of the communication, his knowledge of that falsity, or the motives which prompt him to make it. Originally, this privilege was narrowly restricted to legislative and judicial proceedings and to reports of military officers to superiors. In more recent years, however, the courts have extended it to executive officers of the government. The case of *Spalding v. Vilas*,² where absolute immunity was granted a federal cabinet officer, may be considered as representing the first step in this direction.³ The privilege has subsequently been extended not only to heads of executive departments of the government, but also to inferior officers of such departments when engaged in the discharge of their duties.⁴

¹ It is helpful to recognize that it is the *occasion* which is privileged. The communication made on a privileged occasion may not, for reasons discussed below, always be privileged.

² 161 U. S. 483 (1896); *Matson v. Margiotti*, 371 Pa. 188, 196, 88 A. 2d 892, 896 (1952).

³ *Glass v. Ickes*, 117 F. 2d 273, 132 A. L. R. 1328 (D. C. Cir. 1940), *cert. denied*, 311 U. S. 718 (1940) (Secretary of the Interior).

⁴ *Farr v. Valentine*, 38 App. D. C. 413, Ann. Cas. 1913C, 821 (1912) (Commissioner of Indian Affairs of the Department of the Interior); *DeArnaud v. Ainsworth*, 24 App. D. C. 167, 5 L. R. A. (NS) 163 (1904), *writ of error dismissed*, 199 U. S. 616 (1905) (chief of the Record and Pension Office of the War Department).

The federal courts seem to be more liberal than most state courts in extending this absolute privilege.⁵ Where the communication was made to a superior officer, the privilege has been granted by federal courts to a consul,⁶ a naval officer,⁷ and an internal revenue agent.⁸ Some state courts have also extended the unqualified privilege rather far.⁹ Two cases in which such a privilege was granted to communications passing between law enforcement officers engaged in investigating a crime are *Stivers v. Allen*,¹⁰ and *Catron v. Jasper*.¹¹ Unfortunately, some state courts have carried the privilege to unwarranted extremes.¹² The recent case of *Matson v. Margiotti*¹³ is an example of the abuses

⁵ Note, 33 ILL. L. REV. 358 (1938).

⁶ *United States to Use of Parravicino v. Brunswick*, 69 F. 2d 383 (D. C. Cir. 1934).

⁷ *Miles v. McGrath*, 4 F. Supp. 603 (D. Md. 1933), Note, 12 N. C. L. REV. 170 (1934).

⁸ *Harwood v. McMurtry*, 22 F. Supp. 572 (W. D. Ky. 1938). Considerations against affording protection to officers for false and malicious statements are outweighed by an "imperative public policy that perfect freedom in the discharge of public duties is essential to the maintenance of efficient public service and must be preserved without restraint." *Id.* at 573.

⁹ *E.g.*, *Powers v. Vaughn*, 312 Mich. 297, 20 N. W. 2d 196 (1945) (officials of health department).

¹⁰ 115 Wash. 136, 196 Pac. 663 (1921).

¹¹ 303 Ky. 598, 198 S. W. 2d 322 (1946). The court regarded an absolute privilege as "essential for the enforcement of the . . . law. . . ." *Id.* at 604, 198 S. W. 2d at 325.

¹² In *Donner v. Francis*, 255 Ill. App. 409 (1930), one defendant was the officer in charge of a U. S. Veterans' Hospital; the other was plaintiff's immediate superior. The court said: "All communications, either verbal or written, passing between public officials pertaining to their duties and in the conduct of public business are of necessity absolutely privileged and such matters cannot be made the basis of recovery in a suit at law." (emphasis added) *Id.* at 413. In *Haskell v. Perkins*, 165 Ill. App. 144 (1911), defendant, plaintiff's superior, filed charges against plaintiff with a board of education, their employer. However, each of the foregoing decisions might be explained by remarks of the courts that the proceedings therein were in the nature of quasi-judicial proceedings. Absolute immunity was granted to private citizens who petitioned the Board of County Commissioners for revocation of plaintiff's liquor license in *Lininger v. Knight*, 123 Colo. 213, 226 P. 2d 809 (1951).

Proceedings and communications of quasi-legislative and quasi-judicial agencies are sometimes granted absolute privilege, as extensions of that given to legislative and judicial proceedings. *McAlister & Co. v. Jenkins*, 214 Ky. 802, 284 S. W. 88 (1926) (real estate commission); *Stafney v. Standard Oil Co.*, 71 N. D. 170, 299 N. W. 582, 136 A. L. R. 535 (1941) (Workmens' Compensation Bureau); *Bigelow v. Brumley*, 138 Ohio St. 574, 37 N. E. 2d 584 (1941) (commission appointed by legislature to prepare and circulate official arguments on proposed constitutional amendment).

¹³ 371 Pa. 188, 88 A. 2d 892 (1952). There a letter was sent, having been released to the press prior to its sending, by a state attorney general to a district attorney concerning alleged communistic activities of a member of the latter's staff and demanding her dismissal. In a three-to-two decision, the Pennsylvania Supreme Court held both the letter and its release to the press absolutely privileged. Defendant did not plead truth, admitting that plaintiff had been cleared of such charges by a county bar association. The dissenting judges also pointed out that there was no official duty requiring defendant to make such publications. *Id.* at 212, 88 A. 2d at 902. This decision has been widely criticized by legal writers. See, *e.g.*, Note, 37 MINN. L. REV. 141 (1953).

possible when unqualified immunity is granted, even to high executive officers.

Absolute privilege, on the one hand, is given to those whose positions or duties are such that they should be completely free to act as they choose, without even the harassment of having to defend against litigations by proving their good intentions. Necessarily, this means that they must be protected from litigation even if their motives are bad. On the other hand, there is the consideration of the right of citizens to be free from unredressable injuries to their reputations, a right which it is the fundamental aim and purpose of the law of libel and slander to protect. Thus the question is one of balance between two conflicting public interests. It would seem that absolute immunity from liability for defamatory publications should be as narrowly restricted as possible.¹⁴

In the nature of a compromise between the two extremes is the doctrine of "qualified" or "conditional" privilege, where the interest protected is deemed not to be of such importance that the immunity is absolute, but it is of sufficient importance that immunity is given, conditioned upon proper purpose and good faith. Conditional immunity is granted in a much wider variety of situations than is absolute immunity—summed up by Baron Parke as those communications "fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned."¹⁵

Communications on any matters in which the public has an interest are conditionally privileged. Thus public officers, whose duties are undoubtedly affected with a public interest, should be protected by at least a qualified privilege in the discharge of their duties. And it is generally so held.¹⁶ More specifically, the prevention of crime being a matter of

¹⁴Tanner v. Stevenson, 138 Ky. 578, 128 S. W. 878, 30 L. R. A. (NS) 200 (1910); Comment, *Defamation Immunity for Executive Officers*, 20 U. OF CHI. L. REV. 677, 679 (1953): "The privilege should be confined to those officials whose functions are so necessary that individual rights must be subordinated. Society and the individuals who compose it should not be forced to surrender their rights in return for relatively unimportant services. For offices of less than paramount importance a conditional privilege, sustainable in the great majority of cases, is fully adequate."

¹⁵Toogood v. Spyring, 1 Cr. M. & R. 181, 193, 149 Eng. Rep. 1044, 1049 (Ex. 1834). "A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty. . . ." Lord Campbell, C. J., in Harrison v. Bush, 5 El. & Bl. 344, 348, 119 Eng. Rep. 509, 512 (K. B. 1855).

The situations covered by the qualified privilege may be categorized roughly as those involving (1) protection of the publisher's interest; (2) protection of an interest of the recipient or a third person; (3) protection of a common interest; (4) protection of a public interest. PROSSER, TORTS § 94 (1941); RESTATEMENT, TORTS §§ 594-598 (1938).

¹⁶Tanner v. Stevenson, 138 Ky. 578, 128 S. W. 878, 30 L. R. A. (NS) 200 (1910) (school superintendent); Ranson v. West, 125 Ky. 457, 101 S. W. 885

public interest, communications otherwise slanderous are protected if "they are made in good faith in the prosecution of an inquiry regarding a crime which has been committed and for the purpose of detecting and bringing to punishment the criminal."¹⁷ As the conditional privilege is granted to private citizens on this basis,¹⁸ it should surely extend to public agencies¹⁹ and to law enforcing officers.²⁰

In accordance with the accepted rules of qualified privilege, the Supreme Court of North Carolina has granted such privilege to defamatory communications, made *by private citizens* to the proper authorities, charging crime,²¹ or charging misconduct of public officials²² and also to such statements made *by private citizens* to other interested persons during the course of investigations into crimes.²³ There is no indication that the North Carolina Court would extend an absolute privilege to law enforcement and other minor public officers for communications made in the discharge of their duties.²⁴

In cases in which the conditional privilege is granted, the defendant, in order to be protected from liability for his defamation, must not *abuse* the privilege. That is to say, there are certain conditions which must be satisfied in order to claim this qualified immunity. They can be divided into three somewhat overlapping categories:

- (1) there must be no express malice;
- (2) there must be a belief of the truth of the communication; and

(1907) ("common school trustees"); *Maurice v. Worden*, 54 Md. 233, 39 Am. Rep. 384 (1880) (superintendent of U. S. Naval Academy); *Peterson v. Steenerson*, 113 Minn. 87, 129 N. W. 147, 31 L. R. A. (NS) 674 (1910) (postmaster); *Stevenson v. Ward*, 48 App. Div. 291, 62 N. Y. S. 717 (4th Dep't 1900) (superintendent of municipal water department).

¹⁷ *Eames v. Whittaker*, 123 Mass. 342, 344 (1877).

¹⁸ *White v. Nicholls*, 3 How. 266 (U. S. 1844); *Pecue v. West*, 233 N. Y. 316, 135 N. E. 515 (1922); *accord*, *Stewart v. Major*, 17 Wash. 238, 49 Pac. 503 (1897).

The desirability of giving absolute immunity to F. B. I. informers was raised in *Foltz v. Moore McCormack Lines, Inc.*, 189 F. 2d 537 (2d Cir. 1951), *cert. denied*, 342 U. S. 871 (1951). The Court of Appeals, in reversing the district court's order dismissing the complaint, decided that a qualified immunity was adequate.

¹⁹ *Peoples v. State*, 179 Misc. 272, 38 N. Y. S. 2d 690 (Ct. Claims 1942) (auditors); *In re Investigating Commission*, 16 R. I. 751, 11 Atl. 429 (1887); *Hollis v. McCammon, Morris & Pickens*, 86 S. W. 2d 652 (Tex. Civ. App. 1935) (auditors).

²⁰ *Morton v. Knipe*, 128 App. Div. 94, 112 N. Y. S. 451 (2d Dep't 1908); *City of Mullens v. Davidson*, 133 W. Va. 557, 57 S. E. 2d 1, 13 A. L. R. 2d 887 (1949); *cf.*, *Illinois Cent. R. R. v. Wales*, 177 Miss. 875, 171 So. 536 (1937).

²¹ *Hartsfield v. Harvey C. Hines Co.*, 200 N. C. 356, 157 S. E. 16 (1931); *Briggs v. Byrd*, 34 N. C. 377 (1851).

²² *Alexander v. Vann*, 180 N. C. 187, 104 S. E. 360 (1920); *Logan v. Hodges*, 146 N. C. 38, 59 S. E. 349 (1907).

²³ *Hartsfield v. Harvey C. Hines Co.*, 200 N. C. 356, 157 S. E. 16 (1931); *Hearn v. Ostrander*, 194 N. C. 753, 140 S. E. 724 (1927); *Elmore v. Atlantic Coast Line R. R.*, 189 N. C. 658, 127 S. E. 710 (1925).

²⁴ *But see* a dictum in *Lewis v. Carr*, 178 N. C. 578, 580, 101 S. E. 97, 98 (1919): "The publication was not absolutely privileged, for it was not in the performance of *public service*, in which case, notwithstanding proof of the falsity of the charge and actual malice, an action cannot be maintained thereon." (emphasis added)

(3) the privilege must not be "exceeded."

First, defendant will lose his qualified privilege if he makes the publication in the wrong state of mind—*i.e.*, if there is "express malice." The word "malice" has two distinct meanings in the law of defamation: (a) "malice implied in law," a presumption of malice which arises in order to satisfy the technical requirements of the law whenever a defamatory communication is made on an occasion not privileged; and (b) "express malice," or "malice in fact." When the occasion is qualifiedly privileged, it is necessary for plaintiff to prove actual malice in order to recover. It should be noted that the presence of express malice does not destroy the legal justification or excuse which makes the occasion privileged, but it means that defendant has forfeited the defense given to him by the occasion because he used it for a wrongful purpose.²⁵

There is some confusion in terminology as to exactly what constitutes express malice. It is said that defendant must be actuated by spite or ill will, "with a design to causelessly or wantonly injure the plaintiff."²⁶ Other courts stress the necessity for good faith.²⁷ Mere negligence in making defamatory statements is generally not enough for a showing of actual malice,²⁸ but wantonness or recklessness may be.²⁹ Nor is proof of the falsity of the communication, unless defendant knew of it at the time, sufficient evidence to establish malice.³⁰ Actual malice can best be epitomized as a wrong or unjustifiable motive.³¹

The American Law Institute, in its *Restatement of Torts*, discards the concept of "malice" as unsatisfactory and substitutes the requirement that defendant must "act for the purpose of protecting the particular interest for the protection of which the privilege is given."³²

²⁵ Note, 10 NEB. L. BULL. 193 (1931).

²⁶ NEWELL, SLANDER AND LIBEL § 277, p. 315 (4th ed. 1924); *Elmore v. Atlantic Coast Line R. R.*, 189 N. C. 658, 127 S. E. 710 (1925); *Bell v. Bank of Abbeville*, 208 S. C. 490, 38 S. E. 2d 641 (1946).

²⁷ *Friedell v. Blakely Printing Co.*, 163 Minn. 226, 203 N. W. 974 (1925); *Lawless v. Muller*, 99 N. J. L. 9, 12, 123 Atl. 104, 105 (1923) ("The fundamental test is the bona fides of the communication").

²⁸ *Pecue v. West*, 233 N. Y. 316, 135 N. E. 515 (1922); *Peeples v. State*, 179 Misc. 272, 38 N. Y. S. 2d 690 (Ct. Claims 1942).

²⁹ *Elms v. Crane*, 118 Me. 261, 107 Atl. 852 (1919).

³⁰ *Lewis v. Carr*, 178 N. C. 578, 101 S. E. 97 (1919); *Ramsey v. Cheek*, 109 N. C. 270, 13 S. E. 775 (1891).

³¹ *Stevenson v. Northington*, 204 N. C. 690, 169 S. E. 622 (1933); *Riley v. Stone*, 174 N. C. 588, 94 S. E. 434 (1917); *Krug v. Pitass*, 162 N. Y. 154, 56 N. E. 526, 76 Am. St. Rep. 317 (1900); *Hallen, Character of Belief Necessary for the Conditional Privilege in Defamation*, 25 ILL. L. REV. 865, 865-6 (1931).

The malice does not have to be against plaintiff personally, but can be indirect. *Stevenson v. Northington, supra*; *Gattis v. Kilgo*, 128 N. C. 402, 38 S. E. 931 (1901).

³² RESTATEMENT, TORTS § 603 (1938). Under this test, the existence of ill will would not be an abuse of the privileged occasion as long as defendant acted to protect or further the privileged interest; conversely, if he did not act to protect that interest, the privilege could be abused even though there was no ill will or spite. See *Elms v. Crane*, 118 Me. 261, 107 Atl. 852 (1919), illustrating this proposition.

At any rate, it is generally held that the burden of proving actual malice is on the plaintiff,³³ that it is a question for the jury,³⁴ and that it may be determined from all the circumstances surrounding the communication.³⁵

The second condition necessary in order for defendant to claim the protection of the privileged occasion is that he believe his communication to be true. Some courts hold that the test is whether defendant *honestly* believed his statement to be true.³⁶ Other courts, however, apply a negligence standard—*i.e.*, that defendant must have had reasonable grounds or probable cause for believing his communication true.³⁷

The third general requirement is that there not be what may be called an "excess of privilege."³⁸ Such an excess might be found, for example, if the communication were not within the scope of defendant's official duties,³⁹ if the statements were irrelevant,⁴⁰ if undue publicity were

³³ *Kroger Grocery & Baking Co. v. Yount*, 69 F. 2d 700 (8th Cir. 1933); *Parker v. Edwards*, 222 N. C. 75, 21 S. E. 2d 876 (1942); *Riley v. Stone*, 174 N. C. 588, 94 S. E. 434 (1917).

³⁴ *Riley v. Stone*, 174 N. C. 588, 94 S. E. 434 (1917).

³⁵ "Malice may be proved by extrinsic evidence of personal ill feeling, or by intrinsic evidence such as the exaggerated language of the libel, the character of the language used . . . , the mode and extent of publication, and other matters in excess of the privilege." *Friedell v. Blakely Printing Co.*, 163 Minn. 226, 231, 203 N. W. 974, 976 (1925); *Bell v. Bank of Abbeville*, 208 S. C. 490, 38 S. E. 2d 641 (1946).

³⁶ *Barry v. McCollom*, 81 Conn. 293, 70 Atl. 1035 (1908); *Harrison v. Garrett*, 132 N. C. 172, 43 S. E. 594 (1903); *Joseph v. Baars*, 142 Wis. 390, 125 N. W. 913 (1910); *Clark v. Molyneux* [1877] 3 Q. B. D. 237, 47 L. J. Q. B. 230, 14 Cox., C. C. 10.

However, it is doubtful if even an honest belief will protect statements made recklessly. *Joseph v. Baars, supra*.

³⁷ *Lafferty v. Houlihan*, 81 N. H. 67, 121 Atl. 92 (1923); *cf.*, *Elms v. Crane*, 118 Me. 261, 107 Atl. 852 (1919); *Hollis v. McCammon, Morris & Pickens*, 86 S. W. 2d 652 (Tex. Civ. App. 1935) ("evidence rendering probable that the auditor was sincere in the report").

The courts often add such requirements, possibly without intending to mean anything more than a bona fide belief of truth. *Pecue v. West*, 233 N. Y. 316, 322, 135 N. E. 515, 517 (1922); *Lewis v. Carr*, 178 N. C. 578, 580, 101 S. E. 97, 98 (1919); *Ramsey v. Cheek*, 109 N. C. 270, 274, 13 S. E. 775, 776 (1891).

Defendant can rely on hearsay and rumor if he communicates them as such and "for what they are worth." *Pecue v. West*, 233 N. Y. 316, 323, 135 N. E. 515, 517 (1922).

³⁸ This expression is sometimes used to mean the existence of express malice. As the term is used here, however, it means those things which take the communication outside the privilege as a *matter of law*. "Whether defendant abused or exceeded the privilege of the occasion is . . . a question of law to be determined by the court." *Swearingen v. Parkersburg Sentinel Co.*, 125 W. Va. 731, 743, 26 S. E. 2d 209, 215 (1943); *Gattis v. Kilgo*, 140 N. C. 106, 52 S. E. 249 (1905). These same factors, on the other hand, might also be considered by the jury as evidence of express malice. See note 35 *supra*.

³⁹ *Hale Co. v. Lea*, 191 Cal. 202, 215 Pac. 900 (1923); *Stanley v. Prince*, 118 Me. 360, 108 Atl. 328 (1919); *Jacobs v. Herlands*, 17 N. Y. S. 2d 711 (Sup. Ct. 1940), *aff'd*, 259 App. Div. 823, 19 N. Y. S. 2d 770 (2d Dep't 1940); *cf.*, *Elmore v. Atlantic Coast Line R. R.*, 189 N. C. 658, 127 S. E. 710 (1925).

⁴⁰ *Bohlinger v. Germania Life Ins. Co.*, 100 Ark. 477, 140 S. W. 257 (1911); *Andrews v. Gardiner*, 224 N. Y. 440, 121 N. E. 341 (1918); RESTATEMENT, TORTS § 605 (1938).

given to the communication,⁴¹ or if improper or abusive language were used.⁴²

Some conclusions may be drawn from the foregoing: (1) It is very doubtful that the North Carolina Court and most other courts would extend the absolute privilege to ordinary law enforcement and investigative officers. Such a privilege probably should not be extended. (2) It may be stated with certainty that a qualified privilege *is* available to such officers in the bona fide discharge of their duties (since it is available to private citizens under similar circumstances), and that adequate protection will be afforded them by the qualified privilege. (3) As long as the defamatory communication is not made from some feeling of personal ill will, and is made as a reasonable man would make it under the circumstances—that is, with a reasonable belief of its truth, without abusive language, and without undue publicity—there is little doubt but that the officer will be immune from liability for that communication.

JOSEPH G. DAIL, JR.

⁴¹ *Colpoys v. Gates*, 118 F. 2d 16 (D. C. Cir. 1940); *Fields v. Bynum*, 156 N. C. 413, 72 S. E. 449 (1911).

⁴² Ordinarily, violent language used in the communication would be evidence of express malice for the jury. See note 35 *supra*. The only question for the court to decide is whether there is sufficient evidence of malice to go to the jury. The North Carolina Supreme Court's standard here is "not to give the language of privileged communications too strict a scrutiny. To hold all excess beyond the absolute exigency of the occasion to be evidence of malice, would, in effect, greatly limit, if not altogether defeat, that protection which the law throws over privileged communications." *Gattis v. Kilgo*, 128 N. C. 402, 412, 38 S. E. 931, 935 (1901).

THE NORTH CAROLINA BAR ASSOCIATION

This year for the first time in its long and illustrious history the North Carolina Bar Association launched a full-scale program of public relations activities designed to emphasize the value of preventive law to the people of North Carolina. While much lies ahead to be accomplished in this field, the achievements this year under the leadership of President William L. Thorp and committees of the Association afford a solid foundation for effective expansion of this program.

Last November the first step in the enlarged program was taken by the employment of a full-time Executive Secretary. He is Charles W. Daniel, native of Wake County, a former newsman, an A.B. graduate of Carolina and a recent law graduate of Wake Forest. The Association established new headquarters in the Capital Club Building in Raleigh.

During the winter months the Association sponsored a state-wide series of weekly radio broadcasts over thirty-one radio stations. The programs, panel-style, were on broad, general legal topics and were well received. It is expected that a new round of radio programs will begin next Fall.

In April the Association inaugurated a series of news columns on general legal subjects in the weekly and daily press on the state. Dr. Robert E. Lee, of the Wake Forest Law Faculty, is author of the articles appearing in the daily papers. Secretary Daniel and Attorneys William Joslin, Thomas F. Adams, Jr. and Ferd L. Davis collaborate in providing articles for the weekly press.

Under the able and effective leadership of J. Spencer Bell, head of the Association's Continuing Legal Education Committee, two excellent institutes have been held to date this year, both at Chapel Hill. The first, in January, dealt with the subject of Small Business Loans and Financing. The second, in March, dealt with three subjects: Estates and Trusts, Federal Rules of Discovery, and Workmen's Compensation. A Tax Institute is being planned by Chairman Leon Rice and his committee to be held during the summer. All continuing legal education activities are conducted by the Association in cooperation with the law schools of Carolina, Duke and Wake Forest.

The Association is cooperating fully with the North Carolina State Bar Incorporated in order to advance the administration of justice and eliminate unauthorized practice of law.

During the year the Association introduced a pocket-sized periodical designated "Bar Notes," containing articles, notes and items of interest

to the Bar generally. The first two issues appeared in January and May, 1954, and were edited by Secretary Daniel.

Other features of the Association's activities include: a legal aid program under the direction of the Association's Legal Aid Committee, headed by Dr. John S. Bradway, of Duke University, in cooperation with the state and county welfare departments; and the work of the Association's Committee on Legislation and Law Reform with respect to legislation to be reported to the Association for recommendation to the General Assembly.

Officers of the Association for the current year are: William L. Thorp, president; Chief Justice M. V. Barnhill, Carroll W. Weathers, and John Manning, vice-presidents; Edward L. Cannon, secretary; Robert H. Frazier, chairman, James K. Dorsett, Jr., Sam B. Underwood, Jr., Joel B. Adams, J. B. Swails, A. W. Kennon, Jr., executive committee, with Messrs. Thorp, Bell and Cannon, ex officio members of the committee.

CARROLL W. WEATHERS
Vice-President

