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Jack T. Hamilton

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capitalized incorporated enterprise or other abuse of the privilege of achieving limited liability by incorporation."

The equitable criteria has been an adequate test for the existence or non-existence of the corporate entity in any conceivable combination of rights and liabilities of the parties. Therefore, it seems illogical that the court would feel the need of establishing a rule of automatic invalidity. Because of this implication, however, it is clear that the *Terrace* case will have a disturbing impact on the law of this area until a judicial or legislative remedy is presented.

FRANKLIN A. SNYDER.

Criminal Law—Entrapment in North Carolina

It has been said¹ that the first reported instance of a defense of entrapment is to be found in the decision by the Great Lawgiver, overruling that ancient plea tendered by Eve in Paradise, "The serpent beguiled me and I did eat."²

The earliest reported pleas in North Carolina of temptation by others, appear in the cases of *Dodd v. Hamilton*³ and *State v. Jernagan*⁴ in 1817, and since that time the defense has often been interposed in the North Carolina courts. Perhaps the most enlightening approach to a presentation of the position of the North Carolina court on the doctrine of entrapment is an examination of the cases against a background of the subject generally.

The classic, and most frequently cited definition of entrapment is that of Mr. Justice Roberts, in *Sorrells v. United States*.⁵ "Entrapment is the conception and planning of an offense by an officer and his procurement of its commission by one who would not have done so except for the trickery, persuasion, or fraud of the officer."⁶

The basis for the doctrine of entrapment seems to be ethical rather than legal considerations.⁷ The judicial approach to the problem does not lay stress upon any feeling of solicitude for the accused or try to strike a balance between the equities of the government and those of the accused. Rather, it seems to stem from a realization by the courts that the law is mechanistic in that it does not consider the ability of the offender to resist temptation. As Professor Sayre declared: "Historically, our substantive criminal law is based upon a theory of punishing the vicious will. It postulates a free agent confronted with a choice between

¹ Bernstein, *In Re Eve*. 65 N. J. L. J. 273 (1942).

² Genesis 3:13.

³ 4 N. C. 31 (1817).

⁴ 4 N. C. 44 (1817).

⁵ 287 U. S. 435 (1932).

⁶ *Id.* at 440.

⁷ Anderson, *Some Aspects of Entrapment*, 13 BROOKLYN L. REV. 187, 188 (1942); Note, 2 SO. CALIF. L. REV. 283 (1929).

doing right and doing wrong and choosing freely to do wrong."⁸ Thus the dictates of justice oppose conviction or punishment where the guilty intention is synthetically created by the government for the purpose of obtaining a conviction. The authorities agree that the true foundation of the doctrine is public policy.⁹ However, the courts, by traditional modes of thinking, have attempted to place the doctrine in the category of a recognized principle of law, with a resulting diversity of theories as to why it excuses the criminal act.¹⁰ These theories lend little assistance in determining the applicability of the doctrine in a given situation.

Under the federal view of entrapment, as defined in the *Sorrells* case and subsequent cases, the defense consists of two elements: (1) the origin of the criminal intent in the mind of the officer and (2) the inducement of the defendant by the officer.¹¹ These elements are closely related. The fact that no inducement was used by the officer is evidence that the criminal intent originated in the mind of the defendant, and the fact that such inducement was used is evidence that the criminal intent originated in the mind of the officer.¹² The scope of the activities by law enforcement officers which will constitute inducement, seems to vary with different crimes.¹³ The distinction which is drawn by the courts in determining what constitutes improper conduct by the law officer is that between furnishing inducement and furnishing opportunity. The fact that the officer merely furnished the defendant an opportunity to commit the crime;¹⁴ that is, did nothing to overcome the defendant's shrinking reluctance,¹⁵ resorted to normal coaxing of a liquor purchaser,¹⁶ displayed the common symptoms of a drug addict,¹⁷ or sub-

⁸ SAYRE, INTRODUCTION TO CASES ON CRIMINAL LAW. (2 ed. 1937).

⁹ *Sorrells v. United States*, 287 U. S. 435 (1932); *People v. Barkoll*, 36 Cal. App. 25, 171 Pac. 440 (1918); *Falden v. Commonwealth*, 167 Va. 549, 187 S. E. 329 (1936); *Anderson, op. cit. supra* note 7.

¹⁰ *Sorrells v. United States*, *supra* note 5 presents a marked example of this. The majority decision held that the element vitiating criminal liability was an implied exception in the statute creating the offense, based upon the premise that the legislature intended that the statute should apply to a person acting on his own volition. Three of the Justices, speaking through Mr. Justice Roberts, denied this rationale, saying, "The protection of its own functions and the preservation of the purity of its own temple belongs only to the court." 287 U. S. 435, 443 (1932).

¹¹ *Butts v. United States*, 273 Fed. 35 (8th cir. 1921); *Peterson v. United States*, 255 Fed. 433 (9th cir. 1919); "The doctrine is that an otherwise innocent defendant who has been persuaded by government agents to break the law cannot be convicted." See Note, 46 HARV. L. REV. 848 (1932).

¹² *Newman v. United States*, 299 Fed. 128 (4th cir. 1924); "The present tendency is to look to the conduct of the officer as the criterion to determine where the design originated." 20 KY. L. REV. 246 (1930).

¹³ *United States v. Washington*, 20 F. 2d 160 (D. C. Neb.) (1927). "The scope of activities permitted an officer differs in different crimes, due consideration being given to the repugnancy of the offense and the difficulty of procuring evidence." note 28, COLUM. L. REV. 1067 (1928); See also 44 HARV. L. REV. 109 (1930).

¹⁴ *State v. Litossy*, 52 Wash. 87, 100 Pac. 170. (1909); *Robinson v. United States*, 32 F. 2d 505 (8th Cir. 1928; note 2, So. CALIF. L. REV. 283 (1929).

¹⁵ *Scriber v. United States*, 4 F. 2d 97 (6th Cir. 1925).

¹⁶ *United States v. Wray*, 9 F. 2d 429. (N. D. Ga.) (1925).

¹⁷ *Ibid.*

jected the defendant to no more than ordinary temptation to which he was likely to be subjected in the discharge of his duties¹⁸ is not enough. On the other hand, the defense has been held available where the officer had resorted to pleas of desperate illness,¹⁹ or persistent coaxing,²⁰ or threats,²¹ or any conduct of enticement, beguilement, suggestion, procurement, or aiding that goes beyond the mere offering of opportunity.²² The inquiry is confined for the most part, to the conduct of the officer.²³

Some courts have made the validity of the defense of entrapment turn upon the existence of a reasonable belief on the part of the officer that the accused was, or was about to be, engaged in the commission of a crime.²⁴ Although this criterion would seem highly significant in determining the reprehensibility of the officer's conduct, it seems incorrect as a test for entrapment. It has been pointed out²⁵ that, if the criminal intent originates in the mind of the defendant, he should not be excused because the officer had no reasonable grounds to suspect him, and if the criminal intent originated in the mind of the officer and he induced the defendant to commit the crime, the defendant should be excused even though the officer had reasonable grounds to suspect him. Some cases have rejected this reasonable belief test.²⁶ In *Sorrells v. United States*,²⁷ however, it is held that the evidence showing reasonable suspicion, while not serving to rebut the defense of entrapment, is admissible upon the question of criminal intent, thus opening the door to prior offenses upon a plea of entrapment. Some courts assert that the degree of persuasion permitted depends upon the degree of reasonableness of the officer's suspicion.²⁸ Whatever the stated rule may be, the offender's predisposition to commit the same or similar offenses would seem to be an important factor in answering the ultimate question: In whose mind did the offense originate?

Most jurisdictions announce the same standards for determining when the defense of entrapment is available to a defendant as the federal courts do; that is, an inquiry into the conduct of the officer to determine

¹⁸ *Scriber v. United States*, *supra* note 15.

¹⁹ *Echols v. United States*, 235 Fed. 862 (S. D. Tex.) (1918); *United States v. Wray*, *supra* note 16.

²⁰ *Peterson v. United States*, 255 Fed. 443 (9th Cir. 1919).

²¹ *Capuano v. United States*, 9 F. 2d (1st Cir. 1925); *United States v. Lynch*, 256 Fed. 983. (S. D. N. Y.) (1918).

²² *United States v. Washington*, *supra* note 13.

²³ *Ibid.*

²⁴ *Goldman v. United States*, 220 Fed. 57 (6th Cir. 1915); *United States v. Elnan Mfg. Co.*, 271 Fed. 353 (D. C. Colo.) (1920); See note, 46 HARV. L. REV. 848 (1932).

²⁵ *Hitchler, Entrapment as a Defense in Criminal Cases*, 42 DICK. L. REV. 195, 201 (1937).

²⁶ *Newman v. United States*, 299 Fed. 128 (4th Cir. 1924); *United States v. Washington*, *supra* note 13.

²⁷ 287 U. S. 435. (1932)

²⁸ *Scriber v. United States*, 4 F. 2d 97 (6th Cir. 1925).

in whose mind the offense originated.²⁹ Since public policy is the true foundation of the doctrine, which is a variable quantity depending on the magnitude of the offense, and the difficulty of detecting offenders, among other considerations, it is not surprising that courts reach different results while announcing the same standards. The decision in each case, it has been said, depends on its own circumstances,³⁰ and "must be determined by the scope of the law considered in the light of what may fairly be deemed to be its object."³¹

The North Carolina Supreme Court states its position as in accord with this majority rule.³² The first reported case in which the defense of entrapment by law enforcement officers was interposed, appears to be *State v. Smith*.³³ The defendant, convicted of retailing whiskey contrary to the statute, contended that because his conviction had been obtained from evidence obtained by police officers furnishing money and employing one to buy it from defendant, that he was a victim of "connivance." There was no suggestion of inducement. The court, in rejecting the defense, stated that the wrongful acts of officers will not be imputed to the state so as to excuse the defendant from criminal liability for what he does. The court stated,³⁴ "It is not the motive of the buyer, but the conduct of the seller which is to be considered." The court characterized the defendant as a "live tiger," who for all his cunning, has bolted the officer's trap and now complains that the law of the jungle has been violated.³⁵ Because of the use of such meaningless generalities, North Carolina has been cited³⁶ as being in accord with Tennessee and New York, which reject the defense altogether.³⁷

Although there is language in two earlier cases indicating that the North Carolina Supreme Court would recognize the defense in an appropriate case,³⁸ it remained for *State v. Love*³⁹ to enunciate North Caro-

²⁹ See Annots. 18 A. L. R. 146 (1922); 66 A. L. R. 473 (1930); 86 A. L. R. 263 (1933).

³⁰ *United States v. Washington*, 20 F. 2d 160 (D. C. Neb.) (1927).

³¹ *Sorrells v. United States*, 287 U. S. 435, 440 (1932).

³² *State v. Love*, 229 N. C. 99, 47 S. E. 2d 712. (1948); *State v. Jackson*, 243 N. C. 216, 90 S. E. 2d 507 (1956).

³³ 152 N. C. 798, 67 S. E. 508 (1910).

³⁴ *Id.* at 800, 67 S. E. 509 (1910).

³⁵ The defense counsel, in reply to this, contended that his client was a donkey, not a tiger.

³⁶ Heywood, *Defense of Entrapment*, 21 BAR ASS. KAN. JOURNAL 28 (1932).

³⁷ See also *State v. Hopkins*, 154 N. C. 622, 624, 70 S. E. 394, 394 (1911) in which the court appeared to reject the doctrine entirely, saying:

"The methods adopted by the policeman to catch the defendant have been criticized; but it must be remembered that the ways of "blockaders" are devious and their trade is generally plied underground." However much the defendant, when caught, may criticize the methods used to catch him, it has been held that the transaction is, so far as defendant is concerned, a violation of the law. . . ."

³⁸ In *State v. Salisbury Ice Co.*, 166 N. C. 366, rehearing, 166 N. C. 403 81 S.E. 737 (1914), the court, on entertaining a petition for newly discovered evidence, recognized that there is a difference between cases in which the offender does not

lina's position on entrapment. In that case, a State Bureau of Investigation agent attempted to purchase whiskey from defendant, a person suspected of liquor violations. Without further inducement, defendant sold the officer whiskey and later was convicted on the officer's testimony. In rejecting the defendant's plea of entrapment the court recognized that trickery, persuasion or fraud, which induces the defendant to violate the law, would be a valid defense, but that mere initiation, instigation, invitation, or exposure to temptation by the enforcement officers is not enough, quoting the definition of entrapment given by Mr. Justice Roberts in the *Sorrell* case. The court then rendered a backhand slap at the law enforcement officers by saying:⁴⁰

"The State questions whether the appellant's approach to this position does not more properly challenge the wisdom and fairness of the proceeding rather than its validity; presenting a moral rather than a judicial problem, which, albeit debatable, must yield to judicially approved practice. . . ."

". . . considerations of the purity and fairness of the courts and the agencies created for the administration of justice gravely challenge the propriety of a procedure wherein officers of the state envisage, plan and instigate the commission of a crime on the theory that a facile compliance with the officer's invitation confirms the accuracy of the suspicion of an unproved criminal practice, for which the defendant is in reality punished."

The court felt the contentions of the defense are judicially out voted, though not out argued. This case is cited with approval in two recent North Carolina cases⁴¹ and seems to be the present North Carolina attitude.

When it is considered that the very heart of the doctrine of entrapment is public policy, a preservation of the purity and fairness of the court's processes, it is difficult to reconcile the court's severe rebuke of

act under his own volition and those in which a trap is set to catch one contemplating crime, but found the defense inapplicable here because the alleged "entrapment" was not by a government agent. The defendant had contended that the victim in a false pretense prosecution was not deceived, since he bought the goods in an effort to entrap the defendant. The court felt that the necessary element of deception of the victim was satisfied when the "victim" exchanged his money for the goods.

In *State v. Godwin*, 227 N. C. 449, 41 S. E. 2d 74 (1946), the court, in reversing what was tantamount to a directed verdict for the State in a prosecution for illegal sale of whiskey, observed that the prosecution's case depended upon a "broken reed" because of the "persistent entreaty and duplicity" of the expectant purchaser, saying that under such circumstances the defendant deserved the benefit of a reasonable doubt as to the credibility of such witnesses.

³⁹ 229 N. C. 99, 47 S. E. 2d 712 (1948).

⁴⁰ *Id.* at 103, 47 S. E. 2d 715 (1948).

⁴¹ *State v. Burnette*, 242 N. C. 164, 87 S. E. 2d 191 (1955); *State v. Jackson*, 243 N. C. 216, 90 S. E. 2d 507 (1956).

the fairness of the methods used in this case, feeling they present a moral rather than a judicial problem. The standards set for defining the defense are products of moral considerations entirely. If the officer's conduct exceeded the bounds of propriety by doing more than merely offering an opportunity to one predisposed to commit crime, then the defense is available, as the court recognizes. On the other hand, if the officer trapped a suspected law violator by the violator's own facile compliance, unaided by abnormal temptation, it is difficult to see legal or ethical objections unless it is felt that law officers should be hard working and intelligent, but not clever.⁴²

The defense as defined by Justice Roberts, and the problems heretofore discussed relate to what probably may be called the Simon-pure doctrine of entrapment. While this somewhat narrow definition of the defense is probably entirely accurate,⁴³ the cases dealing with the doctrine have labeled as "entrapment" a variety of pleas which are unrelated to charges of enticement or procurement by officers of the law.⁴⁴

It is generally recognized that a person, suspecting that a crime is contemplated against his person or property may wait passively and allow matters to go on, and even furnish the most complete opportunity for its commission in order to apprehend the criminal.⁴⁵ If, however, he takes any affirmative action to aid or encourage the would-be criminal, if his conduct is active rather than passive, it is said that the victim has given his consent.⁴⁶ The cases often state that the defense of entrapment is available to the defendant.⁴⁷ Authorities have held that "entrapment" is a defense where (1) action by an officer has eliminated a physical condition which is an essential element of the crime charged,⁴⁸ or (2) where the victim in company with an officer, has consented to a crime to be

⁴² *Contra*, note, 16 Mo. L. Rev. 165 (1933), in which it is suggested that such action by officers should incriminate them to the extent of the person thus entrapped. WHARTON, CRIMINAL LAW § 231 (9th ed. 1948) explains that the essential element of *dolus*, or malicious determination to violate the law, is wanting in their cases and thus the crime cannot be imputed to them.

⁴³ See note, 2 So. CALIF. L. REV. 283 (1929).

⁴⁴ Coe, *The Doctrine of Entrapment*, 23 OKLA. BAR JOURNAL 2275 (1952). The author suggests that the term "entrapment" is a misnomer, for it is not the entrapping of criminals which the law frowns on, but rather the seduction of the innocent by its officers.

⁴⁵ *State v. Hughes*, 208 N. C. 542, 181 S. E. 737 (1935); *State v. Salisbury Ice Co.*, 166 N. C. 366, 81 S. E. 737 (1914); *People v. Smith*, 25, Ill. 185, 95 N. E. 1041 (1911); 22 C. J. S. *Criminal Law*, § 42. (1940).

⁴⁶ *State v. Adams*, 115 N. C. 775, 20 S. E. 722 (1894). The victim, having knowledge of an intended theft by defendant, allowed his servant to approach defendant and advise defendant now was the time for the theft; *State v. Goffney*, 157 N. C. 624 73 S. E. 162 (1911); *State v. Nelson*, 232 N. C. 602, 61 S. E. 2d 626 (1950); *Topolewski v. State*, 130 Wis. 244, 109 N. W. 1037 (1915).

⁴⁷ Cases cited notes 45 and 46 *supra*.

⁴⁸ *State v. Shouquette*, 250 Okla. Cr. 169, 219 Pac. 727 (1923); *E.g.*: in burglary when the breaking is done by the officer, *Love v. People*, 160 Ill. 501, 43 N. E. 710 (1896).

committed against his person or property, when lack of consent is an essential element of the offense charged,⁴⁹ and even where the conduct of the victim, or his authorized agent, acting alone, can be said to amount to a consent, and lack of consent is an essential of the offense.⁵⁰ Logically, it seems these situations would require no affirmative plea of entrapment,⁵¹ since the essence of the defendant's contention is: "I did not commit the substantive offense. The prosecution cannot satisfy all the elements of the crime." Some writers have dogmatically asserted this class of cases to be distinguishable from entrapment, and declare courts which do not recognize this are confused.⁵² Other writers have attempted to distinguish between consent which vitiates criminal liability when lack of consent is an element and consent which constitutes the defense of entrapment.⁵³ When it is realized, however, that consent given only for purposes of trapping the criminal is, nevertheless, sufficient consent to vitiate criminal liability,⁵⁴ nice distinctions vanish. However, to state blandly that these cases in which the victim plans to trap the criminal, raising the issue of the victim's consent, are unrelated to entrapment is to ignore the cases. Rather, it seems that the "entrapping" methods used by the victim serve to answer the question: was consent given?

A recent North Carolina case, *State v. Burnette*⁵⁵ dealt with the question of consent of the victim in entrapment pleas, and reviewed the North Carolina cases. The defendant was convicted of an assault with intent to commit rape. The evidence disclosed that the prosecutrix received repeated calls from an unidentified man who threatened to satisfy his passion on her person at all events. She reluctantly agreed to a proposal by law enforcement officers to meet the defendant with officers concealed in the back of her car. On the third attempt to keep a pre-arranged rendezvous with the defendant, the prosecutrix admitted him to her car in response to his request. When the defendant was admitted to the car he "lunged" at the prosecutrix, who screamed, and the concealed law enforcement officer arrested the defendant. The court held

⁴⁹ *State v. Nelson*, 232 N. C. 602, 61 S. E. 2d 626 (1950); *Connor v. People*, 18 Colo. 273, 33 Pac. 159, (1893); *Woo Wai v. United States*, 223 Fed. 412 (9th cir. 1915).

⁵⁰ *People v. Mills*, 178 N. Y. 274, 70 N. E. 786 (1904).

⁵¹ There is a conflict of authority as to whether the defense must be (1) introduced under a plea of not guilty and determined as a question of fact by the jury, or (2) is a matter for determination by the court at any time in whatever manner the question may be raised. The first rule is based on the theory that defendant is not guilty; the second rule is based on the theory that although defendant is guilty, public policy requires his acquittal. *Butts v. United States*, 273 Fed. 35 (8th Cir. 1921); *United States v. Healey*, 202 Fed. 349 (D. C. Mont. 1920).

⁵² *Anderson, op. cit. supra* note 7.

⁵³ *Heywood, op. cit. supra*, note 36.

⁵⁴ *State v. Goffney*, 157 N. C. 624, 73 S. E. 162 (1911); *State v. Adams, supra* note 45.

⁵⁵ 242 N. C. 164, 85 S. E. 2d 744 (1955).

that the prosecutrix did not consent to an assault, and that the defense of entrapment need not have been submitted to the jury.

In a somewhat similar case, *State v. Nelson*,⁵⁶ the court had reached an opposite result. In that case, the prosecutrix received a call from the defendant in response to an advertisement for work she had inserted in the newspaper. Prosecutrix communicated with officers who advised her to meet the defendant, promising to follow in another car. The reasons for these precautions do not appear. At the meeting the defendant proceeded to continually place his hand upon prosecutrix's leg, over her protests, and was arrested by law officers when he stopped his car. In reversing defendant's conviction of assault, the court stated that the acts of the prosecutrix amounted to a consent to an assault for purposes of prosecution.

In the *Burnette* case, the court distinguished this case by stating,⁵⁷ "in the *Nelson* case there was no evidence that the prosecutrix knew that a crime was contemplated against her person. . . ." At first blush, it appears anomalous that one who knows of a contemplated crime against her person, goes to meet the defendant and is held not to have consented to the assault, whereas one who, has no reason to suspect an assault, meets the defendant and is assaulted, is said to have consented to the act. Moreover, since the offense in both cases involved assault in which the appearance of consent is relevant in determining the defendant's intent, it might be contended that there was more of an appearance of consent when the prosecutrix made three efforts to meet the defendant at an isolated place at night after being advised of defendant's purpose, than in the *Nelson* case in which the prosecutrix met defendant in broad daylight with the avowed purpose of discussing a job. In the *Burnette* case there can be little doubt as to defendant's intent to commit rape, at the time of the telephone call. Nevertheless, it seems that an objective test of consent, viewing prosecutrix's acts as they must have looked to the defendant, could raise doubts as to whether such intent existed at the time of his meeting with prosecutrix.

Considered on an over-all basis, the fact situations in the two cases seem to justify their results. Thus although the court speaks of entrapment in a case in which the issue is consent of the victim, the distinction drawn by the court serves to emphasize the nature of the consent test and its relation to the defense of entrapment. The court looks to the reasonableness and propriety of the victim's conduct in determining if consent was given in a manner analogous to the true entrapment cases, which inquire into the conduct of the officer in determining in whose mind the offense originated. Thus in the *Burnette* case, the prosecutrix's

⁵⁶ 232 N. C. 602, 61 S. E. 2d 626 (1950).

⁵⁷ 242 N. C. 164, 167, 87 S. E. 2d 191, 193 (1955).

justification in wanting the defendant identified weighed heavily in the court's determination of the consent issue, whereas in the *Nelson* case the prosecutrix appeared to be a volunteer in the plan to apprehend the defendant.

An unfortunate by-product of treating the issue of consent of the victim as an entrapment defense is illustrated by the charge of the trial judge in the *Burnette* case. The judge charged the jury, on the defense of entrapment, in substance, that if the prosecutrix aided, encouraged or consented to an assault upon her by defendant for the purpose of apprehending defendant in the commission of the assault, *pursuant to an intent not originating with defendant*, defendant would not be guilty. The court found the charge to be without error. This seems incorrect. While the origin of the criminal intent in the mind of the victim should be decisive of the issue of whether consent was given, the converse of that proposition is not necessarily true. As the court recognized in an earlier case,⁵⁸ if the act of the victim amounts to a consent, it is immaterial whether the criminal intent originated in the mind of the accused. Other cases have recognized this.⁵⁹ Construing the charge as a whole, it does not seem that the defendant was prejudiced; but the difficulty experienced by the trial court from entwining two separate defenses seems inevitable because of our Supreme Court's view of "entrapment" as involving improper conduct of officers of the law and consent of the victim in offenses in which lack of consent is an element.

In another recent case, *State v. Jackson*,⁶⁰ the defendant, convicted of uttering a worthless check in violation of GS 14-107, contended that the payee, by trickery, persuasion and fraud had induced him to write the check. The defendant contended that the payee promised not to present the check for payment, and that his purpose was to prosecute the defendant. The court rejected this defense, quoting from *Polski v. United States*:⁶¹ "The very heart of the doctrine of entrapment is that the government itself has brought about the crime."⁶² The court adopted the federal view of entrapment in cases in which the offense charged is a crime regardless of the consent of any one, stating that, since uttering a worthless check is a crime regardless of the consent of anyone, the defense of entrapment must be predicated upon acts of officers of the government. The court, however, perpetuated the entwining of separate defenses by reiterating its statement in the *Love* case: "The Federal conception of entrapment is not necessarily binding upon us, for the

⁵⁸ *State v. Adams*, *supra* note 46.

⁵⁹ *Speiden v. State*, 3 Tex. App. 156 (1921); *Topolewski v. State*, 130 Wis. 244, 109 N. W. 1037 (1923).

⁶⁰ 243 N. C. 216, 90 S. E. 2d 507 (1956).

⁶¹ 33 F. 2d 686 (8th Cir. 1929).

⁶² 243 N. C. 216, 219, 90 S. E. 2d 507, 509 (1956).

question is much broader than the cited application in the Sorrells case."⁶³

It seems desirable that the North Carolina court distinguish between the doctrine of entrapment as defined in the federal courts, and the defense of consent of the victim in prosecutions involving offenses to which such consent is a defense. While the two defenses tend naturally to overlap in factual settings, it should be remembered that they are entirely distinct defenses: the one, admitting commission of the offense but pleading entrapment by officers of the government, a plea whose foundation is public policy; and the other, a plea of not guilty by virtue of the fact that the conduct of the victim robbed the act of an essential element of criminality.

JACK T. HAMILTON.

Eminent Domain—Just Compensation—Hydro-Electric Dam Sites

In the past when the government has taken private property for public purposes or allowed one of its agencies to do so, the "just compensation" guaranteed to the private owner by the Fifth Amendment to the United States Constitution¹ has meant that the owner would receive the full and perfect equivalent of the property in money or money's worth.² Theoretically, the owner is to be put in as good a position pecuniarily as he would have been had his property not been taken.³ In arriving at this "equivalent" the courts have sought to determine the full and perfect market value of the property at the time it was taken.⁴ This has involved a consideration of the best and most profitable use to which the property was adaptable and likely to be used in the reasonably near future,⁵ not

⁶³ *Ibid.*

¹ U. S. CONST. amend. V, ". . . nor shall private property be taken for public use without just compensation."

² *Olsen v. United States*, 292 U. S. 246, 255 (1946); *Jacobs v. United States*, 290 U. S. 13, 17 (1933); *Seaboard Air Line Ry. Co. v. United States*, 261 U. S. 299, 304 (1923); *North Carolina v. Sunrest Lumber Co.*, 199 N. C. 199, 154 S. E. 2d 123 (1930).

³ *Olson v. United States*, *supra* note 2; *United States v. Miller*, 317 U. S. 369, 373 (1924); *Seaboard Air Line Ry. Co. v. United States*, *supra* note 2.

⁴ *United States ex rel. T. V. A. v. Powelson*, 319 U. S. 266, 275 (1943); *United States v. Miller*, *supra* note 3, at 374; *Carolina & Yadkin R. R. v. Armfield*, 167 N. C. 464, 83 S. E. 809 (1914); *Creighton v. Water Commissioner*, 143 N. C. 171, 55 S. E. 511 (1906).

⁵ *United States ex rel. T. V. A. v. Powelson*, *supra* note 4, at 276; *McCandless v. United States*, 298 U. S. 347 (1935); *Olson v. United States*, 292 U. S. 246, 255 (1933); *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106 (1924); *United States v. Seufert Bros. Co.*, 78 Fed. 520 (C. C. D. Ore. 1897); *Young v. Harrison*, 17 Ga. 30 (1855); *Alloway v. Nashville*, 78 Tenn. 510 (1890); *Sargent v. Merrimac*, 196 Mass. 171 (1907); *Minneapolis-St. Paul Sanitary District v. Fitzpatrick*, 201 Minn. 442, 277 N. W. 394 (1937); *Raymond v. The King*, 16 Can. Exch. 1, 29 D. L. R. 574 (1916), *aff'd*, 59 Can. S. C. 682, 49 D. L. R. 689 (1918); *In re Gough & The Asportia, Silloth, & District Water Board*, L. R. 1904, 1 K. B. 417; Note, 34 IOWA L. REV. 695 (1949); 18 AM. JUR., Eminent Domain, §§ 244, 245 (1938).