

## Flake, Nancy <sup>[1]</sup>

### Flake, Nancy

By Vernon O. Stumpf, 1986

**13 Apr. 1917–15 Dec. 1968**

Nancy Flake, radio entertainer with the [Columbia Broadcasting System](#) <sup>[2]</sup> and [WABC in New York City](#) <sup>[3]</sup> and a vocalist with the big bands of Charlie Barnett, Al Kavelin, and Frank Dailey, was the central figure in *Flake v. News Co.* <sup>[4]</sup>, a case heard by the [North Carolina Supreme Court](#) <sup>[5]</sup> in the fall term of 1937 that established recognition of the tort of invasion of privacy in the state.

Nancy was the daughter of W. F. Flake and his wife, the former Elsie Myrtle Baker. She was educated in the [Winston-Salem](#) <sup>[6]</sup> public schools before preparing for a career as a radio entertainer, beginning with singing lessons at about age thirteen. She first studied music in Winston-Salem, sang on the local radio station, and later went with her mother to New York City where she was coached by Eleanor McClelland for about three years. In New York Nancy also studied sight singing under Miss Johnnie Hereford. Her first big band engagement was with Al Kavelin's orchestra at the Hotel Lexington in New York City. She next appeared as a vocalist with the orchestra of Frank Dailey at the Meadowbrook Club in Cedar Grove, N.J. For a year she toured with Dailey's band in Pennsylvania, New York, Delaware, and North Carolina where they played in Winston-Salem, Sedgfield, Laurinburg, and [Durham](#) <sup>[7]</sup>. During this period she recorded four songs for the Victor Recording Company. She then left Dailey's employ and joined Charlie Barnett's organization at Glenn Island Casino.

Publicity photographs made of Nancy Flake for the use of the [Columbia Broadcasting Company](#) <sup>[2]</sup> appeared in various magazines featuring radio entertainers. One magazine, *Popular Songs*, published a picture of her in a bathing suit and described her as "Nifty Nancy Flake in this fetching attire, proves that singers who have what it takes can be equally alluring flirting with the high seas or the high C's." One of the bathing suit publicity photographs taken by [CBS](#) <sup>[8]</sup> appeared in the *Greensboro Daily News* on 11 Mar. 1936 to advertise a burlesquetype show touring in [Greensboro](#) <sup>[9]</sup> and [Winston-Salem](#) <sup>[6]</sup>. Miss Flake was not identified by her own name but as "Mademoiselle Sally Payne, exotic Red Haired Venus in the touring stage production of Folies de Paree." This advertisement was used to sell Melts Bakery goods, particularly bread, which the advertisement suggested would help one achieve a "Sylphe-like Figure."

When Nancy's sister, Ruth, saw the advertisement, she called her mother. Early that afternoon Mrs. W. F. Flake went to the law firm of Slawter and Wall in [Winston-Salem](#) <sup>[6]</sup> and discussed with John D. Slawter the possibility of a lawsuit. Nancy subsequently received a copy of the *Greensboro Daily News* that had been mailed to her in New York by her mother. In the meantime Mrs. Flake received many telephone calls from friends about Nancy's picture in the advertisement associating her with the tawdry burlesque show.

In Forsyth superior court Nancy testified that she "was hurt more than . . . embarrassed" by the advertisement "and naturally I wrote my mother and explained it to her." Because Nancy was nineteen years old and still a minor, her mother filed a suit entitled *Nancy Flake, by Her Next Friend, Mrs. W. F. Flake v. The Greensboro News Company, North Carolina Theatres, Inc., L. Melts, Trading and Doing Business Under the Style and Firm Name of "Melts Bakery," Anton Scibilia and Nick Boila, Trading and Doing Business Under the Style and Firm Name of "Folies De Paree."*

On 12 Apr. 1937, special judge Frank S. Hill began the trial by jury in [Forsyth](#) <sup>[10]</sup> superior court. Scibilia and Boila could not be found according to the sheriff, Joe S. Phipps, of [Guilford](#) <sup>[11]</sup> County. The other defendants were summoned to appear before Judge Hill. On the all-male jury were Robert Brown, Robert Lee, Charlie T. Ketner, C. R. Whitaker, E. J. James, L. S. Lewis, W. A. Angel, K. D. Mayberry, V. C. Atwood, J. K. Barbee, B. B. Vaughn, and M. A. Nifong. The attorneys for the defendants were Frank P. Hobgood, R. D. Douglas, Sr., Kenneth M. Brim, and John I. Ingle. The attorneys for the plaintiff were John D. Slawter, Roy L. Deal, a Mr. Parrish, and a Mr. Wall.

Despite the fact that on 3 Apr. 1936 the Greensboro News Company had published a retraction described as an "Error in Publication of Portrait in Advertisement," the jury found that the defendants had exposed the plaintiff to ridicule and contempt. Damages of \$6,500 were granted to Nancy Flake.

On 17 Apr. 1937 the defendants filed appeals to the [North Carolina Supreme Court](#) <sup>[12]</sup> where the case was heard in the fall term, 1937. The court recognized that the plaintiff's second cause of action was based on the right of privacy. It raised questions, which have since been considered by other U.S. courts, such as free speech and press, libel and slander, distinction between private life and public office, and how these issues can violate the right of privacy of a group or an individual. Although the supreme court ordered a new trial, a final judgment was signed by Mr. Slawter and Colonel Hobgood that Nancy Flake should receive one dollar for damages and the cost of the court action.

The tort of the invasion of privacy was first discussed in an article by [Samuel D. Warren and Louis D. Brandeis](#) published

in the *Harvard Law Review* in December 1890<sup>[13]</sup>. Since then interest in the subject has grown and many cases have been based on it. In North Carolina one other case on the invasion of privacy has cited the Flake case. In *Phillip Barr v. Southern Bell Telephone and Telegraph Company*<sup>[14]</sup>, which was heard by the North Carolina Court of Appeals in the fall term of 1971, a picture of someone else was printed over the plaintiff's name. The court found that the plaintiff's right of privacy had been invaded by his employer and that he would be entitled to nominal damages.

Nancy Flake married B. M. Purtill and by him had two sons.

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[Women](#)<sup>[18]</sup>

## Authors:

[Stumpf, Vernon O.](#)<sup>[19]</sup>

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