NORTH CAROLINA FOCUS

An Anthology on State Government, Politics, and Policy

A Book by the North Carolina Center for Public Policy Research

N.C. Center for Public Policy Research

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edited by

Marianne M. Kersey and Ran Coble

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We would also like to thank Center staff member Lori Ann Harris who conducted interviews with professors and others interested in this project. Her work during the process of selecting articles helped make this book useful for all audiences. Former Center interns H. Lee Cheek Jr., Karen Salter, and Kurt Smith also assisted in narrowing down the field of articles. Our thanks go to them as well.

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Marianne M. Kersey and Ran Coble

PREFACE

The first edition of *North Carolina Focus* was published by the North Carolina Center for Public Policy Research in 1981. This second edition of the Center's anthology on state government and significant public policy issues facing North Carolina should be useful to students of state and local government and public policy in both public school and college classrooms.

Most of the articles that appear in this book have been published by the North Carolina Center for Public Policy Research as articles in the Center's quarterly magazine, *North Carolina Insight.* They have been updated through August 1989.

The first chapter reviews North Carolina's history and the state's unique character—both the logical and the paradoxical. The second chapter examines the constitutional history of the state.

Chapters 3 through 7 correspond to the organization of the North Carolina Constitution. Chapter 3's articles correspond to Article I of the Constitution and the rights of each citizen. The next three chapters examine the legislative, executive, and judicial branches of state government, respectively. Chapter 7 analyzes issues in financing and budgeting by state and local governments.

Chapters 8, 9, 10, and 11 discuss important issues in four key areas of public policy — economic development, education, criminal justice, and the environment. Chapter 12 contains articles on North Carolina politics, while Chapter 13 concludes with a look at the role of the news media in covering state government and educating the citizenry.

The North Carolina State Constitution—the framework for this book—is reprinted in the Appendix.

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Chapter 1

North Carolina: People, Culture, and History

NORTH CAROLINA is a state of immense vitality, variation, and change. Hailed by many as a progressive symbol of the contemporary South's modernization and by others as being among the most conservative of Southern states,[1] North Carolina provides an interesting contrast of forms and behaviors. The state is endowed with a tremendous geographic beauty and range that often serves as a guide to political battles. Its political history has been enriched by an extensive Indian heritage and the oldest colonial settlement in North America. Combined with its regional location and size, North Carolina has had a prominent role in many chapters of American development.

Discovery and Settlement: The Historic Period

The first recorded discovery of North Carolina was made by a French expedition along the coast led by Giovanni da Verrazano in 1524. Two years later a Spanish expedition led by Lucas Vazques de Ayllon established a temporary settlement on "Rio Jordan" (assumed to be Cape Fear) and Hernando de Soto crossed through the Western part of the state in 1540. Still, the Historic Period of North Carolina did not really begin until 1584 with the explorations and settlement attempts of Sir Walter Raleigh.

After receiving a patent from Queen Elizabeth I in March 1584, Raleigh dispatched Captains Phillip Armas and Arthur Barlowe to discover a suitable site for a colony. The expedition arrived at the Carolina coast in early July, entered the Pamlico Sound and, after two months of exploration, returned to England carrying two Indians, Manteo and Wanchese.

Barlowe's report of the expedition was enthusiastically received in England and, in 1585, Raleigh established the first English colony in America on Roanoke Island. Beset by numerous problems, the colony was abandoned less than a year later with the settlers returning to England on the ships of Sir Francis Drake. A second attempt to establish a permanent settlement was made in 1587 — the famous "Lost Colony" celebrated in the state's history and folklore.

Later settlement attempts in the region were slow to develop, and patents granted to Sir Robert Heath and later ceded to the Duke of Norfolk failed to produce hoped-for growth and interest in the colony. Settlement in the area of Albemarle Sound in 1662 attracted attention and in 1663 a charter was issued by King Charles II of England to eight Lord Proprietors of Carolina.

The Proprietary Period

The Proprietary Period (1663-1729) marked the first formal governance of the region. Albemarle County was established and divided into precincts whose residents chose representatives to an assembly. This assembly, with the court system, council and governor (appointed by the Proprietors) constituted the government. In 1669 "The Fundamental Constitutions of Carolina" was adopted to promote settlement and protect property rights. The document, written by British philosopher John Locke whose works were later used in fashioning both the Declaration of Independence and the United States Constitution, provided for a feudal system through which grants of land, titles of nobility, and ruling class privileges were established. The Fundamental Constitutions established the Anglican church, but also allowed the practice of other religious beliefs. Administrative details — the registration of births, deaths, marriages, and land titles — were included, as was a provision assuring trial by jury. Freeholders were beneath the nobility, permitted to own land and slaves. Leet-men were bound to the land as tenants of the nobility. Freeholders were also represented in the proprietary parliament, but this was a limited privilege as the parliament could not initiate any legislation. The eight Proprietors made up the Palantine's Court — the supreme agency of government. The actual government was vested in the governor and his council, chosen by the Proprietors in conjunction with the parliament.[2]

The Fundamental Constitutions, while establishing an elaborate blueprint for government, was ill-suited for the wilderness civilization of North Carolina. In spite of the fact that the document was declared to be "perpetual and unalterable," it went through five editions before completely abandoned less than 30 years later.[3]

The Proprietors failed to give Carolina a stable government and the Proprietary Period was marked by mismanagement, slow growth, and violent internal strife. A number of incompetent officials and governors took office, only to be driven out later. Commerce was severely handicapped by Virginia's refusal to ship Carolina tobacco and lack of adequate surface transportation. Development was slow and it was not until 1706 that the colony had its first town — Bath.

The Royal Period

In 1729 North Carolina became a Royal province when George II purchased the shares of seven of

the eight Lords Proprietors. "Royalization" brought little by way of structural change, but did result in more efficient administration. This period was marked by a steady growth in population and the expansion of settlement throughout the colony. The population of less than 35,000 in 1729 increased to nearly 300,000 by 1775.

Even though population and commerce flourished during the period of royal administration, North Carolina became an active participant in the struggle for independence from Great Britain. Defying the colonial governor, delegates were elected and sent to the first Continental Congress in 1774. Royal rule ended in 1775 when Governor Joseph Martin was forced to flee and the Provincial Congress took control of the government. The new congress met in New Bern, Halifax, and Hillsborough. The Halifax Resolves (April 12, 1776) were adopted and North Carolina became the first colony to sanction American Independence. The Mecklenburg Declaration of May 20, 1775 preceded the Halifax Resolves (and its date appears on both the state flag and seal) and stated North Carolina's wish to establish its independence from Great Britain. There is some doubt, though, as to the authenticity of the exact date of the Mecklenburg Act.[4] It is from this official sanctioning of American Independence that the state slogan "first in freedom" is derived.

The Revolutionary War and Early Statehood

At the end of the Revolution, North Carolina entered into the Articles of Confederation with the other former colonies. The state sent representatives to the Constitutional Convention at Philadelphia in 1787, although a state convention called to ratify the document in 1788 voiced fears of a strong central government and voted to reject the new federal Constitution until a Bill of Rights had been added. A second convention, meeting in 1789, ratified the document.

North Carolina's first state Constitution outlined the organization of state government and contained a Declaration of Rights that established the individual rights of the citizen. Following the federal model, it provided for the separation of powers in the executive, legislative, and judicial branches, but placed the greatest power in the General Assembly. In addition to legislative duties, the Assembly also chose all executive officers (including the governor) and all judicial officers. No system of local government was expressly outlined, but there were provisions for such local officers as sheriff, constable, justice of the peace, and coroner. Two representatives and one senator were to be elected by the voters of each county, and each of the six towns would send a member to the House of Representatives. Only landowners of 50 acres could vote for senators, and property qualifications also applied to candidates for the General Assembly and governor.[5]

The period from 1790 to 1835 was marked by a lack of development and political inequality. The state was dominated by the landed aristocracy of the Eastern coastal plain although the population of the less prosperous Western counties far exceeded their Eastern counterparts. The gerrymandering of county electoral districts and a refusal to create new counties in the more populous West led to a general discontent that finally resulted in the calling of a constitutional convention in 1835. Numerous governmental reforms and constitutional amendments were adopted by popular vote. The thrust of the new constitution centered on the reallocation of representation and the popular biennial election of the governor. Amendments were also adopted that fixed the membership of the House at 120 and the Senate at 50 — the present numbers.

Following the convention, until the Civil War, North Carolina politics was marked by constructive reforms and a genuine two-party system. State aid was given for the building of roads, railways, and a system of free public education. Reforms were enacted in taxation policy, criminal codes, and of the legal status of women.

Secession, Reconstruction, and the Late 1800s

North Carolina seceded from the Union on May 20, 1861 — the last Southern state to join the Confederacy. With the defeat of the Confederate states, North Carolina voted to repeal the ordinance of secession, abolished slavery, and repudiated the war debt. In 1868, a new Constitution was adopted and the Fourteenth Amendment to the United States Constitution was ratified. North Carolina was readmitted to the Union on July 20, 1868.

The new state Constitution was far more majoritarian and democratic than past documents, providing for the direct popular election of all state executive officers, judges, and county officials, as well as legislators. Executive terms were expanded to four years. Property qualifications for voting and officeholding were abolished, and the Senate was apportioned on the basis of population instead of property. Legislative sessions were made annual. A simple and uniform court system was established, constitutional provision was made for a system of taxation and free public

schools, and a uniform system of county government was outlined.[6]

Traditional interests regained control in the 1870s and the Democratic Party gave North Carolina adequate government administration that excluded blacks. Many of the majoritarian elements of the 1868 Constitution were either amended or abolished. Legislative sessions became biennial again. The court system, previously reformed and made uniform, was brought back under the power of the General Assembly. Persons guilty of certain crimes were barred from voting and racial segregation was required in the public schools.

The General Assembly dominated the state's politics and administration during this period, and the Democratic Party dominated the General Assembly. The Democratic control favored large business interests and ignored the needs of the mass of farmers that made up much of the state's population. This led briefly to a successful coalition between the newly formed Populist Party and the Republicans that resulted in the election of Daniel L. Russell as Governor in 1896. The fusion ticket failed to carry out most of its proposed reforms, but did contribute to the temporary return of blacks to political participation.* Capitalizing on this latter issue, the Democratic Party regained control in 1900 and promptly introduced Constitutional provisions for a literacy test and poll tax. Both had the effect of limiting the suffrage rights of thousands of North Carolinians — black and white.

North Carolina Since 1900

Politics in North Carolina since 1900 has centered on two main concerns — the end of segregation and the stimulation of economic development. Tied to both of these concerns have been a number of issues, causes, and personalities.

Through the first four decades of the 1900s, the integration of blacks into the mainstream of North Carolina politics and society was generally a moot point. Although not as repressive as some of its Southern neighbors, and described as "progressive" in V. O. Key's *Southern Politics*,[7] blacks in North Carolina did not enjoy full citizenship in deed, fact, or law.

Following the *Brown v. Board of Education* decision in 1954, race became a key issue in the state's politics. North Carolina made halting attempts at school integration in 1957 and avoided the "massive resistance" experience of Mississippi, Alabama, and Louisiana.[8] U.S. Senator Frank Porter Graham, a moderating influence, was defeated in 1950 by his opponents' appeals to racism. However, I. Beverly Lake Sr., a staunch segregationist, was similarly rejected in two consecutive gubernatorial primaries in the 1960s. By then, civil rights activists had led successful demonstrations in Durham and Greensboro. The adoption of the Voting Rights Act and similar federal legislation in 1964 and 1965 ended *de jure* barriers to full political participation by blacks, and has led to the gradual emergence of prominent black leaders in local and statewide politics.

The economic development of the state has depended largely on growth in the textile, furniture, and tobacco industries. And North Carolina continues to be a major agricultural state, ranking first in the nation in the production of tobacco, sweet potatoes, turkeys, and *farm* forest products (pulpwood, timber, and Christmas trees).

There are, however, three transitions currently underway in the state's economy: 1) a shift within the manufacturing sector from labor-intensive to capital-intensive industries; 2) a shift within the non-agricultural sector from manufacturing to trade, service, and government jobs; and 3) a shift in the agricultural sector from small farms relying extensively on tobacco income to larger farms diversifying into many crops, often run by corporations or under contract. (See pages 204-221 for more.)

The diversity of North Carolina is reflected in its geography, institutions, and its people. The selections in this anthology highlight this diversity in the state's culture, history, and politics. It begins with profile of North Carolina titled "The Newest Megastate."

George White, a black Republican, was elected to the U.S. Congress in 1898. His subsequent defeat in 1900 began a 28-year period during which no black served in the U.S. Congress.

FOOTNOTES

[1]Thad L. Beyle and Merle Black, eds., *Politics and Policy in North Carolina* (New York: MSS Information, 1975).

[2]Hugh T. Lefler and Albert R. Newsome, *North Carolina: The History of a Southern State* (Chapel Hill: University of North Carolina Press, 1973).

[3]*Ibid.*, p. 35.

[4]Hugh T. Lefler and William S. Powell, *Colonial North Carolina: A History* (New York: Charles Scribner and Sons, 1973), p. 268.

[5]Summary of the Constitution taken largely from the League of Women Voters, *North Carolina: Our State Government* (Raleigh: League of Women Voters, 1985) p. 7.

[6]*Ibid.*, p. 8.

[7]V. O. Key, *Southern Politics In State and Nation* (New York: Random House, 1949), p. 205.

[8]An interesting analysis of the entire era and process of desegregation politics following *Brown* is found in Jack W. Peltason, *Fifty-Eight Lonely Men: Southern Judges and School Desegregation* (Urbana, IL: University of Illinois Press, 1961).

North Carolina: The Newest Megastate

by Neal Peirce

THE HARD WORKING STATE of North Carolina has never loomed large in the national consciousness. Since colonial times, it has been called "a vale of humility between two mountains of conceit" — its haughty neighbors to the north and south, Virginia and South Carolina. Thus it came as no little surprise when the 1980 Census revealed that North Carolina had grown, suddenly vaulting past Massachusetts and Indiana in population size to become our 10th-largest state — a "megastate."

The Tar Heel state's relative obscurity is not difficult to fathom. Here is a state known not for glamorous families or dazzling cities but for its three large industries: tobacco, textiles, and furniture. Although North Carolina likes to think of itself as the South's most liberal state, its politics are inconsistent enough to be considered paradoxical. And in a sense, one could say its rise to megastate proportions was somewhat accidental. The states of Massachusetts and Indiana, a bit larger in 1970, grew only marginally in the '70s while North Carolina, plugging ahead at a 15.5 percent rate, reached a 1980 total of 5,874,429 people and its sudden Big Ten status. Many Americans may not realize how large North Carolina's territory is. From the lighthouse at Cape Hatteras to the Smokies, for instance, the distance is more than 500 miles — about the same as the distance from New York to Raleigh.

From colonial days onward, North Carolina was rarely notable. Unlike Virginia and South Carolina it lacked a first-class port (Wilmington, the state's best, was not established till the 1730s). There was a pathetically small planter aristocracy and, for quite a while, very few settlers. The Roanoke Island settlement financed by Sir Walter Raleigh in the 1580s vanished with no trace. Unlike many other Southern states, North Carolina never went through an early golden age. When Virginia was producing such luminaries as Washington, Jefferson, Madison, and Marshall, North Carolina was a land of fiercely independent small farmers, many of them Scotch-Irish, and few slaves. North Carolina, unlike Kentucky and Tennessee, did not enjoy flourishing growth during the age of Jackson and Clay. Rather, it was exporting people west. Three presidents were born in North Carolina — Jackson (though South Carolina also claims him), Polk, and Andrew Johnson — but all launched their political careers from Tennessee. North Carolinians fought lustily (and sometimes against each other) in the War for Independence and the War Between the States, yet in comparison to other places, there were no great political struggles or upheavals, no sharp shifts in the pace of economic development. If Thomas Jefferson was right in saying that people needed a revolution every 20 years, North Carolina is long overdue.

Reprinted by permission from The Book of America: Inside 50 States (New York: Norton), 1983, pp. 348-364.

The state's steady, even growth was, nevertheless, one of the reasons V. O. Key was able to report in *Southern Politics* (1949) that North Carolina "enjoys a reputation for progressive outlook and action in many phases of life, including industrial development, education and race relations." John Gunther, after his brief stop in the state for *Inside U.S.A.*, fairly gushed in saying, "That North Carolina is by a good deal the most liberal southern state will, I imagine, be agreed to by almost everybody."

V. O. Key more judiciously added that North Carolinians themselves are the first to point out that their state does not entirely deserve its progressive reputation. And in reality this is a state of paradoxes: behind every fact indicating its progressiveness lurks another suggesting quite the opposite.

North Carolina has an aggressive, enlightened press exemplified by such papers as *The News and Observer* of Raleigh serving the eastern portion of the state, and *The Charlotte Observer*, part of the Knight-Ridder chain and winner of the 1981 Pulitzer Prize for its series on "Brown Lung: A Case of Deadly Neglect." The press has contributed much to the state's "good government" reputation, but seek real consistency or some strong intellectual tradition in the state's politics and you will encounter major difficulty. The same state that first refused to ratify the Equal Rights Amendment in 1973 (and repeated that vote in 1982) pioneered in reducing criminal penalties for possession of marijuana in 1977. The same state that has prided itself on such progressive Democratic governors as Terry Sanford and James Hunt has also sent to the U.S. Senate two of the most conservative men to enter those portals in modern times: Republicans Jesse Helms and John East.

The paradoxes extend to economic matters as well. Here is a state that has long bragged about its ability to attract industry. In all the Southland, only mighty Texas exceeds it in factory output. North Carolina has a larger percentage of its work force (34.5 percent) employed in manufacturing than any other state in the country, even such industrial giants as Michigan, Ohio, and Illinois. But North Carolina industrial workers' earnings have long been dead last among the 50 states. Not surprisingly, only 6.5 percent of North Carolina's work force belong to unions, the lowest share among the 50 states.

North Carolina is proud, and in many respects justly so, of its system of public education, but in the early 1980s the state still lagged seriously in the number of school years its people complete: nearly 25 percent of North Carolina's adult population had not finished high school, and only 13.4 percent of adults had completed college compared to 16.3 percent nationwide. North Carolina's greatest educational achievement was its 16-campus university system, but into the 1980s the system was maintaining some campuses that were predominantly white and others predominantly black. In 1982 a divided U.S. Court of Appeals approved a U.S. Department of Education settlement that promised to add new programs to the black campuses, but did not require dismantling of duplicate programs at nearby white campuses. Civil rights activists who noted that the plan was developed by the conservative Reagan administration vowed to take the case to higher courts.

Several cases came to the fore in the 1970s in which black rights activists were pursued with suspicious fervor by law enforcement officials. Then, after conviction on questionable charges, they were sentenced to astonishingly long prison terms. Most famous was the "Wilmington 10" case in which 10 civil rights activists, 9 black men and 1 white woman, were convicted in connection with the firebombing of a grocery store. The white woman was later freed on parole, but the black men were sentenced to 20- to 29-year prison terms. Many people inside and outside North Carolina considered the men political prisoners. But the state courts rejected requests for a new trial, and Gov. James Hunt, considered a progressive, long refused to become involved.

This is also a state where the Ku Klux Klan must still be reckoned with, in occasional violence, if not politics. In the 1960s North Carolina was the home of one of the largest and most virulent Ku Klux Klans in the United States. Membership is reported to have fallen from 6,000 dues-paying members in 1960 to the hundreds by the late 1970s, but even then the Klan broke up an anti-Klan rally staged by the Communist Workers party at a public housing project in Greensboro. Klan members, aided by a group of Nazis, burst into the rally, killing five communists, including two doctors and an honors graduate of Duke University. The following year a Greensboro jury acquitted six Klan members of murder charges stemming from the incident.

Persons convicted of crimes in North Carolina are likely to go to jail. The state ranks first in America in numbers of prisoners jailed per 100,000 population, double the incarceration rate for New York State.* In 1981, 77 percent of North Carolina's prison admissions were for crimes that did not involve violence or physical harm to others. Yet if North Carolina judges' inclination to incarcerate has had any effect on the state's crime rate, it has been a peculiar one. The

**Editor's Note: See pages 272-282 for more.*

crime rates for robbery, larceny, car thefts, and rape are among the lowest in the nation, while those for assault and murder are among the top 15 states.

North Carolina's new "megastate" status has created another set of paradoxes. The state may now boast the tenth-largest number of people in the country, yet one searches in vain for most of those characteristics of cultural and economic leadership often exhibited by other megastates — and indeed by some smaller states, such as Massachusetts and Minnesota. The state's economy has not diversified far beyond textiles, tobacco, and furniture. North Carolina has the headquarters of only eight *Fortune 500* companies, fewer than any megastate except Florida. And except for R.J. Reynolds Tobacco Company, and Nucor, a steel manufacturing firm, North Carolina's big companies are all in textiles. Despite a well-publicized campaign to attract high-technology, North Carolina is still not among the top 13 states in the number of high-tech firms. This lack of diversification — unique among the megastates — is illustrated by the fact that even in 1980, one-fourth of all the nation's textile industry could be found in North Carolina. Nearly half of all the state's factory workers were employed in an amazingly high total of textile mills (1,200) and apparel plants (550). The notoriously low wages in the textile industry kept North Carolina's 1980 per capita income at 41st rank among the states. So much of the wealth that is produced in North Carolina goes to out-of-state owners and stockholders that the sum of all incomes in the state is exceptionally low, given its population ranking. The 1980 U.S. Trust Co. of New York survey of millionaires showed that North Carolina had only 10,938 millionaires, 19th among the states.

North Carolina is also more nativist than the other megastates. It was settled principally overland from Virginia and South Carolina, mostly by Scotch and Scotch-Irish farmers, and their stock still dominates. Less than 1 percent of the state's people were born in foreign lands, a proportion far below other large states. North Carolina's 1.3 million blacks in 1980 made up 22.4 percent of the population and were the state's only numerically significant minority group. We have heard reports that foreign businessmen still worry that they would not be accepted in this Southern state and avoid settling there even if they open plants in the state.

North Carolina, although a megastate, has no really major metropolitan center. The urbanized area around Charlotte, the largest city (pop. 637,218), is not as populous as Nashville, Tennessee. North Carolina's population is scattered first and foremost about the seemingly infinite number of smaller textile mill and furniture factory towns, second around the state's five cities, with more than 100,000 people — Charlotte, Greensboro, Winston-Salem, Raleigh, and Durham — and last in rural areas. North Carolina has industrialized without really urbanizing. Fitting that pattern, mobile homes abound: next to Florida and California, North Carolina has the most of any state. And they are not so much the homes of retirees or itinerants as shelter for the people who work in North Carolina's low-paying factories, often unable to afford a "site-built" home.

An Economic History of the Tar Heel State

Up until the Civil War, North Carolina was unrelievedly agricultural and mostly poor. In 1860 it had fewer slaves than any other Confederate state except Tennessee, and fewer big plantations. In the early years of the 1880s, the golden age of Kentucky and Tennessee, North Carolina became known as the Rip Van Winkle state; its population increased only sluggishly, as thousands of North Carolinians made their way west over the mountains. At the outbreak of the Civil War, this state of small farmers had no city of even 10,000 population.

North Carolina held out against secession until the guns began blazing over Fort Sumter and Virginia had seceded. And even though North Carolina soldiers made up one-quarter of the Confederate dead, the land was not as ravaged as Virginia's, nor did emancipation destroy the wealth of the state — as it did in South Carolina. Unlike many of its neighbors, North Carolina was poised to reach for what many said would be the South's salvation: industrialization.

The most important industry in North Carolina, from the Revolution to the Civil War, was the production of turpentine; it was distilled from pine sap and was, except for foodstuffs, the state's only export.* Then, in postbellum North Carolina, cotton textile mills began their years of heady expansion all across the state's productive midstate Piedmont region. From 1880 to 1900, the state saw an average of six new cotton mills built each year.

Why this concentration of textiles in the Carolina Piedmont? Inexpensive water power, tapping the fast-falling waters of such rivers as the Yadkin and

**The nickname "Tar Heel State" is not derived from this industry, however. It stems from an incident of the Revolutionary War when Cornwallis' soldiers crossed a North Carolina river into which tar had been poured, emerging with the substance stuck to their heels.*

Catawba and their tributaries, led the list. Another reason, clearly, was cheap labor. Just consider the average textile wages in 1900: $216 for men, $157 for women, $103 for children — *per year*. The chief raw material, cotton, was indigenous to the Southland. Finally, for reasons hard to divine, it was North Carolina entrepreneurs who had the gumption to gather the capital and launch the industry on a grand scale.

The tobacco industry offered perhaps the most colorful entrepreneurial story of all, in the person of James B. "Buck" Duke. In 1884, at the age of 27, he bought one of the first cigarette-making machines and undertook a frontal assault on the big companies of the day. With shrewd promotion and advertising and lower costs, Duke soon dominated the national market. In 1890 he set up the American Tobacco Company, combining under his control manufacturers of 90 percent of the cigarettes in the United States. Then Duke set out to outsell or to absorb the major manufacturers of pipe and chewing tobacco, snuff, and cigars. All the time, he promoted cigarette smoking, to his great enrichment. In 1911 the Supreme Court ordered Duke's tobacco trust dissolved, and it was broken into four companies: American Tobacco (now American Brands), R. J. Reynolds, P. Lorillard, and Liggett Myers. They still dominate the industry, and all have a major share of their operations in North Carolina. In 1980, North Carolina still grew 43 percent of the nation's tobacco, nearly twice as much as Kentucky, the next highest producer. The state was also responsible for producing more than half the nation's cigarettes: from just one of its 12 plants, the R. J. Reynolds Company spewed out 400 million cigarettes daily, enough to fill 12 railroad cars.

There's little mystery as to why North Carolina became America's top tobacco state: the product grew there most luxuriantly, particularly in the state's eastern regions. Similarly, raw material was responsible for its third great industry, furniture. Magnificent varieties of hardwoods flourished on the moist slopes of the Smokies and the hills of the western Piedmont. The furniture industry grew up around the small towns of the western Piedmont, such as High Point.

Yet while North Carolina has more than fulfilled the 19th-century dream of industrialization to rescue the Southland from its dependence on the land, the state's low personal income figures prove it has not produced the bounteous society once hoped for. The North Carolina Fund pinpointed the problem in a 1967 report that still rings true: "We have seen North Carolina shift from a poor agricultural state to a poor industrial state. We have experienced industrialization without development."

Of the great Carolina industries, only tobacco pays above the national hourly average. Textiles are unquestionably the chief culprit in North Carolina's low-wage dilemma. They pay the lowest wages of all major U.S. industries; not surprisingly, they are also the least unionized. Unions have made sporadic attempts to organize North Carolina mills; there was even a Communist-led strike in Gastonia in 1929. But a massive drive in the late 1950s ended in disaster for the union, and until the Textile Workers Union managed to organize seven J.P. Stevens plants at Roanoke Rapids in 1974, virtually none of the state's textile mills and precious few furniture factories were organized. In 1980, after a bitter, 17-year battle, the Amalgamated Clothing Workers of America (with which the Textile Workers had merged in 1976) won the right to represent about 3,500 textile workers at 12 J. P. Stevens plants. The union was ratified after a campaign in which maverick organizer Ray Rogers used such unorthodox tactics as threatening to take union pension fund money out of any bank that did business with Stevens and using consumer groups to boycott Stevens products. The AFL-CIO's Industrial Union Department and International Brotherhood of Teamsters have both made major efforts in the state. But even in the early 1980s, the unions were still losing more certification elections than they were winning. Why? There is the fierce independence, even orneriness, of Carolina working people, combined with a surplus of labor. But the primary reason for North Carolina's low rate of unionization is surely business hostility. And geography plays a role: few textile jobs are in the major North Carolina cities. Rather, they are spread through all the small, one-industry towns, where the textile makers, with their huge sums of capital and absolute control over workers' jobs, can still have things pretty much their own way.

Consider Cannon Mills, which produces half the nation's towels and a fifth of its sheets. In the Piedmont town of Kannapolis, some 16,000 people, nearly one-third of the residents, work for the Cannon Mills. Many live in the 1,600 company-owned homes. For a half century up to his death, in 1971, the company was run autocratically by Charles Cannon, who with his family held title to a huge portion of the unincorporated town of Kannapolis. Cannon even allowed his stock to be taken off the New York Stock Exchange rather than reveal information as the Exchange rules required. "Mr. Charlie," as he was known, would not even have considered a union at Cannon Mills. And more than 10 years after his death, no serious unionization drive had yet been launched against Cannon. The company itself fell into California hands.

Unionizing textile workers has become the stuff of folklore and even the subject of an Academy Award-winning film, *Norma Rae*. The Amalgamated Clothing Workers has been determined to organize in North Carolina and keeps trying in the face of adversity. Yet a gnawing doubt remains: would textiles, now subject to such heavy (and usually inexpensive) foreign competition, pay a great deal more even if they were unionized?

Unhappiness over low wages has sparked a state government campaign for economic diversification ever since the administration of Governor Luther Hodges, Sr., in the 1950s. Hodges, who was later to become U.S. Secretary of Commerce, spent much of his administration (1954-61) promoting North Carolina around the nation and to the Common Market countries and selling the state on the idea of diversification. Perhaps his most lasting contribution was the creation of Research Triangle Park, near Durham, Chapel Hill, and Raleigh. The location provided access to the state's three major universities: Duke, the University of North Carolina, and North Carolina State. Land was leased or sold to corporations and government agencies for research facilities, and by the 1980s the park was booming. Some 41 corporations and government agencies were operating research facilities and manufacturing high-technology products. Tenants included IBM, General Electric, and the Burroughs Wellcome companies, as well as the U.S. Environmental Protection Agency and Forest Service. By the early 1980s more than 20,000 people were employed at Research Triangle Park, mostly in jobs paying far above the state's average wage, and high-tech employment in the state totalled 50,000 workers. But even in high-tech endeavors North Carolina had problems developing a top-notch image. A California high-technology company executive told us that engineers were still reluctant to move to North Carolina, preferring the "freer" social atmosphere of the Western states. Those attitudes were apparently confirmed by the fact that North Carolina seemed to attract more high-tech production facilities, with a lower wage scale for that industry, than research and development activities.

By 1980 the long-term diversification effort was showing some dividends. Textiles, which accounted for 51 percent of North Carolina's factory employment in 1955, were down to only 30 percent (with apparel another 11 percent). The textiles-furniture-tobacco trio, 63 percent of the state's manufacturing jobs in 1955, was down to 53 percent. What kind of firms were coming in to take up the slack? Plants making rubber and plastic products, chemicals, electrical and nonelectrical machinery. Most investments came in the Piedmont, from Raleigh to the foothills of the Smokies, and nearly 60 percent of the jobs, true to North Carolina form, appeared in rural areas.

North Carolina state officials have sometimes been criticized for blatantly promoting North Carolina's low wages and lack of unionization. But the state's economic development program seems to deserve the progressive label on two scores, the first in education. Starting under Gov. Terry Sanford, the state set up industrial education centers, gradually expanding them into a system of 58 community and technical colleges designed to be within an hour's drive of any location in the state. The state's technical and community colleges, in addition to regular curriculums, customized industrial training packages for industries moving into or expanding within the state — at no cost to the firm. One out of every eight North Carolinians, some 700,000 people, were enrolled in some type of vocational training in 1980. The second area that earns the progressive label is, surprisingly, taxes. North Carolina has not aped the policy of so many states (including neighboring South Carolina) in offering massive tax concessions to prospective firms and was the last state to adopt an industrial revenue bond program. Business taxes are, of course, quite low, but favors for the "big fish" do not unfairly affect small, indigenous businesses.*

The Underdeveloped East

By the early 1980s the big news about North Carolina's diversification program was that it had finally begun to show returns in the underdeveloped eastern portion of the state, which has the largest black population (33 percent) and is the most reliant on the tobacco economy.

The litany of the problems of the East is strikingly similar to that of the South Carolina Lowcountry, south Georgia, or southside Virginia. The residents are largely poor. The cities of eastern North Carolina are small; the largest are Wilmington (44,000), the state's largest port, and Fayetteville (50,057). The latter is almost a tributary of the Army's giant Fort Bragg, home of the 82nd Airborne.

To the extent that North Carolina ever had a plantation culture, it was in the East. The residual black population percentages would be even higher if so many had not left during the 1950s and '60s for the ghettos of Washington, Baltimore, Philadelphia, Newark, and New York. In parts of eastern North

**Editor's Note: For more on state tax policy, see pages 176-189.*

Carolina, entire high school graduating classes left, looking for jobs. So many left each summer that in the 1960s the Seaboard Coast Line Number 76 train became known as the "Chickenbone Special," because the young travelers usually carried a picnic lunch of fried chicken. Outmigration stopped in the 1970s as jobs in the Northern cities began to dry up, and stories of poor conditions "up there" convinced young black North Carolinians they were better off in the state of their birth. Many have, however, moved into North Carolina's own cities.

Until quite lately, the East had few industries, mostly low-wage "cut and sew" shops, hiring mainly women, often blacks whose husbands were trying to eke out a living on tobacco farms. Yet state figures for 1980 showed that nearly one-third of all North Carolina's new jobs that year were in the East and that the region attracted 40 percent of all new industrial development. One can hope that industrialization will lessen the regional importance of tobacco, a crop running into increasing troubles.

Even in its heyday, tobacco offered little better than a marginal living standard for sharecroppers, not much better for many of the landowning farmers, and created no great fortunes even for tobacco warehousemen. The right to grow tobacco is regulated by the government through a system of allotments strictly limiting the acreage and pounds of tobacco that can be grown. Allotments were originally assigned to growers in the 1930s; they have been passed along from father to son like a sacred birthright — or sold. Since 1933, the federal government has issued about 620,000 allotments. By the 1980s fewer than half were owned by tobacco farmers; the remainder are owned by doctors, lawyers, churches, banks, industrial workers, and in many cases, widows, who lease them to farmers at prices exceeding $1,000 per acre. Sen. Helms and others have fought hard to preserve government tobacco price supports. But by 1982 Senators Helms and East were willing to support President Reagan's doubling of the federal tax on cigarettes even if North Carolinians felt betrayed. Antismoking campaigns had succeeded in reducing the percentage of Americans who smoked cigarettes to its lowest level since 1898, and as Helms explained, he would offend too many of his colleagues if he did not support the tax. At the same time, there were grumblings from the younger growers that the archaic system of leasing allotments was feudalistic, and even charges that the system of price supports had made the American product too expensive for international markets.

The Outer Banks, that string of sandy islets separating Albemarle and Pamlico Sounds from the ocean, represents the easternmost extremity of North Carolina. The waters here are treacherous, and among sailors the name of Cape Hatteras (the tip of the elbow that sticks out from the Banks into the Atlantic) is still feared; here, it is said, more than 700 shipwrecks have occurred.

The Banks were also the site of the Wright brothers' first flight at Kitty Hawk, and close by is Roanoke Island, where Sir Walter Raleigh tried to start a colony in 1587. One of the leaders returned to England for more provisions, and when he came back three years later he found no trace of the colonists except for the word "Croatoan," the name of a local Indian tribe, carved on a tree. No one knows what became of this Lost Colony.

For years the Outer Banks were so isolated from the rest of the state that the Bankers, as its residents are called, have retained 17th-century speech patterns and vocabulary. The Outer Banks have been kept relatively free of the kind of high-rise development that has marred Virginia Beach, to the north, and Myrtle Beach, to the south. Much of the beach is protected by the National Seashore designation, and the coast has also been protected by North Carolina's 1974 Coastal Zone Management Act, and some say, its lengthy distance from an interstate highway. But the Outer Banks still grew faster in the 1970s than any other section of North Carolina, and residents became embroiled in debates over future development. Favoring growth were the summer gentry, who began selling their old cedar homes to condominium developers and young, permanent residents who found the housing supply scarce and expensive. Opposing them were the recently arrived retirees who saw the arrival of three-story, condominium complexes, built in factories and shipped in, as a desecration of the natural scenic area to which they had moved.

The Piedmont

North Carolina's urban growth has not centered in one city, as in Georgia, but rather concentrated in the cities and suburbs of what is known as the Piedmont crescent. Roughly following Interstate 85 from northeast to southwest — and thus forming the eastern anchor of the vital growth line of the new South, which stretches through the South Carolina Piedmont cities and on to Atlanta and finally Birmingham — they are (with the 1980 metropolitan population figures): Raleigh-Durham (530,673), Greensboro-Winston-Salem-High Point (827,385), and Charlotte-Gastonia (637,218). These cities have developed and grown less as a function of their geography (none straddles a major river) than as headquarters of major economic interests. Greensboro is the headquarters of

Burlington Industries: Winston-Salem, of R.J. Reynolds Tobacco and Hanes Hosiery; Durham, of the Duke tobacco interests; Raleigh, of state government; and Charlotte, of numerous banking and insurance interests.

There is little to distinguish the Piedmont from one another; even their physical layouts tend to be similar. Each emanates from a downtown that has some gleaming new skyscrapers, but diminished retail trade. Each has a black quadrant, roughly pie-shaped and spreading from downtown to the city limits, and a well-to-do white quadrant. To a Northerner, the racial patterns seem unusual. Blacks rather rarely move out into white neighborhoods; instead they push farther out, toward or beyond the city limits, into neighborhoods that have always been black or into new subdivisions that have been built for blacks — often by black developers.

Charlotte (314,447) is a city of branch offices, banks, insurance companies, and trucking firms. Every Monday morning, some 30,000 salesmen pour out of Charlotte to cover the mid-South. The city seems constantly to have its eye on Atlanta, and though it will never eclipse that colossus of the South, it will surely remain North Carolina's largest (it grew 30.2 percent in the '70s). Some of its greatest problems lie in physical growth that heeds neither land-use planning nor public transportation needs. Some of the good news in recent years has been the tasteful renewal of some inner-city neighborhoods and the creation of Spirit Square, a delightfully conceived multipurpose arts center near city center. Charlotte is headquarters of the North Carolina National Bank and its holding company, NCNB Corp., the largest banking concern in the Southeast. Benefiting from state law, which permits banks to build branches anywhere in North Carolina, and renowned for its competitiveness, NCNB has pursued a bold acquisition and merger policy — sometimes walking the tightrope of legality. Yet NCNB has not limited itself to profit-seeking; its community development corporation, a wholly owned nonprofit subsidiary, has helped refurbish the declining Fourth Ward of Charlotte and developed more than 225 housing units in Charlotte and Greensboro. But what Charlotte is most known for nationally is the 1970 Charlotte-Mecklenburg County desegregation case in which a federal judge ordered extensive busing of school children across the city-county line. Parents were initially furious, but after a few years, the plan was working better than expected — surely far better than in many Northern cities — and tempers cooled.

Winston-Salem (131,885), where the mountains begin to rise from the hilly western Piedmont, is the headquarters of Reynolds Tobacco and the Wachovia National Bank, the state's largest until the early 1970s when Charlotte's North Carolina National eclipsed it. In addition to cigarettes and textiles, furniture and electronics are made here. In the 1950s, the Reynolds family financed the transfer of Wake Forest University from its namesake town near Raleigh, building a university almost singlehandedly, as James B. Duke had done many years before in Durham.

Winston-Salem has had an unusual commitment to the arts since its 18th century settlers of the Moravian sect handcopied hymns, collected 10,000 music manuscripts, and earned the city the reputation of being a "hotbed of Haydn." Winston-Salem formed America's first city arts council in 1949; by the late 1970s that council was overseeing an ambitious effort to use arts as a catalyst to bring people back downtown. Several downtown buildings were renovated into a performing arts center, an arts and crafts school for children and adults, a park and amphitheater, which opened in 1982. Federal money helped finance the project, but the lion's share came from Winston Salem's well-heeled private sector, led by an indefatigable proponent of the arts, R. Philip Hanes, Jr., of the Hanes hosiery family.

An integral part of the arts strategy was the North Carolina School of the Arts, which is connected with the University of North Carolina and attracts highly talented theater, dance, and music students from throughout the state and across the nation. When it was proposed, rural legislators called it a "toe-dancing school," but Governor Sanford was able to ram it through by horsetrading road projects and appointments. Admission to the school is by audition only; visiting the school, you can literally feel the striving, the search for artistic perfection as the young artists train. Graduates land jobs with top performing U.S. and European arts institutions. And there appears to be a clear economic dividend: North Carolina is finding that the state's cultural reputation — from annual European tours of the School of Arts' orchestra, for instance — helps draw foreign investment and makes the state more attractive to high-level executives. North Carolina also supports a symphony orchestra and an art museum. This Tar Heel vigor in the arts must be marked down as yet another paradox in a blue-collar state that one would expect to have little interest in sophisticated dance, drama, and music.

Near Winston-Salem are Greensboro (155,624), a headquarters town (in addition to Burlington, textile firms such as Cone and Glen Raven) and a cigarette and electronics manufacturing center, and High Point (64,107), the furniture capital.

Durham (100,831) is the Piedmont's grittiest city, headquarters for Chesterfield cigarettes and site of

Duke University, one of the two or three most distinguished private universities in the South, with excellent medical and law schools. Duke is Durham's largest employer. Under the presidency of former Governor Sanford, Duke became a center for political thought and analysis. Enormous controversy was generated by an attempt to build the Nixon presidential library there. Duke's largely unrecognized role in politics and government, however, has been its education of many congressional and White House aides. Durham's proximity to Washington seems to lead many Duke graduates into government service.

Durham overall has the air of a factory town and is notable for its 47 percent black population, the highest figure of any of North Carolina's large cities. One attractive high-rise building on Durham's skyline is the North Carolina Mutual Building, headquarters of an insurance company owned and operated by blacks and in business since 1898.

Raleigh (149,771) is dominated by state government and North Carolina State University. It benefits, as Durham does, from the nearby presence of the Research Triangle Park. Development pressures played an unusual role in mayoral elections in the 1970s. In 1973, the city, which is quite conservative and only 27 percent black, elected a black mayor. The victor, Clarence Lightner, owner of a funeral home and veteran of the city council, was elected by a coalition of blacks and white neighborhood groups seeking controlled growth. Four years later, a similar antidevelopment position catapulted political neophyte Isabella Cannon, a Scottish immigrant, widow, and retired library administrator, to the mayor's office, but she was followed by a developer, Smedes York.

Though not one of the Piedmont's larger cities, Chapel Hill (32,421), home of the University of North Carolina, is surely one of the nicest. Most of its permanent residents (12 percent of whom are black) are connected with the university, giving the city an affluent, white-collar intellectual air. The university itself — the first state university in the nation, opened in 1795 — is probably the most distinguished public institution of higher learning south of the Mason-Dixon line. In addition to a variety of excellent departments, particularly in the liberal arts, English, and health education, UNC is renowned for its excellent basketball teams. The entire state, in fact, is basketball crazy, much like Indiana.

Tiny Afton Township, in predominantly black and poor Warren County near the Virginia border, proved in 1982 that North Carolinians can rise to protest. Blacks and whites together — led by the Rev. Leon White, a veteran civil rights activist, and the Rev. Joseph Lowery, head of the Southern Christian Leadership Conference — were arrested by the hundreds for protesting against the state's selection of Afton as North Carolina's first dumping ground for PCB (polychlorinated biphenyl). When the activists were arrested, they were lying down, arm in arm, in front of state trucks hauling dirt laced with the toxic chemical to the dump site.

North Carolina's Mountains: The Gem of Appalachia

Announcing his retirement from the Senate in 1973, Sam J. Ervin, Jr., said that he intended to do a little fishing, sit around home in Morganton, and watch "the indescribable glory of the sun setting behind Hawksbill Mountain." As it happens, Hawksbill Mountain, just west of Morganton and about 50 miles west of Charlotte and Winston-Salem, is part of the Blue Ridge that rises from the hilly Piedmont and signals the beginnings of North Carolina's mountain country. The great wave of Western migration following the Revolutionary War went over the mountains, into Tennessee and Kentucky. The mountains did begin to fill up during this period, but their greatest growth awaited the industrial boom before and after the turn of the century, when furniture factories and, to a lesser extent, textile mills located there.

The Smokies of North Carolina are the highest mountains east of the Mississippi. They are also among this nation's most hauntingly beautiful: it is as if deep green velvet were draped loosely over the earth, rising and falling in curving folds, sometimes in bright relief under the sun, oftentimes barely discernible through the smoky haze that gave these mountains their name. There is also profound fascination in their weird, almost exotic shapes — ridgelines straight out of a fairytale. These hills are, in truth, the gem of the Appalachians; geologically, they are also some of the oldest mountains in North America. As far back as we know, this land was peopled by the Cherokee Indians. This remarkable tribe, which spread south into South Carolina, Georgia, and Alabama, adapted well to the white man's ways, and under the great chief Sequoyah, even developed its own alphabet and literature. But in the 1830s, mindful that whites wanted the Indians' land, the federal government dispatched General Winfield Scott to drive them west. Nearly one-quarter of the Cherokees died on the Trail of Tears to the arid lands they had been granted; it was perhaps the lowest moment of Jacksonian democracy. A little more than a thousand Cherokees had remained behind; today some 8,700 of their descendants live in western North

Carolina.*

Up through the 1940s, western North Carolina was one of the most isolated sections of Eastern America. Then came tourism, industrialization, and the growth of mountain-based educational institutions. Now that the wall of isolation has been broken, thoughtful people of the region speak with deep concern of the head-over-heels tourist development, soaring land prices, bulldozing of mountains to make way for condominiums, ski resorts, and golf courses, and the arrival of the plastic civilization of hamburger and fried chicken stands, gas stations, and all the rest. The once-exquisite Maggie Valley, west of Asheville, is now full of snake farms and other such tourist attractions. "It's a mess," one local leader said, "and unfortunately the zoning can't be made retroactive."

The leading city in the west is Asheville (53,281), basically an industrial town. Asheville did have its own little golden age around the turn of the century, when its cool climate and beautiful scenery made it a fashionable resort for well-to-do Southerners.

Up in the mountains, in the village of Montreat, near Asheville, is the home of evangelist Billy Graham. From his comfortable house notched in the Smokies, Graham has gone forth to preach to huge crowds almost all over the world. Graham's fame was due initially to his vibrant, emotion-charged preaching style, but he also developed a closeness to presidents, from Truman to Nixon. In the days before the Moral Majority and other evangelical groups became involved in politics, he was something of an ambassador to presidents from that segment of American Christianity. Graham's strongest imprecations over the years have been directed at freer sexuality and godlessness; he was silent for years on the evils of racial segregation and never said a word against the American bombing in southeast Asia. Graham was unable to issue more than a mild rebuke to his friend Richard Nixon after Watergate, but the affair has reportedly made him cautious about further political involvement. In the early 1980s Graham shocked some conservative Christians by speaking out in favor of arms limitations and by visiting the Soviet Union.

Graham is not the first celebrity to come from Asheville, however. The novelist Thomas Wolfe was born in Asheville in 1900. In his prose, family friends have written, Wolfe "captured as did no one else the essence of his region's countryside and town, mountaineers and middle class, terror and tomfoolery."

Tar Heel Politics — and State Government

That we have come this far without mentioning, except in passing, politics or the state government, has been no accident. What has shaped North Carolina — what has determined how people live, where they work — is not so much government or politics as the face of the land and the raw economic power of the big textile, tobacco, and furniture companies, the utilities, the big banks, and the northern industries establishing branch plants.

What really matters in North Carolina politics is the governorship, and that in itself is another paradox, for the governor has less formal power than in any other state.* Until 1978, the governor was prohibited from seeking a second consecutive term; the governor has no veto and must share administrative powers with a tribe of nine other elected officials. Withal, it is surprising that North Carolina governors have been able to accomplish much of anything, and, in fact, only a few have. The good reputation of the series of governors who held office for the 50 years from 1904 to 1954 was derived mainly from the fact that they were personally honest and conducted reasonably efficient regimes, free of gross corruption.

North Carolina has had three particularly outstanding post-war governors: Luther Hodges, Terry Sanford, and James Hunt. Hodges, as we have written, was the central figure in moving the state toward economic diversification. Sanford, his successor, was the moving force behind North Carolina's excellent public secondary and technical education system; he also took a deep interest in American federalism, authored an excellent book, *Storm Over the States*, and launched the Southern Growth Policies Board, a group studying the South's problems and prospects (and how to avoid, it was often claimed, the errors of the North). Hunt has promoted economic diversification, education, and a "balanced growth" plan for the state. He won voter approval for the second term for the governor and then won a second term himself (1980-1984). A former Ford Foundation economics adviser in Nepal, Hunt wore a liberal label before his election to the governorship in 1976, much of it because of his progressive stand on civil rights. He appointed many blacks to high positions in the state

**There are actually more Indians in eastern North Carolina, most of them Lumbees in and around Robeson County, south of Fayetteville, who may or may not be descendants of the Lost Colony of Roanoke. Altogether, North Carolina had nearly 65,000 Indians in 1980, the largest number east of the Mississippi.*

**Editor's Note: See pages 106-114 for more.*

government but moderated on other positions, strongly backing the state university system in a quarrel with the federal government over the desegregation of its white campuses and refusing to pardon the Wilmington 10 activists, although he shortened their terms. Hodges, Sanford, and Hunt all enjoyed national reputations as leaders among governors.

Up to the 1970s, Republicans practically never won statewide elections in North Carolina. In 1968 Richard Nixon had become the first Republican presidential candidate to win since 1928, when the dominant Democrats opposed Catholic Al Smith. In 1972 North Carolinians elected a Republican senator and governor and voted for Nixon again. Republican victories signaled a decline in the power of the local courthouse politicians, who had been deemed capable of delivering their counties' votes, in favor of media campaigning. The Democrats recouped some of their losses in 1974, but North Carolina by the '80s was the closest to being a true two-party state as it ever has been.* The legislature has remained Democratic. The biggest change in the legislature came in the early 1960s when it moved into a splendid marble and glass legislative building designed by Edward Durell Stone; the new facilities diverted a lot of the important decision making from sessions in smoke-filled Raleigh hotel rooms, but business interests still have usually gotten what they want from North Carolina legislature.

North Carolina has rarely had a strong impact in national politics. The grand exception in the early 1980s was Senator Jesse Alexander Helms, one of the U.S. Senate's most conservative members and a beacon of "New Right" politics. First elected in 1972, Helms was at first considered an extremist outsider by the Senate "club." But he mastered the parliamentary rules of the Senate by diligent study. He learned tactics to stall bills he opposed or add amendments to others, usually against school busing or in favor of school prayer.

In 1980, when the Senate shifted to Republican control, Helms became chairman of the Senate Agricultural Committee, and began to wield real power over such programs as tobacco supports, which he vigorously supported, and food stamps, which he just as strongly opposed. Helms' greatest power, however, lay in his drive to take the Republican party and national debate further to the right. He was never afraid to be the Senate's lone "nay" vote. A fierce hawk, pushing for ever-greater defense budgets, Helms was the force behind the so-called human rights bill, which would have statutorily established the beginning of human life at conception, thus making all abortion murder. Another Helms bill, which passed the Senate in early 1982, called for strict curtailment of school busing to achieve desegregation. Helms also favored returning the nation to the gold standard. But Helms and his socially conservative followers had a hard time agreeing on the fine points of legislation on such issues as abortion. Helms' ideological fanaticism and his legislative tactics won him few friends in the Senate. He grossly damaged his relations with his colleagues when he led an acrimonious two-week filibuster before Christmas 1982 against an increase in the federal gas tax.

However antediluvian Helms' agenda seemed to many, his political operation was strictly up to date. He created his political base as chief editorial commentator for WRAL-TV in Raleigh, delivering nightly editorials of a vividly conservative hue. In the Senate, he created a new type of political machine through his National Congressional Club, a direct-mail fundraising group that became the nation's largest action committee, contributing millions of dollars to conservative candidates and assuring this North Carolina senator his own, independent political base — even if much of the money was spent on nasty, negative media campaigns against opponents.

In 1980 Helms and his campaign organizations were responsible for electing one of their own, John East, a little known college professor, to the other North Carolina Senate seat. East used a media blitz during the last weeks of his campaign to eke out a narrow victory against his Democratic incumbent Robert Morgan. North Carolina's 11 congressmen (no woman has ever represented the state) have rarely risen to much prominence.

But it is fitting to close our portrait of North Carolina with its most statesmanlike politician, Senator Sam J. Ervin, Jr., who retired in 1974 after a brief period in the national limelight while he presided over the Watergate hearings. At the beginning of 1973, Sam Ervin was no more of a household word than was the Watergate office and apartment complex. Six months later, after the hearings brought Watergate and Ervin into just about every living room in America, college students began wearing Uncle Sam Ervin T-shirts, and Midwestern tourists cooed as they saw "him" shamble through the Capitol. People remembered with fondness his country yams and his habit of quoting the Bible, the Constitution, and random bits of poetry.

But beneath the fustian there was steel. When President Nixon, invoking executive privilege, announced he would forbid all his aides from testifying before Ervin's committee, Senator Sam responded

**Editor's Note: For more, see pages 368-375.*

that he would recommend sending federal marshals out to arrest the aides. Nixon backed down, and the committee exposed the crimes of the Committee to Reelect the President, and even the malfeasance of the president himself, to the nation.

Ervin's performance surprised many liberals who remembered him for his opposition to civil rights, the Equal Rights Amendment, and unions and for voting down the line with Johnson and Nixon on Vietnam. But Ervin could not be stuffed into a neat ideological pigeonhole. He had served on the committee that recommended the censure of Joe McCarthy, crusaded against what he considered the overweening power of the executive branch, and probed into Army spying on civilians and into abuses of government data banks. Ervin did not take up these causes because he sympathized with the people being spied on or because he favored high government spending. But, as the *Almanac of American Politics* summarized his career, "It is a measure of Sam Ervin's devotion to the Constitution that he has spent many of his years in the Senate defending the rights of people whose ideas he does not share."

Chapter 2

The Constitutional Setting of North Carolina Politics

A CONSTITUTION IS A CONTRACT between the people and the government. It is a consensual document in which the people of a society grant certain powers to a government while protecting their own rights through restrictions placed upon the government. Constitutions state the fundamental laws and ideals by which a nation or state is to be governed. The foremost document of American democracy, in fact its very basis, is the United States Constitution.

Overshadowed by the preeminence of the United States Constitution are the constitutions of the individual states, some of which are older than the federal document. Each state has its own constitution establishing the form of government and guaranteeing rights in each jurisdiction.

These constitutional statements of law, rights, and principles are different from legislation. A constitution is a product of the direct vote of the people (whereas legislation results from the votes of elected representatives). Ratification, revision, or adoption of constitutional provisions is one of the few examples of direct democracy found in the United States. This direct power of the people is expressed in the current North Carolina Constitution in Article I, section 2:

> All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Adoption of the North Carolina Constitution

North Carolina has had three constitutions in its state history — the Constitutions of 1776, 1868, and 1971. The current North Carolina Constitution was drafted after two major attempts at substantial revision (occurring in 1959 and 1968) failed. These revision attempts illustrated the need to completely rewrite the Constitution of 1868 to update numerous provisions and provide necessary tools for effective state government in the twentieth century. The revised text and six independent amendments were presented to the voters on November 3, 1970. The proposed Constitution was approved by a 393,759 to 251,132 vote. Five of the six proposed amendments were also adopted.

The North Carolina Constitution: Rights and Powers

Following a short preamble proclaiming thanks to God for the existence of "our civil, political and religious liberties," the North Carolina Constitution lays out, in Article I, a Declaration of Rights to be enjoyed by and guaranteed to its citizens. The inclusion of a Declaration of Rights in the first Article dates back to the original Constitution of 1776. The 1971 Constitution added guarantees covering the freedom of speech (section 14), equal protection of the laws (section 19) and a prohibition against exclusion from jury service or other discrimination by the state on the basis of race or religion — all guaranteed by the United States Constitution and now explicitly recognized by the state.

Included in these guarantees to the citizenry is a detailed accounting of legal due process, elections, and individual liberties. The language of the Article is direct; each right is stated in the imperative so as to make clear that the rights enumerated are commands not mere admonitions. In addition, section 36 acknowledges that the listing of rights found in Article I is in no way exhaustive and that other rights held by the people are not to be impaired or denied.

Article II details the organization and operation of the state legislature. The article begins by vesting the legislative power of the state in the General Assembly, which consists of a Senate and House of Representatives. Sections 2 through 5 establish the number of members each branch shall have — 50 for the Senate and 120 for the House — their terms of office, and place certain restrictions on the drawing of legislative districts. Sections 3 and 5 specifically discuss the apportionment of Senate and House seats, respectively, and orders that each "shall represent, as nearly as may be, and equal number of inhabitants." This order for equity was, until the late 1960s, an often abused facet of legislative practice.

The qualifications required of an individual holding office in the General Assembly are few and are dealt with in sections 6 and 7. Senators must be at least 25 years of age, a qualified voter of the state, have resided in the state for two years and for one year in the district for which they were chosen. These requirements are the same for members of the House of Representatives, except that no age limit is established for the lower house.

The legislative process is covered in the remainder of Article II, sections 11 through 24. Regular biennial and extra sessions are provided for in section 11. Legislative officers, compensation, and records are outlined in sections 13 through 19. Sections 23 and 24 place specific limitations on the purview of legislation enjoyed by the General Assembly. The most important of these concerns revenue bills and the Constitution establishes a particular

process by which the General Assembly must address this topic.

The role of the executive was considerably affected by the drafting of the 1971 Constitution. Scattered grants of power were collected into a single article — Article III — and this brought the role of governor into clear focus as the leader of state government. Section 5 is the base of the governor's power. In this section the duties and powers of the state chief executive are enumerated. Included in section 5 is the power to prepare the state budget, which was elevated from a statutory grant to a constitutional power by the 1971 Constitution. In addition, the governor enjoys extensive administrative reorganization powers. This gives the governor authority to affect agency reduction, consolidation, or reorganization, subject only to a vote of disapproval by either house of the state legislature.

No change was made concerning the tenure or the list of independently elected executive officials. These officials — the secretary of state, auditor, treasurer, superintendent of Public Instruction, attorney general, commissioner of Agriculture, Insurance, and Labor — are all members of the Council of State.

Article IV covering the judiciary was subject to little change following the judicial reorganizations of 1962 and 1965. General grants of power and organization, worked out primarily in 1962, are reinforced by the 1971 Constitution.

The state Constitution established a unified statewide judicial system consisting of three branches: the Appellate Division, the Superior Court Division, and the District Court Division. In addition to the General Court of Justice, Article IV grants the General Assembly the authority to vest in administrative agencies "such judicial powers as may be reasonably necessary" for the performance of their assigned duties (section 3) and establishes the state Senate as the court for all trials of impeachment (section 4).

For the most part Article IV is concerned with the organization and operation of each division of the court system. Section 6 details the Supreme Court, section 7 the Court of Appeals, section 9 the Superior Court, and section 10 the District Courts. In each section the membership and selection of judges for a particular court are outlined as are meeting times and staffing provisions. Judges for the Supreme Court, Appeals Court, and Superior Court all serve terms of eight years, while District Court judges serve terms of four years.

The jurisdiction of the courts is outlined in section 12. Except as otherwise provided by the General Assembly, the Superior Court has original general jurisdiction throughout the state. The jurisdiction of both the Appeals and District Courts, while certainly distinct, are both prescribed, as mandated by the Constitution, by the General Assembly.

The 1971 Constitution made extensive editorial and substantive changes in Article V — provisions concerning taxation and finance in North Carolina. Provisions from other articles were condensed into a single location and former provisions were editorially expanded to make clearer their meaning.

The basic framework of the state's tax system is described in section 2. The goal of this section is to ensure application of tax plans in "a just and equitable manner." The General Assembly has sole power to classify property for taxation. Specific exemptions — for property belonging to the state, counties, and municipal corporations — are part of this section. In addition, the state income tax, with certain specific exemptions, is also described in section 2.

Sections 3 and 4 of Article V concern limitations upon the increase of state and local government debt. The power to secure debt on the full faith and credit of the state is given only upon formal approval by a majority of qualified voters of the state. Local governments are subject to this same restriction, with debt for these units subject to majority vote approval from voters within the local unit.

While these first five articles form the bulk of the state Constitution, important policy items are given constitutional status in the remaining articles — Articles VI through XIV.

Provisions for voting and elections are covered in Article VI. Outlined here are traditional sections concerning voter eligibility, registration, and disqualification.

Article VII places the power to provide for local government with the legislature. Limits on grants of incorporation are described in section 1, election of sheriffs mandated in section 2, and city-county consolidations covered in section 3. This article reflects the subordinate legal and structural position occupied by local governments vis-à-vis the state.

Article VIII covers the grant of power given the legislature for establishing general acts concerning the creation of corporations. Corporations are granted legal standing in section 2 of this article.

Article IX establishes a unified educational system and eliminates a host of obsolete provisions concerning the operation of school administration and finance found in the 1868 Constitution. (Many of these provisions pertained to racial matters whose constitutionality had either been questioned or

already invalidated outright.)

The education article calls for a nine month school term, open to all students equally and compulsorily. The principle of local responsibility for the provision of public education is affirmed in section 2. In addition, organization of the school system throughout the state is also outlined. The superintendent of Public Instruction is the chief administrative officer of the State Board of Education and the Board administers educational funds to be delegated by the state for education. The article also vests power to the state for operation of a system of higher education and affirms the importance of the benefits that derive to the citizens of the state through the expansion of the University of North Carolina.

Homesteads, personal property, and exemptions are enumerated in Article X. The separate rights of married women are described in section 4 protecting them from debts, obligations and engagements made solely by their husbands.

Punishments, corrections, and charities are grouped together and provided for in Article XI. The death penalty is established at the constitutional level in section 2 of this article. Defining the duties of a board of public welfare is charged to the state legislature in section 4.

Article 13 lists the procedures and requirements for constitutional revision and amendments. The importance of the people in the process of constitution-making is the dominant element of this article. Section 2 explicitly reserves to the people the right of revision or amendment to the state's fundamental law.

The state Constitution closes with a series of miscellaneous items covering the boundaries of the state and establishes Raleigh as the permanent seat of government for North Carolina. Significantly, perhaps reflecting the state's abundance of resources, the conservation of natural resources is given constitutional status in section 5 of Article XIV.

Conclusion

State constitutions establish the fundamental law of a state and provide an insight into the nature of the attributes and culture of a state. Those provisions of law or statements of concern, benefit, and rights established in the Constitution are held by the people themselves and can only be changed by their direct action.

In many instances state constitutions are overly detailed and excessively long documents concerned as much with transitory issues as substance of general principle. The relatively short and stable Constitution that establishes the nature of North Carolina government avoids most of these problems by granting sufficient power to the various actors in the state government process while avoiding nagging restrictions of only temporal matter.

SOURCE

For a complete discussion of constitution-making in North Carolina see John L. Sanders, "A Brief History of the Constitutions of North Carolina" in the *North Carolina Manual, 1987-1988*.

Chapter 3

Article I: The Rights of the Citizen

IN A FAMOUS ESSAY DEFENDING the notion of "States' Rights," James J. Kilpatrick notes a key distinction between the state and the individual: "Individuals have rights, states have power."* This chapter illustrates the long-time concern of North Carolinians with this distinction embodied in Article I of the state Constitution.

Article I is an explicit statement of those rights that the state guarantees to all of its residents, rights that the various institutions and agencies enumerated in later articles are to serve, but not encroach upon. The demand for this guarantee of individual rights by North Carolina predates the state's entry into the federal system — the North Carolina State Constitution included a "Bill of Rights" before the U.S. Constitution was adopted. While the exercise of these rights has certainly been flawed — the black population was explicitly excluded from many of these guarantees before the adoption of the 1971 state Constitution — the placement of these rights in the first article of the state's fundamental law is a conscious and intentional statement as to their primacy.

The rights of the citizen included in Article I cover the basic freedoms of speech, press, and religion. In addition, free and frequent elections are noted as a fundamental right of the people "for redress of grievances and for amending and strengthening the laws." Section 13 guarantees religious liberty, and section 15 guarantees the right to an education. Sections 18 through 30 of the Article outline the equal protection of law and due process guarantees enjoyed by all state residents. An open court system is also required. The sovereignty of the people is declared in section 2, and the right of the people to be involved in affairs of their state government is outlined in section 3. The expansion of rights beyond the outlines of Article I is noted in section 36. Finally, though it is not a right guaranteed under Article I, conservation of natural resources is declared to be a state policy under Article XIV, section 5 of the Constitution "for the benefit of all its citizenry."

The selections in this chapter address some of the contemporary issues and facets of the rights guaranteed all citizens in North Carolina.

*"A Case for State's Rights," in Robert A. Goldwin, editor, *A Nation of States*, (Chicago: Rand McNally & Co.), 1961, pp. 88-105.

North Carolina's Constitution Comes of Age

by Katherine White

This article examines how the N.C. Supreme Court is beginning to rely more on the state Constitution than the U.S. Constitution in defining individual rights.

THROUGHOUT THE FIREWORKS celebrating the Bicentennial of the *United States* Constitution, another equally important document quietly gained attention from the North Carolina Supreme Court — the *North Carolina* Constitution. It became the constitution relied on, at least in part, in several cases involving civil rights, replacing the state Supreme Court's traditional focus on the federal Constitution.

The Court's shift is hardly revolutionary. Rather, it brings North Carolina in step with a trend that began more than 16 years ago when other states' appellate courts started looking to their own constitutions when defining the rights of individuals.[1] Syracuse University legal scholar Ronald K.L. Collins has found nearly 400 state supreme court cases since 1970 where the courts relied on state constitutions in cases involving individual rights.

This national trend has been spurred in reaction to the judicial conservatism of the present U.S. Supreme Court, which began with former Chief Justice Warren Burger's term in 1969 and which continues to carve exceptions into earlier U.S. Supreme Court decisions that expanded the protections of the U.S. Constitution. Since the Burger Court began, for example, the U.S. Supreme Court has limited earlier rules designed to protect individuals against unreasonable searches prohibited by the Fourth Amendment of the U.S. Constitution.[2] The U.S. Supreme Court also has limited the extent to which the Constitution will protect obscene materials under the freedom of speech guarantee of the First Amendment.[3]

In North Carolina, some top judges have begun encouraging the bar to rely more on the N.C. Constitution when those lawyers make their judicial arguments. Among them is N.C. Supreme Court Chief Justice James G. Exum, Jr., who has urged North Carolina lawyers to raise state constitutional issues in their cases. "It is time, I think, that we dust off the old document, learn what we can about it, and use it where appropriate," he says.[4] That view receives approval from U.S. Supreme Court Justice William J. Brennan,

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who says "[E]very believer in our concept of federalism... must salute this development in our state courts." [5]

N.C. Associate Justice Harry Martin, who teaches a course on state constitutional law at UNC-CH Law School, believes that using state constitutions instead of the federal Constitution gives "the people of the individual states greater protection of their individual rights because of the way people live in the different states."

Martin points out that the Florida Constitution gives its residents greater freedom from unreasonable searches and seizures on boats, an important part of the state's tourist industry, than does the U.S. Constitution. And, he notes, the Alaska Constitution offers similar protections to passengers on airplanes, the main mode of travel in that state— protection that the U.S. Constitution does not extend. North Carolina's Constitution also offers some rights not mentioned in the U.S. Constitution, such as the right to an education, the right to a system of inexpensive higher education, and access to a system of open courts (see box).

But this new focus on the N.C. Constitution lacks the wholehearted support of all North Carolina's Supreme Court justices. Justice Louis Meyer says, "We have significant legal precedent to the effect that some of our state Constitutional provisions are co-extensive with rights under the federal Constitution. With regard to these particular provisions, individual rights under the state Constitution begin at the same place and end at the same place as the comparable federal constitutional provisions. I will continue to follow this Court's prior decisions with regard to these particular comparable provisions. A thorough analysis needs to be made before the judiciary relies upon a particular provision of the state Constitution as providing rights different than those guaranteed by a comparable provision of the federal Constitution. As to whether other provisions of our state Constitution, to which this Court has not spoken, provide greater or different rights than the federal Constitution provides, my mind is open. Reliance upon provisions of our state constitutions must not become simply a method of evading federal review of our decisions."

But Justice Martin contends, "The problem in following that view is that, to me, it may demonstrate a lack of understanding—and I'm not trying to be critical of my brothers—of the federal Constitution and the state Constitution." The distinction is that state constitutions were designed to respond to the needs of individual states, Martin adds, while the U.S. Constitution responds to the needs of all 50 states.

The N.C. justices demonstrated their divided views in *State v. Cofield*.[6] There, the defendant challenged his conviction on second-degree rape and breaking and entering charges because of what he claimed was racial discrimination in the selection of the grand jury foreman. The defendant, who was black, raised both state and federal constitutional questions. Only three justices in the 6-1 decision wholly accepted the majority opinion written by Chief Justice Exum,[7] although five agreed on the state constitutional question.

That opinion held that both state and federal constitutional rights may have been violated when the defendant showed that blacks had been excluded from serving as foreman on the grand jury that indicted him. The case was returned to the trial court for additional hearings to determine whether there were violations of Article 1, Sections 19 and 26 of the N.C. Constitution, which guarantee equal protection under the law and prohibit discrimination on the basis of race.

Justice Meyer argued that the Court should limit its decision to the U.S. Constitution. "I find it unnecessary and unwise to proceed to any analysis of rights under the state Constitution," he wrote.[8] Conversely, Justice Mitchell disagreed with the majority discussion of any federal constitutional questions. Limiting the decision to the state Constitution, he wrote, "is final and binding, even upon the Supreme Court of the United States. . . . Having decided this case on an adequate and independent State ground, the Court is most unwise from any standpoint—practicality, judicial restraint or disciplined legal scholarship—to address questions concerning the Constitution of the United States."[9] Thus, five justices agreed that racial discrimination in choosing a grand jury foreman would violate the state Constitution, four justices said it would violate the U.S. Constitution, and three held that it would violate both.

Despite the internal Court debate on whether to use the state or federal constitution, a recent case raised no debate because the lawyers brought only state constitutional questions to the Supreme Court and, therefore, the Court did not look to the federal document. "The courts are not self-starters," Justice Martin explains. "We have to be cranked, and unless the lawyers raise state constitutional grounds, they're not before us. And, until the lawyers become aware that their clients may have strong rights under the state Constitution, we're limited as to what we can do about it."

In that case, a company challenged an Onslow County ordinance that regulated businesses "provid-

Provisions in the N.C. Constitution Not Found in the U.S. Constitution

Article 1, Section 15. *Education.* The People have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Article 1, Section 18. *Courts shall be open.* All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Article 9, Section 9. *Benefits of public institutions of higher education.* The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

ing male or female companionship."[10] The idea behind the law was to regulate establishments offering "movie mates," where male customers could enjoy a movie in a private room with a hired female companion. Movie mate establishments are the latest wrinkle for providing sex at a price. They popped up after Onslow County regulated massage parlors out of business in 1978. To ensure that the operators didn't invent another way to disguise their activities as yet another unregulated business, the county commissioners simply decided to regulate all companionship enterprises and outlawed "companionship" services.

But the N.C. Supreme Court, in an opinion written by Justice Martin, decided that the term "companionship" is "broad enough to encompass both the salubrious and the salatious" and therefore might "regulate nursing homes and companions for the elderly along with movie mates, 'private room' bars, and 'dial-an-escort' services." [11] The overbroad approach of the Onslow County officials, Martin said, violated Article I, Sections 1 and 19, of the North Carolina Constitution,[12] which require that a regulation cover its objective and no more.

Where the North Carolina Constitution will take the state Supreme Court when it addresses civil rights and public policy questions is yet unclear. Simply because an argument is made under the Constitution's provisions does not mean that the Court will address the issue or decide the issue in a way that expands an individual's rights beyond those rights granted under the present U.S. Supreme Court's interpretation of the U.S. Constitution. Still, the state Constitution is available as a tool for the Court, and more lawyers are taking advantage of it.

For years, lawyers routinely turned to the federal courts because they appeared to be the best forum for constitutional questions, based on the performance of the federal and the state judiciary. But based on a series of decisions from the U.S. Supreme Court during the administrations of Presidents Nixon, Ford, and Reagan, the state courts have become much more attractive to lawyers seeking a moderate interpretation of state constitutional provisions. And with state courts like the N.C. Supreme Court actually welcoming such cases, attorneys are bringing more constitutional questions before the state judiciary — and getting results. After more than 200 years, the North Carolina Constitution has come of age.

FOOTNOTES

[1] *See* "State Courts and Civil Liberties," *State Legislatures* magazine, September 1987, pp. 28-29. *See also, The National Law Journal,* Special Section on State Constitutional Law, September 29, 1986; "The Interpretation of State Constitutional Rights," 95 *Harvard Law Review* 1324 (1982); "Judicial Federalism and Equality Guarantees in State Supreme Courts," *Publius, The Journal of Federalism,* Winter 1987, pp. 51-67; and "American Constitutions: 200 Years of Federalism," *Intergovernmental Perspective* magazine, Spring 1987, pp. 3-30.

[2] In *United States v. Leon,* 468 U.S. 897, 82 L. Ed. 2d 677, 104 S.Ct. 35405 (1984), the U.S. Supreme Court allowed the introduction of evidence seized in a search where officers made a mistake in their application for a search warrant. The Court created a "good faith" exception to compliance with the Fourth Amendment guarantee. Several state courts, including New Jersey, New York, Michigan, Mississippi and Wisconsin, have refused to follow the *Leon* case and relied on their state constitutions to exclude evidence in criminal trials that was seized as the result of an invalid search warrant.

[3] *Miller v. California,* 413 U.S. 15, 37 L. Ed. 2d 419, 93 S.Ct. 2706 (1972). The Oregon Supreme Court rejected the *Miller* rule, reasoning that its state Constitution — written by "rugged and robust individuals dedicated to founding a free society unfettered by governmental imposition of some people's views of morality on the free expression of others" — allowed consenting adults to buy or see whatever they wanted. *Oregon v. Henry,* 302 Or. 510, 732 P2d 9 (1987).

[4] James G. Exum, "Dusting Off Our State Constitution," *The North Carolina State Bar Quarterly,* Spring 1986, pp. 6-9.

[5] William J. Brennan, "State Constitutions and the Protection of Individual Rights," 90 *Harvard Law Review* 503 (1977).

[6] 320 N.C. 297, 357 S.E.2d 622 (1987).

[7] Justice Martin and Justice Henry Frye voted to support the opinion. Justices Meyer, Burley Mitchell and Willis Whichard concurred in the result but set forth different reasons. Justice John Webb dissented.

[8] 320 N.C. at page 310.

[9] 320 N.C. at page 311

[10] "An Ordinance Regulating Businesses Providing Male or Female Companionship," enacted June 19, 1985, and amended July 1, 1985.

[11] *Treants Enterprises, Inc. v. Onslow County,* No. 320N.C. 776, 779 (1987), decided October 7, 1987, affirming 83 N.C App. 345, 350 S.E.2d 365 (1986). Justice Webb did not participate in the decision.

[12] Article I, Section 1 gives the people the right to "life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness." Section 19 provides that no person shall be "deprived of his life, liberty, or property, but by the law of the land." To pass these requirements, a regulatory law must be rationally related to a substantial government purpose and cannot be overly broad.

The Open Courts Guarantee: Cameras in the Courtroom

by Katherine White

N.C. Constitution, Article I, Section 18. Courts shall be open. *All courts shall be open; every person for an injury done to him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.*

NORTH CAROLINIANS WATCHING the evening news one day in February 1983 were treated to a most remarkable vision: their lieutenant governor for the past six years, James C. Green, sitting in the dock as he went on trial on charges of bribery and corruption. It was not just that the state's second-ranking executive had been indicted and was on trial. What was equally important was that viewers could see and hear Green on television as he testified in his trial, and that they could see published photographs of Green on the witness stand in the next day's newspapers. That trial, more than any other, brought home to North Carolinians what the cameras-in-court issue was all about—and it helped them see that prosecutors *did not* have a solid case to convict Green.

But had the Lieutenant Governor been tried just a few years earlier, his trial never would have hit the airwaves. For it was not until October 1982 that the N.C. Supreme Court cautiously allowed the microchip technology of radio and television to record court proceedings—the first time in decades that such media coverage in state courts was permitted. (Cameras in courtrooms generally means more than cameras alone. The phrase includes still and motion picture cameras, microphones and tape recorders, and television video cameras and recorders.) Still cautious after years of what it calls an "experiment," the Court has yet to give photographic coverage rules a permanent place on the books. The Court has approved temporary rules which have been extended four times. A decision on whether to make the rules final could come later this year. The current extension expires on June 30, 1990.

Introducing video cameras and sound equipment to the state's trial courts in 1982 was not easy. The N.C. Association of Broadcasters and the Radio-Television News Directors Association of the Carolinas petitioned the Supreme Court in October 1981 to allow recording equipment into courtrooms for broadcasting trials and other court proceedings. The broad-

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casters and press groups argued that it would help the public understand the judicial system and open up the judicial process for those who otherwise would never be able to witness trial proceedings firsthand. During a year of court review, trial and appellate judges alike expressed fears that they would lose control of their courtrooms and that the pressure of cameras would intimidate jurors and witnesses. They also questioned whether criminal defendants could get a fair trial if the public were exposed to daily coverage. As a compromise, the Supreme Court approved rules that allowed coverage for a two-year period.

Generally, according to an informal, unpublished survey of trial judges by the N.C. Supreme Court,[1] those judges who have allowed radio, television and press photographers into their domains support the continuation of the rules. "I feel that electronic and photographic media coverage assists the public in understanding the courts and particularly the results of a specific trial," said Superior Court Judge Donald L. Smith in his survey response. Judge Smith has presided at several trials covered by electronic and photographic media.

However, the survey also shows that judges who have refused such access continue to believe that the publicity will undermine the court system. "I don't think the television media has a thing to offer the judiciary," said Superior Court Judge Frank Snepp in the survey. As senior resident judge for his district, which includes Mecklenburg County, Snepp has banned live coverage. Allowing it, Snepp said, would give "a distorted idea of what goes on in court because [reporters] only have three seconds to tell the story. [Reporters] are not going to go in depth."

The national trend allowing cameras and radio equipment to record proceedings began in 1976 after more than 40 years of a virtual blackout. The American Bar Association House of Delegates first adopted a canon of judicial ethics barring photographers in 1937—largely in response to the circus-like press coverage of the 1935 trial of Bruno Hauptmann, accused of kidnapping the child of famed aviator Charles Lindbergh. The Hauptmann trial judge allowed 141 newspaper reporters and photographers, 125 telegraph operators and 40 press messengers to accompany the defendant to court.[2] Reporters chased witnesses in the aisles of the courtroom for interviews, and cameras flashed and disrupted testimony.

The distaste of state courts for cameras and microphones in courts was bolstered in the mid-1960s when the U.S. Supreme Court ordered new trials for defendants who were convicted in criminal proceedings during which the press and television media loomed like vultures in the the courtrooms.[3] By 1965, most states had adopted the ABA proscription on cameras, and North Carolina courts officially banned cameras and sound equipment in 1970.

A trend relaxing the ban on cameras began with technological advances in television and radio that made equipment less obtrusive and that allowed pooled coverage where one microphone or camera can serve any number of news gathering agencies. Then, in 1981, the U.S. Supreme Court ruled that trials could be broadcast without necessarily impairing a defendant's right to a fair trial.[4] With the 1981 decision—and a 1982 relaxation of the ABA canon—the North Carolina justices approved rules for television, newspaper, and magazine photographers and radio reporters on an experimental basis. The guidelines, similar to those in the 43 *other* states (see chart above) that allow electronic media in trial or appellate courts, restrict the media to a single, unobtrusive area of the courtroom. In Wake County, a black booth in the middle of a trial courtroom conceals all equipment and its operators. In Guilford County, a conference room at the rear of a courtroom has a newly installed glass panel through which cameras can record proceedings.

Number of States Allowing Cameras in the Courtroom*

Approved for Trial and for Appellate Courts	24
Approved for Appellate Courts only	9
Experimental, for Trial or for Trial and for Appellate Courts (including North Carolina)	10
Experimental, for Appellate Courts only	5
Do not allow cameras in courtroom	6

*A total of 44 states allow cameras in the courtroom. The total here is higher because some states fall into more than one category.

Source: National Center for State Courts, August 1988.

The senior resident Superior Court Judge of each judicial district decides whether to allow cameras and microphones and, where no booth is available, some judges have allowed photographers to shoot pictures as long as they maintain a low profile. At the heart of the North Carolina experiment's rules is the basic tenet that the judge must retain full control of his court. Certain cases, such as child custody hearings, and certain witnesses, including informants and victims of sex crimes, cannot be recorded or photographed under the North Carolina rules.

In September 1984, the UNC Institute of Government in Chapel Hill prepared a report[5] for the News Media-Administration of Justice Council of North Carolina (a group of judicial and news media officials) in an attempt to gauge the effect of cameras in the courts. The report examined the trials of Green, who was found not guilty of misconduct charges, and Navas Villabona Evangelista, a Colombian who was convicted of taking hostages and murder aboard an Amtrak train in Raleigh.

The Institute found that 48 jurors and alternates in the two cases were aware of cameras but were not concerned about them. Only one potential juror acknowledged apprehension, saying the presence of cameras made her "a little nervous." Of 29 witnesses interviewed, two said that cameras added to their tension before taking the stand but not after they began their testimony. The other 27 witnesses said they were unfazed by the presence of electronic equipment. Said one witness, "The cameras, no. The people, they're the ones that scared me." And one federal agent said he had opposed cameras until he testified. "After this trial, I saw no dramatics or other effects. The real theatrics come on the steps of the courthouse," he said.

Similar results are found in other studies in other states.[6] A California study concluded that "although witnesses may be aware of the presence of the videotape apparatus, this awareness is of little consequence when compared to the pressures and demands made upon witnesses as a part of the normal testimony process."[7] An Alabama judge has said that cameras in the courtrooms there tend to keep "all the personnel in the courtroom on their toes."[8]

Although the N.C. Supreme Court has not decided whether to make cameras and sound equipment permanent fixtures in the state's courtrooms, the Court sanctioned a pilot project in 1986 in Wake County to use video equipment to record trials. The tapes, instead of the usual transcript, serve as the official court record for appeals. Dallas Cameron, assistant director of the N.C. Administrative Office of the Courts, believes that the new technology will be cheaper than the present system of using court reporters. The court equipment might obviate the need for news reporters to bring their equipment because videotapes could be reproduced easily and cheaply for the evening news, he added. Whether the project will succeed, however, is unclear. Kentucky has used videotapes as court records for a few years, but with mixed results, Cameron says. And even the most zealous judicial supporters of allowing the electronic media in courtrooms don't want to lose the court reporters who have doubled as their secretaries from time to time. Judge Smith predicts, "It will not be successful."

Studies show that electronic media coverage—if handled properly—does not infringe upon the rights of parties, witnesses and jurors. Why, then, does the judiciary remain reluctant to make the rules permanent? Perhaps Superior Court Judge D. Marsh McLelland detects in his colleagues a basic human concern rather than a legal objection. The objections raised [to cameras in court] are prompted not by intellectual or legal reservations, but by a "reluctance to expose one's gaffes . . . to wide dissemination and, even worse, relatively permanent recording," says McLelland. "I suspect that judges, trial and appellate, fear that the all-seeing eye will be edited on projection on television to nose-blowings, drowsiness, mutterings, incomprehensible utterings and the like."

For Mark J. Prak, a lawyer for the N.C. Association of Broadcasters, the state's experiment shows that early concerns "have proved to be largely unfounded." Technology now makes it possible to bring the courts to the public, he says, "when in today's society, very few citizens have time to go observe trials in person. It's up to the press to bring it home to the people."

FOOTNOTES

[1]Former Chief Justice Joseph Branch, who retired September 1, 1986, periodically requested comments from trial judges on their experience with electronic or photographic media coverage. Most of the state's 72 Superior Court judges have had no experience because they have received no requests or because the resident chief judges of their judicial district refuse to allow cameras and microphones. The trial judges' comments are not available from the Supreme Court for public review. Judges who *have* conducted court proceedings with electronic or photographic media present as of September 1986 include Judges C. Walter Allen, Napoleon B. Barefoot, F. Gordon Battle, Wiley F. Bowen, Coy E. Brewer Jr., C. Preston Cornelius, B. Craig Ellis, William H. Freeman, William H. Helms, Robert H. Hobgood Jr., D. Marsh McLelland, James M. Long, Mary Pope, Edwin S. Preston, Hollis M. Owens Jr., Claude S. Sitton, and Donald L. Smith. This list was compiled partly from the Administrative Office of the Courts' records and partly from news clippings.

[2]*State v. Hauptmann*, 115 NJL 412, 180 A 809, cert. denied 296 U.S. 649 (1935).

[3]*Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628 (1965); *Sheppard v. Maxwell*, 384 U.S. 330, 86 S. Ct. 1507 (1966).

[4]*Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 1802 (1981).

[5]"Report on Experiences with Courtroom Cameras," Institute of Government, UNC-Chapel Hill, September 24, 1984.

[6]Among these studies are: *Lyles v. State*, 330 P2d 734, 742 (Okla. Crim. 1958); Colorado See Simonberg, TV In Court: The Wild World of Torts, 1 *Juris Doctor* 41 (April 1977); *In Re Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764 (Fla. 1979); Wisconsin *See* Hoyt, Courtroom Coverage: The Effects of Being Televised, 21 *J. of Broadcasting* 487 (1977).

[7]Ernest H. Short & Associates, Inc., "A Report to the Judicial Council on Videotape Recording in the Criminal Justice Systems: Second Year Findings and Recommendations" 30 (1976, California).

[8]Judge Robert Hodnette Jr., *Broadcasting Magazine* at 30 (Dec. 20, 1976).

Open Records— The Key to Good Government

by Robert Conn and Bill Finger

In North Carolina, the public has the right to see almost any government record because of a broadly worded "public records" law. Recent court decisions have helped define the parameters of this law. Four problem areas continue to arise — an individual's right to privacy versus the public's right to know, when a report is completed and therefore is a public record, law enforcement officers' needs to keep investigations confidential versus the public's right to know, and how the statute will adjust to new computer technology. Nevertheless, a huge volume of information is available to the public, without conflict or controversy.

ON OCT. 30, 1985, reporters for *The News and Observer* of Raleigh suspected they were onto something big. Police cars and state government officials were crowding around an industrial site near downtown Raleigh. No one was talking to reporters, but rumors were circulating that some kind of toxic spill was under investigation.

"We couldn't get anybody to explain what was going on," recalls Monte Basgall, then the paper's environmental reporter. "Our deadline was approaching, and we had no story. Finally, we realized that a search warrant is a public document."

The News and Observer's crime reporter rushed to the police station and got a copy of the warrant—as any person is entitled to do. "The warrant alleged that hazardous wastes had been spilled," explains Basgall. Not only did the search warrant get the police into the door at Ashland Chemical Company, it also gave the paper the opening it needed for what became one of the most important series of environmental stories of the year.

A good public records law ensures that reporters—and the general public—have clear access to

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"Until a report on an investigation is completed and filed, it is not a matter of public record."

— Andrew A. Vanore Jr.
Chief Deputy Attorney General

important information. But it does far more. "Public access to public records provides the key to good government, a key that unlocks a storehouse of information, a key that upholds our democratic spirit," says attorney William McBlief.[1]

The North Carolina law (G.S. 132-1), at first glance, seems to provide that "key to good government." It defines a "public record" very broadly, covering everything from pieces of paper to computer disks to artifacts —"made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions." (See full statute below.)

Just a decade ago, however, this very broad language caused considerable confusion. "Because the words and phrases used in G.S. 132-1 are not themselves defined in the statute, such a definition cannot be interpreted without referring to common law, to the pre-1935 judge-made law. . .," explained attorney Fred Harwell in a 1978 report by the N.C. Center for Public Policy Research.[2]

The report examined state and federal laws concerning public access to information, including the federal Freedom of Information Act and right-to-privacy issues.[3] Harwell called the N.C. statute "half a loaf at best in terms of providing access to state government information, and perhaps not much better than no loaf at all. . . . [I]t should be struck from the books in favor of legislation that will insure both prompt access and the efficient management of government business."

Three years later, the N.C. Court of Appeals decided two pivotal cases that spoke directly to the law's broad language.[4] The two 1981 decisions viewed together had the effect of establishing much clearer parameters for how the law should apply to ambiguous situations. In *The News and Observer Publishing Co. v. Wake County Hospital System, Inc.*, the court held that the hospital system was a "public body." In *Advance Publications v. The City of Elizabeth City*, a letter received by the city manager from a consulting engineer was construed to be "a public record subject to disclosure." By defining a public body and a public record, these two decisions turned the corner of ambiguity for the state's open records law, explains Henry Underhill, attorney for the city of Charlotte.

"The '81 decisions, I think, really for the first time underscored what a lot of city attorneys believed to be the law," says Underhill. "The public records law, as interpreted by the courts, is extremely broad and covers virtually any record or file that a governmental body might have in its possession. What those cases indicated was unless the General Assembly has made some exception to it, then they are public records. A record is a public record."

N.C. Attorney General Lacy Thornburg says he agrees: "I think that's the intent of the statute. There would be no use to have the law if it weren't the intent that the content be revealed."

Creating Exemptions from the Law—How Far Should They Go?

The *General Assembly* has passed a few specific exceptions to the law. Communications between attorneys and public bodies they represent, for example, are not public records until three years after these communications.[5] The *N.C. Supreme Court* has also created exemptions, holding in 1984, for example, that records of the State Bureau of Investigation are excluded from the public records act and regulated instead by N.C.G.S. 114-15.[6] Finally, various *attorneys general* have issued formal opinions that certain kinds of records are excluded from the statute.[7] For example, in 1978, Attorney General Rufus Edmisten issued an opinion that "investigative reports and memoranda concerning investigations of crimes are not public records. . .and are therefore not subject to public inspection."[8] These formal opinions are published and carry the force of law until challenged in court.

But the attorney general's office, in advising and counseling state officials (i.e., its clients) also issues

"If it has been bound and copied, it is a document"

— Hugh Stevens
General Counsel
N.C. Press Association

N. C. Laws Affecting Public Records

N.C.G.S. 132-1. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

N.C.G.S. 132-6. Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law.

N.C.G.S. 132-9. Any person who is denied access to public records for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

N.C.G.S. 6-19.2. In any civil action in which a party successfully compels the disclosure of public records pursuant to G.S. 132-9 or other appropriate provisions of the law, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

1) The court finds that the agency acted without substantial justification in denying access to the public records; and

2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source.

informal opinions on a regular basis. Such an informal role can have a powerful effect in preventing the release of documents which some believe should be available to the public. In 1986, for example, East Carolina University investigated its football program concerning compliance with the rules of the National Collegiate Athletic Association. The investigation stemmed from the firing of ECU football coach Ed Emory. Thornburg and Chief Deputy Attorney General Andrew A. Vanore Jr. advised the ECU officials not to release to the public a sworn statement by Emory, made during the investigation while the investigation was still in progress. They claimed that the statement was part of an ongoing investigation and hence an "interim document," as Vanore puts it, and not covered by the public records law.

The News and Observer wrote a stinging editorial criticizing Thornburg's office for acting "contrary to the public's interest in failing to release that public record promptly." The Jan. 21, 1986 editorial went on to say, "[I]n keeping with its repeated practice of quashing public information at the slightest mention of an 'investigation,' Thornburg and Vanore bring no credit to the Attorney General's Office by defying the state's long commitment to open records."

During the Ashland Chemical spill investigation, officials from the Department of Human Resources (DHR)

refused to release preliminary findings, including laboratory test results, for the same reason. They told reporters, including Monte Basgall of *The News and Observer*, that such information could not be made public until the investigation was completed, and referred repeated inquiries to the attorney general's office.

In both cases, the officials eventually released the documents, after the investigations were completed. But the information was lost to the public during the interim, including potential dangers to the public from the Ashland Chemical spill. Only a lawsuit could have forced the ECU and DHR officials to release the information sooner. Without a lawsuit, the informal opinion of the attorney general's office ruled the day. Or as Vanore asserts: "Until a report on an investigation is completed and filed, it is not a matter of public record."

Is The Statute Working?

Under the state law, the most highly publicized cases often stem from newspapers trying to get information for their coverage of a story. What people don't hear much about, however, are the many types of records that are readily available to the public—without conflict or controversy. An enormous amount of information is available to the public, in county courthouses and municipal buildings. Such information can be helpful to everyone from neighborhood groups to potential home buyers to private detectives (see sidebar on pp. 35-38).

Despite the large volume of information readily available under the state's public records act, four important issues have surfaced in recent years regarding how well the statute satisfies various conflicting needs: 1) an individual's right to privacy versus the public's right to know, 2) when is a report completed and therefore a public record?, 3) law enforcement officers' needs to keep investigations confidential versus the public's right to know, and 4) how will the statute adjust to new computer technology?

An individual's right to privacy versus the public's right to know. How much should the public be allowed to know about the private lives of government employees, people seeking government benefits, people who went to a hospital in an ambulance, nursing home patients, or welfare recipients? The answer to this question varies, often depending upon the circumstances.

The law specifies what information about a government employee can be released: name, age, and date of original employment; current position title, most recent promotion, demotion, transfer, suspension, or separation; office to which the employee is currently assigned; and salary, with dates of most recent increase or decrease. Releasing any other information is a misdemeanor, punishable by a fine up to $500.[9] But the law does allow additional information to be released to the public if the city, county, or state officials determine in writing that release "is essential to maintaining public confidence in the administration of . . . services or to maintaining the level and quality of . . . service."[10] Such language establishes room for some subjective judgments, which can lead to differences of opinion regarding information that should be covered by the public records statute.

Usually, when people apply for government benefits of some kind, they have to tell the government something about themselves. The courts have held that those applications are public records, explains David Lawrence of the Institute of Government at the University of North Carolina at Chapel Hill. Public officials, however, often "tenaciously fight giving up that information," says Lawrence, because of the privacy issues involved. Such tenacious fighting reflects the strength and weakness of a broadly worded statute: the law can apply to nearly any situation but it can lead to an invasion of an individual's privacy if abused.

Sometimes, situations arise where public and private information are contained within the same record. For example, information on an ambulance trip (called a "trip ticket") might contain private information on a patient's medical condition as well as public information, such as how fast the ambulance responded to the emergency.

What about the privacy of nursing home patients and welfare recipients? In both cases, county departments of social services have to juggle public and private information. For example, after the Cleveland County Department of Social Services studied possible neglect of disabled adults at the Cleveland Care Center (a nursing home) in Shelby, *The Shelby Star* (the local newspaper) and WSOC-TV in nearby Charlotte sought a copy of the report. The Cleveland County Department of Social Services resisted. On Aug. 2, 1985, Superior Court Judge Peter W. Hairston ordered that the report be made public in accordance with the N.C. public record statute.[11] Before releasing the report, Judge Hairston excised the names of those who received public assistance and of those who registered complaints or furnished information for the investigation, along with some personal and medical information.

In 1975, in another significant case, *The Alamance [County] News* of Graham sought the names of welfare recipients from the Alamance County Department of Social Services (DSS). The county DSS resisted, but the newspaper did get the names from the county's finance office —and then published the names. The N.C. Division of Social Services requested a ruling on the issue from the attorney general's office. On May 3, 1976, Attorney General Edmisten responded with a formal opinion.[12] It interpreted the N.C. social services statute,

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A "Tour" of Public Records in a Local Area

If you are active in a neighborhood organization, thinking of buying a house, about to hire someone, or even curious about your girlfriend's divorce proceedings, you can find out a lot in your own county courthouse, municipal building, and other nearby offices. An enormous amount of information is on the public record in North Carolina. *There are no restrictions based on need to know.* Below is a short "tour" of how to find information in your own area. The tour is divided according to whether you want information on: 1) a person, 2) a piece of property, or 3) some other matter. The tour is organized by type of record, listed with the primary location of that record.

Records on People

There are six major types of documents on individuals that can be valuable: driving records, arrest records, criminal court records, voting records, civil court documents, and probate department records. This information can be valuable to citizens for many reasons, ranging from becoming knowledgeable about a public official running for office to finding out background information on a person you might hire for a job.

Driving Record —
N.C. Division of Motor Vehicles. For $4.00, you can write and obtain a person's driving record, which contains a person's address, date of birth, and driving convictions. Having this information is valuable in itself—to know more about a public official, for example. But it also can streamline other types of research in a county courthouse or municipal building. The office might require a person's name and either a birthday or a driver's license number to be sure it is sending the record of the correct person. Contact the N.C. Division of Motor Vehicles, Driving Record Section, 1100 New Bern Ave., Raleigh, N.C. 27697, (919) 733-6838. (You can also obtain information on the owner of a particular vehicle, using only a license tag number; call (919) 733-3025 or write to Vehicle Registration, same address as above.)

Arrest Records —
Local Police Department. If you rent housing or hire people, you might want to check arrest records —all of which are public records. To obtain a listing of all the times a person has been *arrested* in a specific jurisdiction, you'll need full name, address, and probably date of birth. The arrest record does not give the outcome of trials, so the person may have been found *not guilty* of everything listed or the charge might have been dropped. (If you can't get address and birthday from the Division of Motor Vehicles, you can get a person's address from voter records, alphabetical listings of real property owners and personal property owners, a county tax department's motor vehicle listings, or commercial city directories in your area. Voter registration cards also list birthdays.)

Criminal Records —
County Clerk of Court Office. To find out what happened to those arrests *which have come to trial* in both district and superior court, go to the criminal records section of the county clerk of court. The files will include dismissals and acquittals as well as convictions. You can also see the files themselves and in some cases read the record of what happened in court. The clerk of court will also have copies of indictments for crimes that have not yet come to trial, as well as court calendars. In some counties, such as Forsyth County, all police and criminal court records are on the same computer system.

Campaign and Voting Records —
Local Board of Elections Office. This office, usually in the county courthouse, keeps results of

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all elections, candidates' campaign expense reports, and candidates' financial disclosure statements. This information, usually made public by reporters, can help voters make more informed decisions. You may also see the files of individuals to see how often they have voted. Voting registration cards provide information on party affiliation, date and place of birth, and sometimes prior addresses. Such information also helps with other research (see "arrest records" above, for example), and it can help inform you about public officials.

Civil Documents —
County Clerk of Court Office. Records concerning lawsuits and divorce cases can be obtained through the clerk's civil division. Such background information can be important for many reasons, from being informed about a public official, to knowing where a neighborhood lawsuit stands, to finding out about your boyfriend's previous marriage. Checking civil lawsuits filed *by* or *against* an individual can tell you a lot, including the amount of a judgment in a suit, whether the judgment has been satisfied, and liens against a person's property. Check with the clerk in your county regarding the index system. It will probably be arranged alphabetically, but you must cover a span of years, which may require more than one volume (i.e., all entries on Mr. John Doe may not be listed together, but according to the date the suit was filed). The index will also tell you which court heard the case (magistrate, district, or superior). Using the case number, you can then ask for the trial record. Usually, divorce cases can be found in the same index. A separate index usually exists for judgments; this index tells you which judgment book to read to find out if the judgment has been paid. This index usually includes liens as well.

Probate Affairs —
County Clerk of Court Office (Civil Division). Here you can typically find wills, records of adoptions, copies of disciplinary actions taken against local lawyers, and a special proceedings index (foreclosures, commitments to mental hospitals, and name changes). If you know the date of a person's death, you can go directly to the proper index and look up a will. Otherwise, you will have to scan volumes for a period of years. Probate records are important for many reasons, from settling estates to tracing one's birthparents.

Records on Property

Whether you're in the real estate business or just looking for a place to live, a tremendous amount of information is available in public records. The three most important kinds of records are tax records, title/deed information, and building permits and inspections.

Tax Records —
County Tax Office. Here, you can find the amount of taxes levied on real property (buildings and land) and personal property (cars, boats, etc.). This is important if you are considering buying a piece of property or learning background information on an individual (public official, client, etc.). Some counties maintain an alphabetical listing by name of owner and a listing by address. If you know either name or address, finding the property number is quicker. Then you can find out the tax on the property. But property tax records are generally organized by *property number*, which you can get from official county property maps. The maps have broad sectors, subsectors, and individual tracts; hence a typical property number has three parts, e.g., 143-151-08. Map books are organized by the first number; you can find your tract from there, if you know the exact location of the tract (e.g., three tracts down from a specific intersection).

In Mecklenburg County, when you enter the eight-digit property number into one of several computer terminals available to the public, dozens of key facts about the property flash on the screen—number and date of deed, precise location of the property, name and address of the owner, appraised value of the property and improvements, whether taxes were paid, and other facts about the property (acreage, current zoning, year it was built, square footage, etc.). In smaller counties without such full computerized information, you might have to look a little harder, but the property number is the key you need to unlock

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which said that the monthly public assistance recipient register must be available to the public but that "information contained therein may not be used for any commercial or political purpose."[13] This language "would preclude in our opinion, the publication of the names of public assistance recipients, their addresses, and the amounts of individual monthly grants by the media," concluded Edmisten and then Assistant Attorney General William "Woody" Webb. "Neither a copy of the register [of welfare recipients] nor information derived therefrom may be published by the news media."

When is a report completed and therefore a public record? This question remains one of the grayest areas of the law. In both the East Carolina University and Ashland Chemical investigations, the disputes over documents hinged on timing—*when* would a document become available to the press, and hence the public. "When investigations are completed—general *non*-criminal investigations—then those investigations become public records," contends Vanore of the attorney general's office. But others insist that documents must become public earlier, including a judge in another sports-related issue involving state universities.

In 1985, the University of North Carolina Board of Governors directed the president to issue a report about athletics within the university system. In 1986, C.D. Spangler Jr., the new president of the UNC system, directed the chancellors of the 16 universities in the system to provide him with information on their athletic programs. With the role of athletics at universities prominent in the news, *The News and Observer* wanted to see copies of the reports from the 16-member schools to

this storehouse of information.

Finally, the tax office will also have a master list of recent sales and appraisal cards on each house. From these, you can figure out room by room what is on the inside.

Title/Deed Information —
Register of Deeds Office. Using the book and page number of the deed (which you may have or you have just gotten from the tax record), you can find a lot of information in the deed book in the county courthouse. You may need such information if you plan to buy the piece of property. The deed books may be bound volumes or on microfilm (or both). The deed will show you the date the property was last sold, the previous owner, a precise description of the property, and the revenue tax stamps (which give you a good idea of the previous purchase price—revenue stamps are at the rate of $1.00 per $1,000 of purchase price). Since each deed will tell you the number of the preceding deed, you can walk back through the entire history of the house to the time when the property was vacant land. (Many other technical matters could be involved with the property; if you want to buy the property, you should consider a formal title examination.)

If you don't know the book and page number of the deed but do know the name of the current owner, you'll have a more cumbersome task using either the grantor (seller) or grantee (buyer) index. With the exact name of the current owner, you can find the property deed information through the grantee index, which is grouped by periods of years. Then you can follow the procedure explained above.

Building Permits and Inspections —
Office Varies. Depending on where a piece of property is located, you will find a building inspector's office in either a municipal or county building. This office will have a record of all building permits and inspections, including electrical, plumbing, heating and air conditioning, etc. These records should be available for every major remodeling job as well as for initial construction. Here you can find reports of violations of building codes, which can be very important regarding everything from rundown nursing homes to a non-residential-looking addition to your neighbor's house.

Other Records

A wealth of information is available from county and municipal records. A few of these records are

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President Spangler. Spangler resisted, saying this information was an interim document until he released it to his Board of Governors, and hence not available to the press until his Board of Governors had seen it first.

On Oct. 24, 1986, *The News and Observer* filed a complaint in Wake County Superior Court asking for the material under the public records law. On Nov. 6, 1986, Superior Court Judge D. Marsh McLelland concluded that the information under debate *was* a public record under N.C. law. President Spangler did release the material after he presented it to the UNC Board of Governors. He is also appealing the ruling to the N.C. Court of Appeals.

Despite such complex situations, Hugh Stevens, general counsel for the N.C. Press Association, says that some guideposts can determine when a document becomes a public record. "A document or a report results from an evolutionary process," says Stevens. "It is presumptuous of us to want to see a document in the process of being created." Stevens looks for evidence that a document is essentially complete, even if in draft form. "If it has been bound and copied, it's a document," whether a city manager or other official has signed it or not, says Stevens.

Law enforcement officers' needs to keep investigations confidential versus the public's right to know. The N.C. Supreme Court, as mentioned earlier, has exempted investigations *by the SBI* from the open records law. But the status of other law enforcement investigations under the public records law is not always

included below.

Corporate Records —
Register of Deeds Office. Here you can locate an index to, and copies of, articles of incorporation of virtually every local company (including records of mergers, dissolutions, and suspensions of corporations), partnership agreements, and notaries public (past and present). The office can help you determine what has been pledged as collateral in a loan (but not the amount of the loan). (The N.C. Secretary of State's office also has the charter of every company and organization licensed to do business in North Carolina.) Such records can help supply important information on the involvement of public officials with private ventures.

General County Records —
County Courthouse or Office Building. Public records include minutes of meetings of the boards of county commissioners, county ordinances, check ledgers showing who got checks from the county, general ledgers, and county budgets. You can ask for a line item budget. Some county records might be difficult to obtain, especially those from departments of social services (see main article, p. 34).

Municipal Records —
City Hall. The documents most often requested are city council minutes and copies of city ordinances. A tape of a city council meeting is a public record as well.

Death and Birth Certificates —
County Health Department. You will need the approximate year and full name of the deceased for a death certificate. For a birth certificate, you'll need the approximate year of birth and full name of the child and/or the parents. You might need a birth certificate to travel abroad or for school purposes.

Zoning Records —
Planning Departments. To check the zoning of a tract and surrounding property, check the maps maintained by the planning department. This department (in counties and large cities) will also have records of zoning requests and master plans that may suggest future rezonings that could alter the residential character of your neighborhood. Such information is invaluable to neighborhood groups, the building industry, and others involved in how fast a community grows.

—Robert Conn

clear. Currently, some cities rely on a 1975 attorney general's opinion as the basis for withholding *police* investigation files and supplemental reports from the public.[14]

Police investigative reports have to be confidential and outside the public records statute, says Vanore, because "we've got to balance the right of the public to know with good law enforcement." At issue is permanent confidentiality, not a question of timing. "Oftentimes, a person will not give information to the police about alleged crimes unless their names are kept confidential," continues Vanore. "After a case was over, if a complete report was then released, that would undermine that confidence that the public must have in the police. Attorney general opinions going back to 1972 have consistently expressed the same view. This indicates that the General Assembly has essentially agreed with that view," asserts Vanore. "If it had not, [the legislators] could have changed the law or put something in the law to make it clearer."

The SBI and police investigative files should be withheld because much of what goes into such investigative files is hearsay and because opening up these files would identify informants and thus dry up sources for law enforcement officials, adds Thornburg.

The issue is not always so clearcut, however. In Charlotte, for example, city attorney Underhill applies the attorney general's opinion not only to police investigative reports but also to what are known as supplementary reports. Routine crime reports, which *are* open to the public, often contain very little information, with a note saying "see supplement." Without access to the supplement, a citizen cannot find out what happened in a particular crime. Closed criminal investigation files can keep the public from knowing important information, such as a suspected series of murders.

"The problem comes in controlling what really is part and parcel of an investigation versus what someone just throws into an investigation file to keep it confidential," says Hugh Stevens. "There is a pretty professional attitude in most law enforcement in North Carolina. But there are always a few who see law enforcement as none of the people's business and throw everything into an investigation file. You can cover up everything from ineptitude to corruption," he continues. "No policy or law will solve that problem. Eternal vigilance is how you can deal with it. That is the responsibility of the press."

How will the statute adjust to new computer technology? An overriding concern spans many of the areas discussed above—access to computer records. Computer records are generally considered just as public as if the information were kept on paper, or "hard" copy. "Computers are just a more sophisticated method of record keeping, governed by the same rules," says Thornburg. "I don't see any distinction." But that doesn't mean there aren't problems.

David Lawrence of the Institute of Government raises one of the issues. "There's no question you have a right to a copy," says Lawrence, "*if* you are willing to pay."

The level of fees can be difficult for the supplier of the data as well as for the public. "The question of charging for access is a hotly debated issue," writes Pamela Akison in a *State Legislatures* magazine article focusing on computerized records.[15] "It is a question not so much of whether a legislature should charge some fee (as it does for many of its published documents) but how much it should charge."

Another technological issue is weighing ease of access against dangers of having computer records altered. More and more government offices are setting up public terminals to allow easy access to some records but on a "read only" basis, so a person can't accidentally (or intentionally) alter the record while working at a terminal.

"There's a lot of tension on how to regulate access to computerized records," says Lawrence. "This question has not been sorted out by any legislature in any state. It will be the big issue in the next 10 years or so."

Conclusion

Should the public records law be changed? Probably not, say attorneys in the field. David Lawrence of the Institute of Government notes that about eight years ago—*before* the 1981 decisions interpreted the statute—a committee with representatives of the press, broadcasters, local government, and the state Division of Archives and History in the Department of Cultural Resources considered revising the statute. "Everyone agreed that the best thing to do was not to touch it," he explains. "Everyone was afraid what might happen if the legislature started to mess with it. They didn't want to lose what they had."[16]

The feeling seems even stronger today. "The press has a great reluctance to tamper with a law that is as broadly worded as ours is," says Hugh Stevens. "The law is so broad, so clear, so concise—the burden lies with someone trying to get out from under it."

This sentiment seems to hold for those government officials that have to comply with the law most often. "I don't think municipal officers have any problems with [the law]," says Laura Kranifeld, assistant general counsel for the N.C. League of Municipalities.

What if North Carolina tried to alter its law? "It might look like a Christmas tree when all the exceptions got attached to it," says Jonathan Buchan, *The Charlotte Observer*'s attorney. When Illinois went from a statute like North Carolina's to a Freedom of Information Act,

N.C. "Right-to-Know" Law — New Information for the Public

In 1985, the N.C. General Assembly granted the public access to a sizable new body of information. After a spirited debate, the legislature passed the "Hazardous Chemicals Right To Know Act" in the closing days of the session.[1] The law provided that by May 25, 1986, employers had to notify the fire chief in their area if they have more than 55 gallons or 500 pounds of a hazardous material on the premises. Also, these employers have to provide information on such chemicals to any citizen requesting it. The law has come to be known as the "right-to-know" act.

This act has the capability of making a large body of information available to the public, as does the state's public records law. While both laws establish a system for getting information to the public, the right-to-know act goes a step further than requiring *government documents* be available to the public. It requires *private businesses* to report information on hazardous chemicals to the public. The law also contains a special section called "withholding hazardous substance trade secret information," providing companies a means of reporting the necessary information on hazardous chemicals without revealing industry trade secrets, which could give competitors an unfair advantage.[2]

The right-to-know act reflects a belief that citizens have a right to information from private companies if a company uses or produces chemicals that are hazardous. In a June 28, 1985 editorial, *The Charlotte Observer* explained this right as "the principle that people potentially affected by hazardous chemicals ought to be warned of the risks around them."

Under the public records law, a citizen generally goes to a depository of information and uses those records. Under the right-to-know law, a citizen must go directly to the business involved and has to follow a procedure to obtain the information. In other words, the information is not as readily available—except to fire chiefs and emergency planning personnel.

Shortly after May 25, 1986, the date the law took effect, a nonprofit advocacy group called the N.C. Occupational Safety and Health Project (NCOSH) submitted some 25 requests for information under the law. The group felt that 15 companies did not comply with their request and filed complaints about these 15 companies with the N.C. Department of Labor. "We investigated all of these and resolved them successfully," says Charles Jeffress, assistant commissioner of labor. The companies eventually provided the information to NCOSH.

An estimated 575,000 different chemical products now exist in the United States. As technology changes, so do the needs of the public regarding access to records. The right-to-know law adds another avenue to information, which can work in a complementary way with the state's public records law.

—Bill Finger

FOOTNOTES

[1]N.C.G.S. Chapter 95, Article 18.

[2]N.C.G.S. 95-197.

"problems went up several hundred percent," says Elaine English, director of the Freedom of Information Service Center in Washington. Information that once was speedily released now is routinely delayed.

But does the law have any teeth? There is no penalty in G.S. 132-6, which requires people who watch over public records to make them available. The only remedy found for violations of the public records law is G.S. 132-9, which allows a citizen to apply for a court order compelling disclosure.

In 1983, the legislature partially addressed this concern, but many people don't know about it, because the new law was not codified with the public records law (G.S. Chapter 132). The remedy was added instead to G.S. 6-19.2, within a section of the statutes dealing with civil court actions. This remedy says that if the court agrees with a citizen's claim that a record is public, the agency that withheld the record *may* be compelled to pay the attorney's fees of the citizen. The law goes on to mandate that any such fees have to be paid from the agency's operating budget and "shall not be reimbursed from any other source."

Another issue concerning better implementation of the current law is how to get information available to the public during litigation. When a case goes to court, the material under question can remain outside of public view for years. "There is the need for some type of summary procedure, so newspapers can get it more quickly," says William Lassiter, for many years counsel for the N.C. Press Association.

The real key to public records is educating public officials, says Hugh Stevens. "Too many public officials at all levels don't really approach questions about public documents in the right spirit. They react as if what is in the file is a personal document."

A broadly worded statute seems to provide North Carolinians with the best access to information about how their government works. Even with it, however, questions will continue to arise. Complying with the *spirit* of the law, then, becomes critical. "If public officials have the day-in, day-out knowledge that they are subject to being looked at by anybody who walks in off the street, there is little risk that government will be corrupt or that the public will lack confidence in the honesty of its elected officials," says Jonathan Buchan.

Indeed, perhaps no other single law provides as valuable a "key to good government" as the state's guarantee of public access to government records.

FOOTNOTES

[1]William McBlief, "Public Access to Public Records in North Carolina: The Key to Good Government," 60 N.C.L. Rev. 853 (1982).

[2]Fred Harwell, *The Right to Be Able to Know: Public Access to Public Information* (1978), a report by the N.C. Center for Public Policy Research, pp. 31–32; quote in the next paragraph, p. 33.

[3]For more on the Freedom of Information Act, see "How to Use the Federal FOI Act," FOI Service Center (Washington), 1985 (available for $3 from 800 18th St. N.W., Suite 300, Washington, D.C. 20006); *The Reporter's Handbook*, edited by John Ullman and Steve Honeyman, St. Martin's Press (New York), 1983; and for direct assistance, call the FOI Hotline, 1-800-336-4243.

[4]*The News and Observer Publishing Co. v. Wake County Hospital System, Inc.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981) *pet. for discret. rev. denied*, 305 N.C. 302, 291 S.E.2d 151 (1982); *app. dismissed, cert. denied*, 459 U.S. 803, 103 S.Ct. 26, 74 L.Ed.2d 42 (1982); 27 A.L.R. 4th 731; and *Advance Publications v. The City of Elizabeth City*, 53 N.C. App. 504, 281 S.E.2d 69-71 (1981).

[5]N.C.G.S. 132-1.1. The N.C. Press Association and the N.C. Association of Broadcasters publish pamphlets on public records, public meetings, and other so-called "sunshine" laws. They are currently preparing an updated version of this information, which contains statutory exceptions to the open records law. For a copy of the pamphlet, contact the N.C. Press Association, 5 W. Hargett St., Raleigh, N.C. 27602, (919) 821-1435, or the N.C. Association of Broadcasters, P.O. Box 627, Raleigh, N.C. 27602, (919) 821-7300.

[6]*The News and Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984). The second paragraph of N.C.G.S. 114-15 reads, in part: "All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1 . . . ."

[7]For a summary of these opinions, and of major court decisions regarding public records, see the notes in the statute books that follow N.C.G.S. 132-1.

[8]48 N.C. Attorney General 66 (1978). Formal attorney general opinions are published by the attorney general's office ($5.25 per volume); also formal opinions affecting the Administrative Procedure Act (N.C.G.S. Chapter 150B) are published in *The North Carolina Register*. Informal opinions, made through correspondence, memoranda, and other means, are not published but can be examined in the attorney general's office — if you know what to ask for.

[9]For city employee records, see G.S. 160A-168(b), (e), and (f); for county employees, see G.S. 153A-98(b), (e), and (f); for state employees, see G.S. 126-23 and 126-27.

[10]G.S. 160A-168(c)(7) and 153A-98(c)(7); regarding state employees, see G.S. 126-24, final paragraph.

[11]*Carolina Broadcasting Co. v. Smith*, Superior Court, Cleveland County, 85 CVS 722.

[12]45 N.C. Attorney General 273 (1976), quotes later in the paragraph from p. 275 and p. 274, respectfully.

[13]N.C.G.S. 108-45(b), now codified as 108A-80(b).

[14]44 N.C. Attorney General 340 (1975).

[15]Pamela Akison, "State Records: Are They Up for Grabs?" *State Legislatures* magazine, Conference on State Legislatures, (Denver, Col.), August 1986, p. 29.

[16]For a recent overview of the law, see David M. Lawrence and Joseph D. Johnson, "Interpreting North Carolina's Public Records Law," Local Government Law Bulletin No. 27, Institute of Government, University of North Carolina at Chapel Hill, April 1987.

Freedom of Religion vs. The Right to an Education: When Is a School a School?

by Katherine White

This article takes a close look at the N.C. Supreme Court's decision in Larry Delconte v. State of North Carolina, *which upheld the right of parents to teach their children at home in lieu of attending public or conventional private schools.*

LARRY AND MICHELE DELCONTE'S legal battle against the state to educate their two children at home ended on May 7, 1985. The N.C. Supreme Court ruled that state law allows home instruction, so long as the home meets certain standards.[1]

The decision focused on a narrow interpretation of state statutes, but at the same time raised fundamental questions about constitutional rights — including freedom of religion and whether that freedom outweighs the state's responsibility to guarantee each child an education. The decision even raised the basic question of what precisely constitutes a school.

The Delconte's home instruction program, called the "Hallelujah School," gained Supreme Court approval because the Harnett County couple met statutory guidelines for private schools, according to the unanimous Court decision written by Associate Justice James Exum. (Exum was elected Chief Justice of the N.C. Supreme Court in 1986.)

In 1969 and again in 1979, the N.C. Attorney General had held in two separate formal opinions that the state's compulsory school attendance laws prohibited home instruction[2] and required that public and nonpublic education be conducted in an institutional setting.[3] The Supreme Court's *Delconte* ruling nullified these opinions.

"We find nothing in the evolution of our compulsory school attendance laws to support a conclusion that the word 'school,' when used by the legislature in statutes bearing on compulsory attendance, evidences a legislative purpose to refer to a particular kind of instructional setting," ruled the Court. "Indeed, the evident purpose of . . . recent statutes is to loosen, rather than tighten, the standards for

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nonpublic education in North Carolina."[4]

But the Court invited the General Assembly to reassess the statutes that allowed the Court to reach its conclusion that home instruction is permissible as long as certain academic criteria are met. "Whether home instruction ought to be permitted, and if so, the extent to which it should be regulated, are questions of public policy which are reasonably debatable. Our legislature may want to consider them and speak plainly about them," the Court said.

But until and unless the legislature takes formal action, the Court decision means that parents in North Carolina can teach their children as long as they meet certain criteria, including maintaining attendance records, immunizing against diseases, keeping a regular schedule, conducting safety and health inspections, administering annual tests and maintaining test scores, and providing information on operations to the appropriate state agencies.

Beyond the Delcontes' argument that existing state statutes allow home instruction, the couple offered several constitutional reasons for justifying their position. The court did not have to rule on the constitutional questions in order to decide the *Delconte* case, but gave a strong signal that the justices would, in the right circumstances, lean toward the rights of individuals. The plaintiffs raised these constitutional points:

- The N.C. Constitution seems to permit children to be "educated by other means" than in public schools.[5] "It is clear that the North Carolina Constitution empowers the General Assembly to require that our children be educated. Whether the Constitution permits the General Assembly to prohibit their education at home is not clear," Exum wrote. The legislature historically has insisted only that the teaching setting, whatever it is, meet certain, objective standards, he added.
- The First Amendment to the U.S. Constitution, establishing freedom of religion, can take precedence over state compulsory schools laws.[6] Exum wrote that the U.S. Supreme Court "seems to consider the right of parents to guide both the religious future and the education generally of their children to be fundamental so as not to be interfered with in the absence of a compelling state interest."

At the same time, the court recognized "that the state has a compelling interest in seeing that children are educated and may, constitutionally, establish minimum educational requirements and standards for education."

The Delcontes did not limit their arguments to religious beliefs, citing what they called "sociopsychological" reasons as other, nonreligious reasons for teaching their children at home. Mr. Delconte also testified at a Superior Court hearing that his family could not afford to send the children to a private school. And, he declared, he objected to the school's use of corporal punishment.

Because of these nonreligious objections to compulsory public school attendance, the Delcontes do not present a clean case for a court's decision on whether an individual's freedom of religion outweighs the state's interest in requiring education.

State Rep. Frank D. Sizemore III (R-Guilford), who filed a friend of the court brief in the case for The Christian Legal Society, a national group of lawyers and judges, said that the balancing of the two constitutional interests "would inevitably get involved into considering what kinds of responses — short of closing (a home school) — were reasonable to accommodate the state's interest.... Where those two cross, the basic (individual) right would still prevail. But I don't think we've had to cross that threshold."

State courts generally have been divided on a parent's right to educate a child at home simply because the parent believes state schools are inadequate. One friend of the court brief, citing the fact that at last count, 39 states allow some form of home instruction, cited the example of the state of New Jersey. That state has developed a model approach, placing the burden on the school system to show non-attendance first; then the parents must show that their home teaching is of equal quality to that of the public school. Finally, the school system must prove that home teaching deprives the child of an education. "The balanced approach takes account of both the state's interest in education and the parents' freedom to choose. In addition, and perhaps most important, it permits a greater focus on the best interests of the individual child," write Tobak and Zirkel in *Home Instruction: An Analysis of the Statutes and Case Law.*[7]

Should North Carolina adopt this approach? That is a question of public policy that the legislature must tackle. Choosing between the sometimes-competing demands of individual freedoms and the state's responsibility to educate its citizens guarantees that the General Assembly will have to make decisions that the Supreme Court could not. And that includes defining exactly what constitutes a "school" in North Carolina.

FOOTNOTES

[1] Larry Delconte v. State of North Carolina, No. 9PA84, dec. May 7, 1985, N.C. 384 (1985); 329 S.E.2d 636 (1985).

[2] 40 Op. Attorney General 211 (1969); 49 Op. Attorney

General 8 (1979), on compulsory attendance laws.

[3] The Court relied on the legislature's definition of qualified nonpublic schools. NCGS 115C-555 requires that a nonpublic school have one of four characteristics, including that "it receives no funding from the state of North Carolina." The Delcontes' home school received no public funding.

[4] *Delconte v. State*, pps. 20-21.

[5] Article IX, Section 3, North Carolina Constitution: "The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means." The Court commented, "Whether these 'other means' would include home instruction is a serious question which we need not . . . now address."

[6] *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

[7] Tobak & Zirkel, *Home Instruction: An Analysis of the Statutes and Case Law*, 8 U. Dayton Law Review. 1 (1982). pps. 59-60.

The Right to Education in State Constitutions: Courts Split on School Finance Issue

by Jody George

N.C. Constitution, Article I, Section 15. Education. *The people have a right to the privilege of education and it is the duty of the State to guard and maintain that right.*

IN TWO LANDMARK LEGAL EFFORTS in the early 1970s, parents challenged the funding of school systems near Pasadena, California, and San Antonio, Texas. In *Serrano v. Priest*, the California Supreme Court ruled that the reliance on local property taxes to fund California school systems violated the federal constitution. The Texas action, brought in federal district court, reached the U.S. Supreme Court on appeal before *Serrano*, also appealed to the nation's highest court.

In 1972, The U.S. Supreme Court ruled against the Mexican-American parents from Texas in *San Antonio Independent School District v. Rodriguez*.[1] In reaching its decision, the Court relied upon two important legal principles.

First, the Court said that the U.S. Constitution does not guarantee the right to an education, as it does to rights such as free speech and privacy. Second, the Court said that the Texas school finance system did not violate the equal protection clause of the 14th Amendment. It conceded that the system was imperfect. But it refused to become involved because "direct control over decisions concerning the education of one's children is a need that is strongly felt in our society."[2]

The Supreme Court's decision in *Rodriguez* foreclosed the use of the *federal* courts for school finance challenges, such as the *Serrano* appeal. After 1972, state courts became the arena for addressing the extent of constitutional guarantees of equal funding in education. State courts have found that funding disparities in school finance systems violated state constitutions. Most successful suits have had two factors in their favor.

First, they have been brought on the basis of state equal protection clauses or state education clauses,

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Table 1. Courts That Found Disparities in School Finance Unconstitutional

Language of the Court	Applicable Language in the State Constitution
1. **California:** *Serrano v. Priest*, 5 Cal. 3d 584, 487 P2d 1241 (1971) (Serrano I); subsequent opinion, 18 Cal. 3d 728, 557 P2d 929 (1976) (Serrano II): Discrimination in educational opportunity on basis of district wealth involves a suspect classification and education is a fundamental interest. School financing system violated equal protection guarantees of state constitution by conditioning availability of school revenues upon district wealth, with resultant disparities in school revenue, and by making quality of education dependent upon level of district expenditure.	Art. 1, §7: "A person may not be deprived of life, liberty or property without due process of law or denied equal protection of the laws." Art. 9, §5: "The legislature shall provide for a system of common schools."
2. **Connecticut:** *Horton v. Meskill*, 172 Conn. 615, 376 A2d 359 (1977), affirming 31 Conn. Supp. 377, 322 A2d 813 (Hartford County Superior Court, 1974): Education is a fundamental right, and pupils in the public schools are entitled to equal enjoyment of that right. Thus, a system which depends primarily on local tax base without regard to disparity in the financial ability of towns to finance an educational program and with no significant equalizing state support cannot pass test of strict judicial scrutiny and cannot meet state constitutional requirement of equal educational opportunity.	Art. VIII, §1: "There shall always be free public elementary and secondary schools in the state." Art. I, §20: "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his civil or political rights because of religion, race, color, ancestry or national origin."
3. **Kentucky:** *Rose v. The Council for Better Education, Inc.* (June 8, 1989): The Kentucky Supreme Court said the entire system of school finance and governance violates the state constitution's mandate for the provision of an "efficient system of common schools throughout the state." This is perhaps the most important of the school finance decisions in that it found both the school finance *and governance* systems unconstitutional. The court said the legislature must provide adequate funding for the system and set criteria for the legislature.	
4. **New Jersey:** *Robinson v. Cahill*, 62 NJ 473, 303 A2d 273 (1973): The equal protection clause dictates statewide uniformity in the rudimentary scheme of local government. If the state chooses to enlist local government to meet the state's obligation to support a thorough and efficient system of free public schools, it must do so in terms which will	Art. 8, §4 ¶1: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." Art. 1, ¶1: "All persons are by nature free and independent, and have certain natural and unalienable

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Table 1. *continued*

Language of the Court	Applicable Language in the State Constitution
fulfill that obligation. The New Jersey system which relies heavily on property taxes to furnish approximately 67% of public school costs, and which leads to great disparity in dollar input per pupil, is violative of the state education clause.	rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." Art. 8, §1, ¶1: "Property shall be assessed for taxation under general laws and by uniform rules."
5. **Washington:** *Seattle School District No. 1 of King County, Washington v. State of Washington*, 90 Wash. 2d 476, 585 P2d 71 (1978): The ultimate obligation to the constitutional mandate that the state make ample provision for the basic education of all resident children through a general and uniform system of schools rests upon the legislature. The legislature meets this obligation only if sufficient funds, derived through dependable and regular tax sources are provided; not by authorizing school districts to submit special excess levy requests. Evidence concerning school district's salary scale, staffing, ratios, nonsalaried costs and state funding was insufficient to provide for basic education within the district under any suggested definition of basic education.	Art. 9, §1: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders." Art. 9, §2: "The legislature shall provide for a general and uniform system of public schools."
6. **West Virginia:** *Pauley v. Bailey* (1982): The state's system of financing public schools failed to meet the state constitution's mandate for a "thorough and efficient" education. The court defined in detail the standards for providing such an education. In November 1988, the West Virginia Supreme Court reversed only one part of the lower court decision — that which declared unconstitutional a state law permitting local school districts to seek "excess" property tax levies.	
7. **Wyoming:** *Washakie County School District No. 1 v. Herschler*, 606 P2d 310, (1980), reh'g den. 606 P2d 340 (1980), cert. den. 499 U.S. 824 (1980): State's system of school financing, based principally on local property taxes, whereby property-richer school districts uniformly had more revenue per student than property-poorer ones, was unconstitutional in that it failed to afford equal protection in violation of state constitution.	Art. 1, §34: "All laws of a general nature shall have a uniform operation." Art. 7, §1: "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public education, embracing free elementary schools of every needed kind and grade,..."

which 49 states have. The applicable provision in the North Carolina Constitution reads: "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . ." (Art. IX, Sect. 2). It is comparable with the education provisions in other state constitutions, some of which require "thorough," "efficient," "suitable," or "adequate" systems of free public schools. The New Jersey Constitution, for example, says: "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years" (Art. 8, Sect. 4).

In *Horton v. Meskill*, the Connecticut Supreme Court found that the state's school finance system violated the state constitution's *equal protection clause*.[3] The Court said that state constitutional equal protection provisions, while substantially equivalent to the federal equal protection clause, possess an independent vitality. It thus found unconstitutional the Connecticut school finance system, which depends primarily on the local tax base without regard to the ability of towns to finance an education program.

Second, in successful suits, the factual records generally have been more extensive. As D. C. Long says in "Rodriguez: The State Courts Respond" (*Phi Delta Kappan*, March 1983, pp. 481-484): "Plaintiffs meticulously documented how state school finance systems discriminated against school children as a result of the fiscal capacity of the school district — a factor that has nothing to do with education. They also documented the ways in which inequalities in financing resulted in unequal educational facilities, staff, course offerings, equipment, and instructional materials."

These courts were concerned that taxpayers in property-poor districts paid higher tax *rates* for education than taxpayers in property-rich districts. Because the higher tax rates generated revenues in comparatively small amounts, property-poor towns could not afford to spend for the education of their pupils, on a per-pupil basis, the same amounts that the rich towns could. Furthermore, the courts often found that the state foundation programs did not adequately *equalize* the amounts available to individual districts.

Not all state courts have found that disparities in school finance violate state constitutions. Some have been unwilling to become involved in school finance issues. Georgia and New York are examples. The Georgia Supreme Court concluded that the state school finance system provided unequal educational opportunities to children in low-wealth districts; nevertheless it said that the Georgia Constitution afforded no relief.[4] The New York Court of Appeals, though it denied the plaintiffs' claim, conceded that the New York school finance scheme produces "great and disabling and handicapping disparities in educational opportunities across our state."[5]

The major reason for sustaining inequitable financing schemes has been the preservation of local control. For example, the Ohio Supreme Court found local control to be a rational basis for upholding Ohio's system of financing elementary and secondary education. The Ohio court said that "by local control, we mean not only the freedom to devote more money to the education of one's children but also control over participation in the decision-making process as to how these local tax dollars are to be spent."[6] The Oregon Supreme Court said that "assuming there are alternative systems of financing education which would eliminate some of the inequalities in the present system and retain and enhance local control, the present system of financing is not invalid."[7]

In cases where state supreme courts have struck down school finance systems, most have ordered the state legislature to find a solution, subject to judicial review. Some have ordered the legislature to define the educational opportunity mandated by the state constitution. In a bold and unusual step, the New Jersey court ordered the legislature to levy a new income tax to support the increased costs of reform.[8]

In a 1984 decision, a Connecticut court took the process one step further. Seven years after the *Horton v. Meskill* decision (see discussion above), the court ruled that the state's public school finance system remained unconstitutional. This decision demonstrates the willingness of a court to get involved in the *enforcement of remedies* designed to provide equal education opportunities. As John Augenblick, former director of the Education Finance Center of the Education Commission of the States, told *Education Week*, "What makes the Connecticut decision important is that when the court goes as far as it does and orders some remedy, it obviously means it, and wants to see something happen."[9]

FOOTNOTES

[1] 411 U.S. 1 (1972).

[2] *Ibid*, p. 49.

[3] See cite to Connecticut case in accompanying Table 1.

[4] See cite to Georgia case in accompanying Table 2.

[5] *Board of Education, Levittown Union Free School District v. Nyquist*, Slip Opinion, p. 21 (N.Y. Court of Appeals, 1982).

[6] *Board of Education of the City School District of Cincinnati v. Walter*, 390 NE 2d 813, at 820.

[7] *Olsen v. State*, 554 P2d 139, at 148.

[8] See cite to *Robinson v. Cahill* under "New Jersey" in the accompanying Table 1.

[9] Foster, Susan, "Funding Equalization Is Ordered Again for Connecticut Schools," *Education Week*, May 9, 1984, p. 1.

Table 2. Courts That Found Disparities in School Finances Did *Not* Violate State Constitutions

Language of the Court:	Applicable Language in the State Constitution:
1. **Arizona:** *Shofstall v. Hollins*, 110 Ariz. 88, 515 P2d 590 (1973): The state constitution establishes education as a fundamental right of pupils between ages of six and 21 years and assures every child a basic education. The mere fact that state's school financing system reflects disparity of wealth among school districts does not deny equal protection to students and taxpayers in poorer districts. As long as the financing system meets the educational mandates of the constitution, it need otherwise be only rational, reasonable, and neither discriminatory nor capricious to meet the equal protection requirements of the state and federal constitutions.	Art. XI, §1: "The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system." Art. II, §13: "No law shall be enacted granting to any citizen, class of citizens, or corporations, municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."
2. **Colorado:** *Lujan v. Colorado State Board of Education*, 649 P2d 1005 (1982): Local control is the objective of state's school finance system. Notwithstanding the fact that disparities in school finance system could lead to low-wealth districts having less fiscal control than wealthier districts, such result did not warrant striking down the entire system as in violation of the state equal protection clause. The education clause in the state constitution requires thorough and uniform educational opportunities but does not prevent a local school district from providing additional educational opportunities beyond such standard. Although representative form of government and democratic society may benefit to a greater degree from a public school system in which each school district spends exact dollar amount per student with eye toward financing identical education for all, such are considerations and goals which properly lie within legislative domain.	Art 2, §25: "No person shall be deprived of life, liberty, or property, without due process of law." Art. 9, §2: "The general assembly shall provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state."
3. **Georgia:** *McDaniel v. Thomas*, 248 Ga. 632, 285 SE2d 156 (1981): The adequate education provisions of the state constitution do not restrict local school districts from doing what they can do to improve educational opportunity, nor do they require the state to equalize educational opportunity between districts. As long as low wealth districts provide each child with an opportunity to acquire the minimum basic skills necessary for the enjoyment of rights of speech and of full participation in the political process, they do not fail to provide an adequate education. Because the school finance system bears some rational relationship to the legitimate state purpose of providing basic educational funding to children, it does not violate the state equal protection clause.	Art. 8, §1: "The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation."

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Table 2. *continued*

Language of the Court	Applicable Language in the State Constitution
4. **New York:** *Board of Education, Levittown Union Free School District v. Nyquist*, 94 Misc. 2d 466, 408 N.Y.S. 2d 606 (Nassau County Supreme Court, 1978); aff'd., 443 N.Y.S. 2d 843 (App. Div. 1981); rev'd No. 317, Op. Slip (N.Y. Court of Appeals, 23 June 1982): Preservation and promotion of local control of education was both legitimate state interest and one to which present financing system was reasonably related. Thus present statutory prescriptions for state aid to local school districts for maintenance and support of public elementary and secondary education — premised on local taxation within individual school districts with supplemental aid allocated in accordance with legislatively approved formulas and plans — do not violate the equal protection clause of the state constitution. Statewide $360-per-pupil flat grant provided by state aid legislation was immune from attack under equal protection clause since on its face there was no inequality in per-pupil distribution of state aid allocated to all school districts without differentiation. Education article mandate that legislature provide for a system of free common schools was being met in New York, in which average per-pupil expenditure exceeded that in all other sates but two. And since decisions as to how public funds will be allocated are matters peculiarly appropriate to legislature, the present school financing system does not violate the education provision in the state constitution.	Art. 11, §1: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." Art I, §11: No person shall be denied the equal protection of the laws of this state or any subdivision thereof."
5. **Ohio:** *Board of Education of the City School District, etc. v Walter*, 58 Ohio St. 2d 368.390 NE 2d 813 (1979), cert. den., 444 U.S. 1015 (1980): Although the Ohio system of school financing is built upon the principle of local control, resulting in unequal expenditures between children who live in different school districts, the disparity is not so irrational as to be an unconstitutional violation of the state equal protection and benefit clauses. The system also did not violate the provisions of the state constitution which requires the General Assembly to secure a thorough and efficient system of common schools. It has long been an established principle of law that courts do not interfere in political or legislative matters, except in those instances where legislative enactments violate the basic law.	Art I, §2: "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary." Art. XI, §2: "The general assembly shall make such provision, by taxation or otherwise, as, with the income arising from the school target fund, will secure a thorough and efficient system of common schools throughout the state."
6. **Oregon:** *Olsen v. State*, 276 Or. 9, 554 P2d 139 (1976): Local control is the state's objective in maintaining the present system of school finance. The fact that some school districts have less local control than others because of the disparity in the value of the property in the district did not lead to the conclusion that the equal rights clause of the state constitution had been violated. Nor did it violate the provision in the state constitution requiring a uniform system of schools. The financing system does not totally deprive the children of the poorest district of an education or of the use of some of the tools and programs believed to enhance education.	Art. VIII, §3: "The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools." Art. I, §20: "No law shall be passed granting to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall equally belong to all citizens."

Separation of Powers In North Carolina

by John V. Orth

N.C. Constitution, Article I, Section 6. Separation of Powers. *The legislative, executive, and supreme judicial powers of the state government shall be forever separate and distinct from each other.*

ON JANUARY 12, 1982, the N.C. Supreme Court handed down a decision that triggered a virtual constitutional crisis in state government. The state's highest judicial panel ruled that the legislature cannot appoint its own members to the Environmental Management Commission (EMC), a regulatory body in the executive branch, because such appointments violate the separation of powers provision of the North Carolina Constitution. "It is crystal clear to us," the landmark decision read, "that the duties of the EMC are administrative or executive in character and have no relation to the function of the legislative branch of government, which is to make laws."[1]

In rapid-fire sequence, the Governor, the legislative leadership, the Attorney General, and the Supreme Court Justices themselves issued a series of memos, letters, opinions, and position statements on how the separation-of-powers concept affects the day-to-day functioning of state government. The first three months of 1982 may well be recorded as the period that permanently altered the way in which North Carolina's government is organized.

What exactly did take place during this period regarding the separation of powers of the three branches of government? And why are the various events interrelated? Most importantly, how will these events affect the future of North Carolina's government?

An American Tradition

America's founding fathers, having just led a violent revolution against the excesses of the British king and parliament, feared concentrations of power. Consequently, in the U.S. and state Constitutions, they limited the powers of government and divided them among the executive, legislative, and judicial branches. This separation of powers took two forms: a "vertical" separation between the federal and state levels of government; and a "horizontal" separation

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on both the state and federal levels among the legislative, executive, and judicial branches.

Not only were the powers separated among the three branches, but the individuals exercising them were separated as well. The N.C. Constitution, for instance, prohibits a person from holding a federal and state office at the same time. Within the state, no person may fill two elective offices, such as a legislative seat and a judgeship, at the same time. Finally, no one in the state may hold two or more appointive offices or any combination of elective and appointive offices, unless the legislature specifically authorizes it.

To provide an effective mechanism for regulating disputes over which branch should control which governmental powers, the founding fathers set one branch against another through a system of "checks and balances." Within this system, the three branches of government operate in a permanent and profound interdependence. Consider these examples in North Carolina:

- the legislature enacts laws which the executive branch must administer;
- the lieutenant governor is second-in-command of the executive branch and also presides over the state Senate;
- the governor proposes a budget to the legislature; the legislature adopts a budget which is administered by the governor;
- the attorney general, elected directly by the voters, serves as counsel for both the executive and legislative branches; the legislature funds the Department of Justice, headed by the attorney general;
- the judiciary has the power to review the acts of the legislative and executive branches; the legislature determines the structure and budget of the judiciary and creates new judgeships; the governor fills judicial vacancies and appoints persons to new judgeships.

Even as government grows and interdependence increases, the 18th-century philosophy of the founding fathers retains a powerful influence. Throughout the history of the republic, the wisdom of the framers of the federal and state constitutions has reasserted itself as the rationale for landmark judicial decisions. The 1982 ruling by the N.C. Supreme Court regarding the Environmental Management Commission (*Wallace v. Bone*) has dramatized once again the power of longstanding constitutional principles. In its declaration, the high court relied on language in the N.C. Constitution that could hardly be more plain: "The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other."[2]

The Judiciary Breaks a Logjam

The EMC decision illustrates a critically important fact about the tripartite nature of both the federal and state governments: The buck often stops at the courthouse. Relying on judicial precedents and constitutional principles, the appellate courts often interpret legislative and executive actions. This process catapults the judiciary into a policymaking role, a role that can break logjams of controversy.

When the controversy concerns the respective powers of the different branches of government, the judiciary functions as a kind of policeman, "checking and balancing" the other two branches. Before the EMC decision, a series of legislative and executive assertions of power had built into a logjam of interdependence, burying beneath it the constitutional requirement of "forever separate and distinct" branches of government. When the Supreme Court issued the *Wallace v. Bone* opinion in January 1982, it unleased a torrent of questions that had lain unanswered behind the logjam. At least four legislative and executive trends have been scrutinized because of the clarity of the *Bone* decision.

1. **Legislative Incursion in Executive-Branch Boards, Commissions, and Councils.** In 1980, the legislature enlarged the membership of the Environmental Management Commission (EMC) from 13 to 17 and required that two House members be chosen by the speaker of the House and two Senators be selected by the lieutenant governor (in his capacity as president of the Senate); the governor appointed the other 13. Placing four legislators on the EMC by statute, the legislature gave itself a say in the day-to-day operations of the EMC, a regulatory body in the Department of Natural Resources and Community Development which makes decisions on everything from pollution standards to dam-building.

In February 1981, four of the non-legislative members of the EMC challenged the constitutionality of the statute. Eleven months later, the N.C. Supreme Court ruled in their favor, striking down the part of the statute adding legislators to the EMC. The *Bone* decision affected all other similarly constituted commissions.

On January 26, 1982, Speaker of the House Liston B. Ramsey asked Attorney General Rufus L. Edmisten for an opinion on whether legislators can serve on executive-branch boards and commissions in an *ex officio*, non-voting capacity. On February 1, Edmisten wrote Ramsey that "where the board or commission exercises a part of the administrative or executive sovereign power of the State, a legislator may not serve in any capacity on that board or com-

mission"[3] On February 19, Edmisten sent a five-page letter to all legislators outlining his opinion regarding the impact of the *Bone* decision and including a list of 41 boards and commissions. He suggested that all legislators — "regardless of how or by whom appointed" — should *resign* from those 41 groups. "Should you continue to remain on the board or commission," Edmisten went onto say, "it is my opinion that any action taken by that board or commission will be subject to question." Edmisten also advised five judges to remove themselves from three state commissions (Governor's Crime Commission, N.C. Criminal Justice and Education Training Standard Commission, and Art Museum Building Commission).

In taking such an aggressive stance, Edmisten brought bristles to the backs of some powerful legislators. Sen. Kenneth C. Royall, Jr., chairman of the Advisory Budget Commission and Senate majority leader, charged that "Edmisten has 'gone crazy' in his efforts to get legislators to comply with recent Supreme Court rulings," reported *The News and Observer* of Raleigh on February 28. *The News and Observer* went on to say that Gov. Hunt "has carefully left the dirty work of interpreting [the court decisions] to Edmisten." While Edmisten took the lead on requesting that the legislators resign, Hunt said that "if the Attorney General recommends that the legislators resign, I certainly think that's what we ought to do."

2. **Legislative Incursion into the Executive Budget Powers.** In its budget session in October 1981, the General Assembly took two actions in an effort to broaden its control over budgetary matters. First, it required the executive branch to gain prior approval from the Joint Legislative Commission on Governmental Operations — a committee of 13 legislators and the president of the Senate — for any executive transfer of more than 10 percent of the money from one budget line item to another.[4] Since 1929, the governor had been authorized by statute to transfer budgeted money within departments.[5] The legislature had created the Commission on Governmental Operations in 1975 to provide for "the continuing review of operations of State government."[6] In 1975, James E. Holshouser Jr. — the first Republican to be elected governor in the 20th century — headed the executive branch and the Democrats controlled the legislature. This committee thus became a valuable check for legislators during a time of political partisanship between the executive and legislative branches.

Second, the legislature established the Joint Legislative Committee to Review Federal Block Grant Funds. As part of President Reagan's "new federalism," Congress had enacted a federal budget that consolidated large sums of money available to the states in the form of block grants. The legislature claimed control over the money and granted its new Block Grant Review Committee the power (when the full legislature was not in session) of prior approval of any actions proposed to be taken by the governor with respect to the block grants.[7] Historically, state executive branches generally had administered federal funds that came into a state. But the large new source of funds to be distributed at the state level — the new block grants — stimulated legislative interest throughout the country. In North Carolina, the legislature went a step further than did many states, not only establishing a committee to review all block grant actions but also giving that committee the power of prior approval of any executive action.

After the October 1981 session, Gov. Hunt asked the Attorney General to review the two legislative actions, and various legal analysts questioned their constitutionality. Edmisten provided the Governor with an informal (and therefore unpublished) opinion regarding the actions. But in the wake of the EMC decision, these two budget actions took on added legal significance.

On January 19, a week after the *Bone* decision was released, the Attorney General sent a 38-page legal memorandum to the Governor, Speaker of the House Ramsey, and Lt. Gov. James C. Green advising them that both the Block Grant Review Committee's powers and the Commission on Governmental Operation's new authority over executive transfers of appropriated funds violated the state constitution. Two days later, Gov. Hunt, Speaker of the House Ramsey, and Lt. Gov. Green sent a formal request for an "advisory opinion" to the N.C. Supreme Court about the statutes in question.

On February 16, 1982, the seven Supreme Court justices sent an eight-page advisory opinion to Hunt, Green, and Ramsey which said that the legislative actions violated both the separation of powers language in the Constitution (Article I, Section 6), as well as Article III, Section 5(3), which "explicitly provides that 'the Governor shall administer the budget as enacted by the General Assembly'."[8]

Finally, the justices found that the Block Grant Review Committee would in some cases be "exercising legislative functions. In those instances there would be an unlawful delegation of legislative power."[9]

The question regarding the budget matters was easier for the justices to answer than the issue raised in the EMC case. The executive branch's powers in

respect to the budget are spelled out in the Constitution. The justices did not have to rely solely on the theory of separation of powers but could be guided as well by the specific constitutional provision on the budget.

3. **Legislative Incursions into the Judicial Branch.** In 1981, the legislature gave the Joint Legislative Commission on Governmental Operations (the same committee discussed above regarding executive transfer of funds) control over a restricted reserve fund which may affect the expenditure of funds for judicial personnel.[10] This action may conflict with General Statute 7A-102(a) which gives the Administrative Office of the Courts authority to set the number of employees and salaries of personnel in the judicial branch and to perform other fiscal functions. In the November/December 1981 issue of the N.C. Bar Association's *Barnotes*, N.C. Superior Court Judge Frank W. Snepp expressed alarm over such actions: "The independence and integrity of the judicial branch have come under increasing assaults from the General Assembly. . . . This trend must be reversed if the separation of powers between the legislative and judicial branches of government is to be maintained."

In finding that the Block Grant Review Committee could not perform the functions granted it, the Supreme Court might well have taken a major step towards reversing the trend to which Judge Snepp referred. In issuing a formal opinion regarding administration of block grants — an area of conflict between the legislative and executive branches — the Supreme Court may also have provided a "check and balance" on the legislature as it affects the functioning of the judicial branch.

4. **Executive Infringement on the Legislature's Constitutional Authority to Appropriate Funds.** In February 1981, the executive branch settled a highly controversial suit in federal district court (*Willie M. v. Hunt*), agreeing that the state would identify violent juveniles who are emotionally disturbed and would design and operate programs appropriate for this group of youngsters. While the settlement in federal court carried no promise of a specific amount of money with it (except attorneys' fees, which were appealed), it did require the executive branch of the state to undertake substantial new programs — even though the legislature had not appropriated money for those programs.

In the spring of 1981, the Department of Human Resources (DHR) and Department of Public Instruction submitted supplemental budget requests to the legislature covering "Willie M." services for almost $2 million. In October 1981, DHR returned to the General Assembly with a request of $2.2 million for Willie M. services. The $4.2 million appropriated by the legislature represented only the beginning of the full amount necessary to meet the timetable agreed upon between executive agencies, the plaintiffs, and the court. Legislative analysts estimated that the amount could reach $15 million before the services are all in place.

Executive agencies have been entering into consent judgments for a number of years but usually for much smaller amounts of money. In *Huntley v. Morrow*, for example, a case also settled in federal court, the consent decree required DHR to meet the schedule for appeals established by federal regulations on certain public assistance rulings. The consent decree necessitated hiring a new hearing officer, a position for which DHR previously had no funds.

Because of the amount of money involved, the *Willie M.* case began attracting a lot of attention in 1981. After the *Bone* decision of January 1982, the funding process triggered by an executive consent decree came under further scrutiny. On January 21, 1982, Donald B. Hunt, counsel to the Governmental Operations Committee, sent that committee a memo regarding such executive-branch court settlements. Because of the *Bone* decision, Hunt wrote, "the General Assembly cannot establish a committee with legislative members to decide whether the State will compromise a particular suit." But Hunt went on to suggest how the legislature could become involved in the court settlement at an earlier phase of the process, for example: "filing on behalf of the General Assembly friend of the court briefs in institutional cases to put before the court the legislature's view of the impact of the litigation upon the legislature's power to allocate resources."

The ongoing appropriations process necessary to meet the *Willie M.* settlement, taken in the context of the *Bone* decision, dramatizes a dilemma state officials must face because of the separation of powers doctrine. Following the signing of a consent decree in court, the executive branch in effect presents the legislature with a *fait accompli*, giving the legislature little choice but to fund the new programs required by the court settlement. If the legislature chooses not to appropriate the required funds, the federal court could find the state executive departments involved in contempt of the consent decree.

The Pennsylvania legislature, for example, cut off funds to carry out two federal court orders, one to implement an automobile emissions inspection program and another to create an office overseeing court-ordered transfers of residents from a state home for the retarded. Pennsylvania legislators,

according to *State Legislatures* magazine,[11] claim exclusive authority to raise state funds and decide how to spend them. "There is a strong body of thought here that the courts have stepped across constitutional boundaries," Assembly Majority Leader Samuel E. Hayes told *The New York Times*.[12]

Judicial Common Ground

As the trends discussed above show, the constitutional crisis in state government spread very far in a very short time. These four areas of concern, despite their many differences, share much in common because of the far-reaching power of the judicial branch as it assumes its policymaking role. In turning to the separation of powers concept in the *Bone* decision, the judicial branch drew clear lines between the functions of the legislative and executive branches. While the "jury is still out" on many of the questions discussed in the section above, several judicial characteristics affecting the outcomes are clear.

- *A statute is presumed constitutional until challenged through litigation.* Thus, statutes authorizing the legislature to appoint citizens to serve on other boards and commissions in the executive branch — while questionable under the *Bone* decision — are presumed to be constitutional until challenged.
- *Because of the legal rule of following prior decisions in similar cases, the EMC decision also could apply to all similarly constituted commissions.* This doctrine prompted the Attorney General to advise legislators to resign from some 41 executive branch boards and commissions.
- *The EMC case or similar cases cannot go into the federal court system.* When a state supreme court interprets the state constitution on a matter solely of significance to the state, there is no basis for an appeal to the Supreme Court of the United States.
- *When the N.C. Supreme Court issues an advisory opinion, it is not binding in the same way that a decision in litigation is binding.* Even so, an advisory opinion indicates how that same group of judges would adjudicate a similar question. Since the earliest days of the republic, the U.S. Supreme Court has refused to issue advisory opinions. Only a handful of state courts issue such opinions. (See pages 162-165 for more on advisory opinions.) Moreover, perhaps alone among American state courts, the N.C. Supreme Court issues advisory opinions without express constitutional or statutory authorization. Ironically, one of the major arguments in other states against advisory opinions is that they violate the separation of powers doctrine. Judicial power, it is said, should be limited to deciding litigated cases. When justices issue opinions on contentions that have not yet been the subject of legal dispute, these justices approach the status of lawmakers.

Conclusions

The founding fathers were pessimistic about the ability of the powerful to exercise self-restraint. But they were optimistic about their own ability to construct a constitutional order in which one power would restrain another. As James Madison put it in No. 51 of *The Federalist*:

> The great security against a gradual concentration of the several powers in the same [branch] consists in giving to those who administer each [branch] the necessary constitutional means and personal motives to resist encroachments of the others.

The experience of the last two centuries seems to confirm that Madison and his colleagues understood the value of restraints in keeping men and women free. In the coming years, the N.C. Supreme Court, the legislature, and executive officials will have to separate some of their powers, even as their work becomes more intertwined and interdependent. Against such a difficult task, the words of James Madison might well assist them in discovering exactly what "constitutional means and personal motives" can best "resist encroachments of the others."

FOOTNOTES

[1] *State ex rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E.2d 79 (1982).

[2] N.C. Constitution, Art. 1, Section 6.

[3] Memorandum from Rufus L. Edmisten, Attorney General, to Liston B. Ramsey, Speaker, House of Representatives, February 1, 1982, page 1.

[4] N.C.G.S. 143-23(b).

[5] N.C.G.S. 143-23.

[6] N.C.G.S. 120-71.

[7] N.C.G.S. 120-84.5

[8] Advisory Opinion *in re* N.C.G.S. 143-23(b) and 120-84.1 through 120-84.5, 305 N.C. ___ (1982), p.7.

[9] *Ibid.*

[10] Chapter 964 of the 1981 Session Laws (HB 42), Section 20.

[11] *State Legislatures*, January 1982, p. 5.

[12] *Ibid.*

The Public Trust Doctrine: The Bottom Line on Bottom Lands Is Yet To Be Written

by Katherine White

This article examines a little-noticed 1988 Supreme Court decision, State ex rel Rohrer v. Credle, *which reaffirmed and expanded the doctrine that public waters are held for the benefit of the public.*

ONE MAN'S LOSING COURT BATTLE to keep his Swan Quarter Bay oyster beds private has opened hundreds of thousands of acres of North Carolina underwater land to the public for its use and protection.[1] And perhaps even more important, that case has broad policy implications for the way the state of North Carolina manages lands held in public trust.

For Sidney Credle, who with his father before him had tended 85 acres of Swan Quarter Bay bottom lands for nearly 70 years, the North Carolina Supreme Court decision means he can claim no ownership to the oyster beds he planted and nurtured. For the citizens of North Carolina, the decision puts in question whether anyone—even the government—can sell off or otherwise deprive the public of its rights in the submerged lands.[2]

The North Carolina Supreme Court's unanimous decision, issued in June 1988, reaffirms and expands the historic "public trust" doctrine, a concept that dates to an old, unwritten English law that the King owned the waters for the benefit of the public. The decision gives the doctrine constitutional protection, saying that a 1972 amendment to the North Carolina Constitution "mandates the conservation and protection of public lands and waters for the benefit of the public," wrote Justice Louis Meyer.[3]

But the implications of the June 1988 opinion go beyond the use of the lands beneath the sounds and

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bays of coastal North Carolina. The decision raises significant questions about the way North Carolina government deals with its land. It makes it more difficult for the state to sell off its marshland as it did from the early 1800s to the 1960s, including a 683-acre open water and marshland area that now hosts the private resort known as Figure 8 Island, north of Wilmington and cut off from the public by a private drawbridge.[4] Although the public is blocked from the island, the *Credle* case reinforces the argument that the public can use the wet sand area (the beaches and tidal areas) of the island if it can get to it.

"It is a fundamental decision," says John Runkle, an attorney for the Conservation Council of North Carolina, which filed a friend-of-the-court brief in the case. "It goes to the heart of environmental protection, of protecting public lands, and in that sense, it is one of the most important environmental decisions handed down by the court, because it determines what can be done with public lands."

The distinction between *public lands* and *public trust resources* may not be widely understood. "The common law public trust doctrine applies only to those unique resources in which the public has an interest that is incompatible with private property rights," explains Assistant Attorney General Robin Smith. "For example, the public interest in unobstructed navigation is incompatible with a fundamental attribute of private ownership—the owner's right to exclude others. The same is simply not true of other publicly owned lands. The state could sell many of its lands without significantly impacting any public interest," notes Smith.

The decision raises questions about more than just submerged lands. For example, it could be argued "that you have public trust land in the rivers and forests," Justice Harry Martin says in an interview. "Suppose the state wanted to sell Mount Mitchell? There's a question of public trust. They can regulate it but can they convey it? Strong arguments can be made against [conveyance]," he says.

Other potential questions center on access to the public trust lands and the extent of public trust lands in tidal areas.[5] The North Carolina Supreme Court has not yet considered whether the public trust doctrine extends to access to public trust lands, such as access to the beach through the dune lines. At present, the state seeks donations of land or buys property on which ramps are built to give the public access to the beaches under statutes adopted by the General Assembly.[6] If the public trust doctrine were extended to public access to beaches, the legislature could not restrict access by changing the laws.[7]

"We are hoping that this decision will be expanded to all public lands," says the Conservation Council's Runkle. "The state doesn't own land. It is the trustee for the land, to protect the interests of the rightful owners—all of us. In *Credle*, the court is saying that an individual cannot claim a public land and try to keep other individuals out."

Not everyone agrees that public trusteeship is the best way of protecting environmentally sensitive waters. In the view of at least one environmental law expert, the expansion of the public trust doctrine can help destroy bottom lands, as well as eliminate a potential clean water lobby. "If you have public beds, there is no incentive to postpone gratification. The oystermen will grab as much as they can," warns University of Maryland Law School Professor Garrett Power, who has studied and written extensively on the problems of the Chesapeake Bay.

The issue of who owns the bottom lands is an old one, debated for the last two centuries in this state and others as economic interests in fishing and other coastal industries have competed for the riches that the waters and the earth beneath provide. "Most other states apply the public trust doctrine only to the water column or water surface, but would permit transfers of the beds," Professor Power says.

North Carolina's approach to the interests has shifted from granting private rights in the submerged lands during the 1800s to severely restricting them in the *Credle* case. It was more than 100 years ago that the North Carolina legislature adopted a plan to give private grants in bottom lands to fishermen through a registration system for leasing for the cultivation of shellfish.[8] It was 102 years ago that the legislature expanded its involvement with oyster bed grants in an effort to take the oyster market over from Maryland and Virginia, where declining water quality was polluting the oysters with raw sewage and making them unsafe to eat.[9] The justification, as the state Supreme Court quoted from a 1896 Board of Agriculture report, ran like this:

> It happens that there remains one treasure-house not yet plundered, one great water granary whose doors are not yet thrown wide open. North Carolina, overlooked and despised in the Eldorado of the Chesapeake, now, when the glories of the latter are fading, is found to possess what, with prudence, patience, legislative wisdom and local self-control, may be converted into a field quite as prolific as the once teeming oyster waters of Maryland and Virginia.[10]

Credle argued to the court that the public trust doctrine could peacefully coexist with his private husbandry efforts. Oysters "do not need pens to keep

them contained. It is feasible to raise oysters and at the same time to keep the waters above the bottom open to the public for fin fishing, navigation and other customary uses," said his lawyer, George Thomas Davis Jr. of Swan Quarter.[11]

Conversely, the Conservation Council of North Carolina, an environmental advocacy group, contended, "An exclusive fishery in many ways restricts all of the other uses of the waters. Our coastal waters are one of the great resources of North Carolina, and are held by all of us for the use of all of us. No one person should be permitted to impose on the common right of free enjoyment of our public trust."[12]

For Professor Power, a mix of private and public controls is the environmentally and economically sound way to protect the sounds and bays. Of the Chesapeake Bay oyster industry, he wrote: "The laws which in effect mandate public oyster grounds created the basic economic problem—exploitation."[13] He suggested then and continues to advocate limits on entry to some oyster lands and setting aside "some portions of the oyster bottom as a public ground to serve as a functioning oyster museum."[14]

The North Carolina decision does not address potential exploitation of the submerged lands by watermen. The issue was not raised in the *Credle* case. But Assistant Attorney General J. Allen Jernigan says that the State Marine Fisheries Commission regulates the harvest of oysters and other shellfish in a way that protects future harvests and, therefore, reduces the risk of exploitation by the watermen.

Using Professor Power's economic analysis, the North Carolina approach is a policy decision to regulate rather than let private interests conserve their own vested interests in shellfish beds. "The thing that rankles you about private use is that you're devoting a public asset to a private person for his personal gain," Justice Martin says.

And, according to the state's highest court, the state has no choice as to what its policy shall be. "History and the law bestow the title of these submerged lands and their oysters upon the State to hold in trust for the people so that all may enjoy their beauty and bounty," the court wrote.[15]

That admonition seems to satisfy Section 5, Article XIV of the North Carolina Constitution, at least in terms of policy. That section provides, in part:

> It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

The *Credle* decision, as Runkle notes, may be the key to making that policy work. "The next time there's a case coming along involving public lands, this decision will be there for the court to rely upon," notes Runkle.

Such a case could come along as early as 1991. The state is working against a Dec. 31, 1990 deadline, imposed earlier by the legislature, to sort through thousands of claims of bottom land ownership to determine which ones are valid.[16] Only those claims for lands granted during a 22-year period from 1887-1909 (when granting such rights was legal in North Carolina) will be recognized. The Credle claim was turned down because the plaintiff could not prove the state granted such a right during the period. If Credle had produced documentation of his claim, it likely would have been recognized as valid.

The state's Marine Fisheries Division has as many as 10,000 claims it must process to determine which claims might meet certain criteria including claims of grants during the 22-year window of opportunity, and be recognized as valid. But since the *Credle* decision, the prospects for the state affirming a *private* right to a *public* water appear to be headed for stormy weather.

FOOTNOTES

[1] *State ex rel Rohrer v. Credle*, 322 NC 522, 369 SE 2d 825 (1988).

[2] North Carolina has about 2.2 million acres of submerged lands in its estuaries, bays, and sounds.

[3] *Credle, supra*, 322 N.C. at page 532, 369 S.E. 2d at page 831.

[4] See *This Land Is Your Land*, Chapter III, a report by the N.C. Center for Public Policy Research, 1977, pp. 20-26.

[5] In *Matthews v. Bay Head Improvement Assoc.*, 95 NJ 306, 471 A2d 335, cert. denied, 469 US 821, 105 SCt 93, 83 LEd 2d 9 (1984), the New Jersey Supreme Court held that the public trust doctrine gives the public the right to cross private property to reach the beach.

[6] G.S. 113A-134.

[7] The North Carolina Attorney General's office takes the position that the North Carolina law includes the right to cross private property and to include the dry sand beaches above high tide so that people on the beach at high tide would not have to leave but, instead, could remain on the beach between the dunes and the high tide mark. See Joint Brief for the Plaintiff-Appellants and Intervenor Plaintiff-Appellant in *Concerned Citizens of Brunswick County Taxpayers Association, et al v. State of North Carolina ex rel S. Thomas Rhodes v. Holden Beach Enterprises, Inc.*, No. 8813SC1075, now pending in the North Carolina Court

of Appeals.

[8] Chapter 33 of the 1858-59 N.C. Session Laws.

[9] Chapter 119 of the 1887 N.C. Session Laws.

[10] *Credle, supra*, 322 NC at pages 527-28, 369 SE 2d at page 828. For a history of the way Maryland dealt and continues to deal with its oyster and environmental problems, see *Chesapeake Waters Pollution, Public Health, and Public Opinion, 1607-1972*, Capper, Power and Shivers, Tidewater Publishers, 1983.

[11] Defendant Appellant Brief at page 6.

[12] Friend of the Court brief by the Conservation Council of North Carolina, at page 3.

[13] "More About Oysters Than You Wanted To Know," *Maryland Law Review*, Vol. XXX (1970), pp. 198 and 224.

[14] *Ibid.*, page 225.

[15] *Credle, supra*, 322 NC at page 534, 369 SE 2d at 832.

[16] G.S. 113-206(f).

Chapter 4

Article II: The Legislative Branch

THE GENERAL ASSEMBLY is the oldest governmental body in North Carolina. Described in Article II of the state Constitution, the legislature is the electoral forum in which the interests of the state's residents are translated into law.

North Carolina has a bicameral legislature with the General Assembly consisting of a Senate and House of Representatives. Since 1835, the membership of the Senate has been set at 50 and that of the House set at 120. Both bodies are apportioned by population with members of both houses elected biennially from districts containing approximately equal populations. The legislature may divide its biennial sessions into annual segments.

Reflecting the doctrine of "separation of powers," the legislative branch of North Carolina government is equal with, but independent from, both the executive and judiciary. The major role of the General Assembly is the enactment of general and local laws governing the affairs of state. In addition, the legislature provides and allocates the funds necessary for operating the government by enacting tax and appropriation laws, and conducts investigations into such operations of the state as it deems necessary for regulation and funding.

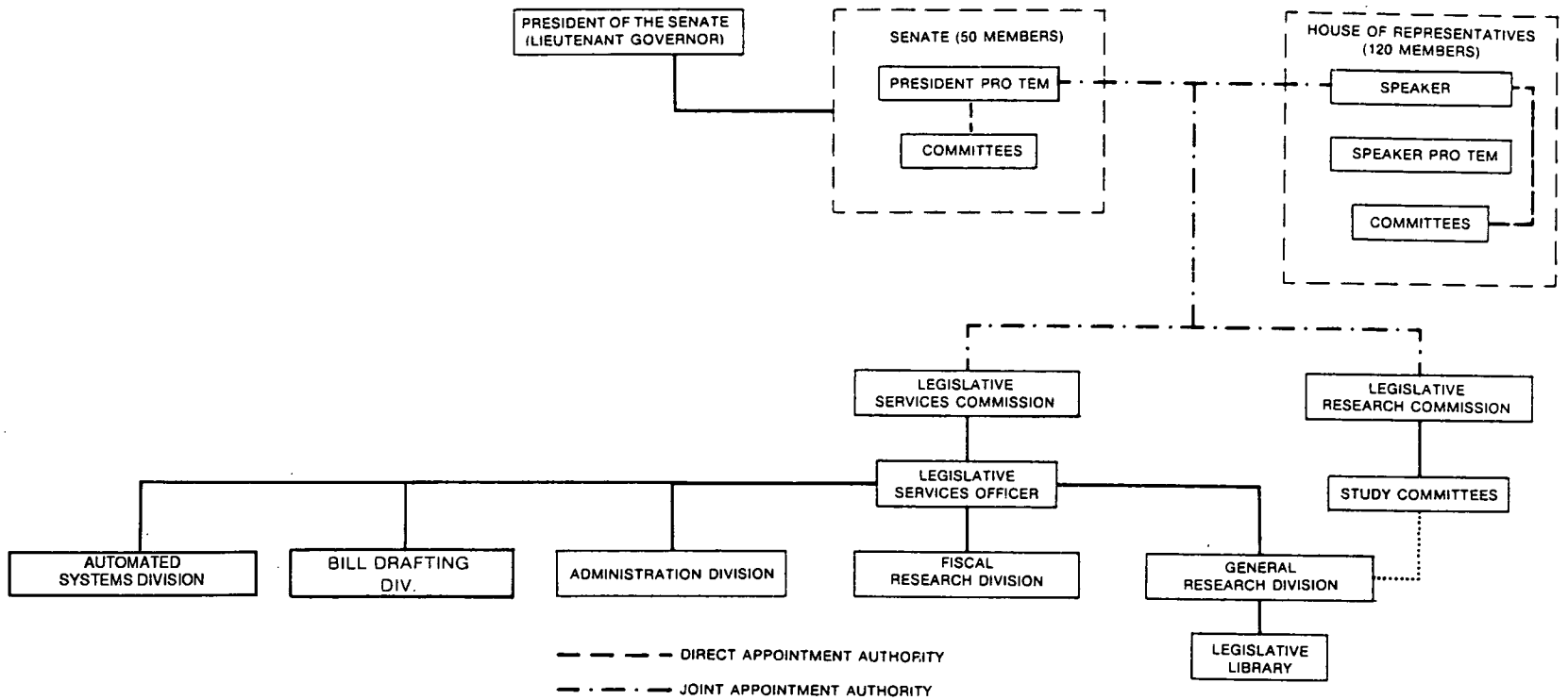
While the enactment of law depends upon votes by individual legislators, much of the actual drafting and research of legislation comes from committees composed of legislative members and their staffs. Committees are organized around subject matter headings and do most of the work on the final version of any bill that is ultimately voted on by the entire body.

Staff services are essential in assisting the members of the General Assembly. The Legislative Services Commission and Legislative Research Commission are two permanent staff bodies that perform various functions for the General Assembly that facilitate the legislative process. In addition, special study commissions can be established to investigate specialized subjects for the General Assembly, and standing committees are authorized to meet during interim periods for complete consideration of matters that confront them.

The following selections discuss the operation and make-up of the legislature in North Carolina.

ORGANIZATIONAL CHART

THE LEGISLATIVE BRANCH



Three Key Trends Shaping the General Assembly Since 1971

by Ran Coble

FOR GENERATIONS of legislators in the 19th and 20th centuries, lawmaking remained much the same as it always had—enduring even after the General Assembly pulled up stakes from its old digs in the 1840 State Capitol and moved down the street to the modernistic Legislative Building in 1963. But fundamental change in the way the legislature goes about its business finally began eight years later in 1971 and 1972. In that two-year period, three key events occurred that changed the face of the legislature in North Carolina and of many other legislatures across the country as well.

The first key event was redistricting. The 1971 session of the legislature was the first session in which redistricting made a real impact in North Carolina. Redistricting transformed the assembly from a rural to a more urban body and eventually changed legislative demographics, attracting a new breed of urban professional to the legislature. The second key event was the release of a national ranking and evaluation of the legislature by the Citizens Conference on State Legislatures in August 1971 that branded North Carolina's General Assembly as the fourth worst legislature in the country. That report eventually led to the addition of staffing for the General Assembly and to the increasing independence of the legislature from information that once came solely from the executive branch. And the third key event was the election in 1972 of the state's first Republican governor in the 20th century. This led to further changes in legislative demographics because it strengthened the Republican party and brought about changes in the state budget process.

Redistricting and The Law of Unintended Consequences

When the U.S. Supreme Court issued its famous "one person, one vote" decisions in 1962 and 1964,[1] it set off waves of redistricting across the country. By 1966, every legislature in the country had reapportioned in line with that principle, which required equal representation of geographic areas based on population. But it was not until much later that redistricting had its greatest effect in North Carolina—during the 1971 session, after the 1970 census was released. That census showed how markedly the state's population had shifted from rural to urban areas. In order to comply with the court decisions, the 1971 redistricting had to reflect that shift.

All of a sudden, there were more legislative seats

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available for cities and fewer for the farmlands. This had an undeniable effect on political elections as well as local referendums and bills in the legislature. For example, after that shift occurred, it was only a matter of time before the urban legislators favoring liquor-by-the-drink legislation were able to form the majority coalition needed to pass such a bill—as it finally did in 1978.[2] With this dramatic shift toward increasing *numbers* of urban legislators came speculation that there would also be a shift in *power*—particularly a question whether the key positions of power, such as the Speakership and the Appropriations Committee chairmanships, would pass to urban legislators.

That didn't happen. Instead, the Law of Unintended Consequences struck. Rather than automatically shifting legislative power to urban areas, redistricting caused increased competition for legislative seats in urban areas, which also meant increased biennial turnover among the city legislators. By contrast, lawmakers from rural areas faced less competition locally, often running unopposed, and thus they were—and to this day still are—able to build up the seniority needed to become chairman of an important legislative committee or become Speaker of the House. Just to illustrate the point, the Center's 1987 biennial rankings of legislative effectiveness show that the top three House members and seven of the top ten Senate members are from rural districts.[3]

Redistricting—particularly the single member districts created in the 1980s—also produced more counties with split delegations, containing both Democrats *and* Republicans. Thus, though Mecklenburg, Forsyth, and Guilford counties saw increases in the total number of legislators they could send to the General Assembly, the split delegations from those counties often couldn't *agree* on many *statewide* issues and policies (and sometimes, incredibly, even on local issues), thereby ceding the power to decide these issues back to rural legislators. It is likely that higher turnover rates in urban districts will continue—and thus power will remain concentrated in legislators from rural areas.

A Report by the Citizens Conference on State Legislatures

Redistricting had shaken the foundations of the legislature, but no sooner had the dust begun to settle than another earthquake hit. This tremor came in the form of a report by the Citizens Conference on State Legislatures in August 1971 declaring that North Carolina had the fourth-worst legislature in the country. The Citizens Conference evaluated and ranked all 50 state legislatures and published its findings in a book called *The Sometime Governments*. With forceful language and exhaustive research, the report brought renewed pressure to reform on most legislatures. North Carolina's legislature ranked 47th in the country, and one of the reasons was its inability to compete with the executive branch. To remedy the state's shortcomings, the report recommended that the legislature be "completely staffed with bill drafters, fiscal specialists and [research] specialists"; that "all committees have permanent, full-time staff as soon as possible"; that an "electric roll-call recorder be installed" to enhance accountability on voting; that the system of rotating leadership where the Speaker of the House was limited to one term be discontinued; and that committee meetings be opened to the public.[4]

Legislators reacted strongly to their low rankings. Members thought they were fairly independent of the executive branch already because North Carolina was the *only* state in the country to deny the governor a veto. At first there was little sentiment for adopting these recommendations. Yet, quietly but surely, over the next few sessions, many of them were implemented.

The recommendation to add staff came first. The legislature had already created the Fiscal Research Division in 1971. The Fiscal Research Division staffs the money committees—the Finance Committees, which decide where the revenue will come from, and the Appropriations Committees, which decide where the money will go. Before Fiscal Research was established, the legislature had relied on the Governor's Budget Office for information about the budget. Following the creation of the Fiscal Research Division, the General Research Division was established to staff the committees dealing with "other-than-money" matters—subjects like education, aging, and transportation. Before, the Institute of Government at UNC-CH had staffed these committees.[5] Next, the Bill Drafting Division was set up, thereby replacing the Attorney General's staff which had previously drafted most bills. Finally, the Automated Systems Division, providing and servicing the legislature's sophisticated computer system, was established.

With new staff came better accountability and new leadership patterns. An electronic voting apparatus was installed in 1975, and Rep. Carl Stewart (D-Gaston) became the first full-two-term Speaker in 1977 and 1979. He was also instrumental in opening up the legislative committee process and passing an Open Meetings Law affecting *all* governmental bodies in North Carolina.

Because the legislature has its own staff, it broke with the past to draft its own budget in 1987. For the

first time, instead of taking the Governor's recommended budget, the General Assembly built its own by beginning with the expenditure figures of executive agencies in the past year (i.e., the certified budget). In this way, the legislature developed its own spending priorities and came up with a new budget that reflected those priorities. The legislature could not have done this in the days before it had its own staff.

Another possible effect of this new staff is a reduction in the number of bills passed. In 1957, *76%* of all bills *introduced* were *passed.* Since 1971, however, the legislature has passed only about 40 to 50 percent of the bills introduced each session.

The Election of a Republican Governor

By far the most significant of the three key trends was the election of James T. Holshouser in 1972 as the state's first Republican Governor since early in the 20th century. Holshouser took office in 1973, and the General Assembly immediately switched from biennial sessions to meeting annually. This shift to annual sessions is consistent with national trends. In 1941, only four state legislatures met annually. Now all but seven do.[6] The presence of a Republican Governor also was a factor in prodding the legislature to hire its own staff, especially to review the state budget. Soon, fundamental changes in the budget process began to take place.

The debate continues as to whether annual sessions were a direct result of electing a Republican Governor. Obviously, the budget was already getting more and more complex, and the federal government was forcing new reponsibilities on the states with Revenue Sharing and Medicaid program administration, just to mention two programs. In addition, the economic instability permeating the nation in late 1973 and 1974, due to the Arab oil crisis, made legislators leery of adopting a two-year budget in 1973 when they did not know what the economic climate in 1974 might be. They decided to meet again in 1974 to review the budget and make necessary revisions. But applying the rule that "If it walks like a duck and quacks like a duck, it's a duck," the fact remains that the state inaugurated a Republican Governor in 1973 and the legislature inaugurated annual sessions the next year in 1974.

The Law of Unintended Consequences applies here, too. When the legislature began meeting more frequently, the demographics of the legislature changed. In 1971, there were 68 lawyers in the legislature. Now there are but 45. There also are more women, more blacks, more Republicans, more retirees, more educators (many of them retired) and more members who describe their occupations as real estate.[7] What's more, legislative turnover rates have stabilized at low levels during the last two sessions. In 1971, the turnover ratio in both the Senate and House was 36 percent. The ratios fluctuated in ensuing years, with highs of 42 percent turnover in the Senate in 1975 and in the House in 1973. However, the turnover ratio for the 1989 General Assembly is down to 10 percent in the Senate and 21 percent in the House. This compares to a 12 percent turnover in the Senate and 21 percent turnover in the House in 1987. There is a trend in favor of incumbants in North Carolina and on the national level.[8]

To counteract the presence of first a Republican Governor in 1973 and later a governor with the power to succeed himself, the legislative leaders began serving multiple terms themselves. Carl Stewart was succeeded by Liston Ramsey (who served four two-year terms as Speaker) in 1981. The first Lieutenant Governor to succeed himself (and serve a second, four-year term as president of the Senate) was Jimmy Green, first elected in 1976 and re-elected in 1980.

Perhaps the most important reactions to the first Republican Governor, however, were the changes in the budget process—forces that are still at work today. The budget now is much more a *legislative* budget than it was in 1969. The budget *proposed* at the start of the session used to be a joint effort—arrived at through a consensus reached by the Governor and the eight to 10 legislators who served on the Advisory Budget Commission. The Governor and Advisory Budget Commission used to submit a budget *together* to the General Assembly, thereby raising questions whether the constitutional power vested in the governor regarding the *preparation* of the budget was being undermined by the involvement of legislators so early in the process. Obviously, it made the budget pass smoothly through the legislature, but the N.C. Supreme Court said that wasn't what the constitutional framers intended.[9] Instead, the Court said the legislature independently should review the budget that was submitted by the governor. In the future, Advisory Budget Commission opinions on what items to propose in the budget would be purely advisory and not the final word. For the first time since 1925 when the Advisory Budget Commission was created, the legislature drafted its own budget in 1987.

In reacting to a Republican Governor, the General Assembly also made two other changes in the budget process—one using an old tool in a new way and the other inventing a new tool. The old tool was

pork barrel money, and the new tool was special provisions in budget bills.[10] Both these tools have been abused in the budget process, but promised reforms by legislative leaders may halt these problems and help restore public confidence in the budget process.

Not to be overlooked in any discussion of legislative changes is the dramatic effect that gubernatorial succession has had. When succession passed the General Assembly in 1977 and was adopted by voters that fall, it affected far more than the Executive Mansion. It meant that the Lieutenant Governor—then James C. Green—could not run effectively for governor, so he sought re-election in 1980, won, and stayed in charge of the Senate. That meant no one moved up, and the committee chairmen stayed about the same. House Speaker Carl Stewart, who already had made history with a second term, tried to buck the odds and ran for Lieutenant Governor, but lost to Green in the Democratic primary. Still, his two-term speakership, and the four-term speakership of Stewart's successor, Liston Ramsey, restricted the production of new leaders in the House. "In effect, what that amendment did was have even greater impact on the legislature than on the executive side," says Thad Beyle, professor of political science at UNC-Chapel Hill. Until January 1989, the leadership had become set, and ambition ladders clogged up. That is until a coalition of Democrats frustrated by the Speaker's autocratic style and House Republicans ousted Ramsey. Rep. Josephus L. Mavretic (D-Edgecombe) became Speaker of the House in the 1989-90 session.

All these changes have come about during a relatively brief period—in just a quarter-century—yet they have transformed the N.C. General Assembly into a modern and more efficient legislative body. In terms of professional staffing, in the use of sophisticated equipment, and in terms of openness, the legislature has made great strides —and has become more independent of and more an equal to the executive branch.

FOOTNOTES

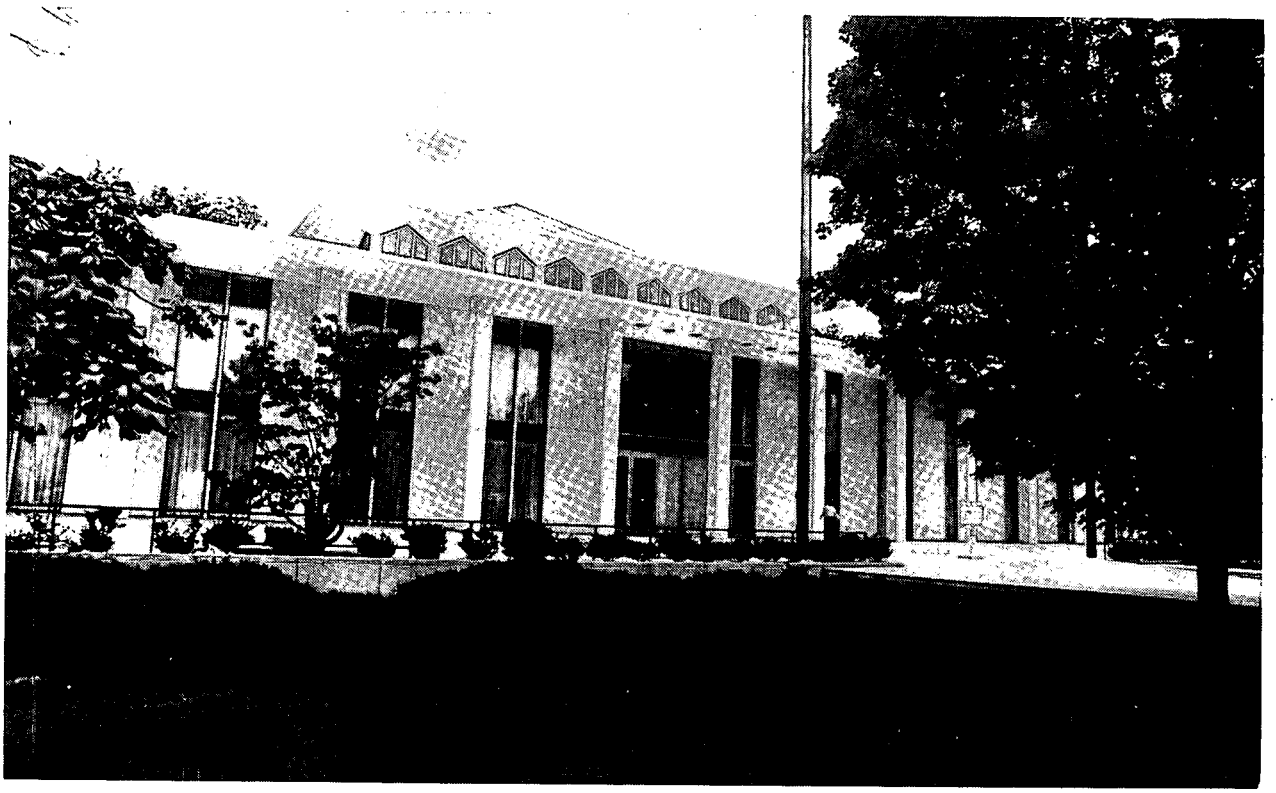
[1] *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964). In 1960, the urban/rural population split was 39.5 percent urban, 60.5 percent rural; in 1970, its was 45.5 urban, 54.5 rural; in 1980 it was 48 percent urban, 52 percent rural.

[2] Chapter 1138 of the 1977 Session Laws (2nd Session, 1978). The 1978 legislature passed such legislation despite a 1973 statewide referendum vote against liquor-by-the-drink.

[3] *Article II: A Guide to the 1989-90 N.C. Legislature*, N.C. Center for Public Policy Research, May 1989, pp. 214-223.

[4] John Burns, *The Sometime Governments*, Citizens Conference on State Legislatures, (Bantam Books: New York, N.Y.) 1971, pp. 274-276.

[5] Milton Heath of the Institute of Government reports that the



IOG began to provide staff services to the General Assembly in 1967 and 1969, mostly on local government issues. The IOG's workload at the legislature grew through the 1970s and began to taper off during the 1981 and 1983 sessions.

[6] "The State Legislatures," by William T. Pound, *The Book of the States, 1988-89 Edition,* The Council of State Governments, Lexington, Ky., 1988, pp. 76-144.

[7] "Legislative Demographics: Where Have All the Lawyers Gone?" by Paul T. O'Connor, *North Carolina Insight,* Vol. 9, No. 2, September 1986, p. 44, and 1989-90 *Article II,* pp. 236-237.

[8] Lucinda Simon, "The Mighty Incumbent," *State Legislatures,* July 1986, pp. 31-34.

[9] *Wallace v. Bone,* 304 N.C. 591, 286 S.E. 2d 79 (1982), N.C. Supreme Court Advisory Opinion (Feb. 16, 1982), and letter from Attorney General to legislature (Feb. 19, 1982).

[10] For more on this point, see Ran Coble, *Special Provisions in Budget Bills, A Pandora's Box for N.C. Citizens,* June 1986, and March 4, 1987 follow-up report, N.C. Center for Public Policy Research. See also "Reforming Pork Barrel, Special Provisions and the Appropriations Process: There's Less Than Meets the Eye," by Paul T. O'Connor, *North Carolina Insight,* Vol. 9, No. 3, March 1987, p. 96.

Legislative Demographics: Where Have All the Lawyers Gone?

by Paul T. O'Connor

This article examines how the membership of the General Assembly has changed in the past 18 years.

IF A TIME TRAVELER from 1971 could have visited the 1989 session of the General Assembly, he would have been amazed by the striking changes that have occurred in the racial, sexual, political, and occupational makeup of the legislature. And the record (see Tables 1 and 2) confirms that there has been something of an interstellar explosion in legislative demographics in the past 18 years.

Over the course of the last nine assemblies, sizeable delegations of blacks and women have joined the assembly while the number of lawyer-legislators has dropped dramatically — from 40 percent of the total membership in 1971 to only 26 percent in 1989. In the same period, the number of Republicans has grown dramatically, and so has the number of legislators who are elderly and retired.

Does the trend tell us that legislatures 12 years in the future will have more contributions from women and blacks, but less legal expertise? Or that the membership will continue to age, and that its members will generally be wealthier because they are the only ones who can afford to run? We won't know, of course, until the year 2001, and by that time, no doubt, new trends will be identifiable.

But we do know what the past has held. In 1971, lawyers held 22 of the Senate's 50 seats and 46 of the House's 120 seats. By 1981, the total number of *lawyer-legislators* had dropped 47 percent, from 68 to only 36 in the two chambers. From 1981 to 1989, the number moved back up to 45 — 20 in the Senate, 25 in the House — but there still are 34 percent fewer lawyers than there had been in 1971.

This precipitous drop in the number of lawyer-legislators concerns the attorneys who continue to serve. "The N.C. Bar Association is concerned about the drop and is encouraging young lawyers to run for public office," says Sen. R. C. Soles (D-Columbus), a lawyer and chairman of the Senate Judiciary II Committee. "We need a good balance of all professions [in the legislature], but having fewer and fewer lawyers is a problem because we [lawyers] do see things from a different perspective. We are trained to deal with the

Paul T. O'Connor is the columnist for the N.C. Association of Afternoon Newspapers. This article was based on research prepared by Kim Kebschull.

technical issues that come before the General Assembly."

Sen. Dennis Winner (D-Buncombe), a former Superior Court judge, adds, "You need at least one lawyer on each committee. The legislative staff [which employs 20 lawyers] is good, but they don't have much experience."

Lawyer-legislators are unanimous in their appraisals of the reason for the drop in their numbers: money.[1] Lawyers say they can't afford to serve in the legislature anymore. "I was talking to one lawyer who left the General Assembly and he said — and I don't think this is a figure that is out of line for most lawyer-legislators — that he was losing $25,000 a year to serve in the legislature," Winner explains.

Rep. Paul Pulley (D-Durham), a former chairman of the House Judiciary IV Committee who retired from the statehouse after four terms, says, "Your clients expect your service. You see clients you used to serve on the street and they say, 'I would have called you, but I thought you were in Raleigh.'"

J. Allen Adams, a Raleigh lawyer and lobbyist and a former five-term representative, says he retired from the legislature because he couldn't ask his law partners to subsidize his service any longer. He says most large law firms have been discouraging their law partners from serving in the legislature. "The main reason for lawyers not being in this body is the urbanization of law firms," Adams contends. These firms represent many business clients and they are concerned that a lawyer in their firm could "offend the interests of one of those clients" by the actions the legislator took in the assembly. Adams still is in the legislature frequently, but this time he is a lobbyist for a number of major corporate and institutional clients.

Former Rep. Dwight Quinn (D-Cabarrus), a legislative veteran, scoffs at the lawyers' laments. He says the voters, not the lawyers, are responsible for the drop in the number of lawyer-legislators. "It's not that lawyers are not running, it's the mood of the people out there. The courts have handed down positions the mass of people haven't agreed with .... The people think the lawyers come to the General Assembly just to look after the legal profession," charges Quinn.

The verdict is still out on whether Adams or Quinn has identified the real trend. While the number of lawyers in the legislature is down markedly from 1971, that number has increased in the past four elections.

Other Occupational Shifts

Concurrent with the drop in lawyer-legislators has been a rise in the number of legislators describing themselves as retired or in the field of education. "You didn't see this 30 years ago because their retirement systems then weren't adequate," Quinn says of educators and retired people. "Now you can retire at a reasonable age and serve in the General Assembly as part of the enjoyment of retirement."

The number of legislators listing themselves as retired has increased from 11 in 1971 to 28 in 1989, although the number actually retired appears to be higher. Many retired legislators still list their pre-retirement professions. For example, the majority of the legislators who call themselves educators have actually retired from the occupation.

At least one retired legislator is concerned that people in his age bracket hold so many legislative seats. Rep. Vernon James (D-Pasquotank) is 79. He says, "I think it is unfortunate that our legislature is being made up of retired people," and he points out that the economics of serving in the legislature discourage service by younger people unless they are rich. The result is an aging of the assembly. "You look down the list [of candidates for the assembly] and you will see very few people under 50 who are coming to the legislature," James says. "I don't think we have a good cross-section."

In 1971, there were seven legislators who listed education as their occupation. The election of 1976 brought in a peak load of 21 educator-legislators. Now there are 10, just above the 1971 number. Of those, only Rep. Dave Diamont (D-Surry), a history and civics teacher, actually makes his living teaching in public schools. Most of the rest are retired teachers and administrators. True, they can relate to the impact a new law may have on classroom operations, but only Diamont actually experiences it.

Another trend in legislative demographics is the emergence of the lawmaker who makes his living in real estate. Since 1971, the number of legislators listing real estate as their occupation has jumped from seven to 23, more than three times as many. "It's one of those endeavors where you can be involved in public affairs and maintain some semblance of a livelihood," says Rep. Joe Hege (R-Davidson), a Lexington broker. On the other hand, the number of farmers in the assembly has decreased from 21 in 1971 to 13 in 1989. The decrease is not surprising because of the rapid urbanization of the state's population.

Number of Blacks Increasing, But Women at a Plateau

Much more obvious changes in the General Assembly have come in the areas of gender and race. Women made their big inroads into the legislature in the mid-

Table 1: Trends in Legislators' Occupations

Occupation	Year and Number of Members per Category									
Senate	**1971**	**1973**	**1975**	**1977**	**1979**	**1981**	**1983**	**1985**	**1987**	**1989**
Banking	1	1	2	2	2	3	1	2	1	1
Business & sales	17	13	14	18	13	20	19	21	19	15
Construction and contracting	1	0	0	0	2	3	3	2	1	4
Education	1	1	3	5	4	4	4	3	3	3
Farming	4	3	2	4	3	5	6	6	6	5
Health care	1	1	1	1	1	0	0	0	0	0
Homemaker	0	1	1	0	2	0	4	2	0	1
Insurance	2	5	5	5	6	7	6	4	4	2
Law	22	19	15	14	13	10	14	17	21	20
Manufacturing	2	3	4	2	3	3	3	2	0	0
Minister	1	1	1	1	1	0	0	0	0	0
Real estate	1	2	5	5	7	12	8	8	6	6
Retired	4	2	2	0	3	4	6	6	4	6
House of Representatives										
Banking	3	2	3	3	2	3	3	3	0	0
Business & sales	49	28	35	41	37	43	45	45	43	37
Construction and contracting	2	0	2	2	2	3	1	2	2	3
Education	6	11	16	16	10	11	10	15	12	7
Farming	17	14	20	22	22	18	24	16	12	8
Health care	0	2	3	3	6	3	5	4	4	4
Homemaker	1	2	3	4	4	4	4	3	4	4
Insurance	7	7	12	11	13	10	6	10	10	8
Law	46	37	36	26	25	26	26	24	23	25
Manufacturing	3	3	1	0	4	2	2	2	0	0
Minister	3	3	1	1	0	1	3	7	4	4
Real estate	6	5	9	7	10	15	19	20	15	17
Retired	7	4	5	8	6	15	12	13	17	22

(Note: Some legislators list more than one occupation; thus, the total number of occupations may be higher than the actual number of members.)

Table 2: Trends in Legislative Demographics

Category	Year and Number of Members per Category									
	1971	1973	1975	1977	1979	1981	1983	1985	1987	1989
Blacks										
Senate	0	0	2	2	1	1	1	3	3	4
House	2	3	4	4	3	3	11	13	13	13
Total number	2	3	6	6	4	4	12	16	16	17
Total percent	1%	2%	4%	4%	3%	3%	7%	9%	9%	10%
Women										
Senate	0	1	2	4	5	3	5	4	4	4
House	2	8	13	19	17	19	19	16	20	21
Total number	2	9	15	23	22	22	24	20	24	25
Total percent	1%	5%	9%	14%	13%	13%	14%	12%	14%	15%
Indians										
Senate	0	0	0	0	0	0	0	0	0	0
House	0	1	1	1	1	1	0	0	0	0
Total number	0	1	1	1	1	1	0	0	0	0
Total percent	0%	1%	1%	1%	1%	1%	0%	0%	0%	0%
Democrats										
Senate	43	35	49	46	45	40	44	38	40	37
House	96	85	111	114	105	96	102	82	84	74
Total number	139	120	160	160	150	136	146	120	124	111
Total percent	82%	71%	94%	94%	88%	80%	86%	71%	73%	65%
Republicans										
Senate	7	15	1	4	5	10	6	12	10	13
House	24	35	9	6	15	24	18	38	36	46
Total number	31	50	10	10	20	34	24	50	46	59
Total percent	18%	29%	6%	6%	12%	20%	14%	29%	27%	35%
Turnover Ratios										
Senate (New Members Elected)										
Number	18	15	21	11	7	8	9	18	6	5
Percent	36%	30%	42%	22%	14%	16%	18%	36%	12%	10%

(Note: If a Senator had served in the House during the immediate past session, he or she is not considered a new member. If a member had served in either chamber during sessions prior to the immediate past session, however, he or she is considered a new member.)

House (New Members Elected)										
Number	43	50	49	24	30	33	31	39	25	25
Percent	36%	42%	41%	20%	25%	28%	26%	33%	21%	21%

**This research was drawn largely from editions of the* North Carolina Manual, *and does not reflect members who first reached the General Assembly by appointment to legislative vacancies caused by death or resignations.*

70s, during the height of the Equal Rights Amendment drive. The number of black legislators has increased markedly after the redistricting of the 1981 and 1983 assemblies.

In 1971, there were two women in the House, while the Senate was all-male. But in the next three elections, women took nine, 15, and 23 legislative seats, respectively. Since that time, female representation in the assembly has remained close to that level, reaching a high of 25 in 1989.

"I really can't explain it," Sen. Helen Marvin (D-Gaston) says of the leveling off of female representation since 1977. "I've wondered about it myself. It could be that the success of the women's movement in efforts that affect women and children . . . has somewhat depressed the motivation of some women to run for public office. Or it could be that the movement for ERA began to stall in the mid-70s. When ERA finally failed, a lot of women lost their momentum, not their interest."

Marvin says future growth in the female delegation might come from the Republican side. There are now nine Republican women in the House, and both Marvin and Sen. Betsy Cochrane (R-Davie), say the GOP has, in some ways, been more open to female candidates than has the Democratic Party. "Republicans in many areas of the country did not have the entrenched good old boys against which women were reluctant to run," Marvin says. With the GOP in North Carolina beginning to grow, women have more opportunities to run and win, she says.

Blacks, on the other hand, never held more than six legislative seats until the 1981 assembly engaged in a marathon redistricting battle. Forced by the courts and the U.S. Justice Department to end the dilution of black voting strength, and, in some cases to carve out predominantly black districts, the 1981 assembly set the stage for 1982 elections in which 12 blacks won seats. By 1989, 17 blacks were in the legislature — four in the Senate, 13 in the House.

Rep. H. M. "Mickey" Michaux (D-Durham), a black, says redistricting made the big difference, and adds that black leaders in the mid-70s were also partly to blame for the paucity of black legislators at that time. Much black political effort went into the election of a Democratic president in 1976 and towards the attainment of goals like affirmative action through the executive branch of government, he says.

Michaux, the leader of a legislative movement to do away with primary runoffs,[2] says even the attainment of that goal will not significantly boost black numbers in the assembly. Any increase of blacks beyond the current plateau of 17 seats, or 10 percent of total representation, depends on three factors. "We need greater black voter participation, more acceptance of black candidates by whites, and the diminution of race as an issue," Michaux says.

A Partisan Roller-Coaster

The partisan make-up of the General Assembly remains on a roller-coaster. Generally, Republicans gain seats in presidential election years, and they lose them two years later. If the Jimmy Carter election of 1976 is put aside, that pattern holds true for every election since 1970. Republicans had a nadir of 10 legislative victories in 1974 (when 40 GOP seats were lost in the post-Watergate election) a zenith of 59 seats in 1989. In recent years, the Republican lows have been 20 and 24 seats in the non-presidential election years of 1978 and 1982.

As legislators look ahead 12 years, they wonder about the makeup of future General Assemblies. Will there be continued change, through a greater diversity of occupations, gender, race, and political parties? Or will the elements of economics and aging dominate to the extent that the General Assembly of 2001 might be comprised mostly, or even solely, of the wealthy and the elderly?

FOOTNOTES

[1]For more on this point, see "Survey: Lawmakers Wealthier, Whiter Than Constituents," by Tim Funk, *The Charlotte Observer*, March 2, 1985.

[2]See "The Runoff Primary — A Path to Victory," *North Carolina Insight*, Vol. 6, No. 1, June 1983, p. 18.

So You Think It's Easy To Find Out How Legislators Vote, Eh?

by Paul T. O'Connor

This article focuses on the difficulty of finding out how legislators voted on an issue, and the movement to use the legislature's new computer system for storage and retrieval of such votes.

IN 1987, STAN WILLIAMS' BOSS gave him a research project that should have been fairly simple for the veteran lobbyist. Williams was told to find out how several potential candidates for lieutenant governor had voted on the series of environmental measures known as the Hardison amendments.[1]

Williams started with a number of research advantages that ordinary citizens wouldn't have: His boss, state Sen. Harold Hardison (D-Lenoir), then a Democratic candidate for lieutenant governor, was the sponsor of the amendments and could provide him with some details to get started. Also, in his years of lobbying, Williams had become familiar with the legislative library's filing system. Nonetheless, it took him nearly six hours to finish this seemingly simple project—and the process points up the need for better access to legislative votes.

"It was excruciatingly difficult," says Williams. "The legislative library did not have a complete system for collecting that information."

The simple truth is that the General Assembly does not make it easy to learn how its members voted on bills. In this day of advanced computers, increasing public acceptance of and familiarity with computer terminals, and the expenditure of hundreds of thousands of dollars by the legislature to equip itself with state-of-the-art computer equipment in 1986, you still have to look up a vote in a dusty notebook. The information is public, most of the time at least, but it is woven throughout a complicated system of notebooks and journals.

Experienced researchers, on someone's payroll, are merely delayed and inconvenienced by the system. But the public would be baffled and frustrated if they wished to find out, for instance, how then-state Sen. R. Gregg Cherry (D-Gaston) voted on the "Horn Tootin' Bill" establishing the North Carolina Symphony in 1943, two years before Cherry would become Governor.[2]

The simplest research project, says Vivian Halperen, legislative librarian, is one that involves a

Paul T. O'Connor is the columnist for the N.C. Association of Afternoon Newspapers.

specific bill. For example, take the phosphate ban of 1987. A novice researcher looking for how legislators voted on that bill would have to go through this process:

First step: Go to a legislative bill status computer terminal, available in the two legislative libraries or in the printed bills office, and type "phosphate ban" on the screen. Note the ban's bill number when it appears on the screen.

Second step: Look for that bill number in the "vote book," which reposes in the stacks of the library. That loose-leaf binder holds the computer printout sheets of House and Senate votes, if they were recorded votes. Most are, but not all. Some are voice votes, which means there won't be a printout of individual votes. If it was a recorded vote, and if there was only one key vote on the bill, your job is finished. Just note how your legislator voted on the bill, and the job is done. Of course, what you've found so far won't explain what the vote was all about. It's not unusual to have a dozen or more recorded votes involving a bill, with motions to table or to reconsider or to amend. And each of *those* parliamentary maneuvers may require an explanation that won't be found even in the vote records. Understanding that requires knowledge of parliamentary procedure and legislative strategy. And there may be separate recorded votes on second and third readings for each bill.

Thus, there's usually much more to the job. For instance, for important amendments or motions, you'll need to do more research.

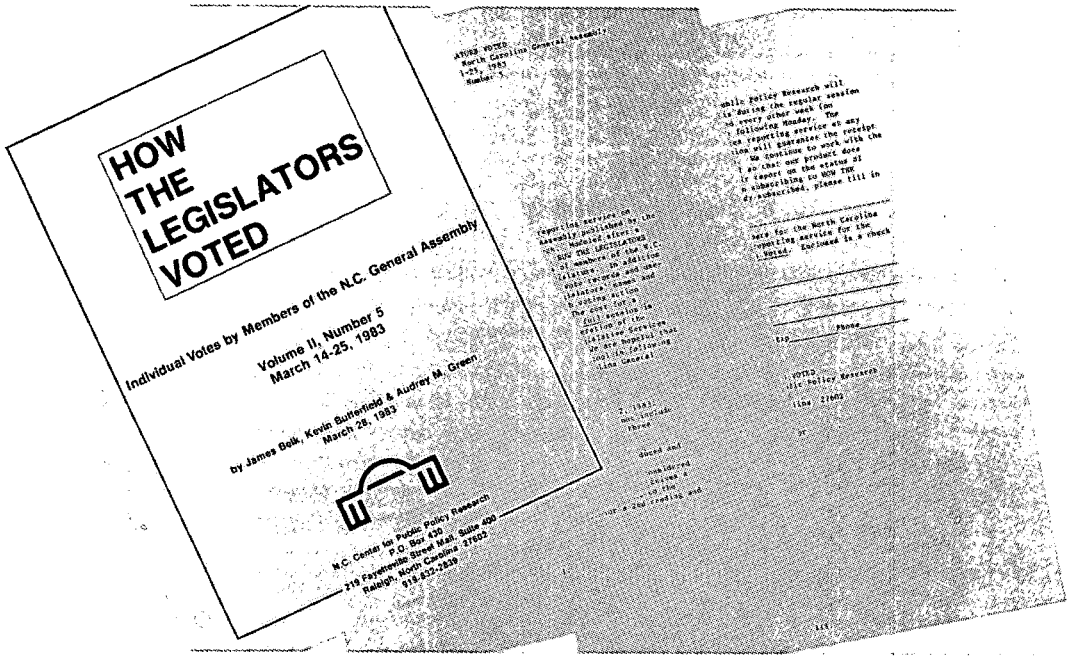
Third step: Go to the "bill book," another loose-leaf book in the stacks, turn to the phosphate ban bill, read all the offered amendments (listed separately, of course, but all affecting different parts of the original bill), and select those which are pertinent to the research project. Jot down the amendment number, because you'll need it for each vote.

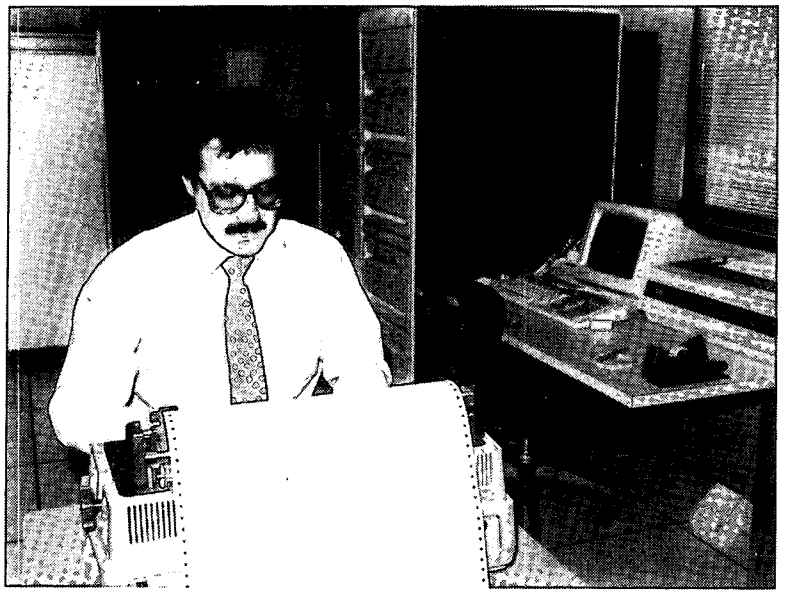
Fourth step: For each amendment, return to the "vote book" and note how the legislator voted on each. You might also check to see if the votes on amendments remain consistent with the vote on final passage. And for each motion, there is a key letter and number atop each voting sheet in the "vote book." Take that number to the rule book of the appropriate chamber (House and Senate rules differ) for an explanation of the kind of motion and what impact it would have.

That's what Mrs. Halperen calls an easy research project. "If you came in with that request, it would be so straightforward that we would be stunned," she says. The legislative librarians are not often stunned.

The Hardison amendments research was only slightly more complicated. A researcher would first have to know when they were adopted and when they were amended. To find out, a researcher would turn to the N.C. General Statutes involved. This assumes that the researcher already knows the specific statutory

From 1981 to 1984, the N.C. Center for Public Policy Research published How the Legislators Voted, *pictured below. The* Daily Bulletin, *from the UNC-CH Institute of Government, does not report individual votes.*





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Peter Capriglione, Systems Network Manager at the General Assembly, works in computer room where mainframes operate.

citations of the Hardison amendments, since they were adopted and amended in several sessions during the period from 1973 to 1979. At the end of each statute, dates and numbers of ratified chapters in the Session Laws are listed in parentheses for each legislative session in which the statute was changed. The researcher then would go to other volumes, called the Session Laws, printed following each long and short session of the General Assembly. An index will lead the researcher to the chapter(s) of the Session Laws on the Hardison amendment from that session. That chapter would contain the appropriate bill, and its original bill number. The researcher would note that bill number and—BINGO—return to the first step, noted above, to begin researching the vote.

Confused? If you're not, you've done this before. If you are, you're like almost everyone else, and that's the point. It's extremely difficult to find out how legislators voted, even though all votes are on public record.

And it would get even worse if you were trying to research a category of votes, such as environmental or business issues, for example, or if you were trying to research votes on a bill that was defeated. Those, of course, don't show up in the General Statutes or in the Session Laws, since they weren't passed.

Some people, like former Speaker of the House Liston Ramsey (D-Madison), contend that it's not all that difficult. "All the votes are in the library," he maintains.

That's another problem. Records of legislative votes are in the library and in the principal clerk's office of both the House and the Senate. But that's it. They're nowhere else. Those who want to research legislative voting in North Carolina either must come to Raleigh, or call the library on the telephone and ask the librarians to do some of the research. The library has a small but extremely helpful research staff that tries to help all callers with a research question, but during legislative sessions, other business comes first.

There is one much easier way to research *some* votes—by referring to the journals of the House and Senate. For *some* bills, these journals report how each legislator voted, but not for all bills. For bills to be recorded in the House or Senate journal, a call for the "ayes and the noes" must be sustained by one-fifth of the members of that chamber. Sen. Laurence Cobb (R-Mecklenburg), the Senate minority leader, has for years led efforts to get more votes printed in the Senate Journal. But with fewer than 10 Republican senators to back him, he's had only limited success.

Why does the General Assembly make it so difficult for the public to learn how it votes? Says Cobb, "I guess a lot of people don't want their votes recorded." Adds Democratic Rep. Dennis Wicker of Lee County, "I'm sure there are a lot of members who don't want the public to know how they voted."

If the General Assembly wanted its votes to be readily accessible, it would be a relatively easy task to accomplish. It might take some money, however. The Legislative Services Commission is looking into possible replacements for the 14-year-old electronic voting systems used in the House and Senate—which themselves were a great improvement in making votes public and available. Glenn Newkirk, director of the assembly's computer operations, says the computer hardware exists to tie a new electronic voting system into the assembly's computers. With such a system, it would be possible not only to quickly look up an individual legislator's votes, but also to make sophisticated computer analyses of voting trends.

That's where Newkirk speaks cautiously. The legislature has six computers—two which can handle up to 32 million bytes each (a byte is a unit of computer information) and four which can handle up to 5 million bytes each. That's ample memory capacity for current demands, Newkirk says. But considering the retrieval demands that would be put on a system that also stores individual legislative votes, Newkirk hedges.

"It's probably true" that the system is large enough, Newkirk says in an interview. "The reason I wouldn't say yes is because that's a lot of information and I can't answer the question until someone tells me how they are going to retrieve it. If all I had to do was store it, I'd say yes." The software to drive such a system would be expensive, he says. "We're talking multi-hundreds of thousands. It has to be really good software; it can't be simple," says Newkirk. But he adds, "It could be done. It would be purely a matter of cost."

Some other states already have begun making legislative votes available via computers. According to the National Conference of State Legislatures, Alabama provides legislative votes in a data base that is open to the public. And Iowa has the journals of its House and Senate on line. The public in Iowa thus can gain computer access to many of the state's legislative votes.

In 1984, the Kansas legislature opened up public access to its computerized information system to keep tabs on bills. Anyone with a personal computer and a $100 access fee could hook up with the information system, which offered data mostly on the status of pending legislation. But the N.C. General Assembly has been reluctant to allow such access at any price. For instance, the Capital Press Corps has asked that a bill status information terminal be added to the Press Room on the first floor of the Legislative Building, but so far the Legislative Services Commission has not acted on that request. On Feb. 19, 1988, however, the commission's Subcommittee on Legislative Information Systems authorized another bill status terminal to be located on the first floor of the Legislative Office Building for the use of members, the public, and the press.

Such bill status information is helpful. And reporters, legislators, lobbyists and others have relied upon the *Daily Bulletin*, published each legislative day by the UNC-Chapel Hill Institute of Government, as a way to help keep track of the status of bills. But the *Daily Bulletin* does not offer any information on voting records.

Cost is the factor former Speaker Ramsey mentions when the subject of legislative vote records comes up. "What's it going to cost?" he asks when questioned whether he'd support such a system. "I'm told it would cost a considerable amount of money." Besides, he says, it's not the legislature's job to report votes. That responsibility belongs to the press. "It would be worth it for you people in the press to get in there [the library] and do your jobs," says Ramsey. "All they have to do is go into the library and publish."

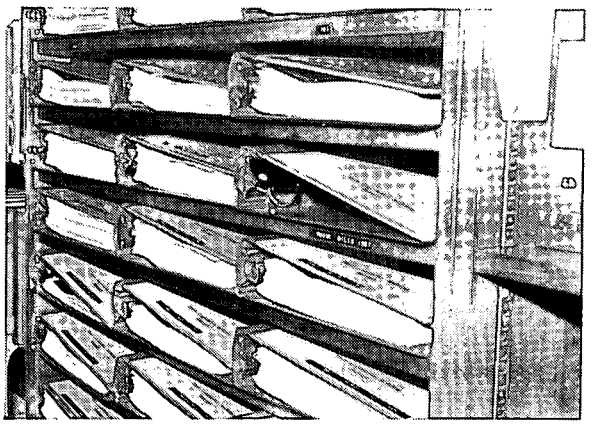
But it is much more involved than that. A mere listing of votes, such as Ramsey suggested, is virtually meaningless. Those votes must be accompanied by an explanation of what the votes on motions and amendments mean. That kind of information can only be gathered by someone covering every moment of every legislative session—at least one reporter in each chamber, and even that may not be enough to keep track of the intent and meaning of each motion, amendment, or parliamentary maneuver with a vote.

Ramsey notes that the N.C. Center for Public Policy Research once reported all legislative votes. For part of 1981 and all of 1982, 1983, and 1984, the Center recorded and published the votes of all 170 legislators, but the project was halted after the 1984 session because of its expense and the lack of paying subscribers to the service.[3]

Center Executive Director Ran Coble says the cost of staffing the Center's vote project in 1983 alone ran to $45,932, far more than the nonprofit Center was able to raise in subscription fees. The service, which published the results of more than 4,000 recorded votes from 1981-1984, met with widespread editorial praise around the state. Since the service was discontinued after the 1984 session, many newspapers have joined the Center in encouraging the assembly to pick up the program as a legislative service. "The N.C. Center venture in publishing voting records proved to the state that such a record is feasible to compile and to issue in understandable form," said *The Raleigh Times*. "The records were usable enough that news media, lobbyists, corporations, associations, parties, candidates, and individual citizens all made substantial use of them."[4]

Said *The Durham Sun*, "The Legislature can, and should, rectify the situation. With a minimum of additional effort, details of votes can be included in the legislative computer tallies already available."[5] And *The Fayetteville Observer* said, "If the [legislative]

Bill books in legislative library hold data on ratified legislation. Another set of books holds recorded vote data.



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leadership is interested in the free flow of information that permits North Carolina citizens to make informed judgments at the voting booth, it should seriously consider providing this information [on voting records] from now on."[6]

The Center and its Board of Directors asked state Sen. Robert B. Jordan, then a candidate for lieutenant governor, in 1984 to consider pushing for a recorded vote service beginning in the 1985 session. "Without the Center's vote reporting service, there is no way the average citizen can find out how a legislator voted on a particular bill," pointed out N.C. Center Chairman Thad L. Beyle and Coble.[7] Jordan responded that his staff would discuss the subject with legislative staff members and added, "I intend to give the proposal my full consideration."[8]

Following another exchange of letters urging adoption of a vote reporting service, Jordan in 1985 said a decision on the legislature's publishing its own votes "needs to be deferred until computer capabilities in the General Assembly are fully operational. Once our computer system is in place, I will talk further with Speaker Ramsey."[9]

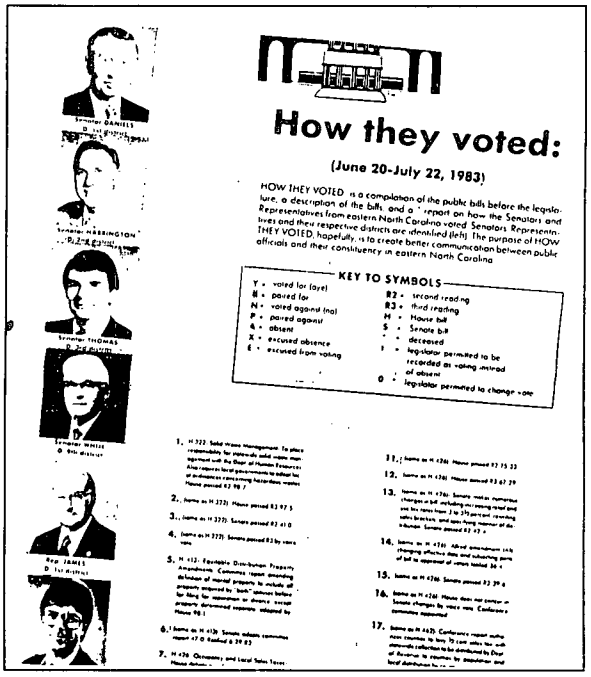
Now that the computer system is in place, Jordan says the legislature should begin publishing the votes. "I would support every vote being published," Jordan says. "I think it would be worth the $45,000." Legislative leaders are warming up to the idea as well. Sen. Henson Barnes (D-Wayne), Pro Tempore in the Senate in 1989, puts it blithely. "[I] Don't mind a bit in the world," he says when asked if the legislature should upgrade its computer system to record and publish all votes.

But not all legislative leaders are willing to go with the service. Some have been concerned in the past that the legislature's computer system's security might be breached, despite the existence of devices that protect computers. And there are real concerns about cost.

"If someone wants to do it [record and publish the votes], they can do it. The Department of Administration, or whoever is in the publishing business, can do it if they're interested," Ramsey says—but only if that agency "took the money out of their own budget."

Sometimes the legislature is willing to spend money in the name of getting more information to the public, and sometimes it's not. For instance, in 1987, the legislative leadership decided to create a legislative press office to promote the legislature's actions. The office has an annual payroll of $52,986 and is responsible primarily for releasing statements about the assembly's accomplishments. Margaret Webb, the legislative press officer, says she has no plans to publish legislative votes.

Traditionally, North Carolina has been a model for other states in its commitment to open records and open meetings. Yet now that the N.C. General Assembly has entered the Computer Age, it has not taken full advantage of using these sophisticated electronic devices to make the state's legislative branch even more accessible to its citizens—and making its recorded votes available for the asking.


How they voted:

(June 20-July 22, 1983)

HOW THEY VOTED is a compilation of the public bills before the legislature, a description of the bills, and a report on how the Senators and Representatives from eastern North Carolina voted. Senators Representing THEY VOTED hopefully, is to create better communication between public officials and their constituency in eastern North Carolina.

KEY TO SYMBOLS

Y - voted for (aye)
N - voted for
N - voted against (no)
P - paired against
A - absent
X - excused absence
E - excused from voting

R2 - second reading
R3 - third reading
H - House bill
S - Senate bill
* - deceased
1 - legislator permitted to be recorded as voting instead of absent
0 - legislator permitted to change vote

The Washington Daily News *regularly reprinted portions of* How The Legislators Voted *on local legislators' votes.*

FOOTNOTES

[1] "The Hardison Amendments: Time for a Reappraisal?" by Jack Betts, *North Carolina Insight*, Vol. 10, No. 2-3, March 1988, p. 107.

[2] G.S. 140-6 (Chapter 755 of the 1943 Session Laws). Senator Cherry's vote is unknown because the Senate vote on final passage of the bill was not recorded.

[3] *How the Legislators Voted*, N.C. Center for Public Policy Research, (three volumes, 1981-1984).

[4] "Keep tabs on votes," *The Raleigh Times*, May 11, 1985, Editorial Page.

[5] "Voting records helpful," *The Durham Sun*, May 3, 1985,, Editorial Page.

[6] "How Did They Vote?," *The Fayetteville Observer*, May 3, 1985, Editorial Page.

[7] Letter from Thad Beyle and Ran Coble to Sen. Robert B. Jordan III, Oct. 29, 1984, p. 2.

[8] Letter from Robert B. Jordan III, Lieutenant Governor-Elect, to the N.C. Center for Public Policy Research Board of Directors, Dec. 18, 1984.

[9] Letter from Robert B. Jordan III, Lieutenant Governor, to Ran Coble, Executive Director, N.C. Center for Public Policy Research, Feb. 22, 1985.

New Faces in Those Rated Most Influential Lobbyists

by Jack Betts

PLANNING FOR A LUCRATIVE CAREER as a lobbyist? No problem—just be born male, get a law degree, get elected to the N.C. General Assembly, and—if you can swing it—become Governor of North Carolina. That will almost guarantee you a lofty place in the N.C. Center for Public Policy Research's rankings of the most influential lobbyists.

Lawyers and former legislators continue to rank at or near the top in the Center's fourth biennial lobbyist effectiveness rankings, but public-interest lobbyists* and women are moving up on the list as well.

Ran Coble, the Center's executive director, and himself a former legislative staff member and former legislative liaison for the N.C. Department of Human Resources, says, "Historically, lobbyists for businesses, state agencies, and associations have done well, but what's new in the rankings is that public interest lobbyists and women lobbyists are making their first real appearances near the top."

The Center's rankings are based on surveys of all 170 legislators, registered lobbyists in the 1987 session, and capital news correspondents. The latest rankings show that the top four lobbyists are both former legislators *and* lawyers, and that 11 of the top 25 lobbyists are former legislators or legislative officers. (One of the 11 is former Gov. James B. Hunt Jr., who as Lieutenant Governor was President of the Senate from 1973-1977.) And 13 of the top 25 lobbyists are lawyers.

Some familiar names head the list of top lobbyists. Former state Sen. Zebulon D. Alley, a close ally of House Speaker Liston B. Ramsey, moved into the top spot in 1988, up from fourth in 1986. Alley displaced former top lobbyist Samuel H. Johnson, who ranks second this year and has ranked first or second every year the rankings have been published. In third place is J. Allen Adams, a former five-term House member who also placed third in 1986. Fourth was John R. Jordan Jr., another former legislator, who placed second in 1986 and first in 1982 and 1984.

Center Staffer Lori Ann Harris, who did the research on which the rankings are based, says, "It's no coincidence that lawyers and legislators make good lobbyists. It helps to be a lawyer, because a lawyer is more likely to understand how to draft a bill and what its implications will be. Former legislators naturally have more experience in the legislative process, and current legislators are more apt to trust a former member's judgment." As Sen. Don Kincaid (R-

*The Center defines a public interest lobby as one which seeks a collective good, the achievement of which will not selectively and materially benefit the membership of the organization. This definition excludes groups which engage in some public interest lobbying but have as their primary purpose the benefit and protection of their membership.

Jack Betts is editor of North Carolina Insight.

Caldwell) puts it, "If they've been in the trenches with you two or three times, there's got to be a camaraderie there."

The developing strength of public interest lobbyists is exemplified by William E. Holman, an environmental lobbyist, who moved from 10th in 1984 to sixth in 1986 to fifth in 1988; Margot Roten Saunders, a lawyer and lobbyist for the N.C. Legal Services Resource Center, representing the poor, who ranked 17th; and Roslyn S. Savitt, lobbyist for the State Council for Social Legislation, who ranked 19th.

Roten and Savitt were joined by three other women in the rankings—Patricia J. Shore (25th) who represents R.J. Reynolds Tobacco Company; Fran Preston (27th) of the N.C. Retail Merchants Association; and Jo Ann Norris (31st) of the Public School Forum of N.C. This is the first appearance in the rankings for Saunders, Savitt, Shore, and Preston, and the first time more than one woman has been ranked.

Legislative experience and legal expertise are not the only requirements. "Hard work, determination and perseverance can pay off, too," adds Coble. "For instance, Bill Holman was just out of college when he began lobbying the legislature. Over the years, he has moved up steadily so that legislators now seek him out because he does his homework and represents a growing citizen concern about protecting North Carolina's environment. Now he ranks fifth among all lobbyists."

Holman says he relies on citizens and environmental groups at the local level to help make him more effective. "You could call it the heat and light theory. I try to provide the light, and the local conservation groups provide the heat," he says.

The lobbyist who moved up the most in the

— continued on page 83

Rankings of the Most Influential Lobbyists in the 1987 General Assembly

1987-88 Ranking	Previous Ranking (Where Applicable) 1985-86	1983-84	1981-82	Lobbyist	Former Legislator	Lawyer
1	4	3	5	**Zebulon D. Alley** of the Raleigh office of the Waynesville law firm of Alley, Killian, & Kersten, representing 25 clients with business/industry, health care, and utility interests, including Burlington Industries, the Microelectronics Center of N.C., N.C. Vending Association, Kaiser Health Foundation Plan of N.C., and Texasgulf Chemicals Company.	yes	yes
2	1	2	2	**Samuel H. Johnson** of the Raleigh law firm of Johnson, Gamble, Hearn, & Vinegar, representing 23 clients with business/industry interests, including N.C. Associated Industries, N.C. Automobile Dealers Association, N.C. Association of Certified Public Accountants, and the Soap and Detergent Association.	yes	yes
3	3			**J. Allen Adams** of the Raleigh law firm of Adams, McCullough, & Beard, representing 16 clients with business/industry, arts and health care interests, including Arts Advocates of N.C., N.C. Cemetery Association, N.C. Association of Electric Cooperatives, and GSX Chemical Services.	yes	yes

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Rankings of the Most Influential Lobbyists in the 1987 General Assembly *continued*

1987-88 Ranking	Previous Ranking (Where Applicable) 1985-86	1983-84	1981-82	Lobbyist	Former Legislator	Lawyer
4	2	1	1	**John R. Jordan Jr.** of the Raleigh law firm of Jordan, Price, Wall, Gray, & Jones, representing 17 clients with business/industry and health care interests, including the N.C. Bankers Association, N.C. Association of Life Insurance Companies, N.C. Day Care Association, American Express Company, and the N.C. Association of ABC Boards.	yes	yes
5	6	10		**William E. Holman,** representing the N.C. Chapter of the Sierra Club, the Conservation Council of N.C., the N.C. Chapter of the American Planning Association, and the N.C. Chapter of the Wildlife Federation.	no	no
6	8			**William C. Rustin Jr.** of the N.C. Retail Merchants Association.	no	no
7				**W. Paul Pulley Jr.** of the Durham law firm of Pulley, Watson, King, & Hofler, representing business/industry, government, and health care interests, including Allstate Insurance Company, Consolidated Coin Caterers Corporation, N.C. Aquarium Society, High Point Enterprise, and Wake County, N.C.	yes	yes
8	5	4	4	**J. Ruffin Bailey** of the Raleigh law firm of Bailey & Dixon, representing the N.C. Credit Union League, N.C. Bus Association, N.C. Beer Wholesalers Association, and the American Insurance Association.	yes	yes
9	17	15		**C. Ronald Aycock** of the N.C. Association of County Commissioners.	no	yes
10				**Jay M. Robinson,** representing the University of North Carolina System.	no	no
11				**David M. Blackwell,** then with the N.C. Academy of Trial Lawyers, and now publisher of the *North Carolina Lawyers Weekly.*	yes	yes
12				**James B. Hunt Jr.,** former governor and now attorney in the Raleigh law firm of Poyner & Spruill, representing nine clients with business/industry interests including R. J. Reynolds Tobacco Company, U.S. Sprint Communications Company, ElectriCities of N.C., and the National Multi-Housing Council.	no*	yes

*Hunt was a N.C. Senate officer when he was Lt. Governor.

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Rankings of the Most Influential Lobbyists in the 1987 General Assembly *continued*

1987-88 Ranking	Previous Ranking (Where Applicable) 1985-86	1983-84	1981-82	Lobbyist	Former Legislator	Lawyer
13				**Durwood F. Gunnells** of the N.C. State Employees Association.	no	yes
14				**Roger W. Bone** of the Raleigh lobbying firm of Bone & Associates, representing the N.C. Automobile Dealers Association, Blue Cross and Blue Shield of N.C., Educational Excellence in the Tar River Region Area Committee, Olin Corporation, and the Tobacco Institute. Bone is also a part-time employee of the N.C. Department of Community Colleges.	yes	no
15	7	5		**R. D. McMillan Jr.**, representing the University of North Carolina System and the Committee for Church Related Non-Profit Homes for the Aging.	yes	no
16	15	14		**Robert R. Harris** of Carolina Power & Light Company.	no	no
17				**Margot Roten Saunders** of the N.C. Legal Services Resource Center.	no	yes
18				**John T. Bode** of the Raleigh law firm Bode, Call, & Green, representing Burlington Industries,Consult Care, and Independent Insurance Agents of N.C./Carolinas Association of Professional Insurance Agents.	no	yes
19				**Roslyn S. Savitt** of the State Council for Social Legislation.	no	no
20				**Roy M. Wall** of Duke Power Company.	no	no
21	10			**John T. Henley** of the N.C. Association of Independent Colleges and Universities.	yes	no
22				**Christopher L. Scott** of the N.C. State AFL-CIO.	no	no
23 (tie)	12			**John D. Hicks,** then of Duke Power Company.	no	yes
23 (tie)				**Bryan Houck** of Southern Bell.	no	no
25				**Patricia J. Shore** of R. J. Reynolds Tobacco Company.	no	no
26				**Patric Mullen,** then of the N.C. Association of Educators.	no	no

—continued

Rankings of the Most Influential Lobbyists in the 1987 General Assembly *continued*

1987-88 Ranking	Previous Ranking (Where Applicable) 1985-86	1983-84	1981-82	Lobbyist	Former Legislator	Lawyer
27				**Fran Preston** of the N.C. Retail Merchants Association.	no	no
28	9	8		**Alan D. Briggs**, Deputy Attorney General for Policy and Planning in the N.C. Department of Justice.	no	yes
29	16	7		**Virgil McBride,** representing the N.C. Pharmaceutical Association, R. J. Reynolds Tobacco Company, National Automobile Transporters Association, N.C. Telephone Association, and the N.C. Trucking Association.	no	no
30				**William A. Pully** of the North Carolina Hospital Association.	no	yes
31	18			**Jo Ann Norris** of the Public School Forum of North Carolina.	no	no
32				**Samuel L. Whitehurst** of the N.C. Soft Drink Association.	yes	no

rankings is C. Ronald Aycock, lobbyist for the N.C. Association of County Commissioners. Aycock was 17th in 1986; in 1988 he placed ninth. Also moving up were Alley, Holman, and William C. Rustin Jr., president of the N.C. Retail Merchants Association.

Among the other newcomers to the 1988 list who Coble characterizes as likely to be perennial heavy-hitters as lobbyists are former Gov. James B. Hunt Jr. of Raleigh and Wilson, whose corporate law clients include Pepsico, R.J. Reynolds Tobacco Company, and ElectriCities of North Carolina, and who ranks 12th in this survey; former state Rep. W. Paul Pulley of Durham, whose clients include Burlington Industries and Allstate Insurance and who ranks seventh in his first stab at lobbying; Durwood F. "Butch" Gunnells of the N.C. State Employees Association, who ranks 13th; and former state Rep. Roger W. Bone of Rocky Mount, representing several clients including the Automobile Dealers Association of N.C. and Blue Cross and Blue Shield of N.C., who ranks 14th.

Coble also points out that the rankings indicate a changing of the guard for several organizations that traditionally have lobbyists ranked among the most influential. UNC System President William C. Friday, who ranked 13th in 1986, has retired, but UNC Vice President Jay Robinson, who has assumed most of Friday's lobbying chores, ranks 10th in the 1988 survey. Similarly, Alan D. Briggs was ranked ninth in 1986 when he lobbied for the N.C. Academy of Trial Lawyers, but Briggs since has gone to work for the N.C. Attorney General. Briggs' replacement, former legislator David Blackwell, is ranked 11th in the 1988 rankings—but now Blackwell has left that job to be publisher of the *North Carolina Lawyers Weekly*. And in 1986, Jo Ann Norris placed 18th in the rankings for her work as the lobbyist for the N.C. Association of Educators. Norris has left the NCAE for the Public School Forum of North Carolina, and her replacement, Patric Mullen, ranks 26th in the 1988 rankings.

During the 1987 session, there were 412 lobbyists

registered with the Secretary of State's office. They represented 395 different companies or organizations. There were also 258 legislative liaisons representing 63 different agencies in the executive branch of state government. By the end of the 1988 short session, there were 688 registered lobbyists. Unlike figures compiled by the Secretary of State's office, these calculations count each lobbyist only once. They do not reflect multiple listings when a lobbyist represents more than one client. These rankings were based on lobbyists' performance during the 1987 long session.

Strange Laws Enacted by the N.C. General Assembly

by Jack Betts

"If the law supposes that," said Mr. Bumble, squeezing his hat emphatically in both hands, "the law is a ass — a idiot."

— From Oliver Twist, *by Charles Dickens*

IF ONLY MR. BUMBLE could take a look at the laws enacted by the North Carolina General Assembly Statutes and see what they suppose, he would have conniptions, the fantods, and a heavy dose of the vapors to boot. For the state's General Statutes, some of them more than two centuries old, suppose things that not even "a ass" or "a idiot" would suppose.

For instance, in North Carolina, it's a crime:

- to sell cotton lint at night;
- to hold a dance marathon or walkathon;
- to permit dogs to "pursue, worry or harass" any squirrel on the grounds of the state Capitol in Raleigh;
- to cuss aboard a passenger train (but not a freight train);
- to cuss anywhere in public, except within the counties of Pitt in the East and Swain in the West;
- to allow either a stone-horse or a stone-mule to run at large (except in the Dare County township of Hatteras);
- to speak to a student at a college for women while on school property; or
- to allow the exhibition of a stallion or a jackass, or anything else of an unusual nature that can be exhibited, within half a mile of any place where the people are assembled for divine worship.

That's just a small sampling of the laws still on the books in North Carolina that might be reasonably construed by the average citizen as strange, unusual, far-fetched, or maybe just plain old out-and-out dumb. Some of those laws, of course, started out as serious efforts to solve a problem, prevent an incidence of unpleasantness or perhaps simply make things better for a portion of the citizenry.

For instance, the ban on sale of cotton lint or seed by night was meant to protect the buyer and prevent fraud in the sale of cotton; the ban on dance marathons was meant to protect those indigent citizens during the Depression years from being exploited by unscrupulous dance-contest operators who might endanger the

Jack Betts, editor of North Carolina Insight, *has been covering dumb laws enacted by the legislature since 1977. Jody George, a former intern at the Center, assisted with research for this article.*

health of contestants by forcing them to dance for days on end; the law aimed at preventing harassment of squirrels on Capitol grounds was obviously meant to .... Well, there must have been a good reason, though no one remembers what it was anymore.

North Carolina's collection of strange, silly or stupid statutes might be broken down into several classifications. For instance, one might start with that category of well-meant — and actually necessary — laws that appear to do something other than what was intended. One might call this category *Good Laws That Sound Funny.*

For instance, there is G.S. 113-291.1(j), which declares, in its entirety: "It is unlawful to take deer swimming or in water above the knees of the deer."

Not many folks have their own deer, and fewer still would think of taking their deer to the neighborhood swimming pool or even, for that matter, of taking them wading in water above their knees. But what would be wrong with it if they did want to take their deer for a swim?

Not a thing. But this law, of course, is written in the jargon of sportsmen, and in this case the verb "take" means to "kill," although it does not say that.

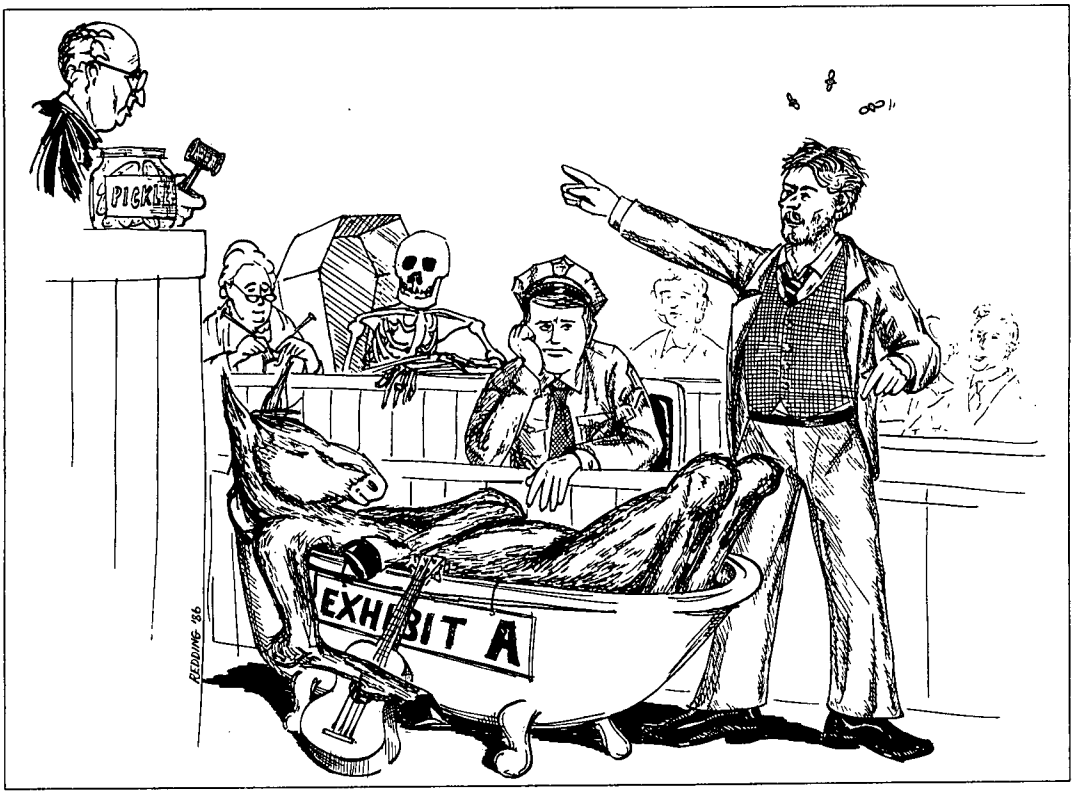
Then there is a certain category, admittedly a limited one, of laws still on the books that used to be enforced but aren't anymore because they have been struck down as unconstitutional. This category might be called *Hey, What's A Little Constitution Among Friends?*

The lead candidate for this category is surely G.S. 116-199, commonly known as the Speaker Ban Law. During the early 1960s, state politicians and commentators were wringing their hands over the prospect of college students hearing anything that might be termed, well, subversive. So in 1963, the General Assembly adopted this law, which prohibited communists or anyone advocating overthrow of the government from speaking on college campuses.

Obviously in conflict with the First Amendment to the U.S. Constitution, this law was amended in 1965 to regulate rather than prohibit commies from speaking. But the 4th U.S. Circuit Court of Appeals in 1968 declined to go along with this little fiction and declared the law unconstitutional.

Still, just because a law is unconstitutional is no reason for the General Assembly to repeal something. So after 20 years, the law still sits on the books — unconstitutional, unenforceable, and as useless as silk spats on a wart hog.

Another category of North Carolina law is that which was surely well-meant, morally uplifting, and



spiritually pure, but doesn't the legislature have anything better to do? Call this category *The Gol-Durnedest Laws in the Whole Danged State.* The leading offender in the category is G.S. 14-197, which makes it a misdemeanor to use profane or indecent language on public highways within the hearing of

And If You Think North Carolina's Dumb Laws Are Dumb. . . .

YOU'RE RIGHT. But North Carolina is in good company. Every other state in the union has its share of stupid statutes, too. Here's an incomplete, highly selective, but absolutely straightforward list that the N.C. Center has compiled (from a long list of reliable sources) of dumb laws that have been in effect at one time or another. They've been enacted by every sort of governing body from small-town aldermen to big-city councilmen, from county commissioners to state legislators. And they all have one thing in common: They're either dumb, or they at least sound dumb.

For instance:

In Brooklyn, it's illegal for donkeys to sleep in the bathtub.

In Youngstown, Ohio, it's against the law for cabbies to transport passengers on the roof of a taxicab.

In Berkeley, Cal., it's illegal to whistle for an escaped bird before 7 a.m.

In Erie, Pa., falling asleep in a barber chair while being shaved is against the law.

In Mexico, Mo., it's a crime for female jury members to knit while hearing evidence in a trial.

Those are among the dumb laws that *Parade Magazine* turned up a few years ago.

Student Lawyer magazine has its own list of favorites. Among them:

It's against the law to carry an unwrapped ukulele on the streets of Salt Lake City.

It's a crime for dead jurors to serve on juries in Oregon.

It's illegal to mistreat oysters in Maryland.

In Chicago, thanks to the efforts of one alderman who happens to own a large flower shop, it's illegal for street peddlers to peddle flowers.

In St. Louis, it's illegal to peddle ice cream within 100 feet of a church, a hospital or a school — at least while classes are in session.

And in Boston, it's illegal for anyone, other than a registered voter, of course, to take sea worms within the city limits.

Not to be outdone by its capital city ordinance-makers, the state of Massachusetts has a law requiring each mayor in the state to "annually appoint two or more fence viewers, to hold office for one year and until their successors are qualified."

In nearby Vermont, it's illegal to paint or to disguise a horse. Not only that, but it's illegal to allow rams to "go at large" 'twixt August 1 and December 1 of any year.

Then there's the compilation of silly statutes bound in a hilarious book entitled *The Trenton Pickle Ordinance And Other Bonehead Legislation.* The Trenton Pickle Ordinance declares it unlawful for anyone to throw tainted pickles in the street.

Perhaps acting on Trenton's leadership, other cities have boldly adopted their own pickle ordinances. For instance, Los Angeles prohibits pickle-making anywhere in the city that its aroma might offend the delicate nostrils of passers-by. Connecticut, on a binge of consumer mindedness, made it illegal to sell a pickle which, when dropped 12 inches, collapses upon itself in its own juice. Much better, the law admonishes, that the pickle "remain whole and even bounce." Oh. And in Central Falls, R.I., it's against the law to pour pickle juice on car tracks.

And finally, in Kentucky, state law requires that every person must take a bath at least once a year. Whether they need it or not, one presumes.

two or more persons, save within the counties of Pitt and Swain.

This particular law was the object of a lively debate in the 1973 General Assembly, when then-state Rep. Herbert Hyde (D-Buncombe) rose to argue against legislation that would eliminate the exemption for Swain County. Hyde, a remarkable orator and gifted lawyer, advised his colleagues that the law was "obviously unconstitutional," but said the good people of Swain County didn't like legal nitpicking and wouldn't want him to "stand on that kind of technicality and I'm not going to do that."

Rather, said Hyde, "There ought to be a refuge somewhere, where a man could go and when he really is provoked that he can say something with impunity. There's only two places left — Pitt and Swain. One in the East and one in the West. I think that's most appropriate."

Hyde's speech carried the day, and that's why today it's still legal to cuss in only two counties. In the other 98 of North Carolina's 100 counties of North Carolina, watch what you say.

Then there's a special category of legislative foolishness that doesn't show up on the General Statutes, but which takes up legislative time and money and confirms the low opinion that some folks have of the legislature. It might well be called *Why Do We Put Up With This Truck?* The major suspect in this field is Senate Resolution 861, adopted in the North Carolina Senate on May 14, 1979, entitled "A Senate Resolution Honoring A Remarkable Pulpwood Truck."

The resolution described the pulpwood truck owned by former Sen. Joe Palmer (D-Haywood) which apparently violated most safety laws and which had figured prominently in a number of Senate debates over improving vehicle safety. The resolution said, "Section 1. The old pulpwood truck of Sen. Joe H. Palmer is hereby declared to be an item of State Historic Property, and is hereby proposed for entry in the National Registry of Historic Property, in sincere hope that entry into said Registry will get such a vehicle, which has questionable adherence to North Carolina motor vehicle laws, special attention from the people of the State of North Carolina so that they can stay out of the path of this particular pulpwood truck.

"Section 2. This resolution, in the interest of safety to all drivers in this State, shall become effective upon its adoption."

That resolution never made it into the General Statutes, thus saving the taxpayers some money, the printers some trouble, and drivers everywhere from the burden of watching out for Palmer's truck. But in a way, it's a shame the resolution didn't become a law. It would have had so much good company amongst all the other dumb laws of the state of North Carolina.

Chapter 5

Article III: The Executive Branch

THE FOCAL POINT of North Carolina politics is the office of the governor. As the chief executive officer in the state, the governor directs a multi-billion dollar enterprise of over two hundred thousand employees. Under the present Constitution, the office of the governor is one of nineteen major departments in the executive branch of state government. Of these, the governor maintains appointment or review power over nine — Administration; Correction; Crime Control and Public Safety; Cultural Resources; Economic and Community Development (formerly Department of Commerce); Environment, Health, and Natural Resources (formerly Department of Natural Resources and Community Development); Human Resources; Revenue; and Transportation.* In addition, the governor maintains immediate jurisdiction over such assistants and personnel that may be required to perform the executive functions of the state.

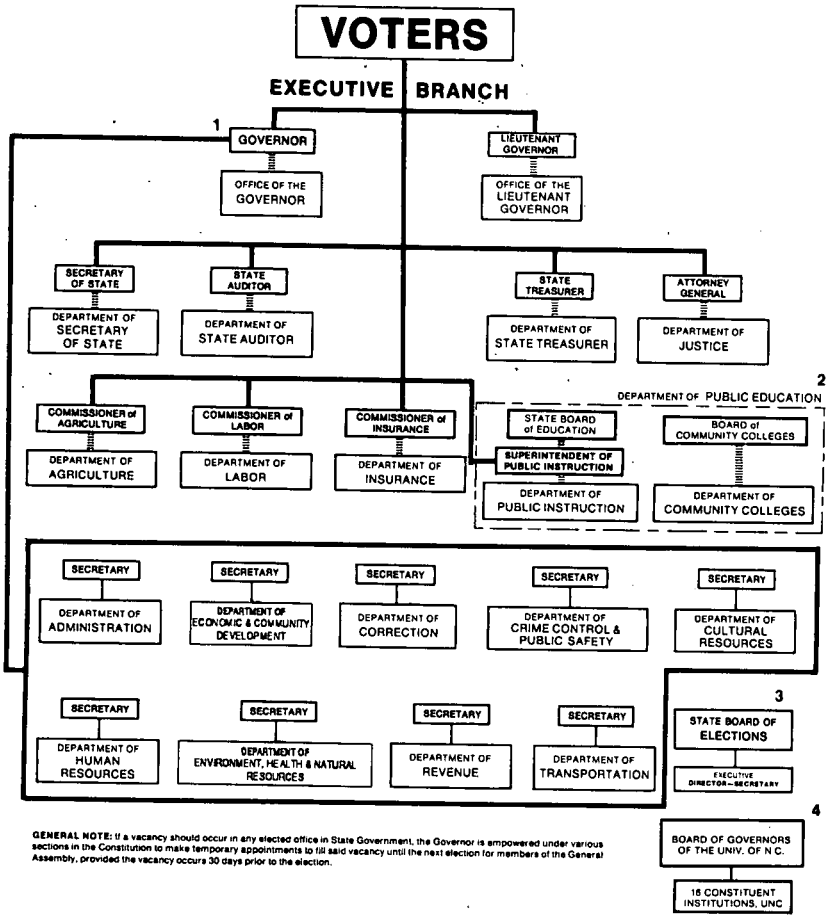
The governor is elected every four years and, with the enactment of a constitutional amendment in 1977, can succeed himself for one additional term of office. The office has extensive budgetary powers and responsibilities, but has no veto power over legislation. North Carolina is the only state in which the governor does not possess veto power.

The governor oversees the execution of all state laws and is the state's chief executive officer with responsibilities for all phases of budgeting. He holds the power to convene the General Assembly in special session if necessary and delivers legislative and budgetary messages to the legislature. In addition, the governor is chairman of the Council of State, which he may call upon for advice on allotments from the Contingency and Emergency Fund and for disposition of state property. The constitutional powers of the office also include the authority to grant pardons, commutations, and issue extradition warrants and requests. The governor also enjoys extensive organizational powers, controls the expenditures of the state, and is responsible for administration of all funds and loans from the federal government.

In this section, the policy and administrative demands of the current governorship are analyzed.

* The other nine departments are headed by elected officials. These nine officials are: Attorney General; Auditor; Commissioners of Agriculture, Insurance, and Labor; Lieutenant Governor; Secretary of State; Superintendent of Public Instruction; and Treasurer.

ORGANIZATIONAL CHART OF
NORTH CAROLINA STATE GOVERNMENT



1. The Governor and the other 9 elected officials of the Executive Branch form the Council of State. The heads—called "Secretaries"—of the other executive departments are appointed by the Governor and serve at his pleasure.
2. The State Board of Education serves as "head" of the Department of Public Education. 11 of its 14 members are appointed by the Governor, subject to confirmation by the general assembly in joint session. The Lieutenant Governor, State Treasurer, and Superintendent of Public Instruction, who is secretary to the Board, are *ex officio* members. The Superintendent of Public Instruction heads the Department of Public Instruction and the President of Community Colleges heads the Department of Community Colleges.
3. The State Board of Elections is an autonomous agency whose members are appointed by the Governor. The Executive Director-Secretary is appointed by the board and with a supporting staff provides administrative services to the board and to the local boards of elections in the counties.
4. The Board of Governors are elected by the General Assembly. The Board elects a President of the University system, who serves as chief administrative officer of the University. Each of the 16 institutions within the system then has its own board of trustees.

How Does the Governor Organize His Power and Staff?

by Anne Jackson

This article focuses on how Gov. James G. Martin organized the Office of the Governor, and how that office handles various policy decisions.

JIM MARTIN HAD BEEN GOVERNOR less than six months when the 12 Republicans in the N.C. Senate asked to meet with him. The 1985 General Assembly was in full swing, and things weren't going well for Martin's "12 disciples," as the GOP senators called themselves.

Seated around the Governor's blue-carpeted, walnut-paneled office in the Administration Building, the legislators aired their complaints:

- Legislative liaison Beverly Lake Jr. had too many responsibilities, they said. Non-legislative duties left him only three or four hours a day for lobbying — not enough time to do the job.
- Lack of communication between the Governor's office and the Republican delegation meant the GOP legislators frequently learned about Martin's policy initiatives from newspaper stories. They did not receive position papers or copies of speeches, and they often were not told when the Governor planned to visit their districts.
- Republicans felt left out in behind-the-scenes negotiations between their Governor and Democratic legislative leaders. In general, they were unhappy with the way things were being run, especially by the Governor's top staff.

At the end of the session, Sen. Jim Johnson (R-Cabarrus) spoke up. What Martin needed, he said, was a chief of staff. "I just adamantly said, 'You were elected to be Governor, not the damn first sergeant. Get yourself one and take names and kick ass,'" Johnson recalled. Martin did not like the idea. "He resisted it. He resisted any advice along those lines," said Johnson.

The Governor had his reasons. A Congressman for 12 years and a college chemistry professor before that, Martin had never worked in state government. He had always run his own shop — whether it was a congressional office in Washington or his academic office at Davidson College. The Governor wanted to know how agencies operated, what made them tick, and he thought the best way to do that was to

Anne Jackson is a Raleigh writer and frequent contributor to North Carolina Insight.

supervise many of the day-to-day operations of the $8 billion-a-year state bureaucracy himself.

"I knew that even with a chief of staff, many questions were still going to come to me," Martin explained in an interview. "And I felt that if I chaired a group of executive assistants ... but maintained that central responsibility myself, it would compel me to learn very quickly about state government and all the different kinds of programs that we have, and it would keep me better informed about what was going on."

So the Governor — a quick learner whom aide Alan Pugh describes as an "information sponge" — set up shop in the Administration Building, closer to the hub of the bureaucracy than the historic office in the state Capitol where his predecessor, Democrat Jim Hunt, had worked.

Four top advisers — Budget Director C.C. Cameron, General Counsel James R. Trotter, then-Special Assistant for Policy R. Jack Hawke Jr., and long-time aide James S. Lofton, who held the title of Staff Director — formed the inner circle. These four, along with other close associates from Charlotte —political consultant Brad Hays, former state GOP Chairman Robert W. Bradshaw, and Martin's brother Joe, an executive vice president at NCNB — helped the Governor mold his fledgling administration, only the second of this century to be elected with Republicans in control.

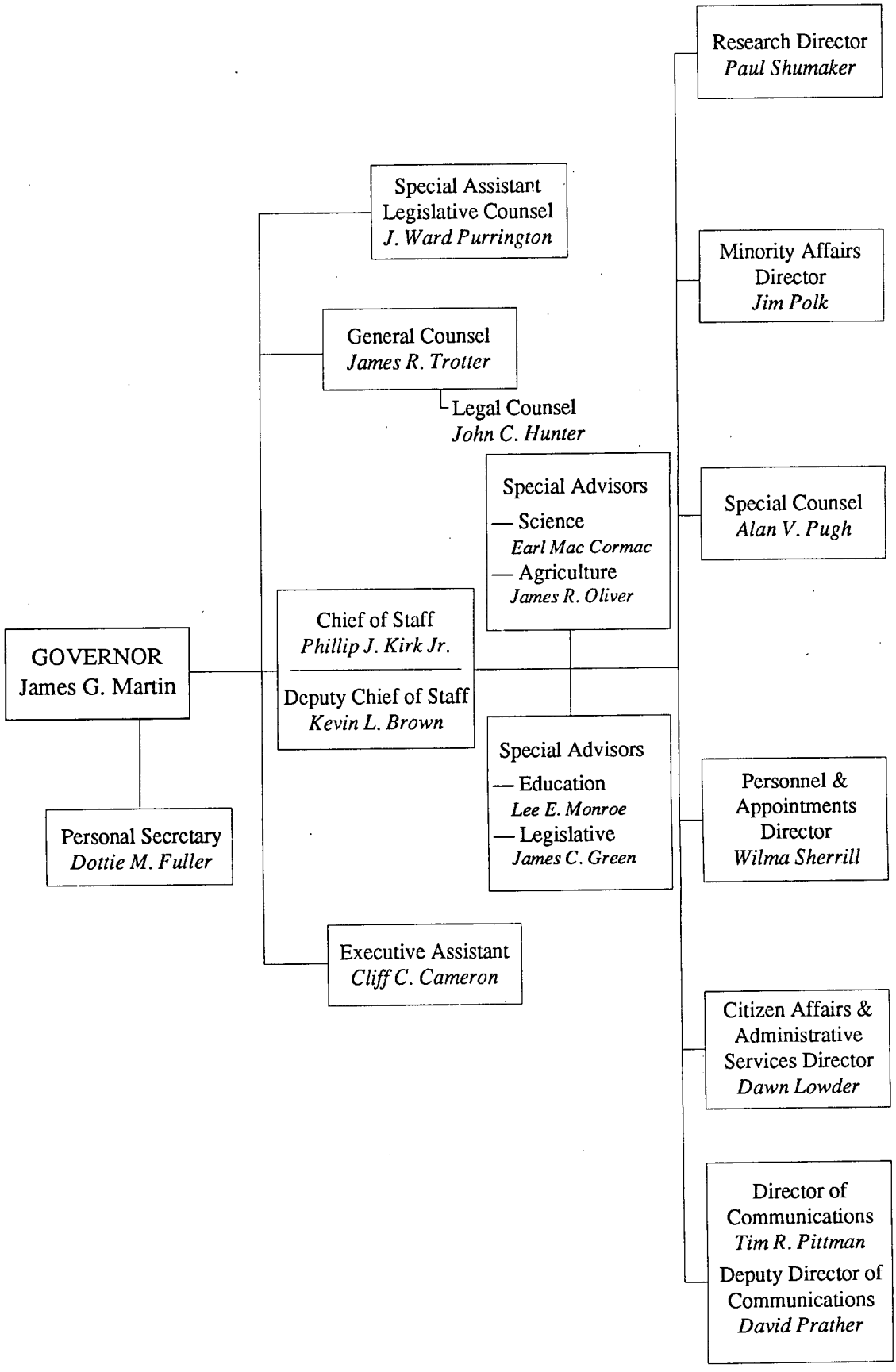
For two years (1985 and 1986), Martin acted as his own chief of staff, overseeing some 20 of the 85 employees who work in the state's Washington, D.C. office, in the Western Governor's Office in Asheville, the Eastern Governor's Office in New Bern, and in the Governor's Office in Raleigh, and supervising a $4.6 million office budget. Martin now admits there were problems with that system, but he believes his initial hands-on approach paid dividends. "I think in retrospect if I had decided to turn all that over to a chief of staff to figure out that organization and had put everybody subservient to a chief of staff, we would have had a different and probably more cumbersome organization than we have now," the Governor said.

But none of his closest allies had ever worked in state government, which complicated Martin's dealings with the Democrat-dominated legislature that came to town only a month after he took office. Not all of his allies were politically astute, and Martin acknowledges that he had "far too many" people reporting to him in decisions that subordinates easily could have made. To give himself some breathing room, Martin moved out of the Administration Building in 1986 and back to the state Capitol, where every North Carolina Governor except Bob Scott and Jim Holshouser has had his office since it was built in 1840. (Scott had moved out while the Capitol was being renovated; Holshouser used the Capitol only as a ceremonial office).

Insiders say Martin at first had too many workers from his political campaign on his office payroll, and they cared less about making state government work than maintaining political strength. And they say Martin relied heavily on two top advisers — Cameron and former Secretary of Commerce Howard Haworth, both wealthy businessmen who were unfamiliar with the intricacies of running a state government.

Little glitches occurred repeatedly. Bills submitted to the General Assembly arrived with misspelled words or missing pages. The Governor's office declined an invitation for him to speak to the state National Guard convention — although the Governor is the state commander-in-chief, and the politically influential audience would have numbered in the hundreds. Organization and communication problems festered, particularly among GOP legislators. "When [Martin] went charging off into battle and looked over his shoulder, he often didn't have all the Republican troops behind him, and he couldn't understand that," says Johnson. "He had sort of a commanding, demanding attitude when he first took over. Now, it's more of a partnership attitude."

Observers believe Phillip J. Kirk deserves credit for smoothing the course of Martin's ship of state. To the relief of many supporters, Martin appointed a chief of staff in February 1987. Kirk, the man he tapped for the sensitive job, had been Martin's secretary of human resources, overseeing the largest


GOVERNOR
James G. Martin
Personal Secretary
Dottie M. Fuller
Chief of Staff
Phillip J. Kirk Jr.
Deputy Chief of Staff
Kevin L. Brown
Special Assistant
Legislative Counsel
J. Ward Purrington
General Counsel
James R. Trotter
Legal Counsel
John C. Hunter
Executive Assistant
Cliff C. Cameron
Special Advisors
— Science
Earl Mac Cormac
— Agriculture
James R. Oliver
Special Advisors
— Education
Lee E. Monroe
— Legislative
James C. Green
Research Director
Paul Shumaker
Minority Affairs
Director
Jim Polk
Special Counsel
Alan V. Pugh
Personnel &
Appointments
Director
Wilma Sherrill
Citizen Affairs &
Administrative
Services Director
Dawn Lowder
Director of
Communications
Tim R. Pittman
Deputy Director of
Communications
David Prather

department in state government. Before that, the Salisbury native had worked as administrative assistant to former Republican U.S. Rep. James T. Broyhill, as administrative assistant to then-Gov. James E. Holshouser Jr., as Holshouser's secretary of human resources, and as a one-term member of the state Senate himself. Thus, Kirk brought four strengths to the new post: He had worked on Capitol Hill, he had experience in the governor's office, he had run a large state agency, and he had both served in and worked with the legislature. Kirk had experience that Martin lacked, especially with competing institutions like the General Assembly.

"It's almost like Phil has had a graduate degree in running someone else's office," notes Sen. Robert V. Somers (R-Rowan), a former political adversary of Kirk's. "If I were in such a position I could do no better than getting Phil Kirk to run it for me."

The boyish-looking Kirk oversees day-to-day operations of the Governor's office and its staff. He acts as gatekeeper to Martin's inner office. With Trotter and Cameron, Kirk forms the inner circle known as "the troika." But even Trotter and Cameron usually go through Kirk to see Martin. Hawke has left the Governor's office to become state GOP chairman; Lofton has been shifted to a cabinet post.

Throughout the Governor's office, staffers have learned to recognize the handwritten memos Kirk scatters on desktops, inquiring about the status of a project or giving directions. "They're like leaflets dropped from a bomber," quipped one aide. Kirk goes through Martin's mail, assists in scheduling, helps shape policy. But he also takes time for personal gestures. He telephones employees on their birthdays and plays on the office softball team. He instituted a monthly employee newsletter, and invites five staffers a week for a brown bag lunch in his office in the Capitol across the hall from the Governor. "Trying to improve teamwork and communication were two of the biggest challenges I faced when I came," says Kirk.

Kirk is never too busy for some things. In the middle of an interview, Kirk stopped to take a call from then-House Minority Whip Ray Warren (R-Mecklenburg), explaining, "Another policy I've instituted is any time a legislator calls, I'm interrupted."

Lawmakers appreciate the effort. While members have always received copies of the Governor's weekly public schedule and press releases, they now receive copies of his major speeches as well. "You can call over there now and get an answer almost immediately," says Senate GOP Whip Paul Smith (R-Rowan). "I'm still waiting on some answers from last year" [before the changes were made].

Martin made other changes when he brought in Kirk. He appointed Lofton secretary of administration, and named Hawke chairman of the state GOP when Bradshaw stepped down.

A year earlier, Martin hired Ward Purrington, a former two-term state legislator, to succeed Lake as his legislative lobbyist after Martin named Lake to a Superior Court judgeship. Purrington enjoys cabinet status and easy access to Martin's office. In fact, he is among the few who may bypass Kirk to see the Governor.

Martin receives recommendations from a variety of committees inside his office. "We're trying to get issues better defined and refined," says Kirk — issues such as the family, education, economic development, infrastructure and public safety. Pugh, the Governor's special counsel, sits on committees that examine scheduling, judicial appointments, nominations for boards and commissions, and pending legislation. The groups usually are small — four to six people — and send their recommendations up the line toward the Governor's office.

The chief executive meets regularly with staff and, during the legislation sessions, with Republican lawmakers to discuss timely topics. Tuesdays and Thursdays he meets at 8:30 a.m. with Kirk, Trotter and Cameron. Topics range from legislation to lawsuits involving the state to politics. But unlike his predecessor, Martin does not have regular meetings with the Speaker of the House and the Lieutenant Governor. While the legislature is in session, Martin meets most Monday afternoons with the five top GOP lawmakers: Sen. Laurence Cobb (R-Mecklenburg) and Rep. Jonathan Rhyne (D-Gaston), the minority leaders in their respective chambers; Rep. Coy Privette, the GOP Caucus leader; and House and Senate Minority Whips. Purrington and Kirk also attend. A weekly breakfast on Thursdays brings together that same group, plus Trotter and Cameron.

After hearing advice from these sources — as well as from his special advisers on agriculture (Jim Oliver), education (Lee Monroe), science (Earl MacCormac), and legislation (former Lt. Gov. James C. Green) — Martin says he calls the shots on tough policy questions. "I can tell you that generally I make those decisions," the Governor says. "Everybody else gets a chance to have their say."

Martin, of course, runs his governorship differently from Hunt; he doesn't rely as closely upon his secretary of administration as Hunt did, nor has he come as close to assuming the reins in the budget office, as Hunt did. But Martin does seek expert

information when making a decision, and he rarely second-guesses his decisions, those who know him say. As Senator Johnson described Martin in 1987, "He is strong-minded, strong-willed, totally confident in his decision-making processes, willing but reluctant to change his course once he's got his mind made up, but more flexible than he was two years ago."

Early into his second term as Governor, Martin has increased his contact with legislators. According to Chief of Staff Kirk, "Improving dealings with the legislature has been the number one priority so far in this second term." Martin recognizes the importance of working with the General Assembly in order to implement his campaign promises. As a result, he has met one-on-one with legislators of both parties, and has held numerous small gatherings at breakfast, during lunch, and even on the porch of the executive mansion at the end of the workday. "Only time will tell if that approach will be successful," says Kirk, "but we've made the effort."

Here is a rundown of Martin's top aides and advisers:[1]

Chief of Staff: Phil Kirk (salary of $71,064) got a raise when he moved to the Governor's Office in February 1987. He now makes more than cabinet secretaries, who are paid $66,972. Kirk's top assistant, Kevin Brown, earns $50,004.

General Counsel: Jim Trotter ($67,404) practiced law in Rocky Mount for more than three decades. Deliberative and thoughtful, Trotter won Martin's respect during the 1984 campaign, when Trotter headed Martin's Nash County bid.

Executive Assistant and Budget Officer: C.C. Cameron, who declines a state salary, is a Democrat and the retired chairman of First Union National Bank.

Legislative Liaison: Ward Purrington ($6,364 per month under contract plus expenses) was deputy secretary of revenue until Martin appointed him to succeed I. Beverly Lake Jr. Purrington says his salary is higher than other key Martin aides because he is paid on a contract basis that does not provide health insurance or other benefits.

Legislative Adviser: Former Lt. Gov. Jimmy Green, a Democrat, also has a contract, one paying him $250 per day while the legislature is in session, plus $81 per day for expenses. Green has been paid for some months even when the legislature is not in session. Total compensation to Green in 1985 was $75,823, and in 1986, it was $61,452.

Science Adviser: Earl Mac Cormac ($74,324 paid by the Department of Adminstration) is a former philosophy professor at Davidson College, where Martin once taught. The gregarious — some say flamboyant — Mac Cormac also heads the N.C. Board of Science and Technology.

Special Counsel: Alan Pugh ($61,332) handles patronage and political contacts for Martin, special projects, and advance work for special events. Pugh also oversees the Governor's western office in Asheville and the eastern office in New Bern.

Research Director: Paul Shumaker ($50,004) researches issues for Martin.

Communications Director: Tim Pittman ($50,004) oversees the Governor's press office. He is a former Raleigh correspondent for the *Greensboro News & Record.* David Prather ($44,508) is Deputy Director of Communications.

Education Adviser: Lee Monroe ($56,532) is a former administrator at Shaw University in Raleigh.

Director of Personnel and Appointments: Wilma Sherrill ($60,168) oversees job placement within the administration and the Governor's appointments to boards and commissions.

Director of Citizen Affairs and Administrative Services: Dawn Lowder ($50,004) is in charge of citizen affairs, acting as an ombudsman, coordinating the volunteer program, and managing correspondence.

Agriculture Adviser: Jim Oliver ($45,792) is paid through the Department of Commerce. He formerly was Master of the North Carolina State Grange.

Administrative Assistant: Dottie Fuller ($34,020) works as the Governor's personal secretary. Her car — parked daily in the Capitol driveway — bears a plate emblazoned with "First Secretary."

Director of Minority Affairs: Jim Polk ($44,940) works as the administration's liaison to the minority community regarding personnel issues and appointments to boards and commissions. He also serves as the Governor's legislative liaison on minority issues.

FOOTNOTES

[1] Also under the Governor is the Cabinet, which includes the nine Departments of Administration, Correction, Crime Control and Public Safety, Cultural Resources, Economic and Community Development (formerly Department of Commerce); Environment, Health, and Natural Resources (formerly Department of Natural Resources and Community Development); Human Resources, Revenue, and Transportation. The Office of the Governor itself was created in 1971. The nine other departments, known as the Council of State, are under the control of individually-elected officials. They are the Office of Lieutenant Governor and the Departments of Secretary of State, State Auditor, State Treasurer, Justice, Agriculture, Labor, Insurance, and Public Instruction. These 19 departments comprise the Executive Cabinet.

[2] See Bob Dozier, "At the Top of the Heap," *N.C. Insight*, Vol. 1, No. 3, pp. 12-15, for a description of how Gov. Jim Hunt organized his staff.

The Effects of Gubernatorial Succession: The Good, The Bad, and the Otherwise

by Thad L. Beyle

Ever since the last of the Royal Governors left this colony, the N.C. General Assembly has kept governors on a short leash. That leash grew a bit longer in 1977, however, as first the legislature and then the public approved a constitutional amendment allowing governors and lieutenant governors to seek a second, successive four-year term in office. Gov. James B. Hunt Jr. was the first to succeed himself under that amendment, and Gov. James G. Martin has done the same. What are the arguments for and against succession? What changes have we wrought with passage of gubernatorial succession? And how has succession affected other branches of government, including the legislative and judicial branches?

MORE THAN A DECADE AGO THIS FALL, North Carolina voters amended the state's Constitution to allow governors and lieutenant governors to seek a second full term in office.[1] The vote on Nov. 8, 1977 was a victory for Democratic Gov. James B. Hunt Jr., who in his first year as Governor led the fight for the amendment with the help of many of his supporters — and some of his adversaries, who foresaw the day when succession might help Republicans too. Hunt's victory at the polls that day was hardly overwhelming. The amendment passed by fewer than 29,000 votes of the 580,701 cast on the question, 52.5 percent to 47.5 percent — far from a landslide, and considerably less than the 81.7 percent of the vote that four other constitutional amendments averaged

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that same day.

And it was even more underwhelming in light of the fact that only a fourth of the state's 2.3 million registered voters went to the polls that day. The amendment was adopted by slightly more than 13 percent of the North Carolinians eligible to vote,[2] but it has affected everyone in North Carolina because it has significantly altered the way we produce leaders — and how government runs in Raleigh.

With a decade of experience with gubernatorial succession behind us, what have we learned from it? We know the obvious — that succession helps those in power, and may impede the political progress of those who hope for power, but the subtleties of succession's effects are still becoming clear.

As the proponent of the successful change in the Constitution, Jim Hunt was also the first Governor to run for and win a second four-year term in office. Obviously, succession strengthened Hunt, for a time. Now attention has turned to his successor, Republican James G. Martin. The second Republican Governor elected during this century, Martin further solidified the Republican Party in the state when he won the 1988 election and succeeded himself.

Before succession was adopted, few political observers doubted that the first Republican Governor elected this century, Jim Holshouser (1973-1977), would be followed by a Democrat. That would be something of a restoration of the crown after the strange political circumstances the Democrats created for themselves in 1972, with an unpopular figure, Sen. George McGovern, heading the party's presidential ticket, and the gubernatorial nominee, Hargrove (Skipper) Bowles, peaking too early before the election, after defeating the Democratic lieutenant governor, Pat Taylor, in a hotly contested second primary. These same observers also knew who that Democrat was likely to be — Lt. Gov. Jim Hunt, who was the highest-ranking Democratic official in state government. They were right on both points.

Succession Enhances the Power of Incumbency

For 1988, the scenario was quite similar. Martin, a Republican Governor, elected in a highly volatile political situation which again worked to the Democrats' disadvantage in 1984, faced the Democratic Lieutenant Governor, Robert B. Jordan III, who was the highest ranking Democratic official in state government. Was it, as the philosopher (and baseball catcher) Yogi Berra once posited, "déjà vu all over again"?

Perhaps not. After all, there are two very important differences between the gubernatorial elections of 1976 and 1988 in North Carolina.

- First, the Republican Party is considerably stronger in the late 1980s than it was in the mid-1970s. The Iranscam scandal did not translate into a Watergate — with its attendant ballot box losses — for the GOP. There are now more North Carolinians voting Republican, and more Republican winners for the GOP down the ballot than in the 1970s. For example, in 1972, registered Republicans made up 23 percent of the registered voters, while in 1986, they were 27.2 percent. In winning the governorship, Holshouser received 51.3 percent of the general election vote, and Martin in 1984 received 54.4 percent.
- Second, the power of incumbency in 1988 lay with Governor Martin. That power is of enormous import, as evidenced by the 1980 election when Hunt won re-election in a landslide, 62 to 37 percent, over Republican nominee I. Beverly Lake Jr., himself a late refugee from the Democratic Party. Why is incumbency so important? Gerald Benjamin, a political scientist who watches state politics from his New York state vantage point, argues that there are two important, but intangible, values associated with incumbency: the reluctance of voters to "fire someone for reasons of partisanship or ideology who seems to be doing an adequate job," and the "image of invincibility" that may grow up around an incumbent over a period of time.[3]

The results of recent gubernatorial elections bolster Benjamin's point. From 1977 to 1986, sixty-two of the 84 incumbent U.S. governors who ran for re-election won — a 74 percent success rate. From 1984 to 1986, nearly 80 percent of the incumbent governors — 19 of 24 — won another term.[4] That mirrors what is happening in races involving incumbents in other positions in our political system. Chances are that a governor who can run again, *will* win again.

Succession Doesn't Guarantee Political Machines

The fear that Jim Hunt would use succession to fashion a lasting political machine was dispelled by the 1984 elections. Remember, a political machine is what the other politician has; a political organization is what you and your associates have. Political machines, like beauty, are in the eye of the beholder — or the opposition. They must endure, even when their leader is running for another office, and they must recruit and elect successful candidates for other offices. But Hunt's organization failed this twin test.

During Governor Hunt's eight-year tenure, his Democratic organization was arguably the strongest in this state since before the Second World War. But that organization's strength was tested in Hunt's 1984 challenge for incumbent U.S. Sen. Jesse Helms' seat, and it failed the test when Hunt lost —narrowly — to Helms after a bitter and expensive campaign. Hunt's political organization worked exclusively in the Senate race, and after the election had no other political irons in the fire.

By focusing on that one race, Hunt's organization did not try to control other races. It did not back a candidate in other races, nor did it seek to control the size of the field. Democrats crowded the slate for the gubernatorial nomination in that same 1984 election. Ten Democrats sought the party's nomination that year, and six of them were considered fairly serious candidates. The outcome of the two Democratic Party primaries was so divisive that a major candidate, Eddie Knox, bolted the party with some of his relatives and supporters. Further, a Republican won the general election, which is the organization's most grievous error — losing the source of its power. In effect, whatever political organization Hunt built was a personal one, but one tied to state government interests and not necessarily to national interests.

Now Martin has his own opportunity to build a political machine. But rather than using that machine strictly to further his own political ambition, Martin appears instead to be building his own party in hopes of making further GOP inroads in the legislature and in other state and local offices. State Sen. Laurence Cobb (R-Mecklenburg), the Senate Minority Leader, says, "There is no question but that Martin's interest is in building up the state Republican Party and in strengthening the two-party system in North Carolina. I have seen no evidence that the Governor is trying to embark on a political career beyond the governorship."

Succession Clogs the Political Ladder

One of succession's major effects has been to slow down — some say clog up — the process of producing new leaders in North Carolina. Because governors and lieutenant governors can serve two terms, as U.S. Sen. Terry Sanford puts it, "there will only be half as many governors. A lot of people have the ambition to run, but won't get the chance."[5]

Prior to 1977, the changeover in North Carolina leadership was regular — a new governor and lieutenant governor every four years, and a new speaker of the House (elected by the House) every two years. But in 1980, both Gov. Jim Hunt and Lt. Gov. Jimmy Green were re-elected, forcing those with ambition for higher office to bide their time — or get beat by the incumbent. Green, for one, had wanted to run for governor in 1980, but chose to stand for re-election rather than challenge the powerful Hunt. Most other candidates chose not to run that year, too.

That meant the Senate leadership would stay in place, and the House anticipated that by re-electing Speaker Carl Stewart to an unprecedented second two-year term in 1979. This was a way for the House to maintain continuity of leadership and elevate it to the same stature as the Senate and the Governor. In 1981, Liston Ramsey succeeded Stewart in the first of his four terms as Speaker.

Curiously, Ramsey thinks succession had little to do with the multi-term speakership. "I think that [more than one term for speakers] was coming anyhow, because it had happened in other states," says Ramsey. "Its time was coming, although possibly it made it happen a little earlier than normal." Ramsey did not seek higher office, preferring to stay in the House, and frustrating the desire of his fellow House members who might aspire to the speakership.

That is until January 1989, when Ramsey was ousted by a coalition of dissident Democrats and House Republicans. Rep. Josephus L. Mavretic (D-Edgecombe) became Speaker of the House in the 1989-90 session.

The frustration prior to 1989 shifted the focus of potential candidates from House leadership to the lieutenant governorship.

North Carolina gets some of its new governors from the office of lieutenant governor. In the post-World War II era, the office has produced Govs. Luther Hodges Sr. in the 1950s, Bob Scott in the 1960s, and Jim Hunt in the 1970s. Bob Jordan attempted to use the office as a steppingstone in 1988. Among Democrats, only Terry Sanford and Dan Moore in the 1960s — both former legislators and well-known attorneys, and Moore had been a well-known judge — did not first serve as a lieutenant governor en route to the governorship. The two Republican governors came from legislative bodies — Jim Holshouser from the state House, and Martin from the U.S. House of Representatives.

Because the lieutenant governor's office is perceived as a good way-station for the governorship, many Democrats announce they are thinking of seeking that office and set up an exploratory committee to determine whether the political waters are warm enough for a plunge. The "exploratory committee" business is a euphemism for seeing whether you are known to anyone who counts politically (aside from your friends and neighbors), you might make a good run for the office, and most importantly, that you are a person whom the

political bankrollers might bless with some money. There is more testing than running, though, as many contenders fail one or all of these questions. But a growing number of potential candidates are out there testing, and the office of greatest interest to them is the lieutenant governorship.

Curiously, the other officers in the Council of State, all of whom run for election and re-election statewide, have not become part of this political ladder-climbing. Most of these officers find these positions as their ultimate office either by their own choice or by the realities of politics in the state, and therefore seek no further upward mobility. The office of attorney general may be a rung on the ladder in some other states, but not in North Carolina. The losing Democratic candidate in 1984, Rufus T. Edmisten, tried to use this office as the last rung on the ladder to the governorship, but lost to Martin. But then, so did the lieutenant governor, James C. Green, try to use his office to gain the governorship, but Green didn't even survive the primary.

Nonetheless, holding a high statewide office increases a candidate's chances for winning the governorship. In the round of gubernatorial elections across the nation in 1983-1986, there were 54 separate contests; of these, incumbents won 19, former governors won five, and sitting or former lieutenant governors won another

Table 1. Arguments Made For and Against The Gubernatorial Succession Amendment During the 1977 Debate

For	Against
To allow Jim Hunt to seek another term	To stop Jim Hunt from seeking another term
To retain good governors	To bring in new blood to the office
To take advantage of a governor's experience in office another term	To force governors to act quickly and not politick for another term
To give a governor time to master the state's bureaucracy	To prompt governors to use the State Personnel Act to control bureaucrats
To provide continuity and diminish four-year cyclical breaks in leadership	To keep an orderly flow of new candidates and replenish the state's supply of new leaders
To allow governors the same right to run again that legislators, judges, and others have	To energize voters and political groups by offering new candidates every four years
To prevent a new governor from being a "lame duck" as soon as he or she takes office	To involve new and more people with regular elections bringing in new leaders
To strengthen the office of governor in N.C., one of the nation's weakest	To prevent accumulation of too much power by a multi-term governor, and preserve checks and balances
To allow N.C. governors to work with national figures from other states and accomplish more	To prevent a governor from so constantly running for re-election during a first term that he accomplishes little
To free up governors from being surrounded by people jockeying for position in the next governor's race, and thus restricting a governor's leadership	To prevent creating a political machine or dynasty for the incumbent, which could overpower other parts of the political system
To give the people the right to decide whether to keep a governor in office	

"No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office."

— Article III, Sec. 2 (2), N.C. Constitution

five.[6] Six attorneys general won the governorship during the period, while two state treasurers and one former state auditor also grabbed the gubernatorial brass ring. Thus, more than 70 percent of the governors winning election between 1983 and 1986 had held these state level positions.

Does Succession Strengthen the Executive Branch?

When succession was debated during the 1977 General Assembly, opponents feared that succession might cede too much power to the executive branch, making it superior to the judicial branch and upsetting the delicate balance of powers among the branches of government. But what has happened over the past decade is that all three branches of our state government have increased in their power and their exercise of it, but the system of checks and balances has remained intact. Only some of this increase in power has come as an effect of the succession amendment.

Without question, the General Assembly's leadership selection process did change during this period. Obviously, with a lieutenant governor able to preside over the Senate for an eight-year period,[7] and with a multi-term speakership, the legislative branch became stronger in relation to the executive branch. In fact, it is the speaker of the House who holds what every North Carolina governor has sought — the ability to stop or veto action of the other house and the governor.

The legislature's exercise of its strength has manifested itself in a number of subtle and not-so-subtle ways, and in fact began years before succession was adopted. Experts can debate endlessly the degree to which succession has spurred legislative nibbling at the executive branch, but the fact remains that it has — through such inter-branch excursions as attempting to establish a legislative veto of executive agency rules, meddling with special provisions in budget bills, or attempting to influence executive branch boards and commissions with legislative appointments.

As leadership questions have changed in the past decade, process questions have also — most evident in the rising importance of the third branch of state government, the courts. As the legislature has intruded into the executive branch — moving across the line drawn by the separation of powers' clause in the North Carolina Constitution and onto gubernatorial turf — the state's Supreme Court has stepped in to referee the problems, usually in the executive branch's favor.

First, in January 1982, the Supreme Court called a halt to the practice of appointing legislators to the policymaking Environmental Management Commission.[8] Under a ruling by the Attorney General, the reasoning of this court decision extended to 36 additional boards and commissions, including the powerful, legislator-dominated Advisory Budget Commission, which had worked with the governor in developing the biennial budget for decades.[9] A month after these decisions, the N.C. Supreme Court issued an advisory opinion that a statute giving legislators new powers to review federal block grants and to review and approve any transfer of funds by the governor of more than 10 percent of a budget line item to another line item, was unconstitutional.[10] Then in 1983, a U.S. Supreme Court decision declared the legislative veto unconstitutional at the national level.[11] This decision undermined its use in state legislatures, including North Carolina's. After the loss of the legislative veto over agency rules, the legislature rewrote the Administrative Procedure Act to restrain rulemaking authority of state agencies. Thus the state Supreme Court has been thrust into this legislative-executive conflict as the ultimate arbiter — another actor with a veto.

Succession did not cause this intra-branch wrangling, of course. Part of it is normal sibling rivalry between two branches of government, without regard to which party is in power. North Carolina's General Assembly always has held its chief executive on a short rein — at least since the last of the Royal Governors hightailed it for other climes. For example, North Carolina's governor remains the sole

governor in the country without *any* form of veto power. And part of it is certainly due to partisan politics. The Democrats control the legislative branch, while Republicans control the executive branch. The two do not get along well — nor did they from 1973-1977, during Holshouser's rein. When there exists such a power split, when strong personalities clash, and when an election looms, tension pervades the governmental process and tinges both the legislative and executive arms of government.

That tension is certainly one reason for legislative dissatisfaction with succession. Former Speaker of the House Liston Ramsey, once a supporter of succession, has changed his mind. "I don't see any good that comes of it. What happens is that governors are extremely careful during their first four years in office, and they don't come out with anything the state really needs," he says.

Former Lieutenant Governor Jordan, while not as outspoken about it, has also had second thoughts about succession. "I have some serious second thoughts about it because of the way it has affected the process of government. For the Democratic Party, it was part of the problem in 1984, when we had too many candidates for the gubernatorial nomination. And I think succession may benefit the person in office a lot more than it does the state."

"...there will only be half as many governors. A lot of people have the ambition to run, but won't get the chance."

— U.S. Sen. Terry Sanford

One thoughtful critic is former state Rep. Parks Helms of Charlotte, who once ran against Ramsey for speaker, and lost. Helms also ran for lieutenant governor in 1988, and he says the next lieutenant governor must deal with the vast changes that succession has wrought on the legislative branch. "It's certainly an advantage to the governor to be able to succeed himself," says Helms, "but it's also a good example of the law of unintended consequences, with its effect on the legislative branch. That effect has been far more significant than on the executive branch, and I have some reservations about legislative succession. I fear it may be moving us much more quickly to a full-time, professional legislature rather than a citizen legislature."

And, says Helms, "Perhaps even more troublesome is what succession is doing to the balance of power between the legislative and the executive branches of government. It goes far beyond party politics and gets into the area of checks and balances between the branches. It raises the question of whether the governor should have the veto in view of the fact that legislative succession has given the General Assembly much more power that it has ever had before."

There was talk in the 1985 and 1989 sessions of repealing succession, but members were reluctant to do so. So succession remains a part of the political landscape, a symbol of an attempt to improve state government.

In the past three decades, states generally have sought to upgrade their governments and make them more able to address the needs of the citizens. North Carolina had already taken major steps in that direction with the adoption of a new Constitution in 1971 and a reorganization of the executive branch from 1971-1975. The U.S. Supreme Court decisions in 1962 and 1964 mandating fair reapportionment of state legislatures brought fresh blood and new drive into all state legislatures. And as Larry Sabato has observed, the quality of our elected officials in the states had increased considerably since the 1950s.[12] "Once ill-prepared to govern and less-prepared to lead, governors have welcomed a new breed of vigorous, incisive and thoroughly trained leaders into their ranks," says Sabato.

What If Succession Had Failed in 1977?

Suppose succession had not passed in 1977 — then what?

- For one thing, Jim Hunt would have been a one-term governor like his predecessors, and Lt. Gov. Jimmy Green would have been in a strong position to seek the governorship in 1980. Would he have won? Who knows — but the record shows Green didn't in 1984 after eight years as lieutenant governor, when he finally got a chance to go for the gold.
- Second, the 1980 elections would have been very different. The selection of a new governor is of great political interest to the state, and considerable attention would have been focused on that race — and not as much space, money, or time would have

Table 2. Gubernatorial Succession by State, 1989

State	Length of Term in Years	Maximum Number of Terms Allowed	Joint Election of Governor and Lieutenant Governor
Alabama	4	2	No
Alaska	4	2	Yes
Arizona	4	No Limit	(c)
Arkansas	4	2	No
California	4	No Limit	No
Colorado	4	No Limit	Yes
Connecticut	4	No Limit	Yes
Delaware	4	2(a)	No
Florida	4	2	Yes
Georgia	4	2	No
Hawaii	4	2	Yes
Idaho	4	No Limit	No
Illinois	4	No Limit	Yes
Indiana	4	2	Yes
Iowa	4	No Limit	No
Kansas	4	2	Yes
Kentucky	4	(b)	No
Louisiana	4	2	No
Maine	4	2	(c)
Maryland	4	2	Yes
Massachusetts	4	No Limit	Yes
Michigan	4	No Limit	Yes
Minnesota	4	No Limit	Yes
Mississippi	4	(b)	No
Missouri	4	2(a)	No
Montana	4	No Limit	Yes
Nebraska	4	2	Yes
Nevada	4	2	No
New Hampshire	2	No Limit	(c)
New Jersey	4	2	(c)
New Mexico	4	(b, e)	Yes
New York	4	No Limit	Yes
North Carolina	4	2 (d)	No

— continued

Table 2. Gubernatorial Succession by State, 1989, *continued*

State	Length of Term in Years	Maximum Number of Terms Allowed	Joint Election of Governor and Lieutenant Governor
North Dakota	4	No Limit	Yes
Ohio	4	2	Yes
Oklahoma	4	2	No
Oregon	4	2 (f)	(c)
Pennsylvania	4	2	Yes
Rhode Island	2	No Limit	No
South Carolina	4	2	No
South Dakota	4	2	Yes
Tennessee	4	2	No
Texas	4	No Limit	No
Utah	4	No Limit	Yes
Vermont	2	No Limit	No
Virginia	4	(b)	No
Washington	4	No Limit	No
West Virginia	4	2	(c)
Wisconsin	4	No Limit	Yes
Wyoming	4	No Limit	(c)

Key:
(a)-Absolute two-term limit, but not necessarily consecutive.
(b)-Successive terms forbidden.
(c)-No lieutenant governor.
(d)-Individuals limited to two consecutive terms, but may serve again after a break in service.
(e)-Beginning in 1991, Governor limited to two consecutive 4-year terms.
(f)-Prohibited from serving more than eight years out of a twelve year period.

Source: The Book of the States, 1988-1989 Edition

been available for the U.S. Senate race in which East Carolina University Professor John East, a Republican, upset incumbent U.S. Sen. Robert B. Morgan, a Democrat, by a margin of only 10,411 votes. Because there were no heated or vigorous gubernatorial contests that year, media attention focused intensely upon that race, and the exposure may have helped the relatively unknown East edge the incumbent Morgan.

■ Third, it is possible that without the amendment, we would have seen a Republican candidate winning the governorship in 1980. National Republican coattails might have been long enough for Republican Ronald Reagan to help carry a Republican nominee to victory in the governor's race against a non-incumbent Democrat.

■ Fourth, in 1984, with the strong run by President Reagan in his re-election bid, and with the U.S. Senate re-election campaign tilting in U.S. Sen. Jesse Helms' direction, we might well have seen a second

Republican gubernatorial victory.

Remember, Republican candidates have won the votes of this state's electorate in four of the last five presidential elections, four of the last six U.S. Senate elections, and three of the last five gubernatorial elections. That's a record of 11 wins in the last 16 major statewide elections, all for the GOP. A winning record of 68.8 percent for the GOP in recent top races should be enough to give Democrats indigestion.

Conclusion

Was the succession amendment passed in 1977 a savior for the Democratic Party in this state? It did allow the Democratic Party, through the governorship of Jim Hunt, to control state government for eight rather than just four years. But it didn't guarantee Hunt lasting power. It served him well while he was governor, but then its benefits transferred to Governor Martin when he took office. Now it benefits Martin and his administration in two ways:

- it gave him the right to run again and serve eight years in a row;
- and the fact that Governor Martin will be in office that long strengthens his power within the state and nationally because the political world knows that Martin will be in charge for an extended period.

FOOTNOTES

[1]Article III, Section 2, Constitution of North Carolina, as approved Nov. 8, 1977 (authorized by Chapter 363 of the 1977 Session Laws of North Carolina).

[2]Martin Donsky, "13.2% of Voters Decide Succession Issue," *The News and Observer* of Raleigh, Nov. 10, 1977, pp. 1 & 8.

[3]Gerald Benjamin, "The Power of Incumbency," *Empire State Report* magazine, April 1987, pp. 33-37.

[4]*State Government: CQ's Guide to Current Issues and Activities, 1987-88*, Congressional Quarterly Press, 1987, p. 90.

[5]Mary Anne Rhyne, "Personal Races Dead, Say Former Governors," *The News and Observer*, Jan. 3, 1984, p. 5B

[6]*State Government*, p. 96.

[7]Steve Adams and Richard Bostic, "The Lieutenant Governor — A Legislative or Executive Office?," *N.C. Insight*, Vol. 5, No. 3, November 1982, pp. 2-10.

[8]*State ex. rel. Wallace v. Bone*, 304 N.C. 591, SE 2d 79 (1982).

[9]Opinion of the Attorney General, Jan. 19, 1982. See also Lacy Maddox, "Separation of Powers in North Carolina," in *Boards, Commissions, and Councils in the Executive Branch of North Carolina State Government*, N.C. Center for Public Policy Research, January 1985, p. 44.

[10]*Advisory Opinion in re Separation of Powers*, 304 N.C. 767 (Appendix).

[11]*Immigration and Naturalization Service v. Jagdish Rai Chadha* 462 U.S. 919, 77 L.Ed. 2d 317, 103 S. Ct. 2764 (1983).

[12]Larry Sabato, *Goodbye to Good-Time Charlie: The American Governorship Transformed, 1950-1975*, Lexington Books, 1978, p. 1.

How Powerful is the North Carolina Governor?

by Thad L. Beyle

In January 1989, Gov. James G. Martin raised his right arm and made history. He became the first Republican Governor to be sworn into a second four-year term. In 1977, the voters of the state had amended the North Carolina Constitution to allow the Governor to succeed himself, and Democrat James B. Hunt Jr. was the first Governor to take advantage of that provision. As Martin began his second term in 1989, he, like Hunt before him, could depend on experienced cabinet members and budget officers, men and women he had placed in positions of power four years earlier.

How does the position that Governor Martin now holds stack up with that position in the other 50 states? And how has the North Carolina governorship changed in the last 20 years? Answers to these two questions provide some important guideposts for understanding the rapidly growing business of state government. For unlike the colonial era and the 19th century, today's governors sit at the top of the pecking order of political power in most states.

Institutional Powers

ASSESSING THE POWERS accorded a governor by state constitutions and statutes provides one means of measuring the relative strength of the 50 governors in the country. The five formal powers common to almost all governors are tenure, appointment, removal, budget, and veto. In addition, the power of the legislature to change the governor's budget proposals and whether the governor and the legislature are of the

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same party are important parts of the gubernatorial power calculus. To examine and compare these seven institutional powers for all the states, a point system for each category and for cumulative groupings, was used. This analysis and presentation is based, in part, on an earlier study published in *N.C. Insight* and on a recent National Governors' Association report.[1] Portions of this update are taken from a chapter on "Governors" to be published in the next year.[2]

Tenure Potential. The longer a governor serves, the more likely he is to achieve his goals and have an impact on the state. The length of term and ability to succeed oneself, then, are critical determinants of a governor's power. In the original 13 states, ten governors had one-year terms, one had a two-year term, and two a three-year term. States gradually moved to either two- or four-year terms, but one-year tenures did not phase out completely until early this century. By 1940, about the same number of states had two- and four-year terms. From 1940 to 1989, the number of states allowing the governor only a two-year term shrank drastically, from 24 to three (New Hampshire, Rhode Island, and Vermont). And from 1960 to 1989, the number restricting consecutive reelection declined from 15 to three (Kentucky, New Mexico, and Virginia).

To rank the states according to the governor's tenure potential, more weight was given to four-year than two-year terms and more to unlimited reelection possibilities than to restraints on reelection. North Carolina (four-year term, one reelection permitted) fell in the second strongest group of states (see table).

Until 1977, the governor of North Carolina could not succeed himself. Not only did this limit his power in developing programs within the state, it also curtailed his effectiveness within intergovernmental circles. The governor serves on interstate bodies concerned with education, energy, growth policy, and other issues and works closely with his colleagues in the Southern and National Governors' Association. The governor represents the state in meetings with the President, cabinet members, and members of Congress and negotiates with federal agencies regarding various issues, programs, and funds. Such complex relationships and activities take time to perform effectively. Further, leadership in some of these organizations provides a platform for making views known and having impact on policy directions.

Until succession passed, North Carolina shortchanged itself. Former Gov. Robert W. Scott (1971-75) put it this way in 1971: "North Carolina is not very effective in shaping regional and national policy as it affects our state because our state changes the team captain and key players just about the time we get the opportunity and know-how to carry the ball and score."[3]

The Power of Appointment. One of the first sets of decisions facing a governor-elect on the Wednesday morning in November after election is the appointment of personnel to key positions within his administration. The appointive power extends to the governor's legislative role; promises of appointments to high-level executive positions, to the state judiciary, and to more than 240 boards and commissions are often the coins spent for support of particular legislation.

The measure of the governors' appointive powers is the extent to which he is free to name the heads of the state agencies administering the six major state functions of corrections, education, health, highways, public utility regulation, and public welfare. Governors who can appoint these officials without any other body involved are more powerful than those who must have either or both houses of the legislature confirm an appointment. And governors who only approve appointments rather than initiating them have even less appointive power. The weakest states are those in which a governor neither appoints nor approves but has a separate body do so, or where separately elected officials head these agencies.

In appointive power for these six functions, the governor of North Carolina ranked among the most powerful of the 50 chief executives. The weak spots are in education where the Superintendent of Public Instruction is elected and in public utilities regulation where the General Assembly must confirm his appointments to the Public Utilities Commission.[4]

Two additional factors should be considered. First, this study did not analyze the number of appointments made to the 240 boards, commissions, and councils in North Carolina.[5] While the governor has to share some of these appointments with the legislature, lieutenant governor, and others, he can now appoint 2882 people to official positions. Second, a large number of state officials are elected independently in North Carolina, and the appointments that might normally devolve to a governor in another state rest with other elected officials here. These factors are not measured here.

Removal Power. The reverse side of appointive power is often overlooked—the power of removal. The power to appoint officials theoretically implies the power to remove officials so an appointment can be made. Generally, this is a difficult power to exercise absent an official accused of outright corruption or unethical behavior. In fact, the political costs of trying to remove someone are often greater than living with the problem that they create.[6]

Proposed Legislation Which Would Alter the Powers of the N.C. Governor

In the 1989-90 General Assembly, eight measures were proposed which would increase, decrease, or otherwise affect the governor's powers in North Carolina. They are as follows:

A. **Legislation Which Would Increase the Governor's Powers**

1. Veto power
2. Team elections with the Lieutenant Governor (by removing a possible adversary in dealing with the General Assembly)
3. Merit selection of judges (by increasing the number of governor's appointments)
4. Limiting the Speaker of the House of Representatives to two terms (limiting the longevity and thereby the power of the House's leadership)

B. **Legislation Which Would Decrease the Governor's Powers**

5. Repeal of gubernatorial succession
6. Limiting the governor to one six-year term

C. **Legislation Which Would Otherwise Affect the Governor's Powers**

7. Four-year terms for legislators
8. Moving state elections to non-presidential election years

Recently another constraint on the governor's removal power has arisen from a series of U.S. Supreme Court cases protecting individuals from political firings.[7] This constraint is based on an individual's freedom of thought and association with political parties embedded in and protected by the First Amendment to the U.S. Constitution. There are some caveats in these rulings: an employee's political rights "may be required to yield to the state's vital interest in maintaining governmental effectiveness and efficiency" if these individual rights "would interfere with the discharge of his official duties" *(Branti v. Finkel)*; and "it does not protect from dismissal public employees who complain about working conditions or their supervisor" *(Connick v. Meyers)*.

Currently, *Stott v. Martin*, a case brought to challenge the North Carolina governor's power of removal, such as political firings, is pending in the U.S. Eastern District Court in Raleigh. This is a pivotal case with considerable national interest as it is the first case to directly challenge a governor's power of removal. The previously noted cases all involved local jurisdictions. *Stott v. Martin* is projected to be tried in 1991 after several pretrial motions and appeals are settled. Then there will be an almost certain appeal to the U.S. Court of Appeals and the U.S. Supreme Court, no matter what the decision may be.

The power of removal is strongest when lodged in the state's constitution rather than in a statute. It is also stronger when there are few specifications or restrictions as to who might be removed, or the causes

— continued on page 112

Institutional Powers of Southern Governors: A Comparison[a]

	Tenure Potential[b]	Appointive Powers[c]	Removal Powers[d]	Budget-Making Power[e]
Very Strong	Texas (18)	Tennessee (3)	(4)	Alabama Arkansas Delaware Florida Georgia Maryland Mississippi Missouri N.Carolina Oklahoma Tennessee Virginia W.Virginia (44)
Strong	Alabama Arkansas Delaware Florida Georgia Louisiana Maryland Mississippi Missouri N.Carolina S.Carolina Tennessee W.Virginia (26)	Arkansas Delaware Kentucky Maryland N.Carolina Virginia (19)	Delaware Louisiana Maryland (5)	Kentucky Louisiana S.Carolina (5)
Moderate	Kentucky Virginia (3)	Alabama Florida Louisiana Missouri W.Virginia (18)	Alabama Arkansas Kentucky Missouri Virginia (13)	(0)
Weak	(3)	(5)	Florida Mississippi Oklahoma S.Carolina Tennessee Texas W.Virginia (19)	Texas (1)
Very Weak	(0)	Georgia Mississippi Oklahoma South Carolina Texas (5)	Georgia N.Carolina (9)	(0)
None	N/A	N/A	N/A	N/A

—continued

	Legislative Budget Changing Power [f]	Veto Power [g]	Gubernatorial Party Control [h]	Overall Institutional Powers [i]
Very Strong	Maryland W.Virginia (2)	Delaware Florida Georgia Louisiana Maryland Mississippi Missouri Oklahoma S.Carolina Texas Virginia (38)	Arkansas Georgia Louisiana Maryland Mississippi W.Virginia (8)	Maryland (1)
Strong	(1)	Alabama Arkansas Kentucky Tennessee W.Virginia (5)	Kentucky Tennessee Virginia (10)	W.Virginia (4)
Moderate	(1)	(0)	Delaware (14)	Alabama Arkansas Delaware Florida Georgia Kentucky Louisiana Mississippi Missouri Oklahoma Tennessee Virginia (38)
Weak	(0)	(5)	Florida Missouri **N.Carolina** Oklahoma S.Carolina Texas (16)	**N.Carolina** S.Carolina Texas (7)
Very Weak	Alabama Arkansas Delaware Florida Georgia Kentucky Louisiana Mississippi Missouri **N.Carolina** Oklahoma S.Carolina Tennessee Texas Virginia (46)	(1)	Alabama (2)	(0)
None	N/A	**N.Carolina** (1)	N/A	N/A

FOOTNOTES

[a] The states included in this table are members of the Southern Governors' Association. The numbers in parentheses are the number of the 50 states falling into that category. Using a point system ranging from five to zero, the states were grouped into six categories: Very Strong (VS) - five points; Strong (S) - four; Moderate (M) - three; Weak (W) - two; Very Weak (VW) - one; and None (N) - zero. Sources are *The Book of the States,* 1988-89 (Lexington, Ky: Council of State Governments, 1988); *Legislative Budget Procedures in the 50 States* (Denver: National Conference of State Legislatures, 1988); "1988 Election Results," *State Legislatures* 14 (November/December 1988); and, "The Institutionalized Powers of the Governorship, 1965-1985," (Washington, DC: National Governors' Association, 1987).

[b] **Tenure Potential.**

VS - 4 year term, reelection allowed;
S - 4 year term, one reelection permitted;
M - 4 year term, no reelection permitted;
VW - 2 year term, one reelection permitted; and
N - 2 year term, no reelection permitted.

[c] **Appointment Power.** Based on governor's ability to appoint officials in six major areas: corrections, education, health, highways, public utility regulation, and public welfare.

VS - governor appoints alone;
S - governor appoints and one house must confirm;
M - governor appoints and both houses must confirm;
W - appointment by department director with governor's approval;
VW - appointed by department director, board, legislature, or by civil service;
N - popularly elected by people.

[d] **Removal Powers.**

VS - power based in state constitution or court decision; no specifications or restrictions as to use;
S - power based in state constitution or statutory elaboration of constitutional provision; specifications or restrictions in only one area (cause, scope, process);
M - power based on statutory elaboration of constitutional provision or statute; specifications or restrictions in one or two areas (cause, scope, process);
W - Power based on statutory elaboration of constitutional provision or statute; specifications or restrictions in two or all three areas (cause, scope, process);
VW - power based on statute, or restricted by court decision; specifications or restrictions in all three areas (cause, scope, process).

[e] **Budget Making Power.**

VS - governor has full responsibility;
S - governor shares responsibility with civil servant or with a person appointed by someone else;
M - governor shares responsibility with legislature;
W - governor shares responsibility with another popularly elected official;
VW - governor shares responsibility with several others with independent sources of strength.

[f] **Legislative Budget-Changing Power.**

VS - legislature may not increase executive budget;
S - a special (three-fifths) vote is required to increase a governor's recommendation;
M - legislature may reduce or strike out items, but may increase and add separate items; subject to governor's line item veto;
W - legislature can change budget, but must balance allocations with revenues;
VW - unlimited power of legislature to change executive budget.

[g] **Veto Power.**

VS - item veto with three-fifths of legislature needed to override;
S - item veto with majority of legislature needed to override;
M - item veto with majority of members of legislature present needed to override;
W - no item veto but special majority of legislature needed to override;
VW - no item veto with simple legislative majority needed to override;
N - no veto of any kind.

[h] **Gubernatorial Party Control.**

VS - Governor's party controls both houses substantially (75 percent majority);
S - Governor's party has simple majority in both houses, or a simple majority in one house and a substantial majority in the other;
M - Split party control in the legislature or nonpartisan legislature;
W - Governor's party in simple minority in both houses, or a simple minority in one and a substantial minority in the other;
VW - Governor's party in substantial minority in both houses.

[i] **Overall Institutional Powers.** The overall ratings were determined by averaging the scores for the seven categories and grouping the states as follows: Strong 4.5+; Strong 4.0 - 4.4; Moderate 3.0 - 3.9; Weak 2.0 - 2.9; Very Weak 1.9 or less.

for removal to be cited, or if the removal is the governor's alone and not shared with another state agency. State supreme court decisions have both provided the governor with considerable power of removal (Indiana), a somewhat restricted power of removal (Arizona), or hamstrung the governor (Georgia).[8]

To rank the states on the governor's removal power, more weight was given to a constitutional rather than to a statutory provision. Other factors considered were the degree to which the governor's removal power is constrained by restrictions on the cause needed to remove an official, the scope of the removal power, and/or the removal process involved. North Carolina falls among the more restricted governors among the 50 states in this power.

Budget-Making Power. An executive budget, centralized under gubernatorial control, is a 20th century response at all levels of our governmental system to the chaotic fiscal situations that existed at the turn of the century. Such a document brings together under the chief executive's control all the agency and departmental requests for legislatively appropriated funds. Sitting at the top of this process in the executive branch, a governor usually functions as chief spokesman for the budget in the legislature as well.

A governor who has full responsibility for developing the state's budget is more powerful than those who share this responsibility with others. Most states (44) do give this power solely to the governor; in only six do the governors have to share the control over the budget.

North Carolina, along with among almost all other states, has provided the governor with a very strong budget-making power. This is a change since the earlier 1981 evaluation of the governor's powers due to the reduction in the powers and functions of the Advisory Budget Commission (ABC), following a state Supreme Court decision.[9] Prior to this 1982 decision, the ABC, with eight legislators among its 12 members, effectively controlled the overall "executive budget" presented to the General Assembly.[10] This legislative role raised legal questions concerning the constitutional power of the North Carolina governor. Under the North Carolina Constitution, the governor "shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period."[11] By having a legislatively dominated commission actually carrying out this function, the Constitution's separation of powers clause was being violated, and thus it fell under the definition of unconstitutional action prohibited by the *Wallace v. Bone* decision.

Legislative budget-changing authority. This is the first of two gubernatorial powers that are basically negative—the first of two in which the legislature has the potential to restrict a gubernatorial power. The governor may propose the next state budget, but to the extent that a legislature may change that proposed budget, the less 'potential' budget power for a governor. Note the use of the word 'potential'; it is applied purposely because not all legislative-gubernatorial relationships are adversarial and the governor's proposed budget most often sets the budgetary agenda for legislative consideration and decision.

There is little variation among the states on this power as only four states have constraints on the legislature's ability to change the governor's budget proposals. In fact, since 1965 no state has increased the governor's budget power vis-à-vis the legislature and four states actually have increased their legislature's power.[12]

Veto Power. The most direct power a governor can exercise vis-à-vis the legislature is the threat and the use of a veto. The type of veto power extended to governors ranges from total-bill veto, to item reduction power, to no veto. As the politics of the past few years have highlighted, only one state has no veto power — North Carolina.

In addition to giving a governor direct power over the legislature, a veto also provides a governor with some administrative powers. For example, it gives him the ability to stop agencies from attempting an end run around the governor's adverse decision. This is especially true in the 43 states where the governor can veto particular items in an agency's budget without overturning the entire bill. But like the legislative budget-changing authority, this is also a measure of how the legislature may curtail a governor's power through it's ability to override a governor's veto.

Ranking the states for veto power is based on two principal assumptions: 1) an item veto gives a governor more power than does a general veto; and 2) the larger the legislative vote needed to override a governor's veto, the stronger the veto power. In this category, North Carolina, with no veto power at all, ranked dead last of all the 50 states (see table).

Governor's Party Control. Textbooks always list one of the governor's major roles as 'political party chief', a role allowing the governor to use partisanship to the most advantage. For example, if the governor and the majority of the members and the leadership of both houses of the legislature are of the same party, the governor's power is likely to be greater than if they are of opposite parties; there is less chance of partisan conflicts. If they are of opposite parties, partisan conflicts can be the norm and the governor loses power due to the inability to call on partisan

loyalty for support.

In recent past there has been a growing trend toward a "power-split" situation in which the two branches are controlled by opposite parties either totally or partially.[13] Following the 1984 elections, sixteen states had such split party control; in 1989 there are thirty-one. Political scientist V. O. Key Jr. called this phenomenon a "perversion" of the separation of powers built into our system of government at the national and state levels as it allows partisan differences to create an almost intractable situation.[14]

Measuring this power across the states is based on the assumption that the greater the margin of control by the governor's party in either or both houses of the legislature, the stronger the governor may be. Conversely, the weaker the governor's party in the legislature, the weaker the governor may be. Of course, this overlooks the possibility that the governor's style and personality can either surmount difficult partisan splits or make the worst of a good situation. North Carolina, with Republican Governor Jim Martin and a legislature ostensibly controlled by Democrats in both houses, falls toward the lower end of this measure.

Summary of Institutional Powers. To compare the institutional powers of the 50 governors, each state was given an overall average score by using a two-step method. First, for each of six categories — tenure, removal, budget-making, legislative budget changing, veto, and governor's party control — a zero to five point scoring range was used. The appointment category had a zero to six point range to conform with the National Governors' Association (NGA) Study. (See the footnotes to table for an explanation of the scoring system for each category.) Second, the scores for the seven categories were totaled and divided by seven to get overall average scores, which ranged from 4.7 (Maryland) to 2.4 (Rhode Island). With a score of 2.6, North Carolina along with eight other states, fell in the bottom group of states — "weak" governor. No state fell in the "very weak" category.

Informal Powers

These measures only tell us part of the story of gubernatorial power. They emphasize the degree of control the governor has over the executive branch and his relationship with the legislature. They do not, however, measure the many informal sources of power or constraints on a governor such as interest groups, media, money, county campaign organization, good looks, and charisma. A media-wise governor can, for example, dominate a state's political and policy agenda.

Some of the informal powers available to the N.C. governor outweigh the constraints on his institutional powers. A strong media base in the state provides the governor with a major vehicle to command attention. Because no large urban area dominates the state's politics, there are not other highly-visible political leaders with which the governor has to compete. In contrast, the mayors of New York, Chicago, Los Angeles, and other large cities have a political base which can vault them into a position to vie with a governor for leadership. Moreover, in this state, few other institutions provide leaders a base for political attention. Labor unions are weak; no independent citizens group has the power to challenge the governor on any sustained basis; and the dominant industries, like textiles, tobacco, or banking, usually have worked quietly behind the political scene.

Finally, a North Carolina governor can still forge a grassroots political organization from Manteo to Murphy. The state is not so big as to make this process impossible, yet it is large enough to make such a county-by-county structure powerful indeed. Because the North Carolina governor can appoint judges and pave highways — the power of "robes and roads" — he can attract campaign workers and financing, essential ingredients for a grassroots network of supporters.

Summary

To place this analysis in a regional perspective, the table presents the comparative institutional powers of governors for the states in the Southern Governors' Association. Southern governors do not generally have as much institutional power as do non-southern governors. Moreover, North Carolina has not kept pace with its neighbors in enhancing its governor's powers. While the N.C. governor gained power through the major executive branch reorganization of the early 1970s and the succession amendment of 1977, he still has to contend with a large number of separately elected state officials and to cope with the legislature without any veto power.

The wide range of informal powers available to the North Carolina governor tends to balance the governor's structural weaknesses. And the way in which the governor uses the institutional powers in a day-to-day functional sense can determine to a large extent how powerful that governor really is. In the final analysis, then, the degree of power that the North Carolina governor has today depends upon the person who occupies the gingerbread mansion on Blount Street and that person's political skills, instincts, ideals, and ambitions. And the longer one person can maintain that residence, the greater power a governor accumulate.

FOOTNOTES

[1] Thad L. Beyle, "How Powerful is the North Carolina Governor?, *N.C. Insight* Vol. 4, No. 4 (December 1981), pp. 3-11; and Office of State Services, "The Institutional Powers Of The Governorship: 1965-1985," *State Services Management Notes* (Washington, DC: National Governors' Association, 1987).

[2] Thad L. Beyle, "Governors," in Virginia Gray, Herbert Jacob, and Robert H. Albritton, eds., *Politics in the American States* 5th ed., (Boston: Little, Brown, 1990).

[3] Robert L. Farb, *Report on the Proposed Gubernatorial Succession Amendment*. 1977 (Chapel Hill: Institute of Government, 1977), p. 5.

[4] N.C.G.S. 62-10.

[5] See *Boards, Commissions and Councils in the Executive Branch of N.C. State Government*. N.C. Center for Public Policy Research, 1985, p. 1.

[6] Diane Kincaid Blair, "The Gubernatorial Appointment Power: Too Much of a Good Thing?", *State Government* 55 (1982), pp. 88-92.

[7] See *Elrod v. Burns*. 96.S.Ct. 2673 (1976), *Branti v. Finkel*, 445 U.S. 507 (1981), *Connick v. Meyers*, 461 U.S. 138 (1983).

[8] See *Tucker v. State*. 218 Ind. 614 (1941); *Ahern v. Bailey* , 104 Ariz. 250, 451 P.2d 30 (1969), and *Holder v. Anderson*, 160 Ga. 433, 128, S.E. 181 (1925).

[9] *State ex. rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E. 2nd 79 (1982). This decision concerned one specific board but the state's attorney general ruled it applied to 36 other boards including The Advisory Budget Commission.

[10] See *The Advisory Budget Commission — Not as Simple as ABC*, North Carolina Center for Public Policy Research, 1980.

[11] Article III, Section 5(3), Constitution of North Carolina.

[12] Office of State Services, *The Institutionalized Powers of the Governorship*. p. 7.

[13] Article III, Section 5(3), Constitution of North Carolina.

[14] V. O. Key Jr., *American State Politics* (New York: Knopf, 1956), p. 52.

The Lieutenant Governorship in North Carolina: An Office in Transition

by Ran Coble

This article focuses on the powers and duties of the office of Lieutenant Governor, which is undergoing a transition in 1989.

GEORGE SANTAYANA ONCE SAID, "Those who cannot remember the past are condemned to repeat it." And the past is instructive in what it discloses about how North Carolina has treated Republicans who break Democratic strings of succession in office.

North Carolina's first Republican Lieutenant Governor was Tod R. Caldwell of Burke County, who became Governor when a Democratic majority in the N.C. General Assembly impeached Gov. William W. Holden in 1871. Holden was the state's first Republican governor, and Caldwell became the second. The legislature then stripped Governor Caldwell of many powers, leaving him with a staff of one.[1] One hundred and eighteen years later, history has proven a prophet as the state's fourth Republican Lieutenant Governor,[2] James C. Gardner, has been stripped of important powers which had been vested in the Lieutenant Governor for decades. With 37 of the N.C. Senate's 50 members, the Democratic majority stripped or took back—the explanation depending on one's party affiliation—the power to assign bills to committee and the power to appoint committees and committee chairmen.

Why is this important to North Carolina's citizens? How has the office of the Lieutenant Governor evolved in the last 30 years? And how do the powers of North Carolina's Lieutenant Governor compare with those of other states?

The Evolution of the Office of Lieutenant Governor

Calvin Coolidge wasn't Lieutenant Governor in North Carolina, but he might as well have been in the first 50 years of this century, because the office had few powers and few duties. When Coolidge was Lieutenant Governor of Massachusetts, he once was asked what he did for a living by a matron who did not recognize him. Coolidge replied, "I'm Lieutenant Governor," and the lady promptly asked him to tell her all about it. "I just did," answered the taciturn Coolidge.[3]

Ran Coble, a former legislative staff member, has been executive director of the N.C. Center for Public Policy Research since 1981.

Up until about 1968, some Tar Heel Lieutenant Governors might have concurred with Silent Cal's assessment of the office as unfulfilling or frustrating. But in the last 20 years, the office of Lieutenant Governor has been transformed into one of great power and opportunities, centered not so much within the executive branch as within the legislative branch.

Picking transition points is an iffy proposition, but let's choose three—1973, 1980, and 1988. Before 1973, the office of Lieutenant Governor was part-time (at least in salary; the job paid $5,000 a year, though the officeholder was lieutenant governor all the time), came with a staff of two (having a staff at all was a recent innovation), and an office budget of $12,000. In 1973, the first Republican Governor to be elected in the 20th century, James E. Holshouser Jr., took office, and the Democratic majority in the General Assembly felt the need to elevate the stature of its highest state-level officeholder, Lt. Gov. James B. Hunt Jr. In fiscal year 1973, the Lieutenant Governor's salary was increased six fold to $30,000 a year, the office budget increased to $59,000, the staff expanded to five, and the job became full-time.[4]

A second step up the rungs of power came in 1980, when James C. Green became the first Lieutenant Governor with the right to succeed himself and build an eight-year power base in the state Senate. At this point, the Lieutenant Governor became a political rival to the Governor, even if they were of the same party. From 1973 through 1988, the legislature gradually expanded the powers of the Lieutenant Governor for a succession of Democrats, particularly involving him in budget decisions. The legislature also empowered the office with significant appointments. By 1989, the Lieutenant Governor controlled 195 appointments to 87 boards in the executive branch of state government, though 106 of those appointments had to be approved by the General Assembly before becoming effective.

However, there were constant signs of unease about this expansion of power. Community College President Robert W. Scott, who was Lieutenant Governor from 1965-69, remembers stirring up a hornet's nest when he attended a few Senate committee meetings.

"I was just interested in seeing how they were going to handle a bill, but it upset some people," recalls Scott. "My friend Tom White [the Senate Appropriations Committee chairman] let me know that in the future, it would be a good idea to check with the committee chairman first before I did that again."

Robert B. Jordan III, who served as Lieutenant Governor from 1985-89, remembers a similar feeling—that of being a Senate leader without being a Senate member. "The leadership in the legislature lets it be known, subtly at times and not so subtly at other times, that you are not a member of the legislature. For instance, if I wanted a report from legislative research [the General Research Division] or from Fiscal Research, I had to ask a Senator to request it. The Lieutenant Governor can't get it because he's not a member. If I wanted a little bit more office space or to move somebody, I'd have to get in line for it. I couldn't do it myself."

In 1971 there was talk of taking away the power to appoint committees, and in 1973 and again in 1975, the Senate attempted, but failed, to strip the Lieutenant Governor of his power to appoint committee membership. Then on the last day of the 1976 session, the Senate successfully voted (34-9) to eliminate the Lieutenant Governor's appointive power. Two months later, however, the Democratic caucus voted to reverse this action (the full Senate made this reversal formal at the opening of the new session).

Despite this continuing unease, the legislative powers of the Lieutenant Governor continued to expand. From 1985-89, Bob Jordan was not only Lieutenant Governor but also the titular head of the Democratic Party in opposition to Republican Gov. James G. Martin. If there was going to be a Democratic Party program, it would fall to Jordan to present the party's program to the Senate and to the people of North Carolina. This combination of Republican Governors, a new right of succession, an expanded staff and budget, and new appointment powers resulted in formidable responsibility for the office of Lieutenant Governor.

The Powers of the Lieutenant Governor

As Jordan went out of office, the Lieutenant Governor had 11 powers, but they came from three different sources—the state Constitution, state statutes, and Senate rules. Most politically savvy observers knew that the Lieutenant Governor appointed committees and their chairmen, and that he assigned bills to committee, but few knew that those powers came from easily changed Senate rules and not from the bedrock authority of the state Constitution. The 11 powers (two have since been dropped) and their origins were as follows:

A. Powers from the State Constitution

1. The power to succeed the Governor (from Article III, Section 3(1) of the Constitution);
2. The power to serve as acting Governor in the Governor's absence from the state or during the physical or mental incapacity of the Governor (Article III, Section 3(2);
3. Membership on the Council of State (Article III, Section 8) and on the State Board of Education (Article IX, Section 4(1)) of the Constitution;
4. The power to preside over the Senate and control floor debate (Article III, Section 6 and Article II, Section 13);
5. The power to vote in case of ties (Article II, Section 13);
6. The duty to sign bills when presiding over the Senate (Article II, Section 22);
7. The power to perform such additional duties as the Governor and the General Assembly may assign him (Article III, Section 6);

B. Powers from State Statutes

8. The power to make outright or to recommend to the General Assembly 195 appointments to 87 boards and commissions in the executive branch (under N.C.G.S. 120-121 and 120-123 and various other state statutes);
9. Membership on:
   - the State Board of Community Colleges, N.C.G.S. 115D-2.1(b)(1);
   - the Economic Development Board, N.C.G.S. 143B-434(a);
   - the Capital Planning Commission, N.C.G.S. 143B-374;
   - the Council on Interstate Cooperation, N.C.G.S. 143B-380;
   - the N.C. Commission on the Bicentennial of the U.S. Constitution, N.C.G.S. 143-564(b)(2);
   - the Committee on Inaugural Ceremonies, N.C.G.S. 143-533 (ex officio);
   - the Computer Commission, N.C.G.S. 143-426.21 (ex officio); and
   - the N.C. Teaching Fellows Commission, N.C.G.S. 115C-363.23(a)(2).

C. Powers from Senate Rules (not applicable in the 1989 General Assembly)

10. The power to appoint committees and committee chairman (1987-88 Senate Rule 31); and
11. The power to assign bills to committee (1987-88 Senate Rule 43).

Unbeknownst to most voters, *Senate rules* can be changed at the beginning of a legislative session by a majority vote of the Senate and thereafter by a two-thirds vote. State statutes can be changed by a majority vote of the N.C. Senate and N.C. House of Representatives. This scenario makes the powers of the Lieutenant Governor that originate in Senate rules or state statutes much more susceptible to change than those derived from the Constitution. Amendments to the Constitution must be approved by a three-fifths vote in the General Assembly and then by a majority of the voters.

When the voters elected Jim Gardner on Nov. 8, 1988, the N.C. Senate Democrats immediately made plans to revise Senate rules and vest the authority to refer bills and appoint committees in someone other than a Republican Lieutenant Governor. The Democratic caucus voted on Nov. 25, 1988 to give the power of bill referral to the Senate principal clerk, allowing the Senate Rules Committee chairman, a Democrat, to resolve any disputes. The power to appoint committee chairmen (and Democratic members of Senate committees) was given to the Senate President Pro-Tempore, Henson Barnes (D-Wayne), who was nominated by the Democratic caucus on Dec. 1, 1988, and formally elected by the Senate on Jan. 11, 1989. The rules changes were adopted the same day.

Gardner and Republican legislative leaders had warned it would be politically unwise to remove these powers, saying it would anger voters and make it difficult for Democrats to defend such actions in 1990 when they run for re-election. Gardner characterized the move as "stripping" the Lieutenant Governor's powers, an image of Democrats taking away something that belonged to the office of Lieutenant Governor by right.

By contrast, Democrats defended the actions as consistent with the principle of majority rule. In words soon echoed by other Democratic leaders, Senator Barnes said the Senate has given away too much of its authority in prior years. He said that the powers of appointing committees and assigning bills belonged to the party holding a majority in the Senate, not to a presiding officer of the minority party.

"A majority of the Senate has been elected by the public as a majority party," said Barnes. "Do you feel the majority party, 37 out of 50, elected by the public of North Carolina, that the public expects them to put themselves in a position where they can't pass bills in the Senate?"[5] Barnes later drew an analogy of the Lieutenant Governorship with the U.S. Vice Presidency (the Vice President only presides over the U.S.

Comparison of Powers of the Lieutenant Governors Among the 50 States

Number of States with Lieutenant Governors:	42
Number of states in which Lieutenant Governor can serve two consecutive four-year terms (or more):	39
Number of States with Team Elections (where the Governor and Lieutenant Governor run together as a team):	22

	Number of states where Lt. Gov. has this power	Whether N.C. Lt. Gov. had this power in 1988
A. Executive Powers of the Lieutenant Governor		
1. The power to succeed the Governor	42	yes
2. Serves as acting Governor when Governor is disabled	40	yes
3. Performs other duties as may be assigned by the Governor	33	yes
4. Serves on boards in the executive branch	31	yes
5. Serves as acting Governor when Governor is out of state	27	yes
6. Member of Governor's cabinet or advisory body	20	yes*
7. Has appointments to boards and commissions in the executive branch	6	yes
B. Legislative Powers of the Lieutenant Governor		
1. Presides over Senate	28	yes
2. Votes in case of ties	25	yes
3. Assigns bills to committees	15	yes**
4. Appoints committees and committee chairs	7	yes**

* The N.C. Lieutenant Governor is a member of the 10-member Council of State, which is composed of officials elected statewide, excluding judicial candidates.

** The N.C. Senate removed this power from the Lieutenant Governor, effective in 1989.

Source: The Book of the States, 1988-89

Table prepared by Ran Coble

Senate). Barnes observed, "In all states and in every nation in the free world, the House or the Senate has a right to organize itself."[6] Thus, the Democrats offered a trio of defenses for their actions—majority rule, the analogy to the limited powers of the Vice Presidency, and the likeness with other legislatures. But how similar is North Carolina's Lieutenant Governor to that of other states?

A Comparison of the Powers of the North Carolina Lieutenant Governor with Those of Other States

Eight states in the U.S. do not even have a Lieutenant Governor. Among the 42 states with a Lieutenant Governor, only seven allow their Lieutenant Governor to appoint committees and committee chairmen (See table). Only 15 Lieutenant Governors have the power to assign bills. Twenty-five states allow the Lieutenant Governor to vote in case of ties, and 28 Lieutenant Governors preside over the Senate. These powers can all be characterized as powers which are more legislative in nature than executive.

By contrast, among the powers which are more executive in nature, other states have been more generous in their grants of power. All 42 Lieutenant Governors have the power to succeed the Governor, 33 can be assigned duties by the Governor, and 40 serve as acting Governor when the Governor is disabled. Thirty-one Lieutenant Governors serve on executive boards, but only six can make appointments to boards in the executive branch, though the data on the latter power are more subject to question.[7] Thirty-one lieutenant governors can succeed themselves for an unlimited number of four-year terms; eight lieutenant governors, including North Carolina's, can serve two consecutive four-year terms; and one state, Kansas, prohibits a second term in office.[8]

The trend is clear, says one expert in the transformation of the offices of Governor and Lieutenant Governor. "In the past, the Lieutenant Governor has been a hybrid executive-legislator," but taking away his legislative duties has helped to make him a firm and integral part of the executive branch, with his allegiance clearly owed to the Governor rather than to a chamber of legislators, wrote Larry Sabato of the University of Virginia in 1983. "Twelve states have now placed the Lieutenant Governor completely in the executive branch, and others have reduced the Lieutenant Governor's legislative role," concluded Sabato.[9]

What Does the Future Hold for North Carolina's Lieutenant Governor?

With the removal of key legislative powers from the Lieutenant Governor, what is the future of the office? Few observers think the powers will be returned, regardless of the party affiliation of future officeholders. Bob Jordan says, "I don't expect to see in my lifetime those powers restored to the Lieutenant Governor."

Jordan does expect the office to play a larger role in the executive branch, with increased assignments from the Governor, and possibly elections of the Governor and Lieutenant Governor as a team. "The Governor should give the Lieutenant Governor more to do, and in my mind, they [the legislature] should go back and look at whether the Governor and the Lieutenant Governor should run as a team," Jordan says. That view reflects a clear trend among other states toward team elections. Twenty-two states have put the concept into practice since 1953.[10] Governor Martin likely will assign Gardner more duties. He already has designated Gardner chief of his administration's campaign against drug use.

Jordan also remembers one other possibility that had been discussed—that of combining the duties of the Lieutenant Governor and the Secretary of State. He served on a 1977 legislative study commission which considered combining the two offices when Thad Eure retired (which occurred in January 1989). The Lieutenant Governors of Alaska, Hawaii, and Utah have statutory authority to perform a number of duties normally associated with secretaries of state—supervision of elections, commissioning notaries public, and maintenance of official state laws and agency rules.[11]

A fourth and final possibility is that the legislature may whittle away at the powers given the Lieutenant Governor in *state statutes*—the power to serve on eight executive boards and the power to make 195 appointments to 87 boards and commissions in the executive branch. But that direction might play directly into the hands of Gardner, whose victory in 1988 is at least partly attributable to his ability to characterize the legislature as a body run by a few people behind closed doors. Gardner's criticism of legislators no doubt helped persuade them to reduce both his powers and any opportunity Gardner had to be a major governing force within the legislature. But those same criticisms may increase Gardner's chances in 1992 at succeeding to the governorship—as eight of the last 30 North Carolina Lieutenant Governors have done.[12]

FOOTNOTES

[1]The Code Commission and the office of Superintendent of Public Works were abolished; the power to elect trustees of the University of North Carolina was taken from the State Board of Education and vested in the General Assembly; and biennial sessions replaced annual sessions, a practice which would not return until 1973-74, when the state's first Republican Governor in the 20th century, James E. Holshouser Jr., took office in 1973. See Hugh T. Lefler and Albert R. Newsome, *The History of a Southern State, North Carolina*, third edition, UNC Press (Chapel Hill, NC), pp. 498-99.

[2]The first was Tod R. Caldwell, 1868-70; the second was Curtis H. Brogden, 1873-74; the third was Charles A. Reynolds from 1897-1901; and the fourth is Jim Gardner.

[3]As related in Larry Sabato, *Goodbye to Goodtime Charlie — The American Governorship Transformed*, CQ Press (Washington, D.C.), pp. 69-70.

[4]See Steve Adams and Richard Bostic, "The Lieutenant Governor—A Legislative or Executive Office?" *N.C. Insight*, Vol. 5, No. 3 (November 1982), pp. 2-11.

[5]Van Denton, "Lt. governor gets duties in Constitution, powers from Senate," *The News and Observer* of Raleigh, Nov. 11, 1988, pp. 1C and 2C.

[6]Rob Christensen, "Democrats set to cut Gardner's powers," *The News and Observer* of Raleigh, Nov. 24, 1988, pp. 1A and 6A.

[7]Kathleen Sylvester, "Lieutenant Governors: Giving Up Real Power For Real Opportunity," *Governing* magazine, February 1989, p. 50, examines this new role. "The model for this new lieutenant governorship comes from Indiana, where the lieutenant governor is both the executive director of the state commerce department and secretary of agriculture. John Mutz, who left the position, also ran the state's employment and training program, the employment security program, the state planning department, the tourism board, the film commission, the enterprise zone program and the federal energy and community development block grant programs. Managing all of these functions, says Mutz, made him responsible for 1,400 state employees and a $150 million annual operating budget," reports Sylvester.

[8]The statistics quoted in this paragraph and the previous paragraph rely on *The Book of the States, 1988-89*, The Council of State Governments (Lexington, KY), Tables 2.1 (p. 35), 2.9 (p. 51), 2.10 (p. 43), 2.12 (p. 65), and especially 2.13 (p. 66). Also see the Council's 1987 publication, *The Lieutenant Governor: The Office and Its Powers*, pp. 3-24.

[9]Sabato, p. 71.

[10]*The Lieutenant Governor*, Council of State Governments, p. 7. Although 22 states *elect* the two together, only eight *nominate* the candidates together. On Feb. 9, 1989, H 189 was introduced in the N.C. General Assembly to amend the N.C. Constitution and require that the Governor and Lieutenant Governor run as a joint ticket in the general election.

[11]*Ibid.*, p. 6. In three states without Lieutenant Governors, the Secretary of State is first in the line of succession to the Governor.

[12]Three Lieutenant Governors were elevated by a Governor's death (Curtis H. Brogden in 1874, Thomas M. Holt in 1891, and Luther H. Hodges in 1954), one by resignation (Thomas J. Jarvis in 1879), one by a Governor's impeachment (Tod R. Caldwell in 1870), and three by the elective process (O. Max Gardner in 1929, Robert W. Scott in 1969, and James B. Hunt Jr. in 1977. See the Council of State Governments, *The Lieutenant Governor*, p. 55, and Jesse Poindexter, "A Steppingstone to Governorship," *Winston-Salem Journal*, April 29, 1984, p. A4.

Boards, Commissions, and Councils in the Executive Branch of State Government: Executive Summary

by Jim Bryan, Ran Coble, and Lacy Maddox

A THREE-YEAR STUDY by the N.C. Center for Public Policy Research disclosed that there are 320 boards, commissions, councils, committees, task forces, panels, and authorities in the executive branch of North Carolina state government. These are all part-time groups to which citizens are appointed by the governor and other executive officials. Of these 320 groups, about two-thirds (205) were created by the legislature, and one-fourth by the governor or other executive branch officials. The remaining 24 groups were required to be established by federal law.

The Department of Human Resources has the most boards, with 52 citizens groups advising agencies or making state policy. The Department of Administration is second with 44 groups, and the Department of Cultural Resources third with 36 groups.

The Center's research has uncovered boards that work extremely well and whose contribution greatly outweighs their financial costs. The Center's research has also uncovered boards that are inactive, ineffective, or duplicative, and which should therefore be abolished or their functions consolidated under other groups. The sections below review the major conclusions of the report and offer recommendations that might hold promise for improvements in government service by state boards, commissions, and councils to the people of North Carolina.

Appointments

Governor James B. Hunt Jr. and his cabinet secretaries had over 84.1 percent (2,882) of the 3,425 appointments to state boards at the disposal of executive branch officials. The Superintendent of Public Instruction controls the next largest bloc of appointments, with 6.5 percent (223) of the total. The State Board of Education has 190 appointments (5.5 percent of the total), while all other elected officials combined only have 130 appointments, or 3.9 percent of the total.

Jim Bryan and Lacy Maddox are former researchers at the N.C. Center. Ran Coble has been executive director of the Center since 1981. The report Boards, Commissions, and Councils *was released by the Center in 1985.*

Governor Hunt improved upon the record of Governor James E. Holshouser Jr. in appointing blacks, women, and Indians, but there was room for greater improvement. Only 28 percent of Hunt's appointments went to women, whereas women constitute 51.4 percent of the state's population. Appointments of blacks were 13 percent of the total in contrast to their level of 22.4 percent of the population. Indian appointments (1.4 percent) were slightly higher than their representation in the population (1.1 percent). There were 59 boards with no women members, 106 boards with no blacks, and 287 boards with no Indians.

Geographic representation was also a problem. Over one-fifth of Hunt's appointments were from the capital area — the Fourth Congressional District counties of Chatham, Franklin, Orange, Randolph, and Wake — an area which contains only 9.1 percent of the state's population. Other congressional districts were not as well represented, as the Tenth and Eighth districts (also each with 9.1 percent of the population) supplied only 4.3 percent and 5.5 percent of the appointments, respectively.

Separation of Powers

In February 1982, when the Center issued a preliminary report on separation of powers questions, there were 203 legislators crossing the constitutional line by serving on 90 executive branch boards. At least 36 of these boards, commissions, and councils had administrative or executive powers and were unquestionably violating the separation of powers provision in the state Constitution. The other 54 groups had powers to advise the executive branch, and legislative service on these boards was characterized as "arguably unconstitutional."

Two years later, the N.C. General Assembly has removed legislators from 32 boards, altered the role of the Advisory Budget Commission, and passed other measures to address many concerns raised by the attorney general, the N.C. Supreme Court, and the N.C. Center for Public Policy Research.

Problems still remain, however. As of August 24, 1984, legislators held 142 positions on 56 different boards, commissions and councils in the executive branch. This included 38 seats on 12 boards with administrative or executive functions and 104 seats on 44 boards which are mostly advisory in nature.

Costs

The 320 boards in the executive branch cost the state a total of $4.7 million each year. Three-fourths of that amount is required for staff support; the rest is for per diem allowances or reimbursement of travel and lodging expenses associated with board meetings. The average cost of a state board is $14,731, but the range varies from a reported low of $0 to a high of $332,482. Not all board members get per diem, subsistence, or travel payments, but all boards are staffed by agency employees. For this reason, the Center is skeptical of state agencies' explanations that 58 boards had no costs associated with their existence.

State funds supply almost two-thirds of the $4.7 million total. Federal funds supply another 29.2 percent, while the remaining funds are generated from other sources, such as receipts or interest on earnings. The total cost of boards per department is strongly related to the number of boards within the department and the extent to which agency officials use them. Generally speaking, policymaking boards cost more than boards with purely advisory powers.

The cost of boards and commissions must be balanced against the contributions made by the groups and the amount of citizen participation purchased with this money. Overall, the *reported* cost of the 320 boards discussed in this report is less than one-tenth of one percent of the state's total budget.

Organization and Powers

The most important power given to state boards and commissions is the power to adopt, repeal, or amend rules. There are 88 groups with rulemaking power. Most of these groups are commissions with specific grants of statutory authority to adopt rules.

Another important power of boards is the power to hear and decide contested cases in disputes between two parties. This quasi-judicial function is carried out by 45 different groups in the executive branch.

A third duty given to state boards is that of allocating funds to specific recipients or local governments once these funds are appropriated for general purposes by the legislature. Twenty-eight groups have the power to allocate funds.

More than 100 groups exercise powers to set eligibility criteria for government services or standards under which those services are to be provided. Another 46 groups set rates or fees that must be paid by citizens for services or in order to raise revenue to help cover the cost of a related program.

Twenty-two boards have the power to license individuals, issue permits for certain activities, or oversee a certification process. These groups usually have other functions as well. There are 35 additional occupational and professional licensing boards which exist solely for licensing purposes.

Strengths and Weaknesses of Boards and Commissions

If boards work well, the benefit is:

1. Boards are a major source of citizen participation and input.
2. Boards provide state agencies with advice they cannot normally get:
   a. Citizens provide a statewide perspective.
   b. Citizen appointments can provide technical expertise.
   c. Citizens can act as sounding boards for proposed policies.
3. Board members can educate the public about state government.
4. Boards can highlight a problem or get a new program off the ground.
5. Boards can serve as vehicles for coordination.
6. Boards can provide consumer input and feedback on how governmental programs work.
7. Boards prevent concentrations of power in the executive branch and serve as pressure valves for citizen complaints.

If boards do not work well, the liability is:

1. a. Some boards do not meet, thus losing all their potential benefits.
   b. Certain segments of the population—blacks, women, and Indians—are underrepresented on boards.
   c. Legislators still serve on many boards, thereby thwarting active participation by citizens.
2. a. The Research Triangle area is overrepresented on boards, and other areas of the state are underrepresented.
   b. Boards may degenerate into rubber stamp operations.
   c. Some boards try to administer executive branch programs.
3. Time constraints and other full-time occupations may prevent citizen appointees from learning enough to educate the public.
4. a. Boards may outlive the problems they were supposed to address.
   b. Boards can be a vehicle for deflecting public outcry about a problem without ever doing anything.
5. Complaints about lack of coordination have not declined as the number of boards has increased to 320 since state government reorganization.
6. The fox can be put in charge of the henhouse if more providers than consumers are appointed.
7. Boards can result in "government by committee" and a lack of accountability in state government.

"And so they made an industry out of government. State office buildings in the decaying downtowns. A proliferation of committees, surveys, advisory boards, commissions, legal actions, grants, welfare, zoning boards, road departments, health care groups ... ."

— John D. McDonald,
Cinnamon Skin *(1982)*

Other functions exercised by state boards, commissions, and councils are the powers to advise the executive branch, hire staff, buy property, enter into contracts or lawsuits, and assist in planning or program implementation. The most prevalent activity of boards is the role of coordinating government activities, which is done by 164 groups. The second most frequent function listed is that of providing citizen advice.

The Center's research on the organization and powers of state boards uncovered three problems. First, there are too many boards in the executive branch with little thought given to the overall design as to where citizen advice is really needed. Part of this problem is due to the fact that the guidelines of the Executive Organization Act of 1973 — as to what powers reside with a "board," what powers should be given to a "commission," a "council," a "committee," etc. — have been largely ignored. Part of this problem is also due to the fact that no sunset commission or similar group regularly reviews the needs for each of the 320 different groups.

Second, there are too many (88) groups with rulemaking power, which leads to too many rules, which in turn has led legislators to overreact and repeal much of the state's Administrative Procedure Act (APA). A better solution would be for the legislature to exercise more careful oversight of the number of grants of rulemaking power given in statutes other than the APA.

Third, the present use of boards and commissions as hearing bodies which decide contested cases has serious flaws in its design. A system that allows a group of citizens first to adopt rules and then to decide contested cases involving those same rules is unlikely to produce the neutral decisionmaker required under American constitutional principles of due process. In addition, the citizens who sit on state boards are usually not trained well enough to provide the kind of written record, hearing, and fair procedural process that would ensure an adequate record for judicial review by the courts.

Oversight of the System of Boards, Commissions, and Councils

From 1977 to 1981, the Governmental Evaluation Commission, or "Sunset Commission," evaluated the system of boards in North Carolina. Although its purview was narrower than this report's definition of boards, its recommendations did lead the legislature to examine the statutory authority for many groups, increase fees to keep certain boards self-supporting, and add more public members to various boards.

In 1981, North Carolina became the first state to sunset, or abolish, its own Sunset Commission. In its place, the General Assembly set up a Legislative Committee on Agency Review. The Legislative Committee on Agency Review had a much better record of getting its recommendations enacted by the General Assembly, partly because of its all-legislator composition. With a smaller budget (less than 10 percent of the Governmental Evaluation Commission's) and fewer staff, it made an interim

report in 1982 and a final report to the 1983 General Assembly.

The most recent attempt by the legislature to review the performance of the state boards has been through the Legislative Study Commission on Executive Branch Boards, Commissions, and Councils. Created July 21, 1983, the legislative group set out to examine ways to limit the number and duration of executive branch boards. However, its $5,000 budget and March 1984 deadline restricted the committee to review only inactive boards, or about 10 percent of the total.

That such systematic review is needed can be shown with a few illustrations. First the number of groups in each department varies widely—from a high of 52 boards in one department (Human Resources) to a low of one per department (Revenue and State Auditor). Departments of similar size in terms of budget and employees might have 7 boards (Crime Control and Public Safety, with 1,793 employees and a $67 million budget), 24 boards (Commerce, with 2,362 employees and a $92 million budget), or 44 boards (Administration, with 1,167 employees and a $40 million budget).

Second, the placement of boards within departments is like a Dada poem—without rhyme or reason. Boards in the Department of Natural Resources and Community Development are relatively well organized, with rulemaking and other powerful commissions largely confined to the division level and smaller, less powerful advisory councils spread evenly throughout the next lowest level in the department. On the other hand, boards in the Department of Human Resources (DHR) are found at the division level, section level, branch level, and program level. They may have as narrow a charge as giving advice on a certain disease (the N.C. Arthritis Program Committee), a certain project (the N.C. Advisory Council on Health Statistics), or certain professions serving one type of disability (the Professional Advisory Committee to the Commission for the Blind). Some state institutions in DHR have their own boards (Board of Directors for the Governor Morehead School) while others share a board (the Board of Directors for the three Schools for the Deaf and the Mental Health, Mental Retardation, and Substance Abuse Services Commission, which oversees four mental hospitals, five retardation centers, three alcoholic rehabilitation centers, and several other residential institutions). Some divisions of DHR have more than 10 advisory groups (e.g., the Division of Health Services), while others (the Division of Youth Services) have none.

Third, the system of boards and commissions presently lets some large government programs and serious problems go without citizen input, while giving other programs or problems an overdose. For example, heart disease and cancer rank as serious health problems in North Carolina, and government efforts to address these problems are properly overseen by the Health Services Commission and State Health Coordinating Council. Yet, less prevalent diseases like arthritis, sickle cell anemia, and sudden infant death syndrome rate their own advisory councils.

Other issue areas get multiple doses of advisory council input. For example, most citizens might agree that water supply and water quality problems are among the most significant issues facing North Carolina in the 1980s, but who would argue that we need all of the 11 water policy groups in the Department of Natural Resources and Community Development, including separate advisory councils for certain rivers and lakes (Chowan and Neuse Rivers and Lake Phelps and Kerr Lake)? What is the reason for having an Annual Testing Commission and a Competency Test Commission? What is the rationale for six different library groups and nine different groups organized around school subjects, none of which is as significant a subject as English, math, or science?

The answer to these questions is that there has been a history of constant growth in the number of boards and duplicative and illogical placement of them within departments. Both of these trends have been caused by the fact that there is no comprehensive executive or legislative oversight for this system of boards, commissions, and councils. For these reasons, the N.C. Center for Public Policy Research makes the following recommendations, posed in the form of three alternatives:

Alternative One: Place a departmental ceiling on the number of boards. The N.C. General Assembly should pass legislation placing a ceiling on the number of boards, commissions, councils, committees, task forces, panels, and authorities in each department in the executive branch. Generally speaking, these limits should take into consideration the following three factors:

(a) the number of boards presently existing in the department;

(b) the number of employees in the department and the size of the departmental budget; and

(c) a general principle of no more than one group per division, although leaving some flexibility for the department head (secretary, commissioner, etc.) to establish a few groups to address problems of major statewide significance.

The total reduction in the number of boards in Alternative One is 132.

Alternative Two: Give the governor and other elected officials a ceiling on the number of boards they can maintain. The N.C. General Assembly should pass legislation placing a ceiling on the number of boards that could exist in the 10 departments under the control of the governor. The General Assembly should also limit the number of boards that could exist in the nine departments headed by other elected officials. The total reduction in the number of boards under Alternative Two is 135.

Alternative Three: Individually abolish specific groups.

1. The N.C. General Assembly should immediately abolish, in the 1984 short session, the 38 groups listed at the end of Chapter 7.* Many of these groups have not met during the last two years and all are ineffective or duplicate other groups' efforts. Some have completed the tasks they were created to accomplish. There was little or no objection to abolishing these groups by the parent state agency when each agency reviewed a draft copy of the Center's report, or in agency testimony before the Legislative Study Commission on Executive Branch Boards, Commissions, and Councils. In addition, the interim report of the study commission recommends that 24 of these 38 groups be abolished and the functions of two others consolidated under other groups.

2. In the 1985 legislative session, the N.C. General Assembly should abolish 60 other groups listed in Table 7.1. Reasons for each recommendation are given.

3. The N.C. General Assembly should also consider the actions recommended in Table 7.1 [of the report] to transfer certain boards to other departments, to amend the statutory authority of some groups, to delete an inadvertent repeal of one group, and to place sunset dates on several task forces so that they will cease to exist when the task is completed.

The total reduction in number of boards under Alternative Three is 98.

* *Editor's note: Using this approach the 1984-88 sessions of the General Assembly abolished 78 of the 98 boards targeted under Alternative Three.*

"Having served on various committees,
I have drawn up a list of rules:

Never arrive on time, this stamps you as a beginner.

Don't say anything until the meeting is over; this stamps you as being wise.

Be as vague as possible; this avoids irritating the others.

When in doubt, sugggest that a sub-committee be appointed.

Be the first to move for adjornment; this will make you popular; it's what everyone is waiting for.

— Harry Chapman,
Greater Kansas City Medical Bulletin, *1963 issue*

The Council of State and North Carolina's Long Ballot: A Tradition Hard to Change

by Ferrel Guillory

This article examines the impact of North Carolina's "long ballot" on the executive branch, and the prospects for change.

AS COMMISSIONER OF AGRICULTURE, James A. Graham runs a department of state government with a $52.2 million budget and nearly 1,400 employees. Graham was *elected* by the people.

As Secretary of Natural Resources and Community Development, William W. Cobey Jr. runs a department with a $198.7 million budget and 2,122 employes. Cobey was *appointed* by Gov. James G. Martin.

As Commissioner of Labor, John C. Brooks controls one of the smallest departments of state government. The Labor Department has a $10.8 million budget and 298 employees. Brooks was *elected* by the people.

As the Secretary of Human Resources, David T. Flaherty sits atop a huge governmental structure, largest in the state, not counting the Department of Education and its statewide network of teachers. The Department of Human Resources has a $2.5 billion budget and 17,800 employees. Flaherty is an *appointee* of Governor Martin.

Why, in this remainder of the 20th Century, do we still elect some state cabinet-level officials, yet appoint others? Tradition, more than anything else. An observation made in 1968 by the North Carolina State Constitution Study Commission remains true two decades later: "Thus whether one of the state executive offices is filled today by vote of the people or by appointment appears to have more to do with the age of the office than with the nature and weight of its responsibilities."[1]

More than most states, and certainly far more than the federal government, North Carolina has a fractionalized executive branch. Although the power of the Governor has been steadily broadened over time, the state's laws and its programs are carried out not only by the chief executive and his Cabinet but also by several independently elected officials.

The Governor has the power to appoint the overseers of the state's prisons; its transportation system; its economic development efforts; its highway patrol; its health, welfare, and social services; its environmental protection units; its cultural assets; and its tax collectors. But the state Constitution gives the

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people the power to elect, in addition to the Governor and the Lieutenant Governor, the Auditor, the Attorney General, the Treasurer, the Secretary of State, the Commissioner of Agriculture, the Commissioner of Labor, the Commissioner of Insurance, and the Superintendent of Public Instruction.

This long list of public offices, combined with a complete slate of Superior Court judges elected statewide, gives North Carolina its traditional long ballot. And together, the 10 statewide elected officials serve on an unusual and long-lasting unit of state government. It's called the Council of State.

Over the past two years, a series of unrelated developments has focused attention on the Council of State—on how its members are chosen and how its members relate to the Governor. In 1987, the General Assembly debated and then turned down legislation to convert the Superintendent of Public Instruction from an elective to an appointive position.[2] Moreover, two members of the Council of State decided not to seek re-election: Thad Eure, after 52 years as Secretary of State, and A. Craig Phillips, after 20 years as Superintendent of Public Instruction. Thus, with Lt. Gov. Robert B. Jordan III running for Governor instead of re-election, voters filled three vacancies on the council in the 1988 elections. And an important lawsuit (see box) has been part of the debate.

"The complexities of the job are such that you don't want what you have in other states—a rapid turnover of commissioners."

—Jim Long
Commissioner of Insurance

The Council of State has its origins in the Proprietary and Colonial periods, as John Sanders, director of the Institute of Government at the University of North Carolina at Chapel Hill, explains in a history of this unusual institution. The Governor's Council, appointed by the Crown from among residents of the colony, not only advised the Royal Governor but also served as the upper house of the General Assembly.

When North Carolina declared its independence in 1776 and set up its own government, the Governor was given little power and a seven-member Council of State was created. Members of the council were elected by the legislature for a term of one year. "The council had no authority to act except in conjunction with the Governor," Sanders writes. "Its members had no governmental authority as individuals and could hold no other state office."[3]

The Convention of 1868 provided for a popularly elected Governor and Lieutenant Governor, as well as six other executive offices. Under this 1868 Constitution, the Council of State consisted of the Auditor, Secretary of State, Treasurer, Superintendent of Public Works, and Superintendent of Public Instruction. The Governor called and presided over its meetings and the Attorney General was its legal adviser, though neither was a Council member. The office of Superintendent of Public Works was abolished in 1873. And the Commissioners of Agriculture, Labor, and Insurance, as elected officials, were added to the state Constitution in 1944, although these offices already existed as elective positions by *statute*.[4] The Council must approve the Governor's actions in convening extra sessions of the General Assembly, acquiring and disposing of land for the state, and borrowing money.

The 1968 Constitution study commission report, which set the stage for the constitutional revisions of 1971, proposed a much shorter ballot of statewide elected officials. The commission wanted to retain the Governor, Lieutenant Governor, Auditor, Treasurer, and Attorney General as statewide elected officials. It proposed having the Secretary of State and the Commissioners of Labor, Insurance, and Agriculture appointed by the Governor, and the Superintendent of Public Instruction appointed by the State Board of Education.

The commission offered this critique of the consequences of having 10 statewide elected officials:

"Relatively few of the State's two million voters have more than a faint idea of the duties of most of these offices; still fewer are in a position to know the qualities of the occupants of and candidates for most of those posts. Thus the vast majority of voters are poorly prepared to make an understanding selection of the men who are to fill those posts. The fact is that for many decades, nearly all of these officers (other than the Governor and Lieutenant Governor) have reached their places by appointment by the Governor to fill a vacancy, have won nomination in the party primary without significant opposition, and have shared the success of the Democratic state ticket in the general election.

"From the constitutional standpoint, these officers nevertheless hold their offices by gift of the

voters, and so are only indirectly subject to supervision by the Governor. Thus the Governor's ability to coordinate the activities of state government and to mount a comprehensive response to the problems of the day are handicapped if the elected department heads choose not to cooperate with him."[5]

North Carolina now has more than three million voters, and no commission today would write only of "men" who hold government jobs. Still, the arguments for a shorter ballot made by the study commission have echoed across the state for the last 20 years.

Neither the 1968 commission nor its echoes swayed the General Assembly to reduce the number of statewide elected officials. In 1987, both Governor Martin and Lieutenant Governor Jordan backed legislation to make the Superintendent of Public Instruction appointive. That office was singled out for two reasons: First, a change seemed feasible with Phillips retiring. And second, the structure of education governance—an elected superintendent reporting to an appointed board, with the Governor having a key role as agenda-setter and budget maker—strikes many people as leaving the lines of accountability blurred.

The Senate approved a proposed constitutional amendment to make the superintendent an appointee of the education board, but the measure was rejected in a House committee. Other members of the Council of State opposed it.

"You take one off the ballot and then the question is which one's next," says Commissioner of Insurance Jim Long, explaining in part why the Council of State opposed the constitutional amendment.

In separate interviews, Long and Commissioner of Labor John C. Brooks discussed why they favor retaining their jobs as elected positions. The principal issues, both said, are continuity and independence.

"The complexities of the job are such that you don't want what you have in other states—a rapid turnover of commissioners," Long says. While some appointed commissioners stay in office no more than 18 months, he says, North Carolina's elected insurance commissioner is assured of a four-year term.

Brooks notes that the federal government has had three Secretaries of Labor during the last eight years. "The continuity that our system offers is very valuable," he says. "But it also has a safety valve—that if someone is doing a bad job, the voters can do something about it." An appointed commissioner, adds Long, "is beholden to the appointive authority, usually the Governor. I have independence."

Candidates for Council of State offices regularly receive much of their campaign financing from persons and groups with a special interest in the affairs of their particular post. Long, for instance, acknowledges accepting campaign contributions from insurance agents, representatives of insurance companies, engineers, architects, and others with an interest in the insurance-regulation and fire-code duties of his office. "I take it from anybody who will give it to me, and I report it," says Long.

But, Long says, if the Governor appointed the commissioner, special-interest groups would shower gubernatorial candidates with campaign contributions in hopes of influencing the winner's choice of the insurance regulator. In terms of special-interest groups trying to influence government policy through campaign contributions, says Long, "You've got the same risk if the Governor appoints me."

Unless some major event changes official attitudes, it is not likely that another attempt at shorten-

Table 1
N.C. Council of State Officers and Number of States Which Elect the Same Officials

Governor	50
Attorney General	43 *
Lieutenant Governor	42 *
Treasurer	38 *
Secretary of State	36 *
Auditor**	22 *
Superintendent of Public Instruction	16 *
Commissioner of Agriculture	12 *
Commissioner of Insurance***	11 *
Commissioner of Labor	4 *

* Includes states in which the office is established by statute as well as by the constitution.

** Includes some comptrollers, pre-auditors, and post-auditors.

***As counted by the National Association of Insurance Commissioners.

Source: Book of the States, 1986-1987 Edition

Table 2. Number of Offices Headed by Elected Officials, by State, and Rank Among All States (*Exclusive* of Office of Governor)

State	Number of Offices	Rank	State	Number of Offices	Rank
Alaska	0	1	Illinois	6	22
Maine	0	1	Indiana	6	22
New Jersey	0	1	Iowa	6	22
New Hampshire	1	4	Kansas	6	22
Tennessee	1	4	Massachusetts	6	22
Hawaii	2	6	Montana	6	22
Virginia	2	6	Ohio	6	22
Maryland	3	8	California	7	33
New York	3	8	Florida	7	33
Pennsylvania	4	10	Michigan	7	33
Rhode Island	4	10	Nevada	7	33
Utah	4	10	Oklahoma	7	33
Wyoming	4	10	South Dakota	7	33
Connecticut	5	14	Alabama	8	39
Delaware	5	14	Georgia	8	39
Minnesota	5	14	Kentucky	8	39
Missouri	5	14	Nebraska	8	39
Oregon	5	14	New Mexico	8	39
Vermont	5	14	South Carolina	8	39
West Virginia	5	14	Texas	8	39
Wisconsin	5	14	Washington	8	39
Arizona	6	22	Mississippi	9	47
Arkansas	6	22	**North Carolina**	**9**	**47**
Colorado	6	22	Louisiana	10	49
Idaho	6	22	North Dakota	11	50

Source: Council of State Governments

ing the ballot with regard to the Council of State will be made soon. What might spark such a change?

"I suppose if you have a scandal or two or three in those offices," Sanders muses in an interview. "Otherwise, a Governor is not likely to tear his shirt over it."

Perhaps not, but the stimulus might come from outside candidates for office. A few years ago, a Colorado politician campaigned—albeit unsuccessfully—for abolition of the office of Secretary of State. And in the 1988 election, Republican Richard Levy of Greensboro ran for Commissioner of Labor on a platform of promising to abolish the office, but he lost. One candidate who succeeded was William F. Winter of Mississippi, who managed to get the statewide elected office of State Tax Commissioner abolished while he held the post. Voters evidently didn't hold it against him, because Winter later was elected Governor.

Opponents of the long ballot might argue that the state is not well served by electing so many officials. They would contend that "accountability in principle is not matched by accountability in fact," notes *State Policy Reports*, a national state policy newsletter, because "it is so difficult for the public to measure performance in some of these jobs that, as a practical matter, elections are decided by such factors as name recognition . . . rather than judgment of competence or issue orientation. They would contend that the governor makes a better judge of com-

"The continuity that our system offers is very valuable. But it also has a safety valve — that if someone is doing a bad job, the voters can do something about it."
— John Brooks
Commissioner of Labor

petence and performance than the public at large."[6]

The trend in recent years is toward fewer statewide elected officials, according to the 1986-87 *Book of the States*. In 1956, states had 709 elected statewide officials in offices other than the Governor, but 30 years later, in 1986, that number had dropped to 509.

Despite this national trend, state legislators, who would have to pass a constitutional amendment before sending it to the voters for their approval, have little political incentive to alter the system. After all, they themselves are elected officials, and many find themselves unwilling to risk asking their constituents to give up the right to vote on who would fill a position that long had been subject to election. Many of them may reason that North Carolina's long ballot is a symbol of Jacksonian democracy, and that a long ballot is indeed the best way to select the state's leaders.

And some of them, as UNC-CH political scientist Thad Beyle points out, may wish to keep these offices intact "so they can move up politically." For instance, state Rep. Bobby Etheridge (D-Harnett) successfully ran for Phillips' vacant seat as Superintendent of Public Instruction in 1988.

North Carolina could have a shorter ballot, Human Resources Secretary David Flaherty points out, "if the merit selection of judges would be implemented. Eliminating the judges on the ballot would reduce the number of slots and heighten public awareness of the Council of State offices."

Not everyone agrees that's a good idea. As State Treasurer Harlan Boyles puts it, "Shortening the ballot would make it easier to vote, but would it give the people better government?" Boyles believes North Carolina's system of government has worked well, and he says a proper balance of powers exists among the three branches of government. "To curtail the Council of State and give the Governor more appointive power would certainly alter this balance in favor of the executive branch. Would this be desirable? North Carolina's Governor already has appointive power exceeding that in most states."

Another Council of State member, Auditor Edward Renfrow, suggests departments headed by appointees of the Governor may be inappropriate places for many new duties—and that the Council of State departments might be better agencies for these responsibilities. "I believe that, over the years, many programs or functions were placed in various offices appointed by the Governor rather than a more appropriate organizational setting under an elected Council of State office," says Renfrow. Examples he mentioned are the Employment Security Commission under Commerce rather than the Labor Department, and the Public Staff of the Utilities Commission rather than the Attorney General's office. "Such 'misplacements,' in my opinion, often result in duplication of services and inefficient operations," says Renfrow.

Shortly after the House committee quashed the Senate-passed legislation on the Superintendent of Public Instruction in 1987, Lt. Gov. Jordan declared, "I feel this was our best opportunity in the last half of the 20th century to cause this reform to come about. I think it is, for all practical purposes, a moot issue until you have major constitutional reforms of North Carolina state government sometime in the future, as you did in the early 70s."

Court Rules in Martin v. Thornburg

In a case called *Martin et al. v. Thornburg et al.*, the Republican Governor and the other members of the Council of State, all Democrats, vied over whether a majority of the council could take certain actions regardless of the Governor's position. The case dealt with who would be landlord for an Employment Security Commission office in Lumberton. The Martin administration had asked the council to approve one bidder, but the council voted to order renegotiation with the original landlord. The Supreme Court ruled that the Council of State could approve or disapprove real estate transactions, although it appears that only the Governor could initiate an action.* That decision has sparked further debate on relations between the Governor and the Council of State.

**Martin et al. v. Thornburg et al.*, 320 N.C. 533, SE2d (1987).

If Jordan is right—and there's no evidence to the contrary—this long-ballot tradition will continue to give North Carolinians an extensive list of decisions to make at the ballot box every fourth November.

FOOTNOTES

[1] *Report of the North Carolina State Constitution Study Commission* to the North Carolina State Bar and the North Carolina Bar Association, Dec. 16, 1968, p. 118.

[2] Senate Bill 149 ("State Schools Superintendent Appointed"), sponsored by Sen. Robert D. Warren (D-Johnston), passed the Senate but received an unfavorable report on June 3, 1987, in the House Committee on Constitutional Amendments.

[3] John Sanders, "The Governor and Council of State: Constitutional Relationships, 1663-1985," unpublished paper dated Jan. 29, 1986.

[4] Article III, Section 1, Constitution of North Carolina.

[5] *Report of the North Carolina State Constitution Study Commission*, p. 118.

[6] *State Policy Reports*, Vol. II, Issue 15, Aug. 14, 1984, p. 17.

Chapter 6

Article IV: The Judicial Branch

THE MOST STRIKING CHARACTERISTIC of the judiciary in the United States is its duality. While the federal court system works throughout the country, each state also has its own system of courts. Both state and federal courts have certain powers and operate under certain jurisdictional limitations, but the two systems are not always mutually exclusive.

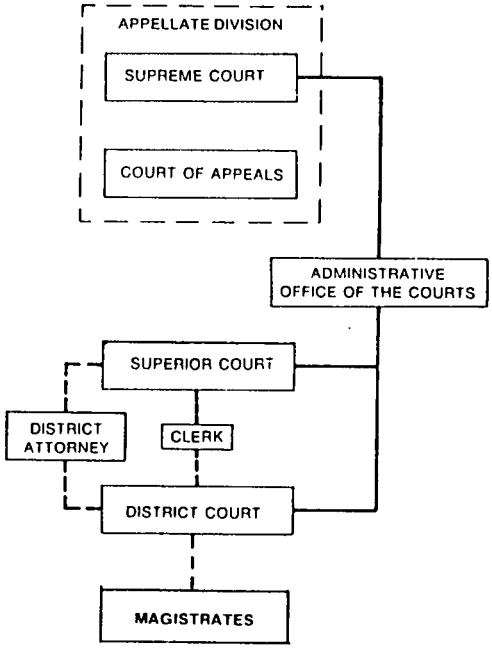
Article IV of the North Carolina Constitution sets out the organization of the "General Court of Justice" in North Carolina, which is comprised of a Supreme Court, a Court of Appeals, and a system of superior courts and district courts throughout the state. To these courts daily fall the task of resolving disputes between citizens in a civilized and orderly fashion, the prosecution of the criminally accused, the protection of life, liberty, and property — in short, the pursuit of justice that is a fundamental concern in all democratic societies.

Symbolic of the courts are the judges, public officials with broad policymaking power and daily opportunities to affect the lives of people across the state. Judges routinely make decisions with profound effects not only on those involved in the judicial process, but on public institutions as well. Perhaps no other government official is required to intervene as directly and often in the affairs of private citizens as is a judge.

In this section the judicial system of North Carolina is described and several issues now confronting the North Carolina courts are analyzed.

ORGANIZATIONAL CHART

NORTH CAROLINA COURTS SYSTEM



North Carolina's Judicial System

HISTORICAL DEVELOPMENT OF THE COURT SYSTEM

From its early colonial period North Carolina's judicial system has been the focus of periodic attention and adjustment. Through the years, there has been a repeated sequence of critical examination, proposals for reform, and finally the enactment of some reform measures.

Colonial Period

Around 1700 the royal governor established a General (or Supreme) Court for the colony and a dispute developed over the appointment of associate justices. The Assembly conceded to the King the right to name the chief justice but unsuccessfully tried to win for itself the power to appoint the associate justices. Other controversies developed concerning the creation and jurisdiction of the courts and the tenure of judges. As for the latter, the Assembly's position was that judge appointments should be for good behavior as against the royal governor's decision for life appointment. State historians have noted that "the Assembly won its fight to establish courts and the judicial structure in the province was grounded on laws enacted by the legislature," which was more familiar with local conditions and needs (Lefler and Newsome, 142). Nevertheless, North Carolina alternated between periods under legislatively enacted reforms (like good behavior tenure and the Court Bill of 1746, which contained the seeds of the post-Revolutionary court system) and periods of stalemate and anarchy after such enactments were nullified by royal authority. A more elaborate system was framed by legislation in 1767 to last five years. It was not renewed because of persisting disagreement between local and royal partisans. As a result, North Carolina was without higher courts until after Independence (Battle, 847).

At the lower court level during the colonial period, judicial and county government administrative functions were combined in the authority of the justices of the peace, who were appointed by the royal governor.

After the Revolution

When North Carolina became a state in 1776, the colonial structure of the court system was retained largely intact. The Courts of Pleas and Quarter Sessions — the county court which continued in use from

Reprinted by permission from 1986-87 North Carolina Courts, *the annual report of the Administrative Office of the Courts. Current data (1989) on numbers of personnel and routes of appeal in the court system provided by Franklin Freeman Jr., director of the Administrative Office of the Courts.*

about 1670 to 1868 — were still held by the assembled justices of the peace in each county. The justices were appointed by the governor on the recommendation of the General Assembly, and they were paid out of fees charged litigants. On the lowest level of the judicial system, magistrate courts of limited jurisdiction were held by justices of the peace, singly or in pairs, while the county court was out of term.

The new Constitution of 1776 empowered the General Assembly to appoint judges of the Supreme Court of Law and Equity. A court law enacted a year later authorized three superior court judges and created judicial districts. Sessions were supposed to be held in the court towns of each district twice a year, under a system much like the one that had expired in 1772. Just as there had been little distinction in terminology between General Court and Supreme Court prior to the Revolution, the terms Supreme Court and Superior Court were also interchangeable during the period immediately following the Revolution.

One of the most vexing governmental problems confronting the new State of North Carolina was its judiciary. "From its inception in 1777 the state's judiciary caused complaint and demands for reform." (Lefler and Newsome, 291, 292). Infrequency of sessions, conflicting judge opinions, and insufficient number of judges, and lack of means for appeal were all cited as problems, although the greatest weakness was considered to be the lack of a real Supreme Court.

In 1779, the legislature required the Superior Court judges to meet together in Raleigh as a Court of Conference to resolve cases which were disagreed on in the districts. This court was continued and made permanent by subsequent laws. The justices were required to put their opinions in writing to be delivered orally in court. The Court of Conference was changed in name to the Supreme Court in 1805 and authorized to hear appeals in 1810. Because of the influence of the English legal system, however, there was still no conception of an alternative to judges sitting together to hear appeals from cases which they had themselves heard in the districts in panels of as few as two judges (Battle, 848). In 1818, though, an independent three-judge Supreme Court was created for review of cases decided at the Superior Court level.

Meanwhile, semi-annual superior court sessions in each county were made mandatory in 1806, and the State was divided into six circuits, or ridings, where the six judges were to sit in rotation, two judges constituting a quorum as before.

The County Court of justices of the peace continued during this period as the lowest court and as the agency of local government.

After the Civil War

Major changes to modernize the judiciary and make it more democratic were made in 1868. A primary holdover from the English legal arrangement — the distinction between law and equity proceedings — was abolished. The County Court's control of local government was abolished. Capital offenses were limited to murder, arson, burglary and rape, and the Constitution stated that the aim of punishment was "not only to satisfy justice, but also to reform the offender, and thus prevent crime." The membership of the Supreme Court was raised to five, and the selection of the justices (including the designation of the chief justice) and superior court judges (raised in number to 12) was taken from the legislature and given to the voters, although vacancies were to be filled by the governor until the next election. The Court of Pleas and Quarter Sessions — The County Court of which three justices of the peace constituted a quorum — was eliminated. Its judicial responsibilities were divided between the Superior Courts and the individual justices of the peace, who were retained as separate judicial officers with limited jurisdiction.

Conservatively oriented amendments to the 1868 Constitution in 1875 reduced the number of Supreme Court justices to three and the Superior Court judges to nine. The General Assembly was given the power to appoint justices of the peace, instead of the governor. Most of the modernizing changes in the post-Civil War Constitution, however, were left, and the judicial structure it had established continued without systematic modification through more than half of the 20th century. (A further constitutional amendment approved by the voters in November, 1888, returned the Supreme Court membership to five, and the number of superior court judges to twelve.)

Before Reorganization

A multitude of legislative enactments to meet rising demands and to respond to changing needs had heavily encumbered the 1868 judicial structure by the time systematic court reforms were proposed in the 1950s. This accrual of piecemeal change and addition to the court system was most evident at the lower, local court level, where hundreds of courts specially created by statute operated with widely dissimilar structure and jurisdiction.

By 1965, when the implementation of the most recent major reforms was begun, the court system in North Carolina consisted of four levels: (a) the Supreme Court, with appellate jurisdiction; (b) the

superior court, with general trial jurisdiction; (c) the local statutory courts of limited jurisdiction; and (d) justices of the peace and mayor's courts, with petty jurisdiction.

At the superior level, the State had been divided into 30 judicial districts and 21 solicitorial districts. The 38 superior court judges (who rotated among the counties) and the district solicitors were paid by the State. The clerk of superior court, who was judge of probate and often also a juvenile judge, was a county official. There were specialized branches of superior court in some counties for matters like domestic relations and juvenile offenses.

The lower two levels were local courts. At the higher of these court levels were more than 180 recorder-type courts. Among these were the county recorder's courts, municipal recorder's courts and township recorder's courts; the general county courts, county criminal courts and special county courts; the domestic relations courts and the juvenile courts. Some of these had been established individually by special legislative acts more than a half-century earlier. Others had been created by general law across the State since 1919. About half were county courts and half were city or township courts. Jurisdiction included misdemeanors (mostly traffic offenses), preliminary hearings and sometimes civil matters. The judges, who were usually part-time, were variously elected or appointed locally.

At the lowest level were about 90 mayor's courts and some 925 justices of the peace. These officers had similar criminal jurisdiction over minor cases with penalties up to $50 fine or 30 days in jail. The justices of the peace also had civil jurisdiction of minor cases. These court officials were compensated by the fees they exacted, and they provided their own facilities.

Court Reorganization

The need for a comprehensive evaluation and revision of the court system received the attention and support of Governor Luther H. Hodges in 1957, who encouraged the leadership of the North Carolina Bar Association to pursue the matter. A Court Study Committee was established as an agency for the North Carolina Bar Association, and that Committee issued its report, calling for reorganization, at the end of 1958. A legislative Constitutional Commission, which worked with the Court Study Committee, finished its report early the next year. Both groups called for the structuring of an all-inclusive court system which would be directly state-operated, uniform in its organization throughout the State and centralized in its administration. The plan was for a simplified, streamlined and unified structure. A particularly important part of the proposal was the elimination of the local statutory courts and their replacement by a single District Court; the office of justice of the peace was to be abolished, and the newly fashioned position of magistrate would function within the District Court as a subordinate judicial office.

Constitutional amendments were introduced in the legislature in 1959 but these failed to gain the required three-fifths vote of each house. The proposals were reintroduced and approved at the 1961 session. The Constitutional amendments were approved by popular vote in 1962, and three years later the General Assembly enacted statutes to put the system into effect by stages. By the end of 1970 all of the counties and their courts had been incorporated into the new system, whose unitary nature was symbolized by the name, General Court of Justice. The designation of the entire 20th century judicial system as a single, statewide "court," with components for various types and levels of caseload, was adapted from North Carolina's earlier General Court, whose full venue extended to all of the 17th century counties.

After Reorganization

Notwithstanding the comprehensive reorganization adopted in 1962, the impetus for changes has continued. In 1965, the Constitution was amended to provide for the creation of an intermediate Court of Appeals. It was amended again in 1972 to allow for the Supreme Court to censure or remove judges upon the recommendation of a Judicial Standards Commission. As for the selection of judges, persistent efforts were made in the 1970s to obtain legislative approval of amendments to the State Constitution, to appoint judges according to "merit" instead of electing them by popular, partisan vote. The proposed amendments received the backing of a majority of the members of each house, but not the three-fifths required to submit constitutional amendments to a vote of the people. It seems likely that this significant issue will be before the General Assembly again for consideration.*

THE PRESENT COURT SYSTEM

Article IV of the North Carolina Constitution establishes the General Court of Justice which "shall con-

**Editor's note: See pages 143-161 for more on merit selection of judges.*

stitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division."

The Appellate Division is comprised of the Supreme Court and the Court of Appeals.

The Superior Court Division is comprised of the superior courts which hold sessions in the county seats of the 100 counties of the State. As of January 1989, there is a total of 60 superior court districts. Some superior court districts are comprised of one county, some of two or more counties, and the more populous counties are divided into two or more districts for purposes of election of superior court judges. One or more superior court judges are elected for each of the superior court districts. A clerk of the superior court for each county is elected by the voters of the county.

The District Court Division is comprised of the district courts. The General Assembly is authorized to divide the State into a convenient number of local court districts and prescribe where the district courts shall sit, but district court must sit in at least one place in each county. As of January 1989, there is a total of 35 district court judicial districts, with each district comprised of one or more counties. One or more district court judges are elected for each of the district court judicial districts. The constitution provides for one or more magistrates to be appointed in each county "who shall be officer of the district court."

The State Constitution (Art. IV, Sec. 1) also contains the term, "judicial department," stating that "The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article." The terms "General Court of Justice" and "Judicial Department" are almost, but not quite, synonymous. It may be said that the Judicial Department encompasses all of the levels of court designated as the General Court of Justice plus all administrative and ancillary services within the Judicial Department.

The original jurisdictions and routes of appeal between the several levels of court in North Carolina's system of courts are illustrated in the accompanying chart.

Criminal Cases

Trial of misdemeanor cases is within the original jurisdiction of the district courts. Some misdemeanor offenses are tried by magistrates, who are also empowered to accept pleas of guilty to certain offenses and impose fines in accordance with a schedule set by the Conference of Chief District Court Judges. Most trials of misdemeanors are by district court judges, who also hold preliminary, "probable cause" hearings in felony cases. Trial of felony cases is within the jurisdiction of the superior courts.

Decisions of magistrates may be appealed to the district court judge. In criminal cases there is no trial by jury available at the district court level; appeal from the district courts' judgments in criminal cases is to the superior courts for trial *de novo* before a jury. Except in life-imprisonment or death sentence cases (which are appealed to the Supreme Court), appeal from the superior courts is the Court of Appeals.

Civil Cases

The 100 clerks of superior court are *ex officio* judges of probate and have original jurisdiction in probate and estates matters. The clerks also have jurisdiction over such special proceedings as adoptions, partitions, condemnations under the authority of eminent domain, and foreclosures. Rulings of the clerk may be appealed to the superior court.

The district courts have original jurisdiction in juvenile proceedings, domestic relations cases, petitions for involuntary commitment to a mental hospital, and are the "proper" courts for general civil cases where the amount in controversy is $10,000 or less. If the amount in controversy is $1,500 or less and the plaintiff in the case so requests, the chief district court judge may assign the case for initial hearing by a magistrate. Magistrates' decisions may be appealed to the district court. Trial by jury for civil cases is available in the district courts; appeal from the judgment of a district court in a civil case is to the North Carolina Court of Appeals.

The superior courts are the proper courts for trial of general civil cases where the amount in controversy is more than $10,000. Appeals from decisions of most administrative agencies are first within the jurisdiction of the superior courts. Appeal from the superior courts in civil cases is to the Court of Appeals.

Administration

The North Carolina Supreme Court has the "general power to supervise and control the proceedings of any of the other courts of the General Court of Justice." (G.S. 7A-32(b)).

In addition to this grant of general supervisory power, the North Carolina General Statutes provide certain Judicial Department officials with specific

powers and responsibilities for the operation of the court system. The Supreme Court has the responsibility for prescribing rules of practice and procedures for the appellate courts and for prescribing rules for the trial courts to supplement those prescribed by statute. The Chief Justice of the Supreme Court designates one of the judges of the Court of Appeals to be its Chief Judge, who in turn is responsible for scheduling the sessions of the Court of Appeals.

The chart illustrates specific responsibilities for administration of the trial courts vested in Judicial Department officials by statute. The Chief Justice appoints the Director and an Assistant Director of the Administrative Office of the Courts; this Assistant Director also serves as the Chief Justice's administrative assistant. The schedule of sessions of superior court in the 100 counties is set by the Supreme Court; assignment of the State's rotating superior court judges is the responsibility of the Chief Justice. Finally, the Chief Justice designates a chief district court judge for each of the State's 35 district court judicial districts from among the elected district court judges of the respective districts. These judges have responsibilities for the scheduling of the district courts and magistrates' courts within their respective districts, along with other administrative responsibilities.

The Administrative Office of the Courts is responsible for direction of non-judicial, administrative and business affairs of the Judicial Department. Included among its functions are fiscal management, personnel services, information and statistical services, supervision of record keeping in the trial court clerks' offices, liaison with the legislative and executive departments of government, court facility evaluation, purchase and contract, education and training, coordination of the program for provision of legal counsel to indigent persons, juvenile probation and after-care, guardian *ad litem* services, trial court administrator services, planning, and general administrative services.

The clerk of superior court in each county acts as clerk for both the superior and district courts. Until 1980, the clerk also served as chairman of the county's calendar committee, which set the civil case calendars. Effective July 1, 1980, these committees were eliminated; day-to-day calendaring of civil cases is now done by the clerk of superior court or by a "trial court administrator" in some districts, under the supervision of the senior resident superior court judge and chief district court judge. The criminal case calendars in both superior and district courts are set by the district attorney of the respective district.

Major Sources

Battle, Kemp P., *An Address on the History of the Supreme Court* (Delivered in 1888). 1 North Carolina Reports 835-876.

Hinsdale, C. E., *County Government in North Carolina.* 1965 Edition.

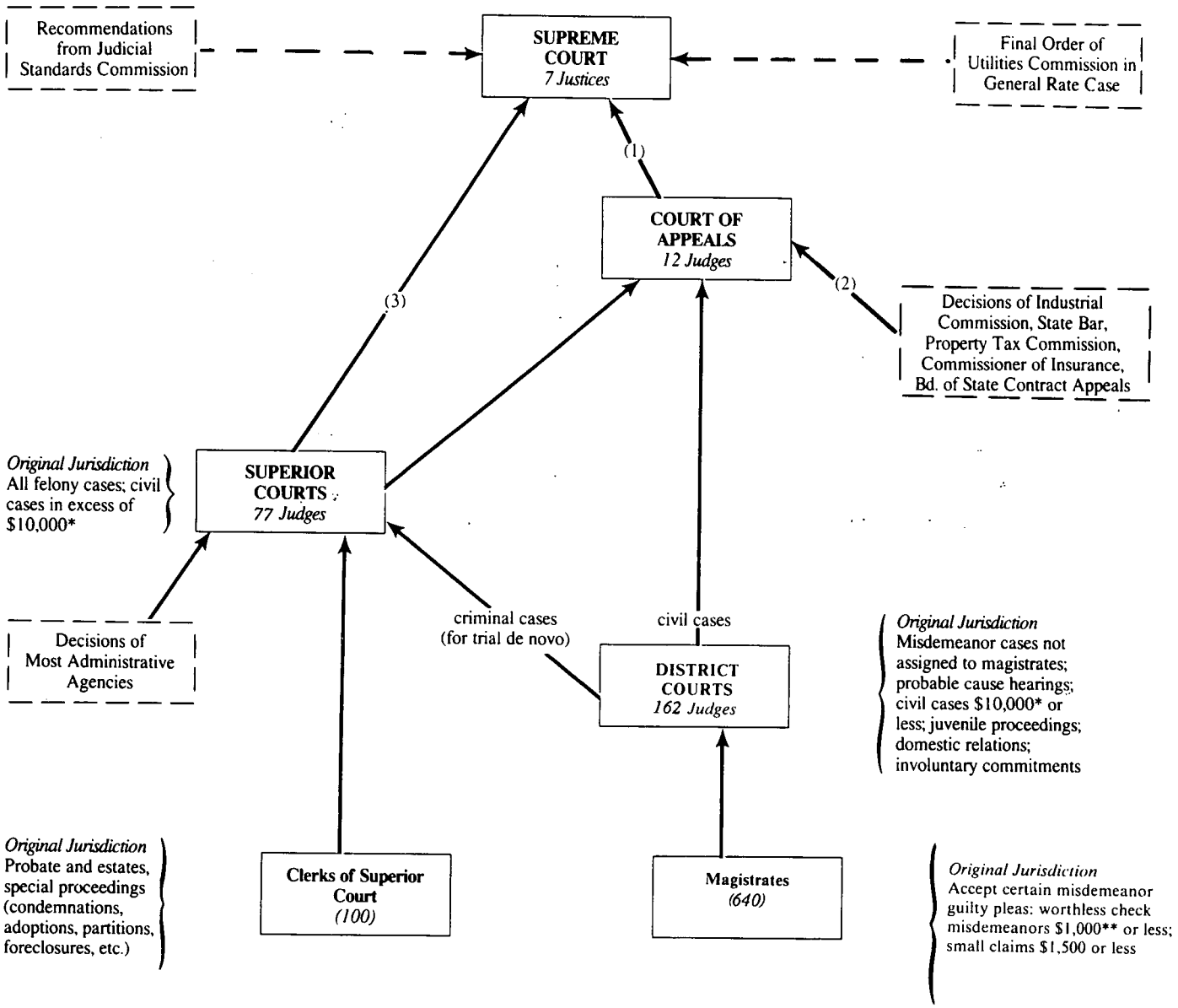
Lefler, Hugh Talmage and Albert Ray Newsome, *North Carolina: The History of a Southern State.* 1963 Edition.

Sanders, John L., *Constitutional Revision and Court Reform: A Legislative History.* 1959 Special Report of the N.C. Institute of Government.

Stevenson, George and Ruby D. Arnold, *North Carolina Courts of Law and Equity Prior to 1868.* N.C. Archives Information Circular 1973.

THE PRESENT COURT SYSTEM

Original Jurisdiction and Routes of Appeal
As of January 1989



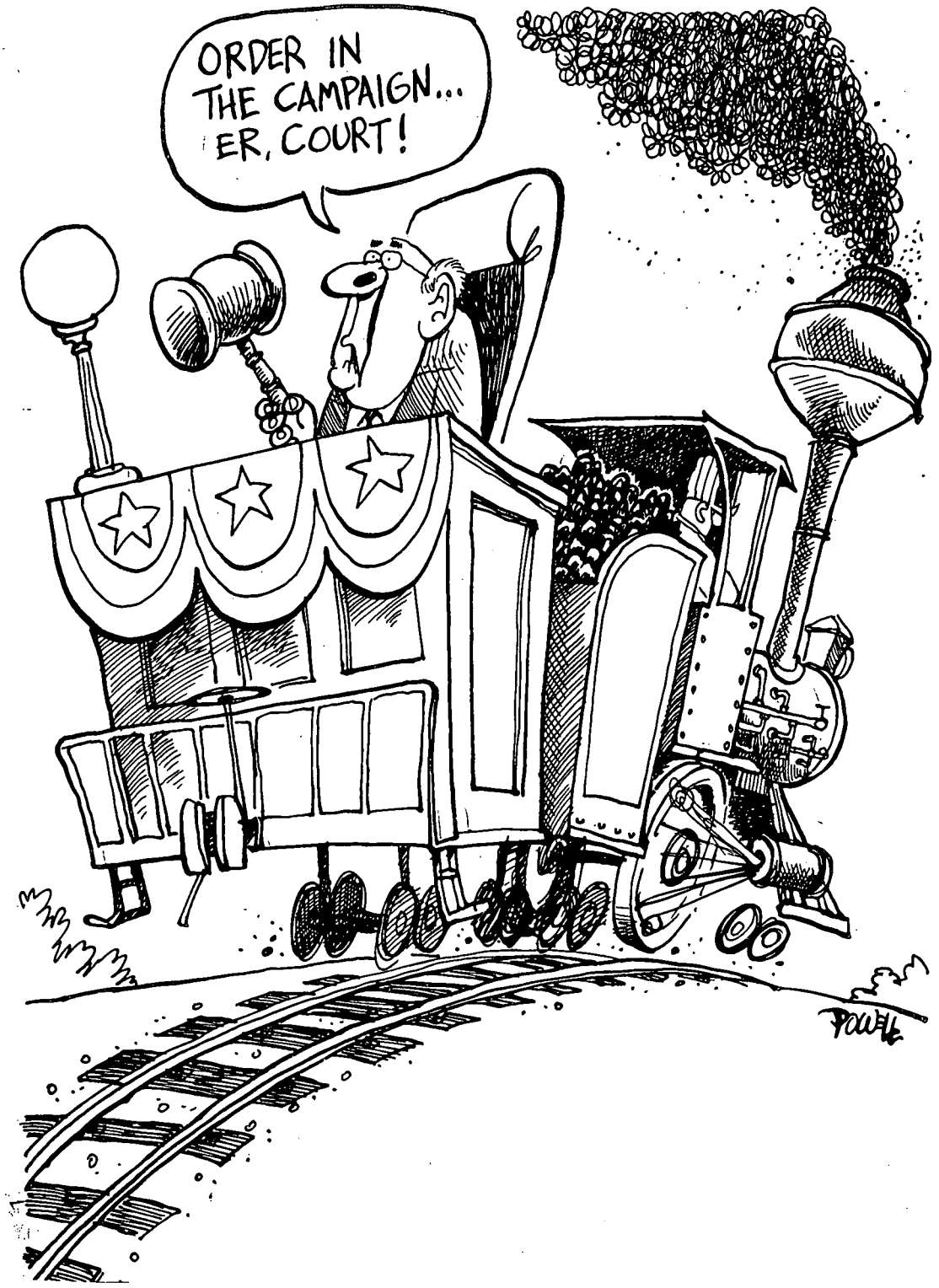
(1) Appeals from the Court of Appeals to the Supreme Court are by right in Utilities Commission general rate cases, cases involving comstitutional questions, and cases in which there has been dissent in the Court of Appeals. In its discretion, the Supreme Court may review Court of Appeals decisions in cases of significant public interest or cases involving legal principles of major significance.

(2) Appeals from these agencies lie directly to the Court of Appeals.

(3) As a matter of right, appeals go directly to the Supreme Court in criminal cases in which the defendent has been sentenced to death or life imprisonment, and in civil cases involving the involuntary annexation of territory by a municipality of 5,000 or more population. In all other cases appeal as of right is to the Court of Appeals. In its discretion, the Supreme Court may hear appeals directly from the trial courts in cases where delay would cause substantial harm or the Court of Appeals docket is unusually full. (Under G.S. 7A-27, effective July 24, 1987, appeals in criminal cases as a matter of right are limited to first degree murder cases in which there is a sentence of death or life imprisonment.)

*The district and superior courts have concurrent original jurisdiction in civil actions (G.S. 7A-242). However, the district court division is the *proper* division for the trial of civil actions in which the amount in controversy is $10,000 or less; and the superior court division is the proper division for the trial of civil actions in which the amount in controversy exceeds $10,000 (G.S. 7A-243).

**Magistrate jurisdiction in worthless check cases increased from $500 to $1,000 effective October 1, 1987 (G.S. 7A-273).


ORDER IN THE CAMPAIGN... ER, COURT!
Powell

The Merit Selection Debate

For decades, politicians, lawyers, and political scientists have debated how to choose judges—by popular election, by direct appointment, or by a screening process that has come to be known as "merit selection." Nationally, 17 states use a form of merit selection that includes (1) a nominating commission to screen judicial candidates, (2) gubernatorial appointments of judges from a list of those nominees, sometimes with legislative confirmation, and (3) retention elections in which voters determine whether a judge serves another term.

Should North Carolina switch from its current elective system to a merit selection system? Judges in this state must run for election, but the record shows that most of our judges first get to the bench via gubernatorial appointment, and then usually win re-election. Would merit selection improve the selection of judges? Or would the state be wiser to retain its current system, with perhaps some modifications that would enhance public confidence in the judiciary?

This three-part package—an introduction describing North Carolina's system, a "pro"-merit selection article by former state Rep. Parks Helms of Charlotte, and a "con"-merit selection article by N.C. State University professors Joel Rosch and Eva R. Rubin—explores what's involved in the debate over judicial election reform.

MERIT SELECTION

Still Waiting in the Legislative Wings

by Jack Betts

VOTERS IN THE 1974 REPUBLICAN PRIMARY for Supreme Court Chief Justice had an intriguing choice of candidates from which to choose—something of an anomaly in North Carolina, where seldom is there more than one GOP candidate for a statewide post or even a Republican primary. But in that race, Republicans could choose between two candidates whose background presented a razor-sharp contrast: District Court Judge Elreta Alexander of Greensboro, a black woman and outspoken trial judge with years of courtroom experience; and James Newcombe, a fire extinguisher equipment salesman from Laurinburg who not only had no judicial experience, he didn't even have a law degree.

Guess who won? That's right—Newcombe, who took 59 percent of the vote in the primary. To his dismay, however, the Republican Party hierarchy declined to support him in the general election, and Associate Justice Susie Sharp, the Democratic nominee, handily won the race. A few years later, North Carolina voters adopted a constitutional amendment requiring that all judges be licensed to practice law in North Carolina, a direct outgrowth of the 1974 primary.[1] But ever since, the debate has waxed and waned as to whether North Carolina has the proper method of choosing its judges.

In fact, North Carolinians have been bickering since Colonial days over the way its judges have been chosen. More than 200 years ago, the British Crown appointed judges in this colony, antagonizing the Lords Proprietors who saw the Crown's influence as an abridgment of their powers granted by Royal Charter, and annoying colonists who thought they should be allowed to judge their own affairs. When that unseemly system was dispatched by the American Revolution, such weighty matters as choosing judges and governors were delegated to the North Carolina General Assembly. For nearly a century, the legislature appointed the state's judiciary to "hold their offices during good behavior," as the 1776 Constitution allowed.

Another war once again changed the way judges were chosen. In the Reconstruction aftermath of the Civil War, a new Constitution was adopted in 1868 that for the first time embraced Jacksonian democracy and gave the citizens of North Carolina the power to elect trial and appellate judges. So it has remained ever since—despite periodic calls for yet another change in the selection of District, Superior, Court of Appeals, and Supreme Court judges. This movement to alter the selection process has generally proposed instead a process known around the country as "merit selection" of judges. It refers to choosing judges by:

- Naming a bipartisan commission to screen a pool of candidates for a judicial vacancy and making a recommendation to an appointing authority, usually a governor but sometimes a legislature;
- Authorizing appointment of a qualified candidate, and sometimes requiring confirmation by a legislative body; and
- Usually requiring the judge to stand for a "retention" vote after a certain period in office. Voters are asked only whether a judge should be retained in office. If a certain percentage—sometimes a simple majority, sometimes a three-fifths majority—vote yes, the judge then serves a full term, whereupon another retention vote is taken; if the vote is no, a vacancy is declared and the nominating and appointment process begins anew.

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Scores of permutations and combinations of certain elements of these plans and of other methods—such as non-partisan statewide elections — have been debated and sometimes adopted by various states. Some use merit plans only for trial judges; others, for appellate judges only. (See Table 1 for more.)

Why adopt such a change? The arguments for a merit selection plan generally include the following: The present, partisan system of election discourages qualified lawyers from running for judgeships; the cost of politicking on a statewide basis is too high and requires candidates to seek funds from lawyers who may have cases before that judge; voters already faced with an unusally long statewide ballot and a lack of information about candidates don't have the time or resources to become familiar with them and make a good choice; and merit selection has worked well in other states. Attorney and former state Rep. Parks Helms of Charlotte outlines the case *for* merit selection.

The arguments against merit selection generally include: Merit selection plans have not worked that well in other states; the system yanks power from its proper place—with the people—and deposits it in the hands of the select few; North Carolina has had a good judiciary under the current system; and changing to merit selection merely alters the way judicial candidates must run for office, rather than eliminating such politicking. The case *against* merit selection is prosecuted by N.C. State Political Science Professors Joel Rosch and Eva Rubin.

These arguments have been batted back and forth for most of the 20th century following growing national dissatisfaction with the politicization of the judicial selection process, according to Keith Goehring, a staff attorney with the National Center for State Courts in Williamsburg, Va.[2] Goehring's research attributes the development of merit selection plans in the early 1900s to Albert M. Kales, a law professor at Northwestern University, and Harold Laski, an English political scientist. They developed what eventually came to be known as the Missouri Plan—not to be confused with the Missouri Compromise. Their plan was first adopted by the state of Missouri in 1940, and has been embraced in some form by at least 30 states, according to *The National Law Journal*.[3] Other states have adopted elements of the Missouri Plan for use in choosing their judges. The Missouri Plan in Missouri, by the way, applies to appellate and circuit court judges; lower court judges continue to be chosen by partisan election.

North Carolina has been toying with the notion of merit selection for 12 years. In the 1975 General Assembly, efforts were made to push for a constitutional amendment after the N.C. Courts Commission endorsed merit selection, but it ultimately failed. In part, the bill went nowhere because it lacked the support of then-Lt. Gov. James B. Hunt Jr., at the time the state's chief Democratic official, and of Chief Justice Susie Sharp. It wasn't that Sharp opposed merit selection. In fact, she supported it but objected to the 1975 legislation because she believed the nominating commission would not have adequately reflected the state's judicial districts.[4] Two years later, she endorsed another attempt, sponsored by Rep. Parks Helms, (D-Mecklenburg), that resolved her concerns.

Sharp was especially concerned over the quality of the state's lower courts. "We have many excellent district court judges," she wrote Helms in 1977. "Some are outstanding jurists. Unfortunately, however, a minority of these judges are so highly unqualified that they are damaging the image of that echelon; and if we continue to elect such judges, they will inevitably tarnish the image of the entire judiciary."

However, the bill still lacked the support of Governor Hunt, who waited until the proposal had been killed in committee before he endorsed it—at least as a proposal worth further debate. Hunt's attitude at first was rather like that of Chicago Mayor Richard J. Daley. Under some lobbying heat to have judges appointed rather than elected, Daley is said to have asked, "What's all this fuss about merit selection? We already got it. If they have merit, we select 'em." The Governor's belief was that no such plan was needed to fill vacancies in North Carolina.

But that summer, as Hunt was about to fill several judicial vacancies created by action of the legislature, political allies warned him that some of the candidates he was about to pick might cause him embarrassment. A short time later, the Governor signed his Executive Order Number 12, setting up a merit selection plan for the selection of Superior Court judges in North Carolina.[5] Hunt used that process to fill dozens of Superior Court judgeships—though not appellate vacancies—during his administrations. Hunt demurred on extending the process to Court of Appeals and Supreme Court vacancies because, he said, he knew the meritorious candidates well enough to make choices without a nominating commission's help.

North Carolina's Constitution, of course, requires that judgeships be filled by elections, except when vacancies occur between elections.[6] Judges of the Supreme Court, the Court of Appeals, and Superior Courts run on the statewide ballot, while District Court judges run within their judicial districts. This can make for an extremely long ballot. For example, in 1987, the N.C. Center calculated that as many as 26 Superior Court judges and nine appellate judges could have appeared on the statewide ballot—35 judges in all, plus

whatever District Judges were eligible within a voter's individual county.

But the fact of the matter is that most judgeships are *not* filled by election. In practice, most state judgeship vacancies are filled by appointment of the governor, which does not require the confirmation of the legislature. These vacancies routinely occur because of resignations, retirements, and occasionally death in office. The chief executive appoints judges to fill these posts, and the judge must stand for election for his post in the next regularly scheduled general election.

That means a lot of elections. North Carolina has 258 judgeships—not counting retired judges who may be called upon to fill in during busy court dockets. There are seven Supreme Court justices, 12 judges of the Court of Appeals, three Special Superior Court judges (who must be appointed by the governor and who do *not* stand for election or re-election), 74 regular Superior Court judges, and 162 District Court judges. That's a total of 258 judgeships, and 255 of those are subject to regular elections. (District Court judges serve four-year terms; all others serve eight-year terms, except Special Superior Court judges, who are appointed for four-year terms.)

Despite North Carolina's electoral system, most of our judges initially are *appointed* to the bench. For instance, of the seven Supreme Court judges, only three reached the court first by election—Chief Justice Jim Exum and Associate Justices Willis Whichard and John Webb. But all three of *those* judges first got to the bench via a governor's appointment—Exum to the Superior Court by Gov. Dan K. Moore, and Webb and Whichard to the Court of Appeals by Governor Hunt. In other words, 100 percent of the Supreme Court first became judges by gubernatorial appointments.

On the Court of Appeals (in 1987), only five of the 12 judges were elected to the court originally, while seven first reached the court by gubernatorial appointment—nearly 60 percent of the judges. For the appellate division as a whole, 13 of the 19 judges first reached the appellate courts thanks to gubernatorial largesse—68 percent of the appellate judiciary.

A majority of the state's trial division judges also reach the bench first through appointment, says Franklin Freeman, Administrative Officer of the Courts. "The majority of District and Superior Court judges are appointed," says Freeman. "The greater majority of these are Superior Court judges. Only fairly recently have we had a majority of District Court judges appointed, too." A 1985 study by the legislature's General Research Division found that of the 237 then-sitting judges, only one-third had reached the bench via elections, while two-thirds had been appointed. An update of that research on April 1, 1987 by the N.C. Center for Public Policy Research showed that following the 1986 election, about 59 percent of North Carolina's judiciary were appointed, and about 41 percent were elected (see Table 2).

Occasionally, some of North Carolina's judges have run afoul of the law themselves and have been defrocked by the state Supreme Court, which has final authority. The N.C. Judicial Standards Commission was created in 1973 to make recommendations to the N.C. Supreme Court in cases of misconduct in office. Since 1973, four N.C. judges have been removed from the bench, and eight have been censured (see Table 5 for more).

Another issue vexing North Carolina policymakers is the perennial flap over whether North Carolina's regular Superior Court judges should be elected statewide. Under present law, the candidates for these judgeships are nominated within their own judicial districts, but they appear on the statewide ballot. As a consequence, say opponents, voters in other areas of the state often do not know who these judges are or how to make a choice among the candidates. Republicans particularly argue that the system works to keep both Republicans and blacks off the bench, because the measure dilutes their voting strength and assures that Democratic candidates, running statewide where the voter registration ratio is more than 2-1 Democrat-Republican, will always win. No Republicans, and only two blacks, have been elected to Superior Court judgeships in this century under the system.

Curiously, the North Carolina Constitution *allows* the General Assembly to approve elections of Superior Court judges within their own districts.[7] That provision was adopted in 1875, but the legislature has never seen fit to employ it, and now the state Republican Party has sued the state in an effort to force a change in the way Superior Court judges are elected.[8] In a similar case in Mississippi, a federal judge ruled April 2, 1987 that judges are legally representatives of the people and their election is subject to the U.S. Voting Rights Act, which bans any election procedure that would make it difficult for blacks or other minorities to elect their own representatives.

The merit selection movement in North Carolina was making no headway by the mid-1980s. The big push for such judicial election reform had peaked a decade earlier,[9] and though Gov. Jim Martin supports merit selection, it was not given much chance in the legislature—until the judicial campaign of 1986. In that race, Martin sought to put his imprint on the state judiciary. Chucking caution and tradition out the window when then-Chief Justice Joseph Branch announced his retirement in mid-1986, Mar-

Table 1. State Systems for Regular Selection of State Judges

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan
Alabama	X				
Alaska					X
Arizona		X			X
Arkansas	X				
California		X	X		
Colorado					X
Connecticut			X		
Delaware			X		
Florida		X			X
Georgia		X			
Hawaii					X
Idaho		X			
Illinois	X				
Indiana	X				X
Iowa					X
Kansas	X				X
Kentucky		X			
Louisiana		X			
Maine			X		
Maryland			X		
Massachusetts			X		
Michigan		X			
Minnesota		X			
Mississippi	X				
Missouri	X				X
Montana		X			
Nebraska					X
Nevada		X			
New Hampshire			X		
New Jersey			X		
New Mexico	X				
New York	X				X
North Carolina	X				
North Dakota		X			
Ohio		X			
Oklahoma		X			X
Oregon		X			
Pennsylvania	X				
Rhode Island			X	X	
South Carolina				X	
South Dakota		X			X
Tennessee	X				X
Texas	X				
Utah					X
Vermont					X
Virginia				X	
Washington		X			
West Virginia	X				
Wisconsin		X			
Wyoming					X
TOTALS:	**14**	**18**	**9**	**3**	**17**

Note: Many states have a mixture of judicial selection plans, and states may appear in more than one category in this list. States are classified according to the system they use for the regular selection of judges, rather than for the filling of vacancies or for staffing minor trial courts.

Sources: The Book of the States, 1986-87 edition; and Lawrence Baum, *American Courts*, Houghton Mifflin, 1986, p. 94.

Table 2. Number of N.C. Judges Who First Reached Bench Via Appointment vs. Election, 1987

Court	Number of Judges	Number Appointed	% of Whole	Number Elected	% of Whole
Supreme Court	7	4	57%	3	43%
Court of Appeals	12	7	58%	5	42%
Superior Court	64	46	72%	18	28%
District Court	151	81	54%	70	46%
TOTALS	**234**	**138**	**59%**	**96**	**41%**

Source: General Research Division, N.C. General Assembly; and Governor's Appointments Office, Office of the Governor.

Note: Chart includes only active judges, not emergency, retired, or Special Superior Court judges, *all* of whom must be *appointed* by the Governor. Table refers to how a judge originally reached his current judgeship. Re-elections are not reflected in table.

tin elevated GOP Associate Justice Rhoda Billings over Associate Justice Exum, then the most senior associate justice, for the Chief Justice vacancy. Longtime tradition required that governors appoint the next most experienced justice as Chief Justice, and every Democratic governor in the 20th century had followed the custom when the opportunity arose. For Hunt in 1977, that had been a hard pill to swallow. Hunt had wanted to anoint his college chum, J. Phil Carlton, as the new Chief Justice. In the end, however, Hunt had gone along with tradition and chosen Branch. Now Martin, the first GOP governor in this century with a crack at picking a chief, declined to jump through the Democrats' hoop. Instead, Martin went with party loyalty despite an extraordinary public plea for the post by Exum. For a brief time—September, October and November—Billings was Chief Justice, her party's first since 1902. But the law required her to run for the unexpired portion of Branch's old term, and Exum retired from his post to campaign for it too.

The fall of 1986 witnessed what many political observers describe as the most bitter election in N.C. Supreme Court history. A group calling itself Citizens for a Conservative Court attacked Exum's record, charging that he was not sufficiently conservative because in a number of cases he had voted against upholding the state's death penalty. The committee's charges created a stink, despite the fact that the record showed a number of inconsistencies in its charges. Exum had also, it turned out, voted to uphold the death penalty in some cases, while Billings had voted against imposing the death penalty on occasion. And the chairman of Citizens for a Conservative Court was former Gov. Jim Holshouser—himself a supporter of merit selection —and who had *opposed the death penalty* when he was a member of the House of Representatives.

Rather than harm Exum's chances, the committee's attack seemed to focus attention on the race, and may have backfired by creating a backlash vote for Exum from voters concerned about politicizing the courts. In the end, Exum won the race handily (by slightly over 55 percent, polling 152,000 more votes than Billings). That was the first defeat of a sitting Chief Justice since 1902, when Democrat Walter Clark defeated Republican Chief Justice David Furches for the top spot. The 1986 election returned the high court to total Democratic domination as three Republicans lost their seats.

Exum, himself a long supporter of merit selection, is using the unseemly specter of the 1986 election as evidence that North Carolina should devise a better way of choosing its judges. In January 1987, the Chief Justice asked the N.C. Courts Commission to name a special study commission to examine North Carolina's judicial selection methods. Exum said the state's Democratic leadership would have to be persuaded that a change should be undertaken, and that a study commission might help attract support for a merit selection plan. "I have no illusions about the difficulty of devising this kind of mechanism," Exum said.

Not everyone is satisfied with that strategy, of course. C. Allen Foster, a Republican activist from Greensboro who has filed two lawsuits against the state challenging judicial selection methods, said the Courts Commission should have urged swift action. "This matter has been studied to death," said Foster. "My clients are not willing to let another election pass."

Governor Martin has campaigned for merit selection since he took office in 1985. In June 1986, Martin told the N.C. Bar Association that the current system "is a perk of partisanship. It is the outmoded legacy of single-party dominance in our state, to a large extent institutionalized by law. It is a holdover patronage system cloaked in constitutional respectability." Martin said he did not know which merit system would be best for North Carolina, "But I do know that the present system is outmoded and wrong and is unfair and is against the best interests of our people."[10]

FOOTNOTES

[1] Article IV, Section 22, N.C. Constitution, first passed by the legislature as Chapter 638 of the 1979 Session Laws, and then approved by the voters November 4, 1980.

[2] Keith Goehring, "Judicial Selection Procedures," memorandum prepared for the National Center for State Courts, Williamsburg, Va., June 28, 1985, p. 2.

[3] Paul Wenske, "Dissension Rocks Missouri Justices," *The National Law Journal*, May 27, 1985, p. 26.

[4] Correspondence from Chief Justice Susie Sharp to the Hon. H. Parks Helms, March 9, 1977, p. 2.

[5] Executive Order Number 12, by James B. Hunt Jr., Governor of North Carolina, July 28, 1977.

[6] Article IV, Section 19, N.C. Constitution.

[7] Article IV, Section 16, N.C. Constitution.

[8] *Haith v. Hunt*, 84-1319-CIV-5, U.S. Eastern District N.C.; *Alexander v. Martin*, 86-1048-CIV-5, U.S. Eastern District N.C. See also *N.C. v. U.S.A.*, Civil Action 86-1490, District of Columbia Circuit Court of Appeals.

[9] Goehring, p. 2.

[10] Address by Gov. James G. Martin, General Session, N.C. Bar Association Meeting, Myrtle Beach, S.C., June 21, 1986.

"A candidate, including an incumbent judge, for a judicial office . . . should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact."

— Canon 7, Section B, Paragraph 1(c), the Code of Judicial Conduct

MERIT SELECTION

The Case For Judicial Election Reform

by H. Parks Helms

NEARLY TWO DECADES AGO, the President's Commission on Law Enforcement and Administration of Justice declared, "The quality of the judiciary largely determines the quality of justice .... No procedural or administrative reforms will help the courts and no reorganization will avail unless judges have the highest qualifications, are fully trained and competent, and have high standards of performance."[1] The passage of time has not diminished the importance of this finding, and any effort at judicial election reform—nationally and in North Carolina — should acknowledge this fact.

We are now embarked upon a course in the state of North Carolina that will determine whether we can continue to maintain the high standards of competence and judicial integrity that have marked our courts for decades. Because of recent political developments and of potential problems associated with the election of judges, *North Carolina should adopt a model merit selection system of choosing and retaining future judges.* Contested partisan elections and pending litigation in the federal courts have raised severe doubts about our ability to attract and retain the quality of judges that will sustain the credibility of our court system. The manner and method of selecting judges has long been a subject of discussion and debate, and while we have for years enjoyed a partisan election system that has resulted in a judiciary made up of competent and capable judges, the 1986 judicial elections have raised the question as to whether we can expect our good fortune to continue.

For the first time in recent memory, contested partisan elections were conducted for seats on the N.C. Supreme Court, the N.C. Court of Appeals, and for three seats on the Superior Court bench. The election opened a new chapter in judicial selection in North Carolina. For the first time, our Governor became actively involved in the campaign to place Republicans on the appellate courts in what he characterized as an effort to make our judicial branch "more conservative." Along with the Governor's strong support for the Republican nominees for these seats, a group calling itself "Citizens for a Conservative Court," chaired by a former Governor, made a concerted effort to influence the outcome of the judicial races. They focused on the race for Chief Justice of North Carolina, implying that the Democratic nominee (now Chief Justice James G. Exum) was opposed to capital punishment. The record did not support that contention, because Exum had voted to impose capital punishment in some cases.

In the midst of the politicking that took place during the months leading up to the election in November 1986, it became apparent that the traditional method of electing our Superior Court judges and our appellate judges in partisan statewide campaigns was at risk. As a practical matter, North Carolina has been dominated by one political party—the Democrats—since the early 1900s, and the overwhelming political influence of Democrats in this state has served to make partisan elections more imagined than real. Even though our judges ran in partisan elections, once they were nominated in the Democratic primary, the politicking was over and

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they ran without opposition— and with seldom an issue—in the general election in November.

The effect of this was to insulate the judiciary from partisan political pressures, and judges and justices were free to be fair and objective in ruling on cases without regard to litigants' personal or political philosophy or the public's perception of his decision. The one-party dominance of the Democratic Party also meant that, as a practical matter, most judges and justices were initially appointed by the Governor to fill unexpired terms or newly created judgeships. Only rarely did judges or justices run for election in the same sense that legislators, or Council of State officers in the executive branch of government, run for office.

In 1971, the original N.C. Courts Commission made a recommendation that North Carolina modify its method of judicial selection to establish a merit selection and retention system.[2] While circumstances have changed since that time, the evolving political climate in North Carolina has reinforced the validity of the findings of the President's Commission on Law Enforcement and Administration of Justice, and underscored the need to develop a procedure to ensure the quality, integrity, and independence of the judiciary.

What's Wrong With The Present System?

North Carolina's Constitution requires that judges be elected at regular intervals, but the fact is that more than half North Carolina's judges are initially appointed by the Governor—and many of those judges have never faced opposition at the polls. In practice, a system that purports to give the voters complete control over the selection of judges gives them almost no control. And it gives the Governor almost complete control over judicial selection.

In such a system, the decision of who to appoint is affected by political considerations. When any Governor is elected, he is elected to represent a point of view that some call political. In his appointments, it is unreasonable to expect the Governor to ignore political considerations, and no system could be devised that will eliminate political considerations altogether. The problem with the North Carolina system is that it does not encourage the Governor to consider other, non-political factors in making his appointments.

It's no secret that some of the most highly qualified lawyers refuse to make themselves available for judicial office. One of the reasons, of course, is money. For the outstanding practitioner who would be a credit to the bench, judicial salaries are not, and perhaps never will be, as attractive as the money to be earned in a private practice (see Table 6). But a more frequently heard reason that leaders of the bar in private practice will not consider a judicial career is the possibility of having to engage in partisan political campaigns. Campaigning can be expensive, and it requires political know-how in a degree not always present in the best qualified judicial candidates; and the specter of defeat after four or eight years on the bench—and having to rebuild a private practice in middle age at severe financial sacrifice—is hardly an incentive for otherwise well-qualified lawyers to file for election. Even if the judge is fortunate and does not have opposition, he would be foolish not to maintain amicable relationships with party leaders in his area—ties that might raise questions about judicial independence. The result, then, is a system where judges must always remain sensitive to partisan political concerns.

If a judge is forced into a contested election, there are few, if any, public issues on which the judge can—or should—campaign. Judges are not like legislators. They do not formulate public policies. Their job is to interpret and apply the law and public policy of this state as established by the General Assembly. As administrators of the law, judges can find it embarrassing and unethical to take sides on political issues which may eventually come to litigation in their courts. Campaigning of this sort is inappropriate, to say the least, and demeans both the office and the individual. Consider the case of the judge who is challenged by an unscrupulous opponent. If a campaigner ignores or bends the rules, then the judge must choose between matching the unethical technique, or risking the loss of the election. In 1986, the Citizens for a Conservative Court conducted a campaign *in opposition to* individual candidates, and clearly crossed the bounds of judicial ethics which have marked the limited number of judicial campaigns conducted in North Carolina in recent years.[3]

Another drawback to judicial independence lies with the fact that judges must closely identify themselves with, and financially support, a political party. The vice in that process is that it does not attract, as judicial candidates, many qualified individuals, because they are unwilling to become involved in party politics to be appointed and to remain involved to stay elected.

Perhaps the most important question is whether partisan campaigns succeed in informing the voters

of a judge's qualifications for office. How many voters in the last election were well informed as to the qualifications of the judges on the statewide ballot? If they were not informed, on what basis did they vote? The fact is that most people tend to vote on party affiliation, and this raises a serious question about the effect on the judiciary as this state inexorably moves toward a two-party political state. As we progress toward political parties with roughly equal strength, two things are bound to happen:

- First, candidates or incumbents may lose or win based mostly on the party's candidate for President, or U.S. Senate, or on the unemployment or inflation rate—factors totally unrelated to a candidate's fitness or temperament for the bench.
- And second, the *possibility* of that kind of result has an undetermined but almost certainly negative effect on the quality of applicants for judicial office. It is in this context that the equally important concept of retention elections should be considered.

Arguments For the Principles of Merit Selection and Retention

Many who oppose any substantive change in the process of nominating and electing judges and justices do so out of a sense of the history of our system and how it has worked under a state dominated by the Democratic Party. With Democrats winning big in 1986, that opposition has become even stronger. The point most often made is that judges and justices need to be subject to a vote of the people as a part of the process of checks and balances in our system of government. With that in mind, the nonpartisan merit selection plans which were introduced in the legislature during the decade of the 1970s had three basic elements:

- Submission of a list of judicial nominees by a nonpartisan commission composed of professionals and lay persons;
- Selection of a judge by an appointing authority (usually the governor) from the list submitted by the nominating commission; and
- Approval or rejection by the voters of the governor's selection in nonpartisan elections in which the judge runs unopposed on the sole question of his record in office.

This plan is now in use, in whole or in part, in at least 39 states (17 states with a formal Missouri Plan, 22 more with elements of the plan, such as nonpartisan elections or gubernatorial appointment with legislative confirmation. And according to separate studies conducted by the American Judicature Society and the University of Illinois' Institute of Government and Public Affairs, most jurisdictions employing the plan have relatively few judges failing in retention elections.[4] In a 1987 study, the number failing at retention elections was less than 1.2 percent, the American Judicature Society found, while the 1985 Illinois study found that about 1.5 percent failed in that state. This result is consistent with the view that a nominating commission does a good job, and refutes the contention that elections will expose good judges to defeat by single-issue voting blocs. The fact that there is a small number who do not get retained indicates that merit selection and retention do not confer a lifetime appointment. The most recent example of such a defeat is former California Chief Justice Rose Bird, a controversial figure who was defeated in a retention vote in the 1986 election. The prospect of having to face an electorate, with the beneficial effect that has on a person's humility and conduct, is preserved by merit selection and retention. It also addresses the need for responsiveness that seems to be the concern of many people.

Obviously, the judicial nominating commission is one of the most important parts of any merit selection plan, and in order for it to be successful, it should be created in such a way as to bring in to the judicial system those persons who are best qualified by training, experience, temperament, and character to serve as judges and justices. The judicial nominating commission can guarantee qualified judges by screening out the obviously unfit and mediocre, and can increase the available pool of qualified candidates from which nominees can be selected. It can also enable judges to be politically independent and to concentrate their time and attention on the business of the courts. Perhaps equally as important, the attention of voters can be focused on a judge's record including his legal skills and objectivity, rather than his political affiliation. Opportunity for minority group representation on the bench is increased, and the likelihood of increased confidence in the role that the courts play in our lives is enhanced.

Finally, such a plan would address the concerns which have been raised in litigation to abolish our system of statewide election for trial judges and to replace it with a district system to ensure that minorities would have an opportunity to be elected to the bench.[5] While judges are not "representatives" in the same sense that members of the legislative branch are, there is a genuine need for minorities to serve in the judicial branch if our courts are to maintain the confidence and respect of the public.

Other states have found, in fact, that merit plans

enhance the prospect for women and minority judges. A 1986 study by the Fund for Modern Courts in New York found that women and minority lawyers are far more likely to become judges in states where they are appointed rather than elected. "The old rationale for judicial elections is that it was the only way to open things up to women and minorities," said David G. Trage, Dean of Brooklyn Law School and the chairman of the New York City Judicial Nominating Commission. In an article in *The National Law Journal*, Trage added, "This study blows that notion right out of the water."[6] The table below indicates that North Carolina runs behind the national averages in the percentage of women, Hispanics, Asians, and Indians on the state bench.

A Recommended Nonpartisan Plan

The decade of the 1970s saw dramatic changes in the makeup of the N.C. General Assembly and the economical and political status of the people of this state. The early advocates of merit selection wanted to preserve and protect the integrity, credibility, and effectiveness of the judiciary in a growing and changing state. The members of the General Assembly could not be persuaded, however, and relied on the old adage, "If it ain't broke, don't fix it." As a result of the political upheaval of the 1980s and the emergence of the two-party system in North Carolina, we now see that while "it ain't broke," it is badly in need of preventive maintenance. The likelihood of major problems in our judicial selection system are obvious for anyone who examines the system objectively. Any honest appraisal of where we have been and where we are going would indicate that the soundest approach for North Carolina would be to revise Article IV, Section 16 of the N.C. Constitution to:

- Authorize a judicial nominating commission to recommend to the Governor a list of qualified nominees for vacant judgeships;
- Direct the Governor to select a judge from this list;
- Establish a method for the General Assembly to confirm the gubernatorial appointment; and
- Provide that the appointee must stand for reelection on a nonpartisan "yes" or "no" ballot at the next general election which occurs more than one year after his initial appointment. If the voters vote "yes," the judge then serves a regular term; if the voters vote "no," the judge's office is declared vacant and the judicial nominating commission submits a new list of names to the Governor as before. Terms of judges—eight years for appellate and superior court judges, and not more than eight years at the option of the General Assembly for district court judges—should be specified.

One possibility for the makeup of the judicial nominating commission would be to name lawyers from each judicial district to constitute a nonpartisan commission with guidelines for the nominating procedure. This would ensure that those doing the nominating would have knowledge of the qualifications of the nominee as well as an understanding of the nominee's responsibilities if appointed and confirmed to the bench.

Perhaps most significantly, the plan outlined above would involve the legislature in the confirmation process and would also give the citizens of this state an important role in a retention election to ensure the necessary responsiveness without sacrificing the objectivity and independence of the judiciary.

A judge selected under this plan who desired to serve a successive term would be required to file,

Table 3. Percentage of Minorities in Judicial Positions

Type of Court	Total Minorities	Women	Black	Hispanic	Asian	Indian
Federal Courts	17.4%	7.4%	7.0%	3.1%	0.4%	0%
State Courts	12.6%	7.2%	3.8%	1.2%	0.6%	0.2%
North Carolina Courts	11.4%	5.0%	7.2%	0%	0%	0%

Source: Fund for Modern Courts, Inc., New York, 1986

Table 4. Arguments For and Against Merit Selection of Judges

For Merit Selection	Against Merit Selection
It takes politics out of the judicial selection process.	Shifts politics from elections decisions by voters to political decisions by nominating committee in the appointment process.
Judges will be selected on a meritorious basis.	Judges still will be selected on the basis of political alliances with those in power.
Merit selection will attract qualified candidates who do not now seek election to judicial office.	Merit selection does not produce more qualified judges than the electoral process does.
Merit selection will prohibit judicial candidates from having to seek campaign funds from lawyers who later must appear before those judges.	Judicial candidates will still have to drum up pledges of support from judicial nominating committee members.
Merit selection will produce a more independent judiciary without ties to party, politicians, or lawyers who appear before judges.	Few problems stem from judicial ties to political parties, and merit selection cannot eradicate party alliances or beliefs.
A judicial nominating committee will be able to make a better choice than voters because it will have access to better information on the candidates' actual performance in the legal profession.	As North Carolina increasingly becomes a two-party state, more contested judicial elections will mean that more information is available to voters.
Merit selection will eliminate bitter political campaigns such as the race for N.C. Supreme Court Chief Justice in the fall of 1986, when judges were attacked for being soft on capital punishment.	Such "campaigns" can still exist because voter groups can oppose a judge who is up for a retention vote under a merit selection system, as happened in California in 1986.
Merit selection will shorten N.C.'s "long ballot" and relieve voters of the burden of having to vote for scores of judges they do not know.	Merit selection would remove choice of judges from the electorate, where it belongs, and place that choice in the hands of the select few.
Merit selection will produce better judges in North Carolina, where some judges have been removed or censured for misconduct in office.	Judges in North Carolina are already good ones, and merit selection in other states has not produced better judges.

within specified time limits, a declaration of his intention to stay in office. The ballot at the next general election would then bear the question:

"Shall Judge _____ of _____ Court be retained in office?"

An affirmative vote by a majority of voters would return the judge to office, and a negative vote would vacate the office and trigger the nominating process described above to fill the vacancy.

A Time For Change

North Carolina has been fortunate in the quality of the judiciary that has served the state in both the trial and appellate courts. Our system of partisan elections has served us well in the past, and few judges have abused the trust of the people. It is clear, however, that the changing economic, political, and social makeup of this state is placing excessive pressures on our judicial system— pressures not envisioned when the framers of our Constitution created the partisan election process by which we are now governed. Partisanship has its proper place in the executive and legislative branches of government, but the role of the judiciary in our system of government transcends any political considerations. A changing political climate and an activist federal court, coupled with a changing citizenry, has brought about the need for fundamental changes in the method of North Carolina's judicial selection. More importantly, the concepts of merit selection are absolutely essential if a stable, independent, and objective judiciary is to be preserved. Ultimately, the choice must be made as to whether our system for the election of judges and justices will be changed by the federal courts or by the General Assembly and the people of North Carolina. The far better choice as we enter an era of two-party politics is for the legislature and the populace to act—and produce a far better method of choosing North Carolina's justices and judges.

FOOTNOTES

[1]"The Courts," Chapter 5 of the President's Commission on Law Enforcement and Administration of Justice, 1968, p. 146.

[2]"A Recommended Nonpartisan Merit Selection Plan for North Carolina," *Report of the Courts Commission to the North Carolina General Assembly*, 1971, pp. 11-15.

[3]Canon 7, "A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office," Code of Judicial Conduct, adopted by N.C. Supreme Court for N.C. Judiciary as a guide to the meaning of N.C.G.S. 7A-376, "Grounds for censure or removal," adopted by the General Assembly as Chapter 590, Section 1, of the 1971 Session Laws.

[4]William K. Hall and Larry T. Aspin, "What twenty years of judicial retention elections have told us," *Judicature* magazine, American Judicature Society, April-May 1987; and William K. Hall, "Judicial Retention Elections: Do Bar Association Polls Increase Voter Awareness?", Institute of Government and Public Affairs, University of Illinois, September 1985, p. 16.

[5]*Haith v. Hunt*, 84-1319-CIV-5, U.S. Eastern District N.C.; *Alexander v. Martin*, 86-1048-CIV-5, U.S. Eastern District N.C. See also *N.C. v. U.S.A.*, Civil Action 86-1490, District of Columbia Circuit Court of Appeals.

[6]Alexander Stille, "The Judiciary's New Look—Election v. Appointment: Who Wins?," *The National Law Journal*, Dec. 30, 1985-Jan. 6, 1986, pp. 1-4.

MERIT SELECTION

The Case Against Judicial Election Reform

by Joel Rosch and Eva R. Rubin

IT IS PART OF THE GENIUS of American politics that our 50 states are in essence 50 laboratories of democracy allowing policymakers to learn from and build on the experience of other states. At N.C. Supreme Court Justice James G. Exum's request, the General Assembly is considering embarking upon just such an experiment in merit selection of future Tar Heel judges. By improving the *way* we choose our judges, supporters of merit selection believe, we *will get* better judges. But these advocates of merit selection —however sincere and well-intentioned they may be—would do well to consider the less-than-satisfactory experiences other states have had with merit selection. *So far, there is no evidence that merit selection has either improved the quality of judges in any of the states where it has been tried or that it has successfully removed politics from the selection of judges.* Those experiences ought to make North Carolina policymakers cautious about changing from a system that has, after all, worked reasonably well.

An initial problem with merit selection is the question of what 'merit' is, and another is who is meritorious. One person's notion of merit may not be another's, and the legal profession itself is sharply split on the issue. While the North Carolina Bar Association is in favor of merit selection, the N.C. Academy of Trial Lawyers, representing those lawyers most likely to try cases before judges, opposes that plan—not because they oppose the theory of 'merit,' but rather because they do not believe that it will ensure the selection of meritorious judges. A look at the past tells why.

During our nation's 200-year history, there have been a number of changes in the way our state judges are chosen. Until the 1840s, most states, as well as the federal government, allowed either the chief executive (the governor or the president) or the legislature to select judges. The election of Andrew Jackson as president in 1828 symbolized a growing movement for popular control over government. As this demand for popular control grew, a number of states adopted systems to choose their judges in partisan elections like other public officials. But during the Progressive Era, which began at the end of the 19th century, many states, expecially in the American west, opted for nonpartisan elections where judges run for election without a party label.[1]

In 1913, the American Judicature Society was founded to improve the way our courts worked. In this period, state judges—most of them still elected—began to reflect the anti-business sentiments associated with the growing tide of populism. The federal bench, which was appointed, was for the most part much friendlier to big business than the state judiciaries. Dominated by prominent attorneys who mostly represented commercial interests, the Judicature Society recommended isolating judicial selection as much as possible from popular control. Instead of holding elections, it recommended that governors choose judges only from lists generated by an independent commission composed mostly of lawyers. Citizens would only have the option of approving or disapproving the governor's choice after the judge has served for a brief period of time. This system was first adopted in 1940 by Missouri and is often called the Missouri Plan.[2] Supporters prefer the term merit selection while others call it the Bar Association Plan—because it would give state

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bar associations a dominant role in selecting judges. Supporters of merit selection in North Carolina today advocate something like the Missouri Plan.

Methods used by each state to select judges usually reflect that particular state's culture and political history. Twelve states, including nine of the original 13 colonies, as well as the federal governmnent, continue to allow elected officials to choose judges. Nonpartisan elections are most often found in the West, where statehood coincided with the Progressive Era. True to their Jacksonian traditions, southern states like North Carolina usually chose their judges in partisan elections.

Court Packing and Silk Stockings

The North Carolina Bar Association argues that a system modeled after the Missouri Plan is a better way to choose judges than having them run as politicians. Whenever there is a judicial vacancy, a panel of lawyers and nonlawyers would prepare a list of qualified attorneys from which the governor would appoint a judge. Unlike the present system, where judges run against each other, the merit system gives voters only the opportunity to decide whether to retain a judge. There would be no opposing candidate in such "elections."

The Bar Association says the present system of partisan elections discourages qualified lawyers, who do not want to be politicians, from running for judgeships. But David Blackwell, former executive director of the North Carolina Academy of Trial Lawyers, sees things in a different light. Blackwell worries that under merit selection, the nomination process would become secretive and vested in the hands of a small, elite group of lawyers. He even objects to calling the bar association plan "merit selection." He asks, "Whose merit?" Calling the proposed plan "merit selection" implies that present judges are not meritorious, Blackwell contends. That's an implication with which he disagrees.

North Carolina judges have in fact had a good record with only isolated judicial scandals and few complaints about judicial incompetence, Blackwell notes. Many states with "merit selection," including Missouri, have in fact been rocked by judicial controversy.[3] In that state, one Supreme Court justice has accused the Chief Justice of influencing the judicial nominating commission in an effort to "pack" the court with three new justices who would vote with the chief on court administration issues. That brouhaha has undermined public confidence in Missouri's model system and eroded support for merit selection systems generally.

The concern of trial lawyers, both in North Carolina and elsewhere, is that merit selection plans would give bar associations far too much power over who becomes a judge. Traditionally bar associations, which are umbrella organizations representing many different kinds of attorneys, are dominated by lawyers who represent corporate clients and business interests.[4] Blackwell worries that merit selection would turn the selection of judges over to what he calls "silk stocking lawyers" representing corporate clients as opposed to trial lawyers who represent consumers, accident victims, and workers. That's what happened in Missouri. Blackwell contends that American history has proven the ballot box to be a good way to get things done.

The Elections Flap

The renewed interest in merit selection stems primarily from the 1986 judicial elections, when Democrats and Republicans fought bitterly over five seats on the state Supreme Court. A squad of conservatives interested in electing judges in harmony with their ideology leveled sharp attacks on the Democratic candidate for Chief Justice, Jim Exum. Both he and his Republican opponent, then-Chief Justice Rhoda Billings, were distressed by the virulent and partisan attacks, and Billings let it be known that she would prefer that the attacks cease. Both Billings and Exum support a merit form rather than an electoral system, but neither has explained how a merit system would eliminate scathing attacks on a sitting justice when he must stand for a retention vote. Nothing could halt an attack on the judge's character or on his record. In short, even with a merit system, there still might be partisan attacks that smack of the current system, and little would be gained.

Consider what happened in California. In 1986, Chief Justice Rose Bird ran for retention under rules much like those proposed for North Carolina. The election was far nastier than the one in North Carolina and did far more damage to the legitimacy of that state's judiciary. It also proved to be one of the most expensive races for state judicial office in American history, (more than $7 million spent) and Bird lost her seat in the fracas. Among other things, Bird was accused of coddling criminals. Bird had voted against the death penalty in several capital cases, and one ad run by her detractors pictured the mothers of murder victims beseeching voters to "cast three votes for the death penalty."[5] The lesson seems clear. Not only will merit selection not encourage lawyers to seek judicial office, but based on the experience from both California and Missouri, merit selection will not eliminate partisan conflict, either. Instead, it may prompt one-issue groups to target candidates they don't like and attempt to turn them out in a single-shot campaign.

Over the last 45 years, many states have experimented with merit selection plans similar to the one

proposed for North Carolina. If these plans really resulted in better judges, we should be able to see some improvements in states that have adopted merit selection. But the best research we have on this question bears little evidence that merit selection produces better judges than an election system.

Consider these studies:

- Judges chosen under merit selection have no more experience, and no better educational backgrounds, than judges chosen in partisan elections.[6] A 1972 study by Bradley Canon, a professor of political science at the University of Kentucky, examined judicial selection before and after merit selection, and found merit selection had no effect in producing more experienced or better educated judges.
- Worse yet, in Missouri the quality of education among judges selected actually declined after the adoption of merit selection, according to a 1969 study by University of Missouri researchers Richard Watson and Ronald Downing.[7]
- Rather than opening up the judicial profession to lawyers who otherwise would not run, as proponents claim, Henry Glick of the University of Florida found in a 1983 study that merit selection actually narrowed the pool of eligible lawyers by concentrating more heavily on local candidates for judgeships than elections had.[8]
- Despite constant research, no one has found any evidence that judges chosen under merit selection do any better job than judges chosen under partisan election. Lawrence Baum, a specialist in judicial politics at Ohio State University, contends that the experiences of more than a dozen states over the last 45 years provide no objective evidence of this.[9]

Advocates of merit selection believe that turning judicial election over to a panel of lawyers and laymen will "take politics out" of the judicial selection process. Contrary to what supporters believe, the Academy of Trial Lawyers speculates, judicial politics under a system where judges are chosen in private by a small group are likely to be just as partisan and far nastier than when they are chosen in a public election. That is what has happened in other states. "I've long maintained that you can't keep politics out of the judiciary completely," says the University of Kentucky's Canon. "The Missouri Plan may keep politics out in the overtly partisan sense, but it doesn't keep it out in the ideological sense."[10]

Although there is no evidence that merit selection schemes remove politics from the process, they do change the nature of politics. According to a 1974 study conducted by the American Judicature Society—the group that first proposed merit selection—merit plans have not been able to remove partisan politics from the selection process. Instead, what actually appears to happen in states with merit selection is that bar associations split along partisan lines in ways resembling the political culture of the state when they choose panel members.[11]

Governors do not appoint lay people randomly to nominating commissions, but rather choose people who will do their bidding—political allies, friends, and other trusted water carriers. What we know of judicial selection in states with variants of the Missouri Plan is that governors use their appointees to put forward names of individuals they would like to see on the bench.[12] In some cases, merit selection allows governors to reward political supporters with judgeships while not appearing to make embarrassing patronage appointments. North Carolina Gov. Jim Hunt may have tried to do just that—avoid embarrassing appointments—in 1977 when he created by executive order his own merit nominating process, according to *The Charlotte Observer*.[13]

What Do You Get?

One further problem of merit selection plans is the demographics of the nominating commission. While the governor is usually the appointing authority, and while the legislature may do the confirming, it is the nominating commission which has enormous influence because it can choose the nominees— and it can choose *who will not* be a nominee for a judgeship. Surveys done of Missouri plan nominating committees around the United States have found that 97.8 percent of the members were white and 89.6 percent were male. While this might be explained by the predominantly white, male structure of the bar, even among the non-lawyers on these panels, business and banking executives tend to predominate.[14] Why is this important? If business, corporate and legal interests have such great influence on the nominating process, the successful judicial candidate may tend to reflect their views, rather than those of the populace at large.

Legitimate questions ought to be raised about the ability of such a system to produce a judiciary that will be sensitive to all interests. "The prevalence of these particular interests on the selection committees raises very serious doubts about the commissions' ability to produce a judiciary sensitive to all interests of the general public, writes Patrick Dunn in "Judicial Selection Process and the Missouri Plan."[15] While electoral politics is crude, it at least is relatively open for those who will see, and it can be analyzed, digested, and assessed.

But merit selection would offer little hope to N.C. Republicans, at least under Democratic governors. Traditionally, Republicans have not fared very well under our state's system of partisan elections, but they

Table 5. Actions Against North Carolina Judges by N.C. Supreme Court Since 1973

(As of June 1989)

Judges Removed from the Bench for Misconduct

1. Judge Linwood Peoples of Henderson

Peoples, a District Court judge, resigned his seat in 1977 after he was accused by the N.C. Judicial Standards Commission of accepting money from defendants to settle traffic cases out of court. The Commission had recommended that Peoples be removed from office. In 1978, Peoples ran for Superior Court and won a seat, but the N.C. Supreme Court refused to seat him, ruling that his misconduct in office made him ineligible to retain his seat.

2. Judge William Martin of Hickory

Martin, a District Court judge, was removed from the bench by the N.C. Supreme Court in 1981 after the Judicial Standards Commission accused him of trying "to obtain sexual favors from female defendants who had matters pending before the courts." The Commission earlier had recommended in 1978 that Martin be removed from office, but the N.C. Supreme Court reduced that recommendation to a public censure of Judge Martin.

3. Judge Charles Kivett of Greensboro

Kivett, a Superior Court judge, was accused by N.C. Justice Department prosecutors in 1982 of sexual misconduct in office and of meting out light sentences to certain defendants at the request of a friend. The Judicial Standards Commission recommended that Kivett be removed, and the N.C. Supreme Court removed him from office in 1983.

4. Judge Wilton Hunt of Whiteville

Hunt, a District Court judge, was accused by the Commission of accepting bribes in an undercover operation conducted by law enforcement authorities. The N.C. Supreme Court removed Hunt from the bench in 1983.

Judges Censured

1. **District Court Judge E. E. Crutchfield** of Albemarle, 20th Judicial District, 1975, for *ex parte* disposition of several court cases.
2. **District Court Judge Joseph P. Edens** of Hickory, 25th Judicial District, 1976, for *ex parte* disposition of a case.
3. **District Court Judge George Stuhl** of Fayetteville, 12th Judicial District, 1977, for *ex parte* disposition of cases, making overtures to an arresting officer about his testimony, and improperly urging an assistant district attorney to take a dismissal in a case.
4. **District Court Judge Milton Nowell** of Goldsboro, 8th Judicial District, 1977, for *ex parte* disposition of cases.
5. **District Court Judge Herbert Hardy** of Goldsboro, 8th Judicial District, 1978, for *ex parte* disposition of cases and for writing another judge urging him to enter a certain sentence in a pending court case.
6. **Superior Court Judge Paul Wright** of Goldsboro, 8th Judicial District, 1985, for making a campaign contribution to a candidate in another race, contrary to judicial canon proscribing such political activity.
7. **Superior Court Judge Kenneth Griffin** of Charlotte, 26th Judicial District, 1987, for making inappropriate courtroom comment and making a derogatory gesture in court.
8. **District Court Judge Lacy Hair** of Fayetteville, 12th Judicial District, 1989, for improper conduct which prejudiced the administration of justice which brought the office into disrepute.

Note: The Judicial Standards Commission was set up in 1973. It recommends actions against judges to the N.C. Supreme Court, which is empowered to take disciplinary action against judges. Prior to that, the only way to remove a sitting judge in North Carolina was by impeachment.

Table 6. Salaries of N.C. Judges (June 1989)

Chief Justice of the Supreme Court, $81,348
Associate Justices of the Supreme Court, $79,668
Chief Judge of the Court of Appeals, $77,124
Judges of the Court of Appeals, $75,432
Senior Resident Superior Court Judges, $69,180
Regular and Special Superior Court Judges, $66,972
Chief District Court Judges, $59,076
District Court Judges, $56,820

would not do well with merit selection, either, unless panels also reflect geographical distributions of Republican and Democratic strength. In the Appellate Division, only one state judge is Republican—Judge Robert Orr of the Court of Appeals. There are no GOP members of the Superior Court, and a scant handful of District Judges. But, based upon what has happened in other states, they would probably have little to gain from merit selection here. In Missouri, it was believed that merit selection would break the hold the Democratic party had over the state judiciary. However, after the merit selection system was put in place, the percentage of Democratic judges actually increased as the locus of politics shifted from elections to bar associations. The lesson here is that no matter which selection process is used, there is considerable room for the influence of other political institutions—including political parties and the other branches of government —to influence judicial selection.

How Can We Improve Judicial Elections?

By and large, North Carolina has not been troubled with the major judicial scandals that have rocked some other states. Apart from some problems with District Court judges and traffic cases, our judges have been relatively well behaved. That's not to say there aren't some pitfalls with judicial elections, however.

Consider these traditional drawbacks in North Carolina:

- Low voter participation in judicial elections and a lack of voter knowledge about candidates;
- Inadequate representation on the bench of women and minority judges; and
- An electoral system for Superior Court judges that discriminates against the minority political party because of the requirement that Superior Court judges run statewide, rather than within districts.

Low interest in judicial elections in North Carolina stems partly from the fact that many judicial candidates run unopposed—the minority party simply does not often nominate candidates for these posts. In part, this is due to the fact that all Superior Court judges have to run in statewide elections where voters are unlikely to have any information about a candidate except their political party, their gender, and possibly their race. This system is under court challenge by both the state Republican Party and the NAACP. If Superior Court elections were held within judicial districts, as they are in most states, scores of contests would be more competitive. Citizens are more likely to take an interest in races that personally affect them and over which they have some measure of control.

Allowing Superior Court judges to be elected from the districts where they primarily reside is more likely to give qualified blacks, women and Republicans an opportunity to serve as judges than the proposed merit selection system. And it certainly would be fairer than the present electoral system.

One of the shortcomings of using popular elections to fill judicial posts is related to restraints on judicial campaigning. Judges cannot make political promises or take sides on controversial issues. They must build their campaigns around issues of training, character, family stability, church affiliation and education background. The typical election handout shows the candidate, his wife, his five children and his golden retriever posed in front of a fireplace in the family den. It tells us little about the qualifications of the candidate beyond education and membership in civic or religious groups. Any method that could increase public knowledge about judicial races and increase the information flow about candidates would be helpful to North Carolina's citizens.

Some states, for instance, have developed ratings systems for judges. While early efforts at rating judges have been sharply criticized, usually by the rated judges, recent efforts have been well received. The N.C. Bar Association could do a great service by conducting periodic surveys of judges and those who practice before them and publishing those results regularly. In 1983, the Bar Association conducted such a survey, but

the results were not published because, it said, it had made a commitment to keep the results confidential. Instead, a judicial evaluation was furnished to each judge so that he might see how he was perceived by the lawyers who practiced before him. The bar has no such follow-up in the works.[16]

An earlier survey, published in 1980 by the N.C. Center for Public Policy Research, asked lawyers for their opinions on members of the trial and appellate courts.[17] That survey was made public by the Center, and has been cited frequently in the media as one indication of a judge's overall performance, his perception by the bar, his professional characteristcs, and the perception of his work by fellow members of the judiciary. The Center is considering conducting another such survey of the judiciary.

Judicial Politics in the Future

Whether a state uses partisan elections, merit selection, nonpartisan elections, or any other method to choose its judges, the politics of judicial selection is always going to be more a function of the *political culture* of a state than the *form* of selection. The problem with recent judicial elections in North Carolina is not the system itself, but the fact that the political culture of the state is changing. As judicial elections become more partisan (and more expensive), a number of people, including former Chief Justice Susie Sharp and Chief Justice Exum, are worried that good candidates will not seek judicial office. Sharp rightly pointed out in 1977 that partisan elections worked well in the past because North Carolina was a one-party state, and real judicial elections were the exception rather than the rule.[18]

North Carolina is still evolving as a two-party state. What we have seen in other states indicates that increased competition will take place no matter which method we use to choose our judges. As partisan politics in North Carolina becomes more partisan, as it did in Missouri, or more ideological, as it has in California; the politics of judicial selection will get nastier and more expensive whether we turn it over to a small group of elite lawyers or leave it in the hands of the people. Partisan combat, in spite of Justice Exum's distaste for it, does not endanger the process unless it produces inferior and subservient judges. So far in North Carolina, it has not. There is no evidence that partisan elections are more likely to give us judges inferior to those who would be chosen under so-called merit selection. And with open elections, at least, we know who to blame if the quality of justice declines.

FOOTNOTES

[1]Lawrence Baum, *American Courts*, Houghton Mifflin, 1986, p. 92.

[2]*Ibid.*

[3]Paul Wenske, "Dissension Rocks Missouri Justices," *The National Law Journal*, May 27, 1985, p. 1.

[4]See Edward Lauman and John Heinz, "Specialization and Prestige in the Legal Profession: The Structure of Deference," *American Bar Foundation Research Journal*, 1977, pp. 155-216; Jerald Auerbach, *Unequal Justice*, Oxford University Press, 1976; John Heinz and Edward Lauman, *Chicago Lawyers: The Social Structure of the Bar*, Russell Sage, 1982.

[5]William Endicott, "Twas the season to be nasty," *The California Journal*, Vol. 17, No. 12, December 1986, p. 582.

[6]Bradley Canon, "The Impact of Formal Selection Processes on the Characteristics of Judges — Reconsidered," *Law and Society Review*, 1972, pp. 588-589.

[7]Richard Watson and Ronald Downing, *The Politics of Bench and Bar*, John Wiley and Sons, 1963, pp. 205-219.

[8]Henry Glick, *Courts, Politics and Justice*, McGraw Hill, 1983, p. 89.

[9]Baum, pp. 106-107.

[10]Quoted from Wenske, p. 26.

[11]See esp. Allan Ashman and James Alfini, *The Key to Merit Selection: The Nominating Process*, American Judicature Society, 1974.

[12]Jerome R. Corsi, *An Introduction to Judicial Politics*, Prentice Hall, 1984, pp. 104-107.

[13]Ned Cline, "Hunt Was Warned About Patronage List for Judges," *The Charlotte Observer*, Sept. 1, 1977, p. 1A.

[14]Ashman and Alfini. See also Greg Casey et al., "A State Supreme Court in Crisis: The Case of Missouri," presented at the annual meeting of the Southwest Political Science Association, March 19, 1986, San Antonio, Texas.

[15]Patrick Dunn, "Judicial Selection and the Missouri Plan," *Courts, Law and Judicial Processes*, The Free Press, 1981, p. 109.

[16]The N.C. Bar Association, which conducted the survey, is sometimes confused with the N.C. State Bar, which is the regulatory agency that licenses and disciplines lawyers in North Carolina, and to which all licensed lawyers must belong. The N.C. Bar Association, on the other hand, is a voluntary professional association of lawyers in North Carolina for a variety of educational and other purposes, and membership is not mandatory.

[17]*Article IV: A Guide to the N.C. Judiciary*, First Edition, N.C. Center for Public Policy Research, 1980.

[18]Correspondence from Chief Justice Susie Sharp to the Hon. H. Parks Helms, March 9, 1977, pp. 1-2.

Advisory Opinions: The "Ghosts That Slay"

by Katherine White

SHOULD THE SUPREME COURT of North Carolina serve as a sort of hybrid policy advisor to the legislative and executive branches of government? That's the central question surrounding the practice of granting advisory opinions — a practice that's not widely understood.

The North Carolina Constitution authorizes state courts to hear two kinds of cases: civil actions between opposing parties, and criminal cases where the state prosecutes those charged with crimes.[1]

But since 1849, the N.C. Supreme Court — the final arbiter of what the state constitution and state law say — has responded to at least 28 requests from the governor or the legislature for advisory opinions. These opinions have no force of law but indicate the Court's views on an issue. The Court has issued only four such opinions in the last quarter-century — in 1961, 1966, 1969 and 1982. But in recent years, the governor and the General Assembly have sought the Court's advice on many occasions.

The Court has issued those opinions despite the fact that it has no guidelines on when it should issue advisory opinions — or any other rules regarding advisory opinions, for that matter. Former Chief Justice Joseph Branch, like some of his predecessors, questions whether such opinions should be issued. He fears, in part, that the Court could be swamped with requests for such opinions in the future.

Legislatures and governors alike have sought advisory opinions because it would help determine the constitutionality of a bill or resolve an issue. It would also help speed the resolution of issues. But there haven't been all that many advisory opinions granted — on the average about one every seven years since the Court first convened in 1789. The use of such opinions has hardly burdened the court.

"You're faced with the fact that over many, many years you've had the court issuing them," Branch said in an interview. "It's custom .... Whether there's any constitutional authority for it I don't know. Up to now no one's challenged giving the opinions — probably because (the opinions) are not binding."

In theory, the opinions are not binding on the Court because they are the individual views of the justices and not of the Court as an institution. But in practice, the opinions often are cited in later developments to support one position or another.

Branch himself acknowledges that the opinions carry weight. "When you get into giving advisory opinions it's a pretty strong indication of what you might do if you get a lawsuit," said Branch.

The latest request, submitted by Democratic Lt. Gov. Robert Jordan and House Speaker Liston Ramsey (D-Madison) in July 1985, sought the justices' opinion on whether two sections of the new Administrative Procedure Act (APA) met state constitutional requirements.[2] The new APA established an inde-

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Advisory Opinions by the N.C. Supreme Court

1. *Waddell v. Berry*, 31 N.C. 516 and 40 N.C. 440 (1849)
2. *In re Martin*, 60 N.C. 153 (1863)
3. *In the Matter of Hughes*, 61 N.C. 64 (1867) (also cited as *In re Extradition*)
4. *In re Homestead and Exemptions*, Opinion handed down in 1869; reported at 227 N.C. 715 (1947)
5. *In re Legislative Term of Office*, 64 N.C. 785 (1870)
6. *In re A Convention of the People*, Opinion handed down in 1871; reported at 230 N.C. 760 (1949)
7. *In re Power of Supreme Court to Declare Act of General Assembly Unconstitutional*, 66 N.C. 652 (1872)
8. *In re Term of Office of Judges and Justices*, 114 N.C. 923 (1894)
9. *In re Leasing of the North Carolina Railroad*, 120 N.C. 623 (1897)
10. *In re Municipal Annexations*, Opinion handed down in 1917; reported at 227 N.C. 716 (1947)
11. *In re Omnibus Justice of the Peace Bill*, Opinion handed down in 1919; reported at 227 N.C. 717 (1947)
12. *In re Municipal Finance Bill*, Opinion handed down in 1921; reported at 227 N.C. 718 (1947)
13. *In re Emergency Judges*, Opinion handed down in 1925; reported at 227 N.C. 720(1947)
14. *In re Proposed Changes in Judicial System*, No formal response, as the Resolution of the General Assembly requesting advice was later withdrawn. Resolution adopted in 1925; reported at 227 N.C. 721
15. *In re Advisory Opinion*, 196 N.C. 828 (1929)
16. *In re Proposed Constitutional Convention*, 204 N.C. 806 (1933)
17. *In re General Election*, 207 N.C. 879 (1934)
18. *In re Yelton*, 223 N.C. 845 (1944)
19. *In re Phillips*, 226 N.C. 772 (1946)
20. *In re Terms of the Supreme Court*, Opinion handed down in 1923; reported at 227 N.C. 723 (1947)
21. *In re Subsistence and Travel Allowance for Members of the General Assembly*, 227 N.C. 705 (1947)
22. *In re House Bill No. 65*, 227 N.C. 708 (1947)
23. *In re Advisory Opinion in re Time of Election to Fill Vacancy in Office of Associate Justice of the Supreme Court of North Carolina*, 232 N.C. 737 (1950)
24. *Advisory Opinion in re General Election*, 224 N.C. 748 (1956)
25. *Advisory Opinion in re General Election*, 255 N.C. 747 (1961)
26. *Advisory Opinion in re Work Release Statute*, 268 N.C. 727 (1966)
27. *Advisory Opinion in re Sales Tax Election of 1969*, 275 N.C. 683 (1969)
28. *Advisory Opinion in re Separation of Powers*, 305 N.C. 767 (Appendix, 1982)

— compiled by Lacy Maddox

pendent system of hearing officers under the chief justice of the Supreme Court and also established a commission — called the Administrative Rules Review Commission — composed of legislative appointees to review the rules executive branch agencies make.

In its deliberations, the Democratic-controlled House wanted to keep Republican Gov. James G. Martin from appointing the chief hearing officer and give the appointment instead to the General Assembly. The House also wanted to ensure control over the executive branch's rules and sought a legislative veto over those rules. The Senate membership expressed concern that the House position encroached on the constitutional provision of separation of powers, which requires that the three branches of government remain separate and distinct.

The two houses compromised on July 12, 1985 — with no legislative veto of rules and with the chief justice appointing the chief hearing officer. But the compromise carried with it a condition: The two houses of the legislature would request an advisory opinion on the two contested issues from the Supreme Court — and one section of the bill would not take effect unless the Court okayed it in an advisory opinion. In other words, the Supreme Court would have what the governor never had — an outright veto.

The N.C. Supreme Court rejected that request for an advisory opinion in a letter written on October 28, 1985, and filed on October 31. The Court's letter, addressed to Lt. Gov. Robert Jordan and House Speaker Liston Ramsey, noted: "To grant your request the members of the Supreme Court would have to place themselves directly in the stream of the legislative process. This kind of legislative power, we believe, should not be construed upon or accepted by this Court. . . ." (The 1986 General Assembly responded by creating a new Administrative Rules Review Commission.)

The request for an advisory opinion, founded in politics, placed the justices in a position of answering a legal question that the state Constitution does not *expressly* empower the court to answer, because its stated powers are limited to review of civil litigation and criminal cases. It also places one branch of government in the position of advising another branch, blurring the separateness of the judicial and legislative branches.

That blur between the two branches is the reason that the U.S. Supreme Court has never given advisory opinions. The justices in 1793 told President Washington that the federal separation of powers doctrine in which they were "judges of a court in the last resort" meant they could not give advisory opinions.[3] By establishing this doctrine requiring a "case of controversy," the U.S. Supreme Court in effect said it would decide only real fights between real antagonists, not serve as an ultimate legal advisor.

The N.C. Supreme Court's first advisory opinion — issued in 1849 — was granted in almost a casual way, with no consideration of the separation of powers doctrine. There, the court settled a political dispute over which votes should be counted in a close state Senate race. Chief Justice Thomas Ruffin wrote that the justices responded because they "deemed it a duty of courtesy and respect to the Senate." Few other state supreme courts extend that courtesy to the executive or legislative branches of government, and most of those states have a specific constitutional provision for advisory opinions.

Still, the N.C. Court hasn't always been courteous.

In 1869, for example, the N.C. Supreme Court refused to advise the General Assembly on how the 1868 Constitution affected certain classes of debt that were incurred before the new Constitution's adoption. Then, wrote Chief Justice Richmond Pearson, "The functions of this court are restricted to cases constituted before it. We are not at liberty to prejudge questions of law."

And in 1984, the justices did not respond to a request from Gov. James B. Hunt Jr. on the constitutionality of sections of the Safe Roads Act of 1983. Their denial is not part of any written record. They simply didn't answer it, said Branch. The reason? People accused of drunk driving already were being prosecuted under the new law. Thus, any defendant's lawyer could raise the constitutional question. "With a pending criminal case, it's questionable whether we could give one (an advisory opinion). It would be bad on the man who was about to be tried," explained Branch.

Over the years, in other states, debate has centered on the appropriateness of the advisory opinion. U.S. Supreme Court Associate Justice Felix Frankfurter called them "ghosts that slay,"[4] meaning that they can come back to haunt a court that acted hastily in issuing an advisory opinion.

That can happen because requests for the opinion don't present a sharply defined controversy between opposing sides. The N.C. Supreme Court doesn't want to receive written briefs on the issues or to be presented oral arguments from people interested in the matter. Requiring briefs and hearing arguments "really gives it the stature of an opinion, it seems to me," Branch said.

North Carolina's expert on advisory opinions,

the late attorney Preston Edsall, explored these problems and recommended that the court take steps to avoid the pitfalls of advisory opinions. Based on the infrequency of such opinions in recent years, the practice has not been abused. Perhaps that has worked in the North Carolina Supreme Court's own best interest — as a sort of legal talisman to ward off those "ghosts that slay."[5]

FOOTNOTES

[1]N.C. Constitution, Article 3, Section 1.

[2]See *Assessing the Administrative Procedure Act,* N.C. Center for Public Policy Research, May, 1985.

[3]Warren, *The Supreme Court in United States History*, 108-111 (1922).

[4]Felix Frankfurter, Note on Advisory Opinions, 37 *Harvard Law Review* 1002, at 1008 (1924).

[5]Preston Edsall, "The Advisory Opinion in North Carolina," 27 *N.C. Law Review* 297 (1949).

The Role of the Judiciary in Making Public Policy

by John V. Orth

A HUNDRED YEARS AGO in the novel Billy Budd, Herman Melville gave us a fictional account of one type of judge. Captain Vere, whose very name means truth, was called upon to judge a crewman who had unintentionally killed one of the ship's officers. While recognizing that the defendant was innocent in the eyes of God, Captain Vere ordered him to be executed. The judge, he said, must enforce the law as it is, and the law required the order he gave. Although Captain Vere himself is fictional, judges with a Captain Vere philosophy are not. Indeed, historians tell us that Captain Vere was modeled on Lemuel Shaw, a famous Massachusetts judge and Herman Melville's father-in-law.

At about the time that Melville was writing *Billy Budd*, North Carolinians were hearing much the same thing about judging that Captain Vere had said. But in North Carolina the spokesman was not a fictional character; he was the state's "fighting judge," Walter Clark, who for 20 years was Chief Justice of the North Carolina Supreme Court. Clark based his philosophy in terms of popular sovereignty: "Whatever tends to increase the power of the judiciary over the legislature diminishes the control of the people over their government." The question, for Clark, was whether the people governed themselves through their representatives, or were governed by their judges.

The ideal that judges should enforce the law, not make it, has attracted many judges, not just in the last century. Susie Sharp, Justice of the North Carolina Supreme Court from 1962 to 1975 and Chief Justice from 1975-1979, often expressed this position. As she once put it, there are four steps in deciding a case: 1) state the facts; 2) state the issue raised by the facts; 3) state the law relevant to the issue; and 4) decide the issue in light of the law. Using this method, any two judges should make the same decision. If a judge thinks legislation is desirable, he may say so, but may not anticipate the legislation by judicial decree.

Charles Becton, a member of the North Carolina Court of Appeals, has a similar outlook. "I view the role of the judiciary in the traditional sense," he said, "of applying the law — not making it."

If the judge's role is so limited, why do talented men and women leave lucrative careers in private practice to don judicial robes? Why is an effort made

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"Whatever tends to increase the power of the judiciary over the legislature diminishes the control of the people over their government."

—Chief Justice Walter Clark, c. 1902

to see that more women and members of minority groups are chosen as judges? And why are judicial decisions so anxiously awaited by persons not party to the suits?

The answer to the last question, of course, is that in the American legal system the judge does more than decide the disputes; he or she makes precedents, which guide other judges. The rule of following prior decisions in similar cases is known by the Latin phrase *stare decisis*, "to stand by decided matters."

Yet this answer only makes the other questions more perplexing. If the judge is bound by statutes and the decisions of his predecessors, why, aside from emoluments, should anyone want the office? And why, once minimum qualifications are met, should society care who holds it?

The answers to these questions lie in the process of judicial decision-making. First of all, our law is more than a collection of statutes and precedents. Every judge swears above all to uphold the Constitution of the United States. In addition, every state judge swears to uphold the Constitution of his state, except to the extent that it conflicts with the federal Constitution. Every state judge must swear to deny effect to any law that violates either Constitution. Because the U.S. and state Constitutions embody many American ideals, the judiciary is called upon from time to time to measure laws against fundamental assumptions, and to throw out those laws that do not conform with the expressions of the Constitutions. Our constitutional system encourages an independence of mind among the judiciary.

Judges Do Make Law

Much of a judge's day-to-day work, of course, involves matters more mundane than constitutional adjunction. Statutes must be construed, which involves more than reading plain language. Anyone who has ever tried to puzzle his way through a statute knows that the meaning is often far from plain. But statutes in the modern world of regulation must be fitted into the complicated machinery of the modern state. Since a statute is produced in the political give-and-take of legislative bargaining, many gaps and inconsistencies may be left for the courts to deal with, as best they may. Charged with the duty of carrying out the will of the legislature, the modern judge must read the statutes in such a way that public policy will be effectuated, not stymied. In the case of *Morrison v. Burlington Industries*, for example, the North Carolina Supreme Court was asked to construe the Workers' Compensation Act as it applied to disability caused by brown lung disease. The N.C. Industrial Commission, which administers the workers' compensation laws, needed a definite rule, and the textile industry, insurance companies, textile workers, and the general public also watched the outcome closely.

In addition to clarifying the statutes, a judge must also restate the common law. When interpreting a statute, the court is enforcing a law made by the legislature. When applying the common law, on the other hand, the court is enforcing a rule made by judges. The common law is, by definition, non-statutory law — law made by past judicial decisions in keeping with the then current views of public policy. As society changes, so does the common law in order to conform to changed conditions. Should the judges fail to update the common law, the legislature will be forced to act. The Workers' Compensation Act, for example, was originally enacted because of public dissatisfaction with common law rules that limited employers' liability for injuries to workers on the job.

The renovation of the common law, however, need not await legislative action. What the judges have done, they also undo. In 1967, for example, Justice Susie Sharp wrote an opinion in which the judges of the N.C. Supreme Court reversed the common law rule of "charitable immunity." Until that decision, charities running hospitals in North Carolina

were not liable for injuries to patients caused by the negligence of their employees. Because she recognized that hospitals relying on their immunity might not have taken out liability insurance, Justice Sharp limited the new rule to the case before her and to similar cases arising subsequently. In effect, the decision was like a statute — only it hadn't been passed by the legislature and signed by the governor. On this ground, three of the seven judges dissented from Justice Sharp's opinion.

Within limits, judges *do* make law. The common law is their creation, and statutes require their interpretation. All law must constantly be squared with the Constitution. And the Constitution means what judges decide it means.

Making Public Policy Every Day

The realization that judges are policymakers came early in the history of the United States. More than 150 years ago, a campaign began to replace the common law with statutory law in the form of a comprehensive code. Deprived of the common law and under the watchful gaze of the legislature, the judges would have less room to maneuver. But the codification movement failed to reach its goals. After winning a famous victory in modernizing legal procedure, the movement faded away.

A more widespread response to the felt need to make judges more accountable was the movement for an elected judiciary. If they were going to legislate, the argument ran, let them run for office like other legislators. Beginning with Mississippi in 1832, one state after another adopted constitutional provisions requiring the election of all state judges. Chief Justice Walter Clark of North Carolina even called for a national crusade for the election of federal judges.

The election of state judges has not succeeded, however, in making them accountable as policymakers. Even ambitious lawyers have hesitated to turn judicial elections into out-and-out political campaigns. The people have never wanted active politicians on the bench, for fear that the life, liberty, or property of individual litigants could become political footballs. The practice arose early in North Carolina, as elsewhere, to reduce judicial elections to mere form. Every North Carolina judge mentioned in this article was first appointed by the governor to fill a vacancy. In any later election, the judge runs as a incumbent.

The fact that a judge may escape effective challenge at the polls does not mean that he has a free rein. As mentioned above, there are limits to judicial lawmaking. And a judge who misbehaves may, of course, be impeached. But the most effective restraint on a judge is his or her own sense of integrity and mission.

How activist do North Carolinians expect the state's judges to be? A purely passive bench would have left an outmoded "charitable immunity" on the books, and washed its hands like Captain Vere when he condemned Billy Budd. In time, perhaps, the legislature would have changed the law, but until then individuals would have suffered. Groups that can more easily influence the legislature than the courts will reasonably prefer that the courts in most cases await legislative fiat. Lobbying is an accepted part of the legislative, but not the judicial, process. Investigation is more easily carried out by legislative committees than by judges. And horse trading is an inevitable part of the legislative process.

For present purposes, perhaps, the most that should be said is that, whether activist or not, judges are making public policy every day. They bear watching.

... The most effective restraint on a judge is his or her own sense of integrity and mission. ...

Judicial Policymaking: Class Action Lawsuits To Bring New Action to N.C. Courts

by Katherine White

This article examines a recent N.C. Supreme Court decision opening up the state courts to more class action lawsuits.

WHO WOULD THINK that the fine print on a standard mobile home sales contract could lead to a major change in the way North Carolina's court system handles lawsuits? But that's the effect of an April 1987 N.C. Supreme Court decision opening the doors of state courtrooms to more class action lawsuits — and bringing North Carolina in line with the majority of the other states in allowing class actions.

The standard form contract, with small print on the back and front, is as common as dirt. Banks, credit card companies, car dealers, and health clubs all have them — documents with language that has been examined under a legal microscope to ensure prompt and certain payment of borrowed money and to comply with federal lending regulations.

The Crow family of Lumberton signed such a standard contract in August 1981 to finance its new mobile home. After putting $3,000 down and going $19,000 in debt, the Crows promised to pay $328.03 per month for 15 years. In early 1983, they failed to make two payments and lost their home at a public sale. That can happen when debts aren't paid, but this time the finance company that held the mortgage allegedly violated state and federal consumer protection laws by charging an excessive rate of interest and by selling the home before the Crows had the chance to make good on the back payments, as federal law requires. The Crows chose to buck the odds and file a class action lawsuit against the finance company.

What was unusual in this case is that North Carolina courts traditionally have prohibited class action suits, where one person can file suit on behalf of himself and all others who have similar claims.[1] In the *Crow* case, others had signed similar contracts with allegedly illegal provisions. As a group, the class can recover damages that will be distributed to all members. The potential for large judgments in class actions is

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enormous. In a case similar to the Crows', 1,450 people from Georgia, Mississippi, and Florida received a $6.3 million settlement in 1984.[2] But no one gave the Crows much of a chance to sue successfully in a class action because of the long-observed North Carolina prohibition on *most* such suits.[3] Now the odds have changed, thanks to the Supreme Court decision allowing such suits to be filed.

Class actions of this kind have been allowed in federal court, but until the *Crow* decision, the North Carolina courts had never before entertained such a class action suit. For the Crows and people like them, the April 1987 N.C. Supreme Court decision on the procedural question of whether the Crows could file a class action converted the Crow's individual claim of $4,000 into a potential $400,000-plus claim for a whole class against Citicorp Acceptance Co., Inc. The substantive questions in the case itself — whether there were actual violations of law — haven't yet come to trial.

Before the decision, the state courts allowed only those people who had a so-called "community of interest" to sue as a class.[4] For example, the N.C. Supreme Court allowed the beneficiaries of the Duke University endowment to pursue a claim when the trustees of the endowment decided to change the terms of the trust agreement when making investments.[5] Because the beneficiaries of the endowment had an interest in how the funds were handled, the Court concluded that they could bring the action as a class. The Crows' situation was different. They, and others, signed the same standard form, but the terms and collateral differed in each contract.

Until the Crows sued, the N.C. Supreme Court had never defined what kinds of classes could appear in a lawsuit. "Until today, we have not considered the proper definition of a 'class,'" wrote Justice Burley B. Mitchell for a unanimous court. "We now hold that a 'class' exists . . . when each of the members has an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members," he wrote.[6]

Thus, the Crows' loss of a mobile home has become the consumer's gain in the courts. Before, only the Attorney General's office could pursue such claims in state courts for groups of people who felt they had been wrongfully subjected to unfair trade practices, or to interest that was higher than the state's legal rate, says Travis Payne, a lawyer for the Crows. And with short staffing, the Attorney General's office couldn't pursue every claim that came to its attention, Payne adds.

Now, however, a private lawyer can serve the same function as the Attorney General's office and file a claim against a company that covers all the people who have signed lending contracts with allegedly illegal provisions in them.

The North Carolina Clients Council in Raleigh, a nonprofit organization of low-income people across the state (associated with N.C. Legal Services Resource Center), says the decision means that poor people will have better access to the courts. "There are approximately one million low-income persons in North Carolina. The number of lawyers who are able and willing to advocate on their behalf is limited," the Council said in a friend of the court brief. "The remedy of a class action is an important tool to redress the grievances experienced by large numbers of persons."[7] Of course, the case benefits others —middle- and upper-income citizens as well — who would be able to file class action suits.

The change doesn't suit everyone. Paul H. Stock, executive vice president of the N.C. League of Savings Institutions, says the *Crow* decision "is an abuse of the class action system." Stock says that a class action lawsuit on a form contract brings together a group of people who may not have been damaged by the contract. For example, he says, many who have signed agreements similar to the Crows probably have not missed a payment and, therefore, have not been subject to an alleged violation of federal law. Even where violations of federal law have been proved in cases similar to the Crows, Stock says, "Those violations have been no more than technicalities. The whole thing is pretty scary."

Others disagree. Jack Long, a Special Attorney General in Georgia with a private law practice, helped Payne represent the Crows in this lawsuit. Such cases are Long's specialty, and Georgia law enables Long to have a private practice on the side. The ability to bring a class action helps "get a hold of the super [big] business," Long says. "The only way you get to business for violations of people's rights is through the class action."

The remedy also allows cases to be filed for a group of people with relatively small individual claims that might not be worth pursuing on an individual basis. How small is unclear. The N.C. Supreme Court concluded in 1986 that a possible recovery of 29 cents per class member was too small.[8] In *Crow*, the Court did not reach the issue of what monetary claim for each class member made a class action permissible.

The N.C. Bankers Association, the N.C. League of Savings Institutions, BarclaysAmerican/Financial, Inc., and N.C. Citizens for Business and Industry say the decision means that their potential liability on consumer form contracts goes beyond anything "contemplated by the institutions and businesses or the legislature."[9] The standard contract, with its fine print, has developed over

the years. "This uniformity affords reduced costs to the lending industry and, therefore, reduced costs to the consuming public," the lenders said in a brief to the Court. "Thus, considerations of public policy dictate that the community of interest required of members of a putative class be more than a mere similarity in their relationship with a lender."[10]

Lenders don't want their standard form contracts subjected to close scrutiny by a class of people challenging them. The possible monetary award to the class could strip the companies of profits — "staggering and unintended liabilities," as Citicorp put it to the Court.[11] The N.C. Supreme Court was not persuaded, however.

"Uniform contracts, like all other contracts, must conform to law. Moreover, the precise historic purpose of class actions has been to permit claims by many plaintiffs or against many defendants to be brought and resolved in one action. To date this Court has not allowed unintentional illegality in the language of standard or uniform contracts to be raised as a shield to prevent [consumers] from prosecuting a suit as a class action. We decline to do so now," Justice Mitchell wrote.[12]

The lending institutions that fought the *Crow* case before the Supreme Court argue that the General Assembly is the proper forum to decide whether such large class actions can be maintained in state courts. The Supreme Court observed that the General Assembly could have barred such actions "expressly and unequivocably" when the legislature passed the class action rule in 1967.[13] The failure of the legislature to set such limits convinced the Court that "it intended to allow them."[14]

One further wrinkle in the class action arena could have an impact on state courts: A 1985 U.S. Supreme Court decision allows state-level class action lawsuits by classes that include individuals who are not citizens of that particular state.[15] As defendant Citicorp noted in its brief before the N.C. Supreme Court, "Our trial judges can expect to be called on to manage class actions that are not even restricted to N.C. citizens, but encompass absentee plaintiffs from all over the country."[16]

In the past session, the General Assembly did not revise the language for class actions — but then, no one asked the legislature to do so. Perhaps in future sessions of the General Assembly, an attempt will be made to change the *Crow* decision by legislation. At that time, the General Assembly will have to balance the public's interest in allowing class action lawsuits to challenge alleged wrongdoing against the costs to the businesses involved.

FOOTNOTES

[1] *Mills v. Cemetery Park Corp.*, 242 N.C. 20, 30, 86 SE 2d 893, 900 (1955), which spelled out how class actions in "community of interest" cases would be permitted.

[2] *Quiller v. BarclaysAmerican/Credit, Inc.*, 727 F 2d 1067 (11th Cir. 1984). Attorneys fees of $1.2 million are included in the settlement amount.

[3] N.C.G.S. 1A-1, Rule 23, Rules of Civil Procedure.

[4] *Ibid.*

[5] *Cocke v. Duke University*, 260 N.C. 1, 131 SE 2d 909 (1963).

[6] *Crow v. Citicorp Acceptance Co., Inc.*, 319 N.C. 274, 354 SE 2d 459 (1987).

[7] Friend of the Court (*amicus curiae*) brief filed by the North Carolina Clients Council, N.C. Legal Services Resource Center, P.O. Box 27343, Raleigh, N.C. 27611, pp. 2-3.

[8] *Maffei v. Alert Cable TV*, 316 N.C. 615, 342 SE 2d 867 (1986).

[9] Friend of the Court brief filed by the lenders, at p. 18. BarclaysAmerican/Financial, Inc. is a named defendant in a lawsuit similar to *Crow v. Citicorp*, called *Bass v. Barclays-American/Financial, Inc.*, No. 85 CVS811, Durham County Superior Court.

[10] *Ibid.*, Lenders' Brief, at p. 19.

[11] Defendant Citicorp Acceptance Co., Inc., brief at p. 19.

[12] *Op. cit., Crow*, at p. 286.

[13] *Ibid.*, Rule 23, Rules of Civil Procedure.

[14] *Op. cit., Crow*, at p. 286.

[15] *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 86 L. Ed. 2d 628 (1985).

[16] Defendant Citicorp Acceptance Co., Inc., brief at p. 17.

Chapter 7

Article V: Budgeting For and Financing North Carolina Government

ALL OF THE SERVICES rendered by state government have a cost that is ultimately borne by the individual citizen. While the determination of what programs are to be funded and which are not reflects the general philosophy of the governor and the General Assembly, the process by which budgets are made greatly influences the provisions of services in any state. The financing of North Carolina government is described in Article V of the state Constitution. Indicative of its importance in the actual maintenance of state government, the finance Article is the most detailed article in the state Constitution. Article V outlines both the state's sources of revenue and the procedures by which this revenue can be expended.

Budget and finance decisions involve more than "bottom line" accounting procedures. The budget is both a source of financial information and a presentation of the services provided to the state's citizens. The entire range of government activities is involved in this process. State agencies and departments submit budget requests, which are incorporated into a budget by the governor. The budget produced by the governor is then submitted to the General Assembly, which is charged with approving and enacting the final fiscal plan for each biennium.

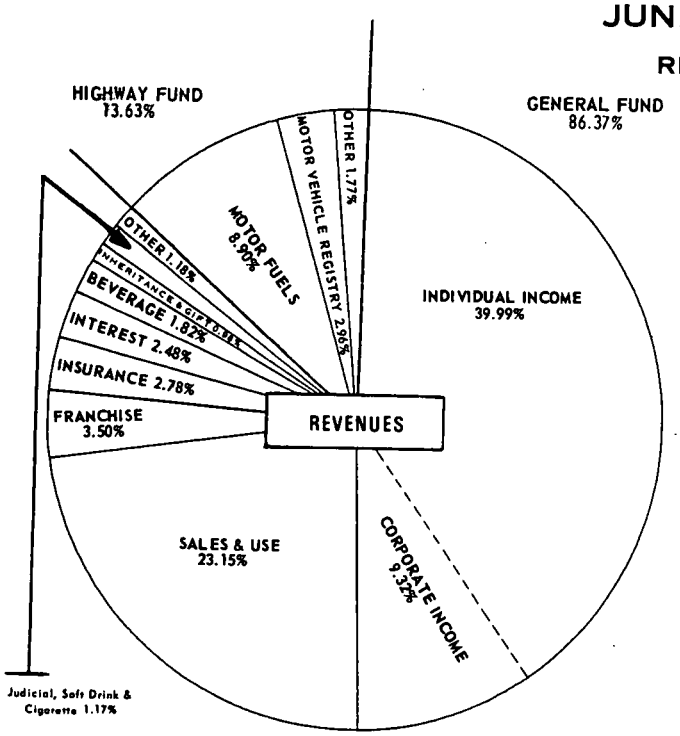
The Office of Budget and Management (OBM), originally a part of the Department of Administration but now housed in the governor's office, is a key link in the fiscal process of state government. Under the overall direction of the governor, the state OBM coordinates the budgets of the various state departments. It is through OBM that the governor both prepares and controls state expenditures.

Article V of the state Constitution requires that North Carolina state government operate with a balanced budget. To fund projects for which expenditures might exceed anticipated income, the issuance of voter approved bonds is required. When expenses appear to be "out-running" revenue, the governor may make adjustments to keep the budget in balance.

Financing state government is a controversial aspect of state administration and the following selections tap many of these current controversies as they exist in North Carolina.

STATE OF NORTH CAROLINA
REVENUES AND EXPENDITURES FOR THE FISCAL YEAR ENDING
JUNE 30, 1988

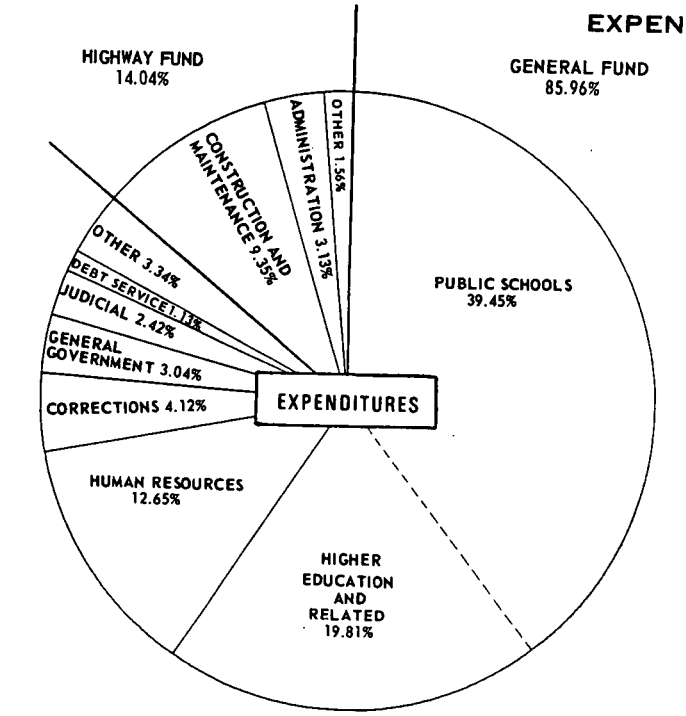
REVENUES



GENERAL FUND:			
Income:			
Individual	$2,686,832,223		
Corporate	625,972,626	$3,312,804,849	
Sales and Use		1,555,266,971	
Franchise		234,779,520	
Insurance		186,461,390	
Interest		166,899,926	
Beverage		122,479,873	
Inheritance and Gift		65,740,232	
Judicial Department Receipts		42,288,659	
License		28,258,896	
Soft Drink		27,365,786	
Savings and Loan		8,695,863	
Cigarette		8,484,073	
Other		42,356,993[a]	
Total General Fund			$5,801,883,031[b]
HIGHWAY FUND:			
Motor Fuels		$ 597,834,798	
Motor Vehicle Registration		198,614,769	
Interest and Miscellaneous Revenue		90,242,796	
Gasoline Inspection Fees		9,915,543	
Property Owners, Cities and Towns Participation		18,808,403	
Total Highway Fund			$ 915,416,309[c]
TOTAL REVENUES			$6,717,299,340

NOTES: Revenues do not include (1) Federal Aid, (2) receipts of special funds, (3) institutional earnings, (4) proceeds from sale, lease, or rental of State property, and (5) agricultural fees and receipts.
[a]Includes $9,000,000 transferred from Department of Public Education Trust Fund (unemployment reserve).
[b]Excludes reversions of capital improvement appropriations amounting to $2,342,734.
[c]Excludes (1) $5,145,000 transferred from General Fund, (2) $7,326,588 in Grants and General Participation, and (3) $304,394,739 in Federal Aid.

EXPENDITURES



GENERAL FUND:			
Education:			
Public Schools	$2,571,179,747		
Higher Education	1,241,614,534		
Related Education Activities	48,792,101[a]	$3,861,586,382	
Human Resources		824,077,051	
Corrections		268,139,442	
General Government		198,027,464[b]	
Judicial		157,700,249	
Public Safety and Regulation		101,344,172	
Debt Service		73,800,147	
Resource Development & Preservation		68,444,587	
Agriculture		32,420,464	
Legislative		15,214,894	
Total General Fund			$5,600,754,852[c]
HIGHWAY FUND:			
Construction and Maintenance		$ 609,363,846	
Administration		203,637,580	
State Aid to Municipalities		63,816,183	
Debt Service		37,955,215	
Total Highway Fund			$ 914,772,824
TOTAL EXPENDITURES			$6,515,527,676

NOTES: Expenditures from special funds, from institutional earnings, from Governor's Highway Safety Program funds, from Federal Aid and for permanent improvements other than roads are excluded. Highway expenditures from Federal Aid amounted to $304,360,240.
[a]Includes expenditures of $35,865,895 for operation of the Department of Cultural Resources, expenditures of $7,335,659 for the North Carolina School of the Arts, and expenditures of $5,590,547 for the North Carolina School of Science and Mathematics.
[b]Includes reserve of $11,998,742 for super computer carried forward from FY 1987-88 to FY 1988-89.
[c]Excludes $173,020,035 for capital improvements.

N. C. DEPARTMENT OF REVENUE
TAX RESEARCH DIVISION

Taxes and the Poor in North Carolina: An Unfair Share?

By Charles D. Liner

Is North Carolina's tax system unfair to the poor? Although a number of the aspects of the state's tax structure are favorable to those in poverty, the system as a whole exacts a weighty toll on those least able to pay. Consider these examples:

— The household income for a family of four at the poverty level has increased 193 percent since 1970, while that same family's state income tax liability has increased 710 percent during the same time period.

— When enacted in 1921, the state income tax was not intended to fall on the poor at all, but rates, brackets, exemptions, and the standard deduction have remained almost unchanged. All of these tools were used to shield the poor from income taxes, but inflation has eroded them to the point that the poor shoulder a substantial state income tax burden.

— A worker now winds up owing state income taxes before his taxable income reaches half the federal poverty line, a tax threshold far lower than that of most states. And in 1988, a family of four earning $10,000 would have had a higher state income tax bill in North Carolina than in any other state except Kentucky.

— North Carolina has increased its reliance on the retail sales tax by increasing the combined state and local tax rate to 5 percent. This regressive tax imposes a relatively high burden on low-income taxpayers, a burden that is increased by the taxation of food and utility bills. Unlike North Carolina, 28 states exempt food purchases from sales taxes, 32 states exempt utility bills, and eight exempt clothing.

What is the magnitude of this problem of tax equity for the poor in North Carolina, and what can be done to correct it?

Greg Gibson

THE MOST WIDELY ACCEPTED PRINCIPLE of tax equity is that taxes which are used to support general government services should be imposed according to taxpayers' ability to pay. All states violate that principle by making extensive use of certain taxes, such as sales taxes, that impose burdens on poor people which are proportionately larger in relation to income than those imposed on higher income people. Taxes are called *regressive* when citizens with the least ability to pay bear the largest proportionate burdens. In contrast to regressive taxes, a *progressive* tax imposes proportionately smaller burdens on *those who have less income.*

All states make heavy use of regressive taxes and charges. For the nation as a whole, sales taxes are by far the largest source of revenue for state and local governments.[1] These taxes include the retail sales tax, gross receipts taxes, and selective sales taxes like taxes on gasoline and alcoholic beverages. Forty-five states have a retail sales tax, and 28 of those states also authorize regressive local retail sales taxes. Although there are conflicting views about whether the property tax is regressive or progressive, in either case the property tax is not tied directly to taxpayers' incomes, and therefore poor people can be subject to relatively high property tax burdens (whether they pay the tax directly or through rents and prices). Finally, user charges, such as tuition at public higher education institutions, medical bills at public hospitals, and water and sewer charges, are used in every state. These charges also are more burdensome to the poor.

Because regressive revenue sources are used extensively, the key to achieving overall tax equity in a state is to have a progressive personal income tax that offsets the disproportionate burdens placed on poor people by regressive taxes and charges. Unlike sales and property taxes, the income tax base can be adjusted according to factors such as family size or medical expenses that have a bearing on ability to

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pay. And the flexible structure of the tax allows the state to grant relief through personal and dependent exemptions and the standard deduction, and to impose a rate schedule that is graduated according to taxpayers' net incomes. These characteristics permit the state to design income taxes that are consistent with the ability-to-pay principle.

North Carolina's Taxes

In North Carolina, the personal income tax is the largest single tax source for the state and local governments combined. This tax produces half of the state's general fund revenue and more than 28 percent of total tax revenue collected by state and local governments. It produces more revenue than the retail sales tax or the property tax (but not more than retail and selective sales taxes combined). In fact, North Carolina relies more on the personal income tax than all but three states (Delaware, Massachusetts, and Oregon). Six states do not have a personal income tax, and in seven other states the tax accounts for less than 10 percent of total state and local tax revenue.[2]

The state's heavy reliance on the personal income tax means that it relies less on other revenue sources. Including both state and local revenue sources, the state ranks 40th in reliance on property taxes, 31st in reliance on user charges, and 25th in reliance on retail sales and gross receipts taxes.

When comparing North Carolina's tax structure in this way, at first glance it appears that North Carolina's structure favors poor people—the state's largest tax is not intended to impose a tax liability on its poorest citizens and the state relies less on sales taxes than half the states. Furthermore, the state's personal income tax is substantially progressive.[3] In 1988, a family of four with an income of $8,500 earned equally by both spouses would owe taxes of $82, slightly less than 1 percent of its income, while a similar family with an income of $66,000 would owe $3,132, or 4.7 percent of its income.[4] It is true that the poorer family would pay a higher percentage of its income in sales taxes—retail and utility sales taxes together would amount

Regressive, Progressive, or What?

Whether North Carolina's tax structure is regressive or progressive is a question of much debate. The Special Senate Commission on North Carolina Revenue Laws reported in 1975 that the "tax system has a definite pattern of regressivity in overall terms, with a range of near proportionality in the middle income range." In other words, the state's overall tax bite started at a high level among low-income residents, dropped and then flattened out for a broad range of middle-income citizens, and then dipped again at the highest income levels. The commission based this conclusion on a study by James Wilde, an economist at the University of North Carolina at Chapel Hill. Wilde's study examined the state's tax structure using a methodology aimed at gauging its overall impact upon the poor. For example, the study assumed that corporate income taxes ultimately would be paid by the consumer through higher prices, rather than by stockholders through reduced earnings. When all of these sources of taxation were taken into account, Wilde found that the state's poorest citizens paid the largest percentage of their income in taxes. Wilde says public finance experts disagree on who ultimately pays such taxes as the corporate income tax and the property tax, and how these taxes are treated makes a big difference in determining whether the state's tax structure is progressive or regressive. He also says the proportion of revenue produced by the state income tax has increased substantially since the Senate panel's study, while certain other more regressive taxes have become less important as revenue producers. Wilde says he would need to repeat the study to determine whether the state's tax structure remains as regressive in 1989 as he found it to be in the early 1970s.

—Mike McLaughlin

to 2.6 percent of the poorer family's income and only 1.4 percent of the wealthier family's income. But even after combining these taxes with income taxes, the family with the lower income would still pay a smaller percentage of its income than would the higher-income family—3.6 percent compared with 6.1 percent.

In addition, two measures have provided tax relief to lower-income taxpayers. In 1985, the General Assembly authorized an income tax credit—a general credit for low- and moderate-income individuals—that is equivalent to an increase in exemptions of as much as $833 for many low-income taxpayers.[5] (Even after the credit, however, the income tax can fall on tax- payers whose incomes are half the federal poverty level). And during the same session, the General Assembly exempted food stamp purchases from the retail sales tax. For most poor families who receive food stamps, this measure largely eliminates the sales tax on food purchased for consumption at home, although many income-eligible households do not receive food stamps.

Aspects Unfavorable to the Poor

But several other factors should be considered in determining whether North Carolina's tax structure is fair to the poor. First, although the state's personal income tax is progressive, it imposes taxes at a lower income level than in most states. Furthermore, erosion in the value of personal exemptions and tax brackets due to inflation continues to increase the taxes of poor taxpayers more than it increases the taxes of higher-income taxpayers. The result is that the income tax now imposes relatively heavy taxes on families below the poverty level, and the tax has become less progressive.

The personal income tax was never intended to fall on the poor at all. When the tax was enacted in 1921, personal and dependents exemptions sheltered the income of all but the well-to-do. Increasingly, however, the tax has fallen on the poor as well because exemptions and tax brackets have not been adjusted sufficiently to offset inflation. The head of household and spousal exemptions were set at $2,000 and $1,000, respectively, in the early 1920s. Those exemptions have been increased only once—in 1979—and by only 10 percent. The dependents exemption, which was $200 in 1921, was last increased in 1979—to $800 effective in 1981. The maximum standard deduction, set at $500 in 1953, was increased by 10 percent in 1979. Tax brackets and rates have not changed since 1937.

The erosion in the value of exemptions, the maximum standard deduction, and tax brackets has transformed the income tax from a tax that once fell only on the well-to-do to a tax that now also falls on people well below the poverty level. In 1970, a family of four with income equal to the 1970 poverty level ($3,968) would have been entitled to exemptions totaling $4,200, or 106 percent of its income. Poor families cannot always use the full value of their exemptions because exemptions cannot exceed income, and in this case the family would have owed taxes of $23.57, or 0.6 percent of its income. By 1987, a family of four at the 1987 poverty level ($11,612) would have had exemptions totaling $4,900, equal to only 42 percent of its income, and it would have owed $191 (before applying the general credit), or 1.5 percent of its income. Thus, while the officially defined poverty level increased 193 percent between 1970 and 1987, the income tax liability for families at that income level increased 710 percent. The general credit available to low income taxpayers who do not receive food stamps would have reduced the tax liability by $50 in 1987 (only $25 now, due to a 1988 amendment). But even after applying the general credit, taxes owed by a family at the poverty level would have doubled to 1.2 percent of the family's income, and its tax bill would have increased by 498 percent.

Another indicator of income taxes on the poor is the *tax threshold*—the income level at which people begin to owe income taxes. In a recent comparison of state income taxes on one-wage-earner families, the National Conference of State Legislatures found that North Carolina's tax threshold of $4,350 for a one-earner family with an income of $10,000 was lower than that of most other states with state income taxes (See Table 1). Furthermore, the amount of state income taxes owed by a family of four with income of $10,000 was larger in North Carolina than in all states except Kentucky.[6] Although the general credit increases North Carolina's tax threshold to $5,148 for a one-earner family of four (providing it does not receive food stamps), only 11 states had thresholds that low. Sixteen states had thresholds above $8,000 and 12 had thresholds above $10,000.

Another aspect of North Carolina's tax structure that should be considered is that, although the state relies less on sales taxes than many other states, the sales taxes it uses are more burdensome to the poor than those used in most states. And since 1961 the trend has been for North Carolina to rely more on sales taxes.

The base of North Carolina's retail sales tax includes food purchases—which are exempted from

Table 1. State Income Tax Thresholds for a One-Earner Family of Four in 1988

Highest 10 States		Lowest 10 States	
California	$18,100	Illinois	$4,000
Mississippi	15,900	Indiana	4,000
Vermont	15,100	New Jersey	4,000
Rhode Island	15,100	Kentucky	4,300
New York	14,000	North Carolina	4,350 *
Maine	13,000	Alabama	4,400
Maryland	12,900	Arkansas	5,600
South Carolina	12,800	Hawaii	5,900
North Dakota	12,800	Virginia	5,900
Nebraska	12,800 **	Montana	6,500

Figures do not include tax credits offered to low income taxpayers in some states, including North Carolina.

*A state's tax threshold is the level of income at which a citizen begins owing income taxes. In North Carolina, the true tax threshold for a one-earner family of four before the general tax credit is applied is $4,222. This comparison overstates the tax threshold because it includes the maximum standard deduction of $550. Many low-income taxpayers cannot take the maximum deduction because they do not earn enough income. These taxpayers instead deduct 10 percent of their adjusted gross income.

**Four other states also have a $12,800 threshold: Minnesota, Kansas, Idaho, and Colorado.

Source: The Unfinished Agenda for State Tax Reform, National Conference of State Legislatures, November 1988, p. 170.

taxation in 28 states—and charges for telephone, electricity, and natural gas services, which are exempted in 32 states (eight states also exempt sales of clothing).[7] Furthermore, utility charges in North Carolina are taxed at a combined rate of 6.22 percent under the retail sales and utility franchise taxes, compared with the overall state and local retail sales tax rate of 5 percent. The 1985 exemption of food stamp purchases provided substantial relief from sales taxes on food purchases for those who receive food stamps.

North Carolina has increased greatly its reliance on the retail sales tax. In addition to adding food sales to the tax base in 1961, the General Assembly in 1971 also authorized local governments to levy a 1 percent retail sales tax. That local rate was doubled with increases authorized in 1983 and 1986. North Carolina's combined state and local rate of 5 percent equals the median state rate and is levied on a base that is substantially larger than that of most states because it includes food purchases and utility charges.

Measures for Reducing Taxes on the Poor

Even if there are no further increases in sales taxes, taxes on the poor will continue to increase disproportionately because inflation will continue to erode the value of income tax exemptions and tax brackets. The following are measures that might be considered as ways to reduce the tax burden on the poor or to adjust the overall tax structure to compensate for inflation, plus a brief discussion of a proposal to replace the current state income tax with a new tax based on the federal income tax.

- *Allow poor families to take full advantage of existing exemptions.* Many poor families cannot take full advantage of the personal and dependents exemptions to which they are entitled under current law, because the law provides that the spouse who claims the head-of-household exemption must claim all dependents exemptions ($800 for each dependent). Many poor heads of household do not have income sufficient to take full advantage of their exemptions

Tax Term Simplification

The following is a guide to sometimes confusing tax terminology, as applied to the North Carolina personal income tax:

Adjusted Gross Income — Income from wages, salaries, and other sources of taxable income, less deductions for certain expenses incurred in earning income.

Personal Exemptions — Flat dollar amounts allowed for taxpayers and dependents. These exemptions are subtracted from gross income in determining net taxable income. Examples include $2,200 for one working spouse or head of household, $1,100 for a second spouse earning income, and $800 for each dependent.

Personal Deductions — Certain personal expenses that may be deducted from adjusted gross income. Examples include interest payments on a home mortgage, charitable contributions, property tax payments, and medical expenses. In lieu of itemizing deductions, taxpayers are allowed to take a standard deduction of 10 percent of adjusted gross income, subject to a maximum of $550. The standard deduction is often used by renters and others who do not have a lot of allowable expenses.

Net Taxable Income — The amount of taxable income remaining after subtracting personal exemptions and personal deductions from adjusted gross income.

Tax Rate — A percentage to be applied to net taxable income to determine a person's tax liability.

Tax Bracket — A range of net taxable income for which a specific tax rate applies.

Tax Threshold — The amount of gross income that can be earned before a person pays income tax. In general, the threshold is the sum of the personal exemptions and the standard deduction. In North Carolina, this amount is $4,222 for a one-earner family of four.

Tax Credit — A fixed amount that may be deducted from tax liability to determine the amount of tax actually owed. Tax credits provide relief for certain expenditures incurred by the taxpayer. In addition, credits may be used to target overall tax relief to low-income taxpayers.

Progressive Tax — A tax is progressive when the ratio of tax to income rises as income rises.

Regressive Tax — A tax is regressive when the ratio of tax to income falls as incomes rise.

Source: Definitions of tax terms were provided by David Crotts, chief tax analyst for the legislature's Fiscal Research Division, with the exception of the definitions of progressive and regressive taxes. These two definitions were taken from Joseph A. Pechman and Benjamin A. Okner, *Who Bears the Tax Burden?*, The Brookings Institution, Washington, D.C., 1974, p. 1.

and the standard deduction, and the spouse cannot claim the unused portion of dependents exemptions. For poor people, this provision negates the purpose of dependents exemptions, which are intended to adjust tax liabilities for family size—a poor family with eight children could be liable for the same amount of taxes as a family with the same income and two children. This problem could be corrected with relatively little revenue loss for the state by allowing a spouse to claim the unused portion of dependents exemptions.

- *Increase the value of personal exemptions.* Ex-

emptions are fundamentally important in achieving overall tax equity under a personal income tax. They shelter a minimum level of income, thus keeping the poorest people off the tax rolls. They also make the tax more consistently progressive. Although exemptions have the same absolute value for all taxpayers, the relative value (the percentage of income they shelter) diminishes as income rises, and an increase in exemptions provides a much greater proportionate reduction in taxes for low-income taxpayers than for high-income taxpayers.

Increasing exemptions to offset inflation is also important in maintaining the structure of the income tax. If exemptions were to remain unchanged as inflation continued, under the current rate schedule most taxable income eventually would be taxed at the highest rate, the rate schedule would become in effect largely a flat rate schedule rather than a graduated rate schedule, and the tax would continue to become less progressive.

The problem with increasing exemptions as a way to help poor people is that such increases benefit all those who pay state income taxes, not just the poor, and therefore cost much more in reduced revenue growth than other approaches. If exemptions were doubled, for example, the state would lose about $490 million a year in revenue, according to the legislature's Fiscal Research Division. This extra cost should be kept in perspective, however, because at the average growth rate of collections over the past decade, revenue from the personal income tax now increases about $300 million each year.

Whether this approach should be used depends on the intended objective. If the objective is to maintain the overall equity of the income tax, adjusting exemptions, perhaps in small increments over a period of time, would be appropriate. If, on the other hand, the objective is to provide as much tax relief to the poor as possible for a given amount of loss in revenue growth, other measures like low-income tax credits would be more effective.

■ *Increase the standard deduction.* Deductions generally are more helpful to high-income taxpayers than to low-income taxpayers. For example, higher-income taxpayers are more likely to own their homes, and as homeowners they can deduct mortgage interest and property taxes. The 10 percent standard deduction (subject to a maximum of $550) is intended at least partially to offset that advantage for higher-income taxpayers. It can be taken only by taxpayers who do not claim other deductions. North Carolina's standard deduction, however, is lower than that of most other states. Only three other states have a percentage deduction that low, and others range up to 20 percent.[8] Of the 24 states in 1986 that had a maximum standard deduction, none was as low as $550. In 18 states the deduction for individuals exceeded $1,000; in 11 states it exceeded $2,000; and in two states it exceeded $3,000. North Carolina's standard deduction could be doubled to $1,100 at an annual cost (in lost revenues) of approximately $30 million.

■ *Create low-income tax credits.* Income-based credits against income tax liabilities have the advantage that they target tax relief only to low-income taxpayers, and therefore they cost much less in re-

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"While they're standing in the welfare lines
Crying at the doorsteps of those armies of salvation
Wasting time in the unemployment lines
Sitting around waiting for a promotion."

—Tracy Chapman
"Talkin' 'Bout a Revolution"

♦

duced revenue growth than increases in exemptions or the standard deduction that provide the same relief.

The primary disadvantage of this approach as a means of providing tax relief to the poor is that an income tax credit provides no relief to the poorest citizens, who are not liable for income taxes and therefore cannot use the credit. Only if a credit is refundable—if the unused portion of the credit is paid in cash—will credits benefit the poorest citizens. Another disadvantage is that this approach—unlike increases in exemptions, the standard deduction, or tax brackets—does nothing to correct the long-term effects of inflation on the overall equity of the income tax.

Despite their limitations, if income-based credits are designed carefully they can be an effective means of providing tax relief to low-income taxpayers. For example, a vanishing credit can be designed which diminishes as income increases, so that the most relief is offered to the poorest taxpayers, and there are no sudden jumps in tax liability when a threshold is crossed. Sudden jumps in tax liability for taxpayers are the chief drawback to no-tax floors, which provide that taxpayers below a certain income level, such as the federal poverty line, are not liable for taxes.

Mike McLaughlin

If adequate procedures are set up to provide refunds, credits can offset the disproportionate effects imposed by other taxes. For example, such credits can be used, as they are in several states, to compensate for the regressive effects of sales taxes, or they can be used to provide a limit on property taxes as a percentage of income (similar in effect to so-called circuit-breakers used in many states to prevent property taxes from exceeding ability to pay).

North Carolina adopted one of the nation's first tax credits for low-income citizens in 1985. When first enacted, the credit was based on the *separate* incomes of married spouses. This meant that some high-income couples could benefit from it—one spouse who earned $10,000 would qualify even if the other spouse earned $100,000, or even more. Furthermore, the amount of the credit available to families with the same income differed according to the spouses' share of earnings.

To close this loophole that allowed some high-income taxpayers to benefit from the credit, the 1988 General Assembly based eligibility of married spouses on their *combined* incomes and personal exemptions. This change also reduced by as much as half the credit available to low-income married couples. Doubling the maximum credit would restore this loss and cost the state $28 million in annual tax revenue.

■ *Reduce the burden of sales taxes on the poor.* Two approaches can be used to reduce the disproportionate burden of sales taxes on the poor. First, certain items like food, utility services, or clothing could be exempted from taxation. However, exempting food purchases and utility charges from retail sales taxes would result in $425 million in annual revenue losses, and most of that reduction would benefit moderate- and high-income taxpayers (although the poor would benefit more in relation to income). Furthermore, while such exemptions would reduce the regressivity of the retail sales tax somewhat, the sales tax overall still would be regressive.

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Tax Fairness Commission Recommends Restructuring of State Income Tax

The legislature's Tax Fairness Study Commission recommended to the 1989-90 General Assembly a number of measures aimed at creating a more equitable tax system. Chief among these was a proposal to restructure the current state individual income tax to conform more closely to the federal system. By making the change, the state would be adopting the features of the Tax Reform Act of 1986 that eliminated the federal tax on more than 6 million poor families.

These measures included a $2,000 personal exemption for each family member and a $5,000 standard deduction for a married couple in the 1989 tax year. Thus, a family of four could earn $13,000 in income tax-free. By adopting these changes at the state level, North Carolina's 3 million state income tax returns could be trimmed by about a half million, says David Crotts, the legislature's chief tax analyst. "$13,000 is a high threshold," says Crotts. "You're knocking a lot of people off [the tax rolls]."

The Tax Fairness Study Commission's recommendation was to begin the state tax calculation with federal net taxable income. Thus, the state would be adopting federal rules on which income is taxable, which personal expenses may be deducted from gross income, and the amount of personal exemptions. For a married couple taking the standard deduction, the 5 percent rate would apply to gross income exceeding $13,000. The 8 percent rate would apply to gross income exceeding $33,000.

For a family of four with two dependents in which both spouses work, the proposal would lead to a lower tax bill if the family had a gross income of less than $45,000, according to the legislature's Fiscal Research Division. In 1988, less than 29 percent of North Carolina families had income exceeding $45,000.

Revenue lost by removing poor families from the tax rolls would be made up by increased taxes on high-income taxpayers. A family of four with $200,000 in income, for example, would see its tax bill increase by 12.7 percent. Commission members say shifting more of the state income tax burden to higher-income citizens is justified because the tax initially was intended to fall only on the well-to-do. Inflation and a failure to adjust tax brackets, deductions, and rates have resulted in a state income tax threshold of less than half the federal poverty line. "Theoretically, what we did here is super because we are starting to get away from the regressive features of the North Carolina tax system," says Sen. Marshall Rauch (D-Gaston), co-chairman of the Tax Fairness Study Commission. "The North Carolina system has too much of a burden on low- and middle-income citizens."

The $13,000 tax threshold for a family of four stands in sharp contrast to the current state income tax, in which a one-earner family of similar size would have a tax threshold of $5,148 (or $4,222 without the low-income credit). This is less than half the federal poverty line of $11,612 for a family of four in 1987. In one analysis of state policies affecting the poor, the Center on Budget and Policy Priorities found that in North Carolina a family of four earning $10,000 a year would owe state income taxes of $252, the second highest tax burden in the nation for a family of that income level.[1]

The proposed 5 percent rate would apply to married couples filing jointly and surviving spouses with a net taxable income of $20,000 or less; heads of households earning $16,000 or less in taxable income; single taxpayers earning $12,000 or less in taxable income; and married taxpayers filing separately and earning $10,000 or less in taxable income (see Table 1).

In addition, the restructured state income tax system generally would track the federal system so that taxpayers would not have to fill out additional forms to claim state tax credits, deductions, and exemptions. "The average

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Table 2. A Comparison of Current Tax and Restructured Tax Proposed to the 1989-90 General Assembly by the Tax Fairness Study Commission

Current Tax		Restructured Tax	
EXEMPTIONS			
$1,100	for single	$2,000	each for self, spouse and dependents
2,200	for married ($3,300 if both work)		
800	for dependents		
STANDARD DEDUCTION			
$550	maximum for each taxpayer	$5,000	for joint return/surviving spouse
		4,400	for head of household
		3,000	for single individual
		2,500	for married filing separately
TAX RATES			
All taxpayers:*		Married filing jointly and surviving spouse:	
$ 1 - 2,000	3 %	$1-20,000	5 %
2,001 - 4,000	4 %	20,001& over	8 %
4,001 - 6,000	5 %	Heads of households:	
6,001 -10,000	6 %	$1-16,000	5 %
10,000 & over	7 %	16,001& over	8 %
		Single individuals:	
* No joint returns allowed		$1-12,000	5 %
		12,001& over	8 %
		Married filing separately:	
		$1-10,000	5 %
		10,001& over	8 %

Source: Fiscal Research Division, N.C. General Assembly

person on the street, that person is going to benefit," says Rauch. The proposal is designed to be revenue-neutral, with the higher 8 percent rate supplanting revenue lost through the higher tax threshold.

The commission also proposed eliminating the intangibles personal property tax, a tax on stocks, bonds, and certain accounts receivable that is a bane to North Carolina's businesses and more affluent citizens. This action was taken independently of the decision to recommend restructuring the state income tax system, but may make more palatable the proposed income tax hike for higher-income citizens. "Sometimes you've got to sweeten the bitter dose," says Rauch.

North Carolina is one of only eight states which still have an intangibles tax in some form. The others are Florida, Georgia, Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia. Eliminating the intangibles tax, however, would cost nearly $80 million in tax revenue, and the state already faced a lean budget year in 1989 because tax revenues fell short of projections. Because it is a property tax, intangibles tax is collected by the state but returned to local government. In some of the state's more affluent counties, such as Polk, the tax represents a substantial amount of local revenue that keeps other property taxes relatively low. In recent years, the General Assembly has made a practice of reimbursing local government for any local revenue lost through state changes in tax policy. Given this tradition, state budget leaders said the revenue picture was too tight to consider eliminating the intangibles tax in 1989. But the study commission proposed that the loss be recouped

through a 3.5 percent surcharge on corporate income tax bills and two additional income tax brackets for the state's wealthiest citizens.

The commission decided that corporations and the affluent should make up the lost revenue for two reasons: (1) they would be the prime beneficiaries of the elimination of the intangibles tax; and (2) their relative share of the tax burden has declined during the last 20 years. "I know if we come up with a good, sensible program, the Governor and the Speaker will listen to the proposal," says Rauch.

Other tax adjustment proposals to benefit lower-income citizens included creating a food tax credit for low income citizens who do not receive food stamps and increasing the income tax credit for child care expenses. While food purchases are exempted from the sales tax in 28 states, North Carolina imposes a combined state and local tax of 5 percent. A 1988 study by Citizens for Tax Justice of Washington, D.C., ranked North Carolina 21st in the nation in the sales and excise tax burden it places on its poorest citizens. According to the study, the poorest fifth of North Carolina residents pay 5.6 percent of their income in sales taxes and excise taxes such as the gasoline tax.

The study commission's proposal would allow a refundable income tax credit of $45 to $75, depending on the number of exemptions claimed, for families with a net taxable income of less than $15,000. Crotts says the credits, which would cost the state less than $10 million a year, represent a rough approximation of the amount these families pay in taxes on food each year. Families which receive food stamps throughout the tax year would not be eligible for the credit because food stamp purchases are exempt from the sales tax. The general tax credit, which benefits all low-income households and is not targeted for food tax relief, would be eliminated in lieu of higher exemptions and deductions if the restructuring bill passed.

(Gov. James G. Martin offered a proposal to raise salaries of teachers and other state employees that could have led to a cut in the food tax. Martin proposed that the 1989 General Assembly raise the sales tax by 1 percent. This would have increased state revenues by $510 million in the first year — enough, Martin says, to implement his pay plan and cover part of the cost, in lost revenues, of removing the sales tax on food and non-prescription medicine.)

The increase in the income tax credit for child care, while not restricted to low-income taxpayers, would benefit those poor people who pay state income taxes and have dependents in day care. The current child care tax credit comes to 7 percent of the first $2,400 in expenses for one qualifying dependent. Taxpayers may claim the credit for up to $4,800 in expenses if they have two or more dependents in child care. The commission proposed that the credit be increased from 7 percent to 10 percent of expenses. Under this proposal, the maximum credit would be $480. The estimated annual cost of the proposal is $12 million.

Although it would not have a direct impact on the poor, one proposal by the commission was of symbolic importance. Purchasers of motor vehicles, boats, airplanes, and railway locomotives currently get a tax break in the form of a 2 percent sales tax and a $300 cap. The commission proposed eliminating the cap, although it stopped short of recommending that these purchases be subjected to the full 5 percent state and local levy. Only one state, South Carolina, has joined North Carolina in placing a cap on the sales tax on motor vehicles, and only eight states give purchasers of motor vehicles a reduced sales tax rate.[2] Eliminating the cap but leaving the rate at 2 percent would increase state general fund revenue by $28 million in the first year alone.

—Mike McLaughlin

FOOTNOTES

[1]Isaac Shapiro and Robert Greenstein, "Holes in the Safety Nets, Poverty Programs and Policies in the States, North Carolina," Center on Budget and Policy Priorities, Washington, D.C., Spring 1988, p. 14.

[2]States which have a reduced sales tax rate for motor vehicle purchases are: Alabama, Mississippi, Missouri, New Mexico, North Carolina, South Dakota, Tennessee, and Virginia. Source: N.C. General Assembly's Fiscal Research Division.

♦

"Once I built a railroad, made it run.
Made it race against time;
Once I built a railroad, now it's done;
Buddy, can you spare a dime?"

from "Brother Can You Spare A Dime?"
by Harburg & Gorney

♦

The second approach is to offset the effects of sales taxes on the poor through use of refundable income tax credits. (The Tax Fairness Study Commission proposed a food tax credit ranging from $45 to $75 for low income people who do not receive food stamps. The cost is estimated at less than $10 million a year. For more on this proposal, see sidebar.) Ideally, such credits, if based on a sliding scale, would convert a regressive sales tax to a progressive tax in the lower range of incomes. The main problem with this approach is that many poor families would not file the forms necessary to obtain the refund of the unused portion of their credit. State and local agencies would have to undertake special measures to get poor people who do not file income tax returns to apply for the credits. Experience in other states indicates that it takes a number of years for a majority of eligible families to seek the credit.[9]

■ *Adopt the federal definition of taxable income.* The Tax Fairness Study Commission recommended that the 1989-1990 General Assembly replace the present income tax with one based on federal laws that define taxable income. This would mean adoption of the much higher personal exemptions and standard deductions allowed under federal law.

Under the proposal, the starting point for calculating taxable income for North Carolina returns would be the amount of taxable income as defined on the taxpayer's federal income tax return. The amount would be adjusted by certain additions or subtractions authorized by law (for example, the General Assembly might allow persons retired from the military to subtract the exclusion they receive under current law).

After adjusted federal taxable income is calculated, tax liability would be determined by applying a new income tax rate schedule. Because the federal tax uses a different approach in defining how income must be reported, married couples are allowed to file joint returns. North Carolina treats the individual as the reporting unit and therefore does not permit joint returns. The current tax rates are applied to separate taxable incomes of spouses. To achieve equity between different kinds of taxpayers, the single tax rate schedule of the current tax would have to be replaced by different rate schedules, one for each type of tax status. That is, there would be separate schedules for married couples filing jointly, married couples filing separately, heads of household, and single taxpayers. For married couples, the tax rate would be 5 percent on taxable income of $20,000 or less and 8 percent on taxable income above that amount. For taxpayers claiming a different filing status, the rates would remain the same but the break would come at different income levels.

Earlier proposals to base the state tax on the federal tax were promoted primarily as a means of simplifying tax filing—most record keeping and calculations of deductions would be the same for both federal and state purposes. But the more important and more fundamental effect would be to increase substantially the amount of exemptions and the standard deduction and therefore to make the tax much more progressive, especially for people of low and middle incomes. North Carolina's separate exemptions for heads of household, spouses, and dependents would be replaced by a single federal exemption that applies to taxpayers and dependents. Exemptions would increase to $2,000 for taxpayers and dependents. The standard deduction—now a maximum of $550 for heads of household and single taxpayers and $1,100 for working married couples—would be $3,000 for single taxpayers, $4,400 for heads of household, and $5,000 for married couples filing jointly. A one-earner family of four would have a tax threshold of $13,000, well above the federal poverty line for a family of that size and more than three times the current tax threshold of $4,222.

Increasing exemptions and the standard deduction would benefit all taxpayers, not just low-income taxpayers, so the cost in lost revenue from those increases would be substantial without some offsetting change. The proposed tax package is supposed to be revenue neutral, with the cost of higher exemptions and standard deductions offset by changing the rate schedule. According to the legislature's Fiscal Research Division, working married couples with two dependents and combined incomes below about $45,000 would pay less tax, and those taxpayers with the lowest incomes would have the largest percentage tax reductions. Working married couples with

combined income of $57,500 would pay about 7 percent more, while those with a combined income of $118,000 would pay 12 percent more.

The net result would be to make the state's income tax much more progressive at the lower end of the income range and slightly more progressive at the upper end. The increase in progressivity at lower and middle incomes is due mainly to the increased exemptions and standard deductions, but the proposed rate schedule actually is not as graduated as the present rate schedule of 3 to 7 percent. High income taxpayers would pay 8 percent rather than 7 percent on most of their taxable liability, but their taxable income would be somewhat less because of the higher exemptions.

The increased progressivity that would result from the change can be seen by comparing estimated changes in tax liability as a percent of gross income for three four-member families with gross incomes of $13,280, $57,500, and $236,000. According to the legislature's Fiscal Research Division, these families would pay 1.4, 4.6, and 5.6 percent of their gross incomes under the current system. Under the proposed system the percentages would change to 0.1, 5, and 6.4 percent. (See Table 3 for a comparison of tax liabilities under existing state personal income tax and proposal by the Tax Fairness Study Commission.)

What would be the advantages of the proposed system? The main benefit would be that the changes would correct the past effects inflation has had in reducing the value of exemptions, the standard deduction, and tax brackets, and therefore would make the income tax more progressive. If the change could be

Table 3. 1988 State Personal Income Tax Liability and Liability Under 1989 Tax Fairness Study Commission Proposal

Gross Income	$10,000	$20,000	$40,000	$80,000	$200,000
			Tax Liability		
Single:					
Current	$ 315	$ 988	$ 2,118	$ 4,610	$ 12,506
Proposed	250	840	2,346	5,256	14,328
% Change	-20.6 %	-15.0 %	10.8 %	14.0 %	14.6 %
Head-of-Household, Two Dependents:					
Current	$ 223	$ 876	$ 1,978	$ 4,498	$ 12,254
Proposed	—	480	1,888	4,820	13,744
% Change	-100.0 %	-45.2 %	-4.6 %	7.2 %	12.2 %
Married, Two Workers, No Dependents:					
Current	$ 207	$ 699	$ 1,821	$ 4,369	$ 12,069
Proposed	90	550	1,880	4,904	13,784
% Change	-56.5 %	-21.3 %	3.2 %	12.2 %	14.2 %
Married, One Worker, Two Dependents:					
Current	$ 98	$ 876	$ 1,950	$ 4,442	$ 12,114
Proposed	—	133	1,560	4,480	13,320
% Change	-100.0 %	-84.8 %	-20.0 %	.9 %	10.0 %
Married, Two Workers, Two Dependents:					
Current	$ 223	$ 604	$ 1,653	$ 4,145	$ 11,817
Proposed	—	350	1,560	4,480	13,320
% Change	-100.0 %	-42.1 %	-5.6 %	8.1 %	12.7 %

Source: Fiscal Research Division, N. C. General Assembly

made with the proposed rate schedule, it could be implemented without unduly increasing the amounts of taxes owed by moderate- and high-income taxpayers, and the highest marginal tax rate would increase by only 1 percent. If the changes were in fact revenue neutral, relief could be provided to lower-income taxpayers without having to increase other taxes or reduce the state's revenue. In addition, filing tax returns would be simplified.

But there are potential drawbacks to the proposed change, aside from the objections likely to come from higher-income citizens who would have higher tax liability. Income tax revenues probably would not grow as fast as in the past, because there would be fewer rate brackets and the rate structure would be less graduated than under the current system, meaning less bracket creep due to inflation. And by adopting the federal definition of taxable income, North Carolina would be using provisions enacted by Congress rather than the General Assembly. Changes in federal provisions, such as the major tax reforms of 1986, would affect state revenue. Some of these federal changes might be offset by authorized adjustments, though perhaps at the expense of simplified filing.

The proposed change seems appealing because it would increase the progressivity of the tax and simplify tax return filing. But the effects of the change on different kinds of taxpayers and on revenue are unknown. Using the federal tax as a base involves more than simply an increase in exemptions and standard deductions and easier filing of returns. The federal tax is based on a different kind of reporting unit and allows joint returns. The approach used in the present state tax does not permit joint returns. Which approach is best is debatable, but a shift to the federal approach can result in substantially different effects among taxpayers. Inequities between different types of taxpayers at comparable income levels can result if the tax rate schedules are not set carefully.

A Growing Burden

North Carolina's growing reliance on sales taxes has increased the disproportionate burden of those taxes on the poor. Erosion in the value of exemptions, the standard deduction, and tax brackets has increased income taxes on the poor and reduced the progressivity of the income tax. Recently adopted measures like the exemption of food stamp purchases from the retail sales tax and the general credit for low-income taxpayers have provided some relief for the poor. However, income taxes on the poor will continue to increase unless changes are made to offset the effects of inflation. As a result, the effectiveness of the income tax in achieving overall equity according to the ability-to-pay principle will continue to be eroded.

Editor's Note: The Tax Fairness Study Commission's proposal to pattern N.C.'s income tax after the federal system was approved by the General Assembly (SB 51) in the closing days of the 1989 session. This legislation will remove many poor people from the tax rolls in North Carolina. Not all of the Commission's recommendations were enacted, however. Thus, the debate on the state's tax structure will continue.

FOOTNOTES

[1]*State Government Finances in 1986,* U.S. Department of Commerce, Bureau of the Census, Table 58, p. 89.

[2]The six states with no personal income tax are Florida, Nevada, South Dakota, Texas, Washington, and Wyoming. The seven states in which the tax accounts for less than 10 percent of total state and local tax revenue are Alaska, Connecticut, Louisiana, New Hampshire, New Mexico, North Dakota, and Tennessee. Sources: *State Government Finances in 1986,* Table 6, pp. 10-13, and *Government Finances in 1985-1986,* Table 29, pp. 46-97, both publications by U.S. Department of Commerce, Bureau of the Census.

[3]Although North Carolina's highest personal income tax rate of 7 percent applies to taxable income in excess of $10,000, the state does not permit joint returns. Thus, a two-earner family of four with income divided equally between the spouses would pay the full 7 percent rate only for household income in excess of $26,000 (includes head of household and spousal exemptions totaling $3,300, plus exemptions of $800 each for two dependents, and standard deductions of $550 each for the two taxpayers). According to N.C. Department of Revenue data, only 39 percent of taxpayers who filed returns for tax year 1986 had taxable income in excess of $10,000 so that at least part of their income was taxed at the full 7 percent rate.

[4]Tax estimates are based on hypothetical families whose income and spending patterns are derived from data from the U.S. Bureau of Labor Statistics, Survey of Consumer Expenditures.

[5]G. S. 105-151.16. As amended by Chapter 1039 of the 1988 Session Laws, the credit is based on combined income and personal exemptions of married couples. If income less personal exemptions is less than $5,000, then the credit is $25; the credit is $20 if income is $5,001 to $10,000, and $15 if income is $10,001 to $15,000. Recipients of food stamps and certain others such as those in prison or in a hospital for more than six months of the tax year are not eligible.

[6]Steven D. Gold, *State Tax Relief for the Poor,* National Conference of State Legislatures, Denver, Colo., April 1987, Table 3-1, pp. 34-35.

[7]Comparisons of tax provisions are from the Advisory Commission on Intergovernmental Relations, *Significant Features of Fiscal Federalism,* 1987 edition, Washington, D.C., Table 50, pp. 56-57.

[8]Gold, *op. cit.,* Table 3-5, p. 46. The three states are Delaware, Arkansas, and West Virginia.

[9]Steven D. Gold, *The Unfinished Agenda for State Tax Reform,* National Conference of State Legislatures, Denver, Colo., November 1988, p. 170.

Eating High on the Hog: How the Pork Barrel Spending Process Has Changed in the Last 10 Years

by Seth Effron

Until a relatively few years ago, pork barrel appropriations in the N.C. General Assembly — those financial goodies legislators send back to their home districts — were perquisites reserved exclusively for legislative leaders. Now all that has changed, and in years where there is extra revenue, nearly every member of the legislature will want a share of the pork barrel. How has the process changed in the last 10 years? And what policy questions does that raise about the way lawmakers spend public monies?

IN 1987, STATE AUDITOR EDWARD RENFROW issued an unusual eight-page report. Following much public debate and journalistic analysis of the legislature's recent years' local appropriations bills — commonly known as "pork barrel" —Renfrow got out his microscope and examined 96 pork barrel expenditures to 46 agencies in 28 counties. Those appropriations had cost the state $3.7 million since 1983.

Renfrow found no evidence of illegal use of taxpayer dollars in the spending. But, he confessed in his letter, that would have been difficult to spot anyway since many of the organizations receiving pork barrel funds kept such poor records. Then the Auditor came to a less-than-startling conclusion, but one which had caused him and other students of the appropriations process much consternation: "We recognize that many people consider these appro-

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Greensboro News & Record

priations to be 'gifts' to local organizations which require no further accountability. . . . We believe recipients which accept these monies must also accept the responsibility to properly account to the state."[1]

The Auditor's recommendations included:

- Clarifying in the appropriations bill what the requirements and conditions for acceptance of money are — particularly whether the money must be matched by other money raised and not by money from other governmental agencies.
- Distributing funds through appropriate state agencies. For example, money for a local arts council should be distributed by the state Department of Cultural Resources.
- Giving agencies receiving pork barrel money a detailed explanation of what conditions go with acceptance of the money, such as what records must be kept and what kind of report the state must receive concerning use of the money.
- Requiring organizations receiving $10,000 or more to have an independent audit concerning how the state taxpayers' money is spent.

Pork as Fast Food

Even as Renfrow was putting together the final touches on his pork barrel report, and despite two years of relentless criticism from Republican Gov. Jim Martin and the close scrutiny from the state's press, legislators in the Democratic General Assembly were busy making pork barrel requests at a record-setting pace. When the 1987 deadline for filing pork barrel requests hit, nearly $100 million worth of spending requests — in hundreds of separate bills — had been filed. Just a year earlier, legislators had filed 347 bills seeking $30.9 million.[2]

This ramjet pace in filing pork barrel requests reflects the legislature's increasing fondness of bringing home the bacon for their eagerly expectant constituents. From 1983 to 1985, pork barrel spending grew from $5 million a year to about $9 million. After a year of intense criticism that included a walkout by House Republicans during the closing days of the 1985 session, pork barrel spending was trimmed back to $5.8 million in the 1986 short session, and $7.9 million in 1987.

Governor Martin contends that pork barrel is little more than a way for the legislature's Democratic leadership "to discipline Democratic legislators to vote the way it tells them to vote." Other Republican leaders agree. "It's tied in with the carrot and stick," says former Rep. Margaret Keesee-Forrester (R-Guilford), who characterized the Democratic leadership style this way: "'If you follow my directions as I am the leader of this body . . . then you will be rewarded for being good and not being a rabble-rouser and making it difficult for us.'"

But Rep. William T. Watkins (D-Granville), one of those leaders who headed the Appropriations Expansion Budget Committee, says the pork barrel is a way for legislators to show that state government is in touch with local needs. "It lets local people know state government cares about them," says Watkins. "It really does cause people to appreciate their state government and participate in state government."

> *"... We believe recipients which accept these monies must also accept the responsibility to properly account to the state."*
>
> *— Edward Renfrow*
> *State Auditor*

Former state Rep. Parks Helms of Charlotte views pork barrel in much the same way. Helms believes that it is a part of the basic political process within the

General Assembly that both serves to create incentives for legislators to compromise and provides them with a way to show voters their legislators are effective and that their tax dollars can go to work for them.[3]

Critics are concerned that using state tax dollars to pay for traditionally, and typically, local needs, entices local governments and non-public agencies to become overly dependent on state government for everything from band uniforms or lights for the local football stadium to money that supports a local festival or historic restoration project.

Some critics are harsher. Mercer Doty, a former director of the legislature's fiscal research staff, says, "Somewhere it needs to be said that some of us feel pork barrel spending is completely unethical as long as North Carolina has so many real unmet human needs."

Former U.S. Sen. Paul Douglas (D-Illinois) once wrote that such expenditures were nearly impossible to halt once begun. "As groups win their battle for special expenditures, they lose the more important war for general economy. They are like drunkards who shout for temperance in the intervals between cocktails."

Beyond that, should a state fund such thoroughly local projects? John Sanders, director of the Institute of Government at UNC-Chapel Hill, points out that while such projects can be deemed to be of public benefit — a fire truck for a volunteer fire department, or a bandstand in a town park, or funds to promote a local huckleberry festival — the question that legislators do not seem to ask is whether the state should fund such projects for every citizen. "Why should the state's taxpayers fund the huckleberry festival but not the blackberry festival?" Sanders asks. "No distinction is made by the legislature as to what kinds of things ought to be funded, so long as they have some sort of public benefit. A helpful line could easily be drawn: Is this the sort of benefit that should be provided for all county residents or all municipal residents of this state?"

Public Purpose Pork

Pork barrel spending by the 1985 legislature raised many questions about whether tax money was being spent for public purposes — and caused a firestorm of criticism from the public and from other politicians. Among the recipients of pork barrel spending, for example, were $2,500 for the Gladiator Boxing Club in Winston-Salem, $2,000 for the Burlington Boys Choir, $475,000 for the Discovery Place museum in Charlotte, and $35,000 for the Mt. Hebron Masonic Lodge in Wilson. The latter caused something of a controversy because the sponsor of the appropriation was state Rep. Milton Fitch, a Wilson Democrat. Fitch's father, Milton Fitch Sr., just happened to be Worshipful Master of the lodge.

Such potential conflicts of interest pop up occasionally. For instance, state Rep. Albert Lineberry, a Greensboro Democrat, is a member of the board of the Greensboro Symphony Orchestra. Guess who sponsored a $25,000 bite of pork for the symphony? Lineberry, of course. Likewise, then-Rep. Jim Richardson, a Mecklenburg Democrat, was a member of the board of the Charlotte-Mecklenburg Youth Council. Guess who got the council a $38,000 slab of pork? Richardson (who was elected to the state Senate in 1988).[4]

Those are just a few of the pork barrel items that appeared in the regular pork barrel bill, in 1985 called the Omnibus Local Appropriations Bill.[5] But pork barrel funds can appear in more than one type of bill. Some show up in capital spending bills, and may include funds for horse arenas or college campus buildings. Others may show up in bills for statewide special projects, and still others may appear in the main operating budget bill. For instance, in 1986, the pork barrel bill appropriated $5.8 million for local pork. But when a special appropriations bill for statewide projects emerged, it held $24 million worth of state spending for certain types of capital projects — the university system, community colleges, and Department of Agriculture facilities — that would be located within the home districts of legislative leaders. Those leaders strongly objected to characterizing those projects as pork barrel, but the aroma was most definitely porcine.[6]

Pork Barrel: An Old Tradition

In the U.S. Congress, "pork barrel" once denoted federal spending for dams or canals in a favored politician's district. Now the money goes for a host of public works projects, including railroad grade crossings, interstate highways, bridges, tunnels, lakes, and the like. Some defense spending is also considered pork barrel at the federal level. But the individual states have raised pork barrel to more of an art form. In New Mexico, it's known as the "Christmas Tree" bill, and there's a present for good legislators under its wide branches. In Florida, it's the "turkey" bill, and everyone gets a nice big slice. In North Carolina, it's the "pork barrel" bill and no one's quite sure why it's called that.

Some say the term "pork barrel" dates to the old South's plantation days, when the infrequent barrel of salt pork was opened and "caused a rush to be made by the slaves."[7] More likely the term came from simple evolution of the slang use of the word pork to describe

"The power of *taxation* shall be exercised in a just and equitable manner, *for public purposes only*, and shall never be surrendered, suspended, or contracted away."

— Article V, Sec. 2 (1), N.C. Constitution
(emphasis added)

"The General Assembly may enact laws whereby the State, any county, city, or town, and any other public corporation may contract with and *appropriate money* to any person, association, or corporation for the accomplishment of *public purposes only*."

— Article V, Sec. 2 (7), N.C. Constitution
(emphasis added)

graft and patronage during Reconstruction. By whatever name, however, favored legislators have been eating high on the legislative hog ever since then.

In North Carolina, the pork barrel practice was an informal one through the 1970s. Only the most powerful legislators, usually those in key leadership posts such as appropriations committee chairmen, got big chunks of pork money, leaving small scraps for a few other favored legislators in a swap for votes or in gratitude for past support. Republicans never got any, because they were in a small minority and often objected to the roughshod ways of the budget committee chairmen. And the amount available for pork barrel spending varied from year to year, depending upon a healthy economy and the occasional unexpected surplus blessing the state treasury. But even in the good fiscal years, pork went mostly to the leadership. The rank and file could only gaze longingly at the empty barrel.

In 1977, the grumbling began in earnest about pork barrel and how it got parceled out — one of the big mysteries of that legislative session. In the rush to adjourn, there was little time for real discussion and debate about what was in the main appropriations bill, and even less time for the handful of pork barrel projects. After a few perfunctory comments about the bigger spending bequests, the bills were approved quickly in the haste to adjourn and go home.

After a few more such experiences, thoughtful legislators began seeking more careful review, asking for committee debates, and generally pushing for better answers to questions. In the 1980s, the pork barrel process became more formal and for the first time became locked into the budget. The 1983-84 budget was one of the tightest in years as the nation and state struggled with a recession. Still, legislators were able to come up with $5 million for local pet projects. Local project funds that year were included in a separate bill, often compiled from individual appropriations bills filed by legislators.

In 1985 came another innovation: legislative leaders bypassed the formal bill process and privately distributed application forms for legislators to designate pork barrel requests. During the 1985 session, Sen. James McDuffie (R-Mecklenburg) asked why he had not gotten a blank form from Democratic leaders so he could list his pork barrel requests. Replied Senate Appropriations Committee Chairman Aaron Plyler (D-Union), "We ran out of forms before we got to you." Still, 11 of the 12 Senate Republicans and 11 of the 38 House Republicans got pork barrel funds from the 1985 General Assembly.

While the process was becoming more formalized, more legislators were getting in on the process. At the end of each legislative session, the pork barrel checks for individual groups or agencies were sent to the sponsoring legislators, a process that enabled the sponsor to present personally the money to the hometown recipient. That brought about its own problems, though. As Senator Plyler put it, "Some people think we can pocket it, if we want."

The pork process changed again in mid-1985, when Governor Martin ordered his budget office to review each pork barrel spending item. The Governor had his doubts about some of the spending items, which ranged from the seemingly worthy to the seemingly absurd. Only after the office was assured the item met the constitutional requirement that the spending be for a "public purpose" would the check be released directly to the agency.[8] Only three of more

than 1,400 items were rejected for failing to meet the public purpose doctrine in 1985 — one to Tau Omega, a fraternity in Greensboro, which did not meet the constitutional public purpose test, and two others to organizations that just didn't exist — the Reidsville Volunteer Fire Department and the Spring Hope Historical Society.

Recent reviews of pork barrel spending have turned up only a few examples of improper pork funding. The Martin administration review of more than 1,400 items found but three that should not be funded, and even the State Auditor's review found no additional examples of improper funding. That comes as good news to defenders of pork barrel who contend that most pork barrel spending, after all, does benefit the taxpayers back home.

In 1986, the pork process changed again. Legislators seeking pork barrel funds were required to submit bills for their requests. For the first time, the public — and other legislators — would know who was seeking what. At the end of the session, those requests became part of a final pork barrel bill. And finally in 1987, a series of bill-filing deadlines were established to bring more order to the process, and to provide time for more thoughtful analysis of each request.

The New Pork Barrel

With demands on the state treasury to boost teacher and state employee pay, continue funding the Basic Education Program, pay for shortfalls in state employee health insurance coverage, and finance a public school construction program, there was little money available for extras in 1987. But even so, there was $7.9 million available for local pork — in addition to other pork-like goodies tucked away in other bills.

Since 1983, legislative leaders have brought more and more structure to the system that even critics say makes pork barrel more equitable. Political party differences remain, of course, with Republicans being frozen out of the process entirely before 1985, and even since 1985, receiving significantly less than Democrats. In 1983, rank-and-file legislators got about $50,000 per district in average spending on pork barrel. In 1984, it was $80,000 per senator and $40,000 per House member.[9] A year later, that amount was $100,000 for a senator and $50,000 for a House member. In 1986, the average dropped back as pork barrel appropriations declined, to an average of about $35,000 per legislator. In 1987, Senators got about $70,000 each; House members got $40,000 each. Critics of the pork barrel process — none of whom would be identified publicly — have charged that this allocation system came about in the House in an effort to cement across-the-board support for the leadership, primarily the speaker and the budget committee chairmen. Defenders of pork barrel in 1987 point out that more members are getting pork now, including Republicans and new members, not just the Democratic leadership. And they say that distribution of funding is becoming fairer, with fewer areas of the state left out of the barrel. Still, some counties get a fairer share than others.

Counties with powerful Democrats fared better in their share of pork barrel spending than those represented by Republicans. From 1983 to 1986, Madison County residents received $13.22 per capita in pork barrel money. That county is represented by Rep. Liston Ramsey, a lifelong Democrat and Speaker from 1981 to 1988. By contrast, nearby Henderson County, represented by a series of Republicans in the General Assembly in recent years, received just $1.26 in per capita pork barrel spending. The statewide average for all counties was $4.36.[10]

Republican counties typically brought up the bottom of the list. Mitchell and Avery, with Republican voting majorities, ranked 97th and 98th among the state's 100 counties in *total* pork barrel over the four-year period; in *per-capita* spending, the Republican counties of Wilkes, Randolph, Avery, Mitchell, and Henderson ranked 92nd, 93rd, 94th, 95th, and 97th, respectively. On the other hand, counties with heavy Democratic registration and voting patterns did handsomely. The top 10 counties in overall money during the period were Wake, Mecklenburg, Cumberland, Forsyth, Guilford, Buncombe, Durham, Gaston, Pitt, and Robeson. In per capita pork barrel, rural counties with a high rate of Democratic registration did splendidly. Take Jones County, for example, with its 94 percent Democratic registration ratio: It led the state in per capita pork, with $25.24 per resident.

Obviously, it pays off for a county to have a Democrat in the legislature, and even more so to have a speaker. But most counties won't ever have a speaker, and with the continued rise of the two-party system, many won't have Democratic legislators. That has Republicans boiling mad. After the uproar in 1985, concluding with the House GOP protest walkout, the Republican caucus declared, "This is the bill that's corrupting the process. To participate is something we cannot do."[11] But others charged Martin with having it both ways — criticizing Democratic pork barrel while getting his own bacon.

The Governor said Democrats had reduced pork barrel "to its lowest common denominator — fear" in forcing lawmakers to vote a certain way. Then-Speaker Ramsey charged that Martin was getting the equivalent of pork barrel for his home county of Meck-

lenburg through spending in the state's continuation budget, such as $70,000 for the Charlotte Symphony, $70,000 for the Mint Museum, and $65,000 for the Charlotte Opera.[12] And the Martin administration has contributed to the quest for pork in another way: On April 16, 1986, Martin's Department of Cultural Resources held a workshop on historic preservation that included advice on how the appropriations system works — and how to go about getting money for restoration projects.

Cleaning up the Pork Barrel

Under Lt. Gov. Bob Jordan's order, the Senate in 1985 launched a study to reform the pork barrel process, as well as some other procedures. That study produced some changes adopted by the Senate, and to a lesser degree, by the House of Representatives.[13]

The changes included the following:

- Any pork barrel requests must be made in the form of a separate bill with details about the nature of the organization to receive the money.
- All requests must be reviewed by appropriations subcommittees to determine the nature of the agency or organization to receive funds, and to assure that the request meets the constitutional requirement of spending for a public purpose.
- And requests from Republican legislators are reviewed and granted on the same basis as those from Democrats.

But despite initial optimism that the late-1985 reforms would lead to a wholesale cleaning up of pork barrel, the question remains as to how much has changed about pork barrel spending. The amount of money for pork barrel projects was trimmed to $5.8 million in 1986, and none of the 1986 projects was rejected for funding by the Governor's budget office review. But the pork barrel spending process remained largely what it had been in 1985. As the Speaker put it, 1986 was not the time to be tinkering with the House rules, adopted in 1985, so little changed. The reforms of 1985 stood for little in 1986, but in 1987 the legislature began to address the study commission's findings.

But it is almost certain that some changes will continue, as they have during the past decade. The Institute of Government's John Sanders points out that

Local Pork Barrel Spending, 1983-1987

Year	Total Pork Barrel	Total State Budget	% of Budget That is Pork	Number of Pork Items	Share Per Senator	Share Per Representative
1983	$5.0 million	$3.8 billion*	0.13%	261	$50,000	$50,000
		$6.7 billion#	0.07%			
1984	$7.8 million	$4.3 billion*	0.18%	308	$80,000	$40,000
		$7.4 billion#	0.10%			
1985	$9.0 million	$4.9 billion*	0.18%	1,442	$100,000	$50,000
		$8.4 billion#	0.10%			
1986	$5.8 million	$5.2 billion*	0.11%	631	$35,000	$35,000
		$8.9 billion#	0.06%			
1987	$7.9 million	$5.9 billion*	0. 13 %	1,183	$70,000	$40,000
		$9.9 billion#	0. 07 %			

* General Fund budget only

\# Total state budget, including federal funds

widely distributed pork barrel "is a recent phenomenon. Just 10 years ago, only a legislative leader could get a special appropriation for a state institution or project in his district — a university building or historic site, for example. But no one would have dreamed that every legislator could ask for this sort of 'free money' to take back home for a public project of a purely local nature."

On balance, the changes in recent years have been positive ones.

□ The 1987 bill deadline process (requiring all pork barrel bills to be introduced by May 29) made it possible to know who sponsored which bills. It also gave the news media more time to examine each request, because several months elapsed between the bill filing deadline and passage of the omnibus pork barrel bill. This was an improvement over the old Jack-In-The-Box process, where pork barrel bills popped up one day and were ratified into law several days later.

□ More members get pork barrel money now, not just the Democratic leadership.

□ Distribution of those funds seems to be fairer than before, even though some counties get much more money than other counties.

□ And reviews by the Governor and the State Auditor show that there's relatively little monkey business when it comes to pork barrel spending. The projects usually are at least defensible.

But the legislature has some questions it must ask itself as the pork barrel process continues to evolve.

— For instance, just because a project benefits some citizens, should the state fund it? Or wouldn't it constitute better public policy to leave such funding to local private groups or to county commissioners?

— Shouldn't the legislature provide a better way to give credit — or blame — to those who have successfully sponsored legislation? Under the current system, it's no problem to determine who has sponsored most pork barrel requests, but it's difficult sometimes to tell what has happened to a piece of legislation, because the hundreds of pork barrel requests are consolidated into one or two omnibus bills. Often the only guides in the computer summary of actions on each pork barrel bill are the acronyms RPAB or PPI, meaning either "Ratified as Part of Another Bill," or "Postponed Indefinitely." Usually a pork barrel bill will show up as having been postponed indefinitely when in fact it was ratified as part of the omnibus pork barrel bill. The legislative records on bill status should accurately reflect what happens to each pork barrel request. With the General Assembly's sophisticated new computer system, this additional measure of accountability could easily be provided to tell researchers exactly what ratified bill contains a pork request and to give credit where credit is due.

— But perhaps the toughest question is this: Has the rise of the pork system contributed to a more parochial N.C. General Assembly, taking it even beyond the age old rural-urban debate and finally pitting one locality against the next locality in the growing quest for the pork barrel? And how will such festering divisions affect future operations of the General Assembly?

FOOTNOTES

[1] "Limited Scope Review on a Sample of Appropriations for 'Local Projects,'" Management Letter from State Auditor Edward Renfrow to Gov. James G. Martin, Lt. Gov. Robert B. Jordan III and Speaker of the House Liston Ramsey, June 3, 1987, p. 3.

[2] Seth Effron, "Pork Barrel Wish List Far Exceeds Funds for Favorite Local Projects," *Greensboro News & Record,* May 24, 1987, p. C1; and "Pork Barrel Legislation is Plentiful," *Greensboro News & Record,* June 18, 1986, p. C1.

[3] B. Scott Schrimsher, "Pork Barrel Legislation and What It Means to Mecklenburg County," unpublished paper prepared for UNC-CH Political Science 135 course, Dec. 12, 1985, p. 8.

[4] Seth Effron, "Symphony's Pork Had Local Cook," *Greensboro News & Record,* Jan. 3, 1986, p. D1.

[5] Pork Barrel spending can be found in the following legislation:
1977: Chapter 802 of the 1977 Session Laws.
1979: Chapter 731 of the 1979 Session Laws.
1981: Chapter 1127 of the 1981 Session Laws.
1982: Chapter 1282 of the 1981 Session Laws (2nd Session 1982).
1983: Chapter 761 of the 1983 Session Laws.
1984: Chapter 971 of the 1983 Session Laws (2nd Session 1984).
1984: Chapter 1034 of the 1983 Session Laws (2nd Session 1984).
1984: Chapter 1114 of the 1983 Session Laws (2nd Session 1984).
1984: Chapter 1116 of the 1983 Session Laws (2nd Session 1984).
1985: Chapter 757 of the 1985 Session Laws.
1985: Chapter 778 of the 1985 Session Laws.
1986: Chapter 1014 of the 1985 Session Laws (2nd Session 1986).
1987: Chapter 830 of the 1987 Session Laws.

[6] Paul T. O'Connor, "Reforming Pork Barrel, Special Provisions, and the Appropriations Process: Is There Less Than Meets the Eye?," *North Carolina Insight,* Vol. 9, No. 3, March 1987, pp. 98-99.

[7] William Morris, *The Dictionary of Word and Phrase Origins,* Harper & Row, 1977, p. 458.

[8] Article 5, Sections 2, 7, and 32, Constitution of North Carolina.

[9] The Associated Press, "State Lawmakers Dig Into 'Pork Barrel' Legislation," *The News and Observer,* July 6, 1984, p. 2C; and "Lawmakers Eye Pork Barrel Funds," *The Raleigh Times,* July 8, 1985, p. 6C.

[10] Seth Effron, "Pork Barrel Rolls Along," *Greensboro News & Record,* Feb. 15, 1987, pp. A1, A10, A11.

[11] Seth Effron, "Pork Barrel Bill OK'd After Debate, Walkout," *Greensboro News & Record,* June 17, 1985, p. D1.

[12] Seth Effron, "Ramsey Jabs at Martin Pork Barrel," *Greensboro News & Record,* Dec. 11, 1985, p. B1.

[13] "Report of the Senate Select Committee on the Appropriations Process to the 1985 Senate of North Carolina," Dec. 10, 1985.

Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens

by Ran Coble

In June 1986, the N.C. Center for Public Policy Research released a report examining special provisions in budget bills passed by the N.C. General Assembly since 1971. Excerpts from the executive summary of the report appear below.

SPECIAL PROVISIONS in legislative appropriations bills are like Pandora's Box. They contain a variety of plagues that undermine the legislative process, work against the public interest, and erode the authority of existing systems and institutions of government. These special provisions—adopted by the legislature in the frenzied final days before adjournment of each session—often are approved without adequate public debate and frequently without the knowledge of many members of the General Assembly.

Years ago, the practice of special provisions began as a legitimate way to explain the purposes of an appropriation or limit the use of funds. Special provisions once served as the narrative flesh on a skeleton of columns of numbers appropriating certain amounts to each state agency. But in recent years, what once was a justifiable method of providing budget instructions to state agencies has gotten out of hand.

For instance, special provisions in recent years were used to repeal parts of the Administrative Procedure Act, to attempt (unsuccessfully) to repeal the Coastal Area Management Act, to pass a major revision to the state's bingo laws, to allow overweight trucks on the state's highways, and to establish study commissions on such disparate subjects as the quality of water in the Pigeon River and a retirement plan for local sheriffs and registers of deeds.

To curb this undesirable practice of using special provisions to supplant the regular legislative process, the Center recommends that each house of

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Table 1. Increase in Number of Special Provisions

Date and Type of Legislative Session	Number of Special Provisions	
1981 regular long session	29	(SB 29)
1982 short budget session	30	(HB 61)
1983 regular long session	65	in three budget bills (SB 23, SB 313, and SB 22)
1984 short budget session	87	in three budget bills (HB 80, HB 1376, and HB 1496)
1985 regular long session	108	in three budget bills (SB 1, SB 182, and SB 489)
1986 short budget session	57	(HB 2055)
1987 regular long session	58	in three budget bills (HB 1514, HB 1515, and HB 2)

What Are Special Provisions?

• SPECIAL PROVISIONS, as defined in the Center's report, are portions of budget bills which are used in any of the following inappropriate ways:

(1) to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;
(2) to establish new agency programs or to alter the powers and duties of existing programs;
(3) to establish new boards, commissions, and councils or to alter existing boards' powers;
(4) to grant special tax breaks or otherwise change the tax laws; or,
(5) to authorize new interim studies by the Genenal Assembly or other groups.

* * *

• An *inappropriate* special provision is in a budget bill but is unrelated to the budget and amends other state laws. For example:

"Effective July 1, 1985, Chapter 150A of the General Statutes [the Administrative Procedure Act] is repealed, with the exception of G.S. 150A-9 and G.S. 150A-11 through 17."

— *Chapter 923 of the 1983 Session Laws (SB 313), Section 52*

• A *legitimate* special provision explains an expenditure of funds in the budget bill. For example:

"Of the funds appropriated to North Carolina State University at Raleigh...the sum of $30,000 shall be used for research and related extension activities in turf grass. An additional $40,000 shall be used for corn research, and $60,000 shall be used for a swine specialist for a ten-county area in extension, which was inadvertently left out in a previous appropriation."

— *Chapter 1034 of the 1983 Session Laws (2nd Session, 1984, HB 80), Section 53*

the General Assembly adopt rules barring the use of special provisions to establish, amend, or repeal statutory law. It also recommends that the legislature amend the Executive Budget Act and empower citizens to petition the N.C. Attorney General to challenge any special provision establishing, amending, or repealing a law. If the Attorney General declined to pursue the case, the individual citizen would then have the right to sue in Superior Court.

Special provisions are not to be confused with pork barrel bills. While pork barrel appropriations and special provisions may wind up in the same bill, they perform different legislative tasks. Special provisions rarely involve the expenditure of money, but they directly affect state laws by amending, repealing, or creating new laws. Pork barrel appropriations, on the other hand, refer specifically to special appropriations, either statewide or local in nature, for legislators' pet projects. This report identifies three major problems with special provisions, as summarized below.

Special Provisions Bypass the Normal Legislative Process

Some bills which might not pass on their own merits are often inserted into budget bills in the form of special provisions. This report, for example, describes a special provision which required a study of comparable worth, or pay equity, in the State Personnel System. This special provision passed as part of the main budget bill in 1984. But in 1985, after debating the merits of the proposal in a *separate bill*, the legislature repealed its 1984 action.

Special provisions undermine the legislative process because too few legislators are involved in the special provisions process. When questioned about the secrecy of the process, legislative leaders will defend the technique by saying that the full House and Senate Appropriations Committees review all special provisions. However, contrast that explanation with a scene from one 1984 Appropriations Committee session.

Committee member Rep. Bruce Ethridge (D-Onslow) asked the Chairman, Rep. William T. Watkins (D-Granville), if he could submit an amendment to the appropriations bill. "I don't know," replied Watkins. "That depends on what it is." Ethridge did not send forth his amendment, even though committee rules allowed it.

One reason why rank-and-file legislators do not revolt, say legislative observers, is that votes for special provisions are implicitly tied to a legislator's share of pork barrel money for his or her district. If you don't vote for the main budget bill — special provisions and all — you may not take home the bacon, observers say. In 1985, for example, former Sen. John Jordan (D-Alamance) did not vote for the main appropriations bill *and* received no pork barrel money—a fact that did not go unnoticed in the press.

Table 2. Increase in Length of Budget Bills

Date and Type of Legislative Session	Number of Pages in Bill to Fund "Current Operations" of State Agencies
A. Regular Long Sessions (usually 6 months)	
1971	31 pages
1973	32 pages
1975	53 pages
1977	79 pages
1979	89 pages
1981	90 pages
1983	191 pages
1985	214 pages [1]
1987	218 pages [1]
B. Short Budget Sessions (usually 1 month)	
1974 [2]	38 pages
1976	80 pages
1978	57 pages
1980	60 pages
1981 [3]	66 pages
1982	74 pages
1984	164 pages [1]
1986	346 pages [1]
1988	184 pages [1]

FOOTNOTES

[1] These bills were *single spaced*. The bills in preceding years (1971-1983) were *double spaced*. The number of pages for these more recent bills was thus doubled in order to make them equivalent for comparison purposes.

[2] The first such short session and the beginning of annual legislative sessions.

[3] Special October session.

Table 3. Prohibitions Against Substantive Legislation (Special Provisions) Being Included in Budget Bills, By State (1985)

A. Prohibit Special Provisions Through State Constitution (29)

Alabama	Missouri
Alaska	Montana (and
Arizona	(joint rule)
Arkansas	Nebraska
California	New Hampshire
Colorado	New Jersey
Florida	New Mexico
Georgia	Oklahoma
Hawaii	Oregon
Illinois	Pennsylvania
Indiana	South Dakota
Kansas	Tennessee
Louisiana	Texas
Maryland	Utah
Mississippi (and House rule)	West Virginia

B. Prohibit Through Other Measures (2)

Connecticut (statute and rule)
Massachusetts (statute)

C. Regulate Special Provisions Through Constitution (8)

Idaho	Ohio
Iowa	South Carolina
Nevada	Virginia
New York	Washington

D. Regulate Special Provisions Through Other Measures (1)

North Dakota (Senate rule)

E. No Prohibitions Against Special Provisions (8)

Delaware	Rhode Island
Maine	Vermont
Minnesota	Wisconsin
North Carolina	Wyoming

F. Status Unclear (2)

Kentucky (court case pending)
Michigan (did not respond to survey)

Source: Gerry F. Cohen, "Survey of Other States Concerning Appropriation Process," Memorandum to the N.C. Senate Select Committee on the Appropriation Process (October 31, 1985), pp. 5-6.

Special Provisions Can Work Against the Public Interest

Special provisions work against the public interest when they are used to create new programs, new boards and commissions, or assign new duties to state agencies. For example, in the last three sessions, special provisions have been used to establish a homeownership assistance program, a community college scholarship program, and an alcohol and drug defense program.

While these may all be worthy programs, they were established without the normal legislative scrutiny given to the need for new programs. The report identifies 11 new boards and commissions also established through special provisions. The taxpayers have a right to expect full legislative debate on the creation of new programs and new boards. These new programs can cost the taxpayers for years to come.

Special tax breaks are also granted in special provisions. One special provision in 1977 authorized foreign trade zones, which had the effect of creating tax breaks for certain types of property held in these zones. Another 1984 provision exempted certain trucks from penalties for being overweight.

Special Provisions Undermine the Authority of Other Governmental Institutions

Special provisions damage relationships between state and local governments and between the executive and legislative branches of government. For example, in 1984, many local school systems were surprised to hear at the last minute about a special provision enacting a centralized payroll system for all public school systems in North Carolina. The Controller for the State Board of Education, James

Barber, objected to the use of a special provision as the vehicle for such a change. "We could have worked out the problems during debate in the normal committee process," he explained at the time.

Special provisions can be a legislative thorn in the executive branch's side. In 1985, the Democratic leadership used special provisions to prohibit Republican Gov. James G. Martin from hiring private legal counsel or private investigators without the consent of the Attorney General, a Democrat. The thorns can pierce Democrats' skin as well. In 1981, Gov. James B. Hunt Jr. found two special provisions so objectionable that he asked for, and obtained, an opinion from the N.C. Supreme Court, which said they were unconstitutional invasions of his constitutional powers to administer the budget.

The report notes that 31 other states prohibit (either by statute or in their constitutions) substantive legislation similar to these special provisions in their appropriations bills. Nine more states have at least partial restrictions on special provisions. Thus, the North Carolina legislature is in the small minority of states that allow special provisions. The South Carolina Chamber of Commerce has recently sued the S.C. General Assembly over its practice of adding non-germane legislation to the annual appropriations bill. A special provision authorizing a dues checkoff to the State Employees Association for state employees triggered the suit.

Conclusion

Because the use of special provisions bypasses the full legislative process, because it can result in legislation against the public interest, and because it undermines other institutions of government, the General Assembly should end the practice. The time has come to close this Pandora's box—before additional legislative plagues escape to wreak havoc on the orderly process of government.

Chapter 8

Economic Development in North Carolina

Making the Transition to a Mixed Economy

by Bill Finger

In the 1970s, North Carolina lurched into a major economic transformation — from a rural culture dependent upon agriculture and predominantly low-wage industries to an urban economy relying increasingly upon the service and trade sector. Three transitions are sweeping through the economy at once: from labor-intensive to capital-intensive industries; from manufacturing jobs to trade, service, finance, transportation, and government jobs; and from small, tobacco-dependent family farms to large, often corporate-owned farms producing diverse products. These transitions are pushing North Carolina toward a dual economy, with booming urban centers and depressed rural areas. How can state economic development efforts address the needs now becoming clear? The mixed economy of the future demands different governmental strategies than in the past.

TWO HUNDRED AND FIFTY YEARS AGO, North Carolina's economy was literally home-grown. At least 95 percent of the state's inhabitants depended on agriculture for their livelihood. "The abundance of land, the ease of acquiring it, and the relative scarcity of capital and labor were fundamental factors in determining the economy, social order, and political character of North Carolina," writes historian Hugh Talmage Lefler.[1] In subsequent years, poor whites and slaves — who couldn't acquire land with ease — helped build the agrarian culture that evolved.

As late as 18 years ago, North Carolina's economy still revolved around the land. The textile mills, which had grown up along the rivers and waterways of the state, spun record amounts of cotton into fabric. The rural counties depended upon the world's best tobacco crop. Fifty-five percent of the state's people lived in rural areas, often making ends meet by combining a shift in a mill with a little patch of tobacco. Textiles, apparel, and furniture plants dotted the rural landscape like familiar road signs.

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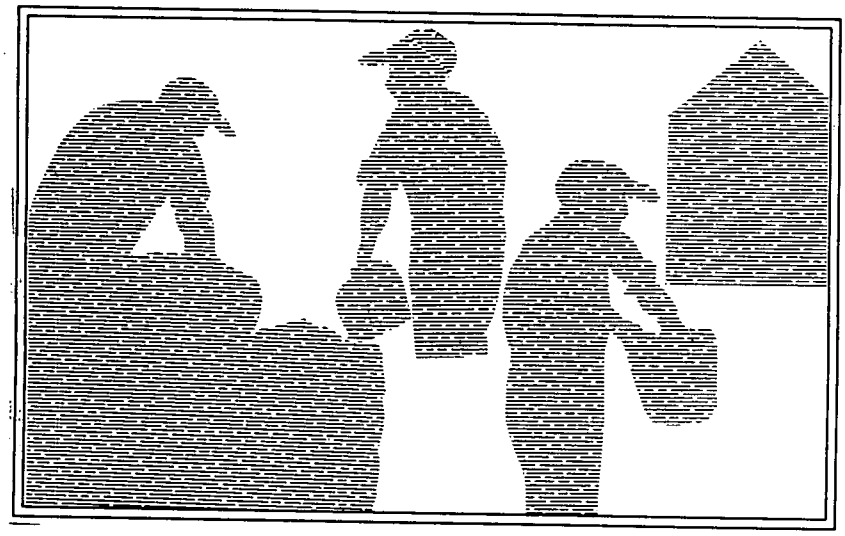


By 1970, North Carolina had not gone through the dramatic transition from an agricultural to an industrial economy that the Northeast and parts of the urban South had. To be sure, the state had gone through a kind of intermediate transition. But when the textile and furniture mills sprung up in the late 19th and early 20th centuries, they did not transform the state's agrarian society. In perhaps the most distinct industrial "revolution" in the nation, this manufacturing base in essence integrated itself into an agricultural society.

Not until the mid-1970s did North Carolina lurch into a major economic transformation — from a rural culture dependent upon agriculture and predominantly low-wage industries to a more urban economy increasingly relying upon the service and trade sector for jobs. "The Tar Heel state has become a genuine national test case of the ability of a society to make a fundamental economic transition," says Ferrel Guillory, an editor at *The News and Observer* in Raleigh.

In 1973, 36 percent of all manufacturing jobs in North Carolina were in textiles — 290,000 jobs.[2] By October 1985, the figures had dipped to 25 percent and 206,000 jobs. More than one of every four textile jobs in North Carolina had vanished in just 12 years. This fundamental change in the state's leading industry came from two factors: mechanization of the heavily labor-intensive industry, and an increase in imports, which in effect was an export of textile jobs to Taiwan, Korea, and other lower wage countries. From 1980 to 1984 alone, the foreign share of the American apparel market climbed from 21 to 50 percent.

Tobacco, meanwhile, has held its own in some respects. From 1973 to 1985, tobacco manufacturing employment — always small relative to textiles — declined only 3 percent, from 28,100 to 27,200 jobs. But on the farms, tobacco has dwindled from the mainstay of the state's agriculture to a crop with an uncertain future, highly dependent upon the federal price support system. In 1950, 60 percent of total farm cash receipts in North Carolina came from tobacco. By 1984, tobacco accounted for only 24 percent of receipts. For the first time, poultry products (27 percent) passed tobacco as the leading agricultural commodity in the state.

From 1970 to 1984, the portion of the state's jobs outside of factories grew from 60 to 68 percent while manufacturing jobs dropped from 40 to 32 percent (see Table 1). But manufacturing remains an important component in the overall economy of the state. "You have to remember that manufacturing accounts for three of every 10 nonagricultural jobs and more than three of every 10 dollars spent in the economy," says Dr. John E. Connaughton, an economist working with First Union National Bank and the University of North Carolina at Charlotte (see Table 2).

These figures suggest not one but three transitions that are currently underway in the state's economy:

- a shift within the *manufacturing sector* from labor-intensive to capital-intensive industries — from millhands to machine operators;
- a shift within the *nonagricultural sector* from manufacturing to trade, service, and government jobs — from blue collar to white collar jobs; and
- a shift within the *agricultural sector* from small farms relying extensively on tobacco income to larger farms diversifying into many crops, often run by corporations or under contract.

These three transitions, working together, are forcing businesses, banks, analysts, planners, and policymakers to anticipate what kind of mixed economy might lie ahead. What kinds of jobs can North Carolinians depend on? What kind of new economy will replace the old? Because these three transitions are proceeding at the same time, the evolution to a mixed economy is causing both prosperity and suffering.

"We're seeing a full-fledged evolution of a dual economy," says Greg Sampson, director of research at the N.C. Employment Security Commission, part of the N.C. Department of Commerce. "The metropolitan areas are the seedbeds of the service-based economy, especially personal and information services. The non-metropolitan areas are weaker due in part to a lack of attractiveness to new industry of all kinds."

Table 1. Nonagricultural Employment in North Carolina, 1960-1984

Category of Employment (Ranked by Size, 1984)	1984 Employment (in 1000s)	1984 Percent of Total Nonagric.	1980 Employment (in 1000s)	1980 Percent of Total Nonagric.	1970 Employment (in 1000s)	1970 Percent of Total Nonagric.	1960 Employment (in 1000s)	1960 Percent of Total Nonagric.
A. MANUFACTURING	830.6	32.4%	820.0	34.5%	718.4	40.2%	509.3	42.6%
1. Textiles	220.2	8.6	245.8	10.3	280.7	15.7	228.8	19.1
2. Apparel	92.3	3.6	88.0	3.7	75.1	4.2	35.3	3.0
3. Furniture	84.6	3.3	81.5	3.4	66.2	3.7	44.6	3.7
4. Electrical Machinery	62.4	2.4	55.3	2.3	40.9	2.3	25.4	2.1
5. Non-electrical Machinery	54.8	2.1	49.5	2.1	29.3	1.6	12.5	1.0
6. Food & Kindred Products	44.0	1.7	44.0	1.8	41.4	2.3	33.5	2.8
7. All Other Sectors	272.3	10.6	255.9	10.8	184.8	10.3	129.2	10.8
B. NONMANUFACTURING	1,731.2	67.6	1,560.0	65.5	1,068.2	59.8	686.2	57.4
"Big Three" 1. Retail and Wholesale Trade	549.3	21.4	472.9	20.0	324.5	18.1	219.8	18.4
2. Government	413.7	16.1	409.9	17.2	264.2	14.8	164.2	13.7
3. Services	398.2	15.5	341.3	14.3	217.5	12.2	127.1	10.6
"Little Three" 4. Construction	133.0	5.2	118.7	5.0	96.5	5.4	65.2	5.5
5. Transportation, Communication & Utilities	127.5	5.0	116.5	4.9	92.1	5.2	64.5	5.4
6. Finance, Insurance & Real Estate	104.9	4.1	95.5	4.0	69.5	3.9	42.1	3.5
7. Other (Mining)	4.6	.2	5.2	.2	3.9	.2	3.3	.3
TOTAL NONAGRICULTURAL EMPLOYMENT	2,561.8	100.0	2,380.0	100.0	1,786.6	100.0	1,195.5	100.0

Source: Labor Market Information Division, N.C. Employment Security Commission, "North Carolina Labor Force Estimate," (for 1984, 1980, and 1970), unpublished data, (1960).

Most of the metropolitan areas are booming — in construction, jobs, and population. "This boom is driven by population growth and personal income growth — which is high in metro areas and low in non-metro areas," says Sampson. In 1984, the four most urban counties had among the state's lowest average unemployment rates: Wake County (3.3 percent), Mecklenburg (4.6 percent), Guilford (5.4 percent), and Forsyth (5.5 percent). The overall state average was 6.8 percent.

"Most of the employment problems are in the non-metro areas," says Sampson. In 1984, 22 counties had an average unemployment level of more than 10 percent. Most of the 22 were rural, but the group included counties with medium-sized towns as well, such as Wilson (Wilson County, 11.1 percent unemployment) and Roanoke Rapids (Halifax County, 11.4 percent).

To anyone who travels the state off the interstate highway system, such figures come as no surprise. What is not apparent, however, is how such a dual economy — the boomtowns and the depressed towns — can move through a transition at the same time. How can any state economic development strategy address the needs of such contrasting situations?

North Carolina is part of a national transition, moving gradually from an economy based on agriculture and manufacturing to an economy increasingly dependent upon services and information. The roles that textiles and tobacco have played in the state's history have resulted, however, in some important distinctions between the transitions here and those in other parts of the country. North Carolina, for example, has a higher percentage of its work force in manufacturing jobs than any other state, 32.4 percent in 1984. At the same time, the 1980 Census found that 52 percent still lived in rural areas (includes towns under 2,500 population). A high percentage of women worked in this state long before the recent wave of women moved into the work force. And a dispersed population meant that no dominant urban center arose, such as Atlanta, Memphis and Nashville, New Orleans, Birmingham, Houston and Dallas, and Little Rock.

The evolution of North Carolina into the leading textile, apparel, tobacco, and furniture-producing state accounts for these unique demographics. Since these industries were scattered and paid relatively low wages, husbands and wives had to work and often chose to live on a farm, which was cheaper than in the city. From the 1930s, the federal tobacco price support system, which assigned allotments to specific plots of land, served as an inducement for people to stay on their farms. Often a tobacco farmer held down a third-shift job in a mill. Or if a millworker wasn't lucky enough to own a small allotment, he could at least raise a few hogs and a little corn. In recent years, many people who work in a city have continued to live in rural areas, near their roots, often commuting long distances.

These historical and more recent patterns have intertwined the state's urban and rural areas. "Once an area has a manufacturing base, it can generate additional money and support an expanding service economy," explains Sheron Morgan, senior policy analyst at the Department of Administration. Hence, the "dual economy" label can be misleading, contends Morgan, because many rural areas currently have expanding service and trade sectors. But the money being spent on these rural services might depend on the economic base of cities — where most of the jobs are.

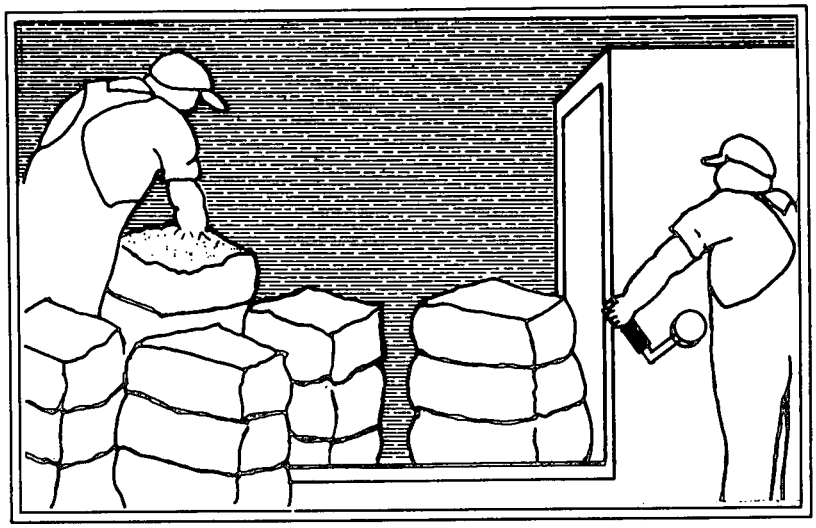
"North Carolina is in better shape than states that have one or two dominant urban centers," says the ESC's Sampson. "We're seeing the acceleration of the transition now — from an economy dominated by a few industries to a mixed economy, with service activity the leading edge and metropolitan areas benefiting the most. In the short and medium run, the gap between metro and non-metro counties in terms of employment and growth will probably grow."

"There are few ways in which a man can be more innocently employed than in getting money."

— Samuel Johnson, in Boswell's "Life"

Transition One

From Labor to Capital — Factories Take the Leap



"Linthead." For sociologists of the 1930s, no single word better summed up the history of factories in this state. For textile industry officials in the 1980s, no word sounds more inflammatory. A linthead, literally, was a textile worker with fluffs of cotton clinging to his clothes at the end of a shift. In a broader sense, a linthead was any person who knew the rhythm of the shift whistles that kept time in a milltown.

But the textile industry has changed. The cotton dust standards under the federal Occupational Safety and Health Act and the same technology that brought us video cassette recorders and microwaves have made the linthead largely obsolete. Today, robots carry giant rolls of cloth, and water-propelled machines noiselessly weave lint-free cloth. Modern textile workers sit behind a computer screen as well as fix looms. Computer operators now can tell machines where to cut bolts of cloth by viewing the fabric as a graphic on a terminal.

Yet the new has not eradicated the old. In 1984, 90,000 people — mostly women — worked in the state's apparel industry, the second largest manufacturing sector behind textiles (and barely ahead of furniture). Many of these women still sew bolts of cloth in small cut-and-sew operations. The apparel industry has just begun to embark on the kind of massive capital-investment campaign that the textile industry launched in the 1970s. Wages in the apparel sector remain significantly below those for textile workers (see Table 3).

Alamance County, unlike the more metropolitan and rural counties, is neither booming nor suffering. But it is in transition, from a labor-intensive, textile-based economy to a more diversified mix of manufacturing jobs. This mix includes a more capital-intensive textile industry, more types of industry, and an increase in service jobs, especially at discount malls. Since J. Spencer Love launched Burlington Industries in Alamance County in 1923, the fate of textiles has generally determined the prosperity of the area. Unemployment levels have risen and fallen with the cycles of the textile industry.

In recent years, Alamance County has been able to ride piggyback on the shift to computer-related jobs in the Research Triangle to the east and the Triad to the west. Sandwiched between two high-growth areas, yet still dependent on the state's traditional industry, Alamance County reflects the two most important

Table 2. Percentage of Gross State Product by Sector, 1985

Sector of Economy		Percentage of Gross State Product*
Manufacturing		33.7 %
Nonmanufacturing		62.4 %
Retail and Wholesale Trade	17.3 %	
Government	11.6 %	
Finance, Insurance & Real Estate	10.8 %	
Services	10.2 %	
Transportation, Communications, & Utilities	8.7 %	
Construction	3.6 %	
Mining	.2 %	
Farm and Agricultural Services		3.9 %

Source: The UNCC/First Union North Carolina Economic Forecast, November 1985.

*These are percentages of total "real" Gross State Product. Real GSP refers to calculations based on 1972 dollars.

"They're closing down the textile mill,
across the railroad tracks,

Foreman says these jobs are going boys,
and they ain't coming back,

To your hometown, your hometown."

— "My Hometown" by Bruce Springsteen

shifts in the state's labor-to-capital odyssey: the changes in the textile industry and the coming of a diversified, computer-dependent industrial base.

Textiles. Manufacturing jobs, including the textile sector, peaked in Alamance County during the 1960s. The unemployment rate never rose over 6 percent and was often as low as 2 percent.[3] Never again would Alamance County have as many people working in factories as it did in 1969 when 25,630 people punched a time card. One of every three of those people clocked in at a textile mill. Textile jobs remained stable, with only small dips and rises, until the recession of 1974-75, which was to alter forever the industrial landscape of Spencer Love's old stamping grounds.

In 1975, unemployment averaged 9.5 percent in the county (with a high of 12.7 percent in February). There were 20 percent fewer textile jobs than just six years earlier (15,360 compared to .19,240). Even though the textile industry's sales and profits improved after the recession ended in 1976, the industry never regained the lost jobs. Textile employment in the county continued to fall, to 12,900 in 1983. And other manufacturing jobs did not pick up the slack. In 1983, Alamance averaged an 11.5 percent unemployment rate, the highest for the county since the Employment Security Commission began keeping such records in 1962.

The jobs never returned because the textile leaders had begun to reshape the industry. Spencer Love built Burlington Industries into the world's largest textile company, employing 81,000 people in 1974; it was also the the largest employer in the state and in Alamance County. In 1974-75, Burlington Industries began a major restructuring program, closing or selling 32 plants (18 of them in North Carolina, from Rhodiss to Reidsville). The company then launched a massive $1.8 billion capital expenditure program, from 1976 to 1984. About 85 percent of these expenditures went for modernization, "to increase labor productivity, improve quality, and enhance flexibility," as the 1977 annual report put it, in order "to replace outmoded shuttle looms with faster, more flexible shuttleless machines and to upgrade cotton yarn opening and carding equipment."[4]

The modernization campaign turned Burlington Industries into a far more capital-intensive company, and much of the rest of the industry followed. "The textile industry has spent about $1.5 billion a year for the past 10 years for modernization," says Jim Leonard, manager of economic analysis for Burlington Industries. What resulted from the capital investment and the divestitures, however, besides improved productivity, less cotton dust, and "enhanced flexibility," was a 35 percent drop in Burlington Industries' employment in 10 years, from 81,000 in 1974 to 53,000 in 1984.

According to industry officials, however, the declines in jobs have just begun — unless federal trade restrictions on imports are tightened. After an intense and well-orchestrated lobbying campaign by the textile and apparel industry, including the unions, to raise import quotas, Congress passed the Textile & Apparel Trade Enforcement Act of 1985. President Reagan vetoed the bill, however. The complex bill would have slowed the growth of imports of textiles, apparel, and manmade fibers to a level more consistent with the industry's own growth. The trade act concentrated on the traditional "big four" Asian competitors (Taiwan, Hong Kong, Korea, and Japan) and the recent threat, the People's Republic of China.

In a recent industry survey, says Leonard, "We counted 1.3 million garments on retail racks and shelves. Our survey showed that imports make up 60 to 70 percent of the garments available to the consumer." This is significantly higher than the 50 percent figure given in government data. But either figure means fewer jobs.[5]

The textile industry has been forced to operate more efficiently and to shift to less vulnerable product lines such as designer sheets and towels. In some cases, that has meant mergers and sales of entire product lines. In December 1985, for example, California financier David Murdock announced the sale of most of Cannon Mills to Fieldcrest Mills. Murdock had bought Cannon Mills from the Cannon family in 1982. Meanwhile, J. P. Stevens Co. put its apparel fabrics divisions up for sale. The recent mergers and capital investments reflect the complexity of the textile industry, which makes everything from automobile seat covers to bolts of raw fabric. Categorizing the changes in the industry can be overly simplistic except for one stark fact — people are losing their jobs.

According to the U.S. Department of Labor, from January 1979 to January 1984, 80,000 textile workers and 136,000 apparel workers nationwide lost jobs because of plant closings or cutbacks. The study estimated that 81,000 North Carolinians — in all jobs — had been displaced. Only persons who had held a job for three years were included in the study.[6] The Department of Labor survey found that in 1984, 60 percent of the textile workers were employed, 26 percent were unemployed, and 14 percent were not in the labor force. These figures were very close to the nationwide percentages for all types of workers. Another important figure that does not show up in such a study "is the large number of people who can't get jobs in textile plants in the first place," says Charles Dunn, formerly the executive vice-president of the N.C. Textile Manufacturers Association.

Diversified, Computer-Dependent Industries. If a tightening of the textile industry's belt brought 11.5 percent unemployment to Alamance County in 1983, a more diversified manufacturing base helped bring the rate back down to 4.7 percent by October 1985. Capital-intensive industries coming to Alamance County have hired some laid-off textile workers, who were retrained at the Technical College of Alamance, the local community college. For example, GKN company employs 600 people making front-wheel drive parts. Sandvik, a Swedish company, has 60 people making carbide cutting tools. And the Honda company has a 120-worker plant making high-priced lawnmowers.

Other companies that are either expanding or developing a new facility in the county include: Carolina Biological Supply, with a new $1.75 million facility that will have 40 employees; D.F.M.&T., a computer software company, moving from a small Burlington office to an 8,000 sq. ft. facility for 20 employees; and Zeller Corporation, which will start with 35 machinists and metal workers making universal joints. These industries reflect the wide range of capital-intensive industries now dependent on computers for everything from production schedules to assembly-line management.

Table 3. Average Hourly Earnings of Production Workers in Selected Industries in North Carolina, October 1985

Industry	Average Hourly Earnings
Tobacco Manufacturers	$11.91
Paper and Allied Products	11.27
Chemicals and Allied Products	9.79
Electrical Machinery	8.37
Non-electrical Machinery	8.28
Statewide Manufacturing Average	7.32
Furniture and Fixtures	6.70
Textile Mill Products	6.50
Food and Kindred Products	6.46
Lumber and Wood Products	6.33
Wholesale and Retail Trade	6.07
Apparel & Other Textile Products	5.16
Hotels & Other Lodging Places	4.55

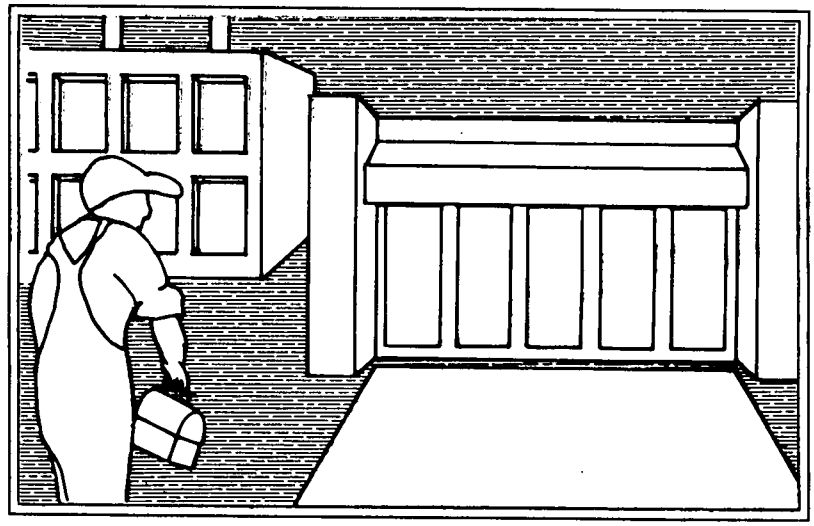
Source: "State Labor Summary, October 1985," Employment Security Commission.

Other areas of the state, particularly the nearby Research Triangle, have concentrated on the computer industry itself, including microchip assembly operations. The widely publicized Microelectronics Center of North Carolina (MCNC), begun in 1981, stands as a symbol of state efforts toward attracting more high-tech industries. This center and other programs, particularly the North Carolina Biotechnology Center, are geared specifically toward using computer technology in innovative ways.

Despite the increased investment in high-tech related jobs, in 1985, 48 percent of all *manufacturing* jobs in the state were in apparel, furniture, and textiles. These three sectors are among the lowest paying jobs in the state (see Table 3). Consequently, in 1985, the average industrial, hourly wage in North Carolina, $7.32, ranked 49th among the states.

Transition Two

Services and Trade — Jobs for the Future



In 1985, American Airlines announced it would make Raleigh-Durham Airport its major north-south hub on the east coast; American Express released plans for its new 2,000-person operations center in the Piedmont Triad area; Purolator, the express mail service, decided to expand its operations in Fayetteville; and Royal Insurance Company indicated it would move its 1,200-person operation from New York to Charlotte.

The arrival of such companies as American Express certainly represents a landmark, but the 2,000 employees at the four-story operation center on a hillside near the Greensboro airport will have plenty of company in the burgeoning service and trade economy. In 1984, more than twice as many people worked in *nonmanufacturing* jobs in North Carolina as in manufacturing jobs — 1,731,200 compared to 830,600 (see Table 1). These 1.7 million jobs fall into six major categories, which can be grouped as the "big three" and the "little three." In 1984, the big three — trade, government, and service — accounted for 53 percent of *all* jobs in the state. (The term "jobs" as used here, and in most articles, excludes the military, farm jobs, and domestic workers.) The little three are: construction; financial, insurance, and real estate; and transportation, communication, and utilities; these three sectors had 14 percent of all jobs. (The other 33 percent were in the manufacturing sector.)

Trade. In 1984, the wholesale and retail trade provided more than one of every five jobs in the state, 549,000 positions. Since 1970, the number of such jobs jumped 69 percent. While the growth has occurred statewide, metropolitan areas have reaped the most benefits. And no place is thriving more than the state's largest metropolitan area, Charlotte.

"There are 2,300 wholesale firms in the area with annual sales totaling $15 billion," says Tony Crumbley, research director for the Charlotte Chamber of Commerce. "We're the tenth largest wholesale center in the nation. On a per-capita basis, these wholesale figures ranked Charlotte number one in the country." The wholesale companies distribute everything from alcohol to zippers. "About half of the foreign wholesale companies are related to the textile industry," says Crumbley, who emphasized that the textile industry is important to the trade sector.

Meanwhile, retail sales in Charlotte totaled $6.5 billion in fiscal year 1984. Retail sales include fast-food shops and the fancy steak houses, shopping malls and downtown department stores, grocery chains and neighborhood specialty shops. "We're going through an active growth cycle now," explains Crumbley. "We had a stable period from about 1978 until around 1983. But now we're seeing lots of new shopping and retail centers come on." In a December 1985 survey of shopping facilities larger than 25,000 square feet, the Charlotte Chamber found 11.1 million square feet in use, with only 2.8 percent of the space empty. In 1985 alone, 1.4 million square feet of retail space came into use, a 14 percent increase in retail space. And Charlotte already served as the corporate headquarters for such retailers as Belk, Ivey's, Pic-N-Pay, Harris Teeter, and Family Dollar Stores.

The growing travel and tourism business reflects a different side of the retail trade boom. Vacationland North Carolina brings jobs to rural areas on the coast and in the mountains. But the seasonal nature of the work is a mixed blessing, not to mention the very low wages — statewide. The hourly production wage for hotel and motel workers ranks at the bottom of all categories, and retail workers aren't much higher. To compare, both are well below the average textile wage (see Table 3).

Government. In 1984, federal, state, and local governments provided 16 percent (413,700) of all North Carolina jobs. This sector had major growth spurts in both the 1960s and the 1970s, but began to slow in the mid-1980s. During the 1960s, federal

government programs increased dramatically, creating new jobs ranging from Head Start teachers to Farmers Home Administration loan officers. The trend continued in the 1970s, with major new programs coming on line, such as the Environmental Protection Agency facility at the Research Triangle Park. By 1984, there were 50,000 federal employees, but federal budget cuts cut this number.

Meanwhile, state government expanded sharply in the 1960s and into the 1970s, keeping pace with the population growth and entering such areas as environmental management, job and technical training, expansion of the university system, and increased health services like Medicaid. In 1984, state government jobs totaled 121,100, but the numbers may not grow much larger. (This figure does not include teachers, who are included in the local government sector even though they are paid primarily with state funds.)

"We're now under an administration that has a different perspective of what the government sector ought to be," says Alice Garland, research and policy specialist for the State Employees Association of North Carolina. "The Martin administration believes that if there are services that the private sector can provide, that's who ought to be providing them. I don't see the number of state government employees growing by leaps and bounds. As the economy grows, there will be some growth. But it's not going to fill the gap created by industries closing in the state."

By far the largest government employer, though, is local government, with more than 242,000 positions in 1984, including teachers. In the 1970s, local government employment grew rapidly, as counties and municipalities became more active in economic development, the arts, recreation, water and sewer facilities, and social services.

"As the federal government divests itself of responsibilities, you'll see the state and local governments talking more about who ought to be providing what," says Garland. "I think you'll see increases in jobs first at local governments and then in state government."

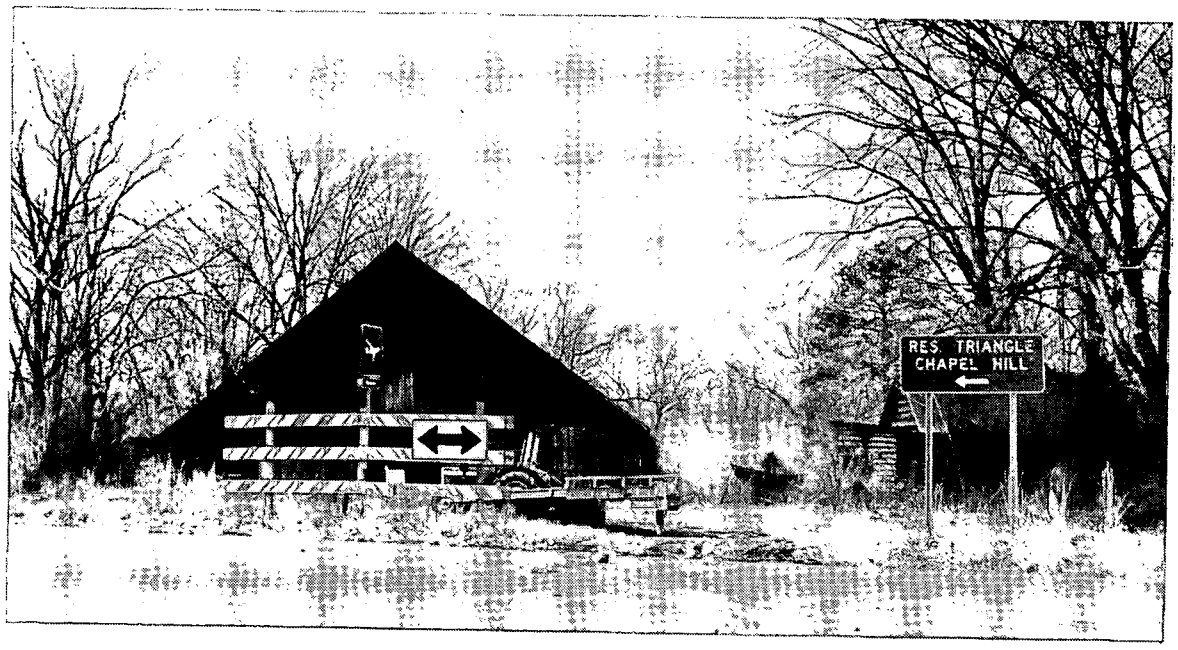
Service. In non-technical terms, the word "service" is used to describe the entire nonmanufacturing sector — meaning everything from the services of a bank, realtor, insurance company, department store, grocer, or lawyer. In government measurements of job categories, the service sector includes people who work in motels, amusement and recreation activities, private health-care facilities (from nursing homes to hospitals), private schools and colleges, churches and other membership organizations, repair shops, motion pictures, child care centers, or private museums — just to name *some* of the places. The service sector also includes doctors, lawyers, engineers, and accountants, so long as they are in the private sector. What is driving the rapid growth of this hodgepodge of activities? The answer is demographics. The two most dramatic demographic trends of the era are the odyssey through life of the baby boomers (and their babies) and the graying of America.

The baby boomers (now aged 25 to 40, roughly) and the elders (65 and over) have caused the service sector to grow faster than any other in recent years. These two groups have spawned whole new industries, from child care centers to nursing homes. As technology has helped to cure more diseases and prolong life, so has it dramatically boosted employment in health care — home health aides, nurses, and gerontologists. In 25 years, the number of service-sector jobs in North Carolina has more than tripled, from 127,100 in 1960 to 398,200 in 1984.

The "Little Three" (see Table 1). What does a banker in pinstripes have in common with a construction worker in jeans? Or how about a realtor (with a cellular phone in her car) and a telephone worker installing fiber-optics technology? All four of these jobs depend upon a growing economy, and they are interrelated. Moreover, they depend upon a strong manufacturing base, showing the interrelationships among the sectors. Banks, for example, now offer individual retirement accounts, ready asset accounts, and certificates of deposit as a regular part of a business that only a few years ago rarely went beyond

"The main impact of the computer has been the provision of unlimited jobs for clerks."

— The Sayings of Chairman Peter Drucker, No. 15



Jack Betts

checking and savings accounts. Meanwhile, the insurance industry has moved from whole and term life to universal life, long-term investment schemes, mortgage life, and other new products.

These new offerings by the finance and insurance industry demand sophisticated staff, more computers, the construction of more office space, more business trips, better communication systems, and overnight mail and package service. Because North Carolina's cities are among the fastest growing areas in the country, the 1985 announcements by American Airlines, American Express, Purolator, and Royal Insurance Company were hardly surprising. Together, the "little three" have almost as many jobs as the service sector, 365,000 compared to 398,000.

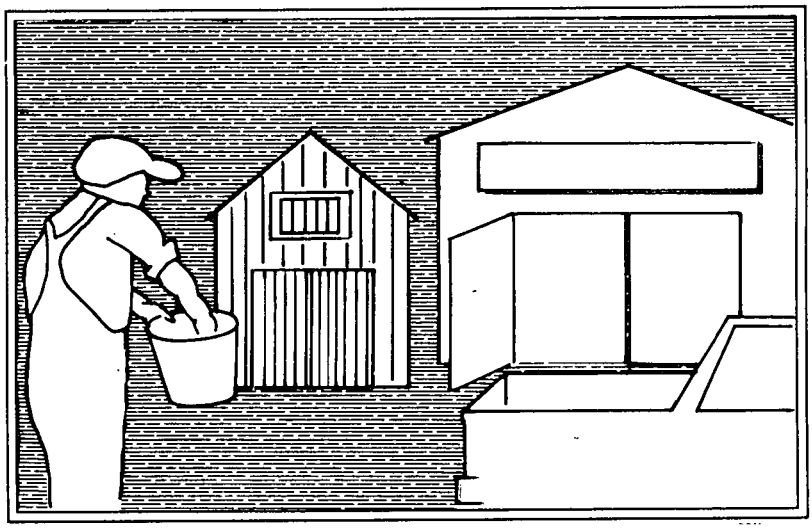
The American Express facility in Greensboro illustrates how these three sectors have fueled the transition economy in North Carolina. The company decided to build its fifth American operations center in North Carolina because of the state's good quality of life, the available work force, and competitive wages, says Ken Croft, public affairs manager for the American Express Payment Systems Division. But this familiar refrain of what North Carolina has to offer wasn't enough.

In early 1985, Southern Bell phased in a new $4.3 million electronic switching system serving customers in the Greensboro airport area. "What helped put this site ahead (of competing locations) was the telephone switching systems already in place," adds Croft. "We're a major telephone service center, monitoring credit ratings for merchants all over the region. The telephone system made the specific difference."

The state's strong banking industry also serves as a lure for new finance-related companies. Charlotte, long a banking center, now has 11 banks headquartered there with combined assets (including holding companies) totaling more than $35 billion. This is more than any other city between Dallas and Philadelphia, reports *Business: North Carolina*.[7] NCNB Corporation and First Union, both based in Charlotte, have been among the most aggressive banks in the recent spate of mergers both within North Carolina and across state lines.

Transition Three

The Family Farm Withers



In 1984, Duplin County led the state in total farm income with $259 million. Number one in the state in hog and turkey sales, Duplin County farmers have also diversified into corn and soybeans, to go with a large tobacco business. By 1984, corn and soybeans each represented 6.2 percent of total farm commodities sold in the state; together, they brought in half as much as tobacco (24 percent). (See Table 4 for a ranking of farm products.) Through diversification, Duplin County farmers can survive the increasing problems with the tobacco price support system better than some. But diversification is not enough, as farmers face various pressures, particularly the debt crisis that has swept from the nation's midwestern farm belt into states like North Carolina.

"The farmers have really suffered," says Woodrow Brinson, director of economic development for Duplin County. "The dry weather has hurt. And land values have dropped over the last two years. Their land is also their collateral."

In the 1950s and 1960s, technology came to farms, much as it did the textile industry 20 years later. Machinery of all sorts, from planters to large tractors, filtered from the Midwest into the South. Fertilizers, disease control techniques, and other modern farming methods were adopted. The technology resulted in larger farm units, which in turn stimulated still more machinery purchases — and still larger farms. The 1973 worldwide grain failure did not hit the United States, resulting in a large export market for American farmers. Modern farming meant greater yields. With a ready-made export market, farmers borrowed heavily, investing in machinery and land.

By the end of the decade, however, the overseas market had not only recovered but had become a major competitor. Tobacco imports increased sharply, as cigarette manufacturers began purchasing much larger portions of foreign tobacco, which was far cheaper and nearing the quality of American leaf.[8] Meanwhile, the big jump in oil prices in the early 1980s sent fertilizer and equipment prices skyrocketing. Farmers tried to meet the rising costs and flood of imports with increased yields. But the larger yields, ironically, drove prices down, often resulting in a lower income for the farmer.

The North Carolina farmers who can survive these pressures will have larger farms, employ more people,

"Scarecrow on a wooden cross,
blackbird in the barn,

400 empty acres, that used to be my farm."

— "Rain on the Scarecrow"
by John Cougar Mellencamp & George M. Green

Table 4. Top Ten Agricultural Commodities by Percentage of Cash Receipts, 1984 (with historical comparisons)

	Commodity	1984	1970	1960	1950
1.	Poultry & eggs	26.8%	21.9%	15.0%	7.6%
2.	Tobacco (flue-cured & burley)	24.1	38.3	49.1	59.5
3.	Hogs	8.7	8.0	4.9	4.3
4.	Corn	6.2	4.3	4.3	2.4
5.	Soybeans	6.2	4.0	2.2	1.1
6.	Farm forest products (Pulpwood, timber and Christmas trees)	5.9	2.1	1.9	2.2
7.	Dairy products	5.4	6.3	6.2	5.4
8.	Greenhouse nursery	3.3	1.5	1.0	.8
9.	Peanuts	2.8	3.0	3.1	3.3
10.	Cattle & calves	2.1	3.7	3.2	2.2

Source: N.C. Agricultural Statistics, N.C. Crop and Livestock Reporting Service, N.C. Department of Agriculture, published annually.

Table prepared by Robert Gregory, a former intern at the N.C. Center for Public Policy Research.

and rely on different crops than their fathers did. These trends were already in place before the current pressures of reduced farm income. From 1959 to 1982, the average North Carolina farm grew from 83 to 142 acres while the number of farms shrunk from 191,000 to 73,000, according to the U.S. Census. The amount of farmland decreased by 35 percent, from 15.9 to 10.3 million acres. But perhaps the most revealing farm statistic is employment status. In 1960, 75 percent of farm jobs were family members; only 25 percent were hired, according to the N.C. Department of Agriculture. But by 1984, only 42 percent were family members and 58 percent were hired workers.[9]

Fifteen counties have the most at stake in this transition, according to a U.S. Department of Agriculture study released in September 1985. In the nationwide study, the USDA classified a county as "farming-dependent" if farming contributed at least 20 percent of the county's income.[10] Duplin County, one of the 15 such counties in North Carolina, got 36 percent of its income from farming and 25 percent from manufacturing in 1979, the year used by the USDA study. Three counties (Greene, Gates, and Jones) had a greater portion of income from farming than Duplin (see Table 5). All but two of the 15 counties (Caswell and Alleghany) are in the eastern belt.

In the short run, the fate of the federal tobacco program will affect many farmers. Throughout 1985, U.S. Sen. Jesse Helms and U.S. Rep. Charlie Rose worked on a compromise in Washington to reduce the $2.5 billion worth of unsold tobacco kept in storage and to keep the price support high enough for farmers to turn a profit. Just before the Christmas 1985 recess, Congress reached a complex solution that would alter the federal farm program in the most fundamental way since the 1930s. Congress finally passed the bill in March 1986.

About 64,500 people are employed in the agricultural job sector, roughly 2.5 percent of all jobs in North Carolina. But tens of thousands of others use farm income to supplement their wages. In addition, the multiplier effect in farmbelt towns — from seed-supply stores to banks to the tobacco warehouses — is enormous. This vibrant farm economy has gradually

diversified to make North Carolina a major supplier of many farm products nationwide. In 1983, the state ranked number one in the country in sweet potatoes, turkeys, and *farm* forest products (pulpwood, timber, and Christmas trees), as well as flue-cured and total tobacco. Other high national rankings were in production of peanuts (4th), broilers (4th), eggs (6th), apples (7th), and hogs (7th).

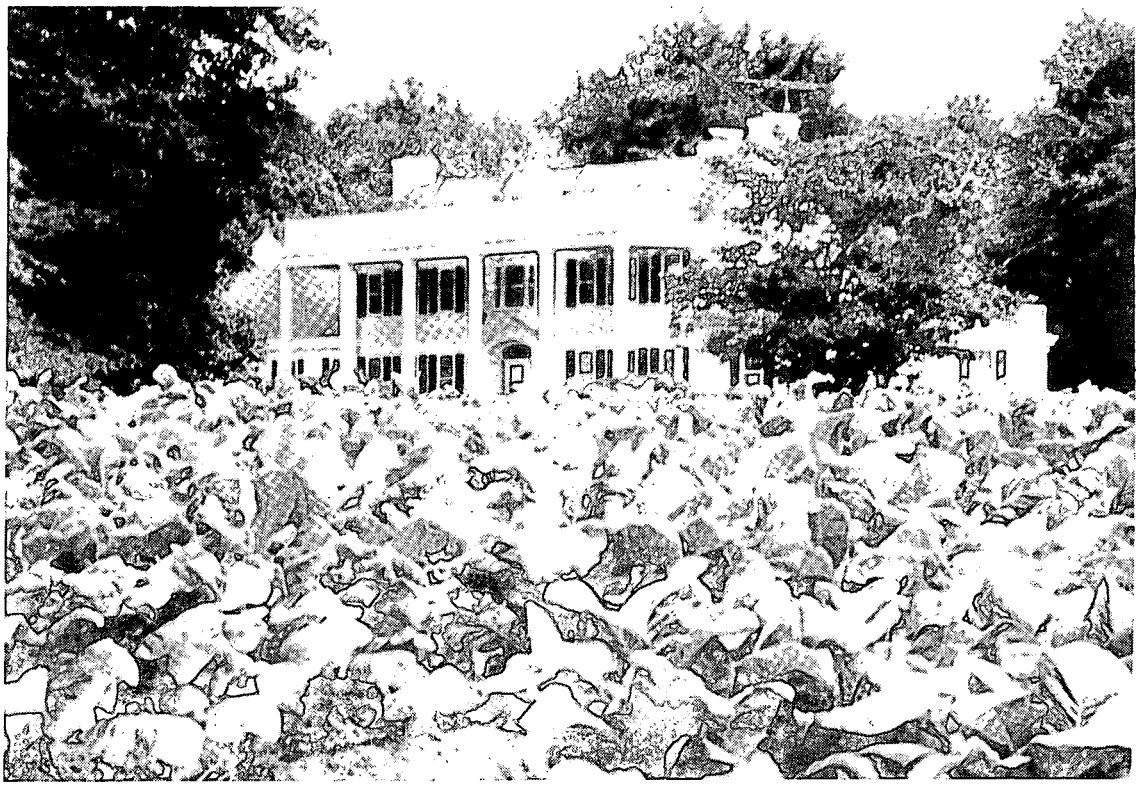
North Carolina farmers will undoubtedly continue to wean themselves from tobacco. Some farmers will manage the transition to other crops, and others will survive with tobacco. But increasingly, those farmers will push their children toward other careers and seek other employment themselves.

In 1985, the biggest news in Duplin County — after the dry growing season and the debt crisis — was the announcement of a new turkey processing plant. Carolina Turkeys, a partnership formed by Carroll's Foods in Warsaw and Goldsboro Milling Company, employed 600 people in 1987 and will employ up to 1,000, says Woodrow Brinson. Duplin had a 6.5 percent unemployment rate in October 1985, and the new poultry processing jobs brought that down a point or two. While the jobs offer a steadier wage than farmers have known in recent years, the pickings aren't so great. The average weekly wage in poultry dressing jobs was $226 a week in 1985, lower than any other manufacturing sector except apparel.

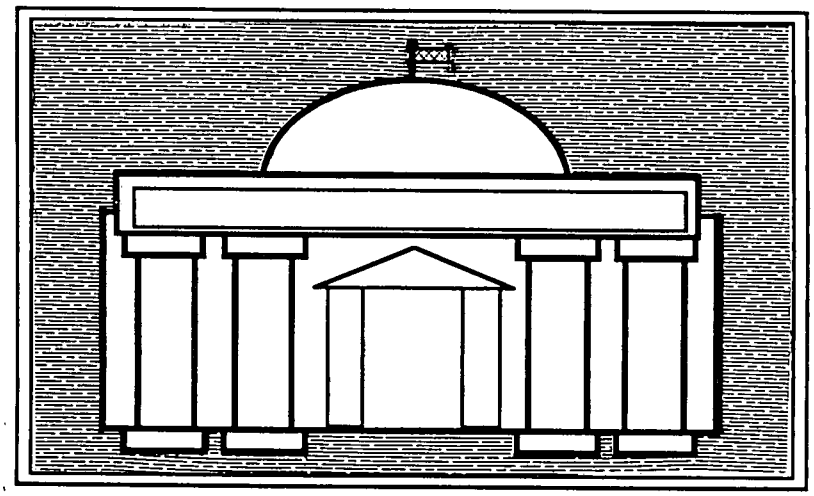
Table 5. North Carolina Counties Most Dependent on Agriculture

County (in descending order of dependence)	Percentage of Income from farming from 1975-79	Percent Change in County's Population, 1970-1984
1. Greene	54 %	+ 10 %
2. Gates	43	+ 9
3. Jones	40	+ 0
4. Duplin	36	+ 10
5. Northampton	33	- 5
6. Caswell	32	+ 16
7. Bertie	32	+ 4
8. Sampson	26	+ 12
9. Perquimans	26	+ 18
10. Camden	26	+ 7
11. Warren	24	+ 3
12. Franklin	23	+ 19
13. Pender	23	+ 32
14. Tyrrell	22	+ 8
15. Alleghany	21	+ 21

Source: Bernal Green, U.S. Department of Agriculture, data prepared for *North Carolina Insight.*



Responding to the Transitions: What Kind of Leadership?



In November 1946, N.C. Gov. Robert Gregg Cherry told a group of utility executives that the state should look "toward the establishment of more small industries, community industries, which will use local capital, local labor, and local raw materials." Concerned about the post-war recession gripping the economy, Cherry said that this strategy would result in "a great number of new businesses, born of our own money and brains and pretty closely related to our agricultural life in this state."[11]

Few state officials paid heed to Cherry's vision. Gov. Luther Hodges (1954-61), known as "the businessman's governor" because of his leadership in establishing the Research Triangle Park and the N.C. Business Development Corporation, stamped the "industrial recruitment" label on the state's economic development strategy. State officials had worked at luring industries to North Carolina prior to Hodges' tenure, but Hodges made industrial recruitment the permanent rallying cry for the state's economic development efforts.

Terry Sanford, Hodges' successor, emphasized education and training for new workers. By expanding the job training centers scattered across the state (begun by Hodges) into a statewide system of technical colleges, Sanford's administration laid the groundwork for a decentralized job training network for new industries. The 58-member community college system today represents one of the state's best inducements for recruiting industries from out of state.

In recent years, the industrial recruitment strategy has turned into a kind of mad dash — across the Frostbelt, over to the thriving Japanese and German heartlands, and into the new high-tech market. In 1973, Gov. James Holshouser (1973-77) opened a state recruitment office in Europe. Then Gov. James B. Hunt Jr. (1977-85) kept the state in this fast lane, opening a recruitment office in Japan in 1977 and spearheading the creation of the new Microelectronics Center in 1981.

In 1983, 37 years after Gov. Cherry's speech to the utility executives, the state broadened its economic development strategy beyond industrial recruitment to include concrete support for small businesses. The General Assembly passed a small business development bill, which established a modest pool of state funds to stimulate "the development of existing and and small businesses."[12]

In 1984, then-state Rep. Parks Helms (D-Mecklenburg) introduced a bill in the legislature to create a Joint Select Committee on North Carolina in Transition.[13] Coming on the heels of a forecast of tobacco difficulties, the bill addressed the fundamental changes taking place in tobacco and throughout the state's economy. But admitting that tobacco was in trouble was still an unacceptable position to most North Carolina legislators, and the bill never got out of committee.

Then in 1985, the General Assembly, at the urging of Lt. Gov. Robert Jordan, created the North Carolina Commission on Jobs and Economic Growth.[14] The legislature appropriated $250,000 to the Office of Lieutenant Governor. Through this group, Lt. Gov. Jordan vowed "to seek concrete answers to some of the challenges we face in keeping and creating jobs and assuring a thriving economy for generations to come."

Where does the Martin administration stand in this evolution of leadership regarding economic development? In his first year, Gov. James G. Martin announced that he would pursue what his supporters call a "balanced approach" — help traditional industries (he appointed a special assistant secretary for this task), recruit new industry and foreign investment, keep pursuing the high-tech trade, nurture local businesses, and support the farmers. "Except for the emphasis on traditional industry, this agenda has been policy for some time," says Ivie Clayton, former president of North Carolina Citizens for Business and In-

dustry, one of Martin's strongest supporters. "Although the emphasis on traditional industry is new, it is a logical expansion of duties."

The Martin administration's clearest commitment related to economic development has been to help the business community in general by seeking the repeal of the inventory and intangible taxes and turning over some governmental functions to the private sector. In a Jan. 25, 1986 televised "Report to the People," however, Martin did begin to address the issue of priorities. "Last year, we only began to explore innovative recruiting concepts for new industries," he said. "To stay ahead, we are developing a new blueprint for economic development, which I will announce in the spring. It will show a special emphasis on rural development to expand job opportunities in those cities that can serve as regional growth centers in our rural east and west. It will also shape new strategies for sustaining a healthy and continuing job market in the populous Piedmont."

Gov. Martin and other state and local government policymakers — including the community colleges and the Labor Department's training programs, both run by Democrats — have the task of meshing the possible economic development strategies with the current transitions within the state's economy. A dual economy is in the making, where the urban areas thrive around the service and trade sectors and the rural areas either rely on a vulnerable manufacturing base or serve primarily as home for commuters traveling to city-based jobs. Not only are jobs in the textiles sector and on the tobacco farm vulnerable, but other mainstays in North Carolina's commercial world have also come on hard times — such as McLean Trucking (gone out of business) and FCX Inc. farmers' cooperative (filed for bankruptcy, with assets sold to Goldkist Inc. and Southern States Cooperative Inc.).

What strategies can best address the three great transitions — 1) from labor- to capital-intensive manufacturing, 2) from relying on the manufacturing sector for jobs to a dependence on the trade and service sectors for new jobs, and 3) from a tobacco-dependent farm sector to a diversified agricultural sector? Government leaders need to anticipate how these transitions will take specific shape in the future. Will the transitions lead to a dual economy with both prosperity and suffering or to a more balanced economy?

Overall, North Carolina is not a poor state. But while the cities are thriving, terrible pockets of poverty exist. In 1986, the state's average industrial hourly wage of $7.32 ranked 49th in the nation, but per capita personal income of $10,850 ranked 36th. In the

"I remember the smell of the creosote plant,

When we'd have to Easter with my crazy old uncle and aunt.

They lived in a big house, antebellum style,

And the winds would blow across the old silo,

When I was just a tranquil little child,

Life is just a tire swing."

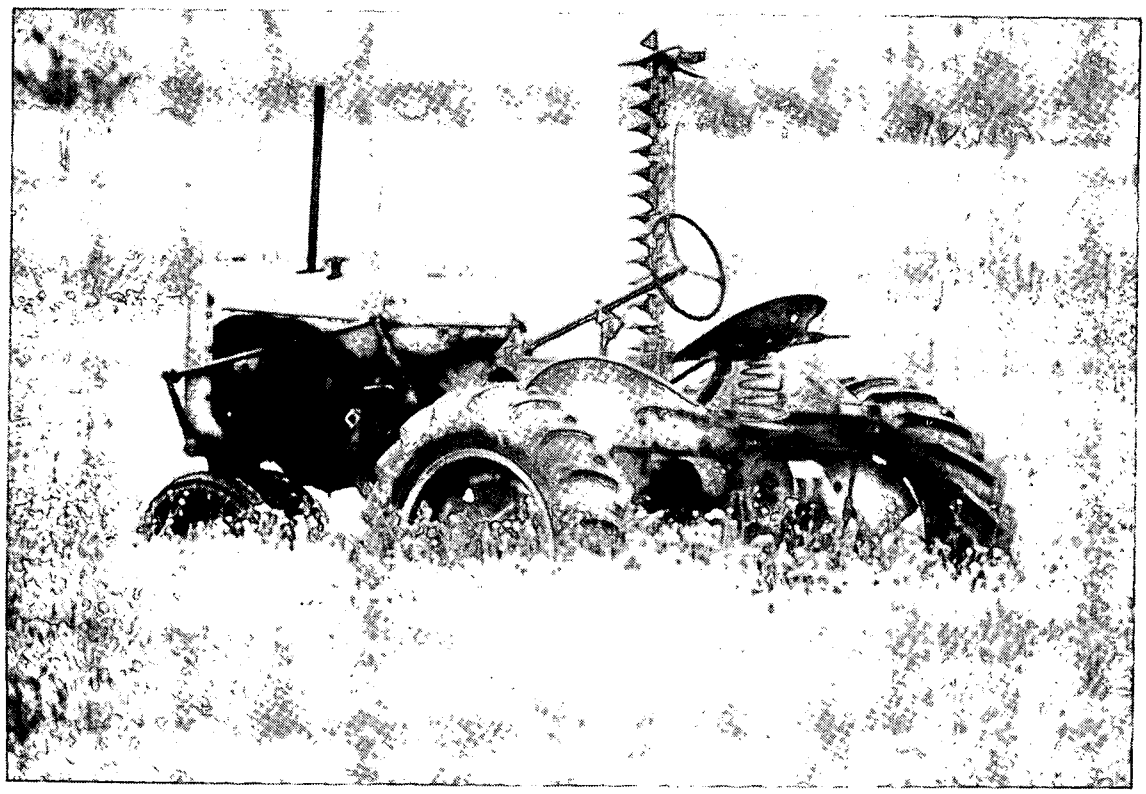
— "Life is Just a Tire Swing" by Jimmy Buffet

South, Virginia (12th), Florida (19th), and Georgia (34th) ranked higher, but North Carolina was ahead of Maine, Vermont, Montana, New Mexico, Idaho, Utah, and eight other southern states. And, as state boosters are quick to point out, the cost of living is lower in North Carolina than in many states, and the quality of life is higher.

Anticipating the impact of economic transitions is not an easy task. Several studies of the future indicate that an economy with increased jobs in the service and information-based sectors will not necessarily lead to greater prosperity. A 1984 Bureau of Labor Statistics forecast for 1995, for example, found that the job categories with the most new openings would be janitors, cashiers, and secretaries — hardly the glamorous jobs that a new "high-tech" era suggests. Another forecast suggests that the growing middle class in place like Alamance County may have trouble ahead. "If it's not the clerks and secretaries who will disappear from the office setting, who will be eliminated?" asks David Pearce Snyder in an article called "The Future" in the September 1984 issue of *Association Management* magazine. "The answer is middle managers — 5 million (nationwide) in this decade."

In recent years, North Carolina has been extremely susceptible to national recessions because of the concentration of the textile, apparel, and furniture industries. The influx of more diversified industry has broadened the state's industrial base, which in turn has provided fertile ground for service and trade companies. "In the last decade, the state's economy has grown about 15 percent faster than the U.S. economy," explains David Crotts, economic analyst for the legislature's Fiscal Research Division.[15] But Crotts sees this pattern ending. "During the foreseeable future, our economy will be hard-pressed to keep up with the overall national experience."

A complex period of economic transition challenges the state's leadership. Will government officials take steps that address the needs of both the boomtowns and the depressed towns? Will these leaders direct the mixed economy away from a dual economy of prosperity and suffering to a mixed economy that is spread more evenly across the state? Innovative economic development strategies will be needed to avoid a dual economy. But even if government leaders cannot affect all aspects of the transition, they can articulate their economic development priorities — and pursue those priorities with all the persuasion they can muster. The key question is this: What role will state government assume in managing the transitions toward a mixed economy?



FOOTNOTES

[1]Hugh Talmage Lefler and Albert Ray Newsome, *The History of a Southern State*, The University of North Carolina Press, 1954, p. 83.

[2]For historic employment data, which show year-long averages (such as the 1973 number used here), see *North Carolina Labor Force Estimates by County, Area, and State*, Labor Market Information Division, N.C. Employment Security Commission. For the latest employment data available, see "State Labor Summary" from the same source.

[3]Data provided by the Employment Security Commission from back issues of *North Carolina Labor Force Estimates by County, Area, and State*.

[4]"1977 Annual Report," Burlington Industries, 1977, p. 18. Burlington Industries annual reports for 1976 through 1984 show these amounts of capital expenditures (in millions): $160 in 1976, $206 in 1977, $216 in 1978, $227 in 1979, $214 in 1980, $217 in 1981, $222 in 1982, $147 in 1983, and $215 in 1984.

[5]The 50 percent calculation is based on data from the U.S. Department of Commerce, the U.S. Department of Agriculture, and the Textile Economic Bureau of the Man-Made Fibers Producers Association. The 60 to 70 percent figure comes from an industry survey, as reported by Jim Leonard in a presentation for various government and trade groups (see page 2 of packet that accompanies the presentation). In addition, Leonard's Economic Analysis Department within Burlington Industries has prepared a book of background materials on the import issue, called *Textile Apparel: Papers and Information.*

[6]"Displaced Workers, 1979-83," U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2240 and accompanying press release, July 1985, Table 2, p. 3.

[7]Ellen Grissett, "Is Raleigh's Business Shadow Creeping Up on Charlotte?" *Business: North Carolina*, December 1985, p.23. Also, see *Business: North Carolina*'s May 1985 issue, which focused on the state's transition economy.

[8]See *The Tobacco Industry in Transition: Policies for the 1980s*, edited by William R. Finger, N.C. Center for Public Policy Research (Lexington Books, 1981), especially part III, "World Leaf Sales Expand — But U.S. Share Shrinks."

[9]The figures on farm size, number of farms and total farmland acreage come from the Bureau of the Census, U.S. Department of Commerce. The data on farm jobs (family members and hired workers) comes from the N.C. Crop and Livestock Reporting Service, *N.C. Agricultural Statistics Annual.*

[10]Bernal L. Green, *et al.*, "The Diverse Social and Economic Structure of Nonmetropolitan America," U.S. Department of Agriculture, Economic Research Service, Rural Development Research Report Number 49, p. 2. In addition to the published report, Green made separate computer runs on North Carolina counties for the April 1986 issue of *North Carolina Insight.*

[11]Gov. Robert Gregg Cherry, "North Carolina Has a Way of Life," *Public Addresses and Papers of Robert Gregg Cherry*, p. 552.

[12]NCGS 143B-471, Chapter 899 (HB 1122) of the 1983 Session Laws.

[13]HB 1760, postponed indefinitely in the Appropriations Committee, July 7, 1984.

[14]Chapter 757 of the 1985 Session Laws (SB 182), section 52.

[15]David Crotts, "State and Local Fiscal Outlook: Implications for Funding Capital Construction Needs," Dec. 17, 1985, p. 8.

Excerpts from

Megatrends

by John Naisbitt

The paragraphs below are from Megatrends — Ten New Directions Transforming Our Lives, *copyright © 1982 by John Naisbitt (Warner Books Inc.) and used with permission of Naisbitt and Warner Books. John Naisbitt, the well-known social forecaster, speaker, and author, puts the transitions discussed in the preceding article in a national context.*

Today's information technology — from computers to cable television — did not bring about the new information society. It was already well under way by the late 1950s. Today's sophisticated technology only hastens our plunge into the information society that is already here. . . .

It makes no sense, for instance, to reindustrialize an economy that is based not on industry, but on the production and distribution of information. Without an appreciation of the larger shifts that are restructuring our society, we act on assumptions that are out date. Out of touch with the present, we are doomed to fail in the unfolding future.

* * *

The real increase has been in information occupations. In 1950, only about 17 percent of us worked in information jobs. Now more than 60 percent of us work with information as programmers, teachers, clerks, secretaries, accountants, stock brokers, managers, insurance people, bureaucrats, lawyers, bankers, and technicians. And many more workers hold information jobs within manufacturing companies. Most Americans spend their time creating, processing, or distributing information. For example, workers in banking, the stock market, and insurance all hold information jobs.

* * *

The entrepreneurs who are creating new businesses are also creating jobs for the rest of us. During a seven-year period ending in 1976, we added 9 million new workers to the labor force — a lot of people! How many of those were jobs in the *Fortune* 1,000 largest industrial concerns? Zero. But 6 million were jobs in small businesses, most of which had been in existence for four years or less.

* * *

The restructuring of America from an industrial to an information society will easily be as profound as the shift from an agricultural society to an industrial society. But there is one important difference. While the shift from an agricultural to an industrial society took 100 years, the present restructuring from an industrial to an information society took only two decades. Change is occurring so rapidly that there is no time to react: instead we must anticipate the future.

* * *

Not surprisingly, China will emerge as the textile leader. By the year 2000, it will probably be employing 4 million textile workers, whereas textile employment in South Korea and Taiwan will remain about steady, and in Hong Kong will decrease by 25 percent. In fact, textile employment decreased in Hong Kong for the first time ever in 1979.

* * *

We have two economies in the United States today: a sunrise economy and a sunset economy.

* * *

Generally speaking, the government should stay out of the way of the sunrise industries (electronics, computer software, cable television, biotechnology) and allow the mature industries to level off.

The one exception is training: not that the government should do the training itself, but it could pay workers who have lost jobs in the old industries to obtain training in the new.

* * *

Biology will be to the twenty-first century what physics and chemistry were to this century. In this field, there are three main areas of interest: (1) fermentation technology, from which the Japanese have produced new drugs and chemicals; (2) the production of enzymes or "living catalysts," which act the same way as chemical catalysts, that is, they drive chemical reactions further than they would otherwise go without themselves changing; and (3) the aspect we have heard most about — gene splitting.

Future Policy Directions

Economic Development Strategies

The 1980s have cast American economic development policies adrift. Codewords have seduced policymakers as often as they have sharpened state strategies. Smokestack chasing for the Sunbelt gave way to retooling and microchips. Now venture capital and incubators are the latest buzzwords, along with import quotas and displaced workers. Within N.C. state government, several economic development strategies have evolved. Two of them are industrial recruitment and small business incentives. How have state policies utilized these strategies, and what course is charted for their future?

Industrial Recruitment: Persuading a company to come to North Carolina is a sophisticated business which is now in transition itself: from recruiting manufacturing firms to seeking service-sector companies; from recruiting new plants to encouraging existing companies to expand; and from a Raleigh-based effort to a more decentralized, local orientation.

Small Business: Guess what accounts for 97 percent of the state's businesses? And for more than half the new jobs? Small businesses of 100 or fewer workers. The state has taken some steps to promote small businesses, but much more could be done to promote this area of job growth, such as state-backed venture capital funding and more assistance to persons setting up new businesses.

Selling Industry on North Carolina — A Strategy in Transition

by Ken Friedlein

FRAMED COLOR PHOTOGRAPHS and drawings of long, low buildings turn the white-walled offices at the N.C. Department of Commerce's industrial recruitment center into a sort of trophy room. Artists' renderings record the success stories. Captions at the bottom of each frame honor the state employee who helped sell the company on North Carolina. There's even a trophy for the boss, recalling his earlier days in the field:

Campbell Soup Co. Alvah Ward Jr.
Maxton, N.C. June 12, 1978

"Campbell Soup could have gone, and almost did, to McBee, South Carolina," remembers Ward, now director of the state agency charged with bringing new industry to the state. "They could have gone to almost anywhere in the Southeast." Of all those places where the soil was right — porous enough to accept a soup maker's considerable effluent but dense enough to hold settling solids back from the water table — Campbell Soup chose Maxton, in west Robeson County. Cost, labor force, geography, and other factors being nearly equal in the three southern states, the site decision rested on less objective measures — such as the skill that Alvah Ward took to his job as a salesman.

With 24 "development representatives" and a $2 million annual budget, Ward runs one of the high-profile sides of North Carolina's economic development efforts. Functioning more like a commercial sales force than actual "recruiters" (as coaches recruit sports stars), Ward's staff collects site information, coordinates projects with local officials, and tries to supply as much information as possible to a potential new company. Rarely do these "recruiters" make blind calls — say to California trying to pick up rumors of an aerospace company that might consider coming to North Carolina. The high-profile industry "recruitment" trips by governors to Japan, West Germany, and New York are more of a sowing of North Carolina's good name than recruiting of specific companies. But this show of public relations can pay important benefits, sometimes years later.

Often, industry representatives asking for information use only first names, and no company names. Or they work through relocation consultants — the middlemen in economic development — who guard

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their clients' names like patented trade secrets. Few businesses open their doors wide to solicitors. The secrecy and the economic realities make salesmanship all the more challenging.

"There are very few plants that can go *anywhere*," Ward says. At the same time, very few plants can go in only one place, or in only one state. The extras from a salesman can push the decision in North Carolina's favor. People in the business tell of the rush that comes with landing a big one, several hundred jobs, another trophy for the office wall. "Campbell Soup — that was my project," recalls Ward.

From Traditional Leader to Competitive Crunch

Southern states, including North Carolina, have been finding ways to lure businesses since the 19th century land and financial subsidies offered to the railroads. By the Depression years, local communities had turned their attention to luring industry. Enticements ranged from near larceny (one Tennessee garment plant was built by withholding 6 percent of the workers' wages) to constitutional sleights-of-hand (factories built with tax funds were called "municipal buildings for public purposes"). One Mississippi hosiery company got an educational tax exemption and a rent-free building on a high school campus, where it "trained" its labor force in 40-hour shifts.[1]

In 1936, Mississippi inaugurated the modern-day industry hunt in the South with its Balance Agriculture With Industry (BAWI) plan. "By introducing a system wherein the state sanctioned and supervised the use of municipal bonds to finance plant construction, the BAWI program lifted the curtain on an era of more competitive subsidization and broader state and local government involvement in industrial development efforts," wrote Mississippi historian James C. Cobb.[2] Across the South, states and local communities, aglow with the fever, offered tax lures. Whether by underassessment or outright exemption, the willingness to forgo property tax revenue represented another stride in the pursuit of industry. Participating governments were, in essence, paying for jobs.

North Carolina, however, had little to do with broad scale enticements. With extensive furniture, textile, and tobacco operations in place in the early 20th century, its economy was far more diversified from agriculture than other southern states. Between 1900 and 1940, manufacturing grew faster in North Carolina than elsewhere in the South, employing more of the N.C. labor force than any other state's. But the labor force stayed close to the land. The early industries could scatter plants and grow, so industrialization didn't concentrate population. Consequently, the nation's most thoroughly factoried state remained, oddly, the most thoroughly rural.

Such patterns helped place industrial progress among North Carolina's oldest and strongest ethics. The "progressive plutocracy" V. O. Key described in the late 1940s included participation by the state's considerable business elite in a loose but effective economic oligarchy. "A sympathetic respect for the problems of corporate capital, and of large employers permeates the states' politics and government," Key wrote.[3]

Industrial recruitment began in earnest in North Carolina during the administration of Gov. Luther H. Hodges (1954-61), known as the "businessman's governor." Best remembered for putting together the public-private partnership in 1956 that launched the Research Triangle Park, Hodges made a more immediate mark as a 1950's scrapper for new factories. In October 1957, Hodges rounded up 75 citizens to hunt industry in New York, resulting in calls on some 250 prospects. Six months later, a similar expedition hit Chicago and seven months after that, Philadelphia. Then in October 1959, Hodges and company struck out on a two-week tour of western Europe. At the end of his term, Hodges touted the extent of investment in new and expanded plants ($1.1 billion) and jobs *expected* to result (140,233).[4] This numbers tradition continues today, despite important problems with using numbers based on company *announcements* as opposed to actual operations.

The early presence and steady growth of non-agricultural ventures may explain why North Carolina was alone among southern states at the end of the 1960s in not offering industrial revenue bonds to finance new plants. Tax breaks, too, were scarce. But North Carolina didn't seem to need such outright lures, relying instead on the personal touch. "In the early days, there probably weren't a half-dozen states that had a formal industrial recruitment effort," says Ward. "We had it all to ourselves."

As the competition grew, North Carolina boosters began to realize the state couldn't depend for success only upon personal contacts and its image as the "progressive" southern state. The administrations of Hodges and Terry Sanford (1961-65) laid the groundwork for the statewide community college system, which has evolved with its job training capabilities into a key element in the package of benefits North Carolina now has to offer.

During the administration of Gov. James E. Holshouser Jr. (1973-77), industrial recruitment became a high-profile business as the state began running slick ads in national magazines and newspapers. Gov.

James B. Hunt Jr. (1977-85) had a new tool available to him in his recruitment efforts. After several false starts, local governments — with state approval — were finally able to offer industrial revenue bonds in 1977. Hunt inundated the media with announcements of new industries coming to the state, all the while playing to the hilt the numbers game on *announced* new jobs begun by Hodges. Hunt also brought the state into the race for big microelectronics companies.

In addition, Hunt led the state beyond a traditional reluctance to accept unionized companies. Local officials in towns such as Smithfield discouraged high-paying, unionized companies from coming to their towns for fear the plants would disrupt the prevailing low-wage market in their area. When Philip Morris, a unionized company paying high wages, announced interest in building a plant in Cabarrus County (in the heart of the low-paying textile belt), initial reactions were unfavorable. Hunt went to a public rally in Cabarrus County and made a speech supporting high-wage industries coming to the state. Local officials then gave the plant the support it needed.

Location of Local Government Economic Development Officials, 1984

Location of Official	Number of Counties	Number of Municipalities	Total
Economic Development Council or Office	58	28	86
Chamber of Commerce	17	34	51
Mayor	0	25	25
City/Town Manager or Administrator	0	23	23
Private Sector Person	3	11	14
County Manager	11	0	11
Bank	2	3	5
County Board of Commissioners	3	0	3
Electric Company	0	2	2
Housing Authority	1	0	1
Resource Management Team	1	0	1
Electric Membership Corporation	0	1	1
Airport Commission	0	1	1
Insurance Agency	0	1	1
Totals	**96**	**129**	**225**
Total Number of Counties/ Municipalities in North Carolina	100	490	

Source: 1984 North Carolina Economic Development Contact List, N.C. Department of Commerce, Industrial Development Division.

Table prepared by Anne Sternlicht

Hunt's overall recruitment efforts evidently paid dividends. In 1984, for example, *Industrial Development* magazine reported that North Carolina led the nation in attracting new manufacturing plants. Also, the N.C. Department of Commerce reported that in 1984, $2.67 billion in industrial investments were *announced* by new and expanding industry. "This investment level represents both a new record, surpassing the previous record of $2.24 billion set in 1980, and a 25 percent increase over 1983's investment of $2.15."[5] North Carolina consistently ranked high in attractiveness to industries, and in 1984 the well-known management firm of Alexander Grant & Co. ranked North Carolina eighth in the nation in general manufacturing climate. The annual Grant rankings are based on 22 factors, grouped into government and non-government controlled factors. North Carolina ranked second in factors controlled by government.

In 1984, James G. Martin campaigned on a platform of tax relief to businesses. Martin's supporters pointed to such studies as that done by *Industrial Development* magazine, which ranked North Carolina last among the 50 states in financial assistance offered to industry by public agencies. In 1985, after many tries, the business community — with the strong support of Gov. Martin — persuaded the General Assembly to reduce the tax on business inventories (through credits on local property taxes). Businesses have never liked paying it, and industrial recruiters have never enjoyed explaining it to prospects who knew their inventories would be tax-exempt in, say, Tennessee and Virginia.

Despite the tax breaks, industrial revenue bonds, and slick advertising now used by North Carolina recruiters, the competition is more keen than ever — and the targets have gotten fewer. "Economic development is a competitive activity," says Dennis Durden, director of public policy at R.J. Reynolds Industries. "It's not how good you are. It's how much better you are than your competitor."

Alvah Ward describes the current recruitment battles this way: "It's no longer feasible to send large numbers of people on industry missions. It used to be you'd go to New York and knock on doors. Now you've got 10,000 communities knocking on the same doors."

But competition among recruiters tells only half the story. The other half lies in the changing economy itself. Adjusting to an economy rapidly shifting from the manufacturing to the service and trade sectors has prompted discussions about the value of industrial recruitment itself, in the traditional sense of the term. "Perhaps the fundamental flaw in current policy is our over-dependence on industrial recruitment for our economic salvation," writes George B. Autry, president of MDC, Inc., which specializes in research on employment policies. "Yankee plants are like the buffalo herds that roamed the West in the 1870s. There are not enough left, and the southern states may go bankrupt competing with each other for the last hide."

The New Face of Industrial Recruitment

The industrial recruitment business has gradually but fundamentally changed since the time Alvah Ward courted Campbell Soup. Certainly, the Martin and Hunt administrations have their differences in emphasis. Martin, for example, has broadened recruitment efforts to include small businesses, traditional industries, and retaining existing industries, while Hunt focused in his later years on microelectronics. An analysis of industrial recruitment as an economic strategy, however, goes beyond the preferences of governors. Three important shifts are taking place that reflect the larger economy:

- from recruiting manufacturing firms to seeking service-sector companies;
- from recruiting new companies to encouraging expansion of existing facilities and to keeping existing companies from leaving North Carolina; and
- from a predominantly Raleigh-based effort to a more decentralized, local orientation.

Recruiting the Service Sector. In 1985, American Express opened a center near Greensboro to process credit card transactions and customer inquiries. The Greensboro center is bigger than any of the manufacturing investments announced in 1984, the year N.C. industry hunters received a secretive call from the New York relocation consultant hired by American Express. In Charlotte, local recruiters got a similar call on behalf of an "industrial prospect," which turned out to be AT&T, about an 800-employee data services center in the University Research Park.[6]

Until 1985, North Carolina didn't even publicize nonmanufacturing investment totals. The Department of Commerce, in its "Six-Month Economic Activity Report: January-June 1985," noted the addition of nonmanufacturing investment figures to better reflect "the full panorama of economic activity." In the same report, then Secretary of Commerce Howard Haworth noted that the new administration's pursuit of the service sector will be in concert with "the state's continued commitment to attract high-tech industries."

To pursue the service sector at all, even in a broader-based effort that includes high-tech indus-

tries, the state will need more than community colleges and industrial revenue bonds. Deciding factors in American Express picking Greensboro were the telephone system in place and a good airport facility. Before AT&T finally decided on Charlotte, University Research Park President Seddon "Rusty" Goode had to get a commitment from Billy Rose, then deputy secretary of the N.C. Department of Transportation, that the state would complete the construction of a ramp onto I-85.

Expanding What's Here — and Keeping It Here. A pronounced shift of investment from new plants to expansions of existing industries began during Hunt's second term. In three of Hunt's first four years as governor, investment by *new* industry exceeded expansion of *existing* industry. But in his second term, only one-third of announced investments were new industries; the other two-thirds were expansions. The trend continued into the Martin administration. During the first six months of 1985, new industry announcements accounted for only 17 percent of the investment total.[7]

In a 1986 industry recruitment trip to New York, Gov. Martin saw only companies that already have a facility in North Carolina. He did not call on a single industry about moving to the state. Martin describes himself as "working behind the scenes to recruit new industry." This may be an effective strategy if all the buffalo that North Carolina can bag are already here.

Recruitment at the Local Level. The state formally began to encourage local recruitment efforts through the Governor's Awards program for small towns during the Robert W. Scott administration (1969-73). Governor Hunt picked up the idea, making a volunteer or paid economic development effort a criterion in his Community of Excellence program. In 1986, according to Alvah Ward's count, North Carolina communities with industrial recruitment programs numbered around 340. A Department of Commerce computer printout lists many of these programs, according to where the local official is based in each county and municipality. For example, in 17 counties, the chamber of commerce is the official economic development office, while 58 counties have separate economic development councils or offices (see table for complete figures).

Urban areas have long maintained major economic development efforts, and now most rural areas have begun to organize local recruitment strategies. Tiny Clay County in the mountains, where two-thirds of the workers are employed across the county line, prepared a 50-acre industrial park. The Kannapolis and Concord chambers of commerce jointly hired a professional recruiter for the new Greater Cabarrus Economic Development Corporation. The county in North Carolina most dependent upon agriculture, Greene County, created a "Committee of 100" to seek new industry. And the Chatham County Industrial Commission in 1985 produced a dozen copies of a 12-minute promotional videotape (with the financial assistance of Carolina Power and Light).

Thomas G. Long Jr., director of economic development for Chatham County, showed the slick videotape to a packed meeting at the Triangle J Council of Governments last October. "We have already sent off a copy of the videotape to a new industry," Long said after the showing. The videotape, called "Chatham: A Carolina Masterpiece," combines state-of-the-art graphics and filmwork with a script that echoes such familiar recruitment phrases as North Carolina's "hard-working and conservative people."

What Future for Recruitment?

The increased sophistication of counties and small towns in recruiting jobs to their areas has created a new level of competition *within* the state. Desperate communities compete to find jobs for displaced textile workers. Rural areas try to out-hustle their neighbors, piecing together a better deal with industrial revenue bonds, Urban Development Action Grant funds, and free extension of water and sewer lines for a facility that might employ farmers who otherwise face bankruptcy or dislocation.

One inherent weakness in industrial recruitment as an economic development strategy is the ultimate outcome of simply moving jobs around — from the northeast United States to North Carolina to Hong Kong, or from the Silicon Valley to North Carolina to Japan. An emphasis on keeping the jobs that we do have seems to make sense in a rapidly changing economy.

Economic development analysts more and more are realizing that recruitment tends to *follow* the overall economy. At any given time, certain industries are in a period of expansion, regardless of who happens to be governor and what his industrial recruitment priorities are.

"The companies make the location decisions, not the communities," says Ward. "We do not have the capacity to direct industry where we want it to go. Companies locate for reasons that are in their best interests — not because it is in the interest of the governor and not because of pressure tactics from the state development staff."

Because the low-paying textile, apparel, and furniture jobs have long dominated the manufacturing sector, North Carolina has ranked near the bottom

among the 50 states in average industrial wages. Consequently, industry hunters, especially during the Hunt years, made the recruitment of higher-paying industries a goal. But if companies follow primarily their own self-interest, what can the state do?

"An important part of our job is to point out to companies the advantages of locating in North Carolina," explains Ward. In addition, says Ward, even within economic constraints, specific industries that are experiencing periods of growth can be influenced.

In a 1982 study, Joseph T. Hughes Jr. developed a "desirable" industry index, based on three factors: economic (high capital intensity and wages), environmental (low chemical use and hazardous waste generation), and worker health (low illness and injury rates).[8] Hughes found that certain industrial sectors are more desirable to recruit than others, with the printing industry coming out at the top. The next group, in order of desirability, included transportation, machinery, petroleum, tobacco, electronics, measuring instruments, and food. Without such a priority of industries, Hughes contends state recruiters tend to ignore environmental and worker health issues — or even high-wage considerations — just to get more jobs, *any* jobs.

The Department of Commerce has recently emphasized targeting its recruitment efforts. The department has contracted for a private study of its economic development priorities. Fantus Inc., a national consulting firm, is conducting the study. "We asked them to look at the possibility of targeting certain industries, particularly the services sector and defense," says former Deputy Secretary of Commerce Kevin Kennelly. "Let's monitor how the economy is changing and adjust [our recruitment] appropriately. We're asking them (Fantus) to tell us what we ought to go after."

Kennelly cautions, however, against believing that the state can go out and recruit specific companies. "First, we have to get on *their* list," he says, referring to desirable companies. "That happens because North Carolina is a very attractive state. Then we go head-to-head with our competition. At that point, by virtue of being a good salesman, you might be able to persuade a company to come to North Carolina."

FOOTNOTES

[1] James C. Cobb, *The Selling of the South: The Crusade for Industrial Development, 1936-1980*, Louisiana State University Press, 1982.

[2] *Ibid.*, p. 5.

[3] V. O. Key Jr., *Southern Politics*, Alfred A. Knopf Inc., 1949, p. 211.

[4] Luther H. Hodges, *Businessman in the Statehouse: Six Years as Governor of North Carolina*, University of North Carolina Press, 1962, p. 78.

[5] N.C. Department of Commerce, *North Carolina Economic Development Report — 1984*, p. ii.

[6] Bea Quirk, "University Research Park: Growing With Industry Giants," *Business: North Carolina*, January 1985, p. 35.

[7] Figures from Department of Commerce publications.

[8] Joseph T. Hughes Jr., "Targeting Desirable Industry," *North Carolina Insight*, Vol. 5, No.1, May 1982, pp. 27-35.

Small Business: Big Business in North Carolina

by Todd Cohen

ALVAH WARD, the state's chief industrial recruiter, leaned back in his office swivel chair and frowned as he pondered how to illustrate the job facing the state's economic developers. The circumstances are well known: North Carolina, despite all the economic progress of the post-World War II era, is still a low-wage state marked by illiteracy and poverty. Finally Ward put his finger on it.

"We would have to recruit a Miller Brewing Company *per month* for *five years* just to increase the average manufacturing wage *five cents an hour*," Ward said, referring to the big brewing plant in Rockingham County that employs hundreds of workers in high-wage jobs. Unfortunately for working North Carolinians, though, there are too few big businesses like Miller Brewing, which has a long line of job applicants, who are willing to bring their high payrolls to the state. And the fact is that *big* businesses — defined by the N.C. Department of Commerce as those with *more* than 100 employees — don't provide the bulk of new jobs in North Carolina.

Instead, most of the new jobs in this state come from *small* businesses, those companies employing *fewer* than 100 employees. They shoulder a heavy part of North Carolina's economic load — and they could use a bigger boost from state government. From 1979 through 1983, they supplied 104,382 *new* jobs in the state — almost three-fourths of the new jobs generated for the period. By comparison, large businesses (those with 100 or more workers) accounted for only 38,928 jobs (see table).[1]

And that's not all. Consider these assorted facts:

— Small businesses account for 97 percent of North Carolina business firms, or more than 110,000 companies out of a total of 114,000 firms.

— Small businesses account for 45 percent of all jobs in the private sector and, with the gains of recent years, the total number of small-business jobs is slowly catching up with the number of large-business jobs.

— And very small businesses (20 workers or fewer) account for 86 percent of the firms and about 20 percent of the jobs.

Small businesses "have been the backbone of our revenue base and economic base for many, many years," says former Commerce Secretary Howard H. Haworth.

But that backbone has an ache in it: An estimated 65 percent to 85 percent of small businesses fail in their first two years, and an estimated 9 out of 10 fail eventually.[2] George Bernstein, chief executive officer of Laventhol & Horwath, an accounting firm specializing in service establishments, says that most new businesses fail "soon after they start up," and fewer than three in 10 survive to be passed on to a new generation of owners. Those failures are the result of

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"If all the economists were laid end to end, they would not reach a conclusion."
—George Bernard Shaw

a lack of one or both of the two key ingredients to success — sufficient capital and the know-how to start or expand a small business.

What's North Carolina Doing To Keep Small Businesses Rolling?

A growing number of states assist small businesses through such means as investment of state employee pension funds. In North Carolina, however, the woes of small businesses have not been a top priority of government. Under the eight-year tenure of Democratic Gov. James B. Hunt Jr., for example, the economic focus was on luring new industry to the state, especially high-technology companies. Under Gov. James G. Martin, efforts are being made to bolster traditional industries, such as textiles, tobacco, and furniture.

"Up until very recently, we haven't acknowledged the importance of that business sector to generate jobs," says Sheron K. Morgan, a senior policy analyst in the state Division of Policy and Planning. Echoing Ward, she asked, "Do you realize how many new plants you'd have to get to relocate to North Carolina to generate that many new jobs?"

In recent years, state government has begun to cultivate the growth of small businesses in the state. That effort thus far has focused on providing technical help, such as assistance in the preparation of business plans and loan applications. The state also has begun to provide direct financial assistance, though in limited fashion.

Current state policies to help small businesses focus on providing small business operators with advice and information, although some direct funding is available. State officials are mulling over the possibility of establishing a privately managed loan program for small businesses that would be financed either by the state or by private lenders, or both. However, additional assistance also may be needed in the form of a restructuring of state tax policy to provide incentives to small business people and entrepreneurs, as well as investors and large corporations that help define the overall business environment.

Existing state programs to assist small business include:

— The Small Business Centers program in the N.C. Department of Community Colleges. The program, with a budget of $850,000 and centers at 20 of the state's 58 community colleges, provides counseling, workshops and classes for small business people and those seeking to start a small business. The program began in February 1984 and may eventually expand to all but a few campuses.

— The N.C. Small Business and Technology Development Center in the University of North Carolina System. The center, with a budget of $790,000 and six offices, also provides small business counseling. The program began late in 1984. Its basic mission, according to its own promotional brochure, is "to provide one-on-one management and technical assistance to small business persons drawing largely from schools of business and engineering."

— The Small Business Development Division in the state Department of Commerce. Previously called the Small Business Assistance Division until a departmental reorganization in 1985, this division, with an annual budget of about $500,000, also provides advice to small businesses. (Other state programs within Commerce also deal with small business, including the Minority Business Development Agency and the Governor's Small Business Council.) Among the division's aims, says former Assistant Secretary Lewis H. Myers, are increasing business starts in North Carolina, and reducing small business failures through information, referral and other assistance.

— The N.C. Technological Development Authority. With a budget of $1.35 million, the authority provides royalty grants — which must be repaid — for research and development. It also provides grants to nonprofit corporations to develop "incubator facilities" in which entrepreneurs can obtain low-rent space and support services. The authority was established in 1983.

Another facet of the state's interest in small business development is the Commission on Jobs for Economic Growth, appointed in late 1985 by former Lt. Gov. Robert B. Jordan III to study how the state

might improve the climate for creation of new jobs. Billy Ray Hall, a former key policy aide in the Department of Natural Resources and Community Development under Governor Hunt, directs the commission's work. Hall recommended creation of a Job Development Committee that would focus on small business "to see if there are ways we can improve it. Are there things we can do to engender small business development?"

Hall says the commission is not a matter of partisan politics and should not be interpreted as the Democrats' reaction to a Republican administration's programs. "That's not the feeling so much as the fact that we know that changes in our economy are going on out there," Hall explained. "The thing you have to be impressed with in North Carolina is the number of jobs that have been created by small businesses in the past few years."

While the Technological Development Authority is the only one of the four state programs that actually provides funding for small businesses, all four share a common goal. "We're trying to give them at least a chance to survive," says R. Jean Overton, associate director for small business and business occupations for the Department of Community Colleges.

Each community college Small Business Center, with a budget of $40,000 to $50,000, has one director and one clerical worker. Dr. Overton's target is to operate centers at all 58 community colleges with a total budget of about $5.8 million — or $100,000 per center. The UNC program, which began in January 1985, provides counseling similar to that offered by the community college program. It already has helped more than 600 small business people.

Like the programs at UNC and the community colleges, the Small Business Development Division in the Commerce Department would like to be a "one-stop center" to provide whatever help a small business person needs — including such routine items as applicable licenses, certification, or other regulatory permits. "But we do not have that yet," says Myers. Myers hopes to establish a computer system soon that would function as a clearinghouse capable of providing answers to any question about small business — accessible by a single telephone call.

But How About Keeping Small Businesses Profitable?

Myers also hopes the state can move beyond providing information and begin to provide the second key element needed by small businesses — cash. "I think we have a capital shortage here in the state," he says. Myers advocates state assistance to small business through investment in venture capital funds.

The state already has begun investing in small businesses through the Technological Development Authority. The authority runs two funding programs. The first provides innovation research funds of up to $50,000 for developing new products. The second provides grants of up to $200,000 to nonprofit organizations to establish incubator facilities to "hatch" new businesses. The authority already has made 16 research awards to small businesses totaling $600,000, covering research in agriculture, medical technology, textile automation and chemical and electrical engineering.

The Incubator Facilities Program, begun in 1983, awarded seven incubator grants totalling $1,400,000 in its first three years. The incubators — buildings constructed or renovated by the nonprofit groups — provide a package of services that are available at lower rates than each service would cost separately on

A Small Glossary of Small Business Nomenclature

Entrepreneur: An individual or group of individuals with an idea for a small business producing a new product or service, but generally lacking the financial backing and the management, administrative, production or marketing skills to start and maintain the business without assistance from technical or financial sources.

Venture Capital: The cash, credit, and other assets that are available for investment in new small business ventures. Because of the high rate of failure and substantial risk of investing in small businesses, the interest rates on venture capital may be much higher than for more conventional loans. In some cases, the loan may be secured or reduced by granting the venture capital investor a part ownership in the company.

Incubator Facility: An office setting available to house multiple small business operators who need space to begin operation but cannot afford separate quarters. Services available in an incubator facility may include telephone answering, secretarial and clerical, and even accounting and legal services on an hourly basis as needed.

the open market. The incubators provide space, clerical services, and technical support, including access to professors at area community colleges who provide advice on financing, management, and marketing.

"There is a dearth of available expertise," says Juliann Tenney, former executive director of the Technological Development Authority. "Small business people tend to reinvent the wheel over and over again for business purposes. They also are crippled by overhead expenses."

The first privately-funded incubator to open began in September 1985. Called Hillsborough Business Center, the incubator is part of a commercial redevelopment of an old cotton mill that eventually will also offer manufacturing, distribution and laboratory space to help hatch and rear new businesses. Another effort is underway in Winston-Salem, and others are planned, including one for the Research Triangle area. Tenney hopes that lawmakers will continue to fund the Technological Development Authority at current levels. But she said that small businesses needed additional help from the state.

Private Sector Employment Trends in Small Businesses, 1979-1983

Size of Business	Number of Employees 1979	1980	1981	1982	1983	Increase Over Five-Year Period
1 to 20 Employees	398,963	402,018	411,571	408,945	438,571	39,608 (+9.9%)
20 to 49 Employees	248,540	256,350	260,195	258,325	283,872	35,332 (+14.2%)
50 to 99 Employees	204,986	206,857	204,429	203,349	234,428	29,442 (+14.3%)
Subtotal in Companies < 100 Employees	852,489	865,725	876,195	870,619	956,871	104,382 (+12.2%)
Big Business by Subtotal in Companies > 100 Employees	1,063,696	1,054,480	1,041,768	1,022,988	1,102,624	38,928 (+3.6%)
Total Business Employees	1,916,185	1,920,205	1,917,963	1,893,607	2,059,495	143,310 (+7.4%)

Source: Small Business Development Division, N.C. Department of Commerce.

The former workroom of the Eno Cotton Mill in Hillsborough which was converted to The Hillsborough Business Center, a small business incubator, in 1985.

Nothing Ventured, Nothing Gained

"I think the state probably ought to develop some type of loan fund," says Tenney, referring to low-interest loans. "Most small businesses need a loan of about $10,000 to $35,000. That money is just not available."

There is a sharp difference of opinion between experts in the state about whether additional venture capital is needed. C. C. Cameron, the Governor's executive assistant for budget and management and the retired chairman of First Union Corp., believes that risk capital is not as readily available to North Carolinians as it is to entrepreneurs in the high-tech centers of Massachusetts, California, and Texas.

Cameron says the state needs "a venture capital source — whether it's a public or private or a joint venture — to encourage the entrepreneur to spin off" new businesses from large high-tech companies such as IBM, Data General, or Northern Telecom.

According to Venture Capital Journal of Wellesley, Mass., nearly $19 billion billion was being managed in the United States in 1985 — and the magazine estimates that more than $50 million of that sum went to North Carolina companies. J. Douglas Mullins, a partner in Venture First Associates, a Winston-Salem venture capital fund, estimates that about $30 million is being managed by Tar Heel venture capital funds — less than 1 percent of the total in the country. "There's an insufficient amount of early-stage venture capital in the state," says Mullins.

To spur additional investment, the private Council for Entrepreneurial Development was formed in late 1983. The group has held two annual venture capital fairs, with would-be entrepreneurs presenting their business proposals to potential investors. An estimated $2 to $4 billion in potential investment was represented at each fair — but most of it was out-of-state money, says Fred O. Hutchison, a Raleigh lawyer and former president of the council.

Dennis J. Dougherty, a general partner in Intersouth Partners, a venture capital fund in Durham with a goal of managing $20 million, said that North Carolina needs its own venture capital funds because entrepreneurs require the cash, business expertise and time of their investors. But others disagree, saying that investors are not inhibited by geographical boundaries. Emil E. Malizia, an associate professor of city and regional planning at UNC-Chapel Hill, acknowledges that North Carolina does not have a native venture capital industry. But the market for venture capital is a "national market," he says. "I think North Carolina companies have been relatively successful in accessing capital in that market."

Kirsten A. Nyrop, a consultant to local governments and small businesses who served as the first executive director of the Technological Development

Authority, says the state's top priority in helping to finance small businesses should be to establish a guaranteed loan program. She favors a program that would guarantee 10 to 20 percent of loans by banks to small businesses. The partial loan guarantees would encourage banks to take the risk in providing venture capital that they otherwise might not have been willing to lend — thus making more money available to potential entrepreneurs.

Other States Have Ventured Into Venture Capital Funds

Other states have begun to invest in small business and venture capital funds. Michigan, for example, allows the investment of up to 5 percent of money in its $13 billion retirement system — about $500 million. Since 1982, when the investment program was authorized by legislation, Michigan has invested $4.8 million directly in 27 companies and $100 million in 14 venture capital funds. The investments thus far have generated about 3,500 new jobs in the state, although the program's top priority is earning an adequate rate of return on its investment. Minnesota is one of about 10 states that are using unemployment funds to help would-be entrepreneurs who are receiving public assistance payments because they don't have jobs to get off the welfare rolls and into their own businesses. At least seven states have formal, state-operated venture capital funds, according to the National Association of State Development Agencies, and 15 others allow pension funds to be invested in venture capital funds.

What should government do in North Carolina to make the state more hospitable to small businesses? Experts agree that small businesses need two types of help — money in the form of loans, and a better, more organized system of providing technical assistance. Government leaders like former Commerce Secretary Haworth, Budget Officer Cameron and State Treasurer Harlan E. Boyles favor some type of government program to spur investment in small business.

Those officials are considering establishing a privately managed fund that would make low-interest loans to small businesses. The fund would consist either of state funds or private funds, or both. As a possible state funding source, Boyles has proposed that the state sell its stock in two railroad companies that it has owned since the 1800s. Boyles estimates the stock to be worth $50 million to $75 million. A legislative committee meanwhile is studying what to do with the stock.[3]

Another option would be changes in state tax policies to encourage private investment in small businesses and to ease the pressures faced by small businesses that frequently find themselves short of cash. M. Campbell Cawood, a general partner at Venture First, said that an overhaul of the state's tax policy could provide more effective and immediate assistance to small business than the state's current set of programs. Cawood suggest that shifting to a graduated tax structure for corporations and individuals with net taxable income above $10,000 would allow small businesses to retain cash. That would give them capital for operating and expansion purposes, help ensure their survival, and make small businesses more attractive to investors.

Cawood also suggests repealing the tax on intangible assets, such as stocks, thus removing an obstacle to capital formation in the state. Another way to create more capital for investment would be to grant tax credits to taxpayers for long-term capital gains, Cawood said.

"If you're talking about government having the ability to do something, this is the area where they can make some changes where they will have an impact," Cawood says. "I believe that changes in the income tax structure will have a broader impact and a more meaningful impact than anything else the state can do — and a more immediate impact."

Former Commerce Secretary Haworth agrees that the overall impact of taxes on small business development needs to be studied and says it is imperative that the tax on intangible assets be repealed — though Governor Martin retreated from earlier stands when he said the state should not immediately remove the tax because of sluggish tax revenues. In general, Haworth is bullish on the state's efforts to assist small business. "We have not been really as well organized to serve and pursue the development of small business in the past," Haworth says, "as we are and will be in the future."

"The propensity to truck, barter, and exchange ... is common to all men, and to be found in no other race of animals."

—Adam Smith, "The Wealth of Nations"

In 1986, Governor Martin began responding to calls for help from the small business sector. On January 28, he told the N.C. Small Business Council he would support developing a corporation to channel low-interest government loans to small businesses and create enterprise zones designed to help create small businesses in rural areas. The Governor's strategy for helping small businesses was part of his administration's new blueprint for economic development released in the spring of 1986.

That the state has been remiss in the past to boost small business is reflected in a *Forbes* magazine report designating what it called the best 200 small companies in America.[4] Selected on the basis of such factors as growth and rate of return on investment, the companies are the sort of firms most development-minded states would seek. One measure related the number of top small company headquarters to each state's population. In this ranking, North Carolina ranked 21st among the 50 states, with an average of 0.5 headquarters per million residents. Only 16 states had above the national average of 0.85 headquarters per million. Eighteen states had no such headquarters.

But the news isn't all bad. According to another survey, North Carolina has 16 businesses on *Inc.* magazine's list of the 500 fastest-growing companies.[5] The list of these North Carolina companies shows what kinds of small businesses will be riding the crest of the future business wave. Among them were Masterclean of Winston-Salem, a general cleaning contractor, which had a growth in sales of 3600 percent from 1980 to 1984; Captive-Aire Systems of Raleigh, a ventilation equipment manufacturer, with more than a 2600 percent sales growth in the period; Southern Office Furniture Distributors of Greensboro, a distributor of office furniture, with a growth of more than 2200 percent; Pioneer/Eclipse of Sparta, a floor cleaning equipment maker, with more than a 2100 percent sales growth rate; and ATCOM, a Research Triangle Park manufacturer of business telephones, with more than a 2000 percent growth rate.

Obviously, the potential for opening new small businesses lies in many more products and services than microchips or fast-food franchises. And the survey indicates that small businesses don't have to stay small, either in sales or in the number of jobs. Captive-Aire, for instance, grew from four jobs to 60 jobs in four years; Pioneer/Eclipse grew from 10 to 65 jobs; ATCOM, from 5 to 42.

Others on the list have already exceeded the general small business definition and have become big businesses. Among them are Roberts Welding Contractors of Winterville, which grew from 25 to 107 employees from 1980 to 1984; SAS Institute of Cary, a computer software distributor, which grew from 58 to 454 employees in the same period; and Dorothy's Ruffled Originals of Wilmington, a curtain retailer and manufacturer, which grew from 29 to 181 employees in four years.

These statistics reflect precisely what John Naisbitt wrote in *Megatrends*: "The entrepreneurs who are creating new businesses are also creating jobs for the rest of us. During a seven-year period ending in 1976, we added 9 million new workers to the labor force — a lot of people! How many of those were jobs in the Fortune 1000 largest industrial concerns? Zero. But 6 million were jobs in small businesses, most of which had been in existence for four years or less."

To say that small business is the wave of the future is to miss the point. Small business is already the future, and state efforts to promote small business should pay off in far more jobs than anyone previously thought. In other words, small business promotion can be an effective state economic development policy — in spades, doubled and redoubled. And North Carolina seems to be holding a good hand.

The 1984 President's Report on the State of Small Business, published in March 1984, predicted that 87 percent of the new jobs in the future will come from small businesses.[6] Promoting the start of those new jobs — and helping small businesses keep those jobs — appears to hold great promise for long-term economic growth. North Carolina might move closer to prosperity by nurturing its own progeny to develop new small businesses — and for those small businesses to develop into bigger businesses.

FOOTNOTES

[1] "Facts About Small Business In North Carolina," typewritten report by Small Business Development Division, N.C. Department Of Commerce, October, 1985. Note: The U.S. Department of Commerce's Small Business Administration defines a small business as one with fewer than *500 employees*, while the N.C. Department of Commerce generally considers a small business to have fewer than *100 employees*. If the federal standard of 500 workers were used to define a small business in this article, the points would be far more dramatic, because the vast majority of both North Carolina businesses and N.C. jobs would be considered in small businesses.

[2] Estimates provided in personal interviews with various representatives of Policy and Planning Division, N.C. Department of Administration, and N.C. Technical Development Authority, October, 1985.

[3] Chapter 792 (HB 344) of the 1985 Session Laws, Sections 13.1 -13.26, "Railroad Negotiating Commission."

[4] "Where the Best 200 Are," *Forbes* magazine, November 1985, p. 115.

[5] "The *Inc.* 500," *Inc.* magazine, December, 1985, pp. 115-148.

[6] "President's Report on the State of Small Business," Executive Summary, published by U.S. Small Business Administration, U.S. Department of Commerce, March, 1984.

Phantom Jobs: Studies Find Department of Commerce Data Misleading

by Bill Finger

TWO 1985 STUDIES — conducted independently — show that the "new and expanded" industry figures used by the N.C. Department of Commerce have vastly overstated the number of new jobs generated in North Carolina. In a report prepared for the N.C. Department of Administration, three researchers at North Carolina State University found that for the 1971-80 time period, only 47 percent of the announced new jobs — less than one of every two for new and expanding industries actually came to exist. The state's main indicator of industrial growth is used primarily for "promotional purposes," says the NCSU study. "The announcement series have very little independent value as a leading indicator."[1]

In addition, three University of North Carolina at Chapel Hill students, working in conjunction with the N.C. Center for Public Policy Research, found similar results. "Only 61 percent of the total number of employees that the department reports as existing actually do exist," they explained. "We do believe that the deception of economic growth in terms of jobs available is significant to the citizens of North Carolina," they concluded.[2]

The problems with the data have been recognized for some years. In a March 24, 1980 story headlined "Fewer New Jobs Created Than Hunt Says," *The Charlotte Observer* pointed out that all 37,000 new jobs announced by Gov. James B. Hunt Jr. for 1979 would not be in place that year. Hunt acknowledged at the time that all 37,000 jobs might not come on line in 1979, but he refused to consider whether some of the announced jobs would *never* come to pass. Hunt points out another factor, however; "Whereas the jobs announced by some of the new industries coming may not all pan out, the additional jobs that are created because of them in the community will be very substantial, and these jobs are generally never reported."

Until 1985, no one had attempted to determine how far off the "announced" new-and-expanding industry data were from the actual number of jobs created. Using the percentages found in the two 1985 studies, only 17,000-24,000 of those 37,000 jobs Hunt bragged about in 1980 would have been created. Moreover, the Department of Commerce reporting

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series on industrial development does *not* include employee *reductions* from plants that have closed or scaled back jobs since 1979. The cumulative data reported by the Department of Commerce for "new jobs" created continue to use Hunt's 1979 figure of 37,000. "The apparent unreliability of the data does raise a question regarding why decision-makers find these data to be useful," reported the NCSU researchers.[3]

The NCSU study examined all new and expanding manufacturing industries from 1971-84 for two counties, Wake and Chatham, checking both the number of jobs and the amount of investment announced. They divided their results into the 1971-80 and 1981-84 period, putting less emphasis on the latter period because such recent announced jobs and investments may not have had sufficient time to materialize. The researchers checked the announced data against Employment Security Commission records (where employers must report the actual number of employees), county property tax records (where companies must report their actual property investments), and the biennial *Directory of N.C. Manufacturing Firms* put out by the Department of Commerce.

Using a different methodology, the UNC group reviewed the annual reports on new and expanded industry for the 1978-84 period and found that the top-ranking job sectors were electronics (most "new industry" jobs listed, 19,192) and textiles (most "expanded industry" jobs listed, 20,842). These researchers checked all new and expanding industries announced in the textiles and electronics sectors statewide for 1978-84. They checked the data by sending a one-page survey to all companies shown in the Commerce announcements.

The survey asked the companies: 1) if they opened on time; 2) how many people they employed (the year they opened and as of October 31, 1985); 3) why the number of employees either exceeded or was lower than the Department of Commerce announcement; and 4) the percentage of new employees who lived in North Carolina, lived in another state, and were transferred from within the company. The survey included follow-up telephone calls to all companies that did not return the written questionnaire. Of the 64 textile and electronics companies in the new and expanding industry announcements, 22 companies responded to the survey and 15 had gone out of business. The remaining 27 companies either would not cooperate, could not be reached, or had not announced how many employees they would hire in the first place.

Because this study picked textiles as one of its areas to check, the results magnify the problems with the Department of Commerce data. In the UNC survey, 84 percent of the announced jobs for the textile sector were actually in place, compared to only 50 percent of the electronics jobs. Given the steep cutback in textile jobs due to imports and mechanization of the industry, the 84 percent figure is particularly surprising. It shows that some textile companies have carved out a solid niche in the market — and hence have met their new job expectations. But this figure does not reflect the large number of textile workers who have lost their jobs through plant closings. Under the current state reporting system, the lost textile jobs will not show up at all in the Commerce Department's indicator series of economic growth.

Both studies emphasized that the Commerce data show only what a company *intends* to do. "Because announcements reflect intentions and not actions, they are easily subject to manipulation," concluded the NCSU study.[4] A Department of Commerce source who asked not to be identified acknowledged that data which are intended for use as a barometer of investment activity can be misconstrued as an economic indicator.

Neither of the studies faulted the professional approach with which the department compiles the report — only the emphasis on "announced" jobs data. "The indicator's announced industrial development series does seem to be carefully and professionally constructed with fairly consistent attempts to confirm announcements," said the NCSU study.[5]

The NCSU study made five recommendations that would streamline the data-gathering process but not alter the current system significantly. These include assigning the same SIC (standard industrial classification) code to all data bases and conducting the survey for the *Directory of N.C. Manufacturing Firms* annually instead of biennially. The NCSU study also pointed out that using announced rather than actual data may be necessary because of the drawbacks in waiting to see how many jobs or how much investment actually materializes: "Planning of public facilities, budgets, and other government activities may require advance notice."[6]

Accepting the need for advance notice, the report then suggested that announcement data could be identified as preliminary and later updated with final data — or at least, emphasized in Commerce Department publications as *announcement figures only*. The latest department publications do point out that the data are only announcements; nevertheless, the cumulative data are not altered. And the public relations comparisons among years and gubernatorial administrations continues. Meanwhile, the public is misled about what kinds of jobs and new investment actually exist,

and economic analysts are left with insufficient data.

While the recommendations in the NCSU study should help somewhat with the problems discussed here, the basic problem would remain: Data designed to be an indication of what *will happen* form the basis for what the public thinks *actually happened.* The fundamental solution to this problem is to publish a new follow-up report called *actual* new and expanded industry, which would include actual jobs and capital investment added in each year.[7]

This option would correct the root of the problem, and the logistics involved are not necessarily difficult. Companies already report the *actual* number of employees to the Employment Security Commission, which is in the Department of Commerce. The ESC could then forward this data to the industrial development office within the department for publication. The state could require companies to report on their annual declaration of real property (the basis for county property taxes) the years for which capital investments were actually added to their tax base. As more county tax offices get computerized, reporting that data to the N.C. Department of Revenue (or Commerce) would become a more routine matter.

The report should show a cumulative year-by-year account of jobs and investment actually added (new and expanded). To be most effective, these figures could be juxtaposed with the "announced" new and expanded data. This year-by-year adjustment to the announced data would provide an additional barometer in itself — indicating which job sectors actually produce the highest percentage of jobs and investment announced, for example. With this *actual* data readily available to the public and analysts of the state's economy, the announcement data would no longer be misleading.

Recommendation: The best way to end the potential for its data to be misleading is for the N.C. Department of Commerce to begin publishing a new report on *actual* new and expanded industry.

FOOTNOTES

[1] Yevonne S. Brannon *et al.*, "Review of the Department of Commerce's Industrial Development Announcement Series," prepared for the Office of Policy and Planning, N.C. Department of Administration, August 1985, pp. 46 and 47.

[2] Beth Barnes *et al.*, "Economic Development in North Carolina," prepared for Thad Beyle, Dec. 12, 1985, p. 1.

[3] Brannon, p. 46.

[4] Brannon, p. 46.

[5] Brannon, p. 48.

[6] Brannon, p. 47.

[7] In a section called "Suggestions for Improvement" (pp. 47-50), the NCSU study discusses the need for measuring actual jobs and investment and some of the methods for collecting actual data, so that "discovered or confirmed added employment could be reported separately from intended added employment" (p. 49). The study, however, stops short of *recommending* that the Department of Commerce publish a new report.

The Job Training Spectrum: From the Classroom to the Boardroom

by Jack Betts

Through a variety of programs and projects that cost state and federal taxpayers hundreds of millions of dollars each year, the state of North Carolina sponsors a dizzying array of educational and job training programs that bear on economic development in North Carolina. Nearly every state agency is somehow involved at least indirectly — from the state's kindergarten programs to the Department of Correction, from Cultural Resources to Administration. This article, however, examines the roles of those state agencies most directly involved in vocational education and job training. It focuses on the Department of Community Colleges, the Department of Labor, and the Department of Natural Resources and Community Development — all major participants in training the workers who will hold the jobs of tomorrow.

NOTHING MORE GRAPHICALLY ILLUSTRATES the point that economic development, education, and job training go hand-in-hand than the case of a 56-year-old Alamance County man who now lives and works in Raleigh. A dairy farmer's son who has tried his hand at several different professions, including military intelligence, farming, teaching, and state government before entering a new profession late in 1983, this veteran of the job market found himself lacking a key skill much in demand as North Carolina's and the nation's economy continue to change. So he did what hundreds of thousands of others do when they need a new job skill: He decided to attend a special class at

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Wake Technical College south of Raleigh so he could learn how to operate computer terminals.

His name? Robert W. Scott, former governor of North Carolina. His job? President of the N.C. Department of Community Colleges. His job skills? Varied — and now include the ability to converse with a computer and to have access to the same information his staff does.

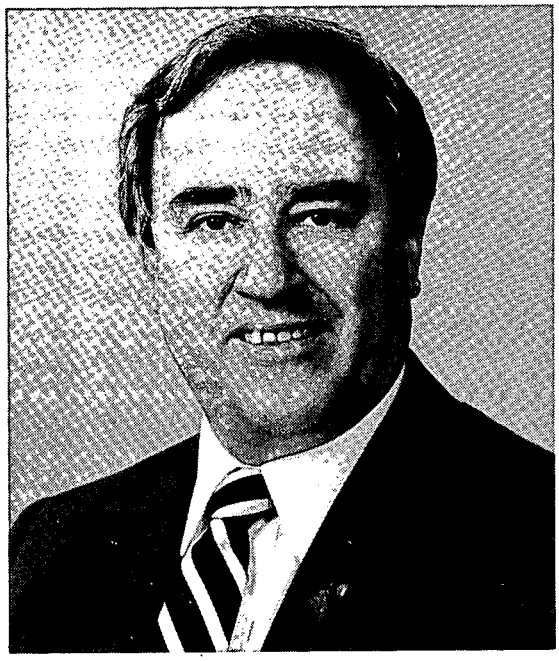
Bob Scott's case is hardly an isolated one. Instead, it is becoming more and more the norm as employers and workers discover that education and job training is a never-ending process of learning and training and retraining to meet the demands of new jobs and new responsibilities. Most North Carolina workers will never command Scott's salary or work their way up the corporate and public ladders to his heights — but with good public education and training programs, they have a chance to make a decent living and find their place on the economic ladder.

But do the state's programs for public education — including vocational education and community colleges — and state and federal job training programs provide what the state's workers and the state's employers need? How effective are these state programs? What role do they play in North Carolina's evolution from its somnolent Rip Van Winkle economy of the 19th Century to the transition economy of the late 20th Century?

State programs for economic development in North Carolina can be viewed as one lengthy continuum, and education and worker training programs occupy a healthy section of that continuum. It begins with the state's elementary and secondary schools and branches out into the 16-campus public university system and the 58-campus community college system. It also finds itself spread over a variety of state agencies, including the Commerce Department, the Labor Department, the Department of Natural Resources and Community Development, the Department of Public Instruction, and the Department of Community Colleges. And that's only the list of state agencies with direct responsibility for vocational education and job training.

The job is enormous, and the responsibility for programs is spread out all over the economic development spectrum. Yet nearly everyone concerned with economic development keeps pointing to one central, underlying problem: North Carolina still doesn't do a good enough job teaching its students to read and write so that they can find and hold a good job.

Bob Scott reviewed the statistics. About 1.5 million adults in North Carolina never finished high school. About 835,000 adults haven't finished the eighth grade, and about the same number can't read and write at a minimal, functional level. About a third of the state's school-age students will drop out before graduating. Only two other states — Kentucky and South Carolina — have worse records than North Carolina in adult literacy.



Robert W. Scott, president of N.C. Department of Community Colleges.

"This doesn't say very much for us, but it does say we've got a big economic development problem," says Scott. "There are that many people out there who cannot even fill out an application form. The chief executive officers of many companies are telling us that they want employees who, at a minimum, have basic literacy skills."

Scott's view is widely shared. Christopher Scott, president of the North Carolina AFL-CIO, puts it this way: "Job training programs are important, but what we *really* have to do is buckle down with our public education system and make sure our kids can read and write."

The state has committed vast resources in recent years to improve the literacy rate and enhance the effectiveness of public schools. Annual testing and high school graduation competency tests have been instituted to monitor progress, but the final proof is not in yet. In the meantime, the public schools and community colleges, primarily, continue to offer literacy programs while at the same time providing basic vocational education.

High school vocational education programs offer courses designed to prepare students for jobs in cer-

tain trades and businesses, such as automotive mechanics, woodworking, and clerical and stenographical jobs. Thousands of high school graduates each year find jobs on the strength of having completed these courses, but many more thousands find that the demands of the job market require advanced training. And in most cases, they turn to their local community colleges and technical institutes for that training.

The Community College: More Than Just a School

Shortly after World War II, when thousands of veterans were flooding the job market, there was talk of finding a better way to retrain workers. But it was not until 1957 that several Industrial Education Centers were established to train workers for jobs. Set up as part of the public school system, they trained high school students during the day and adults at night. By 1963, these centers had been so successful that the General Assembly adopted the Community College Act to set up a series of campuses offering two-year college parallel, technical, vocational, and adult education programs.[1] The system's mission, redefined by the 1969 General Assembly, was "to be the offering of vocational and technical education and training" for adults.[2]

To that end, community colleges spend $177 million annually to prepare students for technical and trade jobs. More than 600,000 students are enrolled either full- or part-time at the 58 institutions, and the community college administration proudly points out that one of every five high school diplomas or equivalency certificates is earned through a community college. A number of community colleges offer college transfer courses, and some have been accused of aspiring to become liberal arts colleges. (Indeed, when Guilford Technical Institute got legislative permission in 1983 to change its name to Guilford Technical Community College, some legislative wags predicted it wouldn't be long before the school would be back for permission to become Guilford Technical Community University.) But Scott estimates that no more than 10 percent of his department's budget is spent on college-transfer courses; the remainder is dedicated to skill training and economic development.

Asheville-Buncombe Technical College: The Hills Are Alive . . .

Consider the case of A-B Tech, as the school is known in western North Carolina. Situated on a hill overlooking the Biltmore Estate, A-B Tech was one of the original Industrial Education Centers. Throughout its life, it has focused on job training, not college transfer programs.

The school offers the usual fare of basic voc-ed courses and a few unique ones as well. Among them is a curriculum in hotel-motel management, and students work at A-B's own motel on campus, Mountain Tech Lodge, where state officials from the lowlands often stay when on business in western North Carolina.

A-B Tech President Harvey Haynes is a native of the region, and he remembers a day and time where there were few jobs to be had — and nothing in the way of job training. "When I was growing up in Western North Carolina, there were two jobs you could get," says Haynes. "You could become a teacher, or you could go to work at the American Enka plant." Haynes became a teacher, but now he finds that his duties go far beyond teaching and administering. Now he has also become an integral part of the economic development effort in Buncombe County and other nearby counties in the mountains. "We're into it up to our ears," says Haynes.

The recruitment of one industry in particular illustrates the role a community college can play not only in educating potential workers, but also in helping bring in a new plant or employer. In 1982, a group of midwestern plant officials showed up in Asheville one day to look around for a new site. Haynes, as a member of the local economic development team, was summoned to tell this group — still unnamed — what A-B Tech could provide: training facilities, instructors, courses of instruction for an initial work force, and continuing education and specialized training — in-plant or on-campus — as the needs of the company progressed through the years.

Haynes promised much, but no more than he could deliver. He knew how competitive the marketplace for new plants could be. "The states in the Southeast will just about kill one another trying to get new industry. It's competitive, it's mean, and it's vicious," he says.

The early commitment paid off: The group of plant officials were from RCA's music division, and they sought a location to build a new plant for the company's entire cassette tape production. They chose a site on U.S. 19, a four-lane highway just a few miles north of Asheville, and built a $9 million plant. There, in three shifts each day, 275 workers produce up to 75 million cassette tapes each year. Former farmers, ex-millworkers and newly graduated students — each trained at special sound-proof laboratories built at A-B Tech for the process — record scores of cassette tapes at once from huge master recordings shipped to the plant from studios in New York. On a given day, the plant's workers might be producing

tapes of Dolly Parton, Whitney Houston, Juice Newton, The Judds, Lee Greenwood or any of the other artists on RCA's label. In addition, the plant does contract cassette work, recording music for such companies as Reader's Digest's music division.

And RCA is delighted with its new work force. Dave Pfeiffer, the plant's personnel director, says, "These people are industrious, conscientious and independent. I learn something new from them every day."

In the past 17 years, A-B Tech has helped recruit 52 new plants to Buncombe County. But the problem, Haynes says, is that the county is also losing certain kinds of jobs, including textile jobs. "It's a struggle just to break even" on the number of jobs.

Haynes hopes to get ahead by introducing new curriculum offerings that will anticipate the continuing transition and produce workers ready for new high-tech jobs. One such offering, to begin in 1986, will be a tool design program. Few schools east of the Mississippi offer such a program, yet tool designers, draftsmen and tool-and-die makers are in critically short supply in this country, particularly the Southeast. Haynes figures that A-B Tech can supply a hefty portion of these engineering technicians needed in this region for years to come. "Engineering personnel are more critical to the development of Western North Carolina than railroads were," says Haynes.

Training new workers is not A-B Tech's only goal. The area has lost hundreds of textile jobs in recent years, and Haynes is constantly on the lookout for ways to retrain them for new jobs. It's not easy. "We have concentrated on retraining for ex-textile workers," says Haynes. "The trouble is they often need a short-term course, because they have families and house payments and children to feed. They won't respond when we ask them to enter a two-year course, so we do what we can, such as giving them a basic electronics course in six weeks." That allows workers to learn the basics of a new skill, find a job fairly quickly, and get on with their careers.

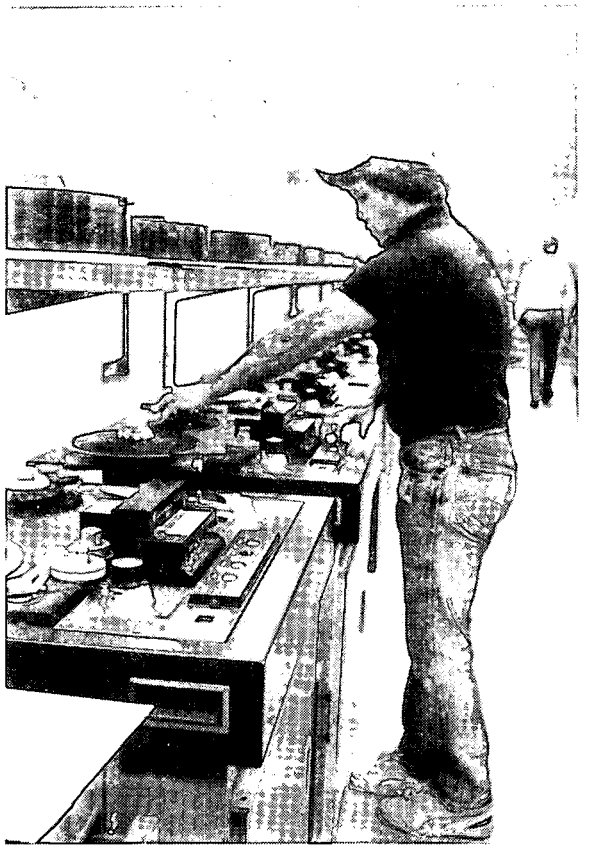
Industrial Recruiting Is Not For Every Campus

Less than 100 miles to the east lies Western Piedmont Community College, set amid the green rolling hills of Burke County. There, Jim Richardson presides over a campus where 2,400 students pursue careers in nursing, law enforcement, computer operation, business technology and the like. But unlike Asheville, where A-B Tech is an integral part of bringing in new industries, Western Piedmont does not get involved in industrial recruiting — because there isn't any. The county hasn't recruited a new manufacturing plant in years. Instead, Burke County — which also has lost textile jobs as well as some furniture manufacturing jobs — relies on Western Piedmont to train workers for existing plants that expand and to supply workers to new businesses in the area.

"In the last four years, we've started 18 new occupational programs," says Richardson. Western Piedmont, for example, just a few years ago had but one introductory course in data processing; now it has a two-year degree program that is as popular with students as it is with potential employers who are lining up to hire them. But every success has its price. Western Piedmont is paying a premium to get and maintain the advanced computer machinery to train its workers.

"Setting up so many new courses in high technology at one time is expensive," explains Richardson. "We are not meeting our equipment needs now because the maintenance and cost of state-of-the-art equipment is just unreal." In the past couple of years,

Ricky Baker loads "Pancakes" — reels of cassette tape that ultimately will be cut into 40 individual cassettes — before duplicating from master tapes at RCA's Weaverville plant.



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says Richardson, Western Piedmont has spent nearly $400,000 on up-to-date equipment. "The trouble is, within two or three years, that equipment will be out-of-date and we will have to replace that."

Western Piedmont, like A-B Tech, also tries to enroll workers whose jobs have been lost due to plant closings. But retraining these workers, says Richardson, is difficult, particularly the older ones who have held only one job before. Western has developed a program to get non-working adults into the job stream. The school's Human Resources Development Program aims at citizens who may be on welfare or are jobless, teaches them a basic skill, and "gets them off of welfare and into a job where they are paying taxes. It's an intensive program, and often these people are scared to death at first, but it's working," says Richardson.

High Tech in Tall Cotton

Down on the edge of the coastal plains, where tobacco and cotton fields once dominated the landscape, Nash Technical College finds itself serving as a bridge between the old and the new. With its more than 2,000 students — mostly female and mostly in their 20s, like most other technical institutions — Nash Tech fulfills dual roles of training workers for traditional vocations and for non-traditional ones as well. A case in point is the ultra-high-tech Consolidated Diesel plant on U.S. 301 near Rocky Mount. Henry Odom, Nash Tech's director of industries services, and who helped recruit Consolidated, says the company threw a new twist into the usual recruiting formula. Consolidated *did not want* trained diesel workers.

"They wanted to do a new theory of cross training, where everyone, including the plant manager and the secretaries, will know how to put that engine together. They didn't want journeymen diesel assemblers," says Odom. After looking at 145 different communities, Consolidated chose Rocky Mount, largely on the promises of Gov. James B. Hunt Jr. to move heaven and earth — almost literally. Some of the promises involved moving a group of families whose homes were too near the plant, and relocation of a sawmill. But one of the promises, and one which may have sold Consolidated on Rocky Mount, was to build a satellite campus of Nash Tech directly across the highway from the new plant. Now, 1,200 workers average $9.25 an hour assembling components for diesel engines — and many of them were trained across the street at the satellite campus of Nash Tech.

But even this modern, high-tech, high-wage plant has the same sort of problems typical of the state's work force at large: Its level of education was insufficient for the job at first. Odom relates the story of one plant worker who was promoted to a supervisory position — and who promptly quit because he felt he did not have enough education to handle the job. Nash Tech instructors took him under their wing in an intensive course that gave him the written and verbal skills, and the confidence, to do the job. Now the worker is back in the plant and proving to be one of Consolidated's best foremen, says Odom. But "plant managers are still pushing us to make sure that all their workers can read and write."

Odom and Reid Parrott, president of Nash Tech, are justifiably proud of the impact their institution has had on economic development in Nash and Edgecombe Counties. Plants there are on the cutting edge of modern technology. A new Bendix plant makes fuel control system parts for the Navy's F-15 and F-16 fighter jets; another company, Morrison-Knudsen, is fabricating parts for the rebuilding of New York's Holland Tunnel. But both Odum and Parrott — like their counterparts at A-B Tech and at Western Piedmont, say one of the keys to continued success in training workers for job is adequate equipment. "That is the big thing. We're going to need to keep up with changes in equipment because of changes in technology," says Parrott.

These case studies are indicative of the community college system's role statewide in recruiting industry and in training workers for those plants. But the system's general role in economic development is greater than that. Programs include:

- Small Business Assistance Centers at 20 of the campuses at a cost of $600,000 annually.
- Cooperative Skills Training programs, which provide about $1.1 million for customized training programs to traditional industries through 19 campuses.
- The New and Expanding Industry program, also providing customized training to help new or expanding firms train workers and open new plants, at an annual cost of about $4.5 million.
- The N.C. Vocational Textile School in Belmont — the forerunner of the community college system — which was established in 1946 and provides skill training for the textile and apparel industries, at a cost of about $500,000 a year.
- The general Technical and Vocational Education program, through which the system provides the bulk of its training, at a cost of more than $177 million.
- And the system's college parallel course curriculum, enabling students to transfer to four-year colleges into baccalaureate degree programs, at a cost

"Millwork ain't easy, millwork ain't hard, millwork it ain't nothing, but an awful boring job....

So may I work the mills, just as long as I'm able, And never meet the man, whose name is on the label."

—"Millworker" by James Taylor

of about $14.4 million annually. This program also contributes to the state's economic development.

How Effective Are These Programs?

Yet, for all the millions spent, are these programs effective? That depends upon who's asked. For instance, the AFL-CIO's Christopher Scott is underwhelmed by the efficacy of the community colleges' efforts. "The community colleges, it seems to me, are not really doing a thorough job," he says. "I've not done a thorough study, but it seems there's a whole range of involvements by the community colleges that are not really appropriate to the job of vocational education." Scott referred to such program offerings as college transfer courses and hobby courses (which now must be self-supporting and not financed by tax dollars), but he was also critical of the training some workers get. "It seems to me that the community colleges should be teaching workers a *skill*, not teaching them a *job*."

But the department itself believes it has done a good job of training its students for vocations and careers. Officials base their beliefs on such yardsticks as frequent follow-up surveys of both employers and former students, which generally have shown high employer satisfaction with their workers and high student satisfaction with their courses of study. Such surveys,[3] released in January and February 1986, found that 89.2 percent of the former students rated their courses of instruction as good or very good, and the employer's supervisors indicated consistently high marks for community college students who had entered their work forces.

However, the studies, conducted in 1985, also found that the community college students were making only $6.90 per hour in average wages. (By comparison, the state's average *manufacturing wage* is $7.32 an hour.) And students also said that the department's job placement system needed improvements.

State officials also point with pride to the passing rate of students on licensing examinations. Passing rates for nursing students from community colleges are usually as high or higher than the rates for students at four-year private and public colleges, says Dr. Vercie Hardee, coordinator of nursing occupation programs for the department. In 1985, for instance, nursing students from baccalaureate programs averaged an 84 percent passage rate, while students from associate degree programs at community colleges averaged a 92 percent passing rate. Similar statistics were recorded in 1984 (87 and 93 percent, respectively) and in 1983 (85 and 92 percent.) In addition, seven community college nursing programs in 1985 had perfect — 100 percent — passing rates on state nursing examinations. Not one of the four-year college programs — public or private — had a passing rate higher than Atlantic Christian College's 94 percent; UNC-Chapel Hill had a 93 percent passing rate.

Still, the need for a critical assessment is obvious, and in 1985 the General Assembly directed that an independent consulting firm make a study of the system to determine how well it has functioned, what its successes and failures have been, and what changes ought to be made — particularly in regard to current methods of financing the system.[4] That study might well echo what other community college studies have found, such as a 1977 study recommending that the system, after a decade-long expansion boom, should focus its attention on bettering the quality and efficiency of its courses of curriculum and general programs.[5] The study may measure whether such improvements have occurred.

Questions also remain whether the community colleges are preparing workers for the right kinds of

jobs. For instance, computer and high-tech related job courses are popular with students, but a study by UNC-Charlotte economist John Connaughton found that there is a pressing need for more traditional occupational workers. Connaughton's research discovered an annual need for more than 10,000 trained food preparation workers, nearly 8,500 secretarial and clerical workers, and more than 1,500 skilled carpenters, among other job classifications.

"What this study seems to indicate is that our state is beginning to feel the backlash of our emphasis on high technology," says Scott. "In most of our institutions, enrollments are up in high-technology programs, but declining in traditional occupations programs. We can't all be computer programmers."

In February 1986, Scott launched a broadside at the state's vocational education, saying, "The educations that most of North Carolina's young people are getting today are simply not preparing them for the world of work." There may soon be "an inadequate number of individuals trained to repair our cars, type our letters, operate our bulldozers, or repair our office equipment," he added.

Scott proposed an initiative to increase enrollment in vocational education programs. To be called the "two plus two" plan, Scott said students interested in vocational or technical careers should be encouraged to begin learning the fundamentals in the last two years of high school and continue that training for up to two more years in a community college.

The General Assembly recognized the strong link between education and job training in 1984, when it authorized up to $200,000 to match funds under the federal Job Training and Partnership Act to augment state training programs.[6] Then, in 1985, the General Assembly sought to redefine state job training policy with passage of the North Carolina Employment and Training Act.[7] The act requires that "all federal, state and local government resources provided for employment and job training programs be coordinated to effect an efficient employment and training service delivery system."

Cutting the Job Training Pie

In order to implement that policy, the state agencies responsible for a piece of the economic development pie began meeting in late 1985 so that each agency would understand exactly what size slice of the pie every other agency had.

The purview of the interagency committee extended beyond community colleges. It also included major responsibilities in job training by the N.C. Department of Labor, which administers apprenticeship and pre-apprenticeship programs, and the N.C. Department of Natural Resources and Community Development's Division of Employment and Training, which administers the federal Job Training Partnership Act (JTPA).[8]

The Labor Department, for instance, has oversight of four separate programs in pre-apprenticeship training funded by the JTPA. They include:

- The Pre-Apprenticeship training program, which subsidizes training for economically deprived workers and which helps them prepare for entry into trade training programs. The aim of the program is to encourage the poorest of unskilled and unemployed citizens to enter a job training program.
- On-The-Job training, in which an employer willing to take on a disadvantaged, unskilled worker for a predetermined period can get reimbursed for up to 50 percent of the wages the worker earns while in apprenticeship.
- On-The-Job-Institutional, a subsidiary of apprenticeship training which requires the worker to also spend a certain amount of time in the classroom training in the fundamentals of the occupation.
- And special job training projects, called Demonstration Projects, which can be specially tailored to the needs of the job market and the potential worker.

These pre-apprenticeship programs, which help train about 1,000 workers annually, should not be confused with the Labor Department's regular apprenticeship programs. These programs are not financed by the JTPA, but rather are paid for by private industries willing to take on apprentices. The Labor Department's sole role in apprenticeship training is to certify the programs of each employer.

The state Department of Labor, says Pre-Apprenticeship Director Joe Jenkins, "seeks to predict growth industries and growth occupations. One advantage we have over academic institutions is that we can gear up in a hurry and be ready with an apprenticeship program long before a school can develop a curriculum."

Jenkins says the department has had good success training workers for high-wage jobs in such occupations as elevator mechanics, and says future good-paying jobs lie in such trades as heating and air conditioning installation and service. Those trades, he said, make it possible "for those who don't want to go to work for a big company to make a pretty good living and have a pretty good business for themselves."

For all the department's successes, there are not that many workers in the apprenticeship program — about 3,000 in 1985. One reason may be the state AFL-CIO's lack of enthusiasm for Labor's apprenticeship programs. The labor unions, disenchanted with the Department of Labor on a variety of subjects,

oppose Labor Commissioner John Brook's efforts to speed up apprenticeship training by shortening the period of training. Christopher Scott, one of the leading critics of Labor's programs, says not enough time is being spent any more to train master tradesmen. "The whole approach to apprenticeship training ought to be to put in time and work with a master craftsman, not just to learn how to jump through the hoops," says Scott.

Jenkins, however, points out that as the state's economy and labor market demands have changed, the structure of training programs also have had to change, including training workers to be proficient at a job, though perhaps not to be master experts. For instance, the Labor Department is gearing up to train workers for jobs involving fiber optics, a training program designed to place workers in jobs where they can continue to learn as time goes by. "We can't do it (train workers) for as long as it might take to produce a craftsman, but we can get them well on their way," says Jenkins.

Two other agencies also handle certain portions of job training programs funded by the Job Training Partnership Act. They are the Employment Security Commission, an agency of the state Department of Commerce, and the Employment and Training Division of the Department of Natural Resources and Community Development. In all, $62.4 million comes to North Carolina for job training under the JTPA, and the money is disbursed through a variety of agencies, institutions and contractors.

The Employment Security Commission, for instance, coordinates a dislocated workers program, placing workers whose jobs have been lost in industry transition into job training programs aimed at starting them on a new career. But the bulk of JTPA money is administered from NRCD's Employment and Training Division, which contracts with Private Industry Councils throughout the state to operate job training programs. There are 11 urban Service Delivery Areas. In addition, areas comprising 82 of the state's counties outside the 11 service delivery areas are dispensed funds through the Rural Service Delivery Area, supervised by the Rural Private Industry Council.

The JTPA — which replaced the old Comprehensive Employment and Training Act Program (CETA) in 1982 — was designed to place more emphasis on private industry involvement in and responsibility for training workers. The Service Delivery Areas can provide or contract for such services as job search assistance, job counseling, remedial education, basic skills training, on-the-job training, and advanced career planning. The JTPA's chief aim is to train individuals to perform jobs, but the act itself is often looked upon in North Carolina as a strategy for economic development. "We have not given proper attention to models in other states that accomplish both objectives," says Sanford Shugart, a vice president of the Department of Community Colleges.

Shugart says a variety of responses exist that could be used to tie JTPA to economic development programs. One such area is making sure that JTPA programs provide training for documented occupational needs. Commerce's Employment Security Commission "has made great strides in doing that the last couple of years," Shugart said.

But two other problems exist with JTPA, he adds. One is that the JTPA was set up to emphasize short-term training programs. The effect is that workers often do not get enough training, and often wind up back in unemployment lines. If JTPA were amended by Congress to provide incentives for longer-term training, the ultimate impact on economic development would be better because workers would be more highly skilled.

The second, Shugart said, is that most disadvantaged JTPA trainees cannot afford to enroll in long-term training programs because, unlike recipients under the old CETA, they do not receive stipends while in training. "We need to find a new mechanism to provide stipends so these trainees can have some income while in a longer-term training program of six months up to two years," says Shugart. "The emphasis ought to be on gaining skills that are now marketable and that will remain marketable over the long-term."

The unknown factor in job training programs sponsored by the federal government in recent years has been this question: Will funds be cut? And the answer for JTPA, just as it was for CETA a few years ago, is yes. Because of the congressional budget cuts mandated under the Gramm-Rudman-Hollings Act passed in late 1985, NRCD officials are bracing for a huge cut in the amount of JTPA funds available. James Ross, director of the Employment and Training Division, estimates there will be a cut of up to 25 percent in North Carolina's JTPA allocations, at least partly because the state's unemployment level is already low.

In 1985-86, North Carolina received $62.4 million under JTPA. The lion's share of that was for Title IIA funds amounting to $41.3 million, including $32.2 million for training economically disadvantaged youth and adults; $2.1 million for administration at the state level; $1.2 million for training older adults; $3.3 million for community colleges and public school educational training program; and $2.5 million for incentive grants and technical assistance to Service Delivery

Areas. In addition, Title IIB provided another $17.7 million for summer youth employment and training programs, and Title III of JTPA provided nearly $3.5 million for training assistance to dislocated workers whose jobs were lost.

The Employment and Training Division of NRCD supervises the dispersal of the JTPA funds to scores of contractors and subcontractors who work with local Councils of Government, Lead Regional Organizations, Community Colleges, Chambers of Commerce and private industries to train those who have neither jobs nor skills to perform a job. For instance, the Durham Private Industry Council worked with Research Triangle Park industries such as Northern Telecom, Sperry-Rand, Mitsubishi, and General Electric Semiconductor, and with Durham Technical Institute and the Durham Chamber of Commerce to train 15 students in electronics manufacturing.

The students — some of them dislocated workers who lost their jobs when plants closed, and other who began the course unskilled and jobless — were recruited by the Commerce Department's Employment Security Commission, training at Durham Technical Institute, a part of the community college system. Their courses were paid for by JTPA funds, administered by the Department of Natural Resources and Community Development. But much of the work was performed by private industry — the Durham Chamber of Commerce and the Research Triangle companies. The students spent 180 hours in the classroom, the equivalent of six months' on-the-job training, and were certified to hold permanent jobs at good wages. Most found work right away.

In 1985, 52,102 people enrolled in JTPA training programs in North Carolina (15,507 of them in summer youth employment programs), according to the Division of Employment and Training at NRCD. Of those enrolled, 68 percent — or about 35,700 persons — actually found jobs, the division said.

When the Gramm-Rudman-Hollings Act takes money out of the federal budget for financing JTPA programs in North Carolina, the number of such success stories will decline. That brings up yet another difficult policy question for the N.C. General Assembly to address. At this critical juncture in the state's economic transition, can North Carolina afford to make up millions of dollars in lost job training funds? And conversely, can North Carolina afford not to commit such resources to train workers for the jobs they will need if North Carolina is to prosper?

FOOTNOTES

[1] Chapter 448 of the 1963 Session Laws, sec. 23.

[2] Chapter 562 (HB 359) of the 1969 Session Laws, sec.1.

[3] "Follow-up Study of 1982-83 Students," N.C. Department of Community Colleges, January 9, 1986, and "Follow-up Study of Employers Hiring 1982-83 Graduates," N.C. Department of Community Colleges, February 13, 1986.

[4] Chapter 479 (SB 1) of the 1985 Session Laws, sec. 66. See also Chapter 757 (SB 182), sec. 31.

[5] "Total Education: The Duty of the State," A Report of The Commission on Goals for the N.C. Community College System, N.C. State Board of Education, March, 1977.

[6] Chapter 1034 (HB 80) of the 1983 Session Laws (2nd Session 1984), sec. 18.

[7] Chapter 543 (HB 1333) of the 1985 Session Laws.

[8] Job Training Partnership Act, P.L. 97-300, October 13, 1982.

Chapter 9

Education in North Carolina

Disparity in Public School Financing — An Update

by Bill Finger and Marianne M. Kersey

PHILIP RAY DAIL, the state's 1984 Teacher of the Year, called disparity in funding among the state's school districts the greatest problem in North Carolina education. The *Report of the Commission on the Future of North Carolina* recommended that the state "devise and apply a system of public school finance that will provide equal educational opportunity to all schoolchildren."[1] In 1984, the Public Education Policy Council concluded that a major clarification of state and local funding responsibilities is needed in order to assure an equal educational opportunity for all school-children.[2]

Any student of the state's education system should by now — after this spate of reports — have read Article IX, Section 2 of the N.C. Constitution. Short and to the point, that section requires that the General Assembly "shall provide by taxation and otherwise for a general and uniform system of free public schools."

In June 1984, and again in April 1985, the N.C. Center for Public Policy Research reported a widening gap in per pupil spending among the then 142 school systems, despite this constitutional guarantee. "Financial disparity is not the only factor leading to educational disparity, but financial equity does represent the cornerstone of any effort to build a 'uniform system of free public schools,'" wrote education analyst Lanier Fonveille in *North Carolina Insight*, the Center's quarterly magazine.[3]

Fonvielle's article, "Disparity in Public School Financing — Where North Carolina Stands," summarized the strengths and weaknesses in the funding system used in North Carolina and examined various school finance reform efforts in their historical context. Fonvielle pointed out the wide variety in course offerings among the 142 systems (there are now 140), and explained how spending relates to programs.

A recent graduate of Northern High School in Durham, for example, had advanced Latin and computer math courses under his belt. But a graduate of the K-12 Blue Ridge School in the mountain community of Glenville (Jackson County) could take neither of those courses. In fact, the Durham County school had 56 more course offerings (28 academic and 28 vocational). Metropolitan area school districts can generally offer more courses than rural districts. While every school cannot offer advanced Latin and computer math, minimum course requirements and creative efforts such as cross-district services and access to community colleges can round out course offerings.

"Expenditure equity is not the same as program equity," cautioned Fonvielle. "By funding a minimum, comprehensive program and imposing statewide standards, the state could focus *on program equity as well as expenditure as well as expenditure equity.*"[4]

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In 1985, the General Assembly tried to meet the challenge put forth by Fonvielle, the Commission on the Future of North Carolina, and the Public Education Policy Council. Sen. Robert Warren (D-Johnston) and Rep. Jo Graham Foster (D-Mecklenburg) introduced legislation which recognized that "the quality and the quantity of the school program is in part dependent upon where a child lives."[5] The 27-page bill attempted to clarify state and local funding responsibilities for public schools, including funding for the new "basic education program." The State Board of Education proposed the basic education program in October 1984 (with revisions in February 1985).[6]

The basic education program incorporates both philosophy and details. For example, the program calls for mastery of integrated knowledge and skills necessary to cope with contemporary society. It also specifies a core curriculum, standards for student performance, and appropriate class size for each course.

The proposals put forth by Sen. Warren and Rep. Foster, who co-chaired the Public Education Policy Council, appeared to address the issue of disparity among the state's 142 school districts. While far-reaching in its broad sweep and in its details, the legislation nevertheless raises some important questions that need adequate debate.

- Under the state and local financial partnership, will raising the "foundation" level of state funding to all districts alleviate problems of disparity in financing among school districts? Or will this increased "foundation" only raise the overall state contribution and serve to perpetuate spending gaps among districts?
- Can *program equity* (through the basic education plan) be achieved by the funding system outlined in the legislation?
- Along with proposals to fund the basic education program are proposals to increase local discretion in spending state funds. Where will responsibilities lie, as a practical matter, for ensuring that every child receives an equal opportunity for the basic program?
- The legislation continues to allocate funds for instructional personnel, support personnel, instructional equipment, and general administration through the traditional "average daily membership" formula. Is this the most equitable means of funding a basic education plan?
- Can program equity be achieved without addressing the question of a local district's ability to pay?

As legislators debate these and other questions, two basic considerations must be kept at the forefront: the *quality* of a "general and uniform system of free public schools" and the degree of *financial equity* among the districts. The 1985 article in *Insight* published the top 10 and bottom 10 school districts, according to total per-pupil expenditures in 1983-84. After releasing the rankings to the media, reporters from around the state called asking, "Where does our system rank?"

The latest rankings in per-pupil spending — covering the 1987-88 school year — have become available from the Department of Public Instruction's Information Center. To be sure that reporters and legislators throughout the state can find at a glance where their districts rank, the newest per-pupil spending data for all 140 districts are included here. Note that the city districts are included under the respective counties.

In North Carolina, the state currently provides a "foundation" for a local school district's operating costs. About four of every five state public school dollars go for instructional salaries according to an allotment system. Using the projected average daily membership of each district, the state determines the number of positions eligible for state funding.

Despite implementation of the basic education program in 1985, the figures for 1987-88 per-pupil funding do not compare favorably to the 1983-84 data. Compared to 1983-84, the disparity in *state per-pupil funding* among the 140 school districts actually *widened.* In 1983-84, the difference between Hyde County ($1761) and Cumberland County ($1345) was $416 or *31 percent.* In 1987-88, however, the difference between Hyde County ($2967) and Onslow County ($2098) was $869 or *41 percent.*

Disparity in *total per-pupil funding*, on the other hand, decreased slightly. There was a 58 percent difference between the Chapel Hill/Carrboro City school district and the Davidson County school district in 1983-84. By 1987-88, however, the percentage difference between Tryon City in Polk County and Onslow County was 56 percent.

Looking at *local per-pupil expenditures*, the differences between districts in 1987-88 was smaller than in 1983-84, but the range was still huge — Chapel Hill/Carrboro City spent more than 5 times as much money per pupil ($1535) than Fairmont City in Robeson County ($287).

Examining the federal, state, and local *shares of total per-pupil spending* in the last decade reveals the *federal share* has decreased every year but one since 1978-79, when the federal share of the total expenditures was 13.1 percent. The federal share in 1987-88 was only 7.7 percent of the total.

The *state share* of total expenditures, however, has gone up and down percentage-wise since 1978-79.

PER-PUPIL EXPENDITURES (PPE) by School District, 1987-88
(Excluding School Food Service)[1]

School District	State PPE	State Rank	Federal[2] PPE	Federal[2] Rank	Local PPE	Local Rank	Total PPE	Total Rank
Alamance County	$ 2235	131	$ 110	128	$ 502	81	$ 2848	124
Burlington City	2460	43	142	95	792	19	3394	29
Alexander County	2469	40	120	118	333	130	2922	111
Alleghany County	2688	11	206	34	408	106	3302	37
Anson County	2297	101	160	71	442	95	2900	116
Ashe County	2621	14	179	54	401	108	3201	50
Avery County	2547	22	221	31	510	72	3278	41
Beaufort County	2367	72	184	45	366	125	2917	112
Washington City	2275	115	240	21	389	115	2904	115
Bertie County	2296	103	248	17	380	120	2925	110
Bladen County	2484	38	250	16	444	94	3178	55
Brunswick County	2289	106	157	76	589	54	3036	84
Buncombe County	2550	21	137	104	658	35	3345	33
Asheville City	2417	49	281	9	1399	2	4097	2
Burke County	2538	25	121	117	518	71	3177	56
Cabarrus County	2330	88	112	126	549	66	2991	91
Kannapolis City	2333	84	146	87	583	57	3061	82
Caldwell County	2312	96	119	119	520	70	2950	101
Camden County	2702	9	174	59	585	56	3461	24
Carteret County	2225	132	143	92	431	102	2799	133
Caswell County	2346	79	157	75	338	129	2842	126
Catawba County	2354	75	80	140	601	48	3035	85
Hickory City	2383	64	164	68	614	44	3162	59
Newton City	2353	76	143	93	738	26	3234	46
Chatham County	2315	95	102	131	648	37	3065	81
Cherokee County	2372	70	177	56	307	134	2855	123
Chowan County	2605	16	174	58	573	60	3353	31
Clay County	2587	18	158	74	347	128	3092	78
Cleveland County	2389	59	148	84	445	92	2981	92
Kings Mtn. City	2369	71	180	50	588	55	3137	66
Shelby City	2460	42	311	6	671	32	3443	26
Columbus County	2340	82	241	20	375	121	2955	99
Whiteville City	2332	85	240	22	372	123	2943	102
Craven County	2197	136	289	8	445	93	2931	107
Cumberland County	2159	138	225	28	505	75	2890	119
Currituck County	2396	57	138	101	915	14	3450	25
Dare County	2130	139	86	138	756	23	2973	93
Davidson County	2182	137	108	129	390	114	2681	139
Lexington City	2315	94	231	24	745	24	3292	38
Thomasville City	2508	32	222	30	592	52	3322	34
Davie County	2262	121	129	108	502	82	2893	118
Duplin County	2416	50	179	52	368	124	2963	98
Durham County	2210	133	87	135	1170	6	3468	23
Durham City	2280	112	170	63	1296	3	3745	8
Edgecombe County	2428	47	297	7	436	101	3161	60
Tarboro City	2388	60	124	112	599	51	3111	74
Forsyth County	2303	100	129	109	1098	9	3530	15
Franklin County	2292	105	134	106	456	89	2882	120
Franklinton City	2334	83	191	39	426	104	2951	100

Per Pupil Expenditures by District, *continued*

School District	State PPE	State Rank	Federal[2] PPE	Federal[2] Rank	Local PPE	Local Rank	Total PPE	Total Rank
Gaston County	$ 2250	126	$ 114	123	$ 459	88	$ 2823	128
Gates County	2672	12	187	41	634	40	3493	20
Graham County	2796	7	329	5	390	113	3515	18
Granville County	2277	113	145	88	550	65	2972	94
Greene County	2804	6	244	18	478	84	3526	16
Guilford County	2317	90	81	139	1028	11	3426	27
Greensboro City	2472	39	139	99	1253	4	3864	6
High Point City	2359	73	166	67	1240	5	3765	7
Halifax County	2407	52	261	14	324	132	2992	90
Roanoke Rapids City	2450	44	131	107	674	31	3255	43
Weldon City	2513	31	267	12	571	61	3351	32
Harnett County	2402	54	161	70	332	131	2896	117
Haywood County	2618	15	180	49	717	29	3516	17
Henderson County	2275	116	140	96	523	68	2938	104
Hendersonville City	2284	109	144	91	855	16	3283	40
Hertford County	2386	62	227	27	503	78	3116	71
Hoke County	2269	119	187	42	292	137	2748	137
Hyde County	2967	1	253	15	768	22	3988	3
Iredell County	2256	123	110	127	454	90	2820	130
Mooresville City	2347	78	143	94	665	33	3154	61
Statesville City	2542	23	181	48	996	13	3719	10
Jackson County	2466	41	235	23	525	67	3225	47
Johnston County	2286	108	137	103	388	116	2811	131
Jones County	2839	4	340	4	290	139	3468	22
Lee County	2317	92	167	66	660	34	3143	63
Lenoir County	2494	36	187	43	506	74	3186	53
Kinston City	2316	93	220	32	592	53	3128	69
Lincoln County	2317	91	118	121	438	100	2873	122
Macon County	2516	30	125	111	617	41	3258	42
Madison County	2605	17	180	51	386	117	3171	57
Martin County	2380	66	186	44	650	36	3215	48
McDowell County	2297	102	122	115	402	107	2821	129
Mecklenburg County	2377	67	101	132	1098	8	3576	14
Mitchell County	2555	20	149	82	439	98	3142	64
Montgomery County	2521	28	149	81	390	112	3061	83
Moore County	2296	104	157	77	726	27	3179	54
Nash County	2199	135	174	60	502	80	2875	121
Rocky Mount City	2255	124	121	116	744	25	3121	70
New Hanover County	2383	65	173	61	685	30	3240	44
Northampton County	2557	19	268	11	477	85	3302	36
Onslow County	2098	140	199	37	348	127	2645	140
Orange County	2525	27	112	125	869	15	3506	19
Chapel Hill/ Carrboro City	2281	111	89	134	1535	1	3904	5
Pamlico County	2502	34	222	29	383	119	3108	75
Pasquotank County	2310	98	159	73	503	77	2972	95
Pender County	2255	125	178	55	503	76	2936	105
Perquimans County	2717	8	168	65	601	47	3486	21
Person County	2375	68	169	64	600	50	3144	62
Pitt County	2391	58	155	78	644	38	3190	52
Polk County	2692	10	179	53	722	28	3593	13
Tryon City	2848	3	123	114	1153	7	4124	1

Per Pupil Expenditures by District, *continued*

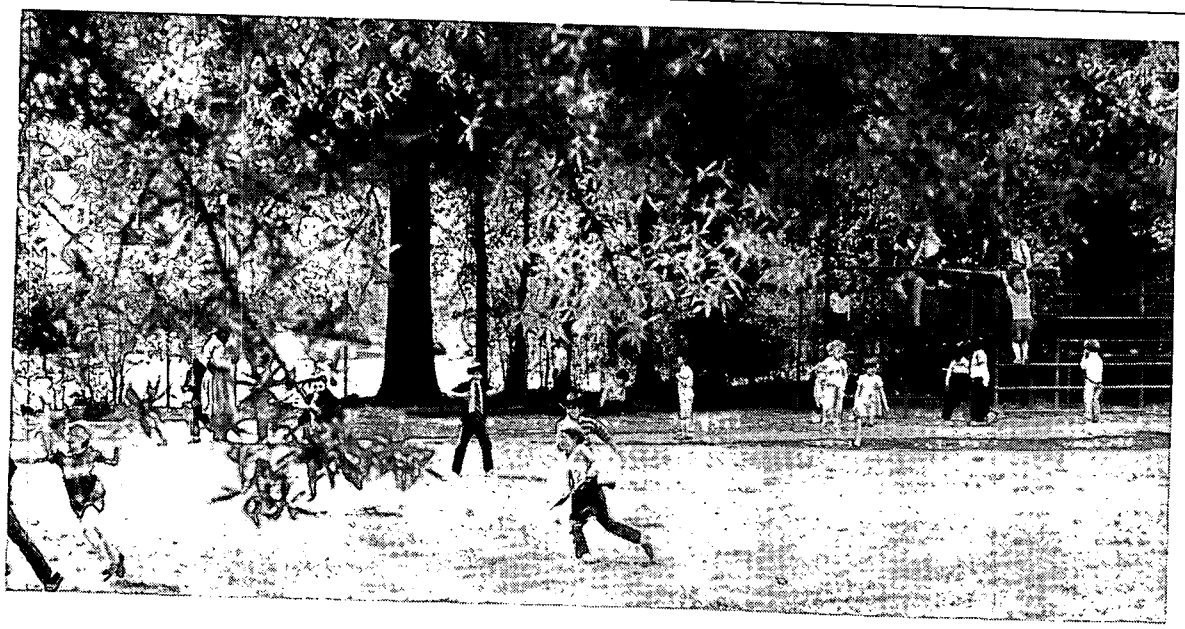
School District	State PPE	State Rank	Federal[2] PPE	Federal[2] Rank	Local PPE	Local Rank	Total PPE	Total Rank
Randolph County	$ 2202	134	$ 87	137	$ 397	111	$ 2685	138
Asheboro City	2351	77	140	97	643	39	3134	67
Richmond County	2250	127	140	98	364	126	2754	136
Robeson County	2244	130	268	10	291	138	2804	132
Fairmont City	2540	24	343	3	287	140	3170	58
Lumberton City	2269	118	153	80	372	122	2795	134
Red Springs City	2385	63	216	33	307	135	2908	114
Saint Pauls City	2248	129	200	36	314	133	2762	135
Rockingham County	2488	37	170	62	577	59	3236	45
Eden City	2308	99	119	120	503	79	2929	108
Western Rockingham	2343	80	154	79	601	49	3097	76
Reidsville City	2408	51	164	69	560	63	3132	68
Rowan County	2288	107	98	133	522	69	2908	113
Salisbury City	2666	13	242	19	814	17	3722	9
Rutherford County	2331	87	144	90	497	83	2972	96
Sampson County	2498	35	231	25	463	87	3191	51
Clinton City	2310	97	146	86	615	43	3072	80
Scotland County	2329	89	175	57	612	45	3115	72
Stanly County	2387	61	108	130	438	99	2933	106
Albemarle City	2406	53	126	110	772	21	3304	35
Stokes County	2281	110	139	100	604	46	3025	87
Surry County	2399	56	145	89	427	103	2970	97
Elkin City	2508	33	87	136	1084	10	3679	11
Mount Airy City	2357	74	136	105	796	18	3289	39
Swain County	2813	5	695	1	410	105	3918	4
Transylvania County	2375	69	123	113	579	58	3078	79
Tyrrell County	2854	2	191	40	617	42	3662	12
Union County	2276	114	113	124	442	96	2831	127
Monroe City	2342	81	264	13	790	20	3396	28
Vance County	2265	120	182	47	399	110	2846	125
Wake County	2249	128	115	122	1025	12	3390	30
Warren County	2537	26	227	26	440	97	3204	49
Washington County	2519	29	206	35	297	136	3022	88
Watauga County	2443	46	148	83	551	64	3141	65
Wayne County	2259	122	159	72	507	73	2925	109
Goldsboro City	2274	117	388	2	449	91	3111	73
Wilkes County	2417	48	137	102	385	118	2939	103
Wilson County	2331	86	194	38	570	62	3094	77
Yadkin County	2400	55	147	85	465	86	3012	89
Yancey County	2446	45	183	46	400	109	3030	86

FOOTNOTES

[1]Low-income students receive reduced price or free school meals, and others pay for meals. The figures in this chart *exclude* all food service funds. The data are rounded to the nearest dollar.

[2]Federal funds are designed to supplement, not supplant, state and local efforts. Federal funds are included in this table to give the local funding picture for each school district. Federal monies, however, should not be considered as a way to address disparities in per-pupil spending among districts.

Source: "Selected Financial Data 1987-88," N.C. Department of Public Instruction Information Center, pp. 6-8.



But it has increased each year beginning in 1983-84 from 64.0 percent to 69.3 percent. The *local share* of total per-pupil expenditures has also fluctuated, although not drastically, since 1978-79; it was 23.6 percent of the total in 1978-79, and 23.0 percent in 1987-88.[7]

So although the *state share of total spending* has increased since implementation of the basic education program, the problems in disparity among the state's school districts have not been alleviated. But the gap in spending may have indeed been larger without the program.

Those who want to understand the complicated issue of school finance should view these per-pupil spending figures only as a beginning point. Important factors do not show up in the per-pupil spending data for each district, particularly per-capita income, spending for transportation (which varies extensively among rural and urban districts), tax effort, and tax base.[8]

Total Per-Pupil Expenditures, 1987-88

The Top Ten		The Bottom Ten	
1.	Tryon City	140.	Onslow County
2.	Asheville City	139.	Davidson County
3.	Hyde County	138.	Randolph County
4.	Swain County	137.	Hoke County
5.	Chapel Hill/Carrboro	136.	Richmond County
6.	Greensboro City	135.	St. Pauls City
7.	High Point City	134.	Lumberton City
8.	Durham City	133.	Carteret County
9.	Salisbury City	132.	Robeson County
10.	Statesville City	131.	Johnston County

FOOTNOTES

[1] *The Future of North Carolina - Goals and Recommendations for the Year 2000,* Report of the Commission on the Future of North Carolina, N.C. Department of Administration, 1983, p.30.

[2] "Report of the Public Education Policy Council," Report to the 1985 General Assembly of North Carolina, Sen. Robert D. Warren and Rep. Jo Graham Foster, co-chairs, December 1, 1984.

[3] Lanier Fonvielle, "Disparity in Public School Financing," *North Carolina Insight,* Vol. 7, No. 1, June 1984, p. 31.

[4] *Ibid.,* p. 36.

[5] Senate Bill 49, preamble. See also, House Bill 102 and Senate Bill 68 of the 1985-86 General Assembly.

[6] Chapter 761 of the 1983 Session Laws (SB 23), Section 86, and Chapter 1103 of the 1983 Session Laws (Regular Session, 1984) (HB 1567), Section 2.

[7] The data on federal, state, and local *shares of total expenditures* during the last decade are based on expenditures *including* food service funds. The trend data are included in the Department of Public Instruction's "Selected Financial Data 1987-88," on page 2.

[8] "Tax effort," as used here, refers to the portion of county taxes allocated for public schools. "Tax base" refers to overall revenues available to a county (countywide property taxes, school district property taxes, fines, license taxes, excise stamps, local sales taxes, ABC profits, intangibles taxes, beverage taxes, revenue sharing, and other miscellaneous sources.) Both of these measurements are usually by *county, not by school district,* which further complicates this issue. (In North Carolina, there are 100 counties and 140 school districts.)

For a more in-depth look at local school financing among the 140 school districts, see "Local School Finance in North Carolina: A Measure of Local Support of Our Schools," published by The Public School Forum of North Carolina, Inc., 1989.

Gifted Education: Nourishing a Natural Resource

by Susan Katz

A leader in education for gifted students since the early 1960s, North Carolina still offers widely varying programs for these children. The state has never defined "appropriate" services for gifted students. New criteria for identifying gifted children — based heavily on standardized testing —underscore the need for determining what types of services local systems should provide. Other policy issues also demand attention, from the discrepancies in funding among systems to the allowable pupil/teacher ratio.

SEVEN-YEAR-OLD EMILY went to the beach last May with her academically gifted class. Prior to the trip, the children studied pirates and shipbuilding. At the beach, they explored a shipwreck, visited Brookgreen Gardens, collected and classified shells, and competed in a sandcastle contest. The second-graders earned the money for this trip from a student production of *The Wizard of Oz* they had staged in January.

In another part of the same county, Kenneth, a bright 12-year-old, was sent out to mow the school's lawn because he'd finished his schoolwork. Neither teacher nor principal knew what else to do with him.

State law mandates a "free appropriate publicly supported education to every child with special needs," including those who are academically gifted.[1] But programs for gifted children across the state vary as widely as the terrain.

"North Carolina is a mature state in gifted education," says Dr. Lyn Aubrecht, associate professor of psychology at Meredith College and chairman for legislative action within the N.C. Association for the Gifted and Talented (NCAGT). "We have taken on the correct burden of trying to serve every gifted child in the state. For that, we ought to be proud.

"Yet, statewide," he adds, "there is a lot of room for improvement."

Susan Katz, a Raleigh-based writer, has written for American Baby, The Washington Post, *and other publications.*

State policies affecting academically gifted (AG) children have often evolved through the context of "special education." At other times, the needs of AG students have required specific actions by policymakers. The article attempts to sort out the complexities surrounding education for academically gifted students. First it reviews the mechanics of state policy, then summarizes important policy issues for the future.

Gifted Education from a State Perspective

North Carolina has a long history of ambitious projects in gifted education.

- Summer programs for gifted children abound across the state — from the Cullowhee Experience, begun in the '50s (one of the nation's oldest summer programs for gifted students); to the Duke TIP (Talent Identification Project) program, where high-testing seventh-graders can earn college credit; to a parent-sponsored summer program in Wilmington.
- The Governor's Schools program, begun in 1963, is the "oldest statewide summer residential program for gifted and talented rising [high school juniors and seniors] in the nation."[2]
- The N.C. School of Science and Mathematics in Durham has attracted national attention, and turned out nationally ranked scholars, since opening its doors in 1980.
- The Odyssey of the Mind, an international problem-solving competition among gifted high schoolers, came to North Carolina in 1982.
- All but one of the 142* school districts in the state now provide at least limited special services for gifted children. (As of the 1984-85 school year, only the Weldon City Schools in Halifax County offered no special programs.) In 1984-85, the basic public school system served more than 60,000 academically gifted students — more than one of every 20 public school children in the state, according to the N.C. Department of Public Instruction (DPI).

In 1961, the General Assembly set in motion the vehicle for gifted education in the public schools when it created the Division for the Education of Exceptionally Talented Children within DPI.[3] The legislators allocated $150,000 for each of the first two years of developing programs statewide for gifted students. Then, in 1968, Superintendent of Public Instruction Craig Phillips merged programs for gifted and handicapped children into a new agency — the Division for Exceptional Children.

Over the next nine years, the legislature enacted statutes requiring appropriate education for exceptional children, both handicapped and gifted. The Equal Education Opportunities Act in 1974[4] mandated education for all children to their "full potential." The Creech Bill in 1977[5] reiterated for North Carolina the federal special education law PL 94-142 but went beyond that act of Congress to include gifted and talented students. The Creech Bill required an appropriate education for all exceptional children, including "individualized education programs." Today, special education and the Creech Bill continue to receive the scrutiny of legislators and the support of a vocal special-education lobby. Among the activists are parents and teachers who want North Carolina to remain a leader in education for gifted children.

"North Carolina is one of the top states in the country regarding gifted education," remarks Patricia Bruce Mitchell, project director for the National Association of State Boards of Education. "You have had programs ongoing for a long time, which is important because it takes a long time to develop a good program, and you have good leadership in the state department of education and within advocacy groups." According to Mitchell, North Carolina is one of only 17 states with specific policies requiring special programs for academically gifted children.[6]

For North Carolina to maintain a national reputation in education for gifted children, educators and lawmakers will need to keep a close watch on how state policy affects the local level. North Carolina has a strong tradition of local autonomy in education. Consequently, a special-education curriculum, to a great degree, is a local matter. But the state exercises considerable control of gifted education by issuing guidelines for identifying gifted students and by providing special-education funds for their schooling.

Identification of Gifted Students. DPI maintains a count of students eligible for special education. They are classified in 15 categories of need, all specified by statute. Thirteen of the categories specify students with some kind of mental or physical disability — "mentally handicapped," "behaviorally, emotionally handicapped," "visually impaired," "multi-handicapped," and so on. Pregnant teenagers, with their particular educational needs, are a 14th category. "Academically gifted," the 15th group, reflects a special learning ability. Of a total of 182,346 children in all these categories in the 1984-85 school year, about 60,160 — almost one-third — were classified as academically gifted, according to reports filed by local school systems with DPI.

**Editor's note: As of August 1989, North Carolina has 140 school districts. This article originally appeared in the April 1985 issue of* North Carolina Insight.

The State Board of Education determines general procedures for serving special-needs children at the local level.[7] DPI has published the board's requirements as *Rules Governing Programs & Services for Children with Special Needs.* Ted Drain, former director of DPI's Division for Exceptional children and now an assistant superintendent in DPI, considers *Rules* the "Bible" of the program.

According to *Rules*, academically gifted students are those "who demonstrate or have the potential to demonstrate outstanding intellectual aptitude and specific academic ability . . . [and] may require differentiated educational services beyond those being provided by the regular school program."[8]

Until 1983, this special education category was called "gifted and talented." Then, in 1983, the legislature dropped the word "talented" and changed the terminology to "academically gifted," reflecting the program as actually implemented on the state and local levels.[9] Many schools provide for the development of artistic talent in students, but they must do so outside the AG funding structure. Some school systems — like Wake County's — offer gifted-and-talented "magnet" schools, but the "talent" components are outside state special-needs guidelines and are not funded with that pot of state money. In refining the statutory language on gifted education, some legislators felt that "talented" students were served best by a special school to develop their abilities, the N.C. School of the Arts in Winston-Salem. According to DPI, the 1983 change in language that dropped "talented" has not affected which children participate in AG programs.

To identify gifted children, local school officials employ an elaborate "point" system, as detailed in *Rules*. The process attempts to allow for a variety of "giftedness" and cultural background. Students may be nominated by their teachers, peers, or parents. They then face an assessment procedure which includes points for various tests and subjective judgments.

New criteria, which took effect on January 1, 1985, altered the point system somewhat. Under the new criteria, IQ and standardized achievement test scores are weighted evenly, each carrying a maximum of 50 points. Grades carry a maximum of 10 points. A student earning 98 points automatically qualifies for services. This ranking system puts less weight on subjective measures such as teacher recommendations. It weeds out the obvious "teacher-pleasers," who smile nicely in class but who might not really need special programming. It frees teachers to offer programming that truly is geared to those children who are significantly "different" from the standard population.

The new criteria are also intended to help identify children who might be gifted but disaffected, i.e., those who score high on an IQ or achievement test but who have been unmotivated or misplaced in school, earning low grades. Usually, individual teachers know their students best, but sometimes a child's exceptional abilities can be obscured by shyness, lack of motivation, or other factors.

Finally, the new criteria attempt to hone what have been some rough edges in identifying gifted minority students. The new criteria include a section labeled "Special Consideration/Further Testing."[10] This section recognizes that standardized tests "do not always adequately control for the lack of environmental or cultural opportunities to learn." But to compensate for this weakness in identifying gifted students, the section offers this remedy: "further standardized testing shall be completed and the scores used in determining eligibility."

Once identified, gifted children enter a special planning process to determine the most effective course of study for them. Until 1983, each gifted child — like every exceptional student — was entitled to an "individualized education program"(IEP). In 1983, however, in the same legislation that changed the term to "academically gifted," the General Assembly determined that gifted children may not require individual plans. Legislators decided that the greatly diminished paperwork required by *group* plans outweighed the benefits of individual programs, especially since most of those individual plans had been similar. Former state Sen. Gerry Hancock (D-Durham), who headed the legislative study of the Creech Bill, says that it was not the subcommittee's intention to dilute programming. Those gifted children whose needs are not met by a group plan, he says, "*shall* receive individualized treatment."[11]

Paying for Gifted Education. In a national study, Dr. James J. Gallagher, director of the Frank Porter Graham Child Development Center at the University of North Carolina at Chapel Hill, found that programming for gifted children costs about 15-to-45 percent more per pupil than standard curricula.[12] For example, if it costs $2,000 per pupil, per year, to run a regular school program, programming for gifted students would cost about $2,300-2,900.

"A little more than $114 million" is the amount of state funding going for *all* special education per year, according to Bill Pilegge, assistant controller for financial services at the State Board of Education. (For FY 1985, the General Assembly raised the figure to $141 million.[13]) How much of that is earmarked for gifted children? The complex funding formulas won't

The Palcuzzi Ploy

The following apocryphal tale is reprinted with permission from James J. Gallagher, Teaching the Gifted Child, *Boston: Allyn and Bacon, 1975, pp. 83-4.*

Mr. Palcuzzi, principal of the Jefferson Elementary School, once got tired of hearing objections to special provisions for gifted children, so he decided to spice an otherwise mild PTA meeting with *his* proposal for gifted children. The elements of the Palcuzzi program were as follows:

1. Children should be grouped by ability.
2. Part of the school day should be given over to special instruction.
3. Talented students should be allowed time to share their talents with children of other schools in the area or even of other schools throughout the state. (We will pay the transportation cost.)
4. A child should be advanced according to his talents, rather than according to his age.
5. These children should have special teachers, specially trained and highly salaried.

As might be expected, the "Palcuzzi Program" was subjected to a barrage of criticism. "What about the youngster who isn't able to fit into the special group; won't his ego be damaged?" "How about the special cost; how could you justify transportation costs that would have to be paid by moving a special group of students from one school to another?" "Mightn't we be endangering the child by having him interact with children who are much more mature than he is?" "Wouldn't the other teachers complain if we gave more money to the instructors of this group?"

After listening for ten or fifteen minutes, Mr. Palcuzzi dropped his bomb! He said that he wasn't describing a *new* program for the intellectually gifted, but a program the school system had been enthusiastically supporting for a number of years — the program for *gifted basketball players!* Palcuzzi took advantage of the silence that followed to review his program again. Do we have ability grouping on our basketball team? Yes, we do. No doubt, the player who does not make the first team or the second team feels very bad about it and may even have some inferiority feelings. However, this will not likely cause the program to be changed.

Do we allow part of the school day to be given over to special work? Generally speaking, the last hour of the day can be used, by tradition, for practice of basketball talents.

Do we allow these children to share their talents with other students from other other schools and other cities? Yes, we do, and, what is more, we pay the transportation costs involved without very many complaints being heard.

Do we allow gifted basketball players to advance by their talents rather than by their age? Indeed, we do. Any sophomore who can make the team on the basis of his talents gets the privilege of playing with seniors, and no one worries very much about it.

Finally, do we have special teachers who are specially trained and more highly salaried than the ordinary teacher? Yes, we do, and although there is some grumbling about it from the regular teachers, this does not materially affect the program.

What does this tell us? The culture and the community will support the kinds of activities that they find necessary, valuable and/or enjoyable. If they feel that a program is sufficiently necessary or sufficiently enjoyable, all sorts of objections are put aside as being relatively inconsequential. If, on the other hand, the community is not fully interested or involved in supporting such a program, all kinds of objections can be raised as to why these things should not be done, or cannot be done.

yield an answer, says Pilegge.

Funding for exceptional children comes from federal, state, and local sources, although programs for gifted students are excluded from federal money. State funding for exceptional children is determined by categories (i.e., physically handicapped, visually impaired, gifted, etc.). But state monies go to the local education agencies (LEAs) in a lump sum, not by categories. Each LEA receives a sum marked "exceptional children's funds," and the local school board can disburse it as it wishes.

This lump-sum distribution stems from the state's traditional attitude of encouraging local autonomy in education. But local autonomy in spending the money causes tremendous variance among school systems in program funding — and in educational opportunities for children with special needs.[14]

Gail Smith and Ruby Murchison, DPI's two state consultants to local schools for gifted education, report wide discrepancies among gifted education programs throughout the state. Smith and Murchison are available to consult with school personnel, run workshops, and interpret *Rules*. They can make recommendations to LEAs for program development, but they cannot prescribe how local schools spend their special education money. State law mandates "appropriate education" for gifted children, but many local programs for gifted students are much better developed — and funded — than others.

State regulations allow public schools to assign 175 children each week to AG resource teacher, a student/teacher ratio that permits very little individual attention to each of these special-needs children. The state also offers little direction to ensure for these students an effective curriculum, one that can depart from standard textbooks and conventional class assignments. And, while some school systems begin identification of gifted students in kindergarten, the process more often begins no earlier than third grade.

While state funding formulas do not determine how LEAs *spend* their money, they can encourage the local systems to *identify* academically gifted children. Prior to 1980, funding for all exceptional children was based on Average Daily Membership (ADM) of all students. This did not encourage districts to identify gifted children, for the districts received a set amount of money from the state, based on their ADM.

In 1979, the General Assembly directed the State Board of Education to switch to a "head-count" system, where LEAs would receive funds according to actual numbers of exceptional children identified. Many special-education advocates prefer headcount, for it encourages schools to locate exceptional children. Says Lyn Aubrecht, "You don't find 'em, you don't get the money."

To prevent runaway funding, the State Board put limits, or "caps," on each of the 15 special-education categories. Academically gifted populations could not exceed 3.9 percent of the average daily school membership, a percentage of the population estimated to be gifted. In the State Board formula, local education agencies would receive one-third the funds for each gifted student that they receive for each handicapped child.

Some of the school systems with high ADMs, however, stood to lose funding in a headcount system. So the State Board wrote a "hold-harmless" clause into the formula, stating that if a school district would lose money by switching to headcount, the loss would not appear for three years. On July 1, 1983, the hold-harmless provision was scheduled to disappear, leaving a strict headcount formula in effect.

The 1983 General Assembly, however, decided to extend hold-harmless through the 1983-84 year and to modify it for 1984-85 so that school systems could lose only part of the funding difference by switching to headcount. In 1985-86, headcount was scheduled to become the sole basis for determining state funding for local special education programs.

In June 1984, increased state revenues greeted legislators arriving in Raleigh for the short session. The lawmakers decided to increase state support by $4.1 million (not including an across-the-board teacher salary hike) for all local special-education programs, including AG. With all LEAs thus scheduled to receive increased funds, the General Assembly eliminated the modified hold-harmless clause for 1984-85 and directed that strict headcount become the funding basis that school year instead of in 1985-86.[15]

What's Next in Gifted Education?

The school year 1983-84 was a time of re-evaluaton and change for gifted education in North Carolina, "a year of fine-tuning," according to Gail Smith at DPI and others throughout the state.

By changing from individualized to group educational programs, says Smith, teachers had a load of paperwork lifted off their shoulders without sacrificing their attention to individual students. In addition, she says that group plans "help teachers build in program consistency across schools in the same system," correcting a prior weakness in gifted education. But other areas of education for gifted children wait to be addressed.

Increased opportunities for teacher training in gifted education would improve programs state-

wide. As long as no college or university east of Raleigh offers graduate level courses in gifted education, it is difficult or impossible for teachers in the eastern part of the state to keep up their own training. Graduate credits earned in locally run workshops are not sufficient to acquire or maintain skills for teaching gifted students.

A concerted effort needs to be made to find gifted students — including minority students. By relying heavily on standardized testing, the new criteria for identifying gifted students will help differentiate "teacher-pleasers" from children needing special services. But some analysts worry about the long-term effects of these criteria.

"Under the new, tougher criteria for identifying gifted students, far fewer students will be labeled academically gifted," says Lyn Aubrecht of the N.C. Association for the Gifted and Talented. Relying so heavily on testing will require students in most cases to score well in order to meet the criteria, adds Aubrecht.

Identification of gifted minority students should continue to be a prime concern. Despite the new section in the *Rules* acknowledging the shortcomings of testing minority students, the main remedy prescribed for the problem is still more testing. Research indicates that, statistically, black and native American students do not generally test as high as white students.[16] Minority students, then, under the new criteria, are somewhat penalized when so much weight is given to IQ and achievement scores. In the absence of a good standardized measure for minority students, it is doubly important for teachers to be alert for gifted minority students.

The freedom to depart from standard textbooks and delve more deeply into subjects is mandatory for any program for gifted students. Third-graders who have already mastered fractions may need the fourth- or fifth-grade math book. Indeed, they may even need a hands-on math lab to practice the things they have learned and to be encouraged to discover more. They may need, for example, a class in aeronautics to discover velocity as a meaningful ratio.

Allowing LEAs to tailor programs to their own needs is part of the state's tradition of local autonomy. Such local flexibility allows for creativity to meet a diversity of needs. But this same flexibility results in some LEAs paying little attention to specialized curricula for academically gifted children.

The State Board of Education should evaluate the current student/teacher ratio requirement. The State Board's gifted education guidelines for pupil/teacher ratio allow up to 175 pupils per week for an AG resource teacher. This 175 to 1 ratio for a resource model is far more than any other category of special education student (35 to 1 for learning disability, 35 to 1 for educable mentally handicapped, 20 to 1 for hearing impaired, and 20 to 1 for behaviorally emotionally handicapped). School districts which do not improve upon this ratio may not be providing an adequate response to the special-education needs of gifted children.

If fewer students are labeled academically gifted under the new, tougher criteria, then there will be a reduction of state money for gifted education at the local level. "This could mean a substantial reduction in the number of teachers of the gifted in some local areas," says Aubrecht. "Too few teachers may be left to provide adequate programs for the widely scattered gifted students that remain."

Conclusion

The enhancement of gifted education over the next few years does not depend on a single policy decision by legislators or by state education officials. Instead, the system will need a series of adjustments if gifted students in every part of the state are going to receive creative teaching instead of lawn-mowing assignments.

Policymakers will address AG questions primarily through modifications to the Creech Bill and to the rules and regulations issued by the State Board of Education. Some issues will affect *all* special education. These are a few of the concerns that state legislators and state education officials should be considering:

- discrepancies in funding, teacher quality, and curriculum among AG programs statewide;
- the headcount formula and its effectiveness in channeling special-education funds where they are needed;
- the accuracy of the 3.9 percent funding cap, which represents an estimate of academically gifted students within the school population;
- the current pupil/teacher ratio of 175 to 1, for a resource program;
- identification of gifted students, particularly among minority children; and
- improvement of teacher training, especially in the eastern part of the state.

As a society, we claim to value the special abilities of our citizens. And North Carolinians have shown a willingness to develop these gifts as they appear among our schoolchildren. But such a development in education is itself a learning process. The General Assembly, the Department of Public Instruction, and local school districts have all accumulated

years of instruction in providing gifted education. The next few years will show how much they've learned.

FOOTNOTES

[1]NCGS 115C-106(b) *et seq.*

[2]*The Governor's School of North Carolina,* a brochure by the Division for Exceptional Children, N.C. Dept. of Public Instruction.

[3]Chapter 1077 of the 1961 Session Laws.

[4]Chapter 1293 of the 1973 Sessions Laws, 1974 Session.

[5]Chapter 927 of the 1977 Session Laws, now codified as NCGS 115C-106 *et seq.* For a description of state policy in special education, see "Special Education in North Carolina: The Chance to Become Less Dependent" by Susan Carol Robinson in *North Carolina Insight,* Vol. 6, No. 2-3, October 1983, pp. 69-79.

[6]The other 16 states are Alabama, Alaska, Arizona, Florida, Georgia, Kansas, Louisiana, Nevada, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Dakota, Tennessee, Virginia, and West Virginia.

[7]16 NCAC .1500.

[8]16 NCAC .1501(a)(2).

[9]Chapter 247 of the 1983 Session Laws, codified in NCGS 115C-109.

[10]16 NCAC .1509(d).

[11]Chapter 247 of the 1983 Session Laws, codified as NCGS 115C-114(g), reads in part: "The State Board of Education shall promulgate rules and regulations specifically to address the preparation of these group educational programs . . . and shall also include standards for ensuring that the individual educational needs of each child within the group are addressed."

[12]James J. Gallagher *et al., Report on Education of Gifted, Vol. 1, Surveys of Education of Gifted Students, Executive Summary,* produced for the Advisory Panel, U.S. Office of Gifted and Talented, Washington, 1982, p. 4.

[13]Chapter 971 of the 1983 Session Laws, 1984 Session, HB 1496. The increase includes teacher salary boosts and a line item to increase program support for exceptional children.

[14]For more on the recent history of special education funding, see "'Hold-Harmless' to Equitable Distribution — Who Gets State Special Education Funds?" by Hilda Highfill. *North Carolina Insight,* Vol. 6, No. 2-3, Oct. 1983, p. 80.

[15]The General Assembly included a one-year, hold-harmless provision affecting seven local systems due to possible reductions of federal funds for handicapped children in those systems. The federal special-education law *does not* cover gifted education, and hence federal funds do not go towards a local system's gifted program. However, state special-education funds, which do cover gifted children, are distributed in a block fashion. Hence, the one-year hold-harmless provision was necessary for the state funds going to those seven systems.

[16]James J. Gallagher, *Teaching the Gifted Child,* Boston: Allyn and Bacon, 1975, pp. 371-81.

Are We Teaching "The Dismal Science" Dismally?

by Jack Betts

In an era of increasing emphasis on economic development in North Carolina, many businessmen and legislators are concerned that public school students don't know enough about the American free enterprise system. State law requires that it be taught, but is it being taught well enough?

ONE DAY IN 1986, a small Charlotte company that you never heard of went out of business forever. The reason for its demise was not that it couldn't hack it in the business world. In fact, it was a success. It developed a product, found a market, met the demand at a reasonable price, filled its orders on time, kept its books in good shape, and made money.

So why did it close? Because it was supposed to. The business was an experiment in free enterprise run by a class at Myers Park High School in business-oriented Mecklenburg County, the mother church of commerce in North Carolina. Students enrolled in "Applied Economics" produced T-shirts with Class of 1987 logos, marketed them to other students after using computer software to determine market demand, and closed the books at the end of the experiment without incurring any red ink. The class was a part of the growing enrollment in economics courses in the state's largest school system and, to varying degrees, symbolic of growing interest in economics education across the state and the nation.

By all accounts, that particular class was a resounding success. It gives hope to those who believe economic literacy among high school students is as important as basic skills in reading, writing, and arithmetic. But almost everyone concedes that success stories in classroom economics education are comparatively rare, and that economics ignorance prevails among public school students from Rodanthe in the East to Ranger in the West.

One of the prime critics is John Redmond, executive director of the business-financed N.C. Council on Economic Education at the University of North Carolina at Greensboro. Redmond is blunt about it: "At the national level, we are a nation of economic imbeciles...because by and large, our public school students are taught little or no economics. We have raised generations of economic illiterates."

Redmond's view is shared by many. One of them is former state Sen. Harold Hardison (D-Lenoir), who for years has pressed the state Department of Public Instruction to offer more economics courses. A Deep

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Run tire dealer, Hardison observed, "It disturbs me that we are bringing up a generation of illiterates when it comes to economics. I see it in my business, and other businessmen do, too. That's what frightens me. When we hire someone in our business, we look for someone who can read and write. We take them today in the full knowledge that we are going to have to teach them what business is all about. They just don't have any knowledge of business when they come to us."

That's the same view taken by former U.S. Secretary of Education Terrel H. Bell, who points to a national failure in the classroom to prepare students for basic skills in economics. "Most modern civics courses do an adequate job of teaching about the structure of government," says Bell, "but the importance of our economic system and our social institutions receive too little attention in the classroom."[1]

> *"At the national level, we are a nation of economic imbeciles...because by and large, our public school students are taught little or no economics. We have raised generations of economic illiterates."*
>
> *— John Redmond*

The Legislative Controversy

The sentiments of these critics may come as unsettling news to those who were under the impression that public schools are — and have been —teaching economics routinely as part of the required curriculum for years. But the fact is that economics education, and more particularly free enterprise education, is a relatively new development in the curriculum of the vast majority of North Carolina high school students. Barely a generation ago, there was no statewide requirement for teaching economics. Most high school seniors went off to college or into the work force without even a rudimentary understanding of the basics of free enterprise, let alone the intricacies of how to make a product, how to sell it, how to keep corporate books, how to meet a payroll, how many government regulations there are to master, how to maintain an inventory, or how to establish a price or a wage.

Legislators, many of them businessmen themselves, were acutely aware of the lack of economics education in the schools, and began pressing for an economics curriculum in the late 1960s. In 1969, the N.C. General Assembly called for a study of the need for a curriculum in "the Free Enterprise System and Economics," and for recommendations in how to train teachers to teach such courses.[2] The subsequent study, written primarily by Dr. David Lapkin, a UNC-Chapel Hill economics professor, found that there was a critical need for economics education in the public schools. Lapkin recommended that social studies teachers receive in-service training — short courses in economics while on the payroll — to bolster their own understanding of free enterprise and economics.[3]

The next session, the General Assembly approved legislation giving the State Board of Education the authority to provide for in-service training of teachers in economics, but no additional money was appropriated to finance that training, and little was done.[4] The state education budget approved in 1971 did have some funds for in-service training, but without legislation specifically earmarking the money for economics education, the impact of the bill was negligible.

After four years, impatient pro-business legislators were angry with the Department of Public Instruction for its lack of interest in free enterprise education. Sponsors of earlier legislation directing the study and recommending in-service training in economics felt they had given the education establishment long enough. If the State Board of Education wasn't willing to tackle economics, the legislators would force their hand.

A bill mandating the teaching of the free enterprise system touched off a heated policy debate centering on whether the legislature should dictate the curriculum for public school students. Pro-business legislators argued that students weren't being taught the basics of an economic system that had made America prosperous, and that only by requiring economics instruction could a new generation of entrepreneurs be educated. Opponents of the bill argued that such decisions must be left to professional educators, who had the expertise and the knowledge to determine what students should be taught. Part of the debate centered on whether the teaching should focus on economics generally or the American economic system. Some lawmakers and educators pointed out that a course in comparative economics, studying how different systems worked worldwide, would be helpful to students, while others argued that it was the capitalistic system as practiced in this country that was most critical to a student's future.

Understanding such basic principles as supply and demand was far more practical, they contended, than learning about socialism or communism or some other brand of "ism."

After a protracted and sometimes bitter debate, the General Assembly adopted a bill requiring that "the free enterprise system at the high school level, its history, theory, foundation, and the manner in which it is actually practiced," be taught in the public schools.[5] (Of course, the legislators did not mean that "free enterprise at the high school level" should be taught; they meant that "free enterprise" should be taught "at the high school level." Such careless bill drafting may serve as its own commentary on the relative familiarity of legislators with the English language.)

The Department of Public Instruction got the message. In 1976, the State Board of Education reached agreement with the N.C. Council on Economic Education on a program called the Developmental Economic Education Program, or DEEP. The department agreed to seek funds for in-service training, and the money would go to local school systems to reimburse them for substitute teachers while classroom teachers took time off to attend economics training sessions sponsored by the Council on Economic Education. In 1977, the legislature began appropriating money to finance in-service training of social studies teachers in economics.

Where'd The Money Go?

From 1977-1978, a $25,000 appropriation was provided each year exclusively for economics. In 1979, another $100,000 was appropriated, but it was to be divided between economics and citizenship education. In 1980, the legislature sought to expand the economics education program with a $500,000 appropriation, part of which went to employ six "economic education coordinators" in the Department of Public Instruction's Regional Education Centers. Later, the titles of these coordinators were changed to "social studies coordinators," a switch which sticks in the craws of businessmen who feel that represented a reduced commitment to economics education.

From 1978 to 1984, the Council on Economic Education was able to provide in-service training to several thousand teachers at one of the Council's 10

Judy Morganthall, Charlotte-Mecklenburg Schools

Then-East Mecklenburg High School seniors Kim Crawford and Rac Cramer use computer software in their Applied Economics course, developed by Junior Achievement.

"When we hire someone in our business, we look for someone who can read and write. We take them today in the full knowledge that we are going to have to teach them what business is all about."

—Former Sen. Harold Hardison

Centers for Economic Education, located on the campuses of colleges and universities throughout the state. The program trained nearly 1,100 teachers in 1978, and by 1981, when the legislature had expanded the program, the centers trained nearly 4,500 teachers in economics education, while the Department of Public Instruction (DPI) trained another 1,000. In 1982, legislative cutbacks in the program pared down appropriations for in-service training to about $150,000, and the number of participants declined to about 4,500, including 3,500 trained by the Council and 1,000 by DPI. By 1984, the number of participants trained by the Council and the DPI was down to about 2,000, and in both 1985 and 1986, fewer than 1,000, the smallest numbers since the training program began, as state funds dwindled.

By then, the in-service training budget for economics teaching was lumped with the Department of Public Instruction's general budget for in-service training, and that account was used to fund in-service training in other subjects which the department was getting increased pressure to emphasize. The list includes math, science, languages, drug education, and history.

The effect was dramatic. The money for in-service economics training dwindled, and Redmond, of the N.C. Council on Economic Education, was well aware of what was happening. Education, he notes, is a field where there are enormous pressures from competing interest groups. "The schools are under so many mandates and must deal with so many different kinds of interest groups that what they do is nod their heads, put the subject into the Basic Education Plan, and nothing really gets done. . . . The effect is literally zero."

John D. Ellington, director of the Division of Social Studies for the Department of Public Instruction, admits that the pressures from competing groups have affected economics instruction funding. "There are a hundred different interests that want to come in and have us teach something," explains Ellington. "I'm not saying they aren't legitimate. They are. But the State Board of Education believes its job is to determine the curriculum, and whenever you mandate a course legislatively, that reduces the number of electives a student can take."

Should North Carolina mandate such courses? The critics are specific on this point. "Of course we should not be legislating curriculum," says Howard Maniloff, former deputy superintendent of public instruction and now superintendent of Vance County Schools. "On the other hand, we should be teaching economics in our schools. But the State Board of Education should be establishing curriculum, not the General Assembly."

The N.C. General Assembly has often taken the opportunity to meddle in this area of education policymaking. The legislature has ordered taught just about every subject that should be taught in a school anyway. This statutory list includes: arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, vocational education, citizenship in the U.S., N.C. government, U.S. government, fire prevention, the free enterprise system, and the dangers of drugs and alcohol. Oh yes — and driver training. Very little is left out, except sex and AIDS education — and hazards of tobacco. Then-Sen. R.P. Thomas (D-Henderson) proposed adding that to the list in 1987, but his suggestion went up in smoke.

As for the money for in-service training, Ellington is candid: "We had that money for two or three years and then they [school officials seeking more in-service training for such subjects as history, for instance] came back and said, 'We need to do something in other subject areas, too.'" With a finite number of dollars and a seemingly infinite number of subjects in which teachers must be trained, the in-service training budget is simply not large enough. Efforts to reinstitute specific funding for economics training in the 1985 General Assembly failed, and the prospects are not good, says former Senator Hardison. "The reason we haven't continued funding this kind of program is that it's just not as politically popular as some other things," says Hardison. Legislation before the 1987 legislature to provide $265,000 for in-service training

in free enterprise was not approved.[6]

When the Basic Education Plan (requiring a core curriculum for all school systems and helping poor school districts to offer courses only their urban counterparts could offer previously) was adopted by the General Assembly in 1985, economics education remained in the state's curriculum.[7] The Teacher Handbook in Social Studies continues to emphasize economics education and guides teachers in how it can be taught at all grade levels.[8] That guidebook sets certain levels of achievement — "competencies" in education jargon — that students must meet.

Mandating curriculum may not be the best education policy, but it certainly is widespread. According to the National Council of the Social Studies and the Joint Council on Economic Education, 27 states require some form of economics instruction, and 15 of them go further than North Carolina law and require a separate course in economics.[9] North Carolina's law requires only that the free enterprise system be taught in its schools, but not necessarily in a separate course. That rankles pro-business critics of state education policy, who believe that economics gets short shrift in the classroom.

Economic Hodgepodge

Under current state policy, the economics instruction that most high school students receive comes in a ninth grade class called "Economic, Legal and Political Systems," known as ELP for short. In essence it is a civics course, generally popular with students because of its strong link to current affairs and government process. But even most teachers and administrators admit that students receive a lot of L and P instruction but relatively little E.

"ELP is a hodgepodge of things now," says Ellington. "Most of our school systems are making good efforts to include economics in the classroom. But there's not enough yet." School officials around the state agree. David Wyatt, principal of Madison High School in western North Carolina, notes that in his district it's a struggle to provide anything beyond the basic curriculum. "We're really not doing a whole lot in economics beyond what the state requires. And I really do not think that is enough."

Vann Langston, former principal of Millbrook High School in Wake County (one of the state's largest, with an extensive offering of courses), says much the same thing. "Maybe we are not doing everything we ought to in economics instruction," says Langston, now assistant superintendent for secondary programs in Wake County schools. "But on the other hand, we are making an effort to do more. North Carolina may not be doing enough, but nationally most school systems are not doing enough, either."

Part of the problem is that North Carolina's method of school financing has meant that the bigger schools in urban counties can offer far more courses than the smaller schools in rural districts, which do not have the property tax base to support a broad selection of electives. Nor do they have the number of students to fill a wider range of courses. The Basic Education Program was designed to ensure that each school district will offer a minimum number of electives, but disparities will remain. For instance, Wyatt's Madison High School cannot come close to matching Wake County's Millbrook High in the number of courses it offers. As *North Carolina Insight* reported in 1984, per-pupil spending on eduction in the state's 142 school systems (140 now) can vary by as much as 60 percent — with rich urban counties spending far more than rural counties.[10]

Redmond believes North Carolina's high school students, despite the recent emphasis on economics education and teacher training, are trailing far behind other students nationally. In May 1986, Redmond's group released the results of a standardized test in economics education, which was administered to 1,800 Tar Heel high school seniors. The results, says Redmond, were depressing. North Carolina students scored well below the national average in their knowledge of economics and the free enterprise system, and well below even other students in the South.[11]

Redmond's group also administered a survey of the students' responses to a set of statements about the economic system. North Carolina students' mean

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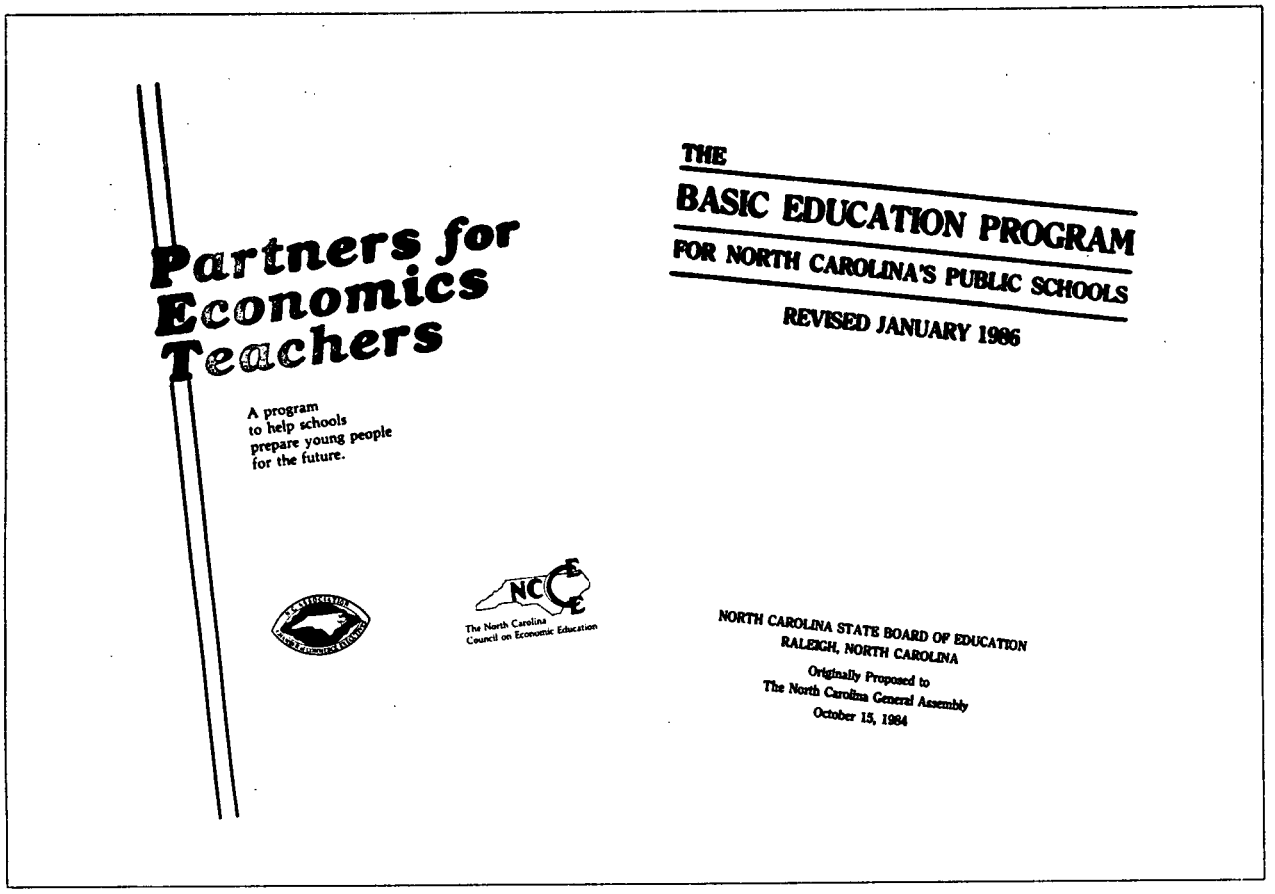
"We should not be legislating curriculum ... we should be teaching economics in our schools, but the State Board of Education should be establishing curriculum, not the General Assembly."

—Howard Maniloff

■



score on the objective test was 17.97; the average in the South was 19.59; nationally, it was 24.22. On the survey portion, they found that students had positive responses about the free enterprise system, but were pessimistic about their futures and about economic opportunities.

"The conclusion we draw from this study is that our young people are graduating without sufficient preparation in an area which is vital to them" says Redmond. "Without some basic knowledge of economics, these young people will be much less able to manage their financial affairs or their careers, and of equal importance, they will be limited in their ability to become informed voters and effective citizens."

Are Teachers Qualified?

Redmond blames this ignorance of economics partly on classroom teachers, who he says are not qualified to teach the free enterprise system. "Of the 57,000 teachers out there, few have an economics degree and only a handful of them is qualified to teach even a semester of economics. Schools are faced with having to teach something they are not qualified to do. Most of these teachers, if they were inclined to economics, would not have gone into teaching. As a result, what is being taught is only what teachers are prepared to teach." Though more than 10,000 teachers have received in-service training in economics, many of those teachers have left the classroom, while others need more training.

That's a problem, concede most administrators. "Teachers feel less comfortable statewide with teaching economics, compared with other social studies subjects," says Betty Jo Johnson, coordinator of social studies for the Wake County schools. "Typically, not many teachers come to the high school level with a degree in economics. Most of us only had one or two economics courses in college. That may reflect a lack of interest in economics. So we do find that is the area we have to work on the most in in-service training."

Adds Ellington of the state education department, "Most teachers aren't comfortable teaching economics, and I think part of that is the fault of the economists themselves. Some of them try to make economics frightening. But most of the economics that our teachers need to know are really very basic, simple concepts."

One of the difficulties in teaching those concepts, though, is that not only are teachers not well prepared, there aren't comprehensive materials in texts that North Carolina schools use, either, says Ellington. "There are some good texts out there, but whether they are readily available to most teachers is another question," he says. In the ELP course, for instance, "The economics part is just not as readily available and a lot of teachers are just not well prepared for it, so they teach more legal and political systems than they do economics. I'd probably do the same thing myself."

What Works?

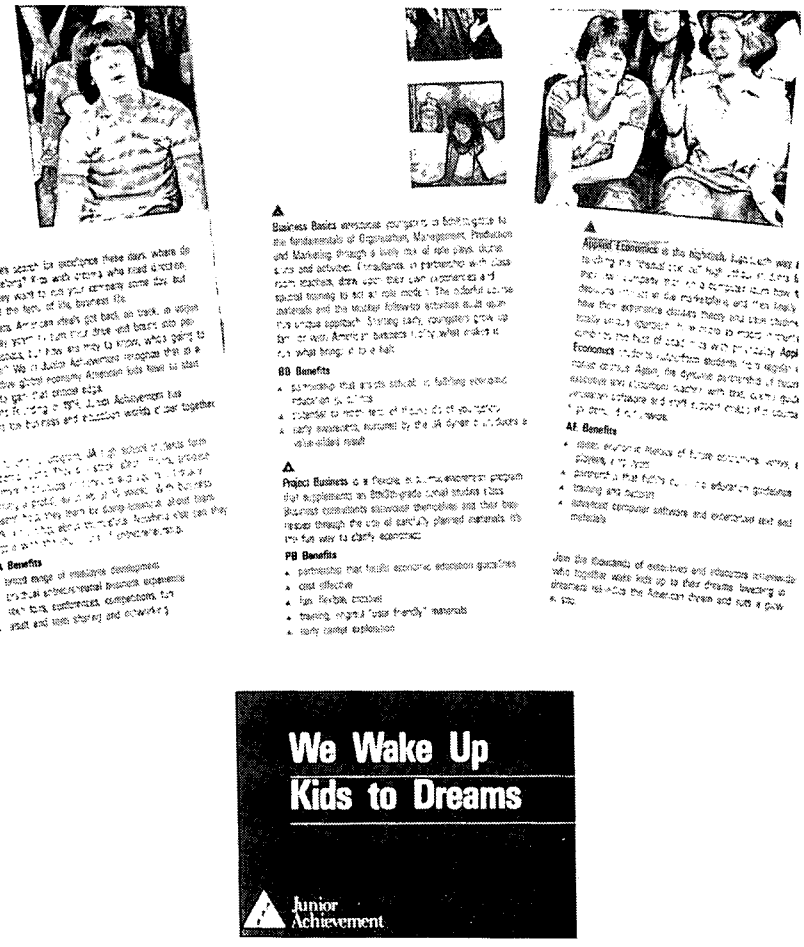
Despite the dearth of trained economics teachers, the lack of state funding for in-service training of teachers, and the absence of readable, comprehensive textbooks, educators believe that North Carolina's schools are making progress in teaching economics — and that they are teaching economics at least as well as they are teaching other traditional subjects such as math, science, English, or history.

For instance, the education department's Ellington points out that thousands of students each year take a one-semester senior class elective course in economics. Although there are no certain figures on enrollment, Ellington estimates that as many as 10,000 seniors —out of a statewide enrollment of about 69,000 seniors—take the economics elective course. (The department's class enrollment figures, taken once a year in the fall, show 6,700 students enrolled; Ellington says a conservative estimate of half that many probably are taking the same course in the spring semester, producing his estimate of 10,000 students).

Thousands more are enrolled in a marketing course derived from the old Distributive Education courses and in other business courses in the vocational education curriculum. A growing number of students are enrolled in economics classes adopted in various school systems across the state. Those courses often involve substantial help from the local business community, Ellington says.

One economics course in Mecklenburg County has been so successful that the school system has required it for graduation beginning with the class of 1988 — which means about 4,500 students each year will be taking the course. The course there was developed by Junior Achievement Inc., a national business-backed organization that has helped students learn about free enterprise in after-school programs since 1919.

In 1979, the Kellogg Foundation gave Junior Achievement a grant to develop a course that could be put into the classroom. That course, which would be taught by a social studies teacher with the regular help of a local volunteer businessman, would combine classroom theory, computer programming, and the actual experience of running a small business for a short time. The program began with a junior high school course called "Project Business," used in a number of North Carolina's junior high and middle schools. From that course grew a more ambitious one for the high school level.



Called "Applied Economics," the new course was an immediate hit with high school students. Various classes have learned about business and economics by operating companies producing auto safety lights, T-shirts (as did the class at Myers Park), Christmas candy packages, and the like.

"'Applied Economics' is a very popular course," notes Evelyn Gerdes, social studies specialist for Charlotte-Mecklenburg schools. "The kids get very involved, and they like it because they get very involved in the mainstream of economics, working with profit and loss statements and the like." Johnson says school systems in Asheville, Buncombe County, Henderson County, Haywood County, Greensboro, Guilford County, and Forsyth County have adopted the "Applied Economics" course as part of their regular offerings. But not every system will get that sort of assistance from business groups like Junior Achievement. The bigger districts will, but will rural counties like Bertie in the East or Swain in the West?

Other economics education programs offered by business groups in cooperation with chambers of commerce are available to public schools, and many local systems are considering their adoption, educators say. Business interest in stimulating more economics instruction continues, says Ellington, though it is not quite as strong as it used to be.

"We still hear about it a lot from some legislators and from some businessmen," says Ellington. "It reached a peak a few years ago, but since then, I think they have realized that there are other subjects that need an emphasis, too. The way to sell economics education is not by legislating it, or by having the Chamber of Commerce demand it. You have to convince teachers and superintendents that it is important. Most of the business community has been highly supportive of the schools, but we cannot expect it to take the place of teachers. For the long haul, it will have to be the teacher in the classroom who can teach economics."

FOOTNOTES

[1]Bell quoted in Robert Rothman, "Economic Literacy: School Reform, Business Concerns Seen Boosting Trend Toward Required Coursework in Economics," *Education Week*, Vol. VI, No. 27, April 1, 1987, pp. 1 and 56.

[2]Chapter 1230 of the 1969 Session Laws (Regular Session, 1969).

[3]Dr. David Lapkin, *The Feasibility of Teaching Economics in the Public Schools of North Carolina*, Department of Public Instruction, Dec. 11, 1970.

[4]Chapter 974 (SB 745) of the 1971 Session Laws (Regular Session, 1971).

[5]Chapter 65 (SB 126) of the 1975 Session Laws (Regular Session, 1975), now codified more grammatically as G.S. 115C-81(b).

[6]SB 890, 1987 General Assembly, referred to Committee on Appropriations.

[7]*The Basic Education Program For North Carolina's Public Schools*, Revised January 1986, N.C. State Board of Education, pp. 22-23. See also N.C.G.S. 115C-81, "Basic Education Program," adopted as Chapter 479 of the 1985 Session Laws (Regular Session, 1985), Sections 55(c)(1) and 55 (c)(2).

[8]*Teacher Handbook*, Social Studies K-12, Division of Social Studies, Instructional Services, N.C. Department of Public Instruction, 1985, pp. 477-544..

[9]Rothman, p. 56.

[10]Lanier Fonvielle, "Disparity in Public School Financing," *North Carolina Insight*, Vol. 7, No. 1, June 1984, pp. 30-37. See also pp. 250-255 in this anthology.

[11]"North Carolina High School Seniors Show Poor Knowledge of Basic Economics," Summary Report issued by the N.C. Council on Economic Education, May 1986, pp. 1-2.

"The study of the free enterprise system, its history, theory, foundation, and the manner in which it operates, shall be included at the high school level."

—N.C.G.S 115C-81(b)

Chapter 10

North Carolina Prisons

Behind Bars: North Carolina's Growing Prison Population

by Jack Betts

A LITTLE MORE THAN A CENTURY AGO, North Carolina had no prison overcrowding problem. North Carolina didn't even have a state prison, for that matter. Trial and punishment for criminal offenses were largely a local matter: Those convicted were hung, if the circumstances warranted it, or they were punished locally. Corporal punishment was not unusual, and public stocks were used to pillory offenders for a time. Not until after the Civil War was a state penitentiary built, and it would be decades before prison units were bulging at the seams.

But bulge they do, despite the expenditure of millions of dollars in recent years in a futile attempt to keep pace with the growth in the number of North Carolinians who are put behind bars each year. By the end of 1986, the prison population in the state's 86 prison units topped 18,000 for the second year in a row. Yet the state's prisons—many of them older by far than the inmates they house—were designed for only 16,633 inmates. Another 4,000 inmates crowd the state's 151 local jails, awaiting trial or serving short sentences. The overcrowding problems have caused inmate unrest and have led to suits in federal courts aimed at forcing the state to improve its prison system.

Overcrowding is one problem, and the state's *rate of incarceration* is another. North Carolina has long had one of the highest rates of incarceration in the nation. According to the U.S. Justice Department, the state's rate of incarceration in mid-1986 was 256 inmates per 100,000 population, ranking the state 11th highest among all states. The incarceration rate appears to be growing again after two years of slight decline in 1983 and 1984.[1] This incarceration rate continues to rise despite the fact that North Carolina has traditionally had one of the nation's lowest crime rates, 32nd in 1985.[2]

The state's overcrowding and high incarceration problems have been fairly constant in the post-World War II era. As the Report of the Commission on the Future of North Carolina noted in 1983:

"The pattern of high incarceration rates is long established, though the state was one of the last in the nation to build its first prison. After half a century of debate, construction of the first state prison was finally mandated in 1868. One of the principal arguments against it at that time was the cost of operation, but some people contended that the administration of the criminal justice system was best left in the hands of the counties. Despite these concerns, the prison system, once established, grew rapidly. By 1934, more than 7,500 inmates were confined.... Between 1950 and 1960, an average of about 15,000 were imprisoned each year. The num-

Jack Betts is editor of North Carolina Insight.

ber declined during the middle 1960s but began to climb again in the 1970s."[3]

Climb it did, and as a result, the state's prisons are filled beyond capacity. Taxpayers have financed costly projects to build new prisons and to replace outmoded ones. The state's lawyers are tied up in federal courts defending the North Carolina prison system against charges that the correction system violates the Eighth Amendment's ban on cruel and unusual punishment.[4] And the Martin administration and the legislative leadership are searching for ways out of this penal puzzle. But to understand how to begin dealing with the future requires a glimpse at the past.

A Short History of Corrections in North Carolina

Not long after the Revolution, the nation's first prison was set up by Quakers when they converted the old Walnut Street jail in Philadelphia into a prison. Their theory of criminal justice reform was that, instead of subjecting offenders to public humiliation or whipping, the ends of justice could be better served by locking them away in solitude to allow them to repent and rehabilitate themselves. This place of repenting— hence the word penitentiary—gained widespread public support, and most states set up central penitentiaries to house their worst offenders.

But not North Carolina. In the 18th Century, state law required counties to do only two things — to build a courthouse, and to build a jail.[5] Offenders were tried and punished where offenses were committed—at the local level. Not until 1854 did the General Assembly authorize imprisonment as criminal punishment. Even then, incarceration was only an alternative. The Constitution of 1868, adopted during Reconstruction, finally authorized construction of a "central prison" in Raleigh for those offenders sentenced to terms of a year or longer. That prison, which came to be known as Central Prison, opened in 1884 and stood for nearly a century until it was replaced by a new Central Prison during the administration of Gov. James B. Hunt Jr.

A few years after the original prison was built, the state began acquiring farmland in Halifax and Northampton counties for use as prison farms and began sending inmates to till those fields. But even by the turn of the century, county governments remained the prime custodians of prisoners, who were often sentenced to labor on public works projects of varied nature. As the need for public works projects waxed and waned, so, sometimes, did the size of the prison population. Jail inmates built county roads, dug canals, drained swamps, laid railroad track, and dammed creeks—sometimes for private contractors who hired inmate labor from the state. That practice continued until 1929, when Gov. O. Max Gardner halted the practice.

In 1933, the State Highway and Public Works Commission took over North Carolina's prison system and responsibility for every person sentenced to 30 days or longer in jail. A women's prison—known as the Industrial Colony for Women—was opened in Raleigh in 1934, a state Parole Commission began operating in 1935, and a Probation Department opened its doors in 1937. By 1939, the state had constructed permanent buildings at the old county road camps in almost every county, and today many of these old road camps survive as units of the state prison system.

"The marriage of roads and prisons was one of convenience based on financial necessity," concluded the Citizens Commission on Alternatives to Incarceration, chaired by then-Court of Appeals Judge (and now an Associate Justice of the N.C. Supreme Court) Willis P. Whichard of Durham, in 1982.[6] By the 1950s, a growing body of sentiment concluded that because highway construction and prisons served different governmental functions, they ought to be managed by separate agencies. Researchers examining state prison policy, according to the Whichard report, "found a confusing diversity in the operation of different units. There was a lack of goals and coordination of policy, as the membership of the Highway Commission changed with every gubernatorial administration."

Faced with a choice of giving control of prisoners back to the counties or setting up another state department, the General Assembly in 1957 established the Department of Prisons, renamed in 1971 as the Department of Social Rehabilitation and Control, and again renamed in 1977 as the Department of Correction. But twin legacies of past policies continued—and survive today —as major correctional policy issues: First, the state retained control of thousands of inmates who *in other states would have been housed in city jails and in county lockups.* And second, the state retained many of the old county road camps as full-fledged, functioning prison units, and that's why today North Carolina has more *prison units* than any other state in the nation.

The gravity of these two factors cannot be overlooked, for they are principal elements of today's overcrowding problems and today's high rate of incarceration. By continuing to accept prisoners

Jack Betts

Central Prison in Raleigh, the state's largest unit, with a capacity of 800 inmates.

who in other states would be housed in local jails, the state inflates its own prison population. And it is able to accept so many prisoners, even past the point of overcrowding, because it has so many units—large, medium, and small—in which to house them.

Further changes in state prison policy have shaped today's correction system. In 1966, North Carolina instituted pre-release and after-care programs, and by 1971 had phased out inmate road work. Those work gangs would be revived on a small-scale basis in the Hunt administration, and an experiment in youth forestry camps would be proposed in 1986 by the administration of Gov. James G. Martin. In the 1970s, North Carolina's prison problems came to the public's attention. Overcrowding, deteriorating facilities, and concerns over the cost of correction programs generated action by the General Assembly. The Legislative Commission on Correctional Programs, chaired by former state Sen. Eddie Knox of Charlotte, led to changes in sentencing that have had a salutary effect on prison overcrowding. As the 1980s began, more reforms were adopted, and the use of alternatives to incarceration began to gain legislative credence and public credibility.

But even with these changes, North Carolina's prison population continues to be a problem. In 1985 and again in 1986, it reached record levels. Why? As Whichard put it in an interview, "If you look at our statistics, you would have to conclude one of two things: either we have the worst people in the world, or we have relied excessively on incarceration as a remedy for criminal acts. I think the latter is the case. I don't think we have more than our fair share of bad people."

Dubious Distinctions

Nationally, more than half a million persons are incarcerated in state and federal prisons.[7] The prison population is growing at the rate of about 10 percent a year, and North Carolina is still among the leaders in terms of the number of persons it sends to jail, even though the rate of growth has slowed. According to the U.S. Department of Justice, in mid-1986, the state's prison population (in both federal and state prisons) stood at 17,596, which ranked the state third in the South (behind only Florida and Texas) and eighth in the nation, behind California (55,238), Texas (37,760), New York (36,100), Florida (29,712), Ohio (21,942), Michigan (19,437), and Illinois (19,317).

Traditionally, North Carolina not only has one of the largest prison populations, but also one of the

highest rates of incarceration—the number of prisoners per 100,000 population. In mid-1986, according to the figures computed by the U.S. Justice Department, the state's rate of incarceration was 256, the eleventh highest rate in the country.[8] Those states which have higher rates of incarceration are Nevada, South Carolina, Louisiana, Delaware, Maryland, Alaska, Alabama, Arizona, Oklahoma, and Georgia. The national rate of incarceration, the Justice Department says, is 210 per 100,000 population; this figure ranks the United States third in the world, *behind only South Africa and the Soviet Union* in the rate of incarceration, according to the Citizens Commission on Alternatives to Incarceration.

The state's high incarceration rate has long alarmed state correction officials, who must find places for the inmates sent to prison. In the 1970s, North Carolina ranked first in its rate of incarceration. This became an embarrassment to the state, in the category of other such "distinctions" as having a high rate of infant mortality, for instance, or leading the region in hookworm disease or illiteracy. In a front page story in 1978, for example, *The New York Times* took note of the state's rate of incarceration in a story headlined, "North Carolina's Leaders Worried by Blemishes on the State's Image." Now Stevens Clarke, a faculty member at the UNC-Chapel Hill Institute of Government, says that the news is not all bad. Although North Carolina's rate of incarceration has continued to grow, it has slowed down rapidly, while the rest of the nation's incarceration rate has increased, he notes.

"We are all used to hearing about how high our prison population is, and how fast it has been growing, and the federal lawsuits, and so on," Clarke told the legislature's Special Committee on Prisons in a 1986 memo.[9] "I don't mean to suggest that there is cause for complacency about this situation, but I'd like to pass on some good news." That news (see Table 1) is that North Carolina's prison population was "the third slowest-growing in the United States from 1980 to 1985, and the second-slowest growing in the South." During the six-year period, said Clarke, the number of prisoners in all states grew by nearly 53 percent, and in the South by nearly 39 percent. But in North Carolina, the number grew by only 11.7 percent—"only about one-fifth as fast as the all-states total," said Clarke. In the early 1970s, North Carolina's incarceration rate had led the nation; now it was still high and still growing, but not as high as the rates in 10 other states.

North Carolina's prison population is high despite the fact that, historically speaking, the state's

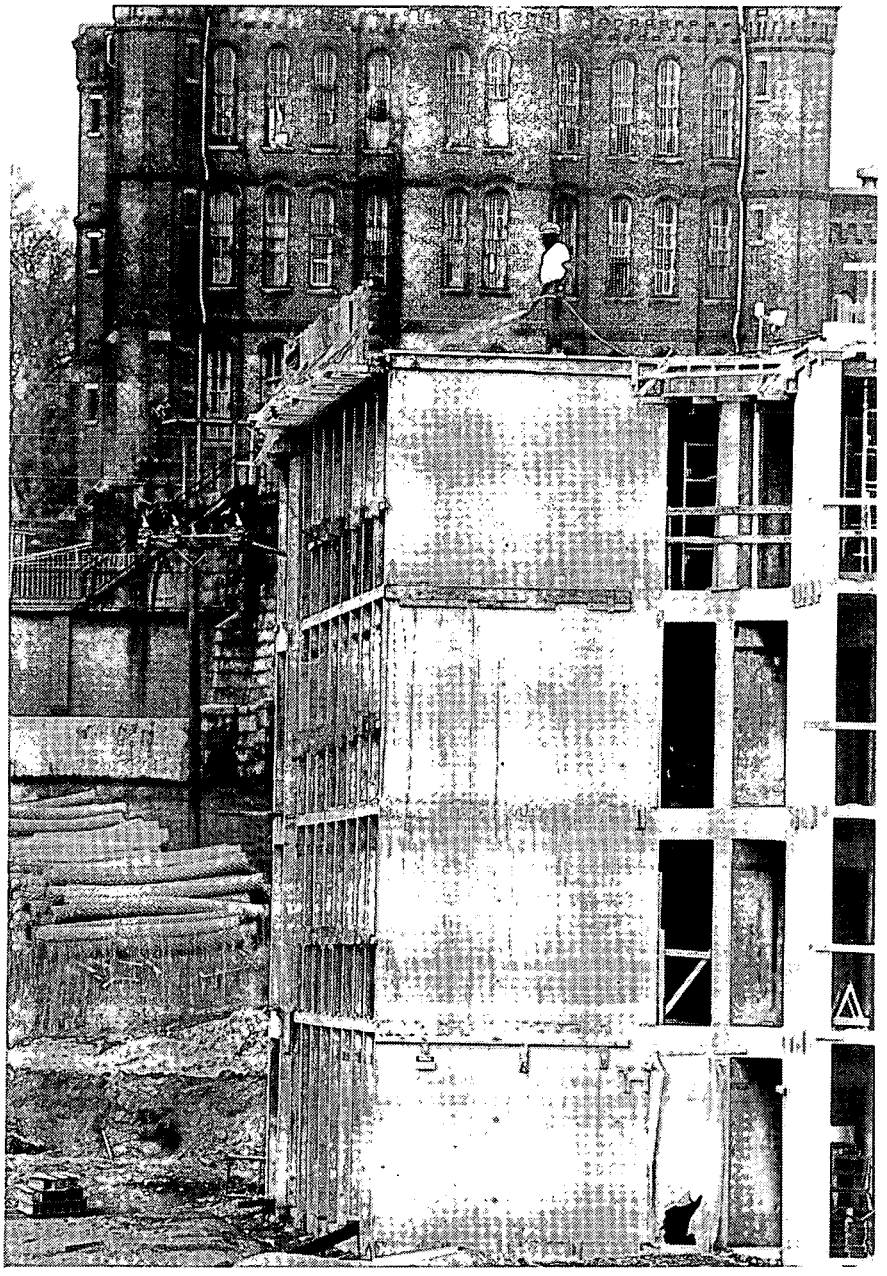
A few years ago, I worked undercover for some weeks as a corrections officer in Texas's maximum security prison. The training manual had all of the right words in it:

'Every man cherishes his dignity. Without it he is less than a man. In his dealings with inmates the correctional officer is expected to preserve that dignity. A man humiliated, shamed or degraded is a man alienated, perhaps forever.'

So how did these words carry over into action? Each field officer had twenty convicts, all attired uniformly in white, whom he ordered to bend over to start picking September's cotton at 8 a.m. None of these convicts straightened his back without permission, be it to wipe his brow, light his cigarette, or pour out his urine. Twice in the long, hot morning, and twice in the long, hotter afternoon, each man got a drink of water from a metal dipper. Verbal abuse, much of it profane, poured down on the sweating line, heaviest of course on whichever man was slowest at filling his burlap bag. At day's end, the inmates stripped bare in the blazing sun at the back gate of the prison, exposed their body cavitites to the corrections staff for inspection, and ran naked across the yard to the showers and clean uniforms beyond. Somehow I couldn't get that training manual out of my head as I watched the rectal searches.

'A man humiliated, shamed or degraded is a man alienated perhaps forever.'

—John R. Coleman, president
Edna McConnell Clark Foundation



Jackson Hill

Central Prison in Raleigh under construction in 1980. The original Central Prison, opened in 1884 and since razed, is in the background.

crime rate has been fairly low. According to statistics published by the Federal Bureau of Investigation, 31 states in 1985 had higher crime rates than North Carolina.

"North Carolina's crime rate generally is among the lower crime rates nationally," observes Whichard, "but we are higher in terms of rates of incarceration. It would be easy to conclude that our high rate of incarceration keeps our crime rate low, but you cannot draw that conclusion if you look at the same statistics on other states. For instance, Florida has a much higher crime rate, but a slightly smaller rate of incarceration. And West Virginia has a very low rate of incarceration, and a very low rate of crime. So the analogy between the two just doesn't hold."

Two's Company, But 18,000's A Crowd

On paper, at least, North Carolina's prisons were designed to hold 16,695. But former Director of Prisons John Patseavouras says that figure is, for all practical purposes, meaningless. When Patseavouras spoke with *Insight* late in 1986, the prison system held 18,022 prisoners, close to the 1985 record of 18,044, and about 1,400 higher than the rated capacity. But, Patseavouras pointed out, the actual capacity of the North Carolina system, if the state adhered to American Correctional Association standards requiring 50 square feet of cell space for each inmate, the capacity of the N.C. prison system would be only 13,200—not counting cells now under construction by the state.

In other words, if the state complied with nationally accepted penal standards, North Carolina's overcrowding problem would sound even worse—an overflow of about 4,800 inmates. North Carolina never has conformed to ACA standards, and not one North Carolina state prison unit has *ever* been accredited by the American Correction Association. The State Auditor calculates that even if a figure of 40 square feet per inmate were used, the system's current capacity would be 14,800.[10] By any calculation, these figures are small. Even the ACA standard of 50 feet would mean inmates have an average cell space that is no larger than a medium-sized residential bathroom.

The Department of Correction, in its 10-year plan released in March 1986, projects that it will have an additional overpopulation of 5,500 inmates by 1995. That will mean a total capacity deficit of about 10,000 adequate spaces—using the ACA standard—for inmates, unless "an ambitious construction program [is] adopted which will mitigate against federal court intervention and provide for reasonable conditions of confinement within the N.C. prison system."[11]

Prisoners are housed in four types of facilities in the 86-unit state prison system:

- 47 minimum custody units, many of them the vestiges of the old county road camps;[12]
- 28 medium custody prisons;
- two combination minimum and medium custody prisons;
- four close and medium custody units;
- one close custody unit;
- one halfway house; and
- three maximum and close custody units.

The latter category includes the largest state prisons—Central Prison in Raleigh for men, N.C. Correctional Center for Women in Raleigh, and Caledonia Prison in Halifax County. The average daily prison population in these 86 units in 1985 was 16,953 inmates.[13]

But state prison units are not the only lockups in the state. Another 151 local units exist, according to the Department of Human Resources' Division of Facility Services. These units include:

- 99 county jails (including four satellite jail units in the same building as the main jail);
- nine free-standing county satellite jails;
- 41 municipal jails, most of which are small; and

Table 1. Growth of N.C. Prison Population Compared to Prison Population of All States and Southern States, 1980-1985

Rate of Incarceration Per 100,000 Population	1980	1981	1982	1983	1984	1985	% Increase 1980-85
North Carolina	244	250	255	233	246	254	4.1%
Southern States	188	202	224	225	231	238	26.6%
All States	130	144	160	167	176	187	43.8%

Source: Institute of Government, UNC-Chapel Hill, Sept. 15, 1986. Based on statistics from U.S. Department of Justice, Bureau of Justice Statistics.

Note: These statistics reflect prison populations and rate of incarceration as of December 31 of each year. Traditionally, each state's prison population is at its lowest point at that time of year, due to holiday release programs.

■ two regional jails serving multi-county areas (the Albemarle Regional Jail in Elizabeth City serves Pasquotank, Perquimans, and Camden counties, and the Bertie-Martin Regional Jail in Windsor serves Bertie and Martin counties).

In 1985, the average daily population of these 151 units was 4,075 inmates, most of whom were awaiting trial or serving short sentences.[14] In other words, an average of 21,028 North Carolinians were locked behind bars on any given day in 1985.

The specter of further overcrowding without substantial new construction is a chilling thought — especially to those who occupy the existing prison cells. In June 1986, the Office of State Auditor provided a snapshot in time of the prison population as it existed on the final day of 1985.[15] That snapshot, provided to the Special Committee on Prisons, has changed since then, of course, because the makeup of the prison population changes daily. But the breakdown of the population that day was representative of the current population today (see Tables 2 and 3).

Of the 17,513 inmates under lock and key that day, most of them (94.3 percent) were male, and more than half were black (52.9 percent)—more than twice the percentage of blacks (24 percent) in the state's general population. Nearly 43 percent were white, and the rest were Oriental, Indian, or of unreported races. As always, most of the inmates were young, with more than 31 percent under the age of 25 and 74 percent under the age of 35. In other words, nearly three-fourths of the prison inmates were younger than 35—far out of proportion to their numbers in the population in general, about 59 percent.

The high number of young people in prison may have been a direct outgrowth of the same trend in the general populace. "The 'baby boom' bulge in the general population may have contributed to the dramatic increase in the total number of criminal offenders and the prison population during the 1970s and early 1980s," notes Joseph E. Kilpatrick, assistant director of the Z. Smith Reynolds Foundation in Winston-Salem, which, with the Mary Reynolds Babcock Foundation, funded the Citizens Commission on Alternatives to Incarceration. "Based on this theory, some believe that the 'prison overcrowding crisis' will subside as the baby boomers grow older," Kilpatrick adds.

Not only were the inmates relatively young, but most had less than a high school education, and less than one-fourth of the inmates were married. Nearly 200 inmates—about 1 percent— had four years of college, and nearly 7 percent of the inmates had at least some college education – triple the rate of 1970, when only 2.3 percent of the inmates had some post-high school education.

Of the 17,513 inmates, the vast majority — 14,000—were felons, compared to 3,258 misdemeanants and 255 prisoners in other categories. In other words, nearly 80 percent of the inmates were felons. But a far lesser percentage were felons serving for crimes of violence. On the final day of 1985, there were 7,509 felons—43 percent of the population—serving sentences for such assaultive crimes as homicide, rape and sexual assault, and robbery. Another 1,369 inmates—8 percent— were behind bars for public order felonies including drug-related crimes, and 5,122—29 percent—were in prison for felony property crimes, including burglary, larceny and auto theft, and forgery and fraud.

Choices for Eliminating Overcrowding

These categories of crimes include non-violent and property-crime offenses for which many states do not imprison offenders. State officials generally are reluctant to enumerate which crimes should not carry active prison sentences, at least as an alternative. As Wade Barber, former district attorney in Chatham County and an advocate of appropriate use of alternatives to incarceration, puts it, "There are *some* bad check writers who ought to go to jail. But rather than defining a crime by how long we should send a person to prison, we need to determine what is the best way to punish an offense, whether it is prison, or probation, or restitution, or all of these."

Another advocate of alternatives, former state Rep. Parks Helms, puts it this way: "My guess is that we have far too many people in our prison system for 'non-violent' crimes, and that detracts from our ability to focus our attention on the serious offenders who are in fact threats to society."

Former Governor James B. Hunt Jr. warned, however, "If an alternative form of punishment will best provide that protection, we ought to use it. If prison will best protect our people, we should use prisons and build as many as we have to. My policy remains the same: that is, swift, certain, and severe punishment for the criminal."

Correction officials, including Secretary of Correction Aaron Johnson and former Director of Prisons John Patseavouras, cite DWI, or Driving While Impaired, convicts as examples of inmates that might be better housed elsewhere. At the end of 1985, for instance, there were 726 misdemeanants serving DWI sentences in state prisons. Had they been

Table 2. N. C. Inmate Population by Race and Sex, Dec. 31, 1985

	Felons	Misdemeanants	Other	Total	Percentage of Total Inmates
Race and Sex:					
Males:					
White	5,621	1,570	—	7,191	41.1%
Black	7,436	1,434	—	8,870	50.6%
Indian	325	76	—	401	2.3%
Oriental	2	—	—	2	0.0%
Other	53	5	—	58	0.3%
Total Males	13,437	3,085	—	16,522	94.3%
Females:					
White	247	65	—	312	1.8%
Black	299	105	—	404	2.3%
Indian	16	3	—	19	0.1%
Oriental	1	—	—	1	0.0%
Other	—	—	—		—
Total Females	563	173	—	736	4.2%
Not Reported/Unsentenced	—	—	255	255	1.5%
Totals	14,000	3,258	255	17,513	100.0%

Table Prepared by Office of State Auditor

housed elsewhere, the state's prison overcrowding would have been relieved—but local jail overcrowding would have worsened.

Still, Patseavouras points out, prison crowding could be alleviated somewhat if inmates with short sentences were not committed to state prisons. "We get more than 400 inmates a year who've been given sentences of 60 days or less. Now, I know that sounds like a small number, but it is expensive to take an inmate in, to transport them, give them all the testing that we must, file all the reports, just for a short sentence. Is that the most effective way to handle an inmate?" The prison system already processes—that is, checks in, examines, and checks out—about 18,000 persons a year. It is a time-consuming and expensive process, departmental officials point out.

More than 90 percent of the state's inmates are serving sentences of one year or longer, and the largest group of inmates is serving 10-year to life sentences (see Table 4). Fewer than 8 percent serve sentences of less than one year; 9 percent serve one to two years; 21 percent serve two to five years; nearly 18 percent serve five to 10-year sentences; nearly 34 percent serve from 10-year to life sentences; and more than 9 percent are in prison for life sentences or are on Death Row. (These sentences do not reflect the actual time served in prison.)

The Martin administration has proposed a two-pronged approach to prison overcrowding— more alternatives to incarceration and more prison construction, including an experiment with three privately built prisons. Governor Martin proposed a 10-year plan to add 10,000 beds to the state system at a total cost of $202 million, including spending $50 million during the first three years of the plan to add 2,500 new beds and replace the decrepit Craggy Prison, a medium custody unit in Asheville generally regarded as the worst prison structure in the state. The Martin administration also proposed a diversion

of up to 5,000 inmates into alternative programs, which the Governor said would reduce the number of new prison beds needed.

The costs of incarceration are startling. The Department of Correction, which employs 7,600 staff members, operates on an annual budget of $216 million. According to the State Auditor, the average daily cost per inmate in 1984-85 was $30.57.[16] The cost of operating prisons varied according to the level of custody, from a low of $22.79 per inmate for minimum custody, to $29.31 for medium custody, to $47.67 for maximum and close custody inmates. The cost varied widely depending upon the unit, too. At the new Central Prison in Raleigh, the daily cost of incarceration was $68.14 per inmate; at the N.C. Correctional Center for Women across town, it was almost half that—$35.51. In other words, to keep *one* inmate locked up at Central Prison for *one* year costs the taxpayer $24,871. More than one legislator has observed that it would be cheaper to hire a full-time probation officer to shadow a freed inmate than to lock him up and feed and clothe him.

Of course, cutting the population by a few, or adding a few prisoners, will produce no substantive savings. But cutting the prison population by a significant amount could save millions by avoiding the costs of new prison construction. For instance, the 1985 General Assembly financed a consent agreement—a legal settlement to a lawsuit filed in federal court charging the state with operating inhumane prisons—to improve state prisons in the Piedmont, to the tune of $12.5 million. How is the state spending this money? The taxpayers are footing the bill for five new 100-bed dormitories, at a cost of

Table 3. N. C. Inmate Population by Crime Category, Dec. 31, 1985

	Felons	Misdemeanants	Other	Total	Percentage of Total Inmates
Assaultive Crimes:					
Homicide	2,355	—	—	2,355	13.4%
Rape and Sexual Assault	1,568	—	—	1,568	9.0%
Robbery	2,717	—	—	2,717	15.5%
Other	869	400	—	1,269	7.2%
Total Assaultive Crimes	7,509	400	—	7,909	45.1%
Public Order Crimes:					
Drugs	1,198	80	—	1,278	7.3%
DWI	—	726	—	726	4.1%
Traffic	—	350	—	350	2.0%
Other	171	218	—	389	2.2%
Total Public Order Crimes	1,369	1,374	—	2,743	15.6%
Property Crimes:					
Burglary	3,075	447	—	3,522	20.1%
Larceny and Auto Theft	1,235	718	—	1,953	11.2%
Forgery, Checks, Fraud	633	204	—	837	4.8%
Other	179	115	—	294	1.7%
Total Property Crimes	5,122	1,484	—	6,606	37.8%
Not Reported/Unsentenced	—	—	255	255	1.5%
Total Inmates (All Crimes)	14,000	3,258	255	17,513	100.0%

Table Prepared by Office of State Auditor

$7.4 million—or nearly $1.5 million per dormitory, and about $15,000 per dormitory bed. And that's just for a minimum custody, dormitory-style unit. Prisons that have single cells, or maximum-custody prisons like Central Prison, cost many times that amount. The Martin administration proposes one new 500-bed institution—at a cost of $28.5 million. Average projected cost per bed? About $57,000.

Of course, projections sometimes are off the mark. The Martin administration, for instance, has projected a prison population increase of up to 22,850 by 1995. But the State Auditor noted that the Martin administration based that projection on a continuation in the existing rate of increase, without accounting for diversion of prisoners in alternative programs and other methods of reducing prison overcrowding.[17] Thus, the State Auditor's projection is for an increase up to 19,191 prisoners by 1995—which could require far less new construction. (The Martin administration revised its projections, lowering its 1995 estimate to 21,950—still higher than the Auditor's estimates.)

That would delight those advocates of increased use of alternatives to incarceration— particularly those who perceive that new prison construction simply confirms a corollary to Parkinson's Law—that objects tend to fill the space provided for them. As Parks Helms puts it, "The more prisons we build in response to political pressures will simply mean that we will place more people in prison. I cannot imagine a time when our citizens will allow prison space to stand vacant." Others argue the reverse—that growth in the prison population itself drives new construction. But no one argues that the financial and social costs of corrections are small.

Says former District Attorney Barber, "Prison is *the* most expensive alternative for punishing an offense, both in terms of what it costs the taxpayer, and in terms of how we are punishing the offender. Prisons should be the *last* alternative that we consider in deciding how to punish an offense."

FOOTNOTES

[1]Memo from Stevens Clarke, Institute of Government, UNC-Chapel Hill, to N.C. legislative Special Committee on Prisons, Sept. 15, 1986, based on statistics from U.S. Department of Justice, Bureau of Justice Statistics.

[2]*Uniform Crime Statistics*, 1985, U.S. Department of Justice, Federal Bureau of Investigation, July 1, 1986, pp. 44-50.

[3]*The Future of North Carolina: Goals and Recommendations for the Year 2000*, Report of the Commission on the Future of North Carolina, N.C. Department of Administration, 1983, pp. 243-244.

[4]The Eighth Amendment to the U.S. Constitution reads, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[5]*Report of the Citizens Commission on Alternatives to Incarceration*, Fall 1982, pp. 35-38.

[6]*Ibid.*, p. 37.

[7]U.S. Department of Justice, Bureau of Justice Statistics, News Release No. BJS 86-210, Sept. 14, 1986.

Table 4. Inmate Population by Sentence Length, Dec. 31, 1985

	Felons	Misdemeanants	Other	Total	Percentage of Total Inmates
Sentence Length:					
6 Months or Less	199	322	1	522	3.0%
6 Months to 1 Year	52	722	—	774	4.4%
1 to 2 Years	372	1,229	—	1,601	9.1%
2 to 5 Years	3,021	668	—	3,689	21.1%
5 to 10 Years	2,933	194	—	3,127	17.9%
10 Years to Life	5,771	116	—	5,887	33.6%
Life/Death*	1,603	4	—	1,607	9.2%
Not Reported/Unsentenced**	49	3	254	306	1.7%
Total Inmates	14,000	3,258	255	17,513	100.0%

* Includes inmates sentenced to death penalty.

** Includes inmates who have been convicted but who have not been sentenced by trial judge.

Table Prepared by Office of State Auditor.

[8]*Ibid.*

[9]Clarke, p. 2.

[10]*Operational Audit Report, North Carolina Department of Correction,* Office of the State Auditor, June 1986, p. 34.

[11]*Corrections at the Crossroads, Plan for the Future,* 10-Year Plan by the N.C. Department of Correction, March 6, 1968, Part IV, pp. 1-3.

[12]The classifications of custody are defined by the Department of Correction as follows: *Maximum* custody inmates are housed in single security cells separated from the regular inmate population at secure prisons. *Close* custody inmates are housed in similar prisons, but are granted more freedom of movement and activity within the institution. *Medium* custody inmates are also under armed supervision but are assigned to field units where they live in dormitories and may work on off-site jobs, such as road squads, under armed supervision. *Minimum* security inmates are housed in field units, but are not under armed supervision. Inmates include misdemeanants and approved felons who are nearing release. Minimum security inmates may be eligible for work release, study release, and home leaves.

[13]*Operational Audit Report,* pp. 101-103.

[14]Interview with Robert Lewis, Division of Facility Services, Department of Human Resources, Nov. 14, 1986.

[15]*Operational Audit Report,* pp. 22-23 and pp. 83-107.

[16]*Ibid.*, pp. 101-103.

[17]*Ibid.*, pp. 30-32.

Alternatives to Incarceration: Fledgling Programs Forced to Grow Up Fast

by Bill Finger

Since 1983, N.C. state government has funded three major community-based programs for adult criminal offenders—community penalties, intensive probation and parole, and community service. This article examines how these three programs have evolved and what their future might be, in the context of the current prison overcrowding crisis and from the viewpoint of a unified system of community-based punishments.

On a dreary fall morning, 16-year-old Eliot Johnson sits fidgeting in Wake County District Court. He's been in trouble with the law before, but this time he broke into a car, and the charges are more serious—one felony count of breaking and entering and two misdemeanor counts of possessing stolen property.

Even though Eliot (not his real name) is only 16, the seriousness of his crime means that he is treated as an adult under the N.C. criminal justice system. Nearly one of every three people in the N.C. prison system is under age 25. Because Eliot is in the adult *judicial system, he has no special juvenile court counselors, only his lawyer, 46-year-old Sally Scherer.*

"The first thing I did when I got the case was call Cindy and ask for help," explains Scherer, motioning to the petite woman at her side during the long wait for the District Court docket to clear. "Attorneys just aren't able to adequately do the kind of background work that Cindy can do at ReEntry."

Cindy Hill, a forensic social worker, picks up the story. "When I first saw him, he was still locked up," she begins, pointing upstairs to the Wake County jail. ReEntry, a nonprofit organization serving Wake County, develops alternative sentencing plans for nonviolent, prison-bound felons, people like Eliot Johnson.

"I got him enrolled in school and gathered the records on his history—criminal justice records from other states and in-patient hospitalizations for substance abuse (drugs and alcohol)," explains Hill. She met with Eliot's mother (his father was not in the home), school officials, and Wake County Drug Action. She learned that Eliot was a kid with some serious problems. "Every previous study of him had recommended some kind of residential out-of-home group situation. I contacted a private group home here which decided he qualified for the home. They put him on the waiting list."

For six weeks, Hill had gathered information on Eliot's history and current situation, which helped attorney Scherer in negotiating the case with Assistant District Attorney Tony Copeland. Throughout the morning, Scherer and Copeland continue to confer, between the parade of cases before Judge Russell Sherrill.

Even if Scherer can finalize the plea and alternative sentencing plan with Copeland, the case still has to go before Judge Sherrill, known for his tough sentences. He could reject any proposal Scherer and Copeland work out. Finally, at 12:50 p.m., Judge Sherrill turns to Eliot's case, the final business on the morning calendar.

SINCE THE LATE 1970s AND EARLY '80s, ReEntry and similar programs in Fayetteville, Asheville, Hickory, and Greensboro have sponsored efforts designed to punish and rehabilitate offenders in a community setting. Overcrowding of the state's aging prisons triggered these early efforts and prompted a greatly expanded system of punishments *outside* of prison. Thus far, only 350 people actually *headed for prison* have been diverted into community-based penalty programs. Yet the overcrowding continues. As of December 1986, the 86 state prisons held over 18,000 people, an all-time record.

The severe overcrowding has prompted far-reaching lawsuits in federal court. In 1985, the state settled a class-action suit covering 13 prison units, and in 1986 the Attorney General's office began defending a class-action suit covering another 48 units. These and other lawsuits spurred Gov. James G. Martin into action.

"It is critical that an ambitious prison construction program be adopted which will mitigate against Federal Court intervention," reported the Governor in a 10-year plan released by his Department of Correction in March 1986. "The total capital cost of this 10-year expansion plan to add 10,000 beds is $202,000,000. This is a substantial investment that will be required unless some effective alternatives to incarceration can be developed."[1]

This magical phrase—*effective alternatives to incarceration*—has taken on significant meaning. In the context of the current litigation, the most obvious measurement of "effective" is whether alternatives help solve the overcrowding problem. Overcrowded prisons have come to be the driving force behind the growing system of community-based sanctions, known loosely as alternatives to incarceration. But a truly "effective" system of alternatives to incarceration must be viewed independently of an overcrowding crisis.

"We need a unified concept of alternatives, a framework for North Carolina," says Lattie Baker, assistant secretary for Programs and Personnel Development in the Department of Correction, and former president of the N.C. Correctional Association. "Without a framework, existing programs don't work well together. Programs tend to compete

Bill Finger is former editor of North Carolina Insight.

against each other for scarce resources."

To determine clear purposes for a system of alternatives *to prison*, one must first articulate goals for prison itself, which has been the traditional penalty for lawbreakers. Historically, in the American criminal justice system, prison has been viewed as serving four purposes: 1) to protect the public safety; 2) to seek retribution for criminal acts; 3) to be a deterrent against more crime; and 4) to rehabilitate the offender.

To meet these four purposes today, people from all political persuasions are looking beyond prison to community-based programs. Overcrowding, lawsuits, and massive capital expenditures by state legislatures around the country have resulted in the endorsement of alternative programs by a broad consensus of opinion-makers, from the American Bar Association to conservative U.S. Senators William L. Armstrong (R-Colo.) and Sam Nunn (D-Ga.). "Penal imprisonment is not always an appropriate punishment for certain types of criminal offenses," Armstrong and Nunn wrote in a recent anthology, released by a conservative think tank.[2] Other contributors making similar points included then-U.S. Rep. Jack Kemp (R-N.Y.) and then-Delaware Gov. Pierre du Pont, both candidates for the 1988 Republican presidential nomination. Community-based sanctions as well as prison are now considered as viable penalities for lawbreakers.

Litigation in federal court has prompted the legislature to consider major policy initiatives in the prison area.

Given this scenario, the General Assembly has an opportunity to go beyond the short-term overcrowding crisis to clarify the long-term goals of community-based penalities. A framework of alternative programs should have four components, says Lattie Baker. They should:

- have local direction;
- include a state-level inducement to promote such programs;
- contain an enforcement mechanism to penalize municipalities and counties that do not divert appropriate offenders into community-based programs; and
- define target groups for the alternative programs.

The overriding theme for all these components is *targeting the appropriate offender* through inducements and enforcement mechanisms. But how does a prosecutor and judge determine who is "appropriate"? Two critical steps in the entire criminal justice process occur when a prosecutor decides the charge against an offender and when the judge imposes the sentence. Even so, sentencing is only part of a system which many analysts believe has gotten out of kilter in North Carolina.

"When I review the DOC's (Department of Corrections) 10-year plan, I am struck with the lack of any explicit, coherent philosophy or the lack of any coherent statement of objectives for the correctional system," says Joseph E. Kilpatrick, assistant director of the Z. Smith Reynolds Foundation, which has funded many alternative programs over the years. "By default, we have settled for the objectives of 'incapacitation' and 'punishment' based on the theory that deprivation of freedom is synonymous with punishment to those offenders who are incarcerated."

Then Kilpatrick takes his argument beyond the short term issues. "But what bothers me is our failure to factor in the *social cost* of not rehabilitating more nonviolent offenders, who are released from the prison system within five years or less. The real issue is not whether incarceration or even prison overcrowding is bad per se, but rather our failure to deal more effectively with those offenders who have the potential to be rehabilitated and thereby diverted from the prison system."

Deeply involved in helping to develop community-based penalty programs for six years, Kilpatrick goes on to explain his concern over the current framework for discussing these programs. "Community sanctions should not be understood solely in reference to prisons or prison overcrowding. They should be judged on the basis of how well they accomplish our criminal sanction objectives."

Regarding penalties outside of prisons, policymakers might consider such questions as these: Do alternative programs divert *prison-bound* offenders or serve to "widen the net" of state sanctions over persons who otherwise would not go to prison? Do alternatives reduce recidivism? Do alternatives enhance rehabilitation? Which people now in prison—and going to prison in the future—would be better off in a community-based program, for themselves and for society at large?

A true "package-deal" approach can clarify the short-term and long-term goals of the prison *and* the alternative programs. To do that, however, first requires an understanding of how the current system of alternative programs has evolved.

Alternatives Take Hold in North Carolina

"Alternatives to incarceration" is a term that has come to mean many things to many people. In North

Carolina, its entrance into the lawmakers' vocabulary dates from November 24, 1982, when Judge Willis Whichard, then on the N.C. Court of Appeals and now a N.C. Supreme Court justice, released the report of the Citizens Commission on Alternatives to Incarceration. Whichard chaired the two-year study by this blue-ribbon commission, which moved alternatives from a fledgling community-based movement into the mainstream of the criminal justice system.

"Alternative penalties are clearly not appropriate for all offenders, but they can be responsible forms of punishment for most nonviolent crimes," explained the Citizens Commission in its 138-page report. "Alternative penalties are punishments that do not rely primarily on confinements in prison or jail."[3]

Before the formation of the Whichard Commission, advocates of alternatives had few highly visible supporters in government, with a few notable exceptions. As early as 1977, for example, the General Assembly had funded some restitution officer positions, a community-based program endorsed by Gov. James B. Hunt Jr., who served from 1977 to 1985. "We're not used to having so many allies in high places," said Lao Rubert, director of the N.C. Prison and Jail Project, at the time.[4]

The Whichard Commission report, through the legislative leadership of state Rep. Joe Hackney (D-Orange), played a significant role in the 1983 legislative session. In that pivotal year, the General Assembly put into place a system of state-sanctioned alternatives to incarceration. Two separate movements dovetailed in 1983—the alternatives-to-incarceration movement and the groundswell to curb drunk driving through Governor Hunt's campaign for the Safe Roads Act.[5]

This coincidence—the same legislature acting on the Whichard Commission recommendations and on the Safe Roads Act—resulted in a three-part *institutionalized* structure of alternatives to incarceration. In 1983, the legislature:

- passed the Community Penalties Act and funded the five existing community-based alternative sentencing programs through a grant system.[6] In order to receive state funds, these programs could work *only* with prison-bound offenders charged with nonviolent misdemeanors and nonviolent felonies in "H", "I", and "J" classifications (the least "serious" felonies under the Fair Sentencing Act);[7]
- passed enabling legislation for an "Intensive" Probation and Parole system, facilitating a much more personalized approach than regular "supervised" probation and parole;[8] and
- established the Community Service Program to manage the anticipated high volume of DWI convictions (which usually include community service) under the Safe Roads Act.

Ironically, about the time the N.C. General Assembly launched this three-pronged system, scholars were beginning to express doubts on how most alternative efforts around the country were being implemented. "A careful review of the research literature on alternatives to incarceration suggests that their promise of reducing the prison population has remained largely unmet," wrote James Austin and Barry Krisberg of the National Council on Crime and Delinquency, in an influential paper developed for the National Academy of Sciences Panel on Sentencing Research.[9]

"Sentencing alternatives, such as restitution and community service, were found to enhance the sanctions of probation and fines *instead of replacing incarceration*," continued Austin and Krisberg. "Similarly, post-incarceration release programs, such as work release and work furlough, often escalated the level of control over clients and served *primarily to control populations* within prison systems" [emphasis added]. The authors go on to explain how alternatives have created wider nets—i.e., causing *more* people, not fewer, to come under state sanctions, if not in prison, then in programs such as community service. Hence, while prison populations continued to increase, the number of people in new community-based programs, such as community service and drunk driving schools, also grew. *Put another way, alternatives seemed to take on their own momentum, but without any clearly articulated goal other than to reduce overcrowding, which they meanwhile were failing to do.*

"Ten years ago in North Carolina, you had two basic systems—probation and prison," says Rubert, of the N.C. Prison and Jail Project. "Alternatives came out of those existing options. The hope was that alternatives would reduce the prison population, because prisons were overflowing all over the country. We wanted the programs to be alternatives to *prison* rather than an alternative to *probation*. But we've got to be careful of unintended and undesirable consequences— increasing the portion of persons whose behavior is regulated by the state."

The Whichard Commission recommendations walked a fine line: incorporating a sophisticated "client-specific" system (designed to produce proper sanctions and rehabilation for each *individual* headed for prison) yet remaining attuned to the political realities of elected officials who want to avoid appearing soft on crime. One compromise inherent

"If the alternative programs can be realistic in their evaluations and assessments, they will gain and keep credibility."

—Jim Kimel
Guilford County
District Attorney

in the Communities Penalties Act was restricting the program to *nonviolent* offenders in the least "dangerous" felony categories. No distinction was made between a violent *offense* (such as a manslaughter case in a fit of passion) and a violent *offender* (a person with a violent pattern who poses a genuine threat to society).

Stevens H. Clarke of the Institute of Government in Chapel Hill, known for his extensive research in the criminal justice field, points out an important issue regarding violent offenders. "Violent felons become recidivists less often, and less seriously, than other offenders," he explains.

The Rand Corporation, a highly respected research group often concentrating on criminal justice issues, released two reports in 1982 examining behavior patterns and policy implications for incarceration rates.[10] The studies developed a method of determining criminal behavioral tendencies, labeling the most serious category of offender as a "violent predator." This crime pattern included some combination of robbery, assault, and drug-dealing. Violent predators typically begin committing crimes, especially violent crimes, well before age 16. Sentencing judges often are not able to determine whether a defendant is a "violent predator" or a generally nonviolent person who committed a violent crime, the studies found.

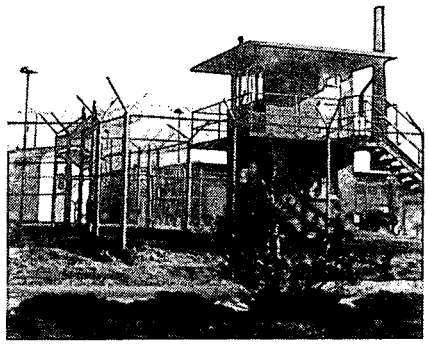
Such distinctions go beyond the casual labels of "violent" and "nonviolent" offenses. But with the implementation of the Fair Sentencing Act (1981) and the Community Penalties Act (1983), the legislature cast in concrete the violent and nonviolent criteria. Looking behind labels like "violent" and "nonviolent" is only one of the many complex issues before the General Assembly.

"The legislators have an incredible problem on their hands," says Rubert. "Because of the litigation, they can't move leisurely ahead. But when they expand overnight, they don't solve the problem. They have to walk the tightrope between the litigation, severe overcrowding, and expanding alternative programs very quickly on the one hand, and moving ahead very carefully and in a targeted fashion on the other."

Since 1983, a three-part *state government* system has evolved—community penalties, intensive probation and parole, and community service. These three programs are discussed in detail below. Other related community-based programs exist, such as halfway houses and dispute settlement centers. But the statewide system is building on these three programs. Policymakers now turn to the task of molding these three into an integrated, cooperative whole. Perhaps most importantly, state officials will face an increasing pressure to adjust this very young state system to the needs of counties and local communities.

AN ALTERNATIVE

Community Penalties



In 1983, the legislature appropriated $210,000 for a grant system for the existing nonprofit programs in Raleigh, Greensboro, Fayetteville, Asheville, and Hickory. The 1986 and 1987 legislatures expanded the program to additional judicial districts.

These programs have a four-part statutory responsibility: 1) to target prison-bound offenders; 2) to prepare a detailed community-based penalty plan and to present the plan to the sentencing judge through the defense attorney; 3) to arrange for the services specified in the plan; and 4) to monitor the progress of the offender placed under the community plan.[11] As Cindy Hill did with Eliot Johnson, a staff person develops an alternative sentencing plan, working with the defense attorney and increasingly with the district attorney's office as well. Usually, the case comes before a superior court judge, who rotates from county to county within a superior court division (district court judges sit in the same district where they are elected).

"We're trying to convince sentencing judges—usually visitors to a community—that a particular community will support a community sentence," explains Dennis Schrantz, the former director of Repay, the Hickory program, and now the statewide grants administrator of the community penalties program. "We produce a document, an alternative sentencing report, that basically says, along with the experts in the community, 'Hey, judge, give it a shot.' That's why community ownership makes a difference in what we do."

The North Carolina community penalties legislation is unusual, because the act focuses on prison-bound felons, explains Malcolm Young of The Sentencing Project in Washington, D.C. "What makes it unique is that the defense counsel is supposed to use the resources funded by the act to propose alternatives." Other states have failed to provide real alternatives to prison, explains Young, because the people running the programs are not motivated to produce the alternative. North Carolina has the "only statutory scheme that specifically allocates the resources of the act to the court and to the defense counsel. After all, the defense lawyer has the job of getting the best deal he can for his client, which usually means the least prison time." The resources of the act, for example, paid Cindy Hill to help Attorney Sally Scherer develop an alternative sentencing plan for Eliot Johnson.

But if some perceive this program design to be a strength, others have criticized community penalties for working too closely with defense lawyers. Consequently, the programs have worked hard at building good communication with the District Attorneys' offices and with the judges.

"The community alternative program should walk a fine line and not be seen as a defense attorney program," says Jim Kimel, Guilford County District Attorney. "It is a sentencing tool used by the presiding judges to form appropriate sentences. Many times, judges have adopted the exact plan proposed by One Step Further [the alternative program in

"[The community penalties program] is just a piece of the pie. You're going to have to keep intensive probation, look at the misdemeanants, expand residential centers, and consider more release options."

—Dennis Schrantz
Statewide Coordinator
Community Penalties Program

Greensboro]. Many times, we have given the defendant a split sentence, with some time and a suspension on probation. If the alternative programs can be realistic in their evaluations and assessments, they will gain and keep credibility."

Austin and Krisberg, in their paper on the "unmet promise" of alternatives, called for advocates to "test their ideologies through rigorous research." In what he says is the only such research in the country, Stevens Clarke has carefully studied two of the five original community penalty programs, Repay in Hickory and One Step Further in Greensboro. In both studies, Clarke compared the clients served by an alternative sentencing plan with a control group that got no assistance from the program (resources were too limited to allow the programs to develop a plan for every person who falls under the program guidelines).

In both studies, Clarke found that those offenders who were served by the community penalties program spent significantly less time in prison. After explaining the technical findings, Clarke puts the results in layman's terms. "Being in the [Repay] service group meant that the defendant was likely to receive a *much less severe sentence* than he would have received if he had been in the control group [which received no Repay services], regardless of all other factors considered" [emphasis added].[12]

A June 9, 1986 *Newsweek* story, "Punishment Outside Prison," led with Clarke's research in Hickory. In the story, Clarke emphasized the cost savings of programs successfully diverting a person from prison. "If you can deter and control offenders less expensively by keeping them in the community, then everybody gains," he told *Newsweek*. A person outside prison costs about one-fourth what an incarcerated offender costs the state, about $8 versus $32 a day, not counting huge capital construction costs.

Clarke's research does not examine how well community penalties plans work *after* sentencing — for example, how the community sanctions affect the recidivism rates of offenders. The programs have not been around long enough for such a study. A large body of research on recidivism in general does exist, with both encouraging and depressing results. Studies have shown, for example, that financial assistance and using ex-probationers to assist professionals have helped to lower recidivism rates but not to the degree that one might expect.[13]

Clarke's studies break new ground, specifically regarding how judges and prosecutors use programs to divert prison-bound offenders at the sentencing stage. "This is significant because much of the criminal justice literature assumes that prosecutors and judges will not use these programs properly," says Joel Rosch, coordinator of the criminal justice program in the Department of Political Science and Public Administration at N.C. State University. But Rosch remains cautious about how the research results speak to areas where judges or DA's *do not* have an investment in using the program. "There must be a supportive DA and some enlightened judges. How do we ensure that others are that responsible? What incentive does any judge or DA have to use it properly?"

Building community support of the program seems to be the key to answering these questions. "The involvement of the community is really crucial," says Superior Court Judge Forrest Ferrell, who is on the board of directors for Repay. "If the community is interested in alternative methods of sentencing, then the judiciary and judges are more confident of its success. Without community support, it's difficult to have a really viable, meaningful alternative sentencing program."

Maintaining direction of the programs through local boards is considered critical to the success of expanding the program. Currently, every community penalties board includes either a superior court judge, chief of police, or sheriff. The boards have incorporated the leadership of such heavyweights as former Sen. Tony Rand (Fayetteville), Sen. William Martin (Greensboro), and senior resident Superior Court Judge Robert A. Collier, also chair of the Governor's Crime Commission Committee on Sentencing (Statesville). Finally, the boards include influential local citizens, ranging from county commissioners to civic and religious leaders.

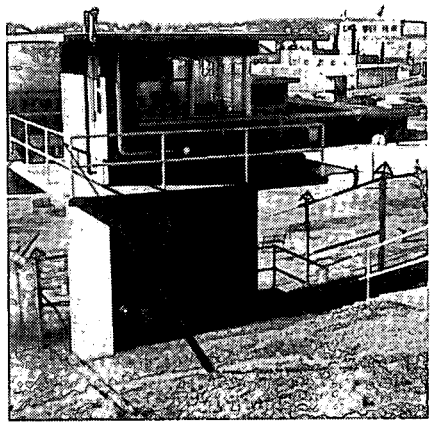
"A state bureaucracy cannot incorporate community resources as well as programs with local boards," says Lao Rubert.

The Department of Crime Control and Public Safety, which oversees the community penalties programs, proposed in its 1987-89 budget to add programs in 10 new judicial districts in each of the two fiscal years, going from nine to 29 programs in two years. The budget would increase from $550,000 in 1986-87 to $2 million by 1988-89. Under this level of expansion, Schrantz estimated the number of defendants diverted from prison would climb to 665 in 1987-88 and 1,121 in 1988-89.

"It starts to add up," says Schrantz. "But it's just a piece of the pie. You're going to have to keep intensive probation, look at the misdemeanants, expand residential centers, and consider more release options."

AN ALTERNATIVE

Intensive Probation and Parole



After nine years as a traditional probation officer, Morty Jayson became an "intensive" probation officer in 1986. From carrying an average caseload of 115 (and working alone), Jayson went to a maximum caseload of 25, working with a surveillance officer. The numbers suggest the many differences in the job—and in the goals of the two programs. A probation officer, because of such a large caseload, does well to keep a face associated with the papers he must shuffle. Were the community work hours completed? Were drug clinic fees paid? Was the judge's restitution order met?

An intensive probation officer deals more with people, with felons convicted of more serious crimes. "It's like I'm in the commercial where they change hats," says Jayson. "I'm a counselor, a referral coordinator, then put on a community service hat, then a law enforcement hat."

Officers in the intensive program can carry a weapon. "It's there for self defense only," says Jayson. "We don't carry it openly. The majority of our work is at night, often by ourselves. In most instances, it's an environment that is sometimes not exactly sociable."

In 1983-84, the Division of Adult Probation and Parole (Department of Correction) launched this program with nine intensive supervision teams in urban areas with the highest concentration of felons sent to prison. A team consists of an intensive officer and a surveillance officer. Intensive probation officers must have worked as a probation officer and have college training; surveillance officers, who work under the intensive officer's supervision, usually come from a law enforcement background.

In 1986, the legislature expanded the program, appropriating funds for an additional 36 teams, including the position now held by Morty Jayson. The 45 teams are located in 43 counties. Judges from all 34 judicial districts may place persons on intensive probation; as a sentencing alternative, this program now functions statewide. But the person on intensive probation must live in one of the 43 counties. As of Dec. 31, 1986, there were 335 people on intensive probation and 20 on intensive parole. The new teams were expected to gear up to full capacity by mid-1987, so that intensive probation/parole could manage up to 1,215 people at one time.

The program has three functions: 1) to oversee felons who pose no major public risk; 2) to provide intensive counseling to help convicted felons get themselves back into the mainstream of society; and 3) to provide strict surveillance (five to seven times a week) to be sure the offenders are meeting the terms of their probation, which could include everything from restitution and community service to drug counseling.

Usually, an intensive officer works first with the district attorney's office, rather than the defense attorney. "We also work closely with the community penalties people," says Doug Pardue, the lead intensive probation officer on one of the original nine teams. Unlike community penalties staff, intensive officers have regular, often daily contact with their clients. Intensive probation/parole is not restricted to H, I, and J felons; it can include offenders who have been convicted of violent crimes. Finally, intensive probation is a state-run system, with staff reporting through an administrative structure that answers to Secretary of Correction Johnson. Community penalties staffers report to a nonprofit board of directors composed of community leaders, while following standards developed in the Department of Crime Control and Public Safety.

"The main emphasis is keeping them on the street," says Pardue. "I go into their homes, allow them to tell me face-to-face how things are going. If they have curfew violations, we usually give them extra community service. You don't want to send them back to prison just for missing curfew one night, but we don't want them to get away with it

either."

Of his current case load of 23, Pardue says five should be in drug counseling, but only one is going regularly. "Some of them we have are not motivated to work," he says. "A lot of these people don't have anything, and that's part of the reason they committed the crime. I try to keep them on the street, but if they don't have any self motivation, I'm not going to burn a lot of night oil."

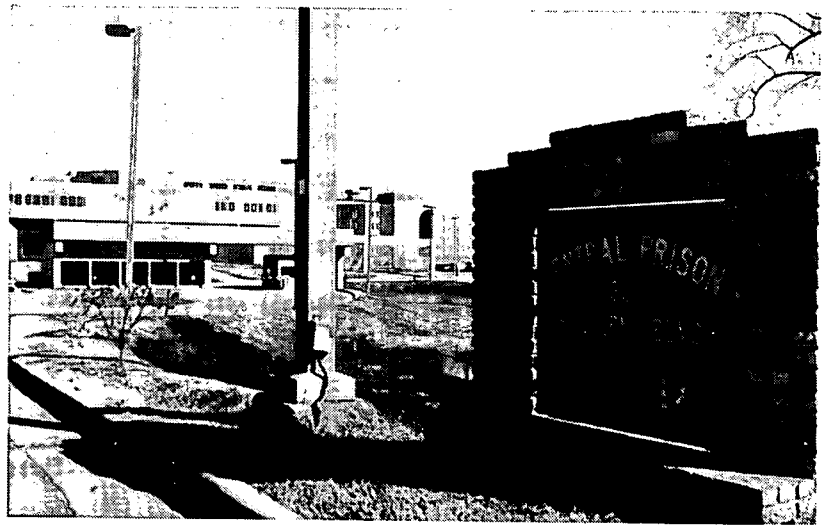
Some 30 states have begun some type of intensive probation system, some of which (not North Carolina) rely on "house arrest."[14] In North Carolina, people placed on intensive probation (as well as regular probation) must pay a $10 a month supervision fee. They may be moved "down" to traditional "supervised" probation by the court upon the recommendation of the intensive officer. (A third general category is "unsupervised" probation, under which an offender does not have a probation officer but is on probation as part of a sentence.)

The original probation system was *the* alternative to going to prison. In the early days, officers were usually male social workers, on a career track that paralleled the female case worker in the welfare system. The best probation officer wanted to rehabilitate the offender. But today, with a caseload of about 115, a probation officer by necessity processes papers more than people. In the wake of prison overcrowding over the last 20 years, probation has become equally "overcrowded." The mission of probation officers has been overwhelmed by the caseload, resulting in little "client-specific" attention.

Probation has evolved into its own system of community sanctions, functioning more like a system of controls than of rehabilitation. In some instances, supervised probation might still be an alternative to prison, but rarely is a prison-bound felon (or misdemeanant) diverted from an active sentence only because of the traditional probation system. Most alternatives to *prison* rely on probation *along with* other community-based sanctions such as community service. On an average day, the Division of Adult Probation and Parole has responsibility for some 59,000 people under probation, plus another 3,500 on parole, and 350 on dual probation/parole (usually under the supervision of a probation officer).

The intensive and surveillance officers are set up to cover people on *parole* as well as probation. This is important to note in the context of alternatives in general. The *parole* system is considered an "exit alternative" to prison—simply put, a system designed to get people out of prison and, only secondarily, to reintegrate them into the society. Officers working strictly with parolees have a caseload of 61, compared to the caseload of 115 a probation officer carries. Parole officers spend about half their time supervising parolees; the other time goes to investigating persons being considered for parole. A five-member Parole Commission, appointed by the governor, decides who may be paroled, acting on requests of its own staff (which is separate from the parole officers themselves).

Among the three central alternative systems launched by the state in 1983, only intensive parole is an *exit alternative*—that is, it can function to reduce the *existing* prison population. Community



penalties and intensive probation, in contrast, can reduce *admissions* to the prison system through alternative sentencing plans. As of Dec. 1, 1986, there were 18,000 people in prison and only 20 on intensive parole—one tenth of one percent of the overcrowded prison population. This exit alternative alone seems woefully inadequate to address in a serious fashion the *existing* prison overcrowding, which has prompted the litigation.

In 1981, when the Fair Sentencing Act took effect, the parole system lost much of its flexibility over who could be paroled. This act eliminated discretionary parole for *all future felons*, with a few notable exceptions, such as some youthful offenders. Three subsequent legislative actions, however, have returned some degree of discretion to the Parole Commission, by allowing inmates to be eligible for parole earlier than prescribed in the Fair Sentencing Act. The legislature:

- in 1983 passed the Emergency Powers Act, which allowed the Parole Commission to release felons 180 days before their release date;[15]
- in 1984 authorized community service parole, which allowed felons serving their first active sentence of more than 12 months to perform community service while in the regular parole system, after serving one-fourth of their sentence;[16] and
- in 1986 increased the thresholds in the two acts named above, lengthening the Emergency Powers Act provision from 180 to 270 days[17] and effectively reducing the community service eligibility threshold period from one-fourth to one-eighth of the person's sentence (which can shorten a sentence by more than 270 days).[18]

In 1985, Secretary of Correction Aaron Johnson formally invoked the Emergency Powers Act; the Parole Commission then issued regulations for implementing the act.[19] "It has been used continuously since the rules were first adopted in April of 1985," says Ben Irons, attorney for the Department of Correction. The community service parole authority, on the other hand, was used "very seldom at first," adds Irons, but "it is being used more often now."

Under this new authority, the Parole Commission still bases its review of inmates on sentence length and projected release date supplied by the Division of Prisons computer system and determined under the Fair Sentencing Act. "We can't release them before they become eligible," says former Parole Commission Chairman Bruce Briggs, but the new laws have "accelerated the eligibility."

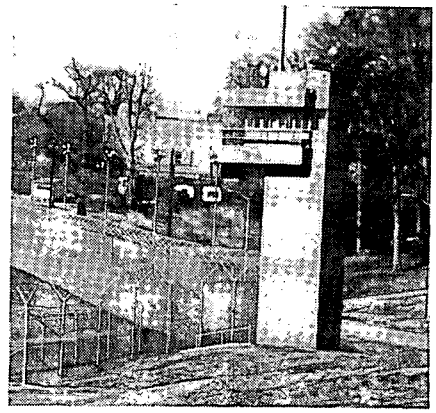
In addition to the discretionary powers for paroling felons, the Parole Commission can also parole misdemeanants, whether sentenced to the state prison or local jails. As of September 1986, nearly *one of every five* people in the state prison system was convicted of a misdemeanor, not a felony (3,299 of 17,708). The Parole Commission concentrates more on felons because it reviews those cases more times. Because of short sentences and the rapid turnover of the misdemeanant population, most misdemeanants come up for parole review only once or twice.

The new flexibility from these three legislative actions makes parole an important tool for policymakers to consider while overcrowding continues. The 1986 law alone, which changed the two thresholds, could apply to as many as 2,000 of the 18,000 people now in prison. But former Commissioner Briggs warns against depending upon parole to relieve overcrowding. "We're paroling more than anybody has ever paroled before," says Briggs. In 1986, the commission paroled 11,312, a record for North Carolina. (Of those, 8,768 were paroled from the state prisons and 2,544 from local jails.)

Even putting the restrictions of this act aside — which could be done through further emergency powers—an exit alternative alone meets only one criteria of an "effective" alternative to incarceration. It can help relieve prison overcrowding. But what about the larger questions of an effective penalty? If proper attention is not given to the individuals paroled, recidivism might undermine the value of this alternative. The parole system alone is not equipped to work with large new numbers of parolees to reintegrate them into a productive life and hence—for many—to avoid future problems with the law.

AN ALTERNATIVE

Community Service Work and Related Programs



In North Carolina, the term "community service" has a dual meaning in the context of alternatives to prison. Traditionally, the term refers to the *actual work* a person performs in the community as part of a sentence. Since 1983, the term has also come to refer to the statewide *system* prompted by the Safe Roads Act. The community service system—run by state employees based in all judicial districts—has four parts: 1) driving while impaired (DWI) community service, 2) non-DWI community service (usually includes people going through the community penalties and intensive probation programs), 3) first-offender programs, and 4) community service parole. Clients come into the program as a condition of probation or of parole, through a "prayer for judgment" (an informal deferral of a case, which is dismissed after community service is completed), through a deferred prosecution agreement, or through a sentence to perform community service (as through community penalties or intensive probation programs discussed above).

Strictly speaking, neither the community service system nor an individual community service work plan is an alternative to incarceration. Community service is either a *component* of an alternative sentencing plan (i.e., through community penalties or intensive probation) or is the main sanction for DWIs and first offenders, that is, for people *not* going to prison. "The community services program does not intend to deal primarily with prison-bound people," says Lao Rubert. "That's why it's not an alternative to prison. It's an additional sanction available to the judge."

Before the Safe Roads Act, the five community alternative programs (Asheville, Fayetteville, Greensboro, Hickory, and Raleigh) included a community service component, which also concentrated on restitution. For three years (1981-83), the General Assembly appropriated funds (in the form of grants) to these groups and about 20 other nonprofit groups across North Carolina. The 1983 Safe Roads Act included community service as a mandatory component of a DWI conviction and had a $2.7 million appropriation to establish a statewide system to administer this sanction. The original community service programs left their community-based board structure and moved under the jurisdiction of the Division of Victim and Justice Services in the Department of Crime Control and Public Safety.

The General Assembly, one should note, funded this system *not* as an alternative to prison but as a *new* community sanction for a person convicted of driving while impaired. The public outrage over drunk drivers, heightened by strong backing from Governor Hunt and other high-profile politicians, added a new, institutionalized system of sanctions, effectively widening the net of persons under state control.

In its first three years of operation, the community service work program collected $4.2 million in fees, which reverted to the General Fund. Most persons sentenced to community service must pay a $100 fee to the program. "These fees have largely been successful in offsetting the cost of the program," Robert Hassell, director of the Division of Victim and Justice Services, told the legislature's Special Committee on Prisons on Dec. 5, 1986.[20]

"The increase in fees from $50 to $100 for community service, passed during the [1986] legislative session, made it possible to offset the expenses needed for additional staff to meet projected client growth for FY 86-87." The division, Hassell said later in an interview, added 36 additional staff members for an expected client growth from 35,000 to 46,000 in FY 86-87.

The additional fee might justify the new positions but it has quite a different effect at the street level. "We used to set up the schedule and monitor

all the community service ourselves—in nursing homes, the Raleigh Rescue Mission, Goodwill, police stations, libraries, you name it," says Intensive Probation Officer Pardue, referring to his caseload. "Now, we have to send them through the community service office and they have to pay the fee." In effect, the system has caused another state employee to become involved with a person on intensive and supervised probation. Hence, in most cases, two offices and two different state employees are keeping track of whether a person completes community service.

"All the probation officer does is check on a form whether the community service is completed," says Hassell. "Our field staff arrange the community service, make all the community contacts, keep up with the schedule, and keep up with a person's progress. If the probation officer and the community service officer are keeping the same kind of records on a person, then we should eliminate that duplication."

Currently, a community service worker has an average caseload of 145 people, compared to the probation officer's load of 115. In fiscal year 1985-86, 34,495 people were sentenced to the community service work programs—*73 percent of them for DWI offenses*—where they had to work from 24 hours to hundreds of hours. Imagine *every resident* of McDowell County (pop. 36,000, including the towns of Marion, Old Fort, Dysartsville, Little Switzerland, and Nebo) under a state-run bureaucracy (with 107 case workers), which required *free work.* That's what the Safe Roads Act spawned in just three years.

"If it hadn't been for them, I would've been here a lot of nights by myself," chuckles Frank Miller, a retired Army man who runs the Greensboro Urban Ministries shelter for homeless people. At 4 p.m. on the first chilly night of the fall, the concrete floors in what had been a grocery store look stark and bare. In four hours, "about 70 people will be here," says Miller. "I'll put two volunteers at the door to record names and shake them down. Another will serve the coffee and sandwiches. Another will put the mats down and help keep the peace." Miller or a staff assistant will supervise the court-ordered workers (and volunteers from churches and colleges). The community service office calls Miller first, telling him about the client, who then sets up his own work. "We're a popular one, because a person can get 12 hours at a time. I only accept those who will work all night."

Government officials, like people working for nonprofit groups, recognize the value of this pool of free labor. "Our courthouse has never been so clean," says Frances Walker, who chairs the Currituck County Board of Commissioners.

The free labor seems to be the key element that sells community service to the public, rather than some sense that the person is repaying society for his crime (or being rehabilitated). "Community service and restitution were linked together in the early 1980s," explains Dennis Schrantz, who ran Repay in Hickory at the time. "But community service was a lot easier to service. There was more of a clamor for free labor than for labor that someone had to pay for." For a person to pay restitution, he needs to have a paying job, explains Schrantz. In two years (1985 and 1986), community service hours were worth over $6 million to nonprofit and governmental organizations. In making the estimate of the value of the work performed, the legislature's Fiscal Research Division assumed a rate of $3.35/hr., the federal minimum wage rate.[21]

But the most heated debate over this system is whether it duplicates the role of traditional probation officers to some extent, thus creating an unnecessary layer of bureaucracy for various state officials to regulate and within which offenders must function. A series of operational audits from the State Auditor triggered this debate in the broader context of pointing out the fragmentation involved in the criminal justice field.[22]

The community service system is not the only new sanction that has emerged in recent years. The Division of Mental Health, Mental Retardation, and Substance Abuse Services in the Department of Human Resources administers four programs used as a community sanction. The sanctions are invoked as a requirement of probation or as part of a multifaceted, community-based sentencing plan.

One of these programs, the Treatment Alternatives to Street Crimes (TASC), is significantly different from the other three. It began as part of a federal emphasis on drug treatment in the 1970s and now operates in 11 N.C. urban areas which have significant crime rates. The TASC program works through grants to nonprofit organizations. When Cindy Hill was trying to develop a community-based plan for Eliot Johnson, she used Drug Action of Wake County, which gets funds from the TASC program. Clients in the TASC-funded programs can be misdemeanants or felons convicted of a nonviolent offense. The programs provide treatment as an alternative to more restrictive action by the courts.

The other three programs are administered more directly by DHR, through the 41 area mental health area agencies and in theory are available statewide:

- Alcohol and Drug Education Traffic Schools

(ADETS) — 89 schools designed to *educate* first-offender DWIs about the dangers of alcohol (they don't offer treatment), usually a required sanction under a DWI conviction. The director of this program testified before the Special Committee on Prisons that preliminary data indicate that this program has not had positive results with regard to reducing recidivism. "This [program] is a noble and desirable goal but it is unrealistic to expect [such an] educational program to impact on 15-20 years of drinking and driving experience."

- DWI Substance Abuse Assessment — designed as an intervention and treatment program for repeat DWI offenders, problem offenders (persons registering over .2 alcohol content in the blood in the breathalyzer analysis), or offenders refusing the breath test. The same person in a local mental health center sometimes runs the ADETS and assessment programs, which can tend to blur the distinctions between the two programs.
- Drug Education Schools (DES) — an education program for first-offenders convicted of drug possession (not repeat offenders or drug sellers), usually for young persons.

"We put more misdemeanants into our state system than nearly any other state. The only way to deal with this problem is to change the law so that no misdemeanant could be sent to the state prison system."

—Lao Rubert
N.C. Prison and Jail Project

What Future for Alternatives to Incarceration?

Within the increasingly complex system described above, where will the legislature look to relieve overcrowding and to chart a clear sense of purpose for prison and for community-based punishments? The lawmakers face a tough question. To answer it in the most innovative and fundamental sense, they must consider not only prison conditions, federal litigation, and alternatives but also local jail overcrowding, changes in sentencing statutes, and other related issues.

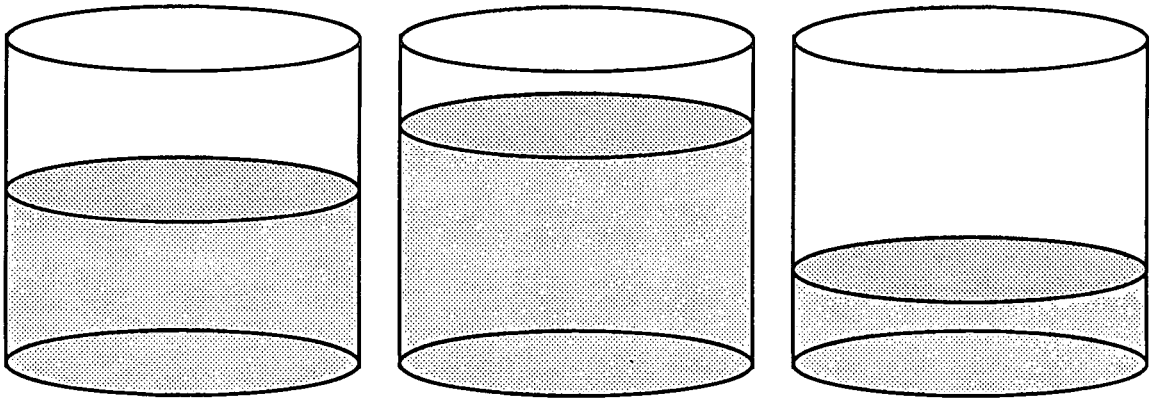
State government actions regarding alternatives to prison can be boiled down to three components: 1) *entrance* alternatives, i.e., diverting prison-bound people at the sentencing stage; 2) *exit* alternatives through parole; and 3) altering sentencing laws so as to reduce the prison populations. This third component may well hold the key to the overcrowding problem.

The sentencing laws—and how judges use sentences in relation to community-based penalties — have the greatest long-term impact on the prison population. Parole, even with the added flexibility discussed above, remains confined within the parameters of a person's sentence. Consider that in the N.C. prison system:

- *one of every 25* (4 percent) was convicted of a DWI offense (another 2 percent had other traffic offenses such as hit and run and death by motor vehicle);
- *one of every 20* (5 percent) is a "committed youthful offender" (CYO) with no prior incarceration, in for a property offense (CYOs are under age 25 and are in a special parole category, where they can be considered for parole anytime during their sentence);
- *nearly one of every five* (19 percent) was convicted of a misdemeanor (only seven states, including North Carolina, routinely put large numbers of misdemeanants in state prisons);[23]
- *almost one of every three* (30 percent) was convicted of a felony property offense; and
- *almost two of every five* (37 percent) are serving time under an H, I, or J felony.

Making sweeping recommendations based on these numbers can be misleading. To take the most common theme among newly won converts to the alternatives approach, what about diverting more "nonviolent" offenders? "The distinction between the 'nonviolent' and 'violent' offender is a bogus

Imagine a glass of water — Admissions, Sentences, Lengths, and Releases



If you take out the same amount you put in, the level of water remains the same.

When *admissions* = *releases*, the population remains the same.

If you take out less water than you put in, the level of water in the glass increases.

When *releases* are lower than *admissions*, the population increases.

If you take out more water than you put in, the level of water in the glass decreases.

When *releases* are higher than *admissions*, the population decreases.

Source: N.C. Prison and Jail Project

one in terms of protecting the public," says Joel Rosch of N.C. State University. "A drug addict who breaks into a house that happens to be unoccupied is classified as a 'nonviolent' offender [under the Fair Sentencing Act] while a 45-year-old alcoholic with no criminal record who murders his wife is 'violent'. As a member of the public, I fear the drug addict more."

Another faulty assumption is that the Parole Commission can target all the groups mentioned above, such as property offenses or H, I, and J felons. With the notable exception of the CYOs, offenders are eligible for parole only according to the amount of time served. If a person got a bad sentence—was charged and tried in a crime category that overstated his danger to the public, for example—the parole process does not have the discretion to alter that sentence.

The prison population is a fluid system. That is, people are entering and leaving it every day. Since so many factors affect this fluid system, from sentencing to parole, analyzing any single point in time is difficult. To simplify this task, Lao Rubert likens the system to a glass of water. The level of water, i.e., the number of people in prison, rises or falls depending upon how much water you put in or take out. Only when releases are higher than admissions does the "water level" drop.

Community-based penalty programs attempt to decrease admissions to prison, while incorporating the four traditional purposes of punishing offenders. To enhance the success of this effort, offenders need to be targeted at the sentencing stage. Three general criteria can be used to target those offenders who most logically could be diverted from prison: property offenders, "public order" offenders (such as traffic or drug offenders), and offenders with limited prior incarceration.

Applying these three criteria to CYOs, misdemeanants, and felons results in 20 groups of offenders. Ken Parker, manager of research and planning for the Department of Correction, has analyzed these 20 categories according to the number of offenders flowing through the system in a year. Parker

assumed that 80 percent of the offenders in each category might be appropriate for a community-based penalty plan or for sentencing to a local jail, and that 70 percent of those diverted from the prison system would not re-enter the system for at least three years. Using 1986 population levels in the 20 categories, Parker calculated that the net prison population could be reduced by 1,940.

Parker is quick to point out, however, that these calculations used "paper" categories, and that any wholesale actions would require a close look at each individual. "What you see from looking at the list is that there aren't too many Boy Scouts in there," he says. "Furthermore, you would have to process over 7,600 cases each year [in these 20 categories]," says Parker, "about half the number who come to prison."

Parker's research shows what is possible over a span of time, which is the proper way to examine a fluid, constantly changing system. But the legislature has to deal with an overcrowding crisis. In 1987 the legislature imposed a cap on the prison population at 18,000. Rep. Anne Barnes (D-Orange), co-chair of the committee, said, "We are working as fast as we can on developing the mechanism for implementing that cap."

The 1989 legislature adjusted the cap, but still faces the tough job of finding a mechanism to keep the prison population below 18,000. In the short run, it had to give Secretary Johnson and the Parole Commission further emergency parole powers. Emergency early release programs have been used successfully in other states, notably in Illinois.[24] But for the long run, the legislature will have to take a close look at sentencing laws.

"The only way you really will address prison overcrowding is through sentencing," says David Jones, director of analysis for the Governor's Crime Commission, which routinely recommends legislative action. Over the years, the recommendations of the Crime Commission have been important guideposts for action.

The Crime Commission has proposed several minor changes designed to reduce the state's prison population in recent years. For example, the commission recommended that the legislature prohibit the sentencing of a misdemeanant to a state prison "unless the defendant has first served an active term in jail or prison, or has been or currently is on supervised probation." Jones admits that this "unless" clause minimizes the impact this recommendation can have on overcrowding.

Getting the misdemeanants out of the state system presents hard policy, administrative, and financial choices for the legislature. "You have a problem

Potential Reduction in Prison Population, by Inmate Type

Inmate Type*	Population Level, 1986	Potential Reduction
A. NO PRIOR INCARCERATIONS		
Property Crimes:		
1. Committed Youthful Offender	893	500
2. Misdemeanant	362	203
3. Felon with less than presumptive sentence	81	45
4. Felon with presumptive sentence	265	148
5. Split sentence	143	80
Public Order Crimes:		
6. Committed Youthful Offender	72	40
7. Misdemeanant	477	267
8. Felon with less than presumptive sentence	55	31
9. Felon with presumptive sentence	106	59
10. Split sentence	133	74
B. ONE PRIOR INCARCERATION		
Property Crimes:		
11. Committed Youthful Offender	150	84
12. Misdemeanant	193	108
13. Felon with less than presumptive sentence	40	22
14. Felon with presumptive sentence	162	91
15. Split sentence	52	29
Public Order Crimes:		
16. Committed Youthful Offender	9	5
17. Misdemeanant	189	106
18. Felon with less than presumptive sentence	6	3
19. Felon with presumptive sentence	28	16
20. Split sentence	52	29
TOTALS	**3,468**	**1,940**

*Felons are sentenced under the Fair Sentencing Act and may receive less than the presumptive sentence if mitigating factors are involved. A judge can also issue a sentence longer than the presumptive length if aggravating factors exist.

Source: N.C. Department of Correction

with misdemeanants who are charged as felons and get the charge reduced through a plea bargain," says former Sen. Tony Rand, a Fayetteville criminal defense attorney. "The sentencing concession [in the plea down to a misdemeanor] is often that the client get some active time. I don't think the jails can pick up that expense."

Lao Rubert, reflecting on the challenges ahead for advocates like herself, also worries about a solution here. "We put more misdemeanants into our state system than nearly any other state. The only way to deal with this problem is to change the law so that no misdemeanant could be sent to the state prison system. But local community programs and local resources need to be in place if misdemeanants aren't going to the prison system."

"Local resources" is one of the key elements in the entire alternative picture—from minimum security detention centers where people can work or go to school during the day in their own communities (called "satellite" jails) to a local community-based punishment system. Simply pushing misdemeanants out of the state prison system into county jails, while it might relieve the overcrowded prison system, can create new problems. The jail system is overcrowded itself and might be worse off for a prisoner than a minimum security prison. Many jails are in a county courthouse, and the inmates cannot even go outside to get some fresh air. Moreover, many people who might be punished better in a community setting would still be incarcerated. The legislature's Special Committee on Prisons recommended that the state set up a $20 million fund for capital grants to counties to develop misdemeanant work-release "satellite" jails. The 1987 General Assembly established a satellite jail fund but appropriated no money. Proposals to fund the program were made in the 1989 Legislature.

"The state needs to provide technical assistance to counties to develop more alternative programs for the people in jails and for people headed to prison," says Stephanie Bass, former executive director of the N.C. Center on Crime and Punishment. "But how do you develop these programs to meet the varying needs of different communities? We need residential centers, drug treatment facilities, and many other things. What does a community do besides jail? The answer is not just more jails."

One thing that all these issues—exit alternatives, sentence diversions, changes in sentencing laws, community service, satellite jails—have in common is the involvement of the judicial and law enforcement systems. Alternative programs are also expanding in an effort to keep problems from ever getting into the complicated and expensive judicial system. The best example, perhaps, are the dispute settlement centers that have spread into at least 10 North Carolina towns. These groups have joined together into the N.C. Association of Community Mediation Programs.

Too often, however, the array of community-based programs related to the criminal justice system evolve without any overall direction. Developing a community corrections *policy* is "often an afterthought" to community corrections *programming*, says Patrick McManus, the federal court's "special master" for the Tennessee corrections system. "This, in fact, may be why the [prison systems in the] United States are in a mess. Overriding community corrections policy rarely happens without federal court intervention."

In looking at all the potential purposes of an "effective" system of community-based penalties, policymakers are "really asking questions about the very nature of crime and punishment," says Malcolm Young.

"Sadly enough, criminal courts are very impersonal places, a system where people get pushed through," continues Young. "It's a poor place to provide social services and rehabilitation. But we're better off anytime we stop and pay attention to the individuals in that system"—individuals like Eliot Johnson.

How Much Do Taxpayers Pay?

Incarceration

1. Average cost per inmate in state prison:
   $31.63 per day **$11,500** per year
2. Average cost of construction per cell (designed for one person) in a new, medium-security prison:
   $60,000 to $72,000

Alternatives to Incarceration

1. Cost per person sentenced through community penalties program:
   $1,000 per person
2. Cost per person on intensive parole or probation:
   $7.13 per day **$2,602** per year
3. Cost per person on traditional probation or parole:
   $1.25 per day **$456** per year

Data compiled by N.C. Center on Crime and Punishment, 1987.

Eliot walks through the swivel gate into the attorney area and sits beside Sally Scherer at the defendant's table on the right. Judge Sherrill asks Tony Copeland, the assistant DA, to proceed.

Rising on the left, Copeland reviews the charges and then announces, "We've worked out a plea, your honor." He then presents the agreement—the felony and two misdemeanors reduced to a single misdemeanor, with a six-month suspended sentence; two years probation; a fine of $100 and court costs (which include attorney fees), to be paid by Eliot; and his placement in the group home.

Cindy Hill, of ReEntry, had arranged for Eliot to move off the waiting list and into the structured living situation he needed.

Judge Sherrill begins shuffling through his papers. Eliot, a full head shorter than Scherer and looking barely out of junior high school, stands beside his attorney. Scherer reaches over and rubs his back as they wait for the decision. At last, Sherrill looks up. His sleepy-eyed countenance belies his bite.

"Are you trying to become a career criminal before you're 25?" Sherrill barks.

"No sir," the 16-year old manages.

"This case will make a fool out of one of us," the Judge continues. "And I hope it's me. If you show up in this courtroom again, you know who the fool will be?"

"Yes sir."

Then the Judge passes his sentence, agreeing to the plan that Scherer and the assistant DA worked out, using the background information and community placements developed by Hill. In agreeing to the community-based penalty plan, Sherrill was making tradeoffs among the four classic purposes of criminal punishments. Would the public be protected with Eliot in the community? Would the system provide sufficient retribution through the combination of fines, probation, and restrictions in a group home? Would such a sentence deter further crime from Eliot? Will the sentence help to rehabilitate Eliot?

Then Sherrill, true to his hard-line reputation, adds, "Your probation officer must take you on a tour of Central Prison during your first 30 days on probation. And that's where I'll send you if I see you back in this courtroom. I'll have your dunce cap ready."

In another setting, the line might have sounded corny, but not from Judge Sherrill. His steel-grey eyes peer wide for the first time during his crowded morning session.

Eliot bursts into a smile and walks through the gate to join his mother. Scherer and Hill follow them outside the courtroom. Dragging long and deep on a cigarette, he says he felt "better" when the Judge agreed to the suspended sentence. "I thought he might send me to prison. I spent 11 days in jail here before I got out," Eliot says.

Cindy Hill's next step is to take Eliot over to the group home, the kind of structure that—unlike the bars of a prison cell—might enhance his chances in life.

FOOTNOTES

[1]"Corrections at the Crossroads—Plan for the Future," developed by the N.C. Department of Correction and released March 6, 1986, p. 1.

[2]William L. Armstrong and Sam Nunn, "Alternatives to Incarceration: The Sentencing Improvement Act," in *Crime and Punishment in Modern America*, Institute for Government and Politics of the Free Congress Research and Education Foundation, pp. 337ff.

[3]"Report: Citizens Commission on Alternatives to Incarceration," released by this 21-member commission through the Prison and Jail Project of North Carolina, Durham, N.C., Fall 1982, p. 65.

[4]Public sentiment in North Carolina on crime and punishment appears to be in flux. In a 1982 survey of 1,506 people, the North Carolina Citizen Survey, part of the N.C. Office of Budget and Management, included a significant section on crime issues. "Although North Carolinians take a fairly 'hard line' on the subject of prison sentences in general (44 percent think they're too short), there is considerable support for alternatives to prison sentences for certain types of offenders," reported the office. Then in 1986, the N.C. Center on Crime and Punishment conducted a 25-minute telephone survey of 621 randomly selected citizens. The survey indicated that North Carolinians would rather use alternative punishments than build more facilities to solve prison overcrowding.

[5]Chapter 435 of the 1983 Session Laws, now codified as N.C.G.S. 20-179.

[6]Chapter 909 of the 1983 Session Laws, now codified as N.C.G.S. 143B-500 to 507.

[7]The Fair Sentencing Act established a 10-tier classification system for felonies, linking presumptive and maximum sentences to each tier. Here are some of the felony categories that can be dealt with through the community penalities program: "H" (maximum 10 years, presumptive three years)—attempt to commit burglary, felonious larceny, felonious breaking or entering, felonious receiving or possession of stolen goods, embezzlement, manufacture or sale of "schedule I or II" controlled substances; "I" (maximum five years, presumptive two years)—breaking and entering into a motor vehicle, forgery, manufacture or sale of schedule III-VI controlled substances, possession of a schedule I controlled substance, welfare and

Medicaid fraud; and "J" (maximum three years, presumptive one year)—credit card theft and fraud, forgery, unlawfully transporting a child out of state, and all felonies not specifically classified by the Fair Sentencing Act.

[8]Chapter 682 of the 1983 Session Laws, now codified as N.C.G.S. 143B-262(c).

[9]James Austin and Barry Krisberg, "The Unmet Promise of Alternatives to Incarceration," *Crime & Delinquency*, July 1982, pp. 374ff.

[10]Jan M. Chaiken and Marcia R. Chaiken, "Varieties of Criminal Behavior: Summary and Policy Implications," The Rand Corporation, publication R-2814/1-NIJ, August 1982; and Peter W. Greenwood with Allan Abrahamse, "Selective Incapacitation," The Rand Corporation, publication R-2815-NIJ, August 1982.

[11]N.C.G.S. 143B-503.

[12]Stevens H. Clarke, "Effectiveness of the Felony Alternative Sentencing Program in Hickory, North Carolina: Report on a Controlled Evaluation," prepared for Repay Inc., Institute of Government, University of North Carolina at Chapel Hill, February 1986, p. 11; see also, W. LeAnn Wallace and Stevens H. Clarke, "The Sentencing Alternative Center in Greensboro: An Evaluation of Its Effects on Prison Sentences," Institute of Government, January 1987.

[13]A valuable source on recidivism and related studies is *Crime and Public Policy*, James Q. Wilson, editor, ICS Press (San Francisco, Ca.), 1983. In this anthology, see particularly Daniel Glaser, "Supervising Offenders Outside of Prison," pp. 207-228. Another excellent background book on how well alternative programs work is James Q. Wilson, *Thinking About Crime* (revised edition), Basic Books, Inc. (New York, N.Y.), 1983.

[14]For a summary of a 50-state survey of house arrest programs, with special emphasis on the Florida program, see "House Arrest: Florida's Community Control Program," publication RM-764, Council of State Governments, 1986. In North Carolina, a pilot house arrest project has begun in Winston-Salem for *juveniles*. This article focuses on alternatives for persons tried and convicted in adult court.

[15]Chapter 557, sec. 4, 1983 Session Laws, now codified as N.C.G.S. 148-4.1.

[16]Chapter 1098, sec. 1, 1983 Session Laws (2nd session, 1984), now codified as N.C.G.S. 15A-1371.

[17]Chapter 1014, sec. 197 (HB 2055, p. 157), 1985 Session Laws (2nd session, 1986), which amended N.C.G.S. 148-4.1(c) and 15A-1380.2(c). This was a "special provision" to a budget bill. For more on this issue, see Ran Coble, *Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens*, N.C. Center for Public Policy Research, June 1986.

[18]Chapter 960 of the 1985 Session Laws (2nd session, 1986), which amended N.C.G.S. 15A-1371(h) and 15A-1380.2(h).

[19]For the rules issued by the Secretary of Correction, see 5 NCAC 2F .2000; for the regulations issued by the Parole Commission, see 5 NCAC 4C .1800.

[20]See "Response of the Department of Crime Control and Public Safety to the Report of the State Auditor Entitled 'Restructuring of Offender Programs in the Criminal Justice System'," p. 14, part of a 70-page packet sent with a cover letter from Governor Martin, dated Dec. 1, 1986.

[21]"Community Service Work Programs," in "Programs of Incarceration and Community Alternatives in North Carolina," Fiscal Research Division, N.C. General Assembly, p. 25.

[22]The Office of the State Auditor put out three major operational audit reports in 1986—on the community services program, on the probation and parole system, and on restructuring issues.

[23]For background on how all 50 states use local jails for incarceration, see "Incarceration Practices," an annotated survey report compiled by the Fiscal Research Division, N.C. General Assembly, 1986.

[24]See *Crime & Delinquency*, Vol. 32, No. 4, October 1986, a special collection of articles devoted to the early release program used in Illinois.

Chapter 11

North Carolina Environment

Municipal Wastes: Trying to Make Molehills Out of Mountains of Trash

by Tom Mather

Barely a generation ago, garbage disposal in North Carolina was rarely a front-page news story. City governments were still handling trash as they always had—they dumped it in noxious, rat-infested mounds and burned what they could. The smoke and the stench could be detected miles away. Then came a revolution in technology—the sanitary landfill, in which governments could dump trash and garbage, compact it with enormous machines, and cover it all with a thick layer of dirt. That was considered an environmentally sound way to handle our refuse—until cities began running out of land, groundwater started becoming polluted from poisons leaking out of landfills, and environmental agencies began applying stricter landfill controls that are driving up the cost of this once-standard method of solid waste disposal. Are the new landfill rules workable? What are the alternatives, such as incineration or recycling of garbage? And what special environmental problems do the alternatives pose?

NEW HANOVER COUNTY FACED A PROBLEM 10 years ago that now is emerging as one of the key environmental issues for cities and counties across the nation: How to dispose of garbage safely and economically. In the late 1970s, New Hanover County was running out of space at its aging landfill. At the same time, several groups were suing the county for polluting nearby ground and surface waters.

"We were the first to have to face the issue," County Engineer C. Ed Hilton Jr. says. "The county was in a predicament . . . . For almost a week, New Hanover didn't have a place to put its waste. The closest place that would take our waste was in Wake County."

Tom Mather is a reporter covering the environment for The News and Observer *of Raleigh.*

The county dealt with the dilemma in two ways. It built a $13 million incinerator for burning most of its garbage. And it constructed a new $3.2 million landfill—complete with liners and other pollution-control equipment—to handle excess trash, non-burnable items, and incinerator ashes.

"The key factor for us, as far as the incinerator, was the cost of landfilling in this county," Hilton said. "That was a very, very expensive landfill."

Many North Carolina counties soon will be facing similar choices. A third of the state's 119 city-and county-run landfills are expected to run out of space within the next five years, according to estimates by the N.C. Solid Waste Management Section of the state Department of Human Resources. "We've got 12 county landfills that have less than two years of space left," says William L. Meyer, head of the section, the primary state agency dealing with garbage disposal (see table for more). And at least 35 landfills have less than five years to go.

Moreover, state officials in 1987 began enforcing stricter guidelines for permitting landfills[1] in the face of mounting evidence that old-style sanitary landfills pollute the state's groundwater system. State officials also adopted a new policy agreement in June 1987 aimed at phasing out conventional landfills and relying more on incineration, recycling, and other types of waste reduction.[2]

"The intent is to preserve and protect the groundwater as a potential drinking water source," says Meyer. "As a policy, we should minimize our dependency on sanitary landfills. The more [waste] we put in the ground, the more of these resources [land and groundwater] we are tying up and having the potential to contaminate."

Meyer and other state officials acknowledge that new regulations will make waste disposal more costly—perhaps five times more expensive than with conventional landfills. But they say such restrictions are necessary because more than half of the state's homes and industries depend on groundwater [through water wells]. "The real cost is the pollution to the environment," says R. Paul Wilms, director of the state Division of Environmental Management. "Groundwater is a very precious and limited commodity—and it needs to be protected. The counties are going to have to charge more for [trash] collection. They're going to have to recover their costs somewhere. And certainly the consumers and taxpayers are the ones who are going to have to pay."

The June 1987 agreement between the Department of Human Resources and the Department of Natural Resources and Community Development seeks a 90 percent reduction in the volume and toxicity of landfill waste over the next 20 years. That's no small order. North Carolina now generates about 25 million pounds of solid waste daily—or about four pounds per person each day, Meyer's office estimates. Most of that garbage ends up in the state's 150 industrial and public landfills, most of which are operated by county governments.

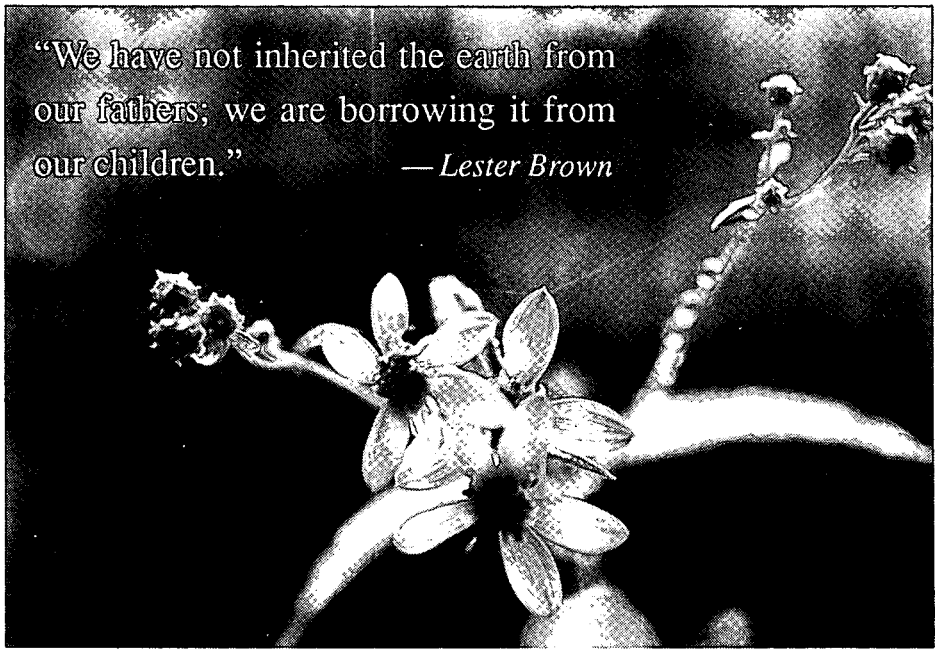
Waste disposal "is on the verge of becoming a statewide issue of utmost importance to the counties," says Ed Regan, assistant executive director for the N.C. Association of County Commissioners. "The issue is double-edged for counties. On one hand, the state's efforts in protecting groundwater are going to make traditional ways of solid waste disposal greatly more expensive. Although we realize the short-term conversion away from the conventional landfill is going to be expensive, we realize it's necessary. We now know that [landfills] pose a serious threat in many cases to groundwater."

Problems With Landfills

Twenty-five years ago, many communities viewed sanitary landfills as an environmentally sound alternative to more traditional ways of disposing of solid waste, such as open dumps and outdoor burning. Local governments responded to prodding by state officials then to open sanitary landfills, and now there are new pressures. Local, state, and federal officials have begun to seek alternatives as they realize that landfills can pollute ground and surface water, consume huge tracts of valuable property, and lead to controversial siting disputes. (Groundwater is water tapped into by wells; surface water is the state's system of river basins and tributaries.)

Landfills contain a concentration of potential pollutants—ranging from discarded oil to bacteria-infested food scraps—and those contaminants often leak into nearby groundwater and streams. At 50 percent of the sites they've sampled, state investigators have found "acutely toxic" levels of pollutants in water—called leachate—that leaks from landfills, says Wilms. Those findings have prodded the state into pursuing the tighter groundwater controls. The U.S. Environmental Protection Agency also has been developing tougher standards that would require states to regulate groundwater pollution more strictly.[3]

For years, the state has encouraged counties to put their landfills near rivers, wherever feasible. The point was not that rivers could help carry away whatever pollution leaked out of the landfills. Rather, the state contends, it was aimed at protecting groundwater, an assertion that environmentalists have not accepted



Carol Majors

universally. The state's theory was that leaking pollutants would show up quicker in the river surface water, and sanitation engineers could act quickly to treat the pollution and to pinpoint and halt the source of pollution. "Groundwater has minimal effect on streams, and thus the river would tell us if there were any effect," says Meyer. "And rivers can attenuate whatever pollution leaks from landfills."

Such quick detection was impossible when landfills were not located near rivers. Sometimes pollutants leaked from landfills and were carried far away by groundwater, only to show up in a distant water supply where it was impossible to detect the source of the pollution.

Environmentalists oppose the practice because such landfills are a source of contamination, especially for towns down river that depend on the water. "Dilution is not the solution for pollution," says Lark Hayes, former executive director of the Clean Water Fund of North Carolina, and now director of the N.C. office of the Southern Environmental Law Center in Chapel Hill. Under stricter landfill rules adopted by the state, conservationists contend, landfills no longer need to be located near rivers. State engineers, on the other hand, say the policy remains in effect. "We think it's a good policy, especially if you do have a leak in the liner," says James Coffey, an environmental engineer in the Solid Waste Management Section.

Under the new state guidelines, most landfills must use engineered barriers such as liners, caps, and leachate collection systems to prevent pollution. Liners are clay or plastic barriers, roughly the thickness of a matchbook cover, that block pollutants from leaking into groundwater. Some environmentalists fear that these liners may create a sort of bathtub effect, and that eventually they will fill to the point that poisons leak over the top or into the ground through punctures in the liner and contaminate ground and surface waters. To prevent that, leachate systems collect pollutants that settle to the bottom of landfills and pump them out so they can be treated. And special caps are designed to prevent water from entering a landfill in the first place.

"All new landfill permits are expected to meet these standards," Meyer says. "Probably more than 95 percent will require these high-technology or highly engineered sites to prevent ex-filtration [leaching of pollutants]." The New Hanover landfill, for instance, is lined, and other urban landfill operators face lining theirs when opening new landfills or expanding existing ones. So far, the liners have not been required by federal or state law or regulations, but Ron Levine, director of the Health Services Division of the Department of Human Resources, says the department is considering putting the liner requirement into the N.C. Administrative Code.

Communities can apply for variances if they can

— continued

Projected Life for Municipal/County Landfills, March 1988

Name of Landfill	Year Opened	Total Acres	Acres Used	Acres Remain	Avg. Depth (feet)	Remaining Life (Years)*
Alamance County	**1979**	**20**	**16**	**4**	**50**	**-1**
Alexander County	1979	25	10	15	30	+5
Alleghany County	1982	14	5	9	33	+10
Anson County	**1979**	**13**	**13**	**3**	**30**	**+2**
Ashe County	1971	100	25	75	50	+10
Avery County	**1972**	**14**	**8**	**6**	**45**	**+2**
Beaufort County	1978	60	41	19	12	+5
Bertie County	**1973**	**101**	**88**	**13**	**13**	**+2**
Bladen County	**1972**	**57**	**25**	**20**	**16**	**+2**
Brunswick County	1984	54	12	42	8	+5
Buncombe County	**1973**	**90**	**60**	**30**	**60**	**+2**
Burke County	1988	318	0	318	35	+30
Cabarrus County:						
Charlotte Motor Speedway	1973	110	0	110	35	+5
Cabarrus County	**1974**	**242**	**62**	**180**	**40**	**+2**
Caldwell County	**1975**	**60**	**45**	**15**	**125**	**+2**
Carteret County	1984	30	10	20	20	+5
Caswell County	1975	10	5	5	18	+5
Catawba County	**1973**	**90**	**75**	**15**	**30**	**+2**
Catawba County	1981	170	30	140	25	+5
Chatham County	1973	79	40	39	25	+10
Cherokee County	**1972**	**16**	**12**	**4**	**20**	**-2**
Clay County	1982	14	7	7	25	+10
Cleveland County	1976	187	75	122	27	+10
Cleveland Container Service	1975	116	10	106	40	+10
Columbus County	1973	50	50	4	10	+10
Craven County	1983	120	40	80	16	+10
Cumberland County	1980	200	90	110	38	+5
Currituck County	**1974**	**0**	**0**	**0**	**15**	**+2**
Dare County	1982	30	5	25	20	+5
Davidson County:						
Davidson County	**1984**	**60**	**10**	**50**	**15**	**+2**
Lexington, City of	**1972**	**33**	**28**	**5**	**18**	**+2**
Thomasville, City of	1961	105	80	25	40	+5
Davie County	1981	60	52	8	35	+5
Duplin County	**1973**	**100**	**80**	**20**	**13**	**+2**
Durham County:						
Durham, City of	**1974**	**130**	**95**	**25**	**45**	**+2**
Edgecombe County	1974	271	35	60	35	+10
Forsyth County:						
Winston-Salem, City of	1975	176	43	123	85	+10
Winston-Salem, City of	**1969**	**50**	**18**	**32**	**45**	**+2**

— table continued

* **Key:**
Bold type indicates fewer than 5 years remaining.
"+" in front of a number indicates more than; "-" indicates less than.

Projected Life for Municipal/County Landfills, March 1988

Name of Landfill	Year Opened	Total Acres	Acres Used	Acres Remain	Avg. Depth (feet)	Remaining Life (Years)*
Forsyth County, *continued*:						
Kernersville, City of	1976	68	17	51	35	+5
Franklin County	**1984**	**45**	**30**	**15**	**30**	**-2**
Gaston County	1987	322	0	322	25	+10
Graham County	**1974**	**15**	**15**	**0**	**50**	**-1**
Granville County	**1976**	**66**	**42**	**24**	**30**	**+2**
Granville County	**1982**	**42**	**37**	**5**	**40**	**+2**
Greene County	1982	65	5	60	12	+10
Guilford County:						
High Point, City of	1981	47	37	10	40	+5
Greensboro, City of	1978	184	103	81	40	+5
High Point, City of	1980	125	0	125	0	+10
Halifax County	1981	110	16	94	45	+10
Harnett County	1977	350	90	260	20	+10
Harnett County	1978	61	51	10	15	+5
Haywood County:						
Haywood County	**1982**	**20**	**20**	**0**	**60**	**-1**
Canton, Town of	1975	20	15	5	50	+10
Henderson County	1965	25	15	15	50	+10
Hertford County	**1973**	**49**	**44**	**5**	**10**	**+2**
Hoke County	1974	20	14	6	20	+5
Iredell County	**1979**	**90**	**45**	**20**	**60**	**+2**
Jackson County	1969	18	10	8	50	+5
Johnston County	1973	125	90	35	20	+5
Jones County	1972	20	7	13	7	+10
Lee County	1972	226	110	116	37	+10
Lenoir County	1981	60	20	40	15	+5
Lincoln County	1986	300	0	0	0	+10
McDowell County	**1972**	**25**	**24**	**1**	**35**	**+2**
Macon County	**1975**	**10**	**10**	**0**	**30**	**-1**
Macon County	**1975**	**10**	**10**	**0**	**20**	**-1**
Madison County	**1980**	**12**	**12**	**0**	**18**	**-1**
Martin County	**1973**	**59**	**54**	**5**	**12**	**-2**
Mecklenburg County	**1972**	**105**	**60**	**45**	**35**	**+2**
Montgomery County	1972	27	21	6	14	+5
Moore County	1972	276	55	221	30	+10
Nash County	**1977**	**57**	**43**	**14**	**35**	**+2**
New Hanover County	1981	191	15	125	30	+10
Northampton County	1971	35	27	8	25	+10
Onslow County	1984	90	35	55	15	+5
Orange County	1970	205	35	170	18	+10
Pamlico County	1981	50	10	40	10	+10

— table continued

*** Key:**
Bold type indicates fewer than 5 years remaining.
"+" in front of a number indicates more than; "-" indicates less than.

Projected Life for Municipal/County Landfills, March 1988

Name of Landfill	Year Opened	Total Acres	Acres Used	Acres Remain	Avg. Depth (feet)	Remaining Life (Years)*
Pasquotank County	1984	150	8	142	30	+10
Pender County	1973	25	13	12	15	+5
Perquimans-Chowan County	1979	50	14	36	7	+10
Person County	1973	40	20	20	13	+5
Pitt County	1974	100	50	50	15	+10
Polk County	1979	35	11	24	35	+10
Randolph County	1986	95	0	95	40	+10
Union Carbide/Ever Ready	1984	5	1	3	12	+10
Richmond County	1985	125	10	110	16	+10
Robeson County	1985	179	10	169	20	+10
Rockingham County	**1979**	**12**	**9**	**3**	**55**	**+2**
Rowan County	**1978**	**48**	**44**	**4**	**20**	**-1**
Rutherford County	1975	23	10	13	35	+5
Rutherford County	1974	127	27	100	35	+5
Sampson County	1984	90	6	84	20	+10
Scotland County	1980	100	40	60	15	+5
Stanly County:						
Albemarle, City of	1973	50	11	39	20	+5
Stokes County	1987	25	0	25	20	+5
Surry County	1983	45	20	25	20	+5
Surry County	1986	80	16	64	30	+5
Swain County	**1972**	**30**	**29**	**1**	**30**	**+2**
Transylvania County	**1975**	**12**	**12**	**0**	**150**	**-1**
Vance County	**1974**	**64**	**39**	**25**	**12**	**-2**
Wake County:						
Raleigh, City of	1972	160	85	75	25	+10
Wake County	1980	300	100	100	10	+5
Sorrells	1970	60	30	30	75	+5
Wake County	1986	219	3	186	45	+10
Warren County	**1984**	**12**	**4**	**8**	**20**	**+2**
Washington County	**1980**	**30**	**25**	**5**	**10**	**+2**
Watauga County	1968	40	17	23	40	+5
Wayne County	1974	130	30	100	20	+10
Wayne County	1974	85	10	75	20	+10
Wilkes County	**1972**	**32**	**30**	**2**	**35**	**-2**
Wilkes County	1975	22	8	14	10	+5
Wilson County	1974	120	60	60	15	+5
Yadkin County	**1972**	**51**	**31**	**20**	**15**	**+2**
Yancey/Mitchell County	1969	30	29	1	40	+5

Source: Solid Waste Management Section, Division of Health Services, N.C. Department of Human Resources

Note: Not every county operates a landfill

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demonstrate their sites contain natural barriers, such as thick, impenetrable clay soils, that would prevent groundwater contamination. But for most landfills, the new regulations will increase disposal costs significantly. How much? That depends upon each site, but perhaps 10 times as much, according to one estimate. "Instead of having to pay $5,000 to $10,000 an acre in developing that landfill site, now we're talking about $100,000 to $125,000 an acre for landfills with liners," says Regan of the Association of County Commissioners. Mecklenburg County is developing a new landfill on a 547-acre tract along the South Carolina border. The county estimates that a liner for the entire tract would cost $47 million.

New Hanover County spent more than $2 million—excluding land costs—constructing the first 10 acres of its lined landfill with a leachate treatment system, county engineer Hilton says. A newly opened five-acre segment cost $620,000—or about $125,000 an acre.

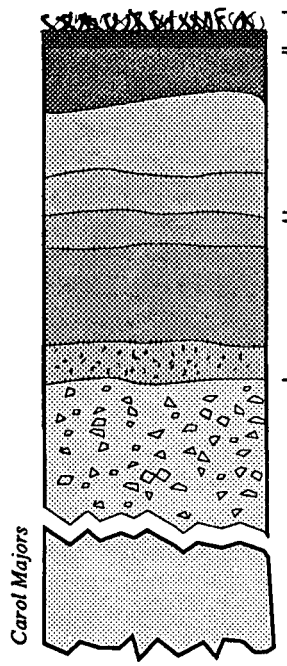
In Alamance County, which ran out of burial space at its landfill in July 1987, officials postponed a decision to open a new site after state officials told them it had to be lined. Landfill operators have since been mounding garbage on top of the ground until the county's board of commissioners decides whether to build a lined site or pursue other alternatives. Meanwhile, daily operating costs have increased from about $1,400 to $3,000 by having to mound rather than bury garbage. (That's what Virginia Beach, Va., once did. It now has a manmade municipal mountain, dubbed Mt. Trashmore, as the centerpiece for a new city park.)

"We can mound until the cost becomes prohibitive," says Commission Chairman Leonard Alcon. "We can go out and bring in 140 dump truck loads of dirt to cover the garbage, but the cost may become prohibitive. I would consider it a crisis. If there is no landfill and there's nowhere to dispose of garbage—how does business operate? I think we may be discouraging industries that are thinking of locating in Alamance County."

The county would need a landfill, he says, even if it eventually built an incinerator or pursued other waste reduction options. "Regardless of what type of disposal alternative you have, you're going to need a landfill," he says. "Once we get a landfill, then we can look at other alternatives."

State officials agree that landfills can't be eliminated entirely. But they say that increased landfilling costs ultimately may force most communities to seek other waste disposal alternatives. "With the new rules that are in place—the groundwater rules and the new federal standards—the cost of landfilling is going to go up drastically," says Gordon Layton, solid waste super-

A Profile of the Soil



Soil is the essential pathway between the mineral and organic worlds. Through the soil, vegetation acquires its nutrients which are passed through the food chain and returned again. The chemical, physical and organic content of soil develops from decomposition and mineralization of the vegetation and the rock materials. Thus, all soil has its own distinctive profile.

Soils have four major horizons, each with concentrations of a particular property. Generally, these horizons are:

The O horizon: is the surface layer composed of fresh, matted or decomposing organic matter.

The A horizon: begins as a dark colored layer of high organic content and mineral matter. Heavy leaching and weathering result in the loss of soluble minerals to the next horizon. Resistant minerals concentrate in the lighter layers.

The B horizon: is usually deeper in color and contains the highest concentration of clay minerals or of iron and organic matter. It is firmer in structure.

The C horizon and R horizon: are composed of weathered material and consolidated bedrock, respectively.

visor for the state. "As the cost of this alternative goes higher, it's going to make waste recovery, recycling, and other alternatives more desirable. Some of the thrust behind this effort is going to have to come from the legislature," he adds.

Most alternatives to landfills involve waste-reduction methods such as recycling, garbage compaction, and shredding. But the most efficient way to reduce volume, some state officials say, is by incineration.

Incineration as a Disposal Alternative

Of the 90 percent waste reduction sought by state officials, Layton estimates that about three-fourths of that cutback could be achieved through greater use of incinerators. New Hanover County operates one of the state's two municipal waste incinerators while Wrightsville Beach operates the other. Soon they will be joined by Charlotte and Mecklenburg County, which have begun construction on an incinerator slated for use in about two years, and Gaston, Rowan, and Alamance counties, and the city of Greensboro, are considering such facilities.

The New Hanover incinerator, located in an industrial district north of Wilmington, reduces the volume of burned trash by more than 85 percent, county officials say. The incinerator burned its first truckload of trash in June 1984 and soon exceeded its design capacity of 200 tons per day. Although the plant operates continuously, it can handle only about 70 percent of the county's 285-tons-per-day garbage production. The county buries the excess garbage in its landfill, along with incinerator ashes, landscape debris, and nonburnable materials such as glass, metals, and concrete.

"Roughly for every 10 trucks of garbage that come in, only one to one-and-a-half truckloads come out," county engineer Hilton says. "Without this reduction of waste, that landfill would last only about 10 years. With this incinerator, it will probably last about four times that."

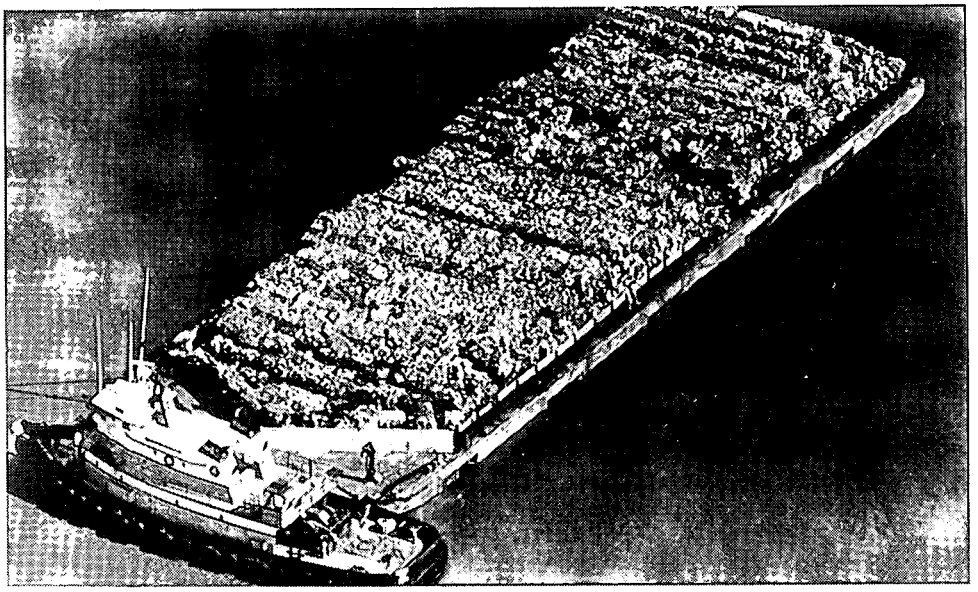
Heat from the burning garbage is used to produce steam, most of which the county sells to W.R. Grace Company, a nearby agricultural chemical manufacturer, for use in its boilers. The county also generates electricity from steam the company can't use and sells that production to Carolina Power & Light Company. This process—called cogeneration—makes waste materials into usable resources.

County officials are quick to point out, however, that the incinerator is not profitable. The county recovers about 80 percent of the incinerator's $4.5 million annual operating costs from steam-electric sales and revenues from garbage dumping fees, Hilton said. But taxpayers still had to contribute about $800,000 to the plant's budget in 1986. Says Hilton, "You don't make any money. You almost pay for what you're doing."

Catawba County, with about the same size population as New Hanover County, operates two county landfills on an annual budget of about $800,000.

Robert Llewellyn

Municipal and county landfills are rapidly filling up in North Carolina, and 35 have fewer than five years of life left.



Wide World Photos

This New York barge loaded with Long Island trash attempted to unload in North Carolina in April 1988, but was denied permission by North Carolina and other states.

County Engineer Dick Wyatt, who has studied New Hanover's $4.5 million operation, says the two counties' situations are quite different, and a direct comparison is difficult to make. "It's true that we're spending $800,000 [compared to New Hanover's $800,000 taxpayer costs], but there are a lot of hidden factors. Our budget doesn't include the cost of litigation, or what it will cost us under the new landfill rules, or what it will cost us when we next have to open a new landfill."

Incineration costs, as well as potential air pollution problems from burning trash, have led some observers to describe incinerators as an unlikely disposal option for all but the state's largest municipal areas. "There's a certain cutoff point where it's not economical for a locality to go with incineration .... It's about 200 tons a day," says Philip Prete, a research assistant at the Institute for Environmental Studies at the University of North Carolina at Chapel Hill. "Without getting at least a little above that, it would be hard to break even. With the steam generating incinerators, I would venture to say that there's few of them making a profit. It's not a money maker; it's a space saver and a quick fix. They're not going to make money."

That's not the point, responds Hilton. "New Hanover built the steam plant to reduce the costs of solid waste disposal caused by our lined landfill expenses," Hilton says. "As the rest of the state is required to install the liner systems, leachate collection and treatment systems, top-liners, and monitoring systems, landfill costs will force the examination of volume reduction techniques. Burning provides the largest volume reduction for the dollar value. The funds saved could pay for two steam plants while limiting our landfill disposal area to 200 acres instead of 800 acres over a 60-year period."

Besides not breaking even, Prete says incinerators would force taxpayers to pay more money for trash disposal. New Hanover County's $22.00-per-ton dumping fees are the highest in the state, he notes. In contrast, Orange County residents pay $3 to $6 per ton to dispose of garbage in the county landfill. According to Meyer, the statewide average cost is between $8 and $10 per ton.

Incinerators have environmental problems as well, which Prete says are "potentially as serious a problem" as landfills. Incinerators can emit harmful air pollutants if not equipped with state-of-the-art pollution controls.[4] "There's a whole host of things that can be sent off from a plant," he says. Such pollutants include particulates (fine liquid or solid particles such as dust, smoke, or smog), sulfur dioxides, nitrogen oxides, volatile hydrocarbons, carbon monoxide, dioxins, hydrogen chlorides, and hydrogen fluorides. Heavy metals are often present in air emissions, he says, but tend to concentrate in ashes.

Such airborne substances as particulates can cause discomfort and breathing problems, and other substances can have more harmful effects. Carbon monoxide poisoning can cause illness, and in extreme concen-

trations can lead to death. Sulfur dioxides have been linked to acid rains. Long-term exposure to such emissions as dioxins have been linked to cancer.

Although the technology exists to remove 90 percent of such pollutants from air emissions, Prete says, the U.S. Environmental Protection Agency does not require plants to install state-of-the-art equipment on smaller incinerators—that is, those burning less than 250 tons per day.

The EPA's emission standards are more lenient for smaller incinerators, Prete says, so operators of such plants tend to install less efficient air pollution equipment, such as electrostatic precipitators. These devices set up an electronic field that cause most of the larger particulates in fly ash—the soot that is emitted by incinerators—to settle. "They can meet those standards by removing the large particulates and still emit small particulates," Prete says. "And it's those small particulates that are most hazardous to human health." Small particles are more dangerous, he said, because they can be drawn deeper into the lungs and absorbed more easily by the bloodstream.

Large incinerators, on the other hand, must contain the "best available technology" for controlling pollutants, such as bag houses and scrubbers. "The bag house works essentially like a vacuum cleaner," Prete explains. "The flue gases pass through this bag, and it filters out the particulates in the fly ash." Scrubbers, on the other hand, spray a fine mist of powdered lime or a mixture of lime and water to neutralize acidic pollutants, such as sulfur dioxide, hydrogen chloride, and hydrogen fluoride.

Environmental groups that have studied incinerators worry about these serious health concerns. While cogeneration incinerators may produce electricity, "the ash the plants produce and the emissions from their stacks are serious—and virtually unregulated—health hazards. Environmentalists also worry that efforts to reduce waste and to create or expand recycling programs will go up in smoke along with the trash," reports *Sierra* magazine.[5]

New Hanover County officials, however, say they have had no problems meeting federal emission standards, a claim that is backed up by officials with the state Division of Environmental Management, which monitors air quality. (New air emission standards are on the way from the Environmental Protection Agency.) Moreover, Hilton says that New Hanover County officials were so pleased with their incinerator that they are considering plans to expand the plant or build another one. County officials are also considering a recycling program, but Hilton says they concluded that incineration would be less expensive than a comprehensive recycling program. "One of the shocking things we have learned recently is that there is a tremendous cost in recycling," Hilton said. "From the information we've looked at, the revenues don't cover the costs." Still, says Hilton, New Hanover is "seriously evaluating recycling as a mechanism to reduce the volume of waste to be landfilled. While we do not anticipate that the process will make money, there does seem to be some potential for reasonable 'avoided' costs. In other words, it may cost us no more to recycle than it does to landfill in our expensive landfill."

State officials acknowledge that all waste disposal alternatives are expensive, but they suggest several options that could help communities cover such costs. One potential remedy, Layton says, would be for the N.C. General Assembly to *set up a revolving loan fund for solid waste projects.* Under such a program, the state would offer communities low-interest loans for projects; repaid loans then could be used to finance other projects. In 1987, the state established such a fund for water and sewer projects, with an initial appropriation of $21.5 million. While such a loan fund would not relieve counties and cities of the cost for disposal projects, it would allow them to begin operating quicker and at a potentially lower cost, because the loan funds would be available at less-than-bond-market rates. The table indicates how rapidly the state's counties are running out of room—and which ones are close to being at maximum capacity.

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> "Pollution is nothing but resources we're not harvesting."
>
> —*Buckminster Fuller*
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Another option would be for counties to band together in financing *regional waste incinerators.* Such regional facilities would not only have a broader financial base for covering construction costs, but could operate more profitably because of their larger scale. "Volume may be the key when you start looking at expensive alternatives such as incineration," says Regan of the Association of County Commissioners.

A number of counties already have begun exploring the idea of building regional incinerators and recycling centers. For instance, Alamance County and Greensboro are considering plans for a jointly operated

incinerator, and Orange and Durham counties have discussed the possibility. And the Neuse River Council of Governments is studying an array of disposal options for the coalition of counties, cities, and military bases in eastern North Carolina.

"We're looking at incineration *and* recycling," says Larry D. Fitzpatrick, a member of the Onslow County Board of Commissioners and of the state Environmental Management Commission. "Maybe we could have a joint incineration and recycling process for two or more of these entities. We could save the taxpayers money and make a more efficient operation."

Prete believes communities should consider the entire range of disposal options in conducting such studies. In doing so, he says most communities would conclude that recycling and other forms of waste reduction are most cost-effective. "I don't think incineration is the way to go," Prete says. "I would say it's the way to go only after every other alternative has been examined for reducing the waste."

Recycling and Other Alternatives

Those who contend that recycling does not pay off, Prete says, often fail to consider secondary benefits such as conservation of resources, preservation of landfill space, and pollution prevention. "If you take all the benefits of recycling ..., I would say that it's certainly profitable from that standpoint," said Prete. "And if not profitable, it's at least feasible and sensible."

Evidence for that argument, he said, can be found in Charlotte and Mecklenburg County. The joint city-county recycling program started in February of 1987 with 2,500 households and had 9,100 households within six months, says Brenda F. Barger, a resource recovery specialist for Mecklenburg County. The county now recycles about 10 percent of its waste, and officials hope to increase that to 30 percent by 1994. "We hope to be city-wide by the fall of 1988," Barger said. "By that time we should be serving a little more than 100,000 households in the city limits."

Participants are asked to recycle four items: newspapers, aluminum, glass, and plastic bottles. They simply put all those recyclables in a single trash can, and garbage collectors sort the materials at the curbside. Most eligible residents have responded favorably to the program, she says, with more than three-fourths of the households participating in areas served by the program.

"We thought the best way to get participation was to make the program as simplistic as we could," Barger says. "The behavioral pattern to recycle had become very set after just a few weeks. People outside the service area are extremely anxious to be included in the program."

Local officials view recycling as an integral part of their total waste disposal effort, she says, even though the county is building an incinerator and a new lined landfill. For instance, the county will waive its $3.75 fee for a carload of trash if the driver brings three bags of recyclable materials to the landfill.

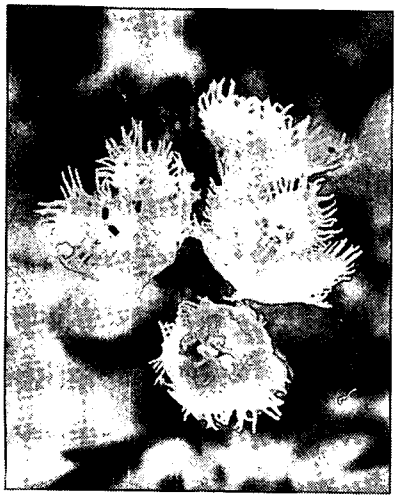
Before making a commitment to any disposal alternative, resource recovery experts say that communities should study their waste stream, identify large components, and try to reduce or recycle those materials. A good example is a study by the Land of the Sky Regional Council in Asheville, which serves Buncombe, Transylvania, and Madison counties.[6] "They realized they were all running out of landfill space . . . and wanted to look at alternatives," says Sandi Maurer, a solid waste planner for the council.

"Questions have been raised about regional incinerators because of low population density and the high cost of transportation due to the mountainous terrain in the region," adds Maurer. "My major objection to incinerators is they're so expensive. Who's going to pay for all the incinerators?"

Instead, she says, the council sampled trash at county landfills to determine what kinds of waste were being dumped. The study found that much more trash was being dumped than officials had realized—thereby shortening the predicted life of area landfills. Plus, it helped the council identify several likely targets for recycling efforts. One was cardboard, which accounted for 36 percent of the area's industrial waste. Clean industrial cardboard is easily recycled.

Another easily recycled item is glass, and during the 1970s, environmentalists made a strong push for a so-called bottle law in North Carolina. That proposal would have required consumers to pay a refundable deposit on soft drink and other beverage containers. But business groups, particularly retailers and bottlers, fiercely resisted the proposals before the General Assembly, and the push for recycling diminished. But that doesn't alleviate the need to stimulate recycling of glass, state officials say. Layton, of the Solid Waste Management Section, puts it this way: "There is going to have to be legislation mandating a bottle" [deposit].

Waste reduction and recycling programs have had an extended infancy in North Carolina, but may now be maturing. Since 1983, the state has supported the Pollution Prevention Pays program, which seeks both "waste minimization" as well as recycling. State officials say the program has become the primary waste management strategy in North Carolina. And unique programs such as the Southeast Waste Exchange at UNC-Charlotte's Urban Institute seek to promote industrial waste recycling.[7] The Exchange acts as a clear-



Carol Majors

...and every fish that swims silent, every bird that flies freely, every doe that steps softly, every crisp leaf that falls.
All the flowers that grow on this colorful tapestry — somehow they know.
That if man is allowed to destroy all we need,
He will soon have to pay with his life for his greed.

—from "Tapestry" by Don McLean

inghouse for businesses that seek waste and by-products for recycling, as well as for industries that offer such materials for sale. In this fashion, waste recycling can play a key role in stimulating economic development, promoting new businesses, and creating new jobs.

Prete cites such efforts as evidence that recycling can work at any scale—not just in large municipalities such as Charlotte. "As far as the cutoff point, I don't think there is one," he says. "A household of one can easily separate and recycle."

Communities should also look at other waste reduction options, he says, such as garbage compaction, shredding, composting, and mulching. For example, the City of Raleigh grinds up leaves and limbs it collects from homes, stockpiles them, and uses them for mulch in parks. The mulch is made available to residents free-of-charge.

Mecklenburg County has even found a way to make recycling pay off. It has instituted a Trash to Treasures program during the warm months of the year. Usable items—such as appliances, lawnmowers, toys, furniture, books, and the like—that have been brought to the county landfill are offered for sale on the first Saturday of each month.[8] These county yard sales attract a variety of buyers and have produced thousands of dollars in revenue for the county over the past few years.

Prete, among other solid waste experts, applauds the state's new policy of seeking a 90 percent reduction in waste. But that policy only sets goals, and he says the state should take stronger actions—such as adopting a bottle recycling bill or promoting other recycling. "Traditionally, solid waste has been an issue that's been left to the local governments," Prete says. "The state ought to take more of an upper hand."

Others say that simple economics and education will bring about changes. One proponent of that view is Jerry W. Johnson, business manager for Reynolds Aluminum Recycling Company's local center in Raleigh. From 1974 to 1986, the company's North Carolina business grew by 6,800 percent, from 100,000 pounds of aluminum to 6.8 million pounds. The company paid customers $1.9 million in 1986 for 176 million aluminum cans brought to its 30 recycling centers in the state. "That's 1,360 trailer loads that would have gone to the landfill, not including any scrap," Johnson said.

Twenty years ago, Reynolds used virtually no recycled material, he said, but it now relies on recycled aluminum for 40 percent of its metal refining needs. Similar results could be achieved for other materials, such as plastics and newsprint, he said, in helping the state reach its goal of reducing wastes by 90 percent.

"I feel like it's a reasonable goal," Johnson said. "The only thing we have to do is educate the public and make recycling centers as convenient to the public as possible. The money's there—if you make it worthwhile as far as the money going into the consumer's pocket—it will work."

FOOTNOTES

[1]Assistant Attorney General Nancy Scott told *Insight* that in February 1987, "A policy decision was made to protect groundwater to the drinking water standard," which was "another way to

interpret existing rules. It is a difference in how the [groundwater] standard is accomplished." That policy decision requires either liners or impermeable clay liners in sanitary landfills. Officials at the Department of Human Resources and at the Attorney General's office agree that the policy is an unwritten one, but it may by incorporated into the N.C. Administrative Code in 1988.

[2]Memorandum of Agreement, "Coordination of the Solid and Hazardous Waste Management Program of the Division of Health Services, Department of Human Resources and the Division of Environmental Management, Department of Natural Resources and Community Development," signed June 4, 1987, by the N.C. Secretaries of Human Resources, of Natural Resources and Community Development, and of Administration.

[3]Proposed "Criteria for New and Existing Municipal Sanitary Landfills," working draft, U.S. Environmental Protection Agency, 1987. See also "Advance Notice of Proposed Rule-Making," Solid Waste Incinerators, *Federal Register*, July 7, 1987.

[4]Philip J. Prete, "Solid Waste Incineration and Air Emissions: Mecklenburg County," An Issue Paper, Dec. 12, 1986, pp. 1-18.

[5]Carolyn Mann, "Garbage In, Garbage Out," *Sierra* magazine, September/October 1987, pp. 20-27.

[6]Sandi Maurer and Cam Metcalf, "Solid Waste Stream Quantity and Composition Study for Buncombe, Madison, and Transylvania Counties, North Carolina," Land-of-Sky Regional Council, Asheville, Jan. 15, 1987.

[7]*Waste Watcher*, published bimonthly by the Southeast Waste Exchange, Urban Institute, Department of Civil Engineering, University of North Carolina at Charlotte.

[8]Betsy Dorn, "Recycling Pays Off: Savings in Money and Landfill Space," *Popular Government*, Spring 1985, p. 23. See also Roger Schecter, "Pollution Prevention," *Popular Government*, Winter 1987, pp. 29-38.

Recommendations

Based on the information in the preceding article, the N.C. Center for Public Policy Research recommends the following:

1. **North Carolina should establish a revolving loan fund for local landfill construction.** North Carolina's county and municipal landfills are rapidly running out of room, with 12 of those landfills having less than two years before they will be full and 35 with less than five years. Because local governments may have difficulty securing financing to open new landfills, the 1989 General Assembly should establish a revolving loan fund to enable county and city governments to open new landfills. The low-interest loans from the loan fund would be paid back to the state to allow continued funding of new landfills. The fund might also be used by counties which decide to band together to open regional waste disposal centers, including regional waste incinerators to reduce waste volume before landfilling the remains.

2. **North Carolina should clarify its landfill requirement rules.** State policy currently requires cities and counties to install expensive liners in new landfills unless soil conditions obviate their need. But so far, the state has not adopted the liner requirement as a part of the N.C. Administrative Code, despite N.C. General Statute 150B-2 (8a). That law requires that "any agency regulation, standard, or statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency" be incorporated into the Administrative Code. To avoid confusion over this policy and forestall legal action challenging the policy, the Department of Human Resources' Division of Health Services should formally adopt rules involving landfill liners.

3. **The state should expand funding of the model Pollution Prevention Pays program.** This program, which has helped the state reduce its production of solid and hazardous wastes substantially, promises increased savings in terms of waste reduction. Yet the 1987 General Assembly cut its research budget in half and declined to increase its staff. The legislature should restore its research budget to $300,000, and increase its operating budget to expand its staff and provide more technical services to local governments wishing to avail themselves of the program.

4. **Similarly, the state should consider expanding the Department of Human Resources' Technical Resource Unit,** which also works with local governments in waste reduction and recovery.

5. **The General Assembly should examine whether a beverage container deposit law** would (a) significantly reduce solid waste and thereby address local problems, and (b) harm the growing container recycling industry in North Carolina. A legislative study commission may be the best way to determine the answers to these questions.

—*Jack Betts*

Clean Water— A Threatened Resource?

by Frank Tursi and Bill Finger

Water quality and water supply problems have reached the 17 river basins and 820,000 wells in North Carolina (no state has more wells). Fish kills, oxygen-depleted water, and other evidence point to a lethal mixture of pollutants in the state's surface waters. *Meanwhile, underground storage tanks and other pollution sources endanger the state's* groundwater system. *As the population grows, water supply needs increase along with sources of pollution. How can North Carolina manage the dual challenge of protecting water quality and ensuring an adequate water supply?*

THE BLUE CRABS SPILLED out of the plastic bucket onto the big wooden table. They scurried in all directions, trying to outrun the gloved hand that approached. One male stood his ground and raised his claws defiantly. Bill Mayo grabbed the crab and held it out for inspection. Almost a quarter of the crab's shell was gone, as if it had just dissolved away. Its organs were visible through the hole.

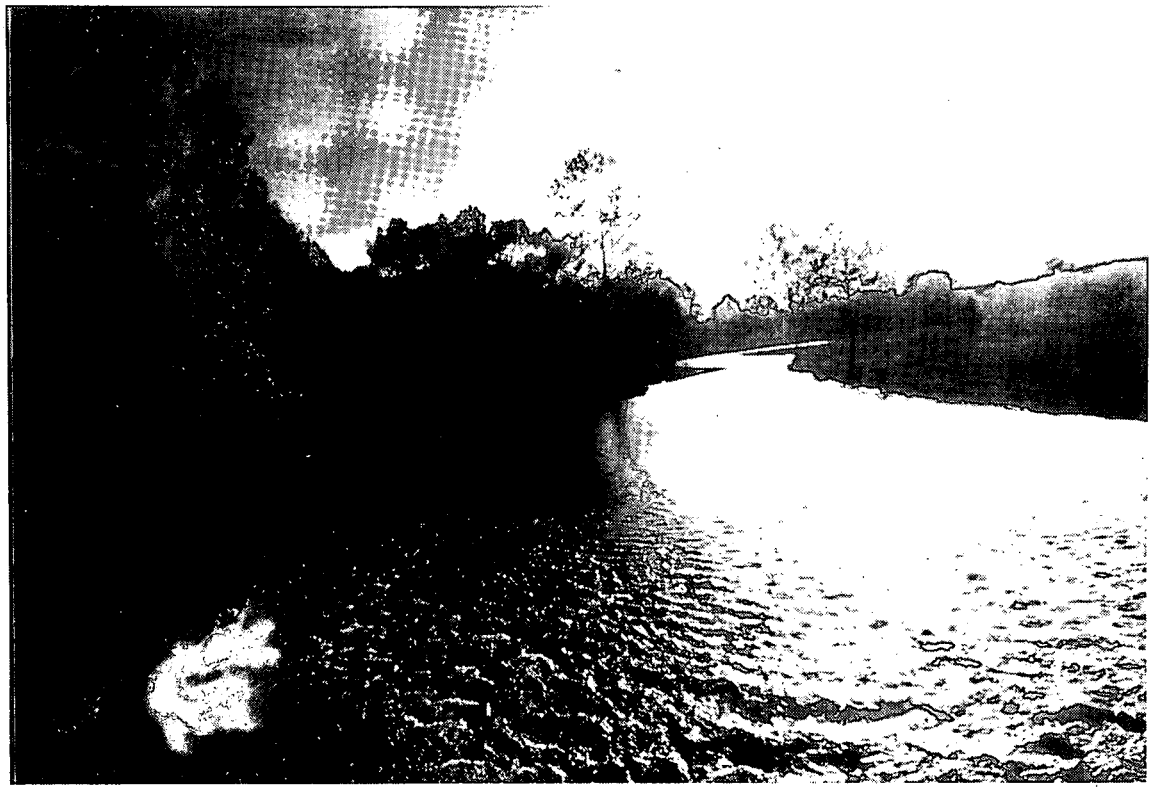
"I ain't seen nothing like it," said Mayo, who's been a commercial crabber on the Pamlico River for most of his 50 odd years. "I've been working the water all my life and I didn't think nothing could eat through a crab's shell." Bacteria can, and last summer they started eating holes in crabs in the Pamlico River in Beaufort County.

Four years ago, a mysterious fish disease leaving ugly red sores on its victims began killing millions of menhaden, causing fishermen to begin to notice that things weren't right on the river. Once common sea grasses were disappearing, and the oysters were vanishing. So were the striped bass.

"Something's wrong out there," Mayo said one day in late summer as he unloaded his day's meager catch at a crab packing house on the south side of the river. "I don't know what it is but something ain't right."

The Pamlico is being slowly poisoned by a lethal cocktail of industrial, urban, and agricultural wastes.

Frank Tursi, a reporter and editor for the Winston-Salem Journal *since 1978, currently covers environmental issues. Bill Finger is former editor of* North Carolina Insight.



Robert Llewellyn

Into the river flow the by-products of modern society—herbicides and insecticides, phosphorus and nitrogen, heavy metals such as lead and mercury, and toxins. They are robbing the Pamlico of its life forces.[1]

Two hundred and seventy miles inland, lush Piedmont farmland straddles the line between Guilford and Randolph counties. In the 1940s, a dam on the Deep River was envisioned to flood this farm country, as both a flood control project and as a source of water for the post-war Greensboro population. Never built when land was cheap and "wastewater" was not yet in the dictionary, the project remains on the drawing board today. Wastewater problems in the Deep River, which flows by High Point and would be captured by Randleman Dam, have delayed the project. A 1984 editorial in the *Greensboro News & Record* cautioned that pollution in the Deep River could make the Randleman reservoir "a giant cesspool."[2]

While the dam would be built in Randolph County, much of the reservoir would back up into Guilford. When federal money appeared to be available, the Randolph County commissioners, including stock car racer Richard Petty, objected, but the Guilford County commissioners favored it. By the time all the local officials signed on, the dam was no longer needed to control floods, and hence the federal funding was lost. The Randleman Dam reservoir, in short, has hardly gotten past the checkered flag.

If the Randleman Dam project moves no further than it has in the last 40 years, the Guilford officials may have to turn to the Dan River basin. "This alternative would involve a transfer of water from a river basin outside the Greensboro area," says David H. Moreau, director of the Water Resources Research Institute, part of the University of North Carolina system. This process is called an "inter-basin transfer."

With a few notable exceptions, North Carolinians have always been able to count on a clean, abundant supply of water. Fish kills and water shortages have not plagued this state. The horrors of Boston Harbor, the Chesapeake Bay, and oil spills on the Monongahela River in Pittsburgh have always been someone else's problems. But with the dying fish and scores of other signals of declining quality, together with droughts in 1986 and 1987, North Carolinians cannot take bountiful, clean water for granted any longer.

In the last decade, the state's population has grown rapidly, about 1.5 percent a year, to 6.3 million people, the 10th most populous state. More people mean more demand for water, and shortages have begun to appear regularly in some parts of the

state. With those new residents come new businesses and industries, new housing subdivisions and condominiums. Growth may be good for the state's economy, but it may be overpowering its rivers and streams. Likewise, groundwater is no longer invulnerable to the abuses that pour into the streams and rivers. More than half of the state's residents depend on underground aquifers for their drinking water. But now, leaks from underground storage tanks, seepage from sanitary landfills and septic tanks, and pesticides from farm runoff threaten the state's groundwater supplies.

The number of industrial, municipal, and private sewage-treatment plants that dump their wastewater into the state's waterways is growing rapidly. North Carolina now has the somewhat dubious distinction of having the most federal wastewater discharge permits of any state in the Southeast, including the boom-state of Florida. The cumulative number of such permits in North Carolina jumped from 1,500 in 1980 to 3,159 in 1986, an 111 percent increase.

The N.C. Division of Environmental Management (DEM) has the job of processing these permits and inspecting the facilities for compliance. The engineers are working nights and weekends just to keep up with the 100 or so new requests for permits that come in *each month*. The inspectors cannot possibly get to all the permit sites, some of which go years without an inspection. "We've still got over 600 requests for discharge permits on backlog," says George T. Everett, deputy director of DEM. "We can't catch up at the rate we're going." Meanwhile, the added wastes are damaging rivers and streams. Some can no longer absorb large amounts of additional wastes and still spawn fish or remain sources of drinking water. Other rivers and streams are approaching that point.

The state's water system is divided into two parts—the overland system of streams, rivers, basins, lakes, estuaries, and reservoirs known as *surface water;* and the underground system of waters known as *groundwater*. Separate legal and administrative systems regulate and monitor surface water and groundwater. In addition, the systems regulating water *quality* are different from those that affect water *supply*. The state agency that sets most of the rules and regulations for water is the N.C. Environmental Management Commission (EMC), composed of 17 citizen appointees meeting monthly.

Water may be to the 1990s what energy was to the '70s: an abundant, undervalued resource taken for granted, but with the potential for great economic disruption if mismanaged. How much time does the state have to change its rules and the public to change its habits?

"The decisions made over the next three to five years will determine the ability of this state to grow economically and socially and still preserve environmental quality," says R. Paul Wilms, director of the Division of Environmental Management, the primary staffing office for the EMC.[3] "I am hopeful that we still have three to five years to make those decisions, that the time hasn't slipped past us."

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North Carolina now has the somewhat dubious distinction of having the most federal wastewater discharge permits of any state in the Southeast, including the boom-state of Florida.

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The Federal Carrot and Stick— The Clean Water Act

North Carolina has 37,000 miles of streams and rivers and millions of acres of reservoirs and lakes. Forty years ago, nobody gave all that water much thought. Like most states, North Carolina didn't make a serious effort to curb water pollution until after World War II. In 1950, there were about 250 communities with more than 2,500 people. About two-thirds either weren't treating their sewage at all or had very minimal treatment. The city of Raleigh was dumping raw sewage into the Neuse River.

In response to such actions, the 1951 General Assembly directed the State Stream Sanitation Committee, the forerunner of the Environmental Management Commission, to begin the state's first comprehensive water-pollution program. The committee classified wa-

Bill Wade, The Pittsburgh Press

Volunteer fireman helps people near Pittsburgh, Pennsylvania, fill containers with drinking water. When an Ashland Oil Co. storage tank burst and sent one million gallons of diesel fuel into the Ohio River, towns had to import water for their needs.

ters as to their "best uses," surveyed the extent of the pollution, and started pollution-control programs.

The "best-use" classification system begun in the 1950s has been refined over the years. Today, all surface fresh water is classified into two general categories: water supplies (6,380 miles) and fishable/swimmable (30,998 miles). There are sub-classifications in each category and new classes such as "nutrient sensitive" and "outstanding resource waters."[4]

The federal government got into the act in 1956 by making technical and financial assistance available to local governments for water pollution controls. The federal role expanded in 1965 when Congress established minimum criteria for state water-quality standards. Congress took the next step in 1972 with the passage of the Federal Water Pollution Control Act. Amendments to the act in 1977 gave the law its popular name, the Clean Water Act.[5]

The law mandated a clean-up of the nation's waters and included a range of regulatory management features. Local governments found them easier to swallow because of the hefty financial incentives that came with them. The carrots for stiff new regulations were grants for municipal sewage treatment plants. The federal money covered up to 75 percent of eligible costs.

Two sections of the 1972 act had the most impact on regulating water quality. Section 402 required that all so-called "point sources" of pollution have a permit with the ponderous title of National Pollutant Discharge Elimination System, or NPDES. *Point sources of pollution* are places where industries and sewage-treatment plants (private or governmental) discharge wastes into the state's surface waters. The NPDES permit sets limits on each pollutant that these facilities can discharge into rivers and streams. Second, Section 404 required a permit from the U.S. Army Corp of Engineers prior to the discharge of dredged or fill materials into U.S. waters, including wetlands.

In addition, the act recognized that *"nonpoint sources"*—runoff from agricultural fields, animal pens, parking lots, and streets, for example—were major contributors of pollution. To control those, the act called for "areawide waste-treatment management planning" which could include stricter land-use measures and programs to reduce pollutants carried by soil erosion and stormwater runoff.

Along with all this came more than the usual government red tape and the grumbling of local officials who resented the federal muscle. Even so, local officials couldn't very well ignore all those federal dollars that were building sewer systems and treatment plants and keeping water and sewer bills so low. So the Clean Water Act became the nucleus around which states built their water-pollution programs.

Federal money, though, has been cut back severely since the gravy days of the mid-1970s and will be phased out totally after 1995.[6] "The federal hooker in this thing has always been the money," says Moreau of the Water Resources Research Institute. Under the Clean Water Act, the Environmental Protection Agency (EPA) has the responsibility of monitoring water pollution, and it can delegate the NPDES permit system to individual states. The states generally want to administer their own permit system, to control the program in-state. Local governments, meanwhile, had another kind of incentive to meet the wastewater treatment regulations.

Since 1973, under the Clean Water Act, nearly $700 million in federal dollars have gone into public wastewater-treatment plants in North Carolina. To get that money, communities had to develop plans on wastewater treatment. When the federal money ends, local communities will no longer have to develop such plans, since state law does not require them. "The only way the feds have been able to get them to do this stuff is by hanging those big bucks out there," says Moreau. "Now comes the question of what to do in place of that."

The carrot and stick approach has worked on the water *supply* side as well. Federal funds have helped build water supply projects while the Section 404 dredge-and-fill permit generally has applied to dam construction for water supply projects. As with water quality, the ballgame is changing for water supply. "The federal government, pushed by the budget deficit crisis, is rapidly withdrawing from its previous role of assisting with water supply projects," says John Morris, director of the N.C. Division of Water Resources. "There are no more Corps reservoir projects on the planning horizon for North Carolina."

With such changes underway, the need for more state and local initiatives are critical. "We've never had a comprehensive water-supply planning program on the state level," says Moreau. "What are we offering in place of the federal planning requirement?" asks Moreau. "Nothing."

North Carolina towns aren't alone. A survey of 700 communities in the Southeast by Moreau's institute found very few do adequate planning for water supply and quality.[7] The Commission on the Future of the South, a project of the Southern Growth Policies Board, found the same thing. The commission recommended in 1986 that states adopt strategic statewide management plans by 1992 that would provide strong protection for water quality and assure adequate water supply.[8] Florida has moved closest toward reaching this goal.

Permits for Point Pollution— A System Overwhelmed

In 1975, the EPA delegated the responsibility to North Carolina for administering the NPDES permits. The state has built a water-quality program that includes monitoring for problems, inspections for compliance, and, starting in February 1987, limits on the amount of toxins that can be dumped into the water. Meanwhile, the state has gradually become more involved in regulating groundwater.

The Water Quality Section in the Division of Environmental Management has the job of issuing permits, inspecting the facilities once they're operating,

◆

Water may be to the 1990s what energy was to the '70s: an abundant, undervalued resource taken for granted, but with the potential for great economic disruption if mismanaged.

◆

and checking the monthly *self-monitoring* reports that each permit holder is required to file. Before being elevated to deputy director of the division, George Everett directed the water quality staff. With the current staff and budget, the section can administer 2,500 permits, says Everett. As of January 1988, 3518 facilities had NPDES permits in North Carolina, more than any other state in the Southeast. In addition, 577 other facilities have requested new or renewal permits which have not yet been processed. No other state in the Southeast has as big a backlog.

In 1982, the state issued 341 NPDES permits. Four years later in 1986, 943 permits were granted. In August 1987, a typical month, the state issued 84 permits and got 88 new requests. And these numbers only refer to the initial permit request.

Inspectors can't possibly visit each plant regularly. Major municipal treatment plants are checked yearly for compliance, Everett says. Some smaller dischargers go five years between inspections. More than half of the 266 public water supplies that rely on surface waters now are downstream from at least one discharge point. Since inspections are so rare, the water quality staff has to rely on the monthly reports filed by the dischargers themselves. The inspections and reports indicate that

about 40 percent of the municipal treatment plants and 21 percent of all other N.C. dischargers currently *do not* meet the standards of their permits.[9]

"Plant inspection is a real problem," says Lisa Finaldi, executive director of the Clean Water Fund of North Carolina, a nonprofit research and advocacy organization based in Raleigh. "The state could go beyond a self-monitoring system and inspect more plants more frequently but not without more funding for more inspectors."

State Rep. Joe Hackney (D-Orange) goes further. "The NPDES program does not work," he says. "In our state, we depend largely on self-monitoring. You can't protect the water quality relying on self-monitoring." Hackney has sponsored much of the legislation promoted by environmental groups in recent years.

Regular monitoring becomes particularly important, Finaldi says, when it comes to so-called *package-treatment plants*. These are small, private plants that treat mostly domestic wastewater from residential subdivisions or condominiums, each dumping 5,000 to 1 million gallons a day into streams and rivers. Some of that discharge meets standards and some doesn't, depending on how well the plants are operated and maintained.

There are about 1,500 such plants in North Carolina, and they represent the bulk of the new NPDES permits being issued.[10] On the Yadkin River, for instance, five such plants are discharging about two miles upstream from Winston-Salem's freshwater intake. Wake County has about 40 of them. In all, package plants make up about one of every seven NPDES permits (14 percent), so many that state inspectors check each one only about once in five years.

"I'm disturbed by the poor record of the reliable operation of these plants," says Finaldi. "For example, in New Hanover and Pender counties, there has been a history of poorly maintained and operated package plants. Sludge is being discharged into creeks, and some plants are providing no chlorination for extended periods of time."

State officials do not view package-treatment plants with such alarm. First, these facilities work well if they are properly operated and maintained, explains Wilms. "They do have to file monthly reports. It's very difficult, despite what people say about the fox watching the henhouse, to falsify these reports," he adds. Wilms thinks these small plants have a compliance record that is at least as good as municipal plants.

But Everett isn't so sure. "Probably not," he says. "Our problem is that we don't get to them enough to tell you."

That should change. The 1987 General Assembly allowed the Division of Environmental Management to raise its fees for an NPDES permit from a maximum of $1,500 for a five-year permit to $7,500. The increase will raise an additional $1.7 million which could be used to hire about 45 people.[11] The results should be more frequent inspections, better monitoring, and more careful permitting. If it's not, Everett's not afraid to ask the legislature for more. Some states, says Everett, charge $900,000 for a five-year permit—*more than 100 times* what North Carolina can charge even under the new enabling legislation.

The Nonpoint Sources— The Toughest Challenge?

As problematic as the permit system is, the bulk of surface water pollution in North Carolina comes not from wastewater discharges directly into the waterways but from nonpoint sources. That includes runoff from farmland, feedlots, and cleared land; residue from car exhausts washed off highways into drainage ditches; failing septic systems; and stormwater runoff. The data on the "best-use" of water systems show the damage done by nonpoint sources.

All surface waters have a best-use classification (drinking, swimming, etc.). With increased pollution, a stretch of water can move down to a lower level "best-use" category. When this happens, the water does "not support its best use." In 1987, 71 percent of the rivers and streams that *did not support their best uses* were being polluted by nonpoint sources (for lakes/reservoirs, it was 50 percent; for sounds/estuaries, it was 65 percent).[12]

"What we don't have a good handle on yet in this state are the unregulated and certainly more ubiquitous and probably more important inputs from nonpoint sources," says Wilms.

Herbicides, insecticides, and heavy metals flow into the water system from nonpoint sources. The most important pollutants may be the organic nutrients phosphorus and nitrogen, which are the basis of many fertilizers and are also in animal wastes. They wash off of fields and feedlots, and even backyard lawns, with each rain and eventually settle in the water. A certain amount of the nutrients keep a river, stream, or lake healthy and productive. But too much will lead to excessive plant and algae growth, called algae blooms, which can deplete water of its dissolved oxygen and can contribute to fish kills.

Coastal rivers and sounds are especially susceptible to excessive nutrient loading. The Pamlico River is a case study. The river is little more than a settling pond for the Tar River, which drains from 16 coastal and

Robert Llewellyn

Go underneath the river bed;
To burn the river down;
This is where they walked,
swam;
Hunted, danced, sang;
Take a picture here;
Take a souvenir. Cuyahoga.

—From "Cuyahoga," by R.E.M

Piedmont counties, mostly in prime farmland. Corn requires heavy doses of nitrogen-based fertilizer, which runs off in the Tar River and ends up in the Pamlico. State officials estimate that 78 percent of the nitrogen that enters the Pamlico each year comes from non-point sources.[13]

When nonpoint and point sources of pollution combine, the lethal cocktail goes to work. In the Pamlico River, the nonpoint nitrogen mixes with phosphorus entering the river from sewage-treatment plants and from Texasgulf Chemicals Company. Texasgulf operates a massive phosphate mine and fertilizer plant on the river and legally dumps about 3,000 pounds of phosphorus *a day* into the river.[14] The result of all of this is algae blooms, now common on the river, and episodes of oxygen-depleted or "dead" water, as the fishermen call it. Dead water used to occur only on the hottest days of the summer and in the deepest part of the river. But now fish kills happen year-round at all depths.

Another source of pollution, the phosphate used in detergents, also contributes to the fish kills. In 1987, after several years of strident debate, the legislature passed a ban on phosphate detergents.[15] Some environmentalists feel the bill was watered down in the legislative process, but the new law does apply to the two major sources, household and commercial laundry detergents. The Environmental Management Commission has also adopted regulations to reduce the phosphate load at wastewater discharge plants.

Rep. Hackney, who spearheaded the phosphate-ban bill, thinks the state's programs to control nonpoint sources have "made great strides. The money is not wasted," he says. "It has a long-term payback."

In administrative and legal systems, nonpoint pollution falls into three groups—agriculture, land development, and coastal development. These types of pollution flow together, if looking at it from the water's point of view. But separate agencies are in charge of each program.

Agriculture. In 1984, the state began encouraging landowners to control sedimentation and runoff through such means as crop rotation, conservation tillage, and animal-waste systems—called "best management practices" or BMPs. The state offers technical assistance and will help pay for the programs. Since the cost sharing began, almost 2,500 landowners have signed three-year agreements to use BMPs on some 200,000 acres. State officials believe the program has saved about 570,000 tons of soil a year. Estimating the extent to which this soil retention reduced nonpoint pollution is difficult, however.

The N.C. Division of Water and Soil Conservation, which coordinates the program, began working in 23 coastal counties. In 1987, the program was expanded to 33 more counties, many in the west. Called the Agriculture Cost Share Program for Non-Point Source Pollution, it also covers "nutrient sensitive" areas. The Environmental Management Commission has designated as nutrient sensitive areas Jordan Lake and Falls Lake in the Raleigh-Durham-Chapel Hill Triangle, the Chowan River (which separates four counties in the northeast before spilling into the Albemarle Sound), and in January 1988, the entire Neuse River area from below Falls Lake all the way to New Bern. This classification requires more stringent pollutant levels in NPDES permits and various land-use controls.

A recent federal law also should help with the nonpoint pollution. The conservation compliance pro-

visions of the federal Food Security Act of 1985 require that farms with highly erodable land prepare a conservation plan by 1990.[16] Plans have to be in effect by 1995. Landowners who don't comply with this and two other provisions already in effect (the "sodbuster" and "swampbuster" sections) will not be eligible for price supports, crop insurance, disaster relief, and other federal programs.

Water pollution from agriculture highlights the conflicts that can occur with state economic development goals. As poultry farms have sprung up across North Carolina, for example, most economic development specialists have applauded this diversification of the state's agricultural base. (The state now ranks number one nationwide in poultry production, which has also moved ahead of tobacco as the state's number one agricultural product.)[17] "But poultry manure is a serious non-point pollution problem," says George Everett. "Few farmers have enough land to absorb all the chicken droppings as fertilizer in their fields. It has to go somewhere."

Land Development in General. Engineers know that when concrete replaces trees and other vegetation, more pollutants can run into the surface water faster. Development allows water to flow across the land and pavement and into the surface water rather than seeping into the vegetation and the groundwater. With disturbances of natural vegetation, water carries red clay, sand, and other sediments that settle to the bottom of streams and ponds.

The N.C. Sedimentation Control Commission sets standards regarding how sediment must be managed on any development project disturbing more than one acre. Developers must construct retaining ponds or use other means to mitigate the damage caused by excessive sedimentation. Agricultural and forestry lands are exempt from the standards. The monitoring and enforcement of the sedimentation regulations are considered a land-management, not a water-quality, function. Hence, the Land Quality Section within the Division of Land Use Resources has responsibility for this program.

Coastal Development. Nonpoint pollution issues in the coastal area have special problems due to both the fragile ecosystem involved and the special governmental systems established by the Coastal Area Management Act (CAMA). "Large-scale land clearing, draining, and agriculture has a much more significant impact on coastal water quality than does urban development," says David Owens, director of the Division of Coastal Management. The draining of coastal wetlands for peat mining and other uses has been particularly controversial. This has altered the drainage patterns in many eastern counties, thus contributing to a reduced salinity and a decline in shellfish in many estuaries, including the Pamlico.

Of growing significance in the coastal area, however, is the impact of development patterns. Until 1985, the state had no comprehensive regulations designed to control stormwater runoff in coastal areas. The concern about stormwater runoff increased because of rapid developments along the shoreline and adjacent to shellfish waters. Like agricultural nonpoint runoffs, rain water washing across developments carry bacteria and other pollutants into the surface water system. Condominiums, shopping centers, and other high-density or commercial projects were causing the runoffs to increase sharply, contributing to the fish kills and contaminating drinking water supplies.

In 1986, the Environmental Management Commission adopted interim stormwater runoff regulations.[18] The regulations required developers of more than one acre within 575 feet of shellfish waters to limit density or to hold up to 4.5 inches of rain (from a 24-hour storm) on the development site. Later in 1986, the EMC proposed permanent regulations which would expand the stormwater runoff requirements to the entire 20-county area covered under CAMA but reduce the amount of rainfall that had to be contained to 1.5 inches. At four public hearings on the proposal, coastal residents and environmental groups strongly objected to what they viewed as a weakening of the standards. Developers objected somewhat to expanding them to all 20 counties but viewed the 1.5-inch standard as less costly.

On Oct. 8, 1987, the EMC adopted the proposed rules. But N.C. Attorney General Lacy Thornburg found that a closed and secret gathering on the night of October 7 of the 10 EMC members appointed by Gov. James G. Martin had a chilling effect on the full EMC meeting the next day. In responding to a question raised by a member of the EMC, Thornburg advised the EMC to consider the October action to be null and void in order to avoid litigation challenging the regulations.[19] The Governor in turn advised the EMC to vote on the stormwater regulations again. On Nov. 12, 1987, the EMC did so and passed the final regulations again, basically the same ones as had been proposed—the 20-county, 1.5-inch rules.[20]

Some observers wondered why the rules could not retain the 4.5-inch standard adjacent to shellfish waters and adopt the 1.5-inch level for the rest of the 20 coastal counties. This combination would have ensured low-density development around shellfish waters. Mary Joan Pugh, NRCD assistant secretary for natural resources, says, however, "It is not the EMC's job to determine development densities or the pattern of land-use [but] to set standards that protect the quality of the environment, in this case, water."

The Water Under the Ground

Stormwater runoff, other nonpoint pollution sources, wastewater discharge, NPDES permits—all affect the quality of the state's system of surface waters. The federal Clean Water Act and most state laws have emphasized this system. But the quality of groundwater in North Carolina is gaining attention, as the dangers to this resource increase.

Statewide, 55 percent of North Carolinians depend on wells for drinking water; in rural areas, the figure is 85 percent. The state has 820,000 domestic wells, more than any other state, and 5,100 community wells, fourth highest among the states.[21] But it doesn't have good laws to protect them, agree experts such as Moreau and Wilms. In 1983, groundwater aquifers were classified under the state's water quality statutes.[22] That is a cumbersome way to protect an extremely valuable water supply, says Wilms.

"We need a groundwater protection act in this state, and that's one of the things I'm going to be pressing for," says Wilms. "It will be a significant piece of legislation and a significant debate."

Currently, an elaborate system of test wells around the state checks on groundwater supply and quality. All of the water in the state's eight principal underground aquifers is classified as drinking water. So far, no major groundwater supplies have been lost to pollution. Two, though, may soon be reclassified as so polluted that they will never be potable again. One area is near a chemical plant in Buncombe County, and the other is under a landfill in New Hanover County. If this happens, people living in these areas would not be allowed to use well water, as they currently do.

"We know we're just seeing the fringe through a lot of isolated, small cases," says Perry Nelson, head of the Groundwater Section in Wilms' division. Each year, Nelson's staff investigates about 200 reports of groundwater pollution. Last August, there were about 300 cases still active. About 75 percent of the incidents, says Nelson, are caused by leaks in underground storage tanks. There are some 100,000 such tanks in the state, and 35 percent of them may be leaking, the division estimates.

Both legislators and environmentalists have been concerned about these storage tanks. In 1985, the legislature gave the Environmental Management Commission the authority to govern the location, construction, installation, monitoring, leak detection, repair, and operations of underground tanks used for the storage of oil and hazardous substances.[23] But the bill did *not* include funding to clean up existing leaks.

The 1985 action prompted a Legislative Study Committee on Underground Storage Tanks. It reported to the 1987 General Assembly, recommending a $1 million appropriation to the EMC to begin investigating and cleaning up leaking underground storage tanks. But the legislature did not act on this recommendation. Meanwhile, oil distribution companies were realizing that aging storage tanks could begin to leak, which would cause them problems with liability insurance.

The liability issue, viewed together with existing statutes regarding oil leaks, has complicated legislative discussions. Rep. Hackney believes the EMC already has the authority to force oil companies to clean up any leaks. "We have strict liability for petroleum spills," says Hackney. Dan Oakley, special deputy attorney general, supports this view. "The Oil Pollution and Hazardous Substances Control Act is a strict liability statute," says Oakley.[24]

Sanitary landfills present another huge problem. Rainwater percolates down through a landfill and into the water table. This liquid filtering into the groundwater is called leachate; the chemicals in the leachate vary according to what's dumped in the landfill. The state recently began requiring liners to prevent leachate from getting into the groundwater.[25] Only one of the 150 sanitary landfills currently operating with a state permit uses a special liner, the one in New Hanover County.

Water Supply— Drought and Growth Ups the Ante

North Carolinians have generally enjoyed an adequate supply of water, thanks to a dispersed population and a generous amount of rain which feeds our rivers and aquifers. But as the state grows, water shortages are becoming more evident in several areas, particularly in areas of high growth where water supply is naturally limited. Greensboro and Hillsborough, for example, are in the upstream ends of river basins where streams are small. In the coastal plain, Kinston, Jacksonville, and New Bern have depended heavily on groundwater for decades. Now the pressure level in the aquifer is dropping, creating concerns about the long-range water supply. There's rapid growth on the Outer Banks, where the principal water supply is a shallow aquifer of limited capacity. And throughout the state, many reservoirs are now too small to handle emergency drought conditions.

The drought of 1986 highlighted the need for more comprehensive planning. About 50 public water supply systems activated water conservation programs, including voluntary or mandatory water restrictions. But many had no plans for droughts, and others with plans never used them. Some faced serious threat of running out of water.

"The key to resolving water supply problems is timely, knowledgeable, and cooperative action by local governments, with appropriate assistance from state government," says John Morris. "The state's responsibility is to provide a framework of laws and policies within which water supply problems can be solved, to provide plans or studies of river basins or regions that can guide the more detailed local government plans, to offer technical and financial assistance, and to assure the protection of water quality and fish habitat."

Within this general mission, hard questions will emerge as future water shortages increase. In most cases, the questions inevitably focus on issues of local governments working together—e.g., one municipality buying water from another. Perhaps the most controversial water-supply issue though is transferring water from one river basin to another.

"Inter-basin transfer," as the process is known, has a long history in western states, where water supplies vary to a great extent. Because of the relative abundance of water throughout North Carolina, river-basin transfers have not yet been widely considered. Small scale transfers have been used in North Carolina, increasingly during droughts. But large-scale transfers have been a highly emotional issue. People living in a certain area feel they have a right to their own water.

Virginia Beach, Va., in the Pasquotank River basin, wants to withdraw 60 million gallons of water a day from Lake Gaston, which straddles the state line in the Roanoke River basin. The Army Corps of Engineers issued a permit for the pipeline in 1984, but the state of North Carolina sued, claiming that the pipeline would violate various federal laws. If the federal courts rule in favor of an inter-basin transfer to Virginia, asks Moreau, how could North Carolina defend its position against such transfers? Within the state, pressure is building to transfer water from rural river basins to urban areas. Greensboro, for example, could solve its water-supply problem by transferring water from the Dan River (Roanoke River basin) to the Cape Fear basin.[26]

In the late 1970s, Speaker of the House Carl Stewart (D-Gaston) found out how strong feelings can be on the inter-basin transfer issue. In speeches, he called for a study of whether the state should consider inter-basin transfers or establishing a state water authority. In the 1979 legislative session, he pushed through a measure to establish a $50,000 Legislative Study Commission on Alternatives for Water Management. But the commission ran into opposition from citizens against inter-basin transfers and from interagency turf considerations over who would conduct a statewide assessment of water supplies. The commission met only eight times, returned about $45,000 of its appropriation unspent, and made its position crystal clear on the controversy. "This commission does not recommend inter-basin transfers of water as a means of solving the general water management problems of the state of North Carolina," it concluded.[27] The study commission thus buried any consideration in the early 1980s of the inter-basin transfer issue.

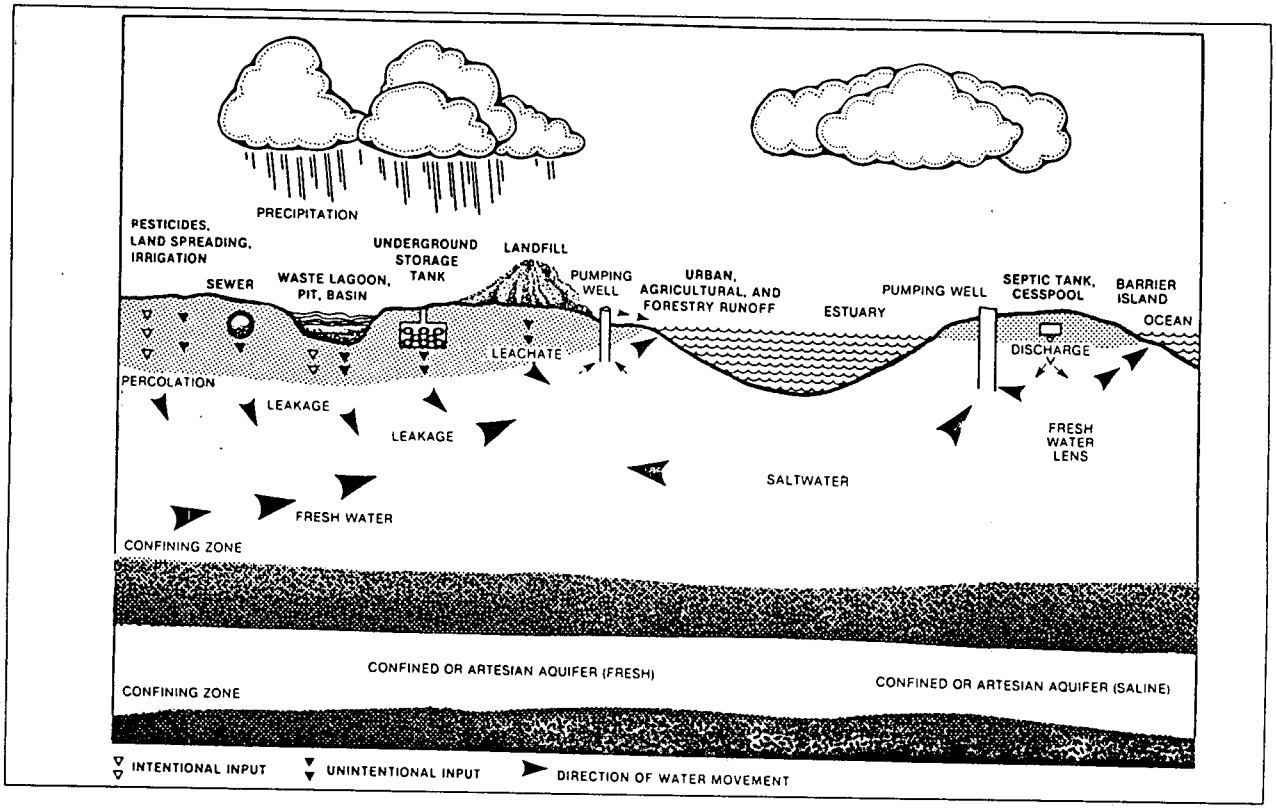
In 1980, Stewart ran for lieutenant governor and lost. "I don't think there's any doubt that my willingness to consider the possibility of inter-basin transfers in the context of future planning of water resources cost me votes in a number of counties," said Stewart in an interview. "I don't think we've made significant progress in water resource planning in the last decade. It's the kind of issue," concluded Stewart, "that will be a dominant issue as we approach the turn of the century simply because in reality some inter-basin incursion is almost inevitable."

Managing a Threatened Resource

An overwhelming array of problems confront the 18 different state agencies and scores of local offices that have some responsibility for water management. Many of the short-term problems mentioned above, such as the backlog in permit applications, are rapidly becoming so great that they may require new kinds of intergovernmental arrangements to manage the long-term solutions.

As the federal money—and the requirement for planning—phase out, the state management role becomes paramount. Any community of more than 5,000 to 10,000 people needs a water management plan that can be systematically updated, says Moreau. Such plans should be required as a condition for receiving a state grant for a sewage-treatment facility, he adds. In 1987, the legislature appropriated $21.5 million for the 1987-89 biennium for wastewater and water-supply facilities. The money will be distributed primarily through low-interest loans from a revolving loan account, which will be coordinated by the Office of State Budget and Management. The state action did *not* require local water planning.[28]

From 1973 to 1986, nearly $700 million in federal grants went to N.C. municipalities for new or expanded wastewater-treatment facilities, plus $412 million from state clean water bonds. But the state bonds are gone and the federal money is declining. Some communities will now have to pay as much as 60 percent of the cost of building or upgrading treatment plants, as opposed to the 12.5 percent maximum local contribution required during the height of



Department of Natural Resources and Community Development

Sources of Groundwater Contamination

the federal involvement. And after 1995, the percentage could go even higher.

About $1 billion will be needed to make municipal sewage-treatment plants meet their permit standards. The 1987 reauthorization of the federal Clean Water Act in 1987 requires that all municipal treatment plants comply with state standards by July 1988.[29] Under the Clean Water Act, the Environmental Protection Agency has the power to monitor water-quality standards established at the state level, according to stream conditions. If a state does not run its NPDES system properly, the EPA can assume control of the permit process. A municipality not in compliance with its permit faces tough penalties, unless it can convince a judge to grant an extension.

Between the pressures of drought and the demands of finding money to replace aging wastewater-treatment facilities, municipalities have a hard question to answer. N.C. municipalities currently cover only 76 percent of the cost of wastewater treatment through fees, according to the Water Resources Research Institute.[30] Can municipalities continue to keep the cost of water and sewer services at a price well below cost? Moreau and others believe the legislature should force municipalities to raise water and sewer bills.

"As you put more and more pressure on a constant resource base, it takes more and more intensive management to maintain that quality," says Moreau. "There's ample money out there to pay for reasonable rates for water and sewer service. Local elected officials have no incentive to raise the rates. It's not a popular thing to do." Without such a legislative requirement, explains Moreau, the legislature will remain under pressure by local governments to help pay for the cost of new wastewater-treatment facilities.

Some recent efforts have been made to link water quality and water supply regulations. For example, the Department of Natural Resources and Community Development has begun a watershed protection program tied to the best-use classification system. A local government might want the state to assign a higher best-use classification to a watershed area; such action would require more stringent requirements on point-source polluters. To get NRCD to assign a higher best-use classification, the local government must have a watershed protection plan that controls nonpoint sources. Such a plan often involves density regulations. "Already 40 communi-

Stream Watch

If you want to see how a broad-based volunteer program can help government work more efficiently, look no further than "Stream Watch." More than 110 local stream watch groups have "adopted" a segment of stream or river, like a person might do with a troubled teenager. Groups do everything from technical monitoring of pollutants in the stream to keeping the creekside cleared of trash. Some stream watch groups are affiliated with environmental organizations, such as the 22 groups joined with the Haw River Assembly. Others are as small as a single person who sends water samples to the state laboratory for regular checks. The Z. Smith Reynolds Foundation has made small grants available to stream watch programs.

Both citizen groups and government officials have high praise for the program. As the 1987 NRCD report on the "State of the Environment" said: "The Stream Watch Program is becoming an important way for citizens to play an active role in managing and protecting the state's valuable water resources." Thousands of miles of streams could still use protector advocates. For more information, contact Jim Mead, director of N.C. Stream Watch, Division of Water Resources, P.O. Box 27687, Raleigh, N.C. 27611-7687, (919) 733-4064.

ties have requested an upgrade in classification and thus have shown a willingness to enact watershed protection measures," says NRCD Assistant Secretary Pugh.

How can the agencies responsible for water supply and quality manage both day-to-day challenges and plan for the future? The task is fraught with technical, interagency, financial, and practical issues. The logical agencies to address such questions are the Environmental Management Commission and the Divisions of Environmental Management and Water Resources. The most urgent issues for consideration, as discussed above, are:

- how—and how fast—communities can develop water management plans;
- how the state can adequately manage a backlogged NPDES permit system;
- whether a new state law is needed to protect groundwater;
- whether the new stormwater regulations will protect shellfish waters effectively or have an impact on land-use patterns, and whether they should be extended statewide;
- whether current N.C. law is adequate to resolve competition among public water supply systems, including questions of inter-basin transfers, and competition among industrial and agricultural users;
- whether the state should set minimum water and sewer rates; and
- what action should be taken in areas where rapid growth or increases in water use are threatening to outstrip available groundwater supplies.

On each of these issues, more research and a broader consensus among policymakers, environmentalists, municipal officials, and developers are needed. Only state-level leadership can build a consensus broad enough to support meaningful actions regarding such issues. Is it too late to save the state's water?

"I hope it's not too late, and I have to believe it's not," says Wilms. "But it soon will be. We will have lost our ability to overcome what we've done to the land. We'll just have to wait and see. You and I won't see it. But our grandchildren will. I'd like them to look back and say, 'They at least tried.' I hope they don't look back and say, 'Why didn't those people do something?'"

FOOTNOTES

[1]A detailed account of the river's problems appeared in the *Winston-Salem Journal*, April 5-9, 1987, pp. 1A ff.

[2]"Up the Polluted River," *Greensboro News & Record*, Feb. 19, 1984, p. 12A.

[3]While the Division of Environmental Management plays the central staffing function for the EMC, the Division of Water Resources and the Division of Land Resources provide staff assistance to the EMC on water supply and water management and on dam safety issues, respectively.

[4]15 NCAC 2B .0214 and 2B .0216, respectively.

[5]33 U.S.C. 1251 et seq. For historical background on the state's water-pollution control program and the components of the Clean Water Act, see David Moreau, "Water Management: A Tenuous State/Local Partnership," *North Carolina Insight*, June 1984, pp. 66ff.

[6]Construction grants for water and sewer facilities ranked fifth among the largest cuts in federal aid to North Carolina in the sweeping budget cuts made after President Reagan came to office. For more, see, Jim Bryan et al., *Federal Budget Cuts in North Carolina*, N.C. Center for Public Policy Research, April 1982, p. ii.

[7]Raymond J. Burby, David H. Moreau, and Edward J. Kaiser, "Financing Water and Sewer Extension in Urban Growth Areas—Current Practices and Policy Alternatives," Water Re-

sources Research Institute, September 1987, p. 25.

[8]"Education, Environment, and Culture: The Quality of Life in the South, 1986 Commission on the Future of North Carolina," Southern Growth Policies Board, Cross-Cutting Issue No. 5, 1987, p. 12.

[9]*North Carolina—State of the Environment Report, 1987,* N.C. Department of Natural Resources and Community Development, April 1987, pp. 5-6, and data from the Division of Environmental Management.

[10]*State of the Environment Report,* p. 6.

[11]Chapter 767 of the 1987 Session Laws, sections 1-3. When the House Judiciary III Committee was considering the fee increase during the 1987 legislative session, George Everett said that the state needs $5 million for the permit granting and inspection process, rather than its $3.9 budget.

[12]*State of the Environment Report,* p. 5.

[13]"Surface Water Quality Concerns in the Tar-Pamlico River Basin," Water Quality Section, N.C. Division of Environmental Management, final draft, April 1987. The report is an excellent technical overview of the problems plaguing the Pamlico River.

[14]*Ibid.*

[15]Chapter 111 and Chapter 817 of the 1987 Session Laws, now codified as G.S. 143-214.4.

[16] 16 U.S.C. 3801, *et seq.*

[17]Bill Finger, "Making the Transition to a Mixed Economy," *North Carolina Insight,* April 1986; see especially pp. 14-16.

[18]15 NCAC 2B .0217; 15 NCAC 2H .0408 and .0409.

[19]Letter from Chief Deputy Attorney General Andrew A. Vanore Jr. to EMC member Anthony R. Combs, dated Oct. 15, 1987.

[20]15 NCAC 2H .1001 to .1004.

[21]*State of the Environment Report,* pp. 10-13.

[22]G.S. 143-214.1.

[23]Chapter 551 of the 1985 Session Laws (SB 831), codified within G.S. 143B-282(2) and 143-215.3(a).

[24]G.S. 143-215.75 *et seq.*

[25]In February 1987, says Assistant Attorney General Nancy Scott, "A policy decision was made to protect groundwater to the drinking water standard," which was "another way to interpret existing rules. It is a difference in how the [groundwater] standard is accomplished." That policy decision requires either liners or impermeable clay liners in sanitary landfills. Officials at the Department of Human Resources and at the Attorney General's Office agree that the policy is an unwritten one, but it may by incorporated into the N.C. Administrative Code in 1988. To avoid a possible violation of the N.C. Administrative Procedure Act, the Center recommends including the policy in the Code.

[26]For more on the legal issues involved, see G.S. 153A-285 and 162A-7, which require that "counties and cities acting jointly or through joint agencies" and water and sewer authorities get permission from the Environmental Management Commission before diverting water from one stream or river to another. The commission is directed to consider seven criteria in evaluating

Beside the grand history of the glaciers and their own, the mountain streams sing the history of every avalanche or earthquake or snow, all easily recognized by the human ear, and every word evoked by the falling leaf and drinking deer, beside a thousand other facts so small and spoken by the stream in so low a voice the human ear cannot hear them. Thus every event is written and spoken. The wing scars the sky, making a path inevitably as the deer in the snow, and the winds all tell it though we hear it not.

—John Muir from "Trails of Wonder"

whether to approve a proposed diversion.

[27]"Alternatives for Water Management, Report of the Legislative Study Commission to the North Carolina General Assembly," Feb. 28, 1980, p. 12.

[28]Chapter 796 (SB 110) of the 1987 Session Laws, now codified as G.S. Chapter 159G, "North Carolina Clean Water Development Loan and Grant Act of 1987."

[29] 33 U.S.C. 1311(i). The new amendments to the act force additional emphasis on a "water-quality based" approach to regulating sources of pollution, in contrast to the old "technology-based" approach. Currently, categories of dischargers (e.g., paper mills, textile mills, petroleum refineries) are required to meet specified national standards of performance in removing pollutants from their wastewater; the standards are based on the best treatment technology. The new water-quality approach, instead, examines the receiving waters to determine the types and amounts of pollution which can be assimilated without impairing the designated uses of the waters.

[30] David H. Moreau and Dale Whittington, "Financing Water Supplies and Wastewater Services in North Carolina in the 1980s," Water Resources Research Institute, Report No. 212, February 1984, p. 14.

Hazardous and Radioactive Wastes: A High Anxiety Problem

by Dee Reid

> Hurt not the earth, neither
> the sea, nor the trees.
> —*Revelation 7:3*

Hazardous and radioactive wastes are among the most difficult materials we must deal with in a modern society. For one thing, there's so much of the three principal kinds of these wastes—two billion pounds of hazardous waste and 83,000 cubic feet of low-level radioactive waste produced each year in North Carolina, plus 700 tons of highly-radioactive waste stored temporarily at the state's nuclear plants. State commissions are searching for a ***hazardous waste*** *treatment facility site and a* ***low-level radioactive*** *waste site, while federal officials have considered North Carolina and other states for an eastern U.S. repository for* ***high-level radioactive*** *wastes. North Carolina will be home to at least two. But both technical problems and public opposition to treatment and storage facilities force state and local policymakers to make exhaustive searches for sites and to consider a broad range of options for dealing with these potentially harmful wastes. Why does North Carolina have so many kinds of wastes? How can the state dispose of them to protect its citizens and the environment without undercutting the state's economy and its attractiveness to its people and to new businesses?*

ON A WARM SUMMER EVENING IN 1978, an unmarked tanker truck on a clandestine mission began dumping a load of hazardous chemicals along 210 miles of local roadways in piedmont North Carolina. Until that incident, the words "hazardous waste" had not been a part of the Tar Heel vocabulary. But all that changed forever when thousands of gallons of oil mixed with an industrial material called PCB—polychlorinated biphenyl, linked to cancer in laboratory animals—gushed onto the right-of-way, contaminating the soil and threatening the groundwater in 14 counties.

It became an environmental nightmare both for state officials trying to clean up the mess and place it in a secure repository and for a wary public that wasn't even sure what a hazardous waste was—or how dangerous it might be. Since the summer of 1978, hazardous wastes have been a subject of frequent headlines as the state grapples with the problems of safely handling its hazardous wastes as well as its radioactive refuse.

After years of public debate over where and how to get rid of the waste, hundreds of thousands of cubic yards of PCB-tainted soil were scraped up from the sides of North Carolina roads, hauled away, and deposited in 1982 in a specially designated landfill in Warren County. The construction and filling of that landfill came only after heated and bitter opposition from residents of Warren County, one of the poorest counties—financially and politically—in the state. Despite concerted protests, the state proceeded with its plans to bury the waste in a remote area of the county.

Some citizens might have thought that would be the end of all the talk about hazardous wastes, but they were wrong. Burial of the PCBs did nothing to solve the problem of what to do about the billions of pounds of other types of hazardous and radioactive waste that are produced, stored, or transported in North Carolina every year.

A decade after the PCB incident, the state still has no central facility for treating and disposing of its most dangerous waste. It's a problem that refuses to go away. Consider the following:

■ During 1986 alone, North Carolina business and industry generated more than 2 billion pounds of hazardous wastes—industrial by-products that can pose a serious threat to human health and the environment if treated improperly.[1] They include everything from drycleaning fluid to printer's ink to industrial dyes and agricultural pesticides.

■ There are more than 700 inactive hazardous waste sites statewide.[2] Some of them are primitive storage sites or lagoons that threaten groundwater. Federal law implies that if North Carolina does not have a comprehensive hazardous waste treatment facility in operation by 1989, the state could lose its federal funds for cleaning up the worst of these "orphan dumps," as environmentalists call them.[3]

■ Nuclear power plants, research labs, fuel production facilities, and hospitals produce about 100,000 cubic feet of low-level radioactive waste each year in North Carolina, enough to fill a 100- foot silo.[4] Even the experts debate what levels of radioactivity are harmful to public health and the environment. But these experts do agree that even low-level radioactive waste must be disposed of carefully since it remains *potentially* dangerous for decades. Most of North Carolina's low-level radioactive waste is shipped to a South Carolina landfill that is scheduled to shut down in 1992, while some of it is shipped to two other states—Nevada and Washington.

■ And two of North Carolina's three nuclear power plants now store about 700 tons of high-level radioactive waste.[5] This high-level radioactive waste—which can cause cancer and birth defects—can remain dangerous for many years if not stored properly. The federal government has designated Nevada as the site for one repository. North Carolina was once on the list for potential sites in the eastern U.S. but is no longer.

The primary obstacle to establishing adequate treatment facilities for hazardous and radioactive waste in North Carolina has been citizen opposition to locating the facilities in their counties. Public officials, many of them convinced that the public is acting on misinformation or misunderstanding, call it the NIMBY (Not In My Back Yard) Syndrome.

"The biggest problem is the lack of understanding," says Linda Little, executive director of the Governor's Waste Management Board, the state board charged with planning and administering a safe system of hazardous and radioactive waste disposal.[6] "It's hard to understand why people oppose a facility that would take something that is hazardous and make it into something that is less hazardous or not hazardous," says Little.

But environmentalists argue that citizen concerns are well-founded. "The public might be more willing to accept a hazardous waste treatment facility if they read in the newspapers about polluters being fined, and they saw that everything was being done by industry to treat waste on-site," says William Holman, lobbyist for the N.C. Chapter of the Sierra Club and the Conservation Council of North Carolina.

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"Instead they see the state bending over backwards to help some polluter. They see an abandoned dump sitting there and not being paid attention to."

So after a decade of grappling with the hazardous waste disposal problem, citizens and state officials have reached an impasse. As a result, state government has begun trying to exercise its statutory authority to site and construct treatment facilities. The Hazardous Waste Management Commission[7]—an appointed body—is searching for a large disposal site for North Carolina's first comprehensive *hazardous (chemical) waste treatment facility.* Meanwhile the *Low-Level Radioactive Waste* Management Authority[8] has been given the job of selecting a regional site for a repository for the Southeast by 1990. And the federal government is looking for one or two national *high-level radioactive waste* repositories, and for a time considered sites in North Carolina. Three different kinds of sites for three kinds of potentially dangerous wastes—two of them, and possibly all three—located in North Carolina.

How did we arrive at this juncture? Where do we go from here?

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"Climb the mountains and get their good tidings. Nature's peace will flow into you as sunshine flows into trees. The winds will blow their own freshness into you and the storms their energy, while cares will drop off like autumn leaves. As age comes on, one source of enjoyment after another is closed, but Nature's sources never fail."

—John Muir from "Wilderness Essays"

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A Major Hazardous Chemical Waste Producer

By any measure, North Carolina produces and handles an enormous quantity of hazardous waste each year, more than 2 billion pounds or about 325 pounds for every man, woman, and child in the state, although that sum has been going down steadily since 1983 (see Tables 2 and 3). The state's 1986 waste totals include about 75 million pounds shipped here from out of state to be treated at state-permitted, commercial treatment plants, and 130 million pounds that are shipped to 27 other states for treatment.[9] The waste is produced by industrial plants, research facilities, and hospitals.

"Both hazardous wastes and radioactive wastes are necessary by-products of today's technology, a by-product that stems from our quality of life," says Russell B. Starkey Jr., manager of nuclear safety and environmental services at Carolina Power & Light Company in Raleigh. "Every state in the country has hospitals producing waste by-products. Every state has research facilities producing hazardous wastes. Every state has hospitals producing low-level radioactive wastes. But the benefits, on balance, far outweigh the disadvantages."

The majority of the state's hazardous waste (63 percent, or about 1.26 billion pounds) is produced at one facility, Sandoz Chemicals Corp.'s textile dye facility in Mecklenburg County. Most of Sandoz Chemicals' hazardous waste (99.9 percent) is actually wastewater, classed as hazardous only because of its acid content. The wastewater is treated and neutralized at the plant. That process destroys nearly 63 percent of all the hazardous waste produced in North Carolina. Sandoz has spent more than $10 million on environmental improvements in recent years, and has reduced its own hazardous waste by 75 percent since 1981.

In fact, about 90 percent of North Carolina's hazardous waste is treated right where it is produced. Still, 22 million pounds are transported to small local facilities and another 130 million pounds are shipped out of state each year.[10] These figures do not take into account the number of companies that produce less than 220 pounds of hazardous waste each month. Those companies are not required to report their hazardous waste production to state authorities. Nor do the statistics measure the amount of waste that individual households contribute to the problem.

Every year, a typical community of 20,000 uses about 100,000 pounds of home products that result in hazardous waste (hair spray, cleaning fluid, glue, nail polish, and the like). That same community will also use 1,000 pounds of pesticides and 3,000 gallons of automotive and paint products.[11] As soon as any of those products are discarded, they become hazardous wastes. State and industry officials say this is a major problem, yet these wastes are largely unregulated.

What are hazardous wastes? By definition, hazardous wastes are substances that fall into one of four categories: ignitable, corrosive, reactive, or toxic. Ignitable waste is highly flammable, such as gasoline, paint thinner, or nail polish remover. Corrosive substances, such as alkaline cleaner or battery acid, can eat through human tissue. Reactive products, such as cyanide or chlorine, can cause an explosion or produce fumes when mixed with air or water. And toxic waste is any poison that can be harmful to health, such as chemicals like pesticides and herbicides or heavy metals. Exposure to unsafe levels of any hazardous material—waste or otherwise—can result in a variety of health problems ranging from coughing and sneezing to cancer and birth defects. Some of these hazards exist in the home and the workplace—paint remover fumes, gasoline, fingernail polish remover, and the like. The list of hazardous waste materials runs from arsenic to the residue from printer's ink, such as used in this magazine, to spent pickle liquor—not from the state's eastern pickle producers, but a material used to clean metals.

The regulatory definition of hazardous waste does *not* refer to radioactive wastes, a distinction not widely understood, state officials say. While radioactive wastes can be highly hazardous or toxic, federal and state laws have established separate definitions for hazardous wastes and for radioactive wastes. (See Table 1 for more.)

Years ago, the common way to get rid of hazardous waste was to bury it in the ground. But Love Canal—where the leakage of chemical wastes in an unmarked New York dump was linked to birth deformities—and citizen opposition to landfills changed their minds. Thanks to federal and state legislation, North Carolina officials have been urging business and industry to prevent, recycle, detoxify, and reduce their hazardous wastes. Landfills are now considered the option of last resort—suitable only for wastes that have been treated to the maximum extent possible.

State officials also once hoped the job of treating and disposing of most of our hazardous wastes could be borne by the private sector. While many industries did treat and dispose of their wastes properly and voluntarily, others did not. In 1983, the state launched an innovative program to encourage industries to take steps to prevent pollution and thereby reduce hazardous waste. The "Pollution Prevention Pays" program caught on, and case studies of 55 North Carolina industries have shown they are saving more than $12 million a year in operating and disposal costs by reducing, recycling, or preventing wastes before they become pollutants.[12] Instead of waiting to deal with such wastes after they've been produced, the program aims at first preventing waste production, and recycling into usable material the by-products that are produced. The program has become popular with industry not only because it helps solve industrial waste problems, but also because savings show up on corporate income statements.

The program is now being used by the U.S. Environmental Protection Agency as a model for other states. Roger N. Schecter, director of the program, is on loan to the EPA to run the national program. Says Schecter, "North Carolina is recognized as the leading state in the nation in implementing a multi-media waste reduction program"—aimed at reducing pollution in air, in water, and in hazardous wastes.

"We've come a long way," says Holman, the environmental lobbyist. "The debate has shifted from disposal of hazardous waste to prevention and treatment."

Despite the success of the Pollution Prevention Pays program and the steady reduction in the volume of hazardous waste generated annually, North Carolina's hazardous waste problem has not disappeared. Industries continue to generate two billion pounds of waste annually as a by-product of the manufacturing process. And private sector efforts to provide commercial treatment facilities have largely failed. For example, consider the fate of two commercial hazardous waste incinerators that have been located in the state: One, in Mitchell County, voluntarily closed down in 1986 following citizen complaints about the operation. The other, a county-owned incinerator in Caldwell County, has drawn the state's attention following allegations that employees suffered health problems because of exposure to hazardous chemicals at the plant. In November 1987, the county Board of Commissioners voted to seek a new operator for the plant, the state's only commercially operated chemical waste incinerator, but later decided to shut it down.[13]

The most recent attempt to locate a major treatment facility in North Carolina was made by GSX Services, Inc. The company has been trying to establish a major hazardous waste treatment facility that

Wendy Walsh, N.C. Independent

Inactive radioactive waste disposal site in Duke Forest.

could discharge up to 500 million gallons of treated wastewater daily in rural Scotland County. The plant would treat wastes from North Carolina and six other states. Citizens opposing the plant fear it would pollute the adjacent Lumber River and drinking water supplies, and lower property values.

Local opposition to the proposed GSX plant was so strong that the 1987 General Assembly enacted special legislation that may effectively halt the company's plans.[14] Sponsored by Sen. J. Richard Conder (D-Richmond), the bill requires all commercial hazardous waste treatment facilities that discharge upstream from drinking water supplies to dilute the discharge wastewater by a factor of at least 1000 gallons of water for every gallon of treated waste. If that requirement holds up against legal challenges, GSX will have to find another site or sharply curtail its plans, because the proposed site near Laurinburg would not be able to maintain the 1000:1 dilution ratio the law requires.

The anti-GSX legislation was opposed by both Gov. James G. Martin and several of the General Assembly's leading environmentalists. One of the criticisms of the GSX legislation was that it might lead the EPA to remove the state's authority to run its own hazardous waste treatment programs. Sure enough, the EPA threatened to revoke that authority, and Gov. Jim Martin briefly toyed with the idea of calling a special legislative session to amend the law. But when legislative leaders balked, Martin dropped that idea and said he would rely on Attorney General Lacy Thornburg's advice that if the EPA took action to revoke the state's regulatory authority, the law would automatically be repealed because of a special proviso in the anti-GSX law. That may have the effect of reviving the GSX facility plans.

Under a federally imposed guideline, North Carolina was to have an adequate waste treatment facility in place by 1989. The body charged with choosing a facility site was the Hazardous Waste Treatment Commission, a panel of nine members appointed by the governor, lieutenant governor and speaker of the House. Its five-year search was unsuccessful.

The Commission's goal was to find by October 1, 1987 a suitable site for a facility that will treat up to 90 million pounds of hazardous waste annually, but it was unable to do so. Plans call for establishment of hazardous waste incinerators and a treatment plant at

one location. Under state law, a hazardous waste landfill cannot be established until the treatment plant is in place, and even then the landfill must be at least 25 miles from the treatment facility.

Plans call for a hazardous waste facility with a series of liquid treatment tanks and a pair of incinerators. The liquid treatment facility would process liquids that are acidic, corrosive, or contain metal. The process would involve adding liquids that could neutralize the acids and corrosives and precipitate (cause particles to settle) the dissolved metals. The incinerators would burn solvents and other flammable liquids such as waste jet fuel and cleaning substances at a temperature of about 2,200 degrees Fahrenheit, a temperature that will reduce the chemicals to steam and carbon dioxide. Ashes from the furnaces would be solidified, sealed in a drum, and then buried in a hazardous waste landfill.

As one might expect, the site selection process met with strong public opposition, although in the early stages there was relatively little public comment. The commission first elicited from county officials statewide a list of more than 500 sites in 51 counties that might be suitable for the state's first comprehensive hazardous waste treatment facility. The commission then scheduled regional public meetings in each county where sites were under serious consideration. Gradually, more and more citizens began to turn out for the meetings, and in September 1987, public meetings were packed with citizens and local officials overwhelmingly opposed to the commission's plans. The tone, state officials say, became tense in October when the commission narrowed its choices to sites in Rowan and Davidson counties—the latter a last-minute candidate—and in November 1987 the Hazardous Waste Treatment Commission reversed itself and began the process anew.

One dramatic indication of the public's opposition to construction of such a facility came on October 25, 1987, when the Hazardous Waste Treatment Commission held a public meeting at Lexington High School to hear from citizens. Local residents filled the school's gymnasium, spilled over into the school cafeteria, then filled the 6,000-seat football stadium, and sprawled over a grassy bank to listen to opponents via loudspeaker. In all, police estimated, more than 15,000 residents—a tenth of Davidson county's population—turned out to express their opposition.

Why the commission failed to pick a site by the original deadline has been the subject of some debate. Commission members point the finger at politicians and a lack of public education about the real versus the perceived risk of such facilities, while others say the state's businesses were not sufficiently supportive of the commission's efforts. Still others say there was not enough public participation earlier in the process, and that the state must mount a massive education plan and offer incentives to counties to alleviate some of their objections to being chosen for a site. Governor's Waste Management Board Director Linda Little says she encouraged the Hazardous Waste Treatment Commission to undertake more of an education effort, and says she has repeatedly sought more appropriations from the General Assembly to finance such efforts. "The Board has made an effort on public education, but I'd be the first to say that we haven't been able to get enough resources to do the job that we need to be doing," says Little.

In May 1989, the Hazardous Waste Treatment Commission was abolished, and the N.C. Hazardous Waste Management Commission was established to take its place and continue the search for a suitable site. Meanwhile, North Carolina still has no comprehensive hazardous waste treatment center, and it will still be years before it does. Most of the public opposition to the facility was based on where it might be located, and relatively few of the objections were based on what technology would be involved, notes Professor Richard Andrews of the Institute for Environmental Studies at UNC-Chapel Hill. "There are lots of questions [besides where to put them] that ought to be acknowledged on hazardous waste treatment plants," says Andrews.

Two notable pieces of legislation have been adopted in recent years to deal with the problems of hazardous materials and inactive hazardous waste sites. In 1985, the General Assembly adopted the Hazardous Chemicals Right-to-Know Act, which enables any citizen to find out what sort of chemical materials or wastes are used by a particular industrial plant.[15] The law also requires businesses to notify the local fire chief if they have more than 55 gallons or 500 pounds of a hazardous material on the premises.

And the 1987 General Assembly adopted an Inactive Hazardous Waste Sites Cleanup Act—some call it the Orphan Dumps Act—to clean up inactive and sometimes abandoned sites. The same bill set up a Carolina Clean Drinking Water Fund—a state-level Superfund—to clean up abandoned sites and to protect drinking water.[16] This bill, sought since 1983 by environmentalists, requires the responsible parties to clean up their abandoned hazardous waste sites. Federal funds help clean up the worst sites in the country, but only nine of the more than 700 abandoned sites in North Carolina qualify for the federal "Superfund" expenditures. The N.C. legislation requires state officials to identify, inventory, and set

Table 1. A Guide to Hazardous and Radioactive Materials

Type of Material	Definition	Source
A. Hazardous Materials and Wastes	Often used erroneously to refer to both hazardous and nuclear wastes, this term applies to the following four broad categories of chemical wastes:	
1. Ignitables	Highly flammable materials including such items as gasoline, paint thinner, nail polish remover and motor oil	Petroleum processors and dealers Paint products manufacturers Chemical companies Furniture companies
2. Corrosives	Corrosive substances such as battery acid or alkaline cleaners, which can eat the skin or dissolve tissue	Battery manufacturers Chemical companies Microelectronics companies
3. Reactives	Chemicals such as cyanide or chlorine, which can cause an explosion or harmful fumes when mixed with air or water	Chemical companies Munitions manufacturers
4. Toxics	Poisonous materials, such as pesticides or herbicides, or other forms of chemicals harmful to animal or plant life	Chemical companies Lawn products manufacturers Electronics insulators Dry cleaners
B. Radioactive Materials and Wastes	These materials, which certainly can be dangerous, are not referred to as "hazardous" wastes. And although radiation can be "toxic," radioactive wastes generally are regarded as a different kind of potentially harmful waste:	
1. Low-Level Nuclear Wastes	Moderately radioactive trash from nuclear power plants, hospitals, and research institutions, such as papers, uniforms, filters, and other disposal items. Individual states are responsible for the disposal of these items, which can be stored in a low-level waste repository, or incinerated in low-level radioactive waste incinerators	Nuclear power plants Hospitals Medical clinics Research organizations
2. High-Level Nuclear Wastes	Highly radioactive wastes, constituting a much greater threat to life than low-level nuclear wastes, left over from spent nuclear power plant fuel or nuclear-powered military vessels. The federal government is responsible for disposing of high-level wastes.	Nuclear power plants Military vessels Arms plants

Source: N.C. Center for Public Policy Research

priorities for cleaning up the abandoned sites. Owners of those properties are given an incentive to voluntarily clean up these sites; those who volunteer can limit their liability to $3 million for the cost of cleaning up such sites.

The Low-Level Radioactive Waste Question: Low Level, High Anxiety

Disposing of the state's low-level radioactive waste has been easier than managing its hazardous chemical waste. North Carolina generated 102,073 cubic feet of low-level radioactive waste in 1985 and 82,936 square feet in 1986,[17] clear evidence that efforts to reduce low-level waste are working. A majority of North Carolina's low-level waste (90.3 percent by volume, but 99.6 percent by radioactivity, according to state estimates) comes from three existing nuclear power facilities (in Wake, Brunswick and Mecklenburg counties) and the General Electric nuclear fuel manufacturing plant in Wilmington. The rest is produced by industrial, governmental, academic, and medical research facilities, and hospitals where radioactive materials are used for diagnosis and treatment.

This low-level waste isn't nearly as harmful as highly radioactive, spent nuclear fuel, but exposure to it could mean an increased risk of cancer and birth defects. Low-level wastes decrease in strength over a period of years, but must be disposed of carefully to minimize the risk of contamination.

So far, only one company has tried to locate a commercial low-level radioactive waste treatment facility in North Carolina. In 1984, U.S. Ecology, Inc. applied for the necessary state permits to build a low-level radioactive waste incinerator in Bladen County. More than 20 local government agencies and organizations within a 50-mile radius of Bladen County opposed the site, and two years later, the state Division of Environmental Management denied U.S. Ecology the required air quality permit, based on the company's lack of experience in incinerating low-level radioactive waste and its "history of non-compliance with environmental laws."[18]

A month later, the state Radiation Protection Section notified U.S. Ecology that it intended to deny the company's application for a radioactive material license on the basis that its other low-level radioactive waste facilities had not been operated properly and because of a lack of qualified personnel. The company eventually withdrew all of its permit applications.

North Carolina has been sending most of its low-level waste to a state-licensed facility in Barnwell, S.C., operated by ChemNuclear, Inc. The state of South Carolina plans to close the facility by 1992, despite ChemNuclear's objections, forcing officials

—continued

Table 2. Trends in Hazardous Waste Management

	1981	1982	1983	1984	1985	1986	Change from 1985 to 1986 Number	Percent
** Number of Generators	806	618	618	610	700	655	-45	-6.4
Number of Treaters, Storers, or Disposers	323	157	111	89	77	78	+1	+1.3
* Total Generation in billions of pounds	1.8	6.2	7.3	5.8	2.6	2.0	.6	-20.58
Shipped to other states (in millions of pounds)	113.5	77.0	113.9	134.9	141.2	130.7	-10.5	-7.4
Shipped from out-of-state to N.C. (in millions of pounds)	3.3	15.8	27.2	57.4	82.0	75.4	-6.6	-8.1

* It is difficult to compare waste generation from year to year because wastewater reporting and the definition for hazardous waste have changed some from year to year. These figures also do not include waste from 1,864 small generators.

** These figures are as of Dec. 31, 1986.

Source: Governor's Waste Management Board

Table 3. Amount of Hazardous Waste by County (1986)

County	Number of Generators	Amount of Waste Generated in Pounds	Number of Treaters, Storers, or Disposers	Amount of Waste Handled* in Pounds
Alamance	6	406,078	-	40,965
Alexander	2	109,481	-	8,058
Anson	2	40,909	-	200
Ashe	1	30,450	-	917
Beaufort	6	286,480	-	6,655
Bladen	2	5,034,762	2	205,802
Brunswick	5	402,380	2	147,839
Buncombe	21	3,838,986	3	1,666,028
Burke	13	3,004,999	-	79,432
Cabarrus	9	4,215,736	3	24,200
Caldwell	23	3,221,647	3	22,871,461
Carteret	1	49,178	-	49
Catawba	32	23,286,523	1	20,164,241
Chatham	1	521,455	1	30,295
Cherokee	4	211,587	1	16,412
Chowan	2	40,645	1	1,320
Cleveland	7	622,123	-	73,352
Columbus	4	257,435	1	108,173
Craven	7	3,048,880	1	569,438
Cumberland	10	2,527,586	1	350,383
Dare	1	39,350	-	39,350
Davidson	30	2,603,253	2	577,347
Davie	4	500,585	1	13,130
Duplin	1	82,000	-	40,000
Durham	19	114,820,774	3	113,189,982
Edgecombe	5	324,125	-	16,212
Forsyth	28	29,524,291	3	35,777,040
Franklin	1	116,706	-	715
Gaston	19	44,499,012	5	37,128,480
Graham	1	197,720	-	18,160
Granville	5	1,487,370	-	96,096
Guilford	59	9,375,592	6	10,381,229
Halifax	4	59,250	-	4,740
Harnett	2	602,831	-	12,519
Haywood	1	112,293	-	9,190
Henderson	7	785,092	-	49,755
Hertford	1	800,640	-	273,510
Hoke	1	530,001	-	58,800
Iredell	12	29,917,166	1	27,898,765
Jackson	1	106,963	-	7,315
Johnston	13	6,633,052	1	5,553,890
Lee	9	208,051,324	2	202,178,053
Lenoir	5	342,344	2	59,986

Table 3. Amount of Hazardous Waste by County (1986), *continued*

County	Number of Generators	Amount of Waste Generated in Pounds	Number of Treaters, Storers, or Disposers	Amount of Waste Handled* in Pounds
Lincoln	1	103,916	-	13,674
McDowell	4	143,3168	-	7,108
Martin	3	42,780	-	243,102
Mecklenburg	88	1,293,133,851	8	1,280,224,671
Mitchell	2	271,292	1	2,852,555
Montgomery	1	5,264	-	320
Moore	1	3,502,810	-	2,759,540
Nash	11	668,551	1	307,331
New Hanover	15	5,257,345	1	2,557,905
Northampton	2	-	-	-
Onslow	4	220,147	1	41,238
Orange	2	282,921	-	15,817
Pasquotank	2	114,496	1	1,223,209
Pender	1	190	-	54
Person	3	294,607	-	22,322
Pitt	8	5,169,315	1	3,090,388
Randolph	8	3,000,006	-	20,553
Richmond	2	42,068	-	1,275
Robeson	6	253,877	1	597,037
Rockingham	6	6,420,257	1	9,644,968
Rowan	8	1,456,319	1	257,275
Rutherford	8	7,384,683	-	174,042
Sampson	3	1,026,956	-	2,200
Scotland	5	363,088	-	22,900
Stanly	4	21,332,450	1	83,247,029
Stokes	1	129,000	-	2,450
Surry	4	170,538,146	-	240,820,461
Swain	1	311,150	-	-
Transylvania	3	185,964	1	73,190
Union	9	4,193,117	-	83,044
Wake	30	11,908,278	10	6,384,193
Watauga	1	38,800	-	1,750
Wayne	7	317,572	1	3,050
Wilkes	6	408,150	-	3,050
Wilson	5	181,449	-	4,041
Yadkin	2	38,975	1	2,400
Yancey	1	180,587	-	20,600
Total*	**655 ** **	**2,041,590,599**	**78 ** **	**2,114,510,785**

* Includes Treatment, Disposal and Storage by Treaters, Storers, and Disposers (TSD's) as of Dec. 31, 1986; and 90-day Storage by Non-TSD's as of Dec. 31, 1986.

** Number of facilities in the North Carolina Hazardous Waste System as of Dec. 31, 1986.

Note: Not every county produces measurable hazardous waste.

Source: Solid Waste Management Section, N.C. Department of Human Resources

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"This we know.
The earth does not belong
to man; man belongs
to the earth ...
All things are connected,
like the blood which
unites one family ...
Man did not weave the web
of life; he is merely a strand
in it. Whatever he does
to the web, he does
to himself."

—Chief Seattle, 1854
Sequamish Tribe,
Washington Territory

◆

in North Carolina and seven surrounding states to discuss and to create in 1983 the Southeast Interstate Low-Level Radioactive Waste Management Compact. That group, known as the Southeast Regional Compact for short, has agreed to take turns hosting a repository for the region's low-level waste.[19]

Because it is one of the region's largest producers of low-level waste, its location, and several other factors, North Carolina was selected to be the next site, a decision that aroused many environmentalists. During the 1987 General Assembly, some House members objected to that selection and proposed legislation withdrawing from the compact, but that move was derailed and North Carolina remains a member of the compact. Under conditions of the legislation setting up the state Low-Level Radioactive Waste Management Authority, North Carolina will dispose of up to 32 million cubic feet (current projections put the total at probably 12 million cubic feet) of the region's low-level radioactive waste for the next 20 years. One important concession to compact opponents was made, however. If the other seven members states do not adopt an agreement to limit the possibility of their withdrawal from the Southeast Compact, North Carolina will withdraw.

Many environmentalists oppose the compact agreement, arguing that North Carolina would be better off managing its own waste forever than the entire region's waste for 20 years. "At its current rate [of waste generation] it would take North Carolina over 300 years to produce 32 million cubic feet of low-level radioactive waste," says Marion Nichol, former president of the Conservation Council of North Carolina.[20]

Moreover, says environmental lobbyist Holman, there are no guarantees that the other states will keep their end of the bargain and take their turn disposing of N.C. wastes. "We'd like to see the compact select the next host [state] now and have that state select a site as North Carolina selects its site, as a show of good faith," he says.

State officials and industries, however, argue that a central storage facility would be far easier to manage and oversee rather than on-site storage facilities. And they point out that numerous legal questions have been raised as to whether North Carolina could withdraw and prohibit other states from shipping and storing their low-level radioactive wastes here.

The 15-member Low-Level Radioactive Waste Management Authority has been appointed by the governor, lieutenant governor, and House speaker, and has begun the process for selecting the most suitable site for the regional repository. The law requires the authority to identify suitable areas by Aug. 1, 1989, to select two or three sites by Oct. 1, 1989 and to select the preferred location by Nov. 15, 1990. The facility is to be in operation by Dec. 31, 1992, and must comply with new strictures placed on low-level repositories by the 1987 legislature.[21] Those strictures include a ban on burial of low-level waste in shallow, unlined trenches; a requirement for special barriers; and a requirement that a facility must be at least seven feet above the water table.

State agencies are examining a number of models for a low-level radioactive waste storage facility. The options include—but are not limited to—above-ground storage vaults, below-ground vaults, the use of modular concrete cannisters, and sophisticated caps, liners, and water-migration detection systems. "This is not going to be an inexpensive undertaking," warns Edgar Miller, former community relations

coordinator of the Governor's Waste Management Board. Cost estimates just for setting up the facility range from $20 million to $35 million; the cost for full operation and monitoring for 100 years could amount to as much as $434 million, estimates the U.S. Department of Energy.

State officials contend the public's concerns about radioactive wastes are often based on a lack of information. They say even the nation's worst nuclear accident at the Three Mile Island nuclear plant did not result in the loss of life or even severe injuries.

Dayne Brown, chief of the state's Radiation Protection Section, which oversees the regulation of all radioactive materials, says the state has been cautious in establishing regulations for a treatment or storage site. The state tries to project what would happen in the worst such cases, and develop programs to deal with that. "These regulations are designed to guarantee that the objective—protecting the public—is met even with the failure of part of a system," says Brown. "Because we are interested in erring on the side of safety, we overestimate everything."

Carolina Power & Light's Starkey believes that the public has "a phobic reaction" when such terms as hazardous and radioactive wastes are mentioned, and that a comprehensive education campaign by the state's public schools, industries, and government agencies is needed to educate the public on exactly what the risks are. "Based on what I know of the technology [on handling dangerous wastes], I don't believe there is any cause for unreasoned concern," says Starkey. "We are talking about minimal to low risk, as long as we go about handling these wastes correctly and carefully."

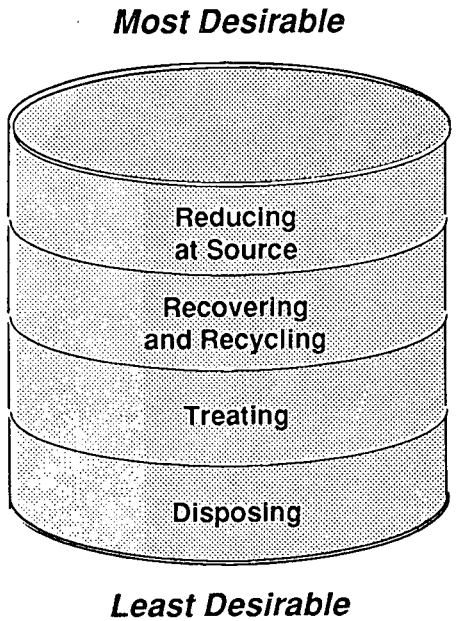
High-Level Waste: A Federal Task with State Implications

Gov. James G. Martin seemed to be stricken with the NIMBY Syndrome himself not long ago when North Carolina became one of seven states being seriously considered for a proposed federal high-level nuclear waste repository; this would be the final resting ground for much of the highly-radioactive, spent nuclear fuel generated in the eastern United States. The first such facility would be sited in the western United States.

In the spring of 1986, when areas in western and eastern North Carolina appeared on the U.S. Department of Energy's tentative shopping list for the second of two planned repository sites, Governor Martin flew to Washington to register the state's protest. He argued that the sites were geologically unsuitable or too close to densely populated areas. Ironically, these were the same arguments North Carolina citizens and local officials had used to fight plans by the N.C. Hazardous Waste Treatment Commission to locate the state's first comprehensive hazardous waste treatment facility. The Governor, a former college professor of chemistry, was willing to accept a hazardous waste treatment facility and a low-level radioactive waste repository in North Carolina, based on the evident need and the ability of the state to minimize risk. But he was not willing to accept a high-level site as well. A month later, U.S. Energy Secretary John Herrington indefinitely postponed the search for an eastern site, but in October 1987 the federal government resumed the hunt.

Congress changed the atmosphere enormously in December 1987 when it enacted legislation designating Nevada as the first host site for a high-level radioactive waste repository.[22] The legislation also halted the search for an eastern repository, which at least takes North Carolina out of the hunt for the foreseeable future. And the legislation also delayed plans for a Monitored Retrievable Storage (MRS) facility in eastern Tennessee, about 40 miles from the N.C.

Hierarchy of Waste Management Alternatives for Pollution Prevention Pays Program



border. That temporary storage site would have meant an increase in the amount of nuclear waste shipped through North Carolina, most likely by truck on the heavily traveled I-85 and I-40 highway corridor. That route, often referred to as North Carolina's Main Street, would have been the primary corridor for high-level wastes because federal regulations declare a preference for interstate roads in the movement of these wastes.[23] But if an MRS is constructed, a site in North Carolina is on the list—in Davie County.

So, for the time being, North Carolina is not likely to become the locus of treatment or storage facilities for all three types of dangerous wastes. But for many citizens, especially those who don't want wastes buried their backyards, figuratively or literally, the two other facilities—for hazardous wastes and for low-level radioactive wastes—will be quite enough.

FOOTNOTES

[1]*North Carolina Hazardous Waste (Generation, Storage, Treatment, Disposal), 1986 Annual Report,* Solid and Hazardous Waste Management Branch, Division of Health Services, Department of Human Resources, July 1987, p. 1.

[2]*Comprehensive Environmental Response and Compensation Liability Inventory System,* (otherwise known as the Superfund list), maintained by the U.S. Environmental Protection Agency pursuant to P.L. 96-510.

[3]P.L. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 *et seq.*; and P.L. 99-499, 100 Stat. 1613.

[4]*North Carolina 1986 Low-Level Radioactive Waste Survey,* Radiation Protection Section, Division of Facility Services, Department of Human Resources, draft, November 1987, p. 1.

[5]Monte Basgall, "Deep pools at N.C. reactors shelter tons of nuclear waste," *The News and Observer* of Raleigh, May 11, 1987, p. A1.

[6]G.S. 143B-216.12 (authority for Governor's Waste Management Board).

[7]Chapter 168 (SB 324) of the 1989 Session Laws.

[8]Chapter 850 (HB 35) of the 1987 Session Laws, now codified as G.S. 104G-5 (Low-Level Radioactive Waste Management Authority).

[9]*N.C. Hazardous Waste, 1986 Annual Report,* p. 9.

[10]*Ibid.*

[11]*Hazardous Household Products: A Guide to Safer Use and Disposal,* Triangle J Council of Governments, November 1985, p. 1.

[12]Tom Mather, "EPA enlists N.C. help in waste program," *The News and Observer* of Raleigh, Sept. 14, 1987, p. C1.

[13]Associated Press, "Caldwell board votes to keep incinerator," *The News and Observer* of Raleigh, Nov. 3, 1987, p. C3.

[14]Chapter 437 (SB 114) of the 1987 Session Laws, now codified as G.S. 130A-295.01.

[15]G.S. 95-18. See also Bill Finger, "N.C. Right-to-Know Law—New Information for the Public," *North Carolina Insight,* Vol. 9, No. 4, June 1987, p. 11.

[16]Chapter 574 (HB 134) of the 1987 Session Laws, now codified as G.S. 130A-310.

[17]*North Carolina 1986 Low-Level Radioactive Waste Survey,* p. 1.

[18]*1986 Annual Report, Governor's Waste Management Board,* p. 36.

[19]P.L. 96-573, federal Low-Level Radioactive Waste Policy Act; see also N.C. G.S. 104F, Southeast Interstate Low-Level Radioactive Waste Management Compact.

[20]Marion Nichol, "N.C. Should Manage Its Own Radioactive Waste," *N.C. Forum* news release, June 1987, p. 3.

[21]Chapter 633 (SB 48) of the 1987 Session Laws, now codified as G.S. 104E-5.

[22] P.L. 100-203.

[23] 49 CFR 177.825b.

North Carolina Division of Parks and Recreation

Cabin in disrepair at Umstead State Park in Wake County

North Carolina's State Parks: Disregarded and in Disrepair

By Bill Krueger and Mike McLaughlin

More than seven million people visit North Carolina's state parks and recreation areas each year—solid evidence that the public supports its state park system. But for years, North Carolina has routinely shown up at or near the bottom in funding for parks, and its per capita operating budget currently ranks 49th in the nation. Some parks are yet to be opened to the public due to lack of facilities, and parts of other parks are closed because existing facilities are in a woeful state of disrepair. Indeed, parks officials have identified more than $113 million in capital and repair needs, nearly twice as much as has been spent on the parks in the system's 74-year history. Just recently, the state has begun making a few more gestures toward improving park spending. But the question remains: Will the state commit the resources needed to overcome decades of neglect?

WEDGED BETWEEN AN INTERSTATE and a major highway in the narrowing strip of undeveloped property that separates the bustling cities of Raleigh and Durham lies a refuge from commercialization called William B. Umstead State Park.

The 5,400-acre oasis has become an easy retreat to nature in the midst of booming growth. But park Superintendent Edwin Littrell says decades of underfunding by the state are taking their toll on a park that serves more than a half-million visitors a year.

Park rangers across North Carolina are in the same predicament. They struggle to keep up appearances, but the money just isn't there.

"With the use of a lot of innovative and creative methods of maintaining and operating the parks, we are just barely keeping our heads above water," says Littrell. "Fairly frequently we are taking a big gulp of it and eventually, we are going to drown."

Visitors probably don't realize that about half the trails at Umstead—10 miles out of a 22-mile system—have been closed to the public because they are in such poor shape. They don't see the park's water lines, which were built more than 40 years ago and lose about 5,000 gallons a week through leaks.

Bill Krueger is a reporter covering state government for The News and Observer *of Raleigh. Mike McLaughlin is associate editor of* North Carolina Insight.

They don't see Littrell trying to figure out how to position his staff of five rangers to patrol two separate sections of the park, pick up trash, clean restrooms and bathhouses, and maintain dozens of deteriorating buildings. "I've got a total of 166 buildings—most of them built between 1933 and 1943," says Littrell. "I've got buildings with five generations of patches—places where patches were put on the patches that were holding the patches on the patches that were put on the patches. It's estimated that over $8 million is needed just to repair this park, and I haven't seen a piece of it yet."

Park superintendents throughout the state park system recount similar horror stories. Supporters of the parks say they have suffered over the years from inadequate funding, haphazard management, and struggles between the General Assembly and the executive branch. The problems have been well documented.

A 1968 report by the Research Triangle Institute established the need for expansion of park holdings and laid the groundwork for the General Assembly to add 10 parks during the 1973 session and enlarge the state's 10 existing parks.[1] Yet a 1973 report by the Legislature's Fiscal Research Division found the parks in a woeful condition of disrepair.[2] *New Directions*, a 1979 report by the Legislative Study Committee on State Parks, laid out an ambitious five-year plan outlining land acquisition goals and park-by-park needs for roads, utilities, facilities, and new staff.[3] But *Parks and Recreation in North Carolina 1984*, a report compiled by the Department of Natural Resources and Community Development, found the state had again fallen short. The report cited a host of needs, including more staff, land acquisition to protect the integrity of the state parks, a more extensive trail system (the report noted that 72 percent of existing trails were located within the mountain regions, where less than 13 percent of the state's population resides), and a more aggressive program of designating Natural and Scenic Rivers to preserve them from development.[4] Subsequent reviews found the plight of the park system had gone from bad to worse. "North Carolina's parks and recreation system is in generally deplorable condition, is a burden to the full development of the state's tourism industry, and is inarguably a worst-case example of the abuse of a public trust and the abdication of responsibility," the State Goals and Policy Board says in its May 1986 report to Gov. Jim Martin.[5] The report goes so far as to suggest that the state use prison labor to get its ailing park system up to snuff.[6]

The parks have enjoyed increased attention since the board's 1986 report, but State Auditor Ed Renfrow still concluded in an audit released in January 1988 that "the basic system needs for repairs and renovation and park development are so extensive that continued increases in funding will be required to protect the state's investment and implement reasonable development plans."[7] As Renfrow notes in the audit report on the management of the state park system, state officials have identified more than $100 million in capital improvements needed at existing parks. Renfrow calls for a "significant commitment by the General Assembly over several years" to increased funding for parks.[8]

Attracting more than seven million visitors a year, North Carolina's park system stretches from the almost 1,500 acres in Mount Mitchell State Park in the west to the 385 acres of Jockey's Ridge State Park in Nags Head on the coast. The system, begun in 1915 with the establishment of Mount Mitchell State Park, now consists of 54 units and 124,532 acres. That includes 29 state parks, nine natural areas, and four recreation areas (See table).

But many of those properties either are closed to the public or in only partial use because of inadequate facilities. Mitchell's Mill is a 67-acre state

Hanging Rock State Park is one of the state's oldest and most popular attractions

North Carolina Division of Parks and Recreation

park in eastern Wake County that few people have enjoyed because state officials have not been able to find the money to clear trails there. So it sits, unmarked, with its entrances blocked to vehicles by large stones. The same goes for Rolling View Recreation Area at Falls Lake in Durham County.

Starving the Parks

Although it ranks 21st in total state park acreage, North Carolina ranks 49th among the states in per capita funding for its state parks, according to the National Association of State Park Directors Annual Information Exchange. While other southern states such as Georgia and Tennessee spend $2.85 and $6.36 per person on parks, respectively, North Carolina spends a meager $1.12 a person. Neighboring South Carolina spends $3.96 a person, and Kentucky, which views parks as an economic development tool, spends $13.72 a person. Only Virginia, at $1.06 a person, spends less than North Carolina, and the national average is $4.08.[9] "The state park system in North Carolina has always been in last place," says William W. Davis, director of the state Division of Parks and Recreation. "There's only one way, and it's up. Anything we do is an improvement. The concept of a state park system in North Carolina has not been well defined. It's been a citizen effort, not a state effort."

Indeed, were it not for the generosity of well-to-do property owners and the public works projects of the Depression, North Carolina might find itself with but a handful of state parks. As much as 70 percent of the system was acquired through donations to the state. Most of the visitors centers, campgrounds, and rangers' residences were built in the 1930s and 1940s by the federal Civilian Conservation Corps and the Works Progress Administration. The list includes those at Umstead, Hanging Rock State Park in Stokes County, and Morrow Mountain State Park in Stanly County.

Since then, efforts to nurture a state park system have been minimal. From 1915, the year the system was established, through 1973, a mere $24,250 was spent by the state to acquire land for state parks. The public purse snapped open during the administration of Republican Gov. Jim Holshouser, with $11.5 million appropriated by the legislature for land acquisition in 1973-1974, and $5.5 million appropriated for park land in 1974-1975. Yet funding for park lands slowed to a relative trickle during the two terms of Democratic Gov. Jim Hunt and did not pick up again until Republican Gov. Jim Martin took office in 1985.[10]

In the park system's 74-year history, only $38.3 million has been spent for land acquisition and $27.2 million has been spent to develop the parks—a total of $64.7 million. "Historically, funding has been up and down," says Bill Holman, a lobbyist for the Conservation Council of North Carolina and the N.C. chapter of the Sierra Club. "Parks didn't have a high priority for several years. It is a park system with tremendous potential but in poor condition."

The public has in recent years been beset by reports of maintenance woes brought on by underfunding of state parks, including sewage running down Mount Mitchell, boat docks collapsing at Carolina Beach State Park, and methane in the bathrooms at Waynesboro State Park in Wayne County.[11] The well-publicized problems in the parks have led to a host of calls from Tar Heel editors for more money. *The News and Observer* of Raleigh, for example, in April 1987 said, "North Carolina should be shamed by the lack of care given its state park system," and said the legislature had "for far too long treated the state park system as an unwanted stepchild."[12] The *Winston-Salem Journal*, in an editorial printed a month later, called North Carolina's per capita funding of its state park system an "embarrassing disgrace."[13]

Davis says the paltry funding of parks has been in part due to limited legislative involvement in the creation and funding of park units. The Council of State, an 11-member panel of statewide elected officials, typically accepted donated land to be assigned by the executive branch to a state agency for management, says Davis. "There was no local delegation involvement or committee system involvement, so they said, 'Tough potatoes. We're not going to give you money to capitalize.'"

In addition, says Davis, the state's agrarian heritage has worked against the full development of the state park system. "Farmers have difficulty envisioning the need to set aside land for parks," he says. A generous allotment of federally controlled public lands may also have obviated the need for state parks in the minds of some elected officials, says Davis. Substantial portions of the Great Smoky Mountains and the Blue Ridge Parkway lie within the boundaries of North Carolina. The state is also home to four national forests that provide camping and hiking opportunities and to miles of pristine beaches along the Cape Hatteras and Cape Lookout National Seashores. No other southeastern state can boast of such precious federal resources, and many of these treasures were acquired with the generous support and cooperation of state government. "The greater federal presence . . . eased the pressure on the state,"

Table 1. North Carolina's Parks and Recreation System

Unit	Size	Public Access	Activities	Capital Needs
Parks (29)				
1. Bay Tree Lake[1]	609 acres	no	none	$ 335,165
2. Boone's Cave	110 acres	yes	b,f,h,p	18,668
3. Carolina Beach	1,720 acres	yes	b,c,f,h,p	1,843,136
4. Cliffs of the Neuse	748 acres	yes	b,c,f,h,p,s,v	2,471,757
5. Crowders Mountain	2,083 acres	yes	c,f,h,p	3,127,977
6. Duke Power	1,447 acres	yes	b,c,f,h,p,s	7,386,921
7. Eno River	2,064 acres	yes	b,c,f,h,p	3,211,981
8. Fort Macon	389 acres	yes	f,h,p,s,v	6,720,000
9. Goose Creek	1,327 acres	yes	b,c,f,h,p,s	2,838,361
10. Hammocks Beach	892 acres	yes	c,f,h,p,s	451,852
11. Hanging Rock	5,852 acres	yes	b,c,f,h,p,s	1,538,010
12. Jockey's Ridge	393 acres	yes	h,p,v	463,560
13. Jones Lake	1,669 acres	yes	b,c,f,h,p,s	2,277,427
14. Lake James[2]	565 acres	yes	b,c,f,h,p,s	706,997
15. Lake Waccamaw	1,508 acres	yes	c,f,h,p,s	4,172,436
16. Medoc Mountain	2,287 acres	yes	b,c,f,h,p	4,459,100
17. Merchants Millpond	2,762 acres	yes	b,c,f,h,p	2,609,200
18. Morrow Mountain	4,693 acres	yes	b,c,f,h,p,s,v	6,897,085
19. Mount Jefferson	555 acres	yes	h,p	1,480,500
20. Mount Mitchell	1,677 acres	yes	c,h,p,v	416,875
21. New River[3]	531 acres	yes	b,c,f,p	3,566,995
22. Pettigrew	850 acres	yes	b,c,f,h,p	3,717,884
23. Pilot Mountain	3,703 acres	yes	b,c,f,h,p	7,883,672
24. Raven Rock	2,805 acres	yes	c,f,h,p	11,762,984
25. Singletary Lake	649 acres	yes	c,f,h,s	2,813,767
26. South Mountains	6,586 acres	yes	c,f,h,p	2,205,458
27. Stone Mountain	13,378 acres	yes	c,f,h,p	2,675,584
28. Waynesboro	138 acres	yes	f,h,p	195,776
29. William B. Umstead	5,229 acres	yes	b,c,f,h,p,s	7,784,219

NOTES:

[1]Bay Tree is now an underdeveloped state park. When facilities now planned are built, Bay Tree Lake will be designated a state recreation area.

[2]Lake James State Park is scheduled to open for public use in the spring of 1989. Public access and activities listed will be available at that time.

[3]Natural and Scenic Rivers legislation limits future acquisition to five acres in fee simple ownership and 1,260 acres in easements.

KEY

b.....boating c.....camping f.....fishing
h.....hiking p.....picnicking s.....swimming
v.....visitors center / museum

Land Needs*	County
**	Bladen
**	Davidson
**	New Hanover
21 acres	Wayne
1,656 acres	Gaston
**	Iredell
945 acres	Durham, Orange
**	Carteret
258 acres	Beaufort
**	Onslow
2,221 acres	Stokes
**	Dare
**	Bladen
**	McDowell, Burke
0 acres	Columbus
211 acres	Halifax
138 acres	Gates
**	Stanly
**	Ashe
**	Yancey
5 acres	Ashe, Alleghany
0 acres	Washington, Tyrell
**	Surry, Yadkin
2,577 acres	Harnett
**	Bladen
1,480 acres	Burke
4,382 acres	Wilkes, Alleghany
**	Wayne
349	Wake

—continued

* The Division of Parks and Recreation is currently updating its priority list for future land acquisition needs. The figures under the column "land needs" are based on a 1978 priority list and are presented to generally illustrate future needs. State parks officials estimate total land acquisition needs are in excess of 23,000 acres.

** Land needs currently being evaluated.

says Davis. "Cape Hatteras was at one point a state park. The state made a conscious decision that the state park system was not up to handling it (and transferred the land to the federal government). The Smokies, the state had to buy the land."

North Carolinians who live in or near urban areas also have access to parks operated by 159 city recreation departments and 59 county recreation departments—perhaps the most expansive network of local parks in the nation. Such parks help make up for the lack of state parks, particularly in the Piedmont Triad cities of Greensboro, Winston-Salem, and High Point. The closest state parks to these areas are in Stokes (Hanging Rock Park) and Surry counties (Pilot Mountain). The lack of state park facilities in the region prompted the General Assembly to toy with the creation of a Triad State Park in the late 1970s, but representatives of local government never could agree on what kind of park they wanted, or where to put it. When one representative suggested that a state-owned theme park be developed in an area near Kernersville, the idea was hooted down and the proposal for a Triad State Park was dropped.

Jim Stevens, Davis' predecessor as state parks and recreation director, says North Carolina has lagged in park funding because other states got a head start. "We've been playing a game of catch-up," says Stevens. "Many older systems received more funding earlier in their existences than we have." In 1929, in fact, the General Assembly set out a policy that where possible, "park acquisition would not be funded by the state, but would be purchased or donated by 'public spirited citizens.'"[14]

That slammed shut the state coffer for four decades, but Kirk Fuller, a former public information officer for the Division of Parks and Recreation, says the attitude of North Carolina officials toward purchasing land shifted in the late 1960s and early 1970s. "It was a realization of a movement across the country that the nation was losing unique natural areas and that the state could not depend on the goodwill of the people," says Fuller. "It had to come in and purchase unique natural areas to preserve them."

Still, Stevens says during the 40-year funding drought, the state was able to assemble an impressive portfolio of parks and natural areas, and the result was a bargain for North Carolina citizens. "We haven't spent a tremendous amount of money, and at the same time, we've made quite a bit of headway," he says.

Another shortcoming of the largely donated system is that the parks are not equally distributed among legislative districts. Rep. David Diamont (D-Surry), for example, has five state parks in his north-

Table 1. North Carolina's Parks and Recreation System, *continued*

Unit	Size	Public Access	Activities	Capital Needs
Recreation Areas (4)				
30. Falls Lake	950 acres	yes	b,f,p,s,	$ 103,158
31. Fort Fisher	287 acres	yes	f,h,s,v	418,612
32. Jordan Lake	1,925 acres	yes	b,c,f,h,p,s	2,836,241
33. Kerr Lake	3,000 acres	yes	b,c,f,h,p,s	5,393,654
Natural Areas (9)				
34. Bald Head Island	1,249 acres	no	h	NA
35. Bushy Lake	1,341 acres	no	h	NA
36. Chowan Swamp	6,066 acres	no	h	NA
37. Dismal Swamp	14,344 acres	no	h	NA
38. Hemlock Bluffs	85 acres	no	h	NA
39. Masonboro Island	106 acres	no	h	NA
40. Mitchell's Mill	83 acres	no	h	NA
41. Theodore Roosevelt	265 acres	yes	h,v	NA
42. Weymouth Woods	676 acres	yes	h,v	409, 635
Rivers (3)				
43. Horsepasture River	13 miles	no	b,f	NA
44. Linville River	13 miles	no	b,f	NA
45. New River*	26.5 miles	yes	b,f	NA
Trails (1)				
46. Mountains-to-Sea[4]	210 miles	yes	h	NA
Lakes (8)				
47. Bay Tree Lake***	1,418 acres	(See line 1)		
48. Jones Lake***	224 acres	(See line 13)		
49. Lake James***	6,510 acres	(See line 14)		
50. Lake Phelps*** (Pettigrew)	16,600 acres	(See line 22)		
51. Lake Waccamaw***	8,938 acres	(See line 15)		
52. Salters Lake*** (Jones Lake)	315 acres	(See line 13)		
53. Singletary Lake***	649 acres	(See line 25)		
54. White Lake	1,068 acres	no	b,f	NA

NOTES:

[4]The N.C. Division of Parks and Recreation is seeking right-of-way access on private land to link sections of the trail.

* The Division of Parks and Recreation is currently updating its priority list for future land acquisition needs. The figures under the column "land needs" are based on a 1978 priority list and are presented to generally illustrate future needs. State parks officials estimate total land acquisition needs are in excess of 23,000 acres.

** Land needs currently being evaluated.

*** Lake or river is part of a park or recreation area. If the name of the park or recreation area differs from the lake or river, the park name follows in parentheses.

Land Needs*	County
NA	Wake, Durham
**	New Hanover
NA	Chatham, Wake,
NA	Vance, Warren
**	Brunswick
785 acres	Cumberland
**	Gates
**	Camden
**	Wake
**	New Hanover
55 acres	Wake
**	Carteret
**	Moore
NA	Transylvania
NA	Burke
**	Ashe, Alleghany
4	** NA
**	Bladen

KEY

b.....boating c.....camping f.....fishing
h.....hiking p.....picnicking s.....swimming
v.....visitors center / museum

Source: N.C. Division of Parks and Recreation

Chart prepared by Melissa Jones, former N.C. Center intern

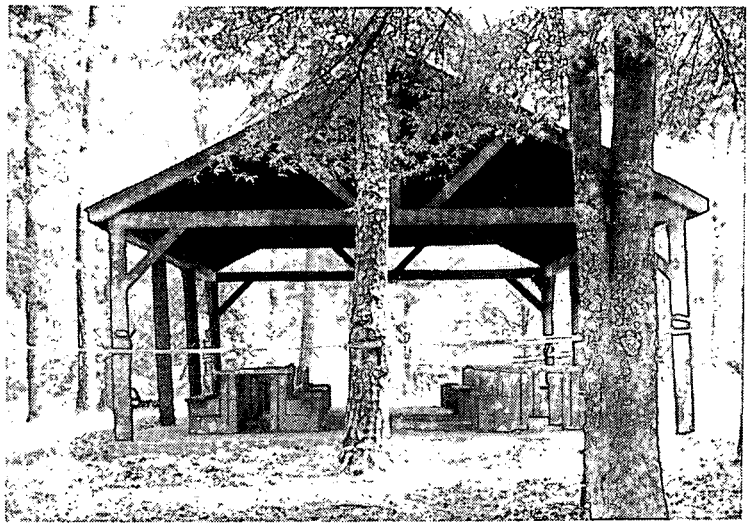
western North Carolina district, while the majority of state lawmakers have none, says Davis. Diamont's five-county 40th House District includes Pilot Mountain, New River, Mount Jefferson, Hanging Rock, and Stone Mountain parks, and he is an aggressive advocate of the state park system. "In Kentucky," says Davis, "every legislative district has a state park. In Georgia, every legislative district has a state park. As a result, the legislature is more responsive." North Carolina's fragmented network of state parks means fewer pork barrel appropriations for capital projects and less general fund support for operating expenses.

The funding shortfall is felt on the frontlines, where rangers at understaffed parks struggle to keep the state's facilities open and presentable to the public. Kerr Lake State Recreation Area, opened in 1952 on land leased from the federal government, has in recent years been among the state's most heavily visited parks. The park features seven campgrounds at separate locations along the shores of Kerr Lake. But park Superintendent Robert Kirk says electrical hookups are outdated and not strong enough to power the homes on wheels the campgrounds must serve. He says waterlines are brittle and often rupture. And then there are the sagging ceilings and peeling paint on bathhouses that leave visitors with a poor impression and force the closing of some facilities deemed structurally unsound. "Some of the buildings are so bad we had to condemn them and close them down," says Kirk, "and people are increasing in number, not decreasing. We need to be adding buildings. This is what the legislature is giving for their constituency." Kirk says Kerr Lake facilities need a complete overhaul, with new electrical and water systems for the campgrounds and renovation or replacement of bathhouses, picnic shelters, and refreshment stands.

"Last summer, a little girl was just walking across a campsite barefooted, and she was getting shocked just walking across the ground" due to a short in an electrical hookup, says Kirk. "It's really discouraging, to tell you the truth, but this is what the citizens are getting for their tax dollars."

Promises for Parks

There are indications that the long-neglected state parks are beginning to get some attention. A 1985 legislative study commission identified $50 million in property that should be acquired to complete and protect existing parks. In response, Governor Martin embraced a $50 million bond referendum. The legislature instead set aside $25 million, although only



Mike McLaughlin

Condemned picnic shelter at Kerr Lake State Recreation Area in Vance and Warren counties

about $16.5 million went for its avowed purpose. In the 1987 legislative session, the General Assembly appropriated $3.8 million for capital improvements, an increase of more than $1 million over the $2.75 million budgeted for the 1986 fiscal year, which had represented more than a two-fold increase over the 1985 appropriation.

"We're going to get off the bottom in per capita spending," says Sen. Henson Barnes (D-Wayne), chairman since 1985 of the legislative Study Commission on State Parks. "In a few short years, North Carolina is going to be offering an excellent park system to the people of the state." Barnes' study commission made recommendations to the 1989 session of the General Assembly including establishment of an eight-year Parks Improvement Plan modeled on the state's Transportation Improvement Plan, and aimed at attracting and holding a larger annual appropriation. "The bottom line is money," says Barnes. "To build a good business, to build a good home, to do anything, you've got to first assess what the needs are. Once you assess the needs, you've got to determine how to access the money supply. The legislature is just like other folks. Show them a place to go, and they will find a way to get there."

The Commission stopped short of recommending a steady source of revenue such as a tax dedicated strictly for park use. According to Davis, 29 states have revenue sources specifically earmarked for parks. These sources include taxes, fees and licenses, donations, bonds, and lottery proceeds, and they provide a stable source of funding. Barnes had at one point mentioned an increase in the tax for deed transfers, which is $1 per $1,000 in real property transactions. But the key to completing the parks puzzle, says Barnes, is increased public awareness of the need for more money. That will pressure elected officials to move the parks higher on the agenda when the budget pie is divided. "The parks have built a constituency in North Carolina, and it's for a good cause, too," says Barnes. "For a number of years, the park system had no constituency pushing it, supporting it."

Holman says, "There is growing public concern about the conditions of state parks." And while he says he finds the prospects for the system to be encouraging, he acknowledges that "it may take awhile" for the system's potential to be realized. "What is needed is for the Governor and the General Assembly to give a high priority to the state park system—a large appropriation for many years," says Holman. "One thing environmentalists have sought—so far without success—is a dedicated source of revenue for parkland, gamelands, and natural areas. Several states use a land [or deed] transfer tax."

Another option might be expansion of user fees with the stipulation that the money be plowed back into the state parks. (A 1987 bill sponsored by Barnes would have required that fees generated in the parks be channeled into a fund for operations, capital improvements, and land acquisition. But the bill was referred to the Senate Finance Committee and never acted upon.) Renfrow's audit notes that in a comparison among 13 southeastern states, North Carolina's state parks in fiscal year 1986 generated the least amount of revenue as a percentage of operating budget.[15] North Carolina remained last among the southeastern states in fiscal year 1987, when the state through various fees and charges to users took in revenue equal to 16.4 percent of its $7.2 million budget. That compares to Louisiana's 19.3 percent and Virginia's 24.8 percent at the low end of the scale, and, at the top of the scale, Delaware at 72.4 percent, Kentucky at 62.3 percent, and South Carolina at 61.6 percent. Renfrow offers a caveat that many neighboring states provide resort-style facilities such as lodges and golf courses that boost both operating costs and revenues and make comparisons between states difficult. But he notes that at $7 a day for a site with full hookups and $5 for a primitive site, North Carolina's camping fees are about 40 percent below the private market.[16] The State Goals and Policy Board, in its May 1986 *Report to the Governor*, recommended increased user fees for such

things as cabins, campsites, and boat rentals as one means of boosting park revenue.[17]

Park advocates say potential is limited for expansion of user fees beyond those already in place. "There are only a few parks that would justify the luxury of user fees," says Holman. "At some parks, it would cost more to collect than you would raise. At Mount Mitchell and Jockey's Ridge, you could collect a lot of revenue. Conservation groups have not taken a position in support of or opposition to entrance fees. It's an ongoing debate."

A major increase in fees and charges, says Holman, could shut the park entrance gates to some of the state's less affluent citizens. "You don't want to exclude people from enjoying the parks," says Holman. "You want the parks to be open to all because a lot of private facilities are expensive. You need some places where just regular folks can go, camp out, have a picnic, and have an outdoor experience."

Barnes says the parks could turn to user fees in selected areas, but adds, "In general we want to say the parks should be like clean air and clean water—they should be freely enjoyed by all North Carolina citizens."

Jack Betts

Crumbling grill and eroding shoreline at Kerr Lake State Recreation Area

The Development Debate

Recent discussions about state parks have focused on how to use the little money available. The primary question has become whether to use the money to maintain and develop existing parks or to buy more land before land prices become prohibitive throughout much of the state. State parks officials say at least 23,000 additional acres are needed to protect existing parks. Stevens says in a series of nine public hearings conducted across the state in 1984, the chief priority expressed by those attending the hearings was maintaining the natural integrity of the park system. Acquiring enough land to provide buffers from development is one means of doing that, says Stevens. Environmental groups tend to favor land acquisition, while current state parks officials contend that more must be done to maintain and open to the public land already in the system. "You can always develop facilities later," says Holman. "Often you can't buy the land later. It doesn't make much sense to build a picnic area or a new campground in a park if someone puts in a landfill or a high-rise condominium just across the creek."

Davis says, "To simply buy land and do nothing with it is not stewardship," but he and Holman agree that in the scrap for funds, the issue has been improperly posed as an either-or question. "The answer to that is both," says Davis. He says there are a number of areas in which land acquisition is incomplete and park integrity is threatened by development. At Carolina Beach State Park, for example, condominiums are being proposed on a parcel of land bounded by park property. Commercial development along U.S. 70 threatens Umstead State Park, and in Burke County's South Mountains State Park a private horse farm is planned so that riders can venture onto public lands. "There'll be hell to pay for the water quality," says Davis.

Besides buying up land, Holman says the state should encourage the counties to use zoning powers to protect the integrity of the state parks. "One county proposed siting a landfill near a state park, and that's not a compatible use," says Holman. "Another county allowed the siting of a drag strip near a state park . . . and Wake County allowed a rock quarry on the west side of Umstead."

There is also debate over what types of parks are wanted in North Carolina. The state typically has sought to provide roads, campgrounds, and visitors' centers at its parks, a dramatic contrast to Kentucky, where many parks are highly developed with cottages, golf courses, and gift shops. Environmentalists argue the need to maintain a delicate balance between development for public use and conservation. Ray Noggle, president of Friends of the State Parks, a citizen support group that lobbies the legislature on

North Carolina Division of Parks and Recreation

Canoeists at Merchants Millpond State Park in Gates County

park-related issues, says North Carolina already has tilted too much toward the pursuit of fee-generating facilities such as swimming lakes. "The people in the field, I think they're first class," says Noggle. "Downtown, they think the best way to serve the people is to turn the parks into Disneylands and make money."

"Nowhere in the budget does it call for building a resort," says Davis. "It's to provide a road, provide a trail, provide a rest room. It's not like we want to build Taj Mahals. We don't need motels and gas stations. But we do need recreational activities so people will want to stay."

Barnes says North Carolina is not aspiring to anything as elaborate as the Kentucky parks. "We do want a pleasant place for the people of North Carolina to go," he says. "We want them to have access to good, clean facilities." As simple as that sounds, state park officials say the parks are in such poor condition that they have identified $113.5 million in capital and repair needs. Environmentalists say the list is exaggerated but concede there are pressing needs. Holman says visitors to the state's parks are often disappointed to find no picnic areas, or portable toilets instead of rest rooms. Davis points to examples such as Hanging Rock State Park, where soil erosion has caused drops as deep as six feet on trails. Guard rails and other road improvements are needed at both Pilot Mountain and Morrow Mountain, he says, and at Lake Waccamaw State Park, there are no flush toilets. "They probably have the only handicapped-accessible pit privy in the state," says Davis.

Additional needs identified by state officials include $463,000 to renovate the septic tanks at Cliffs of the Neuse State Park, $950,000 to develop a picnic area at Stone Mountain State Park, $1.4 million to develop a visitors center at Umstead State Park, $1.1 million to renovate the shoreline and trails at Morrow Mountain State Park, and $1.2 million to develop trails at Eno River State Park. The list includes the construction of several visitors centers, cabins, campgrounds, and picnic areas.[18]

Thomas Rhodes, former secretary of Natural Resources and Community Development, threatened to shut down parks in past years if the General Assembly refused to allocate more money for repairs. Parts of some are closed for lack of money for repairs or completion.

"Our parks are pretty much in rundown and dilapidated condition," says Davis. "We get numerous complaints." But Davis says the 1988 General Assembly appropriated $1 million in discretionary money for repairs and renovation, the first time such money had been appropriated without earmarking it for a specific project.

Staff Shortage

The park system also suffers from staffing shortages, a problem exacerbated by high turnover among rangers. Davis says rangers often are lured away by city and county park systems that offer up to 25 percent higher starting pay and a lighter work load. "They get basically the same salaries as people who are attendants at the rest areas and I resent that," says Bob Conner, immediate past president of Friends of the State Parks. "Many of them are college graduates. I think they deserve better. Some of them qualify for food stamps, and I don't think that's anything to be proud of." (The starting salary for a Park Ranger I is $14,436 and tops out at $22,136, while the starting pay for a Rest Area Custodian I is $13,332 with a maximum salary of $20,412, according to the Office of State Personnel.)

There are 103 field rangers, meaning that most parks are staffed by three or fewer rangers. Six parks have only two rangers, yet the gates are open seven days a week and, in the summer months, 13 hours a

day. The long days, combined with restrictions requiring a 40-hour work week, demand that some parks at times be kept open with only part-time or seasonal workers on duty. Indeed, there are almost as many people running the state zoo in Asheboro as there are operating the entire state park system. (The North Carolina Zoological Park is operated by 141 full-time employees, while the Division of Parks and Recreation has 178 full-time employees, according to NRCD officials.) Park rangers grouse about the understaffing but still manage to keep the parks open. "We can get by," says Jody Merritt, superintendent at Fort Macon State Park on Bogue Banks, where a pre-Civil War fort and a public beach draw more than a million annual visitors. "You cut a man's arm off and he'll get by . . . . That's what we had to do for years and years. It just depends on at what degree you want to function."

Only four district naturalists are employed throughout the state park system, and most of the interpretive programs in the parks, such as nature walks, children's programs, and historical tours, are conducted by seasonal employees. "As far as natural facilities and natural areas, we have the finest park system in the United States," says Merritt. "We just need to expand facilities and interpretive services to the public. The schools are starting to demand it."

Rhodes told legislators in 1988 that the system badly needed 22 maintenance workers to help repair state parks. "That could free rangers to be more responsive to other needs," Rhodes told lawmakers. Funding for the maintenance workers was included in Governor Martin's 1988-1989 fiscal year budget request but was deleted by the legislature when Martin's revenue estimate fell short. Davis says the positions could have been added despite the revenue shortfall. "The legislature was able to find millions upon millions of dollars for other projects that were not included in the Governor's budget to begin with, let alone eliminated or not considered," he says. "Salaries and benefits for the 22 positions amounted to less than $440,000. In a state budget of $10 billion, that is not a significant amount."

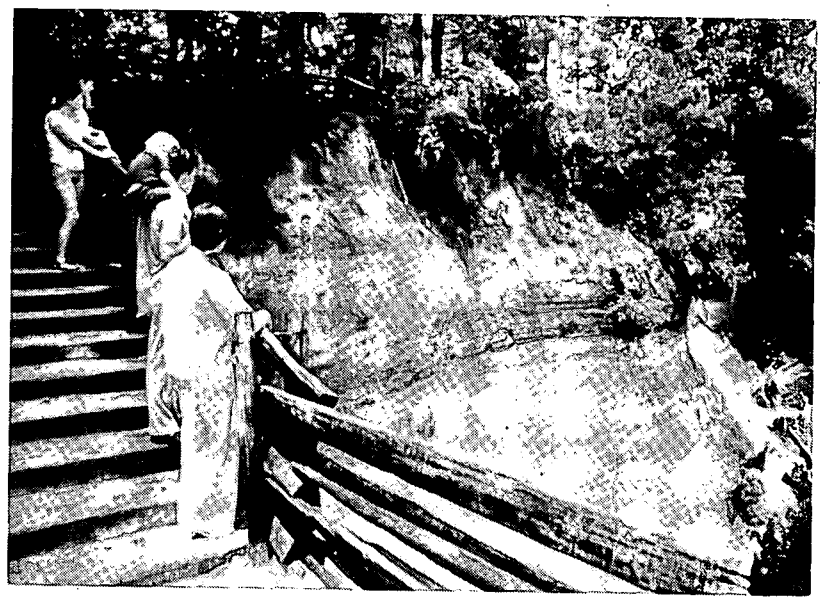
Parks officials had hoped freeing rangers of maintenance duties would help persuade the State Personnel Commission to upgrade salaries for rangers. Davis says the commission bases salary grades on duties rather than titles, and cleaning toilets, picking up paper, and collecting camping fees does not command a hefty pay check. Yet the rangers are solely responsible for lands worth millions of dollars and may be called upon in an emergency 24 hours a day.

The weekend of May 15, 1988 for example, Park Ranger John Speed at Kerr Lake's Hibernia Recreation Area was up at 7 a.m. fishing out a T-shirt someone had flushed down the bath house plumbing. At midnight, he was chasing drunks and rowdies out of the park. "For what we do, really, the pay stinks," says Kirk, "for all the responsibilities we are asked to have to handle—from car accidents to drownings to fights. A lot of it they have to try to take care of along with their day-to-day responsibilities."

Renfrow suggests in his audit of the system that if sufficient funds are not made available to meet the parks' needs, some parks should be closed or ownership of them should be transferred to local governments. He says new parks should not be created until needs in existing parks are met.[19]

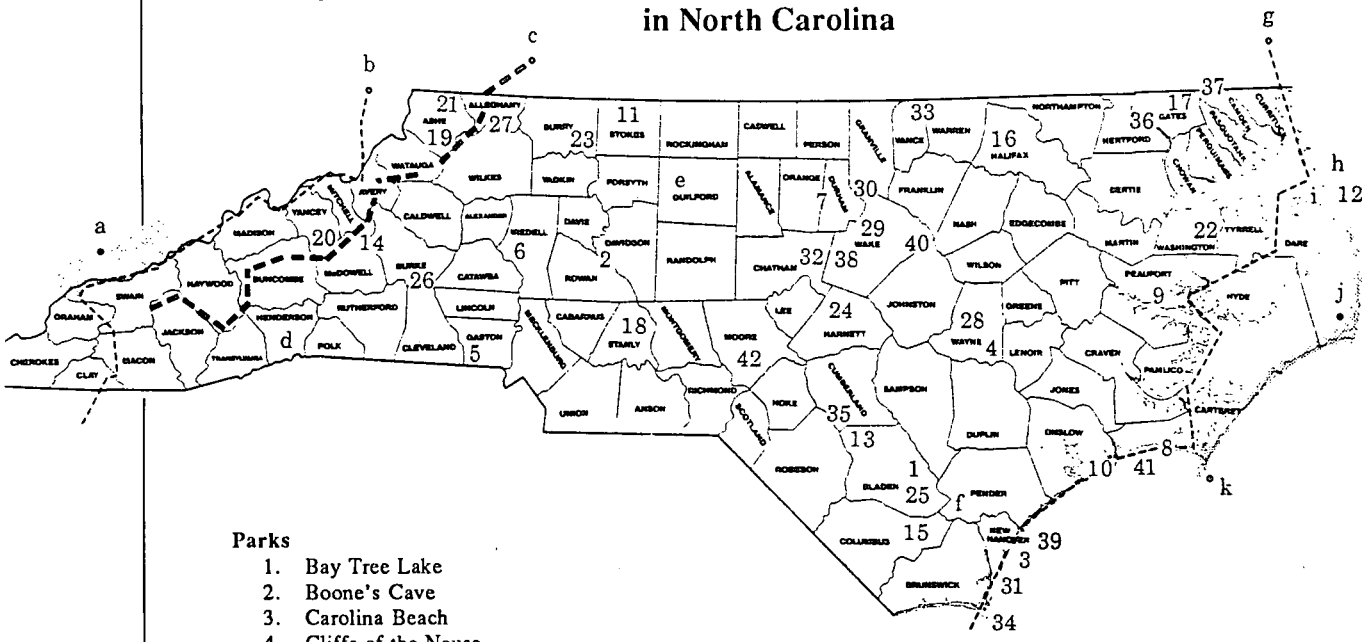
To some who have followed the progress of the park system, the answer to many of its woes lies in an act of the General Assembly in 1987. Lawmakers enacted the State Parks Act, which requires for the first time that the General Assembly approve all additions of land to the park system.[20] The act also requires that approval of those additions be accompanied by appropriations for their development and operation. Davis says the act will help steer the future development of the system. He says involving the General Assembly will help assure that future parks don't

Cliffs of the Neuse State Park in Wayne County



North Carolina Division of Parks and Recreation

Figure 1. Existing National Parks, State Parks and Recreation Areas in North Carolina



Parks

1. Bay Tree Lake
2. Boone's Cave
3. Carolina Beach
4. Cliffs of the Neuse
5. Crowders Mountain
6. Duke Power
7. Eno River
8. Fort Macon
9. Goose Creek
10. Hammocks Beach
11. Hanging Rock
12. Jockey's Ridge
13. Jones Lake
14. Lake James
15. Lake Waccamaw
16. Medoc Mountain
17. Merchants Millpond
18. Morrow Mountain
19. Mount Jefferson
20. Mount Mitchell
21. New River
22. Pettigrew
23. Pilot Mountain
24. Raven Rock
25. Singletary Lake
26. South Mountains
27. Stone Mountain
28. Waynesboro
29. William B. Umstead

Recreation Areas

30. Falls Lake
31. Fort Fisher
32. Jordan Lake
33. Kerr Lake

Natural Areas

34. Bald Head Island
35. Bushy Lake
36. Chowan Swamp
37. Dismal Swamp
38. Hemlock Bluffs
39. Masonboro Island
40. Mitchell's Mill
41. Theodore Roosevelt
42. Weymouth Woods

National Park Areas

a. Great Smoky Mountains
b. Appalachian Trail
c. Blue Ridge Parkway
d. Carl Sandburg Home
e. Guilford Courthouse
f. Moores Creek
g. Intracoastal Waterway
h. Wright Brothers Memorial
i. Fort Raleigh
j. Cape Hatteras
k. Cape Lookout

Figure does not include state lakes, state rivers, or state trails. See Table 1, page 346, for detailed information about these and other units.

Source: N.C. Division of Parks and Recreation

suffer the funding shortfalls experienced by existing parks. "It's giving them overview—giving them the opportunity to buy in," says Davis.

Yet no one is suggesting the parks' needs will be solved easily or quickly. "We're not even making our fair-share contribution to travel and tourism in attracting people to come to our area and see our natural resources," says Davis. "Facilities have stayed the same, infrastructure has stayed the same, staff has stayed the same—we're sort of like the McDonalds of state parks. We serve millions for very little money."

FOOTNOTES

[1] Michael Rulison, *Planning for State Parks and State Forests in North Carolina*, prepared by the Research Triangle Institute for the Department of Administration, December 1968.

[2] *Study of the State Parks*, report by the Fiscal Research Division of the General Assembly, December 1973.

[3] *New Directions: A Plan for the North Carolina State Parks and Recreation System, 1979-1984*, prepared by the Department of Natural Resources and Community Development and the legislature's State Parks Study Commission.

[4] *Parks and Recreation in North Carolina 1984*, A report prepared by the Department of Natural Resources and Community Development for distribution at public hearings on the future of the state parks system conducted across the state in 1984, pp. 1-12.

[5] State Goals and Policy Board, *Report to the Governor*, May 1986, p. 55.

[6] *Ibid.*, pages 40, 60, and 61.

[7] Office of the State Auditor, *Performance Audit Report: Management and Operation of the State Parks System*, January 1988, p. 6.

[8] *Ibid.*, p. 46.

[9] Rankings compiled by the State Division of Parks and Recreation based on the *National Association of State Park Directors Annual Information Exchange*, April 1988.

[10] Jack Betts and Vanessa Goodman, *The Two Party System in North Carolina*, A joint report by the North Carolina Center for Public Policy Research and the University of North Carolina Center for Public Television, December, 1987, pp. 40-41.

[11] "N.C. Ranks Last in Spending for Parks," Associated Press article published in the *Winston-Salem Journal*, May 24, 1987, p. B-6.

[12] "Time to End Parks Neglect," *The News and Observer* of Raleigh editorial page, April 28, 1987.

[13] "An Embarrassing Disgrace," the *Winston-Salem Journal* editorial page, May 27, 1987.

[14] Kirk K. Fuller, "History of North Carolina State Parks: 1915-1976," *Histories of Southeastern State Park Systems*, Association of Southeastern State Parks Directors, Oct. 1977, p. 128.

[15] *Performance Audit Report*, pp. 14-17.

[16] *Ibid.*, p. 7.

[17] State Goals and Policy Board Report, p. 63.

[18] Biennial list of capital needs and projected costs prepared by the state Division of Parks and Recreation, Department of Natural Resources and Community Development, for the State Budget Office, April 28, 1988.

[19] *Performance Audit Report*, p. 8.

[20] Chapter 243 of the 1987 Session Laws, State Parks Act, now codified as N.C.G.S. 113-44.

The State of the Environment: Do We Need a North Carolina Environmental Index?

by Bill Finger

How do we know what the state of North Carolina's environment is? And how do we know whether North Carolina's environment is getting better or getting worse?

The fact is, we don't know as much as we need to know about this most valuable natural resource. We know much more about such other issues as the state of the state's economy, or the condition of our corrections system, or the quality of our schools. And we now know much more about the condition of our children, with the creation by the N.C. Child Advocacy Institute of a North Carolina Children's Index. That index measures the quality of life for the state's youngsters and will report in some detail whether their circumstances in six categories are improving or declining.

Why not a similar measurement for the state of North Carolina's environment? Why not a regular measurement of the quality of the air we breathe, of the land we live and farm on, and of the water we drink? Could such a North Carolina Environmental Index be created? And what should it measure? How would it work? The N.C. Center for Public Policy Research has pondered these questions, and in the following pages presents some possible answers about creating a state Environmental Index.

Gov. Martin endorsed the idea of an Environmental Index in his inaugural address on Jan. 14, 1989, and directed the N.C. Department of Natural Resources and Community Development to carry it out. The governor's Blue Ribbon Panel met for the first time on June 23, 1989, and is developing a set of environmental indicators for North Carolina.

"Something will have gone out of us as a people if we ever let the remaining wilderness be destroyed . . . if we pollute the last clean air and dirty the last clean streams and push our paved roads through the last of the silence."

WALLACE STEGNER, NOVELIST

CONSIDER THESE TERMS: Total suspended particulates. Acres disturbed. Water use impairment. Sound familiar? Unless you're a scientist or environmentalist, chances are these terms will make your eyes glaze over. Now how about these: Average hourly manufacturing wage. The unemployment rate. Rate of inflation. If you're old enough to cash a paycheck, chances are you know something about what those numbers connote.

But this is more than a word game. Studying and reporting on the economy has received so much attention over the years that standard indicators like unemployment rates have taken on a familiar meaning to nearly everyone. Keeping tabs on the environment, on the other hand, requires a new set of knowledge. The data, the measurements, and even the vocabulary available to describe changes in the environment and to denote improvement or degradation are known only to a relative few, despite the growing interest in our environment.

Environmental measurements may never become as familiar terms as, say, the average hourly wage or the U.S. trade deficit. But even now, to people with severe respiratory problems in Los Angeles or Charlotte, the air quality index in those cities means as much as the hourly wage does. If water quality or water supplies in Greensboro or Winston-Salem became threatened as seriously as has the air in southern California, state officials likely would come up with some kind of water quality index that the general public would understand, too.

For years, the N.C. Employment Security Commission has published major economic indicators monthly, quarterly, and yearly. But the state has not chosen to publish regular indicators on North Carolina's most important environmental resources. Could the state develop such a series of indicators? How difficult would it be, and how expensive? What would those indicators be? What criteria could be used? What kind of format could present this data in an easy-to-understand fashion?

Such questions arise again and again to those in and out of government whose job it is to analyze the complicated and fast-breaking news concerning water, air, land, and other natural resources in North Carolina. Is our water in better shape today than it was in 1973 when substantial federal dollars began coming into North Carolina to build new wastewater treatment plants under the federal Clean Water Act? Is the air in North Carolina cleaner or dirtier than it was 10 years ago? How much arable soil has the state lost as rural land has been transformed into shopping centers, residential subdivisions, roads, and commercial property—and what would that data tell us about our land resources?

To analyze environmental policies, policymakers need to know the stress points on the environment and the causes of those stresses. Daily news clippings *suggest the environment in North Carolina is getting worse*—algae blooms depleting oxygen in the Chowan River and in estuaries, dying trees on Mt. Mitchell linked to acid deposition, and stricter auto emission controls mandated in Raleigh and Charlotte because of air quality measurements. On the other hand, many of the reports filed by state offices with the federal Environmental Protection Agency *indicate that water and air quality in North Carolina are improving.*

Where does the truth lie? It might well lie in the regular *publication* and *analysis* of measurable data about North Carolina air, land, water, and other resources.

Publishing environmental indicators is hardly a new idea. In 1973, the Department of Natural and Economic Resources (the forerunner to the current Department of Natural Resources and Community Development, or NRCD) released a 16-page booklet called "North Carolina Environmental Indicators." It included brief descriptions of such resources as air, water, solid wastes, soil, forest land, coastal wetlands, shellfish waters, and wildlife. Eight years later, in 1981, NRCD published a second such report, called "North Carolina's Environment." This 40-page analysis had four main sections, covering land, water, air, and wildlife species. These reports, produced under two different governors, were extremely helpful—as far as they went. But it was clear that more data were needed to paint a comprehensive picture of the state of

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North Carolina's environment.

In 1983, the Commission on the Future of North Carolina called for better environmental data reporting. "Beginning immediately, the state should establish an environmental indicators program that provides regular and systematic monitoring information on changes in the quantities and qualities of environmental conditions," the report recommended.[1] NRCD did not respond to this recommendation in any formal way until the legislature forced the issue with a new state law.

In 1985, the General Assembly adopted a little-noticed special provision in a budget bill that required the Secretary of Natural Resources and Community Development to report "on the state of the environment to the General Assembly no later than January 1 of each odd-numbered year beginning on January 1, 1987."[2] The law included seven specific areas to be covered, including "trends in the quality and use of North Carolina's air and water resources." Unfortunately for NRCD, the legislature did not appropriate special funds to pay for this special provision, and NRCD was forced to find the money within its own budget to pay for producing the first report.[3]

NRCD responded to the legislation by publishing a 60-page glossy booklet called *State of the Environment Report-1987.* It contains chapters on water resources, hazardous and radioactive waste management, general environmental management issues, coastal and marine resources, air, forest land, agriculture, mining, and parks, natural areas, and wildlife. In many ways, the report does an excellent job of explaining the current state of the environment and linking management efforts with the data. "That's the best government report I've ever seen," said one long-time analyst of state government.

However, in two important ways, the report does not provide essential environmental indicators. First, the report emphasizes *managing* the environment rather than indicators on the quality or quantity of the environmental resources themselves. Such a management emphasis, which the legislature in fact *required,* results in a dense, complicated document, not an easy-to-remember set of indicators. Second, the report does not include some data that are needed because the data either are not collected, or are not readily available.

While useful for its description of management practices, such a report does not fulfill the goals set forth by the Southern Growth Policies Board in a recent report on "Education, Environment, and Culture." "By 1992, each southern state should have an integrated, computerized, geographically based environmental information system to track a wide range of water quality, air quality, wildlife, waste, and land use indicators," the report recommends. "The public sector has a strong comparative advantage over the private sector in collecting and disseminating information. This role should be greatly expanded to provide high quality environmental information to a broad array of public and private sector clients."[4]

An annual North Carolina Environmental Index —actually a series of indices collectively published in an Index— is needed to complement the biennial report prescribed by the legislature. Such a review of indicators could begin with air, land, and water—the basic environmental resources—and could be expanded to such other areas as wildlife, parks and recreation, wastes (hazardous, radioactive, and solid waste materials), and other issues covered in several recent national studies.

The index should have at least three components. First, it should contain *quantitative measurements* of the environmental resource itself. Second, the index should present *data over a span of years,* to indicate trends in environmental quality over time. Finally, for the data to make sense, the index should contain an *analysis of each indicator showing*

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"Too often in the past, environmentalists have pursued causes they believe in passionately with a certain arrogance and self-righteousness, which may actually have hurt their cause.

By the same token, many major economic players have tended to view environmentalists as wooly-headed tree-huggers.

Neither of these extreme positions is constructive and both ignore the deep interrelationship between our economic and environmental well-being. But fortunately, I believe we are seeing progress on both sides."

DAVID ROCKEFELLER

How Does North Carolina Rank in Managing the Environment?

If the state legislature were to require a new Environmental Index for North Carolina or if the Department of Natural Resources and Community Development were to initiate it, national indices offer both tips and pitfalls. In the last three years, three national studies have evaluated trends in the environment. One ranked the 50 states with scores on six specific issues, leading to a cumulative ranking. A second index provided a more subjective look at six other environmental concerns, in the context of its 20-year history. The third examined national trends concerning pollution control issues, emphasizing such national issues as the Superfund.

Collectively, these three reports suggest national trends but lack the kind of detailed state-level information discussed in the sections of this article on air, land, and water. While the state-level information in the three reports is somewhat sketchy, the information on states, including some rankings, does stimulate a vigorous debate over the validity of various measurement tools.

For the last two years, The Fund for Renewable Energy and the Environment (FREE) has produced the nation's most detailed environmental report in terms of state-by-state rankings, called *The State of the States*.[1] This report was an outgrowth of Solar Action, an organization formed in 1978 to promote the celebration of "Sun Day" around the world. The group expanded its mission in 1986, as the report says, "to provide new environmental tools for state and local decisionmakers in a continuing effort to build a sustainable society."

In the 1988 report, North Carolina ranked ninth among the 50 states in its overall environmental record, with a score of 40 out of a possible 60 points (a possible 10 points for each of six categories). The 1988 report examined data and compiled state scores concerning surface water protection, reducing pesticide contamination, land use planning, eliminating indoor pollution, highway safety, and energy pollution control. Among southern states, North Carolina trailed only Florida (eighth, 41 points). Massachusetts and Wisconsin tied for first (45 points); Wyoming was last (15 points).

The 1987 FREE report, its first, examined six different topics: air pollution reduction, soil conservation, solid waste and recycling, hazardous waste management, groundwater protection, and renewable energy/conservation. In those rankings, made a year earlier but on different topics, North Carolina ranked higher—seventh—than any other southern state.

The FREE rankings do not distinguish between the quality of the environment itself and a state's efforts to manage that environment. Laws, permits, and actual measurements of the environment are ranked and given numerical scores, then added together for a total score within each category, but the emphasis remains on what programs are in place—not on how well they work or what the environmental quality is. Such a mixing of factors can be misleading. Another problem can result from basing the study on available national and state data rather than digging into information that is comparable from state to state. The surface water category illustrates such problems.

The 1988 report ranked North Carolina the best state in the nation in surface water—the only state with a perfect score of 10 in that category. Using data from the Environmental Protection Agency (EPA), the report showed North Carolina to have only 12 permits on backlog. But according to the data compiled on a monthly basis by the N.C. Department of Natural Resources and Community Development, in January 1988, 577 requests for a new or renewal permit were on backlog.[2]

Mixing various measurements raises other kinds of questions. "While North Carolina may appear to have a great program on paper, our rankings do not reflect the problems that we face due to inadequate monitoring and enforcement of those policies," says Mary Beth Edelman, president of the Conservation Council of North Caro-

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How Does North Carolina Rank — *continued from page 359*

lina. Bill Holman, the state's most prominent environmental lobbyist, adds: "North Carolina has the tools, but the state needs to make sure those tools are used."

Don Follmer, the NRCD director of information, says, however, that the ranking on surface water reflects more than tools. "It shows we are doing a good job. But we can do better."

A second major report issued in 1988 is the "Environmental Quality Index" published by the National Wildlife Federation in its magazine, *National Wildlife*.[3] This was the 20th year the group published its index. The magazine calls its index "a subjective analysis of the state of the nation's natural resources." The editors and the National Wildlife Federation staff consult with government experts, academic specialists, and others before making "judgments of resource trends," as the report explains. The latest index reviewed trends over its 20-year life and then assessed seven specific areas: wildlife, air, water, energy, forests, soil, and quality of life. It used a gauge with three general levels—worse, same, and better. In 1988, all seven categories were in the "same" middle ground, but water and wildlife nearly fell into the "worse" range nationally.

The review of the 20 years points out how much the science of environmental indices has changed. "It is true that not one of the [group's] annual report cards indicated an improvement in the quality of the country's water or the prospects for its wildlife," summarizes the introduction. But, it points out, "Many of our most befouled lakes and rivers are thriving with life again, even Lake Erie, once pronounced clinically dead."

The report goes on to explain why the group's indices seem to say paradoxically, "Things have been getting better and worse at the same time. The reality is that we did not know, 20 years ago, how to measure the problems we faced; and every time we devised a better set of measuring tools, we found the problems to be greater than we had thought." The emphasis of the Environmental Quality Index varies from year to year. The 1987 report, for example, was called "A Nation Troubled By Toxics," even though it reviewed the same seven categories as done in 1988.[4]

The third major study came from The Conservation Foundation, a Washington-based environmental research organization founded in 1948.[5] Called *State of the Environment: A View Toward the Nineties*, it follows similar reports made in 1982 and 1984. The 1987 version concentrates on pollution-control efforts at the national level. "The report is a bold attempt at an overall assessment of progress in pollution control, complete with quantification wherever possible," says *State Policy Reports*. "The conclusion is that a relatively good job has been done in dealing with easily identified pollutants in certain media—particularly air and water—but that new challenges lie ahead in dealing with multi-media problems."[6]

The report includes a supplement with some limited state-by-state data. The most interesting figure is the per capita spending by state government on natural resources, parks, and recreation. Using fiscal year 1984 figures, the report ranks North Carolina only 32nd among the 50 states, $28 per capita per year. (This figure should not be confused with state per capita spending on state parks alone). Businesses in North Carolina spent the equivalent of $42 per capita for pollution control in 1983, compared to a nationwide average of $51 per capita, the report found.

In addition to these three major recent reports, state officials considering how to structure an environmental index could refer to various other sources. The Conservation Foundation publishes many valuable reference reports. One 1983 study, *Environmental Regulation of Industrial Plant Siting*, ranked the 50 states on an environmental "effort index."[7] This index measured such factors as the voting record of the states' congressional delegations on environmental and energy issues, the availability of an income tax checkoff for wildlife and fisheries, per capita environmental quality control expenditures, EPA-authorized state programs for hazardous waste controls, and land use indicators. In

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improvement or degradation as well as a brief narrative discussion of major environmental management issues. For the index to have the most utility, it should be available on an *annual* basis, use reliable data sources, and be simple enough to understand. Several recent indices have examined closely the index concept and have come up with these and other elements as important parts of an index.[5]

Sound simple? It won't be—for a number of reasons. Establishing, operating, and maintaining a North Carolina Environmental Index would be difficult and costly. Monitoring the environment, measuring pollution, and analyzing the data to determine areas of improvement or degradation is an extremely difficult process. It will require expensive monitoring stations in many different areas, costly equipment to collect data in many of those areas, and scientific expertise to analyze that data and to determine whether environmental quality has improved or declined for each indicator. The department has a professional staff that does an excellent job of fulfilling its current responsibilities, but NRCD will need a *larger staff* to operate an Environmental Index.

All this requires money—money that NRCD does not have in its current budget. Such an Environmental Index will require substantial appropriations from the N.C. General Assembly to set up the Index operation and to keep it going each year.

Pitfalls to an Index

This annual report should focus on the environmental resource itself—not on information about *managing* the environment. The 1987 NRCD report included a great deal of valuable information on water quality permits, land-use plans, dredge and fill permits, sedimentation permits, and other environmental management efforts. This information on managing and regulating the environment is one step removed from measuring the progress or decline in the environmental resources themselves. Put another way, the *inputs* into managing a resource such as surface water do not necessarily affect the *outcome* on that resource. In some instances, the permit information—i.e., the management system—is the best available source on an environmental resource. But the Index should transpose the data on permits into an indicator for that resource. In the section that follows on land, for example, the sedimentation permits are used to calculate the amount of land developed. Reporting only the number of permits would give the general public an incomplete picture; interpreting the data to show the actual effect—the amount of land under development—would be more helpful. And careful analysis of that indicator is needed to interpret whether, for instance, development means environmental improvement or degradation.

this report, North Carolina ranked 29th among the 50 states.

Until 1981, the federal government released a valuable annual report on the state of the country's environment. The Council on Environmental Quality, under the Office of the President, released these annual reports. During the Reagan administration, this report was not published. Finally, on a global level, the Worldwatch Institute has recently begun publishing an annual book called *State of the World*, which summarizes environmental indicators worldwide.[8]

These indices, of course, examine national data. North Carolina's Environmental Index should be different in a number of respects: It should examine state data only; it should be published annually rather than periodically; and it should examine environmental problems unique to North Carolina.

—Bill Finger

FOOTNOTES

[1]*The State of the States, 1987* and *The State of the States, 1988*, Fund for Renewable Energy and the Environment.

[2]For a full discussion of the permit backlog issue, see Frank Tursi and Bill Finger, "Clean Water—A Threatened Resource?," *North Carolina Insight*, Vol. 10, No. 2-3 (March 1988), especially pp. 57-58.

[3]"The 20th Environmental Quality Index," *National Wildlife* magazine, Vol. 26, No. 2 (February-March 1988), pp. 38-47.

[4]"A Nation Troubled by Toxics," *National Wildlife*, Vol. 25, No. 2 (February 1987), pp. 33-40.

[5]*State of the Environment: A View Toward the Nineties*, The Conservation Foundation, Washington, D.C.

[6]*State Policy Reports* (Alexandria, Va.), Vol. 5, Issue 22 (Dec. 7, 1987), page 19. Also see Vol. 5, Issue 13.

[7]*Environmental Regulation of Industrial Plant Siting: How To Make It Work Better*, The Conservation Foundation, 1983, pp. 218-229.

[8]*State Of The World*, annual report by the Worldwatch Institute, Washington, D.C.

Could such a data-reporting process lead to a single Environmental Index? On a scale of 1 to 10, for example, would the state be a 6 on the scale in 1989 but improve to an 8 by 1990, or perhaps slide to a 5? Given the range of complex variables in the environment, and the need for careful analysis of each indicator, no such single indicator should be developed.

"A single environmental quality index might mask some very important changes which we ought to be addressing," says David H. Moreau, director of the Water Resources Research Institute, part of the University of North Carolina system. "We might have a serious deterioration in one aspect of the water, for example, and if that gets lost in a general indicator that's not as responsive to that, you're losing important information. A single N.C. environmental quality index might be nice, but I'm not sure it would be very meaningful."

Douglas N. Rader, senior scientist with the N.C. Environmental Defense Fund and a former NRCD official, adds that an environmental indicator may tend to oversimplify a condition—and thus impart erroneous perceptions. "In using indices of the sort proposed," says Rader, "we face . . . a tremendous risk of oversimplifying complex problems. In the process, we may present a misleading picture of our state's environmental quality and provide support to those who would simply preserve the status quo."

The Department of Natural Resources and Community Development has expressed interest in such an Index but is concerned about its difficulty. "There is some merit in discussing the Environmental Index," says Edythe McKinney, director of Planning and Assessment. "However, . . . to be useful it is necessary to better define the problem. As a minimum, there should be a more detailed discussion as to the need, the limitations and experience with measuring the 'quality of the environment,' and the components and weights to be included in an index. There should be an examination of what we want to measure and the costs and trade-offs in establishing an Environmental Index. The reader should be exposed to the debate on 'what is a good environment' that will surround the development and adoption of a system to measure environmental progress."

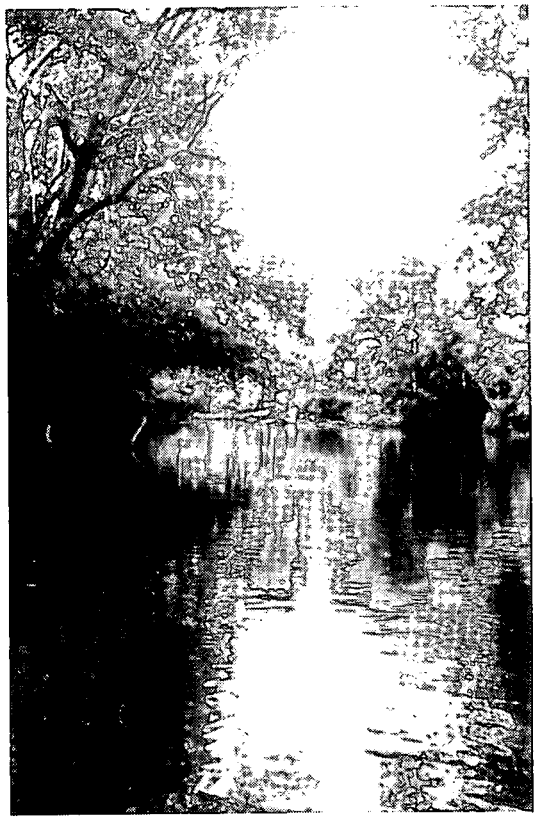
Given the data that's available in North Carolina, publishing an annual Environmental Index—even one covering only air, land, water, and wastes—won't be easy. A central source of information on existing environmental information does not exist, and much of what does exist is technical. Currently, citizens, policymakers, news reporters, and lobbyists must gather data from many separate reports and offices. And once gathered, the pertinent information is often too technical to understand—or has severe gaps regarding important policy questions.

A beginning Index could be developed, however, even with existing data. And new types of data must be developed, refined, and consolidated to improve the Index in future years. As technology changes, so too will the values assigned to the indicators change—and analyzing those changes in future editions of the Environmental Index will also be difficult.

The question at the current juncture, then, is this: what could an Environmental Index contain if it were created now? And what actions could be taken to improve the collection of data in the future and the analysis of currently available data?

What follows is a discussion of what an Environmental Index might contain on air, land, and water. The professional staff at NRCD no doubt will have numerous suggestions for other environmental indicators and for improvements in these suggestions. So may other environmental experts, including the N.C. Environmental Defense Fund, the Sierra Club, the Conservation Council of North Carolina, and the Southeastern Environmental Law Center. Those suggestions can contribute to the debate over the proposal

Neuse River near Raleigh



Jack Betts

advanced here, but the key point of this article is to encourage the state of North Carolina to make regular assessments of its environmental quality. ***For these reasons, the N.C. Center for Public Policy Research recommends that the N.C. Department of Natural Resources and Community Development publish an annual North Carolina Environmental Index, beginning in 1991.***

FOOTNOTES

[1]*The Future of North Carolina—Goals and Recommendations for the Year 2000*, Report of the Commission on the Future of North Carolina, 1983, p. 192.

[2]N.C.G.S. 143B-278.1.

[3]See Chapter 479 (SB 1) of the 1985 Session Laws, Section 124. For more on the issue of special provisions, see *Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens*, by Ran Coble, N.C. Center for Public Policy Research, June 1986 (pp. A-1 to A-3 list all the special provisions in the 1985 main budget bill; the environmental study requirement was one of 64 special provisions in the bill); see also, "N.C. Center Says 1986 Legislature Continued Abuse of Special Provisions in Budget Bills," released on March 2, 1987.

[4]"Education, Environment, and Culture: The Quality of Life in the South," 1986 Commission on the Future of the South, Cross-Cutting Issue Report No. 5, Southern Growth Policies Board, 1987, p. 12.

[5]The North Carolina Child Advocacy Institute unveiled on June 21, 1988, a "Children's Index: A Profile of Leading Indicators on the Health and Well-Being of North Carolina's Children." In developing its format, this group circulated a number of draft models to specialists in children's and policy issues. The final version of the Children's Index contains 30 indicators that meet most of the following criteria:

- *annual availability*—Typically, a state agency is the data source and collects the information each year, unless noted;
- *reliability*—The data are published and/or validated by their original source, and recognized professionally; and
- *simplicity*—The statistic is easily understood and commonly used, e.g., total number, percentage, or rate.

Another useful index to consult for various criteria was developed by the National Civic League and reported in *National Civic Review*, Vol. 76, No. 6, November-December 1987. This "national civic index" is put forward as a new way to approach community problem solving, and contains 10 components, including citizen participation, community leadership, intergroup relations, and others. These variables, in contrast to the criteria put forward by the child advocacy group, do not lend themselves to easy quantification, but represent another kind of use for an annual index.

"And there's this constant rumbling from the backhoes moving boulders for the tennis court. Evidently they've had to do a lot of blasting."

"How can he get away with that, it's wetlands?"

"I don't know, sweet, but he has the permit tacked up right on a tree."

"The poor egrets."

"Oh Lexa, they have all the rest of Rhode Island to nest in. What's nature for if it's not adaptable?"

"It's adaptable to a point. Then it gets hurt feelings."

FROM THE WITCHES OF EASTWICK

BY JOHN UPDIKE

What Should Go in a North Carolina Environmental Index?

"The earth belongs in usufruct to the living."

THOMAS JEFFERSON

The N.C. Center for Public Policy Research recommends that the N.C. Department of Natural Resources and Community Development publish an annual North Carolina Environmental Index, beginning in 1991. The Center also recommends that the N.C. General Assembly appropriate the necessary funds to establish, publish, and maintain the Index.

The N.C. Center has reviewed the data sources on air, land, and water, the primary environmental resources. A North Carolina Environmental Index — really a series of indicators—might start with these three areas. The Index could also cover such areas as wildlife, parks and recreation, hazardous and radioactive wastes, and solid wastes. Below are specific suggestions as to what a North Carolina Environmental Index should contain regarding air, land, water, wastes, and wildlife. Where the existing data base does not provide good indicators, the N.C. Center also recommends ways to improve that data system.

The Air Resource

1. *The Index should contain data on the six major pollutants which the Environmental Protection Agency (EPA) requires the state to monitor, on a statewide basis and by county where possible.* The six pollutants are carbon monoxide, lead, nitrogen dioxide, ozone (including hydrocarbons), particulates, and sulfur dioxide. The county-level data are necessary to show which areas are still not meeting EPA standards. For example, Wake, Durham, and Mecklenburg counties are currently not meeting the carbon monoxide standards.

2. *Carbon monoxide and ozone levels should be reported for the 10 largest urban areas in the state.* Currently, sufficient data on these pollutants are not being gathered in places such as Fayetteville, Greensboro, and Asheville. These areas may or may not be meeting EPA standards, but sufficient data do not exist to tell. If they are not, new emission tests could be required in such counties, as the General Assembly has done for Wake, Durham, and Mecklenburg counties. Such additional monitoring would require an increase in state appropriations.

3. *The N.C. Environmental Management Commission should consider setting air quality standards for agents not on the standard EPA list, particularly toxic pollutants.* Information on air quality issues is changing rapidly. For the public to be fully aware of air quality issues, more pollutants need to be monitored than just the standard six. Such data could then be included in the Environmental Index. The Commission is considering adding up to 116 pollutants to the list of those regulated by the state.

4. *The Index should include information on larger air-quality issues, such as acid deposition and the greenhouse effect, as they relate to North Carolina.* Increasingly, air quality issues are interrelated to larger ecological forces that go beyond a single state or even country. These issues need to be included in the Index of the state's air quality.

The Land Resource

5. *The legislature should appropriate sufficient funds for a statewide inventory of the North Carolina land.* Currently, no such inventory exists. Current data on how land is being used must be estimated from permit records and other methods. There is no data base on how the land is being used. This base should be developed in a way that it could be updated frequently.

6. *The Index should contain trends on how many acres are being developed for urban uses.* This data can be estimated from permit records — statewide except for forest land and agricultural land, and in 20 coastal counties using the major permit process in coastal "areas of environmental concern." Future refinements of this indicator would include digitization (an advanced computer application that could provide

statewide map overlays of a variety of land features) of land-use patterns statewide, as well as developing new sources of data on habitat.

7. *The Index should contain trend data on acreage in cropland, forests, and pasture.*

8. *The Index should contain trend data on the number of acres of protected lands, both public and private.* This information is difficult but not impossible to collect. The Index should compile the number of acres of federal lands (parks, forests, etc.), state-held lands (parks, scenic river areas, etc.), and private reserves (available to some extent through the N.C. Nature Conservancy). These cumulative data, shown over time, would depict the extent to which state and private funds are increasing the total acreage of protected lands. Note: Careful analysis must be used here to distinguish among different types of protected lands and to assign environmental values to changes in these lands.

9. *The Index should contain data on state parks and recreation areas, including state forests and other lands used by citizens for recreation areas.* These data specifically should include information on the age and condition of each of these areas, and should report on critical needs of each park or area. The data should include but not be limited to replacement of existing structures and utilities; needed land acquisition, and trend data on appropriations to each of these areas.

The Water Resource

10. *The Index should contain basic information on surface waters, including data on "use impairment."* The 305b report made to the EPA every two years contains excellent data, including the percent of miles of surface waters meeting their best-use classification. The state has begun to measure more river basins with a broader group of tools, gathering biological, chemical, and other data and resulting in a "use-impairment" index. This gives a fuller picture of whether the quality in a stretch of surface water is improving. The Index should draw on this approach for statewide data. The Chesapeake Bay Program in Maryland and Virginia routinely reports water quality information in an easy-to-understand format, and so can North Carolina. Such reports should include information on facilities out of compliance with their permits, as well as biological events such as fish kills, algae blooms, and diseases in aquatic life.

11. *The Index should contain better data on nonpoint pollution of surface waters.* Thorough data are collected on point sources of pollution but not on *nonpoint* sources. New state funds may be necessary to expand this data collection, and a land-use inventory would be critical to its success.

12. *A comprehensive data collection and reporting system for groundwater needs to be developed and funded.* Currently, little regular data are gathered on groundwater. Periodic surveys are made, and reports of incidents of groundwater pollution are investigated. But routine testing of groundwater is not done as it is with surface waters. With regular collection of data on groundwater, the Index could report trends on whether the quality of groundwater should be of concern to the public.

13. *The legislature should require all governmental units operating a water supply system serving more than 10,000 people to report estimates of water demand and supplies to a central state office.* Currently, no comprehensive information exists on the demand for water and the water supplies of various communities. Long-range planning is difficult, as is planning for emergency measurements under drought conditions. These data could be summarized and reported in the Index to show whether anticipated water supplies can meet anticipated water demands.

14. *The Index should contain newly-collected data on the quality of drinking water supplies, including data on the quality of water both before and after its treatment.* The federal Safe Drinking Water Act amendments adopted in 1986 require the EPA to monitor for a number of chemical compounds in water, and to add monitoring for 25 new compounds each year. This monitoring would provide valuable data.

Wastes

15. *The Index should also contain basic data on the generation, handling, storage, treatment, and reduction of various types of wastes.* These wastes include municipal solid wastes; hazardous wastes; low-level radioactive wastes; and high-level radioactive wastes. The state Department of Human Resources also reported in late August 1988 that hazardous waste production, which had steadily declined in the 1980s, increased by 38 percent from 1986 to 1987. This surge in hazardous waste generation, which can be a sign of an expanding economy, also signals the pressing need for hazardous waste treatment facilities, and detailed data reporting. The Index should report, *by county,* solid waste generation and disposal capacity (whether by landfilling, reduction, recycling, or incineration); hazardous waste generation, transportation, treatment, reduction, or storage; low-level radioactive waste generation, storage, transportation, and monitoring; and high-level radioactive waste production, storage, transportation, and monitoring. The Index should also report annually on changes in the

handling, treatment, or storage of each of these types of waste through new facilities or new technology. Index data provided on each of these waste items would provide a clearer picture of the impact of waste on the state's environment, and would show trends in environmental progress or degradation.

16. *The Index also should develop indicators that measure improvement in waste recycling, reduction, and prevention.* The Index could correlate the reduction in solid waste production with the savings in acre/feet (an acre/foot is one acre one foot deep) of municipal landfills, for instance. In radioactive wastes, the Index could compare the kilowatts generated and the amount of low-level and high-level waste generated in producing that power.

Wildlife Resources

17. *The Index should develop annual data that would illustrate the condition of North Carolina's wildlife resources.* These data could include annual estimates of specific population of endangered wildlife; of game and non-game animals, of marine and aquatic life, and of waterfowl. In addition, the Index should report on state and private acreage specifically set aside for wildlife habitat, including wetlands and natural areas, to show trend data indicating whether natural habitat is declining or growing.

Chapter 12

North Carolina Politics

The Two-Party System in North Carolina

by Jack Betts and Vanessa Goodman

IN THE PAST 20 YEARS, North Carolina politics has undergone a revolution—sometimes quiet, sometimes noisy. A state dominated by Democrats since the turn of the century, North Carolina since 1966 has been transformed into a state with a new political balance. Democrats still dominate politics at the state and at the local level, but Republicans regularly are winning the big elections—and lately, more of the little ones, too. North Carolina has become a two-party state in theory and in fact. The evidence of the shifting political winds abounds. What is this evidence? And if North Carolina does have a two-party state, what difference does that make in terms of state policy?

The N.C. Center for Public Policy Research has examined both these questions. In answering the first, it has found startling documentation of the rise of the Republican Party. Much of that is well known. The GOP's candidate for President has carried the state in every contest but one since 1968, as well as winning two races for governor and four races for U.S. Senator. In all, the Republican Party has won nine of the 14 major statewide races since 1968—a winning percentage of 64 percent.

But the evidence goes deeper. Republicans hold three of the state's 11 congressional seats, held both U. S. Senate seats from 1980 to 1986, hold 35 percent of the seats in the General Assembly in 1989, and have a majority on nearly 30 percent of the county Boards of Commissioners. How could this come about in a state that long was the province of Democrats? The answer lies in voter registration and demographics. Consider:

■ While Democratic registration grew by 37 percent from 1966-86, Republican registration was growing nearly four times as fast—by 143 percent. When the period began, Democrats had nearly a 4-1 edge in registration; by the last election in 1986, it was about 2.5:1. The number of unaffiliated voters also grew rapidly in this period. About half the new registrants are Democrats, while the other half are Republicans or unaffiliated. Twenty years ago, 80 percent of new voters were Democrats. See Table 1 for more.

■ The evidence shows that while Republican strength is growing across the board, it is soaring in the state's most populous areas. In Wake County, Democratic registration grew by 81 percent, but Republican registration grew by 707 percent; in Guilford, Democrats grew by nearly 42 percent, Republicans by 150 percent; in Forsyth, Democrats grew by 27 percent, Republicans by 134 percent.

■ On the local level, Republican strength is beginning to grow rapidly, too. In 1974, for instance, only 80 of the state's 477 commissioners were Republican. By

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1986, the number had grown by 76 percent, to 141. What's more, in 1987, Republicans held a majority on 29 county Boards of Commissioners—more than double the number they controlled in 1974. See Table 2 and Map 1 for more. And the party is making modest gains in other offices. In 1987, the GOP counted 13 of the state's Registers of Deeds, 14 of the Clerks of Court, and 19 of the Sheriffs among its members.

■ And in terms of county voting, what once was a solidly Democratic state has become a solidly Republican state in presidential elections. In the period 1968-1980, only 10 North Carolina counties voted consistently (at least 75 percent of the time) Democratic in *presidential* elections; 40 counties voted consistently Republican, and the rest had mixed voting records. See Table 3 and Map 2 for more.

What does it all mean? Some skeptics say it makes little difference who's in office, particularly in a state that has a Republican governor without veto power and facing a heavily Democratic legislature. But the

Table 1. Statewide Voter Registration by Party (1966-1986)

Year	Total registration	Democrats	% of voters	Republicans	% of voters	Unaffiliated	% of voters
1966	1,933,763	1,540,499	79.7	344,700	17.8	48,564 *	2.5
1968	**2,077,538	1,568,859	75.5	448,637	21.6	52,234	2.5
1970	**1,945,187	1,464,055	75.3	426,159	21.9	48,524	2.5
1972	**2,357,645	1,729,436	73.4	541,916	22.9	79,129	3.4
1974	2,279,646	1,654,304	72.6	537,568	23.6	87,744	3.8
1976	**2,513,664	1,804,827	71.8	601,897	23.9	106,940	4.3
1978	2,430,210	1,764,126	72.6	567,039	23.3	99,045	4.1
1980	**2,774,844	1,974,889	71.2	677,077	24.4	120,905	4.4
1982	2,674,787	1,924,394	72.0	640,675	24.0	109,293	4.1
1984	**3,270,933	2,289,061	70.0	838,631	25.6	142,436	4.4
1986	3,080,990	2,114,536	68.6	836,726	27.2	129,728	4.2
NEW:	**1,147,227**	**574,037**		**492,026**		**81,164**	

* Estimated

** Total registration does not include American party in 1970 or other minor parties. (percentages rounded to nearest tenth)

Material compiled from State Board of Elections

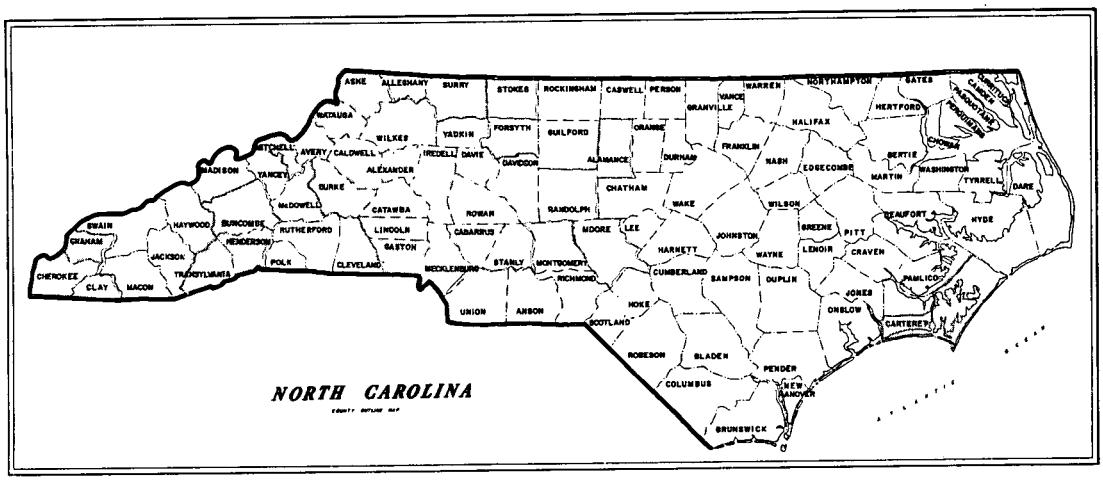
Other sources consulted: U.S. Census Bureau
Department of Cultural Resources, Division of Archives
Secretary of State's Office
N.C. Democratic Headquarters
N.C. Republican Headquarters

NOTE: 1966 was the first year statistics were compiled by the state Board of Elections.

NOTE: Table indicates: 1,147,227 new voters in 1986 compared to 1966
Of those: 574,037 , or 50.2 percent, have been Democrats
492,026 , or 43.0 percent, have been Republicans
81,164 , or 6.8 percent, have been Unaffiliated
Thus: 569,520 , or 49.8 percent of the new registrants since 1966, have chosen not to register Democratic in North Carolina.

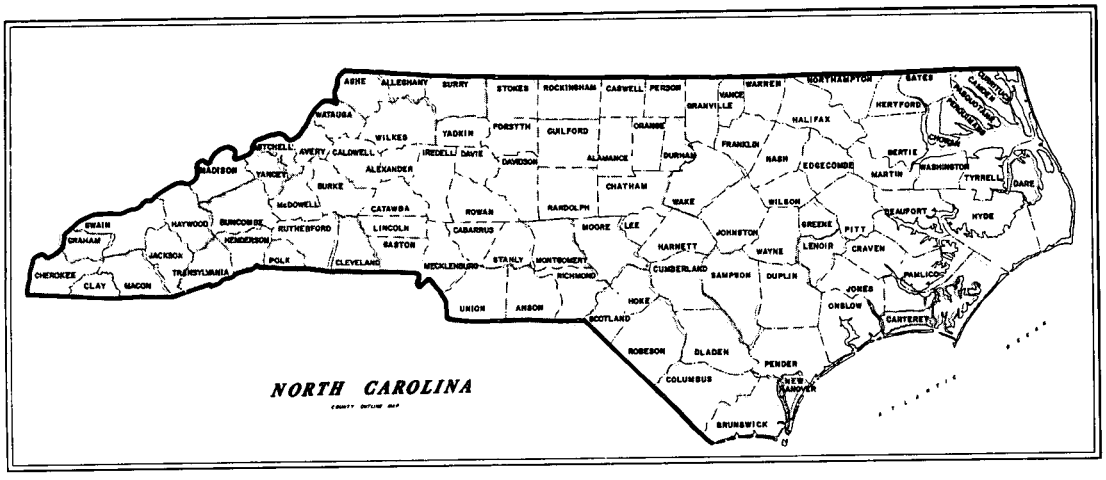
Chart prepared by Vanessa Goodman.

Map 1. County Boards of Commissioners Controlled by Republicans and by Democrats, 1987-88



- Republican
- Democrat

Map 2. Counties Voting Consistently By Party, 1968-80.



- Republican
- Democrat
- Mixed

Center's research shows there is a difference. Consider what happens during Republican administrations:

■ There's more of an emphasis on "workfare" programs designed to give welfare recipients job skills to reduce the number of citizens on welfare. During Democratic Gov. Jim Hunt's eight-year term, the state had workfare programs in only eight counties. But during the first three years of Gov. Jim Martin's term, the state added workfare programs in 20 more counties, with 15 additional county programs to be added in fiscal year 1987-88. See Table 4 for more.

■ Fewer state-paid abortions are performed. During Hunt's terms, the number of state-paid abortions averaged 5,371 per year; under Martin, the number dropped to 3,662 state-paid abortions. See Table 5 for more.

■ State parks appear to get more funding. Under Gov. Jim Hunt, state parks spending—including land acquisition, capital improvements, and field operations—averaged about $3.2 million a year. During the administrations of Gov. Jim Holshouser and Gov. Jim Martin, the state has averaged $10.6 million a year in spending on parks. Republicans take credit for getting far more money for parks than Democrats, but Democrats insist that the GOP had little to do with the increased funding. Such spending decisions, these Democrats say, are made by the legislature—where Democrats predominate—and were not due to the action of Republican governors. See Table 6 for more.

■ And both Republicans and Democrats tinker with the state's road building program in various ways. While Democrat Hunt was in office, for instance, roadwork was speeded up on U.S. 264 from Raleigh to Wilson, Hunt's hometown. While Holshouser was in office, work was advanced on U.S. 321 and U.S. 421 near Boone, Holshouser's hometown. However, the record shows that because of the time-consuming nature of highway building projects, it's not often that a governor can begin and finish a new project during his own term in office. At most, governors are able to move road projects up on the priority list. There appears to be less manipulation of road budgets than in the years prior to 1973, before the state Board of Transportation was created to oversee highway and other transportation programs.

These are just some indications of the policy differences that occur when Democrats or Republicans are in office. But as the state continues its political evolution, there seems to be little doubt that North Carolina has developed into a two-party state.

Not everyone agrees with these conclusions, of course. Ken Eudy, former executive director of the

Table 2. Party Affiliation of N.C. County Commissioners (1974-1986)

Year	Total # of Commissioners	Democrat	Republican	Majority Democratic Boards	Majority Republican Boards	% Republican
1974	477	396	80	86	14	17%
1976	484	437	46	89	11	10%
1978	493	428	65	85	15	13%
1980	492	398	94	80	20	19%
1982	494	431	63	89	11	13%
1984	492	392	100	77	23	20%
1986	502	361	141	71	29	28%

Material taken from *County Lines*, published by N.C. Association of County Commissioners. 1974 was the first year in which a comprehensive breakdown of county commissioners in N.C. was recorded by the Association.

Chart prepared by Vanessa Goodman.

Table 3. Counties Voting Consistently* Democratic, Republican, or Mixed in Recent U.S. Presidential Elections, 1968-1980

County	Democrat	Republican	Mixed	County	Democrat	Republican	Mixed
Alamance			X	Johnston			X
Alexander		X		Jones			X
Alleghany			X	Lee			X
Anson			X	Lenoir		X	
Ashe		X		Lincoln		X	
Avery		X		Macon		X	
Beaufort			X	Madison			X
Bertie	X			Martin			X
Bladen			X	McDowell		X	
Brunswick			X	Mecklenburg		X	
Buncombe		X		Mitchell		X	
Burke		X		Montgomery			X
Cabarrus		X		Moore		X	
Caldwell		X		Nash			X
Camden			X	New Hanover		X	
Carteret		X		Northampton	X		
Caswell			X	Onslow			X
Catawba		X		Orange	X		
Chatham			X	Pamlico			X
Cherokee		X		Pasquotank			X
Chowan			X	Pender			X
Clay		X		Perquimans			X
Cleveland			X	Person			X
Columbus			X	Pitt			X
Craven			X	Polk		X	
Cumberland			X	Randolph		X	
Currituck			X	Richmond			X
Dare		X		Robeson	X		
Davidson		X		Rockingham			X
Davie		X		Rowan		X	
Duplin			X	Rutherford		X	
Durham	X			Sampson		X	
Edgecombe			X	Scotland	X		
Forsyth		X		Stanly		X	
Franklin			X	Stokes		X	
Gaston		X		Surry			X
Gates			X	Swain			X
Graham		X		Transylvania		X	
Granville			X	Tyrrell	X		
Greene	X			Union			X
Guilford		X		Vance			X
Halifax	X			Wake		X	
Harnett			X	Warren			X
Haywood			X	Washington	X		
Henderson		X		Watauga		X	
Hertford	X			Wayne			X
Hoke	X			Wilkes		X	
Hyde			X	Wilson			X
Iredell		X		Yadkin		X	
Jackson			X	Yancey			X

Source: Earl Black and Merle Black, unpublished research base for *Politics and Society in the South*

* In at least 75% of the elections

Table 4. County Workfare* Programs, by Date of Implementation

Counties prior to 1985, Democratic Administration	Implementation date
Ashe	January 1, 1983
Buncombe	September 1, 1984
Caldwell	July 1, 1982
Davidson	July 1, 1982
Moore	July 1, 1982
Nash	July 1, 1982
Pitt	July 1, 1982
Rowan	July 1, 1982

Counties after 1985, Republican Administration	Implementation date
Beaufort	January 1, 1986
Carteret	January 1, 1986
Catawba	August 1, 1986
Craven	August 1, 1986
Cumberland	July 1, 1986
Durham	August 1, 1986
Guilford	February 1, 1987
Iredell	September 1, 1986
Lee	August 1, 1986
Mitchell	September 1, 1986
New Hanover	January 1, 1987
Orange	November 1, 1986
Polk	September 1, 1986
Rutherford	September 1, 1985
Sampson	July 1, 1986
Scotland	August 1, 1985
Vance	May 1, 1987
Wake	August 1, 1986
Wilson	March 1, 1986
Yancey	October 1, 1986

Total: 28 counties
15 additional counties expected in 1987-1988.

*Formally known as Community Work Experience Project

Source: N.C. Department of Human Resources, Division of Social Services

Chart prepared by Vanessa Goodman.

N.C. Democratic Party, agrees that Republicans have made major advances. "But I strongly object to the comparisons on workfare, abortion, and state parks. They are unfair."

Eudy notes that workfare "was a new concept under Democratic Gov. Jim Hunt. It didn't exist under Republican Gov. Jim Holshouser. And it would have been increased under any governor.... And on state parks, the legislature [dominated by Democrats] approved the money.... Martin simply isn't much of a factor on the state budget."

The workfare programs grew much faster under Martin during his first three years in office than they did during Hunt's last three years in office—the same length of time. And abortions, after all, did go up in Democratic years and drop during Martin's years. The reasons for that are that Democrat Hunt was willing to seek extra contingency funds to pay for more abortions—and got the money—while Martin's administration has actively sought to reduce state funding on abortions—and succeeded. As for parks spending, the fact remains that the Republican governors tend to *ask* the legislature for *more* money for parks—and they get the money—while Democrats ask for less money. In both cases, the legislature has generally acceded to the governor's lead on parks questions.

The Center's research did strike a responsive chord with some officials. Phillip J. Kirk Jr., Martin's chief of staff, says the report "gave substantial credence to my belief that North Carolina is almost a true two-party state. . . . A large number of our statewide victories in state races have occurred when the Republican Presidential candidate was carrying the state in landslide proportions, so the coattail effect was present."

Kirk believes the consistent number of local Republican victories, "the tremendous *percentage* increase in Republican registration, and the growing number of unopposed Republican legislators point to the validity of the theory that North Carolina is a two-party state.

"What does this mean? It means we have true competition for a growing number of offices. It means Republicans will be elected to the Council of State and to judgeships. This will encourage the movement toward a different method of selection for these positions. The veto issue will ultimately be resolved by the voters, rather than a handful of powerful legislators. It means the General Assembly will become more open as the Governor has opened the meetings of the Council of State. The only question is 'When,' not 'If,'" says Kirk.

Table 5. Number of Abortions and Amount of State Funds Spent in North Carolina

Fiscal Year	# of Abortions	Party*** in Power	%Increase/ Decrease	# of State-Funded Abortions	% Increase/ Decrease	Amount of $ Spent
76/77	*	R/D	*	4,144	*	$1,832,977
77/78	25,777	D	—	1,123	–369.0	223,276
78/79	27,799	D	+7.3	6,125	+445.0	1,302,801
79/80	30,155	D	+7.8	6,343	+3.6	1,366,921
80/81	30,000	D	-0.5	5,730	-9.6	1,233,301
81/82	29,890	D	-0.4	4,295	-25.0	984,446
82/83	31,392	D	+4.8	6,149	+43.2	1,253,697
83/84	34,138	D	+8.0	6,645	+8.1	1,357,371
84/85	32,478	D/R	-5.1	6,564	-1.2	1,316,770
85/86	32,849	R	+1.1	2,662	-247.0	557,129
86/87	**	R	**	4,181	+57.0	900,750

Average Number of Abortions During Years When Republicans Are in Power: 3,662
Average State Spending on Abortions During Years Republicans Are in Power: $1,096,252

Average Number of Abortions During Years When Democrats Are in Power: 5,371
Average State Spending on Abortions During Years Democrats Are in Power: $1,129,822

* Figures were not kept for years prior to 1978 by state Department of Human Resources.
** Total number of abortions for 1986-1987 not available.
*** Fiscal year marked R/D was year in which Republican Gov. Jim Holshouser completed his term and Democratic Gov. Jim Hunt began his first term. Year marked D/R denotes year Hunt finished his second term and Gov. James G. Martin began his term. For budget purposes, 1976-77 was considered a Republican year, because the Holshouser Administration had set the budget priorities. Similarly, 1984-85 was considered a Democratic year, because the Hunt Administration had set the priorities.

Source: Department of Human Resources

Chart by Vanessa Goodman.

Table 6. Funding for State Parks (1973-1986)

Year	Advisory Budget Commission Proposal	Capital Improvements	Land Acquisition	Total Operations	Legislature Authorized**	Political Party In Power*****
1973-74	$2,325,599	$2,500,000	$11,500,000 ***	$1,191,618	$15,191,618	Republican
1974-75	10,323,141	3,000,000	5,500,000 ***	1,394,111	9,894,111	Republican
1975-76	6,076,874	1,000,000	500,000	1,473,325	2,973,325	Republican
1976-77	10,474,874	1,000,000	1,000,000	1,507,318	3,507,318	R/D
1977-78	13,796,418	1,200,000 ***	500,000 ***	1,756,104	3,456,104	Democratic
1978-79	6,297,391	1,200,000 ***	500,000 ***	2,048,310	3,748,310	Democratic
1979-80	2,466,873	500,000	250,000	2,255,560	3,005,560	Democratic
1980-81	2,416,617	500,000	250,000	2,514,515	3,264,515	Democratic
1981-82	2,713,225	100,000	-0-	2,598,724	2,698,724	Democratic
1982-83	3,749,558	-0-	-0-	2,728,514	2,728,514	Democratic
1983-84	2,951,444	50,000 *	215,000 *	2,867,359	3,132,359	Democratic
1984-85	2,963,577	140,000 *	-0-	3,123,542	3,263,542	D/R
1985-86	4,157,433	850,000	11,185,000	3,491,517	15,526,517	Republican
1986-87	4,370,012	3,950,000 ****	8,800,000	3,999,180	16,749,180	Republican

Average authorized during Republican Years: $ 10,640,344
Average authorized during Democratic Years: $ 3,162,203

* Special bills

** Money authorized by General Assembly includes figures on state park administration, field operations, capital improvements, and land acquisition.

*** Source of funds was the federal Revenue-Sharing Program, in which federal funds were appropriated through the state budget by the General Assembly.

**** Includes $1.2 million for the Community Service Workers Program.

***** Fiscal year marked R/D was year in which Republican Gov. Jim Holshouser completed his term and Democratic Gov. Jim Hunt began his first term. Year marked D/R denotes year Hunt finished his second term and Gov. James G. Martin began his term. For budget purposes, 1976-77 was considered a Republican year, because the Holshouser Administration had set the budget priorities. Similarly, 1984-85 was considered a Democratic year, because the Hunt Administration had set the priorities.

Note: The amount of money proposed comes from money in the General Fund. The authorization from the General Assembly comes from the General Fund except as noted. The chart illustrates large appropriations from the legislature in 1973-74, 1985-86, and 1986-87. These anomalies are due to sporadic funding of the state park system over the years. In some years, the General Assembly had more money to work with than in other years because of greater economic growth and larger tax revenues.

Source: Office of State Budget and Management

Chart prepared by Vanessa Goodman.

Campaign Finance in North Carolina

by Ran Coble

LET'S THINK A MINUTE ABOUT WHY campaign finance is important to every citizen in North Carolina. There are at least four reasons:

(1) because the ability to raise money affects *who can even run* for office;

(2) because the ability to raise a large amount of money *can* affect who wins, though not always;

(3) because campaign contributions can affect policy in the years to come, as candidates are inevitably affected by where their support came from; and

(4) because campaign contributions give the people who write the checks *access* to policymakers.

What matters is not that the relationship between money and influence exists in North Carolina politics—nothing is ever likely to change that. What matters is that the connection be clearly in public view. As one candidate for governor told us, "We are going to lose the entire integrity of what democracy in this country is all about if we can't do something about the money aspect of races."

Goals of the North Carolina Campaign Reporting Act

To begin our discussion of campaign finance, let's take a quick look at North Carolina's Campaign Reporting Act.[1] The N.C. General Assembly enacted that law on April 11, 1974, perhaps in large part as a response to the Watergate scandal in Washington. Most state laws in this field were passed within a few years after Watergate.

There were two main goals these state campaign finance laws were trying to serve. Because of the secrecy surrounding contributions in the 1972 presidential campaign and the ensuing problems known as "Watergate," the state laws were first designed to disclose to the public where a candidate got the money to run for office. Second, because a few *very rich* individuals had played such a prominent role in financing both the Republican and Democratic nominees in the 1972 election (Clement Stone for Nixon and Stewart Mott for McGovern), the laws tried to lessen the influence of a few wealthy individuals and instead enhance participation by large numbers of citizens who would give small amounts of money.

North Carolina's Campaign Reporting Act serves both of these goals. The goal of *public disclosure* is served by the requirement in our law that winning candidates must file four reports during the course of the campaign, reporting *all* contributions and expenditures. And, if someone gives more than $100 to a candidate, then the candidate's treasurer must send in the name and address of the contributor, the date and amount of the contribution, and the cumulative total given thus far by that contributor.

Ran Coble is executive director of the N. C. Center for Public Policy Research.

Thus, campaign finance reports in North Carolina disclose to the voters where a candidate's financial support is coming from, before the voters have to make decisions in the primary and before the general election.

Our North Carolina law also serves the goal of *enhancing participation* in the elections process by a large number of citizens, in that our law says that no one contributor can give more than $4,000 per candidate per election. All of this information on contributions and expenditures is considered a public record, and thus anyone can walk into the State Board of Elections' Campaign Reporting Office and ask to see it.

Comparison of the N.C. Law with Other State Laws[2]

Over the past year, part of the Center's research on campaign finance has been devoted to comparing N.C.'s law with those of the other 49 states. We have analyzed those laws and sent a written copy of our analysis back to each state to let each state verify that we interpreted its law correctly. All in all, I think we would conclude that the N.C. law is a little better than average among the states.

There are several ways that North Carolina is like most other states. In all 50 states, individuals may contribute to campaigns, and campaign finance reports are public records. Like the majority of states, we limit the size of the contribution any one person can give. Here, the limit is $4,000.[3] In most of these states, the limit is less than $4,000; a few have a limit of $1,000 or less.

North Carolina is in a minority of states regarding other points. We are one of 20 states that prohibit contributions by corporations, and one of only eight that prohibit contributions by labor unions. But prohibitions don't necessarily speak to enforcement. For example, in Louisiana, Gov. Edwin Edwards' response to charges that he had received illegal *corporate* contributions was, "It is illegal for them to *give* but not for me to *receive*." It turned out he was right.[4]

The 1985-86 General Assembly did consider a bill that would have allowed contributions by corporations.[5] Both the Republican Governor and Democratic Speaker of the House opposed the bill, however, so it died in the House of Representatives.

Seven states allow either a state tax *deduction or credit* for a contribution to a candidate. The idea behind allowing the tax deduction was to encourage citizens to participate in campaigns, even if in a small way. North Carolina allows a tax *deduction*,

"Politics has got so expensive that it takes lots of money to even get beat with."

—Will Rogers

but the maximum is only $25. Finally, only 21 states, including North Carolina, have some system of public financing of campaigns. In our system there are two funds to which taxpayers may contribute. First, a taxpayer can choose to have $1 of his or her taxes to go into what is called the State Campaign Fund.[6] This fund is distributed to the Democratic and Republican parties according to how many people are registered as Democrats or Republicans. In 1987, only 14 percent of the taxpayers exercised this option, but that much involvement sent $553,554 into the fund.

Second, a taxpayer may contribute a portion or all of his or her state income tax refund to the N.C. Candidates' Financing Fund. This fund was established in 1988 and provides public financing of campaigns for Council of State offices in exchange for candidates agreeing to limit campaign expenditures.[7] In 1988, taxpayers contributed $17,434 to the Candidates' Fund.

Criticisms of the North Carolina Law

Our research shows that N.C.'s law is a little better than the average state law in terms of being comprehensive and reasonable. And, the Campaign Reporting Office staff report that they get about 90 percent compliance by all candidates or committees subject to the law. Even so, our interviews with candidates, election officials, news reporters, and citizens across the state uncovered three criticisms of our law.

First, all the campaign reports aren't filed in one place in North Carolina. Campaign reports on legislative races in *single*-county districts are only filed at the county level, *not* with the State Board of Elections. Reports on legislative races from *multi*-county districts are filed with the State Board in Raleigh. To see *all* the campaign finance reports, you'd have to travel to 16 different counties, from Henderson County in the mountains to Onslow

The Cost of Running for Statewide Office in North Carolina: Total Expenditures for 1984 Statewide Races

Candidates on November Ballot	Contributions	Loans	Expenditures
A. Governor			
James G. Martin (R) *	$ 2,984,544.17	$ 58,000.00	$ 2,935,175.86
Rufus Edmisten (D)	3,955,207.56	423,100.00	4,453,198.21
B. Lieutenant Governor			
Robert B. Jordan, III (D) *	1,281,615.71	254,000.00	1,544,727.44
John H. Carrington (R)	183,289.85	241,657.70	421,800.59
C. Attorney General			
Lacy Thornburg (D) *	376,172.44	-0-	365,404.25
Allen C. Foster (R)	11,385.00	15,227.16	26,291.71
D. Insurance Commissioner			
James E. Long (D) *	337,102.89	11,868.70	292,220.30
Richard T. Morgan (R)	2,225.00	1,000.00	3,224.95
E. Labor Commissioner			
John C. Brooks (D) *	24,105.57	11,000.00	34,758.03
Margaret Plemmons (R)	4,159.06	-0-	4,627.25
F. Secretary of State			
Thad Eure (D) *	9,141.52	-0-	9,034.75
Patric Dorsey (R)	5,054.97	-0-	5,505.23
G. Agriculture Commissioner			
James A. Graham (D) *	69,138.05	-0-	39,422.54
Leo Tew (R)	1,855.00	320.00	2,179.42
H. State Auditor			
Edward Renfrow (D) *	62,426.94	-0-	56,683.04
James Eldon Hicks (R)	7,626.21	4,884.70	7,626.21
I. Superintendent of Public Instruction			
Craig Phillips (D) *	24,806.60	-0-	18,930.22
Gene S. Baker (R)	11,273.50	-0-	10,862.88
J. State Treasurer			
Harlan E. Boyles (D) *	4,552.00	-0-	3,556.36

Source: N.C. Center analysis of the records at the Campaign Reporting Office of the N.C. State Board of Elections, as of December 31, 1984. Amounts shown do *not* include changes from amended campaign reports filed after that date.

* Denotes winners of elections.

County down east.[8]

Second, our law doesn't require the campaign finance reports to list the occupation or business affiliation of contributors who give more than $100. Eighteen states *do* have such a requirement.

Third, the penalties we have for violating the act may be too weak. For example, if you file a report *late*, the fine is $20 per day. If you don't file a report at all, you can be charged with a misdemeanor and fined up to $1000, jailed for a year, or both. Some believe the problem in enforcement is not weak statutory penalties, but rather insufficient funding for the Campaign Reporting Office. The Campaign Reporting Office has three full-time staff people and a budget (fiscal year 1988-89) of $122,667. Those advocating more funds want the General Assembly to appropriate money to computerize the records and allow the office staff to be more than record keepers. The staff's response to this is that the *press* already serves that analytical function quite well, so why should taxpayers pay for what they already get for free?

Where the Money Comes From in North Carolina Campaigns

Let's switch now to comments about where the money for campaigns in North Carolina comes from, because how a state structures its campaign finance law can either encourage or discourage money from different sources. Five possible sources of funds are discussed below: (1) contributions from the candidate and his or her family; (2) large contributions from a few individuals or families; (3) small contributions from a large number of people; (4) political parties; and (5) political action committees.

Contributions From the Candidate and Family. North Carolina's campaign law allows *unlimited* contributions by a candidate and his or her family members. In 1984, the candidate for statewide office who best exemplified the advantage of personal wealth in North Carolina was Lauch Faircloth. Faircloth spent more than $2 million in his race for the Democratic nomination for governor. Of that amount, 42 percent ($882,000) came from loans to the campaign by Faircloth or members of his family. Since less than 2 percent of these loans were repaid as of the end of 1984, family wealth was obviously a real advantage.

Large Contributions From a Few Individuals. North Carolina law limits contributions from an individual *outside* the candidate's family to $4,000 per candidate per election. In the 1984 governor's race, the candidate who got the largest number of $4,000 contributions was Democratic nominee and former Attorney General Rufus Edmisten. Sixty people gave the maximum $4,000 allowed under the law to Edmisten; another 837 people gave $1,000 or more. Three families other than his own gave $47,668 to his campaign. Johnsie C. Setzer, a former Democratic National Committee member, and two members of her family gave a total of $17,000 to Edmisten. By contrast, only 19 people gave the maximum $4,000 contribution to Governor Martin, and 603 gave $1,000 or more. Like Edmisten, Martin drew large amounts of support from a few families. For example, then-Congressman James Broyhill and nine other members of the Broyhill family gave $24,084 to the Martin campaign.

Small Contributions From a Large Number of People. The original campaign finance laws were designed to reduce the influence of a few wealthy individuals and to encourage more small contributions from a large number of people. The goal was also to enhance competition for elective office. The two parties' nominees for governor in 1984 both demonstrated widespread support. More than 5,000 people (5,056) gave $100 or more to Martin's campaign; more than 7,000 (7,240) people gave $100 or more to Edmisten's campaign. People giving small amounts play a significant role in a campaign. "You need to have the $15-$25 contributors to get people involved," one candidate for governor told us. "But you also have got to have some $4,000 givers too, in order to win."

Political Parties. Our research shows political parties are not significant contributors in North Carolina elections. In both Martin's and Edmisten's campaigns, funds from county party contributions, state party contributions, and publicly financed funds coming from tax checkoffs and going to the parties, all *combined*, amounted to less than 3 percent of each candidate's total contributions.

Political Action Committees. Called PACs, these committees are significant contributors in North Carolina elections, even though they too are limited to giving no more than $4,000 per election. The number of PACs has grown in North Carolina from only 29 in 1974 to 259 in 1984. At the same time, their financial attention seems to be shifting from races for high-level statewide office to legislative races at the district level. In 1984, money from PACs was not a significant factor in either the very expensive Helms-Hunt race for the U.S. Senate or the governor's race. Ninety-five percent of Senator Helms' money came from *individual* contributions, not from PACs; 91 percent of the contributions to Hunt came from individuals. In the governor's race,

only 2.4 percent of the $11 million spent came from political action committees.

The number of PACs is growing and the amount of money contributed by PACs is shifting from statewide races to Congressional and state legislative races. According to Common Cause, PAC contributions to Congressional races nationwide increased *54 percent* from 1983 to 1985. Incumbent members of the U.S. House elected in 1984 received a record 44 percent of their campaign funds from PACs, up from 34 percent in 1980, and 37 percent in 1982, reported Common Cause.[9]

> *"Everybody knows that half the money spent in a political campaign is wasted. The trouble is nobody knows which half."*
>
> *— the late Calif. Rep. Robert W. Crown*

Political action committees are also a growing force in state legislative races in North Carolina. Since 1984, *The Charlotte Observer* has been researching the sources of contributions for state legislative races. In 1984, *The Observer* found that 25 percent of all money raised in legislative races came from political action committees. In 1988, that amount rose to 37 percent of all money raised. The PACs ranking at the top of the spending charts were the N.C. Academy of Trial Lawyers, which gave $77,150 to legislators in 1988, and the N.C. Realtors Association, which gave $61,825. Other PACs ranking among the top 10 givers represented Southern Bell, Carolina Telephone, Duke Power, the N.C. Medical Society, Jefferson Pilot Insurance Company, chiropractors, N.C. Power Company, and Carolina Power & Light Company.

PAC contributions are part of the trend toward the increased cost of campaigning for the N.C. General Assembly. In 1988, lawmakers received more that $2.9 million (from all sources), 18 percent more than in 1986. And the 1988 figure is 87 percent more than the $1.5 million raised in 1984.[10]

PACs give more to incumbents than challengers, thus cutting against one general goal of campaign finance laws—to enhance competition and not lock in incumbents. In 1984, for example: *Incumbent* state legislators received an average contribution of almost $2,800 ($2,792) from PACs, while *challengers* only got about $1,000 ($1,009), and thus, it should be no surprise that eight out of every 10 incumbents seeking re-election to the legislature in 1984 won. PACs also ensure that they will give to a winner by giving to both Republican and Democratic nominees.

This movement of PAC giving down toward state legislative races makes real political sense. You can get probably more bang for your buck there. For example, utility companies are regulated predominantly at the state level; the doctors, lawyers, and chiropractors are licensed or regulated at the state level; the educators' salaries, for the most part, are set by the state legislature; and a beer wholesaler's whole economic life revolves around the legislature's taxing powers over alcoholic beverages and laws setting drinking ages.

Conclusion

The Center conducted this research because we believe a strong public disclosure law governing giving and spending in political campaigns will go further than almost any other public policy to encourage integrity and openness in state government in North Carolina.

FOOTNOTES

[1] Chapter 1272 of the 1973 Session Laws (2nd Session, 1974), now codified as N.C.G.S. Chapter 163, Article 22A. All subsequent provisions of the N.C. law mentioned in the article can be found in G.S. 163-278.6 to 163-278.40I.

[2] The data is from responses to surveys of agencies administering the campaign finance laws in all 50 states.

[3] North Carolina's $4,000 limit is in G.S. 163-278.13, which allows no individual or political committee contribution to any candidate or other political committee in excess of $4,000 for an election; and allows no candidate or political committee to accept or solicit a contribution in excess of $4,000 for an election. In addition, the statute provides an exemption *to the candidate and his immediate family* and to the state, district, and county executive committee of any political party recognized under G.S. 163-96. The statute goes on to define an "election" as any primary, second primary, or general election in which the candidate may be involved, whether or not the candidate is opposed.

[4] As reported in *State Policy Reports*, Vol. 3, Issue 6, March 1985, p. 27.

[5] Considered as an amendment to a bill making various technical changes in election laws, this proposal passed the N.C. Senate 39-7 on July 2, 1985, but died on the House floor by a 6-87 vote on July 5, 1985.

[6] G.S. Chapter 163, Article 22B (163-278.41 to 163-278.45).

[7] Chapter 1063 of the 1987 Session Laws (2nd Session, 1988), now codified as N.C.G.S. Chapter 163, Article 22C (163-278.46 to 163-278.57).

[8] The 16 counties are: Burke, Columbus, Cumberland,

Durham, Forsyth, Guilford, Henderson, Iredell, Mecklenburg, Moore, New Hanover, Onslow, Randolph, Rowan, Wake, and Wayne. These 16 counties are single county districts for either House or Senate seats. Four other counties are also single county districts for either judicial or prosecutorial districts (Alamance, Buncombe, Gaston, and Pitt). Finally, 40 counties (all with a population of 50,000 or more, which includes all 20 counties named above) operate campaign reporting offices for elections to *county-level* positions.

[9]*Common Cause Magazine*, March/April 1986, p. 41 and May/June 1985, p. 39. Also, see *Congressional Quarterly*, June 8, 1985, p. 1117.

[10]The Center is grateful for the continuing cooperation of *The Charlotte Observer* and its partnership in conducting research on campaign financing. *The Charlotte Observer* originally published its research on contributions in state legislative races in installments in its June 16-20, 1985 editions. The research on the 1988 legislative races was published April 9, 1989, p.1.

Political Polling: Gauging the Political Winds

by J. Barlow Herget

Political polling has come to play a prominent role in elections. Many North Carolina candidates turn to national firms. In addition, major in-state pollsters and more than 10 Tar Heel companies are in the business. Meanwhile, various polling methods have evolved. Seven aspects of a poll demand the attention of journalists and voters — including the population surveyed, the wording of the questions, and the sample size.

WHAT ROLES HAVE POLLS come to play in politics? How advanced is the science of polling — the questions themselves, the margin of error, the process of selecting those to be interviewed? How do techniques vary among the pollsters? Can polls be relied upon to predict the results of elections?

"I look to see if a poll is consistent with my gut reaction," says V. B. "Hawk" Johnson, long active in Democratic Party politics. "If it's a wide variance with what my gut tells me, I know there may be a problem with it."

David Flaherty, former state Republican Party chairman, and many others echo Johnson's skepticism. "In 1982, every poll we had two weeks before the election showed us winning, and we got creamed," says Flaherty. "It can turn around in two days."

Polling Comes of Age

Today, party pros might be cautious about polling results. But at the same time, many consider pollsters and campaign consultants the wise men of American politics. Why such a contradiction? As early as the 1824 presidential campaign, a Delaware poll predicted Andrew Jackson would beat John Quincy Adams. Even though the poll picked the wrong man (Jackson won four years later), the polling business had a foothold.

Polling was mostly campaign folderol until the 1920s when *The Literary Digest*, a popular magazine

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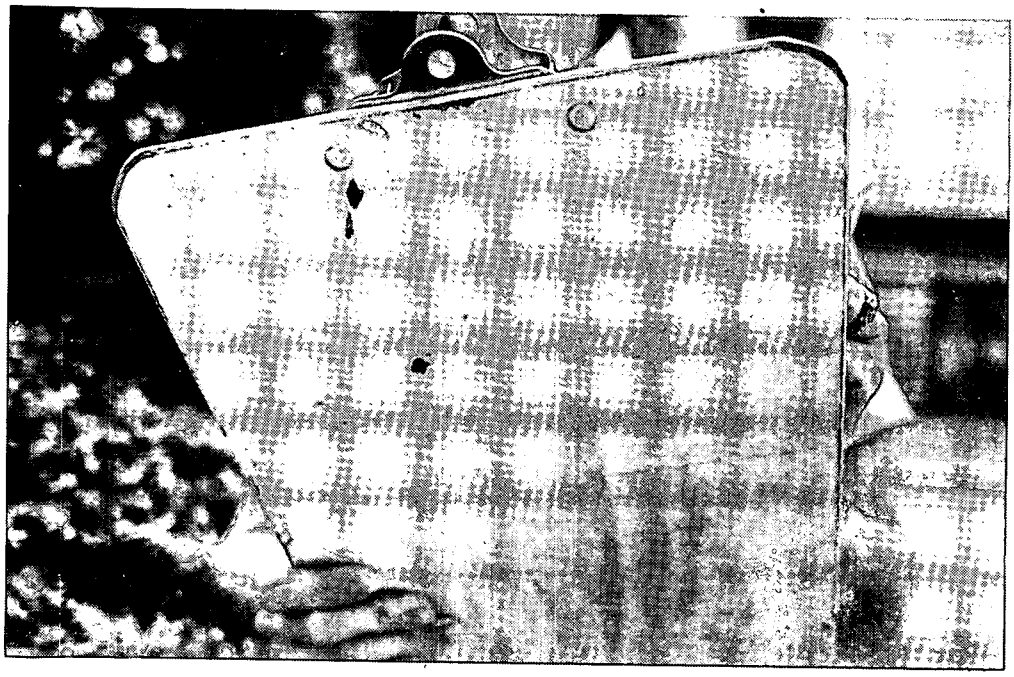

of the era, began predicting election results. The magazine canvassed prospective readers, a technique far removed from today's random sampling and screening of respondents for such factors as "likely voters." In 1936, *The Literary Digest* canvassed 10 million prospective readers on the Franklin Roosevelt-Alf Landon race and predicted a Landon upset. The magazine never recovered from the Roosevelt landslide, but political polling, ironically, not only survived but became serious business.

In 1932, George Gallup helped his mother-in-law run for office in Iowa, and with others, including Elmo Roper, began bringing a methodology to public opinion research. In 1936, Gallup and other pollsters achieved widespread recognition by calling the Roosevelt election right when *The Literary Digest* was wrong, thus gaining respect for their "scientific" approach. Gallup overcame several notable errors — such as predicting Thomas Dewey would beat Harry Truman — to reach the pinnacle of success long before his death in 1984.

A brood of hotshot newcomers are breaking their political necks to take Gallup's place at the head of the pecking order. But there is significant difference between Gallup and the new polling whiz kids on the American scene. Many of the best known upstarts now work directly *for candidates*, not only as pollsters but as consultants for overall campaign strategy. Some of the early pollsters worked directly for candidates (e.g., Roper for Jacob Javits, Lou Harris for John Kennedy), but not until recent years did so many pollsters become integral to the entire campaign operation. "Pollsters pretty much work for one party or another," says Walter DeVries, a former pollster. "You want to be comfortable ideologically. Often you're giving advice, and your reputation goes with how the campaign goes."

The major national Republican pollsters, according to North Carolina Republican pollster Brad Hays, are Richard Wirthlin of Santa Ana, Calif., Lance Tarrance of Houston, Arthur Finkelstein of Washington, D.C., and Robert Teeter of Detroit. Wirthlin moved his family to Washington because of the demands of the Reagan White House.

A threesome has emerged among the leading Democrats. Patrick Caddell rode the Jimmy Carter presidency to national prominence and recently has worked for Gary Hart, among others. Peter Hart polled for Walter Mondale. William Hamilton, whose company worked for John Glenn, also holds major national stature.

Some of these national pollsters call for a "continuing political campaign," as Patrick Caddell puts it, using polls to help officeholders overcome voter alienation and govern more effectively. In *The Permanent Campaign*, an analysis of the new breed of political consultants, Sidney Blumenthal links the increasing power of pollsters/consultants to the era of television and the decline of old-style political machines.[1] "A candidate seeking office had to go to a place other than party headquarters to secure the means to get elected," writes Blumenthal. "The parties were superseded by the consultants."

Pollsters are fixed in the landscape of North Caro-

lina politics as well. In the 1984 U.S. Senate campaign, James B. Hunt Jr. employed Peter Hart, while Jesse Helms used Arthur Finkelstein. The top three finishers in the 1984 Democratic gubernatorial primary all had national agencies. Rufus Edmisten used Caddell and Joseph Napolitan of Washington, D.C.; Eddie Knox worked with DeVries (a national and "state" pollster); and D. M. "Lauch" Faircloth contracted with Hamilton and Associates of Chevy Chase, Md. In addition, state Sen. Robert B. Jordan III (D-Montgomery) hired Peter Hart's company in capturing the 1984 Democratic nomination for lieutenant governor.

Public opinion research, which includes but goes beyond polling on specific political races, is becoming a cottage industry in North Carolina. Compiling a complete list of pollsters is like trying to find all the dandelions in a yard. Some, like Hays, work for particular candidates. Others, like The Observer Poll and The Carolina Poll, conducted at the University of North Carolina at Chapel Hill School of Journalism, have no affiliation to party or candidate. Another major pollster in the state, Long Marketing Inc., operates its state poll on a subscription basis, and is said to be associated with conservative candidates. Numerous other North Carolina companies, individuals, or agencies conduct political or opinion polls on a regular basis as well.

DeVries notes that the news media's involvement in political polling has increased in recent years. *The Charlotte Observer*, the *Greensboro News & Record*, *The News and Observer* of Raleigh, and the *Winston-Salem Journal*, for example, regularly conduct polls during election years. And these newspapers sometimes co-sponsor polls with television stations which have also gotten into the polling business, such as WBTV in Charlotte, WRAL in Raleigh, and WTVD in Durham.

Conclusion

V. O. Key, the political scientist who broke much new ground in political analysis, described the old-style electorate like this: "It judges retrospectively; it commands prospectively insofar as it expresses either approval or disapproval of that which as happened before."[2]

Political consultants who double as pollsters have changed that classic depiction of the electorate, perhaps forever. Their surveys of public mood can shape the issues as much as they reflect them. "The new political operators have hastened the weakening of the old-style political machines by identifying discontent and appealing to it, in order to create swing voters who can provide the margin of victory," writes Sidney Blumenthal.[3]

The pollsters working in North Carolina have a major impact on elections — shaping campaign strategy, generating news for the press, affecting how campaign contributors perceive the frontrunners, and perhaps most importantly, helping to shape the mood of the electorate. "In using polling data prior to an election, newspaper publishers should be sensitive that they may be creating news rather than reporting news," says Rodney Maddox, a former campaign manager.

Despite the growing power of pollsters, political savants still subscribe to that time-worn phrase, "If you live by the polls, you die by the polls." Or in modern jargon, don't rely entirely on pollsters' computer printouts. "They're not a precision instrument like a thermometer," says Ferrel Guillory, an editor at *The News and Observer* of Raleigh. "They can pick up trends and movements."

Raleigh attorney John T. Bode, campaign coordinator for state Sen. Robert B. Jordan III in his successful race for the 1984 Democratic nomination for lieutenant governor, put it this way. Polls "tend to confirm your gut feelings. They don't tell you a whole lot you don't already know." But Bode finds them critical to overall campaign strategy and very helpful at the outset in determining voter issues and where a candidate needs to spend his time.

Political analysts and campaign operators view polls as essential to their work. Yet many view them with caution, both for their power over the electorate and for their imprecision. "Pollster and client prejudice not uncommonly shape a poll's results even before the data is collected," writes Larry Sabato in *The Rise of Political Consultants*. "The wording of questions is unavoidably prejudiced, sometimes culturally, always attitudinally.[4]

Polls, continues Sabato, are "almost certain to be flawed in at least a couple of respects. The sooner this is accepted and understood by candidates, press, and public, the healthier and more realistic will be the perceptions of the polling consultant's role in the election campaign and beyond."

The possibilities for misusing polls, ironically, seem to be increasing even as the technology keeps improving. In North Carolina, as in the nation, polls have taken on a fundamental new role in politics. "As political parties have weakened, polls have stepped in with new technology to replace the intelligence and feedback once provided by precinct captains," says Guillory.

In the end, polls are likely to be judged by their

respective track records. The enlightened voter, meanwhile, will remember that a poll is only a snapshot in time of how the electorate is posed on a particular day. And a voter is advised to remember that tomorrow is another day.

FOOTNOTES

[1]Sidney Blumenthal, *The Permanent Campaign*, New York: Simon and Schuster, 1982, p. 18.

[2]Cited in Blumenthal, p. 333.

[3]Blumenthal, p. 300.

[4]Larry J. Sabato, *The Rise of Political Consultants*, New York: Basic Books Inc., 1981, p. 104.

What to Look for in a Good Poll: Guidelines for Voters and Reporters

by J. Barlow Herget

What should a journalist look for in a good poll? And how should a thoughtful citizen look behind the headlines and the gross percentage figures that make up the "horse race" factor in elections?

The National Council on Public Polls publishes guidelines for its members and political reporters. The council considers it essential that seven types of data, discussed below, accompany news stories on polls.

The discussion below is based on the National Council on Public Polls guidelines, interviews with the leading pollsters working in North Carolina, and the results of a North Carolina Center for Public Policy Research questionnaire. A poll that doesn't provide information on each of these seven criteria could be considered suspect. Yet even with such guidelines, infinite numbers of variables exist that can skew a survey, as the pollsters themselves testify.

1. Who sponsored the poll? A good news report will do more than just name the polling operation. It should also make clear who paid for the poll — a specific candidate, the newspaper reporting the poll, or some other organization. This helps the reader judge the degree of possible bias and news "generation." A reporter should also provide some background information on the philosophy and technique of the particular pollster. A poll done for a news agency is not necessarily more free from bias than a poll done for a candidate.

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2. When was the polling done? The timing of the poll can affect the results. A candidate, for example, may take a poll immediately *after* a big media blitz, and then try to show high standing in the polls. The percentage points might fall, however, after the immediate impact of the ad campaign fades. Similarly, if a candidate has just made a major public mistake — or a major coup — his or her standing could shoot down (or up) for a short period before settling out again.

The media not only have a responsibility to caution readers about when polls were taken but also should examine the timing when they report on poll results. Campaigns, quite naturally, release the results most advantageous to their position. Are there poll results that campaigns do not release? Why? Patterns of *when* campaigns release poll results make good story material for industrious reporters. News releases on the latest poll might well be pure propaganda.

3. How were the interviews conducted — by telephone, mail, or in-person? The major pollsters disagree on the best interview method. Walter DeVries considers mail surveys unwieldy and an anachronism while Bill Long lives by them. Michael Carmichael, the coordinator of polls for Rufus Edmisten during the 1984 primary season, puts considerable faith in pollster Joe Napolitan's in-person interviews but concedes they are the most expensive.

Expense is the most important reason that the telephone poll has become the industry standard. Using telephones, a "baseline" interview will last usually 30 minutes, a "tracking" poll is much shorter.

Charlotte pollster Brad Hays offers some street wisdom on the subject. "You have some quality control with telephone interviews and you don't worry about the 'bad dog theory' or the 'curb syndrome'."

"The bad dog theory and curb syndrome?" we asked.

"Yeah, that's when your interviewer skips a designated house because there's a bad dog on the front porch or you get bad data because the interviewer, tired after a hot morning, sits on the curb and fills out the forms himself."

DeVries, Hays, and North Carolina pollster Phil Meyer also believe people are more willing to tell an emotionless voice over the phone the truth about private thoughts than reveal so much to a real live breathing person sitting across from them in the living room. As for missing those people who do not have telephones — nine percent of the households in North Carolina don't — most pollsters dismiss the worry by saying those persons are also the least likely to vote. Random digit dialing, the system employed by many pollsters, picks up unlisted numbers.

4. What population was surveyed? The science of random sampling has become much more sophisticated in recent years. The process of selecting interviewees and compiling their responses has vastly improved through the use of computers. Still, pollsters make critical judgments in whether and how they "screen" respondents. Specifically, does the pollster screen whether the respondents are registered voters, members of a particular party, voters in the last comparable election, and likely to vote in the upcoming election?

Reporters need to know the philosophy of the major pollsters on screening and may need to prove any twists in the screening of a specific poll. In addition, pointing out the difficulties of proper screening is valuable.

For example, how do you know if respondents are registered voters? You ask them and hope they don't lie. To test whether respondents are indeed telling the truth, most surveys use a battery of screening questions to see if the interviewee is in fact a registered voter and more importantly, a likely voter. Reporters and the electorate need to know the quality of screening questions in a particular survey. Without such analysis, accepting a poll's results is blind faith.

5. What is the size of the sample? The major pollsters use varying sizes for a statewide poll in North Carolina. Most actually survey from 800 to 1,200, but many base their results on only a portion of the total sample. In other words, some pollsters screen out some of the responses.

Thus, reporting on the sample size is important, but not enough. In general numbers, pollsters agree that for a state the size of North Carolina, the results must be based on at least 600 respondents in order to give accurate data with a margin of error of 3-5 percent. But go one step further. How did the pollster decide on these 600 respondents?

6. How big are the sub-groups in the sample? The respondents must represent an accurate demographic spread among the respondents. Various segments of the population — by sex, race, age, urban/rural, location, etc. — should be represented approximately according to their percentage of registered voters. Are important sub-groups, such as blacks and women, underrepresented? In a poll of 600 people, if there are three too few blacks, the survey could miss a lot of black voters. Also, pollsters have difficulty in figuring voter sentiment when groups such as blacks tend to vote in blocs, sometimes for surprised candidates who are selected by a black voter organization the night before election day.

A polling analyst needs to dig for percentages on

the sub-groups — the number in the total sample and results based only on specific sub-groups. With such information, the poll becomes much more meaningful.

7. How are the questions worded? After all the scientific issues are proved — sample size, sub-groups, timing, etc. — the most important issue of all remains fuzzy at best. The science of how to word questions has not even begun to achieve the sophistication of the sampling process, says Duke University professor John McConahay. McConahay has worked for Jeffrey MacDonald, John DeLorean, and other defendants in major trials to help reveal through polling methods how prospective jurors might feel — possible biases, etc. "The science of sampling is very advanced, and very expensive," says McConahay. "But asking the right questions is not at all advanced. It remains the soft part of polling."

No one has a fixed proven formula other than common sense objectivity. The timing of a key question can also alter the response. For example, if the interviewer early on pops the big question — "If the election were held today, would you vote for X or Y?" — the respondent is less likely to be decisive than if he or she first has a chance to answer other questions on issues and likes/dislikes.

Questions might also shape opinions that a person never knew she or he had. A poll, for example, could ask, "Do you think education is the most important issue facing candidates for governor?" A respondent might have never thought that to be the case until answering "yes." Hence, the question itself tends to reinforce the biases of the poll's designer.

Most questions ask respondents to select a choice within a range of possible responses. If for instance, a pollster is screening for registered voters, he might ask you to respond on a scale from one to five of your intention of voting in November.

The wording of questions, perhaps more than any of the other six criteria discussed above, demands close scrutiny by the media, and in turn the public. The nature of the survey questions — i.e., the judgments and biases behind the choice of words — can make one a believer in or a skeptic of any poll.

Polling Checklist

If you are a journalist, a news release on a candidate's latest poll might cross your desk near your deadline. Or if you are a concerned voter, you might have to rush through a news account on a recent political poll. If so, maybe the checklist below will help.

Always report (if you are a journalist) or look for (if you are a concerned voter) the following seven points:

1. who paid for the poll;
2. when the polling was done and any events that might have affected the poll results at that time;
3. how the poll was taken — by telephone, mail, or in-person;
4. the population surveyed and screening questions — registered voters, members of a particular party, voters in the last comparable election, and/or persons likely to vote in the upcoming election;
5. the size of the sample (which should be at least 600 for a statewide poll in North Carolina);
6. the treatment of sub-groups in the sampling process — e.g., underrepresentation of women or blacks;
7. the actual wording of the poll's questions and whether the wording was as neutral as possible.

When It Comes to Environmental Politics, Who's Leading Whom?

by Seth Effron

North Carolinians are a particular lot. They want new jobs, new industries, and economic growth. But they don't want to ruin the environment to get them, and in the past few years, the state's citizens have become much more vocal in giving their elected and appointed leaders this message. This upheaval in public sentiment is beginning to have an impact in safeguarding local areas from what residents view as potential polluters—waste treatment facilities, waste repositories, landfills, real estate developments, drainage of wetlands, and the like. How has this trend made itself felt in the halls of government? And will it be a lasting trend?

GOV. JAMES G. MARTIN GLANCED out the window onto a downtown street in Salisbury on a bright fall day in October 1987. The colorful autumn foliage was obscured by the dark political clouds he senses are forming. And what does the Governor see greeting him? Scores of worried—even scared—protesters carrying placards bearing the skull and crossbones and protesting a proposed hazardous waste facility.

But it will take more than any candidate's considerable political skills to solve a potential political problem facing not just the Governor, but any state officeholder. Throughout the state, and particularly in the Piedmont, citizens have organized in huge numbers to voice concerns on environmental issues. More than 15,000 people attended a public meeting in Lexington to protest the possibility of a hazardous waste disposal site in the county. They filled a high school auditorium, spilled over into the cafeteria and classrooms, and packed the football stadium.

What these officeholders are seeing—and what Democratic and Republican politicians alike are taking serious note of—is that environmental issues

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are moving up on the priorities voters take with them into the voting booths.

Public Support Is Growing

Renewed emphasis on environmental protection reflects an official realization of what the public wants. Since the 1970s, voters throughout the nation—and in North Carolina—have repeatedly expressed strong support for strict stewardship of the environment, even when faced with tradeoffs that might result in raising taxes or slowing economic development.

Consider the following:

- 53 percent nationally oppose relaxing environmental controls to allow more economic growth and development, according to a 1987 Gallup Organization poll, while 38 percent favor relaxing controls and 9 percent don't know.[1]
- 59 percent nationally support increasing spending on improving and protecting the environment while just 4 percent would cut spending, 34 percent would keep it the same, and 3 percent said they didn't know.[2]
- 47.4 percent of North Carolinians say environmental protection laws aren't strong enough, 37.8 percent say they're about right, 2.6 percent say they're too strong, and 12.2 percent said they didn't know, according to a 1983 poll by the state Office of Budget and Management.[3]
- The number of people in the state saying environmental protection is overemphasized at the expense of economic growth has dropped over time—reflecting more concern for environmental issues. In 1982, 18.5 percent of those surveyed by the state said environmental protection is overemphasized at the expense of economic growth. Two years later, that share dropped to 12.2 percent.[4]
- Nearly two thirds—64 percent—of the state's citizens agreed with the statement that "protecting the environment is so important that requirements and standards cannot be too high, and continuing environmental improvements must be made, regardless of cost," according to a Friends of the Earth Foundation poll in 1983. (The New York Times and CBS News asked the same question in a national poll, and 58 percent of the respondents agreed with it.) The Friends of the Earth poll in North Carolina also found that the respondents identified "controlling hazardous waste" as the biggest environmental problem facing the state.[5]

This concern for the environment in North Carolina mirrors a national trend, according to Neal Peirce, contributing editor of the *National Journal*. "If you want solid proof that the environment is now rivaling the economy and employment as central concerns of the American people, check out what the states are doing," says Peirce.[6] The states are beefing up their environmental protection programs across the board. They have been spurred by some of the same factors at work in North Carolina. First, the awareness of hazardous waste problems has prompted more demands for environmental action. Second, notes Peirce, "The anti-environmentalism of the early Reagan years may have had a backlash," prodding politicians and state policymakers to take on polluters. And third, federal agencies and laws have "handed enforcement off to the states," leaving state officials with the job of environmental protection.

North Carolina legislators have begun to sense the increased public sentiment in favor of environmental protection issues. At the close of the 1987 session of the General Assembly, N.C. Sierra Club and Conservation Council of North Carolina lobbyist Bill Holman declared it "the best session for environmental legislation since the 1973-74 session." It was that biennium that many environmental observers consider a landmark period for environmental protection in North Carolina. During the 1973 regular session and the 1974 short session, the General Assembly adopted major environmental bills, including legislation to control sedimentation runoff at construction sites, and the Coastal Area Management Act.[7]

A Good Legislative Session for Environmentalists in 1987

When the gavels hammered the adjournment of the 1987 session, several issues dear to the hearts of environmentalists, and which had been repeatedly defeated in previous sessions over the last decade, had been voted into law. The list included legislation:

- Banning detergents containing phosphates that encourage algae growth in rivers and streams and endanger other fish and plant life;[8]
- Requiring responsible parties to clean up their hazardous waste dumps;[9]
- Limiting the size of commercial hazardous waste treatment plants by limiting the amount of wastewater discharge,[10] a measure aimed specifically at stopping construction of a hazardous waste facility by GSX Corp. on the Lumber River in Robeson County;
- And prohibiting the shallow burial of low-level radioactive wastes.[11]

Not everyone agrees that all these bills are protective of the environment, of course. The Martin admini-

stration considered the phosphate ban as a "window dressing" bill, and the bill limiting wastewater discharge from hazardous waste treatment plants to be anti-environmental bills, says Ernest A. Carl, Martin's deputy secretary of natural resources and community development. Carl says the administration estimated that phosphates would be reduced only about 5 percent under the new law, while the Martin administration would have preferred to require municipalities to extract the phosphate at wastewater treatment plants. Ironically, Carl's boss, and Martin's former Secretary of Natural Resources and Community Development, Tommy Rhodes, supported the phosphate ban when he was in the General Assembly, but switched positions when he took the cabinet post.

Carl also said the administration considered the anti-GSX facility bill to be harmful to the environment, because it would stop or delay a hazardous waste facility that could help North Carolina clean up its wastes. "Some of these bills are just window-dressing bills," contends Carl.

In earlier years, Holman noted, "all environmental bills were viewed with suspicion. Now, all legislators are calling themselves conservationists and environmentalists." Holman credits many of the 1987 victories to a new attitude in the Senate, where Lieutenant Governor Robert B. Jordan III named a Committee on the Environment and endorsed bills calling for the phosphate detergent ban and for a cleanup of abandoned waste dumps.

The 1987 success was a marked change from the session a decade ago when environmentalists lamented the lack of support for environmental legislation. In 1973 and 1975, the General Assembly passed legislation restricting state environmental quality standards to the level of those of the federal government, and in 1977 a "bottle" bill to control litter from beverage containers was defeated. "We haven't passed any environmental control legislation. We've passed relaxing legislation," fumed then-state Sen. Cass Ballenger (R-Catawba),[12] now a Congressman from the 10th Congressional District. Steve Meehan, then a spokesman for the Department of Natural and Economic Resources, lamented: "It would be more difficult to pass some of the same laws we've got now if it were coming up this time (1977)."

For years, state Sen. Ollie Harris (D-Cleveland) was a leader among pro-business legislators who successfully fought much of the legislation supported by environmental groups. He opposed much of the environmental legislation passed during the 1987 session. Harris, who says he's not anti-environment but feels people need to know the cost of environmental legislation, says the public is more aware of environmental issues now. "I think it has become a big issue because of things that have happened and the publicity of environmental problems," he says. "I think that the general public is more sensitive."

> "In wildness is the preservation of the world."
>
> *–Henry David Thoreau*

Internationally, the disasters at the Chernobyl nuclear power plant in the Soviet Union and the chemical tragedy in Bhopal, India have aroused worldwide attention. Nationally, the accident at the Three Mile Island nuclear plant in Pennsylvania and the Love Canal waste dump in New York have stirred the fears of environmental accidents. Closer to home, the PCB dumping along North Carolina roadsides in 1978, fishkills and diseased shellfish in the Pamlico Sound, reports of abnormal cancer deaths in the Chatham County community of Bynum, and the explosion of a hazardous waste facility in Durham have stirred up more than headlines. In North Carolina, the issues of hazardous waste and low-level radioactive waste disposal are no longer abstract problems to be solved in the distant future. "The general public . . . has become aware of the dangers, and there are dangers," Harris says.

John Runkle, president of the North Carolina League of Conservation Voters, believes one reason for the 1987 successes is the increased public attention. "It doesn't take many public meetings where 4,000 or 15,000 people show up . . . for politicians to line up on that side," Runkle says. And the public is acutely aware of environmental risks. "People understand if they don't make a fuss, they're going to get it," such as hazardous and low-level radioactive waste treatment and storage facilities for which the state is seeking locations. "The environmental problems have reached a point in many areas where much of North Carolina will be completely degraded," he adds.

Environmentalists Becoming a Political Force

Increasingly, local groups opposed to an environmentally-sensitive development project or a waste

Gov. Jim Martin

treatment site are able to delay decisions, force changes in plans, or sometimes to stop projects. The PCB landfill in Warren County, established in 1980, was an early case, when the state built the landfill despite the protests (and the arrests of 523 opponents) of local residents. Since then, grassroots citizen organizations and spontaneous outpourings of opposition—such as the hordes that turned out in Lexington to protest a treatment facility last October—have become more involved.

The Institute of Southern Studies in Durham commented on the success of these groups recently. "In a remarkable number of cases, local citizens groups—even those in relatively isolated rural areas—have won significant victories against impressive odds. They have forced state policy makers to change regulations, enact new laws, and enforce existing environmental standards. They have built ad hoc coalitions and enduring organizations, occasionally across race lines, more often across class and cultural divisions within the white community. And they have moved from crisis-oriented, hit-and-miss organizing to sophisticated political lobbying and effective electoral activism."[13]

Martin administration officials strongly object to characterizing these public protests as pro-environmental. On the contrary, they contend, the mass protests and the opposition to waste treatment facilities are anti-environmental, because they mean delays in constructing facilities to clean up environmental problems. "All these protests were starkly anti-environmental," says Carl. "In each case the material to be handled already exists and is being processed in a dispersed, makeshift and dangerous way. They were simple 'not-in-my-backyard' outpourings of emotion and fear."

The Governor himself argues it's a matter of semantics. "There's a psychology that develops around something called hazardous waste," the Governor said at a December 1, 1987 press conference. "Suppose instead of the terminology having been settled on several years ago of calling it hazardous waste, suppose it had been named recycled industrial by-products. Would you be any more concerned as an individual, would you be any more afraid of that than industrial products? Would you be any more concerned about the paint thinner that goes to a recycled by-products factory, than you are about the paint thinner in your own garage? I don't know. I think there's a psychology that's generated about it. The term hazardous waste leads everybody, all of us, to think of the worst possible ingredients. And that's not really what hazardous waste is."

Environmentalists, however, say the record is clear. Many—not all—hazardous wastes are dangerous, and some are lethal. The government has an obligation to see to it that they are treated properly to protect the public health as well as the natural environment, they say.

The standoff between environmentalists and staff officials illustrate one particularly tough part of solving environmental issues—both sides want to have it both ways. That is, environmental groups want the environment cleaned up, but they don't want facilities to do that built in their neighborhoods. And state officials want to construct and operate facilities to clean up various environmental problems, but they don't want the public to be concerned about where those facilities are put or how they are operated.

Holman, the principal environmental lobbyist (and the 5th most effective, according to the 1987 survey of legislators, lobbyists, and capital news correspondents by the N.C. Center for Public Policy Research), says the grassroots opposition has helped create legislative successes. "I basically think the legislature is catching up with public opinion," notes Holman. "More and more legislators are hearing from their constituents about environmental problems and are becoming more responsive to those concerns."

Holman is reluctant to say there's a trend in environmentalists' favor. "It's too early to tell if it's a trend," he cautions. "It will depend on who is the next lieutenant governor. I do think the environmental issues are getting more debate, and they are starting to pass not only the House but also the Senate. In the past, the Senate was rather hostile to environmental legislation."

Dangerous Political Ground

Recent N.C. campaigns show how environmental issues can be hazardous to political health. Bill Hendon is one who knows. The environment—particularly the disposal of radioactive waste—may have been the decisive issue in the 1986 campaign in the 11th Con-

Bill Holman

gressional District race between incumbent Republican Hendon and Democratic challenger Jamie Clarke. The two had traded terms in the seat since 1982. In early 1986, federal Energy Department officials released a list of potential sites for an eastern high-level radioactive waste repository. High-level radioactive waste is spent fuel from nuclear power plants, and the federal government was eyeing a site in the western part of North Carolina, among other states.

Residents mobilized to fight it. Even though the federal government announced it was going to delay the search for an eastern site (a decision that was rescinded after the 1986 election), Clarke focused on the radioactive waste disposal issue and other environmental issues to defeat Hendon. "It was the issue in the 1986 campaign," says Terry Garren, Clarke's administrative aide, who ran the 1986 campaign. Garren believes that concerns over the fragile mountain environment in an area heavily dependent on tourism hurt Hendon. "People saw a clear and present danger. And environmental concerns are growing in our area," Garren says. When the voting was over, Clarke was back in, and Hendon was out of a job.

Making Political Hay

As Governor Martin takes the environmental issue on the campaign trail, his rhetoric is partly meant to assure residents that he believes a hazardous waste disposal site is safe and will dispose of many common household substances. But it also gives the Governor a chance to blast away at the Democrats and the legislature. At the celebration of the 100th anniversary of Cannon Mills in Kannapolis, for instance, Martin criticized Democrats for "pulling a fast one" when it passed the anti-GSX legislation.[14] And earlier, Martin criticized Democrats for proposing cuts in state environmental budgets, and aides said those cuts might cause "severe havoc" in the state environmental protection programs.

In his statements, Martin seeks to deflect concern about the location of the treatment facility away from his administration, which ultimately will make the siting decision, and onto his favorite whipping boy—the legislature. Martin said it was an "arbitrary" and "political decision" to set an abnormally high wastewater discharge dilution ratio in the GSX bill. Martin said the law, backed by statewide environmental organizations, was engineered by Democratic legislators from the eastern part of the state to keep sites out of their districts. "They [Democratic leaders] pulled a fast one there. It wasn't a sound way to base the decision. It was a political decision," Martin said.

Martin's advisors believe the Governor, with his science background (a doctorate in chemistry), has a good environmental record since taking office. In fact, agrees Holman, environmental management *has* improved under Martin. "The Division of Environmental Management has been more aggressive since Governor Martin was elected," says Holman. "Civil actions against polluters are up, and the water quality section is more active that it has been. That is truly one of the positive things that has happened at NRCD."

While the Governor did not have much luck with the legislature, his aides hand out a long list of Martin initiatives on the environment. Under his administration, they say, the EMC has limited the amount of phosphates that municipal water treatment plants can put into nutrient sensitive watersheds; the EMC has increased enforcement actions by 250 percent over the previous administration; the EMC has beefed up water supply classifications to protect watersheds; and the EMC has adopted the state's first coastal stormwater runoff regulations. In addition, the Governor has strongly recommended a number of pro-environmental actions, not all of which the legislature has funded. Martin sought a large increase in staff to oversee leaking fuel tank problems, but the legislature reduced his request; the Governor sought a $50 million state parks bond issue, but the legislature rejected it; and the administration requested and got approval for more than $8 million for a new environmental management laboratory.

Ernest A. Carl

Despite Martin's improvements in environmental regulation, the public may not know much about Martin's record on the environment. Maybe that's one reason that Martin has decided to move some other environmental issues, such as his new emphasis on coastal concerns, onto his priority agenda.

The record shows that environmental questions *have* influenced elections. Larry Sabato, a political scientist at the University of Virginia, notes that the green vote has had a regular influence on statewide elections for nearly two decades. In the 1970s, he wrote, intraparty and interparty politics were important factors in gubernatorial elections, "but new issues also came to the fore. One of these was environmentalism. From Earth Day in 1970 onwards, environmental concerns helped to defeat some pro-growth, pro-industry governors. About one-tenth of all gubernatorial defeats after 1969 could be traced to a concentration on environmental preservation."[15]

That's ample testimony to the power of environmental politics.

FOOTNOTES

[1] *The People, Press and Politics,* national survey by the Times Mirror Company, Los Angeles, September 1987, p. 121.

[2] *Ibid.*

[3] "North Carolina's Environment: A review of public opinion 1979-1984," *N.C. Citizens Survey,* Office of State Budget and Management, April 1985, p. 57.

[4] *Ibid.*, p. 55.

[5] Tracie Cone, "Protect Environment, Survey of Residents Says," *Winston-Salem Journal,* Dec. 4, 1983. See also Deborah Baldwin, "Playing Politics with Pollution," *Common Cause* magazine, May/June 1983, p. 15.

[6] Neal R. Peirce, "Environmental Concerns Stage Comeback," *State Issues,* Congressional Quarterly Press 1987, pp. 179-181.

[7] Pollution Control Act of 1973, now codified as G.S. 113A-50—113A-66; and Coastal Area Management Act of 1974, G.S. 113A-100—113A-134. Other major N.C. environmental legislation was adopted in 1971, with the Environmental Policy Act, G.S. 113A-1—113A-10; and the Natural and Scenic Rivers Act, G.S. 113A-30—113A-43.

[8] Chapter 111 (SB 164) of the 1987 Session Laws, now codified as G.S. 143-214.4—215.3.

[9] Chapter 574 (HB 134) of the 1987 Session Laws, now codified as G.S. 130A-310.

[10] Chapter 437 (SB 114) of the 1987 Session Laws, now codified as G.S. 130A-295.1.

[11] Chapter 633 (SB 48) of the 1987 Session Laws, now codified as G.S. 104E-5.

[12] Jack Betts, "Review of Environmental Legislation", *Greensboro Daily News,* April 21, 1977, p. A1.

[13] Bob Hall, "Environmental Politics: Lessons From The Grassroots," *Southern Exposure* magazine, Summer 1987, Vol. XV, No. 2, pp. 16-28.

[14] Anne M. Ferguson, "Politics is a sad fact of search site," *The Salisbury Post,* Aug. 30, 1987, p. A1.

[15] Larry Sabato, *Goodbye to Good-time Charlie, The American Governorship Transformed,* CQ Press, 1983, p. 111.

Chapter 13

North Carolina Media

The Capital Press Corps: When Being There Isn't Enough

by Jack Betts

This article examines changes in the last decade in the way the press has covered the N.C. General Assembly.

THE WHEELS OF CHANGE grind exceedingly fine in Raleigh, and so it is with the Capital Press Corps—an unstructured, free-form group of reporters and video technicians who cover state government in general and the Governor's Office and the General Assembly in particular. Tradition among reporters is held dear, and certain rituals are observed without fail each year in the press corps: annual end of session parties to which certain legislators are invited; the writing of bogus bills twitting certain members; and the election of a new press corps president and passage of a crudely fashioned wooden gavel as a symbol of the office. The gavel is really a sycamore mallet with the bark left on, a fitting reminder that the president has only two duties: saying "Thank you, Governor" at the end of gubernatorial press conferences, and organizing the annual end-of-session press party. That's about it.

Beyond that, the press corps covers the news pretty much as it always has, usually complying with Hundley's Rules. These rules constitute the advice dispensed by then-WPTF Radio reporter Keith Hundley (now Public Affairs Manager and a lobbyist for Weyerhaeuser Company) in the 1960s to novice reporters. Hundley's Rules of Raleigh Reportage, then as now, hold: "(1) Don't fall down; (2) Don't get sick; and (3) Don't *ever* look like you don't know what you are doing." Almost all reporters, after the first week or so among the Honorables in Raleigh, manage to obey at least two out of three of these rules consistently, and with the passage of time, comply with all three.

But while the press corps itself performs more or less in the same fashion year in and year out, the makeup of the press corps as a body (press corpus?) has undergone two dramatic changes in recent years: The press corps as a whole is more inexperienced in covering state

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government than it used to be, and there aren't as many television reporters covering state government as there used to be. Both of these developments affect the way that newspaper readers and television watchers get their news about public policy issues and what their government is doing in Raleigh.

The Press Corps: Younger, More Inexperienced

Time was when the Capital Press Corps in Raleigh was a collection of middle-aged, experienced reporters who were likely to hold the same job for 25 years or more. The last of these, the venerable Arthur Johnsey of the *Greensboro Daily News*, retired in the early 1970s, and the press corps then went through a long period when reporters were relatively young (in their 20s and early 30s) and, thanks to the emphasis on Watergate-style investigative reporting, more suspicious of government than their elders had been. By the latter part of the 1970s, this group, though still fairly young, had several sessions of legislative and state government coverage under its collective belt and was producing generally thorough coverage of state government in the papers and on radio and television newscasts.

During the 1979 and 1981 sessions of the General Assembly, competition for stories among the members of the press corps was keen. All the major state newspapers—those in Raleigh, Charlotte, Greensboro, and Winston-Salem—had at least two reporters, and sometimes more, assigned to the legislature, and several other daily papers —in Durham, Asheville, and Fayetteville—had at least one reporter assigned full-time to the legislature. So did television stations in Charlotte, Winston-Salem, Greensboro, Durham, and Raleigh. In addition, television stations in Asheville, High Point, Washington, and Greenville also had "stringers"—part-time correspondents who worked regularly covering the legislature and who could file daily stories for the 6 o'clock and 11 o'clock news.

But in 1982 and 1983, the most experienced of these reporters left Raleigh for other jobs or other assignments. Some, like Chief Capital Correspondent A. L. May of the *The News and Observer*, Dennis Whittington of the *Winston-Salem Journal*, and William A. Welch of the Associated Press, were promoted to their respective Washington bureaus. One, Stephen Kelly of *The Charlotte Observer*, even joined the Foreign Service.

By 1985, a relatively new cadre of statehouse reporters was assembled in Raleigh. There were some veterans, to be sure: Paul T. O'Connor of the N.C. Association of Afternoon Dailies, Rob Christensen of *The News and Observer*, back from a tour in the Washington Bureau, and Art Eisenstadt of the *Winston-Salem Journal*, but there were more new faces than there had been for a while. The wire services, the smaller newspapers (and some of the big ones, too), and the broadcast media had relatively inexperienced reporters covering the legislature.[1]

There is no comprehensive roster of the Capital Press Corps over the years, but an examination of the list of regular statehouse reporters, printed every two years in the House and Senate rule books, makes the point. In 1977, 1979, and 1981, about two-thirds of the reporters (newspaper, radio, and television) had covered at least one previous session, and thus were experienced enough to know their way around. But by 1985, there were so many new faces that *fewer than half* the reporters had covered a previous session of the General Assembly.

Experience is not the sole factor in determining whether one is a competent reporter, but inexperience can lead to the sort of gaffe that appeared in one newspaper. In a story by one of the inexperienced reporters on efforts by legislators to repeal the constitutional amendment allowing governors to succeed themselves,[2] the newspaper reported that the amendment had been supported in 1977 by both Gov. James B. Hunt Jr. *and* Lt. Gov. James C. Green. In fact, Green had strongly opposed succession because it would allow Hunt to run again, thus delaying Green's own bid for the governorship. Green tried unsuccessfully to fight Hunt behind the scenes on succession. The bitter squabble was to contaminate relations between Hunt and Green for the next seven and a half years while both were in office, and continues between followers of the two.

However, those types of factual *faux pas* were tempered by an aggressive attitude that led, late in the session, to generally excellent coverage of two major abuses—the proliferation of special provisions in budget bills,[3] and the disgorgement of pork barrel funds for every conceivable use that legislators could conjure. When stories appeared day after day reporting new horrors—such as substantive changes in laws adopted without debate through special provisions hidden in budget bills, and state tax funds going to private groups with no evident public purpose, Lt. Gov. Robert B. Jordan III was moved to appoint an *ad hoc* committee to come up with suggestions for improving the legislative process.

Unfortunately, the lessons of 1985 didn't stick.

When the Senate revised its own rules[4] on pork barrel funds and special provisions at the start of the 1986 short session, reporters were too busy following other issues—including the insurance standoff and proposals to raise gas taxes to fund highway programs—to research and report on the latest abuses of the budget process, especially special provisions. Even a cursory examination of the 1986 budget bill, for example, would turn up scores of special provisions that should have been debated in normal legislative channels. So the abuses reporters turned up in the 1985 session went mostly unreported in 1986, at least partly because there simply weren't enough reporters to go around.

Where Have All The TVs Gone?

The other major trend in Capital Press Corps coverage has been the apparent loss of interest in public policy issues by commercial television stations. Even up through the 1981 session of the General Assembly, at least nine of North Carolina's major television stations[5] either had full-time bureaus operating year-round in Raleigh, or they assigned reporters full-time to cover the legislature while it was in session. In this way, television newscast viewers in Charlotte, Asheville, Winston-Salem, High Point, Greensboro, Durham, Raleigh, Washington, and Greenville saw regular reports of what was happening in Raleigh, and in particular saw how legislators in those areas voted on major bills and what they were up to in the capital city.

In the 1985 and 1986 sessions, however, commercial television nearly abandoned the General Assembly and Raleigh for all but the barest schedule of events. Two notable exceptions were WRAL in Raleigh, which assigned reporters in 1985 and 1986 fairly regularly to cover major events at the legislature, and WBTV in Charlotte, which still assigns a reporter regularly to daily or near-daily coverage in the General Assembly. But the remainder of the state's major TV stations no longer maintain Raleigh bureaus or assign reporters full-time to Raleigh during legislative sessions, and their reporters rarely are equipped with the knowledge and background of public policy issues and their legislative nuances. In other words, the regular corps of television reporters has dropped enormously, from at least nine in previous sessions to only two regulars in the 1986 short session. "The commitment of the broadcast media to covering state government just isn't there anymore," notes one former television reporter who left the business for another job at the beginning of the 1985 session.

Television stations do, of course, send reporters on occasion to Raleigh for major events, such as the opening day of the session, a major speech by the governor, a weekly press conference, or a crucial vote on the floor of the House or Senate. And some stations swap news reports (through the Carolina News Network, for example) with Raleigh-area stations to pick up a story on what transpired in the General Assembly that day. But such spotty coverage can be relatively superficial, and may not indicate exactly what is happening in Raleigh and who's behind it. Thus, even the best reporter who visits the legislature perhaps one or two days a week cannot possibly keep up with what is going on, and as a result can provide viewers with little more than a headline service.

This is not to say that good television coverage of the General Assembly does not exist. In fact, the UNC Center for Public Television, through its four-times-a-week "Legislative Report" program, provides first-rate television coverage of the General Assembly—and most of the state's television viewers can pick up the program. The public television station, which is funded partly by state taxpayers, commits major resources to government coverage, unlike the state's commercial stations. UNC-TV employs experienced reporters, producers, and technicians, and posts them full-time at the legislative building to produce four half-hour programs each week. These reports, again unlike commercial television news programs, are generally lengthy and seek to report not only what is happening, but also why, who's behind it, and what its effects may be. Still, even UNC-TV cannot cover everything in the four programs it airs each week. ("Legislative Report" goes off the air following legislative sessions, and another public affairs program, "Stateline", airs once a week from October until the start of the next legislative session.) What makes the UNC-TV coverage stand out is the experience of its top reporters, Ted Harrison (who has covered the assembly since the mid-1960s) and Audrey Kates Bailey. No other news organization can boast of assigning that much experience to cover the legislature.

The reluctance of commercial television stations to commit full-time resources to covering the N.C. General Assembly is not an isolated case. Thanks to advances in video technology, television stations across the country have found it possible to send their own reporters for spot coverage of Washington, D.C., the state capital, and other, more far-flung places, without going to the expense of posting a reporter in one place all the time. Now, nearly any

local station can dispatch a reporter and video technician to the capital, tape a couple of quick stories, beam them back (with a live report from Raleigh, yet) and still be back home to cover a five-car fatal on the bypass and the local school board meeting. That does allow a station's news operation to stretch its resources.

Yet what new technology allows a station to do in getting a quick report from Raleigh still may leave viewers in the dark and wondering what really goes on in Raleigh. Those viewers may be reaching for the morning paper to find out—and having to read it in stories filed by inexperienced reporters.

FOOTNOTES

[1] For a fuller discussion of the problems of covering state government with small bureaus, see "Improving News Coverage," *State Legislatures* magazine, March 1985, pp. 29-31.

[2] Article III, Section 3, The Constitution of North Carolina.

[3] For more on this issue, see *Special Provisions in Budget Bills: A Pandora's Box for North Carolina's Citizens* by Ran Coble, N.C. Center for Public Policy Research, June 1986.

[4] Senate Resolution 861, "To Amend the Permanent Rules of the Senate," adopted June 11, 1986.

[5] Stations which had full-time reporters or stringers in Raleigh included WBTV in Charlotte, WLOS in Asheville, WXII in Winston-Salem, WGHP in High Point, WFMY in Greensboro, WTVD in Durham, WRAL in Raleigh, WNCT in Greenville, and WITN in Washington.

Is the Afternoon Newspaper a Dinosaur in North Carolina?

by Paul T. O'Connor

This article focuses on afternoon newspapers in the state, where three urban dailies have closed in recent years while rural afternoon papers seem to be flourishing.

FOR LOYAL READERS of *The Raleigh Times*, the message behind the afternoon daily's advertising campaign in the spring of 1987 was hardly encouraging. *The Times*, little sister of *The News and Observer*, has been unable to maintain its circulation even in the midst of tremendous population growth in Wake County — a fact which has encouraged rumors that the Capital City's afternoon paper eventually would be closed.[1] And now *The Times*, which stresses local news coverage, was running a multimedia advertising campaign that pointed up the weaknesses of its own sister publication. It looked like a desperate last effort the keep the paper alive.

In one televised ad, viewers saw a man, visible only from the chest down, with an armful of footballs, basketballs, and baseballs. "When it comes to covering local sports," an announcer intones, "the other paper [meaning *The N&O*] drops the ball." Down onto the floor came all the balls, bouncing hither and yon. The theme of *The Times* campaign was that "Every issue hits closer to home," an obvious comparison of *The Times*' local orientation to *The News and Observer*'s heavy diet of state news.

What was startling to viewers was not just that one division of a company was in effect advertising the faults of another division (The News and Observer Publishing Co. owns both papers), but that *The Times* apparently was in some difficulty. Would management ultimately seek to close down the paper, as cost-conscious businessmen have done in three other major North Carolina cities in the 1980s? The list of casualties includes *The Charlotte News*, *The Greensboro Record*, and *The Sentinel* of Winston-Salem — all respected newspapers that gave their readers a strong editorial viewpoint and which had concentrated on local news coverage, often beating the bigger morning papers to a story. While the larger papers in those areas — *The Charlotte Observer*, the *Greensboro Daily News*,[2] and the *Winston-Salem Journal* — each had committed substantial resources to local coverage, they also focused on regional and statewide news.

The afternoon newspapers often were able to do a better job of local public affairs coverage, particu-

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Table 1. Number of Daily Newspapers in States of Comparable Size to North Carolina

State	Population	Number of Newspapers	
Indiana	5,499,000	74	(62 PMs, 12 AMs)
North Carolina	6,255,000	54	(43 PMs, 11 AMs)
Massachusetts	5,822,000	46	(39 PMs, 7 AMs)
Virginia	5,706,000	38	(23 PMs, 15 AMs)
Georgia	5,976,000	36	(25 PMs, 11 AMs)

Note: Two states with populations larger than North Carolina have fewer daily newspapers — Florida, with a population of 11,366,000, has 49 papers, and New Jersey, with a population of 7,562,000, has 26 daily newspapers.

Source: 1987 *Editor & Publisher International Yearbook,* and 1987 Statistical Abstract of the United States, Bureau of the Census, U.S. Department of Commerce.

larly in such policy areas as local schools, taxation, coverage of county commissioners, and other local government agencies, while the big morning papers concentrated on more of a statewide perspective. But declining circulation of those three papers and stiff competition for afternoon paper readers from improved television news staffs spelled the end of the three PMs, as they are known in the trade. Now, with strong television newscasts in the Triangle area, would *The Raleigh Times* —known for its excellent local coverage of hard news and sports — also bite the dust? On July 22, 1987, the company announced it would combine the news staffs of both papers to serve both *The N & O* and *The Times.*

If *N&O* management does shut down *The Times,* it won't do so before a lot of corporate and editorial teeth are gnashed down to fine dust. As Davis Jones, vice-president and general manager of the company, says, "From the corporate point of view, we feel that everyone is best served by Raleigh having two strong newspapers." Inside the *N&O,* there is considerable feeling that the capital needs *The Times* to do the local reporting which *The N&O* misses. Mike Yopp, *Times* managing editor, says, "*The Times* is a local newspaper, with a local orientation. . . . From local news on the front page to the Public Record on the back, we have a local emphasis, and that is our mission." Yopp concedes that if *The N&O* closed *The Times,* it could redirect its resources into more local coverage. "That would be a corporate decision," Yopp says, and Yopp won't speculate on corporate decisions.

Philip Meyer, a veteran newsman now teaching at the University of North Carolina at Chapel Hill School of Journalism, says newspaper history gives us a framework within which to speculate on such an *N&O* decision, however. "When afternoon newspapers close, there are two models the surviving morning papers usually follow," he says. "The first is to provide a larger range of service to their readers." The afternoon paper's staff is reassigned to the morning paper and suddenly the remaining paper has the ability to do much more reporting than the two previous papers had individually. This occurs because duplication of coverage is eliminated.

"The second model," Meyer says, "is to take the money saved by the closing of the afternoon paper and send it right down to the bottom line."

When one company operates two newspapers in the same city, and maintains independent news staffs for each, it is operating inefficiently. For a routine meeting story, for example, each paper will usually send a reporter, so the parent company is paying for two people to cover a story when one could suffice. When the papers merge, only one reporter must attend that meeting, and that frees up a reporter to pursue another story. The decision the company must make is whether to reassign that freed-up reporter to another reporting position, perhaps on a newly formed beat in a policy area such as education, health, business, or finance. Or the company can fire that reporter and pocket the savings.

Editors in the other North Carolina cities where PMs closed said they were quick to improve their

morning newspapers with the personnel transferred from the afternoon papers. Jim Laughrun, state editor of the *Winston-Salem Journal* and former city editor of the now-defunct *Sentinel*, says, "The biggest gain [from the merger] has been that when a big story breaks, we now have the resources to turn loose on it." But even with expanded staffs, editors at the surviving morning papers in Greensboro, Charlotte, and Winston-Salem say they also see negatives from the closing of their afternoon papers.

Ned Cline, managing editor of the *Greensboro News & Record*, says the merger of the two papers has "eliminated the competitive spirit. It's almost as though we take the position that if we don't get it today, we'll get it tomorrow. The competition is now among ourselves for excellence." Mark Ethridge, managing editor of *The Charlotte Observer*, says the biggest drawback of the merged Charlotte papers "is the loss of a second distinct editorial viewpoint. We're clearly missing something there." Adds Laughrun, "The city loses because it is 24 hours before a newspaper can tell them what's happened." If a story breaks in early morning, for example, Winston-Salem readers won't get a written news report until the next morning; radio and television newscasts can have the story to themselves for 24 hours — if they can get it.

The loss of competition is the negative expressed most often when newspapermen discuss afternoon papers closing. Yopp contends that "any competitive situation where you have newspeople working against each other would heighten the competition and increase both the quality and scope of the news, and of the watchdog element of the press." But others aren't sold on the need for inter-paper competition. As Meyer of UNC says, "I'm not sure competition is always useful. Sometimes papers go off half-cocked" trying to beat the competition on a story. "Reporters try to impress each other rather than their readers and that can lead to distortion" of a story's news value.

Meyer says he knows of no definitive study of North Carolina papers both before and after closings. But he says a good indication might be comparing the size of the total editorial staff of a combined paper versus the total of the two papers before the PM closed.

The Charlotte Observer editorial staff has grown beyond the size of the two staffs before merger, Ethridge says. Cline says that Greensboro eliminated eight positions through retirement and attrition, a number not really significant when one considers the reduced news editing and layout demands of producing only one paper. But the paper also added new products, including a new business section, that created nine new positions, for a net gain of one staff member. Laughrun

Table 2. Circulation of State's Urban Daily Newspapers (In Cities Where AM & PM Newspapers Exist or Once Existed)

	Daily Circulation	Rank Among These 11 Dailies	Rank Among All State Dailies
The Asheville Citizen (AM)	62,682	5	5
The Asheville Times (PM)	13,356	11	29
The Charlotte Observer (AM)		1	1
Durham Morning Herald (AM)		7	8
The Durham Sun (PM)	20,126	10	18
The Fayetteville Times (AM)	25,678	9	14
The Fayetteville Observer (PM)	46,242	6	6
Greensboro News & Record (AM)	112,424	3	3
The News and Observer of Raleigh (AM)	137,746	2	2
The Raleigh Times (PM)	34,234	8	10
Winston-Salem Journal (AM)	91,536	4	4

Source: Audit Bureau of Circulation as reported for 1986 in the 1987 "Directory of Members," North Carolina Press Association. These circulation figures are for weekday circulation only. If weekend circulation figures were used, rankings would be slightly different.

reports that *The Journal* increased its staff size, mostly in sports, business, and features, but "we certainly did not come anywhere near matching the two papers" for total staff. There were some layoffs and early retirement.

The story of local newspaper coverage in North Carolina goes far beyond just the large city dailies. North Carolina, because so much of its population (52 percent) lives outside of metropolitan areas, enjoys an unusually large number of daily newspapers for a state its size (see Table 1). The economics of this rural daily newspaper industry are quite different from those of the metro papers. For example, while the number of *metro* afternoon papers has fallen by three in the 1980s, from seven to four, the number of *rural* afternoon dailies has grown by three. The community papers in Mt. Airy, Marion, and Aberdeen have expanded into dailies, giving the state a total of 54 daily newspapers, 43 of them afternoon daily newspapers, all but four of them in non-metro areas. Most of these papers are economic successes.

Notes Cline, "The *News & Record* goes into 12 counties and competes with 17 daily papers. All 17 of them are healthy." Chester A. Middlesworth Jr., North Carolina and Kentucky regional manager for Park Communications, a national media company, adds, "We feel the afternoon field certainly is very healthy." Park owns 25 newspapers, including eight dailies, in North Carolina.

Nationally, the number of afternoon newspapers is declining, but in North Carolina, those numbers are growing—in rural areas, but not urban areas. For instance, in 1977, there were 1,762 newspapers, and 1,435 of them were PM papers. By 1987, there were 1,657 daily newspapers, and 1,188 were PMs. That's a national decline of 6 percent of all newspapers in 10 years, but a decline of 17 percent in the number of PM papers. In North Carolina, however, the number of daily papers grew in the same period from 51 dailies, with 41 PMs in 1977, to 54 dailies, 43 of them PMs, by 1987. That's a 6 percent increase in all papers, and a 4.6 percent increase in PMs.[3]

That brings us back to the issue of competition. Ethridge of Charlotte says he misses the competition between the two Queen City papers but says *The Observer* has plenty of competition with the papers which surround it. *The Observer* does what Ethridge calls "an enormous amount of zoning." That is, *The Observer* uses section inserts and different editions of the paper to pump local news into the papers it sends to surrounding counties. Six tabloid sections (five in North Carolina, one in South Carolina) are delivered to over 11 counties — three of them published thrice a week, and three of them published twice a week. All of those tabloids are dedicated to local news. Ethridge says *The Observer* watches its competing papers closely. "We really pay attention to what the other folks are doing and who got beat on what. We like to think . . . that with the weddings, births, and property transactions (reported in the tabloids) that we give them everything they get in their local papers."

Hogwash, says the competition. Ethridge's assertion compelled Nancy Stephen, executive editor of the *Monroe Enquirer-Journal*, to say, "Oh my goodness, that's ridiculous. We average at least five times the number of stories *The Observer* has. It's even higher than that. *The Observer* comes in for the big stories and leaves out much of the routine news that the public wants. Middlesworth, whose family once owned the *Statesville Record & Landmark*, also scoffs at claims that *The Observer* covers Iredell County as well as his paper. "There's not much they can do in a 12-page tabloid," he says. *The Observer*'s tabloid pages would total 36 in a week; the *Record & Landmark* would probably run 100 or more pages in a week.[4]

Cline says that his paper can offer readers in surrounding towns things which their local papers cannot. But he says he doesn't think the *News & Record* can replace those papers. "We're never going to give readers in those towns their local news. I read *USA Today*, today, but not instead of the *Greensboro News & Record*." Metro papers still will be read in small towns, Cline said, for the international, national, and state news, and for a higher quality of writing. But these local papers will survive, he says, because of their supremacy on the bulk of local reporting.

There is a widespread public perception that afternoon newspapers are a dying breed. The number may be declining in urban areas, but it is an obvious misconception when one considers the growing number of afternoon dailies in rural North Carolina. Morning papers may dominate in seven of the state's eight largest metropolitan areas (Fayetteville is the exception; see Table 2), but they do so at the expense of their own little sisters, not the bulk of the afternoon dailies in North Carolina. Still, the coming years may bring owners of morning and afternoon papers in the same city — Raleigh, Durham, Asheville, and Fayetteville — a hard choice: deciding whether producing two papers is a drain on a company's profitability, or whether the community is better served by competing editorial and reporting voices.

FOOTNOTES

[1]There is obvious reason for concern. During the first week of April 1986, *The Raleigh Times* circulation was 35,164; by the same week in 1987, it had dropped by more than 1,400 to 33,747, according to *The N&O*'s in-house publication, *Family Ties*. According to

the Audit Bureau of Circulation, *The Times* average circulation dropped from 34,843 in 1985 to 34,234 in 1986.

[2]*The Charlotte News* and *The Sentinel* in Winston-Salem were closed outright, but the morning *Greensboro Daily News* and afternoon *The Greensboro Record* were first merged into the *Greensboro News & Record*, with both morning and afternoon editions, until the afternoon edition was dropped entirely in 1985.

[3]1977 and 1987 editions, *Editor & Publisher International Yearbook*, section 1, "Ready Reckoner of Advertising Rates and Circulation."

[4]Mark Ethridge of *The Charlotte Observer* has suggested a better measure would be "some actual calculations of local news content in places where the larger papers and smaller ones cross paths. Such an analysis, for instance, would not merely compare stories in *The Observer* tabloids with stories in other papers, but would include local stories in the mainframe *Observer* which the subscriber receives in addition to the tab."

Newspaper Coverage of the 1986 Senate Race: Reporting the Issues or the Horse Race?

by Paul Luebke

This article examines how newspapers—not radio or TV—covered the 1986 race for the U.S. Senate between former Gov. Terry Sanford, the former president of Duke University, and U.S. Sen. James T. Broyhill, who had been appointed to a vacant Senate seat following a long career in the U.S. House of Representatives.

EVERY TAR HEEL POLITICAL JUNKIE can recall the contrasts between the Broyhill-Sanford race of 1986 and the Hunt-Helms confrontation two years before. The 1986 campaign was blissfully short, with "only" $9 million expended, a minimum of negative advertising, and both candidates rooted in the center of their political parties. The 1984 race actually began during the spring of 1983, when Sen. Jesse Helms' newspaper ads attacked Governor Jim Hunt's connection to Rev. Jesse Jackson in a preview of the racial bitterness that would erupt in the nation's most expensive U.S. Senate race. That race cost the two camps $26 million (nearly three times what the 1986 campaign would cost), thrived on personal attacks, and juxtaposed New Right and moderate-Democratic ideologies.

What also differed between the two campaigns was the level of the press' interest. North Carolina newspaper editors assigned fewer resources toward coverage of the Broyhill-Sanford contest than they had two years earlier, when the state's papers were chock-full of stories about the campaign—including many pieces written by the national press and picked up locally. Newspapers in 1986 ran somewhat fewer stories, but a review of press clippings during the fall—Labor Day through Election Day—indicates that newspapers vigorously reported the essence of the campaign, noting changes in Broyhill or Sanford strategy almost immediately. Not all of the state's dailies have the same coverage style, to be sure. But

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through a combination of daily reports of events (known to journalists as "spot news") as well as more reflective pieces not tied to a press deadline, North Carolina's major dailies served the reading public well in letting them know what was happening in the candidate's campaigns. The state press was most adept at covering this *horse race* aspect of the campaign—gauging how the campaign was going, who was leading, what the strategy was, and what voters the candidates were courting. But did the press delve into *policy issues* adequately? Did the press tackle some larger issues which were not directly connected to the two campaigns? An examination of more than 800 clippings from North Carolina newspapers during the fall indicates that by and large, these less-exciting but equally important aspects of the campaign were ignored in the heat of reporting on *events, trends, and character issues.*

In retrospect, Sanford's unexpectedly aggressive campaign style may have contributed the most to his victory over Broyhill, and it certainly boosted interest in the campaign and sharpened press reporting of both camps. This theme emerges clearly in the daily reporting. Until well after Labor Day, the campaign had been somnolent, and press reporting of what little was going on was equally dull. But all that changed—and so did the reporting—in late September. Up until then, Sanford himself seemed unsure whether he wanted to deviate from the soft-sell "special leader" rhetoric which had helped him win the May 1986 Democratic primary. The state's reporters quickly noted this ambivalence. Seth Effron, Raleigh reporter for the *Greensboro News & Record,* wrote September 17 that "key (Democratic) party officials were fretting privately that Democrat Terry Sanford isn't campaigning aggressively and isn't visible enough."

Two weeks later, the press had more of the story when Sanford decided to take off the gloves against Broyhill. Rob Christensen, chief capital correspondent of *The News and Observer* of Raleigh, noted on October 2: "Terry Sanford, increasingly assuming the role of aggressor, said Wednesday that the record of . . . James T. Broyhill showed that he was 'no friend of education.'" A similar story appeared in the same day's *Winston-Salem Journal* (without a byline) quoting Sanford as going "on the offensive to pierce the '30-second electronic shield' of Broyhill's television ads."

North Carolina's newspapers have an excellent national reputation for seeking more than just the facts. They also like to capture the smells and the flavor of the story. Perhaps more so than the state's other major dailies, *The Charlotte Observer*'s editors frequently allow their reporters to write reflective stories which focus on more than one day's spot news. An excellent example is political reporter Ken Eudy's article, also published on October 2, which noted that Sanford had "donned his old Army Airborne ring and used military imagery to suggest that he's tough and his opponent is not." Like his fellow reporters across the state, Eudy quoted Sanford's defense of his 1961 decision to advocate a new sales tax on food: "(Broyhill) just wouldn't have fit in with the men and women who risked their necks to vote for children and North Carolina's future."[1]

At this critical juncture in the campaign, Broyhill was reemphasizing his alliance with Ronald Reagan, hoping that the President's high approval ratings would carry him to victory. The press presented Reagan's message clearly during both of his brief October visits. *The News and Observer,* not usually inclined toward color photos, ran a large, page-one, color picture of Reagan on the morning after his October 8 visit to Raleigh. Correspondent Christensen's lead story cited the President's depiction of "Broyhill as a solid conservative, while portraying . . . Sanford as a champion of higher taxes." The October 29 *Winston-Salem Journal* similarly gave the President's Charlotte airport rally front-page coverage, quoting directly Reagan's assertion that Broyhill was "part of the 1980 clean-up crew for the worst economic mess since The Great Depression." These papers also took note of the attendance at the two rallies, particularly because the Raleigh crowd had been surprisingly small, given the appearance of a popular President in a Bible Belt setting. The papers avoided speculating that this was a harbinger of things to come, however.

Although both Sanford and Broyhill brought in out-of-state politicians to enliven statewide barnstorming tours, such speakers were far more important to Broyhill's strategy than to Sanford's. When television evangelist-politician Pat Robertson stumped eastern North Carolina for Broyhill, the Republican campaign received straightforward coverage enunciating the Reagan and social-issues themes. Ken Murchison of the *Rocky Mount Telegram* wrote a page-one story on September 28 conveying Robertson's blunt message to Tar Heels: "Marion G. 'Pat' Robertson . . . said a vote for Jim Broyhill in November is a vote for Ronald Reagan. Conversely, he said, a vote for Terry Sanford would be a vote for Teddy Kennedy, D-Mass., Alan Cranston, D-Cal., Howard Metzenbaum, D-Ohio, and other liberal Democrats who he said are responsible for the weakening of the moral fiber of the United States."

In the same day's Sunday *Fayetteville Observer - Times,* reporter Pat Reese stressed some of Robertson's

favorite issues. "Television evangelist Pat Robertson, a likely Republican candidate for president in 1988, sounded a battle cry for war against communism, crime and drugs as he joined a three-day, $1 million fund drive for the election of Sen. Jim Broyhill." The Broyhill campaign decision to try to peg Sanford as "soft on defense" by criticizing his alleged position on draft-dodgers also received press coverage—a strategy that blew up in his face like a claymore mine when Sanford emphasized to the press his own military background. On October 20, *News & Record* correspondent Effron gave advance notice of a pro-Broyhill press conference, which prompted a stinging on-the-record rebuttal from Sanford: "Today a group of veterans, led by longtime Broyhill backer state Senate Minority Leader Bill Redman, R-Iredell, will hold a news conference to attack Sanford's record on defense and his support of amnesty for draft evaders. Sanford, hearing of the impending attack, shoots back, 'Ask him why didn't he (Broyhill) serve in the Korean War?'"

... where newspapers can excel — and where television and radio often do not because of the difficulty of illustrating such a story in a visual and aural format—is in the analysis of policy issues. North Carolina newspapers need to do more.

With two weeks to go, reporters picked up on the sharp anti-Broyhill tone which emerged as key to Sanford's final offensive. *News and Observer* reporter Sally Jacobs quoted the Democrat's sports metaphor in an October 22 story: "Republican Sen. James T. Broyhill has 'struck out' in efforts to protect the textile industry, and it is time for someone else to step up to the plate, Democratic senatorial nominee Terry Sanford said Tuesday." And *Winston-Salem Journal* Washington correspondent Paul Haskins on October 30 stressed the contrast between Broyhill's attempt at pork barrel politics and Sanford's effort to hammer away at the pocketbook issues: "Sen. James T. Broyhill, R-N.C., took credit yesterday for getting a planned nuclear submarine named after Asheville, but former Gov. Terry Sanford, Broyhill's Democratic opponent in the U.S. Senate race, said that he'd prefer a new textile import barrier with North Carolina's name on it." The press was quick to note the public relations disaster for Broyhill: Effron pointed out that the area had only recently been relieved of the Reagan administration threat to create a spent-nuclear-fuel repository near Asheville, and naming a nuclear sub for the city only served to remind voters of nuclear waste.

The press also detected the shift in momentum toward the Democrats in the final weeks, by highlighting Broyhill's impatience with reporters and Sanford's subtle but seemingly deliberate attempts to contrast himself as a populist with Broyhill the patrician. *The News and Observer*'s political-insiders column, "Under The Dome," on October 22 ran a long story on Broyhill's press relations, stressing in the lead sentence that Broyhill, "generally considered a model of Southern reserve, got testy with reporters this week, angrily lecturing two of them Monday when they aggressively questioned him." Ironically, one had to read in *The News and Observer* that it was Effron whom Broyhill angrily poked in the chest while objecting to a story. Effron's own paper did not run an account of the chest-poking at the time of the incident but saved it for a later campaign wrap-up. In post-election reflection, Effron said writing about it immediately might have given the Broyhill campaign the false impression that the reporter was seeking to create news.

The press highlighted the differences which Sanford wanted to stress between the two men's backgrounds and experiences. In an October 19 story, *The Charlotte Observer*'s Eudy quoted Sanford at an Albemarle campaign breakfast taking a sharp poke at Broyhill's upper-crust background. "[Sanford said that Broyhill] would have taken a knife and sliced that watermelon, and shared it. [Sanford] paused, then added that Broyhill would have asked for a napkin—'a linen napkin at that.' The audience hooted." Similarly, Effron wrote in the *News & Record* of October 24 about the two candidates at Charlotte's annual Mallard Creek Barbecue. "Sanford worked the crowd in his shirt sleeves; Broyhill kept his suit coat on and buttoned."

In the campaign's final days, the press focused on voter turnout. Tim Funk, Raleigh correspondent for *The Charlotte Observer*, reported on October 30 some detailed examples of Republican turnout "tools of the trade: phone banks, mailings, even recorded telephone messages from Reagan and Gov. Jim Martin." *The News and Observer* provided the most detailed coverage of turnout and demographics, writing long stories on both black and New Christian Right electoral organizing. For example, Christensen on October 29 provided an excellent explanation of the fundamentalist-Christian vote's significance for North Carolina politics: "With . . . Broyhill locked in the political fight of

his life, leaders of the Christian Right are trying to mobilize a coalition of abortion foes, conservative evangelicals and others that they hope will pull him through Tuesday's election. That coalition often has been credited with helping elect Republicans... Helms in 1984 and... [former U.S. Sen. John] East in 1980. But how much the Christian Right backs Broyhill in his tight race with... Sanford remains a question." It was a question answered November 4, and Christensen's intimations were prescient: Fundamentalists did not turn out in 1984-sized numbers, a factor contributing to Broyhill's defeat, Jacobs reported in *The News and Observer* in a November 8 vote analysis.

Reporters delivered their post-mortems on the race in the November 6 newspapers, the Thursday following the Tuesday election. The most succinct summary of Broyhill's decline came in Eudy's *Observer* story: "In interviews Wednesday, most Broyhill advisers agree the campaign derailed in mid-October, recovered late in the month, but not in time to catch Sanford, who hadn't won an election in 26 years."

In sum, North Carolina reporters deserve kudos for the careful coverage of the ebb and flow of Sanford's and Broyhill's campaigns. But a consequence of editors' assigning their reporters to file daily stories on candidates' activities, whether in Asheville or Asheboro, is that some more basic political questions remained unanswered. Examples of good stories missed include:

- An October 19 *New York Times* dispatch from Washington, D.C. reported that Jesse Jackson had come to the state to bolster black organizational support for the Sanford campaign. Yet no North Carolina newspaper carried any follow-up to that story.
- Editors, reporters, and both campaigns regularly discussed the absence or presence of "negative advertising." But no reporter defined the term "negative ad." Is a negative ad any criticism of an opponent's record, or personal attacks only, or gross distortions of a record? The Tar Heel press didn't say, leaving the distinct impression that any sort of comparative advertising is inherently sinister.
- Sanford claimed that he was a friend of education and Broyhill was education's foe. Why did reporters not compare the candidates' records and draw their own conclusions? Or for another example, on economic issues, did Broyhill, the mainstream Republican, vote any differently than Helms, the champion of the New Right? And on social issues, how different were Sanford and Broyhill, both candidates from their parties' mainstream? Such articles were missing.
- Social issues like race and abortion were central to Helms' reelection in 1984. Why were social issues debated less in the 1986 campaign? Unfortunately, the daily press didn't address these concerns in any more than a routine way.
- Did class background really matter? Does serving the people mean you can't have grown up with linen napkins? In any event, Terry Sanford, former Duke University president and ITT board member, was no stranger to Fortune 500 circles, contrary to the impression he sought to make upon reporters. Did Sanford play the press like a fine violin in the 1986 campaign?
- Broyhill had more than 20 years' seniority in the House and could have, arguably, been a much more effective senator than Sanford, who had relatively little experience as a legislator (he served in the state senate in the 1950s) but who had vast experience as an administrator. Yet, despite these apparent strengths of the candidates, few reporters examined the record to determine whether their reputations were justified. How many bills did Broyhill introduce in his career and how many passed? What were the major effects of Sanford's governorship beyond the food sales tax impact on schools?

There were, of course, some exceptions during September, October, and November. *The Winston-Salem Journal* ran a series of issues pieces that ran in six Monday editions prior to the election. *The Charlotte Observer* published question-and-answer interviews with the candidates that addressed issues in its editorial section on October 23. And *The News and Observer* ran several pieces that addressed some of these concerns, including an October 16 story on Broyhill's votes on economic issues; and September 14 coverage of the candidates' records on social issues. Too, most of the papers delved into Sanford's corporate campaign finance connections, such as *The News and Observer*'s October 26 story. But by and large, issues were not a prime ingredient of newspaper coverage of the campaign.

Unquestionably, the press reported thoroughly the horse race aspect of the campaigns. But reporting campaign events, and even reporting the color and flavor of a campaign in all its nuances and trends, is something that radio and television reporters can also do well. But where newspapers can excel—and where television and radio often do not because of the difficulty of illustrating such a story in a visual and aural format—is in the analysis of policy issues. North Carolina newspapers need to do more.

A challenge has emerged for Tar Heel newspaper editors and reporters. They need to reflect on how their generally high-quality daily coverage could be combined with more in-depth analysis of policy issues which are not rooted in the daily routines of the candidates. All of us would benefit from an increase in that kind of political analysis.

FOOTNOTE

[1]In January 1987, Eudy left the newspaper to become Executive Director of the state Democratic Party. He left that position in 1988 and is a businessman in Chapel Hill.

Radio Journalism in North Carolina: Listening for Less News

by Jack Betts

This article examines radio journalism and how it has fared in an era of deregulation and intense competition within the commercial radio industry.

IN THE WANING DAYS of Jimmy Carter's presidency, the Federal Communications Commission (FCC) handed down an order that is still reverberating throughout the broadcasting industry —and which has had a dramatic effect on the amount and, some say, the quality of news that America's citizens get via the radio. Just a week before Ronald Reagan took over the White House, the FCC adopted an order scrapping its long-standing requirements for a minimum amount of news and public affairs programming for any commercial station licensed to do business in the United States.[1] For years, AM radio stations had been required to air at least 8 percent such "non-entertainment" programming; FM stations had been required to commit 6 percent of their air time to news, information, and other public affairs material.

But all that changed on Jan. 14, 1981, when the FCC deregulated radio. In the ensuing years, radio stations across the country have cut back on their news operations—paring down the number of daily newscasts, cutting the length of newscasts, cutting newsroom budgets, and all too often, cutting news entirely. Other stations have dropped a once-proud tradition of strong local reporting in favor of "rip 'n read" journalism —saddling disc jockeys and announcers with the job of reading wire copy right off the Associated Press or United Press International teletypes, or subscribing to "canned" news networks that may be played over the airwaves without further effort by local stations. The long-standing tradition of radio news excellence—what Edward R. Murrow called "that most satisfying and rewarding instrument"[2]—is in jeopardy in North Carolina. "Deregulation was the culprit that is doing us in," says one prominent Raleigh radio journalist, who asked not to be identified for fear of losing his job. "We've had a wholesale decline in the number of self-operated radio news staffs, and no one knows how far it's going to go."

Jack Betts is editor of North Carolina Insight.

John Wheeling, a veteran of WCBS in New York and former news director of Raleigh's WRAL-FM and the N.C. News Network (NCNN), says of the industry in general, "We lost that hole card (the minimum news requirement) and the predictable happened—there no longer was a real reason to keep news programming at the same level. And since then, we have seen a significant if not alarming decrease in the amount of resources committed to radio news."

Even WRAL, which has a professional staff, has trimmed its newscasts, concentrating mainly on the "drive-time" during morning and evening rush hours. "Even though we've reduced the number of scheduled broadcast minutes," adds Wheeling, "our commitment is still there. We try to provide as broad a cross-section of news as we can."

What has happened in North Carolina mirrors a national trend. "Once the backbone of electronic journalism and the first source of live reporting, radio news is on the skids," reported *The New York Times* in December 1986. "Its decline in many cases reflects a deliberate retreat by station owners who see cutting news as an easy way to reduce costs. In other instances the trend reflects acquiescence to ambitious television stations that have used video and satellite technology to gain the edge in local news. Whatever the reasons, the number of all-news radio stations is dwindling, and many other stations that have maintained news staffs are eliminating or reducing them and the air time allotted to news."[3]

Does it make a difference whether radio covers the news? Consider: When the nuclear accident occurred at Three Mile Island in Pennsylvania in 1979, 56 percent of the local residents found out about it from radio news—compared to about 14 percent from television and fewer still from newspapers. When Sen. Robert F. Kennedy was shot in 1968 while campaigning for the presidency, nearly 57 percent of the public heard about it on radio, while 20 percent got the word from television and 6 percent from newspapers. When Alabama Gov. George Wallace was shot while campaigning in Maryland in 1972, radio beat television by a four-to-one margin.[4] In other words, there is no other medium on earth that can get the word out as quickly and to as many people as radio.

Yet, with fewer resources going to radio news, the public stands a greater chance of going without substantive coverage of dramatic, critical events. But what if there were a serious nuclear accident at the Shearon Harris Nuclear Station near Raleigh? Or at the Catawba Station near Charlotte? Or a chemical spill in a critical watershed of Asheville? An oil spill off the coast of Wilmington? In those instances, radio news would play a critical role, but stations without a competent news staff might only confuse its listeners.

But emergency news is hardly radio's only role. The fact is that radio news operations also are important cogs in the reporting of many other types of stories—weather, school board, city council, courthouse, politics, and the entire range of public affairs. The same expertise that newspapers and television stations require is essential to an effective radio news operation. Yet few stations commit these types of resources to covering the news daily. There are, of course, major exceptions. In Raleigh, for instance, WPTF-AM, which always has had a strong commitment to news and public affairs, and WRAL-FM both regularly cover state government, the General Assembly, and other important news. WUNC in Chapel Hill also does in-depth reporting on public affairs issues. In other major radio markets, old-line stations like WBT and WSOC in Charlotte, WSJS in Winston-Salem, and WDNC in Durham remain committed to covering *local* and *regional* news, but only a few stations make a serious effort to cover state government news beyond the headlines. And in 1986, one of the oldest radio stations in the state, Greensboro's WBIG-AM, for years a mainstay of radio journalism in the Piedmont, went off the air when its owner, Jefferson-Pilot Communications, decided to staunch the flow of red ink.

The cutbacks in news operations around the state concern serious journalists who view the state's far-flung scattering of small radio stations as reporting *assets* as well as *outlets*. Sue Wilson, broadcast editor for the Associated Press Raleigh Bureau, puts it this way: "What scares me about this is that there are parts of the state where we don't know what is going on on a daily basis. There may be some giant story out there that we don't know about because there is no news reporter in the area."

North Carolina's journalistic community reflects its population—dispersed, traditionally more rural than urban, and concentrated in small towns. The state has literally scores of small newspapers — dailies, biweeklies and weeklies—but it has hundreds of radio stations scattered from the coast to the mountains. The 1986 Broadcasting Cablecasting Yearbook lists 361 radio stations operating in the state—225 of them AM stations, 136 of them FM stations.[5] But of these stations, how many have active news operations? No one knows, because the FCC no longer keeps statistics on radio news operations, nor do other industry groups.

John Harris, broadcast sales manager for the

Associated Press in North Carolina, says the number of radio stations going without even a state wire service has increased over the years, partly because of deregulation and also partly because many old-line AM stations have been squeezed financially by the proliferation of FM stations. "A number of AM stations have gone dark (off the air) in recent years and I fully expect more to succumb in the next 10 years," he says. The AP now has 136 radio clients in North Carolina—a little more than a third of the radio stations operating. By contrast, the AP has as clients more than 90 percent of the television stations and the daily newspapers operating in North Carolina. These clients are AP members who exchange news stories and who pay a fee for AP services based on the size of circulation or audiences.

While the decline in radio journalism has cut the number of newscasts and of professional radio journalists in the state, it has also strengthened one segment of the profession—the radio news network. The sole radio audio network operating in North Carolina is the N.C. News Network, a for-profit venture of Capitol Broadcasting Co. (Other audio services—from AP and UPI, and the Southern Farm Network operated by Durham Life Broadcasting Co.—are available, but they are not specifically designed *solely* for North Carolina listeners.) The N.C. News Network, says Wheeling, has nearly doubled its list of clients in the past three years, to about 100 users, although only about 30 stations carry every item that NCNN transmits. "We protect those stations which don't have a wire machine or their own news staff," says Wheeling. NCNN clients receive the service for free, save for the cost of transmission devices. NCNN revenues come from advertisements that client stations must broadcast along with newscasts.

Ernie Shultz, executive secretary of the Radio/Television News Directors Association in Washington, says the NCNN reflects another national trend—more regional newscasts. "There has been a swing from local radio news to regional news," he says. But Schultz also says local radio news is in for a renaissance. "It may be that local radio news is about to be rediscovered," he ventures.

Schultz may be whistling in the graveyard, but if he is, he's got a lot of company: "I think the pendulum is starting to swing back," says Wheeling, formerly of WRAL, "maybe not to the extent that we will be regulated again and required to have a minimum amount of news, but I think the news will reach an equilibrium." Says Margaret Murchison of Sanford's WWGP-AM, "Some stations perhaps had too many reporters originally, and some of them are still having trouble." A veteran reporter, former president of the Associated Press Broadcasters Association, and secretary-treasurer of the Radio and Television News Directors Association of the Carolinas, Murchison senses that "radio news is on its way back."

There are some encouraging trends. Harris of the Associated Press finds a new willingness on the part of FM stations—traditionally the stations which concentrate more on music than public affairs—to operate their own news departments. "For 10 years, most of these stations were in a strictly music-box format," says Harris. "But now the FM stations, even the rockers, are going back and doing newscasts and two-man teams in drive-time with a lot of news and information." Often this programming content includes "soft" news and lifestyle features—what the stations call "news you can use."

Radio experts have long debated whether radio news—like its television counterpart—can be a money-maker. Increasingly, industry officials have pointed out how radio news not only can make money, but also can help hold an audience for the station's other programming. In an age where the populace is demanding more information about a variety of subjects, radio stations might well profit by beefing up their news and public affairs operations.

One way to help ensure that more—and better—information goes across the airways is to insist that local radio reporters do more digging. Tim Pittman, Director of Communications in Governor Martin's office, notes that his office gets regular calls from radio stations. But instead of asking hard questions of the Governor, or independently pursuing a news story, they usually call for an audio feed from the Governor's weekly press conference. "They call to take whatever we can give them," says Pittman. One reason for that is that too often, one-person news staffs must do everything—research, report, write, produce, and announce the news. And even at the larger radio stations, there rarely are "beat" reporters who cover one or two fields exclusively, as there are on newspapers and on television. There often is little time for a radio reporter to become an expert on, say, public education, or hazardous waste disposal.

Beefing up news staffs and newscasts, as well as insisting that radio reporters dig harder for the story, requires a renewed commitment from radio station owners and operators. And it will cost some cold, hard cash. But freeing up reporters to pursue difficult stories, with no guarantee that the story will pan out, has long been the mark of successful newspapers and, increasingly, of successful television news de-

partments. When radio has recommitted itself to original newscasts and begins to assign reporters to probe behind the headlines and the blue smoke and mirrors, we'll know that Edward R. Murrow's "most satisfying and rewarding instrument" is indeed back where it belongs.

FOOTNOTES

[1]"Report and Order of the Federal Communications Commission," Broadcast Docket 79-218, Deregulation of AM and FM Radio, Jan. 14, 1981.

[2]"This Just Might Do Nobody Any Good," address delivered by Edward R. Murrow to annual convention of the Radio/Television News Directors Association in Chicago, Oct. 15, 1958. This was Murrow's major career speech on the broadcasting industry.

[3]"Fewer Radio Listeners Are Hearing the News," by Reginald Stuart, *The New York Times*, Dec. 28, 1986, p. 12E.

[4]*Radio In The Television Age*, by Peter Fornatale and Joshua E. Mills, The Overlook Press, Woodstock, N.Y., 1980, p. 95.

[5]*Broadcasting Cablecasting Yearbook 1986*, Broadcast Publishing Inc., Washington, D.C., 1986, pp. B-200 – B-212.

"Visual Bubblegum"—Dial-In TV Polls Spark Debate Among Broadcasters

by Mike McLaughlin

This article examines the dial-in poll, in which television viewers pay 50 cents to dial a 900 number and register their yes or no opinion on a question posed during a television newscast.

SHOULD U.S. Attorney General Ed Meese resign? Should the admission by Douglas Ginsburg of marijuana use disqualify him from consideration as a Supreme Court Justice? And what about a state lottery for North Carolina? Yes or no?

These are questions Tar Heel broadcasters have thrown to their viewers in dial-in polls—opinion tallies in which viewers are charged 50 cents a pop to talk back to their televisions by dialing one of two telephone numbers to register a yes or a no vote. An AT&T computer tabulates the number of yes phone calls and no phone calls and the tally is fed back to the television station for on-the-air reports. There is no chance to elaborate on one's opinion or even to say a single word. The computer places the caller in the correct category based on the phone number the viewer dials.

It isn't science, and broadcasters tell their viewers as much. But it's like the health warning on a package of cigarettes—they still want to sell the product. The dangers are misinformation and confusion about the opinions of North Carolinians on sensitive public policy issues and erosion of credibility for those who conduct their polls according to the exacting standards of social science.

Still, the polls have proliferated to the point that every North Carolina resident with a television set is likely to be able to tune in to a station that flashes a pair of 900 numbers across the screen in hopes of enticing viewer participation in the newscast. Of the 17 commercial television stations across North Carolina that feature at least a half hour each of evening and late night news, eight reported using the polls as a regular feature. A ninth station, WECT in Wilmington, dropped the dial-in polls in January 1988 because they were not generating enough response to justify their cost, says Bob Keefer, WECT assignment editor.

But costs were rarely cited among editors and

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news directors charged with making decisions on whether to use the polls. Dial-in polls are cheap compared to public opinion studies in which random samples are drawn so that the results can be generalized to represent the views of a larger population.

AT&T charges a $250 start-up fee for initiating the service. If the poll generates at least 500 calls—and most do—there are no additional charges. Stations are charged 25 cents for each call short of the break-even point. If a poll generated only 300 calls, for example, the station would be faced with an additional charge of $50.

Stations can also make money if the response is strong enough. AT&T reimburses stations on a sliding scale that begins at 2 cents for each call above the 2,000 call mark and goes up to 5 cents a call for every response above 20,000 calls. While the reimbursement rate sounds paltry compared to the phone company's take, WITN in Washington rang up $600 in revenue in a March 1987 poll. Viewers were asked whether they favored a state holiday celebrating the birthday of slain civil rights leader Martin Luther King Jr. and more than 20,000 responded, says news director Jim Bennett.

But despite the potential for a kickback, dial-in-poll users say making money is not their intent. "Dial-in polls are not revenue makers for WSOC-TV," says Mark Casey, executive producer of the Charlotte station's 11 p.m. news. "Such polls are not identified as revenue makers. Such polls are not designed to produce revenue. Very simply, making money has never and never will be a consideration in producing a dial-in poll."

Proponents of dial-in polls also say they are not intended to be scientific and are not presented as such. News directors who use the polls say they take pains to point out during the newscast the limitations of the poll, although most say they have heard of instances of abuse—cases in which disclaimers are inadequate or are omitted. They defend the polls as a means of enhancing viewer interest and participation in the newscast. A viewer who dials in a vote during the 6 p.m. news is likely to tune-in again at 11 p.m. to catch the results. "It's a way to get the viewer to talk back," says Casey. "So often we just bombard people with information. Very rarely do we ask them what they think."

News directors say the disclaimers they use with the polls inform viewers that the results are unscientific and represent only the opinions of viewers who call in a vote. At the same time, they say the polls help them get a feel for issues their audiences feel strongly about. "I just think it gives us a way of showing what some of our people are thinking," says Connie Howard, news director at WRAL in Raleigh. "I can't go away saying 50 percent of the people in the WRAL viewing area feel this way. If I had $10, I could call as many times as I wanted to."

"It identifies an issue on the national, international, state, or local level that is hot enough—touches people enough—to make them get up off the chair and pick up the telephone and give their opin-

North Carolina Commercial Television Stations That Conduct Dial-in Polls

	Station	Location	Conduct Dial-in Polls Yes	No
1.	WBTV	Charlotte		X
2.	WSOC	Charlotte	X	
3.	WCTI	New Bern		X
4.	WECT	Wilmington		X
5.	WFMY	Greensboro	X	
6.	WGHP	High Point	X	
7.	WHKY	Hickory		X
8.	WITN	Washington	X	
9.	WKFT	Fayetteville		X
10.	WLOS	Asheville	X	
11.	WNCT	Greenville		X
12.	WPCQ	Charlotte		X
13.	WPTF	Raleigh	X	
14.	WRAL	Raleigh	X	
15.	WTVD	Durham		X
16.	WWAY	Wilmington	X	
17.	WXII	Winston-Salem		X

Note: WUNC Television, the state's leading public television station, carries news and public affairs programming but does not conduct dial-in polls. Stations included in the table were those that feature at least a half-hour each of evening and late night news.

Table prepared by Mike McLaughlin.

ion," says WSOC's Casey, who points out his station also conducts scientific public opinion surveys—five of them in 1987 alone. "I want to stress that dial-in polls were never intended to replace the scientific survey. They are intended to give the viewer instant, talk-back contact with a news program. The dial-in is designed for viewer interaction. It puts into action the viewer's often muttered response to a medium that constantly speaks to [the viewer]."

Casey sets up dial-in polls for the Carolina News Network, which includes WSOC, WRAL, WFMY in Greensboro, WWAY in Wilmington, and WLOS in Asheville. He says successful polls often feature an ideologically charged issue that touches the emotions of viewers. For example, more than 10,000 viewers registered their votes when asked in an October 1987 poll whether the Senate should confirm Judge Robert Bork, President Reagan's first choice to fill the vacancy created on the Supreme Court by the retirement of Associate Justice Lewis Powell. A notable flop came later that same month when viewers were asked whether Dick Crum should resign as football coach at the University of North Carolina at Chapel Hill. "Our worst was Dick Crum's future at UNC," says Casey. "We pulled less than 500 calls. Nobody cared enough to get up and spend 50 cents."

As is the case at most stations, Bennett of Washington's WITN follows a strategy to assure that the dial-in polls generate viewer interest. The poll is announced during the noon broadcast. Reporters then collect sidewalk interviews on the same subject which are aired along with early poll results during the 6 p.m. newscast. Viewers get reminders about the poll and the phone numbers to dial throughout the evening. The final results are broadcast at 11 p.m. "You've got to tease it," says Bennett. "You've really got to promote it pretty heavily to get the proper response."

Critics among North Carolina broadcasters cite the amount of promotion required to conduct a successful dial-in poll as one of its chief drawbacks. "It takes up valuable time that could be used [for] more news stories," says Dave Davis, news director at WTVD in Durham. A feature package built around a dial-in poll can take two to three minutes. That's a significant chunk out of a half-hour broadcast.

Jim Ogle, news director at WGHP in High Point, says he has aborted scheduled dial-in polls when more important news has developed. "We don't run them on days when we've got major stuff going," says Ogle. "I'm not going to run visual bubblegum when people come to the table for a full-course meal." But Ogle concedes that once a poll is underway it must be completed, or else the station will face a host of angry viewers when they get their telephone bills. There is a potential for a dial-in poll to devour news time when a major story breaks after a poll has already started.

And some news directors say they believe that despite the disclaimers, many viewers confuse the dial-in polls with scientific public opinion samples. They say including the dial-in polls in a newscast lends them undue credibility. "No matter how carefully you couch the information you present in the polls, I suspect the overwhelming impression the audience is left with is this is a scientific opinion poll and should be given the same weight in assessing public opinion," says Mark Mayhew, assistant news director at WXII in Winston-Salem. "They are not designed to be accurate. All they do is muddy the waters, and there's enough misinformation out there as it is." Many television stations spend thousands of dollars on polls that do follow the guidelines of social science research. Some do not like to spend their credibility on polls that fall short of the mark.

"People assume that because it is on the TV news there is some kind of built-in accuracy to it," says WTVD's Davis. "They lend their credibility to

Polling Checklist

Here are some points to consider when evaluating the merits of a poll:

1. who paid for the poll;
2. when the polling was done and any events that might have affected polling results at that time;
3. how the poll was taken—by telephone, mail, or in person;
4. the population surveyed and screening questions, such as those used in a political poll to identify likely voters;
5. the size of the sample and, where the survey design makes it relevant, the response rate;
6. some indication of the allowance that should be made for sampling error;
7. the treatment of sub-groups in the sampling process—e.g., under-representation of women and blacks; and
8. the actual wording of the poll's questions.

something that probably doesn't deserve it."

Some critics also question the use of news time to promote a moneymaker for AT&T. "The telephone company provides the service to you," says Bill Knowles, news director at WCTI in New Bern. "They set it up and they reap the benefits. I just don't like it because it costs something from the viewer, and it's going to the telephone company. And they're just the middleman."

Ron Laughlin, state AT&T public relations manager, concedes the service is a moneymaker but says most of the 50 cents charge to viewers represents fixed costs. These include the cost of setting up the lines and of tabulating the results and providing them to television stations, as well as local telephone company access charges.

The key to getting an accurate public opinion sample is making sure that every member of a population being surveyed has a chance of being selected.[1] This is called random sampling, and without it, the results cannot be presented legitimately as representative of a larger population.[2] Because viewers decide whether to participate in a dial-in poll, the concept of random sampling is abandoned. That means there is no need to bother with the basics of reporting poll results, such as sample size, margin of error, and confidence level. It also means the results are meaningless beyond their face value.[3]

"There is no way to tell whether any given dial-in poll is representative or not," says Phil Meyer, a Kenan Professor of Journalism at the University of North Carolina at Chapel Hill and former research director for the Knight-Ridder newspaper chain. "It might be, and it might not be." Meyer says the biases inherent in the dial-in poll are similar to those of the clip-out survey sometimes used by newspapers. "There is a strong probability of over-representation of people for whom time is not a heavy cost, such as retired people and bored housewives," he says. "It takes 50 cents, and it takes some effort."

Meyer, who has published a number of scholarly articles on journalistic ethics and is vice president of the American Association for Public Opinion Research, says he sees no ethical problem with using

Viewers Veto Dial-In Poll

Dial-in polls are a prominent part of many North Carolina newscasts, but do viewers want them? In at least one instance, when a television audience got to vote on the question, the answer was a resounding no.

In April 1983, an aggressive *Charlotte Observer* media critic took aim at WBTV's dial-in poll, a feature in which viewers were posed a question and asked to dial one of two telephone numbers flashed on the screen to register either a yes or a no vote.

Mark Wolf, in a column on television and radio, charged that one edition of the poll had been misrepresented as "decisive" on whether Charlotteans favored a nuclear freeze.[1] Wolf said the poll actually was "about as scientific as standing in the middle of Tryon Street (one of Charlotte's main streets) and asking people to shout their opinions out the window." He said viewers should be told the primary purpose of the poll was to boost ratings so the station could increase its advertising rates.

WBTV threw the issue to its viewers in an appropriately unscientific manner—it conducted another dial-in poll. Viewers were asked, "Do you think [Channel] 3's Poll is a worthwhile part of this newscast?"

"The overwhelming response to it was no," says Bill Foy, the station's current news director.

The *Observer*, in an article measuring about two column inches, reported the vote as running two to one against the poll, with 63 percent of viewers voting no.[2]

That was the "kiss of death" to 3's Poll, says Foy.

Of course, there was nothing scientific about the vote, but then isn't that the case with every dial-in poll?

—Mike McLaughlin

FOOTNOTES

[1] Mark Wolf, "Without Scientific Methodology, WBTV's '3's Poll' Lacks Meaning," *The Charlotte Observer*, April 7, 1983, p. 9-B.

[2] "Viewers Reject '3's Poll' in Poll," *The Charlotte Observer*, April 9, 1983, p. 13-A.

the polls as long as stations include a prominent explanation of their worth in predicting public opinion. "As long as they are doing it just for fun and it's clear that it's just for fun, I don't think there is anything wrong with it," says Meyer. "Once you begin generalizing and say this poll proves such and such a thing, then you've crossed the line. I think it's better if it is used for a frivolous question, because that way it's much less likely that the consumer will be misled. It's hard to use it on a serious subject and then convince people it should be taken frivolously."

Others in academic circles are less tolerant of dial-in polls. "They're absolute junk," says Prof. Seymour Sudman, immediate past chairman of the Standards Committee of the American Association for Public Opinion Research. "They have no redeeming value at all. If the public recognized they are absolute trash it would be OK, but many people believe they have valid meaning."

Sudman says when news organizations have conducted comparison polls using social science research techniques in conjunction with dial-in polls on the same subject, the results have been "hugely different."

ABC News, for example, conducted a dial-in poll on the question, "Should the United States take strong action against the Soviets?" for shooting down a Korean passenger plane and killing 269 people in August 1983. More than 236,000 viewers called to register their opinions, and about 94 percent favored strong action. In a scientific poll conducted by the network the same night, however, 83 percent of those surveyed favored strong action against the Soviets.[4]

"The results have absolutely no relationship to public opinion," says Sudman. Because responding to the polls costs money, Sudman says there is a built-in economic bias. He also points out there are no safeguards to prevent viewers from calling more than once. "The ideologues and so on—people who feel very strongly about their viewpoint—are likely to jump in and try to win," he says. Interest groups may also misrepresent the results of the polls even when they are presented properly on television.

Sudman says the association has taken no formal action regarding use of the polls but encourages reputable news organizations to steer clear of them. "We're sensitive about issues of free speech," says Sudman, "but we try to persuade any rational user of this thing not to do it. People find it interesting, but there's just no reality."

Mayhew, of Winston-Salem's WXII, says dial-in polls should be avoided by North Carolina broadcasters, although he does not believe use of the polls should be restricted.[5] "I feel TV shows should be free to follow their own editorial judgment," says Mayhew, "but I'm pleased that the station for which I work no longer does them."

FOOTNOTES

[1] Seymour Sudman, immediate past chairman of the Standards Committee of the American Association for Public Opinion Research, says what is necessary for a legitimate public opinion poll is that every member of a population being sampled have a known, non-zero chance of being selected and that weighting be used to adjust for unequal probabilities.

[2] A shortcoming of every telephone poll is that not everyone has a telephone and those without a phone cannot participate. This is true of dial-in polls as well as other telephone polls that use scientific sampling techniques. Southern Bell provides telephone service to the majority of North Carolina residents, and a spokesman says about 89 percent of the households within the company's service area have phones. Southern Bell's definition of household includes nursing home rooms, college dormitory rooms, and the like.

[3] Sample size is the total number of respondents who participate in an opinion poll. Margin of error is the range the results of an opinion poll may vary at a given confidence level from the actual division of opinion within the population being sampled. For example, a poll with a sample size of 500 carries a margin of error of plus or minus 4 percent at the 95 percent confidence level, meaning that in 95 of 100 samples drawn, the results would lie within 4 percentage points of the true value in the population. For more on opinion polls, see *North Carolina Insight*, October 1984, Vol. 7, No. 2, pp. 2-14.

[4] "Punishing the Soviets—What U.S. Options?" ABC News Nightline transcript, Sept. 2, 1983, Show No. 605, pp. 10-11.

[5] The North Carolina Association of Broadcasters says it has taken no position on whether dial-in polls should be used in television newscasts.

Appendix

The Constitution of North Carolina

CONSTITUTION of NORTH CAROLINA

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I
DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. *The equality and rights of persons.* We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. *Sovereignty of the people.* All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. *Internal government of the State.* The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. *Secession prohibited.* This State shall ever remain a member of the American Union; the people thereof are part of the American nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. *Allegiance to the United States.* Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. *Separation of powers.* The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Reprinted from the 1987-1988 North Carolina Manual.

Sec. 7. *Suspending laws.* All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. *Representation and taxation.* The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. *Frequent elections.* For redress or grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. *Free elections.* All elections shall be free.

Sec. 11. *Property qualifications.* As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. *Right of assembly and petition.* The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret politial societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. *Religious liberty.* All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. *Freedom of speech and press.* Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. *Education.* The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. *Ex post facto laws.* Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.* Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Courts shall be open.* All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws;* No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.* General warrants, whereby an officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.* Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. *Modes of prosecution.* Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in non-capital cases.

Sec. 23. *Rights of accused.* In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. *Right of jury trial in criminal cases.* No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. *Right of jury trial in civil cases.* In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. *Jury service.* No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. *Bail, fines, and punishments.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. *Imprisonment for debt.* There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. *Treason against the State.* Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. *Militia and the right to bear arms.* A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. *Quartering of soldiers.* No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. *Exclusive emoluments.* No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. *Hereditary emoluments and honors.* No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.* Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principals.* A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.* The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II
LEGISLATIVE

Section 1. *Legislative power.* The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.* The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.* The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the Senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district:

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.* The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts; apportionment of Representatives.* The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of ever decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being deter-

mined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. *Qualifications for Senator.* Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. *Qualifications for Representative.* Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. *Elections.* The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. *Term of office.* The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. *Vacancies.* Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. *Sessions.*

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. *Oath of members.* Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. *President of the Senate.* The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) President Pro Tempore - succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon

the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of this term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other Officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.* The House of Representatives shall elect its Speakers and other officers.

Sec. 16. *Compensation and allowances.* The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.* Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.* Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.* Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.* Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.* The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. *Action on bills.* All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officer of both houses.

Sec. 23. *Revenue bills.* No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Sec. 24. *Limitations on local, private, and special legislation.*

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

(a) Relating to health, sanitation, and the abatement of nuisances;
(b) Changing the names of cities, towns, and townships;
(c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
(d) Relating to ferries or bridges;
(e) Relating to non-navigable streams;
(f) Relating to cemeteries;
(g) Relating to pay of jurors;
(h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
(i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
(j) Regulating labor, trade, mining, or manufacturing;
(k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
(l) Giving effect to informal wills and deeds;
(m) Granting a divorce or securing alimony in any individual case;
(n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III
EXECUTIVE

Section 1. *Executive power.* The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor; election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of

Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) Succession as Governor. The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Govenor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all of the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

Sec. 4. *Oath of office for Governor.* The Govenor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of Governor.

Sec. 5. *Duties of Governor.*

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuring fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State

Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditons as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by its proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Govenor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Sec. 6. *Duties of the Lieutenant Governor.* The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. *Other elective officers.*

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of

Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of Janaury succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.* The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.* The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.* There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina." All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina," and signed by the Governor.

Sec. 11. *Administrative departments.* Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and

duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV
JUDICIAL

Section 1. *Judicial power.* The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.* The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. *Judicial powers of administrative agencies.* The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. *Court for the Trial of Impeachments.* The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. *Appellate division.* The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. *Supreme Court.*

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. *Court of Appeals.* The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. *Retirement of Justices and Judges.* The General Assembly shall provided by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired. The General Assembly shall also prescribe maximum age limits service as a Justice or Judge.

Sec. 9. *Superior Courts.*

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Court shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.* The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall precribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.* The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of Action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress or private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.* In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.* The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. *Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.* Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. *Removal of Judges; Magistrates and Clerks.*

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. *District Attorney and Prosecutorial Districts.*

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. *Vacancies.* Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. *Revenues and expenses of the judicial department.* The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. *Fees, salaries, and emoluments.* The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. *Qualification of Justices and Judges.* Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V
FINANCE

Section 1. *No capitation tax to be levied.* No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes or property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten per cent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) To fund or refund a valid existing debt;

(b) to supply an unforeseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections, or to repel invasions;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. *Limitations upon the increase of local government debt.*

(1) *Regulation of borrowing and debt.* The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) *Gift or loan of credit regulated.* No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or

corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote threon.

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. *Acts leving taxes to state objects.* Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. *Inviolability of sinking funds and retirement funds.*

(1) *Sinking funds.* The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State Treasury but in consequence of appropriations made by law, and an accurate account of the recipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. *Health care facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing,

and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. *Capital projects for industry.* Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilties, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. *Joint ownership of generation and transmission facilities.* In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. *Capital projects for agriculture.* Notwithstanding any other provision of the Constitution of the General Assembly may enact general laws to authorize the creation of

an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. *Higher Education Facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Section 13. *Seaport and airport facilities.* (1). Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies.

(a) to acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor or otherwise dispose of lands and facilities and improvements, including undivided interests therein;

(b) to finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

(c) to secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State."

ARTICLE VI
SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. *Registration.* Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. *Qualifiation for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. *Eligibility to elective office.* Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. *Oath.* Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, ... , do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as . . . . . , so help me God."

Sec. 8. *Disqualifications of office.* The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjuged guilty of treason or any other felony against this State or the United States, or any person who had been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjuged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places or trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.* In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII
LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.* The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of

Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. *Sheriffs.* In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. *Merged or consolidated counties.* Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII
CORPORATIONS

Section 1. *Corporate charters.* No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. *Corporations defined.* The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX
EDUCATION

Section 1. *Education encouraged.* Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem

appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. *School attendance.* The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. *State Board of Education.*

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. *Powers and duties of Board.* The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. *State school fund.* The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State; and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. *County school fund.* All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. *Higher education.* The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. *Benefits of public institutions of higher education.* The Generaly Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as as far as practicable, be extended to the people of the State free of expense.

Sec. 10. *Escheats.*

(1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X
HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.* The personal property of any resident of this State, to a value fixed by the General Assembly but not less than $500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than $1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall insure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) *Conveyance of homestead.* Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. *Mechanics' and laborers' liens.* The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to

prevent a laborer's lien for work done and performed for the person claiming the exemption of a mechanic's lien for work done on the premises.

Sec. 4. *Property of married women secured to them.* The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. *Insurance.* A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI
PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.* The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.* The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.* Such charitable, benevolent, penal, and correctional institutions and agencies as the needs for humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.* Beneficient provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII
MILITARY FORCES

Section 1. *Governor is Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.* No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act of submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. *Power to revise or amend Constitution reserved to people.* The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. *Revision or amendment by Convention of the People.* A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. *Revision or amendment by legislative initiation.* A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. *Seat of government.* The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. *State boundaries.* The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.* Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.* The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto."

Sec. 5. *Conservation of natural resources.* It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve", and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

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