

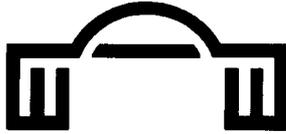
North Carolina  
**FOCUS**

**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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The North Carolina Center for Public Policy Research is an independent, nonprofit organization dedicated to the goals of a better informed public and more effective, accountable, and responsive government. The Center identifies public policy issues facing North Carolina and enriches the dialogue among citizens, the media, and policymakers. Based on its research, the Center makes recommendations for improving the way government serves the people of this state. In all its efforts, the Center values reliable and objective research as a basis for analyzing public policy, independence from partisan bias and political ideology, the richness of the state's diverse population, and a belief in the importance of citizen involvement in public life.

The Center was formed in 1977 by a diverse group of private citizens "for the purpose of gathering, analyzing, and disseminating information concerning North Carolina's institutions of government." It is a nonpartisan organization guided by a self-elected Board of Directors and has individual and corporate members across the state.

Center projects include the issuance of special reports on major policy questions; the publication of a quarterly magazine called *North Carolina Insight*; joint productions of public affairs radio programs with WUNC-FM and public radio stations in North Carolina; and the regular participation of members of the staff and the Board in public affairs programs around the state. The Center's research combines the thoroughness of scholarly research with the readability of good journalism. In each Center publication, we try to amplify conflicting ideas on the subject under study and to reach conclusions based on sound rationalization of these competing ideas.

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# North Carolina FOCUS

An Anthology on State  
Government, Politics, and Policy

EDITED BY  
MEBANE RASH WHITMAN AND RAN COBLE



*a book by the*

North Carolina Center for Public Policy Research

*NORTH CAROLINA FOCUS*  
*An Anthology on State Government, Politics, and Policy*

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In planning this text, the North Carolina Center for Public Policy Research organized an advisory committee, which provided invaluable guidance and assistance on this project from start to finish. We wish to recognize the following members of the *North Carolina Focus* Advisory Committee:

**Ted Arrington**, Professor, UNC-Charlotte;  
**Thad Beyle**, Professor, UNC-Chapel Hill;  
**Ronnie Capps**, Superintendent, Currituck County Public Schools;  
**Trusten Frank Crigler**, Policy Analyst and Consultant;  
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**Mary Thornberry**, Professor, Davidson College; and  
**Sandra Trivett**, Author of *The Price of Democracy: Citizen Responsibility* (see pp. 107–119) and past president of the Asheville-Buncombe County League of Women Voters.

We thank all of you for your time and dedication to this project.

Thanks also to Carol Majors and Publications Unlimited for developing creative solutions to all kinds of interesting problems.

We would also like to thank Center staff members for their support: Nancy Rose, for her help in developing a business plan for the project; Danita Morgan, for her help in marketing the final product to professors, libraries, and interested citizens; Laurita Ray, for her constant good humor and administrative support; Tom Mather, for his research assistance and for his contribution of articles to the anthology; and Mike McLaughlin, especially, for his dedication and leadership of *North Carolina Insight* magazine, without which this project would not exist. It is a pleasure to work with each of you.

—*Mebane Rash Whitman and Ran Coble*

## Dedication

### Frank Utley Fletcher 1912-1995



Larry Ketchum

THE NORTH CAROLINA CENTER FOR PUBLIC POLICY RESEARCH dedicates *North Carolina Focus: An Anthology on State Government, Politics, and Policy* to Frank Fletcher, an attorney and philanthropist. Plato said that society cultivates whatever is honored there. At the Center, we hope to cultivate Frank Fletcher's sense of citizenship and values for education by honoring his life and work. In recognition of his service to North Carolina, the Center is committed to providing nonpartisan resources, such as *North Carolina Focus*, for educators and the broadcast media.

Mr. Fletcher was born in Sparta, North Carolina, on February 7, 1912. As an undergraduate, he attended North Carolina State University. He received his LL.B. and J.D. degrees from Wake Forest University School of Law. He followed these degrees with graduate work at Duke University. For his extensive work in the fields of law and broadcasting, Shaw University awarded Mr. Fletcher an honorary Doctor of Law degree.

In 1934, Mr. Fletcher left North Carolina to take a position as an attorney with the Federal Communications Commission, and in 1939, he joined the firm of Spearman and Roberson, ultimately becoming its Senior Partner. From 1942-45, he served as an attorney with the United States Army. Mr. Fletcher was a founding partner of the Washington law firm,

Fletcher, Heald & Hildreth, which specializes in communications law. He co-founded WARL, a radio station in Arlington, Virginia and also was instrumental in founding Capitol Broadcasting Company in Raleigh, North Carolina in 1937. Capitol Broadcasting grew to include seven radio and television stations.

Mr. Fletcher gained national recognition for his work in the field of communications law. In 1952, he became the president of the Federal Communication Bar Association, and in 1985, he was inducted into the North Carolina Broadcasters Hall of Fame. He also was a member of many professional and civic organizations including: admission to practice in the courts of North Carolina, the U.S. Supreme Court, the U.S. Court of Appeals for the District of Columbia, and the Federal Communications Commission; the World Peace Through Law Center, the National Association of Broadcasters, and the Broadcast Pioneers. He loved to travel and visited at least 65 countries during his life.

After his retirement from the practice of law in 1986, Mr. Fletcher became the Grants Coordinator at the A.J. Fletcher Foundation, a charitable foundation established by his father in the early 1960s. With this new career in philanthropy, he quickly established a reputation for dedicated service to North Carolina's nonprofit community. He was especially effective at breaking down barriers between charitable donors and recipients, and at encouraging the development of a wide range of nonprofit agencies and organizations. Mr. Fletcher greatly enhanced the Foundation's commitment to education, expanding both its music scholarship program and its Law Scholars program at Wake Forest University.

Mr. Fletcher was particularly fond of an earlier edition of *North Carolina Focus* as a resource to teachers of government in policy research. This edition of *North Carolina Focus* is made possible in part by the Frank U. Fletcher Memorial Gift from the A.J. Fletcher Foundation to support the Center's service to teachers in North Carolina. American philosopher Mortimer Adler said, "Everyone is called to one common human vocation—that of being a good citizen and a thoughtful human being." Mr. Fletcher was both. North Carolina will miss Frank Utley Fletcher, but the spirit of his work will not be forgotten.

## *Preface*

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THE FIRST EDITION OF *North Carolina Focus* was published by the North Carolina Center for Public Policy Research in 1981. The second edition of the Center's anthology on state government, politics, and policy issues facing North Carolina was published in 1989. We hope this third edition is useful to students in public and private secondary schools in classes such as Civics, Social Studies, and Economic, Legal and Political Systems. *North Carolina Focus* also is designed for use by students in colleges and universities across North Carolina in political science, public administration, and public policy classes.

Many of the articles that appear in this book have been published previously by the North Carolina Center for Public Policy Research as articles in the Center's journal, *North Carolina Insight*. They have been updated through April 1996.

Part I reviews North Carolina's history and the state's unique character—both the logical and the paradoxical.

Part II examines the constitutional history of the state. Chapters one through five correspond to the organization of the North Carolina Constitution. Chapter one looks at Article I of the Constitution: The Rights of the Citizen. The next three chapters examine the legislative, executive, and judicial branches of state government, respectively. Chapter five analyzes issues in financing and budgeting our state and local government.

Part III discusses important issues of public policy to North Carolina citizens: economic development, education, health care, the environment, and prisons. Chapter eleven contains articles that assess the role of the news media in covering state government and educating the citizenry. Chapter twelve concludes with an examination of politics in North Carolina, and features a look at campaign finance.

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

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# **North Carolina:** **People, Culture, and History**



# Part I

## Introduction

*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,<sup>1</sup> 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 Native-American 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**

**T**he 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 Lords 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.<sup>2</sup>

The Fundamental Constitutions, while establishing an elaborate blueprint for government, were 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

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**

**N**orth 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 sla-

very, 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.<sup>6</sup>

Traditional interests regained control in the 1870s. 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 Republican 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.<sup>7</sup> 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**

**P**olitics in North Carolina since 1900 has centered on two main concerns—racial

equality 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*,<sup>8</sup> 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.<sup>9</sup> 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 emergence of prominent black leaders in local and statewide politics.

The economic development of the state in much of the 20th century 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, and turkeys. 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 nonagricultural 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 products, often run by corporations or under contract. (See pages 389–402 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.

#### FOOTNOTES

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

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

<sup>3</sup> *Ibid.*, p. 35.

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

<sup>5</sup> 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.

<sup>6</sup> *Ibid.*, p. 8.

<sup>7</sup> 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.

<sup>8</sup> V. O. Key, *Southern Politics in State and Nation* (New York: Random House, 1949), p. 205.

<sup>9</sup> 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).

## *Is North Carolina a Progressive State?*

THE NEXT ARTICLES take a look at North Carolina at four different points in time during the 20th century: 1949, 1976, 1983, and 1993. As you read the chapters, assess whether North Carolina is a progressive state. How would you define progressive? Think about the following questions: Is North Carolina progressive in identifying and dealing with racial issues? Is North Carolina progressive in its treatment of workers? Is the economic transition away from textiles, tobacco, and furniture progressive? Is the shift to a two-party political system progressive? Is concentrated development in one part of a state progressive? Identify long-term problems that this state will have to address in the 21st century.

# North Carolina: Progressive Plutocracy 1949

BY V. O. KEY, JR.

*Despite common inheritances of war and reconstruction each southern state possesses characteristics that combine into a unique personality. Though their differences are known to anyone who has looked beneath the surface, they are often ignored in general comments about the region. There are deeply rooted dissimilarities in the economic and social fabric. There are differentiations in the tone and nuance of politics. There are distinguishing attributes that can be measured and others that can only be felt. The prevailing mood in North Carolina is not hard to sense: it is energetic and ambitious. The citizens are determined and confident; they are on the move. The mood is at odds with much of the rest of the South—a tenor of attitude and of action that has set the state apart from its neighbors. Many see in North Carolina a closer approximation to national norms, or national expectations of performance, than they find elsewhere in the South. In any competition for national judgment they deem the state far more “presentable” than its southern neighbors. It enjoys a reputation for progressive outlook and action in many phases of life, especially industrial development, education, and race relations.*

**N**orth Carolina's position of respect ability in the nation rests on more than popular imagination. Its governmental processes have been scrupulously orderly. For half a century no scandals have marred the state administration. No band of highwaymen posing as public officials

has raided the public treasury. No clowns have held important office—save the erratic and irrelevant Bob Reynolds—and there have been no

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*Reprinted with permission. V.O. Key, Jr., Southern Politics in State and Nation, Alfred A. Knopf, Inc.: New York, 1949, pp. 205-228.*

violent outbursts by citizens repressed beyond endurance. The state university has pioneered in regional self-examination; it has become famed for academic freedom and for tolerance.<sup>1</sup>

The state has a reputation for fair dealings with its Negro citizens. Its racial relations have been a two-sided picture, but nowhere has cooperation between white and Negro\* leadership been more effective. Nowhere, except perhaps in Virginia, have over-all relations, year in and year out, been more harmonious. In 1947 a northern Negro reporter, hearing of the harmony that prevailed, visited North Carolina. He looked with critical eye and concluded that it bid fair to be a model community in its race relations, "something of a living answer to the riddle of race."<sup>2</sup>

North Carolina has outstripped other southern states in the development of a virile and balanced economy. In 1940 a larger proportion of its labor force was employed in manufacturing,<sup>3</sup> and the total value added by manufacture was larger than that of any other state in the South.<sup>4</sup>

The comfortable picture of the Tar Heel state as an area of progress, tolerance, and enlightenment is scotched most forcefully by North Carolinians themselves. They are aware of the rough and hard struggles within their state. They know the bitter conflicts that surround the Negro and organized labor. They know the fights over state appropriations and tax sources. They know that every liberation from ancient taboo is bought or buttressed by shrewdness and hard work and endless patience. Yet they take pride in what they accomplish and seldom indulge in complacency that ignores work yet undone.

### 1. A Modern Renaissance

North Carolina's chroniclers trace the distinctive character of their state<sup>5</sup> to its atypical origins in the Old South and to a political and educational renaissance that took place at the turn of the century.

Much of the distinctiveness of modern North Carolina stems from differences between it and the rest of the South that existed at the time of The War. It refused by popular vote in 1861 to call a secession convention. It re-

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*Editor's Note: At the time this article was written, "Negro" was the preferred term for African Americans.*

fused to leave the Union until Lincoln issued his call for troops and Virginia and South Carolina made it a lonely island of deep loyalty between them. Its fundamental difference from the Deep South was the smaller relative importance of its plantation economy. North Carolina had large numbers of slaves, to be sure, but large land- and slave-holdings played a less-important part than in other states. North Carolina had fewer slaves than any of the seven principal slave states and a much smaller number of large slaveholders. It had fewer manorial plantations to support violent states' rights politicians. It had less of a ruling class to impress its fixations of economics and of race on the state. It was less dependent on plantation production and less imbued with the associated attitudes.

With its relatively few baronial slaveholders, North Carolina became in the nineteenth century conscious of its lowly position. The arrogant glare of the gentry in neighboring Virginia and South Carolina gave it a sense of inferiority, or at least so say some North Carolinians. A poor-relations complex put the state on the defensive. But if there was a sentiment of inferiority, it was belligerent. And if the elegant accomplishments of others gave it an awareness of mediocrity, the mediocrity was militant.<sup>6</sup> After The War this odd child bestirred itself sooner and more productively than its prouder neighbors. It seemed less shackled than they by the ghosts of lost grandeur; it had had less grandeur to lose. Perhaps its inner spirit was pricked by the ill-concealed condescension that it often received. In any event, at the turn of the century a revival in the life of the state launched it upon a new and vigorous era.

The causal influences in any social gestation are elusive. What moves a people to action, what gets the ball of social inertia rolling one direction instead of another, or rolling at all, is a pretty question. Yet once a trend starts, it is strongly disposed to persist, difficult to reverse. A sequence of historical events often stimulates a social organism to a particular line of action. Those events are sometimes manifestations of deep evolutionary processes and may give the impression that they are the prime movers themselves.

North Carolina's spirit reveals itself in the purposeful direction of its social action commencing about 1900. Philosophers and historians find the origin, if not the explanation, of

this spirit in the political struggles at the end of the past century, which propelled the state into its modern era of liberalized Democratic government. These struggles centered around Republican and Populist forces which captured control of the state legislature in 1894 and elected a Republican governor in 1896. Fusion successes, in addition to removing the state's affairs from Democratic hands, increased the prominence of Negroes in public life. Their number in elective and appointive places expanded to the acute irritation of Democratic whites. And, as had occurred elsewhere, when the competition became intense, Democrats maintained that Negroes were moved by every base incentive and that, in fact, their presence in the electorate was responsible for the shameless corruption that prevailed. In bitter white-supremacy campaigns the Democrats recovered control of the legislature in 1898 and the governorship in 1900.

The modern era dates from the administration of the newly elected governor, Charles Brantley Aycock. Aycock has come down as "the educational governor." His energies in office and out were consumed with the advancement of public education. The key to his fame, which in North Carolina is great, lies in the success with which he recruited the support of Carolinians, including those who would have to pay the tax bill, to the cause of universal education. A great schism split the state for years over private versus public institutions of higher learning. Supporters of denominational colleges

fought appropriations for the state university. There was great concern not only over secular instruction but over the tax money that would have to be spent on it. Aycock, in company with others, fought and won the battle for the general principle that the best investment a state can make is in the education of its children.

Aycock spoke for universal education, and he and North Carolina did not exclude the black man from the universe. The campaigns of 1898 and 1900 had been fought on a pledge to remove the Negro from politics. The legislature proposed and in 1900 the people approved a reading and writing qualification for voting. (A temporary grandfather clause accommodated illiterate whites.) And then having disfranchised the Negro on the grounds of illiteracy, North Carolina set about to make him literate. Aycock spoke in 1904: "When the (suffrage) fight had been won, I felt that the time had come when the Negro should be taught to realize that while he would not be permitted to govern the State, his rights should be held more sacred by reason of his weakness."<sup>7</sup> His rights included the right to education along with the white citizenry. While North Carolina has been no picnic ground for its Negro citizens, the spirit of Aycock has persisted in a consistently sensitive appreciation of Negro rights.<sup>8</sup>

From this educational revival springs in large measure the spirit of self-examination that still sets North Carolina apart in the South. As the state struggled to educate its people it made

**Table I. Slaves and Slaveholdings in Principal Slave States, 1860**

State	Number of Slaves	Number of Slaveholdings of 50 or More Slaves
North Carolina	331,059	744
Virginia	490,865	860
Georgia	462,198	1314
Louisiana	331,726	1576
South Carolina	402,406	1646
Mississippi	436,631	1675
Alabama	435,080	1687

**Table 2. Value of Farm Products by States, 1899 and 1939**

State	1899	1939	Percent Increase
Florida	\$ 18,309,104	\$ 88,904,396	385.6
North Carolina	89,309,638	262,437,677	193.9
Texas	239,823,244	509,736,065	112.5
Arkansas	79,649,490	159,098,085	99.7
Virginia	86,548,545	150,912,239	74.4
South Carolina	68,266,912	110,748,841	62.2
Georgia	104,304,476	165,956,195	59.1
Louisiana	72,667,302	114,046,616	56.9
Mississippi	102,492,283	158,940,942	55.1
Tennessee	106,166,440	156,491,597	47.4
Alabama	91,387,409	119,740,527	31.0

great strides, too, in the fundamental base of a healthy society, productivity. Perhaps fortuitous economic circumstances impelled tobacco and textile production. Perhaps it was something as simple as the conflux of energies of able men of good will. Whatever the causes, as North Carolina began to educate it also began to produce, and there set in motion the progressive, productive forces that today distinguish the state. Not that it has achieved a material welfare greater than other southern states, but, rather, it has been on the way. Once started, it has demonstrated a relentless forward determination. By many economic indices, the state ranks far down the ladder, even among southern states, none of which, however, has shown more sustained progress.

Increases in the value of farm products between 1899 and 1939 are shown for each southern state in Table 2. North Carolina's percentage increase exceeded that of every other southern state except Florida. Florida's farm production was so low in 1899 that even a small increase resulted in a high rate of growth. Over the same period North Carolina's advance in the value of manufactured products was even more marked, as is made clear in Table 3.

It has been the vogue to be progressive. Willingness to accept new ideas, sense of community responsibility toward the Negro, feeling

of common purpose, and relative prosperity have given North Carolina a more sophisticated politics than exists in most southern states. The spirit of the state has not tolerated demagoguery. The spirit that has not feared to face community needs, and to levy taxes to meet them, has had no place for Huey Long. The spirit that recognizes a responsibility to citizens who long were unable to participate in their government does not tolerate a Talmadge. The spirit that is unchained to a social and economic hierarchy of great tradition and authority has no place for a Byrd machine.

## **2. Rule of an Economic Oligarchy**

**I**ndustrialization has created a financial and business elite whose influence prevails in the state's political and economic life. An aggressive aristocracy of manufacturing and banking, centered around Greensboro, Winston-Salem, Charlotte, and Durham, has had a tremendous stake in state policy and has not been remiss in protecting and advancing what it visualizes as its interests. Consequently a sympathetic respect for the problems of corporate capital and of large employers permeates the state's politics and government. For half a century an economic oligarchy has held sway.

North Carolina's economic-political combination has exhibited a sense of responsibility in community matters. It has not been blind to broad community needs. It might impose a sales tax during the depression and at the same time reduce ad valorem taxes. Yet it had the courage and foresight to embark in the 'twenties on a huge highway construction program financed by borrowed money. The traditional, organization governor in 1947 recommended to his legislature increased salaries for teachers and state employees, expanded highway construction, an enormous and costly good health program, substantial capital outlay for institutions of higher learning. The kind of economic-political system favored by the oligarchy was described by a former governor as the "capitalistic system liberally and fairly interpreted."<sup>9</sup> And that pretty well sums up the view of the prevailing forces in North Carolina.

The state has been run largely by lawyers.<sup>10</sup> While many of its governors may have been stodgy and conservative they have never been scoundrels or nincompoops. It would be inaccurate to portray a direct line of authority, or even of communication, from the skyscraper offices of industrial magnates to the state capitol. It would be inaccurate to suggest that North Carolina's top politicians and policy makers have

been other than generally independent, conscientious citizens in the execution of their charges. The effectiveness of the oligarchy's control has been achieved through the elevation to office of persons fundamentally in harmony with its viewpoint. Its interests, which are often the interests of the state, are served without prompting.

The pre-eminence of these politicians has been accomplished through two "machines" or organizations. Even if North Carolinians did not constantly talk about them, their existence would be suggested by the voting behavior of the state. On the basis of our observations in Tennessee, Georgia, and Virginia, Table 4 clearly indicates the presence of a political organization. Instead of a dispersion of the vote among many candidates, as occurs in a loose and anarchic factional system, the North Carolina primary vote clusters mainly around two major candidates. In every contested primary since 1916, save one, about three-fourths of the vote has gone to the two leading candidates.

In fact, the organizations indicated by the figures have existed. First, the "Simmons machine" and, then, the "Shelby Dynasty" dominated the state's politics so thoroughly that the people generally felt that their candidates were picked for them long in advance by a small inner

**Table 3. Value of Manufactured Products by States, 1900 and 1939**

State	1900	1939	Percent Increase
North Carolina	\$ 94,919,663	\$ 1,421,329,578	1397.4
Texas	119,414,982	1,530,220,676	1181.4
Virginia	132,172,910	988,813,246	648.1
Alabama	80,741,449	574,670,690	611.7
South Carolina	58,748,731	397,512,863	576.6
Tennessee	108,144,565	728,087,825	573.3
Florida	36,810,243	241,538,534	556.2
Georgia	106,654,527	677,402,657	535.1
Louisiana	121,181,683	565,265,273	366.5
Mississippi	40,431,386	174,937,294	332.7
Arkansas	45,197,731	160,166,984	254.4

circle of politicians. Furnifold M. Simmons organized the Democratic campaign of 1898, which wrested control of the legislature from the fusion forces. While primarily created to fight the Republicans and Populists, the powerful Democratic organization inevitably possessed a personal loyalty to Mr. Simmons. It extended to every county and into many precincts. Mr. Simmons employed it to assure his dominance within the Democratic party. It put him in the United States Senate in 1900 and kept him there until 1930. For thirty years he determined who should be his Senate colleague and, with one exception, supported the winning candidate for governor. In 1908 he lost control of the organization, and his candidate for governor, Locke Craig, was defeated by William W. Kitchen. By 1912, however, he regained mastery. Craig was unopposed for the governorship and Simmons was renominated for the Senate against Kitchen and a third candidate.

In 1928 North Carolina cast its electoral votes for Herbert Hoover, who was supported actively by Simmons. Senator Simmons was not a candidate that year. When he ran in 1930 resentment against his 1928 bolt assured his defeat by Josiah W. Bailey, a former follower.

After 1908, the machine's severest test occurred in 1920. Its candidate, Cameron Morrison, fought a bitter race against an extremely popular maverick, Max Gardner of Shelby in Cleveland County, who lost by the narrowest of margins. By the time Gardner ran again in 1928 he had so strengthened his position that Simmons supported him and he went unopposed for the Democratic nomination. He won over the Republican candidate in the election in which Hoover carried the state.

In 1928, with Gardner's unopposed nomination and Simmons' bolt of the party, transition of party control commenced; it was completed in 1930 with Simmons' defeat. Even with the depression Gardner's influence remained sufficient for his personally selected candidate, J. C. B. Ehringhaus, to win in 1932. In 1936 Gardner's brother-in-law, Clyde R. Hoey, also of Shelby, was elected. The Shelby Dynasty became a byword.

Whereas the Simmons strength had rested primarily on a personal network of followers extending from county to county over the state, the Gardner-Ehringhaus-Hoey power rested chiefly on the elective and appointive offices of the state administration.<sup>11</sup> Particularly important,

by common repute, have been the highway and revenue departments in their political activity and significance. This loose confederation, the "state administration," found strength in unity. It split in 1940, but in 1944, with a resident of Gaston County, next-door-neighbor to Shelby, in the race, it held together to assure his election. The 1948 contest found state officials split, although most of them were on the side of Charles Johnson, the state treasurer, identified long before the primary as the administration's favorite. To the astonishment of most observers he went down before a surprise entrant, Kerr Scott, the commissioner of agriculture.

Unlike Senator Simmons, who kept taut his reins on the state's politics, former Governor Gardner made no attempt after leaving office to maintain detailed leadership of the "Shelby Dynasty" or of the administration that supported it.

**Table 4. Percentage of Total Vote Received by the Two and Three Highest Candidates in the First Democratic Primaries for Governor of North Carolina, 1916-48**

Year	Percentage of Total Vote Received by	
	Two Highest Candidates	Three Highest Candidates
1916	100.0	—
1920	76.5	100.0
1924	100.0	—
1928	100.0 <sup>a</sup>	—
1932	73.1	100.0
1936	74.2	98.7
1940	54.0	75.8
1944	99.3	100.0
1948	78.3	96.3

<sup>a</sup> Unopposed.

On leaving office in 1933 he moved to Washington, D.C., to practice law. His position of leadership thereafter undoubtedly grew from legendary embellishment, which found root in his tremendous personal prestige, the succession of his friends in office, and the helping hand he could lend to candidates through the raising of campaign funds.

In the long life of the Simmons and Gardner organizations it has never been doubted that the ultimate political power of the state represented large business and financial interests. Simmons was hotly accused of favoritism toward corporations and his voting record in the Senate suffered sustained criticism from the state's more liberal Democratic leadership. His conservative leanings became so pronounced that in 1912 his long-time political friend, former Governor Aycock, and two liberals announced against him for the Senate. Aycock died before the primary and Simmons won easily over the other opponents. He became marked as the leader of conservative Democratic sentiment in the state.<sup>12</sup>

The only threatening electoral challenges to the economic oligarchy were repelled by the Gardner followings in 1936 and 1944. In both races Dr. Ralph McDonald, a professor of government who had seen brief service in the legislature, waged strong campaigns against the administration. He had fought the sales tax, attacked the incumbent administration on many scores, and had been labeled a radical. In 1936 a third man, A. H. Graham, participated in the first primary, but in the run-off threw his support to Hoey. In 1944 the lines were clearly drawn between the allegedly dangerous and unreliable McDonald and Cherry, the only two consequential candidates. The full resources of the administration enabled Cherry to win.

It is no accident that North Carolina has not produced a spokesman of the downtrodden like Folsom or Ferguson or Florida's Catts. In the time of Simmons and since, ambitious, young politicians have seen the way to advancement through the favor of those already in power. It is as old a story as politics itself. Campaign money is there for those whose views harmonize with the predilections of the suppliers of the funds. Encouragement to aspiring contestants is thus on a selective basis. Perhaps some incipient mavericks have thought better of their daring and gradually, or suddenly, conformed to the mold. Sometimes they have persevered as Mayne Albright did in 1948. Young, able, energetic,

Albright based his campaign on opposition to machine government. He ran third, with 18 per cent of the vote in the first primary. And when a full-fledged opposition candidacy has developed as it did in the person of McDonald, the weight of the whole financial community has been thrown against him. In North Carolina, as everywhere else, money talks in politics.

It has not been necessary for politicians in North Carolina to be, or to pretend to be, poor men. It has not been necessary for them to cultivate a rusticity to get votes. They have been unblushingly and unapologetically in favor of sound, conservative government. Progressive, forward-looking, yes, but always sound, always the kind of government liked by the big investor, the big employer. While investors and employers have been willing to be reasonable, they have aimed to keep control. As a venerable North Carolinian put it: The big interests have known when to give way and when to play ball. They have been willing to be fair but not at the expense of their power.<sup>13</sup>

### 3. Black Belt in the Minority

A center of consistent resistance to North Carolina's political machines shows up in a patch of northeastern counties, south of the Virginia border and west of Albemarle Sound, which resemble the Deep South more than any others in the state. The heart of the North Carolina black belt, this area has been the foundation of opposition in a long series of elections. The maps in Figure 1 show the points of highest strength of the leading opposition candidate in four races beginning with 1932. In the three gubernatorial contests represented, antiorganization strength clearly focused in the blotch of black counties.<sup>14</sup> This focus was especially noticeable in Fountain's race in 1932 because he himself came from the heart of the section, Edgecombe County. The same localization of support shows up, however, in races in which the candidates do not live in the black

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*As a venerable North Carolinian put it: The big interests have known when to give way and when to play ball. They have been willing to be fair but not at the expense of their power.*

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belt. In 1936 the pattern appeared clearly in the second primary in which liberal conservative lines were drawn drum tight between Hoey and McDonald. The latter, "radical" and opposed to the sales tax, received his greatest proportionate support in the black belt. Similarly, in 1948 Mayne Albright, running on a platform that stressed his opposition to machine government and actively supported by organized labor, found his greatest appeal there. In the 1932 Senate race the poor man's candidate, Bob Reynolds, who made fun at the expense of Gardner-backed Cam Morrison, drew heavy support not only around his home in the western highlands, Buncombe County, but also in the plantation crescent.

Why this area should be the bed of revolt against the ruling clique in the Democratic party can be understood only in terms of its minority position in North Carolina's new prosperity. It is not strange that the black belt should exhibit an antipathy to the rest of the state. We have seen such sectional temperament displayed in Alabama and will see it again in Mississippi. What is odd is that the black-belt counties should champion candidates of insurgency rather than candidates of the status quo.

We saw the occasional emergence in Alabama of an alignment of black-belt counties with "big mules" of the cities in opposition to the Northern and wiregrass sections of the state. The coalition there was essentially a combination of large planters and large businessmen who had a common concern over the tax rate and a desire for conservative government. Their opponents were the poorer farmers, with smaller holdings in sections of the state with few Negroes, and organized labor.

The odd aspect of North Carolina sectionalism is that protest arises in the black belt instead of the Piedmont. Agrarian radicalism, reminiscent of the Populists and centered in the same areas as the strength of the People's party, is found in the Alabama counties with fewest Negroes. In North Carolina opposition to the political machine, to the economic oligarchy of manufacturing and financial interests, comes from the counties with the most Negroes. These counties as a group did not constitute the area of greatest Populist sentiment in the 'nineties. Some of them, however, such as Nash, Pitt, and Warren, had strong Populist leanings in the elections of 1892 and 1894 despite the presence of large numbers of Negroes.<sup>15</sup>

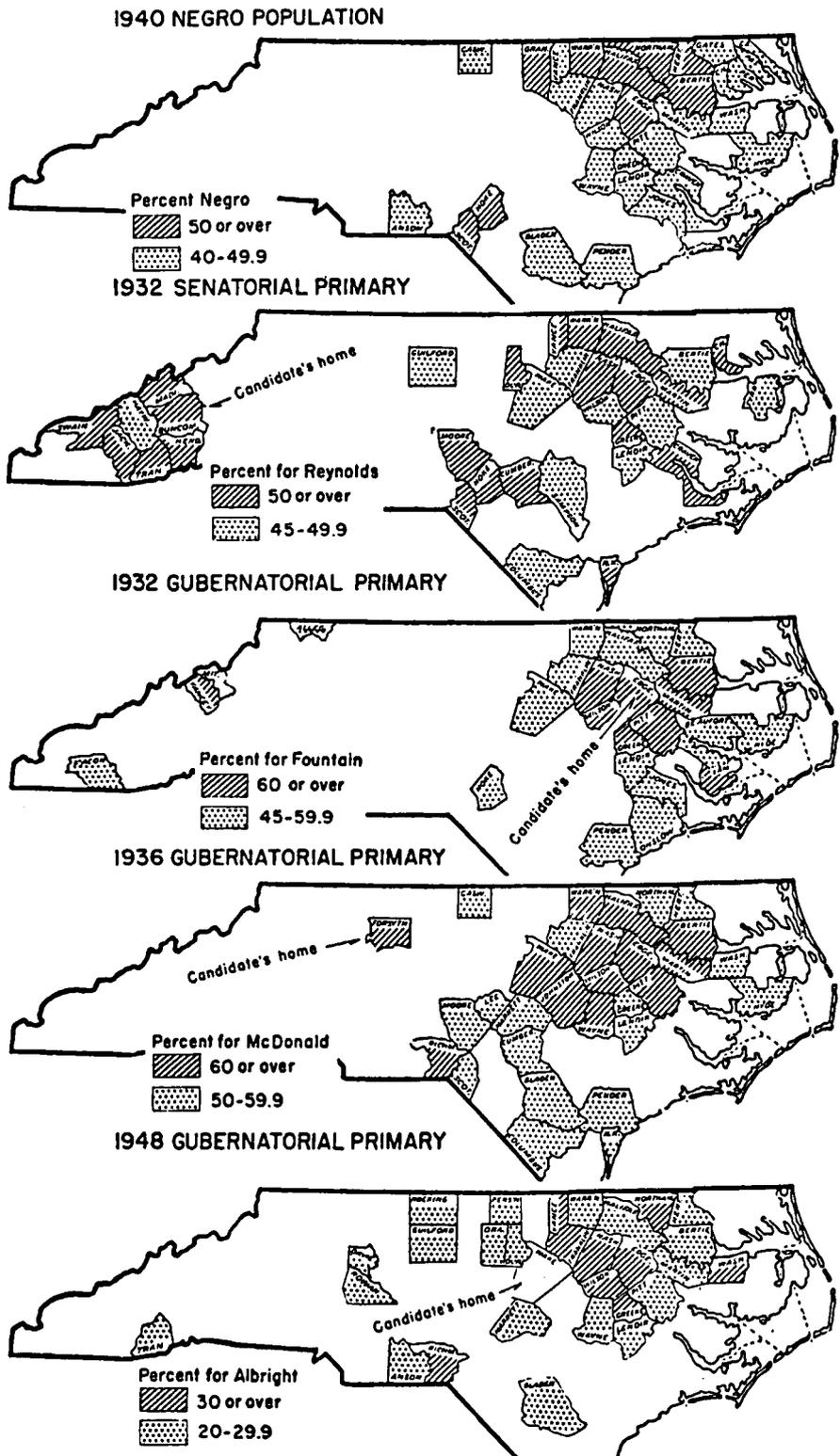
The most meaningful explanation of the contrast between the Alabama and North Carolina black belts is found in their sharp disparities. Table 5 contrasts selected characteristics of each state's counties that had 40 per cent or more Negro population in 1940. Three important differences exist between the two states. First, a greater degree of urbanization in the North Carolina black belt presumably contributes to its liberation from traditionalism. Second, the number of large land operations is much greater in the Alabama counties. The 1945 census of agriculture records the number of multiple-unit operations of 500 acres or more in most black-belt counties of each state. The number of such operations in the median Alabama county was 83 as compared with 33 for North Carolina. Proportionately more North Carolina farm units were in multiple units in the black-belt counties, but there were fewer multiple-unit operations of great size. These conditions no doubt disperse economic influence in the area, lessen the political significance of large landholders, and narrow the distance between the top and bottom rungs of the economic and social ladder. A third difference lies in the character of tenancy. The ratio of tenancy in Alabama tended to be higher but the proportion of tenants white much lower. In North Carolina's black counties there is a comparatively large number of white tenants, a factor perhaps contributory to the difference in political flavor of the two areas.

The political insurgency of the North Carolina black belt helps free the state political leadership of racial attitudes of areas of high Negro population. Though the North Carolina black belt exhibits tendencies toward insurgency in economic matters<sup>16</sup> there is no suggestion of a radically atypical attitude on race relations. In Alabama, black-belt whites are often among the political big shots who set the style of state policy and politics. The lesser role of plantation princes in North Carolina's executive and legislative affairs contributes not only to a de-emphasis of harsh, racial attitudes but also to less effective assertion of the extremely conservative viewpoints of all kinds that are usually associated with a plantation economy.

#### 4. Sectionalism and the Republicans

**"T**he political questions in North Carolina have always been questions of east and

**Figure 1. North Carolina's Black Belt:  
A Center of Resistance to the State Machine**



**Table 5. Comparison of  
North Carolina and Alabama Black Belts**

	Alabama	North Carolina
Number of counties 40% or more Negro, 1940	24	31
The following data pertain to these counties:		
Percentage of counties 20% or more urban, 1940	20.8	35.4
<i>Median County in</i>		
Percentage of farm units in multiple-unit operations, 1945	12.2 <sup>a</sup>	23.8 <sup>b</sup>
Number of multiple units of 500 acres or more, 1945	83 <sup>a</sup>	33 <sup>b</sup>
Percentage of farmers who were tenants, 1940	71.9	60.8
Percentage of tenants who were white, 1940	31.6	52.6

<sup>a</sup> Based on 21 counties.

<sup>b</sup> Based on 28 counties.

west, or the upcountry against the lowlands, of crystalline schists and granites against unconsolidated clays, sands, and gravels.” These remarks of a university professor<sup>17</sup> are oft quoted in explanation of North Carolina’s political disputes. They have much foundation in fact as can be inferred from the behavior of the black belt.

The Democratic organizations that ruled the state for almost fifty years possessed a decidedly sectional character. With regularity far from coincidental the area of their greatest strength has been in the west, and most frequently in the far-western counties of the Blue Ridge. And the sectionalism within the Democratic party has gone hand in hand with a sectional division of strength between Republicans and Democrats.

North Carolina has more-tender sectional sensibilities than any other state in the South, including even tripartite Tennessee. Invariably one Senator must come from the east and one from the west. The rule has been, too, that the governorship rotates between the east and the west.<sup>18</sup> The line between east and west is not precisely drawn and mid-state politicians sometimes find their ambiguous position advantageous and sometimes not.<sup>19</sup>

Sectional consciousness appears in many phases of state life, political and nonpolitical, and extends back to the early days of North Carolina. Many a crucial vote in North

Carolina’s history has divided along the fall line, which separates the Piedmont from the coastal plain, a diagonal running northeastward from Anson County to Northampton. In 1835 the eastern planters wrangled with the western small farmers over the apportionment of legislative seats, a question of which should rule the state. In 1861 the heaviest opposition to the calling of a secession convention came from the western section of smaller land- and slave-holdings. In alliance with the west were the counties in the Northeast around Albemarle Sound, also an area not dependent on the plantation system, and this alliance repeats itself almost ninety years later in Democratic primaries.<sup>20</sup> In 1900 the west showed far less enthusiasm than the east for Negro disfranchisement. Even the prohibition vote in 1908 reflected the east-west division in the superior inclination of the mountain counties to vote dry.

The bulk of population, money, and productive activity now rests west of the fall line and gives that section the pre-eminence long ago held by the agricultural counties of the coastal plain and tidewater. Sectionalism lives on, however, with perhaps the most sensitive issue being that of taxation. The wealthy Piedmont laments its large share of taxes, which are spent over the state without regard to source. The Mayor of Greensboro, a prosperous west Caro-

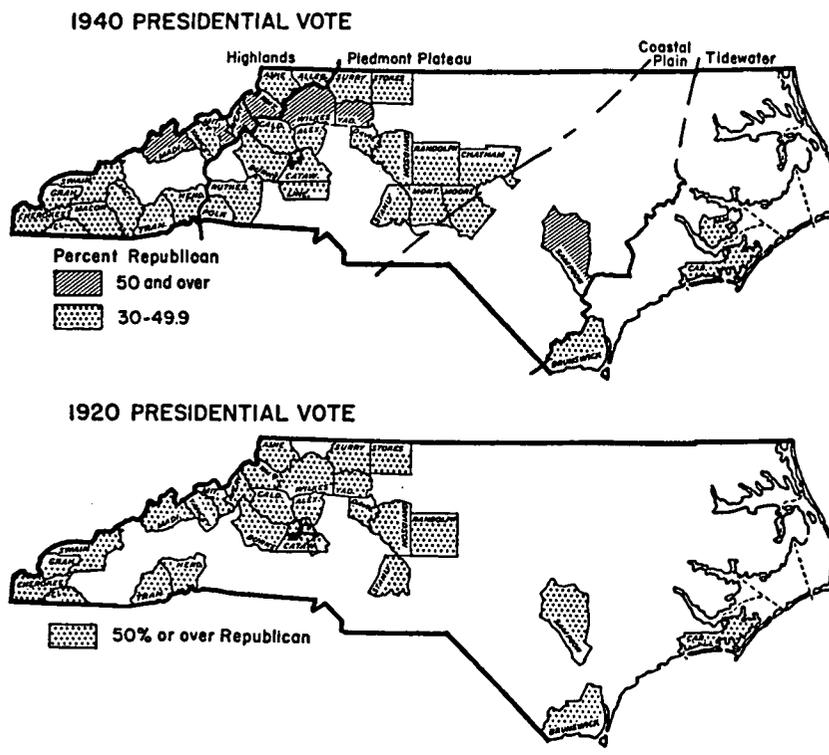
lina city, complained in 1948 that the Piedmont paid the state's bills but the eastern section received most of the benefits.<sup>21</sup>

By far the most significant residue of a long history of sectional antagonism is the Republican party. In the familiar pattern of all southern states, those North Carolina counties that had had fewest slaves emerged from The War with the strongest Republican leanings. North Carolina had many such counties, most of which were located in the Blue Ridge—the great spine of Republicanism which runs down the back of the South.

The Republican party in North Carolina today is a sectional party, as is apparent from the maps in Figure 2. Most votes for Republican presidential and gubernatorial candidates are cast west of the fall line in counties that are more rural than urban. In 1944, 81 per cent of the state's Republican presidential vote came from the 52 counties west of the fall line.

There are, however, spots of Republican strength in eastern North Carolina, the most conspicuous being Sampson County. Eastern Republicanism is found in coastal counties with relatively small numbers of Negroes and in counties like Sampson where Populist forces were so bitter toward the Democratic party that they refused to support it when their own party expired, early in the century. An eastern county, Tyrrell, has sent three Republican representatives to the state legislature in the past fifty years. Others have shown sympathy to the Republicans, but the sectional outlook of the party is reflected by the fact that in 1948 an eastern Republican campaign headquarters was set up for the first time. The west, however, elects virtually all the Republican legislators and local officials. There Democrats must gerrymander to keep Republican victories to a minimum. There, too, the hottest congressional races take place.

**Figure 2. Sectional Character of North Carolina Republicanism: Republican Presidential Vote, 1920, 1940**



**Table 6. North Carolina Republicanism, 1920–48**

Year	Total Vote in First Democratic Primary for Governor	Total Vote in General Election for Governor	Republican Percentage of Total Vote	
			Governor	President
1920	128,233	538,326	42.8	43.3
1924	234,771	480,068	38.7	39.6
1928	Unopposed	651,424	44.4	54.9
1932	379,657	710,218	29.9	29.3
1936	516,864	812,982	33.1	26.6
1940	469,396	804,146	24.3	26.0
1944	321,757	759,993	30.4	33.3
1948	426,125	780,525	26.4	32.7

Lily-whiteism has had sectional overtones in that western Republicanism does not have to contend with an eastern Negro wing. Negroes, who are concentrated below the fall line, once formed an important element in the party, but today Republican leadership offers little or no encouragement to them.<sup>22</sup> In some areas, the Democrats facilitate participation in their primaries by Negroes, who might otherwise strengthen the Republicans. On the other hand, Negro concentration in the east has traditionally induced white attachment to the Democracy and strengthened its control in the area. No such incitement to white solidarity prevails in the west. The geographical distribution of race thus aids in molding the state's politics.

The Republican party in North Carolina is a major electoral force of relatively constant strength, as Table 6 testifies. The median of its proportion of the total gubernatorial and presidential vote in eight recent elections is approximately one-third. Moreover, the total turnout at the general election is always materially higher than at the Democratic primary, an indication of the importance that voters attach to it. The Republican party is strong enough to give North Carolina many earmarks of a two-party state yet not strong enough to threaten Democratic supremacy.<sup>23</sup>

Unable to make a serious bid for the governorship, the Republican leadership focuses its interest on local and district offices, where it has a chance for victory, and attends to the selection

of delegates to the national convention. Campaigns are made for national and gubernatorial candidates, with no hope for victory but with an eye to the support that these campaigns give to candidates for local offices.<sup>24</sup> Republican leaders complain of the difficulty of getting candidates to run in localities where the party is in the minority. One of the highest party officials concludes that there is little chance of genuine two-party competition state-wide because of the satisfaction with which the Republicans regard Democratic performance. The Democratic party, he concluded, through its able leaders had kept in touch with the people and with their needs, had expanded state services, and in general given satisfactory government. He even went on to say that in the administration of state government he had detected no discrimination against Republicans. The end result is that Republicans have not carried the state for any offices since 1900 except President in 1928. In that year, in which two congressional seats were also won, Hoover's victory came from Democratic and not Republican efforts.

### **5. Republicanism and the Character of the Democratic Party**

**A**lthough the Republicans do not endanger Democratic control of the state, they profoundly influence the nature of the Democratic party. The dominant faction of the Democratic

party, thanks to the Republicans, possesses a relatively high degree of discipline, and the party as a whole has a consciousness of being and of responsibility. In consequence, North Carolina has an organization that can be called a Democratic party, a condition that does not exist in such states as Florida, South Carolina, or Arkansas. And, a corollary of Republican infusion of discipline into the Democratic group is that a bi-factional battle, rather than a multifactional melee, is waged within the party for its control.

The Republican contribution to Democratic discipline is plain. In those counties in which Democrats are in a minority, or must fight desperately to win local offices, leaders look to the state for aid and succor. Faced by a common threat they appreciate the necessity for concerted action under strong state leadership, and the result is a relatively cohesive state organization. It is in the counties with greatest Republican strength that the Simmons machine and its successor, the Shelby organization, found their most intense support.

Simmons was strong in some sure Democratic counties in the southeast around his home, but the counties most intense in their loyalty to him and to his organization were in the west. Candidates of the Shelby Dynasty had essentially the same pattern of support, although by their time the geographical base of the organization had taken a sharper sectional form. The series of maps in Figure 3, showing the vote in one of Simmons' races and in several races by Shelby candidates makes plain the intensity of organization support in the western counties of high Republican strength.

The organization, discipline, and state-wide viewpoint that both organization and anti-organization Democratic factions are compelled to accept largely override influences of localism in voting. In states with fluid factional systems, as we have observed, candidates exert a powerful pull on their friends and neighbors. The same influence makes itself felt in North Carolina but not nearly to the same degree. In the maps in Figures 1 and 3, the homes of candidates have been shown and inspection indicates that their local followings distort the normal voting pattern only slightly. Even in those occasional primaries in which the organization is split, the friends-and-neighbors influence is of little import. In such races a candidate may or may not be strong in his home county. In any case he will make a showing in widely scattered

counties, a pattern of voting indicative of factional struggles for control of the organization rather than of the attempts of purely local potentates to expand a group of local admirers into a state-wide following.

Cohesion of the organization faction of the Democratic party and the relative unimportance of localism must be credited to the existence of the Republican party. Comparison of the various maps showing the distribution of organization strength in Democratic primaries and of Republican strength in the general elections roughly shows the relation between the two. By compelling the Democratic party to fight, the Republicans give it a backbone composed of those counties in which it has to fight. The organization is not, of course, completely without support in counties with few or no Republicans. Nor does the popular strength of organization candidates increase from county to county precisely with Republicanism. Nevertheless, the organization is likely to carry in the Democratic primary most if not all counties with Republican majorities, while it can count on no such uniform support in the sure Democratic counties.<sup>25</sup>

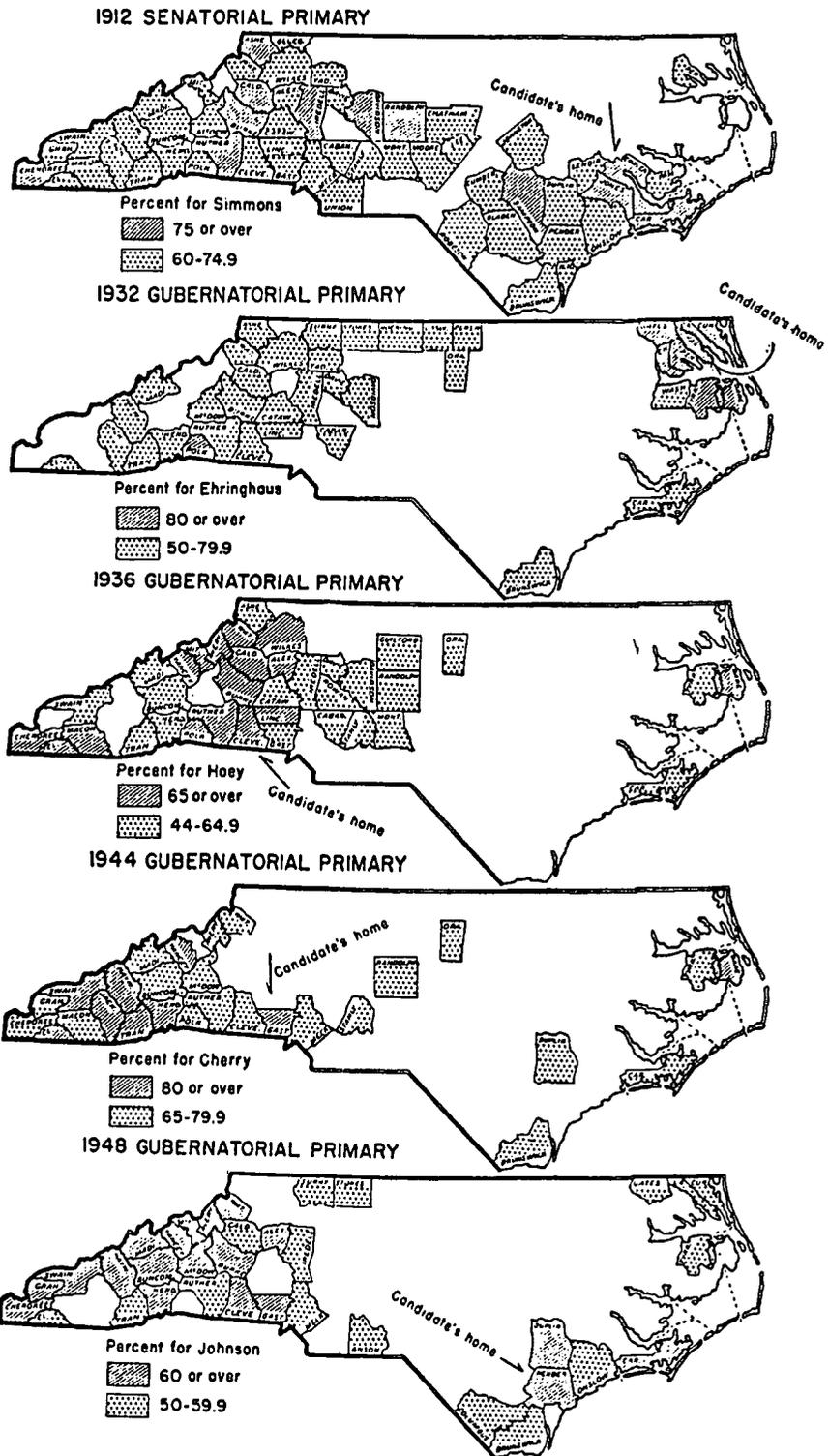
The alignment of western counties with the state organization resembles the alliance that prevailed between Tennessee's eastern Republican counties and the Crump machine when it controlled the state government. The same incentives move Democratic leaders in North Carolina's highly competitive counties to establish close ties with the state administration. Frequently denied local patronage, they seek other ways to support and reward the faithful and the state government is the logical source. In competition with local Republicans they desire a sympathetic central authority to whom recourse can be had. They rely on the big guns of the

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***North Carolina has an organization that can be called a Democratic party, a condition that does not exist in such states as Florida, South Carolina, or Arkansas. And, a corollary of Republican infusion of discipline into the Democratic group is that a bi-factional battle, rather than a multifactional melee, is waged within the party for its control.***

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**Figure 3. Points of Highest Strength of "Organization" Candidates in North Carolina Democratic Primaries**

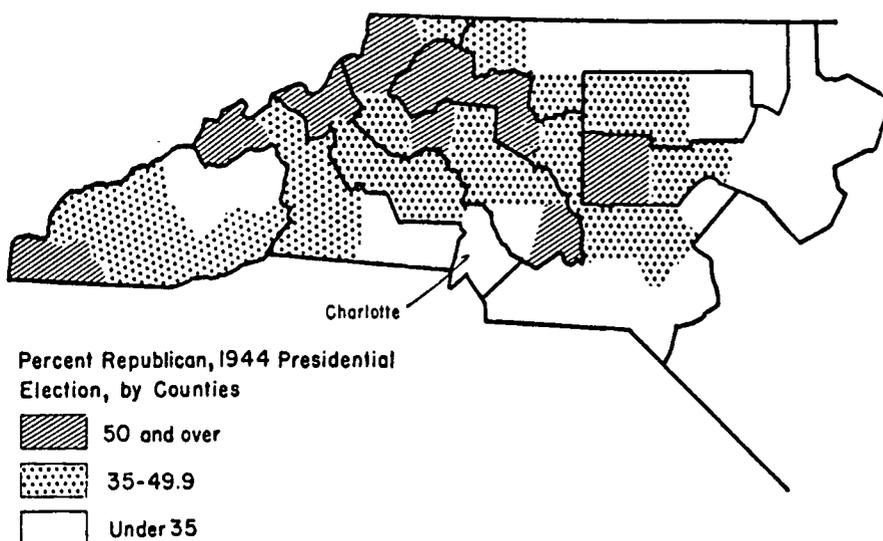


party to come out from Raleigh to help in their campaigns, and the state committee sends some money to the county committees for general election campaigns. By no means the least significant advantage of fidelity to the state organization is that the local Democratic leaders obtain control of the election machinery, even in Republican counties.

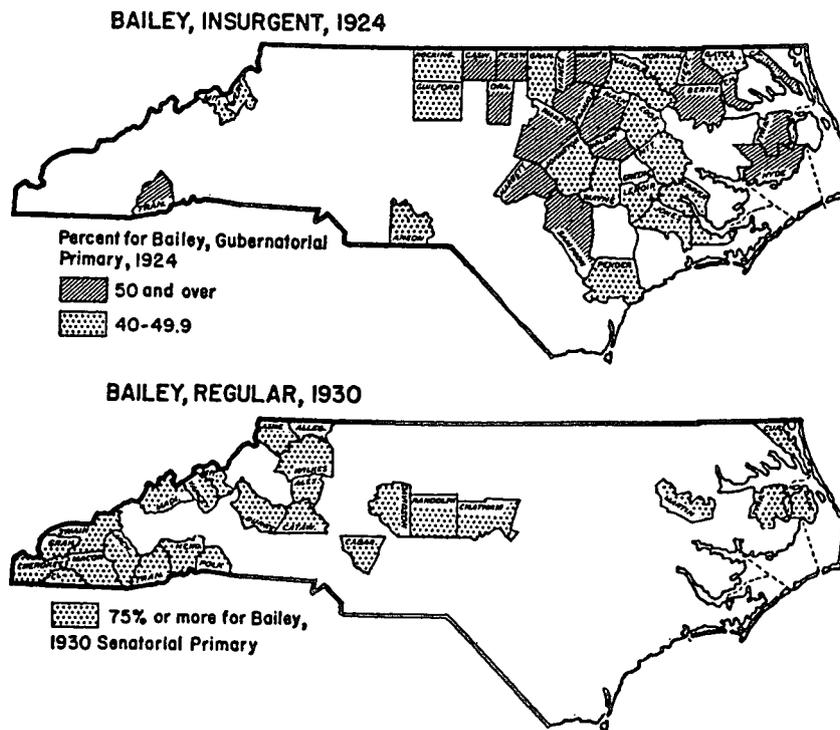
Western Democrats also are able to share in the fruits of victory in some races because of the sympathetic collaboration of their eastern allies in drawing district lines. It has been possible to maintain a solidly Democratic House delegation only by the artifices of political geography. In the 1944 presidential election 14 counties gave the Republican candidate a majority and in 27 others he polled over 35 per cent of the vote. Despite the concentration of these counties in the west, the Republicans won not a single Representative. "Bacon strip" congressional districts cut across the highlands and Piedmont to smother the Republicans by linking Republican counties in the west with even heavier Democratic counties in the east and south.<sup>26</sup> The odd shapes of the districts that result may be seen in the map in Figure 4.<sup>27</sup>

Democrats in uncertain counties, thus, are dependent in many ways on the party's state leadership. Out of their adversities is created a branch of the party wedded to the party's state leadership regardless of the geographical origins of that leadership. In turn, the leadership depends on the faithful support of those who understand the wisdom of unity. And those who must fight the Republicans to win have little sympathy with the view that it is quite all right to harbor within the Democratic party a fifth column which at propitious times lines up with the GOP. Organization devotion to party regularity demonstrated itself dramatically in the shift of attitude of many western counties toward Senator Furnifold M. Simmons in 1930 after his heresy in supporting Hoover in 1928. The story is told in the two maps in Figure 5. In 1924 Simmons' candidate for governor, Angus McLean, handily defeated Josiah W. Bailey whose most intense support came from the traditionally, anti-organization eastern counties. The close western counties, as is the custom, contributed heavy majorities to the machine candidate. In 1930 Bailey ran for the Senate against Simmons, thirty years a Senator

**Figure 4. Congressional District  
Gerrymandering in North Carolina**



**Figure 5. Shift in Location of Simmons' Machine Support between Democratic Gubernatorial Primary of 1924 and Senatorial Primary of 1930**



and chief of the state Democratic organization. The close counties, the loyal organization counties, could not afford to tolerate party treason. They joined to dethrone the old boss and to elect Bailey, to whom they had shown little sympathy six years before.

By whatever test, the conclusion emerges that North Carolina's Republicans contribute mightily to the unity of the dominant faction within the Democratic party. And the creation of a single cohesive faction almost inevitably unites the opposition elements into a minority faction, with the result that the battle within the Democratic party resembles a two-party conflict. Party discipline is not simply a matter of neat maps of academic interest only; its consequences for the government of the commonwealth are far-reaching. Fundamentally those consequences

come down to the fact that a disciplined faction provides the power to govern. Governments derive their power not from constitutions and charters alone but from the support of organized citizenry. North Carolina's Democratic party, by virtue of its discipline, can suppress the mountebank and clown, can deal with him who would incite the citizenry by inflammatory racial appeals, and can develop some sense of direction and responsibility.

Awareness among North Carolina Democrats of their role and their responsibility should be emphasized. High political leaders and sophisticated political observers constantly refer in private discussions to the quality of government the Democratic party has brought to the state. It has been over fifty years since the Republicans won a state election, but memories of their

last regime burn brightly in the minds of the older leaders who warn the younger generation in horrendous terms of what might be expected of the Republicans. A definite consciousness of party provides the base for a sense of group responsibility transcending any one governor or individual. The event of the moment must be regarded from the standpoint of its bearing on

the fortunes of the party as a whole in the long pull.<sup>28</sup> Such observations, as good North Carolinians would be the first to say, exaggerate the realities. Nevertheless, partly from the nature of its political organization North Carolina does not suffer the erraticism, the instability, and the incapacity to act that characterize most southern states with an unorganized politics.

## FOOTNOTES

<sup>1</sup> The University's president has been Frank Graham, by all odds the South's most prominent educator and versatile public servant. In the forefront of American progressiveism, it is significant that Dr. Graham is indigenous to North Carolina and himself a product of the University. In 1949 he was appointed to the United States Senate.

<sup>2</sup> *News and Observer* (Raleigh), July 17, 1947.

<sup>3</sup> By rank: North Carolina, 26.9; South Carolina, 22.8; Virginia, 20.1; Georgia, 18.5; Tennessee, 18.3; Alabama, 17.4; Louisiana, 12.9; Florida, 11.7; Texas, 9.9; Arkansas, 9.9; Mississippi, 9.2.

<sup>4</sup> By rank: North Carolina, \$545,952,289; Texas, \$453,105,423; Virginia, \$379,488,055; Tennessee, \$320,341,902; Georgia, \$283,316,138; Alabama, \$247,383,611; Louisiana, \$200,085,837; South Carolina, \$169,846,619; Florida, \$118,015,863; Mississippi, \$73,462,419; Arkansas, \$67,390,149.

<sup>5</sup> Illustrative of North Carolina's individuality was its action in the 1948 controversy over President Truman's civil rights recommendations. Most members of its congressional delegation were cool in the hysteria that beset the region. Its governor failed to applaud Senator Tom Connally of Texas when that gentleman called the program a "lynching of the Constitution" at a Jefferson-Jackson day dinner in Raleigh.—*Atlanta Journal*, March 1, 1948. In the Democratic national convention of 1948 North Carolina split its vote but gave the President his only support in the South.

<sup>6</sup> See Robert W. Winston, "North Carolina: A Militant Mediocracy," *The Nation*, 116 (February 21, 1923), pp. 209-12; and Jonathan Daniels, *Tar Heels* (New York: Dodd, Mead & Company, 1941), pp. 1-16.

<sup>7</sup> Address before Democratic state convention, June 23, 1904.—Hugh Talmadge Lefler, *North Carolina History told by Contemporaries* (Chapel Hill: University of North Carolina Press, 1934), p. 410.

<sup>8</sup> *The Negro Year Book* (Tuskegee: Tuskegee Institute, 1947), p. 76, has measured the relative status of Negro and white education by the percentage that the cost per white pupil exceeds the cost per Negro pupil. Using the "value of school property and current expense per child in average

daily attendance," the cost per white pupil was greater than the cost per Negro pupil in 1943-44 by the following percentages: North Carolina, 43; Texas, 47; Florida, 102; Arkansas, 136; Alabama, 174; Louisiana, 201; South Carolina, 207; Georgia, 212; Mississippi, 499. Not only did North Carolina hold a favorable "per pupil" position, but the proportion of Negroes in school was closer to that of whites in school than in most southern states.

<sup>9</sup> O. Max Gardner, quoted in *Atlanta Journal*, December 23, 1946.

<sup>10</sup> Kerr Scott, elected in 1948, was the first governor not a lawyer in fifty years. Of 170 members of the 1947 legislature, only one could be called a "labor man."

<sup>11</sup> The relatively high degree of centralization of North Carolina's state government may aid in the formation of state-wide political organization, although the administrative structure does not have all the features that contribute to machine discipline in Virginia.

<sup>12</sup> A. L. Brooks, *Walter Clark, Fighting Judge* (Chapel Hill: University of North Carolina Press, 1944), pp. 177-79.

<sup>13</sup> Illuminating articles on North Carolina politics by Robert E. Williams appeared in the *News and Observer* (Raleigh, N.C.), February 16, 1947, and July 4, 1948. The inauguration of Governor Kerr Scott in 1949 may have marked the beginning of a new phase in the state's politics. Governor Scott showed signs of a more aggressive liberalism than the state has been accustomed to in the past.

<sup>14</sup> The maps in Figures 1 and 3 on pp. 15 and 20 identify these counties as an area of relative organization weakness.

<sup>15</sup> S. A. Delap, "The Populist Party in North Carolina," *Historical Papers* (Durham: The Trinity College Historical Society, XIV, 1922), p. 57; William Alexander Mabry, "Negro Suffrage and Fusion Rule in North Carolina," *North Carolina Historical Review*, XII (April 1935), p. 84.

<sup>16</sup> The lack of enthusiasm of these counties for Ehringhaus in 1932 has been attributed to the severe privations suffered by the farmers during the depression, responsibility for which they fixed on the Gardner administration which supported Ehringhaus.

<sup>17</sup> Collier Cobb of the University of North Carolina, quoted in S. H. Hobbs, *North Carolina Economic and*

*Social* (Chapel Hill: University of North Carolina Press, 1930), p. 69.

<sup>18</sup> Some observers hold that this practice, which halves contests for which candidates are eligible, imposes an undesirable limitation on the use of the state's leadership. There is no assurance that talent for public office will be equally distributed between the east and the west.

<sup>19</sup> The continuous awareness of this sectionalism was demonstrated in 1948. Kerr Scott of Alamance county, in mid-state, ran in the year reserved for eastern candidates. It was contended that Alamance had always been considered a western county and that Scott was violating the rotation tradition. At a rally for candidate Johnson, principal Scott opponent, leaflets were distributed that proclaimed: "Preserve Party Harmony—Give the East its Governor . . . By the terms of the [rotation] agreement, the County of Alamance has always been considered in the West. Now is the time for the Governorship to come from the East! Uphold the argument! Vote solidly to nominate a man from the East—Charles M. Johnson of Pender County . . . Failure to elect an EASTERNER will mean the rotation agreement is broken."—*News and Observer* (Raleigh), March 31, 1948. When Scott was elected one of his opponents, Mayne Albright, commented that the victory meant the end of the "east-west selection system."—*Ibid.*, June 30, 1948.

<sup>20</sup> See maps in Figure 3, p. 20.

<sup>21</sup> The Raleigh *News and Observer* thought the Mayor's statement undoubtedly correct and that the situation was as it should be. So long as North Carolina is a "state," the editor wrote, those best able would and should aid those most in need.—May 10, 1948.

<sup>22</sup> When a Negro physician was appointed in 1947 as "director of finance, Republican national committee, Negro division for North Carolina," the appointment was announced by the national committee rather than by the state Republican organization. The Republican candidate for the Senate in 1948 campaigned on his opposition to the Democratic civil rights plank; he likened it to the "force bill" of 1868.

<sup>23</sup> In Maine the Democratic gubernatorial candidate polled in 1938, 47.1 per cent of the two-party vote; in 1940, 36.2; in 1942, 33.2; in 1944, 29.8. In Vermont the same figures were: 1938, 33.3; 1940, 36.0; 1942, 22.1; 1944, 34.2.

<sup>24</sup> In 1946, 13 of North Carolina's 100 counties elected a Republican to the state House of Representatives. Twenty-three Republicans offered for the 50 state senate seats and 62 for the 120 house seats.—*News and Observer* (Raleigh), Sept. 23, 1946.

<sup>25</sup> In 1936 Hoey, the organization candidate, carried in the second primary all save one of those counties that gave the Republican gubernatorial candidate more than 45 per cent of its vote in the following general election. Of the 52 counties less than 30 per cent Republican, he had a primary majority in only 26. Of the 48 counties more than 30 per cent Republican, he polled more than 50 per cent of the Democratic primary vote in 42.

<sup>26</sup> Western Democrats are grateful also for such fortuities of North Carolina politics as the election of circuit judges by the state at large. Democratic nominees, selected in primaries held by districts, some of which unavoidably contain large numbers of Republicans, are elected by the party's majority in the state as a whole.

<sup>27</sup> The map gives no notion of the size of the vote in the counties included in each district. The extreme situation is illustrated by the tenth district, which stretches from the western border to include Mecklenburg County which contains Charlotte, the largest city of the state. The city's Democratic majority overcomes the Republican lead in the west. In 1946 the Democratic candidate won with a majority of 3,518 votes in a total vote cast of 45,710. In two counties the Republican candidate led by 2,604 votes and in the other four, the Democrat led by a total of 6,122, of which 3,649 came from Mecklenburg. The net Democratic majority was thus 3,518, or about the same as the Democratic lead in Mecklenburg.

<sup>28</sup> In testifying before a legislative committee in 1947 on a proposed state "good health" program, Josephus Daniels based his plea for the program not on its merits, as most advocates had done, but on party loyalty. He cited the platform pledge of such a program and recalled the great advances of the state under Democratic administrations. He cited earlier party platforms and the record of party fulfillment of its responsibilities. Incidentally, a factor of no mean importance in explanation of the general tenor of North Carolina politics was Josephus Daniels. A newspaper editor who can call his soul his own, who is usually right, and who has the courage to express his views can exert a powerful and lasting influence.

# North Carolina: The Progressive Myth 1976

BY JACK BASS AND WALTER DEVRIES

At the end of the 1940s, V. O. Key described North Carolina as “the progressive plutocracy,” a state that was the leader of what the South might become. A press more liberal than any other in the South, the traditional institutional strength of the University of North Carolina at Chapel Hill, a higher level of industrialization, and a history in which the plantation influence played a lesser role—all had contributed to the progressive image. “It has been the vogue to be progressive,” Key wrote. “Willingness to accept new ideas, sense of community responsibility toward the Negro, feeling of common purpose, and relative prosperity have given North Carolina more sophisticated politics than exists in most southern states.”<sup>1</sup>

Although Key believed the state would remain on its progressive course, he realized the balance was precarious: “The comfortable picture of the Tar Heel state as an area of progress, tolerance, and enlightenment is scotched most forcefully by North Carolinians themselves. . . . They know that every liberation from every ancient taboo is bought or buttressed by shrewdness and hard work and endless patience. Yet they take pride in what they accomplish and seldom indulge in complacency that ignores work yet undone.”<sup>2</sup>

North Carolina remains a plutocracy, but a complacency has replaced the “energetic and

ambitious” mood that Key detected. Migrants to the state who are familiar with the progressive reputation tend to be struck by the reality they find. “The farther you get from North Carolina, the more progressive it looks,” declared Ferrel Guillory, an astute observer who moved from New Orleans to become chief political writer for the *Raleigh News and Observer*.<sup>3</sup>

The progressive image the state projected in the late 1940s has evolved into a progressive myth that remains accepted as fact by much of the state’s native leadership, despite ample evidence to the contrary. Although North Carolina has changed with the times, it is perhaps the least changed of the old Confederate states. Because of its moderation, it yielded more easily to the forces of change, but it missed the dynamic reaction to resistance that so swiftly transformed political and social development elsewhere in the South. Nor has it experienced the impact of urbanization as much as most other border South states have.

When Key wrote, the race issue was still suppressed in North Carolina, as it had been for 50 years through a process in which men of some distinction ran against each other “within the accepted framework,” an unspoken code which barred the arousal of racial antagonisms. The Negro was given a degree of paternalistic protection and allowed marginal political participation. But once political appeals on race were unleashed, in the 1950 U.S. Senate race against Frank Porter Graham, they proved a powerful force, and the progressive momentum slowed.

That campaign is worth examining in some detail. As president of the University of North

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Carolina, Frank Graham had continued the tradition his father had established of making that institution the center for an unfettered examination of southern life and history and the shaper of the progressive spirit in the state. He had received an interim appointment to the U.S. Senate and was running for a full term. Key had characterized Graham as "by all odds the South's most prominent educator and versatile public servant" who stood in the "forefront of American progressivism." Graham neither smoked, nor drank, nor cussed—admirable attributes in moralistic North Carolina, the only state left in the South where liquor is not sold by the drink.

Graham received 49.1 percent of the vote in the first primary, falling 5,635 votes short of a clear majority over Willis Smith, who trailed by 53,000 votes. Smith was a former president of the American Bar Association and chairman of the Board of Trustees of Duke University. He hesitated to call for a runoff, doing so only a few hours before the deadline. The runoff followed the defeat in Florida of liberal Senator Claude Pepper by George Smathers in a racist, red-baiting campaign. And between the two primaries in North Carolina, the U.S. Supreme Court had ruled that Pullman dining cars could not be racially segregated and that the universities of Texas and Oklahoma would have to admit Negro students.

Graham forces were confident of victory until the closing days of the election, when handbills flooded the state that screamed in oversized type:

**"WHITE PEOPLE WAKE UP"**

They declared that "Frank Graham Porter Favors Mingling of the Races" and predicted dire consequences unless Willis Smith was elected senator. Graham had served on President Truman's Civil Rights Commission, and the last three days of the campaign were marked by advertisements in newspapers throughout the state proclaiming, "End of Racial Segregation Proposed" or "The South Under Attack." Radio spots hammered such messages as "Do you know that 28 percent of the North Carolina population is colored?" A mass whispering campaign intimated that the election of Graham would mean an end to racial segregation in the public schools.

Thousands of handbills were distributed throughout the state that pictured a Negro youth who, it was falsely alleged, Graham had appointed to West Point. (A Negro youth had

placed as an alternate through competitive examinations.) In one tobacco-farming community, Graham took along the white youth who actually had received the appointment, an attempt to show how untrue the whole racial campaign was. When he finished speaking, Samuel Lubell reports, an angry murmur riffled through the crowd: "Why didn't he bring the nigger he appointed? Who was he trying to fool, showing us that white boy?"

In addition to the race issue, allegations were spread that Graham was a Communist sympathizer. Their force was such that a few years later, the South Carolina Senate voted to ban an appearance by Graham to speak at a state college for women because of his alleged Communist ties. The lone senator who voted against the ban was John C. West, who became that state's "New South" governor in 1971.

In North Carolina, Lubell reported, "the mob mood that was built up in the final days of the campaign was not unlike that preceding a lynching. In Wilmington a precinct worker telephoned the Graham manager and demanded hysterically, 'Come and take all your literature out of my house! My neighbors won't talk to me!' Graham stickers came off automobiles as people found it uncomfortable to say they were for him. In Raleigh an eight-year-old schoolboy, who spoke up for Graham, was beaten up as 'a nigger lover' by other children. A Durham election official, favorable to Graham, was awakened during the night by the jangling telephone. When his wife answered, she was asked, 'How would you like a little stewed nigger for breakfast?'"

In areas where open racial appeals would not be effective, Graham's support of New Deal-Fair Deal policies was used to appeal to economic interests, but the whispering campaign about school integration touched all areas. Lubell reported an interview in a suburban residential area in Greensboro, whose residents were ready to vote for Eisenhower as a Republican in 1952 but who had supported Graham because of his reputation as the South's most progressive educator:

One worker for Willis Smith had written an eloquent campaign letter, picturing the threat to family security in inflationary policies which robbed savings of their value and which taxed away so much of one's earnings. She showed the letter to the wife of a doctor, who campaigned for Graham in the first primary. The

doctor's wife read it and exclaimed, "That's a fine letter! It expresses my sentiments exactly."

Then, as she turned to leave, the doctor's wife added, "You know I don't want my daughter to go to school with Negroes."

When the votes were counted, Smith was the winner. Eighteen eastern counties which Graham had won in the first primary, areas of heavy black population and susceptible to racial appeals, swung against him in the runoff. But in the cities, the major shift came from the economically conservative middle class. Lubell concluded, "The surprise in Graham's defeat was the revelation that the cry of 'nigger' could enflame even the well-educated, well-to-do middle class.

. . . It was not only the bigots who turned against 'Doctor Frank' but many 'progressive' North Carolinians."<sup>4</sup> Lubell's precinct analysis showed that voting patterns for Smith in North Carolina and Smathers in Florida both paralleled the pattern of support for Dixiecrat and Republican presidential candidates in 1948, the combination of economically and racially conservative voters who were to form the nucleus of the emerging Republican party in the South.

Pepper later recalled discussing the 1950 campaign with Graham. "Frank said that within a week or ten days after my election, a lot of that same crowd moved right up into North Carolina that had been working against me. He said, in ten days, they had made him out such a monster that his friends would hardly speak to him."<sup>5</sup>

In each election since then, race has seldom failed to emerge in at least one North Carolina campaign, either overtly or covertly. For example, in 1956, after North Carolina congressman Thurmond Chatham and Charles B. Deane refused to sign the "Southern Manifesto" that denounced the Supreme Court's school desegregation decisions, both were defeated for reelection. Although a third nonsigner, Harold Cooley, survived another ten years in office, the North Carolina congressional delegation's voting record since has been one of the most conservative in the South. In a ranking of southern "progressivism" using composite averages of Senate and House delegations from 1965-74, as measured by their degree of opposition to *Congressional Quarterly's* "conservative coalition" roll call votes and House votes on civil

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rights roll calls, North Carolina ranked behind only South Carolina and Mississippi in its conservative voting record in Congress.<sup>6</sup>

In the 1960s, the emergence of Dr. I. Beverly Lake as a political figure around whom the submerged racial issue could surface further demonstrated that the "progressive" image was less real than perceived. And the racial issue persisted into 1972, when television commentator Jesse Helms won election as the state's first Republican Senator in this century. He campaigned as an antibusing candidate, although Helms would contend that blacks were as opposed to "forced busing" as whites. That same year, the voters repudiated former Governor Terry Sanford, who had remained a leader of the state Democratic Party's progressive wing, in a presidential primary against George Wallace.

### **State of the State**

**T**he social change that began in the late 1950s was less traumatic in North Carolina. Because the progressive reputation and the more moderate approach created an image that change was occurring, there was less pressure to change from both the federal government and the civil rights movement. "Pupil placement laws were so devastatingly effective as deterrents to integration that North Carolina managed to 'hold the line' with its moderate stance as successfully as a state like Virginia with its hardline position of 'massive resistance.'"<sup>7</sup>

"Because there were Terry Sanfords who handled desegregation problems in an astute

fashion, North Carolina didn't get the attention, and the pressure was not brought to bear as greatly as on other Southern states," explains Howard Lee, the perceptive black mayor of Chapel Hill. "To be sure, there has been some change in North Carolina . . . but when you really look at the amount of actual progress that is being made in practically every category in this state, we're behind."<sup>8</sup>

In a 1973 "quality of life" study by the Midwest Research Institute that analyzed 100 different statistical measurements to determine a social-economic-political-environmental index, North Carolina ranked 46th among all the states and eighth among the 11 states of the Old Confederacy. Six years earlier, the institute had ranked North Carolina 40th in the nation and fourth among the southern states.

The 1973 study noted that the nonwhite infant death rate for North Carolina was higher than in any southern state except Mississippi. Only South Carolina and Mississippi had fewer telephones per 100 population. North Carolina had fewer lawyers per 100,000 population than any other southern state. Only three of the other southern states spent less per capita on welfare. Only three had a higher rate of Selective Service draftees fail the mental test. Only South Carolina and Arkansas at 10.5 had a lower level of median school years of education for persons 25 and older than North Carolina's 10.6. Only South Carolina had a lower percentage of voting-age population registered to vote. In addition, North Carolina ranked 49th in the nation in average hourly rate for manufacturing wages—and last in percentage of manufacturing work force who belonged to labor unions.

But these statistics are seldom mentioned in North Carolina, certainly not by politicians. With a few exceptions, such as the beginning of a kindergarten program by the state and the administration of limited health care programs by the University of North Carolina, the problems these statistics suggest get little attention from state government.

Neal Peirce cites a single statistic that tells much about the problems of eastern North Carolina: in 1972, it produced the nation's highest percentage of volunteers for the Army, a reflection of local prospects for employment and educational opportunity.

Although there is much talk within the state about urban growth, and considerable attention

has been focused on the fast-growing metropolitan Piedmont Crescent that curves from Raleigh through Durham, Greensboro, and Winston-Salem to Charlotte, only 38 percent of the population in 1970 lived in metropolitan areas that contained a central city of 50,000 population or more, and 44 percent lived in places of less than 2,500 population. In the South, only Arkansas and Mississippi have populations that are less urban.

By 1970 the Piedmont was the fastest-growing region of the state, and 60 percent of the population lived there, three-fifths in the metropolitan areas. Another 31 percent lived in the east, where population has been stable, and about 9 percent in the mountains.

There are stirrings of change in the east, the beginnings of industry in the larger towns, the development of superfarms, and the first manifestations of dissatisfaction with the status quo, leading to a major union victory in 1974, when workers in Roanoke Rapids voted for representation by the Textile Workers Union of America. But the issue of a comprehensive plan of development for this region of more than a million and a half people is seldom raised.

The political battle easterners have fought in recent years has been whether to build a medical school at East Carolina University and thus add to the empire of Leo Jenkins, its politically ambitious chancellor. Jenkins contends that if doctors are trained in the east, more are likely to remain there and practice, a contention that runs counter to studies which show that doctors tend to settle in urban areas with greater economic opportunities and social amenities. The doctor shortage is very real, and the easterners won the battle to build a second medical school for the state. But what was never really debated was whether the same amount of funds could not have delivered health care services more effectively by financing clinics and hospital residency programs coordinated by the established medical school at the University of North Carolina at Chapel Hill.

Little apparent attention has been focused on the lack of economic development in eastern North Carolina, a tobacco-growing region of scrubby pine trees and declining population whose level of health care, educational attainment, and income pull down the overall statistics for the state. Nevertheless, when President Nixon in 1973 eliminated funds for the Coastal

Plains Regional Development Commission, newly elected Republican Governor James E. Holshouser, Jr. decided to join the Democratic governors of South Carolina and Georgia, the other affected states, in criticizing the move. Of course, one may view eastern North Carolina as a rural preserve that should remain unchanged as part of the state's agricultural heritage—provided one is willing to ignore the poverty that in recent decades has forced the outmigration of tens of thousands of citizens, those who protest conditions by voting with their feet.

Despite these problems, native North Carolinians have a very strong attachment to their state. In the Comparative State Elections Project,<sup>9</sup> one question read, "All things considered, would you say that (your state) is the best state in which to live?" For the entire United States, 62.6 percent agreed. In North Carolina, a positive response came from 82.3 percent, higher than in any other state. Only 10.8 percent responded negatively, and 6.9 percent were "not sure." There was virtually no difference in the responses from the state's three regions, the east, the Piedmont, and the west. Merle Black at the University of North Carolina reports that natives with the most education were as enthusiastic about the state as those with the least formal education. He concluded: "Consequently the state appears to lack substantial numbers of well educated, 'homebred' critics or individuals who dissent from the prevailing orthodoxy." The major dissenters were well-educated migrants to the state, only a third of whom found North Carolina the "best."

Across the nation, the survey found that the individuals most likely to approve of their state of current residence were the "natives"—the elderly, the residents of rural areas and urban locations outside metropolitan areas, the least educated, and the least wealthy. Within North Carolina, each of these types provides a greater degree of support for the state than do their counterparts in the nation as a whole. And Black found "a disproportionate size of such groups within the state."

Sociologist John Shelton Reed has noted the positive value of localism in the sense of "an appreciation of the qualities of one place as opposed to others," but he also noted the darker side, its rootedness in "limited experience and narrow horizons."<sup>10</sup> There is an obvious sense

of well-being among North Carolina natives, who like southerners elsewhere have a strong sense of place, a sense of community. And in terms of climate, attractive scenery, and perhaps a somewhat lower cost of living than the nation as a whole, the state has some appealing qualities. But by objective standards, there is ample room for improvement.

Key argued that "ruling groups have so inveterate a habit of being wrong that the health of a democratic order demands that they be challenged and constantly compelled to prove their case."<sup>11</sup> And Black concluded: "The likelihood of such challenges occurring with regularity are dim indeed in a political system in which the natives believe that they are living in an ideal state. Yet without such challenges it will be difficult, if not impossible, for the state to alter substantially its relatively weak position on many 'objective' rankings of the states."<sup>12</sup>

Significantly, the CSEP findings for North Carolina disclosed no differences between blacks and whites. Black natives viewed the state as favorably as did the whites, but migrant blacks tended to be rather critical. And the more than 379,000 blacks who migrated out of North Carolina in the 1950s and 1960s apparently found some qualities lacking.

Although North Carolina has one of the most modern and impressive legislative buildings in America, those adjectives seldom are applied to the legislature itself, which in 1971 was ranked 47th by the Citizens Conference on State Legislatures. The *News and Observer* in 1974 commented:

The State Legislative Building stands as one of the most outwardly handsome temples built to democracy in America. Its glistening marble, lush carpets, resplendent brass and tinkling fountains could grace a Taj Mahal. But the marble is but a veneer glued to cinder block. And the proceedings echoing through the temple's chambers these past three months have been as democratic as the Cadillacs clustered in its basement.<sup>13</sup>

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William L. Bondurant, a foundation executive who served 18 months as Governor James E. Holshouser's director of administration, said the legislature is where "provincial and partisan" political attitudes still dominate. But Bondurant added, "I had read reports about that, and the reports were not exaggerated. But what went unreported were the efforts of the people who were doing the right thing. There is a hard core of solid, good people in the legislature."<sup>14</sup> One veteran state House reporter said, "These guys are basically honest. There are conflicts of interest rather than corruption. For example, the Senate Banking Committee a few years ago had a majority of members who were board members of banks."

Until 1975, "good government," a term which in the South has come to mean government sympathetic to business interests, had become a byword in North Carolina, where it had come also to mean government free of corruption and scandal. However, the state's reputation for corruption-free government diminished a bit with the disclosure

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*If the progressive spirit in North Carolina has become complacent in recent years, the heritage of the state reflects a deep-rooted respect for civil liberties.*

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by a former Southern Bell executive of an illegal corporate political slush fund that had donated thousands of dollars to all the serious candidates for governor in 1972, including Holshouser, as well as to Lieutenant Governor James B. Hunt, Jr. The governor appoints members of the State Utilities Commission, the regulatory body for utilities; the lieutenant governor appoints Senate committees and their chairmen.

Investigation by the *Charlotte Observer*, which broke the story, subsequently disclosed a cozy relationship between Southern Bell and key legislators. For example, Southern Bell's lobbyist escorted several legislators on a deep-sea fishing trip in 1970 that cost \$1,379 and was included as part of the company's business costs when it sought a \$23.1 million rate increase that year. Former state Senator Gordon Allen, who made the trip when he was a member of the Senate Public Utilities Committee, said, "I see nothing sinister or evil in it."

The Southern Bell disclosure and subsequent stories that revealed how the major banks

put together pools of campaign funds aroused a degree of nervousness in political circles in the state, touched off a major investigation into political activity by the state's utilities, and created an atmosphere from which a reform movement could emerge. But some politicians wondered why there was a furor; they considered it common knowledge that corporate interests dominated campaign financing in the state.

Key had already written of governmental dominance for half a century by "an economic oligarchy . . . [whose] control has been achieved through the elevation to office of persons fundamentally in harmony with its viewpoints."<sup>15</sup> The state's banking laws are such that of the nation's 30 largest banks, the only two located in the Southeast, Wachovia and North Carolina National, are both in North Carolina. And another North Carolina bank, First Union, is among the next three largest in the Southeast.<sup>16</sup>

The local advisory boards of the bank branches reflect the local power structure. The giant tobacco companies, the textile and furniture manufacturers that dominate the state's low-wage industrial base, the insurance industry, and the electric power companies tend to be as satisfied as the bankers with state government.

## Democrats

If the progressive spirit in North Carolina has become complacent in recent years, the heritage of the state reflects a deep-rooted respect for civil liberties. The state's colonial population included a heavy proportion of independent-minded and Calvinistic Scotch and Scotch-Irish immigrants, and North Carolina refused to ratify the U.S. Constitution until it included a Bill of Rights. Free Negroes had the right to vote under the state's first constitution in 1776. Although that right was taken away 60 years later by a 65-62 vote at the 1835 constitutional convention, free Negroes had been given citizenship status in 1776. This fact was overlooked by the U.S. Supreme Court in the *Dred Scott* case when it declared that free Negroes had not been citizens of any state when the U.S. Constitution was adopted.<sup>17</sup>

In 1860, North Carolina seceded only after Virginia's withdrawal from the Union had isolated the state, and only after the firing on Fort Sumter. North Carolina's slave population and

number of plantations were fewer than those of any other southern state except Tennessee. It was a rural state, with not city of more than 10,000 population. In the mountains, many men remained Unionists, and their descendents, including Governor Holshouser, became hereditary Republicans.

The state's attitude toward civil liberties was manifested by Sam Ervin, whose U.S. Senate career began with a leading role in the inquiry that led to the downfall of Senator Joseph McCarthy and ended with his direction of the Watergate Committee and the downfall of Richard Nixon. Although much of Ervin's energy was spent in opposing civil rights legislation, his battles against attempts to encroach upon the Bill of Rights earned him a reputation as a civil libertarian.

When Ervin left the Senate at the beginning of 1975, he sent a newsletter to the people of North Carolina, telling them that the framers of the Constitution "knew that false opinions cannot possibly be dangerous to a country if truth is left free to combat error." And while he encouraged his constituents to "cling to the ancient landmarks of truth," he also told them to "be forever ready to test the soundness of new ideas."

It was after a Republican-Populist coalition that had the support of voting Negroes elected a governor in 1896 that North Carolina in 1900 adopted a literacy requirement for voting which resulted in disfranchisement of the majority of the Negro voters. (A grandfather clause protected most of the illiterate whites.) As in the rest of the South, the success of the various efforts to disfranchise blacks left the state firmly in control of the Democrats and resulted in one-party domination. But Governor Charles B. Aycock, who supported the literacy requirement, also fought for the general principle of public education and insisted that it must include the education of Negroes.

Between 1900 and 1968, the state voted Democratic in every presidential election since 1928. That year, U.S. Senator Furnifold Simmons, who since 1900 had dominated the Democratic organization in the state, endorsed Herbert Hoover against Al Smith and led a revolt against the national ticket. Two years later, the Democrats treated Simmons as an apostate and turned him out after five terms in the Senate. Only six of the 49 Republicans elected to the legislature in 1928 managed to survive the

1930 election. After the defeat of Senator Simmons, control of the Democratic Party shifted to the "Shelby dynasty." O. Max Gardner, a former maverick, was elected governor with Simmons's support in 1928; along with anti-New Deal Senator Josiah Bailey, Gardner dominated the state Democratic organization until after World War II.

Although the office of governor in North Carolina is weak institutionally—he cannot succeed himself, and North Carolina is the only state without a gubernatorial veto—the traditional strength of the Democratic Party, more united and cohesive than in most southern states, gave him status as the party leader. A succession of politically skillful governors exerted considerably influence with the legislature.

In 1948, Secretary of Agriculture Kerr Scott pulled an upset victory and launched a new era in North Carolina politics. Scott got the support of the "branch head boys," the rural people of North Carolina who were isolated by dirt roads and a lack of telephone and electric service. He is remembered as the governor "who got the state out of the mud." When Scott died in 1957, there were rural shopkeepers who closed their country stores upon hearing the news and placed wreaths on the door.

His son Robert Scott later became governor, and his brother Ralph Scott remains a power in the state Senate. Kerr Scott was one of those inner-directed men who possess an innate capacity for political leadership; he touched people and treated politics as a way to serve them. It was typical of his style that his appointment to the U.S. Senate of the University of North Carolina President Frank Graham, for years one of the outstanding educators and voices of humanistic concern in the South, was announced almost casually at a dinner in Chapel Hill.

Ralph Scott recalled once asking his brother why he wanted to run for governor. "You're a layman," I said. "I can see where a lawyer would run; it gives him connections of one kind or another. But you can't get nothing out of it."

And he recalls his brother responding, "I want to go to Raleigh to represent those people that don't have any lobbyists down there. That's my main reason for wanting to go."<sup>18</sup>

In his battles to force utility monopolies to provide electric and telephone service to rural people, Scott called on I. Beverly Lake, a brilliant lawyer who later became a symbol of

racist politics and who now sits on the state Supreme Court.

Scott's 1954 Senate campaign was managed by Terry Sanford, a leader of the young Democrats—an organization then composed of bright and ambitious young men, many of them World War II veterans, who wanted to get North Carolina moving. Another man who cut his political teeth in the Scott campaign was Robert Morgan, who in 1960 managed Lake's campaign against Sanford and in 1974 resigned as attorney general to run successfully for the U.S. Senate seat vacated by the retirement of Sam Ervin.

North Carolina's last progressive era came in the administrations of Luther Hodges, Sr. and Sanford. Although moderate in comparison with those of other southern states, the pupil placement laws sponsored by the Hodges administration in the face of school desegregation basically amounted to a state scheme aimed at delay and evasion, providing for school closings and tuition grants to private schools. Hodges later defended the measures as "safety valve" legislation. But on the whole, in his seven years as governor—he stepped up from lieutenant governor in early 1953 upon the incumbent governor's death—the former business executive and Marshall Plan administrator surrounded himself with a capable, creative staff and focused attention on industrial diversification.

One proposal led to the creation of Research Triangle Park, a 5,000 acre project that provides corporate and government research units with access to nearby Duke University in Durham, North Carolina State University in Raleigh, and the University of North Carolina in Chapel Hill. By early 1975 there were 10,000 employees in Research Triangle Park, an annual payroll in excess of \$120 million, and capital investment in buildings and equipment of more than \$300 million. The Research Triangle Institute was created jointly by the three universities as a non-profit research facility for both government and business, and the three universities also partici-

pate in the operation of one of the largest computer centers in the world.

About half the total employment comes from IBM, one of a number of corporate research entities. The Environmental Protection Agency's major research unit, which was landed by North Carolina because of Sanford's influence with the Kennedy White House,<sup>19</sup> also is located at Research Triangle Park.

As secretary of commerce under President Kennedy, Hodges told the nation, "The forces that bar minorities from employment, decent housing, adequate educational facilities, and social benefits make a shocking contribution to slums and crime and disease. The real economic vigor our economy needs today is not possible as long as one segment of the population has these artificial limits on its freedom and earning power."<sup>20</sup>

Sanford was the last Democratic nominee for governor to campaign for the national presidential ticket when he actively supported the Kennedy-Johnson candidacy, which won in North Carolina. Sanford later thought he had made a mistake in not concentrating exclusively on his own race in a two-party contest.<sup>21</sup> Sanford paid lip service to segregation in his campaign for governor, but he emphasized that the state needed massive education and not massive resistance. He won the Democratic primary runoff with 56 percent of the vote against Lake, whose pro-segregation campaign included sharp criticism of the Supreme Court and the NAACP. In November, Sanford received only 54 percent of the vote against Robert Gavin, a moderate who waged a progressive campaign calling for a \$1-an-hour minimum wage, bond issues for highway construction, and civil service for all state employees, and who repeatedly mentioned North Carolina's low national economic and educational ranking.

Sanford provided leadership that reflected the progressive spirit reported by Key. The Sanford administration made a frontal attack on long-neglected needs in education. It created a state system of community colleges and technical institutes that in the mid-1970s enrolled more than 50,000 students. Sanford also established the North Carolina Fund (financed primarily by the Ford Foundation), which sponsored experimental antipoverty programs that helped stimulate and set an example for national antipoverty legislation. He created a North Carolina School of the Arts and a Learn-

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***Sanford provided leadership that reflected the progressive spirit [of North Carolina]. The Sanford administration made a frontal attack on long-neglected needs in education.***

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ing Institute to develop innovative educational programs. Industrial diversification received continued emphasis.

He also proved to be one of the most liberal governors in the South in dealing with the racial issue. Floyd McKissick, the first black ever to attend the University of North Carolina Law School and national head of the Congress of Racial Equality (CORE) when that organization was viewed as one of the more militant civil rights groups, recalls that when Sanford was governor, "We used to meet with him, have breakfast with him at the mansion. He called me in and said, 'Now look, I'm not opposed to the demonstrations. I just don't want violence. You demonstrate all you want; just recognize your limits.' I said, 'Well, we are going to demonstrate.' He said, 'Well, I'm going to set up a Good Neighbor Council in this state.'"<sup>22</sup>

Sanford's liberal position on race cost him support among whites, and opponents called him "Food Tax Terry" after his imposition of a regressive 3 percent sales tax on food to pay for educational programs. The food tax issue was raised against him in the 1972 presidential primary, although some observers felt it was raised by those who really opposed Sanford's racial policies but did not want to attack him directly on that issue.<sup>23</sup>

Early in 1975, when Sanford was president of Duke University and planning another presidential bid, he proposed that the sales tax on food be eliminated in North Carolina. Sanford said the food tax in 1961 "was absolutely essential" to fund the technical institutes, community colleges, and other educational programs, but critics of the tax in 1961 pointed out that there was no state tax at that time on tobacco and that an effort should have been made to seek other revenue sources. A former aide said a tax increase in 1961 perhaps could have been avoided if the state treasurer had not badly underestimated revenue forecasts.<sup>24</sup>

Like Hodges, Sanford developed a first-rate staff with vision—a characteristic which those close to the scene in North Carolina contend has since vanished from the governor's office. Sanford developed relevant issues and innovative programs, and he is perhaps the last North Carolina governor to make an active effort to educate the public politically. But he went out of office relatively unpopular, and later he said the one thing that with hindsight he would have done differently would have been to make a

greater effort to explain to the public what he was doing and why it was important—just doing good things wasn't enough.<sup>25</sup>

Although Sanford developed a progressive coalition of young men, many of whom have remained politically active, no permanent organization was created that could win elections. In 1964, when U.S. District Judge L. Richardson Preyer resigned to run for governor as the candidate of the progressive wing, state Judge Dan Moore ran a moderate-conservative, and Lake ran again as a conservative segregationist. The progressives hoped for a Preyer-Lake runoff in which Preyer would win enough of Moore's supporters for a majority. As expected, Preyer led in the first primary with 281,430 votes, but Moore was second with 257,872, to 217,172 for Lake. The Lake supporters in the runoff moved solidly to Moore. Robert Scott was elected lieutenant governor in his first race for political office.

Moore defeated Gavin by a larger margin than Sanford did, with 57 percent, but in 1968, Scott received less than 53 percent of the vote against conservative Republican Representative Jim Gardner.

The Moore and Scott administrations were less dynamic than the ones preceding them. Moore appointed Lake to the Supreme Court, but also quietly made significant increases in the number of blacks appointed to positions in state government. Scott broke through the resistance of the tobacco industry in North Carolina and succeeded in imposing the state's first cigarette tax. Perhaps his most significant achievement was the reorganization of higher education into a unified university system under one board of governors. He also pushed successfully for a \$1.60 state minimum wage.

But Scott became the target of political attack from within his own party, and the 1972 campaign left the North Carolina Democrats temporarily leaderless. Hargrove (Skipper) Bowles had pulled an upset over Lieutenant Governor Pat Taylor in the Democratic primary, utilizing modern media techniques, something new to North Carolina. But after the primary, Bowles made remarks antagonistic to supporters of both Taylor and Governor Scott, and many Democrats blame the Bowles defeat by Holshouser in November on his failure to exercise party leadership after the primary. They attribute the low turnout in November in part to the county organizations' disinclination to work

hard for Bowles. The old county political machines in North Carolina, as elsewhere, are casualties to the television era, but influence remains marginally significant, although far from dominant. Despite heavily contested battles for governor and the U.S. Senate, North Carolina was one of only two southern states that showed a numerical decline in voter turnout from 1968.

Since 1948, the more progressive element within the old bifactional Democratic Party has been dominant. Kerr Scott was the first of the insurgents to defeat the established conservative order. Senator B. Everett Jordan, who retired in 1972, was a Kerr Scott man as party chairman but later jumped into the Old Guard faction that descended from the "Shelby dynasty." Hodges, who succeeded to the governor's office, was somewhat independent of and acceptable to both groups. Sanford came out of the Scott campaigns.

The last of the Old Guard to win was Governor Moore in 1964. In 1968, the last vestiges of the Democratic Old Guard disappeared when Melville Broughton, Jr., son of a former governor, lost to Robert Scott in the Democratic primary and switched to the Republican Party, into which he disappeared from view. In 1972 both Taylor and Bowles came out of the Sanford wing, with Bowles an insurgent against the local organization veterans, who in the main supported the lieutenant governor.

New leadership emerged in 1974 from Robert Morgan and Lieutenant Governor Hunt, who began to play a more aggressive role. Morgan proved that he could unify the Democrats in 1974, a year in which Watergate and the recession made the Republican Party far less attractive. Significantly, Morgan appealed for support as a Democrat, and his billboards carried the party label. The billboards of Republican candidate William Stevens carried no party label.

Ferrel Guillory analyzed the campaign on the eve of the election:

Morgan's obvious attempts were to bind together a Democratic coalition, including both blacks and liberals and Eastern conservatives. He has done so, it seems, by stressing the economic issues and by even having his campaign take on something of a populist tone. His criticism of the Ford administration's economic package has gotten most of the press attention lately, but Morgan's speeches also point to corporations paying a smaller percentage of

income taxes than middle income families, too many wealthy individuals being allowed to get away with no taxes, and to his own modest six-room house in Harnett County, if it were on the housing market, being out of the reach of most potential home-buyers because of economic conditions.<sup>26</sup>

After his election in 1968, Morgan was one of the first state attorneys general in the South to take an activist role in consumer protection. He hired black lawyers for his staff and cultivated black political leaders. In his 1974 campaign he made a clear break from I. Beverly Lake. Morgan told an NAACP meeting in Charlotte that he managed Lake's 1960 campaign because Lake had been his professor in law school at Wake Forest and had helped Morgan in his first political contest for Harnett County court clerk. "I think my entire public career before then [the 1960 campaign] and since then has been one of fairness to all people," Morgan said.

Lake then sent a letter withdrawing support from Morgan. Lake said he felt Morgan was apologizing for his role in the 1960 campaign when in fact, Lake said, Morgan had urged him to run and was in agreement with Lake's presentation of the race issue. In response, Morgan called it "immaterial" whether he agreed with Lake in 1960 and said, "We've all grown as the traditions and times changed."<sup>27</sup>

After the 1960 Lake campaign, Morgan had campaigned on behalf of Terry Sanford. "He introduced me, spoke for me, went to rallies I couldn't go to," Sanford recalled. "He carried the Lake forces back around to me, or I would have lost."<sup>28</sup>

Conservatives in the east accepted Morgan's position in 1974. John J. Burney of Wilmington, a former segregationist state senator, said they understood the need to appeal for a broader base, especially since the racial tensions of the 1960s had diminished. "He should appear before any group," Burney said. "The people in the east are not narrow-minded. They know you have to go before any group."

The pattern of the Wallace vote in 1968 and 1972 was similar to that of Lake in 1960 and 1964, and Republican Jesse Helms in his 1972 U.S. Senate campaign successfully put together a combination of Wallace-Lake voting patterns in the east and traditional Republican support from the Piedmont and the west. But the east

returned to its solidly Democratic voting pattern in supporting Morgan in 1974.

Morgan, a man who enjoys the mechanics of politics, may play a major role in state Democratic politics in the future.

## Republicans

**I**t was from the traditional and hereditary mountain Republicans that the modern North Carolina GOP developed. Unlike the Deep South, where the Republicans won at the presidential level in what basically was a revolt against the Democratic Party, the Republicans built up from the local level in North Carolina, expanding into urban areas in the Piedmont, where younger voters were looking for a change from entrenched courthouse Democrats, and also attracting economic conservatives. Although they picked up adherents because of the race issue, this was much less a factor in North Carolina than in the Deep South.

Since the 1940s, urban voting in North Carolina, as elsewhere in the South, has come more and more to reflect the same economic divisions as in cities elsewhere in the country. Republican support tends to grow as one goes up the economic scale.

The initial Republican breakthrough came in 1952, when Charles R. Jonas overcame Democratic gerrymandering efforts to win election to Congress from a district dominated by Charlotte. A hardworking, constituent-oriented fiscal conservative, Jonas subsequently proved unbeatable. He served 20 years until he retired in 1972 and was succeeded by another Republican, Jim Martin, a college chemistry professor.

Ten years after Jonas was elected, he was joined in Congress by James Broyhill, from the neighboring district in the Appalachian foothills. Jonas and Broyhill happen to be the sons of the two men who for 45 years represented North Carolina on the Republican National Committee. Broyhill ran for Congress when a candidate search committee on which he served could not find anyone else to run. A number of local Republicans already had been elected in counties in his district. He recalls that it was Republican sheriffs who appointed the first black deputies.

Broyhill believes the key to Republican development is "to show the people that we can be effective in running programs and adminis-

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***Once a minority party comes to power, it can build strength either by focusing its energies on the administration of government and the development of programs that touch people's lives, which involves the risk of opposition to change, or it can concentrate its energy and time building party organization.***

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tering programs and advocating solutions to problems . . . at the state level. And I think that we have to show that we're appealing to all people, not just whites, but blacks and whites. . . . Unfortunately, over the years, we have had too many candidates in some places that get 100 percent of the [black] vote against them."<sup>29</sup>

Broyhill is linked closely in philosophy with James Holshouser, who served six years as party chairman and as state House minority leader before his election to the governorship in 1972. As governor, Holshouser projected a moderate image by appointing blacks to several highly visible positions in his administration, and he worked closely with the state's bipartisan Women's Political Caucus in appointing women to positions in government and on boards and commissions. He also gave support to such black-oriented enterprises as Soul City, the new town project being coordinated by Floyd McKissick.

But there was little initiative in dealing with basic problems of low income and poverty, and Holshouser grew defensive after a conference on hunger in Chapel Hill pointed out that North Carolina had one of the poorest records of any state in dealing with that problem, and that more than a half million people in the state who were eligible for food stamps were not receiving them. At a press conference not long afterward, Holshouser said he thought local officials should handle the problem, and he declared, "From my own standpoint, I like to think that if the statistics don't prove anything else, it is that a significant number of North Carolinians still have enough

pride that they wouldn't be involved [in the food stamp program]."<sup>30</sup> Later, he endorsed expansion of the food stamp program, reasoning that it would produce more revenue for the state through the state sales tax on food.

Thus, although Holshouser appealed to the race consciousness of blacks, he didn't overcome the consciousness of the mass of blacks of being part of the lower economic class.

Once a minority party comes to power, it can build strength either by focusing its energies on the administration of government and the development of programs that touch people's lives, which involves the risk of opposition to change, or it can concentrate its energy and time building party organization. In its first two years, the Holshouser administration concentrated on the latter. This included a divisive fight over the party chairmanship in which eastern conservative Frank Rouse was deposed.

Rouse's fight wasn't so much with Holshouser as with his top aide and controversial political operative, Gene Anderson. Raleigh editor Claude Sitton, a former national editor of the *New York Times*, once referred to Anderson as "the Svengali in the governor's office" whose critics "believe with some reason that he is retained to feed non-issues to the Holshouser administration's friends and to destabilize any non-issues launched by its enemies."<sup>31</sup> And Democratic state Representative Claude DeBruhl referred to Anderson as the "staff Rasputin" in the governor's office.<sup>32</sup> Rouse describes Anderson in language that is even less kind. But a former key aide to Holshouser defended Anderson as "absolutely indispensable" because someone had to play the role of hatchet man in confronting an entrenched Democratic state bureaucracy.<sup>33</sup>

Although eastern North Carolina includes the heaviest concentration of blacks, it lacked the plantation characteristics of Black Belt regions of other southern states. There was a populist strain, and the east strongly supported the economic liberalism of the New Deal. In the 1948 Dixiecrat movement, Strom Thurmond's economic conservatism and anti-civil rights appeal generally drew its strongest support across the South from counties with high percentages of black population. But not in North Carolina, where his greatest strength came from the more urbanized Piedmont and from counties along the South Carolina border. Likewise, in 1964, eastern North Carolina gave less support to Barry

Goldwater than did other regions in the urban South with large, heavily rural black populations.

Rouse, a contractor in Kinston and earthy son of a tobacco farmer, lost the GOP party chairmanship in 1973 to Holshouser's hand-picked candidate. He says that "in the east, we're redneck people. Now to people in Mecklenburg County [Charlotte], 'redneck' means a guy is stupid. To me, 'redneck' means country, it means that he's rural, that he's extremely honest, that he's plainspoken and ultra-conservative in that he's highly moral and an inherent Southern Baptist, and he's independent-minded."<sup>34</sup> Thus, the popularity of Helms in the east is not altogether so much what he says, but the honest and plainspoken way he says it.

Rouse believes that Goldwater failed to win the east because of the Democratic legacy since the Civil War and because voters in North Carolina register by party. "There was an obligation [to vote Democratic]. It was a thing of honor, something they take seriously."<sup>35</sup> Others recall that Goldwater came to Raleigh in 1964 and said he did not favor price supports on tobacco, more of which is grown in eastern North Carolina than anywhere else in the United States. It was consistent with his telling the old folks in Florida he did not like Social Security or his promise in Tennessee to sell the Tennessee Valley Authority.

Alexander Heard concluded that in 1948, "the pull of party loyalty—in these counties of traditionally greatest party loyalty—seemed to take precedence over fears stimulated by civil rights disturbance."<sup>36</sup> But by 1968, the "civil rights disturbance" was more pronounced, and there was open lack of support for the Democratic presidential candidate among state party leaders. Thus, eastern North Carolina became a Wallace stronghold, reacting to the rhetoric that combined racial conservatism and economic liberalism.

After the 1972 election, North Carolina appeared to be a genuine two-party state. The GOP candidate for governor since 1960 had averaged more than 47 percent of the vote, and the Republicans appeared to have established a competitive position. Their numbers in the legislature had increased steadily to 50 in 1972—35 in the 120-member House and 15 in the 50-member Senate. They held four of the state's 11 seats in the House. And they also elected a U.S. Senator, Jesse Helms, an ul-

traconservative who accused Richard Nixon of "appeasing Red China" after Nixon's presidential trip there. The conservatism of Helms represents a broad-based ideological commitment. He explained: "This government cannot survive if it continues this fiscal irresponsibility that has been practiced for a generation now. We have got to balance the budget. We have got to reduce government spending. We have got to remove the federal government from the lives of the people. The federal government was never envisioned to be a provider, a welfare organization. . . . The federal government ought to be against price controls because they won't work, and the free market system is the only thing that is going to work. Minimum wages—this is purely a political device. Anybody who is honest with himself knows that every time you raise the minimum wage, either on the state or federal level, you do nothing but lop off thousands upon thousands of jobs and put these people out of work."<sup>37</sup>

In 1974, however, Republican candidates received less than 40 percent of the vote in the statewide races for U.S. senator and attorney general. Two incumbent U.S. representatives suffered upset losses, and Republicans lost 40 seats in the legislature, including 14 of their 15 seats in the Senate. These losses came after two years in which Governor Holshouser had focused his attention on party building and after he had actively campaigned for the party candidates.

Although the effects of Watergate and the recession hurt the Republicans here as elsewhere, the magnitude of the defeat was greater than in any other state. However one interprets the results, they certainly were no endorsement of the Republican administration in Raleigh.

A clear split developed in the Republican Party in 1974 between factions identified as the Holshouser-Broyhill wing and the conservative Helms wing. One factor in the split was the support given by Holshouser to state Representative William C. Stevens, a brother-in-law of Congressman Broyhill, for the Senate nomination, after Helms had been led to believe that Holshouser would accept state Senator Hamilton C. Horton for the nomination. Horton withdrew and claimed he had been "sandbagged" by Holshouser and Gene Anderson. Although Holshouser subsequently appointed Horton as chairman of the state Milk Commission in a show of harmony, Helms was clearly displeased. In 1974, he gave only token

support in the east to Republican candidates, who fared poorly there.

Holshouser came into office when the state had a \$265 million surplus and thus was able to fulfill his campaign promises to provide additional funds for public education, mental health, and state employees' compensation. He expanded the state kindergarten program but rejected a \$190 million tax relief proposal. As governor, he reflected his lack of executive experience by a tendency to react to the proposals of others and to avoid exercising leadership. He said little or nothing on such controversial issues as liquor-by-the-drink, the death penalty, and no-fault insurance. As a Republican governor unable to succeed himself, with no veto and a Democratic-dominated legislature, Holshouser preferred to avoid conflict except on partisan issues. He offered little in the way of new direction for tackling basic problems in the state.

A prime example was his administration's response to the state's economic dependence on low-wage industry. More than 60 percent of the manufacturing work force remains in textile, apparel, and furniture manufacturing. After state AFL-CIO President Wilbur Hobby in the fall of 1974 blew the whistle on the Raleigh Chamber of Commerce's active discouragement of a Xerox Corporation effort to locate a unionized plant near Raleigh, the *News and Observer* pointed out that the situation was another example of the way "low-wage industries and their allies who dominate the economy" oppose growth that threatens to bring labor unions or competition in the labor market. The Xerox plant would have paid \$5 an hour, well above the \$3.74 hourly rate then prevailing in the Raleigh area and more than double the \$2.46 state average hourly rate. The Raleigh Chamber of Commerce simultaneously was promoting a Holshouser-backed referendum to provide state-backed revenue bond financing for industrial development, on the grounds that "North Carolina is presently unable to compete with neighboring states for blue-chip, high-wage industry."

The irony did not escape the *News and*

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***North Carolina has lagged behind all the other southern states in union activity, a fact not unrelated to its next-to-bottom standing in average manufacturing wages.***

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*Observer*, which gave other examples and commented, "This pattern of local conniving to screen out desirable industry drew the attention of officials in the administration of Governor Bob Scott. They called it a major barrier to improving North Carolina's industrial mix. Their campaign to end the practice never got off the ground. The 'no-growth-if-it-hurts-us' forces saw to that." The editorial added that Holshouser had commissioned a Research Triangle study on the subject, which recommended that if the state was serious about improving the economy, it must intensify efforts to attract high-paying technical industries and discourage further textile industry growth. However, Holshouser's secretary of natural and economic resources indicated that action should be left to local government. The *News and Observer* concluded: "Nothing here indicates that the Holshouser administration is ready to fight the tiger."<sup>38</sup>

### Organized Labor

**A**lthough North Carolina has lagged behind all the other southern states in union activity, a fact not unrelated to its next-to-bottom standing in average manufacturing wages, state AFL-CIO President Wilbur Hobby is the only union leader in the South to have run for governor. "I really got involved in it because it didn't seem like we could get anybody to discuss issues," Hobby explained of his 1972 race.<sup>39</sup> Hobby, who had worked in Henry Howell campaigns in Virginia, adopted Howell's slogan of "Keeping the Big Boys Honest" and Howell's issue of taking the sales tax off food—an issue that state Senator McNeill Smith, one of the state's liberal hopes, picked up in the North Carolina legislature.

A onetime worker in a Durham cigarette factory, the heavyset Hobby is something less than the ideal media candidate. But he is no political novice. He spent several years as regional Committee on Political Education (COPE) director in the South before returning to his native North Carolina. Although he received only 7 percent of the vote in the governor's race in the 1972 Democratic primary, Hobby believes his race helped the unions. "I think people know there is a trade union movement in the state now. They know that it can talk about issues, that the big people in the utilities and the banks and the in-

surance companies run this state, and that it ought to be a people's government. And I think they know now that the unions are the champion of the little man."<sup>40</sup>

Hobby recalls that there was an active and successful coalition of labor, blacks, and liberals in Durham in the late 1940s, "but the race thing killed it." However, he points to Ku Klux Klan leader C. P. Ellis, who grew up with Hobby in Durham. Ellis confronted blacks on school desegregation in the early 1970s, then realized they had many of the same goals as whites and began organizing a biracial union among Duke University employees.

The successful union vote by 3,000 workers of the J. P. Stevens textile firm in Roanoke Rapids in 1974 may represent a breakthrough in North Carolina, but the union lost a later vote that year at another major textile chain when the economy went sour.

Hobby believes that integration of the work force in the textile industry will lead to greater union acceptance because blacks tend to welcome union representation and because white workers are accepting blacks as they come to know them better. "They've kept us apart, and they talked about blacks. And the only ones working there were sweeping the floor. We didn't know nothing about them, but now they're in our unions. We still have a little friction sometimes in the local unions but just the fact that they're meeting together. You can see coalitions forming, where a local union official who may have been a redneck realizes he's going to have to switch and have some black votes if he's going to win again."<sup>41</sup>

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*I came here thinking there was no other state in the South that was as racially progressive as North Carolina. I did not know any difference until I got here . . . I think the relationship that existed here was a paternal relationship between blacks and whites and that those blacks in power aided in that relationship.*

—FORMER SEN. HOWARD LEE (D-ORANGE)

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Hobby regularly invites Chapel Hill Mayor Howard Lee to speak to the state labor convention and to smaller groups. "I don't know if North Carolina is ready yet to elect a black lieutenant governor," Hobby said of Lee, "but he's extremely popular with our people who have been exposed to him."<sup>42</sup> With eight A. Philip Randolph chapters in the state, the AFL-CIO is actively engaged in political education among blacks and is developing higher levels of political sophistication and skills among black union members.

Politically, union activity tends to be most effective in Winston-Salem, Greensboro, and Durham, and AFL-CIO lobbying helped push through the legislature a \$1.80-an-hour minimum wage law in 1973. In Winston-Salem, organized labor has supported a number of Republican candidates, and Holshouser appointed Republican-oriented union leader Coy Vance to the state Industrial Commission, which hears workmen's compensation cases.

But compared with states like Arkansas, Louisiana, Tennessee, and Texas, union membership in North Carolina is low and organized labor remains relatively weak. The legacy of bitter and bloody textile strikes in the 1920s and 1930s and repressive measures (often sanctioned by government) against union organizers in the 1950s have all contributed to labor weakness. And government policy still reflects the unspoken concern of business to discourage union growth.

In 1970, 15 percent of all textile workers in America were in North Carolina, and in 1975 textile hourly wages averaged \$1.26, less than the national factory average or \$50.40 weekly. But the idea of diversification has not been sold to many local officials.

## Black Politics

V. O. Key quoted a northern Negro reporter who in 1947 visited North Carolina with a critical eye after hearing of the harmony that prevailed. The reporter concluded that North Carolina held promise to be a model in its race relations, "something of a living answer to the riddle of race."

When Howard Lee came to North Carolina to attend graduate school after being active in the civil rights movement in his native Georgia, it was at the end of the Sanford administration. He

recalled his impression that the image of North Carolina among blacks elsewhere in the South was that "when you heard the name North Carolina you weren't thinking about the South, so you never took a real close look at it. It wasn't until I came here in 1964 that my attitude about North Carolina, about what was truly inside the boundaries of this state, changed. I came here thinking there was no other state in the South that was as racially progressive as North Carolina. I did not know any difference until I got here . . . I think the relationship that existed here was a paternal relationship between blacks and whites and that those blacks in power aided in that relationship."<sup>43</sup>

Although limited black political participation has always been allowed in North Carolina, most of the activity was centered in the cities, especially Durham with its relatively large black middle class. Greensboro blacks developed a strong and effective organization in Guilford County in the 1960s. And Raleigh elected a black mayor in 1973 and Charlotte a black state senator in 1974.

In the rural east, where the black population is most heavily concentrated, black registration remained below that of the rest of the state. Not only was the region bypassed by the civil rights movement, it was also a hotbed of Ku Klux Klan activity in the 1960s, and the Klan in North Carolina was larger and more virulent than in any state outside of Alabama and Mississippi during that period.

Compared to the rest of the Black Belt, the church was relatively weak in eastern North Carolina. Many of the ministers lived in easily accessible Durham or Raleigh, cities with long-standing middle-class black communities, and commuted on weekends; a number of ministers had more than one church. The morticians, another source of black leadership in the rural South, tended to operate relatively small establishments and were dependent on whites for financing. The relatively few black lawyers tended to shun politics because of the pressures that would rise against them in the local courts.

The election to the 1975 legislature of the first two black senators in this century brought to six the total number of blacks in both houses—fewer than in such border states as Tennessee and Texas and fewer than in any Deep South state except Mississippi.

The legislators recognize the need to develop a statewide black political organization,

and there is movement in that direction. The quality of black legislators in North Carolina is high in terms of ability and leadership potential. Representative H. M. Michaux of Durham ran for attorney general in 1974 and was encouraged by the response he received. The nomination was made by the state Democratic Executive Committee for a special election to fill a vacancy created by the resignation of Robert Morgan to run for the U.S. Senate. It was the unity of the black caucus in the committee that provided the margin of victory on the sixth ballot for Rufus Edmisten, a 33-year-old lawyer who for ten years had served as a key staff aide to Senator Sam Ervin.

When Howard Lee ran for Congress in 1972 against veteran incumbent L. H. Fountain, Lee received 41 percent of the vote, and his three-month campaign stimulated 18,000 blacks in the predominantly rural district to register for the first time. But one postelection analysis indicated that less than half of the registered blacks actually voted, and Lee attributed his defeat to the failure of blacks to vote and the lack of experienced black political leadership in the rural areas. In North Carolina as a whole, 72.2 percent of the whites and 54.4 percent of the blacks of voting age were registered at the end of 1974. This 17.8 percent difference compared with only an 0.5 percent difference in South Carolina.

Lee believes racial attitudes are changing rapidly and recalls a white peanut farmer he met during his congressional campaign who invited Lee to stay for dinner with the farmer, his wife, children, and mother-in-law. Lee ran for lieutenant governor in an attempt to "wake the sleeping black vote." He hoped to put together a coalition of working-class whites and blacks by taking strong positions on delivery of health care, tax reform, housing, job quality, and vocational education.<sup>44</sup>

Perhaps no political campaign better reflected changing attitudes on race than the 1973 mayor's race in Raleigh in which black City Councilman Clarence Lightner won support from a coalition of white suburbanites concerned about urban and suburban sprawl. In a city where less than 16 percent of the voters are black, Lightner defeated the director of the Raleigh Merchants Bureau. Lightner won 19-1 in black precincts and captured a majority in white suburban areas to receive 53 percent of the total vote. Although Lightner ran best in white areas heavily populated by re-

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*Not only has the North Carolina delegation to Congress been one of the most conservative in its voting patterns, but it has also been among the least influential from the South.*

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cently arrived Research Triangle employees, he received a respectable 37 percent of the vote in East Raleigh, his weakest area.

### **Women in Politics**

One area in which North Carolina does stand out in the South is the role of women in politics, the outgrowth of a strong, bipartisan North Carolina Women's Political Caucus (NCWPC). When the caucus organized in 1972, there were two women in the legislature. The number jumped to nine the next year and to 13 in 1975, more than in any other state legislature in the United States. Many other women won election as county commissioners.

More than a thousand women attended the first NCWPC meeting, which included as co-convenors the League of Women Voters, United Church Women, the Federation of Women's Clubs, the National Organization of Women (NOW), the AFL-CIO, and the vice-chairwomen and national committeewomen of both political parties. The NCWPC encouraged women to run for office, staged workshops with professional political consultants, and provided advice and a written checklist on the nuts and bolts of conducting a political campaign. The caucus helped sensitize women to politics and began to break the psychological barriers that inhibit many women from running for public office.

On such women-related issues as restrictive credit laws and adequate day care centers there was agreement without regard to party. Holshouser pledged in his campaign to utilize more women in his administration, and he followed up by meeting with the caucus and utilizing of a talent bank they had compiled in making appointments of women to state boards and commissions.

"If we are more successful," said Martha McKay, organizer and first chairperson of the caucus, "one reason is the caucus from the beginning was in no way a fringe group. It was very clearly people who had been centrally involved in politics."

## Congress

Not only has the North Carolina delegation to Congress been one of the most conservative in its voting patterns, but it has also been among the least influential from the South. Since 1952, no North Carolina Democrat has served on any of the three major committees in the House—Rules, Appropriations, and Ways and Means—except for one term on Appropriations by former Representative Nick Galifianakis. Until Sam Ervin received national exposure as a civil libertarian in the Watergate hearings, there was little to distinguish the state's senators. Previously, Ervin had served as a solid member of the conservative bloc and was noted as a prominent strategist in opposition to civil rights legislation.

An exception to the overall conservative voting record is that of Representative L. Richardson Preyer, the defeated candidate for governor in 1964. Since his election to the House in 1968, Preyer has compiled a moderate-to-liberal voting record.

Seventh district Representative Charles G. Rose, elected in 1972 when he was 33, is a former member of the Terry Sanford law firm and in his first term showed signs of leadership among the new southern Democrats in Congress, who tend to vote more with the national party. Three other new Democrats elected in 1972 and 1974 showed similar tendencies.

Federal per capita spending in North Carolina was \$815 in 1973, less than in any other state in the South, an indication that the state's congressmen have not been very effective in funneling federal dollars into projects at home.

## Voting Trends

The Comparative State Elections Project found that the highest percentage of Democratic identifiers in North Carolina, in sharp contrast to other border South states, were those in the highest income bracket. Of those

with family incomes of \$15,000 or more, 70 percent identified as Democrats, compared with only 40 percent in Texas and 29 percent in Florida. Also striking was the fact that the lower middle-income group (\$6,000–8,999) showed the highest Republican (25 percent), highest independent (27 percent), and lowest Democratic (47 percent) identification.<sup>45</sup> While local tradition is no doubt a factor, those findings suggest that both workers and management understand well the role the Democratic Party has played in North Carolina.

A major finding was that Republican Party identification lags behind Republican voting all across north Carolina. "While a growing proportion of North Carolinians may be voting Republican farther down the ballot than ever before, many of these voters have not yet made the psychological break with the Democratic party which would enable them to think of themselves as Republicans."<sup>46</sup>

In terms of self-perception, 60 percent of the North Carolina voters in 1968 regarded themselves as Democrats, which matched voter identification for the Deep South rather than the border South. But the 21 percent Republican identification matched that for the border South and is stronger than for the Deep South.

Urban middle- and upper-class voters in North Carolina are likely to follow their northern counterparts in predominantly Republican voting patterns, but whether they will identify themselves as Republicans or as independents who tend toward ticket splitting remains to be seen.

A 1972 postelection survey disclosed that 17.6 percent of the registered Democrats voted straight Republican, while none of the registered Republicans in the survey voted straight Democratic. The same survey found the following characteristics more prevalent among ticket splitters: more formal education, lived in urban areas, were younger (21–39 years), professional, executives, salespersons, white collar and civil service, females and whites.<sup>47</sup> Total registration was 73.3 percent Democratic, 23 percent Republican, and 3.9 percent independent or no party.

Humphrey and Wallace voters in 1968 tended to agree in their views on the need for more jobs and better wages and government help for labor unions. But they differed in their views on racially tinged issues, such as open housing, government help for Negroes, cutting

poverty program spending, and giving the police more authority.<sup>48</sup>

In his 1974 campaign for the U.S. Senate, Democrat Robert Morgan urged North Carolina voters to "return to the party of your fathers." The degree to which they responded supports a theory that the 1968 supporters of George Wallace in North Carolina were engaged in a temporary revolt against the dominant party, a revolt against an unpopular candidate and the party's national stance on the racial issue.<sup>49</sup> With another unpopular Democratic presidential candidate in 1972, the Wallace vote shifted solidly to Nixon, and the traditionally Democratic east voted for Helms, a familiar face and voice whose television editorials for years had attacked many of the same targets on which Wallace had focused.

The 36.8 percent straight Republican voting behavior found in the 1972 De Vries study matched almost identically the 37 percent vote received by William Stevens, the Republican candidate for the U.S. Senate in 1974. In the east, Stevens received only 31 percent, compared with 54 percent for Helms and 44 percent for Holshouser in 1972.

The 1974 election results project no clear trends for the state. The steady gradual increase in Republican percentage of the votes for governor from 1948 to 1972 suggest a solid, challenging two-party base despite the 1974 debacle. One study of voting patterns since 1948 shows that Republicans in North Carolina run consistently better in congressional and senatorial races in presidential election years. The analysts conclude that the highly involved electoral "core" which votes in every election tends to be more Democratic, but that the electoral "periphery" requiring greater stimulation of a presidential election consistently has increased the Republican percentage.<sup>50</sup>

Except for Arkansas, which has two-year terms for governor, North Carolina is the only state in the South that elects its governor in presidential election years, a unique advantage for Republicans in the Tar Heel state. But the 1974 elections left in doubt whether Republicans can regain a competitive position and destroyed Republican hopes for near-term dominance.

As in Virginia and Tennessee, North Carolina Democrats began to understand the necessity for building a stronger political party organization after the election of a Republican

governor. The surprise upset of Republican Representative Wilmer (Vinegar Bend) Mizell in 1974 by politically unknown weekly newspaper publisher Steve Neal in part was attributed to the fact that Forsyth County (Winston-Salem) Democrats were better organized than ever before. County Democratic Chairman Wayne Corpening, a Wachovia Bank vice-president and former director of administration under Governor Dan Moore, developed a precinct system in which a telephone number for each precinct was published that would provide a ride, babysitter, etc., for any voter who called. There were a series of meetings for groups of party workers from half a dozen or so precincts at which Morgan or Edmisten and others would appear for a pep talk. Mizell had received 58 and 65 percent of the vote in the two previous elections, and the district appeared to be safely Republican.

Short-run Republican recovery after the 1974 election disaster will depend on the record of the last half of the Holshouser administration, on whether moderate and conservative factions can unite, and on whether the party can develop quality candidates.

### Summary

The last decade has produced no leaders who have advocated a new approach or a new way of looking at problems. In terms of social and economic development, North Carolina—like Alabama under George Wallace—has not kept pace with the rest of the South. In recent North Carolina elections, the issues have been muted and based on racial attitudes rather than on programs that affect the masses. This may help account for the relatively low levels of turnout in recent elections.

Key's description of North Carolina as a "progressive plutocracy" was an apt one in the late 1940s. But when one compares the indices of economic development, the level of participation and modernization of the political process, the relative neglect of long-standing social problems, the controlling oligarchy's perpetuation of "no-growth-if-it-hurts-us," two decades of a congressional delegation among the most conservative in the South, and the emergence of race as a significant political issue, what remains is a political plutocracy that lives with a progressive myth.

## FOOTNOTES

- <sup>1</sup> V. O. Key, *Southern Politics in State and Nation* (New York: Vintage, 1949), p. 211.
- <sup>2</sup> *Ibid.*, p. 206.
- <sup>3</sup> Interview with Ferrel Guillory, December 11, 1973.
- <sup>4</sup> Samuel Lubell, *The Future of American Politics*, rev. ed. (New York: Doubleday Anchor, 1956), pp. 106-115.
- <sup>5</sup> Interview with Claude Pepper, February 1, 1974.
- <sup>6</sup> Merle Black, "Nominal Democrats and Real Republicans: The Voting Behavior of North Carolina Congressmen," in Thad Beyle and Merle Black, eds., *Politics and Policy in North Carolina* (New York: MMS Press, 1975), p. 173.
- <sup>7</sup> August B. Cochran III, "Desegregating North Carolina's Schools," in *ibid.*, p. 202.
- <sup>8</sup> Interview with Howard Lee, December 13, 1974.
- <sup>9</sup> This study and analysis of voting behavior was based on survey research involving more than 7,000 voters in 13 states, representing all regions of the country, after the 1968 presidential election. The study was coordinated and its reports published by the Institute for Research in Social Science, University of North Carolina at Chapel Hill, in 1974.
- <sup>10</sup> John Shelton Reed, *The Enduring South* (Lexington, Mass., D. C. Heath, 1974), p. 35.
- <sup>11</sup> Key, *Southern Politics*, p. 310.
- <sup>12</sup> Merle Black, "Is North Carolina Really the 'Best' American State?" in Beyle and Black, eds., *Politics and Policy in North Carolina*, pp. 33-34.
- <sup>13</sup> *Raleigh News and Observer*, April 14, 1974.
- <sup>14</sup> Quoted in *Raleigh News and Observer*, June 30, 1974.
- <sup>15</sup> Key, *Southern Politics*, p. 211.
- <sup>16</sup> *World Almanac, 1976* (N.Y., Cleveland: Newspaper Enterprise Assoc.), 1975. (Source: *The American Banker*).
- <sup>17</sup> North Carolina Advisory Committee to the U.S. Commission on Civil Rights, *Equal Protection of the Laws in North Carolina* (Washington, D.C., U.S. Government Printing Office, 1962), p. 5.
- <sup>18</sup> Interview with Ralph Scott, December 20, 1973.
- <sup>19</sup> Interview with Henry Hall Wilson, congressional liaison for the White House in the Kennedy administration (and formerly campaign office manager for Sanford), December 19, 1973.
- <sup>20</sup> North Carolina Advisory Committee, *Equal Protection*, p. 153.
- <sup>21</sup> Interview with Terry Sanford, December 3, 1973.
- <sup>22</sup> Interview with Floyd McKissick, December 6, 1973.
- <sup>23</sup> Interview with Ralph Scott, December 20, 1973.
- <sup>24</sup> Confidential interview with the authors.
- <sup>25</sup> Interview with Terry Sanford, December 3, 1973.
- <sup>26</sup> *Raleigh News and Observer*, November 3, 1974.
- <sup>27</sup> *Raleigh News and Observer*, October 17, 1974.
- <sup>28</sup> Interview with Terry Sanford, December 3, 1973.
- <sup>29</sup> Interview with James Broyhill, January 30, 1974.
- <sup>30</sup> James E. Holshouser, press conference, July 23, 1974.
- <sup>31</sup> *Raleigh News and Observer*, November 3, 1974.
- <sup>32</sup> *Ibid.*, November 10, 1974.
- <sup>33</sup> Confidential interview with the authors.
- <sup>34</sup> Interview with Frank Rouse, December 17, 1973.
- <sup>35</sup> *Ibid.*
- <sup>36</sup> Alexander Heard, *A Two Party South?* (Chapel Hill: University of North Carolina Press, 1952), p. 272.
- <sup>37</sup> Interview with Jesse Helms, March 8, 1974.
- <sup>38</sup> *Raleigh News and Observer*, November 10, 1974.
- <sup>39</sup> Interview with Wilbur Hobby, December 18, 1973.
- <sup>40</sup> *Ibid.*
- <sup>41</sup> *Ibid.*
- <sup>42</sup> *Ibid.*
- <sup>43</sup> Interview with Howard Lee, December 13, 1973.
- <sup>44</sup> Interview with Howard Lee, December 13, 1973.
- <sup>45</sup> David M. Kovenock, James W. Prothro and Associates, *Explaining the Vote: Presidential Choices in the Nation and the States* (Chapel Hill, N.C.: Institute for Research in Social Science), vol. II, pp. 331, 383, 429.
- <sup>46</sup> Thad Beyle and Peter Harkins, *Explaining the Vote* (Chapel Hill, N.C.: Institute for Research in Social Science, 1973), vol. II, p. 384.
- <sup>47</sup> De Vries & Associates, "North Carolina Statewide After-Election Survey."
- <sup>48</sup> Beyle and Harkins, p. 398.
- <sup>49</sup> *Ibid.*
- <sup>50</sup> Richard J. Trilling and Daniel F. Harkins, "The Growth of Party Competition in North Carolina, 1948 to 1974," in Beyle and Black, eds., *Politics and Policy in North Carolina*, p. 86.



# North Carolina: The Newest Megastate 1983

BY NEAL PEIRCE

**T**he 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.

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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.

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

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***In reality this is a state of paradoxes: behind every fact indicating its progressiveness lurks another suggesting quite the opposite.***

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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 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 over-

land 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 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.

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*\*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.*

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 invest-

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***Unhappiness over low wages has sparked a state government campaign for economic diversification.***

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ments 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

**B**y 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 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 cities 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.

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*North Carolina is finding that  
the state's cultural reputation  
helps draw foreign investment  
and makes the state more  
attractive to high-level executives.*

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Charlotte is headquarters of the North Carolina National Bank and its holding company, NNCB 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, NNCB has pursued a bold acquisition and merger policy—sometimes walking the tightrope of legality. Yet NNCB 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

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\*Now known as NationsBank, N.A. and NationsBank Corp. respectively.

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 Gov-

ernor 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**

**A**nnouncing 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 de-

veloped 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 stron-

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*\*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.*

gest 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**

**T**hat 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 (1981-1985). 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 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

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***Helms' greatest power lay in his drive to take the Republican party and national debate further to the right.***

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his National Congressional Club, a direct-mail fundraising group that became the nation's largest political 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" shamle 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 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."

# North Carolina's Demographic Destiny 1993

BY KEN OTTERBOURG AND MIKE MCLAUGHLIN

*This article examines the results of the 1990 Census and explores the policy implications for North Carolina. Four major trends are examined: (1) the shift of North Carolina's population from primarily rural to primarily urban; (2) the aging of the North Carolina population; (3) the increase in the state's Asian and Hispanic populations; and (4) the drop in the state's poverty rate.*

On January 6, 1993, North Carolina's double-digit population growth during the 1980s was recognized in two very different ways. The first occurred in Washington. It was there that Melvin Watt took the oath of office as a Democratic congressman from the state's new 12th Congressional District. The second was an announcement that the state would get a third area code carved out of the eastern half of the state that currently uses 919.

The newly added congressional district, drawn with an eye toward electing blacks to the U.S. House of Representatives, twists and snakes through parts of ten counties, from Gaston in the west to Durham in the east. A Charlotte lawyer, Watt is one of two African-Americans in the state's 14-member congressional delegation.

As for the area code split, it will happen along a line that starts in Person County, bobs

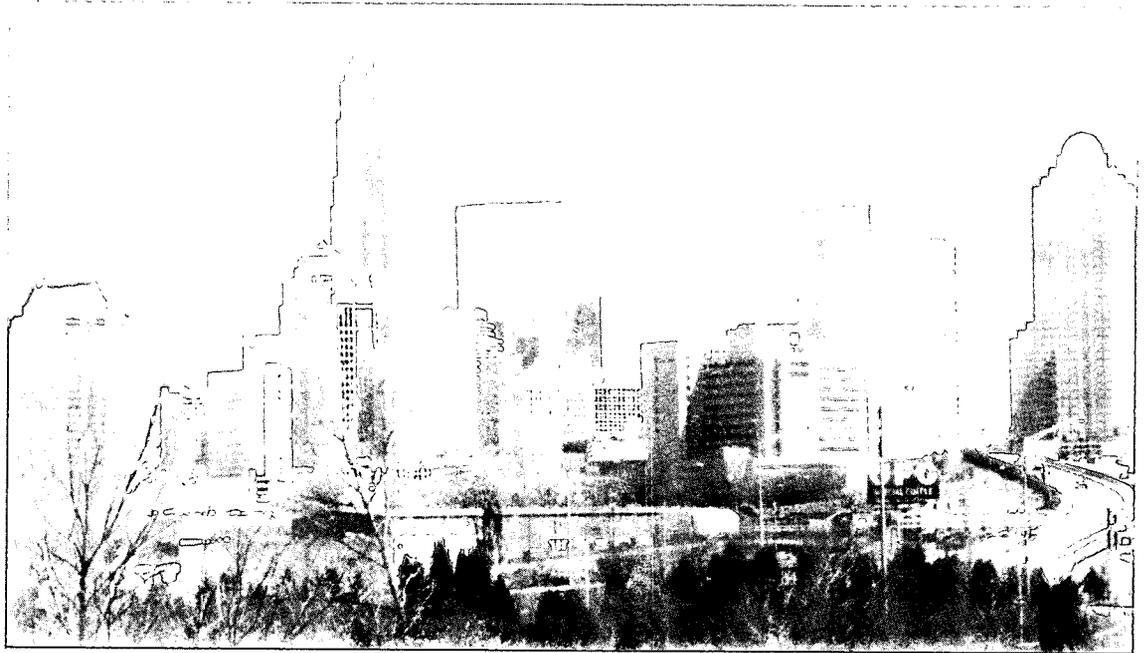
and weaves south, and then makes an arc that ends near Morehead City. On Nov. 14, 1993, telephones to the east continued to use the 919 area code. Those to the west of that line switched to a new code, 910. Southern Bell officials say the region's growth, along with demands for phone numbers for fax machines and cellular phones, made the change necessary.<sup>1</sup>

There are ways other than counting congressional districts or area codes to get a sense of the change underway in North Carolina. Drive along the coast and listen to the whir of circular saws ripping lumber for beach houses. Travel to downtown Charlotte and crane your neck to look at the city's skyscrapers, now among the tallest in the South. Or take a look at the U.S. Census.

Produced by a division of the U.S. Department of Commerce, the census is a once-a-decade look at America<sup>2</sup> and each of the 50 states. Each report is only a snapshot, but string them together and you get a sense of movement over time. It is—plain and simple—North Carolina by the numbers.

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Chuck Barton

**Charlotte, North Carolina's largest city, registered strong growth during the 1980s.**

According to the census, North Carolina is still the nation's tenth most populous state, sandwiched between New Jersey, No. 9, and Georgia, No. 11.<sup>3</sup> From 1980 to 1990, North Carolina's population grew 12.7 percent, from 5,881,766 to 6,628,637.<sup>4</sup> It became wealthier, and its poverty rate dropped to 13.0 percent, just below the national average of 13.1.<sup>5</sup>

The state's population also grew older, with a median age in 1990 of 33.1, compared to 29.6 years in 1980.<sup>6</sup> Long a state dominated by blacks and whites, North Carolina's "other" categories—primarily comprised of American Indians, Hispanics, and Asian-Americans—have climbed.<sup>7</sup> And for the first time in the state's history, a majority of its residents live in areas the Census Bureau calls urban.<sup>8</sup>

That's the overview. At the county level, the uniformity fades. North Carolina's growth isn't evenly distributed, but instead is bunched—mainly in the state's middle—in the Piedmont. For every booming city, there is a rural county that lost population during the 1980s. Despite a poverty rate now slightly below the national average, nearly 830,000 North Carolinians still live below the federal poverty level of \$13,359 for a family of four.<sup>9</sup>

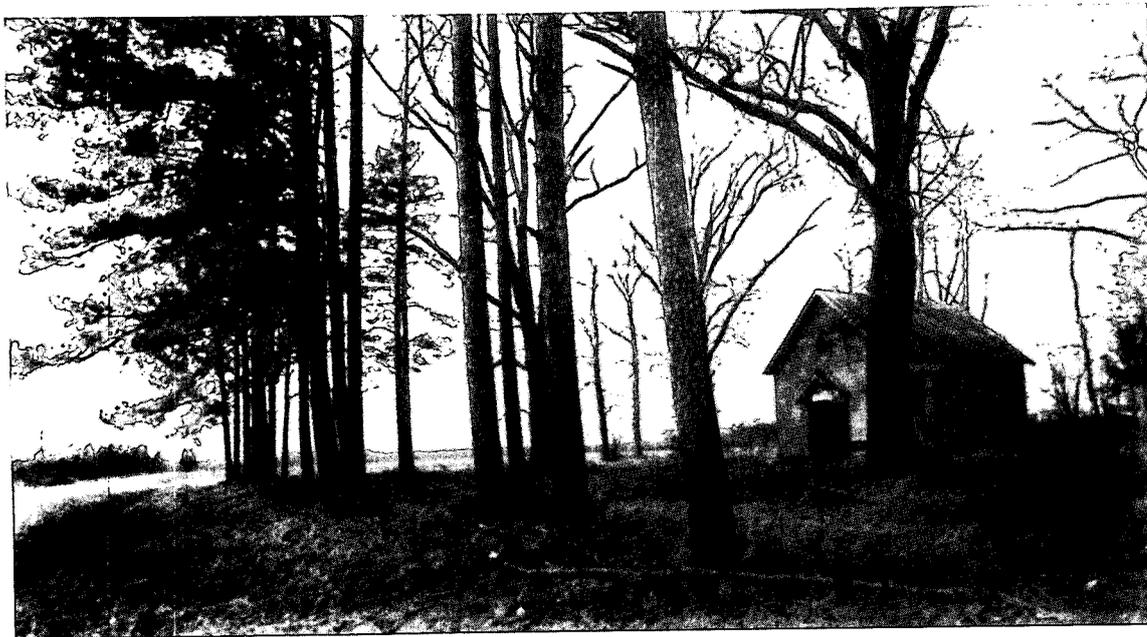
How did the Bureau of the Census learn all this? By asking questions. A lot of them. Census-takers are supposed to hit every household

in the nation. Most households receive a short form with seven questions on the age, sex, race, and marital status of the people in that home. One of every six households received a long form with questions about education, employment, and housing conditions.<sup>10</sup>

It's from those responses that the Census Bureau assembles its portrait of the nation. While governments glean information from a host of other sources—tax returns, employment records, birth and death certificates—the census is the most complete compilation.

Who uses census information? It seems just about everybody. A business might decide to locate a restaurant in a certain community because the owners like the income level of that part of town. The U.S. government uses population figures to divvy up federal dollars for everything from highways to hospitals. And because membership in the U.S. House of Representatives is capped at 435, North Carolina's recent gain of a twelfth seat came at the expense of one of the thirteen states that lost seats.

"If the only thing riding on the census was strictly the number of people in the country, it would have been easy to do," says William Tillman, the state demographer with the Office of State Planning, a division of the Governor's Office. But Tillman says because financial issues are at stake for local governments, they cannot



**A North Carolina rural scene**

participate in the census except to point out perceived errors. Often, Tillman says, local government officials know more about the locations of new housing and populations than do the census-takers, but the census-takers must start each count from scratch.

The census has been controversial since its inception in 1790. President Washington wanted the survey to show the United States had a population of at least 4 million, enough to make the European powers think twice about meddling in the infant nation's affairs. To the first president's disappointment, the census only showed 3.9 million residents, including slaves. North Carolina's population was 393,751.<sup>11</sup>

But such weighty controversies generally have been leavened by the value of the census as an information source. A careful examination of the census answers many questions, such as: What county in North Carolina has the highest percentage of old people? The retirement mecca of Polk County, with 24.6 percent of its residents over 65. Or, what county has the highest percentage of women? Edgecombe, at 54.3 percent. Or men? Onslow, home of Camp Lejeune Marine Corps Base and the New River Marine Corps Air Station, at 59.8 percent.

But the pages of numbers that make up the 1990 Census pose far more questions than they readily answer. Among the most challenging

are: What do the census figures say about where North Carolina has been and where it is going? How does the state's performance on key indicators compare with the nation's? And, most importantly, what should state policymakers draw from the census figures in developing programs and strategies to solve the state's problems?

To narrow the focus, this analysis focuses on four key areas: North Carolina's rural-urban split; the aging of the state's population; the state's changing racial and ethnic make-up; and poverty.

### **Rural Versus Urban**

**H**arold Hodgkinson, a demographer with the Center for Demographic Policy in Washington, sees the growing gap between rural and urban North Carolina as among the most important trends revealed in the census data. "We can sum up what has happened in North Carolina in one sentence," writes Hodgkinson. "North Carolina's metro populations benefited from economic improvements during the 1980s, while more than 40 percent of the populations living in rural areas of the state did not. During the 1990s, new pressures will be brought on the state's fiscal and

**Table 1. N.C. Counties Which Lost Population in the 1980s or Are Projected to Lose Population in the 1990s**

County	Population Loss	
	Actual 1980s	Projected 1990s
1. Alleghany	(0.03)%*	1.36%
2. Anson	8.48	7.28
3. Ashe	0.52	2.12
4. Bertie	3.03	2.43
5. Bladen	6.00	5.06
6. Caswell	0.06	(0.05)
7. Columbus	2.84	3.41
8. Duplin	2.34	1.50
9. Graham	0.29	0.93
10. Greene	4.55	5.41
11. Hertford	3.62	1.73
12. Hyde	7.87	5.69
13. Jones	3.00	9.77
14. Lenoir	4.25	4.29
15. Martin	3.35	3.48
16. Mitchell	(0.03)	1.37
17. Northampton	6.29	5.72
18. Richmond	1.42	0.18
19. Sampson	4.81	6.14
20. Tyrrell	2.99	3.60
21. Washington	5.43	4.94

\* ( ) indicates an increase in population

Source: 1990 Census and N.C. Rural Economic Development Center for population losses in 1980s, N.C. State Data Center projections for population losses in 1990s

infrastructure resources, which will require new leadership to move ahead.”<sup>12</sup>

It takes only about an hour to drive from downtown Charlotte, the heart of Mecklenburg County, to Wadesboro, the county seat in Anson County. But during the 1980s, these two counties seemed to grow further apart.

With its surging financial services industry leading the way, Mecklenburg added 107,163 residents from 1980 to 1990. The per capita income of its residents—most of whom work in white-collar professions—is the second highest in the state at \$16,910 a year.<sup>13</sup>

The decade wasn't as kind to Anson County. Population in the predominantly blue collar rural county declined by 8.5 percent, a drop of 2,175 residents. The county's poverty rate approaches 18 percent and wages remain well below the state and national averages.<sup>14</sup>

Former County Commissioner Gene Russell of Ansonville says the people who are leaving Anson County are the very ones who should be securing its future—educated young workers. “You lose your income earners, and on the other hand, you keep your poor, your elderly, your indigent. You get a shift to a service-consuming population.”

Russell describes a cycle in which fewer taxpayers must provide more services, which pushes taxes higher. That, in turn, breeds resistance to the taxpayer investment in infrastructure needed to attract industry that would produce jobs. The lack of jobs prompts more young people to leave, and the cycle continues. “It's an exponential, negative thing on rural areas,” Russell says.

### Which Counties Are Growing?

Anson County was one of 19 rural counties that lost population during the 1980s. (See Table 1.) No urban counties lost population. The state's metropolitan regions grew faster and more robustly than its rural sections, continuing a trend that began in the 1970s.<sup>15</sup> All but four of the 19 rural population losers in the 1980s—Anson, Ashe, Caswell, and Graham counties—were in or near the Coastal Plain, the broad stretch of land between the Piedmont and the coast.

The gap between rural and urban isn't likely to be closed easily, but state policymakers say it's a problem that must be addressed. “With the

pressures of global competition growing, the rural economy appears ill-prepared to cope with the challenges of a new economic era," says the N.C. Rural Economic Development Center in its *Rural Profile*, an analysis of census data and other resources released in November 1992. The center's report depicts the rural/urban gap by comparing the numbers on a series of indicators. Here are just a few of them:

**Population:** Urban counties added more than 500,000 residents during the 1980s and grew by 17.4 percent; rural counties added fewer than 200,000 residents for a population increase of 7.3 percent.<sup>16</sup>

**Income:** In 1990, urban counties had a per capita income of \$17,818. Per capita income in rural counties was \$14,228. The gap? \$3,590.<sup>17</sup>

**Poverty:** The rural counties had a poverty rate of 16.4 percent in 1990. Urban counties had an average rate of 10.4 percent. All 25 counties with poverty rates exceeding 20 percent were rural.<sup>18</sup>

And lumping the rural counties together masks some real differences in the data. For example, growth rates during the decade ranged from a high of about 70 percent in Dare County to Anson's *decrease* of 8.5 percent. There are at least two big reasons some rural counties are thriving while others decline: the mountains and the coast. Both are drawing retirees and newcomers with the resources to make a difference in local economies.<sup>19</sup> "Take the resort counties out and you really have a bleak picture," says Bud Skinner, the rural center's senior researcher.

The phenomenon is particularly strong for rural counties along the coast, with a mean growth rate nearly twice that of the mountain and Piedmont regions. (See Figure 1, p. 63.) Heading east from the population centers of the Piedmont, the growth curve flattens out along the coastal plain, rises modestly across the coastal counties with rivers and sounds, and then skyrockets for counties with actual ocean frontage.<sup>20</sup>

### What Is Urban and What Is Rural?

**D**eciding what is rural and what is urban isn't always easy in North Carolina. Tobacco and cotton grow near the strip shopping centers in Wake County. Rural communities like Lizard Lick and McGee's Crossroads lie less than 20 miles from downtown Raleigh. In rural

Watauga County, there is a night life to rival more metropolitan counties, thanks to the presence of Appalachian State University and the local ski industry.

The U.S. government doesn't help much. The Bureau of the Census uses one definition, while the U.S. Office of Management and Budget uses another.

The Census Bureau basically defines urban residents as those who live in cities and towns with at least a population of 2,500 or in suburbs outside the municipal boundaries but considered urban because of population density. That breaks each county into rural and urban sections. Even in Mecklenburg County, with its 511,433 people, the census says about a tenth of these citizens, 50,594, are rural dwellers.<sup>21</sup>

OMB takes a different approach. It looks at commuting patterns, total population, and other indicators to decide if a county is part of a metropolitan area. Some counties, such as Onslow, are their own metro area. Others encompass a region, often built around several large cities, such as the 11-county Piedmont Triad, built around Greensboro, High Point, and Winston-Salem.

By OMB's definition, counties such as Stokes and Franklin are considered urban. The Census Bureau sees them as predominantly rural.<sup>22</sup>

Richard Reid is the county planner for Franklin County, which lies to the north and east of Raleigh. He calls Franklin "exurban. We're not exactly suburban yet. When you drive around the county, it looks very open, very rural, but it's deceptive."

The Tar River splits Franklin County. South of the river, the county is becoming a bedroom community for people who commute to jobs in Raleigh and Rocky Mount. It's that proximity to jobs that helped Franklin grow by 21.1 percent in the 1980s, says Reid. Still, growth alone does not make for a healthy economy. Reid worries about the quality of that growth—viewing some of it as the scraps that fall from the table of neighboring urban counties.

The list of urban counties continues to grow. In January 1993, with a stroke of the pen, OMB made Pitt County an urban area. The same thing happened in Wayne, Edgecombe, Nash, Chatham, Johnston, Caldwell, Currituck, and Madison counties.<sup>23</sup>

Until their conversion, many of these nine were among the most successful rural counties,

registering strong growth during the 1980s. "There's a strange anomaly here," says Edward Bergman, the director of the Institute of Economic Development at the University of North Carolina at Chapel Hill. "The most successful rural places no longer are. It's more than a matter of semantics. This urban rite of passage depletes the rural category of its stars."

The phenomenon could be referred to as the suburbanization of a previously rural state. Skinner says the rural decline in the 1980s marks a sharp contrast with the 1970s, when country kept pace with the city. "There was some migration to rural areas, and the growth rates were equivalent," says Skinner. "People were talking about a rural renaissance."

### Reversing the Decline of Rural Counties

During the 1990s, the state's rural areas are likely to find themselves in even more of a squeeze, says Skinner. Fewer and fewer families are earning their living from farming, and the old manufacturing jobs that helped to sustain these communities are drying up, says Skinner.<sup>24</sup> But the new information and financial services jobs aren't coming to town. And if they arrive, they don't always stay.

That's been confirmed by two of the state's most successful service sector businesses. Carolina Telephone & Telegraph Company announced in December 1990 that it was moving its headquarters and 400 jobs from Tarboro in Edgecombe County to a site just north of the Wake County line in Franklin County.<sup>25</sup> The phone company instantly became Franklin's single largest taxpayer while leaving Edgecombe with a hole to fill in its local economy. And in late 1992, Southern National

Corporation of Lumberton said it would move its North Carolina banking division to Winston-Salem.<sup>26</sup>

As for the shift from agriculture, the U.S. Department of Agriculture defined 15 North Carolina counties as farm-dependent in 1979. By 1986, the

number of North Carolina counties with farming as the principle source of income had shrunk to four—Gates, Greene, Jones, and Northampton, according to Robert Murphy, chief statistician in the N.C. Department of Agriculture.

Meanwhile, rural leaders on the losing end keep hoping for a white knight bearing jobs for their ailing economies. "I'm still optimistic," says Lee Allison, an Anson County commissioner. "We have a lot of unskilled workers here. We need some kind of high-tech industry to come in here."

But some experts say hopes of attracting high-tech industry with a low-skills work force are fading. That's why they preach work force preparedness as the key to a more prosperous future.

The community college system, these experts say, will become increasingly important as employers demand workers with more highly developed thinking skills and low-wage, repetitive motion jobs move offshore. That means more funding for the community college system and better coordination with the public schools to develop the work force of the future.

One program that links high school and community college curriculums to prepare students for technical jobs is called Tech Prep. The six-year program of academic and technical education started in Richmond County and now has expanded to 45 consortiums of local school systems and community colleges across the state. "It's part of a massive education reform movement," says J.W. Eades, associate director for federal vocational education in the N.C. Department of Community Colleges. Eades says the program has been successful in attracting federal funds, but it's too early to tell whether it will succeed in producing workers who can think on the job.

Skinner, of the Rural Economic Development Center, says work force preparedness is important, but more will be required to rebuild the state's sagging rural economies. "If you educate people, and there is no job to go to, they just leave," he says.

The rural center offers its own prescription for improving the rural economy. It includes: (1) refitting the rural manufacturing base to compete in the global economy; (2) nurturing job-creating small businesses through such efforts as the rural center's microenterprise loan

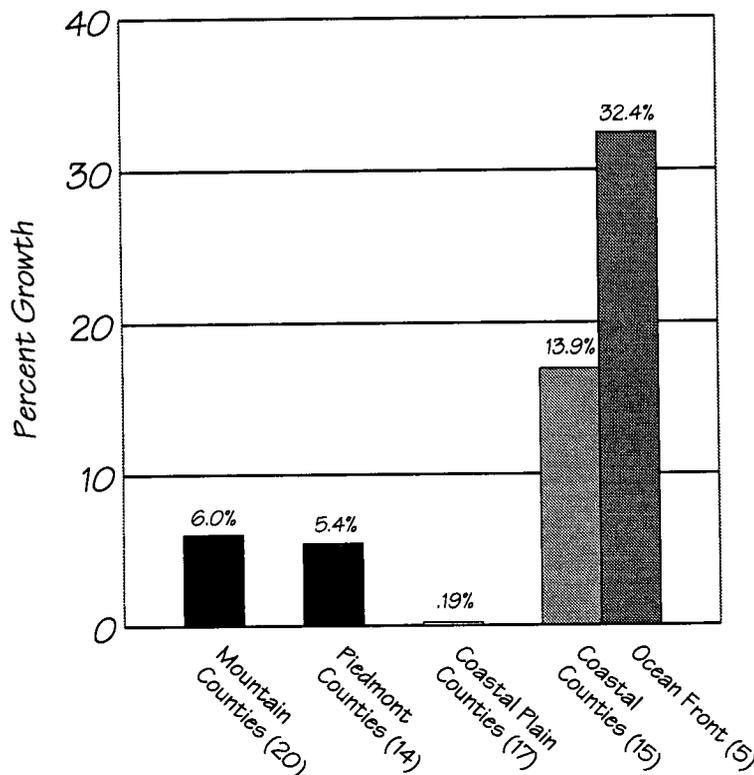
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*I look at the TV, your  
America's doing well. I  
look out the window, my  
America's catching hell.*

—VERNON REID OF LIVING COLOUR,  
"WHICH WAY TO AMERICA"

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**Figure 1. 1980s Growth Rates for N.C. Rural Counties, by Region**



*Note: This chart uses the U.S. Office of Management and Budget designation of rural counties, as updated in 1993. By the OMB definition, N.C. now has 66 rural counties. Coastal counties with oceanfront also are included in the coastal region average.*

program; and (3) tailoring job-training programs to the needs of rural communities, rather than training workers to join the exodus to the cities.

Sen. Marc Basnight, the President Pro Tempore of the N.C. Senate, represents the state's First Senatorial District, which includes several poor, rural counties as well as fast-growing Dare County. He recalled visiting Mattamuskeet High School in Hyde County last year. "Every senior I talked with was leaving after graduation," says Basnight.

But while the Rural Economic Development Center talks of microenterprise loans and other aids to small businesses, some rural counties are dreaming big. Lenoir County lies in the middle of North Carolina's Coastal Plain. Like Anson County, Lenoir County lost population—more than 2,000 residents, or about 4 percent—during the 1980s.<sup>27</sup>

Yet officials in Lenoir aren't waving the white flag. They're testing the limits of the state's commitment to bringing jobs and growth to struggling rural areas through a big-ticket public works project called the Global TransPark. The idea is to build a huge air cargo airport and use it as a draw for luring industry to the area.<sup>28</sup> The price tag for the project could exceed \$150 million, but supporters believe it could draw as many as 28,000 jobs to the complex.

The success or failure of the air cargo project won't be known for years, but the importance of finding an answer to the state's rural dilemma will become even more critical in the decades to come. According to projections from the Office of State Planning, 20 counties will lose population during the 1990s. Another five will grow less than 1 percent.<sup>29</sup> (See Table 1, p. 60.)

For the state's 34 urban counties, the 1990s won't be all gravy. Growth has its costs in more traffic and crime, less open land, and greater service demands that must be paid for with taxes. These include everything from heavier demands on infrastructure like water and sewer systems and landfills, to more crowded courtrooms, to greater demands for social services.

Of the 750,000 additional people expected to reside in North Carolina by the end of the century, a third are projected to live in Wake and Mecklenburg counties, the state's two largest counties.<sup>30</sup> Mecklenburg's population is forecast to grow by 23 percent, from the 511,433 citizens counted in the 1990 Census to 629,593 at the turn of the century. Even more growth is forecast for Wake, which is projected to expand its population by nearly 30 percent with the addition of 125,604 residents.

Less robust growth is forecast for North Carolina's other major population centers. Guilford, the state's third most populous county, will gain 25,710 residents, a growth rate of 7.4 percent. Cumberland, fourth, will add 24,096 residents, an 8.8 percent increase. Forsyth, fifth, will expand by 8.3 percent by the year 2000.<sup>31</sup>

But the growth boom is expected to continue for North Carolina's resort counties. Dare County on the northern coast, for example, will expand its population by some 42.5 percent, according to state forecasts, adding 9,670 residents to a 1990 population of 22,746. Brunswick, the state's southernmost coastal county, will add 14,315 residents to end the century with a population of 65,300 citizens—a 28.1 percent increase.<sup>32</sup>

### The Consequences of Growth

**C**oping with these arrivals will be costly. For example, Wake County estimates its school enrollment in the year 2000 will be 102,000, a 46 percent increase. To meet that need, the school board endorsed a \$735.8 million bond proposal. About two-thirds of that package would be construction for the new students. That proposal was scaled back to a more politically palatable \$250 million, \$200 million of the total for schools—which the voters approved in June 1993. School officials say they will seek an additional bond vote in the future if enrollment projections hold true.<sup>33</sup>

In Mecklenburg County, the situation is similar. School officials project about \$800 million in construction needs.

Wake County officials estimate that the first bond issue alone will push the county's property tax rate from 66 cents per \$100 of assessed value to 85 cents per \$100 by the 1996–97 fiscal year—not a pleasant thought for elected officials.

Also on the horizon for the state's high-growth regions: snarled traffic and the pollution that results from over-reliance on the internal combustion engine. For a state that had prided itself on clean air, it was a shock when the World Resources Institute claimed the Triangle—along with Fresno, Calif., and Houston, Texas—had the second worst air in the nation. Charlotte was tied for third.<sup>34</sup>

Some researchers question the ranking, but one has only to watch the cars trickle along Interstate 40 or Interstate 77 during rush hour to get a sense that some of the state's traffic arteries are overburdened. One solution may be mass transit, now largely limited to bus service in some of the state's largest cities. But census figures indicate that few people ride the bus to work. Only in Mecklenburg and Orange counties did use of mass transit as a means of transportation to work exceed 3 percent.<sup>35</sup>

Will the 1990s be a decade of major change in mode of transportation? Jim Ritchie, the director of the Triangle Transit Authority, is keeping his fingers crossed. It's his hope that by the year 2000, construction will have begun on some type of mass transit rail system in the Triangle and that developers will have begun shifting from suburban sprawl to more concentrated communities built along operating or planned mass transit corridors.

"That will take a new commitment [of tax dollars] to public transportation from the state," says Ritchie. "To date, there's been little, if any, commitment. They've said it's a local responsibility. But the property tax just won't do it."

Planners in Mecklenburg County also are developing a regional transportation strategy that encompasses cities within a 20-mile radius of Charlotte. Eventually, says Mecklenburg Planning Director Martin Cramton, the regional transit system would provide commuter bus and light-rail service along five corridors. "We're trying to foster a new vision for this region as a competitive metropolitan region,"

—continued on page 68

**Table 2. County-by-County Census Data on Population, Per Capita Income, and Percentages for Overall Poverty, Children in Poverty, People over 65, and People over 65 in Poverty**

County	Population	Per Capita Income	Percent in Poverty	Percent of Children in Poverty	Percent of People Over Age 65	Percent of People Aged 65+ in Poverty
Alamance	108,213 (13)	\$13,290 (16)	8.9 (93)	11.3 (90)	14.8 (29)*	15.9 (82)
Alexander	27,544 (65)	11,624 (38)	9.8 (84)*	11.6 (88)	11.0 (88)	24.5 (41)
Alleghany	9,590 (93)	10,237 (66)	20.1 (24)	24.8 (27)*	18.6 (7)	31.7 (7)
Anson	23,474 (70)	9,402 (86)	17.6 (38)	22.9 (33)	15.7 (23)	29.4 (16)
Ashe	22,209 (75)	9,545 (77)	18.4 (35)	21.2 (39)	17.1 (15)*	27.5 (28)
Avery	14,867 (84)	9,729 (75)	14.6 (51)	16.1 (61)*	14.7 (31)*	28.0 (25)
Beaufort	42,283 (48)	10,722 (54)	19.5 (29)	24.8 (27)*	14.9 (27)*	29.1 (18)*
Bertie	20,388 (78)	8,392 (98)	25.9 (3)	35.3 (5)	14.6 (33)	32.3 (6)
Bladen	28,663 (63)	9,497 (79)	21.9 (14)	28.0 (18)*	14.2 (47)*	31.1 (10)
Brunswick	50,985 (42)	11,688 (35)	15.4 (48)	21.3 (38)	14.7 (31)*	17.9 (74)*
Buncombe	174,821 (8)	13,211 (18)	11.4 (71)*	15.0 (68)	16.1 (21)*	15.8 (83)
Burke	75,744 (28)	11,604 (39)	10.1 (81)*	13.0 (79)*	13.0 (65)*	18.8 (69)
Cabarrus	98,935 (19)	13,522 (14)	8.1 (99)	9.7 (96)	13.2 (61)*	15.4 (85)
Caldwell	70,709 (29)	11,522 (42)	10.8 (77)	13.3 (77)*	12.1 (78)	20.5 (60)
Camden	5,904 (98)	10,465 (63)	16.1 (45)	19.5 (48)*	14.0 (50)*	18.9 (68)
Carteret	52,556 (40)	13,227 (17)	11.6 (70)	15.7 (64)	14.3 (40)*	11.9 (98)
Caswell	20,693 (77)	9,817 (73)	16.2 (44)	18.0 (52)	14.3 (40)*	34.5 (3)
Catawba	118,412 (12)	13,764 (12)	7.1(100)	8.9 (98)	12.0 (79)*	12.6 (96)
Chatham	38,759 (52)	13,321 (15)	9.7 (87)	11.7 (86)*	14.4 (38)*	19.8 (62)
Cherokee	20,170 (79)	9,258 (87)	20.4 (20)*	26.2 (22)	19.0 (6)	23.1 (48)
Chowan	13,506 (89)	10,606 (61)	17.7 (37)	23.6 (31)	17.6 (13)*	18.7 (70)
Clay	7,155 (97)	9,456 (83)	17.9 (36)	20.2 (44)	20.3 (5)	25.7 (37)
Cleveland	84,714 (23)	11,875 (31)	11.0 (75)*	14.1 (72)*	13.6 (58)	19.2 (67)
Columbus	49,587 (44)	9,134 (89)	24.0 (9)*	28.7 (14)	13.4 (59)*	37.8 (1)
Craven	81,613 (25)	11,619 (38)	13.6 (58)*	19.5 (48)*	11.2 (86)	17.9 (74)*
Cumberland	274,566 (4)	11,100 (48)	14.4 (53)*	20.1 (45)	6.1 (99)	19.7 (63)
Currituck	13,736 (88)	12,630 (23)	10.1 (81)*	13.4 (76)	12.4 (71)*	14.5 (88)

( ) = rank \* asterisk denotes tie in rank

—table continues on next page

**Table 2, continued**

County	Population	Per Capita Income	Percent in Poverty	Percent of Children in Poverty	Percent of People Over Age 65	Percent of People Aged 65+ in Poverty
Dare	22,746 (73)	15,107 (6)	8.3 (97)*	8.3 (99)	12.5 (70)	10.5 (99)
Davidson	126,677 (10)	12,597 (24)	9.8 (84)*	12.4 (83)	12.0 (79)*	17.8 (76)
Davie	27,859 (64)	14,648 (9)	8.4 (94)*	6.6(100)	13.8 (53)	22.6 (52)
Duplin	39,995 (50)	9,406 (85)	19.1 (30)*	22.3 (34)	14.0 (50)*	28.1 (24)
Durham	181,835 (6)	15,030 (7)	11.9 (69)	15.3 (67)	10.7 (89)*	15.6 (84)
Edgecombe	56,558 (38)	9,530 (78)	20.9 (18)	28.4 (16)*	12.3 (74)*	29.0 (20)
Forsyth	265,878 (5)	16,151 (3)	10.5 (79)*	14.9 (69)	12.2 (76)*	14.6 (87)
Franklin	36,414 (56)	10,959 (50)	14.5 (52)	17.1 (56)*	13.4 (59)*	27.3 (29)
Gaston	175,093 (7)	12,477 (25)	10.6 (78)	14.1 (72)*	12.0 (79)*	17.5 (77)*
Gates	9,305 (95)	11,561 (40)	15.7 (47)	20.4 (41)*	14.6 (33)*	22.9 (49)*
Graham	7,916 (96)	8,877 (94)	24.9 (7)	34.9 (6)	16.1 (21)*	25.1 (39)
Granville	38,345 (53)	10,939 (51)	13.5 (60)*	16.9 (58)	12.4 (71)*	26.7 (32)
Greene	15,384 (83)	9,567 (76)	19.1 (30)*	27.8 (20)	12.3 (74)*	27.6 (27)
Guilford	347,420 (3)	15,373 (5)	10.1 (81)*	13.3 (77)*	11.9 (82)	13.2 (91)*
Halifax	55,516 (39)	8,980 (91)	25.6 (4)	36.5 (2)	14.3 (40)*	26.2 (34)*
Harnett	67,822 (31)	10,053 (68)	17.5 (39)	21.7 (37)	11.7 (83)*	26.1 (36)
Haywood	46,942 (46)	11,731 (34)	12.7 (64)	15.4 (66)	18.2 (10)	16.8 (79)
Henderson	69,285 (30)	13,702 (13)	10.5 (79)*	15.9 (63)	21.9 (3)	10.0(100)
Hertford	22,523 (74)	9,016 (90)	25.0 (5)*	36.4 (3)	14.6 (33)*	26.8 (30)*
Hoke	22,856 (72)	8,688 (96)	21.1 (17)	28.8 (13)	9.3 (95)*	28.2 (23)
Hyde	5,411 (99)	9,434 (84)	24.0 (9)*	36.2 (4)	16.6 (20)	23.4 (46)
Iredell	92,931 (21)	13,000 (20)	9.4 (91)*	11.7 (86)*	13.2 (61)*	16.7 (80)
Jackson	26,846 (66)	10,326 (65)	16.7 (42)	17.9 (53)	13.8 (53)*	22.3 (55)
Johnston	81,306 (26)	11,839 (33)	14.3 (55)	16.6 (59)*	12.6 (68)*	29.9 (12)*
Jones	9,414 (94)	8,832 (95)	20.2 (23)	24.7 (29)	14.3 (40)*	25.4 (38)
Lee	41,374 (49)	12,042 (29)	14.7 (50)	20.4 (41)*	13.1 (64)	18.5 (73)
Lenoir	57,274 (36)	10,647 (59)	20.0 (25)	28.0 (18)*	13.7 (56)*	26.8 (30)*
Lincoln	50,319 (43)	12,440 (26)	9.6 (88)*	12.8 (81)	11.7 (83)*	17.5 (77)*
McDowell	35,681 (57)	10,516 (62)	11.4 (71)*	11.9 (84)*	14.4 (38)*	18.6 (71)*

( ) = rank \* asterisk denotes tie in rank

**Table 2, continued**

County	Population	Per Capita Income	Percent in Poverty	Percent of Children in Poverty	Percent of People Over Age 65	Percent of People Aged 65+ in Poverty
Macon	23,499 (69)	11,017 (49)	16.5 (43)	20.0 (46)	22.5 (2)	21.5 (58)
Madison	16,953 (81)	9,149 (88)	20.4 (20)*	22.2 (35)	16.7 (19)	36.0 (2)
Martin	25,078 (68)	9,486 (80)	22.3 (12)	28.9 (12)	14.5 (37)	31.0 (11)
Mecklenburg	511,433 (1)	16,910 (2)	9.6 (88)*	13.0 (79)*	9.3 (95)*	13.2 (91)*
Mitchell	14,433 (85)	10,219 (67)	16.0 (46)	17.1 (56)*	17.7 (12)	29.9 (12)*
Montgomery	23,346 (71)	10,695 (57)	14.4 (53)*	19.6 (47)	13.7 (56)*	21.0 (59)
Moore	59,013 (35)	14,934 (8)	11.1 (74)	16.6 (59)*	20.8 (4)	12.4 (97)
Nash	76,677 (27)	12,684 (22)	13.6 (58)*	17.2 (55)	12.4 (71)*	23.9 (44)
New Hanover	120,284 (11)	13,863 (11)	14.0 (56)	19.3 (51)	12.6 (68)*	13.2 (91)*
Northampton	20,798 (76)	8,244 (99)	23.6 (11)	32.7 (9)	16.8 (17)*	28.4 (22)
Onslow	149,838 (9)	10,713 (56)	12.1 (67)	16.1 (61)*	4.5(100)	19.3 (65)*
Orange	93,851 (20)	15,776 (4)	13.9 (57)	10.1 (93)	8.7 (97)	13.0 (95)
Pamlico	11,372 (90)	10,665 (58)	18.9 (32)	22.1 (36)	16.8 (17)*	23.3 (47)
Pasquotank	31,298 (59)	10,718 (55)	19.7 (26)*	26.8 (21)	13.9 (52)	22.4 (53)*
Pender	28,855 (62)	11,460 (43)	17.2 (40)	24.6 (30)	14.3 (40)*	22.8 (51)
Perquimans	10,477 (92)	9,821 (72)	21.5 (15)*	33.7 (7)	18.3 (9)	21.6 (57)
Person	30,180 (60)	11,158 (47)	13.0 (63)	17.3 (54)	14.2 (47)*	22.4 (53)*
Pitt	107,924 (15)	11,642 (36)	22.1 (13)	25.3 (25)	9.9 (93)	28.9 (21)
Polk	14,416 (86)	14,213 (10)	9.6 (88)*	9.9 (95)	24.6 (1)	14.4 (89)
Randolph	106,546 (16)	12,102 (28)	8.3 (97)*	10.0 (94)	12.2 (76)*	16.4 (81)
Richmond	44,518 (47)	9,841 (70)	16.8 (41)	23.0 (32)	14.2 (47)*	24.3 (42)
Robeson	105,179 (17)	8,878 (93)	24.1 (8)	31.7 (11)	10.7 (89)*	32.4 (5)
Rockingham	86,064 (22)	11,546 (41)	12.2 (66)	15.6 (65)	14.3 (40)*	20.3 (61)
Rowan	110,605 (14)	12,018 (30)	9.4 (91)*	11.6 (88)*	15.3 (26)	15.2 (86)
Rutherford	56,918 (37)	11,287 (45)	12.3 (65)	14.8 (70)	15.6 (24)	21.9 (56)
Sampson	47,297 (45)	9,480 (81)	20.7 (19)	25.2 (26)	14.3 (40)	31.2 (9)
Scotland	33,754 (58)	9,768 (74)	18.6 (33)	25.9 (24)	11.1 (87)	24.2 (43)
Stanly	51,765 (41)	11,265 (46)	11.0 (75)*	14.7 (71)	14.6 (33)*	18.6 (71)*
Stokes	37,223 (54)	12,181 (27)	9.8 (84)*	10.4 (91)*	11.5 (85)	29.3 (17)

( ) = rank \* asterisk denotes tie in rank

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**Table 2, continued**

County	Population	Per Capita Income	Percent in Poverty	Percent of Children in Poverty	Percent of People Over Age 65	Percent of People Aged 65+ in Poverty
Surry	61,704 (33)	11,342 (44)	11.4 (71)*	12.5 (82)	14.8 (29)*	22.9 (49)*
Swain	11,268 (91)	8,922 (93)	27.6 (2)	33.4 (8)	15.4 (25)	29.8 (14)*
Transylvania	25,520 (67)	12,737 (21)	13.5 (60)*	19.5 (48)*	18.5 (8)	13.1 (94)
Tyrrell	3,856 (100)	7,884 (100)	25.0 (5)*	32.2 (10)	17.6 (13)*	31.6 (8)
Union	84,211 (24)	13,135 (19)	8.4 (94)*	10.4 (94)	9.6 (94)	19.3 (65)*
Vance	38,892 (51)	10,457 (64)	19.6 (28)	26.0 (23)	13.0 (65)*	23.7 (45)
Wake	423,380 (2)	17,195 (1)	8.4 (94)*	9.2 (97)	7.8 (98)	13.9 (90)
Warren	17,265 (80)	8,502 (97)	28.2 (1)	37.1 (1)	17.9 (11)	32.6 (4)
Washington	13,997 (87)	9,827 (71)	20.4 (20)*	28.4 (16)*	13.8 (53)*	27.8 (26)
Watauga	36,952 (55)	10,628 (60)	21.5 (15)*	11.9 (84)*	10.6 (91)	19.4 (64)
Wayne	104,666 (18)	10,843 (52)	15.2 (49)	20.4 (41)*	10.3 (92)	26.2 (34)*
Wilkes	59,393 (34)	10,816 (53)	13.3 (62)	13.5 (75)	13.2 (61)*	29.1 (18)*
Wilson	66,061 (32)	11,641 (37)	19.7 (26)*	28.6 (15)	12.7 (67)	24.9 (40)
Yadkin	30,488 (61)	11,843 (32)	12.0 (68)	14.1 (72)	14.9 (27)*	26.5 (33)
Yancey	15,419 (82)	9,462 (82)	18.7 (34)	20.6 (40)	17.1 (15)*	29.8 (14)*
<b>Statewide</b>						
N.C.	<b>6,628,637</b>	<b>\$12,885</b>	<b>13.0%</b>	<b>16.9%</b>	<b>12.1%</b>	<b>19.5%</b>

( ) = rank \* asterisk denotes tie in rank

Source: U.S. Census Bureau, 1990 Data

—continued from page 64  
says Cramton. “To be competitive in the 21st Century as an urban metropolitan complex, you’ve got to have more than roads.”

When Gov. Jim Hunt named Sam Hunt as his Secretary of Transportation in 1993, the governor promised to raise the profile of public transportation. He created a new deputy secretary of public transportation and elevated David King, long-time head of DOT’s mass transit program, to the new post. “This administration will

be a strong supporter of high-speed and light rail projects as appropriate—especially in our urban areas,” Governor Hunt said in January 1993.

Sheron Morgan, director of the Office of State Planning, says realized and projected population growth and the resulting higher traffic volume suggest a move toward mass transit. But Morgan says she’s not sure when or even whether this will occur. “There are some real questions about density,” says Morgan, “how dense an area has to be to support

urban transportation and how the population must be distributed to support inter-urban, high-speed rail."

For example, Morgan says if the state pressed ahead with high-speed rail between Charlotte and Raleigh, all the leaders in small towns in between would be pushing to get the train to stop in their towns. All these stops would defeat the purpose of high-speed rail, yet the small-town riders might be needed to make the route financially feasible. "Half the population concentrations you could reach and serve would be in those little towns," says Morgan.

Still, says Morgan, futuristic modes of transport are not as far-fetched as they may sound. Rail transport of private vehicles could help solve the problem of not having a car at the end of a train trip. So-called electronic highways could be used to ease traffic congestion in and around the state's larger cities. These electronic highways could do everything from alerting drivers to traffic problems on the route ahead to providing dedicated traffic lanes that actually control vehicles. "DOT [the N.C. Department of Transportation] is already planning an electronically controlled traffic management system for Charlotte," says Morgan.

But with all the other demands on state resources, it remains uncertain how much money the General Assembly will allocate to these sort of projects. What the state *may* be able to do with fewer resources is encourage car-pooling. If census data are correct, the state would be starting from a solid base. In some sections of the state, as much as a third of the work force is already car-pooling, and the statewide average is 16.1 percent.<sup>36</sup>

Car- or van-pooling rates are highest in rural counties with a major employment area within easy commute. In Gates County, for example, 35.2 percent of the population participates in some sort of car-pool. County manager Ed McDuffie expressed some doubt about the

census numbers on car-pooling. But he *did* say many county residents car-pool to jobs in paper mills and shipyards in the Tidewater area of Virginia. "We have farmers who work on their property and wage earners who have to leave the county for jobs," says McDuffie. "We have a lot of people who buy 12- to 15-passenger vans and charge their co-workers to commute."

## An Aging Population

If addressing the growing rural-urban gap isn't enough to gray the hair of North Carolina policymakers, there are other demographic developments that undoubtedly will. One good candidate is the graying of the North Carolina population. Between 1980 and 1990, the number of people older than 65 increased from 603,181 to 804,341. They started the decade at 10.3 percent of the total population and ended it at 12.1 percent, below the national average of 12.6, but gaining ground.<sup>37</sup> For the very old—those above age 85—the growth is even greater, from about 45,203 in 1980 to about 69,969 in 1990, a 54.8 percent jump.

The numbers of elderly are increasing in North Carolina for two distinct reasons. First, people are living longer—a result of medical breakthroughs and healthier lifestyles. Second, North Carolina has become a magnet for retirees, drawn here by the state's natural beauty, friendly citizens, and moderate, four-season climate.

Through the 1970s, the state ranked seventh in the nation in in-migration of retirees, behind Florida, California, Arizona, Texas, New Jersey, and Pennsylvania, with about 20,000 more retirees entering the state than leaving, says Charles Longino, a sociology professor at Wake Forest University and a national authority on retirement migration patterns. Comparable figures for the 1980s were not available, but since the state's 65-and-over population has increased so dramatically, its in-migration rate almost certainly has increased.

"It's a mechanism for economic development," says William Haas, a sociology professor at the University of North Carolina at Asheville who has studied the impact of the retirement population on Western North Carolina. In Henderson County, says Haas, the informal motto of the Chamber of Commerce is "apples, industry, and retirees."

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***Can you imagine us years from today—sharing a park bench quietly? How terribly strange to be 70.***

—PAUL SIMON, "OLD FRIENDS"

The N.C. Center for Public Policy Research examined the pluses and minuses of this influx of out-of-state retirees in a 1985 *North Carolina Insight* theme issue on the elderly.<sup>38</sup> These newcomers generally are more affluent than retirees who are North Carolina natives. They invest in housing, pay for their own supplemental health care, have disposable income, and exhibit a high level of volunteerism. Because they spend a lot on health care, retirees help attract doctors and other providers to rural areas that might otherwise face a shortage of health care professionals.

Still, these retirees bring their own set of service demands—better ambulance service is one example. And because they have no school-age children, they may be less inclined to support tax increases to pay for public education.<sup>39</sup> Providing long-term care for larger populations of frail elderly also may ultimately strain the resources of some North Carolina counties.



Karen Tam

North Carolina's elderly population is scattered across the state, but certain counties have a higher proportion of their citizens above age 65. (See Table 2, pp. 65). Most of these counties are in the mountainous west. Nearly a quarter of Polk County's population is above age 65. Others with more than a fifth of the population over 65 are: Macon, 22.5 percent; Henderson, 21.9 percent; Clay, 20.3 percent; and Moore, 20.8 percent. Excepting only Moore in the Piedmont, all of these are mountain counties.

Skinner of the Rural Economic Development Center says these rural counties may be the exception to the rule. "On average, rural counties have a higher percentage of elderly not because of in-migration but because young adults are leaving," says Skinner. "The younger, better-educated people in rural areas are having to move to urban areas for employment. These are exactly the population component you don't want to lose."

The counties with the lowest proportion of elderly citizens are Onslow, with only 5.6 percent of the population 65-years-of-age and older, and Cumberland, at 6.3 percent. Both have large populations of young soldiers that skew their averages. Others with proportionally fewer elderly are: Wake, 8.7 percent over age 65; Orange, 9.3 percent; and Hoke, 9.4 percent.<sup>40</sup>

The elderly population isn't projected to slow its growth any time soon. The Office of State Planning predicts steady increases through the year 2020, when 17 percent of the population will be age 65 and older, and 2.1 percent of North Carolina's 8.6 million residents will be older than age 85.<sup>41</sup> Lynne Perrin, the assistant secretary for aging and special needs in the Department of Human Resources, says, "I've been concerned about the demographics for some time. You can see this wave coming at you."

George Myers, the director of the Center for Demographic Studies at Duke University, has already marked the year 2012 as an important one for future policymakers. By his calculations, that's the year the baby boomers hit retirement, a transition reminiscent of a "pig being ingested by a python."<sup>42</sup>

"I don't think there's a lot of people who know what it will all mean," says Myers. "We're in the process of population aging and this has profound implications for the provision of social services, hospital services, and welfare services."



**Table 3. Racial and Ethnic Makeup  
of North Carolina Population  
for 1980 and 1990**

	Population in 1980	Percent of Population in 1980	Population in 1990	Percent of Population in 1990	Percent Change in Population
White	4,457,507	75.8 %	5,008,491	75.6 %	12.4 %
Black	1,318,857	22.4	1,456,323	22.0	10.4
Native American	64,652	1.1	80,155	1.2	24.0
Hispanic	56,039	1.0	76,726	1.2	36.9
Asian/Pacific Islanders	21,176	0.4	52,166	0.8	146.3

*Source:* U.S. Census Bureau

got to watch in terms of consumers of services," says Lamb. "The curve starts going up after 70 and it goes straight up after 85. That's the long-term care population."

In 1991, the Division of Aging issued a lengthy report, outlining its strategies for the coming decade. "The demographics of individual aging, population aging and institutional aging pose both challenges and opportunities to the state and its citizens," says the report, which was developed with participation from all 100 North Carolina counties.<sup>47</sup>

"The challenges can be found in the familiar demographic reality of persistent economic disadvantages for some segments of the older population as well as in the growing number of impaired older adults that results largely from the increase in the state's "old-old" population, those 85 and older. More difficult to imagine, but just as real, are the opportunities that can and should exist for these same people—opportunities for maintaining and even improving their life conditions through self-help, by helping and being helped by their peers, and through other appropriate interventions."

### **The Elderly's Need for Government Services**

**T**he three greatest service needs for the state's elderly are improved in-home ser-

vices, transportation, and housing, according to county officials surveyed for the report.<sup>48</sup> A key to cost containment is keeping the elderly in their own homes as long as possible. That means providing support services that assist in independent living. It also means assisting the elderly in repairing, maintaining, and modifying houses so that they remain habitable.

Lamb says most of the state's elderly live in their own homes, but the houses are older and thus more likely to need repairs. The longer the elderly stay in their homes, the less able they are to provide upkeep. "There's got to be a housing strategy addressed in order to keep people in their own homes," says Lamb.

The state also has identified a need for affordable multi-unit housing with support services, or "congregate" housing. Through a program called Housing Living Independence for Older North Carolinians, the Division of Aging is helping to arrange financing for such housing and studying how it should be regulated.

Contrary to some stereotypes, most elderly don't live in the state's 34,000 nursing home beds or 25,600 rest home beds. In fact, nearly 95 percent live independently, whether alone or with other family members.<sup>49</sup> But those who do live in institutions are a costly expenditure for the state, which, according to the Division of Aging, spent \$915 million in state, local, and federal funds in the 1991-92 fiscal year on programs for the elderly.<sup>50</sup>

Medicaid is the single largest payer of services for the elderly. In 1991, North Carolina's state and local governments paid about \$191.9 million in *health care* services for the poor elderly, the Division says. Older adults comprised about a sixth of the recipients, but a third of the expenditures. The biggest single category for this group was for nursing facilities, about \$119.1 million. Three years earlier, state and local governments paid about \$65.8 million for long-term care.

The Division of Aging surveyed all 100 counties in 1990 for their advice on critical issues facing the elderly. After improving in-home services, transportation was a strong second. North Carolina might be the self-proclaimed "Good Roads State," but that's little help for the elderly poor who can't afford upkeep on a car or no longer feel comfortable driving. The state's spread-out lifestyles can mean great distances between a person's home and the rest of their community.

More than \$4 million in public funds went for transporting the elderly in 1991-92, Lamb says, but he thinks it wasn't enough. The General Assembly added \$500,000 to the Elderly and Disabled Transportation Assistance Program in the 1993 session.

What else is the state doing about improving transportation for the elderly? Working with the American Association of Retired Persons, state officials are promoting a program called "Fifty-Five Alive/Mature Driving," aimed at helping older adults refresh their driving skills.<sup>51</sup> In addition, there is ongoing discussion about using state school buses to drive the elderly places.

### **North Carolina's Changing Racial and Ethnic Mix**

**F**or years, North Carolina's racial and ethnic mixture was easy to define. The state was slightly more than three-quarters white. The other quarter was overwhelmingly black, with a small percentage of American Indians. But that image is slowly changing.

In the last decade, the number of Hispanics as well as Asians and Pacific Islanders living in North Carolina jumped sharply. (See Table 3). While their percentages are still small, both groups are growing strongly. The census says there were 76,726 Hispanics living in North

Carolina in 1990, compared to 56,039 in 1980—a 37 percent increase and 1.2 percent of the total population.<sup>52</sup> Asians and Pacific Islanders now represent .8 percent of the population. Native Americans' numbers relative to the rest of the population have remained largely unchanged at about 1.2 percent.

But if the number of Hispanics and Asians and Pacific Islanders is increasing, North Carolina still is not a national hot spot for immigration. That distinction goes to California, New York, Texas, Florida, Illinois, and New Jersey, which together accounted for three-quarters of the legal immigrants who came to the United States between 1980 and 1990.<sup>53</sup> An Urban Institute study, in fact, ranked North Carolina 38th in the nation, with immigrants increasing the total population by only .6 percent.<sup>54</sup> Still, their impact is being felt.

By census definitions, Hispanics are a language minority, not a racial minority. Although Hispanics make up about 1.2 percent of the state's population, they tend to be concentrated in counties with major military installations, counties with labor intensive harvests for crops like tobacco and produce, and the state's more urban counties.

Cleve Hollar is the superintendent of the Yadkin County Schools. Hispanics, mainly migrant workers, originally came to his county just west of Winston-Salem to pick tobacco. They stayed to work in chicken houses and other low-wage, but steady jobs. The result is that about 2.9 percent of the Yadkin school system is now Hispanic, more than four times the state average of 0.7 percent.<sup>55</sup>

"It presents more challenges," says Hollar of the school system's 138 Hispanic students. "It's somewhat frustrating, them being non-English and all. It's put a burden on teachers who aren't bilingual."

Johnston County in the east is another North Carolina county with a relatively large Hispanic population. "We have a number of students in our school system right now who do not speak English," says Thomas Houlihan, Johnston County Schools superintendent and Governor Jim Hunt's education advisor. "We're a rural school system and some of our teachers are not prepared for it."

Houlihan says the school system is responding by using interpreters in some classes and offering English as a Second Language classes. The school system also plans to stop offering

French in grades four through eight and concentrate all of its resources on Spanish. "It's a major issue that we have not been able to solve at this time," says Houlihan of the language barrier.

### **From Temporary Migrant Work to Permanent But Low-Wage Jobs**

**M**ariano Sanchez, migrant parent involvement coordinator for the Yadkin County Schools, says the challenge will remain because of the trend of Hispanics giving up the migrant life for year-round, low-wage jobs. "They spend a fortune to come here and work four or five months. Then they realize, 'Hey, I can go to work in a chicken house or lumber yard and

***Bernabe Gutierrez and Alberta Carachure, with baby Juan, are among the Hispanic newcomers to North Carolina.***



*Mike McLaughlin*

have a paycheck all year round." The poverty rate for Hispanics is 19.2 percent, well above the state average of 13 percent.<sup>56</sup> But grim as Sanchez says some migrant trailer parks might be, he adds, "You have to go and see what they left behind."

The state's Hispanic community isn't just former farm workers. It includes professionals such as Julio Lazaro, who works for Sara Lee Corporation in Winston-Salem. Last year, Lazaro and some friends decided to hold a street festival. It drew 4,000 people to Winston-Salem. From that party, called "Fiesta '92," came the idea for the Hispanic League of the Piedmont Triad.

"There were several Hispanic executives who felt the need to bring the Hispanic community closer to the Anglo community and the black community," says Lazaro. "For years, it's been black and white. Now that's changing."

### **English as a Second Language**

**B**ut from a policy standpoint, the state barely recognizes Hispanics. There are consultants at the Department of Public Instruction who work with students who are learning English as a second language, but no money is given to schools to pay for this added expense.

"These children have no advocates," says Frances Hoch, the chief consultant in the Second Language Studies Section of DPI. And unlike some other states, there is no bilingual education. "All instruction in the public schools is in English," says Hoch. For the youngest students, she says, this immersion gets them fluent in English fastest.

Although bilingual education has been taboo in the state's schools for years, that taboo spread further in June 1987, when the state passed Senate Bill 115.<sup>57</sup> That law made English the official state language of North Carolina. Its stated purpose is to "preserve, protect and strengthen the English language," but in practice it prohibits printing most state publications in any other language, such as Spanish.

"The State of North Carolina can give you the driving test in Spanish, but not give you the driving book in Spanish," says Lazaro. "That doesn't make sense. You need to learn English, but you also need to drive around in this state to get anywhere."

The Department of Community Colleges *does* offer English as a second language at many of its campuses across the state and will provide these classes off campus if demand is sufficient. Don Snodgrass, the system's coordinator for adult basic education, says 14,033 students enrolled in English as a second language during the 1991-92 school year. The course is offered at three different levels—beginner, intermediate, and advanced—as one component of the basic skills package.

Snodgrass could not provide figures on the number of Hispanics enrolled in these courses. But he says of 126,698 students enrolled in basic skills courses in 1991-92, 10,238—or 8.1 percent—were Hispanic. Many of these Hispanics, he says, are enrolled in English as a second language, which is the first step in mastering basic skills for people who don't speak English. "We've seen rapid increases in the last two or three years, and it's mostly Hispanics," says Snodgrass. "There's a lot of activity out there, and we are trying to address this need."

### **The Asian Demographic Increase**

Snodgrass says Asians are more likely to speak English, and generally are more educated than their Hispanic counterparts. Often, they come to the state for college or professional jobs, and so they present fewer educational challenges. The census numbers back up this assertion about education levels. Of 33,761 Hispanics at least 25 years old living in North Carolina, 17.9 percent are college graduates. Among their Asian and Pacific Island cohorts, 39.3 percent graduated from college.<sup>58</sup>

Tillman, the state demographer, says the state's Asian population resides mainly in urban counties and those with military installations. Nearly 14,000 of the state's 53,032 Asians live in Wake, Durham, and Orange counties—home of three major research universities and Research Triangle Park. Mecklenburg has the state's largest Asian and Pacific Islander population, with 8,510 residents.

Cumberland County, home of Fort Bragg Army Base, also has a relatively high number of Asians and Pacific Islanders—6,014 residents. Tillman says many of these likely are military wives, since 60 percent are women. As is the case for Hispanics, few government programs are targeted to Asians and Pacific Islanders.

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## ***Selected Resources on N.C Demographics***

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Office of State Planning  
116 West Jones Street  
Raleigh, N.C. 27603-8803  
Phone: (919) 733-4131

Center for Demographic Policy  
Institute for Educational Leadership  
1001 Connecticut Avenue, N.W., Suite 310  
Washington, D.C. 20036  
Phone: (202) 822-8405

N.C. Center for Geographic Information  
and Analysis  
115 Hillsborough Street  
Raleigh, N.C. 27603  
Phone: (919) 733-2090

N.C. Census Atlas  
The Broyhill Institute for Business Development  
Appalachian State University  
Boone, N.C. 28608  
Phone: (704) 262-2492

The Latin American Resource Center  
6412 Rushingbrook Drive  
Raleigh, N.C. 27612  
Phone: (919) 870-5272

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### **Health Services for Hispanics**

**T**he state does offer health programs that serve large numbers of Hispanics—including three federally funded migrant health clinics and services provided in local health departments and community health clinics. The three migrant health clinics are Goshen Medical Center in Faison, Blue Ridge Community Health Services in Hendersonville, and Tri-County Community Health Council in Newton Grove.

"As far as services that are actually targeted [for Hispanics], there are not many in the local health departments, largely because of the language barrier," says Laureen Lopez, research associate with the state's Office of Minority

Health in the Department of Environment, Health, and Natural Resources. "They [health departments] are serving them as they would other populations."

Nationally, health statistics show access to health care may be a problem for Hispanics.<sup>59</sup> They are the least likely to be insured of any racial or ethnic group, and see doctors less frequently than whites or blacks. Health outcomes, however, are mixed. Hispanics, for example, are more likely to suffer diabetes than their non-Hispanic white counterparts but less likely to suffer heart disease.

Lopez says besides migrant clinics, church groups such as Catholic Social Ministries and the Men's Baptist Association also are providing health-related services to migrants. In addition, there are pilot projects to provide maternal and child health services and HIV-prevention to Hispanics in local health departments in five eastern counties—Duplin, Harnett, Johnston, Robeson, and Sampson. And in at least a dozen counties, migrant councils have sprung up to solve problems in serving the migrant population.

### The Poor Among Us

When it comes to the bottom line financially, the last decade was generally good for North Carolina. That's particularly true in two key indicators: the state's poverty rate and the per capita income of its residents.

The state's poverty rate fell from 14.8 percent in 1980 to 13.0 percent in 1990. (See Table 2, pp. 65.) The national rate increased from 12.4 percent to 13.1 percent.<sup>60</sup> North Carolina's per capita income<sup>61</sup> increased from \$6,033 a year (83 percent of the national average) in 1979 to \$12,885 a year (89 percent of the national average) in 1989.<sup>62</sup>

But not everyone shared equally in that growth. According to census figures, the average earnings of non-whites didn't pick up any ground on that of whites. As a group, blacks started and ended the decade making about 55 percent of what whites made. And in general, people who live in urban

areas are still far wealthier than people in rural areas.

North Carolina has a large and prosperous black middle class, but the state's largest minority group has—as a whole—gained little on whites during the last decade, says George Autry, president of MDC Inc., a Chapel Hill nonprofit agency that does research and consulting on work force issues. The gap has narrowed for the educated and widened for those who have no more than a high school diploma, says Autry.

Andrea Harris, director of the N.C. Institute of Minority Economic Development, says discrimination is one reason some blacks have not made larger economic strides.<sup>63</sup> She says the state must root out overt discrimination and take the lead in two additional areas: seeing that black employees who work for state government aren't herded into low-wage jobs compared to white counterparts with the same training; and developing ways to make capital more available to minorities, particularly in rural areas.

"Otherwise," says Harris, "we'll continue to see out-migration to the urban counties," she says. "They [urban counties] can't provide jobs for their own, so it will perpetuate urban decay. If North Carolina doesn't get out in front, then it will face some of the same challenges as Washington, D.C., and Newark. [We] will not be able to do the other things we need to do. It will cost the state more in the long run."

### The Structural Problem of the Working Poor

Still, there is no easy solution to the problem of ingrained poverty—whatever the race of the poor. Katherine McKee is the associate director of the Center for Community Self-Help, a Durham nonprofit organization that works with poor people and operates a successful credit union. While she's cheered by the drop in poverty, she thinks the numbers mask the large number of working poor in North Carolina, families where both spouses work, but find little left over after the bills are paid.

Autry says the problems of the working poor are nothing new to North Carolina. As low-wage manufacturing jobs decline in the state, he says North Carolina's working poor will be challenged to get retrained for the future. "It used to be high-skills or low wages," he said.

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*I try and try but I  
can't save—pennies  
nickels dollars slip  
away. I've tried and  
tried but I can't save.*

—ROBERT BUCK AND  
NATALIE MERCHANT, "DUST  
BOWL" BY 10,000 MANIACS

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"Nowadays, it's high skills or no wages."<sup>64</sup>

A lower poverty rate is certainly good news, but 13 percent of the state's population in 1990 amounts to nearly 830,000 residents, with the highest levels of poverty found in the very young and the very old. Skinner of the Rural Economic Development Center points out that the actual number of North Carolina residents in poverty dropped by only 10,000 between 1980 and 1990. "For the most part, the reduction of the rate is due to population growth," says Skinner. "There's a core group we haven't dealt with very effectively." Even though the state is at the national average in this indicator, it hardly seems like anything to shout about.

Autry adds that because of deep-rooted structural problems, moving the state much below the 13 percent poverty rate won't be easy. These include a high rate of adult illiteracy and a work force ill-prepared to meet the demands of the job market of the future.

By one estimate, North Carolina will lose 75,000 jobs in this decade in textiles alone, and as many as 500,000 jobs in manufacturing over the next 20 years.<sup>65</sup> On average, North Carolina workers have completed 12.3 years of schooling, but by the year 2000, most new jobs will require at least 13.5 years of schooling. Unless the state invests heavily in worker retraining, experts say, these workers will not be prepared to fill the high-tech jobs of the future, and will be forced to compete for lower-paying service sector jobs.<sup>66</sup>

Autry notes that North Carolina has more functionally illiterate adults than Japan, despite the fact that Japan has 95 million more adults than North Carolina. "A rising tide doesn't lift boats with holes in them," Autry says.

### Women in Poverty

Among the working poor are increasing numbers of households headed by women. In 1980, the median income for a female worker with a full-time job in North Carolina was \$8,781 a year, two-thirds of the wages of a male worker.<sup>67</sup> Figures for 1989 showed a slight increase to 70.2 percent. *The Charlotte Observer*, in its own analysis, sampled the 127,812 questionnaires from North Carolinians who filled out the census long form and estimated women earned 72 cents for every \$1 earned by men in 1989.<sup>68</sup>

"The analysis found pervasive pay gaps in jobs dominated by women, in low-skill jobs, and in high profile professions," says the newspaper, which compared earnings across a range of professions. "The analysis did not factor in work experience." Nationally, women working full-time earned a median income of \$10,380 in 1980, some 60 percent of men's earnings.<sup>69</sup> For 1990, the national figure was 70 percent. At this pace—a dime a decade—women would reach parity with men in the year 2020.

Another startling statistic is the poverty rate for women who head households with children. Among whites, the most *affluent* of the subgroups compared, women with at least one child under age 5 and another between the ages of 5 and 17 have a poverty rate of 48.8 percent.<sup>70</sup> Among all North Carolina women with at least one child under age 5 and another between the ages of 5 and 17, the rate is 63.2 percent.<sup>71</sup>

"Women in North Carolina live in an economic caste system," says Sandy Babb, former president of N.C. Equity and now executive director of the Governor's Work Force Preparedness Commission. "They're clustered in low-paying jobs at the bottom of the economic ladder."

Babb says the state needs to aggressively train women for higher-paying jobs. "In our community colleges—the way for people to climb out—two-thirds of the students are women, but they're clustered in low-paying curriculums like cosmetology and nurses aides," says Babb. There's nothing wrong with either profession, Babb says, but the community colleges need to hold orientation sessions for women that tell them the economic realities of their intended majors.

Bill Strickland, the director of student services at the N.C. Department of Community Colleges, agrees that there is a problem with women seeking training through the community colleges for lower-paying jobs. "I think that clearly, historically, a lot of women have—on their own initiative—moved in those directions," says Strickland.

Strickland says community colleges' efforts to change this phenomenon are limited to one small grant program and the individual efforts of community college counselors. "I know there are counselors who are encouraging women to think higher and aim higher," says Strickland. "We have a special program in the colleges called the Sex Equity Grant program . . . that is gen-

erally aimed at this issue.<sup>72</sup> But it's a relatively insignificant amount of money in proportion to the magnitude of the problem."

North Carolina's traditional industries, such as textiles and apparel, employ a lot of women. This is reflected in census figures that show a high percentage of women in the work force. Sixty percent of the state's women older than 16 are in the work force,<sup>73</sup> up from 54 percent in 1980. Two-thirds of women with children under 6 have jobs. Nationally, 50 percent of women work and 60 percent of those with young children have jobs.<sup>74</sup>

### **Working Poor Mothers and the Need for Child Care**

**T**he large number of working mothers, combined with the generally lower wages paid to women, suggests a broad need for affordable child care. North Carolina's child care system includes licensed centers and unlicensed locations. More than 143,000 children are in day care, but the quality of care varies greatly. And day care isn't cheap. The average cost in North Carolina is \$281 a month, more than many low-income parents can afford. Mainly from federal funds, North Carolina spent \$101.5 million last year subsidizing day care for 85,440 children of the poor and working poor.<sup>75</sup>

Governor Hunt emphasized children's issues in his 1992 campaign and 1993 Inaugural Address. His proposals—introduced with a flourish in the 1993 General Assembly—include efforts aimed at improving the quality, availability, and affordability of day care for all parents who need it.

Hunt is calling his package of legislation "Smart Start."<sup>76</sup> It includes lowering child care staff ratios, increasing the number of child-care center inspectors, increasing child-care tax cred-

its for people with adjusted gross incomes below \$40,000, and creating public-private partnerships in 20 North Carolina counties to provide developmental child care. Hunt has made children's issues his top legislative priority, but better child care doesn't come cheap. The price tag for Hunt's package exceeds \$80 million for the biennium.

Still, for most North Carolina families with children, both parents work. That means they must now depend on some type of child care. As the N.C. Child Advocacy Institute says in a recent report, "For these families, child care is the linchpin in the parents' ability to maintain their employment and provide economic security for their children."

### **Conclusion**

**I**n many ways, the 1990 Census brought good news for North Carolina: robust population growth, a rising per capita income, and a poverty rate that dipped below the national average. Still, there are troubling numbers that suggest where the state needs to focus its attention in the future.

North Carolina's citizens too often are in poverty, especially the oldest and youngest; women and minorities often earn too little to support their families; North Carolina's rural economy falls further behind; and more and more immigrants are settling in the state with language and health care access barriers.

The problems are major, and many of them have no easy solution. Rather, they emerge from the data as a series of challenges for the decade of the Nineties. None of these challenges can easily be met. But the state must throw itself into the task and let the 2000 Census be the yardstick of its progress.

### **FOOTNOTES**

<sup>1</sup> Bob Williams, "State to gain area code," *The News & Observer*, Raleigh, N.C., Jan. 6, 1993, p. 1A.

<sup>2</sup> The language requiring the decennial census, which appears in Article I, Section 2 of the U.S. Constitution, reads: "The actual Enumeration shall be made within three years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten years, in such Manner as they shall by Law direct."

<sup>3</sup> U.S. Census Bureau, *Statistical Abstract of the United States*, Washington, D.C., 1992, Table 25, p. 22.

<sup>4</sup> U.S. Census Bureau, *General Population Characteristics, North Carolina*, June 1992, Table 3, p. 15, *General Population Characteristics, North Carolina*, December 1983, Table 15, p. 35-14.

<sup>5</sup> U.S. figure taken from U.S. Bureau of the Census, "Income and Poverty Status in 1989: 1990," Table 3, Sum-

mary Tape File 3; N.C. figure from Summary Tape File 3, "Ratio of Income in 1989 to Poverty Level."

<sup>6</sup> U.S. Census Bureau, *General Population Characteristics, North Carolina*, June 1992, Table 1, p. 1; *General Population Characteristics, United States Summary*, May 1983, Table 67, p. 174. The median is the midpoint of the distribution, so for North Carolina, half the population is older than 33.1 and half is younger.

<sup>7</sup> See note 3 above.

<sup>8</sup> *Ibid.*

<sup>9</sup> U.S. Census Bureau, *Summary Social, Economic, and Housing Characteristics, North Carolina*, Washington, D.C., May 1992, Table 9, p. 151.

<sup>10</sup> U.S. Census Bureau, *Census '90 Basics*, Washington, D.C., January 1990, pp. 3-4.

<sup>11</sup> Hyman Alterman, *Counting People: The Census in History*, 1969, Harcourt, Brace & World, Inc., New York, N.Y., pp. 204-205.

<sup>12</sup> Harold L. Hodgkinson, "A Demographic Profile of the Southeast," Center for Demographic Policy, Institute for Educational Leadership, Washington, D.C., October 1992, p. 37.

<sup>13</sup> U.S. Census Bureau, *Summary Social, Economic, and Housing Characteristics, North Carolina*, Washington, D.C., May 1992, Table 9, p. 163.

<sup>14</sup> *Ibid.* at pp. 2 and 151.

<sup>15</sup> *North Carolina Rural Profile*, N.C. Rural Economic Development Center, November 1992, p. 3. The report indicates that in "all the major indicators of economic health—population, jobs, and income growth—urban areas grew twice as fast as rural areas" in North Carolina during the 1980s.

<sup>16</sup> *Ibid.* at p. 6.

<sup>17</sup> *Ibid.* at p. 14. The rural center used U.S. Bureau of Economic Analysis data to determine the gap in per capita income between rural and urban counties, rather than census data. Bud Skinner, senior researcher at the Center, says the Bureau of Economic Analysis uses a broader definition of income than does the Census Bureau—including the value of food stamps, for example—and it updates its figures annually. But the BEA income data also produces a wider gap in per capita income when comparing rural and urban counties. Using Census Bureau figures for per capita income, the rural-urban gap narrows some 26 percent, from \$3,590 to \$2,642.

<sup>18</sup> *Ibid.* at p. 17.

<sup>19</sup> Some mountain counties, particularly those in the far west, are not sharing in this growth boom, perhaps because of isolation. Instead of prosperity, these counties are typified by high rates of poverty, low per capita incomes, and high rates of unemployment.

<sup>20</sup> The lone exception to this phenomenon is Hyde County, which claims a 14 mile stretch of coastal real estate called Ocracoke Island, most of it national seashore and thus protected from development. Hyde's population actually *dropped* 7.87 percent during the decade.

<sup>21</sup> U.S. Census Bureau, *General Population Characteristics, North Carolina*, Washington, D.C., June 1992, Table 77, p. 490.

<sup>22</sup> For its analysis, the Rural Economic Development Center used the OMB definition, substituting the designations urban and rural for metropolitan and non-metropolitan. But the Center has not yet accepted 1993 additions to OMB's list of metropolitan counties. OMB updates its designations every 10 years.

<sup>23</sup> Wire Reports, "State's Metro Areas Grow," *The News & Observer*, Raleigh, N.C., Jan. 2, 1993, p. 6B.

<sup>24</sup> For more on the forces that are shaping the North

Carolina economy, see Bill Finger, "Making the Transition to a Mixed Economy," *North Carolina Insight*, Vol. 8, No. 3-4 (April 1986), pp. 3-20. See particularly the section titled, "The Family Farm Withers," pp. 14-16.

<sup>25</sup> Jim Barnett, "Carolina Telephone to move offices, 400 jobs from Tarboro," *The News & Observer*, Raleigh, N.C., Dec. 1, 1990, p. 1A.

<sup>26</sup> Pamela Moore, "Bank Plans To Move To Winston," *The Winston-Salem Journal*, Nov. 10, 1992, p. 1A.

<sup>27</sup> *Rural Profile*, p. 25.

<sup>28</sup> For a pro-con discussion of the Global TransPark proposal, see "Air Cargo Complex: Flight or Fancy?," *North Carolina Insight*, Vol. 14, No. 2, (September 1992), pp. 26-57.

<sup>29</sup> *North Carolina Population Projections*, Office of State Planning, Summer 1992, pp. 8-9.

<sup>30</sup> *Ibid.* at p. 9.

<sup>31</sup> *Ibid.* at p. 16.

<sup>32</sup> *Ibid.*

<sup>33</sup> Wade Rawlins, "Bond Proposal Cut Back," *The News & Observer*, Raleigh, N.C., March 23, 1993, p. 1A.

<sup>34</sup> Stuart Leavenworth, *The News & Observer*, Raleigh, N.C., Dec. 25, 1992, p. 1A. Leavenworth notes that the ranking is based on the Pollution Standards Index, which contains the average presence of five pollutants over a year-long period and is intended to gauge chronic pollution levels in major cities. Air quality more typically is gauged by how many days the presence of a particular pollutant exceeds EPA standards.

<sup>35</sup> U.S. Census Bureau, *Summary Social, Economic and Housing Characteristics*, Washington, D.C., May 1992, Table 6, p. 107.

<sup>36</sup> *Ibid.* at Table 5, p. 75.

<sup>37</sup> U.S. Census Bureau, *Summary Population and Housing Characteristics, United States Summary*, Washington, D.C., March 1992, Table 1, pp. 1-59. For 1980 figures: U.S. Census Bureau, *General Population Characteristics*, Washington, D.C., Table 14, p. 12, Table 67, p. 174. U.S. Census Bureau, *Summary of General Characteristics, North Carolina*, Washington, D.C., Table 43, pp. 146-147.

<sup>38</sup> For a discussion of the implications of this trend, see Bill Finger and Jack Betts, "Attracting Retirees to North Carolina," *North Carolina Insight*, Vol. 8, No. 1 (September 1985), pp. 55-59.

<sup>39</sup> Haas says it's a myth that retiree in-migrants don't support bond issues for education. He says his own research—analyzing bond referendums for public education between 1969 and 1988—indicated that counties with high levels of in-migration were more likely to approve bond issues than were the rest of the state's counties. A poll taken prior to a June 8, 1993, bond referendum for schools in Wake County, however, indicates at least some increase in opposition to school bonds with age. Among respondents 40 or older, 61.6 percent opposed the bonds. Only 40.9 percent of those respondents under 40 opposed the bonds.

<sup>40</sup> U.S. Census Bureau, *General Population Characteristics, North Carolina*, Washington, D.C., June 1992, Table 1, pp. 1-2.

<sup>41</sup> *N.C. Population Projections*, Office of State Planning, p. 55.

<sup>42</sup> George C. Myers, "Demography of Aging," *Handbook of Aging and Social Sciences*, Third Edition, Robert H. Binstock and Linda K. George, eds., Academic Press, Inc., 1990, p. 32.

<sup>43</sup> U.S. Census Bureau, Summary Tape File 3, Poverty Status in 1989 by Sex and Age, pp. 117-188.

<sup>44</sup> U.S. Census Bureau, *Summary Social, Economic, and Housing Characteristics, North Carolina*, Washington, D.C.,

May 1992, Table 10, pp. 174–175. These counties are: Columbus, 37.8 percent; Madison, 36.0 percent; Caswell, 34.5 percent; Warren, 32.6 percent; Robeson, 32.4 percent; Bertie, 32.3 percent; Alleghany, 31.7 percent; Tyrrell, 31.6 percent; Sampson, 31.2 percent; Bladen, 31.1 percent; and Martin, 31.0 percent.

<sup>45</sup>Waldo *et al.*, “Health Expenditures by Age Group, 1977 and 1987,” *Health Finance Review*, Vol. 10, No. 4 (Summer 1989), p. 118.

<sup>46</sup>*North Carolina Population Projections*, Office of State Planning, Raleigh, N.C., Summer 1992, p. 2.

<sup>47</sup>*North Carolina Aging Services Plan*, p. 11. The Division of Aging has since released an updated version of the plan.

<sup>48</sup>*Ibid.* at p. 27.

<sup>49</sup>*Ibid.* at p. 24.

<sup>50</sup>For a thorough discussion of how North Carolina nursing homes are regulated, see Tinker Ready, “Carrots, Sticks, and North Carolina’s Nursing Homes: Regulatory Program Satisfies Few,” *North Carolina Insight*, Volume 14, No. 1 (May 1992), pp. 20–45.

<sup>51</sup>*North Carolina Aging Services Plan*, at p. 150.

<sup>52</sup>U.S. Census Bureau, *General Population Characteristics, North Carolina*, Washington, D.C., May 1992, Table 3, p. 15; for 1980 total: U.S. Census Bureau, *General Population Characteristics, North Carolina*, Washington, D.C., May 1983, Table 15, p. 35–14.

<sup>53</sup>Rob Gurwitt, “Back to the Melting Pot,” *Governing*, June 1992, p. 33.

<sup>54</sup>*Ibid.* at p. 32.

<sup>55</sup>*Report Card 1992: The State of Schools Systems in North Carolina*, N.C. State Board of Education, January 1993, p. 990.

<sup>56</sup>U.S. Census Bureau, 1990 Census of Population and Housing, Summary Tape File 3, p. 19.

<sup>57</sup>Now codified as G.S. 145–12.

<sup>58</sup>U.S. Census Bureau, Summary Tape File 3, 1990 Census of Population and Housing, pp. 117–188.

<sup>59</sup>Data on Hispanic health issues is taken from *The State of Hispanic Health*, National Coalition of Hispanic Health and Human Services Organizations, Washington, D.C., 1992, pp. 21–57.

<sup>60</sup>U.S. Census Bureau, Summary Tape File 3, 1990 Census of Population and Housing, Population: Poverty Status, North Carolina, pp. 117–118; See also Summary Tape File 3, Table 3. Income and Poverty Status in 1989–1990, United States.

<sup>61</sup>The Census Bureau derives per capita income by dividing the total income of a particular group by the total population in that group. If per-capita earnings appear lower than prevailing wages, it is because the total population for a particular group may include many people who have no earnings, such as children.

<sup>62</sup>U.S. Census Bureau, Summary Tape File 3, Table 3. Income and Poverty Status in 1989:90, pp. 117–188; *General Social and Economic Characteristics, North Carolina*, Washington, D.C., June 1983, Table 81, p. 35–84; *General Social and Economic Characteristics, United States Summary*, Washington, D.C., December 1983, Table 107, p. 1–78.

<sup>63</sup>As evidence, Harris cites a January 1993 study commissioned by the N.C. General Assembly that found \$389 million in highway contracts should have been awarded to businesses owned by minorities and women. For more, see *Study of Minority and Women Business Participation in Highway Construction*, MGT of America, Inc., Chapel Hill, N.C., January 26, 1993.

<sup>64</sup>For an evaluation of North Carolina job training programs, see Bill Finger and Jack Betts, “Off the Dole and Onto the Payroll: Do Jobs Programs Get People Out of Poverty?” *North Carolina Insight*, Vol. 11, Nos. 2–3 (April 1989), pp. 64–93. See also Mike McLaughlin, “The Family in Poverty: Working and Still Poor,” pp. 94–105 in the same edition, for an analysis of the plight of the working poor. For more on the issue of work force preparedness, see Jack Betts, “Work Force Preparedness: Training 21st Century Workers on a Mid-20th Century Budget,” *North Carolina Insight*, Vol. 12, No. 4 (September 1990), pp. 23–29.

<sup>65</sup>Daniel D. Mahoney, Managing Director, DRI/McGraw-Hill, “North Carolina in 2010: Discussion of Major Trends,” presentation to the Office of Policy and Planning, N.C. Department of Administration, Feb. 23, 1990. Some question Mahoney’s estimate, as the state had a total of 830,000 manufacturing jobs in May 1993.

<sup>66</sup>As discussed in Jack Betts, “Work Force Preparedness: Training 21st Century Workers on a Mid-20th Century Budget,” *North Carolina Insight*, Vol. 12, No. 4 (September 1990), pp. 23–26.

<sup>67</sup>U.S. Census Bureau, *General Social and Economic Characteristics, North Carolina*, Washington, D.C., June 1983, Table 71, p. 35–66.

<sup>68</sup>Jennifer French Parker and Ted Mellnik, “Wage Gaps Persist in Carolinas Jobs,” *The Charlotte Observer*, Charlotte, N.C., April 17, 1993, p. 1A.

<sup>69</sup>U.S. Census Bureau, *General Social and Economic Characteristics, United States Summary*, Washington, D.C., May 1983, Table 107, p. 1–78 for 1979 figure. U.S. Census Bureau Summary Tape File 4, Table PB93B, for 1989 figure.

<sup>70</sup>U.S. Census Bureau, 1990 Census of Population and Housing, Summary Tape File 3, pp. 117–188.

<sup>71</sup>*Ibid.*

<sup>72</sup>The Sex Equity Grant program awards grants to North Carolina community colleges for programs to recruit and train women for trades in which they do not traditionally work in great numbers. A total of \$286,000 has been awarded by the N.C. Department of Community Colleges to 16 colleges for programs for the 1993–94 school year.

<sup>73</sup>U.S. Census Bureau, *Summary Social, Economic, and Housing Characteristics, North Carolina*, Washington, D.C., May 1992, Table 5, p. 75.

<sup>74</sup>U.S. Census, *General Social and Economic Characteristics*, Washington, D.C., June 1983, Table 67, p. 35–62; Table 103. Labor Force Characteristics: 1980, U.S. Summary, p. 1–72; 1990 figures from *Summary Social, Economic, and Housing Characteristics*, Table 6. Employment Status and Journey to Work Characteristics: 1990, North Carolina, p. 107.

<sup>75</sup>*Meeting the Childcare Promise*, N.C. Child Advocacy Institute, Raleigh, N.C., December, 1992, p. 6.

<sup>76</sup>Hunt’s child-care initiatives were enacted by the General Assembly in the budget bill (S.B. 27, Chapter 321, sec. 254 of the 1993 Session Laws) and in H.B. 720 (Chapter 432 of the 1993 Session Laws).

# **The Constitutional Setting of North Carolina Politics**



# Part II

## Introduction

*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.*

**T**hese 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

**N**orth Carolina has had three constitutions in its 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**

**F**ollowing 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 (section 26) 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, an 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 Representa-

tives, 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, and commissioners 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, and 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 had already been 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 XIII 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 explic-

itly 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**

**S**tate 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 Con-

stitution 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.

### **MAJOR 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*.

# The Role of the States in American Federalism

BY RICHARD P. NATHAN

## Theories of Federalism

British political scientist Kenneth C. Wheare's seminal work on federal government, first published in 1946, began by stating that the modern idea of federalism was determined by the United States.<sup>1</sup> Before 1787 the term "federal" was used to refer to a league in which the constituent states were members of a general polity, like a club. In the United States, by contrast, both the general government and the regional governments operate directly upon the people; "each citizen is subject to *two governments*."<sup>2</sup> Wheare said the general and regional governments are "co-ordinate in a federal system." Furthermore, according to Wheare, both types of governments—national and regional—must have "exclusive control" in some areas of activity.<sup>3</sup> In a similar vein, American political scientist Arthur W. Macmahon said, "The matters entrusted to the constituent governments in a federal system (whether their powers are residual or delegated) must be substantial and not trivial."<sup>4</sup> This is the formal or traditional theory of federalism found in the writings of political scientists.

There is a newer theory that rejects Wheare's notions of exclusivity and Macmahon's idea of substantial powers entrusted to the regional

governments. Instead, it stresses the idea of shared powers or cooperative federalism. This view is associated with University of Chicago political scientist Morton Grodzins's famous essay on "marble cake" federalism.

The American form of government is often, but erroneously, symbolized by a three-layer cake. A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently colored ingredients, the colors appearing in vertical and diagonal strands and unexpected whirls. As colors are mixed in the marble cake, so functions are mixed in the American federal system.<sup>5</sup>

Edward S. Corwin, another political theorist, came to a similar conclusion from an opposite point of view. He did not like the role of the states being downgraded. In an article published in 1950, Corwin said the passing of dual federalism was the result of the U.S. Constitution having "been overwhelmed and submerged" by events.<sup>6</sup> He was referring to decisions by the U.S. Supreme Court that increased the powers of the national government at the expense of the states.

In another essay, Grodzins embellished his theory: "All areas of American government are involved in all functions. . . . There has never been a time when federal, state and local functions were separate and distinct."<sup>7</sup> Much of the contemporary scholarship reflects Grodzins's view of modern federalism. Many experts on federalism, writing on the subject after Grodzins,

Richard P. Nathan, "The Role of the States in American Federalism," *The State of the States, Congressional Quarterly Press, Washington, D.C., (Second Edition, Edited by Carl E. Van Horn), 1992, pp. 15-32. This edited version of the article is reprinted with the permission of Congressional Quarterly.*

have agreed with his dynamic/sharing model featuring the “inseparable mingling” of functions of federalism and, as a result, the inability to tightly define “federalism.” British political scientists M. J. C. Vile, for example, described “a gradual slide away from what was felt to be the excessive legalism and rigidity of Wheare’s definition to the point where the definitions that are offered are almost totally vacuous.”<sup>8</sup> Likewise, G. F. Sawyer in *Modern Federalism* said attempts now to define federalism are “futile,”<sup>9</sup> and Michael D. Reagan and John G. Sanzone refer to “the bankrupt quality of federalism as an operational concept.”<sup>10</sup> In a study of American federalism published in 1970, Richard H. Leach concluded: “Precisely what ‘federalism’ means is now and never has been clear.”<sup>11</sup>

This chapter advances a contrary position from the dominant theme of Grodzins’s theory. It is true that the relationships between the federal and state governments in American federalism are complex and fluid and that over the long haul the federal government has become more powerful. But there is a geographical division of power between the central and regional governments in the American federal system and in other federal systems that makes them different from countries with nonfederal systems. The essence of modern federalism is that it is a political form in which regional governments have a major role in the political system and process.<sup>12</sup> Previous studies of federalism focused too heavily on legal powers and intergovernmental relationships. Not enough attention has been given to empirical, behavioral studies of the role of different types of governments, particularly state governments.<sup>13</sup>

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***The essence of modern federalism is that it is a political form in which regional governments have a major role in the political system and process.***

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A further important attribute of the role of state governments exists that helps to understand the American federal system. In the United States, there has been a *cyclicity* in the relative role of state governments, with the swing variable in this cyclical pattern being *political ideology*.<sup>14</sup> In conservative periods, the role of state governments has been enhanced,

whereas in liberal or progovernment periods, the role of the national government has grown. This cyclical pattern has an almost mathematical

character. In liberal periods, those who favor increased governmental activity often find that it is efficient to lobby for their interests at one place, the center. In conservative periods, the proponents of increased governmental activity have fewer opportunities; they have to try to get changes adopted wherever they can. It is not surprising, therefore, that progovernment lobbying activities are focused on those sub-governments, particularly states, in which there is support for a stronger role for the public sector. States—not all states, but many of them—have been the centers of activism and innovation in domestic affairs in conservative periods in U.S. history.

In the early years of the twentieth century, the states were the source of such progressive policy initiatives as workers’ compensation, unemployment insurance, and public assistance. Twenty-one states enacted workers’ compensation laws prior to 1913.<sup>15</sup> Other states followed suit. The same is true of public welfare programs. According to Michael B. Katz, “Between 1917 and 1920, state legislatures passed 400 new public welfare laws; by 1931, mothers’ pensions in all states except Georgia and South Carolina supported 200,000 children; and in constant dollars, public welfare expenses, fueled especially by mothers’ pensions, increased 168 percent between 1903 and 1928.”<sup>16</sup> In a similar vein, James T. Patterson noted that the states “preceded the federal government in regulating large corporations, establishing minimum labor standards, and stimulating economic development,” although he added, “the most remarkable development in state government in the 1920’s was the increase in spending.”<sup>17</sup> In this period when the United States was “Keeping Cool with Coolidge,” it was state policy initiatives that planted the seeds of Franklin Roosevelt’s New Deal. State initiatives formed the basis for many of the major national government programs adopted under Roosevelt.

A similar spurt of state initiatives in domestic affairs characterized the conservative period in the latter part of the nineteenth century: “The first great battles of the reform movement were fought out in the states.”<sup>18</sup> Examples of state innovations adopted during that time are compulsory school attendance laws and the creation of state boards of education, reforms of political processes, a growing role for state boards of charity, child labor laws, and state regulatory policies in licensing and zoning.

## The Rising Role of the States

One hundred years later, in the 1980s, the pendulum of U.S. domestic policy has again swung to a conservative position: the states again are on the move. Five factors have contributed to the rising role for the states. One is the conservative, devolutionary domestic policies adopted by the Reagan administration. Reagan's policies to cut federal grants and rely more heavily on the states have made their mark. A second and longer-run factor underlying the recent state activism is "the modernization movement in state government," which has occurred over the past twenty years. The phrase refers to reforms adopted by states to increase their managerial and technical capacity to take on new and expanded functions. In a 1985 report, the U.S. Advisory Commission on Intergovernmental Relations concluded that "state governments have been transformed in almost every facet of their structure and operations."<sup>19</sup> A third factor has been the effects of the U.S. Supreme Court decision in *Baker v. Carr* (1962). This decision reduced the rural-urban political imbalance of state legislatures and increased general public support for an increased role for state governments. A fourth and related factor is "the end of southern exceptionalism." Martha Derthick believes that integration in the South has created a situation in which "the case for the states can at last begin to be discussed on its merits."<sup>20</sup>

Finally, the strong recovery of the U.S. economy from the 1981-1982 recession contributed to the resurgence of the states in the 1980s. This factor interacted in an important way with Reagan's devolutionary policies to highlight the state role. Typically, state governments overreact to national recessions, batten down their fiscal hatches by cutting spending and raising taxes to balance their budget. The strong recovery from the 1981-1982 recession beginning late in 1982 meant that state coffers were filling up just as Reagan's federal aid retrenchment policies were beginning to be felt. This high volatility of state finances put state governments in a position after 1982 to spend more and do more in those functional areas in which the federal government under Reagan was pulling back or signaling its intention to do so.

The coming together of all these trends produced a resurgence of the state role in American federalism. Evidence of this change can be

seen not only in the response to Reagan's domestic budget cuts, his creation of new block grants, and other changes in federal grant-in-aid programs, but also in efforts being undertaken in many states to reform major functions of state government, for example, in the fields of education, health, and welfare.

In the field of education, initiatives have been launched by many governors and state legislatures to do things such as mandate early childhood education, strengthen instruction in basic disciplines, and upgrade the performance of teachers through merit pay. According to Denis P. Doyle and Terry W. Hartle, writing in 1985, "The last two years have witnessed the greatest and most concentrated surge of educational reform in the nation's history. . . . Indeed, the most surprising aspect of the 'tidal wave of reform' is that it came from state governments."<sup>21</sup> Reforms by state governments are also being undertaken in the health programs, especially to overhaul Medicaid, by revising and focusing benefits and attempting to control costs.

Important state policy shifts are occurring in public welfare programs, too. Two-thirds of the states have developed new-style workfare programs. These programs require welfare family heads to participate in activities linked to the labor market and the reduction of dependency, such as job search, remedial education, job training, and community work experience. The aim is to convert welfare payment programs for able-bodied, working-age recipients into service systems that emphasize jobs and job preparation.<sup>22</sup> In addition, many state governments are assuming a stronger leadership role in planning for growth management and in providing infrastructure to promote economic development.

Data from the U.S. Bureau of the Census show in the aggregate that state governments increased their role during the Reagan years. From 1983 to 1986, as the Reagan retrenchment and federalism policies took effect, state aid to localities increased by an average of 5.6 percent a year in real terms, that is, adjusted for inflation. Total state spending rose by nearly the same percentage. Prior to that, from the mid-1970s to 1983, both state aid to localities and total state spending had been level in real terms. Considerable variation does exist, however, in all of these program areas reflecting U.S. Supreme Court justice Louis Brandeis's famous characterization in 1931 of state governments as laboratories that can "try novel

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***State initiatives  
undertaken in  
conservative periods  
become the basis for  
national policy actions  
in liberal periods.***

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social and economic experiments without risk to the rest of the country.”<sup>23</sup>

There are no ready calipers for measuring the activism of individual states. Studies by political scientists Jack L. Walker and Virginia Gray indicate that over time it has been the larger, older, and ideologically most liberal or progovernment states that have tended to be most

innovative.<sup>24</sup> Contemporary research suggests a broader distribution of state innovation. Newer states, and those that are changing ideologically toward a more liberal stance on the role of government, are also enhancing the role of state government.

The argument that the role of American state governments changes on a cyclical basis differs from much of the writing on American federalism. The dominant theory has highlighted the idea of a steady centralizing trend in federalism, whereby, gradually and over time, federal government systems become more integrated and unified. Part of the reason that this view has been dominant is that the United States recently experienced a liberal period in which the role of the national government expanded. The United States has always been a country in a hurry that lives in the present. In the long period of growth in the role of the national government, from Franklin D. Roosevelt’s New Deal through the late 1970s, some observers forgot that in conservative periods, states were the engines of innovation in domestic affairs. State initiatives in the 1920s were the models for New Deal programs. This cyclical pattern of state leadership and innovation reflects the normal equilibrating tendency of the American political system for states to move into areas of public policy when the national government is moving out, or at least not taking the initiative.

Public choice economists depict federalism as a governmental system that creates competition among the states, which in turn has the effect of holding down governmental taxing and spending. The opportunity of citizens to move freely among political jurisdictions produces pressures that hold back increases in the level of public service. Geoffrey Brennan and James M. Buchanan characterize federalism as “an indirect means of imposing constraints on the potential

fiscal exploitation of Leviathan,” referring to “the monopoly-state model of government.”<sup>25</sup>

Another way to interpret the role of states in American federalism is grounded in the cyclical nature of the role of state governments. Federalism can be seen as a growth force underlying government spending whereby the activism of state governments in conservative periods causes a *ratchetting-up* effect over time. State initiatives undertaken in conservative periods become the basis for national policy actions in liberal periods, such as many of the New Deal reforms.

Two main types of national government action have influenced the roles of the national and state governments in American federalism: grants-in-aid and judicial decisions. Increased activity by the national government has undercut the role of the states. Decreases in national government activism—cuts in grants as under Reagan and pro-state court decisions—have contributed to the rising role of the states.

#### **Grants-in-Aid**

**M**ichael D. Reagan and John G. Sanzone state that the “sharing of functions [in American federalism] is most clearly and dramatically seen in the explosive growth of federal grants-in-aid.”<sup>26</sup> This was the case particularly in the post-World War II period, although grants as a form of government interaction have much deeper roots. For example, land grants to the states predate the American Constitution.<sup>27</sup> Federal spending under grant programs tripled as a percentage of federal outlays from 1950 to 1978, which was the peak year for federal aid in real terms.

According to Morton Grodzins’s dynamic/sharing theory of federalism, the expanded fiscal role for the national government in intergovernmental affairs involves not only the federal-state relationship but also the federal-local relationship. Beginning under Truman and continuing into the Nixon-Ford period, direct federal grants-in-aid to local governments increased dramatically. This direct relationship between the national government and local governments, described as “the expanded partnership” by Roscoe Martin,<sup>28</sup> goes against the traditional theory of federalism that highlights “Dillon’s rule.” John F. Dillon, an expert on municipal finances in the late nineteenth century

and an Iowa state Supreme Court justice, argued that local governments are creatures of the state and stressed a two-level (national-state) view of federalism. Dillon said the state legislature gives local governments "the breath of life without which they cannot exist."<sup>29</sup>

Federal grants-in-aid have had a major effect on American federalism. Still, the tendency to assign a major role to this type of intergovernmental relationship frequently leads observers to overstate their importance. Research by political scientists reveals that federal grants, despite their heralded goals and requirements, often end up simply reinforcing state and local programs already in place. State and local officials are not above bending the goals and conditions of federal grant-in-aid programs to fit their purposes. The result is that grants often have much less effect on state programs and activities than is assumed.

In sum, federal grants-in-aid are a barometer of American federalism. They have grown in liberal periods. They have become more intrusive in these periods, especially when the national government bypassed the states and provided grants directly to local governments. But all grants are not the same. The revenue sharing and block grants that Republicans tend to favor are not as far reaching as "categorical" grants generally favored by Democrats and targeted on narrower purposes. Moreover, the government does not always exercise the authority it has to influence state governments. Indeed, the Reagan period marked a decline in the size and influence of grants-in-aid from the national government to states and localities. Reagan's policies, in particular, have downplayed direct federal-local grants.

### Judicial Decisions

The other federal level action that influenced the role of state governments in American federalism is the activity of federal courts. It can be argued that court decisions, more than legislative actions, have shaped federalism in the United States. In the country's early history, the courts were a centralizing force. In the nineteenth century, they shifted to a pro-state position. However, since the mid-1930s, the courts, especially the U.S. Supreme Court, have emerged as an aggressive nationalizing force.<sup>30</sup>

This current phase, in which the courts tend to favor the federal government, is still very much with us. Most recently, in *Garcia v. San Antonio Metropolitan Transit Authority* (1985), the Supreme Court held to a centralizing theory, saying, in effect, that there are no intrinsic and immutable divisions of power and responsibility in American federalism. Writing for the majority in *Garcia*, Justice Harry A. Blackmun said efforts by the courts to impose limits on the power of Congress in relation to the states ultimately fall short because of "the elusiveness of objective criteria for 'fundamental' elements of state sovereignty."<sup>31</sup> Dissenting, Justice Lewis F. Powell, Jr., said the Court's decision in *Garcia* "reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause."<sup>32</sup> It is the Tenth Amendment of the Bill of Rights that "reserves" to the states and to the people powers not enumerated as powers of the national government in Article I of the U.S. Constitution.

In an unusual dissenting opinion in *Garcia*, Justice William H. Rehnquist, now chief justice, joined with Powell, predicting a reversal of this decision: "I do not think it incumbent on those of us in the dissent to spell out further the fine points of a principle that will, I am confident, in time again command the support of a majority of this court."<sup>33</sup> Despite Rehnquist's assertions, one would be hard put to predict such a reversal. If President Reagan had had one more appointment to the U.S. Supreme Court, Rehnquist's prediction could have come true.

It is instructive to consider the types of actions the federal courts have taken on U.S. federalism. The role of the courts in expanding the authority of the national government has occurred in some areas, but not others. The expansion of the federal role has been greatest, for example, in matters involving individual rights, civil rights, voting rights, and legislative apportionment. It has not been as extensive in programmatic areas that affect state and local finances more directly, such as welfare and education. The courts, particularly the U.S. Supreme Court, have tended to stay out of the fiscal thicket. They have been reluctant to take responsibility for causing the national government or the states to change policies that would create appreciable new fiscal burdens. This is less true of lower federal courts and appeals and district courts than of the Supreme Court. U.S.

district courts, especially, have asserted the rights of prisoners and patients in state mental institutions in a way that caused major increases in state spending by setting specific standards for these facilities. The prison systems of more than forty states are currently operating under some form of federal court order.

### The Sorting-Out Theory

The story of American federalism can be seen as one in which two theories—the widespread-sharing position and the traditional federalism theory—have competed for attention. In both the legislative and judicial arenas, liberals have tended to act in a way that reflects the dynamic federalism theory, while conservatives have tended toward the traditional theory and dual federalism.

A more recent position—the “sorting-out” theory of federalism—emerged in the latter part of the 1960s. Its rise was in large part a reaction to the growth of the national government’s role under Lyndon Johnson’s Great Society programs.<sup>34</sup> This theory, as the name implies, argues that it is important to sort out functions in American federalism, so that each function is clearly assigned and the responsible governments can be more easily held accountable for their actions. In effect, this effort moves back from the Grodzins position and toward the traditional view.

Proponents of the sorting-out theory have been particularly interested in federal grants-in-aid. They criticize the proliferation of federal grants, which they see as undermining accountability in U.S. domestic affairs and causing political resentment, confusion, and inefficiency. The U.S. Advisory Commission on Intergovernmental Relations has been a leading proponent of rationalizing functions and finances in American federalism. The Commission is a hybrid agency; it is federally chartered and funded, but state and local government officials constitute a majority of its members. President Nixon’s New Federalism program, which included welfare reform, revenue sharing, and block grants, reflected this middle sorting-out position on federalism. President Reagan’s position reflected the older state-oriented dual federalism theory.

As the idea of sorting out functions in U.S. federalism gathered steam in the 1970s, economists came to play an increasingly larger role in

shaping this and other theories about federalism. Economic concepts of public goods, spillovers, and externalities were brought to bear to devise criteria for selecting those functions that should be assigned to the national government because their benefits extend beyond state or local political boundaries. Such analyses were used as the basis for designating functions such as air and water pollution control and income maintenance as appropriate for national governmental action. Other functions such as police and fire protection, mass transit, and elementary and secondary education were considered areas in which the national government should have a limited role.

Much of the economic literature on federalism concentrates on fiscal equalization. The focus is on disparities in wealth and industrial capacity among regions and the ways in which central governments in federal nations, not just the United States, do or do not deal with these conditions. Surely, this subject is important. However, the question of how to achieve horizontal equity among regions is not exclusive to federal systems of government. Equalization schemes are found both in federal political systems and those defined as “unitary.”

### Summary

The activities of government have three dimensions—policy making, financing, and administration. Governmental functions in a federal system can be analyzed in terms of the level of government that has the principal responsibility for one or several of these dimensions for any given function or program. Grants-in-aid affect policy and financing in important ways. A federal grant may set rules for a program involving an increase in the policy and fiscal role of the national government, though a Washington-based view of federal grant programs often overstate these effects. The third dimension of government activities, administration, is likely to be unaffected, or much less affected. Under federally aided programs, the administration of the benefits or services provided by the national government is carried out by the recipient government. Even though the national government has come to play a larger policy and financial role in the affected functional areas, state and local governments—because they also play a policy and funding role

and because they administer the aided benefits or services—retain more control than they are often credited with by those who highlight the intrusiveness of the national government in domestic affairs.

The one who pays the piper does not always call the tune. Under federal grants-in-aid, the recipient governments retain substantial power. In this sense, the Grodzins theory of federalism goes overboard. The widespread-sharing view of American federalism, looking from the top down, does not give enough attention to the behavior of state and local governments. For many functions, the state role is substantial and definitive on all three dimensions of governmental activity. Grodzins's point about the sharing of functions in American federalism need not be rejected, but it should be recognized as overstated in interpretations that do not dig deeply enough into the actual functioning of modern government. Federalism in its traditional formulation is not a relic of earlier days to be preserved under glass or only in nostalgia, the rhetoric of conservative politicians and unsophisticated introductory American government textbooks.

It is important to sharpen the focus. In the area of higher education, for example, the federal government provides student aid and is instrumental in setting the research agendas of many public and private universities. But the predominate role in chartering, structuring, locating, paying for, and administering public institutions of higher education lies with the states. The three-dimensional state role—in policy, finances, and administration—is much less marbleized in the real world than in the academic literature. Much the same can be said for elementary and secondary education; the federal role has always been chary and limited. States now pay for well over half of public elementary and secondary education. They charter and regulate local school districts and set standards on a wide range of matters affecting teachers' certification, salaries, and school curriculum. Public elementary and secondary education are often regarded as local functions, but an updated theory might argue that state governments have the predominate role in this area. In any event, the federal government certainly does not. Likewise, the state role in regard to highways, except for interstate highways, is a critical one. The same applies to natural resources and recreational and environmental programs.

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***The activities of government have three dimensions—policy making, financing, and administration. Governmental functions in a federal system can be analyzed in terms of the level of government that has the principal responsibility for one or several of these dimensions for any given function or program.***

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Similar observations can be made about regulatory activities. The regulation of public utilities, insurance, marriages, adoptions, foster care, divorces, as well as the licensing of drivers, animals, and childcare centers, are all areas in which federal involvement is very limited or non-existent.

In much the same vein, new areas at the cutting edge of social policy tend to be a primary or at least heavy responsibility of state governments. For example, laws and regulations relating to AIDS patients and treatment, surrogate parenthood, death with dignity, and the rights of homosexuals are all dealt with at the state level. States predominate in these areas in a way that is not out of line with the Wheare and Macmahon ideas about federalism. Neither Congress nor the courts have regarded all areas of domestic affairs as shared governmental responsibilities. State governments have a substantial role, and the clearly dominant role, in many areas of U.S. domestic government.

The role of the states as the broker of American federalism shifts as conditions change. In liberal periods, the relative role of state governments diminishes as the federal government's role in domestic affairs increases. However, the opposite is true in conservative periods. Neither the marble cake nor the traditional federalism theory fully serves our needs. American federalism can be thought of as involving a continuum between the two positions, with the crucial broker role of state governments greatly influenced by ideological changes in the society.

## FOOTNOTES

- <sup>1</sup> K. C. Wheare, *Federal Government*, 4th ed. (New York: Oxford University Press, 1963; reprint, 1987), p. 1.
- <sup>2</sup> Wheare, *Federal Government*, p. 1.
- <sup>3</sup> Wheare, *Federal Government*, pp. 4-5.
- <sup>4</sup> Arthur W. Macmahon, "The Problem of Federalism: Survey," in *Federalism Mature and Emergent*, ed. Arthur W. Macmahon (New York: Doubleday, 1955), p. 4.
- <sup>5</sup> Morton Grodzins, "The Federal System," in *Goals for Americans: The Report of the President's Commission on National Goals* (New York: Columbia University Press, 1960), p. 265.
- <sup>6</sup> Edwin S. Corwin, "The Passing of Dual Federalism," *Virginia Law Review* 36 (February 1950): pp. 1-24.
- <sup>7</sup> Morton Grodzins, "Centralization and Decentralization in the American Federal System," in *A Nation of States*, ed. Robert A. Goldwin (Chicago: Rand McNally, 1961), pp. 3 and 7.
- <sup>8</sup> M. J. C. Vile, "Federal Theory and the 'New Federalism,'" in *The Politics of "New Federalism,"* ed. D. Jaensch (Adelaide, Australia: Australian Political Studies Association, 1977), p. 1.
- <sup>9</sup> G. F. Sawyer, *Modern Federalism* (London: C. A. Watts & Co. Ltd., 1969), p. 2.
- <sup>10</sup> Michael D. Reagan and John G. Sanzone, *The New Federalism* (New York: Oxford University Press, 1981), p. 19. William Anderson was also wary of precise definitions of federalism, preferring to regard it as less a formal structure than "a concept of mind." See William Anderson, *Intergovernmental Relations in Review* (Minneapolis: University of Minnesota Press, 1960), p. 17.
- <sup>11</sup> Richard H. Leach, *American Federalism* (New York: W. W. Norton and Co., 1970), p. 9.
- <sup>12</sup> Regional governments are called states in the United States, India, and Australia; provinces in Canada; cantons in Switzerland; landers in West Germany; and Republics in Yugoslavia.
- <sup>13</sup> Richard P. Nathan and Margarita M. Balmaceda, *Comparing Federal Systems of Government* (Oxford, England: Oxford University Press, forthcoming).
- <sup>14</sup> This point is suggested by Albert O. Hirschman in *Shifting Involvements: Private Interest and Public Action* (Princeton, N.J.: Princeton University Press, 1982).
- <sup>15</sup> Edwin Amenta, Elisabeth Clemens, Jefren Olsen, Sunion Parikh, and Theda Scopol, "The Political Origins of Unemployment Insurance in Five American States," Center for the Study of Industrial Societies, The University of Chicago, unpublished manuscript, p. 10.
- <sup>16</sup> Michael B. Katz, *In the Shadow of the Poorhouse* (New York: Basic Books, 1986), p. 208.
- <sup>17</sup> James T. Patterson, *The New Deal and the States: Federalism in Transition* (Princeton, N.J.: Princeton University Press, 1969), p. 4 and 7.
- <sup>18</sup> Allan Nevins and Henry Steele Commager, *A Pocket History of the United States* (New York: Washington Square Press, 1981), p. 346.
- <sup>19</sup> Advisory Commission on Intergovernmental Relations, *The Question of State Government Capability* (Washington, D.C.: Advisory Commission on Intergovernmental Relations, January 1985).
- <sup>20</sup> Martha Derthick, "American Federalism: Madison's 'Middle Ground' in the 1980s," *Public Administration Review* 47 (January/February 1987): p. 72.
- <sup>21</sup> Denis P. Doyle and Terry W. Hartle, *Excellence in Education: The States Take Charge* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1985), p. 1. Governors have taken a leadership role in the field of public education. Please see National Governors' Association, *Time for Results: The Governors' 1991 Report on Education* (Washington, D.C.: National Governors' Association, August 1986), p. 7. Governor of Tennessee Lamar Alexander, at the time chairman of the National Governors' Association, said, "The Governors are ready to provide the leadership needed to get results on the hard issues that confront the better schools movement. We are ready to lead the second wave of reform of American public education."
- <sup>22</sup> U.S. General Accounting Office, Report to the Chairman, *Work and Welfare: Current AFDC Work Programs and Implications for Federal Policy* (Washington, D.C.: Government Printing Office, January 1987).
- <sup>23</sup> *New State Ice Co. v. Ernest A. Liebmann* (285 U.S. 262-311), *United States Supreme Court Reports* 76 L. Ed., (1931), p. 771.
- <sup>24</sup> Jack L. Walker, "The Diffusion of Innovation among the American States," *American Political Science Review* 63 (1969): pp. 880-899. Walker's analysis is for the period 1870-1969. See also: Virginia Gray, "Innovation in the States: A Diffusion Study," *American Political Science Review* 67 (1973): pp. 1174-1185.
- <sup>25</sup> Geoffrey Brennan and James M. Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (Cambridge, England: Cambridge University, 1980), pp. 16 and 174.
- <sup>26</sup> Reagan and Sanzone, *The New Federalism*, p. 75.
- <sup>27</sup> Richard P. Nathan and Fred Doolittle, *Reagan and the States* (Princeton, N.J.: Princeton University Press, 1987), Chapter 2.
- <sup>28</sup> Roscoe C. Martin, *The Cities and the Federal System* (New York: Atherton Press, 1955), p. 171.
- <sup>29</sup> *City of Clinton v. Cedar Rapids and Missouri RR Co.*, 24 Iowa 475 (1868) as quoted in James A. Maxwell and J. Richard Aronson, *Financing State and Local Governments* (Washington, D.C.: The Brookings Institution, 1977), p. 11.
- <sup>30</sup> Martha Derthick, "Preserving Federalism: Congress, the States, and the Supreme Court," *The Brookings Review* (Winter/Spring 1986).
- <sup>31</sup> *United States Supreme Court Reports* 89 L. Ed. 2d., no. 9, March 22, 1985, p. 1032.
- <sup>32</sup> *United States Supreme Court Reports*, p. 1040.
- <sup>33</sup> *United States Supreme Court Reports*, pp. 1052-1053.
- <sup>34</sup> For a discussion of this position, see David B. Walker, *Towards a Functioning Federalism* (Cambridge, Mass.: Winthrop Publishers, 1981).

# The Debate on Federalism: A Set of Principles

BY FERREL GUILLORY AND RAN COBLE

**United States Constitution, Amendment X.** The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

“**T**he question can be posed very simply. Do we want a single national government, or a federal government which combines a national government with governments of the several states?” This quotation appeared almost thirty years ago in *Storm Over the States*, an analysis of the changing function of state governments by Terry Sanford.<sup>1</sup> In his book, written during a two-year research project that followed his gubernatorial term in North Carolina (1961–65), Sanford argued for a revitalization of state governments as a fundamental step in restoring order and balance to the federal system. That idea now has popular support: A 1995 nationwide poll of 1,003 adult Americans found that a strong majority believes

that power generally should be concentrated in the states (64 percent) rather than the federal government (26 percent).<sup>2</sup>

Public interest in the concept of federalism—the proper roles of the federal, state, and local governments—blows hot and cold. It’s hot now and it was hot in the 1780s, the early days of the Republic. “[The] revolutionary experience had taught Americans to fear power. In their thinking, power, an attribute of government, and liberty, an attribute of the people, were two parts of a zero-sum game. If power expanded, it did so at the expense of liberty,” writes William M. Wiecek in *Liberty Under Law*.<sup>3</sup> “The dilemma of power was especially troublesome in a large federation, in which power had to be not only checked within the states but also apportioned between state and nation. Power was like a dangerous but necessary beast: caged too effectively, it could not serve its purpose; allowed to roam freely, it might devour its master.”

So, the states carefully enumerated the powers of the federal government in the United States Constitution and adopted the tenth amendment to clarify that powers not delegated to the federal government were reserved to the states and the people. “The federal government

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was supposed to be kept on a short leash, lest it claim powers never given to it," writes columnist Joseph Sobran in *The Charlotte Observer*.<sup>4</sup> Nevertheless, "[t]oday the federal government routinely claims countless powers unmentioned in the Constitution."

Since the establishment of the New Deal programs of the 1930s, the nation's problem-solving functions have increasingly become centralized in Washington. The federal government set more and more of the rules of government, and by the 1960s, the states and municipalities were starting to become "branch offices" for the federal government, administering and helping to pay for programs mandated by Congress. By 1981, the national government had become so overextended, according to a study by the Advisory Commission on Intergovernmental Relations (ACIR), that "a fanciful form of federalism" had emerged. The Commission reported that from 1960 to 1981 the number of federal grant-in-aid programs to the states jumped fourfold, from 130 to 534.<sup>5</sup> The federal government issued marching orders, and state and local governments carried them out.

In 1982, President Ronald Reagan proposed, as he put it, to "take the country back to the Constitution," by transferring responsibilities for most welfare and social services programs from the federal government to the states. Reagan's "New Federalism" promised to return power to the states, a concept which has little to do with our founding fathers' notion of federalism. Yet, the founding fathers "would have agreed that the federal government should never be permitted to reach, or even approach, the size and scope it has achieved in the late 20th century," notes Sobran.<sup>6</sup>

But while the Constitution enumerates the powers of Congress, it does not say with precision which government programs should be federal, which state, and which local. Such arrangements stem from the interpretation of the tenth amendment and from congressional debates and court rulings over what should be proper federal functions. Conspicuously absent from debates on federalism—currently raging in the aftermath of the 1994 elections that brought Republicans to power in Washington—is a set of principles that can guide government officials in allocating responsibilities among the three levels of government and serve as some lasting basis for analysis.

## **Eleven Principles to Guide the Debate on Federalism**

### ***Principles in Favor of Programs Being Handled by the Federal Government***

*Principle 1. Is this a program which knows no borders and thus cannot be provided in the varying amounts the states and counties would offer? This principle has dictated consistently that defense be a federal program because the United States cannot take the chance that military protection might stop, for example, at the South Carolina line. Environmental protection also would seem more properly a federal concern because the air and water in Tennessee today may be found in North Carolina tomorrow.*

*Principle 2. Is the program one where national uniformity is important or where some national minimum of services is needed? Groups such as the Advisory Commission on Intergovernmental Relations and the National Governors' Association have supported this principle in arguing that welfare programs should rest at the federal level in order to assure a minimum guaranteed income and to discourage recipients from crossing state lines to receive higher welfare benefits.*

*Principle 3. Is the program one of protecting citizens' rights that are based in the United States Constitution? This principle serves to protect certain rights, regardless of one's state or county of residence, through the jurisdiction of the federal courts. Minority races, women, persons with disabilities, and others rely on this principle in seeking federal protection of their civil rights.*

*Principle 4. Is the program so costly that the ability to raise revenue is a primary consideration? Since the federal income tax is so much more productive and flexible than state and local sources of revenue, many programs automatically get elevated to national stature because that is the level of government best able to pay for them. National health insurance seems to be one such proposal.*

### ***Principles in Favor of Programs Being Handled by the State Governments***

*Principle 5. Is the program one in which using the states as laboratories for experimentation is especially applicable? This principle is grounded in the fact that some programs are so*

new that part of the legislative debate concerns whether the program might work or how well. No-fault automobile insurance and state lotteries, for example, were tested first at the state level.

*Principle 6. Is the program particularly susceptible to regional differences or conditions?* For example, states seem better suited than the federal government to pursue economic development programs because governors are more likely to understand the changing industrial mix of their regions. (Consider the changing importance of tobacco, poultry, hogs, textiles, furniture, microelectronics, pharmaceuticals, and the Global TransPark in North Carolina). Unemployment insurance is another program where federal responsibilities might shift to the state because regional and state employment conditions vary so much.

*Principle 7. Would the program be too expensive to run if it were offered by all local units?* In other words, do economies of scale argue against 100 universities or 100 rural health clinics in North Carolina? In the same manner, the number of mentally retarded and mentally ill citizens may be too small in some areas to justify having mental health centers in each county, so North Carolina has opted for regional mental health programs and a few state institutions.

*Principle 8. Does the program need to be close to the people because it affects basic rights or property, but involves regulatory functions too big for counties to handle?* Coastal area management is a good example of this principle. Although strong local input is needed for this program, the state should assume primary responsibility to finance it as well as to guarantee uniform standards among the 20 coastal counties.

### **Principles in Favor of Programs Being Handled by Local Governments**

*Principle 9. Is the program particularly susceptible to different community standards or priorities?* Law enforcement and libraries are two examples of programs that should be based with the counties or cities under this principle.

*Principle 10. Is the program one where face-to-face contact or administration is necessary?* Job training is an example of such a program that has long been funded and administered at federal and state levels but perhaps is best suited to local government. Simply put, counties are most

familiar with the industries in their area and the skills and educational levels of their citizens.

*Principle 11. Since the counties are saddled with the least popular revenue source (the property tax), should they be given programs that are either the most popular or the most likely to receive public scrutiny?* Water and sewer services, fire protection, and public health programs fall into this category and are mostly handled at the county level.

### **Conclusion**

**T**he philosophical and economic dimensions of previous federalism debates—from the 1780s to the Reconstruction decade following the Civil War, in the Roosevelt Administration's response to the Great Depression of the 1930s, and through the Reagan/Bush era of New Federalism—can serve as a basis for establishing an analytical framework to guide future federalism debates. While one may disagree with the framework outlined above, without some set of principles the current federalism debate will be governed solely by program costs and by what one level of government wants to unload on the other.

Federalism debates affect decisions about allocating responsibilities among different levels of government. It is not unusual for programs to shift from one level of government to another. Transportation is an excellent example of this federalist shift of purpose and allocation of responsibilities. In order to create a national system of railroads, interstate highways, and air travel, the federal government had the primary role in the early years of each of these transportation systems. Now, however, these programs either have been deregulated and shifted from the public to the private sector or shifted from the federal government to the states.

When he wrote his book on the states, Terry Sanford called for the establishment of a national policy that would ensure that all federal programs would be designed to enhance rather than hurt, state governments, and he envisioned a role for state as a coordinator of programs for local government. The federal system is not like a "layer cake" in which each level of government acts in its own sphere, Sanford contended. Federalism is more intermingled like a "marble cake," a system of joint responsibilities and part-

nerships. The realities of such a relationship, however, are complicated. "States want to be laboratories of change and to design creative, effective solutions. Yet they have continuously found their hands tied by federal rules and regulations," writes Michael Castle, a former governor of Delaware and now in Congress, in *State Government News*.<sup>7</sup>

James Madison described the hybrid government established by the United States as "neither wholly federal nor wholly national." If it is true that the founding fathers could not have imagined the centralized, national government that exists in the United States today, it is also true that certain issues of federalism were settled at Appomattox and in the Great Depression. This was not to be a nation in which states were sovereign, but interest in their role is reviving again.

## FOOTNOTES

<sup>1</sup> Terry Sanford, *Storm Over the States*, McGraw-Hill, New York, N.Y., 1967, p. 8.

<sup>2</sup> As reported in "The Dimming American Dream," *State Legislatures*, National Conference of State Legislatures, Denver, Colo., Vol. 21, No. 7, July/August 1995, p. 7. Poll conducted by Peter D. Hart and Robert M. Teeter for the Council of Excellence in Government, March 16-18, 1995, in a random telephone survey of 1,003 registered voters nationwide; margin of error, +/- 3 percent.

<sup>3</sup> William M. Wiecek, *Liberty Under Law: The Supreme Court in American Life*, The Johns Hopkins University Press, Baltimore, MD., 1988, p. 17.

<sup>4</sup> Joseph Sobran, "Back to federalism?" *The Charlotte Observer*, Charlotte, N.C., Sept. 28, 1995, p. 11A.

<sup>5</sup> Advisory Commission on Intergovernmental Relations, "A Catalogue of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1981," February 1982.

<sup>6</sup> *Ibid.*

<sup>7</sup> Michael N. Castle, "Give States Flexibility," *State Government News*, The Council of State Governments, Lexington, KY., Oct. 1995, p. 23.

# 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.*

**T**hroughout 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 was hardly revolutionary. Rather, it brought North Carolina in step with a trend that began more than 25 years ago when other states' appellate courts started looking to their own constitutions when defining the rights of individuals.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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 former 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.<sup>4</sup> That view receives approval from U.S. Supreme Court Justice William J. Brennan, who says "[E]very believer in our concept of federalism . . . must salute this development in our state courts."<sup>5</sup>

Former N.C. Supreme Court Associate Justice Harry Martin, who teaches a course on state constitutional law at UNC-CH Law School, be-

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lieves 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.

But this new focus on the N.C. Constitution lacks the wholehearted support of all North Carolina’s Supreme Court justices. Former Justice Louis Meyer says, “We have significant legal precedent to the effect that some of our state

## *Separation of Powers in North Carolina*

**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.

### **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 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;

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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 com-

parable 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 fed-

- 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*)<sup>1</sup> 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."<sup>2</sup>

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.

—John V. Orth

#### FOOTNOTES

<sup>1</sup>*State ex rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E.2d 79 (1982).

<sup>2</sup>N.C. Constitution, Art. I, Section 6.

eral 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*.<sup>6</sup> 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,<sup>7</sup> 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 I, 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.<sup>8</sup> 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.”<sup>9</sup> 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 “providing male or female companionship.”<sup>10</sup> 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 salacious” and therefore might “regulate nursing homes and companions for the elderly along with movie mates, ‘private room’ bars, and ‘dial-an-escort’ services.”<sup>11</sup> The overbroad approach of the Onslow County officials, Martin said, violated Article I, Sections 1 and 19, of the North Carolina Constitution,<sup>12</sup> 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

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***State constitutions were designed to respond to the needs of individual states, while the U.S. Constitution responds to the needs of all 50 states.***

—FORMER N.C. SUPREME COURT  
JUSTICE HARRY MARTIN

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

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**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.

**Article I, 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 a remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

**Article IX, 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.

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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, Reagan, Bush, and Clinton, 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

<sup>1</sup> 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, p. 3–30.

<sup>2</sup> In *United States v. Leon*, 468 U.S. 897 (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 constitution to exclude evidence in criminal trials that was seized as the result of an invalid search warrant.

<sup>3</sup> *Miller v. California*, 413 U.S. 15 (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*, 732 P.2d 9 (Or. 1987).

<sup>4</sup> James G. Exum, “Dusting Off Our State Constitution,” *The North Carolina State Bar Quarterly*, Spring 1986, pp. 6–9.

<sup>5</sup> William J. Brennan, “State Constitutions and the Protection of Individual Rights,” 90 *Harvard Law Review* 503 (1977).

<sup>6</sup> 320 N.C. 297, 357 S.E.2d 622 (1987).

<sup>7</sup> 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.

<sup>8</sup> 320 N.C. at 310.

<sup>9</sup> 320 N.C. at 311.

<sup>10</sup> “An Ordinance Regulating Businesses Providing Male or Female Companionship,” enacted June 19, 1985, and amended July 1, 1985.

<sup>11</sup> *Treants Enterprises, Inc. v. Onslow County*, 320 N.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.

<sup>12</sup> North Carolina Constitution, 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.

# Chapter I

## 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.”<sup>1</sup> This chapter illustrates the long-time concern of North Carolinians with this distinction embodied in Article I of our 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 United States Constitution was adopted. While the exercise of these rights has certainly been flawed—the African-American 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 “great, general, and essential principles of liberty and free government” including the basic freedoms of free assembly, speech, press, and religion. 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. 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 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.

#### FOOTNOTE

<sup>1</sup> Robert A. Goldwin, “A Case for State’s Rights,” *A Nation of States*, Rand McNally & Co., Chicago, Illinois, 1961, pp. 88–105.

# The Price of Democracy: Citizen Responsibility

BY SANDRA K. TRIVETT

*A democracy is government by the people. It guarantees, through the Bill of Rights in the United States Constitution and a declaration of rights in the North Carolina Constitution, certain personal freedoms for all citizens. Although these freedoms may vary from one democratic country to another, there is a consensus that Americans enjoy more freedom than other citizens of the world. However, "[j]ust when America's democratic ideals are held in the highest global esteem, growing numbers of Americans fear that democratic government is faltering here at home," writes Professor Robert D. Putnam of Harvard University, a respected scholar on civic engagement.<sup>1</sup> Although democracies are "free" societies, citizens must "pay" to preserve their freedoms. The price? Citizen responsibility. Without vigilant public involvement, democracies are threatened.*

**P**ublic involvement, or civic engagement, can be as simple as staying informed on community issues, voting, paying taxes, serving on a jury, returning your census form, and volunteering, or it can be as demanding as running for elected office. Each creates an opportunity for individual input on the formulation of public policy through participation in our democratic system. Meet Jane, who wants to be a responsible citizen.

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## An Informed Citizenry

**A**t the very least, citizens owe it to themselves and their democracy to be knowledgeable about important public policy issues. Although most Americans rely on television for the majority of their news, given the brevity of news reports, television is not an effective medium for citizens who want to learn about the issues and understand the underlying public policy debates. To be "informed," Jane Citizen needs to do more than watch TV news reports and read a daily newspaper; she needs to attend local government meetings and public

hearings. However, a survey by the Roper Organization reveals that the number of Americans who in the past year have "attended a public meeting on town or school affairs" decreased from 22 percent in 1973 to 13 percent in 1993.<sup>2</sup> Increasingly, Americans are becoming disengaged.

How does Jane attending a town or county meeting promote civic engagement? James Fishkin, a professor at the University of Texas, believes that "people make sounder public policy decisions when they deliberate together, for that way they have the benefit of others' points of view."<sup>3</sup> When Jane attends a local government meeting, she learns not only what the issues are, but she meets her neighbors, hears what they

have to say about the different issues, and begins to develop a sense of social trust.

In addition to attending town meetings, citizens can serve on regional study groups, task forces, local boards and commissions, and attend public meetings of organizations that make decisions which affect their lives—water authorities, school boards, governmental bodies, etc. Even if a person's time is limited to mere observation, various sunshine laws<sup>4</sup> protect a citizen's right to see public documents and attend open meetings. In this way, citizens can perform the "watchdog" role so essential to democracy and open government.

This type of citizen involvement has many positive ramifications. On election day, for in-

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## *What Difference Can a Few Votes Make?*

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ASK LONNIE REVELS WHAT difference a few votes can make. Ask, and sit down while Revels, a Greensboro businessman, Native American, and Republican Party activist tells you about the heartbreaking elections of 1972. And 1974. And 1983.

In 1972, Revels ran for the state House of Representatives. He lost by a handful of votes in the primary, but when the Guilford County Board of Elections members sat down to certify the results, they found an error—and certified Revels as a primary winner. In the fall elections, Revels won by a handful of votes, but when the local board certified the results, it found another error, and Revels had lost—by 27 votes.

For months after that loss, Revels replayed the election again and again. "I'd walk into a room of people and I'd count them until I'd reach 27 and I'd say to myself, those could have been the 27 votes you didn't get. Maybe those 27 could have put you in," Revels recalled nearly 20 years later.

Two years after that first defeat, Revels tried again for one of the seven at-large House seats from Guilford County. This time he lost narrowly again—by 107 votes. That loss—by less than a tenth of 1 percent of the votes cast—was so devastating that Revels quit running for nearly a decade.

But he was well-known in the community, served on a lot of boards, knew a lot of the voters, and felt he had something to offer. So in 1983, Revels ran for the Greensboro City Council. Revels lost again, this time by 100 votes. And it stung worse than ever.

"You relive it over and over again. If it was a wipeout, you can say, 'Well, I gave it a good shot but it wasn't meant to be,'" Revels says. "But you come so close, you replay it over and over in your mind—'If I had only attended one more meeting, if only I had made another one of those phone calls, maybe if my supporters had worked a little bit harder.' You just say 'What if? What if?'"

Two years later, Revels tried again. And he won. By 10 votes. The headlines in the paper called him "Landslide Lonnie," but in Revels' mind, those 10 votes

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*Jack Betts is an associate editor at The Charlotte Observer.*

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stance, Jane can make informed and deliberative, rather than uneducated choices. A thriving democracy results: "The correlation between civic engagement and effective government is virtually perfect."<sup>5</sup>

### Political Participation and Voting

**T**hrough her participation in local government meetings, Jane Citizen now is able to identify issues that are important to her, her family, and her community. Registering to vote and then actually getting out to the polls on election day are the next steps in the fulfillment of her responsibilities as a citizen.

In a democracy, each citizen has the right to vote—a privilege to elect leaders and thus affect public policy. "Political participation is action directed explicitly towards influencing the distribution of social goods and social values," according to Steve Rosenstone and Mark Hansen in the book *Mobilization, Participation and Democracy in America*.<sup>6</sup> Basically, those who participate in elections are those who care strongly about the outcome, whether it is an issue or a candidate. However, many people who care about the issues never vote because they feel that one vote cannot influence the system. (See "What Difference Can a Few Votes Make?," p. 108.) And, it is easier to stay at home and leave political participation to others.

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that put him on the city council were "just as good as 10,000 votes."

Revels doesn't think he's ever missed voting in an election, and he loves to tell people his story. "I can attest that every vote does count," Revels says. He especially like to tell young voters that may be apathetic how much a vote can count. He tells them about the 27 votes he lost his first election by, and the 10 votes he won his first city council election by, and he tells them, "Close isn't enough. Close only counts in horseshoes and hand grenades."

Revels is hardly the only case where elections have been tight in North Carolina. They happen every year. State Sen. Bob Shaw (R-Guilford) lost out to former state Sen. Walt Cockerham (R-Guilford) by only two dozen votes in an election in the 1980s. In 1994, the senate race between Democrat Elaine Marshall and Republican Dan Page was declared a tie. Sen. Page won the special election that was ordered by the State Board of Elections.

On North Carolina's coast, the mayoral election at Topsail Beach tied three times in 30 years. But the contestants usually settle the race amicably—they flip a coin, and the winner becomes mayor.

Close votes occasionally decide questions of much more moment. For instance, there was the close vote in the U.S. Senate in 1868 when Andrew Johnson—the North Carolina native who was Abraham Lincoln's vice president and successor—was to be impeached. One vote—delivered by a senator who was brought in from his sickbed—saved Johnson from conviction by the Senate and ouster from the presidency.

And a few other notable votes:

In 1645, Oliver Cromwell gained control of England by a single vote.

In 1875, one vote was enough to refashion France from a monarchy into a republic.

In 1923, Adolf Hitler took over leadership of the National Socialist Party—the Nazis—by one vote.

In 1960, an average of one vote per precinct gave the presidency to John F. Kennedy and ended—temporarily—the political career of Richard Nixon.

—Jack Betts



John Page

**Voters in Guilford County pass the time while waiting to vote in a slow-moving polling place.**

“By almost every measure, Americans’ direct engagement in politics and government has fallen steadily over the last generation, despite the fact that average levels of education—the best individual-level predictor of political participation—have risen sharply throughout this

period,” writes Robert Putnam. “Americans have . . . disengaged psychologically from politics and government over this era.”<sup>7</sup>

Who does participate in politics in America? “The wealthiest Americans are 15.8 percent more likely to vote in presidential elections, 5.7 percent more likely to try to convince others how to vote, 1.8 percent more likely to work for a party or candidate, and 14.8 percent more likely to make a campaign contribution than the poorest Americans,” according to Rosenstone and Hansen.<sup>8</sup>

Federal, state, and local governments have tried to empower citizens and encourage civic involvement. For example, the states are trying to make it easier to register to vote. Citizens now are allowed to register at driver’s licensing offices and by mail. However, the question is not whether people are registered, but whether they vote. In 1992, 73 percent of North Carolinians were registered to vote, but only 68 percent of those registered voted on election day and only 50 percent of the voting age population voted. (See Table 1.) Voter turnout in non-presidential election years is even lower. Thus, some states are trying to make it even easier to

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***“At the bottom of all tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper. No amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”***

—WINSTON CHURCHILL

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vote. Oregon, for example, is experimenting with voting by mail.

Political candidates, political parties, interest groups, and other organizations also try to foster political participation, by involving their constituents and getting them to the polls. There has been a great proliferation in special interest groups. It seems every group has its cause; and, due to mass media and communication techniques, all are able to influence local and national policy debates.

For example, in Asheville, North Carolina, the conservative Christian community formed the Family Coalition of Asheville, a political action committee (PAC), in 1995. Other organizations and religious congregations became concerned over the influence garnered by the Family Coalition, so they formed the Interfaith Alliance for Justice. Sometimes these groups agree on issues; sometimes they disagree. One way for citizens to voice their opinions to government is by aligning themselves with such special interest groups.

Whether citizens choose to voice their opinions collectively or individually, it is more important than ever for Jane Citizen to demand access to decisionmakers. Current efforts at the federal level to move social problem-solving to the state level through block grants is causing considerable public debate. Some believe this is a way of empowering the people; others believe it is merely a way to dismantle

social programs. Regardless of one's point of view, if these changes occur, local citizen input will be vital. People in Washington will be making fewer decisions, leaving decisionmaking up to state and local leaders.

### Running for Elected Office

Many public offices in North Carolina counties—county commissioner, sheriff, and register of deeds, for example—regularly come up for election. While political parties work to make sure that there is a candidate for every office, often incumbents are not challenged.

It is not surprising that Jane Citizen is reluctant to enter the political arena as a candidate. "For three reasons, it's almost impossible to get people to run for office anymore," says Andy Penry, chair of the Wake County Democratic Party. Running for office and serving is too time consuming. The monetary reward is nominal<sup>9</sup> and the cost of running for office is high.<sup>10</sup> "It now costs upwards of \$50,000 to run for any seat in Wake County," notes Penry. "But people don't like asking their friends for money, especially when it just doesn't seem like it's worth it." And, negative campaigns are becoming the norm. "People are reluctant to be the target of negative publicity. They don't want to be raked through the mud." Penry

**Table 1. Registered Voters and Voter Turnout in North Carolina**

Year	1982	1984	1986	1988	1990	1992	1994
% of Population Registered	61	71	63	70	60	73	72
% of Registered Voters Who Voted	49	83	52	62	62	68	41
% of Voting Age Population That Voted in Presidential Elections		47.4		43.7		50.1	

*Shaded areas represent presidential election years.*

Sources: *The Book of the States 1994-95* and *1996-97*, The Council of State Governments, Lexington, KY, Vol. 30, Tables 5.8 and 5.9, pp. 225-26. Also the Committee for the Study of the American Electorate, Washington, D.C., (202) 546-3221.

concludes that an individual who decides to run for office, despite these deterrents, usually has two characteristics. "A serious desire for public service and ego—in equal doses."

### **Paying Taxes**

**G**overnment can force civic involvement in some ways—for example, local, state, and federal governments tax Jane Citizen to pay for services for the public good. These services include transportation, education, fire protection, safety from crime, the judicial system, assistance to those in need, and the national defense, among others. Most people don't object to paying taxes when they believe the benefits are worth the expense. However, in 1990, for every \$5 in federal taxes owed, \$1 was evaded. The amount of taxes evaded annually exceeds \$100 billion. The IRS knows of 6.5 million taxpayers who do not file returns.<sup>11</sup>

Tax evasion is illegal, undermining a basic tenet of our democracy: Citizens pay for the services provided by government. Unfortunately, it is common to read in the news that political and religious leaders, celebrities, and many other Americans regularly fail to pay taxes.

### **Serving on a Jury**

**T**he concept of a citizen jury is integral to our democracy. "Jurors keep law in the U.S. from getting too far from the people, preserving a guarantee of freedom and democracy that many in the world are still struggling to achieve," writes the National Institute for Citizen Education in the Law in a book titled *When Justice Is Up To You*.<sup>12</sup> Jury service is a right of citizenship guaranteed by our state and federal Constitutions.<sup>13</sup> "Based on the democratic belief that a community's collective wisdom is the best judge of the actions of others in the community, juries represent the most open kind of democratic government."<sup>14</sup>

The American Bar Association and the Brookings Institute, a think tank in Washington, D.C., have identified five essential virtues of America's jury system:

- the jury, because of its valuable decision-making process, is a fair way to resolve disputes;

- "the jury provides important protections against the abuse of power by legislatures, judges, the government, business, or other powerful entities;"

- juries bring community values to bear on the issues involved in resolving disputes;

- the jury brings common sense and fairness to the system, providing an important check on the bureaucratization and professionalization of the courts; and

- "the jury system provides a means for legitimizing the outcome of dispute resolution and facilitating public understanding and support for and confidence in our legal system."<sup>15</sup>

Serving on a jury can be enormously demanding, as the entire country witnessed in 1995 with the eight month trial of former football star O. J. Simpson. But, it usually just takes a day or less of a citizen's time, and it gives those selected firsthand experience with our judicial system.

Jury service is an easy way for Jane Citizen to perform a civic responsibility. North Carolina General Statutes 9-6 states "The General Assembly hereby declares the public policy of this State to be that jury duty is the solemn obligation of all qualified citizens . . . ."<sup>16</sup> Although failure to participate after being selected for jury service can result in a charge of contempt of court, the Buncombe County Clerk of Superior Court's office says that most people regard jury duty as their "civic responsibility," and there are very few instances of refusal to participate.

### **Participation in the Census**

**E**very ten years, the federal government conducts a census to update the number of people living in the United States, determine basic demographic information on which to base economic forecasts, and learn about broad trends in the country in housing, income, and social structure. If the information is incomplete, faulty projections and decisions are made. Because census numbers are used in federal funding formulas, communities eligible for certain programs and funding before the census may suddenly become ineligible. In 1990, 33 million American households did not return their census forms. When Jane Citizen fails to

return her census form, the expense of collecting the data is increased and a less accurate picture of our country results.

### Volunteering as Private Citizens

Since Alexis de Tocqueville, a Frenchman, visited the United States in the 1830s and wrote *Democracy in America*, our country has been known for its spirit of volunteerism. Americans “are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute,” wrote Tocqueville.<sup>17</sup> Volunteerism is a way of solving community problems through citizen involvement and private donations rather than through governmental programs and public funds.

“One of the great things about America is that 48 percent of American adults volunteer

an average of 4.2 hours a week,” says Jane Kendall, executive director of the North Carolina Center for Nonprofits. “And, in North Carolina, 53 percent of our citizens volunteer—more than half of our entire adult population. And they look to nonprofits to provide these volunteer opportunities so they can make a difference in their communities and feel connected to their neighbors.” North Carolinians also contribute more money to nonprofits than citizens do nationally.<sup>18</sup> Seventy-nine percent of North Carolinians contribute to nonprofits compared with 73 percent nationally.

Volunteerism, as a form of civic engagement and social connection, faces challenges for several reasons: 1) the social revolution of women joining the labor force, which has reduced the time and energy they have to volunteer; 2) our society’s mobility and residential instability inhibit social connection; 3) demographic changes—more divorces, fewer children, lower real wages—affect civic engagement because those most likely to be involved are married, middle-class parents; and 4)



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## *Fancy Clothes and Overalls*

A LITTLE BOY AND HIS FATHER walk into a firehouse. He smiles at people standing outside. Some hand pamphlets to his father. They stand in line. Finally, they go into a small booth, pull the curtain closed, and vote. His father holds the boy up and shows him which levers to move.

"We're ready, Wade, pull the big lever now."

With both hands, the boy pulls the lever. There it is: the sound of voting. The curtain opens. The boy smiles at an old woman leaving another booth and at a mother and daughter getting into line. He is not certain exactly what they have done. He only knows that he and his father have done something important. They have voted.

This scene takes place all over the country.

"Pull the lever, Yolanda."

"Drop the ballot in the box for me, Pedro."

Wades, Yolandas, Pedros, Nikitas, and Chuis all over the United States are learning the same lesson: the satisfaction, pride, importance, and habit of voting. I have always gone with my parents to vote. Sometimes the lines are long. There are faces of old people and young people, voices of native North Carolinians in southern drawls and voices of naturalized citizens with their foreign accents. There are people in fancy clothes and others dressed in overalls. Each has exactly the same one vote. Each has exactly the same say in the election. There is no place in America where equality means as much as in the voting booth.

My father took me that day to the firehouse. Soon I will be voting. It is a responsibility and a right. It is also an exciting national experience. Voters have different backgrounds, dreams, and experience, but that is the whole point of voting. Different voices will be heard.

As I get close to the time I can register and vote, it is exciting. I become one of the voices. I know I will vote in every election. I know that someday I will bring my son with me and introduce him to one of the great American experiences: voting.

—Wade Edwards

*Wade Edwards, who was an honor student at Broughton High School, won the National Endowment for the Humanities and Voice of America national essay contest for this essay.*

changes in technology—the introduction of televisions, cable television, and video cassette recorders—lead to leisure time alone instead of in groups and make “our communities (or, rather, what we experience as our communities) wider and shallower.”<sup>19</sup>

Additionally, a plethora of nonprofit as well as special interest organizations compete for the time and dollars of volunteers. For Jane Citizen the harder decision today is not whether to volunteer, but where and how to volunteer.

### **Volunteering as Corporate Citizens**

Corporations also have responsibilities as citizens in our democracy. Governments charter corporations with the expectation that they will be good corporate citizens. “In exchange for the charter,” writes Richard Grossman and Frank Adams in *Taking Care of Business: Citizenship and the Charter of Incorporation*, “a corporation [is] obligated to obey all laws, to serve the common good, and to cause no harm.”<sup>20</sup> But how is corporate citizenship valuable to a democracy? (See “Some Questions To Consider in Thinking About the Idea of Corporate Citizenship,” p. 119.)

“[C]orporations must be capable of citizenship on a local level,” writes Daniel Kemmis in *Community and the Politics of Place*. “This must be more than a public-relations variety of citizenship; it must be the kind of citizenship that is real enough to inspire trust. Above all, such citizenship must demonstrate a genuine and reliable responsiveness to the place, a full-fledged participation in the human project of living well in that place.”<sup>21</sup>

As the debate rages over where the responsibility lies to solve community problems—with individuals, families, nonprofits, churches, corporations, or government—there has been a growth in “public-private partnerships.” Such cooperative efforts bring together governmental entities with program experience and technical expertise, the business community with its financial resources and entrepreneurial approaches, and citizens who have an interest in solutions to community problems. The term public-private partnership was popularized by the book, *Reinventing Government*, which also looked at other means of restructuring bureaucracies to make them more innovative and responsive.<sup>22</sup> If Congress succeeds in moving

decisionmaking from Washington to the local level, new approaches must be developed, and more citizen involvement will be required.

There has also been a growth in "regionalism" as several communities or groups within communities have come together to solve problems. Regionalizing water authorities, landfills, and jails are all examples of how resources can be shared for the benefit of more people at less expense. Through the actions of corporations and these regional groups, citizens have another opportunity to participate in our democracy.

### Conclusion

Organizations must work to reinvolve individual and corporate citizens in our democracy. A 1995 open letter from Becky Cain, President of the League of Women Voters of the United States, to all members of the League, calls for the organization to take the

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***"America is a land where a citizen will cross the ocean to fight for democracy and won't cross the street to vote in a national election."***

—BILL VAUGHAN,  
AMERICAN NEWSPAPER COLUMNIST

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"lead in renewing American democracy—how it works, how citizens participate, how citizens think about democracy." She states that we must "rediscover what binds us together as a nation if we are to succeed in finding shared solutions to the many complex problems that confront our communities today." To quote one of the League's most familiar slogans: "Democracy is not a spectator sport." Citizens must participate more, setting examples not only for

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## ***Government: Who's in Charge?***

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*"... Government of the people, by the people, and for the people ..."*

—Abraham Lincoln, 1863

THERE'S MUCH MORE TO RESPONSIBLE citizenship than merely studying the issues and voting in elections, as important as these are. Every facet of organized public life (the social process we call "government") ought to kindle a response among citizens whenever their individual concerns and interests are affected. For in a democracy, it's only the citizens themselves—not some remote authority in Washington, at the state capitol, or in City Hall—who are responsible for organizing, managing, and overseeing the myriad everyday activities that living together in a civilized community requires.

As President Lincoln pointed out, it is literally we, the people, who govern in a democracy. However, democracy is a very disorderly form of government, and citizenship in a democracy is unremitting hard work. It imposes a continuing obligation on each one of us to share in the everyday housekeeping chores of community living or see that they are satisfactorily carried out. Depending on how broadly we define our community, those chores may range from collecting the trash, cleaning the streets, building schools, or punishing those who break house rules to defending our national borders and managing our natural resources—or even sharing our wealth and technology with other nations.

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*Frank Crigler is a fellow at the Center for International Development Research at Duke University.*

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— Government, *continued*

Ultimately we, as responsible members of a democratic community, must arrive at a practical understanding with our neighbors about priorities: which of these housekeeping tasks are to be performed, who will perform them, and how we'll pay the cost of doing them. The process by which these priorities are set and decisions made is called "politics"—a dirty word, unfortunately, to many of the system's critics, but a process that is central to the exercise of democratic citizenship.

- Without politics, there is no way to reconcile the differing interests, values, and concerns of the community's many members, each of whom has an equal stake in the outcome.
- Without politics, there is no way to resolve the conflicts that must inevitably arise among so many complex human beings, all freely pursuing their own personal goals and destinies—except by force.

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*It is at this local level—where the decisions and actions of government have the most immediate impact on individuals—that apathy has deepened and responsible citizenship grown weakest in recent years.*

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Politics begin very close to home, when neighbors decide whether and how to organize their efforts to improve or look after their neighborhood. They may reach as far as the eye can see or the imagination will carry, so that "neighbors" in the world community may seek to agree on ways to protect the earth's ozone layer or preserve its rain forests. But political issues closer to home are usually more clear-cut and controversial, because the choices more directly affect the interests of individual community members: neighbors are likely to have sharper views about property taxes or safety in the classroom than about logging in the Amazon rain forests.

Curiously, it is at this local level—where the decisions and actions of government have the most immediate impact on individuals—that apathy has deepened and responsible citizenship grown weakest in recent years. There are many factors that help explain this trend:

- One is the enormous growth of mass communications media, whose TV networks and news magazines tend to focus our attention on national and regional issues at the expense of local community affairs.
- Another is our increasing awareness that problems in our communities may not be unique and could be part of some larger pattern (e.g. illegal immigration) whose causes are too big for us to handle by ourselves.

One effect has been to blow our local problems out of proportion, making them seem too large and complicated for our individual communities to manage. This in turn has reinforced the lazy streak that lies in each one of us. We have a tendency, as citizens, to assign more and more of the responsibility for dealing with such problems to our elected representatives, especially those at the national level—

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the President, members of Congress, the Supreme Court, our political parties, interest groups, and the public agencies and “bureaucrats” empowered to enforce or implement the laws passed by our representatives.

Perhaps, like Tom Sawyer, we secretly think that by delegating our responsibilities we’re getting out of doing the chores, and if they’re not done properly we’ll have someone else to blame. But the current loss of confidence in our political system shows that it’s a mistake to expect someone else to paint our fences for us.

There are recent signs that the trend is reversing, and that many communities are seeking to reclaim the citizenship responsibilities they’ve delegate in the past. The trend coincides with an increasing awareness that many community problems can be more effectively dealt with at the local level, where individual concern and personal resourcefulness are likely to be stronger than at the national or state level.

As it happens, the greatest opportunities for practicing responsible citizenship—and the greatest challenges as well—are found close to home.

- Citizens concerned about community health services, public transportation, schools, recreation facilities, law enforcement, or environmental problems, for example, may register those concerns more effectively with elected city or county officials—and get their attention—than with officials of federal agencies. Most local governing councils hold public meetings several times a month to weigh such issues and to hear the views of individual citizens.
- Better yet, citizens may attend and even take part in meetings of most of the special advisory boards that elected officials set up to study these issues and recommend appropriate courses of action. In Durham County, for instance, some 45 such boards and committees advise the County Commissioners on such topics as the quality of local nursing homes and the rights of their residents; the preservation of Durham’s historical character and heritage; the development and protection of community trails, green ways, and open spaces; and the improvement of public transportation.
- Citizens sufficiently concerned about an issue and prepared to shoulder an even greater measure of responsibility may apply for appointment to one of these advisory bodies. Or they can go yet one step further and run for election to the city council, county board of supervisors, or school board, so they can take a sustained part in the search for solutions or improvements.
- Alternatively, they might organize interest groups or political action committees among like-minded members of the community, in order to express their views in a concerted way to local officials or endorse election of candidates for office sympathetic to those views. In a democracy, numbers count, and elected officials quite properly take note when significant numbers of citizens show that they share the same opinion.

President Lincoln’s point, in his brief speech at Gettysburg cemetery, was that Americans had paid dearly in lives and blood to preserve their radically different system of government, a system run by its own citizens. Many more American lives have been sacrificed since 1863 for the same cause. In our own day, we can hardly do otherwise than to exercise these hard-won rights of self-government as often and as fully as possible.

—Frank Crigler

one another but for future generations, if we are to preserve our democratic system and make it truly representative.

Individuals and corporations in North Carolina should work to become active and responsible citizens. To paraphrase Margaret Meade, an American anthropologist: Small groups of thoughtful committed Jane Citizens are the only thing that has ever changed the world.

## DISCUSSION QUESTIONS

1) Are you registered to vote? Or, do you plan to register to vote? Why or why not? If

you vote, how would you decide whom to vote for?

- 2) Does someone in your family volunteer? Describe this activity and how it affects your view of social problems in your community?
- 3) In a democracy, what do you think are your most important rights and responsibilities as a citizen?
- 4) Describe the rights and the responsibilities of citizens at different levels: within the family, within a school or university, within a neighborhood, and within a local government, state government, and federal government.
- 5) Who sets the political agenda in America? In North Carolina? At the local level?

## FOOTNOTES

<sup>1</sup> Robert D. Putnam, "What Makes Democracy Work?" *National Civic Review*, Spring 1993, pp. 101-07.

<sup>2</sup> Robert D. Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy*, Vol. 6, No. 1, Jan. 1995, p. 68.

<sup>3</sup> Noelle McAfee, "A Deliberate Nation," *Kettering Review*, Summer 1994, pp. 8-16.

<sup>4</sup> Sunshine laws protect the rights of citizens to observe government meetings and decision making. "The concept of 'open meetings' is historically fundamental, arising out of the colonial town meeting approach to determining laws and policies. It is also politically essential, crucial to the satisfaction of every person's 'right to be able to know' not just what government has done, but also what government is doing." Fred Harwell, *The Right to Be Able to Know: Public Access to Public Information*, N.C. Center for Public Policy Research, Raleigh, N.C., 1978, p. 37.

<sup>5</sup> Putnam, note 1 above, p. 103.

<sup>6</sup> Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation and Democracy in America*, Macmillan Publishing Co., New York, N.Y., 1993, p. 4.

<sup>7</sup> Putnam, note 2 above, p. 68.

<sup>8</sup> Rosenstone and Hansen, see note 6 above, p. 135.

<sup>9</sup> According to the North Carolina Association of County Commissioners, commissioners in Mecklenburg County are paid the most (\$13,050 salary and \$5,080 for travel) and commissioners in Washington County are paid the least (\$30 per meeting and 29 cents a mile).

<sup>10</sup> In 1992, candidates for seats in the state House of Representatives and Senate spent on average \$14,244 and \$21,127, respectively. Kim Keschull Otten and Tom Mather, *The Cost of Running for the North Carolina Legislature*, The N.C. Center for Public Policy Research, Raleigh, N.C., Sept. 1993, pp. 8-9. In 1994, it cost Worth Hill \$16,965.24 to win the race for sheriff in Durham County. Julia White, "Election winner outspends incumbents," *Herald Sun*, Durham, N.C., Feb. 2, 1995, pp. C1. The same year, Tom Bowman spent a record \$43,000 to win a seat on the Wilkes County Board of Commissioners. Staff Report, "Spending record set in Wilkes race," *Winston-Salem Journal*, Winston-Salem, N.C., Jan. 31, 1995, p. B1.

<sup>11</sup> Ralph Vartabedian, "Nonfilers soaring, to IRS' dismay," *News & Observer*, Raleigh, N.C., April 14, 1996, p. 5A.

<sup>12</sup> *When Justice Is Up To You*, National Institute for Citizen Education in the Law, Association of Trial Lawyers of America, Washington D.C., 1992, p. 5.

<sup>13</sup> N.C. Constitution, Article I, Section 26. *Jury Service*. No person shall be excluded from jury service on account of sex, race, color, religion, or national origin. U.S. Constitution, Amendment VI guarantees a defendant the right to jury trial in criminal cases and Amendment VII preserves the right to trial by jury in civil cases.

<sup>14</sup> *When Justice Is Up To You*, note 12 above, p. 17.

<sup>15</sup> *Charting a Future for the Civil Jury System*, Report from the American Bar Association and the Brookings Institute, Washington, D.C., 1992, pp. 8-11.

<sup>16</sup> See N.C.G.S. § 9-3 for qualifications of prospective jurors.

<sup>17</sup> Alexis de Tocqueville, *Democracy in America*, Anchor Books, Garden City, N.J., 1969, p. 513.

<sup>18</sup> "In North Carolina, 79 percent [of respondents to a poll] said they had made a voluntary contribution of money, property or other items to a private, not-for-profit organization in the past 12 months. Nationally, 73 percent reported donating [in a Gallup poll commissioned by the Independent Sector in October 1994]." "North Carolinians Value Nonprofits," *Common Ground*, N.C. Center for Nonprofits, 4601 Six Forks Road, Suite 506, Raleigh, N.C., 27609-5210, Vol. IV, No. 3, May-June 1995, pp. 1 and 7. The North Carolina poll was conducted by FG\*1, a marketing and research firm in Chapel Hill, N.C. Between April 20-23, 608 North Carolina adults were interviewed by telephone. The margin of error was four percentage points.

<sup>19</sup> Putnam, note 2 above, p. 74-75.

<sup>20</sup> Richard L. Grossman and Frank T. Adams, *Taking Care of Business: Citizenship and the Charter of Incorporation*, Charter, Ink., Cambridge, Mass., 1993, p. 1.

<sup>21</sup> Daniel Kemmis, *Community and the Politics of Place*, University of Oklahoma Press, 1990, p. 133.

<sup>22</sup> David Osborne and Ted Gaebler, *Reinventing Government*, Addison-Wesley Publishing Co., Boston, Mass., 1992.

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## *Some Questions To Consider in Thinking About the Idea of Corporate Citizenship*

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1. Do corporations have duties as citizens or are their main duties only to their shareholders?
2. Does the corporation have *a corporate-giving program*?  
Does that program have clear priorities and is it publicized in the community?  
Does the corporation have a matching gifts program, a program to encourage its employees to volunteer with nonprofits in the community, or a gifts-in-kind [its products, furniture, equipment, etc.] program?
3. What is the corporation's record on how its products or manufacturing process affect *the environment*?  
What is the corporation's record on the use of scarce resources in its operations?
4. What is the corporation's record in terms of *how it treats its employees*? This can include everything from paying above-poverty-level wages to workplace safety to decent benefits packages to its record with labor unions in complying with federal and state laws.
5. What is the corporation's *record in paying taxes*?
6. What is the *corporation's investment policy*? For example, many corporations and government entities withdrew investments or refused to invest in South Africa when it was under a racially apartheid government.
7. What is the *corporation's responsibility to the community* when it closes a plant or when it seeks to enter a community?
8. How does the corporation *balance its responsibilities* to its employees, shareholders, the communities in which it is located, and the environment?
9. What do others say about the corporation in the *fulfillment of its social responsibilities*? For example, the nonprofit Council on Economic Priorities evaluates the policies and the practices of U.S. corporations, publishes *Shopping for a Better World* and *The Better World Investment Guide*, identifies what it says are the nation's worst corporate polluters in its Campaign for Cleaner Corporations, and publishes reports on a company-by-company basis.

—Ran Coble

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*Ran Coble is the executive director of the North Carolina for Public Policy Research.*

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# The Right to Education and the Financing of Equal Educational Opportunities in North Carolina's Public Schools

BY MEBANE RASH WHITMAN

North Carolina 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.

North Carolina Constitution, Article I, Section 19. *Equal protection of the laws.* 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.

North Carolina Constitution, Article IX, Section 2 (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.

North Carolina Constitution, Article IX, Section 2 (2). *Local responsibility.* The General Assembly may assign to the units of local government such responsibility for the financial support of the free public schools as it may deem appropriate.

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*This article updates two articles that were previously published in the 1989 edition of North Carolina Focus and in North Carolina Insight magazine: Jody George, "Courts Split on School Finance Issue," North Carolina Insight, Vol. 7, No. 1, June 1984, pp. 38-41; and Bill Finger, "Disparity in Public School Financing—An Update," North Carolina Insight, Vol. 7, No. 4, April 1985, pp. 44-49. Mebane Rash Whitman is the Center's policy analyst.*

**I**magine going to school and having classes in the hallway, or the cafeteria, or even a closet. The lighting is inadequate, making it difficult for you to see your textbook. The plaster walls that define your learning space are cracked, and the paint on them is peeling. Overhead, you can see some rusting pipes, and sometimes the roof leaks when it rains. In your science classroom, there aren't enough microscopes—much less the measuring devices, sinks, and safety equipment needed for experiments. Many of your textbooks are outdated, and sometimes you have to share your workbook because there aren't enough to go around.

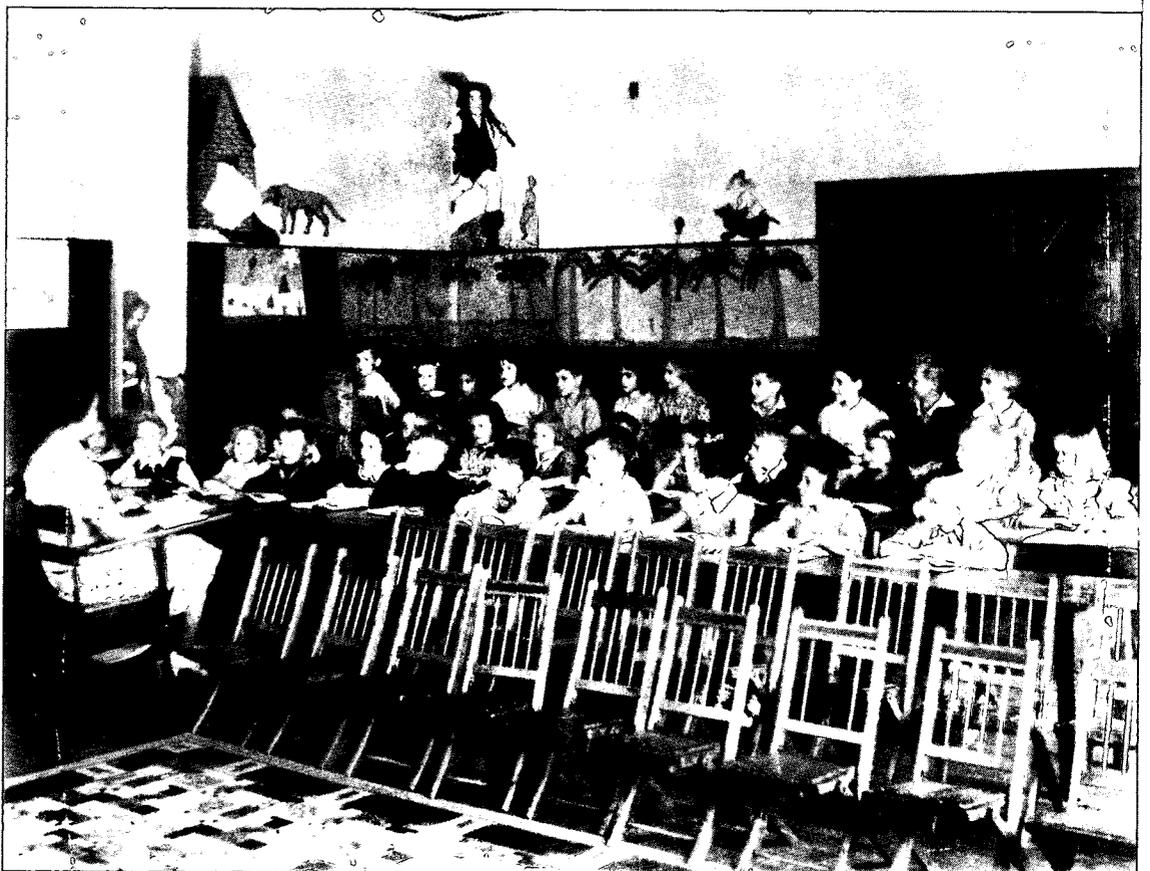
On the other hand, imagine going to school in a newer facility with dependable heating and air conditioning. Lots of courses are offered: calculus, advanced biology, chemistry, and physics, several foreign languages, journalism, as well as creative writing. There are plenty of desks, blackboards, and textbooks, plus many state-of-the-art computers which can be checked out and taken home overnight. The media center has

audio visual equipment that you can use to produce your own videos for special projects; the chemistry lab has many high-tech instruments, including digital read-out balances; the library has more than 26,000 volumes; the art department has a kiln, a press, and extensive art supplies; there is a publishing center—complete with an up-to-date graphics department—where the school newspaper is printed. Classes are smaller, so your teachers have more time to help you.

Although it is hard to imagine that schools could be so different, these schools are not hypothetical. They are composite descriptions of schools across North Carolina.

The reason these schools differ is because they receive disparate amounts of funding from federal, state, and local governments—the traditional funding sources of public schools across the nation. In the United States, the nationwide average of federal funding is 7.0 percent and state and local governments chip in roughly equal amounts—45.7 percent and 47.3 percent respectively.<sup>1</sup> In North Carolina, 7.5

*A first grade class at Davie Elementary School in Statesville, 1938*



*N. C. Division of Archives and History*

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## ***Snapshots of Schools Across North Carolina: Are They Adequate?***

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- In Robeson County, at Rowland Norment Elementary School, the facilities are in desperate need of repair. “This school is infested with termites, has corroded exposed pipes, cracked walls, and peeling paint. The school has poor lighting and poor acoustics. The library has tables with broken legs and numerous books that are outdated and in poor condition.” At St. Paul’s High School, the science classes need “microscopes, Bunsen burners, electronic balances, multimeters, models, charts, and other basic science supplies. Some safety equipment, such as the eye wash, does not work, while other safety items, such as goggles and gloves, are simply not available.”<sup>1</sup>
- In Halifax County, at Inborden Elementary School, signs are posted throughout the school warning of asbestos. But that is not the only problem. “Textbooks are frequently in short supply. In addition to shortages, students must often make do with worn out and outdated textbooks. Other supplementary materials that are recommended to accompany state textbooks are frequently unavailable, or must be shared with other classes. Classrooms often do not have resources such as dictionaries.”<sup>2</sup>
- In Vance County, “there are no elementary school programs in second languages, drama, creative movement education, choral music or instrumental music—all of which are basic elements in North Carolina’s Standard Course of Study.” Furthermore, “[t]he school system has experienced considerable difficulties attracting and retaining well-qualified teachers.”<sup>3</sup>
- In Hoke County, increasing enrollment presents a variety of problems. “With no locally paid teachers we have an inordinate number of combination grade classes (There are not enough teachers to provide for self-contained grade levels.) and frequently exceed class size maximums.”<sup>4</sup>
- In Cumberland County, “[f]ew, if any, schools have adequate technology in the area of computers. Indeed, many of these schools lack much more basic equipment, such as overhead projectors. . . . The children of Cumberland County do not have anything approaching the educational opportunities available to children in wealthier North Carolina school districts.”<sup>5</sup>

### FOOTNOTES

<sup>1</sup> Affidavit of Purnell Swett, Superintendent of the Robeson County School System.

<sup>2</sup> Affidavit of Willie J. Gilchrist, Superintendent of the Halifax County School System.

<sup>3</sup> Affidavit of A. Craig Phillips, Superintendent of the Vance County School System.

<sup>4</sup> Affidavit of William C. Harrison, Superintendent of the Hoke County School System.

<sup>5</sup> Affidavit of John R. Griffin, Jr., Superintendent of the Cumberland County School System.

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percent of public school funding is federal, 64.3 percent is state, and 28.2 percent is local (see Table 1). Deriving such a substantial percentage of funds from local governments, however, creates the problem. Most local funds are raised by property taxes, a tax levied by cities and counties on property that is owned by residents. The rates of taxation vary widely from locality to locality, as does the tax base—the value of property that exists in a city or county on which a tax may be imposed. Therefore, the revenue generated by property taxes varies

enormously. The resulting disparities in expenditures exist in school districts across the nation. For example, in North Carolina, Hyde County spent \$7460 per-pupil in 1994–95, almost 96 percent more than the \$3809 Onslow County spent (see Table 2).

### **The Right to Education**

**I**n 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*,<sup>2</sup> the California Supreme Court ruled that the reliance on local property taxes to fund the California school system violated the federal constitution. The Texas action, *San Antonio Independent School District v. Rodriguez*,<sup>3</sup> brought in federal district court, reached the U.S. Supreme Court on appeal before *Serrano*. In 1972, the U.S. Supreme Court ruled against the Mexican-American parents from Texas.

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 rights such as free speech and privacy. Second, the Court said that the way the Texas schools were financed did not violate the equal protection clause of the 14th Amendment of the U.S. Constitution. Although the Court conceded the system the state used to finance schools was imperfect, 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."<sup>4</sup> This is one legal principle that undergirds school finance policy: "The courts have firmly established the *states'* authority over education."<sup>5</sup> The U.S. Supreme Court's decision in *Rodriguez* foreclosed the use of federal courts and the federal constitution for school finance challenges, such as the *Serrano* appeal. Thus, since 1972, plaintiffs have looked to state courts for relief in funding disparity suits. Defendants rarely argue that the disparities in funding do not exist. Rather, the issue is whether the disparities are unconstitutional.

### **Plaintiffs' Arguments: Disparities are Unconstitutional**

**M**ost successful school finance suits have had several factors in their favor. First, they have been brought on the basis of education clauses or equal protection clauses in *state constitutions*. The North Carolina state constitution has such an education clause. Article I, Section 15 states that the people of this state have a right to the privilege of education and that it is the duty of the State to guard and protect that right. Also, Article IX, Section 2(1) directs the General Assembly to provide a *general and uniform* system of free public schools. This provision is comparable with the education

provisions in other state constitutions, some of which require "thorough," "efficient," "suitable," or "adequate" systems of free public schools.

Such clauses can help establish that education is a fundamental state right. Article I of the North Carolina Constitution is entitled the "Declaration of Rights" and Section 15 follows sections on religious liberty and the freedom of speech. It precedes sections on *ex post facto* laws (a law which punishes a person for something he did, even though at the time it was done the action was not a crime) and slavery. It could be argued that the nestling of education in our state constitution among some of the most important individual rights indicates that education is a fundamental right in this state, and as such, it would be protected by the equal protection clause.

State constitutional equal protection provisions, while substantially equivalent to the federal equal protection clause, possess an "independent vitality."<sup>6</sup> Thus, the equal protection clause of state constitutions may be interpreted independently of the U.S. Supreme Court's interpretation of the federal equal protection clause, so state courts are largely unrestrained by the precedent set in *Rodriguez*. If plaintiffs can prove either that education is a fundamental state right or that wealth is a suspect classification (such as, race or national origin), then the court may apply the legal standard of *strict scrutiny*, and the funding scheme will be struck down unless the state can prove it is necessary to achieve a compelling government purpose.

Plaintiffs in funding suits, citing these state constitutional provisions, assert that the disparities in funding among school districts are unconstitutional because of the resulting *inequalities* among districts as well as the *inadequate educational opportunities* that exist for the school children from the poorer districts. "Adequacy arguments, demanding for all students an opportunity to enjoy the schooling mandated by the state's charter, offer a natural . . . alternative [to inequality arguments]."<sup>7</sup> In North Carolina, the adequacy of education might be measured by comparing the educational program provided in a given school district with the Basic Education Program (BEP) required to be provided by statute.<sup>8</sup>

Under the BEP, schools must offer a core curriculum, including arts, communication skills,

—continued on p. 128

**Table 1. Percent of Revenue Receipts by Source, 1993-94**

Rank*	State	Federal	State	Local
1.	Hawaii	7.9	90.3	1.8
2.	New Mexico	12.8	75.3	11.9
3.	Alabama	12.7	65.7	21.6
4.	Kentucky	9.9	68.3	21.7
5.	Washington	5.8	71.5	22.6
6.	Alaska	12.6	63.6	23.8
7.	West Virginia	7.9	67.1	25.0
8.	Delaware	8.3	66.4	25.3
9.	Arkansas	9.4	62.7	27.9
10.	<b>North Carolina</b>	<b>7.5</b>	<b>64.3</b>	<b>28.2</b>
11.	Oklahoma	7.4	63.3	29.4
12.	Idaho	8.3	62.4	29.4
13.	Mississippi	17.7	51.8	30.5
14.	Louisiana	11.7	55.4	32.9
15.	California	8.8	54.3	36.9
16.	Utah	6.8	55.6	37.5
17.	Tennessee	9.6	48.6	41.8
18.	Florida	9.4	48.7	41.9
19.	Iowa	5.5	51.6	42.9
20.	Wyoming	5.9	50.9	43.2
21.	South Carolina	9.3	47.4	43.3
22.	Indiana	5.2	51.2	43.6
23.	Maine	7.6	48.3	44.1
24.	Georgia	7.9	47.9	44.3
25.	Kansas	5.5	49.8	44.8
26.	Minnesota	4.3	50.6	45.1
27.	North Dakota	11.8	42.6	45.7
28.	Nebraska	6.1	46.3	47.6
29.	Arizona	8.9	42.3	48.9
30.	Colorado	8.9	42.3	48.9
31.	Texas	7.3	43.2	49.5
32.	Oregon	7.3	41.0	51.7
33.	Pennsylvania	4.6	42.1	53.2
34.	New Jersey	3.4	42.9	53.6
35.	Ohio	6.0	40.1	53.9
36.	Montana	9.4	36.7	53.9
37.	New York	5.9	39.5	54.7
38.	Connecticut	4.6	40.1	55.3
39.	Maryland	5.6	39.0	55.4
40.	Missouri	6.4	37.4	56.2
41.	Wisconsin	4.6	37.1	58.3
42.	Rhode Island	5.2	36.5	58.3
43.	Illinois	8.2	32.8	59.1
44.	Nevada	4.6	36.0	59.3
45.	Virginia	4.8	34.4	60.7
46.	South Dakota	12.0	27.1	60.9
47.	Michigan	5.7	32.1	62.2
48.	Massachusetts	6.1	31.0	62.9
49.	Vermont	4.9	31.7	63.4
50.	New Hampshire	2.8	8.3	88.9

\* Rank is based on states least dependent on local sources of revenue.

Source:  
 "Percent of Revenue Receipts by Source,"  
*Rankings of the States 1994*,  
 National Education Association.

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## State Courts Rule on the Financing of Public Schools

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The following 15 state courts have held that funding disparities violate their state constitution:

1. Alabama            *Alabama Coalition for Equity v. Hunt*, 624 So.2d 107 (Ala. 1993);
  2. Arizona            *Roosevelt Elementary School District No. 66 v. Bishop*, 877 P.2d 806 (Ariz. 1994);
  3. Arkansas           *Dupree v. Alma School District No. 30*, 651 S.W.2d 90 (Ark. 1983);
  4. California        *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971)(*Serrano I*); *Serrano v. Priest*, 557 P.2d 929 (Cal. 1976)(*Serrano II*); *Serrano v. Priest*, 226 Cal. Rptr. 584 (Cal. 1986)(*Serrano III*); *Butt v. State*, 842 P.2d 1240 (Cal. 1992);
  5. Connecticut       *Horton v. Meskill*, 376 A.2d 359 (Conn. 1977);
  6. Kentucky           *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989);
  7. Massachusetts     *McDuffy v. Secretary of Executive Office of Education*, 615 N.E.2d 516 (Mass. 1993);
  8. Montana            *Helena Elementary School District No. 1 v. State*, 769 P.2d 684 (Mont. 1989), *amended*, 784 P.2d 412, 413-14 (Mont. 1990);
  9. New Jersey        *Robinson v. Cahill*, 303 A.2d 273 (N.J. 1973); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990);
  10. New Hampshire   *Claremont School District v. Governor*, 635 A.2d 1375 (N.H. 1993);
  11. Tennessee        *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn. 1993);
  12. Texas              *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex. 1989)(*Edgewood I*); *Edgewood Independent School District v. Kirby*, 804 S.W.2d 491 (Tex. 1991)(*Edgewood II*); *Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District*, 826 S.W.2d 489 (Tex. 1992)(*Edgewood III*);
  13. Washington       *Seattle School District No. 1 v. State*, 585 P.2d 71 (Wash. 1978);
  14. West Virginia     *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979); and
  15. Wyoming          *Washakie County School District No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980).
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## State Courts Rule on the Financing of Public Schools, *continued*

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The following 18 state courts have held that funding disparities *did not* violate their state constitution:

1. Colorado            *Lujan v. Colorado State Board of Education*, 649 P.2d 1005 (Colo. 1982);
  2. Georgia            *McDaniel v. Thomas*, 285 S.E.2d 156 (Ga. 1981);
  3. Idaho                *Thompson v. Engelking*, 537 P.2d 635 (Id. 1975); *Idaho Schools for Equal Educational Opportunity v. Evans*, 850 P.2d 724 (Id. 1993);
  4. Illinois             *People ex rel. Jones v. Adams*, 350 N.E.2d 767 (Ill. 1976); *Committee for Educational Rights v. Edgar*, 641 N.E.2d 602 (Ill. 1994);
  5. Maryland           *Hornbeck v. Somerset County Board of Education*, 458 A.2d 758 (Md. 1983);
  6. Michigan            *Milliken v. Green*, 212 N.W.2d 711 (Mich. 1973); *East Jackson Public Schools v. State*, 348 N.W.2d 303 (Mich. 1984);
  7. Minnesota           *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993);
  8. Nebraska            *Gould v. Orr*, 506 N.W.2d 349 (Neb. 1993);
  9. New York            *Board of Education v. Nyquist*, 439 N.E.2d 359 (N.Y. 1982); *REFIT v. Cuomo*, 199 A.D.2d 488 (N.Y. 1993);
  10. North Carolina    *Leandro v. State*, 468 S.E.2d 543 (N.C. 1996);
  11. North Dakota      *Bismarck Public School District No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994);
  12. Ohio                *Board of Education v. Walter*, 390 N.E.2d 813 (Ohio 1979);
  13. Oklahoma           *Fair School Finance Council v. State*, 746 P.2d 1135 (Okla. 1987);
  14. Oregon             *Olsen v. State*, 554 P.2d 139 (Or. 1976); *Coalition for Equitable School Funding v. State*, 811 P.2d 116 (Or. 1991);
  15. Pennsylvania      *Danson v. Casey*, 399 A.2d 360 (Pa. 1979);
  16. South Carolina     *Richland County v. Campbell*, 364 S.E.2d 470 (S.C. 1988);
  17. Virginia            *Scott v. Commonwealth*, 443 S.E.2d 138 (Va. 1994); and
  18. Wisconsin          *Kukor v. Grover*, 436 N.W.2d 568 (Wis. 1989).
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physical education, math, computer skills, science, second languages, social studies, and vocational education. The BEP also sets forth minimal standards for facilities, equipment, materials, class size, and staffing. To the extent that districts fail to meet the requirements of the BEP, an inadequacy claim could be brought in North Carolina. In 1994, a significant portion—36.1 percent—of the BEP remained unfunded,<sup>9</sup> and, according to Jim Johnson, senior fiscal policy analyst at the General Assembly, the BEP still is not fully funded.<sup>10</sup> The funding system, so the argument goes, is unconstitutional because it results in districts with inadequate course offerings, facilities, and equipment as measured against the BEP which determines “what each child in the North Carolina public schools is guaranteed.”<sup>11</sup>

An equality argument, on the other hand, would go one step further noting to the court that the BEP is just that—basic. The BEP does not equalize educational opportunities among school districts: therefore, the BEP does not require the teaching of calculus, advanced biology, chemistry, or physics, or other classes needed to get into college that are often available in wealthier school districts. In an appendix to the BEP, such classes are suggested as appropriate

electives for high school, but school districts which choose to offer these classes “are expected to do so at local expense.”<sup>12</sup> The BEP might even be challenged—instead of using it to define what is adequate, it could be argued that the BEP itself is inadequate. Among other things, the BEP does not, for instance, take into account the special education needs of children from poorer districts.

Also, in successful suits, the factual records generally have been extensive and well documented. “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.”<sup>13</sup>

Sympathetic courts have been concerned that taxpayers in property-poor districts paid in some cases higher tax *rates* for education than taxpayers in property rich districts. Because the higher tax rates generated revenues in comparatively smaller amounts, property-poor districts could not afford to spend for the education of their pupils, on a per-pupil basis, the same

amounts that the rich towns could. Several options exist, including: 1) the state could redistribute property taxes from the richer to poorer districts, or 2) it could supplement local revenues with state funds from statewide taxes. However, courts often find that such state programs do not adequately *equalize* the amounts available to individual districts.

North Carolina already has two programs in place designed to provide additional funds to low-wealth counties. Since 1991, counties have been eligible to receive *low wealth supplemental funds* if their property tax base is below the state average and their tax rate is above the state average. So, only low-wealth counties making high tax efforts are able to get the dollars. The North Carolina General Assembly appropriated \$41.5 million dollars a year for the fiscal years 1995–96 and 1996–97 for this program.<sup>14</sup> However, as a *Fayetteville Observer-Times* editorial pointed out, that amount “doesn’t sound so impressive when it’s doled out among the 70 percent or so of schools that qualify. And remember: The goal had been \$100 million a year. Even *that* figure had been considered low. The amount originally said to be needed was \$200 million.”<sup>15</sup> Also in place since 1991, *small schools supplemental funds* provide additional money to counties with enrollments below 3,150 students or to counties whose enrollments are between 3,000 and 4,000 students if their property tax base is below the state average.<sup>16</sup> This funding is intended to help very small school districts provide the standard course of study and additional teachers.

### **Defendants’ Arguments: Disparities are Constitutional**

**M**any states, on the other hand, have held that disparities in school financing are constitutional. One of the major reasons cited by courts for sustaining inequitable financing schemes has been the preservation of local control. Also, courts say “[a]llowing local communities to go above and beyond established minimums to provide to their people encourages the best features of democratic government.”<sup>17</sup> Local control has long been the rallying cry of school districts: locally set tax rates and locally elected school boards are two of the most visible signs of local control in most communities. It arises from a deeply ingrained conviction held by Americans—that a child’s education can best

be provided by the community in which they will live and work as productive citizens in the future.

To the extent that defendants successfully argue that education is not a fundamental right or that wealth is not a suspect class, courts will apply a different legal test, the *rational basis* standard. Many courts, such as the Supreme Court in Ohio, have held that local control is a rational basis for upholding the state’s system of financing the public schools. 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 and participation in the decision-making process as to how these local tax dollars are to be spent.”<sup>18</sup>

Most defendants also argue that the issue of financing the public schools is a policy or political matter for the legislature, not the courts. Courts may use the constitutional principle of separation of powers between the three branches of government to stay out of disputes like school finance, which basically come down to the level of funding that will be provided for public education.<sup>19</sup> When courts agree with this theory, they decide that the issues are not *justiciable*, or proper for the court to decide.

State defendants can also assert that equal educational opportunities, not equality of resources, is the promise of state constitutional provisions. Parity or substantial equivalence of funding between rich and poor districts is alleged to be sufficient. “There is no mandate in state constitutions to do this,” says Vanderbilt University professor Thomas McCoy, whose specialty is school funding suits. “Courts ‘are taking a very liberal or broad view of their state constitutions to arrive at the conclusion that education funding must be equal.’”<sup>20</sup> The concept of equal educational opportunities is also argued to refer to equal *access* to schools, thus only barring racial segregation.<sup>21</sup> Because access to education for all children is provided and, similarly, no absolute denial of education has occurred, defendants argue that the equal protection clause is inapplicable.

### **Remedies Prove Elusive**

**O**nce a court decides that a state’s system of funding its public schools is unconsti-



tutional, then what? In many cases, the court has directed the legislature to devise a remedy to address the constitutional violation. However, when the remedy is left to the legislature, redress is often not forthcoming because (1) of the political power of legislators from property-wealthy districts, and (2) voter resistance to paying the higher taxes required to equalize funding.<sup>22</sup>

It has been difficult for the legislature in New Jersey, for example, to develop a public school financing scheme that addresses the court's concerns and has popular support. The result in such cases may be inaction, inadequate legislation, or inadequate funding. The courts have been reluctant to step in and reinvolve themselves in fashioning the remedy for several reasons: (1) separation of powers—judicial deference to the legislative remedy; (2) taxing and appropriations powers—clearly within the legislature's province in state constitutions; and (3) fear that the judiciary's protection of the rights of less powerful groups will result in an organized effort to amend the state's constitution.<sup>23</sup>

Another option is for the court itself to formulate the remedy. In Kentucky, the Supreme Court held that the entire system of school fi-

nance and governance violated the state constitution's mandate to provide an "efficient system of common schools throughout the state."<sup>24</sup> The Court then spelled out education standards in terms of equality and adequacy. The legislature was ordered to fund the system adequately.

Most courts, however, have been more cautious in setting forth remedies. And, often there is a "gap between right and remedy [that] can be traced to fundamental conflicts between the interests of the grievants and those of the institutional actors."<sup>25</sup>

### **Two Remedies with Drawbacks: Earmarking and Lotteries**

**T**wo remedies often relied on by states to provide new revenue for schools, earmarking and lotteries, have significant drawbacks and should be considered carefully before being implemented in a state.<sup>26</sup> Earmarking refers to the practice of dedicating state revenue for a specific program, in this case the financing of public schools. Thirty states earmark revenue for this purpose. There are two ways to earmark funds. The conventional method is to earmark

revenue from a specific tax (sales or tobacco tax, for example) to be dedicated to funding public education. California developed another way to earmark funds when it decided to dedicate a certain percentage of its overall state budget to education—40 percent of California's general fund is earmarked for this purpose. Often, once funds are earmarked, it is difficult to obtain additional funds for the specified purpose and earmarking a percentage of a state budget obviously impacts the funding of other state programs.

North Carolina already earmarks funds for education. In 1983 and then again in 1986, the General Assembly authorized counties to levy an additional one-half cent sales and use tax, with a specified percentage of the resulting revenue earmarked for capital construction. Legislators in 1987 increased the corporate income tax and earmarked the additional revenue for school construction by establishing the Public School Capital Building Fund and the Critical School Facility Needs Fund.<sup>27</sup> The earmarked funds for capital needs provided school districts with \$1.5 billion dollars from 1984 to 1993, only half of the total dollars spent on construction during this period.<sup>28</sup> Local governments paid the balance of the school construction bill.<sup>29</sup>

Many states have earmarked funds from lotteries to fund public education. However, lotteries may in fact harm educational funding for the following reasons: "(1) Lotteries contribute only a fraction of the funding needed for education, . . . (2) Lotteries are an unstable source of revenue, due to waning interest over time and their susceptibility to changes in the economy. (3) Education budgets might be reduced, then refilled by lottery proceeds—lessening the actual enhancement of the budget. (4) When lotteries are used, the public may falsely believe that schools are adequately funded, making it difficult to raise funds through other sources."<sup>30</sup>

### North Carolina: Funding Disparities Continue to Increase

In 1984, 1985, 1989, and now again in 1996, research by the N.C. Center for Public Policy Research found a significant difference in per-pupil spending among North Carolina's school districts. "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 when the Center first reported this disparity in a 1984 issue of *North Carolina Insight*, the Center's magazine.<sup>31</sup>

Fonveille, pointing out the wide variety of course offerings among the school districts, said, "expenditure equity is not the same as program equity." She noted that while every school cannot offer advanced Latin, minimum course requirements and creative efforts such as cross-district services and access to community colleges could provide more equality in course offerings. "By funding a minimum, comprehensive program and imposing statewide standards, the state could focus on program equity as well as expenditure equity," concluded Fonveille. The Basic Education Program (BEP) was later adopted by the state legislature. Nevertheless, funding disparities have not decreased.

Instead, the disparity in *state per-pupil expenditures* among the 119 school districts actually increased.<sup>32</sup> In 1983–84, Hyde County spent the most state funding per-pupil (\$1761) and Cumberland County spent the least (\$1345)—a difference of \$416. Hyde County spent *31 percent* more than Cumberland County. In 1987–88, the difference between Hyde County (\$2967) and Onslow County (\$2098) was \$869 or *41 percent*. In 1994–95, the difference between Hyde County (\$5743) and Onslow County (\$3069) was \$2683 or *88 percent*, a significant increase in spending disparity over the past ten years.

The disparity in *total per-pupil expenditures* also increased significantly, despite a decrease between 1983–84 and 1987–88. The affluent Chapel Hill/Carrboro City district spent *58 percent* more per-pupil than the poorer Davidson County district in 1983–84. That difference had decreased to *56 percent* when comparing Tryon City in Polk County and Onslow County in 1987–88. But, in 1994–95, that difference dramatically increased to *96 percent* when comparing total per-pupil expenditures for Hyde County (\$7460) and Onslow County (\$3809).<sup>33</sup>

And, the difference in *local per-pupil expenditures*<sup>34</sup> is still huge. In 1987–88, Chapel Hill/Carrboro City spent more than 5 times as much money per-pupil (\$1535) than Fairmont City in Robeson County (\$287). Chapel Hill/Carrboro City now spends more than 7.5 times as

—continued on page 137

**Table 2. Per-Pupil Expenditure Ranking, Average Daily Membership, Low Wealth Allocation, and Small Schools Allocation for North Carolina School Systems, 1994-95**

School System	State		Federal		Local		Total		ADM		State Allocation	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank		Rank	Wealth	Small School
Alamance County	\$3262.74	107	\$174.92	98	\$749.84	69	\$4187.50	109	11151	29	\$ 0	\$ 0
Burlington City	3275.53	101	198.32	82	1043.14	26	4516.99	70	6378	55	NA	0
Alexander County	3372.12	80	167.15	105	521.28	105	4060.55	116	4878	67	158,951	0
Alleghany County	4509.32	4	379.47	17	695.98	79	5584.77	5	1455	112	2,054	617,021
Anson County	3699.73	33	268.92	50	700.86	78	4669.51	52	4330	71	404,995	0
Ashe County	3833.28	25	291.40	43	605.73	95	4730.41	47	3443	83	119,387	0
Avery County	4088.48	14	325.22	32	952.30	34	5366.00	12	2390	100	0	518,348
Beaufort County	3577.19	44	334.88	26	864.14	46	4776.21	43	7655	43	360,345	0
Bertie County	3862.47	24	375.48	18	485.40	113	4723.35	49	3949	75	500,363	631,805
Bladen County	3741.00	30	468.44	6	675.02	84	4884.46	40	5379	62	452,020	0
Brunswick County	3313.08	95	213.01	79	1016.66	29	4542.75	65	8885	36	0	0
Buncombe County	3377.75	78	165.22	107	1056.92	22	4599.89	57	23518	8	0	0
Asheville City	3621.23	38	765.20	1	2224.98	2	6611.41	2	4493	70	NA	0
Burke County	3446.12	64	169.76	101	764.64	65	4380.52	89	12780	26	575,084	0
Cabarrus County	3226.94	112	137.39	115	775.75	61	4140.08	112	14973	19	0	0
Kannapolis City	3393.73	74	189.42	91	873.64	44	4456.79	78	3922	78	NA	0
Caldwell County	3325.67	93	178.16	97	754.43	67	4258.26	103	11466	28	587,365	0
Camden County	4311.88	8	289.15	45	704.90	75	5305.93	13	1210	115	106,527	561,460
Carteret County	3288.68	98	231.18	68	1015.60	30	4535.46	67	8031	40	0	0
Caswell County	3803.81	26	249.81	59	610.71	93	4664.33	54	3379	84	267,058	521,874
Catawba County	3210.12	114	133.66	116	863.59	47	4207.37	107	13513	24	0	0
Hickory City	3360.19	84	235.40	64	1146.09	17	4741.68	46	4168	73	NA	0
Newton-Conover	3779.07	28	217.35	74	1165.33	16	5161.75	17	2751	94	NA	0
Chatham County	3353.72	85	141.32	113	1088.59	20	4583.63	59	6262	56	0	0
Cherokee County	3909.68	22	317.74	35	480.98	114	4708.40	50	3366	86	195,094	571,594
Edenton-Chowan	3936.40	21	256.53	55	759.83	66	4952.76	37	2572	97	181,276	592,045
Clay County	4395.04	6	214.64	77	451.56	116	5061.24	27	1200	116	38,343	604,698
Cleveland County	3408.53	72	198.41	81	687.48	80	4294.42	101	8362	37	524,590	0

**Table 2. Per-Pupil Expenditure Ranking, Average Daily Membership, Low Wealth Allocation, and Small Schools Allocation for North Carolina School Systems, 1994-95, *continued***

School System	State		Federal		Local		Total		ADM		State Allocation	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank	ADM	Rank	Low Wealth	Small School
Kings Mountain	3582.39	42	230.50	69	944.49	35	4757.38	45	3926	77	NA	0
Shelby City	3504.34	51	398.59	15	1052.79	23	4955.72	36	3193	87	NA	0
Columbus County	3504.21	52	416.44	13	533.50	104	4454.15	80	7586	44	862,220	0
Whiteville City	3618.84	39	293.99	41	503.05	109	4415.88	86	2764	93	NA	0
Craven County	3274.34	102	430.72	11	714.06	74	4419.12	84	14233	21	714,228	0
Cumberland County	3125.98	117	291.75	42	753.62	68	4171.35	111	49030	4	2,041,430	0
Currituck County	3626.55	36	195.70	85	1431.70	9	5253.95	15	2892	92	0	538,392
Dare County	3408.76	71	172.35	99	1557.20	6	5138.31	20	3931	76	0	0
Davidson County	3219.95	113	138.64	114	613.10	92	3971.69	117	16988	17	296,390	0
Lexington City	3509.89	49	256.67	54	1323.37	11	5089.93	24	2927	91	NA	0
Thomasville City	3637.87	35	353.02	23	1100.76	19	5091.65	23	2101	104	NA	0
Davie County	3445.54	65	179.73	95	920.39	41	4545.66	64	4686	69	0	0
Duplin County	3341.35	87	276.21	49	488.66	112	4106.22	114	8043	39	488,569	0
Durham County	3271.16	104	194.25	88	1969.43	3	5434.84	11	27215	7	0	0
Edgecombe County	3461.55	59	335.91	25	776.25	60	4573.71	61	7843	42	548,565	0
Forsyth County	3250.18	110	167.26	104	1638.45	4	5055.89	28	38811	5	0	0
Franklin County	3394.23	73	289.04	46	678.81	83	4362.08	94	6443	54	619,083	0
Gaston County	3280.53	99	181.94	94	791.40	59	4253.87	104	28544	6	0	0
Gates County	4062.08	16	243.09	61	867.64	45	5172.91	16	1873	109	192,376	601,472
Graham County	4626.00	3	576.50	3	292.37	119	5494.87	7	1225	113	69,684	594,428
Granville County	3338.67	88	234.56	65	849.54	51	4422.77	81	6848	51	582,650	0
Greene County	3984.51	19	458.17	8	619.62	91	5062.30	26	2715	95	232,254	529,303
Guilford County	3369.91	82	178.73	96	1563.25	5	5111.89	22	54756	3	0	0
Halifax County	3689.51	34	470.05	5	504.19	108	4663.75	55	6177	57	1,058,078	0
Roanoke Rapids City	3444.69	66	195.24	86	1176.35	15	4816.28	41	3066	89	NA	0
Weldon City	4075.14	15	438.92	10	1425.19	10	5939.25	4	1216	114	NA	0
Harnett County	3384.78	76	225.24	71	492.97	111	4102.99	115	13067	25	1,462,094	0

—continued

**Table 2. Per-Pupil Expenditure Ranking, Average Daily Membership, Low Wealth Allocation, and Small Schools Allocation for North Carolina School Systems, 1994-95, *continued***

School System	State		Federal		Local		Total		State Allocation			
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank	ADM	ADM	Rank	Low Wealth
Haywood County	3607.86	41	263.97	52	1064.85	21	4936.68	38	7109	47	50,130	0
Henderson County	3257.48	109	191.79	90	930.41	40	4379.68	90	10473	30	0	0
Hertford County	3435.03	69	363.05	19	717.52	72	4515.60	71	4253	72	528,087	0
Hoke County	3469.31	56	327.23	31	440.26	117	4236.80	105	5489	60	874,766	0
Hyde County	5742.78	1	529.72	4	1187.84	14	7460.34	1	771	118	0	635,187
Iredell-Statesville	3314.27	94	169.86	100	933.21	38	4417.34	85	13617	23	NA	0
Mooresville City	3261.82	108	113.08	119	887.41	43	4262.31	102	3183	88	NA	0
Jackson County	3794.71	27	348.82	24	818.69	55	4962.22	34	3374	85	0	0
Johnston County	3457.00	60	166.92	106	684.03	82	4307.95	98	15852	18	1,045,218	0
Jones County	4478.67	5	425.57	12	570.44	98	5474.68	8	1524	111	106,250	619,517
Lee County	3247.12	111	244.50	60	822.32	54	4313.94	97	7936	41	106,113	0
Lenoir County	3474.75	54	331.83	27	771.82	63	4578.40	60	10227	31	499,929	0
Lincoln County	3329.79	91	167.79	103	684.08	81	4181.66	110	9091	35	159,994	0
Macon County	3614.40	40	254.27	56	766.33	64	4635.00	56	3581	82	0	0
Madison County	4145.14	11	322.36	33	510.81	107	4978.31	32	2497	99	140,410	552,706
Martin County	3623.67	37	395.39	16	955.61	33	4974.67	33	4898	66	362,107	0
McDowell County	3471.14	55	188.96	92	639.82	88	4299.92	99	6052	59	391,996	0
Mecklenburg County	3270.42	105	202.08	80	1545.13	7	5017.63	30	84,216	1	0	0
Mitchell County	4044.48	17	220.01	73	460.38	115	4724.87	48	2320	102	115,116	525,848
Montgomery County	3578.93	43	303.75	39	537.32	103	4420.00	83	4141	74	246,419	0
Moore County	3273.02	103	228.57	70	1022.70	28	4524.29	69	9851	32	0	0
Nash-Rocky Mount	3270.12	106	285.86	47	930.55	39	4486.53	72	16998	16	707,325	0
New Hanover County	3276.69	100	214.81	76	1040.26	27	4531.76	68	20,318	10	0	0
Northampton County	3715.64	32	358.75	20	625.44	90	4699.83	51	3732	81	416,370	521,520
Onslow County	3059.62	119	231.73	67	517.60	106	3808.95	119	19835	11	1,755,236	0
Orange County	3455.51	62	187.41	93	1437.80	8	5080.72	25	5464	61	0	0
Chapel Hill-Carrboro	3178.15	116	123.86	118	2252.39	1	5554.40	6	7509	46	NA	0
Pamlico County	4030.26	18	328.61	28	572.33	97	4931.20	39	2120	103	135,816	541,287

**Table 2. Per-Pupil Expenditure Ranking, Average Daily Membership, Low Wealth Allocation, and Small Schools Allocation for North Carolina School Systems, 1994-95, *continued***

School System	State		Federal		Local		Total		ADM		State Allocation	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank	ADM	Rank	Low Wealth	Small School
Pasquotank County	3441.24	67	264.08	51	714.82	73	4420.14	82	6081	58	495,603	0
Pender County	3372.67	79	303.61	40	863.45	48	4539.73	66	5340	63	350,052	0
Perquimans County	4197.76	9	448.89	9	609.65	94	5256.30	14	1899	108	195,205	544,822
Person County	3384.68	77	252.53	57	912.86	42	4550.07	63	5273	64	0	0
Pitt County	3303.56	96	258.01	53	808.39	58	4369.96	93	18646	12	690,101	0
Polk County	4164.10	10	236.73	63	1043.44	25	5444.27	10	2083	105	0	544,135
Randolph County	3188.01	115	115.46	111	549.69	102	3893.16	118	14622	20	424,821	0
Asheboro City	3419.55	70	232.10	66	1118.16	18	4769.81	44	3797	80	NA	0
Richmond County	3501.75	53	291.33	44	567.07	99	4360.15	95	8106	38	844,425	0
Robeson County	3452.54	63	402.72	14	554.22	101	4409.48	87	22518	9	3,066,840	0
Rockingham County	3461.79	58	224.00	72	704.64	76	4390.43	88	13931	22	593,952	0
Rowan-Salisbury	3341.48	86	165.10	108	730.10	71	4236.68	106	17939	14	461,214	0
Rutherford County	3467.92	57	240.44	62	773.24	62	4481.60	74	9738	33	492,221	0
Sampson County	3507.37	50	309.46	37	559.86	100	4376.69	91	6813	52	560,281	0
Clinton City	3371.35	81	250.90	58	973.88	32	4596.13	58	2505	98	NA	0
Scotland County	3533.22	46	313.00	36	937.23	36	4783.45	42	6971	50	677,107	0
Stanly County	3388.64	75	156.05	110	581.40	96	4126.09	113	7053	48	383,965	0
Albemarle City	3724.96	31	283.76	48	1044.68	24	5053.40	29	2079	106	NA	0
Stokes County	3437.29	68	162.04	109	859.27	49	4458.60	77	6462	53	186,061	0
Surry County	3361.73	83	197.70	83	630.33	89	4189.76	108	7579	45	239,162	0
Elkin City	3945.70	20	196.12	84	1011.52	31	5153.34	18	1028	117	NA	0
Mount Airy City	3759.23	29	194.56	87	1199.11	13	5152.90	19	1911	107	NA	0
Swain County	4344.77	7	742.57	2	385.30	118	5472.64	9	1611	110	110,715	667,872
Transylvania County	3333.53	90	215.78	75	934.70	37	4484.01	73	3891	79	0	0
Tyrrell County	5389.20	2	355.77	22	817.59	56	6562.56	3	760	119	49,914	686,571
Union County	3293.92	97	148.38	112	853.62	50	4295.92	100	17273	15	370,286	0
Vance County	3516.32	48	304.26	38	846.35	52	4666.93	53	6982	49	497,751	0

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**Table 2. Per-Pupil Expenditure Ranking, Average Daily Membership, Low Wealth Allocation, and Small Schools Allocation for North Carolina School Systems, 1994-95, *continued***

School System	State		Federal		Local		Total		ADM		State Allocation	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank	ADM	Rank	Low Wealth	Small School
Wake County	3125.49	118	133.16	117	1219.65	12	4478.30	75	76273	2	0	0
Warren County	3896.32	23	467.54	7	641.44	86	5005.30	31	3034	90	335,555	558,497
Washington County	4134.43	13	327.61	30	493.74	110	4955.78	35	2630	96	271,135	555,314
Watauga County	3551.99	45	169.33	102	840.46	53	4561.78	62	4770	68	0	0
Wayne County	3326.71	92	357.53	21	640.00	87	4324.24	96	18336	13	1,547,345	0
Wilkes County	3524.24	47	193.62	89	738.27	70	4456.13	79	9656	34	464,442	0
Wilson County	3334.86	89	317.97	34	809.96	57	4462.79	76	11719	27	303,983	0
Yadkin County	3456.73	61	214.02	78	703.44	77	4374.19	92	5038	65	278,771	0
Yancey County	4143.64	12	327.78	29	657.36	85	5128.78	21	2354	101	110,547	554,009
<b>State Totals</b>												
PPE	\$3369.08		\$230.93		\$979.36		\$4579.37					
ADM									\$1,131,090			
<b>Allocations:</b>												
Low Wealth											\$35,283,809	
Small Schools												\$11,131,342

**NOTES**

*Per Pupil Expenditure:* PPE is based on current expense expenditures. It excludes capital expense expenditures and child nutrition.

*Average Daily Membership:* The total number of school days within a given term or school year that a student is on the current roll of a class, regardless of his being present or absent, is the "number of days in membership" for that student. The sum of the "number of days in membership" for all students divided by the number of school days in the term yields ADM. The final ADM is the total days in membership for all students over the school year divided by the number of days school was in session. ADM is a more accurate count of the number of student in school than enrollment.

*NA:* Not applicable because low wealth funds are allocated by county, not by school district.

*For an explanation of the low wealth and small schools allocations, see page 129 of this article.*

*Sources:* Selected Financial Data 1994-95, Statistical Research Section, Department of Public Instruction. For PPE Ranking, see table 5. For ADM ranking, see table 10. See also Overview: Fiscal and Budgetary Actions, North Carolina General Assembly 1995 Session, Fiscal Research Division, Raleigh, N.C. For low wealth allocation, see pages 395-96. For small schools allocation, see pages 397-99.

—continued from page 131

much money per-pupil (\$2252) than Graham County (\$292).

In 1990, five years after the BEP was enacted, the State Auditor concluded that “[t]he distribution of BEP funds based on [average daily membership] does not contribute to equalized opportunity for education.”<sup>35</sup> There are four reasons for this according to a report to the General Assembly, *A Right Denied: Education Inequity in North Carolina’s Schools*: 1) the BEP has not been fully funded; 2) the BEP, although it establishes standards for facilities, does not allocate resources for capital projects; 3) the BEP, although it acknowledges the greater needs of children with special needs, does not provide additional resources to school districts with large at-risk populations; and 4) the BEP does not take into account the differing abilities of school districts to supplement state dollars with local funds.<sup>36</sup> The state’s low-wealth supplemental funding program also is not making a significant difference in equalizing funding disparity.<sup>37</sup>

North Carolina now ranks 34th in its current expenditures per-pupil across the nation. Examining the federal, state, and local shares of total per-pupil spending reveals the federal share is decreasing. In 1978–79, the federal share of total expenditures was 13.1 percent; in 1987–88, it was 7.7 percent; and in 1993–94, it was 7.5 percent. The share of state funds continues to average 65 percent: in 1983–84, the state share was 64.0 percent; in 1987–88, it was 69.3 percent; and in 1993–94, it was 64.3 percent. The share of local funds is significant, decreasing only slightly from 23.6 percent of the total in 1983–94 to 23.0 percent in 1987–88, and increasing to 28.2 percent in 1993–94. See Table 3 for a description of North Carolina’s public school financing system.

Charles D. Liner, a faculty member of North Carolina’s Institute of Government and public school finance analyst, finds that such differences in spending are not very meaningful when trying to assess the adequacy of resources in various school districts. “[A] large county with a dispersed student population will have much higher transportation costs per student than a small, urban unit. Likewise, heating costs for a school in the mountains will be higher than for a school in the coastal areas. The cost of providing teachers from state funds varies because state salaries are based on teachers’ education

and experience. Units with low turnover of teachers may account for more state funds per student for teacher salaries because their more experienced teachers receive higher state salaries.”<sup>38</sup> Per-pupil expenditures do not succeed in reflecting the differences between large and small school systems, or rural and urban school systems. Nor are they an *ideal* measure of the quality of educational opportunity. However, they are readily available statistics that can be meaningfully compared.

### Lawsuits in North Carolina

In 1994, a lawsuit—*Leandro v. State*—asserting unconstitutional school funding disparities was filed on behalf of five low-wealth counties in North Carolina—Cumberland County, Hoke County, Halifax County, Robeson County, and Vance County. “The complaint states that despite the constitutional requirement, the system for funding public schools does not provide adequate or equal educational opportunities for students in North Carolina’s low-wealth counties. It asserts that the education provided is inadequate when compared to both the minimal requirements contained in the State’s Basic Education Program (BEP) and to the programs, facilities and opportunities available in wealthier counties. . . . The complaint says that students from these districts frequently have to undertake remedial work once in college and face a lifetime of relative disadvantage as a result of inadequate educational opportunities. The suit seeks a declaration that the overall North Carolina school funding system violates the State Constitution . . . .”<sup>39</sup>

This is not the first time such a suit has been filed in North Carolina. In 1987, plaintiffs from Robeson County lost in the North Carolina Court of Appeals in *Britt v. N.C. Board of Education*.<sup>40</sup> In *Britt*, the plaintiffs contended that education was a fundamental right under North Carolina’s Constitution, and that this right was being violated by the state’s school finance system as it then existed. At the trial court level, the plaintiffs’ case was dismissed on a motion and, therefore, little evidence was presented. The appeals court dismissed the plaintiffs’ arguments, and relied upon the history surrounding the drafting of the state constitution. “The fundamental right,” the court held, “that is guaranteed by our Constitution, then, is to equal

**Table 3. Primary Components of the System for Funding Public Schools in North Carolina**

State Money Pays For:	Local Money Pays For:
Superintendents	School Site
Principals	School Buildings
Assistant Principals	Temporary Classroom Units
Teachers	Water and Sewage Facilities
Teacher Assistants	Plant Maintenance
Library and Media Personnel	Electricity
Office Support Personnel	School Furniture
Custodians	Additional School Buses and Garages
Bus Drivers	
Vocational and Technical Education Program	Food Services
Special Education for Handicapped Students	Summer School
Transportation System	
School Safety	
Basic Textbooks	
Low-Wealth Schools Supplemental Fund	Instructional Supplies:
Small Schools Supplemental Fund	blackboards
Critical School Facility Needs Fund	reference books
Public School Building Capital Fund	library equipment
State School Technology Fund	maps
	science equipment

*Source:* See North Carolina General Statutes, sections 115C-12, -96, -106, -156, -232, -249, -263, -265, -272, -285, -289, -301, -315, -316, -408, -418, -489, -517, -521, -522, -524, -525, -546.1. Also see Chapter 507, sections 17.1 and 17.2 of the 1995 N.C. Session Laws.

access to our public schools—that is, every child has a fundamental right to receive an education in our public schools.”<sup>41</sup> Instead of relying on the plain meaning of the language in the North Carolina constitution that requires equal opportunities for all students, the court interpreted Article IX, Section 2(1) to mandate only “equal access to full participation in our public schools, regardless of race or other classification.”<sup>42</sup> Because *Britt* was not decided by the North Carolina Supreme Court,<sup>43</sup> the facts of the case were less than ideal as a vehicle for testing the state’s school finance system, and it did not raise adequacy issues, the 1987 defeat did not close the door for the *Leandro* case.

The State of North Carolina and the State Board of Education filed a motion to dismiss *Leandro* for failure to state a claim. The superior court judge, E. Maurice Braswell, denied the motion. The Court of Appeals granted an interlocutory appeal to the State, and oral arguments were heard on January 25, 1995. On March 19, 1996, the Court of Appeals reversed the trial court’s order denying the State’s motion to dismiss.<sup>44</sup> Chief Judge Gerald Arnold, a former state legislator, wrote the opinion and Judges John Lewis and Ralph Walker concurred.<sup>45</sup>

After noting that “education is primarily the responsibility of parents, teachers, and state

and local school officials, and not of state judges,"<sup>46</sup> the court held that the "general and uniform" clause of the North Carolina constitution requires *system* uniformity, not spending or program uniformity.<sup>47</sup> Then, Judge Arnold opined that the plaintiffs' claim under the "equal opportunities clause" of the Constitution was foreclosed by the *Britt* decision,<sup>48</sup> which "established that the Constitution provides no fundamental right to equal educational opportunities, but simply 'equal access to our public schools.'"<sup>49</sup> According to the opinion of the court, school children in North Carolina do not have a right to an adequate education because the fundamental right afforded by the Constitution is "limited to one of equal access to education, and it does not embrace a qualitative standard."<sup>50</sup> The strict scrutiny legal standard was not used to evaluate the plaintiffs' equal protection or substantive due process arguments because the court had already decided that students did not have a fundamental right to an adequate education, so these claims were dismissed.<sup>51</sup>

The Court of Appeals decision was criticized roundly in the press. An editorial in a paper located in one of the plaintiffs' home counties decried: "It is a grossly unfair outrage for the people of North Carolina that not only has this process been allowed to stand, but that it has been given a seal of approval by a state court."<sup>52</sup> The *Raleigh News & Observer* reported that John Leandro, the father of one of the students who brought the suit, said "If you have access to an education that's inadequate, you might as well not have access."<sup>53</sup>

That sentiment was echoed in an editorial in *The Charlotte Observer*: "Thanks to the Court of Appeals, it is clearer now that North Carolina's Constitution doesn't guarantee much of an education."<sup>54</sup> And an editorial in *The Wilson Daily Times* concluded, "No one can look at the disparities in schools statewide and draw any other conclusion than that funding is inequitable. Such funding penalizes some unfortunate students and rewards others, and violates American principles of fairness and equality."<sup>55</sup>

Attorney General Mike Easley, the state's lawyer, acknowledged that although the system is constitutional, it's not necessarily fair. Editorials in the *Greensboro News & Record* and the *Greenville Daily Reflector* thought the decision was a fair interpretation of the Constitution and that the General Assembly was the

appropriate branch of government to deal with funding equity questions.<sup>56</sup>

The controversial decision will be reviewed by the North Carolina Supreme Court.<sup>57</sup>

### The Importance of Resolving the Issue

Since 1991, when funds were first appropriated for low-wealth and smaller school districts, the North Carolina General Assembly has attempted to remedy disparity in school finance with almost \$50 million appropriated in fiscal year 1994-95. However, the gap in total spending per-pupil by the district that spends the most and the district that spends the least is now 96 percent. Some studies document the widening of the gap,<sup>58</sup> and others document the effects of such a system. "Inadequate and inequitably distributed state funding means that the kind and quality of a child's education depends solely on where he or she lives. What results is a dual system of public education: one for the rich and one for the poor," said one report to the General Assembly.<sup>59</sup>

"Our only real hope," notes an editorial in *The Robesonian*, "is that the state legislature [will] finally wake up and correct this glaring inequity, an inequity they have allowed to stand

"OUR COURTS HAVE HELD that education is a fundamental right with several components including the right to a free education for at least nine months every year within a state-wide system that is general and uniform and free from race-based discrimination. What they have not held is that the General Assembly's decision to assign a part of the funding responsibilities to counties, as specifically authorized by the Constitution, is unconstitutional, or that the Constitution contains a funding based requirement for an adequate education. This does not mean that adequacy is left to whim or caprice by the Constitution; it means that adequacy as measured by level of funding is left in the hands of the people through the votes they cast for their representatives in the General Assembly and on boards of county commissioners."

—Edwin M. Speas, Jr., *Special Litigation, Office of the Attorney General*

for far too long. They have the political power to correct this political explosive problem. We can only hope they have the courage to do so.”

#### DISCUSSION QUESTIONS:

1) What or who are the most important factors in your ability to receive an adequate education at your school?

2) How should the state ensure the constitutional guarantee of an “equal educational opportunity?” Is there a difference between having the right of *access to an education* and the right to *equal educational opportunities*?

3) Do you think discriminating on the basis of wealth should be as constitutionally suspect as discrimination on the basis of race or religion? Why or why not?

#### FOOTNOTES

<sup>1</sup> Mary Fulton and Laura Sonovick, Education Commission of the States, “Percentage of public elementary and secondary school operating costs from FEDERAL, STATE, AND LOCAL GOVERNMENTS, along with the principal STATE AND LOCAL REVENUE SOURCES,” *Clearinghouse Notes . . . FINANCE*, 707 17th Street, Suite 2700, Denver, C.O. 80202-3427, phone (303) 299-3600, pp. 1, 9. Based on 1993-94 data from *Rankings of the States 1994*, National Education Association.

<sup>2</sup> *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1987) (*Serrano I*).

<sup>3</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

<sup>4</sup> *Ibid.*, p. 49.

<sup>5</sup> William E. Sparkman, “The Legal Foundations of Public School Finance,” 35 Boston College Law Review 569 (1994) (emphasis added).

<sup>6</sup> *Serrano v. Priest*, 557 P.2d 929, 950 (Cal. 1977) (*Serrano II*).

<sup>7</sup> Peter Enrich, “Leaving Equality Behind: New Directions in School Finance Reform,” 48 Vanderbilt Law Review 101, 183 (1995).

<sup>8</sup> N.C. General Statute § 115C-81(a1) (1994).

<sup>9</sup> Complaint for Plaintiffs, *Leandro v. State* (94 CVS 520), filed Sept. 26, 1994 with the Halifax Co. Clerk of Superior Court, p. 10.

<sup>10</sup> The state deadline for full funding was 1993, but that deadline was extended to July 1995.

<sup>11</sup> N.C. State Board of Education, *The Basic Education Program for North Carolina's Public Schools*, 1988, p. 1.

<sup>12</sup> *Ibid.*, Appendix, pp. 46-47.

<sup>13</sup> D.C. Long, “Rodriguez: The State Courts Respond,” *Phi Delta Kappan*, March 1983, pp. 481-84.

<sup>14</sup> Total Appropriations by Fiscal Year for Supplemental Funding for Low-Wealth Schools:

FY 1991-92	\$ 6,000,000
FY 1992-93	\$ 9,000,000
FY 1993-94	\$18,000,000
FY 1994-95	\$35,283,800

<sup>15</sup> Editorial, “No Clout: Poorer schools didn’t get respect or cash,” *Fayetteville Observer-Times*, Fayetteville, N.C., July 7, 1995. According to John Dornan, executive director of the Public School Forum of North Carolina, the formula for allocating low wealth supplemental funds was revised in 1993. The result was halving the goal that the State was

pursuing in addition to changing the qualification and effort requirements.

<sup>16</sup> Total Appropriations by Fiscal Year for Supplemental Funding for Small School Systems:

FY 1991-92	\$ 4,000,000
FY 1992-93	\$ 7,000,000
FY 1993-94	\$11,000,000
FY 1994-95	\$14,389,725

<sup>17</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 at 48, note 102 (1973).

<sup>18</sup> *Board of Education v. Walter*, 390 N.E.2d 813 (Ohio 1979). Also see *Olsen v. State*, 554 P.2d 139, at 149 (Or. 1976).

<sup>19</sup> Funding decisions are usually legislative matters.

<sup>20</sup> Mark Curriden, “Unequal Education at Issue,” *ABA Journal*, May 1994, p. 36.

<sup>21</sup> *Britt v. N.C. Board of Education*, 86 N.C. App. 282, 357 S.E.2d 432, 436 (1987).

<sup>22</sup> “Unfulfilled Promises: School Finance Remedies and State Courts,” 104 Harvard Law Review 1072, 1078-80 (1991).

<sup>23</sup> *Ibid.*, pp. 1082-85.

<sup>24</sup> *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989).

<sup>25</sup> “Unfulfilled Promises,” see note 22 above, p. 1078.

<sup>26</sup> For a complete discussion of these remedies, see Education Commission of the States, note 1 above, pp. 1-2.

<sup>27</sup> N.C. General Statute § 115C-546.1 to -.2; N.C. General Statute § 115C-489 to -489.4.

<sup>28</sup> Charles D. Liner, “Twelve years and \$ 3 Billion Later: School Construction in North Carolina,” *Popular Government*, Institute of Government, Chapel Hill, N.C., Fall 1994, Vol. 60, pp. 30-43.

<sup>29</sup> See generally, Charles D. Liner, *State and Local Government Relations in North Carolina: Their evolution and current status*, Institute of Government, Chapel Hill, N.C., 1995, pp. 186-87.

<sup>30</sup> For a complete discussion of these remedies, see Education Commission of the States, note 1 above, pp. 1-2.

<sup>31</sup> Lanier Fonvielle, “Disparity in Public School Financing,” *North Carolina Insight*, Vol. 7, No. 1, June 1984, p. 31.

<sup>32</sup> The number of school districts in North Carolina has decreased from 143 in 1982-83, to 142 in 1983-84, to 140 in 1987-88, to 119 in 1994-95.

<sup>33</sup> For many small school districts with low average daily membership, like Hyde County, the per pupil expenditures are very high. North Carolina allots most of its state education dollars on a "resource" basis, see table 3, therefore small school districts have higher unit costs than large school districts. For this reason, although Hyde County has the highest total per pupil expenditures of any school system in the state, it does not provide the most representative example of funding disparities in North Carolina. See table 2.

<sup>34</sup> For a more in-depth look at local school financing among the 121 school districts, see "North Carolina: Local School Finance Study 1995," published by The Public School Forum of North Carolina, Raleigh, NC, 1995.

<sup>35</sup> Office of the State Auditor, *Performance Audit Report, North Carolina Department of Public Instruction, Chapter VII—Impact of the Basic Education Program on Public Schools and a Review of School Financing*, 1990, p. 2 (emphasis in the original).

<sup>36</sup> *A Right Denied: Educational Inequity in North Carolina's Schools*, N.C. Civil Liberties Union and the American Civil Liberties Union, June 1991, p. 35-37.

<sup>37</sup> See note 34 above, p. 5.

<sup>38</sup> Charles D. Liner, "Spending and Employment in the Public Schools," *Popular Government*, Institute of Government, Chapel Hill, NC, Spring 1990, p. 32.

<sup>39</sup> Robert Spearman, Parker, Poe, Adams, & Bernstein L.L.P. Press Release, May 25, 1994. See also Complaint for Plaintiffs, *Leandro v. State* (94 CVS 520), filed Sept. 26, 1994 with the Halifax Co. Clerk of Superior Court, p.10.

<sup>40</sup> *Britt*, see note 21 above.

<sup>41</sup> *Ibid.*, p. 436.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Britt v. N.C. Board of Education*, 320 N.C. 790, 790 (1987). The Supreme Court denied the plaintiffs' petition for discretionary review and allowed the defendant's motion to dismiss the appeal for lack of a substantial constitutional question.

<sup>44</sup> *Leandro v. State*, 468 S.E.2d 543, 552 (1995).

<sup>45</sup> *Ibid.*, pp. 547 and 552.

<sup>46</sup> *Ibid.*, p. 548.

<sup>47</sup> *Ibid.*, p. 549 (emphasis in the original).

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*, p. 550.

<sup>51</sup> *Ibid.*, p. 551.

<sup>52</sup> "Schools lose another round," *The Robesonian*, Lumberton, N.C., March 20, 1996, p. A4.

<sup>53</sup> Foon Rhee, "Court deals blow to schools suit," *News & Observer*, Raleigh, N.C., Mar. 20, 1996, p. 1A.

<sup>54</sup> "Access vs. adequacy," *The Charlotte Observer*, Charlotte, N.C., Mar. 22, 1996, p. A12.

<sup>55</sup> "School funding is legal but not fair," *The Wilson Daily Times*, Wilson, N.C., Mar. 25, 1996.

<sup>56</sup> "Equity in schools is up to the legislature," *News & Record*, Greensboro, N.C., Mar. 21, 1996, p. A16; "Another chance," *Daily Reflector*, Greenville, N.C., Mar. 25, 1996.

<sup>57</sup> The N.C. Supreme Court agreed to review the case on June 13, 1996.

<sup>58</sup> See note 29 above.

<sup>59</sup> See note 31 above.



# 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.*

**L**arry and Michele Delconte's legal battle against the state to educate their two children at home ended on May 1985. The N.C. Supreme Court ruled that state law allows home instruction, so long as the home meets certain standards.<sup>1</sup>

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<sup>2</sup> and required that public and nonpublic education be conducted in an institutional setting.<sup>3</sup> 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 nonpublic education in North Carolina."<sup>4</sup>

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

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policy which are reasonably debatable. Our legislature may want to consider them and speak plainly about them," the Court said.

But 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.<sup>5</sup> "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.<sup>6</sup> 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,

## ***Since Delconte v. North Carolina: An Update on Home Schools***

ON JUNE 20, 1988, the North Carolina General Assembly, in response to the *Delconte* decision, enacted legislation defining home schools.<sup>1</sup> A home school is defined as "a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents or legal guardians, or a member of either household." The legislation also set qualifications and requirements of home schools. For example, the person providing academic instruction must have a high school diploma or its equivalent (a GED).

For information on home schools in North Carolina, contact:

Division of Nonpublic Education  
Rod Helder, Director  
530 North Wilmington Street  
Raleigh, NC 27604-1198  
919-733-4276

Families Learning Together  
Route 5, Box 339  
Lenoir, NC 28645  
704-758-5285

North Carolinians for Home Education  
419 North Boylan Avenue  
Raleigh, NC 27603-1211  
919-834-6243

All 50 states and the District of Columbia allow some form of home schooling. Thirty-four states regulate home schooling, but only 29 states require standardized testing or evaluations of students who are schooled at home.<sup>2</sup>

**Table 1. North Carolina Home School Enrollment by Ages and Statewide Statistical History**

Age on 10/15	Students Enrolled in Home Schools									
	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93	93-94	94-95
5-years-old	70	142	125	46	40	28	61	8	10	18
6	113	206	222	214	201	208	285	407	579	788
7	111	188	226	366	446	517	723	920	1051	1277
8	94	186	201	294	485	579	672	872	1135	1263
9	83	149	194	295	383	540	729	811	1027	1292
10	76	138	150	239	393	472	650	821	953	1159
11	64	138	147	203	315	437	558	746	960	1155
12	67	109	149	183	250	396	532	680	859	1105
13	52	108	126	162	241	324	479	610	785	958
14	41	86	95	148	217	276	387	464	714	895
15	20	61	60	97	141	213	295	393	547	763
16	11	37	43	48	69	96	134	149	236	380
17	7	24	18	30	25	41	51	66	71	169
Total # of students statewide	809	1572	1756	2325	3206	4127	5556	6947	8927	11222
Total # of schools statewide	381	793	962	1385	1911	2479	3315	4138	5415	6683
Average # of students per school	2.1	2.0	1.8	1.7	1.7	1.7	1.7	1.7	1.7	1.7

**Table 2. North Carolina's Home Schools**

**1994-95 Home School Enrollment**

by Sex			by Type		
Female	5420	48.3%	Independent	2612	23.3%
Male	5802	51.7%	Religious	8610	76.7%
Total	11222	100.0%	Total	11222	100.0%

**1994-95 Home Schools**

by Type		
Independent	1708	25.6%
Religious	4975	74.4%
Total	6683	100.0%

Source: *North Carolina Home School Statistical Summary*, State of North Carolina, Office of the Governor, Division of Nonpublic Education, September 1995.

**FOOTNOTES**

<sup>1</sup> North Carolina General Statutes Chapter 115C, Article 39 (Nonpublic Schools), Part 3 (Home Schools).

<sup>2</sup> Christopher J. Klicka, "Home Schooling in the United States: A Legal Analysis," Home School Defense Association, 1994.

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.

Former 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 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*.<sup>7</sup>

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

<sup>1</sup> *Larry Delconte v. State of North Carolina*, 313 N.C. 384 (1985); 329 S.E.2d 636 (1985).

<sup>2</sup> 40 Op. Attorney General 211 (1969); 49 Op. Attorney General 8 (1979), on compulsory attendance laws.

<sup>3</sup> 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.

<sup>4</sup> *Delconte v. State*, pps. 400.

<sup>5</sup> 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."

<sup>6</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

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

# Anonymous Political Speech: Is It Protected?

BY KATHERINE WHITE

**North Carolina Constitution, Article I, Section 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.

*In State v. Petersilie, the N.C. Supreme Court let stand a 60-year-old statute outlawing true but anonymous political speech. No recorded reference to the statute is found in court documents until the Petersilie case, in which Frank Petersilie was convicted in 1989 of distributing anonymous campaign materials in a Boone Town Council Race. There followed a raft of similar prosecutions under the law. In a ruling with great First Amendment implications, Petersilie's conviction was upheld by the state's highest court in a 1993 decision. Ultimately, the ruling was clouded by a U.S. Supreme Court ruling in an Ohio case. But the high court did not have the North Carolina case before it, and it left enough room for the state to revisit the idea of regulation of political speech in the future. While cleaning up vicious political campaigns may have merit, the author reminds us there are also free speech issues to consider.*

**P**oliticians, citizens, and news commentators often deride the current mudslinging, vicious attacks, and distortions in many campaigns for electoral offices and referendums. But such sentiments didn't get much support from a recent

decision of the U.S. Supreme Court that called into question the continuing validity of a North Carolina statute governing anonymous political speech.

In *McIntyre v. Ohio*,<sup>1</sup> the high court ruled that an Ohio statute prohibiting the distribution of anonymous but truthful campaign literature was unconstitutional because it violated the First Amendment's protection of political speech.

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***“Under our Constitution,  
anonymous pamphleteering is not  
a pernicious, fraudulent practice,  
but an honorable tradition of  
advocacy and of dissent.  
Anonymity is a shield from the  
tyranny of the majority.”***

— U.S. SUPREME COURT JUSTICE  
JOHN PAUL STEVENS  
IN THE *McINTYRE* DECISION

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The April 19, 1995, decision may have effectively nullified a North Carolina ruling that had let stand a law limiting political speech in the interest of fairer campaigns. And the U.S. Supreme Court ruling makes it harder for states to limit political mudslinging, a result which brought the court jeers from a noted syndicated columnist at *The Washington Post*.

“It is presumably not the purpose of the [U.S.] Supreme Court to screw up the political process in this country more than it is already,” political commentator David S. Broder wrote of the decision. “But if the learned justices had that intent, they could not be doing a better job.”<sup>2</sup>

But did the high court err in its ruling? Should proper decorum in political campaigns really take precedence over free speech concerns? The answer is, probably not—at least not in the case of *State v. Petersilie*. The U.S. Supreme Court ruling means the state must find another vehicle in its quest for cleaner campaigns.

Already, the search is underway. The North Carolina Supreme Court’s decision, *State v. Petersilie*<sup>3</sup> was reviewed by a 1994 study commission of the N.C. General Assembly as it considered ways of improving the quality of political debate.<sup>4</sup> With the same purpose, state Sen. Wib Gulley (D-Durham) introduced a bill in the 1995 session of the General Assembly that would have provided state funding for candidates who take a “standard of conduct” pledge for running clean campaigns.<sup>5</sup>

And at least one North Carolina Supreme Court justice, despite the court’s setback in *Petersilie*, remains sympathetic to establishing some ground rules for campaigns. Justice Willis

Whichard, a member of the 5-1 majority in the North Carolina decision, says he understands the U.S. Supreme Court’s rationale in the *McIntyre* ruling—which undercut *State v. Petersilie*. But Whichard, a former state legislator, still wishes that some controls could be placed on negative campaigning. And Deputy Attorney General Charles Hensey believes the North Carolina law is sufficiently different from the Ohio law to allow its continued use.

That sentiment is not universal. For North Carolina Supreme Court Chief Justice Burley Mitchell, the *Petersilie* court’s sole dissenter, the United States Supreme Court resurrected North Carolina’s long history of freewheeling and anonymous political campaigning and debate.

The ruling also prompted a sigh of relief from William Van Alstyne, a renowned scholar of the First Amendment of the United States Constitution and a professor in the Duke University School of Law. Van Alstyne says the U.S. Supreme Court ruled correctly in the *McIntyre* case, and the North Carolina Court erred in its *Petersilie* decision. “Burley Mitchell has been vindicated in his lonely and solitary dissent,” he says.

In *McIntyre*, Justice John Paul Stevens wrote for the U.S. Supreme Court: “Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority.”

Those words may have effectively nullified the North Carolina Court’s decision in July 1993. In *Petersilie*, the state Supreme Court upheld a North Carolina law that was similar to the one in Ohio. The state court concluded that the law was constitutional under the First Amendment of the U.S. Constitution<sup>6</sup> and Article I, Section 14 of the North Carolina Constitution,<sup>7</sup> both of which guarantee free speech for all citizens.

Chief Justice James G. Exum, now retired, wrote for a majority of the state court that: “Because the statute expressly regulates political speech, it is content-based. . . . We must give it exacting scrutiny; and we must be satisfied that it is necessary to serve the State’s compelling interest in having fair, honest elections.”<sup>8</sup> The N.C. Supreme Court concluded that the law was narrowly tailored to serve the state’s interest in fair elections and that the law did not infringe on anyone’s First Amendment rights of free speech.

The North Carolina law makes it a misdemeanor “for any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate’s chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge.”<sup>9</sup> Ohio’s version prohibited anonymous political campaign leaflets designed to “influence voters in any election.”<sup>10</sup>

Van Alstyne says that the North Carolina statute “is dead in the water” as a result of the *McIntyre* decision. It also affects 39 other state laws as well as a similar act of Congress.

The public outcry in North Carolina against perceived abuses of political speech, including the cries of losing politicians in heated campaigns, prompted the North Carolina General Assembly to set up a 1994 study commission to look for ways to clean up the state’s campaigns. As part of that study, legislators reviewed the statute under which Petersilie was convicted, in existence since 1931, that makes it a crime to publish truthful but anonymous speech.<sup>11</sup>

North Carolina’s retreat to the English tradition of punishing true but anonymous speech emerged some sixty years ago when this portion of the campaign law was adopted. But no reference to the statute is found in recorded court decisions until the *Petersilie* case.<sup>12</sup>

Although no new legislation was proposed by the 1994 study committee, the legislature’s focus, in part, stemmed from some truthful, but negative and anonymous, campaign leaflets circulated in 1994 state legislative races. Former House member Maggie Jeffus (D-Guilford) objected to signs posted at polling places on election day stating that she had been endorsed by a gay rights organization. The information was true. Its distribution fell within the *Petersilie* statute and, therefore, exposed the person who posted the signs to potential criminal charges.

After decades of silence, the statute had regained statewide recognition in November 1989. Frank W. Petersilie, after failing to gain sufficient votes to qualify for a run-off race for a seat on the Boone Town Council, distributed a copy of a *Washington Post* article written by Nan Chase, the wife of Saul Chase, one of the candidates in the run-off election.

The article expressed Mrs. Chase’s opinion about prayer in school. An unsigned letter distributed with the article quoted Mrs. Chase’s

description of herself as an “unbeliever (in Christianity) in the midst of the pious” who found herself unable to criticize “religious paraphernalia displayed in public offices and on state-owned vehicles.”

The article and the views attributed to Mrs. Chase in the letter would have been unpopular with a segment of the Boone electorate, and distributing these materials was likely intended to damage Saul Chase’s candidacy. Petersilie did not sign his name to the material he sent out. He eventually admitted that he addressed some of the envelopes.

A few days later, Petersilie received a flyer urging voters to support the “pro liquor” candidates—Chase and another contender, Louise Miller. Petersilie remailed that flyer to about 20 or 25 individuals—again without signing his name.

He was charged with 11 counts of violating the anonymous political advertising statute and faced a maximum sentence of 22 years in prison. Instead, a Watauga County Superior Court judge sentenced him to a two-year prison term, which was suspended, and placed Petersilie on supervised probation for three years. He also was ordered to spend seven weekends in jail, to pay a \$400 fine and court costs, and to perform 180 hours of community service.<sup>13</sup>

Petersilie appealed his conviction on constitutional and jurisdictional grounds. The Supreme Court ordered a new trial for him on jurisdictional grounds but upheld the constitutionality of the statute upon which the conviction rested.<sup>14</sup>

After Petersilie’s conviction, other individuals across the state were singled out for similar prosecution:

- Rick Rosen, a leader of a citizen’s group opposed to an Alamance County landfill, was convicted of violating the law in June 1992 when his organization placed an advertisement in the *Burlington Times-News* that did not state the sponsor. Never mind that the organization had run similar ads with its sponsorship listed and that many people may have known the source. The county manager and four county commissioners, two of whom were up for re-election, sought retribution. Rosen was convicted and ordered to pay \$55 in court costs as punishment.<sup>15</sup> He appealed the decision and the prosecutor

decided not to pursue the case further. The newspaper was not charged for publishing the ad.

- A former wife of Chapel Hill lawyer Barry Winston was charged in May 1994 with distributing anonymous flyers during his campaign for Orange County district attorney. Anne Russell of Wilmington distributed the flyers to businesses and placed them on car windshields. The flyers challenged Winston's integrity in dealings with former wives and included excerpts from a lawsuit seeking unpaid legal fees, part of an Internal Revenue Service letter declaring a tax lien, and a deposition concerning Winston's personal life.<sup>16</sup>
- In May 1994, Cumberland County District Attorney Ed Grannis asked the State Bureau of Investigation to investigate a negative ad against a candidate for the General Assembly that ran in the *Fayetteville Observer-Times* three days before the May 3 primary.<sup>17</sup> Again, the Fayetteville paper was not charged. The person placing the advertisement through an ad agency was the target of the investigation.
- In 1992, *The Shelby Star* ran an ad without the appropriate identifying information and the individual, not the newspaper, was prosecuted under the statute.<sup>18</sup>
- Again in 1992, *The Bugle Calls*, an anonymous newsletter written by "The Town Tattler" (whose real name is Frances Winslow), received a remonstrance from Assistant District Attorney Ernie Lee in Onslow County. Lee wrote a letter stating that the paper might be found in violation of the law if it continued writing anonymous criticism of political candidates.<sup>19</sup>

Curiously, newspapers printing such advertisements have yet to be prosecuted. Before the state Supreme Court ruled in *Petersilie*, Charles Hensey, an assistant attorney general representing the state in election law violations, said that he wouldn't go after a newspaper because he believed the state could not withstand a challenge from newspapers of the First Amendment principles involved. Mr. Hensey continues to support the law, saying that the *McIntyre* decision "wounded *Petersilie* a bit but it's still alive."

Then-Chief Justice James Exum, writing for the majority of the court in *Petersilie*, concluded that the statute did not infringe upon free speech rights. He narrowly construed the statute to read that it is illegal to publish an anonymous accusation derogatory to a candidate in a political campaign. The state court balanced two U.S. Supreme Court cases—*Burson v. Freeman*<sup>20</sup> and *Talley v. California*<sup>21</sup>—which reached opposing results.

In *Burson*, the U.S. Supreme Court upheld a statute that prohibited election day solicitation of votes within 100 feet of a polling place. The Court explained that "a facially content-based restriction on political speech in a public forum. . . must be subject to exacting scrutiny: The State must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."<sup>22</sup> The court felt the election day restriction met that test.

The U.S. Supreme Court in *Talley*, on the other hand, with facts more similar to *Petersilie*'s situation, applied the same standard, and concluded that the law prohibiting the distribution of anonymous pamphlets and leaflets on public matters of importance was void because "it would tend to restrict freedom to distribute information and thereby freedom of expression."<sup>23</sup>

The N.C. Supreme Court, faced with these and other U.S. Supreme Court opinions, concluded that the North Carolina law fell between the *Burson* and *Talley* decisions. "In the context of a campaign it is necessary for accusers of candidates to identify themselves, even if they speak the truth, in order for the electorate to be able to assess the accusers' bias and interest. . . . This kind of information is required in order for the electorate to determine what weight, if any, should be given the accusation, even if it is true. The source of the charge is as much at issue as the charge itself."<sup>24</sup> Therefore, the court held that the statute was narrow enough to withstand free speech scrutiny.

Justice Burley Mitchell, the lone dissenter in the case, wrote, "The decision of the majority to uphold this flagrant violation of the First Amendment opens a sad chapter in the history of this Court. I can only pray that this chapter and the inevitable harm that will result to this State's people and their government will be brief."<sup>25</sup>

He stated, "I have grave reservations as to whether, consistent with the First Amendment,

any public purpose can justify such a limitation on pure political expression. . . . The right to anonymity has long been recognized in this country as a necessary component of the constitutional rights of free speech and a free press."<sup>26</sup>

Indeed, Justice Mitchell's dissent is consistent with North Carolina's early history and recent North Carolina Supreme Court decisions affecting other speech-related issues.<sup>27</sup> This state has stopped punishing invasion of privacy claims such as publication of private facts<sup>28</sup> and placing a person in a "false light."<sup>29</sup> North Carolina was the first state court to require public officials to meet a high standard of proof in libel cases.<sup>30</sup>

North Carolina refused to ratify the U.S. Constitution because it lacked a freedom of speech and press clause. The *Petersilie* decision ran counter to the state's early determination to allow free flow of debate. As the late U.S. Supreme Court Justice Hugo Black wrote in *Talley*:

Anonymous pamphlets, leaflets, brochures and even books have played an important role in history. Persecuted groups and sects have been able to criticize oppressive practices and laws either anonymously or not at all. The press licensing law of England, enforced against the Colonies, was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation of literature critical of the government. The old seditious libel cases in England show the lengths to which government had to go to find out who was responsible for books that were critical of the rulers. . . .<sup>31</sup>

Before the Revolutionary War, colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. During that period, the Letters of Junius were written to urge the colonists to rid themselves of English rule. The

identity of their author is unknown to this day. Even the *Federalist Papers*, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.

The anonymous but truthful political speech law of North Carolina harkens back to the English practice of punishing those individuals who distributed true information without identifying themselves. Had the authors of the *Federalist Papers* circulated their material in North Carolina today, they could now be languishing in jail.

The United States Supreme Court decision in *McIntyre v. Ohio* clearly calls into question the validity of the North Carolina statute. But the North Carolina statute is more narrowly drawn. And the high court left the door open a crack. As U.S. Supreme Court Justice Ruth Bader Ginsburg wrote in her concurring opinion in *McIntyre*:

[I]n for a calf is not always in for a cow . . . we do not thereby hold that the state may not in other, larger circumstances, require the speaker to disclose its interest by disclosing its identity. Appropriately leaving open matters not presented by McIntyre's handbills, the court recognizes that a State's interest in protecting an election process 'might justify a more limited identification requirement.'<sup>32</sup>

So the Supreme Court may have left the state some room to regulate political speech. But the court's overall ruling is a high hurdle for any state that wishes to constrain First Amendment rights to achieve that purpose.

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***Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.***

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## FOOTNOTES

<sup>1</sup> *McIntyre v. Ohio Elections Commission*, 115 S.Ct. 1511 (1995).

<sup>2</sup> David S. Broder, *The Washington Post*, editorial, May 7, 1995, p. 7A.

<sup>3</sup> *State v. Petersilie*, 334 N.C. 169, 432 S.E.2d 832 (1993).

<sup>4</sup> "Questions about Regulating Negative Electioneering," report by William R. Gilkeson, Staff Attorney, General Research Division, Legislative Services Office, December 1, 1994, p. 2.

<sup>5</sup> Senate Bill 1040. The bill was packaged with a House bill setting term limits for legislators (HB 12) and voted down in the Senate.

<sup>6</sup> The First Amendment of the U.S. Constitution states, "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ."

<sup>7</sup> Article I, Section 14 of the North Carolina Constitution states, "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."

<sup>8</sup> *Petersilie*, note 3 above, at p. 184.

<sup>9</sup> N.C. General Statute 163-274(7).

<sup>10</sup> Ohio Code, Section 3599.09(A).

<sup>11</sup> Gilkeson, note 4 above.

<sup>12</sup> The statute was used in 1986 to force the resignation of Bill Lashley, then a Burlington City Councilman, from office. Lashley had distributed an unsigned flier that said "Alamance County can't afford four more years of John Freeman wasting the taxpayers' money." Freeman was a Democratic county commissioner who was defeated in the November 1984 election. Lashley also distributed other anonymous material in 1985 against other candidates. Then District Attorney George Hunt "claimed that Lashley was a danger to American society because he was trying to get people into office who held the same views he did." See "In defense of free speech, tax protestors, and Bill Lashley," *The Alamance News*, Dec. 8, 1993, p. 2.

<sup>13</sup> Charlie Peek, "Judge Orders Petersilie to 7 Weekends in Jail," *Winston-Salem Journal*, Winston-Salem, N.C., Oct. 20, 1990, p. 17.

<sup>14</sup> Saul Chase says that while he can understand the Supreme Court's ruling in favor of true but anonymous political speech, it's important to note that not all of the material circulated against him was true. For example, in the letter mailed anonymously along with the *Washington Post* article, the author writes, "If he wins, he will have the

power to take away any Christian influence from the Town employees, buildings, etc. . . . It can be assumed that Chase allegedly has a goal to wipe out Christian influence from our town, take it away from the very God-fearing Christian people who helped put him in office." Chase says he had neither the power nor the intent to wipe out Christian influence in Boone. Ultimately, Chase was vindicated at the polls. He ran for the Town Council again in 1994 and led the ticket. He now is mayor pro tempore of Boone.

<sup>15</sup> Alamance County District Court Division, 92 CR 10807.

<sup>16</sup> Noah Bartolucci, "Candidate's Ex-Wife Charged in Flier Case in Orange DA's Race," *The News & Observer*, Raleigh, N.C., May 20, 1994, p. B6. Russell is seeking a reversal of her conviction in light of the *McIntyre* case. Her first petition, on a motion from District Court, was denied on July 12, 1995, by the N.C. Court of Appeals (P95-269). More recently, she went to Superior Court for redress and the Superior Court judge ruled that he thought the law was, at best, questionable in light of *McIntyre* and her prayer for judgment continued was dismissed.

<sup>17</sup> Marc Barnes, "Richardson Attack Cut Short by Judge," *Fayetteville Observer-Times*, Fayetteville, N.C., Dec. 20, 1994, p. 1A.

<sup>18</sup> Author's personal knowledge, based on a public seminar she participated in for media and elections officials in Shelby.

<sup>19</sup> Ben Stocking, "Some think law's a gag," *The News & Observer*, Raleigh, N.C., Aug. 3, 1992, p. A1.

<sup>20</sup> 504 U.S. 191, 112 S.Ct. 1846 (1992)

<sup>21</sup> 362 U.S. 60 (1960).

<sup>22</sup> *Burson* at p. 1851.

<sup>23</sup> *Talley* at p. 65.

<sup>24</sup> *Petersilie* at p. 187.

<sup>25</sup> *Petersilie* at p. 207.

<sup>26</sup> *Petersilie* at p. 199.

<sup>27</sup> For more on the court's decisions affecting speech-related issues, see Katherine White, "The N.C. Supreme Court at 175: Slow on Civil Rights But Fast on Free Speech?" *North Carolina Insight*, Vol. 15, Nos. 2-3 (September 1994), pp. 106-111.

<sup>28</sup> *Hall v. Post*, 323 N.C. 259, 372 SE2d 711 (1988).

<sup>29</sup> *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 312 S.E. 2d 405 (1984).

<sup>30</sup> *Ponder v. Cobb*, 257 N.C. 281, 126 S.E.2d 67 (1962).

<sup>31</sup> *Talley v. California*, at pp. 64-65 (footnotes omitted).

<sup>32</sup> *McIntyre v. Ohio Elections Commission*, note 1 above.

# The Open Courts Guarantee: Cameras in the Courtroom

BY KATHERINE WHITE

**North Carolina 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.) Cautious after years of what it called an “experiment,” the Court finally gave photographic coverage rules a permanent place on the books on June 25, 1990. Until then, the court had approved temporary rules and extended them four times.

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 broadcasters 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

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of cameras would intimidate jurors and witnesses. They also questioned whether criminal defendants could get a fair trial if the public was exposed to daily coverage.

Generally, according to an informal, unpublished survey of trial judges by the N.C. Supreme Court,<sup>1</sup> those judges who have allowed radio, television and press photographers into their domains supported 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 then-Superior Court Judge Donald L. Smith in his survey response. Judge Smith, now on the N.C. Court of Appeals, has presided at several trials covered by electronic and photographic media.

However, the survey also showed that judges who refuse 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 Snapp in the survey. As senior resident judge for his district, which includes Mecklenburg County, Snapp had banned live coverage under the temporary rules. Allowing it, Snapp 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." With Snapp's retirement, Mecklenburg County courts opened up to cameras.

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.<sup>2</sup> 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 courtrooms.<sup>3</sup> 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.<sup>4</sup> 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 47 other states (see chart) 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.

Under the permanent rules, the presiding judge in a trial 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 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. Thus, in the so-called "Little Rascals" trial, involving allegations of child abuse, cameras were not allowed to film the child witnesses as they testified.

In September 1984, the UNC Institute of Government in Chapel Hill prepared a report<sup>5</sup> 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 al-

ternates 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.<sup>6</sup> 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."<sup>7</sup> An Alabama judge has said that cameras in the courtrooms there tend to keep "all the personnel in the courtroom on their toes."<sup>8</sup>

Even before the N.C. Supreme Court decided 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. He adds that, when it comes to reviewing long transcripts, lawyers and judges alike prefer the written versions over the videotapes because of the simpler way to refer—by page number—to legal challenges on appeal. 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 predicted, "It will not be successful."

## Cameras in the Courts

STATE	TYPE OF COURT	STATUS	CONSENT REQUIRED <sup>1</sup>	EFFECTIVE DATE
Alabama	Trial, appeals	Permanent	Yes	Feb. 1, 1976
Alaska	Trial, appeals	Permanent	Certain	Feb. 1, 1982
Arizona	Trial, appeals	Permanent	No	June 30, 1983
Arkansas	Trial, appeals	Permanent	Yes	March 8, 1982
California	Trial, appeals	Permanent	No	July 1, 1984
Colorado	Trial, appeals	Permanent	No	Dec. 1, 1985
Connecticut	Trial, appeals	Permanent	No	June 15, 1984
Delaware	Appeals	Experimental	No	May 2, 1983
D.C.	None			
Florida	Trial, appeals	Permanent	No	May 1, 1979
Georgia	Trial, appeals	Permanent	No	July 1, 1982
Hawaii	Trial, appeals	Permanent	No	Dec. 7, 1987
Idaho	Appeals	Permanent	No	Jan. 4, 1982
Illinois	Appeals	Permanent	No	Jan. 22, 1985
Indiana	None			
Iowa	Trial, appeals	Permanent	Certain	Jan. 1, 1982
Kansas	Trial, appeals	Permanent	No	Sept. 1, 1988
Kentucky	Trial, appeals	Permanent	No	July 1, 1981
Louisiana	Appeals	Permanent	No	April 23, 1985
Maine	Trial, appeals	Permanent	No	Aug. 1, 1994
Maryland	Trial <sup>2</sup> , appeals	Permanent	Yes <sup>3</sup>	July 1, 1984
Massachusetts	Trial, appeals	Permanent	No	Jan. 1, 1983
Michigan	Trial, appeals	Permanent	No	March 1, 1989
Minnesota	Trial, appeals	Exp./Perm.	Yes <sup>3</sup>	Sept. 25, 1989
Mississippi	None			
Missouri	Trial, appeals	Permanent	No	Oct. 1, 1992 <sup>4</sup>
Montana	Trial, appeals	Permanent	No	April 18, 1980
Nebraska	Trial <sup>4</sup> , appeals	Exp./Perm.	No	Oct. 1, 1983
Nevada	Trial, appeals	Permanent	No	May 31, 1988
New Hampshire	Trial, appeals	Permanent	No	Jan. 1, 1978
New Jersey	Trial, appeals	Permanent	No	March 21, 1983
New Mexico	Trial, appeals	Permanent	No	Jan. 1, 1983
New York	Trial, appeals	Exp./Perm.	Certain	June 1, 1989
North Carolina	Trial, appeals	Permanent	No	June 1990
North Dakota	Trial, appeals	Perm./Exp.	Certain	July 1, 1988
Ohio	Trial, appeals	Permanent	No	Jan. 1, 1982
Oklahoma	Trial, appeals	Permanent	Certain	Feb. 22, 1982
Oregon	Trial, appeals	Permanent	No	Feb. 15, 1989
Pennsylvania	Trial <sup>5</sup>	Experimental	No	Oct. 1, 1979
Rhode Island	Trial, appeals	Permanent	No	March 24, 1988
South Carolina	Trial, appeals	Permanent	No	Sept. 21, 1993
South Dakota	None			
Tennessee	Trial, appeals	Permanent	Certain	Feb. 22, 1979
Texas	Trial, appeals <sup>3</sup>	Permanent	Yes <sup>4</sup>	Sept. 1, 1990
Utah	Trial, <sup>2</sup> appeals	Permanent	No	Sept. 16, 1991
Vermont	Trial, appeals	Permanent	No	Jan. 2, 1989
Virginia	Trial, appeals	Permanent	No	July 1, 1992
Washington	Trial, appeals	Permanent	No	Sept. 20, 1976
West Virginia	Trial, appeals	Permanent	No	May 7, 1981
Wisconsin	Trial, appeals	Permanent	No	July 1, 1979
Wyoming	Trial, appeals	Permanent	No	July 23, 1990

<sup>1</sup> Consent may be required of parties in the proceeding. 'Certain' means consent required only in certain types of cases.

<sup>2</sup> Only still photography allowed in trial courts.

<sup>3</sup> Coverage allowed in civil trial and all appellate courts, but not in all criminal trials.

<sup>4</sup> Guidelines not set for trial coverage.

<sup>5</sup> Civil cases only. Supreme Court rules amended to permit experiment with official videotaping.

<sup>6</sup> Experimental coverage in Court of Appeals from Oct. 1, 1992, through Sept. 30, 1994, and in trial courts from Jan. 1, 1993, through Dec. 31, 1994.

<sup>7</sup> Permission of parties not required in appellate courts.

<sup>8</sup> Experimental audio coverage in 13th and 18th districts only.

Source: Radio-Television News Directors Association

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Reporters Committee for Freedom of the Press.

The Wake County pilot project is alive and well after ten years. It remains a pilot project and, although the videotapes are available for anyone to review, the tapes are watched primarily by lawyers for training or educational purposes, says Pam Motley-Adams, the coordinator of the project.

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.” And, as to concerns that coverage would be distorted because of short film clips, Prak said that

Court TV, with its gavel to gavel coverage of trials, has shown that cameras in the courtroom increase “public knowledge and understanding of the courts system.” While cameras in courtrooms have become a routine part of news coverage in North Carolina as well as in other states, the emergence of full continuing coverage of the more high profile cases causes judges to open courts with caution. In Robeson County, the trial of Daniel Andre Green, also known as Lord D.A.A.S. U’llah, on charges stemming from the murder of James Jordan, father of basketball great Michael Jordan, was not televised.

Superior Court Judge Gregory Weeks barred all cameras from his courtroom during the trial and sentencing phases. “My concern was the lawyers would play to the cameras and that would impede the progress of the trial. . . . Despite what we say, the presence of cameras does have an effect on all of us. Having seen [the lawyers] antics during the pretrial phase, I was determined to avoid that during trial.” As soon as the jurors reached a verdict on the punishment phase, Judge Weeks allowed cameras to record the verdict.

Judge Week’s decision to bar cameras from the courtroom during the U’llah trial did not keep interested North Carolinians from following the progress of that case. Citizens were able to track the trial on-line because a court reporter put daily transcripts on the Internet.<sup>9</sup> Coverage of trials on the Internet is yet another way to ensure that the courts in North Carolina remain open as required by our state Constitution.

## FOOTNOTES

<sup>1</sup> 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.

<sup>2</sup> *State v. Hauptmann*, 115 N.J.L. 412, 180 A. 809, cert. denied, 296 U.S. 649 (1935).

<sup>3</sup> *Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628 (1965);

*Sheppard v. Maxwell*, 384 U.S. 330, 86 S. Ct. 1507 (1966).

<sup>4</sup> *Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 1802 (1981).

<sup>5</sup> “Report on Experiences with Courtroom Cameras,” Institute of Government, UNC-Chapel Hill, September 24, 1984.

<sup>6</sup> Among these studies are: *Lyles v. State*, 330 P.2d 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).

<sup>7</sup> Ernest H. Short & Associates, Inc., “A Report to the Judicial Council on Videotape Recording in the Criminal Justice Systems: Second Year Findings and Recommendations,” p. 30 (1976, California).

<sup>8</sup> Judge Robert Hodnette Jr., *Broadcasting Magazine*, p. 30 (Dec. 20, 1976).

<sup>9</sup> Paul Nowell, “Internet site allows access to Jordan murder trial,” *The News & Observer*, Raleigh, NC, Jan. 16, 1996, p. C9.

# The State Board of Elections:

## An Interview with Executive Secretary-Director Gary Bartlett

BY HEATHER HAUGH AND MEBANE RASH WHITMAN

North Carolina Constitution, Article I, Section 10. *Free elections.*  
All elections shall be free.

North Carolina Constitution, Article VI, 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 . . . .

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*Who are the electors of the . . . representatives?*

*Not the rich, more than the poor;*

*not the learned, more than the ignorant;*

*not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune.*

*The electors are to be the great body of the people of the United States.*

—James Madison, Number LVII, *The Federalist Papers*

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**U**ntil a century ago, barriers to voting were both legal and physical. If you were white and male and if you could get yourself to the polling place, you could vote. There was no registration process and voting was regarded as a privilege. But our system of government, a democracy, guarantees us the right to vote, and people

hold that right in high esteem—even if they sometimes choose not to exercise it. Laws and practices that prevented minorities and women from voting have been reformed. But barriers to voting remain, and Gary Bartlett, Executive

*Heather Haugh, a Center intern, is completing her Masters in Public Administration at the University of Georgia. Mebane Rash Whitman is the Center's policy analyst.*

Secretary-Director of the State Board of Elections, is determined to change that.

Gary Bartlett grew up in Wayne County. As a young boy, he enjoyed reading historical novels about Ben Franklin, Thomas Jefferson, and other founders of our country. In his teens, Bartlett followed local campaigns and elections with interest and developed a profound sense of respect for democratic ideals. He went on to graduate from the University of North Carolina at Chapel Hill, where in his senior year he participated in organized politics. After graduation, he worked for seven years in his family's business, a masonry contracting company. Then, for eight years, Bartlett worked with Weil Enterprises, a development and management company. During this time, he started to get involved with the Democratic Party at the state and local levels. Then Bartlett left home for three years to work as legislative assistant to Congressman Martin Lancaster (D-3rd District) in Washington, D.C. On August 3, 1993, Gary Bartlett was appointed by the members of the State Board of Elections to be Executive Secretary-Director of the Office of the State Board of Elections.

### The State Board of Elections

The State Board of Elections is the agency with overall responsibility for administration of the elections process and campaign finance disclosure in North Carolina. The mission of the Board is to promote consistent administration and equal application of all election and campaign finance laws, rules,

and regulations. The five-member Board, appointed by the Governor for four-year terms, is the only independent, bipartisan (with the majority determined by the party of the governor), quasi-judicial supervisory board in state government. According to the State Board of Elections, among the 50 states, only 13 of the state boards of elections do not operate under an elected official.

Chapter 163 of the North Carolina General Statutes outlines the relationship between the state board and local boards of elections, as well as their respective responsibilities and duties.<sup>1</sup> The relationship between the state and local boards is interesting: in some ways, it is similar to the relationship between the federal and state governments; in other ways, it is similar to the relationship between the supreme court of a state and lower courts. The state board has oversight over all county and municipal boards of elections, providing directives, memoranda, and procedures which they must follow. Each of the local boards keeps track of voter registration, stores local election records, and makes the initial decision on election challenges or complaints. Only after a challenge has made its way through the local process can an appeal be filed with the state board.

On December 7, 1995, staff members of the North Carolina Center for Public Policy Research conducted the following interview with Gary Bartlett and several members of his staff (see Table 1). Bartlett then responded to campaign finance reforms proposed by the North Carolina Center for Public Policy Research in 1990.

**Table 1. State Board of Elections Staff**

State Board Staff		Campaign Reporting Staff	
Gary Bartlett	919-715-1827	Yvonne Southerland	919-715-1788
<i>Executive Secretary-Director</i>		<i>Deputy Director-Campaign Reporting</i>	
Johnnie McLean	919-715-1790		
<i>Deputy Director-Elections</i>			
Stacy Flannery <sup>2</sup>	919-715-1792		
<i>Director of Voter Registration</i>			

## The Interview

### with Gary Bartlett and His Staff<sup>3</sup>

#### I. The National Voter Registration Act of 1993

*Over the last few years, the General Assembly has rewritten the laws on voter registration to comply with the National Voter Registration Act of 1993 (NVRA). The changes included "do-it-yourself" registration forms, a uniform deadline for voter registration, registration by mail, and registration at public agencies like health departments, social services, etc. What are the positive and negative effects of this legislation?*

The primary objectives of the NVRA are to increase voter registration, maintain accurate and current voter registration rolls, and to strengthen voter participation in federal elections. North Carolina was actually able to implement a large portion of the NVRA before it was required by state law. As early as 1984, North Carolina began establishing voter registration at offices of the Department of Motor Vehicles around the state.<sup>4</sup> Citizens could also register to vote at libraries and high schools.<sup>5</sup> So, we were already a leader in developing innovative ways for people to register to vote (see Table 2).

In 1993, the General Assembly passed a mail-in voter registration bill. One of the first things I did was to implement this program. The development of a mail-in form that could be used statewide was already in progress, so after holding a few focus groups, the State Board was able to approve a mail-in voter registration form that met the needs of local government officials as well as the state (see p. 167). There was some concern over whether a mail-in voter registration program would work—whether the handwriting would be legible and if there would be fraudulent registration forms. Thus far, we have found that the program is quite successful. Generally, the forms are legible, and when there has been misinformation or a lack of information on the form, it has been easily and quickly corrected by phone or through the mail.

Before, it was a hassle to update your records, and now we are finding because mail-in registration forms make it easier, our records are improving. Furthermore, because we no

longer have special registration commissioners, anyone can assist someone in filling out the mail-in form. The form can be mailed, given to a third party to mail, or delivered to the county Board of Elections in person. Political parties have also enjoyed mail-in voter registration because they use it to get voters to switch parties.

"One of the most positive aspects of NVRA that we have experienced," explains Stacy Flannery, Director of Voter Registration, "is the overall increase in voter registration. In 1995, 360,447 newly registered voters were processed. In a comparable year, from October 1990 to October 1991, 71,000 people registered to vote in North Carolina."

One of the reasons for the increase in voter registration is that the NVRA allows voter registration at many state agencies. That has been somewhat problematic. The state agency employees who were required to assist in voter registration were, for the most part, untrained until the implementation started. These state employees already have so many responsibilities, and this addition to their job was not going to increase their pay, so motivation was an issue.

Another common problem has been one of duplication. Until we have an operating statewide computer registration system, we cannot audit records nor can we compare voter registration across county lines. Currently, we can only audit within a county. The computer system will also help reduce the amount of paperwork related to maintaining records. Agencies will be able to access existing registration records to see who is registered and if the state's information is current.

Also, because of the increase in registration, we are finding that the counties are in need of additional resources. North Carolina is to the point where elections and voter registration require full-time local offices. Staffing is also inadequate. Many of our counties find it difficult to do the things required by law, much less provide the services wanted by the public, candidates, elected officials, and the media.

NVRA has increased the State Board of Election's role in the registration process. The law requires state agencies to be involved in

voter registration, and our office is to provide periodic accounting of these activities. Thus, there is a greater need for coordination and reporting statewide. Our office must handle all orders of mail-in voter registration forms and ship them to the various distribution points. Because of the increase in voter registration activity in the counties, the role of our office in providing training, support, and assistance continues to grow. But, overall, NVRA as a tool for voter registration works.

*What is "motor-voter" registration?*

NVRA requires that agencies providing public assistance also provide the opportunity to register to vote to clients who use their services. Should clients choose not to register, they sign a declination form. They are told up-front that this does not affect the services for which they are applying. If a client chooses to register, an application is completed and then forwarded to the appropriate county board of elections. The term "motor-voter" just refers to the option of registering at the Division of Motor Vehicles. One implementation issue with the DMV, and the Employment Security Commission as well, was that they are completely automated, and we are not. They had to adopt a paper system for our voter registration process. A statewide computer system would allow them to return to a paperless system.

*How do you make sure voter registration lists are accurate and up-to-date?*

"We are seeing better accuracy simply through greater opportunities for people to update their records," says Flannery. "We verify every application with a verification notice prior to making that record active. We use the Postal Service to help verify the information if we get mailings back undeliverable. North Carolina used to have a purge of registration rolls where every four years you would remove people if they had not voted in one of the last two presidential elections, or any election in that time and had not responded to a purge notice. We no longer have that purge; rather, we do a list cleaning where each four-year cycle, we make a list that includes the names of the registrants who have had no contact with the office or who have not verified their record in some other way, either through an mail-in update or an appearance at

a drivers license office or other agency. Those individuals would receive a "no contact" notice. If that is returned to our office as undeliverable, we would then send a confirmation mailing, which would take the place of the purge notice," concludes Flannery.

## **II. The Need for a Statewide Computer System**

*The 1995 General Assembly appropriated funds to the State Board of Elections to develop a centralized voter registration system, as you have requested. Specifically, \$1.5 million was appropriated in 1995-96 to set up the central component of the system, and \$3.5 million was appropriated for the 1996-97 fiscal year to give grants for the county component.<sup>6</sup> Tell us why this is needed.*

The computer system will allow us to standardize all of our information, which will be a tremendous help. It will help us weed out duplications and guard against fraud. It will also allow us to give services to those candidates, media, and citizens interested in multiple county districts and states.

"A statewide computer system would revolutionize the voter registration process in this state," says Flannery. "There is no question it would make verification of records easier, transmittal of the applications easier from the agencies and DMV offices. The duplication problem is not as high as we expected it to be, but we only see the duplication reported from within a county. Where the computer would help is in comparison across county lines which we cannot do right now. We could weed out the individual registrants who don't know they shouldn't be registered in two places."

"It also would allow us to provide a greater level of service," Flannery continues. "Right now, if you need a voter list, you have to go to each county board of elections. With a statewide computer system, we could do that from here."

## **III. Voter Participation**

*North Carolina still has one of the worst voter participation records in the United States. Statistics from the Committee for the Study of the Electorate show that North Carolina turnout was ranked 44th out of the 50 states on voting age*

population for the 1992 presidential elections, moving up only three states from the previous rank of 47th (43.4% of voting age population) during the 1988 presidential elections. What are your priorities for future changes to increase voter participation?

As far as voter participation, we do not have any kind of state statutory authority. Turnout has been left up to the candidates and the parties. What we can do to promote turnout is very limited. First of all, we can ask the General Assembly to consider certain legislation, such as no-excuse absentee voting. If you can make the process easier with safeguards, that is the best we can do. Certainly we have a role here to ensure that anyone who is eligible to vote is registered, and we encourage them to vote. Basically we are like referees: we cannot help the teams because there would be an appearance of impropriety.

Another thing we can do is keep pace or urge the General Assembly to keep pace with technology that will make it easier to vote. For instance, in New Mexico, there are two companies experimenting with voice-activation voting by phone. Others are trying to find a secure way to cast a vote at a poll, like you currently are able to get money from an automatic teller bank machine (ATM). Others expect that one day citizens will vote using the Internet, telephone, and TV together. All of these are futuristic type things, but I think the technology will be there. The problem is there is another standard you have to meet—the public's comfort level. Usually with any type of change, there is always some skepticism and the fear of fraud. It's very hard to administer a system people do not have faith and confidence in.

*What about having elections by mail, as they have had in Oregon?*

My friends in Oregon say they would rather administer a mail election than elections at the polling place. A couple years ago, I made a few phone inquiries into the possibility of special legislation to allow voting by mail for residents of Bald Head Island in Brunswick County. They have a unique situation where they must go by ferry to their poll to vote. Less than 200 people would be affected by the legislation, so I thought it would be the perfect test. I decided to make a few phone calls to see whether anyone would be interested in

sponsoring the legislation. After the first two calls, I dropped it. Candidates and a lot of voters are against voting by mail because they would feel like some tradition would be taken away from them. Some people view their precinct and their polling place as an integral and important part of their sense of community.

"In an urban society, that sense of community has disappeared," says Yvonne Southerland, Deputy Director of Campaign Finance. "I go to vote, and I don't know anybody. It used to be that when you went to vote, you knew the workers there, and you knew the locality. I would love to see us do one vote by mail, for instance for a Constitutional Amendment, just simply to have the records and to be able to pull it off in 100 counties, in one whole state, with our population. I believe turnout would be great!"

*Election laws mandate a biennial voter registration drive,<sup>7</sup> where the Governor proclaims a Citizens Awareness Month as designated by the State Board of Elections in every even-numbered year. During that month, the State Board of Elections is to hold a statewide voter registration drive. When was your first voter registration drive? How will this increase voter participation?*

We had our first one in September 1994. The Board voted to have the voter registration drive in September because it is just before the general election and the voter registration deadline. We were not given any money to implement this law, so we had to try and do a few good things well, instead of a lot of things. We held a press conference involving our State Board and staff. We invited the counties to

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***Motor voter is a bowling success as a registration tool, but turnout is still a dog. It's clear . . . that this country's next great political challenge is to find a way to boost turnout."***

—AS QUOTED IN "MOTOR VOTER LAW' HAS INCREASED REGISTRATION, BUT NOT ELECTION TURNOUT," *THE NEWS & OBSERVER*, RALEIGH, NC, DECEMBER 3, 1995, P. 6A.

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hold their own press conferences at the same time. We think we had 75–80% participation at the county level. We also encouraged the counties to establish a speaker's bureau to address civic clubs in the community and other interested groups. We just tried to plant a seed. For instance, we recruited Senator Charlie Albertson (D-Duplin), a country western singer, to help us. He, Stacey, and I wrote a jingle about registering and voting. We sent it out for public service announcements. It was played in the Triangle. I think we had mixed success the farther you got away from Raleigh.

An open house was held for voter registration and campaign reporting. What happened was kind of scary. People responded. We thought we had enough mail-in voter registration forms, but supplies were exhausted a week.

Unsuccessfully, I asked the General Assembly for a Public Relations Director so we could get information out about voter registration and campaign reporting to the interested public, interest groups, candidates, elected officials, and media. Also, in the future, we would like to use free publicity to explain the elections process and encourage people who want to participate. That is one reason we are interested in getting on the Internet. We certainly want to provide as much information as possible to the citizens of North Carolina.

Hopefully, the drive will continue to increase not only voter registration, but voter participation.

*What other ideas do you have for increasing citizen access to public information?*

We are currently trying to get grant money for the establishment for an election laws library. There are only two facilities in the United States that try to collect everything possible about election laws. One is the office of Dr. Robert Montjoy at Auburn University and the other is Election Data Services in Washington D.C. With our universities and the level of interest we have in North Carolina, I think this would be a great service.

"We have a wealth of information: the election results, the campaign disclosure reports, the information that is gathered by political scientists," says Southerland. "It takes some review and some know-how to put it together. It seems

cruel to me that this information isn't being printed together as a resource for citizens."

#### IV. Standardizing Voting Equipment

*North Carolina has about 5 different systems of voting—the optical scanner, the mechanical device, the punch card, the paper ballot, and the electronic device. Do the counties need standardized equipment and processes? Do you plan to standardize the way people are able to vote in North Carolina?*

We need standard voting equipment in North Carolina. The problem is, will it be an unfunded mandate,<sup>8</sup> or will the state pay for it? There are two options: optical scan and direct record.

"The optical scan, and we include the mark sense and the punch card in this category, means that voters either mark the ballot with the pen in a specified area or punch a card with a stylus," says Johnnie McLean, Deputy Director of Elections. "The machine reads those marks. The technology is very similar to that used to grade college entrance tests, such as the Scholastic Aptitude Test (SAT). The direct record method of voting uses the same kind of technology as when you go to the bank and use your ATM. The keys you punch cause the machine to record a vote for that person. The machines don't know who the candidates are; it knows the place they are on the ballot."

If we were to standardize voting equipment, we could probably go with the minimum amount—optical scan equipment which would have the cheapest upfront costs to implement at about \$13 or \$14 million statewide. We would have additional costs—paper—and we would be at the mercy of paper and printing costs. The direct record method would cost \$20 to \$25 million up front. We would not have the paper costs we would have with optical scan. Certainly with both optical scan and direct record, we would have maintenance costs.

*Do you have a preference for the optical scanner or the direct record?*

Half of the elections family would go with optical scanner, the other half with direct record. I fall in the later category. About 52 counties already use the optical scan method.

## *Campaign Finance Disclosure: Is North Carolina Ready for Reform?*

**B**artlett says current campaign finance disclosure laws are confusing and difficult to administer. Reform would result in laws easier to administer, to enforce, and more consistent with the needs of today's election processes.

For example, notes Bartlett, "Currently, campaign finance reports are only required for those candidates in localities with a population of 50,000 and over. We believe there should be equal application of disclosure to all counties. Some of these small areas have large campaigns." Southerland remarks, "Sometimes, over \$50,000 is spent on a race for county commissioner or city mayor in a town of less than 50,000. Yet, the records can only be accessed in an investigative manner if there is an apparent violation because they are not required to file. So the under 50,000 population exemption seems a disservice to the campaign finance laws. Furthermore, the reporting schedule needs to be improved. Currently, it allows the information to be withheld from the public for three or four months."

Bartlett and his staff, in addition to pursuing their own campaign finance reform agenda, are willing to support, with approval from the State Board of Elections, independent reform proposals where they agree with the policy changes proposed. Their reaction to Center proposals follows:

### **Some Independent Recommendations for Campaign Finance Reform . . . and Gary Bartlett's Reaction**

**T**he North Carolina Center for Public Policy Research produced a report in 1990, *Campaign Disclosure Laws: An Analysis of Campaign Finance Disclosure in North Carolina and a Comparison of 50 State Campaign Reporting Laws*, analyzing all 50 state campaign disclosure laws. The Center made several recommendations to improve North Carolina's system of reporting to the public the sources of money for candidates for political office in North Carolina:

#### **1) Penalties for Noncompliance**

**The Center:** Because full and prompt disclosure by candidates and committees is a key component of campaign finance laws, penalties for noncompliance with reporting requirements should be sufficiently severe in order to compel voluntary compliance. The Center recommends that these penalties be stated more specifically in North Carolina law, with forfeiture of the nomination or election specified as the penalty for serious campaign finance violations, such as intentional misreporting.

The Center recommends that penalties for not filing be restored to their pre-October 1987 level of up to \$1,000 for an individual and \$5,000 for other offenders, and/or imprisonment for up to one year. North Carolina law should be amended to provide that candidates may not take office until their reports are filed. Additionally, the Center recommends that the current fine of \$20 per day for late reports, not to exceed \$100, be raised to \$50 day, and that the names of those candidates that filed late be printed publicly in local newspapers to encourage greater compliance.

**Gary Bartlett:** Many campaign finance violations are violations of criminal law, resulting in misdemeanor and felony charges. It is my position that they should be changed to civil penalties. Currently, the maximum fine is \$100 for late reports. We think there should be an increase in fines to put a little teeth in our laws to deter habitual offenders, which we do have. I know folks who intentionally withhold the reports from the public because it only costs them \$100.

#### **2) Information Required in Reports**

**The Center:** North Carolina should join the federal government and the 25 other states in requiring candidates to list the occupation and/or principal place of employment of contributors to candidates, parties, PACs, and other political committees. This information would

enable voters to analyze the financial interests of those supporting a particular candidate.

**Gary Bartlett:** I believe that listing occupations is something that would be valuable to the public. I do not know when it should kick in, at what dollar amount. I do think that \$100 or less is NOT as important as higher contributions, like \$500 or more. This has been brought up each session of the General Assembly, and it has been reported favorably by previous Election Laws Study Commissions. The new study commission will probably take this issue up. We would hope the commission would continue to be supportive of this requirement.

### 3) *Limits on Family Contributions*

**The Center:** The Center recommends that North Carolina follow the lead of 27 states and limit contributions by members of a candidate's family. The state's standard \$4,000 per candidate per election limit should be made applicable to contributions by members of a candidate's family as well. This would help level the playing field among candidates from a variety of family backgrounds, and would contribute to holding down the cost of campaigns.

**Gary Bartlett:** As far as siblings and parents, I could support limitations.

## *Looking to the Future*

**E**lections in North Carolina have traditionally been characterized as a decentralized process, with statutory authority given to the individual counties so they may organize voter registration records and administer elections. Bartlett does not see the relationship between the state board and local elections boards changing much in the near future. He does think the elections process will increasingly be driven by federal initiatives as special interests push for the education and training of election officials nationwide and the standardization of voting equipment nationwide. "I would say that implementing these national initiatives will be a long-term process, not anything you will see on the horizon," says Gary Bartlett.

In the meantime, Bartlett sticks to his own management initiatives, trusting that they will ensure that he meets his goals. But at times, his frustration is apparent. "We would like to do everything we can to modernize the elections process," says Bartlett. "It is slow going. There are lots of things we want to do, such as on-line voter registration and making election night returns available to the public. We are not going at the pace we would like to, but we are going as fast as the system will allow us, and that our dollars will allow us."

Bartlett, however, sometimes seems to interpret existing laws too restrictively. For example, on two occasions during our interview, he cited a lack of apparent statutory authority as his reason for not moving on an issue.

First, when we asked him about his role in increasing *voter participation*, he said: "As far as voter participation, we do not have any kind of statutory authority." His response is disconcerting because one of the primary objectives of NVRA is increasing voter participation. Enhancing "the participation of eligible citizens as voters in elections for Federal office" is a purpose of the federal law.<sup>9</sup> In fact, increasing voter participation is one of the goals of the State Board of Elections.

Bartlett agrees that the purpose of the NVRA and of everything that the State Board of Elections does is to enhance the participation of eligible citizens as voters. "But we do it," says Bartlett, "through the creation of opportunity and means, not through persuasion. Persuasion is the role of the parties and the candidates. Participation as voters is a high goal which we continually serve, but the choice not to vote remains fundamentally with the voter."

Second, many states—such as California, Hawaii, New Jersey, and Oregon—publish campaign finance reports that include not just raw data but analysis of the data, so that trends in campaign financing over the years can be developed. With a new statewide computer system, North Carolina's State Board of Elections should be able to produce similar reports. Again, however, Bartlett and his staff cite a lack of statutory authority as the reason they do not plan to publish such reports.<sup>10</sup>

## **Table 2. How Do I Register to Vote in North Carolina?**

### **Am I eligible to vote?**

To register to vote in North Carolina, you must sign a voter declaration attesting that:

- You are a U.S. citizen.
- You will have been a resident of North Carolina and this county for 30 days before the election.
- You will be at least 18 years old by the next general election.
- You are not registered nor will you vote in any other county or state.
- If you have been convicted of a felony, that your rights of citizenship have been restored.

### **Where do I register to vote?**

**Local Boards of Elections** You may register to vote at local boards of elections in all 100 counties.

**Mail** You may register to vote with a mail-in registration form available at your county board of elections office (or they will send you a form in the mail if requested). The form is self-explanatory and easy to complete. The completed forms should be mailed directly to your county board of elections.

**Libraries and Public High Schools** Mail-in voter registration forms are located in public libraries and high schools. These locations provide the forms, but you must mail it to your county board of elections office.

**Public Agencies** If you applying for or receiving services from any of the following public agencies or programs, you may register to vote at that time:

- Aid to Families with Dependent Children (AFDC)
- Women, Infants and Children (WIC)
- Food Stamps
- Medicaid
- Services for the Blind
- Mental Health, Developmental Disabilities and Substance Abuse Services
- Employment Security Commission

**Division of Motor Vehicles** You may complete a voter registration application at any driver's licenses examination office when you are there to renew your license, I.D. card, etc.

### **What is the registration deadline?**

The deadline to register to vote in North Carolina is 25 days before the day of the election. Your registration form must be either postmarked or received by the deadline in order to vote in the upcoming election.

### **How will I know where to go to vote on Election Day?**

You will be notified by your county board of elections of your precinct and polling location after they receive your voter registration form.

**For questions, please call the Director of Voter Registration, State Board of Elections (919-715-1792), or your county board of elections.**

Yvonne Southerland says, "I am not sure that in administering the [laws], we have the authority. . . . We concentrate on gathering and providing the information and leaving the analysis to the public. . . . I am always telling [Bartlett] I would like to write a white paper. 'Let me tell them what I think I know.' But, I am not sure the way the North Carolina laws are written, the way the administration is designed, that analysis of the data is our responsibility."

Bartlett says, "We must pursue equal access and fairness. This office cannot justifiably influence or draw conclusions. . . . We are not opposed to printing an issue of an annual report. Future plans include using the Internet for this function."

However, North Carolina General Statute Section 163-278.22(6), in the Article on *Regulating Contributions and Expenditures in Political Campaigns*, charges the State Board with the

duty and the power to prepare and publish "reports" they deem appropriate. It is within their discretion whether they produce such reports. Reports that include the analysis of campaign finance data are invaluable to concerned citizens and the media as they try to track costs of campaigns. The North Carolina Center for Public Policy Research encourages Bartlett and his staff to find the motivation, money, and personnel resources to produce these reports in the future.

Gary Bartlett's faith in democracy and the system is apparent when you talk with him. His manner is mild and jovial. His intentions are sincere and earnest. But to become a leader in the country on election laws and campaign finance reform, he will need to take more initiative. Without Bartlett's support, voter *participation* will not increase and the campaign finance data *analysis* needed by North Carolina citizens will not be available.

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***You may never be the boss, at the place you're working,  
But there is a place where you can have your say.  
Yes you can be the boss, of this whole country.  
Pick up the form and fill it out today.  
There's a brand new way—it's as easy as can be.  
So register and vote! There's no excuses anymore!  
It's our country's gift to you and me."***

—SENATOR CHARLES ALBERTSON (D-DUPLIN)

RECORDED FOR THE STATEWIDE VOTER REGISTRATION DRIVE

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## FOOTNOTES

<sup>1</sup> Each county in North Carolina has a local board of elections. N.C.G.S. 163-30.

<sup>2</sup> Michelle Wyatt has since assumed the position of Director of Voter Registration.

<sup>3</sup> Interview questions are italicized. Responses are by Gary Bartlett, unless otherwise indicated.

<sup>4</sup> Chapter 854 of the 1983 North Carolina Session Laws (House Bill 1112).

<sup>5</sup> Chapter 588 of the 1983 North Carolina Session Laws (Senate Bill 109) and Chapter 707 of the 1983 North Carolina Session Laws (Senate Bill 157), respectively.

<sup>6</sup> To date, the State Board of Elections does not have a statewide computer system. According to Gary Bartlett, although the General Assembly appropriated the money, the funds have not been released.

<sup>7</sup> N.C.G.S. 163-82.25.

<sup>8</sup> A mandate is a statute or requirement that a level of government provide a service or meet a particular standard.

An unfunded mandate comes with no funds to pay for implementation.

<sup>9</sup> National Voter Registration Act of 1993, section 2(b)(2) (Public Law 103-31)(May 20, 1993).

<sup>10</sup> Public records available from the State Board of Elections include: disclosure reports filed by candidates, political party committees, and PACS; candidate, political party, and PAC files recording receipt of reports and contribution, loan, and expenditure totals of each report by election cycle; an analysis by election cycle, by office, by candidate of the totals of contributions, loans, and expenditures with election results; the ALL record—an index in alphabetical order of every registered candidate, political party, or PAC registered since 1974; an index to locate old reports; microfilm of reports that have been destroyed; and an electronic database by candidate, political party, and PAC by election cycle of reports filed beginning with the 1989-90 election cycle.

## North Carolina Voter Registration Application/Update Form

### A. Information

If you have previously registered to vote in the county where you live, you do not need to register again. If you are not sure you are registered, call your county Board of Elections.

**You Can Use This Form To:**  
 Register to vote in a county in North Carolina  
 Change your name  
 Change your address within a county in North Carolina  
 Change your political party

**Instructions:**

- The county where you live is the county where you must register and vote.
- You may mail this form to the Board of Elections in the county where you live, or you may hand deliver the form to that office.
- If you choose to use this form to register to vote, the office where you have received this form will remain confidential and will be used only for voter registration purposes.

(Fold here to seal)

### B. Cancellation of Previous Registration (in Another County or State)

Were you previously registered to vote in another county or state? If so, fill out the information below. *Print name and address on last voter registration.*

Name \_\_\_\_\_

Previous Name (if different than above) \_\_\_\_\_

Previous Address (Number and Street/Road/Dorm) \_\_\_\_\_  
 \_\_\_\_\_

County of Previous Residence \_\_\_\_\_

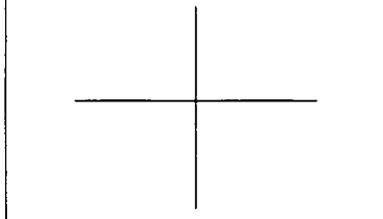
City/State/Zip \_\_\_\_\_

Place of Birth \_\_\_\_\_ Date of Birth \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

*Office Use Only*  
 Now registered in \_\_\_\_\_ County

If you live in a rural or nontraditional place, please show on the grid below where you live. Include street names and house numbers. Cross streets and landmarks (churches, schools) would be very helpful.



(Fold Here to Seal)

### C. Application to Register to Vote (Complete and Sign Below)

Check all that apply:  New Registration In County  Name Change *Office Use Only*  
 Address Change Within County  Party Change

Last Name:	First Name:	Middle/Maiden Name:	Sr. Jr. II III IV
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Address where you live (Number and Street/Road/Dorm)	Apt/Lot	City	County	State NC	Zip
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Address where you get your mail (if different than above).

Race (Circle One) White Black Am. Indian Other	Sex (Circle One) Male Female	Date of Birth mm/dd/yy	Place of Birth (City/Co/State)	US Citizen by: <input type="checkbox"/> Birth <input type="checkbox"/> Naturalization	Driver's License # (optional)	Phone # (optional) <input type="checkbox"/> Day <input type="checkbox"/> Night
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Previous name (if name change)	Previous address (if you moved within the same county)
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Political Party Choice\* (check only one)

- Democratic
- Republican
- Unaffiliated
- Other qualified party (write name) \_\_\_\_\_

\* You must register with a party to vote in that party's primary unless that party allows unaffiliated voters to vote in its primary. If you indicate a political party that is not a qualified party, or indicate no party, you will be listed as "Unaffiliated".

- I am a U.S. Citizen.
- I will have been a resident of North Carolina and this county for 30 days before the election.
- I will be at least 18 years old by the next general election.
- I am not registered nor will I vote in any other county or state.
- If I have been convicted of a felony, my rights of citizenship have been restored.

Signature	Date
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If you sign this card and know it to be false, you can be convicted of a Class I felony and jailed for up to five years, or fined, or both.

# VOTER REGISTRATION APPLICATION

STATE OF  
NORTH CAROLINA

### YOU MAY USE THIS FORM TO:

- Register To Vote In A County In North Carolina
- Change Your Address Within A County In North Carolina
- Change Your Name
- Change Your Political Party

### IN ORDER TO VOTE IN AN ELECTION, THIS FORM MUST BE:

- Postmarked at least \_\_\_\_\_ before the election, or
- Delivered to the local board of elections office no later than \_\_\_\_\_ before the election



Seal Here

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLACE  
STAMP  
HERE

TO: \_\_\_\_\_ COUNTY BOARD OF ELECTIONS  
\_\_\_\_\_  
\_\_\_\_\_  
CITY \_\_\_\_\_ NC \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

## Chapter 2

### 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 each house has been set: there are 50 Senators and 120 Representatives. 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 judicial branches of government. 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 appropriations laws.

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.

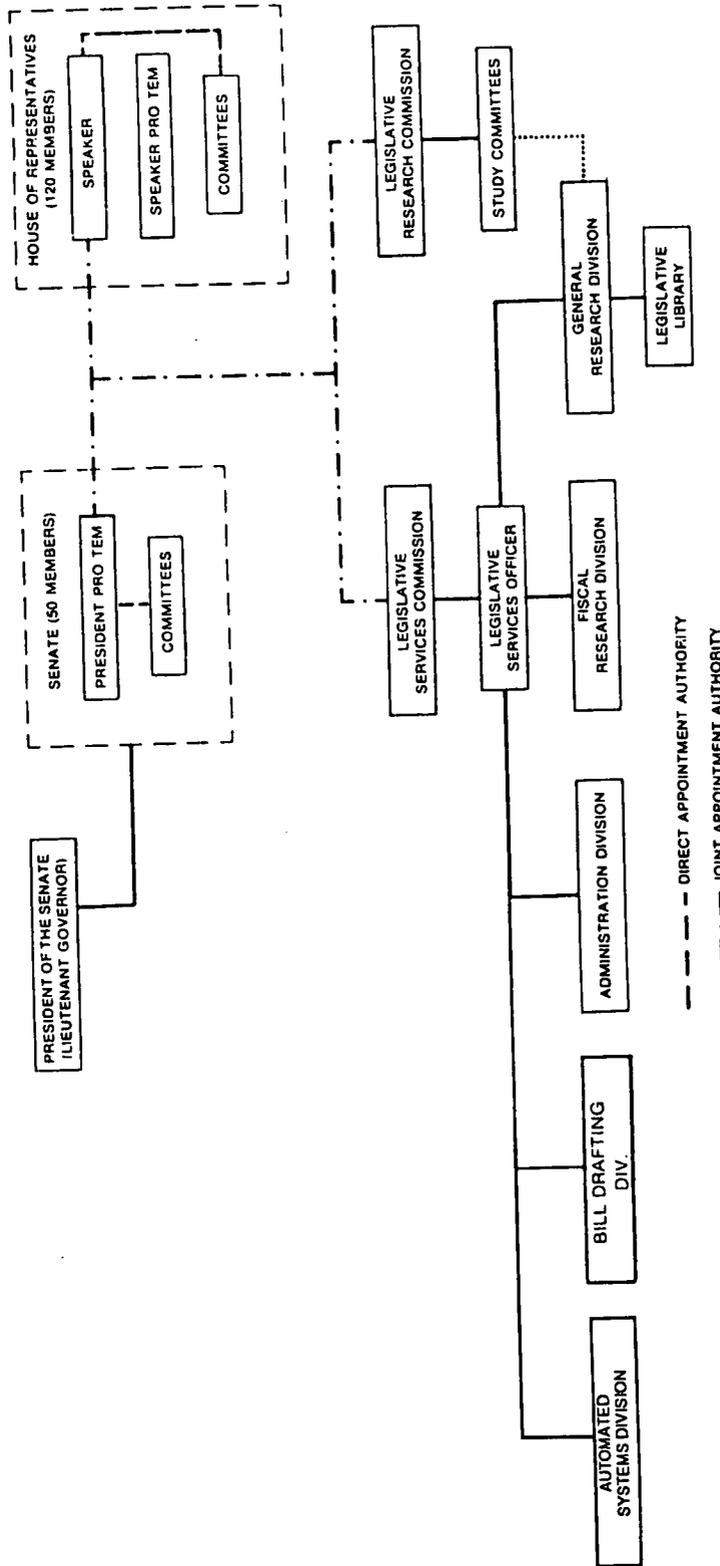
Committees are organized around subject matter such as education, health, or transportation, and they do most of the work on the final version of any bill that is ultimately voted on by the entire body.

Staff services are essential in assisting the members of the General Assembly. The General Assembly has a Fiscal Research Division which staffs the money committees—the Appropriations and Finance Committees. The General Research Division staffs the other substantive committees, such as the Education Committee or Local Government Committee. The Bill Drafting Division drafts bills for legislators, and the Automated Systems Division handles the computerized voting system and other functions. In addition, 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

## ORGANIZATIONAL CHART THE LEGISLATIVE BRANCH





# The Evolution of Party Politics:

## The March of the GOP Continues in North Carolina

BY MEBANE RASH WHITMAN

**T**he importance of the November 1994 elections in North Carolina should not be underestimated. Newspaper headlines heralded "Tarheel Revolution," and election results surprised even Republicans.<sup>1</sup> The Grand Old Party's gains in elections at all levels of government—national, state, and local—were grand indeed. So grand that some think it could portend a 21st century of Republican dominance in North Carolina state politics.

### A Reactionary, Revolutionary, or Evolutionary Election?

**A**nalysts disagree about how to frame the recent electoral wins of the GOP in North Carolina. Were the wins *reactionary*, that is, were voters reacting in an angry anti-incumbent, anti-Democrat, anti-tax, anti-big government manner? Were the wins *revolutionary*, a changing of the guard in terms of which party governs the state—from Democrats, whose party has governed the state for almost all of the 20th century, to Republicans, who hope to govern much of the 21st century? Or were they *evolutionary*, a single step in the long march of the Republican Party toward true competitiveness in a two-party state?

The results of most elections are to some extent reactionary, but 1994 was not a run-of-the-mill election. "Voters . . . revolted against Democratic-dominated national politics that

seemed corrupt, divisive and slow to address the needs of ordinary citizens," writes Stanley Greenberg, pollster for President Bill Clinton, in *The Polling Report*.<sup>2</sup> "Many voted to change a government that spends too much and accomplishes too little, and to shift the public discourse away from big government solutions." Pollsters brought together after the election "agreed that a lot of votes were cast Nov. 8 in opposition to something—whether it was an individual, or the party in power, or even more broadly, the idea of government intruding into people's lives."<sup>3</sup>

Hal Hovey, former Illinois budget director, analyzed voters' desire for change in the 1994 elections. In *State Policy Reports*,<sup>4</sup> he writes, "If voters were unhappy with their lives and disillusioned with government, they may have concluded that change was desirable—not change in a particular direction, just change. This theory is supported by a poll showing that 53% of respondents explained election results as indicating 'people wanted to see a change in Washington,' which far outdistanced 'voting against the President and his agenda' (19%), and 'because people wanted a more conservative Congress' (12%)." Once voters decide they want change for change's sake, according to this analysis, state policy does not matter. "It's time for a change threatens incumbents regardless of what they do, so they can't respond to the mandate except by finding their next job."

Ran Coble, executive director of the N.C. Center for Public Policy Research, uses two television-based images to describe the reactionary nature of the 1994 election. "One is the Nike athletic shoe commercial image of 'Just Do It.'

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Mebane Rash Whitman is the Center's policy analyst.

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***It was a very big victory for the Republican Party. We may well be looking at the complete political realignment of the once Democratic South to the now solidly Republican South.***

—CHARLES BULLOCK  
A PROFESSOR AT THE  
UNIVERSITY OF GEORGIA  
WHO STUDIES POLITICS IN THE SOUTH

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As one voter put it, 'Just do it. Do it now, do it quickly, just do it.' The problem is, they disagree over what 'it' is. Nevertheless, a big theme of the last elections was change, since more than two-thirds of independent voters believe the country is on the wrong track. People want *change* and a government that works well—one that delivers services more efficiently and for less money. The second image that may capture the 1994 electorate is that of the television remote control, as in 'I believe I'll change stations—or political parties.' And if Republicans don't produce, voters may switch again in 1996." The long-term impact of the 1994 elections is unknown until the results of the next few elections can be compared.

The Republican Party hopes the 1994 elections represented a permanent revolution, and some analysts believe their hopes were realized. Prior to the election, Tom Vass, in an essay published in *The Charlotte Observer*, proclaimed, "... the citizens of this state should happen to rouse themselves to political fury in order to deal the Democrats a death blow, it would be to a political oblivion that the Democrats richly deserve."<sup>5</sup> Charles Bullock, a professor at the University of Georgia who studies politics in the South, says, "It was a very big victory for the Republican Party. We may well be looking at the complete political realignment of the once Democratic South to the now solidly Republican South." He cites North Carolina as an example of a state that's moving back towards a one-party system, this time controlled by the Republicans.

An editorial in *The Chapel Hill Herald* noted that "[f]ar from a ripple, the Nov. 8 election was a revolution."<sup>6</sup> Former Governor Jim Martin, in an article published in *The Charlotte*

*Observer* shortly after the election, wrote, "In the political story of the decade, voters swept out Democrat incumbents all across America. Power was purged. . . . Nowhere was this more dramatic than in North Carolina, where the House was captured outright for the first time since Reconstruction."<sup>7</sup>

In 1987, the N.C. Center for Public Policy Research released its report *The Two-Party System in North Carolina: Do We Have One? And What Does It Mean?* The report found that, "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 of political winds abounds."<sup>8</sup>

Thad Beyle, a professor of political science at the University of North Carolina at Chapel Hill, also thinks that the Republican gains in November were evolutionary, and says that none of this is surprising. "This was all happening prior to Watergate. In the late 1960s, after the Democrats passed the Civil Rights Act and the Voting Rights Act, the Republican Party began to gain momentum. But Watergate undid Republican gains in the South, and in 1976, North Carolinians supported fellow Southerner Jimmy Carter, the Democratic presidential nominee from Georgia," says Beyle. "It took the Reagan/Bush era to instill confidence in the Republican party again." In 1973, there were 50 Republican legislators in North Carolina. After Watergate, there were ten. When Reagan won a second term in 1984, the Republicans again held 50 seats in the 1985 state legislature. In 1995, they increased that number to 92.

"This potentially was one of the most significant elections," says Beyle. He notes several reasons for Republican gains. Low African-American turnout made it difficult for Democratic candidates to win their elections. "And, the losses of the Democrats are tied to the decision to create minority race districts—the effect was to strip nearby districts of Democratic support."<sup>9</sup> Also, voters in North Carolina are increasingly conservative. We've become a destination state for retirees; businesses that have moved to this state have brought with them employees who tend to vote Republican; and students since

the Reagan years are increasingly more conservative, more Republican." So Beyle is cautious when making long-term predictions about the significance of the gains. He says the 1996 elections will determine whether the 1994 Republican gains were reactionary, revolutionary, or evolutionary. "If Republican gains are stable or increase, that will validate the importance of the 1994 elections."

Others assert that the gains of Republicans in November are being overestimated, not underestimated. In his book, *Tar Heel Politics*, Rep. Paul Luebke (D-Durham) writes that dealignment—not realignment—characterizes the tendencies of voters in North Carolina. "The gradual weakening of Democratic loyalties by white Southerners is known as dealignment. Dealignment means that many North Carolina whites have lost their commitment to the Democratic party, but have not yet transferred their loyalty to the Republicans."<sup>10</sup> Luebke asserts that Democratic politicians tend to act like generalists, failing to assert specific taxation and policy programs, and that they need to "draw clear distinctions between Democrats and Republicans. If dealigned white Tar Heel voters, typically registered Democrats who lack strong allegiance to either political party, cannot easily see how they directly benefit from state government policies that are passed by the Democratic majority, they will vote against the Democrats."<sup>11</sup> Luebke says, "That's what happened in the 1994 election." It is one of the reasons he has pushed hard in the 1995 session for repeal of the sales tax on food.

Dewey Grantham, professor emeritus at Vanderbilt University and author of *The South in Modern America*, comments, "We are not on the precipice of shifting to a one-party Republican South. The two-party system is an ingrained institution in national politics. It would be very hard for the Republicans to establish a monopoly like the Democrats enjoyed, even though they appear to be the dominant party."

### Republican Party Seeks Permanent Shift

As the Center's 1987 report found, it is hard to downplay the significance of Republican gains in North Carolina over the past 30 years. The Republican campaign started at the national level. Before 1968, Re-

publicans won only one presidential contest in North Carolina. Since 1968, Republican presidential candidates have won a plurality in North Carolina in all but one election, in 1976. (See Table 1 on pp. 176–177.) "The fall of the South as an assured stronghold of the Democratic party in presidential elections is one of the most significant developments in modern American politics," write Earl and Merle Black in their book *The Vital South: How Presidents Are Elected*.<sup>12</sup>

In 1968, both U.S. Senators were Democrats. In 1972, Republican Jesse Helms won his first U.S. Senate race. He still holds that seat and Republican Lauch Faircloth holds the other North Carolina seat in the U.S. Senate. In November 1994, North Carolinians elected 12 members to the United States House of Representatives: eight were Republicans, four were Democrats. The last time the Republicans held a majority in the N.C. Congressional Delegation was in 1869, when they held seven of ten seats. In 1867, Republicans held all seven seats.

In 1972, Jim Holshouser became the first Republican governor in North Carolina elected in the 20th century. Republican Jim Martin was elected governor in 1984, and he served two terms.

The 1994 election results provided the GOP with significant gains in the state legislature (+ 39 seats) and at the local level (+ 56 seats on boards of county commissioners). Tar Heel Republicans in the Senate picked up 13 seats (from 11 to 24), gaining more seats than in any other state senate in the country. In the North Carolina Senate, Democrats hold 26 of 50 seats—a vulnerable majority. On the House side, North Carolina Republicans picked up 26 seats (from 42 to 68), securing the third largest gain in any state house after New Hampshire (+ 28 seats) and Washington (+ 27 seats).<sup>13</sup> With 68 of 120 seats, Republicans controlled the North Carolina House for the first time this century. "We had hoped to pick up 10 seats, recovering a few previously held by Republicans, for a total of 52: a new record, but short of 61 for a majority. Without losing a single Republican seat, 26 were taken from the Democrats," writes former Governor Jim Martin.<sup>14</sup> One commentator, in the magazine *Campaigns & Elections*, writes, "[T]he GOP's seizure of the . . . North Carolina House is the culmination of years of steady gains by state legislative Republicans."<sup>15</sup> Overall, Republicans

hold 92 of the 170 seats in the General Assembly.

And the march may not be over. Tres Glenn, former political director for the Republican Party in North Carolina, predicts that this surge of Republican legislators has not peaked. "In the districts where Senator Jesse Helms, Governor Jim Martin, and President George Bush have run well, the Republican Party captured all but a handful of seats in 1994. By and large, in those districts, if we didn't get the seat, it was because we didn't contest the election." For example, in the 71st House district, Joe Mavretic lost in the Democratic primary, but Republicans didn't have a candidate running for that seat. "In the future, we will definitely contest those 10 seats," says Glenn.

Wayne McDevitt, chair of North Carolina's Democratic Party, thinks GOP gains will be hard to come by. "Voters want government to work better. Given the Republican leadership in the North Carolina House, there will be room for

significant gains of the Democratic Party in 1996," says McDevitt.

Al Adams, a long-time Democratic Party activist, former legislator, and lobbyist, says, "It's much too early to tell how significant the November elections were. We're only three months into Republicans controlling the House. But, this is not a permanent 100- or 50-year change. The Democrats are more cohesive than ever."

The judicial system in North Carolina, once devoid of Republicans, now has Republican judges at all levels—from the Supreme Court down to district courts across the state. "After winning just three statewide judicial races this century, Republicans won all 12 statewide races they contested this year,"<sup>16</sup> writes Joseph Neff of *The News & Observer* in Raleigh. Republicans now hold two seats on the North Carolina Supreme Court, two seats on the North Carolina Court of Appeals, six Superior Court seats, and 15 District Court seats.

On the local level, Republicans are making

**Table 1. Election Results in North Carolina, 1968–1992**

**PRESIDENTIAL VOTING RESULTS\***

Year	Democrat	Vote in N.C.	%	Republican	Vote in N.C.	%
1968	Hubert Humphrey	464,113	29.2	Richard Nixon	627,192	39.5
1972	George McGovern	427,981	28.6	Richard Nixon	1,043,162	69.8
1976	Jimmy Carter	927,365	55.3	Gerald Ford	741,960	44.2
1980	Jimmy Carter	875,635	47.2	Ronald Reagan	915,018	49.3
1984	Walter Mondale	824,287	37.9	Ronald Reagan	1,346,481	61.3
1988	Michael Dukakis	890,167	41.7	George Bush	1,237,258	58.0
1992	Bill Clinton	1,114,042	42.7	George Bush	1,134,661	43.4

**U.S. SENATE VOTING RESULTS**

Year	Democrat	Vote	%	Republican	Vote	%
1968	Sam Ervin	870,406	60.6	Robert Somers	566,934	39.4
1972	Nick Galifianakis	677,293	46.0	Jesse Helms	795,248	54.0
1978	John Ingram	516,663	45.5	Jesse Helms	619,151	54.5
1980	Robert Morgan	887,653	49.7	John East	898,064	50.3
1984	Jim Hunt	1,070,448	48.1	Jesse Helms	1,156,768	51.9
1986	Terry Sanford	823,662	51.8	James Broyhill	767,668	48.2
1990	Harvey Gantt	981,573	47.4	Jesse Helms	1,088,331	52.6
1992	Terry Sanford	1,194,015	46.3	Lauch Faircloth	1,297,892	50.3

—continued

key gains as well. In 1992, Republicans controlled only 27 boards of county commissioners; after the November 1994 elections, they control 42. (See Table 2 on p. 179.)<sup>17</sup> Of the 17 commissions where party control changed, 16 opted for Republican leadership. In 1992, Republicans held 29.2 percent of the seats on county commissions in North Carolina and Democrats held 70.8 percent. Republicans now

hold 38.8 percent of the seats; Democrats hold 61.3 percent.

Republican voter registration is also on the rise. (See Table 3 on p. 180.) Over the last 10 years, Republican registration has substantially increased. In 1984, only 838,631 (25.6 percent of registered voters) North Carolinians were registered Republican; by 1994, the number of Republicans had increased to 1,191,878

**Table 1, continued**

**NUMBER OF N.C. DELEGATES TO U.S. HOUSE, BY PARTY**

Year	Total # of Delegates	Democrat	Republican
1968	11	8	3
1970	11	7	4
1972	11	7	4
1974	11	7	4
1976	11	9	2
1978	11	9	2
1980	11	9	2
1982	11	9	2
1984	11	6	5
1986	11	8	3
1988	11	8	3
1990	11	8	3
1992	12	8	4
1994	12	4	8

**GUBERNATORIAL VOTING RESULTS**

Year	Democrat	Vote	%	Republican	Vote	%
1968	Bob Scott	821,233	52.7	Jim Gardner	737,075	47.3
1972	Hargrove "Skipper" Bowles	729,104	48.7	Jim Holshouser	767,470	51.3
1976	Jim Hunt	1,081,293	65.7	David Flaherty, Sr.	564,102	34.3
1980	Jim Hunt	1,143,143	62.3	Beverly Lake, Jr.	691,449	37.7
1984	Rufus Edmisten	1,011,209	45.6	Jim Martin	1,208,167	54.4
1988	Bob Jordan	957,687	43.9	Jim Martin	1,222,338	56.1
1992	Jim Hunt	1,368,246	52.7	Jim Gardner	1,121,955	43.2

\* Third party candidates are omitted from this table. In 1968, George C. Wallace received 496,188 votes—31.2 percent of the North Carolina vote. In 1980, John B. Anderson received 52,800 votes—2.9 percent of the vote. In 1992, Ross Perot received 357,864 votes—13.7 percent of the North Carolina vote.

Source: *The North Carolina Manual*, Office of the Secretary of State.

(32.8 percent). At the same time, Democratic registration has declined: 2,289,061 North Carolinians (70.0 percent) were registered Democrats in 1984; only 2,129,159 (58.6 percent) were registered in 1994.<sup>18</sup>

A poll conducted for a pro-business non-profit called N.C. FREE (Forum for Research and Economic Education) found continued erosion in the number of North Carolinians who identify themselves as Democrats. "Those identifying with the Democratic Party dropped from 43 to 33 percent during the past four years, while Republican identification has remained at about 41 percent."<sup>19</sup>

The Republican Party's intention to effect a permanent realignment in North Carolina also is evidenced by their recruitment of minority candidates. Just as the South was once thought to be exclusively controlled by the Democrats, African Americans have predominantly voted Democratic and run for office as Democrats. However, in the 1995-96 session of the General Assembly, there are three African-American Republican legislators—Sen. Henry McKoy (R-Wake), Rep. Larry Linney (R-Buncombe), and Rep. Frances

Cummings (R-Robeson). Rep. Cummings ran as a Democrat, but switched parties after the election. She is the first female African-American Republican ever to serve in the N.C. General Assembly. In the journal *Southern Exposure*, Ron Nixon writes, "Across the South a small but growing number of African Americans, left disenfranchised and alienated by the Democrats, are joining the Republican Party. . . . Today's black Republicans express deeply conservative values and ideas."<sup>20</sup>

### The Republican Contract

Republican gains at the national, state, and local level, in judicial races, and in registering voters are unprecedented in this state. The GOP presented voters with "A New Contract, by the People for the People of North Carolina." The eight-point document proposes an income-tax cut, state budget spending cuts,

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***Republican gains at the national, state, and local level, in judicial races, and in registering voters are unprecedented in this state.***

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an end to the cap on the state's prison population, welfare reform, education governance changes, a citizen initiative and referenda process, veto power for the Governor, term limits, and changes in legislative procedure.

A potential problem for the Republicans is the shaky marriage between the Christian Right and the more moderate Republicans, says Charles Bullock. "To the extent that they beat up on each other instead of on the Democrats, the Democrats may find they have a new lease on life in 1996." However, if Republicans successfully move their agenda and gain the additional seats they anticipate in 1996, the GOP's dominance in North Carolina will not be just a blip on the radar screen in the battle for political control of the Old North State.

"It's no surprise that the Democrats have lots of work to do," says McDevitt, the state Democratic Party chairman. "In the 1994 elections, the Democrats nationally allowed the Republicans to define the issues. In 1996, we will define what it is to be a Democrat in North Carolina. We will articulate our message clearly." Will the Democrats have their own contract in 1996? "Unlikely," McDevitt notes. "People are concerned about the issues—children, public safety, education, jobs, cutting taxes for working families. The Democrats have a very good record of success on those issues. Voters want you to tell them what you're gonna do, do it, and then tell them what you did. That's our contract. That's what we'll do in 1996."

Keith Miles writes in *Southern Exposure*, "Both parties have tremendous challenges before them: the Republicans in translating a seductive philosophy into concrete policy without alienating their new constituency [white Southerners]; the Democrats in devising and articulating a new platform that recognizes and addresses the current drift to the right without losing their liberal and minority base. What happens between now and the 1996 elections will determine whether there will be real realignment in the South."<sup>21</sup>

### Conclusion

The 1996 elections are eagerly anticipated because they will determine whether the previous gains of the Republican party in North Carolina were an aberration or whether the GOP

**Table 2. 1994 Election Results for  
Boards of County Commissioners,\* by Party, in N.C.**

	1992	1994
# of Republicans	161	217
% of Republicans	29.2%	38.8%
# of Boards of County Commissioners Controlled by Republicans	27	42
# of Democrats	390	343
% of Democrats	70.8%	61.3%
# of Boards of County Commissioners Controlled by Democrats	73	58

\* There are 100 boards of county commissioners in North Carolina.

Source: The North Carolina Association of County Commissioners,  
P. O. Box 1488, Raleigh, N.C. 27602 (919)715-2893.

has attained the status of a competitive party all the way down the ballot. The prevalence of Republican wins in 1994 at all levels of government—national, state, and local—and the magnitude of their gains indicate that the Republicans likely will hold on to many of the seats in the 1996 elections.

Republicans used their contract with the people as a mechanism for developing a party platform and attracting voters, which has increased the significance of party affiliation in North Carolina. “The New Contract agenda began as a campaign gimmick last fall when almost no one thought it would make a difference,” writes Jack Betts of *The Charlotte Observer*.<sup>22</sup> “Today, it represents what may become [House Speaker Harold] Brubaker’s legacy to North Carolina—the imposition of a form of parliamentary government. If Brubaker’s idea takes root and grows into the norm, future campaigns will turn on the notion that when you vote for a certain legislator, you vote for a program he has agreed to support and an ideology that politician will work to adopt.”

### **Article II**

Information about the gains of the GOP and other demographic trends are reported in *Article II: A Guide to the North Carolina Legis-*

*lature*, the Center’s legislative handbook, which contains profiles of each member of the legislature, including photos, business and home addresses, telephone and fax numbers, district served, counties in that district, number of terms served, and educational and occupational backgrounds. For members who served in the previous session, the guide lists votes on 14 of the most significant bills considered, effectiveness rankings since 1983, and five selected bills they introduced. Also included are demographics for the General Assembly since 1975, a list of the 50 most influential lobbyists, and a supplement that contains committee assignments by member and by committee.

The guide is available for \$22.50 from the North Carolina Center for Public Policy Research, P.O. Box 430, Raleigh, NC 27602. Phone: (919) 832-2839. FAX: (919) 832-2847.

### **DISCUSSION QUESTIONS**

- 1) Which political party do you think will control the legislature and Governor’s office during the next 20 years? Why?
- 2) What are the benefits of having a competitive two-party system in North Carolina? What are the benefits and dangers of one party control over a long period of time?

**Table 3. Statewide Voter Registration by Party, 1974–1994**

Year	Total Registration	Democrats	% of Voters	Republicans	% of Voters
1974	2,279,646	1,654,304	72.6%	537,568	23.6%
1984	3,270,933	2,289,061	70.0%	838,631	25.6%
1994	3,635,875	2,129,159	58.6%	1,191,878	32.8%

Source: The State Board of Elections; *The Two-Party System in North Carolina: Do We Have One? What Does It Mean?*, N.C. Center for Public Policy Research, December 1987.

### FOOTNOTES

<sup>1</sup> David Rice, "Tarheel Revolution: GOP presents the voters with an eight-point contract for legislative change," *Winston-Salem Journal*, Winston-Salem, N.C., Jan. 22, 1995, p. A1. See also Editorial, "The Republican revolution," *The Chapel Hill Herald*, Durham, N.C., Mar. 9, 1995, p. 4. In September 1994, the chairman of the state Republican Party, Jack Hawke, predicted that his party would pick up ten seats in the state House. See David Rice, "GOP awaits Clinton backlash," *Winston-Salem Journal*, Winston-Salem, N.C., Sept. 18, 1994, p. E1. Party chairmen are prone to overestimate their expected gains when predicting the results of an election. However, in November 1994, the GOP picked up 26 seats in the N.C. House of Representatives.

<sup>2</sup> Stanley B. Greenberg, "Election of 1994: Revolt Against Politics," *The Polling Report*, Vol. 10, No. 22, Washington, D.C., Nov. 21, 1994, p. 1.

<sup>3</sup> Howard Goldberg, "Polarization called key to '94 elections," *The News & Observer*, Raleigh, N.C., Nov. 19, 1994, p. A6.

<sup>4</sup> *State Policy Reports*, Vol. 12, Issue 23, Dec. 1994, p. 9.

<sup>5</sup> Tom Vass, "North Carolina's 100-year legacy of one-party rule," *The Charlotte Observer*, Charlotte, N.C., Nov. 3, 1994, p. A19.

<sup>6</sup> Editorial, *The Chapel Hill Herald*, see note 1 above.

<sup>7</sup> James G. Martin, "At last, a 2-party South," *The Charlotte Observer*, Charlotte, N.C., Nov. 20, 1994, p. D4 [emphasis in original].

<sup>8</sup> Jack Betts & Vanessa Goodman, *The Two-Party System in North Carolina: Do We Have One? And What Does It Mean?*, N.C. Center for Public Policy Research, Raleigh, N.C., Dec. 1987, p. i.

<sup>9</sup> Rep. Paul Luebke, in his book *Tar Heel Politics: Myths and Realities*, cautions that two points remain important to African Americans in their continued advocacy for minority race districts, despite Republican gains. First, white Democrats needed to and did develop a political program that appealed to white voters because in the areas of the state where a strong two-party system exists, they could no longer rely on the party loyalty of blacks to win seats. Second, African Americans maintain their right to elect candidates of their own choosing. See Paul Luebke, *Tar Heel Politics: Myths and Realities*, University of North Carolina Press, Chapel Hill, N.C., 1990, p. 120. The result of in-

creased African-American representation in the General Assembly may be the loss of indirect representation in the form of white Democratic legislators—as allies to black Democratic legislators and advocates for African-American constituents.

<sup>10</sup> *Ibid.*, p. 156.

<sup>11</sup> *Ibid.*, p. 211.

<sup>12</sup> Earl Black & Merle Black, *The Vital South: How Presidents Are Elected*, Harvard University Press, Cambridge, Mass., 1992, p. 4.

<sup>13</sup> Information provided by the National Conference of State Legislatures.

<sup>14</sup> Martin, see note 7 above.

<sup>15</sup> John F. Persinos, "The GOP Farm Team: Republican Gains in State Legislatures Could Pave the Way for Bigger Electoral Victories in the Future," *Campaigns & Elections*, Washington, D.C., Mar. 1995, p. 30.

<sup>16</sup> Joseph Neff, "Merit selection of judges may gain momentum," *The News & Observer*, Raleigh, N.C., Nov. 15, 1994, p. A3.

<sup>17</sup> Information provided by the North Carolina Association of County Commissioners.

<sup>18</sup> Voter registration information provided by the State Board of Elections and from the Center's report *The Two-Party System in North Carolina: Do We Have One? And What Does It Mean?*, table 1, p. 3.

<sup>19</sup> "Tar Heels worried about crime," *The News and Observer*, Raleigh, N.C., Mar. 18, 1995, p. A3. "The statewide survey of 800 registered voters was conducted . . . between Feb. 27–March 3 by Marketing Research Institute, a veteran polling firm located in Pensacola, Fla. The margin of error was 3.5 percentage points." The poll looked at voter identification with political parties since 1991. "[T]he survey found a moderate shift to the right by North Carolinians."

<sup>20</sup> Ron Nixon, "Plantation Politics," *Southern Exposure*, Institute for Southern Studies, Durham, N.C., Spring 1995, pp. 27–29.

<sup>21</sup> D. Keith Miles, "Whatever happened to the Southern Democrats? They Turned Republican," *Southern Exposure*, Institute for Southern Studies, Durham, N.C., Spring 1995, p. 39.

<sup>22</sup> Jack Betts, "Thrust for change," *The Charlotte Observer*, Charlotte, N.C., Apr. 9, 1995, p. C1.

# The Evolution of the Speaker's Office

BY PAUL T. O'CONNOR

*This article traces the evolution of the office of the Speaker of the N.C. House of Representatives, from a part-time position whose office closed at the end of the legislative session, to today's bustling office with eight staff members. The profile of the speaker has been raised by media attention and the partisan twists of the state's recent political history. And the power of the office has been consolidated through the ability to seek more than one consecutive term, competition with the Senate, and competition with the executive branch.*

## I. Historical Evolution

**D**uring the 1967 legislative session, when House Speaker David Britt faced the crush of legislative duties, his impending move from the legislative branch to a seat on the N.C. Court of Appeals, and a commencement address that he'd been asked to make at Appalachian State University, to whom did he go for help? "Dr. Preston Edsall at N.C. State [University] had a number of interns working [at the legislature] as part of their coursework. I turned to one of them—my cousin—who was an undergraduate at the time."

In comparing the office 30 years ago, the most obvious and undisputed difference is in the staff available to the speaker. In what other ways has the office evolved? And when all is said and done, is today's speaker any more powerful than three decades ago?

### A. More Staff But More Work

Britt and his predecessors usually had only a secretary and the help of college student interns. The speaker now can seek assistance from both a personal staff of well-educated specialists, and a much larger staff in the legislature's bill drafting, automated systems, general research, and fiscal research divisions.

Speaker of the House Harold Brubaker (R-Randolph) has a staff of eight employees and a budget of nearly \$450,000 a year.<sup>1</sup> While Britt occupied a suite of two small offices, Brubaker's staff fills offices in the remodeled, 2300 quadrant of the Legislative Building. (Senate President Pro Tempore Marc Basnight and his staff similarly have occupied the 2000 quadrant.)

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Of course, the entire legislative staff has mushroomed since Britt held the speaker's office nearly three decades ago. In Britt's day, the only legislative employees were temporaries, the principal clerks, and secretaries. The janitors were employed by the executive branch. On July 30, one week after the 1993 session adjourned, the Legislative Services Commission issued paychecks to 148 full-time, permanent employees.

Observers say the responsibilities of the speaker's office have grown on nearly every front—from selecting people for appointments to a burgeoning number of committees and commissions to even the seemingly mundane task of answering constituent mail. Kaye Gattis, former Speaker Carl Stewart's secretary from 1977 to 1980 and now chief of staff to Lt. Gov. Dennis Wicker, says growth has been tremendous in constituent contact with officeholders like House speaker, governor, and lieutenant governor. Someone must answer that mail.

Staff also has grown for reasons other than administration. In 1968, the General Assembly hired its first legislative services officer, John Brooks.<sup>2</sup> The action was North Carolina's entry in a nationwide movement to make state legislatures more professional and independent. In 1970, the General Assembly hired its first full-time lawyer, Clyde Ball, making him head of the General Research Division. And in 1972, the Assembly hired Fiscal Research Director Mercer Doty and three fiscal analysts. Since those hirings, staff increases have been steady.

***B. More Staff Enables the Speaker to Develop an Independent Agenda***

Does independence for the speaker and the legislative branch bring more power to the office? The answer depends upon who you ask. But an independent speaker clearly has increased resources to pursue his own agenda, and many think that modern speakers now do that.

**Table 1. Speakers of the North Carolina House of Representatives, 1961–Present**

Years Served	Representative	County
1961	Joseph M. Hunt Jr. (D)	Guilford
1963	H. Clifton Blue (D)	Moore
1965 and 1966 special session	H. Patrick Taylor Jr. (D)	Anson
1967	David M. Britt (D)	Robeson
1969	Earl W. Vaughn (D)	Rockingham
1971	Philip P. Godwin (D)	Gates
1973–1974*	James E. Ramsey (D)	Person
1975–1976	James C. Green (D)	Bladen
1977–1980	Carl J. Stewart Jr. (D)	Gaston
1981–1988	Liston B. Ramsey (D)	Madison
1989–1990	Josephus L. Mavretic (D)	Edgecombe
1991–1994	Daniel T. Blue Jr. (D)	Wake
1995–	Harold J. Brubaker (R)	Randolph

\* In 1974, the legislature began meeting annually, rather than every other year, adding a short session in even-numbered years at which the primary business would be to fine-tune the biennial budget.

Gov. Jim Hunt, asked to cite the major difference between today's speaker and those in office when he became lieutenant governor in 1973, cites the speaker's agenda. "Historically, speakers did not have programs that they supported," says Hunt. "Clearly, we see now, that [the speakership] can be a position of affirmative and aggressive leadership."

Reporters who covered the General Assembly in the 1960s agree. "The speaker's agenda was the governor's agenda," says Ted Harrison of the University of North Carolina Center for Public Television, who came to Raleigh in 1968 to cover politics for WFMY-TV in Greensboro. Russell Clay, who began covering the Assembly in 1959 and who ended his legislative career as a speechwriter for Speaker Liston Ramsey in 1989, says the speakers of the 1950s "didn't have an agenda to the extent that they do now. They were just there to preside."

That was also the case in the sessions of 1945 and 1947, recalls Rep. Vernon James (D-Pasquotank), who served two terms in the legislature in the 1940s, then returned in 1973. The speaker's agenda, he says, "was the governor's agenda."

Past speakers agree. Britt lists the four speakers he served under as a representative: Addison Hewlett in 1959, Joe Hunt in 1961, Cliff Blue in 1963, and Pat Taylor in 1965. Of each, he says the same thing. "If he had an agenda, I didn't know what it was." Taylor, he says, was an exception to some extent in that he sought to modernize the state's court system.

Yet even Taylor professes not to have had an agenda, and says that was typical of speakers of his day. "As speaker, I made an effort to promote the governor's program," he says.

Taylor says the speaker's job was to make committee appointments and assign bills to those committees in a way that would assure that legislation got a fair hearing—not to exercise power or pursue an agenda. That, he says, was the job of the governor, not a state representative elected by district. "The governor is elected by the whole state," says Taylor. "He should have right much influence when he proposes something."

Speaker of the House Harold Brubaker has been open about his agenda. In the 1995 session, for example, issues he supported included: an income tax cut, removal of the cap on prison population, welfare reform, education reform, voter initiative, veto power for the



Karen Tam

**Dan Blue  
as House  
Speaker,  
1993.**

Governor, and term limits for legislators.

Former Speaker Dan Blue also had an agenda and scoffs at the notion that other speakers had no agenda. "I think some of them had something of an agenda," he says. "They were among some of the chief policymakers of the state. They can claim that they did not have an agenda, but even if they were not proactive, you're going to have an agenda to react. They may not have been as tightly defined as some of my ideas, but if they didn't have an idea [of what they wanted to do in terms of policy], they shouldn't have run for office."

Whether they had a clearly stated agenda, other speakers certainly exerted their will through the office. For example, four-term House Speaker Liston Ramsey, a Madison County Democrat, used the power of the office to control the budget process, build the strength of the legislative branch versus the executive branch, and direct numerous multi-million dollar capital projects to western North Carolina. And with Republican Governor James G. Martin in office for two of Ramsey's four terms, the mountain populist had a clear agenda to oppose Martin's agenda.

## II. Other Institutional Changes in the Speaker's Office

While the office of the speaker has evolved toward a fully staffed office that enables an independent agenda, there also have been institutional changes that have helped the office consolidate power. Among these are succession, the evolution of the speaker's office to a full-time position, and, indirectly, the legislature's removal—or stripping—of certain powers from the lieutenant governor's office.

### A. *Serving Multiple Terms: the Most Important Institutional Change?*

The freedom to run for the speaker's office more than once often is cited as a way in which the power of the speaker has grown. Since 1979, when Carl Stewart won a second term as speaker and broke a century-old tradition of one-term speakers, speakers have had the option of seeking to succeed themselves.<sup>3</sup> Stewart held the job for two terms, Liston Ramsey for four, Joe Mavretic for one, and Dan Blue for two.

Taylor, in fact, calls this succession issue the most dramatic change in the power of the speaker since he held the office in 1965. And Taylor credits succession with breaking a long-standing tradition of alternating the speakership between the east and the west. "Of course it was an unwritten law, and there was never any clearly defined line of where the east ended and the west started," says Taylor.

Succession, he says, ended the tradition by giving Stewart, a westerner from Gastonia, a second term. Then Ramsey, a mountain populist from the far west, buried the tradition by win-

ning a second, and then a third and a fourth term. "Everything disappeared with that of course," says Taylor.

Blue also says that the tradition of alternating the speaker's office between the east and the west now is a relic. "The speaker before me was from the east and I'm from the east and I was elected twice," he says. Harold Brubaker is from Asheboro in the central part of the state.

Hawk Johnson, a lobbyist who has followed the General Assembly since 1969, agrees with Taylor that succession resulted in a dramatic boost in the powers of the speaker. "The biggest change has been succession," he says. "It stopped the political parade through here every two years and kept new leadership from developing. The speaker has more power today, and he can utilize more power because in recent years, [a member] knew the leadership would change. Now, [a member] doesn't know if the speaker is for today or forever, and legislators have to subvert their desires to those of the leadership."

Stewart says he didn't break the succession tradition to increase his power. He says it was a reaction to changes in state law and in the state constitution that threatened to weaken the speaker's office.

On November 8, 1977, North Carolina voters agreed to a constitutional amendment that allows the governor and lieutenant governor to succeed themselves for a second term.<sup>4</sup> In addition, the lieutenant governor's job had been made full-time under then Lt. Gov. Jim Hunt in 1973.

Representatives felt threatened in two ways. First, they feared that the traditional balance of power between the House and the Senate would be dissolved and the Senate would have an advantage. The lieutenant governor, who at that time appointed committees and routed bills to those committees, would be able to put a leadership team in place for up to eight years.<sup>5</sup> Such permanency in politics leads to strength. The House, on the other hand, would see its leadership change every two years. "We needed some balance over on the House side in terms of the respective influence of the presiding officer," Stewart says.

The second threat was to the legislature as a whole versus the executive branch. By allowing a governor to succeed himself, the voters had doubled some of the powers which a governor

uses to influence legislators. The governor's ability to hire legislators and their friends—making them judges, utility commissioners, or transportation board members, for example—now potentially ran for eight years, not just four.<sup>6</sup> It was a huge bargaining chip to use with legislators.

Succession, says Stewart, allowed his two terms as speaker to “fit nicely into the gubernatorial term.”

He served four years with Hunt as governor and Jimmy Green as lieutenant governor. The extra term also fit nicely with Stewart's political plans. He stayed in the speaker's chair just long enough to challenge Green in the 1980 Democratic primary for lieutenant governor but, like a line of previous speakers (including Taylor and Joe Hunt, who served in 1961 and

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## *The Roots of the Speaker's Power*

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THE OFFICE OF THE SPEAKER of the N.C. House of Representatives, unlike that of the Lieutenant Governor, derives none of its powers from the state Constitution. The Constitution says only that, “The House of Representatives shall elect its Speaker and other officers.”<sup>1</sup> Instead, most of the speaker's powers are rooted in the easily modified House Rules. State statutes also place the speaker on several boards and commissions and give the speaker authority to make appointments to dozens more. The speaker's powers and their origins are as follows:

### **A. Powers Derived from State Statutes**

1. The power to make outright or to recommend to the General Assembly 324 appointments to 121 boards and commissions in the executive branch. These powers are authorized under N.C.G.S. 120-121 and 120-123 and various other state statutes.
2. The speaker serves as a member of:
  - The Legislative Research Commission (ex officio), N.C.G.S. 120-30.10(a);
  - The Legislative Services Commission, N.C.G.S. 120-31(a);
  - The Capital Planning Commission, N.C.G.S. 143B-374(a);
  - The Committee on Inaugural Ceremonies (ex-officio), N.C.G.S. 143-533; and,
  - The Economic Development Board, N.C.G.S. 143B-434.

### **B. Powers Derived from House Rules**

3. The power to preside over the House (1995–96 House Rule 6);
4. The power to control floor debate (1995–96 House Rule 7);
5. The power to decide points of order (1995–96 House Rule 9);
6. The power to vote or reserve the right to vote on legislation before the House (1995–96 House Rule 25);
7. The power to appoint committees and committee chairs (1995–96 House Rule 26);
8. The power to assign bills to committee (1995–96 House Rule 32).

### FOOTNOTE

<sup>1</sup> N.C. Constitution, Article II, Sec. 15.

wanted to be governor), his ultimate political ambitions were never fulfilled. He lost.

### ***B. The Speaker's Office Becomes a Full-Time Job***

Despite being elected by district, the office of speaker has the statewide responsibilities that come with directing a legislative chamber representative of the entire state and through which all legislation must pass. These responsibilities were enhanced with the evolution to a full-time position. This institutional change occurred during the tenure of Liston Ramsey, who succeeded Stewart. Ramsey had no ambitions beyond speaker and was ready to serve in the post indefinitely.<sup>7</sup> In his four terms, he probably brought more power to the office than it ever had before.

When Ramsey became speaker in 1981, House members were anxious to regain parity with the Senate. There was a sense that the House as an institution had fallen behind, despite Stewart's two activist terms. Roger Bone, now a lobbyist but then a representative, recalls a joint meeting of the House and Senate appropriations committees at which the budget was being considered. "Ed Holmes, who was our chairman of appropriations [in 1979-80], was standing at the podium saying that this was not the Senate's budget that was about to be approved, that the House had had some input. And nobody believed him."

Al Adams, a lobbyist now but co-chairman of House Appropriations in 1981, says Ramsey felt strongly when he took the speakership that "the House needed to be the equal of the Senate and that our members ought to be made to feel that they are part of the process."

Ramsey says, "I took the position, and still do, that there is no upper house. There's one house with 50 members and that's the Senate, and there are 120 state representatives, and we've earned that title." Members in both chambers serve two-year terms.

Ramsey set about finding inequities in resources available to the upper and lower houses and eliminating them. If the lieutenant governor's office had a certain number of staff positions, Ramsey wanted the same number in the speaker's office. He wanted the two officials to have the same budget. He wanted the speaker to have the same number of appointments to boards and commissions as the Senate

leaders did (either the lieutenant governor or the president pro tempore). And he made the speaker's job full-time, year-round.

"Liston was the first [speaker] to put in four-and-a-half days a week in the office in Raleigh," says Dot Barber, Ramsey's committee clerk and administrative officer since 1969. "Other speakers always had jobs to return to. Carl had his law practice. Green [who was speaker in 1975] had his warehouses."

Ramsey says he began serving full-time because the job had expanded. "I felt like it was my job," he says. "We [the General Assembly] had a staff, and somebody needed to be here to see that they came to work in the morning. I felt I owed it to the taxpayers, and, also, we had gotten into the study commission business pretty heavy."

The job that speakers like Taylor had been able to put behind them at the end of a legislative session—"Pat locked up the door and went home to his law practice," Barber recalls—had now evolved into a year-round position. In 1985, the General Assembly recognized Ramsey's full-time commitment by raising his salary from \$13,860 to \$25,044.

### ***C. Election of Republicans in the Executive Branch***

The election of Republican Governor Martin in 1984 helped focus additional attention on the legislative leadership, as the legislature remained firmly under the control of Democrats. Although Martin was the *second* contemporary Republican governor, his predecessor, James E. Holshouser (1973-1977), had been a former legislator and was more inclined to work cooperatively with the legislature. Because his style was less contentious, his single term had less impact on the power equation between the legislative and executive branches.

Jim Martin, however, served two terms as governor and adopted a more partisan style. During Martin's first term, Democrats still controlled the lieutenant governor's office, so the leading opposition voice belonged to Democratic Lt. Gov. Bob Jordan. But when Martin was elected to a *second* term in 1988 and Republicans also captured the lieutenant governor's office, the Democratic speaker became the primary voice of the opposition party.

The stage was set for a showdown over powers, and the legislature wasted no time in assert-

### **Factors Increasing the Power of the Speaker of the N.C. House of Representatives**

- Staff has increased for the speaker's office and legislature as a whole.
- A specialized research staff enables the speaker to develop an independent agenda.
- The tradition of one-term speakers has been broken, and succession is now allowed.
- The speaker's office became a full-time position in the push for parity with the Senate and the lieutenant governor's office.
- Election of a Republican governor led to a larger role for Democratic leaders of the opposing party, and especially the speaker.
- Election of a Republican lieutenant governor led Democrats to strip the office of its major legislative duties, thereby enhancing the powers of the Senate president pro tempore directly and the speaker indirectly.
- Increased media attention for speaker's office resulted from all of the above.

### **Factors Diminishing the Power of the Speaker of the N.C. House of Representatives**

- Elimination of pork barrel appropriations for individual members removes a disciplinary tool used by previous speakers.
- More open government means less opportunity to twist arms behind closed doors.
- A larger minority party presence means more opportunities for coalitions to defeat the speaker's agenda.

ing its will. One of its first actions in the 1989 session was to strip certain key powers held by the lieutenant governor. Until James C. Gardner took office, the lieutenant governor had a foot in both the executive and legislative branches of state government. But with Gardner in the post and Martin in the governor's mansion, the legislature decided to place the lieutenant governor more firmly in the executive branch. It stripped the lieutenant governor's primary legislative powers—the ability to appoint committees and committee chairmen and to assign bills to those committees.

Those duties were rooted in Senate rules rather than in state statutes or the constitution. The Senate's Democratic leadership argued that

the majority party had the right to organize committees. In January 1989, it gave the president pro tempore of the Senate the power to appoint committee members and chairs and the power to assign bills to committee. The lieutenant governor's main legislative duty became presiding over the session, with the power to vote only in the case of ties.<sup>8</sup>

This had an impact on the speaker, because the president pro tempore, unlike the lieutenant governor, is elected by the Senate from within its ranks and is not a statewide elected official. Now the speaker—elected by the House—had an equal shot at becoming the unofficial spokesperson for the Democratic Party, and Dan Blue ultimately assumed the mantle.

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## *The Speaker's Office as a Political Stepping Stone?*

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HOW SUCCESSFUL ARE SPEAKERS of the house in moving directly from the legislative chamber to the chief executive's chair? Or, in political science jargon, in how many races has the speakership been the "penultimate" office for candidates en route to the governorship?

During the 1977–1995 electoral period, there were 255 gubernatorial elections in the 50 states. Speakers and former speakers of the house were involved in 26 of these races (10 percent), with nine of them winning (35 percent). The winners include four incumbent governors who had moved directly from the speaker's office to the governorship for their first term, then won re-election.<sup>1</sup> In effect, 21 speakers have sought to move directly to become governor, five have been successful, and four have been able to serve a second term.

While the *number* of speakers entering governor's races nationwide is relatively low, the *success rate* of those who do enter compares favorably with offices more typically thought to be stepping stones to the governorship. A total of 73 lieutenant governors entered governor's races from 1977–1995 and 20 were successful, a success rate of 27 percent. As for attorney generals, 57 entered the 255 governor's races, and 14 won, for a success rate of 25 percent. So for the period examined, the odds of a speaker who enters a governor's race actually winning are more favorable than for either lieutenant governors or attorney generals. It's just that fewer speakers enter.

Eight of the speaker candidates lost their bid for the governorship in their own party's primary, indicating that the power they have among their elected party colleagues in the state house was not transferable to party primary voters. The other nine lost in the general election, including one former speaker seeking a second term as governor.<sup>2</sup>

Of the 26 races, 11 were in Western states (all Republican speakers or former speakers), and seven were in Midwestern states (four Democrats and three Republicans). Three races were in the Northeast (all Republicans), and five were in the South (all Democrats).<sup>3</sup> Seven of the 21 individual speaker candidates were Democrats, and 14 were Republican.

Kansas has provided a virtual yellow brick road from the speaker's office to the governorship. Five speakers sought the office and only two met the wicked witch of electoral defeat. In fact, the governor of Kansas has been a former speaker for 13 of the past 17 years. New Jersey, Tennessee, and Utah have had speakers run and win two terms during the period. These are the only four states in which speaker candidates have been successful. (See Table 2.)

Most of the action for speakers occurred in the 1978–1986 period, when 21 of the 26 entered the governor's race. Since then, there have been only the re-election bids by three former speaker/incumbent governors initially elected in the mid-1980s, and two unsuccessful candidacies in 1990 by Don Avenson (D-Iowa) and Tom Loftus (D-Wisconsin).

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**Table 2. Odds on Lieutenant Governors, Secretaries of State, Attorneys General, and Speakers Entering and Winning the Governor's Races, 1977-95**

	Lieutenant Governor	Secretary of State	Attorney General	House Speaker
Number of governor races	255	255	255	255
Number in race	73	19	57	26
Percent in race	29	8	22	10
Odds: getting in race	3.5-1	13.4-1	4.5-1	9.8-1
Number of races	73	19	57	26
Number won	20	4	14	9
Percent won	27	21	25	35
Odds: winning race	3.7-1	4.8-1	4.1-1	2.9-1
Number of primaries	73	19	57	26
Number won	37	7	30	18
Percent won	51	37	53	69
Odds: winning primary	2-1	2.7-1	1.9-1	1.4-1
Number general elections	39	7	30	18
Number won	20	4	14	9
Percent won	51	57	47	50
Odds: winning election	2-1	1.8-1	2.1-1	2-1

No North Carolina speaker tried to move directly from the speaker's office to the governor's mansion during the period analyzed here (1977-1995). Events in Kansas, New Jersey, Tennessee, and Utah show it can be done. But it's a gamble.

—Thad Beyle

#### FOOTNOTES

<sup>1</sup> John Carlin (D-Kansas) won in 1978 and 1982, Tom Kean (R-New Jersey) won in 1981 and 1985, Ned McWherter (D-Tennessee) won in 1986 and 1990, and Norman Bangertter (R-Utah) won in 1984 and 1988.

<sup>2</sup> Mike Hayden (R-Kansas) lost his 1990 re-election bid.

<sup>3</sup> The unsuccessful speaker candidates from southern states were: Joe McCorquodale (D-Alabama) in 1982, "Bubba" Henry (D-Louisiana) in 1979, and Clyde See (D-West Virginia) in 1984. Ned McWherter (D-Tennessee) won in 1986 and 1990.

### III. The Speaker's Ability to Affect Policy Issues

Even when a Democrat, Dennis Wicker, was elected lieutenant governor in 1992, the 1993 General Assembly chose not to return the powers it had removed from the office. The legislature had become more independent and did not wish to yield key legislative powers to an executive branch official, even if that official were a Democrat.

#### *A. The Use of the Speaker's Power to Assign Bills to Committee*

In comparison to other former speakers, Dan Blue, in particular, did not shy away from showdowns with the governor when his beliefs were tested. Instead, he used the time-honored power tools of the speaker's office—such as the committee structure—to win the day. Take, for example, Blue's response when Governor Hunt urged the legislature to place a constitutional

## *President Pro Tem's Office Evolves into Senate Power Center*

WHILE THE SPEAKER'S OFFICE has evolved over the years in influence and prestige, the president pro tem's office in the Senate has seen sudden and dramatic increases in perks and power. The development of the office as a rival power center on par with the speaker's office can be traced to 1989, when the legislature stripped the powers of the lieutenant governor and placed them under the control of the president pro tempore.

The power shift occurred when North Carolina's fourth Republican lieutenant governor, James C. Gardner, assumed office. The legislature transferred to the office of president pro tempore the lieutenant governor's major legislative powers—the power to appoint committee members and chairs and to assign bills to committee.<sup>1</sup> Former Sen. Henson Barnes (D-Wayne) was the first president pro tempore entrusted with these powers, serving from 1988–1992. Current President Pro Tempore Marc Basnight (D-Dare) is the second.

Along with these new powers have come growth in staff and salaries, increased appointments to boards and commissions in the executive branch of state government, and a larger budget. The budgets of the president pro tempore of the Senate, the House speaker, and the lieutenant governor are now roughly equal, at nearly \$525,000 a year.

Basnight says removing the lieutenant governor's legislative powers was the correct course because the lieutenant governor is an executive branch official. He says it's equally important that the president pro tempore's office have the same resources and powers as the speaker's office because the Senate is just as important to the passage of legislation as the House. "Nothing passes until it passes the Senate," says Basnight.

Barnes believes the change has been good for both the legislature and North Carolina citizens. It has given the Senate greater influence over policies affecting the state, he says, while removing undue influence over legislation by an executive branch official, the lieutenant governor. "If you believe in checks and balances of government, and that no branch should have power over another, then you believe

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amendment on the ballot awarding the governor veto power. Blue sent the veto legislation to its burial in the unfriendly Constitutional Amendments and Referenda Committee, chaired by his close ally, House Majority Leader Toby Fitch (D-Wilson).

A similar incident occurred when Hunt changed his previous opposition to a state lottery and decided it was time to let the voters decide whether to approve a lottery in a state referendum. Blue—a staunch lottery oppo-

nent—didn't think so. He sent lottery legislation to the same committee, where it never came up for a vote.

Blue—like speakers before him—accomplished his legislative objectives without introducing substantive legislation or voting on major issues before the House. By tradition, the speaker rarely introduces legislation, and he only votes when he thinks it appropriate, which is hardly ever. The power to decide who sits where in the House committee structure and to

the legislature has taken the right position in the framework of our constitution," says Barnes.

But Former House Speaker Phil Godwin (D-Gates), who served as speaker in 1971, isn't so sure the legislature is headed in the right direction. "You've got a rivalry going on over there in the office of the president pro tem," says Godwin. "That tells the speaker he's got to protect his turf too."

As for the lieutenant governor, Godwin says, "He's just a gavel holder now." Godwin believes the lieutenant governor should have a share of the legislative powers now attached to the office of the president pro tempore. "If they shared power in certain circumstances, it might make for a more harmonious situation," Godwin says.

Both Basnight and Barnes believe a better solution would be a team-ticket approach—much as at the federal level and in 24 states—in which the governor and lieutenant governor run on the same platform and share a common agenda.<sup>2</sup> "There should be power sharing, but the lieutenant governor and the governor, they're the ones that should work together," Barnes says. In his 18 years in the legislature, Barnes says he observed too little cooperation between the two executive branch officials. "I saw all the time lieutenant governors tearing down what the governor was building up," says Barnes.

Basnight would add the gubernatorial veto to help balance the equation with the executive branch. "I don't think the governor should have to come to see Marc Basnight [then-Speaker of the House] or Dan Blue and pay homage," says Basnight. "To some extent, that's what he has to do now."

Godwin, however, sees fiefdoms developing within the legislature that ultimately may harm the institution. "It has almost gotten to the point that the three separate branches of government—the executive, judiciary, and legislative—have actually developed into four branches, namely the executive, the judiciary, the Senate, and the House," Godwin says.

Both Godwin and Barnes say a limit of two terms might help curb the power of the offices of speaker and president pro tem. But as former Rep. Vernon James (D-Pasquotank) puts it, "It's pretty hard to organize against a man who's in office. He'll cut your water off."

—Mike McLaughlin

#### FOOTNOTES

<sup>1</sup> For more on these changes, see Ran Coble, "The Lieutenant Governorship in North Carolina: An Office in Transition," *North Carolina Insight*, Vol. 11, Nos. 2-3 (April 1989), pp. 157-165.

<sup>2</sup> For more on team election of governors and lieutenant governors, see Ran Coble, "Executive-Legislative Relations in North Carolina: Where We Are and Where We are Headed," *Wake Forest Law Review*, Wake Forest University, Winston-Salem, N.C., Vol. 25, No. 4, 1990, pp. 699-700.

play traffic cop over the flow of legislation to those committees was enough to determine the outcome for both the veto and the lottery in the 1993 session.

### ***B. Use of Authority to Organize the House***

These highly publicized showdowns with the governor highlighted the power of the speaker's office and the prominence of the individual serving in that office. But there are other ways to wield power through the speaker's office. For example, the speaker can use his authority over House procedure for everything from controlling what policy is set in the budget bill to reorganizing the committee structure to improve its handling of legislation.

For example, the speaker and the president pro tempore of the Senate can exercise a great deal of control over the use of special provisions in the budget bill. In addition to appropriating state funds, the budget bill often is used for other policy changes—sometimes related to the budget bill and sometimes not. These additional changes generally are called special provisions, and they sometimes run far afield of their intended purpose of determining how state funds are spent. The North Carolina Center for Public Policy Research has opposed what it defines as inappropriate use of special provisions in the budget bill. (See pp. 361-364).

Dan Blue also took steps to streamline the committee structure of the House—once considered among the most unwieldy in the nation. Members complained that they sometimes had to be in two places at once or had little time for substantive debate on some issues. By his second term, Blue had cut the number of committees from a recent high of 59 committees and subcommittees under House Speaker Joe Mavretic to 44. "I'm trying to accommodate as many desires of the members so they can pursue as many things as they want to pursue, but also to maintain a reasonable number of committees to improve the flow of legislation," says Blue. One of Blue's innovations was to lump subject areas that seemed to overlap into one committee. This change was intended to prevent legislation from being reported back to the House floor, only to be re-referred to another committee. Another change was to create subcommittees under major subject areas and give subcommittee chairs the authority to report leg-

islation directly to the House floor. This trend has continued under Brubaker's leadership: in 1995, there were 40 committees and subcommittees in the House.

### **IV. Mitigating Factors in the Power Equation**

**G**iven all these developments in the evolution of the office—increased staff, succession, more intensive media coverage, and equal status among legislative leaders—isn't the modern speaker more powerful than were speakers of earlier times? To address that question, one must look at the other side of the power equation, at the powers the speaker has lost.

#### ***A. Loss of Pork Barrel Appropriations to Maintain Discipline***

Brubaker cites one important loss: pork barrel money doled out to individual members. Until 1989, when the General Assembly stopped the practice, each legislator was provided with a small amount of money to spend on local projects in his or her district. In the 1987 session, for example, senators got \$70,000 each and House members got \$40,000 each.<sup>9</sup> Senators traditionally got the larger share because they represent more people. Groups like rescue squads, rape crisis centers, and arts centers were often the beneficiaries, and the Democratic leadership defended the appropriations as a way for state government to support local needs.

Brubaker says there also was another purpose. "Back in those days, the check coming back to the district was the way to keep discipline" within the rank and file, Brubaker says. He says lawmakers who failed to follow the leadership on certain key votes were subject to having their pork withheld.

Democrats denied that maintaining party discipline was the purpose of pork. "This was a GOP contention—not fact," says Raleigh lobbyist Al Adams, a long-time legislator (1975-1984) and former appropriations committee chairman.

Stewart says that other elements of the legislative process have changed enough that the answer is no—speakers are *not* as powerful today. "It's my theory that in my day and before that, the speaker's word was final," says Stewart. "The speaker's wishes would be upheld by the



**N.C. House Speaker Harold J. Brubaker (R-Randolph) was among the big winners in the 1994 GOP landslide.**

House if there was an issue he felt strongly about—although speakers mostly let the chips fall where they would on most issues.”

### ***B. The Rise of Consensus Building as a Leadership Style***

“Today, there’s a lot less certainty on issues as they come to the floor of the House,” Stewart says, adding that today’s speaker “governs much more by consensus than I had to. A speaker today must consult much more with his members, with a myriad of special interests.” Stewart pauses for a moment, then concludes, “Maybe that’s a change for the better.”

Other states have experienced similar changes in the leadership style of House speakers. State Legislatures, the magazine of the National Conference of State Legislatures, in an article titled “Leadership 1980s Style,” notes that the era of speakers who ruled with an iron hand is past. Team play and consensus building are more the norm for getting things done in today’s General Assembly. “It’s more difficult to exercise leadership today,” says Alan Rosenthal, director for the Eagleton Institute and a political science professor at Rutgers Uni-

versity in New Brunswick, N.J. “It is no longer possible for a single person to lead the body.”<sup>10</sup>

### ***C. A Stronger Republican Party Presence***

Brubaker, Rep. John Brown (R-Wilkes), and Sen. Betsy Cochrane (R-Davie) say the trend toward shared power is for the better and that in North Carolina, their party is partly responsible for it. Brown, who first served in the General Assembly in 1971, says the legislative process is much more open to the minority party today due to reforms implemented during the speakership of Rep. Joe Mavretic (D-Edgecombe) in 1989–90.

In 1989, Republican representatives joined 20 dissident Democrats and ousted Ramsey, elevating Mavretic to the speaker’s post.<sup>11</sup> Changes were then made that opened much of the legislative process to the public and to minority party participation, Brown says. Under this system, he says, the speaker has less chance to confine decision-making to a small group of close allies. These changes benefit whichever party is in the minority in the House, Republicans or Democrats.

## Conclusion

Thirty years ago, speakers didn't have speech writers and research assistants. Government was less a part of the average North Carolinian's life, and it was the speaker's job, primarily, to carry forth a package of bills written by the governor and to assure that they got a fair hearing in the House. After that, he could pack up and go home and maybe later take a job as an appellate judge or campaign for higher office. But those speakers also didn't have to deal with the problems created by a legislative staff of 150, more than 500 lobbyists, and a Republican party that was within striking distance of turning him into a minority leader.

The raw power of speakers past has been blunted somewhat by the trend toward a more open, consensus building style of governing. But the contemporary speaker has benefited from a number of developments that would appear to leave the speaker's office more powerful than ever. Consider these additional tools at the disposal of the contemporary speaker: (1) a larger personal research staff and a vastly expanded legislative staff that enable the development of an independent agenda; (2) full-time presence in Raleigh, enabling closer monitoring of state government; (3) ability to seek multiple terms of office; (4) expanded appointment powers to executive branch boards and commissions; and (5) removal of the most significant legislative powers of the lieutenant governor.

These powers are in addition to the considerable tools the speaker's office already had at its disposal. The traditional powers include responsibility for appointing committees and committee chairs, control over budget decisions, and authority to organize the House. To date, these powers have been magnified by the lack of any sort of gubernatorial veto to help balance the equation with the executive branch.<sup>12</sup>

The speaker's office has changed markedly, accruing significant new powers that enable more influence on statewide policy issues and a higher profile with the media that could enhance the position as a stepping stone to higher office. Still, in the end, the speaker's primary job is the same—to move legislation either through the House or into a House-dug grave. In 1903, in 1943, and in 1993, a speaker moved legislation in exactly the same way—by rounding up 61 votes.

## FOOTNOTES

<sup>1</sup> The speaker's office budget is \$444,008 for the 1995–1996 fiscal year. Three of Brubaker's staff members—Tripp Sizemore (attorney), Alan Pugh (attorney), and Don Follmer (former press secretary)—work on contract, so they are paid a flat rate and the state does not pay for their health insurance, pensions, or other benefits. Brubaker has seven full-time and one part-time staff members. Joe Dew, "Brubaker keeps his promise to spend less on staff," *The News & Observer*, Raleigh, N.C., November 25, 1995, p. 3A.

<sup>2</sup> Brooks, legislative services officer from 1968 to 1970, would go on to win election as labor commissioner in 1976, a position he held until he was defeated by Harry Payne, the current labor commissioner, in the Democratic primary in May 1992.

<sup>3</sup> See Jack Betts, "The Coming of Age of the General Assembly," *North Carolina Insight*, Vol. 4, No. 4, 1981, pp. 12–16, for more on succession by the House speaker as a turning point in the strengthening of the legislature as an institution.

<sup>4</sup> North Carolina Constitution, Article III, Section 2(2).

<sup>5</sup> For more on the impact of succession on the lieutenant governor's office, see Steve Adams and Richard Bostic, "The Lieutenant Governor—A Legislative or Executive Office?" *North Carolina Insight*, Vol. 5, No. 3, November 1982, pp. 2–10. See also Ran Coble, "The Lieutenant Governorship in North Carolina: An Office in Transition," *North Carolina Insight*, Vol. 11, Nos. 2–3, April 1989, pp. 157–165.

<sup>6</sup> Although legislators may have feared the strengthening of the executive branch through succession, North Carolina's governor has relatively few institutional powers compared to governors of other states. For more on this topic, see Thad L. Beyle, "The Formal Powers of the Governor in North Carolina," pp. 267–275.

<sup>7</sup> For more on the environment in the legislature when Ramsey assumed office, see Ferrel Guillory, "Legislative Leadership in 1981," *North Carolina Insight*, Vol. 3, No. 4, Fall 1980, pp. 2–7.

<sup>8</sup> North Carolina Constitution, Article III, Section 13. The state constitution does not speak to the powers of the House speaker, except to say, "The House of Representatives shall elect its Speaker and other officers." North Carolina Constitution, Article II, Section 15. For more on the evolution of the powers of the lieutenant governor, see Ran Coble, "The Lieutenant Governorship in North Carolina: An Office in Transition," *North Carolina Insight*, Vol. 11, No. 2–3, April 1989, pp. 157–165.

<sup>9</sup> Seth Effron, "Eating High on the Hog: How the Pork Barrel Spending Process Has Changed in the Last 10 Years," *North Carolina Insight*, Vol. 10, No. 1, October 1987, p. 25.

<sup>10</sup> As quoted in Pat Wunnicke and Sharon Randall, "Leadership 1980s Style," *State Legislatures*, National Conference of State Legislatures, Denver, Colo., July 1986, p. 26.

<sup>11</sup> For more on Mavretic's election to the speaker's office, see Thad L. Beyle and Fetzer Mills, Jr., "Political Change in North Carolina: A Legislative Coup D'état," *Comparative State Politics*, Illinois Legislative Studies Center, Sangamon State University, Springfield, Ill., Vol. 10, No. 2, April 1989, pp. 2–15.

<sup>12</sup> During the 1995 session, the North Carolina General Assembly passed a bill that will allow for a referendum in 1996 to amend the Constitution to provide for gubernatorial veto. If voters approve this constitutional change, the governor will have general veto power, subject to override by a 3/5 vote of the members of both houses of the General Assembly.

# Pro and Con on Term Limits: Needed Reform? Or Populist Ploy?

## *A 'Pro' Perspective*

BY CLETA MITCHELL

**T**here are few political and public policy issues that enjoy as much widespread support from the American people as the issue of limiting the terms of members of federal and state legislatures. Despite continuing opposition to term limits from political insiders and the national political media, the voters have said repeatedly: "We don't care what the inside-the-beltway know-it-alls think: we still want term limits." Over 25 million votes in favor of congressional term limits have been cast

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*Cleta Mitchell is the Director and General Counsel of the Term Limits Legal Institute, a project of Americans Back in Charge (ABIC).*

in 23 states since 1990 and the support is still overwhelming.

In June 1995, the Tarrance Group conducted a nationwide poll of 1,000 registered voters on behalf of the Term Limits Legal Institute in Washington, D.C. The most comprehensive national survey to date on the issue of term limits found that:

- 74 percent of the voters favor term limits; 56 percent strongly favor the term limits amendment;
- Only 21 percent oppose term limits;
- Support for term limits never falls below 60 percent in any demographic group;

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- One-third (33 percent) of focused pro-term limits voters say that a candidate's stand on term limits will be important in determining their vote in 1996; only 6 percent of anti-term limits voters say a candidate's stand matters;
- For conservative Democratic voters, 54 percent say that a candidate's stand on term limits is important in deciding whether to vote for him/her—the highest of any group;
- There is no demand by voters for any particular version of term limits: 53 percent prefer one of the two versions that includes a maximum 12-year term limitation for House and Senate members; 23 percent favor the 6-year limit for House members and 15 percent favor the 8-year House limit;
- 68 percent are more likely to favor a federal constitutional amendment after the Supreme Court decision invalidating state term limit laws\*;
- 73 percent believe we still need term limits despite the 1994 election results;
- Minorities (70 percent) and women (75 percent) support term limits overwhelmingly.

*Editors' Notes:*

\*On May 22, 1995, the United States Supreme Court held that the states do not have the authority to limit the terms of their congressional delegation. *U.S. Term Limits, Inc. v. Thornton*, 115 S. Ct. 1842 (1995).

\*\*On October 1, 1995, Sen. Bob Packwood (R-Oregon) resigned. The Senate Ethics Committee unanimously had voted to recommend his expulsion because of charges of sexual harassment.

Here's a summary of the issue's appeal to voters:

1) Term limits are perceived by the voters to be a nonpartisan issue that will constrain careerism and seniority for both Democrats and Republicans.

While the issue of term limits is very partisan (Republicans tend to support, Democrats tend to oppose), that is NOT how the voters see the issue. What the voters want is a limit on congressional careerism, regardless of which party happens to be in the majority at any given time. Term limits appeals to voters of every stripe for its universal application to lawmakers from both parties.

2) Term limits are a metaphor for disciplining legislative excess and arrogance.

While the devil is in the details, there is still a general consensus in this country that power and decisionmaking should be moved out of Washington and returned to the states and the citizenry. Additionally, there is still great suspicion in the country as to the ability of career Congressmen to wisely and sincerely deal with the issues facing the country. The Packwood mess\*\* only underscores that cynicism.

Voters instinctively believe that Congress—like every other organization and person—needs limits. Thus, the bookends of the GOP Contract with America were the term limits amendment and the balanced budget amendment because those two issues clearly place external, non-negotiable limits on the Congress itself.

Voters believe that by limiting the time that politicians can spend in Washington and limiting the money that politicians in Washington can spend, our children's future will be more secure. Those candidates who understand the numbers—and the values that undergird the voters' support for term limits—will be the most successful in 1996.

## A 'Con' Perspective

BY VICTOR KAMBER

**T**erm limits mean giving up on democracy. Just what is so hard about going into a voting booth every two years, going down the list of candidates on the ballot, making informed judgments about them, and then punching the card or pulling the lever for the best? When it comes to incumbents running for reelection, how tough is it to skim off the scum while keeping the cream?

Leaders of the term limits movement think that's too much to ask of voters. They believe that democracy should run on some type of bizarre autopilot which prevents voters from reelecting incumbents whom they believe are doing a good job, and which forces legislators out of office just when they gain enough experience to be effective.

That's antithetical to the vision of our founding fathers who unanimously rejected including congressional term limits in the U.S. Constitution. They set out to create a free and democratic nation of citizens joined together by faith in ourselves and shared responsibility. The first and foremost responsibility is to participate in our civic life.

Unfortunately, term limits embodies perhaps the most dangerous and pervasive problem facing this country today: our increasing cynicism and despair over politics that culminate in a refusal to participate in anything resembling civic life, even elections.

This culture of suspicion—"you can't trust anyone in office after six (or 12) years"—creates a vicious cycle in which negative attitudes mushroom and our politics gets even uglier.

Term limits are the legal codification of cynicism. If it is written into law that politicians cannot be trusted, what self-respecting elected official who believes in an ethos of public service would want to function in such a climate?

Just look at California, which next year will be the first state with legislative term limits in

place. As the *Sacramento Bee* editorialized, the early impact of term limits was not "to drive out the hacks and the ideologues . . . but to discourage precisely those who have worked hardest and most conscientiously to be good legislators."

As a result, the California legislature has gone from national model to laughingstock. The speakership shenanigans is but one example. Already, there has been a scramble for new jobs. Many legislators quit in midterm, costing taxpayers millions of dollars for special elections. Some left politics altogether, dispirited by a system that no longer works. Worst of all, the revolving door between public service and private interest is spinning wildly, as legislators jockey to lobby for the very industries about which they had once written legislation.

The same is happening in Michigan, where limits won't go into effect until 1998. According to the *Detroit News*, one prominent special interest lobbyist reported that 20 state legislators have asked him about getting jobs, and as many as 50 told him they would quit next year to find work rather than wait to be forcibly retired.

That's just a preview of what we would see in a term-limited Congress.

While term limiters don't tell the voters about this, hiding an elitist philosophy with pseudo-populist rhetoric, this is exactly what many want. The movement is financed by a small group of ultra-rich radical libertarian extremists—people like oil billionaires Charles and David Koch, who bankrolled Citizens for Congressional Reform, and wealthy New York businessman Howard Rich who bought CCR and renamed it U.S. Term Limits. These rich oligarchs see limits as a tactical maneuver to undermine the power and effectiveness of Congress. Democracy is about choices, and the first choice we must make is whether we believe politics can be a force for positive action.

Saying "yes" to this question means saying "no" to term limits. In doing so, Americans can send a message—one that desperately needs to be heard—of hope and faith in our people, our nation, and democracy itself.

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*Victor Kamber, a Democratic political consultant who heads The Kamber Group, is the author of Giving Up on Democracy: Why Term Limits Are Bad for America.*



# Four-Year Terms for Legislators?

North Carolina Constitution, Article II, Section 2. *Number of Senators.* The Senate shall be composed of 50 Senators, biennially chosen by ballot.

North Carolina Constitution, Article II, Section 4. *Number of Representatives.* The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

*Proponents contend that four-year terms will strengthen the legislature, specifically its nature as a citizen legislature rather than as a professional body. Opponents insist the measure will make the legislature less accountable to voters and will not make it easier for the average citizen to serve. In the following pages, two experts on the legislative process lay out the arguments for and against longer terms for legislators.*

PRO:

## *North Carolina Needs Four-Year Terms for Legislators*

BY HENSON BARNES

**I**n 1835, a great debate arose in North Carolina over whether to switch from annual legislative sessions to a biennial system. The issue centered on whether annual sessions were costing the state too much

*Henson Barnes (D-Wayne) was President Pro Tempore of the N.C. Senate (1989–92). He served eight terms in the Senate and one term in the House.*

money and resulting in a full-time legislature. After a spirited legislative debate and a close vote by the people, the call for a part-time, or “citizen” legislature—as opposed to a professional body—won the day. North Carolina, in contrast to most other states at the time, switched to biennial sessions, convened by a band of citizens who served as part-time legislators.<sup>1</sup>

**Former Sen.  
Henson  
Barnes  
(D-Wayne)  
huddles with  
former Sen.  
Wanda Hunt  
(D-Moore)  
and others.**



*Karen Tam*

In 1995, more than 150 years later, the concept of a citizen legislature is again endangered. And once again, the state's voters can do something about it. While the nature of the debate has shifted from the frequency of legislative sessions to the length of time a legislator serves,<sup>2</sup> the heart of the debate is the same: What can we do to ensure that North Carolina continues to have a citizen legislature?

There are two choices: Limit the time demands on a legislator's duties or service *or* reduce the burdens of running for office every two years.

The work load of the legislature is increasing rapidly and is not likely to slow down. The only alternative is to decrease the time spent running for office. The proposed shift from two-year terms to four-year terms accomplishes this goal.

Over the past half-century, many governments have adopted four-year terms, often staggering them so that half the lawmakers are elected in one election and the other half in the next election two years later. At one time, every state in the nation had two-year terms for its legislators. Now 39 states have four-year terms for at least one body in the legislature. Four states have four-year terms for both bodies (see Table 1, p. 203). Two-year terms were

once the norm for every county commissioner in North Carolina. Of the 100 counties, 93 have now gone to four-year terms for their commissioners. And today, more than half of our cities—about 295—have four-year terms for their governing boards or councils.

### **The Citizen Legislator Faces Extinction**

**I**n recent years, the legislature has increasingly resembled a full-time body. The sessions run longer. In 1995, the session began January 25 and lasted until July 29 (see Table 2, p. 204, for more). In addition, many legislators spend weeks in Raleigh in advance of the session preparing the budget. After adjournment, the legislators were serving on 230 study commissions, according to the Senate Principal Clerk's Office. When the legislature is not in session, the average legislator spends at least one day a week in Raleigh on official business.

In an off year, which is any even-numbered year, legislators return for a budget session of three to six weeks in May or June. Moreover, they have to campaign in a primary and a general election during these off years. There is little

time for their jobs or families.

Historically, a citizen legislator has had a full-time job at home and part-time job as a legislator, and a legislator's pay has reflected the part-time level. The pay in 1995 is \$13,951 a year, plus per diem expenses for food and lodging (\$104 per day) and travel (\$0.29 per mile) during sessions. But the nature of a legislator's responsibilities has changed to such an extent that few lawmakers can maintain a full-time job at home and serve in the legislature. A number of legislators resign rather than run for re-election—sometimes more than are defeated in the election. It is a myth that we have part-time legislators.

Consider your occupation. Should a member of your occupation be represented in the General Assembly? The answer is certainly yes. Now ask yourself if your employer would allow you or a colleague to take off from work up to 12 to 14 months out of each 24 months to serve as a legislator. If the answer is no, then you have effectively eliminated citizens in your occupation from serving in the General Assembly.

In theory, a citizen legislator should not be tied to any special interest group. He or she runs for office and raises sufficient funds from family and friends to run a modest campaign. That theory worked when you could call most of the people in your district by their first name. Now, it is necessary to go through the news media to reach those people. A one-page advertisement in a newspaper costs from \$350 to \$9,150, depending on the circulation of the paper. A one-minute ad on the radio can cost from \$75 to \$150. The average Senate campaign in 1992 cost \$21,127, and the average House campaign cost \$14,244—and some go as high as \$125,000. This amount must be raised every other year for a two-year term. Regular donors—special interest groups—become more important.

The two-year term is forcing legislators to accept—even depend upon—large contributions from special interest groups.<sup>3</sup> If the average citizen is going to serve in the legislature, we must do something about the cost of campaigns.

Regardless of how productive you are in the legislature or how well you serve your district, a member of the opposition party will probably file against you in the next election. Only 6 out of 50 senators were without opposition in 1996. If you have opposition, he or she will run expensive

newspaper, radio, and television ads, as well as nail signs on every oak tree in your district. The incumbent must answer blow for blow. Campaigns continue to become more expensive. Four-year terms would tend to bring the staggering cost of campaigns under some control.

### The Fears of Opponents

Opponents of four-year terms have expressed fears of this proposed change. The most often-expressed concern is that a legislator will be less responsive to the people. A person is responsive if he or she is a conscientious and hard-working legislator. The length of the term does not matter. If the fear of less responsiveness is valid, we should be making every effort to go to full-length annual sessions. I have heard no one suggest that. Has anyone complained that county commissioners or city aldermen are less responsive now than when they served two-year terms?

Opponents also fear that legislators will run for other offices—such as governor or a Council of State seat—without having to resign, since a four-year legislative term would overlap the term of those offices. County commissioners and municipal officials throughout the state currently are serving four-year terms. Their terms overlap legislative terms. Rarely does a person run for another office while serving as a commissioner or alderman. That pattern suggests that few legislators, while serving a four-year term, would run for another office. In addition, there is a law, in effect since 1991, that requires a person to resign from any office held before running for another office.<sup>4</sup> Should a legislator seek another office, what is the problem? Certainly, we do not want to build a fence around any particular office.

Opponents further fear that a lower percentage of people would vote in elections for four-year-term legislators because elections might be held in off years—those even-numbered years when a president and governor are not elected. But legislators are now elected every two years, so every other election, they are elected in off-

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*What can we do to ensure that North Carolina continues to have a citizen legislature?*

---

year elections. The fact that legislators would be running for a four-year term might create greater interest. An off-year election would make the legislator's record subject to closer review, which could result in better performance.<sup>5</sup>

Opponents additionally claim that having four-year terms will upset the balance of power between the legislature and the governor. North Carolinians historically are concerned about concentrating too much power in the executive branch. That is why our governor does not have a veto. (A gubernatorial veto passed the 1995 General Assembly and will be submitted to the voters for ratification in November 1996. See pages \_\_\_ for a discussion of the veto issue.) In 1977, the voters approved a constitutional amendment which allows the governor and lieutenant governor to succeed themselves.<sup>6</sup> Prior to 1981, a legislator had to be elected only twice to be in office for the same period of time as the governor. But now a legislator must be elected four times—he or she must serve eight years—to be in office for the same length of time as a governor who has been re-elected. Four-year terms will restore the historical balance between the legislative and executive branches.

Finally, opponents fear that four-year terms are self-serving. If the people of this state must vote on the question, how can the outcome be called self-serving? Four-year terms will be self-serving to the people of North Carolina because the longer terms will preserve the independence of the legislative branch.

## Conclusion

**H**istorically, the citizen legislator has served North Carolina well. In an effort to limit time demands, we have established study commissions between sessions and have attempted to limit the so-called short budget session in even-numbered years. Such patchwork efforts have not worked in reducing time demands and campaign costs for legislators.

In an effort to keep the citizen legislature, our forefathers had the courage to go from annual to biennial sessions. Let us emulate their courageous example and go from two-year to four-year terms. By doing so, the citizen legislature will continue to serve North Carolina well.

## FOOTNOTES

<sup>1</sup> See Chuck Alston, "The Citizen Legislature—Fact or Fable?," *North Carolina Insight*, Vol. 8, No. 2, November 1985, pp. 50–53.

<sup>2</sup> Several bills dealing with four-year terms were introduced in the 1989 General Assembly. Chief among them were SB 95, providing four-year terms for legislators, which passed the Senate; HB 83, providing a veto for the governor, four-year terms for legislators, and a single six-year term for the governor; and HB 206, calling for a state constitutional convention to consider all constitutional changes dealing with the balance of powers between the executive and legislative branches. Two bills, both providing term limits and four-year terms for legislators, were introduced in the 1993 session: HB 1446 died in committee and SB 79 was reported unfavorably out of committee to the Senate.

<sup>3</sup> Political Action Committees particularly are becoming more involved in legislative races. According to *The Charlotte Observer*, PACs representing business alone gave more than \$1 million in the 1988 election to legislative candidates—more than one-third of all campaign contributions. See Jim Morrill, "Lobbyists Escalate 'Arms Race,'" *The Charlotte Observer*, April 9, 1989, p. 1A.

<sup>4</sup> Chapter 325 of the 1989 Session Laws (SB 370).

<sup>5</sup> For more, see Thad Beyle, "The Presidential Primary—Sweeping Away Local Stakes," *North Carolina Insight*, Vol. 3, No. 2, Spring 1980, pp. 18–19.

<sup>6</sup> Chapter 363 of the 1977 Session Laws. Ratified by the people on Nov. 8, 1977 on a 307,754 to 278,013 vote, as Article III, Section 2(2), N.C. Constitution.

**Table 1. Terms of Office for State Legislatures**

**Unicameral Legislature 4-Year Term (1)**

Nebraska

**Four-Year Term for Both House and Senate Members (4)**

Alabama  
Louisiana  
Maryland  
Mississippi

**Four-Year Term for House Members and Two-Year Term for Senate Members (0)**

None

**Four-Year Term for Senate Members and Two-Year Term for House Members (34)**

Alaska	New Jersey <sup>3</sup>
Arkansas	New Mexico
California	North Dakota
Colorado	Ohio
Delaware	Oklahoma
Florida	Oregon
Hawaii	Pennsylvania
Illinois <sup>1</sup>	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah
Michigan	Virginia
Minnesota	Washington
Missouri	West Virginia
Montana <sup>2</sup>	Wisconsin
Nevada	Wyoming

**Two-Year Term for Both House and Senate Members (11)**

Arizona	New Hampshire
Connecticut	New York
Georgia	North Carolina
Idaho	Rhode Island
Maine	Vermont
Massachusetts	

**FOOTNOTES**

<sup>1</sup> The entire Illinois Senate is up for election every 10 years, beginning in 1972. Senate districts are divided into three groups. One selects senators for terms of four years, four years, and two years; the second group for terms of four years, two years, and four years, and the third group for terms of two years, four years, and four years.

<sup>2</sup> After each decennial reapportionment in Montana, lots are drawn for half of the senators to serve an additional two-year term. Subsequent elections are for four-year terms.

<sup>3</sup> New Jersey Senate terms beginning in January of the second year following the U.S. decennial census are for two years only.

Source: *The Book of the States 1994-95*, Council of State Governments, 1995.

**Table 2. Length of N.C. Legislative Sessions, 1971-1995  
(Actual Working Days in Session)**

Year of Session	Length of Long Sessions in Odd Years	Length of Short Sessions in Even Years	Total Length for Biennium
1971	141		141
1972		None	141
1973	97		161
1974		64	127
1975	117		136
1976		10	123
1977	123		143
1978		13	161
1979	108		147
1980		15	161
1981	127		147
1982		16	161
1983	138		147
1984		23	161
1985	118		147
1986		29	161
1987	125 (Senate) 134 (House)		192
1988		27	148
1989	128 (Senate) 137 (House)		146
1990		55	148
1991	99 (Senate) 106 (House)		146
1992		42	146
1993	109 (Senate) 110 (House)		146
1994		36	146
1995	109 (Senate) 108 (House)		

*Source:*  
UNC-Chapel  
Hill Institute  
of Government  
and House  
and Senate  
Principal  
Clerks' offices.

CON:

## *North Carolina Does Not Need Four-Year Terms for Legislators*

BY PARKS HELMS

**T**hose who propose four-year terms for legislators do so with a legitimate concern—maintenance of a citizen legislature, which has served the people of North Carolina with distinction and ability. Over the last 20 years, our General Assembly has lost many of its most capable and respected members. Some have gone on to offices such as judicial and executive appointments, while others have returned to private life. Why this drop-out rate among legislators?<sup>1</sup> Among other factors, it stems from the relatively low pay legislators receive, and the tremendous increase in campaign costs. These factors have combined to make legislative service an activity few working men and women can afford. The danger in allowing this trend to continue is that our General Assembly could become dominated by very wealthy or retired persons<sup>2</sup> and lose its character as a citizen legislature.

A four-year term, however, does not solve the problem of getting and keeping competent citizen representatives and senators. And it ignores the issue of legislator responsiveness and accountability to the people. It would reinforce the existing imbalance of power between the executive and legislative branches. And paradoxically, it would not even solve the problem it is supposed to correct. For philosophical and practical reasons, the four-year term should be defeated.

### **Philosophical Issues**

**O**ur state and federal governments were designed so that elected officials in at least one branch would have to face the voters at least every two years. Frequent elections serve to reflect the current mood of the people. In North

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Carolina, this proposition took formal shape in Article I, Section 9 of the state constitution: "For redress of grievances and for amending and strengthening the laws, elections shall be often held."

The desirability of frequent elections is no less important today than it was when our constitution was adopted. The people we elect to our General Assembly should represent our present views on how government should be conducted. The immediate dissemination of information through the electronic media has made the average citizen more likely to change his stance on important issues much more often than every four years. Thus, a legislature which is isolated from the voters for four years is a legislature that does not reflect the true sense of the times in which it functions.

A legislator with a four-year term is less accountable to his constituents than one with a two-year term. Some members may be tempted with a four-year term to pay more attention to the well-heeled special interest groups and less attention to the needs and wishes of the constituents in their districts, hoping that time will cause the people of the district they represent to forget what they have or have not done. By creating a legislature which insulates its members from challenge for four years, a constitutional amendment to create four-year terms would contradict representative government as we have come to know it in North Carolina. At least some other states have adopted staggered terms to go along with their four-year terms, so that at least some legislators are elected every two years. North Carolina's current proposal does not envision staggered terms.

At a time when credibility of government at every level is in question, any change of governmental principles should be carefully studied. Now more than ever, it is important that constituents' views be reflected in public policy decisions. It is not a time to move to four year terms.

## Practical Issues

Proponents of four-year terms argue that the majority of states already have precedents for such a system. At best, this is a half-argument. North Carolina, along with 10 other states, has a legislature in which both representatives and senators serve two-year terms. But should voters approve the proposed amendment, North Carolina would become one of only five states which grant four-year terms to *all lawmakers* (see Table 1, p. 203). The proposal, then, takes our state from one minority category (11 states) to an even more isolated one (four states). The argument that we should adopt a four-year system because other states have done it does not examine the whole statistical picture.

For government to be truly responsive, it must permit voters to participate often in the electoral process. The state constitution speaks to this necessity, and it is too important a principle to be abandoned. In terms of voter participation, the four-year term would undoubtedly reduce the number of people participating in the election of our legislators. The elections might be in off years—when a governor and president are not being elected. Absent any prominent statewide or national races, off-year elections have less press coverage, less public interest, and not surprisingly, significantly lower voter turnout. One could argue that people who do not vote deserve the government they get, but that position overlooks the fact that those of us who do vote get the same government. Going to four-year terms would cut in half the opportunities to vote for legislators.

Aside from its effect on the General Assembly, the four-year term would have a significant impact on the executive branch as well. North Carolina's governor is already the only chief executive in the nation without veto power. And, in recent years, the General Assembly has

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*A four-year term does not solve the problem of getting and keeping competent citizen representatives and senators. And it ignores the issue of legislator responsiveness and accountability to the people.*

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sought to encroach more and more on duties traditionally performed by the governor and the executive branch. The North Carolina Supreme Court ruled in 1982 that the legislature had overstepped its constitutional bounds by placing some legislators on the state Environmental Management Commission in the executive branch.<sup>3</sup> A four-year term would increase such intrusions into the executive branch and would make relations between the Governor's Office and the legislature even more difficult.

Thad Beyle, a political science professor at the University of North Carolina at Chapel Hill and an expert on state government, rates North Carolina's governor as one of the weakest chief executives in the nation, primarily because the governor lacks exclusive authority over the budget, shares power with other elected officials, and does not have veto power.<sup>4</sup> Governors could find themselves severely impaired when dealing with the entrenched legislature that would result from four-year terms. Gubernatorial succession, approved by the voters in 1977 and won by Gov. James B. Hunt Jr. in 1980 and Gov. James G. Martin in 1988, has served a useful purpose in balancing the powers of the executive and legislative branches. But we must not approve "legislative succession," which would swing too much power back to the legislative side.

The final practical twist to the four-year term debate is that longer terms will not accomplish what proponents claim they will do—make it easier for men and women of all occupations to serve in the General Assembly. This proposal does not raise the salary of a legislator, now \$13,951 annually. A person supporting a family would be just as hard pressed to serve for four years at such low wages as for two years. More importantly, if the length of sessions continues to increase, it will be just as difficult for legislators to find time to serve, no matter how long the term of office is.

Regarding campaign costs, it may be true that a four-year term would result in a legislator spending less on a re-election campaign. But if an incumbent would have to spend less in campaign costs, a challenger would have to spend more to run. A four-year incumbent would have more name identity in the home district than would a two-year incumbent. Generally speaking, the longer a legislator stays in office, the more formidable an opponent he or she becomes for a challenger. Hence, a

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Democratic  
nomination  
for Lt.  
Governor in  
1988.**



Karen Tam

challenger would have to spend more against an incumbent legislator serving a four-year term. It is an unpleasant fact of political life that some talented legislators are defeated for re-election. But defeat is a risk that each person in public office assumes. No legislator, no matter how proficient he or she may be, deserves to be insulated from the voters of this state for a period of four years.

### **Conclusion**

**E**ncouraging qualified men and women to run for office and serve in the General Assembly can be accomplished by means other than changing the term of office to four years. Increasing salaries for legislators would do more to encourage service in the General Assembly than would the four-year term. And attracting qualified persons to stay in the legislature might well produce more frugal policies, actually saving the state more than the cost of increased salaries.

Changes less drastic than going to four-year terms can preserve the historical citizen character of our legislature. More efficient management of legislative sessions could reduce meeting time. For instance, by adopting a system under

which committees work on bills before a session—as is the case in Florida and other states—the General Assembly could transact the same amount of business while requiring legislators to spend less time in Raleigh. Standing committees could be given the authority to meet between sessions to study bills and resolutions. And we could formally limit the length of a session. Several states have in their constitutions limited the length of legislative sessions to as few as 30 days (Virginia in odd-numbered years) or to as many as 140 days (Texas). These types of measures surely would produce more positive results than would four-year terms.<sup>5</sup>

The N.C. General Assembly is often characterized as the most powerful legislative body in America in relation to the executive branch. After all, short of judicial reprimand, the only check on our legislature comes from the voters. The loss of many of our competent legislators is a disturbing trend that concerns all of us who support a citizen legislature. But implementing four-year terms for all legislators repudiates in a wholesale manner our long-established principle of representative government. Four-year terms will do little to make good legislators better and may go a long way toward making bad legislators worse.

## FOOTNOTES

<sup>1</sup>The dropout rate for the General Assembly has not been computed, but over the years a number of experienced, senior leaders have chosen not to run for re-election because of the demands on their time, their families, their businesses or their professions. Among them in recent years have been state Reps. Harry Grimmer (R-Mecklenburg), David Diamont (D-Surry), and Minority Leader Johnathan Rhyne (R-Lincoln); Sens. Bill Goldston (D-Rockingham) and Paul Smith (R-Rowan).

<sup>2</sup>Over the years, the number of retirees serving in the legislature has increased dramatically:

Year	# of Retirees	Year	# of Retirees	Year	# of Retirees
1975	7	1983	18	1991	34
1977	8	1985	19	1993	32
1979	9	1987	21	1995	37
1981	19	1989	28		

Source: *Article II: A Guide to the 1995-96 N.C. Legislature*, N.C. Center for Public Policy Research, Raleigh, N.C., p. 221.

<sup>3</sup>*State ex. rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E. 2d 79 (1982). See also *The Advisory Budget Commission—Not as Simple as ABC*, N.C. Center for Public Policy Research, 1980, and see Jim Bryan, Ran Coble, and Lacy Maddox, *Boards, Commissions, and Councils in the Executive Branch of N.C. State Government*, N.C. Center for Public Policy Research, 1985, p. 23.

<sup>4</sup>See Thad Beyle's article, "The Formal Powers of the Governor in North Carolina: Very Weak Compared to Other States," pp. 267. If voters approve veto power for the Governor in the November 1996 referendum, the governor's power will increase, but the general veto power the governor would gain is weaker than the power accorded by an item veto.

<sup>5</sup>See Rich Jones, "State Legislatures," *The Book of the States 1994-95*, The Council of State Governments, 1994, p. 99. Jones reports that 13 states, including North Carolina, place no limits on session length; 31 states have a constitutional limit; and six states have a statutory or indirect limit (such as a cessation of legislative salaries or per diem expense payments) on the length of legislative sessions.

# African-American Legislators: From Political Novelty to Political Force

BY MILTON C. JORDAN

*This article examines the role of African-American legislators in the N.C. General Assembly and how their role has evolved since 1969, when then-Rep. Henry Frye (D-Guilford) became the first black to be elected to the legislature in the 20th century.*

**F**or two years, Alma Steele argued the residents' perspective as an ex-officio member of the Durham Housing Authority's Board of Commissioners. Afterwards, she had to sit silent and motionless as the other commissioners voted. But in 1981, all that changed. Rep. Kenneth Spaulding (D-Durham) pushed a bill through the N.C. General Assembly that allowed public housing residents to be full voting members of these boards rather than just non-voting delegates.<sup>1</sup> Spaulding was one of only four African-American lawmakers in the General Assembly that year, but his legislation changed things for public housing residents.

"That law confirmed what I had known all the time," Mrs. Steele says. "My convictions reflected in my votes were as important as my opinions and suggestions. It surely made a difference." Those comments, say African-American legislators, summarize their role and their

significance during the 27 years of this century that African Americans have been elected to legislative seats in the N.C. General Assembly.

"Black legislators must clearly understand that we are up here to make a difference," explains Sen. William Martin (D-Guilford). "First, we address the needs of our constituents in our districts, then the needs of black people state-wide, and the state as a whole. Our mission is to make a difference."

But making a difference is no easy task when you lack the numbers to carry the votes. So, African-American legislators have used other tactics to get things done. "When I went there," says Henry Frye, North Carolina's first African-American legislator this century, "I knew I wouldn't get very far with allegations. So I never charged anyone with anything. I always spoke of the problems we faced as third-party entities."

Frye, now an associate justice of the N.C. Supreme Court, first served in the N.C. House of Representatives in 1969. He was the only African-American legislator until 1971, when Joy J. Johnson, a firebrand Baptist minister from Robeson County, joined Frye in the General Assembly. "Joy could preach to our colleagues,

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and he would fire them up with his oratory, and then I would sit and negotiate with them.”

As time passed and the numbers of African-American legislators increased to three in 1973, then doubled to six in 1975 and 1977 (see Table 1), the strategies expanded further. “We were still too few to carry much clout,” says Frye, who served in the House through 1980 and in the state Senate in 1981 and 1982, “but we could target more of our colleagues to work with. But another important part of our strategy was to take serious direction from the traditional black community organizations.”

### Bringing About Change

**A**frican-American legislators have wrought many changes during their time as state lawmakers. Consider:

- In 1969, Frye persuaded his colleagues to approve a bill that put the state’s literacy test to a statewide referendum on constitutional amendments to delete the requirements.<sup>2</sup> Frye contended that the literacy test requirement unconstitutionally blocked African-Americans from voting. The proposal to change the law lost in the referendum, but the courts later overturned such laws.<sup>3</sup>
- That same session, Frye introduced legislation to prevent the enforceability of unconscionable clauses in business contracts.<sup>4</sup> That was one of the first legislative efforts in this state to expand economic development opportunities for various groups, including black businessmen. The measure failed in 1969, but passed two years later.
- In 1976, African-American legislators saved the law school at North Carolina Central University in Durham from closure when other legislators were grumbling about the school. They were unhappy because the school’s graduates had a low passing rate on the state bar exam, and because it was expensive for the state to support two public university law schools—at NCCU and at UNC-Chapel Hill. African-American legislators engineered a \$6.2 million appropriation to improve and expand the law school—more capital improvement money in one lump sum than the law school had received from the General Assembly in the previous 39 years combined.<sup>5</sup>
- In 1981, Spaulding and a handful of other African-American legislators fought for a re-districting proposal—one that created single-member districts in areas where there were a lot of black voters—that was subsequently ordered by the courts.<sup>6</sup> Anything less, Spaulding argued, would have diluted African-American voting strength and deprived blacks of the representative of their choice. As a result, in the 1984 elections, African Americans quadrupled their numbers in the General Assembly from four years earlier, from four to a total of 16 (see Table 1). Their numbers since have grown to 24 in the 1995–96 session.
- In 1987, African-American legislators fought and won the legislative battle to have Dr. Martin Luther King Jr.’s birthday become a paid state holiday for state employees.<sup>7</sup>
- Also in 1987, these legislators helped rewrite the way voters nominate Superior Court judges, and created new judgeships that African Americans would win.<sup>8</sup> Superior Court judges were elected statewide, even though they were nominated from within judicial districts, and African Americans felt that the statewide election of such judges was the chief reason that African-American lawyers were not being elected to such positions. In the 1988 elections, after the changes, the number of African-American Superior Court judges climbed from two to 10. In 1994, for the first time, Superior Court judges were elected by district. Since then, their numbers have grown to 35: Henry Frye is an Associate Justice on the N.C. Supreme Court; two African-American judges sit on the N.C. Court of Appeals; 14 African Americans are judges in Superior Court; and 18 African Americans are judges in District Court.
- In 1989, African-American legislators sparked the rewriting of the state’s 74-year-old runoff primary law.<sup>9</sup> The old law required candidates to win 50 percent plus one vote in a primary with more than two contestants, or face a runoff if the second-place finisher called for one. Under the new law, a candidate needs to win only 40 percent of the vote to win a party’s nomination. African-American and some white legislators had argued for years that the second primary law often kept them out of office, but efforts at repeal failed until blacks pushed the issue in the

**Table 1. African Americans in the N.C. Legislature in the 20th Century**

	Senate	House	Total Number Elected	Percentage of Total Legislators	Total Who Served*
1900-1968	0	0	0	0%	0
1969	0	1	1	1%	1
1971	0	2	2	1%	3
1973	0	3	3	2%	3
1975	2	4	6	4%	6
1977	2	4	6	4%	10
1979	1	3	4	3%	6
1981	1	3	4	3%	4
1983	1	11	12	7%	12
1985	3	13	16	9%	16
1987	3	13	16	9%	16
1989	4	13	17	10%	19
1991	5	14	19	11%	19
1993	7	18	25	15%	28
1995	7	17	24	14%	24

\* This number includes African-American legislators who were appointed to fill the unexpired portions of terms to which other legislators were first elected.

Sources: Article II: A Guide to the 1995-96 N.C. Legislature, N.C. Center for Public Policy Research; and North Carolina Government 1585-1979, A Narrative and Statistical History.

1989 session. The second primary had cost state Rep. H. M. "Mickey" Michaux (D-Durham) the 2nd District Democratic nomination for Congress in 1982.

- The 1991-92 General Assembly voted in a Special Session to redraw the state's congressional districts according to the results of the 1990 census. Redrawing the 12 Congressional districts resulted in two new black majority districts, the 1st and 12th, providing greater opportunity for those districts to elect an African-American representative.<sup>10</sup> African Americans Eva Clayton and Mel

Watt became the first to hold the 1st and 12th District seats respectively.

- African-American legislators, voting as a bloc, helped ensure that legislation passed during the 1995-96 session to help minority economic development programs, despite the fiscally conservative environment in the legislature. As a result of the 1994 elections, Republicans had control of the N.C. House (68-52) for the first time this century. According to Rep. Howard Hunter (D-Northampton), chair of the Legislative Black Caucus, the \$3.8 million in economic

development funding for minorities is designed to support community development projects in North Carolina's minority communities.<sup>11</sup> The Black Caucus also was able to obtain \$1.8 million in funding for maturing community development corporations.<sup>12</sup>

- Also during the 1995 legislative session, African-American legislators secured a total of \$18.8 million for the 1995-97 biennium for capital construction at historically black colleges and universities.<sup>13</sup>

### Calling the Shots, Setting the Agenda

**B**ut the changes pioneered by African-American legislators extend beyond the laws they have worked to pass. For example, these legislators have rewritten many traditional leadership relationships in the black community. While civil rights leaders continue to carry clout, members of the Legislative Black Caucus now more frequently call the shots, set the agenda, and orchestrate the strategy of change.

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## *When African-American and Republican Interests Coincide, Does the Democratic Party Lose?*

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AS NORTH CAROLINA CONTINUES to move from a one-party to a two-party state, African-American legislators face important challenges. African-American legislators must combine forces with both Democrats and Republicans—even though they do not perceive Republican interests to be compatible with the interests of African Americans in North Carolina—if they want their agenda to be successful in the prevailing political climate.

In the past, African Americans and Republicans have collaborated successfully. For example, in the early 1980s, an alliance of black legislators and Republicans led the General Assembly to adopt single-member legislative districts where there were concentrations of black voters.<sup>1</sup> In 1989, the groups teamed up again to pass legislation that eliminated many runoff primaries.<sup>2</sup> The changes helped both groups, and Rep. H. M. "Mickey" Michaux (D-Durham) says he has no illusions about this paradox. He states, "I'm convinced that Republicans voted for the party primary bill because they feel if more black candidates get to general elections, Republicans can win more legislative seats at our expense." Michaux feels blacks are caught between a rock and a hard place on such issues.

One result of increased African-American representation in the General Assembly may be the loss of indirect representation in the form of white Democratic legislators—as allies to black Democratic legislators and advocates for African-American constituencies. "The losses of the Democrats in the 1994 elections are tied to the decision to create minority race districts. The effect was to strip nearby districts of Democratic support," says Thad Beyle, a professor of political science at the University of North Carolina at Chapel Hill.

Furthermore, some argue that civil rights groups may have ultimately harmed their own cause by aligning themselves with Republicans and pushing for minority districts. "Racial districting may have become a clarion call for the civil rights movement, but it is also a cause celebrè for the conservatives who cheer the will-

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*Jack Betts is an associate editor of The Charlotte Observer.*

Traditionally, African-American leaders have taken a family approach to dealing with important issues. That is, critical discussions that might reveal differences among key leaders have been kept within the family and not bandied about publicly. If issues couldn't be resolved, the antagonists traditionally called a truce to prevent those differences from erupting publicly. But all that changed in 1987.

Rep. Michaux, dean of black legislators with nine terms under his belt, introduced and shepherded to passage a bill designed to obvi-

ate two suits against the state filed in federal court. The suits were filed by the National Association for the Advancement of Colored People (NAACP) with the assistance of a prominent Republican Party leader, Allen Foster, the GOP's 1984 nominee for Attorney General. They charged that North Carolina's system of electing Superior Court judges was unconstitutional.<sup>14</sup> Normally, Michaux would have observed the keep-it-in-the-family rule even though he disagreed with the NAACP suit, but this time he went public and sponsored the leg-

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ingness of blacks to separate."<sup>3</sup> For some observers, the supreme irony is that after all the gains in knocking down segregation in education, in employment, in housing, and in other arenas, the net effect of single-member districts is to re-segregate the races—making some districts blacker and some districts whiter.

But those who fought for opportunities for blacks reject that notion. Charlotte attorney and state Senator Leslie Winner says that while the changes may have hurt the Democratic Party, that's a wound the party will have to bear. "In the end," she told the *Raleigh News and Observer*, "my answer is that white Democrats are not entitled to save their own necks at the expense of black representation, even if that is the net effect."<sup>4</sup>

The alliance of blacks and Republicans may also be strengthened to the detriment of the Democratic Party as African Americans increasingly join the Republican Party. In the 1995 General Assembly, there are three African-American Republican legislators, two in the House and one in the Senate. Although they are a minority within a minority, black Republicans say they are attracted to the GOP for reasons ranging from the practical to the ideological. They say they like the party's anti-abortion platform, its emphasis on religion, and its get-tough approach to crime. One of the party's greatest appeals, they say, is its promotion of independence and individual responsibility.<sup>5</sup> But, despite the increase in black Republican legislators, the long-term implications of increased Republican legislative power may be the elimination or reduction of programs that assist minorities. And that's an uneasy alliance for many African Americans.

—Jack Betts

## FOOTNOTES

<sup>1</sup> The first redistricting plans following the 1980 census passed the legislature as Chapters 800 and 1130 of the 1981 Session Laws for House districts and Chapter 821 of the 1981 Session Laws for Senate districts.

<sup>2</sup> Chapter 549 of the 1989 Session Laws, now codified as N.C. General Statutes §163-111.

<sup>3</sup> Matthew Cooper, "Beware of Republicans Bearing Voting Rights Suits," *The Washington Monthly*, (February 1987), p. 11.

<sup>4</sup> As quoted in Rob Christensen, "Ranks of urban, white Democrats thinning in legislature," *The News and Observer*, Raleigh, N.C. (April 16, 1989), p. 10A.

<sup>5</sup> Ben Stocking, "Ambivalent times for GOP blacks," *The News and Observer*, Raleigh, N.C. (Aug. 1, 1995), pp. 1A and 9A.

islation to defuse the suits and create new judge-ships that would be filled by African-American citizens. "My concern," Michaux says, "was that you never know what a court will do. Frankly, I feel more comfortable handling this legislatively where you can have better control over what happens."

This new political thrust produced strange political adversaries and alliances. The NAACP found itself opposing Rep. Michaux's bill, and Republicans found themselves quoting NAACP state President Kelly Alexander Jr. of Charlotte as they fought against Michaux and in favor of the NAACP position.

The ouster of long-time member E.B. Turner from the UNC Board of Governors that same year and the appointment of former Rep. Joy Johnson heralded a similar shift in tradition. In the past, an African-American official could expect to continue in a public position almost indefinitely, regardless of that person's effectiveness. But during 1987, several members of the Legislative Black Caucus became disaffected with

Turner's performance, branded him ineffective, and declared that Turner had to go. He went. Turner was not renominated, and Johnson was elected by the legislature to the same seat that Turner had held.

Those changes give African-American legislators new clout in the African-American community statewide. And these legislators and their actions have helped change the way African-American leaders are perceived. They have, for example, established solid legislative reputations. They have also helped undermine the notion that blacks think and act in a monolithic fashion. In addition to Michaux's willingness to buck tradition, former state Rep. William Freeman (D-Wake) voted independently when he was a member. Freeman, elected from a district where more than 70 percent of the eligible voters are white, didn't always vote with the Legislative Black Caucus. His record was conservative: He voted to keep the death penalty for children 17 or younger, to require parental consent for abortions (Michaux says the

**Table 2. African Americans in State Legislatures, 1995**

Rank	State	# of African-American Legislators	Total # of State Legislators	% of African Americans in Legislatures
1	Alabama	35	140	25.0%
2	Mississippi	42	174	24.1%
3	Louisiana	30	144	20.8%
4	Maryland	35	188	18.6%
5	Georgia	42	236	17.8%
6	South Carolina	30	170	17.6%
7	North Carolina	24	170	14.1%
8	Florida	20	160	12.5%
9	Illinois	22	177	12.4%
10	New York	26	211	12.3%

*Sources:* Information on the number of African-American legislators nationwide was obtained from The National Black Caucus of State Legislators, 444 N. Capitol St. NW, Suite 622, Hall of the States, Washington DC 20001, (202) 624-5457, FAX (202) 508-3826. For the total number of legislators in each state, see *The Book of the States, Volume 30*, The Council of State Governments: Lexington, Kentucky (1994) p. 113.

Caucus did not vote to fight that bill), and to deny workmen's compensation benefits for hernia victims.

In 1989, when the Caucus voted to boycott the General Assembly's meeting at the Market House in Fayetteville during the Bicentennial Celebration of the U.S. Constitution, the group left Reps. Luther Jeralds and C.R. Edwards, both Democrats of Fayetteville, free to attend, though only Edwards actually went. The Caucus was upset because slaves once had been sold at the Market House, and members thought that the program planners had been insensitive to African-American legislators to schedule a meeting there. The boycott was meant to express the Caucus' deep displeasure. But Edwards attended and got the session to approve a resolution honoring a former slave who became a successful minister.<sup>15</sup>

### **An Eight-Item Agenda for African-American Action**

African-American legislators have developed an eight-item agenda that they have pursued in the N.C. General Assembly individually and collectively, as members of the Legislative Black Caucus. The Caucus is comprised of African-American legislators of both political parties. The traditional eight-item agenda has not changed much over the years and includes the following issues:

- 1) Preserving, protecting, and enhancing the historically black campuses of the University of North Carolina system, which are N.C. A&T State University in Greensboro, N.C. Central University in Durham, Winston-Salem State University, Fayetteville State University, and Elizabeth City State University;
- 2) Advocating for expanded opportunities in economic development for minorities;
- 3) Seeking expanded programs and appropriations for human services;
- 4) Advocating stronger and more equitable public education;
- 5) Fighting for broader recognition for African-American accomplishments and concerns;
- 6) Educating African-American voters;



**Associate Justice Henry Frye in 1969 became the first African-American legislator elected to the N.C. General Assembly in the 20th century.**

- 7) Advocating for local initiatives and supporting local bills; and
- 8) Acting as a preventive force in the General Assembly to fight legislation deemed harmful to minority interests.

“Our presence, the savvy we’ve developed, and the respect we’ve gained allow us to help kill—often before it gets to the floor—certain legislation that might prove detrimental to our primary constituency,” explains Rep. Pete Cunningham (D-Mecklenburg). African-American legislators say this agenda hasn’t changed much in 27 years, and they say it’s not likely to change very much any time soon. “We will continue to do what we’ve done for the past two decades,” says Michaux. “We’ll chip away at each issue a little bit each session.”

### The Influence of Speaker Dan Blue

As North Carolina's first African-American Speaker of the House, Dan Blue (D-Wake) achieved a high profile not only for himself, but for all African-American legislators in the General Assembly. Blue served as Speaker from 1991–94, and in the 1993–94 session, African-American legislators held five committee chairs and six subcommittee chairs in the House.

"The 1993 legislative session . . . was the most influential this century for African-American lawmakers. Historic numbers of black lawmakers—25 of the 170 legislators, the highest number this century—occupied more positions of power. . . . [T]heir higher numbers have given them more freedom and clout to push a broad agenda," wrote Greg Trevor in *The Charlotte Observer*.<sup>16</sup> Such numbers are a far cry from the early 1970s when African-American representation still seemed a novelty. And, their presence has helped shape the legislative agenda, resulting in greater attention to issues important to African Americans in North Carolina.

Although Blue lost his speakership in 1995, some important legislative gains occurred during his tenure. In the 1993 session, for example, issues he supported included raising standards for child care, improving child protective services, strengthening public education, and providing increased funding for low-wealth public school districts.

### The Decline in African-American Influence

The influence of African-American legislators, however, has declined. Because of the takeover of the 1995 House by a 68–52 Republican margin after the 1994 elections, Rep. Dan Blue lost his position as Speaker of the House. With him went the Democratic chairs of 11 House committees and subcommittees. In the 1995–96 session, the only African American chairing a House committee or subcommittee was Rep. Frances Cummings (R-Robeson), chair of the Education Subcommittee on Preschool, Elementary, and Secondary Education.

"Even though we only lost one seat in the November elections, blacks have less clout this session than they had in 1993–94 because of the Republican sweep," says Rep. H.M. Mickey Michaux Jr. "In the environment that exists in

the House—blacks control 17 seats, Republicans control 68 seats—we have found it very difficult to garner the influence we once had, and losing key leadership positions hasn't helped."

The Senate however is a different story. Sen. Frank Ballance (D-Warren), Majority Whip and chair of the Appropriations Subcommittee on Justice and Public Safety, was probably the most powerful African American in the 1995 legislature. A slim 26–24 Democratic majority exists in the Senate, making African Americans powerful as a group. If the six African-American Democratic senators choose to abstain from a vote, the Democrats could lose a critical bill. Although this scenario never played out in reference to specific legislation during the 1995 session, Sen. Ballance recalls, "There were opportunities where the African-American Senators could have jumped ship." But, a spirit of compromise influenced working relationships in the Senate, where the six African-American Senators were often reminded of their importance by their colleagues. In 1995, in a survey of legislators, lobbyists, and capital news correspondents, Sen. Ballance was ranked 15th in effectiveness—the highest ranking that session for an African American.

### Conclusion

African-American legislators face many new challenges. First, they must walk a much narrower tightrope of change because many strategies that traditionally aided African Americans also might serve Republican interests. Of the 56 African-American legislators who have served between 1969 and 1996, all but three have been Democrats, and African-American legislators generally do not perceive Republican interests as dovetailing with black interests. (See "When African-American and Republican Interests Coincide, Does the Democratic Party Lose?," pp. 212–213.)

Just as the South was once thought to be exclusively controlled by the Democrats, African Americans have predominantly voted Democratic and run for office as Democrats. However, the Republican Party's intention to effect a permanent realignment in North Carolina is evidenced by their recruitment of minority candidates. In the 1995–96 session of the General Assembly, there are three African-American Republican legislators—Sen. Henry McKoy



**Representative  
H.M.  
"Mickey"  
Michaux**

(R-Wake), Rep. Larry Linney (R-Buncombe), and Rep. Frances Cummings (R-Robeson). Rep. Cummings is the first female African-American Republican ever to serve in the N.C. General Assembly. Rep. Cummings ran in the 1994 election as a Democrat and then switched parties. In the journal *Southern Exposure*, Ron Nixon writes, "Across the South a small but growing number of African Americans, left disenfranchised and alienated by the Democrats, are joining the Republican Party. . . . Today's black Republicans express deeply conservative values and ideas."<sup>17</sup>

The African-American community is also developing new, young leaders. One measure of this is the participation of young African Americans in the North Carolina Institute of Political Leadership. This leadership development program selects potential leaders who are interested in running for office, and teaches them how to get elected and about issues facing the state. Since 1988, the Institute has graduated 70 African Americans, ten of whom now hold elected office. Two graduates, Rep-

resentatives Larry Linney (R-Buncombe) and Frances Cummings (R-Robeson), serve in the N.C. House, four are county commissioners, two are members of city councils, one serves on a local board of education, and one is a register of deeds.<sup>18</sup> Continued participation in this "School for Statesmen" will ensure new, young leaders in the African-American community.

Despite the partisan shift of power during the latter part of this century, African-American legislators have become a political force of their own. No one today perceives an African-American legislator as a sort of lawmaking curiosity. "That was pretty much the view when I went to the General Assembly," says Frye. "Many of my colleagues looked at me in awe. They seemed to wonder how I got elected. But I also gained much respect during my time there."

From 1868 to 1900, 113 black legislators were elected to the General Assembly, an average of more than 3.5 legislators each year over the 32-year period. By contrast, between 1969 and 1989, only 30 African Americans were

elected, an average of 1.5 new African-American legislators every year, or just half the rate of the previous 100 years. But, since 1989, 21 African Americans have been elected, an average of 3.5 legislators a year over the last six years, which is a rate comparable with the statistics from the Reconstruction period of the last century. These higher numbers in recent years have given African-American legislators more freedom and clout to push a broader agenda.

## DISCUSSION QUESTIONS

- 1) What are the advantages and disadvantages of any minority group voting consistently for one party, as African Americans traditionally have done with the Democratic Party?
- 2) What are the sources of political leadership in the African-American communities of North Carolina?
- 3) What issues are likely to be added to the agenda of the Legislative Black Caucus in the future?

## FOOTNOTES

<sup>1</sup> Chapter 864 of the Session Laws, now codified as N.C. General Statutes §157-5.

<sup>2</sup> Chapter 327 of the 1969 Session Laws. The proposed constitutional amendment to delete the literacy test for voter registration was defeated in a statewide referendum on Nov. 3, 1970 by a 355,347 to 279,132 vote—52 percent against, 44 percent for the amendment.

<sup>3</sup> Such literacy tests were prohibited in the 1965 Voting Rights Act (42 U.S.C. 1973), and several court cases upheld that ban, most notably *Gaston County v. United States*, 395 U.S. 285, 89 S. Ct. 1270, 23 L.Ed.2d 309 (1969). In North Carolina, a state law requiring literacy tests (N.C. General Statutes § 163-58) was finally repealed during the 1985 legislature by Chapter 563 of the 1985 Session Laws, but it remains in the N.C. Constitution in Article 6, Section 4.

<sup>4</sup> House Bill 928, "Unconscionable Contracts," failed to move in 1969, but Frye backed the same legislation in the ensuing session and saw it adopted as Chapter 1055 of the 1971 Session Laws, now codified as N.C. General Statutes §25-2-302.

<sup>5</sup> Chapter 983 of the 1975 Session Laws (Second Session 1976).

<sup>6</sup> Spaulding and others fought against legislative redistricting plans preserving multi-member districts, which passed the legislature as Chapters 800 and 1130 of the 1981 Session Laws for House districts and Chapter 821 of the 1981 Session Laws for Senate districts. These redistricting plans were successfully challenged under the federal Voting Rights Act in a landmark national case, *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984), affirmed in part, reversed in part, *sub nom.*, *Gingles v. Thornburg*, 418 U.S. 30, 106 S. Ct. 2752, 92 L.Ed.2d 25 (1986). Single-member districts finally were adopted in the 1984 General Assembly, in Chapters 4 and 5 of the 1983 Session Laws

(Extra Session 1984) for Senate districts, and in Chapter 1, Chapter 6, and Chapter 7 of the 1983 Session Laws (Extra Session 1984) for House Districts.

<sup>7</sup> Chapter 25 of the 1987 Session Laws, now codified as N.C. General Statutes §103-4(a).

<sup>8</sup> Chapter 509 of the 1987 Session Laws, now codified as N.C. General Statutes §163-106.

<sup>9</sup> Chapter 549 of the 1989 Session Laws, now codified as N.C. General Statutes §163-111; see also Mark Lanier's "The Runoff Primary: A Path to Victory," *North Carolina Insight* (June 1983), Vol. 6, No. 1, pp. 18-23.

<sup>10</sup> *North Carolina Legislation 1991*, ed. Joseph S. Ferrell. Institute of Government, University of North Carolina at Chapel Hill, 1992, pp. 51-52.

<sup>11</sup> Chapter 507 of the 1995 Session Laws (House Bill 230, Part 25, Sec. 25.4.).

<sup>12</sup> Chapter 324 of the 1995 Session Laws (House Bill 229, Part 25, Sec. 25.13.).

<sup>13</sup> Chapter 507 of the 1995 Session Laws (HB 230, Sec. 26A(1).).

<sup>14</sup> *Haith v. Martin*, 618 F. Supp. 410 (1986); see also *Alexander v. Martin*, 86-0148-CIV-5, U.S. E.D.N.C., which was dismissed by agreement of the two parties, and see also *N.C. v. U.S.A.*, Civil Action 86-1490, District of Columbia Circuit Court of Appeals, which was also dismissed by agreement.

<sup>15</sup> House Resolution 14 of the 1989 Session Laws.

<sup>16</sup> Greg Trevor, "No longer 'sort of nonentities,' black N.C. legislators wield power," *The Charlotte Observer*, Charlotte, N.C. (July 25, 1993), pp. A1 and A12.

<sup>17</sup> Ron Nixon, "Plantation Politics," *Southern Exposure*, Institute for Southern Studies, Durham, N.C. (Spring 1995), pp. 27-29.

<sup>18</sup> Information provided by the North Carolina Institute of Political Leadership, located in Wrightsville Beach, N.C.

# Women in the Legislature: A Force for the Future

BY BETTY MITCHELL GRAY

*The increasing clout of women in the General Assembly has had an impact on everything from making it a crime for a husband to rape his wife to increasing funding for domestic violence centers. Such successes are partly due to the increasing number of women in the General Assembly. Still, female lawmakers make up only 16.5 percent of the North Carolina General Assembly and nearly 52 percent of the state's population. This under-representation of women may limit the effectiveness of female legislators, although numbers are only one of the factors that influence effectiveness in the legislature.*

Just before the start of the 1993 General Assembly, freshman Sen. Linda Gunter (D-Wake) stopped at the security booth in the legislative parking garage to get the key to her office. When she identified herself as a newly elected senator from Wake County, the guard seemed skeptical. "You don't look like a legislator," he told her.

"You have this stereotype of what a senator is," says Gunter, a 43-year-old teacher. "In my generation, women were secretaries, nurses, and teachers."

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*Betty Mitchell Gray is a legislative reporter for The Virginian-Pilot of Norfolk, Va., and a former reporter for the Washington Daily News. In 1990, the Washington Daily News won the Pulitzer Prize for Meritorious Public Service for a series of articles by Gray on contamination of the town's drinking water supply.*

The story is a familiar one to former Rep. Erin Kuczmarski (D-Wake). Kuczmarski was one of several House members chosen to escort Vice President Al Gore to the House floor when he addressed a joint session of the General Assembly during the 1993 session. About an hour later, Kuczmarski was barred by a Secret Service agent from returning to her office. She too was told she didn't look like a legislator.

But the look of the legislature is changing. White males no longer represent the vast majority of legislators, and the makeup of the General Assembly seems to be moving closer to that of the North Carolina population in terms of race and gender.<sup>1</sup> The 1993 General Assembly was, in fact, the most diverse in the state's history, with a record 31 (18.2 percent)

**Lillian Exum  
Clement—  
North  
Carolina's  
first female  
legislator.**



women and 25 (14.7 percent) African Americans serving out of 170 legislators.

Still, women represent a majority of the North Carolina population at nearly 52 percent.<sup>2</sup> At 16.5 percent of the General Assembly in 1995, they are far from a majority, but they *are* gaining ground. In 1971, only two women served in the legislature. Does the number of female lawmakers make a difference in terms of the types of bills passed and dollars appropriated? And what obstacles prevent an even faster increase in the number of female legislators and ascension to the top seats of power?

### A Steady Increase in Numbers

The number of women in the North Carolina General Assembly had been building slowly since the early 1970s. (See Table 1, p. 220.) But the number of female office-seekers may have gotten a boost from the televised confirmation hearing of U.S. Supreme Court Justice Clarence Thomas before the U.S. Senate Judiciary Committee in October 1991. The specter of a committee of white males grilling witness

**Table 1. Number and Percentage of Women in the North Carolina General Assembly, by Chamber, 1971-1995**

	1971	1973	1975	1977	1979	1981
Senate	0	1	2	4	5	3
House	2	8	13	19	17	19
Total Number	2	9	15	23	22	22
Total Percent	1	5	9	14	13	14

	1983	1985	1987	1989	1991	1993	1995
Senate	5	4	4	4	5	7	6
House	19	16	20	21	20	24	22
Total Number	24	20	24	25	25	31	28
Total Percent	14	12	14	15	15	18	17

*Source: Article II, the biennial guide to the legislature published by the N.C. Center for Public Policy Research, 1989-90 and 1995-96 editions.*

Anita Hill on her allegations of sexual harassment by Thomas angered many women and contributed to a record number of female congressional candidates filing for office in 1992.

This phenomenon received heavy press coverage on the news and opinion pages of newspapers across the nation. But another phenomenon got a great deal less media attention—the record number of women who filed as candidates for state legislatures in 1992 and their remarkable success rate.

Of the 2,373 female candidates for state legislatures nationwide in 1992, 1,374, or about 58 percent, won, while another 142 incumbents whose terms did not expire retained their seats.<sup>3</sup> That brought the total for 1993 to 1,516, a 141 seat gain over 1992. (See Table 2, p. 221.) North Carolina ranked 17th nationwide in the number of female candidates running for the legislature, with 51—tied with Florida and Idaho. In North Carolina, 61 percent of these candidates were successful.<sup>4</sup>

In 1995, 1,532 of the 7,424 state legislators in the United States are women (20.6 percent), a fivefold increase in female representation since 1969.<sup>5</sup> And 28 women currently serve in the North Carolina General Assembly.

But the expanding ranks of women in the General Assembly cannot be attributed to a single television event such as the Clarence Thomas hearings. The roots of female representation run much deeper.

In 1921, the first female legislator, Buncombe County lawyer Lillian Exum Clement, joined the N.C. General Assembly. Clement defeated two men for the nomination in 1920—the same year the 19th amendment to the U.S. Constitution gave women the right to vote.<sup>6</sup> From then through the 1960s, the number of female legislators remained low, with fewer than five women serving at any one time in the two chambers combined. But since the early 1970s, the number of women serving as lawmakers has increased steadily—with the most dramatic increases coming in the late 1970s and early 1990s.<sup>7</sup>

During the 1970s, women lost their bid to get the General Assembly to ratify the Equal Rights Amendment to the U.S. Constitution, and some were frustrated by the effort. The amendment, which would have put language in the U.S. Constitution outlawing discrimination on the basis of gender, was defeated three times

**Table 2. Number of Female State Legislators Serving Nationwide and Percent of All Legislators, 1969–1995**

Year	Number of Female State Legislators	Percent of All State Legislators
1969	301	4.0 %
1971	344	4.5
1973	424	5.6
1975	604	8.0
1977	688	9.1
1979	770	10.3
1981	908	12.1
1983	991	13.3
1985	1,103	14.8
1987	1,170	15.7
1989	1,270	17.0
1991	1,388	18.3
1992	1,375	18.4
1993	1,516	20.4
1995	1,532	20.6

*Source:* Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University, New Brunswick, N.J., 08901. Phone: (908) 828-2210.

in committee during the 1970s, and finally died in committee in 1979. A “gentlemen’s agreement” between 12 opponents and a proponent of ERA prevented discussion or a vote on the amendment in the 1981–82 session, and it did not resurface before the June 30, 1982, deadline for ratification.<sup>8</sup>

The failure to ratify the Equal Rights Amendment no doubt disappointed proponents. Whether it encouraged more women to run for the General Assembly is subject to debate, but the number of female legislators did rise over the course of a decade during which the General Assembly repeatedly considered and rejected the controversial amendment.

Nine women served in the General Assembly in 1973, when the ERA suffered its first lopsided defeat. By 1975, when the amendment was narrowly defeated in the House, there were 15 women serving. By 1977, when the legislation actually cleared the House and died in the Senate, the ranks of female legislators had swollen to 23 members, or 14 percent of the 170-member General Assembly.

Until the 1992 increase, the number of female legislators fluctuated between 23 and 25 members—a large enough voting bloc to assure at least some legislative successes. For example, in the 1987–88 General Assembly, the 24 female legislators unanimously supported a change in the marital rape law to allow prosecution of husbands living separately from their wives, though at that point they lacked the political clout to have the exemption from the rape laws removed completely from state statutes.<sup>9</sup> And in subsequent sessions, female legislators have banded together to pass legislation requiring insurance companies to pay for mammograms, which test for breast cancer, and Pap smears, which can detect cervical cancer.<sup>10</sup>

The increase in female legislators also has had side effects—like the hiring of more female lobbyists. “Noticeably, now with more women elected, lobbying teams encompass many more women,” says Ann Duncan, former chair of the Employment Security Commission and a former Republican Representative from Forsyth County. “I believe they feel the need to retain female lobbyists not only to lobby female legislators more effectively—or to give the message that, ‘We hire females on our team,’ but to more effectively communicate those issues labeled ‘female issues’ to male legislators.”

### A Growing Force in the Legislature

**T**he influence of female legislators has climbed to an all-time high. “Clearly, there is no job out there that an elected official can do that can’t be done by women that are currently serving in the legislature,” said then-House Speaker Dan Blue (D-Wake) in 1993. “Women have come to full power, at least in the House, and that’s as it should be.”

Women are forging alliances, promoting their own issues, and playing key roles both in supporting and opposing legislation. Consider these examples:

■ When Gov. James B. Hunt Jr. unveiled his plans for new education standards and school accountability, he turned to two powerful female legislators for help in passing his programs—Rep. Anne Barnes (D-Orange), and Sen. Beverly Perdue (D-Craven), then-chairs of the House and Senate education committees.<sup>11</sup>

■ Two female Republicans—Reps. Connie Wilson of Mecklenburg County and Cherie Berry of Catawba—led opposition to Hunt’s “Smart Start” package of legislation for preschool children. A third female Republican, Sen. Betsy Cochrane (R-Davie) worked quietly in the Senate to rewrite the legislation and meet some of the objections raised by Republicans in the House.<sup>12</sup>

■ And former Sen. Elaine Marshall (D-Harnett), a lawyer specializing in domestic cases, helped get a law repealing a marital rape exemption through a reluctant Senate judiciary committee. Until its repeal, the law allowed a man to force sex on his wife without her consent as long as he was living with her at the time the incident occurred. Former Rep. Bertha Holt (D-Alamance) spearheaded the campaign to repeal the marital rape exemption. But she got a key assist from Marshall in the Senate. Marshall swayed her fellow committee members by inviting victims of spousal rape to testify before the committee.<sup>13</sup>

“The women legislators played a key role in the passage of not only the governor’s program but in a variety of issues,” says Jim Phillips, Hunt’s legislative liaison. “Everywhere you turned, on just about every issue, there were women who wielded power on the issue. You don’t think about women legislators as women legislators anymore. They are just good legislators who know their stuff.”

### New Players at the Table

**L**t. Gov. Dennis Wicker, a former six-term House member who now presides over the Senate, says female legislators have changed not only the composition of the legislature, but the issues that come to the table for discussion. “I think we’ve seen a lot more debate on women’s issues and children’s issues as a result of more

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***More important than sheer numbers, legislative observers say, is the quality—the ability, intelligence, and energy—not only of veteran female legislators but of the influx of first-term women.***

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women taking part in the process. The most obvious and glaring example of that is the marital rape bill. I would venture to say that but for the clout of women legislators, that bill would never have been approved. Certainly 10 years ago, it would never have been debated, much less passed into law.” Besides the spousal rape bill, women lawmakers also played key roles in passing legislation that banned demonstrations in obstructing access to abortion clinics,<sup>14</sup> affirmed a woman’s right to breastfeed in public,<sup>15</sup> increased appropriations for domestic violence centers,<sup>16</sup> implemented Hunt’s early childhood initiatives,<sup>17</sup> and strengthened the law against child abuse.<sup>18</sup> “Almost all of the things we did will help women and will help children,” says Holt.

The 1995 General Assembly enacted several laws dealing with issues important to women, including bills that: authorize broader penalties for “deadbeat dads” who refuse to pay child support;<sup>19</sup> require insurance companies to cover hospital stays of at least 48 hours after childbirth;<sup>20</sup> give judges more options in trying to prevent domestic violence;<sup>21</sup> and make financial need instead of fault the primary criterion for determining whether divorced spouses qualify for alimony support.<sup>22</sup>

Holt says the current state of affairs is a far cry from when she arrived in Raleigh for her first term in 1975. Then, says Holt, the General Assembly was still under the control of “good ol’ boys,” and women had to fight for recognition to speak on the House floor. Today, she says, younger male lawmakers are more open to women’s views and more supportive of issues that traditionally have been considered women’s issues—like her bill repealing the marital rape exemption.

North Carolina ranks 36th nationally in the number of female legislators, sandwiched between North Dakota and Iowa.<sup>23</sup> (See Table 3, p. 224.) Washington ranks No. 1, with females constituting 39.5 percent of its legislators. But the fact that North Carolina elected 31 female members in 1993 becomes more impressive when one considers that in 1971, the North Carolina General Assembly had only two female legislators, both serving in the House. By 1993, the Senate had seven women serving and the House had 24.<sup>24</sup> (See Table 1, p. 220.) In 1995, women lost only three seats in the General Assembly.

And more important than sheer numbers, legislative observers say, is the quality—the ability, intelligence, and energy—not only of veteran female legislators but of the influx of first-term women. “Being a woman or a man shouldn’t make a difference,” says Perdue. “I have never seen a door closed because I was a woman.” Power in the legislature is based largely on seniority, Perdue says. “I’m able to do what most good legislators can do after eight years.”

### **Gender Still Makes a Difference**

Some observers say gender still makes a difference in the General Assembly. “Basically, the North Carolina General Assembly is, for the most part, under the control of men,” says Roslyn Savitt, lobbyist for the N.C. chapters of the National Organization for Women and the National Association of Social Workers. “That’s not to say that there aren’t people like Dan Blue who are very strong on women’s issues. But the final decision-making still is in the hands of men.”

Peggy Stamey, a Wake County Democrat who served 10 years in the House before resigning in July 1993 to accept an N.C. Parole Commission appointment, agrees with that assessment. “Believe me,” Stamey says. “Men still control the legislature. Things have improved for women, but not nearly enough.”

Since 1977, the N.C. Center for Public Policy Research has published biennial effectiveness rankings for legislators based on ratings by their legislative colleagues, registered lobbyists, and the capital press corps. Women consistently have had trouble breaking into the top 10 percent of either the Senate or the House. How-

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**Table 3. Percentage of Women in State Legislatures and Ranking Among the 50 States**

State	1993		1995	
	Percent of Female Legislators	Ranking Among the 50 States	Percent of Female Legislators	Ranking Among the 50 States
Alabama	5.7%	49	3.6%	50
Alaska	21.7	21	23.3	20
Arizona	35.6	2	30.0	4*
Arkansas	9.6	46	12.6	42
California	23.3	18	20.8	26
Colorado	34.0	3	31.0	3
Connecticut	25.1	13	26.7	11
Delaware	14.5	38	21.0	25
Florida	17.5	31	19.4	30
Georgia	17.4	32	18.22	32
Hawaii	23.7	16	19.7	29
Idaho	30.5	7	27.6	10
Illinois	23.2	19	23.2	21
Indiana	19.3	27*	22.0	23
Iowa	14.7	37	18.00	35
Kansas	29.5	8	27.9	9
Kentucky	4.3	50	8.0	49
Louisiana	6.9	48	9.7	48
Maine	31.2	6	25.8	12
Maryland	23.4	17	28.7	8
Massachusetts	23.0	20	24.0	17*
Michigan	19.6	26	22.3	22
Minnesota	27.4	9	24.9	13
Mississippi	10.9	44	11.5	45
Missouri	19.3	29	19.8	28
Montana	19.3	27*	24.0	17*
Nebraska	20.4	23	24.5	14
Nevada	27.0	11	34.9	2

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**Table 3, continued**

State	1993		1995	
	Percent of Female Legislators	Ranking Among the 50 States	Percent of Female Legislators	Ranking Among the 50 States
New Hampshire	33.5	5	29.7	6
New Jersey	12.5	41	13.3	41
New Mexico	19.6	25	20.5	27
New York	16.1	35	18.01	34
<b>North Carolina</b>	<b>18.2</b>	<b>30</b>	<b>16.5</b>	<b>36</b>
North Dakota	16.3	34	15.0	37
Ohio	21.2	22	24.2	15*
Oklahoma	9.4	47	10.7	47
Oregon	26.7	12	28.9	7
Pennsylvania	9.9	45	11.9	44
Rhode Island	24.7	14	24.0	17*
South Carolina	12.9	40	12.4	43
South Dakota	20.0	24	18.1	33
Tennessee	12.1	42	13.6	40
Texas	16.0	36	18.23	31
Utah	13.5	39	14.4	39
Vermont	33.9	4	30.0	4*
Virginia	11.4	43	11.4	46
Washington	39.5	1	39.5	1
West Virginia	16.4	33	14.9	38
Wisconsin	27.3	10	24.2	15*
Wyoming	24.4	15	21.1	24
	<b>National Avg.</b>	<b>20.4%</b>	<b>National Avg.</b>	<b>20.6%</b>

\* Denotes a tie that affects ranking. States in which ties are due to rounding rather than to exact percentages are ranked according to exact percentages.

Source: Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University.

ever, in the Center's rankings of the effectiveness of the 1995 General Assembly, Sen. Cochrane ranked 5th in the Senate, the highest ranking ever for a woman or a Republican. Sen. Perdue ranked 6th. And in the House, the highest ranking woman was Speaker Pro Tempore Carolyn Russell (R-Wayne) at 8th.

Those numbers have changed dramatically since the first effectiveness rankings were published for the 1977 legislature. That year, Rep. Patricia S. Hunt (D-Orange) was the highest-ranked woman in the House at 12th. (Hunt peaked at 10th in the 1979 rankings, and ultimately was appointed a District Court judge by then-Gov. Jim Hunt.) Sen. Katherine Sebo (D-Guilford) was the only woman to be ranked in the top half of the Senate for 1977, at 24th of 50.

### Women Get the Plum Appointments

**A**ppointment to a committee chairmanship is one route to effectiveness, particularly appointment to head one of the four committees that spend and raise money. Men used to head all of the General Assembly's money committees—the House and Senate appropriations committees, which decide how to spend money, and the finance committees of the two chambers, which decide how revenue is raised. Women increased their power in the 1995 session when they were given the plum committee chairs in both the N.C. House and Senate for the first time.

Although in the 1993–94 session a record 31 women served in the legislature, women chair some of the most powerful committees in the 1995–96 session. For example, Democrats selected Sen. Perdue to co-chair the Senate Appropriations Committee, while Republicans chose Rep. Theresa Esposito (R-Forsyth) to co-chair the House Appropriations Committee. In addition, Rep. Wilson now co-chairs the House Finance Committee, through which all major tax legislation passes. In the Center's survey, the Appropriations and Finance Committees were named the most powerful in each house. Overall, women chaired 15 committees and subcommittees in the 1995–96 session. Women also secured other important leadership posts. Rep. Russell is the Speaker Pro Tempore of the House, while Sen. Cochrane is Minority Leader in the Senate.

Steve Tuttle, in N.C. Citizens for Business and Industry's magazine, *North Carolina*, writes, "Behind every man in the 1995 General Assembly, there is a woman he must address as 'Madam Chairman,' or so it seems in this session of the legislature where women are heading up many of the most important committees. . . . In some cases it's seniority that has propelled the women to the front ranks, in other cases it's a result of the Republican takeover of the House."<sup>25</sup>

Sen. Perdue says, "Women have more clout this session than in 1993–94, but it is not just because they are women. It's all about hard work. With the tough policy issues and the incredible amount of fiscal responsibility facing legislators, positions are awarded based on individual accomplishments and commitment. Women have to be as good as or better than their counterparts."

What would it take to push more women into positions of leadership in the General Assembly? More numbers would probably help, although the state of Alaska is showing that women don't have to have dominant numbers to dominate. There, with 13 females among 60 legislators, women hold the offices of House speaker, majority leader, minority leader, and Senate Finance co-chairman.<sup>26</sup>

### A Call for Equity

**T**hirty-one women is just not enough out of 170 legislators," said Anne Mackie, former director of the Women's Agenda Program for N.C. Equity, a Raleigh nonprofit advocating for women's issues, in 1993. "We need equity."

Perdue adds, "Women represent 52 percent of the population in the state. We certainly are not 52 percent of the elected population in the state."

The 61 percent success rate of women candidates for the legislature in 1992 shows women *can* be elected to the legislature in North Carolina *if* they run. But with 51 candidates for 170 seats, only so much headway can be made. More women are running for the legislature than ever before, but observers say barriers remain.

Women who enter politics are "fighting the traditional role of wife and mother," says Penny Craver, former development director for the

N.C. Institute for Political Leadership in Wilmington, which teaches participants how to wage successful political campaigns. The institute has graduated 238 would-be politicians since it opened in 1988. Of these, 87, or 36.5 percent, are women.

Two institute alumnae are now serving in the General Assembly: Rep. Frances Cummings (R-Robeson) and Rep. Wilson. But Craver says in politics, women have to walk a fine line between being perceived as too outspoken or too timid, while men win points for being outspoken and decisive.

Others point to a lack of self-confidence among women, family pressures, difficulty in raising money for campaigns, long absences

from home, and comparatively low legislative salaries as reasons more women don't seek election to the General Assembly. "Heaven knows, balancing family and the General Assembly is not that easy," says Marshall.

Adds Berry, "If you can't stand the heat, stay in the kitchen, because it's not that easy."

Another problem women legislators have to deal with is sexual harassment. In 1995, Rep. Ken Miller (R-Alamance) was accused of sexually harassing a 16-year-old page. After the public accusation, many women who regularly work at the General Assembly—legislators, lobbyists, reporters, and aides—came forward with stories of their own. According to a report in *The Charlotte Observer*, "The racy jokes, roving

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## *Women's Issues? Yes and No*

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ARE THERE REALLY SUCH THINGS as women's issues? I put the question to 16 Democratic and Republican lawmakers. Of the dozen who responded, the consensus was "not really."

Issues that were once considered important only to women—such as child care—have become more relevant to male politicians in recent years. Even issues like abortion, domestic violence, and problems associated with displaced homemakers—once depicted solely as "women's issues"—now also are being cast as human rights and public health issues.

Still, there's something paradoxical about the responses of female lawmakers to this question. They say there are no women's issues, and then they go on to name some. Most women could think of only one or two, but string them together and you get a list of women's concerns, with few differences between the two parties.

That list includes domestic violence, pay equity, abortion, mandatory insurance coverage for mammograms and pap smears, breast feeding in public, and child care and other child advocacy issues.

Several of the female lawmakers said they are the ones who promote and best understand these issues. In that limited sense, they are women's issues. Still, they say issues that affect women generally affect everyone. "These are people's issues," says Rep. Joni Bowie (R-Guilford).

Former Rep. Bertha Holt (D-Alamance) says elimination of the spousal defense in rape prosecutions during the 1993 session of the General Assembly was the closest she could come to identifying a woman's issue. As for domestic violence, she says, "I think it's a family issue. I think it's a public health issue. The chief reason for women going to the emergency room is that they have been beaten."

"Women have been painted into a box," says Rep. Connie Wilson (R-Mecklenburg). "Women's issues encompass the whole scheme of what we deal with in Raleigh. All the issues are intertwined. I see all the issues as women's issues."

—Betty Mitchell Gray

hands and running commentary on women's bodies would be grounds for sexual harassment complaints in many workplaces—but they're *de rigueur* in the committee rooms where the state law is crafted."<sup>27</sup>

Sex *role* harassment is also common. Rep. Joanne Bowie (R-Guilford), a public relations executive with adult children, says when she first arrived in Raleigh in 1989, she was told by an older, male colleague, "You need to go home and take care of your babies."

Those women who *do* take the plunge and run for legislative office are finding that many roads lead to Raleigh. Many, like Rep. Ruth Easterling (D-Mecklenburg), Rep. Mary McAllister (D-Cumberland), and Rep. Bowie served in local government before seeking office. Easterling, Charlotte's only female city council member when she decided to run for the legislature in 1976, was blithe about her decision to seek higher office. "I never thought about being in politics," says Easterling. "I just sort of fell into it. I realized that so much of what we do depended on money and permission from Raleigh. So, I decided I'd rather come down here and give permission."

Bowie decided to run after more than a decade of service in local government. She did so, she says, "mainly because there were not enough women in the General Assembly."

Others, like Wilson the Mecklenburg County Republican, have worked their way up the political ladder through party organizations. Kuczarski and Cummings demonstrate yet another route to Raleigh. They gained lobbying experience with professional associations before running for the legislature—Cummings with the North Carolina Association of Educators and Kuczarski with the North Carolina Chiropractic Association.

Cochrane believes female candidates have at least one advantage over their male counterparts. Where a male candidate might be dismissed as just another politician, female candidates generally are perceived as issue-oriented and sincere, Cochrane says. "The public perceives women less negatively, and they are not smeared with that brush that says politicians are bad."

### Fundraising Less an Obstacle

**O**ne barrier—fundraising—is apparently less an obstacle for female candidates than it

once was. Female candidates say they are becoming more comfortable asking for money, and, as the number of female candidates has grown in recent years, various partisan and non-partisan political action committees (PACs) have organized to help these candidates.

In 1992, winning female candidates raised more than males—an average of \$17,975 compared to \$17,375 for winning male candidates. The difference was wider in the Senate, where successful female candidates raised \$35,177 on average, compared to \$30,379 for winning men.<sup>28</sup> In the Senate, three of the top 10 money-raisers were women, while an unsuccessful female candidate had the 10th highest fundraising total in the House.<sup>29</sup>

"I had no trouble raising money or getting support," says Rep. Berry. Berry says women have become more active in politics and promoting women's issues, and that translates into more dollars for candidates. "They're out there, and they're active now," she says.

Rep. Wilson, a Charlotte banker, says her business background has helped her raise money. "I'm used to working with people and their money," she says. "A lot of politicians—not just women—are afraid to ask, but I'm not afraid to ask."

In recent years, statewide political organizations such as the Pine Needles Network, N.C. NOW (National Organization for Women), the Women's Political Caucus, and Women Elect have become more active in contributing to female candidates. The Pine Needles Network, for example, was founded in 1990 with the specific goal of helping elect women to the state legislature. "Our sole function is to raise money and give money away," says Jan Parker, the network's 1992 treasurer and now a Hunt administration official.

While many women's PACs contribute on a non-partisan basis, the Pine Needles Network contributes only to Democratic female candidates who are waging tight races in the general election, Parker says. In 1992, the PAC contributed \$10,500 to 21 female candidates for state legislature.

Senate Minority Leader Cochrane says she knows of no such group that exists strictly to promote female Republican candidates. The Federation of Republican Women's Clubs contributes to female candidates, she says, but its mission is broader than electing women to office. "The Republicans have looked for a strong



**Women's suffrage advocates rally for a woman's right to vote in this 1920 photo.**

candidate with the best potential to win," says Cochrane. "If she happened to be a woman, more power to her." Cochrane says Republican women have gotten financial support from women's groups and other advocacy groups operating at the local level, although not as much as Democrats.

### **Diversity Versus Effectiveness**

**I**ncreased ability to raise money likely will increase the number of female legislators. That, in turn, would likely increase their clout in the General Assembly. But numbers aren't the only factor that determine effectiveness. Some observers say the Women's Legislative Caucus has not been as successful as it could have been in promoting women's issues and advancing women legislators into positions of leadership.

That's in part because of the diversity of the group. In contrast to the 25-member Democratic Black Legislative Caucus, the women's caucus is about one-third Republican. Blacks have been successful in pushing members into positions of leadership and in accomplishing leg-

islative goals because they have been able to agree on a common agenda.<sup>30</sup>

Consensus is much more difficult to achieve with a bipartisan coalition. "We, as a women's group, have more power in numbers, but the women's caucus is divided," says Holt, former caucus chairman. Holt says the group typically selects one or two issues to back. One example was a successful effort to win increased funding for domestic violence centers. Another was funding for a displaced homemaker program.<sup>31</sup> There was also the marital rape bill, which was co-sponsored by all 31 female legislators in the 1993 session.

Still, the caucus has to choose its battles carefully because there are many issues upon which women in the legislature divide their support along partisan lines. An example is whether to decrease appropriations for the state abortion fund for poor women, which Democrats generally oppose and Republicans favor. "That we can pull together on even one or two issues has helped," Holt says.

Easterling says, "You can't lump all women together. The coalitions change within women's groups just like they do with men's groups."

## Support from the Executive Branch

Part of the success of female legislators can be traced to the fact that Gov. Hunt's 1993 legislative agenda included issues that have been described as "women's issues"—those that are of particular concern to women. For example, Hunt identified early childhood intervention as a major objective of his administration. This issue also was important to many female legislators, although support was not universal. Rep. Wilson stirred the Christian right to oppose the package and was accused by her House colleagues of spreading misinformation.

Wilson views her role differently. "The bill was being ramrodded through the legislature," says Wilson. "I felt the responsibility to inform the people of North Carolina as to what was in the bill and what was not in the bill." Wilson says questions raised by her, Rep. Berry, and others resulted in more than 200 lines of changes in the legislation establishing a nonprofit corporation to develop 12 pilot day care programs for young children. "Every issue that we brought up was addressed," Wilson says. Blue later appointed one male Smart Start opponent, Rep. Robin Hayes (R-Cabarrus), to the corporation's governing board.

Cochrane, however, says that while Hunt's legislative agenda may have benefited women in the General Assembly, Republicans have the longer track record for placing women in positions of leadership. Cochrane served as House Minority Leader in the 1985 and 1987 sessions before moving to the Senate in 1989, where she is now Minority Leader.

"Republicans elected me as minority leader and gave me the opportunity at leadership, and that was the first time a woman had been in a leadership position in the history of the General Assembly," she says.

Cochrane says former Republican Gov. Jim Martin also was supportive of women, appointing three female cabinet members and a number of division heads and finishing out his term with a female chief of staff. "The Republicans are

seldom pictured as being supportive of women, and that is not a fair assessment," she says.

## Role Models Past and Present

The fact that both parties are electing female legislators and that women are being named to lofty executive branch positions means more role models for a new generation seeking public office and careers in public service. Indeed, women may find that the public sector represents a quicker path to power than does the private sector, where the proverbial glass ceiling is said to block their rise through the corporate ranks.<sup>32</sup>

Representative Lillian Exum Clement, the state's first female legislator, clearly understood that she was paving the way for future generations. "I want to blaze a trail for other women," Clement is reported to have said in 1923, two years after taking office.<sup>33</sup> "I know that years from now there will be many other women in politics."

Adds Cochrane, "Women have obstacles to overcome in their own thinking. I didn't see myself as a legislator. As women find out they can get elected—that the network of support is out there—they will be more encouraged to seek elective office."

Many of the current class of female legislators are finding that despite the difficult hours, time away from family, and lack of free time, they are enjoying life in politics. And among these women, the state's voters may see a future governor or member of the Council of State.

"Chairing the money committees in the General Assembly is definitely a political stepping stone," says Ran Coble, the N.C. Center's Executive Director. "The next step up for women could be the Speaker's Office and President Pro Tem of the Senate. Or, you may see them choosing to pursue elected positions in the executive branch—Lieutenant Governor and Governor, for example. The first woman to step into one of these positions is very likely to come from this group of women legislators."

Cummings characterizes the female electorate as a sleeping giant that needs to wake up. "Women don't realize that we are 50 percent of the electorate, and we can win," she says. "Women don't recognize the power that we have."

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*Women may find that the public sector represents a quicker path to power than does the private sector, where the proverbial glass ceiling is said to block their rise through the corporate ranks.*

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## DISCUSSION QUESTIONS

- 1) Is it important for the proportion of women serving in the General Assembly to mirror their proportion of the statewide population (52 percent)? Why or why not?
- 2) What issues are women legislators more likely to pursue than men?

## FOOTNOTES

<sup>1</sup> For an analysis of the demographics of the legislature, see Kim Kechschull Otten and Tom Mather, "Legislative Campaign Costs, PAC Donations Continue to Rise," *North Carolina Insight*, Vol. 14, No. 4 (August 1993), pp. 85-88. See also Mebane Rash Whitman, *Article II: A Guide to the 1995-96 N.C. Legislature*, North Carolina Center for Public Policy Research, Raleigh, N.C., March 1996, p. 220.

<sup>2</sup> For more on the demographics of North Carolina, see Ken Otterbourg and Mike McLaughlin, "North Carolina's Demographic Destiny: The Policy Implications of the 1990 Census," *North Carolina Insight*, Vol. 14, No. 4 (August 1993), pp. 2-49.

<sup>3</sup> Center for the American Woman and Politics, National Information Bank on Women in Public Office, Eagleton Institute of Politics, Rutgers University, New Brunswick, N.J., 08901. Phone: (908) 828-2210.

<sup>4</sup> New Hampshire, with 239 female candidates for its 424-seat legislature, ranked first in total number of candidates. About 59 percent of those candidates won seats. In Florida, 28 of 51 female candidates won seats in the 160-seat General Assembly, and in Idaho, 32 of 51 female candidates won office in the 105-seat legislature, according to the Center for the American Woman and Politics at Rutgers University.

<sup>5</sup> Center for the American Woman and Politics, see note 3 above.

<sup>6</sup> Clement's feat is recounted in Kathy Shinkle, "Women Legislators, Facing a Double Bind," *North Carolina Insight*, Vol. 3, No. 4 (Fall 1980), pp. 10-15. Clement served on seven House committees during her first session and chaired the Committee on Institutions for the Deaf and Dumb.

<sup>7</sup> John L. Cheney, *North Carolina Government, 1585-1979: A Narrative and Statistical History*, N.C. Department of Secretary of State, Raleigh, N.C., 1981, pp. 544-553. Totals from 1979 to present are taken from *Article II: A Guide to the 1995-96 N.C. Legislature*, the biennial guide to the legislature published by the N.C. Center for Public Policy Research.

<sup>8</sup> Marney Rich, "What Happened to the Amendment in N.C.," *The News & Observer*, Raleigh, N.C., August 23, 1981, p. 8-III. This chronology outlines the General Assembly's deliberations on the Equal Rights Amendment, and on the 19th Amendment to the U.S. Constitution, which gave women the right to vote. It accompanies an article by Rich titled, "A Battle Recalled: Winning the Vote (Rich, p. 1-III)." As was the case with the equal rights amendment, North Carolina was among the last states to consider ratifying the 19th Amendment. Despite having no representation in the General Assembly, women on both sides of the issue were quick to join the fray. The Southern Women's Rejection League argued that, "Men's vote is sufficient to express the will of the people. Among other things, it is not the right order of affairs to expect men to take orders or direction from women officials. Therefore,

if women are given further suffrage, they might hold the office of judge, senator, or by political accident—president of the United States." The North Carolina Equal Suffrage Association countered that, "Women are the equals of men in mentality," and urged women to "raise fewer dahlias and a lot more hell." Opponents won the battle for North Carolina but lost the war when Tennessee ratified the amendment on August 18, 1920. The N.C. legislature ratified the amendment as a symbolic gesture in 1971.

<sup>9</sup> The influence of female legislators on this change in the marital rape law is recounted in Jack Betts, "In the Legislature, White Male Democrats Become a Minority," *North Carolina Insight*, Vol. 13, No. 2 (June 1991), p. 68. Until this change in the law, marriage was a complete defense against a rape charge unless the couple had a written separation agreement or was living apart under judicial decree. The 1987 change in the law dropped this requirement for legal documentation and allowed prosecution if the couple were separated. The law providing an exemption from prosecution for spousal rape was repealed outright in the 1993 session of the General Assembly (Chapter 274 of the 1993 Session Laws, H.B. 214.)

<sup>10</sup> Chapter 490 of the 1991 Session Laws (H.B. 347), now codified as G.S. 58-51-57.

<sup>11</sup> Hunt's Education Standards and Accountability Commission was authorized by S.B. 878 (Chapter 117 of the 1993 Session Laws), now codified as G.S. 115C-105.1-10.

<sup>12</sup> Hunt's child-care initiatives were enacted by the General Assembly as special provisions in the budget bill (S.B. 27: Chapter 321, sec. 254 of the 1993 Session Laws) and in H.B. 720 (Chapter 432 of the 1993 Session Laws).

<sup>13</sup> Chapter 274 of the 1993 Session Laws (H.B. 214).

<sup>14</sup> Chapter 412 of the 1993 Session Laws (S.B. 873).

<sup>15</sup> Chapter 301 of the 1993 Session Laws (S.B. 1143).

<sup>16</sup> Chapter 561, Sec. 6 of the 1993 Session Laws (S.B. 26).

<sup>17</sup> See note 12 above.

<sup>18</sup> Chapter 324 of the 1993 Session Laws (H.B. 625).

<sup>19</sup> Chapter 538 of the 1995 Session Laws (H. B. 168).

<sup>20</sup> Chapter 517 of the 1995 Session Laws (S. B. 345).

<sup>21</sup> Chapter 527 of the 1995 Session Laws (S. B. 402).

<sup>22</sup> Chapter 319 of the 1995 Session Laws (H. B. 270).

<sup>23</sup> Center for the American Woman and Politics, see note 3 above.

<sup>24</sup> Mebane Rash Whitman, *Article II: A Guide to the 1995-96 N.C. Legislature*, N.C. Center for Public Policy Research, Raleigh, N.C., March 1995, p. 220.

<sup>25</sup> Steve Tuttle, "Madam Chairman' Today, Governor Tomorrow?" *North Carolina*, North Carolina Citizens for Business and Industry, Raleigh, N.C., Apr. 1995, p. 41.

<sup>26</sup> Gary Boulard, "Women at the Wheel," *State Legislatures*, National Conference of State Legislatures, Denver, CO, August 1993, p. 31.

<sup>27</sup> Carol D. Leonnig, "Women in legislature say harassment common," *The Charlotte Observer*, Charlotte, N.C., Aug. 8, 1995, p. 1A. Female legislators have also alleged sexual harassment in Colorado, Georgia, Minnesota, New York, and Washington, according to a survey by Maryland's Department of Legislative Reference. For more on this topic, see Diana Gordon, "It's Not About Sex—It's About Power," *State Legislatures*, National Conference of State Legislatures, July 1993, pp. 51–57.

<sup>28</sup> Kim Kebschull Otten and Tom Mather, *The Cost of Running for the North Carolina Legislature—An Analysis of Legislative Campaign Finances During the 1992 Elections in North Carolina*, North Carolina Center for Public Policy Research, Raleigh, N.C., September 1993, pp. 8–9.

<sup>29</sup> *Ibid.* at pp. 14–15. The three top female money raisers in the Senate, their rank, and amount raised were: Sen.

Linda Gunter (D-Wake), 5th, \$59,758; Sen. Leslie Winner (D-Mecklenburg), 6th, \$59,640; and Sen. Mary Seymour (D-Guilford), 10th, \$42,304. Unsuccessful House candidate Wilma Sherrill (R-Buncombe) was the 10th leading money-raiser in the chamber (\$41,750).

<sup>30</sup> For more on this topic, see Milton C. Jordan, "African-American Legislators: From Political Novelty to Political Force," pp. 209–218.

<sup>31</sup> Chapter 561, Sec. 6 of the 1993 Session Laws (S.B. 26).

<sup>32</sup> For more on the advancement of women in state government, see Angela M. Bullard and Deil S. Wright, "Circumventing the Glass Ceiling: Women Executives in American State Governments," *Public Administration Review*, American Society for Public Administration, Washington, D.C., Vol. 53, No. 3 (May/June 1993), pp. 189–202.

<sup>33</sup> See note 6 above.

# Tales from the Latest Rankings of the Most Influential Lobbyists

BY MEBANE RASH WHITMAN

**L**obbyists have long maintained that glad-handing, good jokes, and a hefty stash of campaign contribution cash are peripheral to winning one's way with the General Assembly. The real key to effective lobbying, they say, is getting good information into the hands of lawmakers. And the proliferation of innovative ways of communicating is having its effect on the trade.

This and other trends in the lobbying profession are apparent from the rankings in *The 50 Most Influential Lobbyists in the 1993 North Carolina General Assembly*, a report released by the North Carolina Center for Public Policy Research in August 1994. These trends include an increase in the number of new faces using high-tech gadgetry to work the halls of the General Assembly and the number of lobbyists forming teams to win their way with legislators. Hot public interest issues, like health care, also seem to fuel higher rankings for some lobbyists.

Patricia Pleasants, a lobbyist representing the National Federation of Independent Business, marvels at the trend toward high-tech lobbying. In 1993, for example, a group of business lobbyists hired a communications team to coordinate grassroots support for the proposed workers' compensation reform legislation.<sup>1</sup> Armed with a list of supporters for the bill and a sophisticated telephone system, communications firm employees would call people on the list and confirm support. Then, with the

touch of a button, the citizens' telephone lines were directly linked to their legislators in Raleigh so they could express support for the bill.

"All they had to do was punch one button and the phone would automatically ring into that legislator's office," says Pleasants. "It was amazing." The ensuing barrage of calls to the legislative office building burned up the telephone lines. "The rumor was that one legislator got so many phone calls the phone broke," says Pleasants. "It's kind of a scary thought, that ability."

Ellis Hankins, a veteran lobbyist, has his own war stories. "I remember, during the 1990 session, that we got wind of a plan by the Senate appropriations leadership to cut the local reimbursements for the repealed inventory tax significantly, the next day. Out went a 'League LegisFAX' to 200 pre-programmed city hall numbers, and the next morning legislators' phones rang off the hook. By noon, that plan was dead, before the appropriations committees even met. Senator Bill Goldston asked me how in the world we got so many of our folks on the phone so fast with accurate information. It was music to my ears."

Welcome to the new age of lobbying. Beepers, cellular telephones, and laptop computers with modems are the essential tools of the trade, and technology is being used to provide quick and easy access to grassroots efforts, creating a powerful method of influencing legislators. As Terry Martin, former capital correspondent for the *Winston-Salem Journal*,

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*Mebane Rash Whitman is the Center's policy analyst.*

**Laptop computers, flip phones, and other high-tech devices are quickening the pace of lobbying the legislature.**

Karen Tam



noted, “[T]he leading lobbyists regularly make use of such technology as facsimile machines, computers, videocameras, and telephone banks to ply their trade most effectively.”<sup>2</sup>

Where does that leave Jane Doe, who has a concern about some particular issue but doesn’t have access to a phone bank or a high-powered lobbyist? At least one commentator believes a well-timed call from a constituent still packs a punch. “[L]egislators generally will pay more attention to one . . . genuinely concerned constituent than five lobbyists trying to win something for their clients,” writes Danny Lineberry of *The Herald-Sun* of Durham, N.C.<sup>3</sup> The trouble is, notes Lineberry, “Not many people call their legislators, unless it’s about a particularly hot issue. Lobbyists are in the Legislative Building every day.”

So how does one keep up with who’s influencing who? One way is through the Center’s lobbyist rankings. Lobbyists list their rankings on resumes; clients use them to evaluate effectiveness, to determine if a raise is merited, or to decide which lobbyist to hire; citizens can use them too.

As an editorial in the *Greensboro News & Record* observes, “Just as voters, at election time,

need to know the candidates vying for the privilege of representing them in the General Assembly, so also do they need to know who it is who has their elected officials’ attention. . . . That’s why surveys such as this one, which ranks the top 50 lobbyists, are useful.”<sup>4</sup> This is the seventh time the Center has released its lobbyist rankings. The latest edition is based on results from a survey conducted during the fall of 1993 after adjournment of the regular session of the General Assembly.

### Old and New Faces

**Z**eb Alley, who represents 18 clients with business and industry interests, received the top ranking for the fourth time in a row. Rounding out the top five spots were Allen Adams, representing 15 clients including the N.C. Retired Governmental Employees Association and Arts Advocates; Roger Bone, legislative liaison for the Department of Community Colleges and also representing 10 clients; Sam Johnson, representing 14 clients including IBM; and Bill Holman, representing the Sierra Club and other environmental groups. Although

there was little movement among the top five spots, 30 percent of the 50 lobbyists ranked as most influential never had been ranked before.

The influx of newcomers and the shifts within the rankings make it apparent that a new generation of lobbyists is garnering the skills necessary to someday replace "the old guard." Fifteen of the 50 top lobbyists this legislative session have not been ranked previously among the most influential. Jim Phillips Jr. (11th), Governor Hunt's former legislative liaison, is the highest-ranked newcomer. Other newcomers to the rankings include: John McMillan (18th), representing 14 clients; D.G. Martin Jr. (20th), legislative liaison for the UNC system; Harry Kaplan (21st), representing the Kaiser Foundation Health Plan of N.C.; Gene Upchurch (22nd), representing Southern Bell; John Niblock (23rd), representing the N.C. Child Advocacy Institute; Phil Kirk (26th), representing N.C. Citizens for Business and Industry; and Mike Carpenter (29th), representing the N.C. Home Builders Association.

Carpenter attributes the success of fellow newcomers to their "ability to take care of business in committee, winning their battles there instead of on the floor." Ran Coble, the Center's executive director, notes, "The committee system is the key part of the lawmaking process. The floor is for show, and the committees are for go. Influential lobbyists learn the committee system and use it to their client's advantage."

Richard Bostic, one of the General Assembly's fiscal research analysts, agrees. "Over the past two or three years, lobbyists have been very active in the appropriations committee process. In the transportation committee, for example, lobbyists attend the daily meetings during the session. And lobbyists who are employed year-round work to influence study committees in the interim. On the Transportation Oversight Committee, for example, lobbyists tried to influence the agenda and shape the recommendations made on some issues, such as overweight trucks."

### Lobbying in Teams

**M**any of the traditional lobbying powerhouses in the legislature increased their clout by sending teams of lobbyists to Raleigh during the 1993 session. Six organizations and

corporations—the American Petroleum Institute, Southern Bell, Carolina Power & Light Company, Citizens for Property Rights, the N.C. Retail Merchants Association, and the N.C. Association of County Commissioners—each were represented by three lobbyists ranked among the 50 most influential lobbyists. The American Petroleum Institute retained the three who collectively rank the highest, with Zeb Alley (1st), Marvin Musselwhite (8th), and Lawrence Bewley (16th) heading their lobbying team.

Ten other organizations and corporations—the Alliance of American Insurers, American Insurance Association, Amusement Machine Association, Blue Cross and Blue Shield of N.C., N.C. Citizens for Business and Industry, North Carolina Association of Educators, ElectricCities of N.C., N.C. Hospital Association, Kaiser Foundation Health Plan, and Microelectronics Center of N.C.—each were represented by two lobbyists ranked among the most influential.

Because power in the legislature is not as concentrated as it used to be, lobbyists have to lobby an increasing number of legislators if they want to be effective. This dispersion of power has increased team lobbying. Team lobbyists divide their responsibilities in numerous ways, says Coble, including "I'll take the House, you take the Senate," "I'll take the Republicans, you take the Democrats," and "I'll take this bill, you take that bill." Coalitions of lobbyists capitalize on the age-old adage that there is strength in numbers.

For example, Roger Bone subcontracts some of his work out to other lobbyists—one who specializes in legal issues, another who has contacts with Republicans, and another who works with African-American legislators. Farming work out in this manner allows Bone to take advantage of the different lobbyists' contacts.

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***Because power in the legislature is not as concentrated as it used to be, lobbyists have to lobby an increasing number of legislators if they want to be effective. This dispersion of power has increased team lobbying.***

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**Table 1. The 15 Most Influential Lobbyists in the 1993 General Assembly**

Lobbyist and Clients	previous rankings where applicable							former	
	1993	1991	1989	1987	1985	1983	1981	legislator	lawyer
<b>Zebulon D. Alley</b> of the Raleigh law firm Zebulon D. Alley, PA, representing 18 clients with business/industry interests including the American Petroleum Institute, Amusement Machine Association, NC Bankers Association, Carolina Power & Light Company, Citizens for Property Rights, Duke Power Company, Kaiser Foundation Health Plan of NC, Microelectronics Center of NC, Public Service Company of NC, Southern Bell, R.J. Reynolds Tobacco Company, and the NC Vending Association.	1	1	1	1	4	3	5	yes	yes
<b>J. Allen Adams</b> of the Raleigh office of the law firm Parker, Poe, Adams & Bernstein, representing 15 clients with business/industry, arts, and health care interests including Arts Advocates of NC, NC Citizens for Community Action, Digital Equipment Corporation, NC Head Start Association, Maxicare North Carolina, and the NC Retired Governmental Employees Association.	2	2	3	3	3	n/a	n/a	yes	yes
<b>Roger W. Bone</b> of the Raleigh lobbying firm Bone & Associates, representing 10 clients with business/industry, health care, and education interests including Blue Cross and Blue Shield of NC, Chem-Nuclear Systems, NC Association of Long Term Care Facilities, NC Firemen's Association, NC Pork Producers Association, and the Tobacco Institute. Also representing the Department of Community Colleges as a legislative liaison.	3	4	10	14	n/a	n/a	n/a	yes	no
<b>Samuel H. Johnson</b> of the Raleigh law firm Johnson, Gamble, Mercer, Hearn & Vinegar, representing 14 clients with business/industry interests including Auto Insurance Agents of NC, Automobile Dealers Association of NC, NC Association of Certified Public Accountants, IBM Corporation, and NC Associated Industries.	4	3	2	2	1	2	2	yes	yes
<b>William E. Holman</b> representing the NC Chapter of the American Planning Association, Conservation Council of NC, NC Coalition for Public Transportation, NC Public Transportation Association, and the NC Chapter of the Sierra Club.	5	5	5	5	6	10(tie)	n/a	no	no

**Table 1. *continued***

Lobbyist and Clients	previous rankings where applicable							former	
	1993	1991	1989	1987	1985	1983	1981	legislator	lawyer
<b>S. Ellis Hankins</b> then representing the NC League of Municipalities, now with the Raleigh office of the law firm McNair & Sanford.	6	13	29	n/a	n/a	n/a	n/a	no	yes
<b>William C. Rustin Jr.</b> then representing the NC Retail Merchants Association.	7	6	4	6	8	n/a	n/a	no	no
<b>Marvin D. Musselwhite Jr.</b> of the Raleigh office of the law firm Poyner & Spruill, representing 19 clients with business/industry and health care interests including the American Petroleum Institute, Browning-Ferris Industries of the South Atlantic, ElectriCities of NC, Hertz Corporation, Martin Marietta Aggregates, NC Obstetrical & Gynecological Society, PepsiCo. Inc., the Smokeless Tobacco Council, and the NC Association of Textile Services.	8	9	30	n/a	n/a	n/a	n/a	yes	yes
<b>William A. Pully</b> representing the NC Hospital Association.	9	15	15(tie)	30	n/a	n/a	n/a	no	yes
<b>Jay M. Robinson</b> then representing the University of North Carolina system as a legislative liaison.	10	8	11	10	n/a	n/a	n/a	no	no
<b>Jim W. Phillips Jr.</b> representing the Office of the Governor as legislative liaison.	11	n/a	n/a	n/a	n/a	n/a	n/a	no	yes
<b>C. Ronald Aycock</b> representing the NC Association of County Commissioners.	12	11	14	9	17	15	n/a	no	yes
<b>John T. Bode</b> of the Raleigh law firm Bode, Call & Green, representing 11 clients with health care and business/industry interests including Bellsouth Telecommunications, Bowman Gray School of Medicine, Carolina Power & Light Company, Managed Health Services, Inc., NC Hospital Association, and NC Radiologists.	13	10	9	18	n/a	n/a	n/a	no	yes
<b>Janis L. Ramquist</b> representing nine clients with health care, education, and business interests including the Association of American Publishers, Learning Disabilities Association of NC, NC Association of Nurse Anesthetists, and NC State Optometric Society.	14	17(tie)	n/a	n/a	n/a	n/a	n/a	no	no
<b>Pam C. Silberman</b> then representing the NC Legal Services Resource Center, NC Primary Health Care Association, and the NC Health Access Coalition.	15	35(tie)	37	n/a	n/a	n/a	n/a	no	yes

## Hot Issues, Hot Lobbyists

Each legislative session, some issue moves to the front burner of public attention, and lobbyists working on that issue tend to move up in the rankings. In 1993, the hot issue was health care, and many lobbyists representing clients with interests in health care ranked among the most influential. They include: Zeb Alley (1st) and Harry Kaplan (21st), representing Kaiser Foundation Health Plan; Allen Adams (2nd), representing Maxicare North Carolina; Roger Bone (3rd) and Brad Adcock (44th), representing Blue Cross and Blue Shield of N.C.; Marvin Musselwhite (8th), representing the N.C. Obstetrical and Gynecological Society; Bill Pully (9th) and John Bode (13th), representing the N.C. Hospital Association; and Janis Ramquist (14th), representing the N.C. State Optometric Society.

The high rankings of health care lobbyists were “no surprise given their big hand last year in writing—and watering down—legislation to overhaul what is a \$20 billion-a-year industry in North Carolina,” writes Foon Rhee, capital correspondent for *The Charlotte Observer*. “In the frenzy before state legislators adjourned, it was mainly lobbyists who cobbled together a health care bill approved at the last minute. They had copies of it before many lawmakers, and knew far more about it.”<sup>5</sup>

The lobbyist who gained the most ground in the latest rankings, Pam Silberman, represented consumers in health care issues. Silberman, who has been a registered lobbyist since 1983, moved up from a tie for 35th in 1991–92 to 15th this year. From 1983 through July 1992, she lobbied exclusively for N.C. Legal Services Resource Center, representing low income families on health and public benefits issues. But, since the 1993 session, Silberman has lobbied extensively for comprehensive health care reform.

The N.C. Health Access Coalition, which she founded, is composed of 149 advocacy groups representing children, seniors, minorities, people with disabilities, labor, grassroots, and religious organizations. “The interest in health care reform expressed by citizens in the 1992 elections put health care on the legislative agenda,” Coble says. “That, plus Silberman’s individual skills, helped boost her influence.”

## Contract Lobbyists

The other lobbyist who jumped substantially in the rankings was Lawrence Bewley, who moved up from 30th in 1991–92 to 16th in the current rankings. Bewley is a contract lobbyist<sup>6</sup> representing 12 clients with business and industry interests, including American Express, R.J. Reynolds Tobacco, and Citizens for Property Rights. From 1978 to 1992, as senior director of the state government relations department at R.J. Reynolds, Bewley’s major responsibility was the promotion and passage of a wide range of legislative initiatives by coordinating trade association and company resources. He is now president of his lobbying firm, Lawrence Bewley & Associates of Raleigh, which specializes in government relations and corporate affairs.

Ellis Hankins, ranked sixth this year, has also assumed the role of contract lobbyist. Hankins was the lead lobbyist for the League of Municipalities until February 1994. He is now with the law firm McNair & Sanford in Raleigh, representing seven clients including Unisys Corporation, Phillips Petroleum, Lederle-Praxis Biologicals, Advantage Capital, Inc., as well as Brunswick, Sampson, and Richmond Counties.

“Lobbying for different clients, as a contract lobbyist or as part of a team, may lead to conflicts of interest in the future,” says Coble. “Clients may begin to request that their lobbyists sign exclusivity agreements to ward off potential problems.” Currently, 31 of the 50 top lobbyists—or 62 percent—represent a single client, corporation, or interest.

## Clients with Clout

The Center notes that some lobbyists may benefit from the stature of their clients. For instance, there have been different individuals working as legislative liaisons for the Governor’s Office and the UNC system in recent legislative sessions, yet each has consistently ranked highly. “This suggests a combination of the talent of the lobbyist and the clout of the client,” says Coble. Jim Phillips Jr., former legislative liaison for Governor Jim Hunt, debuts at 11th this year. Ward Purrington, Governor Jim Martin’s legislative liaison, ranked 32nd (of the 40 lobbyists ranked that year) in the 1989–90 rankings and Zeb Alley made his debut at

fifth place as Governor Hunt's legislative liaison in the 1981-82 rankings.

During the 1993 session, the UNC system's legislative liaison, Jay M. Robinson, helped secure a statewide bond issue of \$310 million in capital projects for 16 campuses. Robinson ranked 10th this year. D.G. Martin, Robinson's successor and a lawyer as well as a former Democratic nominee for Congress, debuts at 20th in the 1993-94 rankings. Their predecessor, R.D. McMillan, also consistently ranked among the most influential lobbyists.

### Public Interest Lobbyists

**F**ive public interest lobbyists<sup>7</sup> appear in this year's rankings: Bill Holman (5th), Pam Silberman (15th), Roslyn Savitt (17th), John Niblock (23rd), and Jo Ann Norris (30th). Niblock, who represents the N.C. Child Advocacy Institute, is the newcomer in this group. Governor Hunt proposed an early childhood development initiative called Smart Start in 1993, and Niblock's nonprofit institute supported Hunt's proposal. In 1993, Niblock also lobbied for the strengthening of child abuse laws and an improvement in child/staff ratios at child care centers.

Despite the appearance of several public interest lobbyists in the rankings, Lineberry, the capital correspondent for *The Herald-Sun*, is concerned that corporate lobbyists far outnumber public interest lobbyists. "Obviously, business and industry lobbyists would work overtime to grease the skids for passage of a corporate tax cut, because millions could be at stake for their clients. Who would roam the halls of the Legislative Building, trying to shift a little more of the benefits of a tax cut to individuals and families? Who would argue that a cut in the sales tax—particularly the sales tax on food—might provide a more direct benefit to the state's citizens than a break for business? Not many lobbyists, that's for sure."<sup>8</sup>

### Other Trends

- Several lobbyists ranked among those most influential in the 1993 session this time *will not return in 1995*, opening up the rankings for even more changes two years from now. Jay Robinson of the UNC System has retired; and Pam Silberman left the N.C. Health Access Coalition.
- Janis Ramquist, who represents clients with health care, education, and business interests, is the *highest ranked woman* this year at 14th. Overall, women captured 11 of the 50 spots, or 22 percent. In the 1991-92 rankings, nine of the 37 (24 percent) lobbyists ranked were women.
- And, 21 of 50 ranked lobbyists (or 42 percent) are *lawyers*, but only nine of 50 (18 percent) are *former legislators*. Sixteen of the 37 lobbyists (43 percent) ranked in 1991-92 were lawyers, and ten were former legislators (27 percent).

During the 1993 session, 493 lobbyists were registered with the Secretary of State, representing 548 different companies or organizations. The Secretary of State says there are 1,141 lobbyists registered, but this figure counts the same lobbyist 10 times if she or he has 10 different clients. The Center's calculations count each lobbyist only once. There were also 205 legislative liaisons representing 25 different state government agencies and licensing boards.

## FOOTNOTES

<sup>1</sup> Senate Bill 906 proposed to rewrite substantially the workers' compensation laws of North Carolina. At the end of the 1993 session, the bill had passed the Senate but was pending in the House. The bill later passed the House and was ratified on July 5, 1994. The act is known as "The Workers' Compensation Reform Act of 1994" and is codified in Chapter 97 of the North Carolina General Statutes.

<sup>2</sup> Terry Martin, "Medical Industry Lobbyists Rank High," *Winston-Salem Journal*, Winston-Salem, N.C., Aug. 31, 1994, p. 17.

<sup>3</sup> Danny Lineberry, "Voice of the People Isn't Very Loud in 1994," *The Herald-Sun*, Durham, N.C., Sept. 4, 1994, p. A16.

<sup>4</sup> "Lobbyists Have Punch in the Halls of State," *News & Record*, Greensboro, N.C., Sept. 4, 1994, p. F2.

<sup>5</sup> Foon Rhee, "Medical Lobbyists Top List," *The Charlotte Observer*, Charlotte, N.C., Aug. 31, 1994, p. C1.

<sup>6</sup> Contract lobbyists are those who represent multiple clients on a contract basis.

<sup>7</sup> A public interest lobbyist is defined as someone who 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.

<sup>8</sup> Lineberry, see note 3 above.

# The General Assembly of the 21st Century

BY PAUL T. O'CONNOR

North Carolina Constitution, Article II, 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.

*What will the legislature look like in 10 years? For one, computers and other high-tech equipment will play a larger role. The legislature of the future also is likely to have a much different demographic make-up. It may have more women and fewer men. It probably will have more minorities and retirees, but fewer lawyers and business people. There also is likely to be a larger legislative staff and expanded cable television coverage of the General Assembly, but perhaps fewer newspaper correspondents following the legislature.*

Imagine it's a spring weekend in the year 2001. Rep. Ann Smith is writing a proposal to present to a House appropriations subcommittee the following week. Smith plans to recommend doubling the funding for the state's adult day-care program. But the subcommittee's chairs support only a 10-percent increase.

Somehow, Smith must find nine votes for her proposal—about twice the number she has now. So, using the state-loaned personal computer that she's installed in the upstairs bedroom of her house, Smith calls up the names of

every subcommittee member. She then begins research aimed at identifying those members most sympathetic to her proposal and perhaps most vulnerable to senior citizen voters.

Welcome to the General Assembly of the 21st Century!

Between January and May 1992, several dozen legislators, lobbyists, and other legislative observers were asked in interviews the same question: What will the General Assembly look like in 10 years? They predicted sweeping changes in the legislature's racial, gender, and political make-up. But their least speculative forecast, perhaps, may be the assembly's increasing reliance on new technology—particularly computers.

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*Paul O'Connor is a columnist for the Capitol Press Association. He has covered the General Assembly since 1979.*

### Increased Use of Computers and Databases

The hypothetical legislator, Rep. Smith, is linked by telephone from her home computer to the main legislative network in Raleigh. Her administrative assistant communicates directly with her using a computer in Smith's office in the Legislative Building. Helping the aide is a budget analyst from the legislative staff, now divided into separate House and Senate contingents.

Using the computer, Smith scans the voting records of each subcommittee member going back to the 1993 legislative session, when the General Assembly first computerized floor votes. She asks for the members' votes on a list of key issues related to aging and child day care.

Next, she calls up a state database first used for the 1991 redistricting but kept current with fresh data over the past 10 years. The file catalogues every road, stream, and neighborhood in the state. It's also blended with state files on voting records and U.S. Census files on demographics. With a few keystrokes, Smith pulls up other state databases showing Medicare/Medicaid usage and tax records showing senior-citizen income and the number of families claiming senior citizens as dependents. To her computer, she also adds the state's files on local unemployment rates and jobless workers who are seeking human service positions.

Finally, she tells the computer to mix all the databases and compile profiles of the 16 subcommittee members' districts. Smith is now ready to start politicking. Using the computer data, she has compiled a profile of the need for adult day care and the impact her proposal would have in each district—for both the coming biennium and decade. That's because the Assembly now requires legislators to project long-range goals and costs when they propose new spending. Smith then selects a few key facts for each district and faxes them to the desk-top computers in the homes of the other subcommittee members.

When Smith buttonholes the subcommittee members on Monday, she won't appeal to their sense of compassion for the aged or the families of senior citizens who need someone to care for their parents and grandparents while they work. Instead, flashing her research findings for each district, she'll talk about votes back home and the potential for state jobs in

those day-care centers.<sup>1</sup> She'll also threaten to talk about the needs of individual districts at the subcommittee meeting—in front of cameras of the statewide cable television network that airs live, gavel-to-gavel coverage of the legislature.<sup>2</sup>

Don't get caught up in the futuristic-sounding technology, however. Much of what Rep. Smith does in 2001 already can be done. "I don't see any problem with your scenario," says M. Glenn Newkirk, former chief of the legislature's Automated Systems Division.

The technology to do such research exists now, and legislation recently adopted or under consideration almost guarantees that lawmakers will be able to use that technology during the coming decade. For example, the Legislative Services Commission voted on March 26, 1992 to replace the voting systems in both houses of the Assembly. The Legislative Services Commission's plan will allow floor votes to be captured by the Assembly's computer network and stored in databases that will be open to the public. Other proposals before the commission would supply legislators with individual personal computers and let them use the state computer network from outside the government complex.

Thad Beyle, a professor of political science at the University of North Carolina at Chapel Hill, predicts that in the age of computers, those who control the new technology will have a new source of power. That is particularly true for House and Senate leaders, because they can utilize staff members who know *how* to use the technology. But some observers note that legislatures, in general, have been slow to take advantage of computer technology. That has shifted the balance of power in some states where the executive and judicial branches have more readily made use of computers.

"Legislators are losing out because they are not paying enough attention to the possibilities in information technology," Rick Krueger, speaker pro tem of the Minnesota House of Representatives, writes in the journal, *State Legislatures*. "But despite the pervasive manner in which [computers] are changing the world, information technologies don't seem to interest legislators beyond certain narrow applications. High-tech information systems have caught the attention of the other branches of government and of decision makers in the business world who use them to great advantage."<sup>3</sup>

## Changes in the Demographics of the Legislature

If the technology is a sure thing, the least certain aspect of the scenario is Rep. Smith—a dedicated, tenacious, technologically literate legislator who has a vision and is ready to pursue it. As Joe Mavretic, who served in the House from 1980 to 1994, puts it: “The assumption is that they will use the information and technology. They may have more information available, but whether or not legislators, on average, are going to make use of it is another issue. You could make the case that the more information legislators have, the less they use—that they turn instead to staff and special interest groups and say, ‘Tell me what you think I should think.’”

Those interviewed for this article expressed considerable skepticism about the General Assembly’s ability to attract high-quality, dedicated people for service. Probably no one was more pessimistic than a veteran industry lobbyist who asks that his name not be used. “There’s a dearth of leadership down here,” he says. “The idea of government service has deteriorated” among the state’s leading citizens. That view is echoed by Gordon Allen, who owns a Roxboro insurance company and lobbies for the

Community Bankers Association of North Carolina. “We’re getting a bunch of retirees now who are out of touch,” says Allen, a three-term legislator who was Senate president pro tem from 1971 to 1974. In the past, he says, “all of the guys were family men who had an immediate need to have an impact.”

Many observers believe that retirees will play increasingly larger roles in future legislative sessions, as they have in recent years. From 1971 to 1991, the number of retirees serving in the General Assembly more than tripled, from 11 to 34.<sup>4</sup> During that same period, the average ages of House members rose from 49 to 57 and Senate members from 51 to 58. Many observers say they expect those retirees to come mainly from government service, teaching, and other fields that allow early retirements and pensions that would supplement legislative pay.

“We’ll have more retired people,” says former House Speaker Dan Blue (D-Wake). Rep. George Miller (D-Durham) agrees: “Young people can’t afford to serve. The young professional, the worker at the factory, can’t serve.”

Although the 1991 session was shorter than previous ones, the shifting of federal responsibilities to the states will force ever-longer



Karen Tom

sessions in the coming decade.<sup>5</sup> That time commitment will force many young and middle-aged legislators to abandon public service and could keep others from even running. Retirees, in contrast, generally have more time available to serve.

Sen. Betsy Cochrane (R-Davie) says that the combination of an aging electorate and a legislature increasingly made up of retired people has serious implications for programs for the young, especially education. Jim Johnson, a budget analyst with the legislature's Fiscal Research Division, notes that the state's population of school children, as well as its senior citizens, will grow through the 1990s. That means that the legislature and local governments will be asked to increase spending on education at the same time that retirees—the voting group traditionally least favorable to such spending—will be increasing their clout.

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***The General Assembly of 2001 probably will be much more diverse than previous sessions with regard to race, gender, and political affiliations.***

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In contrast, practicing attorneys will continue to decline in numbers. Whether or not one likes attorneys, there's no disputing that their legal training, bill-drafting ability, and analytical skills suit them well for legislative service. Yet the number of lawyer-legislators has dropped for the past 20 years and that decline is likely to continue. In 1991, the number of lawyers, 35, was nearly half the number, 68, that served in the General Assembly in 1971.<sup>6</sup>

Business leaders, perhaps, will miss their own kind the most. The perception that business people are a dying breed in the legislature may or may not be accurate. But it's clear that no longer will the state's traditional leading industries—furniture, textiles and cigarette manufacturing—provide some of their most important officers for legislative service.<sup>7</sup> "There will never be another Dwight Quinn," says Johnson, the legislative budget analyst, referring to the late Cabarrus County Democrat who served a total of 36 years in the Assembly while also rising to become a vice president of Cannon Mills. Fewer lawyers and business executives will seek office because many law firms and major corporations are unwilling to accommodate or encourage employees who also want political careers.

Allen, the Roxboro lobbyist and insurance company owner, says that in his day, and those of his father and grandfather, serving in the General

Assembly was considered an obligation that fell upon a community's leading citizens. "Charlie Cannon owned Cannon Mills and the whole town of Kannapolis, but he saw it as an obligation [to have his executives serve in the legislature]. Many law firms saw it as an obligation. But not any longer. They want that quick money coming in. It used to be a great honor to serve and also an obligation. Who better to do the work of man than the leaders of the community?" Another lobbyist and former state senator, Zeb Alley of Raleigh, says the cost of serving in the General Assembly has had a big impact. "There's a trend away from actively employed people to independently wealthy and retired people," he says. "If you're a doctor, or lawyer, or pharmacist, you're going to lose 10 times [the legislative compensation] by being down here." Adds Paula Ray Gupton, a lobbyist for the N.C. Farm Bureau Federation, "It takes so much time away from business. They can't afford to take seven months off [during the long session in odd-numbered years] to come down here."

### **Legislature Also Will Be More Diverse**

On the flip side, the General Assembly of 2001 probably will be much more diverse than previous sessions with regard to race, gender, and political affiliations. In 1989, for the first time this century, white male Democrats no longer held a majority of seats in the two chambers.<sup>8</sup> The 48 percent of seats held by white, male Democrats in 1991 is likely to decrease during the decade for several reasons.

A key factor is the increasing numbers of female legislators. In 1991, the General Assembly had 25 women—up from two in 1971. Surprising, however, is the near absence of baby-boomer-aged women. (According to birth dates listed in The Center's publication, *Article II: A Guide to the 1991-1992 N.C. Legislature*, only one female senator and two female representatives were born after World War II, and none were born after 1949.) Sharon Thompson, a Durham lawyer who served in the House from 1987 to 1990, attributes that trend to "sexual politics" at home. "I think the biggest problem you're going to have with younger women—those in their 30s and 40s—is that they're still primarily the ones responsible for raising the children," she says. "I don't see this same issue with men at this point."

But more women are seeking public office, bolstered by polls indicating increased interest in female candidates by female voters. The State Board of Elections does not keep records on the percentage of registered voters by sex, but the 1990 census found that women outnumbered men by a 52-to-48 percent margin in the state's voting age population.<sup>9</sup> That trend could further intensify if the U.S. Supreme Court decides to turn the question of legal abortions back to the states.

Sen. Cochrane says that more women will serve in the legislature of the future because of changing social attitudes: It's now an acceptable thing to do, and women are winning. "We may actually see women work their way into the leadership," she says. With more women in the Assembly, Cochrane says that more attention will be focused on women's issues, which she defines as aging, the environment, children, child support, and small business. "Women's issues will pass more quickly, and closer to the form that they were originally introduced," she predicts. (See "Women in the Legislature," pp. 219-232.)

### **The Continuing Effects of Redistricting**

Other demographic changes are related to redistricting. For one, the number of black legislators should grow because the General Assembly's 1991 reapportionment increased the number of districts in which minorities are a majority of the population. In the 120-member House, the number of minority-dominated districts rose from 13 to 19. In the 50-member Senate, the tally rose from three to six. If the trend continues, the legislature of the future is likely to focus more attention on issues such as civil rights, housing, and social services.

A second factor that is likely to change the make-up of the legislature is the continued growth and viability of the state's Republican Party.<sup>10</sup> Although redistricting in 1991 probably strengthened Democratic Party hands in the short term, hardly anyone disputes that North Carolina is now a two-party state. Republicans should gain more legislators because of two factors: The state's urban areas picked up seats in the reapportionment, and the two houses are now dominated by members elected from single-member districts. Republicans tend to fare much better in affluent suburbs, and they are

more likely to hold majorities in smaller single-seat districts than in multi-seat districts that cover larger regions.

At a press conference held to announce the GOP's failed court challenge to the 1991 redistricting, party chairman Jack Hawke said the lawsuit was a favor of sorts to the Democrats. "Because the next time we have redistricting (in 2001), the Republicans will be in control and I don't want us doing this to the Democrats," he said.

Redistricting is likely to foster other changes as well. That's because the legislature has transformed both houses from chambers dominated by members from multi-seat districts to those from single-seat districts. In 1991, 80 House members came from multi-member districts and 40 from single-member districts. By 1993, 39 will come from multi-member districts and 81 from single-member districts. On the Senate side, in 1991, 28 members came from multi-seat districts and 22 from single-seat districts. By 1993, 16 Senators will come from multi-seat districts and 34 from single-seat districts. As a result of those changes, legislators will have more allegiance to their specific areas and will be less likely to think in terms of larger regions or the state as a whole. In urban areas, the growth of single-member districts could lead to delegations torn by geographic and partisan politics that have trouble representing the interests of the cities where their constituents reside. Also, we are likely to see higher rates of turnover in the more competitive urban districts, except in those that are predominantly black.

### **New Coalitions in the Legislature**

Such changes will bring new coalitions to the legislature. Joe Johnson, who represented Wake County in the House from 1975 to 1980 and in the Senate from 1981 to 1994, expects urban votes to increase beginning in 1993, although he questions whether they will form a strong coalition due to members' partisan differences. It may be that many Republicans from suburban districts will band with conservative Democrats from rural areas, Johnson says. It is also likely that urban Democrats will find kindred spirits among new members from minority-dominated rural districts.

Art Pope, who served in the House from 1989 to 1992 and was a candidate for lieutenant

ant governor in 1992, has a differing view. Pope predicts that rural areas will elect more Republicans as well as more black Democrats. Urban delegations will be split along partisan lines, he says.

The working coalitions of 2001 may change considerably for other reasons as well. Sen. Cochrane expects to see the growth of regional coalitions that will include members of both parties. "All of which will be an effort to counter the Eastern coalition," she says. "[But] the philosophical differences between Republicans and Democrats will make urban coalitions difficult." Others expect to see more coalitions of activists, businesses, and other groups that lobby or threaten to litigate the Assembly. "What we're seeing is a lot of coalitions forming outside the legislature, and not just among the legislators themselves," says Jim Johnson, the legislative budget analyst. A good example of that trend is illustrated by recent legislative debates over the distribution of money for public schools. In that case, poorer school districts have banded together in seeking a more equitable formula for distributing state funds, while wealthier districts have united to preserve the status quo.

This might be a good time to consider our hypothetical legislator, Rep. Smith. You'll recall that she was leading the charge for adult day care even though she was only a first-termer lacking the support of House leaders.

In the past, Smith's defiance of the leadership would have earned her a stern reprimand—probably in the form of tabling her motion in subcommittee, if her effort even got that far. Smith probably also would have had trouble getting information for her research. Clearly, the power of committee chairs often has stemmed from their control of information.

But in 2001, the new technology will enable

Smith to access this information from her home. Senate president pro tem Marc Basnight (D-Dare) says that the hypothetical legislator could get this information for one other key reason: changes that have let more legislators participate in the budget-writing pro-

cess while opening it up more to the press and the general public. In fact, the General Assembly of 2001 may see a vast diffusion of power to a number of individual fiefdoms due to the new technology, the more flexible coalitions, and the breakdown of leadership's powerful grip on the process.

Take Rep. Smith. She could become the "queen of adult day care" through her interest in issues related to the aged, her ability to gather information, and her willingness to work harder than anyone else on the issue. Subcommittee chairs would have to take Smith and her proposals seriously because of her access to information and her ability to reach the public independently through the electronic media.

To reach such a position, however, Smith probably would have to make a considerable time commitment. That leads to the most commonly asked question about the future of the legislature: Will it be a full-time body or remain a part-time citizen legislature?<sup>11</sup>

### **A Professional Legislature Or Still A Citizen One?**

Full-time, say some who argue that legislating already is like a regular job. Rep. Blue and Sen. Basnight point to members who are in the Legislative Building nearly every week for study commissions and operational committees. Over the next decade, they say, the number of legislators who make such commitments probably will grow. Many legislators, even those who don't serve on many study commissions, say the job is full-time now because of the large load of constituent demands. And such duties will become even more time-consuming. That's because citizens increasingly are finding they must contact their legislators in Raleigh rather than their congressmen in Washington as the federal government transfers services such as housing, highways, and water and sewer facilities to state jurisdictions.

Defined in other ways, however, the Assembly will not be a full-time body. For one, it won't have full-time pay. Blue says that public sentiment is against a legislature that is formally "full time." So the legislature probably will never hold a single, defining vote to which historians will point as the day the body became full-time. Nor will there be a single vote that will raise legislators' salaries to full-time

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*The General Assembly of 2001 may see a vast diffusion of power to a number of individual fiefdoms due to the new technology, the more flexible coalitions, and the breakdown of leadership's powerful grip on the process.*

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equivalency, Blue says, although their pay likely will increase as responsibilities grow.

### **An Increased Role For A Larger Staff**

One relief valve for legislators' growing responsibilities could be larger staffs. Legislative staff has grown steadily since the 1970s and that trend is likely to continue.<sup>12</sup> Notes House Speaker Harold Brubaker (R-Randolph): "I've already heard discussions of providing for home offices and/or having a clerk in the office here in Raleigh two or three days a week." Rep. Blue predicts that legislators will hire more staff to help them respond to constituents. But the public will resist significant increases, he says, so leaders may need to find improved technologies to get their work done without adding a lot of new employees. Some states already are scaling back their legislative staffs in the face of budget shortfalls. "What you're seeing in other parts of the country, and in Washington too, is a reaction to the larger staffs," says Jim Johnson, the legislative budget analyst. "They've cut the legislature's legs off out in California."

Those employees can expect to see major changes in the coming years. Sen. Basnight predicts that there will be separate House and Senate staffs. Even now, some legislators are taking matters into their own hands. In 1991, House Republicans pooled some of their per diem expense money to pay for a staff member who helped the party caucus with communications, research, and constituent services.

### **Fewer Capital Correspondents, But More Coverage?**

While the staff grows, the number of news reporters covering the Assembly probably will shrink. Already, the state's television and radio stations have virtually abandoned the Assembly.<sup>13</sup> The state's major newspapers also are trimming the number of reporters they assign to Raleigh as well as the number of government stories they print.<sup>14</sup> For instance, *The Charlotte Observer*, the *News & Record* of Greensboro, and *The Virginian Pilot* all have scaled back their capital bureaus in recent years.<sup>15</sup>

But the same computer technology used by future legislators will be available to reporters—and that could dramatically improve the quality

and depth of state-government coverage. Pat Stith, investigative reporter for *The News & Observer* of Raleigh, says reporters will find new kinds of stories in the state's huge computer databases. The newspaper may have provided a glimpse of the future in February 1992 when it cross-tabulated records from the state medical examiner's office and the N.C. Department of Labor.<sup>16</sup> Its finding: The department was unaware of about one-fourth of the state's on-the-job fatal accidents.

Likewise, although commercial television stations might send fewer reporters to Raleigh to gather political news, that could be offset by expanded cable television coverage. The Agency for Public Telecommunications, a division of the state Department of Administration, likely will provide the television cameras and equipment needed for live, gavel-to-gavel coverage of the Senate and House.<sup>17</sup> Those telecasts would be relayed by satellite to radio stations, television stations, and cable systems throughout the state. Radio and television stations could excerpt portions for their news and public affairs programs, while cable systems would carry the sessions live—much as C-SPAN now covers the U.S. Congress. Thus, voters across the state would have instantaneous access to the General Assembly.

Some predict that live cablecasts could boost newspaper coverage as well, particularly at smaller papers that cannot afford to send reporters to Raleigh. Rich Oppel, former editor of *The Charlotte Observer*, says that reporters and editors could sit in their offices back home and monitor the Assembly on their television screens, if the cablecasts are approved.

Such coverage would supplement, but not replace, the reporting provided by capital correspondents. Reporters who tried to "cover" the legislature solely by television couldn't ask tough questions, gather background information from staff, observe behind-the-scenes maneuvering, or watch all-important committee meetings that didn't make the telecasts. Such cablecasts also could be manipulated by lawmakers, just as some U.S. congressmen have been known to deliver long-winded speeches to empty chambers so they could appear on C-SPAN.

Imagine now that it is the Tuesday morning in the late Spring of 2001. Rep. Smith has used modern technology and ages-old methods of political arm-twisting, all to push her call for an expansion of the adult day care program.

And it will be at that time that the subcommittee chair, after a one-hour opening delay, will come to the rostrum to announce that the meeting for that day has been postponed. True to tradition, the chair blames the delay on

a breakdown in the Assembly's computer system, allegedly preventing the staff from drafting the budget bill.<sup>18</sup>

Let's not expect too much change in only a decade.

## FOOTNOTES

<sup>1</sup> In 2001, the senior citizen constituency will be considerably stronger according to demographic projections cited in, "The Aging Services Guide For Legislators," published by the N.C. Commission on Aging, 1990. The guide projects that, by the year 2000, the proportion of older adults in North Carolina will actually exceed the national average by 13.7 percent to 13.0 percent. The number of North Carolinians aged 65 or older was approximately 225,000 in 1950 and 603,000 in 1980. By the year 2010, that age group is projected to increase to nearly 1.2 million.

<sup>2</sup> The "network" would be privately owned, but the state would own and operate the cameras. Cable television systems—not broadcast stations—would provide the "gavel-to-gavel" coverage.

<sup>3</sup> See Rick Krueger, "Unused Power: Legislators Ignore Technology," *State Legislatures*, June 1992, pp. 14–15.

<sup>4</sup> In 1995, 37 retirees served in the legislature. For more on the legislature's changing makeup, see Jack Betts, "In the Legislature, White Male Democrats Become a Minority," *North Carolina Insight*, Vol. 13, No. 2 (June 1991), pp. 65–71. Also see Ran Coble, "Three Key Trends Shaping the General Assembly Since 1971," Vol. 9, No. 4 (June 1987), pp. 35–39. Legislative trends are summarized by Mebane Rash Whitman in *Article II: A Guide to the 1995–1996 N.C. Legislature*, N.C. Center for Public Policy Research, March 1995, pp. 220–221.

<sup>5</sup> Thomas Covington, director of the state Fiscal Research Division, says the shifting of federal responsibilities to the state will mean major increases in Medicaid costs and less federal money for water and sewers, urban and economic development, and school lunch subsidies. "Basically, it's the shrinking of federal support for federal entitlements," he says.

<sup>6</sup> Betts, p. 70. In 1995, 32 attorneys served in the General Assembly.

<sup>7</sup> *Ibid.* Some business-related fields have decreased their presence in the General Assembly, while others have increased. For instance, from 1971 to 1991, the occupations that declined in numbers included: business and sales, 66 to 49; farming, 21 to 17; manufacturing, 5 to 0; and banking, 4 to 1. Fields that grew included: real estate, 7 to 26; insurance, 9 to 13; construction and contracting, 3 to 5; education, 7 to 19; and health care, 1 to 9. In 1995, occupation trends shifted as follows:

<sup>8</sup> *Ibid.*, p. 69. From 1971 to 1991, the number of black legislators increased from two to 19. In 1995, 24 African-American legislators served in the General Assembly. From 1971 to 1991, female legislators increased from two to 25. In 1993, a record 31 women served in the legislature. In 1995, that number dropped to 28.

<sup>9</sup> According to the State Data Center, women comprised 51.5 percent (3,414,347) of the state's total population (6,628,637) in the 1990 census. In the voting age population, women comprised 52.3 percent (2,628,510) of the 5,022,488 people 18 years and older.

<sup>10</sup> From 1971 to 1991, Republicans nearly doubled their numbers in the legislature, from 31 to 53. After the Republican takeover of the House in 1995, the percentage of white, male Democrats serving in the General Assembly

fell to 31 percent. In 1995, Republicans held 92 seats in the General Assembly. Also see, Jack Betts and Vanessa Goodman, *The Growth of a Two-Party System in North Carolina*, N.C. Center for Public Policy Research, 1987, 63 pp. That report was summarized in the article, "Center's First Joint Production With Public Television Examines Two-Party System in North Carolina," *North Carolina Insight*, Vol. 10, No. 4 (June 1988), pp. 31–39.

<sup>11</sup> For more on the increasing demands placed on state legislators, see Chuck Alston, "The Citizen Legislature: Fact or Fable?" *North Carolina Insight*, Vol. 8, No. 2 (November 1985), pp. 50–52.

<sup>12</sup> The Legislative Services Office now has 128 employees in five divisions: fiscal research (created in 1971), general research, (1971), administration (1976), bill drafting (1977), and automated services (1984).

<sup>13</sup> Currently, no television stations have a full-time correspondent covering the legislature. Radio coverage includes three full-time correspondents, representing WUNC, WPTF, and the North Carolina News Network.

<sup>14</sup> For more on press coverage of the legislature, see the following articles in *North Carolina Insight*: Jack Betts, "The Capital Press Corps: When Being There Isn't Enough," Vol. 9, No. 2 (September 1986), pp. 48–51; Betts, "Radio Journalism in North Carolina: Listening for Less News," Vol. 9, No. 4 (June 1987), pp. 44–46; Paul T. O'Connor, "Is the Afternoon Newspaper a Dinosaur in North Carolina?" Vol. 10, No. 1 (October 1987), pp. 68–71; Betts, "Covering the Legislature: As Hierarchical As A Chess Set," Vol. 12, No. 1 (December 1989), pp. 66–67; and Ferrel Guillory, *et al.*, "Customers or Citizens? The Redefining of Newspaper Readers," Vol. 12, No. 4 (September 1990), pp. 30–38.

<sup>15</sup> Newspapers with full-time capital correspondents include the *Asheville Citizen*, *Charlotte Observer*, *Durham Herald*, *Fayetteville Observer*, *News & Record* of Greensboro, N.C., and *The News & Observer* of Raleigh, N.C. Full-time coverage also is provided by the Associated Press, Freedom Newspapers, New York Times Regional Newspaper Group, and the Capital Press Association.

<sup>16</sup> Steve Riley and C.E. Yandle, "Many On-Job Deaths Not Investigated," *The News & Observer*, Raleigh, N.C., Feb. 16, 1992, p. 1A.

<sup>17</sup> On April 21, 1992, the Open Government Through Public Telecommunications Study Commission recommended that the legislature approve unedited, gavel-to-gavel television coverage of House and Senate proceedings. According to a March 29, 1992, editorial in *The Charlotte Observer*, the commission recommended an 11-fold increase in OPEN/NET's weekly television time—from a mere four hours to as much as 45 hours. See "Televising the Legislature Gavel-to-Gavel—A North Carolina Version of C-SPAN," pp. 703–732.

<sup>18</sup> Glenn Newkirk, who oversees the legislature's Automated Services Division, says records show that the computer system has not "broken down" during the budget bill drafting process since January 1987. Nevertheless, many capital correspondents will attest that legislators often have "blamed" delays on computer breakdowns.

## Chapter 3

### 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 with more than two hundred thousand employees. Under the present state 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; Commerce; Environment, Health, and Natural Resources; Human Resources; Revenue; and Transportation.<sup>1</sup> In addition, the governor maintains immediate jurisdiction over such assistants and personnel as 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 serve one additional term of office. The office has extensive budgetary powers and responsibilities, but North Carolina is the only state in which the governor does not possess veto power.<sup>2</sup>

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 chair 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.

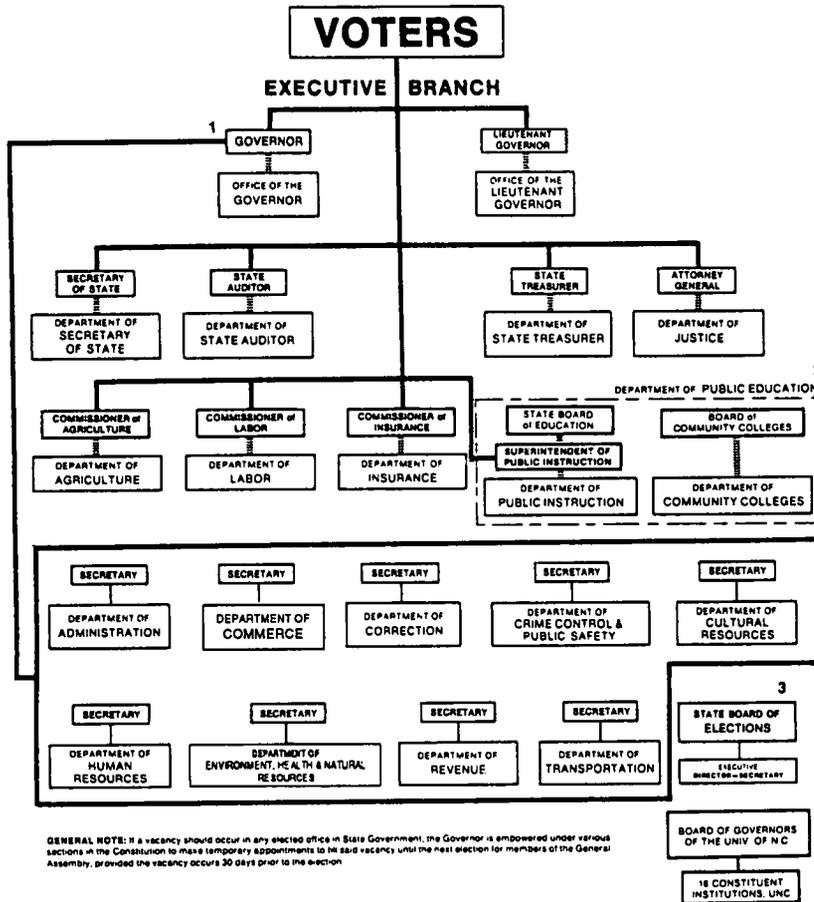
The selections in this chapter analyze the policy and administrative demands of the executive branch.

#### FOOTNOTES

<sup>1</sup> The other nine departments are headed by elected officials. These nine elected officials are: Attorney General; Auditor; Commissioners of Agriculture, Insurance, and Labor; Lieutenant Governor; Secretary of State; Superintendent of Public Instruction; and Treasurer.

<sup>2</sup> During the 1995 session, the North Carolina General Assembly passed a bill allowing a statewide voter referendum in 1996 to amend the Constitution to provide for gubernatorial veto.

# Organizational Chart of North Carolina State Government



**GENERAL NOTE:** If a vacancy should occur in any elected office in State Government, the Governor is empowered under various sections in the Constitution to make temporary appointments to fill said vacancy until the next election for members of the General Assembly, provided the vacancy occurs 30 days prior to the election.

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.



# Executive-Legislative Relations in North Carolina: Where We Are and Where We Are Headed

BY RAN COBLE

*The following article traces the history and the policymaking impact of relations between the executive and legislative branches of state government.*

When Gov. James G. Martin testified before the N.C. House of Representatives in 1985 in favor of veto power for the office of the governor, a central part of his argument was that the worries about the evils of the Royal Governors in the 18th century were no longer relevant as we neared the end of the 20th century. "I understand the 18th century concern about Royal Governors," he said, "and how that carried over into the early 19th century: They are not coming back. We have not had a Royal Governor for 209 years. We won!"

The N.C. General Assembly declined to grant Martin's request for veto power and had major disagreements over his budget proposals. These differences continue a tradition that dates back to 1731-1734, the tenure of the first royal governor, George Burrington. As Lefler and Newsome wrote in their comprehensive history of North Carolina, "Many of the executive-legislative conflicts had to do with finance, and the assembly consistently and persistently used its

'power of the purse' to force concessions from the governor. . . ."

Burrington's lack of success in salary negotiations with the legislature caused him to write that no governor could have kept peace with a people who were "subtle and crafty to admiration, who could be neither outwitted nor cajoled, who always behaved insolently to their Governors, who maintained that their money could not be taken from them save by appropriations made by their own House of Assembly, a body that had always usurped more power than they ought to be allowed."<sup>1</sup>

Not voting the governor a salary and arguing over matters of taxation were certainly low points in executive-legislative relations, and it is no accident that the Revolutionary War followed 45 years of experience with Royal Governors. However, in the Reconstruction politics after the Civil War, North Carolina Gov. William W. Holden became the first governor of an American state to be impeached and removed from office. In 1871, the N.C. House of Representatives brought eight charges of "high crimes and misdemeanors" against Holden—including unlawfully declaring an insurrection, declaring martial law, raising troops illegally, illegally arresting and imprison-

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ing citizens, and refusing to obey a writ of *habeas corpus*. After a trial in the state Senate, Holden was convicted and removed from office. Former wartime Gov. Zebulon B. Vance said, "It was the longest hunt after the poorest hide I ever saw."

With that kind of history, it is no surprise that in 1995, the N.C. governor is still the only one in the country without veto power and that the governor shares the executive powers with nine other officials elected statewide—the most of any state save Georgia (12), Illinois (14), Michigan (35), North Dakota (13), and Oklahoma (10).<sup>2</sup> Still, during the last several decades the governor has gained the power to reorganize the nine executive departments under his control and the right to succeed himself, and a key court decision has strengthened his budgetary powers. The coveted veto power may even be within his reach.

The legislature has gained in stature and power also, as it has added four new staff divisions (Fiscal Research came first in 1971, then General Research in 1973, Bill Drafting in 1977, and Automated Systems in 1984), stripped the lieutenant governor of his traditional powers to appoint Senate committees and make appointments to executive branch boards and commissions, allowed its officers (e.g., the

speaker and president pro tem) and important committee chairs to succeed themselves, and increased the length of its sessions in Raleigh.

From the low points preceding the Revolutionary War and following the Civil War, both the executive and the legislature in North Carolina have improved their power bases and their relations with each other. Where are we now in 1996? And where are we likely to be by the beginning of the 21st century?

### Where Are We Now?

The most momentous changes in executive relations came as a result of two main forces—the power of a governor to succeed himself and the evolution of North Carolina into a two-party state. In 1977, the voters passed a

constitutional amendment allowing the governor and lieutenant governor to succeed themselves to a second four-year term. This has altered the balance of powers in a number of key ways, including enhancing the governor's powers and slowing down the production of new leaders. North Carolina has also become much more of a two-party state, and increasingly disputes between the branches rest more on institutional differences and occur regardless of which party holds the governorship and which party holds the majority of seats in the legislature. These two factors have exacerbated seven key tension points between the legislative and the executive branches. Those tension points are:

#### TENSION POINT #1:

##### ***A New Budget Process as a Bone of Contention***

One of the common battlegrounds for executive-legislative skirmishes is adoption of the state budget. However, a key court decision (*State ex rel. Wallace v. Bone*)<sup>3</sup> in 1982 changed the balance of power in formulating and enacting a state budget. The two branches spent much of the 1980s adjusting to this change, with some parts still unresolved.

Prior to 1982, the legislature held the upper hand in putting together a state budget. Though the state constitution said, "The Governor shall prepare and recommend to the General Assembly a comprehensive budget . . .,"<sup>4</sup> in actual practice the Advisory Budget Commission (ABC) prepared the budget. At the time, the ABC had two gubernatorial appointees, to be sure, but it also had eight legislators on it, four appointed by the speaker and four by the lieutenant governor. These eight legislators also were usually chairs of the major appropriations committees or subcommittees. Thus, the actual balance of power in preparing a budget was heavily weighted toward the legislature.

The *Bone* decision entirely changed executive-legislative relations in the budgetary arena. As the ABC's real powers declined, the governor's powers ascended, albeit with a governor (James B. Hunt Jr.) who was very uncomfortable about the new arrangement and how it might affect his ability to get what he wanted. Since the 1983 statutory changes in the institutional powers of the ABC (in order to comply with the court decision), the budget is much

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***From the low points preceding the Revolutionary War and following the Civil War, both the executive and the legislature in North Carolina have improved their power bases. . . .***

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more a governor's budget as proposed but a legislative budget as disposed.

Since the *Bone* decision in January 1982, the General Assembly parried succession, loss of some of its budgetary power, and election of a Republican governor with the following five counterthrusts, of which two were on the budget battlefield, two on the appointments battlefield, and one on the rulemaking battlefield:

- increased use of special provisions within budget bills to direct the executive or limit the uses of state funds;
- restrictions on the executive's ability to settle lawsuits against the state;
- removing the powers of the lieutenant governor to appoint Senate committees, appoint chairpersons, make appointments to executive branch boards and commissions, and assign bills to committee;
- giving the speaker of the House, lieutenant governor, and the president pro tempore of the Senate increased appointments to boards in the executive branch; and
- increasing its oversight over executive agency rules and regulations.

#### TENSION POINT #2:

##### ***The Use of Special Provisions in Budget Bills***

Prior to the 1980s, special provisions had been used in an appropriate fashion by the legislature to explain the purpose of an expenditure of funds or to limit the use of such funds to what the legislature intended. However, in the years following succession, the *Bone* decision, and election of a Republican governor, the legislature increasingly used special provisions in an inappropriate fashion to try to direct the executive branch. (For more on this, see "Special Provisions in Budget Bills," pp. 361–364.) Special provisions increasingly are used to amend state laws, create new programs, and change tax laws.

#### TENSION POINT #3:

##### ***Settlement of Lawsuits by the Executive Branch***

Just as the executive branch was distressed over what it viewed as a legislative incursion into executive territory by use of special provisions, so was the legislature angered over what it viewed as executive incursion into its appropria-

tions powers. This occurred when executive agencies committed the state to an expenditure of funds by agreeing to settle lawsuits against state agencies, thereby committing the state to future expenditures.

If there's one area of legislative powers that the General Assembly guards jealously, it is its power of the purse strings. Three suits in particular are noteworthy here—the first involving treatment of emotionally disturbed youth, the second over conditions in state prisons, and the third concerning the mental hospital system.

The advent of class action suits raised the budgetary stakes and brought new sources of tension between all three branches of government. In September 1979, attorneys filed a class action lawsuit against the state<sup>5</sup> in federal district court in Charlotte on behalf of all minors who "now or in the future will suffer from severe emotional, mental, or neurological handicaps" accompanied by violent or assaultive behavior and for whom the state provided no treatment. On the eve of what became known as the *Willie M.* case, the two sides reached a settlement, avoiding a prolonged court fight. The Attorney General's Office, representing the N.C. Departments of Human Resources and of Public Instruction, agreed that the state would provide individual medical and treatment plans in the least restrictive setting for all children in the class.

In fiscal year 1981–82—the first year of the program—the state spent \$4.6 million to set up a delivery system for this new program for emotionally disturbed youngsters. By FY 1994–95, the cost of the program was \$50 million a year. The state, when it settled the suit, anticipated a class of 200 to 800 children. The current program serves 1,375 children a year.

Ironically, the legislature's anger over what it viewed as an incursion upon its power over the purse strings surfaced in a special provision. In the 1982 short budget session, a special provision was inserted into a budget bill which limited the executive branch's ability to enter into such consent judgments in the future. However, a little more than a year later, an out-of-court settlement in a five-year-old lawsuit (*Hubert v. Ward*) committed the state to another large expenditure of funds—\$12.5 million to remedy constitutional deficiencies affecting inmates confined in 13 prison units in the south Piedmont area of the state prison system.<sup>6</sup> On the heels of that agreement came another (*Small v. Mar-*

tin) in April 1989 costing \$29 million and covering 49 more prison units.<sup>7</sup> These two suits and settlements have made corrections one of the three fastest growing areas of expenditure in the state budget.

Another ramification of these suits was the adoption by the legislature in 1987 of a limit on the prison population to alleviate unconstitutional crowding. In settlement of the suits, the state agreed to a space standard of 50 square feet per inmate. The prison cap used to meet the standard has been raised over the years as prison capacity expanded because of construction. Nevertheless, many feared that the cap increased crime and in 1992 repeal of the cap was first proposed. In 1994, during the special session on crime, the General Assembly amended the prison cap statute, allowing prison population capacity to be set by the Governor. In 1995, the legislature repealed the prison cap.<sup>8</sup> The struggle for control over setting the cap is a powerful reminder of the tremendous tension between the executive and legislative branches of government.

A class action suit (*Thomas S. v. Flaherty*)<sup>9</sup> contesting the constitutional adequacy of the state mental hospital system resulted in a court order for the state to provide extensive services to all mentally retarded adults involuntarily committed to a state psychiatric hospital. In FY 1991-92, \$7,742,308 was appropriated and in FY 1992-93, \$12,129,050 was appropriated to implement the court decision. *Willie M.* and *Thomas S.* have also received expansion funding from the General Assembly: in FY 1993-94, \$12.9 million; in FY 1994-95, \$20 million; and \$6 million in FY 1995-96 and again in FY 1996-97.<sup>10</sup>

There are three ways such suits create tension between the executive and legislative branches. First, no group of elected officials likes to be presented with a *fait accompli*. Yet Governor Hunt agreed to set up an expensive *Willie M.* program and "send the bill to the legislature," said senior fiscal analyst Jim Johnson of the legislature's Fiscal Research Division at the time.<sup>11</sup>

The second way such situations increase inter-branch tension is that they heighten the suspicions about motives that already naturally exist between branches. Legislators regularly fulminate about empire-building and bureaucratic red tape by executives, while executive agencies lament the legislature being penny-wise-and-

pound-foolish and its tendency to ignore problems, saying, "So sue me, then." In the wake of the *Hubert* prison litigation, Lucien "Skip" Capone III, special deputy attorney general, said, "The consent judgment contained a great many things that the Department of Correction already wanted to do."<sup>12</sup> A few legislative observers have wondered whether the consent decree was a way for an executive department to get the legislature to do what it would not have otherwise done if the department had submitted the same reform package as part of its normal budget proposals.

The third way in which settlements increase tension is that legislators see them as a violation of their prerogatives to set the state's budget priorities. It is highly doubtful that the legislature would have voted to make prison reform one of the top three budget priorities in recent years, but that is indeed what the judicial and executive branches have forced upon them.

#### TENSION POINT #4:

#### ***Suits by One Branch of Government Against Another***

Suits by outside parties against executive agencies do not exactly create warm and fuzzy feelings between the executive and the legislature. But in the 1980s, antagonism between the branches became so strong that they actually sued each other.

In a special session in October 1981, the legislature met to deal with the tidal wave of changes occurring as a result of President Ronald Reagan's policy of New Federalism, which shifted major responsibilities from the federal government to state or local governments.

Both the governor and the legislature were quick to recognize these block grants as an opportunity to gain control over a new pot of money. The legislature established the Joint Legislative Committee to Review Federal Block Grant Funds and required the governor to get prior approval of any actions the executive proposed to take with block grant funds. The legislature also required the executive branch to get prior approval from the legislature's Joint Legislative Commission on Governmental Operations for transfers of more than 10 percent from one budget line item to another.

On Feb. 16, 1982, the N.C. Supreme Court issued an advisory opinion that both the limit on transfers and the new block grant committee

were unconstitutional, as they violated the separation of powers clause and the governor's power to administer the budget and represented an unlawful delegation of legislative power.<sup>13</sup>

That fight over the parameters of control of the budget was between a Democratic governor and a Democratic legislature. The next legal skirmish was a square-off between a Republican governor (James G. Martin) and a Democratic legislature. This subsequent fight also became a contest over the limits of the power of the governor, this time augmented by partisan differences.

In *State ex rel. Martin v. Melott*,<sup>14</sup> the governor ostensibly sued the head of the Office of Administrative Hearings (OAH), but he was really in a contest with the Democratic majority in the legislature. The 1985 General Assembly passed a law providing that the director of the OAH be appointed by the chief justice of the N.C. Supreme Court. Governor Martin sued, saying that the legislation was an incursion on his appointment powers.<sup>15</sup> He also invoked the separation of powers clause, saying that because the OAH was in the executive branch, the General Assembly could not place the power to appoint the head of the OAH outside that branch. The General Assembly recognized that it was playing at the edge of constitutional limits because it included a provision in the law asking the Supreme Court for an advisory opinion on whether its action was constitutional. If unconstitutional, the appointment was to be made by the attorney general, also a Democrat.<sup>16</sup>

After earlier declining to issue an advisory opinion, the state Supreme Court could arrive only at a plurality decision in *Melott*, but the net effect was to uphold the right of the legislature to delegate the power to appoint the director of the OAH to the chief justice. The court also commented that the 1970 constitution had greatly reduced the governor's appointive powers.

*Martin v. Melott* is the first case interpreting the appointments clause of the 1970 constitution and thus is a significant case. Its importance may be diminished somewhat by the fact that it is only a plurality decision, and it has received some criticism that it is inconsistent with previous separation of powers decisions. As one writer concluded, "By concentrating on the power to appoint, which it views as neither legislative nor executive, the court permits the General Assembly to grant to any person, or to keep to itself, all

appointments not provided for in the constitution. This power opens the door for legislative hegemony, threatening the integrity of the executive and judicial branches."<sup>17</sup>

In any event, tension between the actors is heightened both when branches of government sue each other—as was the case in the 1982 request for an advisory opinion and in *Martin v. Melott*—and when executive officials sue each other. The tension sometimes shows up in budget battles and sometimes in litigation, but the amount of such litigation definitely increased in the 1980s.

#### TENSION POINT #5:

#### ***Conflicts Between the Governor and the Constitutionally Hybrid Office of the Lieutenant Governor***

One member of the Council of State who has consistently been a source of tension with governors of all parties at least since 1977 has been the lieutenant governor. This is due to a constitutional flaw which places the lieutenant governor in both the executive and legislative branches and a political system which has the lieutenant governor elected separately from the governor—rather than running under a team ticket arrangement.

The constitution places the lieutenant governor in the executive branch by declaring him or her a member of both the Council of State and the State Board of Education, giving him the right to succeed the governor, and allowing him to serve as acting governor in the governor's absence from the state or during the physical or mental incapacity of the governor. The lieutenant governor also has the power to perform such additional duties as the governor may assign—all of which places him or her squarely within the executive branch, which is what Article III of the constitution deals with and where the authority for most of these powers originates.

However, in Article II, the legislative article, the constitution outlines a legislative role for the same official. The lieutenant governor is given the power to preside over the Senate, vote in case of ties, and sign bills when presiding over the Senate. Over the years, many of the lieutenant governor's legislative powers have been stripped:

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***... antagonism between the branches became so strong that they actually sued each other.***

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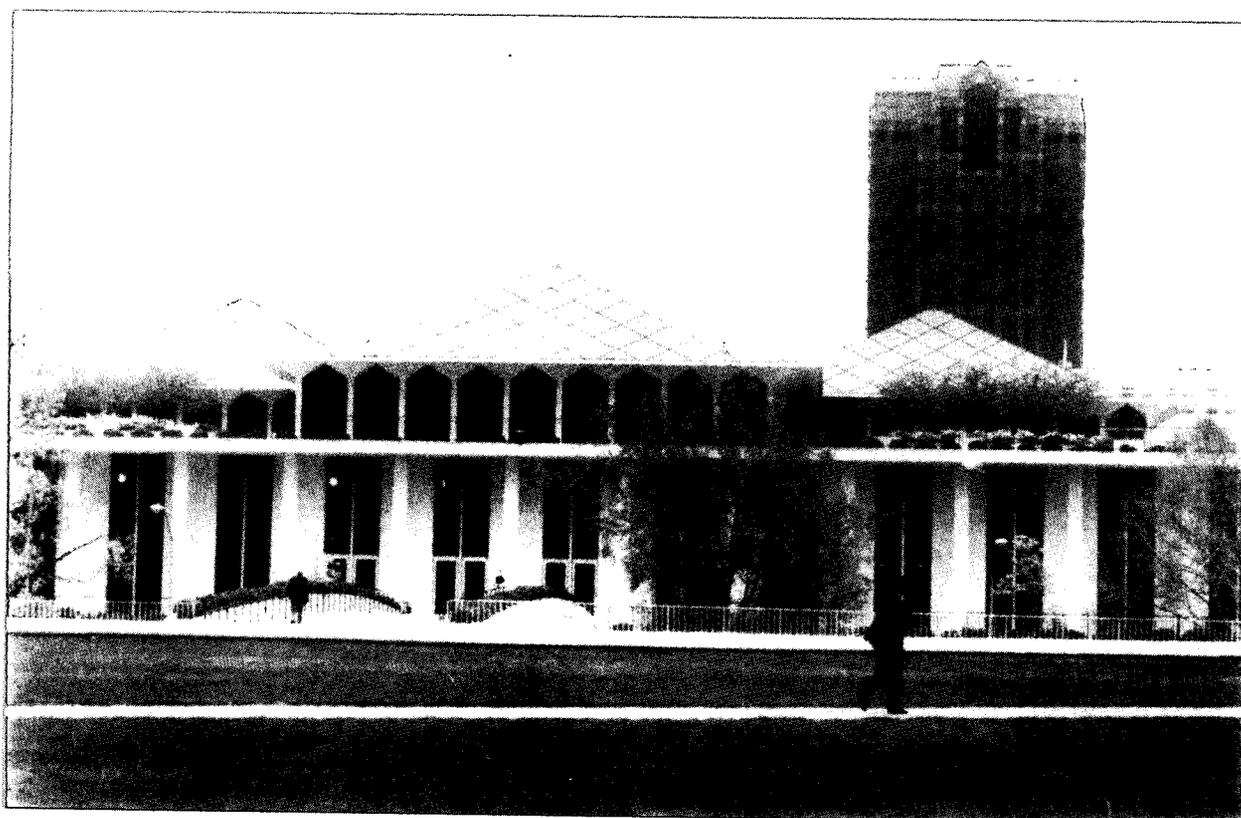
the General Assembly removed the powers of the lieutenant governor to appoint Senate committees, appoint chairpersons, make appointments to executive branch boards and commissions, and assign bills to committee.

Depending on whether the lieutenant governor is considered an executive or legislative official, this power-stripping either increased tensions between the two branches or within the legislative branch. Regardless, the lieutenant governor has increasingly been a thorn in the governor's side. In the 1970s, Lt. Gov. James C. Green was a continual burr in the saddle of Governor Hunt, though both were Democrats. Green opposed Hunt on gubernatorial succession, ratification of the Equal Rights Amendment, chairmanship of the State Board of Education, allocation of tax checkoff money for political parties, a bluebook plan for children's services, and countless other issues during Green's two terms as lieutenant governor.

Green's successor, Robert B. Jordan III, became the titular leader of the Democratic party in 1985 and opposed Republican Governor Martin on tax issues, education, and eventually in the 1988 gubernatorial election. Republican Lieu-

tenant Governor Jim Gardner questioned fellow Republican Martin on the need for a hazardous waste incinerator and the need for an increase in the sales tax to fund education improvements. He may even have cost the governor veto power by running television ads criticizing legislative Democrats as spendthrifts in the weeks before they were to decide whether to give the governor veto power during the 1990 short session.

One reason for this tension is that the last six lieutenant governors (Gardner, Jordan, Green, Hunt, H. Pat Taylor Jr., and Robert W. Scott) became candidates for governor. Thus, as each governor approached the end of his term and took on more and more characteristics of a lame duck, each lieutenant governor began to differ with the governor in order to stake out his own territory. This heightens tension, and it is one of the chief reasons that many other states have gone to team elections or removed the lieutenant governor from the legislative arena. A dozen or so states now have placed the lieutenant governor completely in the executive branch, and others have reduced the lieutenant governor's legislative roles,<sup>18</sup> reports Larry Sabato of the University of Virginia.



Karen Tam

#### TENSION POINT #6:

##### ***Legislative Incursion into the Executive Branch Power of Appointments***

Most students of government assume that most of the appointment power lies with the governor. But by the time of the *Wallace v. Bone* case in 1982, 90 of the approximately 400 boards, commissions, and councils in the executive branch had legislators as members in a total of 203 positions. Even after the legislature removed its members from 41 boards as a result of *Bone*, legislators still held 142 positions on 56 groups.<sup>19</sup> Prior to *Bone*, the speaker of the House and the lieutenant governor made these appointments on their own. In order to get around the constitutional question *Bone* raised about an unlawful delegation of legislative power to these two officials, the legislature ostensibly began making these decisions in the body as a whole. Even now, however, the appointments come in bills in the form of recommendations by the speaker of the House and by the president pro tem of the Senate. Though the full House votes on the recommended appointees from the speaker, and the full Senate on the appointees recommended by the president pro tem, the recommendations are merely rubber-stamped and never have been overturned.

Ignoring the fact that legislators still serve on advisory bodies in the executive branch (*Bone* removed them only from policymaking bodies) and ignoring the fact that the speaker and president pro tem still make appointments in actuality, the key point is the erosion of the governor's appointment power during the last decade. By 1995, the President Pro Tempore of the Senate controlled 157 appointments to 64 boards in the executive branch of state government, though 119 of those had to be approved by the General Assembly before becoming effective. The speaker had similar appointment power.<sup>20</sup>

By its very nature, this reduction of gubernatorial appointment power and increase in legislative officials' appointment powers increases tension between the branches. But it also creates tension on the boards themselves, as appointees loyal to the governor may follow one policy, while appointees of the president pro tem may follow another, and those of the speaker yet another.

An effort by the state Child Day Care Commission to ban corporal punishment provides a good example of this. In 1985, the commis-

sion passed rules banning corporal punishment when the membership comprised a majority of Democratic appointees forged from holdover appointments of Governor Hunt and Lieutenant Governor Jordan. These appointees outvoted those of Governor Martin. Thereafter, through appointments by Martin and Jordan's successor, the Republican Lieutenant Governor Gardner, Republicans gained a solid majority. When that occurred, the commission first retracted the ban and then voted in August 1990 to say it lacked even the authority to ban spanking in day care centers. And to make matters really testy within the commission, 13 church day care centers who support corporal punishment filed suit against the commission. Two of the commission members were among the 13 plaintiffs, in effect suing themselves and the rest of the commission.

Thus, 1980–1995 was a time of *political* reduction of the executive's appointment powers coupled with a *legal* weakening of the governor's constitutional base for the power of appointment. Neither improved relations between the branches of government, nor did it slow down the trend of increased rivalry between the governor and lieutenant governor.

#### TENSION POINT #7:

##### ***Legislative Oversight of Executive Rulemaking***

In 1974, the N.C. General Assembly enacted an Administrative Procedure Act (APA) for North Carolina.<sup>21</sup> In its broadest sense, the purpose of such acts is for the executive to provide the specifics in rules for the broad outlines of the bills passed by the legislature. As the Institute of Government's Robert Joyce put it, "Law-making is a legislative function, law-enforcing is executive. The delegation of rule-making and -enforcing powers by the legislature to administrative agencies creates a gray area."<sup>22</sup>

From its infancy, the APA was a new source of tension between the executive agencies and the legislature. Though the act only went into effect on July 1, 1976, that same year, Sen. I.C. Crawford (D-Buncombe and chair of the Senate Government Operations Committee) asked the state auditor to perform an operational audit on how the act was functioning. By the late 1970s, outright legislative opposition to the APA began to surface as legislators began to get calls from constituents complaining not about

laws legislators had passed, but about rules the executive agencies had promulgated. By Jan. 1, 1985, there were more than 18,000 pages of rules on file at the state Department of Justice, the official repository of the APA rules.

By the 1981 session, legislators who opposed the APA process were demanding the right to veto administrative rules that members did not like. In 1977, the General Assembly established an Administrative Rules Review Committee (ARRC) to review all agency rules.<sup>23</sup>

A 1985 debate is a good illustration of how the line between legislation and rulemaking is a source of tension between the legislative and executive branches. The late Rep. William T. Watkins (D-Granville), a vociferous opponent of the APA, would frequently cite two examples of bureaucratic poaching on the legislative preserve. The Division of State Parks had adopted a rule which prohibited consumption of beer in boats on Kerr Lake, which was in Watkins' district and caused constituents to complain to him. However, Watkins contended, there was no such prohibition in the state's alcoholic beverage control laws. In the second example, the Wildlife Resources Commission adopted a rule requiring hunting and fishing licenses to be filled out only with ball point pens. In both cases, violations of the rules amounted to misdemeanors, punishable by fines, jail terms, or both.

Watkins argued that such rulemaking was the equivalent of executive agencies writing criminal laws without the authority to do so. "This bill will stop these agencies from writing criminal law," he said of his legislation in 1985. "That is the legislature's function, not the executive branch's." Governor Martin replied, "This problem is not the result of the executive branch usurping the legislative branch. Rather it is the failure of the General Assembly to exercise appropriate care in delegating rulemaking authority."<sup>24</sup>

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*... the years 1980-1995 were a time of political reduction of the executive's appointment powers coupled with a legal weakening of the governor's constitutional base for the power of appointment.*

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The legislative interest in oversight of rulemaking continued in the 1986 short session with the fourth incarnation of the ARRC. Under provisions which largely continue in effect today, the ARRC's main duties are "to determine whether each rule reviewed is (1) within the statutory authority of the adopting agency, (2) clear and unambiguous, and (3) reasonably necessary (a) to enable the agency to perform a statutorily assigned function or (b) to enable or facilitate the implementation of a program or policy."<sup>25</sup> No newly adopted permanent rule may be filed until it is reviewed by the ARRC. If that body determines that the new rules do not meet the three tests above, the rules' effective dates are delayed, and the agency is notified and asked to submit revisions. The agency has 30 days in which it can either fix the rule to satisfy the ARRC's objections or it can file the rules with the Office of Administrative Hearings with a notation of the ARRC's objections. Ignoring such an objection is at the executive agency's peril, however. The General Assembly may by statute disapprove and invalidate the objected-to rule.

In 1995, the General Assembly created the Joint Legislative Administrative Procedure Oversight Committee, consisting of 16 members—eight appointed by the President Pro Tempore of the Senate and eight appointed by the Speaker of the House. "The committee is to review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly, and to otherwise oversee the rulemaking process under the APA."<sup>26</sup> These provisions are sure to be a source of future tension between the legislative and executive branches.

### Summary of Tension Points

**T**hink of tension points in an anatomical sense. They might be described as points where bone, muscle, and nerve meet, much like the three branches of government. Over the last 25 years, both the legislature and the executive have tried to muscle in on each other's constitutional territory, and the judiciary has had to referee the wrestling matches. However, just like physical aches and pains, these tension points are likely to flare up at any time because of institutional differences or suspicions among the

## **Possible Trades in the Balance of Power Between the Executive and Legislative Branches**

### **A. Measures Which Would Increase the Governor's and Executive Branch's Powers**

1. Veto power for the governor
2. Team elections with the lieutenant governor (which would remove a possible adversary in dealing with the General Assembly)
3. Merit selection of judges (which would increase the number of the governor's appointments and the governor's ability to affect the judicial branch)
4. Reducing the number of officials who are elected statewide as part of the 10-member Council of State (thereby putting more of the executive departments under the governor's control)
5. Limiting the speaker of the House of Representatives and/or the president pro tempore of the Senate to two terms (limiting the longevity and thereby the power of the legislative leadership)
6. Limiting the length of legislative sessions (the legislature is less a force when it is not in session)
7. Limiting the number of terms a legislator can serve (16 states have adopted term limits for state legislators)

### **B. Measures Which Would Increase the Legislative Branch's Powers**

1. (a) Repealing succession, or (b) limiting the governor to one six-year term
2. Removal of all legislative functions from the office of the lieutenant governor (including presiding over the Senate and voting in case of ties)
3. Requiring legislative confirmation of judicial appointments by the governor
4. Placing the state auditor under the legislative branch or have the state auditor appointed by the legislature for a fixed term
5. Four-year terms for legislators
6. Making more of the governor's appointments subject to legislative confirmation or increasing the number of legislative appointments to boards and commissions in the executive branch
7. Creating a Legislative Oversight Committee to monitor the Governor's spending when the legislature is not in session.

### **C. Other Measures Which Would Affect the Balance of Power**

Moving state elections to non-presidential election years (removing the tie-in to presidential elections generally weakens the party holding the presidency, which can affect both the governor and the majority in the legislature)

branches or because of partisan splits. The most likely flashpoints are the budget arena, the power of appointments, the line between rulemaking and lawmaking, the role of the lieutenant governor, or sometimes actual lawsuits between the branches of government. These tension points emphasize the *legal* concept of *separation* of powers and largely legal solutions to problems in the courts. However, as can be seen in the comments of the governors and legislative leaders in the sections above, the *political* concept of a *balance* of powers is also at work. It is in the political arena that future battles over the boundaries between the branches are more likely to be fought.

### **Where We May Be Headed**

**O**ne way of predicting the future of executive-legislative relations is to examine possible future power shifts in terms of gainers and losers—although neither the legislature nor the governor are likely to give major increases in one branch's institutional powers without receiving a corresponding grant of power. The major balancing points are depicted in the table on page 261.

#### ***Toward Veto Power For the Governor***

North Carolina is the only state in the country where the governor has no veto power. Of the other 49 states, 43 allow their governor an item veto, while six states—Indiana, Maine, Nevada, New Hampshire, Rhode Island, and Vermont—allow a regular veto but not an item veto.

For over sixty years, legislators in North Carolina debated the merits of a gubernatorial veto. In 1995, at long last, legislators passed a bill to submit the issue to the voters in a referendum. If voters approve this constitutional change in November 1996, the governor will have general veto power, subject to override by a 3/5 vote of the members of both houses of the General Assembly.<sup>27</sup> Support from all sides—a Democratic Governor, a Republican House of Representatives, and a Democratic Senate—was needed to get the bill passed.

#### ***Toward Four-Year Terms for Legislators***

Of the baseball cards likely to be traded in exchange for veto power, the governor is most

likely to pitch the idea of support for four-year terms for legislators. The main reason for this is that it is easier for a governor to support an accompanying increase in the legislature's power than it is to give up a power he or she already has, such as succession. Under this rationale, a governor is least likely to give up succession, moderately likely to agree to a six-year gubernatorial term, and more likely to agree to support longer legislative terms in exchange for the veto.

A second reason the veto-for-four-year-terms exchange is the most likely scenario is the recent history of voter actions on succession and four-year terms. It has been less than 20 years since the voters approved a constitutional amendment granting succession<sup>28</sup> by a 52.5 percent to 47.5 percent margin, and it has been less than 15 years since the voters turned down an amendment granting four-year terms for legislators by a whopping 76 percent to 24 percent.<sup>29</sup> In this political equation, a governor can argue that the people have shown their support for increased gubernatorial powers, but not for increased legislative powers, and that the legislators need the governor's support to convince the voters of the need for four-year terms.

Though the voters have shown strong disinclination to vote for four-year terms, such a measure could pass (a) if it had the governor's support and (b) if it were linked with a grant of veto power, though submitted as a separate measure on the ballot. The main reasons given for longer legislative terms are (1) to preserve the citizen legislature by countering the increased length of legislative sessions with a reduction in the number of times a legislator has run for office; (2) to reduce the cost of running for office by reducing the number of times one has to run; and (3) to make the terms of North Carolina's legislators consistent with the majority of other states. Nationwide, only 11 states still have two-year terms for legislators.<sup>30</sup>

#### ***Toward a Redefinition of the Office of Lieutenant Governor as an Executive Office***

Two bills were introduced in the 1993 General Assembly to provide that the governor and lieutenant governor run on a team ticket in the general election. Such team tickets are modeled after the federal system of having the president and vice-president elected as a team. Unlike the

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*North Carolina may also choose to make its lieutenant governor less a constitutional hybrid and more an official of the executive variety by peeling away the office's legislative duties.*

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federal system, the state proposal would not give the governor power similar to the president's to name his or her running mate. It leaves to the parties the decision as to how a candidate for lieutenant governor is chosen. However, simply by tying the lieutenant governor and governor together as a team, the proposal would increase the power of the governor because the lieutenant governor would no longer have a separate electoral power base; instead, the lieutenant governor would owe his or her election to the governor.

North Carolina may also choose to make its lieutenant governor less a constitutional hybrid and more an official of the executive variety by peeling away the legislative duties. As discussed above, the state Senate has already stripped the lieutenant governor of the power to appoint committees and committee chairs, to make appointments to executive boards and commissions, and to refer bills to committee. Most of the changes were made through simple changes to the Senate *rules*, however. Further changes would require traveling the very arduous journey of submitting a constitutional amendment to the voters. For this reason, it is much less likely that the legislature would attempt to change the lieutenant governor's power to preside over the Senate or vote in case of ties, both of which are constitutionally based grants of power.

Looking outside North Carolina, there is also a clear national trend toward reducing the legislative role of the lieutenant governor. Since 1953, 24 states have adopted measures requiring the governor and lieutenant governor to run as a team.<sup>31</sup> Though 26 of the 42 states with lieutenant governors allow the lieutenant governor to preside over the Senate, and 25 allow that official to vote in case of ties, only five allow him or her to make appointments to boards in the executive branch. And only five states al-

low the lieutenant governor to appoint committees and committee chairs, while only 12 are allowed to assign bills to committee.

"Twelve states have now placed the lieutenant governor completely in the executive branch, and others have reduced the lieutenant governor's role," concludes political scientist Larry Sabato. While South Dakota voters rejected a proposal to strip the lieutenant governor of legislative duties, a legislative study committee in Kansas has considered abolishing the office. And in a suit brought by a state senator, a Mississippi state court struck down—on separation-of-powers grounds—the practice of the lieutenant governor acting as a legislative leader.<sup>32</sup>

### *Toward Merit Selection of Judges*

Nationally, 20 states have switched to a form of merit selection of judges since Missouri first enacted the idea in 1940. Sixteen states use the model most often proposed in North Carolina, a system 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. In 1995, despite strong support, a judicial reform bill died in the House after it passed the Senate. The vote was 62–43 in favor of merit selection for the Court of Appeals and Supreme Court, but supporters of the bill—which included the leaders of the House—needed approval by 3/5 of the House (72 votes) since an amendment to the Constitution is required.<sup>33</sup>

Institutionally, it could be argued that a move to merit selection dramatically increases the governor's appointment power—and in a year when legislators had already passed a bill putting to voters the issue of veto power for the governor, the General Assembly may have been reluctant to increase executive power yet again. If all judges in North Carolina were to be appointed by the governor instead of elected by the people, legislators might argue that such a measure represents a sea change. However, in a study published in September 1990, the N.C. Center for Public Policy Research found that of the 261 judges sitting on the bench as of July 31, 1990, 61 percent first had been *appointed*, not elected, to their posts.<sup>34</sup> That is, though they may have won election since that first appointment, they got to their judgeship through

an appointment by the governor. In actual practice, then, one can argue that the governor already is appointing three-fifths of North Carolina's judges.

Democrats have been bothered by two trends in judicial elections. First, they are starting to lose judicial elections. In 1980, 99 percent of the judgeships on the Supreme Court, Court of Appeals, and Superior Court were held by Democrats. But as vacancies occurred on the Supreme Court, Court of Appeals, Superior Court, and Special Superior Court, Governor Martin was able to fill those posts with Republicans. In 1994, Republicans won all 12 of the judicial seats they contested. As of 1995, fifteen percent of the state's judges are Republicans, with the largest GOP gains having occurred in District and Superior Court.

The second trend causing legislative Democrats to go slow on merit selection is the increase in partisanship in judicial races. In 1986, the two parties fought bitterly over five seats on the state Supreme Court. A group calling itself Citizens for a Conservative Court attacked former Chief Justice James Exum's record, saying he was not sufficiently conservative, particularly on death penalty cases. As it turned out, Exum also had voted to uphold the death penalty in other cases. In any event, the Republican effort failed, but Democratic legislators and many lawyers were disturbed by campaigns which attempted to put the law to a popular vote. Increasingly, judicial elections evidence similar partisan spats.

If the proponents of merit selection expect to move this issue off square one, it likely will be due to what the governor is willing to give up in other appointment powers. There are two ways this could occur. One way is for the governor to agree to let the legislature continue to make inroads in the appointments area by appointing more officials to executive boards upon the recommendations of the speaker of the House and president pro tem of the Senate.

Another way is to agree to submit more of the governor's appointments for confirmation by one or both houses of the General Assembly. Already, the legislature votes to confirm or reject the governor's 11 appointees to the State Board of Education,<sup>35</sup> the seven members of the Utilities Commission, and the commissioner of banks.<sup>36</sup> The legislature solely nominates and elects the 32 members of the 16-campus University of North Carolina Board of Governors.<sup>37</sup>

In any debate over shifts in appointment power, the concept of balancing power is likely to be in the forefront of the legislative debate. Former Rep. Harry Payne (D-New Hanover) objected to the 1990 veto-terms-appointments package using three vivid images of cats, buttons, and glasses of milk. Payne argued, "The cat is out of the bag, but the cat is not one which should be left alone in the house. This issue is about the governor having more buttons than anybody in the House or Senate [both houses vote by pushing buttons connected to an electronic voting machine]. When you have kids, you spend a lot of time balancing how much milk is in the glass of each child. You've got to be fair. What we're doing here is sloshing a lot of milk from one glass [the legislature's] to another [the executive's]." Future debates over merit selection may involve a trade—pouring a bit more milk in the governor's glass for appointing judges, but also filling up the legislature's glass for confirming more gubernatorial appointments.

### *Toward a Reduced Number of Officials Elected Statewide?*

For years, there has been talk of reducing the long number of North Carolina officials elected on the statewide ballot. Proponents of reducing the list point out that North Carolina elects a larger number of officials than all but five other states, and that shortening the list would reduce confusion in election years. Currently, a number of groups, headed by N.C. Citizens for Business and Industry, are pushing to make the superintendent of public instruction appointive. Recent troubles in the office of the Secretary of State also have brought calls to make that office appointive instead of elective. But the history of efforts to convert statewide elective positions into appointive posts is not encouraging for supporters of such measures. For more on this, see the pro/con discussion on whether to elect or appoint the superintendent of public instruction, pages 459–476.

### **Conclusion**

**F**rom the Royal Governors before the Revolutionary War to the rise of the Republican Party in the 1980s and 1990s, and from post-Civil War days to the era of succession, execu-

tive-legislative relations have had their ups and downs in North Carolina. Because public attention is usually focused on the protagonists themselves—the governor, the lieutenant governor, the speaker of the House, and the president pro tem of the Senate, this article has attempted to look at the institutional differences between the two branches. One primary theme running throughout is that the system of *separation of powers* has undergone a metamorphosis in the last two decades. The butterfly that emerges is not a kingly Monarch but a system which includes a greatly strengthened governor and a greatly strengthened legislature. Constitutional changes have given the executive the power to reorganize the nine executive departments under the governor's control and the power of succession, and an important court case has increased the executive's budgetary powers. Veto power would further strengthen the office of Governor.

The executive branch also has had its wings clipped in the areas of appointment powers and in a reduced legislative role for the lieutenant governor. The legislature has gained in power through increases in staff and oversight of executive rulemaking.

Although many of the battles described here have a partisan element to them, one of this article's main contentions is that the many disputes between the governor and the legislature rest more on institutional differences and would occur regardless of which party held the governorship and which party held the majority of seats in the legislature. Veto power for the governor and merit selection of judges are two such issues where partisan elements further heat up the argument, but the argument has not and will not disappear—even if both the executive and the legislative majority are of the same party.

The judicial branch has played a key role in resolving disputes between the executive and legislature over the last decade. The 1980s saw the court hand down a major separation of powers case in *Bone*, a major appointment powers case in *Melott*, an important advisory opinion on budgetary powers, and the court even has had to resolve suits by one branch against another.

The 21st century is likely to see a further evolution in relations between the branches. This evolution is likely to be characterized as a *balancing of powers*—sometimes between the governor and the legislature, other times between other statewide elected officials (such as the lieutenant governor or superintendent of public instruction) and the legislature. If the fortunes of the Republican Party continue to rise, the level of tension between the two branches is likely to rise also. For as Oliver Wendell Holmes once said, "The only prize much cared for by the powerful is power."<sup>38</sup> The role of the courts as arbiter of these disputes is likely to take on a higher profile.

The founders of our constitutional system foresaw those kinds of struggles, and the concept of separation of powers was their answer to the problem of a concentration of power. As James Madison saw it, they spread power among three branches under the theory that "the great security against a gradual concentration of the several powers in the same department [branch] consists in giving to those who administer each department [branch] the necessary constitutional means and personal motives to resist encroachments of the others. . . . Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place."<sup>39</sup> It's a beautiful system—and it still flies.

## DISCUSSION QUESTIONS

- 1) How does the partisan nature of politics (which party controls the legislature or the offices of governor and lieutenant governor) affect the separation of powers among the executive, legislative, and judicial branches of government?
- 2) What is the difference between separation of powers and balance of powers?
- 3) Look into your crystal ball. Of the possible trades in the balance of power between executive and legislative branches, which do you foresee happening before 2010? Why? Which trades are unlikely ever to happen?

## FOOTNOTES

<sup>1</sup> Hugh T. Lefler and Albert R. Newsome, *North Carolina: The History of a Southern State*, 3rd edition, Univ. of N.C. Press (Chapel Hill, NC: 1973), pp. 150-151 and 498.

<sup>2</sup> *The Book of the States 1994-95*, The Council of State Governments, Lexington, KY, Vol. 30, p. 55.

<sup>3</sup> *State ex rel. Wallace v. Bone*, 301 N.C. 591, 286 S.E.2d 79 (1982).

<sup>4</sup> N.C. Constitution, Article III, Section 5(2).

<sup>5</sup> *Willie M. et al. v. James B. Hunt Jr. et al.*, "Complaint for Declaration and Injunctive Relief," filed in the U.S. District Court for the Western District of North Carolina, Charlotte Division, October 1979, Civil Action #CC-79-0294, p. 1.

<sup>6</sup> *Hubert v. Ward et al.*, No. C-C-80-414-M (W.D.N.C.).

<sup>7</sup> *Small v. Martin*, No. 85-987-CRT (E.D.N.C.).

<sup>8</sup> See "Sentencing and State Corrections" in *North Carolina Legislation 1992*, Institute of Government (UNC-Chapel Hill), p. 101. Also see "Sentencing and State Corrections" in *North Carolina Legislation 1995*, Institute of Government (UNC-Chapel Hill), pp. 23-7 to 23-8.

<sup>9</sup> *Thomas S. v. Flaherty*, 699 F. Supp. 1178 (1988), 902 F.2d 250 (1990) is a class action suit on behalf of 400-1600 mentally retarded adults who have been in state psychiatric institutions. The plaintiffs prevailed at both the trial court level and in the 4th Circuit U.S. Court of Appeals. The state's petition for certiorari to the U.S. Supreme Court was denied on Oct. 29, 1990.

<sup>10</sup> See "Mental Health, Developmental Disabilities, Substance Abuse Services" in *North Carolina Legislation 1993*, Institute of Government (UNC-Chapel Hill), p. 125-26. Also see "Mental Health, Developmental Disabilities, Substance Abuse Services" in *North Carolina Legislation 1995*, Institute of Government (UNC-Chapel Hill), p. 16-2.

<sup>11</sup> As quoted in Kendall Guthrie and Bill Finger, "Willie M. Treatment for Disturbed Youngsters," *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 6, No. 2-3 (October 1983), p. 59.

<sup>12</sup> As quoted in Joel Rosch, "Litigation: Will the Federal Courts Run N.C.'s Prison System?" *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 9, No. 3 (March 1987), p. 33.

<sup>13</sup> *Advisory Opinion in re: Separation of Powers*, 305 N.C. 767 (Appendix 1982).

<sup>14</sup> *State ex rel. Martin v. Melott*, 320 N.C. 518, 359 S.E.2d 783 (1987).

<sup>15</sup> Article III, Section 5(8) of the N.C. Constitution, the appointments clause, says "The Governor shall nominate and by and with the advice and consent of the majority of the Senators appoint all officers whose appointments are not otherwise provided for."

<sup>16</sup> Chapter 746 of the 1985 Session Laws, Section 19. The Court declined to issue an advisory opinion, apparently having tired of this advisory role in an era of contesting branches. Interestingly enough, one of the reasons given was that "the members of the Supreme Court would have to place themselves directly in the stream of the legislative process." *In Re Response To Request for Advisory Opinion*, 314 N.C. 677 (Appendix 1985).

<sup>17</sup> Charles Herman Winfree, "State ex rel. Martin v. Melott: The Separation of Powers and the Power to Appoint," 66 N.C. Law Review 1120 (1988).

<sup>18</sup> Larry Sabato, *Goodbye to Goodtime Charlie—The American Governorship Transformed*, CQ Press (Washington, DC), 1983, p. 71.

<sup>19</sup> Both statistics are from studies by the N.C. Center for Public Policy Research and reported in Lacy Maddox, "Separation of Powers in North Carolina," in *Boards, Commissions, and Councils in the Executive Branch of N.C. State*

*Government*, N.C. Center for Public Policy Research, 1984, p. 43-44 and pp. 52-59.

<sup>20</sup> See Paul T. O'Connor, "The Evolution of the Speaker's Office," *North Carolina Insight*, Vol. 15, No. 1, N.C. Center for Public Policy Research, Raleigh, N.C., Jan. 1994, pp. 34-38 (Table 4—Appointments of the N.C. Speaker of the House to Boards and Commissions in the Executive Branch: Where the General Assembly Appoints Upon the Recommendation of the Speaker; Table 5—Appointments of the N.C. Speaker of the House: Where the Speaker Alone Makes Appointments to Boards and Commissions in the Executive Branch).

<sup>21</sup> Chapter 1331 of the 1973 Session Laws (2d Session 1974) which went into effect on July 1, 1976. Now codified as N.C. Gen. Stat. Chapter 150B.

<sup>22</sup> Robert P. Joyce, "Overview of the 1983 General Assembly," *North Carolina Legislation 1983*, Institute of Government (UNC-Chapel Hill, 1983), p. 11.

<sup>23</sup> Chapter 915 of the 1977 Session Laws. In 1991, the ARRC was renamed the Rules Review Commission (RRC). See N.C. Gen. Stat. 150B-2(1c).

<sup>24</sup> These examples and quotations are from Bill Finger, Jack Betts, Ran Coble, and Jack Nichols, *Assessing the Administrative Procedure Act*, N.C. Center for Public Policy Research, May 1985, pp. 6-7 and p. 4.

<sup>25</sup> For excellent summaries of the APA changes, see John L. Sanders, "Administrative Procedure," in *North Carolina Legislation 1985* and "State Government" in *North Carolina Legislation 1986*, Institute of Government (UNC-Chapel Hill), pp. 12-16 and 99-102, respectively. The quotation is from the latter publication, p. 100. Also see N.C. Gen. Stat. 150B-21.9.

<sup>26</sup> See "State Government" in *North Carolina Legislation 1995*, Institute of Government (UNC-Chapel Hill), p. 26-3.

<sup>27</sup> See "Constitutional Amendments" in *North Carolina Legislation 1995*, Institute of Government (UNC-Chapel Hill), pp. 6-2. Also see Chapter 5 of the 1995 Session Laws (Senate Bill 3).

<sup>28</sup> Chapter 363 of the 1977 Session Laws, ratified by the voters on Nov. 8, 1977.

<sup>29</sup> Chapter 504 of the 1981 Session Laws, rejected by the voters on June 29, 1982.

<sup>30</sup> *The Book of the States 1994-95*, The Council of State Governments, Lexington, KY, Vol. 30, p. 113.

<sup>31</sup> *The Book of the States 1994-95*, The Council of State Governments, Lexington, KY, Vol. 30, p. 50-51, 55. Although 24 states elect the two together, only nine nominate the candidates together.

<sup>32</sup> *The Book of the States 1988-89*, The Council of State Governments, Lexington, KY, Vol. 27, p. 28. The Mississippi case is *Dye v. State ex rel. Hale*, 507 So.2d 332 (1987).

<sup>33</sup> See "Constitutional Amendments" in *North Carolina Legislation 1995*, Institute of Government (UNC-Chapel Hill), p. 6-5. See also Senate Bill 971 of the 1995 General Assembly.

<sup>34</sup> Katherine White, Dale McKeel, and Jack Betts, "The Demographics of the Judiciary: No Longer a Bastion of White Male Democrats," *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 12, No. 4 (September 1990), pp. 45-46.

<sup>35</sup> N.C. Constitution, Article III, Section 7(1).

<sup>36</sup> N.C. Gen. Stat. 62-10 and Gen. Stat. 53-92, respectively.

<sup>37</sup> N.C. Gen. Stat. 116-5 and 116-6.

<sup>38</sup> Michael Jackman, *Crown's Book of Political Quotations* (Crown Publishers, Inc.: New York), 1982, p. 179.

<sup>39</sup> James Madison, *The Federalist Papers*, No. 51 (Mentor Books: New York), 1961, pp. 321-2.

# The Formal Powers of the Governor in North Carolina: Very Weak Compared to Other States

BY THAD L. BEYLE

North Carolina Constitution, Article III, Section 1. *Executive power.*  
The executive power of the State shall be vested in the Governor.

**T**o those who sit in the N.C. General Assembly, there is no more powerful political creature than the governor of North Carolina. But to the official who sits in the State Capitol two blocks south of the North Carolina Legislative Building, the office of governor isn't strong enough to deal with the problems of the state—or even to deal effectively with the 170 members of the General Assembly. In fact, the record shows that North Carolina's governor is the weakest in the nation in terms of formal, institutional powers. Only the governor's personal political skills and his ability to capitalize on the informal powers available to him partially compensate for the lack of more formal powers and inherent strength.

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How does the position that Governor James B. Hunt Jr. now holds stack up with that position in the other 49 states? And how has the North Carolina governorship changed in the last 25 years? Answers to these two questions provide some important guideposts for understanding the rapidly growing business of state government. For, unlike in the Colonial Era and the 19th century, today's governors sit at the top of the pecking order of political power in most states.

## I. Formal Institutional Powers

**A**ssessing the powers accorded a governor by state constitutions and statutes provides one means of measuring the relative strength of the 50 governors in this country. Six separate institutional indicators of gubernatorial power are common to almost all governors: 1) tenure, or the limits on the number of terms that may be served; 2) appointment power in six

major areas (corrections, kindergarten through 12th grade education, health, highways, public utilities regulation, and welfare); 3) number of separately elected officials (SEOs) with executive branch responsibilities; 4) budget power and the legislature's ability to change the budget; 5) veto power and the legislature's override requirements; and 6) congruence of political party control of the executive and legislative branches. Table 1 presents the comparative institutional powers of governors of all 50 states.

Each state was given an overall average score using a two-step method. First, for each of the six categories, a zero to five point scoring range was used. Second, the scores for the six categories were totaled and divided by six to obtain overall average scores, which ranged from 4.1 (Hawaii, Maryland, New York, and Pennsylvania, the strongest of governors) to 2.3 (North Carolina, the weakest governor). Based on the score total, the states were grouped into the following categories: 4.0 or more = Very Strong

Gubernatorial Power (VS); 3.5 to 3.9 = Strong Gubernatorial Power (S); 3.0 to 3.4 = Moderate Gubernatorial Power (M); 2.7 to 2.9 = Weak Gubernatorial Power (W); and 2.6 or less = Very Weak Gubernatorial Power (VW). Critics may point out that each category is weighted equally and that this may obscure important differences among the powers of the 50 governors. But because such values can vary enormously from state to state, there is no simple way to weight them differently. After all, this survey seeks to compare the powers of the various governors in order to provide a perspective on the relative powers and to help policymakers and voters consider how their chief executive compares with the governors in other states.

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*North Carolina's reluctance to empower the governor with formal, institutional powers is not atypical in the South.*

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#### **A. Length of Tenure**

The longer a governor serves, the more likely that governor 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 had three-year terms. States gradually moved to either two- or four-year terms, but one-year tenures were not phased out completely until early in the 20th century. Over much of the century, one goal has been to increase the tenure potential of governors. The number of two-year terms has been reduced from 18 in 1955 to only 2 in 1994: New Hampshire and Vermont are the only states that still have two-year terms. The number of states limiting their governors to only one term also has decreased. In 1955, 17 states limited their governors to one four-year term or banned immediate succession while six others limited their governors to two four-year terms. As of early 1996, only Virginia banned gubernatorial succession; 28 states have a two-term limit.

The net effect of these changes in tenure potential has been to reduce the number of individuals who actually serve as governors in the states. While a longer time in the governor's chair for one individual may lead to stability and continuity, it does bar other potential candidates from the office. Another restraint to tenure potential has been the term limit movement of the 1990s. Such limits are usually aimed at the legislative branches at both the national and state levels, but 11 of 22 states adopting some form of term limits between 1990 and 1994 included the governor.<sup>1</sup>

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 consecutive reelection permitted) fell in the second strongest group of states.

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. Until succession passed, North Carolina shortchanged itself. Former Gov. Robert W. Scott (1969-73) put it this way: "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."<sup>2</sup> Now that has changed. Jim Hunt was the first governor to succeed himself and serve a second term, and James G. Mar-

tin Jr. followed suit. In 1992, Jim Hunt was elected to serve his third term (although non-consecutive) as Governor of North Carolina, and he will run for a fourth term in 1996. Thus, in the area of tenure potential, North Carolina's governorship is *strong*.

### **B. The Power of Appointment**

One of the first sets of decisions facing a governor-elect on the first Wednesday morning in November after the election is the appointment of personnel to key positions within the new administration. The appointive power enhances the governor's legislative role. Promises of appointments to high-level executive positions, to the state judiciary, and to about 250 boards and commissions often are the coins spent in support of particular legislation.

The measure of the governor's appointive powers is the extent to which he or she is free to name the heads of the state agencies administering the six major functions common to most states—of corrections, education, health, highways, public utility regulation, and public welfare.<sup>3</sup> 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 where a separate body does so or where separately elected officials head these agencies.

The N.C. Governor does control appointments of the Secretaries of Corrections; Environmental, Health, and Natural Resources (health); Transportation (highways); and Human Resources (welfare). However, two weak spots limit the appointive power of the N.C. chief executive: 1) education, where the superintendent of public instruction is a separately elected official even though the governor is able to appoint (subject to the legislature's approval) 11 of 13 members of the State Board of Education;<sup>4</sup> and 2) public utilities regulation, where the General Assembly must confirm the governor's nominees to the seven-member N.C. Utilities Commission.<sup>5</sup> On the basis of appointment powers measured here, then, North Carolina's governor ranks *moderate* in appointive power.<sup>6</sup>

### **C. Separately Elected Officials (SEOs)**

The power of appointment is constrained by the large number of separately elected executive branch officials over whom the governor has relatively little leverage except at budget time. SEOs not only blur executive branch responsibility in the citizens' eyes, but these officials also run state government agencies. Who is in charge often becomes a question that bedevils those wanting to make change or respond to a problem, and, no matter who is in charge, it is too often the governor who is blamed for whatever happens in state government. SEOs have their own constituencies, and often these positions are progression steps up the state's political ladder. Thus, abolishing this mode of selection could be politically more costly than any boost in formal powers a governor might obtain by doing so.

The more offices which are filled by a SEO, the less power the governor has since those are positions in other states that are appointed. The highest ranking in this category, then, is awarded to states where the only member of the executive branch that is elected in a statewide race is the governor or the governor/lieutenant governor team.

In North Carolina, nine other state officials are independently elected statewide.<sup>7</sup> They have the power to name more than 500 appointees who normally might be appointed by a governor in another state, such as New Jersey or Maine, where the governor does not share powers with any other elected official. Because the governor shares a large measure of executive branch responsibility with the Council of State, much of the power that in other states is concentrated in the office of governor lies in the hands of other elected officials in North Carolina. North Carolina ranks *very weak* in terms of SEOs because so many state officials are separately elected in statewide races. Only a handful of states elect as many or more officials on statewide ballots.

### **D. The Budget**

Governors have gained almost complete control over the process of developing state budgets for presentation to the legislature. An executive budget, centralized under gubernatorial control, is the 20th century response at all lev-



**Gov. Jim Hunt 1977-85, 1993-**

els of our governmental system to the chaotic fiscal situations that existed at the turn of the century and during the Depression. A budget document brings together under the chief executive's control all the agency and departmental requests for funds appropriated by the legislature. Sitting at the top of this process, the governor usually functions as chief cheerleader 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. North Carolina, along with most other states, has provided its governors with very strong budget-making power. 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 period."<sup>8</sup>

However, the more a legislature may change that proposed budget, the less potential budget power a governor has. 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.

In North Carolina, the General Assembly has begun taking a more direct role in budget-making and in recent years has produced its own budget package—though it must by law and by constitutional provision produce a balanced budget. That means that the legislature can make nearly unlimited changes in the governor's budget, subject only to statutory and constitutional requirements to balance revenues and expenditures. The governor's budgetary power in North Carolina is, therefore, *moderate* because although he has full responsibility for developing the budget, the General Assembly has virtually unlimited power to alter it.

### *E. Veto Power*

The most direct power a governor can exercise in relation to the legislature is the threat of or actual use of a veto. The type of veto power extended to governors ranges from the simple all-or-nothing veto, to the item veto, to the amendatory veto, to no veto power at all. 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 in struggles with the legislature, a veto also provides the governor with some administrative powers. For example, it gives him the ability to stop agencies from attempting an end run around a governor's adverse decision—such as when agencies go directly to the legislature to seek authority or spending approval for items the governor opposes. 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 legislature's authority to change the budget, this is also a measure of how the legislature may curtail a governor's power through its ability to override a governor's veto.

Ranking the states for veto power is based on two principal assumptions: first, that an item veto gives a governor more power than does a general veto; and, second, that the larger the legislative vote needed to override a governor's veto, the stronger the veto power. North Carolina, with no veto power at all, ranks *a notch below very weak*—dead last among the 50 states.

However, during the 1995 session, the North Carolina General Assembly passed a bill that will allow for a referendum in 1996 to amend the Constitution to provide for a guber-

natorial veto. If voters approve this constitutional change, the governor will have a general veto power, subject to override by a 3/5 vote of the members of both houses of the General Assembly. Although improving the formal powers of the governor, if the referendum passes, the veto power that would be accorded the governor is weak compared to those 43 states that accord their governors an item veto.<sup>9</sup>

### F. Partisan Control

Textbooks and politicians always list political party chief as one of the governor's major roles. That role allows the governor to use partisanship to the utmost advantage. For example, if the governor and the majority of the members as well as the leadership of both houses of the legislature are of the same party—as they were when Democrat Jim Hunt was governor from 1977–85 and 1993–94—the governor's power is likely to be greater than if they are of the opposite parties—as was the case when Republican Jim Martin was in office from 1985–93 (and both houses of the legislature were controlled by the Democrats) and is now for Governor Hunt since the Republicans gained control (68–52) of the state House in the 1994 elections. When the executive and legislative branch leaders are all of the same party, there is less chance of partisan conflicts and more chance for the governor to influence legislation because it is dominated by the governor's own party. 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 the recent past, the trend has been toward "powersplits" where the executive and legislative branches of government are controlled by opposite parties either totally or partially. After the 1994 elections, a powersplit existed in 27 states. 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.<sup>10</sup> Nebraska is unique—a non-partisan, unicameral legislature and partisan governor govern the state.

Measuring this power of party control 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 power of the governor. Con-

versely, 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—or moderate politics—can either surmount difficult partisan splits or make the worst of a good situation. Traditionally, North Carolina's governor has had strong power resulting from constant Democratic control of the General Assembly the entire century until 1995 and all but two governors this century being Democrats. After the 1994 elections, however, the Republicans gained control of the House for the first time this century. This powersplit decreases the formal, institutional power of Governor Hunt since he is a Democrat. Thus, in the area of partisan control, North Carolina is *moderate*.

## II. Informal Powers

Overall, North Carolina's governorship ranked *very weak*. But, these measures only tell part of the story. They emphasize the degree of control the governor has over the executive branch and his or her relationship with the legislature. However, they do not measure the many informal sources of power or constraints on a governor such as supporting or opposing interest groups, a governor's ability to take advantage of news media, access to campaign contributions, county political organizations, good looks, charisma, and overall political popularity—which itself can rise or fall with each governor or each new political brushfire. A media-wise governor can, for example, dominate a state's political and policy agenda if he or she is adept at handling the media and public appearances; by the same token, a governor's power can decline if the governor is inept at controlling the political agenda or communicating through television cameras.

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***In North Carolina, the wide range of informal powers available to the governor tends to balance weak formal, institutional powers.***

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**Table 1. Institutional Powers of the Governors**

State	Tenure <sup>a</sup>	Summer 1994			Veto <sup>e</sup>	November 1995 Party Control <sup>f</sup>	Score Total (+ 6) <sup>g</sup>	Level of Power <sup>h</sup>
		Appoint- ment <sup>b</sup>	Elected Officials <sup>c</sup>	Budget Power <sup>d</sup>				
Alabama	4	2.5	1	3	4	2	2.8	W
Alaska	4	3	5	3	5	2	3.7	S
Arizona	4	2.5	2	3	5	4	3.4	M
Arkansas	4	2.5	2	3	4	5	3.4	M
California	4	3	1	3	5	3	3.2	M
Colorado	4	3	3	2	5	2	3.2	M
Connecticut	5	3	4	3	5	3	3.8	S
Delaware	4	3	2	3	5	3	3.3	M
Florida	4	1.5	3	3	5	3	3.3	M
Georgia	4	1.5	1	3	5	4	3.1	M
Hawaii	4	2.5	5	3	5	5	4.1	VS
Idaho	5	2	2	3	5	5	3.7	S
Illinois	5	2.5	3	3	5	4	3.8	S
Indiana	4	4	3	3	1	2	2.8	W
Iowa	5	3	4	3	5	3	3.8	S
Kansas	4	3	3	3	5	4	3.7	S
Kentucky	4	3	4	2	4	4	3.5	S
Louisiana	4	3	1	2	5	1	2.7	W
Maine	4	3.5	5	3	2	1	3.1	M
Maryland	4	2.5	4	5	5	4	4.1	VS
Massachusetts	5	1	4	3	5	1	3.2	M
Michigan	4	3.5	3	3	5	4	3.8	S
Minnesota	5	2.5	4	5	5	2	3.6	S
Mississippi	4	2	3	3	5	2	3.2	M
Missouri	4	2.5	3	3	5	4	3.6	S
Montana	4	2	3	3	5	4	3.5	S
Nebraska	4	3	3	4	5	3	3.7	S
Nevada	4	3	2	3	2	3	2.8	W
New Hampshire	2	3	5	3	2	4	3.2	M
New Jersey	4	3	5	3	5	4	4.0	VS
New Mexico	4	3	3	2	5	2	3.2	M
New York	5	3.5	4	4	5	3	4.1	VS
North Carolina	4	3	1	3	0	3	2.3	VW
North Dakota	5	2.5	3	3	5	4	3.8	S
Ohio	4	5	3	3	5	4	4.0	VS
Oklahoma	4	1	1	3	5	2	2.7	W
Oregon	4	2.5	3	3	5	2	3.3	M
Pennsylvania	4	4.5	4	3	5	4	4.1	VS
Rhode Island	5	4	3	3	2	1	3.0	M
South Carolina	4	2	1	1	5	3	2.7	W
South Dakota	4	3.5	3	3	5	4	3.8	S

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**Table 1. continued**

State	Tenure <sup>a</sup>	Summer 1994			Veto <sup>e</sup>	November 1995 Party Control <sup>f</sup>	Score Total (+ 6) <sup>g</sup>	Level of Power <sup>h</sup>
		Appoint-ment <sup>b</sup>	Separately Elected Officials <sup>c</sup>	Budget Power <sup>d</sup>				
Tennessee	4	4	4	3	4	3	3.7	S
Texas	5	1	1	1	5	2	2.5	VW
Utah	4.5	2.5	3	3	5	4	3.7	S
Vermont	2	2.5	3	3	2	3	2.6	VW
Virginia	3	3.5	3	3	5	2	3.3	M
Washington	4	2.5	1	3	5	3	3.1	M
West Virginia	4	4	3	5	4	4	4.0	VS
Wisconsin	5	2	3	3	5	4	3.7	S
Wyoming	4	3.5	2	3	5	4	3.6	S
<b>Average</b>	<b>4.1</b>	<b>2.8</b>	<b>2.9</b>	<b>3.0</b>	<b>4.4</b>	<b>3.1</b>	<b>3.4</b>	

**FOOTNOTES**

<sup>a</sup> Limit on governors' terms. Scoring: 5=four-year term, no reelection restraint; 4.5=four-year term, three terms permitted; 4=four-year term, two terms permitted; 3=four-year term, no consecutive reelection permitted; 2=two-year term, no reelection restraint; 1=two-year term, two terms permitted.

<sup>b</sup> Governors' appointment powers in six major areas—corrections, K-12 education, health, highways, public utilities regulation, and welfare. Scoring: 5=governor appoints alone; 4=governor appoints and a board, council, or the legislature must approve; 3=someone else appoints and governor approves/shares in appointment; 2=someone else appoints and governor and others (legislature) approve; 1=someone else appoints alone; 0=separately elected or appointed by the legislature.

<sup>c</sup> Based on which of certain offices—attorney general, agriculture, auditor, K-12 education, insurance, labor, lieutenant governor, public utilities authority, secretary of state, and treasurer—are filled by a (SEO). Scoring: 5=only governor or governor/lieutenant governor team elected statewide; 4=same team with some process officials elected (attorney general, secretary of state, treasurer, and auditor) separately elected; 3=team and some process officials with a major policy official (education, public utilities), or governor (no team) and four or more process and minor elected officials (agriculture, insurance, labor); 2=governor (no team) with six or fewer officials and a major policy official; 1=governor (no team) with seven or more process and major policy officials.

<sup>d</sup> Governors' ability to develop budget and legislature's ability to change the budget. Scoring: 5=governor has full responsibility for developing the budget and the legislature may not increase it; 4=governor has full responsibility for developing the budget, but the legislature can increase it by special majority vote or subject it to item veto; 3=governor has full responsibility for developing the budget, but legislature has unlimited power to change it; 2=governor shares budget development responsibility, but legislature has unlimited power to change it; 1=governor shares budget responsibility with other elected official(s), and legislature has unlimited power to change it.

<sup>e</sup> Governors' ability to veto legislation and legislatures' veto override mechanism. Scoring: 5=item veto, with votes of 3/5 of elected legislators or 2/3 of legislators present needed to override; 4.5=item veto, with majority of elected legislators needed to override, except for appropriations bills when votes of 2/3 of those elected are needed; 4=item veto, with majority of legislators needed to override; 3=item veto, with majority of legislators present needed to override; 2=no item veto, but a special legislative majority needed to override; 1=no item veto, and only simple legislative majority needed to override; 0=no veto of any kind.

<sup>f</sup> This measure is based on which party controls the governorship and the branches of state government as of November 1995. Scoring: 5=governor's party has substantial majority (75% or more) in both houses; 4=governor's party has simple majority in one house and substantial majority in the other; 3=split party control or nonpartisan legislature; 2=governor's party in simple minority in both houses, or simple minority in one house and substantial minority in the other; 1=governor's party in substantial minority in both houses.

<sup>g</sup> The six separate institutional powers scores for each governorship are totaled and divided by 6 to stay within a 5-point scale framework.

<sup>h</sup> Based on the score total, the states are grouped into the following categories:

- 4.0 or more =Very Strong Gubernatorial Power (VS)
- 3.5 to 3.9 = Strong Gubernatorial Power (S)
- 3.0 to 3.4 = Moderate Gubernatorial Power (M)
- 2.7 to 2.9 = Weak Gubernatorial Power (W)
- 2.6 or less =Very Weak Gubernatorial Power (VW)

Some of the informal powers available to the North Carolina governor outweigh many of the constraints on his institutional powers. A strong political base and popularity with the media provides the governor with a major vehicle to command the public's attention. Because no large urban area dominates the state's politics, there are no other highly visible political leaders with which the governor has to compete. By contrast, the mayors of New York, Boston, Chicago, Detroit, Los Angeles, Atlanta, and other large cities have a political base which can vault them into a position to vie with a governor for leadership.

Moreover, in North Carolina, 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, furniture, utilities, and banking—usually work quietly behind the political scenes.

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. The North Carolina governor can appoint judges and, through his appointed Board of Transportation, pave highways and set the course of highway construction for years to come. This power of "robes and roads" can help the governor garner political support and collect campaign workers and financing—essential ingredients for a grassroots network of supporters.

And not to be overlooked is the power of a governor to reorganize the existing executive branch structure to conform with his own plans. In North Carolina, the governor has broad powers to combine major state departments and to realign executive branch responsibilities under the Executive Organization Act of 1971.<sup>11</sup> Such powers allow a governor to shift the setup of the major agencies under his control, especially when pressing state needs indicate a reorganization would be helpful.

All these formal and informal powers can confer upon an individual governor considerable powers if that official knows how to take best advantage of them. In recent years in North Carolina, Democratic governors probably have been more powerful than their Republican counterparts for a variety of reasons—including sharing the same party registration

with the majority of the legislators, although the powersplit in 1995 has affected the relationship between the executive and legislative branches of government.

### Conclusion

North Carolina's reluctance to empower the governor with formal, institutional powers is not atypical in the South. Southern governors generally do not have as many institutional powers as do non-Southern governors. Gubernatorial power in the South is often shared with other statewide, elected officials, a weakness that other governors outside the region generally do not have. But, many of the southern states are making a shift from old South to new South politics and governors. The good-old-boy networks, whose members viewed state government as their private playground, are being replaced with new leaders who want to use the power and resources of state government to improve their states. In the 1990s, the Republicans are staking out the southern governors' chairs as their own. In 1991, Kirk Fordice was elected governor in Mississippi and in 1993, George Allen broke a string of Democratic wins in Virginia. In the 1994 elections, new Republican governors were elected in Alabama, Oklahoma, South Carolina, Tennessee, and Texas, unseating Democratic incumbents in Alabama and Texas. In 1995, Mike Foster, a Republican, won the gubernatorial race in Louisiana.

Why so much action in the southern states? By most indicators, these were the states with the greatest needs to have state leaders and governments changed and updated. Also, the region has been undergoing a most profound political realignment over the same period.

In North Carolina, the wide range of informal powers available to the governor tends to balance weak formal, institutional powers. With veto power possibly on the horizon, the way in which the governor uses the institutional powers in a day-to-day functional sense will be very important in determining to a large extent how powerful the governor really is. In the final analysis, then, despite the lack of formal powers, the degree of power that the North Carolina governor has today depends largely upon the person who occupies the gingerbread mansion on Blount Street and that person's political skills, instincts, ideals, and ambitions.

## FOOTNOTES

<sup>1</sup>Thad Beyle and Rich Jones, "Term limits in the states," *The Book of the States*, Council of State Governments, Lexington, KY., 1994, pp. 28-33.

<sup>2</sup>Robert L. Farb, *Report on the Proposed Gubernatorial Succession Amendment*, UNC-Chapel Hill Institute of Government, 1977, p. 5.

<sup>3</sup>These categories were chosen by the National Governors' Association as key indicators of a governors' appointive powers.

<sup>4</sup>The N.C. Constitution Article III, § 7(1) creates the office of Superintendent of Public Instruction. N.C. General Statutes § 115C-10 creates the State Board of Education, comprising the lieutenant governor, the state treasurer, and 11 other members nominated by the governor and confirmed by the General Assembly.

<sup>5</sup>N.C. Gen. Stat. § 62-10.

<sup>6</sup>This study did not analyze the number of appoint-

ments made by the governor to other state boards, commissions, and councils.

<sup>7</sup>Including the lieutenant governor, the secretary of state, state auditor, state treasurer, the superintendent of the department of public instruction, the attorney general, and the commissioners of the department of agriculture, the department of labor, and the department of insurance.

<sup>8</sup>N.C. Constitution Article III, § 5(3).

<sup>9</sup>Allowing the North Carolina governor a veto of any kind would move this state closer to the overall average of 3.4 among the 50 states, however.

<sup>10</sup>V.O. Key, Jr., *American State Politics*, Knopf, New York, 1956, p. 52.

<sup>11</sup>N.C. Gen. Stat. § 143A-14. See also N.C. Constitution Article III, § 5(10) for more on the constitutional provisions empowering the governor to reorganize administrative departments.



# The Lieutenant Governorship in North Carolina: An Office in Transition

BY RAN COBLE

**North Carolina Constitution, Article III, Section 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.

**G**eorge 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.<sup>1</sup> One hundred and eighteen years later, history was prophetic as the state's fourth Republican

Lieutenant Governor,<sup>2</sup> James C. Gardner, was 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.

"From 1973 to 1978, the lieutenant governor exerted great sway in the Senate: setting the agenda, appointing committees and controlling the flow of legislation. When Jim Gardner—the first Republican to win the job this century—took office in 1989, Democrats rewrote Senate rules to strip the office of many of its legislative powers," says a column in *The News and Observer*.<sup>3</sup>

In 1995, the General Assembly passed a bill—sponsored by a Democrat and passed by a Democratic Senate—that strips the Lieutenant

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Governor of his power to make appointments to executive boards and commissions, transferring the power to the President Pro Tempore of the Senate.<sup>4</sup> Interestingly, Lieutenant Governor Dennis Wicker, a Democrat, relinquished the power without a fight. Now “the lieutenant governor will have three tasks: presiding over the Senate with gavel in hand; waiting around in case the governor dies; and going to committee meetings,” notes *The News and Observer’s* dome watcher.<sup>5</sup>

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.<sup>6</sup>

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 between 1968 and 1988, the office of Lieutenant Governor was 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.<sup>7</sup>

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 Changing 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 committees, 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 (three since have 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 appointments to boards and commissions in the executive branch [transferred to the President Pro Tempore of the Senate, effective in 1997 (Senate Bill 901, Chapter 490 of the 1995 Session Laws)];
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 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 after 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).



**Lt. Gov. Dennis Wicker 1993-**

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?”<sup>8</sup> Barnes later drew an analogy of the Lieutenant Governorship with the U.S. Vice Presidency (the Vice President only presides over the U.S. 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.”<sup>9</sup> 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.

In 1995, the effort to limit the powers of the office of Lieutenant Governor continued, even though the position was no longer held by a Republican. Two initiatives were introduced in

**Table 1. Comparison of Powers of the Lieutenant Governors Among the 50 States**

Number of States with Lieutenant Governors: <sup>1</sup>	42
Number of states in which Lieutenant Governor can serve two consecutive four-year terms (or more):	41
Number of States with Team Elections (where the Governor and Lieutenant Governor run together as a team):	24

	Number of states where Lt. Gov. has this power	Whether N.C. Lt. Gov. has this power
<b>A. Executive Powers of the Lieutenant Governor</b>		
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	26	yes
6. Member of Governor's cabinet or advisory body	23	yes <sup>2</sup>
7. Has appointments to boards and commissions in the executive branch	5	no <sup>3</sup>
<b>B. Legislative Powers of the Lieutenant Governor</b>		
1. Presides over Senate	26	yes
2. Votes in case of ties	25	yes
3. Assigns bills to committees	12	no <sup>4</sup>
4. Appoints committees and committee chairs	5	no <sup>4</sup>

**FOOTNOTES**

<sup>1</sup> The eight states without a Lieutenant Governor are Arizona, Maine, New Hampshire, New Jersey, Oregon, Tennessee, West Virginia, and Wyoming.

<sup>2</sup> 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.

<sup>3</sup> The N.C. Senate removed most appointment powers from the Lieutenant Governor, effective in 1997. A few appointments to boards, such as the Economic Development Board and Capitol Preservation Commission, remain but most appointments were given to the President Pro Tempore of the N.C. Senate.

<sup>4</sup> The N.C. Senate removed this power from the Lieutenant Governor, effective in 1989.

*Source: The Book of the States, 1994-95*

the Senate: 1) Senate Bill 901, which passed, stripped the power to make appointments to executive boards and commissions from the office of Lieutenant Governor; 2) Senate Bill 275, which was reported unfavorably by committee to the Senate, would have made the office of Lieutenant Governor part-time. The rationale for the shift in appointive powers was that because of the separation of powers doctrine in our state Constitution legislative appointments should not be made by a member of the executive branch. "I've always accepted that this office is in the executive branch," says Wicker.<sup>10</sup>

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**

**E**ight states in the U.S. do not even have a Lieutenant Governor. Among the 42 states with a Lieutenant Governor, only five allow their Lieutenant Governor to appoint committees and committee chairmen (see Table 1). Only 12 Lieutenant Governors have the power to assign bills to committees. Twenty-five states allow the Lieutenant Governor to vote in case of ties, and 26 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 five can make appointments to boards in the executive branch, though the data on the latter power are more subject to question.<sup>11</sup> Forty-one lieutenant governors can serve at least two consecutive four-year terms.<sup>12</sup>

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.<sup>13</sup>

### **What Does the Future Hold for North Carolina's Lieutenant Governor?**

**E**ight of the last 30 Lieutenant Governors have become the Governor of North Carolina.<sup>14</sup> But 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 election 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-four states have put the concept into practice since 1953.<sup>15</sup>

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.<sup>16</sup>

A fourth and final possibility is that the legislature may continue to whittle away at the powers given the Lieutenant Governor in the *state statutes*—for instance, the power to serve on six executive boards.

## DISCUSSION QUESTIONS

- 1) Should the Governor and Lieutenant Governor be elected as a team?
- 2) Do you think the office of Lieutenant Governor should be placed clearly in one branch of government—the legislative or executive? If so, which one and why?

## FOOTNOTES

<sup>1</sup> 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.

<sup>2</sup> 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 was Jim Gardner from 1989–93.

<sup>3</sup> Under the Dome, "Lightweight job is about to get lighter," *The News and Observer*, Raleigh, N.C., April 29, 1995, p. 3A.

<sup>4</sup> Senate Bill 901, Chapter 490 of the 1995 Session Laws

<sup>5</sup> "Under the Dome," see note 3 above.

<sup>6</sup> As related in Larry Sabato, *Goodbye to Goodtime Charlie—The American Governorship Transformed*, CQ Press (Washington, D.C.), pp. 69–70.

<sup>7</sup> See Steve Adams and Richard Bostic, "The Lieutenant Governor—A Legislative or Executive Office?" *North Carolina Insight*, Vol. 5, No. 3 (November 1982), pp. 2–11.

<sup>8</sup> Van Denton, "Lt. governor gets duties in Constitution, powers from Senate," *The News and Observer*, Raleigh, N.C., Nov. 11, 1988, pp. 1C and 2C.

<sup>9</sup> Rob Christensen, "Democrats set to cut Gardner's powers," *The News and Observer*, Raleigh, N.C., Nov. 24, 1988, pp. 1A and 6A.

<sup>10</sup> "Under the Dome," see note 3 above.

<sup>11</sup> 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 direc-

tor 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 made Mutz responsible for 1,400 state employees and a \$150 million annual operating budget," reports Sylvester.

<sup>12</sup> The statistics quoted in this paragraph and the previous paragraph rely on *The Book of the States 1994–95*, The Council of State Governments (Lexington, KY), Tables 2.1 (p. 50–51), 2.9 (p. 70–71), 2.12 (p. 83), and especially 2.13 (p. 84–85). Also see the Council's 1987 publication, *The Lieutenant Governor: The Office and Its Powers*, pp. 3–24.

<sup>13</sup> Sabato, p. 71.

<sup>14</sup> 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.

<sup>15</sup> *The Lieutenant Governor*, Council of State Governments, p. 7. Although 24 states *elect* the two together, only nine *nominate* the candidates together. On Feb. 9, 1989, House Bill 189 was introduced in the N.C. General Assembly to amend the N.C. Constitution and require that the Governor and Lieutenant Governor run on a joint ticket in the general election. On Feb. 8, 1993, Senate Bill 77 was introduced in the N.C. General Assembly to amend the N.C. Constitution and require a team ticket. The bill died in a Senate committee.

<sup>16</sup> *Ibid.*, p. 6. In four states without Lieutenant Governors, the Secretary of State is first in the line of succession to the Governor.



# The Council of State and North Carolina's Long Ballot: A Tradition Hard to Change

BY FERREL GUILLORY

North Carolina Constitution, Article III, Section 7. *Other elective 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.

*This article examines the impact of North Carolina's "long ballot" on the executive branch and the prospects for change.*

**A**s Commissioner of Agriculture, James A. Graham runs a department of state government with a \$63.1 million budget and 1,225 employees. Graham was *elected* by the people.

As Secretary of Environment, Health, and Natural Resources, Johnathan Howes runs a department with a \$519.9 million budget and 4,305 employees. Howes was *appointed* by Gov. James B. Hunt, Jr.

As Commissioner of Labor, Harry E. Payne, Jr. controls one of the smallest departments of state government. The Labor Depart-

ment has a \$21.5 million budget and 412 employees. Payne was *elected* by the people.

As the Secretary of Human Resources, C. Robin Britt, Sr. 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 \$6.3 billion budget and 17,568 employees. Britt was *appointed* by Governor Hunt.

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 almost three decades later: "Thus whether one of the state executive offices

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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."<sup>1</sup>

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 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 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.

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."<sup>2</sup>

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*.<sup>3</sup> 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.

**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 **	26*
Superintendent of Public Instruction	15*
Commissioner of Agriculture	12*
Commissioner of Insurance	10*
Commissioner of Labor	5*

\* Includes states in which the office is established by statute as well as by the constitution.

\*\* Includes some comptrollers, pre-auditors, and post-auditors.

Source: *The Book of the States 1994-95*, Council of State Governments, Lexington, KY, Table 2.9, pp. 70-71.

**Table 2. Number of Offices  
Headed by Elected Officials, by State Rank  
(Exclusive of Office of Governor)**

Rank	# of Offices	State	Rank	# of Offices	State
1	0	Maine	16	5	Vermont
1	0	New Hampshire	16	5	West Virginia
1	0	New Jersey	16	5	Wisconsin
4	1	Alaska	29	6	Arkansas
4	1	Delaware	29	6	Idaho
4	1	Hawaii	29	6	Indiana
7	2	Virginia	29	6	Iowa
8	3	Maryland	33	7	California
8	3	New York	33	7	Florida
8	3	Tennessee	33	7	Kentucky
11	4	Colorado	33	7	Louisiana
11	4	Pennsylvania	33	7	Mississippi
11	4	Rhode Island	38	8	Arizona
11	4	Utah	38	8	South Carolina
11	4	Wyoming	38	8	Washington
16	5	Connecticut	41	9	Alabama
16	5	Kansas	41	9	New Mexico
16	5	Massachusetts	41	9	North Carolina
16	5	Minnesota	41	9	South Dakota
16	5	Missouri	41	9	Texas
16	5	Montana	46	10	Oklahoma
16	5	Nebraska	47	12	Georgia
16	5	Nevada	48	13	North Dakota
16	5	Ohio	49	14	Louisiana
16	5	Oregon	50	35	Michigan

*Source: The Book of the States 1994-95, Council of State Governments, Lexington, KY, Table 2.4, pp. 55-56 [includes only executive branch officials who are popularly elected either on a constitutional or statutory basis (elected members of state boards of education, public utilities commissions, university regents, or other state boards or commissions are included)].*

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.<sup>4</sup>

North Carolina now has more than 3.6 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 25 years.

Neither the 1968 commission nor its echoes swayed the General Assembly to reduce the number of statewide elected officials. In 1987, both Governor James G. Martin and Lieutenant Governor Robert B. Jordan III backed legislation to make the Superintendent of Public Instruction appointive. That office was singled out for two reasons: First, a change seemed feasible with A. Craig Phillips retiring after 20 years.

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.<sup>5</sup>

The 1995 General Assembly came very close to passing Senate Bill 5 which would have made the Superintendent of Public Instruction an appointed position. The bill passed in the Senate, but failed in the House in its third reading 70 to 40—only two votes short of the three-fifths majority needed to submit a constitutional amendment to the voters [and after passing the second reading 75 to 39].<sup>6</sup>

Some members of the Council of State oppose such a bill. "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 members of the Council of State oppose the constitutional amendment.

In separate interviews, Long and former 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.

After noting the frequency of turnover in the federal system, Brooks says, "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." 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 shortening the ballot with regard to the Council of State will be successful 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. Several 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. Governor Frank Keating of Oklahoma is moving to destroy executive fiefdoms created by electing members of the executive branch. Keating hopes a study commission will recommend that many elected positions in his state will become positions appointed by the Governor subject to confirmation by the Oklahoma State Senate.

Opponents of the long ballot might argue that the state is not well served by electing so many officials. "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. [Opponents] contend that the governor makes a better judge of competence and performance than the public at large."<sup>7</sup>

The trend in recent years is toward fewer statewide elected officials. In 1956, states had 709 elected statewide officials in offices other than the Governor, but over 35 years later, in 1992, that number had dropped to 304 (covering 12 major offices).<sup>8</sup>

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

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## *Court Rules in Martin v. Thornburg*<sup>1</sup>

IN A CASE CALLED *Martin v. Thornburg*, Republican Governor James G. Martin 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 N.C. 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.

### FOOTNOTE

<sup>1</sup> *Martin et al. v. Thornburg et al.*, 320 N.C. 533 (1987).

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 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. He won again in 1992. "In the last six statewide elections for the 10 council of state offices in North Carolina (1972-92), only one of the 39 incumbents seeking reelection was beaten," writes Beyle.<sup>9</sup> "These are lifetime offices."

But a short ballot isn't necessarily 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 former 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 appointment of 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."

If Jordan is right—and the 1995 session provided 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

<sup>1</sup> *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.

<sup>2</sup> John Sanders, "The Governor and Council of State: Constitutional Relationships, 1963-1985," unpublished paper dated Jan. 29, 1986.

<sup>3</sup> N.C. Constitution, Article III, Section 1.

<sup>4</sup> *Report of the North Carolina State Constitution Study Commission*, p. 118.

<sup>5</sup> 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.

<sup>6</sup> "Constitutional Amendments," *North Carolina Legislation 1995*, Institute of Government, Chapel Hill, NC, pp. 6-4 to 6-5.

<sup>7</sup> *State Policy Reports*, Vol. II, Issue 15, Aug. 14, 1984, p. 17.

<sup>8</sup> Thad Beyle, "The Executive Branch: Organization and Issues, 1992-93," *The Book of States 1994-95*, Council of State Governments, Lexington, KY, p. 65.

<sup>9</sup> *Ibid.*

# Rulemaking by the Rules

BY KATHERINE WHITE

*This article examines a N.C. Court of Appeals decision—Whittington v. N.C. Department of Human Resources—restricting the rulemaking authority of state agencies to powers expressly granted by the N.C. General Assembly.*

**F**ew of North Carolina's taxpayers have ever heard of the Rules Review Commission—the RRC, as it's known to capital insiders. Indeed, even veteran state government workers would be hard-pressed to say where the agency is located, or what it does. But the agency has more potential clout in it than a Louisville Slugger, and it sometimes finds itself embroiled in a cause célèbre. A state Court of Appeals decision—in *Whittington v. N.C. Department of Human Resources*—highlights concerns about the agency's ability to question the legality of an administrative rule. And legislative action in 1995—designed to give the General Assembly more power over executive branch agency rules—has thrown the agency into the center of a political maelstrom.

For the most part, the small state agency quietly goes about its business of reviewing the thousands of administrative rules cranked out by other state agencies. These rules run the gamut from acquisition of state property to operations of the state zoo, but they deal with carrying out

the programs and policies formally adopted by the N.C. General Assembly and interpreted by the executive branch of state government. And the tedious job of sorting through the tens of thousands of these rules means that the RRC sometimes finds itself at the epicenter of storms swirling over policy questions that are not the purview of the commission—whether, for example, it is appropriate to spank children in day care centers, or how to provide counseling to pregnant mothers applying for state-funded abortions.

The RRC was intended to perform an important function, acting as a sort of strainer to filter proposed rules that pose problems and earmark them for further study by the agency that proposed the rules. Specifically, the RRC reviews rules on three criteria: (1) Does the rule have adequate statutory authority? (2) Is the rule clearly and unambiguously drawn? And (3) is the rule reasonably necessary, either to enable the agency to perform a statutorily-assigned function, or to carry out a program or policy?<sup>1</sup>

But the RRC has come under enflaming fire—from some critics who say the agency doesn't have enough authority, and from others who say the agency gums up the work of

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government. Its authority to review rules was challenged by the State Board of Education in conjunction with emergency, temporary rules the education board enacted to block local school contracts with Channel One, a commercial television venture for public schools. The state Supreme Court side stepped the issue, resolving the dispute on other grounds.<sup>2</sup>

Former Gov. James G. Martin considered recommending cutting the RRC's funding—an estimated savings of about \$250,000 a year—to help remedy the budget crunch facing the state, but decided to keep it in his budget proposal to the 1991 General Assembly. Such a cut was unlikely to be accepted by the General Assembly because the legislature insisted on setting up the RRC in the first place. The cut would have eliminated the agency and put a halt to its review process.

The Rules Review Commission and its predecessors have been around North Carolina state government for about 20 years. They represent an attempt by the General Assembly to exercise oversight of the executive branch and to keep the executive branch from invading the legislators' exclusive right to legislate.<sup>3</sup> The RRC mission is not to set public policy but to ensure that the public policy set by the General Assembly is carried out by the governor and other executive branch officials within the rules they adopt.

When rules are ambiguous or exceed an agency's authority, the RRC tells the agency to correct them. The commission advises the executive branch agency that there is a problem with a rule and that it should be revised or eliminated. In the more-than-18,000 rules reviewed between 1986 and 1990, state agencies refused to follow the changes proposed by the RRC only 52 times. During that period, the RRC delayed rules on 118 occasions, objected to 570 rules, and recommended technical changes in 1,566 cases.

In 1995, the General Assembly increased its oversight of the executive branch by amending the rules law—in a special provision of the budget bill—to allow it to control whether controversial rules will be adopted.<sup>4</sup> The law establishes the Joint Legislative Administrative Procedure Oversight Committee to review rules the RRC objects to and oversee the rulemaking process under the APA. Furthermore, the new law provides that a permanent rule approved by the RRC must survive a 30-day review process

during a General Assembly session. That delay gives legislators an opportunity to introduce new legislation on the subject if they disagree with the rule.

The impact can be harsh. Proposals to help curb pollution of the Neuse River—including restrictions on farm fertilizer runoff and animal farm operations—have been delayed because of the changes. And, even if the changes are approved by the RRC, legislators can now block the rules if they don't like them.

The amendments to the law caused the RRC to be deluged with proposed rule changes between July 1 and November 15, 1995—the cutoff date to avoid the new General Assembly oversight provision. More than 24 state departments and boards filed 2,259 proposed rule changes—almost half of them were filed within the two weeks of the November 15 cutoff.<sup>5</sup>

The North Carolina Bar Association supports the uniformity the RRC has brought to the state rule-making process. Now, most agencies submit their rules to the RRC for review. Because the rules are reviewed by a central agency, the rules now have a uniform style and format. In addition, the Office of Administrative Hearings publishes rules in organized binders, updates them regularly, and publishes a monthly register of all proposed rule changes as well. All these rules appear in the *North Carolina Register*, which also includes executive orders of the governor and other information about executive, legislative, or judicial branch actions related to the Administrative Procedure Act.<sup>6</sup>

"I think that it's helpful for rules to be reviewed, and when RRC flags a rule as having a problem, it's corrected [by the agency] more times than not," says Ann Reed, senior deputy attorney general.

Still, the RRC is a thorn in the side to some state officials who have to write rules and who must submit their work to a reviewing agency. To others, it's an additional layer of bureaucracy. Yet others question whether the RRC has sufficient power to do its job. If the RRC had more powers, for instance, it might have saved N.C. taxpayers a lot of time and money—nearly \$200,000—in litigation costs.

Consider what happened in *Whittington v. N. C. Department of Human Resources*.<sup>7</sup> In that case, the state's Social Services Commission adopted rules that expanded the responsibilities of local social service agencies when counseling pregnant women who applied for

state-paid abortions—and, critics contended, went well beyond the Social Services Commission's statutory authority. The Social Services Commission's rules were engineered in 1986 by former commission Chairman Barry McCarty, a religion professor and a prominent figure in the anti-abortion movement. The proposed rules would have required local social service agencies to (1) offer each woman who applied for public abortion funds an opportunity to see fetal models showing growth and development of the fetus, and (2) notify a dis-

trict attorney when a woman applying for a state-funded abortion mentioned allegations of rape or incest.<sup>8</sup>

The Social Services Commission had already purchased 100 fetal model sets—each containing nine enlarged fetal models showing the development of the human fetus at monthly stages of pregnancy—at a cost of more than \$35,000. The theory was that if pregnant women were shown the models of developing fetuses, they would be far less likely to want to go through with the abortions.

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## *Reviewing Rules from Another Perspective*

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A TREMENDOUS AVALANCHE OF RULES is being promulgated by the agencies. I keep up primarily with the environmental rules, and there are thousands of pages of them promulgated at the state and federal level every year. Without an adequate procedure for reviewing those rules effectively, there is no check on the power of the unelected bureaucracy. The legislature cannot keep up with all of the rules that are being passed. In a sense, the *Whittington* case is a bad example of the need and appropriateness of the RRC's review of a rule: *Whittington* looked at a simple, short, well-publicized rule that was extensively debated and monitored in the press. The more typical rule—at least in the environmental area—is long, complicated, technical, and costly to implement. The environmental rules share with the pregnancy-related rules in *Whittington* the fact that both are controversial, which, again, may make them less instructive as examples.

The primary threat to liberty, due process and fair play comes from rules that are promulgated quietly, with little review and less controversy, but that have adverse impacts that fall disproportionately on the particular group that has the misfortune of being in the wrong regulatory place at the wrong regulatory time. The threat most frequently comes not in huge leaps involving fetal models or similar concrete situations, but through small nibbles, nips, bits and slices that gradually carve up the regulated community. The ball-point pen example [see footnote 3, page 295] is actually a better example for that. In and of itself, it meant little. It probably cost little in terms of costs or time to use a pen. There were even good reasons, the agency claimed, for requiring that pens be used. Fortunately, Representative Watkins and others realized that it was an instructive paradigm for a deeper problem: a bureaucracy that chipped away at liberty and fairness without any contravening oversight.

Frogs get cooked without ever realizing it, because they get placed in tepid water that is then gradually warmed so slowly that they never know what happens to them. In much the same way, regulatory agencies make small incursions with rules that rarely—if ever—provide the regulatory community with sufficient cause to act to avoid the problem.

—Charles D. Case

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*The writer is a Raleigh attorney who represents the Chemical Industry Council, among other clients.*

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But opponents said there was a problem with what the Social Services Commission wanted to do: it didn't really have the authority to make those rules, or to require the county social workers to show the fetal models to a pregnant woman. The General Assembly had added language to the bill appropriating funds for abortions declaring that "designation of services to be provided or the designation of providers shall be done only by enactment of law by the General Assembly."<sup>9</sup>

That "only by enactment of law" seemed clear to opponents of the rules—that only the General Assembly could designate services to be provided, and that the Social Services Commission could not. The RRC dutifully objected to their enactment. The rules originally had been proposed by the Social Services Commission in March 1986 and almost immediately drew fire from the Attorney General's Office. Assistant Attorney General Henry T. Rosser advised the Department of Human Resources on March 20, 1986, that the Social Services Commission lacked the authority to adopt the rules it proposed. In a follow-up letter on May 20, 1986, Attorney General Lacy Thornburg, a Democrat, told McCarty, a Republican, that he agreed with Rosser's informal opinion and added, "... it is the opinion of this office."

But despite this advice from the Social Services Commission's own lawyers, then-Rep. Paul Stam (R-Wake), a leading legislative opponent of abortion, was pushing hard for the rules' enactment. The commission in October agreed to go ahead with the rules. For one thing, the commission believed it was authorized to adopt rules because the General Assembly had created the Administrative Procedure Act, which sets forth how state agencies can adopt rules—and the Social Services Commission is subject to the APA.<sup>10</sup> And the commission reasoned that it had authority to adopt rules because it is a tenet of North Carolina law that administrative authority generally should be broadly construed.

The rules were adopted on Oct. 30, 1986, after the Martin administration got clearance to hire outside attorneys to represent the commission in litigation or other legal matters that were sure to materialize.<sup>11</sup> The Social Services Commission adopted its two rules and sent them to the RRC for review.

Ten weeks later, on Jan. 15, 1987, the RRC met to examine the proposed rules, and its conclusion was clear: the Social Services Commis-

sion didn't have the power to adopt such rules. On Feb. 26, 1987, the Social Services Commission said it would proceed with the rules anyway, since the RRC didn't have the power to veto the rules, and on March 2, 1987, the Rules Review Commission advised the General Assembly that the RRC objected to the rules. That delayed the matter for three months, but on June 1, 1987, the rules took effect anyway.<sup>12</sup>

Planned Parenthood of Charlotte, among others, challenged the rules in Wake County Superior Court on June 11, 1987, on the ground that the General Assembly had limited the authority of the commission, precluding the challenged rules. That court issued a preliminary injunction on July 1, 1987, and heard arguments on Nov. 9, 1988. A month later, on Dec. 8, 1988, the trial court found that the two rules were *ultra vires* [a legal term meaning, literally, "beyond the powers"] and exceeded the scope of the administrative authority of the Social Services Commission.<sup>13</sup> The Social Services Commission appealed to the N.C. Court of Appeals in hopes of finding support for its argument that it had the authority to adopt rules to administer the abortion program despite the legislature's restriction that services would be provided "only by enactment of law by the General Assembly." But on Nov. 20, 1990, the three-judge panel of the Court of Appeals backed up the RRC's original advice.

"Had the legislature desired to carve an exception under any of the subsections to permit the Social Services Commission to promulgate rules, it could have done so," concluded Appeals Judge Robert F. Orr, a Republican, for the unanimous panel. "The legislature did this for certain other rules. . . . Had the legislature intended to leave room for additional future rules, such as the rules in the present case, it could have done so," Orr added.<sup>14</sup>

Judge Orr noted that despite all the controversy, the case was not a question about the morality of abortions, or about the propriety of taxpayers funding abortions. Rather, Orr wrote, "it is a case solely about administrative rule-making authority and whether the trial court erred" when it found the Social Services Commission had no authority to adopt the fetal model rules.

The Appeals Court also noted that the Social Services Commission does have general rule-making authority for social services programs—just not the authority to adopt rules on which services may be offered in connection with the

state abortion fund. But the court also gently admonished the legislature to be more specific in the future if it wished to permit—or limit—rule-making authority. The court put it this way: “. . . we note that it is the legislature’s obligation to clarify its intent should it deem such clarification to be necessary.”

The Department of Human Resources did not appeal the court’s decision. Secretary of Human Resources David Flaherty, a defendant in the case, accepted the correctness of the court’s decision in the *Whittington* case, but he raised questions about the RRC’s power to delay a rule. When the RRC objects to a rule, that automatically delays implementation of the rule for 90 days. “I don’t think the RRC has been good for the state. It’s tremendously increased the cost of doing business. It’s another layer of bureaucracy and all they do is recommend,”

Flaherty said. “It delays [challenged rules] from getting to the courts” where the rules ultimately receive a binding determination.

The *Whittington* litigation cost the state \$190,620.33 in legal fees and other expenses, revealing a down-side to the RRC’s work. But defenders say that’s not the commission’s fault. “The authority is very limited,” says Jack Stevens, an Asheville lawyer and former RRC chairman. “You can’t stop a rule. All you can do is slow it up.”

The 1996 short legislative session and future sessions will tell what effect, if any, the latest wrinkle in rulemaking will have on the operation of government. At this time only one thing is clear, the General Assembly’s latest salvo will keep the executive branch dancing the rulemaking limbo until the legislators stop the music.

## FOOTNOTES

<sup>1</sup> G.S. 143B-30.1-2 The larger Administrative Procedure Act, which governs how administrative rules must be drawn, has six primary purposes—(1) to allow groups affected by rules to know of them before they take effect; (2) to allow citizen input into rule-making; (3) to allow public access to rules once they are adopted; (4) to ensure that all significant agency policies are put into writing; (5) to establish a uniform system of administrative procedures for state agencies to follow; and (6) to establish a uniform system of appeals from those rules. For more on the APA, see Bill Finger et al., “Assessing the Administrative Procedure Act,” a special report by the N.C. Center for Public Policy Research, May 1985.

<sup>2</sup> See *North Carolina v. Whittle Communications*, No. 164 PA 90, North Carolina Supreme Court, filed April 3, 1991. The state petitioned for reconsideration, but the Supreme Court denied that petition April 22, 1991. In *Whittle*, the State Board of Education argued that it was not subject to the RRC when it wrote rules pursuant to its constitutional power, as opposed to its statutory authority. The rule in this case is 16 N.C. Administrative Code 6D .0105.

<sup>3</sup> Initially, the General Assembly for a few months had a committee which reviewed rules made by the executive branch and whose powers included the right, never used, to veto the rules. After *State ex rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E.2d 79 (1982), in which the North Carolina Supreme Court required strict separation of powers among the three branches of government, the General Assembly—fearing a challenge based upon the principles out-

lined in that case—established a review commission that operated under the executive branch.

The Office of Administrative Hearings was created in part because a law partner of the late Rep. Billy Watkins (D-Granville) received in 1984 a morass of rules from the state’s Medical Assistance Division. He received one set of rules, followed by a second set of amendments and had a difficult time figuring out what they meant. At that time there was no register of rules and no system for maintaining them in one place. Another popular reason given at the time for creating the agency was a Wildlife Resources Commission rule that required forms to be filled out only with a ballpoint pen. The forms used pressure sensitive paper for copies which meant a felt tip pen wouldn’t do. But the peculiar specificity of the ball-point pen rule heightened the General Assembly’s interest in getting a handle on the rule-making process. Others attribute Watkin’s keen interest in the APA to yet another administrative rule that in effect outlawed beer drinking on Kerr Lake, the popular reservoir on the Virginia-North Carolina border which lay partly in Watkin’s district.

The RRC and the accompanying Office of Administrative Hearings represent a trend in state governments nationally as well. In 1988, the RRC was separated from the Office of Administrative Hearings and now operates as an independent agency. See G.S. 143B-30.1(c).

<sup>4</sup> Chapter 507 of the 1995 Session Laws, sec. 27.8(a)(c).

<sup>5</sup> Joe Dew, “Agencies rush to get new rules on the books,” *The News and Observer*, Raleigh, N.C., Nov. 7, 1995, p. A1.

<sup>6</sup>G.S. 150B-63.

<sup>7</sup>*Whittington v. N.C. Department of Human Resources*, 100 N.C. App. 603, 398 S.E.2d 40, decided Nov. 20, 1990.

<sup>8</sup>The rule involving fetal models was proposed as 10 N.C. Administrative Code 42W .0003(c), while the rule on reporting cases of rape or incest was proposed as 10 N.C. Administrative Code 42W .0005.

<sup>9</sup>Chapter 479 of the 1985 N.C. Session Laws, s. 93.

<sup>10</sup>G.S. 150B-1(d).

<sup>11</sup>G.S. 114-2.3 authorizes the state to employ private counsel when the Attorney General's Office decides it cannot provide that counsel to a state agency. The governor

must formally request private counsel, and the attorney general must formally approve it. In this case, formal approval came by letter on Oct. 21, 1986, from Attorney General Lacy Thornburg (signed by Senior Deputy Attorney General William P. O'Connell) to Gov. James G. Martin.

<sup>12</sup>G.S. 143B-30.2(c) provides that when the RRC objects to a rule, its implementation will be delayed "for a period not to exceed 90 days."

<sup>13</sup>No. 87 CVS 4867 (Wake County), Dec. 8, 1988.

<sup>14</sup>*Whittington*, supra, at 613. Judges Sidney S. Eagles, Jr. and Jack Cozort concurred in the decision. The defendants did not appeal.

# Chapter 4

## 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.

The selections in this chapter describe the judicial system in North Carolina and analyze issues confronting the courts.



# 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**

**A**round 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.

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### **After the Revolution**

**W**hen 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 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, state-wide "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**

**N**otwithstanding 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, 1980s, and 1990s 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.\*

\*See p. 315 for more on merit selection of judges.

## *The Present Court System*

Article IV of the North Carolina Constitution establishes the General Court of Justice which "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." The Appellate Division is comprised of the Supreme Court and the Court of Appeals.

### **The Lower Courts**

**T**he 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 October 1995, there is a total of 62 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 October 1995, there is a total of 39 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 (see p. 305).

## Criminal Cases

**T**rial 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

**T**he 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 \$3,000 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

**T**he 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 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 39 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

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.

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# The N.C. Supreme Court at 175:

## Slow on Civil Rights but Fast on Free Speech?

BY KATHERINE WHITE

*What follows is a look at some of the highs and lows of the North Carolina Supreme Court during its first 175 years. The General Assembly, originally viewing the court only as a money-making venture for lawyers, voted it into existence in 1818. It succeeded a series of earlier, similar tribunals, one of which operated under the provision that "no attorney shall be allowed to speak or be admitted as counsel in the aforesaid court."<sup>1</sup> That much has changed, but much about the state's highest court has remained the same over the years. Unlike the General Assembly, which often makes sudden or sweeping legal changes in the give-and-take of politics, the Court makes law slowly, by interpreting the constitution, the legislature's statutes, and its own past decisions. The Court's work is seen primarily through its published review of cases, raising issues of particular import to the life and times in which the justices served.*

**T**he North Carolina Supreme Court, now celebrating its 175th anniversary in 1994, has an august—if sometimes notorious—history. It has promoted prison reform, abolished certain invasion of privacy torts, advanced women's rights, and determined whether chickens fall within the protection of a statute prohibiting cruelty to imals.

On its less noble side, the court has defended slavery, and it was often a necessary, but useless, step for those litigating civil rights issues in the 1950s and 1960s. Its refusal to recognize certain constitutional rights during that period resulted in at least one landmark decision by the U.S. Supreme Court that continues to benefit all Americans—the right to a speedy trial.<sup>2</sup>

Because the Court has dealt with such a range of issues, it is difficult to draw sweeping themes from its history. In most cases, the Court's decisions have reflected the status quo. There are, however, exceptions to this rule. The Court, for example, traditionally has been ahead

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of its time on free speech issues and behind the times on civil rights issues.

Eighty white men have shaped the course of the state's legal history, with three white women joining their ranks since 1962 and only one black man, appointed in 1983.<sup>3</sup> The number of justices in office at one time has varied from three to seven. Almost all of the justices in this century have been Democrats, two of the turn-of-the-century Republican members having faced impeachment charges for defying the General Assembly by ordering the State Treasurer to pay out money that had been forbidden by legislation.<sup>4</sup>

The North Carolina high court traditionally reflects the state's power structure, its members being appointed or elected from a group with impeccable political credentials. Its opinions have mirrored the state's evolving political and social development, not making wholesale legal changes as other states' courts have, and taking few steps that alter the way business is done.

### **A Foot Firmly Rooted in the Past**

**T**he Court is one of tradition. Tradition governs the way justices file into the courtroom, parcel out their workloads, assign seats at the bench, vote their opinions, and take their midday meals.<sup>5</sup> And until it made the switch in 1940, the Court was the last appellate court in the United States where the members wore ordinary clothes instead of robes while on the bench.<sup>6</sup>

Ties to the past are, in a sense, part of the Court's function. The six men and one woman now serving as justices sit at the highest level in the judicial branch of government.<sup>7</sup> They are the guardians of several centuries of North Carolina law.

The Court's early years were marked by informality, according to Judge Rich Leonard, currently a U.S. bankruptcy judge who studied the Court's work of 1841 and 1897.<sup>8</sup> Citizens argued their own cases without using an attorney in about half of the 1841 cases. Most of these disputes involved property: land repossession, for example, or a case in which a home-made canoe was punctured by a borrower. The few criminal matters of the early Court seem minor by today's standards, though perhaps appropriate for the times: indictments for crimes

like selling rotten bear meat as food and changing the identifying markings on sheep.

But by 1897, the Court had become more formal. Attorneys argued nearly every case for their clients. A 30-day deadline on appeals was by then being enforced, compared to an 1841 practice of letting appeals miss their deadlines by two years or more.

Yet much about the Court has resisted change. The Court's dealings with capital punishment reflect its constancy.<sup>9</sup> Retired Justice Harry C. Martin, in a history prepared for the 1994 celebration, notes that the Court today spends nearly half its time on death penalty cases. He observes that in 1919, T.T. Hicks, a lawyer involved in the Court's Centennial Celebration, predicted that the Court would steer away from the death penalty. "Will not the conscientious men and women who meet to celebrate the next centennial of this court blush, as they turn these pages, to think that their ancestors in 1919 condemned human beings to death by law in North Carolina?"<sup>10</sup> But deliberations on death sentences are as much a part of the Court's work today as they were in 1919.

### **A Voice for Better Jail Conditions**

**D**espite its inherent conservatism, the Court has had isolated bursts of activism. In 1875, for example, the Court displayed an activist nature when upholding damages of \$2,000 for the death of John Godwin in the Raleigh City Jail. The court concluded that his death "was accelerated by the noxious atmosphere" and that his 8x14 foot cell had "no opening connecting with the outer air or light," "no ventilation even." "Nature teaches us that any person kept in such a place must soon die, and any person 'lodged' in such a place is injured by the first breath . . . . Not a chair, nor a bed, nor a blanket, nothing but the cold, hard floor in 'a hole like Calcutta's.'"<sup>11</sup>

### **A Beacon on Free Speech Issues**

**A**nother area in which the Supreme Court historically has embraced change is that of issues affecting free speech. The first recorded prejudicial pre-trial publicity case, prior to the Supreme Court we know now, resulted in the



**The 1994 North Carolina Supreme Court. Standing (l-r): Justices Willis Whichard, Henry Frye, John Webb, and Sarah Parker. Seated (l-r): Justice Louis Meyer, Chief Justice James Exum, Jr., and Justice Burley Mitchell.**

court's concluding that the publicity meant nothing to the trial's outcome. "[T]he people of this country do not take for truth everything that is published in a newspaper."<sup>12</sup>

In 1962, the Supreme Court anticipated the U.S. Supreme Court's decision in *New York Times v. Sullivan* that gave protections to some false statements made about public officials. *Ponder v. Cobb* involved voting irregularities in Madison County and concluded that false accusations about public officials were not actionable if they were made in good faith and without malice.<sup>13</sup>

In the last decade, the North Carolina court has gained national recognition for its curbing invasion of privacy claims. In 1984, in *Renwick v. News & Observer Publishing Co.*, the Court concluded that false light invasion of privacy would not be part of the state's law in part because of its closeness to libel claims.<sup>14</sup> The Court also opined that allowing damages for such publication would add to the tension between freedom of the press—protected by both the state and federal constitutions—and the law of torts, which permits recovery of damages against the media.<sup>15</sup>

Following *Renwick*, in 1988, the Court went a step further when it ruled that North Carolina will not recognize yet another tort of invasion of privacy—when true private, personal facts are published.<sup>16</sup> The Court reasoned that the first Amendment of the U.S. Constitution, guaranteeing free speech and a free press, runs counter to a claim that can result in the recovery of damages for truthful publications.

### **But Behind the Times on Civil Rights**

**B**ut if the Court consistently has broken new ground on free speech issues, it has been equally insistent on dragging its feet in the area of civil rights. In an 1830 decision, for example, the Court ruled that slave owners and overseers could not be prosecuted for how they treated slaves. The case stemmed from an incident in which a Chowan County slave owner named John Mann shot a slave in the back who had fled from him while he was whipping her. He was convicted of assault for inflicting punishment "cruel and disproportionate" to her transgression, but the Supreme Court threw out Mann's

conviction on grounds that slavery demanded the total and unquestioning obedience of slaves. Harriet Beecher Stowe cited the case as background for *Uncle Tom's Cabin*.<sup>17</sup>

One justice was credited by Josephus Daniels, publisher of *The News & Observer*, as being the founder of the Ku Klux Klan in North Carolina. Daniels, at a ceremony unveiling the portrait of Justice Alphonzo Calhoun Avery in 1933, told of an encounter when Daniels asked the justice why he had supported a candidate for statewide office whose views on an important issue did not match the justice's. Justice Avery, pulling Daniels off to the side, whispered that the candidate had, like himself, been a night-rider.<sup>18</sup>

During the Civil Rights movement of the 1950s and 1960s, the Supreme Court was but a way station for cases en route to the U.S. Supreme Court. Daniel Pollitt, professor emeritus of constitutional law at the University of North Carolina School of Law, recalls, "The whole thing was to avoid the state courts as far as possible."<sup>19</sup>

The first such civil rights case grew out of a black Durham minister's 1956 effort to take children from his church group to the Royal Ice Cream store. The minister charged that the Durham ordinance requiring segregated facilities was unconstitutional. The North Carolina Supreme Court refused to consider the ordinance, stating that the defendants had failed to introduce it into evidence and that the Court could not take judicial notice of it, something clearly possible had the Court wished to do so.<sup>20</sup>

### A Few Progressive Voices

Still, the Court's predilection has not always been to preserve the status quo, and some of its jurists have shown a penchant for the progressive. Among them was Chief Justice Walter Clark, who served from 1889 to 1924 and retains a fabled and venerable reputation. Passed over as too young by Jefferson Davis, he was not made a Confederate general. And he was thought to be too old to be appointed by Woodrow Wilson to the U.S. Supreme Court in 1916, when Louis Brandeis was appointed in his stead, an appointment Clark supported.

But Clark made his mark at the state level. He advanced the rights of women, too often treated as "infants, idiots, lunatics and con-

victs."<sup>21</sup> He also supported making industry accountable for its actions, for example, requiring that a bottler of carbonated beverages be responsible for damages when the bottle exploded, even though there was no contract between the bottler and the ultimate consumer.<sup>22</sup> The Court under Justice Clark also held for the first time that a wife could sue her husband for damages, removing the bar of interspousal immunity.<sup>23</sup>

And it was Justice Clark who wrote into state law the common law principle that one's home is one's castle. In his opinion, he traced the concept from early England to a 1901 incident on South Street in Raleigh. There, a woman was accused of hitting a creditor of her husband's with her son's baseball bat. The defendant:

knew naught of legal lore, but she had an instinctive sense of her rights, and, by means of the wooden wand touched to the back of the [creditor's] head she communicated electrically to his brain the same conception more effectually than if she had read to him the above citations.<sup>24</sup>

When Justice Clark died in 1924, the president of Southern Railroad came to his grave, relates Pollitt. Asked why he was there despite his legendary dislike for the Chief Justice and his pro-worker views, the railroad official replied, "I just want to make sure the son-of-a-bitch is dead."

Another notable justice was William Gaston, a vehement opponent of slavery and a Catholic, which meant he was technically prohibited from sitting on the Supreme Court by an N.C. Constitutional provision that limited officeholding to those of the Protestant faith. An 1835 change to the Constitution lifting that prohibition is attributed to the high regard in which Justice Gaston was held. Serving with him at the time was Justice Joseph Daniels, described as a man "of large brain, but no ambition."<sup>25</sup> While Judge Gaston personally was opposed to slavery, he was unable to move the Court, which remained steadfast in its support of the institution.

### Poetic Justice?

The Court has not been without scandal. A judge on an earlier court that func-

## Key Dates in the History of the N.C. Supreme Court

- 1819:** The Supreme Court, meeting at the North Carolina State House, hears its first case as an appeals-only court.
- 1830:** *State v. Mann*. Court rules that slaveowners and overseers cannot be prosecuted for how they treated slaves. Harriett Beecher Stowe later would cite the case as background for *Uncle Tom's Cabin*.
- 1834:** *Hoke v. Henderson*. Court rules that a state officeholder has a property right in his office—a right found nowhere else in the nation. The ruling proves troublesome for both the state and the jurists who issued it and is overruled in 1903.
- 1834:** *State v. Will*. Court gives slaves the right of self-defense against cruel and unjust punishment by owners. Overturned by 1857 *Dred Scott* ruling that slaves are not citizens.
- 1868:** The Supreme Court is expanded from three to five members.
- 1873:** *State v. Linkshaw*. Court reverses conviction of man charged with disturbing public worship by singing too loud and too long during church service.
- 1878:** The Court licenses Tabithia Holton as the first woman to practice law in North Carolina.
- 1901:** Republican Justices David Furches and Robert Douglas are impeached by the House of Commons. The trial centers on the 1834 *Hoke* decision. The House refuses to convict.
- 1914:** *State v. Darnell*. Court, citing “natural law,” rejects an ordinance prohibiting persons of a particular race from moving onto a street where a majority of the residents are of another race. The anti-segregation ruling goes largely unused.
- 1937:** Court is expanded to seven members and becomes the last in the nation that doesn't wear robes. The Court dons robes in 1940.
- 1962:** Susie Sharp becomes the first woman appointed to the Supreme Court.
- 1967:** *Rabon v. Hospital*. Court abolishes charitable immunity for hospitals in malpractice and other damage cases.
- 1968:** The creation of the 12-member Court of Appeals lightens the workload of the Supreme Court by taking on most trial court appeals.
- 1975:** Susie Sharp becomes the first woman chief justice in the nation.
- 1983:** Henry Frye becomes the first African American appointed to the state's highest court.
- 1988:** *Hall v. Salisbury Post*. The Court bars people from suing for invasion of privacy when true, personal facts are published.
- 1991:** *Woodson v. Rowland*. Court rules that injured workers can sue their employers for gross negligence. Prior to this ruling, workers or their survivors would have been limited to collecting workers' compensation.

Sources: “N.C. Supreme Court 175th Anniversary,” *The News & Observer*, Raleigh, N.C., Jan. 7, 1994, p. 3A; “Key Dates for the N.C. Supreme Court,” *The Charlotte Observer*, Jan. 4, 1994, p. 1C.

tioned as a *de facto* Supreme Court was Samuel Spencer of Anson County, a polygamist. Spencer's death was chronicled in an official Supreme Court history after he was caught napping under the shade of a tree and pecked to death by a "turkey gobbler enraged by the red handkerchief which the judge had placed over his face to keep off the flies."<sup>26</sup> The document failed to mention Spencer's domestic proclivities or whether any related fatigue may have contributed to his nap and, thus, his untimely demise.

### Strength in Times of Trial

Another notable characteristic of the Court is that it has often shown strength in the face of political adversity. After the Civil War, for example, the Court upheld the unpopular administration of W.W. Holden. Holden, appointed provisional governor after the Confederate defeat at Appomattox, was later elected and then impeached. The Court observed that without Holden's provisional term, there would be no state government.

No one of the State officers was bound by an oath to support the Constitution of the United States and consequently no one of them was qualified to discharge the duties of their respective offices. There was no governor, no members of the General Assembly, no Judges. Every office in the state was politically dead, and the effect [was] the same as if they had all died a natural death. . . . Here, then, was a state of anarchy.<sup>27</sup>

### And Protection for the Least Among Us

If it has upheld un-elected governors, the state Supreme Court also has shown a soft spot for bad singing. In 1873, while children continued to pray in public schools, the Court supported a different version of separation of church and state. W.M. Linkshaw was convicted at the trial level of disturbing public worship because his singing disrupted the congregation, causing laughter among some worshipers and indignation among others.

A summary of testimony at the trial revealed that "[a]t the end of each verse his voice is heard after all other singers have ceased and the dis-

turbance is decided and serious; the church members and authorities have expostulated with him about his singing and the disturbance growing out of it, to all of which he replied that he will worship God according to the dictates of his heart and that a part of his worship is singing." The Supreme Court, reversing his conviction, concluded that "while he may be a proper subject for discipline of the church, he is not for the discipline of the courts."<sup>28</sup>

As for whether chicken abuse falls within the purview of a cruelty to animals statute, the answer is yes. The defendant in this case, enraged that his neighbor's chickens had dug up all his garden peas, chased down the chickens and dispensed his own brand of frontier justice. The Court, impressed by the intentional and vicious assault on the chickens, affirmed the perpetrator's \$1 fine.

He pursued one of the prosecutor's chickens clear across the lot of another neighbor and intimidated it into seeking safety in a brush pile; pulled it out ignominiously by the legs, and putting his foot on the victim's head, by muscular effort, pulled its head off. Then, in triumph he carried the lifeless body and threw it into the prosecutor's yard. Another he jabbed with a stick until it was dead and knocked another over, throwing their bodies into the neighbor's yard also, and then he on another occasion beat a hen that had young chickens, which, with maternal solicitude, she was caring for, so that she died and the birdies, lacking her fostering care, likewise perished.<sup>29</sup>

So the Court has had its say on issues large and small over the course of its 175 years. Former Justice Martin observes that the Court has at times been progressive, particularly with regard to workers' compensation issues.<sup>30</sup> The Court also has allowed recovery for injuries to unborn children and has expanded individual rights granted under the federal Constitution through reliance on state constitutional provisions. On criminal law, Justice Martin believes the Court is conservative, reflecting the social desires of the people who live in North Carolina.

The Court is a living entity. In its next 175 years it will continue to grow and change, although—if the past is any guide—perhaps more slowly than the times in which it operates.<sup>31</sup>

## FOOTNOTES

<sup>1</sup> Walter Clark, "History of the Supreme Court of North Carolina," reprinted from the *North Carolina Booklet*, Uzzell & Co., Raleigh, 1919.

<sup>2</sup> *Klopper v. North Carolina*, 386 U.S. 213, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967). Peter Klopper, a zoology professor at Duke University, was charged with criminal trespass during a sit-in at a Chapel Hill restaurant. The Orange County District Attorney placed the case on an inactive docket but could have it reinstated by a judge at any time. Klopper claimed the district attorney's practice violated his right to a speedy trial. The North Carolina Supreme Court held that the practice did not violate any rights. The U.S. Supreme Court disagreed, noting that the North Carolina court's position had been rejected by every other state court in the nation that had addressed the question, and concluded that "the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial which we hold is guaranteed to him by the Sixth Amendment of the United States."

<sup>3</sup> The female justices were Susie Sharp, appointed in 1962; Rhoda Billings, appointed in 1985; and current Justice Sarah Parker, who in 1992 became the first woman elected to the state's highest court without being appointed first. Justice Henry Frye, appointed by Gov. James B. Hunt Jr. in 1983, is the sole African American to have served on the state's highest court.

<sup>4</sup> Robert E. Williams, "High Court Gives Impression of Permanence," *The News & Observer*, Raleigh, N.C., April 26, 1942, p. C1; Walter Clark, *History of the Supreme Court of North Carolina*, 177 N.C. 617, 631-32 (1919). Chief Justice Clark does not mention political party affiliation in his history of the court's first 100 years. He does, however, reveal that most of the justices during that time—23—were Episcopalians. The remaining justices included three Roman Catholics, two Baptists, four Methodists, seven Presbyterians, and one Freethinker. *Id.* at 634. For a more recent discussion of the demographics of the state's judiciary as a whole, see Katherine White, et al., "The Demographics of the Judiciary: No Longer a Bastion of White Male Democrats," *North Carolina Insight*, Vol. 12, No. 4 (September 1990), pp. 39-48.

<sup>5</sup> At approximately 11:50 a.m. each day, the chief justice or a justice whose hunger pangs require immediate attention picks up the telephone and buzzes each justice in his or her chambers. The group then proceeds en masse down the capital's pedestrian mall as they discuss which of their regular spots they will choose for that particular day. Two favorites are the Hudson Belk cafeteria (now closed) and a Greek-American eatery called the Mecca that is at least a third as old as the court itself.

<sup>6</sup> See Williams, footnote 4 above.

<sup>7</sup> The justices sitting during the Court's 175th anniversary were Chief Justice James Exum Jr., who retired at the end of 1994; and Justices Louis Meyer, Burley Mitchell, Henry Frye; John Webb; Willis Whichard; and Sarah Parker.

<sup>8</sup> As cited in Joseph Neff, "Justices loosen up, toss a birthday party," *The News & Observer*, Raleigh, N.C., Jan. 7, 1994, pp. 1A & 3A.

<sup>9</sup> Only a hiatus granted by the U.S. Supreme Court has interrupted the state Supreme Court's near-constant deliberations over the death penalty. The U.S. Supreme Court held in 1972 that the Georgia death penalty statute was unconstitutional. Legislatures nationwide then redrafted their laws. In North Carolina, it took two attempts to enact a law that met constitutional standards, the current ver-

sion being adopted in 1977. (*Furman v. Georgia*, 1972, *Woodson v. North Carolina*, 1976.)

<sup>10</sup> 176 N.C. 791 (1918).

<sup>11</sup> M. Lancaster, Raleigh, *An Unorthodox History of North Carolina's Capitol*, Down Home Press, 1992, p. 39.

<sup>12</sup> *State v. Norris*, 2 N.C. 430 (1789).

<sup>13</sup> 257 N.C. 281 (1962). The case was cited favorably by Justice Brennan in *New York Times v. Sullivan*, 376 U.S. 272, 280 (1964).

<sup>14</sup> False light invasion of privacy is a civil claim for damages arising from the publication of false information about a person. The information usually is not defamatory, but it makes the person look like something he's not. Thus, he is put in a false light.

<sup>15</sup> *Renwick v. News and Observer Publishing Co.*, 310 N.C. 312, 312 S.E.2d 405 (1984), cert. denied, 469 U.S. 858 (1984).

<sup>16</sup> *Hall v. Post*, 323 N.C. 259 (1988).

<sup>17</sup> *State v. Mann*, 13 N.C. (2 Dev.) 263 (1829). See also Joseph Neff, "In the court of history, law review comes out a winner," *The News & Observer*, Raleigh, N.C., Jan. 9, 1994, p. 1C.

<sup>18</sup> Lancaster, *supra*, p. 140-141. 204 N.C. 818, 824-825 (1933). Daniels was quick to point out that Justice Avery's Klan was far different from the KKK of the 1930s, which Daniels described as "spurious." The earlier version, he claimed, operated "for the protection of womanhood."

<sup>19</sup> With the conservative trend on the U.S. Supreme Court that began with former Chief Justice Warren Burger's term in 1969, the N.C. high court has begun using the *state* constitution to advance human rights issues. For more on this topic, see Katherine White, "North Carolina's Constitution Comes of Age," *North Carolina Insight*, Vol. 10, Nos. 2-3 (March 1988), pp. 118-120.

<sup>20</sup> *State v. Clyburn*, 247 N.C. 455 (1958).

<sup>21</sup> *Weather v. Burdens*, 124 N.C. 610, 617 (1899).

<sup>22</sup> Martin, *supra*, p. 4, citing *Grant v. Graham Cherokee Bottling Co.*, 176 N.C. 256 (1918).

<sup>23</sup> *Crowell v. Crowell*, 180 N.C. 516 (1920), cited by Justice Martin in *A Historical Review of the Supreme Court of North Carolina, 1919-1994* (1994).

<sup>24</sup> *State v. Goode*, 130 N.C. 651, 654 (1902), described in Lancaster, *supra*, p. 27. The creditor was bent on repossessing a bed which Goode's husband was buying on time. Justice Clark wrote that he "laid his profane hands on the paraphernalia of her bed and began to throw back the bed covers and to lift the mattress, all of which would speedily have gone, of course, upon the floor."

<sup>25</sup> Rich Leonard, "Two Years in the Life of the Supreme Court of North Carolina," 1975, not published, Supreme Court Library Archives. See also Samuel Ashe, *Biographical History of North Carolina*, Volume II, VanNoppen Publishing, Greensboro, 1905, pp. 99-107, and Kemp P. Battle, *Address on the History of the Supreme Court*, Edwards & Broughton, Raleigh, 1889.

<sup>26</sup> Clark, *Ibid.*, 177 N.C. 617, 619 (1919). His marital status is discussed in M. Lancaster, Raleigh, *An Unorthodox History of North Carolina's Capitol*, Down Home Press, 1992, p. 235.

<sup>27</sup> *In the matter of William Hughes*, 61 N.C. 65, 73 (1867).

<sup>28</sup> *State v. Linkshaw*, 69 N.C. 215, 216 (1873).

<sup>29</sup> *State v. Neal*, 120 N.C. 613 (1897).

<sup>30</sup> *Woodson v. Rowland*, 329 N.C. 330, 407 S.E. 2d 222 (1991). In this case, the court allowed workers to bring civil claims against their employers for injury caused by reck-

less and wanton acts of their employers. For more on the case, see Katherine White, "Work Place Injury Claims: Beyond Workers' Comp," *North Carolina Insight*, Vol. 14, No. 1 (May 1992), pp. 102-105.

<sup>31</sup>The Futures Commission for Justice and the Courts, a public-private panel, has been appointed to conduct a two-year study of what the structure of the state court system

should be for North Carolina. An initiative of the Z. Smith Reynolds Foundation, the study was motivated by a perception of loss of public confidence in the criminal justice system. It remains to be seen what the impact of this study will be for the state Supreme Court. For more, see The Associated Press, "Study of State Courts Planned," *The News & Observer*, Raleigh, N.C., Jan. 25, 1994, p. 3A.

# The Debate over Merit Selection of Judges

BY JACK BETTS

**North Carolina Constitution, Article IV, Section 16. Terms of office and election.** 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.

*For decades, politicians, lawyers, political scientists, and citizens 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, 20 states use some variation of merit selection and sixteen of those states use a form of merit selection known as the “Missouri Plan” 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. North Carolina’s judges currently are selected by partisan elections.*

**V**oters in the 1974 Republican primary for Supreme Court Chief Justice had an intriguing choice of candidates from which to choose. The two candidates’ backgrounds presented a razor-sharp contrast: District Court Judge Elreta Alexander of Greensboro, an African-American

woman and trial judge with years of courtroom experience; and James Newcombe, a fire extinguisher salesman from Laurinburg who not only had no judicial experience, but also lacked a law degree.

Guess who won? That’s right—Newcombe, who took 59 percent of the vote in the primary.

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*This article is based on a series of articles, including pro/con arguments, that were previously published in North Carolina Insight and the second edition of North Carolina Focus: Jack Betts, “The Merit Selection Debate—Still Waiting in the Legislative Wings,” North Carolina Insight, Vol. 9, No. 4, June 1987, pp. 15-21; H. Parks Helms, “Merit Selection: The Case For Judicial Election Reform,” North Carolina Insight, Vol. 9, No. 4, June 1987, pp. 22-27; Joel Rosch and Eva R. Rubin, “Merit Selection: The Case Against Judicial Election Reform,” North Carolina Insight, Vol. 9, No. 4, June 1987, pp. 28-34.*

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.<sup>1</sup>

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 state 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 (1) 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; (2) authorizing appointment of a qualified candidate, and sometimes requiring confirmation by a legislative body; and (3) usually requiring the judge to stand for a "retention" vote after a certain period in office. Voters, in a retention election, are asked only whether a judge should be kept 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

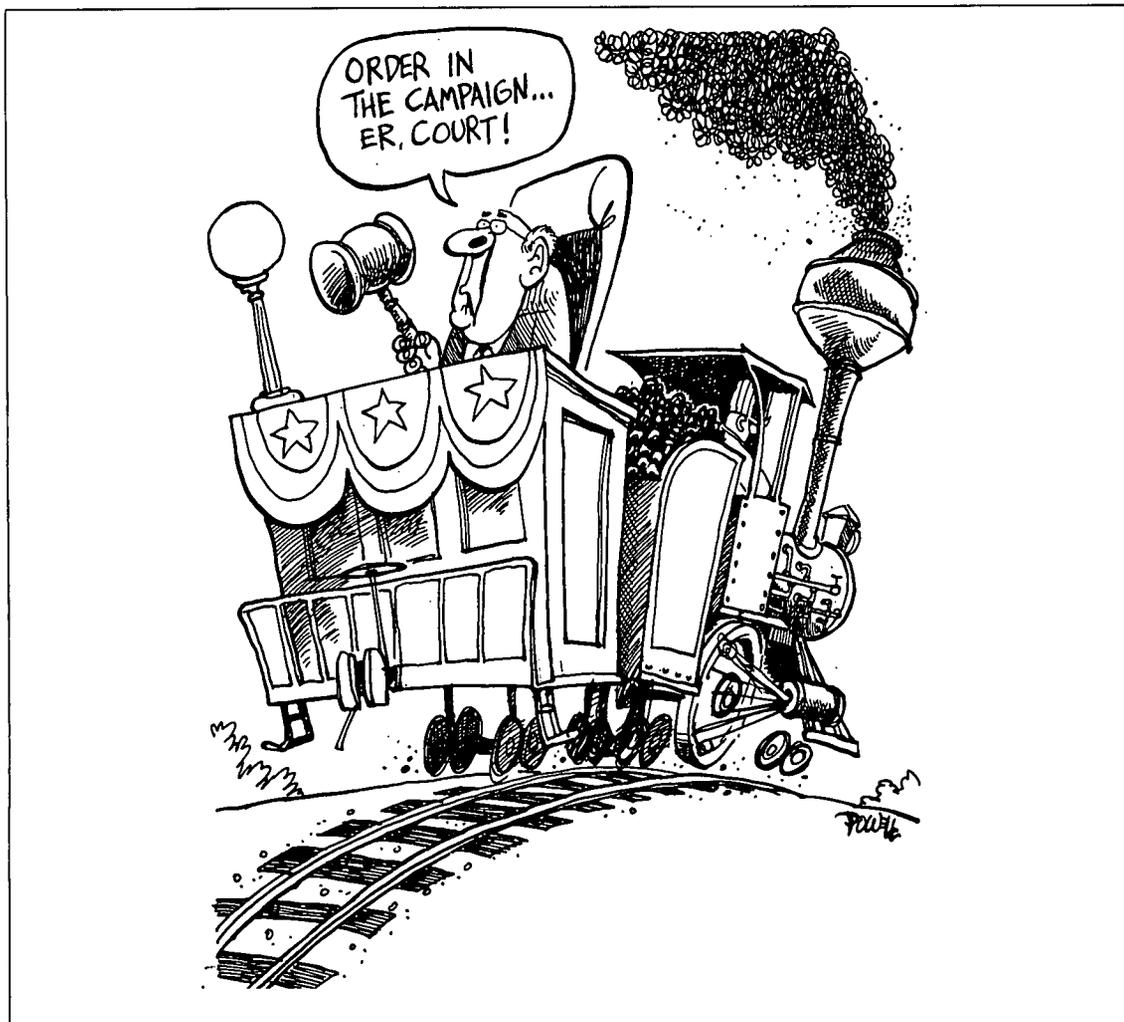
the nominating and appointment process begins anew. Scores of variations and combinations of certain elements of these plans and of other methods—such as non-partisan statewide elections—have been debated and sometimes adopted by various states. Some use merit selection only for trial judges; others for appellate judges only.

*Why adopt such a change?* The arguments for merit selection generally include that (1) the present, partisan system of election discourages qualified lawyers from running for judgeships; (2) the cost of running for office is too high; (3) politicking requires candidates to seek funds from lawyers who may subsequently have cases before that judge; (4) voters already are faced with an unusually long statewide ballot; (5) voters often lack information about candidates, and without the time or resources to become familiar with them, they are unable to make good choices; and (6) merit selection has worked well in some other states.

*Why resist such a change?* The arguments against merit selection generally include that (1) the system yanks power from its proper place—with the people—and deposits it in the hands of a select few; (2) North Carolina has had a good judiciary under the current system; (3) merit selection does not eliminate politicking, it just alters the way judicial candidates must run for office; and (4) merit selection has not worked well in some other states.

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.<sup>2</sup> 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 a merit selection process which was first adopted by the state of Missouri in 1940 and thus is commonly referred to as the Missouri Plan. Generally, there are now five systems used by the states for the regular selection of judges: partisan election (12 states), nonpartisan election (17 states), gubernatorial appointment (7 states), legislative election (3 states), and some form of merit selection (20 states) (see Table 1).

North Carolina has been toying with the



notion of merit selection for more than 20 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. (and later Gov.) Jim Hunt and of then-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.<sup>3</sup> 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 court judges. "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 worthy of 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."

North Carolina's Constitution requires that judgeships be filled by elections, except when vacancies occur between elections. Justices of the Supreme Court and Judges of the Court of Appeals run on the statewide ballot, while District and Superior Court Judges run within their judicial district.<sup>4</sup> North Carolina has 296

**Table 1. State Systems for the Regular Selection of State Judges**

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan	Other Merit Selection
AL	X					
AK					X	
AZ					X	
AR	X					
CA		X	X			
CO					X	
CT						X
DE			X			
FL		X			X	
GA		X				
HI						X
ID		X				
IL	X					
IN	X				X	
IA					X	
KS					X	
KY		X				
LA		X				
ME			X			
MD					X	
MA						X
MI		X				
MN		X				
MS	X					
MO	X				X	
MT		X				
NE					X	
NV		X				
NH			X			
NJ			X			
NM					X	
NY	X		X			
NC	X					

**Table 1. continued**

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan	Other Merit Selection
ND		X				
OH		X				
OK		X			X	
OR		X				
PA	X					
RI			X	X		
SC				X		
SD		X			X	
TN	X				X	
TX	X					
UT					X	
VT						X
VA				X		
WA		X				
WV	X					
WI		X				
WY					X	
<b>TOTALS</b>	<b>12</b>	<b>17</b>	<b>7</b>	<b>3</b>	<b>16</b>	<b>4</b>

NOTES: The Missouri Plan is the term used for merit selection that involves (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.

Many states have different judicial selection plans for different groups of judges, so states may appear in more than one category on this chart. States are classified according to the system they use for the regular selection of judges, rather than for the filling of vacancies or for the staffing of minor trial courts.

Source: *The Book of the States 1994-95*, The Council of State Governments, Lexington, KY, Table 4.4: "Selection and Retention of Judges," pp. 190-92.

regular 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 are appointed by the Governor to four-year-terms and who do not stand for re-election), 90 regu-

lar Superior Court judges, and 187 District Court judges. District Court judges serve four-year terms; all others serve eight-year terms.<sup>5</sup> That means lots of elections.

But the fact of the matter is that many judgeships are *not* filled by election. Vacancies routinely occur because of resignations, retire-

**Table 2. Removal and Censure Actions Against North Carolina Judges by the North Carolina Supreme Court Since 1973**

**Judges Removed from the Bench**

1. District Court Judge Linwood Peoples of Henderson resigned his seat in 1977 after he was accused by the Judicial Standards Commission of accepting money from defendants to settle traffic cases out of court. The Commission recommended to the Supreme Court that Peoples be removed from office. In 1978, Peoples ran for Superior Court and won a seat, but the Supreme Court refused to seat him, ruling that his misconduct in office made him ineligible to retain his seat.
2. District Court Judge William Martin of Hickory was removed from the bench by the 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 Supreme Court reduced that recommendation to a public censure of Judge Martin.
3. Superior Court Judge Charles Kivett of Greensboro was accused by N.C. Department of Justice prosecutors in 1982 of sexual misconduct in office and of giving light sentences to certain defendants at the request of a friend. The Judicial Standards Commission recommended that Kivett be removed, and the Supreme Court removed him from office in 1983.
4. District Court Judge Wilton Hunt of Whiteville was accused by the Judicial Standards Commission of accepting bribes in an undercover operation conducted by law enforcement authorities. The Supreme Court removed Hunt from the bench in 1983.
5. Superior Court Judge Terry Sherrill of Charlotte was removed from the bench by the Supreme Court in 1991 for conduct that constituted willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In 1990, Sherrill had been placed in the Deferred Prosecution Program for offenses arising out of his arrest on March 10, 1990 for misdemeanor possession of marijuana and drug paraphernalia and felony possession of cocaine.

**Judges Censured**

1. District Court Judge E.E. Crutchfield of Albemarle, 1975, for *ex parte* disposition of several court cases.
2. District Court Judge Joseph P. Edens of Hickory, 1976, for *ex parte* disposition of a case.
3. District Court Judge George Stuhl of Fayetteville, 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, 1977, for *ex parte* disposition of a case.
5. District Court Judge Herbert Hardy of Goldsboro, 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, 1985, for making a campaign contribution to a candidate in another race, contrary to a judicial canon proscribing such political activity.
7. Superior Court Judge Kenneth Griffin of Charlotte, 1987, for making an inappropriate courtroom comment and for making a derogatory gesture in court.
8. District Court Judge Lacy Hair of Fayetteville, 1989, for improper conduct which prejudiced the administration of justice which brought the office into disrepute.
9. District Court Judge George Greene of Raleigh, 1991, for conduct prejudicial to the administration of justice which brings the judicial office into disrepute. While presiding over a prosecution for assault on a female, the judge told the victim she would ruin her children's lives if she did not reconcile with the defendant. He also referred to a battered women's assistance group as a one-sided, man-hating bunch of females and pack of she-dogs. He also polled the courtroom spectators to see how many of them had little spats during their marriages. While presiding over speeding trials, the judge routinely admitted that he drove 52 m.p.h. in 45 m.p.h. zones and 65 m.p.h. in 55 m.p.h. zones. He counseled defendants to restrict

their speeding violations to those limits to avoid apprehension and conviction.

10. District Court Judge Stafford Bullock of Raleigh, 1991, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge ordered the detention of an attorney who declined to give a reason for his motion to withdraw as counsel in a criminal case, and the judge informed the attorney in open court that in the future, he would not accept recommendations from him, would not grant him continuances, would not appoint him to represent indigent defendants, and would require his clients to plead guilty or not guilty as charged.
11. District Court Judge Allen Harrell of Wilson, 1992, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge involved himself in a criminal child abuse case in the district in which he was sitting.
12. District Court Judge James E. Martin of Greenville, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge convicted defendants for reckless driving when they were charged with impaired driving, an action he knew was improper and *ultra vires*.<sup>2</sup>
13. District Court Judge Marilyn Bissell of Charlotte, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge barred an attorney, who had initiated a preliminary investigation of the judge with the Judicial Standards Commission, from a session of juvenile court over which she was presiding. The proper course of action was for the judge to recuse<sup>3</sup> herself.
14. District Court Judge John S. Hair, Jr. of Fayetteville, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge made comments which could reasonably be interpreted as threats of professional reprisal against members of the district attorney's office and attorneys practicing in district court for what the judge perceived to be disloyalty and a betrayal of him in his divorce case.
15. Superior Court Judge Preston Cornelius of Mooresville, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge gave legal advice to an individual with regard to her

discharge from employment with Iredell Co. Department of Social Services and he undertook in his official capacity to intervene on her behalf.

16. District Court Judge Jerry Leonard of Raleigh, 1995, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge was censured for (1) his behavior while publicly intoxicated in Key West, Fl., which resulted in his arrest and a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) his behavior while publicly intoxicated in Raleigh, N.C., which resulted in his conviction of the criminal offense of indecent exposure; and (3) his refusal to abstain from the consumption of alcohol.
17. District Court Judge James E. Martin of Greenville, 1995, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge initiated a series of *ex parte* communications with law enforcement and court personnel concerning the son of a friend who had been taken into custody for felonious breaking and entering. The judge also initiated *ex parte* communications with a law officer concerning an automobile accident which resulted in charges being filed against the driver of a car in which the daughter of a friend was a passenger. He told the officer his opinion was that the matter was civil, not criminal, and that if the case came before him in court, he would so declare it, and he suggested to the officer that he reconsider his assessment of fault. Previously censured in 1993.
18. Superior Court Judge George Greene of Raleigh, 1995, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute for comments made during the trial of two separate cases over which he presided. Previously censured in 1991.

#### FOOTNOTES

<sup>1</sup> *Ex parte* means on behalf of one party in a lawsuit.

<sup>2</sup> *Ultra vires* means beyond or exceeding the legal authority.

<sup>3</sup> Recuse means a judge disqualifies herself from hearing a lawsuit because of self-interest, bias, or prejudice.

**Table 3. How North Carolina Judges Reach the Bench:  
Appointment vs. Election, 1995**

Court	Total # of Judges	# Appointed	% Appointed	# Elected	% Elected
Supreme Court	7	3	43%	4	57%
Court of Appeals	12	3	25%	9	75%
Superior Court	90	48	53%	42	47%
District Court	187	100	53%	87	47%
<b>TOTALS</b>	<b>296</b>	<b>154</b>	<b>52%</b>	<b>142</b>	<b>48%</b>

**African American/Native American Judges**

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	1	0	1	14%
Court of Appeals	1	1	2	17%
Superior Court	5	9	14	16%
District Court	11	7	18	10%
<b>TOTAL</b>	<b>18</b>	<b>17</b>	<b>35</b>	<b>12%</b>
<b>SUMMARY</b> 35 African American/Native American Judges = 12% of the Judiciary				

**Female Judges**

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	1	0	1	14%
Court of Appeals	1	0	1	8%
Superior Court	1	5	6	7%
District Court	13	20	33	18%
<b>TOTAL</b>	<b>16</b>	<b>25</b>	<b>41</b>	<b>14%</b>
<b>SUMMARY</b> 41 Female Judges = 14% of the Judiciary				

**Republican Judges**

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	0	2	2	29%
Court of Appeals	0	2	2	17%
Superior Court	0	5	5	6%
District Court	12	23	35	19%
<b>TOTAL</b>	<b>12</b>	<b>32</b>	<b>44</b>	<b>15%</b>
<b>SUMMARY</b> 44 Republican Judges = 15% of the Judiciary				

*Source:* Tom Andrews, General Counsel, Administrative Office of the Courts, 1995. The appointment/election statistics are based on the way the judge most recently was seated.

ments, and occasionally death in office. The Governor appoints judges to fill these posts, and confirmation of the legislature is not required. But the judge must stand for election for the position in the next regularly scheduled general election. Thus, despite North Carolina's electoral system, most of our judges are initially appointed to the bench. For instance, of the seven Supreme Court justices, three reached the court by appointment; of the 12 judges on the Court of Appeals, three reached the court by appointment; of 90 regular Superior Court judges, 53 percent were appointed; and, of 187 District Court judges, 53 percent were appointed. Overall, 52 percent of North Carolina judges first won their seats by appointment, not by election (see Table 3).

Of the 35 members of the judiciary who are African American or Native American, 18 were appointed and 17 were elected. Of the 41 female judges, 16 were appointed and 25 were elected. And, of the 44 judges who are Republicans, 12 were appointed and 32 were elected. Thus, only in theory has North Carolina had a partisan system of judicial selection and retention. In fact, because of the Governor's appointment power, the system has worked quite differently. "As a result, for many years in North Carolina a system supposedly giving voters complete control over judicial selection has given them almost no control,"<sup>6</sup> notes a *Wake Forest Law Review* comment.

In addition to the Governor's de facto control over the seating of judges, proponents of merit selection could cite a rise in judicial misconduct. North Carolina's judges occasionally run afoul of the law themselves, and some have been defrocked or censured by the state Supreme Court, which has final authority in disciplinary actions. 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. Between 1975 and 1995, five N.C. judges have been removed from the bench, and 18 have been censured. By and large, it's the District Court judges that seem to get in the most trouble: three of the five judges removed from the bench were District Court judges; and, 14 of the 18 censured judges were seated in the District Court (see Table 2).

In the 1995 General Assembly, a push to end partisan judicial election for judges on the Court of Appeals and justices on the Supreme

Court failed again. "The 1994 elections saw record amounts of money spent in Supreme Court and Court of Appeals races," writes Joseph Neff in *The News and Observer*.<sup>7</sup> "In the Supreme Court race won by Bob Orr, a Republican, candidates spent almost \$500,000. In the Court of Appeals race won by Mark Martin, a Republican, candidates spent more than \$300,000." Neff continues, "The bulk of campaign contributions in North Carolina come from trial lawyers who argue before the court, and from businesses that often appear before the court as defendants." Senator Fountain Odom (D-Mecklenburg), a sponsor of a judicial reform bill, noted that such contributions tend to corrupt the image of an impartial judiciary.

North Carolina Chief Justice of the Supreme Court Burley Mitchell, Jr. endorses reform of the judicial selection system. In an address to the 1995 General Assembly, he noted that 1) strongly contested partisan elections have led to more expensive and time consuming races; 2) the Supreme Court was required to cancel court in November and December of 1994 after two justices were defeated, the third such cancellation in the past ten years resulting from partisan sweeps; and 3) and all the judges in the state adopted a 1994 resolution endorsing an appointive system for judges.<sup>8</sup>

**Table 4.**  
**Salaries of N.C. Judges, 1995**

Chief Justice of the Supreme Court	\$98,576
Associate Justices of the Supreme Court	\$96,000
Chief Judge of the Court of Appeals	\$93,600
Judges of the Court of Appeals	\$92,000
Senior Resident Superior Court Judges	\$89,500
Superior Court Judges	\$87,000
Chief District Court Judges	\$79,000
District Court Judges	\$76,500

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**Table 5. Arguments For and Against Merit Selection**

**For Merit Selection:**

It takes politics out of the judicial selection process.

Judges will be selected on a meritorious basis.

Merit selection will attract qualified candidates who do not now seek election to judicial office.

Merit selection will prohibit judicial candidates from having to seek campaign funds from lawyers who later must appear before those judges.

Merit selection will produce a more independent judiciary without ties to party, politicians, or lawyers who appear before judges.

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.

Merit selection will eliminate bitter political campaigns.

Merit selection will shorten North Carolina's long ballot and relieve voters of the burden of having to vote for judges they do not know.

Merit selection will produce better judges in North Carolina, where some judges have been removed or censured for misconduct in office.

**Against Merit Selection:**

Shifts politics from elections decisions by voters to political decisions by nominating committee in the appointment process.

Judges still will be selected on the basis of political alliances with those in power.

Merit selection does not produce more qualified judges than the electoral process does.

Judicial candidates will still have to drum up pledges of support from judicial nominating committee members.

Few problems stem from judicial ties to political parties, and merit selection cannot eradicate party alliances or beliefs.

As North Carolina increasingly becomes a two-party state, more contested judicial elections will mean that more information is available to voters.

Such campaigns can still exist because voter groups can oppose a judge who is up for a retention vote under a merit selection system.

Merit selection would remove choice of judges from the electorate, where it belongs, and place that choice in the hands of the select few.

Judges in North Carolina are already good ones, and merit selection in other states has not produced better judges.

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Despite strong support, the 1995 judicial reform bill died in the House after it passed the Senate. The vote was 62-43 in favor of merit selection, but supporters of the bill, which included the leadership of the House, needed approval by three-fifths of the members of the House—72 votes—since the bill involved an amendment to the Constitution. The bill pro-

posed gubernatorial nomination of judges, legislative confirmation, and retention elections for judges on the Court of Appeals and justices on the Supreme Court.

Why was the bill voted down? "Some oppose taking away votes from the people. Others think the system would act like a close cousin to the federal system, where judges are

appointed for life. And some fear that confirmation hearings would become political," noted a column in *The News and Observer* of Raleigh.<sup>9</sup> A dismayed Chief Justice Mitchell responded, "It will be well into the next century before we get an opportunity to get hard partisan politics out of the judiciary."<sup>10</sup>

#### DISCUSSION QUESTIONS:

- 1) Should North Carolina switch from its current elective system to a merit selection system or would the state be wiser to retain its current system?
- 2) What kind of information about local judges was available in your home county in the last judicial election?

#### FOOTNOTES

<sup>1</sup> N.C. Constitution, Article IV, Section 22, first passed by the legislature as Chapter 638 of the 1979 Session Laws, and then approved by the voters on November 4, 1980.

<sup>2</sup> Keith Goehring, "Judicial Selection Procedures," memorandum prepared for the National Center for State Courts, Williamsburg, Va., June 28, 1985, p. 2.

<sup>3</sup> Correspondence from Chief Justice Susie Sharp to the Hon. Parks Helms, March 9, 1977, p. 2.

<sup>4</sup> Until the November 1994 election, Superior Court judges were elected statewide. Candidates were nominated within their own judicial districts, but they appeared on the statewide ballot. As a consequence, voters in other areas of the state often did not know who the candidates were or how to choose among those running for a judicial seat. Republicans argued that the system worked to keep both Republicans and African Americans off the bench, because the measure diluted their voting strength and assured that Democratic candidates would always win because the voter registration ratio favored Democrats. The Republican Party sued the state in an effort to force the election of Superior

Court judges by judicial district. Interestingly, the North Carolina Constitution allows the General Assembly to approve elections of Superior Court judges within their own districts. However, to date, such legislation has not passed, with the courts providing the only relief for Republicans.

<sup>5</sup> Joan G. Brannon, *The Judicial System in North Carolina*, Institute of Government, Chapel Hill, N.C., 1994, pp. 3-8.

<sup>6</sup> John J. Korzen, "Changing North Carolina's Method of Judicial Selection," *Wake Forest Law Review*, Vol. 25, 1990, p. 265.

<sup>7</sup> Joseph Neff, "Change in selection of judges advances," *The News and Observer*, June 14, 1995, p. A3. The judicial reform bill is Senate Bill 971, introduced in the 1995 session of the General Assembly.

<sup>8</sup> Burley Mitchell, "Picking Judges," *The Charlotte Observer*, March 22, 1995, p. 12A.

<sup>9</sup> "Judicial bill may get benched," *The News and Observer*, Raleigh, NC, July 26, 1995, p. A3.

<sup>10</sup> *Ibid.*

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## ***Recent History of the Merit Selection Debate in the North Carolina General Assembly***

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- 1971 The North Carolina Courts Commission recommended replacing the partisan election method of selecting judges with a nonpartisan merit selection system.<sup>1</sup> The recommendation was never reported out of legislative committees.
- 1973 The recommendation was introduced as a constitutional amendment (SB 72, HB 76) and an implementing statute (SB 120, HB 145). The House Committee on Courts and Judicial Districts gave HB 76 a favorable report, but the bill was withdrawn before floor debate by its sponsors, who sensed that they lacked the 3/5 majority (72 votes) required for passage of a bill submitting a constitutional amendment to the voters.
- 1974 HB 76 was reported favorably by the same committee. Sponsors of the bill amended it on the floor of the House to remove district court judges from the merit selection plan. As amended, the bill passed second reading by two votes. However, the next day, the bill failed third reading by six votes.
- 1975 Backed by the North Carolina State Bar and most of the state's trial judges, merit selection bills were introduced (SB 145, HB 212). Hearings on HB 212 before the House Committee on Courts and Judicial Districts resulted in tie votes, and the sponsor requested that the bill not be considered further. SB 145 was reported without prejudice and without debate, and postponed indefinitely on the floor of the Senate.
- 1977 Pushed by the North Carolina State Bar, merit selection bills were again introduced. The House bill reached the floor, but fell short of the 3/5 majority needed for a constitutional amendment. Those opposed to the bill claimed that merit selection is a departure from the principles of Jacksonian democracy and that the composition of the committee that would have nominated the judges was insufficiently representative.
- 1979 A merit selection plan with implementing legislation (HB 1163, HB 1164) was introduced in the House, but died in committee. Even though Governor Hunt supported the plan, "an informal survey of House members indicated there were not enough favorable votes to justify committee hearings and a floor fight."
- 1985 In Governor James G. Martin's State of the State Address, he called for merit selection of judges in North Carolina. The Courts Commission and the Governor's Crime Commission also supported SB 676 and SB 677, which would have submitted a constitutional amendment to the voters on the issue of judicial appointment. The bills never emerged from committee.

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### *Recent History of the Merit Selection Debate, continued*

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- 1987 No proposal for merit selection was introduced. A 20-member Judicial Selection Study Commission was established to recommend changes and improvements in the method of selecting judges in North Carolina. The Chief Justice, Governor, Lieutenant Governor, Speaker of the House, and Attorney General each appointed four members of the Commission.
- 1989 SB 218, approved by the Senate with a vote of 30 to 16, called for the initial appointment by the governor of all justices of the N.C. Supreme Court and judges of the N.C. Court of Appeals, subject to confirmation by the General Assembly. The bill was sent to the Rules Committee of the House for consideration in 1990.
- 1990 SB 218 died in the House.
- 1991 Merit selection was introduced in two similar bills (HB 102, SB 71). HB 102 died in House committee. SB 71 passed the Senate and was sent to the House Committee on Courts, Justice, Constitutional Amendments and Referenda for consideration in 1992. Judges of superior and district courts would continue to be elected.
- 1992 SB 71 died in the House.
- 1993 No merit selection bills introduced.
- 1995 Before the 1995 session, for the first time, the state's trial and appellate judges had a conference in Raleigh. A resolution recommending judicial appointment was almost unanimously adopted. Six different bills introduced in the 1995 session would have changed judicial selection in North Carolina. SB 971 became the primary vehicle for changing the state's elective system to an appointive one. Trial judges were removed from SB 971's coverage early in deliberations. The bill passed the Senate with bipartisan support. However, SB 971 failed second reading in the House 62-43 because it lacked Democratic support. "The House's failure to confirm Governor Hunt's appointment of Kathy Taft (the wife of a former Democratic state senator) to a seat on the State Board of Education played a key role in the demise of judicial appointment. House Republicans had voted as a bloc to defeat Taft's nomination, and Democratic opponents of judicial appointment said that vote was an example of how partisan politics might play out if judicial candidates had to be confirmed by the General Assembly."

#### FOOTNOTE

- <sup>1</sup> "A Recommended Nonpartisan Merit Selection Plan for North Carolina," *Report of the Courts Commission to the North Carolina General Assembly*, 1971, pp. 11-15.

*Source:* This was compiled using the Institute of Government's legislative summaries, *North Carolina Legislation 1974 through 1995*. See the sections on "Constitutional Amendments" and "Courts and Civil Procedure."



# 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.<sup>1</sup>

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 feared, 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. "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 in July 1985 by Democratic Lt. Gov. Robert Jordan and

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House Speaker Liston Ramsey (D-Madison), sought the justices' opinion on whether two sections of the new Administrative Procedure Act (APA) met state constitutional requirements.<sup>2</sup> The new APA established an independent 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.<sup>3</sup> By establishing this doctrine requiring a "case or 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.

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## ***Advisory Opinions by the N.C. Supreme Court***

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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

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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,"<sup>4</sup> 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."<sup>5</sup>

#### FOOTNOTES

<sup>1</sup> N.C. Constitution, Article 4, Section 13(1).

<sup>2</sup> See *Assessing the Administrative Procedure Act*, N.C. Center for Public Policy Research, May 1985.

<sup>3</sup> Warren, *The Supreme Court in United States History*, pp. 108-111 (1922).

<sup>4</sup> Felix Frankfurter, Note on Advisory Opinions, 37 *Harvard Law Review* 1002, at 1008 (1924).

<sup>5</sup> Preston Edsall, "The Advisory Opinion in North Carolina," 27 *N.C. Law Review* 297 (1949).

# The Judging Business:

## Does the Court of Appeals Follow Precedent?

BY KATHERINE WHITE

*The state Supreme Court is insisting that panels on the state Court of Appeals be consistent—and stop trying to overrule what previous panels have held. This article examines the decision-making process in the judicial branch of state government.*

In May 1989, the North Carolina Supreme Court lay down the law to the North Carolina Court of Appeals. It directed the court, in no uncertain terms, to change its ways. The North Carolina Court of Appeals, the intermediate appellate court, was instructed to make sure that its three-judge panels don't overturn one another and that it follows the precedents set down by earlier panels.

If that sounds like basic civics, it is. But the fact was that the Court of Appeals had been told on more than one occasion in recent years that it would have to mend its ways. What's the Court of Appeals to do? Its 12 judges sit in panels of three to decide cases appealed from the state's trial courts and directly from quasi-judicial government agencies, such as the N.C. Utilities Commission or the N.C. Department of Insurance. Collectively, the Court of Appeals judges write more than 1,500 opinions a year, ranging from decisions on rapes to robberies, divorces to contract claims, zoning to workers compensation, and banking to welfare.

That's as many as five times the number of decisions the seven-member Supreme Court must make, but the Appeals Court has five more judges to do it. To handle its workload, the Court of Appeals hears cases in panels of three judges—in effect in four different Courts of Appeals—rather than *en banc* like the Supremes. The Supreme Court—which never sits in panels—reviews the work of the Court of Appeals and is the final arbiter of what the law is in North Carolina. It decides up to 700 petitions for review each year, and hands down from 200 to 300 decisions annually.

At times, the Court of Appeals' opinions have reached different results—findings in one case that directly contradict or ignore findings in a similar case. Sometimes it happens on purpose, some appeals judges say privately, when the Court of Appeals wants the Supreme Court to referee an issue it can't decide. And sometimes it happens because one panel of judges is simply unaware of what another panel has written on the same point of law. But the N.C. Supreme Court told the Court of Appeals judges that they have to keep up with what their colleagues write and follow those opin-

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ions—even though they may disagree with them.

The Supreme Court's directive came in what was an eyebrow-raising aside—for judicial writing, anyway—in an important environmental decision having to do with sedimentation control laws.<sup>1</sup> The Supreme Court in that case reversed a decision by the Court of Appeals which had made front-page news across the state and had plunged the state bureaucracy into turmoil.<sup>2</sup> The Court of Appeals decision, written by Judge K. Edward Greene, concluded that state government lacked the authority under the N.C. Constitution to levy fines in administrative cases. To reach that result, Judge Greene did not follow an earlier Court of Appeals decision.<sup>3</sup> Greene's decision—had it been upheld—would have meant an end to penalties for violations of air and water pollution regulations and for others who violated the state's administrative rules. It would have been, in the words of one state official, “a goat roping of cosmic proportions. We would have had to rewrite several hundred laws and God knows how many cases would have been thrown back in our faces.”<sup>4</sup>

But the Supreme Court, in a unanimous decision written by then-Associate Justice Louis B. Meyer, concluded that Judge Greene had erred. The General Assembly could give state agencies the authority to exercise discretion in determining civil penalties, the Supreme Court held. The Supreme Court further noted that Judge Greene had ruled contrary to an earlier decision by another Court of Appeals panel—something the Supreme Court said that Greene's panel could not do. Wrote Meyer, “Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”<sup>5</sup>

Since that eventful decision, the Court of Appeals has made it clear that it has read the opinion, citing it often in their own opinions.<sup>6</sup> In a way, the ruling by the Supreme Court made it simpler. A court panel is able to note that it is bound by another panel's decision and then deliver the appropriate decision. If someone does not like the result, the panel—being bound by the earlier decision—discreetly directs the criticism to the precedent.

But, anytime the Supreme Court gives *public* direction to the Court of Appeals, it means that the Supreme Court cannot conjure up a

more subtle way to convey a strong message. Then-Associate Justice Burley B. Mitchell Jr., now Chief Justice, says that the less-than-gentle prod by the Supreme Court to the Court of Appeals was necessary because some Court of Appeals judges “have just ignored each other” in recent years. In other cases, they have overstepped their bounds, as the late Justice Earl Vaughn wrote in an unusually terse three-paragraph order in 1985 in response to a Court of Appeals decision striking down the state's alienation of affection laws. Vaughn wrote that “the panel of Judges of the Court of Appeals to which this case was assigned has acted under a misapprehension of its authority to overrule decisions of the Supreme Court of North Carolina and its responsibility to follow those decisions, until otherwise ordered by the Supreme Court.”<sup>7</sup>

For most judges, the Supreme Court's edict in the sedimentation case was neither a rhetorical revelation nor a judicial bolt from the blue—but seeing it in print was still a jolt even though judges know they're supposed to follow precedent. “It was just hard to find in black and white until Justice Meyer wrote it down,” says Appeals Judge Sidney S. Eagles Jr. The Court of Appeals judges are somewhat philosophical about the Supreme Court's get-tough language. As one judge blithely put it, “They're not Supreme because they're right; it's just that they're right because they are Supreme.”

Failure to follow precedent is *not* considered a big problem for the Court of Appeals, but it happens just often enough for the Supreme Court to have to dredge the subject up again. But most judges interviewed for this article say that the Court of Appeals' heavy workload makes it difficult to know what other judges are writing. “Most of us try our dead-level best to follow others' opinions,” says Judge S. Gerald Arnold, and inconsistent opinions are rare. Still, he concedes, “It happens more often than we like . . . . This particular situation is becoming more of a problem. We have such a turnover of judges that we have no long collective history. . . . They [the judges] have different philosophies in terms of how to approach cases.”<sup>8</sup>

In addition to the turnover of judges, the increase in the size of the court from nine to 12 judges in 1977 is blamed for the difficulty of judges to keep abreast of all the decisions doled out by the Appeals Court. “At one time I thought I basically knew what was going on

with the other judges,” says Arnold. “Now, I’d say I don’t.”

Adds Judge Robert F. Orr, “If you consider that when things are really rolling, that there is a lot of pressure to get the opinions out, it’s certainly easy to miss a case.”

In a curious twist of fate, Judge Orr—elevated to the Supreme Court in 1995—discovered that the Supreme Court mandate to the Court of Appeals meant that one of his Court of Appeals decisions, filed on December 20, 1994, was withdrawn after the opinion was issued. In 1994, two cases—*In re Appeal of May* and *In re Appeal of Belk*—were appealed to the Court of Appeals, both concerning the tax valuation of anchor tenants in shopping malls. An opinion for *In re Appeal of Belk* was filed on July 18, 1995, signed by Judges Johnson, Cozort, and Greene. The same day, that panel filed a new opinion for the *May* case, relying on its holding in *Belk*, even though they had not heard oral arguments in the *May* case.<sup>9</sup>

“I have never been formally informed by anyone at the Court of Appeals, either prior to the time the case was withdrawn nor since that time, as to the reasons or circumstances surrounding the fact that one of my opinions that was unanimous when filed was withdrawn,” says Justice Orr. “The only way that I found out . . . was when my legal assistant did not find the [proofs] of the opinion. She called and told me it had been withdrawn on Judge Arnold’s order.”

Judge Arnold, now Chief Judge of the Court of Appeals, said the preferred practice would have been to bring all the judges involved in the conflicting opinions together for an informal resolution. That couldn’t happen in this case because Judge Orr had moved on to the Supreme Court, he said.

Several Supreme Court justices who have had earlier experience on the Court of Appeals say that conflicting opinions by the court panels are bound to occur. “Some are inadvertent,” says Mitchell. “There are some where they [the judges] just have a conflict.” Mitchell, a member of the Court of Appeals from 1977–79, says such conflicting opinions “inevitably are going to happen. When I was on the Court [of Appeals], we used to keep a notebook of recent opinions in the library so the last thing you did was check off that nothing had happened in the last week or so by another panel.”

Justices Harry Martin and Willis Whichard, both serving as Associate Judges on the Court of Appeals in 1981, left a clear trail of conflicting opinions. On May 19, 1981, the two judges filed their respective opinions in separate cases on whether the constitutional prohibition of double jeopardy precluded convictions for larceny and possession of stolen goods, both of which stemmed from the same set of facts. Judge Martin allowed both convictions, saying that they had different elements and therefore were separate crimes.<sup>10</sup> Judge Whichard disallowed the two, saying that the prosecutor had relied on the same evidence to prove both the crimes.<sup>11</sup>

In December of the same year, Judge Whichard reiterated his opinion and Judge Vaughn (then also on the Court of Appeals) dissented in the same case, citing Justice Martin’s May 19, 1981 decision. But then, Judge Whichard did too, citing *his* own earlier case—but also Martin’s decision, to show the dichotomy of opinion on the issue.<sup>12</sup> “It was clear we were not two ships passing in the night,” now-Justice Whichard says. The Supreme Court upheld Judge Martin’s conclusion—at least on the double jeopardy point.<sup>13</sup>

Another example was resolved in recent years by the Supreme Court. The issue: does one need a physical injury before he can seek damages for the tort of negligent infliction of emotional distress, a mental injury? According to one panel of the Court of Appeals, which has admitted difficulty with the subject, “mental anguish” *is* a physical injury and is sufficient to allow a claim for negligent infliction of emotional distress.<sup>14</sup> According to another panel, a physical injury is just that—a physical injury and nothing more.<sup>15</sup> The Supreme Court held that negligent infliction of emotional distress is a separate claim that an individual may bring without proving physical injury.<sup>16</sup>

And then there’s another set of cases illustrating further confusion over the law. Judge Orr in March 1988 observed that a section of the workers compensation statute is “a morass of confusion and needs to be intelligibly re-drafted.”<sup>17</sup> Judge Jack Cozort, several months later in another case, declared a subsection of the same part of the statute to be “clear and unambiguous.”<sup>18</sup>

Then-Court of Appeals Chief Judge Robert A. Hedrick says the conflicting decision situation is not a problem for the court. Rather, he

says, it is a personal problem for the judges who chose to disagree with their colleagues' previous decisions. "We have no problem," Judge Hedrick says. "There was no problem in that case [involving the civil penalty for administrative violations]. The problem was that Judge Greene just refused to follow [precedent]. It was his mistake, his personal mistake, and we've talked about that case, but he wouldn't listen."

Hedrick was equally adamant about the alienation of affection decision—originally written by Court of Appeals Judge Clifton Johnson—that was so abruptly vacated by the Supreme Court. "He ignored precedent. That was his personal mistake," says Hedrick. "We have no trouble keeping that [precedent] straight."

Of course, neither Judge Johnson nor Judge Greene believed they were overruling established precedent of either the Court of Appeals or the Supreme Court. Both men thought they had distinguished material differences in the cases—differences that did not amount to either overruling or ignoring precedent—until the Supreme Court declared the Court of Appeals decisions to be in error. In addition, neither Greene nor Johnson was alone in their thinking. In the civil penalty case, Appeals Judge Eugene Phillips voted with Greene, while Judge Charles Becton dissented in a 2-1 decision; in the alienation of affection case, Appeals Judges Hugh Wells and Becton joined Johnson in a unanimous decision.

Whatever the reason for conflicting opinions from the Court of Appeals, Judge Arnold says the court does want to resolve the matter. Other states have resolved the issue—or avoided it—by requiring all reported opinions to be circulated and approved by all judges on the intermediate appellate court. In Maryland, for example, the Court of Special Appeals, with 13 judges, holds conferences at which all opinions to be published must be approved by a majority of the court. Court of Special Appeals Chief Judge Richard P. Gilbert said the 13 judges "take the facts as given by the judges on the panel, but we don't accept their say in the law." The review is independent and designed to keep the court's decisions consistent—to reflect the entire court's position, not just a majority of a three-judge panel.

When the majority of the court disagrees with the majority of the panel responsible for the opinion, the Maryland appeals court will have additional arguments before the entire court and a new opinion will be written for the entire

court. The unpublished opinions are approved by a majority of the three-judge panel which heard the arguments and, as a further check, by the chief judge. And, when Judge Gilbert spots potential problems in proposed unpublished opinions, he sends that draft out to the entire court for its review. "When you let these panels go into business for themselves, you get problems," said Gilbert. "We're not going to have two judges telling the other 11 what to do."

The National Center for State Courts and Public Policy in Williamsburg, Va. does not keep records on how many courts of appeals sit *en banc* to review decisions for consistency, but that practice "is fairly common," says a spokesman, and New York and Michigan have procedures similar to Maryland's.

Unlike its Maryland counterpart, the North Carolina Court of Appeals does not have an established system for internal review of its opinions. The court was set up with the understanding that "the Supreme Court would reconcile the differences," says Judge Eagles, where the Court of Appeals had difficulty. But the Supreme Court's unwillingness to referee the Court of Appeals panels—as outlined most recently in the sedimentation case—points up the clear need for some sort of system to make sure that the court's panels don't contradict one another in the future. In fact, the Supreme Court has mentioned the problems more than once, going back at least six years to a 1983 bank case in which the Supreme Court held that one panel of the Court of Appeals was bound by another. The high court wrote that "once a panel of the Court of Appeals has decided a question in a given case, that decision becomes the law of the case and governs other panels which may thereafter consider the case."<sup>19</sup>

Judge Arnold doesn't want to use the Supreme Court as a referee in his court's disputes but at the same time he believes that Justice Meyer's decision has caused more problems than it has solved. "We should be able to review our own cases," he said, adding that the Supreme Court is able to amend its earlier opinions and that the Court of Appeals should have the same opportunity.

The Supreme Court said that did not mean the Court of Appeals could not change its mind, but if it wanted to do so, it first had to declare the original panel's decision to be in error—and such a decision should be handed down by the

original panel if possible. "Otherwise," lectured the Supreme Court, "a party against whom a decision was made by one panel of the Court of Appeals could simply continue to press a point in that court hoping that some other panel would eventually decide it favorably, as indeed the plaintiff did in this case; and we would not have that 'orderly administration of the law by the courts' ... which litigants have a right to expect."

How can the Court of Appeals ensure that "orderly administration?" Several alternatives suggest themselves:

- The Court could sit *en banc* to review decisions for consistency, which might be the safest way to approach the problem. But several judges who discussed the subject felt the *en banc* approach might only add to the Court's already heavy workload without producing measurable improvements.
- The Court might be expanded from 12 to 15 or more members, reducing the individual caseload somewhat and allowing more time for research for consistency. This alternative may do more to reduce caseload than to prevent conflicting opinions by multiple panels. That is, in providing for more judges, it also creates more opportunities for missing precedent already established by earlier panels. What's more, it might be politically difficult to achieve. The Court of Appeals was last expanded in 1977, and persuading the legislature to increase the number of appeals judges is harder than creating new trial court judgeships.

- The Court might set up a sort of super-panel of four to six judges whose job it would be to keep a sharp judicial eye out for precedent and consistency. This, of course, would add to the workload of the judges involved, but that extra workload could be somewhat alleviated if the Court were also to:
- Add professional staff whose key job it would be to review all panel decisions for consistency and precedent and to work with the super-panel to make sure that all 1,500 Court of Appeals decisions pass the litmus test of consistency before they are published. This latter recommendation, combined with the super-panel, seems to be the most practical alternative and would not add to the entire court's workload. It could be implemented at least on an interim basis with existing staff until the Court could persuade the General Assembly to fund more staff positions.

Panels of the Court of Appeals have disagreed on at least a half-dozen occasions in recent years, and the Supreme Court has told the Court of Appeals at least three times that it would have to follow precedent. The Supreme Court's directives seem clear enough. And no doubt judges of the Court of Appeals understand what the Supreme Court means. But as the sedimentation case showed, clarity and perspicacity aren't enough. Following precedent, for the Court of Appeals, is harder than it sounds.

## FOOTNOTES

<sup>1</sup> *In The Matter of A Civil Penalty*, 324 N.C. 373, 379 S.E.2d 31 (1989).

<sup>2</sup> *In The Matter of A Civil Penalty*, 92 N.C. App. 1, 373 S.E.2d 572 (1988).

<sup>3</sup> *N.C. Private Protective Services Bd. v. Gray, Inc.*, 87 N.C. App. 143, 360 S.E.2d 135 (1987).

<sup>4</sup> "Court made the right ruling," *Winston-Salem Journal*, May 8, 1989, p. 14.

<sup>5</sup> *In The Matter of A Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 31, 37 (1989).

<sup>6</sup> *Rose v. Isenhour Brick & Tile Co.*, 120 N.C. App. 235, 461 S.E.2d 782 (1995) (noting that "a panel of the Court of Appeals is bound by a prior panel."). Argued in N.C. Supreme Court on April 12, 1996.

<sup>7</sup> *Cannon v. Miller*, 71 N.C. App. 460, 322 S.E.2d 780 (1984); vacated by the N.C. Supreme Court, 313 N.C. 324, 327 S.E.2d 888 (1985).

<sup>8</sup> The N.C. Court of Appeals was created by constitutional amendment in 1965 and began with six judges in 1967. The court was increased to nine judges in 1969 and to its current total of 12 in 1977. Since its creation, 30 judges have been members of the court, and 18 have been members since the court was enlarged to 12 in 1977. By contrast, the seven-member N.C. Supreme Court, has also had 18 members since 1977—and seven of the 18 had previously been members of the Court of Appeals. Of the current seven justices on the Supreme Court, five—Associate Justices Burley Mitchell, Willis Whichard, Sarah Parker,

Robert Orr, and John Webb—served on the Court of Appeals prior to joining the high court.

<sup>9</sup> *In re May*, 119 N.C. App. 596, 459 S.E.2d 274 (1995); *In re Belk*, 119 N.C. App. 470, 458 S.E.2d 921 (1995).

<sup>10</sup> *State v. Andrews*, 52 N.C. App. 26, 277 S.E.2d 857 (1981).

<sup>11</sup> *State v. Perry*, 52 N.C. App. 48, 278 S.E.2d 273 (1981).

<sup>12</sup> *State v. Garner*, 55 N.C. App. 192, 284 S.E.2d 733 (1981).

<sup>13</sup> *State v. Perry*, 305 N.C. 225, 287 S.E.2d 872 (1982).

<sup>14</sup> *Johnson v. Ruark Obstetrics*, 89 N.C. App. 154, 365 S.E.2d 909 (1988).

<sup>15</sup> *Edwards v. Advo Systems, Inc.*, 97 N.C. App. 154 (1989) 376 S.E.2d 765 (1989).

<sup>16</sup> *Johnson v. Ruark Obstetrics*, 327 N.C. 283, 395 S.E.2d 85 (1990).

<sup>17</sup> *Williams v. International Paper Co.*, 89 N.C. App. 256, 365 S.E.2d 84 (1988).

<sup>18</sup> *Pollard v. Smith*, 90 N.C. App. 585, 365 S.E.2d 84 (1988).

<sup>19</sup> *N.C.N.B. v. Virginia Carolina Builders*, 307 N.C. 563, 299 S.E.2d 629 (1983).

# 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.*

**A**t 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.

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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

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Charles Becton, a former 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 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**

**T**he 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 law-making. 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.

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*... The most effective restraint on a judge is his or her own sense of integrity and mission. ...*

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# Work Place Injury Claims: Beyond Workers' Compensation

BY KATHERINE WHITE

*This article examines policymaking by the judicial branch of North Carolina state government. It focuses on the case of Woodson v. Rowland, which expanded injured workers' ability to win claims against employers for work place injuries.*

Until the late summer of 1991, families of workers killed or injured on the job because of the reckless acts of their employers knew about what they were worth, dead or alive: \$123,000.<sup>1</sup>

But on Aug. 14, 1991, just 22 days before the Sept. 3, 1991 fire at a Hamlet chicken processing plant that killed 25 workers and injured another 78 workers, the law suddenly changed.

On that day the N.C. Supreme Court, in a landmark decision with broad implications for workers and for businesses, greatly expanded workers' power to file claims beyond the strictures of the state's Workers' Compensation Act.<sup>2</sup> The decision affected the surviving workers and families of the deceased, among others, who are now able to file for greater compensation. Some applaud the decision, while others say the decision went too far and that the legislature should

rescind it since it is based on an interpretation of a statute, not on the state constitution.

Following the lead of a few other state courts, the N.C. Supreme Court not only expanded the rights of some workers who are injured or killed on the job, but also opened the door for multimillion dollar court awards for the injuries.<sup>3</sup> The decision signaled a major policy shift for state standards regarding the way employers should operate. No longer will companies ignore serious OSHA (the Occupational Safety and Health Act) violations and merely pay the fines, because to do so may expose them to massive civil judgments.

Until *Woodson v. Rowland*,<sup>4</sup> no one in North Carolina could recover for claims in civil court for injuries caused by the reckless and wanton acts of their employers. They could sue their employer if the employer or a co-worker intentionally did something to harm the employee, such as hit him in the face or shoot him with a gun.<sup>5</sup> For all other injuries, including those based on intentional, unsafe conditions in the work place, workers could recover

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only by filing a workers' compensation claim where damages are limited to medical expenses and wage replacement benefits tied to salary levels.

Before *Woodson*, the exclusiveness of the workers' compensation provisions and the statutorily mandated compensation had been the law in North Carolina since 1929, when the General Assembly adopted the Workers' Compensation Act.

The workers' compensation law traditionally has required a worker to pursue a claim for injuries under the Workers' Compensation Act and nowhere else. The law attempts to balance competing interests between employers and employees. Injured workers are certain to recover for on-the-job accidents without having their employers raise the defense of contributory negligence where the worker is alleged to contribute through his or her own negligence, or that the employee assumed the risk by knowing of possible harm and doing nothing to notify the employer or mitigate the danger. Employers, on the other hand, gain limits on the amount of money employees can recover and do not have to defend civil actions that could result in larger damage awards.

The exclusivity of the remedy "is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance."<sup>6</sup>

The *Woodson* case involved the death of an employee in a trench cave-in at a Research Triangle construction site. Thomas Sprouse was instructed to work in a 14-foot-deep, four-foot-wide trench which was not sloped, shored, or braced, as required by the Occupational Safety and Health Act of North Carolina.<sup>7</sup> His employer, Morris Rowland Utility Inc., had been cited four times by OSHA in the previous six-and-a-half years for violating regulations governing trenching safety procedures. The administrator of Sprouse's estate sued the employer civilly, electing not to pursue a workers' compensation claim.

The Supreme Court, in a 5-2 decision, concluded that the evidence was sufficient to maintain the action in a trial court because a preliminary showing was made that the employer "intentionally engage[d] in misconduct knowing it [was] substantially certain to cause serious injury or death to employees."<sup>8</sup> The misconduct, wrote former Chief Justice James G. Exum for the majority, "is tantamount to an

intentional tort, and civil actions based thereon are not barred by the exclusivity provisions of the Act." In other words, the company's disregard for safety made the resulting death not an accident but an intentional act on the employer's part.<sup>9</sup>

Justice Burley Q. Mitchell Jr., an associate justice at the time and now Chief Justice, in a dissenting opinion with Justice Louis B. Meyer, noted that "the majority's holding represents reasonable and perhaps desirable social policy. . . ."<sup>10</sup> But, citing the Court of Appeals' decision in the same case, he concluded that "a right to bring a civil action 'against his employer, even for gross, willful, and wanton negligence would skew the balance of interests inherent in [the] Act. Changes in the Act's delicate balance of interests is more properly a legislative prerogative than a judicial function."<sup>11</sup>

A leading commentator on the subject sides with the minority. When the decision was announced, Arthur Larson, a Duke University law professor and author of a leading text on workers' compensation law, believed that the Supreme Court dove head first into "treacherous waters" and, in so doing, undermined the state's Workers' Compensation Act. In equating willful and wanton negligence with intent to injure, Larson said the courts "still cannot quite accept the non-fault nature of workers' compensation, and have taken it on themselves to change the statutory scheme to conform more closely to their values."<sup>12</sup>

"If every case of gross negligence on the part of the employer is taken out (from the workers' compensation system), it's only a matter of time before the exclusiveness provision is a joke," said Larson.

Supporters of the decision said the court properly and narrowly interpreted the statutory language and improved the workers' lot by providing the chance for additional compensation when an employer acts in such a way as to unreasonably place his employees at substantial risk for injury or death.

The Supreme Court used language that has been approved by other state legislatures in an effort to narrow the scope of the decision, said Norman B. Smith, a Greensboro lawyer who represented the administrator of Sprouse's estate. "It's reserved for extremely egregious circumstances," says Smith. "I don't think it will open the floodgates. I don't think it will be the beginning of the end of workers' comp." Com-

menting on a lawyer who, immediately after the *Woodson* decision, filed 58 civil actions for workers who had injuries from asbestos, chemical burns, and unsafe equipment, Smith said, "That's nuts."<sup>13</sup>

More important than the allowance of civil claims, Smith said, "The most significant aspect of the case is that it will have the effect of protecting workers in dangerous situations. The employer will take more precautions. That's never been true in the past." Mr. Smith explained that the state's OSHA program has inadequate resources to inspect all work places for safety violations. Further, the penalties are relatively small and encourage violations. It has been "more inexpensive to pay the fine and risk an unexpected death or maiming" than to expend funds for safety equipment, he says.

Not only that, but a typical employer's liability insurance policy does not cover intentional wrongs of the employer so companies have to pay any claims out of their own coffers, an additional incentive for providing a safe work environment.

J. Bruce Hoof, a lawyer for Morris Rowland Utility, disagrees with Smith. He contends that lawyers for workers have to file civil actions to protect themselves from malpractice claims. "This is the classic case of 'bad facts make bad law,'" he says. "My client made some mistakes, but he didn't mean to kill anyone."

The reality, after five years with the decision on the books, is that workers rarely have been able to recover under *Woodson*. Smith says, "It's a rare case that will be a *Woodson* claim. . . . The message from the courts is an employer has to have repeated violations, knowing that harm will come. It's not enough to merely create a life threatening situation."

Chief Justice Mitchell says, "We have seen a substantial number of petitions for review [from plaintiffs' appeals for reversal of summary judgment against their claims]. My impression is they have been mostly denials but I don't have any scientific figure for you on this point."

Those who have closely watched the decision's ramifications on the remedies available for workers agree. On September 11, 1995, three cases where plaintiffs sought relief under *Woodson* were argued before the North Carolina Supreme Court. On November 3, 1995, the Supreme Court ordered the dismissal of all three claims.<sup>14</sup> According to Donnell Van Noppen III and Burton Craige, trial lawyers who

represent employees, the court's actions "have strongly emphasized the narrowness of these exceptions to the exclusive remedy provisions of the Workers' Compensation Act . . . [I]t is clear that the successful case will be rare."<sup>15</sup>

Rowland and Morris Rowland Utility, Inc. relied on earlier Supreme Court decisions in their effort to avoid civil liability. The company and its sole shareholder argued that "The intentional failure to provide a safe place or the knowing violation of OSHA regulations does not constitute an intent to injure. . . ."<sup>16</sup> At most, there was an intentional 'toleration of a dangerous condition;' that is, the OSHA violations, particularly the absence of shoring."<sup>17</sup> Citing an earlier Supreme Court case, the employer noted "in any normal use of the words, it cannot be said that this constituted a 'deliberate infliction of harm.'"<sup>18</sup>

The earlier decision, *Barrino v. Radiator Specialty Co.*,<sup>19</sup> involved the death of an employee as the result of an explosion and fire at the factory where she worked. The conditions at the plant included: several violations of OSHA and National Electric Code regulations; meters designed to warn of danger and explosive gas and vapor levels disabled with plastic bags so they would not register; and alarms warning of dangerous and explosive levels turned off.

Rejecting an attempt to seek civil damages as opposed to workers' compensation recovery, the Supreme Court stated: "It is . . . clear from the act itself that such allegations of safety code violations do not remove the claim from the exclusivity of the act. N.C.G.S. 97-12 provides *inter alia* a penalty to the employer of a 10 percent increase in benefits 'when the injury or death is caused by the willful failure of the employer to comply with any statutory requirement or any lawful order of the [Industrial] Commission.'"<sup>20</sup>

Justice Exum noted in *Woodson* that only two of the four majority justices in *Barrino* agreed with the above language.<sup>21</sup> He and the other justices joining him in the majority decision expressly adopted the views of the *Barrino* dissent.

Initially, the court's shift rallied industry officials to seek General Assembly action. Representatives of N.C. Citizens for Business and Industry (NCCBI) and the North Carolina chapter of the National Federation of Independent Businesses expressed concern about the

case. Anne Griffith, a lobbyist with NCCBI, said some members of her organization were concerned "about how broadly or narrowly the decision would be construed." Griffith explained that often employers simply pay OSHA penalties, whether they agree with them or not, because the cost of defending the fines often exceeds the fine itself.

Because OSHA violations now could be determinative of where an employee can sue the employer, she said the companies would begin defending them, which could further stress the N.C. Department of Labor's limited resources. But she also said NCCBI members wanted to make clear that their concerns about the *Woodson* decision did not mean that members were unfeeling toward victims of industrial accidents.

So far, the legislature has not changed the laws to undermine the *Woodson* decision but

the Supreme Court has not approved a claim under *Woodson* since the initial decision came down either. The burden of proof for an employee is extraordinarily tough. A worker must show that the employer knew that its conduct was substantially certain to cause serious injury or death. The decision has, however, encouraged lawyers representing workers to look beyond the Workers' Compensation Act for a remedy. David A. Batten and Anthony L. Lathrop, both lawyers who represent employers, believe that the workers' lawyers will look to individuals other than employers for additional compensation, such as a company that hires an employee's company to perform construction work or parent companies that own the employer as a wholly owned subsidiary.<sup>22</sup> Regardless, it is clear now that *Woodson* has not opened any floodgates.

## FOOTNOTES

<sup>1</sup> This figure is an estimate. Actual figures vary based on the individual's salary, extent of injury, and number of dependents. The award may go as high as \$160,000.

<sup>2</sup> G.S. Chap. 97.

<sup>3</sup> That is, according to an employer's ability to pay. Employees can probably recover only from the employer, because most liability insurance policies exempt from coverage any payment for injuries and death cause by the intentional acts of the employers. The owner of Imperial Food Products, where the Sept. 1991 fire in Hamlet killed 25 and injured 78, apparently has no assets from which victims can recover.

<sup>4</sup> 329 N.C. 330, 407 S.E.2d 222 (1991).

<sup>5</sup> An employee also could sue a co-worker for reckless negligence. See *Pleasant v. Johnson*, 312 N.C. 710, 325 S.E.2d 244 (1985).

<sup>6</sup> Arthur Larson, *The Law of Workmen's Compensation*, Section 65.11 (1987).

<sup>7</sup> G.S. 95-126.

<sup>8</sup> *Woodson*, supra, at 340, 407 S.E.2d at 228.

<sup>9</sup> *Id.* at 341, 407 S.E.2d at 228.

<sup>10</sup> *Id.* at 362, 407 S.E.2d at 241.

<sup>11</sup> *Id.*

<sup>12</sup> Larson, supra at Section 68.15.

<sup>13</sup> Duke Power Co. settled most of those claims as part of a settlement approaching \$10 million in late April, 1992. The settlement covered 108 claims against the utility involving deaths and illnesses from exposure to asbestos. See Joseph Menn, "Duke OKs Asbestos Settlements," *The Charlotte Observer*, April 24, 1992, p. 1D.

<sup>14</sup> The three cases decided November 5, 1995, are *Mickles v. Duke Power Co.*; *Echols v. Zarn*; and *Powell v. S & G Prestress*. The last two decisions were issued per curiam.

<sup>15</sup> See Donnell Van Noppen and Burton Craige, "Beyond *Woodson*: Where is the Supreme Court Taking Us? *Mickles, Powell, and Echols*," *Workplace Torts and Workers' Comp II*, N.C. Academy of Trial Lawyers Education Foundation, Inc., 1995.

<sup>16</sup> Neal Morris Rowland and Morris Rowland Utility, Inc. Defendant Appellees' New Brief at p. 6.

<sup>17</sup> *Id.* at p. 19.

<sup>18</sup> *Id.*

<sup>19</sup> 315 N.C. 500, 340 S.E.2d 295 (1986).

<sup>20</sup> *Id.* at 515, 340 S.E.2d at 304.

<sup>21</sup> Justice Meyer, who joined Justice Mitchell in the concurring and dissenting decision of *Woodson*, wrote the *Barrino* decision and is the only justice of the two Justices to whom Exum referred who participated in the *Woodson* decision. Justice Mitchell concurred in the *Barrino* result but did so on the basis that the plaintiff already had received workers' compensation payments and had, therefore, elected to file under the Workers' Compensation Act, prohibiting any alternative recovery. From his dissent in *Woodson*, however, it would appear that he could have agreed with Justice Meyer at that time but took a narrower approach that for that case, at least, had the same practical result. Justice Harry C. Martin wrote the dissenting opinion and was joined by Justice Exum and Justice Henry E. Frye. The other justices in the *Woodson* majority—Justices John Webb and Willis P. Whichard—were not on the court when *Barrino* was decided.

<sup>22</sup> See David A. Batten and Anthony L. Lathrop, "The Defense of *Woodson* and *Pleasant's* Claims: An Update on the Defense of Perspective," *Workplace Torts and Workers' Comp II*, N.C. Academy of Trial Lawyers Education Foundation, Inc., 1995.

# Chapter 5

## Article V: Budgeting 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.

The selections in this chapter take a look at some of the controversial aspects of financing state government in North Carolina.

# The State Budget

BY JOSEPH S. FERRELL

**Article V, Section 2 (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.

**Article V, Section 3 (1).** *Limitations upon the increase of State debt.* 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, . . . .

**Article V, Section 7 (1).** *Drawing public money.* No money shall be drawn from the State Treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

## The Budget Process

**T**he North Carolina state budget is prepared on a biennial basis covering two fiscal years beginning on July 1 of odd-numbered years. The process begins with the formulation of budget recommendations by the governor, who by virtue of the state constitution is director of the budget. At the beginning of each biennial session of the General Assembly, the governor presents to the legislature comprehensive budget recommendations for the upcoming biennium.

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*From Joseph S. Ferrell, "The State Budget," North Carolina Legislation 1995, Institute of Government, The University of North Carolina at Chapel Hill, November 1995, 2-1 to 2-4. Reprinted by permission of the Institute of Government, The University of North Carolina at Chapel Hill.*

These recommendations estimate the amount of revenue available for appropriation and estimate the budget required to continue existing programs at their current level. The governor may also recommend continuation budget reductions and may ask the General Assembly to approve new programs, expand existing ones, and authorize new state buildings and other capital improvement projects. The governor's expansion and capital budget requests do not usually cover all funds available for those purposes; some funding is left to the discretion of the General Assembly.

Even though the governor is director of the budget, the General Assembly is not obligated by the state constitution or statutes to give the governor's budget recommendations more than a polite hearing. During the two administrations

of Governor James G. Martin, the General Assembly paid little heed to the governor's budget. The legislative branch has developed the staff and expertise to formulate the state budget with little advice or direction from the executive branch and it uses that capability with confidence. Governor James B. Hunt, Jr., has been more successful in establishing an atmosphere of cooperation with the General Assembly in developing a state budget. In 1995 the General Assembly followed Governor Hunt's lead in estimating revenue availability, granting tax relief, and downsizing state government through continuation budget reductions.

The budget is presented in three major funds. The General Fund budget covers all operations of state government not included in another special fund. Almost all of the state's tax revenue, other than the motor fuels tax, is spent through the General Fund. The Highway Fund covers the operations of the state Department of Transportation and is funded by the motor fuels tax and other revenues related to motor vehicles. The Highway Trust Fund covers the special program of highway construction authorized by the 1989 General Assembly. It is funded by a portion of the per gallon motor fuels tax and other revenues dedicated to the Trust Fund. When the construction program is complete, the special tax will expire and the Trust Fund will terminate.

Although the governor presents a comprehensive budget to the General Assembly, appropriations items are grouped in three major categories. The *continuation* or *base budget* includes appropriations needed to continue existing programs at current levels after taking into account anticipated increases due to influences such as institutional populations, increases in entitlement payments such as Medicaid, utilities costs, and other inflationary factors. Recommendations for new or expanded programs are presented as a series of expansion budget items. Collectively these items are referred to as the *expansion budget*. Finally, recommendations for new buildings and other capital projects are enumerated and are known collectively as the *capital budget*. Legislative consideration of the biennial budget takes place in three rounds that reflect these major divisions and the revenue sources that support them.

The first round of legislative consideration of the budget addresses the continuation or base budget. The primary objective of this stage of

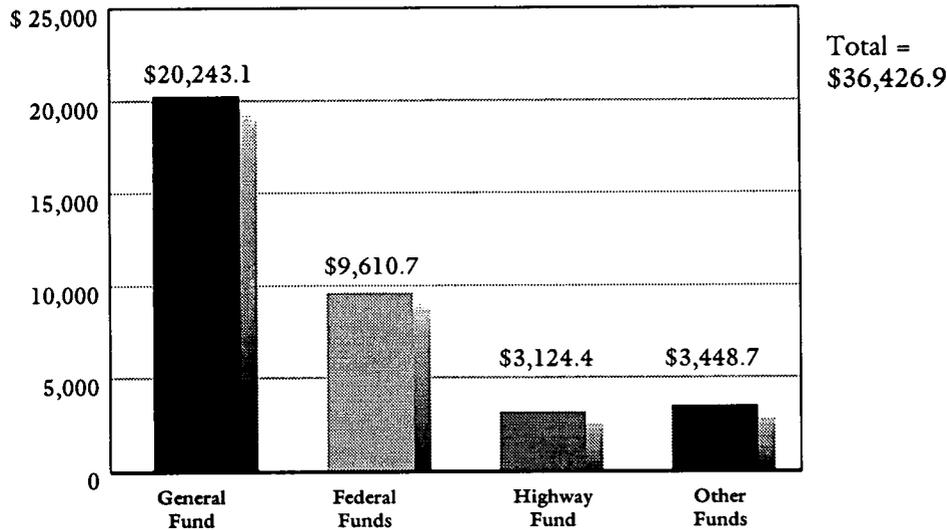
the process is careful evaluation of the on-going fiscal needs of each state agency and institution. Seldom does an agency or institution receive additional funding at this stage. More often, the legislature identifies programs to reduce in scope or eliminate, vacant positions to eliminate, and other budget cuts that can generate additional revenue availability or make tax cuts possible without impairing on-going programs.

When work on the continuation budget has been completed, the relative relationship between the size of the continuation budget and the amount of recurring revenue estimated to be available becomes known. If estimated revenues fall below the estimated cost of funding the continuation budget, there will be no money for new spending and the state will find itself in a fiscal crisis. This is what began to unfold in the 1990-91 fiscal year. There are two obvious remedies for such a crisis: reduce spending and increase revenue. The 1991 and 1992 sessions did just that with the result that North Carolina successfully weathered a national economic recession without a major cut in state services. On the other hand, when revenue estimates exceed the cost of the continuation budget money is available for tax relief, state employee pay increases, and other additional spending.

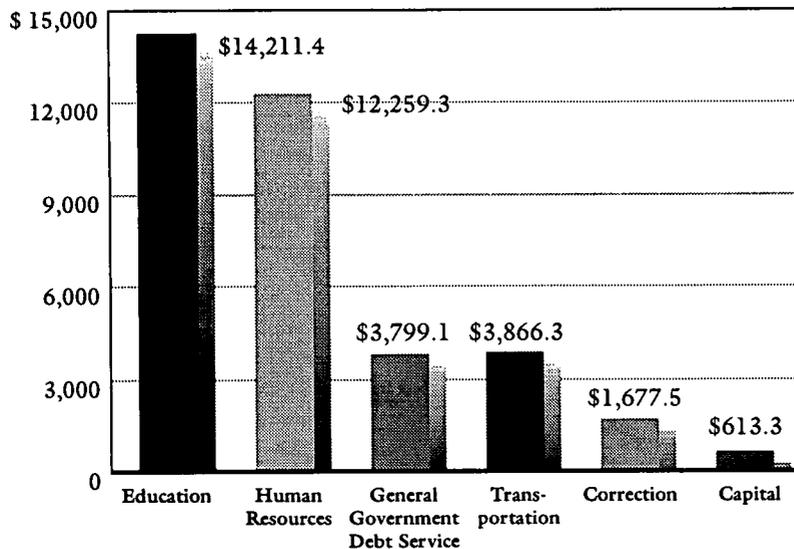
The second round of budget making addresses the expansion or change budget. The overall appropriations level for the continuation budget and expansion budget is driven by the General Assembly's estimate of the probable yield of recurring revenue sources over the upcoming biennium. Only recurring revenues are taken into consideration for permanent expansion budget items because once approved such items normally become part of the continuation budget for future fiscal years. The amount available for expansion budget items is computed by first estimating total recurring revenue available, deducting decreases due to tax cuts, and then subtracting the revenue needed to support the continuation budget. What remains is the maximum revenue available for expansion budget items. The General Assembly is under no obligation to appropriate all of the estimated revenue availability and normally it does not. Money may be set aside in reserves to guard against anticipated shortfalls in revenue collections, to fund possible legislative action in future sessions, or to provide for contingencies. The legislature may also simply leave major sums of money uncommitted. For example, the 1995

## 1995-1997 Authorized State Budget, in Millions

### Where It Comes From ...



### ... Where It Goes



regular session left at least \$167 million in anticipated 1996-97 recurring revenue uncommitted in anticipation of further action on the 1996-97 budget in the regular session.

The final component of budgeting addresses the capital budget and requests for one-time expenditures that will not impose a continuing obligation on the state in future fiscal years. Capital improvements items are usu-

ally treated separately from other one-time expenditures because operating costs for a new building usually must be built into the continuation budget when the facility is brought "on line." Many other one-time appropriations, such as grants-in-aid, have no necessary consequences for the future. Others, such as large-scale equipment purchases, may have future consequences that are difficult to predict. The

**Table 1. North Carolina General Fund Revenue, in Millions**

	1994-95			1995-96			1996-97		
	Actual	Baseline	Adjustments	Authorized	Baseline	Adjustments	Authorized		
<b>Tax Revenue</b>									
Individual Income	4,665.5	4,954.1	(330.3) <i>A</i>	4,623.8	5,354.0	(339.4) <i>A</i>	5,014.6		
Sales and Use	2,781.7	2,920.8	(2.7) <i>B</i>	2,918.1	3,095.0	(3.0) <i>B</i>	3,092.0		
Corporate Income	649.4	626.3	(0.7) <i>C</i>	625.6	634.6	(0.7) <i>C</i>	633.9		
Franchise	458.1	479.0	(130.5) <i>D</i>	348.5	510.1	(139.0) <i>D</i>	371.1		
Insurance	236.2	239.9	(1.8) <i>E</i>	238.1	253.4	(1.8) <i>E</i>	251.6		
Alcoholic Beverage	163.2	164.5	(21.0) <i>D</i>	143.5	166.1	(21.0) <i>D</i>	145.1		
Intangibles	128.6	137.6	(124.4) <i>F</i>	13.2	124.5	(124.5) <i>F</i>	0.0		
Inheritance	109.9	111.1		111.1	119.4		119.4		
Soft Drink	38.0	38.2		38.2	39.3	(9.6) <i>G</i>	29.7		
Privilege License	64.7	36.4		36.4	37.9		37.9		
Tobacco Products	44.6	42.5		42.5	44.0		44.0		
Deed Stamp	16.4	15.8		15.8	18.0	(18.0) <i>H</i>	0.0		
Gift	8.6	8.6		8.6	10.0		10.0		
Other	1.1	1.1		1.1	1.2		1.2		
<b>Total Taxes</b>	<b>\$ 9,365.8</b>	<b>\$ 9,775.9</b>	<b>\$ (611.4)</b>	<b>\$ 9,164.5</b>	<b>\$ 10,407.5</b>	<b>\$ (657.0)</b>	<b>\$ 9,750.5</b>		
<b>Nontax Revenue</b>									
Investment Income	160.1	132.0	2.0 <i>I</i>	134.0	139.9	2.0 <i>I</i>	141.9		
Judicial Fees	87.1	89.7		89.7	93.3		93.3		
Insurance	15.4	16.7	4.7 <i>J</i>	21.4	18.1	4.2 <i>J</i>	22.3		
Disproportionate Share	94.0	106.9		106.9	117.7		117.7		
Other Nontax	67.1	71.3	0.8 <i>K</i>	72.1	73.3	0.8 <i>K</i>	74.1		
<b>Total Nontax</b>	<b>\$ 423.6</b>	<b>\$ 416.6</b>	<b>\$ 7.5</b>	<b>\$ 424.1</b>	<b>\$ 442.3</b>	<b>\$ 7.0</b>	<b>\$ 449.3</b>		
<b>Transfers:</b>									
Highway Fund	\$ 10.5	\$ 11.1		\$ 11.1	\$ 11.9		\$ 11.9		
Highway Trust Fund	170.0	170.0		170.0	170.0		170.0		
<b>Total GF Revenue</b>	<b>\$ 9,969.9</b>	<b>\$10,373.6</b>	<b>\$ (603.9)</b>	<b>\$ 9,769.7</b>	<b>\$ 11,031.7</b>	<b>\$ (650.0)</b>	<b>\$10,381.7</b>		
<b>% Change</b>	<b>9.5%</b>	<b>4.0%</b>		<b>-2.0%</b>	<b>6.3%</b>		<b>6.3%</b>		

*A:* Increased Standard Deduction and \$60 Child Care Credit (95-96: -\$235 Million; 96-97: -\$244.1 Million). Elimination of the Intangibles Tax; Reimbursement to Local Governments from the Elimination of the Intangibles Tax (-\$95.3 Million each year).

*B:* H55, Aquaculture Tax Preference (-\$0.1 Million each year); H759, Nonprofit Home Sales Tax Refund (-\$1.4 Million each year); and H360, Railroad Diesel Sales Tax Exemption (-\$1.2 Million each year).

*C:* H396, Expand Ports Tax Credit.

*D:* 1993 Local Tax Sharing Changes.

*E:* S710, Self Insured Guarantee Fund Tax Credit.

*F:* Elimination of the Intangibles Tax.

*G:* H223, Phase Out Soft Drink Tax.

*H:* H718, Earmark Funds to the Parks and Recreation Trust Fund and Natural Heritage Trust Fund.

*I:* Increased Income from Electronic Funds Transfer.

*J:* Insurance Regulatory Changes.

*K:* Local Government Commission (\$1.5 Million each year); Treasurer's Banking Fees (-\$0.7 Million each year).

**Table 2. Total North Carolina State Budget by Function and Source of Funds, 1996-97**

Function	General Fund	Highway Fund*	Other	Federal	Total
General Assembly	\$ 30,702,253	\$	\$ 77,500	\$	\$ 30,779,753
Judicial	282,821,415		6,063,022		288,884,437
General Government	278,634,419	2,270,054	18,638,475	48,096,882	347,639,830
Public Safety & Regulation	137,381,774	106,473,497	46,621,915	201,371,761	491,848,947
Correction	837,205,300		33,338,003		870,543,303
<i>Education:</i>					
Public Education**	4,061,171,653	21,188,826	11,696,364	445,681,827	4,539,738,670
Community Colleges**	459,702,135		71,458,533	7,602,410	538,763,078
Universities**	1,312,844,607		690,436,566	69,595,434	2,072,876,607
Subtotal Education	5,833,718,395	21,188,826	773,591,463	522,879,671	7,151,378,355
Transportation	10,147,210	1,418,258,724	4,775,833	523,367,208	1,956,548,975
Human Resources	2,176,379,929		683,892,300	3,495,392,980	6,355,665,209
Environment, Health, and Natural Resources	230,733,328	6,554,505	83,434,593	149,848,765	470,571,191
Agriculture	45,745,793	3,162,344	15,017,309	5,319,032	69,244,478
Debt Service	139,482,588	4,978,215			144,460,803
Reserves and Transfers	27,430,579	8,122,385			35,552,964
Total Current Operations	10,030,382,983	1,571,008,550	1,665,450,413	4,946,276,299	18,213,118,245
Capital Improvement					
Appropriation	157,267,000				157,267,000
<b>Grand Total</b>	<b>\$ 10,187,649,983</b>	<b>\$ 1,571,008,550</b>	<b>\$ 1,665,450,413</b>	<b>\$ 4,946,276,299</b>	<b>\$ 18,370,385,245</b>

\* Reduced to reflect transfers to General Fund (\$181,853,450) and between the Highway Fund and Highway Trust Fund (\$32.3 million).

\*\* Appropriation for recurring compensation increase included under all education budget codes.

overall appropriations level for capital improvements and nonrecurring expenditures is driven by the estimate of nonrecurring revenue to become available in the budget year. Much of that total comes from unspent appropriations from the preceding fiscal year (the "reversion"). The remainder comes from estimates of revenue streams not expected to recur, such as the windfall realized by accelerating collection of an existing revenue source.

Since the 1975-77 biennium, the General Assembly has adopted a biennial budget in the

odd-numbered year in anticipation of returning in the even-numbered year to fine-tune and complete work on the budget for the second year of the biennium. On the whole, the budget process in an even-numbered year differs little from that in an odd-numbered year insofar as legislative action is concerned. New revenue estimates are prepared, the continuation budget for the upcoming fiscal year is given close scrutiny, expansion budget requests are evaluated and approved, and new capital improvements projects are authorized.

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## *Steps to a Biennial State Budget*

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1. About a year before the General Assembly convenes for a new session, the Office of State Budget and Management (OSBM) sends forms to state agencies asking for budget requests for the next biennium. Agencies must return their requests by September before the new session, but may be required to return them much sooner. OSBM will work with the governor and the Advisory Budget Commission (ABC) in developing a biennial budget to present to the General Assembly.
2. OSBM analysts review requests and confer with departments.
3. ABC tours state facilities to assess capital improvement needs in the fall before the new session.
4. State agencies appear before ABC in October, November, or other specified times in the fall to explain budget requests.
5. Governor and ABC collaborate on budget proposal for presentation to the General Assembly. Typically, they do not agree on what the budget should contain, and the governor submits a separate proposal to the legislature. Governor unveils his proposed budget in conjunction with his State of the State Address to the General Assembly in January.
6. Separate bills are filed encompassing the governor's expenditure and revenue proposals. Throughout the spring, appropriations committees of the House and Senate review spending requests and finance committees review revenue proposals, often making major revisions.
7. Ideally, before June 30 and the beginning of the new fiscal year, budget bills are reported out of committee to the floors of the Senate and the House, with separate bills for continuation, expansion, capital outlay, the judiciary, aid to local governments, and a bill to cover items left out of the other bills.
8. A conference committee iron out differences between Senate and House versions of the budget bills. The legislature typically adjourns soon after the budget is passed, and reconvenes the following year to make adjustments to the continuation budget.

*Source:* Joseph S. Ferrell, *Handbook for Legislators*, Institute of Government, Chapel Hill, NC, 1990, pp. 93-101.

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### Revenue Availability

The 1995 session had available to it over \$10 billion in available General Fund revenue from the existing tax and fee structure for each year of the 1995-97 biennium. It also had available \$388 million in excess revenue collections and reversions from 1994-95, \$320.5 million in federal block grant funds for the 1995-96 fiscal year, and over \$100 million in each year of the biennium from federal disproportionate share receipts. After granting tax relief of \$363 million in 1995-96 and \$400 million in 1996-97, the amount available for appropriation in the General Fund was just under \$10 billion in the first year of the biennium and \$10.4 billion in the second.

### Appropriations

The 1995 session left unappropriated \$4.2 million of the estimated recurring 1995-96 revenues of the General Fund and \$54.4 million in 1995-96 nonrecurring revenues. For the 1996-97 fiscal year, a total of \$167.2 million in recurring and non-recurring revenues combined remains available for General Fund appropriations, plus any additional amounts that may be realized from adjustments to the continuation budget, excess 1995-96 revenue collections, reversions in excess of estimates for the 1994-95 fiscal year, and reversions from the 1995-96 fiscal year. In addition, the balance of the Savings Reserve Account now stands at \$423.6 million.

### Line Item Budgeting

The North Carolina state budget has always been prepared and administered on a line item basis. The system is well-adapted to controlling governmental expenditures once the budget is adopted, but critics charge that it is a blunt instrument for evaluating program effectiveness. One of the recommendations of the Government Performance Audit Committee (GPAC) that was established in 1991 urged that the state begin to move toward a budget system that de-emphasized line item budgeting. Instead, GPAC endorsed performance-based budgeting in which the General Assembly would establish specific goals and objectives for each governmental program. Performance measures

## 1995-97 Appropriations

	1995-96	1996-97
<b>General Fund</b>		
Continuation Budget Items	\$9,512,349,465	\$9,763,000,793
Recurring Expansion Budget Items	175,817,708	259,135,263
<i>Subtotal Continuation and Recurring Items</i>	9,688,167,173	10,022,136,056
Non-recurring Expansion Budget Items	104,895,205	8,246,927
Capital Projects	113,522,500	157,267,000
<i>Subtotal Non-recurring Items</i>	218,417,705	165,513,927
<b>Grand Total General Fund</b>	<b>\$9,906,584,878</b>	<b>\$10,187,649,983</b>
<b>Highway Fund</b>		
Continuation Budget Items	997,706,396	1,001,996,783
Expansion Budget Items	411,118,280	44,319,217
Capital Projects	9,397,590	
<b>Total Highway Fund</b>	<b>\$1,048,222,266</b>	<b>\$1,048,316,000</b>
<b>Highway Trust Fund</b>	<b>\$698,432,000</b>	<b>\$738,846,000</b>

## *A Glossary of Selected Budget Terms*

- Continuation Budget**—Budget for ongoing state programs. Also referred to as the base budget.
- Expansion Budget**—Budget for new state programs and salary increases.
- Capital Budget**—Budget for capital projects such as new buildings and land purchases. Traditionally funded with reversions, or money unspent at the end of a budget year.
- General Fund**—Covers operating costs of general government programs. Primary sources of revenue are income and sales taxes.
- Highway Fund**—Pays for highway maintenance and construction. Primary source of revenue is the gasoline tax.
- 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 income rises.
- Recurring**—An expenditure that will recur each year and thus must be figured into the continuation budget for the next fiscal year.
- Non-recurring**—A one-time expenditure that does not become a continuation expense in the next budget year.
- Reversions**—Money budgeted but unspent because of vacant positions and other agency savings. These funds revert to the General Fund, or are carried over to the next budget year. Reversions typically have been used for one-time expenses such as capital projects because they cannot be depended upon as a steady, or recurring, revenue source.
- Negative Reserves**—This practice amounts to building reversions into the budget in advance. For example, an agency might be allotted \$100 in the budget but allowed to spend only \$97. It would be up to the agency to find the \$3 savings over the course of the year. Some fiscal analysts think this practice provides management flexibility and thus is preferable to across-the-board cuts.

—Mike McLaughlin

*Mike McLaughlin is editor of North Carolina Insight.*

would be identified to enable both the executive and legislative branches to evaluate the extent to which those goals and objectives were being accomplished. The 1993 session tentatively endorsed the program budget concept and it was implemented by the Office of State Budget and Management (OSBM) for those portions of the governor's 1995-97 budget recommendations covering the program areas of health and safety, environment, correction, justice, social and economic well-being, and economic development and commerce.

The 1995 session made it clear that the General Assembly does not support any further moves in the direction of performance-based budgeting and hinted that the entire concept may be in jeopardy. Section 10(a) of Chapter

324 amends G.S. 143-11 to require that the budget be presented by line item in five columns: (1) proposed expenditures and receipts for each fiscal year, (2) the certified budget for the preceding fiscal year, (3) the currently authorized budget for the preceding fiscal year, (4) actual expenditures and receipts for the most recent fiscal year for which this information is available, and (5) proposed increases or decreases. This information must be no less specific than the two-digit level in the State Accounting System Chart of Accounts. These directions apply to the entire budget, including those portions that may be presented in the program budget format. This amendment to G.S. 143-11 is a permanent change in the Executive Budget Act.

# From A to Z, Suggestions on Downsizing State Government

BY ROB CHRISTENSEN

**W**E USED TO talk about expanding government, starting new programs, hiring new employees. But that was B.C.—Before Clinton.

Now the talk is of tax cuts, downsizing government, hiring freezes. This is, after all, the year 1 A.D.—After Democrats.

In keeping with the new age of austerity, I submit for your consideration a series of modest proposals, from A to Z, to either save money or reduce the size of state government:

- **ABC stores** should be sold to private industry. Why should the government be selling booze? The liquor business should be operated by private enterprise, as it is in most parts of the country.
- **Bodyguards.** The gov is surrounded by more gun men than your ordinary Medellin drug lord. The governor's bodyguard detail should be cut in half, freeing troopers to do more important stuff—like guarding football coaches.
- **Charlotte** is the state's economic engine. It's a city filled with rich Republicans who claim to be rugged individualists and all that stuff. So why do they keep coming to Ra-

leigh asking taxpayers living in places like Northhampton and Hoke counties to ante up for big-ticket projects such as Discovery Place? Oink, oink.

- **Death Penalty** abolished. We spend millions trying to kill a bunch of losers, psychopaths and drug-crazed crackheads. It costs \$163,000 more on average to seek the death penalty than it would cost to send them to prison for life. I say lock 'em up and throw away the key.
- **Eliminate** the Secretary of State's office. After years of the late Thad Eure at the helm, we learned that we don't really need one. The department's functions could be shifted to other agencies. Agriculture czar Jim Graham could hire Rufus Edmisten to be his barbecue taster.
- **Four-lane highways.** Not every one-stop-light town in the state needs one. But most politicians think highways are better than sex. In the new age of austerity, it's time to rethink our road-building orgy.
- **Global TransPark.** This is the white man's Soul City—a boondoggle in the making. The dream is to turn an area near Kinston into an air-cargo facility that will be a magnet for industry. Soul City, the failed federally funded "new town" in Warren County, had a better chance of becoming the new Cary.
- **Higher tuition** for University of North Carolina system students. Republicans say

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they want to cut government so that families have more money in their pocket. With more disposable income, families can afford to pay higher tuition. Welcome to Newtonian economics.

- **Insurance.** Slash the unemployment insurance tax. Hunt just proposed cutting it by 23 percent—the third such cut in the past two years. But at \$1.7 billion, the trust fund is still one of the nation's biggest. By comparison, Virginia has a \$646 million fund. Is the state hoarding money for the day when the textile industry moves to Mexico and all the tobacco is grown in Brazil?
- **Just eliminate** some of our elected offices and the bureaucracy will shrink. North Carolina elects more officials than most states. Let the governor appoint the agriculture secretary, insurance commissioner, labor commissioner, superintendent of public instruction and the treasurer. With fewer separate fiefdoms, there'll be fewer bureaucrats.
- **Kill** the industrial recruitment slush fund. This is nothing but welfare for corporations. If some car executive from Stuttgart thinks Alabama is a better place to open a plant than North Carolina, then let him. I hope he gets sick on his bratwurst.
- **Lieutenant governor's office** should be made part-time again. At one time, the lieutenant governor ran the Senate. Now they mainly run for governor. (See Jim Hunt, Bob Jordan, Jim Gardner and Dennis Wicker.)
- **Mansions.** This is my rule of thumb: one mansion per governor. The governor's western mansion in Asheville should be sold.
- **Ninety-two prisons** is absurd. Close some of them. Larger prisons are much more economical. And the new prison farms are nothing but political posturing. It's probably cheaper to go shopping at Food Lion than have the cons grow their own grub. It's not Ma and Pa Kettle in the prison system.
- **Offices.** Abolish the governor's eastern and western offices in New Bern and Asheville. These are anachronisms in the age of faxes and e-mail, not to mention telephones.

- **Private** colleges should be taken off the dole. Taxpayers finance 16 university campuses and 58 community colleges. That's plenty. Why should the state also subsidize the state's private colleges? This is now done through two funds that provide money for Tar Heel students attending private schools in the state.
- **Queen Elizabeth II Historic Site.** I love history. I love the beach. But I don't see why we need \$10 million to fix up the site around the replica of a sailing ship that brought the Roanoke colonists to North Carolina. All those Washingtonians vacationing at the Outer Banks are more interested in catamarans than Elizabethan replicas. This is a Marc Basnight pork special.
- **RJR**—The cigarette conglomerate promises to build a cookie factory in Garner if the legislature will give RJR a big tax break. The legislature gives the tax break, but RJR decides it can't afford the factory. Yet RJR and a number of other companies are still getting a \$30 million windfall from the tax break. Sweet deal, huh?
- **State Employee Liaison**—This was a position set up as a political payoff by Gov. Jim Hunt. Hunt promised state workers he'd form the office during his 1992 campaign. I thought this was the reason we had a state personnel office.
- **Traffic cops.** That's the main job of our Highway Patrol. So why are they better paid than the SBI agents, who are responsible for investigating real crimes? Because the politicians just love the smokies. Here's a proposal to both save money and get salaries more in line: Why not follow Virginia, New Jersey and other states, and form a state police force, which would include the Highway Patrol, the SBI, and the Alcohol Law Enforcement officers?
- **UNC campuses.** We have too many of them. Keeping up the quality of 16 campuses is increasingly difficult. We can start by merging N.C. A&T State University and UNC-Greensboro. It makes no sense to have two UNC campuses in Greensboro. This is a 1920s idea that had survived into the 1990s.

- **Vocational and job training.** There are now 45 job-training programs in eight state agencies costing \$600 million a year. Raise your right hand if you think there is even a remote possibility that the right hand knows what the left hand is doing. Raise your left hand if you think there just might be a little overlap here. I feel the urge to merge.
- **World Language Center**—This was former Gov. Jim Martin’s baby, setting up a language school at Pfeiffer College to help teach executives how to speak French, German and other languages not normally heard over grits at Big Ed’s restaurant. Lord knows more American businessmen need to know foreign languages. (If you live in Cary, you need to learn how to speak New Yawk.) But every two-bit college in the state offers foreign language courses. And that’s not to mention private Berlitz Language schools.
- **X-out the Displaced Homemakers Program.** This program is designed to help the wife get back on her feet after her husband abandons her for a young trophy companion. I’m for helping displaced homemakers. I also think husbands who trade in their wives for new, sleeker models are jerks. But this \$375,000 effort just reeks of political correctness. There is no shortage of worker training programs in the state. (See “V.”)
- **Yanceyville Cinema School.** Does a county that doesn’t even have a movie theater need a \$1.8 million film school? Does the Technicolor dream of former state Sen. George (just call me Bernardo Bertolucci) Daniel deserve to live? I think not. As they say on the movie set: “CUT.”
- **Zoo**—Did we really need to shell out \$150,000 to bring in the former director of the London Zoo to run the North Carolina Zoo? Isn’t that sort of like bringing in the former head of Scotland Yard to be Asheboro’s police chief?



# Special Provisions in Budget Bills:

## A Pandora's Box for North Carolina Citizens and a Problem in the Budget Process

BY RAN COBLE

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 the adjournment of each session—often are approved without adequate public debate.

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 what once was a justifiable method of providing budget instructions to state agencies has gotten out of hand.

For instance, over the years, special provisions have been used to repeal parts of the Administrative Procedure Act, to attempt unsuccessfully to repeal the Coastal Area Management Act, to allow overweight trucks on the state's highways, to pass a major revision to the state's

bingo laws, to repeal the cap on the number of inmates in state prisons, and to establish study commissions on such disparate subjects as the quality of water in the Pigeon River and a retirement program for local sheriffs.

To curb this undesirable practice of using special provisions to supplant the regular legislative process, the Center recommends that each house of 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. Inappropriate 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 in their

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home districts. This article identifies three major problems with special provisions.

### Special Provisions Bypass the Normal Legislative Process

Some changes in law which might not pass on their own merits are often inserted into budget bills in the form of special provisions. This undermines 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.

One reason why rank-and-file legislators do not revolt, say legislative observers, is that votes for special provisions often are implicitly tied to a legislator's share of pork barrel money. If you don't vote for the main budget bill—special provisions and all—you may not take home the bacon.

Special provisions also are used to bypass the normal process for setting up legislative study commissions between sessions. Usually, the General Assembly passes one omnibus bill assigning groups of legislators to study some 50 or so topics between sessions. However, the appropriations process can be used to establish additional study commissions in budget bills. For example, in 1995 budget bills, the legislature set up study commissions on job training programs, the guardian *ad litem* program, the drivers license medical evaluation program, and whether to abolish all or part of the Department of Crime Control and Public Safety. The budget bill also assigns other studies to be conducted by the Board of Governors of the University of North Carolina, the Office of State Budget and Management, and the Departments of Correction, Transportation, and Human Resources. In this manner, special provisions are misused to do an end-run around the normal process for deciding what public policy questions deserve further study and for allocating scarce staff resources to support these study groups.

**Table 1. Trends in the Number of Inappropriate Special Provisions Found in Budget Bills**

Date and Type of Legislative Session	Number of Special Provisions
1981 regular long session	29 (SB 29)
1983 regular long session	65 in three budget bills (SB 23, SB 313, and SB 22)
1985 regular long session	108 in three budget bills (SB 1, SB 182, and SB 489)
1987 regular long session	58 in three budget bills (HB 1514, HB 1515, and HB 2)
1993 regular long session	89 (SB 27)
1995 regular long session	125 in two budget bills (HB 229 and HB 230)

### 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. The taxpayers have a right to expect full legislative debate on the creation of new programs and boards which can cost the taxpayers for years to come. For example, in 1995 budget bills, special provisions were used to create a new program of drug treatment courts and new task forces in the mental health system as well as on heart disease and stroke prevention. Special provisions also were used to abolish the Division of Family Development in the N.C. Department of Human Resources and to end a program requiring art works in public buildings. These may be good or bad ideas, but they should be debated on their own merits and not hidden in lengthy budget bills, which in 1995 were up to 194 pages long.

Special tax breaks also are granted in special provisions. In this way, special provisions can be used to benefit certain industries with smart lobbyists who know how to use the budget process to their advantage—but who also know their tax

break could not withstand the public scrutiny of normal legislative floor debate.

### **Special Provisions Undermine the Authority of Other Governmental Institutions**

Special provisions damage relationships between the executive and legislative branches of government and between state and local governments. For example, the 1995 legislature inserted special provisions in the budget bills requiring the executive branch to obtain an in-

dependent evaluation of the Governor's Smart Start child care initiative and to raise private funds to match 20 percent of the cost of the program. Both of the provisions were inserted over the objections of the Governor, who is the only Governor in the United States without a veto.<sup>1</sup>

The legislature's use of special provisions also has angered local governments over the years. For example, it used special provisions to mandate a centralized payroll system for all school systems in North Carolina in 1981 and to make sweeping changes in the Law Enforcement Officers Retirement Fund in 1984.

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## ***What Are Special Provisions?***

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- *Special provisions*, as defined by the Center, 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 General 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 (S.B. 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, H.B. 80), Section 53

## Conclusion

**T**he General Assembly should end the practice of using special provisions because it bypasses the full legislative process, can result in legislation against the public interest, and undermines other institutions of government. The time has come to close this Pandora's box—before additional legislative plagues escape to wreak havoc in the orderly process of government.

## FOOTNOTE

<sup>1</sup> However, during the 1995 session, the North Carolina General Assembly passed a bill that will allow for a referendum in 1996 to amend the Constitution to provide for a gubernatorial veto. If voters approve this constitutional change, the governor will have a general veto power, subject to override by a 3/5 vote of the members of both houses of the General Assembly.

# A Tax Menu for Local Governments: *Yes or No?*

BY MIKE McLAUGHLIN

**L**ocal government officials face a dilemma. The one source of tax revenue they can control—the property tax—is also the one consistently cited as least popular in public opinion polls.<sup>1</sup> Yet local government officials face increasing service demands from every direction. Population growth forces the construction of new schools and increased investment in roads and other infrastructure. Increasing caseloads drive up county Medicaid costs. Citizens demand that service levels be maintained or enhanced while their property tax bills remain unchanged or go down. Industries wishing to expand want local officials to pick up part of the cost through low-cost loans, job training, or other incentives—waving the threat of taking their property tax payments and the jobs their industries provide out of the local economy.

These conflicting demands leave local officials with two choices. They can do more with less, or find a way to get more. Local officials are proving themselves adept at doing both. To do more with less, they are shaving operating costs and turning to privatization of services. To get more, they have increasingly turned to user fees as a revenue source. Yet both avenues have their limitations. Local officials can only go so far with cost-cutting and privatization before running head on into citizen service expectations and employee morale problems. And true user fees should be assessed in proportion to services rendered and benefits received. They are difficult to administer fairly, and inappropriate for

certain services that provide for the general welfare of the population—such as general law enforcement and public education.

These limitations lead some local government officials to advocate for a third way—authority to pick and choose from a so-called menu of new local taxes to supplement the property tax. North Carolina local governments operate legally under Dillon's Rule rather than Home Rule, which means they have no authority other than that granted explicitly by the legislature. The property tax is the only general, broad-based taxing authority under the control of local officials,<sup>2</sup> and many local government officials would like to have more authority.

The tax menu approach has been backed both by the N.C. League of Municipalities and the Association of County Commissioners. It surfaced in 1991 legislation sponsored by Rep. Bill Hurley (D-Cumberland) in the House<sup>3</sup> and Sen. Fountain Odom (D-Mecklenburg) in the Senate<sup>4</sup> but quickly sank under the weight of opposition from groups that would have been affected. The 1991 legislation would have authorized four types of local-option taxes: an occupancy tax; a local land transfer tax; a prepared food and beverage tax; and an amusements tax. A fifth option—some type of local income tax—was recommended by a study committee but never made it into legislation, says Hurley.

Given the tension between increased service demands at the local level and resistance to property tax increases, the tax menu idea may well surface again in the General Assembly. Indeed, House Speaker Pro Tempore Carolyn Russell (R-Wayne) says the issue is likely to be consid-

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*Mike McLaughlin is editor of North Carolina Insight.*

Mike McLaughlin



**User charges and fees for services are on the increase in North Carolina, for example, in some public libraries.**

ered by the State and Local Government Fiscal Relations and Trends Study Committee she chairs with Senate Appropriations Committee Co-Chair Beverly Perdue (D-Craven). “Additional revenue raising authority—a potential tax menu—is on the table,” says Russell.

Perdue agrees that the legislature should take a close look at additional taxing authority for local government. She says citizens in her district fiercely resist higher property taxes. As a result, local officials are severely limited in their ability to raise funds for public needs such as water and sewer facilities and school buildings. “They can ignore their capital needs . . . float a bond issue—which is often turned down—or raise the property tax,” says Perdue. One option for expanding the range of revenue choices for cities might be additional local sales tax authority in lieu of the property tax, says Perdue. “I just think there needs to be some discussion,” she says.

That’s music to the ears of local government officials like Ed Regan, deputy director of the N.C. Association of County Commissioners.

“There’s still very strong interest in a broader range of options for generating local revenue,” says Regan. Lee Mandell, director of research and information technology for the N.C. League of Municipalities, adds that a tax menu would be of “tremendous benefit” to a number of municipalities, allowing them to tailor their tax structure to take into account the local economy and local politics.

But Mandell is quick to acknowledge that a tax menu—at least one as limited as the one laid out in the 1991 legislation—wouldn’t help all municipalities. For example, a small town with only one restaurant could produce barely a burp in its revenue stream through a meals tax. An accommodations tax or an amusement tax would face similar limitations in revenue generating potential in small-town North Carolina, as would a real estate transfer tax. And unless a strong case could be made for the shortcomings of the present revenue-generating system, it’s likely that a proposal for a tax menu would meet the same fate it did in 1991, when interest groups such as the N.C. Association of

Realtors—which opposed the land transfer tax included in the menu—stopped it in its tracks.

Tim Minton, the association's lobbyist, notes that his trade group opposes the land transfer tax for three primary reasons: (1) it increases the cost of housing, which could be a burden for first time buyers; (2) it is an unstable revenue source that drops when the housing market cools; and (3) it targets a small portion of the population—those buying and selling real estate—instead of spreading the tax burden across the entire population.

And since the tax menu last was proposed, a new election in which the Republican Party picked up 39 seats in the 170-member General Assembly left the body even less amenable to any action that could be perceived as a tax increase. Authorizing a tax menu would not directly raise taxes, but it would grant local elected officials additional flexibility so that *they* could raise taxes.

### What's Wrong with the Property Tax?

**I**n the face of such opposition, why even consider granting additional revenue raising authority? To make the case for a tax menu, one must first make the case that the present revenue options are inadequate to meet the growing demands on local government. Advocates for increased revenue authority argue that the property tax—local government's primary source of tax revenue—is too subject to political pressure to bear the full weight of funding local services. Indeed, the property tax is consistently found to be the least popular tax in public opinion polls. Yet those same polls indicate local government is the most popular level of government and the one most trusted to provide services. Thus, local governments face a whipsaw effect of increasing service demands and scarce tax dollars to provide those services. That problem will only worsen if state and federal officials deliver on their promise to return more responsibility to the local level.

Johnston County Manager Richard Self notes that legislative actions such as repeal of the inventory tax and exemption of household personal property such as furnishing and clothing have eroded the ability of the property tax to generate money. Meanwhile, service demands have mushroomed. Johnston County, for example, is increasingly becoming a bedroom community for neighboring Wake and the Research

Triangle Park area. As a result, the county's population of school-aged children has exploded—requiring the equivalent of one new school every year to house all the new students. The county's share of Medicaid spending has grown from \$500,000 in the 1989–90 fiscal year to \$2.7 million in 1995–96.

Citizens opposed to tax increases in Johnston and elsewhere have become increasingly astute at bringing pressure to bear on the county commissioners and town council members who control the rates, and the result has been increased reliance on fees and reluctance to raise taxes. In Johnston, county commissioners kept the property tax rate at the same level for seven years, then lowered it so the county would not receive a windfall when property was re-evaluated for tax purposes in 1995–96. Such hold-the-line attitudes are becoming more and more typical. Indeed, at least 53 of North Carolina's 100 counties held their tax rate steady or decreased it for the 1995–96 fiscal year, compared to only 35 counties in 1993–94. Municipalities exhibited a similar trend.

Why the reluctance to raise taxes, even in the face of growing demands? Eager-to-please politicians find that holding the line on taxes plays well with the public, and pleasing the voting public is what makes the difference between a candidate and an elected official. And the 1994 Republican revolution filtered down to the local level as well, where the GOP gained 56 seats on county boards of commissioners.<sup>5</sup>

Many of these local officials were elected on anti-tax themes that resonated with the public. Indeed, opinion polls indicate that the property tax ranks among the least popular taxes, rivaled only by the federal income tax.

So what don't people like about the property tax? David Crotts, the legislature's senior fiscal analyst, notes that one problem is the visibility of the tax. Property owners must list certain possessions in January, elected officials debate the rate in well-publicized meetings during May and June, property owners get their bills in late July, and the bills come due at the end of the year. Taxpayers are reminded of the tax at predictable intervals throughout the year.

And as Regan notes, the tax must be paid when many households are suffering a severe fiscal hangover from the holidays. "A lot of people pay through their mortgage, but you still have a significant number who get one bill and have to

pay it right after Christmas—and it's a big chunk of money.”

Still, no tax should be expected to win a popularity contest, and the property tax does have positive features. It is a true local tax in that it is raised from local residents to pay for local services. Local elected officials control the rate and these officials are held directly accountable to the tax-paying public. Crofts notes that the rate is relatively low compared to many states. And Charles D. Liner, the tax expert at the University of North Carolina's Institute of Government, argues that revenue sources local governments have been able to secure to supplement the property tax may shift the local tax burden from owners of large amounts of property to low- and moderate-income taxpayers.

Part of this phenomenon could be described as user fee creep. Elected officials reluctant to take the heat for raising property tax rates turn to a broad range of user fees, some of which are actually regressive taxes that do not vary with the amount of services consumed. Examples Liner cites include solid waste disposal fees billed on a per-household basis, motor vehicle registration fees, impact fees charged on new home purchases, and a fee of up to \$1 per month local governments are authorized to bill all local residents on their phone bill for 911 service.

A positive feature of the property tax, Liner notes, is that it taxes most directly the people who receive local services. Most taxes that have been discussed for a tax menu would in some way export the tax burden to people outside the local community. And Liner argues that many supplemental taxes, such as the local option sales tax, are regressive.

But whether a tax is regressive is not the issue to local elected officials. “Our elected officials don't hear from the experts,” says David Dear, Cleveland County Finance Officer. “They hear from the taxpayers who feel they're bearing an unfair share of the burden.” Dear says elderly citizens and those who have no school-age children are particularly vocal in their opposition to the property tax. “They call it a school tax,” Dear says, and they wonder why they have to pay it since they don't have any children in school.

Former Wake County Commissioner Jack Nichols says user fees that supplement the property tax are not always regressive. He says in some instances fees that vary according to benefits received and ability to pay represent a pref-

erable alternative to increasing the property tax to pay for the service. Nichols offers several examples where fees may be appropriate: inspection of private water treatment facilities at subdivisions; excessive calls for false alarms due to a faulty burglar alarm; fees for cleanup of a spill of hazardous materials; and sliding-fee scales for public health, mental health, and substance abuse services. “I believe that the common denominator in these common sense forms of taxation is the close nexus between the service provided and the cost of the service,” says Nichols. “In each case, the user is paying for his or her pro rata share of the service. In some cases, the payment is imposed as a consequence of their actions. . . . What could be more fair?”

Richard Self, Johnston County manager, argues that the property tax has a disparate impact on senior citizens, people with disabilities, and people on a fixed income. “I never have thought it was a fair tax,” says Self. The Johnston County Commissioners sought additional taxing authority in the 1995 General Assembly to meet the county's mushrooming school needs. Self says the county wanted authority for a real estate transfer tax; an impact fee on new homes, mobile homes, and apartments; and an additional 1 percent local sales tax. “The bill never got out of committee,” says Self.

Nevertheless, the N.C. League of Municipalities and the N.C. Association of County Commissioners make a strong case for a tax menu. A menu would ease some of the pressure on the property tax, and with the exception of a local income tax, all of the taxes these groups advocate have been authorized for at least some units of local government, according to a list maintained by the legislature's Bill Drafting Division. The groups argue that what is fair for the units that have won legislative approval for these taxes seems fair for the remainder. Local elected officials could pick and choose from the menu, and no one would be required to implement any tax against the wishes of their constituents.

The tax menu items advocated by the League and the Association include:

*The hotel/motel occupancy tax.* Already authorized for 66 counties and 33 municipalities across North Carolina, this tax is levied on overnight accommodations. The tax typically is limited to 3 percent of the cost of those accommodations, although it rises as high as 6 percent

## **Table 1. Key Arguments For and Against a Tax Menu for Local Governments**

### **Pros of a Tax Menu**

1. Towns and counties could tailor their tax structure to the strengths of the local economy.
2. Many menu items—such as the hotel/motel occupancy tax and local land transfer tax—already are in place in some cities and counties.
3. Granting additional flexibility would be consistent with the trend toward returning authority to the local level.
4. Local government is closest to the people so that voters can more easily hold elected officials accountable for taxing decisions.
5. Political constraints work against using property tax increases to meet rising service demands.
6. In lieu of raising the property tax, cities and counties are turning to user fees that are more regressive than the menu items in the way they distribute the tax burden.

### **Cons of a Tax Menu**

1. Some of the menu items—such as the meals tax, the hotel/motel tax, the amusements tax, and the land transfer tax—would not help some of the less populated and poorer rural counties that need help most.
2. The meals tax, the hotel/motel tax, the amusements tax, and the land transfer tax target specific industries or types of businesses, which raises a fairness issue.
3. Some of the menu items—such as the local option sales tax—are regressive and would shift the tax burden away from wealthy individuals and businesses with large amounts of property.
4. The menu gives local officials additional authority to raise taxes at the local level, which flies in the face of anti-tax sentiments.
5. The state may be less willing to share revenue with local governments if it grants additional taxing authority, which could hurt poorer towns and counties that have fewer resources to tax.
6. Local officials already have broad constitutional authority to raise property taxes to meet their revenue needs.

in some places. Revenue from the tax often is restricted to promotion of travel and tourism, although this isn't always the case. While both the League and the Association would include the tax on their menu, the organizations acknowledge that most local governments that would benefit from the tax already have it in place.

**The local land transfer tax.** A total of seven counties have been authorized to implement a local land transfer tax—all located in the northeast corner of the state. These counties are Dare, Currituck, Chowan, Camden, Pasquotank, Perquimans, and Washington. Assessed at 1 percent of the value of any real estate conveyance, the tax is a proven revenue generator in high growth counties. Dare County, for example, raised \$2.2 million through the tax in the 1994–95 fiscal year. The county's general fund property tax produced about \$15 million in revenue during the same year, says Finance Director David Clawson, so the land transfer tax provided a hefty supplement. The tax has been authorized for Dare County since 1985 with little apparent impact on growth. The county led the state in population growth in the 1980s, with its population increasing by 70 percent. Its growth rate is projected to lead the state in the 1990s as well, with the increase pegged at 42.5 percent. Dare County is, however, a coastal county where growth rates are driven by desire to be near the ocean. This does not mean that a land transfer tax would have no impact on housing demand in a non-coastal county with a more typical growth rate.

**The prepared food and beverage tax.** Six units of government have been authorized to charge a 1 percent prepared food and beverage tax. They are: the city of Charlotte; the town of Hillsborough; and Cumberland, Dare, Mecklenburg, and Wake counties. This tax can be a significant revenue generator in urban areas, but many smaller towns and less populated counties do not have enough restaurants to see much benefit. Charlotte, the state's largest city, generated more than \$7 million in revenue through its prepared meals and beverage tax during the 1993–94 fiscal year, according to the Department of the State Treasurer. Hillsborough, on the other hand, produced just over \$29,000. Proceeds typically are restricted to tourism promotion or to capital projects that might encourage restaurant business, such as convention centers, museums, and sports facilities.

**Amusement.** This is among the least tested of any of the taxes on the proposed tax menu. According to Martha Harris, a staff attorney in the legislature's Bill Drafting Division, only two amusement taxes have been authorized in North Carolina, and only one has been implemented. The one that has been implemented allows for a charge of up to \$1 a seat on events at the Greensboro Coliseum. Known locally as the ACC Tournament tax, the surcharge was authorized to help expand the coliseum and lure back the famed Atlantic Coast Conference Basketball Tournament, which had migrated down Interstate 85 to Charlotte. An amusement tax also is authorized for Cabarrus County, home of the Charlotte Motor Speedway, but the tax has never been implemented. Like the prepared food and beverage tax, the amusement tax has limited appeal for less populated counties and small towns with few amusements.

**Additional sales tax authority.** Counties already have the authority to levy a local option sales tax of two cents on the dollar, and all 100 counties levy the full amount. Local government would like to have an additional penny. A primary reason is that the sales tax is a potent revenue raiser that generates fewer complaints by the taxpaying public than the property tax. David Crotts, the legislature's senior fiscal analyst, estimates that a penny increase in the sales tax would generate more than \$650 million in the 1996–97 fiscal year. If the revenue were distributed on a per capita basis, it would help counties with fewer resources and activities to tax, such as restaurants, amusements, and land transfers. According to Liner, the sales tax is somewhat regressive but less so than certain other fees and taxes that have been used to supplement the property tax, such as per household fees that do not vary with the amount of services consumed. Moreover, Liner notes that shifting from property taxes to sales taxes results in significant shifts in tax burdens from property owners and businesses to the public at large. Aside from these issues, a sales tax increase would push the North Carolina tax higher than that of neighboring states, potentially hurting sales in border counties.

**The local income tax.** No North Carolina unit of government has a local income tax. Proponents of a tax menu do not believe that is likely to change in the near future. Nevertheless, they put the local income tax on the list of taxes they'd like to see on a menu. Why? A lo-



*The Session of the  
and His Speaker, Members, Officers  
and employees of General Assembly,  
Sept. 1931.*

**The 1931 session of the N.C. General Assembly, shown here in front of the State Capitol, greatly expanded the state's control over local governments.**

cal income tax could be structured so that it would be more progressive than many alternative local taxes. And it would provide some help for local governments that have relatively few amusements, restaurants, hotels, or real estate transfers, although such a tax would not solve the problems of North Carolina's poorest counties. (It would probably take direct revenue sharing by the state to achieve this end.)

To ease administration at the local level, a local income tax could be pegged as a percentage of the state income tax bill and collected by the state. Currently 7.75 percent at its highest rate, the N.C. Constitution limits the state income tax to no more than 10 percent of income.<sup>6</sup> Regan and Mandell agree the legislature would be reluctant to share its authority to tax income, and local elected officials might be reluctant to implement the tax even if authorized. Nevertheless, they include the tax on the menu as a possible means of helping all of North Carolina's towns and counties—not just those with taxable amenities and pastimes.

### Options for State Action

**L**ocal governments are groaning under increasing service demands while citizens moan about the chief means to pay—the property tax. Yet there is no easy answer to this di-

lemma. A tax menu such as that advocated by the N.C. League of Municipalities and the N.C. Association of County Commissioners would provide additional flexibility for raising funds at the local level, yet the political climate is largely one of considering tax cuts. There are clear pros and cons to adopting a tax menu for local governments.

Among the **pros** of a tax menu are these: towns and counties could tailor their tax structure to the strength of the local economy; many menu items already are in place in at least some cities and counties; additional flexibility would be consistent with the trend toward returning authority to the local level; local government is closest to the people so that voters can more easily hold elected officials accountable for taxing decisions; political constraints work against using property tax increases to meet rising service demands; and cities and counties—hamstrung in their ability to raise the property tax—are turning to user fees that are even more regressive than the menu items in the way they distribute the tax burden.

The **cons** of a tax menu include the following: some of the menu items—such as the meals tax, the hotel/motel tax, the amusements tax, and the land transfer tax—would not help some of the less populated and poorer rural counties that need help most; these same taxes target specific industries or types of businesses, which

raises a fairness issue; some of the menu items—such as the local option sales tax—are regressive and would shift the tax burden away from wealthy individuals and businesses with large amounts of property; the menu gives local officials additional authority to raise taxes at the local level, which flies in the face of anti-tax sentiments; the state may be less willing to share revenue with local governments if it grants additional tax authority, which could hurt poorer towns and counties that have fewer resources to tax; and, finally, local officials already have broad constitutional authority to raise property taxes to meet their revenue needs.

While the case is less than clear for a tax menu, the N.C. Center for Public Policy Research believes the case *has* been made for a severe fiscal crunch at the local level brought on by tension between rising service demands and stable or declining property tax rates. Local governments are the most popular level of government in poll after poll, but their chief revenue source, the property tax, is the least popular. And federal and state governments plan to send more responsibility to the local level, but little talk is heard about sending more revenue. The Center believes the General Assembly should consider the problem, and sees at least four clear options for addressing it.

**Option 1. The N.C. General Assembly could authorize a tax menu for local government that includes authority to levy one or more of the following: a hotel/motel occupancy tax, a local land transfer tax, a prepared food and beverage tax, an amusement tax, a 1-cent increase in local sales tax authority, and a local option income tax.** A broad tax menu could provide something for every unit of government in North Carolina. Poorer counties with fewer taxable amenities such as hotels and restaurants could turn to the local option sales tax or the local income tax. (This would not entirely solve their revenue needs since they also have relatively less sales and income.) The hotel-motel tax already is in place in 66 counties and 33 municipalities in North Carolina. Seven counties have the local land transfer tax. Nine units of government have a prepared food and beverage tax. Two units of government are authorized to levy an amusement tax. The menu would authorize these items for the remaining counties and municipali-

ties. The more broad-based taxes on the menu—the local option sales tax and the local income tax—could provide significant additional revenue for local officials willing to implement them. And authorization for a local option income tax would give at least one option to local officials who want a progressive rather than a regressive local tax. The disadvantage of this option is that the current political climate is not conducive. The legislature might not be willing to authorize a menu, and, if it did, some units of government might find the additional revenue not worth the political fallout from enacting a new tax. For poor counties and municipalities, a tax menu could ease pressure on the state to share revenue without providing a full solution to their financial needs.

**Option 2. The legislature could authorize a 1 cent increase in the local option sales tax and forgo the remainder of the tax menu.** If adopted statewide, a 1 cent increase in the local option sales tax could provide more than \$650 million in annual revenue to local governments (1996–97 fiscal year estimate). That amount of revenue would go a long way toward addressing the revenue needs of local governments. The legislature could earmark a portion of the proceeds for specific local needs—such as school construction for the counties and infrastructure improvements for municipalities—or it could allow local officials to make their own decisions about how best to use the money. While somewhat regressive, the sales tax is not as regressive as some of the user fees that are being used locally to supplement the property tax. One problem with granting additional sales tax authority to local governments, however, is that the state may want to reserve the extra penny for its own revenue needs, or it may want to grant sales tax relief through repeal or partial repeal of the sales tax on food.

**Option 3. The N.C. General Assembly could approach the fiscal needs of local government from the cost side by relieving local government of expenditures for the local share of Medicaid, Aid to Families with Dependent Children, and Special Assistance for Adults.** House Majority Leader Leo Daughtry (R-Johnston) characterizes the state's assuming responsibility for the local share of Medicaid, AFDC, and Special Assistance as a tax cut to the

counties. Local spending for these programs totaled more than \$330 million in the 1994-95 fiscal year and likely will continue to increase.<sup>7</sup> By assuming the local share, the state would be relieving counties of a significant cost—one which is one of the fastest rising parts of their budgets and a cost over which local government has virtually no control. Such a move would not, however, directly help municipalities with revenue needs for such services as street maintenance, waste disposal, and crime prevention. A further obstacle to this approach is that the state may be unwilling to absorb the additional cost of assuming the local share.

**Option 4. The legislature could opt to do nothing to increase flexibility or decrease responsibility at the level, leaving local officials the current options of property taxes, user fees, and privatization or ignoring increased service demands in favor of lower taxes or no increase in taxes.** This option is likely to lead to greater reliance on regressive user fees, increased privatization of services, and curtailment of some services due to reluctance of local officials to raise property taxes to meet rising costs. Ultimately, citizen service expectations and citizen willingness to pay property taxes might find their balance. Citizens could express at the ballot box their pleasure or displeasure with the course of events.

One disadvantage of this approach is that the current trend toward regressive user fees could unfairly shift the burden of who pays for local services to those less able to pay. A further danger is that human needs could go unmet, schools go unbuilt, and public roads and buildings decline. In addition, the current desire to shift more responsibilities and decisions to the local level could be halted in its infancy.

The unpopularity of the property tax has placed clear constraints on the ability of local officials to raise revenues. County commissioners and city councils have found alternative ways to meet their needs through a combination of budget cuts, privatization of services, and increased reliance on user fees. Yet some services—such as crime prevention and police work—are not appropriate for fees, and fees that do not vary with either the level of service consumed or with ability to pay are probably the most unfair taxes of all. There may be a limit to how far citizens are willing to go with user fees, privatization, and the curtailment of services that continual budget-cutting ultimately requires. Whether to grant additional revenue-raising authority to local government or to assume some responsibility for local government costs ultimately is a dilemma for the legislature. And, as the complaints of local government officials wrestling with rising service demands and stagnant revenue sources make clear, the stakes are very high.

## FOOTNOTES

<sup>1</sup> Survey by the Gallup Organization, for the U.S. Advisory Commission on Intergovernmental Relations (ACIR), June 17-July 6, 1994. The survey was based on personal interviews with 1,003 adults nationwide. The results, weighted for demographic variables, carried a margin of error of +/- 3 percent. Participants responded to the question, "Which do you think is the worst tax—that is, the least fair: federal income tax, federal Social Security, state income tax, state sales tax, or local property tax?" A plurality (28 percent) responded that the local property tax was the least fair. The biennial poll has consistently produced similar results, except that the federal income tax has sometimes supplanted the property tax as least favorite. See Tom Mather, "What Polls Have Shown about Public Attitudes on Federalism," *North Carolina Insight*, Vol. 16, No. 3 (May 1996), pp. 36-41.

<sup>2</sup> N.C.G.S. 153A-149(c) for counties and G.S. 160A-209(d) for municipalities.

<sup>3</sup> H.B. 1221 in the 1991 General Assembly.

<sup>4</sup> S.B. 845 in the 1991 General Assembly.

<sup>5</sup> For more on this topic, see Mebane Rash Whitman, "The Evolution of Party Politics: The March of the GOP Continues in North Carolina," *North Carolina Insight*, Vol. 16, No. 2 (September 1995), pp. 81-97. See particularly Table 2, p. 89.

<sup>6</sup> Article V, Sec. 2 (6) of the N.C. Constitution.

<sup>7</sup> Counties are responsible for 50 percent of local Medicaid administrative costs and 5.2 percent of the cost of payments to vendors. For AFDC, counties are responsible for 50 percent of local administrative costs and 16 percent of payments to recipients. Special Assistance for Adults is split on a 50-50 basis between the state and the counties.



# Mandates to Local Government: How Big a Problem?

BY MIKE MCLAUGHLIN AND JENNIFER LEHMAN

*Local government officials have complained for years about the problem of unfunded mandates being handed down by higher levels of government. Their complaints finally appear to have caught the attention of both state and federal elected officials.*

*Unfunded mandates are program requirements handed down from a higher level of government to a lower level without providing the revenue to pay for implementing the requirements. How serious is the problem of unfunded mandates? Does the expense of unfunded mandates prevent local elected officials from implementing local programs with a higher priority? Are further reforms needed to prevent the state and federal government from passing unfunded mandates down to the local level?*

*The Center's conclusion: unfunded mandates are, in the horticulture vernacular, more crab grass than kudzu. Like weeds in a garden, they are a serious problem, but they are not so prolific that they choke off all other life forms at the local level. New state and federal laws promise to increase participation by local officials in the development of rules and regulations springing from mandates. And the laws may even keep a few new mandates from germinating. Given the hierarchical nature of our federalist system, that may be all the reform local government can legitimately expect on the topic of unfunded mandates.*

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**I**n Greensboro, population 188,976, city officials worry that closing a landfill before it is full will cost local taxpayers with no benefit to the environment. Across the state in tiny Marion, population 4,840, town leaders are concerned they will become a farm team for water plant operators who get expensive training at town expense, then move on to higher-paying jobs in bigger cities. In both municipalities, officials believe their problems stem from a similar source: mandates handed down from a higher level of government.

Indeed, local government officials have been complaining about mandates for years, culminating in National Unfunded Mandates Week in October 1994. The clamor in the months leading up to the event moved CBS News personality Charles Osgood to compose a poem called "Sing a Song of Mandates" commemorating the occasion.

Washington tells them what they have to do,  
What policy all of them have to pursue,  
And even if they must go out of their way for it,  
Gives them no money whatever to pay for it."

Whether because of Osgood's poetry or the justice of their cause, it appears that the complaints of local government officials are finally being heard. In March 1995, Congress passed the Unfunded Mandates Reform Act,<sup>1</sup> which institutes a number of procedural reforms and erects procedural barriers to discourage Congress from imposing unfunded mandates with a fiscal impact of more than \$50 million. Closer to home in Raleigh, the state legislature adopted a law that requires notice and a fiscal note when mandates are imposed on lower levels of government. The law also grants local government greater involvement in the development of rules flowing out of legislation.<sup>2</sup> At least 25 other states have enacted statutory or constitutional provisions to govern mandates, including a dozen that have prohibited mandates unless funded.

Despite these advances, skepticism reigns regarding the likelihood of stemming the flow of mandates. "Experience shows . . . that a stringent state unfunded mandate law does not necessarily translate into fewer unfunded mandates," writes Susan Bush, a policy analyst with the Council of State Governments in Lexington, Ky. "The same concern applies to legis-

lation at the federal level."<sup>3</sup>

But railing and rhetoric aside, how serious is the mandate problem at the local level? What services are local governments required to provide and where do the requirements come from? And how effective are laws likely to be that restrict the ability of higher levels of government to tell local government what to do? What, if anything, should be done to restrict state government's ability to issue mandates to local government?

### What Is a Mandate?

**A** good starting point for this discussion is to define the term mandate. At the simplest level, a mandate is a statute or requirement that a level of government provide a service or meet a particular standard. Most local government officials will concede that a certain number of mandates are appropriate or at least inevitable. They begin to grumble, however, when the requirements come with no funds to pay for their implementation. Thus, the debate is really not about mandates per se, but about *unfunded mandates*. And some local government officials concede that even an unfunded mandate may be acceptable if local government officials participate in the decision-making. In other words, a mandate may be OK if a local government agrees that it is needed.

But what if the legislature passed a law and then the rulemaking agency established unforeseen requirements that would be expensive to implement and politically unpopular at the local level? After all, these things happen. Ask the local government officials who supported the seemingly innocuous Watershed Protection Act<sup>4</sup> and wound up having to implement what amounted to state-mandated zoning in parts of North Carolina where the Z-word is hardly uttered in public. It is this type of mandate—passed along with little input from local officials and little or no money to pay for its implementation—that most arouses the ire of local government officials.

### Are Mandates Good, Bad, or Something in Between?

**W**ith all the rhetoric surrounding mandates, it ought to be clear that they are

terrible things that should be rooted from the federalist system, right? Well, not even the critics would go that far. "Most of our members recognize that some level of mandates is appropriate so maybe we can live in harmony," says David Reynolds, executive director of the 509-city N.C. League of Municipalities. "But there has to be some balance."

What possible good could there be in a mandate? It helps local elected officials give priority to problems that need to be solved or issues that need to be addressed but that may not be popular with local taxpayers. For example, standards imposed by the state may give county commissioners a reason to seek bond funding for a new jail instead of a softball complex.<sup>5</sup> The Solid Waste Management Act of 1989 forced counties to spend money on recycling programs to help divert the flow of solid waste to landfills.<sup>6</sup> And dollars counties are required to appropriate for food stamps and Aid to Families with Dependent Children (AFDC) provide at least some minimal level of financial sustenance that keeps local charities from being overwhelmed.<sup>7</sup>

Still, complaints about mandates seem to be rooted in more than just rhetoric. Local government officials interviewed for this article point to the following problems:

- **Lack of flexibility.** This is what local government officials bemoan as the "one size fits all" mentality that requires local officials to apply a uniform solution to a problem that may vary from place to place—if it exists at all in some localities.
- **Differing abilities to pay.** A requirement that is perfectly affordable for a mid-sized city may work a severe hardship on a small town or rural county with a limited tax base.
- **Lack of input.** Local officials would like some voice in decision-making before they are left holding the bag for an expensive new program. They also would like field technicians to have input to assure that mandates implemented actually work.
- **The cumulative effect of mandates.** Individual mandates may have merit, but cumulatively, they rob local government of resources that already are being used to address other local priorities.

To add insult to injury, certain revenue sources such as federal revenue sharing that might have helped pay for mandates have eroded

or disappeared entirely. The state still shares a significant amount of revenue with local government with no program requirements attached, although much of it is reimbursement for revenue lost due to legislative actions such as repeal of the inventory tax. David Crotts, the legislature's senior fiscal analyst, says there are two primary sources of unrestricted state tax revenue returned to local government: (1) the gross receipts tax on utilities, which generates \$130 million annually for municipalities; and (2) the excise tax on beer and wine, which returns about \$21.5 million of the revenue generated through this tax to units of government that allow alcoholic beverage sales. Other significant sources of state revenue returned to local government include: Powell Bill funds, which return more than \$100 million annually from the state gasoline tax for city street construction and maintenance; and 0.5 percent of the 7.75 percent corporate income tax, which is earmarked for school facilities.

Indeed, when tax sharing, tax reimbursement, and local sales tax revenues are lumped together, the state will provide some \$1.8 billion dollars in tax aid to local government during the 1995–96 fiscal year, according to the legislature's Fiscal Research Division.<sup>8</sup> By these calculations, growth in tax aid to local government has averaged 11 percent per year since 1973.

Yet many local officials consistently have claimed that mounting state and federal mandates outstrip the ability of local officials to pay for services, as evidenced by a 1993 letter sent to former House Speaker Dan Blue (D-Wake) by Parks Helms, then chairman of the Mecklenburg County Board of Commissioners. "As a former member of the House and now chairman of the Mecklenburg County commission, I am persuaded that among the most serious and far reaching problems facing state and local governments in North Carolina are the state and federal mandates that place increased fiscal responsibilities on local governments without providing for increased financial support or revenue generating authority," writes Helms.<sup>9</sup>

How serious is the mandate problem and what can be done about it? There, the issue becomes cloudy. Mandates are difficult to trace and hard to pin down. A committee of the N.C. Association of County Commissioners appointed by the association's president in 1993 to investigate unfunded state and federal

**Table 1. State Mandate Relief Provisions**

State	Constitutional Relief					Statutory Relief								Total		
	Prohibit Unless Funded	Require Reimbursement	Local Government Must Approve	State Authorize New Local Funding Source	Two-Thirds Vote to Impose Mandates	Governor May Suspend Mandate	State Must Reimburse	Authorize New Local Funding Source	Prohibit Unless Funded	Delay Effective Date	Local Government Must Approve	General: Waivers/ Appeals/ Fiscal Impact	Provides Specific Relief	Two-Thirds Vote of Legislature Required	Constitutional	Statutory
Alabama <sup>1</sup>			●												●	
Alaska <sup>2</sup>			●												●	
California		●													●	
Colorado			●					●							●	●
Connecticut									●							●
Florida	●			●	●										●	
Hawaii		●													●	
Illinois							●		●							●
Louisiana			●												●	
Maine	●	●			●		●								●	●
Massachusetts	●		●		●		●								●	●
Michigan	●	●													●	
Minnesota											●					●
Missouri	●	●													●	
Montana							●	●	●							●
Nevada								●	●							●
New Hampshire	●		●				●			●					●	●
New Mexico		●		●											●	
New York													●			●
North Carolina <sup>3</sup>											●					●
Pennsylvania	●														●	
Rhode Island							●									●
South Carolina								●	●					●		●
South Dakota							●	●								●
Tennessee <sup>4</sup>	●										●				●	
Virginia						●										●
<b>Totals</b>	<b>7</b>	<b>7</b>	<b>6</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>7</b>	<b>4</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>15</b>	<b>15</b>

Source: 1994 survey data collected by Joseph F. Zimmerman, State University of New York, Albany.

Table reprinted from *Intergovernmental Perspective*, U.S. Advisory Commission on Intergovernmental Relations, Washington, DC, Spring, 1994, p. 29.

mandates acknowledged as much up front. In fact, the committee noted that several of the most talked-about mandates had been adopted as association legislative goals before they ever were enacted by the General Assembly.<sup>10</sup> These included mandates in solid waste management, watershed protection, and expanded AFDC and Medicaid eligibility.

In its deliberations, the committee focused on four major policy areas: public education; human services; environmental protection; and criminal justice. Within these four policy areas, the committee looked at 12 sources of local spending. Yet it could find few examples of purely unfunded state mandates on local government. "Largely because the counties participate in state initiatives, there is almost always some flow-through or matching money," says Jim Blackburn, the association's general counsel and author of the committee's report on unfunded mandates. "Almost nothing is a purely unfunded mandate."<sup>11</sup>

While some local officials would consider anything less than full funding an unfunded mandate, the committee could find only one mandate that was totally unfunded—energy costs for the public schools, required under the statutory provision that counties provide "adequate school buildings equipped with suitable school furniture and apparatus."<sup>12</sup> The state froze its contribution to local schools' energy costs in 1986–87 and by 1992–93 had eliminated it completely, "thus, creating a totally un-

funded state mandate costing counties \$120 million in 1992–93," according to the committee.

In the *human services* policy area, a source of much local grumbling, the committee found no purely unfunded mandates. It did, however, lament that the local shares of public assistance programs are eating up increasing percentages of county budgets, creating particular stress on counties with smaller tax bases.<sup>13</sup> Total spending for public assistance jumped 55.1 percent over a three-year period (1989–90 to 1992–93)—from \$200.7 million to \$311.3 million. And over the same time period, the share of property taxes going to pay for public assistance increased from 13.8 percent to 16.2 percent.

Under *environmental* policy, the committee cited two legislative actions, the Solid Waste Management Act and the Watershed Protection Act, both passed in 1989, as "imposing added and expensive . . . responsibilities on county governments." The committee acknowledged that the Solid Waste Management Act was not entirely unfunded, since it gave local governments the right to charge solid waste disposal fees to pay for waste management programs.<sup>14</sup> But it complained that technical assistance and state funding lagged behind what had been hoped for when the bill was passed. As for the Watershed Protection Act, the committee noted that it created friction at the local level for a number of reasons: (1) it imposed the unfunded mandate of requiring that local governments prepare and approve watershed protection ordinances; (2) it foisted zoning-style restrictions upon citizens unused to having such controls placed upon their use of land; and (3) it left some local officials with the conclusion that the restrictions stunted the growth of their tax base by curtailing development, requiring them to raise taxes to meet increasing service demands, whether the services were mandated or not.

Under *criminal justice*, the committee examined jails and courts in the quest for the unfunded mandate. It cited a "historical mandate" for jails, since there is no direct requirement that counties authorize jails. If counties do operate jails, however, they are subject to expensive standards established by the state. In 1991, these standards were updated to include two requirements of particular concern to local budgets: single cells must be at least 50 square feet in size; and supervision rounds must be made at

#### Notes to Table 1

<sup>1</sup> Alabama prohibits enforcement of a state law increasing expenditures or decreasing revenues in the current fiscal year, which ends on September 30, unless the law is approved by a governing body.

<sup>2</sup> Alaska provides that special acts necessitating appropriations by local governments do not become effective unless ratified by the concerned voters in a referendum.

<sup>3</sup> North Carolina data by N.C. Center for Public Policy Research

<sup>4</sup> The Tennessee General Assembly is authorized to impose mandates on cities and counties only if the state shares the cost.

least every 30 minutes. The committee also cited medical care for inmates as another major mandated cost for counties operating local jails. District Court facilities also are mandated, although fees charged in civil and criminal cases are supposed to help offset the expense. The committee noted that cases are often dismissed and prisoners are often indigent, making court facility fees a limited source of revenue.

But if the committee found few smoking guns in its review of unfunded mandates from the state, there is still the matter of certain services being required. The counties, being subdivisions of the state, are in this sense a service-providing arm of state government. Cities, too, operate under the constraints of Dillon's Rule, which provides that local governments have only those powers and duties assigned to them by the state legislature. That's opposed to Home Rule, which grants greater independence to local government.

To gain a more thorough understanding of actual service and program requirements imposed by the legislature, the Center reviewed the North Carolina General Statutes. While the review produces a long list of requirements—everything from accounting procedures to staffing levels for the county register of deeds office—many of these requirements were structural in nature and fairly inexpensive. Moreover, since the counties exist largely to provide state services at the local level, it is entirely logical that the law require them to do so. And as the N.C. Association of County Commissioners readily admits, few—if any—of these service requirements could be labeled totally unfunded mandates.

Yet many of the complaints of local government officials spring not from the statutes but from regulations developed to implement them. In addition, the federal government often promulgates rules and requires the state to administer them, particularly in the environmental arena. These generally are adopted as state rules and included in the Code of Federal Regulations and the North Carolina Administrative Code. Thus, the counties also want a larger voice in rulemaking. "Rulemaking is fairly closed," says Blackburn. "What we want to do is be looped in to the development of rules—not after they're drafted and at the hearing stage."

Through legislation passed by the 1995 General Assembly and an earlier executive order by Gov. James B. Hunt Jr.,<sup>15</sup> the cities and counties have gained additional input into rule-

making, Blackburn says. Yet he doesn't expect the tension between state and local officials to subside entirely. "I call it creative tension and sometimes there's more tension than at others," Blackburn says. "It's always going to be a schizophrenic situation for the commissioner who wants to spend to fulfill local wishes. . . . It's sort of understanding where you are on the government food chain, and that's not easy. The miracle is it works as well as it does."

### **North Carolina Municipalities Face Fewer State Mandates**

Compared to the counties, North Carolina municipalities have fewer mandated services required by the state. In fact, the state absolutely requires only three services: fire inspection, building inspection, and watershed protection.<sup>16</sup> Yet cities are organized to provide a higher level of service, says Margot Christensen, public affairs director for the N.C. League of Municipalities. Such services as water and sewer treatment, garbage pickup, and police protection are necessary to keep the local economy vital and protect the public health, she says. Plus, citizens demand these services, so there is a political mandate. It's easier to start a service than to stop it, and once a city elects to provide a service, state and federal standards apply. "The expensive mandates tend to be in water and sewer," says Christensen.

Of course, local property taxes are a major funding vehicle for providing such services, and the cities and counties have not approached the legal limits of this revenue source. State statutes allow both cities and counties to set tax rates of up to \$1.50 per \$100 of property valuation. Property tax levies used to pay for schools, social services, and certain other services do not count towards the total.<sup>17</sup> So there is a source of funding. And in some instances there is a direct appropriation. The state has provided additional help with an array of new revenue sources, although some of these restrict how the money can be spent. These include the local option sales tax, hotel-motel taxes in some cities and counties (largely restricted to local tourism promotion), and fees for solid waste disposal and vehicle ownership.

Yet the property tax is the pack mule bearing much of the load for local government, and the property tax—along with the federal income



tax—consistently has been found to be the least popular tax.<sup>18</sup> Meanwhile, service demands are outstripping local officials' ability to pay. Mandates—unless there is an appropriation from the state tied directly to the program or service and paying the full cost—eat up discretionary funding that could be used for other local priorities. And they strap local elected officials with the powerless feeling that they are merely passing along dictates from above, with no real power and authority.

### Are Recent Reforms Enough?

With federal legislation restricting Congress from imposing mandates with a fiscal impact of more than \$50 million, and state legislation giving local government a larger role in rulemaking, has the problem of unfunded mandates been solved? Local government officials say the answer probably is no. "It's more of a moral victory than anything else," says Terry

Henderson, director of advocacy for the N.C. League of Municipalities. "Congress can do anything it wants, and there are escape hatches in [the law]."

Neither the state nor the federal legislation is retroactive. "Existing regulations are not affected, and there may be some existing regulations that need some help and work," says Henderson. In addition, getting accurate estimates of the cost of implementing mandates is difficult, whether at the state or federal level. Both levels of government are depending on increased local government involvement in estimating program costs and crafting rules to implement legislation. To some extent, the success of these new efforts depends upon the quality of local government input.

At the state level, groups like the N.C. Association of County Commissioners and the N.C. League of Municipalities are focusing their attention on strengthening their relationship with people who make administrative rules. "We're taking a much closer look at our relation-

ship with the regulators," says the League's Margot Christensen. "We're making sure they know what we're doing, so they don't just have blinders on with the science of regulation."

Both the league and the association have developed advisory groups of city and county managers, finance officers, and field operations specialists such as wastewater treatment plant operators and landfill operators to help administrative rule makers develop regulations that are practical and workable. And local government officials are winning appointments to rule-making bodies such as the Environmental Management Commission, which is the chief state policy-making board on environmental issues.

Given that there is little sentiment for an outright ban on mandates, what else do local government officials want? A ranking state environmental official argues that local officials want laws and regulations that make sense. "The real reason these measures have generated such a hue and cry is that specific requirements imposed on local governments have too often been unreasonable—requiring local governments to spend a lot of money with little return to human health or environmental protection," says Steven J. Levitas, deputy secretary of the Department of Environment, Health and Natural Resources.

Levitas makes the distinction between unfunded versus "unfounded" mandates. "For example, under the federal Safe Drinking Water Act and regulations, our local governments were going to have to do expensive testing of their drinking water supplies every quarter, even if they had previously tested clean and were not threatened by any known source of contamination. Everyone agreed that imposing these costs on local governments did not make sense; our department was able to develop a streamlined waiver program approved by the EPA that has saved an estimated \$10 million in testing costs through reduced monitoring."

Levitas argues that complying with certain other mandates is simply a cost of doing business. "Most Americans would agree that local governments should not build landfills that contaminate groundwater or run drinking water systems that poison their customers. When such mandates are imposed on local government, there is no reason why the federal or state government should pick up the cost of compliance, any more than they do for the many private par-

ties that provide the same services—often in competition with local governments."

The league's Henderson takes a slightly different slant. "We want what's reasonable and feasible," he says. "And if it's a major priority, we want some funding." Like a number of local officials interviewed for this article, Henderson holds that the level of government that makes the policy should be the one that pays for it. "Who should pay for the state and federal government's priorities?" he asks.

## Conclusion

**I**t is difficult to gauge the magnitude of the unfunded-mandate problem. Higher levels of government often pass along at least part of the funding, and when the funding isn't forthcoming, local government has the authority to raise property taxes. Still, raising taxes to pay for new programs at any level of government is becoming increasingly difficult, and the property tax is among the least popular of all taxes. Local government officials make a compelling case that at least from a *political* standpoint, paying for mandated programs interferes with their ability to fund local priorities. That's because even though the authority is there, the political *will* is increasingly lacking to raise property taxes to pay for local priorities.

The result is a funding crunch for local government, and mandates may be a part of the problem. Yet as long as there is a federalist system, there will be instances when higher levels of government work their will on the next level down. And if local taxpayers must pick up some of the cost, they also receive such benefits as clean drinking water, safer workplaces, more accessible public facilities, and better public health. Local government officials resent being dictated to from above, and they raise credible concerns about the need for flexibility in applying rules at the local level. But the evidence suggests that mandates—at least *unfunded* mandates—are less of a problem than the rhetoric might suggest.

That's particularly the case with mandates handed down from the state. The N.C. Association of County Commissioners, for example, uncovered only one clear example of a totally *unfunded* mandate, despite a thoroughgoing search—that one created when the state withdrew financial assistance for the provision of

energy in the public schools but left the mandate.<sup>19</sup> In fairness, there were plenty of programs in which the state picked up only part of the cost, but that should not be surprising in a system in which the counties are political subdivisions of the state responsible for direct service delivery. And in some cases, instead of mandating a program with no revenue, the state provides revenue with no mandate, such as utilities tax revenue returned to cities, as well as portions of beer and wine tax revenue returned to cities and counties that allow sale of these beverages.

Many of the complaints leveled by local officials interviewed for this article took issue with federal mandates, rather than those handed down by the state. This is particularly the case

with cities, which are more likely to engage in water and sewer treatment and thus get hit with expensive federal environmental mandates. Clearly, these requirements can have a cumulative impact that results in significant costs for cities, as Greensboro officials were able to document.

Yet the Center's research suggests that part of the problem has been poor communications between various levels of government. Local government officials are not always certain what is required of them when a higher level of government passes a new law, and it seems as important for the higher level of government to communicate what is required as it is for the lower level to receive the message.

**Table 2. Top 10 Most Expensive State Mandates to Local Government in North Carolina**

Rank	Mandate	Units Affected
1	Provide adequate facilities for public schools	counties
2	Pay local share of Medicaid costs	counties
3	Pay local share of Aid to Families with Dependent Children costs	counties
4	Various water testing requirements	primarily cities
5	Wastewater monitoring	cities
6	Comply with Solid Waste Management Act through recycling, landfill construction regulations, and increased tipping fees	cities and counties
7	Provide certain pension benefits for law enforcement officers	cities and counties
8	Comply with federal Occupational Safety and Health Act (state administered)	cities and counties
9	Conduct fire inspections	cities and counties
10	Adopt watershed protection ordinance	cities and counties

*Source:* Opinions of Jim Blackburn, legal counsel for the N.C. Association of County Commissioners and Terry Henderson, director of advocacy for the N.C. League of Municipalities.

State and federal legislation passed in 1995 will at least assure that communications improve. Local government officials will have a larger voice in the development of legislation and regulations that affect the way they do business. There also will be a stronger effort to assure that the cost has been weighed against the benefit, and that the dollars have been identified to pay the tab. If these reforms can be made to work—resulting in more reason-

able regulation, a greater awareness of the cost of new programs versus the benefit, and increased attention to the need to make sure that local governments have the wherewithal to pay for new priorities—local governments will have achieved much in the way of mandate reform. A guarantee of full funding for every program requirement handed down by a higher level of government is probably too much to expect.

## FOOTNOTES

<sup>1</sup> Public Law 104-4 (2 USC 1501).

<sup>2</sup> Chapter 415 of the 1995 Session Laws (HB 895), now codified as N.C.G.S. 150B-21 ff., 120-30.45 ff., and 120-36.8.

<sup>3</sup> Susan Bush, "Mandate Relief: Reality or Rhetoric?" *State Government News*, Lexington, Ky., May 1995, pp. 6-10.

<sup>4</sup> N.C.G.S. 143-214.5.

<sup>5</sup> N.C.G.S. 153A-221

<sup>6</sup> For more on the solid waste disposal woes of local government, see Tom Mather, "Trying to Make Molehills out of Mountains of Trash," *North Carolina Insight*, Vol. 10, Nos. 2-3 (March 1988), pp. 40-52. See also Mike McLaughlin and Amy Carr, "Recycling North Carolina's Resources: The Long Campaign to Cut Tar Heel Waste," *North Carolina Insight*, Vol. 12, No. 1 (December 1989) pp. 2-39.

<sup>7</sup> N.C.G.S. 108A-87.

<sup>8</sup> "Local Government Tax Aid—Historical Data (table)," *Overview: Fiscal and Budgetary Actions*, Fiscal Research Division, N.C. General Assembly, 1995 session, p. 378.

<sup>9</sup> As quoted in the editorial "Rusty Knife Surgery," *The Charlotte Observer*, May 26, 1993, p. 10A.

<sup>10</sup> *Report of the Committee to Investigate Unfunded State and Federal Mandates*, N.C. Association of County Commissioners, April 1994, p. C-1.

<sup>11</sup> John Witherspoon, a long-time county manager in Guilford and Cabarrus counties, says many county commis-

sioners would consider an unfunded mandate to be any program requirement that is only partially funded. "To them, unfunded simply means that the state forces counties to spend something for a program . . . whether 5 percent or 100 percent," Witherspoon says.

<sup>12</sup> N.C.G.S. 115C-521.

<sup>13</sup> Public assistance included Medicaid, Aid to Families with Dependent Children, food stamps, and special assistance.

<sup>14</sup> A number of local government officials, in reviewing this article prior to publication, noted that providing authority to raise revenue—whether through a new tax or a fee—is not the same as providing funding. Therefore, they would consider any new requirement to be unfunded unless dollars were appropriated to pay for it.

<sup>15</sup> Gov. James B. Hunt Jr., "Fiscal Notes on Administrative Rules Affecting Local Governments," Executive Order No. 49, May 17, 1994.

<sup>16</sup> N.C.G.S. 160A-411.

<sup>17</sup> For county authority to levy the property tax, see N.C.G.S. 153A-149. For cities, see N.C.G.S. 160A-209.

<sup>18</sup> *Changing Public Attitudes on Governments and Taxes, 1994*, U.S. Advisory Commission on Intergovernmental Relations, p. 3.

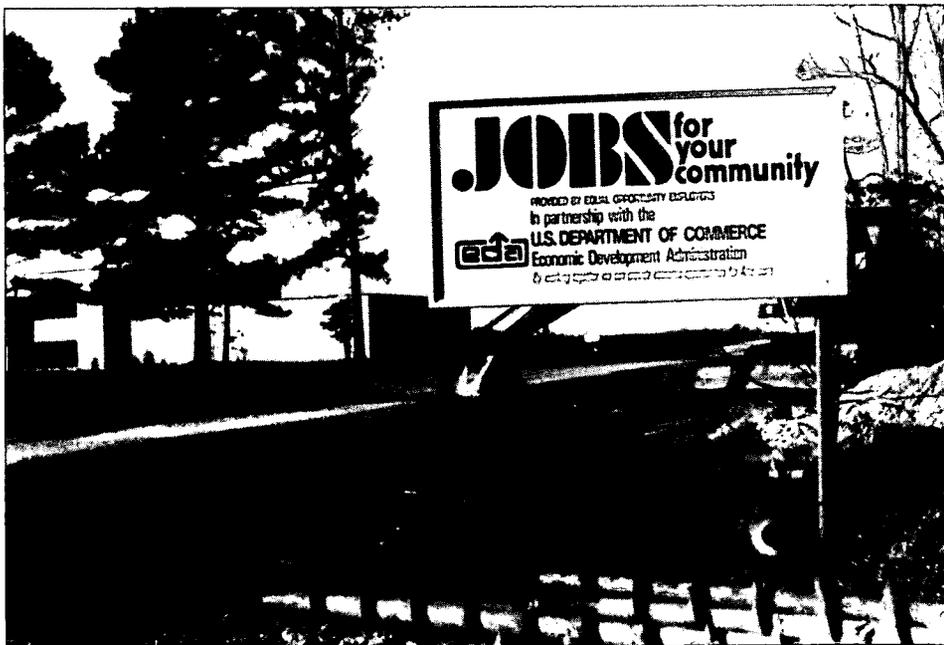
<sup>19</sup> Former County Manager Witherspoon argues that use of the term "totally unfunded mandate" sets up a straw man. "I maintain that if the program is mandated and not 100 percent funded by the mandating authority, it's unfunded," he says.

# **The Formation of Public Policy**



# Chapter 6

## Economic Development



Jack Betts

*“My occupational hazard is my occupation’s just not around.”*

—“A PIRATE LOOKS AT FORTY” BY JIMMY BUFFETT



# Making the Transition to a Mixed Economy

BY BILL FINGER

*Beginning 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 sectors. Three transitions are sweeping through our 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, such as hogs. These transitions are pushing North Carolina toward a dual economy, with booming urban centers and depressed rural areas.*

**T**wo 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.<sup>1</sup> In subsequent years, poor whites and

slaves—who couldn't acquire land with ease—helped build the agrarian culture that evolved.

As late as 30 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 the mill with a little patch

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*Bill Finger was editor of North Carolina Insight from 1979–1988. He is now a Raleigh freelance writer and consultant. This article is based on an article that was previously published in North Carolina Insight and the second edition of North Carolina Focus: Bill Finger, "Making the Transition to a Mixed Economy," North Carolina Insight, Vol. 8, No. 3–4, April 1986, pp. 3–22. The descriptions about economic transitions in Wake County, Dare County, Graham County, Jones County, and Cabarrus County were excerpted from Wade Rawlins, "Local Governments Face Increasing Demands, Tighter Budgets," North Carolina Insight, Vol. 16, No. 3, May 1996, pp. 2–17.*

of tobacco. Textiles, apparel, and furniture plants dotted the rural landscape like familiar road signs.

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 sectors 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," said 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.<sup>2</sup> 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. The decline has since stabilized. In 1993, 24 percent of all manufacturing jobs in this state were in textiles—205,800 jobs. This fundamental change in the state's leading industry came from two factors: mechanization of this heavily labor-intensive industry, and an increase in imports, which, in effect, was an export of

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*"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

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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.

From 1970 to 1980 to 1990, while manufacturing jobs dropped from 40 to 34 to 28 percent, the portion of the state's jobs outside of factories grew from 60 to 66 to 72 percent. (See Table 1.) "We're seeing a full-fledged evolution of a dual economy," says Greg Sampson, director of research at the N.C. Employment Security Commission, within 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." But manufacturing remains an important component in the overall economy of the state.

Tobacco also has failed to hold its own. From 1973 to 1985, tobacco manufacturing employment—always small relative to textiles—declined only 3 percent, from 28,100 to 27,200 jobs. But since then, the decline has become more pronounced: by 1993, there were only 18,600 tobacco manufacturing jobs in the state. And, 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 and under public attack from anti-smoking activists and public health advocates. 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. That trend has continued: in 1993, 33 percent of receipts came from poultry products, and only 19 percent came from tobacco. Agribusiness replaced agriculture in North Carolina, as corporations, with diverse interests such as poultry and hogs, replaced family farms that grew tobacco.

These figures suggest three transitions that are 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

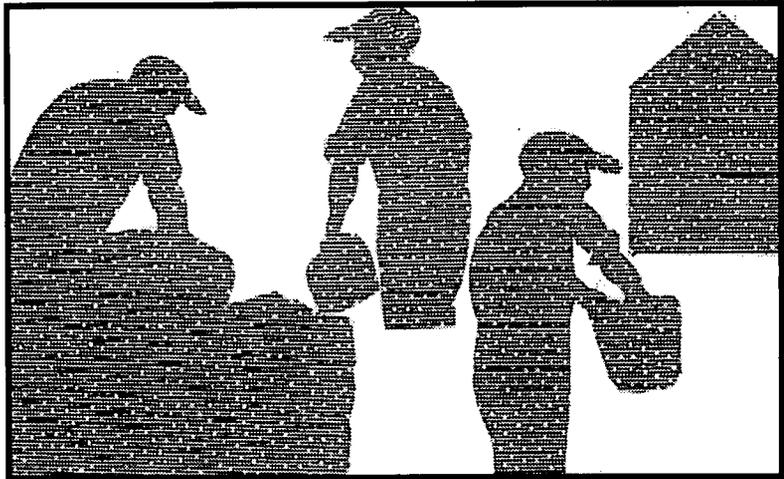
- a shift within the *agricultural sector* from small farms relying extensively on tobacco income to larger farms diversifying into many commodities—including crops but also livestock, dairy, and poultry—often run by corporations or under contract.

These three transitions, working together, are forcing businesses, banks, analysts, planners, and policymakers to anticipate what kind of mixed economy might lie ahead. What kind 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.

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 of the N.C. Employment Security Commission. In 1994, the four most urban counties had among the state’s lowest average unemployment rates: Wake County (3.0 percent), Mecklenburg County (3.6 percent), Guilford County (3.7 percent), and Forsyth County (4.0 percent). The overall state unemployment average was 4.4 percent.

Wake County, for example, has been experiencing its most rapid growth in years. In the early 1990s, Wake County was adding 5,000 more people a year than it did during the high-growth 1980s. Permits to build single-family homes had increased steadily to 6,295 in 1993—the level of the mid-1980s boom years.<sup>3</sup> And demographers forecast that the growth would continue. Wake County is expected to attract one-fifth of the state’s population growth over the next 25 years.<sup>4</sup>

“Most of the employment problems are in the non-metro areas,” says Sampson. In 1994, 18 counties had an average unemployment rate of seven percent or more. Most of these counties are rural and in the eastern part of the state (for example, Hyde County, 9.6 percent; Brunswick County, 9.4 percent; and Tyrrell County, 8.5 percent) or the western part of the state (for example, Swain County, 12.5 percent; Graham County, 11.2 percent; Mitchell County, 7.4 percent). The group even includes counties with medium-sized towns such as Wilson (Wilson County, 8.0 percent), Laurinburg (Scotland



County, 7.2 percent), and Lumberton (Robeson County, 7.1 percent).

Graham County, a scenic, but poor county just south of the Great Smoky Mountain National Park, is among the score of impoverished counties in the mountains and Coastal Plain of North Carolina that lost population in the 1980s and are forecast to continue losing people in the 1990s. In the 1990 census, Graham ranked in the top 10 North Carolina counties in percentage of residents in poverty and in the bottom 10 in per capita income.<sup>5</sup> More than two-thirds (113,000 acres) of the land in the county is owned by the U.S. Forest Service and, therefore, is tax-exempt. Young people tend to leave Graham County to find jobs, says Dale Wiggins, the county manager.

To anyone who travels the state off the interstate highway system, the figures that statistically differentiate urban and rural areas come as no surprise. What is not apparent, however, is how such a dual economy—the boomtowns and the depressed towns—can move through the economic transitions 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, computer technology communications, 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. For instance, for the first

**Table 1. Nonagricultural Employment in North Carolina, 1960-90**

Industry Employment	1960		1970		1980		1990	
	# employed (in 1000s)	% of total	# employed (in 1000s)	% of total	# employed (in 1000s)	% of total	# employed (in 1000s)	% of total
<b>MANUFACTURING</b>	509.3	42.6%	718.4	40.2%	820.0	34.5%	861.5	27.6%
1) Textiles	228.8	19.1%	280.7	15.7%	245.8	10.3%	216.0	6.9%
2) Furniture	44.6	3.7%	66.2	3.7%	81.5	3.4%	84.7	2.7%
3) Apparel	35.3	3.0%	75.1	4.2%	88.0	3.7%	81.8	2.6%
4) Non-electrical Machinery	12.5	1.0%	29.3	1.6%	49.5	2.1%	65.4	2.1%
5) Electrical Machinery	25.4	2.1%	40.9	2.3%	55.3	2.3%	54.8	1.8%
6) Food	33.5	2.8%	41.4	2.3%	44.0	1.8%	51.1	1.6%
7) Other	129.2	10.8%	184.8	10.3%	255.9	10.8%	307.7	9.9%
<b>NON-MANUFACTURING</b>	686.2	57.4%	1068.2	59.8%	1560.0	65.5%	2256.3	72.4%
<i>Big Three</i>								
1) Retail and Wholesale Trade	219.8	18.4%	324.5	18.1%	472.9	20.0%	715.8	22.9%
2) Services	127.1	10.6%	217.5	12.2%	341.3	14.3%	592.4	19.0%
3) Government	164.2	13.7%	264.2	14.8%	409.9	17.2%	492.0	15.8%
<i>Little Three</i>								
4) Construction	65.2	5.5%	96.5	5.4%	118.7	5.0%	163.7	5.3%
5) Transportation, Communication, & Utilities	64.5	5.4%	92.1	5.2%	116.5	4.9%	152.5	4.9%
6) Finance, Insurance, & Real Estate	42.1	3.5%	69.5	3.9%	95.5	4.0%	134.7	4.3%
7) Other (Mining)	3.3	0.3%	3.9	0.2%	5.2	0.2%	5.2	0.2%
<b>Total Nonagricultural Employment</b>	<b>1195.5</b>	<b>100.0</b>	<b>1786.6</b>	<b>100.0</b>	<b>2380.0</b>	<b>100.0</b>	<b>3117.8</b>	<b>100.0</b>

Source: Labor Market Information Division, N.C. Employment Security Commission, North Carolina Department of Commerce, "Civilian Labor Force Estimate for North Carolina."

time, the 1990 census classified more than 50 percent of the residents of North Carolina as living in urban areas. And, North Carolina's traditional industries employ a lot of women. Statewide, 60 percent of women over the age of 16 work outside the home (compared with 50 percent nationally) and 66 percent of women with young children work outside the home (compared with 60 percent nationally). Also, a dispersed population has inhibited the growth of a dominant urban center the way Atlanta and Chicago dominate Georgia and Illinois. In North Carolina, a rural community, like Lizard Lick or McGee's Crossroads, can lie less than 20 miles from downtown Raleigh.

The evolution of North Carolina into the leading textile, apparel, tobacco, and furniture-producing state accounts for these unique demographics. Because these industries were scattered and paid relatively low wages, both husbands and wives had to work and they often chose to live on a farm or in a rural community, which were cheaper than 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 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.

### **Transition One: From Labor to Capital—Factories Take the Leap**

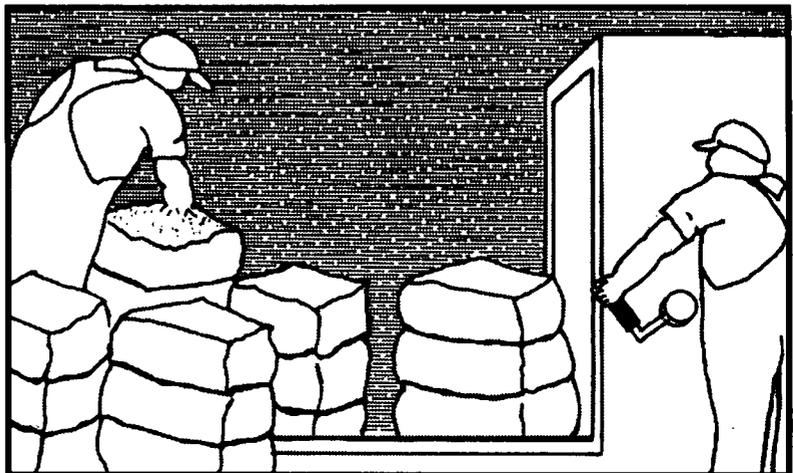
**L**inthead." For sociologists of the 1930s, no single word better summed up the history of factories in this state. For modern textile officials, no word sounds more inflammatory. A linthead, literally, was a textile worker with fluffs of cotton clinging to his clothes at the end of a shift. In a broader 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 (OSHA) 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 1990, 81,800 people—mostly women—worked in the state's apparel industry, the third largest manufacturing sector behind textiles and furniture. Many of these women still turn bolts of cloth into apparel in small cut-and-sew operations. In the 1980s, the apparel industry embarked on the kind of massive capital-investment campaign that the textile industry launched in the 1970s. Nevertheless, wages in the apparel sector still remain below those for textile workers as a whole. (See Table 2.)

Manufacturing jobs, including those in the textiles sector, peaked in the 1960s. And, textile jobs remained stable, with only small dips and rises, until the oil crisis and recession of 1974–75. The jobs that were lost never returned because the textile leaders had begun to reshape the industry. With modernization as the goal, textile companies launched massive capital expenditure programs "to increase labor productivity, improve quality, and enhance flexibility in order to replace outmoded shuttle looms with faster, more flexible shuttleless machines and to upgrade cotton yarn opening and carding equipment."<sup>6</sup> In 1974, Burlington Industries was the world's largest textile company, employing 81,000 people. Capital investment and divestitures, however, besides



**Table 2. Average Hourly Earnings of Production Workers in Selected Industries in North Carolina**

Industry	Average Hourly Earnings 1985	Average Hourly Earnings 1995
Tobacco Manufacturers	\$11.91	\$17.91
Paper and Allied Products	11.27	14.34
Chemicals and Allied Products	9.79	13.65
<b>Statewide Manufacturing Average</b>	<b>7.32</b>	<b>10.60</b>
Furniture and Fixtures	6.70	9.82
Textile Mill Products	6.50	9.27
Food & Kindred Products	6.46	9.27
Lumber and Wood Products	6.33	9.41
Wholesale and Retail Trade	6.07	8.58
Apparel and Other Textile Products	5.16	7.46
Hotels and Other Lodging Places	4.55	6.78

*Source:* Labor Market Information Division, N.C. Employment Security Division, "State Labor Summary," October 1985 and August 1995, p. 11.

improved productivity, less cotton dust, and enhanced flexibility, contributed to a 35 percent drop in Burlington Industries' employment to 53,000 in 1984. Burlington Industries currently employs 22,500 workers.

Textile competitors in Asia—the Philippines, Taiwan, China, Korea, and Japan—have affected the textile market for North Carolina companies as well. The textile industry in this state has been forced to operate more efficiently and to shift to less vulnerable product lines. In some cases, that has meant mergers and sales of entire product lines. The mergers and capital investments reflect the complexity of the textile industry, which makes everything from automobile seat covers to bolts of fabric. Categorizing the changes can be overly simplistic except for one stark fact—many people are losing their jobs.

In 1993, the U.S. Congress passed the North American Free Trade Agreement (NAFTA), allowing the U.S. to enter into a trade agreement with Canada and Mexico. "NAFTA was particularly critical for the textile industry," writes Regina Oliver in the magazine *North Carolina*, published by North Carolina

Citizens for Business and Industry.<sup>7</sup> "In the past 30 years, the U.S. has lost an estimated 60 percent of its textile jobs, largely to the Far East. Without NAFTA, according to Guilford Mills Chief Executive Officer Chuck Hayes, the rest of the U.S. textile industry would have evaporated. Because Mexico doesn't have significant textile production capability, Mexican apparel makers look elsewhere for their fabric, and under NAFTA they have incentives to use materials from the U.S. rather than from China, Korea or Taiwan."

Counties have responded by developing a more diversified manufacturing base to take advantage of opportunities created by such trade agreements and in response to our nation's diminishing proportion of the textile market. In Alamance County, for instance, after a tightening of the textile industry's belt resulted in 11.5 percent unemployment in 1983, a more diversified manufacturing base helped bring the unemployment rate down to 4.7 percent by October 1995. Capital-intensive industries that moved into Alamance County hired laid-off textile workers who had been retrained at the

Technical College of Alamance, the local community college. For example, GKN company employed 625 people making front-wheel drive parts, and Honda employed 120 workers making high-priced lawnmowers. These industries reflect the wide range of capital-intensive industries now dependent on computers for everything from production schedules to assembly-line management.

Other areas of the state, particularly the Research Triangle Park, have concentrated on the computer industry itself, including microchip assembly operations, such as Mitsubishi in Durham. The N.C. Microelectronics Center opened in 1981 and 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.

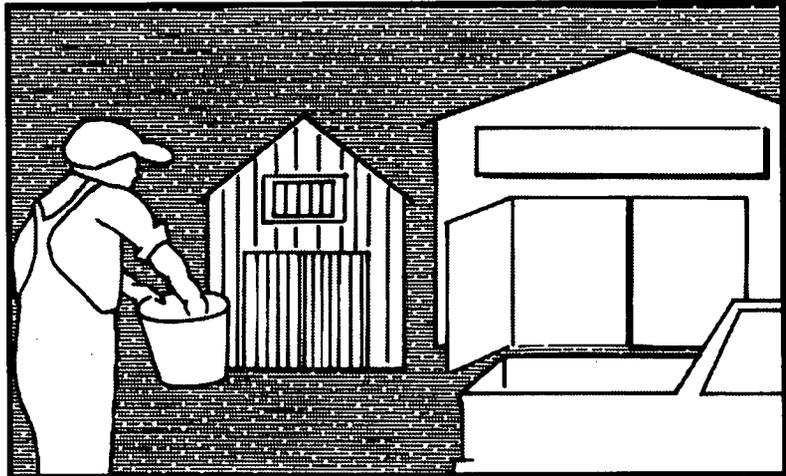
These examples demonstrate how North Carolina is coping with the transition within the *manufacturing sector*, from labor-intensive jobs of the past like "lintheads" to capital-intensive jobs like computer operators.

### Transition Two: Services and Trade—Jobs for the Future

In 1990, more than twice as many people worked in *nonmanufacturing* jobs in North Carolina as in manufacturing jobs—2,256,300 compared to 861,500. These 2.25 million plus jobs fall into six major categories, which can be grouped as the "big three" and the "little three." The big three—trade, services, and government—account for 58 percent of all jobs in the state, excluding military, domestic, and agricultural workers. Fourteen and a half percent of all jobs come from the little three: construction; transportation, communication, and utilities; and finance, insurance, and real estate. All other jobs are in the manufacturing sector.

**Trade.** In 1970, wholesale and retail trade provided 324,500 positions. Since then, that number has jumped to 715,700 positions, or 22.9 percent of all jobs. While the growth has occurred statewide, metropolitan areas have reaped the greatest benefits. And no place is thriving more than the state's largest metro area, Charlotte.

Wholesale companies in Charlotte distribute everything from alcohol to zippers. Retail sales



include fast food shops and fancy steak houses, department stores in shopping malls, grocery chains and neighborhood specialty shops. Charlotte serves as the corporate headquarters for homegrown hits like Belk and Harris Teeter.

The growing travel and tourism business reflects a different side of the retail boom. The hourly wages for hotel and other lodging places ranks at the bottom of all categories, and retail workers aren't much higher. Both are well below the average textile wages. (See Table 2.) And, although Variety Vacationland North Carolina brings jobs to rural areas on the coast and in the mountains, the seasonal nature of the work is a mixed blessing.

For instance, the town of Nags Head, like many of North Carolina's beach communities, has a split personality. Half the year, it is a quiet community along a 12-mile strip of Dare County coast line with a permanent population of 1,818 people. But from late April through September, vacationers flock to its beaches, swelling the population to around 40,000. The seasonal tide of tourists boosts the town's revenues through the sales taxes on money spent in restaurants, gift shops, and on rental cottages. But accommodating all the visitors has its costs. In summer months, the town needs to hire seasonal staff to clean streets and pick up garbage.

**Services.** In non-technical terms, the word "services" 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 measures 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, movie theaters, child care centers, or private museums—and that's just to name *some* of the places. The service sector also includes doctors, engineers, and accountants so long as they work 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 offspring, and the graying of America.

These two trends have spawned whole new service industries, from child care centers to nursing homes. As science has helped to cure more diseases and thereby prolong life, so it has dramatically boosted employment in health care—home health aides, nurses, and gerontologists. In 30 years, the number of service-sector jobs in North Carolina has more than quadrupled, from 127,100 in 1960 to 592,400 in 1990.

**Government.** In 1990, federal, state, and local governments provided 15.8 percent—or 492,000—jobs in North Carolina. This sector had major growth spurts in both the 1960s and 1970s, but began to slow by the mid-1980s. During the 1960s, federal government programs increased dramatically, creating new jobs ranging from Head Start teachers to Farmer 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. In the early 1980s, federal budget cuts cut the number of employees in this sector.

Meanwhile, state government expanded sharply in the 1960s and 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. By far the largest government employer, though, is local government. 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 the social services.

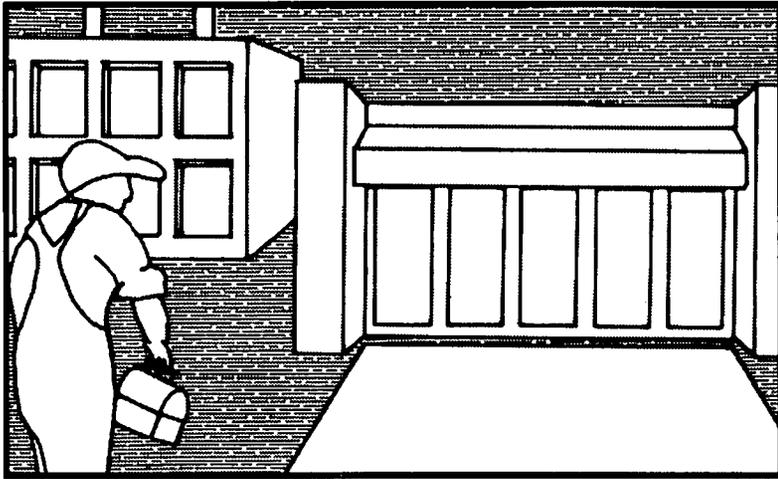
“As the federal government divests itself of responsibilities,” said Alice Garland, former research and policy specialist for the State Employees Association of North Carolina, “you’ll see

the state and local governments talking more about who ought to be providing what. I think you’ll see increases in jobs first at the local level and then in state government.”

**The Little Three.** 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 on 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 (IRAs), ready asset accounts, and certificates of deposit (CDs) as a regular part of business that only 10 years ago rarely went beyond checking and savings accounts. Meanwhile, the insurance industry has moved from whole and term life insurance to universal life, long-term investment schemes, mortgage life, and other new products. Together, the little three provide 14.5 percent—450,900—of all jobs.

These new offerings by the finance and insurance industry demand sophisticated staff, more computers, the construction of more office space, more business trips, better communications systems, and overnight mail and package service. For instance, the Global TransPark, a proposed international cargo airport, is designed to serve as a global manufacturing and distribution center. “This is really a computer-age industrial complex, in which global aviation plays the pivotal distributional role,” says John D. Kasarda, Kenan Professor of Business Administration at UNC-Chapel Hill. Companies in the technologically sophisticated industrial park would utilize “just-in-time” manufacturing.<sup>8</sup> The state is bankrolling this massive economic development project in hopes that the TransPark will create 59,200 jobs statewide by 2000 and 101,200 jobs by 2010.<sup>9</sup> Such a project would meet the increased demands of the little three, as well as other sectors that need sophisticated transportation and shipping services.

In addition to major government initiatives like RTP, the Microelectronics Center, and the Global TransPark, the state’s strong banking industry also serves as a lure for new finance-related companies. Charlotte, long a banking center, is the headquarters for First Union (based on assets, number two in North Carolina) and NationsBank (based on assets, ranked



number one in North Carolina and number three in the United States). Both banks have been among the most aggressive in the recent spate of mergers both within North Carolina and across state lines. Winston-Salem is the headquarters for Wachovia and Southern National Corporation (the holding corporation created when BB&T merged with Southern National Bank).

These examples illustrate how the transition within the *nonagricultural sector*, from manufacturing or goods producing jobs to trade, service, and government jobs, is affecting employment opportunities in North Carolina.

### Transition Three: The Family Farm Withers

**P**igs, not people, are moving into Jones County. One of eastern North Carolina's rural counties, Jones County has been losing population for more than a decade. At this point, it has fewer than 10,000 people.<sup>10</sup> It has far more hogs and is the heart of the state's rapidly growing hog industry. Four of the county's 20 largest taxpayers are now commercial hog operations, with Brown's of Carolina at the top of the list, according to the county tax supervisor. "Three years ago, we [had] never heard of them," says Wayne Vanderford, Jones County tax supervisor. "That shows you how hogs are growing in eastern North Carolina." Predominantly agricultural, Jones County has one of the lowest per capita incomes in the state and ranks in the top fourth in the percentage of residents living in poverty.

Because of increasing problems with the federal tobacco price support system, farmers have had to diversify their products. (See Table 3.) In 1950, just 4.3 percent of cash receipts for agricultural commodities in North Carolina was attributable to hogs. In 1993, that figure is an astounding 16.3 percent, making hogs the third largest grossing agricultural commodity in North Carolina. In fact, pork production reached a record high in 1993 (2.1

billion pounds), 13 percent above the previous record set in 1992. Hog and pig inventory also set a record high in 1993 at 5.4 million animals. 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 such as North Carolina.

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 not only had 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.<sup>11</sup> Meanwhile, the big jump in oil prices in the early 1980s sent fertilizer

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*"Scarecrow on a  
wooden cross,  
Blackbird in the barn,  
Four hundred empty  
acres that used to be  
my farm."*

—"RAIN ON THE  
SCARECROW" BY JOHN  
MELLENCAMP AND  
GEORGE M. GREEN

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**Table 3. Top Ten Agricultural Commodities by Percentage of Cash Receipts, 1950-93**

Commodity	1950 %	1960 %	1970 %	1984 %	1993 %
1) Poultry & Eggs	7.6	15.0	21.9	26.8	33.4
2) Tobacco	59.5	49.1	38.3	24.1	18.9
3) Hogs	4.3	4.9	8.0	8.7	16.9
4) Greenhouse Nursery	0.8	1.0	1.5	3.3	6.2
5) Dairy Products	5.4	6.2	6.3	5.4	3.8
6) Cattle and Calves	2.2	3.2	3.7	2.1	3.6
7) Soybeans	1.1	2.2	4.0	6.2	3.5
8) Corn Feed	2.4	4.3	4.3	6.2	2.7
9) Peanuts	3.3	3.1	3.0	2.8	1.6
10) Farm Forest Products (pulpwood, timber, and Christmas trees)	2.2	1.9	2.1	5.9	N/A*

\* Farm forest products has not been ranked since 1989, when the definition of "farm income" was changed to exclude such products. The change was needed so that all states would have comparable farm income. The U.S. Census' definition of "farm income" was adopted. Such products are now considered "farm-related income."

Source: N.C. Crop and Livestock Reporting Service, N.C. Department of Agriculture, "N.C. Agricultural Statistics," p. 7 of the 1994 report.

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 that survived these pressures have larger farms, employ more people, and rely on different crops than their parents did. These trends were already in place before the current pressures of reduced farm income. From 1959 to 1982 to 1992, the average North Carolina farm grew from 83 to 142 to 158 acres, while the number of farms shrunk from 191,000 to 73,000 to 58,000.<sup>12</sup> The amount of farmland has decreased by 42 percent, from 15.9 to 10.3 to 9.3 million acres. In 1992, the realized gross income per farm in North Carolina was \$109,688, but the realized net income was only \$42,195.

Depending on the season, between 18,000 and 66,000 people are employed in the agricul-

tural job sector 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 globally. "Every day we process over 1.5 million broilers, 170,000 turkeys, and 27,000 hogs," writes state Agriculture Commissioner James E. Graham in the 1994 Agricultural Statistics Report. "We continue to be the leading producer of tobacco, sweet potatoes, turkeys, and are the second largest producer of cucumbers for pickles. . . . Last year North Carolina ranked third in net farm income with agriculture and agriculture related industries contributing \$42 billion to the State's economy." Livestock, dairy and poultry account for 58.7 percent of cash receipts for farming in North Carolina;

**Table 4. Cash Receipts from Farming in North Carolina, 1940-1990**

Year	Total Commodities Sold*	Crops*	% of Total	Livestock, Dairy, & Poultry*	% of Total
1940	\$201,241	\$167,322	83.1	\$33,919	16.9
1950	\$829,695	\$670,830	80.9	\$158,865	19.1
1960	\$1,066,336	\$752,304	70.6	\$314,032	29.4
1970	\$1,502,531	\$899,987	59.9	\$602,544	40.1
1980	\$3,592,612	\$2,148,710	59.8	\$1,443,902	40.2
1990	\$4,962,498	\$2,303,693	46.4	\$2,658,805	53.6

\* in 1000s of dollars

Source: Jay Johnson, N.C. Department of Agriculture, Agricultural Statistics Division, (919) 733-7293.

crops account for only 41.3 percent now. (See Table 4.)

North Carolina farmers undoubtedly will 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. And, so, the transition in the *agricultural sector* from small farms relying on tobacco income to larger farms diversifying into many crops, often run by a corporation or under contract, will continue.

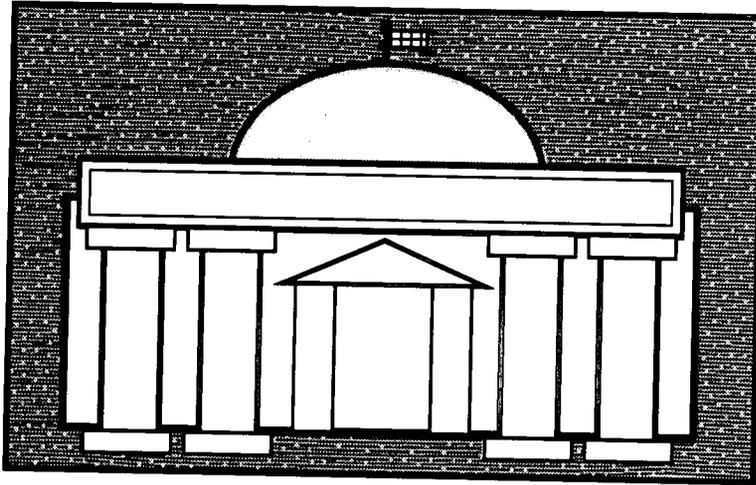
### Responding to the Transitions: What Kind of Leadership?

In November 1946, North Carolina Governor 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."

Few state officials paid heed to Cherry's vision. Governor 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 out-of-state industries to North Carolina prior to Hodges' tenure, but Hodges made industrial recruitment the permanent rallying cry for the state's economic development efforts.

Governor 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 perhaps represents one of the state's best inducements today for recruiting industries from out-of-state.

Since then, the industrial recruitment strategy has turned into a kind of mad dash—across the Frostbelt, over to thriving Japanese and German heartlands, and into the new high-tech market. In 1973, Governor James Holshouser (1973-77) opened a state recruitment office in Europe. Then, James B. Hunt Jr., in his first



two terms as Governor (1977–85), kept the state running 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 Governor Cherry's speech to 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 small businesses."<sup>13</sup>

Governor James G. Martin announced in the first year of his administration in 1985 that he would pursue a "balanced approach"—help traditional industries, recruit new industry and foreign investment, keep pursuing the high-tech trade, nurture local businesses, and support farmers. However, the Martin administration's clearest commitment related to economic devel-

opment was to help the business community in general by seeking repeal of both inventory and intangibles taxes and turning over some governmental functions to the private sector.

Where does the third Hunt administration stand in this evolution of leadership regarding economic development? In 1993, at the beginning of Governor Jim Hunt's term, he announced his strategy for building North Carolina's economic future: "Our goal should be to build our future on high-skill, high-wage jobs."<sup>14</sup> Hunt's economic development strategies are premised on the belief that education *is* economic development in the competitive global economy that has emerged as the playing field.

State and local government policymakers 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.

For example, Cabarrus County, which lies northeast of Charlotte, a quick drive up Interstate 85, is plagued by the suburban sprawl epidemic. Thousands of people who drive to work in the Queen City each day call Cabarrus County home. Real estate advertisements boast of the county's low taxes and good schools. The western part of the county nearest Charlotte is sprouting new subdivisions. Like other rural counties near urban centers, Cabarrus County is feeling the effect of its proximity through sprawling growth and the conflicting expectations of newcomers and longtime residents. Gerald Newton, the county's planning directors, says he has watched the county's population

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*"I remember the smell of the creosote plant,  
When we'd have to eat on Easter with my crazy old uncle and aunt.  
They lived in a big house, antebellum style,  
And the winds would blow across the old bayou,  
When I was a tranquil little child,  
Life is just a tire swing."*

—"LIFE IS JUST A TIRE SWING" BY JIMMY BUFFETT

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grow more in the past five years than it did in the previous 10 years.

A complex period of economic transition challenges the state's leadership. Will government officials take steps that address the needs of both areas that are thriving—like Cabarrus County—and those that are depressed—like Graham County? Will leaders direct the economy away from a dual economy of prosperity and suffering to a mixed economy that is balanced and spread more evenly across the state? Innovative economic development strategies will be needed to manage the transitions toward a mixed economy.

## DISCUSSION QUESTIONS

- 1) Should state government assume a role in managing North Carolina's transition to a mixed economy or should this be left to the market?
- 2) The old economy of North Carolina has been likened to a three-legged stool—textiles, tobacco, and furniture. What role are these industries likely to play in the state's future economy?

## FOOTNOTES

<sup>1</sup> Hugh Talmage Lefler and Albert Ray Newsome, *North Carolina: The History of a Southern State*, The University of North Carolina Press, 1954, p. 83.

<sup>2</sup> 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, N.C. Department of Commerce. For the latest employment data available, see "State Labor Summary" from the same source.

<sup>3</sup> Steve Riley and Carrick Mollencamp, "Great expectations," *The News and Observer*, Raleigh, N.C., Oct. 23, 1994, p. A1.

<sup>4</sup> Sally Hicks, "Triangle forecast: big and bigger," *The News and Observer*, Raleigh, N.C., June 29, 1995, p. A1.

<sup>5</sup> 1990 U.S. Census and the N.C. State Data Center for projected losses in the 1990s.

<sup>6</sup> Burlington Industries, Annual Report, 1977, p. 18.

<sup>7</sup> Regina Oliver, "The Payoff From NAFTA," *North Carolina*, North Carolina Citizens for Business and Industry, Raleigh, N.C., November 1994, p. 29.

<sup>8</sup> John D. Kasarda, "A Global Air Cargo-Industrial Complex for the State of North Carolina," Kenan Institute of Private Enterprise, UNC Business School, Chapel Hill, N.C., pp. 1–ff.

<sup>9</sup> Transportation Management Group, *North Carolina Air Cargo System Plan and a Global Air Cargo Industrial Complex Study*, Executive Summary, February 1992, p. 2.

<sup>10</sup> 1990 U.S. Census.

<sup>11</sup> 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," p. 117.

<sup>12</sup> N.C. Crop and Livestock Reporting Service, N.C. Dept. of Agriculture, "N.C. Agricultural Statistics," published annually.

<sup>13</sup> Chapter 899 of the 1983 Session Laws (HB 1122), now codified as N.C. General Statutes § 143B-471.

<sup>14</sup> Jim Hunt, *A North Carolina Agenda for Action*, 1992, p. 15.

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## Excerpts from Megatrends

*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 dated. 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.

—John Naisbitt

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# Economic Incentives: Corporate Welfare or Prudent Investment?

North Carolina Constitution, Article V, Section 2 (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.

## *Whole Hog for Business*

BY JACK BETTS

**D**ave Phillips didn't start this war among the states to lure new plants with offers of cash on the barrelhead, but he believes he has to wage it. The state Secretary of Commerce, who outlines the arguments in favor of financial incentives for new and expanding industry, thinks North Carolina's got to have an array of financial incentives to compete with other Southern states. Otherwise, states like South Carolina, Virginia, and Alabama will nab the kinds of plants that make the most impact on a state's economy—BMW, Mercedes-Benz, Motorola.

And Bill Maready, who defines the arguments against cash incentives, doesn't contend that the state has no business in economic development. He believes educational programs, infrastructure improvements that benefit the general public and aggressive promotional cam-

paigns are appropriate roles for public agencies. But the Winston-Salem lawyer, who is leading the legal charge against using public funds for private purposes, is challenging a state statute called the Local Development Act, originally passed in 1925 but considerably amended in the 1980s and in 1993, that allows governments broad discretion in using public funds to attract industry.

Maready brought the matter to a head by suing Winston-Salem and Forsyth County for having spent more than \$13 million in tax money on 24 economic incentive projects. He argued that the statute is unconstitutional because it violates the N.C. Constitution's requirement that all expenditures have a "public purpose," and that the law itself is vague and arbitrary on how public money can be used.

Maready won his argument in Forsyth County Superior Court, where Judge Julius Rousseau found the statute unconstitutional. The state appealed that verdict, but meanwhile Transylvania Superior Court Judge Forrest Bridges in a similar case upheld the law, finding

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*Reprinted with The Charlotte Observer's permission. Jack Betts, "Whole hog for business," The Charlotte Observer, Charlotte, N.C., November, 19, 1995, pp. 1D and 4D.*

that the economic development resulting in more jobs and increased tax base is a legitimate public purpose in itself.

The state Supreme Court reviewed the cases early in 1996 partly because doubt over what's legal may interfere with the state's recruitment efforts. State officials say a number of prospects already have bowed out of the running because it is not clear whether the state will be able to fulfill its financial promises. (See pp. 406-407).

It's a timely issue from another standpoint. Just a week ago, the N.C. Economic Development Board recommended upping the ante in the state's economic development offerings. A clear interpretation of the law from the Supreme Court may be instrumental in helping the state decide what it can and cannot do in economic development.

### What N.C. Offers Now

**W**hat does North Carolina offer now? The Department of Commerce outlines six key financial incentives for new and expanding industries. The list includes:

- *Worker training programs* through the community college system, including instructor salaries, travel expenses, classroom materials, even a training facility. The state will also custom-tailor a training program as part of its incentives.
- *Repeal of the intangibles tax.* The General Assembly this year ash-canned its tax on stocks and bonds, which benefits both companies and individuals to the tune of about \$127 million.
- *Reductions in unemployment insurance taxes.* The state has lowered its rates for the third year in a row, and now has the lowest unemployment insurance tax rate in the country.
- *The Industrial Recruitment Competitive Fund,* which has provided about \$12 million to help cinch the deal with companies considering locating or staying in North Carolina. The state says it has brought in 10,000 jobs and \$1 billion in economic development.
- *The Jobs Creation Tax Credit,* providing companies with \$2,800 in tax credits over four years for each new job created in distressed counties.

- *The Industrial Development Fund,* which provides distressed counties up to \$2,400 for each new job created; up to a maximum of \$250,000 for renovating buildings or providing infrastructure.

### The Next Steps

**I**f the N.C. Economic Development Board gets its way next year, the state would go further. It would grant tax credits of up to \$4,000 for each job in the 25 most economically-distressed counties, extend tax credits to non-manufacturing firms that do 75 percent of their business out-of-state and give tax credits for research and development, among other things.

The board says those incentives may be necessary for North Carolina to compete with other states like Alabama and Virginia, which offered much larger incentives packages than North Carolina for recent industrial prizes. Gov. Jim Hunt called the N.C. offer to Mercedes-Benz a prudent package, but it surely looked like one giant giveaway to many who doubt the wisdom on special economic incentives.

### An Admirable Position

**M**eanwhile, the state retains its admirable position as one of the best places to bring a company. The publication *Plant Sites & Parks*, after surveying more than 500 executives for their preferences, last week [November 1995] rated North Carolina first in the nation for overall attractiveness. That raises the question: If North Carolina is already the most attractive state for economic development, why does it need to expand its definition of "public purpose" to attract economic development?

When the N.C. Supreme Court in 1968 struck down the N.C. Industrial Development Financing Authority, then-Associate Justice Susie Sharp concluded that it was difficult to be precise about the term. But for an expenditure to be public, she wrote in the majority opinion, "its benefits must be in common and not for particular persons, interests or estates; the ultimate net gain or advantage must be the public's. . . ."

Twenty-seven years later, we're still arguing about what's a public purpose. Maybe the Supreme Court will come up with a better definition this time around.

PRO:

## *Invest in Industry and Jobs— Without Giving Away the Store*

BY DAVE PHILLIPS

**N**orth Carolina has evolved over the decades from a predominantly agricultural state to a growth center for high-technology industries. Our economy has diversified into the automotive, biotechnology, computer and transportation industries.

North Carolina has built this strong economy with incentives—worker training through the community college system, world-renowned universities and research parks, a state-maintained highway system, a AAA bond rating, strong financial resources and infrastructure such as water, sewer and road improvements.

In the last three years, the Hunt administration has offered modest financial incentives to help create new jobs. These include the Industrial Recruitment Competitive Fund, which provides modest cash incentives to help close a deal on new or expanding industry, the Jobs Creation Tax Credit, which provides a \$2,800 tax credit for each new job created, and an expanded Industrial Development fund, which gives counties up to \$2,400 for each new job created in order to renovate buildings or provide infrastructure to industrial sites. Gov. Hunt has also championed major changes in the tax code that benefit business and industries in North Carolina.

The *Maready* case argues that business incentives provided by governments to companies are not used for a public purpose. When a Forsyth County Superior Court judge agreed with Maready in August, the ruling made headlines across the nation. When a Transylvania County Superior Court judge ruled on a similar local challenge to incentives eight weeks ago and

said incentives were indeed constitutional, there was little news coverage. The two ruling indicate the different opinions held on incentives.

So it has always been. Even in 1968, our Supreme Court had divided opinions—and that of Chief Justice R. Hunt Parker was farsighted. In an important dissent to an opinion striking down an economic incentives act, Justice Parker wrote: "We have moved into a jet age, characterized by gigantic mergers of corporations and struggles between the states of this Nation to get new industry; and, in the language of the legislative findings and purposes, this Act is necessary for the State's progress and growth in order 'to meet the challenge of attracting new industry through legislative enactments in other jurisdictions and to continue the State's progress in industrial development.' In this jet age conditions for industrial development are critical or urgent, and, in Mr. Justice Cardozo's words, 'What is critical or urgent changes with the times.' North Carolina's efforts to attract new industry will be hampered . . . if the majority opinion becomes the law in this State."

We believe that incentives benefit the public in a significant way—by bringing jobs. Incentives are investments in our economy and in our work force; our strong business economy is proof that we have made wise investments.

### **A Great Record**

**N**orth Carolina has recruited many good companies because we have offered modest financial incentives. The Industrial Recruitment Competitive Fund, set up by the General Assembly in 1993, is North Carolina's only cash incentive. It has brought nearly 10,000 new jobs and more than \$1 billion in investment to North Carolina. Over a three-year period, the General Assembly's investment of \$12 million

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*Dave Phillips, a High Point businessman, is N.C. Secretary of Commerce. This article is reprinted with his permission. See Dave Phillips, "PRO: Invest in industry and jobs—without giving away the store," The Charlotte Observer, Charlotte, N.C., November, 19, 1995, pp. 1D and 4D.*

in the fund has helped 55 companies create new jobs. That is compared to an \$86 million incentive package provided by Virginia to Motorola.

Mr. Maready should talk to the thousands of North Carolinians who have completed worker-training programs to get good jobs at the companies here because of incentives. He should talk to rural North Carolinians who can work in their counties only because of water, sewer and road improvements that helped land the company there.

Mr. Maready should talk to North Carolinians in largely rural Person County about the Competitive Fund that helped bring Wolverine Tube Inc. 200 new jobs and a \$37 million investment.

It is ironic this lawsuit is pending in North Carolina courts when neighboring states are escalating the use of incentives daily. A recent poll by *Financial World* ranks North Carolina 34th among the 50 states that provide financial incentives.

Over the past three years, North Carolina has lost more than 30 major companies to Virginia and South Carolina—and lost thousands of jobs for North Carolinians. Those companies include Black & Decker, Isola Werke, AMP and American Koyo Bearing—all now in South Carolina; and IBM/Toshiba, Motorola and Solarex—all now in Virginia.

### Drawing the Line

Unlike South Carolina and Virginia, North Carolina has refused to give away the store. We have refused to offer giveaways like tax abatements extending years into the future and industrial construction paid by deductions from wages of the workers. *That's where we draw the line.*

Last spring, before the *Maready* case, Gov. Hunt asked the N.C. Economic Development Board to take a hard look at North Carolina's incentives, compare them to other states and recommend changes. Last week, the board's task

force detailed incentives packages used by competitor states, recommending that North Carolina use our modest incentives more strategically to compete for high-wage jobs. A final recommendation to Gov. Hunt will come in February [1996].

North Carolina's economy is strong—with record numbers of new jobs in the last two years—because the Hunt administration has been aggressive about recruiting new jobs. Now, we face crucial questions: Do we forfeit the game and forfeit good jobs for our people, or do we seek ways to play wisely?

The people of this state need good jobs, and we need to pursue economic development strategies that will help us recruit new jobs without giving away the store. North Carolina will fight to keep its competitive edge, including modest incentives. Gov. Hunt will continue to push for a more competitive business climate with better schools and lower taxes, and he will continue to look for ways to bring high-skill, high-wage jobs to all areas of the state. The people of this state deserve no less.

ON MARCH 8, 1996, the North Carolina Supreme Court held "that N.C.G.S. [section] 158-7.1, which permits the expenditure of public moneys for economic development incentive programs, does not violate the public purpose clause of the North Carolina Constitution. Accordingly, the decision of the trial court on this issue is reversed."<sup>1</sup> The Court used two guiding principles in determining that the statute at issue was for a public purpose: "(1) it involves a reasonable connection with the convenience and necessity of the particular municipality; and (2) the activity benefits the public generally, as opposed to special interests or persons."<sup>2</sup> The Court found that economic development has long been recognized as a proper governmental function and therefore the first principle was satisfied.<sup>3</sup> And, because the purpose of the statute is to "increase the population, taxable property, agricul-

# CON: Cash Incentives for Economic Development Are Bribes

BY WILLIAM F. MAREADY

Our Constitution is there for those who know they know better. Since 1868, the N.C. Constitution has prescribed that our tax money will be used for "public purposes" only. It is clear language. It means that tax money is not to be contributed to private corporations for their corporate purposes.

We are a government of laws—not of those who believe they know better. In 1968, our state Supreme Court considered whether the

state could spend tax money to provide incentives for economic development. The language of the court is plain and simple:

"If we are to bait corporations which refuse to become industrial citizens of North Carolina unless the state gives them a subsidy, the people themselves must so declare. Such fundamental departures from well-established constitutional principles can be accomplished in this state only by a constitutional amendment."

The court held the practice unconstitutional as not being a "public purpose." I do not believe that it is even arguable that this language means anything different from what it says, that is, that subsidies to corporations for economic-incentive purposes are illegal.

The Constitution itself doesn't define "public purpose." We have one Supreme Court decision holding that it is unconstitutional to build a roadway for one property owner, but another decision, similar in basic facts, holding that it is all right to build a road to a plant because the general public, and the workers there, will be using the road. It seems likely that water and sewer lines fall in the same category if they serve the public in general.

We also have court decisions holding it permissible for a chamber of commerce to receive tax money to promote or advertise the

tural industries and business prospects of any city or county,"<sup>4</sup> the Court found that the "public advantages are not indirect, remote, or incidental; rather, they are directly aimed at furthering the general economic welfare of the people of the communities affected. While private actors will necessarily benefit from the expenditures authorized, such benefit is merely incidental."<sup>5</sup> Thus, the second principle was also satisfied and the statute was held to be constitutional.

## FOOTNOTES

<sup>1</sup> *Maready v. City of Winston-Salem*, 342 N.C. 708, 727, 467 S.E.2d 615, 627 (1996).

<sup>2</sup> *Madison Cablevision v. City of Morganton*, 325 N.C. 634, 646, 386 S.E.2d 200, 207 (1989).

<sup>3</sup> *Maready*, 342 N.C. at 723, 467 S.E.2d at 624.

<sup>4</sup> N.C.G.S. 158-7-1(a).

<sup>5</sup> *Maready*, 342 N.C. at 725, 467 S.E.2d at 625.

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*William F. Maready, an attorney with the Winston-Salem firm of Robinson, Maready, Lawing & Cromerford, is the plaintiff in a lawsuit charging that taxpayer subsidies such as the N.C. Industrial Recruitment Competitive Fund are unconstitutional. This article is reprinted with his permission. See William F. Maready, "CON: Cash incentives for economic development are bribes," The Charlotte Observer, Charlotte, N.C., November, 19, 1995, pp. 1D and 5D.*

city, the rationale being that it directly benefits the city—the public. It seems clear that the court would hold that specialized training at community colleges is an appropriate public purpose, even if the students are being trained for a particular industry.

But subsidies of private corporations are quite a different question. The never-say-die proponents of subsidies took up the challenge of asking the people to amend the Constitution. Just two years ago, the people voted on a constitutional amendment to authorize subsidies. The result was a massacre of the idea by the voters.

Regardless of their sound defeat in 1968, the professional recruiters and those who have a direct economic or political interest continued the chant—and in recent years, incalculable millions of dollars of tax funds collected from the citizens of North Carolina under the force of law have nevertheless been expended directly to corporate America on the promise of economic “incentives”—more politely, “subsidies,” and more accurately “bribes.”

### Bad Government

Subsidies are also bad government. It is true that subsidies ordinarily increase the tax base. But this is not a fair consideration of the matter. The recruiters who advise our politicians never address the problems of the added costs of government that invariably result. “New” industries create the need for new schools (some \$10 million or so to build each, and up to \$2 million per year to operate), new highways, expanded government services, environmental services and a host of other things. In most cases, the costs exceed any benefit the public will ever receive. If indeed such an increase in the tax base is “good,” then our property taxes should be going down.

A growing number of economists conclude that taxpayers are coming out on the short end of the stick. The Federal Reserve Board has received a report which concludes that incentives interfere with normal market forces and should be eliminated.

And it is *not* true that North Carolina suffers by not being able to compete with other states. Corporations that take North Carolina off the list because of a few hundred thousand

dollars are not something we need. Those same companies will be gone when a higher bidder comes along. And sometimes they do not even follow through on their promises in terms of jobs to be created, payroll to be paid, property tax base to be augmented.

### Growing List of Horrors

There is a growing list of horror stories of misspent tax dollars. Responsible companies continue to move to and expand in North Carolina because we are a great place to be. And as long as we spend our money on the right things—a good educational system, a clean environment, adequate roads and other government facilities, and reducing our crime rate—they will continue to do so.

Ask the promoters of subsidies to give the names of the corporations that have truly turned North Carolina down because we did not bribe them with subsidies, and they turn bleary-eyed. The fact is that such subsidies are a remote factor at best. Corporations take subsidies because they are there and because they have learned to play off one community against the other.

Government subsidies are also plain unfair. Every company in our private enterprise system competes with another, either in the cost of products produced or in the cost of labor, or both. If one company has a million dollars of tax funds in its pocket, it can easily sell its products cheaper and at the same time outbid the competition in the labor market. What is the fairness of our government subsidizing a wealthy corporation with tax funds? What about established businesses in that area struggling to keep up—and paying the taxes to fund its competition?

There is also an insidious problem. Corporate America does not negotiate in the public eye—and for good reason. Consequently, when government is negotiating, government boards too often meet in closed session and discuss deals involving the spending of tax dollars in secret. Government in secret is not just distasteful, it strikes at the heart of our system.

Our political leadership is not getting the message. John Q. Citizen is opposed to tax money being spent as subsidies. It is better to hear the bell now, rather than later.

# Air Cargo Complex: Flight or Fancy?

BY TOM MATHER

*Supporters of Global TransPark, North Carolina's proposed air cargo/industrial park, describe the concept as the logical next step in the evolution of world trade. Fast-tracking the project could give the state the "first-mover's advantage," eventually pumping billions of dollars into the economy and creating thousands of jobs in an economically depressed region. But there's some risk involved—mainly the estimated \$156 million that it would cost the state to develop the complex at an existing airport.*

**F**irst in Flight," the familiar motto on North Carolina's license plates, could take on new meaning if John D. Kasarda has his way. Kasarda, Kenan Professor of Business Administration at the University of North Carolina at Chapel Hill, would like to see the state go beyond its claim as the birthplace of aviation, the site of the Wright brothers' first airplane flight.

The next major step in economic trade, Kasarda predicts, is the development of international cargo airports that serve as global manufacturing and distribution centers. (See Figure 1.) And he believes that North Carolina is the ideal place to build such a complex, which would include a large airport geared toward national and international cargo flights combined with a large, technologically sophisticated indus-

trial park for companies utilizing "just-in-time" manufacturing.<sup>1</sup>

"This complex will make North Carolina the crossroads of global air commerce," says Kasarda, director of the Kenan Institute for Private Enterprise, a branch of UNC's Kenan-Flagler Business School that tries to promote economic growth by linking academia, business, and government. "This is much more than a modern air-cargo complex. This is really a computer-age industrial complex, in which global aviation plays the pivotal distributional role."

Kasarda's concept, first proposed in a Kenan Institute paper, has won enthusiastic support from Gov. James B. Hunt, Jr., former Gov. James G. Martin, and some business leaders.

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(See Table 1 on p. 414.) The state legislature was interested enough that in 1991 it created the N.C. Air Cargo Airport Authority and appropriated \$6.6 million for studying and marketing the so-called Global TransPark.<sup>2</sup>

But not everyone is enamored with the proposal. Some critics say it is unwise for the state to bankroll such a massive economic development project, especially considering recent shortfalls in state revenues.<sup>3</sup> (See Table 1 on p. 414.) Indeed, preliminary studies have projected development costs starting at \$156 million.<sup>4</sup> Questions also remain about the project's effect on the state's existing commercial airports and its potential strain on the environment and nearby communities.

### **Project on the Fast Track**

**A**s envisioned by proponents, the complex would dwarf—in size as well as money invested—previous state economic development projects such as Research Triangle Park and the Microelectronics Center of N.C. Kasarda initially envisioned a complex that would cover at least 15,000 acres,<sup>5</sup> about 20 square miles, and generate nearly 100 flights daily when fully operational.<sup>6</sup> State officials now estimate that the airport and cargo complex would cover about 4,700 acres, with an additional 28,000 acres zoned for industrial development.

Proponents claim the complex would be the first of its kind. Although others have built or proposed all-freight airports, Kasarda says that no one has yet combined a cargo airport, transportation hub, and manufacturing center in an integrated complex. But at least four existing airports contain substantial elements of the proposed complex and a number of other states are considering plans for comparable facilities. (See Table 2, p. 416–17.)

Various observers, however, say that North Carolina is leading the pack—at least for now.<sup>7</sup> North Carolina got the jump in August 1991, when the General Assembly appropriated \$6.2 million to create the Air Cargo Airport Authority, while setting aside another \$400,000 for marketing the Global TransPark through the state Department of Economic and Community Development. In July 1992, the legislature appropriated another \$2 million to the authority for designing runway and cargo-handling facilities at the proposed complex, plus another

\$500,000 to continue marketing the project. The 1993 General Assembly appropriated \$7.5 million to the Department of Transportation for economic development projects and infrastructure in the Global TransPark Development Zone.

“We’ve been out ahead of everybody,” says Paul A. Shumaker Jr., the former chief assistant secretary of commerce. “I would say we’re a year ahead of the game right now, from a time standpoint. But other states can get where we are a lot quicker than we did.”

Proponents say it's important that the state maintain its “first-mover's advantage” because the eastern United States probably could not support more than one such complex. That thinking led Governor Martin, who first chaired the air cargo authority,<sup>8</sup> to unabashedly fast-track the proposal. “We’ve moved at something close to the bureaucratic speed of light to get to where we are today,” Martin said at the authority's meeting in May 1992.

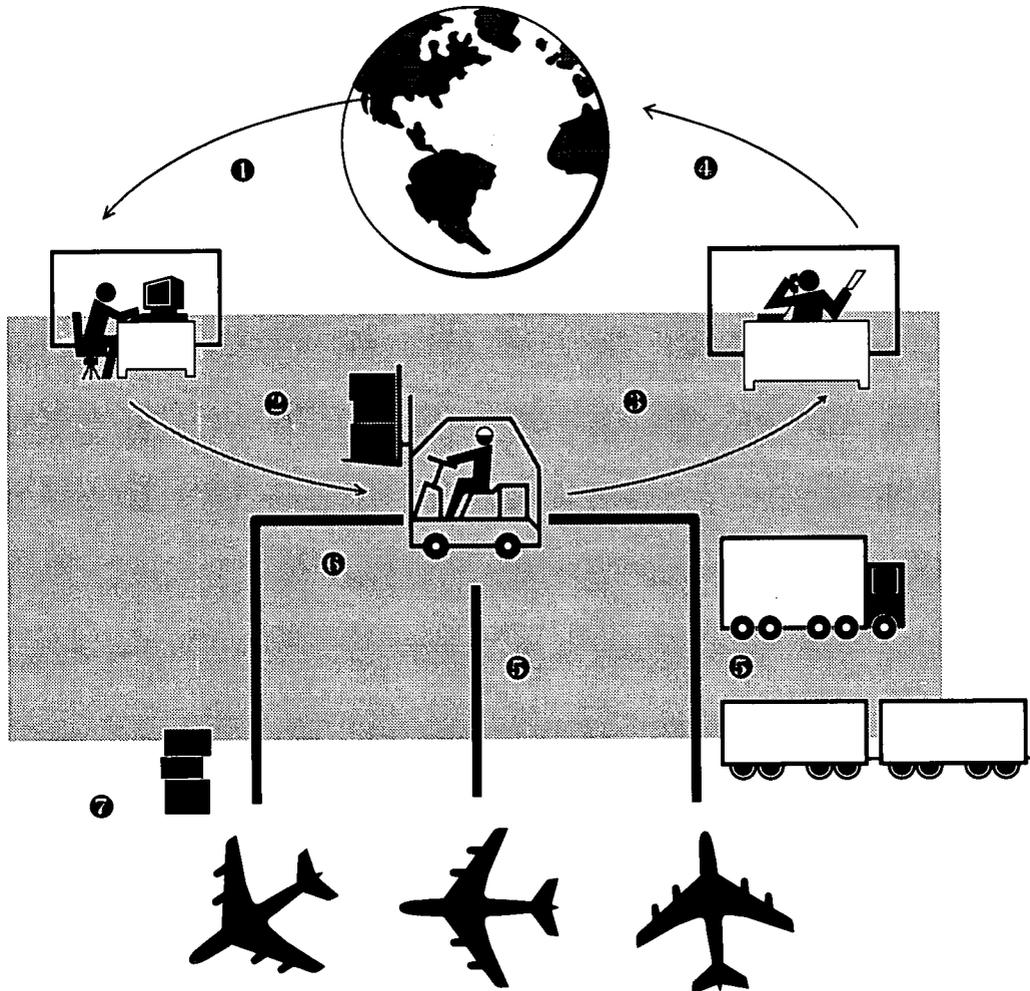
The 14-member Air Cargo Airport Authority, originally was charged with determining whether the project was worth pursuing and, if so, when, where and how big it should build the complex. The board's decision hinged not only on the technical merits of the complex, but on whether it could find an airport site that was affordable, had sufficient land, and met concerns about noise and other environmental factors.

One of the authority's first orders of business was to review a \$475,000 feasibility study, commissioned by the Martin Administration and partially funded by the Federal Aviation Administration, that compared options for the combined cargo airport and industrial park.<sup>9</sup> That study was completed in February 1992 by Transportation Management Group Inc., a Raleigh-based consulting firm. The consultants' study concluded that the Global TransPark could succeed, generating thousands of jobs and pumping billions of dollars into the state's economy.<sup>10</sup>

### **Proponents Hope to Capitalize on Boom in Air Cargo**

**T**he consultants' optimistic forecasts are largely based on the assumption that air-freight business will continue to boom. Worldwide, air-cargo traffic increased at an average rate of 8.6 percent annually over the past two de-

**Figure 1. How Global TransPark Would Work**



- ① Orders sent to production facility
- ② Orders sent to factory floor
- ③ Factory requests raw materials and components
- ④ Purchasing sends orders to local and remote suppliers
- ⑤ Raw materials delivered to factory
- ⑥ Production of goods
- ⑦ Finished goods shipped air freight to customer

cares,<sup>11</sup> and the growth rate has been even higher at North Carolina's largest airports.<sup>12</sup> At Raleigh-Durham International Airport alone, carriers handled nearly six times more cargo by weight in 1991 than they did in 1980.<sup>13</sup> That increase largely was tied to the growth of nearby Research Triangle Park.

Air freight has grown so rapidly at Raleigh-Durham that the volume of cargo shipments by 1985 had surpassed projections for the year 2000.<sup>14</sup> To cope with that growth, the RDU Airport Authority has begun constructing a new \$30-million facility that will triple the amount of space available for processing freight and parking cargo planes when it's completed early in 1993. "It's planned right now for the dedicated cargo carriers," says RDU spokesperson Teresa Damiano, referring to the all-freight airlines such as Federal Express and United Parcel Service. "Since the late 1970s and early '80s, there's been a real squeeze for places for the all-cargo carriers to park."

North Carolina's three largest commercial airports—Raleigh-Durham International, Charlotte/Douglas International, and Piedmont Triad International in Greensboro—together accounted for virtually all (98 percent) of the state's air cargo traffic in 1990. The state as a whole produced more than 195,000 tons of air cargo that year, with the three large airports handling 254,000 tons (including out-of-state freight).<sup>15</sup> The Global TransPark feasibility study predicts that air-cargo traffic at the state's commercial airports will increase by nearly eight-fold between 1990 and 2010, even without the proposed cargo complex.

### Location Critical to Project's Success

A key factor influencing the potential success of the complex is siting, and the feasibility study compares three broad options: existing commercial airports, military bases, and new "greenfield" locations. Building the complex at an existing airport would be the least expensive option, costing \$156 million. But the consultants' first choice was that the state develop a "joint-use" complex at a military base, with an estimated cost of \$281 million, because of fewer constraints regarding air traffic, noise and other factors. That recommendation led to much speculation that the authority would propose locating the cargo

complex at Seymour Johnson Air Force Base in Goldsboro, the state's only military facility with enough available land for the project. But the air cargo authority decided to focus its attention on commercial airports because of lower projected costs and time delays that likely would result from seeking military approval for a joint-use facility.

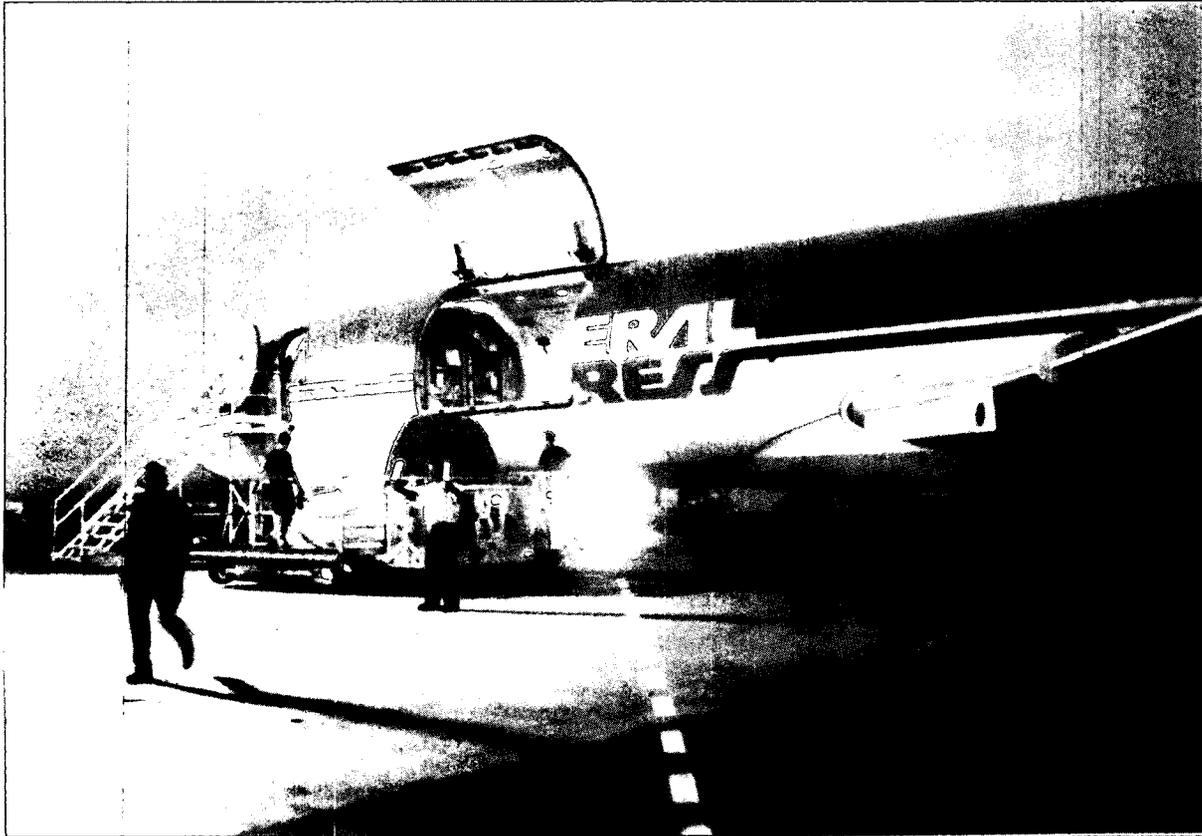
In February 1992, Governor Martin announced that the board would pick a final site at its May 19 meeting after reviewing proposals from communities hoping to land the complex. That announcement created a frenzy among economic development coordinators across the state, and 13 groups representing 23 counties submitted bids for the project by the April 16 deadline. "Never before have I seen local elected officials so excited about a project," said then-Rep. Daniel H. DeVane (D-Hoke).

On May 15, Martin and the authority's executive director, Seddon "Rusty" Goode, narrowed the list of potential airport sites to two finalists without a vote of the entire board—a move that apparently perturbed at least one board member. Cameron Harris of Charlotte, the only member to vote against the board's final choice, referred to that process when asked to explain his opposition: "I am very much for the air cargo facility; I think it's a great idea. But I had some problems with the procedures."

### And the Winner Is . . .

At its May 19 meeting, the board heard presentations from groups representing the two finalists: Laurinburg-Maxton Airport in Scotland County and Kinston Regional Jetport in Lenoir County. The authority selected the Kinston airport as the preferred site, following a lengthy closed-door discussion. Although both groups offered to donate land, utilities, and airport facilities worth millions of dollars, several factors weighed in Kinston's favor:

- It is centrally located in eastern North Carolina, an economically depressed region in need of jobs, and close to East Carolina University in Greenville.
- The airport has ready access to four-lane highways (U.S. 70 and Interstates 40 and 95), railroad lines, and ports in Wilmington and Morehead City.



Karen Tam

- Officials from 17 surrounding counties and a number of nearby towns supported the Kinston proposal.
- The airport has an existing air-traffic control tower operated by the Federal Aviation Administration, a 7,500-foot runway that can handle large cargo aircraft, and an approved master plan for a second parallel runway.
- The airport is surrounded by more than 30,000 acres of generally open, level land that potentially could be developed.

Governor Martin says that choosing a site was a crucial step in moving the project forward. Without a specific location, he says, the state couldn't prepare a master plan for the complex, conduct environmental studies, market the complex to prospective customers, or arrange financing.

"By selecting this site we are saying, 'We believe it will work; we believe we can market this concept and our state,'" Martin said after the May 19 meeting. "We've taken another vital step."

Local leaders predict the complex will put Kinston on the map, while creating an economic boon for all of eastern North Carolina. "The outward migration of our youngest and our brightest can be reversed," says Vernon Rochelle, the city attorney for Kinston. But some local landowners already have formed a group opposing the project, saying they won't easily part with their property.<sup>16</sup> As one farmer, J.P. Hill of Lenoir County, told *The News & Observer* of Raleigh: "They think we ought to just give our land so they can do whatever they want, but it ain't going to work that way. I know some that's going to put up a fight, including me. The farm I own is not for sale at any price. I don't want to sell and I don't want them to take it."<sup>17</sup> That sentiment drew support from the *Fayetteville Observer-Times*, which editorialized of local opponents: "They have every right to fight back, and if they win they could even save the state from wasting money. The influx of high-technology manufacturing plants envisioned for the project could easily be made up of ghosts that, unlike

the players in [the movie] 'Field of Dreams,' would do nothing."<sup>18</sup>

### The Next RTP?

Some saw Martin's support for the Global TransPark as a final attempt by the governor to establish a legacy in a pro-business administration that had its share of economic setbacks—including the \$1.2-billion budget

shortfall in 1991 and the failure of bids to attract large federal projects such as Sematech in 1987 and the Superconducting Super Collider in 1988.<sup>19</sup> "What I see this as is the governor trying to make his mark," says Michael F. Corcoran, executive vice president of the N.C. Wildlife Federation, the state's largest conservation group. "I see this as the governor trying to establish another Research Triangle Park."

Others don't mind the comparison to Research Triangle Park. Kasarda, the UNC pro-

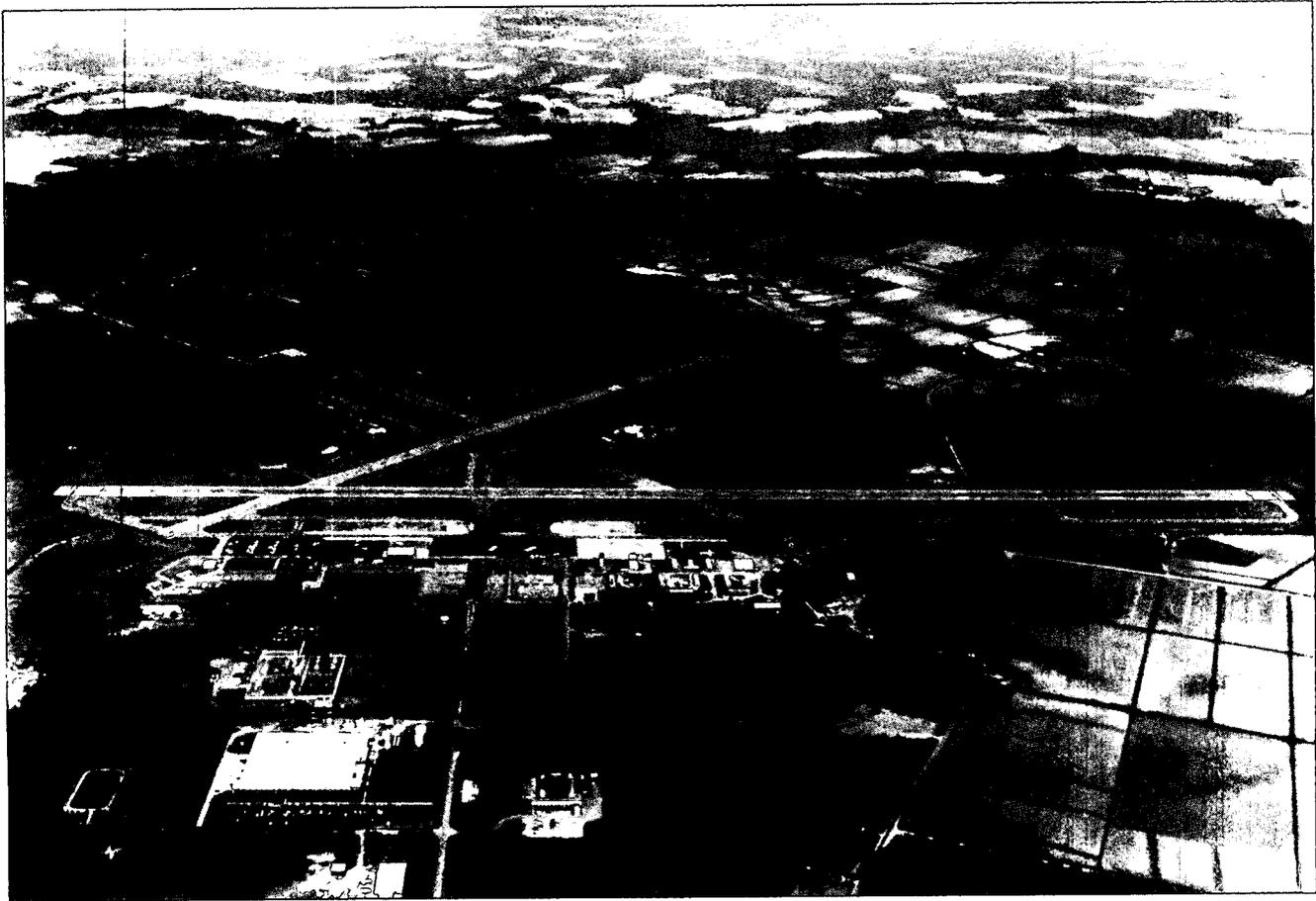
**Table 1. Key Arguments For and Against the Global TransPark Project**

#### PRO

1. Global TransPark would create an estimated 28,000 jobs at the complex and 59,200 statewide by the year 2000.
2. Would generate an estimated \$3.8 billion in total economic impact statewide by the year 2000, and \$12.9 billion by the year 2010.
3. Would bring jobs and economic growth to eastern North Carolina, a region of the state that largely has missed out in previous state development ventures.
4. Like Research Triangle Park, would create a government/business partnership that would generate statewide economic impact.
5. Would accelerate North Carolina's already growing air-freight business.
6. Would give North Carolina a jump on other states in developing global markets, particularly in fast-growing Pacific Rim nations.

#### CON

1. Job and economic projections are based on overly optimistic assumptions regarding plant relocations. State government has a history of inflating estimates of job creations.
2. Economic forecasts are dependent on assumptions that workers and materials would be available for just-in-time production, and that fuel would remain cheap and plentiful.
3. Large complex would require the relocation of many families, create excessive noise, and burden local highways, schools, and other facilities.
4. Private marketplace is better able to assess the wisdom of investing millions of dollars in such a speculative venture.
5. Could draw business away from existing commercial airports, which have plenty of capacity for growth.
6. North Carolina is better situated for targeting markets in Europe and North and South America; West Coast states are better able to develop Pacific Rim markets.



Charles L. Buchanan

**The Global TransPark will be located at the Kinston Regional Jetport, which is largely surrounded by farmland.**

fessor who conceived the air cargo/industrial complex concept, notes that the state's investment in the park since the early 1960s has created thousands of new jobs, increased tax revenues, and spurred economic growth across North Carolina. And like Research Triangle Park, he says, Global TransPark probably won't take off unless state government provides the seed money and institutional support.

"Research Triangle Park would have never happened if it hadn't been a state-instigated venture, because you need something to jump-start it," Kasarda says. "You need somebody to acquire the land, exercise eminent domain. Private enterprise doesn't have eminent domain, it can't condemn land. It can't set up the kind of policy needed to make this happen. It can't float revenue bonds and industrial development bonds.

"If we could sit back and wait for the private sector to do something, are they going to pick North Carolina? We don't know. But this

is the time for us to do something preemptive. If North Carolina wants to shape its destiny, it has the opportunity. And if it seizes it fast, it could have that first-mover advantage."

### **A Global TransPark Update**

**W**hen Governor Martin left office, many observers wondered if the Global TransPark project would ever get off the ground without the continued support of the executive branch. Supporters of the project were relieved when, in April 1993, Governor Jim Hunt confirmed his support of the GTP, announcing he would take over as chair of the Global TransPark Authority. Martin, who is now chair of the GTP Foundation, the nonprofit raising money from the private sector for project development, remains involved and committed to the project. As Martin handed the reins for the project to

**Table 2. Projects Comparable to Global TransPark in Other States**

Global TransPark proponents say the complex would be the first of its kind—a state-of-the-art manufacturing center linked to global markets through an all-cargo airport, four-lane highways, and nearby seaports. But at least four existing airports possess substantial elements of the proposed air-cargo/industrial park complex, and others are under consideration. Following is a summary of some comparable existing and proposed facilities:

Name	Location	Status	Description
Alliance Airport	Fort Worth, Texas	Existing	This “commercial industrial cargo airport” is a joint venture between the city of Fort Worth and private investors—most notably Ross Perot Jr., son of the well-known billionaire. Airport covers 678 acres, surrounded by some 4,000 acres marketed to industrial tenants and geared to just-in-time production. Linked to interstate highways and rail lines. Opened in 1989.
Huntsville International Airport	Huntsville, Alabama	Existing	Airport located on 3,500-acre site that includes a new air-cargo center and a large industrial park. Tenants include Chrysler, Boeing, and other corporations, some engaged in just-in-time production. Linked to interstate highways and rail lines. Opened 1986.
Memphis International Airport	Memphis, Tennessee	Existing	This 4,000-acre airport is the central hub for Federal Express Corp., the nation’s largest air-cargo carrier. Airport dominated by passenger traffic by day, cargo at night. Federal Express hub a catalyst for development, attracting manufacturers to adjacent industrial park. Linked to interstate highways, rail lines, and shipping via the Mississippi River.
Front Range Airport	Denver, Colorado	Expansion underway	This 5,000-acre cargo airport is surrounded by a 10,000-acre industrial park. Complex opened in 1984, with an expansion scheduled for completion in 1993. Firms can lease land in industrial park or along run-ways. Linked closely to interstate highways, rail lines, and Denver International Airport, primarily a passenger facility.
Jacksonville International Airport	Jacksonville, Florida	Proposed expansion	This 7,500-acre airport is linked to interstate highways, rail lines, and a seaport. Primarily a passenger facility, managers are seeking to locate an air-cargo hub and/or manufacturing plants on airport property.
Calverton Airport	Long Island, New York	Proposed conversion	Feasibility study underway considering conversion of 7,000-acre Navy base into an air cargo/industrial park complex. Linked to interstate highways, railroads, and seaports.

Name	Location	Status	Description
Pease Air Force Base	Portsmouth, New Hampshire	Proposed conversion	Study underway considering conversion of 4300-acre military base into an air-cargo/industrial park complex. Linked to interstate highways, rail lines, and seaport.
Central-Midwest International Airport	Central City, Kentucky	Proposed	State developing master plan for proposed cargo airport/industrial park complex on a 20,000-acre site. Targeted for just-in-time manufacturers and manufacturers and international trade. Interstate highway links would have to be built, but rail line already runs through property.
Global TransPark	Kinston, North Carolina	Proposed	State developing master plan for proposed cargo airport/industrial park complex. To be located at existing 1,250-acre airport, with about 20,000 acres of nearby land available for development. Would be linked to interstate highways, rail lines, and seaports.

Hunt, he said "It is so vital to have this administration unified on this project, just as mine was."<sup>20</sup> In August 1993, with Hunt's leadership, the air cargo authority unveiled its master plan for the project.<sup>21</sup>

Three things still threaten the project's viability: the lack of corporate tenants, an evaluation of the project's affect on the environment, and money. In 1994, the Global TransPark landed its first tenant, Mountain Air Cargo, Inc., a small airplane cargo operator.<sup>22</sup> Although getting commitments from tenants has been difficult, there is interest in the project. "At the Global TransPark Authority, there have been 870 serious inquiries, including 119 firms that continue to talk about the project," writes Estes Thompson of the Associated Press in *The News & Observer*.<sup>23</sup>

The project also needs an environmental impact statement before the Global TransPark Authority can request federal funds for construction of the airfield. In 1995, the Federal Aviation Administration selected Greiner, Inc., a Florida-based company with offices in Raleigh, to complete the assessment. A public meeting was held in May 1995 giving citizens the opportunity to voice their concerns about the pro-

posed development. A draft EIS is scheduled for completion in the summer of 1996, and final approval from the FAA is expected later the same year.

Once the project clears environmental hurdles, it is hoped that the Federal Aviation Administration will pay for about 90 percent of the airfield. In the meantime, Congress appropriated \$4.8 million to extend the existing runway at the Global TransPark site 900 feet to meet the needs of the Department of Defense. "The runway improvements will immediately benefit the military and give the Global TransPark a much improved infrastructure as a base when it begins construction at the site," reports Jim Sughrue in the *Global TransPark Update*, a publication of the N.C. Global TransPark Authority.

In the 1995 Annual Report for the North Carolina Global TransPark Authority, Governor Jim Hunt commented on the progress of the project and its potential impact on North Carolina. "The Global TransPark is an example of our vision and our commitment to economic growth. A few years ago, the GTP was just a concept of what the infrastructure needs would be for the businesses of the 21st century. Now

the vision of the GTP is on its way to becoming reality as we work to keep up with the business trends of the future. . . . As we continue to develop the Global TransPark, we will see a return on our investments as companies from

around the world take notice. The GTP will help secure North Carolina's place a leader in the global marketplace and help secure a brighter future for all our citizens."

## FOOTNOTES

<sup>1</sup> John D. Kasarda, "A Global Air Cargo-Industrial Complex for the State of North Carolina," Kenan Institute of Private Enterprise, UNC Business School, Chapel Hill, N.C., pp. 1-ff.

<sup>2</sup> See N.C.G.S. 63A-2(8).

<sup>3</sup> For more on the state's recent budget problems, see Mike McLaughlin, "North Carolina's Biennial Budget—Oil Change or Overhaul?" *North Carolina Insight*, Vol. 13, No. 2 (June 1991), pp. 2-19.

<sup>4</sup> See Transportation Management Group Inc., *North Carolina Air Cargo System Plan and a Global Air Cargo Industrial Complex Study*, Raleigh, N.C., February 1992, Chapter 7, p. 69. The group is a Raleigh-based consulting firm that the state selected to prepare a feasibility study on the proposed Global TransPark.

<sup>5</sup> Kasarda, p. 15.

<sup>6</sup> Transportation Management Group, Chapter 1, p. 3.

<sup>7</sup> Articles in various trade publications have portrayed North Carolina as leading the way toward developing an all-cargo airport complex. For examples, see: Nancy Nachman-Hunt, "If they build them, will global-minded corporations come?" *Expansion Management*, Jan./Feb. 1992, pp. 14-22; Ralph Gardner, "And Now The Fifth Wave," *AirCargo USA*, Oct. 1991, pp. 8-10; and Gardner, "Tarheel State Places its Bets on a Future in Air Cargo," *Air Cargo News*, Vol. 16, No. 8 (Sept. 1991), pp. 9-10.

<sup>8</sup> Governor Martin named himself to the authority as one of the seven gubernatorial appointees stipulated by the law.

<sup>9</sup> Transportation Management Group, Executive Summary, p. 21.

<sup>10</sup> *Ibid.*, Executive Summary, p. 2.

<sup>11</sup> *Ibid.*, Executive Summary, p. 1.

<sup>12</sup> *Ibid.*, Chapter 3, p. 26.

<sup>13</sup> According to Teresa Damiano, public affairs manager for the Raleigh-Durham Airport Authority, cargo traffic at RDU increased from 7,318 tons in 1980 to 41,745 tons in 1991.

<sup>14</sup> Judith Schonbak, "Raleigh-Durham International Airport Outlines Growth Strategy," *Jet Cargo News*, February 1991, p. 18.

<sup>15</sup> Transportation Management Group, Executive Summary, pp. 1-2 and 9.

<sup>16</sup> "Group to fight air cargo complex," *The News & Observer*, Raleigh, N.C., June 26, 1992, p. 8C.

<sup>17</sup> Jerry Allegood, "Huge Kinston airport plan doesn't sit well with some neighbors," *The News & Observer*, Raleigh, N.C., May 25, 1992, p. 6A.

<sup>18</sup> "The state's airfield of dreams," *Fayetteville Observer-Times*, reprinted in *The News & Observer*, Raleigh, N.C., June 7, 1992, editorial page.

<sup>19</sup> The state of Texas landed both projects. Sematech, located in Austin, is a joint industry/university/government consortium aimed at improving the production of semiconductors, or computer chips, in the United States. The Superconducting Super Collider is an \$8-billion federal project aimed at building a massive proton accelerator to explore the fundamental nature of matter; the future of that project is in doubt, however, because Congress recently cut its funding.

<sup>20</sup> Associated Press, "Hunt will take reins of Air Cargo Authority," *The News & Observer*, Raleigh, N.C., April 6, 1993, p. 3A.

<sup>21</sup> David Ranii, "TransPark board chooses plan," *The News & Observer*, Raleigh, N.C., August 21, 1993, pp. 8C, 12C. Also see Dudley Price, "TransPark savings plan aired," *The News & Observer*, Raleigh, N.C., December 13, 1995, pp. 1D and 6D.

<sup>22</sup> Carrick Mollenkamp, "TransPark lands its first tenant," *The News & Observer*, Raleigh, N.C., April 15, 1994, pp. 1A, 13A.

<sup>23</sup> Estes Thompson, "Global TransPark isn't airborne yet despite state backing," *The News & Observer*, Raleigh, N.C., June 11, 1995, pp. 7B.

# Regionalism in Economic Development

## *Introduction*

Since the Great Depression in the 1930s, state government has become more involved in improving and developing the state's economy. A notable example occurred in the late 1950s when Governor Luther Hodges announced a public policy in support of economic growth and helped start the Research Triangle Park. Industrial recruitment has been at the heart of North Carolina's economic development policy since Hodges' administration.

However, a major problem has emerged as industrial recruiting has primarily benefitted urban areas. Furthermore, the most effective type of industrial recruitment for raising the statewide average wage is not necessarily the most effective strategy for improving statewide employment opportunities or raising the income levels in rural areas of the state. And, sometimes the highest wage industry may have undesirable environmental effects or high rates of occupational accidents or disease.

This conflict in policy goals raises several questions: Is it the policy of the state to attract all the industry it can in the hope that some of it will choose to locate in the rural areas? If so, what tools does the state have to prevent the over-industrialization of the urban areas and their fringes which would result from such a policy? What can be done to lure appropriate industry to more rural locations? Such questions required policymakers in North Carolina to discuss the appropriate role for the state and the 100 counties to play in developing economic development policies and priorities. Thus, the idea of regionalism emerged.

In rural areas, regionalism got its start with the passage of federal legislation in the mid-1960s establishing the Appalachian Regional Commission, the Coastal Plains Regional Commission, and the Economic Development Administration (EDA), each of which mandated planning in multicounty districts. The single county was thought to be too small a unit for economic planning because so many problems—such as housing density, environmental concerns, and transportation—do not stop at city or county lines. There also were good reasons for consolidating planning at the multicounty level, rather than going to a broader statewide scale.

Planning at the multicounty scale is thought to be manageable. And it is close enough to the community level to allow real community and citizen participation in the planning efforts. Ideally, community residents can help decide how and where they want their communities to grow. Also, regions are able to develop individualized

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economic development plans, considering factors like local unemployment rates, per capita incomes, and the need for employment stability, as well as housing and transportation patterns.

The results of the Census in 1990 make it clear that balanced economic growth needs to be a success in North Carolina if rural areas are to thrive. During the 1980s, urban counties added more than 500,000 residents and grew by more than 17.4 percent; rural counties added fewer than 200,000 residents for a population increase of 7.3 percent. In 1990, urban counties had a per capita income of \$17,818. Per capita income

in rural counties was \$14,228. The gap? \$3,590. And while the rural counties had a poverty rate of 16.4 percent in 1990, urban counties had a lower average rate of 10.4 percent. All 25 counties with poverty rates exceeding 20 percent were rural counties. The gap between rural and urban areas must be addressed by policymakers in North Carolina. One way to bridge this gap may be regional economic development strategies.

The following article by Donald Kirkman discusses the history of regionalism in North Carolina and assesses its viability as a strategy for economic development in our rural areas.

# Regionalism in Economic Development

BY DONALD A. KIRKMAN

**E**conomic development can be broadly defined as the process of creating wealth. The role of the economic development professional is to influence the process for the benefit of the community through increasing job opportunities and expanding the tax base. North Carolina has been long regarded as one of the nation's most successful states in recruiting industry, which is an important component of economic development. Historically, North Carolina's success has been based on a strong business recruitment office in the Department of Commerce in Raleigh, which has been supplemented by a large network of economic development professionals employed by local governments and the private sector. In recent years, however, a number of regional economic development organizations have been created which will have a significant impact on the practice of economic development in North Carolina.

Regionalism has several meanings in the economic development community. It can mean a central organization with a network of offices assigned to geographic regions. It can mean a collaboration of multiple individuals or organizations to promote regional assets. Or, it can mean a formal or informal combination of local governments, individuals, and organizations which share an interest in a common

project or issue. Regionalism has many definitions because it means different things to different people.

While the distinctions between types of regional structures may be subtle, they are important in understanding the evolution of regional economic development initiatives in North Carolina. This article will discuss the history of regionalism in North Carolina, and it will describe the events of 1992 and 1993 which redirected the state's economic development efforts. The article will conclude by discussing some of the successes of the seven new state-supported regional economic development entities, and by identifying some of the uncertainties facing the state's economic development efforts as a result of regionalism.

## **Early Regionalism Efforts: EDDs, LROs, and CGOs**

**R**egionalism has been a part of the economic development process in North Carolina since the 1960s. The United States Department of Commerce, through the Economic Development Administration, established a nationwide network of Economic Development Districts (EDDs) in the 1960s to distribute federal revenue sharing and grant funds for economic development. Eight EDDs were created in North Carolina, primarily in the rural western and eastern regions of the state, to administer economic development grants to local governments. The federal funds were used pri-

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marily for the creation of a five-year Overall Economic Development Plan for the region, with annual updates, and for infrastructure (utility and transportation) development. Grant funds were expended for other purposes, however, including feasibility studies and loan programs.

In the early 1970s, Governor Robert W. Scott expanded the EDD initiative into a statewide regional program. A total of 18 Lead Regional Organizations (LROs) were created, which incorporated the eight existing EDDs. For the first time, every county in North

Carolina was assigned to a regional organization. The purpose of the LROs, unlike the original EDDs, was to administer a wide range of programs, not merely those relating to economic development. The LROs, most of which are now known as Councils of Government (COGs), were designed to be the conduits through which a variety of state programs—health, housing, aging, social services, and emergency services, among others—would be administered. The eight North Carolina LROs which had originally been established as EDDs, however, continued to focus much of their efforts on economic development, particularly in the administration of grants from the U.S. Economic Development Administration.

The motive behind the creation of the federal EDDs and the North Carolina LROs was the same: to streamline the distribution of funds to, and the administration of programs in, over 600 separate local governments in North Carolina. The broad vision of the role of LROs was never realized, however. Many local government leaders perceived that the EDD and LRO regionalism initiatives were part of an effort to replace city and county governments. Local governments and state agencies were reluctant to relinquish authority to the newly created regional organizations, fearing a loss of control over their programs. Currently only two programs—the Area Agencies on Aging Program and the Emergency Medical Services Program—are coordinated through the LROs, although some LROs and COGs provide a variety of services to units of local government in North Carolina. Those services include economic development, job training, housing, land use planning, and grant assistance.

### **Interest in Regionalism Grows: Business Recruitment and Community Assistance**

**S**eparate from the EDDs and LROs, the State of North Carolina has operated regional economic develop-



ment offices since the 1960s. Although the name of the department in which these offices have been located has changed frequently throughout the years, they have always been housed in the economic development office of state government, currently known as the North Carolina Department of Commerce. Today, the North Carolina Department of Commerce is home to the Business/Industry Division and the Division of Community Assistance, both of which are headquartered in Raleigh.

Initially, five regional offices—in Sylva, Salisbury, Washington, Lumberton, and Raleigh—were established to help local communities prepare for new industry and to assist existing industry. The regional structure underwent several significant changes in the 1970s. Regional offices in Winston-Salem and Wilmington were added, and a second employee was added in each regional office to work with local communities on infrastructure and other local issues. Today, the Business/Industry Division maintains nine regional offices, which are located in Asheville, Lenoir, Piedmont Triad Airport, Mooresville, Raleigh-Durham Airport, Fayetteville, Wilmington, Greenville, and Hertford. The responsibilities of the offices—new business recruitment and existing industry assistance and expansion—have not changed.

In 1957, the state established a community assistance program which quickly expanded from its base in Raleigh to regional offices in Asheville and Washington. Offices were later added in four other cities. The community assistance program—the primary function of which was to provide technical assistance to local governments in areas such as land use planning and public administration—bounced back and forth between the economic development and the environmental branches of state government.

The Division of Community Assistance now has seven regional offices, which are located in Asheville, Winston-Salem, Mooresville, Fayetteville, Raleigh, Washington, and Wilmington. Some of the offices are located with the regional offices of the Business/Industry Division, while others are housed independently or located with regional offices of the Department of Environment, Health, and Natural Resources. In addition to the technical assistance responsibilities of the Division of Community Assistance, the Division currently administers the non-economic development portion of the federal Community

Development Block Grant Program for the State of North Carolina.

### **North Carolina's Voluntary Regionalism Initiative in the 1990s**

Several urban areas prior to 1993 formed voluntary alliances to promote and market themselves on a regional basis. Local government and industry leaders in these communities felt that marketing a region would produce better results and ultimately would be more economical than each county promoting itself independently. Some community leaders also perceived that the North Carolina Department of Commerce had not done a satisfactory job attracting new industries to their regions.

These regional efforts included the Carolinas Partnership, a sixteen county region surrounding Charlotte, which included three South Carolina counties, and the Piedmont Triad Partnership, a collaboration of twelve counties around the Greensboro/High Point/Winston-Salem area. Funding for each of these partnerships was provided locally from public and private sources, and participation in these regional organizations was left to the discretion of local representatives. In addition, leaders in the Raleigh/Durham/Chapel Hill area were developing support for a regional organization. While these three regional organizations were concentrated in the most urban regions of North Carolina, the establishment of the Global TransPark Development Commission would cause regionalism to expand dramatically to include rural areas of the state.

### **The Global TransPark Development Commission**

In 1992, Governor Jim Martin embraced the vision of a global air cargo industrial complex in North Carolina. With support from the General Assembly, the Global TransPark Authority was created and charged with the responsibility of constructing this facility. When Governor Jim Hunt was elected in 1992, he replaced Martin as the Chairman of the Global TransPark Authority, and Hunt became a vocal advocate for the project.

After considering numerous sites for the facility, Lenoir County was selected for what

would be known as the North Carolina Global TransPark. Lenoir County was selected for the project in part because the Global TransPark had the potential to have a significant positive economic impact on the surrounding region. Because many of the counties surrounding Lenoir County were impoverished counties with inadequate infrastructure and industrial facilities, TransPark proponents developed a plan to raise funds in the region surrounding the TransPark to construct the necessary improvements to maximize the regional economic benefits of the project. The plan contemplated establishing through legislation a regional organization with a revolving low-interest loan fund. The fund would allow counties within the region to develop the infrastructure, industrial parks, and shell buildings necessary to compete successfully for new industries locating within the region surrounding the Global TransPark.

Advocates of this plan initially proposed raising \$30 million through the imposition of a one-cent sales tax for six months in the participating counties. Because the leadership of the North Carolina House of Representatives, then under Speaker Dan Blue of Wake County, did not want to establish a precedent for allowing a sales tax to be imposed regionally, the regional sales tax was rejected. Instead, the General Assembly agreed to allow the participating Global TransPark counties to levy on themselves a \$5.00 fee on motor vehicle licenses and renewals for a five-year period for the purpose of creating a revolving loan fund for economic development and infrastructure projects in the participating counties.

During the 1993 session of the General Assembly, legislation was adopted creating the Global TransPark Development Commission. The Commission, established outside of the Department of Commerce, was given very broad authority to undertake economic development activities within Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Nash, Onslow, Pamlico, Pitt, Wayne, and Wilson counties, which were the counties that elected to join the regional organization. Because the \$5.00 motor vehicle fee was projected to raise only \$22.5 million over the five-year life of the fee, versus the \$30 million which would have been raised from the sales tax, the General Assembly agreed to make a \$7.5 million appropriation directly to the Global TransPark Development Commission to make up the funding deficiency.

### **The 1993 General Assembly Adopts Regionalism**

Until 1993, North Carolina's regional economic development efforts had been structured around a strong central organization with branch offices assigned to clusters of counties. The regional offices, whether they were business recruitment and retention offices under the Business/Industry Division or community development offices under the Division of Community Assistance, existed to provide outreach services to local communities. Beginning in 1993, a new regional structure was implemented which, while preserving the regional offices of Business/Industry and Community Assistance, has created a new network of publicly-supported regional entities outside the operational control of the North Carolina Department of Commerce.

Once the General Assembly appropriated \$7.5 million to the Global TransPark Development Commission, several powerful legislators representing counties not included in the three urban regions or the Global TransPark region initiated efforts to establish state-funded regional economic development organizations for their districts. Some of these legislators had criticized the North Carolina Department of Commerce for its perceived lack of interest in recruiting new industries to the more extreme rural areas of the state. By the time the 1993 short session of the General Assembly adjourned, bills had been adopted creating regional commissions in western, southeastern and northeastern North Carolina. Each was initially funded with \$1.85 million over a twenty-month period.

The bills creating the Western Regional Economic Development Commission and the Southeastern Regional Economic Development Commission were identical in all substantive respects. Each commission had 15 members, appointed pursuant to a designated formula by the Governor, Lieutenant Governor, Speaker of the House and President Pro Tempore of the Senate. Each commission was directed to study and promote their respective regions, and each was additionally given broad latitude with respect to traditional economic development activities. Although administratively the two commissions were to be part of the Department of Commerce, the statutes creating the regional organizations explicitly stated that they were to

function totally independent of the Department of Commerce. The statutes further stipulated that funds would be disbursed directly to the respective commissions.

The bill creating the Northeast Regional Economic Development Commission was similar but not identical to the bills creating the western and southeastern commissions. The governing commission was larger and had a different appointment structure. The statute establishing the northeast commission included specific direction to develop a comprehensive tourism and natural resource-oriented economic strategy with its own director, in addition to the broad grant of traditional economic development powers to be administered by a separate economic development director. Like the western and southeastern commissions, the northeastern commission was established administratively within the Department of Commerce, but was operated and funded totally outside of the Department of Commerce.

### **The Role of the Department of Commerce**

**D**ave Phillips, whom Governor Hunt appointed as Secretary of Commerce in 1992, joined Commerce with extensive experience in regional economic development. Phillips, a successful High Point businessman, had been instrumental in the creation of the Piedmont Triad Partnership and had served as its chairman. After becoming Commerce Secretary, Phillips, who had seen the benefits of regional organizations, quickly embraced regionalism as the focal point of his economic development agenda for North Carolina.

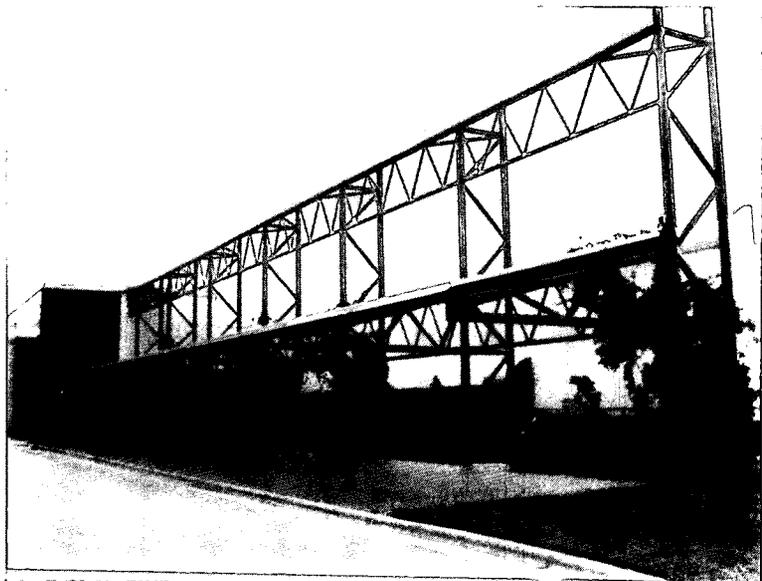
Almost immediately upon taking office, Phillips was confronted with the legislative creation of four regional economic development organizations which were not under the control of the Department of Commerce. Since the 1960s, North Carolina consistently had been among the nation's leading states for industrial recruitment and expansion, in large part because of the strong statewide industrial recruitment program housed in the North Carolina Department of Commerce. The new state-supported regional economic development organizations threatened to dilute the authority and funding of the Department of Commerce. Furthermore, there was no assurance that the General Assem-

bly would not create additional regional organizations.

In order to maintain a role for the Department of Commerce in the evolving regional framework, Secretary Phillips created a structure pursuant to which every county in North Carolina was administratively assigned to a regional economic development organization. The initiative was called the "North Carolina Partnership for Economic Development" and incorporated the three voluntary regional organizations (the Carolinas Partnership, the Piedmont Triad Partnership and the emerging Research Triangle Regional Partnership) and the four statutory regional commissions (the Global TransPark Development Commission, the Western Regional Economic Development Commission, the Southeastern Regional Economic Development Commission, and the Northeastern Regional Economic Development Commission).

Watts Carr, III, who had been the Director of the Business/Industry Division of the Department of Commerce, became the President of the North Carolina Partnership for Economic Development. The Executive Director and Chairman of the Board of each of the seven regional organizations became directors of the Partnership, together with several ex officio representatives representing economic development groups, LROs, and local governments. An advisory group of economic development professionals from each region was

**Consolidated Diesel's modern, high-tech assembly plant in Edgecombe County.**



*Jack Betts*

created to advise the Partnership and the Department of Commerce.

During the 1993–94 fiscal year, the General Assembly appropriated \$7.5 million to the Global TransPark Development Commission and \$1.85 million over a twenty-month period to each of the western, southeastern and northeastern regional commissions. Beginning with the 1994–95 fiscal year, the General Assembly for the first time appropriated state funds also to the Carolinas Partnership, the Piedmont Triad Partnership, and the Research Triangle Regional Partnership. The General Assembly appropriated a total of \$4,680,000 during the 1995–96 fiscal year to the seven regional organizations. The funds were distributed pursuant to a complex formula based on the level of economic distress of the member counties of each region. The largest share, \$1,243,691, was appropriated to the Western Regional Economic Development Commission, while the smallest share, \$359,242, was allocated to the Global TransPark Development Commission.

### **Regionalism: Successes and Uncertainties**

The seven regional organizations have experienced varying levels of success. The Carolinas Partnership and the Piedmont Triad Partnership, both of which were formed prior to the 1993 legislative initiative, have enjoyed substantial success with their promotion and marketing programs. Each region now employs an industrial recruitment specialist to develop marketing strategies. The Research Triangle Regional Partnership, which was formed later, has moved more slowly to develop its marketing program.

The four legislatively created regions have enjoyed success, although the northeast region struggled during its formative stages. The western and southeastern commissions quickly developed and began implementing regional marketing strategies. The Global TransPark Development Commission, the only regional organization with a dedicated source of funds for “bricks and mortar,” has used its loan and grant funds to attract several significant manufacturing companies to the region, as well as to fund infrastructure construction projects. The western, southeastern and Global TransPark regions have developed technology networks in the

county economic development offices throughout the respective regions to share site and building data for new companies. The Northeastern Regional Economic Development Commission, which took longer to organize, lagged behind the other rural regional organizations, but now has its professional staff in place and has completed a strategic plan.

A variety of challenges face the new regional organizations and the North Carolina Department of Commerce. The seven regions constituting the North Carolina Partnership for Economic Development are connected to the Department of Commerce more by strong leadership in the Department of Commerce than by any legal or institutional imperative. As discussed previously, the Global TransPark Development Commission was created as an independent economic development organization and was given authority to raise public funds for infrastructure and economic development projects. The western, southeastern, and northeastern commissions were established outside of Commerce and given broad economic development powers. The three urban regional partnerships are private, non-profit corporations.

At a time of shrinking public budgets, it is not clear whether the new state-supported regional program will continue to receive state financial support. While the potential loss or diminution of state support poses a minimal threat to the Carolinas Partnership, the Piedmont Triad Partnership, the Research Triangle Regional Partnership, and the Global TransPark Development Commission—all of which receive or have the capacity to receive significant funding from other sources—the loss of state support could jeopardize the continued viability of the western, southeastern, and northeastern regions. If state support is maintained at current levels, there is no assurance that funds will not be diverted from the Department of Commerce, the LROs, or any number of organizations receiving state funding for economic development.

Several studies in recent years have recommended streamlining North Carolina’s economic development activities, with the goal of finding greater programmatic and funding efficiencies. Notwithstanding the efficiency rhetoric, state-supported economic development organizations and policy-making boards have proliferated. Once established, new economic development programs and organizations develop their own support groups in the private sector and in the

General Assembly. The goal of streamlining North Carolina's economic development efforts becomes more difficult with the creation of each new organization and policy board.

With the establishment of the seven regional organizations, regionalism in economic development in North Carolina has entered a new era. The vestiges of prior eras remain, however. The LROs and COGs, which receive significant state funding, still provide economic development services to local governments across the state. The regional offices of the Business/Industry Division and the Division of Community Assistance continue to exist, although the offices are being realigned to conform to the geographic boundaries of the seven new regions. How these existing organizations will interact with the new regional commissions has yet to be determined.

Economic development regionalism makes sense for North Carolina. At a time when commuting patterns cross county lines and urban hubs drive regional economic progress, regional economic development collaboration provides a cost-effective strategy to promote economic

growth and development. Exporting regionalism from urban regions, where economic factors dictate regional alignments, to rural areas, where regional alliances are less apparent, may prove difficult. Regions formed voluntarily and financed with local funds may in the long term fare better than regional organizations created and funded by the General Assembly.

The latest regionalism initiative may be successful, but it is not the product of a well-conceived and integrated strategy for regional economic development in North Carolina. Its creation as a confederation of voluntary regional organizations and legislatively mandated entities under a tenuous Department of Commerce umbrella guarantees that there will be little uniformity in the implementation of regional programs statewide. Had the General Assembly created and funded a comprehensive regional structure within the Department of Commerce, with specific directions to develop marketing and promotion strategies tailored to the needs of each region in North Carolina, many of the uncertainties facing the state's economic development program might have been avoided.

***Production workers manufacture cassette tapes at RCA's Weaverville plant.***



Jack Betts

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## *Regional Economic Development Builds A Stronger Economy*

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LIKE ALL BUSINESS PURSUITS, economic development takes place in a highly competitive arena. Competition is fierce—and it is global.

North Carolina competes aggressively in this arena for one reason—to help create jobs for the state’s workers and build the state’s economy. In addition to building a business climate that nurtures existing industry and attracts new companies, the state’s economic development officials must always look for ways to stay ahead of the curve.

Regional economic development is one of the ways we can build a stronger economy. The birth of regionalism came as economic and community leaders in counties throughout the state realized they had a better chance at attracting companies to their “region” than their “county.” They realized they would reach their economic development goals more quickly by working together, rather than against each other.

Each of the state’s seven regions has its own character. The needs—and strategies for fulfilling those needs—are diverse. Yet these seven regions are more marketable than 100 individual counties, much like a shopping mall approach versus individual small stores.

Regional partnerships complement existing economic development efforts. The regions also are coordinating with state and local developers of tourism, film production, and sporting events to help these agencies operate more efficiently.

While each region is developing a distinct marketing strategy that promotes its own strengths, all regions have some marketing tools in common. These tools include the Economic Development Information Network (EDIN), the Geographic Information System (GIS), World Wide Web home pages, brochures, videos, exhibit booths, advertising, direct mail, and media relations programs.

Already the regional partnerships have many of these tools in place.

For example, **AdvantageWest**, which includes 23 counties in Western North Carolina (from Ashe County to Cherokee County), has completed the final design of the EDIN. The network will allow partnerships to share specific information with local economic developers on buildings, available land, and transportation. AdvantageWest also has a home page on the World Wide Web. The partnership has helped local communities improve the quality of sites available to industrial prospects and is looking at ways to improve the region’s infrastructure needs, including water and sewer facilities.

The **Carolinas Partnership**, which includes 12 North Carolina counties (those counties surrounding Mecklenburg County), has focused marketing efforts on the film and sports industries—both major money-makers for the region. The partnership has conducted several international and domestic trade missions and maintains a comprehensive economic development database.

The **Piedmont Triad Partnership**, which includes 12 counties (those counties around Greensboro, High Point, and Winston-Salem), has developed regional leadership training programs in which citizens help business and community leaders identify strengths in their economy and find solutions to weaknesses. The partner-

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ship has developed the region's first data center with on-line access for economic developers in all the region's counties.

The **Research Triangle Partnership**, made up of 13 counties (those counties around Raleigh, Durham, and Chapel Hill), has developed promotional materials, including county profiles, a multi-lingual brochure, a video, and a trade show display booth. The partnership also joined Commerce Department developers at trade shows for the telecommunications and biotechnology industries—both important industries for the Research Triangle region.

**North Carolina's Southeast**, which includes 11 counties (from Richmond County to Brunswick County), has provided computer technology and training for each of the region's economic development offices. The partnership now has a home page, an ad campaign, and marketing materials.

The **Global TransPark Commission**, composed of 13 counties (from Nash County to Carteret County), has installed the EDIN and has developed a comprehensive development plan. The commission also will send each economic developer in the region to two trade shows or recruiting missions per year.

The **Northeastern Commission**, composed of 16 counties (from Currituck County to Beaufort County), has focused on marketing the region as a travel destination. The partnership also is compiling a list of water and wastewater needs and providing a computer system to link counties to the EDIN.

These accomplishments show how the regional partnerships and the Department of Commerce work hand in hand to build the state's economy. The Department of Commerce is aligning its regional offices with those of the regional partnerships to ensure communication and cooperation. The Department of Commerce continues to work with clients interested in locating in the state and continues to work with county developers in the recruitment process.

As NationsBank Chief Executive Officer Hugh McColl said in a March 1996 speech to the annual meeting of the North Carolina Citizens for Business and Industry: "Regionalism can even out our spotty field because it can channel the energy and growth of urban areas to outlying counties—from Wake to Franklin, from Mecklenburg to Stanly, and from Cumberland to Sampson. As our regions grow, they will develop distinct characteristics and advantages. And that will broaden the appeal of the entire state. But as we incubate the new regional partnerships, we should explore funding alternatives, the use of seed money and public-private partnerships to help them put in place the infrastructure they need to compete."

Regional economic development makes sense for North Carolina because it works! This statewide network brings together the key economic development leaders from communities throughout the state. It also ensures that community leaders are actively involved in marketing their area and helping the state bring jobs to their workers.

We believe state legislators have seen the benefits of the regional partnerships in their areas and will continue to support these efforts.

—Dave Phillips

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*Dave Phillips was appointed North Carolina Secretary of Commerce in 1993.*

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***Regional  
economic  
development  
makes sense for  
North Carolina  
because it works!***

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# Not Just Fun and Games Anymore:

## Pro Sports as an Economic Development Tool

BY J. BARLOW HERGET AND MIKE MCLAUGHLIN

*Local officials—armed with claims of impressive economic impact—are going to bat for professional sports franchises and single-shot sporting events like never before in North Carolina. Even state government has gotten into the act with the establishment of a Sports Development Office in the Department of Commerce.<sup>1</sup> But how much impact can sports really have on the economy of a community?*

**T**he Charlotte Hornets, a National Basketball Association team, and the Carolina Panthers, a National Football League team, are the only major league professional sports franchises in the state of North Carolina. The teams' presence and history in Charlotte reflect the interest in sports as a significant part of the state's overall economic development strategy. Sports—both amateur and professional—no longer are just fun and games but are viewed as big dollars and cents for the communities that host teams and events.

The search for new jobs or, in modern parlance, "economic development" has become one of the magic phrases of politics and politicians. Business and political leaders have refined this search over the years, and have identified different segments of the economy on which to focus interest and resources.

The latest jobs sector to attract special notice is that of spectator sports. In 1990, the state established the Sports Development Office in the Department of Commerce, and municipalities such as Greensboro and Charlotte began forming their own sports development programs. Take Greensboro for example. "We've made a major commitment to make our sports facilities top-notch in the Southeast," says Dick Grubar, a Greensboro City Council member and former collegiate basketball player at the University of North Carolina at Chapel Hill. "The economic impact has been phenomenal. With the Chamber of Commerce, county, and city, we formed a sports commission, and we've hired an executive

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director. I think that the national and regional tournaments that have come here as a result have been immensely helpful to our hotel and restaurant industry.”

This new interest—and especially the use of public monies—in sports development has raised questions: How can the economic impact of such activities be measured? Are there benefits over and above new jobs? What are the drawbacks? Finally, what is the role of public money in sports ventures?

**Kendall Gill takes it to the hoop for the Hornets.**



Chuck Burton

## **Economic Impact**

The appearance of consultants is one sure sign of a successful economic development trend. One of the veteran consultants in North Carolina is Hill Carrow, president of Carrow Sports and Marketing Company of Raleigh. Carrow is a nationally ranked amateur swimmer and an attorney who helped organize and direct the 1987 U.S. Olympic Festival in Raleigh. The two-week festival was centered in the Triangle cities of Raleigh, Durham, and Chapel Hill, but events were staged in cities as far away as Greensboro.

In a good year, the Olympic Festival breaks even, but the 1987 festival ended with a \$1.7 million surplus and produced a publicity bonanza for the Triangle area.<sup>2</sup> This triumph accelerated local and statewide interest in sports as an economic development issue, and Carrow subsequently wrote the business plan for the state Sports Development Office.

“First Union Bank did a study after the 1987 festival,” Carrow says, “and the study showed that there was \$41 million spent in conjunction with that event. That includes money spent on tickets, sponsorships, hotel rooms, even purchases of automobiles by Buick and sold later by local dealerships. That amount doesn’t include the multiplier effect of the number of times a dollar turns over in a community. A conservative multiplier figure is 2.5 times, and if you use that figure, then the total impact of that one event in the local economies was over \$80 million.”<sup>3</sup>

Economists acknowledge that applying a multiplier to actual spending is an inexact science. John Connaughton, an economist at the University of North Carolina at Charlotte, has estimated the impact of the Hornets on the Charlotte area economy, as well as the impact of a National Football League franchise. Connaughton says a rough rule of thumb is to figure \$2 in economic impact for every \$1 in actual spending. “You’ve got to be real careful about whether you’re recycling dollars that already exist or bringing new dollars in,” says Connaughton.

Connaughton says he sometimes sees projections of economic impacts of \$6 and \$7 for every dollar spent. These estimates, he says, are vastly inflated. “Where there is a judgment to be made,” says Connaughton, “I err on the conservative side.”

In general, estimates of tremendous economic impact should be interpreted cautiously. The studies these estimates are based on typically are commissioned by supporters of a franchise or event. They typically include rosy assumptions about how much money will be spent on concessions, meals at off-site restaurants, gasoline or other transportation, motel rooms, retail shopping, and so on. All of these hypothetical expenditures are added up and doubled, tripled, or even quadrupled to come up with an impressive sounding but entirely hypothetical economic impact.

These studies generally do not point out some of the disadvantages of investing in sports franchises—that building stadiums and providing infrastructure usually requires investment of public funds; that public funds committed to sports development may be diverted from other more important public purposes; and that teams can lose money and move or even go out of business, leaving a community holding the bag with an under-used and expensive stadium.

Still, figures showing exponential economic impact for sports development cause salivation among business and political leaders. Max Muhleman, a Charlotte consultant instrumental in the city's emergence as a market for major league sports, considers a report on Philadelphia's four major league sports franchises to be among the most convincing studies of this genre. The study's authors estimate the impact of ice hockey's Flyers, basketball's 76ers, football's Eagles, and the Phillies baseball franchise on the Philadelphia area economy at nearly \$600 million annually.

Carrow cites other studies: "You can also look at ongoing sporting events such as a college athletic program. A report by University of Georgia professors in 1991 measured the economic impact of all of the university's sports programs and showed that they pumped in excess of \$10 million annually into the Athens [Ga.] economy.<sup>4</sup> There has been a study done on the motor sports industry that shows it generates over \$100 million a year in North Carolina."<sup>5</sup>

Indeed, motor sports may provide the greatest economic impact of any sport in North Carolina, says Paul McGuire, former director of the state's sports development office. North Carolina is home to three speedways that hold major NASCAR events—the Charlotte Motor Speedway, the North Carolina Motor Speedway in Rockingham, and the North Wilkesboro Speed-

way. A total of 891,200 people attended 10 events at Charlotte Motor Speedway in 1991, according to speedway officials.

And McGuire points out that it doesn't take a franchise or a super speedway to have a major economic impact. The K-Mart Greater Greensboro Open, North Carolina's only regular stop on the men's Professional Golf Association tour, means big money to the Greensboro economy, and the senior PGA tour stops in Winston-Salem for the Vantage Championship and Charlotte for the Paine Webber Invitational. Another major event is the Crosby National Celebrity Golf Tournament at Bermuda Run near Winston-Salem.

The sports development office is encouraging North Carolina communities to pursue events connected with the 1996 Olympics in Atlanta. Communities with the right facilities might attract teams looking for a place to practice or even play host to preliminary events.

Such events can have a surprising impact. An example is the national volleyball championships, held in Raleigh in May 1990. The nine-day tournament and convention attracted 1,500 players and, according to Carrow, "had the biggest impact of any convention in all of Raleigh that year."

Al Baldy, convention director for the Greater Raleigh Convention and Visitors Bureau, agrees that the tournament represented a coup for Raleigh. "Certainly it was one of the major events" of 1990, Baldy says. He says the event—which featured a four-day meeting followed by competition in 10 different amateur divisions—had a number of advantages over traditional conventions.

Many players brought along their families for a vacation, so they were more willing to spend money on entertainment and retail purchases than the typical conventioneer. And the participants stayed in hotels of every size and price range, which broadened the economic impact, says Baldy. "We would like to go after more of these types of events because it was such a huge economic generator," he says.

Another major event mentioned by sports enthusiasts is the ACC Tournament, the grandfather of college basketball conference tournaments. The ACC tournament, in fact, is so prized that Greensboro voters agreed to a 7,000-seat coliseum expansion in 1991 to lure the four-day event back from Charlotte, says Greensboro Sports Commission director Tom Ward. Con-

ference officials have since committed the tournament to Greensboro for three years, Ward says, beginning in 1995.

This is one of the plums available to cities from the tradition-steeped world of college sports. But unlike the professionals, college sports teams do not move, nor do leagues offer expansion teams. There is relatively little opportunity for those communities that don't already have a well-established team to pursue college sports as an economic development tool.

Still, college sports administrators caution against neglecting a thriving industry in the pursuit of professional sports. "The value of intercollegiate athletics is immense for our community," says Todd Turner, former athletic director at North Carolina State University in Raleigh. "I fear that we take it for granted.

Our niche shouldn't be pro sports. It's college sports."

### **Major League Sports Teams**

Compared to the Triangle, however, Charlotte's collegiate sports market is largely undeveloped. That leaves the market wide open for pursuing professional sports. UNCC economist Connaughton's research on the Hornets basketball team led him to explore other areas of pro sports development, including football and minor league baseball.

Despite his caution about using conservative estimates of economic impact, Connaughton believes that the dollars that flow from sports can be quantified. "There is measurable change in

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## ***A Pocket Guide to Pros and Cons of Sports Development***

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### **Advantages of Sports as an Economic Development Tool**

- 1) Increased business for restaurants, hotels, service stations, and others.
- 2) Increases an area's profile, which may help recruit industry, attract conventions, or otherwise boost economic development.
- 3) Builds sense of community/regionalism if team wins.
- 4) Another alternative for use of leisure time.
- 5) More dollars stay in the community than for some other forms of entertainment.
- 6) More fun than investing in widget-making factory.

### **Disadvantages of Sports as an Economic Development Tool**

- 1) Cost of taxpayers' money in stadiums and other infrastructure; could result in higher property tax rate.
- 2) Teams can lose money, fold, or leave town.
- 3) Opportunity cost of other uses of public money for more important needs in the community.
- 4) Public dollars may be used to enrich private individuals.
- 5) Unlike major league teams, minor league teams bring in few dollars from outside the community, thus lessening their economic impact.
- 6) Is sports a public purpose?



**Racers and dignitaries gather at the starting line of the original Charlotte Motor Speedway, a wooden racetrack that opened in 1924.**

the funds that come into an economy,” says Connaughton. “The variance is predicated on several factors: the price of the ticket; the draw of the event; and where the people come from.”

For example, if the sport is a major league event such as an NBA or NFL game, a large percentage of people typically come from outside the community. More money from outside the community will flow into the local economy. If the event is not a “big ticket” event and most of the people come from within the community, as is often the case with minor league baseball, Connaughton says the effect is very small.

In the Charlotte Hornets study, Connaughton reported that the team brings almost \$100 million annually into the area economy.<sup>6</sup> “Thirty to 35 percent of the fans come from outside the seven-county metro region,” he says. “We found that a bunch of people come from Spartanburg and Greenville, S.C., and Cleveland County [N.C.]” Connaughton says professional football has an even bigger economic impact, though the number of games is far smaller and the season shorter than professional basketball. The audiences are larger and the tickets cost more per game.

Still, not everyone agrees that securing a major league franchise is a sure financial windfall for a local economy. John Wilson, a Duke University professor who studies leisure and its relationship to politics, is one critic of sports-related economic impact claims. Wilson cites a

1988 study of a cooperative effort by the cities of Irving and Arlington, Texas, to build a stadium for the Dallas Cowboys football team in the early 1970s. Wilson says Irving and Arlington have since suffered greater increases in sales and property taxes than comparable Texas cities because of the debt undertaken to build the stadium. “Was the money well spent?” asks Wilson. “The weight of the evidence leads you to believe it made no sense whatsoever.”<sup>7</sup>

### Minor League Sports Teams

Of more relevance to most North Carolina cities is minor league baseball. Including the Charlotte Knights, who actually play their games in Fort Mill, S.C., 10 North Carolina cities have such teams. A total of 174 minor league franchises operate in the U.S., Canada, and Mexico. Of all of these teams, the Durham Bulls are perhaps the best known because of the hit movie “Bull Durham,” which was filmed in the city and its venerable Durham Athletic Park.

Minor league hockey also is proving popular in some North Carolina cities. The Greensboro Monarchs of the East Coast Hockey League, for example, drew an average of 5,305 fans per game in the 1991–92 season, according to team president Morris Jeffries. And the Raleigh Ice Caps, in their inaugural season in 1991–92, reported 14 sellouts of 5,400 in 32 home games.



N.C. Division of Archives and History

**Baseball players pass the time at an Orange County Gas Station, circa 1939.**

Unlike major league sports, there have been few systematic studies about the impact for minor league baseball, according to a special report by the International City Management Association. "Belief in the positive impact of minor league teams is based on assumptions drawn from the major league experience," the study says. "The studies which have been done generally have been done by the teams themselves or consultants hired by the teams. For example, interviewees, when talking about the benefits to their community, often cited major league studies which they had heard about or read, and often simply assumed as a given the positive impact of a team and ignored its public cost."<sup>8</sup>

Among the reasons for the relatively low economic impact of minor league teams, the report says, are that much employment created by a franchise is seasonal, that workers in concession stands and vendors may be part-time or volunteers, and that profits of a team with out-of-town owners likely will be invested else-

where. Except for the so-called "bonus babies," players often receive minimal salaries and a low per diem when traveling. And few fans are likely to follow a team on a road trip, so the impact on local hotels and restaurants is likely to be small, the study says.

"Based on the interviews conducted for this report, the unavoidable conclusion is that if the team is important economically, it is due more to image-shaping than to direct economic impact." The report did provide income and revenue from two AAA teams. Team A posted revenues of \$1.98 million and net income of \$358,778; Team B, \$1.4 million in revenue and \$228,019 in net income.<sup>9</sup> Figures like these—from a financial standpoint—make minor league baseball comparable to a typical small business.

There is another important economic impact other than direct revenue from outside sources, according to Connaughton. "One of the things that a local professional sport does is it locks the leakage of entertainment dollars into

the community," he says. "If local dollars are spent on a Kenny Rogers concert, for example, much of that money will get on the bus and head out of town with Kenny."

Connaughton contrasts that scenario with the local dollars that go to pay Charlotte Hornets power forward Larry Johnson's salary. "When we pay Larry Johnson \$3 million, we know he just bought a house . . . and he gave \$180,000 to the [Charlotte-Mecklenburg] United Way." As for minor league teams, says Connaughton, "They will not draw like major league sports, nor will the revenue from ticket and concession sales be on a major league scale, but they plug the leakage." Still, it's worth noting that not every Hornet is as generous as Johnson, and many players live elsewhere in the off season, so their investment in the community is not as great.

### Quality of Life Issues

In addition to economic benefits, sports developers and boosters invariably cite other factors in their quest for attracting athletic teams and events. These factors vary according to the imagination of the promoter, but they usually are related to the community's "quality of life."

Jim Goodman, president of Capitol Broadcasting Co. in Raleigh and owner of the Durham Bulls, discovered firsthand the good and bad of such intangibles. Goodman and his broadcasting companies played a big role in the 1987 Olympic Festival, and the event left him a big believer in sports development. "Communities really need to take a look at those things that complete the leisure time activities if those communities expect to get the economic development they want," says Goodman. "In the big picture, the art museum, amphitheater, and sports are part of the total quality of life. When we were talking to Sears about coming here, they wanted to know what their employees would do once they got here. That is now a very important part of bringing business to the Triangle. Sports are becoming a bigger and bigger part of everybody's life, and amateur sports in particular."

Goodman sought to translate his belief in sports development into action with his ambitious plan for a Triangle sports park that would be home to minor league baseball, soccer, and eventually tennis and ice hockey. He drew

heavily on eager public support for the park from the Capital Area Soccer League's 7,000-plus players and their families. Soccer fans spoke at a Raleigh City Council public hearing about the value of having professional soccer available for young players and the intangible benefit of having such role models in the community.

Conversely, Durham leaders, fearful of losing the Bulls from the heart of the city's downtown, dug in their heels and waxed eloquent about how the Bulls had become the symbol of the city's 1980s resurgence. To remove the team from the city to even a nearby Triangle park, they argued, would be to cut the heart out of the Bull City.

Intangibles are important. Connaughton points to the "qualitative factor" in the Charlotte Hornets experience. Landing the Hornets, he says, has raised the level of Charlotte's game. The city is now playing in the big leagues. "I can't put a number on it," says Connaughton. "Being one of a few cities with a pro team makes a difference. Kids in Seattle are wearing Hornets T-shirts, not NCSU T-shirts. Charlotte for years struggled and was compared to cities such as Raleigh, Richmond, and Birmingham. With an NBA franchise and an NFL franchise . . ., Charlotte starts competing with cities like Atlanta. It clearly separated itself by adding major league entertainment."

Ward, the director of the Greensboro Sports Commission, notes that Charlotte, the Triad, and the Triangle have traditionally been fierce competitors in sports and entertainment. Now Charlotte is pulling ahead. "They are placing themselves in the big time sports arena," says Ward of the Charlotte area's success in luring the NBA, AAA baseball, a premier NASCAR facility, and the NFL. "This type of sports activity draws heavily from the Piedmont," he says. "There is no way we can compete unless we start working basically toward the same type concept."

The answer, Ward believes, might be a greater reliance on regionalism. A committee representative of 11 Piedmont-Triad counties is studying the region's sport and entertainment facility needs with an eye toward a regional complex to serve the area's one million-plus population, Ward says. A stadium to attract a higher level of professional baseball, an amphitheater for outdoor concerts, perhaps even a race track are possibilities for the complex, says Ward. "Sports is a big key to the future of all of these areas."

## The Public's Role

The public increasingly has been drawn into the politics of sports development. Not surprisingly, citizens are being asked to bring their pocketbooks, and for many North Carolina taxpayers, this is a new and rude request. This is especially the case when the sport is professional and owned by private investors.

Durham citizen Forrest Johnson, for example, offered his objection to that city's proposal to build a new stadium for the Durham Bulls in a letter to *The News and Observer* of Raleigh. "Many residents believe that the city has pressing social, environmental, and educational needs that should be addressed before building a stadium," Johnson wrote. "Other residents believe that a private business enterprise such as the Durham Bulls should pay a fair market value for its place of business. Still other residents never see the Durham Bulls play and prefer not to subsidize them."<sup>10</sup>

Greensboro City Council member Dick Grubar says his city will have to be innovative to win financing for future new athletic facilities. "Because of the cost of everything and people being anti-tax, we're going to have to be creative in raising money; maybe something like a prepared food tax to help pay for it." But

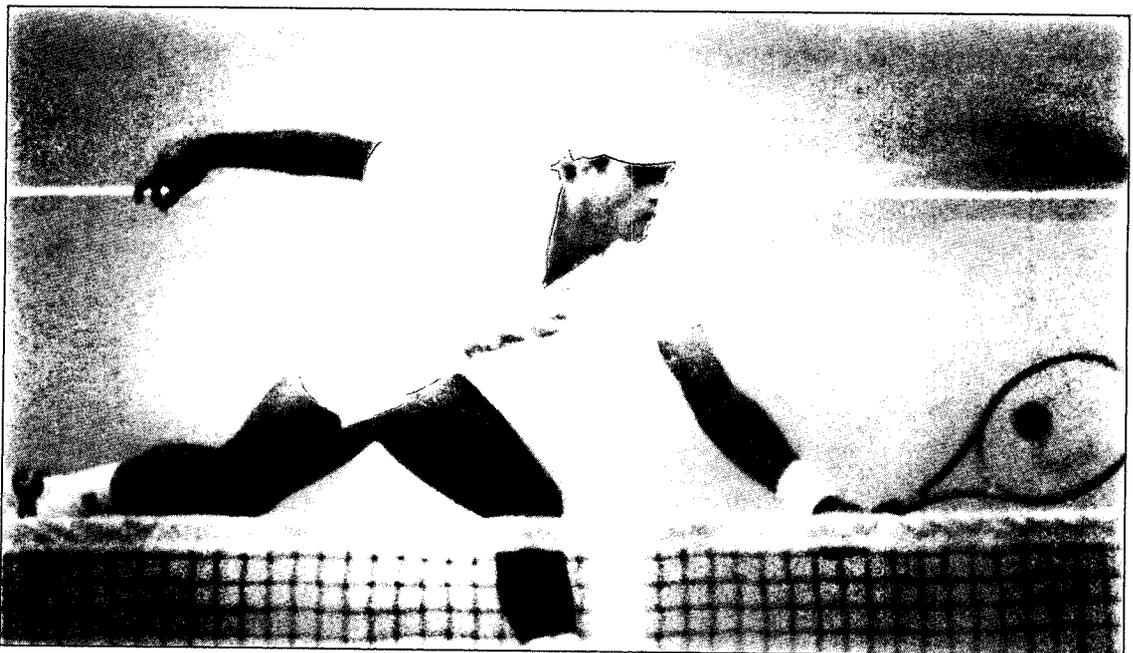
Grubar says some public funding is essential to financing a facility. "I don't think you would have it if you left it up to the private sector alone," he says.

Even in larger cities with long sports histories, there is sentiment against using public monies to build stadiums for private sports franchises owned by wealthy individuals. Donald Schumacher, director of the Greater Cincinnati Sports and Events Commission and treasurer of the National Association of Sports Commissions, says such an argument already has begun concerning the need for a new baseball or football stadium in that city. "Several articles have already been written to that effect," he notes.

An ICMA survey of cities that contained minor league baseball teams found that the biggest negative factors cited by city officials concerned public funds being spent on stadium costs. Disputes over stadium conditions and concerns over public subsidies to such teams were mentioned most often.<sup>11</sup>

The record shows the public often *does* become a partner in both professional and amateur sports ventures, although this varies some depending on the sport. Motor speedways, golf courses, and horse and dog tracks typically are privately held and operated, although betting at

**Tim Wilkerson, also known as Dr. Dirt, digs for a forehand volley in a Raleigh Edge team tennis match.**



Karen Tam

**Table 2. Pro Sports Franchises Operating in North Carolina**

Team or Facility	Sport	Estimated 1991 attendance*
Asheville Tourists	baseball**	117,625
Burlington Indians	baseball	57,613
Carolina Mudcats (Zebulon)	baseball	218,054
Carolina Panthers	football***	55,203/game, 1995
Charlotte Heat	team tennis	20,000
Charlotte Hornets	basketball***	971,618
Charlotte Knights	baseball	313,791
Charlotte Motor Speedway	auto racing	891,200
Charlotte Rage	arena football	66,000****
Durham Bulls	baseball	301,240
Fayetteville Flyers	basketball	57,600
Fayetteville Generals	baseball	88,380
Gastonia Rangers	baseball	44,060
Greensboro Hornets	baseball	191,048
Greensboro Monarchs	hockey	206,893
Kinston Indians	baseball	100,857
N.C. Motor Speedway (Rockingham)	auto racing	120,000
North Wilkesboro Speedway	auto racing	105,000
Raleigh Bullfrogs	basketball	38,400****
Raleigh Edge	team tennis	19,600****
Raleigh Ice Caps	hockey	155,000
Winston-Salem Spirits	baseball	111,333

\* 1991-92 for teams with seasons that fall in two calendar years. Attendance for the Carolina Panthers is from the 1995 season.

\*\* All baseball teams are class A with the exception of the Carolina Mudcats and the Charlotte Knights, which are class AA. The Knights move to AAA in 1993, the highest level of minor league baseball.

\*\*\* The NBA's Charlotte Hornets and the NFL's Carolina Panthers are the only major league franchises operating in North Carolina.

\*\*\*\* The Rage began inaugural season in 1992. The Bullfrogs and the Edge are now defunct.

Source: N.C. Sports Development Office, N.C. Department of Economic and Community Development, 430 N. Salisbury St., Raleigh, N.C., 27603 (919) 733-4171. N.C. Center intern Richard Harrill also conducted research for this table.

horse and dog racing tracks is illegal in North Carolina. North Carolina's three major motor speedways are privately owned. The Charlotte speedway cost about \$2 million when first constructed in 1960. It would cost \$250 million to build today, says Bruton Smith, one of its owners.<sup>12</sup>

Even though these facilities have been built with private capital, they often ask the public to provide infrastructure expenses such as access roads and water and sewer. An example is Charlotte Motor Speedway, which will benefit from a \$10.6 million interchange to be constructed on the Cabarrus-Mecklenburg County line north of Charlotte. The speedway is to pick up nearly a third of the construction cost (32 percent), while another third will be paid by a group of developers who also will benefit. The remaining third will be paid by the taxpayers, according to Larry Goode, chief engineer for programs in the N.C. Department of Transportation.

**Durham's smoke-blowing bull symbolizes the debate over the future of the franchise.**



Karen Tam

In another perk, taxpayers pitch in \$100,000 annually for traffic control for major events at Charlotte Motor Speedway. Former Rep. Coy Privette (R-Cabarrus) questioned this use of taxpayer funds for a private sporting event that grosses millions of dollars in revenue. "Charlotte Motor Speedway is the only one that gets it," said Privette. "We can't find resources for good causes but we can find resources to control traffic at a sporting event."<sup>13</sup>

Sports such as baseball, football, and basketball almost always require the public to share in the cost of building stadiums or coliseums. Of the major league franchises, only a handful play in privately financed facilities, according to consultant Hill Carrow and sports commission director Don Schumacher. Two examples are the NFL's Miami Dolphins, and the NBA's Minnesota Timberwolves. The Carolina Panthers are yet another example. Although city, county, and state taxpayers have put up some \$60 million for the downtown stadium site, the Richardson Sports Group plans to spend \$160 million in private funds to build the stadium.<sup>14</sup> Boyd F. Cauble, executive assistant to the Charlotte city manager, says the public's share includes: \$35 million from the city for land, a practice field, and 2,400 parking spaces; \$14 million from the county to relocate a rest home and an old jail, and \$11 million from the state for roads and infrastructure.

Competing cities have tried to make an issue of the Charlotte proposal's heavy reliance on private financing, charging that the franchise would be strapped with long-term debt and thus be less stable. But the Richardson group has reiterated its commitment to private financing. "We are not even looking at any more public participation," says Mark Richardson of Richardson Sports.<sup>15</sup>

Public participation in projects of the magnitude of Charlotte stadium is the rule. The exception is the amount of private money committed to the Charlotte stadium. Cauble points out that besides saving the taxpayers money, the fact that the stadium will be privately owned represents a sort of insurance policy for Charlotte against the team abandoning its facility and jumping to a different market. Adds Carrow, "It's rare, if ever, that a facility gets done totally with private money."

Minor league facilities also typically benefit from some type of public funding. "Nearly all minor league baseball teams benefit from some

level of public subsidy," says the ICMA report. "This public subsidy commonly takes the form of a substantial investment of public funds in a stadium, whether it is publicly or privately constructed or publicly or privately owned."<sup>16</sup>

While most sports development efforts require some amount of public funding, given the fits and starts of minor league sports franchises, experts recommend caution in developing public-private ventures. In negotiating minor league baseball contracts, for example, the ICMA advises city officials to work with league officials and "attempt to deal with more than one franchise owner." The city should seek information about the owners and "avoid those who relocate frequently or have little experience in the entertainment industry or otherwise are not known for being successful operators."

In building a facility, ICMA advises, city leaders should reject "an owner's demand to finance a stadium completely with government funds." And if public funds must be used, "officials should expect to invest from \$3 million to \$20 million . . . and should seek as many government and private sources as possible to share the costs."

## Conclusion

The success of amateur and professional sports in North Carolina has prompted concentrated interest in this segment of the state's economy. This interest is manifest in the state's own Sports Development Office and in similar local municipal offices, some of which are supported by tax revenues. Many observers believe that popular spectator sports have measurable economic benefits to their host cities and that sports also have less tangible cultural advantages that enhance a community's entertainment opportunities. These are the major pluses of using sports as an economic development tool.

Among the minuses are that tax dollars may be required to secure a team or event, even from citizens who have no interest in sports, that these dollars may be diverted from other, more noble public purposes, and that public dollars may be placed at risk in the event that a franchise folds or moves.

Still, to recruit sports developments, local governments usually are expected to provide use of public facilities, whether existing or new.

These public-private partnerships may be unfamiliar to many North Carolinians, but they are the rule in traditional major and minor league sports.

## FOOTNOTES

<sup>1</sup> The 1991 General Assembly passed a law changing the name of the Department of Economic and Community Development to the Department of Commerce effective Jan. 1, 1993.

<sup>2</sup> Carrow says the Olympic Festival lost an undisclosed amount in 1981, earned \$100,000 in 1982, earned \$75,000 in 1983, lost \$500,000 in 1985, and earned \$20,000 in 1986 before the successful festival in the Triangle. The 1991 Olympic Festival in Los Angeles produced the event's worst ledger sheet ever. There, festival organizers lost more than \$1.2 million, declared bankruptcy, and paid creditors 10 cents per dollar of debt.

<sup>3</sup> Tish Stoker, "U.S. Olympic Festival: Economic Impact," First Union National Bank, Charlotte, November 1987, pp. 1-3.

<sup>4</sup> As reported in *The Atlanta Journal-Constitution*, Atlanta, Ga., Sept. 21, 1991, p. 2D.

<sup>5</sup> A 1987 report commissioned by the North Carolina Division of Travel and Tourism indicated motor racing contributed \$541.4 million to the state's economy in 1987 alone.

<sup>6</sup> John E. Connaughton, "The Economic Impact of the Charlotte Hornets on Charlotte, North Carolina," 1989, p. 23.

<sup>7</sup> As quoted in Chip Alexander, "Franchise Could Cost You, Too," *The News and Observer*, Raleigh, N.C., Oct. 13, 1991, p. 11B.

<sup>8</sup> "Local Government and the Business of Minor League Baseball," the International City Management Association, Washington, D.C., 1990, pp. 7-8.

<sup>9</sup> *Ibid.*, p. 6.

<sup>10</sup> Forrest Johnson, "Some Spirits Not Lifted," *The News and Observer*, Raleigh, N.C., July 8, 1992, p. 6A.

<sup>11</sup> Arthur T. Johnson, "Local Government and Minor League Baseball: A Survey of Issues and Trends," International City Management Association, Washington, D.C., 1989, p. 11.

<sup>12</sup> Caulton Tudor, "Charlotte Has a Man of Vision," *The News and Observer*, Raleigh, N.C., May 27, 1992, p. 1C.

<sup>13</sup> In 1992, the appropriation was made through a special provision in the legislature's capital budget bill (SB 1205). It authorizes statewide highway maintenance money to be spent for traffic control at events drawing 30,000 or more cars per day. Besides the Charlotte Motor Speedway, only the State Fair draws such a large number of cars in a single day. Privette says the appropriation is for the speedway and decries the use of "pothole money" for this purpose.

<sup>14</sup> Julie Powers Rives, "Charlotte Builds on Dream Team," *The News and Observer*, Raleigh, N.C., June 28, 1992, p. 1A.

<sup>15</sup> As quoted in Charles Chandler and Liz Clarke, "Vinroot: NFL Bid OK Without Public Funds," *The Charlotte Observer*, Charlotte, N.C., July 1, 1992, p. 1B.

<sup>16</sup> Arthur T. Johnson, "Local Government and the Business of Minor League Baseball: A Guide for Decision-makers," International City Management Association, Washington, D.C., 1990, p. 13. Muhleman, who also works with the Richardsons, provided excerpts.



# Filmmaking in North Carolina: A Second Home for Hollywood

BY SHARON OVERTON

*North Carolina has gained a reputation as a hospitable state for the film industry, with a roll call of hits like "Nell," "Bull Durham," "The Fugitive," and "The Color Purple" among its credits. The state film office says that the movie industry has pumped \$4.18 billion into the state's economy since the state began courting Hollywood in 1980. This article examines the impact a major motion picture can have on a small North Carolina town, discusses the development of a homegrown film industry, and considers what steps North Carolina should take to compete with other states attempting to attract movie business.*

**I**t's a typical morning at Hamlet's Terminal Hotel. No murders in the up-stairs bedrooms. No gangsters hanging out in the lobby. Just a few of the regular patrons—day laborers and old men down on their luck—watching "The Price is Right" on a worn-out TV.

The Terminal Hotel was built in 1912 and named for its proximity to the Hamlet train station. Once a thriving enterprise, it is now a run-down rooming house with 30 more or less permanent residents and a small sign in the window that reads "Outreach for Jesus."

On this muggy August morning, there is little to suggest that this was ever the scene of Hollywood magic. But Jake Covington, the hotel's 73-year-old owner, leads a visitor on what amounts to Hamlet's official Tour of the

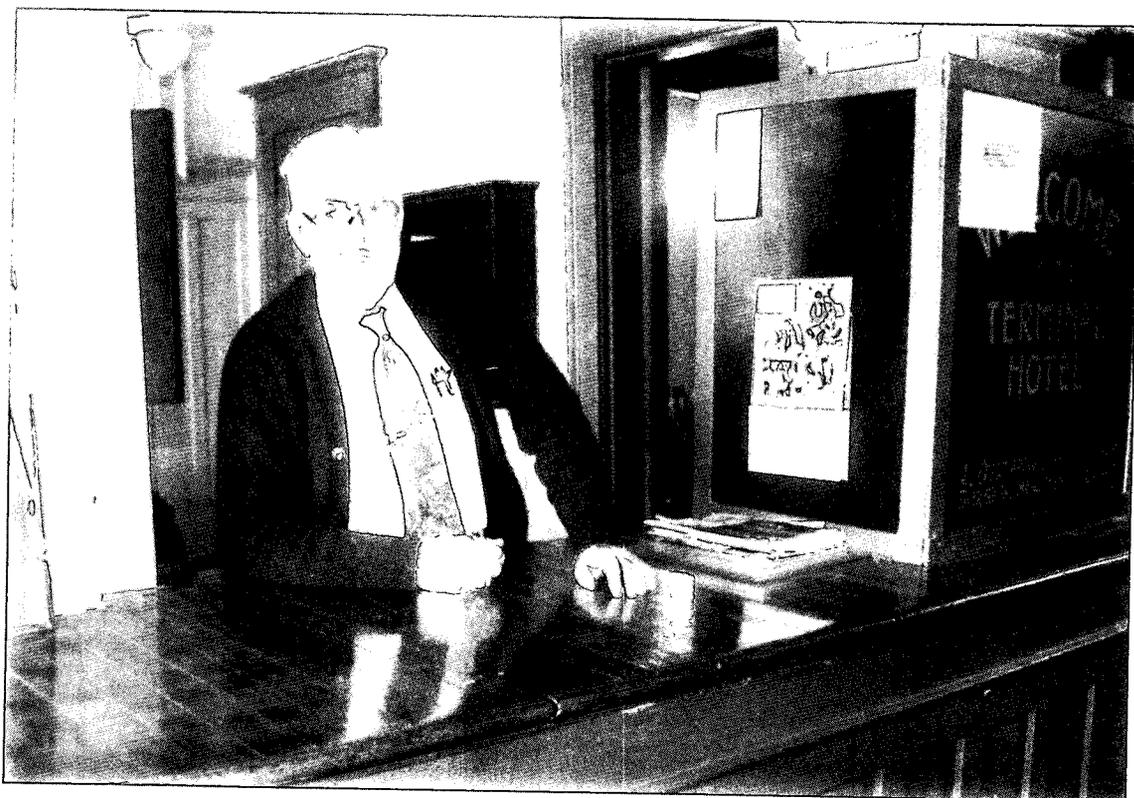
Stars. For three months in the fall of 1990, he explains, Hamlet was transformed into the Depression-era town of Onondaga, New York, for the film "Billy Bathgate."

Upstairs is the suite of rooms where Dustin Hoffman killed one of his gangster associates. "Cut his head off, actually,"<sup>1</sup> Covington says. Down the hall is another suite that was occupied by Hoffman's on-screen girlfriend, played by actress Nicole Kidman.

Out on Main Street, many of the storefronts still retain their 1930s movie facades. The old Hamlet theater boasts a new marquee, courtesy of the movie company. And over at

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*Sharon Overton is a Raleigh free-lance writer. North Carolina Insight editor Mike McLaughlin contributed to this article.*



Jeff Holland

**Jake Covington behind the desk of the Terminal Hotel in Hamlet, scene of the depression-era film "Billy Bathgate."**

the Seaboard Station Cafe, owner Judy Page proudly displays her autographed picture of "Dustin," as everyone in town calls him, behind the cash register.

When "Billy Bathgate" left Hamlet, however, it left behind more than scenery and autographs. The movie pumped an estimated \$3 million into the local economy<sup>2</sup> and brought much-needed short-term jobs to a county that in 1990 had a 5.6 percent unemployment rate.

It also left some bitter feelings. Some merchants complained that filming closed downtown streets and hurt their business. The boost in tourism that some people expected after the movie's release never materialized, since the film bombed at the box office.

While many Hamlet residents say they would welcome another production for the money and attention it brings, others express a different view. "A lot of people don't want to deal with another movie," says Jake Covington's son Ernie. "They'd shoot you first."

For the past 15 years, North Carolina has basked in the golden glow of Tinsel Town. Looking for locations outside California to shoot its movies, Hollywood found a second home

here. And by most accounts, the relationship has been mutually beneficial.

The N.C. Film Office in the Department of Commerce says the movie business contributed \$4.18 billion to the North Carolina economy from 1980–1995. (See Table 1.) From 1980–92, the film office applied a multiplier of three for dollars spent by out-of-state producers when they brought film projects to North Carolina. This meant that each dollar spent generated \$2 in additional spending in the local economy and thus was counted as \$3 in the film office tally. But it also meant the Film Office figure was inexact and possibly inflated.<sup>3</sup> Based on recommendations by the North Carolina Center for Public Policy Research, the film office has not used a multiplier in its revenue estimates from filmmaking since 1993.

Still, the movie business has contributed significant new dollars to the North Carolina economy and generated a whole new infrastructure to support the industry. The state is home to movie studios in Wilmington, High Point, Shelby, Yanceyville, Winston-Salem, and Charlotte. In the past three years, a total of 118 movies have been filmed in whole or in part in

the state, and since 1980, North Carolina has hosted such hits as "Nell," "The Fugitive," "Forrest Gump," "The Hunt for Red October," "Sleeping With the Enemy," "Bull Durham," "Dirty Dancing," "The Color Purple," "Days of Thunder," "Teenage Mutant Ninja Turtles," and "The Last of the Mohicans." Much is at stake in a business that, as N.C. Film Office director Bill Arnold puts it, "drops millions like raindrops."

But is the movie business in North Carolina more glitter than gold? For most communities, having a film shot on location is still just a one-time shot in the arm. It is far from a cure for their economic woes. And some caution that an industry that places a high premium on what's hot at the moment could easily turn cold on North Carolina.

"Those guys are here today and gone tomorrow," warns Lowery Ballard, director of the Small Business Center at Richmond Commu-

nity College near Hamlet. "You're seeing part of the good life, but only for a short time."

### The Movie Business Heads South

The good life roared into North Carolina in 1984 in the form of an Italian movie producer named Dino De Laurentiis. De Laurentiis came here to shoot the movie "Firestarter," liked what he saw and decided to stay. He established a studio in Wilmington that has accounted for roughly a fourth of the movies shot in the state and has secured North Carolina's reputation as a major player.

The De Laurentiis Entertainment Group went bankrupt in 1987 and the studio was sold two years later to Carolco Pictures Inc., the Los Angeles company responsible for such Arnold Schwarzenegger mega-hits as "Terminator 2" and "Total Recall."

**Hamlet—known for trains, jazz musician John Coltrane, and a 1991 chicken-processing plant fire that killed 25 people—got a shot in the arm from the film's production.**



Richmond Co. Daily Journal

**Table 1. Feature Films Produced in North Carolina Since 1980 and Revenue from All Productions**

Year	Features Produced	Revenue from All Productions* (In millions)
1980	11	\$ 87
1981	4	65
1982	6	86
1983	8	102
1984	12	115
1985	18	200
1986	22	266.5
1987	22	384.1
1988	19	297
1989	14	314.3
1990	17	426
1991	18	202.5
1992	17	391
1993	33	504.3
1994	39	357
1995	54	391
Totals	260	\$4.18 billion

\* From 1980-92, actual spending on filmmaking in North Carolina by out-of-state production companies was multiplied by three to arrive at revenue estimates. Since 1993, the film office has not used a multiplier and, therefore, revenue estimates reflect actual spending on filmmaking in North Carolina.

Source: North Carolina Film Office, 430 North Salisbury Street, Raleigh, N.C. 27611. Phone: (919) 733-9900

But the seeds for what some have called "Hollywood East" were sown long before De Laurentiis arrived. In Shelby, Earl Owensby had been making low-budget horror and action movies since the early '70s. The technicians who cut their teeth on Owensby's soundstages became part of the crew base that Hollywood

now lists as one of the state's greatest assets. But while Owensby's movies were a hit at the drive-in, he never has made it to the big-time.

Arnold traces the development of North Carolina as a location for big-budget Hollywood movies to a conversation Durham native Thom Mount had with Governor James B. Hunt Jr. in 1978. Mount, who was vice president in charge of production for Universal Studios, told Hunt that producers were looking for new locations to make their movies. Mount, who later would return to his hometown to make "Bull Durham," had just finished filming the Burt Reynolds hit "Smokey and the Bandit" in Florida and Georgia. All but five states had established film commissions, he told the governor. If North Carolina didn't act soon, it would be left behind.

The following year, Hunt proposed the establishment of a North Carolina Film Office with a budget of \$149,000. State legislators were skeptical, to say the least. "They just laughed it out of existence," says Arnold.

Undeterred, Hunt used his executive powers to create the commission. Arnold, then head of travel and tourism, and Paula Wyrick, an executive assistant to former Secretary of Commerce (and now a U.S. Senator) Lauch Faircloth, were picked to staff the office. They had no movie experience and no operating budget. But they made two trips to Los Angeles that first year, touting North Carolina's assets: low labor costs, a long shooting season, and varied topography. Their efforts paid off. The state hosted 11 movies in 1980.

In his cramped, cluttered office in downtown Raleigh, Arnold slumps behind a manual typewriter, surrounded by posters of movies shot in the state: "Reuben, Reuben," "Being There," "No Mercy," "Blue Velvet." He doesn't look like the kind of guy you'd expect to find wheeling and dealing in Hollywood. He wears a rumpled suit. A perpetual cigarette dangles between his fingers.

Arnold, who made his name in tourism as the guy who launched the slogan "Virginia is for lovers," runs the North Carolina Film Office on a shoestring budget. Until 1992, when the legislature nearly doubled the Film Office budget, state appropriations hovered around \$250,000. The budget increase brought North Carolina in line with Florida, Illinois, and Utah, to mention just three competing states.

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## *Major Motion Picture Studios in North Carolina*

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THE FOLLOWING IS a list of major motion picture studios in North Carolina, along with addresses, phone numbers, and selected facts about these facilities:

**Carolco Studios Inc.**, 1223 North 23rd St., Wilmington, N.C. 28405. (910) 343-3500. This studio features eight sound stages, the world's largest seamless blue screen for special effects, and a backlot of three blocks of city streets that can be used to represent different times and places. Built in 1984 by filmmaker Dino De Laurentiis and purchased in 1989 by Carolco Pictures, Inc. of Los Angeles.

**Carolina Atlantic Studios**, 2000 Brentwood St., High Point, N.C. 27263. (919) 887-4184. Carolina Atlantic offers one 14,000-square-foot sound stage and supporting facilities. The studio opened in 1988 in a city known more for furniture than film, but it has won praise for its high-quality design and technical support.

**Carolinas Cement Company**, P.O. Box 37, Castle Hayne, N.C. 28429. (910) 675-2264. This facility, which is located on over 50 acres of land, contains more than 268,000 square feet of space including production and art offices, dressing and wardrobe areas, and five floors for stage use.

**The Creative Network Studios**, 4202 Barringer Drive, Charlotte, N.C. 28217. (704) 523-9272. This North Carolina facility was established in 1989. Its features include two 7,500-square-foot sound stages, supporting facilities, and a mobile unit, along with script writers, production managers, location scouts, and complete crews.

**Earl Owensby Studios**, Shelby, N.C. (704) 487-0500. North Carolina's first motion picture studio opened in 1973. EO Studios features eight sound stages, including an underwater tank and a cyclorama stage. The facility has its own motel and a private airstrip, plus its own make-up, wardrobe, set design and construction, and production crews. The studio also maintains a complete transportation fleet. A \$500,000 renovation of the facilities began in 1995.

**Magder Studios**, P.O. Box 216, Yanceyville, N.C. 27379. (910) 694-4688. The first phase of this communications center opened in April 1995. This full service facility has four sound stages, offices, and post-production facilities. When the second phase of the project is complete, productions will be able to send footage out over fiber optic phone lines or by satellite to homes offices for viewing. Magder Studios offers recreational facilities as well, including tennis courts, a golf course, a private lake, and a children's playground.

**The North Carolina School of Filmmaking**, P.O. Box 12189, Winston-Salem, N.C. 27117-2189. (910) 770-3399. This \$14 million state-of-the-art complex will be completed in 1996. The facility includes three sound stages as well as post-production (including a 5,200 square foot scoring stage and high-tech editing suites), exhibition, and backlot services.

**Wilmington Film Center**, Wilmington, N.C. (910) 392-6099. This film center opened in 1995. The facility includes a 450,000-square-foot warehouse with production and office space.

*Source:* "On Location North Carolina Film and Video Directory," North Carolina Film Office, Department of Commerce, Raleigh, N.C., 1995, pp. 11-17.

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Although North Carolina advertised in the movie trade magazines for the first time in 1995, the Film Office does not spend a lot on promotions. Other states go to extremes to reach Hollywood decision-makers. The Illinois Film Commission, for example, had lighted signs installed above the exits in the Forum for Los Angeles Lakers basketball games, ran a full-page ad in the Lakers' program, and put a billboard on Sunset Strip.<sup>4</sup> North Carolina also doesn't offer tax credits or rebates, as Arnold says states such as Arkansas, South Carolina, and Virginia have done, as an incentive for movies to locate here.<sup>5</sup>

What the North Carolina Film Office staff does do is scour scripts for scenes it can match with North Carolina locations. "If we've got photographs, we send them," says Arnold. "If we don't, we go out and shoot them." The Film Office also sends information on essential services such as proximity to an airport, area hotel rooms, and catering availability.

"The next step is, if they like the photographs, they send people in to actually look," says Arnold. At this stage, Arnold will go to great lengths to try to get movies filmed *somewhere* in North Carolina. This means running interference and solving problems to make North Carolina locations work.

In 1986, for example, Arnold says Steven Spielberg was scouting locations to film "The Color Purple." Spielberg had had death threats against him and wanted permission to have his two bodyguards carry concealed weapons while he was in the state. The Film Office found this was against federal law, but did manage to get the governor to assign a Highway Patrol officer to guard Spielberg while he was in North Carolina.

For the actual shooting, the Film Office arranged to have the Anson County Sheriff's Department deputize Spielberg's bodyguards so they could carry their weapons legally. Later, when a scene called for a mature corn crop early in the growing season, the Film Office put Spielberg in touch with a specialist at North Carolina State University who applied steroids to accelerate the crop's growth.

Location scouting can hold perils all its own. Arnold recalls how Paula Wyrick, assistant director of the Film Office, prevented a scout who was shooting video over the Atlantic Ocean from plunging from a state helicopter. "She asked the pilot to go sideways and when he tilted the machine the door flew open

and she almost fell out," says Arnold. "Paula grabbed her by the seat of her britches and actually saved her life."

Personal contact with Hollywood decision-makers such as producers, directors and production managers also is important. That means frequent trips to Los Angeles to develop and maintain industry contacts. "Whenever possible, we take the governor with us," says Arnold. A visit from the governor makes an impression on those who make decisions about where to shoot movies. "They like to know that if they are coming to the end of the Earth and get in real trouble, state government's top man knows what they do, who they are, and will do what he can to help solve problems."

Producers chose North Carolina for the filming of 39 movies in 1994. Arnold estimates the economic impact of these films at \$357 million. "Frankly, based on our track record, we're beating the stuffing out of  $\frac{9}{10}$  of the other states by NOT doing it like everyone else," Arnold says. "We're literally taking their lunch from them."<sup>6</sup>

### Port City Becomes Movie Mecca

Nowhere in North Carolina is the boom more evident than in Wilmington. In the last 10 years, Wilmington has changed from a sleepy Southern port city into a movie mecca. When a major production is underway, stargazing rivals beachcombing as a popular pastime for tourists. It's not uncommon to see stars such as Julia Roberts or Nicholas Cage dining at one of the chic new waterfront restaurants, where ordering vegetarian is *de rigueur* but asking for autographs is discouraged.

John Kretschmer moved to Wilmington eight years ago to get a job in the burgeoning movie business. It was a quiet town then, says Kretschmer, a 30-year-old assistant set decorator whose credits include "Rambling Rose" and "The Abyss." "In the winter, half the restaurants closed down. We joked about a rush *half* hour." Now traffic jams are a daily occurrence.

While the completion of Interstate 40 certainly contributed to Wilmington's traffic woes, the movie business has helped put the town on the map and has pumped millions into the economy. In 1991, revenues from film and television projects had an economic impact of roughly \$76 million<sup>7</sup> in Wilmington and the sur-

rounding areas, more than was spent in the entire state of South Carolina.

The impact is felt almost everywhere—from hotels that house out-of-town crews, to building suppliers that provide materials for sets, to furniture stores, to vintage clothing shops, and even to a local zoo, which recently sold several hundred New Hanover County toads at \$2 a head for the movie “Super Mario Brothers.”

The movie business provides jobs as well. As many as 600 crew members—technicians, make-up artists, carpenters, costumers, and caterers—are now based in Wilmington. Salaries can range from about \$500 a week for an entry-level production assistant to \$2,000 a week for a department head. Local retirees and others also do a brisk business as extras, pocketing \$50 to \$100 a day.

Despite its glamorous image, movie-making is a long, often tedious business. Seventy-two-hour work weeks are the norm. And because most North Carolina crew members don't work with a union contract, their pay is lower and they don't get benefits such as health insurance or retirement plans. “I can work in this industry for 20 years and when I'm done, I've got whatever I came out of it with,” says Billy Alford, a 35-year-old Wilmington set dresser.

Bryan Unger, a union organizer with the International Alliance of Theatrical and Stage Employees in New York, says the lowest level crew members in North Carolina earn from \$12 to \$14 per hour with no benefits for what essentially is temporary work. That compares to a rate of about \$20 an hour with benefits for similar work in union states.

Unger says movie producers pay less and provide fewer benefits in North Carolina, both because the state is promoted to the trade as a right-to-work state and because North Carolina's movie industry is rooted in the anti-union sentiments of De Laurentiis. “If you allow employers to come in and treat North Carolinians like second-class citizens, they will do exactly that,” says Unger. Many of the higher-paid workers on a set, he says, are still imported from out-of-state.<sup>8</sup>

But Kent Swaim, executive director of Carolco Studios Inc., disagrees sharply with Unger's portrayal of the North Carolina movie industry. Swaim says the hourly minimum wage for film workers in New York is actually \$18 an hour—lower than the \$20 mentioned by Unger but perhaps still too high to be competitive.

“Just maybe the union crew rates in New York might be part of the reason fewer movies are being filmed in New York,” says Swaim. “Wilmington locals working in the movie industry are earning excellent wages for our local area. Even Mr. Unger's own figures of \$12–\$14 per hour for ‘lowest level’ crew members is a far cry from second-class citizenship when labor rates in the Wilmington area [for industry in general] are \$14.64 to \$17.21 per hour for the ‘highest experience’ pay grade.”

Union officials suggest that workers in the North Carolina movie industry are cautious

**Richard Dreyfuss at a wedding scene at the Governor's Mansion in “Once Around.”**



Karen Tam

about organizing for fear of not getting a job on the next production. "It's the classic problem," says Chris Scott, director of the North Carolina chapter of the AFL-CIO. "They're not making what they ought to be making, and they're not getting the protection that they ought to be getting, but they are getting more than they would be getting somewhere else."

But Kretschmer, the Wilmington assistant set decorator, says work is plentiful in the Wilmington area and independent crew members are earning good money. Independent filmmakers have not felt the need to organize. "It's a business question," says Kretschmer, "not a fear question."

At this point in her career, Heather Pendergast isn't complaining about pay or benefits. The 18-year-old student at Winston-Salem's N.C. School of the Arts landed her first movie role in the summer of 1992—a minor part in "Super Mario Brothers," a \$30 million-plus movie starring Dennis Hopper and Bob Hoskins that is loosely based on the Nintendo game.

Pendergast makes \$1,500 a week for two or three days' work and gets \$350 a week for living expenses. She has her own trailer on the lot and someone to bring her food and mineral water. A tall brunette, Pendergast has just signed with an agent in North Carolina and plans to get one in L.A. soon.

"It's wonderful," she says, looking cool in dark sunglasses despite the sweltering 98-degree heat. Asked if the job has any drawbacks, she thinks for a long time. "There *has* to be something," she says.

If there is a down side to the movie business in North Carolina, it may be the unpredictable nature of the beast. For 10 years, the state enjoyed fairly steady growth. And then the bottom fell out. In 1991, revenues fell from \$426 million in estimated economic impact to \$202.5 million, the lowest since 1985. Part of the problem was belt-tightening in Hollywood due to the recession. At the same time, budget cuts forced the state film office to start curtailing basic services, such as mailing out location photographs to interested producers or picking up prospects at the airport, Arnold says.

And Swaim points out that the 1991 total represents an anomaly in a 12-year track record of steady growth. "In a recession year, I would not consider revenues of \$202.5 million to be 'the bottom fell out,'" Swaim says. For the state as a whole, Swaim says, film production remains

a fairly reliable generator of revenue, and "a big industry for North Carolina."

Film revenues were up again in 1992, with the Film Office estimating \$391 million in economic impact. A total of 19 movies and two network television series—"Matlock" and "The Young Indiana Jones Chronicles"—were shot in the state. In 1993, film revenues hit \$504 million—the biggest total ever. But North Carolina may have lost some ground to states like Florida, Georgia, and Illinois, which have been more aggressive in marketing their locations.

Perhaps more than any other state, Florida has launched an all-out offensive to become the premier movie-making location outside California. Home to Disney-MGM and Universal Studios Florida, the state offers filmmakers a number of incentives, including exemption from the sales and use tax for certain activities and one-stop permitting for such needs as getting streets closed temporarily for filming. The Florida Commission for Film and Television opened a satellite office in Los Angeles last year and has established a fund to assist with the cost of promoting movies filmed in the state.

To keep pace, the 1992 N.C. General Assembly increased the Film Office's budget from \$267,000 to \$476,000 for fiscal year 1992-93. Arnold says he used the money to restore basic services, improve the state's file of photos for potential film locations, and step up marketing. The budget—\$550,000 in 1996—has continued to increase.

But some people say money alone may not be enough. Critics complain that North Carolina has become complacent and out of touch. Its Film Office serves as little more than a "clearing-house for information," one insider says. Even the state's logo, "On Location in North Carolina," which it prints on T-shirts and brochures, is out of date, says John Kretschmer, the Wilmington set decorator. "Much of the industry now calls North Carolina home."

Some North Carolina filmmakers believe that what the state really needs to do is nurture an indigenous industry so that movies can be created from start to finish and more of the profits can remain in North Carolina. (See "Homegrown Movies: What Would It Take?" p. 453 for more.) One obstacle, however, is financing. "Making movies is like drilling for oil," says Swaim, a former Twentieth Century Fox executive. "It's very speculative." When there is a profit, says Swaim, much of it goes to the dis-

tributor. "The idea that more profits will remain in North Carolina from an indigenous movie industry ignores the realities of motion picture distribution."

Swaim says the state took the right approach by nearly doubling the budget of the N.C. Film Office in 1992. The Film Office, he says, had been doing a good job on a shoestring budget, but other states were spending more and reaping a return on their investment. The tightfistedness in Raleigh *had* to change if North Carolina was to remain competitive. "Thus far, we've been extremely lucky," Swaim says. "I don't think we can expect our luck to continue without more input toward promotion at the state level."

Still, Swaim believes the role of the state should be about what it has been in the past—promoting the advantages of filming in North Carolina, maintaining a well-stocked photo file, and squiring producers around to various locations. "They just need to do a good job of keeping North Carolina's name before producers and servicing those producers who want to look in the state," says Swaim.

As for the "on location" logo, Swaim says it's an accurate description of the role North Carolina plays in the movie industry—a place

where out-of-state directors and producers go to shoot movies. Conception, financing, adding a sound track, and final editing all are likely to take place elsewhere for the foreseeable future, Swaim says. "We are a location production destination," says Swaim. "All we need to do is continue to be that."

According to Arnold, Florida is trying to out-hype Hollywood, and that won't work for North Carolina. Filmmakers have found North Carolina's laid-back approach to be a pleasant contrast to the Hollywood hustle. And Florida has made a few promises it can't deliver. Its promotional fund for films shot in Florida, for example, depends on private dollars and so far has raised few of them, Arnold says. He says that filmmakers who had hoped to use the fund have been disappointed.

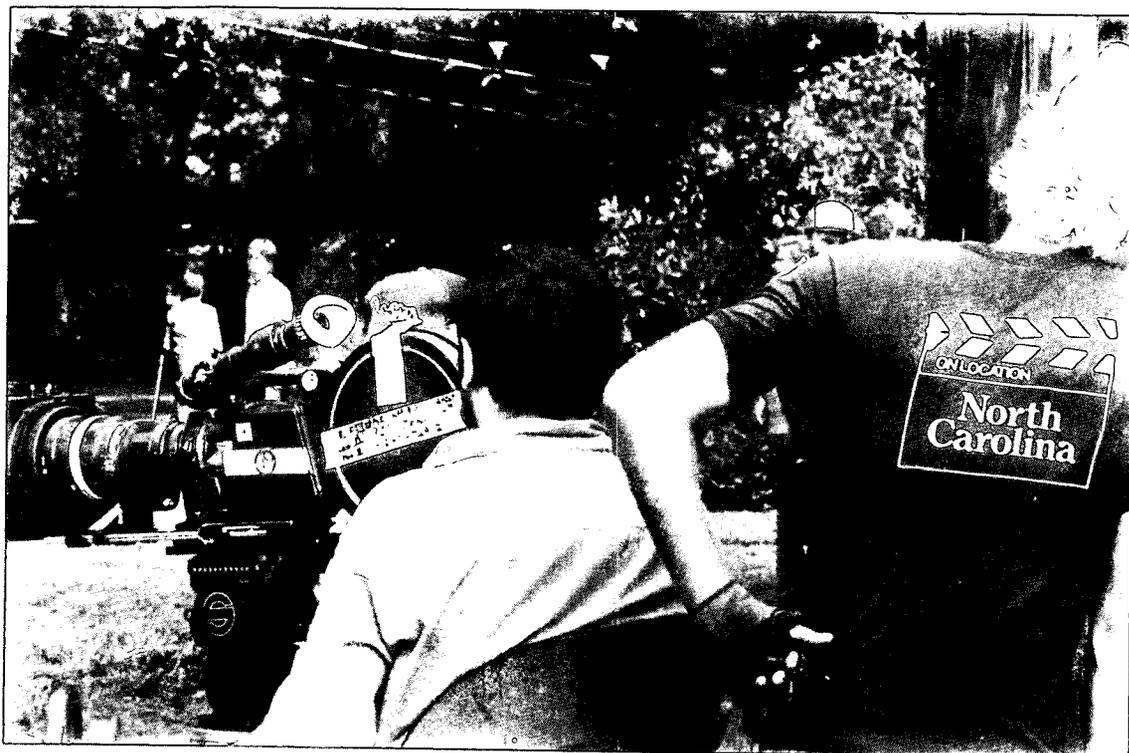
North Carolina does not need to create such a fund or offer major tax breaks to moviemakers, Arnold says. "I'm uncomfortable with giving away seed money, because we've never had to do that," he says.

Arnold sees little reason to try and match the Florida approach. "Florida is pushing and gouging and trying to get the advantage," says Arnold. "We're aggressive without being pushy."



***Chairs await the stars at a private home in Durham, where "A Handmaid's Tale" was filmed.***

*Karen Tam*



The people in L.A. respond well to the way we operate and the way people in this state operate.”

Some North Carolina communities are beginning to do some pushing of their own by forming organizations to help with movie production. Wilmington and Winston-Salem have established their own film commissions to recruit and support the movie industry. Charlotte and Asheville have formed more informal organizations. “Lots of economic development organizations have run out of prospects,” Arnold says, explaining why the movie business is so appealing right now. “At the same time, they see all these film companies coming in and spending tons of money.”

But how well do movies work as a tool for local economic development? The answer depends on whom you talk to.

As a rule of thumb, approximately one-third of a film’s budget stays in the community in which it’s made, Arnold says. The community spends little, if anything, in return. “It’s significant how little outlay you have to make to get huge amounts of dollars brought in,” says Arnold. “Really, the most you have to do is shut down streets for a couple of days.”

Leigh von der Esch, president of the Association of Film Commissioners International

and director of the Utah Film Commission, says, “They pay for every service they use. You don’t have to build roads, sewers or educate their people. . . . They come in, they spend their money, they leave it behind, and they go.”

Also, having a movie shot in an area can be good for tourism. Since “Thelma and Louise” was filmed in Utah, the state has had an influx of single women taking vacations in the state, von der Esch says.

#### Economic Impact in Epic Proportions

The North Carolina mountains attract movies for the same reason they attract tourists: an abundance of relatively unspoiled scenery. In 1991, Twentieth Century Fox chose Lake James in McDowell and Burke counties to make its \$46-million epic, “The Last of the Mohicans.” The lake also was used several years ago for the closing scene of the submarine thriller, “Hunt for Red October.”

As an incentive to the “Mohican” filmmakers, the Burke County Chamber of Commerce, Burke County Economic Development, and the McDowell Tourism Development Authority agreed to spend about \$25,000 to restore roads

and other areas disrupted by the movie. In return, the production company spent about \$2.5 million in the two counties, says Cy Lynn, executive director of the Burke chamber. Officials with the U.S. Forest Service and Crescent Resources Inc., both of which owned property the film was shot on, say the filmmakers left the land in good shape.

Lynn says the movie also gave a big psychological boost to an area that has suffered economically. In fact, he was so pleased with the experience that he plans to ask the county for travel development funds to set up a part-time film office.

Others weren't as pleased. Some residents complained of noise from late-night battle scenes and the inconvenience of road detours. There was also disappointment when the fort featured

in the movie was demolished and burned after filming. Some local residents had wanted to use the fort as a tourist attraction.

Even Lynn admits that as a long-term economic development tool, movie-making is a risky proposition. He mentions a shoe factory that has been providing steady employment in the county for years.

"If I had a choice between that company being here as long as it has and a movie once every five or 10 years," Lynn says, "there's no question what I would vote for."

Still, for glitz and glamour, Hollywood beats shoemaking. Many communities would be happy to put up with some inconvenience for a dose of excitement and a short-term influx of dollars. Arnold's office offers free advice to

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## ***Homegrown Movies: What Would It Take?***

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SURE IT'S GREAT when movies like "The Color Purple," "Dirty Dancing," and "Teenage Mutant Ninja Turtles" drop several million production dollars into the North Carolina economy. But when those movies go on to make hundreds of millions in ticket sales and video rentals, none of that money comes back here.

That's the argument of some North Carolina filmmakers who believe that the next logical step for the state is to nurture its own homegrown movie industry. Hollywood is fine, they say, but it's unpredictable.

"We're totally dependent on the whims of the industry," says Craig Fincannon, a Wilmington casting agent who is working on several projects he hopes to produce. "If they all got up tomorrow and decided they didn't want to work in North Carolina, there would be no work for us here."

North Carolina has several pieces of the puzzle in place: a highly regarded resident crew force, six movie studios, and businesses that supply lights, cameras, cranes, props—whatever a production needs.

One missing piece is money. North Carolina filmmakers run into a brick wall when they try to get financial backing for their projects. Banks consider them too risky. Venture capitalists don't know enough about the business, filmmakers say.

At least one North Carolina banker, however, says he would not turn down a film project if the deal was structured so the risk was not excessive. "We would be interested in looking at any viable business opportunity, but as you probably know, film is a very speculative business," says Carlos Evans, a NationsBank executive in Charlotte who oversees commercial lending for North and South Carolina.

Evans says only a small number of banks lend for film projects. He says would-be filmmakers must raise a sizable amount of seed money for start-up costs before

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they are ready to take the deal to banks for production and distribution dollars. The early private investors take an equity share in the project with the promise of a big payoff if the movie hits. Banks typically get involved when the film is a viable project with assurance that it will be made and distributed. Even then, there is no assurance that the film will make any money. To lessen the risk, as many as 20 or 30 films are financed in a package by a number of banks.

### **A Dearth of Capital**

Evans did not slam the door outright on lending for films, but he left it only slightly ajar. "We're interested in making any viable loans that will benefit North Carolina," says Evans. "But to make them bankable, you have to have fairly significant seed capital, and I don't know that the network is in place to provide that in North Carolina."

Venture capitalists who theoretically might be a source of seed money say they are designed for a different purpose than financing movies. "We try to invest in companies, rather than project-style investment," says Charles Closson of the North Carolina Enterprise Corporation in Research Triangle Park. "We're designed to invest in companies when they are one size, get out when they are another size, and hopefully make some money in between."

Bill Arnold, head of the North Carolina Film Office, says there is a history to the search for North Carolina investors to underwrite film production. He recalls that as early as 1986, Dino De Laurentiis invited three of the state's top bank executives to Wilmington to meet with a major international movie financier. The financier proposed that the banks kitty up \$10 million each, which he would match, to start financing movies in the state. "Dino felt that if North Carolina were in a position to finance films the way L.A. does, the whole industry would just move here," Arnold says.

The bankers listened politely and went back home. The next year, the De Laurentiis Entertainment Group declared bankruptcy. The movie fund never happened.

### **Access to Distribution**

Still, not everyone believes lack of financing is the chief obstacle to a start-to-finish film industry for North Carolina. Walter Wilkinson, a venture capitalist with Kitty Hawk Capital in Charlotte, says the real roadblock is lack of access to the distribution network that generates most of the profits for films. "There is an infrastructure for financing," says Wilkinson. "It's in New York and Los Angeles."

Wilkinson says a well-conceived North Carolina film project could be financed from existing sources. "If someone could make a good movie on a cost-effective basis, I think the money would support them here," he says.

Some of the state's major players in the motion picture industry, however, remain skeptical about a role for North Carolina financiers. "I don't think we've got an organization or panel of people qualified to judge the quality or merits of a particular project, much less access to a distribution network," says Kent Swaim, manager of Carolco Studios in Wilmington. Florida, he says, also has had little success in raising private funds for filmmaking. "I'm not sure they've raised a nickel to go into that fund yet," Swaim says.

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Besides problems with obtaining financing, there are other gaps that discourage start-to-finish film production in North Carolina, Swaim says. "We're very limited in post-production facilities," says Swaim. Filmmakers may shoot a picture in North Carolina, he says, but the post-production work of editing and scoring (adding a soundtrack), still must be done elsewhere. "A lot of investment is required in post-production. Unless you've got tremendous volume rolling through there, you just can't be competitive price-wise."

And Swaim says most of the creative talent involved in producing pictures still lives in California. Putting the finishing touches on a movie can take six months to a year, he says. "If you're talking about a big project out of Hollywood, they're going to go back to Hollywood to cut the picture," Swaim says.

### **A Filmmaking School in N.C.**

Still, there are those who dream of an indigenous film industry for North Carolina—one in which movies could be conceived, financed, and completed, and most of the profits could stay in North Carolina. One piece of the dream is a full-fledged filmmaking school at the North Carolina School of the Arts. The first students enrolled in the school, a state-of-the-art facility, in 1993. The school has chosen Sam Grogg, a veteran filmmaker, as its first director. Grogg's credits include "A Trip to Bountiful" and "Kiss of the Spider Woman."

Borden Mace, a retired filmmaker and a consultant to the School of the Arts, says the film school helps expand the pool of creative talent and provides editing and scoring facilities so movies can be made from start to finish in North Carolina. Students concentrate on filmmaking, rather than criticism or theory, much as do the five leading film schools: The American Film Institute, UCLA, and Southern California in Los Angeles; and NYU and Columbia University in New York.

The film school, Mace says, provides technical support and talent for full-scale movie production in North Carolina. He envisions a creative network that would produce popular films with high artistic value on a much smaller budget than is the case with the typical Hollywood blockbuster.

Mace believes joint financing can be arranged for such movies, with North Carolina investors taking their returns off the top and the other investors taking the greater risk in hopes of a bigger payoff. Later, as North Carolina investors learn more about the movie industry, they may be comfortable with moving into the riskier positions and reaping greater rewards, Mace says. "The financing of any entertainment is a problem, but it's not an insurmountable problem if the product is hot enough," says Mace. "That's why the North Carolina School of Filmmaking concentrates on screen writing and development backed up with production."

The state, with a minimal investment, has shown that it can compete in the movie business by becoming one of the leading sites in the nation for location shoots, and historically has produced for export a great deal of creative talent, Mace says. "We've demonstrated that it's a viable economic development field for the state," says Mace. "It's time we now moved into the next phase, and the next phase is complete production in North Carolina, including financing."

DeCoste, the independent filmmaker, agrees. States are battling among themselves to become the next Hollywood, she says. "I think this is a way North Carolina could kind of quietly win the war."

—Sharon Overton and Mike McLaughlin

would-be Hollywood hosts, and it's fairly simple to follow. He suggests that communities interested in filmmaking have photographs taken of interesting features like street scenes, landscapes, and architecture, and send them to the film office. A major function of the office is matching movie scripts to photographs of North Carolina locations.

Communities also should compile a list of facts that might be of interest to filmmakers—like an inventory of local hotel rooms, sources for supplies filmmakers might need (such as hardware and building supply stores), proximity to businesses that cater to the movie industry (studios and filming and lighting services, for example), and transportation information, such as the nearest airport.

All this may seem a bit fanciful to the town fathers of, say, Frog Level, but filmmakers have descended on communities in over half of North Carolina's 100 counties, according to the Film Office. Who's to say where it will happen next? Plumbtree and Pensacola in the west, Lilesville and Marshville in the Piedmont, and Chadbourne and Burgaw in the east all have had Hollywood come calling in recent years.

It's been five years since Hollywood packed up and left the Richmond County town of Hamlet. The movie facades on Main Street, left up in

an anticipation of a tourism boom, are starting to rot and fall away. Some merchants already have replaced them with metal awnings. The juxtaposition is strange: In one block, you pass what appears to be a 1930s barber shop; in the next, you stroll by a modern-day video store.

Feelings in the town are mixed as well. One downtown merchant grows angry when the subject is brought up. "It just ruined me for two months," he says. "I have lots of older customers, and they just couldn't get here."

Bill Dennis, on the other hand, still isn't tired of talking about the movie. A retired route salesman for Ruth's Salads, he visited the set several times a day and collected every star's autograph. He shows a visitor his three-inch-thick scrapbook and the framed picture of Dustin Hoffman he keeps on the mantel along with his family photographs.

The movie gave Hamlet positive exposure, Dennis says. "The only people who were disappointed were some of the merchants who were looking to get more financially."

If nothing else, everyone agrees the movie raised people's spirits for awhile. "The attitude of the whole community went to another level," says Lowery Ballard, the Small Business Center director. At the time, he said, "everyone thought it was a no-lose situation."

## FOOTNOTES

<sup>1</sup> Hoffman actually shot his associate in the head, but why wreck a good story?

<sup>2</sup> Source: Lowery Ballard, director of the Small Business Center at Richmond Community College. The \$3 million figure is an estimate of actual dollars spent by the production company in the community.

<sup>3</sup> The film office did not use the multiplier for spending on films and videos conceived and produced entirely in North Carolina by North Carolina companies, because spending for these projects did not represent an injection of new dollars into the state's economy. According to Film Office Director Bill Arnold, a Department of Commerce survey conducted when the Film Office was founded in 1980 determined that most states employed a multiplier of three to estimate the economic impact of *filmmaking*. Arnold says studies conducted for the department by economist Lewis C. Copeland in 1977, 1978, and 1979 also supported the use of a multiplier of three for the film industry. These studies found the expenditure of every out-of-state dollar by *tourists*—whether traveling for business or pleasure—generated the expenditure of two additional dollars.

<sup>4</sup> Illinois Film Commission Director Suzie Kellett says the Lakers campaign was expensive but extremely effective, culminating in a 30-second display of one of the Forum exit signs in the opening scene of the movie "Grand Canyon."

But Kellett says the state of Illinois—in the throes of its own budget crisis—stripped the Illinois Film Office of its advertising budget in 1991. The hard work of selling filmmakers on specific locations within a state is more important than marketing or advertising, Kellett says.

<sup>5</sup> Filmmakers *do* receive one tax break for making movies in North Carolina—a 1 percent cap and an \$80 ceiling on the sales and use tax for buying or renting certain items used in the production of films in the state. G.S. 105-164.4(a)(1d)(b).

<sup>6</sup> Kellett, the Illinois Film Office director, disagrees with Arnold's assessment of North Carolina's performance compared to other states. She says it's difficult to compare the performance of various states because all use different criteria for tallying dollars from film activity. "He's good, and North Carolina is great, but what is he using as his base?" Kellett asks. She says she does *not* use a multiplier in compiling her annual estimate of film-making activity in Illinois.

<sup>7</sup> N.C. Film Office estimate based on a multiplier of three, meaning that a dollar spent on movie production generates two dollars in additional spending.

<sup>8</sup> While crew members still are brought in from out-of-state to work on films shot in North Carolina, Kretschmer, the Wilmington set decorator, says the number of highly paid workers imported for these projects is "a lot fewer than five years ago."

# Chapter 7

## Education



Karen Tam

*“In her classroom our speculations ranged the whole world. She breathed curiosity into each of us. When she left we were sad, but her light did not go out. She had written her indelible signature on our minds. I suppose, to a large extent, I am the unfinished manuscript of such a teacher. What awesome power lies in the hands of such a person.”*

—JOHN STEINBECK



# Should the Superintendent of Public Instruction Be Appointed or Elected?

BY JACK BETTS

**Article III, Section 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.

**Article IX, Section 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.

**Article IX, Section 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.

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*Jack Betts is an associate editor of The Charlotte Observer.*

State politicians and policymakers frequently debate whether North Carolina should drop its century-old history of electing its chief public school officer and join the ranks of the states which have switched to an appointive superintendent of public instruction. The debate spans the spectrum of public issues, and touches on partisan politics, the inter-branch rivalry of the executive and legislative branches, turf battles between the superintendent and the State Board of Education, educational progress, the expectations of parents, and the desires of the business com-

munity for more accountability in education. Sparring over the role of the board and the superintendent and the governor and the chairman of the board is nothing new, of course. During the 1960s and 1970s, when Dallas Herring was chairman of the State Board of Education and Craig Phillips was superintendent, the feuding was a Raleigh fixture—until 1977 when newly-installed Gov. Jim Hunt put a stop to it by naming David Bruton as chairman of the board. Even then, the governor, the superintendent, and the State Board of Education were at odds. When Hunt took the unusual step of not



reappointing Herring as chairman in the spring of 1977, the board went into a momentary uproar—and before Hunt could nominate Bruton, the board temporarily elected the lieutenant governor, an ex-officio member, as chairman. The political impact of this was a slap in the face of Hunt, because the lieutenant governor was Hunt's chief rival, Lt. Gov. Jimmy Green. The actual brouhaha was short-lived, and Bruton became chairman as planned a few weeks later. But the board's swift action reverberated in Raleigh for years to come and symbolized the deep divisions between the Office of the Governor, the State Board of Education, and the Department of Public Instruction.

The key problem, as former Gov. Bob Scott puts it, is accountability. "Given the sorry state of affairs our public education now is [in], with its babble of voices, the answer to 'Who's On First?' is 'No one!'"

But amending the North Carolina Constitution is a cumbersome business. To do so, the N.C. General Assembly must approve legislation by a three-fifths majority to propose an amendment to the people. Then the voters of the state

must ratify the amendment in a statewide election by a majority vote. Such an amendment would alter Article III, Section 7(1) of the N.C. Constitution, which created the elective office of Superintendent of Public Instruction, as well as several parts of Article IX, which divides responsibility for education among the superintendent, the State Board of Education, and other institutions and officers. Because the process is difficult, the constitution is not easily altered. And North Carolina, unlike many states, has clung to its traditional long-ballot Council of State offices, a vestige of Jacksonian democracy that Tar Heel legislators have been reluctant to change because they believe that the more elected officials there are, the better off the public will be.

In the following pages, former Duke Power Company President and Chairman William S. Lee writes in favor of the switch to an appointive post, while state Sen. J. Richard Conder (D-Richmond) argues that the state should retain its elected superintendent but make that official chairman of the State Board of Education and cut the length of board members' terms from eight to four years to boot.



**PRO:**  
*North Carolina Needs an Appointed  
Superintendent of Public Instruction*

BY WILLIAM S. LEE

**N**orth Carolina's public education system, which has a \$3.9 billion budget, is one of the state's largest businesses. And, by a number of measures, the status of that business is desperate. We have a retention rate that hovers around 65 percent and the standardized test scores of those students who remain in school are at or near the bottom in the nation.<sup>1</sup>

We may argue about the usefulness of standardized tests. We may quibble over a few points that enhance our state's standing. But the fact remains that our education system needs more than fine-tuning. It needs a major overhaul. And that overhaul will be difficult, if not impossible, without a change in the way our public schools are governed.

Right now, at the top of our education system, the overall leadership and administration is divided, ambiguous and overlapping. We have the governor, we have a chairman of the State Board of Education appointed by the governor, and we have an elected state superintendent of public instruction—not to mention a host of other state officials who hold some advisory position on public education. Who's in charge? Who's accountable? As a business person, I find that it doesn't make sense to have an ambiguous leadership structure for our nearly \$4 billion education enterprise.

There are many steps we should take to improve the quality of educating our young people. Certainly one of those steps is to establish a clearly accountable leadership structure at the top. We must organize the state-level education bureaucracy for management efficiency. And that means amending the N.C. Constitution to provide for the appointment of

the top school official. This would enable that leader to provide an unbiased focus on the big picture of the state's education needs, to articulate a long-term vision, and to initiate the sometimes unpopular reform measures that are needed to meet the tremendous challenges and changes our society is facing. This article reviews the history of public school governance (see "A Short Constitutional History of Public School Governance" on pages 474–476), outlines the problems associated with our present governance structure, and summarizes models from other states. But as the sidebar on the system's history makes clear, through 200 years of legislative changes, the appointed State Board of Education has developed the policies for the public school system while the elected superintendent of public instruction has implemented the policies and, until 1995, has overseen their funding.<sup>2</sup>

**The Problems with an Elected  
Superintendent**

**T**he nature of the responsibilities of the board and the superintendent requires that they overlap in some of their tasks. As the policymaker, the board must in part oversee the implementation of its own policies, for the board members themselves understand the desired effects and the possible shortcomings more than someone who did not participate in the planning.

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*William S. Lee is former president and chairman of Duke Power Company in Charlotte. He passed away on July 10, 1996 at age 67.*

Similarly, as the official who must implement policy laid down by the board, the superintendent must also participate in the policymaking process to offer expertise derived from discussions with students, teachers, parents, and principals in the public school system.

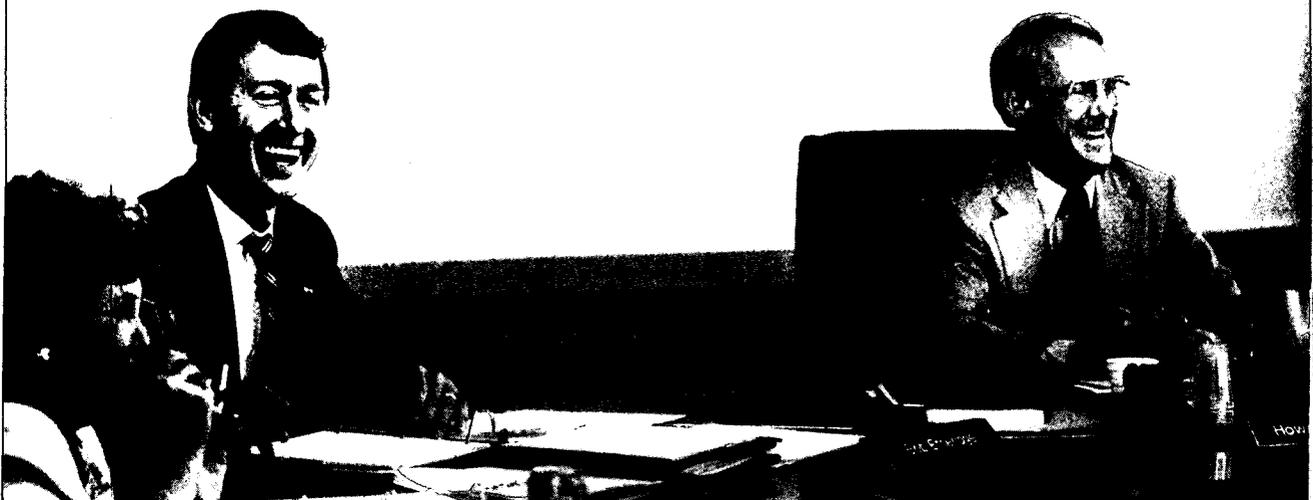
This overlapping of responsibilities of the policymaker and the policy implementer may lead to a cycle of conflict. For instance, the board may make a decision which the superintendent believes lies within the superintendent's jurisdiction. Then the superintendent may respond by only marginally implementing the policy decision. The board interprets this as incompetence or a lack of commitment on the part of the superintendent. The board then leans on the superintendent even harder, encountering more resistance with each policy decision.<sup>3</sup>

### **The Emerging Role of the Board Demands Reorganization**

**B**efore the current crisis in education mounted, the board primarily set minimum standards and regulations for the public school system. Problems facing the schools rarely required more than yearly updating of standards and funding. However, changing archaic standards and increasing funding will not, in and of themselves, solve today's education problems in North Carolina. Raising student achievement scores, improving teacher performance, establishing accountability for educational quality and even reorganizing the governance system for public schools all are goals which will require the state board, the state's primary policymaking body in education, to conceive sophisticated and comprehensive solutions.<sup>4</sup>

***Superintendent of Public Instruction Bob Etheridge, left, and former State Board of Education Chairman Howard H. Haworth, right, during a lighter moment in a state board meeting.***

THE PEOPLE HAVE A RIGHT  
TO THE PRIVILEGE OF EDUCATION.  
AND IT IS THE DUTY OF THE STATE  
TO GUARD AND MAINTAIN THAT RIGHT.



Karen Tam

**Table 1. Methods of Selection and Length of Terms for  
Chief State Public School Officers and State Boards of Education**

State	How Superintendent Is Chosen	Length of Term	How Board Members Are Selected
Alabama	Appointed by Board of Education	4	Elected
Alaska	Appointed by Board of Education with Governor's approval	5	Appointed by Governor
Arizona	Elected	4	Appointed by Governor with Senate confirmation
Arkansas	Appointed by Board of Education	- <sup>a</sup>	Appointed by Governor
California	Elected	4	Appointed by Governor
Colorado	Appointed by Board of Education	**	Elected
Connecticut	Appointed by Board of Education	4	Appointed by Governor
Delaware	Appointed by Board of Education	1-5 years	Appointed by Governor with Senate confirmation
Florida	Elected	4	Elected
Georgia	Elected	4	Appointed by Governor
Hawaii	Appointed by Board of Education	*	Elected
Idaho	Elected	4	Appointed by Governor
Illinois	Appointed by Board of Education	3	Appointed by Governor
Indiana	Elected	4	Appointed by Governor
Iowa	Appointed by Governor	-	Appointed by Governor
Kansas	Appointed by Board of Education	*	Elected
Kentucky	Appointed by Board of Education	*	Appointed by Governor
Louisiana	Appointed by Board of Education	by contract	Mixed Method — 8 elected; Governor appoints 3
Maine	Appointed by Governor	-	Appointed by Governor
Maryland	Appointed by Board of Education	4	Appointed by Governor
Massachusetts	Appointed by Board of Education	*	Appointed by Governor
Michigan	Appointed by Board of Education	*	Elected
Minnesota	Appointed by Governor	4	Appointed by Governor
Mississippi	Appointed by Board of Education	*	Mixed Method—Governor appoints 5; Legislature appoints 4
Missouri	Appointed by Board of Education	*	Appointed by Governor with Senate confirmation
Montana	Elected	4	Appointed by Governor
Nebraska	Appointed by Board of Education	3	Elected
Nevada	Appointed by Board of Education	3	Elected
New Hampshire	Appointed by Board of Education	4	Appointed by Governor
New Jersey	Appointed by Governor	-	Appointed by Governor
New Mexico	Appointed by Board of Education	*	Mixed Method—10 elected; Governor appoints 5
New York	Appointed by Board of Education	*	Appointed by Legislature
North Carolina	Elected	4	Appointed by Governor
North Dakota	Elected	4	Appointed by Governor
Ohio	Appointed by Board of Education	*	Elected
Oklahoma	Elected	4	Appointed by Governor
Oregon	Elected	4	Appointed by Governor
Pennsylvania	Appointed by Governor	4	Appointed by Legislature
Rhode Island	Appointed by Board of Education	*	Appointed by Governor
South Carolina	Elected	4	Appointed by Legislature
South Dakota	Appointed by Governor	-	Appointed by Governor
Tennessee	Appointed by Governor	-	Appointed by Governor
Texas	Appointed by Governor	4	Elected
Utah	Appointed by Board of Education	*	Elected
Vermont	Appointed by Board of Education	*	Appointed by Governor with Senate confirmation
Virginia	Appointed by Governor	4	Appointed by Governor
Washington	Elected	4	Elected by Local School Boards
West Virginia	Appointed by Board of Education	*	Appointed by Governor
Wisconsin	Elected	4	None
Wyoming	Elected	4	Appointed by Governor

Given these needs for a long-range plan as part of the policymaking process, a 1987 national Task Force on State Board Leadership developed a new role for state boards.<sup>5</sup> First, the board needs a long-term vision for education reform. Second, the board should provide systematic information on the extent and quality of education. Finally, the board should add some predictability, vital to sustaining a long-term vision for reform, to the policymaking process.

The ambiguous responsibilities of the state superintendent and the board will impede the board from assuming this new role of leadership, and our education crisis will continue unabated. Often the board may hesitate to form far-reaching policies because the responsibilities of the board and the superintendent are not clearly defined. And because both the board and the superintendent each have some measure of independence, turf battles are likely to be fought anytime either the board or the superintendent takes action—as happened on a number of occasions in the 1960s and 1970s.

If the superintendent were appointed by the governor or by the board itself, as is the case in 35 states (see Table 1), the top of the continuous chain of command could efficiently allocate the time and resources of the board and the superintendent in collaborative, rather than conflicting, policy solutions.

# of Board Members	Length of Board Terms	Term Limits	State
9	4		Alabama
7	5		Alaska
9	4		Arizona
12	6		Arkansas
11	4		California
7	6		Colorado
9	4		Connecticut
7	6		Delaware
7	4		Florida
11	7		Georgia
13	4		Hawaii
7	5		Idaho
17	6	2 terms	Illinois
11	4		Indiana
9	6		Iowa
10	4		Kansas
11	4		Kentucky
11	4		Louisiana
9	5		Maine
12	4	2 terms	Maryland
15	5	2 terms	Massachusetts
8	8		Michigan
9	4		Minnesota
9	9		Mississippi
8	8		Missouri
7	7		Montana
8	4		Nebraska
11	4	3 terms	Nevada
7	5	2 terms	New Hampshire
13	6		New Jersey
15	4		New Mexico
16	5		New York
11	8		North Carolina
7	6		North Dakota
11	4		Ohio
7	6		Oklahoma
7	4	2 terms	Oregon
9	6		Pennsylvania
11	5	3 terms	Rhode Island
17	4		South Carolina
9	4		South Dakota
11	9		Tennessee
15	2 or 4		Texas
15	4		Utah
7	6	1 term	Vermont
9	4	2 terms	Virginia
11	4		Washington
9	9		West Virginia
			Wisconsin
11	6	1 term	Wyoming

#### FOOTNOTES

<sup>a</sup> The symbol - indicates that the length of term is set by the Governor.

<sup>b</sup> The symbol \* indicates that the length of term is set by the State Board of Education.

Sources: *State Education Governance at a Glance 1995*, National Association of State Boards of Education, 1012 Cameron Street, Alexandria, Va., 22314, (703) 684-4000. See also Martha McCarthy, Carol Langdon and Jeannette Olson, *State Education Governance Structures*, Education Commission of the States, 707 17th Street, Suite 2700, Denver, Co., 80202-3427, November 1993, pp. vii and 9.

## **Inherent Political Pressures on Superintendent**

**T**he inherent political nature of the job creates a number of problems, including the following:

- Rather than encouraging the superintendent to act boldly and creatively, the inherent political pressures on an elected superintendent can actually discourage development of effective policy and workable programs. In order to remain in elective office, the superintendent instead must act in accordance with the prevailing political winds.

The superintendent also must explain and defend education policies to a sometimes uninformed or under-informed public.<sup>6</sup> For example, instead of rethinking the entire way our state measures the academic achievement of its students (a remedial action that may seem radical to many), the superintendent might choose to concentrate on programs improving the state's scores on existing—though perhaps irrelevant—standards. The superintendent could adequately explain and defend the latter proposal to the public, yet that proposal might not be the most effective approach in the long term for improving education. An appointed superintendent, on the other hand, would have the job stability required for effective long-term planning and for radical changes where needed.

- An elected superintendent, who holds only a four-year lease on the office, could have a problem with program continuity and long-term vision. As the State Board of Education plans its long-term strategy for reform, it can count on having the strengths and beliefs of the current superintendent for only four years. If the superintendent is not re-elected, a new superintendent with different strengths and a new agenda could undermine the board's long-term reforms. However, if the board selected the superintendent, it could find one who would complement the reform plan for the long term, thus ensuring program continuity as well as enhancing long-term planning.

- An elected superintendency encourages only a narrow scope for school reform when more comprehensive measures may be needed, particularly when single-issue politics are involved. Political emergencies—where the public is aroused about a single issue that may have little or nothing to do with educational progress—can mire the public school system in a morass of substandard achievement.

If the public feels particularly strongly about a peripheral issue (birth control clinics in schools, for example, or some other issue not related to academics), it may vote for a superintendent who has a thoughtful stance on only one issue. The scope of reform demanded in North Carolina mandates a comprehensive approach to change, encompassing nearly every issue of education from teacher merit pay to curriculum changes. A single-issue, elected superintendent would be unlikely to improve the system as a whole.

- The high costs of campaigning may mean that the best candidates don't run—or cannot win—an elected superintendency. Campaign costs can prohibit excellent, interested candidates from entering a race in the first place, and education leaders with little experience in politics may be effectively prohibited from entering the competition. Furthermore, the superintendent must take time away from creating and implementing education policy and devote that time instead to fundraising and campaigning for re-election.

As education continues to rise to the forefront of public policy concerns, the number of candidates for superintendent may also rise, thus creating more competition for the post and driving up the amount of time and money needed to campaign successfully for it. An appointed superintendent, on the other hand, can devote the full length of the term to education reform without having to deal with elective politics.

- An elective superintendency can create conflicts of interests. Before the state of Mississippi switched to an appointed superintendent in 1986, charges of corrup-

tion plagued its school systems. Local superintendents would informally choose their candidate for state superintendent, and then organize the candidate's campaign. Once in office, the superintendent had the responsibility for accrediting the campaign managers' schools. This not only created the potential for conflicts of interest, but led to allegations of bribery and misconduct. An appointed superintendent, on the other hand, owes loyalty only to the state as a whole—and not to a group of individual political supporters.

- An elected superintendent cannot be fired (although a Council of State member can be impeached and removed from office for a felony, certain misdemeanors, malfeasance, or neglect of duty). If the elected superintendent were to act unethically or ineffectively, the state could find it so difficult and time-consuming to go through formal impeachment proceedings that it would be impossible to dismiss the superintendent. Instead, the state would be stuck with that official at least until the end of the term. And even an incompetent official may win re-election, even indefinitely. An appointed superintendent, on the other hand, would answer directly to the State Board of Education and could be dismissed for incompetence or misbehavior while in office.

### **The Advantages of an Appointed Superintendent**

**I**n addition to correcting the problems and potential problems outlined above, appointing the superintendent affords the state an opportunity to benefit directly from the knowledge and strengths of national education leaders. While all elected superintendents must come from the state, an appointed superintendent could be selected from candidates throughout the country. Employing a superintendent from outside the state could enhance the state's exchange of ideas about education reform, and has the potential for energizing the policymaking process.

In modern times, most governors hope to make education the hallmark of their administration, and thus the governor has a great deal

of clout in proposing educational programs to the General Assembly and in marketing them to the public. It is only natural, then, that the superintendent of public instruction be appointed by the governor to push for those programs and to be the chief cheerleader for them—both with the legislature and with the State Board of Education. That's not the only way to choose a superintendent, of course, but it would be among the more direct ways—with clear lines of accountability straight to the top.

Former Gov. Terry Sanford clearly saw the problem when he wrote, "No citizen of any state should tolerate the diffusion of command, the division of authority or the hamstringing of executive power. The head of a corporation could not run his firm if the vice president in charge of sales were elected by the board, the superintendent of production selected by the vice presidents with the approval of the president, the transportation chief by union members and the personnel director by a visiting committee."<sup>7</sup> What Sanford saw then is equally important today—we need a change.

Other states have chosen to switch from an elected superintendent to an appointed superintendent. A little over 40 years ago, a majority of the states elected their chief state school officers, while less than a third do so now. In 1947, 31 of the 50 states had an elected superintendent, while in 1995, that number had dropped by more than half, to 15. In 1989, Kentucky joined the list of states switching to an appointed superintendent. Earlier in the 1980s, Mississippi and Louisiana also switched to an appointive superintendent—clear evidence that the trend continues toward a professional manager and educator as the top school administrator.

North Carolina study commissions on several occasions have raised questions about an elected superintendent and an appointive board. Study commissions appointed by the governor in 1948 and in 1968 questioned "the validity of electing an individual to fill a position that is so demanding of the highest professional leadership abilities."<sup>8</sup> Each commission urged the legislature to enact a procedure allowing the board to appoint the superintendent as its executive officer, but those proposals have gone nowhere.

The former State Board chairman, Howard Haworth, who stepped down in September 1990, says that the governance structure is one of the most important issues to resolving our education problems. "I personally feel very

strongly that a change to an appointed superintendent of public instruction for the North Carolina public education system is a must if we are to ultimately achieve adequate overall reform and improvement of the endeavor. It is not the only change, by any means, that is necessary, but one of four or five critical issues to real progress in this area. To suggest that the people of North Carolina would not endorse such a change through the referendum process is perhaps more politically self-serving than it is an accurate assessment. This is simply one of a number of matters that the General Assembly seems determined to protect the citizens from re-evaluating," Haworth says.

As Table 2 on page 471 indicates, there are 12 public school governance models in the United States, though four of these models are

used in over three-fourths of the states. In three of the top four models, the superintendent is appointed rather than elected. Several of these models would enable our state to streamline management and maximize the efficiency of the public school bureaucracy. And no matter which of the models we choose, we should make certain that the lines of command are clear.

There almost certainly will be political obstacles to overcome in achieving this revision in school governance. But we must end today's politically driven, three-headed system. It impedes our ability to offer our young people the best education they can have. We simply must take the sometimes difficult steps that are necessary for the benefit of our children. One such step is to adopt a system of an appointed superintendent of public instruction in North Carolina.

## FOOTNOTES

<sup>1</sup>In 1995, North Carolina's SAT scores ranked 48th in the nation (combined verbal and math score = 865). See Table 1: 1995 SAT Verbal, Mathematics, and Total Scores Ranked by State, Department of Public Instruction, Raleigh, N.C., (919) 715-1972.

<sup>2</sup>In 1995, the General Assembly passed House Bill 7 which redefined the relationship of the superintendent and the State Board of Education. The superintendent manages the day-to-day administration of the Department of Public Instruction, subject to the "direction, control, and approval of the State Board." The superintendent no longer administers funds for DPI's operation. See Chapter 72, 1995 Session Laws, codified at G.S. 115C-19 and 115C-21. Also see G.S. Chapter 143A.

<sup>3</sup>For more on the potential interaction between superintendent and board, see Grady McGonagil, "Board-Staff Partnership: The Key to the Effectiveness of State and Local Boards," *Phi Delta Kappan*, a national education journal, September 1987, p. 67.

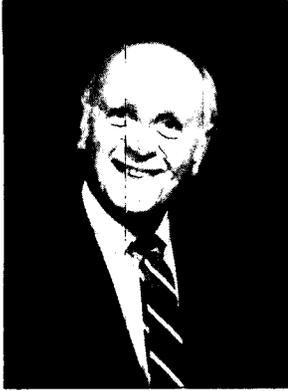
<sup>4</sup>For more on educational policymaking, see Michael Cohen, "State Boards in an Era of Reform," *Phi Delta Kappan*, September 1987, p. 61.

<sup>5</sup>"The Challenge of Leadership: State Boards of Education in an Era of Reform," National Association of State Boards of Education, 1012 Cameron St., Alexandria, Va., 22314, 1987.

<sup>6</sup>For more on this subject, see *Overview of State Education Governance Structure*, National Association of State Boards of Education, Alexandria, Va., February 1989.

<sup>7</sup>Terry Sanford, *Storm Over the States*, McGraw-Hill (New York), 1967, p. 197.

<sup>8</sup>*Education in North Carolina Today & Tomorrow: The Report of the State Education Commission*, United Forces for Education, Raleigh, December 1948, pp. 50-51; and *1968 Report of the Governor's Study Commission on the Public School System of North Carolina*, Raleigh, 1968.



CON:

*North Carolina Should Keep Its Elected Superintendent of Public Instruction*

BY J. RICHARD CONDER

**A**n elected superintendent of public instruction is an inherently strong advocate for public education, one that we can build upon for the future. Yet every so often, along comes a wave of proposals to weaken the independence of the superintendent and make the office subservient to some other authority. Like the mythical phoenix rising from its ashes, the subject of electing or appointing the state superintendent of public instruction rose once again in 1995, as it has periodically since the State Board of Education was first created in 1868.<sup>1</sup>

When this was debated in 1987, conventional wisdom had it that the time was ripe, given the fact that the superintendent, Dr. Craig Phillips, was not seeking re-election, to lop off one of the three heads running North Carolina schools and establish a single, accountable voice for public education. I supported the move to make the state superintendent position appointive rather than elective, a bill that passed the Senate and died in the House of Representatives.<sup>2</sup> I did so because I felt at the time that it was an expedient way to solve the problem of educational accountability, and I felt the constitutional amendment that the change requires had some chance of surviving a referendum.

The window of opportunity passed, however, and that option is no longer realistic. To suppose that a consensus could be achieved that could produce the three-fifths majority in both the Senate and House to approve a constitutional amendment to make the superintendent appointive and then get that amendment accepted by a majority of the people of North Carolina is unrealistic and a waste of time.

Citizens generally look with great misgivings at any move to take away their right to

vote—such as the abortive attempt in 1982 to provide four-year terms for legislators.<sup>3</sup> They can be expected to adamantly oppose any attempt to dilute their right to elect a public official whose role is of paramount importance to our children and our state's future. Georgia tried such a change in 1986 with the support of its governor, its state superintendent, and leaders of its General Assembly. The move was soundly defeated by a margin of 65 percent to 35 percent. Fifteen states still elect their chief state officer (see Tables 1 and 2, pages 464–465 and 471, for more).

Even if the three-fifths majority could be obtained in the General Assembly to float a constitutional amendment, the referendum would immediately put the entire Council of State en masse in opposition to the amendment. For if a measure to appoint the state superintendent were submitted to the voters, every other Council of State position from attorney general to agriculture commissioner would be at risk. All 10 Council of State positions currently are elective.<sup>4</sup> Can you imagine the army of opponents that would be created by the friends and neighbors of the agriculture commissioner, attorney general, state auditor, state treasurer, insurance commissioner, labor commissioner, secretary of state, and state school superintendent? (The other two members of the Council of State are the governor and lieutenant governor). We can better spend our time improving student achievement and fine-tuning the system we have.

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*J. Richard Conder is a North Carolina state senator from Rockingham, representing the counties of Anson, Hoke, Montgomery, Richmond, Scotland, Stanly, and Union.*

### **Inherent Strengths of an Elected Superintendent**

**A**s I have studied our educational structure since 1987, I have come to believe that there is an inherent strength in having an elected state superintendent, and we should build on that strength. The elected state superintendent means that we have an official whose entire attention can be devoted to public schools, who can be a full-time advocate for those schools, who can become expert in what works and does not work, and who is not tied to a particular governor who may—or may not—be a strong supporter of public education. The fact is that there is enormous stability surrounding the office of superintendent. Not one of North Carolina's superintendents has ever been defeated for re-election, and the three of the last four superintendents served for 18, 17, and 20 years, respectively. The public has voted to keep those officials in office because the public wanted them there. (See Table 3, page 473, for more.)

The strength of our system was demonstrated during the spring 1990 debate over the budget shortfall when state Superintendent of Public Instruction Bob Etheridge mobilized the educational forces to oppose cuts in educational programs—cuts that had been requested by the governor. The public disagreement was resolved to the benefit of the schools. Had the state superintendent been a gubernatorial appointee, he would not have dared to oppose the governor's wishes, and public education would have lost.

I have also been struck by the fact that the Superintendent Bob Etheridge was able to run on a campaign of cutting the bureaucracy and then deliver on that promise. The staff of the state Department of Public Instruction has been greatly reduced, a feat that is little short of remarkable in our system of government and one that I simply don't believe would have been possible by a gubernatorial appointee. At least, I haven't seen that kind of reduction in any other department in state government under either a Republican or a Democratic administration.

So to blame our present educational status on the governance system that we have employed since 1868 is ludicrous. In Arkansas and West Virginia, the governor appoints the board and the board then appoints the superintendent. The same system has been suggested for North Carolina, but these are not

exactly the states whose school systems we would seek to emulate, for their educational results are hardly the envy of the nation. On the other hand, California, Indiana, Oregon, and Georgia elect their superintendents, and their students do well on national tests. We might do well to emulate their systems. But the point is that the system of governance used by a state apparently has little to do with educational outcomes. Wisconsin, which annually produces excellent SAT scores (it ranked 5th on the combined verbal and math scores in 1995), elects its superintendent, yet does not even have a state board of education.

Those who are so anxious to change our system of governance in education remind me of the novice painter who was forever searching for Michelangelo's brush, secure in the conviction that if he could just find that brush he would immediately be able to match the masterpieces on the ceiling of the Sistine Chapel. Appointing the state superintendent is not going to solve our problems in public education. In fact, if we chase that phantom long enough and hard enough, we will multiply our problems.

But accountability in public education's administrative structure is important, and I think we do need to analyze carefully the structure we have. It is *not* a good structure. But simply changing the state superintendent from an elective post to an appointive post is unlikely to provide us with the "accountable chief executive officer" our business leaders are proposing. For the truth is, we do not have a two-headed monster running public education in North Carolina, as the media are fond of saying. We have a Hydra-headed monster with little pieces of power scattered around among state officials, the State Board of Education, the Office of the Governor, the General Assembly, and various interest groups. Turning the state superintendent into an appointive post would be dealing with only one piece of the educational accountability maze.

### **North Carolina's Governing Structure**

**L**et's look briefly at the structure. The state superintendent is elected by the people and is charged with the responsibility "to organize and establish a Department of Public Instruction . . . for supervision and administration of the public school system" and with vari-

**Table 2. Governance Structures of Public Education,  
by Type and State**

<b>Model 1:</b>	Governor appoints Board of Education; Board appoints Superintendent Alaska, Arkansas, Connecticut, Delaware, Illinois, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, Rhode Island, Vermont, West Virginia	(13 states)
<b>Model 2:</b>	Governor appoints Board of Education; Superintendent is elected Arizona, California, Georgia, Idaho, Indiana, Montana, <b>North Carolina</b> , North Dakota, Oklahoma, Oregon, Wyoming	(11 states)
<b>Model 3:</b>	Board of Education is elected; Board appoints Superintendent Alabama, Colorado, Hawaii, Kansas, Michigan, Nebraska, Nevada, Ohio, Utah	(9 states)
<b>Model 4:</b>	Governor appoints Board of Education and Superintendent Iowa, Maine, Minnesota, New Jersey, South Dakota, Tennessee, Virginia	(7 states)
<b>Model 5:</b>	Board of Education is selected by mixed method; Board appoints Superintendent Louisiana, Mississippi, New Mexico	(3 states)
<b>Model 6:</b>	Legislature appoints Board of Education; Board appoints Superintendent New York	(1 state)
<b>Model 7:</b>	Legislature appoints Board of Education; Superintendent is elected South Carolina	(1 state)
<b>Model 8:</b>	Board of Education is elected; Superintendent is elected Florida	(1 state)
<b>Model 9:</b>	Board of Education is elected by local boards of education; Superintendent is elected Washington	(1 state)
<b>Model 10:</b>	Board of Education is elected; Governor appoints Superintendent Texas	(1 state)
<b>Model 11:</b>	Legislature appoints Board of Education; Governor appoints Superintendent Pennsylvania	(1 state)
<b>Model 12:</b>	No state Board of Education; Superintendent is elected Wisconsin	(1 state)

*Source: State Education Governance at a Glance 1995, National Association of State Boards of Education, 1012 Cameron Street, Alexandria, Va., 22314, (703) 684-4000. See also Martha McCarthy, Carol Langdon and Jeannette Olson, State Education Governance Structures, Education Commission of the States, 707 17th Street, Suite 2700, Denver, Co., 80202-3427, November 1993, pp. vii, 9.*

ous other duties, including the administration of "the instructional policies established by the Board" (of Education).<sup>5</sup> Imagine trying to run a department without the power to hire staff, control the budget, enter into contracts, or even implement a staff organization plan. That is essentially the situation state superintendents find themselves in after their election.

The State Board of Education consists of the lieutenant governor, the state treasurer, and 11 members appointed by the governor subject to confirmation by the General Assembly. Appointments are for eight-year terms, and only three states (Mississippi, Tennessee, and West Virginia) have longer terms, a factor that sets up a potential conflict in accountability anytime there is a change in the individual who occupies the governor's office. A new governor doesn't have control of the board and may not achieve such control until well into the governor's administration, if ever. Is that accountability? (Retaining the lieutenant governor and state treasurer on the State Board of Education is a century-old tradition, dating to the time [1868] when all members of the Council of State, including these two officers, comprised the board.)

The Office of the Governor has appreciable clout in the administration of the public schools because the governor is in charge of the budget, appoints members of the state board, generally suggests who will be chairman, and has the ability to focus public attention by appointing various educational task force groups or study panels. Most governors wish to be known as education governors, and they spend a lot of time and effort, making speeches and appearing in the news, to promote education. In recent years, Govs. Terry Sanford and Jim Hunt have been particularly interested in education.

The General Assembly also has been and continues to be a major player in the public school arena. As the final word on budget appropriations, the General Assembly can be the effective final voice in determining which program is approved. The General Assembly has even dictated such mundane matters as staff development by providing funds that must be spent with various schools or organizations. The legislature has also dictated curriculum on a number of occasions, including free-enterprise economics, driver training, fire prevention, and the danger of drugs and alcohol.<sup>6</sup>

Then there is the whole vast area of educational interest groups. Senate Bill 2 of the 1989 General Assembly, the state's big educational reform package of 1989, came not from the state superintendent or the State Board of Education or the governor, but from a study group set up by the private, non-profit Public School Forum of North Carolina, which also administers the Teaching Fellows Program designed to award scholarships to prospective teachers.<sup>7</sup> Daily in the General Assembly, you will see lobbyists for the Forum, the N.C. School Boards Association, the North Carolina Association of Educators, and others representing school psychologists, curriculum areas, textbook publishers, and any number of groups working to see that their particular interest is protected.

The administration of public education in North Carolina is a vast, complex, maze-like process that has been and is affected by the political winds that blow back and forth across our state. Schools are inherently political because they are so close to the hearts of our people. The Public School Directory put out by the Department of Public Instruction lists more than 60 associations or councils whose aim is to influence some facet of the educational scene. To suppose that we can solve our accountability problems in public education by appointing the state superintendent is simplistic.

I should add parenthetically here that I do believe strongly that the state superintendent must be a person with strong administrative abilities. The time has long passed when the position could be viewed as the highest rank to which an educator could aspire. The state Department of Public Instruction manages the largest food service in the state, presides over the largest transportation program in the state with the task of seeing that our children are transported to and from school safely, and assures that our teachers and administrators have the proper certification and are paid the salaries the General Assembly has set for their positions. Those are duties that require a top administrator, from whatever background that person may come. I believe the current process—where a person must not only seek the approval of the voters of this entire state, but who must also take a program, a vision, and his or her abilities out there for public inspection—is most likely to produce the kind of person we

need speaking up for public education. And, I might add, if we find out that the person we elect is not the person for the job, we have the ability to change it at the next election. An appointed superintendent might very well remain in office so long as his or her party could hold the governorship.

### Superintendent Should Chair State Board of Education

Then, what should we do at this point in North Carolina's history? Short of convening some type of public school constitutional convention and attempting to remake the North Carolina public schools laws and get those changes approved by the people—a long and involved process that I believe would be detrimental to our whole system of public education and would steal energy better spent on improving student achievement—I believe we must work with what we have.

The General Assembly, for example, can

solve the State Board of Education chairman versus state superintendent dichotomy by legislation making the state superintendent chairman of the State Board of Education—as is the case in Indiana, North Dakota, and Oklahoma. I realize this change would not satisfy those who learned everything they know about government in an introductory course in political science, but the change has a number of points in its favor. It is practical. It is achievable. It eliminates one of the prime conflicts the present system encourages. It would not subject the state and its people to a long and involved constitutional amendment process that, I am convinced, would fail anyway. And it would somewhat simplify the political and administrative maze by removing a redundant figure—a state board chairman appointed by the governor—and replacing that person with an individual already in office, the superintendent.

With the state superintendent serving as state board chairman, we would have created a climate for cooperation between the state superintendent and the members of the State Board

**Table 3. North Carolina Superintendents of Public Instruction in the 20th Century**

Name	County	Years Served
Charles H. Mebane	Catawba	1897–1901
Thomas F. Toon*	Robeson	1901–1902
James Y. Joyner	Guilford	1902–1919
Eugene C. Brooks	Durham	1919–1923
Arch T. Allen	Alexander	1923–1934
Clyde A. Erwin	Rutherford	1934–1952
Charles F. Carroll	Duplin	1952–1969
A. Craig Phillips*	Guilford	1969–1989
Bob R. Etheridge*	Harnett	1989–1997

\* Toon, Phillips, and Etheridge were the only Superintendents to have been elected to the job when they first attained it. All the rest were first appointed to the post by the governor. With 20 years' service, Phillips served longer than any other Superintendent of Public Instruction. No Superintendent of Public Instruction has been defeated in an election in North Carolina in this century.

Source: North Carolina Manual.

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## *A Short Constitutional History of Public School Governance in North Carolina, 1776–1996*

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NORTH CAROLINA'S THREE STATE CONSTITUTIONS (1776, 1868, and 1971) have dealt in increasing detail with public education, and the 1868 and 1971 constitutions have dictated the roles of the state superintendent of public instruction and the State Board of Education.

1. **The Constitution of 1776.**<sup>1</sup> Section 41 of North Carolina's first constitution established the public school system:

“That a school or schools shall be established by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and, all useful learning shall be duly encouraged and promoted in one or more universities.”

2. **The Constitution of 1868.** Article IX of this constitution established a State Board of Education which included these popularly elected members: governor, lieutenant governor, secretary of state, state treasurer, state auditor, superintendent of public works (a position abolished in 1873), attorney general, and superintendent of public instruction.

The responsibilities of the board were to “make all needful rules and regulations in relation to Free Public Schools and the Educational Fund of the State.”

*The responsibilities of the superintendent of public instruction were to direct operations and enforce laws; to report to the governor annually; to study school systems in other states and countries; and to be responsible for sectional needs of the state.*

■ Statutory changes, 1927–1945.

— In 1927, the General Assembly created a State Board of Equalization<sup>2</sup> which relieved the State Board of Education of its responsibility to distribute money to counties using the equalizing fund. The equalizing fund had been created in 1901 to subsidize education in the poorer counties.

— In 1933, the General Assembly created the State School Commission<sup>3</sup> to succeed the State Board of Equalization. The commission included the governor, lieutenant governor, state treasurer, superintendent of public instruction, and one member, appointed by the governor, from each congressional district. The commission's task was to manage the public school system's fiscal affairs.

— In 1943, the statutes were amended to abolish the State School Commission, and the constitution was amended to change the membership of the State Board of Education. The board now included the lieutenant governor, the state treasurer, the superintendent of public instruction, and one member from each congressional district. In addition, the constitutional amendment created the position of controller, who would assume the fiscal responsibility for the school system in lieu of the State School Commission.<sup>4</sup>

— In 1945, the General Assembly described the board's responsibilities in the reorganization of 1943.<sup>5</sup>

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“Those relating to the supervision and administration of the public school system of which the superintendent shall be the administrative head, except as they relate to the supervision and management of the fiscal affairs of the board.

*“Those relating to the supervision and administration of fiscal affairs of the public school funds committed to the administration of the State Board of Education, of which the controller shall have supervision and management.”*

3. **The Constitution of 1971.** Article IX recreated the State Board of Education which would “supervise and administer a free public school system and the educational funds provided for its support . . . and shall make all needed rules and regulations in relation, thereto . . . .” The state board included the lieutenant governor, treasurer, and 11 members appointed by the governor, one from each of the eight education districts and three at-large members. The superintendent of public instruction was the chief administrator and secretary of the board, but was not an official member and no longer had a vote. The controller, answering to the board, continued to manage the fiscal affairs of the public schools.

■ **Statutory changes, 1988–95.**

— In 1988, in the Act to Provide a Governance Structure for the Department of Public Instruction, the General Assembly granted the superintendent these duties:<sup>6</sup>

As administrator of the Department of Public Instruction: To organize and establish a Department of Public Instruction including the divisions and departments needed for supervision and administration of the public school system, to administer the funds for the operation of the Department of Public Instruction, and to enter into contracts.

As secretary of the State Board of Education (the superintendent already held this post by constitutional provision, but the legislature’s 1988 action enhanced the post with these duties): To administer through the Department of Public Instruction all policies established by the board; and to administer the funds appropriated to the Department of Public Instruction for the operations of the state board and for aid to local school administrative units.

— In 1995, the General Assembly redefined the relationship of the superintendent of public instruction and the State Board of Education, limiting the superintendent’s authority.<sup>7</sup> The superintendent is to manage to day-to-day administration of the public school system subject to the “direction, control, and approval of the State Board.”

The superintendent’s administrative duties include organizing the Department of Instruction and other matters as delegated by the Board. The superintendent no longer administers funds for DPI’s operation or enters into contracts.

As secretary of the State Board of Education, the superintendent administers instructional policies (not all policies as the previously law provided).

FOOTNOTES continue on page 476

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*Compiled by Andy Baxter, a Duke University graduate student and intern at Duke Power Co., based on a study by E. Michael Latta, executive director of the N.C. Advisory Council on Vocational Education, cited in footnote 1, below.*

of Education and, by extension, between the state superintendent and the governor, no matter what the political party of the individuals involved. It would simply be in the best interests of the state superintendent and members of the state board to cooperate, to speak with a united voice. As it is now, there is a constant temptation for both the state superintendent and the chairman of the board to posture in public and at board meetings.

As we contemplate changes in the structure of our public education system, we also should look carefully at the length of terms of members of the State Board of Education and at how the members are chosen. The eight-year term is clearly a product of a gentler, slower day, not the product of our rush-rush world when new ideas and new energy are at a premium. Certainly, any plan that does not address the length of term of members of the State Board of Education would go only part of the way to bringing true accountability to our public education system. The changes in term would, however, have to be made by a constitutional amendment, because Article 9, Section 4(1) sets the terms at eight years.

More important than anything else we can do right now is to encourage all citizens of North Carolina to unite behind our public schools as the one best hope we have of achieving progress in the future. Our children are our most important resources, and our schools must be supported by all of us, whether we are political leaders, businessmen and businesswomen, parents, or just plain ordinary citizens. At no other

time in our state's history has it been more abundantly clear that education is the highway to progress for us as a state and for us as a nation.

## FOOTNOTES

<sup>1</sup> Section 7, Article IX of the 1868 Constitution of North Carolina, adopted in convention on March 16, 1868. The original Board of Education comprised the governor, lieutenant governor, secretary of state, treasurer, auditor, superintendent of public works, superintendent of public instruction, and attorney general.

<sup>2</sup> SB 149, which passed the 1987 N.C. Senate on a 42-7 vote but which never came to a vote in the House of Representatives.

<sup>3</sup> Chapter 504 of the 1981 Session Laws proposed a constitutional amendment making terms of members of the General Assembly four years long rather than two years, but the amendment was defeated by a vote of 522,181 against to only 163,058 for, or 76 percent to 24 percent, on June 29, 1982.

<sup>4</sup> The Council of State comprises the 10 constitutional officers in the executive branch of North Carolina state government, including the governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction, attorney general, commissioner of agriculture, commissioner of labor, and commissioner of insurance. The Council of State is cited in Section 8, Article III, 1971 Constitution of North Carolina.

<sup>5</sup> Section 7, Article III of the 1971 Constitution of North Carolina authorizes the position of superintendent of public instruction. The duties of the superintendent are outlined in G.S. 115C-19 and 115C-21.

<sup>6</sup> These course requirements and others are found in G.S. 115C-81.

<sup>7</sup> Chapter 778 of the 1989 Session Laws, the School Improvement and Accountability Act of 1989, now codified in G.S. 115C-238.

Chapter 1014 (SB 2) of the 1985 Session Laws (Second Session 1986), now codified as G.S. 115C-363.22, delegated authority for administering the N.C. Teaching Fellows Program to the Public School Forum of North Carolina.

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## FOOTNOTES

<sup>1</sup> For those wishing to read more about the three constitutions (1776, 1868, and 1971) adopted in North Carolina, copies can be found in a number of places, including the *North Carolina Manual*, published biennially by the Department of the Secretary of State, and in various sources in most public libraries in North Carolina. For an excellent source for key constitutional provisions and statutory changes regarding N.C. education law, see E. Michael Latta, *The Constitutional and Statutory Development of the State Board of Education and the State Superintendent of Public Instruction as well as the Defunct Office of the Controller*, first presented to the Select Committee on Education of the N.C. General Assembly, Oct. 4, 1982. Reissued Nov. 17, 1989 with amendments, and available from the State Advisory Council on Vocational Education in Raleigh at (919) 733-2064.

<sup>2</sup> Chapter 256, Public Laws and Resolutions, 1927 General Assembly.

<sup>3</sup> Chapter 562, Public Laws and Resolutions, 1933 General Assembly.

<sup>4</sup> Chapter 721, Session Laws and Resolutions, 1943 General Assembly.

<sup>5</sup> Chapter 530, Session Laws and Resolutions, 1945 General Assembly.

<sup>6</sup> Chapter 1025, 1987 Session Laws (Second Session 1988), now codified as G.S. 115C-19 and 115C-23.

<sup>7</sup> Chapter 72, 1995 Session Laws (House Bill 7), codified at G.S. 115C-19 and 115C-21. See also G.S. Chapter 143A.

# ***School Choice:***

## **A Simple Term Covers a Range of Options**

BY TOM MATHER

*School choice, the concept of letting parents pick which schools their children attend, has been one of the most talked-about education proposals over the past decade. Proponents tout school choice as a way to increase educational opportunities and achievement by promoting competition in public schools and parental involvement in education. But critics say choice would destroy public schools by starving them of funds and magnifying inequalities.*

*School choice encompasses a range of options involving both public and private schools. Public-school choice options include: transfers, in which districts allow students to attend other schools on a case-by-case basis; magnet schools, which focus on themes and draw students from anywhere in a district; charter schools, which are like magnets but are largely free from state and local educational regulations; and open-enrollment programs, in which students can attend any school in their district or state. Private-school choice options use state tax money to pay for students' tuition at private and religious schools, including: vouchers, which are credit slips that schools can redeem for cash from the state; tuition grants, which are direct payments to parents; and tax credits, which allow parents to deduct tuition costs from their income taxes. This article discusses various school choice options.*



Nearly 25 cents out of every dollar in state taxes collected in North Carolina goes to support the public schools.<sup>1</sup> Yet some citizens, particularly many parents who send their children to private schools, say they aren't getting their fair share of the state's educational spending. They say the state should give them vouchers or tax credits to offset the money they spend on private school tuition.

Such sentiments are at the heart of one of the most talked-about topics today in education: "School Choice." (See Table 1 on p. 481 for a summary of the key arguments for and against school choice.) Proponents tout school choice as a way to expand educational opportunities by letting parents pick which schools their children attend. School choice also would instill a much-needed element of competition in the public education system, supporters say. Increased competition, they argue, would spur educational improvements by encouraging schools to excel and by weeding out the poorly performing ones.

*Tom Mather is associate editor of North Carolina Insight.*

"The problems facing primary and secondary education in North Carolina will never be addressed without changing the system's incentive structure," says Rep. Larry Linney (R-Buncombe), who introduced legislation that would provide tuition grants to parents with children in private and religious schools. "This bill empowers parents by giving them choices and making the customer king or queen in a new market of educational services."<sup>2</sup>

But critics say vouchers and tax credits would derail efforts to improve the public schools by diverting funds to wealthier citizens who can afford private schools. Such reasoning led Citizens for Public Schools—a bipartisan coalition of 28 organizations representing educators, parents, business people, and other citizens—to release an open letter on June 19, urging North Carolinians to oppose the tuition tax credit bill, which appeared to be the most likely private-school choice legislation to win approval in the legislature.<sup>3</sup> The letter, signed by Democratic Gov. Jim Hunt and former Republican Gov. Jim Martin, stressed that the bill would cost taxpayers \$15 million in 1996 and

\$77 million in 1997—just to provide tax credits to existing users of private schools.<sup>4</sup> Instead of spending public money on tax credits, the group says, such funds should be used to: (1) reduce class sizes, (2) raise teachers' pay, or (3) provide for other performance incentives for educators.

Opponents of private-school choice also argue that increased competition would be a farce because public schools and private schools don't compete on even terms. Private schools can cherry-pick the brightest students from wealthy families, but public schools must take all comers—including the poor, the disabled, the disciplinary problems, and the not-so-intelligent.

"Possession of a voucher doesn't guarantee anyone a place in private schools," says Albert Shanker, president of the American Federation of Teachers. "If students are of the wrong religion or social background, or the school thinks they won't fit in, private schools don't have to take them. The notion of 'parental choice' is a false promise, since the private schools actually do the choosing, not the parents."<sup>5</sup>

Despite vigorous opposition from many educators, support for school choice appears to be growing. In 1994, legislatures in 25 states were considering bills that would establish some type of school choice, according to The Heritage Foundation, a conservative think tank in Washington, D.C.<sup>6</sup> Plus, the governors in 40 states have expressed support for some type of school choice.<sup>7</sup>

The push for school choice has taken on a new vigor since Republican candidates captured many local, state, and national offices in the 1994 elections—including control of the N.C. House. That's because the Republican Party and other conservative groups have propelled most of the efforts to expand school choice, particularly voucher programs. Republican leaders such as former President George Bush have been some of the most visible proponents of school choice at the national level. But school choice encompasses much more than vouchers. So it's important to clarify terms to avoid confusing apples with oranges.

### **School Choice Encompasses a Range of Options**

**I**n its broadest sense, school choice means giving parents—rather than school administrators—the freedom to select which schools chil-

dren attend. But school choice can include a wide range of options. At one extreme is the traditional approach, in which the only way parents can choose a school is to live in or move to the district in which the school is located. At the other extreme is the voucher concept, in which parents can send their children to any school—public, private, or religious—at government expense. Here is a brief description of various school choice options, ranging from the most to the least restrictive:

**Transfers.** Traditionally, most students are assigned to public schools by attendance district. They can attend other schools by moving to another district or by requesting transfers, which some systems grant on a case-by-case basis.

**Magnet Schools.** Students are assigned to public schools by district but can enroll in special "magnet" schools. Although most magnets accept students from all districts within a county or city school system, schools may turn away some students if they receive too many applications. Magnet schools typically specialize in themes—such as the arts, science and technology, academically gifted, or international studies—and often are established to increase racial diversity. For example, Bugg Elementary in Raleigh focuses on the creative arts and science, with specialized instruction in visual arts, music, dance, and the theater.

**Charter Schools.** Teachers or other groups can apply for "charters" to operate schools that

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***"... North Carolina should focus on improving the public schools, and we believe the legislature has taken historic action to do that. For the first time, school systems and individual schools will have the authority they need to meet their obligations to taxpayers and be held accountable for the results. That clear authority and accountability could be undermined if HB 954, or any tax credit/voucher bill, is enacted."***

—CITIZENS FOR PUBLIC SCHOOLS, COALITION OPPOSING PRIVATE-SCHOOL CHOICE, IN AN OPEN LETTER SIGNED BY GOV. JIM HUNT, FORMER GOV. JIM MARTIN, AND OTHERS

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receive government funding, but are largely free from the administrative control of local school systems. As with magnet schools, students can attend charter schools outside their assigned districts, but may be denied admission if the school has too many applicants. An example of a charter school is City Academy of St. Paul, Minn., which was established by teachers to attract high-school dropouts. The school, which has only about 30 students and seven teachers, receives funding from the state as well as local businesses.<sup>8</sup>

**Open Enrollment.** Students can attend any *public* school that is appropriate to their grade level. Administrators make final selections, however, and students may have to settle for second or third choices if schools have more applicants than they can accommodate. Open enrollment can be district-wide or statewide. In district-wide programs, students can attend any public school *within* their local system. For example, elementary and middle-school students in the East Harlem section of New York City can enroll in any public school in the district, with the schools offering a range of different educational approaches.<sup>9</sup> In statewide programs, students can attend any public school *in their state*, with state funding typically shifting from the transfer students' district of residence to the district of the school they attend. In Minnesota, the first state to adopt statewide open enrollment (in 1987), students can attend virtually any public school in the state.<sup>10</sup>

**Private-School Choice.** In addition to public school options, students can attend any *private* school of their choice, with their tuition paid for or supplemented by government-funded vouchers, grants, or tax credits. Vouchers are credit slips that parents give to schools, which can redeem them for cash from the state. Grants are direct payments to parents for tuition costs. Tax credits allow parents to deduct tuition costs from their income taxes or to receive tax refunds. As with other choice options, however, school administrators make final enrollment decisions based on the availability of space. Plus, private schools can deny students who don't meet their educational standards, don't belong to affiliated religious faiths, or cannot afford the full tuition even with government support. Minnesota and Iowa are the only states with statewide private-school choice, allowing parents to deduct educational expenses—which can include

private-school tuition—from their state income taxes.<sup>11</sup>

### **Support for School Choice Rooted in Many Causes**

**T**he push for school choice is rooted in many causes. These include: parental frustrations over the lack of control in selecting public schools; concerns about the quality of education in public schools; violence, drugs, and other crimes in public schools; opposition to busing and other efforts to promote racial integration in public schools; resentment by parents who must pay taxes for public schools while also paying tuition for their children to attend private schools; parents who want a religious education for their children; and desires for stability in rapidly growing communities where students are frequently reassigned to different schools.

"The decade-long struggle to reform American education seems suddenly to hang on a single word: choice," the Carnegie Foundation states in a detailed report on school choice. "Advocates of choice are promoting this option from the nation's most respected political and academic pulpits, driven by the conviction that public schools are in deep trouble and that bold, creative steps are needed to shake up a lethargic education system."<sup>12</sup>

### **Public School Systems Offering More Choices**

**P**ublic school systems have responded to requests for more educational choices in several ways, including student transfers, magnet schools, charter schools, and open enrollment programs. Some people argue that such options are all that's needed to satisfy public demands for more school choice. "These are true parental choices within the public schools," says Bob Berlam, director of government relations for the N.C. School Boards Association. "We now have these choices, and they are developing."

Others, however, contend that public-school choice options serve only a small percentage of the student population. "There is hardly anywhere in North Carolina—other than your urban areas—that has any magnet choices," says Rep. Fern Shubert (R-Union), who adds that transfers and open enrollment programs are

**Table 1. Key Arguments For and Against School Choice**

**For**

1. Parents who send their children to private schools would get something back for taxes they pay for public education, perhaps building more support for education funding.
2. Choice is needed to provide alternatives to the public schools, which some people perceive as unsafe, undisciplined, and academically inferior to private schools.
3. Charter schools and private-school choice options would create competition for the public schools, spurring them to improve.
4. Private-school choice could save public schools the expense of having to build new schools and educate students who transfer to private and religious schools.
5. School choice could build more support and interest in education because parents and students would have more input and control.
6. Parents would not be penalized financially for sending their children to private and religious schools.
7. Private-school choice would provide alternatives for low-income families that are unhappy with public schools but cannot afford tuition at private and religious schools.
8. School choice is the fair thing to do because we live in a free society in which citizens choose their own destiny.

**Against**

1. Choice could starve the public schools of funds as more parents send their children to private schools, perhaps becoming less willing to pay taxes for public education.
2. Surveys show most parents do not want to send their children to other schools, public or private. Studies show that private schools are not significantly better than public schools when socioeconomic factors are taken into account.
3. Public schools can't compete on the same terms because private schools can exclude students who are less intelligent, cause disciplinary problems, or have learning disabilities and other handicaps.
4. The state would incur large expenses in paying tuition for transfer students, as well as for those already enrolled in private schools.
5. School choice could greatly increase school systems' costs for administration and transportation.
6. Using public money to pay for tuition at private schools could violate the guarantee of separation of church and state in the U.S. Constitution, as well as the public purpose clause of the N.C. Constitution.
7. Vouchers and tax credits would not help many low-income families that could not afford private-school tuition, even with the proposed funding supplements.
8. Although we live in a free society, our choices are often limited in how we vote, where we live, the work we do, and other options.

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***“Well, Johnny can dance and Johnny can love  
Johnny can push and Johnny can shove  
Johnny can bang out; Johnny can talk tough  
Johnny can get down and Johnny can throw up—***

***But Johnny can't read  
Summer is over and he's gone to seed  
You know that Johnny can't read  
He never learned nothin' that he'll ever need—***

***Well, is it Teacher's fault? Ob no  
Is it Mommie's fault? Ob no  
Is it Society's fault? Ob no  
Well, is it Johnny's fault? Ob no!”***

—DON HENLEY AND DANNY KORTCHMAR  
IN “JOHNNY CAN'T READ”

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equally rare. “They (school systems) are perfectly capable, yet I doubt that they would unless they would be forced to do so.” In the 1994–95 school year, 8.4 percent (10 of 119) of the state’s local school systems offered some sort of magnet program, according to the N.C. Department of Public Instruction.

Virtually all school systems allow some students to transfer to schools outside their districts of residence, typically on a case-by-case basis. But most systems allow only limited numbers of transfers because of difficulties arranging transportation and allocating space in the schools. For instance, Wake County Public Schools approved about 4,700 transfer requests (not including magnet and year-round schools) for the 1994–95 school year, representing about 6 percent of the total student population in the system.<sup>13</sup>

Magnet schools are the first step toward expanding choice, and many school districts across the state have opened magnet schools—particularly in urban areas. Typically, students from anywhere in a district can attend magnet schools. But magnet programs offer only a limited amount of choice because participating schools may turn away students—usually through lotteries—if they receive too many applications. For

instance, the Wake County public school system received nearly twice as many applications as it had spaces for in its magnet schools for the 1995–96 academic year.<sup>14</sup>

Charter schools are the next step toward school choice. As with magnet programs, students from anywhere in a school district can apply to attend charter schools. And, like magnets, charter schools may focus on a particular theme or style of education. The key distinction with charter schools is that, although they are publicly funded, they are largely free from educational controls set by local school boards and the state.<sup>15</sup> Instead, such schools are run by teachers or other groups—such as private contractors or education colleges—that are granted “charters” by the state or some other enabling body.

“It’s a magnet school on steroids, basically,” says Jim Johnson, a senior analyst with the N.C. General Assembly’s Fiscal Research Division. “The difference is in the flexibility of funding and how they decide to spend their money.”

To keep its charter, a charter school has to meet or exceed predetermined standards of performance for student achievement, attendance, and other measures. In theory, that organizational structure spurs teachers and students to excel because the school’s existence depends on its performance.

“Charter schools are part of a movement for expanded opportunity, in a careful and thoughtful way,” says Joe Nathan, director of the Center for School Change at the University of Minnesota and a leading proponent of charter schools. “These people are accountable for results. There has to be measurable improvement in student achievement. If there isn’t, then the charter school is closed.”

Minnesota was the first state to start a charter schools program, with its enabling legislation adopted in 1991. By January 1995, 11 states had passed laws establishing charter school programs, and those programs had approved charters for 134 schools.<sup>16</sup> (See Table 2 on p. 485.) In addition, more than 20 states were considering charter-school bills during the 1995 legislative session,<sup>17</sup> with at least eight of those states (Alaska, Arkansas, Delaware, Louisiana, New Hampshire, Rhode Island, Texas, and Wyoming) enacting laws by August.<sup>18</sup> “Any list of charter schools should be viewed as out of date within a month of its publication,” Nathan says.<sup>19</sup>

CHARTER SCHOOLS TO LOOK FORWARD TO:



FUNDAMENTALIST SCHOOL



SCHOOL OF WESTERN VALUES



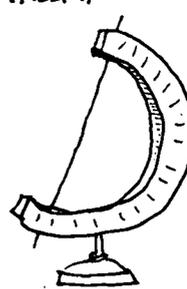
THE AFRO-ACADEMY



THE ISLAMIC JIHAD CENTER



THE MILITIA INSTITUTE



THE PUBLIC SCHOOL

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Philadelphia  
USA

### Charter Schools Coming to North Carolina?

Currently there are no charter schools in North Carolina.<sup>20</sup> But the charter school concept was the only school-choice option to win approval of the N.C. legislature when House Bill 955 was ratified on June 21, 1996. The bill exempts charter schools from most rules and regulations set by local school boards, but such schools must abide by health, safety, and civil rights laws. Charters can be approved by local boards of education, the State Board of Education, and trustees for institutions in the University of North Carolina. Five schools may be chartered in each local school administrative unit.

Not everyone is enamored with charter schools, however. Dudley Flood, executive director of the N.C. Association of School Administrators, says he is concerned about the notion that increased competition would improve public schools. "There is no place in public schools for competition," Flood says. "What's needed in public education is collegiality, and collegiality brings improvement.

They're going to get better because we realize that all the schools belong to all the people." Flood also warns against an over-reliance on testing, which would be used to gauge the progress of charter schools. "I fear that we're going to be testing two days and teaching just one," he says. "If you want a cow to get fat, you feed the cow, not weigh the cow."

Even Joe Nathan, the proponent from Minnesota, cautions that charter school programs—if not implemented carefully—could promote re-segregation and exacerbate disparities between rich and poor schools. "Choice, it seems to us, is a lot like electricity," Nathan says. "It is a very powerful force and it has to be used carefully. If it's not used very carefully, it could be used to increase inequality.

### Open Enrollment Becoming More Widespread in Public Schools

Most of the debate over school choice in North Carolina has centered on charter schools and private-school choice options such

as vouchers and tax credits. But the committee substitute for Rep. Steve Wood's (R-Guilford) Parental Choice in Education bill also would establish limited open enrollment in North Carolina's public schools. Under the bill—which is pending in the House Appropriations Committee—parents could send their children to public schools outside their district of residence if space is available. However, school systems could charge tuition for transfer students. Plus, parents would have to submit written requests at least one year before the beginning of the school year in which the transfer would occur.

Nationwide, the concept of open enrollment or public-school choice appears to have broad support. Several nationwide opinion polls have found that the public supports open enrollment by about a 2-to-1 margin. Likewise, at least 19 states allow some type of open enrollment—although not all of those programs are statewide in effect.<sup>21</sup>

Despite the broad support for open enrollment, such programs have been slow to catch on—even in states that have adopted comprehensive, statewide open enrollment programs. The Carnegie Foundation found in a 1992 study that less than 2 percent of the public school students had transferred from their school districts of residence in each of the seven states with statewide open enrollment programs at that time. (See Table 3 on p. 487.) Likewise, the Carnegie study found that most parents with children in public schools (70 percent of those surveyed) had no desire to send their children to another school, public or private.<sup>22</sup> In explaining this apparent contradiction, the Carnegie study concluded:

“In summary, the vast majority of public school parents appear to be quite satisfied with the education their children are receiving. Most are not inclined to move their children to a different school. And in states where choice has been introduced, participation rates are very low. The general public, on the other hand, seems to find the idea of choice appealing. But when asked to choose between local schools and a market approach to education, Americans overwhelmingly support the neighborhood school arrangement. None of this speaks to the merits or demerits of choice. What it does suggest is that the push for school

choice does not appear to be a groundswell from parents.”<sup>23</sup>

Nevertheless, *district-wide* open enrollment has been credited with helping to revitalize public schools in areas such as Cambridge, Mass.; East Harlem, N.Y.; and Montclair, N.J. “These districts are routinely cited as evidence that school choice can indeed deliver excellence to all, including children in the most challenging environments,” the Carnegie study says. “Even education leaders who generally are skeptical of choice’s potential have hailed these places for their efforts.”<sup>24</sup> In all three of these districts, open enrollment programs have led to increased educational opportunities for students, better parental involvement, and improved racial harmony, the study concludes. But the programs have had less certain effects on academic performance, while increasing educational costs—particularly for transportation.<sup>25</sup>

The jury is still out on the merits of *state-wide* open-enrollment programs. Although various polls have found strong support for the concept of open enrollment, existing statewide programs have encountered problems with providing transportation to transfer students, supplying adequate information for parents to compare schools, and assuring equitable funding and racial balance among school districts.<sup>26</sup> Such problems undoubtedly have helped account for the low participation rate in areas with statewide open enrollment programs. (See Table 3 on p. 487.) Even in Minnesota, which began its statewide open enrollment in 1987, only 1.8 percent of the students were participating in the program by 1992.<sup>27</sup>

Transportation has become an issue with open-enrollment programs because many parents cannot afford to send their children to other schools unless bus rides are provided. Plus, bus-ing students across school district lines can greatly increase transportation costs, at a time when many governments are trying to find ways to cut expenses. For instance, the Michigan legislature postponed plans for a statewide open enrollment program after studies estimated it would cost an additional \$20 million in state transportation funding.<sup>28</sup> Thus, in most states with comprehensive open enrollment programs, parents and local school districts are responsible for transportation.

Parents also are largely on their own when it comes to comparing and evaluating different

schools. The Carnegie study found that, except for Minnesota, states with comprehensive open enrollment programs provide parents with little reliable information for assessing school options.<sup>29</sup>

But perhaps the most serious shortcoming of statewide open enrollment programs concerns the allocation of educational resources. Various studies have found that open enrollment pro-

grams can exacerbate funding inequities among school districts because students tend to transfer from poorer schools with less resources to wealthier schools with more equipment.<sup>30</sup> Such inequities can become even worse with open enrollment programs as state funding generally transfers with the student. Thus, poor schools end up with even less money, making it harder for them to improve.

**Table 2. Charter Schools Authorized and Approved in the States, January 1995.**

State <sup>1</sup>	Year Law Passed	Number of Charters Authorized by Law	Number of Charter Schools Approved as of January 1995
1. Arizona	1994	No limit <sup>2</sup>	3
2. California	1992	100	73
3. Colorado	1993	50	16
4. Georgia	1993	No limit	0
5. Hawaii	1994	25	1
6. Kansas	1994	15	0
7. Massachusetts	1993	25	14
8. Michigan	1993	No limit <sup>3</sup>	8
9. Minnesota	1991	35	14
10. New Mexico	1993	5	4
11. North Carolina	1996	Limited <sup>4</sup>	N/A
12. Wisconsin	1993	20	1
<b>TOTAL</b>	—	—	<b>134</b>

**FOOTNOTES**

<sup>1</sup> Table does not include states that adopted charter school bills during the 1995 legislative session. By August 1995, charter school laws had been enacted in at least eight additional states—Alaska, Arkansas, Delaware, Louisiana, New Hampshire, Rhode Island, Texas, and Wyoming. See Drew Lindsay, “In States, G.O.P. Stymied in Push to Revamp Policy,” *Education Week*, Vol. XIV, No. 39 (June 21, 1995), p. 14.

<sup>2</sup> Local school districts may approve any number of charters in Arizona, but the state board of education and state board for charter schools may sponsor no more than 25 schools a year.

<sup>3</sup> State universities may approve no more than 75 charter schools in Michigan, but the state puts no limit on the number of charters sponsored by other institutions.

<sup>4</sup> Five schools may be chartered in each local school administrative unit.

*Source:* U.S. General Accounting Office, “Charter Schools: New Model for Public Schools Provides Opportunities and Challenges,” Report to Congress, GAO/HEHS-95-42, Washington, D.C., January 1995, p. 6.

Such inequities also can magnify racial differences among school districts. For instance, hundreds of white students in Des Moines, Iowa, transferred from inner-city to suburban schools after the state began an open enrollment program. As a result, the Des Moines city school system was expected to lose more than \$1 million a year in state funding, even though the system had district-wide open enrollment with a broad range of educational choices.<sup>31</sup> Such problems led the Carnegie Foundation to conclude that states should *not* start comprehensive open enrollment programs until they have established measures to prevent inequities.

“By any standard of fairness, then, statewide [open enrollment] programs demand a level playing field,” the Carnegie study concluded. “At a minimum, this means adequate transportation for all students; accessible, reliable information for parents and students about the plan itself and about the quality of schools and their programs; and serious attention to reducing the disparities between rich and poor districts. By these yardsticks, we conclude that responsible and effective statewide school choice does not exist in America today.”<sup>32</sup>

### Private-School Choice Still Largely Untested

Although much of the debate over school choice has focused on vouchers, there are few examples of private-school choice programs in the United States. None of the states currently have statewide programs providing vouchers or other direct financial support for parents who send their children to private schools. However, several states provide limited or indirect support for private-school students:

- ▣ Iowa allows parents who send their children to private schools to deduct from their state income taxes up to \$1,000 per child, with a limit of \$4,000 per family.
- ▣ Minnesota allows parents to deduct from their income taxes up to \$1,000 per year for school-related expenses, which can include private-school tuition, as well as transportation, books, supplies, and required clothing.
- ▣ Vermont lets small towns that have no nearby public schools pay the tuition for residents who send their children to nearby private schools, but that tuition cannot be paid with state funds.



Karen Tam

**Table 3. Student Participation Rates in Comprehensive, Statewide Open Enrollment Programs, 1992.**

State	Number of Students in Open Enrollment	Percent of Total in Public Schools
1. Arkansas	1,667	0.4%
2. Idaho	2,580	1.2%
3. Iowa	5,227	1.0%
4. Massachusetts	1,100	0.1%
5. Minnesota	13,000	1.8%
6. Nebraska	3,300	1.2%
7. Utah	5,000	1.1%

*Source:* Ernest L. Boyer, ed., *School Choice*, The Carnegie Foundation for the Advancement of Teaching, Princeton, N.J., 1992, p. 12.

- Wisconsin has the nation's only state-sponsored voucher plan, but that program is limited to fewer than 1,000 families in Milwaukee. That plan provides vouchers worth about \$3,000 a year to students from low-income families who attend private, *non-religious* schools of their choice. In July, the Wisconsin legislation expanded the program to include religious schools—even though a federal court had ruled in March 1995 that the voucher program could not apply to religious schools without violating the constitutional First Amendment guarantee of separation between church and state.<sup>33</sup> In addition, a recent survey of Wisconsin residents found that a solid majority (56 percent) opposed expanding the voucher program to religious schools.<sup>34</sup>
- Puerto Rico adopted a voucher program in 1993 that provided \$1,500 grants that low-income families could use to send their children to any public or private school, including religious institutions. But in November 1994, the Puerto Rico Supreme Court struck down, on constitutional grounds, portions of the law dealing with private-school vouchers.<sup>35</sup>

Despite the lack of any statewide, comprehensive voucher programs in the United States, such proposals have come up for votes in recent years in a number of state legislatures and referendums. But so far, at least, no statewide voucher proposals have been enacted into law. During the past five years, for instance, voters in three states have turned down ballot initiatives that would have established statewide voucher systems:

- In 1990, Oregon voters defeated by a 2-to-1 margin a ballot proposal called "Measure 11" that would have given parents vouchers worth \$1,200 a year to pay for their children's education in public, private, or home schools.<sup>36</sup>
- In 1992, Colorado voters defeated by a 62-to-37-percent margin a ballot initiative called "Choice School Reform" that would have provided vouchers worth up to \$2,500 that parents could use to send their children to public, private, or religious schools.<sup>37</sup>
- In 1993, California voters defeated by a 70-to-30-percent margin a ballot initiative called "Proposition 174" that would have given parents vouchers worth \$2,600 a year to pay

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*“Possession of a voucher doesn’t guarantee anyone a place in private schools. If students are of the wrong religion or social background, or the school thinks they won’t fit in, private schools don’t have to take them. The notion of ‘parental choice’ is a false promise, since the private schools actually do the choosing, not the parents.”*

—ALBERT SHANKER,  
PRESIDENT, AMERICAN FEDERATION OF TEACHERS

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for their children’s education at public, private, or religious schools.<sup>38</sup>

Voucher proposals have fared no better in state legislatures. Bills that would establish school voucher systems were introduced in at least 30 states from 1990 to 1994, but none of those bills were enacted during that period, according to The Heritage Foundation.<sup>39</sup> However, many observers predict that vouchers and other private-school choice options will fare much better in state legislatures in the wake of the Republican sweep at the polls in 1994.

“I do think there is a climate change of sorts,” says Chester E. Finn Jr., a senior fellow at the Hudson Institute and former assistant secretary of education in the Reagan Administration.<sup>40</sup> Nevertheless, only two states had enacted voucher legislation as of August 1995—even though more than 20 states were considering voucher bills in 1995.<sup>41</sup> In addition to the Wisconsin bill that expanded the Milwaukee voucher program, the Ohio legislature enacted a bill that would provide vouchers worth up to \$2,500 to low-income families in the Cleveland school district.<sup>42</sup>

### **N.C. Legislature Considering Several Private-School Choice Bills**

**N**orth Carolina is one of the states that considered private-school choice legislation in 1995, with three competing bills introduced by early May. All three bills would have provided

financial support to parents who send their children to private and religious schools. The primary difference between the bills is in how they would reimburse parents for tuition costs:

- House Bill 190, introduced by Rep. Ken Miller (R-Alamance), would provide tax credits worth \$3,100 for students enrolled in private schools and \$2,480 for students taught at home.
- House Bill 781, introduced by Rep. Larry Linney (R-Buncombe), would provide tuition grants worth about \$2,050 for students from low-income families and \$1,400 for others.
- House Bill 954, introduced by Rep. Steve Wood (R-Guilford), the chair of the House Education Committee, would provide tax credits worth \$3,100 for private schools and \$2,480 for home schools (the same as H.B. 190), plus vouchers worth \$1,500 per student.

In June, the House Finance Committee passed a committee substitute for H.B. 954 that dropped the voucher proposal and decreased the tax credits. Under the substitute bill, parents who send their children to private or religious schools would be eligible for refundable tax credits worth \$200 in 1996 and \$1,000 in 1997. The bill also would allow open enrollment in North Carolina public schools, while providing the same tax credits to parents who pay tuition to send their children to public schools outside their districts of residence.

Rep. Wood says he anticipated tough going in the legislature, as well as stiff opposition from groups representing teachers and school administrators. “This is benchmark legislation,” Wood says. “They [critics] are going to fight us all the way. But we intend to engage them fully.”

Wood wasn’t overestimating the opposition. Citizens for Public Schools, the bipartisan coalition that released the letter in June opposing the tax-credit bill, is made up of 28 organizations representing more than 300,000 citizens in North Carolina. Those groups include most of the major players in the state’s education establishment, as well as many business organizations, including: the N.C. Association of Chamber of Commerce Executives; the N.C. Business Committee for Education; N.C. Citizens for Business and Industry; the Public School Forum of N.C.; the State Board of Education; the State Depart-

ment of Public Instruction; the N.C. Congress of Parents and Teachers (PTA); the N.C. Association of Educators; the N.C. School Boards Association; the American Civil Liberties Union of N.C.; and the N.C. Child Advocacy Institute.

Such concerns were apparent at a public hearing the House Education Committee conducted on May 4, 1995, when a number of those groups voiced strong opposition to vouchers and other private-school choice options. "Vouchers, tuition grants, and tax credits would drain already precious funds away from public schools and divert them to private schools," said Helen Heavner, a board member with the N.C. Association of Educators. Another speaker, Sandy Carmany, president of the N.C. PTA, said: "How would these schools, under private control, be accountable to me, the taxpayer? We would rather see our money spent on improving the public schools."

Nevertheless, hundreds of people showed up at the public hearing to voice their support for private-school choice. Those proponents included a number of parents and teachers representing African-American churches and private schools.<sup>43</sup> One of those speakers, Margaret Rose Murray, says many African Americans are turning to private schools because the public schools have failed to provide a safe, disciplined educational environment for inner-city children.

"There is a need for choice," says Murray, the director of Vital Link, a private school with branches in Raleigh and Durham. "You can see what is happening in the public schools, compared to the private schools. . . . We don't have to worry about discipline because it's taught as part of the curriculum."

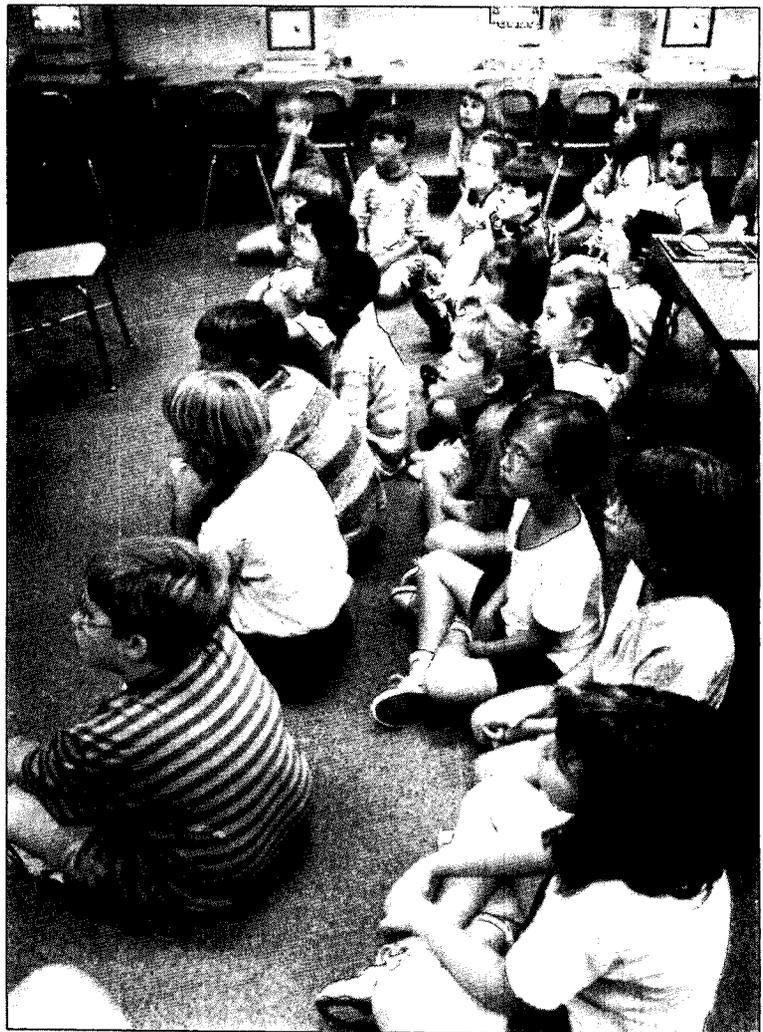
## Conclusion

At the simplest level, school choice seems as American as apple pie. After all, we are free to choose our leaders, our jobs, the communities we live in, and the products we buy. But freedom of choice, like most liberties, is not limitless. In reality, choice is merely the opportunity to select from a limited set of options. We can't vote for anyone we want, but usually must choose between the two candidates nominated by the Democratic and Republican parties. We're free to apply for any job, but our chances for success are limited by such factors as our education, experience, connections, inherent drive,

and intelligence. We can live anywhere we want, as long as we can qualify for a loan and afford the house payments. We can buy any product we choose, as long as we can find it in nearby stores at a price we can afford.

In that sense, it could be argued that most Americans already have school choice. They can choose to enroll their children in any private school, if they can afford the tuition and meet the standards. They can choose to send their children to virtually any public school, if they can move to a neighborhood in its designated district.

The reality, however, is that many people are not willing or able to pay the tuition at private schools. Likewise, many people cannot relocate in order to attend the public school of their choice. Thus, what the school choice debate is about is *lowering or easing* the barriers that prevent or discourage some families from attending the school of their choice.



Karen Tam

## FOOTNOTES

<sup>1</sup> In the 1994-95 fiscal year, \$4.132 billion of the total \$16.589 billion state budget went to support public education (not including community colleges and the university system), according to the State Budget Office. This \$16.589 billion budget includes the General Fund, Highway Fund, and federal funds received by the state for appropriation by the General Assembly.

<sup>2</sup> Rep. Linney made his remarks at a news conference concerning the introduction of his bill (H.B. 781) on April 4, 1995, at the Legislative Building in Raleigh.

<sup>3</sup> Gov. Jim Hunt's office released the letter on June 19, 1995. In addition to Gov. Hunt and former Gov. Jim Martin, it was signed by: Jay Robinson, chair of the State Board of Education; Bob Etheridge, State Superintendent of Public Instruction; Howard Haworth, former chair of the State Board of Education; William R. Friday of the Kenan Charitable Trust; and Bill Lee, Chairman Emeritus of Duke Power Co.

<sup>4</sup> Citizens for Public Schools estimated the cost of the bill by multiplying the proposed tax credit (\$1,000) times the projected private-school enrollment in 1997 (77,000). Other analysts, however, note that this cost estimate does not take into account the savings that would result from public-school students who transferred to private schools, thus saving the state \$3,565 per student allotment. The N.C. Budget and Tax Center, a private group in Raleigh, estimates that the tax credit would cost the state more money, but not as much as projected by Citizens for Public Schools. See Dan Gerlach, "Is This the Time for Education Tax Credits and Other Tax Relief Proposals?" *BTC Reports*, Vol. 1, No. 8 (June 1995). "For the General Fund to break even over the next four years, at least five percent of the children who would otherwise be attending public schools (or approximately 60,000 students) would have to transfer to nonpublic schools," Gerlach writes. "It is unlikely that the State's nonpublic schools would have either the operational or facility capacity to accommodate such an increase in students."

<sup>5</sup> Albert Shanker, "Vouchers: The Devil is in the Details," advertisement in *State Legislatures* magazine, National Conference of State Legislatures, Denver, Colo., January 1995, p. 26.

<sup>6</sup> Allyson Tucker and William Lauber, *School Choice Programs: What's Happening in the States*, The Heritage Foundation, Washington, D.C., 1995, p. 2. In 1993, 33 states were considering some type of school-choice legislation, according to the 1994 edition of Tucker and Lauber's report.

<sup>7</sup> *Ibid.*

<sup>8</sup> Kathleen Sylvester, "The Charter School Experiment," *Governing* magazine, Washington, D.C., June 1993, p. 39.

<sup>9</sup> Ernest L. Boyer, ed., *School Choice*, The Carnegie Foundation for the Advancement of Teaching, Princeton, N.J., 1992, pp. 38-46. Also, David Kirp, "What School Choice Really Means," *The Atlantic Monthly*, November 1992, pp. 119-132.

<sup>10</sup> *Ibid.*, pp. 47-55.

<sup>11</sup> *Ibid.*, pp. 99-112. Also, Tucker and Lauber, note 7 above, pp. 9-55.

<sup>12</sup> *Ibid.*, p. 1.

<sup>13</sup> Personal communication with Patrick Kinlaw, director of magnet programs for Wake County Public Schools, June 7, 1995.

<sup>14</sup> Todd Silberman, "Wake magnets turn away 3,000," *The News & Observer*, Raleigh, N.C., May 2, 1995, p. 3B.

<sup>15</sup> Although free from most educational regulations dealing with matters such as curricula, instruction, budgets, and personnel policies, charter schools generally must still abide by state and local health, safety, and civil rights laws.

<sup>16</sup> U.S. General Accounting Office, "Charter Schools: New Model for Public Schools Provides Opportunities and

Challenges," Report to Congress, GAO/HEHS-95-42, January 1995, p. 6.

<sup>17</sup> Mark Walsh, "12 States Join Move To Pass Charter Laws," *Education Week*, Vol. XIV, No. 33 (May 10, 1995), p. 1. Walsh reported that 20 states were considering charter-school bills, but that number did not include North Carolina.

<sup>18</sup> Drew Lindsay, "In States, G.O.P. Stymied in Push To Revamp Policy," *Education Week*, Vol. XIV, No. 39 (June 21, 1995), p. 14.

<sup>19</sup> Joe Nathan, "Charter Public Schools: A Brief History and Preliminary Lessons," report from the Center for School Change, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota, Minneapolis, Minn., March 1995, p. 8.

<sup>20</sup> According to an editorial in the Greensboro, N.C., *News & Record* (April 18, 1995), p. A6, the charter school concept is not unprecedented in North Carolina: "The Curry School that was operated in Greensboro for many years by the old Women's College (now UNC-G) was, in effect, a charter school. It is fondly remembered as an outpost of first-rate education."

<sup>21</sup> Tucker and Lauber, note 6 above, p. 7.

<sup>22</sup> Boyer, note 9 above, pp. 9-12.

<sup>23</sup> *Ibid.*, p. 12.

<sup>24</sup> *Ibid.*, p. 29.

<sup>25</sup> *Ibid.*, pp. 29-46.

<sup>26</sup> For more detailed discussions of pros and cons associated with statewide open enrollment programs, see Boyer, pp. 47-62. Also see Kathleen Sylvester, "School Choice And Reality," *Governing* magazine, Washington, D.C., June 1993, pp. 36-41; and John F. Witte, *Choice in American Education*, report from the La Follette Institute of Public Affairs, University of Wisconsin, Madison, Wis., 1990, 28 pp.

<sup>27</sup> Boyer, note 9 above, p. 49.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, p. 51.

<sup>30</sup> *Ibid.*, pp. 52-60; also, Sylvester, note 26 above, pp. 38-40; and Witte, note 26 above, p. 14-15.

<sup>31</sup> Sylvester, note 26 above, p. 38.

<sup>32</sup> Boyer, note 9 above, p. 62.

<sup>33</sup> *Miller v. Benson*, 878 F. Supp. 1209 (E.D. Wis. 1995). See Peter Schmidt, "Religious Schools Cannot Join Wis. Voucher Plan, Judge Rules," *Education Week*, Vol. XIV, No. 27 (March 29, 1995), p. 16. Also see Drew Lindsay, "Wisconsin, Ohio Back Vouchers for Religious Schools," *Education Week*, Vol. XIV, No. 40 (July 12, 1995), p. 1.

<sup>34</sup> "Voucher Plan Opposed," *Education Week*, Vol. XIV, No. 32 (May 3, 1995), p. 18. The survey of 410 adults by Wisconsin Public Radio found that 56 percent opposed expanding the Milwaukee voucher program to religious schools, 38 percent favored the proposal, and 6 percent were undecided.

<sup>35</sup> *Asociación de Maestros de Puerto Rico [Teachers Association of Puerto Rico] v. Torres*. Also see Mark Walsh, "Court Strikes Down Puerto Rico's Private-School Voucher Program," *Education Week*, Vol. XIV, No. 15 (Dec. 14, 1994), p. 17.

<sup>36</sup> Tucker and Lauber, note 6 above, p. 44.

<sup>37</sup> *Ibid.*, p. 14.

<sup>38</sup> *Ibid.*, pp. 12-13.

<sup>39</sup> *Ibid.*, pp. 9-55.

<sup>40</sup> Mark Walsh, "Prospects Improve for Voucher Proposals in Congress," *Education Week*, Vol. XIV, No. 28 (April 5, 1995), pp. 25 and 27.

<sup>41</sup> Lindsay, note 18 above, p. 14.

<sup>42</sup> Lindsay, note 33 above, pp. 1 and 14.

<sup>43</sup> Tim Simmons, "Black churches push for school vouchers," *The News & Observer*, Raleigh, N.C., May 7, 1995, p. 1B.

# Work Force Preparedness:

## Training 21st Century Workers

BY JACK BETTS

*This article on work force preparedness examines North Carolina's projected work force needs in the early 21st Century and whether the state has adapted its policies to help fulfill those needs.*

**O**n the eve of the 21st century, North Carolina's work force of the future is in tatters. Consider:

- Workers entering the work force in the year 2000 are students in North Carolina's public schools right now, supposedly enjoying the benefits of the state's much-heralded Basic Education Plan (BEP). But legislators have failed to fully fund the BEP. Will these schoolchildren be any more prepared than the class of 1995, whose SAT score averages were among the worst in the country?
- North Carolina will lose 75,000 textile jobs in this decade alone, and as many as 500,000 in textiles and furniture over the next 20 years, throwing a huge number of loyal workers with a strong work ethic into the job market.<sup>1</sup> They won't be able to find comparable jobs, because they won't be trained to do the sort of work that the new work place will demand. For them, it may be menial labor or service work, or the dole. Will the state shift policy gears to provide the sort of intensive retraining necessary to keep these workers on the production line and out of the welfare line?

- And what about those tens of thousands of North Carolinians who should be in the work force right now but are not because they have no marketable job skills—and may not even be able to read and write? North Carolina has more illiterate adults than the nation of Japan, notes job development expert George Autry, yet Japan has 95 million more adults than does North Carolina. The state's literacy and adult job training programs are not geared to recruit these potential workers, school them to the point that they can handle the work of the future, and turn them into productive citizens.<sup>2</sup> Will the General Assembly fund state programs that emphasize training and retraining the state's work force to handle what's coming? Will the state take note of these and similar demographic trends and consider their implications for public policy?

So far, the answers to these questions are a resounding no, filed in triplicate. That's what worries policymakers like Bob Scott and a number of other North Carolinians who are preach-

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Scott Hoffman

*Five North Carolina governors gather on June 11, 1990 to promote using the community college system to prepare North Carolina's future work force. Shown here, listening to Sherwood Smith, chairman of the Commission on the Future of the North Carolina Community College System, are, from left, James B. Hunt Jr., James E. Holshouser Jr., Robert W. Scott, Terry Sanford, and James G. Martin.*

ing a sermon on the unbreakable link between education and economic development in this state. "Do you realize that if present trends continue unabated—and our present level of illiteracy holds—that within the next 10 years we as a state will have in essence educationally and economically disenfranchised fully a third of our state's adults?" asks Scott, governor from 1969–1973 and former president of the N.C. Community College system.<sup>3</sup>

George Autry, president of MDC, a firm specializing in economic development and work force preparedness in the South, puts it this way: "There is a declining pool of new entrants into the work force; and an increasing proportion of that declining pool is poor, it is minority, it is under-educated, it is immigrant. These are the people we are going to look to to pay for our national debt service, our bills for national defense, and our Social Security benefits."<sup>4</sup>

And Governor Jim Hunt, a prominent national advocate for educational reform, adds this view from his work as a member of the Commission on the Skills of the American Workforce: "We found that most firms in this country are competing in the international marketplace not

by development of workers' skills, but by cutting costs and using less-skilled people to do the job," says Hunt. "There are two ways to compete in this economy. One is to take the work force and make it more skilled, more versatile, and more valuable. Or you can compete by cutting costs, and getting fewer skilled workers. Those employers are not thinking for the long-term. And they know it. If you press them, they will admit this can't go on forever."

#### **New Strategies Needed for Education and Training**

If North Carolina's economy is to remain competitive in the future, work force experts say, it will require a new sense of cooperation among the states, the federal government, local governments, school units, and businesses. These often-competing factions should develop plans and programs for the future economy—plans that include new strategies for economic development and new strategies for education and job training. Consider the findings of Donald Tomaskovic-

Devey, associate professor of sociology at N.C. State University. In a spring 1990 report on human resources and economic development, Tomaskovic-Devey said, "With the internationalization of economic activity, North Carolina is no longer competing with Massachusetts or Ohio for branch plants, but with Mexico, Brazil, and the Philippines. Wages are low in North Carolina, but not nearly low enough to compete with the poverty of the third world. If North Carolina is to enjoy any comparative advantage in the national and international economy in the 21st century, the state must give a very high priority to the skills and basic training of its work force."<sup>5</sup>

That means the state must "redirect its economic development strategy from one based on surplus low-skilled labor to one that nurtures the skills of the local work force," adds Tomaskovic-Devey. "The low-skill-low-wage development strategy was probably appropriate for the transition from an agricultural to an industrial economy," but that transition took place long ago. The problem is that "future development cannot be based on surplus labor [that is] leaving agriculture and supplying low-wage-low-skill labor to branch plants of national and international firms."

That system simply won't work in the new economy of the 21st century. Today, the unemployment rate is relatively low, and the U.S. Department of Labor is predicting a huge shortage of workers by the year 2000.<sup>6</sup> The department predicts that the state will create 760,000 new jobs by the beginning of the new millennium, but that only 550,000 new workers will be available to fill them. That means that as many as 210,000 new jobs could go unfilled because there won't be enough North Carolinians—or immigrants from outside the state—with sufficient education and skills to handle those jobs. In other words, it's not that there will be a lack of people. But because of the lack of salable job skills, the lack of training, and especially the lack of retraining for formerly employed workers, there will be a large number of jobs without workers to fill them.

## A Declining Work Force

**T**here are several reasons for the decline in the size of the work force compared to past growth. For one thing, the population is grow-

ing only about a third as fast as it did in the 1970s, when the work force grew 3 percent a year thanks to rapid population growth from 1945–65.<sup>7</sup> Over the next 15 years, growth will increase only at 1 percent a year, and thus there will be fewer new workers available to fill jobs than there were during the 1970s and into the early 1980s.

Of the new workers available to fill the new jobs, they will be different demographically than they have been in the entire postwar period. Increasingly, workers "are women, minorities and non-English speakers, traditionally less-skilled members of the labor force," writes Sheron K. Morgan, director of the Office of Policy and Planning in the N.C. Department of Administration.<sup>8</sup> The new work force may also attract older and more highly-skilled workers back into the labor force as well as a number of immigrants who may already have needed work skills. But these new workers won't be sufficient to fill all the jobs.

Janice Kennedy-Sloan, vice president for student development services of the Department of Community Colleges, says it's time to focus on the needs of the potential work force as well as the needs of employers. "We know what business wants and needs," she says. "What do the folks need who could fill the jobs?"

For these reasons, on June 11, 1990, the state's four living former governors (Terry Sanford, Bob Scott, Jim Holshouser, and Jim Hunt) and Gov. Jim Martin made a rare joint public appearance in Raleigh, ostensibly to promote the state's 58-campus community college system but really to hold a camp meeting about using the community college system to prepare North Carolina's workers to meet the economic job demands of the future. When his time came in the pulpit, Hunt related a conversation with a high-ranking official at IBM Corporation, who told Hunt that his plants had ceased hiring workers who only had completed high school and perhaps one or two courses at the community college level. "He told me that his plants were hiring only those who have an associate's degree or better," Hunt told the crowd.

The meaning was as plain as day: In the factories of the future, at least two years of college would be required just to get in the door, and the state had better redraft its educational and economic development policies to plan for the future.

In an interview, Hunt expands on the critical need for worker training. Few employers, Hunt says, give much credence to a high school diploma these days. "About 90 percent of the employers we talked to said the high school diploma made no difference to them. They counted it only as an indication that the kid would stick it out, as a measure of their potential work ethic." North Carolina's active work force, on average, has completed 12.3 years of school—below the national average of 12.6 years of school. But by the year 2000, most new jobs will require much more education. Four out of five new jobs will require about 13.5 years of schooling.

Tomaskovic-Devey also found in his survey that North Carolina natives have less schooling than workers who move here from other states, and that of 306 North Carolina employers surveyed, most value the skills of native North

Carolinians less than those of immigrants. Employers also find that the largest barrier to future business expansion is the shortage of skilled labor, and that a key problem for employers is finding workers who can read adequately.<sup>9</sup>

To Scott, the obvious answer lies in beefing up funding for community colleges without doing damage to the universities or to the public schools. The state's community colleges "represent the best—if not the only—hope this state has to forestall the economic equivalent of a Hurricane Hugo" through the education system. Community colleges, in Scott's view, are "going to have to do it—educate the undereducated, train and retrain the low- or semi-skilled, retool the work forces of the business community in much the same way as a manufacturing company retools its machines to do a new job."

And to do that, the community colleges need money. The Commission on the Future of the North Carolina Community College System has recommended boosting spending on the system by \$135 million over current operating funds (the department's budget in 1995–96 was \$436 million).<sup>10</sup> But in this era of fiscal conservatism, dollars are hard to come by. "The bottom line is being reached in the community college system," says Scott. "And the state is about to pay a price it can ill afford to pay . . . and from which it will take years to recover." Lieutenant Governor Dennis Wicker says part of the problem is that legislators do not yet realize the importance of work force preparedness issues. "You don't hear as much about it inside the beltline as you do outside the beltline," he says. "But pretty soon our community colleges are going to be in the same shape our public schools are in, and the reason is that they don't have the money they need."

### **Lack of Leadership Part of the Problem**

Tomaskovic-Devey, whose study has stirred debate not only over worker preparedness but also over the state's economic development policies, says, "The business community is taking this much more seriously than do legislators." His study noted that 80.4 percent of 306 N.C. employers in a survey were so concerned about preparedness issues and related questions involv-

### **Characteristics of North Carolina Job Growth and Work Force Growth**

#### **Job Growth**

# of new jobs available by 2000:	760,000
# of new workers available by 2000:	550,000
# of new jobs that could go unfilled:	210,000

#### **Reasons for Shortfall in Work Force**

% Annual growth in work force 1990–2005:	1%
% Annual growth in work force 1970–1980:	3%

#### **Who Will Fill New Jobs in 2000?**

- Women who have not previously worked
- Minorities seeking to move up in work force
- Hispanics and other non-English-speaking workers
- Immigrants, especially those with work skills
- Older workers rejoining the work force

*Source:* U.S. Department of Labor; N.C. Department of Administration; N.C. Department of Commerce.

ing the quality of life in North Carolina that they were willing to support higher taxes if necessary. That finding was backed up in dramatic fashion during the 1990 short session of the legislature, when the state's most powerful and well-known business lobby joined in a unusual call for higher taxes. North Carolina Citizens for Business and Industry, a statewide chamber of commerce, joined with four other groups—the Public School Forum of North Carolina, the N.C. Association of County Commissioners, the N.C. School Boards Association, and the N.C. League of Municipalities—to urge the General Assembly to take whatever steps were necessary to support “initiatives aimed at strengthening the economic competitiveness of our state,” including the state’s educational programs. “While it is not simple to pinpoint an easy solution to the revenue problem, all of our organizations believe that some form of increased tax revenue should be considered and acted on in this session. That is especially true if the alternative is draconian cuts in ongoing initiatives or passing along the state’s financial crisis to local governments,” the five groups said in a joint statement.

But not every business group agreed with the call for higher taxes. The Raleigh lobbyist for the National Federation of Independent Business opposed the call, saying that small businesses were more concerned about tax increases than they were about funding for education or other programs. “Our tax load is more than heavy enough. We simply can’t afford full BEP funding at this time,” Susan Valauri said in a June 28, 1990 press release. Legislators must have agreed, for they chose to cut the rate of budget increases rather than raise revenues.

At the same time that the legislature was avoiding increases in taxes, *The New York Times* was weighing in with one of its periodic looks at problems in North Carolina, particularly in educational achievements.<sup>11</sup> The *Times* noted that North Carolina “symbolizes more than any other state the contradictions of a region increasingly split between metropolitan areas that prospered in the Sun Belt boom of the last two decades and rural areas left behind.” Politicians predictably objected to the article, some of them calling it “a hatchet job,” *The Charlotte Observer* noted editorially. Yet, the *Observer* went on, the *Times* was correct in pointing out how poorly the state was faring—and why. “This isn’t news,” noted the *Observer*. “But what has given

it new urgency is the realization that low levels of education will no longer attract even the industries that have placed us on the bottom rungs of the nation’s wage scale. Even the consultants touting our affordable wages to industry warn about the lack of a skilled work force. If you want to know what business groups and chambers of commerce really think, look at their complaints about the quality of workers they’ve been getting from the state’s high schools.”<sup>12</sup>

Michael Vasu, professor of political science and public administration at N.C. State, worries that the state is not providing the political leadership the issue needs. “Someone really does need to pay attention to this,” says Vasu. “State government is not hearing what the business community wants. We need a different kind of work force from what we’re getting from traditional vocational education programs. We need a larger concept of vocational education than just bricklayers and carpenters. We need people who can do decimal fractions, who can handle digital readouts. We need a whole new conceptualization of work force training.”

Vasu and Andy Frazier, director of former Governor Martin’s Commission on Workforce Preparedness, examined business needs and weighed them in relation to what the public schools are producing. More than half the state’s employers are dissatisfied with the schools, Vasu and Frazier found, and they say the evidence is clear that North Carolina’s future “will hinge in important ways upon all students in the educational system; however, much of our economic future will depend upon the forgotten half of our student population [who do not pursue post-secondary education]. These will be the ‘human capital’ upon whom we base a major portion of our economic hopes. But even if we are successful in reforming elementary and secondary education, public school reform only solves a small part of the immediate problem with our work force”—the fact that most of our workers for the next 15 years already are out of school and in the job market. Too many of these workers “are functionally illiterate by today’s standards,” and many more may be considered functionally illiterate in the future. The best answer may be a new set of strategies that encompasses “a continuum of education and training services that begin in early childhood and continue throughout an adult’s working life,” Vasu and Frazier say.<sup>13</sup>

**The Four C's—  
Critical Thinking, Communications,  
Collaboration, and Computer Literacy**

**W**orkers of the 21st century not only need to be literate and proficient in reading, writing, and arithmetic, they need to be critical thinkers, able communicators, team players, and computer literate. Work force preparedness must be a priority for North Carolina's political leaders if our workers are expected to acquire such advance skills.

North Carolina cannot afford for work force preparedness to be an issue driven by partisan politics. Realizing the importance of work force training to the future of our state, in March 1993, Governor Hunt continued Governor Martin's Commission on Workforce Preparedness.<sup>14</sup> The Commission is a 40-member board—including private sectors leaders, state government employees responsible for work force preparedness, representatives of organized labor, and heads of community and educational agencies—charged with the task of establishing and guiding “a world class work force development system for North Carolina.” In January 1995, the Commission released its strategic plan and recommendations for 1995–97, “Building a High Performance Workforce.”

The challenge of training and retraining our

workers is not a new one for North Carolina. Our agrarian work force once dependent on tobacco and cotton was retrained in the 20th century to meet the needs of the manufacturing sector dependent on textile production. “The mismatch this time,” the Commission reports says, “is the widening gap between the technological requirements in the workplace and the education and training of our people. It comes at a point in history when the quality of the human resource has become the most important factor in economic development.”

The role of the community college system in the training and retraining of our work force cannot be underestimated. This is evident in the Commission's report and in the recent changes to the mission statement of the community college system. The core of the mission is economic development and work force preparation. Thus, the infrastructure of the state's educational system is essential to North Carolina's ability to meet the demands of the 21st century's high performance economy.

But funding the educational infrastructure is challenging in North Carolina. Bob Scott often wishes that funding schools and worker training programs were as easy as building new highways. “I have the feeling that if this state goes down the road to economic stagnation, it'll be on a six-lane highway.”

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*The mission of the North Carolina Community College System is to open the door to opportunity for individuals seeking to improve their lives and well being by providing:*

- *education, training and retraining for the workforce, including basic skills and literacy education, occupational and pre-baccalaureate programs;*
- *support for economic development through services to business and industry; and*
- *services to communities and individuals which improve the quality of life.*

—Revised 4/15/94

## FOOTNOTES

<sup>1</sup> Daniel D. Mahoney, Managing Director, DRI/McGraw-Hill, "North Carolina in 2010: Discussion of Major Trends," presentation to the Office of Policy and Planning, N.C. Department of Administration, Feb. 23, 1990.

<sup>2</sup> A number of recent studies have faulted state and federal literacy and job training programs not for their content, but for the fact that so many citizens need literacy and job training and so few of them get it to the point that they are able to hold a full-time job. For more on literacy problems in North Carolina, see Barbara Barnett, "Poverty and Education: A Costly Problem in North Carolina," *North Carolina Insight*, Vol. 11, Nos. 2-3, April 1988, pp. 106-121. For more on job training programs, see Bill Finger and Jack Betts, "Off the Dole and Onto the Payroll: Do Job Programs Get People Out of Poverty?" *North Carolina Insight*, Vol. 11, Nos. 2-3, April 1988, pp. 64-93.

<sup>3</sup> Robert W. Scott, remarks to the Southeastern N.C. Rural Leaders Program, Pembroke State University, Lumberton, N.C., May 15, 1990.

<sup>4</sup> George B. Autry, remarks to the Governor's Commission on Workforce Preparedness, Raleigh, N.C., April 11, 1990.

<sup>5</sup> Donald Tomaskovic-Devey and Rosemary Ritzman, *Back to the Future? Human Resources and Economic Development Policy for North Carolina*, Department of Sociology, Anthropology and Social Work, N.C. State University, Spring 1990, p. 4.

<sup>6</sup> *Workforce 2000: Work and Workers for the 21st Century*, Hudson Institute, Indianapolis, for the U.S. Department of Labor, June 1987. For a regular update on employment forecasts, see also *Outlook 2000, the Occupational Outlook Quarterly*, published by the U.S. Department of Labor's Bureau of Labor Statistics, Washington, D.C.

<sup>7</sup> *North Carolina's 21st Century Workforce*, Labor Market Information Division, Employment Security Commission of North Carolina, 1989, p. 6.

<sup>8</sup> *Listening to the Future: Workers in a Changing World*, Office of Policy and Planning, N.C. Department of Administration, June 1990, p. 6.

<sup>9</sup> Tomaskovic-Devey and Ritzman, generally.

<sup>10</sup> *Gaining the Competitive Edge: The Challenge to North Carolina's Community Colleges*, a report of the Commission on the Future of the North Carolina Community College System, MDC, Inc., February 1989, p. 33.

<sup>11</sup> Peter Applebome, "In North Carolina, the New South Rubs Uneasily With the Old Ways," *The New York Times*, July 2, 1990, p. A1.

<sup>12</sup> "A 'Hatchet Job'? Legislative Ax, Not New York Times, Should Worry N.C.," editorial, *The Charlotte Observer*, July 5, 1990, p. 12A.

<sup>13</sup> Michael L. Vasu and Andy Frazier, *Workforce Preparedness for Economic Development: Report on the 1989 North Carolina Business and Industry Survey*, a joint initiative of the N.C. Department of Administration, the N.C. Department of Economic and Community Development, and the Office of the Governor, 1990, p. 14. For further information on how business people view work force needs of the future, see *America's Choice: high skills or low wages!*, prepared by the Commission on the Skills of the American Workforce, the National Center on Education and the Economy, Rochester, N.Y., June 1990.

<sup>14</sup> Governor James B. Hunt, Jr., Executive Order Number 4, Commission on Workforce Preparedness and Its Inter-Agency Coordinating Council, March 10, 1993.



# How Do Universities in the UNC System Identify and Reward Excellent Teaching?

BY KIM KEBSCHULL OTTEN

**F**rom 1990–93, the North Carolina Center for Public Policy Research studied teaching in the University of North Carolina system—its importance within the overall scope of the universities' missions, the amount of attention it receives at each university, the means by which universities and their component departments and divisions evaluate teaching, and the ways in which exemplary teaching is promoted and rewarded.

As part of this study, the Center sent a survey questionnaire to the chairperson of each department, the dean of each college or school, and the vice-chancellor for academic affairs at each university within the system—a total of 492 surveys. The overall response rate was extremely high for survey research, 78 percent, which thus gives us a very complete picture of teaching within the university system. Center staff also conducted extensive interviews with UNC system administrators, chancellors, deans, department chairs, faculty members, and students to discover their perceptions of what is being done to promote and reward good teaching at the universities. The study also included information on

unique departmental and university-wide programs on such topics as training new faculty members and teaching assistants in how to teach effectively.

To provide the most accurate and fair analysis of the data we gathered, we used the standard Carnegie university classifications, which were published in 1987 by the Carnegie Council on Policy Studies in Higher Education, a division of the Carnegie Foundation for the Advancement of Teaching. The classifications are based on such factors as the number and types of programs and degrees offered, the size of the institution and the number of faculty, and the budget and external funding of the school. They permit comparisons of generally similar types of institutions in order to detect patterns of similarities and differences among them.

North Carolina's public universities, with the exception of the School of the Arts, which is not classified, fall into five Carnegie categories. North Carolina State University and the University of North Carolina at Chapel Hill are both **Research Universities I**.<sup>1</sup> The University of North Carolina at Greensboro is the state's only **Doctoral Granting University I**, although the university would like to move up to the category of **Research University II**, a step below **Research University I**.<sup>2</sup>

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There are eight universities in the UNC system that fall into the next Carnegie category, that of **Comprehensive Universities and Colleges I**.<sup>3</sup> These include Appalachian State University, East Carolina University, Fayetteville State University, North Carolina A&T State University, North Carolina Central University, the University of North Carolina at Charlotte, the University of North Carolina at Wilmington, and Western Carolina University. Several of these schools—East Carolina, North Carolina A&T, and UNC-Charlotte—also are attempting to boost their status to the next level, Doctoral Granting Universities II.

Three schools are in the fourth category, **Comprehensive Universities and Colleges II**.<sup>4</sup> These are Elizabeth City State University, Pembroke State University, and Winston-Salem State University. Of these, Pembroke State and Winston-Salem State plan to seek Comprehensive University I status within the decade.

The University of North Carolina at Asheville recently received approval to change its status from a Comprehensive University II to a **Liberal Arts University I**. Liberal Arts I universities are considered highly selective, primarily undergraduate, institutions, and award more than half of their degrees in the arts and sciences. The University of North Carolina Board of Governors must approve all plans to add programs in order to change a university's status within the system.

### Survey Methodology

**I**n order to get a comprehensive picture of what universities in the UNC system are doing to evaluate and reward good teaching, staff of the N.C. Center for Public Policy Research conducted extensive surveys of the universities during 1990 and 1991. Three separate questionnaires were designed: one for all Vice Chancellors for Academic Affairs, one for all deans of schools or colleges, and one for all department chairpersons.

Prior to administering the surveys, staff conducted a trial run to ensure that our questions were applicable and our procedures were clear. Participants (two department chairpersons at each university) were told that the surveys were preliminary, and were encouraged to make comments or suggestions for improvement. With a

response rate of more than 80 percent, we were reasonably confident that we could also expect a good response rate for the actual survey.

On August 1, 1990, the Center mailed a total of 492 surveys, letters explaining the project, and postage-paid return envelopes: 15 went to the Vice Chancellors for Academic Affairs;<sup>5</sup> 69 to deans of schools or colleges; and 408 to department chairpersons.

The overall response rate to the survey was very high—382 returned, or 78 percent. Eleven of the Vice Chancellors responded, for a rate of 73 percent; 57 of the deans, or 83 percent; and 314 of the department chairs, or 77 percent. No university's departmental response rate was lower than 64 percent, and several universities had response rates in the upper 90s.

### Mission Statements and Teaching at UNC Institutions

**T**he 16 constituent universities in the UNC system completed a mission review process in the spring of 1992—the first time these had been reassessed since 1976. Early in 1991, each university submitted its proposed mission statement, goals for the years 1991–2000, and desired program changes to President C.D. Spangler Jr., the Board of Governors, and a group of four consultants composed of current or former university presidents. The consultants made their report to the Board of Governors in November 1991, recommending that the universities strengthen basic undergraduate education in the system rather than focusing on additional high-level graduate programs.<sup>6</sup> The Board of Governors reviewed the suggestions and made final decisions about missions and programs in early 1992.

In discussing any university's mission, one issue that frequently arises concerns the institution's tendency to aspire to higher status. Some observers of the scene, such as Clark Kerr, president emeritus of the University of California, call this phenomenon "upward drift." According to Kerr, "Many within this category [comprehensive colleges and universities] would like to move up into the doctorate-granting category. . . . Most of their faculty have doctorates from research or other doctorate-granting institutions. In moving 'down' to employment at the comprehensive level, some

act as though they inhabit a graveyard of disappointed expectations. Doctorate-granting status also brings, generally, lower teaching loads, higher salaries, more travel funds, and better library facilities.”<sup>7</sup>

Salary patterns at North Carolina’s public universities bear out Kerr’s supposition: at the state’s two Research I universities, the average salary for a full professor is \$64,600; at UNC-Greensboro, the state’s Doctoral I university, the average salary for a full professor is \$58,900. At the state’s eight Comprehensive I colleges, the average full professor’s salary is \$51,400, and at the three Comprehensive II universities, a full professor’s pay averages \$47,367. (At the one Liberal Arts I University, it averages \$51,900.)<sup>8</sup>

Many analysts, however, stress that the desire for upward mobility destroys the distinctiveness of the school’s current mission, and that “research” status is not the be-all and end-all of a university’s existence. Darryl Greer, executive director of the New Jersey State College Governing Boards Association (an organization viewed as a model by many other states), writes, “It must be remembered that the leading re-

search universities do not serve as a pattern for all higher educational institutions. The vast majority of students who seek an undergraduate degree attend colleges and universities that are very different in their missions. Individual institutions must excel in their distinctive roles, serving within their mission.”<sup>9</sup>

There are clear, though differing, benefits to students attending both “research” and “comprehensive” universities—the two main types represented in the UNC system. Ursula Wagener, who conducted a study on university teaching for the Pew Charitable Trust’s Higher Education Research Program, writes, “[F]aculty at research universities understand that their first task is to advance knowledge and that good teaching must be grounded in the research function. . . . The mentoring aspect requires bringing this knowledge into the classroom and helping students to participate to some degree in the scholarly aspect. In contrast, faculty at [other] colleges see their relation to students as more personal and individual. Students are encouraged, in and out of the classroom, to think, question, and explore extradisciplinary methods

**Table 1. Examples of Evaluations  
Used in UNC System Schools**

	Within the UNC System	At Four-Year Universities Nationally
1) Student course evaluation surveys:	99% of UNC departments	98% nationally
2) Self-evaluation by faculty members:	45% of UNC departments	60% nationally
3) Peer review by faculty colleagues:	30% of UNC departments	54% nationally
4) Review of syllabi, assignments, and tests:	26% of UNC departments	
5) Videotaping of faculty members’ classes:	9% of UNC departments	
6) Exit interviews with senior departmental majors:	UNC-A History department	
7) Comparison with national peers:	UNC-G Biology department, using the IDEA* system	
8) Reviews of classes and faculty published by students:	UNC-CH <i>Carolina Course Review</i>	

\* A national course evaluation service that uses data from student evaluations to determine how faculty compare with their national peers.

Source: N.C. Center survey data, 1990.

and problems. Faculty at the colleges see the first task of teaching as a more general approach to thinking and living."<sup>10</sup>

These differences in the form of education that universities offer must be made clear and explicit to students and the public. Students applying to North Carolina State, UNC-Chapel Hill, or UNC-Greensboro (the state's research and doctoral universities) should be aware that their professors *are* expected to devote a good deal of their time to research, and that graduate teaching assistants (TAs) will be teaching some of their classes. Indeed, the proposed 10-year plan and mission statement of UNC-Chapel Hill states that "With many higher education opportunities available, it is important that UNC-



Chapel Hill counsel and advise students who will thrive in the critical open environment of a research university. . . "

At the same time, however, good teaching at research universities—whether by regular faculty or graduate students—should be expected and not lost in the shuffle. As national attention to teaching has increased within the past five years or so, each of these universities also has increased the prominence it gives to its teaching mission. As *The News & Observer* of Raleigh, N.C., noted in an editorial about the installation of Larry Monteith as chancellor of North Carolina State University, "He . . . set some other priorities, students first among them. He has been an advocate for better undergraduate education, with more senior faculty members involved in teaching first-year students."<sup>11</sup>

Undergraduate students attending the other universities in the system expect, on the other hand, that their professors will spend the majority of their time in class or in preparation for teaching. Good teaching should, therefore, be the norm, and students expect that faculty members will give them their time and attention.

Given their various missions and expectations, what are the universities in the UNC system doing to ensure that excellent teaching is pursued and supported at their school? Are the universities that are looking to change their classification to add more research still paying attention to teaching? And are the schools whose primary purpose is teaching doing an adequate job of promoting and encouraging it?

### Assessing and Evaluating Teaching

Assessing and evaluating teaching, both for the purpose of improving it and for identifying which professors should be promoted and tenured, takes many forms in today's universities. Some of the more popular methods used in UNC system schools include student course evaluations; evaluations of classes and of a faculty member's knowledge, presentation, and organization of the course by fellow professors; and self-evaluations by faculty.

#### *Student Course Evaluation Surveys*

The practice of having undergraduate students evaluate the teaching of their professors has been regarded with some skepticism, but

until recently it has been the only method routinely used by most departments in most universities, including 99 percent of all departments in universities in the UNC system. (According to a study by the U.S. Department of Education in 1990, approximately 98 percent of all departments in four-year schools across the country use student questionnaires to evaluate the teaching performance of faculty.)<sup>12</sup>

Typical student evaluation forms are generally administered at the end of the semester and ask that students evaluate instructors on a five-point scale, with responses ranging from "Strongly Agree" to "Strongly Disagree" on items such as:

- 1) The instructor was organized and well-prepared for class.
- 2) The instructor demonstrated enthusiasm and interest in the subject.
- 3) The instructor graded exams and papers fairly and returned them promptly.
- 4) Lectures were clear and stressed important points.
- 5) The instructor was open to questions and answered them thoroughly.

The questionnaires are most often computer-graded, but frequently include some open-ended questions for student response. These ask students their opinions on, for example, what they liked best/least about the class, what they liked best/least about the instructor, and what they would recommend to change or improve the class. Department chairpersons interviewed for this study said that while students' write-in comments could be fairly critical, they were also helpful in getting a more complete picture of the professor's teaching.

### ***Peer Review: Faculty Review of Colleagues' Classes and Course Material***

If student course evaluations make faculty apprehensive, imagine how faculty feel when they are told that their department head or other colleagues are coming to visit their class. Nonetheless, more than 30 percent of all departments in UNC system schools have professors and/or the department head review each others' classes—commonly known as peer review—in addition to using student course evaluations. (This compares with 54 percent of all depart-

ments in four-year colleges across the United States.)<sup>13</sup> Most departments conduct these evaluations less frequently than they do student course questionnaires, generally using them only when a faculty member is considered for tenure (at about the sixth or seventh year of teaching) or promotion.

There are thought to be several advantages of this form of evaluation, especially when used in combination with student evaluations. While student ratings can give a good idea of how well faculty come across in a classroom, students may not be the best judges of a faculty member's scholarly competence or command of his or her discipline.

Fellow faculty members can also assess how current their colleague's material is and whether he or she is presenting the material at an appropriate level for the students. Twenty-six percent of all departments at UNC system schools review faculty members' class syllabi, paper assignments, and tests administered in order to gauge the organization of the class, how the material is presented, and how papers and tests are graded.

### ***Self-Evaluation and Videotaping***

A number of departments (about 45 percent in the UNC system) ask that professors contemplate and review their own progress in teaching—commonly known as self-evaluation. The typical evaluation is similar to that described by Ron Lunsford of the English department at UNC-Charlotte:

"By the time a faculty member is ready for reappointment (after three years), tenure (after six years), or any other promotion, they are asked to go through an extensive self-review process about their teaching. They submit a document about how they see their teaching and the progress they've made, and they also provide copies of their syllabi, tests, and new courses they've worked on." Lunsford added that "If they're not teaching well, they will not be reappointed or tenured."

Finally, a small percentage of departments (only 9 percent in UNC system schools) make videotapes of a faculty member teaching. Some departments use the videotapes for evaluation and review, but most use them to give professors the opportunity to see themselves teaching.

Often consultants, either another professor in the department or a staff member at the university's teaching center, are available to review the videotape with the faculty member and point out areas where teaching techniques could be added or improved.

### *Use Made of Evaluations and Assessments*

After department chairpersons gather any or all of the evaluations described above, what happens next? Responses varied among the departments in the UNC system (see Table 2), but almost all use them to provide feedback to the professors and to enhance teaching skills. Many include them in a faculty member's permanent file and use them both to support requests for tenure and promotion decisions and as an important factor in giving merit pay raises. More than half of all departments use the results of evaluations to identify faculty members for teaching awards.

### **Tenure and Promotion**

**M**ore than any other element, tenure and promotion guidelines show how universities and the divisions within them really view

the overall work of their faculty members. Tenure and promotion guidelines are often clearly spelled out, with specific weightings attached to a faculty member's performance in their three major areas of responsibility: teaching, research, and service.

Within the UNC system, approximately 82 percent of the universities responding to the Center's survey have university-wide written guidelines for promotion and tenure decisions (the remaining universities allow departments to devise their own criteria). About half of all departments make additions to their university's policies, often to describe departmental expectations for teaching, research, and service, and to determine the specific weighting given to each component. At Winston-Salem State University, for example, weightings among the various components of a faculty member's job range from 50-75 percent for teaching, 15-25 percent for research, and 15-25 percent for service. At the beginning of each academic year, faculty members specify what they want given to each component and are evaluated accordingly.

Much controversy surrounds the subject of tenure and promotion. Faculty and administrators in one camp feel strongly that tenure and promotion should be awarded primarily on the basis of research productivity, as that is what

**Table 2. Departmental Use of Student Course Evaluations in the UNC System**

Department chairpersons' response to the question:  
How are the results of the evaluations used?\*

a. To provide feedback to the instructor:	305 departments,	97.1%
b. As part of the instructor's file for tenure, promotion, and merit pay increase decisions	281 departments,	89.5%
c. For monitoring performance in order to enhance teaching skills:	268 departments,	85.4%
d. As a basis for determining teaching awards:	168 departments,	53.5%
e. Other:	17 departments,	5.4%
f. Made no response/not applicable:	3 departments,	1.0%

\* Departments may use evaluations for more than one purpose; percentages, therefore, exceed 100.

Source: N.C. Center survey data, 1990.

enhances the prestige of the department and the university, contributes to the overall body of knowledge in the field, and strengthens teaching.

Those in another camp believe that teaching is undervalued, even ignored, in the tenure and promotion process. "In the university, concerns about teaching are generally regarded as the second-best preoccupation of those who have not been successful in the world of scholarship," writes Harriet Sheridan, director of Brown University's Center for the Advancement of Teaching. "Find the most successful nontenured teacher on a campus, the one who has received the student award for teaching, and you will find someone whose days are numbered there."<sup>14</sup>

### **Faculty Development Programs and Teaching Centers in UNC System Schools**

Interest in faculty development and teaching improvement programs on college campuses has waxed and waned over the past two decades, but appears to be picking up again with today's renewed interest in "taking teaching seriously." "Faculty development" is a broad term with differing implications depending on the campus, but at most schools it refers to programs designed to assist individual faculty members with their teaching. Some universities have special teaching centers located on their campuses, while others run their programs through the offices of a dean, another university administrator, or through individual departments.

Regardless of who is responsible for faculty development on a given campus, programs typically offer similar types of activities, including:

- Workshops, conferences, or seminars on teaching improvement techniques, presented by an expert on teaching;
- Classroom visitations and/or videotaping by staff members, who then review the teaching performance of the faculty member who was visited;
- Individual consultations with faculty members on teaching methods and improvement;
- Training and orientation sessions for teaching assistants and new faculty;
- Administration and analysis of student course evaluation surveys;

- Consultation and financial support for course development and design projects;
- Maintaining libraries and publishing newsletters on teaching improvement techniques.

Seven of the 16 universities in the UNC system now have centers for teaching enhancement or faculty development—Appalachian State University, East Carolina University, UNC-Charlotte, UNC-Chapel Hill, UNC-Greensboro, UNC-Wilmington, and Western Carolina University. The first three universities to set up such centers—Appalachian State University, UNC-Chapel Hill, Western Carolina University—have been vocal about the importance of high-quality teaching at their institutions and want to be seen as leading the way in helping make teaching even better. Appalachian State's center is called the Hubbard Center for Faculty Development and Instructional Services; UNC-Chapel Hill has the Center for Teaching and Learning; and Western Carolina's is the Faculty Center for Teaching Excellence. All three sponsor extensive programs on campus, and Western Carolina's Faculty Center for Teaching Excellence has served as the host site for several system-wide conferences on improving the climate for teaching in North Carolina. In addition to the seven centers listed above, several other universities sponsor teaching enhancement programs, and all appear to be making a notable impact on faculty interest in and attention to teaching.

### **Teaching Awards**

Most faculty members who teach well would probably agree that they teach because they enjoy it, not because they want to win an award—which is not large in terms of money or recognition—from their department or university. Professors interviewed for this study unanimously agreed that the teaching awards offered at their institution did not motivate faculty to be good teachers; "If they're good, they're good regardless," said one department chairperson.

On the other hand, the fact that universities, colleges, or departments give awards at all does show that the institution values teaching and recognizes it as important and worthy of special recognition. The awards may not actually improve teaching performance, but they do



help to establish an institutional culture that is supportive of teaching. And this institutional culture supporting teaching is important, because, as Mickey L. Burnim, the Vice Chancellor for Academic Affairs at North Carolina Central University noted,

“People are not in the academy for monetary reasons. The difficulty in rewarding teaching has to do with academic tradition—the focus of the Ph.D. experience is to teach people to become researchers, not teachers. People sometimes feel that they’re sort of ‘letting down’ their graduate school if they ‘only teach.’”

According to responses from the Center’s survey of all department chairpersons, deans, and vice chancellors for academic affairs at UNC system universities, only 9 percent of all *departments* give awards for excellent teaching; 55 percent of all schools or colleges within universities give teaching awards; and 91 percent of all universities responding give teaching awards. In some cases, the awards are in the form of recognition only; in others, they carry a significant salary supplement.

Of the teaching awards made by *departments*, most are in the form of recognition of some sort—often the recipient’s name is added to a plaque of departmental award winners. Thirteen of the 28 departments that give teaching awards include a monetary award with the recognition, in amounts ranging from about \$1,000 (for teaching assistants in the English department at UNC-Chapel Hill) to \$100 for the faculty in the departments of both Civil and Industrial Engineering at North Carolina State. Recognition for good teaching by *schools and colleges*, by contrast, is more likely to be in the form of monetary awards. Almost 70 percent of the teaching awards made by schools and colleges are monetary, compared with less than 50 percent of the departmental awards. Schools and colleges, with their larger budgets, are more likely to have the money available to make awards. Plus, the money for some—such as the David Brinkley Teaching Excellence Award at the School of Journalism at UNC-Chapel Hill—comes from outside sources.

The *university-wide* teaching awards are almost all monetary, according to the Center’s data. Only one institution—Appalachian State—does not include money as part of the recogni-

tion for excellent teaching. Monetary awards at the other universities range from \$500 to \$5,000. For example, the Distinguished Faculty Award at Fayetteville State provides \$500, as do five Chancellor's Awards for Excellence in Teaching at UNC-Wilmington. At UNC-Chapel Hill, the \$5,000 awards are: the Bowman and Gordon Gray Professorships; one Johnston Teaching Excellence Award; four Students' Undergraduate Teaching Awards; and six Tanner and Salgo Awards for Excellence in Undergraduate Teaching. UNC-Wilmington also offers \$5,000 for four University Distinguished Professorships.

Though these figures represent a number of ways of acknowledging outstanding teaching at UNC system schools, some critics claim that teaching awards are just for show—that they're of less value and duration than those given for research. This charge applies especially to endowed chairs, which are highly valued and given for outstanding work in a certain field. "There's a great discrepancy in endowed chairs at universities, including UNC-Chapel Hill," according to Joel Schwartz, director of UNC-Chapel Hill's Center for Teaching and Learning. "Research chairs, such as the Kenan professorships, are held for life, while the Bowman and Gordon Gray chair for Teaching Excellence is a one-time position (with a \$5,000 bonus) and held for three years only." Additionally, at many universities, recognition given for research does not come in the form of actual awards as such, but in the form of tenure and promotion to higher rank,

and therefore higher salaries. On the other hand, endowed research chairs enable universities to compete for and keep excellent faculty who might be attracted elsewhere due to their research skills and reputations.

Interestingly, some of the UNC system universities that are the most vocal about the importance of good teaching give the fewest teaching awards. For example, although some of the *colleges* at Appalachian State give monetary teaching awards (such as the College of Business, which makes one Outstanding Teaching Award annually, for \$2,000), the four university-wide awards are plaques. Pembroke State, UNC-Charlotte, and Western Carolina all have very few departmental or college-based awards and make only one university-wide teaching award annually (all at \$1,000), and Elizabeth City State has no award at all. Some of these are smaller universities with fewer resources with which to make awards, whereas others may simply need to make more of an effort.

Universities in the UNC system appear to be making diligent efforts to establish a culture of encouraging excellence in teaching on campus and to reward the outstanding teaching of their faculty members. However, not all teaching awards are formally given and easy to document. Many department chairpersons noted on their surveys that excellent teaching is rewarded with merit pay increases, travel funds to attend conferences, or leave to conduct research (See

—continued on page 513

**Table 3. Teaching Awards Made by Departments**

Number of departments in UNC system schools giving teaching awards: 28 (9%)

Form of teaching awards (multiple response):

a. Recognition:	21 departments,	75.0%
b. Monetary awards:	13 departments,	46.4%
c. Other:	5 departments,	17.9%
d. Funds for professional development:	4 departments,	14.3%
e. Reduced administrative load:	1 department,	3.6%
f. Leave time for research:	1 department,	3.6%

Source: N.C. Center survey data, 1990.

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## ***Recommendations: University Practices in Assessing and Evaluating Teaching***

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**1** The UNC Board of Governors should require that teaching evaluation procedures in all departments consist of *student evaluations* of each section of every course as well as at least *one other objective method of evaluation*, preferably some form of peer review. Although the use of student course evaluations at UNC system schools is widespread, departments at some universities evaluate classes less frequently than the N.C. Center recommends—only once a year rather than every semester, or for only one class rather than all the classes taught by the faculty member.

Student evaluations have been found to be valid indicators of an instructor's teaching ability. As the findings of the Committee on Teaching of the College Arts and Sciences at UNC-Chapel Hill (the Stadter Committee) noted:

*"The numerous research evaluations of student ratings overwhelmingly demonstrate their reliability and validity. . . In spite of commonly shared myths to the contrary, student ratings are not correlated with grading difficulty, sex of student or professor, size of class, or teaching load. . . . In spite of many attempts to demonstrate otherwise, across all subjects and student levels the single most valid indication of an instructor's effectiveness at communicating his or her subject to students and motivating them to work to learn it is student evaluation."*

Other forms of evaluation are essential as well, though less common in the UNC system. Only about 30 percent of departments in UNC system schools use a system of *peer review* of faculty teaching, as compared with 54 of all departments in four-year colleges across the United States. Furthermore, only 45 percent of UNC departments require faculty *self-evaluation*, as compared with 60 percent nationwide. Clearly, there is much room for improvement; UNC departments should at least meet, if not exceed, the national average in terms of well-rounded evaluations of teaching. Either the university administration or individual departments could determine the procedures to be used, but the university should verify that all departments are conducting evaluations.

**2** Department chairs should link the results of the evaluations to faculty teaching assignments. Well-designed evaluations, whether completed by students, peers, or the faculty members themselves, should reveal the type and level of classes individual faculty members are best suited to teach. Although some commentators recommend that full professors should be required to teach introductory classes, evaluations may demonstrate that certain instructors, teaching assistants, or less senior professors are most skilled at teaching particular classes. Regular and thorough evaluations would also help ensure that all faculty, regardless of rank, are keeping abreast of developments and changes in their fields.

**3** Universities in the UNC system should consider implementing a comprehensive assessment program similar to that of the University of Tennessee at Knoxville. Prior to instituting its form of assessment, which examines

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both faculty teaching and the campus environment for learning, UT had come under fire for stressing research productivity at the expense of teaching. Now, with numerous forms of assessment such as the Student Satisfaction Survey, a graduate student questionnaire, and an alumni survey, the university has the data to gauge both problems and improvements over time and across departments. Though the state of Tennessee requires assessment for all colleges and universities in the state, North Carolina's public universities could begin their programs without waiting for a state mandate.

**4 Results of teaching evaluations should be linked to tenure and promotion decisions.** While the evaluations are useful to help faculty members improve their teaching, they also should be used by departments in making personnel decisions. Though many departments (about 90 percent in UNC System schools) use the results of teaching evaluations in making merit pay increase decisions, there has been some hesitancy to use teaching evaluations in tenure and promotion decisions. When student course questionnaires were the only evaluations conducted, faculty were skeptical of their legitimacy and wary of giving them much weight in decisions. If universities require additional forms of evaluations such as peer review, however, as the Center recommends, university leaders should be able to persuade faculty that using such evaluations in personnel decisions is appropriate.

**5 While recognizing that universities in the UNC system have different missions and emphases, the N.C. Center for Public Policy Research recommends that the Board of Governors strongly encourage that, in general, teaching ability and effectiveness count for at least one-third of the weight in a faculty member's overall performance (which includes teaching, research, and service).<sup>1</sup>** The weighting given to teaching will vary according to the individual missions of departments and universities, but good teaching should be important enough to the overall goals of the university system that it count for a significant proportion of the weight in tenure and promotion decisions at *all* universities, including Research and Doctoral institutions. **At Comprehensive I universities, teaching should count for at least 40 percent of the weight; at Comprehensive II and Liberal Arts universities, for as much as 50 percent.** Faculty members should be told in detail what is expected of them and how they will be evaluated.

Regardless of the type of university, faculty members should be told in detail what is expected of them and how they will be evaluated. Furthermore, *no* faculty members in any university who are expected to teach classes regularly should be given tenure if their teaching performance is consistently poor.

**6 The Board of Governors should encourage universities to pursue funding or consider making grants to all universities without formal teaching centers or faculty development programs to enable the schools to establish them.** Many administrators expressed interest in beginning or enhancing faculty development programs at their universities, but said that funding was the main obstacle they faced. G.S. 116-11(3) and 116-11(9) give the Board of Governors the authority to request funds from the General Assembly for such areas as new programs and activities, capital improvements, and improvements in levels of operation. Additionally, UNC General Administration has been very supportive of the system-wide Carolina Colloquies on Teaching held at Western Carolina University, and additional funds for programs at individual universities could help sustain the efforts initiated by the Colloquy.

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**7** All universities in the system, and the schools and departments within them, should examine the feasibility of establishing some form of recognition of or support for excellent teaching. Though teaching awards, in and of themselves, do not cause faculty members to teach well, they do show that a university or department believes that teaching is important, and recognition for excellence establishes a supportive culture for teaching. Currently, only 9 percent of all *departments* give awards for excellent teaching, and only 55 percent of all *schools or colleges* within universities give teaching awards, according to the Center's survey. Many of the awards for outstanding teaching are in the form of recognition only, rather than the monetary awards commonly given for research.

Although *monetary* awards for excellence in instruction would be most effective in helping to put teaching on par with research, even recognition as simple as a "Teacher of the Year" plaque outside the departmental office, or the funding and time to work on developing a new course or revamping an existing one, would be preferable to no award at all.

**8** The universities should also seriously consider establishing endowed chairs for teaching. These would be lifetime positions given for outstanding achievement in the field, similar to those given for research accomplishments. Currently, there is a discrepancy in endowed chairs at UNC system universities. While research chairs are held for life, chairs for teaching excellence, such as the Bowman and Gordon Gray chairs at UNC-Chapel Hill, are one-time positions and are held for only three years. According to UNC-Wilmington chancellor James R. Leutze, this discrepancy between research and teaching chairs "sends a very powerful message about what's *really* valued." **Just as endowed chairs for research enable universities to attract and keep faculty members with excellent reputations as researchers, endowed teaching chairs could enable universities in the UNC system to attract—and build a reputation on—outstanding teachers.**

**9** The Board of Governors should enforce its policy that no graduate student teaches an undergraduate course without extensive training, monitoring, and evaluation. Although a number of departments in the university system have exemplary programs for teaching assistant (TA) preparation, others provide only rudimentary training and monitoring. According to responses to the Center's survey, only half (71, or 48 percent) of the departments reported having at least some form of training program or procedure. Some of the departments offer their own training sessions; others rely on a training course run by the university that all teaching assistants are required to attend. Even though the majority of departments in the UNC system—70 percent—have procedures in place for monitoring and evaluating their teaching assistants, there are still a number of TAs who teach without proper preparation and monitoring.

With sufficient support and guidance, teaching assistants can do an excellent job in the classroom; without training, undergraduate education can suffer, especially at the large universities where teaching assistants frequently teach introductory courses. **Departments should be required to have suitable training and evaluation programs for their teaching assistants, and should be given the money and personnel to put these in place.** Ensuring that TAs are suited for teaching and well-prepared for their assignments would go a long ways towards removing the stereotypes that currently plague them.

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**10** If universities are determined to require and support good teaching, administrators should insist that departments make teaching a central criterion in all hiring decisions, and that truly poor teachers, regardless of their research credentials, are not hired. As is already the practice in many departments, personnel committees should require that candidates for positions either teach an actual class to students, if feasible, or present a seminar to the committee, and the candidates should be evaluated on their teaching performance.

Departments in the UNC system might also consider instituting a requirement that new faculty, prior to their first teaching assignment, have had a teaching apprenticeship as a core part of their training. At the very least, departments should require that interested but inexperienced new faculty receive special instructions in teaching, whether within the department or through the university's faculty development center.

New faculty—and their teaching—also should be monitored especially carefully by the department, and they should possibly be assigned a mentor to help with acclimation to university life.

#### FOOTNOTE

<sup>1</sup>This recommendation applies to the vast majority of faculty who are hired with the expectation that they will perform all three duties routinely. However, a small number of faculty are hired under special circumstances: those who are expected primarily to conduct research, for example, and who teach few, if any, classes. The recommendation that teaching count for one-third of their performance would, therefore, not apply.

Additionally, some faculty members (for example, department chairpersons) are hired and brought in *with tenure* as an associate or full professor. If the candidates for these positions will be teaching classes, they should be asked by the personnel committee to teach a class to students or to present a seminar to the committee. Their teaching should be subject to the same evaluations as that of other faculty.

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Table 3). For example, R.J. Thomas, head of the Wood and Paper Science department at North Carolina State, wrote that in his department, "Awards for teaching are reflected in merit pay increases. Teaching excellence is part of the job." Other responses mentioned that even if the department has no award for teaching, the chairperson does evaluate and recommend faculty members for school-wide or university-wide teaching awards.

#### Training Teaching Assistants to Teach Undergraduates

**M**any graduate students, regardless of whether they will eventually become professors, teach classes while they are working on their degrees. Unfortunately for graduate students, popular lore surrounding graduate teaching assistants (TAs) is full of illustrations and

examples of TAs' incompetence, lack of preparation or knowledge, and—for some foreign-born TAs—inability to speak English. Other complaints reflect undergraduate students' disappointment that they are taught many of their courses by instructors barely older than themselves, rather than by more senior professors who also are assumed to be better prepared, more knowledgeable, and simply better suited to conduct a class.

Are these stereotypical criticisms accurate at UNC schools? Are TAs, as some suggest, merely ill-prepared cannon fodder? Are they enthusiastic, ready and eager to teach about a field that is still fresh and exciting to them? Or are they somewhere in between—teaching because that's what you do to earn your fellowship or stipend, and you may as well make the best of it?

Not all universities in the 16-campus UNC system have graduate programs, and even within schools that do, not all *departments* offer

graduate instruction. This part of the Center's study, therefore, examined only the preparation and training efforts of the 147 departments—47 percent of the total surveyed—that have both graduate programs *and* graduate students teaching undergraduate classes. These students may either teach alone, with a supervisory faculty member, or teach a discussion section of a large lecture class taught by a professor.

### ***Training Programs for Teaching Assistants***

In response to criticism they have received for unleashing untrained graduate students on undergraduate classes, universities across the country are beginning to offer training programs for teaching assistants. At some universities, *all* graduate students who will be teaching undergraduates are required to attend a workshop on teaching techniques; at others, departments provide their own instruction. This can range from one lecture by a departmental administrator to a full-blown and in-depth class.

In departments without formal training programs—however brief—faculty members are generally assigned supervisory responsibility for one or more TAs, and individual professors are made responsible for their TAs' training. This may produce some faculty who take a serious interest in the training and monitoring of their TAs, or it may lead to training that consists solely of advice to "look professional."

Because of the possibility of great irregularity in training, many faculty members advocate a more standardized process. David Lowery, chairman of the Political Science department at UNC-Chapel Hill, said that in his department, "For years, TAs were assigned to a faculty mentor, who was supposed to go over their syllabus, give them help in their teaching, and so on. This worked pretty well, but it was dependent on how good a mentor the TA had. For the last few years, we've instead held a training course for incoming TAs in the August before they start their teaching. It's an intensive course, and all TAs have to take it."

Among the 147 departments at schools in the UNC system that offer graduate programs and use graduate students as teaching assistants,

71 (48 percent) reported having at least some form of training procedure or program. Some of the departments offer their own; others rely on a training course run by the university that their TAs are required to attend. Departmentally designed courses seem to be the more extensive of the two, and offer the additional advantage that the material presented about teaching can be specifically tailored to the field's subject matter. While there are some universally helpful teaching techniques, what TAs need to know about teaching chemistry might be very different from what they would need to teach drama.

### ***Monitoring and Evaluating Teaching Assistants***

Even though not all of the departments in UNC system schools provide formal training programs for their teaching assistants, the vast majority—more than 70 percent—have procedures in place for *monitoring and/or evaluating* them. In many cases, according to data from the departmental surveys, the monitoring and evaluation included a training component, even if not expressed as such. Evaluations of teaching assistants are similar to those required of regular faculty members—questionnaires completed by students in the course—and the results are generally reviewed with the TA.

Although the departments in UNC system schools with teaching assistants are making efforts to train and prepare them for teaching, less than half of all departments with TAs have formal training programs. Even training consisting solely of a day-long workshop would be highly useful to a graduate student who has never taught before, and *no* undergraduate student should be taught by an instructor who has not had some type of training.

Departments are better at monitoring and evaluating their TAs, but even here the procedures are not universal. Teaching assistants need feedback—from both their students and their supervisors—in order to continue to develop into good teachers. Something as simple as mid-term student evaluations would help TAs discover both their teaching strengths and what needs work, and would give them a chance to improve during that semester.

## FOOTNOTES

<sup>1</sup>The designation of **Research University I** is given to universities in the United States that offer a full range of baccalaureate programs, numerous doctoral programs, and give a high priority to research. According to the Carnegie requirements, the criteria for this classification include that the institution must maintain a minimum of \$33.5 million annually in federal support for research and development, award at least 50 Ph.D. degrees each year, and maintain excellence in all of its graduate programs and research activities.

<sup>2</sup>The classification of **Doctoral University I** requires that, in addition to offering a full range of baccalaureate programs, the mission of these institutions must include a commitment to graduate education through the doctorate degree. Universities in this category award at least 40 Ph.D. degrees annually in five or more academic disciplines.

According to the Carnegie Council, **Research Universities II** offer a full range of baccalaureate programs, are committed to graduate education through the doctorate degree, and give high priority to research. They receive annually between \$12.5 million and \$33.5 million in federal support for research and development and award at least 50 Ph.D. degrees each year.

<sup>3</sup>Universities classified as **Comprehensive I** have enrollments of at least 2,500 and are authorized to offer a full range of programs at the baccalaureate and master's levels.

<sup>4</sup>**Comprehensive Universities II** offer degree programs primarily at the baccalaureate level, though they may offer a small number of master's or professional degrees. All universities in this group enroll between 1,500 and 2,500 students.

<sup>5</sup>The N.C. School of the Arts did not have a Vice-Chancellor when this survey was done; a survey was mailed to the head of the Division of General Studies.

<sup>6</sup>Trish Wilson, "Advisers frown on more graduate programs: Improve basic education, state universities told," *The News & Observer*, Raleigh, N.C., November 9, 1991, p. 1A.

<sup>7</sup>Clark Kerr, "The New Race To Be Harvard or Berkeley or Stanford," *Change* magazine, Vol. 23, No. 3, May/June 1991, p. 15.

<sup>8</sup>American Association of University Professors as printed in *The Chronicle of Higher Education*, Vol. 38, No. 33, April 22, 1992, p. A21. Definition and categorization of institutional type made by the Carnegie Foundation for the Advancement of Teaching. Note: These are average salaries for all faculty at these ranks at the various universities. They include faculty in the professional schools—such as law, medicine, business, etc.—at the universities that have them.

<sup>9</sup>Darryl G. Greer, "Pitfalls to Avoid in the 1990s," *Policy Perspectives*, a publication of the Pew Higher Education Research Program, sponsored by The Pew Charitable Trusts, Philadelphia, Vol. 3, No. 4, Section B, September 1991, p. 10B.

<sup>10</sup>Ursula Elisabeth Wagener, "Affording Quality Teaching," (abstract), *Policy Perspectives*, a publication of the Pew Higher Education Research Program, sponsored by The Pew Charitable Trusts, Philadelphia, Vol. 2, No. 1, September 1989, p. 2.

<sup>11</sup>"Monteith, officially," *The News & Observer*, Raleigh, N.C., October 24, 1991, p. 18A.

<sup>12</sup>National Center for Education Statistics Survey Report, January 1990. *A Descriptive Report of Academic Departments in Higher Education Institutions*. Washington, D.C.: U.S. Department of Education, Office of Educational Research and Improvement, p. 33.

<sup>13</sup>*Ibid.*

<sup>14</sup>Harriet W. Sheridan, "The Compleat Professor, Jr.," *AAHE Bulletin*, Vol. 41, No. 4, December 1988, p. 3.

## ARTICLE 1.

### *The University of North Carolina.*

#### Part 1. General Provisions.

##### § 116-1. Purpose.

(a) In order to foster the development of a well-planned and coordinated system of higher education, to improve the quality of education, to extend its benefits and to encourage an economical use of the State's resources, the University of North Carolina is hereby redefined in accordance with the provisions of this Article.

(b) The University of North Carolina is a public, multicampus university dedicated to the service of North Carolina and its people. It encompasses the 16 diverse constituent institutions and other educational, research, and public service organizations. Each shares in the overall mission of the university. That mission is to discover, create, transmit, and apply knowledge to address the needs of individuals and society. This mission is accomplished through instruction, which communicates the knowledge and values and imparts the skills necessary for individuals to lead responsible, productive, and personally satisfying lives; through research, scholarship, and creative activities, which advance knowledge and enhance the educational process; and through public service, which contributes to the solution of societal problems and enriches the quality of life in the State. In the fulfillment of this mission, the university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State.

Teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions. The relative importance of research and public service, which enhance teaching and learning, varies among the constituent institutions, depending on their overall missions. (1971, c. 1244, s. 1; 1995, c. 507, s. 15.17.)

##### Editor's Note. —

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

##### Effect of Amendments. —

The 1995 amendment, effective July 1, 1995, added the subsection (a) designation, and added subsection (b).

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## *A Look at the Making of Public Policy*

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THE NORTH CAROLINA CENTER FOR PUBLIC POLICY RESEARCH, a nonprofit, non-partisan research organization, identifies public policy issues facing North Carolina and enriches the dialogue about the issues among citizens, the media, and policymakers. Based on its research, the Center makes recommendations for improving the way state government serves the people of this state. In all of its efforts, the Center values reliable and objective research as a basis for analyzing public policy.

Kim Kebschull Otten's article, *How Do Universities in the UNC System Identify and Reward Excellent Teaching?*, and Ran Coble's testimony, *Center Presents Research to Legislative Study Commission on the Status of Education at the University of North Carolina*, demonstrate essential steps in the making of public policy. The following is a timeline of the public policy debate on teaching in the UNC system—from the inception of the project to legislative action on the Center's recommendations.

### **IDENTIFY THE PUBLIC POLICY ISSUE**

March 1990      The Board of Directors of the North Carolina Center for Public Policy Research identifies teaching in our higher education system as a major public policy issue facing North Carolina and adopts it as a topic of study.

### **CONDUCT THE RESEARCH**

August 1990      The Center mails 492 surveys with letters explaining the project to all vice-chancellors for academic affairs, deans of schools or colleges, and department chairs in the UNC system.

1991–1992      Center staff visit every university in the UNC system, interview university leaders, and submit a draft report to a review committee.

February 1993      The Center's report, *How Do Universities in the UNC System Identify and Reward Excellent Teaching?*, is released.

February 1993      The Center's research and recommendations receive national and statewide press coverage in 53 articles in 38 newspapers, with editorials urging action in 12 major newspapers.

### **PRESENT THE RESEARCH**

April 1993      Ran Coble, the Center's Executive Director, and Kim Kebschull Otten, the author of the report, present the research findings and the Center's recommendations to the UNC Board of Governors.

### **CHANGES IN POLICY RESULT**

July 1993      The General Assembly establishes the Legislative Study Commission of the Status of Education at the University of North Carolina to study undergraduate education, including the impact and effect of research on the teaching mission, rewards and incentives offered for undergraduate teaching, the use of teaching assistants, and assessment and evaluation of faculty teaching—and the role of this assessment in the rewards system. The General Assembly also appropriated \$250,000 for each year of the biennium to establish faculty awards for excellent teaching.

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- September 1993 On September 10, 1993, the Board of Governors adopts a report on tenure and teaching in the University of North Carolina. On September 28, 1993, Administrative Memorandum #338 on "Tenure and Teaching in the University of North Carolina" is issued by C.D. Spangler, the President of the UNC system. (See p. 518 of Ran Coble's testimony).
- November 1993 The Center's follow-up study documenting what has been accomplished and what remains to be done receives statewide press coverage in 46 articles in 30 newspapers. The editorial pressure increases with 23 editorials, almost all of which support the Center's recommendations.
- April 1994 On April 29, 1994, Administrative Memorandum # 343 on "University Teaching Awards" is issued by C.D. Spangler, the President of the UNC System.
- September 1994 On September 22, 1994, Administrative Memorandum #349 on "Training, Monitoring, and Evaluation of Graduate Teaching Assistants" in the University of North Carolina is issued by C.D. Spangler, the President of the UNC system. (See p. 518 of Ran Coble's testimony).

#### **FOLLOW UP ON THE RESEARCH AND THE RESULTS**

- October 1994 Coble testifies before the Legislative Study Commission of the Status of Education at the University of North Carolina. He identifies the changes still needed to promote evaluation of teaching and reward excellent teaching in our higher education system.
- October 1994 The Center's testimony receives coverage in 18 newspapers with six editorials endorsing the Center's recommendations to the legislature.

#### **MORE POLICY CHANGES RESULT**

- March 1995 The Legislative Study Commission of the Status of Education at the University of North Carolina releases its report and recommendations to the Joint Legislative Education Oversight Committee. (See p. 516). Five of the recommendations would carry out more recommendations in the Center's report, *How Do Universities in the UNC System Identify and Reward Excellent Teaching?*
- June-August 1995 The General Assembly, in special provisions of the budget bills:
  - appropriated \$250,000 for each of the next two years for teaching awards on the 16 campuses;
  - enacted a mission statement for the university system which includes teaching, research, and public service, and states that "teaching and learning constitute the primary service that the university renders to society. Teaching, or instruction, is the primary responsibility of each of the constituent institutions;" (See p. 513).
  - directed the Board of Governors to instruct the 16 campuses that teaching is primary in making faculty personnel decisions regarding tenure, teaching assignments, and promotions; and
  - required the Board of Governors to review the procedures used to screen and employ graduate teaching assistants and ensure that all teaching assistants are able to teach effectively.

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## ***Legislative Panel Endorses Center's Proposals on Evaluating and Rewarding Teaching in the UNC System***

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The Legislative Study Commission on the Status of Education at the University of North Carolina approved its findings and recommendations to the 1995 N.C. General Assembly in a final report adopted on Feb. 20, 1995. That report included five recommendations on Teaching and Learning that would carry out proposals in the North Carolina Center for Public Policy Research's report, *How Do Universities in the UNC System Identify and Reward Excellent Teaching?* Those recommendations are:

- 1a. The General Assembly should enact AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE LEGISLATIVE STUDY COMMISSION ON THE STATUS OF EDUCATION AT THE UNIVERSITY OF NORTH CAROLINA TO CODIFY THE UNIVERSITY'S MISSION, WHICH EMPHASIZES THE PRIMARY IMPORTANCE OF TEACHING AND LEARNING.
- 1b. The General Assembly should enact legislation that would appropriate sufficient funds annually to establish a system of teaching awards to encourage good teaching throughout the University system.
- 1c. The General Assembly should enact legislation in support of the Board of Governors' policy that directs that teaching be given primary consideration in making faculty personnel decisions regarding tenure, hiring, and promotional decisions for those positions with teaching as the primary responsibility, and to assure that the personnel policies reflect the Board's directions.
- 1d. The Board of Governors should review its policies on peer evaluations of teaching performance to ensure that they apply to all teaching faculty, including those who are tenured.
2. The Board of Governors is encouraged to review the procedures used to screen and employ teaching assistants to ensure their ability to communicate effectively in the classroom. As part of this review, the Board may wish to consider the following issues:
  - a. Whether all proposed teaching assistants and all new faculty should be required to attend teaching workshops before they teach their first classes.
  - b. Whether there is a need to strengthen the role of faculty who supervise teaching assistants.
  - c. Whether all faculty should attend periodic teacher training sessions.
  - d. Whether teaching faculty should be required to have their teaching skills reviewed by established Centers for Teaching and Learning.
  - e. Whether the English proficiency of all persons offering classroom instruction should be assessed prior to classroom contact with students.
  - f. Whether undergraduate majors should take comprehensive exams to assess the degree of learning in the teaching/learning equation.
  - g. If the use of contextual course evaluations would capture the unique aspects of differing disciplines and courses.

# Center Presents Research to Legislative Study Commission on the Status of Education at the University of North Carolina

BY RAN COBLE

*During the 1993 General Assembly, the Legislative Study Commission on the Status of Education at the University of North Carolina was set up to study, among other things, assessment and evaluation of faculty teaching, rewards and incentives for undergraduate teaching, the role evaluations should play in the rewards system, and the use of teaching assistants. On October 25, 1994, Ran Coble, executive director of the N.C. Center for Public Policy Research, was invited to speak before the commission. Coble's remarks, edited here for space, summarize the actions taken by the UNC Board of Governors and the General Assembly in response to the Center's policy report, How Do Universities in the UNC System Identify and Reward Excellent Teaching? Coble also identifies what remains to be done in increasing evaluation of teaching performance and rewards for excellent teaching.*

**I** am here today to share with you the findings of the Center's 429-page study which addresses the question *How Do Universities in the UNC System Identify and Reward Excellent Teaching?*<sup>1</sup>

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*Ran Coble is executive director of the N.C. Center for Public Policy Research.*

In our study, we asked two major questions: (a) How do the universities evaluate teaching? and (b) How do they reward excellent teaching? We tried to conduct our study in a spirit of cooperation and mutual respect with the University.

[Coble then summarized the study's process, research findings, and the Center's recom-

mendations. See *How Do Universities in the UNC System Identify and Reward Excellent Teaching?*, p. 499.]

### **Progress and Praise: What's Been Accomplished by the UNC Board of Governors and the Legislature**

Since the Center's report on teaching was released in February 1993, much progress has been made on re-emphasizing the role of teaching in public universities. I want to give credit and praise to UNC President C.D. Spangler Jr., Vice-President for Planning Roy Carroll, the UNC Board of Governors, and you as legislators.

Over the last year and a half, President Spangler and Board of Governors have adopted new policies on teaching and tenure which accomplished these six things:

- 1) *The Chancellors were ordered to review mission statements, tenure policies, and the criteria for making faculty personnel decisions and revise them to explicitly recognize "the primary importance of teaching."<sup>2</sup>*
- 2) *The Chancellors also were asked to review procedures for the evaluation of faculty performance to ensure (a) that student evaluations and formal methods of peer review are included in teaching evaluation procedures; (b)*

*that student evaluations are conducted at least one semester each year; and (c) that peer review of faculty includes direct observation of the classroom teaching of new and non-tenured faculty and graduate teaching assistants.*

- 3) *The Chancellors of institutions without teaching awards were asked to establish awards at the institution-wide or college/school level.*
- 4) *With the legislature's help, the Board of Governors created annual systemwide teaching awards.*
- 5) *The Board of Governors said it expected all institutions without special teaching centers to create such centers as soon as possible.*
- 6) *And, in September this year, President Spangler sent out an excellent set of guidelines for training, monitoring, and evaluation of graduate teaching assistants who are assigned to teach undergraduate classes. Awards are also to be given for outstanding teaching by graduate students, and their proficiency in English is to be verified.<sup>3</sup>*

Most of these new policies went into effect for the 1994–95 academic year. I want to publicly praise and recognize the University for the progress it has made at increasing evaluation of teaching performance, increasing teaching awards, increasing the number of teaching centers, and instituting better training, monitoring, and evaluation of graduate teaching assistants who are teaching undergraduates. So in large part today, I have come to praise Caesar, not to bury him.

The other progress that has been made has come from you, the members of the N.C. General Assembly, and you deserve equal praise for your efforts. As you know, during the 1993 session, this legislative commission was set up in the budget bill to study, among other things, the assessment and evaluation of faculty teaching, rewards and incentives for undergraduate teaching, the role evaluations should play in the rewards system, and the use of teaching assistants.<sup>4</sup>

In that same budget bill, the legislature required the Board of Governors to allocate funds from the Reserve for University Operations to the Distinguished Professors Endowment Trust Fund—set up under Sen. Dennis Winner's leadership—for the establishment of



*Almost everyone in America gets an annual review of their job performance. . . . This principle also should apply to faculty teaching in public universities.*

—RAN COBLE

endowed chairs that recognize excellence in undergraduate teaching.<sup>5</sup> You might want to ask the university for a progress report on how they're coming on creating endowed teaching chairs. And, in a third provision in the budget bill, the legislature required the Board of Governors to allocate \$250,000 from overhead receipts each year to establish faculty awards for excellent teaching.<sup>6</sup>

As a result, the Board of Governors will divide that \$250,000 into two equal pots—one for their new systemwide teaching awards, and one for teaching awards at each institution. The *systemwide award* winners will receive \$7,500, and there will be one recipient from each of the 16 institutions. The *institutional award* winners will receive from \$250 to \$2,500. The seven institutions that did not already have teaching awards or had more limited resources got a total of \$9,500 each (Elizabeth City State, Fayetteville State, N.C. Central, Pembroke State, UNC-Asheville, Winston-Salem State, and the School of the Arts). The other nine institutions got a total of \$6,500 each to allocate. Both of these new award programs go into effect for the first time this academic year,<sup>7</sup> and your actions in the budget bill made this possible.

### What Remains To Be Done

**W**hat remains to be done to ensure that teaching performance is properly evaluated and that excellent teaching is recognized and rewarded? I would suggest that this study commission recommend four needed actions to the 1995 General Assembly:

#### **I Make the Appropriation for Teaching Awards and Endowed Chairs a More Permanent Commitment in the State Budget**

The first action needed is to make the appropriation for teaching awards and endowed chairs a more permanent commitment in the budget. Because the provisions for \$250,000 for teaching awards and the use of the reserve for endowed chairs were in last year's budget bill, they will expire in June 1995 unless renewed in some way, either in the 1995 budget bill or in separate legislation.

University officials told us that they have submitted a request to renew the \$250,000 for

teaching awards and an expansion request of \$2 million for the Distinguished Professors Endowment Trust Fund. On the Trust Fund request, however, there is no mention of earmarking money for teaching chairs, and we think that should be added. The University's requests are included as part of Priorities #3 and #9 in the Board of Governors' budget.<sup>8</sup> We strongly endorse the parts of these requests that would go toward teaching awards and endowed chairs for teaching.

#### **2 Reinforce the University's Policy on Teaching Evaluation by Putting It in State Statutes**

The second action you should take is to put the policies enacted by the Board of Governors into the state statutes in order to affirm and reinforce the seriousness of this matter with both the public and the faculty within the institutions. Several states have done this. For example, the Arkansas legislature enacted a statute that says:

"Each state-supported college and university shall conduct a rigorous, consistently applied, annual review of the performance of all full-time faculty members. This review shall include assessments by peers, students, and administrators and shall be utilized to insure a consistently high level of performance and serve in conjunction with other appropriate information as a basis for decisions on promotion, salary increases, and job retention. This review shall not be used to demote a tenured faculty member to a nontenured status."<sup>9</sup>

We recommend that the Board of Governors' current administrative policy be enacted into law. Such a statute would: first, restate the Board of Governors' position that teaching is the primary mission of the university system; second, restate the requirement that both student evaluations and peer reviews of teaching would be conducted at least once a year; third, make it clear that these evaluations would apply to *all* faculty—new, non-tenured and tenured faculty; and fourth, stipulate that direct observation of classroom teaching would be part of the peer review for new and non-tenured faculty and graduate teaching assistants.



**UNC System President C.D. Spangler Jr.**

### **3 Clarify State Policy That Evaluation of Teaching Performance Includes Evaluating Tenured Faculty**

The third action we recommend relates to clarifying state policy in one respect. The area that needs clarification is whether the current Board of Governors' policy requiring student and peer evaluation of teaching performance applies to *tenured* faculty, as well as new faculty, non-tenured faculty, and graduate teaching assistants. The reason this is important is that more than 50 percent of the faculty in the UNC system already have tenure. Dr. Carroll has assured us that the Board's intent was to require evaluation of teaching performance of *all* faculty, including those with tenure, and we applaud him for that. Because we misunderstood the policy language passed by the Board, we wondered if others might too. So, we called the offices of the Vice Chancellors for Academic Affairs on 12 campuses to see what their understanding was. We found that six campuses understood the evaluation policy correctly to apply to tenured faculty; five, however, said it did not apply to tenured faculty, and one said it didn't apply to tenured faculty but they were going to imple-

ment it that way anyway.<sup>10</sup> With that in mind, I think the Board could use your help in reinforcing in the statutes that evaluation of teaching performance applies to all faculty. That would clear up this misunderstanding.

### **4 Plug Two Loopholes: Ensure That Teaching Is Given Adequate Weight, and Link Evaluation To Tenure, Course Assignments, and Hiring Decisions**

When the Fiscal Research Division was set up in 1971, I was one of the first researchers to work for you in those early years. One of the best lessons I ever got about public policy was from a representative from Asheville who told me to always write the best law you could for 90 percent of the situations and then try to anticipate the loopholes that the other 10 percent would use to try to get around the law.

There are two loopholes in the current Board of Governors' policy on evaluating teaching performance. The main loophole is that the Board of Governors' policy doesn't give guidance on the *weight* to be given to teaching in relation to the other two university missions—research and public service. And,

the current policy also does not clearly require that these new evaluations of teaching performance are to be used in those three key decisions on tenure, course assignments, and hiring.

If you'll think about what's likely to happen in tenure and other decisions for the next few years, the university committees are going to be looking at file folders or portfolios full of information about a faculty member up for tenure or promotion or merit pay. In that folder are going to be a resume, all of their course syllabi, student evaluations, all of their research publications, and copies of any peer evaluations available. But for the next several years, there may be only one or two peer evaluations available, but there will be years worth of research publications. How is

teaching performance going to fare in that scenario? This is one reason that we've recommended that teaching count for at least a third in all tenure decisions. Unless a weight is specified, there is a way for department chairs to beat this new process, and the Board of Governors has come too far to let that happen.

The second loophole you need to plug is to make it clear that evaluations of teaching performance are to be used in tenure and promotion decisions, course assignments, and hiring. The Board policy is very clear on requiring that student course evaluations and peer review are to be conducted as part of an overall program of evaluating faculty performance. And, though I think the Board is also clear in its intent to bring the student and peer evaluations into ten-

## *Comments on the Center's Testimony*

**Roy Carroll**

*Vice-President for Planning,  
UNC General Administration*

“... The Board of Governors undertook its study of *Tenure and Teaching within the University* to ensure that the quality of teaching continues to be a prime consideration in tenure decisions. The recommendations of that study have become policy. They are not options, they are requirements. Thus, now at every UNC campus: 100 percent of the departments conduct student evaluations of teaching of *all* faculty; 100 percent of the departments have adopted formal methods of peer review of faculty performance of *all* faculty; and 100 percent of the departments include, as *one method of peer review*, the direct observation of classroom teaching for all new faculty, non-tenured faculty, and graduate teaching assistants. Moreover, mission statements, tenure policies, and criteria for faculty personnel decisions give explicit recognition of the *primary* importance of teaching as mission and as a criteria for evaluating faculty performance.

“What this means is that the UNC system and its constituent institutions are ahead of their national counterparts. And if there is a need for clarification of these policies, the President and the Board of Governors of the University can do so without a statutory amendment. ...”



## *Comments on the Center's Testimony*

**Joseph E. Johnson**

*Professor at the University of  
North Carolina at Greensboro*

“ I applaud the Center's interest in the quality of the student's experience at the universities.

“While I support the intent, I have major concerns with your proposals for legislation. I do not believe that it is desirable to enact statutory provisions with regard to the evaluation of teaching. Encouraging such specificity of legislative action invites meddling in all areas of academic life and in my opinion will result in efforts to control the content of the classroom and campus activities in teaching and in research . . .

“Therefore, while I support the renewed focus on the quality of teaching and the primacy of teaching in our institutions, I believe that it is the wiser course to direct the Board of Governors to assure that teaching is the primary function at each of our institutions, and that the Board of Governors shall assure that student and peer evaluations for each faculty member are conducted annually and that such evaluations are used in conjunction with other appropriate information as the basis for personnel decisions.

“Consistent with the objective of emphasizing teaching as primary, I believe that it is desirable to direct the Board of Governors to establish policies requiring that peer review findings regarding teaching be given determinative weight in personnel decisions at each institution while allowing for exceptions for unique cases.

“During my professional life, research has been the basis for the reward system and it continues to be. While I hear comments about the renewal of teaching focus, they are largely along the lines of what we have to do politically. In these times of tight budgets and enrollment pressures, administrators in particular see the issue as one of teaching loads—number of classes and hours—rather than the quality of teaching. . . .

“These thoughts may be provocative, perhaps incendiary and even helpful. On the other hand, I might have better spent my time working on my teaching.”



ure decisions, we're not sure the policy language sent out to the constituent institutions actually says that. And, it is definitely silent on the need for teaching evaluations to be used in decisions on course assignments and hiring.

I have been a student in a system that encouraged evaluation of faculty performance but only as new information given to faculty—not as the primary tool for making policy decisions. You do not just want to create more paper that's not used. As a result of the Board of Governors' action, new evaluations of teaching performance will be on paper. What you want to ensure is that those evaluations of teaching performance are both used in key decisions and given adequate weight to fulfill the university's primary mission. And then you want the outstanding teachers to benefit from your appropriations for teaching awards and endowed chairs.

The draft bill we propose would statutorily enact current Board policy on evaluation of teaching performance, clear up the murky area of whether tenured faculty are to be evaluated, plug those two loopholes I described, and make permanent the legislature's commitment to programs for teaching awards and endowed chairs for teaching. The draft statute is modeled after the Arkansas law I mentioned earlier, but adapted to fit the Board of Governors' current policy in North Carolina.

At your last meeting, one of your co-chairs, Rep. Martin Nesbitt, made a very astute observation. He said the only two ways the General Assembly affects policy are with money and the statutes, and that the legislature already had given the university system flexible budgeting, as well as all salary money in a block grant. If I remember correctly, he concluded, "We ate our carrot."

At the same meeting, one of your consultants, Peter Ewell, talked about the wisdom of setting aside some money for achieving legislative priorities. Your staff reinforced this by suggesting that you focus on what they called "change money" to help move forward on the legislature's priorities. Taking all this together, I think you and the University are now in agreement that teaching is the primary mission of all 16 institutions, but there is nothing in the statutes that says that. In fact, if you'll look at Chapter 116 of the North Carolina General Statutes [the chapter dealing with the University of North Carolina], there is little in the statutes at all on the University's missions.

The Board of Governors has put a good new evaluation system into place. As with all state agencies and employees, you want to ensure that performance in relation to the primary mission is evaluated. And, you've begun a pot of "change money"—the money for teaching awards and endowed chairs for teaching. The Center recommends that you reinforce the Board of Governors' policy on evaluating teaching performance by putting it into the statutes, plug the two loopholes we mentioned, and then link the policy of evaluating teaching with the carrot of increased appropriations for teaching awards and endowed chairs for teaching excellence. That would be a fine legacy for this study commission to leave.

A final word about the environment for higher education right now and the importance of what this study commission produces, because I think the public is very concerned about higher education. Both the public and the faculty seem to feel that the pendulum has swung too far toward incentives and rewards for research. If you talk to university students and their parents, you'll find concern about these issues runs very deep. Louis Harris, the national pollster, released a poll in 1993 that found that the percentage of the public that had great confidence in the people running institutions of higher education had dropped to an all-time low of 23 percent—a 59 percent decrease from the level in 1966. You see evidence of that in North Carolina in the 1993 vote on the bond package for the University system that passed by only 52 percent and which failed in 57 of 100 counties—including the home counties of Senators David Hoyle, Betsy Cochrane, and Beverly Perdue, and Representatives Toby Fitch and Robert Grady on this commission.

You also might have read what the *Chronicle of Higher Education* found, as part of its Survey of Faculty Attitudes, when it asked faculty, "Do your interests lie primarily in teaching or research?" Among faculty in the United States, 37 percent indicated that their primary interest was in research, but 63 percent indicated that their primary interest was in teaching. So, almost two-thirds of the faculty *want* the priorities to lie with teaching.

Yet a recent national study of more than 4,000 faculty members across the country by James Fairweather, a researcher at Penn State, concluded that teaching simply is not valued in most universities. He found that 1) the greater

## *Comments on the Center's Testimony*

**Judith M. Stillion**

*Interim Vice-Chancellor of  
Academic Affairs at Western  
Carolina University*



“ [T]here are a few misperceptions in this testimony. . . . The first seems to be a confusion concerning peer review of teaching and an annual review of job performance. . . . At every college I have been associated with (six in all), faculty are evaluated annually as part of an Annual Faculty Evaluation (AFE) process. This involves a review of their teaching, research and service commitments for the year. Student evaluations are almost always a part of such reviews and most departments involve peer committees in the process, although some delegate the evaluation process solely to department heads, who are also peers. The results of the Annual Faculty Evaluation process are used for making merit pay and reappointment recommendations, form the foundation for developmental plans for the ensuing year, and lend their cumulative weight to decisions involving tenure and promotion. . . .

“The point made . . . regarding weighting teaching differently for different campuses is interesting. However, it assumes that all professors on any given campus have exactly the same assignments and skills. Professors are not cookie cutters. . . . To lay any kind of formula on constituent institutions would be to interfere with the most basic of necessary conditions for excellence: the ability of individual department heads to assign professional loads and hold faculty accountable for fulfilling them with distinction.

“In addition, different types of teaching require different types of evaluation. . . . Attempting to force a formula of any kind onto an institution that had very different styles of teaching would not be useful. . . . While I applaud the goal of your presentation, I believe that setting arbitrary percentages for teaching by type of school seriously underestimates the complexity of the multiple types of teaching and the variable professional loads necessary in every university. . . .

“One other area of concern that I have with your comments relates to the call for action represented in the proposed legislation. . . . This form of redundant micro-management would not seem to serve the interests of the taxpayers.

“Finally, let me commend you and your organization for the work you are doing. Certainly, your report has been influential in helping to increase the visibility of teaching within the University of North Carolina, a position that we loudly applaud. Your suggestion of endowed chairs for excellence in teaching is a positive step and your understanding that teaching should explicitly count toward tenure and promotion helps to highlight its importance. While we may differ on some of the points you make, we certainly don't differ on the overall goal: to increase the quality of education for all North Carolinians attending our state's universities.”

the time spent on research, the higher the compensation; 2) the more time spent on teaching, the lower the compensation; and 3) the more hours in class per week, the lower the pay.

Former President of Harvard University Derek Bok summed this up by saying:

“[R]ather than just react [to attacks on universities], we need to understand more deeply what is bothering the public. . . . Notwithstanding the improvements that may have taken place in the quality of undergraduate teaching in this country, the public has finally come to believe quite strongly that our institutions—particularly our leading universities—are not making the education of students a top priority. This is especially true for our undergraduates within the arts and sciences. . . . There are many everyday signs that betray these priorities. When we go to recruit a star professor, the bargaining chip is always a reduced teaching load—never a reduced research load. . . . They [the public] are often wrong about the facts—but they are right about our priorities, and they do not like what they see.”<sup>11</sup>

The point that Bok makes about language is reinforced when you hear people on cam-

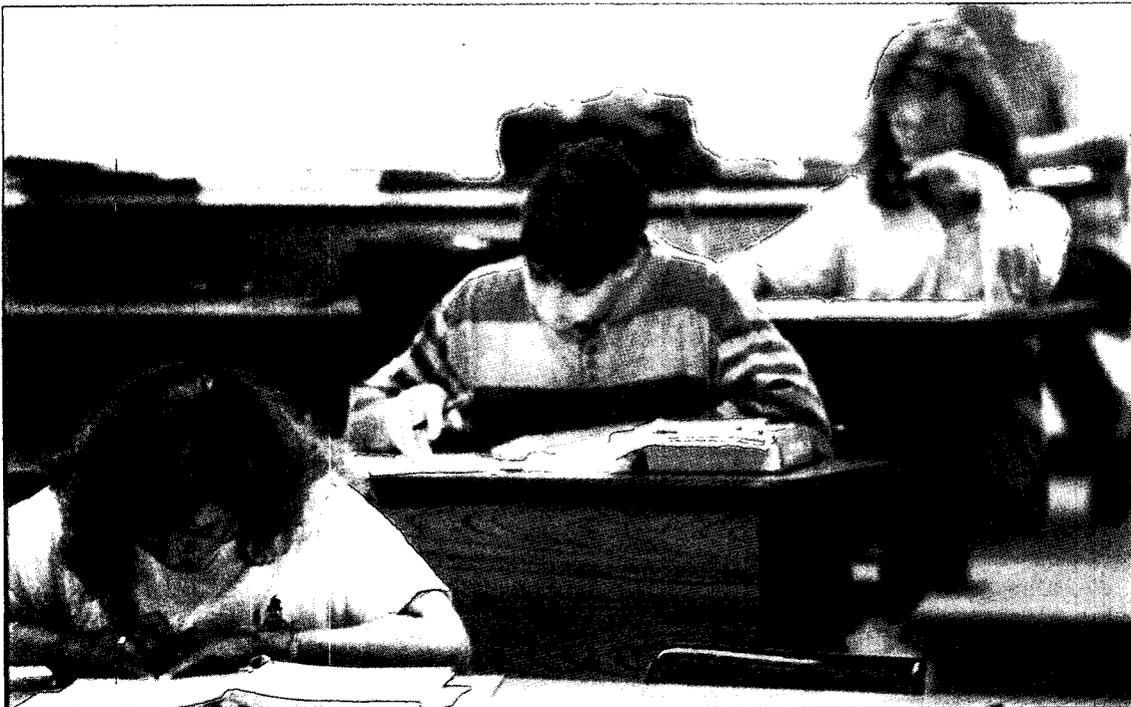
pus in North Carolina speak of teaching *loads* and research *opportunities*. When we published our study, we dedicated it to some of our favorite teachers. Thanks to one of those teachers, I developed a lifelong love of history and literature. Therefore, I want to close with a quotation from one of this nation’s most enduring autobiographies—*The Education of Henry Adams*. Adams was the grandson of President John Quincy Adams and great-grandson of President John Adams. He was also a history professor and the following passage underscores the importance of teaching and its long-lasting impact. Adams wrote:

“A parent gives life, but as parent gives no more.

A murderer takes life, but his deed stops there.

A teacher affects eternity; he can never tell where his influence stops.”<sup>12</sup>

We at the Center for Public Policy Research commend the members of this commission for what you have already done and what you are doing, we commend the University for what it has done, and we challenge you both to keep the momentum going. You will never know where your influence stops.



Karen Tam

## FOOTNOTES

<sup>1</sup> Kim Kebschull Otten, *How Do Universities in the UNC System Identify and Reward Excellent Teaching?*, North Carolina Center for Public Policy Research, 1993.

<sup>2</sup> The University of North Carolina Office of the President, Administrative Memorandum #338, UNC Board of Governors, "Tenure and Teaching in the University of North Carolina," Sept. 28, 1993, p. 1 (emphasis in the original).

<sup>3</sup> The University of North Carolina Office of the President, Administrative Memorandum #349, "Training, Monitoring, and Evaluation of Graduate Teaching Assistants," Sept. 22, 1994.

<sup>4</sup> Chapter 321 of the 1993 Session Laws, Senate Bill 27, §101.5, pp. 78–80.

<sup>5</sup> Chapter 321 of the 1993 Session Laws, Senate Bill 27, §89(d), p. 74.

<sup>6</sup> Chapter 321 of the 1993 Session Laws, Senate Bill 27, §89(c), p. 74.

<sup>7</sup> The University of North Carolina Office of the President, Administrative Memorandum #343, "University Teaching Awards", April 29, 1994.

<sup>8</sup> The University of North Carolina Board of Governors, 1995–97 Budget Request, Schedule of Priorities, pp. 124,

159, and 197–99.

<sup>9</sup> Ark. Code Ann. § 6-61-219 (Michie Supp. 1993).

<sup>10</sup> The actual language in Administrative Memorandum #338, see note 1, reads, "That the Board of Governors, through the President of the University, instruct the Chancellors of each constituent institution to do the following: . . . (c) Review procedures for the evaluation of faculty performance to ensure (1) that student evaluations and formal methods of peer review are included in teaching evaluation procedures, (2) that student evaluations are conducted at regular intervals (at least one semester each year) and on an ongoing basis, (3) that *peer review* of faculty includes *direct observation* of the classroom teaching of *new and non-tenured faculty* and of graduate teaching assistants . . ." (emphasis added).

<sup>11</sup> Derek Bok, "Reclaiming the Public Trust," *Change*, American Association of Higher Education, July/August 1992, pp. 14–18.

<sup>12</sup> Henry Adams, *The Education of Henry Adams*, (Houghton Mifflin Company: Boston, 1961 edition), 1918, p. 300. Adams probably underestimated the long-lasting impacts of parents and murderers in his effort to emphasize the impact of teachers.

# Chapter 8

## Health Care



Karen Tam

*“Since, both in importance and in time, health precedes disease, so we ought to consider first how health may be preserved, and then how one may best cure disease.”*

—GALEN, CIRCA 170 A.D.



# How Healthy Is North Carolina's Population?

BY KEN OTTERBOURG

*How healthy is North Carolina's population? The answer depends on which statistics you consider, but in the main the state's population has never ranked among the healthiest. Tar Heels exceed the national averages in deaths from heart disease, cancer, injuries, and infant mortality.*

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*"The only Business here is of raising Hogs, which is manag'd with the least Trouble, and affords the Diet they are most fond of. The Truth of it is, the Inhabitants of N Carolina devour so much Swine's flesh, that it fills them full of gross Humours. For want too of a constant Supply of Salt, they are commonly obliged to eat it Fresh, and that begets the biggest taint of Scurvy. . . ."*

—WILLIAM BYRD, 1728

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**I**t's been a good long while since scurvy has shown up as one of North Carolina's most pressing health problems, but the fact is that the overall health of the state's people is still not what it should be. The state's mortality rates—deaths per 100,000 population—exceed the national average on eight key indicators: all causes, heart diseases, strokes, diabetes, kidney disease, homicide, motor vehicle accidents, and all other kinds of injuries (see Table 1, p. 530).

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*Ken Otterbourg is a reporter for the Winston-Salem Journal.*

Still, North Carolina's rankings are nowhere near the worst in the land. In 1990, a Minneapolis-based insurer began a new ranking of the states. Northwestern National Life Insurance Co. annually compiles health statistics in 17 categories for each state, then tallies up the results. The states with the healthiest citizens: New Hampshire, Minnesota, Utah, Connecticut, and Hawaii. Those with the least healthy citizens: Alabama, Alaska, New Mexico, Arkansas, and Nevada.<sup>1</sup> North Carolina? In the middle of the pack at number 32, well behind Virginia, but ahead of most other states in the South Atlantic region (see Table 2, p. 531).

**Table 1. Age-Adjusted Mortality Rates for U.S. and N.C., by Cause, 1991 (with Percent Change Since 1981)**

	United States		North Carolina	
	Rate	% Change	Rate	% Change
<b>All Causes</b>	513.7	-9.6	546.0	-9.6
<b>Specific Causes</b>				
Diseases of the Heart	148.2	-24.0	156.9	-24.7
Cancer	134.5	2.2	133.9	4.9
Cerebrovascular Diseases (Stroke)	26.8	-29.7	34.1	-29.1
Chronic Obstructive Pulmonary Diseases (Lung Disease)	20.1	23.3	19.6	27.3
Motor Vehicle Accidents	17.0	-22.0	20.1	-19.6
All Other Accidents	13.9	-22.8	15.9	-25.4
Pneumonia and Influenza	13.4	8.9	13.4	-6.9
Diabetes Mellitus	11.8	20.4	13.8	40.8
Suicide	11.4	-0.9	11.4	-8.1
Homicide/Legal Intervention	10.9	4.8	13.2	24.5
Chronic Liver Disease and Cirrhosis	8.3	-27.2	8.1	-21.4
Nephritis/Nephrosis (Kidney Disease)	4.3	-4.4	5.0	-15.3
Atherosclerosis	2.6	-50.0	2.2	-55.1

*Source:* "North Carolina Center for Health Statistics Pocket Guide—1993," State Center for Health and Environmental Statistics, N.C. Department of Environment, Health, and Natural Resources, December 1994, Table 5.

Being number 32 out of 50 isn't much for the state to brag about, but just how healthy are North Carolina's residents? Dr. Georjean Stoodt, former director of the Division of Adult Health at the North Carolina Department of Environment, Health, and Natural Resources, couches it this way: "My baseline for comparison is what is demonstrably achievable, and are we there? And the answer is no."

As proof, she points to the state's high rate of preventable deaths and unenviable status as a sort of buckle in the "stroke belt," a stretch of territory that takes in much of the southeast United States.<sup>2</sup>

Adds Dr. Ronald H. Levine, state health director, "Compared to ourselves, we are healthier than ever before. Compared to the United States, we are not as healthy as we should be."

Another answer might be found in how North Carolinians rate themselves. A Carolina Poll conducted in March 1991 by the School of Journalism and Mass Communication and the Institute for Research in Social Sciences at UNC-Chapel Hill surveyed 509 adults. More than four-fifths, 81 percent, rated their health as excellent or good as opposed to fair or poor.<sup>3</sup> By comparison, a national survey in 1989 found that about 91 percent of the people polled rated their health as excellent, very good, or good.<sup>4</sup>

Generally speaking, younger, better-educated, wealthier people living in *urban* areas of North Carolina see themselves as healthier than do older, less-educated poor residents living in *rural* sections of the state.<sup>5</sup> There was also a difference based on race. Eighty-three percent of the *white* people surveyed said their health was

**Table 2. Comparative Rankings of Health Statistics  
in 1990 and 1995**

State	1990 Rank	1995 Rank	State	1990 Rank	1995 Rank
New Hampshire	4	1	Idaho	36	26
Minnesota	1	2	Arizona	36	27
Utah	3	2	California	25	27
Connecticut	5	4	Illinois	32	29
Hawaii	2	4	Michigan	27	29
Vermont	11	6	Delaware	27	31
Massachusetts	7	7	<b>North Carolina</b>	<b>30</b>	<b>32</b>
Iowa	9	8	Texas	32	33
Wisconsin	7	8	Wyoming	31	33
Maine	15	10	Georgia	36	35
Nebraska	5	10	Missouri	23	35
Colorado	11	12	Oklahoma	27	37
Kansas	10	12	Florida	45	38
Virginia	16	12	Kentucky	40	38
Maryland	20	15	New York	34	38
North Dakota	11	15	Tennessee	35	38
New Jersey	14	17	Alabama	40	42
Washington	25	17	Alaska	49	43
Rhode Island	17	19	New Mexico	46	43
South Dakota	23	20	Arkansas	43	45
Pennsylvania	17	21	Nevada	43	45
Montana	22	22	West Virginia	50	47
Ohio	19	22	South Carolina	39	48
Indiana	20	24	Louisiana	48	49
Oregon	42	24	Mississippi	47	50

*Source:* The ReliaStar Health Rankings: An Analysis of the Relative Healthiness of the Populations in All 50 States, 1995 Edition, Northwestern National Life Insurance Company, Minneapolis, Minn., p. 12. These were formerly called "The NWNL State Health Rankings."

excellent or good, while only 71 percent of *non-whites* felt the same way.

The overall breakdown in the Carolina Poll is about the same as the results from a survey conducted in 1981, 1983, and 1984 by the

North Carolina Citizen Survey through the state's Office of State Budget and Management. In that poll, between 78 and 83 percent of the state's residents surveyed rated their health as good, very good, or excellent.<sup>6</sup>

## Perceptions vs. Reality in Health Care

It's clear that most North Carolinians consider themselves to be in pretty good health—but do the facts give us a more accurate x-ray of the health status of North Carolina's population? How do you accurately and objectively measure health? In Northwestern National's ranking, the insurance company used a number of subjective categories, such as percent of high-school graduates in the adult population, and then boiled down the statistics to a single ranking.

In reality, the picture is much more complicated than that. The health status of the Tar Heel state isn't so much a uniform blanket as it is a patchwork quilt of black, white, and several shades of gray. That reflects the state's diversity. North Carolina has grinding poverty tucked amid prosperous cities. It has nationally recognized medical schools and rural counties with no doctors. And the state has gleaming medical centers and almost a million people who lack the health insurance they need to gain easy access to these facilities.<sup>7</sup>

The *mortality* rate is the most widely used indicator of health because it is among the simplest. That's because when people die, their death certificates state their cause of death, their age, their race, and address. At the end of the year, the numbers are collected and analyzed by the Division of Statistics and Information Services at the Department of Environment, Health, and Natural Resources (DEHNR).

The ease of data collection for deaths contrasts with the difficulty health officials have in compiling information on diseases, known in medical jargon as *morbidity*. At this point, good morbidity data—whether for diabetes or ulcers—just aren't available. The exceptions are for communicable diseases, such as tuberculosis, syphilis, and, of course, Acquired Immuno-deficiency Syndrome (AIDS).

The North Carolina Medical Database Commission, a branch of the Department of Insurance, collected information on hospital discharges (until it was abolished in 1995), but its published statistics don't take note of a patient's age, sex, or race. And if patients never get admitted to a hospital, but rather find relief at the doctor's office, they're not recorded.

Even when considering death statistics, health officials urge caution in comparing counties on raw data. The reason is that while death

might seem random in individuals, it follows a pattern for the population as a whole. *Generally speaking, the more non-whites, males, and elderly that live in a county, the higher the death rate.*<sup>8</sup>

The state's *unadjusted death rates* show these outcomes. In much of northeastern North Carolina, in the counties along the Virginia border, blacks make up a majority of the population and the death rates are higher than the state average. By contrast, Onslow County is home to Camp Lejeune and has a disproportionate percentage of young people, especially healthy young U.S. Marines and their families. Its death rate is the lowest in the state.

But when statisticians account for these differences in demographics by adjusting for age, race, and sex, that pattern collapses. The county that ends up with the worst *adjusted death rate* is Avery County, a small mountain county. The reason: an unusually high rate of heart disease, despite a population that has few blacks.

So which batch of statistics is the right one to use? On national comparisons, health officials generally adjust death rates only for age. For in-state purposes, there's some debate. Dr. Thad Wester, the former deputy state health director, says, "If we want to compare North Carolina with other states, then adjustments should be made so that the populations compared appear similar. For example, you cannot compare North Carolina with Utah without adjusting for the marked differences in non-white populations. On the other hand, you must avoid the trap of allowing the non-white statistics—which are almost twice that of the white rate—from becoming an accepted norm within the state. This is because there is little reason to believe that the differences are racially determined. It is more likely that the higher rate is caused by being disadvantaged rather than by being non-white."

Wester, a former public health director in Robeson County, points out another reason Utah's citizens are healthier than North Carolina's: Utah, unlike North Carolina, has a large number of Mormons, whose religious teachings urge them to avoid tobacco, caffeine, and alcohol.

In 1992, 59,512 people died in North Carolina—about 870 people for each 100,000 residents. Nationally, the mortality rate is 853 per 100,000. When adjusted for age, the state's rate drops to 540 per 100,000. But the U.S.

rate drops to 505 deaths per 100,000, even though the nation's population, on average, is slightly older than that of North Carolina (see also Table 1, p. 530 for 1991 data).

The state's top killer is heart disease, accounting for nearly 30 percent of all deaths in North Carolina. Rounding out the top 10, in descending order, are cancer, stroke, lung disease, motor vehicle accidents, unintentional injuries, pneumonia, diabetes, suicide, and homicide. Four-fifths of the state's deaths each year can be attributed to these 10 diseases.

Delton Atkinson is the director of DEHNR's statistics division. He says his job is to get beyond the numbers. "What do they mean?" he asks. "This information ought to be of use to policymakers."

### ***Infant Mortality***

Take North Carolina's well-publicized battle against infant mortality. Any death of an infant less than one year old counts toward the state's infant mortality rate. Taken together, these deaths would rank eleventh in number each year, just below homicide.<sup>9</sup>

In 1987 and 1988, the state's infant death rate—which for the past decade had dropped steadily—took a turn for the worse. North Carolina ended the year with the highest infant mortality rate (12.6 deaths per 100,000 live births) of any state except Georgia, and a black eye in the local and national press. The legislative and executive branches scrambled into action, convening task forces and targeting additional state dollars—nearly \$40 million since 1989—towards various forms of prenatal care.<sup>10</sup> In mid-1991, Gov. James G. Martin was able to announce dramatic results—the infant death rate had dropped for 1989 and 1990. In trumpeting the decline, Martin praised several state and private-sector programs, as well as his Commission on Reduction of Infant Mortality, established in December 1989. From 1988 to 1994, North Carolina's infant mortality rate declined by more than 20 percent—from 12.6 to 10.0 deaths per 100,000 live births.

Yet despite the state's gains, one grim fact stands out: the infant mortality rate for non-whites is still nearly twice as high as the rate for whites. Along with race, the other key indicator for infant mortality is a baby's low birth weight. That, health officials assert, tends to "occur more frequently among non-whites and persons of

lower socio-economic status. . . . Infant mortality cannot be separated from its broader context of under-development and poverty."<sup>11</sup>

But Atkinson and his staff still don't know either what caused the two-year hike in the rate in 1987 and '88 or what caused it to subside in 1989 and '90. "Do Medicaid and state dollars make a difference and under what conditions do they make a difference?" he wonders. "You can't say whether one thing did it or a combination of things did it."

Even Walter Shepherd, former executive director of the commission, isn't sure what accounts for the drop. He said better medical technology might hold the answer. "It would be nice to say that the programs put in place would have an impact, but it's too early to say," he says.

Answers to those questions can be elusive, whatever the illness. Similar questions arise about other causes of deaths and illnesses that prevail in North Carolina, and what policy makers are doing about them.

### ***Heart Disease***

Although it causes a third of all deaths, heart disease currently accounts for a smaller percentage of deaths in North Carolinians than in earlier years. In 1979, 223.7 people per 100,000 died from heart disease. In 1991, the last year for which comparable statistics are available, the rate was down to 157 per 100,000. The national rate—203 deaths per 100,000 in 1979—had fallen to 148 deaths per 100,000 by 1991.

Those statistics bear good news and bad. The state's death rate from this disease has dropped, but it still exceeds the national average.

Dr. Fredric Romm, an associate professor of family and community medicine at Wake Forest University's Bowman Gray School of Medicine in Winston-Salem, is coordinating North Carolina's participation in a national survey on heart disease. His suspicion is that heart disease's decline relative to other causes of death is caused partly by lifestyle changes but also by the rise of advanced medical care for heart disease.

Romm is one of four field coordinators for a heart-disease study called Atherosclerosis Risk in Communities, or ARIC. In four communities—Forsyth County, N.C.; suburban Minneapolis, Minn.; Hagerstown, Md.; and Jackson, Miss.—researchers hope to track about 16,000 middle-aged persons over several years and

record changes in their heart conditions. From that information, they hope to gain insight into the onset and prevention of heart disease. "One of the reasons we're doing this study is there's been a decline in deaths in heart disease, and we don't know why," says Dr. Romm.

Cigarette smoking is the leading cause of heart disease and lung cancer, according to the U.S. Department of Health and Human Services.<sup>12</sup> But the public health crusade against smoking isn't quite as simple in North Carolina as it might be in other states. Tobacco is North Carolina's largest cash crop and a linchpin of the state's rural economy, despite efforts to shift the agricultural economy to other commodities.



Wake Medical Center

Cigarette making remains a leading high-wage industry in the urban Piedmont.

So not surprisingly, the state's policy makers on occasion have conflicting opinions about tobacco-related health issues. This shows at the state and local level in three recent instances. North Carolina applied in 1990 to take part in a nationwide program that aims to cut the adult smoking rate from 28 percent to 15 percent by the year 2000. The plan's name is the American Stop-Smoking Intervention Study, or AS-SIST. The state's top health officials carefully weighed the grant application's merit, acknowledging that the tobacco industry's heft made the decision a touchy one, but in September 1991, North Carolina was approved for inclusion in the effort.

By contrast, consider what happened in mid-1991 when the Duplin County Board of Education tried to ban smoking in the county's schools. After the board's initial vote endorsing the ban, angry tobacco farmers threatened to derail a \$30 million school bond referendum, and the board backed down. A brochure prepared that same summer publicizing recommendations of Lt. Gov. Jim Gardner's Drug Cabinet warned pregnant women not to drink or use drugs but made no mention of smoking.<sup>13</sup> The resulting brouhaha was publicized in newspapers across the state and wound up on the pages of the *Journal of the American Medical Association*.

Still, despite the widespread impact of tobacco and the state's traditional position as the largest cigarette manufacturer in the world, one ranking showed about 25 percent of North Carolina's adults smoke, compared to 22 percent for the nation. The highest rate: Kentucky, with 29.3 percent. The lowest: Utah again, at 14.3 percent.<sup>14</sup>

While cigarette smoking is the leading cause of heart disease, it is by no means the only cause. Other contributors include: hypertension or high blood pressure, high cholesterol, obesity, and sedentary lifestyles.

Among the early findings of the ARIC research supervised by Romm is that nearly a fourth of the blacks and about a fifth of the whites participating in the Forsyth County study have high cholesterol levels. And half the blacks have high blood pressure, while slightly less than a third of whites also show hypertension.

Death from heart disease is highest in the rural southwest and rural northeast sections of

the state. The clusters have mainly to do with age and race. Many of the eastern counties have large minority populations, and non-whites smoke more often than whites. Many of the western counties have a higher percentage of elderly.

### Cancer

As heart disease has dropped as a cause of death, cancer has risen. It's the only major illness that causes more deaths now than 40 years ago. Part of the reason is modern medicine's success in treating *other* diseases relative to its ability to cure cancer. Another reason is that what the experts know about preventing and detecting cancer isn't always put into practice.

Overall, North Carolinians die of cancer at about the same rate as the nation as a whole, but certain segments of the population do not share in that status. In North Carolina, as elsewhere, blacks die of cancer at a greater rate than whites. In Chowan County, for example, the mortality rate from *prostate cancer* is three times the state average.

According to a state publication on mortality, "Blacks in certain regions of North Carolina have some of the highest prostate cancer mortality rates in the world. The high rate among blacks may be related to genetic or environmental factors as well as to health care access or quality issues."<sup>15</sup>

Cancer strikes at many organs. And the news is better for cancer in some parts of the body than for others. A bleak spot in the state's war on cancer is *lung cancer*. As a cause of death, it's increasing in both sexes and in blacks and whites, with white females showing the greatest increase. With extremely low cure rates (less than 5 percent) for lung cancer, health officials say prevention is the most effective way to combat the disease. This is where the issue of access to health care enters the debate. In 1992, North Carolina had one doctor for every 1,360 residents. But within the state, there are vast disparities in the availability of *primary care* physicians, a vital first rung on the health care ladder.<sup>16</sup>

In Orange County, home to the University of North Carolina's medical center, there was one such doctor for every 294 people in 1992—the lowest ratio of population to primary care physicians in the state. In Stokes County in the northwest, each primary care

physician serves, on average, 6,506 people, the highest ratio in the state. Other counties with high ratios are: Greene, one to 5,301; Hyde, 5,391; and Perquimans, 5,283.

Other indicators also point to the inability of many North Carolinians to gain access to health care. Most critical is the lack of health insurance. Nearly one in every eight persons in North Carolina lacks health insurance on any given day, and as many as 1.2 million citizens are uninsured at some point over the course of a year.<sup>17</sup>

In the treatment of cancer, ready access to health care can be the difference between life and death. Take *cervical cancer*, which is often successfully treated if detected early. While the mortality rate for this form of cancer is dropping, non-whites still die at three times the rate of white females. "This wide differential probably involves late access to health care and perhaps socioeconomic and sexual activity factors often associated with the disease," according to a 1988 state publication on mortality.<sup>18</sup>

"I don't think there's rank discrimination here," state health director Levine told *The News & Observer* of Raleigh. "I think it's inadvertent discrimination. The lack of access to resources is an indirect form of discrimination that needs to be addressed."

How do you give more people access to health care? In the 1991 session, the General Assembly approved two pieces of legislation that address parts of the problem through the existing health insurance structure. The first law requires health insurers to pay for annual mammograms and pap smears for women.<sup>19</sup> Mammograms are a screening procedure to detect *breast cancer*, while pap smears detect cervical cancer. The idea behind the legislation is to remove virtually all financial disincentives to women using these diagnostic tests.

But there's a catch. The law only covers women who have health insurance. Dr. Wester applauds the spirit of the law, but says there's something not quite right with a law that gives wealthier women access to a potentially life-saving procedure while denying it to poor women. Wester attributes the law's limited scope to the budget difficulties that confronted the General Assembly when it convened for the 1991 session. Lawmakers eventually closed a gap of about \$1.2 billion using equal parts budget cuts and tax increases, but revenues are projected to be tight for the foreseeable future.<sup>20</sup> "Eventually, I'm sure, these services will be picked up for all," Wester

says, "but it's hard to do that when you have a \$1 billion shortfall."

The second piece of legislation important to providing access requires health insurers and health maintenance organizations (HMOs) to offer a bare bones insurance policy for small businesses.<sup>21</sup> The law would also limit the annual rate increases insurers could charge. Sponsors and industry lobbyists who pushed for the bill estimate there are about 600,000 uninsured residents who work for or are dependent on someone who works for a small business. While N.C. Department of Insurance officials say it's too early to tell about the success or failure of this program, an optimistic estimate is that 10 percent of these uninsured individuals might gain access to health care coverage.

### *Diabetes*

Diabetes is both a leading cause of death and a leading disease in North Carolina. An estimated 500,000 residents have the ailment, but about half don't know it.<sup>22</sup> Although the disease can be controlled through diet, exercise, and insulin and other drugs, about 5,100 persons die from diabetes in an average year. Non-whites are more than twice as likely to die from diabetes as whites.

The public and private sector's efforts against diabetes provide a glimpse of a substantial population that is considered unhealthy but still is reluctant to make changes in their lifestyle. Dr. Joseph Konen, director of community medicine at the Bowman Gray School of Medicine, said adult diabetes often appears in a two-step pattern. Certain people are genetically predisposed to the disease, but the ailment's onset is triggered by an inappropriate diet.

The key to preventing diabetes, he said, is identifying high-risk individuals and then helping them make lifestyle changes. And that is often a difficult task. "There's a large segment of North Carolina's population that likes its buttered grits and red-eye gravy and bacon," he says. The people who readily come forward for help, he adds, are not the disadvantaged, but "are the ones who've already bought into changing to a healthy lifestyle."

The federal Centers for Disease Control have begun a project in the Triad and the Triangle to combat diabetes. The Triad will be the control group, while the Triangle communities

of Raleigh and Durham will receive intervention in the form of heavy doses of public education. The goal is to reduce body weight by an average of 5 to 10 percent during the next decade or so, which would reduce the risk of diabetes. One target for these efforts is the black church, where researchers plan to push for dietary changes. "If the community buys into it, there will be a change in the culture," says Dr. Konen, one of the study's coordinators.

These types of early steps are crucial for narrowing the black-white health gap, says Dr. John Hatch, a professor of health behavior and health education at UNC-Chapel Hill. "Intervening at the symptoms is not a long-run solution," he says.

Dr. Stoodt of the Division of Adult Health Services agrees. "Preventing the incidence of diabetes is a pretty new question," she says. The public health emphasis traditionally has turned on keeping the disease in check and preventing its side effects, such as blindness and kidney failure.

That view still predominates in state policy decisions. Using federal money, North Carolina spends nearly \$220,000 to staff diabetes control programs at three local health departments in rural eastern North Carolina. The goal is to reduce the complications, disabilities and premature deaths caused by diabetes. According to the grant application for the Triad and Triangle project, "The emphasis is on increasing self-care in the management of the disease and in controlling complications."<sup>23</sup> Dr. Stoodt adds, "Managing diabetes on a daily basis is largely the individual's responsibility."

### *Injuries*

Not so long ago, fatalities from car wrecks, drownings, and fires were called "accidents." Now they're called "injuries." This isn't an Orwellian attempt at double-talk or news-speak. Instead it reflects the growing recognition that many accidents aren't as accidental as they seem.

When North Carolina abandoned the term "accident" in 1990, health officials wrote, "The connotation of accidents as random events beyond reasonable human control is considered an impediment to the prevention of injuries in North Carolina."<sup>24</sup>

In 1994, the last year statistics are available, 4,617 people died from injuries. A third of

those deaths are considered “intentional” injuries, such as *suicide* and *homicide*. The rest are called “unintentional.”

Compared to the nation, North Carolina’s rates of murder are slightly higher and rates of suicide are the same. In the past, the state has considered “accidents” from drowning, falls, poisoning, and fire enough of a problem to have a Governor’s Task Force on Injury Prevention.<sup>25</sup>

But overall, the incidence of death from unintentional injuries is higher than the national average. This is particularly true in *motor-vehicle accidents*. Generally, residents in the state’s rural areas die more often in car wrecks than in other types of injuries.<sup>26</sup>

“I attribute it to a lack of manpower for traffic law enforcement in rural areas of the state versus urban areas,” says Alfred C. Warlick III, deputy director of the Governor’s Highway Safety Program. Warlick says young people who like to drive fast tend to seek out rural areas where they are “less likely to be caught.”

But the biggest cause of the state’s 1,384 traffic deaths in 1990 had little to do with city streets or country roads. It was abuse of alcohol. According to reports from the state’s medical examiners, more than half the drivers in single-vehicle crashes were legally intoxicated. Overall, 44 percent of all fatal accidents were alcohol-related.

The Safe Roads Act is the cornerstone of the state’s attack on drunk-driving. Enacted in 1983, it imposed stiffer penalties for convictions of driving-while intoxicated.<sup>27</sup> But it’s not easy to trace the act’s direct or indirect impact on the number of traffic fatalities. The state’s rate of vehicle deaths actually increased in the years immediately after the legislation was passed, but then began dropping again in 1986. “I attribute the declining fatality, injury, and accident picture in the years following the Safe Roads Act to a combination of stiffer penalties, increased adjudication, and more concentrated enforcement,” says Warlick. “These factors, combined with a higher percentage of larger cars and a 60 percent-plus safety belt use rate account for a large portion of

our improved collision picture.”

North Carolina’s child seat belt laws were enacted in 1982, 1985, and 1994.<sup>28</sup> The adult seat belt requirement took effect in 1987.<sup>29</sup> Now drivers and front-seat passengers of any age must wear a seat belt and children up to age 12 must be restrained whether they are riding in the front or back. But according to the UNC Highway Safety Research Center, which monitors seat belt use statewide, compliance has dropped since the early days, from 78 percent in the first year to just over 60 percent in 1991.<sup>30</sup>

States measure traffic fatality rates two ways: the number of deaths per 100,000 population and the number of deaths for each 100 million miles driven. With either method, North Carolina, along with other South Atlantic states, is above the national average, although its rate for each measure is lower than it was a decade ago.<sup>31</sup>

On the job, North Carolinians appear to be relatively healthy, despite the tragic poultry processing plant fire that claimed 25 lives in Hamlet, N.C., in September 1991. A total of 185,394 private sector *work-related injuries and illnesses* were reported in 1993, according to the N.C. Department of Labor.<sup>32</sup> While a greater share of the state’s workers draw their paychecks from manufacturing jobs than in any other state,<sup>33</sup> North Carolina’s private-sector injury rate is still lower than the nation’s. There were 7.9 injuries for every 100 full-time Tar Heel workers in 1993. Nationally, 8.5 injuries were reported for every 100 workers.

**Table 3. Cases of Sexually Transmitted Diseases in N.C., 1980–95**

Year	AIDS	Syphilis	Gonorrhea	Chlamydia
1980	0	908	41,707	
1985	91	1,289	39,162	
1990	474	2,867	33,377	10,500
1995	867	3,494	23,961	15,780

Source: HIV/STD Control, Epidemiology, N.C. Department of Environment, Health, and Natural Resources.

Injuries are the leading cause of death for Americans aged 1–44.<sup>34</sup> Health statisticians use a measurement called “years of potential life lost” to gauge the impact of these accidental deaths. The calculation multiplies each death by the number of years before the victim turned 65. A 25-year-old who drowned would be given 40 years of life lost, while a 63-year-old who died from stroke would only receive two years. The years lost from injuries in North Carolina exceed the years lost from cancer or heart disease.

### ***Sexually Transmitted Diseases***

One of the fastest-growing health problems in North Carolina is STD, the acronym for Sexually Transmitted Diseases. Once known euphemistically as “social diseases,” STDs include gonorrhea, syphilis, chlamydia, and AIDS (Acquired Immunodeficiency Syndrome). “A relentless increase in gonorrhea and syphilis cases in North Carolina is worrying public health experts who fear that the trend foreshadows a surge in AIDS,” *The News & Observer* of Raleigh reported in November 1991.<sup>35</sup> Health officials are worried that the dramatic increases in syphilis and gonorrhea mean that increases in HIV infection—the virus linked to AIDS—won’t be far behind (See Table 3 for a 15-year look at trends in sexually transmitted diseases).

As late as 1986, there were no reported cases of congenital syphilis, an STD passed from mother to child at birth. In 1990, there were 30 cases of the disease, spread from infected mothers to their babies. “That means syphilis is rampant,” says Dr. Rebecca A. Meriwether, the director of the communicable disease division of the Department of Environment, Health, and Natural Resources.

Indeed, in 1990, reported cases of syphilis jumped by nearly 40 percent in North Carolina, according to preliminary figures compiled by the American Social Health Association. Based on the 1990 figures, the state’s infection rate now tops the national rate. For gonorrhea, the other major reported sexually transmitted disease, the infection rate is not increasing, according to state-produced statistics.

Dr. Meriwether blames drug use and budget cuts for the increase in syphilis. “Whenever resources for partner notification go down, rates go up,” she said.

North Carolina’s AIDS infection rate, now at 15.0 per 100,000, is increasing steadily, although it’s still about half the national average and below most other states in the South Atlantic region. “We’re catching up,” warns Dr. Meriwether. Of particular concern to public-health officials is the disease’s steady tilt toward non-whites and poor people. That would follow a pattern of other sexually transmitted diseases. Syphilis and gonorrhea, the state’s most common STDs, are both most prevalent in counties with large minority populations.

### ***Mental Health***

Although perhaps not as obvious as heart disease or diabetes, mental illness is a serious and widespread problem in North Carolina. Estimates vary on the number of mentally ill, but including substance abuse, as many as 900,000 North Carolina citizens may suffer some form of mental illness at any one time, according to the state Mental Health Study Commission.<sup>36</sup> A report issued in July 1988 by the Division of Mental Health, Mental Retardation, and Substance Abuse Services in the N.C. Department of Human Resources estimated more than 1.2 million North Carolinians had suffered some mental disorder in the previous year.<sup>37</sup> That included everything from major depression to a simple fear of wide-open spaces.

For severe and persistent mental illness, a narrow definition of serious cases, the study estimated that about 85,000 residents, or 1.76 percent of the adult population, were afflicted. Another 1.15 percent have schizophrenia. Leaders of the study commission suggested that the state needed to add \$600 million during the next decade to the existing \$645 million budget to fight mental illness and substance abuse and expand existing programs.

### **The Challenge**

**T**he most recent survey of North Carolina lifestyles revealed that 11 percent of residents between the ages of 18–24 are *obese*. More than half do little or no *exercise*. A fifth *smoke*. More than a fifth *drink* heavily. (See Table 4, p. 539 for more).

If North Carolina is to improve its health, the challenge is to make the next generation

**Table 4. Percentage of North Carolinians with Reported Risks by Race and Sex, Age, Income, and Education Level, 1990**

	Current Smokers	Current Hypertensives	Sedentary Lifestyles	Obesity	High Cholesterol	Chronic Drinkers	Acute Drinkers	Drinking & Driving	Lack of Seat Belt Use
<b>Total N.C. Population</b>	28.0	18.0	60.5	28.8	11.7	2.5	9.1	1.5	15.8
<b>Race and Sex</b>									
White Male	32.4	15.0	58.8	27.5	11.2	5.1	15.8	3.3	21.4
White Female	27.4	18.1	56.4	23.7	15.8	0.3	3.5	0.4	12.5
Nonwhite Male	23.4	16.5	67.8	32.3	1.6	4.1	15.1	1.0	15.4
Nonwhite Female	21.0	27.8	71.8	45.6	9.0	0.8	3.5	0.5	9.9
<b>Age</b>									
18-24	20.9	1.5	57.3	11.1	3.1	5.6	16.9	3.6	21.1
25-34	39.6	6.1	55.3	23.9	5.8	3.2	16.0	3.2	17.4
35-44	29.4	10.2	60.1	34.5	12.1	1.9	8.9	1.0	16.0
45-54	31.0	24.3	62.2	39.6	18.3	1.5	4.5	0.5	18.8
55-64	27.9	39.4	63.7	37.5	18.7	1.6	2.4	—	10.8
65+	13.4	39.2	68.9	30.0	17.1	1.2	1.2	—	9.1
<b>Income</b>									
Less than \$10,000	22.4	33.5	74.9	38.4	11.2	2.5	6.2	0.4	17.1
\$10,000-14,999	29.1	17.0	65.3	35.0	10.1	3.4	10.3	2.0	19.3
\$15,000-19,999	34.8	20.3	58.2	25.6	11.0	3.4	10.4	2.3	19.2
\$20,000-24,999	32.1	16.7	55.6	26.2	12.2	3.0	7.6	1.8	14.6
\$25,000-34,999	30.6	10.3	55.0	21.6	11.4	2.3	8.8	0.9	15.5
\$35,000-50,000	28.1	13.2	56.5	30.8	15.1	3.5	14.0	2.7	12.0
\$50,000+	20.3	9.1	43.7	23.1	16.2	0.9	11.2	1.3	13.6
<b>Education Level</b>									
<9th Grade	23.2	40.4	79.4	43.1	8.8	1.4	1.8	0.8	16.0
Some High School	33.2	23.7	78.1	34.4	8.2	1.5	6.9	1.2	18.2
High School Grad.	31.2	16.4	62.0	27.2	11.7	2.5	10.3	1.4	19.0
Any Tech. School	38.7	7.4	58.4	24.2	10.2	3.2	10.4	—	13.0
Some College	28.9	10.6	48.8	27.8	13.5	3.7	12.2	2.4	14.7
College Graduate	17.4	15.4	44.8	23.0	13.8	3.2	9.4	2.1	9.5
Post Graduate	20.2	12.3	48.1	19.4	17.5	1.2	9.9	—	8.7

**Definition of Risk Factors**

*Current Smokers*—Have smoked 100 cigarettes in life and smoke now.

*Current Hypertensives*—Persons told blood pressure was high more than once, or who are on medication, or report their blood pressure is still high.

*Sedentary Lifestyles*—Persons who do not get at least 20 minutes of aerobic exercise at least three times a week.

*Obesity*—Persons at or above 120 percent of ideal weight—as defined by the 1959 Metropolitan Height-Weight Tables.

*High Cholesterol*—Blood reading greater than 200 milligrams per deciliter.

*Chronic Drinkers*—Persons who have an average of 60 or more alcoholic drinks in a month.

*Acute Drinkers*—Persons who had five or more drinks on one occasion in a month.

*Drinking and Driving*—Persons who drive after having too much to drink.

*Lack of Seatbelt Use*—Any reported seat belt use that is less than always.

*Source: N.C. Department of Environment, Health, and Natural Resources, Division of Adult Health.* These data are based on annual telephone interviews with more than 1,700 persons and adjusted for age, race, and sex to reflect the demographic makeup of the North Carolina population. The results are published in a brochure titled, "Risky Business—A Fact Sheet on the Behavioral Risk Factors of North Carolinians."

healthier than the previous one. The experts say the solution lies in fostering better eating habits, a regular exercise program, and avoidance of alcohol and drugs, including tobacco.

Levine, the state health director, says the statistics compiled over the years show that North Carolinians generally "are enjoying better health than ever before. Compared to a decade ago or longer, we are living longer; are experiencing declines in overall mortality as well as some of the leading causes of mortality such as heart disease, cerebrovascular disease, and injuries; and are experiencing declines in infant mortality." The median age at death has increased from 28.1 years in 1914 to 72.9 years in 1989, Levine says.

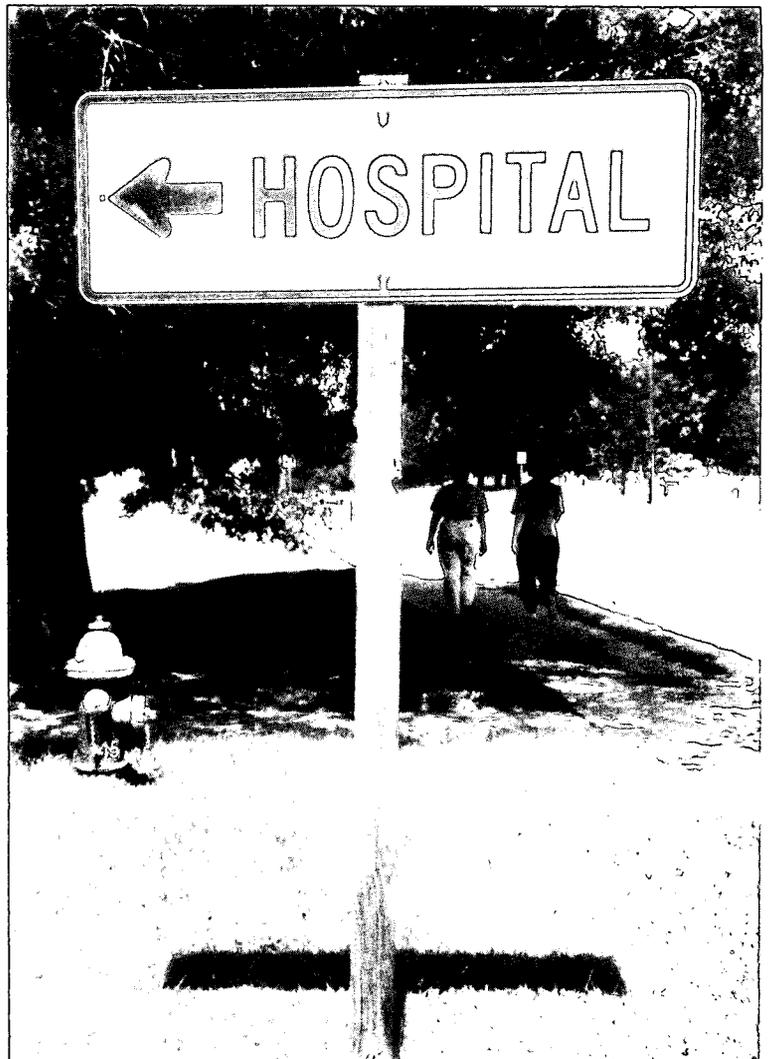
But he adds, "While the past century has been marked by outstanding progress toward saving lives and promoting health, we are still challenged. North Carolina continues to be far below the comparable U.S. rates for a number of the health indicators. Minorities and low-income persons in this state have rates far exceeding those for whites and the moderate-to-high-income groups. Our citizens continue to die from causes too early or needlessly. Problems such as lack of health care access, poor health habits [and] behavior, and inadequate health education requiring extraordinary efforts by health officials must be resolved before the relative health of North Carolinians can improve."

## FOOTNOTES

<sup>1</sup> The ReliaStar Health Rankings: An Analysis of the Relative Healthiness of the Populations in All 50 States, 1995 Edition, Northwestern National Life Insurance Company, Minneapolis, Minn., pp.1-13. These were formerly called "The NWNL State Health Rankings."

<sup>2</sup> Robert A. Hahn, *et al.*, "Excess Deaths from Nine Chronic Diseases in the United States, 1986," *The Journal of the American Medical Association*, Vol. 264, No. 20, Nov. 28, 1990, pp. 2654-2659. See also "The Stroke Belt: Stroke Mortality by Race and Sex," National Heart, Lung and Blood Institute, October 1989, pp. 1-4.

<sup>3</sup> See Thad Beyle, "North Carolinians and Health: It Is a State of Mind," Department of Political Science, UNC-Chapel Hill, June 1990, pp. 1-4. See also The Carolina Poll, March 1991, School of Journalism and Mass Communication and the Institute for Research in the Social Sciences, UNC-Chapel Hill. The poll's margin of error, based on sample size, is plus or minus 4 percent. Respondents were asked, "Would you say your own health, in general, is excellent, good, fair, or poor?"



Jack Betts

<sup>4</sup> *Health United States 1990*, National Center for Health Statistics, U.S. Public Health Service, March 1991, p. 123.

<sup>5</sup> For more on health care in rural areas, see Jeanne M. Lambrew and Jack Betts, "Rural Health Care in North Carolina: Unmet Needs, Unanswered Questions," *North Carolina Insight*, Vol. 13, No. 3-4 (November 1991), pp. 66-92.

<sup>6</sup> "North Carolina Citizen Survey: A review of survey data from 1976 to 1984," Management and Information Services, Office of State Budget and Management, Raleigh, N.C., December 1985. The poll is no longer being conducted, although the North Carolina Center for Public Policy Research has recommended that it be revived.

<sup>7</sup> For a full discussion of inadequate health insurance as an access barrier, see Chris Conover and Mike McLaughlin, "Spreading the Risk and Beating the Spread: The Role of Insurance in Assuring Adequate Health Care," *North Carolina Insight*, Vol. 13, No. 3-4, November 1991, p. 21.

<sup>8</sup> *Leading Causes of Mortality: North Carolina Vital Statistics, 1989*, Vol. 2, N.C. Center for Health and Environmental Statistics, February 1991, Chap. 1, p. 1 through Chap. 7, p. 1. Information updated with *Leading Causes of Death: North Carolina Vital Statistics, 1994*, Vol. 2, N.C. Center for Health and Environmental Statistics, December 1995.

<sup>9</sup> See Pam Silberman, "State's Infant Mortality Rate Among the Nation's Worst," *North Carolina Insight*, Vol. 11, No. 2-3 (April 1989), pp. 131-133 for more on this topic. Information updated with *Governor's Commission on Reduction of Infant Mortality: Final Report*, March 1995. Published by the N.C. Healthy Start Foundation, 1300 St. Mary's Street, Suite 204, Raleigh, N.C. 27605-1276.

<sup>10</sup> The legislature appropriated a total of \$10.3 million in new money for the fight against infant mortality in the 1991-93 biennium. In the 1989-91 biennium, \$28.5 million in additional funds were appropriated to battle infant mortality, according to the legislature's Fiscal Research Division.

<sup>11</sup> *Leading Causes of Mortality: North Carolina Vital Statistics, 1988*, Vol. 2, N.C. Center for Health and Environmental Statistics, June 1990, Chap. 8, p. 4. Information updated with *Leading Causes of Death: North Carolina Vital Statistics, 1994*, Vol. 2, N.C. Center for Health and Environmental Statistics, December 1995.

<sup>12</sup> "Reducing the Health Consequences of Smoking: 25 Years of Progress," a report by the U.S. Surgeon General, U.S. Department of Health and Human Services, 1989.

<sup>13</sup> A spokesperson for the Department of Environment, Health, and Natural Resources says smoking was omitted because the brochure focused on illegal drugs and tobacco is legal.

<sup>14</sup> The ReliaStar Health Rankings, see note 1 above, p. 29.

<sup>15</sup> *Leading Causes of Mortality*, Center for Health and Environmental Statistics, Department of Environment, Health, and Natural Resources, Volume 2, 1988, Chap. 5, p. 31. Information updated with *Leading Causes of Death: North Carolina Vital Statistics, 1994*, Vol. 2, N.C. Center for Health and Environmental Statistics, December 1995.

<sup>16</sup> "North Carolina Center for Health Statistics Pocket Guide—1993," State Center for Health and Environmental Statistics, N.C. Department of Environment, Health, and Natural Resources, December, 1994, Tables 6 and 7. Primary care physicians are defined as those concentrating on family practice, general practice, internal medicine, pediatrics, or obstetrics and gynecology.

<sup>17</sup> Conover and McLaughlin, see note 7 above, p. 22. See also Pam Silberman, "Health Care for the Poor: Adequacy, Availability, Affordability," *North Carolina Insight*, Vol. 11, No. 2-3 (April 1989), pp. 122-137 for more on gaps in health care coverage.

<sup>18</sup> *Leading Causes of Mortality: North Carolina Vital Statistics 1988*, Vol. 2, Chap. 5, p. 11. Information updated with *Leading Causes of Death: North Carolina Vital Statistics, 1994*, Vol. 2, N.C. Center for Health and Environmental Statistics, December 1995.

<sup>19</sup> Chapter 490 (HB 347) of the 1991 Session Laws.

<sup>20</sup> For more on the budget shortfall and its implications for the future, see Mike McLaughlin, "North Carolina's Biennial Budget: Oil Change or Overhaul?" *N.C. Insight* Vol. 13, No. 2 (June 1991), pp. 2-19.

<sup>21</sup> Chapter 630 (HB 1037) of the 1991 Session Laws.

<sup>22</sup> Estimates are from the Diabetes Control Program, Division of Adult Health Services, Department of Environment, Health, and Natural Resources.

<sup>23</sup> See "Diabetes Control Program Proposal FY 1991-1992," Division of Adult Health Services, N.C. Department of Environment, Health, and Natural Resources, undated, p. 1.

<sup>24</sup> *Leading Causes of Mortality, 1988*, Vol. 2, Chap. 7, p. 3. Information updated with *Leading Causes of Death: North Carolina Vital Statistics, 1994*, Vol. 2, N.C. Center for Health and Environmental Statistics, December 1995.

<sup>25</sup> Established by Executive Order No. 78, issued by Gov. James G. Martin, Nov. 1, 1988. The task force was extended by Executive Order No. 185, then abolished by Gov. James B. Hunt in Executive Order No. 42, on April 12, 1994.

<sup>26</sup> "N.C. Traffic Accident Facts 1990," Division of Motor Vehicles, N.C. Department of Transportation, 1991, pp. 4-6.

<sup>27</sup> Chapter 435 of the 1983 Session Laws, codified as G.S. 20-179.

<sup>28</sup> G.S. 20-137.1.

<sup>29</sup> G.S. 20-135.2A.

<sup>30</sup> See "Increased Seat Belt Use Through Police Action," N.C. Highway Safety Research Center, Publication No. A-144, 1990-90 and 1990-91.

<sup>31</sup> "1990 State Statistics," National Highway Safety Transport Association, Washington, D.C., 1991, pp. 11-12.

<sup>32</sup> "1993 Occupational Injuries and Illnesses in North Carolina," N.C. Department of Labor, January 1995, p. viii and p. 6.

<sup>33</sup> As of December 1991, 26.7 percent of the state's non-agricultural work force held jobs in manufacturing, according to the Employment Security Commission of North Carolina.

<sup>34</sup> Draft, 1989 Edition, Behavioral Risk Factor Surveillance System, Division of Adult Health, Department of Environment, Health, and Natural Resources, dated 1989, unnumbered sheet provided by department.

<sup>35</sup> Rachele Kanigel, "Gonorrhea, syphilis on rise in N.C.," *The News & Observer* of Raleigh, Nov. 6, 1991, p. 1B.

<sup>36</sup> See Remarks by Sen. Kenneth C. Royall Jr., co-chair, Mental Health Study Commission, Jan. 29, 1991, p. 1.

<sup>37</sup> Prevalence of Mental Disorders in North Carolina, N.C. Division of Mental Health, Mental Retardation and Substance Abuse Services, N.C. Department of Human Resources, July 18, 1988, p. 14. New data should be available summer 1996.



# The Health of Minority Citizens in North Carolina

BY MIKE MCLAUGHLIN

*What is the health gap between minorities and whites in North Carolina? What steps are being taken to help close the gap, and what chance do they have for success? North Carolina minorities—particularly African Americans—are less healthy than the white majority. They are more likely to suffer disease and less likely to have health insurance to pay for care. Thus, they have less access to care and are more likely to wait until they are sicker to seek care. For these and other reasons, they die younger. Their mortality rates are higher for such diseases as diabetes and stroke, and the rates are higher for heart disease and cancer when adjusted to account for age differences in the population.*

To find the faces behind the numbers that show a health gap between minorities and whites, one doesn't have to look beyond the front-line troops. Take, for example, Barbara Pullen-Smith, director of the Office of Minority Health. She attributes the early death of her father and her mother's chronic hypertension to a lack of access to health care.

"I've always believed that if my father had had access to better care, he probably would have lived longer," says Pullen-Smith, an African American who was raised in rural Warren County. "He had a blood clot on the brain. He

died when I was six weeks old. . . . The nearest hospital was 16 miles, and in 1959, 16 miles was very far away. My mother has had hypertension for as long as I can remember. . . . She calls it 'high blood.'"

Other health care workers share similar stories. Vanessa Davis is a college-educated professional who formerly worked for the Governor's Commission on the Reduction of Infant Mortality. She testified at a public hearing on minority health issues about the loss of her two infants.<sup>1</sup> She wanted people to know it isn't just the poor and uneducated whose tragedies are recorded in infant mortality statistics that show African Americans are twice as likely to die in their first year of life as whites.

Quinton Baker, director of the Community Based Public Health Initiative in Chatham

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*Mike McLaughlin is the editor of North Carolina Insight. Center interns Myron Dowell and Emily Coleman contributed to this report.*

County, suffers from diabetes and partial blockage of the arteries. Baker tries to control these maladies through diet and exercise, and he's seeking ways to help other African-American males who suffer similar fates.

In some way, all of these warriors in the battle to narrow the health gap between minorities and whites are touched by the very conditions and illnesses they are fighting against. Indeed, it would be difficult to be a minority citizen in North Carolina and *not* be affected in some way by the statistics.

The problem is particularly acute for African Americans, who face a long list of illnesses from which they are more likely than whites to get sick or die.<sup>2</sup> Consider these stark statistics, which represent the average number of deaths per 100,000 residents attributed to a given disease each year from 1988 through 1992:<sup>3</sup>

**Stroke.** Average mortality rate 79.9 for African Americans. White mortality rate 67.3. African American rate 19 percent higher.

**Chronic Liver Disease and Cirrhosis.** Average African-American mortality rate 13.9. Average white mortality rate 9.9. African-American mortality rate 40 percent higher.

**Diabetes.** Average mortality rate 33.0 for African Americans. White mortality rate 17.3. African-American rate 91 percent higher.

**Kidney Disease.** Average African-American mortality rate 13.7. Average white mortality rate 6.8. African-American mortality rate 101 percent higher.

**Acquired Immune Deficiency Syndrome.** Average African-American mortality rate 16.8. Average white mortality rate 3.5. African-American rate 380 percent higher.

Unadjusted white death rates from 1988–1992 were higher than those of African Americans for the leading causes of death in North Carolina, heart disease and cancer. But this is explained by the fact that African Americans are a younger population than whites, and cancer and heart disease predominantly strike older people. Approximately half of African-American deaths are attributed to heart disease and cancer. And when death rates are adjusted for age differences in the population, African Americans are more likely than whites to die of these diseases as well.

The 1991 age-adjusted heart disease mortality rate for North Carolina minority males, for example, was 275.1 deaths per 100,000 population. That's 34.3 percent higher than the

white rate of 204.8 per 100,000. For minority females, the gap after age adjusting was even greater, at 54.0 percent. For cancer, the minority male age-adjusted death rate (241.0 per 100,000) was 51.2 percent higher than the white age-adjusted rate (159.4 per 100,000). The gap narrows when comparing minority females to white females, although it still exists. Age-adjusting also illustrates the impact of stroke on minorities. For males, the rate was more than twice that of whites. (See Table 1 below for 1991 age-adjusted figures on heart disease, cancer, and stroke.)

Researchers attribute higher death rates for the three leading causes of death among African Americans—heart disease, stroke, and cancer—to smoking, hypertension, and obesity, as well as socioeconomic factors.<sup>4</sup> And in the case of cancer, the overall numbers hide relatively high death rates for particular *types* of cancer—such as breast cancer, for which early detection and treatment represents the best hope for a cure, and lung cancer, which is preventable.

Aside from *mortality* data, the state also keeps track of *morbidity*—or illness—for a broad range of communicable diseases and for cancer. For almost every type of communicable disease the state tracks, African-American infection rates far exceed those of whites.<sup>5</sup> Consider these examples:

- African Americans are more than five times more likely to be infected with AIDS than whites.
- African Americans are more than twice as likely as whites to be infected with hepatitis B.

Rates are also much higher among African Americans for the food and water-borne illnesses salmonellosis and shigellosis, and for bacterial meningitis (caused by a bacteria called *H. influenza*).

Rates of **sexually transmitted diseases** among African Americans dwarf those of whites. For example, the gonorrhea rate for African Americans is 1,897.6 cases per 100,000 North Carolina residents, compared to 62.9 cases per 100,000 residents for whites. Syphilis infects African Americans at a rate of 208.4 times per 100,000 residents, compared to 7.1 per 100,000 residents for whites. Native Americans and Asians also have higher rates of sexually transmitted disease than whites, although not as high as African Americans.

These statistics underscore the magnitude of the problem of differences in health between whites and minorities. And they raise a number of questions for state policymakers. Why do disease and death strike African Americans disproportionately? What about other minority subgroups such as Hispanics and Native Americans? How does their health stack up against that of the white majority? Is it the role of the state to try to address the health gap between whites and minorities in North Carolina? If so, what can be done that is both effective and economical?

The Center took a four-pronged approach in seeking answers to these questions. This involved: (1) analyzing state-level and county-by-county data produced by the State Center for Health and Environmental Statistics on morbidity and mortality of whites compared to minorities; (2) conducting field audits of immunization efforts at local health departments as one measure of how well preventive health services are reaching their intended targets; (3) surveying all local health directors for further insights into what obstacles may exist in serving minorities at the local level; and (4) examining existing programs addressing minority health issues for clues to what works.

### African-American Health Issues

A total of 62 percent of all African-American deaths are due to four leading causes: heart disease (28.8 percent), cancer (20.8 per-

cent); stroke (8.5 percent), and diabetes mellitus (3.5 percent). African Americans were more likely than whites to suffer death from these diseases, which in some cases could be controlled or influenced by diet. African Americans were slightly more likely to have an accident that would lead to death, and about four-and-a-half times more likely to be murdered or die at the hands of a law officer. For minority youth ages 15-19, the discrepancy is even greater. They are more than 12 times more likely to be murdered or killed by authorities than white youths.<sup>6</sup> (See Table 2, pp. 548-549.) But the biggest discriminator in black-white death rates was Acquired Immune Deficiency Syndrome (AIDS): the death rate for African Americans was nearly five times the rate for whites.

Even areas for which the overall numbers look good, such as cancer mortality, are misleading. When African-American death rates are adjusted for the fact that the population is younger, cancer death rates exceed those of whites. "Cancer is largely a disease of older people," says Dale Herman, a statistician with the N.C. Cancer Registry, which tracks all deaths by cancer in the state. "Since there are more older whites than minorities, there will be more cases of cancer among whites. However, the rates for minorities are higher than for whites for each age group."

Some types of cancer, such as prostate and cervical cancer, are much more common among African Americans than whites, and the survival rate for African Americans generally is lower. After adjusting for age, African-American males

**Table 1. U.S. and N.C. Age-Adjusted Mortality Rates for Heart Disease, Cancer, and Stroke, by Race, 1991\***

	White Male		White Female		Minority Male		Minority Female	
	U.S.	N.C.	U.S.	N.C.	U.S.	N.C.	U.S.	N.C.
Heart Disease	196.1	204.8	100.7	99.5	234.0	275.1	143.1	153.2
Cancer	159.5	159.4	111.2	104.2	207.4	241.0	121.2	114.9
Stroke	26.9	32.7	22.8	26.8	48.2	65.9	36.9	47.3

\* Deaths per 100,000 population using 10-year age groups and U.S. 1940 population as standard for direct age adjustment.

Source: "North Carolina Center for Health Statistics Pocket Guide—1993," State Center for Health and Environmental Statistics, N.C. Department of Environment, Health, and Natural Resources, December 1994, Table 5.

are more than twice as likely to die of prostate cancer as white males, according to N.C. Cancer Registry data provided by Herman. These data show an age-adjusted mortality rate of 60.3 per 100,000 African-American males, compared to 24.5 annual prostate cancer deaths per 100,000 whites.<sup>7</sup> Indeed, the mortality rate of African-American males suffering prostate cancer in North Carolina is among the highest of any state in the nation.<sup>8</sup>

African-American males also have higher age-adjusted mortality rates for lung cancer than do white males. The disease kills 103 African-American males per 100,000 population, compared to 83.3 white males.<sup>9</sup>

A program called Project ASSIST in the Adult Health Promotion Division of the Department of Environment, Health, and Natural Resources is attempting to increase its focus on African Americans in order to prevent lung cancer, heart disease, and other smoking-related illnesses. Sandra Headen, a faculty member with the Tobacco Education and Training Center at

the University of North Carolina School of Public Health, says differences in smoking habits may account for higher lung cancer mortality rates among African Americans.

African Americans, she says, are more likely to use mentholated brands that encourage them to inhale more deeply. They also are more likely to have a relapse if they quit, Headen says. She adds that tobacco is ingrained in the African-American culture. Tobacco companies advertise heavily in African-American oriented magazines, Headen says, and on billboards in African-American neighborhoods. They also underwrite cultural and athletic events important to African Americans, she says. Headen is helping Project ASSIST use culturally appropriate materials to combat these messages and to help African-American smokers quit.

Part of the national American Stop Smoking Intervention Study, Project ASSIST works in partnership with the American Cancer Society and statewide and local coalitions. The project's aim is to reduce the percentage of

North Carolinians who smoke from the current 29 percent of the population to 15 percent by 2000. To achieve this, the program relies on community-level campaigns that provide encouragement and support for people who want to kick the habit, says Sally Malek, state-level project manager in the Division of Adult Health Promotion. More effective targeting of minorities is one of the keys to reaching this 15 percent goal, Malek says.

African-American females are three times more likely to die of cervical cancer than white females, with a rate of 7.2 deaths per 100,000 population compared to a death rate of 2.3 per 100,000 for whites.<sup>10</sup> African-American females also are somewhat more likely to die of breast cancer than white females,<sup>11</sup> even though the disease is more common among whites.

Herman says one reason for these higher death rates is



Karen Tem

that African Americans are not having their cancers detected early enough through preventive screenings. "People should not be dying of cervical cancer," says Herman. "If [cervical] cancer is detected early enough, it's treatable."

Diabetes is another disease for which early detection is important. The disease to a large degree can be controlled by some combination of medicine, diet, and physical activity—yet many African Americans with diabetes have not even been diagnosed. The result: diabetes is nearly twice as likely to kill African Americans as whites. African Americans also suffer disproportionately from diabetes-related illnesses such as kidney disease and blindness.

The large gap in sexually transmitted disease rates between whites and African Americans may be explained in part by the fact that more African Americans than whites use local health departments for diagnosis and treatment. Local health departments are thought to be more likely than private providers to report such cases to the state. (See Table 3, p. 550, for a breakdown of communicable disease rates for North Carolina by race.)

"Most of the disease reports we get come from the public clinics, and African Americans are more likely to go to the public clinics," says Rebecca Meriwether, deputy chief of the Communicable Disease Control Section in the N.C. Department of Environment, Health, and Natural Resources. "That doesn't explain the entire difference, however."

Meriwether says newborn screening for AIDS and congenital syphilis reveals that African-American mothers are much more likely to pass these diseases to their infants. For AIDS, she says, the rate of infection is 10 times greater for African Americans than for whites. "Some of it is reporting bias, but it's also true that sexually transmitted diseases are more common in African-American communities," says Meriwether. "A lot of it is probably due to socioeconomic factors."

Jane Leserman, author of an N.C. Equity report on the status of women's health in North Carolina, also cites the reporting bias in her report. But she too concludes that most of the racial gap can be attributed to socioeconomic factors. "Socioeconomic factors that are likely to increase the risk of getting an STD [sexually transmitted disease] are lack of access to health services resulting in delayed treatment and wider spread of disease, exchanging sex for drugs or

money, and cultural or sexual norms," Leserman writes.<sup>12</sup>

Of all of the sexually transmitted diseases, AIDS is the most deadly. The blood-borne virus that causes AIDS is passed most frequently through anal intercourse and by sharing dirty needles. Thus, male homosexuals and intravenous drug users are the most likely to be infected. Increasingly, however, the ailment is being spread to women through unprotected intercourse with an infected male.

At a Charlotte conference sponsored by the Office of Minority Health, former Mayor and U.S. Senate candidate Harvey Gantt gave a fiery speech on the impact of AIDS in the African-American community. "Why is AIDS growing exponentially in our community? I think there's something there we need to examine," said Gantt.

Gantt said African Americans are more likely to keep homosexuality in the closet than whites and have generally dealt with AIDS by trying to ignore the problem and hoping it would go away. "I want us to create a crisis atmosphere among young people early on to inform them of the dangers that await them," Gantt said. "We're not talking to our young people about casual sexual behavior. They go on thinking it can't possibly happen to them. It's a victim mentality. There's no transmission of values."

The fact that AIDS takes such a heavy toll on African Americans and prompts so little action from society as a whole speaks volumes, Gantt said. "We need to start talking about the impact of race in North Carolina and quit sweeping that under the rug as well," he said.

To fight AIDS, the Minority Health Advisory Council has pressed for increased funding to (1) support prevention and education programs and (2) provide additional support services for people already living with AIDS. The General Assembly increased AIDS funding by \$500,000 in the 1994 short session, far less than the \$6 million the council had sought. DEHNR included \$2 million in increased funding for AIDS prevention and services in its 1995 budget request to Governor Hunt, but Hunt left it out of his final budget proposal.

Tuberculosis is another disease striking harder at African Americans, and again, socioeconomic factors may be to blame. "TB has for a long time been more prevalent in the African-American community than for whites, and that's

—continued on page 550

**Table 2. Leading Causes of Death in North Carolina, 1988–1992, Overall and by Race, with Rankings by Race**

CAUSE	TOTAL DEATHS	RATE PER 100,000	OVERALL RANK	NATIVE AMERICAN DEATHS	RATE PER 100,000	RANK	ASIAN/ OTHER DEATHS	RATE PER 100,000	RANK
DISEASES OF THE HEART	94,793	284.8	1	666	164.0	1	73	27.4	2
CANCER	66,147	198.8	2	396	97.5	2	112	42.0	1
CEREBROVASCULAR DISEASES (STROKE)	23,005	69.1	3	121	29.8	4	26	9.7	4
CHRONIC OBSTRUCTIVE PULMONARY DISEASES (LUNG DISEASE)	10,737	32.3	4	66	16.2	8	4	—	11
PNEUMONIA AND INFLUENZA	9,596	28.8	5	59	14.5	9	6	—	9*
OTHER ACCIDENTS AND ADVERSE EFFECTS	7,425	22.3	6	88	21.7	6	20	7.5	6
MOTOR VEHICLE ACCIDENTS	7,343	22.1	7	164	40.4	3	29	10.9	3
DIABETES MELLITUS	6,901	20.7	8	101	24.9	5	11	—	7
SUICIDE	4,275	12.8	9	38	9.4	10	9	—	8
HOMICIDE/LEGAL INTERVENTION	3,748	11.3	10	74	18.2	7	22	8.2	5
CHRONIC LIVER DISEASE AND CIRRHOSIS	3,570	10.7	11	36	8.9	11	6	—	9*
NEPHRITIS NEPHROSIS (KIDNEY DISEASE)	2,740	8.2	12	25	6.2	12	1	—	13
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)	2,134	6.4	13	14	—	13	2	—	12
ALL CAUSES	290,582	873.2		2,230	549.0		402	150.7	

\* Indicates tie in rankings

Table 2. *continued*

CAUSE	AFRICAN-AMERICAN DEATHS	RATE PER 100,000	RANK	WHITE DEATHS	RATE PER 100,000	RANK
DISEASES OF THE HEART	19,728	268.8	1	74,326	294.2	1
CANCER	14,265	194.4	2	51,374	203.3	2
CEREBROVASCULAR DISEASES (STROKE)	5,846	79.7	3	17,012	67.3	3
CHRONIC OBSTRUCTIVE PULMONARY DISEASES (LUNG DISEASE)	1,253	17.1	9	9,414	37.3	4
PNEUMONIA AND INFLUENZA	1,863	25.4	7	7,668	30.3	5
OTHER ACCIDENTS AND ADVERSE EFFECTS	2,159	29.4	5	5,158	20.4	7
MOTOR VEHICLE ACCIDENTS	1,763	24.0	8	5,387	21.3	6
DIABETES MELLITUS	2,419	33.0	4	4,370	17.3	8
SUICIDE	485	6.6	13	3,743	14.8	9
HOMICIDE/LEGAL INTERVENTION	2,067	28.2	6	1,585	6.3	12
CHRONIC LIVER DISEASE AND CIRRHOSIS	1,019	13.9	11	2,509	9.9	10
NEPHRITIS/NEPHROSIS (KIDNEY DISEASE)	1,007	13.7	12	1,707	6.8	11
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)	1,236	16.8	10	882	3.5	13
ALL CAUSES	68,542	933.9		219,408	868.4	

*Source:* Data produced by the State Center for Health and Environmental Statistics, Department of Environment, Health, and Natural Resources. Rates are average number of annual deaths per 100,000 persons, based on a five-year period, 1988-92. Rates based on fewer than 20 deaths may be misleading and were not computed.

pretty much true all over the nation," says Meriwether. "It's more prevalent among people who live in poverty. It's more prevalent among people who live in crowded conditions." (See Table 3 below for a breakdown of AIDS and Tuberculosis disease rates, by race.)

Meriwether says improvements in living standards have contributed to a long-term decline in the prevalence of tuberculosis, but the rate of decrease has slowed. One reason for this, she says, is the rise in the number of people infected with HIV. TB is relatively difficult to catch, Meriwether says, and people with compromised immune systems are more

susceptible. Between 1988 and 1992, 2,013 tuberculosis cases were reported among N.C. African Americans compared to 1,034 cases among whites. (See Table 3.) By population, African Americans were nearly seven times more likely to suffer from the disease than whites.

### Native-American Health Issues

**F**or Native Americans in North Carolina, motor vehicle accidents are a major killer, claiming lives at nearly twice the rate of whites.

**Table 3. Communicable Disease Cases and Rates in N.C.,  
By Race, 1988-92**

WHITE CASES	RATE PER 100,000	AFRICAN- AMERICAN CASES	RATE PER 100,000	NATIVE- AMERICAN CASES	RATE PER 100,000	ASIAN/ OTHER	RATE PER 100,000	TOTAL IN N.C.	RATE PER 100,000
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)									
988	3.9	1488	20.3	1	—	6	—	2483	7.5
HEPATITIS A									
1377	5.4	390	5.3	12	—	15	—	1794	5.4
ACUTE HEPATITIS B									
2200	8.7	1540	21.0	121	29.8	112	42.0	3973	11.9
SALMONELLOSIS									
3746	14.8	1587	21.6	66	16.2	32	12.0	5431	16.3
SHIGELLOSIS									
1690	6.7	1170	15.9	62	15.3	16	—	2938	8.8
BACTERIAL MENINGITIS AND H FLU									
1019	4.0	489	6.7	31	7.6	6	—	1545	4.6
SYPHILIS									
1790	7.1	15295	208.4	95	23.4	47	17.6	17227	51.8
GONORRHEA									
15893	62.9	139275	1897.6	1070	263.4	458	171.7	156696	470.9
CHLAMYDIA AND NON-GONOCOCCAL URETHRITIS									
33808	133.8	76717	1045.3	791	194.7	703	263.5	112019	336.6
TUBERCULOSIS									
1034	4.1	2013	27.4	35	8.6	97	36.4	3179	9.6

*Source:* Data produced by the State Center for Health and Environmental Statistics, Department of Environment, Health, and Natural Resources. Rates are average number of annual cases per 100,000 persons, based on a five-year period, 1988-92. Rates based on fewer than 20 cases may be misleading and were not computed.

(See Table 2, pp. 548–549.) Homicide rates also were double the rate of whites, and deaths by diabetes mellitus were somewhat higher.

Russell Childers is district health director for Swain and Graham counties in the mountainous far west. Swain's population is approximately 20 percent Cherokee Indian, and Childers says these Cherokee are in relatively good health. "For some things, such as diabetes and cholesterol, because of their diet, they do have a little higher problem," says Childers. "But chronic and communicable disease rates are no higher. Comparatively speaking, they are a well-blessed tribe."

The Swain County Health Department sits on a hilltop just outside Bryson City in the Smoky Mountains. It is a spartan, but tidy facility, and Childers apparently runs a tidy operation. His county's on-time immunization rate for children under age 2, at 79.1 percent, was the best of any of the nine counties the Center examined. For Native Americans, the rate was somewhat lower, at 68.4 percent. But Childers says most Swain County Indians get their shots at Indian Health Services on the Cherokee reservation, where services are free for anyone listed on the Cherokee tribal rolls.

On one wall of Childers' office is a plaque that reads, "As you go through life, two rules will never bend. Never whittle toward yourself or pee against the wind." But Childers' department violates these rules through its efforts to change the way people eat. Fried and high-fat foods are the primary culprits in the Indians' diet, Childers says, adding that Swain County whites also indulge in high-fat diets. The health department continues to try and change dietary habits among the Indians and other Swain County citizens by providing nutrition education and participating in a control program aimed at diabetes. "It's almost an impossible challenge," Childers says.

One reason, he says, is that the Native American foods taste good. "Fry bread, bean bread—made out of baked pinto beans, pigs' feet, souse meat,"<sup>13</sup> says Childers, ticking off a menu of high-fat foods. These are some of the Cherokees' dietary staples that make controlling diabetes difficult. Alcoholism, Childers says, is a problem for Indians. This may be reflected in high rates of deaths in car crashes in Swain County.

Another major concentration of Native Americans resides at the opposite end of the

state, in Scotland, Robeson, and Hoke counties. The largest component of Robeson County's population is, in fact, Native American, according to health director William Smith. More than 40,000 Lumbee Indians call Robeson home, the largest concentration of Native Americans east of the Mississippi.

The Lumbee are not a federally recognized tribe, says Smith, but they do have recognized health problems. "The Indian population here has the same characteristic high diabetes and heart disease rates, which don't differ a great deal from the African-American population," Smith says. They also have the same characteristic high rate of deaths in automobile accidents suffered by the Cherokees.

Smith adds, though, that white death rates from diabetes and heart disease aren't much different than those of Native Americans and African Americans in Robeson County. "If it's truly diet, that would make sense," says Smith. He says Robesonians, regardless of race or ethnic origin, love their high-fat foods. "It's more your everyday fatback in the green beans, sliced fatback for breakfast," Smith says.

To attack the problem, the health department is participating in a Diabetes Today project to train lay people about the high level of diabetes and the impact it is having on the community. These volunteers will be expected to spread the word to their peers. Smith says he has had success in the past with beauticians in a program aimed at spreading the message about the need for breast cancer screenings. For diabetes, he is adding barbers to the list.

"We're going to try that route, rather than a doctor or nurse preaching to people," says Smith. Smith adds that too many minorities get their primary care from emergency rooms, where they get no advice at all about preventive health. "You don't get any education in the emergency room. You wait around forever for a service, and then you're gone." The diabetes control program was started by a \$10,000 state grant.

The health department also belongs to a consortium of local agencies called Partnership for Community Health. The consortium includes representatives from Pembroke State University, the public schools, social services, and private industry. A committee of this group is focusing on diabetes and heart disease and plans to work on prevention for all age groups. One vehicle will be the schools, but the group hopes

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## ***Health Services at North Carolina's Local Health Departments***

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THE STATE REQUIRES every local health department to provide mandatory services for each county's population.<sup>1</sup> Any person who lives within the jurisdiction of the local health department can receive health care at the department, although certain populations are specifically targeted as "needy" because of economic status or lack of access to health care.

State regulations do not specify that any health department programs should be targeted explicitly to minority populations. Instead, certain programs are structured to assist segments of the population with limited resources, says Thornton B. Haynes, chief of the Office of Local Health Services in the Division of Health Services, Department of Environment, Health, and Natural Resources. These programs are costly, Haynes says, and health departments charge fees for some services. State statutes say that required immunizations must be provided free at local health departments.<sup>2</sup> Diagnosis and treatment for sexually transmitted diseases also is provided free at local health departments.

Medicaid covers some health care services, but not all. For services not covered by Medicaid, Haynes says county commissioners work with the local boards of health and health directors to create a fee schedule for the local health departments. The income from these fees is applied to the cost of providing services. With the help of the state, Haynes says, local health departments attempt to make health care affordable for all residents of North Carolina, regardless of income level or race.

Mandatory services are outlined under 13 categories in the North Carolina Administrative Code. These categories are: (1) adult health; (2) home health; (3) dental public health; (4) food, lodging, and institutional sanitation; (5) individual on-site water supply; (6) sanitary sewage collection, treatment, and disposal; (7) grade A milk sanitation; (8) communicable disease control; (9) vital records registration; (10) maternal health; (11) child health; (12) family planning; and (13) public health laboratory support.<sup>3</sup>

While local health departments must make sure the mandated services are available, health departments may or may not offer them in house. Offering extensive mandatory services is costly, Haynes says, often beyond what the local health departments can cover with their resources alone. If a health department does not have the staffing, funding, or space to support a necessary service, it can contract with the private sector to ensure that the county will have access to the required range of services. The county also can pool its resources with another county by forming a district health department, such as North Carolina's Toe River District Health Department, which includes the small mountain counties of Avery, Mitchell, and Yancey.

Once the state mandates a program, the local health departments are monitored to assure that this service is provided for each county. Haynes says administrative rules outline how each program is monitored and require each county to submit objectives and anticipated outcomes.

Each division of DEHNR monitors the programs under its jurisdiction. For example, the Division of Maternal and Child Health picks a small number of health departments each year to check for efficiency, effectiveness, and use of funds. These factors, combined with outcomes and health statistics, help the division decide if the local health department is adequately providing services for women and children.

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Only as a last resort will the state threaten to take away funds from the local health department. Haynes says he recalls only once when the state has initiated this action. In June 1992, an administrative law judge signed an order allowing the withholding of funds because the local health director in Hyde County did not meet minimum hiring criteria, Haynes says. The issue was resolved when the Hyde County Board of Health and the Department of Environment, Health, and Natural Resources agreed on a course of study to be completed by the acting health director. Officials on the state level do not want to see funds taken from the local departments' budgets, he says, so they work closely with local officials to create efficient and accessible health departments.

Periodically, the Department of Environment, Health, and Natural Resources and the State Center for Health and Environmental Statistics publish a databook on North Carolina's local health departments. The report contains both statewide and county-by-county information about the health departments, including facilities, staffing, and the various health services that are currently available. Although the state mandates certain broad categories of services, counties maintain varied programs which cover the requirements of the Commission for Health Services.<sup>4</sup> (See Table 4, p. 557, for Selected Health Services Available at Local Health Departments.)

The Center for Health and Environmental Statistics surveys each of North Carolina's 100 counties, asking the local health department officials if their department provides specific services. Frank Matthews, a state official who compiled the fiscal year 1993 report, says that in each response, the counties were not asked to specify if the programs in question were contracted out or provided at the health department. If a service was available in some form for the county's needy population, the county was counted as providing the service.

The selected data listed in Table 4 are a mix of mandatory services and supplementary programs, covering categories such as dental public health, communicable disease control, maternal health, child health, and family planning. For example, under the communicable disease control section of the North Carolina Administrative Code, each department must offer tuberculosis diagnostic and follow-up services and treatment services.<sup>5</sup> The study indicates tuberculosis control is offered by 98 counties, a total matched by only maternity care coordination and child services coordination.

With regard to chronic disease, the code mandates prevention and detection services for cancer, diabetes, and hypertension. Early detection and referral services for cancers were available in 86 counties, while similar programs were available for diabetes in 87 counties, and for hypertension in 88 counties.<sup>6</sup>

Matthews says that the fact that no single service is reported as available in all 100 counties does not necessarily mean that local health departments are falling short of mandated requirements. North Carolina has 86 local health departments, and some services may be available within a district that are not available in each county that comprises the district.

—Emily Coleman

#### FOOTNOTES

<sup>1</sup> 15A N.C. Administrative Code 25.0201.

<sup>2</sup> G.S. 130A-153.

<sup>3</sup> 15A NCAC 25.0201.

<sup>4</sup> N.C.G.S. 130A-1.1 (b). The Commission for Health Services is the rulemaking body that determines which services local health departments must provide to satisfy the requirements of the General Statutes.

<sup>5</sup> 15A NCAC 25.0214.

<sup>6</sup> 15A NCAC 25.209.

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*Emily Coleman, a Davidson College graduate, was a Center intern in the fall of 1994.*

to reach parents as well. "If you can't get the parents to change a little bit, it doesn't do any good to tell the children what they ought to be eating," says Smith. "When they go home, they don't have any choice."

Native Americans also have higher rates of sexually transmitted diseases and tuberculosis than whites, although not as high as African Americans. (See Table 3, p. 550.) For example, Native Americans are about three times as likely to be infected with syphilis as whites. And Native Americans, with 35 cases of tuberculosis over the five-year period, were about twice as likely to suffer the disease as whites.

### Hispanic Health Issues

The Center for Health and Environmental Statistics did not produce death rates for Hispanics because their numbers were too small to produce meaningful statistics at the county level. They also are defined by the U.S. Census Bureau as an ethnic, rather than a racial group. Most Hispanics categorize themselves as either white or African American. They are thought to have been undercounted in the 1990 Census and are underreported on death certificates, according to the State Center for Health and Environmental Statistics.<sup>14</sup> Many health reporting systems and surveys do not collect information on Hispanic origin, so data on the state of Hispanic health are hard to come by.

CHES, however, used birth certificates to identify Hispanics and examine maternal and child health indicators from 1988 through 1992. These indicators are largely positive for Hispanics, despite some complicating factors. For instance, Hispanic mothers of Mexican origin are less likely to receive prenatal care in the first trimester of pregnancy than virtually any subgroup of the population. Hispanics of Puerto Rican origin are particularly prone to anemia and diabetes during pregnancy. Yet Hispanic mothers are no more likely than non-Hispanic whites to have a low birthweight baby, thought to be the leading direct cause of infant mortality. Hispanic infant death rates are about the same as non-Hispanic whites.<sup>15</sup>

Hispanics represent only 1.2 percent of the state's population according to the 1990 Census. Yet they place a heavy burden on some local health departments. Migrant workers and their families may as much as double the state's

Hispanic population during harvest season,<sup>16</sup> and many communities have experienced significant growth in their Hispanic populations since the 1990 Census.

At a Chatham County Health Department clinic in Siler City, for example, Hispanics represent 35 percent of the clientele. That compares to a county-wide Hispanic population of 1.5 percent, according to the 1990 Census. Yet Hispanics are flocking to the Siler City area of the county, drawn by low-wage jobs in area chicken-processing plants.

In 1991, when Siler City lost its only obstetrician and the local hospital shut down its birthing center, the health department expanded its role to provide prenatal care. Among the services the department added was a transportation network to get patients to its maternal and child health clinic. It also coordinates support groups for both African-American and Hispanic mothers, some of whom speak no English. These groups provide training in both prenatal care and parenting skills. Hispanics also get lessons in English as a second language.

The county has seen a drop in its infant mortality rate since instituting these new services, although some of it may be random fluctuation in rates. In 1990, for example, the rate was 8.4 infant deaths per 1,000 live births, according to Robert Meyer, head of perinatal epidemiology at the State Center for Health and Environmental Statistics. The rate increased to 11.2 per 1,000 births in 1991, plummeted to 1.8 in 1992, then rose again to 7.7 in 1993.

But Meyer says citing infant mortality rates for a single year can be misleading, particularly in a small county. Because the number of live births is so small, one infant death can have a relatively large impact on the rates. For instance, in Chatham County there were five infant deaths in 1990. This produced an infant mortality rate of 8.4 per 1,000 live births. In 1991, six infant deaths produced the 11.2 rate, and in 1992, two deaths out of 571 births produced the 1.8 rate. The better statistic to use, Meyer says, is the average number of deaths over a five-year period. For the years 1988-92, Meyer says, Chatham's rate was 7.7.

Nationally, studies have found Hispanics to be the racial or ethnic group *least* likely to have health insurance. They see a doctor less than whites or African Americans, and are more likely to report fair or poor health status than whites. They suffer higher rates of accidents or

injuries than whites and are three times more likely to have AIDS. Diabetes mellitus is also a problem among Hispanics, although hypertension, serum cholesterol levels, and rates of heart disease are lower than those of the population as a whole.<sup>17</sup>

### Asian-American Health Issues

Asians and any other racial groups were lumped together in the CHES data produced for the North Carolina Center for Public Policy Research, but the number of deaths was too low to provide reliable death rates for most categories of illness. (See Table 2, pp. 548-549.)

For categories for which death rates could be calculated, the rates often were far lower than those of the general population. Deaths from heart disease, for example, totaled 27.4 per 100,000 population, compared to an overall death rate of 284.8. Cancer death rates also were much lower than those of the population as a whole, at 42 per 100,000 compared to an overall death rate of 198.8.<sup>18</sup>

Paul Buescher, chief of CHES health statistics section, surmises that Asian death rates are lower for two primary reasons: (1) they are a

fast growing immigrant population and thus younger; and (2) Asians in the United States, while a diverse population, generally are healthy, with fewer risk factors that affect longevity.

As for disease data, Asians and others did suffer disproportionately in some areas, such as sexually transmitted diseases and tuberculosis. (See Table 3, p. 550.) Asians and others, with 97 tuberculosis cases over a five-year period, were about nine times more likely to be infected than whites.<sup>19</sup> Their rate was the highest of any racial group or ethnic group for which data were available.

Meriwether says tuberculosis is relatively difficult to catch and tends to circulate in minority communities where there is more exposure to the germs that spread the disease. The fact that minorities are more likely to contract tuberculosis may also present an access barrier. Once infected, treatments are available that will decrease markedly the likelihood of developing TB, but first one must seek treatment.

### Access to Care

Indeed, access to care is cited repeatedly by service providers and others as a major bar-



**Mom Allyson Swelam holds Haithim, 3½ years, while Amira, 2½, waits with one-year old Dania in stroller at Wake Health.**

Karen Tam

rier to improved health for minorities. Access can be broken down into at least two components—availability and affordability. In North Carolina, many minorities have a hard time getting to health services due to rural isolation. Once they get to the doctor, they often can't afford to pay for the service. The counties with the highest percentage of African-American population, for example, are among the poorest, most rural, and most isolated. These include: Warren County, the state's poorest, 57 percent African American; Bertie, third poorest, 61 percent African American; Halifax, fourth poorest, 50 percent African American; and Hertford, tied for fifth poorest with Tyrrell, 58 percent African American.<sup>20</sup>

These counties are also among the most unlikely to be able to attract and retain doctors and other highly paid health care providers. "One county I represent has no general practitioner whatsoever," says Rep. Howard Hunter (D-Northampton), who represents Gates, Northampton, and parts of Bertie and Hertford in the rural northeast. "Two counties have no hospital. The older people [health care provid-

ers] are getting old, and no new physicians are moving back in. . . . We need more physician assistants to deliver services."

But Hunter says even with more health care facilities and services, citizens would have trouble gaining access to them, both because they don't have a way to pay for services and because they don't have a way to get there. "Transportation is a problem in my district. They ain't got a house, much less a car."

African Americans also are about twice as likely not to have health care coverage as whites. One in five African Americans are without health care coverage in North Carolina, compared to only one out of every nine whites. That's despite the fact that African Americans are four times more likely than whites to qualify for Medicaid, the government health care program for the categorically eligible poor.<sup>21</sup>

Yet another possible indicator of an access barrier is the infant mortality rate for African Americans. North Carolina almost hit bottom in 1988, when its overall rate was 12.6 per 1,000 live births—49th in the nation, above only Georgia.<sup>22</sup> Since then, the state's overall standing has improved.

In 1992, North Carolina's infant mortality rate stood at 9.9 per 1,000 live births—the lowest in the state's history. Yet the state still trailed much of the nation, primarily because its infant mortality rate for African Americans, at 15.7, was more than twice the white rate of 7.2. The rate crept up to 10.6 in 1993, with increases in rates for whites, at 7.9, and African Americans, at 16.4.

The racial gap has confounded the experts because socioeconomic factors such as age and education do not seem to have a big effect. Meyer, the perinatal epidemiologist in the State Center for Health and Environmental Statistics, says much of the recent improvement is due to "better survival of low-birthweight infants. It's usually ascribed to high-tech medical care."<sup>23</sup>

Adds Tom Vitaglione, chief of the Children and Youth Section in the Division of Maternal and Child Health, "The most intractable problem to us in terms of minorities is infant mortality."

The state has attacked the infant mortality problem through a broad category of services under the Medicaid-funded Baby Love program. Through this program, Medicaid eligibility and services have been expanded greatly for pregnant women, with maternity care coordinators

*Tiffany Montalvo, 9 months, with Mom Elsanava Montalvo and nurse Shirley Moser, R.N.*



Karen Tam

**Table 4. Selected Health Services Available at Local Health Departments**

<u>Service</u>	<u># of counties offering service</u>	<u>Service</u>	<u># of counties offering service</u>
<b>Maternal Health:</b>		<b>Chronic Disease Control:</b>	
Maternity Care Coordination	98	<i>Patient Education—(continued)</i>	
WIC Services <sup>1</sup>	95	Glaucoma	57
SIDS Counseling <sup>2</sup>	94	Arthritis	47
Prenatal and Postpartum Care	91	Epilepsy	40
		Kidney Disease	34
<b>Family Planning:</b>		Home Health Services	65
Contraceptive Care	96	Chronic Disease Monitoring and Treatment	50
Pregnancy Prevention-Adolescent	90		
<b>Child Health:</b>		<b>Health Promotion and Risk Reduction:</b>	
Child Services Coordination	98	Nutrition Counseling	93
Well-Child Services	97	Lifestyle Behavior Modification	91
WIC Services—Children	95	Injury Control	68
School Health Services	93		
Lead Poisoning Prevention	91	<b>Communicable Disease Control:</b>	
Adolescent Health Service	81	Tuberculosis Control	98
Services to Developmentally Disabled Children	74	Immunization	97
Genetic Services	42	AIDS/HIV Screening	97
		Acute Comm. Disease Control	95
<b>Chronic Disease Control:</b>		<i>STD Control—<sup>3</sup></i>	
<i>Early Detection and Referral—</i>		Drugs	93
Hypertension	88	Training/Education	92
Diabetes	87	Case Management	84
Cholesterol	87	<i>Epidemic Investigations—</i>	
Cancer	86	Risk Assessment	70
Glaucoma	42	Pesticide Poisoning	31
Arthritis	28		
Kidney Disease	24	<b>Dental Health:</b>	
Epilepsy	22	Dental Health Education	83
<i>Patient Education—</i>		Dental Screening and Referral	82
Cholesterol	94	Dental Treatment	39
Hypertension	92		
Cancer	89	<b>Other Personal Health:</b>	
Diabetes	89	Migrant Health	64
		Refugee Health	40

**FOOTNOTES**

<sup>1</sup> WIC = Women, Infants, and Children nutrition program

<sup>2</sup> SIDS = sudden infant death syndrome

<sup>3</sup> STD = sexually transmitted diseases

Source: Local Health Department Facilities, Staffing, and Services Summary for Fiscal Year 1993, State Center for Health and Environmental Statistics, August 1993, pp. 52-122.

assigned to assure that pregnant women get the services they need to improve the chances they will have a healthy child. One study found that for each dollar spent on maternity care coordination, there was a savings of \$2.02 in medical care costs for newborns during the first two months of life.<sup>24</sup>

A recently added service under the Baby Love program is special home visits using culturally paired workers. Called maternal outreach workers, these workers take a personal role in supporting low-income pregnant women deemed at high-risk of having poor pregnancy and parenting outcomes, says Marcia Roth, policy and program development assistant in the Division of Maternal and Child Health.

Through home visits and peer counseling, maternal outreach workers encourage at-risk expectant mothers to get appropriate prenatal care and to get care for themselves and the child for a full year after the birth. "We see maternal outreach workers as being ambassadors acting as cultural translators between health agencies and communities," says Roth.

Funded by Medicaid and the Kate B. Reynolds Charitable Trust, the maternal outreach program already is available in 24 local health agencies and should be available statewide by January 1996. DEHNR has proposed expanding the program so that maternal outreach workers stay with at-risk mothers until their children reach age 3. The cost would be \$550,000 for the 1995-96 fiscal year.

Roth says part of the justification for this is that the maternal outreach worker may be able to encourage longer intervals between subsequent pregnancies and thus prevent low birthweights. A second reason is that these workers may be able to promote a safer atmosphere for children (accidents and injury are a leading cause of death in this age group) and encourage better use of preventive health services for both mother and child.

A study by Family Health International pinpointed low birthweight due to prematurity as the primary contributor to the infant mortality rate in North Carolina. The study eliminated such potential causes as a higher rate of teenage pregnancy among African Americans. In fact, the study found that for African Americans, older mothers had worse birth outcomes than teens.<sup>25</sup>

"It's not strictly an issue of poverty," says Hugh Young, executive director of the

Governor's Commission on Infant Mortality. "There's something else that's there. The problem is low birthweight. It's twice that of whites, and this accounts predominantly for the difference in the infant mortality rate." To attack the racial gap in the state's infant mortality rate, the legislature in 1994 awarded funding for 15 pilot projects at \$50,000 each, to be administered through the Division of Maternal and Child Health. "The idea is to see if the communities themselves can come up with something that researchers and professionals had missed," says Young. "The challenge is to see if anything can be done through some type of community support so that these women can have higher birthweights."

#### **Immunization Rates: An Indicator of Preventive Care**

**R**ep. Howard Hunter's concerns about health care in his home district are underscored by immunization field audits conducted by the N.C. Center for Public Policy Research in the spring and summer of 1994. The audits took a detailed look at nine local health departments and their ability to deliver required shots on time to children ages 2 and under. In Hertford County, part of which lies in Hunter's district, the Center found only 42 percent of children who got their shots at the local health department were up to date on their immunizations. That compares to an average for the nine counties of 60.6 percent and a statewide average of 58.8 percent.<sup>26</sup>

Hertford was among the poorest and most isolated of the nine counties studied. With a population that is 58 percent African American, Hertford also was among the counties with the highest proportion of minorities.

Overall, the Center found that minorities using health departments in the nine counties were less likely to be up to date on their immunization shots than their white counterparts, but this was not the case in Hertford County. African Americans in Hertford were slightly *more* likely to be up-to-date than whites.

District Health Director Jim Boehm says part of the problem with children being behind on their immunizations is the county's low socioeconomic standing.<sup>27</sup> Poor people, he says, are more interested in short-term survival than long-term preventive health. Neighboring

Gates County, also in Boehm's district, offers a sharp contrast. The per capita income is much higher, and so is the propensity of health department users to follow through on things like getting their immunization shots on time. Boehm doesn't think this is a coincidence.

Ann Meyers, nursing supervisor in the Hertford County Health Department, sees apathy on the part of parents in general. "People say, 'Well, I'll get it when they start to school.' They don't care if they get whooping cough or influenza in the meantime." Meyers is old enough to remember polio epidemics and iron lungs. Such memories can be a strong motivator to seek immunizations, and contemporary parents haven't had these experiences. "They're not scared into thinking, 'My child will get crippled or die,' like I have seen in my lifetime," says Meyers.

To improve performance in delivering immunization shots on time, the staff of the Hertford County Health Department has tried everything from extended hours to special shot days. They have pre-screened the records of children with scheduled clinic appointments to make sure they don't miss an opportunity to get shots to a child who is behind. They've even tried dividing up the names and telephone numbers of parents with children who are not up to date and handing them over to local Kiwanis Club members for follow-up. Boehm is troubled that these efforts have produced no better results. "If we can't give shots [on time], we might as well close it up," he says.

Why is the ability to deliver immunizations on a timely basis of such importance? Because immunization shots represent basic preventive care that is required by law. "These diseases are much more dangerous when children are infants, not when they are 4-5 years old," says Norma Allred, immunization epidemiologist in the N.C. Department of Environment, Health, and Natural Resources. "It's not just immunizations. It's also looking at well-child care." If parents won't get their child immunized, what *will* they do in the way of well-child care? And if they won't provide preventive care for their children, will they secure it for themselves?

The Center's study examined the immunization records of 4,194 children in nine county health departments—Buncombe, Halifax, Hertford, Johnston, Mecklenburg, New Hanover, Pender, Robeson, and Swain. Of these, 2,543, or 60.6 percent, were up to date

on their immunizations. In selecting local health departments to examine, the Center sought a cross-section of rural and urban counties with a significant minority population. The Center also wanted some geographic balance.

Among white health department users included in the study, 66.4 percent (1,478 of 2,227 children) were up-to-date. Hispanics had an on-time immunization rate of 58.8 percent (47 of 80 children). Native American children, at 54.5 percent (159 of 292), were less likely to be up to date on their immunizations than Hispanics. Among African-American children, 53.9 percent (only 801 of 1,485 children) had received their shots on time, the lowest percentage among racial and ethnic groups examined by the Center.

That minorities are less likely to obtain free immunization shots suggests a problem that goes deeper than just cost or availability of a health service. Service providers and minority recipients may fail to connect for any number of reasons, including lack of transportation, inconvenient hours, lack of information about the need for and importance of immunizations, and lack of motivation on the part of parents.

The problem of minorities getting too little preventive health care is by no means confined to immunizations. The long list of illnesses and causes of death from which minorities suffer disproportionate to their numbers in the population suggests that minorities are not receiving a broad range of services they need to lead a long and healthy life.

Delton Atkinson, director of the State Center for Health and Environmental Statistics, notes that many of the health outcome disparities between whites and minorities flow out of behavioral and lifestyle differences. A major campaign targeting preventive health and lifestyle changes, he notes, could have an impact on these numbers. "If you look at what's driving some of those rates, it seems to be more lifestyle factors," says Atkinson. "If you could significantly change some of those things, you might see a difference in health outcomes."

But should the state mount a special effort to close the health gap between whites and minorities? Ron Levine, the state health director, believes the answer clearly is yes. "I believe the state has a role in trying to close the gap and address the disparities in health status and outcomes," says Levine, who labels the health gap "morally unacceptable."

The gap prevents some citizens from reaching their full potential, Levine says, and thus retards the progress of the entire state. "It's absolutely defensible to spend our energies and resources on addressing the health gap. You do that not by bringing the health status of others down, but by bringing the status of minorities up."

Levine says the prime movers in calling attention to the gap in North Carolina have been the Office of Minority Health and the Minority Health Advisory Council, both created in 1992.<sup>28</sup> Yet despite all the statistics, not everyone agrees that focusing exclusively on the health problems of minorities is appropriate.

A case in point is a call-in television show on minority health aired in November 1994 by the N.C. Agency for Public Telecommunications. Laureen Lopez of the Office of Minority Health was asked to respond to a question from a caller that really was more of a lecture on the wrongheadedness of efforts to single out minorities for special focus.

"I'm wondering, why do you have an issue called minority health issues?" mused the vitriolic caller from Carrboro. "If I understand the human body as I do, I don't really see that much difference in our anatomy and physiology. I wouldn't like to have to separate and exclude groups from attention and public services because of race. It's not working, I don't like it, it's not fair, and it's biased."

Lopez, a consultant to the office who has produced a number of reports on the health status of minorities and services available to them, offered this response: "The reason we focused on minority health and created this office is really the tremendous difference in health status of the minority and non-minority populations. Minority people get sicker more often, they die sooner, and they generally have less access to health care. There needs to be a special effort to reach these people in order to bring them up to the level of the rest of the population."

Her reply prompted an angry retort from the Carrboro caller. "My family has Indian blood. Does that mean I get half a service? It's not an issue of race. It's an issue of economics . . . what people can afford. When it's couched as an issue of race, it really turns people like me off and makes me mad. I wish you people could just get it straight."

But under the leadership of Barbara Pullen-Smith, the office has spent countless hours over the last two years trying to convince people like the caller from Carrboro that the issue of minority health needs special attention. The office has spun out reports outlining the health status of minorities and barriers to receiving services at the local level. Its staff has trooped across North Carolina conducting public hearings with the Minority Health Advisory Council, which advises the governor and the secretary of the Department of Environment, Health, and Natural Resources on minority health matters.

The regional hearings were conducted in Asheville to the west, Durham in the Piedmont, Winton in the northeast, and Pembroke in the southeast. Staff members published transcripts of the hearings and a summary of major issues raised at the hearings. While the testimony varied from region to region, office staff found consistent themes in the comments.

They divided the issues that surfaced at the hearings into two broad categories: (1) *access issues* such as ability to pay, a lack of providers, and cultural differences between service providers and recipients; and (2) *health issues* such as drug dependency, teen pregnancy, infant mortality, and AIDS and other sexually transmitted diseases. Heart disease and cancer also frequently were mentioned as health issues.<sup>29</sup>

Among the recommendations for change offered by people who testified at the hearings were: health insurance reform aimed at expanding coverage to the uninsured, more health education programs, more community-based health programs and services, increased recruiting and retention of minorities in health careers, more school health programs, and more money for local services.

Levine says the council decided AIDS was the public health issue having the most devastating impact on minority communities and made attacking the disease its top priority. "They made a quick move on AIDS," says Levine. "For a long time, African Americans did not realize the strength of the penetration of AIDS into the African-American community and the suffering it was engendering," he says. As a result of the council's focus, says Levine, the 1994 General Assembly "made the first sizable appropriation to combat the AIDS epidemic." That appropriation totaled \$500,000 for the 1993-94 fiscal year.

Still, the work of these two groups only has begun to bring resources to bear on the broad range of health issues affecting minority communities. "It's a process accomplishment," says Levine of the light the two groups have begun to shine on minority health issues. "It's got to be backed up by improved programs and services and eventually by changes in the numbers [for minority health status]."

### Should Minorities Be a Special Focus of State Action?

Local health directors surveyed by the Center were divided on whether local health departments should make minorities a special focus for health programs. Most said there should be some targeting of services. "Their needs are unique, and their health problems are disproportionate to the rest of the population," said one local health director. Added another, "The minorities' negative [health] indicators are about double the white rates."

Nearly a third of the respondents, however, argued that there should be no special focus. "Health department services should focus on a broad spectrum of populations," commented one respondent. Another respondent said health departments should not have the responsibility of assuring access to services they do not provide. "Minorities' principal need is primary care, and most health departments do not provide primary care."

State regulations governing local health departments do not specify that minorities should be a focus of state programs, and there is widespread thinking that all health services should be for all people.

"It's understandable and, under different circumstances, it would be reasonable, but the reality is, health differences between whites and minorities are not getting any better," says Pullen-Smith. "That's why the Office of Minority Health and the Minority Health Advisory Council were formed—to look at changes that might be needed in the system to make it more responsive to the health needs of minorities."

Levine, the state health director, believes it is appropriate "to target and focus on the needs of minorities who demonstrate worse health status and outcomes." His reasoning? Programs must be tailored to meet the needs of the popu-

lations they serve. One size does not fit all in health services. In addition, by targeting services to minorities, it is easier to highlight these programs within minority communities and win the support that will help them achieve their objectives. In other words, they are less apt to be viewed as white people's programs.

Levine credits the Office of Minority Health and the Minority Health Advisory Council with fostering a mind set that increasingly looks to the community to deliver services. Examples are HIV prevention programs, the Five-A-Day program using African-American churches as partners to encourage better nutrition and prevent chronic disease, and new programs for the prevention of infant mortality.

"They have sensitized the public health officials and program managers and legislators and people responsible for policies and programs to look outside the bureaucracy, and I think it's penetrated throughout the agency," says Levine. "People are changing their mind set about how to fashion services to really be successful in the various subcultures we already have all over the state."

**Table 5. The Cost of Prevention Versus the Cost of Cure**

Each Dollar Spent for These Preventive Measures	Equals These Dollars Saved in Treatment Costs
For measles, mumps, rubella vaccine	\$16.30
For diphtheria, tetanus, pertussis vaccine	6.20
For oral polio vaccine	3.40
For maternal care coordination to prevent low birthweight infants	2.02

Sources: Paul A. Buescher, *et al.*, "An Evaluation of Maternity Care Coordination on Medicaid Birth Outcomes in North Carolina," *American Journal of Public Health*, Vol. 81, No. 12, (December 1991), pp. 1626-1627; for immunizations, Centers for Disease Control, Atlanta, Ga.

## Conclusion

If any single theme stands out in the Center's research as key to improving minority health, it's access to care. And access to *preventive* care may be the most cost effective means of closing the health gap between whites and minorities. (See Table 5.) Without neglecting treatment for those who have nowhere else to turn, the state *must* step up its efforts in health promotion and prevention.

In virtually every category of disease for which the State Center for Health and Environmental Statistics provided data, proper preventive health can have a major impact. Take, for example, the top four killers of African Ameri-

cans in North Carolina—heart disease, cancer, stroke, and diabetes. All are potentially devastating. Yet preventive health measures such as proper diet, exercise, and giving up smoking can improve the chances of avoiding or controlling these diseases.

The trend toward addressing the health needs of minorities must continue and intensify. What is called for is greater inclusiveness that broadens health programming to reach out to minority communities that traditionally have faced access barriers to health care. The ultimate goal should be better health for all North Carolinians. But as the data make clear, minorities are a great deal further from that goal than the white majority.

## FOOTNOTES

<sup>1</sup> Rachele Kanigel, "Racial disparity in infant deaths targeted," *The News & Observer*, Raleigh, N.C., Nov. 14, 1992, p. 1B.

<sup>2</sup> The health status of the North Carolina population is discussed in Ken Otterbourg, "How Healthy is North Carolina's Population?," *North Carolina Insight*, Vol. 14, No. 1 (May 1992), pp. 2-19. This was the second of two special theme issues of *North Carolina Insight* devoted to health care in North Carolina. The discrepancy in health outcomes between whites and minorities was a recurring theme in these two issues of *Insight*, leading the Center to launch a major research project on this topic alone.

<sup>3</sup> Mortality data were produced by the State Center for Health and Environmental Statistics in the Department of Environment, Health, and Natural Resources. With the exception of infant mortality, rates cited are averages per 100,000 citizens of a given race, based on five years of data collected between 1988 and 1992.

<sup>4</sup> *Chronic Disease in Minority Populations*, Centers for Disease Control and Prevention, Atlanta, Ga., 1992, pp. 2-16.

<sup>5</sup> Data on communicable disease rates were compiled by the State Center for Health and Environmental Statistics in the N.C. Department of Environment, Health, and Natural Resources. Rates were based on the average number of annual cases per 100,000 residents over a five-year period, 1988-92.

<sup>6</sup> Kathryn B. Surlis, *Adolescent Health in North Carolina: The Last 15 Years*, State Center for Health and Environmental Statistics, Department of Environment, Health, and Natural Resources, Raleigh, N.C., CHES Studies No. 89, January 1995, p. 4, table 6.

<sup>7</sup> N.C. Cancer Registry, 1988-1992 race and sex specific, age-adjusted mortality rates per 100,000 population. Standard = 1970 U.S. Census total.

<sup>8</sup> Cary Robertson, *et al.*, "Prostate Cancer in North Carolina," *North Carolina Medical Journal*, Vol. 53, No. 9 (September 1992), p. 447.

<sup>9</sup> N.C. Cancer Registry. See note 7 above.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Jane Leserman, *In Sickness and In Health—The Status of Women's Health in North Carolina*, N.C. Equity, Raleigh, N.C., 1993, p. 84. Regarding cultural norms, in Eilene Z. Bizgrove, *et al.*, "Racial Differences in North Carolina Infant Mortality: An Analysis for the Identification of Prevention Strategies," Family Health International, Research Triangle Park, N.C., September 1994, the authors note that "while black women are usually sexually active earlier than white women, there is no evidence that black women have, on average, more sexual partners than white women." See p. 13 for this discussion.

<sup>13</sup> Souse is a pickled loaf made of pork trimmings.

<sup>14</sup> For more on this issue, see, "North Carolina Minority Health Facts: Hispanics/Latinos," State Center for Health and Environmental Statistics, N.C. Department of Environment, Health, and Natural Resources, November 1993, p. 1.

<sup>15</sup> *Ibid.*, pp. 2-3.

<sup>16</sup> For an estimate of the state's Hispanic migrant population and discussion of the need for interpreter services, see Lauren Lopez, "Interpreter Services for Hispanic/Latino Clients: Report and Recommendations," Office of Minority Health, Department of Environment, Health, and Natural Resources, Raleigh, N.C., September 1994, pp. 1 ff.

<sup>17</sup> National data on Hispanic health are taken from *The State of Hispanic Health*, National Coalition of Hispanic Health and Human Services Organizations, Washington, D.C., pp. 21-57.

<sup>18</sup> CHES data, 1988-1992.

<sup>19</sup> *Ibid.*

<sup>20</sup> Poverty rankings and population figures are based on the 1990 U.S. Census. Among the six counties with the highest poverty rates, only Swain in the far west and Tyrrell to the northeast were less than 50 percent black. Swain has a Native American population of 27 percent, and much of its land is owned by the federal government. Tyrrell has a black population of 40 percent.

<sup>21</sup> For a thorough discussion of the problem of the uninsured and underinsured, see Chris Conover and Mike McLaughlin, "Spreading the Risk and Beating the Spread:

The Role of Insurance in Assuring Adequate Health Care," *North Carolina Insight*, Vol. 13, Nos. 3-4 (November 1991), pp. 21-47. See especially p. 30.

<sup>22</sup> Preliminary results placed North Carolina last in 1988, but the final tally had Georgia lower than North Carolina, says Robert Meyer, head of the Perinatal Epidemiology Branch, State Center for Health and Environmental Statistics, Department of Environment, Health, and Natural Resources.

<sup>23</sup> For more on this issue, see Robert E. Meyer, *et al.*, "Trends in Cause and Birthweight-Specific Infant Mortality in North Carolina, 1987-88 to 1991-92," State Center for Health and Environmental Statistics, N.C. Department of Environment, Health, and Natural Resources, Report No. 88, November 1994.

<sup>24</sup> Paul A. Buescher, *et al.*, "An Evaluation of the Impact of Maternity Care Coordination on Medicaid Birth Outcomes in North Carolina," *American Journal of Public Health*, Vol. 81, No. 12 (December 1991), pp. 1626-1627.

<sup>25</sup> For more on this topic, see Eilene Z. Bisgrove, *et al.*, "Racial Differences in North Carolina Infant Mortality: An Analysis for the Identification of Prevention Strategies,"

Family Health International, Research Triangle Park, N.C., Sept. 8, 1994, 44 pp. plus addenda.

<sup>26</sup> The statewide figure is based on a retrospective study of children who entered school in 1991. While the methodology was different, it is cited here for rough comparison purposes.

<sup>27</sup> By any of several measures, Hertford stands near the bottom among North Carolina counties. Its per capita income, at \$9,016, ranked 90th among the state's 100 counties, according to the 1990 U.S. Census. The county's poverty rate, at 25 percent, was fifth highest in the state. For more on demographics and poverty, see Ken Otterbourg and Mike McLaughlin, "North Carolina's Demographic Destiny: The Policy Implications of the 1990 Census," *North Carolina Insight*, Vol. 14, No. 4 (August 1993), pp. 2-49. County-by-county rankings appear on pp. 17-20.

<sup>28</sup> Chapter 900 (H.B. 1340), sections 165 and 166, of the 1992 Session Laws.

<sup>29</sup> Office of Minority Health summary of comments offered at public hearings conducted in 1993 by the Minority Health Advisory Council.

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## *Recommendations*

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IF ANY SINGLE THEME stands out in the Center's research as key to improving minority health, it's access to care. And access to *preventive* care may be the most cost effective means of closing the health gap between whites and minorities. Without neglecting treatment for those who have nowhere else to turn, the state *must* step up its efforts in health promotion and prevention.

In virtually every category of disease for which the State Center for Health and Environmental Statistics provided data, proper preventive health can have a major impact. Take, for example, the top four killers of African Americans in North Carolina—heart disease, cancer, stroke, and diabetes. All are potentially devastating. Yet preventive health measures such as proper diet, exercise, and giving up smoking can improve the chances of avoiding or controlling these diseases.

Local health directors point to the need to improve access to existing services such as disease-preventing immunization programs and well-child screenings. Speakers at public hearings across North Carolina told the Minority Health Advisory Council of the need for increased involvement of community-based agencies in spreading the message of public health. And Republican and Democratic legislators alike agree that preventive health strategies are cost-effective in the long-run.

Actions to improve access to preventive health services for minorities are justified by the tremendous health gap between whites and minorities. With an eye toward closing this gap, the Center proposes the following six-point plan:

**I** The Legislature should appropriate \$750,000 for the 1996-97 fiscal year for a new grant program to develop local community-based preventive health programs to attack the health gap that exists between whites and minorities in North Carolina. Minorities in North Carolina die younger and carry a greater burden of illness throughout their lives. This is a fact painted in black and white by the stark health statistics. The state continues to gather evidence on

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approaches that show promise in improving the overall health of minorities through strengthening preventive health programs.

These include: the National Institutes of Health Five-A-Day Program in the area of cancer prevention through better diet; the National Cancer Institute's Project ASSIST with its effort to urge people to quit smoking for the prevention of cancer and heart and lung disease; and Project DIRECT, the Wake County campaign to better contain and control diabetes among African Americans, which is funded by the federal Centers for Disease Control and Prevention.

The evidence is strong that effective health promotion campaigns can be mounted to address the health gap. The legislature should appropriate funds for five-year grants to local health departments to attack the health gap in such areas as heart disease, cancer, stroke, and diabetes.

The Division of Adult Health Promotion in the Department of Environment, Health, and Natural Resources, should administer these grants, with consideration of at least the following four criteria: (1) the size of the minority population; (2) the discrepancy in health between whites and minorities in the target area; (3) available local resources, including the strength of the local health department and the strength of the local economy; and (4) the likelihood of success of the proposed program. Each proposal should include a strong evaluation component and a long-range goal of improving minority health and narrowing the gap in health status between whites and minorities by a given percentage.

If successful, the community health promotion projects could provide a model for better preventive health across North Carolina. That would be an investment well worth the return. The gauge of success, however, should be a tough one: Did the campaign actually affect behaviors that would improve the health of minorities in the targeted community? Did minorities seek more preventive care? Did they eat fewer fatty foods? Did they exercise more? Did these behavioral changes ultimately lead to better health?

The legislature should require an interim report on the success of these programs by 1999, and a final report by the year 2002, with an eye toward expanding successful programs and terminating the failed ones.

**2** To aid in the fight against infant mortality, the legislature should support the expansion of the maternal outreach workers program to all 100 counties and appropriate \$550,000 annually to allow maternal outreach workers to work with families until children reach age 3. Maternal outreach workers should make a special effort to target minority families. Of all of the health gaps the Center noted in its research on minority health, the difference in infant mortality rates is perhaps most tragic. The minority rate is more than double the death rate for white infants. The Division of Maternal and Child Health already plans the expansion of maternal outreach workers to all 100 counties, and, due to higher infant death rates and generally poorer economic standing, minorities will be the prime beneficiaries. These maternal outreach workers make home visits to at-risk expectant mothers to assure they get the care and services they need and work closely with these women until their children reach age 1.

Expansion is based on evidence that these workers can have an impact on the infant mortality rate. This is accomplished by encouraging low-income expectant mothers to get prenatal care and attend to their own health and that of their infant after the child's birth. The program as currently structured is fundable through

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Medicaid and existing resources, and taking the current program statewide will not require an additional appropriation.

The division also has recommended, through the Children's Health Initiative, further expansion to allow these workers to aid families until age 3, rather than the current age 1. This is desirable for several reasons. Inadequate birth spacing is one contributor to the higher infant death rate among minorities. Maternal outreach workers can provide counseling on this issue, and, if there is a subsequent pregnancy, they can help to assure that expectant mothers get adequate prenatal care.

In addition, abuse, neglect, and accidents are primary causes of death among low-income children. Maternal outreach workers could provide support to lower the death rate among children ages 1–3. And they could assure that children get the well-child services they need to get a healthy start in life, including on-time immunizations, proper nutrition, and checkups.

**3** The legislature should appropriate \$500,000 annually to fund immunization outreach workers in 20 high-minority, low-wealth counties across North Carolina. The legislature or the Health Services Commission should clarify that local health departments will be responsible for seeing that children ages 2 and under are age-appropriately immunized. The Center's research in nine North Carolina counties uncovered a clear problem with assuring that children ages 2 and under are up to date on their immunizations. This is particularly a problem with minorities. In a review of 4,194 immunization records, the Center found that only 54.1 percent of minorities who use local health departments for services were up to date on their immunizations, compared to 66.4 percent of whites.

The Center found promise in a New Hanover County program in which an outreach worker takes responsibility for assuring that *all* children are up to date. Yet many high-minority, low-wealth counties do not have the resources to implement such a program. The Center recommends that a pool of \$500,000 be established to fund immunization outreach workers in 20 high-minority, low-wealth counties. In exchange, the legislature or the Health Services Commission should clarify that local health departments *will* be responsible for assuring that children who reside in their counties are up to date.

With the implementation of a statewide immunization registry and state-supplied vaccines, monitoring children should be easier, and the state's goal of having 90 percent of its 2-year-olds age-appropriately immunized by the year 2000 may be attainable. Besides preventing childhood diseases, this campaign should have the effect of boosting well-child care in general. This will benefit minorities and all North Carolina citizens.

**4** The legislature should appropriate \$500,000 annually for AIDS *prevention* and \$500,000 annually for AIDS *treatment* for the benefit of minority communities across North Carolina. The \$500,000 the state has appropriated so far for the AIDS fight is only a start. AIDS is having a disproportionate impact on minorities. The mortality rate for AIDS among African Americans is 16.8 per 100,000 residents, nearly five times the white death rate of 3.5 per 100,000 residents. And African Americans are five times more likely to contract AIDS than whites. The state must respond aggressively to such discrepancies in health status. The \$2 million biennial budget requested by DEHNR—\$1 million

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for prevention and \$1 million for treatment—would have given a much-needed boost to community-based programs addressing the AIDS epidemic. Governor Hunt left this out of his budget.

**5** Local health departments should take further steps to include both minority staff and minority-community members in planning for health services. A major goal should be to make services more accessible to minority populations. The clientele of local health departments is heavily weighted toward minorities. Yet well over a third of the respondents to the Center's survey (37.5 percent) say they do not involve minorities or minority groups in their community diagnostic planning process used to identify health needs and plan a strategy for meeting those needs. Many others do not go outside the local health department for minority input and advice. This kind of insular planning neglects a local resource that could be applied to local problem-solving.

Some local health officials need to develop their listening skills. How can they tailor services and programs to the communities they serve when there is no dialogue? Those who listen likely will find that health department clientele need more convenient hours. Often, people who use health department services are the working poor who may not get paid time off to go to the doctor or take their child in for an immunization shot or other services.

Currently, the N.C. Administrative Code requires only that clinics offering immunization shots be offered at a time convenient to working parents at least once a month. At least 36 of the 86 local health departments already exceed this minimal requirement, according to the Center's survey of local health directors. All local health directors should examine whether they can offer a full range of health services at convenient hours.

**6** Local health departments, in partnership with the state, should provide interpreter services in counties where the combined resident and migrant Hispanic population exceeds 2 percent of the total population or 5 percent of health department clientele. The legislature should appropriate \$250,000 annually in matching funds for local health departments who meet these criteria and wish to hire additional bilingual staff. Health departments increasingly are serving Hispanic clientele with English language skills so limited they can't even tell health department personnel what sort of service they need. The problem has health directors scrambling for help with translation services. Hispanics represent only 4.6 percent of overall health department clientele, according to the Center's survey. Yet in areas where the language barrier looms, a small percentage of clientele are creating a major problem.

A plan has been developed within DEHNR that would provide \$500,000 in the 1995 fiscal year to add interpreters in the 20 counties with the highest density of Hispanic population. In 1996–97, the plan would add the next 40 highest-density counties at a cost of \$1 million.

The Center recommends a more modest approach. Local health departments should provide interpreter services in counties where the combined resident and migrant Hispanic population exceeds 2 percent of the total population or 5 percent of health department clientele. The legislature should appropriate \$250,000 in renewable matching funds as a challenge grant for local health departments who meet the population density criteria and wish to hire additional bilingual staff.

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The Center has two reasons for recommending this more modest approach: (1) fierce competition for health funding in the current political climate (health directors in the Center's survey rated translation services as only their sixth most pressing need in promoting health access); (2) many local health departments are addressing this issue and perhaps could do more with a little encouragement from the state. By appropriating matching funds for new personnel only, the legislature leverages limited funds and assures that it is getting increased effort, rather than merely substituting state dollars for local ones. The appropriation could be increased in future years if necessary to meet demand.

Of the 72 local health directors who responded to the Center's survey, 51 said they use a translator to ease the language barrier, and 29 said this individual was on staff. An additional 10 said they contract for translation services, and 12 said they use volunteers.

Still, there is evidence that the current efforts are not enough. Of the 18 health departments in counties with Hispanic populations exceeding 1 percent, three—Harnett, Henderson, and Onslow—indicated in the Center's survey that they do not provide translation services. Health directors in two other counties with significant Hispanic populations—Henderson and Orange—did not respond.

And the 1990 Census provides only a floor estimate of the state's Hispanic population. Migrant workers more than double the Hispanic population in some counties during harvest season and the number of Hispanics taking up permanent residence in the state increases every year. The language barrier clearly is a problem, and it is one that many local health departments are struggling to solve. Some departments clearly could work harder to address this problem. The state should encourage them to do so and provide the carrot of additional funding for counties that are willing to meet the state halfway.

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These modest proposals alone will not cure the health gap. The Center's recommendations represent only the first steps, and there are many steps to take to close the health gap between whites and minorities in North Carolina.

The trend toward addressing the health needs of minorities must continue and intensify. What is called for is greater inclusiveness that broadens health programming to reach out to minority communities that traditionally have faced access barriers to health care. The ultimate goal should be better health for all North Carolinians. But as the data make clear, minorities are a great deal further from that goal than the white majority.



# Health Care: New Roles for the State Emerge

BY JOHN DRESCHER

*In a century and a half, state roles in planning and providing health care for their citizens have evolved from reluctant participant to sometime provider to major payer. In the late 19th and early 20th centuries, the role was primarily that of a public health department encouraging sanitary practices and operating state hospitals. In the mid-20th century, states were a sort of junior partner with the federal government as Washington made many of the decisions and paid many of the bills. But in the 1980s and 1990s, states have risen to full-partner status in the decision-making process—and especially in the bill-paying process. How have these new state roles defined themselves? How might they further evolve, and what consequences does that hold for North Carolina's future?*

James C. Dobbin, a Democrat and a state representative from Fayetteville, may not have known what course he was setting the state upon that day in 1848 when he rose to tell his colleagues about a promise he had made to his dying wife. Louisa Holmes Dobbin, he told the House of Commons, had been nursed during her long illness by a Massachusetts woman who had come to North Carolina to campaign for better treatment of the insane.

James Dobbin had made a deathbed promise to Louisa to help that nurse persuade North Carolina to establish a state hospital for the mentally ill. Democrats opposed the plan, but James

Dobbin's stirring speech carried the day and the bill passed, marking North Carolina's formal entry into the health services and health policy arena.

Nearly a century and a half later, James Dobbin is long gone and rarely remembered. But Dorothea Dix Hospital—up on Dix Hill overlooking the Capital City—remains both the legacy of Louisa Dobbin's nurse and a symbol of state involvement in providing health care for the citizens of North Carolina. But how did the state's role in health care progress from 1848—when there was essentially no state involvement in health care—to the 1990s, when fully one-fifth of the total state budget goes to health care?

Like most other states, North Carolina's formal role in providing and planning health care

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evolved slowly at first. For most of the 19th century, the only formal role was that of providing state appropriations for Dix Hospital and an institution for the deaf and the mute across the creek—what would become known as the Governor Morehead School. It would not be until 1877, when the State Board of Health was created, and 1879, when the medical school at the University of North Carolina was established, that the role became more formalized. But even then the state role was minimal, writes N.C. historian H.G. Jones, because the health board's "appropriation did not exceed two hundred dollars annually for eight years,"<sup>1</sup> and the two-year UNC medical school didn't fare much better.

Following the board's creation, sanitation and public health were the prime focuses of state efforts for the next three-quarters of a century. Under the supervision of the board and eventually the local health departments that ultimately served each of the state's 100 counties, "the state almost eliminated typhoid fever, diphtheria, smallpox, malaria, hookworm, and rabies as deadly diseases, and greatly reduced the ravages of tuberculosis, polio, and syphilis by distributing serums, vaccines, antitoxins, and medicine and by a campaign of health education."<sup>2</sup>

The campaign for better public health in North Carolina included efforts that environmentalists might challenge today, but at the time were thought essential: spraying and draining the swamps that bred billions of malaria-carrying mosquitoes. "That was a great victory for public health," says State Health Director Ronald Levine, director of the Division of Health Services in the N.C. Department of Environment, Health, and Natural Resources.

The duties of the state health department expanded over the years. By 1913, the department was keeping track of vital statistics and licensing nurses. By 1919, it was inspecting local hotels for health conditions, and eventually every public eating place in the state bore a certificate attesting to the health department's inspection findings. By 1938, the State Board of Health, working with local departments, had opened the first state-sponsored birth control clinics.

Gradually, as better sanitation practices bore fruit and many diseases were controlled or eradicated, the public health focus turned toward health promotion: distributing vitamins to fight nutritional deficiencies and promoting better diets as a way to avoid health problems (and by the 1970s that would include avoiding

tobacco, alcohol, fat, and red meat). "As the condition and relative prevalence of different diseases alter over time, the energy and resources that are in place in any one particular area change," says Levine. By the 1950s, the local health department was a routine stop for many North Carolina families. The annual summer typhoid shot, the tetanus shot, the polio vaccination, the blood test for those planning to get married, all were routine work for nurses at the health department.

For a period, the state was also a major health care provider, building and operating various state hospitals. There were state-run hospitals for patients with tuberculosis, polio, and other communicable diseases in addition to institutions for the mentally ill and for those with physical handicaps. But over the years, many of those hospitals were closed. Some, like the TB and polio hospitals, were no longer needed when cures were developed. And in the 1970s, deinstitutionalization of many with mental problems eliminated the need for many beds in mental institutions.

Research by the N.C. Center for Public Policy Research in 1984 showed how the need for many human services institutions had declined as more and more patients were being treated in area programs and fewer were entering institutions. The Center found that two-thirds of the state's funding was being spent on institutions and only a third on community programs, while the population of the institutions was dropping by a fourth and participation in community programs was rising by more than one-third, from 1974–1983.<sup>3</sup>

The state was also playing a bigger role in planning health facilities. Entertainer and Big Band leader Kay Kyser launched his Good Health Campaign, focusing on the dramatic need for better health facilities and services in North Carolina, particularly for returning war-time troops. In 1944, Gov. J. Melville Broughton shook up the health care establishment by proposing an ambitious program to improve the state's medical schools and build more hospitals. "The ultimate purpose of this program should be that no person in North Carolina shall lack hospital care or medical treatment by reason of poverty or low income," Broughton told the UNC Board of Trustees on Jan. 31, 1944.

Though this goal remained unmet nearly a half-century later, Broughton's plan led to mas-

sive hospital-building. During a five-year period of construction between 1947 and 1952, more than 5,000 beds were added to the state's capacity (thanks in part to \$885,500 from the Duke Endowment and to millions of dollars from the federal Hill-Burton Act<sup>4</sup>); numerous public health clinics and health centers were added; and the forerunners of Blue Cross and Blue Shield of North Carolina, a nonprofit insurer that would become a major health care institution in the state, were greatly expanded.

Many of these same trends were occurring across the nation: Beginning with the bacteriology and sanitation movement of the late 19th century, moving into more sophisticated inspection and disease eradication services of the early 20th century, and finally into health promotion and facility-building programs and health services of the mid-20th century. Soon enough, a new national health crisis was clearly visible: questions about care and financing. As a landmark report on public health put it, "By the 1970s, the financial impact of the expansion in public health activities of the 1930s through the 1960s, including new public roles in the financing of medical care, began to be apparent."<sup>5</sup>

### **Medicaid—The Driving Force in State Budget Increases**

**T**hat financing dilemma was becoming more apparent in North Carolina. When Barbara Matula started dealing with the state's fledgling Medicaid program in 1975, she could keep the details in her head. Eligibility? Federal match? Congressional mandates? "I knew all this," she sighs, scrambling for documents, "without my notebooks."

No longer. The infant that was Medicaid—the joint federal-state program to fund health care for the poor—has grown into a budget-eating monster. Any effort to evaluate the state's role in providing health care must address the enormous impact of Medicaid, which was started by President Lyndon Johnson and the U.S. Congress in 1965.<sup>6</sup> The federal government pays for most of the costs of Medicaid. The formula varies from state to state, depending on the wealth of the state, with poorer states getting more aid. In North Carolina, the federal government pays for about 64.8 percent of the costs; the state requires counties to pay 5.3 percent; the state pays the difference, about 29.9 percent.

Medicaid began as a program to provide health care to those who receive welfare or Aid to Families with Dependent Children (AFDC)—mostly poor children and their mothers, as well as the aged, blind, and disabled poor. Nationally, the traditional Medicaid programs cover only about 35 percent of the poor because eligibility has been strict, and about 40 percent of Medicaid spending has gone to support the needs of about 7 percent of the eligible population—the elderly and the disabled who require long-term care. But over the years, Congress has expanded the program to include all children under 21 who live in households beneath the federal poverty level.<sup>7</sup>

All these factors, plus the effects of economic recession and inflation, have increased the number of people served in the state. In 1994-95, 1,068,907 North Carolinians received care funded by the program — up from 545,000 in 1989-90 and 388,000 in 1977-78, the earliest year in which the state has records on the number of Medicaid clients. Legislators have complained about this growth. Many blame Congress for mandating expansion of the program. But the state also has contributed to rising costs because it, too, has increased the number who are eligible.

For example, Congress said in 1988 that states must provide Medicaid coverage to pregnant women and children in their first 12 months who lived at the poverty level or below. But North Carolina already was serving these women and children up to 150 percent of the poverty level. "We've been ahead of specific [federal] mandates since 1987 with our pregnant women and infant population," says Matula, the director of the Division of Medical Assistance. The 1990 legislature extended coverage to all such women and children from families making up to 185 percent of the federal poverty level.

Legislators took such action because they wanted to lower the state's high level of infant deaths—the second highest in the nation in 1988 with a rate of 12.6 deaths per 1,000 births. The rate improved to 11.5 deaths per 1,000 births in 1989, and in 1990 to 10.6 deaths per 1,000 births, but the national average was 10 in 1989. The effort to improve that rate—through increasing Medicaid fees to obstetricians, for example—was effective, but costly. "First you make a conscious decision to raise the reimbursement rate to obstetricians," Matula says, "then you enroll 25,000 pregnant

women and encourage them to use the care so their babies will be born healthier. Yes, you'll have higher costs. Why would you want to cut that? You've accomplished what you've intended to do. Sometimes the investments you make in medical care are to prevent larger expenses in the future."

### Changing Needs

Such increases have legislators and program administrators wondering how to slow the growth. In doing so, they find themselves confronting issues of availability and cost—and just what the state's future role should be in providing health care.

North Carolina has had to adjust to the changing needs of its citizens in many public policy issues, but nowhere is the changing nature of the state's role more dramatic than in health care. In recent years, state health officials have responded to the AIDS epidemic. They have responded to an aging population that increasingly relies on the state to pay for its long-term care. They have groped for ways to deal with vexing environmental problems, including ensuring adequate supplies of water and dealing with hazardous wastes. They have worked to save rural hospitals with empty beds, to supply physicians and other health professionals to needy areas, and to expand health training beyond the medical schools and teaching hospitals. These are just some of the new problems the state has faced as it takes on more responsibility for planning health care, administering services, paying bills or arranging for funding schemes, building facilities, training caregivers, and making health care policy.

North Carolina's quandary over its future role is hardly unique. All states face many of the same questions over how to mesh current roles as providers, financiers, planners, and policymakers with the burden of future demands. A U.S. Institute of Medicine landmark report in 1988 grouped these demands into three categories: 1) *immediate crises*, such as the AIDS epidemic and providing care to the medically indigent; 2) *enduring public health problems* such as injuries (the leading cause of death in North Carolinians aged 1 to 45 and "the principal public health problem in America today"), teenage pregnancy, controlling high blood pres-

sure, and smoking and drug and alcohol abuse; and 3) *growing challenges* such as dealing with toxic wastes, conquering Alzheimer's Disease and similar maladies that demand long-term care, and revitalizing the country's once-aggressive public health capacities.<sup>8</sup>

That report raised questions about the efficacy of current public health efforts after a long period of successes. It warned of "complacency about the need for a vigorous public health enterprise at the national, state, and local levels," and declared that the system today "is incapable of meeting these responsibilities, of applying fully current scientific knowledge and organizational skills, and of generating new knowledge, methods, and programs."<sup>9</sup>

### Six Vital State Roles in Health

The Institute of Medicine said the states "are and must be the central force in public health. They bear primary public sector responsibility for health."<sup>10</sup> To carry out that responsibility, the institute recommended six key functions and roles that each state should adopt:

1) To assess health needs "within the state based on statewide data collection;"

2) To assure that sufficient laws, rules, executive directives and policy statements are developed to provide for health activities in the state;

3) To create statewide health objectives and delegate sufficient power to local governments to accomplish them and hold local governments accountable;

4) To assure that adequate statewide health services—including environmental health and education programs—are available to the people;

5) To guarantee that a "minimum set of essential health services is available;" and

6) To support local efforts to provide services, "especially when disparities in local ability to raise revenue and/or administer programs require subsidies, technical assistance, or direct action by the state to achieve adequate service levels."<sup>11</sup>

In varying degree, North Carolina addresses these six roles thorough a combination of state statutes, policies, programs, planning agencies, funding arrangements, and data collection agencies—but there are gaps in how well it does so, as the following analysis indicates.

### ***Goal 1—Statewide Data Collection***

For instance, a number of state-supported agencies collect massive amounts of data on the health status of the population. Among them, the State Center for Health Statistics in the Division of Health Services of the Department of Environment, Health, and Natural Resources and the Cecil G. Sheps Center for Health Services Research at UNC-Chapel Hill are repositories of extensive health statistics which national and state researchers frequently use to make forecasts of health care needs. But there is no central agency charged with the responsibility to

sift through all the data, assess state needs, and make recommendations to the General Assembly. Furthermore, legislation to designate such an agency failed in the 1991 General Assembly, although the Legislative Research Commission has created a more limited study commission to focus on public health needs.<sup>12</sup>

### ***Goal 2—Adequate Statutory and Regulatory Base***

North Carolina has a vast array of laws, rules, directives and policy statements on health care, and has rewritten its public health policy

***Dorothea Dix Hospital, 1938***



*N.C. Division of Archives and History*

to give a higher profile to the mission and services of the state public health system. The statute, adopted by the 1991 General Assembly, takes no new direction or shift in policy, says Levine, but re-emphasizes the importance of public health to ensure that goals are met. The law identifies seven goals of public health: a) preventing health risks and disease; b) identifying and reducing health risks in the community; c) detecting, investigating, and preventing the spread of disease; d) promoting healthy lifestyles; e) promoting a safe and healthful environment; f) promoting the availability and accessibility of quality health care services through the private sector; and g) providing quality health care services when not otherwise available.<sup>13</sup> Levine says the local health departments, which in North Carolina are operated and funded more from local governments than in many other states, "should feel the responsibility of providing these [meeting the public health goals] directly or seeing there's an effective alternate scheme."

### **Goal 3—Statewide Health Objectives**

A number of groups and officials have attempted to identify health objectives in North Carolina, among them the Division of Health Services and the proposed Task Force on Health Objectives. Thad Wester, former deputy director of the Division of Health Services, says the effort is to produce 25 health objectives for the state for the year 2000. It is modeled loosely on the National Task Force on Health Objectives, set up by former U.S. Health and Human Services Secretary Louis Sullivan. The objectives of the N.C. group, Wester says, should be targeted to the disadvantaged, be measurable, deal clearly with costs and benefits, emphasize local intervention, and fit North Carolina's specific health circumstances. "Those objectives will emphasize prevention of disease and illness through lifestyle modification," says Wester. "It's a program designed to encourage individuals to take charge of their health and do things themselves to improve their health." In July 1994, Gov. Jim Hunt created the Task Force on Health Objectives by executive order.<sup>14</sup>

In addition, North Carolina does have a state health plan that includes goals and which the department has updated biennially. But how well it addresses health needs, and how well it is used by public health departments and

other state agencies to identify objectives, provide care, and *meet* goals is a matter of some debate.<sup>15</sup>

### **Goal 4—Adequate Statewide Health Services**

North Carolina operates a vast array of state health services, including personal, environmental, and educational programs. In fact, more than 200 state programs and activities are at work in the health care field, far more than similar programs in fields such as poverty, environment, insurance regulation, economic development, or corrections. But state health programs and services are spread over a variety of administrative structures and sometimes seem to overlap with other programs, raising questions whether the state has developed the most efficient administrative and service structure for its health programs.

The U.S. Institute of Medicine begged the question whether the state should be the *provider* of adequate statewide health services, or simply bear the responsibility for seeing that such services are provided by other agencies and institutions. Such a question has yet to be addressed directly by the N.C. General Assembly.

### **Goal 5—Minimum Set of Health Services**

North Carolina does not have a basic health care program available, though it does, as mentioned previously, operate hundreds of programs. Alone of the industrialized nations, only the United States has not identified a basic set of health services they would make available to citizens through a form of national health insurance, although there have been occasional calls for creation of a basic health plan from time to time. Among the states, five—Washington, Minnesota, Florida, Oregon, and Hawaii—have decided to subsidize basic health insurance projects for some of the uninsured. Massachusetts has launched an ambitious but financially troubled health plan for its uninsured citizens, and several other states have begun encouraging private insurers to sell basic health care policies at low cost to the working poor.<sup>16</sup> The N.C. Institute of Medicine has recommended that North Carolina adopt a system similar to that of Hawaii.<sup>17</sup>

While each county in the state must offer certain basic health services, there may be a big gap between rural counties and urban ones, says former Wake County Health Director Leah Devlin. "In larger counties, a lot of health services are offered that are not available in smaller counties," says Devlin. For a rundown of basic services offered at all public health departments in North Carolina, see Table 1.

### ***Goal 6—Addressing Disparities in Local Ability to Provide Health Services***

While North Carolina does provide appropriations to local departments and health service agencies based on a formula that includes county size, it has not yet debated the concept of providing special funding to those counties which have greater needs and fewer resources to provide minimal services for their citizens.

The N.C. General Assembly has adopted just such an equalization in education for the smallest and poorest counties, and future sessions of the General Assembly might apply the same principle to disparities in health care in the needier counties.<sup>18</sup>

A 1985 study showed just how large the disparities can be from county to county in per capita spending on indigent health care. It ranged from a low of \$7.36 in Randolph County to a high of \$153.85 in Pender County—a huge difference. But the disparity was even higher in the total amount of indigent funding per recipient below the poverty level—from \$386 in Currituck County to \$2,791 in Stanly County.<sup>19</sup> Wake County's Devlin says developing a need-based formula for distributing health funds would help many counties, but she says such a formula should be based on more than just poverty status. "Public health

**Table 1. Minimum Health Services  
Required by State Law**

1. Health Support:
  - a. Assessment of health status, health needs, and environmental risks to health;
  - b. Patient and community education;
  - c. Public health laboratory;
  - d. Registration of vital events;
2. Environmental Health:
  - a. Lodging and institutional sanitation;
  - b. On-site domestic sewage disposal;
  - c. Water and food safety and sanitation;
3. Personal Health:
  - a. Child health;
  - b. Chronic disease control;
  - c. Communicable disease control;
  - d. Dental public health;
  - e. Family planning;
  - f. Health promotion and risk education;
  - g. Maternal health.

*Source:* G.S. 130A-1.1 (b), Mission and Essential Services, 1995 (Chapter 299, 1991 Session Laws).

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## Medicine

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Grandma sleeps with  
my sick

grand -

pa so she  
can get him  
during the night  
medicine  
to stop  
the pain

In  
the morning  
clumsily  
I  
wake  
them

Her eyes  
look at me  
from under -  
neath  
his withered  
arm

The  
medicine  
is all  
in  
her long  
un -  
braided  
hair.

— "MEDICINE" FROM *ONCE*,  
BY ALICE WALKER,  
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needs may be greater in urban areas" than in rural areas, Devlin says. For instance, AIDS patients may gravitate to cities, creating a greater need for expensive health care.

In sum, North Carolina's record in fulfilling these six goals is mixed. It partially meets goals 1, 4, and 5; addresses but does not fully meet goals 3 and 6; and satisfies goal 2 fairly completely. If the U.S. Institute of Medicine's standards are comprehensive, then there obviously is much for the state yet to do in meeting its public health responsibilities.

### What New Roles Should North Carolina Take?

The six goals recommended by the U.S. Institute of Medicine as key targets for each state should be embraced by North Carolina's health care system. They represent a broad, well-defined approach to ensure systematic planning for adequate health care for the state's 6.9 million people. But in addition to the six broad goals that the state *ought to adopt*, there are four more emerging roles that *are being forced* upon the state—(1) ensuring access to care, (2) cost containment, (3) health promotion, and (4) rural health.

### A State Role in Access to Care

Research has shown that more than one million North Carolinians go without insurance at least some time during the year, and many more have inadequate health insurance coverage. Many more U.S. citizens often avoid getting health care because of the expense—and putting off needed care can result in worsening health problems later on. Access to care and health insurance is a complex and growing problem in North Carolina—and one that state policy-makers need to examine.

The range of options the state could consider include legislative action to broaden insurance coverage but leave it up to employers to decide whether to offer insurance; adopt a "pay or play" approach requiring employers either to offer health insurance or pay into a public fund to provide such coverage; go to a single-payer system with the state acting as a huge insurer; or decline to make changes and hope the problem does not worsen.

**A State Role in Cost Containment**

North Carolina should not expect help in slowing the increase in costs from the federal government any time soon, says Duncan Yaggy, chief planning officer at Duke Medical Center. The issue is too difficult for national politicians to handle, he says. "It's a no-win proposition. You can't deal with the financing of health care sensibly without reducing existing benefits or increasing the portion of health care costs funded out of taxes. People inside the Beltway don't want to do either." Consequently, he believes states will be forced to deal with the problems. That will lead to painful discussions aimed at making citizens choose between two apparently contradictory beliefs: (1) that every citizen has a right to health care, and (2) that health care is too expensive, so not everyone can have it even though they believe they have a right to it.

For example, Yaggy points to discussions in Oregon about whether some organ transplants and other medical procedures should be funded by the public. Americans have shown little taste for discussions of rationing health care. After discussing the astronomical amounts spent to keep the elderly alive in their last years, "That's usually where the conversation ends because then people have to start talking about their mothers and grandmothers," Yaggy says. Nonetheless, he believes states will be forced to have such conversations—and make decisions. Holding such debates and making such deci-

sions likely will renew the debate about North Carolina's Certificate of Need (CON) process, which is designed to hold down health care cost increases and other cost containment programs.

Some are skeptical about whether states can tackle the problems. Deborah A. Stone, Brandeis University professor of law and social policy, argued at a conference at Duke University in 1991 that states lack enough freedom from the federal government to innovate in health policy.<sup>20</sup> States have little hope of controlling their biggest health expense, Medicaid, because of federal mandates, she said. "It may well be that there are some policy problems simply too big for states to handle," Stone said. "We have a health policy system that is federally dominated, so that the federal government directs and constrains state government innovations, even as the reigning ideology celebrates the importance of state and local innovation."

Others raise flags at increasing state involvement. "Political figures . . . try to solve every problem with a new law," says Alex McMahon, former president of the American Hospital Association, who now chairs Duke University's health administration program. "It's going to add costs. Is it worthwhile? The people in favor of it say yes, but the employers are much more cautious. They know what the costs are. . . . It turns into some very real problems if we insist that our employers do something employers in Virginia and South Carolina

**Table 2. North Carolina's Medically Indigent, 1995**

Uninsured All Year	627,101
Uninsured Part Year	610,909
Underinsured (Private Coverage)*	791,819
Underinsured Medicare	311,795
Total	2,341,624 = 34% of total state population

\* The underinsured are defined as those at risk of spending more than 10 percent of their family income on medical expenses.

Source: Duke University Center for Health Policy Research and Education

don't have to do. Then we have real problems of interstate competition."

Yet many people who follow health care issues don't see the state retreating. Some state officials hope the federal government will help solve the twin problems of health care availability and health care costs, freeing the state for other health-care challenges. "If they solve the problems of financing care for all, we may be able to re-orient some of those [state] resources into prevention," says Levine, the state health director. "I think public health is going to move

more into the traditional role of prevention. Public health has a huge job to make [age] 65 [seem] young, which is possible and we will be concentrating on."

#### *A State Role in Health Promotion*

Levine envisions a new state emphasis on promoting health through nutrition counseling, physical fitness and injury prevention. The Division of Adult Health Services, established in 1981 to promote health and prevent disease, es-

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## *What the Doctor Said*

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*He said it doesn't look good  
he said it looks bad in fact real bad  
he said I counted thirty-two of them on one lung before  
I quit counting them  
I said I'm glad I wouldn't want to know  
about any more being there than that  
he said are you a religious man do you kneel down  
in forest groves and let yourself ask for help  
when you come to a waterfall  
mist blowing against your face and arms  
do you stop and ask for understanding at those moments  
I said not yet but I intend to start today  
he said I'm real sorry he said  
I wish I had some other kind of news to give you  
I said Amen and he said something else  
I didn't catch and not knowing what else to do  
and not wanting him to have to repeat it  
and me to have to fully digest it  
I just looked at him  
for a minute and he looked back it was then  
I jumped up and shook hands with this man who'd just given me  
something no one else on earth had ever given me  
I may even have thanked him habit being so strong*

—RAYMOND CARVER

FROM THE BOOK, *A NEW PATH TO THE WATERFALL*

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Karen Tam

**Nursing home resident Rachel Taylor**

estimates that only 20 percent of the deaths among 18- to 64-year-olds are from natural causes; the remainder of the deaths are controllable—or can be influenced—through such changes as an altered lifestyle or different environment.<sup>21</sup>

Compared to many countries, the American lifestyle is unhealthy. Compare it to, say, China. In the largest city in China, Shanghai, the life expectancy at birth is 75.5 years. In New York City, the United States' largest city, the life expectancy is 73 years for whites and 70 for non-whites.<sup>22</sup> Cost comparisons are tricky, but in Shanghai, each person receives the equivalent of \$38 worth of health care each year, on average; in the United States, we each receive an average of \$2,400 worth of care each year. If a Shanghai resident needs dialysis, a coronary bypass or an organ transplant, he or she likely won't get it. The person probably will die. But the Chinese live longer because they get plenty of exercise, have low-fat diets, avoid alcohol and drugs, and are highly unlikely to be murdered or killed in a car accident.

"In order to get people healthier and keep them healthy, increasingly you're not talking about vaccinations. You're talking about [alter-

ing] lifestyles," said Yaggy, the Duke official who once served as assistant health commissioner in Massachusetts.

Even if the federal government is successful in overhauling the health care system, the state probably will continue to have a strong role in financing health care. For example, the state can expect to continue paying to care for the poor. Medicaid might be changed and given a new name, but costs will live on.

### ***A State Role in Rural Health***

Other problems will remain. As the article on page 581 indicates, rural hospitals in North Carolina are in trouble and shortages of physicians persist. Sixteen rural hospitals are at risk of failing to meet their service missions, and hundreds of vacancies exist for a variety of health professionals. The health of rural care facilities, and the lack of providers, will be a prime concern of state officials and policymakers in the future.

No one believes the roles of the state will diminish. Duke's Yaggy notes that states historically have filled the gaps in providing care. For decades, even into the 1950s, when parents

didn't know what to do with mentally ill or retarded children, many simply dropped them off at state institutions and abandoned them for life. The role of the states has changed enormously since then, but gaps remain and may become larger, says Yaggy. "I think the state's role is going to grow."

That greater role is appropriate for the states, said the Committee for the Study of the

Future of Public Health. The committee urged states to take a leadership role in planning and providing for health care. "In fulfilling the public health mission," the committee said, "states are close enough to the people to maintain a sense of their needs and preferences, yet large enough to command in most cases the resources necessary to get the important jobs done."<sup>23</sup>

## FOOTNOTES

<sup>1</sup> H.G. Jones, *North Carolina Illustrated*, The North Caroliniana Society, 1983, p. 264.

<sup>2</sup> Hugh T. Lefler and Albert Ray Newsome, *History of a Southern State*, UNC Press, 1954 (third edition, 1973), p. 677.

<sup>3</sup> For more, see Michael Matros and Roger Manus, "From Institutions to Communities," *North Carolina Insight*, Vol. 7, No. 1, June 1984, pp. 42-54.

<sup>4</sup> 42 U.S. Code 291, et seq. For more on this subject, see Lori Ann Harris, "The Hill Burton Act," *Comparing the Performance of For-Profit and Not-For-Profit Hospitals in North Carolina*, N.C. Center for Public Policy Research, 1989, pp. 42-45.

<sup>5</sup> "A History of the Public Health System," *The Future of Public Health*, the U.S. Institute of Medicine, National Academy Press, Washington, 1988, p. 69.

<sup>6</sup> Title XIX, Social Security Act, 42 U.S. Code 1396 et seq.

<sup>7</sup> Tony Hutchison, "The Medicaid Budget Bust," *State Legislatures* magazine, National Conference of State Legislatures, June 1991, p. 11.

<sup>8</sup> *The Future of Public Health*, pp. 19-31.

<sup>9</sup> *Ibid.*, pages 19 and 31.

<sup>10</sup> *Ibid.*, p. 143.

<sup>11</sup> *Ibid.*, p. 143.

<sup>12</sup> Senate Bill 367, sponsored by former Sen. Russell Walker (D-Randolph) would have authorized a Public Health Study Commission with broad authority to assess health status and health needs and report to the 1993 General Assembly, but the bill was not approved. However, an LRC study commission was authorized by Chapter 754 of the 1991 Session Laws (SB 917, Part II, Legislative Research Commission, item 11, Effectiveness and Efficiency of the Public Health System's Delivery of Health Services to the Citizens of the State). The Legislative Research Commission approved funds for such a study. The Public Health Study Commission reports to the General Assembly after each biennial session is convened.

<sup>13</sup> Chapter 299 (House Bill 499) of the 1991 Session Laws, codified in G.S. 130A-1.1.

<sup>14</sup> Executive Order Number 56, July 13, 1994, issued by Gov. Jim Hunt. The task force was first created by Executive Order Number 148, Aug. 6, 1991, issued by Gov. James G. Martin.

<sup>15</sup> See "Consolidated Plan for Public Health Services FY 90," Department of Environment, Health, and Natural Resources, September 1989.

<sup>16</sup> "Basic State Health Insurance Plans: No Substitute for a National Program," Public Citizen Health Research Group *Health Letter*, Vol. 7, No. 3, March 1991, p. 7. See also Elizabeth Buerger, "State Health-Care Reform Initiatives," *The Book of the States 1994-95*, Council of State Governments, Lexington, Ky., pp. 564-67.

<sup>17</sup> "Strategic Plan to Assist the Medically Indigent of North Carolina," Report of the Task Force on Indigent Care, N.C. Institute of Medicine, July 1989.

<sup>18</sup> In 1995, the General Assembly appropriated supplemental funding of \$14.4 million per year for small county school systems (less than 3,000 students) and \$35.3 million a year for county systems with high-tax effort, but low tax income.

<sup>19</sup> See Chris Conover, "Indigent Health Care North Carolina County Profiles," prepared for the Indigent Health Care Study Commission, Center for Health Policy Research and Education, Duke University, July 1986. See specifically Tables 11 and 12, pp. 22-25.

<sup>20</sup> Deborah A. Stone, "State Innovation in Health Policy," prepared for the Ford Foundation Conference on The Fundamental Questions of Innovation, Duke University, May 3-4, 1991, pp. 30-31.

<sup>21</sup> Memo from Georjean Stoodt, N.C. Division of Adult Health Services, to Thad Wester, May 31, 1991, pages 1 and 4.

<sup>22</sup> Nicholas D. Kristof, "Chinese Grow Healthier From Cradle to Grave," *The New York Times*, April 14, 1991, p. A1.

<sup>23</sup> *The Future of Public Health*, p. 143.

# Rural Health Care in North Carolina: Unmet Needs, Unanswered Questions

BY JEANNE M. LAMBREW AND JACK BETTS

*What is the future of rural hospitals in North Carolina? The use of North Carolina's rural hospitals has declined in the past decade, leading to questions about health care delivery in rural areas. This article explores several different facets of the state's rural health care system, before focusing on the utilization and services of the state's rural hospitals.*

If you drove through the heartland of North Carolina along the superhighways of the most populous areas, and if you were to have an accident requiring medical care and hospitalization, you couldn't be in a better place. In Raleigh, there's the vast Wake Medical Center and at least two other fine hospitals; in Durham, the world-renowned Duke Medical Center and Durham Regional; in Chapel Hill, the huge University Hospitals system. Further to the west, the major medical centers of Greensboro, Charlotte, and Winston-Salem are well stocked with physicians, nurses, CT Scanners, Magnetic Resonance Imagers, and all sorts of Buck Rogers equip-

ment—sprawling facilities offering cutting-edge technology and the most sophisticated expertise in the world.

But if you were to travel the backroads of the Piedmont, or spend time in the western and particularly the less-populous eastern reaches of North Carolina, it's a different story entirely. The problem is not a lack of hospitals, or insufficiently skilled doctors and nurses. There are a lot of hospitals in North Carolina, even in rural areas. But in the state's rural counties, some hospitals are in severe financial trouble, and some of them are showing vital signs of distress in serving their communities successfully. Rural hospitals, pillars of local health and economic systems alike, are failing.

This increasingly grim picture is hardly unique to North Carolina. "Throughout rural America, small hospitals are closing their doors," says Arthur Caplan, director of the Center for Biomedical Ethics at the University of Minnesota. "They cannot compete with their regional, suburban, and big-city rivals. Doctors, especially new ones, go where the jobs

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are. There is simply more money to be made in the city than in the country.”<sup>1</sup>

The problems in rural health go far beyond hospital closings. “Many rural residents face difficulty in obtaining health care,” notes the Center on Budget and Policy Priorities in Washington, D.C. “Access to health care for these residents may be limited by economic as well as geographic barriers and by a shortage of medical providers in rural areas.”<sup>2</sup> The report also notes that rural residents usually are not as healthy as their urban counterparts, and they use medical facilities and seek medical care far less often.

With the dramatic urban growth of North Carolina in recent years, it’s easy to forget that much of the state remains rural. Others are isolated by poverty or lack of transportation. Though most rural residents live close to one of the many small towns that dot the state’s landscape, the barriers to access traditionally associated with the remote rural areas are appearing in these communities as well.

Jim Bernstein, director of the state’s Office of Rural Health and Resource Development in the Department of Human Resources, says the rural health care problem extends to many of these small towns. “Because we are a densely populated rural state, with a significant portion of its population in small towns, there already are a number of problems in towns of around 2,500. And it won’t be long before we see these problems in towns of up to 10,000.”

These problems include:

- a lack of medical personnel (particularly family practice physicians, nurse practitioners, and physicians’ assistants);
- a lack of resources and supporting institutions for rural hospitals, including fundraising and medical support organizations;
- low rates of health insurance coverage for rural residents and an insufficient number of employers with health insurance plans and other third-party payers to pay for care for rural citizens;
- the growing disparity between large urban counties that are better able to afford care for their indigent citizenry, and the rural counties that are disproportionately poor and far less able to provide an adequate level of care; and

- a disproportionately large number of the working poor in rural areas—which means that many rural residents, who work full time at regular jobs but don’t qualify for government health programs, don’t earn enough to buy private insurance.

“We’ve got hospitals in trouble, we don’t have enough doctors, especially primary care doctors, and we have a payment system that is out of whack,” says Bernstein.

In the face of huge financial pressures, competition, and the changing nature of health care, the traditional small rural hospitals may disappear. What’s going to happen to North Carolina’s rural hospitals? If a rural hospital goes out of business, what steps could the local county take to provide essential, minimum services? And will there be enough health professionals to deliver these services?

### Overview: North Carolina Hospitals

Currently, North Carolina’s complement of 118 general acute-care hospitals is fairly widely dispersed, with no hospital more than 35 miles from another.<sup>3</sup> Though some metropolitan areas have more than two or three hospitals, 18 counties, all of them rural, do not have a hospital (see Table 1 for a list of rural counties and their hospitals).

Seventy-five general acute-care hospitals are located in non-metropolitan counties, meaning counties that are not part of a Metropolitan Statistical Area, or MSA. An MSA is defined as an integrated area with a central city of 50,000 population or greater within an urbanized area of 100,000 or greater. Two of North Carolina’s non-metropolitan hospitals are not classified as *rural* by the U.S. Health Care Financing Administration (HCFA)—Betsy Johnson Memorial and Good Hope Hospital, both in Harnett County—because they are adjacent to a metropolitan area (Wake County); only the 73 hospitals reimbursed by the HCFA are considered in this analysis.

Of the 118 hospitals, 45 are in metropolitan areas; of the remaining 73 rural hospitals, 15 hospitals have fewer than 50 beds; 27 have 50–99 beds; and 31 have 100 or more beds (see Figure 1). So the term *rural hospital* does not necessarily mean *small* and rural. It can also

mean fairly large and not-so-rural—as in the case of 501-bed Pitt Memorial Hospital in Greenville or 261-bed Wayne Memorial in Goldsboro.

### The Average Rural Hospital

The average rural hospital in North Carolina had 109 staffed beds in 1989, compared to a nationwide non-metropolitan average of 83 beds. Thirteen percent of all North Carolina's non-metro hospitals had fewer than 50 beds in 1989 compared to 17.8 percent in the United States in the same year. By comparison, urban hospitals are nearly three times larger than rural hospitals—averaging 280 staffed beds in North Carolina and 245 beds nationally in 1989.<sup>4</sup>

Fewer than 10 percent of rural hospitals in North Carolina are proprietary or operated on a for-profit basis, with 49.3 percent owned by not-for-profit organizations, and 41 percent owned by some unit of local government (county, township, district, or hospital author-

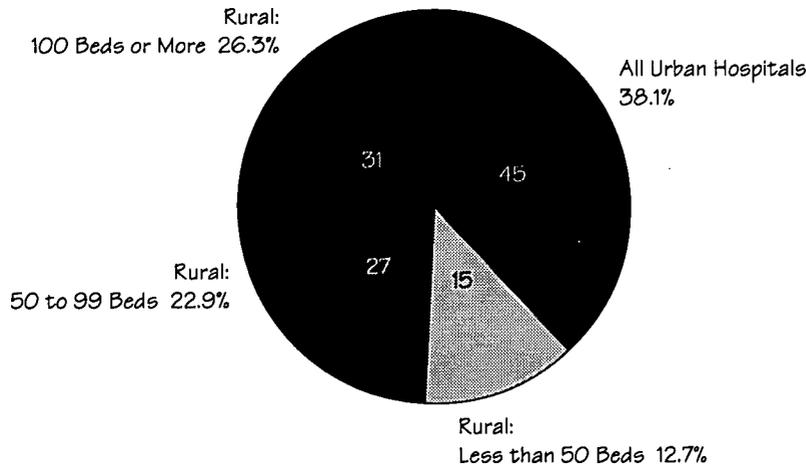
ity). This pattern of ownership is comparable to that of non-metropolitan community hospitals nationwide, of which 10 percent were for-profit in 1987, 48 percent were nonprofit, and 41.3 percent were under government ownership.<sup>5</sup>

### Rural Hospital Trends

One of the most alarming national trends of the last decade has been the closure of rural hospitals, including four in North Carolina since the mid-1980s—Warren County General in 1985, Robersonville Community in Martin County in 1989, Blackwelder Hospital in Caldwell County in 1988, and Sea Level Hospital in Carteret County in 1991.<sup>6</sup> These closures usually can be anticipated by financial difficulties, but financial troubles may be symptoms and not the root causes of hospital failure. *Utilization—declining hospital utilization—is a major cause of hospital failure.*

—continued on page 586

**Figure 1. Urban-Rural Distribution of North Carolina Hospitals, 1989**



*Note:* Hospitals that are members of systems often are reported in aggregate rather than as individual hospitals; thus, this is a conservative count.

*Source:* N.C. Center for Health and Environmental Statistics; Health Facilities Data Book: Hospital Summary Report, 1989

Prepared by N.C. Rural Health Research Program, Cecil G. Sheps Center for Health Services Research, UNC-CH

**Table 1. Rural Hospitals in North Carolina**

1 County	2 County Population	3 Hospital	4 Type of Ownership	5 Staffed Beds		7 % Occupied		8 % Discharges From County	
				in Use		1980	1989	1980	1989
	1990		1989	1989	1980	1989	1980	1989	
Alleghany	9,590	Alleghany County Memorial Hospital	NPA	46	46.0	50.1	67.2	64.0	
Anson	23,474	Anson County Hospital	CNTY	52	81.0	43.3	57.0	49.0	
Ashe	22,209	Ashe Memorial Hospital	NPA	57	63.8	41.5	64.3	50.9	
Avery	14,867	Charles A. Cannon Jr. Memorial Hospital	NPA	79	54.1	45.1	41.2	32.1	
		Sloop Memorial Hospital	NPA	38	64.1	57.7	37.9	42.4	
Beaufort	42,283	Beaufort County Hospital	CNTY	117	69.3	48.2	58.4	51.7	
		Pungo District Hospital	NPA	47	56.2	72.4	19.7	14.6	
Bertie	20,388	Bertie Memorial Hospital	CNTY	49	61.5	25.1	32.6	18.1	
Bladen	28,663	Bladen County Hospital	CNTY	42	91.6	65.0	46.7	49.3	
Brunswick	50,985	Brunswick Hospital	PROP	60	39.4	38.8	24.5	24.3	
		J. Arthur Doshier Memorial Hospital	TWNSHP	40	55.9	35.8	16.4	17.8	
Caldwell	70,709	Caldwell Memorial Hospital	NPA	97	74.4	73.7	40.5	51.9	
Camden	5,904								
Carteret	52,556	Carteret County General Hospital*	CNTY	117	75.5	67.6	65.5	69.6	
Caswell	20,693								
Chatham	38,759	Chatham Hospital	NPA	46	71.6	67.0	40.7	33.3	
Cherokee	20,170	District Memorial Hospital of SW N.C.	DIST	52	40.5	66.3	39.4	27.3	
		Murphy Medical Center	AUTH	50	52.6	41.0	41.4	45.8	
Chowan	13,506	Chowan Hospital	CNTY	70	91.6	47.0	74.5	74.3	
Clay	7,155								
Cleveland	84,714	Crawley Memorial Hospital	NPA	51	52.5	66.0	7.7	1.6	
		Kings Mountain Hospital	NPA	92	78.2	40.5	14.0	11.3	
		Cleveland Memorial Hospital*	CNTY	239	74.8	65.6	65.0	62.4	
Columbus	49,587	Columbus County Hospital*	CNTY	136	87.5	80.0	69.0	70.5	
Craven	81,613	Craven Regional Medical Center*	NPA	276	92.0	78.7	82.5	83.0	
Currituck	13,736								
Dare	22,746								
Duplin	39,995	Duplin General Hospital	CNTY	60	60.2	64.7	35.2	41.4	
Edgecombe	56,558	Heritage Hospital	PROP	127	59.9	49.1	37.8	39.5	
Gates	9,305								
Graham	7,196								
Granville	38,345	Granville Medical Center	CNTY	66	59.0	48.6	38.5	41.6	
Greene	15,384								
Halifax	55,516	Halifax Memorial Hospital	DIST	171	84.8	87.3	64.5	62.7	
		Our Community Hospital	NPA	20	37.7	33.2	3.6	1.4	
Harnett	67,822	Betsy Johnson Memorial Hospital**	CITY	77	69.4	68.3	33.3	31.0	
		Good Hope Hospital**	NPA	72	93.7	67.8	17.5	16.0	
Haywood	46,942	Haywood County Hospital	CNTY	152	61.2	61.8	78.0	70.1	
Henderson	69,285	Margaret R. Pardee Memorial Hospital	CNTY	155	71.8	65.2	68.7	58.1	
		Park Ridge Hospital	NPA	103	65.6	63.0	16.9	17.3	
Hertford	22,523	Roanoke-Chowan Hospital	NPA	100	81.7	75.6	86.1	82.0	
Hoke	22,856								
Hyde	5,411								
Iredell	92,931	Davis Community Hospital	PROP	149	70.5	44.1	24.1	16.6	
		Iredell Memorial Hospital	CNTY	183	84.1	80.5	39.4	49.3	
		Lake Norman Regional Medical Center	PROP	113	76.6	34.8	18.9	17.4	
Jackson	26,846	C.J. Harris Community Hospital	NPA	86	71.4	61.9	75.3	70.6	
Johnston	81,306	Johnston Memorial Hospital*	CNTY	114	66.9	70.6	45.9	40.1	
Jones	9,414								

Table 1. *continued*

1 County	2 County Population 1990	3 Hospital	4 Type of Ownership 1989	5 Staffed Beds in Use		6 % Occupied		7 % Discharges From County	
				1989	1980	1989	1980	1989	1989
Lee	41,374	Central Carolina Hospital	PROP	137	59.9	55.0	63.6	59.2	
Lenoir	57,274	Lenoir Memorial Hospital*	CNTY	226	85.2	76.0	80.9	78.1	
Macon	23,499	Angel Community Hospital	NPA	81	66.7	57.2	65.0	62.9	
		Highlands-Cashiers Hospital	NPA	27	19.8	14.0	7.3	5.2	
<b>Madison</b>	<b>16,953</b>								
Martin	25,078	Martin General Hospital	CNTY	49	70.4	46.0	42.9	37.7	
McDowell	35,681	McDowell Hospital	NPA	65	71.0	74.5	53.1	63.8	
Mitchell	14,433	Blue Ridge Hospital System	NPA	70	56.8	54.9	68.5	62.5	
Montgomery	23,346	Montgomery Memorial Hospital	NPA	50	64.7	46.3	64.5	46.6	
Moore	59,013	Moore Regional Hospital*	NPA	312	85.0	85.6	86.6	81.3	
Nash	76,677	Community Hospital of Rocky Mount	PROP	50	54.4	54.9	7.5	6.8	
		Nash General Hospital*	CNTY	282	88.4	76.5	61.0	60.2	
<b>Northampton</b>	<b>20,798</b>								
<b>Pamlico</b>	<b>11,372</b>								
Pasquotank	31,298	Albemarle Hospital*	CNTY	137	68.9	80.1	93.5	93.5	
Pender	28,855	Pender Memorial Hospital	CNTY	43	78.1	56.6	37.7	31.4	
Perquimans	10,447								
Person	30,180	Person County Memorial Hospital	NPA	54	77.9	36.4	46.4	27.2	
Pitt	107,924	Pitt County Memorial Hospital*	CNTY	501	84.1	94.7	86.7	94.2	
Polk	14,416	St. Luke's Hospital	NPA	52	56.1	81.0	69.1	69.2	
Richmond	44,518	Hamlet Hospital	PROP	64	38.9	43.8	9.9	17.7	
		Richmond Memorial Hospital	CNTY	88	58.1	61.0	55.3	42.4	
Robeson	105,179	Southeastern General Hospital*	NPA	281	77.5	70.1	65.3	64.6	
Rockingham	86,064	Annie Penn Memorial Hospital	NPA	90	75.7	81.1	38.7	29.9	
		Morehead Memorial Hospital	NPA	85	63.0	76.8	31.7	34.3	
Rutherford	56,918	Rutherford Hospital*	NPA	145	72.3	52.4	64.9	68.1	
Sampson	47,297	Sampson County Memorial Hospital	CNTY	116	76.5	60.3	62.5	60.1	
Scotland	33,754	Scotland Memorial Hospital	NPA	124	50.7	53.9	71.7	66.2	
Stanly	51,765	Stanly Memorial Hospital	NPA	124	67.2	56.8	56.0	59.8	
Surry	61,704	Hugh Chatham Memorial Hospital	NPA	58	55.5	66.3	15.4	14.3	
		Northern Hospital of Surry County	DIST	116	96.0	61.0	42.9	47.4	
Swain	11,268	Swain County Hospital	NPA	46	64.7	40.8	56.2	41.0	
Transylvania	25,520	Transylvania Community Hospital	NPA	94	54.7	55.0	63.6	59.9	
<b>Tyrrell</b>	<b>3,856</b>								
Vance	38,892	Maria Parham Hospital	NPA	78	66.0	74.0	66.9	58.1	
Warren	17,265								
Washington	13,997	Washington County Hospital	CNTY	49	60.5	32.9	56.7	52.5	
Watauga	36,952	Blowing Rock Hospital	NPA	28	50.0	50.1	10.6	6.0	
		Watauga County Hospital	CNTY	141	52.5	51.3	71.8	68.8	
Wayne	104,666	Wayne Memorial Hospital*	NPA	261	73.1	76.9	82.0	79.8	
Wilkes	59,393	Wilkes Regional Medical Center	CITY	111	72.1	77.8	59.6	64.0	
Wilson	66,061	Wilson Memorial Hospital*	NPA	277	84.6	74.3	91.6	81.8	
<b>Yancey</b>	<b>15,419</b>								

**Key to Ownership:** NPA: non-profit association; CNTY: county; PROP: for-profit proprietary; TWNSHP: township; AUTH: hospital authority; DIST: district

*Source:* N.C. Center for Health & Environmental Statistics; Health Facilities Data Book: Hospital Summary Report & Patient Origin Reports, 1980; 1989; and U.S. Census, 1990. Prepared by Jeanne Lambrew, N.C. Rural Health Research Program, Cecil G. Sheps Center for Health Services Research.

■ indicates no hospital in the county  
 \* indicates a Rural Referral Hospital  
 \*\* Harnett County hospitals have been designated as urban for Medicare reimbursement and thus are not included in the analyses of rural hospitals

The stability and success of a hospital depend on the number and characteristics of the people who use it. In the past decade, a nationwide decline in inpatient hospitalization occurred. The American Hospital Association reports that between 1979 and 1989, the number of inpatient hospital days declined by 11.3 percent nationally.<sup>7</sup> This is only partly attributable to the recession of the early 1980s and the increase in outpatient surgery.

In particular, the federal government's Prospective Payment System for Medicare, introduced in 1983,<sup>8</sup> was instrumental in changing the nature of hospital stays. The Prospective Payment System made it unprofitable to extend a patient's stay beyond the length of time designated for a particular diagnosis. It also provided strong disincentives for unneeded admissions to hospitals. As a result, hospitals experienced the *quicker and sicker* phenomenon, where only those more critically ill were admitted to hospitals, and once there, they stayed a shorter period because there was no additional payment for additional days. That has had a strong influence on hospital viability.

The typical patient using the rural hospital also changed during the 1980s. Increasingly, younger and more affluent county residents have stopped patronizing their local hospitals, leaving a patient population that is mostly elderly and indigent. In the same way that rural residents travel to more urban areas for their work or shopping, health care "outshopping" implies that, except for emergency care, rural residents uncouple their basic health needs from the local hospital and seek care in urban hospitals.

But there's more to it than a shopping analogy, says James R. Queen, administrator of Our Community Hospital in Scotland Neck. "Most residents leave rural area hospitals because they need care that their local facility does not and cannot deliver," says Queen. "For example, Our Community Hospital does not perform surgery or deliver babies, so residents with these needs must go elsewhere. It is not a matter of choice."

Rural hospital administrators are proud of the job they do with the services they have. "You can get good health care with the physicians here and with the specialties represented here," says Duplin General Hospital Chief Executive Officer Richard E. Harrell. But for some serious illnesses, he adds, "We will send patients to a hospital in another county."

Rural hospitals, like urban hospitals, are treating more patients who cannot pay for their care. The amount of uncompensated care in all U.S. hospitals has increased, with non-metropolitan hospitals treating 26 percent more medically indigent in 1987 than in 1984.<sup>9</sup> However, the bad-debt patient at an urban hospital represents a small percentage of gross revenues; at a rural hospital, bad debt may be high enough to lead to insolvency.

Critical to the understanding of the rural hospital problem is the financial condition faced by most rural hospitals. All hospitals, regardless of location, faced problems such as higher debt burden, higher cost per patient discharged, and a shortage of cash in the period following the 1983 change in Medicare reimbursement policies. The North Carolina Hospital Association reported that the average hospital wrote off more than one-fourth of its Medicare charges in 1988; the rural hospitals wrote off approximately 36 percent of their Medicare charges.<sup>10</sup>

### **Hospital Utilization in Rural North Carolina**

To assess the trends in rural hospital utilization in North Carolina, five measures were examined: occupancy, days of care, total patient discharges, percent of discharges of patients 65 or older, and percent of a county's total discharges from the county's hospital, a measure of market share.<sup>11</sup> The data were taken from reports filed by the hospitals themselves with the state Division of Facility Services and the N.C. Center for Health and Environmental Statistics.

#### ***Occupancy Rate***

A hospital's occupancy rate is calculated by dividing the total days of care in a year by the number of staffed beds, multiplied by 365 days. This estimates the annual percent occupancy of all staffed beds. As such, it describes the extent to which the capacities of the hospital are fully utilized.

Since 1980, the average occupancy rate for all types of hospitals has declined, in North Carolina and nationwide. Large rural hospitals saw their occupancy rates decrease by nearly 20 percent between 1980 and 1985; the average mid-size rural hospital's rate decreased by 27.3

percent; and the average rural hospital with fewer than 50 beds experienced a 33.4 percent drop in its occupancy rate. Nationally, between 1984 and 1988, rural hospital occupancy rates declined at nearly twice the rate of urban hospitals, to a low of 55 percent occupancy; small rural hospitals in North Carolina had an occupancy rate of around 45 percent in 1989, while large rural hospitals' occupancy rates averaged 70 percent. All North Carolina hospitals did experience a general improvement in occupancy rates during the latter part of the 1980s, but not enough to overcome the large declines earlier in the decade (see Table 1, columns 6 and 7).

These occupancy rates fail to meet state-set targets for hospitals. The Department of Human Resources' Division of Facility Services says small hospitals should have at least a 70 percent occupancy rate for *licensed* beds; mid-sized hospitals should have at least a 75 percent occupancy rate; and large hospitals should have at least an 80 percent occupancy rate.<sup>12</sup>

### ***Days of Care***

Days of care is a count of the total days of inpatient care provided by a hospital. It is comparable to discharges as a measure of utilization, but reflects the amount of care delivered in terms of time and not just people. One hospital may have high volume and low length of stay, another low volume and high length of stay; thus, both indicators are necessary to present an accurate picture of utilization.

All North Carolina hospitals have experienced decreases in the number of days of patient care provided. The days of care at rural hospitals in North Carolina decreased by 17.6 percent from 1980 to 1989—four times the decrease (3.7 percent) experienced by the state's urban hospitals. This decrease was especially pronounced for the small rural hospitals, which delivered one-third fewer days of care in 1989 than in 1980.

### ***Total Patient Discharges***

A hospital's total number of patient discharges is a more direct measure of volume than an occupancy rate. The number of discharges can give a sense of the hospital's productivity and viability. High volume will mean a greater base over which fixed costs can be spread.

Across all categories of hospitals, North Carolina hospital discharges declined from 1980 to 1989. The smallest rural hospitals had the greatest decline: there were 29.9 percent fewer discharges in 1989 than in 1980, from an average of 1,464 to 1,026 discharges per year. All other hospitals saw approximately 17.5 percent fewer discharges in 1989 compared to 1980. As with the occupancy rate trends, the number of discharges fell more steeply between 1980 and 1985 than between 1985 and 1989.

The decline in discharges was paralleled by a national decline in hospital admissions, which between 1984 and 1988 was two and one-half times greater for rural hospitals than for urban hospitals. Since 1979, all U.S. hospitals have experienced a decline in admissions of 11.3 percent.

### ***Percent of Discharges of Patients Older than 65***

The percent of total discharges of people 65 years or older can mean several things. First, it may reflect a higher-than-average elderly population in the community. Second, it could indicate that the younger people in the county are no longer using the local hospital. In a third, more indirect way, it can give information about the financial condition and stability of the organization. The percent of elderly discharges can be viewed as a proxy for the Medicare income of the hospital. Commonly, heavy reliance on Medicare has been viewed as negative, particularly when rural hospitals received a cut in reimbursement under the Prospective Payment System immediately after the program's implementation in 1983. However, this theory is disputed by a recent report suggesting that Medicare-dependent hospitals are not at a greater risk of closure than hospitals with a smaller Medicare population.<sup>13</sup>

All North Carolina hospitals saw the older-than-65-years percentage of their discharges increase between 1980 and 1989. The large rural hospitals saw that percentage increase by slightly more than one-third, while the small and mid-sized rural hospitals had an increase of approximately 37 percent. In 1989, 52.9 percent of the smaller rural hospital's discharges were elderly, compared to 41 percent of the mid-sized rural hospitals discharges and 34.1 percent of the large rural hospital's discharges. Urban hospi-

tals also cared for a greater percentage of elderly patients, with an increase in elderly discharges of 26.3 percent between 1980 and 1989; in 1989, the elderly represented 32 percent of all discharges.

### ***Percent of County's Total Discharges from the County's Hospital***

This statistic reflects the local residents' use of the local hospital. It is calculated by dividing the number of county residents discharged from a particular hospital by the total number of that county's residents discharged from all hospitals. This statistic is not as meaningful for urban counties or counties with several hospitals, since the local discharges are divided among several local hospitals. Though the county's boundaries often are different from a hospital's service area, this measure nonetheless identifies rural counties that have an out-migration for hospital care. Excessive out-migration is a major sign of trouble for a rural hospital; if a county's own residents don't seek care at their home county hospital, where will patients for that rural hospital come from in the future?

Rural North Carolinians often seek health care outside their home counties; 25 percent of the rural hospitals treated fewer than a third of their county residents, with seven of the 15 small rural hospitals treating fewer than 20 percent of the county residents who were hospitalized in 1989. Seventeen of the largest urban hospitals provided half of all the inpatient care for North Carolinians, rural and urban.

### **Will Rural Hospitals in North Carolina Close?**

**T**he N.C. Hospital Association in 1989 released a survey of its members anticipating that by the year 2000, as many as 20 hospitals will close, representing a net loss of 530 beds.<sup>14</sup> Bernstein, the director of the state's Office of Rural Health and Resource Development, says, "A number of our smaller hospitals don't have any other option but to close over the next few years."<sup>15</sup>

And a U.S. Government Accounting Office report has predicted that hospitals with fewer than 50 beds were 12 times more likely to close than hospitals with 200 or more beds; hospitals with occupancy rates of less than 20 percent are

nine times more likely to close than hospitals with a 61 percent occupancy rate.<sup>16</sup>

If current utilization trends continue, some small rural hospitals in North Carolina are likely to fail. While most people might define failure as the total shutdown of services, a hospital also may be considered a failure if it does not meet its mission. A for-profit hospital may be considered a failure if it has a negative net income. For a county-owned hospital, low use of the facility by county taxpayers may represent a failure. To the local citizen, the true measure of whether a hospital is successful depends upon whether it adequately serves the community, regardless of the institution's fiscal viability. The widespread number of local subsidies, bond referendums, tax districts, and general philanthropy toward local hospitals confirms that people do not consider the hospital as just another business.<sup>17</sup>

Tom Ricketts, director of the N.C. Rural Health Research Program at UNC-Chapel Hill, says more and more rural hospitals will shift their focus from the old way—attempting to offer the full complement of services—to new arrangements that will more accurately satisfy the needs of the community. "Medicine has changed so drastically just in recent years alone," notes Ricketts. "It was logical 30 years ago to have a 30-to-60 bed hospital" in many rural communities, but financial pressures and service patterns make it hard for those hospitals to survive today. To do so, rural hospitals must offer what the community needs, not try to compete with the huge mega-medicine centers in Chapel Hill and Durham and Charlotte. "I'm a big advocate of regrouping services," Ricketts adds.

At Heritage Hospital in Edgecombe County, officials are working to provide new programs and specialists to cope with the problems of viability. Randy Beaman, Heritage's assistant administrator, says an aggressive physician recruitment program with a focus on specialists may help stem patient out-migration. "We are also developing new services such as MRI, cardiac catheterization, cardiac rehab, [an] inpatient rehabilitation unit, and also have a skilled nursing unit in place and have expanded our Level II nursery, which is the only one in our area."

Jim Bernstein of the state's Office of Rural Health points out that despite distances and costs, many rural patients prefer a big-city hospital. "We just can't have so many rural hospi-

tals with their patient population going to urban areas. What they [rural hospitals] need to do is to find their niches of care.”

Bernstein suggests that such niches include care for the elderly—“Nursing homes will not be sufficient in the future, and children are going to want better for their parents,” he says—and better primary care and maternal and child health care. “Raleigh can’t do that for Warren County,” Bernstein adds. “Warren County will have to do that for Warren County” and leave high-tech medicine to large hospitals.

In June 1991, one hospital which had closed made a reappearance as an outpatient clinic. Robersonville Community Hospital, which closed in 1989, reopened after two doctors agreed to move to the Martin County town.

Similarly, a clinic is operating at the old Warren County General, where the county health department and a community health center offer services. Other small hospitals should begin preparing for such a future, Bernstein says. “Some counties will position themselves to provide care and thrive,” predicts Bernstein, “but others won’t, they won’t have care, and they’re just going to dry up. They won’t have health care.”

As the economic climate worsens, medical sophistication increases, and rural health problems persist, the rural hospital as we know it may disappear, evolving into new types of organizations like primary care hospitals, rural health networks, and extended care clinics that can weather the problems and maintain essential services in rural North Carolina.

## FOOTNOTES

<sup>1</sup> Arthur Caplan, “Simple changes could help ease rural health-care crisis,” *The News & Observer* of Raleigh, May 9, 1990, 12A.

<sup>2</sup> Laura Sumner, “Limited Access—Health Care for the Rural Poor,” Center on Budget and Policy Priorities, Washington, D.C., March 1991, p. xi.

<sup>3</sup> This count of 118 hospitals reflects the number of hospitals reporting to the state for licensing; several of these are systems whose members report their statistics in aggregate, so this count of 118 is conservative. In 1990, the N.C. Department of Human Resources reported there were 127 acute-care hospitals in North Carolina.

<sup>4</sup> *AHA Hospital Statistics: 1990-91*, American Hospital Association, Chicago, 1990.

<sup>5</sup> U.S. Congress, Office of Technology Assessment, *Health Care in Rural America*, 1990, pp. 111-113. See also Marianne M. Kersey, et al., *Comparing the Performance of For-Profit and Not-For-Profit Hospitals in North Carolina*, N.C. Center for Public Policy Research, 1989.

<sup>6</sup> For more, see Jack Betts, “North Carolina Hospitals Succumb to Ills of Health Care Industry,” *The Investor-Owned Hospital Movement in North Carolina*, N.C. Center for Public Policy Research, 1986, pp. 50-51.

<sup>7</sup> *AHA Hospital Statistics: 1990-91*.

<sup>8</sup> P.L. 89-97. For a list of Diagnostic Related Groups, see the *Federal Register*, Vol. 49, No. 171, Aug. 31, 1984, p. 34777.

<sup>9</sup> For more on uncompensated care, see Marianne M. Kersey, et al., *Comparing the Performance of For-Profit and Not-For-Profit Hospitals in North Carolina*, N.C. Center for

Public Policy Research, 1989. The Center’s research showed that for-profit hospitals performed 27 percent less health care for the indigent than did not-for-profit hospitals.

<sup>10</sup> N.C. Hospital Association, “Report on Rural Hospitals and Medicare,” October 1989, p. 9.

<sup>11</sup> For more detail on the computations and analysis, see Jeanne M. Lambrew, “North Carolina Hospitals: Utilization Trends by Urban-Rural Location and Size,” N.C. Rural Health Research Program Working Paper, UNC-Chapel Hill, September 1991.

<sup>12</sup> *N.C. State Health Planning, 1990-91, State Medical Facilities Plan*, Division of Facility Services, Department of Human Resources, 1990, p. 44.

<sup>13</sup> *Rural Hospitals: Federal Efforts Should Target Areas Where Closures Would Threaten Access to Care*, U.S. Government Accounting Office, Washington, D.C., 1991, p. 43.

<sup>14</sup> Report of the N.C. Hospital Association Summer Meeting, July 1990, pp. 3-4.

<sup>15</sup> Tinker Ready, “Program may help hospitals,” *The News & Observer* of Raleigh, Sept. 11, 1991, p. 1B.

<sup>16</sup> *Rural Hospitals: Factors That Affect Risk of Closure*, U.S. Government Accounting Office, Washington D.C., 1990, p. 7.

<sup>17</sup> For more on foundation giving to hospitals and on the success rate of local hospital bond referenda, see Marianne M. Kersey, et al., *Comparing the Performance of For-Profit and Not-For-Profit Hospitals in North Carolina*, N.C. Center for Public Policy Research, 1989, pp. 163-65 and pp. 182-194.



# Health Care Cost Containment: Does Anything Work?

BY NINA YEAGER AND JACK BETTS

*North Carolinians shelled out an estimated \$12.3 billion in total health care expenditures in 1990, and that sum is projected to soar to \$32 billion by 2000. The rapid increase in health care facilities and equipment is part of the reason, and so is the cost of certain medical procedures. What drives the high cost of health care? And what can be done to come to grips with these sky rocketing costs?*

State policymakers and health care officials are wringing their hands about how to rein in health care costs—and about the impact of efforts to control costs on the delivery of care. The Families USA Foundation in its report, *Emergency! Rising Health Costs in America, 1980-1990-2000*, said:

“Health care costs in the United States have risen dramatically, far outpacing economic growth, general inflation, and families’ incomes. These spiraling health costs are creating an emergency—a crisis of affordability for consumers, government, labor, and business. Families are

paying more in premiums, deductibles, and co-payments while often seeing their benefits shrink. Employers faced with double-digit premium increases now find that health care costs [are equal to nearly] 94 percent of net profits. Rising costs have also resulted in a growing number of Americans without adequate health coverage, or none at all.”<sup>1</sup>

Too dramatic a description? Consider the rate of spending from all sources—public and private—on health care in the United States. Not that long ago—1980 to be precise—we were spending about \$230 billion annually on health care—a tidy sum. In 1990, we managed to spend nearly triple that amount—about \$606 billion. And by 2000, the Families USA Foundation projects, the total tab will have more than doubled again—to a projected \$1.5 trillion, give or take a few billion dollars. “The cost of health

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**Table 1. Rate of Growth in Selected Costs of Living**

<i>Commodity or Service Group</i>	1980–1990 (percent)	1995 (percent)
Energy	1.9	-1.3
Apparel	3.6	0.1
Transportation	4.5	1.5
Food and Drink	5.2	2.1
<b>Rate of Inflation (CPI)</b>	<b>4.7</b>	<b>2.5</b>
Housing	5.9	3.0
Entertainment	5.8	3.3
<b>Medical Care</b>	<b>10.4</b>	<b>3.9</b>

*Source:* CPI Detailed Report, Table 26, Historical Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, by commodity and service group and detailed expenditure categories, 1995 data. Also see Dan M. Bechter, "Consumer Prices," *Cross Sections*, Federal Reserve Bank of Richmond, Spring 1991, p. 12, 1980–1990 data.

care is out of control and beyond control," says Glenn Wilson, professor of social medicine at the UNC–Chapel Hill School of Medicine.

The news is no better for North Carolinians than for the rest of the country. Total health care spending in North Carolina rose 137 percent between 1980 and 1990 and will more than double by the year 2000, from an estimated \$12.3 billion in 1990 to a projected \$32.2 billion in 2000 (see Table 2, page 593).

Figures from the former N.C. Medical Database Commission point out clearly how the costs of certain medical procedures have increased over a short period. The average cost of a heart transplant increased from \$139,773 in 1989–90 to \$192,741 in 1992–93, a 37.9 percent increase (see Table 3, page 594, for more). The cost of a cardiac valve procedure with a cardiac catheter was up 59.8 percent, from \$40,244 to \$64,288; and the cost for a craniotomy for trauma was up from \$35,292 to \$54,325—a 53.9 percent increase.<sup>2</sup>

Higher costs do not mean that more Americans have access to health care. On the contrary, the number of uninsured Americans rose from 25 million in 1980 to an estimated 37 million

in the early 1990s.<sup>3</sup> At least one person in eight has trouble getting access to health care of any kind. The ranks of the medically indigent are likely to swell as employers stop offering health insurance benefits entirely. It is clear that until we get control of rising costs for those who are already insured, there's little hope for expanding coverage to growing numbers of medically indigent citizens.

There are those who see runaway health care costs as potentially apocalyptic—threatening the very viability of the nation itself. Former Colorado Gov. Richard Lamm calls rising health care costs an "economic cancer" that threatens the nation's competitive edge in the international marketplace. He has become a proponent of rationing health care. "We're denying polio and flu shots to kids for exotic things like Barney Clark's artificial heart," says Lamm.<sup>4</sup>

#### **What Factors Drive Up Health Care Costs?**

**A**lthough there is little agreement about what to do to cure the cost problem, there

**Table 2. Spending on Health Care, All Sources, by State**

State	Estimated Per Capita Spending 1990	Rank	Total Spending in 1990 (billions)	Estimated Per Capita Spending 2000	Total Estimated Spending in 2000 (billions)
Alabama	\$2,286	26	\$ 9.5	\$5,201	\$22.7
Alaska	2,367	21	1.2	5,390	3.2
Arizona	2,211	30	8.1	5,031	23.3
Arkansas	1,944	42	4.7	4,423	11.1
California	2,894	2	84.7	6,584	223.6
Colorado	2,415	20	8.0	5,496	18.8
Connecticut	2,699	6	8.8	6,136	20.9
Delaware	2,268	27	1.5	5,160	4.1
Florida	2,427	19	31.4	5,520	90.1
Georgia	2,072	38	13.7	4,714	37.7
Hawaii	2,469	15	2.8	5,619	7.6
Idaho	1,726	49	1.7	3,926	3.9
Illinois	2,619	8	30.6	5,953	69.8
Indiana	2,201	31	12.4	5,004	28.5
Iowa	2,351	22	6.6	5,343	13.6
Kansas	2,548	11	6.4	5,792	14.7
Kentucky	1,875	43	7.0	4,266	15.7
Louisiana	2,185	33	9.5	4,972	20.6
Maine	2,175	34	2.7	4,945	6.6
Maryland	2,436	18	11.6	5,541	31.1
Massachusetts	3,031	1	17.9	6,890	42.4
Michigan	2,569	9	23.9	5,840	54.7
Minnesota	2,480	14	10.9	5,641	25.8
Mississippi	1,751	48	4.6	3,984	11.0
Missouri	2,568	10	13.4	5,837	31.9
Montana	2,059	39	1.6	4,686	3.5
Nebraska	2,452	16	3.9	5,576	8.6
Nevada	2,757	4	3.1	6,272	8.8
New Hampshire	1,981	40	2.3	4,505	6.4
New Jersey	2,224	29	17.4	5,056	42.4
New Mexico	1,792	45	2.7	4,078	7.1
New York	2,818	3	50.4	6,408	115.1
North Carolina	1,833	44	12.3	4,170	32.2
North Dakota	2,661	7	1.7	6,051	3.6
Ohio	2,493	13	27.2	5,667	61.9
Oklahoma	2,139	35	6.8	4,867	14.2
Oregon	2,312	24	6.5	5,260	15.3
Pennsylvania	2,536	12	30.5	5,763	69.6
Rhode Island	2,707	5	2.7	6,153	6.4
South Carolina	1,689	50	6.0	3,842	15.2
South Dakota	2,322	23	1.6	5,278	3.7
Tennessee	2,262	28	11.3	5,145	27.9
Texas	2,192	32	37.4	4,987	88.9
Utah	1,784	46	3.1	4,062	7.5
Vermont	1,956	41	1.1	4,448	2.7
Virginia	2,076	37	12.9	4,724	34.4
Washington	2,311	25	11.1	5,258	27.3
West Virginia	2,088	36	3.8	4,752	7.8
Wisconsin	2,449	17	11.9	5,567	26.9
Wyoming	1,756	47	0.8	3,996	1.6
<b>United States</b>	<b>\$2,425</b>		<b>\$605.9</b>	<b>\$5,515</b>	<b>\$1,476.5</b>

Source: State Policy Reports; Vol. 9, Issue 1, p. 18; and LEWIN/ICF Health & Sciences International Co. for the Families U.S.A. Foundation and Citizen Action, Washington, D.C.

is some agreement among experts about what factors are driving costs. Those factors include high technology, demographic changes, the American psyche, mental health coverage, health care wages, physician fees, malpractice costs, administrative costs, marketing, growth of outpatient care, cost shifting, and price insensitivity.

**High Technology.** Powerful medical technologies such as life-saving artificial organs, advanced wonder drugs, experimental cancer treatments, advanced diagnostic devices, and new infertility treatments are major factors in the cost equation. Advances in high-technology medicine may contribute more than 50 percent to annual cost inflation for health care, economists estimate.<sup>5</sup> Ironically, researchers and health care officials alike expected that high technology would be a powerful cost-cutting force. In addition, medical success itself often adds to the health care tab. For example, recent advances in neonatal care enable premature babies weighing under a pound to survive at a cost ranging from \$200,000 to \$1 million. Unfortunately, about 30 percent of the premature babies who survive have handicaps which require additional health care spending.

What's worse, not all technologies actually improve care or are even necessary. A Rand Corporation study of Medicare records for 300,000 patients found that more than one-

third of three major procedures—coronary angiography, upper gastrointestinal endoscopy, and opening carotid arteries—were unnecessary or of questionable benefit.<sup>6</sup> Other studies have concluded that as much as 20 percent or \$100 billion of the money spent on health care is wasted.<sup>7</sup>

**Demographic Changes.** High-tech medicine combined with an aging population is a potent force that will drive health care costs in the years ahead. On average, 85 percent of an individual's health care expenses accumulate in the last two years of life.<sup>8</sup> This is true regardless of age, since accidents and illnesses occur throughout lifetime and may require large expenditures whenever they occur. Still, the elderly do account for large portions of health care costs. "Today, those over 65 account for about 11 percent of the population and consume 35 percent of all health care dollars," *BusinessWeek* magazine reported in 1989. "By 2040, those over 65 will account for 20 percent of the population and will use an even greater proportion of health care expenditure, since many medical technologies are aimed at prolonging their lives."

**The American Psyche.** Most American citizens believe that alongside life, liberty and the pursuit of happiness is the right to the best and newest in American medicine. A Harris Poll

**Table 3. Most Expensive Medical Procedures in North Carolina, 1989-1993**

Medical Case	October '89- September '90	October '92- September '93	Percent Change
Cardiac Valve Procedure with Pump with Cardiac Catheter	\$ 40,244	\$ 64,288	+ 59.8%
Craniotomy for Trauma	35,292	54,325	+ 53.9%
Heart Transplant	139,773	192,741	+ 37.9%
Kidney Transplant	42,769	55,224	+ 29.1%
Extensive Burns with Operating Room	65,466	79,866	+ 22.0%
Other Cardiothoracic Procedures	41,700	46,580	+ 11.7%
Cardiac Valve Procedure with Pump without Cardiac Catheter	55,494	51,737	- 6.8%

Source: N.C. Medical Database Commission.

found that nine out of every 10 Americans believe that everyone deserves care "as good as a millionaire gets"<sup>9</sup>

**Mental Health Coverage.** Depression, substance abuse, and stress-related health problems rank among the top 10 health problems in the work force. Once inaccessible to the average employee, expanded medical coverage for these problems now accounts for about 10 percent of employer medical plans.<sup>10</sup>

**Health Care Worker Wages.** Recent improvements in wages for nurses, who provide the bulk of patient care but who have been in short supply until recently, are likely to continue in order to keep health care facilities operating and viable. Economists consider these wage increases a significant factor in the rapid rise of health care costs.

**Physician Fees.** The overall rise in physician incomes has played its part in the rising cost of health care. The net income of physicians grew 8.1 percent per year compared to 5.5 percent for other workers from 1977–1987. In 1987, the typical income for a physician was \$116,000, but the median income for specialty physicians was nearly three times that amount.<sup>11</sup> Rising incomes are *not* related to increased productivity. On the contrary, physicians are seeing 8 percent fewer patients per week than 10 years ago despite—or because of—an increase of 44 percent in the number of physicians over the same period.

**Malpractice and Defensive Medicine.** When physicians order tests or other services in order to protect against charges of malpractice—rather than because they believe those services to be of value to their patients—they are practicing *defensive medicine*. Extensive record-keeping and unnecessary patient testing reduce physician productivity and increase costs. Some studies indicate that up to 25 percent of doctors' procedures are done for defensive reasons.<sup>12</sup>

**Benefit Administration.** Physicians and hospitals face a bewildering array of insurance plans which require substantial numbers of clerical personnel to handle the large volume of paperwork. The greatest growth in health care employment has been in the offices of physicians and surgeons, where employment has been increasing at an average rate of 7.6 percent annually.

**Health Care Marketing.** Increased competition among providers for paying consumers

of health care has meant marketing, advertising, new computer systems, management consulting, and the like. These additional costs are not likely to result in an increase in the quality or quantity of health care delivered, but they do increase the overall cost of delivering care.

**Growth of Outpatient Settings.** In hope of reducing overnight hospital stays for routine treatment, medical insurers and employers encouraged the use of a variety of programs to increase outpatient care in doctors' offices and clinics. The result is that today, those outpatient settings contain laboratory, diagnostic, and surgical equipment that once was available in hospitals only. This proliferation of equipment, combined with advances in surgical techniques, has reduced *inpatient* hospital care.

That's the good news. The bad news is that the cost of health care has continued to rise, particularly costs for *outpatient care*. One reason for the rise in costs may be third-party payers' failure to control utilization of outpatient care. Outpatient services generate numerous bills, as opposed to a single itemized bill for a hospital stay, and that makes it difficult to track total costs for a specific procedure. From 1985 to 1990, outpatient billings rose from 20 percent of total health care costs to 50 percent.<sup>13</sup>

**Cost Shifting.** Charges that can't be collected from third-party payers or from patients who can't pay for their care are shifted to paying patients and their insurance carriers. As payers tighten payment policies and the ranks of the medically indigent rise, the size of the cost shift to paying patients snowballs. How much does it amount to? Blue Cross and Blue Shield of North Carolina estimates that in 1991 the average hospital admission will cost \$7,676; of that, cost-shifting accounts for \$2,456—32 percent of the total.<sup>14</sup>

**Price Insensitivity.** Although the experts may disagree on the relative importance of each of the cost components, there is a consensus that the core of the cost problem is price insensitivity for patients who consume the services, physicians who order the services, and insurers who process payments for services. Consumers of care pay a relatively small portion of the cost of their care and have little incentive and little information to shop for low-cost health services. The doctor who orders the care has no financial incentive to use cost-effective services and suffers no consequences for ordering unnecessary procedures. The insurer simply passes the cost

back to the employer or the consumer. No one feels the financial impact of the decisions and choices they make.

### Cost Containment Strategies

Efforts to gain control of health care costs have been underway since the 1970s. Generally, efforts have focused either on making consumers more aware of costs, or tightening controls on costs that insurers and other third-party payers, like the government, will pay for health care. These efforts fall within five categories: increasing the consumer's share of costs, increasing third-party payer control, creating incentives for efficiency, encouraging competition among health care providers, and controlling the supply of services and facilities through Certificate of Need programs.

An additional category—strengthening and expanding prevention programs to improve health and reduce demand—ought to be on every state's agenda, argues Ron Levine, a physician and the State Health Director. "The public health perspective, that is, prevention as a strategy to contain health care cost, is conspicuously absent," notes Levine, but programs adopted in North Carolina and five other states, including Virginia, may pay benefits in cost containment efforts.<sup>15</sup>

**1. Increase the Consumer's Share of the Cost.** The first approach has been to change the behavior of consumers by requiring them to pay a larger portion of the cost of their care. Obviously, larger employee deductibles (the amount of health care costs employees must pay before insurance payments kick in) and higher co-payments (fixed portions of health care costs that employees must pay on certain procedures) reduce costs for employers. But this approach poses some risks as well. Shifting costs to enrollees may deter them from obtaining care in the early stages of health problems, perhaps leading to a need for more expensive care later. The lower the employee's income, the greater the risk. In addition, once treatment is sought, increased deductibles and co-payments have little impact on a provider's medical decisions.

**2. Increase Third-Party Payer Control.** The second approach seeks to limit demand for health care by discouraging providers—doctors, facilities, insurers and other payers—from providing unnecessary or costly care through what

euphemistically are called "utilization controls." These include pre-admission *certification*, which means patients must be approved for elective medical procedures prior to admission; *concurrent review* for inpatient stays, which means medical committees must review individual cases to determine if patients should continue to stay in the hospital after a certain period; requiring *second opinions* from at least one more doctor before approval for elective surgery; and the like.

Utilization controls have become a standard feature of health insurance programs. However, despite their widespread use, there has been little systematic study of these mechanisms, and the evidence that they actually reduce spending is limited.<sup>16</sup>

**3. Create Incentives for Efficiency.** A third approach to cost control is to induce providers to make cost-saving changes by providing incentives for greater efficiency. An example of this approach is Medicare's DRG system—an acronym for *Diagnostic Related Groups*—which pays hospitals a fixed payment per case based on the patient's diagnosis. That keeps the government's costs down. And if the hospital can provide the service for less than the amount government will reimburse the hospital, the hospital can keep the difference.

Critics of this system claim that tightening the belt in one area tends to cause costs to balloon in another area. Hospital charges the DRG system fails to pay are shifted to other third-party payers, or to the taxpayer. For this reason, savings for one payer may not translate into system-wide savings.

**4. Encourage Provider Competition.** A fourth approach to cutting health care costs is to encourage consumers to choose among competing health plans. This approach assumes that consumers will pick the best health care value for their dollar just as they do when buying any other commodity. The validity of this assumption may be the key to the success or failure of this approach. There are two key programs competing in this arena—a) Health Maintenance Organizations (HMOs) and b) Preferred Provider Organizations (PPOs).

**a. Health Maintenance Organizations** represent a major effort to introduce a market orientation to the health care field.<sup>17</sup> HMOs provide a fixed package of health services for a fixed price that is independent of the use of the service, and they emphasize preventive visits in the hope of avoiding more costly treatment in



**Magner, a high-tech diagnostic tool, whose potential—and \$2 million price tag—is enormous.**

the future. Services usually include ambulatory care and inpatient hospital services. Because the HMO assumes financial risk or gain in the delivery of the services, the HMO has a financial incentive to reduce unnecessary procedures and make the most of cost-saving practices. With HMOs, costs for health care are capped for the employer or insurer by contract. Consumers pay a relatively small fee, if any, for a service within the package. However, services outside the HMO package are paid for by the consumer only.

*b. Preferred Provider Organizations* can take a variety of forms. Unlike HMOs, they take none of the risk for providing care, but act as brokers to negotiate contracts among employers, doctors, and patients.

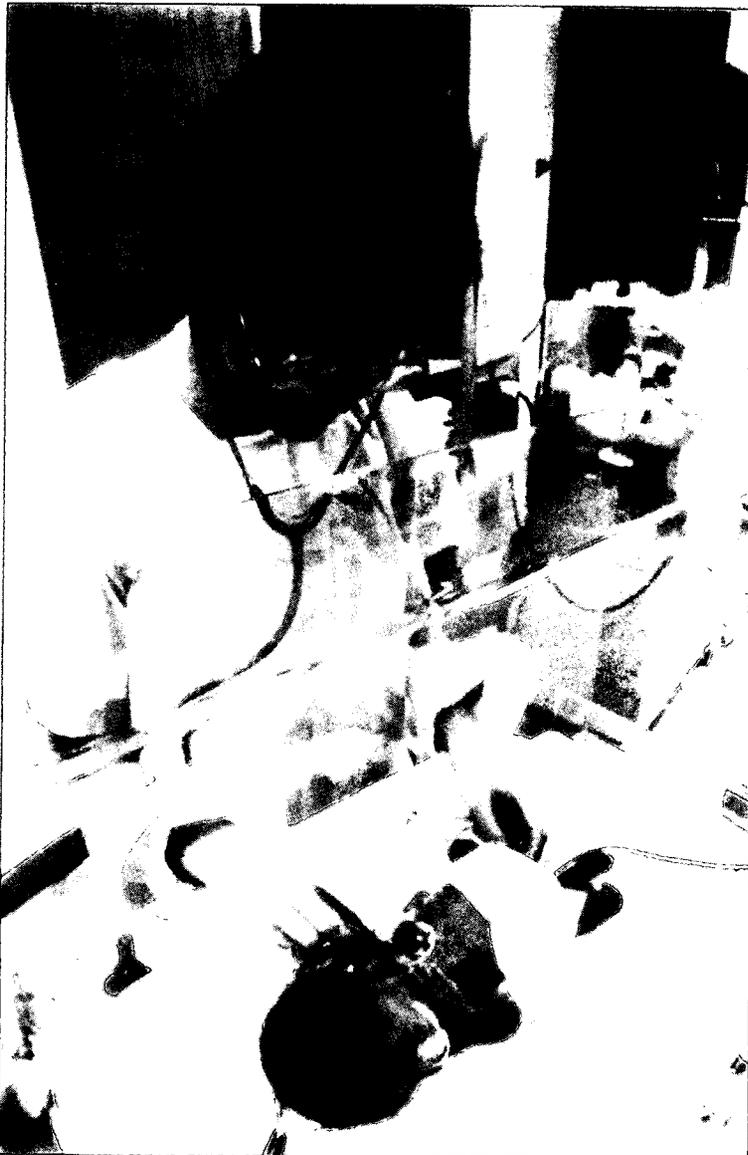
PPOs can be organized by physicians or hospitals or a combination of both providers. Insurance companies, employers, and third-party administrators also establish PPOs. Some common elements apply to most. The broker negotiates an agreed-upon discount from the providers' normal fee schedule. Preferred providers may be physicians, pharmacies, hospitals and others. Discounts typically vary from as little as 5 percent to as much as 30 percent off the cost of conventional services.

Employers and insurers give consumers incentives to use the preferred provider, but patients are not restricted to PPO providers for health care. For example, the employer may be willing to pay the full cost of care from a physician on the preferred provider list but require

employees to pay co-payments for services from other physicians. In this way, the insurer or employer basically sets a cap on the payment for a given service.

**5. Limit Supply of Services and Facilities.**

Federal legislation enacted in 1974 created the Certificate of Need process, which was designed to control health care costs by limiting facilities and services. Costly new facilities and services could be offered only after issuance of a formal Certificate of Need—with a formal finding that the service or facility was needed to meet health care needs.



Duke Medical Center

## Future Prospects

**W**hat's to be done? In an era of tighter state revenues and increasing demands for spending on education, environment, infrastructure, and a host of other public issues, how do policymakers plan to tackle health care costs?

In 1991, the nation's governors adopted plans to deal with costs by advocating a three-part strategy: 1) pushing for more managed health care systems, deregulating health care providers, and making prices and quality information more available to consumers; 2) developing a new system of health-care payers (such as a national health care system) and providing private health insurance for unemployed citizens not eligible for Medicaid; and 3) creating a uniform electronic billing system to reduce administrative overhead for providers and for consumers.<sup>18</sup> But beyond this broad strategy, what specific steps might state policymakers consider in coming years?

The list of potential targets includes, but is not limited to:

- **Tighter Physician Payments.** New limits on physician reimbursements are one of the likelier strategies in coping with rising costs.
- **Increased Out-of-Pocket Costs for Patients.** Consumers of medical care can expect rising out-of-pocket expenses for health care as well.
- **Restraining System Growth.** Efforts to hold down the supply of health care resources may be strengthened and renewed. Limits on growth in the number of physicians and limits on expansion of medical care facilities and equipment can be expected in the future. But limiting the number of physicians could cause big problems in rural areas of North Carolina where health care costs may be one problem, but a lack of physicians is an even greater concern. In these areas, lack of facilities and professionals is a continuing problem.
- **Increased Pressure for National Health Insurance.** Farther out on the horizon, a growing number of business leaders have begun joining the ranks of advocates for national health insurance. While there hardly is unanimity on the subject, it is clear that many business leaders believe

that some sort of national health care program should be created to provide a minimum, uniform measure of care. In May 1991, the conservative American Medical Association added its voice to the call for universal health insurance, which would use public and private funding sources. Unfortunately, the AMA had few suggestions about how to restrain costs under the current system.

- *Assessing High-Tech Medical Procedures.* In the long run, some experts believe that successful cost containment strategies will inevitably focus on weighing the costs and benefits of technology. For that reason, there is growing interest in technology assessment that balances the cost of a procedure against its safety and effectiveness.
- *Rationing Health Care.* One new antidote to soaring costs is rationing. This is among the most controversial of proposals, because it would limit health care resources for some patients in order to serve others—the notion of the highest public good for the greatest number. Rationing could (a) limit care to the elderly because many treatments offer little hope of sustained improvement, (b) provide less care to patients whose behavior brings on the illness (such as smoking or drinking heavily), (c) provide unlimited access to preventive care such as prenatal care and immunizations but limit high-tech care for the very ill, or (d) provide palliative care only to the terminally ill and use the remaining resources for prevention and treatment. Rationing formalizes what some critics say we already have—rationing care, in effect, based on a person's ability to pay.
- *Cutting Benefits and Eligibility for Medicaid.* The Medicaid program (paid for in North Carolina with federal, state and local funds, though other states do not require a local contribution) is always a likely target for state budget cost-cutting. In recent years, federally mandated coverage for some of the uninsured population, in addition to medical inflation, has sent program costs skyrocketing. State policymakers, concerned about the poor and the ill and reluctant to shift costs to other payers, have avoided wholesale cuts

in optional services and beneficiaries. For one thing, reductions in eligibles increases the number of uninsured, which contributes to cost-shifting, further increasing costs. In an era of limited state revenues, the struggle to fund the Medicaid program intensifies the pressure for some sort of national health insurance.

- *Cutting State Employee Benefits, Raising Employee Contributions, and Raising Co-payments and Deductibles.* Spending on state worker and teacher health care plans has risen rapidly in recent years, and legislators say privately these programs may get increased scrutiny in future years.

### From Here, Where?

While most policymakers can easily identify cost containment strategies and tactics, the real difficulty lies in putting those devices into place so they will have an impact. Once any of these devices takes effect, the citizenry will be affected in various ways—some will get greater coverage, some less; most patients will pay more, and some will pay a lot more.

In 1990, the National Governors' Association took note of this difficulty in health care reform, identifying six key realities about health care, financing, and coverage:

- 1) the public doesn't really favor the kinds of hard choices we need to make to reduce health spending;
- 2) Americans say they support health care cost solutions as long as they don't lead to dramatic changes in their own coverage;
- 3) the public still isn't sure whether it wants the country to have a mostly public or mostly private universal health care system;
- 4) Americans are willing to pay only a modest tax increase for a universal health plan;
- 5) the public is ambivalent about using the welfare system to provide medical care for the poor; and
- 6) although the public says it wants the federal government to *create* a national health care system, it doesn't have confidence in the government's ability to *operate* it properly.

Legislators and other policymakers must cope with these public attitudes on the one hand, and health care needs and cost containment problems on the other hand until they find a solution that works.

## FOOTNOTES

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<sup>2</sup> "State and County Profiles of Hospital Patient Utilization, Oct. 1, 1989-Sept. 30, 1990," Report Number H901201, N.C. Medical Database Commission, p. 26.

<sup>3</sup> "Americans Pay More for Health Care," Health section, *The Washington Post*, Nov. 15, 1990, page 5.

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<sup>6</sup> M.R. Chassin et al., "Does Inappropriate Use Explain Geographic Variations in the Use of Health Care Services?" The Rand Corporation, *Journal of the American Medical Association*, Vol. 258, No. 18, Nov. 13, 1987, p. 2535.

<sup>7</sup> Hamilton, p. 76.

<sup>8</sup> Hamilton, p. 77.

<sup>9</sup> Humphrey Taylor, Making Difficult Health Care Decisions, Vol. 1—The National Survey, Study # 874003, Louis Harris and Associates, Inc., June 1987, p. 31.

<sup>10</sup> Rodger Thompson, "Curbing the High Cost of Health Care," *Nation's Business*, Sept. 22, 1989, p. 22.

<sup>11</sup> *Ibid.*, p. 24.

<sup>12</sup> Victor Fuchs, The Health Sector's Share of the Gross National Product," *Science* magazine, Vol. 247, No. 4942, Feb. 2, 1990, p. 537.

<sup>13</sup> Ellen Paris, "Got a moment? How about some knee surgery?" *Forbes*, July 10, 1990, p. 58.

<sup>14</sup> Sandra B. Greene, "North Carolina Health Care Trends," April 1991, Exhibit 11.

<sup>15</sup> For more on prevention as a cost containment strategy, see Karen Davis et al., "Paying for Preventive Care: Moving the Debate Forward," *American Journal of Preventive Medicine*, Vol. 6, No. 4, 1990, pp. 1-32; Report of the Legislative Research Commission on Preventative Medicine, N.C. General Assembly, Dec. 12, 1986; and "State-wide Health Promotion Program Report to the Human Resources Subcommittees of the House and Senate Appropriations Committees," N.C. Department of Human Resources, March 15, 1989.

<sup>16</sup> Mark Merlis, CRS Report for Congress: Controlling Health Care Costs, Congressional Research Service, The Library of Congress, Jan. 26, 1990, pp. 6-7.

<sup>17</sup> For more on HMOs, see J. Kolimaga, ed., "Health Cost Management Handbook, Strategies for Employers," N.C. Foundation for Alternative Health Programs, Inc., 1984, pp. 19-28. Also see Robert Conn, "Health Maintenance Organizations Arrive in North Carolina," *North Carolina Insight*, Vol. 7, No. 3, pp. 58-70.

<sup>18</sup> "Health Care Reform," report of the Health Care Task Force and the Executive Committee, The National Governors' Association, Aug. 18, 1991, pp. 3-5.

## Chapter 9

### Environment



Ken Taylor, N.C. Wildlife Resources Commission

***“This we know.***

***The earth does not belong to man; man belongs to the earth . . .***

***All things are connected, like 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, SEQUAMISH TRIBE, WASHINGTON TERRITORY

## Introduction

**I**n the October 1988 edition of *N.C. Insight*, the North Carolina Center for Public Policy Research published an article entitled “Do We Need a North Carolina Environmental Index?” This article proposed the establishment of an environmental indicators program in North Carolina, offered suggestions on what components an environmental index might have, and finished with a recommendation that the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) develop and publish an annual environmental indicators report.

The idea was simple really. The index would consist of a series of indicators for gauging environmental quality—similar to the leading indicators used to track the health of the economy. If you are old enough to cash a paycheck, chances are you can understand the basic economic indicators that are published regularly—the inflation rate, the unemployment rate, and interest rates. An environmental index would use similar indicators to track North Carolina’s environmental health.

The concept won broad support from scientists, environmentalists, and business leaders because a well-designed index could help settle disputes over environmental problems. It also could help lawmakers identify the most serious pollution problems and spend money where it is needed most.

Such reasoning led former Governor James G. Martin to endorse the concept in his 1989 Inaugural Address. “I am impressed with this

concept, and propose to establish a statewide effort to evaluate the quality of our air, water, and land resources,” said Martin, who then appointed a blue-ribbon panel on environmental indicators. In December 1990, the State of North Carolina published the *Final Report and Recommendations of the Governor’s Blue Ribbon Panel in Environmental Indicators*. This report provided guidelines for developing a set of indicators to evaluate the status and trends of environmental quality within North Carolina. The Panel recommended that the responsibility for this task be assigned to the state’s DEHNR and suggested that the environmental indicators program produce a biennial publication reporting on the status of and trends in the state’s environmental quality.

In 1993, the North Carolina legislature appropriated funds for the environmental indicators program, and analysis of the collected data began. Faced with limited resources, the State Center for Health and Environmental Statistics, an agency within DEHNR, decided to confine the initial evaluation of indicators to four main areas: air, water, waste, and natural resources. In September 1995, the first report, *North Carolina Environmental Indicators*, was released. Most of the information presented in the report is for 1989 through 1993. Future reports will incorporate 1989 as a base year and extend trend evaluations from that year forward.

The following article has been edited from the state’s report.

# North Carolina Environmental Indicators

BY DAVID VOGT

## Air: Ambient Air Quality, Air Radioactivity, and Radon

### *Ambient Air Quality*

Under the Clean Air Act, the U.S. Environmental Protection Agency (U.S. EPA) established National Ambient Air Quality Standards (NAAQS) for six ambient air pollutants: carbon monoxide, ozone, nitrogen dioxide, sulfur dioxide, particulate matter, and lead. These six are designated "criteria pollutants" and are monitored at various locations throughout the state, except for lead. Ambient air monitoring for lead was discontinued within North Carolina in 1982 because the phase-out of lead gasoline resulted in a rapid drop in ambient air concentrations of lead. There was an 87 percent decrease in total lead emissions and a 95 percent decrease in lead emissions from transportation sources between 1980 and 1990.

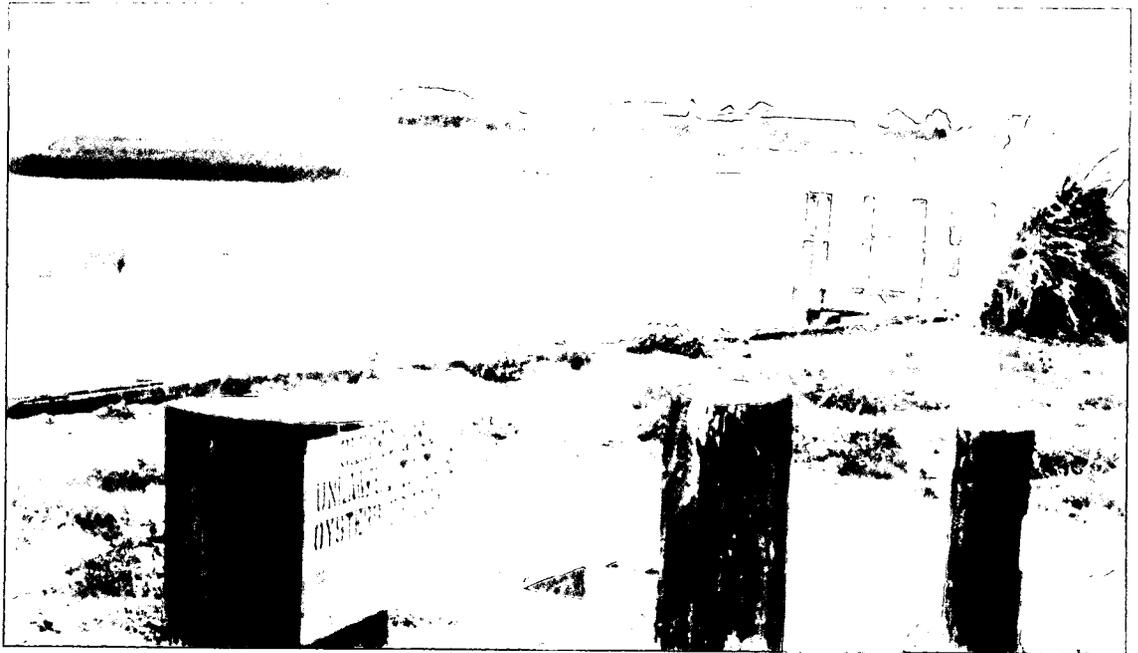
- **Carbon Monoxide**—In urban areas, almost all carbon monoxide (CO) is produced by motor vehicle exhaust. Contributions by stationary sources—power plants that burn fossil fuel for example—is much less since the high-burning efficiency of these sources tends to produce considerably less carbon monoxide. Carbon monoxide concentrations vary widely in cities, with maximum levels reached during peak traffic hours. Elevated levels of ambient carbon monoxide

are of concern to several risk groups, including older people, people with cardiac or respiratory disease, fetuses and young infants, people with chronic bronchitis or emphysema, and people with blood diseases.

- **Ozone**—Ozone (O<sub>3</sub>) production is primarily a result of the reactions between nitrogen oxides, hydrocarbons, and sunlight. In the upper stratosphere, ozone serves as a shield that removes harmful ultra-violet radiation from incoming solar radiation. Therefore, high concentrations of ozone in the upper atmosphere are beneficial to the environment. However, high concentrations of ozone at the surface can lead to ill effects on humans and vegetation. Ozone levels tend to peak during early afternoon hours in response to morning traffic. Since ozone production depends on sunlight, this can be worse in the summer when the days are hot and long. Thus, the U.S. EPA has classified ozone as a seasonal pollutant and has designated April through October as "ozone season."
- **Nitrogen Dioxide**—Nitric oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) are important species in the atmosphere that contribute to air pollution. The single greatest contribution to nitrogen pollution is the nitric oxide formed during motor vehicle combustion. When nitric oxide is released during gasoline combustion, it reacts with hydrocarbons and sunlight to produce nitrogen dioxide, which is then converted to ozone. Other substances such as carbon monoxide may also be formed as by-products of nitrogen dioxide produc-

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*David Vogt is the primary author of the report, North Carolina Environmental Indicators. He works with the State Center for Health and Environmental Statistics.*



**Closed Shellfish Waters, Sunset Beach**

tion. Photochemical smog is a combination of the atmospheric inversion of these chemicals and their reaction with sunlight. Such reactions can produce air pollutants which cause eye irritation, respiratory distress, and other health problems.

- **Sulfur Dioxide**—Primary sources of sulfur dioxide ( $\text{SO}_2$ ) from human activity are the burning of high sulfur fuels by industries and utilities, the manufacturing of sulfuric acids, and the smelting of metal sulfides. Sulfur dioxide emissions are usually emitted from high stacks, and therefore, wind speed and wind patterns are important factors in dispersal. Exposure to sulfur dioxide can pose health risks to humans and can also harm plant life. Sulfur dioxide reacts with atmospheric water droplets to produce rain, fog, and clouds that can have pHs (an indication of the acidity or alkalinity of liquid solutions—pH of 7.0 is normal, low pH is acid, and high pH is alkaline) of 4.5 and lower. In recent years, trees in some of the higher elevations of the mountains of western North Carolina have died rapidly. Acid rain damage to commercial crops such as cotton, cucumbers, sweet potatoes, tulips, apple trees, and some pine species has also been documented.

- **Particulate Matter**—There is a broad class of chemically and physically diverse atmospheric compounds referred to as particulate matter. The dispersion of particulate is dependent upon stability of the atmosphere near the source of the emissions. Wind strength, humidity, and particle size, shape, and density all affect the distance that particulate travels before disposition. Large particles can be removed from the atmosphere through wash-out by rain. Smaller particles can also be removed by rain, but rather than being washed out, they act as cloud condensation nuclei around which raindrops are formed. Atmospheric particulate matter may cause health problems that include irritation of the nose, throat, and lungs, breathing impairment, and possible carcinogenic effects to the body.

From an overall standpoint, air quality in North Carolina did not vary significantly from 1989 through 1993. While there were slight decreases in the levels of most pollutants, carbon monoxide and ozone experienced small increases. In 1991, North Carolina had several urban areas designated as “nonattainment areas.” This is an EPA designation that indicates an area has had difficulty in meeting national

## Nonattainment Areas

### *Moderate Classification*

#### Carbon Monoxide

- (1) Wake and Durham counties: designated nonattainment in November 1991; redesignated attainment September 1995;
- (2) Forsyth county: designated nonattainment in November 1991; redesignated attainment in November 1994;
- (3) Mecklenburg county: designated nonattainment in March 1978; redesignated attainment September 1995.

#### Ozone

- (1) Triangle area (Wake and Durham counties plus Dutchville Township in Granville county): designated nonattainment in November 1991; redesignated attainment in June 1994;
- (2) Triad area (Davidson, Guilford, and Forsyth counties plus a small part of Davie county around the monitor): designated nonattainment in November 1991; redesignated attainment in November 1993;
- (3) Mecklenburg and Gaston counties: designated nonattainment in March 1978 and reaffirmed nonattainment in March 1991; redesignated attainment in July 1995.

ambient air quality standards. By 1995, all areas had been redesignated attainment.

Based on the U.S. EPA's pollution standard index, most North Carolina cities evaluated had ratios of 60 percent "good" days, to 40 percent "moderate" days, and very few "unhealthful" days. From 1989 to 1993, Greensboro maintained the most favorable PSI ratings with ap-

proximately 95-98 percent of all measured days falling into the "good" category.

### *Air Radioactivity*

Air radiation includes fallout due to past atmospheric nuclear weapon testing, possible emissions from nuclear power plants, low-level radioactivity from waste incinerators, and statewide natural ambient radiation.

Air radioactivity near the state's nuclear power plants, as well as statewide average radioactivity, fluctuated around normal background levels for the years 1989 through 1993. There were no nuclear plant releases.

### *Radon*

Radon is a colorless, odorless, radioactive gas produced from the natural decay of radium, which in turn is a decay product of uranium. Radon is found in almost all types of soils, with the level of radon concentration depending on several factors: the composition underlying rock structures, soil porosity, moisture content, and permeability to gas movement. Radon emitted from the ground typically enters homes and other buildings through cracks and openings in building foundations.

In North Carolina, the highest concentrations of radon are found in the mountain areas and the lowest concentrations are found in the coastal plain. Federal and state officials advise homeowners to reduce their radon exposure if levels exceed four picoCuries per liter of air measured. According to the results of a 1990 study, Ashe, Watauga, Henderson, and Transylvania counties had average levels of indoor radon that exceeded this benchmark.

## Pollution Standard Index (PSI)

Index Range	Descriptor Words
0 to 50	Good
51 to 100	Moderate
101 to 199	Unhealthful
200 to 299	Very Unhealthful
300 and above	Hazardous

## **Water: Surface Water Quality, Groundwater, and Public Water Supply**

### *Surface Water Quality*

The most common method of evaluating water quality nationwide is "use support assessments." This methodology is used by states in fulfilling the requirements of the Clean Water Act and provides a biennial evaluation of water quality for each state. These estimates provided a "snapshot" look at the water quality of the streams, rivers, and estuaries within the state.

North Carolina has approximately 37,600 miles of freshwater streams and rivers contained within 17 major river basins divided into 3 physiographic regions: mountain, piedmont, and coastal plain. *Streams and rivers located within the mountain region* are generally small and swiftly flowing as compared to those in the piedmont and coastal regions. Water quality in the mountain region is usually characterized as high in dissolved oxygen and low in waste loading (pollution), except downstream from point sources (any discrete conveyance from which pollutants may be discharged, including pipes, ditches, wells, and concentrated animal feeding operations; e.g., municipal wastewater treatment plants). Streams and rivers in this area are thus particularly well-suited for drinking water sources and recreational purposes.

*Streams and rivers located within the piedmont region* are slower and wider, owing to the more gentle topography of rolling hills. Most of the state's population and industrial base is located within the piedmont region. Therefore, piedmont streams and rivers are more affected by waste loading than any other area within the state. Much of this loading comes from sediment originating from agricultural, construction, and urban runoff. The piedmont also has the heaviest point-source waste loading due to the large municipal and industrial wastewater treatment plants servicing the concentrated population and industrial centers in the central portion of the state.

The *coastal region* has the most diverse hydrography (the description of surface waters) of the state. Within the coastal region are extensions of piedmont streams and rivers; large, slow-moving tidal rivers; blackwater streams and rivers; swamps and coastal wetlands; and estuaries and sounds. Streams and rivers of the coastal region are characterized by heavy sediment and

nutrient loadings since their drainage is composed of land used primarily for agriculture. There are also significant point-source loadings from the populated areas of the coastal region which have experienced a large influx of both permanent and seasonal residents, as well as tourists, over the last 20 years.

Use support estimates indicate that 35 percent of North Carolina's streams and rivers had water quality that was fully supporting, 30 percent were support-threatened, 21 percent were partially supported, and 5 percent did not support their designated uses. Most impairment of the state's streams occurred in the slow-moving reaches of the Chowan, Pasquotank, Roanoke, and White Oak river basins. There, 56 percent of all impairment was due to nutrients from agricultural runoff.

The use support estimates for North Carolina's 152 significant lakes indicated that 70 percent were fully supporting, 26.5 percent were support-threatened, 3.3 percent partially supporting, and only 0.2 percent did not support their designated uses. The major source of lake impairment was urban runoff, which accounted for 64 percent of total impacts.

North Carolina has approximately 1,997,775 acres of tidewater estuaries and sounds and 320 miles of ocean shoreline. Six major river basins within the state end in estuaries: the Lumber, Cape Fear, Neuse, White Oak, Pamlico, and Pasquotank.

Continued development of North Carolina's coastal areas has contributed to a deterioration of estuarine water quality. The primary sources of estuarine pollution are: agricultural and urban runoff, leaking septic tanks, marinas, conversion of maritime forests, and the dredge and fill of coastal wetlands.

A major cause of the state's estuarine problems is eutrophication (a body of water that is abundant in plant and animal life, but lacking in oxygen at times). Most of this eutrophication is the result of nutrient runoff from agricultural lands upriver from the estuaries. However, excessive nutrients may also be attributed to point sources, both municipal and industrial, that discharge directly into the estuaries.

Use support for North Carolina's estuarine areas was generally good with 90.1 percent fully supporting, 3.3 percent support-threatened, and 6.6 percent partially supporting their designated uses. Most estuarine waters that are partially support-

ing are found in the Lumber and Cape Fear river basins.

### **Groundwater**

Groundwater is the primary source of drinking water for approximately 43 percent of North Carolinians. The state's public water supply systems provide 50 billion gallons of groundwater annually to almost a million residents. In addition, private water supplies provide almost 38 billion gallons of groundwater annually to approximately two million residents. Groundwater is used for public supplies, as well as domestic, mining, industrial, livestock, commercial, and irrigation needs.

Most of North Carolina's high-quality groundwater is found in the deep aquifers located in the coastal plain. The shallow aquifers of the piedmont and mountain areas provide a limited amount of lower-quality groundwater.

Leaking underground storage tanks are the leading cause of groundwater contamination within North Carolina, followed by surface spills. Accordingly, gasoline and diesel fuel are the most common groundwater pollutants.

In 1991, North Carolina initiated a field study to determine groundwater contamination due to pesticides. Preliminary test results found detectable pesticide levels in 12 percent of wells drilled for the study.

### **Public Water Supply**

North Carolina has 10,383 public water supply systems, of which 320 are surface systems and 10,063 are groundwater systems. However, surface systems serve a much larger percentage (83 percent) of the state's population, since these systems were constructed to serve the state's towns and cities. Local governments own 68 percent of North Carolina's surface systems, while private ownership accounts for 63 percent of the state's groundwater systems. The average annual per capita amount of water provided by the state's public water supplies was 64,320 gallons of surface water and 51,956 gallons of groundwater.

There are four main types of surface and groundwater systems.

- *Community*—serves 15 or more service connections or regularly serves 25 or more year-round residents.

- *Transient, Non-Community*—serves 25 or more residences at least 60 days of the year.
- *Non-Transient, Non-Community*—serves 25 or more residences at least 6 months per year.
- *Adjacent*—two or more systems that are adjacent, are owned or operated by the same supplier of water, and together serve 15 or more service connections or 25 or more residences.

The number of drinking water contaminant violations for the state's public water supply systems did not change significantly during 1989 through 1993. Bacterial violations were fairly constant in 1989 and 1990, with 321 and 341 violations, respectively. The number decreased to 239 in 1991, rose to 254 in 1992, and decreased again to 239 in 1993. From 1991 onward, there was a marked shift in violations occurring in community systems to violations in non-community systems.

### **Waste: Solid Waste, Hazardous Waste, and Low-Level Radioactive Waste**

#### ***Solid Waste***

In North Carolina, the concern over solid waste is growing as existing landfills reach their design capacity and the regulation of new landfill facilities becomes more strict. The primary method of solid waste disposal remains county landfills. From 1990 to 1993, the number of municipal landfills remained steady at approximately 100. There are also private municipal and industrial landfills operating within the state. From 1990 to 1993, the number of private municipal landfills remained around six, while the number of industrial landfills increased from 15 to 27.

There was a slight decrease—nine percent—in the amount of tonnage received by municipal landfills from 1990 to 1993. However, this was offset by the 29 percent increase in tonnage received by private municipal landfills and the 617 percent increase of waste received by industrial landfills.

North Carolina has a "special waste" category that includes lead batteries, scrap tires, used motor oil, and white goods (e.g., refrigerators, washers, dryers, stoves). During 1990

to 1993, there were significant increases in the collection of lead batteries, scrap tires, and used oil, while the collection of white goods slightly decreased.

Source reduction is the top priority of preferred management techniques for solid waste. Source reduction is defined as the avoidance of waste by reducing the amount of waste or its toxicity before generation. The overall effect of source reduction is a decrease in the quantity of material collected, processed, and disposed. Examples include avoiding unnecessary photocopying, using double-sided copies, avoiding usage of disposable items, and acquiring items with minimal packaging. However, as of 1993, only 13 percent of the 620 local governments in North Carolina had some type of source reduction program. Local government recycling pro-

*Neuse River*



Jack Betts

grams fared better with an increase of 40 percent in the number of programs from 1989 to 1993. Consequently, 93 percent of all local governments within the state had some type of recycling program in effect in 1993.

In 1989, the North Carolina General Assembly adopted a bill to improve the management of solid waste (Senate Bill 111). This bill banned yard waste and aluminum cans from landfills, and set a statewide goal of a 25 percent reduction in municipal solid waste by June 30, 1993. The state did not meet this goal—only a 6.4 percent decrease was achieved in the amount of solid waste per capita landfilled as of June 30, 1993. The reduction that did occur can be attributed, at least in part, to changes in solid waste management techniques. These involved the separation of land clearing and inert debris from disposal of general solid waste, the ban of certain materials from landfills, and the increase in the number of recycling and source reduction programs by the public, business, and industry. (See *Recycling North Carolina's Resources*, pp. 615–625.)

### ***Hazardous Waste***

Many human activities generate hazardous waste which must be properly managed to reduce the possibility of contaminating the environment. Hazardous waste is solid waste that because of its quantity or physical and chemical characteristics may “1) cause or significantly contribute to an increase in mortality, irreversible, or incapacitating illness; or 2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed” (see N.C. General Statutes §130A-294). Hazardous waste may present itself in several different forms: solids, liquids, contained gases, or sludges. Hazardous waste is classified according to four characteristics.

- *Ignitable waste* can cause fires under certain conditions. These wastes include materials such as acetone, mineral spirits, and industrial alcohols.
- *Corrosive waste* can burn the skin or corrode metal. These wastes include materials such as battery acid, rust removers, and acid cleaners.
- *Reactive wastes* are unstable under normal conditions and can cause explosions and/or toxic fumes, gases, and vapors when mixed

with water. Cyanide plating wastes and bleaches are considered reactive wastes.

- *Toxic wastes* are harmful or fatal if ingested or absorbed into the body. Lead-based paints and mercury batteries are considered toxic wastes.

There are three types of hazardous waste generators: 1) waste generated from normal operating procedures; 2) waste generated from spill clean-ups by large generators and subject to the federal Resource Conservation and Recovery Act (RCRA); and 3) one-time clean-ups or federal "Superfund" actions.

The number of normal-operation hazardous waste generators within North Carolina decreased from 633 in 1989 to 624 in 1993. However, there was a slight increase in the amount of waste generated, from 125.5 million pounds in 1989 to 128.5 million pounds in 1993. While there was only 3.5 million pounds of hazardous waste generated in 1989 from RCRA mandated clean-ups, this increased dramatically to 56 million pounds in 1993 as the result of 3 large clean-ups done during that year at Thomasville Furniture in Caldwell County, Mannington Ceramic Tile Company in Davidson County, and Pope Air Force Base in Cumberland County. The volume of hazardous waste from one-time non-RCRA cleanups varied during 1989 to 1993, ranging from a high of 14 million pounds in 1990 to a low of 3.5 million pounds in 1993.

Methods for processing hazardous waste presently include recycling, treatment, storage, and disposal. Recycling involves activities such as energy recovery, solvent recovery, and metal recovery. Treatment of hazardous waste involves incineration, fuel blending, aqueous inorganic treatment, aqueous organic treatment, and sludge treatment. Disposal can be to landfills or other disposal sites.

Hazardous waste is either processed on-site or is shipped to commercial treatment, storage, and disposal (TSD) facilities, either in-state or out-of-state. The amount of hazardous waste processed on-site remained constant from 1989 to 1992 at approximately 30 million pounds, but increased to 56 million pounds in 1993. Off-site shipments of waste sent to in-state commercial facilities varied little between 1989 and 1993 (22 to 25 million pounds), while off-site shipments to out-of-state facilities varied considerably (182 million pounds in 1990, 84 million

pounds in 1991, 121 million pounds in 1993).

North Carolina has 11 commercial treatment, storage, and disposal facilities located across the state; these are located within or near Raleigh, Creedmoor, Reidsville, Greensboro, Archdale, Charlotte, Norwood, and St. Pauls. Methods of processing hazardous waste at these facilities exhibited strong trends during 1989 to 1993. The recycling of hazardous wastes decreased by 97 percent during this time period while the amount of waste processed using treatment methods increased by 1700 percent. The amount of hazardous waste stored varied over the 5-year period, but was 11 million pounds in 1993.

### ***Low-Level Radioactive Waste***

Low-level radioactive waste generators are grouped into the following categories:

- *Academic*—university hospitals and university medical and nonmedical research facilities.
- *Government*—state and federal agencies.
- *Industrial*—research and development companies, manufacturers, nondestructive testing facilities, nuclear fuel fabrication facilities, industrial irradiators, and radiopharmaceutical manufacturers.
- *Medical*—hospitals and clinics, medical research, and private medical offices.
- *Utility*—commercial nuclear power reactors.

While the number of North Carolina facilities generating low-level waste more than doubled between 1990 and 1993, the volume and radioactivity of this waste did not appreciably change.

Low-level radioactive waste is managed by on-site methods, either storage or incineration, or is shipped out-of-state to a commercial processing facility. For the years 1989 through 1993, more waste volume was shipped out-of-state than was managed by either on-site method. North Carolina generators shipped their waste to disposal facilities in South Carolina, Nevada, and the state of Washington, with 99 percent of the waste being shipped to the Barnwell, South Carolina facility.

North Carolina does not presently have an in-state commercial facility for processing low-level radioactive waste. However, the state is in the process of siting a commercial processing

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## *Environmental Index Could Have Many Benefits*

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PROPOSERS CITE a number of reasons for producing an environmental index. Most importantly, it will help the state identify key environmental problems and focus more attention on them. It also will help settle disputes among bureaucrats, politicians, environmentalists, and business leaders about whether pollution problems are getting better or worse. (See Table 1.) And it may provide state officials with invaluable feedback on the effectiveness of laws and regulatory programs.

"This is a win, win situation for everybody," says Dave Moreau, chair of Governor Martin's blue-ribbon panel on environmental indicators and former director of the University of North Carolina's Water Resources Institute. "This is not simply a good idea. It is essential to the setting of environmental policy, to the allocation of financial resources, and to the administration of environmental programs. . . . The more I got into the project, it became clear that information of that kind is a necessity for administering the Department of Environment, Health, and Natural Resources. We run the risk of making costly errors in setting policy without the kind of information called for in the report."

The index has won support from environmentalists as well as business leaders. "I would be concerned about requiring another report from government agencies without providing additional support to the agencies to do the job," says Bill Holman, lobbyist for the Sierra Club and the Conservation Council of North Carolina. "But I think the environmental index is a tremendous opportunity to measure our progress or lack of progress in protecting the environment."

Anne Griffith, chief lobbyist and vice president for governmental and legislative affairs for N.C. Citizens for Business and Industry, says the primary value of an environmental index is that it helps state officials set spending priorities for various regulatory programs." That view is echoed by George Everett, executive director of the Manufacturers and Chemical Industry Council. "I certainly believe that everybody ought to support it," says Everett, former director of the state Division of Environmental Management. "In a time of limited dollars, the question is: Where are you going to spend not only environmental money, but all money? And that's where an environmental index is going to help. The resources are spread all over the place, and the agencies are trying to do too many things. In addition to letting people know the status [of the environment], it also gives you some direction."

Doug Lewis, director of planning and assessment for the Department of Environment, Health, and Natural Resources, says that environmental indicators data will assist the department's decision-making from top to bottom. Such information, he says, could help in formulating goals, establishing priorities, evaluating risks, educating the public, developing management objectives, and measuring the success or failure of programs. "Underlying all of this is good information—environmental indicators that are accurate and reliable," Lewis says. "I tend to view environmental indicators as a foundation for the whole strategic planning process."

—Tom Mather

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*Tom Mather is associate editor of North Carolina Insight.*

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**Table 1. Why North Carolina Needs an Environmental Index**

An environmental index is based on a careful analysis of data over time. It helps state officials and lawmakers make rational judgments about where to spend money on environmental problems and could help settle disputes about whether our environment is improving or declining.

Using existing reports and data, for example, one could cite evidence showing that:

The Environment Is Improving	The Environment Is Being Degraded
<p>1. North Carolina ranked 1st in surface water protection and 9th in overall environmental protection in a 50-state study by Renew America in 1988.<sup>1</sup></p>	<p>1. North Carolina ranked 28th in water pollution problems and 23rd in overall environmental conditions in a 50-state analysis by the Institute for Southern Studies in 1991.</p>
<p>2. North Carolina tied for 3rd in a 50-state ranking of programs for protecting drinking water in a 1989 study by Renew America.<sup>2</sup></p>	<p>2. North Carolina ranked 21st in the percentage of water systems in significant non-compliance with drinking water standards in a 50-state analysis by the Institute for Southern Studies in 1991.</p>
<p>3. Only 7 percent of North Carolina's residents lived in counties not meeting federal clean-air standards in June 1988, ranking the state 5th among the 50 states in a 1989 study by Renew America.<sup>3</sup></p>	<p>3. The Raleigh and Greensboro metropolitan areas were two of only 18 urban centers in the nation that violated federal standards for both ozone and carbon monoxide from 1987 through 1989, according to the U.S. Environmental Protection Agency.</p>
<p>4. The volume of low-level radioactive waste shipped for disposal dropped by 52 percent in North Carolina from 1985-1990, according to the state Department of Environment, Health, and Natural Resources.<sup>4</sup></p>	<p>4. North Carolina generators shipped more low-level radioactive waste for disposal than any other state in the U.S. in 1987, according to the Institute for Southern Studies.</p>
<p>5. North Carolina increased its annual operating expenditures for its state parks by 72 percent from FY 1985-86 to FY 1990-91, according to the state Department of Environment, Health, and Natural Resources.</p>	<p>5. North Carolina spends less money per capita on its state park system than virtually any other state, ranking 49th out of 50 in 1988, according to the National Association of Park Directors.</p>
<p>6. North Carolina has retained about three-fourths (76 percent) of the 7.8 million acres of wetlands that originally covered the state, according to the state Department of Environment, Health, and Natural Resources.</p>	<p>6. North Carolina has lost nearly half (49 percent) of the 1.1 million acres of wetlands that originally covered the state, according to the U.S. Fish &amp; Wildlife Service.</p>

**FOOTNOTES**

<sup>1</sup> Scott Ridley, *The State of the States 1988*, Renew America, Washington, D.C., February 1988.  
<sup>2</sup> Scott Ridley and Rick Piltz, *The State of the States 1989*, Renew America, Washington, D.C., February 1989.  
<sup>3</sup> *Ibid.*  
<sup>4</sup> "North Carolina State of the Environment Report," N.C. Department of Environment.

facility on the border of Wake and Chatham counties. The site has been approved by North Carolina's Low-Level Waste Management Authority.

### **Natural Resources: Marine Fishery Resources, Shellfish Growing Areas, and Wetlands**

#### ***Marine Fishery Resources***

North Carolina has historically been one of the top ten states in the nation in both recreational and commercial annual marine fish landings. North Carolina's marine fishery contributes approximately one billion dollars annually to the state's economy. However, commercial fish landings alone do not provide an indication of the health of fish stocks. For instance, even though the number of commercial landings of a certain species may be increasing, this may be due to better equipment, more fishermen, longer hours, or other factors, rather than an abundance of fish being caught. Thus, it is possible that the population of a fish species can decrease while the harvest of that species increases.

The harvesting of marine fishery stocks has three classifications:

- *commercial-edible*—finfish (flounder, striped bass), crustaceans (shrimp, crabs), and mollusks (oysters, clams);
- *commercial-industrial*; and
- *recreational*.

Although the commercial landings of edible finfish fluctuated from 1975–94, finfish harvest experienced a general decline after 1980 when the high of 91.5 million pounds occurred. Most of this decline was due to overfishing and water pollution. Landings of industrial finfish, comprised primarily of menhaden (90 percent), also declined since 1980. However, the decline in menhaden landings was not related to stock conditions, but was due to diminishing worldwide demand for menhaden fish meal and oil.

Between 1975–94, there was a steady rise in the amount of crustaceans harvested, primarily because the pounds of blue crab landings quadrupled. By 1990, landings of crustaceans exceeded the landings of finfish and this trend continued through 1994.

Landings of mollusks peaked in 1987 with 5.5 million pounds and then decreased to a low of 1.8 million pounds in 1992. The decline in mollusk landings was due to a variety of factors, principally water pollution, episodes of red tide (a red discoloration of sea water caused by the presence of small marine plants which can be lethal to fish), and outbreaks of disease.

Stock evaluations of finfish indicate that the number of species rated "healthy" varied little over the 20-year time period. However, as more species were evaluated, there was a corresponding increase in the number of species rated "stressed" and "depressed." Crustacean stock evaluations maintained good ratings since 1980. However, mollusk stock evaluations reveal a distinct change in trend after 1985, shifting toward more unsatisfactory ratings.

#### ***Shellfish Growing Areas***

North Carolina has approximately two million acres of shellfish growing and harvesting areas. Of this amount, 1.4 million acres are designated as saltwater acres and 0.6 million acres are designated as brackish areas. Saltwater acreage is considered important productive acreage, since most clam and oyster harvests come from these waters.

Classification of shellfish growing areas within coastal waters are the result of sanitary reviews which include information from shoreline, hydrographic, meteorological, and bacteriological surveys. There are four classifications for shellfish growing areas: approved, conditionally-approved, restricted, and prohibited.

From 1989 through 1993, there were only modest increases in the percentage of total acres of shellfish growing areas closed to harvesting. However, several of the state's coastal counties had a large percentage of their saltwater shellfish growing areas closed to harvesting. Even though these percentages did not change significantly over time, local, county, and state governments should seek ways to improve conditions contributing to these closures, so that more growing and harvesting acreage will remain open in the future.

#### ***Wetlands***

Almost all wetlands in North Carolina are located within the coastal plain (95 percent in the coastal plain, 4 percent in the piedmont, and

one percent in the mountains). Wetlands are areas of land with a significant amount of soil moisture, for instance, swamps and marshes. North Carolina classifies wetlands by hydric soil composition and according to the following "use support" designations: supporting, partially-supporting, and non-supporting. Supporting wetlands have little disturbance of their vegetation, soils, and hydrology. A major distinguishing factor of supporting wetlands is the retention of natural tree cover. Partially-supporting wetlands have their natural cover and hydrology altered but still provide basic wetland uses such as wildlife habitat, flood control, and nutrient removal. Non-supporting wetlands have been altered for uses that do not support basic wetland functions.

There are eight wetland types that have been identified from hydric soil surveys. Of these, seven types are considered to support their designated use, these are: salt marsh, pine savannah, wet pine flatwood, pocosin, bottomland hardwood, ponds, and swamp forest. The remaining

wetland type, pine plantations, is considered to partially support designated use. Wetlands not supporting their designated use have usually been altered for agricultural or urban development purposes.

It is estimated that North Carolina originally had slightly more than 7 million acres of wetlands. A recent analysis done by the Division of Environmental Management (DEM) estimates that there were approximately 4.7 million acres of unaltered wetlands remaining in 1993.

Sixty-six percent of the original wetland acreage supported designated use in 1993; partially-supporting wetlands accounted for a 13 percent decrease from the historical supporting acreage; and non-supporting acreage accounted for a 21 percent decrease. The largest number of acres altered occurred in the pine savannah, wet pine flatwood, and pocosin wetlands. Agricultural impacts accounted for 84 percent of all non-supporting coastal wetlands, while 16 percent was due to urban development.



# Recycling North Carolina's Resources: The Long Campaign to Cut Tar Heel Waste

BY MIKE MCLAUGHLIN AND AMY CARR

*Through its adoption of landmark legislation, the 1989 General Assembly laid the groundwork for an ambitious assault on the state's bulging waste stream, with recycling the major weapon to be deployed in the battle. The law set a goal of diverting 25 percent of waste from the state's landfills by 1993, which in hindsight was unrealistic. What must be done to move the state past the current crash waste reduction diet to a lastingly leaner solid waste stream?*

**E**ddie Hill maneuvered his 23-foot custom-designed recycling truck to the curb along a shady narrow street in central Raleigh. What happened next was a blur. Hill raced to a 14-gallon green plastic bin and picked out paper, cans, and bottles, and flipped them to his assistant, Stephen Whitley, who slam-dunked them into the proper compartments on the specially designed "Eager Beaver" truck body.

Less than 30 seconds later, both men were back in the truck and headed towards the next green bin. The two would collect from 409 homes before the day was over, leaving the route only long enough to haul the materials to market.

Welcome to curbside recycling, Raleigh style. The pilot program was an instant hit when it was introduced to 4,000 households in October 1989. And because of a law passed by the 1989 General Assembly, the recycling truck has become as much a fixture in many North Carolina communities as the meter reader or the postal carrier.

That law is called the Solid Waste Management Act of 1989.<sup>1</sup> The legislature thought it so important that Democrats and Republicans alike laid aside partisan bickering to enact it on the last day of the longest session on record.

"Most of our landfills over the next 10 years will be closed down because they are full," said former Rep. James Craven (R-Moore) in legislative debate over the law. "Our counties are going to find themselves buried in waste. Garbage is the greatest problem in our state today."

Rep. David Redwine (D-Brunswick) declared the bill "one of the most important pieces

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*Mike McLaughlin is the editor of North Carolina Insight. Amy Carr, a graduate of the London School of Economics, was an intern at the N.C. Center for Public Policy Research during the summer of 1989.*

Karen Tam



**Eddie Hill (r) and Stephen Whitley grab a bin full of recyclables on one of Raleigh's curbside recycling routes.**

of legislation we will look at this year” before the House passed it after debate in numerous meetings of a subcommittee chaired by then-Rep. Dennis Wicker (D-Lee), who is now the Lieutenant Governor of North Carolina. Former Sen. Dennis Winner (D-Buncombe) said he only wished his Senate colleagues had been left time to scrutinize the bill. With adjournment nigh, the Senate could only give the bill the green light and tack on a few changes in conference committee. “It got to the Senate so late, and there was such pressure to get it passed, that I felt like the Senate had no voice in it,” said Winner.

The legislation, according to Rep. Joe Hackney (D-Orange), was actually “20 or 30 bills” rolled into one, which he said justified the length of time the House spent on it. Much of that time was spent in Wicker’s subcommittee, which, under Wicker’s guidance, worked to shape legislation that ultimately would win broad support. “His having the confidence of both the environmental community and the business community helped tremendously,” said Hackney.

The law’s most sweeping provision is summed up in a single sentence: “It is the goal of this state that at least 25 percent of the total waste stream be recycled by January 1, 1993.”<sup>2</sup> With that sentence, the legislature committed the state to behavior modification on a grand scale, enacting into law the notion that Tar Heels can be taught to stop tossing out so much trash.

In so doing, the General Assembly joined an increasing number of states that are stepping up to the plate to take their cuts at a mounting problem—what to do with an overflow of solid waste. And the 25 percent waste reduction goal is consistent with that of the federal government. But the legislation was more like a long single than the towering home run supporters initially sought. To get the state home on solid waste, future General Assemblies need to go to bat on the issue.

That’s because the legislation established lofty goals but did not chart a clear course for reaching them.

Legislation passed in 1991 strengthened the Solid Waste Management Act. A baseline year—

July 1991 to June 1992—against which future comparisons would be made was designated. The goals of the act were also refined. The amendments clarify that reduction goals can be met through a combination of source reduction, reuse, and composting in addition to recycling. Furthermore, they set a new goal of 40 percent reduction by 2001.

At the end of the first comparable fiscal year (FY 1992–93), North Carolina had reduced waste by 6.4 percent. But by FY 1993–94, waste reduction had decreased to 5.69 percent and in FY 1994–95, there was no reduction in waste disposed of in comparison to FY 1991–92. In FY 1994–95, a record 7,624,145 tons of waste were disposed of by North Carolinians.

The law and the realities of waste reduction in North Carolina raise troubling questions. How will the counties ever reach even the 25 percent waste diversion goal? And what will become of the waste that is diverted? Will it be recycled and put to productive use? Or will it simply be warehoused, with no market for a huge influx of would-be raw materials that used to be rubbish? Policymakers readily concede they do not have all the answers, but they say the counties—facing huge increases in the cost of landfilling waste—are ready to face the questions. In a sense, local governments will become laboratories for change, nurturing what works and discarding what doesn't as they search for solutions to their solid waste problems. Many North Carolina counties and municipalities already have turned to recycling to defuse the solid waste dilemma.

### A Short History of Recycling

The nation's first paper makers depended on textile rags and waste paper for raw materials. After the Civil War, battlefield scrap, classified as either "Yankee shot" or "Rebel shot," was cleaned and melted for reuse.<sup>3</sup> And during World Wars I and II, living by the waste-not-want-not adage was considered one's patriotic duty. Scarcity of vital resources necessitated the recycling of everything from kitchen grease to toothpaste tubes. *Chapel Hill Herald* columnist Rolland Wrenn, a lifelong resident of rural Orange County, writes that as a child during World War II, she provoked her parents with an unsuccessful plan to sell all of the family's rub-

ber boots to the salvage dealer during his monthly pickup.<sup>4</sup>

But post-war prosperity ushered in an attitude of wastefulness. Except for a brief resurgence during the early 1970s, recycling was left to people of exceptional environmental consciousness, civic groups, and the desperately poor. Disposable products replaced reusable razors and cloth diapers. Returnable soft drink

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## How You Can Cut Waste Production

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Towns and counties have the primary responsibility for cutting the flow of solid waste to landfills, but private citizens must do their part as well. Susan Hassol and Beth Richman provide a common sense guide to home waste reduction in their handbook, "101 Practical Tips for Home and Work Recycling." Here is a sampling of their advice:

- Avoid items with excessive packaging, or, better yet, buy in bulk and avoid packaging altogether.
- Use cloth products instead of disposable paper alternatives. Examples include cloth napkins, cloth cleaning rags, cotton handkerchiefs, and, of course, cotton diapers.
- Avoid disposable products such as razors and lighters.
- Choose returnable beverage containers where available.
- Use a lunchbox or canvas bag, rather than disposable paper lunch bags.
- Re-use grocery bags and refuse a shop's bag when items can be carried out by hand.
- Re-use envelopes, boxes, and packing materials such as foam peanuts.
- Donate used goods such as clothing and small appliances to charitable groups, rather than throwing these items away.
- Use a live Christmas tree which you can plant outside after the holidays.
- Compost yard and kitchen waste to improve soil health and replace chemical fertilizers.

*Source:* Susan Hassol and Beth Richman, "101 Practical Tips for Home and Work Recycling." A Windstar Earth Pulse Handbook, August 1989, pp. 27–68.

bottles were replaced by plastic containers the size and shape of howitzer shells. Elaborate packaging and convenient individual serving containers became standard fare at grocery stores and fast food outlets, and ultimately helped pack the nation's landfills. The figures speak plainly. In 1960, each person in the United States contributed an average of 2.65 pounds of trash a day to what were then rat-infested open dumps, according to the U.S. Environmental Protection Agency. By 1986, the average American produced 3.58 pounds of solid waste daily, or more than half a ton a year for every man, woman, and child.<sup>5</sup>

While the nation indulges its new-found taste for trash, the places to put all the waste actually are diminishing. The thousands of open dumps that could be found across the nation a few decades ago were prohibited by the federal government in favor of the sanitary landfill, essentially a hole in the ground in which waste is buried under daily layers of soil. But these disposal sites in many cases have caused environmental problems of their own. More than a fifth of the sites on the EPA Superfund Priority List—a ranking used to parcel out federal cleanup dollars for the nation's most potent toxic waste sites—are municipal solid waste landfills.<sup>6</sup> Recent environmental concerns and the stigma that always has been associated with living next to a garbage dump have made a political nightmare of siting these facilities. And the EPA has responded to environmental problems with new

requirements that will drive up the cost of landfilling dramatically. These requirements include installing plastic or clay liners to prevent leakage, installing and operating systems to monitor groundwater contamination around the landfill and gas buildup within it, installing leachate collection and treatment systems, and establishing an escrow account to ensure that any environmental damage can be cleaned up after the landfill closes.

Although most North Carolina towns and counties have not yet run out of places to put their waste, in 1994, 54 unlined landfills were closed across the state. Some municipalities in other states now are shipping their garbage hundreds of miles by rail to find a place to dump. The problem came to a head in the public consciousness with the infamous garbage-laden barge from Islip, N.Y., which in 1987 could find no place to unload its cargo along the entire East Coast. The wandering barge, which originally was bound for North Carolina, has since become a symbol of the nation's solid waste woes.

### The North Carolina Problem

**H**ow serious is the problem in North Carolina? The pressing problem of rapidly depleting landfill capacity was one of the driving forces behind the Solid Waste Management Act. "I don't think it's reached a crisis for the most part in this state yet," said Senator Winner. "In New Jersey and Connecticut, it's almost beyond crisis. What we're trying to do is get the problem dealt with before it becomes a crisis."

Still, no one is arguing that siting new landfills to replace those that are running out of room will be a simple task. Even in rural areas, the siting of new landfills is often stymied by local opposition. The problem in most cases is not a lack of acceptable land, but mounting public concerns about landfills. A 1988 study of water quality near 71 coastal landfills in North Carolina revealed considerable pollution. Groundwater quality standards for heavy metals and hazardous organic compounds were violated at more than half the sites.<sup>7</sup> Educated about the risks of groundwater contamination, the dumping of hazardous waste, and the possibility of methane gas leaks and explosions, residents not only shout, "Not in my backyard," but also "Not in my neighbor's backyard, not near my schools, and not near my water supply!"

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*"Garbage. All I've been thinking about all week is garbage. . . I've gotten real concerned over what's going to happen with all the garbage. . . The last time I felt this way was when that barge was going all over the place. . . I started imagining a garbage can that just keeps producing garbage. . . It just seems so stupid, especially when we don't know what to do with all the garbage. . ."*

—ANN MILLANEY (ANDIE MACDOWELL)  
IN "SEX, LIES, AND VIDEOTAPE"  
CANNES FILM FESTIVAL PALM D'OR AWARD WINNER, 1989

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But for most North Carolinians, once the garbage is out of sight, it is out of mind. Many counties and municipalities include the cost of landfilling in their general operating budgets. Consequently, residents and businesses have no idea of the full costs of garbage disposal. That will soon change, as counties move towards tipping fees to help recoup the cost of waste disposal. A tipping fee is a charge for dumping, usually assessed on a per-ton basis. Seventy-six of North Carolina's counties regularly impose tipping fees for the disposal of solid waste.

"The tipping fee encourages people to think about their discards" and remove recyclable material to save money, says Blair Pollock, solid waste planner for Orange County, Chapel Hill, and Carrboro. Besides the waste-reduction incentive, the tipping fee provides local government a revenue source for its overall solid waste management plan.

County officials, however, worry that aggressive tipping fees could encourage littering. The Solid Waste Management Act addresses this problem by authorizing severe fines and the levy-

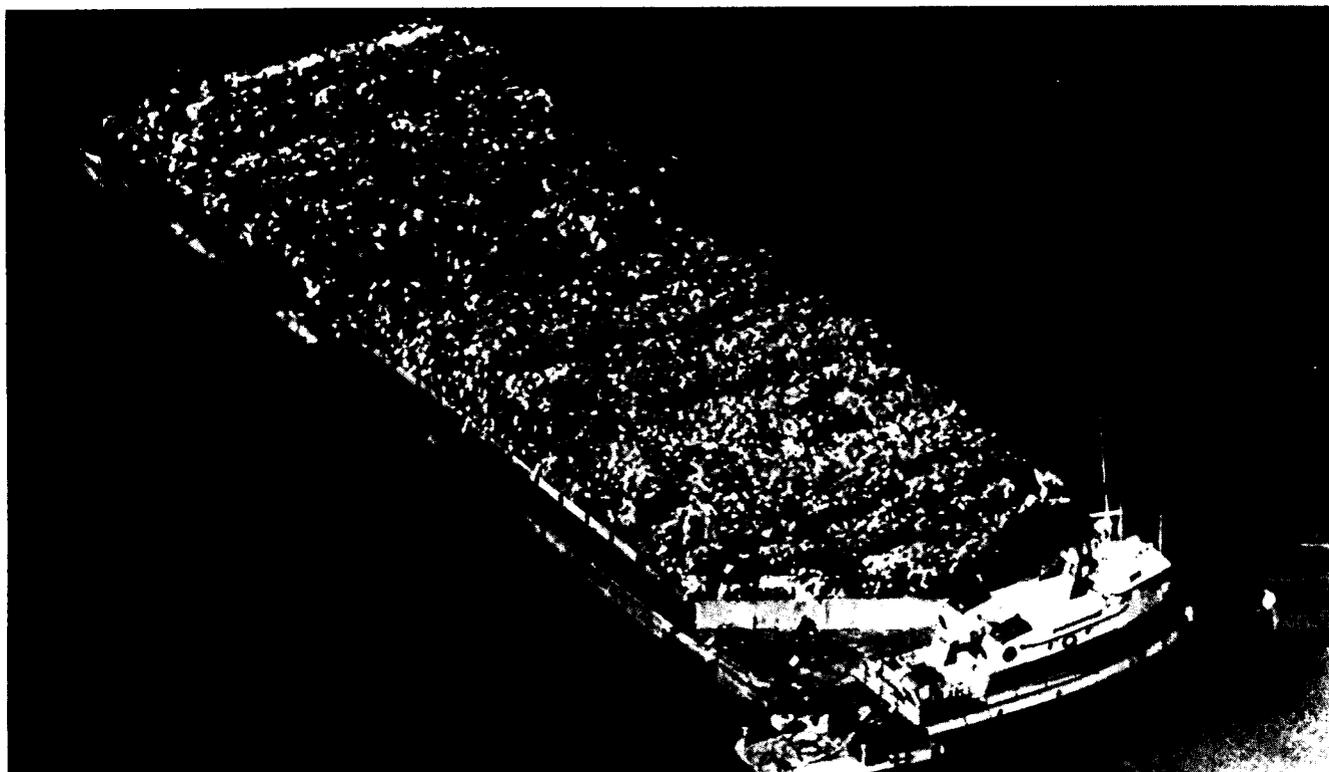
ing of one point on the driver's license of anyone caught using a motor vehicle to litter. The law even allows authorities to impound the vehicles of offenders in the worst cases.<sup>8</sup>

County officials say the courts have not always taken violations of the state litter law seriously enough. "The prohibition against littering hasn't been actively enforced in the counties," says Ed Regan, associate director of the North Carolina Association of County Commissioners. Consequently, Regan says, there is widespread concern that increasing disposal fees at landfills will encourage more illegal dumping. Still, Regan says county officials agree that tipping fees are essential as an economic incentive to waste reduction and recycling and as a source of revenue for solid waste management.

### **A Solid Waste Management Hierarchy**

**A**s the costs of landfilling increase, alternative methods of handling solid waste look more attractive. What are these alternatives?

***This wandering garbage barge, originally bound for North Carolina in April 1988, became a symbol of the nation's solid waste woes.***



*Wide World Photos*

North Carolina has now adopted a variation on the EPA's hierarchy of disposal methods. In descending order of preference, the state's hierarchy consists of:

- waste volume reduction at the source;
- recycling and re-use;
- composting;
- incineration with energy production;
- incineration for volume reduction; and
- disposal in landfills.<sup>9</sup>

Although it is listed at the top of the waste management hierarchy, waste reduction actually gets less attention than recycling. Hackney said the state has little means of forcing industry to reduce its waste or to market fewer throwaway products. "I don't think we in this state have a good way to enforce waste minimization other than cost," said Hackney. "What it gets down to is a technician from the state signing off on a manufacturing process. We don't have the people or the technical expertise to do that. It's sort of a tough nut to crack." But industry will reduce waste if a savings can be demonstrated. That's where aggressive tipping fees play a role, giving industry a financial incentive to reduce its waste. And proponents of so-called advance disposal fees say these fees, which amount to additional taxes on certain kinds of packaging or on disposable products, also can encourage waste reduction, as can outright bans on objectionable packaging or products. Finally, consumers could contribute greatly to waste reduction if they would spurn products with excessive packaging.

Re-use of products represents another important waste management strategy. Washing and re-using glass containers saves more energy and expense than does crushing old glass to produce new containers. And many items such as furniture and appliances are tossed on the trash heap when they still have value.

For waste that cannot be re-used, recycling is the preferred management option, because it saves both energy and natural resources. Recycling means not only the collection, separation, and processing of recyclable material, but also its eventual use for making new products, and the purchase of these new products by the consumer.

Using organic wastes to produce mulch or compost, the third-ranking process in the state's

hierarchy and really a form of recycling, also offers tremendous potential for waste diversion. Yard waste, food waste, and wood account for almost 30 percent of the typical waste stream. Some local governments in North Carolina already use tub grinders to chip wood wastes and yard debris into mulch for landscaping and other uses, and counties that don't soon will have to consider this option. The law bans yard trash from landfills effective Jan. 1, 1993.<sup>10</sup>

Incineration reduces the volume of waste that requires disposal and can convert garbage into useful energy. But incinerators are expensive, air emissions must be carefully monitored, and the ash that results from incineration must be disposed of in specially designed landfills, so the state ranked incineration next to last in its waste management hierarchy. Sanitary landfilling ranks last because of its expense and because of environmental problems.

### What's in the Trash?

The first step toward setting up an effective solid waste management program is determining what goes into the local landfill. This is called a *waste stream analysis*. By weight, the nation's waste is 41 percent paper and paperboard, 6.5 percent plastics, and 25.8 percent food and yard waste (see Table 1). Experts are quick to point out that these numbers are general, and that many factors can influence the composition of a local solid waste stream. Alamance County, for example, found through its waste stream analysis that corrugated cardboard cartons, mostly from furniture showrooms, comprised 31 percent of the waste that reached its landfill.<sup>11</sup> The county responded by banning the disposal of recyclable commercial cardboard. County officials say the flow of cardboard reaching the landfill had been cut by 80 percent one month after the ban was enacted in May 1988. Other North Carolina counties have found the percentages of textile manufacturing waste and furniture industry wood waste are higher than the national average.

### What Products are Recyclable?

Experts say as much as 80 percent of the solid waste stream theoretically could be

recycled, and a growing list of products are made with recycled materials. Proctor and Gamble markets Spic and Span cleaner in bottles made of recycled plastic. Eggs may arrive at the market in cartons made of recycled plastic or paper. And bleached denim scraps and clean cotton fibers have long been used in making U.S. currency.

Aluminum cans are the most heavily recycled consumer product. Recycling aluminum saves tremendous amounts of energy; manufacturing cans with recycled aluminum uses 95 percent less energy than manufacturing cans from bauxite ore.<sup>12</sup> But basic economics accounts for the success of aluminum recycling. For consumers who collect and sell aluminum cans, there really is cash in trash. A pound of empty aluminum cans is worth 43 cents.

Since paper—at 41 percent of the waste stream—takes up so much space in landfills, its collection is crucial for the success of any recycling program. Waste paper can be sorted into different quality grades. Computer printout paper and office paper command the highest prices and are used in making new stationery, writing paper, toilet tissue, and wallboard. Corrugated cardboard also is highly marketable, and has become a target for solid waste planners because of its bulk.

Glass composes 8 percent of the waste stream and also is widely recycled. Glass jars and bottles can be cleaned and re-used or crushed into cullet and employed in making new glass. Cullet melts at a lower temperature and emits fewer pollutants than other raw materials used in glass making. The Carolinas Glass Recycling Program, sponsored by the glass industry, promotes glass recycling in North and South Carolina. Thirty-seven thousand tons of glass was collected for recycling in 1993–94.

Reclaimed plastics can be processed into insulated filling for sleeping bags and ski jackets, and plastic lumber for railroad ties, parking lot car stops, and park benches. After July 1, 1991, all plastic containers sold in North Carolina must be molded with a label identifying the plastic resin used to make the product. The imprint will facilitate the separation and recycling of plastics.<sup>13</sup>

Many other common household products are recyclable. Tin cans, which are really 99 percent steel, can be detinned and re-used in manufacturing, although there is virtually no market

**Table 1. Gross Discards in the United States, Measured by Weight**

Product	Amount (millions of tons)	Percentage of the Waste Stream
Paper and Paperboard	64.7	41.0%
Yard Waste	28.3	17.9
Metals	13.7	8.7
Glass	12.9	8.2
Food Waste	12.5	7.9
Plastics	10.3	6.5
Rubber, Leather, and Textiles	6.8	4.3
Wood	5.8	3.7
Other	2.7	1.7
Total	157.7	99.9%

Source: U.S. Environmental Protection Agency.

for tin cans in North Carolina. Aluminum recyclers buy old canoes, aluminum siding, and window frames. Textile scraps are re-used in manufacturing or to make rags and automobile floor mats.

Used tires and oil, which present major disposal problems, also can be recycled. North Carolinians discard an estimated 7 million tires annually. Products from recycled tires can be used to make mud flaps for trucks or added to asphalt to reduce stress and cracking in new roads. One Iredell County company cuts old racing tires into worm-like strips and weaves them into welcome mats. Tires can also be a valuable energy source when safely burned in an incinerator.

Used oil, a potentially serious pollutant, can also be a valuable renewable resource when correctly handled. It can be re-refined for use as a lubricant or wood preservative. It can even be used in the production of artificial logs.

## Collection Techniques

Techniques for collecting recyclables vary in their waste diversion potential, ease of implementation, and net cost. A full range of collection methods already have been put into practice by public and private recycling program operators across North Carolina. These can be grouped into three major types of operations: 1) buy-back and drop-off centers for recyclables; 2) curbside collection programs; and 3) salvage

centers located at landfills to divert metals and bulky materials such as old appliances.

Buy-back centers encourage recycling with a cash incentive. These centers primarily purchase materials such as glass and aluminum that command a high enough price to make it worth the consumer's while to recycle. The private sector operates most buy-back centers, but 16 local governments in North Carolina have established this type of recycling program.

The convenience of curbside collection

of recyclables boosts participation rates, but is also the most expensive recycling option. Curbside recycling accounts for 38 percent of recyclables collected in North Carolina. Sixteen counties and 247 municipalities in North Carolina now offer this service. Curbside collection makes recycling as easy as taking out the trash for residents.

Many counties also try to salvage recyclable materials from the landfill. Bulky items, such as appliances, and marketable waste such as corrugated boxes and aluminum, can easily be separated from other garbage.

Drop-off centers are local government's least costly option for recycling residential waste. In 93 North Carolina counties, some site is offered where residents can deposit accumulated

recyclables. Some counties are consolidating their green box dumpster sites to economize on collection, and are adding drop-off recycling centers at the consolidated sites. Although cheaper to operate than curbside programs and buy-back centers, drop-off sites do have disadvantages. Participation is lower, *so less waste gets diverted from landfills*, litter and overflow can be a problem at unstaffed sites, and non-recyclable household trash may be thrown in with the recyclables.

## How Much Can Be Recycled?

In determining whether a waste diversion goal has been met, county officials can count yard trash, appliances, tires, and construction and demolition debris towards only half of the goal. That's because with the exception of tires and appliances, much of this waste winds up in demolition landfills—separate landfills for bulky materials from such activities as construction, land clearing, and demolition—that represent less of an environmental threat than sanitary landfills. And much of the wood and yard waste can easily be diverted through mulch and compost operations, which many cities and counties already have in place. The other half of the goal represents the greater challenge and the more expensive proposition for local government. This half must be achieved through diversion of such recyclables as paper, glass bottles, and aluminum cans—items that might ordinarily wind up in the kitchen garbage pail—and commercial waste such as office paper and cardboard. Solid waste from industrial, mining, or agricultural operations diverted from sanitary landfills cannot be counted towards the goal at all. Given these restrictions, can the state's goals be met?

Theoretically, high recycling rates are plausible. Japan recycles more than 50 percent of its solid waste, and European countries all have surpassed the 25 percent recycling rate, according to the EPA. Using the EPA domestic waste stream figures, if three-quarters of wood and yard waste and half of waste paper, glass, metals, food, and plastics were recovered, North Carolina could recycle more than 50 percent of its waste stream.

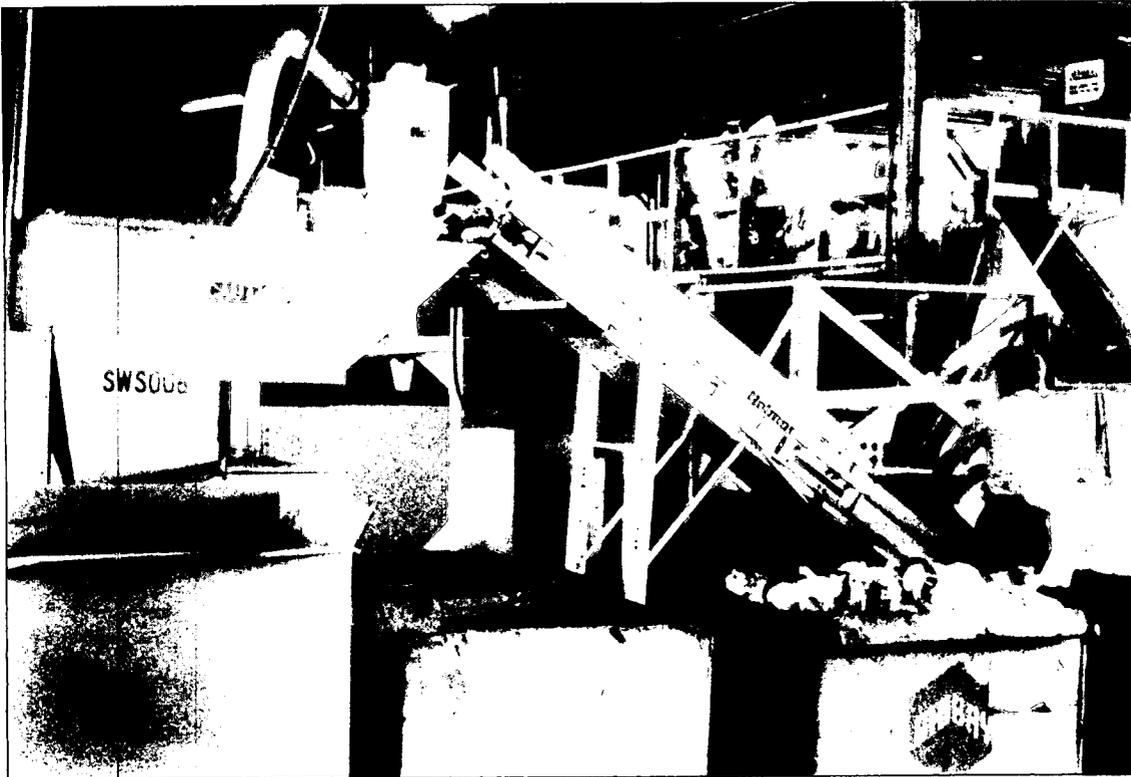
But a gap exists between what is theoretically possible and what is technically and logistically feasible. Although 80 percent of the waste stream is recyclable, material loss due to

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*"I unfolded the bag cuffs,  
released the latch and lifted  
out the bag [of garbage].  
The full stench bit me with  
shocking force. Was this  
ours? Did it belong to us?  
Had we created it? I took  
the bag out to the garage  
and emptied it. The  
compressed bulk sat there  
like an ironic modern  
sculpture, massive, squat,  
mocking."*

—DON DELILLO, *WHITE NOISE*,  
NATIONAL BOOK AWARD  
WINNER, FICTION, 1985

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Mike McLaughlin

**Worker monitors a conveyor belt at Mecklenburg County's materials processing facility.**

contamination, a less-than-perfect participation rate, and the fact that some recyclables inevitably end up in the trash cans of participants, push the feasible recovery rate down considerably.

As of FY 1993–94, only 19 of North Carolina's 100 counties had reduced their waste by 25 percent and 30 counties had actually *increased* their contribution to the waste stream in comparison to FY 1991–92. In 1995, lawmakers—realizing that the goals of the 1989 Solid Waste Management Act were not attainable—considered legislation that would have eliminated the 25 percent interim waste reduction goal.

### **What About Cost?**

One factor prohibiting many counties from recycling is cost. Many local governments and nonprofit recyclers had hoped residential recycling would function like a stand-alone business, with costs covered by revenue generated. These hopes have been dashed by unstable markets, expensive equipment, and high operating costs. Only unique

recycling efforts are self-financing. Yet the cost of even the state's most expensive recycling program—Mecklenburg's—represents a fraction of the cost of constructing a new state-of-the-art landfill or a waste-to-energy incinerator.

Capital costs for recycling can range from a few hundred dollars for a simple drop-off facility to hundreds of thousands of dollars for specially designed collection equipment and processing centers. Typically, the larger the percentage of waste diverted from the waste stream, the larger the cost. A tub grinder for chipping yard waste sets a local government back about \$150,000. A compartmentalized truck for curbside collection may run \$70,000. Shredders, balers, and storage buildings or material recovery facilities are all expensive capital investments. Operating costs such as insurance payments, wages, marketing and public relations costs, interest on loans, and transport costs must be figured into the recycling budget. Even consulting fees and other costs involved in planning a recycling program may be prohibitive for some local governments.

It's next to impossible to predict how much revenue these investments will yield. Markets are extremely volatile. Graphs plotting the prices

offered for aluminum and paper look more like EKG readouts than economic data. Even the price paid for usually lucrative aluminum cans is on a downward track. And the bottom has dropped out of the market for old newspapers, although there are signs of a recovery.

Most experts believe that the market for recyclables is demand driven; the demand for recycled materials determines the price offered for them, which in turn determines the volume of collected recyclables which can be marketed. But other solid waste specialists, particularly in the plastics industry, contend that the market is supply driven; if a stable supply of separated waste were available, entrepreneurs would find ways to process and market recyclables.

Uncertain markets and low revenue may make recycling look like a bad bargain until the benefits are totaled. Recycling diverts waste from the landfill and consequently lowers the landfill's operating expenses and extends the useful life of existing landfills. With landfill costs skyrocketing in the near future due to the new EPA regulations, rising land costs, and other factors, and with public opposition to siting new landfills, that picture will quickly change. Says Steve Reid, the state's former Solid Waste Division spokesman, "You can pay now or you can pay later. And later is going to be a hell of a lot more expensive."

### State Policy Shifting on Solid Waste Management

Traditionally, local governments have been left on their own to grapple with solid waste management problems. "What used to be

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*"The earth was the great garbage bowl. Everything discarded was flung on the earth and they did not care. Almost they liked to live in a milieu of fleas and old rags, bits of paper, banana skins and mango stones. Here's a piece torn off my dress! Earth, take it. Here's the combings of my hair! Earth, take them!"*

—D. H. LAWRENCE,  
*THE PLUMED SERPENT*

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an inexpensive service that counties and municipalities voluntarily provided their citizens has become expensive, and will become much more expensive in the near future," said the Legislative Research Commission report to the 1989 General Assembly on solid waste management.<sup>14</sup> "The clear trend is for states, in the interests of protecting the health of their citizens and their environment, as well as economic growth, to choose to become more involved in solid waste management, to provide leadership to the counties within their state, and to provide financial assistance or incentives to local governments."

Until the 1989 legislative session, North Carolina had only a few policies in place to encourage responsible solid waste management in general, and recycling in particular. Recycling and resource recovery equipment costs have been and remain deductible from franchise taxes or individual income taxes.<sup>15</sup> Such tax incentives encourage the purchase of recycling equipment and promote the development of the recycling industry. The Pollution Prevention Pays Program, established in 1983, encourages private industries and local governments to reduce or recycle potentially polluting wastes, and offers matching grants of up to \$5,000 to promote such efforts. The program has provided funding for waste stream analyses in some counties and maintains a library of information about recycling. The program also has contracted for two special publications—a statewide directory of recycling programs and contact persons, and a directory of markets for recycled materials.<sup>16</sup>

But these limited state efforts were not enough to prevent solid waste problems from getting worse. In 1989, the General Assembly recognized a larger state role in what until then largely had been considered a local concern. In addition to the Solid Waste Management Act, the legislature appropriated \$5 million to set up a financing agency authorized to borrow private money on behalf of local government for capital costs associated with recycling, composting, incinerating, and landfill construction.<sup>17</sup> The agency is expected to help local governments tap up to \$50 million in private funds.

But despite the new state role, the heavy lifting still takes place on the local level, both literally and figuratively. Local government must find new ways of dealing with tires, waste oil, lead-acid batteries, discarded major appliances, and yard trash, all of which is banned from sanitary landfills after 1993.<sup>18</sup> That's in

addition to the requirement that local governments submit solid waste management plans to the state, institute recycling programs aimed at meeting the state waste diversion goal, and actually divert 40 percent of waste from local landfills by the deadline.<sup>19</sup>

The law also hits the private sector on a number of fronts, including these: all plastic grocery bags must be recyclable; imprints that aid recycling will be required on certain plastic containers; and polystyrene products—such as plastic foam cups and the clam shell containers that keep hamburgers hot—must be recyclable. At least 25 percent of both plastic grocery bags and polystyrene products must be recycled or these products will be banned.<sup>20</sup>

## Conclusion

With the act, the state has laid the groundwork for a statewide assault on its solid waste management problem, with recycling as the major weapon to be deployed in the battle.

But to make recycling work on a statewide basis and to get a handle on the state's solid waste woes, the legislature must return to this issue in future sessions. What is needed is a statewide waste diet that incorporates government, industry, and private citizens.

The programs and policies already in place in cities and counties across the state provide a good starting point. Experience in these existing programs indicates the public is willing to recycle at a certain level on conservation grounds alone. And business is beginning to realize that recycling means good public relations and—in some cases—higher profits. But these motives alone will not be enough to push the state to its waste reduction goals. Strong economic incentives, a massive public education effort, and programs that maximize convenience will be required if the state is ever to recycle a large percentage of its waste. The Solid Waste Management Act represents the bold beginning of a long battle to slim down the state's bulging waste stream. But it is only a beginning.

## FOOTNOTES

<sup>1</sup> Chapter 784 (SB 111) of the 1989 Session Laws, now codified as N.C.G.S. 130A-309.01 to .86.

<sup>2</sup> G.S. 130A-309.04(c).

<sup>3</sup> "Scrap: America's Ready Resource," Institute of Scrap Recycling Industries, Inc., Washington, D.C., 1988, p. 18.

<sup>4</sup> Rolland Wrenn, "Recycling: A Good Idea Comes Around Again," the *Chapel Hill Herald*, Aug. 2, 1989, p. 4.

<sup>5</sup> Background for "The Solid Waste Dilemma: An Agenda for Action," Draft Report of the Municipal Solid Waste Task Force, Office of Solid Waste, U.S. Environmental Protection Agency, August, 1988, Chapter 1, p. 12.

<sup>6</sup> Background for "The Solid Waste Dilemma: An Agenda for Action," p. 2E-18.

<sup>7</sup> John Hodges-Copple, "Minimizing Solid Waste," Southern Growth Policies Board, 1988, p. 3.

<sup>8</sup> G.S. 14-399.

<sup>9</sup> G.S. 130A-309.04(b).

<sup>10</sup> G.S. 130A-309.10(f)(3).

<sup>11</sup> Philip J. Prete, Mary Beth Edelman, and Richard N.L. Andrews, *Solid Waste Reduction: Alternatives for North Carolina*, University of North Carolina Institute for Environmental Studies, October 1988, p. 23.

<sup>12</sup> "The Amazing All-Aluminum Can," *Phoenix Quarterly*, published by the Institute of Scrap Recycling Industries, Inc., Vol. 21, No. 2, Spring 1989, p. 8.

<sup>13</sup> G.S. 130A-309.10(e).

<sup>14</sup> "Solid Waste Management," Legislative Research Commission Report to the 1989 General Assembly, p. 4.

<sup>15</sup> Philip J. Prete, *A Solid Waste Agenda for North Carolina Cities and Counties*, The Conservation Foundation of North Carolina, May 1989, p. 16.

<sup>16</sup> The publications, produced under contract by the University of North Carolina Institute for Transportation Research and Education, are titled, "1988 Directory of North Carolina State and Local Contacts for Recycling Information and Assistance," and, "Directory of Industrial and Commercial Recyclers Serving North Carolina Businesses and Communities." The N.C. Association of County Commissioners also has distributed a helpful report, "Recycling: Perspectives for North Carolina Local Governments," by David Patte.

<sup>17</sup> Chapter 756 (SB 115) of the 1989 Session Laws.

<sup>18</sup> G.S. 130A-309.58(b), G.S. 130A-309.10(f)(1-4).

<sup>19</sup> G.S. 130A-309.09(d).

<sup>20</sup> G.S. 130A-309.10(c-e).



# Preserving the North Carolina Mountains: Time to Develop a Plan?

BY MIKE MCLAUGHLIN

*The mountain region trails the rest of the state in planning for and managing growth, despite a clear economic interest in protecting the beauty of the region for tourism. A mountain top has been leveled for a high-rise condominium, and mountain forests have given way to second-home subdivisions. Golf courses have been graded, billboards erected, and scenic vistas marred. And still the stream of newcomers flows, bringing new ideas, but also altering the politics and the mountain culture.*

*There are four clear options for protecting mountain resources. The state could: (1) require regional land-use planning for the mountains, as it has done for the coast; (2) mandate local land-use planning statewide; (3) avoid comprehensive strategies but attack specific environmental problems that would require some land-use controls; or (4) leave planning entirely up to local elected officials, who could adopt growth management strategies or leave it up to market forces to dictate how growth will occur.*

**S**hort of Murphy, Hayesville is about as far west as you can get and still be in North Carolina. Stoplights are still a novelty in this tiny town, the Clay County seat, population 600. One of the town's more notable economic development coups came when County Manager Carl Moore coaxed a Hardee's fast food restaurant to locate on the bypass.

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*Mike McLaughlin is editor of North Carolina Insight. Center intern Dale McKeel did much of the research for this article.*

But Moore is fond of loading visitors taken with the town's slow pace into his dusty pickup truck for a preview of what he is certain is soon to come—the same sort of bustling development that is occurring just across the county line in north Georgia. There the grass has barely sprouted at a fancy stone hotel and marina on Lake Chatuge, and already the proprietors are adding on. Second homes march up the mountainsides while red clay erodes down them. The Georgia Mountain Fair, with its sprawling facilities and prefab music hall, waits like a ghost



Hugh Morrison

town for the thousands of visitors it attracts every summer.

The highway is being widened all the way to Atlanta, and Georgia is planning a state park resort by Brasstown Bald, complete with a lodge, campground, and golf course. "They're going to pump people into north Georgia," says Moore. The spillover, Moore is convinced, will wash across Hayesville and Clay County, which stand between the Georgians and the Great Smoky Mountains National Park. Like any leader of a small town facing big changes, Moore is by turns delighted and frightened.

"I see this area has the potential of becoming the next small Pinehurst," says Moore. Six different golf courses exist, are planned, or are under construction. "We have an abundance of trout and hiking trails. Our link to the outside world is that way," he says, flinging an arm in the direction of Atlanta. "It [the highway] puts 3.2 million people in ready access to us. Hell, this is sad, but we're going to be overrun with people."

Clay is one of the state's poorest counties. Growth will put money in people's pockets and boost the county's property tax base. But Moore fears that without proper planning, the county is ill-prepared to manage the coming boom. "We have none," says Moore. "We have no land-use planning at this point."

Far across the mountains, in the northwest region of the state, the town of Blowing Rock confronts another kind of problem. Perched on the edge of the John's River Gorge, the town has long been a tourist mecca, boasting of the state's oldest travel attraction, Blowing Rock. There tourists plop down \$3 to gaze off into the vast emptiness of the gorge and wonder whether it really snows uphill, as the brochure claims.<sup>1</sup>

The town has been a quaint oasis where summer residents rubbed shoulders with native mountaineers and Appalachian State University students looking for a cold beer. Now its popularity has mushroomed. The sidewalks are jammed in summer with tourists lapping ice cream cones, examining high-dollar antiques and crafts, and nibbling Mackinac Island fudge.

Out on the bypass, near the entrance to the Blue Ridge Parkway, a strip shopping center of outlet stores beckons, promising "factory direct savings" in a resort setting. The bypass is becoming congested with chain motels and fast food eateries. The problem again is growth—and how to preserve what is good about Blowing

Rock while keeping cash registers ringing. It's a problem every growing community must confront, but for a town depending on its aesthetic appeal to survive and thrive, the issue becomes more crucial.

But unlike Hayesville and Clay County, Blowing Rock has a full set of ordinances to manage growth. Zoning is restrictive and enforced, the town has a sign ordinance and a noise ordinance, and proposed new construction is reviewed for appearance and architectural appropriateness. "We want to maintain the charm of our little town," says Blowing Rock Town Council member J.B. Lawrence. "If we can keep it the way it is now for as long as we can, I think we can be proud of it. I think that's the main concern of our entire town council." Without these growth management tools in place, says Town Manager Chris May, the chances of preserving the character of Blowing Rock would be "next to none."

### Old Customs and New Ideas

**T**he stories of Clay County and Blowing Rock are microcosms for what is going on throughout the North Carolina mountains. There still are forgotten hollows, but towns and counties across the region are either poised to grow or struggling to manage growth that is almost beyond their control. Natives and newcomers are rubbing shoulders uneasily, eyeing each other suspiciously, and pitting old customs against new ideas. And increasingly, the question is becoming not *whether* to manage growth but *how*.

Leaders in the mountain region point to a number of examples that stand as monuments to poor planning, including the following:

- residential and commercial development that has gobbled up most of the land suitable for industrial development in some mountain counties, fostering dependency on the low-wage and seasonal tourist industry;
- unsightly commercial strip development along spectacularly scenic routes, a problem which likely will become worse as intrastate highways financed through the state's highway improvement package are built;
- a proliferation of billboards that block views and clutter the landscape;

- extensive cutting of forests, which mars mountain scenery and threatens the environment;
- residential development in watersheds and along pristine mountain trout streams, which threatens water quality; and
- slap-dash second home developments with poorly designed gravel roads that erode away to the point of impassability and with rocky soil that will not accommodate a septic tank for sewage treatment or a well to supply water.

But despite these kinds of problems, many people worry that a region long resistant to any kind of land-use planning won't work through its differences about how to plan in time to preserve what is special about the North Carolina mountains. They worry that the fast buck artists and a handful of irresponsible developers will, as more than one person put it, "kill the goose that laid the golden egg." There is antipathy toward even minimal planning efforts, and there are communities across the region where, as the local politicians tell it, one dares not even mention the Z word—zoning. In fact, conventional wisdom holds that the quickest way out of elected office in western North Carolina is to become a strong advocate of land-use regulations. The theory goes that a Scotch-Irish heritage and decades of self-sufficient isolation in the hardscrabble mountains have fused to form a fierce resistance to anyone telling a native mountaineer what to do with a piece of land. Those who would buck this tradition would be ridden out of office on a rail.

The General Assembly also must share the blame for the lack of land-use planning in the region. Two decades ago, in rejecting the Mountain Area Management Act,<sup>2</sup> the legislature elected not to require planning in the mountains. At the same time it imposed a mandatory planning program on the North Carolina coast. Since then, the Coastal Area Management Act<sup>3</sup> has been cited time and again as a national model for planning to protect a fragile resource.<sup>4</sup> Meanwhile, the mountains have languished without a regional plan and with fragmented and limited local planning efforts.

Public officials and private citizens interviewed across the region acknowledge that they trail the rest of the state in planning for growth

and change, and point to local politics in assessing blame. They express concern that steady growth coupled with a relative lack of controls leaves precious natural resources vulnerable. The risk, they say, is that the very qualities that draw people to the North Carolina mountains—scenic beauty, clean air, and pristine mountain streams—will be destroyed by rampant growth.

There appears to be broad agreement that the promises and pitfalls of growth are cause for concern in the North Carolina mountains. But what should be done to manage growth, and what is the appropriate role of the state?

Here the consensus breaks down, but four clear options emerge from the debate. The state could: (1) step in and require regional land-use planning for the North Carolina mountains, as it has done at the coast; (2) require every county in the state to do land-use planning as part of a comprehensive growth management strategy; (3) attack specific environmental problems through legislation and avoid comprehensive strategies; or (4) stay out of the picture entirely, rendering technical assistance as it now does. This approach leaves the decision up to local elected officials, who could engage in land-use planning or let the

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## *Glossary of Selected Land-Use Planning Terms*

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**Land-Use Plan**—A document developed after a series of public hearings that identifies preferred use for land within a community, such as agricultural, residential, industrial, or commercial. Such plans serve as a tool for guiding growth and can provide the legal underpinning for zoning ordinances.

**Zoning Ordinance**—An ordinance that governs how property will be used—such as for residential, commercial, or industrial purposes—and dictates the density at which development can occur. For example, a certain residential zone might allow only one housing unit per acre, while another zone might allow a mix of commercial and residential uses at a much higher density.

**Capital Improvements Program**—Identifies sites and sets out a timetable for constructing and a plan for financing such facilities as parks, schools, fire departments, and water and sewer systems.

**Watershed Protection Ordinance**—Governs development within a watershed, covering such criteria as what percentage of an acre of land can be covered with impermeable surfaces and how storm water runoff will be controlled.

**Subdivision Ordinance**—Sets minimum criteria for subdividing property for development, such as lot size, setbacks, road width, and erosion control.

**Sign Ordinance**—Controls size and placement of signs.

**Planning Board**—Performs planning duties as assigned by a board of county commissioners or a town council, such as reviewing development proposals for compliance with a subdivision ordinance.

**Board of Adjustment**—Considers requests for exceptions to or variances from ordinances, most commonly zoning changes.

market dictate growth. A case can be made for each of these approaches.

### **Option 1: The Case for Mandatory Regional Planning in the Mountains**

Advocates of mandatory regional planning point to the success of the Coastal Area Management Act in establishing a role for the state in regulating development along the North Carolina coast.<sup>5</sup> “We feel that land-use planning is something that needs to be done if the mountain counties are going to have some control over our own destiny,” says Bill Thomas, a Brevard resident and president of the North Carolina chapter of the Sierra Club. “It could be modeled after CAMA,” says Thomas. “CAMA appears to have been a reasonable success. It hasn’t stopped development, but it has restricted it in areas that shouldn’t be developed. I don’t know how any forward-looking person could be opposed to land-use planning.”

A regional land-use plan based on CAMA would have two basic components: a process by which each county would develop and adopt a land-use plan and a means of designating “areas of environmental concern.” A special state permit would be required before major development could occur in areas of environmental concern. The act would be administered by a commission which represented various interests and would be supported by a professional staff. “It establishes a role for the state,” says Bill Holman, who lobbies for the Conservation Council of North Carolina, the Sierra Club, and the N.C. Chapter of the American Planning Association.

And requiring the mountain counties to plan would take the heat off county commissioners, who could lay the blame for mandatory planning on the state. “Really, the situation is so political, I don’t think many boards of commissioners can enact any land-use regulations or land-use restrictions and survive,” says Ed Israel, executive director of Western North Carolina Tomorrow, a planning and economic development agency at Western Carolina University in Cullowhee. Israel points to several instances in which a firestorm of criticism forced local elected officials to reverse themselves on land-use planning decisions. “Back in the early 1970s, Buncombe County enacted a

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*If people in general could be got into the woods, even for once, to hear the trees speak for themselves, all difficulties in the way of forest preservation would vanish.*

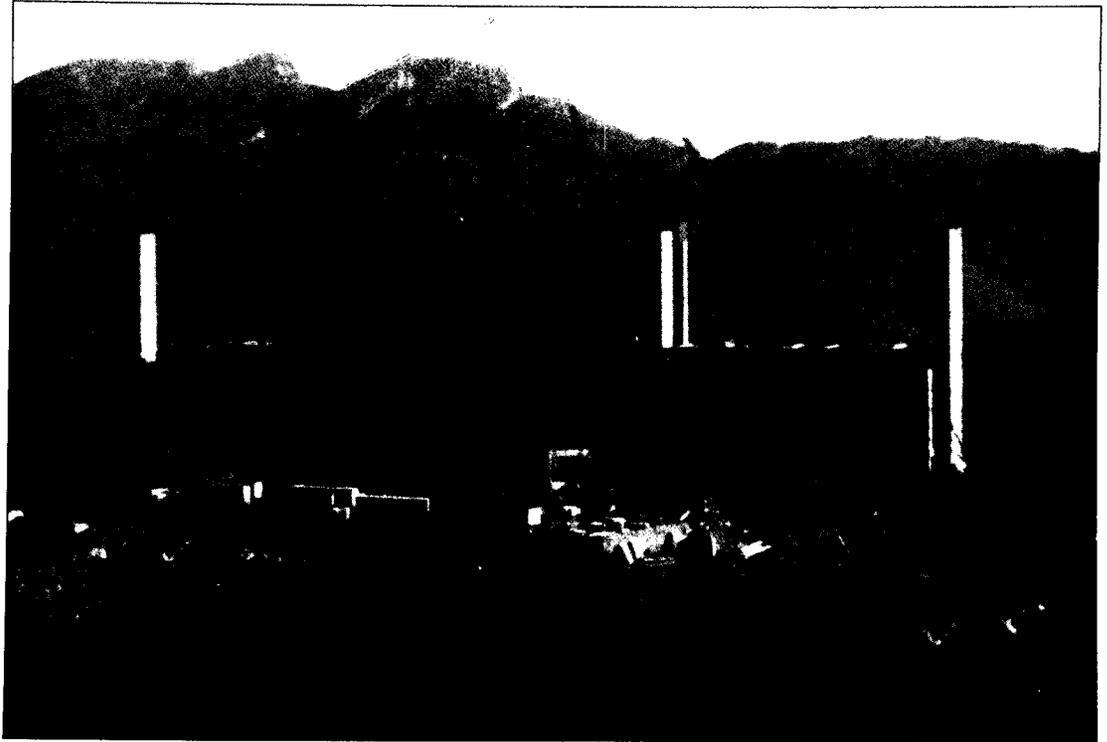
—JOHN MUIR

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land-use plan and had a special session the next day and repealed it. Haywood County passed a subdivision ordinance, and it lasted three days.”

Israel says a number of factors inhibit the development of land-use regulations in the mountains and necessitate the intervention of the state. Partly, it’s tradition. “There’s the old mountain attitude. ‘This land was my granddaddy’s and my daddy’s, and now it’s mine, and I’ll do with it as I please,’” he says. There is also a cultural clash. That newcomers push for more regulations only stiffens the resolve. “When new people from the north come in and start demanding these things, there is an automatic resistance on the part of the local people,” says Israel. Intervention by the state would be one way to resolve the political impasse. “We certainly can’t continue to drift,” says Israel. “If it’s done tomorrow, it will be too late in some instances.”

Western North Carolina Tomorrow, which acts on behalf of 17 western North Carolina counties, passed a resolution on Dec. 10, 1990, calling on the General Assembly to enact legislation mandating growth management planning in the North Carolina mountains. The resolution asks that the state provide money and other incentives to all of the mountain counties for planning and for developing ordinances to regulate growth. It also seeks an opt-out provision so that counties can conduct a referendum on whether to participate. Few advocates of better growth management believe a carbon copy of the original Mountain Area Management Act would soar through the legislature and into the law books. “I agree that there’s not much being done up here right now,” says Hugh Morton, owner of Grandfather Mountain, a scenic attraction in Linville. “I don’t know whether the mood has changed sufficiently to have such a thing meet with success. It [the Mountain Area Management Act] got killed last time be-



***This high rise condominium project, shown under construction on Little Sugar Mountain near Banner Elk, led to a 1983 law governing ridgetop development.***

cause some opponents were able to say with some degree of truth in it that you couldn't build a hen house without getting a permit from Raleigh—and they killed it dead.”

Morton says a Mountain Area Management Act might have a better chance of passing the General Assembly if it had an opt-out provision such as that included in the 1983 Ridge Law. That law—passed when a developer leveled the top of Little Sugar Mountain in Avery County and constructed a 10-story condominium complex—forbids construction of buildings more than three stories tall on ridgetops above 3,000 feet.<sup>6</sup> Morton, a chief proponent of the law, says a provision for an opt-out referendum insisted upon by then-Speaker of the House Liston Ramsey (D-Madison) assured its passage. Of the mountain counties, only Cherokee in the far west held a referendum, and the voters overwhelmingly endorsed the law. “That kind of more intelligent approach is going to have to be made if anybody is going to make headway,” says Morton.

### **Option 2: The Case for Statewide Mandatory Land-Use Planning**

Some planning advocates argue that the best way to make sure that land-use planning takes place in the mountains is to require it for the whole state, a path followed by a number of states, including Oregon, Vermont, Florida, Virginia, and most recently, Georgia. Proponents say mandatory statewide planning would defuse the criticism that the mountain counties are being targeted unfairly for a higher level of regulation than the rest of the state. “Minimum standards for the whole state might fly,” says Bob Shepherd, executive director of the Land of Sky Regional Council, which represents Buncombe, Henderson, Madison, and Transylvania counties. “You can't single out the mountains and say, ‘Gee, we've got to protect those people up there.’ They're too independent and too stubborn to let the people in Raleigh tell them what to do.”

Holman, the environmental and planning lobbyist, has also come to support a statewide approach. "Politically, it's going to be very difficult to get the rest of the state to impose a Mountain Area Management Act on the mountains," says Holman. "It might even be easier to pass a statewide program." Holman says the idea would be to link state investment in infrastructure to local planning. "If you want a road, you've got to do the plan," he says. "The state could also encourage local planning and land-use regulation by acting consistently with local plans. For example, the state should deny a wastewater discharge or air quality or mining or whatever permit to a project that is inconsistent with a local plan or ordinance."

Holman has become a mild critic of CAMA, saying it has become increasingly difficult to protect environmentally sensitive areas under the act. "Regulation in areas of environmental concern has been helpful on the coast, but the state has been reluctant to use those powers," says Holman. As evidence, he cites the fight to preserve maritime forests. "I think environmentalists may win that [regulatory] battle, but there may not be any maritime forests left by the time we do," Holman says.

Georgia's program establishes minimum standards and procedures for planning, requires state, regional, and local land-use plans, and establishes a critical areas program for protecting mountains, wetlands, and coastal areas.<sup>7</sup> The state provides funding for planning at the regional level, but as Holman has suggested for North Carolina, local governments that do not comply with planning requirements are denied state funds for infrastructure such as water and sewer systems and roads. Such a program would be expensive to implement for North Carolina, and Holman says it would be difficult to adopt without strong executive branch support. "In other states where they have a policy, it took a strong push by the governor to get it," says Holman. "Until we have executive branch support, we have to take it one step at a time."

Holman points out that one of the goals of the Commission on the Future of North Carolina was that all of the state's 100 counties have a land-use plan by the year 2000. Mandatory land-use planning would be one way to accomplish that goal.<sup>8</sup>

Still, there will be those who argue that a statewide program is unnecessary, like Grandfather Mountain's Hugh Morton, who believes

the mountains are in need of special protection but is not convinced about the Piedmont. "We've already got CAMA for the coast," says Morton. "The main metropolitan areas of the Piedmont are implementing zoning on their own. I don't know that it's necessary to make it the whole state." The mountains, Morton argues, have certain characteristics that require a higher level of attention—like steep slopes that cause rapid runoff and stream-choking erosion when development isn't managed properly. And of course there is the scenic beauty that must be preserved if the region is to continue to attract the hordes of tourists and second-home settlers.

Morton believes there is a chance that the mountain region—properly approached—can be nudged toward more management of growth. "Moderation is the key to everything," says Morton. "The people who want to build Rome in a day with zoning laws will get their ears pinned back. The people who are reasonable and moderate in their approach might get somewhere and might do some good."

But Bill Gibson, director of the Southwestern North Carolina Planning and Economic Development Commission, believes efforts to encourage growth management in the mountain counties have failed. One way or another, he says, the time has come to require a stronger planning effort. What would Gibson, who works

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***Nine years have passed since this book first came from the press. My log cabin on the Little Fork of Sugar Fork has fallen in ruin. The great forest wherein it nestled is falling, too, before the loggers' steel. A railroad has pierced the wilderness. A graded highway crosses the county. There are mill towns where newcomers dwell. An aeroplane has passed over the county seat. Mountain boys are listening, through instruments of their own construction, to concerts played a thousand miles away.***

—HORACE KEPHART, *OUR SOUTHERN HIGHLANDERS*,  
PREFACE TO 1922 EDITION

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with the state's seven westernmost counties, see as minimum standards that every county should have in place to grapple with growth? "I think in general, pre-development ordinances are a good idea," Gibson says. "That way, the developer is forced to come in and touch all the right points—sedimentation and pollution control, water and sewer—before he ever begins developing the property. For a lot of governments here, the horse gets out of the barn before the developer understands what is required and before local government knows that development is occurring." Subdivision regulations for the mountain counties also are a must, Gibson says.

Mandatory zoning, Gibson says, would go too far. "We're a long way from getting, or perhaps even needing, a countywide land-use plan that gets down into very specific countywide zoning. We need more overlay kinds of procedures and processes that steer development."

Like Morton, Gibson is convinced that a certain level of development and growth is healthy. Indeed, promoting orderly growth is one of the roles of regional councils of government. "I am not in any way suggesting that we stop development—roadblock it," says Gibson. "I just want it done properly. We need to properly steer and guide and shoehorn development, if you will, so that it fits properly."

### **Option 3: The Case for Legislation that Attacks Specific Environmental Problems**

There are also those who believe that neither regional nor statewide mandatory land-use planning is appropriate; they think the better course is legislation and regulation that

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*Our mountain farmer, seeing  
all arable land taken up, and  
the free range ever narrowing,  
has grown jealous and  
distrustful, resenting the  
encroachment of too many  
shares in what once he felt was  
his own unfenced domain.*

—HORACE KEPHART, *OUR SOUTHERN HIGHLANDERS*

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attacks specific environmental problems. Examples are the high-quality waters regulations that control development along 900 miles of North Carolina streams and rivers, including mountain trout streams, and the statewide Watershed Protection Act, which requires counties to control land use and density of development in watersheds.<sup>10</sup> "We're interested in watershed protection," says Joe Furman, Watauga County planning director. "One of the major goals for Watauga is protection of our water supply. It's an issue that natives and newcomers can agree on." Broader land-use planning, on the other hand, is "a local government function," says Furman. "It's a choice that local governments have to make."

Yet these water quality protection laws have been described as "land-use management creeping up the rivers and creeks." Furman concedes that he sees no other way to enforce the density requirements of the Watershed Protection Act except through zoning. And citizens and politicians across the region are complaining that the guidelines were developed with too little local input.

Virgil Odell, co-chairman of the Cherokee County Board of Commissioners, is deeply troubled by the high-quality waters designation, which he says will block needed development. "It'll ruin us," says Odell. "It'll keep us from building new homes. We can't have no factories in here. . . . The Sierra Club out of California is what's got us all buffaloed. If you read the fine print, it's all in there. It's one of the zoning outfits." Odell is not flatly opposed to all land-use regulations, but he says mountain waters are as clean or cleaner than those of the Piedmont, and he resents outsiders coming in and dictating what Cherokee County citizens can do with their property.<sup>11</sup>

And Odell is not alone in bemoaning the impact of these water quality protection measures. Region D Council of Governments director Dick Fender says county officials in the northwest are in an uproar about the Watershed Protection Act. In Wilkes County, for example, watersheds make up 90 percent of the county. "That effectively makes it a no-growth county," says Fender. "With the initial regulations, obviously not a hell of a lot of thought was given to the expense and impact. It puts us in a defensive, aggressive posture." Adding mandatory land-use controls to the mix, says Fender, would be "a lot for people to swallow."<sup>12</sup>

#### Option 4: The Case for Doing Nothing

Fender says the timing is wrong for any kind of comprehensive land-use planning program. "We are experiencing problems, yes, as a result of growth, and we need regulation. But I'm not sure it's salable right now in our region and throughout the [mountain] region." Some say the best course is to let local land-use ordinances evolve at their own pace. But will community efforts be too little, too late? A number of mountain leaders fear the answer may be yes.

Dick Miller, a former Ashe County manager and now president of the local chamber of commerce, says efforts to establish land-use planning in that county have been futile despite a pressing need. The planning board saw a year and a half of work on its subdivision regulations thwarted when the county commissioners—under heavy political pressure—repealed them after only six months on the books. "Everybody agrees that, 'Yeah, something ought to be done. We don't want to see Ashe County become another Watauga or Maggie Valley, but no, don't tell us what to do with our land,'" says Miller. "We've got a lot of rubber tire tourists coming this way, and we're doing our best to attract tourists, but the very beauty that attracts people to the area stands to be lost if we don't plan for growth."

Ashe County Manager Mike Dixon says the subdivision regulations were repealed because county residents worried that they could not divide their land and pass it to their children without getting approval from the county. He says he would rather have Ashe County implement regulations on its own than have the state require them, but he concedes that for the short term, any local land-use planning initiative is unlikely.

These kinds of political stalemates at the local level have caused some mountain leaders to conclude that prompting is needed from the state. "Somewhere along the line, we need to do something," says Bjorn Dahl, U.S. Forest Service supervisor for the national forests in North Carolina. "Government needs to take a leadership role." Dahl says he sees private forests being "logged, subdivided, and put into residential, commercial, and industrial use" at an alarming rate. He worries about what that will do to the ecosystem. Highway system improvement and expansion will only accelerate the trend. And Dahl sees a disturbing lack of fore-

thought in local government decision making. "There is no county planning or zoning, no deliberate thinking about where this is going to go and where that is going to go. . . . There has to be a regional sense of how are we going to deal with all these things."

Tom Massie, Jackson County director of planning and economic development, agrees that the current hodge-podge of isolated local planning efforts is not enough. "We have to have something on a regional basis to coordinate efforts in western North Carolina. Otherwise, the richer counties are going to make the investment to protect whatever their quality of life is, and the poorer counties are not going to be able to afford to do that." And Massie says the time to act is now. "We're where Florida was 20 years ago," he says. "They're one of the most restrictive states in the nation, but it doesn't do a whole lot of good because everything they can develop has been developed. It's a case of closing the barn door after the horse is out."

Adds Gibson of the Southwestern North Carolina Planning and Economic Development Commission, "You talk to folks privately who are county managers or commissioners and you will get general agreement that we are already behind the eight ball and need to get into growth management in a more functional way than we are now. To get that same thing said and supported in a public way is a different question."

#### Approaches for the State

Given the region's reluctance to plan for and manage growth on its own, how should the state approach the problem? The options for protecting mountain resources, again, are: (1) regional land-use planning; (2) statewide mandatory land-use planning; (3) more problem-specific laws like the Watershed Protection Act, or (4) voluntary local land-use planning with new incentives from the state. And of course there is always the option of doing nothing and letting "the market" decide. Here are a few avenues for putting any one of these options in place:

- (1) *The legislature could enact a Mountain Area Management Act, revising the original proposal to assure adequate local input, perhaps even adding the opt-out provision included in the ridge law.*

- (2) *The governor or the legislature could appoint a blue-ribbon task force to set about formulating a mandatory and comprehensive land-use planning program for the state of North Carolina.*
- (3) *The state could set minimum standards for county planning and regulation and force all 100 counties to comply.*
- (4) *The state could make money or other incentives available for counties to do land-use planning, but not force them to do it.*

Whatever the approach, the mountains are a North Carolina treasure, and there is a clear state interest in preserving them for future generations to enjoy. How far the state needs to go in regulating growth across the region and what the state's role ultimately should be is a question that is yet to be resolved. But clearly it is a question that must be addressed—and soon.

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*I make my living on  
Blue Ridge Lake.*

*The water keeps giving  
whatever I take.*

*Froglegs, minnows, and  
catfish steaks—*

*I make my living on  
Blue Ridge Lake.*

—MIKE CROSS

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## FOOTNOTES

<sup>1</sup> A brochure handed to visitors at The Blowing Rock makes two references to snow that falls upside down, including the following: "The current of air flowing upward from The Rock prompted the Ripley 'Believe-It-Or-Not' cartoon about 'the only place in the world where snow falls upside down.'"

<sup>2</sup> Chapter 1284 of the 1973 Session Laws (2nd Session), now codified as G.S. 113A-100-128.

<sup>3</sup> HB 1374 of the 1973 session, H.B. 596 of the 1975 session.

<sup>4</sup> See, for example, John M. DeGrove, "The Politics of Planning a Growth Management System: The Key Ingredients for Success," *Carolina Planning*, Vol. 16, No. 1, Spring 1990.

<sup>5</sup> For an evaluation of the performance of the Coastal Area Management Act in regulating coastal development, see Bill Finger and Barry Jacobs, "Coastal Management: A Planning Beachhead in North Carolina," *N.C. Insight*, Vol. 5, No. 1 (May 1982), pp. 2-13. For more on North Carolina's land resources and tensions between planning and development, see Larry Spohn, "Protecting the Land and Developing the Land: How Can We Do Both?" *North Carolina Insight*, Vol. 10, No. 2-3 (March 1988), pp. 94-106; and Bill Finger, "How Do We Gauge Progress or Decline in Land Resources?" *North Carolina Insight*, Vol. 11, No. 1 (October 1988), pp. 15-20.

<sup>6</sup> Chapter 676 of the 1983 Session Laws, now codified as G.S. 113A-205-214.

<sup>7</sup> Ga. Annotated Code 50-8-7.1(a)(1). See also Joel H. Cowan, "Quality Growth Partnership, The Bridge to Georgia's Future," final report of the Governor's Growth Strategies Commission, Nov. 2, 1988, pp. 13-15.

<sup>8</sup> *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. 148.

<sup>9</sup> Morton has himself become the target of criticism because of plans to sell 900 acres on the lower slope of Grandfather Mountain for development. Morton says he is minority owner in a partnership and therefore cannot control the decision to sell the property. "The land in question is down in the valley from the high ground land that I own that is usually considered to be Grandfather Mountain," says Morton. "I have not offered for sale any Grandfather Mountain land that came to me in 1952 in the division of family property, other than to provide right of way and buffer zone for the Blue Ridge Parkway, so the high ground of Grandfather Mountain is thoroughly protected. That is land I control, and it is wrong for anyone to implicate me with regard to land I do not control."

<sup>10</sup> Chapter 426 (HB 156) of the 1989 Session Laws, now codified as GS 143-214.5.

<sup>11</sup> A spokesperson for the Division of Environmental Management in the Department of Environment, Health, and Natural Resources says the high quality waters regulations would not prevent industrial or residential construction along a designated stream but would hold development in these areas to higher standards. For example, an industry along a native trout stream would have to pre-treat any waste water and take it to a county or municipal treatment facility rather than discharging it directly into a stream. Residential construction beyond a density of one house per two acres would require a storm water detention system to control runoff.

<sup>12</sup> Bradley Bennett, an environmental engineer in the Division of Environmental Management, says restrictions will not necessarily apply to an entire watershed. He says it has not yet been determined how much acreage in Wilkes County will fall under the regulations.

# Charting a Course for Our Coast

BY THE NORTH CAROLINA COASTAL FUTURES COMMITTEE

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*“I find the great thing in this world is not so much where we stand, as in what direction we are going. To reach the port of heaven, we must sometimes sail with the wind and sometimes against it—but we must sail, and not drift, nor be at anchor.”*

—JUSTICE OLIVER WENDELL HOLMES, JR.

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**N**orth Carolina’s coastal areas—its sandy beaches and shallow sounds, freshwater rivers and brackish estuaries—are among its most valuable natural resources.

The State boasts 320 miles of beachfront, the sixth largest coastline in the nation. Behind these low-lying barrier islands lies a rich water-scape comprised of 2 million acres of sounds and thousands of acres of bays, tidal creeks and

marshes. Feeding these salty sea and sound waters are seven major river systems, some stretching across the state.

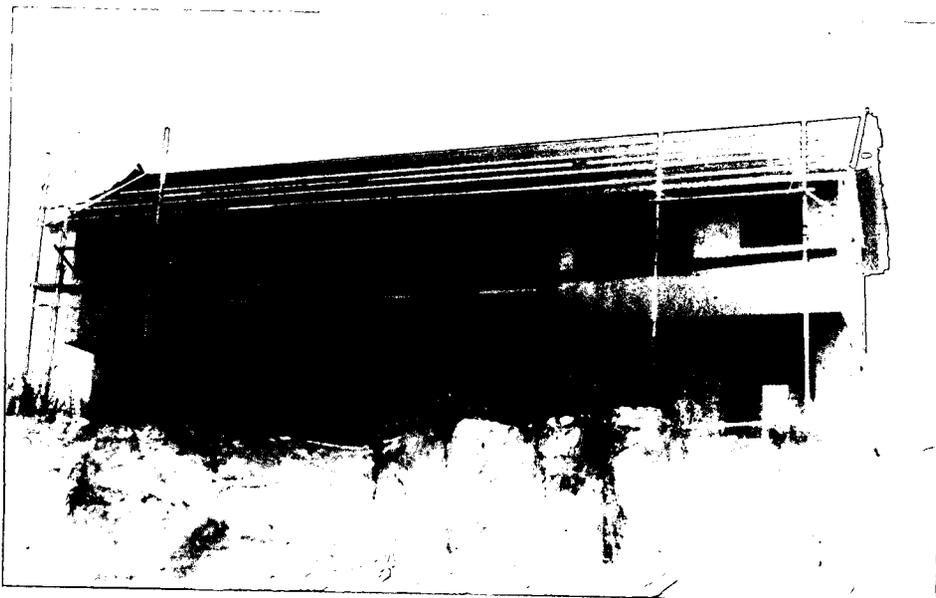
Taken together, the state’s coastal waters form an estuarine system second in size only to the Chesapeake Bay.

Twenty years ago, recognizing that rapid growth was endangering the coast, a group of bold visionaries took steps to protect and preserve this precious natural heritage. In 1974, the state passed the Coastal Area Management Act, CAMA. CAMA represents the state’s first attempt to form a partnership to protect coastal resources by integrating local land use planning with state regulation. One of the earliest and most progressive programs of its kind in the nation, CAMA’s accomplishments have been far-reaching.

As a result of this landmark legislation, North Carolina now bans sea walls, concrete bulkheads and rock revetments that harden the oceanfront and destroy beaches. Vital estuarine areas and marshes, where salt and freshwater mix, have been protected and provide habitat for fish,

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*This article is excerpted from The North Carolina Coastal Futures Committee, L. Richardson Preyer, Chairman, Charting a Course for Our Coast: A Report to the Governor, September 1994. It is reprinted with the permission of the N.C. Department of Environment, Health, and Natural Resources. The 20th anniversary of CAMA presented an excellent opportunity to review its accomplishments, assess its shortcomings, and chart a new course of action for the next 20 years and beyond. In celebration of North Carolina’s unique coastal resources, Governor James B. Hunt, Jr. declared 1994 the “Year of the Coast.” He also created the Coastal Futures Committee, a group of 15 appointed members charged with studying current management efforts and drafting recommendations for future action.*



**New house at Figure Eight Island about to be undercut by the ocean.**

plants and wildlife. Thousands of acres of maritime forest have been saved from destruction, including a significant portion of Buxton Woods at Cape Hatteras, the state's largest intact maritime forest. Visitors have unprecedented access to the state's beaches thanks to an innovative program that opens public pathways to the sand. And perhaps most importantly, all local governments in the 20 coastal counties have adopted land use plans as a tool to manage development and protect natural resources.

But 20 years after the enactment of CAMA, North Carolina's coast faces new threats from unprecedented growth and unexpected environmental dangers. In recent years, reports of fish kills have been on the rise. Recently, a toxic dinoflagellate, or single-celled algae, has been blamed for 30 to 50 percent of the major fish kills annually in North Carolina's estuaries. Fisheries officials report that 18 of the state's 26 commercially important fish species are showing severe signs of overfishing or environmental stress.

Studies also reveal that nearly a third of the state's rivers and streams are impaired by pollution and as much as a third of the state's groundwater is possibly contaminated. Meanwhile, North Carolina ranks 47th among the 50 states in spending on water quality and water quality programs and 43rd in per capita spending on all environmental programs, according to the

Green Index, a ranking of states' environmental programs.

One of the greatest challenges facing the coast is how to deal with exploding growth. During the 1980s, the coastal population grew at a rate almost twice that of the entire state. Six counties registered increases of more than 25 percent, led by Dare County at 70 percent, while four counties lost population at an annual rate of 3 percent or more. By the year 2000, most coastal counties will see growth rates of at least 20 percent.

In Craven and Carteret counties, officials are preparing for an unprecedented population boom expected from the expansion of the Cherry Point Marine Corps Air Station. Growth of the military base and plans for a Global TransPark in nearby Kinston will add significantly to earlier population projections for surrounding counties. Planned bridges and improved highways will bring still more growth pressures. While opportunities for balancing environmental and economic issues abound, intelligent choices can be made only if we keep our eye on the future.

### **North Carolina:**

#### **A Leader in Coastal Management**

North Carolinians were loving their coast to death by the early 1970s. Marshes were being filled at an alarming rate. Residential, commercial and agricultural development was threatening the very natural systems that attracted people to the coast. Scattered laws gave some protection to some resources, such as sand dunes and estuaries, but there was no umbrella legal framework. For every example of thoughtful development, there were several more instances of ill-advised, quick-profit projects. Something had to be done.

With the environmental movement on the rise, coastal residents, environmentalists and political leaders from across the state began to fashion a comprehensive coastal plan for North

Carolina, one that focused on striking a balance between conservation and development. A 1973 proposal was shelved by the General Assembly because of the perception that it looked more to Raleigh than the coast for inspiration. A revamped 1974 bill put greater emphasis on local involvement, local planning, and a balance between regulation and property rights.

After two years of some of the most bitter political debate in the state's history, the General Assembly passed the Coastal Area Management Act, CAMA, in 1974. Resentment against CAMA surfaced in 1977 in bills to repeal the law. They died in committee. The law also was attacked in the courts. But in 1978, the N.C. Supreme Court declared CAMA constitutional. As promised by the Federal Coastal Zone Management Act of 1972, federal planning and administrative grants began to flow into North Carolina and other states that had taken the lead in coastal programs. State planning grants to coastal communities matched federal aid. CAMA was a reality.

### What is CAMA?

**T**he 1974 Coastal Area Management Act, CAMA, established the North Carolina Coastal Management Program as the planning and regulatory program for the state's coast. It laid down a blueprint for developing land use plans for the 20-county coastal area, identifying critical areas in need of protection ("Areas of Environmental Concern") and installing a permit system to guide development in these critical areas. Policy decisions are made by the Coastal Resources Commission, whose 15 members are appointed by the governor. The commission is made up of citizens, not bureaucrats. Twelve of its members must live in the 20-county coastal area. Commission members set guidelines and try to resolve conflicts among competing interests. The commission is assisted by an advisory council made up primarily of persons nominated by elected officials from local governments on the coast.

Planning is one of CAMA's key elements. As a result of CAMA, for the first time all 20 coastal counties and 67 cities and towns in those counties adopted land use plans. Updated every five years, the plans serve as guides for development. They also force people in those counties to ask some tough questions about what they

want their communities to look like. Where should industry be located? What areas should be left open for recreation? Will there be enough water to handle growth?

State and federal money covered most of the local costs of producing the early CAMA plans. As a result, plans usually were produced and adopted in a timely fashion with a minimum of friction. Because they are required to have land use plans, many coastal counties and communities now have planning boards and planners—and individual citizens are more involved in planning issues. The use of the plans as a way to solve problems has gradually improved and expanded. Getting citizens and local elected officials involved, and regularly evaluating and updating the plans, have been the keys to their success.

The regulatory program is CAMA's other key element. Permits are required for land development in certain, limited areas along the coast. These Areas of Environmental Concern, AECs, are carefully defined in the law and in the regulations. The CRC gave a high priority to establishing AECs during CAMA's early years, and the initial designations were completed in 1977. They included coastal wetlands, estuarine waters, public trust waters, well fields for public water supplies and several kinds of natural hazard areas—particularly ocean beaches, inlets and highly erodible areas. Three very important additional areas of protection have been added in the last few years: outstanding resource waters, freshwater primary nursery areas and submerged aquatic vegetation. Within these AECs, any development requires a permit and must comply with strict standards and local land use plans. Permits for "major" developments are issued by the state, while "minor" permits generally are handled on the local level.

Aside from setting policy and adopting AEC rules, the Coastal Resources Commission also serves as a quasi-judicial body in deciding permit and enforcement appeals and variance petitions. The commission also provides the basis for reviewing federal projects in the 20 coastal counties to ensure that they are consistent with state and federal guidelines.

### Coastal Reserve and Beach Access

**I**n the late 1970s, it became apparent that planning and regulations wouldn't be

enough. A program to acquire sensitive lands was another necessary component of an effective coastal management program. To fill this void, two land-acquisition efforts were added to CAMA in the 1980s—the coastal reserve and the beach/coastal waters access program.

With the aid of federal grants to CAMA, North Carolina had been acquiring sensitive coastal land for research and education since 1982. Amendments to CAMA in 1989 formally authorized the state-level expansion of the coastal reserve program. More than \$18 million in state and federal money has been spent to permanently protect six sites: Zeke's Island and Masonboro Island in New Hanover County, Carrot Island (Rachel Carson National Estuarine Research Reserve) in Carteret County, Currituck

Banks, Permuda Island in Stump Sound and Buxton Woods at Cape Hatteras. Recent additions to the coastal reserve's 13,000 acres include Kitty Hawk Woods in Dare County and Bald Head Woods in Brunswick County.

The coastal waters access program started in 1981 when the General Assembly passed a law authorizing the state to buy oceanfront land to improve public access to the beaches. The legislature expanded the program in 1983 to include soundside or estuarine beaches. More than \$5 million in state, local and federal money had been spent on the program by the end of 1993. More than 200 access projects have been installed, ranging from neighborhood walkways to regional parking areas with restrooms. Local economies have benefitted greatly from these amenities.

***Development has transformed this estuarine shoreline at Wrightsville Beach.***



Todd Miller

### **Legislative Evolution**

The General Assembly has amended CAMA in several legislative sessions since 1974. The years 1979, 1981, 1983 and 1989 in particular brought surges of coastal legislation spurred by legislative study commission recommendations.

In 1979, the General Assembly took its first step toward honoring the early promise of CAMA to simplify permit processes by eliminating redundant legislation, repealing the Sand Dune Law, merging the administration of CAMA and the Dredge and Fill Law, and simplifying the Easement to Fill Law. The Coastal Resources Commission itself has taken further steps toward simplifying regulations through permit exemptions, general permits, and a joint application/public notice that coordinates eight separate state and federal approvals.

The 1981 and 1983 legislatures steered CAMA successfully through its final stages of approval, increased its budget to offset lost federal aid and made a number of changes recommended by study commissions. The main thrust of these changes was to strengthen enforcement, simplify permitting, update administration, and initiate an ocean and estuarine beach access program.

The 1989 legislation further strengthened CAMA enforcement, created the coastal reserve system, added the new AEC categories for outstanding resource waters and primary nursery areas, addressed conflict of interest issues involv-

ing members of the Coastal Resource Commission, increased the state's leverage to challenge noise levels from federal military overflights, and sought to better protect North Carolina's beaches and offshore waters from littering, medical wastes, and oil pollution.

### **Twenty Years After CAMA: The Challenge Ahead**

**F**rom historic Ocracoke Island, a fisherman watches his catches decline. In Currituck and other coastal counties, officials worry about a dwindling drinking water supply. And in the village of Oriental, a mayor mourns the slow death of a river.

As the Coastal Area Management Act enters its third decade, North Carolinians can be proud of what has been accomplished by this landmark legislation. But all is not well. New environmental dangers and unprecedented population growth threaten precious coastal resources. A snapshot of the coast 20 years after CAMA reveals the following causes for concern:

- Growth is pushing wastewater systems to the limit, while pollution from industry, agriculture, forestry and urban development continues to threaten our coastal waters. Studies show that nearly a third of the state's rivers and streams are impaired. Environmental stresses and increased fishing have contributed to declining catches and a growing incidence of fish diseases.
- Over a third of the state's wetlands—vital natural areas that filter impurities from the water, provide flood protection, and serve as a refuge for wildlife and a spawning ground for fish—have been degraded or destroyed since pre-settlement times. Of the remaining 3.75 million acres, 74 percent are on private lands.
- The fragile ecosystems and unique character of thousands of acres of coastal land, including our few remaining tracts of maritime forest, stand to be permanently altered or lost.
- Increasing development on the oceanfront, and on the shorelines of coastal rivers and sounds, has reduced opportunities for public access to these areas. At the same time, the need for access is growing because of dra-

matic increases in coastal population and tourism.

- Increased waterfront development has led to the demand for more marinas, docks and piers. In North Carolina, navigable waters are owned by the public and held in trust by the state for the use and enjoyment of all citizens. Yet no program exists for the public to receive compensation for private, commercial use of public trust areas.
- Some coastal areas are experiencing shortages of drinking water and are having difficulty disposing of their wastes. Several counties and towns already rely on desalination of brackish water for their drinking supply.

Many more problems have not yet reached the critical stage. But there is an urgent need to address these problems now, before the opportunity is lost. For coastal residents like Ocracoke fisherman James Barrie Gaskill, there is no time to waste. Gaskill has seen his catches decline over the years as pollution and sediment wash into the Pamlico Sound, killing fish and fouling the water.

"We're at the end. We're next to the ocean and everything that happens from the mountains to the ocean ends up right here at our door," says Gaskill, one of the last full-time fishermen remaining in the village. "I doubt 15 years from now if there will be any fish left."

### **Planning for Growth**

**T**hese problems and many others point to the need for long-term, coordinated regional planning. While there have been numerous examples of thoughtful development that places a high priority on preserving the natural environment, and there are many developers who make admirable efforts to comply with state rules and regulations, there are other instances where development conflicts with environmental priorities and local concerns. Local land use planning, established by CAMA, offers communities in all 20 coastal counties the opportunity to make decisions about how to manage growth and minimize the harmful effects of development. These plans must be updated every five years and must meet guidelines set forth by the Coastal Resources Commission. However, land use planning raises tough technical and legal issues, and current regulations don't always

provide adequate answers. The quality of planning at times has been uneven. In some places, local plans are inconsistent with one another. Because CAMA does not require that adopted plans be implemented, local input can be lost.

In addition, state agencies often fail to coordinate with local governments before making decisions that can seriously affect these communities. As a result, communities may be unprepared to deal with the sudden influx of people and development that invariably accompany a new state project such as a bridge or highway. Efforts to determine the overall "carrying capacity" of an area for development or its ability to sustain growth have been inadequate. In general, the state has not yet met the challenge of evaluating the long-term, cumulative consequences of building highways, houses, motels, and marinas where fish, wildlife, and waterfowl once reigned.

In addition to local planning, CAMA requires developers and homeowners to obtain permits before they can build on the waterfront. Other "Areas of Concern" include wetlands, estuarine waters, public trust waters, well fields for public water supplies, and several kinds of natural hazard areas such as ocean beaches, inlets, and highly erodible areas in the estuaries. While the permitting process has been simplified over the past 20 years, it is still time-consuming and complex. The state has begun to use computer data bases and electronic mapping to help in decision-making. But these technologies aren't yet widely available.

One of CAMA's most successful features has been the land acquisition program. Since the first settlers arrived in what would become North Carolina, the beaches and sounds have been considered state property and have been held in trust for the use of its citizens. This Public Trust Doctrine has remained viable for more than 370 years. However, a development boom in the last two decades effectively blocked access to public beaches and estuarine waters in many places. Conflicts emerge between those who own the land and those who want to use that land to get to the beach.

In 1981, the state created the Coastal and Estuarine Water Beach Access Program. By 1993, the program had spent some \$5 million to buy land and build more than 230 public pathways to the beach. However, funding has not kept pace with demand. Since 1989, no ad-

ditional state funds have been earmarked to build walkways, parking lots, restrooms, and related facilities. Only one-fifth of the projects requested by local governments have been funded. Also, public access is not mandatory, and the distribution of these sites is uneven. In the summer, parking at some access points is filled beyond capacity while nearby residential communities that oppose public access have effectively banned tourists from their beaches.

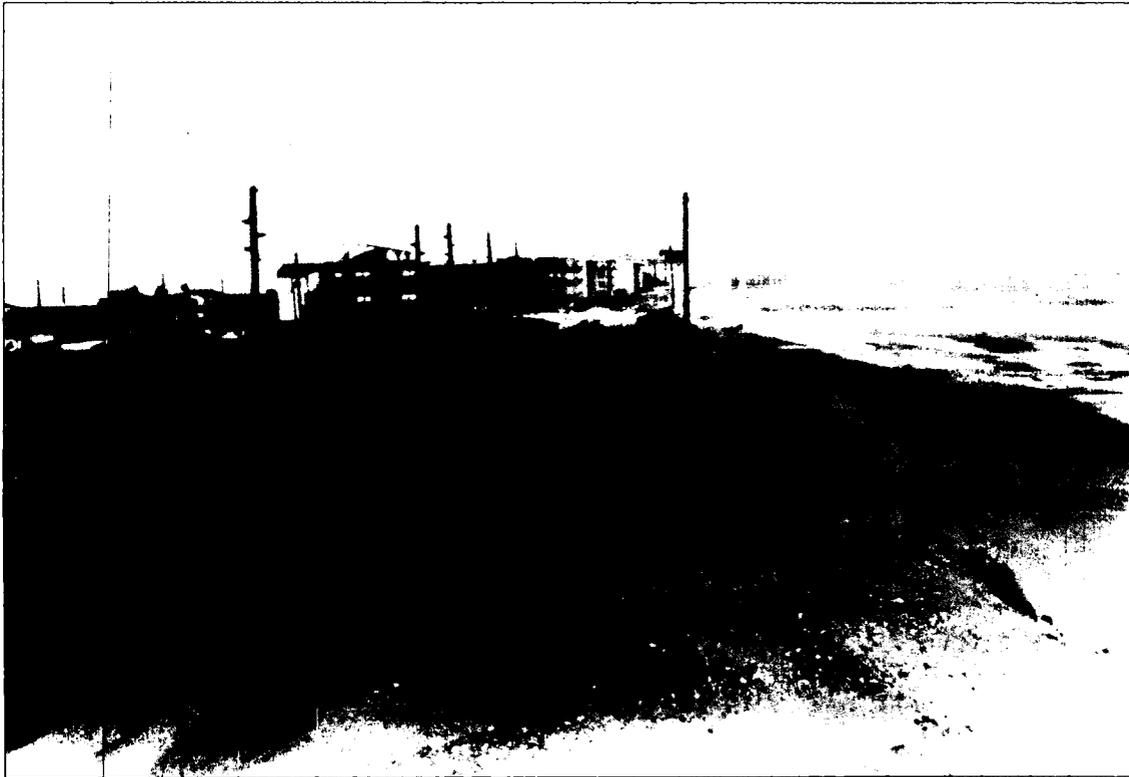
Since 1982, CAMA has also set aside money to purchase and preserve important coastal ecosystems. But North Carolina's efforts to protect these natural areas pale in comparison with other states, and many habitats remain threatened by shoreline development and urban sprawl. Over the past five years, the state has spent a total of \$18 million to acquire and protect coastal ecosystems. By comparison, the state of Florida has recently directed \$300 million for natural heritage protection and management.

### Protecting the Water

**T**he quality of the water in North Carolina's rivers and sounds, oceans and aquifers is key to the quality of life for the people, fish and animals that live on, in and around it. Yet, everyday, we all engage in activities that threaten this critical resource.

Industrial discharges can introduce toxic substances into the water supply. Run-off from faulty septic tanks along the coast and overflow from sewage plants upstream release fish-killing nitrogen and phosphorus that can cause oxygen-robbing algal blooms. Water-control techniques such as dredging, ditch-digging and dams release freshwater into the estuary, disrupting natural salinity patterns. Also harmful are the fertilizers, sediments and bacteria that wash off farms, roads, and rooftops after heavy rains.

North Carolina has some of the most productive estuaries in the world, including fertile nurseries that support abundant commercial and recreational fishing. But a number of serious problems threaten this resource. Excessive nutrients from multiple sources encourage algal growth that chokes the water of dissolved oxygen and can lead to fish kills. Some of these algae are poisonous to fish and can kill them directly. While scientists are studying the causes and effects of excess algae growth, and some



Todd Miller

***Ocean erodes shoreline on West Onslow Beach.***

steps have been taken to reduce nutrients in the waters, more needs to be done.

Another major concern is the closure of shellfish waters due to harmful levels of bacteria and other pathogens. In the past, the greatest cause of shellfish closures was point source polluters, such as wastewater treatment plants or industries that dump harmful substances directly into the water system. Much progress has been made in cleaning up these sources. But sewage treatment plants along the coast still malfunction or become overloaded during rainstorms. Increasing numbers of overloaded or old “leaky” septic systems from small communities and shoreline cottages also add poorly treated sewage to our coastal waters. In addition, land-disturbing activities such as construction and clear-cutting, as well as water-control techniques such as damming and ditch-digging, degrade water quality.

While rising reports of fish kills and crab and fish diseases may be due in part to increased public awareness of these dangers, new diseases have been identified in the last 20 years. Often, the causes aren’t clear. MSX and Dermo—two dis-

eases that have devastated the oyster industry in the past few years—occur in the saltiest waters furthest from man’s influence. Other diseases, such as ulcerative mycosis in menhaden, have been demonstrated to be caused by the toxin of a pathogenic dinoflagellate, or single-celled algae, which may be stimulated by nutrient enrichment from sewage, farming, and phosphate mining wastes.

Fishermen such as Rodney Calhoun feel the effects of stressed fisheries directly. Calhoun remembers as recently as 15 years ago workers packing up to 300 bushels of oysters from the South River in Carteret County each season. “We had the prettiest oysters in the world,” says Calhoun, whose family has plied these waters for more than 200 years. Last year, workers at his South River Seafood facility packed just two bushels of oysters. Mud and fecal bacteria from runoff damaged many oyster beds in the South River, which is a tributary to the Pamlico Sound. Most of the beds have been closed because of contamination.

All along the state’s shorelines, about 56,000 acres of once-productive shellfish waters

**§ 113A-102. Legislative findings and goals.**

(a) Findings. — It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced. In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the coastal area of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property shall be managed in accordance with the Constitution of this State and of the United States.

- (b) Goals. — The goals of the coastal area management system to be created pursuant to this Article are as follows:
- (1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
  - (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
  - (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
  - (4) To establish policies, guidelines and standards for:
    - a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensively developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
    - b. The economic development of the coastal area, including but not limited to construction, location and design

**North  
Carolina  
General  
Statutes**

are permanently closed to harvest. The affected area temporarily doubles after moderate rainstorms because of an infusion of stormwater runoff containing bacteria and other contaminants. These closed areas represent more than 10 percent of our highest-quality commercial shellfisheries. Within the past decade, nonpoint source pollution has caused steady and small,

but numerous and widespread, permanent closures. The causes include expanding coastal development, with its associated increase in land disturbance, drainage and runoff from roads, buildings, and paved surfaces; runoff from farms and drainage ditches; bacterial contamination from sewage plants and septic tanks; and problems caused by marinas.

In some instances, recreational and commercial fishing have been responsible for declining catches. Excessive harvesting has contributed to the severe depletion of certain fish species, including Atlantic croaker, Atlantic sturgeon, red drum, striped bass, and summer flounder. Submerged sea grasses, which provide an important habitat for many forms of aquatic life, have been destroyed because of fishing practices, boat propellers and dredging, as well as increased nitrate levels from runoff. Declines in underwater vegetation have been observed from Bogue Sound in Carteret County

north to Currituck. In the Pamlico River estuary, less than one percent of the sea grasses that existed in the mid-1970s remain today.

As growth increases, further degradation of surface and groundwater is predicted. The consequences could be severe for human as well as aquatic life. In New Hanover and Brunswick counties, coastal residents rely on the same water resources as industries located hundreds of miles inland. Both depend on the Cape Fear River and the Castle Hayne Aquifer for their water supply, although concerns have been raised over the quantity and quality of these resources.

In Atlantic Beach and in Brunswick County, officials are trying to find adequate means to treat their sewage while at the same time dealing with explosive growth. The issue is not only how to deal with the sewage itself but how to handle the problems that can come with increased treatment capacity, such as higher development densities and damage to the water supply.

And in the scenic fishing and boating village of Oriental, Mayor Sherill Styron sees the evidence of unchecked growth in the murky waters of the Neuse River. "Our river's not very clean. The water doesn't even look clean," Styron says. "There's just too many people dumping in the river. And it all adds up."

### **Paying the Price**

**P**rotecting the quality of our coastal waters, wildlife habitats and natural heritage is expensive. But the bigger question may be, what is the price for doing nothing? In the relative short term, fish harvests may continue to decline, tourism dollars may be lost to more pristine areas and considerable money may be required to clean up polluted waters. Ultimately, maintaining and improving the economic health of the coast depends on the region's ability to preserve a healthy environment.

In many ways, North Carolina's coast is a study in contrasts. While resort communities on the northern Outer Banks and southern coast attract retirees and tourists, other counties struggle with economies that are tied to the land and to traditional industries that haven't fully shared in the economic boom. Better jobs and stronger local economies are a basic need in these areas. Traditional industries such as fishing, farming, and forestry are part of the fabric of coastal life and need to be preserved. At the same time, the growth of new industries related to tourism and recreation is both inevitable and desirable. At present, there is no formal mechanism for bringing together these diverse interests and for integrating the region's economic and environmental goals.

One of the key elements in achieving these goals will be education. Only a fraction of North Carolina school children graduate with formal exposure to basic principles of environmental education. As a result, most of the

state's citizens grow up with only a passing knowledge of the problems that are threatening our coast. A recent study found that most North Carolinians surveyed believed government wasn't doing enough to protect the quality of our water. Yet they were unaware that some of the greatest causes of water pollution come from their own houses, streets, and farms.

Finding ways to educate the public, to promote responsible planning and development, to encourage a vital economy, and to protect our coastal resources is a challenge that is immediate and pressing. How we respond to these challenges now will determine the state of the coast for future generations.

Ocracoke fisherman James Barrie Gaskill looks at the damage that already has been done in the Pamlico Sound and hopes it isn't too late. Gaskill has watched generations of fishermen throw down their empty nets and turn away from the water, hoping to find better-paying jobs on the land. "Every year (the fishing) keeps getting less and less," he says. "I just hope there is something left for the young people."

### **A New Vision**

**T**wenty years ago, visionary state leaders embarked on a voyage through uncharted waters. After intense debate through two legislative sessions, North Carolina in 1974 was among the first states in the nation to pass a comprehensive law protecting coastal resources. The Coastal Area Management Act has profoundly affected the way people think and feel about the coast.

North Carolina's coastal resources belong to everyone. We all share the responsibility for protecting and developing these resources for present and future generations. Recognizing the need to reassess current coastal management and to chart a course for the next 20 years and beyond, we must develop a comprehensive plan that will:

- **PROTECT** the quality of all our natural resources—our water, as well as our fish and wildlife habitats;
- **ACCOMMODATE** planned, sustainable development while building a sound, diverse economy; and

- PRESERVE the region's character and natural beauty.

This is our vision for the North Carolina coast in 20 years:

- well protected natural resources that support both ecological functions and economic needs;
- abundant natural areas and open spaces that provide clean water, healthy habitats for fish and wildlife, and opportunities for traditional water-based industries and recreation;
- an economic development strategy that balances economic health with environmental protection;

- careful planning for development that doesn't significantly alter the region's natural character and that preserves coastal heritage;
- a vibrant tourism industry that promotes the natural environment as the region's principal attraction;
- education that promotes environmental stewardship; and
- a high quality of life for coastal residents.

Realizing this vision will require commitment and leadership from citizens, public officials, and all those who enjoy and depend on the resources of the North Carolina coast. New funding and revenue sources should be sought as the next step in this process.

# Pesticide Regulation: An Overview

BY TOM MATHER

*Pesticides, like medicinal drugs, are chemicals that can provide substantial benefits while posing serious potential hazards. Pesticides have important uses in increasing crop production, curbing insect-borne diseases, and preventing pest damage to buildings, food, and stored products. But the inherent toxicity of many pesticides can cause health problems and damage the environment. The dual nature of pesticides is reflected in current laws, which direct government agencies to weigh the benefits against the hazards of pesticides when regulating their use.*

**P**esticide use has been one of the focal points of the environmental movement ever since the publication of *Silent Spring* in 1962. The landmark book by biologist Rachel Carson warned that unrestricted use of pesticides could result in widespread damage to the environment and human health.<sup>1</sup> Her warnings, backed up by extensive research, have provided the impetus for major revisions of federal and state pesticide regulations since the early 1970s.

Now, more than 30 years after the publication of *Silent Spring*, where does pesticide regulation stand in North Carolina?

## What Are Pesticides?

**G**enerally speaking, pesticides are substances used to kill, limit, or control pests.<sup>2</sup> But pests can mean many things to different people. To a farmer, pests can include insects, mites, slugs, fungi, and nematodes that damage crops; weeds that compete with crops for moisture and nutrients; rodents that eat seeds or bark from fruit trees and stored grains; and birds that eat newly planted seeds and seedlings.

To a homeowner, pests can include roaches, flies, mosquitoes, and other annoying insects; moths that can destroy sweaters and other woolen clothes; termites that can eat away the wooden structure of a house; crabgrass and

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*Tom Mather is associate editor of North Carolina Insight.*

other weeds in lawns and vegetable gardens; mildew that tarnishes bathrooms and basements; aphids, slugs, and other pests that attack ornamental plants and vegetables; rats and mice that litter attics and storage rooms; fungi that rot timbers used to support homes and decks; and algae that turn ponds and swimming pools green. Likewise, a wide range of pests can spell trouble for businesses, hospitals, and government agencies.

Pesticides include three major classes, defined by the pests they control. **Insecticides** control insects such as aphids, beetles, mosquitoes, cockroaches, termites, fleas, and caterpillars. **Herbicides** control weeds such as crabgrass, chickweed, Bermuda grass, and nutgrass. **Fungicides** control fungi such as molds, mushrooms, mildews, and rusts. Those three classes account for 93 percent of the pesticides used in the United States, according to the U.S. Environmental Protection Agency. (See Figure 1 on p. 651.)

A variety of other pesticide types account for the remaining 7 percent, including: **rodenticides** for controlling rats and mice; **nematicides** for controlling nematodes (small worms that attack plants); **miticides** for controlling mites (small spider-like pests); and **algacides** for controlling algae (microscopic plants that can clog rivers, lakes, and swimming pools). For regulatory purposes, the "other" category also includes various agricultural chemicals that the EPA classifies as pesticides but aren't used to kill pests. These include chemicals such as **plant growth regulators** that keep crops like tobacco from producing unwanted flowers; **ripening agents** that speed up or slow down the ripening of fruits and vegetables; and **defoliants** that make plants

drop their leaves to ease the harvesting of crops like cotton.

Not surprisingly, the wide range of pest problems and uses has prompted the development of a dizzying array of pesticide products. Manufacturers currently produce about 20,000 pesticide products containing some 900 active ingredients.<sup>3</sup> In North Carolina alone, there were 12,391 pesticide products registered by the state Department of Agriculture in 1992.<sup>4</sup>

### The Benefits of Pesticides

**T**he large number of pesticide products is just one indication of their economic importance. Another indication is pesticide sales. More than \$8 billion worth of pesticides were sold in the United States in 1991, representing about one-third of the world market.<sup>5</sup> Three-fourths of the pesticide usage in the United States is for agriculture,<sup>6</sup> and some studies have estimated that every dollar spent on pesticide control returns about \$4 in crops saved.<sup>7</sup>

Pests destroy about one-third of the world's food crops during growth and storage.<sup>8</sup> In the United States, pests destroy at least 30 percent of the crops—totaling about \$30 billion a year—despite the heavy use of pesticides and other control methods. Agricultural studies have found that pesticide use can increase crop yields up to nearly 80 percent,<sup>9</sup> although some studies have concluded that farmers could cut their use in half without reducing yields.<sup>10</sup>

"Were it not for herbicides, we would still have 10 to 12 percent of our population working on farms, instead of the present 2 percent," writes George Ware, an entomology professor at the University of Arizona. "Today's farms would quickly become perpetuating weed fields that would require tremendous levels of our human energy. Indeed, it has been estimated that more energy is expended on the weeding of crops than on any other single human task."<sup>11</sup>

The benefits of pesticides go far beyond their value for agriculture. They also have important health benefits in controlling diseases, improving nutrition, and preventing starvation.<sup>12</sup> Pesticides have been particularly important in reducing insect-borne diseases such as malaria, typhus, plague, cholera, and yellow fever. For example, the incidence of malaria in India dropped from about 100 million cases a year in the mid-1930s, before pesticides were used to

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*Can anyone believe it is possible to lay down such a barrage of poisons on the surface of the earth without making it unfit for all life? They should not be called 'insecticides,' but 'biocides.'*

—RACHEL CARSON, *SILENT SPRING*

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control mosquitoes, to about 150,000 cases a year by the mid-1960s.<sup>13</sup> The role of pesticides in increasing food production has helped improve people's diets by making fruits, grains, and vegetables more available and less expensive, thus helping avoid widespread famines around the world.<sup>14</sup>

Other societal benefits from pesticides include: increased production of timber and fiber crops; prevention of storage losses from spoilage and rodent damage; protection of buildings from termites and fungal rot; pest control for lawns, gardens, nurseries and greenhouses; control of unwanted vegetation along highways and utility rights-of-way; and quality-of-life improvements through the control of everyday pests such as cockroaches, fleas, mosquitoes, rats, and mice.

"When millions of humans are killed or disabled annually from insect-borne diseases and world losses from insects, diseases, weeds, and rats are estimated at \$100 billion annually," Ware writes, "it becomes obvious that control of various harmful organisms is vital for the future of agriculture, industry, and human health. Pesticides thus become indispensable in feeding, clothing, and protecting the world's population, which will approach 6.4 billion by the year 2000."<sup>15</sup>

### The Hazards of Pesticide Use

The wide range of benefits from pesticides has led to an explosion in their usage over the past 50 years. In the United States alone, pesticide use has grown 33-fold since 1945.<sup>16</sup> However, total production has declined about 10 percent since peaking at 1.2 billion pounds in 1981. That decline has been due to rising chemical costs, the production of more potent pesticides that are effective in smaller quantities, the development of more pest-resistant crops, and the use of farming techniques that lessen the need for chemicals.<sup>17</sup> Another factor has been increasing awareness of the hazards of pesticides.

As Rachel Carson pointed out in the early 1960s, most pesticides were developed for a single purpose—to kill living organisms—and their use can have unintended consequences. "These sprays, dusts, and aerosols are now applied almost universally to farms, gardens, forests, and homes—nonselective chemicals that have the power to kill every insect, the 'good'

and the 'bad,' to still the song of birds and the leaping of fish in the streams, to coat the leaves with a deadly film, and to linger on in soil—all this though the intended target may be only a few weeds or insects. Can anyone believe it is possible to lay down such a barrage of poisons on the surface of the earth without making it unfit for all life? They should not be called 'insecticides,' but 'biocides.'"<sup>18</sup>

The toxicity and other dangers of pesticides have implications for the environment as well as human health. A team of scientific authorities, directed by the Environmental Protection Agency to assess the relative hazards of some 30 environmental problems, ranked pesticides as a high risk with regard to potential health and ecological effects.<sup>19</sup> David Pimentel, an entomology professor at Cornell University, has estimated that the environmental and social costs

**Victoria Martinez, director of the Farmworkers Project in Benson, conducts a training session on pesticide safety.**



Tom Mather

of agricultural pesticide use total at least \$8 billion a year in the United States—about half the amount that pesticides save in crop production each year.<sup>20</sup> That study considered costs from human health effects; domestic animal poisonings; losses of fish, birds, bees, and other wildlife; surface and groundwater contamination; unintended crop damage; greater pest control expenses resulting from the destruction of natural enemies and the development of pesticide-resistant bugs; and increased funding for government regulation and pollution control.

Much of the environmental damage from pesticides results from their nonselectivity. As Rachel Carson put it, pesticides often kill the good with the bad. For example, an insecticide that kills aphids also can destroy bees, ants, and other beneficial insects that are essential for pollinating many fruits and vegetables. Insecticides also can kill ladybugs and other insects that prey on pests, leading to a “rebound” effect. Although spraying initially knocks out most pests, those that survive can come back in even greater numbers because their natural predators have been eliminated. Thus, farmers are forced to repeat pesticide applications, sometimes at higher rates.

A related problem is the development of chemical-resistant pests. That is, some insects with high reproductive rates can evolve strains that are no longer susceptible to certain pesticides—similar to bacteria that develop drug-resistant strains. As a result, farmers can be forced to spray at higher application rates or use more toxic chemical alternatives.

The nonselectivity of many pesticides has other consequences as well. They can kill birds, fish, and other animals when sprays drift off-target during aerial applications, when wildlife feed in newly treated fields, and when storm runoff washes pesticide residues into streams, lakes, or coastal waters. Those effects can be particularly serious with pesticides that don't break down readily into non-toxic forms. Such persistent pesticides can build up as they are passed along the food chain, a process known as **biological magnification**.

Perhaps the best-known example of biological magnification relates to the chemical DDT, one of the most widely used insecticides of the 1950s and 1960s.<sup>21</sup> DDT, although relatively non-toxic to humans, had accumulated to high concentrations in many predatory animals by the late 1960s. That apparently led to the near ex-

tinction of many birds of prey—such as bald eagles, ospreys, and pelicans—because DDT caused their egg shells to thin and break, thus preventing them from reproducing. The populations of most predatory birds have rebounded sharply since the Environmental Protection Agency banned DDT in 1973,<sup>22</sup> although some scientists attribute the recovery to wildlife management policies rather than the DDT ban.<sup>23</sup>

Another hazard with pesticides is that they can contaminate drinking water supplies by seeping into groundwater and washing into streams and lakes. Groundwater contamination is particularly serious because cleaning it up can be very difficult, time-consuming, and expensive. It also could have potential health effects for large numbers of people. Wells supply drinking water to more than half of the total population and virtually all of the rural population—in North Carolina as well as the United States as a whole.<sup>24</sup>

Groundwater tests have found traces of pesticide residues in wells from nearly every state, including North Carolina.<sup>25</sup> In a 1990 study, the U.S. Environmental Protection Agency estimated that 4.2 percent of the nation's 10.5 million rural domestic wells and 10.4 percent of the 94,600 community water system wells contained detectable amounts of one or more pesticides.<sup>26</sup> The EPA estimated that less than 1 percent of those wells contained pesticides at levels exceeding recommended health standards.

A more recent study found pesticide contamination in 16 percent of the wells tested at 139 farms in Eastern North Carolina from 1989–1992. “The only reasonable conclusion is that pesticides are getting into groundwater because of routine applications,” says Richard P. Maas, who directed the study by researchers at the University of North Carolina at Asheville.<sup>27</sup> But that study's methodology has been harshly criticized by state agriculture and environmental officials, who are in the process of setting up a statewide system for monitoring groundwater contamination in North Carolina.<sup>28</sup>

The state monitoring program eventually will test water from more than 150 wells in 65 of North Carolina's 100 counties, focusing on areas with vulnerable groundwater supplies and large amounts of agricultural production. Preliminary tests have found detectable amounts of pesticides in six of the 97 wells (6 percent) sampled so far, with levels in two wells exceeding recommended health standards.<sup>29</sup> Authorities plan to complete the study by June 1996.

## Health Effects of Pesticides Vary Widely

With thousands of different pesticide products, it's hard to generalize about their health hazards. Some pesticides are highly poisonous, while others are less toxic than many commonly used substances such as table salt and aspirin. Generally speaking, insecticides are most toxic to humans, followed by herbicides and fungicides—but there are many exceptions. The method of exposure also is important: pesticides generally are more toxic when swallowed than when breathed or absorbed through the skin. And, as with any potential poison, the toxicity depends on the dosage and length of exposure.<sup>30</sup>

When discussing health hazards, it's important to distinguish between acute and chronic effects. *Acute effects* are those caused by short-term exposures to toxic chemicals, with symptoms usually appearing relatively quickly. Pesticide exposures can cause a range of acute effects, including nausea, dizziness, shortness of breath, skin rashes, and in extreme cases—blindness, poisoning, and death. In 1991, pesticides caused 84,283 poisonings, or 4.6 percent of the total human poison exposures reported to the American Association of Poison Control Centers. Pesticide poisonings caused 22 deaths in 1991, or 1.7 percent of the total for all reported fatal poisonings.<sup>31</sup> (Figures for North Carolina are not available because the state does not require doctors and hospitals to report pesticide-related health problems.) Most pesticide poisonings that result in death involve suicides or accidental ingestion by young children.<sup>32</sup>

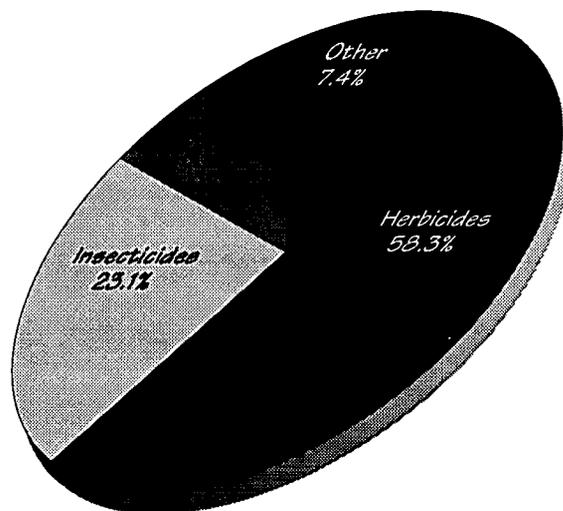
*Chronic effects* are those that result from repeated or long-term exposures to chemicals such as pesticides. Laboratory studies of animals have linked various pesticides to a wide range of chronic conditions, including cancer, birth defects, nerve damage, reproductive disorders, immune-system defects, and lung, liver, and kidney damage.<sup>33</sup> Much of the concern about chronic effects has focused on cancer. One-third of the pesticides in use contain chemicals that are known or suspected causes of cancer, according to the Environmental Protection Agency, which estimates that those pesticides cause 6,000 deaths a year in the United States.<sup>34</sup> A recent study by the National Research Council concluded that children may be more susceptible than adults to long-term pesticide exposure,<sup>35</sup> while other studies have suggested a link be-

tween breast cancer and certain organic pesticides.<sup>36</sup>

Some researchers, however, contend that the chronic health hazards of pesticides—at the levels most people are exposed—have been greatly exaggerated. For instance, Bruce Ames, a biochemist at the University of California at Berkeley, says that laboratory studies often overstate pesticides' cancer-causing potential because they are based on exposing rats and mice to levels of chemicals far higher than most people ever encounter. In addition, Ames says that many common foods and drinks that people consume every day—including apples, bananas, cabbage, coffee, mushrooms, and oranges—contain *natural* substances with far greater cancer-causing potential than the trace levels of pesticide residues typically found on food.

"We estimate that Americans eat about 1,500 mg/day of natural pesticides, 10,000 times more than manmade pesticide residues, which FDA estimates at a total of 0.15 mg/day," Ames writes. "Exaggerating the risks from

**Figure 1. Percentage of Pesticide Use in the United States by Class of Chemicals, 1991**



Source: U.S. Environmental Protection Agency

manmade substances, ignoring the natural world, and converting the issue to one of blaming U.S. industry does not advance our public health efforts. If we spend all our efforts on minimal, rather than important, hazards, we hurt public health."<sup>37</sup>

Other researchers defend such laboratory studies, arguing that certain pesticides may pose real cancer-causing hazards to people, even in small amounts.<sup>38</sup> Despite such disputes, the long-term health effects are largely unknown for many pesticides.<sup>39</sup> But most researchers would agree that people who are exposed to large amounts of pesticides generally are the most susceptible to harm.

"[We] are more concerned about the farmers, occupationally exposed workers, pesticide applicators, weekend gardeners, and others who may be repeatedly exposed to much higher levels of pesticides and therefore are at greater risk," say researchers James Huff and Joseph Haseman of the National Institute of Environmental Health Sciences.<sup>40</sup>

Even studies of occupational groups that are exposed to higher levels of pesticides have raised more questions than they have answered. For instance, a detailed review of epidemiological studies by researchers at the National Cancer Institute found that farmers were at lower risk for most major causes of death—including most types of cancer—than the general population.<sup>41</sup> However, the review found that farmers had moderately elevated levels for several types of cancer, including leukemia, Hodgkin's disease, multiple myeloma, and cancers of the lip, stomach, skin, prostate, brain, testes, and connective tissue.

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*These insecticides are not selective poisons; they do not single out the one species of which we desire to be rid. Each of them is used for the simple reason that it is a deadly poison.*

*It therefore poisons all life with which it comes in contact: the cat beloved of some family, the farmer's cattle, the rabbit in the field, and the horned lark out of the sky.*

—RACHEL CARSON, *SILENT SPRING*

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Such concerns have led some researchers to compare pesticides to medicinal drugs. That is, both classes of chemicals have far-reaching benefits that must be weighed against their potential for causing serious harm. "The tremendous diagnostic and therapeutic value of drugs justifies their use, but in turn requires a detailed study of their side effects," writes Wayland Hayes, a physician and toxicologist at Vanderbilt University. "The same is true for pesticides. Their important contributions to our health and economy guarantee their continued use as a class and require the most complete knowledge of toxicology that we can achieve in order to avoid hazards."<sup>42</sup>

### An Overview of Federal Pesticide Regulation

The dual nature of pesticides—that is, their potential to yield great benefits as well as cause serious damage—is the basic concept guiding modern pesticide regulation. Although the federal government has regulated pesticides since 1910, most early legislation was aimed at consumer protection and product performance.<sup>43</sup> Current regulation seeks to allow the beneficial uses of pesticides while minimizing their hazards to public health and the environment.<sup>44</sup>

The primary agency charged with implementing federal pesticide regulation is the U.S. Environmental Protection Agency (EPA). Previously, pesticides were regulated through the U.S. Department of Agriculture and the Food and Drug Administration, but Congress transferred most authority to the EPA when it created the agency in 1970. In practice, the EPA has delegated many pesticide enforcement responsibilities to the states. However, the EPA remains the final authority and can preempt states that fail to take proper enforcement actions.<sup>45</sup>

The primary law guiding pesticide use is the **Federal Insecticide, Fungicide, and Rodenticide Act**, or FIFRA. Originally enacted by Congress in 1947, FIFRA required pesticide manufacturers to register their products with the Department of Agriculture. It also required manufacturers to label their products with directions aimed at ensuring safe use.

In 1972, Congress amended FIFRA while enacting the nation's most comprehensive pesticide legislation, sometimes known as the Fed-

eral Environmental Pesticide Control Act. One of the law's central tenets is that the EPA must consider both the costs and benefits of pesticides in regulating their use.<sup>46</sup> "Unlike most other environmental statutes, which focus on pollution abatement, FIFRA, as amended, focuses on balancing the inherent risks and benefits of substances that are generally designed to be injurious to living organisms and deliberately introduced into the environment," according to a review of pesticide regulation by the General Accounting Office. "This balancing of risks and benefits underlies all basic regulatory decisions under the act."<sup>47</sup>

The FIFRA amendments of 1972 included key provisions that: made it illegal to use pesticides in ways "inconsistent" with the directions on product labels; authorized fines and penalties for dealers or applicators who violated pesticide regulations; and required that all pesticide products be registered with the EPA. Before registration, the law required that manufacturers provide scientific evidence that pesticide products—when used as directed on labels—would: (1) effectively control the targeted pests; (2) not harm humans, crops, livestock, wildlife, or the total environment; and (3) not leave illegal residues on food or feed products.

The FIFRA amendments also directed the EPA to classify all pesticides into two categories: *restricted use*, which generally includes the most hazardous products, such as the highly toxic herbicide paraquat; and *general use*, which includes less toxic chemicals, such as the herbicide Roundup (glyphosate) and other chemicals sold in garden shops.<sup>48</sup> The law required states to certify—that is, to train and test—anyone applying restricted-use pesticides. Most states *train* applicators through their cooperative extension services, with *certification* handled by their departments of agriculture.

Congress has amended FIFRA a number of times since 1972, with the most substantive changes dealing with product registrations. Tougher registration requirements have led the EPA to cancel more than 26,000 pesticide products since 1988.<sup>49</sup> Despite those cancellations, the EPA allows the use of a number of pesticides that have not been fully tested for health and environmental effects.<sup>50</sup>

Another key law dealing with pesticide regulation is the **Federal Food, Drug, and Cosmetic Act** of 1954. The law authorized the

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*A good part of agriculture is to learn how to adapt one's work to nature. . . . To live in right relation with his natural conditions is one of the first lessons that a wise farmer or any other wise man learns.*

—LIBERTY HYDE BAILEY

FORMER PROFESSOR OF HORTICULTURE  
AT CORNELL UNIVERSITY

[AS QUOTED BY WENDELL BERRY IN *WHAT ARE PEOPLE FOR?*]

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Food and Drug Administration to condemn any agricultural products that contain non-approved pesticides or pesticide residues that exceed established tolerance levels. In 1958, Congress adopted an amendment that included the so-called Delaney Clause, which has become one of the most controversial laws dealing with pesticides. In essence, the Delaney Clause states that processed foods may not contain any chemical found to cause cancer in humans or animals through laboratory tests.<sup>51</sup> That requirement has become increasingly troublesome for food processors because of research studies linking greater numbers of chemicals to cancer and the ability of modern analytical techniques to detect minute amounts of such chemicals.

The EPA is responsible for setting pesticide tolerance levels, but the Food and Drug Administration is charged with enforcing the limits. "Tolerances are the single most important tool by which the U.S. Government regulates pesticide residues in food," according to the National Research Council.<sup>52</sup> The Federal Food, Drug, and Cosmetic Act defines a tolerance as the maximum quantity of a pesticide residue allowable on a raw agricultural product or in a processed food.<sup>53</sup>

Increasing recognition of the special risks posed to workers handling pesticides has prompted federal agencies in recent years to issue new regulations dealing with worker safety. In 1988, the Occupational Safety and Health Administration broadened its **Hazard Communication Standard**<sup>54</sup> to require all employers—including farmers—to provide workers with information on the dangers and safety precautions relating to hazardous chemicals used in the workplace.

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*Never again need there be a disaster like the famine in the 1840s in Ireland that was caused by a fungus, Fusarium, the late potato blight. That catastrophe led to the death of one third of Ireland's population from starvation, another third emigrated, and the bitterness that exists between the Irish and the English was intensified yet further. How much of the tragedy of the Emerald Isle might have been averted if a good fungicide like captan had been available?*

—DIXY LEE RAY, FORMER GOVERNOR OF WASHINGTON FROM *TRASHING THE PLANET*

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In 1992, the EPA issued its **Worker Protection Standard**<sup>55</sup> for ensuring the safety of the estimated 3.9 million agricultural workers and others who are exposed to pesticides through their jobs. The regulation, which took effect in part in April 1994, applies to pesticide handlers as well as workers in treated fields, greenhouses, forests, and nurseries.<sup>56</sup> Under the rule, employers must: provide workers with basic pesticide safety training; notify workers when applying pesticides; restrict entry to fields for minimum time periods following pesticide applications, depending on the toxicity of the chemicals used; and post signs summarizing basic information about pesticide safety.

Other federal laws with important provisions dealing with pesticides include:

- **The Endangered Species Act of 1973** requires all federal agencies to insure that their actions—including pesticide use—will not jeopardize endangered or threatened plants and animals. Unlike FIFRA, the act does not require the EPA to weigh the costs and benefits of pesticide products in prohibiting uses that could harm endangered species.

- **The Transportation Safety Act of 1974** authorized the U.S. Department of Transportation to regulate the shipping of hazardous materials, which include many pesticides.
- **The Right-To-Know Act**<sup>57</sup> of 1986 applies to all facilities that manufacture, use, or store more than 300 types of hazardous chemicals, including many pesticides.<sup>58</sup> The law requires owners to prepare plans for dealing with fires and other emergencies. It also requires them to report the presence of hazardous chemicals to appropriate local, state, and federal authorities.
- **The Food, Conservation, and Trade Act**,<sup>59</sup> more commonly known as the 1990 Farm Bill, requires pesticide dealers and applicators to keep records on the sale or use of all restricted-use products. The law does not require users to report that information to the state or federal government unless requested by regulators or inspectors. The U.S. Department of Agriculture is charged with implementing the regulations, which took effect May 1993.<sup>60</sup>

## FOOTNOTES

<sup>1</sup> Rachel Carson, *Silent Spring*, Houghton Mifflin Co.: Boston, 1962.

<sup>2</sup> For a thorough discussion of the uses, history, and benefits and hazards of pesticides, see George W. Ware, *The Pesticide Book*, Thomson Publications: Fresno, Calif., 1994.

<sup>3</sup> *Ibid.*, pp. 4–5. The number of pesticide products has declined from about 50,000 in the mid-1980s, largely due to EPA cancellations of product registrations since 1989.

<sup>4</sup> *North Carolina Pesticide Report*, N.C. Department of Agriculture, 1992, p. 331.

<sup>5</sup> Arnold Aspelin, et al., *Pesticide Industry Sales and Usage: 1990 and 1991 Market Estimates*, U.S. Environmental Protection Agency, Office of Pesticide Programs, Washington D.C., 1992, Publ. No. H-7503W, pp. 7–11.

<sup>6</sup> *Ibid.* According to the EPA, agriculture accounted for 75.9 percent of the total pesticide usage by weight and 73.6 per cent of the total expenditures on pesticides in the United States in 1991.

<sup>7</sup> See Ware, note 2 above, p. 8, and David Pimentel, et al., "Environmental and Economic Costs of Pesticide Use," *BioScience*, Vol. 42, No. 10 (November 1992), p. 750.

<sup>8</sup> Ware, note 2 above, pp. 5–8.

<sup>9</sup> *Ibid.*

<sup>10</sup> See David Pimentel, et al., "Environmental and Economic Effects of Reducing Pesticide Use," *BioScience*, Vol. 41, No. 6 (June 1991), p. 402.

<sup>11</sup> Ware, note 2 above, p. 8. David Pimentel, an entomology professor at Cornell University, disputes Ware's contention that 10–12 percent of the U.S. population would have to work on farms to replace the benefits of herbicides. "I seriously doubt that it would be 3 percent, which is a 50 percent increase over current labor input on U.S. farms," Pimentel says.

<sup>12</sup> See Ware, note 2 above, pp. 10–19; also, Wayland J. Hayes Jr. and Edward R. Laws Jr., *Handbook of Pesticide Toxicology*, Vol. 1, Academic Press: San Diego, Calif., 1991.

<sup>13</sup> *Ibid.*, Hayes and Laws, p. 9.

<sup>14</sup> *Ibid.*; also see Ware, note 2 above, pp. 17–19; and National Research Council, *Pesticides in the Diets of Infants and Children*, National Academy Press: Washington, D.C., 1993, pp. 1 & 13.

<sup>15</sup> Ware, note 2 above, p. 19.

<sup>16</sup> See Pimentel, note 10 above, p. 403.

<sup>17</sup> *Ibid.*

<sup>18</sup> Carson, note 1 above, pp. 7–8.

<sup>19</sup> U.S. Environmental Protection Agency, "Unfinished Business: A Comparative Assessment of Environmental Problems," Office of Policy Analysis, February 1987, pp. 84–86.

<sup>20</sup> See Pimentel, note 7 above, p. 759.

<sup>21</sup> See Eugene P. Odum, *Fundamentals of Ecology*, W.B. Saunders Co.: Philadelphia, Pa., 1971, pp. 74–75.

<sup>22</sup> See Jim Dean, "Un-Endangered Wildlife," *Wildlife in North Carolina*, Vol. 55, No. 3 (March 1991), p. 36.

<sup>23</sup> For an alternative view on DDT and its effects, see Dixy Lee Ray and Lou Guzzo, *Trashing the Planet*, Regnery Gateway: Washington, D.C., 1990, pp. 68–77.

<sup>24</sup> According to the National Research Council, note 14 above, p. 228, wells provide drinking water to 53 percent of the total U.S. population and 97 percent of the rural population. Those percentages are essentially the same for North Carolina, according to the state Division of Environmental Health.

<sup>25</sup> See Elizabeth G. Nielson and Linda K. Lee, "The Magnitude and Costs of Groundwater Contamination from Ag-

ricultural Chemicals," U.S. Department of Agriculture, Economic Research Service, Report No. 576, October 1987.

<sup>26</sup> U.S. Environmental Protection Agency, *National Survey of Pesticides in Drinking Water Wells, Phase I Report*, Office of Pesticides and Toxic Substances, EPA 570/9-90-015, November 1990, Executive Summary, pp. vii–xv.

<sup>27</sup> As quoted by Stuart Leavenworth, "Study says some drinking water wells contaminated," *The News & Observer* (Raleigh, N.C.), Jan. 8, 1993, p. 1B.

<sup>28</sup> The Interagency Study of the Impact of Pesticide Use on Groundwater in North Carolina is being conducted jointly by the state Department of Agriculture and the Department of Environment, Health, and Natural Resources.

<sup>29</sup> Personal communication with Henry Wade, project coordinator for the Interagency Study of the Impact of Pesticide Use on Groundwater in North Carolina, N.C. Department of Agriculture, June 1994.

<sup>30</sup> Ware, note 2 above, pp. 209–214.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, pp. 210–211. Also see William M. Simpson Jr., "Health Effects as a Result of Exposure to Pesticides," presentation at the conference, "Pesticides and Health in the Southeast," School of Public Health, University of North Carolina at Chapel Hill, June 15, 1992.

<sup>33</sup> See National Research Council, note 14 above, p. 13. For detailed information on health effects, see Hayes and Laws, note 12 above (entire publication).

<sup>34</sup> U.S. Environmental Protection Agency, note 19 above, p. 28.

<sup>35</sup> *Ibid.*

<sup>36</sup> See Dan Fagin, "Breast cancer debate," *The News & Observer* (Raleigh, N.C.), Sept. 12, 1993, p. 17A. Also see Devra Lee Davis, et al., "Medical Hypothesis: Xenoestrogens As Preventable Causes of Breast Cancer," *Environmental Health Perspectives*, Vol. 101 (October 1993), pp. 372–377.

<sup>37</sup> See Bruce Ames, "Too Much Fuss About Pesticides," *Consumers' Research*, April 1990, pp. 32–34. Ames uses the term "natural pesticides" in reference to natural substances in plants that repel or kill insects or other pests. For a rebuttal of Ames' arguments, see Thomas Culliney, et al., "Pesticides and Natural Toxicants in Foods," *Agriculture, Ecosystems and Environment*, 41 (1992), pp. 297–320, Elsevier Science Publishers B.V., Amsterdam.

<sup>38</sup> See "The Perils of Pesticides," *The Wilson Quarterly*, Spring 1991, pp. 132–133.

<sup>39</sup> See U.S. General Accounting Office, "Pesticides: EPA's Formidable Task to Assess and Regulate Their Risks," Publ. No. GAO/RCED-86-125, Washington, D.C., April 1986, 138 pp.

<sup>40</sup> As quoted in *The Wilson Quarterly*, note 38 above, p. 133.

<sup>41</sup> See Aaron Blair and Shelia H. Zahm, "Cancer Among Farmers," *Occupational Medicine: State of the Art Reviews*, Vol. 6, No. 3 (July–Sept. 1991), Hanley & Belfus Inc.: Philadelphia, Penn., pp. 335–354.

<sup>42</sup> Hayes and Laws, note 12 above, p. 9.

<sup>43</sup> U.S. General Accounting Office, 1986, note 39 above, p. 11.

<sup>44</sup> National Research Council, note 14 above, p. 17.

<sup>45</sup> Ware, note 2 above, pp. 240–243.

<sup>46</sup> U.S. General Accounting Office, note 39 above, pp. 11–12. FIFRA, as originally enacted by Congress in 1947, required the U.S. Department of Agriculture to register pesticides in order to protect users from ineffective and acutely

dangerous products. Congress transferred the authority for administering FIFRA to the newly established EPA in 1970. In response to growing concerns over the potential health and environmental hazards associated with pesticides, Congress substantially amended FIFRA in 1972 (7 U.S.C. 136 *et seq.*). The 1972 version and changes enacted in 1975, 1978, and 1980, broadened FIFRA's regulatory scope, changing the law's emphasis from primarily consumer protection and product performance to public health and environmental protection.

<sup>47</sup> *Ibid.*

<sup>48</sup> For a legal definition of general and restricted-use pesticides, see 7 U.S.C. 136. Although the law defines restricted-use pesticides as potentially more hazardous, some environmentalists contend that many general-use products are equally dangerous.

<sup>49</sup> Ware, note 2 above, p. 246.

<sup>50</sup> U.S. General Accounting Office, note 39 above, pp. 12-13. Also see Shirley A. Briggs, *Basic Guide to Pesticides*, Hemisphere Publishing Co.: Washington, D.C., 1992, pp. 280-282.

<sup>51</sup> For more on the Delaney Clause, see the National Research Council, *Regulating Pesticides in Food: The Delaney Paradox*, National Academy Press, Washington, D.C., 1987, 288 pp.

<sup>52</sup> National Research Council, note 14 above, p. 18.

<sup>53</sup> *Ibid.*, p. 8.

<sup>54</sup> 29 Code of Federal Regulations 1910.1200

<sup>55</sup> 40 Code of Federal Regulations 170.

<sup>56</sup> In early 1994, Congress delayed implementation for most of the requirements in its Worker Protection Standard until Jan. 1, 1995.

<sup>57</sup> The full name of the law is: The Emergency Planning and Community Right-To-Know Act, or Title III of the Superfund Amendments and Reauthorization Act of 1986.

<sup>58</sup> The Right-To-Know law does not apply to the "inert" ingredients of pesticide products, which include a range of solvents and other chemicals used as carriers, binders, and fillers.

<sup>59</sup> 7 U.S. Code 136i-1.

<sup>60</sup> 7 Code of Federal Regulations 110.19014.



Karen Tam

# Enforcement of Pesticide Regulations in North Carolina

BY TOM MATHER

*This article looks at the structure of North Carolina's three pesticide oversight and advisory boards, their powers and responsibilities, their enforcement actions, and their supporting agencies in the Department of Agriculture. The article also seeks to answer the following questions: Do the state's pesticide oversight and advisory boards include a balanced representation of public interests? Do those boards have fair and consistent methods for penalizing violators? What kinds of violations are most common among pesticide applicators? Do some types of pesticide users account for more violations than others? How does the state train, license, and certify pesticide applicators?*

**T**he Environmental Protection Agency may be the nation's final authority on pesticide regulation, but the top dog in North Carolina is the Department of Agriculture. That's because the EPA delegates its enforcement powers to a "lead" pesticide program in the states.<sup>1</sup> And North Carolina, like most states, has regulated pesticides through its agriculture department since the days when fly swatters were the primary means of pest control.

The N.C. General Assembly considered changing that arrangement in 1989, when it reorganized the state's environmental programs. At that time, the legislature consolidated most of the state's environmental agencies into the

new Department of Environment, Health, and Natural Resources. But legislators—despite appeals from environmentalists—balked at moving pesticide regulation into the new "super agency" after hearing strong complaints from farmers and agricultural interests.

The N.C. Department of Agriculture is responsible for regulating more than 12,000 pesticide dealers, exterminators, crop dusters, lawn-service companies, and other commercial applicators—in addition to thousands of farmers and home gardeners. In doing so, the department's pesticide program employs about 80 people with an annual budget exceeding \$4.1 million in FY 1992–93.

The administration of the state's pesticide program is complex, with key responsibilities divided among several divisions of the agriculture

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department as well as three boards. Much of the program's enforcement power rests with two panels, the Pesticide Board and the Structural Pest Control Committee, whose members are largely drawn from the ranks of agriculture, industry, and state government. A third panel, the Pesticide Advisory Committee, provides technical advice to the Department of Agriculture and the Pesticide Board but has no enforcement powers.<sup>2</sup>

### **Pesticide Legislation in North Carolina**

**L**ike federal legislation, North Carolina's early pesticide laws primarily were aimed at protecting consumers and farmers by assuring the performance of pesticide products.<sup>3</sup> As stated in a state training manual for pesticide users, "Prior to 1971, North Carolina had neither laws to effectively limit the use or disposal of pesticides nor to see that most commercial pesticide applicators and dealers were qualified to apply or sell pesticides."<sup>4</sup>

That changed when the General Assembly adopted the **North Carolina Pesticide Law** of 1971.<sup>5</sup> The law is designed to regulate—in the public interest—the use, application, sale, disposal, and registration of pesticides. Like current federal legislation, the state law attempts to balance the benefits of pesticides with the hazards they can pose for the environment and public health. "The thrust of pesticide regulation has always been that they are necessary evils for the production of food and fiber," says John L. Smith, administrator of the state's pesticide program. The Pesticide Law also created the N.C. Pesticide Board to carry out, with the Commissioner of Agriculture, the enforcement of pesticide regulations; and the Pesticide Advisory Committee, to advise the board and the commissioner on technical matters.

Legislators have amended the Pesticide Law a number of times, often to comply with changes in federal pesticide regulations. A key change enacted in 1993 was a bill that created a Pesticide Environmental Trust Fund to help pay for new health and environmental programs.<sup>6</sup> The law imposes additional registration fees on pesticide products, with one-fourth of the funds being used to pay for agricultural-medical programs at North Carolina State University and

East Carolina University. Three-fourths of the funds are earmarked for the Department of Agriculture's environmental programs, including the monitoring of groundwater pollution by pesticides and the disposal of pesticide containers.

The other key state legislation dealing with pesticides is the **North Carolina Structural Pest Control Law**,<sup>7</sup> originally passed in 1955 and since amended a number of times. The law primarily deals with the training, certification, and licensing of structural pest applicators—that is, exterminators, termite-control applicators, and fumigators. It also established the Structural Pest Control Committee to adopt and enforce regulations.

In 1987, the General Assembly authorized the Legislative Research Commission to undertake a broad study of pesticide use in the state. The LRC's Committee on Pest Control—after considering more than 30 proposals dealing with pesticide regulation—made eight recommendations to the legislature's 1989 session.<sup>8</sup> Legislators have acted on several of those recommendations, including funding a groundwater monitoring program for pesticides and agricultural-medical programs at North Carolina State and East Carolina universities. However, the legislature has not acted on other recommendations, which include tighter limits on aerial applicators and a proposal for collecting data on pesticide usage and sales.

### **The N.C. Pesticide Board**

**T**he seven-member Pesticide Board shares with the Commissioner of Agriculture primary responsibility for regulating pesticides in North Carolina. As specified by the Pesticide Law, the board's duties include:

- Adopting rules, regulations, and policies for pesticide use.
- Carrying out programs for planning, environmental and biological monitoring, and investigating long-range needs and problems concerning pesticides.
- Advising the public, private groups, other state agencies, and the governor on matters relating to pesticides.
- Recommending legislation concerning the management and control of pesticides.

- Preparing annual reports to the governor as well as any other reports or investigations as requested by the governor or the legislature.
- Exempting state or federal agencies from provisions of the Pesticide Law under emergency conditions.

The Pesticide Board works closely with the N.C. Department of Agriculture, which provides staff and administrative support. Together, the board and the department regulate: the control of crop and animal pests; the application of pesticides by commercial and private applicators; the training, certification, and licensing of applicators; the storage and disposal of pesticides; the sale, shipping, and registration of pesticide products; the testing of pesticide products for effectiveness; and penalizing violators.

Most administrative support for the Pesticide Board comes from the Pesticide Section of the department's Food and Drug Protection Division. Pesticide Administrator John Smith, who also serves as secretary to the board, heads a staff of about 60 people. The program's budget totaled nearly \$3.2 million in FY 1992-93.

The governor appoints all Pesticide Board members, who serve staggered four-year terms. Members are supposed to represent the following interests: one from the N.C. Department of Agriculture; two from the N.C. Department of Environment, Health, and Natural Resources, one of whom is the State Health Director or his designee, and one representing an environmental protection agency; one from the agricultural chemicals industry; one directly engaged in agricultural production; and two at-large members from other fields, one of whom is to be a "non-governmental conservationist."

The board's membership has been a sore point with environmentalists, who say that governors often have not appointed members who truly represent conservation interests. That criticism appears to have validity, as neither of the board's current at-large members—both appointed by former Gov. James G. Martin—claim to fill the conservationist seat. Lu Ann Whitaker, a Raleigh homemaker, says she considers herself a consumer advocate. Board Chairman Jerry Coker is an engineer with Weyerhaeuser Co. in Plymouth.

"The Pesticide Board, on paper, is fairly representative," says Allen Spalt, director of the Agricultural Resources Center, a Carrboro-based

environmental group. "But if you ever look into the backgrounds of the people who fill those seats, there's never been a conservationist appointed to that seat on the board—despite what it says on paper." Other observers familiar with the Pesticide Board say that Spalt overstates his assessment of members' qualifications. "This insinuates that you can be one or the other, but you cannot be both a conservationist and a professional," says Anne Coan, natural resources director for the N.C. Farm Bureau Federation. "This is not true."

### The Pesticide Advisory Committee

The Pesticide Law of 1971 also established the Pesticide Advisory Committee. The 20-member committee provides technical advice on pesticides to the Agriculture Commissioner and the Pesticide Board. In addition, it can recommend policies, help develop regulations, and conduct detailed studies of issues—such as procedures for monitoring groundwater contamination.

Like the Pesticide Board, the advisory committee's membership is supposed to represent a variety of interests. These include: three practicing farmers; one conservationist; one ecologist; one from the pesticide industry; one from agri-business; one local health director; one from a public utility or railroad company that uses pesticides; one from the public at large; one involved in forest pest management; one member of the N.C. Agricultural Aviation Association; one representing the State Health Director; one from the N.C. Department of Agriculture; one from the N.C. Department of Transportation; two from the N.C. Department of Environment, Health, and Natural Resources, one of whom represents the Solid Waste Management Division; and three faculty from the School of Agriculture and Life Sciences at N.C. State University, including at least one from the areas of wildlife or biology.

The directors of state agencies represented on the committee are responsible for appointing those members, while the Pesticide Board appoints the other members. As with the Pesticide Board, environmentalists have criticized the make-up of the advisory committee. "The problem with the advisory committee is not who fills the seats," Spalt says. "The basic problem is that

different interests are not well represented on that committee.”

Even some Pesticide Board members agree with that position. Greg Smith, a physician with the state Division of Epidemiology, recommended at an April 1994 meeting that the board reconsider its appointments to the advisory committee’s ecologist and conservationist seats. In particular, Dr. Smith cited the ecologist seat, which was filled by John McLaurin, a retired farmer from Scotland County. “I don’t know [McLaurin], and he may be a very nice gentleman,” Dr. Smith told fellow board members. “But I really don’t see anything in his biographical information that would suggest he has any background in ecology. I really don’t think that particular position is filled appropriately.”

The Pesticide Board initially rejected Smith’s motion, citing McLaurin’s background in soil conservation. But the board later agreed to reopen its nomination process and, in August 1994, replaced McLaurin with Dave Adams, a retired N.C. State University forestry professor.<sup>9</sup>

### **The N.C. Structural Pest Control Committee**

**T**he seven-member Structural Pest Control Committee is the state’s oldest pesticide oversight board, dating back to the mid-1950s. Unlike the Pesticide Board, which is charged with protecting the environment and public health, the structural pest board is more explicitly concerned with consumer protection. The Structural Pest Control Act created the board “to ensure a high quality of workmanship and in order to prevent deception, fraud

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*Because you can die of overwork, because  
you can die of the fire that melts  
rock, because you can die of the poison  
that kills the beetle and the slug,  
we must come again to worship you  
on our knees, the common living dirt.*

—MARGE PIERCY, POET  
FROM “THE COMMON LIVING DIRT” IN *STONE, PAPER, KNIFE* (1983)

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and unfair practices” in the extermination business.<sup>10</sup>

The act also created the Structural Pest Control Division to provide staff support to the committee and to administer programs for licensing exterminators and enforcing regulations. Division Director Ray Howell oversees a 20-person staff and serves as secretary to the structural pest committee. The division’s budget totaled more than \$950,000 in FY 1992–93.

The Structural Pest Control Committee is composed of seven members who serve terms ranging from two to four years. Members are appointed by various state officials representing different interests. The Commissioner of Agriculture appoints two members, one from the Department of Agriculture and one from the general public. The dean of the College of Agriculture and Life Sciences at N.C. State University appoints one member from the entomology department. The Secretary of the Department of Environment, Health, and Natural Resources appoints one member who is an epidemiologist in the Division of Health Services. The governor appoints three members: two who are actively involved and licensed in the pest control industry; and one public member who is unaffiliated with the pest control or pesticide industry, the Department of Agriculture, the Department of Human Resources, or the NCSU School of Agriculture. As with the other pesticide oversight panels, environmentalists have criticized the Structural Pest Committee for not including a broad enough range of public interests.

### **Licensing and Certification of Pesticide Applicators**

**A** key responsibility of the state’s pesticide program is the training of pesticide users, such as exterminators or aerial applicators. The Department of Agriculture regulates some 40,000 pesticide applicators through its licensing, certification, and registration procedures.

“The idea behind the regulatory program is: If you’re going to use pesticides, let’s use them correctly,” Pesticide Administrator John L. Smith says. “Education is a big component of that.”

Certified private applicators, which include farmers who apply restricted-use pesticides, accounted for more than two-thirds (68 percent)

**Table 1. Duties and Membership of North Carolina's  
Pesticide Oversight Boards**

	Pesticide Board	Pesticide Advisory Committee	Structural Pest Control Committee
<b>AREAS OF RESPONSIBILITY</b>			
Advising staff	Yes	Yes	Yes
Adopting or revising regulations	Yes	No	Yes
Setting policy	Yes	No	No
Hearing contested cases and appeals	Yes	No	Yes
Issuing or suspending licenses	Yes	No	Yes
Enforcing regulations	Yes	No	Yes
Fining violators	Yes	No	Yes
Allocating funds	Yes	No	No
<b>GROUPS REPRESENTED ON BOARD</b>			
Universities or colleges	No	Yes	Yes
Farmers	Yes	Yes	No
Agriculture industry	Yes	Yes	No
Public health	Yes	Yes	Yes
Agriculture department	Yes	Yes	Yes
Environmental or conservation groups	Yes <sup>1</sup>	Yes	No
Environment or natural resources agency	Yes	Yes	No
Chemical or pest control industry	Yes	Yes	Yes
Public at large	Yes	Yes	Yes
Farmworkers	No	No	No
Other	No	Yes	Yes
<b>WHO APPOINTS MEMBERS</b>			
Governor	7	0	3
Agriculture Commissioner	0	1	2
Secretary of Environment, Health, and Natural Resources	0	2	1
Secretary of Transportation	0	1	0
State Health Director	0	1	0
N.C. State University (department heads)	0	3	1
Pesticide Board	0	12	0
<b>TOTAL MEMBERS</b>	<b>7</b>	<b>20</b>	<b>7</b>

**FOOTNOTE**

<sup>1</sup> Although the N.C. Pesticide Law specifies that the Pesticide Board should include a "non-governmental conservationist," no member of the current board meets that qualification.

**Table 2. Training Requirements for Certified Pesticide Applicators in North Carolina**

Pest Control Category <sup>1</sup>	Interval Between Credit Hours of Training	Hours of Certification Renewals	Training Per Year
Seed Treatment	3 hours	5 years	0.6
Certified Private	2 hours	3 years	0.7
Wood Treatment	4 hours	5 years	0.8
Right-of-Way	4 hours	5 years	0.8
Structural (1 phase) <sup>2</sup>	5 hours	5 years	1.0
Agricultural Pest/Animal	6 hours	5 years	1.2
Aquatic	6 hours	5 years	1.2
Forest	6 hours	5 years	1.2
Public Health	6 hours	5 years	1.2
Regulatory	6 hours	5 years	1.2
Structural (2 phases) <sup>2</sup>	7 hours	5 years	1.4
Structural (3 phases) <sup>2</sup>	9 hours	5 years	1.8
Aerial	4 hours	2 years	2.0
Agricultural Pest/Plant	10 hours	5 years	2.0
Demonstration/Research	10 hours	5 years	2.0
Ornamental/Turf	10 hours	5 years	2.0

**FOOTNOTES**

<sup>1</sup> Applicators can be certified in more than one category. Structural pest control applicators are certified through the N.C. Structural Pest Control Division, which regulates exterminators. All other applicators are certified through the N.C. Pesticide Board, which regulates most agricultural and commercial uses.

<sup>2</sup> Structural pest applicators can be certified in as many as three phases—fumigation, household pest control, and wood destroying insect control.

*Source:* N.C. Department of Agriculture.

of all registered applicators in 1992. Other types of users, listed in order of their numbers, include: commercial ground applicators, or those who apply pesticides for money (11.8 percent); structural pest control, or exterminators (9.7 percent); public operators, or those who work for governments and utilities (6.9 percent); dealers (2.5 percent); aerial applicators, or crop dusters (0.6 percent); and pest-control consultants (0.2 percent).

Licensing and certification requirements vary widely among the types of applicators. The Pesticide Board requires licenses for all dealers, commercial ground and aerial applicators, public operators, and consultants—but not for farmers, homeowners and other private applicators. To obtain licenses, applicators must pass exams showing their knowledge of pesticide laws, safety, uses, and application techniques. Licenses must be renewed annually.

**Table 3. Pesticide Enforcement Actions by the N.C. Department of Agriculture, 1988-92<sup>1</sup>**

Type of Enforcement Action	Pesticide Board		Structural Pest Control Division	
	Total 1992	Average 1988-92	Total 1992	Average 1988-92
Warning Letters	26	19.8	47	30.4
Board Actions	52	58.4	43	54.0
Court Cases <sup>2</sup>	0	0	12	10.8
Fines: Number	42	49.6	38	44.0
Total Fines	\$18,840	\$24,478	\$36,950	\$29,405
Average Fine	\$449	\$494	\$972	\$668
Revocations <sup>3</sup>	1	0.6	7	4.0
Suspensions <sup>4</sup>	12	6.4	4	4.8
Product Recalls	1	3.4	NA	NA
Cleanups Required	4	2.0	NA	NA
Total Inspections <sup>5</sup>	8,083	7,023	10,046	8,471
Pesticides Tested <sup>6</sup>	1,711	1,719	NA	NA

#### FOOTNOTES

<sup>1</sup> North Carolina has two main agencies that regulate pesticide use, with administrative support for both provided by the Department of Agriculture. The N.C. Pesticide Board regulates pesticide use by farmers, aerial applicators, lawn-service companies, and other commercial applicators. The N.C. Structural Pest Control Division regulates exterminators, including household pest applicators, termite controllers, and fumigators.

<sup>2</sup> Court cases initiated by the Structural Pest Control Division all involved unlicensed and uncertified applicators.

<sup>3</sup> Includes all licenses, certifications, and registrations revoked or surrendered.

<sup>4</sup> Includes all licenses, certifications, and registrations suspended or modified.

<sup>5</sup> For the Pesticide Board, number includes all inspections relating to record-keeping, storage, disposal, and product labeling and quality. For the Structural Pest Control Division, number includes all inspections of exterminator firms and work sites.

<sup>6</sup> Number of pesticide products tested for purity and accuracy of labeling.

Source: N.C. Department of Agriculture.

In addition to licenses, anyone who uses *restricted-use* pesticides must be "certified" under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Pesticide Board automatically certifies all licensed applicators who pass qualifying exams. But farmers and

other unlicensed users of restricted-use pesticides also must qualify as certified private applicators, either by attending approved training sessions or passing an exam. *Farmers, homeowners, and other private applicators who don't apply restricted-use pesticides do not have to*

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*We used to read in old poets about the scent of the earth  
And grasshoppers. Now we bypass the fields:  
Ride as fast as you can through the chemical zone of the  
farmers  
The insect and the bird are extinguished. Far away a  
bored man  
Drags dust with his tractor, an umbrella against the sun.  
What do we regret? . . .*

—CZESLAW MILOSZ, NOBEL PRIZE WINNER, EXCERPT FROM THE POEM, "ADVICE"

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*obtain licenses or certifications.* Both licensed and certified private applicators must periodically renew their certifications, either by attending training sessions or retaking the qualification exams.

The number of required training hours and the frequency of renewal for recertifications vary by the type of applicator. For instance, aerial applicators must earn four credit hours every two years to maintain their certifications. Applicators who treat ornamental plants and turf must earn 10 credits every five years. Certified private applicators must earn two credits every three years. Most other types of applicators must earn from four to six credits every five years. However, some pesticide applicators are not required to get any training at all. For instance, the "technicians" who apply lawn-care pesticides around people's homes are supposed to work under the supervision of licensed applicators but have no formal educational requirements.

The Structural Pest Control Committee has training requirements for three levels of exterminators: licensees, certified applicators, and registered technicians. No business may engage in structural pest control in North Carolina without at least one licensed applicator, the highest level. Licensees must pass a qualifying exam and have at least two years experience in the field or equivalent educational background. Plus, they must qualify as certified applicators. North Carolina had 596 licensed exterminators in FY 1992-93, accounting for 15 percent of the total registered structural pest applicators.

To qualify as certified applicators, exterminators must pass written exams demonstrating

their knowledge in each phase of structural pest control in which they plan to work—including fumigation, household pests, and wood-destroying insects. North Carolina had 1,160 certified applicators (not including licensees) in FY 1992-93, accounting for 30 percent of the total structural pest applicators. Like other types of pesticide applicators, both licensed and certified exterminators must renew their certifications periodically by attending classes or retaking exams. Educational requirements range from five to nine credit hours every five years, depending on the number of phases in which applicators are certified.

Registered technicians are the third category of structural pest applicators. Although technicians are not tested or formally trained, they are supposed to apply pesticides only under the supervision of certified applicators. Currently, the only training requirement for technicians is that they watch a 45-minute videotape dealing with safety issues. However, the Structural Pest Control Committee is considering more stringent requirements. The state had 2,136 registered technicians in FY 1992-93, accounting for 55 percent of the total structural pest applicators.

The N.C. Cooperative Extension Service conducts training sessions for all types of pesticide applicators, but the Department of Agriculture administers the licensing and certification exams. Between 1988 and 1992, the Pesticide Section administered 11,985 certification and recertification tests, with 78 percent passing the exams. During that same period, the Structural Pest Control Division administered 8,349 tests, with a 45 percent passing rate.

## Enforcement of Pesticide Regulations

The Department of Agriculture and its oversight boards have a range of powers for enforcing pesticide regulations. These include the authority to conduct inspections, send warning letters, levy fines, suspend and revoke licenses, initiate criminal prosecutions, and require cleanups for accidents and spills.

Both pesticide agencies can conduct inspections, but the Structural Pest Division is more active in that regard. "We do many routine inspections," Division Director Ray Howell says. In 1992, the division conducted 10,046 inspections of structural pest control firms and the structures they treated for pests. By contrast, the Pesticide Section conducted 8,083 inspections in 1992 relating to pesticide storage, disposal, record-keeping, and product labeling and quality. In addition, the section investigated 232 complaints about pesticide violations in 1992.

Warning letters are perhaps the lowest level of formal enforcement action against violators. The state's pesticide oversight boards typically send warning letters for less serious offenses, particularly those involving private applicators or first-time violators. Over the five-year period, the two boards sent about 50 warning letters per year.

*Civil penalties* generally represent the next level of enforcement. Both oversight boards can levy fines as high as \$2,000 per violation against commercial and licensed pesticide applicators. However, the Pesticide Board can fine private applicators (which includes most farmers) no more than \$500 for each willful violation. In 1992, the two oversight boards assessed \$55,790 in fines, about \$2,000 more than the annual average from 1988–92. The Pesticide Board fined each violator about \$500 on average over the five-year period, while the Structural Pest Committee's average fine was about \$670.

Pesticide regulators consider *license suspensions* and *revocations* among the most serious actions they can take against violators, particularly commercial applicators. "Suspending or revoking a license is a really extreme action—because you're taking away a person's livelihood," says Carl Falco, assistant director of the structural pest division. "With most of these people, this is the only kind of work they know. If you suspend their license, you put them out of business." From 1988–92, the two boards sus-

ended about 11 licenses or certifications per year and revoked about five per year.

In extreme cases, both oversight boards can initiate *criminal prosecutions*. Although the Pesticide Board did not take any cases to court from 1988–92, the Structural Pest Committee averaged about 11 cases per year. Structural pest authorities say they have a larger number of prosecutions because—unlike the Pesticide Board—they don't have the authority to penalize *unlicensed* exterminators. So, those cases must be referred to the court system.

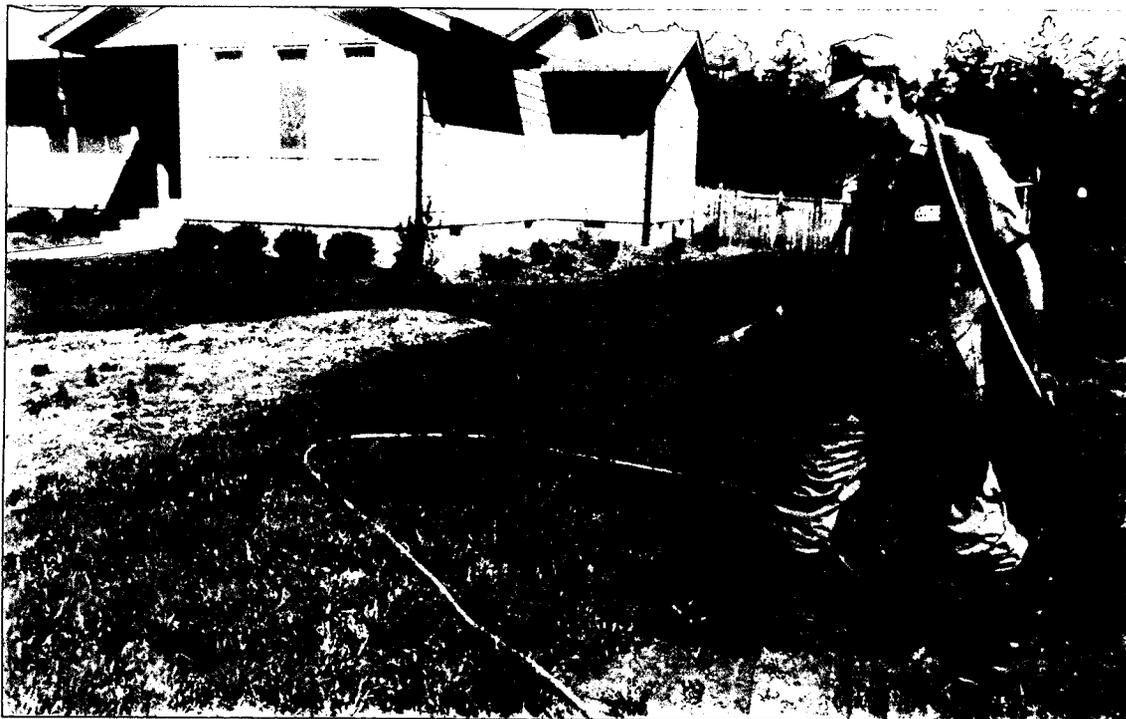
The Pesticide Board, unlike the Structural Pest Committee, has the authority to order *cleanups* for violations involving the leakage or spillage of pesticides. In 1992, the board ordered four cleanups, twice the annual average from 1988–92.

## Consumer Protection Issues

In addition to policing powers, both pesticide boards and the Department of Agriculture have substantial responsibilities dealing with consumer protection and safety. The Pesticide Section tests about 1,700 pesticide products per year to ensure that they are effective, properly labeled, and registered.<sup>11</sup> The department's Food and Drug Protection Division also tests samples of fruits and vegetables to ensure that they don't contain pesticides at levels exceeding EPA tolerance limits.

Consumer protection is the primary focus of the Structural Pest Control Division. In fact, most of the division's enforcement activities are aimed at ensuring that exterminators adequately treat homes and buildings for termites and other pests. "Easily, 90 percent of what we do is dealing with wood-destroying insects," Falco says. "With our [violations], a lot of times—instead of for putting out too much pesticides or in the wrong place—it's for not putting out enough chemical."

Some exterminators say the division goes too far in that direction. David Nimocks, an applicator with Terminix in Fayetteville, says the division's standards require exterminators to apply much more pesticides than are needed to control termite damage. "Research shows that 7 parts per million [of pesticide] is enough to kill the termites," Nimocks says. "Yet, they're wanting us to apply at 500 ppm. Even those [homes] that are failing, they're still getting 70



**North Carolina does not require any formal training for the “technicians” who apply pesticides for lawn service companies or structural pest control firms (exterminators).**

ppm—10 times what they need to kill the termites.”<sup>12</sup> Steve Taylor, owner of Capital Pest Services in Raleigh and past president of the N.C. Pest Control Association, says that excessive treatment standards cost consumers more money and pose safety hazards. “If you ask me to re-treat a house with 100 to 150 gallons of termiticide, at my cost,” Taylor says, “it becomes a financial consideration and an environmental consideration.”

Other exterminators and structural pest control officials, however, disagree with the contention that treatment standards are too high. “I don’t think there’s a problem with the numbers,” says James E. Lynn, owner of Surety Exterminating Co. in Raleigh and a member of the N.C. Structural Pest Control Committee. “They [critics] are looking at the dollar signs. I question their sincerity.” The committee adopted its standards, he says, based on the levels of chemicals needed to control termites as recommended by pesticide manufacturers and the U.S. Department of Agriculture’s research laboratories. Plus, he says, the state needs standards that prevent structural pest damage for many years—to ensure that homeowners are protected.

### Pesticide Violations by Type

What types of violations account for the most enforcement actions? The N.C. Center for Public Policy Research answered that question by reviewing the Pesticide Board’s warning letters and settlement agreements from 1988–92. Enforcement actions were grouped into eight broad categories of violations, which sometimes overlap. The results of that analysis are shown in Table 4 on p. 668. [Structural pest actions were not reviewed because the vast majority of their violations involve applicators who apply too little termite-control chemicals to meet standards.]

The Center’s review confirmed the saying among pesticide regulators that “the label is the law.” Nearly half (43 percent) of the Pesticide Board’s total enforcement actions over the five-year period involved *label violations*—that is, applicators who used pesticides “in a manner inconsistent” with the directions on product labels. Such violations can be very broad in scope, ranging from improperly mixing pesticides to spraying chemicals that drift away from the intended crop or pest. Nevertheless, the large

number of label violations suggests that many applicators could be disregarding or failing to read the finely-printed directions on pesticide products.

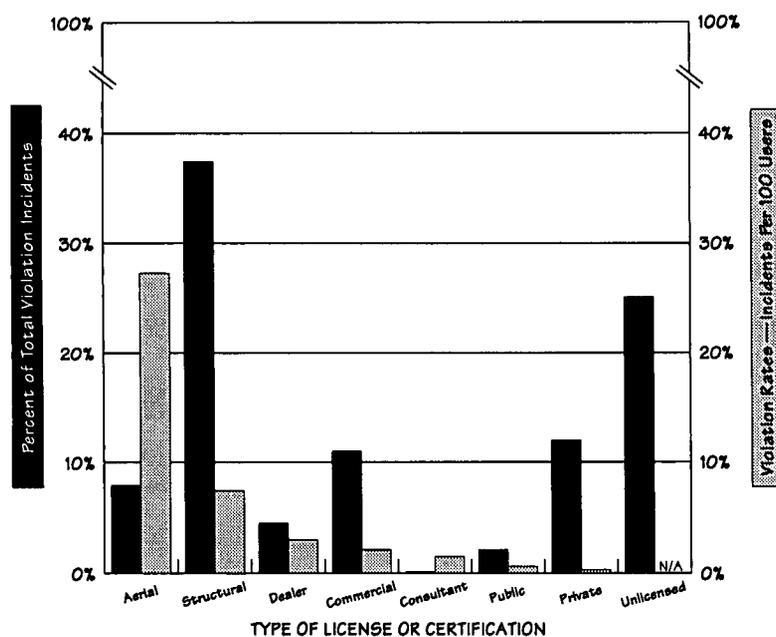
The second-most common type of violation was the *non-licensed use* of pesticides, which accounted for nearly a third (30 percent) of all enforcement actions. Many of the license violations involve the application of restricted-use pesticides by nonlicensed or noncertified applicators—or those with expired licenses and certifications. Also included were those who applied general-use pesticides *commercially* without first obtaining a license, or those using expired licenses. An example of a typical license violation is a landscape gardener who applies pesticides for pay without first obtaining a license and certification. Although license violations usually result in minimal damages, the large number of such incidents suggests that many commercial pesticide users are not aware of licensing and certification requirements—or they just ignore the requirements.

More than one-fourth (27 percent) of the violations involved *drift/deposit* incidents in which pesticide sprays landed or drifted away from the targeted crop or pest. Such incidents are among the most serious violations because the pesticides involved can harm people's health. Drifting sprays also can damage non-targeted crops and gardens, pollute lakes and streams, and cause large fish and bird kills. Many of the drift violations involve gardeners and farmers who inadvertently spray pesticides on neighbors' property, often with minimal damage. But drifting pesticides landed on people and water bodies in more than 15 percent of the incidents over the five-year period.

Other types of enforcement problems included:

- *Sales violations* were involved in more than one-fifth (22 percent) of the pesticide enforcement actions. Such violations include: product recalls; sales of restricted-use pesticides by nonlicensed dealers; sales of re-

**Figure 1. Violations by Pesticide Applicator Types, 1988–92**



Source: N.C. Department of Agriculture.

**Table 4. Types of Violations Cited by the N.C. Pesticide Board, 1988-92<sup>1</sup>**

Description of Violation	Total Number of Actions <sup>2</sup>	Percent of Total <sup>3</sup>
<b>Label Violations</b> (Failure to use or apply pesticides according to directions on product labels.)	168	43%
<b>Non-Licensed Use</b> (Commercial use of pesticides by non-licensed or non-certified applicators, or use of restricted-use pesticides by non-certified applicators.)	118	30%
<b>Drift/Deposit</b> (Pesticide applications that drift or land on non-intended targets, crops, property, roads, autos, people, or water bodies.)	105	27%
<b>Sales</b> (Product recalls; sales by non-licensed dealers; sales to non-licensed or non-certified users; sales of illegal, mislabeled, or unregistered products.)	86	22%
<b>Disposal</b> (Improper disposal, spills, or leaks of pesticides.)	61	16%
<b>Storage</b> (Improper storage, transportation, or labeling; lack of fire plan or inventory.)	37	9%
<b>Non-Approved Use</b> (Application of pesticides that are illegal, not registered, or not approved for target crops or pests.)	36	9%
<b>Other</b> (Fish or animal kills; contamination of food products.)	14	4%
<b>Total Number of Cases<sup>4</sup></b>	391	—

**FOOTNOTES**

<sup>1</sup> The N.C. Pesticide Board regulates agricultural and most commercial uses of pesticides. Table does not include actions taken by the N.C. Structural Pest Control Division, which primarily regulates exterminators.

<sup>2</sup> Total number of warning letters and settlement agreements that cited type of violation, 1988-92.

<sup>3</sup> Percentage of total warning letters and settlement agreements that cited type of violation. Total is greater than 100 percent because warning letters and settlement agreements often cite applicators for multiple violations.

<sup>4</sup> Sum of total actions does not equal total number of cases because individual cases can involve more than one type of violation.

*Source:* N.C. Department of Agriculture.

stricted-use chemicals to nonlicensed and noncertified applicators; and sales of illegal, mislabeled, or unregistered products.

- *Disposal violations* were involved in 16 percent of the total incidents. Such violations include spills, leaks, and improper disposal of pesticide products.
- *Storage violations* were involved in 9 percent of the incidents. Such violations include storing pesticides in improper containers, incorrect labeling of products, transportation problems, and lack of inventories and fire plans.
- *Non-approved uses* were involved in 9 percent of the violation incidents. Such violations can include: using banned, illegal, or non-registered pesticides; and using pesticides on crops or pests for which they are not approved.
- *Other* uncommon and varied violations—ranging from bee kills to the contamination of food products—were involved in 4 percent of the enforcement actions.

### Violations by Pesticide Applicators

The Center also analyzed enforcement records to determine which types of pesticide applicators accounted for the most violations. In total numbers, structural pest applicators were responsible for the most violations (37 percent), followed by unlicensed users (25 percent), certified private applicators (12 percent), commercial applicators (11 percent), aerial applicators (8 percent), dealers (5 percent), public operators (2 percent), and consultants (0.1 percent).

However, just looking at total violations does not take into account the number of applicators in each user category. A truer measure of compliance is the violation rate—or, the number of violation incidents per applicator by type.<sup>13</sup> For example, although private applicators were involved in the second-highest number of incidents (81), they had the lowest violation rate (0.3 percent). By contrast, aerial applicators had the highest violation rate by a wide margin. Aerial applicators were involved in 27 violation incidents for every 100 licensed applicators—a rate four times higher than the next highest category, structural pest applica-

tors (7.4 percent). All other categories of pesticide applicators had violation rates of 3 percent or less.

Aerial and structural pest applicators also accounted for virtually all of the repeat violators of pesticide regulations. Over the study period, seven structural pest applicators and five aerial applicators were involved in three or more violation incidents.

*The higher violation rates and numbers of repeat offenders among aerial and structural pest applicators raise serious concerns. That's because those two groups of applicators have perhaps the greatest potential to affect public health and the environment.* Although there are fewer than 200 licensed aerial applicators in North Carolina, such pilots typically treat much larger acreages of land than ground applicators. Plus, aerial-applied sprays are much more likely to drift off target. One researcher reports that 50 to 75 percent of the aerial-applied pesticides miss their target—compared to 10 to 35 percent for ground-applied chemicals.<sup>14</sup> Although structural pest applicators do not generally have problems with drift, they apply pesticides in and around thousands of homes and occupied structures—with the potential to affect people, pets, and private wells.

Several factors could help account for the higher violation rates and repeat offenses among aerial and structural applicators. Pilots say aerial problems are exaggerated by three factors: their high visibility; the large amounts of land they treat relative to other types of applicators; and the strictness of North Carolina's regulations, which they describe as among the harshest in the nation. "It is very nearly impossible for an aerial applicator to apply chemicals in North Carolina without breaking a regulation," says Boyd Respass, a Beaufort County pilot and board member with the N.C. Agricultural Aviation Association.

North Carolina's aerial regulations prohibit the application or drift of any pesticide off a targeted site. In addition, the rules prohibit the deposit or drift of any pesticides within 25 feet of a public road, 100 feet of any residence, and 300 feet of schools, churches, hospitals, nursing homes, or other occupied buildings. Ground applicators of pesticides do not have to comply with those buffer zones. "A lot of the ground rigs are still spraying when we shut down—because we have to pay a lot closer attention to the weather," says Wayne Slaughter,

a Farmville aerial applicator and past president of the N.C. Agricultural Aviation Association.

Structural pest regulators say the higher violation rate for exterminators is primarily due to their rigorous inspection program. Plus, they say, few of the structural pest violations pose safety or environmental hazards. Instead, most structural violations involve exterminators who have not applied enough insecticides to meet standards for preventing termite damage. "Most of those violations do not represent misuse of structural pest control chemicals," says Steve Taylor, the Raleigh exterminator. "Most of them have to do with paperwork violations or not putting down enough chemicals." Nevertheless, such violations can be very serious to a person whose home has been damaged by a termite infestation related to improper treatment.

Some exterminators also question the higher number of repeat offenses among structural pest applicators. That number is inflated, they say, because the Structural Pest Control Division generally cites licensed or certified applicators for substandard work done by the registered technicians who work under their supervision. "The problem with being a licensee in North Carolina is that you can have 100 employees, and if one of them screws up, you're responsible for it," says S. Alan King, a Rocky Mount exterminator.

Nevertheless, misapplications of pesticides by exterminators can have serious health and environmental consequences—because such chemicals often are applied in close proximity to living areas. State records show that some applications of pest-control chemicals have contaminated wells, filled homes with noxious fumes, and even caused fish kills.

### Proposals for Reducing Excess Violations

Some observers, however, say the Department of Agriculture and its oversight boards should take further steps to reduce violations from exterminators and aerial applicators. "These are the two areas that are the most risky," says Spalt of the Agricultural Resources Center, the Carrboro environmental group that focuses on pesticides. The group is particularly concerned about aerial applicators because the pesticides they spray can spread far and wide.

"Drift from aerial applications can go literally miles," says Spalt, whose group supports a

number of proposals aimed at preventing potential harm from aerial drift.<sup>15</sup> Some of those proposals include:

- Increasing the buffer zone where aerial spraying is prohibited from 100 feet to 300 feet around residences.<sup>16</sup>
- Mandatory liability insurance for aerial applicators to pay for potential damages caused by accidents or misapplications of pesticides.<sup>17</sup>
- Requiring aerial applicators to notify people living or working near crop sites before applying pesticides.

Other proposals for limiting excess violations include more extensive training requirements and harsher penalties for repeat violators. Currently, the number of training hours needed for aerial applicators and exterminators to renew their certifications are not much different than for other user groups with much lower violation rates. Spalt of the Agricultural Resources Center says better training is particularly important for registered structural pest control technicians—who account for more than half of all exterminators yet are not tested or certified for their knowledge of pesticide safety. The same situation exists for the horticultural technicians who apply insecticides and herbicides for lawn service companies.

"The technicians are supposed to be operating under direct supervision, which means a certified applicator should be on site with them," Spalt says. "But under direct supervision has been interpreted to mean in radio contact with a certified applicator. You can't supervise how somebody is applying pesticides if you're back in the office. It's a legal responsibility, rather than a preventive action for homeowners' safety."

James Lynn of the Structural Pest Control Committee, says most pest control firms have certified applicators accompanying their technicians while treating homes. But Lynn supports the adoption of stronger training and certification requirements for all exterminators. "Most people in this industry would rather see an industry that has nothing but certified applicators in it," Lynn says. "I think we need to increase the training requirements. I think there ought to be a yearly requirement."

The large number of violations by *unlicensed* applicators suggests that state could do a better job of educating home gardeners about safe

**Table 5. Top Repeat Violators of  
North Carolina Pesticide Regulations, 1988-92<sup>1</sup>**

Name	Number of Violation Incidents <sup>2</sup>	License Type <sup>3</sup>	Total Fines	Other Penalties
Roy W. Wood, Wood Spraying Service, Raeford (Hoke)	6	Aerial	\$3,950	6 months suspension
Herman Ray Meads, Elizabeth City (Pasquotank)	6	Aerial	\$2,800	none
Dudley Carroll Vann, Vann Aero Service, Greenville (Pitt)	5	Aerial	\$1,700	1 month suspension
S. Alan King, King Exterminating Co. of the Coast, New Bern (Craven) <sup>4</sup>	4	Structural	\$9,900	3 months probation
Henry F. Kessler, Southern Pest Control, Charlotte (Mecklenburg)	3	Structural	\$2,000	18 months probation
Boyd W. Childers, C&C Exterminating Co., Hickory (Catawba)	3	Structural	\$1,400	none
Richard V. Hanson Jr., Spirittine Exterminators, Wilmington (New Hanover)	3	Structural	\$1,050	none
Isaac Floyd Jr., Floco Pest Control Inc., Rocky Mount (Edgecombe) <sup>5</sup>	3	Structural	\$900	none
Randall A. Hill, Ranger Helicopter Services, Roanoke, Va.	3	Aerial	\$700	16 months suspension
John W. Fleming Jr., Fleming Pest Control, Mount Airy (Surry)	3	Structural	\$600	license revoked
Arvel R. Hill, H&L Pest Control, Dallas (Gaston)	3	Structural	\$500	18 months probation
Farmway Chemical Corp., Farmingdale, N.Y.	3	NA <sup>6</sup>	\$400	NA
Alvin R. McCraw, Hendersonville (Henderson)	3	Private	\$300	1 month suspension
John Steve Newsome, Newsome Spray Service, Woodland (Northampton)	3	Aerial	0	3 months suspension

**FOOTNOTES**

<sup>1</sup> Based on enforcement records from the N.C. Pesticide Board, which primarily regulates agricultural uses of pesticides, and the N.C. Structural Pest Control Division, which primarily regulates exterminators.

<sup>2</sup> Total number of settlement agreements and hearings in which applicator was cited from 1988 to 1992.

<sup>3</sup> Aerial = Aerial applicators of pesticides; Structural = Exterminators or structural pest control applicators; Private = Private certified applicators, including most farmers.

<sup>4</sup> King is also affiliated with King Exterminating Co. of Rocky Mount (Nash), which was not responsible for the violations listed above.

<sup>5</sup> Floyd is now affiliated with Mantis Pest Control of Rocky Mount, which was not responsible for the violations listed above.

<sup>6</sup> Not applicable—company not registered in North Carolina.

Source: N.C. Department of Agriculture.

pesticide use. Although the N.C. Department of Agriculture and the Cooperative Extension Service can provide free brochures on pesticide safety, such information often is not available at garden shops, nurseries, and other places where consumers purchase such chemicals.

“The Department of Agriculture may think they do a good job of increasing public awareness about the safe use of pesticides, but very few occasional gardeners know that ‘the label is the law,’” says Mary Joan Pugh, a former member of the N.C. Pesticide Board. “Most people think the label on any pesticide product is just a guide.”

### Critics Say Penalties Not Consistent

Others say the Department of Agriculture needs to revamp its system for penalizing violators, particularly those cases that are handled through the Pesticide Board. Critics—including some Pesticide Board members—say the panel’s fines often are inconsistent and don’t reflect the severity of violators’ offenses. Plus, repeat offenders account for a large number of the violation incidents among some groups, such as aerial applicators. For example, repeat offenders were involved in about 45 percent of all aerial application incidents in 1991 and 1992.

Much of the problem results from the way the Pesticide Board sets penalties—by negotiating the amounts of fines and lengths of suspensions with violators or their attorneys, says board member Greg Smith, a physician with the state Department of Environment, Health, and Natural Resources. “It’s a negotiated settlement, and it all depends on how good a negotiator someone is,” says Dr. Smith, who compares the process to buying an automobile.

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*The modern environmental movement, though it has shifted its emphasis from preservation of precious resources to control of pollution caused by our industrial and agricultural practices, declares our dependence on the earth and our responsibility to it...*

—WALLACE STEGNER, *WHERE THE BLUEBIRD SINGS*

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“Some people pay full price for a car, and some people get 10, 20, or 30 percent off—depending on how good a negotiator they are. I’m not sure that’s the best way to go.”

To illustrate his point, Smith asked the Pesticide Section to prepare a report on repeat violations by aerial applicators from 1983 to 1992. The report showed a wide range of penalties for comparable violations, with repeat violators sometimes receiving more lenient penalties than first offenders. Consider the following examples, all involving pilots:

- Randall A. Hill of Roanoke, Va., was fined \$700 in 1992 for his first violation incident. That same year, he received a 16-month suspension for his second and third incidents.
- H. Ray Meads of Elizabeth City was fined \$250 in 1985 for his first violation incident. In 1990, Meads was fined \$2,500 for five separate violation incidents. Yet he was fined only \$300 for a seventh incident in 1991. Meads received a two-month suspension for an eighth incident, but he has appealed that penalty.
- J. Steve Newsome of Woodland received a one-month suspension in 1989 for his first and second violation incidents. In 1992, he received a two-month suspension for his third incident.
- D. Carroll Vann of Greenville was fined \$1,200 in 1990 for his first violation incident, yet only received a warning letter in 1992 for his second and third incidents. In 1993, he was fined \$500 and received a one-month license suspension for his fourth and fifth incidents.

In other cases, Smith has chided the board’s staff for negotiating settlement agreements that don’t reflect the severity of violations. For example, in March 1994, Smith urged the board to reject a \$400 settlement for a Wilmington golf-course owner charged with ordering his employees to apply paraquat to greens and fairways. “I think the \$400 settlement is too low,” Smith told fellow board members. “Not only did this person knowingly break the law, but he also endangered the health and well-being of his employees. This particular pesticide is responsible for many, many cases of poisoning throughout the world.”<sup>18</sup>

For the sake of consistency, Smith has suggested that the Pesticide Board and the Department of Agriculture develop an enforcement matrix that sets standard fines and penalties based on factors such as the severity of violators' offenses, public health concerns, environmental damages, and prior offenses. Such a system would work like the "point system" for traffic violators in which repeat offenders can receive higher fines or get their licenses suspended. "What you want to do is get the bad apples out," Smith says. "But for those who make very minor violations, I can't see the purpose in dealing with them too harshly."

The Department of Agriculture's Structural Pest Control Division already uses an enforcement matrix in setting penalties for exterminators who violate regulations, Division Director Ray Howell says. "We have developed a matrix, and we use that to try and develop consistency," Howell says. Records show that the Structural Pest Control Committee penalizes repeat violators more consistently than does the Pesticide Board. For example, the panel typically fines exterminators about \$200 for a first offense, \$400 for a second offense, and \$600 for a third offense.

The use of penalty matrices also is commonplace in other state agencies with regulatory enforcement powers, such as the N.C. Division of Environmental Management. Former division director George Everett says that "a predictable response" is an essential component of an enforcement program. "I found that an enforcement matrix or penalty schedule did help in making enforcement more consistent," says Everett, now executive director of the Chemical Industry

Council of N.C. "I also believe that repeat violators should be dealt with aggressively. Single violations in a program that has rules as strict as the aerial [applicator] program in North Carolina should not be unexpected. However, repeat violators should be dealt with forcefully, and the use of suspensions and revocations can be very effective deterrents."

Pesticide Administrator John Smith says that adopting an enforcement matrix could limit the Pesticide Board's flexibility in considering all of the factors involved in cases. The Pesticide Section generally relies on the severity of violations in negotiating fines and suspensions, he says, but the agency deals with a much wider range of applicators and incidents than the structural pest division. Although Smith acknowledges that inconsistencies occur in some cases, he says that—"over the long haul"—more serious violations tend to earn harsher fines and suspensions. "You can mess up bad enough on the first incident to lose your license completely in North Carolina," he says.

Nevertheless, a number of current and past Pesticide Board members say they are confused by the Pesticide Section's negotiation process and support the development of a penalty matrix. "I think we really need to go in that direction," says board member Lu Ann Whitaker of Raleigh. "We need to have some way to determine whether we're giving [violators] a fair penalty. And we need to do something about the repeat offenders." Mary Joan Pugh, a past board member, says: "If you're going to have any consistency or any fairness, then you need to have some kind of a penalty matrix as a guide."

## FOOTNOTES

<sup>1</sup>At the time of the Center's survey of state pesticide programs (August 1993), Nebraska was the only state that lacked enforcement powers. Since then, however, the Nebraska legislature has enacted legislation enabling the state to assume pesticide enforcement responsibilities from the EPA.

<sup>2</sup>For more information on the state's pesticide oversight boards and their relation to other such panels, see the N.C. Center for Public Policy Research's report, *Boards, Commissions, and Councils in the Executive Branch of North Carolina State Government*, 1984, pp. 77-95 and 192-194.

<sup>3</sup>*North Carolina Pesticide Report*, N.C. Department of Agriculture, Report No. 283, 1992, p. 8.

<sup>4</sup>See John H. Wilson, *et al.*, "North Carolina Pesticide Laws and Regulations," Pesticide Training Manual, N.C. Department of Agriculture and N.C. Agricultural Extension Service, 1989, p. 8. This quote does not apply to structural pest control applicators, which are regulated under legislation separate from other pesticide applicators.

<sup>5</sup>N.C.G.S. Chapter 143.

<sup>6</sup>See N.C.G.S. 143-468. North Carolina already charged registration fees of \$30 per pesticide product. The new law imposes additional assessments of \$25 per product for pesticides with sales less than \$5,000 a year, and \$50 per product for those with sales greater than \$5,000 a year.

<sup>7</sup>N.C.G.S. 106-65.22-41.

<sup>8</sup>Legislative Research Commission, Committee on Pest Control, Report to the 1989 Session of the General Assembly, Dec. 14, 1988.

<sup>9</sup>The N.C. Department of Agriculture, in a news release dated June 2, 1994, stated that the Pesticide Board would accept nominations until July 11, 1994, for the following seats: three practicing farmers; one conservationist at large; one ecologist at large; one pesticide industry representative; one agribusiness representative; one local health director; one representative of a public utility or railroad company; one member of the N.C. Agricultural Aviation Association; one member of the public at large; and one person actively engaged in forest pest management.

<sup>10</sup>N.C.G.S. 106-65.22.

<sup>11</sup>In 1992, the Pesticide Section tested 1,711 pesticide products. Those tests found seven products that were adul-

terated, 94 that were deficient, seven that had excessive active ingredients, and 36 that were not registered.

<sup>12</sup>To support his argument, Nimocks cites an article by Nan-Yao Su, *et al.*, "Measuring Termiticides," in *Pest Control*, September 1990, p. 24.

<sup>13</sup>The Center calculated violation rates by dividing the number of violation incidents in each applicator type by the number of applicators in that category and multiplying the result by 100. Violation incidents were defined as pesticide cases that culminated in hearings or settlement agreements through the Pesticide Board or the Structural Pest Control Committee.

<sup>14</sup>See David Pimentel, *et al.*, "Environmental and Economic Costs of Pesticide Use," *BioScience*, Vol. 42, No. 10 (November 1992), p. 755.

<sup>15</sup>For a discussion of the drifting potential of aerial sprays, see Pimentel, note 14 above, p. 755.

<sup>16</sup>The Legislative Research Commission's Committee on Pest Control recommended such a change to the 1989 session of the N.C. General Assembly. Rep. Bertha Holt (D-Alamance) introduced a bill, H.B. 389, that would have widened the buffer zone to 300 feet, but the measure died in committee.

<sup>17</sup>From 1953 to 1971, aerial applicators were required to carry liability insurance under the N.C. Aerial Crop Dusting Law (G.S. 4B, Chapter 105), which was superseded by the N.C. Pesticide Law of 1971. Bill Buffaloe, state affairs manager for Rhone-Poulenc Ag Co. and former administrator of the state pesticide program, says the requirement was dropped because the cost of insurance premiums threatened to drive many aerial applicators out of business. "The cost was unreal," he says. "It really was a burden."

<sup>18</sup>The Pesticide Board reconsidered the case at its April 1994 meeting, directing its staff to negotiate a \$2,000 settlement—the maximum fine for a single violation. However, the board's attorneys said that could be difficult because the golf-course owner, Thomas D. Wright of Wilmington, did not actually apply the pesticide himself. As a result, the board also directed its staff to draft legislation that would allow it to fine employers who order their workers to apply pesticides illegally. The General Assembly would have to approve the change.

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## ***Recommendations: State Regulation of Pesticides***

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THE N.C. CENTER FOR PUBLIC POLICY RESEARCH, in its review of state pesticide regulations, identified strengths and weaknesses in North Carolina's program. On the positive side, a 50-state survey found that North Carolina's pesticide program was among the most comprehensive in the breadth of its responsibilities and extent of its regulatory powers. North Carolina also ranked high in total spending and staffing for pesticide programs, as well as various measures of regulatory activity—including total fines assessed on violators, the number of applicator licenses suspended or revoked, and the number of complaints investigated.

The Center's research also found areas where North Carolina is lagging. Our review of enforcement records found shortcomings in North Carolina's regulation of aerial applicators, its methods for penalizing violators, and the balance of public interests on the boards that oversee pesticide regulation. In addition, our survey found that North Carolina trails many states in its record-keeping and reporting requirements for pesticide applicators, and the hours of training needed for applicators to renew their licenses and certifications.

North Carolina cannot afford to ignore these shortcomings. Scientific authorities rank pesticides as a relatively high risk compared to other environmental problems in their potential to cause health and ecological damage.<sup>1</sup> Therefore, the Center recommends the following policy actions in areas of pesticide regulation:

**I** The N.C. Department of Agriculture and the Pesticide Board should revise their system of punishing violators of pesticide regulations to: (A) assess more consistent fines and penalties; (B) punish more harshly serious violations and repeat offenses; and (C) cease the current practice of negotiating penalty settlements with violators.

The Center's review of the N.C. Department of Agriculture's pesticide enforcement actions found numerous inconsistencies in the amounts of fines and lengths of suspensions assessed on violators. Such inconsistencies were particularly apparent with the Pesticide Board, which negotiates settlements with violators rather than using a system that assigns standard penalties.

Such inconsistencies often give the impression that the severity of penalties is more related to the negotiating skill of violators than the severity of their offenses. *To dispel that notion, the N.C. Center recommends that the Pesticide Board stop its current method of negotiating fines and penalties with violators. Instead, the board should develop a matrix system that sets standard fines and penalties based on factors such as severity of incidents, damage involved, illnesses or deaths caused, and number of previous violations. The new penalty system should include a method for assessing harsher penalties on repeat violators, comparable to the "point system" used for traffic violators.*

Records show that a small percentage of repeat offenders, primarily aerial applicators and exterminators, account for many of the pesticide violations. *Both the Pesticide Board and the Structural Pest Control Committee should assess higher fines for more serious incidents and for repeat offenders.* State law limits pesticide fines to \$2,000 per violation, and the N.C. Center does not propose raising that limit. But the state's pesticide oversight boards rarely assess fines that approach the maximum, and both panels should make more use of their authority within current guidelines.

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The Pesticide Board averaged \$494 per fine from 1988 to 1992, while the Structural Pest Control Committee averaged \$668. Our survey shows that the average fine assessed on violators in North Carolina is much lower than in many states—even though North Carolina is among the leaders in total fines. The average fine assessed in North Carolina from 1990–92 was \$601—less than one-fifth of that among other states, which averaged \$3,434 per fine.

**2** The Pesticide Board should take actions to reduce the numbers of violations by aerial applicators, who account for an undue proportion of the state's pesticide violations. Such actions should include imposing harsher penalties on repeat offenders and requiring aerial applicators to notify nearby residents by posting signs before spraying.

Center research found that, among pesticide users, aerial applicators had the largest violation rate—or, *the number of violation incidents per applicator by type*.<sup>2</sup> From 1988 to 1992, aerial applicators were involved in about 27 violation incidents for every 100 applicators—a rate far higher than any other user category. The second-highest category, exterminators, had a violation rate of seven incidents per 100 applicators. Put another way, aerial applicators were involved in nearly as many violation incidents as private applicators—even though private licensees outnumbered aerial licensees by 28,650 to 194. Aerial applicators also accounted for more than a third (36 percent) of the *repeat* violators over the five-year period.

Pilots say their higher violation rate is due to three factors: their high visibility; the large amount of land they treat relative to other types of applicators; and the strictness of North Carolina's regulations, which they describe as among the harshest in the nation. There is some truth in those claims. But it's also true that aerial spraying is more prone to drift off-site than other types of pesticide application, thereby posing greater hazards to the environment and public health.

North Carolina regulations already prohibit all drift from aerial spraying—it's hard to get much tougher than that. Yet more actions are clearly needed to reduce complaints and violations. Imposing harsher penalties on repeat violators is one step in that direction.

Another much-needed change is requiring aerial applicators to notify nearby residents before spraying fields.<sup>3</sup> Pilots have opposed notification requirements because of the difficulties and delays involved in identifying and contacting residents by letters, telephone calls, or advertisements. Such concerns are legitimate. *The Center recommends instead that pilots provide advance notice to nearby residents by posting standardized signs around target sites before spraying.* Administrators with the Massachusetts pesticide program say they have reduced aerial application problems since they began requiring pilots to post signs prior to spraying. That seems a reasonable approach.

*The Center also recommends that the Pesticide Board and/or the General Assembly study the merits of several other proposals aimed at regulating aerial applicators, including: (A) increasing the buffer zones in which spraying is prohibited around residences from the currently required 100 feet to 300 feet; (B) adopting a more lenient standard than the current "no deposit" rule for pesticide drift in buffer zones; (C) requiring mandatory liability insurance for aerial applicators,<sup>4</sup> which was required by state law from 1953 to 1971; and (D) adopting stronger training requirements for the renewal of certifications.*

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**3** The N.C. General Assembly should enact legislation giving the Structural Pest Control Committee the authority to penalize *unlicensed and uncertified* violators of its regulations.

Unlike the Pesticide Board, the Structural Pest Control Committee currently does not have the power to fine or otherwise punish unlicensed or uncertified exterminators who violate state pesticide regulations. As a result, the structural pest board must refer such cases to the courts—thus contributing to the backlog of cases in the court system and resulting in unnecessary costs for taxpayers. In 1992 alone, 12 cases involving unlicensed and uncertified exterminators were tried in the court system. Transferring that authority to the Structural Pest Control Committee would speed up the handling of such cases and rid the court system of an unneeded burden.

**4** The N.C. Department of Agriculture should start compiling accurate data on the amounts of pesticides used statewide in order to assess and correct potential health and environmental problems, including groundwater contamination. The state also should develop a mandatory system for the reporting of pesticide-related illnesses, injuries, and deaths.

Accurate information would be valuable for a number of reasons, including: determining where to concentrate regulatory and training efforts; conducting recalls of canceled pesticide products; monitoring and correcting potential environmental problems, such as groundwater contamination; and detecting and dealing with potential health problems associated with pesticides. The information also could benefit farmers, who are among the most vulnerable to potential groundwater contamination and pesticide-related health problems.

Ideally, the Pesticide Board should require all applicators to report their use of all pesticides. But such complete reporting could be expensive and time-consuming to collect and analyze. However, the board could obtain much valuable information on pesticide usage with relatively little effort. *At a minimum, the Pesticide Board and the Department of Agriculture should compile annual statewide pesticide-usage reports based on statistical samples of people who apply restricted-use chemicals. Plus, the General Assembly should appropriate funds for the additional staff and resources that the Agricultural Statistics Division needs to compile and analyze those reports.*

*North Carolina also should join the 13 states that require physicians and hospitals to report pesticide-related illnesses, injuries, and deaths.* The data compiled from this effort would go hand-in-hand with pesticide-use records in helping to monitor and deal with potential health problems associated with pesticides. The Center's survey found that such reporting is required in about one-third of the states, including neighboring South Carolina.

**5** The N.C. General Assembly should rewrite the statutes regarding appointments to the state's three pesticide oversight and advisory panels to ensure that each board includes a broader balance of public interests. Also, the Governor and the N.C. Pesticide Board should closely follow the requirements of the state Pesticide Law when making any new appointments to the state's pesticide oversight and advisory boards.

In particular, the Center recommends the following changes in the laws specifying appointments to the state's pesticide oversight and advisory boards:

*A) The Pesticide Board should include an environmentalist from a non-profit, public-interest group as a substitute for one of its two at-large members.*

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B) *The Structural Pest Control Committee should include an environmentalist from a non-profit, public-interest group as a substitute for one of its two members who are involved in the pest control industry.*

C) *The Pesticide Advisory Committee, because of its larger size, should include several additional interests that currently are not represented. These include: an environmentalist from a non-profit, public-interest group as a substitute for the committee's conservationist seat; an environmental scientist as a substitute for its ecologist seat; a farmworker advocate as a substitute for its at-large member from the general public; and a researcher or farmer involved in integrated pest management or alternative methods of pest control as a substitute for one of its three practicing farmers.*

Regardless of whether the legislature enacts such changes, the Center also recommends that:

D) *The Governor—when appointing new members of the Pesticide Board—should select persons with backgrounds that are truly representative of the slots they are supposed to fill under the state Pesticide Law.*

E) *The Pesticide Board—when appointing new members of the Pesticide Advisory Committee—should select persons with backgrounds that are truly representative of the slots they are supposed to fill under the state Pesticide Law.*

**6** The Pesticide Board and the Structural Pest Control Committee should increase the training requirements for the renewal of pesticide licenses and certifications, particularly with regard to aerial applicators and exterminators. At a minimum, the state should require *all applicators* to complete 10 hours of training every three years.

**7** The Department of Agriculture should expand its public education efforts regarding safe pesticide use to help stem the large number of violations by unlicensed and uncertified applicators.

Unlicensed applicators account for one-fourth of the state's violation incidents—second highest among the types of pesticide users. These violations generally include two types: home gardeners who carelessly apply pesticides bought from garden centers but aren't required to obtain licenses; and landscape workers and exterminators who illegally apply pesticides for money without obtaining licenses. Most unlicensed applications result in minimal damage, but some have caused serious accidents and injuries. For example, in 1989 an uncertified farmworker in Bladen County accidentally mixed a container of the insecticide Counter with cow feed—killing 125 head of cattle.

The N.C. Department of Agriculture has available pamphlets and posters on pesticide safety that it can supply to dealers and garden shops. But the Pesticide Board does not *require* dealers to provide such information to consumers, and many dealers don't bother. As a result, most gardeners probably are not aware that it is illegal to apply pesticides on someone else's property (or for money) without a license. Many gardeners also might not know that "the label is the law" regarding pesticide use. That is, it's illegal to apply pesticides in ways inconsistent with the directions listed on the small, hard-to-read labels on pesticide bottles and boxes.

*The Department of Agriculture should expand its public education efforts by distributing pesticide-safety information to all dealers and garden shops. The Pesticide Board also should require those dealers, at a minimum, to post signs with basic information on pesticide safety.* The state wouldn't have to write such material because of the availability of existing publications. For instance, the EPA publishes an inexpensive,

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24-page pamphlet, "Citizen's Guide to Pesticides," that contains all the information the average person needs to know about the safe handling of pesticides.<sup>5</sup>

**8** The N.C. General Assembly should establish a study commission to re-examine the merits of moving pesticide regulatory programs from the Department of Agriculture to the Department of Environment, Health, and Natural Resources. The N.C. Center makes no recommendation on whether the program should be moved.

Perhaps no issue in pesticide regulation has caused more debate than this question: Can an agricultural agency regulate pesticide use without favoring farmers at the expense of public health and the environment? Congress considered that issue in 1970, when it transferred pesticide regulation from the U.S. Department of Agriculture to the newly created Environmental Protection Agency. In North Carolina, the state legislature considered the issue in 1989, when it consolidated most of the state's environmental programs into the new Department of Environment, Health, and Natural Resources. At that time, the legislature decided to leave pesticide regulation in the Department of Agriculture.

The issue hinges on the ageless philosophical debate over the proper role of government regulation. That is, is it better for government agencies to focus on policing and punishing violators of pesticide regulations? Or, is it better for government agencies to stress the promotion of safe pesticide use while taking a more lenient stance against violators? The state legislature is the proper place to resolve such questions.

## FOOTNOTES

<sup>1</sup> U.S. Environmental Protection Agency, "Unfinished Business: A Comparative Assessment of Environmental Problems," Office of Policy Analysis, February 1987, pp. 84-86.

<sup>2</sup> The Center calculated violation rates by dividing the number of violation incidents in each applicator type by the number of applicators in that category and multiplying the result by 100. Violation incidents were defined as pesticide cases that culminated in hearings or settlement agreements through the Pesticide Board or the Structural Pest Control Committee.

<sup>3</sup> Currently, North Carolina requires notification in only two limited circumstances: aerial applicators seeking to spray in restricted areas, such as parks; and those spraying within 1/2-mile of registered apiaries (bee colonies).

<sup>4</sup> Aerial applicators were required to carry liability insurance under the N.C. Aerial Crop Dusting Law (G.S. 4B, Chapter 105) from 1953 to 1971. The General Assembly dropped the insurance requirement while enacting the N.C. Pesticide Law of 1971.

<sup>5</sup> "Citizen's Guide to Pesticides," U.S. Environmental Protection Agency, Washington, D.C., Publ. No. 20T-1003, 1990, 24 pp.



# North Carolina's State Parks: Finding a Dedicated Source of Funding

BY BILL KRUEGER AND MIKE MCLAUGHLIN

*More than ten 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 near the bottom in funding for parks, and its per capita operating budget ranks 49th in the nation. After decades of neglect, the General Assembly recently created a dedicated source of funds for the state parks.*

**A**ttracting more than ten million visitors a year, North Carolina's park system stretches from the 1,677 acres in Mount Mitchell State Park in the west to the 414 acres of Jockey's Ridge State Park in Nags Head on the coast. The system, begun in 1916 with the establishment of Mount Mitchell State Park, now consists of 58 units and 135,000 acres. That includes 29 state parks, ten natural areas, and four recreation areas (see Table 1).

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.

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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.<sup>1</sup> Yet a 1973 report by the Legislature's Fiscal Research Division found the parks in a woeful condition of disrepair.<sup>2</sup> *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.<sup>3</sup> 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.<sup>4</sup>

A 1985 legislative study commission identified \$50 million in property that should be acquired to complete and protect existing parks. In response, Governor James G. Martin embraced a \$50 million bond referendum. The legislature instead set aside \$25 million, although only 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," said Sen. Henson Barnes (D-Wayne), then chairman 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 William W. Davis, former director of the state Division of Parks and Recreation, many 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. But the key to completing the parks puzzle, said 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," said Barnes. "For a number of years, the park system had no constituency pushing it, supporting it."

Subsequent reviews, however, 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 said in its May 1986 report to Gov. Jim Martin.<sup>5</sup> The report went so far as to suggest that the state use prison labor to get its ailing park system up to snuff.<sup>6</sup>

Although the parks enjoyed increased attention after the board's 1986 report, former 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."<sup>7</sup> As Renfrow noted in the audit report on the management of the state park system, state officials had identified more than \$100 million in capital improvements needed at existing parks. Renfrow called for a "significant commitment by the General Assembly over several years" to increased funding for parks.<sup>8</sup>

Since then, public support for the parks has dramatically increased. To some who have followed the progress of the park system, the answer to many of its woes was an act of the 1987 General Assembly. Lawmakers then enacted the State Parks Act, which required for the first time that the General Assembly approve all additions of land to the park system.<sup>9</sup> The act also required that approval of those additions be accompanied by appropriations for their development and operation, and it directed the Department of Environment, Health, and Natural Resources to prepare a systemwide plan for the North Carolina State Parks System every five years. Davis said the act helps steer the future development of the system. He said involving the General Assembly assures that future parks don't suffer the funding shortfalls experienced by existing parks. "It's giving them overview—giving them the opportunity to buy in," said Davis.

In the 1990s, financial security for the parks system has become a long awaited reality. In

1991, Carolina Power & Light Company became the nation's first corporate sponsor of a state park system when it adopted the parks in North Carolina. Several other public-private partnerships also have been formed. In November 1993, the citizens of North Carolina passed a \$35 million bond referendum for land acquisition and capital improvements for the state parks—the largest dedication of funds in the history of the state parks system.<sup>10</sup> And, in 1995, the General Assembly appropriated an additional \$10 million for land acquisition, construction,

and renovations. More importantly, it created a dedicated source of funds for the state park system which is estimated to produce \$10 million per year.

### **Starving the Parks**

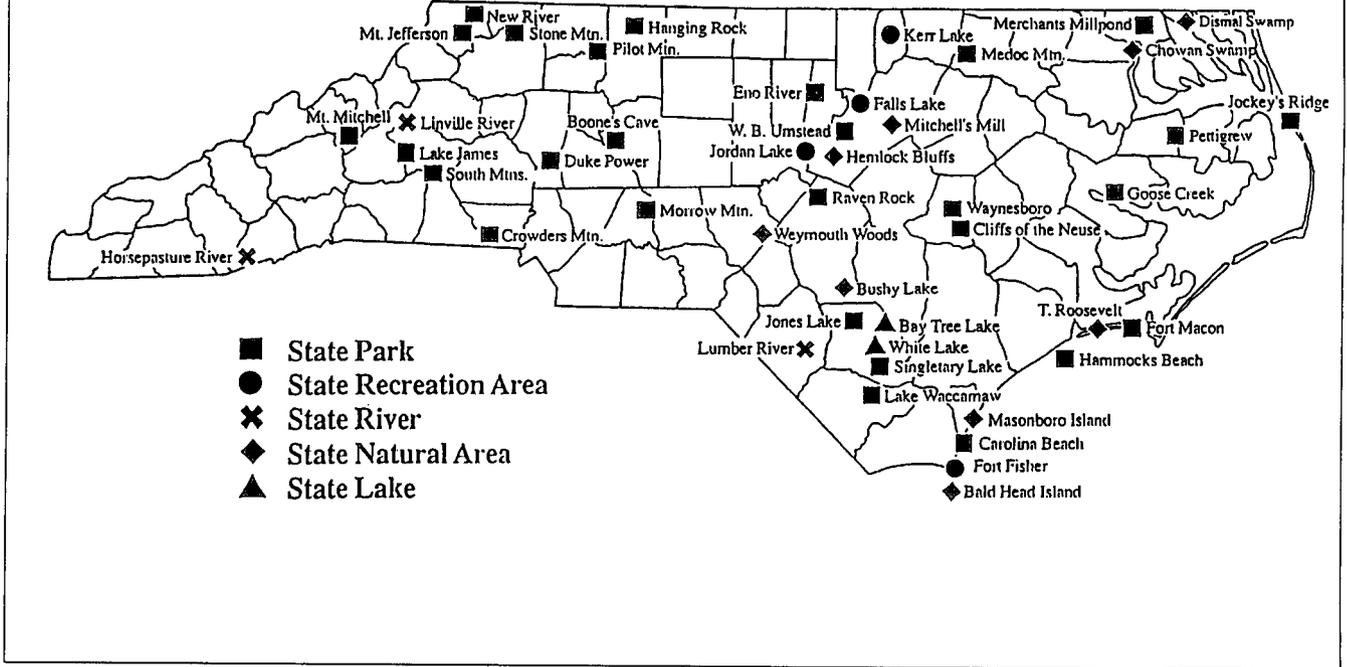
**I**n 1991, North Carolina ranked 49th among the states in per capita funding for its state parks. While other southern states such as Georgia and Tennessee spend \$5.63 and \$7.39 per

***Cabin in disrepair  
at Umstead State  
Park in Wake  
County.***



*North Carolina Division of Parks and Recreation*

Figure 1. North Carolina State Parks System



person on parks, respectively, North Carolina spends a meager \$1.57 a person. Neighboring South Carolina spends \$4.84 a person, and Kentucky, which views parks as an economic development tool, spends \$14.69 a person. Only Virginia, at \$1.44 a person, spends less than North Carolina, and the regional average is \$5.50.<sup>11</sup> "The state park system in North Carolina has always been in last place," said Davis. "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 in-

cludes those at William B. Umstead State Park in Wake County, Hanging Rock State Park in Stokes County, and Morrow Mountain State Park in Stanly County.

But efforts to nurture a state park system have been minimal. From 1916, 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 first two terms of Democratic Gov. Jim Hunt and did not pick up again until Republican Gov. Jim Martin took office in 1985. Between 1989 and 1993, 80 tracts of land (4,463 acres) were acquired for the state parks system at a cost of \$8,159,989.

"Historically, funding has been up and down," says Bill Holman, a lobbyist for the Conservation Council of North Carolina and the

**Table 1. North Carolina's Parks and Recreation System**

**State 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. Lumber River
- \* 17. Medoc Mountain
- \* 18. Merchants Millpond
- \* 19. Morrow Mountain
- \* 20. Mount Mitchell
- \* 21. New River
- \* 22. Pettigrew
- \* 23. Pilot Mountain
- \* 24. Raven Rock
- \* 25. Singletary Lake Group Camp
- \* 26. South Mountains
- \* 27. Stone Mountain
- \* 28. Waynesborough
- \* 29. William B. Umstead

**State Lakes**

1. Bay Tree Lake
2. Lake Phelps
3. Lake Waccamaw

4. Jones Lake
5. Salters Lake
6. Singletary Lake
7. White Lake

**State Recreation Areas**

- \* 1. Falls Lake
- \* 2. Fort Fisher
- \* 3. Jordan Lake
- \* 4. Kerr Lake

**State Rivers**

1. Horsepasture River
2. Linville River
3. Lumber River
4. New River

**State Trails**

1. Falls Lake/Wake County Trail
2. French Broad River Trail
3. Lower Lumber River Trail
4. Yadkin River Trail

**State Natural Areas**

1. Bald Head Island
2. Bushy Lake
3. Chowan Swamp
4. Dismal Swamp
5. Hemlock Bluffs
6. Masonboro Island
7. Mitchells Mill
- \* 8. Mount Jefferson
9. Theodore Roosevelt
- \* 10. Weymouth Woods

\* Operated Units — Operated units have one or more full time staff, have visitor facilities, and are open to the public.

Source: "Systemwide Plan for the North Carolina State Parks System," Division of Parks and Recreation, N.C. Department of Environment, Health, and Natural Resources, 1994.

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."

Over the years, the public has been beset by reports of maintenance woes brought on by underfunding of state parks, including sewage running down Mount Mitchell, boat docks col-

lapsing at Carolina Beach State Park, and methane in the bathrooms at Waynesboro State Park in Wayne County.<sup>12</sup> The well-publicized problems in the parks 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.”<sup>13</sup> 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.”<sup>14</sup>

Davis said the paltry funding of parks was in part due to limited legislative involvement in the creation and funding of park units. The Council of State, an 11-member panel of state-wide elected officials, typically accepted donated land to be assigned by the executive branch to a state agency for management, said 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, said 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 said. A generous allotment of federally controlled public lands may also have obviated the need for state parks in the minds of some elected officials, said 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,” said 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).”

Jim Stevens, Davis’ predecessor as state parks and recreation director, said North Carolina lagged in park funding because other states got a head start. “We’ve been playing a game of catch-up,” said 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.’”<sup>15</sup>

That slammed shut the state coffer for four decades, but Kirk Fuller, a former public information officer for the Division of Parks and Recreation, said 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 good will of the people,” said Fuller. “It had to come in and purchase unique natural areas to preserve them.”

Still, Stevens said that 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 said.

**Table 2. Increasing Land Acquisition Costs**

Park (Year Established)	Cost Per Acre	
	At Establishment	1990-93
Crowders Mountain (1973)	\$ 1,099	\$ 2,449
Eno River (1973)	1,983	10,035
Jockey’s Ridge (1975)	7,206	37,107
New River (1977)	1,125	3,654

*Source:* “Systemwide Plan for the North Carolina State Parks System,” Division of Parks and Recreation, N.C. Department of Environment, Health, and Natural Resources, 1994.

Another shortcoming of the largely donated system is that the parks are not equally distributed among legislative districts. The five-county 40th House District in northwestern North Carolina, for example, has four state parks—Pilot Mountain, New River, Mount Jefferson, and Hanging Rock—while most legislative districts have none. “In Kentucky,” said 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 that resulted was felt on the frontlines, where rangers at understaffed parks struggled to keep the state’s facilities open and presentable to the public. But the long-neglected state parks are beginning to get some financial attention.

Holman says, “There has been growing public concern about the conditions of state parks. One thing environmentalists have sought is a dedicated source of revenue for parkland, gamelands, and natural areas. Several states use a land [or deed] transfer tax.”

Another long-term funding option was the expansion of user fees with the stipulation that the money be plowed back into the state parks. Park advocates said potential was 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.”

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 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.” In a report to the 1995 General Assembly, the State Parks and Recreation Areas Study Committee found that it was not clear that the additional revenue from charging and

collecting admission fees would be worth the negative impact such fees would have on potential park visitors and the public’s support for the parks system.

So, in 1995, the General Assembly earmarked the state’s share of the property transfer tax—\$2 assessed per \$1000 in property transfers—for parks and natural heritage programs. Seventy-five percent of the state’s share will go to the Parks and Recreation Trust Fund and 25 percent will go to the Natural Heritage Trust Fund.<sup>16</sup> Of the 75 percent that goes to the parks trust fund, 65 percent will go to the state park system, 30 percent will be used to provide matching grants to local parks, and 5 percent will be used for a program that ensures public access to the beaches of North Carolina.

***Hanging Rock State Park is one of the state’s oldest and most popular attractions.***



*North Carolina Division of Parks and Recreation*

### The Development Debate

Discussion about state parks now focus not on the dearth of funding for parks, as it has in the past, but on how to use the money available. The primary question is 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 (see Table 2). State parks officials say at least 35,268 additional acres are needed to protect existing parks (see Table 3). But this is not a new debate. Stevens said in a series of nine pub-

lic 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, said 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 camp-

**Table 3. North Carolina's State Parks**

Unit Parks	Current Park Acreage	Acreage Acquisition Needs	Construction / Renovation Needs	Visitation 1991
Bay Tree Lake	2027	0	NA	NA
Boone's Cave	110	0	0	27,198
Carolina Beach	420	73	\$ 2,642,900	261,536
Cliffs of the Neuse	750	157	4,422,900	136,886
Crowders Mountain	2591	1419	4,841,900	163,432
Duke Power	1458	1109	10,415,300	207,154
Eno River	2233	893	1,485,600	159,084
Fort Macon	389	10	7,814,300	1,346,171
Goose Creek	1596	392	5,485,500	111,046
Hammocks Beach	736	169	3,402,800	92,218
Hanging Rock	6341	2200	3,847,800	262,317
Jockey's Ridge	414	16	2,196,600	656,212
Jones Lake	4483	0	1,673,300	70,368
Lake James	585	13	1,060,800	158,449
Lake Waccamaw	1732	2	3,748,300	60,151
Lumber River	575	7712	6,440,100	NA
Medoc Mountain	2287	347	8,522,000	46,896
Merchants Millpond	2922	807	2,850,749	79,420
Morrow Mountain	4693	764	5,976,000	310,675
Mount Jefferson	489	198	988,400	59,702

ground 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 was improperly posed as an either-or question. “The answer to that is both,” said Davis. He noted that there are a number of areas in which land acquisition is incomplete and park integrity is threatened by development. For instance, commercial development along U.S. Highway 70 threatens Umstead State Park.

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 con-

**Table 3. *continued***

Unit Parks	Current Park Acreage	Acreage Acquisition Needs	Construction / Renovation Needs	Visitation 1991
Mount Mitchell	1677	1137	1,744,100	301,683
New River	1377	823	4,890,600	40,523
Pettigrew	1143	590	2,707,800	79,399
Pilot Mountain	3703	123	7,191,800	277,324
Raven Rock	2990	2586	9,500,100	66,054
Singletary Lake	1221	0	1,776,300	9,644
South Mountains	7330	8915	4,273,500	72,837
Stone Mountain	13439	3543	3,824,700	284,722
*Waynesborough	142	0	195,776	37,402
*Weymouth Woods	676	300	372,235	14,545
William B. Umstead	5337	344	9,517,000	491,671
<b>Recreation Areas</b>				
Falls Lake	1043	0	591,100	477,443
Fort Fisher	287	0	429,300	873,932
*Jordan Lake	1925	0	2,775,541	1,062,006
Kerr Lake	3000	203	39,813,252	1,245,656

NA = data not available

\* Construction and renovation needs for these parks and recreation areas are incomplete.

Source: “Systemwide Plan for the North Carolina State Parks System,” Division of Parks and Recreation, N.C. Department of Environment, Health, and Natural Resources, 1994.

trast 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 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," said 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 said 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 said. "We want them to have access to good, clean facilities."

With the funding crisis abated, the debate on development and funding priorities should be steered by the state parks system mission statement:

The North Carolina state parks system exists for the enjoyment, education, health and inspiration of all our citizens and visitors. The mission of the state parks system is to conserve and protect representative examples of the natural beauty, ecological features and recreational resources of statewide significance; to provide outdoor recreational opportunities in a safe and healthy environment; and to provide environmental education opportunities that promote stewardship of the state's natural heritage.

For more information about the state parks and recreation areas, call or write: Division of Parks and Recreation, N.C. Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, N.C. 27611-7687. Telephone: 919-733-PARK; 919-733-4181.

### ***Canoeists at Merchants Millpond State Park in Gates County.***



*North Carolina Division of Parks and Recreation*

## FOOTNOTES

<sup>1</sup> 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.

<sup>2</sup> *Study of the State Parks*, report by the Fiscal Research Division of the General Assembly, December 1973.

<sup>3</sup> *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.

<sup>4</sup> *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.

<sup>5</sup> State Goals and Policy Board, *Report to the Governor*, May 1986, p. 55.

<sup>6</sup> *Ibid.*, pages 40, 60, and 61.

<sup>7</sup> Office of the State Auditor, *Performance Audit Report: Management and Operation of the State Parks System*, January 1988, p. 6.

<sup>8</sup> *Ibid.*, p. 46.

<sup>9</sup> Chapter 243 of the 1987 Session Laws, State Parks Act, now codified as N.C.G.S. 113-44.

<sup>10</sup> Chapter 542 of the 1993 Session Laws (S.B. 14).

<sup>11</sup> Rankings compiled by the State Division of Parks and Recreation based on the *National Association of State Park Directors Annual Information Exchange*, April 1988.

<sup>12</sup> "N.C. Ranks Last in Spending for Parks," Associated Press article published in the *Winston-Salem Journal*, May 24, 1987, p. B-6.

<sup>13</sup> "Time to End Parks Neglect," *The News and Observer* of Raleigh editorial page, April 28, 1987.

<sup>14</sup> "An Embarrassing Disgrace," the *Winston-Salem Journal* editorial page, May 27, 1987.

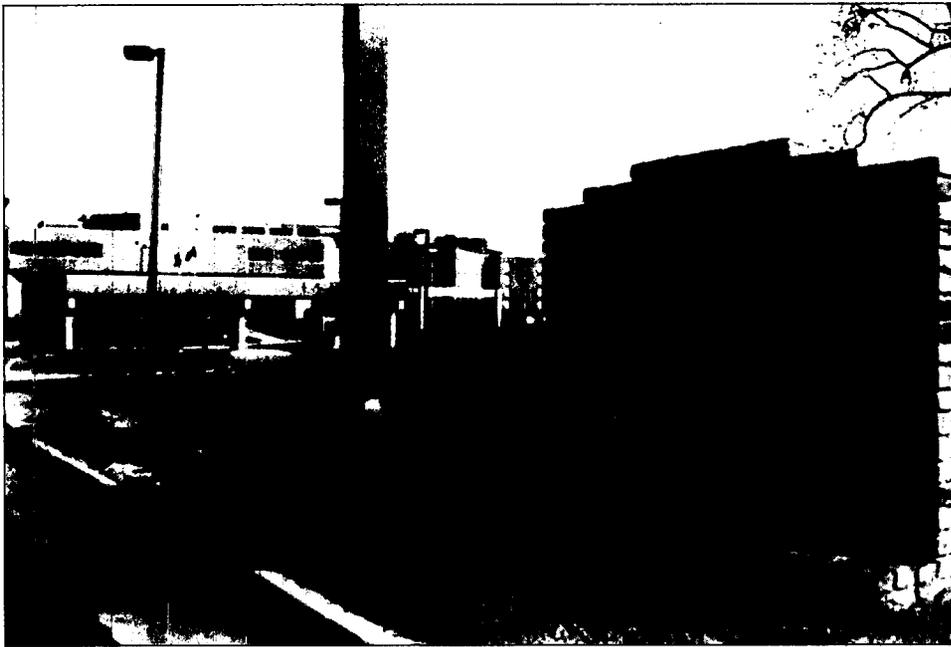
<sup>15</sup> Kirk K. Fuller, "History of North Carolina State Parks: 1915-1976," *Histories of Southeastern State Park Systems*, Association of Southeastern State Parks Directors, Oct. 1977, p. 128.

<sup>16</sup> Chapter 456 of the 1995 Session Laws (H.B. 718).



# Chapter 10

## Prisons



*“You can judge the degree of civilization of a society by entering its prisons.”*

—FYODOR DOSTOYEVSKI



# A Short History of Corrections in North Carolina

BY JACK BETTS

*Not long after the Revolution, the nation's first prison was set up by the 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 served better 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.*

**B**ut not North Carolina. In the 18th Century, state law required counties to do only two things—to build a court house and to build a jail.<sup>1</sup> 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 first administration of Gov. James B. Hunt, Jr.

A few years after the original prison was built, the state began acquiring farmland in Halifax and Northhampton 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.

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*Jack Betts is an associate editor of The Charlotte Observer.*

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 woman'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 Associate Justice of the N.C. Supreme Court) Willis P. Whichard of Durham in 1982.<sup>2</sup> 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

*Triple-bunk dormitory at Craggy Prison in Asheville.*



*Elizabeth Leland*

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## ***The Correction Conundrum: What Punishment Is Appropriate?***

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TO CICERO, IT WAS SIMPLE. Let the punishment match the offense, said the Roman statesman. In the ensuing 2,000 years since Marcus Tullius Cicero spoke, civilizations have been struggling to match the punishment to the crime, with varying degrees of success. In North Carolina, we still labor to devise appropriate sentences for the crime committed. Traditionally, we have made prisoners of those we convict of a crime. That prisoner becomes a ward of the state—ours to feed, clothe, shelter, protect, and sometimes rehabilitate.

In the process, however, we too often have created prisons that test the constitutional limits of what are “cruel and unusual punishments.” A prisoner at a southeastern N.C. unit said he heard a Department of Correction guard offer this remark about another inmate involved in a fight the day before: “Well, you can kill him for all I care. Just as long as I don’t know about it.” And consider these assertions from sworn affidavits filed in federal court in 1986 regarding North Carolina prisons: “I feared for my safety and life every day I was at Caledonia,” said one inmate. Other affidavits speak of bribery of prison guards; of rainwater running down the inside of walls and along the floors of triple-bunked dormitories; of guards dispensing medicines even though they could not read the dosage instructions; of the easy availability of weapons. “I estimate that I owned 15 to 20 street knives while I was at Columbus County Prison,” said one inmate.

Such descriptions of our prison system make a mockery of the original meaning of the word *prisoner*. It stems from the Old French. A thousand years ago, mercenaries captured in battle by the French were called *prizes* from the Latin *prendre*, to take. Where else to put these prizes? In *prizen*, of course, and later, prisons. But few today would regard the prisoners of the state as anything close to prizes—costly prizes at that.

If anything, most of us would regard the prisoner as a burden, and usually our attention is focused on *how* we punish them—often losing sight of *why* we punish. In 1930, a Pennsylvania appellate judge (and late Chief Justice of the Pennsylvania Supreme Court) named P.J. Stern outlined in his review of a murder case the four commonly accepted theories “as the basis upon which society should act in imposing penalties upon those who violate laws. These are: (1) to bring about the *reformation* of the evil-doer; (2) to effect *retribution or revenge* upon him; (3) to *restrain* him physically, so as to make it impossible for him to commit further crimes; and (4) to *deter others* from similarly violating the law.”<sup>1</sup>

Too often, these four purposes of punishment are lost in the public clamor for locking offenders away, out of sight and out of mind. Little thought may be given to which of these purposes is best suited to an individual offender’s own circumstances. Moreover, little thought may be given to the possibility that there may be better ways—better deterrents to crime, cheaper ways to punish, safer ways to punish offenders, and more efficient means to protect society than locking criminals behind iron bars and forgetting them.

As North Carolina policymakers attempt to solve this state’s corrections conundrum, Cicero’s admonition to make punishment fit the crime needs to be heeded.

—Jack Betts

### FOOTNOTE

<sup>1</sup> *Commonwealth v. Ritter*, Court of Oyer and Terminer, Philadelphia, 1930, 13 D. & C. 285.

in 1971 as the Department of Social Rehabilitation and Control, and again renamed in 1977 as the Department of Correction. But twin legacies of the past continued: 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 overcrowding problems and high rates of incarceration. By continuing to accept prisoners who in other states would be housed in local jails, the state inflates its own prison population. And the state 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 first 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 Fair Sentencing Act of 1981 had salutary effects on prison overcrowding, more reforms were adopted in 1983, and the use of alternatives to incarceration began to gain legislative credence and public credibility.

In the 1990s, the Sentencing Commission developed and recommended new sentencing guidelines. The Structured Sentencing Act was adopted by the General Assembly in 1993. (See *Structured Sentencing in North Carolina*, p. 699). The General Assembly also enacted the Criminal Justice Partnership Act, which estab-

lished community-based correctional programs. In 1995, the cap on the prison population—originally enacted in 1987 to control prison crowding and avert a federal court takeover of the state prison system—was repealed. The General Assembly also authorized private prisons during the 1995 session. (See *Private Prisons: Businesses Want a Piece of the Rock*, p. 705).

In his third term (1993–97), Gov. Hunt is just as serious about putting inmates to work. "By having inmates working in our communities," Hunt says, "we're not only saving taxpayers money, we're building a better quality of life for our people. Whether they're clearing brush or repairing public buildings, our Community Work Program is teaching criminals the value of hard work and discipline."

The Department of Correction began the Community Work Program in January 1995. In June 1995, an inmate crew cut scrub pines and cleared out grass and weeds around a threatened earthen dam at the North Carolina Zoological Park in Asheboro, and another crew cleared storm debris from flooding around a family recreation area at Jordan Lake in Chatham County. Crews also have stripped and waxed floors and painted walls at an elementary school in Caswell County.

There are about 16,000 state inmates working or training for jobs in North Carolina. About 2,500 inmates work in the highway labor force. Correction Enterprise employs nearly 2,000 inmates in their operations, which include printing plants, farms, soap and paint manufacturing, laundries, and sewing plants. About 5,000 inmates work inside prisons and another 100 inmates have construction jobs—building prisons and installing security fences.

The number of state prisoners is expected to reach 26,502 by June 30, 1999.

## FOOTNOTES

<sup>1</sup> Report of the Citizens Commission on Alternatives to Incarceration, Fall 1982, pp. 35–38.

<sup>2</sup> *Ibid.* p. 37.

# Structured Sentencing in North Carolina

BY ROBIN L. LUBITZ

*Prior to the enactment of the Fair Sentencing Act in 1981, North Carolina had an indeterminate sentencing system. Judges exercised wide latitude in imposing the length of prison terms and the parole commission exercised wide discretion to release offenders. There were no real criteria for sentencing in the statutes, court decisions, or court rules.*

## The Knox Commission and the Fair Sentencing Act

In response to criticisms of disparities in sentencing resulting from the wide use of judicial and parole discretion, the General Assembly created a special Legislative Commission on Correctional Programs, which became known as the Knox Commission—named after Eddie Knox, a North Carolina attorney, former state senator and mayor of Charlotte. In 1979, this Commission made specific recommendations to the General Assembly to reduce sentencing disparities. These recommendations ultimately led to the passage of the Fair Sentencing Act in 1981.

The major feature of this legislation was the establishment of presumptive (or standard)

prison terms for felonies. Judges were able to deviate from this presumptive sentencing only if they imposed a non-prison sentence, or if they found aggravating or mitigating factors. As the legislation moved through the General Assembly, it was amended to exempt plea bargains from the presumptive requirements. The legislation eliminated discretionary parole but did include day-for-day “good time” as well as “gain time.”

The Institute of Government at the University of North Carolina at Chapel Hill conducted a study of sentences during the first five years following the implementation of the Fair Sentencing Act. The study indicated that during the first two to three years the difference in the average sentence length for felonies was reduced. However, these effects began to erode over time due to the lack of enforcement by the appellate courts and inadequate prison resources to back up the sentences imposed. In later years, increasing the presumptive sentence became the rule rather than the exception.

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The Fair Sentencing Act also was instituted without taking correctional resources into consideration. Over time, prison overcrowding worsened, and the state reinstated discretionary parole release as a way to control and manage prison resources. This resulted in offenders serving a smaller and smaller percentage of their sentence and led to renewed criticism of the state's sentencing policies.

### The Prison Population Cap

**T**hrough the 1980s, the problem of prison crowding continued to escalate. In 1987,

*Central Prison in Raleigh under construction in 1980.*



Jackson Hill

in response to lawsuits filed against the state over the crowding in state prisons, the legislature enacted a statutory cap on prison population of 17,460 prisoners.

The cap provisions served to alleviate prison overcrowding but had substantial repercussions on sentencing. The average percentage of the sentence which felons served dropped significantly from 40 percent in 1986 to about 18 percent by 1993. Furthermore, the average time served also dropped from about 25 months in 1986 to 16 months in 1993. The prison cap had an even more dramatic effect on the time served by misdemeanants whose sentences were not controlled by the Fair Sentencing Act. For instance, except for Driving While Impaired (DWI) offenders,<sup>1</sup> misdemeanants sentenced to prison for two years were typically released within two weeks. In an attempt to ensure longer time served, many judges increased the length of their sentences. These increases in sentence length, coupled with corresponding reductions in actual time served, further widened the gap between the sentence imposed and the sentence served and led to widespread public frustration and demands for sentencing reform.

The prison cap also had the unintended effect of undermining the use of alternative programs to prison. Because of reduced terms of imprisonment, many offenders elected to serve their sentence rather than accept alternative programs. The reduction in time served also undermined the ability of probation officers to use the threat of prison to spur compliance with probation conditions.

To meet the space requirements of the settlement agreement, the state proposed spending \$275 million to renovate and expand prison facilities. The state authorized spending \$75 million and sought public approval to spend the remaining \$200 million. This prison bond referendum passed by an extremely narrow margin during the 1990 general election.<sup>2</sup> In 1991, the General Assembly appropriated \$103.4 million of the bond funds for prison construction and renovation that added 3,298 beds to the prison system.

In the February-March 1994 extra legislative session on crime, the General Assembly turned over authority to set the prison cap to the Governor but limited the prison population to 24,500 prisoners. In 1995, however, the prison cap was repealed by the General Assembly, effective January 1, 1996. For the 1995-

97 biennium, \$74,582,700 was appropriated for prison construction, adding 1,384 prison beds.

## Structured Sentencing

New sentencing laws enacted during the 1993 session—and modified during the 1994 special crime session and the 1995 session of the General Assembly—change how offenders are sentenced in North Carolina. The new laws, based primarily on concepts developed by the North Carolina Sentencing and Policy Advisory Commission, create a system of structured sentencing in North Carolina coupled with a comprehensive community corrections plan.

The new laws replace the Fair Sentencing Act and apply to felonies and misdemeanors—except offenses for Driving While Impaired (DWI)—committed on or after October 1, 1994. The laws are based on the following principles:

- *Sentencing policies should be consistent and certain*—offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences;
- *Sentencing policies should be truthful*—the sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served;
- *Sentencing policies should set resource priorities*—prisons and jails should be prioritized for violent and repeat offenders, and community-based programs should be used for non-violent offenders with little or no prior record; and
- *Sentencing policies should be supported by adequate prison, jail, and community resources.*

The primary purposes of sentencing are to impose a just punishment commensurate with the injury caused (taking into account factors that may diminish or increase the offender's culpability), to protect the public by restraining offenders, to rehabilitate the offender, and to deter other criminal behavior.

### A. Felonies

The new sentencing law classifies felons based on the severity of their crime and the extent and gravity of their prior record. Based on

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## Glossary

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### Active Sentence

A sentence requiring the defendant to serve time in prison or jail.

### Aggravating Factors

Includes, for example, if the defendant was hired or paid to commit the offense; if the defendant was armed with or used a deadly weapon; if the offense was committed against a law enforcement officer; if the victim was young, old, mentally or physically disabled; or if the defendant took advantage of a position of trust to commit the offense.

### Earned Time

A feature of the Structured Sentencing Act that allows an inmate to reduce his maximum sentence for good behavior and participation in assigned work, education, and treatment programs, but felons must serve at least the minimum term. Misdemeanants cannot reduce their term more than four days per month served.

### Felony

Murder, rape, burglary, arson, extortion, kidnaping, drug possession, forgery, etc.

### Gain Time

A feature of the Fair Sentencing Act that allowed an inmate to earn time off his or her sentence for working at a prison job.

### Good Time

A feature of the Fair Sentencing Act that allowed an inmate to earn one day off his or her sentence for every day of good behavior.

### Misdemeanor

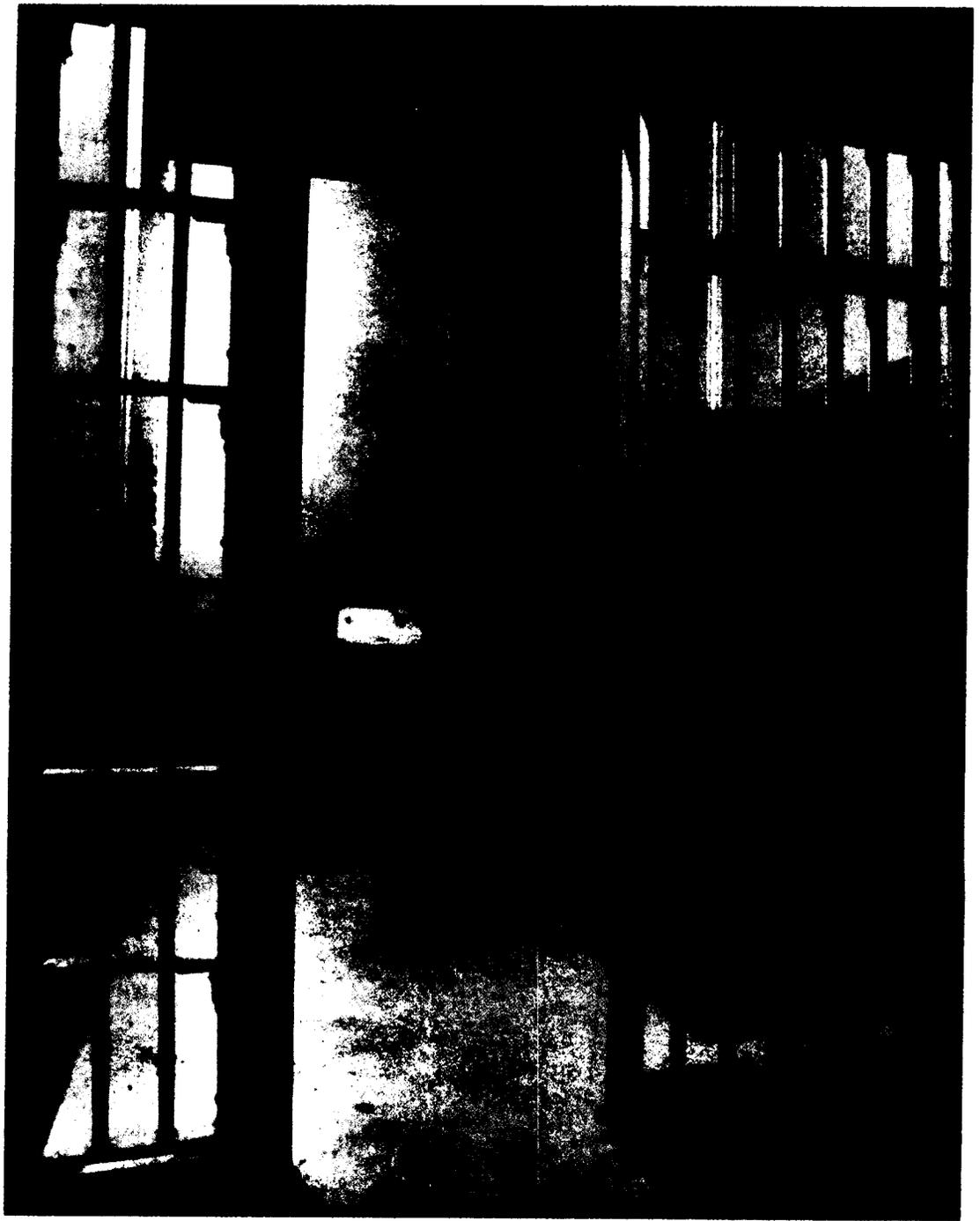
Littering, public intoxication, simple assault, etc.

### Mitigating Factors

Includes, for example, if the defendant committed the crime under duress; if the defendant was a passive participant; if the defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in the prosecution of another felon; if the defendant is a minor; if the defendant has accepted responsibility for his/her criminal conduct; and if the defendant has a positive employment history.

### Presumptive Sentence

A set length of active prison time that all parties in a case may presume will be given unless there are aggravating factors that would lengthen a sentence or mitigating factors that would shorten a sentence.



**IN NORTH CAROLINA, THERE ARE  
LOTS OF GREAT PLACES TO SPEND YOUR  
WEEKENDS. THIS ISN'T ONE OF THEM.**

Get convicted of drunk driving in this state, and you could lose a lot more than your license. You could lose your freedom to lock-ups on the weekends, or even longer.

**DRIVE DRUNK IN NORTH CAROLINA, AND IT'S THE END OF THE ROAD.**

*This advertisement warns drivers of the penalty for drunk driving  
in North Carolina.*

these classifications, the type and length of sentence is prescribed.

The law groups offenses into ten classes based on the actual or potential harm to the victim normally associated with the crime. Offenders are grouped into six prior record levels based on the extent and gravity of their prior criminal histories. A *sentence disposition* is prescribed for each combination of *offense class* and *prior record level*. Dispositions include active punishments (prison), intermediate punishments (jail, boot camp, day reporting centers, electronic monitoring, residential treatment, and intensive supervision), and community punishments (regular probation or a fine).

A *sentence length* is also prescribed for each combination of offense class and prior record level—a presumptive range for normal cases, an aggravated range when aggravating factors are found, and a mitigated range when mitigating factors are found. The judge selects a minimum sentence from the appropriate sentence range and the maximum sentence is then automatically set by statute (20 percent longer than the minimum sentence). If an active sentence has been imposed, the offender must serve 100 percent of the minimum sentence. “Good time” and “gain time” are eliminated and replaced by “earned time” which can reduce the maximum sentence for good behavior, work performed, or participation in training, educational, or rehabilitation programs. However, the minimum sentence can never be reduced. Parole is eliminated, but violent offenders are required to serve a mandatory period of post-release supervision following release. During this period, they are monitored in the community and provided with special services to assist with reintegration into society.

### **B. Misdemeanors**

The new sentencing law provides a separate sentencing system for misdemeanants. The law groups misdemeanor offenses into four classes based on the maximum penalties currently provided by statute. Misdemeanants are grouped into three prior conviction levels based on their total number of prior convictions. *Sentence dispositions* are based on a combination of the *misdemeanor offense class* and the *prior conviction level*. Possible dispositions for misdemeanants are the same as those for felons. One *sentence range* is provided for each combination of misdemeanor offense class and prior conviction

level. The judge may impose any *sentence length* from the sentence range. The offender must serve the sentence imposed less up to four days per month for “earned time.” Parole is eliminated and there is no post-release supervision.

Counties are responsible for all misdemeanants with active sentences of ninety days or less. The state is responsible for all other sentenced misdemeanants.

### **Conclusion**

**U**nder the new sentencing laws, prison and jail resources will be prioritized for violent and repeat offenders, while less serious offenders will be channeled into less expensive intermediate and community programs. Imprisonment will increase for violent and career felons but decrease for less serious offenders. Overall, fewer felons will be incarcerated, but those who are will generally serve more time than they did under the Fair Sentencing Act. The same holds true for misdemeanants. Fewer misdemeanants will be sentenced to jail, but those who are will serve significantly longer terms.

Because the new sentencing laws require offenders to serve a certain and predictable sentence, it is possible to project the correctional resources required to support the new policies. The new sentencing laws were formulated to be in balance with projected prison and jail resources. Based on current projections and assuming no further changes to the sentencing laws, when all currently funded prison construction is complete, the state is expected to have sufficient correctional capacity to support its sentencing policies until the early part of the next century.

### **FOOTNOTES**

<sup>1</sup> The “Safe Roads Act” established a highly structured sentencing schedule for offenders convicted of DWI. The scheme set punishments based on the number of prior DWI convictions and the presence or absence of aggravating factors. See N.C.G.S. 20-179, which codifies Senate Bill 1 of the 1983 Session of the N.C. General Assembly.

<sup>2</sup> Chapter 935 of the 1989 Session Laws submitted the prison and youth services facilities bond referendum to the voters. On November 6, 1993, 690,110 North Carolinians voted for the bonds (50.02 percent) and 689,528 voted against the bonds (49.98 percent).

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## ***Data Bears Out Truth-in-Sentencing Goals***

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SIX MONTHS WORTH of data shows that Structured Sentencing is doing exactly what proponents said it would—keeping convicted felons and misdemeanants in prison longer.

Rob Lubitz, executive director of the N.C. Sentencing and Policy Advisory Commission, recently reported the findings to the Association's Criminal Justice Steering Committee and the State Criminal Laws and Procedures and Sentencing Committee.

"It is what we projected would happen," Lubitz said. "I think it shows Structured Sentencing is doing what it was intended to do."

Felons are now serving 100 percent of their sentences, while misdemeanor offenders are serving at least 86 percent of their sentences. That is a significant increase from 1993, when felons were only serving 18 percent of their sentences and misdemeanants were serving less than 10 percent of their sentence.

Actual time served has increased from an average of 16 months in 1993 to 33 months today for felons and from 1.9 months to four months for misdemeanants.

However, Lubitz cautioned, citizens must realize that Structured Sentencing and no early parole applies to prisoners who were sentenced after October 1, 1994. Prisoners sentenced before that are not covered by Structured Sentencing and can be released on parole without serving their entire sentence. Since some prisoners were sentenced to 30 and 40-year sentences, parole will not disappear for a long time.

Two other situations—major prison construction and 500 additional probation officers—are also affecting crime and punishment in North Carolina.

By the end of 1997, the state will have added 15,000 prison beds since 1993, giving North Carolina capacity to house 35,000 prisoners instead of 20,000. Local jails have also added bed space, a projected increase of 4,000 beds to 16,000.

The state also added 500 more probation officers to supervise and monitor those convicted offenders who were diverted from prison sentences into community-based alternative programs. After a steady increase since 1986, the number of people failing while on probation has dropped from 12,500 in 1993 to 10,600 in 1995.

Finally, the state is providing more correctional resources to the counties through grants issued through the Criminal Justice Partnership Act.

- 38 counties have received funding for day reporting centers;
- 14 have received money for pretrial release programs;
- 12 have received money for stand alone substance abuse treatment programs; and,
- Three have received money for work/employment programs.

*—Gayle Butzgy*

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*Gayle Butzgy, "Data bears out truth-in-sentencing goals," County Lines, Vol. 22, No. 1, January 10, 1996, pp. 1-2. Gayle Butzgy is the editor of County Lines, a publication of the North Carolina Association of County Commissioners, 215 N. Dawson Street, P.O. Box 1488, Raleigh, N.C., 27602. This article is reprinted with her permission.*

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# Private Prisons:

## Businesses Want a Piece of the Rock

BY ELIZABETH LELAND

*Most businessmen don't want anything to do with being in prison, but some entrepreneurs are trying to break into North Carolina's prison system. It's not that they want to be behind bars. In this new twist on the "privatization" theme, these businessmen want to build and operate prisons on a for-profit basis—and the notion has stirred heated debate here and throughout the nation.*

**T**here's nothing new about privatization, the contracting with private companies to provide services normally performed by government. Some private companies collect garbage under government contracts. Some mend roads. Others run sewage plants and provide an array of other services. But incarcerating humans in pursuit of corporate profits has turned the trend toward privatization into a moral and constitutional debate.

Proponents say privatization may be North Carolina's answer to legal and financial pressures on the prison system. Opponents say privatization may only compound existing problems. They call it "prostitution" and "dungeons for dollars," among other disparaging names. This hot debate is running nationally as governments seek new solutions to old problems in prisons.

North Carolina's experiment with privatization goes back more than a century. More than 100 years ago, some states, including North Carolina, gave private contractors control of prisoners, substituting prison labor for the slave labor that existed up through the Civil War. But because of abuses—from long hours to inadequate food—the practice ended in the 1920s. More recently, private organizations have run halfway houses, foster homes, training schools, group homes, and substance abuse treatment centers. For example, the state Department of Correction has contracted with the Mary Frances Center in Tarboro to provide substance abuse treatment for 75 minimum security women inmates. "We expect this program," says Lattie Baker, the Department of Correction's assistant secretary for substance abuse programs, "to steer these offenders away from lives of addiction."

State correction officials agree with the entrepreneurs' claim that private business could

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*Elizabeth Leland is a reporter for The Charlotte Observer.*

save the taxpayer money. Their argument is simple: a private company can build prisons and other facilities faster and cheaper by avoiding government red tape, and could operate those prisons more efficiently for the same reason. But opponents aren't so sure that private firms can run correction facilities more cheaply and more efficiently. And they question the propriety, legality, and constitutionality of for-profit prisons.

### The Constitutional Question

Legal skeptics question whether it is constitutional for governments to turn over prisons to private business. The North Carolina Constitution states in the article on corrections: "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."<sup>1</sup> The main question is whether state laws allow the state and local governments to turn over the jailing of prisoners to for-profit companies—or any organization that is not a federal, state, or local government.

In North Carolina, Secretary of Correction Aaron Johnson asked the Office of the Attorney General in 1985 for an opinion on whether North Carolina could contract for private

prisons. The answer was no and yes. Sylvia Thibaut, an associate attorney general, wrote an opinion dated Oct. 23, 1985 advising the Department of Correction that under North Carolina law, the state cannot contract for housing for adult male inmates.<sup>2</sup> The state can, however, contract for housing young males and women, and contract for treatment programs for all types of inmates, the memo noted. With regard to adult male prisoners, Thibaut wrote, ". . . [T]here is no statutory authority for the provision of contracts with private agencies for the housing of adult male prisoners. Weighing the statutes . . . as a whole, I would not recommend that the Secretary of Correction enter into such a contract without the express approval of the legislature."

In 1986, the issue was thought to be settled when the General Assembly prohibited the addition of privately-owned and privately-operated facilities to the state prison system. The only exemption allowed the state to contract with private, nonprofit firms for the provision of work and study release centers for women and youth. The ban on private prisons was continued through 1994.

A need for alternative solutions to corrections problems, however, led the state to reconsider private correctional facilities. In 1993, the Secretary of Correction was allowed to solicit bids from private companies for the operation of private substance abuse treatment centers for inmates. The General Assembly later appropriated the money for 500 beds in such treatment centers. Then, in 1995, the General Assembly enacted a statute allowing the Secretary of Corrections to contract with private companies to own and operate two or more confinement facilities to house up to 1,000 inmates.<sup>3</sup> A Senate bill that did not pass would have given the Secretary of Corrections even more freedom to contract with private companies for the confinement of state prisoners, allowing such contracts whenever it would have been cost effective to do so.<sup>4</sup> Despite the General Assembly's move to legalize private prisons, moral and financial issues still exist.

### The Moral Ground

Beyond the constitutional and legal concerns, there are philosophical concerns that argue against private prisons. Some people just

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*Well I had just got out of the county prison  
doing 90 days for non-support.*

*Tried to find me an executive position but no  
matter how smooth I talked,  
They wouldn't listen to the fact that I was a  
genius.*

*The man said that we got all that we can use.*

*Now I got them steadily depressing,  
low-down mind messin',  
workin' at the car wash blues.*

—FROM "WORKIN' AT THE CARWASH BLUES" BY JIM CROCE

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## *The Arguments For and Against Private Prisons*

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### **Arguments For Private Prisons**

Private businesses can run prisons more effectively than government.

Private companies can build prisons quicker and cheaper than government.

Private prisons can save tax dollars by operating cheaper than government prisons.

Private prisons must operate under accepted standards of care.

Private companies have more flexibility in management, hiring, and promotion, and can provide better-trained personnel.

Privatization of prisons has been tested and thus is not a new concept.

Private companies have a profit incentive to do a better job of running prisons than the government.

Private companies may make money for investors.

Private companies are taxpayers.

### **Arguments Against Private Prisons**

Profits have no place in a system designed to dispense justice.

The state could be liable for the actions of private company guards.

Private firms may not deliver on the promised level of service, and prices may rise in the future.

Building more jails will not alleviate problems of criminal justice administration.

Public employees' jobs are adversely affected by hiring private company workers.

Private firms could exploit the constitutional rights of inmates for the sake of profits.

Private firms may skimp on costs and provide a lower quality of service.

Private prisons may be in conflict with existing state laws.

Private prisons may be used to circumvent moratoriums on prison construction.

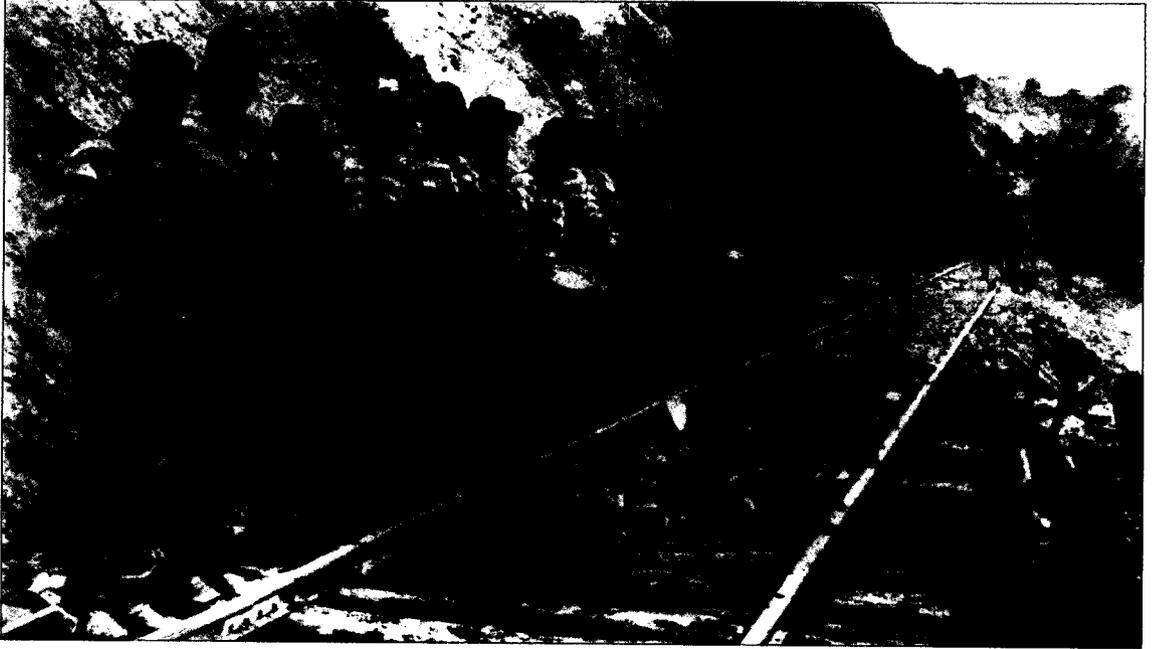
*Source:* "Private Jails: Contracting Out Public Service," The Council of State Governments, Lexington, Ky., April 1985.

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don't think it is right for a private business to run a prison. "This is the prostitution of punishment," says E.M. Adams, Kenan professor of philosophy at UNC-Chapel Hill.<sup>5</sup> "Some things are not a moral option for the sake of economy. In a politically organized society, only the government has the authority to define crime and punish criminals, for only the government is the

moral voice and arm of the people. A state cannot contract out to private corporations its law-making, judicial, or police responsibilities, for it cannot invest in them the moral authority to perform these tasks."

Mark A. Cuniff, executive director of the National Association of Criminal Justice Planners in Washington, describes imprisonment as



**State prison labor often was contracted out to private industry around the turn of the century. These prisoners were working on a railroad in western North Carolina.**

“the ultimate sanction that a state has available to it to enforce laws. Because only the government can promulgate and enforce the laws, only the government should be involved in provision of those services.”

### **The Bottom Line**

**B**ut the bottom line, and perhaps the most controversial issue, is cost. Private companies say they can save the government money and provide better service. The companies point out that they don’t have to fuss with civil service regulations, and they have lower pension and benefit costs. “We can address the problem very quickly, and we can use our own capital to do it,” says Thomas Beasley, Chairman Emeritus and former President of Corrections Corporation of America. “Government won’t have to come up with new capital to finance a facility. Government will not pay a thing unless it actually utilizes a facility.”

Corrections Corporation of America, based in Nashville, is an industry leader in private sector corrections with 26,715 beds in 45 corrections facilities under contract in 11 U.S. states, Puerto Rico, Australia, and the United

Kingdom. CCA provides a full range of services that includes financing, design, construction, renovation, and management of new or existing correction facilities, as well as inmate transportation.

Most studies have concluded that a private company could build a prison faster than the state because it is not encumbered by competitive bidding procedures and other red tape. They also found that the company would have more flexibility in hiring and firing. But Cuniff, the justice planner, says those are not necessarily advantages. “The red tape is there for a reason,” he says. “Red tape, for better or worse, is a check against corruption. We have competitive bidding so that the powers that be do not give away contracts to their buddies. If the problem is too much red tape, let’s look at the problem of red tape—not substitute a panacea.”

Critics fear that once a state is dependent upon a private firm, the firm might demand higher prices. They also fear hidden costs—monitoring by the state auditor’s office, for instance, or the costs of legislative oversight. Proponents say the cost of monitoring could be included in a contract, and ceilings on costs increases could be established.

Yet another concern is that revenues would vary with the number of prisoners and the length of incarceration. Critics say that private companies would have an incentive to keep more people in prison, and keep them there longer—thereby exacerbating the problem that private prisons were supposed to solve.

### The Liability Question

Another unresolved problem is who is liable for what happens in privately run prisons. For instance, who is responsible if a prisoner's civil rights are violated—the private company running the prison, or the state? The National Institute of Justice notes, "There is . . . no legal principle to support the premise that public agencies will be able to avoid or diminish their liability merely because services have been delegated to a private vendor. Just as juveniles are wards of the court, inmates can be considered wards of the state, and a private contract essentially acts as an extension of the state. Thus, if the contractor errs, the state has retained its authority and may share the liability."<sup>6</sup>

The burden on the state would be eased by insurance that companies would be required to provide. In North Carolina, the new law allowing the privatization of prisons states: "All contracts for the housing of State prisoners in private confinement facilities shall require a minimum of ten million dollars (\$10,000,000) of occurrence-based liability insurance and shall hold the State harmless and provide reimbursement for all liability arising out of actions caused by operations and employees of the private confinement facility."<sup>7</sup>

Private providers of prison facilities are aware of the necessity of this kind of liability insurance. "The government's responsible, and we're responsible to the government," says CCA's Beasley. "We hold government harmless. We indemnify government for our operation. We have multi-million dollar insurance."

Another question stems from the liability issue. In the event of a prison insurrection, could

private prison employees use force if necessary to maintain public safety? To what extent, and how far off prison grounds? The National Institute of Justice says there is no reason why they could not use force. Already, many states license private security firms, and rules set forth how and when those private guards may use force.

### The Broader Question

Aside from the pros and cons of private versus government-run prisons, there is a broader question: Should states build more prisons? Some say governments should look instead to alternatives to incarceration. "The most reasonable conclusion to be drawn from all this is simply that the citizens and legislatures of our Southern states should avoid the new 'dungeon for dollars' game like the plague," wrote Harmon L. Wray Jr. in the September 1986 issue of *Southern Changes*, a magazine published by the Southern Regional Council in Atlanta. "The privatization debate distracts us from the real issue of our society's failure to deal with crime in any way other than a knee-jerk repressive fashion."<sup>8</sup>

### FOOTNOTES

<sup>1</sup> North Carolina Constitution, Article XI, section 3 (emphasis added).

<sup>2</sup> Memorandum from Sylvia Thibaut to Andrew A. Vanore Jr., October 23, 1985, re: Authority to Contract with Private Agencies for Housing Prisoners, pp. 1-3.

<sup>3</sup> North Carolina General Statutes 148-37(g)(h)(i).

<sup>4</sup> Senate Bill 31 (1995).

<sup>5</sup> E.M. Adams, "Prisons for Profit," *The Triad Spectator*, Greensboro, N.C., April 23, 1986, p. 5.

<sup>6</sup> Joan Mullen, Kent John Chabotar, and Deborah M. Carrow, *The Privatization of Corrections*, a report written for the National Institute of Justice, U.S. Department of Justice, February 1985, pp. 76-77.

<sup>7</sup> North Carolina General Statutes 148-37(g).

<sup>8</sup> Harmon L. Wray Jr., "Cells for Sale," *Southern Changes*, Southern Regional Council, Atlanta, Ga., September 1986, pp. 3-6.



# Chapter 11

## The Media



Karen Tam

*“A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both.”*

—JAMES MADISON, 1822



# Public Access to Public Information

BY FRED HARWELL

*This article is about the flow of information between government officials and ordinary citizens and the power that comes from knowing and being able to know what the government is doing.*

Information is power, and the balance of power between government and people depends on how much information each has about the other. For more than 200 years, the American people have been disputing their government, at both the state and federal levels, for access to the information it routinely compiles, collects, produces, catalogues, and uses to shape and control their lives. Until recently, the conflict has been more theoretical than real. Early federalism produced a government that was decentralized and relatively unintrusive. There was no income tax, no Selective Service, no Federal Bureau of Investigation, no Central Intelligence Agency. For a long time, there was only the census and the small bureaucracy in Washington, distant threats to the free spirit of pioneers in hostile and remote territories.

But as the United States became a force in global affairs and a more complex society after World War I, the government became more centralized and more powerful. Depression-era programs expanded the influence of the federal

government over the economy, and therefore over virtually every aspect of daily life. The Cold War exacerbated concerns about sedition as well as surprise attack, and modern technology gave authorities the means to spy on almost anyone, almost anywhere. Federal and state agents and local police, sometimes with knowing disregard for the right of individual citizens, began in the 1950s the vast and systematic collection of information that eventually resulted in what author David Wise described as *The American Police State* in a 1976 book subtitled *The Government Against the People*.<sup>1</sup>

This unprecedented tension between the government and the ordinary citizen is not a struggle between evenly matched adversaries. The flow of information to the government has steadily increased during the past 45 years, but in some ways the flow of information from the government has slowed to a trickle. The suppression of information can cloak not only "the failings of government" as President Richard Nixon ironically warned, but also the steady erosion of democratic ideals. Secrecy without sound justifications impedes what retired Supreme Court Justice William O. Douglas called the "wide open and robust dissemination of

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*Fred Harwell is former director of the N.C. Center for Public Policy Research.*

ideas and counterthought” which is fundamental to the maintenance of liberty.<sup>2</sup>

### The Opportunity to Know

**I**t is unclear, even after more than 200 years of constitutional debate and analysis, whether the people of this country have a right to know—a right to obtain information from and about the government. No such right is mentioned in either the Declaration of Independence or the Constitution. The First Amendment does prohibit the making of a law which abridges the “freedom of the speech, or of the press,” but what is “speech” and what is “the press?” What, for that matter, is “freedom?”

The First Amendment guarantees of free speech and free press apply to all citizens, to those who listen and read as well as those who speak and publish. For this reason, questions about public access to government information raise profound First Amendment issues and require an effort to determine what the language of that amendment actually means. While the Bill of Rights acknowledged that certain rights do exist, the terms used in the Bill of Rights were not defined. Thus, the nine justices of the United States Supreme Court have almost exclusive power (limited only by popular indignation) to interpret the meaning and effect of the terms in the First Amendment. The provocative language of that amendment means what they say it means at any given time, and over the years different judges have had different ideas about what it means.

Justice Hugo L. Black argued that the First Amendment guarantees were absolute, that no restrictions on them could ever be tolerated. Few other jurists have subscribed to Black’s absolutist view. “The most stringent protection of

free speech,” wrote Justice Oliver Wendell Holmes in 1919, “would not protect a man falsely shouting fire in a theatre and causing a panic.”<sup>3</sup> It is certain, nevertheless, that the First Amendment does establish as a constitutional priority the free flow of opinions and ideas in this country.

Opinions and ideas are not necessarily information, however, and merely reading the First Amendment does not always answer the question it provokes. Does this constitutional endorsement of full and free discussion presuppose access to most or all information about government, or only the casual acquisition of such information as is generally available?

Both colonial and contemporary writers have advanced the view that an informed electorate is essential in democracies, that there is inherent in the democratic system a need to know. Out of this presumed “need to know,” this assumption about the importance of information in the maintenance of the democratic social compact, has come the notion that there is a “right to know” built into the First Amendment.

Political systems in fact can be defined and classified according to the way in which information flows within them and how accurate and complete that information is. The difference between democracy and tyranny is little more than the difference between *an informed public* and *a public informed*.<sup>4</sup> A democratic government must continually cultivate the voluntary support and enthusiasm of its people. Without sufficient and reliable information, or at least the perceived opportunity to obtain it, public confidence in government and in government officials withers in a “free” society. Expectations are dashed, and alienation overtakes popular support.

Information is the currency of democracy, a medium of exchange between the government and the people. Each is both a producer and a consumer, and the press is an instrument through which the exchange takes place. Writing about the importance of the independent and decentralized press in America, Alexis de Tocqueville observed that it

causes political life to circulate through all parts of that vast territory. Its eye is constantly open to detect the secret springs of political designs, and to summon the leaders of all parties to the bar

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*Information is the currency of democracy, a medium of exchange between the government and the people. Each is both a producer and a consumer, and the press is an instrument through which the exchange takes place.*

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of public opinion. It rallies the interests of the community round certain principles and draws up the creed of every party; for it affords a means of intercourse between those who hear and address each other without ever coming into immediate contact.<sup>5</sup>

Much has changed since the early 1800s when Tocqueville's *Democracy in America* was written, but the role of the press and the implications of the First Amendment as a statement of policy remain the same. Freedom of the press is guaranteed, if not freedom for the press. The power of public officials to plug the conduit of opinions and ideas is at least limited, though the extent of the limitation still depends, as Alexander Hamilton predicted, on "the general spirit of the people and the government."<sup>6</sup>

That spirit has recently grown more and more acrimonious. The government has become ever more intrusive, the press more querulous, the public more skeptical of public officials. Access seems to become more difficult even as the need for it has increased.

Debate about public access focuses on the issue of how much the public, usually through the press, can be permitted to know. But the question should be how much information, and for how long and in what manner, the government can be permitted, for reasons of sound public policy, to withhold. Government officials need to recognize the obligations as well as the benefits of maximum disclosure, for it is up to them to remedy the crisis of credibility they now face. At the same time, private individuals, especially journalists, must regularly exercise their power as consumers of information by using the means available for obtaining government data, the laws already enacted which have become the public's "tools of access."

### Tools of Access

State and local governments, through benign policies as well as misguided officials, often seem prone to withhold information which is obviously a part of the public record. Community officials across North Carolina, according to local journalists, have denied or obstructed efforts by the press to cover the activities of county commissions, city councils, and other public bodies. All of this has occurred despite appar-

ent trends toward liberalizing the laws of access at the federal and state levels.

### *Access to Public Records*

Common law made by courts required justification for the release of government information by any citizen who requested it. The sovereign was viewed, both in England and in this country, as an authority to be revered in deference rather than as the repository of the public's trust and property. But that archaic view seemed to shift in North Carolina in 1935 with the enactment of legislation to "make systematic provision for the preservation and availability of public records,"<sup>7</sup> and it changed abruptly in 1966 at the federal level with the passage of the Freedom of Information Act (FOIA).<sup>8</sup> Prior common law was swept aside, according to a congressional report on the federal law, by a statute "based upon the presumption that the government and the information of government belong to the people" and "the notion that the proper function of the state in respect to government information is that of custodian in service to society."<sup>9</sup>

Public access to records of the executive branch of the federal government is guaranteed by the FOIA. The law creates a presumption that federal executive agency records are public, with the following nine exceptions:

- records that concern national security;
- internal personnel regulations;
- records exempt from public access by other statutes;
- trade secrets;
- interagency and intra-agency memoranda;
- personnel and medical files;
- law enforcement investigation records;
- records about the regulation of financial institutions; and
- geological records on oil and gas wells.

FOIA requests must be made in writing.

Unlike FOIA, the basic intent of the 1935 North Carolina state law was archival. It prevented further loss of records "from fire, water, rats and other vermin, carelessness, deliberate destruction, sale, gifts, loans, and the use of

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*Secrecy in government usually serves the best interests of neither the government nor the people and is rarely justifiable.*

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impermanent paper and ink . . . to the lasting detriment of effective governmental operation and of family, local, and state history.” The statute had serious drawbacks:

it was both wordy and vague, failing even to specify which records were public documents and which were not. The law has been amended and many, but not all, of the defects have been corrected.

For example, apparently the assault by “rats and other vermin” has abated for the North Carolina General Statutes no longer mention them as a hazard in the maintenance and disclosure of public records. “Public records” are defined by statute to 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.<sup>10</sup> Exceptions to the public records law, however, are numerous including those defined by the law itself, those created by other statutes, and those declared by judicial or attorney general opinions.

Despite such broad language and the fact that the law requires that “[e]very custodian of public records shall permit any record . . . to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law,”<sup>11</sup> in the past government officials have delayed and denied access to public records without justification. Thus, the North Carolina public records law is not truly an access statute and does not afford the public pro-

tection from officials who would seek to suppress information.

### ***Access to Government Meetings***

Access involves more than the opportunity to get documentary evidence of past government decisions. It also includes the opportunity to take part, if only as an observer, in the processes of government decisionmaking. The concept of “open meetings” is historically fundamental, arising out of the colonial town meeting approach to determining laws and policies. It is also politically essential, crucial to the satisfaction of every person’s “right to be able to know” not just what government has done, but also what government is doing.

North Carolina has had an open meetings or “sunshine” law since 1971, when legislation was passed declaring it to be the public policy of the state for “[a]ll official meetings” to be “conducted openly.”<sup>12</sup> The law was revised in 1978, but the amended law—still rife with exceptions and exemptions—was only a bit better than the original version. The Open Meetings law was more a blueprint for closing meetings than a legislative imperative for holding them in the open.

Important amendments to the law were enacted by the General Assembly in 1994. “Public body” was redefined to be more inclusive<sup>13</sup> and minutes must now be kept of meetings not open to the public.<sup>14</sup> The number of permissible reasons for closing a meeting to the public was reduced dramatically from 20 to seven.<sup>15</sup> And, giving some teeth to the new law, public officials that violate the law now may be held personally liable for the expenses a citizen incurs enforcing the law.<sup>16</sup> The new amendments should ensure that access to government meetings is the rule rather than the exception.

### **Government in the Shade**

“Sunshine is the best disinfectant,” wrote a U.S. Supreme Court justice in support of the principle of open meetings statutes, and indeed it would seem difficult for politicians to oppose open meetings and public records laws without embracing the contrary notion that public business should be conducted in private. Secrecy in government usually serves the best interests of neither the government nor the

people and is rarely justifiable. Limitations on official secrecy and the opening of government files and records involve several practical questions: who, what, when, and where? But the difficult policy question—why?—is most impor-

tant of all if the people are to be satisfactorily informed and officials are to be put to the high test of working under public scrutiny which is sufficiently knowledgeable to guarantee effective and efficient government.

## FOOTNOTES

<sup>1</sup> David Wise, *The American Police State: The Government Against the People*, Vintage Books, 1976.

<sup>2</sup> *Branzburg v. Hayes*, 408 U.S. 665 (1972).

<sup>3</sup> *Schenck v. U.S.*, 294 U.S. 47 (1919).

<sup>4</sup> "There is more than a semantic difference, after all, between an 'informed public' and 'a public informed,' for an 'informed public' has presumably heard and learned what a 'public informed' has merely been told." P.D. Bathory and W.C. McWilliams, "Political Theory and the People's Right to Know," in *Government Secrecy in Democracies*, p. 4.

<sup>5</sup> Alexis de Tocqueville, *Democracy in America*, translation by George Lawrence, edited by J.P. Mayer, Anchor Books, 1969, p. 181.

<sup>6</sup> *The Federalist Papers*, selected and edited by Roy P. Fairfield, Anchor Books, 1966, No. 84, p. 263.

<sup>7</sup> N.C.G.S. Chapter 265.

<sup>8</sup> 5 U.S.C. § 552.

<sup>9</sup> *A Citizens Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents*, Thirteenth Report by the Committee on Government Operations, 1977.

<sup>10</sup> N.C.G.S. 132-1(a). A 1995 amendment makes it clear that "[t]he public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people." N.C.G.S. 132-1(b).

<sup>11</sup> N.C.G.S. 132-6. Any person denied access can go to court and request an order compelling disclosure. N.C.G.S. 132-9.

<sup>12</sup> N.C.G.S. 143-318.2 et seq.

<sup>13</sup> N.C.G.S. 143-318.10(b).

<sup>14</sup> N.C.G.S. 143-318.10(c).

<sup>15</sup> N.C.G.S. 143-318.11(a).

<sup>16</sup> N.C.G.S. 143-318.16B.

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## A "Tour" of Public Records in a Local Area

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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.

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### ***Driving Record—***

*N.C. Division of Motor Vehicles.* For \$5.00, 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 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.

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### ***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

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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 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.

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## **Other Records**

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

### ***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



# Televising the Legislature Gavel-to-Gavel—

## A North Carolina Version of C-SPAN?

BY ADAM HOCHBERG

Since 1979, most cable television subscribers in North Carolina have been able to watch live, gavel-to-gavel coverage of the U.S. Congress on C-SPAN. In many communities, cable viewers also can watch their local city council or board of county commissioners. However, a proposal to televise the General Assembly's sessions from beginning to end was not so well received when it was introduced.

A legislative study commission recommended in 1992 that the state spend \$3.2 million for the gavel-to-gavel telecasts.<sup>1</sup> "The public is demanding to know more about their government," said Rep. George Miller (D-Durham), a member of the commission. "Currently, the public has to rely only upon what is reported through the press, many times sporadically, most of the time after the fact." Miller said the live and tape-delayed coverage of the General Assembly would give North Carolinians an unprecedented opportunity to see their government in action.<sup>2</sup>

Other legislators, however, were less convinced that the state should spend money on the project. "I have not heard any hue and cry from anybody wanting to see us on television,"

Sen. Beverly Perdue (D-Craven) said during a July 1992 meeting of the Senate Appropriations Committee. The committee voted to delete funding for the project from the state budget, and decided to direct the money into a fund that pays for repairs and renovations to state buildings.<sup>3</sup>

Under the commission's proposal, television cameras would be installed in the House and Senate chambers, as well as in the rooms where the appropriations and finance committees meet. The Legislative Services Commission—a panel of legislators chaired by the Speaker of the House and President Pro Tempore of the Senate—would establish policies on how the cameras would be used. For instance, the commission might be asked to decide whether the camera operators may pan across the chamber or if the cameras must remain fixed on the legislator who is speaking. The coverage would be produced and distributed by the Agency for Public Telecommunications (APT), a branch of the Department of Administration.<sup>4</sup>

Wade Hargrove, a Raleigh attorney and chair of the APT Board, says the gavel-to-gavel proposal is aimed at making state government more accessible and accountable to the public.<sup>5</sup> "The legislative television coverage is simply one dimension of a broader effort that began over 10 years ago to provide the people of the

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*Adam Hochberg is a broadcast journalist who covers state government for public radio stations in North Carolina.*

**Cameramen with WUNC-TV cover a 1956 news conference in Raleigh.**



*N.C. Division of Archives and History*

state more access to state government,” says Hargrove, who represents the N.C. Association of Broadcasters and the N.C. Cable Telecommunications Association. “A lot of people feel it’s important for the people of the state to have more access. The question is: Can the taxpayers of the state afford it at this time? In 1992, the General Assembly said, ‘No, we can’t afford it, in view of the times and the circumstances.’ It will be appropriate, however, for the General Assembly to reconsider the question in the future.”

Legislative leaders in both parties agree that cost is the key factor in whether the legislature decides to televise its sessions.<sup>6</sup> “I personally feel that it would be wonderful to try to show it,” says Senate President Pro Tempore Marc Basnight (D-Dare), who chaired the Senate Appropriations Committee during the 1991–92 session. “How to pay for it is another matter. We have to compete against the other many requests we get from across the state. What is needed more—textbooks for the children, or TV pictures of legislators talking? We need to weigh these sorts of things.” Basnight’s views are echoed by Sen. Paul S. Smith (R-Rowan), who says the future of the proposal hinges on whether the state succeeds in winning a federal grant to help pay for the coverage—without a lot of strings attached. “I don’t want anyone coming in and

telling us what to do,” says Smith, the Senate Minority Whip from 1989 to 1992.

Others question whether enough people would watch the gavel-to-gavel coverage to justify spending \$3.2 million in start-up costs and \$500,000 in projected annual operating expenses. “It really is more of a ‘field of dreams’ prospect—if you build it, they will come,” says Allyson Duncan, a member of the state Utilities Commission and former member of the APT Board. “While I don’t have a problem with that with respect to private funds, I find it troubling with respect to public ones. Further, I don’t believe that people will come (or view it). And, if they do, it will only be periodically and in insufficient numbers to justify the expenditure. Finally, if you are going to spend this kind of money, I think it makes more sense to upgrade the public television system that you have now *before* creating something with the potential to compete with it.”

### **State Already Provides Limited Television Coverage**

Currently, the Agency for Public Telecommunication produces four hours of television programming per week, which is carried by some 50 cable systems in the state. (See Table

1, p. 725.) The agency's Open Public Events Network show, called OPEN/net, regularly features unedited videotaped portions of legislative committee meetings, as well as meetings of boards and commissions in the executive branch.<sup>7</sup> The videotaped meetings are followed by call-in sessions, in which viewers are encouraged to ask questions of government leaders in APT's Raleigh studio.

APT's former executive director, Lee Wing, says OPEN/net programming has been well received by North Carolinians. Although there are no ratings data on the telecasts, Wing says OPEN/net handled more than 13,000 phone calls between 1985-92, averaging about 19 calls per show. "Our lines can be busy the whole time, and we might get in only 10 calls, if people are long-winded," Wing says. The program also has received national attention. In 1987, the Ford Foundation recognized OPEN/net by bestowing on it an award for "Innovations in State and Local Government."

The proposed gavel-to-gavel legislative coverage, Wing says, would improve upon the spo-

radic committee meeting coverage that OPEN/net already provides. "It gives people a complete picture of what happens on the floor of the House and Senate," Wing says. "People who know more about their government will vote more intelligently, and government will improve as a result of it."

Wing says gavel-to-gavel telecasts also would benefit elected officials because it would allow constituents to hear them speak, unfiltered by the news media. Wing says OPEN/net hosts do not conduct interviews, but only introduce the programs, guests, and callers. "We are not journalists," she says. "Many of our hosts over the years have been reporters with local television stations. We retrain them for the job of being an OPEN/net host. They're not investigative reporters when they're on OPEN/net. Their job is not to go after government officials." Wing told the legislative study commission that gavel-to-gavel television coverage may increase the public's approval of the legislature.

Because the House and the Senate usually meet simultaneously, the Agency for Public

**Table 1. Existing Public Television Coverage of North Carolina State Government**

Program	Producer	Duration / Frequency	Availability	Description
"Legislative Week in Review"	UNC Center for Public Television	1 hour, weekly	Statewide on public television channels	Taped interviews with news clips and discussion.
"North Carolina NOW"	UNC Center for Public Television	30 minutes, Monday-Friday	Statewide on public television channels	News and feature stories, often focusing on legislative issues.
"OPEN / net"	Agency for Public Telecommunications	2 hours, weekly	Statewide on about 50 cable TV systems	Unedited coverage of legislative and executive branch meetings, followed by live call-in show.
"Inside North Carolina"	Agency for Public Telecommunications	1 hour, weekly	Statewide on about 50 cable TV systems	Live call-in show on public issues of statewide interest.
"Town Hall Television"	Town Hall Television Inc. (planned)	1 hour, monthly	Statewide on public television channels	Varied format show on public issues of statewide interest.

Telecommunications would alternate live coverage of the two bodies each day. For instance, on Tuesdays, the Senate session might be covered live, while the House would be tape-delayed. On Wednesdays, the House would be covered live, while the Senate would be shown on tape. Evening hours would be filled with call-in programs and tapes of meetings of the legislature and executive boards and commissions.

### **Some Legislators Skeptical of Gavel-to-Gavel Concept**

**B**efore APT's plan could be put into effect, legislators need to be convinced that gavel-to-gavel coverage is a good idea. In the Senate Appropriations Committee, senators from both political parties spoke against it. "It's a frivolous expenditure," Sen. Perdue said. "I'd much prefer to see that money go to buy a few school buses for our children. They need that more than they need to see us."

Rep. Miller, a supporter of gavel-to-gavel coverage, sympathizes with Perdue's financial concerns. But he said that legislators shouldn't feel forced to choose between funding for television or funding for schools. "I view [gavel-to-gavel coverage] as seeing that the public is informed," Miller said. "An informed public then would be better informed as to the need for additional appropriations for public education."

Other legislators worry that gavel-to-gavel television would disrupt the General Assembly. Sen. Jerry Blackmon (R-Mecklenburg) predicts that the presence of television cameras on the Senate floor would lead to more political posturing. "I was on a county commission for six years, and we were exposed to this kind of thing," Blackmon told the appropriations committee. "It increases the time of the meetings and causes people to say things that you would never expect them to say." Sen. Basnight has similar concerns. "Once you bring the cameras in, there's a lot of politicking that goes on," Basnight says. "If you could hide the cameras, where nobody would see them, I think it would be great."

Wing, the former APT official, insists viewers would be smart enough to know when a legislator was posturing or wasting time. "They're not dumb," Wing says of viewers. "They can figure out if somebody's giving them a bunch

of baloney. Furthermore, I think the legislature will police itself. It's not going to tolerate that kind of baloney." Hargrove, chair of the APT Board, says the continual presence of TV cameras might discourage legislators from wasting time on political posturing. "Knowing that there is an audience outside the chambers that is watching them may have the effect of refining the discussions," Hargrove says.

If legislators can be persuaded to fund gavel-to-gavel coverage, the next challenge would be to win cooperation from the cable television industry. Many operators of local cable systems are reluctant to set aside a channel for legislative coverage when they could be using that channel for a commercial network that can attract more viewers and advertisers. "Channel capacity is always a problem, especially for smaller systems," explains Adrian Cox, former president of the North Carolina Cable Television Association and executive vice president of Summit Cable Services in Winston-Salem. State officials hope advances in video compression and digital technology will increase the channel capacity of local cable television systems within the next decade, making it more likely that there will be space for the new service. Hargrove adds: "The cable industry has indicated it will try in good faith to be as supportive of the proposal as it can be. A number of cable systems have said they will make channel space available for this public service effort. But viewer preferences ultimately might determine which programs cable systems will carry."

### **Seven States Telecast Live Coverage of Their Legislatures**

**T**he states of California, Hawaii, Massachusetts, Minnesota, Nebraska, Rhode Island, and Washington now have some form of gavel-to-gavel television coverage of their legislatures. In addition, Oregon and New York previously had such telecasts but discontinued them. The Oregon telecast was a three-month experiment that failed to gain enough support to earn public funding. The New York telecast ran for eight years before succumbing in March 1992 to tough, budget-cutting measures in a state faced with an \$875 million shortfall in its 1991-92 budget. Oregon and New York are reviewing ways to revive their coverage.



**The technology has changed in the 40 years that WUNC-TV has covered state government. In this photo, a cameraman is taping a news conference in 1956.**

According to *Governing* magazine, interest in gavel-to-gavel coverage of state legislatures is on the rise. "Alaska and Florida started televising this year. Michigan is about to launch coverage of all three branches of the state government, including meetings of state boards and commissions. South Carolina, Texas, Virginia and Wisconsin legislators are actively considering the issue."<sup>8</sup>

Most of the state legislative telecasts cost about \$500,000 a year to operate, excluding initial capital costs for wiring, cameras, and other equipment. Nebraska has the least expensive program, costing about \$100,000 a year. Its expenses are lower because some costs are charged to another program that Nebraska Public Television broadcasts nightly, according to Bill Ganzel, a senior producer for the network. Also, the Nebraska legislature is a unicameral body—requiring half as much equipment

and personnel as it would to telecast a bicameral legislature.

Several of the existing state programs are not as extensive as the North Carolina proposal. For instance, gavel-to-gavel coverage in Massachusetts is available only for the House of Representatives, and it is broadcast over a local station in Boston. In Minnesota, only the Senate is televised, and it is distributed over cable systems only in the Minneapolis-St. Paul metropolitan area.<sup>9</sup> Program administrators in both states cite budgetary constraints as a key reason for not providing more complete coverage.

The most advanced state in legislative TV coverage is California. The California Channel televises live action from the House and Senate floors, as well as legislative committee meetings, state Supreme Court proceedings, and press conferences by the governor.<sup>10</sup> Unlike the North Carolina proposal, which calls for the state to

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## *The UNC Center for Public Television: 40 Years of Legislative Coverage in North Carolina*

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THE FIRST TIME NORTH CAROLINA experimented with gavel-to-gavel television coverage of the General Assembly, the cameras were black-and-white. So were the issues that legislators discussed.

In July 1956, WUNC-TV—the state’s new public television station—showed live coverage of a special legislative session on school desegregation.<sup>1</sup> In light of the U.S. Supreme Court decision, *Brown v. Board of Education of Topeka, Kansas*, lawmakers in North Carolina enacted the “Pearsall Plan to Save Our Schools.” The plan provided parents with ways to avoid sending their children to integrated public schools, and gave them state grants if they wished to enroll their children in private schools.<sup>2</sup> Huge cameras televised the proceedings in the old House chamber in the state Capitol, as the General Assembly set down into law that “no child will be forced to attend a school with children of another race in order to get an education.”<sup>3</sup> It was one of the earliest live remote broadcasts in North Carolina television history, seen both on WUNC-TV and on Durham’s new commercial television station, WTVD.<sup>4</sup>

Over the next few decades, public television continued to televise House and Senate sessions from time to time when the legislature was debating such issues as the Speaker Ban Law, legalized abortion, and liquor by the drink.<sup>5</sup> “We did extensive gavel-to-gavel type coverage,” recalls Richard Hatch, former public affairs director at the UNC Center for Public Television. “We would put cameras in the balcony and do it live. Several times, we broadcast all afternoon.”

In recent years, public television has backed away from live legislative broadcasts, instead putting more emphasis on its five-day-a-week program, *North Carolina Now*. Hatch says it’s harder to do gavel-to-gavel coverage today than it was 30 years ago because viewers have increased their expectations. “It’s gotten so complicated and expensive,” he says. “Today, nobody would accept the quality that we used to do.”

—Adam Hochberg

### FOOTNOTES

<sup>1</sup> The University of North Carolina put WUNC on the air Jan. 8, 1955, with funds raised by private donors. Initially, WUNC was the only station, and its programs were supplied by studios on the campuses of UNC-Chapel Hill, N.C. State, and Women’s College (now UNC-Greensboro). The network later grew to its current 10 transmitters, covering virtually the entire state by the mid-1980s. Although the General Assembly has appropriated money for public television since the mid-1950s, it did not codify statutes for the network until 1979, when it adopted G.S. 116-37.1, which authorized the UNC Board of Governors to establish the UNC Center for Public Television.

<sup>2</sup> *The Pearsall Plan to Save Our Schools*, Governor’s Advisory Committee on Education, April 5, 1956.

<sup>3</sup> Chapter 3 of the 1956 Extra Session Laws.

<sup>4</sup> Richard W. Hatch, “News Coverage of the General Assembly, Past and Present,” *Popular Government*, Vol. 49, No. 4 (Spring 1984), Institute of Government: University of North Carolina at Chapel Hill, pp. 32–36.

<sup>5</sup> The General Assembly enacted the Speaker Ban Law in 1963, forbidding Communists from speaking at all state-supported schools, but the state Supreme Court later ruled the law unconstitutional. North Carolina was one of the first states to legalize abortion, which the legislature approved in 1967. The liquor-by-the-drink legislation, enacted in 1978, allowed cities and counties to hold elections on whether to allow sales of mixed drinks.

fund and operate the television system, the California Channel is a private, non-profit venture, funded mainly by the cable television industry.<sup>11</sup> The program is also the most expensive to produce, at \$900,000 a year, nearly double the operating costs of most state telecasts.

Paul Koplin, the president of the California Channel, says the public has been very supportive of the channel during its two years of operation. "We're the only means for them to understand what's happening in the state," Koplin says. "We get calls from constituents all the time saying, 'Are you going to air this committee hearing on education cuts or this committee hearing on health care cuts?'"

Still, only about half of California's cable subscribers have access to the channel because many cable operators are hesitant to add it to their systems. Koplin tries to convince cable television executives that adding the California Channel will improve the cable industry's image with the public. "As they face an increasing regulatory environment, it's important for them to maintain these positive relations," he says.

At the national level, C-SPAN officials report increasing public interest in the channel's telecasts of Congressional sessions and other government proceedings. C-SPAN surveys show growing viewership of the channel, particularly during periods when Congress has grappled with serious national issues such as the Gulf War, the federal budget crisis, and the breakdown of the savings and loan industry. Currently, the channel is available in 67.1 million households nationwide, up from about 35 million in 1990.

"More people are tuning in to C-SPAN to see how Washington is responding," says Brian Lamb, the network's chairman and chief executive officer. "The cable industry should be proud—these are the times when the public service value of C-SPAN is really driven home." C-SPAN has televised the U.S. House of Representatives since 1979 and the U.S. Senate since 1986.

The network's news coverage has been "so successful that we've extended it to the White House and are working with the courts to see if we can get cameras in the courts," says Virginia Diez, a C-SPAN media specialist who applauded the proposal to televise legislative sessions in North Carolina. "Certainly, we would encourage you to go forward with it."

## Commercial TV Stations Cutting Back Their Legislative Coverage

Koplin says the California Channel has become an especially important news source because all of the commercial television stations in California have closed their state capital bureaus during the past few years. In North Carolina, many commercial television stations also have de-emphasized legislative news. WBTV in Charlotte and WNCT in Greenville, for example, have closed their Raleigh bureaus.

The University of North Carolina Center for Public Television provides the only regular TV coverage of the General Assembly, with its "*Legislative Week in Review*" program. (See Table 1, p. 725.) *Legislative Week in Review* typically covers key legislative issues during sessions, providing analyses by reporters, interviews with legislators and lobbyists, and taped footage of meetings and debates. Among commercial television stations, only WTVD in Durham and WRAL in Raleigh regularly assign reporters to cover legislative news.<sup>12</sup>

"There appears to be less public coverage of the General Assembly," says Rep. Miller, a 13-term legislative veteran. "I can recall when the newspapers would publish the calendar of the bills that were on for debate. Now the news media don't feel that the legislature warrants front-page news."

Indeed, some supporters of gavel-to-gavel television hope it will result in more news about the General Assembly in the media. All television and radio stations in North Carolina would be able to tape the gavel-to-gavel coverage and broadcast excerpts in their news shows at no charge. For instance, if the House or Senate were debating a controversial subject, a commercial TV station could videotape the debate directly from cable TV. The station's reporters then could edit this tape and assemble a story about the debate for their evening news, all without ever leaving their hometown newsroom. "The heaviest pitch [for the gavel-to-gavel coverage] was that the media people wanted it," said former Rep. Judy Hunt (D-Watauga), a co-chair of the study commission. "If they had access to a tape, they'd do more legislative coverage."

The president of one of the state's largest broadcasting companies agrees. Jim Goodmon, whose Capitol Broadcasting Company owns

WRAL-TV in Raleigh, says it's difficult for a mobile TV news camera to shoot good video in the House and Senate chambers because of poor lighting and peculiar camera angles.<sup>13</sup> As part of the proposal to begin gavel-to-gavel coverage, the lighting in the chambers would be upgraded, and several cameras would be permanently installed to result in more attractive video. "As a business now, we're really tied to video," Goodman says. "If we have a picture of it, we'll cover it."

The UNC Center for Public Television would continue its legislative coverage even if the gavel-to-gavel telecasts become a reality, Associate Director Chancy Kapp says. But the availability of a gavel-to-gavel video feed from the House and Senate floors could free up public TV reporters to do more interviews and in-depth analyses of the legislature, she says.

Even some newspaper editors say gavel-to-gavel television could improve their coverage of the legislature. Richard Oppel, editor of *The Charlotte Observer*, was among the news executives who testified before the legislative study commission in favor of the proposal. Oppel said in an interview that the *Observer* has no plans to scale back its staff of three Raleigh-based writers who cover the legislature. But he says Charlotte-based writers also could cover the General Assembly if they could watch it on TV. For instance, he says if legislators were debating a bill concerning public schools, the newspaper's education writer might watch. "You always have legislation that affects a specialized area," Oppel explains. "As the legislature takes up bills like this in committee or elsewhere, I would see the gavel-to-gavel providing the opportunity for a reporter to tune in from back in Charlotte. He or she may not necessarily have to get in a car and drive to Raleigh."

Still, the advent of gavel-to-gavel coverage would not guarantee that legislators receive more attention from their hometown media. Ron Miller, the news director at WBTV in Charlotte, says access to video from the House and Senate floors would only "occasionally" result in his station broadcasting a legislative story. "It's not very exciting video," Miller says. "The value of legislative coverage is that you have a reporter and camera person there to tailor the coverage, put it into a package, and really make it meaningful to the local viewer." Since WBTV closed its Raleigh news bureau, it now relies mainly on WRAL to provide it with legislative

news, although Miller says WBTV occasionally sends a crew from Charlotte for major legislative stories.

### **Media Observers Stress Need for Objectivity in Gavel-to-Gavel Coverage**

Several North Carolina media executives also question whether the gavel-to-gavel television coverage would be objective. Richard Hatch, the former public affairs director at the UNC Center for Public Television, is concerned about how the Legislative Services Commission might use its control of the cameras. "The North Carolina proposal would have the TV coverage under the control of the legislature and distributed by another state agency," he says. "Thus, the origination and distribution of coverage and the production would all be under the control of the legislature or a state agency dependent directly on the legislature for its funds. . . . As someone who has covered the legislature since the 1950s, I am delighted at the growing interest in the subject. My own view is the more coverage the better, but I would prefer to see some distance from legislative control built into the project."

Hatch points out that the U.S. House and Senate produce the video coverage that C-SPAN telecasts. In other words, Congress controls the coverage; C-SPAN merely distributes it. For example, Congress requires the video cameras to be aimed at whomever is speaking on the floor during regular proceedings, and it bars reaction shots or close-ups of Senators and Representatives.<sup>14</sup> "They have very strict rules to make sure that nobody looks bad," Hatch says. "Any organization that sets out to cover itself is going to have a conflict of interest in how they do it."

Another problem with the gavel-to-gavel proposal, Hatch says, is that simply televising legislative proceedings—without interviews, background information, or analysis by reporters—might confuse or fail to inform most viewers. "Coverage of floor debate is a one-dimensional picture of a highly complex process which includes committees, lobbyists, special interests, and other government agencies," he says. "This is why we decided 20 years ago to concentrate on journalistic coverage."<sup>15</sup>

Oppel, *The Charlotte Observer* editor, agrees there's potential for government leaders to manipulate the schedule of the television service to

portray the legislature in a positive light or to limit coverage of sensitive issues. He urges legislators to fund the APT proposal, "then stay out of the judgments about how specifically to assign coverage."

Common Cause—a group that lobbies for accountability in government—says even greater steps should be taken to assure the gavel-to-gavel coverage is fair and objective. Jeff Parsons, a Raleigh attorney and chairman of the governing board for Common Cause/North Carolina, says independent charitable foundations should become involved in the funding and management of the television project. He says that would help shield the television programs from editorial interference by the government and would provide a secondary source of funding if the state cuts the project's budget.<sup>16</sup>

Such a joint venture would not be without precedent. Private donations already pay for a substantial portion of the state's existing television and radio coverage of the legislature, state

government, and public issues. For example, the UNC Center for Public Television's \$15.9-million budget for the 1995–96 fiscal year included 49 percent state funds, 35 percent individual contributions, ten percent federal grants and contracts, and six percent from other sources. In the 1992–93 fiscal year, the Agency for Public Telecommunications depended on private and federal grants for about 10 percent of its \$1 million budget, and that breakdown is about the same for its current budget. Similarly, private cable systems and viewers underwrite C-SPAN's telecasts through licensing fees and subscription costs; the U.S. Congress pays for the cameras and other equipment used to televise its sessions.

"I would like to see a private-public partnership running it," Parsons says of the state proposal. "I have a concern that if it's 100-percent government funded, then you're only going to see what the government wants you to see, and perhaps not necessarily see everything we need to see."

## FOOTNOTES

<sup>1</sup> The funding proposal, H.B. 1427, was introduced in May 1992. It called for a total appropriation of \$3,222,669 for the 1992-93 fiscal year. That included \$2,403,700 for the purchase of television equipment at the Legislative Building, \$314,175 to match a federal grant to install satellite receiver dishes at public libraries statewide, and \$504,794 in operating funds for the telecasts. The bill was based on recommendations of the Open Government Through Public Telecommunications Study Commission, which submitted its report to the legislature on May 1, 1992.

<sup>2</sup> For more on television and cable coverage of the legislature and government, see Henry Wefing, "A Blow to Public Access," *North Carolina Insight*, Vol. 2, No. 1, (Spring 1979), p. 9; *Cable Television in North Carolina*, North Carolina Center for Public Policy Research (Nov. 1978); Jack Betts, "The Capital Press Corps: When Being There Isn't Enough," *North Carolina Insight*, Vol. 9, No. 2 (Sept. 1986), pp. 48-51; Katherine White, "Cameras in the Courtroom: The Experiment Continues," *North Carolina Insight*, Vol. 9, No. 2 (Sept. 1986), pp. 41-43.

<sup>3</sup> The Senate appropriations committee defeated the funding proposal for gavel-to-gavel coverage on a voice vote, July 8, 1992. The House did not debate the proposal.

<sup>4</sup> The General Assembly established the Agency for Public Telecommunications in 1979 under G.S. 143B-426.9.

<sup>5</sup> For more on public access to state government, see Bertha Holt, "Conflicting Interests for Citizen Legislators," *North Carolina Insight*, Vol. 3, No. 4 (Fall 1980), pp. 30-34; Fred Harwell, "Government Secrecy vs. Public Access," *North Carolina Insight*, Vol. 1, No. 3 (Summer 1978), pp. 4-7; *The Right To Be Able To Know*, North Carolina Center for Public Policy Research, 1978.

<sup>6</sup> Such financial concerns were reflected in December 1992 by the Government Performance Audit Committee, a panel created by the legislature to identify waste and inefficiencies in state government. The panel, in its report to the 1993 General Assembly, recommended delaying funding for gavel-to-gavel TV coverage until the state could "validate both the need and the expected value of the program."

<sup>7</sup> The N.C. Center for Public Policy Research's executive director, Ran Coble, participated in one such telecast aired on APT's OPEN/net program on Aug. 29, 1986. For a summary of Coble's presentation, see "Campaign Finance Research Featured Before N.C. State Board of Elections and on Cable TV," *North Carolina Insight*, Vol. 9, No. 3 (March 1987), pp. 100-105.

<sup>8</sup> Geoff Earle, "Channel Surfing with the States," *Governance* magazine, Washington, D.C., April 1996, p. 34.

<sup>9</sup> See Mary Renstrom, "Legislative Television Programming in the States," *State Legislative Report*, Vol. 17, No. 13 (July 1992), National Conference of State Legislatures, Denver, Colo., pp. 1-17.

<sup>10</sup> The California Channel's CAL-SPAN program covers the legislature using robotic cameras, with procedural rules established by the state Assembly and Senate. CAL-SPAN uses people-operated cameras to cover press conferences, court proceedings, and other events.

<sup>11</sup> The California Channel receives most of its funding from cable television system operators who pay fees based on the number of subscribers to their systems. The network also receives private contributions.

<sup>12</sup> For more on cutbacks in television coverage of the legislature, see Jack Betts, "The Capital Press Corps: When Being There Isn't Enough," *North Carolina Insight*, Vol. 9, No. 2 (Sept. 1986), pp. 48-51. Also see Betts, "Radio Journalism in North Carolina: Listening for Less News," *North Carolina Insight*, Vol. 9, No. 4 (June 1987), pp. 44-46; Paul O'Connor, "The Legislature of the 21st Century," *North Carolina Insight*, Vol. 14, No. 2 (Sept. 1992), pp. 58-68; and Tom Mather, "Slowly But Surely, Legislature Opening its Doors," *North Carolina Insight*, Vol. 14, No. 2 (Sept. 1992), pp. 69-71.

<sup>13</sup> The legislature requires that camera operators set up their equipment in one spot, thereby limiting them to one view or angle of floor sessions. The sheer size of legislative chambers also limits televising; it would take two or more cameras to effectively televise sessions.

<sup>14</sup> Rules are different for videotaping special orders of business, such as when members of Congress speak to largely empty chambers after regular sessions. Cameras periodically scan the chambers at such times.

<sup>15</sup> The state plan proposes covering appropriations and finance committee hearings as well as floor sessions. Hatch applauds that plan, but notes that money issues make up only a fraction of total committee debates.

<sup>16</sup> In times of budget crisis, the legislature has targeted public broadcasting in the past. In 1991, as part of efforts to trim a \$1.2-billion shortfall in the budget, the General Assembly reduced the UNC Center for Public Television's budget and eliminated funding for five of the seven state-owned public radio stations. The legislature dropped funding for all radio stations operated by the UNC system, including WFAE in Charlotte, WFSS in Fayetteville, WNAA in Greensboro, WRVS in Elizabeth City, and WUNC in Chapel Hill. The legislature continues to fund stations operated by the N.C. Department of Community Colleges, including WNCW in Spindale and WTEB in New Bern.

# Civic Journalism:

## Strengthening the Media's Ties with the Public

BY TOM MATHER

*A growing number of newspapers and television stations—in North Carolina and across the country—are trying a different approach to covering the news. The new approach, called civic or public journalism, seeks to stem growing disillusionment with politics and the news media by focusing coverage on the issues that concern people the most. Practitioners hope to present news in more appealing ways, attract more readers and viewers, and better involve the public in the political process. But some critics warn that civic journalism may be pandering to the public's sometimes conflicting and short-sighted desires.*

**T**he *Charlotte Observer* turned to an unlikely source—the public—when seeking advice on how to cover the 1992 election campaign. In a ground-breaking media experiment, the paper polled 1,000 Charlotte-area residents about what issues they considered most important for political leaders to address. The *Observer* then used those survey findings to guide its coverage of candidates running for the Governor's Office, the U.S. Senate, and the Presidency.

For example, the paper used its findings to identify key concerns of local residents and to

develop questions for its reporters to pose to candidates. Since then, the *Observer* has used a similar approach to guide its coverage of the N.C. General Assembly, local crime issues, and the 1994 elections.

“Our coverage has dramatically changed,” says Rick Thames, the *Observer's* assistant managing editor. “More than anything, this is a change in the way we think about election coverage. It's really voter-driven election coverage, rather than candidate-driven coverage.”

The *Observer's* experiment seemingly flies in the face of typical journalistic practice. Traditionally, newspaper editors and television producers have called the shots when deciding what

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*Tom Mather is associate editor of North Carolina Insight.*

news is fit to print or broadcast. That has led to a perception, among some readers, that an elite group of editors is telling the public, "You WILL read this!"

In reality, public opinion has always been a factor in news coverage. After all, editors and reporters are people too, and they have friends, relatives, and neighbors among the general public. Ignoring public opinion also can be bad for business. Many people won't buy newspapers or watch TV shows that don't cover the news they consider important or that dwell too much on events they don't care about.

Nevertheless, a growing number of journalists are concluding that they need to do a better job of listening to public concerns about news coverage. Many journalists also feel that they need to find new ways of attracting readers and viewers, presenting news in appealing ways, and involving the public in the political process. Practitioners of this emerging style of news coverage, labeled "civic" or "public" journalism, make use of several methods to better engage the public:

- Identifying what issues people consider most important through opinion polls, interviews, and focus groups;
- Placing more attention on the potential solutions and remedies for problems discussed in news coverage;
- Clearly noting, when possible, how elected officials stand on the issues most important to voters;
- Regularly informing readers and viewers how to contact their elected officials, vote in elections, attend public meetings, and otherwise participate in the political process;
- Organizing public meetings, televised forums, and other ways for people to discuss public policies and the solutions to problems.

By themselves, these techniques are not revolutionary changes in news coverage. What's new about civic journalism is the *systematic use* of such methods in order to involve the public more in news coverage and politics.

"Civic journalism is a revulsion against the usual election campaign coverage rituals of 'horse race' polling, 'sound-bite' reportage and

television attack ads," writes Neal R. Peirce, a nationally syndicated columnist.<sup>1</sup> "One could say the papers' and stations' primary interest in civic journalism is to attract readers and viewers. . . . But civic journalism is arguably more: an opening wedge of papers and broadcasters to 're-engineer' their operations and reinforce the focus they should always have—the needs and concerns of all of us, not just as consumers but as participating citizens."<sup>2</sup>

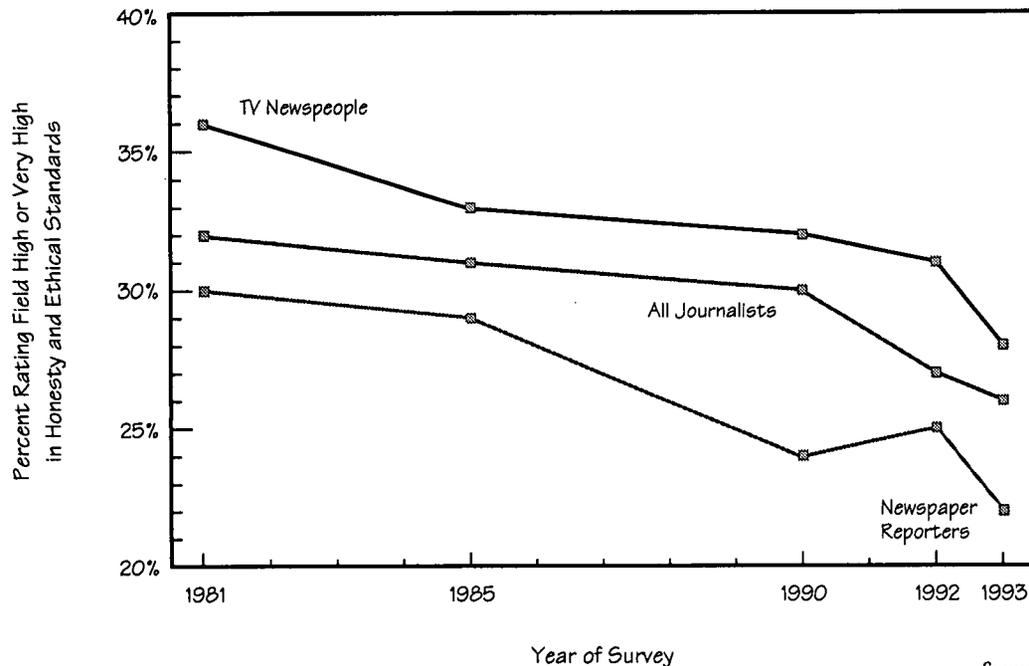
### Reasons for Changing Media Coverage

News media have been re-examining their coverage of issues for several reasons. One of the key concerns is the public's increasing disillusionment with the political process. As Jay Rosen, a professor at New York University and one of the leading proponents of civic journalism, says: "Citizens are frustrated with the political system. Public life is in an advanced state of decay and journalism must do something about it. And because public life is in trouble, journalism is in trouble."<sup>3</sup>

Rosen's contention is supported by growing public skepticism about the accuracy and veracity of the news media. That trend is illustrated by polls showing that the public's regard for journalists has declined steadily over the past decade. (See Figure 1.) For example, 30 percent of the respondents to a 1981 Gallup poll rated newspaper reporters as having high or very high honesty and ethical standards. By 1993, that number had declined to 22 percent. Similar declines have occurred in public ratings of all journalists and television reporters. (The silver lining in the Gallup findings is that journalists have consistently ranked higher than many other groups, including lawyers, business executives, senators, congressmen, local and state office-holders, and the perennial also-rans—car salesmen.)

Perhaps related to the declining esteem of journalists is a long-term decline in newspaper readership. The proportion of adults who read newspapers every day dropped from 73 percent in 1967 to 50 percent in 1994, according to surveys conducted by the National Opinion Research Center at the University of Chicago. (See Figure 2.) A similar, although less dramatic, decline in newspaper readership has occurred in North Carolina since 1979, according to The

**Figure 1.**  
**Public Ratings of Journalists' Honesty and Ethics**



Source: Gallup Poll

Carolina Poll conducted by the University of North Carolina at Chapel Hill.<sup>4</sup> The Carolina Poll also found that the percentage of people watching television news shows has declined moderately among younger residents (those less than 30 years old) but has increased among older residents (those more than 30 years old).

"U.S. newspapers are not dying; they are committing suicide," says Gene Cryer, editor of the *Sun-Sentinel* in Fort Lauderdale, Fla. "They are produced by journalists for other journalists and/or their sources. They are, for the most part, irrelevant to most reader groups."<sup>5</sup>

Such trends have convinced Cryer and other journalists that the news media need to change the way they cover politics and public policy. Instead of focusing on the latest political scandal or squabble, such critics contend that the media need to pay closer attention to what the public wants from news coverage. "All the editors have to do is listen to their

readers," Cryer says. "Not talk. Listen. And keep listening."<sup>6</sup>

Another journalist, Arthur Charity, expressed a similar view in *Columbia Journalism Review*: "[O]rdinary Americans, far from needing lessons from us in serious journalism, understand what it can and ought to be much better than most reporters and editors do. I'm convinced that people have steadily retreated from newspapers and networks until now because what they found there was shrill and shallow. We will not survive if they continue to feel unsatisfied. Our ideals and our bottom lines both point to the same fact—that we stand to gain quite a lot from a little reckless faith in the American people."<sup>7</sup>

Such concerns prompted the *American Journalism Review* in 1993 to organize a conference in which a cross-section of citizens shared their views of news coverage with a panel of journalists. The magazine summarized

the citizens' concerns in the following statements:<sup>8</sup>

- "We don't understand how you operate, especially how you make decisions on story selection and what news to cover."
- "We don't think the news media are held accountable for what they do."
- "We've lost a certain level of trust and confidence in the press. Above all, we question your accuracy."
- "It seems that 'anything goes' to sell newspapers or to compete in today's TV market. News and entertainment have become blurred; sensationalism has replaced substance."
- "Why can't the press be more responsive to the needs of the communities? You're elite and out of touch with the concerns of most people."
- "We are bombarded by so many choices today in obtaining news and are having a hard time sorting through everything."
- "You do a poor job of covering politicians, focusing on their personal lives instead of their jobs."

### Civic Journalism Not Without Its Critics

There are drawbacks, however, with some of the techniques central to civic journalism—particularly if taken to an extreme. Critics are most vocal about journalists guiding their coverage of news with opinion polls, focus groups, and other ways of gauging public attitudes. The problem is the fickle nature of public opinion. Surveys show that the public can be notoriously inconsistent in its assessment of the importance of issues. For example, a January 1993 poll identified the economy as the most important issue facing the American public, followed by unemployment, the federal budget deficit, health care, and crime. By January 1994, a similar poll showed almost a complete reversal—with the public ranking the top issues as crime, health care, unemployment, the economy, and the deficit.<sup>9</sup>

The wording of questions in such polls also can have dramatic effects on the results. For ex-

ample, in a July 1994 poll that asked what was the *single* most important issue for the federal government to address, the top three choices—in rank order—were: crime, the economy, and health care.<sup>10</sup> That was a reversal from a May 1994 poll that asked what were the *two* most important issues for the government to address. In the earlier poll, the top choices by rank were: health care, crime, and employment.<sup>11</sup>

Another problem with polls is a variation of the old riddle: Which came first, the chicken or the egg? That is, do the news media cover an issue because that's what the public is concerned about? Or, does an issue become important to the public because that's what the news media are covering?

"Polls can be a mirror or a window," says Richard Morin, director of polling for *The Washington Post*.<sup>12</sup> "On many issues, survey results merely reflect back what people have superficially absorbed from the media. Instead of peering into the minds of voters, reporters sometimes merely are seeing themselves in these survey results. And too often, what's been written or broadcast about an important issue and then partially digested by the public is either wrong or misleading."

With some issues, Morin says, media coverage has had a substantial—and misleading—influence on public perceptions. "Consider the current spotlight on crime, which ranks as the top concern of many voters," he says.<sup>13</sup> "But that finding doesn't quite square with reality: that the overall crime rate actually is going down and that the violent crime rate—including the murder rate—is lower now than it was a decade ago.<sup>14</sup> There is strong evidence to suspect that the media have created the current undifferentiated fears about crime by their often careless coverage of the issue."

Such concerns have led political analyst Susan Rasky to describe civic journalism as a "perhaps well intentioned, but ultimately hare-brained notion."<sup>15</sup> Using opinion polls to guide reporting, she says, would result in news coverage that "amounts to an expanded version of letters to the editor."

"It is neither fashionable nor polite—let alone politically correct—to suggest that the *vox populi* may not be all it's cracked up to be," Rasky writes. "But the dirty little truth that emerges in voters' 'voices' is well known to political reporters, political scientists and above all to the politicians themselves: Citizens generally

want very contradictory things from those who govern.”<sup>16</sup>

By focusing news coverage on popular perceptions, Rasky says, journalists are abandoning a key responsibility—to guide public discourse. One of the ways journalists exercise that responsibility, she says, is by gathering and analyzing the views of academics, leaders, experts, and informed sources.

Indeed, surveys and other studies have shown that public opinion often can differ widely from expert opinion.<sup>17</sup> Such differences could support arguments against the wisdom of basing news coverage on popular opinions. Some critics already accuse the media of pandering to popular public interests by de-emphasizing political coverage at the expense of news about celebrities, sports, sensational crimes, and life styles.

Humorist and author Garrison Keillor is among those who have criticized newspapers for “dumbing down” their news coverage. “Newspapers are keenly aware of a younger generation of non-readers that does not care whether it sees a newspaper in the morning or not, and newspapers are trying to appeal to this generation by writing down to it,” Keillor says. “In the mind

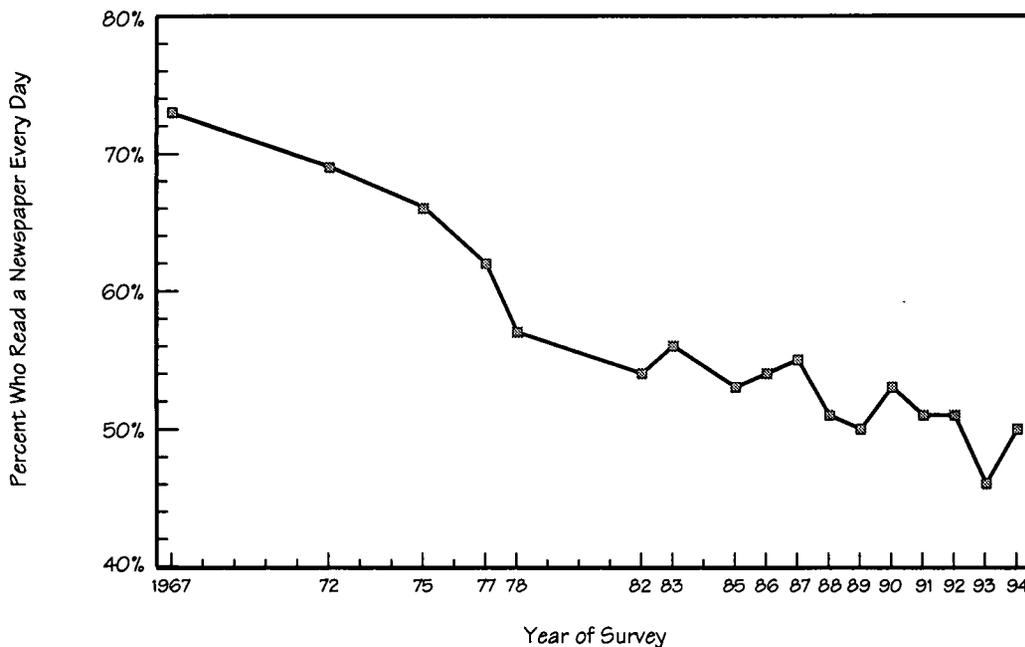
of a not very bright 14-year-old, the entire adult world consists of dolts and jerks and meanies, and that is how reporters tend to write about government these days.”<sup>18</sup>

Other critics of civic journalism worry about crossing the line between civic responsibility and boosterism. Such critics say that reporters and editors could lose their objectivity by actively urging the public to vote, contact politicians, and become more involved in the political process. “I know newspapers will tell you they are only going out to develop a civic culture, to get people involved,” says Howard Schneider, managing editor of *Newsday* in New York. “But inevitably, once a newspaper gets identified as a particular advocate for a position, the dangers are self-evident. Once you lose your credibility and your ability to speak with authoritativeness, you’re losing everything.”<sup>19</sup>

### More Newspapers and TV Stations Trying Civic Journalism

Despite such concerns, some media observers cite civic journalism as the kind of ap-

**Figure 2.**  
**Newspaper Readership**



Source: National Opinion Research Center

proach that newspapers and television news shows must try in order to attract more readers and viewers. Phil Meyer, a journalism professor at the University of North Carolina at Chapel Hill, says civic journalism could stimulate citizens to become more involved in their communities and in the political process—thus boosting newspaper circulation in the long-run. “There’s some risk to it, but that’s not a reason not to do it,” Meyer says. “I think it’s a risk that newspapers ought to take because the loss of community is such a frightening thing.”

Jay Rosen, the New York University professor, says critics of civic journalism have exaggerated its reliance on opinion polls. Polls, he says, are just part of a broader effort to involve citizens more in news coverage and public policy. “A lot of places where public journalism is done best, polling isn’t being done at all,” Rosen says. “The point is for journalists to think about the ways they isolate themselves from citizens—and then try to overcome that. . . . The real thrust of public journalism is how to help make public life work.”

Rosen and other proponents of civic journalism appear to be gaining converts, particularly among newspapers. In 1992, only a handful of newspapers were using the civic journalism approach. By 1994, dozens of newspapers across the country were doing so. *Editor & Publisher*, a magazine that covers the news industry, analyzed the civic journalism trend in a recent editorial: “It is an idea that is catching on and developing in many ways. It may become a groundswell and sweep the country, in spite of the opposition of some traditionalists who believe trained journalists know better what a newspaper should contain than does the reading public.”<sup>20</sup>

Here are some examples of newspapers and television stations that have adopted civic journalism techniques:

- In Kansas, *The Wichita Eagle* used surveys and extensive interviews to identify problems that local governments seemed unable to solve, including faltering schools, crime, family tensions, and health care. The paper analyzed the problems in special reports, sponsored community forums in which citizens could work on solutions, and used its findings to guide coverage of local elections in 1991.<sup>21</sup>
- In Ohio, the *Akron Beacon-Journal* examined racial inequities in its community and

then sponsored a public forum on racism. The paper even published a pledge card urging readers to vow to fight racism, drawing more than 22,000 responses.<sup>22</sup>

- In Florida, the Fort Lauderdale *Sun-Sentinel* conducted 130 group discussions with more than 1,400 readers on how to cover the news better. The paper also assigned a senior editor whose full-time job is to talk with readers and “give them a voice in what the paper does.”<sup>23</sup>
- In Washington, the Spokane *Spokesman-Review* encouraged public involvement in community issues by sponsoring “Pizza Papers” meetings. The paper donated \$15 worth of pizza to readers who volunteered to host neighborhood discussion groups on issues such as crime, traffic congestion, and city-county consolidation.<sup>24</sup>
- In Georgia, *The Atlanta Journal-Constitution* published a special voter’s guide on the governor’s race that included a score sheet for ranking the candidates on major issues. The paper printed candidates’ responses to voters’ key concerns as identified in a statewide poll; it also co-sponsored with WSB-TV a town meeting in which voters, not reporters, questioned the candidates.<sup>25</sup>
- Nationally, the CNN cable television network broadcast a series called “The People’s Agenda” that examined issues facing American voters at the outset of the 1992 campaign season. The reports, aired over two weeks in February 1992, sought “to present issues as voters see them, not as candidates perceive them.”<sup>26</sup>

#### North Carolina:

#### A Laboratory for Civic Journalism

In 1992, *The Charlotte Observer* became one of the first newspapers—in North Carolina as well as the nation—to embrace civic journalism techniques. The paper’s conversion is partly due to its affiliation with the Knight-Ridder newspaper chain, which has actively encouraged efforts to make news coverage more relevant to readers. “People with a sense of connection to the places they live are almost twice as likely to be regular readers of our newspapers,” says

Knight-Ridder Chairman James Batten, a former executive editor of the *Observer*.<sup>27</sup>

Another catalyst for the change was the Poynter Institute for Media Studies, a think tank in St. Petersburg, Fla. In 1991, the institute was seeking a daily newspaper to participate in an experimental civic journalism project, patterned after *The Wichita Eagle's* groundbreaking coverage of its local elections that year. *Observer* editors heard about the Poynter plan and offered to participate.

"Rich Oppel, our [former] editor, was very unhappy with the way news coverage had gone during the 1988 elections," says Thames, the *Observer's* assistant managing editor. "It seemed to focus on a lot of inconsequential issues, such as flag-burning or who could be the most macho." *Observer* editors also were disenchanted with the media's focus on horse-race polling during the 1990 election, in which Republican Sen. Jesse Helms had defeated Democratic challenger Harvey Gantt—even though polls had shown Gantt ahead during the entire campaign.<sup>28</sup>

The *Observer* and the Poynter Institute agreed on several goals for their joint project:<sup>29</sup>

- To let the voters, not the candidates, establish the key issues in the 1992 election campaign.
- To focus news coverage on issues and the solutions to problems, while forcing candidates to deal with voters' concerns.
- To de-emphasize coverage of horse-race polling, inside politics, and political posturing.
- To forge a partnership with a broadcast competitor, WSOC-TV, in order to reach a broader audience.
- To expand the use of innovative graphics in order to make news coverage more accessible and appealing to readers.

The first step in the project was to survey 1,003 residents in the *Observer's* core readership area, encompassing 14 counties in the Charlotte region. "We began with a baseline poll, in which we tried to establish what the voters thought this election was about," Thames says. "We wanted to test the waters before they were disturbed." That poll identified six core issues of concern to local citizens: the economy and taxes, crime and

drugs, health care, education, the environment, and family and community concerns.

"This was not exactly a surprising agenda; a lot of things you would expect were there," Thames says. "What did surprise us is that we didn't realize to what an extent the economy would be an issue. The poll helped us realize early on that the economy would probably dominate the election—if voters had their way. . . . We did three polls during the campaign. So, we did retest it. Interestingly enough, in this campaign, the key issues were fairly stable."

The *Observer's* involvement with citizens didn't end with its surveys. It sought public input on issues by regularly publishing phone numbers that readers could call to voice their opinions with newspaper reporters and editors. It published columns written by local citizens or

**As part of its civic journalism project, The Charlotte Observer regularly prints graphics such as this showing readers how to contact or direct questions to candidates and public officials.**

**CALL US**

**SHERIFF'S RACE '94**

Do you have a question for Republican Bill Kennedy and Democrat Jim Pendergraph, the candidates for Mecklenburg sheriff?

Call us at 570-6351. We'll ask the candidates to answer your questions.

**Pendergraph, Kennedy on the Issue** page 2C

**More election coverage** page 2C

## FEAR FOR THE FUTURE



GARY O'BRIEN/STAFF

Insurance woes: Diane Spargo, a Gastonia widow with twins, Greg (top) and Brian, faces \$800 monthly fees if her late husband's firm

changes insurance carriers. "Everybody should be entitled to health care. It should not cost them the entire money that they get . . ."

### People demand politicians hear them

By DAVID PERLMUTT  
And JIM MORRILL  
Staff Writers

**L**isten, candidates, your neighbors are worried. Worried about losing their jobs, their health insurance and even the moral values that glue their communities together.

Worried that taxes — and the cost of a decent life — will be able to afford a home or send their children to college.

And, as more are touched by the scourge of drug-related crime, they worry about simply going outside their home — or about someone breaking in.

As a new election year unfolds, a Charlotte Observer/WSOC-TV poll of 1,003 Carolinians found people are deeply troubled about the future. And nine out of 10 in the 14-county Charlotte region doubt their elected leaders are in touch with the powerful forces tearing at their personal lives.

They want their worries heard. They want them to become the priorities of politicians.

Listen to Carol Horn of Chester, S.C., on the latter economy.

**"It's a sense of things being out of control . . . people are adjusting their lifestyle to the fact that they may not have a job next week or down the road"**

— Rev. John Giuliani, pastor of Divine Saviour Church in York, S.C.

"People don't know around here from one day to the next whether they have a job," Horn said.

Or Mae Rose McMiller of Gastonia about crime. "I'm afraid to walk out the door," she said. "You just don't know what's going to happen with people outside who are using drugs. We live in a dangerous and critical situation."

And Bob Mauldin Jr. of Lake Wylie, S.C., about mounting medical bills. "I don't think anybody should have to go into financial ruin as a result of having to go to the hospital," said Mauldin, who suffered a heart attack and

had triple bypass surgery. "I think we have to attack some way to bring the medical costs down and provide equal health care to all. . . ."

It's a chain reaction of fears. If people lose jobs, they lose health insurance. They fear losing their homes and their children not living a prosperous life. Perhaps, mostly, they fear losing their independence — and their dreams. It's what Tom Smith of Rock Hill calls a fear of "backward mobility."

The fears are unavoidably intermingled.

"Our whole economy system and cultural value system are so thoroughly addicted to squandering any kind of resource," said Dave Payne of Charlotte. "Whether it's the environment or the economy, the whole thing moves by using resources as quickly as possible."

For many, optimism has given way to uneasiness.

"It's a sense of things being out of control," said the Rev. John Giuliani, pastor of Divine Saviour Church in York, S.C. "People are adjusting their lifestyle to the fact that they may not have a job next week or down the road. People are very cautious about making commitments."

#### The top worries

According to 1,003 Carolinians interviewed in an Observer/WSOC-TV poll:



**The Economy/Taxes**  
32% are very worried they or someone in their family will lose a job

**Crime/Drugs**  
67% strongly agree handguns are too easy to get

**Health Care**  
60% strongly agree that government should guarantee medical coverage

**Education**  
73% want more taxes spent to improve education

**The Environment**  
62% want more tax money spent to clean the environment

**Family/Community**  
48% strongly agree elected officials are not concerned enough with children's needs

Full report on the poll  
Pages 8-9A

NOTE: Citizens were polled Dec. 13-Jan. 6 in Anson, Cabarrus, Catawba, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly and Union counties in North Carolina; and Chester, Lancaster and York counties in South Carolina.

#### INSIDE

- Readers react to Observer's election plans. Editor Rich Oppel's column page 2C
- Pat Buchanan profiled/page 2A

The Charlotte Observer kicked off its ground-breaking civic journalism project by publishing the results of its poll showing local residents' key concerns in the 1992 election campaign.

based on interviews with them. It invited readers to submit questions to be used by *Observer* reporters when interviewing candidates. It organized focus groups to evaluate readers' reactions to its news coverage. It ran articles and graphics showing candidates' stands on issues the voters had identified as most important. It printed phone numbers and addresses where citizens could contact candidates and elected officials. It prominently featured information on how and where citizens could register to vote. It sponsored forums where citizens, experts, and politicians could talk about issues and solutions to problems.

Along with its efforts to involve the public, the *Observer* also changed the way its reporters and editors covered the election campaign. It focused its news articles on issues, rather than on campaign strategies and political spats. It downplayed its coverage of campaign polls. It published regular "ad-watches" that examined the accuracy of political advertisements. "We didn't ignore the horse-race polls and inside politics," Thames says. "We just reserved most of our space on page 1A for in-depth reporting on the issues. Other papers were stripping stories on page 1A that ended up as briefs inside our paper."

### Does Civic Journalism Make a Difference?

Errel Guillory, on sabbatical from his position as associate editor of *The News & Observer* in Raleigh, compliments the Charlotte newspaper for its coverage of the 1992 election. But Guillory says that many elements of civic journalism—such as paying close attention to public concerns, reporting candidates' stances on issues, and informing readers how to participate in the political process—are techniques that always have been considered good journalism. "One of the things I do like about civic journalism is that it's more focused on solutions," he says. "Newspapers do need to become more focused on solutions, not just on problems and criticisms."

Nevertheless, Guillory questions whether the *Observer* covered the 1992 campaign better than other newspapers in the state that used more conventional reporting techniques. "The bottom line is, 'Were the readers of *The Char-*

*lotte Observer* any better served?'" he asks. "Did the people learn any more about the politics of the state or the candidates they covered? . . . Did they learn more than the readers of other newspapers learned?"

The answer to those questions is 'Yes,' according to two separate studies. After the 1992 election, the Poynter Institute commissioned a content analysis which showed that *The Charlotte Observer* substantially changed its news coverage. Compared to the 1988 campaign, the *Observer* published 58 percent more news coverage about the 1992 election. That coverage included nearly three times more text about issues, 25 times more text about voter information, and only one-fifth as much text about candidate polling.<sup>30</sup>

*The Charlotte Observer* also covered the issues more thoroughly during the 1992 campaign than other major newspapers in North Carolina, according to an independent content analysis by Phil Meyer, the UNC-CH journalism professor.<sup>31</sup> In a study of 13 daily newspapers, Meyer found that the *Observer* devoted the most space on its front page to coverage of policy issues (25 percent)—nearly double the average (13 percent). The *Observer* also devoted the least amount of space to coverage of horse-race polls (2 percent)—less than half the average (5 percent).

"In sum, the editors in Charlotte were right to abandon journalistic passivity to the extent that they resolved to follow through on their reporting, including polling on policy issues, and convene citizens' groups and promote action," Meyer says. "But their rejection of traditional horse race polling may work against them by depriving the audience of one sure-fire generator of excitement and interest."<sup>32</sup>

Poynter researchers also assert that the *Observer's* coverage stimulated more voters to participate in the 1992 election, but that result is debatable. "We're convinced it did," says Edward Miller of the Poynter Institute. "Voter turnout in Mecklenburg County (metro Charlotte) was spectacular—up 32 percent (59,000 voters) over the previous record."<sup>33</sup>

Miller's claim isn't fully supported by records from the State Board of Elections. Total turnout in Mecklenburg County in the 1992 presidential election was up 27.7 percent (49,567 voters) from the 1988 election, according to state records. That was better than the

statewide voter turnout, which was up 22.4 percent from 1988 to 1992. But Mecklenburg's turnout did not increase as much as some other counties. For instance, voter turnout in Wake County was up 44.6 percent from 1988 to 1992. Looked at another way, 70.0 percent of Mecklenburg County's registered voters participated in 1992 election, compared with 68.4 percent of the registered voters statewide and 74.6 percent of the registered voters in Wake County.

An unexpected result of the *Observer's* civic journalism project, Thames says, is that the paper

**Other newspapers, such as *The News & Observer of Raleigh*, also are using civic journalism techniques, such as this graphic analyzing the views of Congressional candidates in the 1994 election.**

**ISSUES '94**

## How to fight poverty

This is the latest in a series of questions on issues in the 2nd and 4th congressional district races. Answers are based on interviews with the candidates in the Nov. 8 election.

**Q** There are millions of North Carolinians who live in poverty. What should be the federal government's role in helping people climb out of poverty?

REPUBLICAN	DEMOCRAT
 <p><b>Fred Heineman</b> "I think the federal government, as well as state government, or government itself, should make a target of cutting costs by cutting fraud. "I think we should raise the dropout age to 18. I'd want to keep people in school until 18, hold the family responsible and the kid responsible. At 16, we should give them an option of going to trade school. The federal government would probably have to assist in funding these trade schools. "We have rules that keep fathers out of housing developments. We need them back there, with the families, being responsible. I don't think we're going to save much money in welfare, and I don't think that should really be our aim."</p>	 <p><b>David Price</b> "The best poverty program is an expanding economy, the kind of economic growth and development we've seen in the last year, since the five-year budget plan was put in place." "In my opinion the problem with welfare is not just that we're spending a lot of money without really moving people forward, but we're also spending it, probably, in the wrong ways. We ought to be investing more in education and training programs and job placement efforts. "We ought to be making a greater effort at child-support enforcement."</p>

— Compiled by staff writers ROB CHRISTENSEN and MARY E. MILLER

got a lot fewer criticisms from readers about its coverage during the 1992 campaign than it did in the 1990 race. "In 1992, the criticisms dropped practically to zero," he says. "We got a lot of calls and letters saying, 'We do appreciate your emphasis on the issues.'"

But aren't newspapers supposed to rile people up? "Sometimes you need to do that," Thames says. "On the other hand, you can't afford to hide behind that. Maybe we ought to do a better job of listening and determining how we might better do our jobs."

Meanwhile, the *Observer's* editors were so pleased with their 1992 election coverage that they have expanded their use of civic journalism techniques. In 1993, they used surveys and focus groups to identify the public's key concerns among the issues facing the N.C. General Assembly. And in 1994, the paper began a series of reports focusing on crime—one of the key concerns identified in their polls and interviews—while trying to organize local solutions to the problem.<sup>34</sup>

Civic journalism also is catching on at other North Carolina newspapers—even at papers like *The News & Observer*, that are wary of using opinion polls to dictate coverage. The Raleigh paper has run regular ad-watches examining candidates' TV ads. It has published a number of graphics focusing on candidates' stances on particular issues. And, in special reports, it often tells readers how to contact reporters, editors, and public officials—by telephone and computer networks.

"You can call that civic journalism or not," Guillory says. "We just call it good journalism. Civic journalism has some strengths, but it is not some magic potion. Traditional journalism has its strengths, but periodically it needs to be reassessed."

*The News & Observer* also is trying to become more responsive to its readers. For example, prior to the legislature's special crime session in early 1994, the paper organized a focus group to find out citizens' primary concerns. The paper also has expanded its opinion polls to include more frequent and comprehensive assessments of the public's views on issues. But editors are quick to emphasize that *The News & Observer* is not using opinion polls to set the agenda for its news coverage.

"You've got to be in touch with your community," says Mike Yopp, the paper's deputy managing editor. "But you can't just let that

dictate your coverage, because obviously there are some things going on that people don't always know about. We still have to use the traditional tools of journalists."

Editors at *The Charlotte Observer* agree that it would be a mistake to base news coverage solely on polls and other ways of gauging public opinion. They say they haven't abandoned traditional reporting techniques, such as interviewing experts, examining government records, and relying on gut instincts. But they say civic journalism techniques have helped them cover

the news better, while involving their readers more in the political process.

"If this approach were taken to its extreme, it would be wrong," Thames says. "We didn't throw our instincts out. That would be foolish. . . . The problem is that journalists have done a bad job covering the minimal amount needed for voters to make decisions. I believe that the people who read our newspaper, when they went to the ballot box on election day, knew what they needed to know. That's what I'm most proud of."

## FOOTNOTES

<sup>1</sup> See Neal R. Peirce, "Civic journalism's 'extra extra,'" *The News & Observer*, Raleigh, N.C., June 26, 1994, p. 16A.

<sup>2</sup> For further discussion of changing trends in news coverage, see Ferrel Guillory, "Customers or Citizens? The Redefining of Newspaper Readers," and related articles, *North Carolina Insight*, Vol. 12, No. 4 (September 1990), pp. 30-38. Also see Ellen Hume and John Ellis, "Campaign Lessons for '92," Conference Summary, Barone Center on the Press, Politics and Public Policy. Hume and Ellis list a number of suggestions for improving press coverage of politics, including: avoiding "manufactured news"; curtailment of coverage of horse-race polls and inside campaign strategies; and reassigning senior reporters from covering day-to-day campaigning to doing more in-depth examinations of issues and fact-checking.

<sup>3</sup> As quoted in M.L. Stein, "A Catalyst For Public Awareness?" *Editor & Publisher*, Oct. 15, 1994, p. 11.

<sup>4</sup> See Thad Beyle, "'The Age of Indifference' and the Media in North Carolina," *North Carolina DataNet*, Issue No. 3 (December 1993), pp. 4-5. The Carolina Poll is conducted jointly by the UNC-CH School of Journalism and the Institute for Research in Social Science. The poll found that, between 1979 and 1990, the percentage of people who read newspapers at least 6 days a week declined from 35 percent to 30 percent among younger residents (those less than 30 years old) and from 60 percent to 56 percent among older residents (those more than 30 years old). During the same period, the poll found that the percentage of people who watch television news at least 6 days a week declined from 34 percent to 28 percent among younger residents but increased from 50 percent to 60 percent among older residents.

<sup>5</sup> As quoted in William B. Ketter, "Market-Driven Editorial Content—How Viable?" *Editor & Publisher*, Oct. 15, 1994, p. 13.

<sup>6</sup> *Ibid.*

<sup>7</sup> See Arthur Charity, "What Readers Want: A Vote for a Very Different Model," *Columbia Journalism Review*, November/December 1993, pp. 45-47.

<sup>8</sup> See Penny Pagano, "Public Perspectives on the Press," *American Journalism Review*, December 1993, pp. 39-46.

<sup>9</sup> From CBS News polls, as reported in "National Barometer," *The Polling Report*, Jan. 24, 1994, p. 8.

<sup>10</sup> From an ABC News/*Washington Post* survey as reported in "National Barometer," *The Polling Report*, July 18, 1994, p. 8.

<sup>11</sup> From a Harris Poll, as reported in "National Barometer," *The Polling Report*, June 13, 1994, p. 8.

<sup>12</sup> See Richard Morin, "Newspapers ask their readers what's important," *The Charlotte Observer*, Charlotte, N.C., June 16, 1994, p. 13A.

<sup>13</sup> *Ibid.*

<sup>14</sup> Federal crime statistics can be used to argue that crime rates have gone up *and* down; such discrepancies are largely due to differences in the way data are collected. For instance, the U.S. Bureau of Justice Statistics compiles its National Crime Survey based on incidents reported by citizens in polls. That survey shows that total crime has declined substantially over the past two decades, while violent crime has dropped slightly. For instance, the rate of total crime per 1,000 people declined from 124 in 1973 to 92 in 1991. During that same period, the rate of violent crime per 1,000 people dropped from 33 to 31. See U.S. Bureau of the Census, *Statistical Abstract of the United States* (113th edition), Washington, D.C., 1993, p. 196.

However, the Federal Bureau of Investigation has reached a different conclusion through its Uniform Crime Reporting Program, which is based on reports filed by law enforcement agencies. The FBI data show that total crime and violent crime have increased markedly over the past two decades. For example, the rate of total crime per 100,000 people increased from 4,154 in 1973 to 5,660 in 1992. During the same period, the rate of violent crime per 100,000 people increased from 417 to 758. See Federal Bureau of Investigation, *Uniform Crime Reports for the United States*, U.S. Department of Justice, Washington, D.C., 1992, p. 58.

<sup>15</sup> See Susan Rasky, "Voice of the Voter," *California Journal*, Vol. 25, No. 5 (May 1994), p. 15.

<sup>16</sup> *Ibid.*

<sup>17</sup> Consider the results of two separate surveys aimed at determining the most important public issues in July 1992, during the last presidential campaign. A poll by the Public Agenda Foundation asked some 500 leaders in government, academia, business, criminal justice, religion, and the media to rank 20 issues on their relative importance. By contrast, a Gallup poll asked 755 registered voters nationwide

to rank 16 issues on their importance. Although both polls ranked education, the federal budget deficit, and crime in the top five, there were notable differences with regard to other issues. The experts' poll ranked health care as the third most important issue, while the voters' poll ranked it seventh. Likewise, the voters ranked the economy first and unemployment fifth, while experts ranked those issues eighth and tenth, respectively.

<sup>18</sup> See Garrison Keillor, "Shallow news, sorehead nation," *The News & Observer*, Raleigh, N.C., Oct. 25, 1994, p. 7A. (The article was reprinted from *The New York Times*.)

<sup>19</sup> See Alicia C. Shephard, "The Gospel of Public Journalism," *American Journalism Review*, September 1994, pp. 28-34.

<sup>20</sup> See "Public journalism," *Editor & Publisher*, Oct. 15, 1994, p. 6.

<sup>21</sup> See Peirce, note 1 above. Also see Michael Hoyt, "The Wichita Experiment," *Columbia Journalism Review*, July/August 1992, pp. 43-47.

<sup>22</sup> See David E. Brown, "Public journalism: Rebuilding communities through media," *Philanthropy Journal of North Carolina*, Vol. 1, Issue 11 (July-August 1994), pp. 1 and 11.

<sup>23</sup> See Ketter, note 5 above, p. 40.

<sup>24</sup> See Stein, note 3 above, p. 41.

<sup>25</sup> See Charles Walston, "Tell Us The Truth," *The Atlanta Journal-Constitution*, Oct. 16, 1994, pp. R1-7.

<sup>26</sup> From a CNN news release titled "The People's Agenda," (undated), Turner Broadcasting System, Atlanta, Ga.

<sup>27</sup> See Hoyt, note 21 above, p. 45.

<sup>28</sup> For a look at the accuracy of political polls, see Paul Luebke, "Newspaper Coverage of the 1986 Senate Race: Reporting the Issues or the Horse Race?" *North Carolina Insight*, Vol. 9, No. 3 (March 1987), pp. 92-95. Also see Adam Hochberg, "Polls Shed Light on Outcomes of Political Races in North Carolina's 1992 Elections," *North Carolina Insight*, Vol. 15, No. 1 (January 1994), pp. 48-61.

<sup>29</sup> For a description of *The Charlotte Observer's* 1992 civic journalism project, see Edward D. Miller, "The Charlotte Project: Helping citizens take back democracy," Poynter Institute for Media Studies, St. Petersburg, Fla., 1994, 93 pp.

<sup>30</sup> *Ibid.*, pp. 65-66.

<sup>31</sup> See Philip Meyer, "The Media Reformation: Giving the Agenda Back to the People," pp. 89-108, in *The Elections of 1992*, edited by Michael Nelson, CQ Press: Washington, D.C., 1993.

<sup>32</sup> *Ibid.*, p. 105.

<sup>33</sup> See Miller, note 29 above, p. 72. For further discussion of issues related to voter turnout, see Jack Betts, "Voting in North Carolina: Can We Make It Easier?" and related articles, *North Carolina Insight*, Vol. 13, No. 2 (June 1991), pp. 20-53.

<sup>34</sup> See Liz Chandler, "Taking back our neighborhoods," *The Charlotte Observer*, Charlotte, N.C., July 17, 1994, p. 1A.

# The Capital Press Corps:

## When Being There Isn't Enough

BY JACK BETTS

*This article examines changes during the last decade in the way the press has covered the N.C. General Assembly.*

**T**he 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 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**

**T**ime 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

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*Jack Betts is an associate editor of The Charlotte Observer.*

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”

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## ***Radio Journalism in North Carolina: Listening for Less News***

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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. These trends have had a dramatic effect on the amount and, some say, the quality of news that America’s citizens get via the radio.

What has happened in North Carolina mirrors the 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*. “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.”<sup>1</sup>

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.<sup>2</sup> 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.

—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 then 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.<sup>1</sup>

There is no comprehensive roster of the Capital Press Corps over the years, but an ex-

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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.

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."

—Jack Betts

## FOOTNOTES

<sup>1</sup> Reginald Stuart, "Fewer Radio Listeners Are Hearing the News," *The New York Times*, Dec. 28, 1986, p. 12E.

<sup>2</sup> Peter Fornatale and Joshua E. Mills, *Radio in the Television Age*, The Overlook Press, Woodstock, N.Y., 1980, p. 95.

amination 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 legislature. That trend has leveled off some. In 1995, although more than 50 percent of the reporters in the press corps covered the 1993 session, there were still a lot of new faces in the press room at the General Assembly.

### Where Have All The TVs Gone?

**T**he 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<sup>2</sup> 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. Most 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. The regular corps of television reporters has dropped enormously, from at least nine in previous sessions to only two regulars in the 1995 session—WRAL in Raleigh and WTVD in Durham. "The commitment of the broadcast media to covering state government just isn't there anymore," notes one former television reporter.

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 programs "Legislative Week in Review" and "North Carolina NOW," provides first-rate television coverage of the General Assembly. 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 the 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. One thing that makes the UNC-TV coverage stand out is the experience of its top reporter, Ted Harrison who has covered the assembly since the mid-1960s. 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

<sup>1</sup> 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.

<sup>2</sup> 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.



# Chapter 12

## Politics



N.C. Division of Archives and History

*“The sad duty of politics is to establish justice in a sinful world.”*

—REINHOLD NIEBUHR

*“History is past politics, and politics present history.”*

—SIR JOHN SEELEY



# Interest Groups and Mass Media

BY JACK FLEER

*When Bill Holman goes to work, he dresses differently than other people who practice his profession. He wears a blue suit, a yellow shirt, and a tie depicting a walleyed pike. Most of his cohorts wear gray pin-striped suits, white shirts, and dotted ties. They carry briefcases containing numerous documents. Holman stands out in the halls of the General Assembly—not only in his attire, but also in his message and his effectiveness. A lobbyist for the Conservation Council of North Carolina and the state chapter of the Sierra Club, Holman was recognized as one of the most influential lobbyists in the 1985–86, 1987–88, 1989–90, and 1991–92 sessions of the General Assembly.<sup>1</sup> As the principal environmental lobbyist in North Carolina, Holman symbolizes important developments that are occurring in the state's politics and in interest group activity. The changes are reflected in the number and variety of interests represented, the techniques used by groups, and the influence of groups in the state's politics. These changes, along with the impact of the media, contribute to a developing political pluralism in the state.*

Several trends in North Carolina have significance for interest group activity in the state. In the economy, dominated in the past by a few low-skilled manufacturing industries, manufacturing continues to be important but employment in service, trade, and governmental sectors is expanding to create more diverse economic and political interests. Political party competition is creating

more vigorous contests for major offices, while the Democrats continue to hold advantage in less visible offices, in an electorate that is more politically unpredictable. A more assertive and

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professional legislature vies with an executive that is more often led by a Republican governor in defining the political agenda and determining the state's policy directions.<sup>2</sup> These developments open new areas of political, social, and economic pluralism in the state. Such pluralism is a breeding ground for political conflict, giving rise to more varied and intense interest group representation and activity.

### **Regulation of Lobbying**

**L**obbying regulation is set out in Article 9A, Chapter 120, of the General Statutes of North Carolina, originally written in 1933 and amended most recently in 1991. Under this law, every person who is employed or retained as a lobbyist must register. A lobbyist is defined as any person who is employed or contracts to influence or attempts "to influence legislative action through direct oral or written communication with a member of the General Assembly" or solicits others "to influence legislative action" during any regular or special session of the legislature concerning any "bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or employee of the legislature." Registration with the secretary of state is required for each session of the General Assembly and for each employer or retainer for whom a person works as a lobbyist. Each member of the General Assembly is provided a list of all lobbyists within twenty days of the opening of each session of the legislature. Lists are updated as new registrations occur.

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*A lobbyist is defined as any person who is employed or contracts to influence or attempts "to influence legislative action through direct oral or written communication with a member of the General Assembly."*

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After the adjournment of the session of the General Assembly, each lobbyist and each employer must file a report of expenses for transportation, lodging, entertainment, food, any item worth more than twenty-five dollars, and "contributions made, paid, incurred, or promised, directly or indirectly." The employer also must report the compensation paid a lobbyist for lobbying activities or an estimate of the compensation or retainer related to lobbying if the person is a full-time employee or receives an annual retainer. When ten or fewer legislators benefit from an expenditure, the report must name them. For larger groups of legislators, the report must provide the number and the basis for selection.

The statutory requirements are not applicable to an individual citizen who expresses a personal opinion on a matter before the legislature; to an elected or appointed federal, state, or local government employee when acting in an official capacity; to representatives of news media when performing their duties; or to members of the General Assembly. Since 1975, however, the law has required all persons who are "authorized official legislative liaison" personnel representing the governor, members of the Council of State, and heads of departments, agencies, and institutions of state government to register with the secretary of state.

Violations of this law are misdemeanors subject to punishment by fine or imprisonment. Data on apparent violations of the registration law are limited but reveal few incidents from 1981 through 1990.<sup>3</sup> The office of the secretary of state does not audit reports or have other investigative powers that could provide a more complete assessment of compliance with the law.

An investigation by the Institute of Southern Studies of reports filed for the 1989-90 session found reported expenditures amounting to \$3.7 million. Nearly half (46%) of the registrations reported expenses of less than \$100, including over one-third (36%) that reported no expenses, not even the required registration fee of \$75. Most (78%) reported no compensation paid to the lobbyists. Many of the reported expenditures were for food and entertainment, often for "legislative seminars" and "receptions." Few reports listed contributions as expenditures. Reports on compensation reveal widely varying interpretations of the law's requirements. The

**Table 1. Registration of Lobbyists  
in North Carolina, 1969-91**

Year	Number of Registrants	Number of Persons	Number of Groups
1969	151	138	140
1977	323	294	222
1979	453	—	—
1981	505	—	—
1983	584	—	—
1985	666	411	369
1987	805	457	351
1989	848	467	453
1991*	840	460	461

\* As of June 18, 1991.

Source: Records in the Office of the Secretary of State, Raleigh.

institute concluded that the reported expenditures were only the tip of the iceberg and estimated that total expenditures probably exceeded \$10 million.<sup>4</sup> The 1991 amendments to the law, which attempt to be more precise and thorough, may provide a test of this conclusion and estimate. The aim is to disclose more of the activities and expenditures of lobbyists to permit the public to judge their propriety. The amendments also seek to prohibit contributions from lobbyists to legislators and solicitation of contributions by legislators from lobbyists during a legislative session.

The focus of the law is on lobbying directed at the legislative branch of state government. Persons who attempt to influence policymakers in the executive or judicial branches are not covered under the requirements of the law. Expenses incurred through actions directed at these branches need not be reported.

Article 10 of the General Statutes requires the registration of persons or organizations "who or which [are] principally engaged in the activity or business of influencing public opinion and/or legislation" in North Carolina. Few registrations occur under this statute, undoubtedly because of the phrase "principally engaged."

### Types of Groups Registered

There has been a dramatic and steady increase in the number of registered lobbyists since 1969 (table 1). In the 1989 and 1991 sessions of the General Assembly, approximately 840 lobbyists were registered with the office of the secretary of state, a significant increase from just over 300 registered in 1977.

As indicated, the number of registrants and the number of persons are different. The difference is due to the fact that some persons register to represent more than one organization or interest during the session. Multiple representation is a common feature of lobbying. For example, in 1991, Zebulon Alley, who was rated the most effective lobbyist in the 1989 and 1991 sessions, was listed as an agent for fifteen different groups, ranging from the Carolina Power and Light Company to Whittle Communications. Moreover, many organizations or firms have multiple agents. In 1991, the North Carolina Association of Educators had seven agents registered. But, most persons represent only one interest, and most interests have only a single representative.<sup>5</sup>

Most registrants work on behalf of business

interests (table 2), a rather typical finding in studies of interest groups among the states and in the federal government. The definition of business interests used here is comprehensive and includes corporations, banks, utilities, and retail merchants, to name just a few. Other major interests frequently represented are professional and trade associations, education, and health care (e.g., doctors and hospitals). Labor interests are few but encompass traditional and new-style groups, such as associations of state and local employees, including teachers.

The diversity of interest group representation has increased moderately since the 1970s. By the 1980s, new groups had emerged in environmental and citizens' affairs. Education and government employee groups have an increased presence. The enlarged role of African Ameri-

can citizens in state politics is not reflected among the registered lobbyists. Since 1969, however, the Black Legislative Caucus has been a growing influence in the General Assembly.<sup>6</sup> Despite increases in the number and diversity of legislative agents registered, the interests that were represented most frequently in 1977 continued to be most frequently represented in 1991-92.

Another major category of interests represented before the General Assembly are executive departments, agencies, and institutions. A March 1991 directory from the office of the secretary of state listed 310 persons serving as official legislative liaison personnel from the executive branch. Among them were twelve individuals representing the office of governor and fifty-nine representing various components of

**Table 2. Interests Represented by North Carolina Lobbyists, by Year of Registration**

Type of Interest	Number of Lobbyists			
	1969	1970	1985	1991*
Business	58	115	182	163
Corporations	20	28	65	70
Utilities	6	10	25	24
Banking, Finance	9	15	24	20
Insurance	14	27	28	24
Other	9	35	40	25
Trade associations	34	32	48	90
Professional associations	5	8	16	33
Agriculture	5	8	16	16
Environment	1	1	6	18
Citizens' groups	3	9	17	21
Labor	7	3	4	3
Education	3	8	13	20
Employees of governmental units	4	10	15	19
Medicine, Health care	13	18	29	38
Miscellaneous, Unclassified	11	10	41	40

\* As of June 18, 1991.

Source: Records in the Office of the Secretary of State, Raleigh.

the Department of Economic and Community Development. Frequently, the persons listed included the secretary of the department, as in the case of Labor and Transportation.

### Techniques of Interest Group Influence

Some techniques employed by interest groups to influence policy have been practiced for decades. In addition, new means of influence have been developed and are being used with new fervor. Of particular interest is the emergence of political action committees (PACs) as funding sources for state campaigns. In a 1985–86 survey, legislators and lobbyists were asked to indicate which lobbying techniques are most effective.<sup>7</sup> The two groups agreed that the most important is a skillful, personal appeal to legislators. This choice highlights the significance of the lobbyist who represents a particular group to members of the General Assembly. While differing on levels of importance of several techniques, both sets of respondents indicated that other useful means include presenting testimony before legislative committees, assisting in drafting bills for introduction, forming coalitions with another group or groups, and mobilizing public opinion through letter writing and/or the media (i.e., grassroots lobbying). Legislators differed from lobbyists in that the latter said supporting legislators in elections was an effective lobbying technique. Although legislators generally did not select that option, 95 percent of the legislators stated that they did receive financial support from groups in election campaigns.

Interest groups certainly see election support as a means of influencing public policies and policymakers. PACs have existed for some time, but they have emerged with prominence only since about 1970. Their numbers have increased dramatically.<sup>8</sup> In North Carolina, PACs are regulated through registration and financial disclosure statements filed with the Office of Campaign Reporting of the State Board of Elections.<sup>9</sup> Committees are required to file periodic reports listing contributions, loans, and expenditures. Political committees' contributions to any candidate or other committee are limited to no more than four thousand dollars per election. Total expenditures by PACs are not limited. Reasonable administrative support

by the parent organization of a PAC is permissible and must be disclosed in an annual report. The number of state political action committees registered with the State Board of Elections increased from 29 in 1974 to 278 in 1992.

A comprehensive examination of political action committees and North Carolina legislative politics was conducted by the staff of the *Charlotte Observer* for the 1984, 1986, 1988, and 1990 elections. As Ken Eudy stated in introducing the findings, the *Observer* staff "found a recurring connection between political contributions and legislative activity. The most active contributors . . . were people and groups whose financial interests are the most heavily lobbied in the General Assembly."<sup>10</sup>

In the 1990 legislative campaigns, PACs were the largest single source of identifiable contributions: \$1.6 million out of a record \$4.1 million raised. Thus, their share of funding increased from less than 20 percent in 1984 to almost 40 percent in 1990. Furthermore, in 1990, twenty-four of the winning senate candidates and forty-nine of the winning house candidates received at least half their reported campaign funds from PACs. Almost all (95%) candidates for legislative offices received donations from PACs. PACs gave more substantially to incumbent and winning candidates than to challengers and losers, a common circumstance. The average winning house campaign spent about \$19,000; the average amount in the senate was \$28,500.<sup>11</sup>

In 1986, 1988, and 1990, major contributors among nonpartisan PACs to legislative candidates included MEDPAC (the North Carolina Medical Society), the North Carolina Academy of Trial Lawyers PAC, the North Carolina Realtors Association PAC, Duke Power Employees State PAC, Southern Bell PAC, and Carolina Power and Light Company PAC. Other important groups were committees for NC Power, Jefferson Pilot Insurance, and the North Carolina Association of Educators. A few interests, such as lawyers, health care, utilities, and realtors, dominated the field. Among them are what Jim Morrill refers to as "full-service attendants who pump money, fill up contributor lists, and polish strategy."<sup>12</sup> Eudy states, "The more heavily a business and industry is regulated by the state, the more likely were contributions to legislative campaigns."<sup>13</sup> At the least, almost every legislator and observer acknowledges that

contributions provide access to members who must attend to a large number and wide range of competing interests.

The North Carolina Center for Public Policy Research examined the role of contributions from PACs to the North Carolina governor's contest in 1984.<sup>14</sup> The findings indicate that the role of PACs in that race was much less important than in the state legislative races in the same year. Approximately 3 percent of the funding was contributed by PACs, out of slightly more than \$11 million reported as contributions. The PACs' role in executive campaigns requires further analysis. PACs contribute more to district-type races, such as those for state legislative seats, and less to statewide races, such as the one for the governorship.

Another study revealed that contributions from individuals to the campaigns of the two party nominees reflect interest group bias toward particular candidates. In 1984, James Martin, the Republican nominee who was subsequently elected governor, received major contributions from business interests within the state. The study concludes, "What is striking . . . is the unprecedented degree to which North Carolina's top business leaders, Republicans and Democrats alike, rallied behind his campaign." The authors note a high correlation between Martin's chief contributors and the officers and directors of the North Carolina Citizens for Business and Industry (NCCBI), a prominent interest group for business in the state.<sup>15</sup>

The Democratic nominee in 1984, Rufus Edmisten, received most of his large donations from lawyers, including attorneys in the attorney general's office, which Edmisten occupied, and from state government employees. These contrasts in sources of major contributions reveal the way in which individuals who are associated with particular interests can supplement the work of political action committees and organized interests.<sup>16</sup>

Additional research is needed on the role of PACs in interest group influence in state politics. It is clear that PACs are significant actors, especially in state legislative politics. PACs have come to be a major weapon in the arsenal of interest groups. For groups that have the resources, PACs can enhance their influence in shaping public policies.

Lobbyists also provide gifts to legislators to create goodwill and to promote their causes. Members of the General Assembly snack on

cookies from RJR Nabisco, refresh themselves with Pepsi-Cola, and attend numerous breakfasts and receptions sponsored by such organizations as the North Carolina Association of Life Underwriters and the Raleigh Chamber of Commerce. They attended university basketball games, Durham Bulls' baseball games, and North Carolina School of the Arts' concerts. While such gifts promote interests, they raise questions about securing access and influence. But as one legislator remarked, "If a legislator can be bought off by a soda and a few crackers, the state's in real trouble."<sup>17</sup>

### Assessment of Interest Group Influence

The findings from a 1986 survey of members of the General Assembly and of lobbyists registered with the secretary of state provide answers to several questions: What are the most important groups in North Carolina? What makes groups and their agents effective in influencing public policies in the state? How important are interest groups in general in North Carolina politics?<sup>18</sup>

Respondents were asked to list the five most influential interest groups in the state at election time and the five most influential interest groups during the 1985–86 session of the legislature. The questions were open-ended, and thus various phrasings of the names of the influential groups were received. Responses were coded into categories of interests. Of the numerous groups mentioned, a few were noted frequently (table 3). The most often mentioned influential group is made up of education interests and teachers. Almost three-fourths of the respondents listed public school teachers, educators, and, more specifically, one of the organized education groups—the North Carolina Association of Educators (NCAE)—as among the most influential groups. In three of the four categories of responses, education was mentioned more frequently than any others. Only among the lobbyist respondents was education not rated first.

The second most frequently mentioned interest category was business, including listings for industry, corporations, chambers of commerce, and, more specifically, the North Carolina Citizens for Business and Industry. Approximately half the respondents rated business interests among the most influential

**Table 3. Five Most Influential Interest Groups in North Carolina, 1985-86**

At Election Time		During Session	
Legislators' Responses	Lobbyists' Responses	Legislators' Responses	Lobbyists' Responses
Education	Education	Education	Banking
State employees	Business	Banking	Business
Business	Banking	Business	Education
Doctors	State employees	State employees	Insurance
Lawyers	Insurance*	Local governments*	Lawyers
	Doctors*	Lawyers*	

\* Tied ranking.

*Source:* Survey of the 1985-86 General Assembly and lobbyists registered with the Secretary of State (responses were received from 51 legislators and 52 lobbyists).

groups in North Carolina both at election time and during the legislative session. The next most frequently mentioned interest category was a subcategory of business: banking and bankers. Three of the four sets of responses included this category among the top five; only legislators rating influential groups at election time did not include banks. Overall, about 40 percent of the respondents rated banks among the influential. No other interest category was listed among the top five by all four categories of responses. The fourth most frequently mentioned influential group was state employees, specifically the State Employees Association of North Carolina, rated among the top five by three categories of respondents. Lawyers, including the North Carolina State Bar and the North Carolina Academy of Trial Lawyers, two organizations of attorneys, were mentioned by three categories of respondents.

Although the specific ordering of influential interests may vary from session to session depending on the legislative agenda and membership, among other factors, the rating of interests in North Carolina has parallels in other states. A national study of interest group influence found education interests rated most effective in forty-three states, business interests most effective in thirty-one states, and banking interests most effective in twenty-eight states. State

employee associations and lawyers' groups were rated lower but were among the top twelve effective groups in the fifty-state study.<sup>19</sup>

Although respondents were not asked to explain the influence of particular groups, they were asked to list characteristics of interest groups that make them influential in the legislative session. Of the wide variety of responses given, the following were most often mentioned by legislators: knowledge of the subject and credibility; nature and frequency of contacts; general visibility and access; character of presentation of information, including positive and personal appeal; and relationship with constituents, especially registered voters. Also mentioned were rapport with the leadership and providing campaign support.<sup>20</sup>

The North Carolina Center for Public Policy Research, which has conducted surveys on the most influential lobbyists since 1982, provides another perspective on effective lobbying. The Center asked legislators, lobbyists, and news correspondents to name the most influential lobbyists in each session. Those listed were, in addition to Zebulon Alley and Bill Holman, mentioned earlier, J. Allen Adams, Samuel H. Johnson, and J. Ruffin Bailey. Adams, Alley, and Johnson each represent numerous clients, including the Arts Advocates of North Carolina, Kaiser Foundation Health Plan

of North Carolina, and Carolina Power and Light.

Consistently, the lobbyists named as most effective were former members of the legislature and practicing attorneys. In 1985–86, all the top five and ten of the top twenty were former legislators. In 1991, six of the top ten were former legislators and six were lawyers.<sup>21</sup> “Good legislators who quit the General Assembly after a few sessions don’t just fade away. They become lobbyists, cultivate old friendship ties, and make a lot of money.”<sup>22</sup>

These findings have led some commentators to renew the debate on whether effectiveness depends on legislative experience and legal training. Ran Coble, executive director of the Center, notes that good lobbyists, many of whom served as legislators, can better plead a case because they know the legislative process and when and how information can be presented most effectively. Moreover, he says, they “know the players . . . [and] what each individual legislator cares about.”<sup>23</sup> Although the requisite knowledge and sensitivity do not require past service, it can be beneficial. One

of the top five lobbyists commented, “I haven’t noticed anybody bowing down or falling over just because I’ve been in the legislature.”<sup>24</sup> This debate has prompted lawmakers to consider legislation requiring former state officials to wait several years before becoming professional legislative lobbyists.

Another legislator remarked that the effectiveness of a lobbyist derives in part from his or her clients and cause. Explaining the success of a top lobbyist, the legislator concluded: “He represents those who have power, so he has power. Anybody with his list of clients, and the resources and clout they bring with them, would do well in the General Assembly. I doubt [he] would be effective if he were lobbying for Legal Services.”<sup>25</sup> Other factors that might help explain the influence of groups and their representatives include a group’s size, geographical distribution, and previous and current political activity.

Comparing the results of the 1986 survey with those of the 1966 work of Harmon Zeigler and Michael Baer provides historical perspective on the influence of groups in North

**Table 4. Comparison of North Carolina Interest Group Rankings**

Zeigler-Baer (1966)		Composite (1986)	
Legislators’ Responses	Lobbyists’ Responses	Legislators’ Responses	Lobbyists’ Responses
Electricity (public)	Trucking	Education	Education
Education	Education	State employees	Business
Trucking	Governmental units	Business	Banking
Electricity (private)	Agriculture	Lawyers	State employees
Utilities*	Labor and public employees	Doctors** Banking**	Insurance** Doctors**

\* Other than electricity.

\*\* Tied ranking.

Sources: Harmon Zeigler and Michael Baer, *Lobbying: Interaction and Influence in American State Legislatures* (Belmont, Calif.: Wadsworth, 1969), pp. 32–33; survey of the 1985–86 General Assembly and lobbyists registered with the Secretary of State.

Carolina,<sup>26</sup> although comparison is made difficult by the use of different categories of interests. In both surveys, education interests are prominent (second in 1966 and first in 1986) (table 4). Zeigler and Baer mention a wide range of business interests that their respondents rated as influential, but most of these particular interests were not given specific attention in the 1986 survey. In particular, utilities, including public and private electricity, were much less frequently mentioned in 1986. Trucking interests, also mentioned often by respondents in 1966, were not among the top groups in the 1986 survey. In their place was the more generalized interest category of business. Banking and bankers, rated tenth by lobbyists in the 1966 survey, had risen to third in 1986. Explanations of these changes in ratings of influential groups include changes in the employment structure of the state (as discussed earlier), emergence of the service sector in the state's economy, and the improved organizational representation of interests, including the emergence of NCAE and NCCBI. In addition, utility lobbyists now focus on the Utilities Commission more than on the legislature.

### **Assessing Interest Groups' Overall Strength**

**T**he 1986 survey offered legislative and interest group respondents several opportunities to give general assessments of the role of interest groups in the political process. Such assessments are difficult to make because of the variety of groups and the numerous policy decisions in which lobbyists and legislators are involved. But it is possible and useful to have participants' overall evaluations.

When asked to select a single statement to describe group influence, both legislators and lobbyists chose what could be considered positive assessments. Approximately four-fifths of the lobbyists and two-fifths of the legislators rated interest group influence as crucial or very important in policymaking. No lobbyist and only two legislators indicated that they regarded interest group influence as minimal.

Not surprisingly, lobbyists evaluate their role and influence more positively than do legislators. In answer to both survey questions, lobbyists selected the most favorable responses more frequently than did legislators. That undoubtedly

reflects the different understandings of each group regarding its contribution to policymaking, plus the vested interests of lobbyists.

An evaluation of interest group influence within North Carolina's political system was obtained by asking legislators and lobbyists to rank various forces in policymaking. For both legislators and lobbyists, the most important influence on policy decisions among those listed was the General Assembly. Based on a composite of total score, most frequent rating, and average rating, the state legislature ranked a clear first. Several respondents volunteered that not the entire legislature but the leaders (Speaker and lieutenant governor) or the "six power brokers" of the General Assembly were the major influence in legislative policy decisions.

Interest groups were ranked as the second most important influence, followed closely by the governor and his staff. Several respondents commented that if the governor had not been a Republican at the time of the survey, the governor's office and its occupant would have had greater influence. In a state where Democrats have long had a virtual monopoly on executive and legislative leadership and power, the second Republican governor of the century was believed to be at a disadvantage in shaping public policy. Indeed, in 1985-92, some observers of how Governor Martin interacted with the General Assembly concluded that he did not attempt to provide strong legislative leadership.<sup>27</sup> With more experience and a larger party delegation, a Republican governor could have a greater influence. Apparently, the void has been filled by interest group power. What the relative influence of the governor and interest groups would be if a Democrat returned as chief executive is unknown.

Among other agents, the media ranked fourth; government departments and agencies, fifth; and the judiciary, sixth. Among lobbyists, the media and government agencies tied at fourth.

The several general assessments of the role and influence of interest groups in North Carolina government and policymaking suggest that such groups are perceived as important and positive participants in the process. While it is clear from earlier analyses that influence varies greatly among groups, with the policy under consideration, and from year to year, the significance of interest groups as a whole was confirmed by the 1986 survey results.

## The Impact of Interest Groups

An assessment of the role of interest groups in state politics must include consideration of their general strength in shaping public policy. In North Carolina, are interest groups on the whole strong, moderate, or weak? Several efforts to answer this question have reached widely different conclusions. Belle Zeller in 1954 and Sarah McCally Morehouse in 1981 reported that North Carolina was a strong pressure group state.<sup>28</sup> John Wahlke and colleagues in 1962 and Zeigler and Baer in 1969 concluded that “lobbyists exert little pressure” and that North Carolina is a “weak lobby state.”<sup>29</sup> The discrepancies in these conclusions may be attributed to actual changes in the dynamics of the relationship between interest groups and decisionmakers, or to differences in the measures used to assess interest group strength, or to both factors. We examine a variety of explanations for assessing the strength of interest groups in order to understand their applicability to North Carolina.

Two elements of the North Carolina environment that have remained fairly steady are associated with weak interest groups and help describe the character and development of the state’s political system. Zeigler and Baer posit the notion that North Carolina has an old, established political system in which the rules of the game are fixed to limit interest group influence. The classification of the state as having a “paternalistic political culture” characterized by a “paternalistic and elitist” power structure correlates with this idea.<sup>30</sup> Each of these features infuses the political system with a legacy of restricting the activity and influence of groups in political decisionmaking. While that legacy is subject to challenges and changes, it remains a component that weakens the legitimacy and impact of groups in state politics.

Another category of factors is the level of a state’s economic and social complexity. Zeigler, for example, says that “strong interest group states typically do not have complex economies” and societies.<sup>31</sup> Morehouse reinforces that view when she suggests that strong pressure group states, such as she classified North Carolina in 1981, are dominated by a single or a few economic interests.<sup>32</sup> North Carolina did have an economy and society strongly dominated by agriculture and related activities in tobacco, tex-

tiles, and furniture, but changes have been occurring, as discussed earlier. In addition, the growth in the number of interest groups with registered agents and the increased diversity of those groups and agents suggest a new complexity in the state’s group representation. Even while the category of business representatives remains large, the greater variety of interests within that category reflects an increased complexity in North Carolina’s economy and society.

Greater complexity also derives from changes in the capacity of political parties to provide interest representation in the state. These changes have come with the growth of competition between the two major parties, increased internal party cohesion, and the improved organizational strength of the two parties. As the parties’ relative positions change, the incentive to “circle the wagons” to gain strength against the opposition is clear. Moreover, state parties have improved their organizational capacity by such changes as better financing, more professional personnel, and better campaign coordination. Improved parties in North Carolina provide more effective restraints on interest group influence.

Finally, greater professionalism in state legislative and executive politics has developed in North Carolina, and this, too, restricts interest group influence. The North Carolina legislature has increased its professional personnel, reducing the need and inclination to depend on outside sources for information and direction. Greater continuity and experience in representation stem from a modest decline in turnover among legislators. These developments, however, occur against a background of continued emphasis on an amateur, or a citizens’ legislature. Executive professionalism has also increased in the state as the governor’s office has added highly skilled personnel and the state’s major departments have been reorganized. But the office of the governor in North Carolina remains relatively weak in formal powers, a condition exacerbated when the occupant is a member of the minority party. Zeigler argues that weak governors are related to strong lobbies.<sup>33</sup>

This review of factors associated with the strength of interest groups reflects conflicting developments, some pointing to weak interest groups and others suggesting that interest group influence is strong. On balance, however, the evidence supports a conclusion that social, eco-

nomic, and political conditions in North Carolina moderate interest group influence, as competition between groups permits public officials to pick and choose among entrees in an interest group smorgasbord when formulating public policy.

### Mass Media in North Carolina

Faith Williamson was two years old when she died after repeated reports by her neighbors that she was being abused. Christopher West, age six, died from being forced to drink large quantities of water by his mother and her boyfriend. Anthony Tolliver suffered a similar early death at the hands of his family. These three cases of child abuse and neglect were featured extensively on the front pages of the *Winston-Salem Journal* and other state newspapers during the spring of 1991, bringing problems of child protective services to the attention of citizens and public officials alike. The publicity, along with a report on child abuse by the North Carolina Child Advocacy Institute and actions by Governor James G. Martin and Representative David Diamont, led to a major victory for children in the 1991 session of the General Assembly and significant new attention to abused children in North Carolina.<sup>34</sup>

After the newspapers devoted coverage to the problems of these three young children and others, the Department of Human Resources' Division of Social Services called in consultants from the American Bar Association's Center for Children and the Law. The consultants and representatives of social service agencies met with executive and legislative leaders to review relevant public policies and their administration and to make recommendations for improvement. Governor Martin called for the establishment of child-death review teams in each of the state's one hundred counties. Representative Diamont introduced legislation to provide for a state child-death review team, a task force to study state child protective services and suggest improvements, and additional state and county social service workers to handle the casework more effectively. That legislation and a \$15 million appropriation were approved in the final days of the 1991 legislative session.<sup>35</sup>

The deaths of the children were tragic and possibly avoidable. Because they attracted at-

attention from newspapers and then from public officials, however, perhaps fewer such cases will occur. The newspapers of the state played a major role in bringing problems of child abuse and neglect to the public's attention and in monitoring the consideration of legislation and other actions to improve the policies and their administration.

### Structure of the Media

The 6.5 million North Carolinians have numerous media sources to provide them information and insight on the state's politics and government.<sup>36</sup> In 1990, the newspaper circulation of fifty-three dailies was 1.45 million, approximately one for every five persons. Those newspaper readers do not depend on any one daily that dominates the state. Rather, the major metropolitan areas (Raleigh, Durham, Greensboro, Charlotte, and Winston-Salem) each have their own local newspapers, all of which give a full range of international, national, state, and local coverage. The circulation of these dailies is proportionate to the population of the cities they serve. More than half the newspapers sold in the state are purchased in major cities. All these dailies have correspondents in the capital throughout the year, though the staffs tend to be limited to one or two persons.

The newspaper that comes closest to being a state newspaper is the *Raleigh News and Observer*. Published in the state capital, the *News and Observer* covers state government and politics as "hometown" happenings. With the governor and executive officials being permanent residents and the legislators being frequent "visitors," their deliberations take on special meaning in the capital city. While the paper's impact on state officials is considerable, its readership outside the immediate population is limited.<sup>37</sup>

The presence of many small and moderate-sized towns in the state accounts for the large

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***Public decisionmaking  
requires public information in  
a properly functioning  
democracy.***

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number of dailies. These papers are not likely to have a permanent presence in the capital but depend on the wire services for their stories. During major events, such as the inauguration of a new governor, the opening of the General Assembly, or a policy debate with special significance for local readers, a correspondent from one of the papers might be sent to Raleigh.

Few cities in the state have competing daily newspapers published locally, a pattern now common across the country. In the 1980s, afternoon dailies folded in Charlotte, Greensboro, Winston-Salem, Durham, and Raleigh, reducing the alternative local newspaper sources providing different editorial positions. These losses, bemoaned by advocates of a vigorous press, were brought about by economic considerations, suburbanization, and the presence of nightly news programs on television. Despite the death of the afternoon dailies in major cities, most dailies in the state are published in the evening in small urban areas.<sup>38</sup>

The presence of so many newspapers does not ensure adequate coverage of the activities and decisions of state and local governments. Because of its power and accessibility, the General Assembly receives unusual attention when it is in session. The executive, other than the governor, attracts much less attention because of its size, its dispersed nature, and the apparent routine character of its activities. Deliberations and decisions of the courts receive the least attention among the major branches of state government. Local governments' decisions usually receive more frequent and extensive coverage than do state executive and judicial activities.

Most Americans and presumably most North Carolinians cite television as their most frequent and trusted source of the news.<sup>39</sup> In the state, television markets are focused on large metropolitan areas. The major networks (ABC, CBS, NBC, PBS, CNN) are available across the state. National and local news broadcasts provide regular but limited coverage of state government and politics with only occasional extended attention on commercial networks. The most concerted effort to focus on state deliberations and decisions is made by the Raleigh stations and public television. In the past, when the General Assembly was in session, public television devoted four half-hour programs a week to the legislature. A weekly program, "Stateline," examined state government news. Currently, public affairs program-

ming is included in "North Carolina Now," a nightly broadcast, and "Legislative Week in Review," airing weekly when the legislature is in session. Because television is considered an entertainment medium, news information and analyses are a minor part of its mission, especially concerning state and local public affairs. Radio news and analyses of state government are virtually nonexistent, except for regular and limited reporting of headlines.<sup>40</sup>

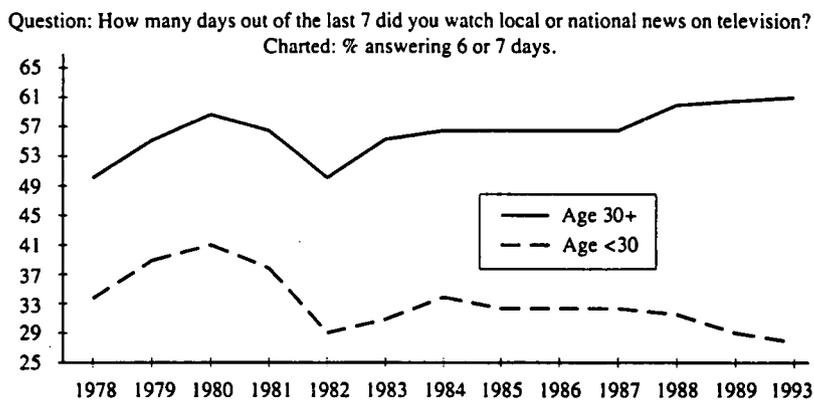
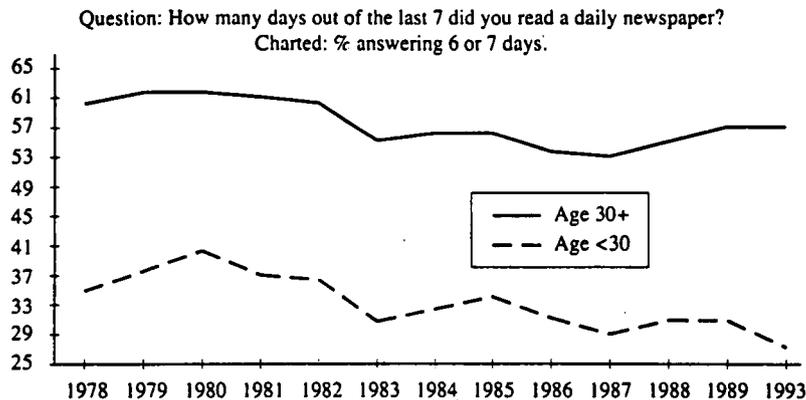
Additional news organizations are the news wire services, which are available to both print and electronic media. Indeed, since both television and newspapers have limited staffs to report on state news, the wire services are critical to political coverage. For many citizens, the news they receive comes from the wires with little editorial change.

A 1991 study of state officials' perceptions of the importance of different media revealed that "the wire services are perceived to be as politically significant, if not slightly more so, than television to state politicians."<sup>41</sup> In political agenda setting, the wire services were seen as having less impact. The significance of the wire services derives from their wide circulation, especially in rural and small-town markets; their generally objective, factual content; and the quality of the wire reporters and stories.<sup>42</sup> In North Carolina, the numerous small-town newspapers are especially dependent on political coverage by Raleigh correspondents of the wire services.

The Carolina Poll, conducted periodically by the Institute for Research in Social Sciences at the University of North Carolina at Chapel Hill, tracked the use by state citizens of newspapers and television as news sources between 1978 and 1993 (figure 1). Overall, use of television increased, while use of newspapers decreased. Newsgathering through television and/or newspapers among persons over thirty years of age is much greater (approximately 56% in the 1978-93 period) than it is among persons under thirty years of age (approximately 33%). Indeed, in North Carolina and the nation, analysts express concern about the emergence of an "Age of Indifference" as younger generations do not "turn on" to public affairs broadcasting and reporting.<sup>43</sup>

While citizens may be paying modest attention to public affairs, public officials are working hard to get their news to the citizenry. A *Greensboro News and Record* study of public affairs and public relations operations in state gov-

**Figure 1.**  
**Media Use in North Carolina, 1978–93**



Source: *North Carolina DataNet 3* (December 1993): 5. Based on data from Carolina Poll, UNC-CH.

ernment concluded that in 1989, “362 people [were] paid to give information, write press releases, draft speeches and prepare publications to answer questions, spread the word and promote various aspects of state government.” Additional efforts are made to inform the state legislature of the work and needs of the agencies. The total cost for a year was estimated to be \$10.3 million.<sup>44</sup>

Almost all agencies, from the office of governor, to the Department of Crime Control and Public Safety, to the University of North Carolina at Chapel Hill, employ persons engaged in publicizing their work. An citizens from the

third grader writing a report on prisons, to the high school student trying to make her college choice, to the local official seeking information on state policies benefit from these operations. Public decisionmaking requires public information in a properly functioning democracy.

### Media Coverage of Public Affairs

Citizens learn much, maybe most, of what they know about public affairs—events, officials, decisions—through the media. Thus, an important aspect of the role of media in the

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*Citizens learn much, maybe most, of what they know about public affairs—events, officials, decisions—through the media.*

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political process is what is covered and what is not covered in the daily papers and on the nightly news. Bernard Cohen has stated that the mass media “may not be successful much

of the time in telling people what to think, but they are stunningly successful in telling people what to think about.”<sup>45</sup> This role is often referred to as agenda setting, but it has implications for other functions of the media, such as surveillance, interpretation, socialization, and manipulation, as discussed by Doris Graber.<sup>46</sup>

No single study of media coverage is available, but several illustrations are instructive. How well do North Carolina’s newspapers bring the state’s citizens information and analyses of the world beyond the state? One study found “that North Carolina newspaper coverage of the ‘worlds’ outside of North Carolina is, at best, less than adequate and that, more disheartening, it seems to have gotten generally worse with the passage of time.”<sup>47</sup> In an analysis of coverage of activities in the United Nations, NATO, the U.S. Supreme Court, and five foreign nations, Keith Peterson reported that such coverage in three state papers was limited and declined from 1949 to 1981. The analysis showed similar findings, however, for Illinois newspapers and the nation’s elite press (*New York Times* and *Chicago Tribune*). Peterson critically concludes that “those North Carolinians or Illinoisians—or for that matter, New Yorkers—who are interested in ‘keeping up’ with what is going on in their respective ‘outside worlds’ will have to—and they will have had to increasingly over the years—consult sources other than their own local or even elite presses.”<sup>48</sup>

Within the state, the General Assembly is likely to be reported on more prominently and extensively than the governor, bureaucracy, and courts. Legislative deliberations are open, accessible, and convenient for the media to cover. The decisions made by the assembled lawmakers have great impact on the daily lives of the state’s citizens. Finally, because the legislature is constituted as the premier representative body, the precepts of democracy require significant

coverage, and the media obliges.<sup>49</sup> Regrettably, there is no systematic study of the nature and extent of media coverage. Some observers might conclude that despite the greater coverage of the legislature, attention to and analyses of its deliberations and decisions are inadequate.

Another prime focus of media attention is the conduct of political campaigns. Contests for major offices, such as for governor and U.S. Senator, receive extended coverage in most papers around the state and on some television stations. Campaigns for lesser offices are given more limited notice, though practices vary. Media analysts generally find that the coverage of such campaigns focuses more on the organization and strategy of a candidate’s appeal (“the horse race” effect) than on the content of the issues involved. Studies of U.S. Senate races in North Carolina have reached similar conclusions.<sup>50</sup>

Beyond the coverage of the daily activities of state and local governments, the media make an important contribution in their special features on public problems and policies. The *Winston-Salem Journal*’s particular devotion to environmental policies, the *Charlotte Observer*’s extended and repeated analyses of campaign money, and the *Greensboro News and Record*’s focus on poverty in the state are examples of occasional in-depth coverage that informs and educates the public and officials.<sup>51</sup>

Finally, news analyses and positions are provided in “op-ed” pages and editorials, which are regular features in newspapers. Comment or opinion pieces on electronic sources are rare, although regular viewpoint broadcasts did bring notoriety to one prominent state citizen, U.S. Senator Jesse Helms.<sup>52</sup> The expression of opinions is also fostered through the publication of letters to the editor, a public service regularly provided by newspapers.

### Assessment

Cultural values in North Carolina offer a positive context for both political interest groups and the mass media. As they have increased in number and diversity, each has made crucial contributions to the progress toward pluralism, which characterizes North Carolina government and politics. Southern states generally, including North Carolina, have placed few restrictions on agents of political representation

and lobbying and have imposed limited requirements on reporting their activities and finances. The enlarged conception of individual rights and liberties present in the state's culture is quite hospitable to the representation of political ideas and interests. The social and economic diversity that has developed in the state is reflected in the increased number and range of interests now active in politics. While business and professional associations have been continuously dominant among the state's legislative agents, the range of types of groups within those categories has expanded. Additionally, public employee organizations, especially state employees, including teachers, are major actors in the arena, along with environmental and citizens' groups. Interest groups also have at their disposal a wide spectrum of lobbying techniques. Here political action committees are increasingly prominent.

The media reflect significant diversity in representing opinions of their consumers. The large number of newspapers published in the state provides multiple sources, but the declining number of competing papers within particular communities moderates the diversity. From a longer-range perspective, the growth of electronic media—radio, television, and cablevision—makes an important addition. But the limited attention given to state politics and government by the media reduces their im-

pact on and contribution to public debate.

African American interests are not well represented among interest groups and media, despite the prominence of African Americans in the state population. Alternative means of representation (e.g., through public officeholding) must be used to press their needs and ideas on policymaking institutions. African Americans have also found alternative means of policy influence, such as judicial recourse and federal law enforcement. Likewise, women's interests are not proportionately expressed through the present voices in the political system (we acknowledge disagreement among women on so-called women's issues, such as abortion and child care). Nevertheless, many social and economic topics of concern to women and men, such as poverty, domestic abuse, and health care, do have strong advocates among both interest groups and media. Finally, other demographic and political minorities (i.e., Native Americans, Hispanics) are not heard often in public councils.

Advancing political pluralism in North Carolina is due in part to the growing number and diversity of interest groups and a vigorous media network that contribute to an ever more crowded public agenda. Interest groups and the media play crucial and complementary roles in the state's policymaking. Vigilance in controlling their influence will be matched by a determination to protect their rights to exist.

## FOOTNOTES

<sup>1</sup> Jon Healey, "Bill Holman: Environmental Lobbyist Feels the Tide Turning," *Winston-Salem Journal*, May 10, 1987, p. A13; "Of Legislators and Lobbyists: The Biennial Rankings of Effectiveness and Influence," *North Carolina Insight* 9 (September 1986): 52-56; Mike McLaughlin, "Lobbyist Rankings Reveal Some Subtle Surprises: Legislative Rankings Show a Major Shakeup to Come in '93," *North Carolina Insight* 14 (September 1992): 72-83.

<sup>2</sup> For a useful theoretical framework in which to understand the context of interest group activity, see Clive S. Thomas and Ronald J. Hrebenar, "Interest Groups in the States," in Virginia Gray, Herbert Jacob, and Robert Albritton, eds., *Politics in the American States: A Comparative Analysis*, 5th ed. (Glenview, Ill.: Scott, Foresman/Little, Brown Higher Education, 1990) pp. 123-58.

<sup>3</sup> Response of the Secretary of State to the Legislative Research Commission, Committee on Legislative Ethics and Lobbying, January 24, 1986, p. 3; Letter to author from Susan C. Coward, Legislative Agent Specialist, Department of Secretary of State, August 20, 1991.

<sup>4</sup> Peter Hans and Bob Hall, *Lobbying Reforms: Safeguard for a \$10 Million Machine* (Durham, N.C.: Institute for Southern Studies, June 27, 1991), pp. 1, 8-10.

<sup>5</sup> Office of the Secretary of State, *Legislative Agents for the 1991 General Assembly* (Raleigh, June 18, 1991), pp. 3 and 28.

<sup>6</sup> Milton C. Jordan, "Black Legislators: From Political Novelty to Political Force," *North Carolina Insight* 12 (December 1989): 40-54, 58.

<sup>7</sup> Questionnaires were sent to all members of the 1985-86 North Carolina General Assembly and 150 legislative agents registered with the office of the secretary of state. Responses from fifty-one legislators and fifty-two agents provide the bases for the survey analysis.

<sup>8</sup> See Larry J. Sabato, *PAC Power: Inside the World of Political Action Committees* (New York: W. W. Norton, 1984), esp. chap. 1; and Ruth S. Jones, "Financing State Elections," in Michael Malbin, ed., *Money and Politics in the United States: Financing Elections in the 1980s* (Chatham, N.J.: Chatham House, 1984), pp. 172-214.

<sup>9</sup> *General Statutes of North Carolina*, art. 22A, chap. 163; North Carolina State Board of Elections, Campaign Reporting Office, *Manual of Regulations and Reporting Instructions* (Raleigh, January 1988).

<sup>10</sup> Ken Eudy, "PAC Contributions Win Attention from Candidates," *Charlotte Observer*, June 16-20, 1985, pp. 1, 4.

<sup>11</sup> Eudy, "PAC Contributions"; Jim Morrill, "Contributions Pave Way for Access to Legislators," *Charlotte Observer*, May 5, 1991, pp. 1A, 25A-27A. Also see Jim Morrill, "PACs Assume Growing Role in High-Tech, High-Stakes Races," *Charlotte Observer*, April 5, 1987, pp. 1-3.

<sup>12</sup> Morrill, "Contributions Pave Way," p. 1A; Eudy, "PAC Contributions."

<sup>13</sup> Ken Eudy, "Political Balance Sheet," *Charlotte Observer*, June 16-20, 1985, p. 1. Also see Jim Morrill, "Lobbyists Escalate 'Arms Race,'" *Charlotte Observer*, April 9, 1989, pp. A1, A8.

<sup>14</sup> North Carolina Center for Public Policy Research, "1983-84 Governor's Race Contribution Analysis" (no date). The author is grateful to Jim Bryan and Ran Coble of the Center for making these data available.

<sup>15</sup> "The Money behind Martin: Does It Signal a New Era for the State's GOP?" *North Carolina Independent* 3 (March 1-14, 1985): 5-6 (quotation at p. 5).

<sup>16</sup> N.C. Center for Public Policy Research, "1983-84 Governor's Race"; "Money behind Martin," pp. 5-6.

<sup>17</sup> "Legislators Get Scores of Goodies," *Winston-Salem Journal*, February 24, 1987, p. A5.

<sup>18</sup> See note 7, above.

<sup>19</sup> Thomas and Hrebener, "Interest Groups in the States," pp. 144-45.

<sup>20</sup> Responses to survey described in note 7, above.

<sup>21</sup> North Carolina Center for Public Policy Research, "Ex-Legislators, Lawyers Still Are Most Influential Lobbyists," (Memorandum, July 21, 1986); Mike McLaughlin, "Former Legislators, Lawyers Dominate Lobbyist Rankings—Again," *North Carolina Insight* 12 (September 1990): 51-52; McLaughlin, "Lobbyist Rankings," pp. 73-83.

<sup>22</sup> "Rating the Lobbyists," *Winston-Salem Journal*, July 22, 1986, p. 14.

<sup>23</sup> "Ex-Legislators, Lawyers," p. 1.

<sup>24</sup> Raleigh *News and Observer*, July 22, 1986, p. 20C. See also "Lobbying Is Serious Business to Zeb Alley," *Winston-Salem Journal*, June 26, 1990, p. 24.

<sup>25</sup> Quoted in Ann Morris, "Mr. Big: Sam Johnson is Raleigh's Consummate Lobbyist," *North Carolina Independent* 3 (June 8-21, 1985): 10-11.

<sup>26</sup> Harmon Zeigler and Michael Baer, *Lobbying: Interaction and Influence in American State Legislatures* (Belmont, Calif.: Wadsworth, 1969, pp. 32-33).

<sup>27</sup> Barry Yeoman, "Who Runs N.C.?" *North Carolina Independent* 4 (July 4-17 1986): 6-8. See also Joel Thompson, "After the Honeymoon: Jim Martin, the General Assembly, and the State of Holy Acrimony," *Politics and Policy* 7 (1987): 14-32.

<sup>28</sup> Belle Zeller, *American State Legislatures* (New York: Thomas Y. Crowell, 1954), pp. 190-91; Sarah McCallly Morehouse, *State Politics, Parties, and Policy* (New York: Holt, Rinehart & Winston, 1981), p. 109.

<sup>29</sup> John C. Wahlke, Heinz Eulau, William Buchanan, and LeRoy C. Ferguson, *The Legislative System* (New York: John Wiley & Sons, 1962), p. 322; Zeigler and Baer, *Lobbying*, p. 37.

<sup>30</sup> Zeigler and Baer, *Lobbying*, pp. 147-51; Wahlke et al., *Legislative System*, p. 322; Daniel J. Elazar, *American Federalism: A View from the States* (New York: Thomas Y. Crowell, 1966), pp. 92-97.

<sup>31</sup> L. Harmon Zeigler, "Interest Groups in the States," in Virginia Gray, Herbert Jacob, and Kenneth N. Vines, eds., *Politics in the American States: A Comparative Analy-*

*sis*, 4th ed. (Boston: Little, Brown, 1983), p. 112.

<sup>32</sup> Morehouse, *State Politics*, p. 112.

<sup>33</sup> Zeigler, "Interest Groups in the States," p. 122.

<sup>34</sup> Karen Youngblood, "Laws Hamper Abuse Investigations," *Winston-Salem Journal*, April 14, 1991, pp. E1 and E4; Randy Diamond "N.C. Counties Vary Widely in Confirming Child Abuse," *Raleigh News and Observer*, May 10, 1991, pp. 1A and 4A; Karen Youngblood, "Children Fared Better in 1991," *Winston-Salem Journal*, July 14, 1991, pp. E1 and E5.

<sup>35</sup> Karen Youngblood, "State May Start Temporary Death-Review Team," *Winston-Salem Journal*, April 17, 1991, pp. 1 and 4; Randy Diamond, "Bill Calls for \$15 Million to Boost Child-Protective Services," *Raleigh News and Observer*, May 10, 1991, p. 15A.

<sup>36</sup> U.S. Bureau of the Census, *U.S. Statistical Abstract* (Washington, D.C., 1990), p. 556.

<sup>37</sup> Jack Betts, "When the Legislature's in Session, Does Other News Take a Back Seat?" *North Carolina Insight* 12 (December 1989): 63-67.

<sup>38</sup> Paul T. O'Connor, "Is the Afternoon Newspaper a Dinosaur in North Carolina?" *North Carolina Insight* 10 (October 1987): 68-71.

<sup>39</sup> Everett Carl Ladd, *The American Polity*, 3d ed. (New York: W. W. Norton, 1989), pp. 520-21.

<sup>40</sup> Jack Betts, "Radio Journalism in North Carolina: Listening for Less News," *North Carolina Insight* 10 (June 1987): 44-46.

<sup>41</sup> G. Patrick Lynch, "What about the Wires?" *Comparative State Politics Newsletter* 12 (December 1991): 10.

<sup>42</sup> Lynch, "What about the Wires?" pp. 11-12.

<sup>43</sup> Thad L. Beyle, "Poll Watch: *The Age of Indifference* in NC and Newspapers," *Inside Politics: NC 2* (August 20, 1990) 2; Thad L. Beyle, "Poll Watch: *The Age of Indifference* in NC and Television," *Inside Politics: NC 2* (September 3, 1990) 2; Andrew Kohut, *The Age of Indifference* (Los Angeles: Times Mirror Center for the People and the Press, 1990).

<sup>44</sup> Seth Effron, "Taxes Paying for What Government Voices Say," *Greensboro News and Record*, July 18, 1989, pp. A1 and A12-13.

<sup>45</sup> Bernard C. Cohen, *The Press and Foreign Policy* (Princeton: Princeton University Press, 1963), p. 13.

<sup>46</sup> Doris A. Graber, *Mass Media and American Politics*, 2d ed. (Washington, D.C.: CQ Press, 1984), pp. 5-11.

<sup>47</sup> Keith S. Peterson, "North Carolina Newspapers and Their 'Outside Worlds': A Select Comparison, 1949-1981," *Politics and Policy* 8 (1988): 32-55.

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<sup>49</sup> Betts, "When the Legislature's in Session," pp. 63-69.

<sup>50</sup> Graber, *Mass Media and American Politics*, pp. 189-208; Paul Luebke, "State of Competition: N.C. Senate's Race and the Newspapers' Battle to Cover It," *Washington Journalism Review* 6 (1984): 21-23; Paul Luebke, "Newspaper Coverage of the 1986 Senate Race: Reporting the Issues or the Horse Race," *North Carolina Insight* 10 (March 1987): 92-95.

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# Political Polling:

## Guidelines for Voters and Reporters

BY J. BARLOW HERGET

*Political polling has come to play a prominent role in elections. What should a journalist look for in a good poll? And how should a thoughtful citizen evaluate the science of polling—the questions themselves, the margin of error, the process of selecting those to be interviewed?*

**T**oday, 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?

### Polling Comes of Age

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 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 land-

slide, 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

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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.”

Pollsters are fixed in the landscape of North Carolina politics as well, and now 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.

### The Problems of Polling

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, a political analyst. “They can pick up trends and movements.”

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.”<sup>1</sup>

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.



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## ***Polling Checklist***

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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 800 for a statewide poll in North Carolina);
  - (6) the treatment of sub-groups in the sampling process—e.g., underrepresentation of women or blacks; and
  - (7) the actual wording of the poll's questions and whether the wording was as neutral as possible.
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"I look to see if a poll is consistent with my gut reaction," says V. B. "Hawk" Johnson, long active in Democratic Party politics in North Carolina. "If it's a wide variance with what my gut tells me, I know there may be a problem with it."

### **Polling Guidelines**

**T**he 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.

**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.

**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. Some consider mail surveys unwieldy and an anachronism while others live by them.

In-person interviews are the most expensive, and 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."

Pollsters 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, 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 up 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 800 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 800 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? Polling analysts need 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 indicate on a scale from one to five 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.

## 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."<sup>2</sup>

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. Sidney Blumenthal writes, "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."<sup>3</sup>

## FOOTNOTES

<sup>1</sup> Larry J. Sabato, *The Rise of Political Consultants*, New York: Basic Books Inc., 1981, p. 104.

<sup>2</sup> Cited in Sidney Blumenthal, *The Permanent Campaign*, New York: Simon and Schuster, 1982, p. 333.

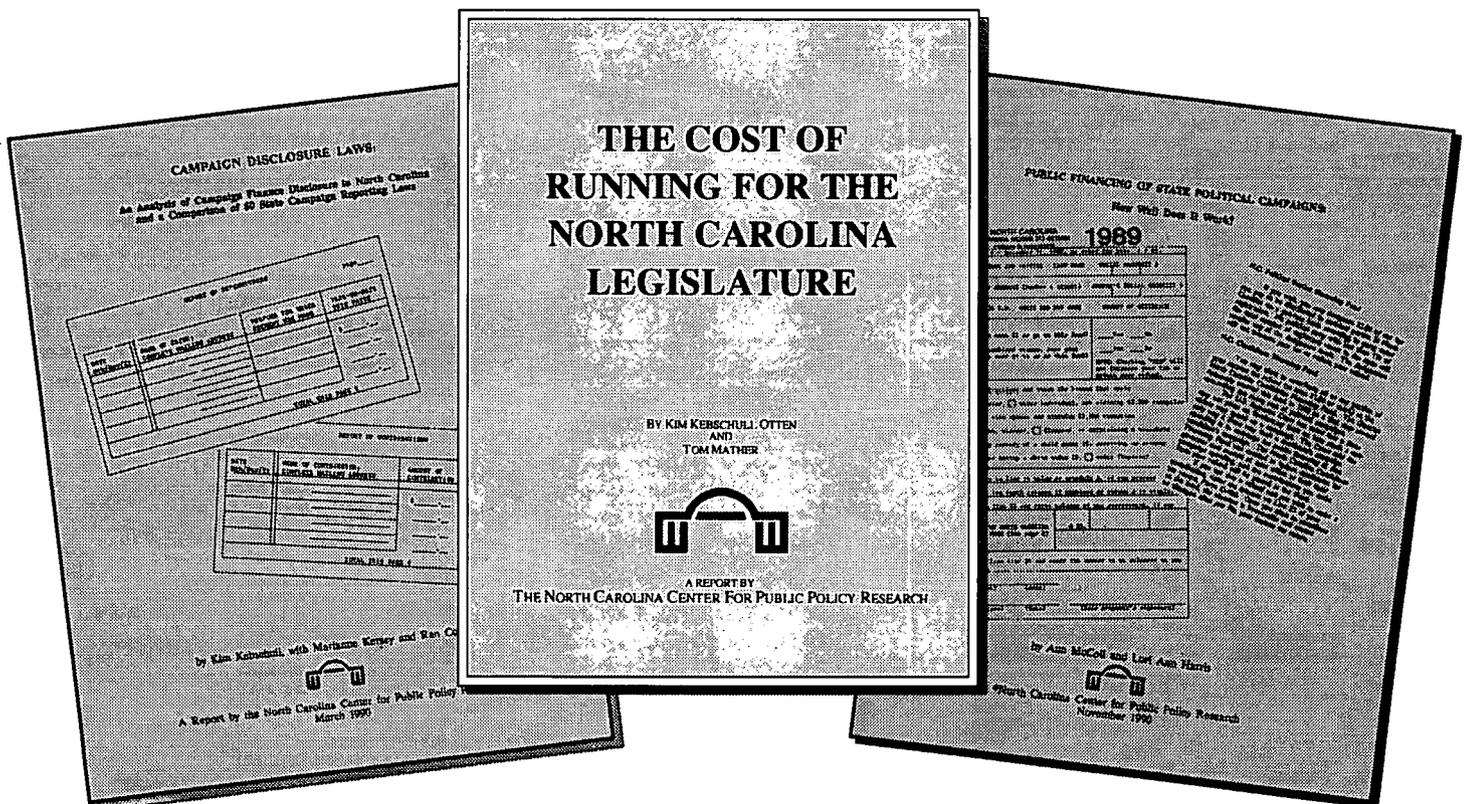
<sup>3</sup> Blumenthal, p. 300.

# Political Campaign Financing Issues in North Carolina

## Introduction

Since 1984, the N.C. Center for Public Policy Research has examined the costs and conduct of electoral campaigns in North Carolina. The Center's campaign finance research has focused on three specific issues: 1) how North Carolina's campaign reporting and disclosure laws compare

with such laws in the 49 other states, and how North Carolina's laws might be improved; 2) how North Carolina's public campaign finance program works and how it compares with the other states that have such programs; and 3) the costs of campaigns and sources of contributions in major races.



# Campaign Reporting Laws: The Inadequacies of Disclosure

BY KIM KEBSCHULL OTTEN

It's not often that political events in Washington lead directly to legal reforms in the state capital, but that's exactly what happened with campaign finance and specifically with new laws requiring greater disclosure of campaign finance activities. North Carolina's Campaign Reporting Act was enacted by the North Carolina General Assembly on April 11, 1974,<sup>1</sup> as a direct result of the Watergate scandal that eclipsed the presidency of Richard M. Nixon.

Millions of dollars were contributed under questionable circumstances to President Nixon's 1972 re-election campaign thanks to the efforts of Nixon's fundraisers, whose practices "bordered on extortion."<sup>2</sup> They developed a "quota system" which set an expected "standard" contribution by wealthy individuals (1 percent of their net worth) and corporations (1 percent of gross annual sales).<sup>3</sup>

Along with the 1974 amendments to the Federal Elections Campaign Act of 1971, these new state campaign finance laws attempted to address two major problems that Watergate had made glaringly obvious. Because of the secrecy surrounding contributions in the 1972 presidential campaign and the subsequent revelations of the Nixon administration's activities,

the state laws were designed first to disclose to the public where and from whom a candidate got the money to run for office, and how this money had been expended. Second, the laws aimed to reduce the influence of a few very wealthy individuals who virtually could bankroll entire campaigns.

By setting limits on the amount of money a person or political committee could contribute to a candidate, the new laws attempted to encourage a number of important changes in the field of campaign finance. These included enhancing participation by large numbers of citizens who would give small amounts of money, diminishing the influence of large contributors or interest groups, reducing the appearance of a corrupting link between contributions and pending legislation, and slowing the rising cost of campaigns.<sup>4</sup>

North Carolina's Campaign Reporting Act has two primary goals: *public disclosure* of campaign contributions and expenditures, and facilitating *broader public participation* by limiting the amounts individuals and certain groups can contribute. Why is this important? Consider the words of Herbert Alexander, an expert on the subject of campaign finance: "Journalists, political scientists, elected officials, and numerous interested citizens are participating, perhaps as never before, in a lively exchange over the place and influence of money in election campaigns and legislative politics. That is a salutary development, for money, I have long held, serves as a tracer element in the study of political power."<sup>5</sup>

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*Kim Keschull Otten is the former policy analyst at the N.C. Center for Public Policy Research. This summary is taken from the Center's first report on campaign laws, CAMPAIGN DISCLOSURE LAWS: An Analysis of Campaign Finance Disclosure in North Carolina and a Comparison of 50 State Campaign Reporting Laws, March 1990.*

Money—in large amounts—is the lifeblood of political campaigns today at all levels, from the race for president of the United States to a seat in a part-time (and relatively low-paying) state legislature. Some political scientists consider these expenditures to be the cost of educating the public on the policy issues confronting them. Although these educational expenses rise with every election campaign, many analysts are concerned less with the actual dollar amounts contributed and expended than with determining the sources of the contributions and the identities of the contributors, as well as information on how and where the money was spent. This identification of sources is done with the help of state disclosure laws, which require financial information of varying degrees of specificity, depending on state policy.

A study by the national public interest group Common Cause said, “Disclosure continues to be the most basic element in campaign finance reform. Campaign finance disclosure statutes play a vital role in enabling the public to trace candidate contributions to their sources and reveal the potential influence of large donors.”<sup>6</sup> University of Virginia Political Scientist Larry J. Sabato says, “Disclosure itself generates pressure for more reform. When campaign finance was out of sight, it was out of most people’s minds; now that the trail of money can be more easily followed, indignation is only a press release away.”<sup>7</sup>

To determine the availability, accessibility, and comprehensiveness of the disclosure information compiled by North Carolina and other

states, the N.C. Center for Public Policy Research surveyed each state agency responsible for gathering or maintaining campaign finance reports. All 50 states and the District of Columbia responded.

### **Penalties for Noncompliance**

**M**ost campaign reporting agencies say they are underfinanced, understaffed, and overworked. In addition to receiving, filing, and auditing contribution and expenditure disclosure reports, the agencies also write and implement campaign finance regulations, give advisory opinions, and conduct investigations of reporting irregularities. Because of their workload, notes expert Herbert Alexander, most commissions rely on complaints filed by others and on investigative newspaper reporting to detect violations.<sup>8</sup>

Penalties for noncompliance with reporting requirements depend upon the severity of the offense. By independent accounts of most analysts, actual enforcement of these penalties is uniformly lax across the United States. Attorney Christopher Cherry, author of an extensive study of state campaign finance laws, writes, “Enforcement statistics are sparse, but the available information indicated that except for fines for tardy disclosure, most states seldom impose civil penalties and virtually never invoke criminal sanctions. Even with late fees, agencies tend to impose the minimum penalty available and sometimes impose none at all.”<sup>9</sup>

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## ***Provisions in Campaign Reporting Laws Designed to Discourage Potentially Corrupting Influences***

- 1) A prohibition or limit on direct corporate or union contributions
- 2) A prohibition or limit on contributions by regulated industries
- 3) Limits on contributions by political action committees
- 4) A prohibition or limit on solicitation of or by government employees

Twenty-four states, including North Carolina, have fines only for late filing, ranging from \$10 per day late in eight states to \$1,000 per day late in Ohio for statewide candidates' pre-election reports. North Carolina's fine is \$20 per day late, not to exceed five days or \$100.

Penalties for not filing disclosure reports were considerably more severe, often resulting in criminal prosecution or denial of the election or nomination. In North Carolina, if candidates or committees fail to file reports, the Campaign Reporting Office will send the non-filers up to three letters requesting compliance before reporting them to the county's district attorney. Until October 1987, North Carolina law specified a fine of up to \$1,000 for an individual and \$5,000 for others (such as political action committees) and imprisonment up to one year. Current North Carolina law merely designates such offenses as misdemeanors to be reported for prosecution to the appropriate agency.

**Recommendation:**

Because full and prompt disclosure by candidates and committees is a key component of campaign finance laws, penalties for noncompliance with reporting requirements should be sufficiently severe in order to compel voluntary compliance. The N.C. Center for Public Policy Research recommends that these penalties be stated more specifically in North Carolina law, with forfeiture of the nomination or election specified as the pen-

alty for serious campaign finance violations such as intentional misreporting. Penalties for not filing should be restored to their pre-October 1987 level of up to \$1,000 for an individual, \$5,000 for other offenders, and imprisonment for up to one year. North Carolina law should be amended to provide that candidates may not take office until their reports are filed. Additionally, the Center recommends that the current fine of \$20 per day for late reports be raised to \$50 per day, and that late filers' names be listed publicly in local newspapers as in Hawaii and Indiana, in order to encourage greater compliance.

### Information Required in Reports

Political contributions fall into three broad categories: *money* (whether cash or check), *loans* (either by the candidate to his own cause or from a supporter or bank), and *in-kind* contributions. The laws of all states require some form of disclosure of all monetary contributions, and the disclosure of loans is required by all but four states.

In-kind contributions are more complex to regulate; the term refers to goods or services provided free of charge or at reduced rates by a supporter. The most common in-kind contributions include computer services, office space, and the use of automobiles, for example. North Carolina law requires that all in-kind contributions be reported in full, and that they appear

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## ***Provisions in State Reporting Laws Designed to Encourage Large Numbers of Citizens to Participate in Campaigns***

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- 1) Ceilings on the amount any one individual may contribute
  - 2) Limits on contributions from members of the candidate's family
  - 3) Limitations on contributions from large groups, such as labor unions, corporations, professional associations, and PACs
  - 4) Tax credits and tax deductions for political contributions
-

on disclosure reports as both contributions *and* expenditures.

Most state laws set a floor for the itemization of contributions received by candidates, political parties, political action committees (PACs), and other political committees. The itemization threshold in North Carolina is \$100; under this regulation, any single contribution over \$100 or the aggregate of several contributions by an individual or group exceeding \$100 must be reported, along with the contributor's name and address, amount and date of the contribution, and the total amount of all contributions received from this person or group.

Five states have itemized disclosure for all contributions of *any* amount; the laws of these states do not specify minimum amounts or thresholds for reporting. Nineteen states require itemized disclosure for contributions of less than \$100 in some races; 10 of these states itemize amounts of less than \$50. Twenty states including North Carolina itemize contributions once they reach \$100, and eight states have initial thresholds higher than \$100, ranging from Illinois' \$150 to \$500 in Mississippi for statewide candidates and \$500 in Nevada for all candidates.

In addition to requiring the name and address of the contributor and the amount of the contribution once the threshold is reached, 25 states also require disclosure of the occupation or principal place of business of the contributor. This information allows for more complete tracing of the sources of contributions and the interests behind them. North Carolina does not require any listing of a contributor's occupation.

#### ***Recommendation:***

**North Carolina should join the federal government and the 25 states that require the listing of the occupation and/or principal place of employment of contributors to candidates, parties, PACs, and other political committees. This information would enable voters to see the sources of funding for candidates and to analyze the interests supporting a particular candidate or political action committee.**

#### **Sources of Contributions**

**S**tate laws may also regulate the sources of political contributions, and often place lim-

its upon contributions from particular sources. Since few states allow unrestricted contributions, the survey also asked for the limitations that were placed on the amount of contributions from the various sources.

Among the most important findings, the Center's survey revealed that seven states, including North Carolina, prohibit both corporations and labor unions from contributing *directly* from their treasuries. This is done, according to University of California-Berkeley Political Science Professor Edwin M. Epstein, in order to avoid the perception that large economic interests could subvert the integrity of the political process by dominating the selection of public officials. Furthermore, prohibitions against corporate and union contributions exist to protect corporate shareholders and union members from having their invested or contributed money used to finance candidates and causes to which they had not assented.<sup>10</sup> These seven states prohibiting direct corporate and union contributions do permit the groups to overcome this restriction by forming and registering PACs, however. They may then solicit contributions from employees or members to give to candidates or parties.

Political Action Committees (PACs), virtually unknown prior to the 1970s, are now a significant factor in almost all races at the statewide and legislative level. North Carolina's contribution limit for PACs is \$4,000 per candidate per election. This same limit applies to contributions from all other groups and individuals except for political parties and the candidate and his or her immediate family, who may give unlimited amounts. Most states limit corporate and union contributions to between \$1,000 and \$5,000 per candidate. Contributions from industries regulated by the state are permitted in 30 states and the District of Columbia and are prohibited in 20. North Carolina prohibits direct contributions to candidates not only from industries regulated by the state—such as banks, savings and loans, and insurance companies—but from all corporations.

Candidates in North Carolina and 43 other states may contribute unlimited amounts to their own campaigns. In North Carolina, candidates must report both formal contributions to their own efforts and incidental out-of-pocket campaign expenditures. North Carolina does not limit contributions by the candidate's immediate family, and large gifts by family



**Rural voting in North Carolina—May 27, 1950**

members have played an important role in North Carolina politics. During the 1984 gubernatorial election, for example, candidate Eddie Knox received \$40,128 from family members for his unsuccessful primary campaign alone, and Democratic nominee Rufus Edmisten received more than \$25,000 from his father and brother. More recently, Art Pope, in his 1992 bid for Lt. Governor, received loans totaling \$330,000 from his mother and father, plus a \$4,000 contribution from his father, on top of his own loans to the campaign totaling \$130,000. I. Beverly Lake, Jr., in his campaign for a seat on the Court of Appeals received \$25,895 in contributions from his father in 1990 and \$10,000 in 1992. And, Frank Block's mother contributed \$15,000 to his campaign for a Senate seat in 1990 and \$10,000 in 1992. Unlike North Carolina, the

laws of 27 other states do place limits on family contributions. This is done to prevent candidates with wealthy families from "buying" elections or from deterring other candidates with fewer resources from running for office.

***Recommendation:***

The Center for Public Policy Research recommends that North Carolina follow the lead of 27 other states and limit contributions by members of the candidate's family. The state's standard \$4,000-per-candidate-per-election limit should be made applicable to contributions by members of a candidate's family as well. This would help both to level the playing field among candidates from a variety of family backgrounds, and would contribute to holding down the cost of campaigns.

### Additional Analyses by States

In most states, it would be relatively difficult for average citizens to obtain information about their own elected officials on matters such as the amount of money contributed by individuals, as opposed to PACs, or the amount spent by the candidate on television advertising. In North Carolina, the Campaign Reporting Office does compile information on the total amount of all contributions received and all expenditures made by candidates for statewide office.

The campaign finance agencies of 21 states are required to compile some form of summary or report, either on an annual basis or "from time to time." Several states—Hawaii, Missouri, New Jersey, and Oregon, for example—publish extensive and excellent reports for the public about campaign finance. It is worth noting that these state agencies have higher budgets and larger staffs than does North Carolina's Campaign Reporting Office. The current budget of the Campaign Reporting Office is clearly not commensurate with its responsibilities.

### Recommendation:

North Carolina should follow the lead of the twenty-one states which require annual or periodic reports of campaign finance activities in the state. Compiling summary reports and analyses in North Carolina would require additional appropriations and staff for the state's Campaign Reporting Office. The Campaign Reporting Office should then be permitted to hire sufficient additional staff and to purchase the equipment necessary to produce reports for public distribution. These reports should be similar to those compiled by the state of Missouri noted above, giving detailed information about campaign contributions to each legislative and Council of State candidate, analyzing patterns of contributions and expenditures, and summarizing trends in campaign costs. This type of analysis would result in much better use of the data now available in raw form and in much greater public awareness of the role of money in politics and campaigning in North Carolina.

### FOOTNOTES

<sup>1</sup> Chapter 1272 of the 1973 Session Laws (2nd Session, 1974), now codified as G.S. Chapter 163, Article 22A. All subsequent provisions of the North Carolina law mentioned in this report can be found in G.S. 163-278.6 to 163-278.40E.

<sup>2</sup> Larry J. Sabato, *PAC Power* (N.Y.: W.W. Norton and Co., 1985), p. 5.

<sup>3</sup> Herbert E. Alexander, "Political Finance Regulation in International Perspective," in *Parties, Interest Groups, and Campaign Finance Laws*, Michael J. Malbin, ed. (Washington, D.C.: American Enterprise Institute, 1980), p. 340.

<sup>4</sup> Herbert E. Alexander, *Financing Politics: Money, Elections, and Political Reform* (Washington, D.C.: Congressional Quarterly Press, 1980), pp. 60-61.

<sup>5</sup> California Commission on Campaign Financing, *The New Gold Rush: Financing California's Legislative Cam-*

*paigns* (Los Angeles: The Center for Responsive Government, 1985), p. 215.

<sup>6</sup> Michael S. Ashford, *Campaign Finance Reform in the States* (Washington, D.C.: Common Cause, March, 1989), p. 17.

<sup>7</sup> Larry J. Sabato, *Paying for Elections: The Campaign Finance Thicket* (N.Y.: Priority Press Publications, 1989), p. 61.

<sup>8</sup> Alexander, *Financing Politics*, p. 172.

<sup>9</sup> Christopher Cherry, "State Campaign Finance Laws: The Necessity and Efficacy of Reform," *Journal of Law and Politics* (Charlottesville, Va., Winter 1987), p. 587.

<sup>10</sup> Edwin M. Epstein, "Business and Labor Under the Federal Election Campaign Act of 1971," in *Parties, Interest Groups, and Campaign Finance Laws*, Michael J. Malbin, ed. (Washington, D.C.: American Enterprise Institute, 1980), p. 110.

# Public Financing of State Political Campaigns: How Well Does It Work?

BY ANN MCCOLL BRYAN AND LORI ANN HARRIS

**M**any taxpayers might remember seeing “check-off” boxes on their North Carolina and federal income tax forms for \$1 to go to a campaign fund. But most do not understand much about this public financing program—where the money goes, or how it is spent, or who qualifies to use it. What’s the record on public financing of campaigns in North Carolina, and how might it be improved?

Since 1977, North Carolina taxpayers have been allowed to divert \$1 of their tax liability from the state’s General Fund to the N.C. *Political Parties* Financing Fund (formerly the N.C. Election Campaign Fund). This check-off neither increases the tax owed nor decreases the taxpayer’s refund. Until 1983, taxpayers could designate which political party would receive the check-off funds. Now the funds are distributed according to the voter registration levels for the Democratic and Republican parties.

The N.C. *Candidates* Financing Fund appeared for the first time in 1988 near the bottom of the state income tax form. Taxpayers may

contribute all or part of their income tax *refunds* to the fund. When the fund has accumulated enough money, it will be used to assist candidates for Governor in their political campaigns. The candidates will have to agree to limit total campaign expenditures and raise qualifying matching contributions in exchange for receiving public funds for their campaigns. Former Rep. Walter B. Jones Jr. (D-Pitt), sponsor of the law, says, “The escalation in the cost of political campaigns has locked the door to public office for the average citizen. Excessive fundraising to win an election has become the rule, rather than the exception. Voluntary public financing is necessary to correct a system that relies more on dollars than issues.” The N.C. Candidates Financing Fund had a balance of \$159,311.20 as of November 1994. If enough money has accumulated in the Candidates Fund, grants will be distributed to certified candidates for Governor to pay for their campaigns, beginning in 1996.

The North Carolina Center for Public Policy Research examined the two North Carolina public financing programs for both political parties and candidates and compared them with programs currently operating in 19 other states that provide public financing of political activities. While most people do not consider the goals of public financing to be controversial, the type of public financing program chosen by

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states is often marked by partisan and political debate.

On the other hand, some people oppose any type of public financing program on a philosophical basis, questioning the use of state tax monies to finance the campaigns of political candidates. "The incumbent officeholder has a tremendous advantage before the first campaign dollar is raised and spent, due to name recognition, access to the media, and other resources inherent in the office," says former Rep. Art Pope (R-Wake). Pope contends that public financing and expenditure limits "would prevent the challenger from overcoming this advantage . . . and discourage people from running for office." Jones supports public financing because he thinks it levels the playing field for all candidates.

Still, the North Carolina law is on the statute books, so the Center decided it could best serve the public by analyzing how other such state laws work and how North Carolina's law could be improved. This report considers some of the tough issues states have had to face in creating public financing programs and in meeting the goals of public financing.

Public financing measures have been instituted in 22 states<sup>1</sup> with a variety of goals in mind. The specific goals of public financing to be examined in this report are: (1) to increase public participation in the electoral process; (2) to encourage more citizens to run for office by reducing the fundraising burden for those who are not independently wealthy; and (3) to strengthen political parties. (See Table 1 for the year of enactment of state public financing programs).

### **Goal 1: To Increase Public Participation in the Electoral Process**

**B**oth campaign finance programs—check-off programs that divert a certain amount of money from the state General Fund—and add-on programs—those that allow taxpayers to contribute part of their tax refund—allow the public to participate financially in the electoral process. Because *check-off* programs do not cost taxpayers any of their refund to participate, they have higher rates of participation than do *add-on* programs.

North Carolina is the only state that has both a check-off and an add-on program in operation. In 1987, participation in the check-off

for the N.C. Political Parties Financing Fund is slightly below the average for the 11 states with check-off programs with a participation rate of 14 percent during the 1987 tax year. The N.C. Candidates Financing Fund, an add-on program, was not in existence in 1987. The taxpayer participation rate for the 1988 tax year was less than 0.2 percent of all taxpayers who received a refund. By 1990, that rate had increased to 0.3 percent.

Traditionally, the participation rates for add-on programs have never been as high as they are for check-off programs. Add-on public financing provisions in other states have taken an extra beating in the last few years because of the addition of other opportunities for earmarking funds on the income tax form, such as a wildlife fund or a child abuse fund. These programs also receive their funding from contributions from tax *refund* dollars. North Carolina has only two add-on programs—the N.C. Nongame and Endangered Wildlife Fund instituted in 1983 and the new N.C. Candidates Financing Fund instituted in 1988. The data from other state public financing programs show that the wildlife and child abuse add-on funds are consistently more popular with taxpayers and exceed the campaign funds in total contributions.

**Recommendation:** The N.C. Center for Public Policy Research recommends that state officials conduct an aggressive public education campaign to increase taxpayer participation in North Carolina's public financing programs. The importance of a public education campaign is evident in light of the decreasing taxpayer participation rate in the N.C. Political Parties Fund and the low participation in the N.C. Candidates Financing Fund.

State political parties, the State Board of Elections, the Department of Revenue, the governor, and other elected officials should work together to increase public awareness of the state's public financing programs. Since public financing is a state policy, the state of North Carolina, particularly the Department of Revenue, should take a lead role in conducting an education campaign. Common Cause/North Carolina and the League of Women Voters have kicked off an educational campaign to inform North Carolinians about the N.C. Candidates Financing Fund. Other public interest organizations could also be instrumental in efforts to educate the public. Cooperation from all of the above groups is vital to the success of a public

**Table 1. Date of Enactment of Public Financing Programs**

Check-Off Programs		Add-On Programs <sup>c</sup>	
1. Iowa	1973	1. Maine	1973
2. Rhode Island	1973	2. Maryland <sup>d</sup>	1974
3. Utah	1973	3. Massachusetts	1975
4. Minnesota	1974	4. Montana <sup>e</sup>	1979
5. New Jersey	1974	5. California	1982
6. Idaho	1975	6. Virginia	1982
7. North Carolina <sup>a</sup>	1975	7. Alabama	1983
8. Kentucky	1976	8. Oregon <sup>f</sup>	1986
9. Michigan	1976	9. Arizona	1988
10. Wisconsin	1977	10. North Carolina <sup>a</sup>	1988
11. Oklahoma <sup>b</sup>	1978	11. Florida	1991
12. Hawaii	1979	12. Nebraska	1992
13. Ohio	1987		

**FOOTNOTES**

- <sup>a</sup> North Carolina is the only state that currently has both a check-off and an add-on program.
- <sup>b</sup> Oklahoma's \$1 state income tax check-off was never implemented. An advisory opinion by the Attorney General ruled that the tax check-off was unconstitutional.
- <sup>c</sup> Iowa instituted an add-on program in 1984 to complement its check-off program. The Iowa add-on program to fund political parties was abolished in 1986.
- <sup>d</sup> Maryland's add-on program is inoperative. Money collected in the fund is to be distributed to gubernatorial candidates in 1990.
- <sup>e</sup> Montana's public financing program began as a tax check-off to fund political parties. In 1979, the law was amended. Now the fund is supported through a tax add-on, and money is distributed to candidates.
- <sup>f</sup> Oregon had an experimental check-off program that was adopted in 1977. The legislature did not reauthorize the program and it expired Jan. 1, 1980.

education campaign. Efforts should include, but not be limited to, the production and distribution of brochures and posters to Internal Revenue Service offices, the N.C. Department of Revenue, post offices, public libraries, local government offices, and tax return preparation firms. The state also should seek the cooperation of tax form preparers and certified public accountants by sending letters to them explaining the procedure for participating in both public financing programs and urging them to inform their clients about the programs. Other educational efforts

should include: public service announcements; press conferences and news releases; editorials and guest columns in newspapers; newspaper ads; and television and radio talk shows.

**The N.C. Center also recommends that the General Assembly amend the income tax statutes<sup>2</sup> so that all taxpayers may contribute to the N.C. Candidates Fund via their state income tax forms.** At the present time, only taxpayers who receive a refund may designate that all or part of that refund be transferred to the candidates fund. Taxpayers who are not eli-

## Major Provisions of the N.C. Political Parties Financing Fund

*Enacted:* 1975      *First Year Funds Distributed:* 1977

*Source of Funds:* \$1 check-off on individual income tax forms.

*Distribution:* Political parties with at least one percent of the total number of registered voters receive funds on a pro rata basis according to voter registration levels.

(1) In general election years, each party chair disburses 50 percent to the party and 50 percent to a "special committee" composed of the state chair, treasurer, congressional district chair, and two other appointees. This committee allocates the funds.

(2) In years with no general election, the chairman disburses 100 percent of funds paid over by the state treasurer to the party.

*Discretion in the Use of Funds:* In general election years, the "special committee" may only use funds for any "legitimate campaign expenses," including party headquarters operations, as well as for direct and in-kind contributions to candidates. Funds *cannot* be used by the party or special committee to support candidates in the primary or to select candidates at political conventions, nor can the funds be used to support or oppose a referendum, bond election, or constitutional amendment.

*Reporting Requirements:* All political parties and candidates receiving funds must submit an annual report to the State Board of Elections itemizing receipts, expenditures, and disbursement of Political Parties Financing Fund monies.

gible for a refund are allowed to send their donations to the N.C. state treasurer. The extra effort needed to send a separate check to the state treasurer may deter some taxpayers (who may otherwise wish to do so) from participating. The Department of Revenue should reword the instructions to read as follows: "You may make a voluntary contribution to the N.C. Candidates Financing Fund. Your contribution to this fund is added to your income tax liability. It will *reduce* your refund, or *increase* the amount due with your return." Alabama, California, and Massachusetts are among the states that allow contributions to be made to their public financing funds in this manner.

## Goal 2: To Encourage More Citizens To Run for Office by Reducing the Fundraising Burden for Those Who Are Not Independently Wealthy

Challengers, as well as some incumbents, have traditionally met with difficulty in their efforts to secure sufficient funds to run for office. North Carolina's public financing programs have not provided substantial sums of money directly to candidates. The political party check-off brings in about half a million dollars a year—but very little of this money goes directly to the candidates. Direct monetary assistance is provided to candidates at the discretion of the state parties. Distribution of money from the candidates fund will begin in 1996.

Advocates of campaign reform think that limiting the amount candidates can spend on their campaigns is essential to cutting the costs of running for office. But since the U.S. Supreme Court decision in *Buckley v. Valeo* in 1976, limits on campaign spending cannot be imposed unless coupled with public financing.<sup>3</sup>

The N.C. Center recommends that campaign expenditure limits be revised to reflect more accurately the costs of campaigns and to ensure fair competition among candidates. Currently the statutory expenditure limit for gubernatorial candidates is one dollar (\$1) multiplied by the number of votes cast for governor in the last general election. Based on 1992 voting statistics, certified gubernatorial candidates who accept public financing in 1996 would be allowed to spend \$2,595,184 in the general election. Yet James B. Hunt, Jr. and James C. Gardner, the party nominees for governor in 1992, spent \$6.9 million and \$5.6 million, respectively, in the general election. The Center recommends that the legislature raise the expenditure limitation formulas to \$1.50 multiplied by the number of votes cast for governor in the last general election. The new limit would allow gubernatorial candidates to wage a viable campaign yet still address the concern that expenditure limits work to the advantage of incumbents by prohibiting challengers from running an effective campaign. It would also help reduce the cost of campaigns.

The N.C. Center recommends that the N.C. Candidates Financing Fund law be revised to incorporate an inflationary measure to adjust expenditure limits for the effects of inflation. In an era of ever-increasing cam-

paign costs, the Consumer Price Index would normalize the expenditure limit to current dollars. The federal expenditure limits for the presidential campaign are adjusted for inflation.

The N.C. Center recommends that the General Assembly amend the N.C. Candidates Financing Fund law to allow a candidate who has accepted public financing to exceed the expenditure limits when an opponent is eligible for public financing but chooses not to accept. The N.C. law includes a withdrawal option for a person who is the only candidate in a race to apply for money from the candidates fund; however, upon withdrawal from the program, the candidate is not entitled to public funding. Minnesota has a provision that does just this and thereby effectively levels the playing field for candidates. An alternative might be to double-match all eligible contributions to a candidate who accepts public financing but whose opponent does not. A double-matching provision is contained in New York City's campaign financing program.

### Goal 3: To Strengthen Political Parties

Political parties that receive money from campaign finance programs do not dispute the impact that the funds have on party operations. North Carolina political party officials believe the N.C. Political Parties Financing Fund has made a real difference in the parties' roles. Both major state parties have been able to increase staff and centralize services for candidates in party headquarters. "The party's role has been substantially greater since the party fund was established. It has enabled parties to be more of a factor in campaigns," says Gov. James B. Hunt Jr.

**Recommendation:** The North Carolina Center recommends that the state continue to support political parties by continuing the N.C. Political Parties Fund. Continued support would allow the state Democratic and Republican parties to coordinate campaigns, develop party programs, and organize their get-out-the-vote efforts. The N.C. Center's first recommendation above calls for a public education campaign to increase taxpayer participation in both of North Carolina's public financing programs. In order to have a successful education campaign, there must be strong bipartisan support for both public financing programs.

Until 1983, North Carolina taxpayers could specify which political party would receive their check-off money. Legislation was introduced in 1989 and again in 1995 to do away with the check-off for political parties.<sup>4</sup> However, the Democratic Party and the Republican Party both attest to the benefits they receive from the fund and the importance of keeping the check-off. The fund enables the political parties to hire staff, pay bills, and support the campaign efforts of their candidates.

The N.C. Center recommends that the General Assembly revise the N.C. Political Parties Financing Fund statute to allow taxpayers to designate their check-off to a specified political party or give to a general campaign fund. Each political party would receive all funds specifically designated to it. The money contributed to the general campaign

### Major Provisions of the N.C. Candidates Financing Fund

*Enacted:* 1988    *First Year Funds To Be Distributed:* 1996

*Source of Funds:* Contributions by taxpayers of all or part of a refund of income taxes. The contribution qualifies as a tax deduction.

*Distribution:* One-to-one matching funds for candidates for Governor who (1) raise qualifying matching grants equal to 5 percent of the expenditure limit, (2) agree to abide by expenditure limits, (3) agree to a post-election audit, and (4) have opposition on the ballot in the general election.

*Discretion in the Use of Funds:* Funds may be used only for general election expenses.

*Campaign Expenditure Limits:* For governor — \$1.00 multiplied by the number of votes for governor in the last general election. Governor: \$2,595,184.

*Reporting Requirements:* Reports are due from the candidates to the State Board of Elections in August and September listing contributions and expenditures in any year in which public funds were received. A report is due 60 days after the general election. It must itemize all receipts, expenditures, and disbursement of N.C. Candidates Financing Fund monies.

*Total Funds Accumulated as of Nov. 1994:* \$159,311.20.

fund would be distributed to the political parties according to voter registration. This recommendation is a compromise that would be fair to both political parties and help garner the bipartisan support that the N.C. Political Parties Fund needs.

The universally prescribed goals of public financing programs should be the goals of North Carolina's public financing programs. The state's two programs, the North Carolina Political Parties Fund and the N.C. Candidates Financing Fund, must be set up to achieve the goals of 1) increasing public participation in the electoral process; 2) encouraging more candidates to run by reducing the fundraising burden for those who are not independently wealthy; and 3) strengthening political parties. The N.C. Center believes that the recommendations above will help to achieve these objectives and put the state's two public financing programs on a sound course for the future.

## FOOTNOTES

<sup>1</sup> These states are Alabama, Arizona, California, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Carolina, Ohio, Rhode Island, Utah, Virginia, and Wisconsin.

<sup>2</sup> G.S. 105-163.16.

<sup>3</sup> *Buckley v. Valeo*, 424 U.S. 1, 248 (1976).

<sup>4</sup> House Bill 1167 was introduced on April 11, 1989 by Reps. Larry Etheridge (R-Wilson), Art Pope (R-Wake), Trip Sizemore (R-Guilford), and Robert Grady (R-Onslow). The bill was assigned to the Judiciary Subcommittee on Election Laws and Constitutional Amendments but was not taken up for consideration and is ineligible for consideration in the 1990 short session beginning May 21, 1990. House Bill 911 was introduced on April 12, 1995 by Reps. Robert Brawley (R-Iredell), Leo Daughtry (R-Johnston), Daniel McComas (R-New Hanover), David Miner (R-Wake), Richard Morgan (R-Moore), Carolyn Russell (R-Wayne), Fern Haywood Shubert (R-Union), and Steve Wood (R-Guilford). The bill was assigned to the Finance Committee. It passed third reading in the House of Representatives on May 11, 1995. It was referred to the Judiciary II Committee in the Senate.

### Voting in Raleigh—April 28, 1947



N.C. Division of Archives and History

# Legislative Campaign Costs, PAC Donations Continue to Rise

BY KIM KEBSCHULL OTTEN AND TOM MATHER

**T**he price of a seat in the N.C. General Assembly has more than doubled over the past eight years, with political action committees paying a growing share of the tab. Candidates who won seats in the state legislature in the 1992 elections raised \$21,482 on average for their campaigns, up from \$16,941 in 1988 and \$9,075 in 1984, the Center found in its study, *The Cost of Running for the N.C. Legislature*.<sup>1</sup>

Campaign spending and contributions from political action committees have been going up across the country, and the Center's study found that North Carolina is no exception.<sup>2</sup> In fact, the average amounts spent by House and Senate winners actually exceeded their annual legislative salaries—\$13,026 a year in the 1993–94 session.<sup>3</sup> The Center's study also under-counts the total campaign contributions and spending because it only includes numbers for the 1992 calendar year.

"It's staggering just to see the amounts of money raised and spent by the candidates," says Ran Coble, the Center's executive director. "The total raised by all candidates was about \$4.7 million and the total spent was about \$4.5 million. That's a lot of money."

In comparing its findings with previous studies by *The Charlotte Observer*,<sup>4</sup> the Center

found that the influence of political action committees, or PACs, has increased almost as much as the cost of running legislative campaigns. For instance, the study showed that PAC contributions accounted for nearly half (47 percent) of the money raised by winning candidates in 1992—up from about one-fourth in the 1984 elections. Rep. Dan Blue (D-Wake), who was Speaker of the House from 1991–94, says PACs have become a much more potent force over the past decade. "They've organized," Blue says. "From the early 1980s to the late '80s, they proliferated. Every organization that was anybody started forming PACs."

## Cost of Campaigning Goes Up

**T**he Center's study of campaign financing was based on a review of all contributions and expenditures made between January 1 and December 31, 1992. Although some candidates raise and spend money outside the election year, the Center included only 1992 figures for the sake of consistency.<sup>5</sup>

Legislative candidates in total raised slightly more money, \$4,708,515, than they spent, \$4,544,376. By and large, the amount of money raised and spent by candidates was most highly related to the competitiveness of their races—either in the primaries or in the general election. Candidates who spent a lot of money on their campaigns generally were either newcomers vying for open seats, newcomers chal-

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lenging incumbents, or incumbents holding off strong challengers. There also were wide differences in the results if one compares winners with losers, incumbents with new members, and Senators with House members. Other significant findings were:

*Legislative election winners not only attracted more votes, but dollars.* Winning candidates in both chambers raised a total of \$3,651,944—more than three times the losers' total of \$1,058,303. In the Senate, winners out-raised losers by \$1.1 million, or \$1,552,548 to \$412,185. In the House, winners out-raised

losers by \$1.4 million, or \$2,099,396 to \$646,118.

The legislature's leading money-raiser, Sen. George Daniel (D-Caswell), took in \$177,149—eight times more than his general election opponent, Hubert Lowe of Alamance County. In the House, the leading money-raiser, newcomer David Miner (R-Wake), took in \$89,544—nearly three times more than his opponent, incumbent Rep. Larry Jordan (D-Wake).<sup>6</sup>

*Election losers didn't just lose votes—they also lost money.* Overall, legislative winners raised \$238,540 more than they spent, while los-

**Table 1. Average Costs of Running for the N.C. House, 1992 Elections <sup>1</sup>**  
1990 figures in ( ), if available

House Category	Amount Raised	Amount From PACs <sup>2</sup>	Average Percentage From PACs	Amount Spent	% Spent of Amount Raised
All Candidates	\$14,441	\$6,057	45.2%	\$14,244	106.4%
Winners	\$17,495 (\$21,433)	\$7,929 (\$8,567)	54.4% (44.9%)	\$16,782 (\$18,971)	100.4% (86.9%)
Losers	\$9,100	\$2,822	29.7%	\$9,777	116.4%
Incumbents	\$16,756 (\$19,858)	\$9,484 (\$9,373)	64.8% (50.8%)	\$15,043 (\$17,280)	93.2% (85.6%)
New Members	\$18,818 (\$27,732)	\$5,144 (\$5,344)	35.9% (21.3%)	\$19,895 (\$25,737)	113.4% (92.2%)
Democrats	\$16,863 (\$21,668)	\$7,896 (\$8,691)	54.9% (44.3%)	\$16,038 (\$19,849)	100.7% (89.2%)
Republicans	\$18,669 (\$20,945)	\$7,989 (\$8,312)	53.5% (46.2%)	\$18,162 (\$17,147)	99.9% (82.3%)
Men	\$17,375 (\$22,629)	\$7,955 (\$9,082)	55.4% (45.3%)	\$16,659 (\$19,816)	103.4% (86.6%)
Women	\$17,975 (\$15,455)	\$7,825 (\$5,996)	50.3% (43.1%)	\$17,274 (\$14,748)	88.7% (88.6%)
All Open Seat Candidates	\$14,630	\$3,807	28.7%	\$15,547	118.0%
Open Seat Winners	\$19,851	\$5,231	35.4%	\$20,858	119.6%
Open Seat Losers	\$6,231	\$1,516	17.9%	\$7,003	115.5%

**FOOTNOTES**

<sup>1</sup> Based on contributions reported by all candidates during the 1992 calendar year.

<sup>2</sup> PACs = Political Action Committees. PAC numbers include contributions from political party PACs.

ers spent \$74,401 more than they raised. Senate losers on average spent 8.4 percent more money than they raised, while House losers spent 16.4 percent more than they raised. By contrast, Senate winners spent 12.5 percent less than they raised and House winners nearly broke even—spending a mere 0.4 percent more than they raised.

In the House, Lanier Cansler of Asheville spent \$52,357—nearly 40 percent more than he raised—in losing to Speaker Pro Tem Marie Colton (D-Buncombe). In the Senate, Republican challenger Gerald Hewitt of Forsyth

County spent \$21,591—66 percent more than he raised—in losing to Democratic incumbents Ted Kaplan and Marvin Ward for one of the 20th District's two seats.

*New members spent much more money than incumbents in winning seats in both chambers.*

On average, new members spent \$36,720 for a Senate seat and \$19,895 for a House seat, compared with \$25,236 for Senate incumbents and \$15,043 for House incumbents. Winners of open races, in which no incumbents were running, spent even more money—an average of \$20,858 in the House.

**Table 2. Average Costs of Running for the N.C. Senate, 1992 Elections <sup>1</sup>**  
1990 figures in ( ), if available

Senate Category	Amount Raised	Amount From PACs	Average Percentage From PACs	Amount Spent	% Spent of Amount Raised
All Candidates	\$22,583	\$9,613	41.0%	\$21,127	96.4%
Winners	\$31,051 (\$31,123)	\$15,190 (\$11,002)	58.1% (44.3%)	\$27,992 (\$28,624)	87.5% (87.8%)
Losers	\$11,140	\$2,077	18.0%	\$11,852	108.4%
Incumbents	\$29,341 (\$27,571)	\$16,557 (\$11,887)	65.7% (50.2%)	\$25,236 (\$25,047)	83.7% (85.3%)
New Members	\$36,467 (\$43,715)	\$10,864 (\$7,862)	33.9% (23.4%)	\$36,720 (\$41,308)	99.3% (96.7%)
Democrats	\$35,039 (\$30,894)	\$16,637 (\$12,025)	54.9% (46.7%)	\$32,360 (\$28,153)	93.9% (87.1%)
Republicans	\$16,913 (\$31,710)	\$10,062 (\$8,370)	69.3% (38.1%)	\$12,506 (\$29,835)	64.5% (87.8%)
Men	\$30,379 (\$30,909)	\$15,161 (\$8,370)	58.9% (38.1%)	\$26,949 (\$29,835)	86.4% (87.8%)
Women	\$35,177 (\$33,046)	\$15,372 (\$11,417)	52.8% (44.4%)	\$34,402 (\$26,596)	94.2% (85.1%)
All Open Seat Candidates	\$27,008	\$7,690	31.4%	\$27,740	101.9%
Open Seat Winners	\$36,467	\$10,864	33.9%	\$36,720	99.3%
Open Seat Losers	\$15,658	\$3,881	28.6%	\$16,964	105.1%

**FOOTNOTES**

<sup>1</sup> Based on contributions reported by all candidates during the 1992 calendar year.

<sup>2</sup> PACs = Political Action Committees. PAC numbers include contributions from political party PACs.

In both chambers, two of the top five money-spenders were newcomers. In the Senate, David Hoyle (D-Gaston) ranked second and Linda Gunter ranked fourth in amount of money spent by winning candidates. In the House, David Miner and Dewey Hill (D-Columbus) ranked first and second, respectively, in the amount spent by winners. "The reason I needed to raise a lot of money is that I was running against an incumbent—it's that simple," Miner says. "I knew my opponent would receive a lot of PAC money—and he did."

*Senate races were nearly twice as expensive as House races.* Candidates spent \$27,992 on average to win a Senate seat, compared to \$16,782 for a House seat. That difference is understandable given that Senate districts generally are larger and more populous than House districts, presumably resulting in higher advertising and travel expenses.<sup>7</sup>

Sen. Daniel, for example, spent \$125,286—\$23,098 more than the biggest-spending House winner, Rep. Miner. In his *losing* quest for the 36th Senate seat, Republican hopeful and former House member Paul "Skip" Stam spent more money than *any* House candidate except Rep. Miner. Stam, a Wake County attorney, spent \$82,567 in losing to Sen. Linda Gunter (D-Wake). He attributes the high spending in that race to keen competition, in both the primary and the general elections. "Each of us had a contested primary," says Stam, who spent more than any other losing legislative candidate and more than all but three winning candidates. "I don't know what Linda [Gunter] spent, but I spent about \$30,000 through the primary alone."

*The amount of money raised by legislative candidates was not consistently related to political affiliation.* In the House, Republican candidates on average out-raised Democrats by more than 10 percent, or \$18,669 to \$16,863. But in the Senate, Democrats out-raised Republicans on average by more than a 2:1 margin—\$35,039 to \$16,913.

In both chambers, however, Democrats dominated the list of top money-raisers. Democrats accounted for seven of the top 10 money-raisers in the House and eight of the top 10 in the Senate—perhaps reflecting more competitive primary elections in their party. For instance, Sen. David Parnell (D-Robeson) says his toughest opponent was another Democrat in the primary election. "My opponent

spent a lot of money, so we had to spend a lot of money too," says Parnell, a six-term Senator and former House member. "I've never spent that kind of money [in a campaign] before."

*Female candidates were better fundraisers in both chambers, but not by a large margin.* In the House, women raised \$17,975 on average, compared to \$17,375 for male candidates. The difference was even wider in the Senate, with female candidates raising \$35,177 on average, compared to \$30,379 for men.

Among the Senate candidates, three of the top 10 money-raisers were women—Gunter, Leslie Winner (D-Mecklenburg), and Mary Seymour (D-Guilford). Gunter says she found fund-raising the most difficult aspect of running a campaign, and was shocked when she found out that she had raised more money than any female legislator and all but a few men. "I couldn't believe it when I added it all up," says Gunter, who raised \$59,758. "I was just floored because nine people gave me \$300 or more. That's wonderful because it shows the wide base of support that I had. With an average contribution of \$35, that's a lot of people." In the House, losing Republican candidate Wilma Sherrill of Buncombe County was the only woman among the top 10 money-raisers.

### Campaign Costs Going Up Across The Nation

**T**he rising cost of state legislative campaigns is a nationwide trend, with many states surpassing the increase in North Carolina.<sup>8</sup> For example, the average amount spent on Senate campaigns in the state of Washington in the 1990 election was \$111,183—more than five times higher than the North Carolina average of \$21,127 in 1992.

Tommy Neal, a campaign reform and elections specialist with the National Conference of State Legislatures, attributes the increases to several factors: inflating campaign expenditures (e.g., mail, advertising, staff salaries); greater professionalism, with more lawmakers claiming 'legislator' as their primary occupation; the increased difficulty of unseating incumbents, requiring more spending by challengers; and, greater spending by PACs and other groups in elections preceding or following reapportionments.

"Records are set to be broken," Neal wrote in the May 1992 issue of *State Legislatures*.

**Table 3. Top Money-Raisers, N.C. House Candidates, 1992<sup>1</sup>**

Representative <sup>2</sup> (Party-County)	Total Money Raised	% PAC Money of Total
1. David Miner (R-Wake)	\$89,544	4%
2. Dan Blue (D-Wake)	\$86,778	61%
3. Lyons Gray (R-Forsyth)	\$54,864	24%
4. Martin Nesbitt (D-Buncombe)	\$49,864	57%
5. Robert Hunter (D-McDowell)	\$48,753	38%
6. James Black (D-Mecklenburg)	\$48,475	26%
7. George Miller (D-Durham)	\$47,179	60%
8. Phil Baddour (D-Wayne)	\$43,384	19%
9. Richard Moore (D-Vance)	\$41,869	29%
10. Wilma Sherrill (R-Buncombe)	\$41,750	4%

**FOOTNOTES**

<sup>1</sup> Based on contributions reported by all candidates during the 1992 calendar year.

<sup>2</sup> Six of the top 10 PAC money-raisers were incumbents. The exceptions were Baddour, Miner, Moore, and Sherrill. Rep. Baddour defeated Republican hopeful Helig Hoffman of Lenoir County. Rep. Miner defeated Democratic incumbent Larry Jordan of Wake County. Rep. Moore defeated Republican hopefuls Louis "Ed" Nicholson of Halifax County and Robert Rector of Franklin County for one of two 22nd District seats. Sherrill lost her bid for one of three seats in the 51st District, all of which were won by incumbents: Nesbitt, Speaker Pro Tem Marie Colton (D-Buncombe), and Narvel J. Crawford (D-Buncombe).

"And when it comes to breaking campaign spending records for state legislature seats, it happens every two or four years."<sup>9</sup>

Spiraling costs have prompted a number of states to place limits and restrictions on campaign contributions.<sup>10</sup> The Center's 1990 report, *Campaign Disclosure Laws*, listed four major reasons for putting limits on the amount individuals or groups can contribute: to encourage candidates to seek a wide variety of funding sources; to diminish the influence of large contributors or interest groups; to reduce the appearance of a corrupting link between contributions and pending legislation; and to slow the rising costs of campaigns.<sup>11</sup>

Another critical link in campaign finance reform has been legislation requiring candidates to disclose the sources of their contributions. As

the national public interest group Common Cause concluded in a 1993 study: "Disclosure continues to be a basic element of campaign finance reform. Campaign disclosure statutes play a vital role in enabling the public to trace candidate contributions to their sources and revealing the potential influence of large donors."<sup>12</sup>

**PACs Increase Contributions to Legislative Campaigns**

A key focus of the Center's study of campaign finances was the relative importance of PACs, or Political Action Committees.<sup>13</sup> PACs are legal devices that allow corporations, labor unions, and other organizations to raise large sums of money and channel it into politi-

cal campaigns. State law prohibits corporations, unions, and other groups from contributing directly to campaigns.<sup>14</sup> The law also prohibits PACs, like individual citizens, from giving candidates more than \$4,000 per election.<sup>15</sup> But PACs can organize fundraising drives among corporate officers, employees, or interest groups, and then distribute that money to sympathetic candidates.

PAC contributions are important because they tend to favor incumbents, and incumbents tend to win elections. For example, in the 1992 North Carolina elections, all of the 39 Senate incumbents who sought re-election won; in the House, 90 percent (78) of the 87 representatives who sought re-election won.<sup>16</sup> A recent study of campaign financing in North Carolina found that the ratio of PAC contributions to incumbents compared to challengers is about 2:1 for Democrats and nearly 8:1 for Republicans.<sup>17</sup> A number of studies have found similar trends in other states and at the national level.<sup>18</sup>

“The trend in the past two decades has been one of a steady increase in PAC contributions and a relative decrease in individual contributions for state elections,” Keon Chi writes in a recent issue of *State Trends & Forecasts*.<sup>19</sup> “. . . The rapid growth of PACs may be interpreted as evidence of the weakened roles of political parties in elections.”

The Center’s latest study showed that incumbent candidates in the North Carolina legislature received twice as much of their funding from PACs as did new members. In comparable studies, The Charlotte Observer found that PACs accounted for about 25 percent of the money contributed to state legislative campaigns in 1984 and about 37 percent in 1988.<sup>20</sup> The Center’s study found that PAC contributions had increased to 47 percent of the total for winning candidates in the 1992 elections. (The Center included political party PACs in its compilation of PAC contributions, but *The Charlotte Observer* did not. The *Observer* also counted all

**Table 4. Top Money-Raisers, N.C. Senate Candidates, 1992<sup>1</sup>**

Senator <sup>2</sup> (Party-County)	Total Money Raised	% PAC Money of Total
1. George Daniel (D-Caswell)	\$177,149	34%
2. David Hoyle (D-Gaston)	\$86,083	16%
3. Skip Stam (R-Wake)	\$80,112	18%
4. Robert Pittenger (R-Mecklenburg)	\$80,049	3%
5. Linda Gunter (D-Wake)	\$59,758	38%
6. Leslie Winner (D-Mecklenburg)	\$59,640	18%
7. David Parnell (D-Robeson)	\$52,903	46%
8. J.K. Sherron (D-Wake)	\$47,719	49%
9. Clark Plexico (D-Henderson)	\$46,878	46%
10. Mary Seymour (D-Guilford)	\$42,304	61%

**FOOTNOTES**

<sup>1</sup> Based on contributions reported by all candidates during the 1992 calendar year.

<sup>2</sup> Five of the top 10 money-raisers were incumbents: Daniel, Parnell, Sherron, Plexico, and Seymour. Gunter defeated Stam for an open seat in 36th District. Hoyle won an open seat in 25th District, and Winner captured an open seat in the 40th District. Pittenger lost to incumbent Sen. James Richardson (D-Mecklenburg).

**Table 5. Top PAC Recipients, N.C. House Candidates<sup>1</sup>**

Representative <sup>2</sup> (Party-County)	PAC Money Received	Percent of Total Raised
1. Dan Blue (D-Wake)	\$53,206	61%
2. Martin Nesbitt (D-Buncombe)	\$28,412	57%
3. George Miller (D-Durham)	\$28,258	60%
4. E. David Redwine (D-Brunswick)	\$22,700	65%
5. George Robinson (R-Caldwell)	\$20,000	67%
6. Ronnie Smith (D-Carteret)	\$19,975	68%
7. David Diamont (D-Surry)	\$18,509	70%
8. Narvel J. Crawford (D-Buncombe)	\$18,475	47%
9. Robert C. Hunter (D-McDowell)	\$18,362	38%
10. Larry Jordan <sup>3</sup> (D-Wake)	\$17,359	56%

**FOOTNOTES**

<sup>1</sup> Based on contributions from Political Action Committees to all candidates during the 1992 calendar year.

<sup>2</sup> All of the top 10 PAC recipients were incumbents.

<sup>3</sup> Rep. Jordan was defeated in the 1992 election by Republican challenger David Miner of Wake County.

contributions made during the 1983–84 and 1987–88 campaign seasons, whereas the Center only counted contributions made during the 1992 calendar year.) Other key findings in the Center’s study were:

***PACs contributed much more to incumbents than to new members.*** In total, PACs contributed \$1,359,452 to incumbents—nearly four times the \$351,539 that they gave to new members. Looked at another way, Senate and House incumbents received nearly two-thirds of their money on average from PACs, compared to about one-third for new members.

In the House, the 10 candidates who received the most PAC contributions were all incumbents. In the Senate, incumbents accounted for eight of the 10 candidates who received the most PAC contributions. For example, Sen. Daniel raised \$59,628 from PACs—more money than any other legislative candidate and 13 times more than his opponent.

Most legislators acknowledge the advantage of incumbency in raising PAC money. Mary Seymour, who raised the second highest amount of PAC contributions in the Senate, attributes much of her success to her long legislative tenure—including three terms in the Senate and four in the House. “A lot of legislators actively solicit PAC contributions; I did not,” says Seymour, while noting that another factor has been her membership on important committees dealing with insurance, utilities, and other business concerns. “I’ve handled a lot of bills that have affected just about every kind of business in North Carolina over the years. I think they’ve found that I’m a reasonable person that they can sit down with and work out reasonable compromises. I don’t feel like I’ve had any pressure put on me by any of my contributors.”

***Election winners attracted much more PAC money than did losers.*** For all candidates, PACs accounted for 47 percent of the money raised

by winners and 26 percent of the amount raised by losers. In the House, winners on average received 54 percent of their money from PACs, compared to 30 percent for losers. The disparities were even larger in the Senate. Winning senators on average received 58 percent of their funding from PACs, compared to just 18 percent for losers. "Normally, the one who is judged to be the prospective winner attracts PACs more so than a prospective loser," Sen. Parnell says.

*PAC contributions by political affiliation varied from the House to the Senate.* In the House, Democrats and Republicans received approximately the same proportion of their contributions from PACs, slightly more than half, on average. But in the Senate, Republicans depended much more heavily on PAC contributions. Senate Republicans received 69 percent of their funds on average from PACs, compared to about 55 percent for Democrats.

However, virtually all of the legislators who raised the most PAC money were Democrats. In the Senate, the top 10 raisers of PAC-money were all Democrats. In the House, nine of the top-10 raisers of PAC money were Democrats. "That's because the Democrats are the ones in power," says House Speaker Dan Blue (D-Wake). "You would observe the same kind of trend with contributions to Governor Jim Martin in the 1988 election. But that's not unusual. People contribute to people who they think are or will be significantly influential."

*Male legislators depended on PAC contributions more than the women in both chambers.* Senate men received about 59 percent of their money on average from PACs, compared to 53 percent for women. In the House, men received about 55 percent of their money from PACs, compared to 50 percent for women. Senators Gunter and Seymour were the only female legislators to make the list of top-10 rais-

**Table 6. Top PAC Recipients, N.C. Senate Candidates<sup>1</sup>**

Senator <sup>2</sup> (Party-County)	PAC Money Received	Percent of Total Raised
1. George Daniel (D-Caswell)	\$59,628	34%
2. Mary Seymour (D-Guilford)	\$25,923	61%
3. David Parnell (D-Robeson)	\$24,150	46%
4. Ralph Hunt (D-Durham)	\$24,084	84%
5. J.K. Sherron (D-Wake)	\$23,354	49%
6. Joe Johnson (D-Wake)	\$23,029	75%
7. Linda Gunter (D-Wake)	\$22,646	38%
8. Marc Basnight (D-Dare)	\$22,641	57%
9. R.C. Soles (D-Columbus)	\$22,350	70%
10. Ollie Harris (D-Cleveland)	\$21,361	85%

**FOOTNOTES**

<sup>1</sup> Based on contributions from Political Action Committees to all candidates during the 1992 calendar year.

<sup>2</sup> All of the top 10 PAC recipients were incumbents, except Gunter and Harris. The top Republican recipients of PAC money were: Sen. James Forrester of Gaston County, who received \$18,450 (53%), and Paul "Skip" Stam of Wake County, who received \$14,455 (18%) in his race against Gunter.

ers of PAC money in either chamber. Both Gunter and Seymour note that much of their PAC money came from organizations promoting “women’s issues,” such as equal rights for women, penalties for marital rape, and freedom of choice in abortion. “There’s a large group of women who are interested in promoting legislation that directly impacts them,” Seymour says. “The marital rape bill is a good example of that.”

### **PACs Look For ‘Known Quantities’**

**T**he increasing importance of PAC contributions has caused some critics to question whether the groups play too big a role in the electoral process. Jeff Parsons, chair of the governing board for Common Cause of North Carolina, says that growing PAC contributions have fueled the rise in campaign costs and bolstered incumbents’ already formidable advantage in elections. “That really makes it difficult for a challenger to have any kind of a chance,” says Parsons, who favors smaller limits on campaign contributions. “There’s something to be said for lower [contribution] amounts. If we lowered it down to \$2,000 or \$1,000—both for individuals and for PACs—it would even the playing field.”

But representatives of leading Political Action Committees in North Carolina say there’s a simple reason for the increase in PAC contributions to legislative campaigns. “There’s a lot more PACs now than there used to be—that’s the primary reason,” says Barbara Clapp, director of the N.C. Realtors PAC, which gave \$51,900 to legislative campaigns in 1992. The Greensboro-based group has been one of largest contributors to legislative campaigns over the past decade, but Clapp says her group hasn’t increased its campaign donations. “As far as increasing our individual amounts, we haven’t,” she says. “We’ve been pretty consistent—ranging from \$500 to \$1,500 per individual. We’re not giving any more per candidate now than we did in 1988.”

Ann Hale, executive director of the N.C. Medical Society Political Education and Action Committee, agrees with that assessment. Another factor, she says, is the general apathy toward politics. “If the public, as individuals, would get involved in legislative races, then the PAC contributions would be proportionately

less,” Hale says. “A lot of people don’t even know who their legislators are.”

PAC representatives, likewise, say there’s a simple explanation for why most PAC money goes to incumbents. “An incumbent is a known quantity,” Hale says. “That doesn’t mean that somebody has to agree with you 100 percent of the time, because nobody does. The new folks don’t always go to the effort to let the PACs know who they are. It’s not that we have a bias against new folks running. But if you’ve got a friend who’s willing to listen, that’s kind of a burden for new folks to overcome. We’re eager for information from anybody running for office—because we want to support the best person we can.” The Realtors PAC supports newcomers as well as incumbents, but Clapp acknowledges that office-holders often have an edge. “Generally, we go with the incumbent if he’s doing a good job and we have an open-door relationship with him,” she says.

Despite such trends, PAC representatives see nothing sinister or worrisome in the increasing percentage of campaign contributions coming from their groups. “I don’t think PACs, per se, are the problem,” says Paul Pulley, a former legislator and lobbyist who chairs the N.C. Academy of Trial Lawyers PAC. “PAC money is identifiable and has some limits. There are things a lot worse than PAC money, in my opinion, such as bundling.

“The increasing cost of campaigning and the increasing importance of funding for campaigns should be a concern for all of us,” Pulley says. “Recently we had a fairly glaring example reported in the newspapers, where one candidate for lieutenant governor received almost a half-million dollars from four contributors, apparently through contributions that circumvented the law.”<sup>21</sup>

Rep. Dan Blue shares Pulley’s concern about campaign-finance loopholes, such as bundling—in which corporations and professions can avoid contribution limits and disguise large donations by lumping together large numbers of individual contributions from employees. But he says disclosure requirements and limits on contributions generally prevent PACs from wielding undue influence. Blue also points out some apparent contradictions: PACs with differing goals often contribute money to the same candidates, and individual PACs often contribute to opposing candidates. “They just try to cover the waterfront,” Blue says.

Senate President Pro Tem Marc Basnight (D-Dare), however, favors lower limits on individual and PAC contributions. "Your limits ought to come down—maybe to \$2,000 or somewhere around there," says Basnight, who wants the legislature to create a bipartisan commission to review all of the state's election laws.<sup>22</sup> "The laws are just a hodgepodge." A 1990 Center study found that North Carolina was one of 16 states that allowed PAC contributions exceeding \$2,000 per candidate.<sup>23</sup> The study also

found that 25 states permit unlimited PAC contributions.

According to The Council of State Governments, a growing number of states have been placing stricter limits on PAC contributions.<sup>24</sup> As Chi writes: "The primary reasons for limiting campaign contributions are to give challengers a fair, if not equal, chance of competing in elections and, perhaps more importantly, to restore public confidence in government by reducing the influence of money in election campaigns."<sup>25</sup>

## FOOTNOTES

<sup>1</sup> Figures from the 1984 and 1988 elections were taken from articles published in *The Charlotte Observer*. See the series on legislative campaign finances by Ken Eudy, et al., June 16–20, 1985, pp. 1–8 in special reprint; and Jim Morrill, et al., April 9, 1989, pp. 1A, 8–10A.

<sup>2</sup> For a detailed look at nationwide trends in campaign finance, see Keon S. Chi, "State Campaign Finance Reform: Options for the Future," *State Trends & Forecasts*, The Council of State Governments, Vol. 2, Issue 1 (April 1993), pp. 1–35.

<sup>3</sup> According to the Legislative Services Office, a legislator's total compensation includes: \$13,026 per year in base salary; \$522 per month in expenses; \$92 per day for a subsistence allowance, seven days a week during sessions; \$1,500 per two-year term for postage and telephone expenses; and 25 cents per mile for one round-trip a week between Raleigh and their homes.

<sup>4</sup> See Ken Eudy, "PAC Contributions Win Attention From Candidates," *The Charlotte Observer*, special reprint from articles published June 16–20, 1985, p. 1. The *Charlotte Observer* study did not include political party PAC contributions, which the Center included in its study.

<sup>5</sup> According to the state Board of Elections, candidates in the 1992 campaign were required to file reports on their contributions on April 27 (10 days before the first primary election) and October 26 (10 days before the general election). Primary losers also had to file reports 10 days after the primary election or runoff, if required. Candidates who had not closed out their campaigns at year end were required to file annual reports by Jan. 29, 1993.

<sup>6</sup> Rep. Miner says that he raised an additional \$22,000 in 1991, increasing his contributions for the entire campaign to more than \$110,000.

<sup>7</sup> According to the 1990 Census, the average Senate district has 132,572 people—more than twice as many as the average House district, which has 55,239 people.

<sup>8</sup> For more on the national perspective of rising campaign costs, see Tommy Neal, "The Sky-High Cost of Campaigns," *State Legislatures*, May 1992, pp. 16–22.

<sup>9</sup> *Ibid.*, p. 16.

<sup>10</sup> See Chi, pp. 2–22. Also see Kim Keschull, et al., *Campaign Disclosure Laws: An Analysis of Campaign Finance Disclosure in North Carolina and a Comparison of 50 State Campaign Reporting Laws*, N.C. Center for Public Policy Research, March 1990, pp. 14–19. The report was summarized by Keschull in "Campaign Reporting Laws: The Inadequacies of Disclosure," *North Carolina Insight*, Vol. 12, No. 3 (June 1990), pp. 34–46.

<sup>11</sup> Keschull, p. 55.

<sup>12</sup> See Julie Marsh, *Campaign Finance Reform in the*

*States*, Common Cause, Washington, D.C., January 1993, p. 20. For more on campaign financing reform, see Ann McColl and Lori Ann Harris, *Public Financing of State Political Campaigns: How Well Does It Work?* N.C. Center for Public Policy Research, November 1990.

<sup>13</sup> The Center counted as PAC contributions all donations by political committees registered with the Campaign Reporting Office. This includes political party organizations, both local and state. Party donations are usually small, however.

<sup>14</sup> N.C.G.S. 163-278.19.

<sup>15</sup> N.C.G.S. 163-278-13. The \$4,000 limit applies separately to each election—primary, runoff (if necessary), and general election.

<sup>16</sup> Incumbent Representatives who lost in the 1992 elections included: Howard Chapin (D-Beaufort), Gerald Anderson (D-Craven), Bruce Ethridge (D-Carteret), Joe Hege (R-Davidson), Wayne Kahl (D-Iredell), William Withrow (D-Rutherford), Marty Kimsey (R-Macon), Larry Jordan (D-Wake), and Edward McGee (D-Nash).

<sup>17</sup> See Joel Thompson, William Cassie, and Malcolm Jewell, "A Sacred Cow or Just a Lot of Bull?: The Impact of Money in State Legislative Campaigns," paper presented at the 1991 annual meeting of the American Political Science Association.

<sup>18</sup> *Ibid.* Also see Chi, p. 8.

<sup>19</sup> See Chi, pp. 6–7.

<sup>20</sup> See Ken Eudy, "PAC Contributions Win Attention From Candidates," *The Charlotte Observer*, reprinted from June 16–20, 1985, p. 1; and Jim Morrill, "Lobbyists Escalate Arms Race," *The Charlotte Observer*, April 9, 1989, p. 1.

<sup>21</sup> See Sarah Avery, "Donations to Hardison called illegal," *The News & Observer*, Raleigh, N.C., May 8, 1993, p. 1A. *The News & Observer* reported that a State Bureau of Investigation probe had found that former state Sen. Harold Hardison (D-Lenoir) had improperly collected \$465,000 from four businessmen during his unsuccessful campaign for lieutenant governor in 1988. The men accused of making the contributions were: Wendell Murphy, a major pork farmer and former state senator; Robert Hill, a nursing home operator; Marvin Johnson, president of a turkey processing company; and William C. Shackelford, now in federal prison on fraud and conspiracy charges stemming from the misuse of \$34 million in funds from Interstate Insurance Co.

<sup>22</sup> As quoted by *The News & Observer* of Raleigh, "Basnight seeks new election laws," May 20, 1993, p. 3A.

<sup>23</sup> See Keschull, pp. 63–69.

<sup>24</sup> See Chi, p. 6.

<sup>25</sup> *Ibid.*



Karen Tam



**Constitution  
of the State 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 pre-

text, 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.

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 of 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 political 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 noncapital 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 principles.* 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 every 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 determined 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 therefore 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 Speaker 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 officers 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 differ-

ent 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 the 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 Governor 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.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. *Oath of office for Governor.* The Governor, 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 ensuing 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 conditions as he may think proper, subject to regula-

tions 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 his 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 Governor 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 January 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 their 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 and 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 State 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 de-

termined 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 provide 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 for 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 prescribe 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 of 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 10 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 authorized 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 oc-

curing 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 nonjudicial 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 statewide 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 statewide 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 percent, 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 percent 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 1969-70, 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 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 percent 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 thereon.

(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 levying 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 receipts 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 to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, 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 continuous 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 and 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 moneys 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. *Qualification 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 adjudged 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 adjudged 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 of 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 60,000 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. 6. *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 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.

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 acknowledgment 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 corrections, 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.* Beneficent 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 uni-

formly 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.

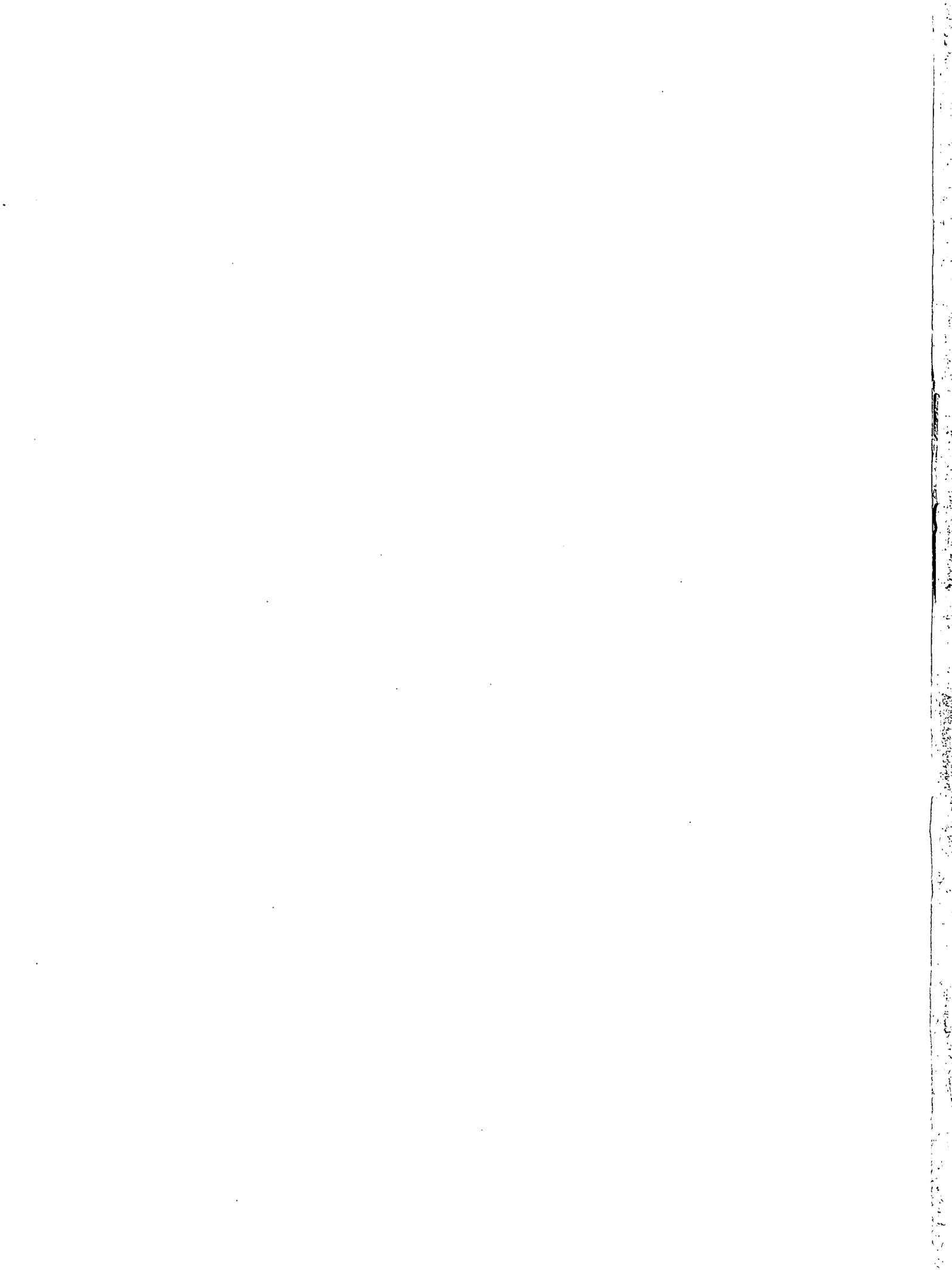
*Sec. 5. Conservation of natural resources.* It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, 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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