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This unusual cover shot shows municipal officials attending 1963 Institute of Government Short Planning Course which is conducted each year by Assistant Directors Philip P. Green, Jr. and Robert E. Stipe. Here Donald H. Fetner and Lee H. Thomas, Jr. ponder a planning problem.

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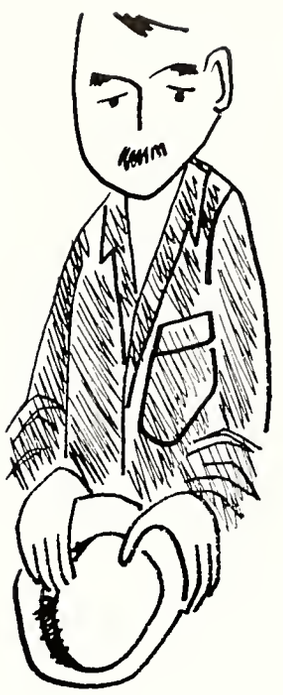
RIGHT TO COUNSEL: the Supreme Court Speaks



By L. Poindexter Watts
Assistant Director, Institute of Government

[*Editor's Note: The original version of this memorandum was written shortly after the decision in* Gideon v. Wainwright *appeared. It was distributed by the Institute of Government to judges and solicitors of the superior and inferior courts of North Carolina along with a copy of the* Gideon *case. At the request of the North Carolina Bar Association, the memorandum, substantially in its original form, was reprinted in the Association's periodical* Bar Notes. *The article as it now appears contains a substantial amount of additional material based on further research by the author.*]

On March 18, 1963, the Supreme Court of the United States handed down six decisions that seem destined to have a great impact on state criminal procedure. Two concerned right to counsel; two concerned the right of an indigent to a free transcript on appeal; two concerned the rights of a state prisoner in federal habeas corpus proceedings. The case that has the greatest immediate impact upon the states is *Gideon v. Wainwright*, 372 U.S. 335, 83 Sup. Ct. 792 (1963). All nine justices concurred in overruling *Betts v. Brady*, 316 U.S. 455 (1942), which had held that the states need not appoint trial counsel to assist criminal defendants unable to hire lawyers of their own in noncapital cases, absent special circumstances.

The *Gideon* decision and the questions it raises as to North Carolina criminal procedure is the immediate subject treated here. Yet it will be helpful to note the holdings in the other five cases as an aid in plumbing the full meaning of *Gideon v. Wainwright*. (See box on page 2.)

Set out below are some of the questions that can be anticipated at this early stage following the decision, plus opinions as to the probable answers to at least some of the questions posed.

In what type of case must the court appoint counsel if the defendant is unable to hire his own?

The concurring opinion of Justice Harlan insists, rather wistfully, that the decision covers nothing more than "offenses which . . . carry the possibility of a substantial prison sentence." (The sentence in *Gideon v. Wainwright* was five years; the sentence in *Betts v. Brady* was eight years.) The seven-man opinion of the Court, however, written by Justice Black, bases the decision squarely upon the right-of-counsel guarantee in the Sixth Amendment to the Constitution of the United States, and holds that this right is so fundamental as to be obligatory upon the states by virtue of the due process clause of the Fourteenth Amendment. The Sixth Amendment by its terms applies in "all criminal prosecutions" and *Johnson v. Zerbst*, 304 U.S. 458 (1938), interpreted that amendment to require appointed counsel for those unable to secure their own in all federal criminal prosecutions. The main opinion does nothing to hint that the ruling will be confined to felonies only or to felonies and the more serious misdemeanors only; indigent defendants may very well be held entitled to appointed counsel in all criminal proceedings, no matter how minor.

What judges can appoint counsel?

Unless and until there is clarifying legislation on the subject, the appointment of counsel should be by superior court judges. One legal encyclopedia makes the general statement that "there is good authority to the effect that courts of record having criminal jurisdiction possess competent authority independent of statute to appoint counsel to defend paupers and other indigent persons charged with crime." 14 Am. Jur., *Criminal Law* § 174. Nevertheless, appointment by other than superior court trial judges might work an undue hardship on the bar. Varying standards for appointment might be applied and certain persons could be called on for more than their

THE OTHER CRIMINAL PROCEDURE CASES

Set out below is a digest of the five other criminal procedure cases decided the same day at Gideon v. Wainwright:

Douglas v. California, 372 U.S. 353, 83 Sup. Ct. 814 (1963) (6 to 3): on the first appeal as a matter of right from a trial court conviction a state may not constitutionally refuse to appoint counsel on appeal for an indigent defendant on the basis of the appellate court's examination of the record and its decision that appointment of counsel would not be of advantage to the defendant or helpful to the court.

Lane v. Brown, 372 U.S. 477, 83 Sup. Ct. 768 (1963) (9 to 0): it is a denial of equal protection of the laws for a state-appointed public defender who represented a prisoner in a *coram nobis* hearing to have the unreviewable discretion whether an appeal should be filed or not, at least when a negative decision would make it impossible under state procedure for the prisoner to obtain a free transcript of the hearing on which he might base an appeal *pro se*. (Two concurring justices thought the error would be cured if there were some judicial review of the reasonableness of the public defender's decision which resulted in denial of the transcript.)

Draper v. State of Washington, 372 U.S. 487, 83 Sup. Ct. 774 (1963) (5 to 4): Although a state need not furnish an indigent defendant a complete stenographic transcript on his appeal from a criminal conviction, he is entitled to a record of sufficient completeness for adequate consideration. The state trial judge held a hearing on defendants' request for a transcript or narrative of the testimony concerning portions of the trial as to which they assigned error. In a written findings of fact and conclusions of law the trial judge denied the request, but set out the ultimate facts of the case at length and gave reasons why each assignment of error made by the defendants was without merit. The majority thought that the findings of the judge at the hearing (held more than two months after the trial) did not set out the portions of testimony questioned by defendants' assignments of error specifically enough to serve as a record itself, and that the judge's conclusion that the appeal would be frivolous did not foreclose the right to an adequate appeal record. The minority thought that the written findings of fact were sufficient to serve as a record on appeal.

Fay v. Noia, 372 U.S. 391, 83 Sup. Ct. 822 (1963) (6 to 3): a federal court has the *power* in a habeas corpus hearing to hold hearings as to any state prisoner held in custody in violation of the Constitution or laws or treaties of the United States if there are no longer any state remedies open to him. The requirement that a prisoner exhaust all of his state remedies before applying to a federal court for habeas corpus is a matter of comity and respect for the integrity of state courts. They are equally obliged to grant relief to prisoners held in violation of federal law. This court-made rule based on comity is now codified in 28 U.S.C. §2254. Past failure to exhaust state remedies that are no longer open, however, unless deliberate and inexcusable, is not a sufficient ground under the statute for denying a state prisoner a habeas corpus hearing in federal court. (Here, defendant did not appeal his conviction because of his fear that on a new trial he might, if convicted again, receive the death penalty rather than the sentence of life imprisonment he did receive. His co-defendants by appealing did exhaust state remedies and thus eventually secured a release to face a new state trial under federal habeas corpus—a trial unlikely to take place, however, after the lapse of twenty years.) *Held:* The failure to appeal under such grisly circumstances as in this case was not such a deliberate bypassing of orderly state procedure for prosecuting federal claims as to constitute a waiver or forfeiture of the right to a habeas corpus hearing in federal court. Although the case is technically distinguishable, the basis of this holding necessarily overrules *Darr v. Burford*, 339 U.S. 200 (1950), which required timely petition for writ of certiorari to this Court as a part of exhaustion of state remedies.

The minority justices thought a state should be able to require a defendant to appeal within a reasonable time in order to correct all defects in his conviction—including federal defects—known to him at the time of trial and appeal. A state should thus be able to limit its postconviction remedies to *coram nobis* hearings, which are granted on the basis of facts not known to the prisoner at the time of the trial. This procedure, being reasonable, constitutes an adequate *nonfederal* ground for retaining the prisoner in custody and prevents the federal courts from having the power to hold habeas corpus hearings as to underlying federal defects in the conviction.

Townsend v. Sain, 372 U.S. 293, 83 Sup. Ct. 745 (1963) (5 to 4): The state trial court record was unclear as to whether the judge applied the correct standard of law in ruling that a drug-induced confession was voluntary and should be introduced into evidence. *Held:* although the district court always has the discretion to receive evidence and try the facts anew, in certain classes of cases the district court *must* hold an evidentiary hearing; this case is one of them. (The Court then listed six classes of cases where the federal court must grant an evidentiary hearing to a habeas corpus applicant.) The minority justices agreed that "where the facts are in dispute, the federal court on habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of the trial or in a collateral proceeding." But they disagreed both as to the wisdom of attempting to set out six specific classes of cases coming under the general principle and as to application of the principle in the instant case. They felt the state record did sufficiently indicate that the prisoner received a full and fair evidentiary hearing. The fact that the record did not spell out the exact standard of law applied by the judge in ruling the confession admissible should, according to the minority, raise no presumption that the wrong standard had been applied. [Although the point was not stated explicitly, the tone of the majority opinion conveyed a certain amount of incredulity that the trial judge could have found the confession voluntary under a good-faith application of the correct legal standard; the defendant was a narcotic addict suffering withdrawal pains; and he confessed shortly after receiving from the police doctor a combination of scopolamine (sometimes used as a "truth serum") and phenobarbital to relieve the withdrawal pains.]

fair share of service.

Should superior court judges appoint counsel in the inferior courts?

It can be argued that so long as a defendant is entitled as a matter of right to a full-dress trial *de novo* before a jury in superior court—with the right to appointed counsel there—denying indigent defendants appointment of counsel in the lower criminal courts is not ultimately prejudicial and does not amount to a denial of due process of law. Of course, an indigent defendant unable to secure counsel might likely be unable to post an appeal bond and would thus languish in jail pending trial in superior court. And, G.S. 6-65 and -45 through -48 authorize imprisonment for nonpayment of fine and costs. As a matter of realism, then, the defendant with money would enjoy a better brand of justice than the defendant without money.

A state might argue that an indigent defendant can be subjected to some minor inconveniences not suffered by others simply because attempting to place all defendants on a parity—in the lower courts, at least—would have an incalculably disruptive effect upon the bar and upon the court system. Up to now most of the other states that have developed systems for appointment of counsel or public defenders restrict this service by necessity to felony cases. The brief filed in behalf of the twenty-two state *amici curiae* urging that *Betts v. Brady* be overruled restricted its plea to felony cases. Those states may, however, have received more than they bargained for if the literal language of the opinion of the Court is any indication.

Even if the Supreme Court does interpret its holding to mean that the right to counsel is all-pervasive, there are a number of possible ways for handling the large volume of petty offenses to minimize the impact on North Carolina criminal procedure. It should be possible to treat petty crimes in the manner of the present federal statute: a person brought before a federal commissioner is told of his right to be tried before the district court, where, under the Federal Rules, counsel will be assigned to indigents. A person desiring immediate trial before the commissioner must sign a waiver of trial in district court. 18 U.S.C. § 3401.

A North Carolina judge in discussing this issue with a group made a similar suggestion based on familiar procedure. Legislation could be passed to transfer cases to superior court upon a request by an indigent for appointed counsel, in the same fashion that cases are now transferred from many lower courts upon a request for a jury trial. As an interim measure the suggestion appears to have great merit, but as a long-term solution it might result in an undesirable crowding of superior court dockets.

In addition to use of the above transfer procedure, the appointment of counsel issue in inferior courts can probably be avoided in cases falling within the following categories:

(1) Where judgment for costs, or fine and costs, is imposed and the defendant pays the money. [Presumably if he had the money to pay the fine he had the money to pay a lawyer but determined that he would come out cheaper by not having a lawyer.]

(2) Where judgment of not guilty, arrest of judgment, prayer for judgment continued, or some other disposition is reached which results in release of the defendant. [There might have been a denial of due process, but the determination of the case would probably render the issue moot.]

(3) Where judgment of imprisonment is suspended upon the basis of payment of a stipulated fine and costs, or costs, and the defendant pays the money. [See reasoning under (1) above.]

(4) Where judgment of imprisonment is entered, the defendant is told that he has an absolute right of appeal to the superior court and have counsel assigned there (if he is indigent), and provision is made that any appearance bond previously posted is kept in force to cover appearance in the superior court. If the defendant prefers to start serving the sentence and get it over with, he should be asked to sign a waiver of his right to appeal to the superior court.

Unfortunately, though, the above four cases are after-the-fact situations. The right to counsel accrues *before* the trial. If the right to appointed counsel is held to apply to indigent misdemeanants tried in inferior courts, it seems likely that any defendant convicted without counsel and in fact sentenced to a term of imprisonment of any length will, in the absence of the most express and knowing waiver, be able to secure a new trial upon a habeas corpus hearing any time after the time for appeal has expired. See *Fay v. Noia*, 372 U.S. 391, 83 Sup. Ct. 822 (1963), which was decided on the same day as *Gideon v. Wainwright*.

When and how should counsel be assigned?

In the absence of specific statutory authority, it is clear that the duty rests on the trial judge to see that attorneys are assigned to represent defendants unable to employ counsel of their own. The procedure probably should in general follow G.S. 15-4.1, applicable in capital cases. This statute is in substantial conformity with the federal practice developed after the decision in *Johnson v. Zerbst*. The statute requires the clerk of superior court "if he believes that the accused may be unable to employ counsel" to notify a judge and request immediate appointment of counsel. "If the judge is *satisfied* that the accused is unable to employ counsel, he shall appoint counsel to represent the accused as soon as may be practicable." (Emphasis added.)

It should be particularly noted that the statute is designed to provide for the appointment of counsel at an early time. Although many states have statutes providing for appointment at the time of arraignment, it is often the case in such states that arraignment is held a number of days prior to trial where there is a contested case. *Cf.* Preliminary Draft of Proposed Amendments, FED. RULES CRIM. PROC., Rules 5 & 44 (Dec. 1962), which will allow earlier assignment of counsel in federal courts than has generally been the case in the past.

Judges should institute some method of screening defendants, either through use of court clerks or otherwise, when there will be any delay between the time of preliminary hearing and trial. It follows from the provisions discussed above that for the right to counsel to be effectual, it must be available from the earliest moment practicable and not just offered *pro forma* in the courtroom on the day of the trial. Where for any reason there is no appointment of counsel till close to the time of trial, it will be up to the appointed counsel to discuss the case with the defendant, determine the issues and complexity of the case, and ask for a continuance if needed for proper preparation of the case.

If a public- or volunteer-defender system is used rather than one of assigning counsel, the selection problem is not necessarily placed on the judges. Moreover, the defender systems are often praised particularly because they can better assure early assignment of counsel than the average court-appointment system. North Carolina, incidentally, goes beyond most states in specifying the right to counsel not merely upon arraignment but at preliminary hearing. G.S. 15-87. See also N.C. CONST. art I, § 11, and G.S. 15-4.

How is indigency determined?

One of the questions asked most frequently concerns the problem of telling if a particular defendant is in fact "unable to employ counsel." The

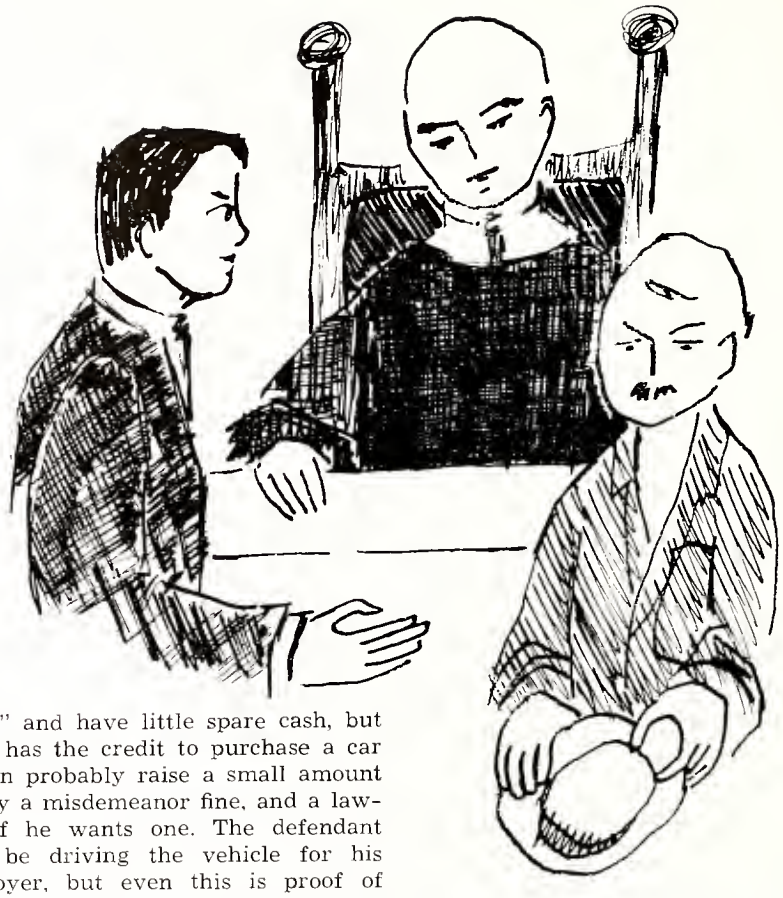
literature from other jurisdictions with extensive assigned-counsel systems is conflicting. Where lawyers are appointed by judges to serve as counsel without compensation (and the judges make the determination as to indigency), it frequently appears that the judges see no major problem but the lawyers do. The statement has been made that the defendant with enough money to hire a lawyer of his own choosing will usually want to do so, and that the cost of an elaborate investigative system into the indigency of a defendant would outweigh any benefit that would result from screening out the relatively small numbers who would lie as to their financial status. Many of the busy public defenders' offices, however, find it worth the effort to make a routine preliminary investigation as to indigency.

A number of jurisdictions require that a defendant claiming inability to employ counsel must sign a sworn statement to that effect. There is general agreement that very few perjury prosecutions in fact result, but at least some experienced observers feel the requirement is a sufficient psychological hurdle to discourage many who might otherwise lie.

One important rule of thumb seems to be applied in almost all jurisdictions with much experience in assignment of counsel. It is the "bail" test. In addition, the author believes a relatively simple "automobile" test should be helpful—in petty offense cases only, however—in weeding out false claims of indigency.

(1) *Bail test.* Public-defender literature often states that when a defendant cannot raise bail, his claim of indigency is more or less accepted (though an affidavit may also be required). If a person has been able to raise bail, the source of the bail should be thoroughly investigated. More often than not, persons who can get out of jail on bail are able to secure funds to hire lawyers. [Indigency is relative, however. A person may be able to scrape up the money to pay a lawyer to represent him in a minor misdemeanor; he might not be able to raise the money to retain counsel to prepare an adequate defense in a serious or complicated case.]

(2) *Automobile test.* It seems logical that a man who either owns or has the use of an automobile can at least initially be presumed not indigent—so far as minor misdemeanors are concerned. Although the author has seen nothing in the literature on this specific point, this is probably because there has been no extensive examination of the concept of assigned counsel in truly minor misdemeanor cases. A defendant may be buying his car on "time" and have little spare cash, but if he has the credit to purchase a car he can probably raise a small amount to pay a misdemeanor fine, and a lawyer if he wants one. The defendant may be driving the vehicle for his employer, but even this is proof of employment and some solvency. He may be driving the automobile of a friend, but this in itself shows that he is not wholly destitute and friendless in many cases. (Rebutting evidence of indigency could, of course, be offered. It probably would be improper to reject a claim of indigency solely on the basis of the assets of friends and relatives.) This "automobile" test would *not* necessarily apply even in prosecution of the more serious misdemeanors, but would seem to dispose of the large volume of minor traffic cases that flow through our courts in the event the *Gideon* case is construed to apply to all crimes in all courts. [Note: in the District of Columbia under a provision for nonjury disposition of "petty offenses," the United States Supreme Court held that reckless driving was an offense "malum in se" and thus not a petty offense. *District of Columbia v. Colts*, 282 U.S. 63 (1930). The Circuit Court has held that the Sixth Amendment right to counsel, however, applies even as to petty offenses. *Evans v. Rives*, 126 F. 2d 633 (D.C. Cir. 1942).]



Must the defendant ask for counsel in order to get it?

The defendant in *Gideon v. Wainwright* did explicitly ask for appointed counsel, but the decision does not stress this point in any way. The decision emphasizes the constitutional right to counsel, and this right presumably is not conditioned upon the defendant's making timely request or utilizing any specific procedure. Cf. *Fay v. Noia*, 372 U.S. 391, 83 Sup. Ct. 822 (1963). Constitutional rights may be waived, of course, but the waiver should be a knowing one by a defendant informed of the full sweep of his rights. *Johnson v. Zerbst*, 304 U.S. 458 (1938). State procedure should apparently substantially emulate federal procedure in appointment of counsel. Every defendant should be informed of his right to appointed counsel if unable to employ private counsel. For purposes of the record, any defendant without private counsel who waives his right to counsel should be asked to sign a written waiver in the absence of a court reporter taking a transcript of the proceedings and thus recording the defendant's oral waiver.

It is interesting to note that the proposed amendment to Rule 44 of the Federal Rules of Criminal Procedure provides for early appointment of counsel under procedures to be set up in each district. It specifically mentions the situation where the defendant requests assignment of counsel, but does not require an affirmative statement by the district judge as to right to counsel until time of arraignment. This seeming lack is likely cured, though, by the proposed amendment to Rule 5 requiring the United States Commissioner to inform each defendant of his right to assigned counsel.

Can a defendant select or reject appointed counsel?

The relationship between attorney and client demands the highest degree of mutual trust and confidence. Clearly, an indigent defendant is not entitled to pick out the lawyer he wants appointed. He must be satisfied with any competent lawyer appointed in good faith by the court. Yet in a situation where there is immediate antagonism between appointed counsel and client a judge should perhaps consider appointment of other counsel, at least if the antagonism appears to be a personal or personality clash between the two and not the defendant's general mistrust of any appointed counsel. As to later-developing clashes between attorney and client, the judge must use his common sense and discretion based on the ultimate premise that the defendant is entitled to fair representation in court.

Suppose the defendant admits his guilt and wishes to plead guilty?

The defendant in *Gideon v. Wainwright* entered a "not guilty" plea, but the court laid no stress upon this fact. It is a matter of universal observation that counsel are often most effectively employed in cases where guilty pleas are entered. In most crimes the General Assembly gives the judge a wide latitude in imposition of minimum and maximum punishments, and the law relating to suspension of sentence vastly increases the scope of the judge's discretion in sentencing. Testimony is heard in guilty-plea cases to assist the judge in determining what sentence to impose. Even though the issues relating to sentencing may be in part nonlegal, there is no doubt that in almost every case the defendant who has counsel to marshal the issues relevant to what sentence should be imposed enjoys an advantage over the defendant without counsel.

Any pressure by the court or the state on the defendant to waive counsel and plead guilty and thus "save the court trouble" would, if proved, undoubtedly be held a denial of due process of law. Nevertheless, even in the federal district courts, which are generally considered to be a model for the states, there is an extremely wide variation in percentage of defendants waiving appointment of counsel from district to disrtict. Note, 76 HARV. L. REV. 579, 584 (1963).

Are appointed counsel entitled to compensation?

Although there are at least three jurisdictions which have held to the contrary, see Annot., 130 A.L.R. 1439 (1941), the general rule is as stated in *Ruckenbrod v. Mullins*, 102 Utah, 548, 133 P.2d 325, 144 A.L.R. 839, 841 (1943):

> The majority of jurisdictions hold that an attorney is an officer of the court with many rights and privileges, and must accept his office cum onore. One of the burdens incident to the office, recognized by custom of the courts for many years, is the duty of the attorney to render his services gratuitously to indigent defendants at the suggestion of the court. . . .

See also *Powell v. Alabama*, 287 U.S. 45, 71-73 (1932); Canon 4, Canons of Ethics and Rules of Professional Conduct of the North Carolina State Bar.

G.S. 15-5 provides for compensation by the county in which the indictment is found, but only in capital cases. Unless and until there is some change in the law, appointed counsel serving in noncapital cases will not be entitled under any specific law to compensation for their services from any agency of the state or local government. At this writing, only one bill has been introduced in the General Assembly relative to compensation of appointed counsel, SB 335. It appropriates $500,000 per year during each year of the coming biennium to support a state system of compensation. The detailed provisions of this and any other bill introduced will be discussed in future publications of the Institute of Government.

Will the decision have "retroactive" effect?

The concurring opinions of Justices Harlan and Clark took the position that the new decision had been reached by a process of evolution in the concept of due process of law. The opinion of the Court, however, deliberately undermined the legal premises upon which *Betts v. Brady* was decided, intimating that it was erroneous from its inception. Great emphasis was placed upon the right-to-counsel ruling of *Powell v. Alabama*, 287 U.S. 45 (1932), as if *Betts v. Brady* were a departure from the principles stated in that 1932 case.

The Court in *Gideon v. Wainwright* does not discuss the question of retroactive effect, but even as to Gideon himself the effect is in a sense retroactive since this case was heard on a petition for writ of habeas corpus and not on an appeal. Similar rulings have evolved in analogous situations. The Fourth Circuit has very recently given the decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), retrospective effect, *Hall v. Warden, Maryland Penitentiary*, 313 F.2d 483 (4th Cir. 1963), and the rule in *Griffin v. Illinois*, 351 U.S. 12 (1956), requiring that transcripts of record be furnished indigent defendants on appeal is also being given retrospective application. *Eskridge v. Washington State Board of Prison Terms and Paroles*, 357 U.S. 214 (1958). Apparently, then, any defendant in prison who asserts he is presently serving a sentence imposed at a trial in which he was denied his right of counsel may secure his release to face a new trial if he succeeds in establishing that right to counsel was, in fact, denied.

Conclusion

The *Gideon* decision poses a great many practical problems for North Carolina lawyers and officials to solve, but the essential justice of the holding makes it reasonable to assume that the bench and bar and the other public officers of this state will in good faith face the task of working out an equitable procedure for securing legal representation for all defendants regardless of their wealth or poverty. By 1962, thirty-seven states on their own initiative had already provided by law for the assignment of counsel to represent all indigent felons. And, in many of the remaining states the practice in most counties resulted in assignment of counsel in the more serious felony cases at least. The states in which indigents accused of noncapital felonies were most likely to be denied representation of counsel were five of the poorer Southern states. See Kamisar, *The Right to Counsel and the Fourteenth Amendment: A Dialogue on "The Most Pervasive Right of an Accused,"* 30 U. OF CHI. L. REV. 1 (1962).

Even in North Carolina the sentiments of *Gideon v. Wainwright* have found previous expression. Nearly a century ago, speaking for the Supreme Court of North Carolina, Justice Settle said in a dictum:

> In this country every one has a constitutional right in all criminal prosecutions to have counsel for his defense, and if he be too poor to employ counsel it is the duty of the Court to assign some one to defend him, and it is the duty of the counsel thus assigned to give to the accused the benefit of his best exertions. It is always gratifying to be able to state that the bench and bar in North Carolina have always dealt mercifully and generously with those who have had the double misfortune to be stricken with poverty and accused of crime.—*State v. Collins*, 70 N.C. 241, 244 (1874).

REPORT FROM RALEIGH

By Elmer Oettinger

Assistant Director, Institute of Government

Editor's note: *A complete summary analysis of the work of the 1963 North Carolina General Assembly will appear in the September issue of* Popular Government. *This legislative issue has been prepared and published by the Institute of Government following every session since 1933.*

* * * * *

The 1963 North Carolina General Assembly, as of this writing, still has unfinished business, but the end is almost in sight. The legislators hope to finish about the second week in June. And it's not unusual to hear conversation beginning to turn to legislative accomplishment.

The General Assembly already has been praised by Governor Sanford for its enactment into law of the program for higher education. This program is substantially that proposed by the Governor's Commission on Education Beyond the High School (reported in *Popular Government*, November-December 1962). It calls for expansion and further coordination of the State's public institutions of higher learning to meet the growth rate of students who are entering college and to provide opportunities and encouragement for some who would like to go but presently cannot. The much-discussed community college system is one part of this program. The increase of university stature and services of the three branches of the University of North Carolina, including the newly-named North Carolina State of the University of North Carolina at Raleigh, is another.

The Governor also has strongly endorsed certain other proposed legislation, most recently the bills designed to increase highway safety. In so doing, he has categorically denied that the State Highway Patrol has an "arrest quota" and has warmly endorsed such proposed safety measures as a new State motor vehicle inspection law on the ground that they are important to the saving of lives on North Carolina streets and highways.

Although non-budget legislation can be important, controversial and time-consuming, the record indicates that, once a General Assembly has agreed upon budget legislation for the next biennium, it can close up shop and go home any time it so desires. Usually other bills, not involving revenue or appropprіations, can be dispatched speedily: by floor passage or defeat, tabling, or quiet death in committee. But the budget is a *sine qua non*. Without it, no State program can be adequately maintained or advanced.

This General Assembly has had both advantages and disadvantages in facing its budget problems. On the plus side has been the healthy condition of the State treasury which has been reported to have a sizable "surplus." On the other side is the mounting demand for increased appropriations for both new agencies and programs. As always, the legislators must evaluate requests and make some difficult choices. Proposed committee increases in appropriations run some $27 million over the original budget bill and just about cancel out the prospective increase in revenue estimates from now to the end of the 1963-65 biennium. Any hope of a tax cut, as suggested by the Governor, has vanished with the so-called "surplus."

At least four things are reasonably certain as the General Assembly goes into its final grueling weeks: 1) The Legislature is not likely to stay in session long after it passes the budget bills; 2) Final decisions on all major legislation are likely soon, both because the Legislature has reached a point of decision and because the legislative pay ends on June 3; 3) The final legislative record must await these vital decisions and actions; and 4) Any evaluation of the 1963 General Assembly prior to the availability of the final record will be premature.

When historians begin to attain a perspective on recent developments in State government, they may find that it was not only a time of ferment, but of unusual creativity. For example, Governor Terry Sanford has proposed such things as a North Carolina Board of Science and Technology and local committees to developp and insure better race relations.

His administration or the General Assembly also have in the idea, proposal, or new legislation stage such projects as preservation and greater recreational use (in cooperation with the federal government) of the Outer Banks, reform of the election laws, increase in the minimum wage law, considerable extension of the highway safety program, formation of a State Department of Mental Health, changes in utilities regulation, implementation of court reform legislation, Senatorial redistricting (following other reapportionment action and in line with federal court decisions), Statewide industrial development, ports and airport expansion, extension of educational television, and privately-financed toll roads to increase the State's transportation and communication facilities and industrial prospects.

This rather substantial list actually is only a part of the interesting and potentially important concepts which are presently alive and kicking in North Carolina governmental circles. Equally vital are proposed legislation to implement the United States Supreme Court decision requiring legal counsel for accused who are indigent, to meet the threat of stream pollution and develop the State's water resources, and to facilitate and encourage community development and improvement. And, looming above all, there is the tremendous emphasis on educational improvement in the State, as symbolized by the comprehensive legislation designed to meet the State's needs in higher education.

One salient fact is that *the effect of national and world events on developments in State and local government has become increasingly important.*

When astronauts soar, space research is required. When atomic explosions rock the earth, research and industrial growth as a part of the development of atomic energy take on significance. In calling for a North Carolina Board of Science and Technology, with a two million dollar budget, Governor Sanford said: "We missed the Industrial Revolution, and our people have paid for it. We don't want to miss out on the new revolution in science and technology."

When industrial development becomes a key to opportunities within a state, and access and skilled labor supplies keys to industrial development, such matters as ports development, essential road and other transportation needs, airline and rail transportation, minimum wages, utilities, health and hospital facilities, highway safety, stream pollution, and education all begin to have relationship and special significance.

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COURT REORGANIZATION:

Some Transitional Problems

By C. E. Hinsdale

Assistant Director, Institute of Government

(Editor's Note: This is the first in a series on court reorganization. The author will discuss various other court reorganization and transitional problems in future issues of Popular Government.)

Introduction. Several amendments to the State Constitution were submitted to popular vote on 6 November 1962. All were approved, and formally became a part of the Constitution on 30 November 1962, when certified by the Governor to the Secretary of State. The most important of these amendments was an entirely new Article IV, The Judicial Department. The new Article provides for a reorganization of the judicial system of North Carolina, and directs the etsablishment of a system of District Courts to replace all of the courts below the Superior Court. The General Assembly is required to prescribe the details of the new system and put it into effect throughout the State by 1 January 1971. During the transitional period, it is important to realize that, while the new Article IV is *effective* in the sense that it is a part of the Constitution, it is not *fully operative* as yet in many respects. Whether or not a particular part of the new Article is merely effective, or both effective and operative, is a question of legal interpretation. Since several years will pass before all provisions of the new Article IV will be both effective and operative, consideration of some questions of interpretation of a constitution in transition may be in order.

Justices of the Peace No Longer Exempt from Double Office Holding

Oddly enough, the first major question to arise concerning court reorganization under the new Constitution sprang not from Article IV, but from a related section, Article VIX, Section 7.[1] This latter section, which prohibits double office holding, was amended to delete the exception therein in favor of justices of the peace.

Under the proposed system of District Courts the justice of the peace as a judicial officer is abolished. The new Article IV consequently makes no mention of this official and to be consistent, it was necessary to eliminate references to justices of the peace elsewhere in the Constitution. This was the purpose of the amendment to Article XIV, Section 7. While it may not have been foreseen by the General Assembly, at least in the immediacy of its impact, the result converted many local office holders into *double* office holders, a status forbidden by the Constitution, as amended.

The largest group of officials affected was local police officers, many of whom were also justices of the peace.[2] Appointment to the latter position was resorted to in order to permit police "desk officers" to issue warrants, and especially to do after normal working hours when JPs and other warrant-issuing officials are ordinarily unavailable.

In a ruling of 18 March 1963 to Mr. C. W. Everett, the Attorney General expressed the opinion that the amendment to Article XIV, Section 7 became effective (and operative) on 30 November 1963, that thereafter justices of the peace were not exempt from the double office holding provisions, and that a policeman-JP who renewed his oath to either office after that date automatically vacated the other office. To eliminate retroactive application of the amendment, the Attorney General further ruled that persons who held both police and JP offices prior to 30 November 1963 could legally continue in both capacities until the expiration of the term of one of the offices; thereafter, a choice of offices would be necessary.

Localities in which this situation exists may choose from a number of possible solutions to this problem. The use of existing justices of the peace for this purpose can be expanded. Since most JPs may not care to serve after normal working hours, or locate their

(Continued on page 19)

1. Art. XIV, Sec. 7. *Dual office holding.* "No person who shall hold any office or place of trust or profit under the United States or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, justices of the peace, commissioners of public charities, or commissioners for special purposes." The 1962 amendment deleted "justices of the peace."

2. A few *federal* office holders may be effected. G.S. 7-119, which authorizes JPs to accept a civil office under the United States, provided the duties thereof are confined to the county of residence, is now undoubtedly unconstitutional under the Attorney General's Ruling of 18 March 63, cited herein.

NEW DEVELOPMENTS IN PEACE OFFICER TRAINING

By JAMES C. HARPER, *Research Assistant*

(Editor's Note: The author served as Coordinator for the First Basic Peace Officer's School he describes in this article. In addition, Institute of Government Assistant Directors L. Poindexter Watts and Neal Forney and Research Assistant Perry Powell were among those on the school instructional staff. Further information concerning future schools for peace officers may be obtained by addressing the author or Ivan E. Valentine, Coordinator, Industrial Education Centers, N.C. Department of Public Instruction, Raleigh, North Carolina, or the director of the nearest Industrial Education Center.)

Law enforcement officials in North Carolina have been vitally concerned with a uniform and regular training program for peace officers for a long time now. But it was not until early this year that a basic course outline was devised for such a program. That outline was drawn up by a group of Chiefs of Police and other law enforcement officials at a conference held in Winston-Salem in late winter, and has been recently subjected to an acid test in a pilot program conducted at the Fayetteville Area Industrial Education Center during April and May.

The 120-hour *Basic Peace Officer's School* was based upon the outline shown in the table on this page.

The writer was privileged to conduct the initial school in Fayetteville from April 15 through May 10, under the sponsorship of the Industrial Education Center. The purpose of this note is to make known the results of this initial school and to bring to the attention of all interested officials and citizens of this State the prospects for future peace officer's training schools of a similar nature.

In the past—except for local, intra-departmental training programs conducted by various police departments—all formal police training in North Carolina has been carried on by the Institute of Government. While the Institute's programs include the State Highway Patrol, the Wildlife Resources Commission, the Board of Alcoholic Control, certain key officials within local police and sheriff's departments, and newly-elected sheriffs and their deputies, it has ever been impossible to bring to Chapel Hill *all* the peace officers from the cities and counties throughout the State. And it has ever been impractical for the Institute to take the schools out to the various cities and counties. Thus, the maority of the State's local law enforcement officers have been learning only from on-the-ob experience, and through whatever local training programs that have existed.

Although the chiefs of police and sheriffs who have devised in-service training programs for their men have done a remarkable job in providing instruction to improve the quality of their units, it is not difficult to see how such diverse and informal schools might be seriously lacking. At any rate, they cannot be enlarged within the local department to include students from other munuicipalities and counties where there is no organized training program.

Returning to the plans for a statewide peace officer's training school, one more difficulty has been the problem of procuring instructors. Since uniformity of material and instruction is vital to the proper administration of such a training program, a state-wide organization has been sorely needed, but until this time no seemingly workable solution had been found to the instructor problem. But now it appears that a solution has been found—at least in that uniform locations and sources of instructors have been fixed.

The Industrial Education Centers are especially adaptable to a police training program. The physical plants are ideally situated throughout the State, from a standpoint of accessibility to at least one city and several smaller communities and counties—all within commuting distance from the center. This situation alleviates the problems of housing, travel over long distances, and continued absences from home by the students. In addition, costs are greatly reduced.

Accessibility to at least one of the larger cities provides one solution to the problem of obtaining qualified instructors, particularly in the areas of substantive and procedural law. In those larger cities, as well as in many of the smaller ones, are local bar associations and generally a number of recent graduates of our law schools. And perhaps the best source of teachers for the substantive and procedural law courses taught in the law schools is the local bar association. It is the opinion of many, including one noted authority on police training,* that the recent graduates of the law schools are persons who are notably qualified to teach constitutional law, history of the law and courts, and the laws of arrest, search and seizure, and evidence. The reason advanced for this preference is that the most recent graduates are usually still keenly mindful of the academic approach to constitutional law—the foundation of the law enforcement officer's power and authority.

Chapter 14 of the General Statutes provides an excellent—indeed a vital—reference for instruction in elements of crime, both generally and on the offense-by-offense method used in this school. But, as in the areas of substantive law and procedure, the annotations to the decisions of the courts

(Continued on page 18)

Major Division		*Hours*
I.	Courts—Constitutional Law	10
II.	Elements of Crime	22
III.	Laws of Arrest	8
IV.	Evidence	5
V.	Laws of Search and Seizure	6
VI.	Motor Vehicle Laws	9
VII.	Liquor Laws	2
VIII.	Court Structure and Procedure	3
IX.	Techniques and Procedures of Arrest	3
X.	Law Enforcement Procedures	9
XI.	General Criminal Investigation	11
XII.	Special Courses	9
XIII.	Human Relations	11
XIV.	Juveniles	3
XV.	Jurisdiction of Agencies	3
XVI.	Weekly and Final Examinations	6
	Total	120

* Professor Richard A. Myren, Department of Police Administration, Indiana University. See *Police*, Vol. 3, No. 6, July-August 1959, p. 43.

Prof. John W. Horn, Department of Civil Engineering, N. C. State College, expounds on the ins and outs of streets and thoroughfare planning during one of the morning lecture periods. For a picture story of this two-week school in basic city planning methods and techniques, see the following two pages.

INSTITUTE OF GOVERNMENT PLANNING COURSES

One of the continuing problems of city government throughout the country and in North Carolina has been the adequate staffing of local planning operations. With the continued acceptance of planning as a local government function, the need for personnel schooled specifically in the methods and techniques of planning has increased rapidly, and the demand for planners has far outstripped the supply. The demand exists not only at the top, or director's level, but in subordinate positions as well.

In a continuing effort to meet the demand for trained technicians, a fourth annual two-week school in basic city planning methods and techniques was completed at the Institute of Government early this spring. The course is oriented primarily toward the practical aspects of planning design and implementation, and is limited to ten students in order to provide a more individualized type of instruction. Major subjects covered included the organization and administration of a planning program; population, economic and land-use research and survey techniques; the design of comprehensive plans (including thoroughfare planning); and the use of such techniques as zoning, subdivision control and urban renewal to implement community plans.

The course is an intensive one, consisting of more than 100 hours of lectures, field surveys, and design problems scheduled for completion within the two-week period. The "laboratory" for the last two such courses has been the Town of Hillsboro, some 14 miles from Chapel Hill, in which field surveys were undertaken, and for which student demonstration plans for land use, major streets, and historic areas were completed.

Basic instruction was provided by Robert E. Stipe, Philip P. Green, Jr., and George H. Esser, Jr., of the Institute staff. Guest instructors included R. Albert Rumbough, Fayetteville, N. C. Planning Director; Prof. John W. Horn, Department of Civil Engineering, N. C. State College; Ronald F. Scott, Greensboro, N. C. Planning Director, and Robert G. Barkley, Greensboro, N. C. Urban Redevelopment Director.

Here a student begins a study of land capability, in which developed properties in Hillsboro are identified and in effect "withdrawn" from the pool of land available for new development.

Ronald Scott, Greensboro Planning Director, discusses the role of the planner in formulating plans for urban redevelopment and renewal.

Under the watchful eye of instructor Robert E. Stipe of the Institute staff, students Virginia C. Forrest of Hillsboro and Lee H. Thomas of Rock Hill, South Carolina, undertake the precise measurement of land use areas through the use of the polar planimeter.

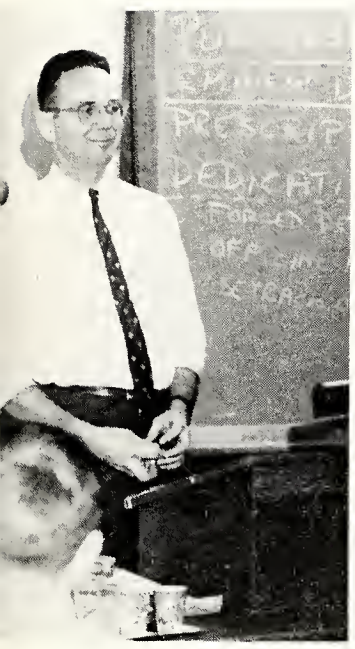
This photograph illustrates one of the practical techniques for the measurement and analysis of land use in a city, in which similar uses of property are "collected" district-by-district, prior to actual measurement.

PLANNING COURSE

Ron Poole, Planning Engineer II with the N. C. Department of Highways is shown conducting an analysis of street and highway use in Hillsboro.

Students Poole, Mat Davis of the Greensboro Planning Department, and Jackie Skipper of the Division of Community Planning, argue the merits of alternative proposals for development of major streets in preparing demonstration sketch thoroughfare plan for Hillsboro.

Rufus Coulter of Durham, N. C., defends his plan for the expansion of the Hillsmoro business district before his classmates. Plan for the business district was tied in with a complimentary plan for the preservation of historic sites and structures in central Hillsboro.



As the basis for preparing sketch land development plans, students were required to prepare estimates of the amount of land needed for the expansion of residential, commercial and industrial districts in Hillsboro. Here, Ron Poole answers criticism by classmate and argues the advantages of team's land use and thoroughfare plan.

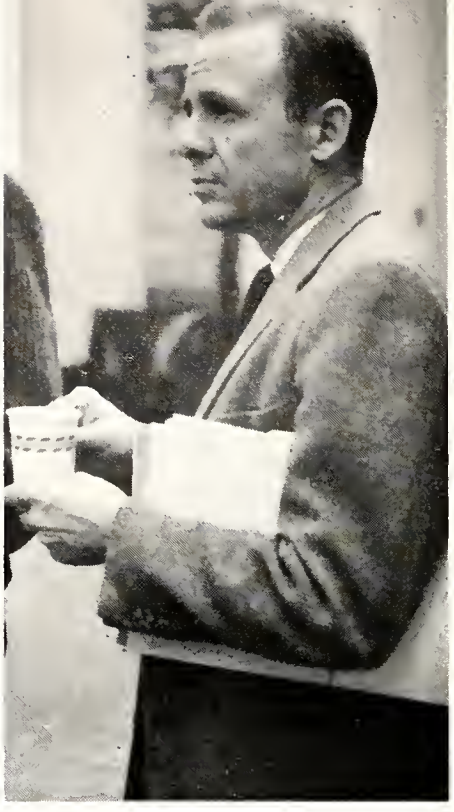
Assistant Director Philip P. Green, Jr., senior member of the Institute of Government's planning staff, lectures on legal and administrative problems involved in executing community development plans.

R. Albert Rumbough, Fayetteville, N. C. Planning Director, and Institute staff member Robert E. Stipe explain a point in subdivision design, following a critique and review of student subdivision designs.

Jackie P. Skipper of the Division of Community Planning, N. C. Department of Conservation and Development (left) and Rufus G. Coulter of the Durham, N. C. City Planning Department are engaged in the compilation of a map showing land availability in the Hillsboro area.

Lee H. Thomas, Rock Hill, S. C. Planning Director; Don Fetner, City Engineer of Melbourne, Fla., and Rufus Coulter of Durham, N. C., put finishing touches on survey of existing land uses in and around Hillsboro. The land use survey, preparation of maps, and tabulation and analysis of uses was completed in the short space of two days and nights.

This cross-section of county accountants show concentration and deep interest in the class observation of Institute Assistant Director Henry W. Lewis.



Commissioners and accountants continued the discussion of their governmental responsibilities, even at coffee breaks. In the picture above Institute of Government Assistant Director Warren J. Wicker, teaching materials under arm and coffee cup in hand, ponders an astute question before giving his answer.

A segment of the county commissioners attending the School for County Commissioners and County Accountants is shown here as they listen to Institute Assistant Director George H. Esser, Jr.

INSTITUTE SCHOOLS MEETINGS AND CONFERENCES

Here Assistant Director Robert G. Byrd of the Institute of Government discusses a fine point after class with County Commissioner Horace C. Guthrie of Northampton.

The recent Institute of Government School for Coroners and Medical Examiners is reported by James C. Harper below. This shot shows the coroners and medical examiners in the midst of a lively discussion during the school.

THE CORONER SYSTEM:

CONFLICTS BETWEEN LAW AND PRACTICE

By James C. Harper, *Research Assistant*

The coroner system is as old as the common law, but somewhere along the way various practices have developed without sanction in the law. The result is that there currently exist several significant conflicts between the practice of the coroner and the law under which he must perform his duties. The law has changed with the times as medical science has made inroads upon the old methods of investigating death, but the statutory limitations upon the power of the coroners have, for the most part, remained unchanged.

Areas of Conflict:

1. Jurisdiction of County Coroner

The first area of conflict surrounds the very core of the coroner's jurisdiction. One statute[1] provides that the jurisdiction of the county coroner is invoked "immediately upon information of the death of a person within his county under such circumstances as, in his opinion, call for investigation. . . ." At another place in the statutes[2] it is provided that the duty of the coroners to act arises when "it is made to appear . . . that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person . . ." A third provision[3] states that "Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he [the coroner] shall go to the place where the body of such deceased person is. . . ." Read together, the reasonable interpretation of these three statutory provisions is that the coroner *in the county where the death occurs* is charged with the responsibility of investigating, when it appears that there probably was a criminal act or default involved. For example, when a person is shot, poisoned, or dealt a mortal blow in Durham County and then removed to the North Carolina Memorial Hospital in Orange County where he later dies, the coroner in Orange County should investigate the death. The practice is otherwise. In such a case, the Durham County Coroner is called. Similarly, if a person is mortally wounded in any other county in the State, and later dies in a hospital in a county other than the one in which he was wounded, the coroner in the county where the wound was given is generally called to investigate the death.

There are arguments favoring both the law and the practice. On the side of the law, the coroner in the county where the death occurs is most readily available; he usually can go immediately to the place where the body is, as the statute directs, to investigate. A jury may be readily obtained without the delay and expense involved in traveling from a distant county. And since usually there are medical experts in attendance upon such deaths, they are readily available to testify as to the cause of death. On the other hand, once the cause of death is established, any other witnesses are generally in the distant county where the injury that caused the death was incurred. Nevertheless, the coroner may, by affixing his seal, cause his process to be served anywhere in the State[4] and thereby obtain any witness or accused person, even though he or she may be in a distant place.

On the side of the practice, the most favored argument is that the coroner in a county such as Orange—the site of the North Carolina Memorial Hospital—would be burdened with many investigations and inquests over the bodies of persons who were residents of other counties, and who were dealt a mortal wound in another county. This, it is stated, would cause Orange County (or other counties in similar situations) to bear the expense of many coroners' inquests where the criminal act or default causing the death was committed in another coun-

1. N.C. Gen. Stat. Sec. 152-7(6) (Supp. 1961)
2. N.C. Gen Stat. Sec. 152-1 (1952)
3. N.C. Gen. Stat. Sec. 152-7(1) (Supp. 1961)
4. N.C. Gen. Stat. Sec. 152-11 (1952)

ty, and where the subsequent trial of a person accused of criminal homicide would be held in the other county. Thus the effect would be that a county where a large medical center is located would be paying for the investigation of deaths for other counties. It may readily be seen that there is merit in that argument. But suppose a mortal wound is given in Graham or Dare, and the victim is transported to Orange County where he subsequently dies. It is submitted that the expense involved in the investigation of the death by the coroner of the distant county, if he were required to travel to Orange County with his jury and the witnesses, would be even greater. There would obviously be a delay in the investigation of the death, and considerable expense incurred in transporting the jurors and witnesses. But the law would not be served if the body were packed up and shipped back to the distant county before an investigation was conducted by the coroner, since the statutes plainly state that the coroner must act immediately upon information of the *death of a person within his county*, or when the *body of a deceased person has been found within his county*.[5] (Emphasis added.) The result is, under the present state of the law, that the coroner in the county in which the deceased drew his last breath of life bears the responsibility for investigating the death.

2. Signing of Death Certificates

The second area of conflict, and perhaps the more troublesome, involves the signing of death certificates. While there is nowhere an *express* provision which authorizes or directs the coroner to sign a death certificate in cases where he has held an inquest, the practice is for him to certify the cause of death in such cases; that is to say, in the ordinary coroner's case where a criminal act or default on the part of some person is involved. But the more significant problem arises in cases of unattended death not involving the probability of such criminal act or default as would give rise to the exercise of the powers of the coroner.

The statute[6] directs the funeral director or person acting as such to notify the local registrar of vital statistics of all deaths which have occurred without medical attendance; then the local registrar must in turn inform the local health director (either county or district) and refer the case to him for "immediate investigation and certification." The statute further states that the local registrar is to notify the coroner, in lieu of the local health director, only in those instances in which the coroner is a physician and has been appointed by the board of county commissioners to perform such duties in lieu of the local health director.[7] Thus a coroner who is not a physician, or a coroner who is a physician but has not been appointed by the board of county commissioners to investigate and certify unattended deaths, is not authorized to sign a death certificate certifying to cause of death. The only exception is where there is no county or district health director. Only in such rare instances may the layman coroner sign a death certificate.

Where there is a medical examiner[8] in the county, however, he is specifically authorized to investigate and certify all unattended deaths which occur within his county.[9] But since there are currently only two counties[10] in the State which have formally adopted the medical examiner provision, there has been little done about a solution to the problem concerning death certificates in cases of unattended death.

In the majority of the remaining ninety-eight counties, the practice is to notify the coroner of unattended deaths. The coroner then investigates to determine the cause of death, and signs the death certificate, even though he may have no authority to do so in most cases. There are many who feel that this existing practice is the most practicable way of handling the problem of unattended deaths.

Very few physicians would sign a death certificate without first having examined the body. As a matter of fact, it seems inconceivable that any physician would do so. Therefore, if the county or district health director is required to examine the body of every person who has died in his county or district unattended by a physician, many feel that it would be improbable—at least in the larger and more populous counties or in the areas where the health director covers a district—that he would have time to perform his function of being responsible for the public health programs in the county or district.

3. Notification of Coroner

A third problem exists in the coroner system under the present state of the law with respect to notification of the coroner in unattended deaths, or when it appears that there has been a criminal act involved. Except in New Hanover County,[11] and in counties where there is a medical examiner, there is no provision in any law in North Carolina which requires that the coroner be notified in either instance. In order that he be able to discharge his duties, the coroner should be notified in every case where it appears the deceased was the victim of criminal homicide, or was killed as a result of the culpable negligence of another person. But there is no provision in which it is stated that he must be called. Fortunately, in that respect, the practice throughout the State is for the private citizen who discovers a body, or the law enforcement agency which is called to investigate a death, to notify the coroner. But the practice goes too far. The coroner is called to investigate unattended deaths as to which there is not the slightest suspicion of crime, and as pointed out earlier, he acts without authority in investigating and certifying deaths in the latter category.

The coroner is a judicial officer and is required by statute[12] to hold an inquest and preliminary hearing in every case where it appears that a deceased came to his death as a result of the criminal act or default of another. This is true even though the sheriff or other law enforcement officers have already investigated the death, arrested an accused person, and caused a preliminary hearing to be conducted by a magistrate. This is true even though some person has admitted the felonious slaying of the deceased. The result in many cases is a duplication of effort. On the one hand the case is investigated by the local law enforcement agency and the accused bound over by a magistrate; on the other hand the coroner must come along right on the heels of the magistrate and conduct another judicial proceeding, if he complies with the law in its present state. But if the coroner gets the case first, his preliminary hearing is in lieu of all other preliminary hearings.[13]

Therefore, under the present state of the law, since no one is required to notify the coroner—even in obvious murders—it is not inconceivable that the coroner could be required to conduct an inquest over a person whose malefactor was already serving a sentence! This leads to the final problem, which is complex indeed.

The law provides[14] that the coroner must take the jury to the "place where the body is" and convene an inquest. But suppose the body has been interred? Since the coroner has no authority to order an exhumation, this means that he must transport the

(Continued on page 20)

5. Notes 1 & 2, *supra*.
6. N.C. Gen. Stat. Sec. 130-47 (1958)
7. *Ibid.*
8. N.C. Gen. Stat. Sec. 130-197, -193 (1958)
9. Note 6, *supra*.
10. Guilford and Transylvania Counties
11. Pub.-Loc. Laws of 1921, c. 229
12. N.C. Gen. Stat. Sec 152-7(1) (Supp. 1961)
13. N.C. Gen. Stat. Sec. 152-10 (1952)
14. N.C. Gen. Stat. Sec. 152-2 (1952)
15. *Gurganious v. Simpson*, 213 N.C. 616 (1938)

JACKSONVILLE DEVELOPS ITS WATER SUPPLY

By W. Thompson Cox
Jacksonville City Manager

Editor's note: This article is based on a guest lecture given earlier this spring by Mr. Cox in a seminar on Water Resources Development at the University of North Carolina Department of Environmental Sciences and Engineering. Assistant Director Milton Heath of the Institute of Government shares responsibility for teaching the seminar with Assistant Professor J. K. Sherwani of the Department.

The City of Jacksonville, North Carolina, population 15,000, is in Onslow County approximately 50 miles north of Wilmington, North Carolina. It is located on New River approximately 10 miles from the Atlantic Ocean. New River rises within Onslow County approximately 20 miles northwest of Jacksonville where the water drains from swamplands. The river, as it borders Jacksonville, is nothing more than a tidal estuary containing brackish water. In short, there is no usable surface supply of water for Jacksonville. The water above Jacksonville in the New River originates in the swamplands and is not suitable as a surface supply for domestic use.

Yet Jacksonville has an abundant supply of water. The question was how best to utilize and develop the available water resources to meet the needs of a rapidly growing community.

There is an abundant supply of ground water available immediately in Castel Hayne limestone underlies the the Jacksonville area, inasmuch as entire region. The water immediately in the Jacksonville area has a very high content of dissolved solids and an unusually high amount of hydrogen sulfide gas; therefore, the residents have been plagued with both taste and odor in their water. This is common to all ground water coming from the Castel Hayne limestone which, generally, underlies most of coastal North Carolina.

The original water supply in Jacksonville was obtained from the Castel Hayne limestone formation, there being one original well and through 1960 the system had grown to a total of five wells. The present plant facilities were built with the aid of Federal Defense Impact Funds during the early 40's. This was due to the great influx of military personnel and dependants moving into the area with the construction of Camp Lejeune, Marine Corps Base.

The existing treatment plant consists of aeration and chlorination of the water supply.

The water from the Castel Hayne limestone has a total calcium hardness of 260 parts per million. With the growth of the City and the subsequent demands for water taken from the Castel Hayne limestone aquifer the chloride content of the water began to gradually increase in the past three to five years. A study of the past records indicated that the salt water intrusion was lateral as against the possibility of being vertical.

In 1960 the city fathers dug into the problem of expanding the city's waterworks in earnest. Initially, consideration was given to a proposal to locate two additional wells between the present well field and New River, the source of the lateral saline intrusion. In addition, this proposal contemplated that four additional wells be located at the northern edge of the city approximately two and one-half miles from the existing well field. All of these wells were to be located in the Castel Hayne limestone formation. It also involved the addition of softening facilities at the existing treatment plant and construction of a new and complete filtration plant, including softening, at the site of the four new wells.

Upin arriving in Jacksonville in November 1960, I gave immediate study to the water system expansion needs and found very serious doubt in my mind as to the feasibility of the program which was already underway. Being a complete neophyte, insofar as ground water supplies in Eastern North Carolina are concerned, I, of course, felt it discreet to proceed with extreme caution in expressing my doubts.

With the aid of the Water Department's personnel we went back into the records to make the determination as to the salt water intrusion in the existing well field. At the same time we set about trying to determine if a surface supply of water was available.

Located 12 miles west of Jacksonville, at the highest elevation in the county, is a 25-acre natural lake. We obtained samples of water from the various depths of Katherine Lake and upon analysis found that this water would be ideal as a surface supply provided it was put through a complete treatment process. We had visions of constructing a filtration plant at Katherine Lake and transporting the finished water 12 miles into Jacksonville. Katherine Lake has no surface overflow and no apparent feeding streams. This gave me some concern and therefore brought about further investigation as to the geological formations in that particular area. To determine the possible capacity of available water from Katherine Lake we installed portable pumps and pumped from the lake at the rate of four million gallons per day. This caused very little drawdown and we, therefore, considered that Katherine Lake might be good for a surface supply of three to five million gallons per day of raw water. We knew that this would not be ample for the anticipat-

ed growth of the city. New River is only two miles away from Katherine Lake. An impounding dam and intake would supply us with an additional three to five mgd of water. We studied the possibility of lifting the water from New River by pipeline for approximately one mile, then having it flow through open trench one mile; thereby removing the swamp water characteristics from the water, prior to its entering our proposed raw water reservoir, Katherine Lake.

During the course of our study we talked with many of the "old-timers" in the Katherine Lake area. Just before satisfying ourselves that this would be an adequate arrangement, we heard one older citizen mention that when he was a boy, Katherine Lake became so low that he was able to walk all the way across the lake on dry land, due to a ridge approximately in the center. This singular fact caused much concern. In discussing this with the District Geologist, Department of Interior, we were convinced that Katherine Lake is a "sink hole." At any time a slight movement in the underlying geological formations might remove the plug from this natural bathtub and drain it completely. This "fine source" was OUT.

In our search for an adequate supply of naturally soft, potable underground water we had two facts on which to proceed. *Fact 1*, 15 miles west of Jacksonville at Richlands the source of water supply is from deep wells. These wells tap the Pee Dee and Black River geological formations of cretaceous age and supply naturally soft water of highest quality. *Fact 2*, during 1957 the City of Jacksonville had two test wells drilled to a depth of 900 feet. The information from these wells proved that the cretaceous age formation lay at a depth of 900 feet under Jacksonville and contained salt water.

Based on these two facts we made the assumption that at some point between Richlands and Jacksonville it might be possible to obtain water from this formation in an adequate supply and economically transport it by pipeline into Jacksonville. We enlisted the aid of the Ground Water Branch of the U. S. Department of Interior to determine at about what point we might be able to obtain this water. We were advised to drill a test well eight miles west of Jacksonville to gain further geologic and hydrologic data for a more accurate location. The results of this test well showed that we could safely come two miles nearer to Jacksonville.

Based on this information we laid out the line of strike on a U. S. Geological Survey Map and then determined property owners and land lines in the area. The proposed well field was put on paper at what we considered to be the spot where land acquisitions would be possible. Well site No. 1 was acquired on the basis of an option to purchase, provided we found the type of water we wanted. This, in essence, became our second test well to verify the determinations that had been made from test well No. 1. When test well No. 2 was completed all of our findings were confirmed and this site was purchased in fee simple, together with a right-of-way easement for access to the highway.

As soon as well No. 1 had been developed and pumping tests run we could then determine well spacing. After this determination was made we laid out our sites for seven wells spaced 1,300 feet apart, running in a northeast direction from well No. 1. We found that, due to the preliminary layout of our proposed well field, we would be dealing with only two additional property owners in the acquisition of the sites.

This well field site is also ideal for any future expansion to the southwest. The first 3,000 feet extending to the southwest belongs to one landowner, the next 3,000 feet to another. This makes it possible to extend the well field to the southwest, where no sites have yet been acquired, for the installation of four wells and be dealing with only two landowners.

The landowner where well site No. 2 is located held title to a tract of land that had no public road frontage. An old tram road, abandoned after the virgin timber was removed from the land, was partly grown up but provided an excellent route for access road and pipeline installation. This road, when improved, also provided a means of access from the highway to the landowner's property.

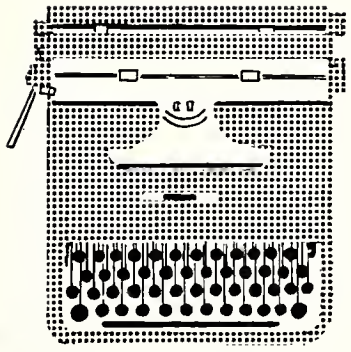
The second landowner's property had access to a public road which became a dead-end at his boundary line approximately three miles from the paved highway. We sold him on the idea of permitting us to extend the road, passing our proposed well sites, out to the paved highway via the old tram road. The entire route is being constructed according to State highway requirements, thus obtaining State highway maintenance and a State road through both owners' property. This gives both owners State road frontage of about three-fourths of a mile. Another advantage to landowner No. 2 was that the distance to the highway by the new route is only one and one-half miles as opposed to the old three mile route. This he considered was an advantage. Landowner No. 1 is a white resident. Landowner No. 2 is a colored farmer.

The greatest amount of time spent in the acquisition of lands was that of visiting with the farmer in order for him to understand that these improvements would be to his advantage. After about eight months we were able to gain the confidence of the farmer and his children, but had made little headway with his wife. The farmer had indicated that he would give the four well sites in return for the benefits derived from the new State maintained road. His wife could only see dollar signs; as a result we paid $1,200 for the four sites, a 60-foot wide right-of-way three-fourths of a mile long, plus an additional easement 25 feet in width for a pipeline right-of-way and access road approximately three-fourths of a mile in length.

The 16-inch cast-iron transmission main, capable of transporting 3,000 gpm of water, was installed along and in the highway right-of-way. At several locations in the six-mile route the Highway Department had not acquired rights-of-way easements. There also arose some question as to whether the Highway Commission could grant the City the use of the right-of-way which had been obtained for highway purposes. This query originated from a young and energetic attorney who owned land on the north side of the highway approximately one mile from the well field. He passed the word that his deed went to the center line of the road and no right-of-way had been obtained over his land. We, therefore, located the pipeline on the south side of the highway and heard no more from the young attorney. Even though there was some "scuttlebutt" about possible difficulties in using the highway right-of-way, we obtained the standard highway encroachment agreement from the State, plead our ignorance to any discrepancies in their acquisition of rights-of-way, and had no difficulty whatsoever in getting the pipeline all of the way into the City.

An alternate well field site was considered in this study, that being on the line of strike approximately three miles northeast of the site chosen, on the opposite side of New River. At this site the line of strike is intersected by a secondary road leading from Richlands to the northern section of Jacksonville. It is only three miles to this location from our one-half million gallon elevated storage tank located at the end of the feeder main system. The reason why this site was not developed was that there are relatively few houses along this secondary road between the line of strike and the City. At sometime in the future,

(Continued on page 20)



● NOTES FROM . . .

CITIES AND COUNTIES

CITIES

City Manager C. D. Pickerell has been notified by Congressman Alton Lennon that the SOUTHPORT area has been declared a federal disaster area by the Department of Labor and made eligible for federal funds due to the high unemployment rate. The area is considering using the funds, which are on a 50-50 matching basis, for drainage and paving. In January a survey showed that 16 per cent of the area's employable persons were out of work.

* * *

BREVARD is enjoying a period of unprecedented growth, but not without problems. The Board of Aldermen reports that something must be done soon about the water supply, both for sewage and consumption. Officials are considering the installation of a water meter system and the construction of a $250,000 sewage plant.

* * *

Spring floods made the news again when officials in NORTH WILKESBORO reported a rampaging Reddies River clogged filter screens, closing the town's raw water pumping station.

* * *

Winning praise from State officials for a job well done was KERNERSVILLE'S Sewerage Disposal Superintendent Johnny Nelson. Nelson and his staff were cited for their work in protecting water resources of the State.

* * *

TARBORO, NASHVILLE, and ROCKY MOUNT have become the first municipalities in the Tar Heel State to have public shelters stocked under the National Fallout Shelter Provisioning Program. Over 15 tons of goods were placed in the areas which have a capacity of 3,074 persons.

* * *

MOUNT AIRY Police Chief W. H. Sumner has announced that Lt. E. V. Marion, a 15-year veteran of the force, has been promoted to captain in charge of Traffic Control.

* * *

Property owners in the Osceola Lake Community near HENDERSONVILLE have developed a new method of dealing with vandals who have been causing considerable property damage. Most of the residents of the area have been deputized to patrol and make arrests through a protective club.

* * *

After an uncontrollable forest fire threatened the town of FRANKLIN, *The Franklin Times* editorialized on the dire need for a central fire control and communications network and called on the county commissioners to give the idea a boost.

* * *

Matching federal funds are expected to help after POLKTON voters authorized the issue of up to $90,000 in bonds to construct and install a public water system.

* * *

FAYETTEVILLE voters have approved bond issues totaling one million dollars for electric service and sanitary sewers. Neither will require increases in utility rates or city taxes.

* * *

After years of a "hit and miss" system WINSTON-SALEM Mayor John Surratt has announced that the city has invoked a new paving program on a priority basis. The goal is to pave all dirt streets within 10 years, with those most in need of paving coming first. Formerly a street was considered for paving when a petition had been received.

* * *

Getting in step with a move which has swept many of the nation's businesses and municipal governments, the RALEIGH City Council voted to raise the mandatory retirement age of firemen and policemen from 62 back to 65.

* * *

After citizens of ROXBORO approved a whopping $850,000 bond improvement issue, the city will be getting a new city hall at an expected cost of $225,000. The remainder of the money will go for sewer and water improvements.

* * *

Fire fighting will become easier soon after delivery of a new fire truck to the town of KENLY. The Town Board of Commissioners recently approved the purchase of a $12,445.42 vehicle.

The City Council of KINSTON has received a recommendation from its Advisory Committee that a 25-acre lagoon unit for sewage disposal be built at a cost of $200,000. This pilot project would test the possibility of using the system for the entire city. It was pointed out that the lagoon system could save the city as much as $1,500,000 if successful.

* * *

Citizens of WEST END have approved a special school tax supplement not to exceed 30 cents on the $100 valuation.

* * *

WINSTON-SALEM officials are anxious to get a new housing code passed. Until it is passed, the city cannot obtain funds for Urban Renewal from the federal government.

* * *

A heart attack has claimed the life of 14-year veteran policeman Thomas Hale. The MOUNT AIRY officer was stricken while walking his beat.

* * *

The DURHAM City Council has asked the legislature to clear up the law to enable it to offer a reward. Both county and city officials sought the action after learning neither had authority to use public funds as proffered bounty.

* * *

Authorization for the issue of up to $250,000 in water, storm, and sanitary sewer bonds has been passed by the SCOTLAND NECK Board of City Commissioners. The town expects matching funds from the Accelerated Public Works program to provide the remainder of the estimated $462,000 project.

* * *

Congressman Herbert C. Bonner was present to open the new post office building March 24 in OAK CITY.

* * *

Voters in the town of CATAWBA passed a $77,000 bond issue for a new sewer plant. The new plant was necessitated by the backing of water by new Lake Norman into the old one.

* * *

JACKSONVILLE police force's loss became Burke County Sheriff Depart-

(Continued on page 22)

BOND SALES

From February 5, 1963, through April 23, 1963, the Local Government Commission sold bonds for the following governmental units. The unit, the amount of bonds, the purpose for which the bonds were issued, and the effective interest rates are given.

Unit Cities:	*Amount*	*Purpose*	*Rate*
Albemarle	$ 96,000	Electric System	2.48
Blowing Rock	100,000	Sanitary Sewer	3.64
Charlotte	8,000,000	Water, Sanitary Sewer, Street Land, Airport	2.91
Clayton	270,000	Sanitary Sewer	3.35
High Point	2,000,000	Water, Sanitary Sewer	2.77
Pittsboro	90,000	Sanitary Sewer	3.72
Raleigh	4,010,000	Sanitary Sewer, Fire Station, Public Library, Municipal Auditorium, Street Improvement	2.84
Roxobel	60,000	Water	4.02
Salisbury	1,315,000	Sanitary Sewer	2.98
Siler City	630,000	Water, Sanitary Sewer	3.43
Southern Pines	445,000	Sanitary Sewer, Water, Public Swimming Pool, Public Library	3.19
Tarboro	60,000	Municipal Building	2.64
Thomasville	1,025,000	Sanitary Sewer	3.08
Williamston	442,000	Sanitary Sewer	3.25
Zebulon	392,000	Water	3.85

Unit Counties:	*Amount*	*Purpose*	*Rate*
Caldwell	$ 90,000	School	2.43
Durham	3,020,000	School, County Courthouse and Building	2.77
Edgecombe	600,000	Courthouse	2.85
Forsyth	2,000,000	School Building	2.05
Northampton	750,000	School Building	3.08
Union	1,000,000	School Building	2.98
Wayne	225,000	Road Bridge, General Refunding, Refunding School	2.91
Wilson	2,420,000	Public Hospital	2.91

– Peace Officer Training –

(Continued from page 8)

are equally as necessary to proper instruction; and again a person with a legal education is best qualified to teach. Therefore, over one-half of all the instruction given in the Fayetteville school was done by members of the legal profession. Local attorneys responded willingly, and their work was eminently satisfactory.

Similarly, practically all the other courses included in the outline require persons who are highly trained and experienced in their respective fields. General criminal investigation is best handled by members of the federal and state Bureaus of Investigation, and the services of members of those agencies were made available to us. As a matter of fact, no teaching was done at Fayetteville except by such highly trained and experienced persons.

Almost every larger city police department contains experts in one area or another. Heads of identification bureaus make excellent instructors for such courses as fingerprinting and identification of persons; chiefs of police and desk sergeants do a similar job with records and report writing. Each of the larger fire departments contains at least one person who is qualified to teach a course in first aid and emergency treatment of the injured. Senior high schools and community colleges are sources from which instructors in oral communications and applied psychology may be obtained.

The Department of Motor Vehicles, the Board of Alcoholic Control, and the Insurance Commissioner provided the Fayetteville school with instructors for the courses concerning their respective departmental functions. In every area where there is an industrial education center there is also either a juvenile court judge or a clerk of superior court who acts as juvenile court judge, who may be called upon to discuss the subject of juveniles and related problems. Although not called upon in Fayetteville, it has been suggested by the framers of the peace officer's training program that county attorneys and district solicitors also might be asked to lend a hand in planning and conducting such schools.

Technical courses, such as weapons and firearms safety, pursuit driving, and defensive tactics, require highly trained and skilled instructors. Skilled instructors are available in the State Highway Patrol, Protection Division of the Wildlife Resources Commission, and many of the city police departments. Considering the spirit of cooperation which was exemplified by the various departments called upon for our instructors, it is suggested that there is a wealth of qualified persons in other North Carolina law enforcement departments who could be obtained for the asking, given sufficient notice.

The matter of obtaining texts and library references for student use posed the only other real problem encountered in the Fayetteville school. However, most instructors are willing to prepare and supply lecture notes and course outlines for student use. A file has been prepared of all such materials used in this school. Similarly, and for permanent use and retention by the students, we were able to obtain copies of official publications from the Institute of Government (such as the *Law of Arrest*, 2d. Edition, by Roy G. Hall, Jr.), and other departments within the State, and the Michie Company reprints of the motor vehicle and liquor laws. The cost of these materials is nominal. The only vital areas for which we were unable to provide adequate text material were constitutional law and the laws of search and seizure. However, it is hoped that in the near future we will be able to have prepared at least some introductory and outline material on those subjects.

On the whole, the experience at Fayetteville was indeed gratifying. Twenty-one students, including municipal police officers and deputy sheriffs from several cities and counties within the reach of the industrial education center, were graduated. Their attitudes, participation, and comments during and at the end of the school indicated that a step had been taken in the direction of obtaining a training program which was both needed and wanted.

Finally, there is the matter of cost to the departments which send their members to the schools. We are pleased to state that it is nominal. Although the fees for supplies and registration might vary somewhat between different industrial education centers, the cost-per-student at Fayetteville

(Continued on page 23)

JUNE SCHOOL FOR NEW MAYORS AND CITY COUNCILMEN

Three 2-day schools for newly-elected mayors and councilmen are being sponsored in mid-June by the Institute of Government with the cooperation of the North Carolina League of Municipalities.

Schools are scheduled at the Institute of Government in Chapel Hill on June 13-14, at the Palace Motel in New Bern, North Carolina on June 17-18, and at Asheville-Biltmore Junior College in Asheville on June 20-21. All newly-elected mayors and councilmen are urged to attend, and they may select the location which is most convenient for them.

The program has been designed to give newly-elected municipal governing board members a brief but comprehensive review of their primary duties and responsibilities. Instruction will be handled by staff members of the Institute of Government and the North Carolina League of Municipalities.

Subjects to be covered include the general functions and organization of municipal governments, the responsibilities of city councils and town boards and their relationships with managers and other administrative personnel, the financing of municipal government in all its aspects, personnel policies and administration, and the responsibilities of the governing board in city planning.

Each school will begin at 10:00 a.m. on the morning of the first day and end at 4:00 p.m. in the afternoon of the second day. No instruction has been scheduled for the evening of the first day in order to make commuting convenient for as many persons as possible.

A detailed program is being prepared and will be mailed to the mayors and governing board members of each city and town in N. C.

—Court Reorganization—

(Continued from page 7)

offices convenient to law enforcement activities, this may be an impractical suggestion. Additional justices may be appointed by the resident superior court judge, under G.S. 7-115. Also firemen, who have been held to be *employees*, as distinguished from *officers*, may be appointed JPs, to insure after-hours availability of a warrant-issuing official, but this is not a favored solution, since a fireman may have little or no qualifications for the warrant-issuing function, and it may interfere with his primary fire-fighting duty. It must be kept in mind that any solution based on use of JPs is necessarily a temporary one, as the days of JPs are numbered.

If there is a local criminal court established pursuant to a general law, and there are many of these,[3] the solution may be simpler. The clerks and deputy clerks of these courts are already empowered by the statutes establishing these courts to issue warrants. Appointment of additional deputy clerks may ease the difficulty in these localities. Where the local court has been created by a special Act of the legislature, reference to the language of the particular Act is necessary to ascertain whether the clerk has warrant-issuing authority. Justices, most judges, and mayors may also issue warrants, (G.S. 15-18), but these officials are not likely to offer a solution to the present problem.

Finally, special or local legislation may be sought to authorize local police officers to issue warrants.[4] This last solution is a poor one—as is, indeed, the policemen-JP practice—because it combines a judicial function and a law enforcement function in the same official. This disadvantage can be partially alleviated by providing in the special Act that a warrant cannot be served by the officer who issued it. A recent example of this type of special legislation is Chapter 133, Session Laws of 1963, enacted 2 April 1963 for the city of Roanoke Rapids.

Consideration will be given in a subsequent article to the constitutionality under the new Constitution of special or local legislation affecting the establishment of inferior courts.

3. Municipal Recorder's Court, G.S. 7-200.1; County Recorder's Court, G.S. 7-231; Municipal-County Court, G.S. 7-240; General County Court, G.S. 7-274; District County Court, G.S. 7-302; County Criminal Court, G.S. 7-395; or Special County Court, G.S. 7-440.

4. Apparently this practice is constitutional, State v. St. Clair, 246 N.C. 183 (1957); see also State v. Furmage, 250 N.C. 61, (1959), and cases cited therein.

ROCKY MOUNT HOUSING PROGRAM ORIGINS

Low-cost community housing projects have their origins in various ways. But it seems that the idea for the Rocky Mount project came directly from an article in an issue of *Popular Government* published fourteen years ago. While Bill McIntyre, then an insurance and real estate man in Rocky Mount, was "cooling his heels" in the ante-room of the city manager's office, he happened to pick up a copy of the September-October 1949 *Popular Government* from the table and read an article by William B. Cochrane on "How to Start a Municipal Low-Rent Public Housing Project." McIntyre wondered why Rocky Mount shouldn't have such a project. So, when he returned to his home, he telephoned the regional office of the FHA, then in Richmond, Virginia. From that chance reading of the *Popular Government* article and the follow-up telephone call came the start of the Rocky Mount program, which now comprises 520 dwelling units in which some 3,000 families have lived over the years.

The story came to light when Ruth L. Mace, Institute of Government Research Associate, invited McIntyre, now Executive Director of the Rocky Mount Housing Authority, to appear as a panelist on public housing at the Sixth Annual North Carolina Planning Conference. McIntyre took the occasion to tell her how Rocky Mount's model program was born out of his inspiration from the Cochrane article. Mrs. Mace wrote Cochrane, now Administrative Assistant to United States Senator B. Everett Jordan, to let him know how well he had laid his handprint on the sands of time.

- Coroner System -

(Continued from page 14)

jurors to the grave, and there convene his inquest. Such a move, in modern times, seems to be somewhat absurd. Moreover, there are many cases of death which do not, at first blush, arouse a suspicion of homicide in the average man. Unless the coroner *first* suspects a criminal act or default, he cannot order an autopsy.[15] What then is the solution to a case where at first there was nothing to give rise to a suspicion of a crime, and then, after burial, such suspicion is aroused?

The coroner may investigate any leads, and then if he is satisfied that there is reason to suspect a criminal act or default, he must take his jury to the graveside and convene an inquest. He must then, if it seems to be necessary to exhume the body for a post-mortem, turn to the solicitor for the authority to cause an exhumation and post-mortem examination.[16] In the meantime, there is delay and a greater chance of the loss of valuable evidence. But if the coroner complies with the law, and wishes to avoid personal liability or an unauthorized autopsy in the first instance, that is what he must do.

4. Ordering Autopsy

According to the foregoing state of the law, the initial determination of whether there is reason to suspect a criminal act or default—and hence the question of whether to order an autopsy—is a subjective matter for the coroner. Although his acts are supported by a presumption of regularity,[17] he cannot be certain that he does not subject himself to personal liability to the spouse or the next of kin of a deceased, where he orders or performs an autopsy and it is later determined that there was no cause to suspect a criminal act or default.

In counties where there is a medical examiner, the foregoing problem does not arise. A duly appointed medical examiner has the authority to investigate—which includes the power to order autopsies—in every case of death in his county where the deceased met his death "apparently by the criminal act or default of another, or apparently by suicide, or suddenly when apparently in good health . . . or under any suspicious, unusual or unnatural circumstances. . . ."[18] The only restriction upon the medical examiner's power to order an autopsy is that in his opinion an autopsy or other pathologic study must be advisable and in the public interest.[19] But the medical examiner does not have any judicial powers, and therefore must turn the cases involving a suspicion of crime over to the coroner so that an inquest and preliminary hearing may be held.[20]

Significance of Conflicts

In final analysis, it is submitted that the conflicts outlined in this article are significant. Many people feel that these conflicts deserve the careful attention of those persons who are in a position to bring about either a revision of the law, or a change in the practice.

A Manual for Coroners and Medical Examiners has been published by the Institute of Government, and a school for coroners and medical examiners was conducted on May 8-10 at the Institute of Government. An additional note, subsequent to the distribution of the manual and adjournment of the 1963 General Assembly, will be published in *Popular Government*.

16 N.C. Gen. Stat. Sec. 15-7 (1953)
17. 13 Am Jur *Coroners* §308
18. N.C. Gen. Stat. Sec. 130-197 (1958)
19. N.C. Gen. Stat. Sec. 130-199 (1958)
20. Note 18, *supra*.

- Jacksonville -

(Continued from page 16)

when the City's demands for water approach four mgd, this site will be advantageous for development. Development at this site would necessitate constructing ground storage facilities at the well field and installing high level service pumps with a feeder main running from the well field to the one-half million gallon elevated storage tank. When this is done the same type of automatic controls based on tank level and ground storage level can automatically operate both well fields, supplying the City's water system from both ends.

The present well field has been developed to the extent of constructing three wells supplying two mgd. The water is brought through the transmission main to the ground storage reservoir at the old water plant; thence, pumped into the system by existing service pumps. The system is controlled by the master controller located at the old water plant and the entire operation is based on the water level in the one-half million gallon tank located at the far end of the system. Two other tanks of 200 thousand gallons each are also on the City water system. Service pressure is maintained on the transmission main, to serve adjacent customers, by means of a pressure regulating valve located just ahead of the ground storage reservoir.

For approximately 10 years the City officials have been discussing the possibility of annexing a fully developed area west of New River. The main difficulty in annexing this area has been the problem of supplying water across the river. The installation of our well field to the west of the City and the transmission main entering the City from that direction has brought water through this area. In order to serve the entire area to be annexed on the west side of New River, we plan to construct a separate, automatically controlled water system. This system will consist of a ground storage reservoir, service pumps, elevated storage and distribution system. This system will be supplied from the 16-inch transmission main. The potential customers immediately adjacent to the transmission-service main will be served from that line, areas other than immediately adjacent will be served from the separate, automatically controlled system.

The system as installed, including all the automatic controls, has cost approximately ten thousand dollars less than the earlier proposal considered by the City. The City of Jacksonville's future for water supply will not require any plant additions but merely new wells, controls, and lines. The savings between the operation of the system as presently designed and constructed and one which requires a softening process amounts to approximately 20 thousand dollars per year per mgd operation. In other words, a two mgd operation with softening would cost approximately 40 thousand dollars more than the operation of the system as it is now constructed.

The City of Jacksonville, in the past decade, experienced a rate of growth of 369% which is approximately ten times as fast as other North Carolina cities grow. It is anticipated that this rate of growth will subside very little, if any. We picture Jacksonville having as great a potential for development as that of the city of San Diego, California. San Diego was built, and continues to grow, by retired servicemen from the military installation immediately adjacent. We think that Camp Lejeune, which is a part of our community, is just as permanent as the United States itself and as Jacksonville is. With this anticipated growth we are sure to attract industries that will be desirable for our type of city. With the quality of water which the city now has, the attraction of water using industries requiring high quality water, is certainly not remote.

BOOK REVIEWS

VOICE OF THE PEOPLE: READINGS IN PUBLIC OPINION AND PROPAGANDA. Edited by Rio M. Christenson and Robert O. McWilliams. McGraw-Hill Book Company, Inc., 1962. 582 pages. $4.95.

Professors Christenson and McWilliams have sought in this volume to fill the need for a "non-technical book of readings on public opinion and propaganda designed to contribute broadly to students' liberal education." Major subject headings include the Nature, Determinants, Pollings (measurement), and Competence of Public Opinion; The Mass Media; The Mass Mind; The Tyranny of Majority Opinion; Censorship and Freedom; Political Propaganda; Public Relations; and Advertising. One hundred and seven selections range from James Bryce's "The Ubiquity and Power of Public Opinion" and Thomas Jefferson's "The Founding Fathers' Various Views" to Francis Rourak's "How Much Should the Government Tell?' and the late Senator Richard L. Neuberger's "Are the People Ahead of Their 'Leaders'?" At this time, when the relationship of government, press, and the people is under especially sensitive scrutiny and test, this volume (also available in paperback) has especial meaning and significance for the reader.

* * * *

READINGS IN AMERICAN GOVERNMENT. Fourth edition. Edited by H. Malcolm McDonald, Wilfred D. Webb, Edward G. Lewis, and William L. Strauss. Thomas Y. Crowell & Company, 1963. 835 pages. $4.25.

This gathering together of major documents, cases, and articles on American government has gone through three earlier editions and a total of seventeen printings. About one-third of the new edition is new material, exploring "current problems and issues" and including such recent Supreme Court cases as *Baker v. Carr* and "ranging from new campaign devices like television debate to the shifting relationships between national and state governments and between the President and Congress." The book is available in paperback and remains a standard and ready reference for study in our governmental classes.

* * * *

LEGAL POSITIVISM: ITS SCOPE AND LIMITATIONS. By Samuel I. Shuman. Wayne State University Press, 1963. 271 pages. $8.50.

Since Professor Shuman himself suggests that his work is a "philosophical study" of political and legal theory, it is apparent that it has a specialized value for those who would probe more deeply into philosophical concepts underlying the bases of our government. The author is concerned with basic differences in natural law and legal positivism, and the relationship of separateness of law and morals and law and ethics within the logic of the various theories.

* * * *

URBAN GROWTH AND DEVELOPMENT. By Richard B. Andrews. New York: Simmons-Boardman Publishing Corp., 1962. 407 pages. $7.50.

Although primarily designed as a textbook for University instruction, this book would be a useful addition to the library of any local governmental official interested in a broader understanding of municipal problems. The author attempts to lay a basis for development of a general theory of urban development, by pinpointing in pro and con fashion the issues in eight different areas: urban economic development, the central business district, urban traffic and transit, the government of metropolitan areas, housing, minority groups, zoning, and neighborhood and metropolitan area design. His approach is that of an economist, with liberal helpings of sociology, geography, law, city planning and political science. The presentation is at a rather basic level, but the end result is provocative of fresh thinking on the part of the reader.

* * * *

THE MAN WHO RODE THE TIGER: THE LIFE AND TIMES OF JUDGE SAMUEL SEABURY. By Herbert Mitgang. J. B. Lippincott & Company, 1963. 380 pages. $6.95.

Judge Samuel Seabury was a reformer and investigator who routed corruption from New York in the days of Mayor James J. Walker and Tammany control. The author has treated his biography in a relatively popular vein, with a considerable analysis of the elements which go into the making of a reformer of the Seabury mold. The book has insights into the local and state governmental process and factors which can tend to destroy the ethical and moral fibre of democratic government.

* * * *

THE AMERICAN POLITICAL PROCESS. Edited by Leonard W. Levy and John P. Roche. New York: George Braziller, Inc. 246 pages. $5.00.

This volume is part of the American Image Series which includes also The American Society, The American Foreign Policy, The American Economy. Its purpose is to show how the American government operates, and in terms of present problems. The four major headings are Feudalism, The Separation of Powers, Civil Rights, and the Conduct of Foreign Affairs. Although the volume is designed to show "government in the United States as it actually is," it serves even larger purposes, such as providing challenge to the mind and imagination in terms of what the government might be.

* * * *

JOSEPHUS DANIELS SAYS. By Joseph L. Morrison. Chapel Hill: University of North Carolina Press, 1962. 339 pages. $7.50.

This book by Professor Morrison of the University of North Carolina School of Journalism throws scholarly light upon various important facets of Josephus Daniels' career, among them his roles in the political, educational and editorial development of the State and the attitudes of its people in the latter nineteenth and early twentieth centuries. Of special interest is the author's careful treatment of Daniels' words, deeds, and influence over the free public schools system, the overall education program of Governor Aycock, Jeffersonian democracy and the power of the Democratic Party in the State, and the "forward looking" tenor of politics. Daniels' constant editorial instinct for human rights and against privilege permeats the book and exhibits the reform impulse, yet tempered by practicality which underly much of his writings and actions.

Any serious student of government and politics, and especially their relationship with the press, will find this volume illumination reading.

* * * *

HOUSING POLICY — THE SEARCH FOR SOLUTIONS. By Paul F. Wendt. Berkeley, Calif.: The University of California Press, 1962. 273 pages. $6.00.

The end of World War II presented most participating nations with a major crisis in the provision of housing for their citizens. The combination of pre-war depression, wartime destruction, war marriages, and necessary postponement of non-military construction led to an accumulation of need which was a central problem of government. Dr. Wendt has made a highly competent and useful analysis of the varying approaches followed by the United Kingdom, Sweden, West Germany, and the United States in meeting this problem, including judgments as to the comparative effectiveness of the varying approaches. This is "must" reading for those concerned with developing policies and programs in housing at the national government level, but many local officials will also find it interesting.

NOTES FROM . . . CITIES and COUNTIES

(Continued from page 17)

ment's gain recently when Wade L. McGalliard, for six years a detective in the Onslow County community, resigned. McGalliard, a Burke native, said he would work with the sheriff of his home county.

* * *

KINSTON has announced the selection of its Urban Renewal Director. Robert M. Bowstrom, Captain, U.S. Navy (ret.), was chosen from 25 applicants for the position.

* * *

Gracing the town of NORWOOD will be a new town hall after the voters overwhelmingly approved a $45,000 bond issue for the structure. Included in the vote was approval for bonds totaling $15,000 for water main extension.

* * *

The *Henderson Dispatch* pointed out in a recent editorial that it is not always necessary to run a municipality in the red. Citing the town of BENSON, which is debt free and has a $90,000 surplus, as an example the *Dispatch* said, "What has been accomplished goes to show that crushing, burdensome debt is not always necessary to operate good government."

* * *

MORGANTON voters marched to the polls in snow, slush, and rain to

(Continued on page 23)

THE ATTORNEY GENERAL RULES

CRIMINAL LAW

(A.G.: To Judge Julius W. Blanton)

You inquire concerning the legality of the use of a form in traffic cases entitled "Waiver of Appearance in Court and Submission of Plea of Guilty."

In our opinion several features of the form are not in accordance with law. We call attention to the following legal principles:

(1) In every criminal prosecution it is the right of the accused to be present throughout the trial. In misdemeanors this right may be waived by the defendant through his counsel *or by the defendant personally*, with the *consent of the court*, *State v. Matthews*, 191 N.C. 378; *State v. Cherry*, 154 N.C. 624; *State v. Dry*, 152 N.C. 813; *State v. Paylor*, 89 N.C. 539; *State v. Epps*, 76 N.C. 55.

(2) Neither the clerk, the arresting officer, the judge nor any other officer of the court has the power to waive the defendant's presence. The judge when sitting as such must consent before defendant's presence may be waived, but the judge may not consent *for the defendant*.

(3) The issuance and service of a warrant is necessary before there is a criminal proceeding. *In re Wright*, 228 N.C. 584.

(4) A judgment may be entered by the judge only after a warrant has been issued and served, after hearing and while court is in session. A judgment may not be entered while the court is not in session, even by consent.

In the form you submit defendant requests the judge to "waive his or her appearance in court." This, the judge cannot do. Defendant's waiver must be absolute and by himself or herself personally.

The form purports to advise defendant of the judgment which will be entered. In effect, this is an entry of judgment, without a warrant having been issued and served, without a hearing, and while court is not in session.

Under proper circumstances a defendant may waive his appearance in writing before trial. In such cases the following steps, at least, should be required: (1) A warrant should be issued and served on defendant; (2) Then defendant may, in writing, waive his appearance at the trial, and deposit with the Clerk a sum of money with his agreement in writing that any fine or costs imposed may be deducted from the sum so deposited; (3) The warrant should be docketed for the next session of the court; (4) In regular session the judge should hear the evidence and enter verdict and judgment; (5) The court minutes should show all these procedures, including waiver of appearance and payment of fine and costs, if any are imposed.

While not absolutely necessary, the defendant should be advised by mail of the outcome of the case. If any money remains on deposit, it should be returned to defendant.

– Report from Raleigh –

(Continued from page 6)

When traffic safety requires a President's Advisory Committee and a national "Action" program, the purpose of an officials' Coordinating Committee and a citizens' Safety Council within the State becomes readily apparent. And a traffic safety program, including renewed efforts to put into effect a system of motor vehicle inspection and initiate such aspects as provisional licenses for teenage drivers, "implied consent" for chemical testing of drinking drivers, and enforcement by aircraft, is understandable.

When the arts—literature, drama, painting, music—are emphasized by the President of the United States, states, too, tend to move to meet cultural needs. It is not surprising, therefore, that North Carolina has established a State Film Bureau and begun the production of governmental films, encouraged its symphonies and outdoor theater, and voted to begin at its State University a Division of Fine Arts.

When race relations become sensitive on the national scene, and watched with critical eyes throughout the world, local and State committees formed for promotion of good will and social legislation have meaning and portent far beyond that to be expected in normal times.

The truth is that time and the times have caught up with government at all levels. This fact is especially noticeable at State and local levels whose problems (as they have been seen in the past) have not, in general, been considered the same as or often seemed closely related to national or world problems.

The ferment of world competition and unrest has swirled in upon governors' mansions and state legislatures and local governments with every blast of air from an atomic explosion and every cry of underprivileged peoples who see new visions of freedom dancing before their eyes. Some of this ferment, and national participation in state and local government, has been in evidence during all or part of the last three decades. Federal matching grants for public welfare, public health, highways, etc.; federal aid for disaster areas; state, county, and local programs in public welfare, public health, industrial development, wage-hour legislation; collaboration in civil defense programs; federal-state agriculture programs—all these have sprung from recognition of interrelated needs and have been with us before, during or since World War II. Yet their complexity has increased, not diminished, with the years.

Perhaps the historian looking back on the 1963 General Assembly may reflect that the world has indeed grown small when its major problems loom so large in the minds of a State legislative body. In the words of the editor of *The Book of the States* (1962-63): "The strength of our federal, democratic system requires self-reliance at each level of government—state, local, national. It also requires cooperation among all levels."

As John Donne wrote in his famous seventeenth century devotion: "No man is an island entire of itself; every man is a piece of the continent, a part of the main."

NOTES FROM CITIES AND COUNTIES

(Continued from Page 22)

vote fifteen to one in favor of a bond issue sufficient to increase the city's water filtering capacity by 2,000,000 gallons and doubling the capacity of its sewage treatment plant.

* * *

VASS taxpayers have voted for a $16,000 supplemental bond issue to complete construction of a filter plant.

* * *

A low bid of $246,588 has been accepted by the city of ROCKY MOUNT for a new fire station. It will be located at the intersection of George Street and Cokey Road on Lutheran Field.

* * *

Former DURHAM City Manager George Aull has begun his duties as city manager for GREENSBORO. Aull has been assistant to one-time Greensboro Manager J. R. Townsend.

* * *

The resort town of HIGHLANDS has voted for a water bond issue of a maximum of $134,000 and a sewer bond issue of a maximum of $66,000.

* * *

"Here's mud in your eye," a phrase BRYSON CITY citizens have been using after turning the tap after a hard rain, will be heard no longer. Recently the city's voters approved a $66,000 municipal bond issue to improve its water system.

* * *

MONROE'S City Council moved swiftly to secure matching federal funds after its citizens approved a bond issue of $1,300,000 to modernize its sewage treatment plant. The council authorized Mayor Fred M. Wilson to make application for the funds the same night the issue was okayed.

* * *

About 300 citizens of LAKE WACCAMAW turned out for the dedication of its new town hall. The building was constructed in 1959 at a cost of $17,000 obtained from the city's first bond issue.

* * *

Now in operation in YADKINVILLE is a new $300,000 sewage disposal plant. The system has been designed to meet the needs of 3,000 persons, almost double the number now living in Yadkinville.

January, 1965 is the projected date for completion of the expansion of sewage facilities for the city of LIBERTY after voters there approved the issuing of $310,000 in bonds.

COUNTIES

On hand for the opening of the new Industrial Education Center in LENOIR County were Governor Terry Sanford and State Senate President Clarence Stone. The new facility is located at the Trenton-New Bern intersection on Highway 70.

* * *

If the bill clears the Legislature, DUPLIN County residents will be asked to pass on a five cent property tax levy to finance an industrial drive for the area. Among other items, the money would be used to pay for industrial surveys and in the construction of industrial plants in the county.

* * *

Renovation work having been completed, the HENDERSON County Sheriff's Department has moved back to its old quarters in the Courthouse addition. While the work was being done, the sheriff's offices were on the first floor of the county jail.

* * *

ASHE County experienced so much difficulty in obtaining qualified surveyors that the county had to request a special bill from the Legislature exempting it from the State's licensing law.

* * *

DARE County is asking the Legislature to create the office of "Tax Collector" to relieve the sheriff's department of the duty which it now has. Cost studies showed this to be the most effective method.

* * *

School Board officials in HARNETT County are beginning hearings on possible consolidation.

* * *

In an effort to achieve more efficiency from present facilities, the GUILFORD County Sheriff's Department is adding one more patrol car on weekends and dividing the county into four quadrants enabling the officers to set shorter patrol boundaries.

* * *

HARNETT County lost the services April 1 of Stanley Byrd, a nine and one-half year veteran of its Sheriff's Department. The former officer resigned to enter private business.

Prospects improved for two new dams in ALLEGHANY County when the Federal Power Commission approved a permit for a study by the Appalachian Power Company.

* * *

Nearby WILKES County residents learned the mammoth W. Kerr Scott Reservoir will have its opening June 1. The eight million dollar project is to have large areas for public use.

* * *

Efforts to attract new industry received a boost when two groups in HAYWOOD County voted to combine their efforts. The Pigeon Valley Development Corporation and the Haywood Improvement Foundation, Inc. are now one unit.

* * *

"I am looking forward to working for only five bosses" was the first official comment new GUILFORD County Manager Carl Gustav Johnson made after assuming his duties. Johnson formerly had 37 bosses as manager for Washtenaw County, Michigan.

* * *

Water and sewer lines will be available to non-urban residents of DURHAM County in the future following a vote of the Board of County Commissioners. The plan calls for a pay-as-you-go policy for the property owners where the lines are constructed.

– Peace Officer Training –

(Continued from page 18)

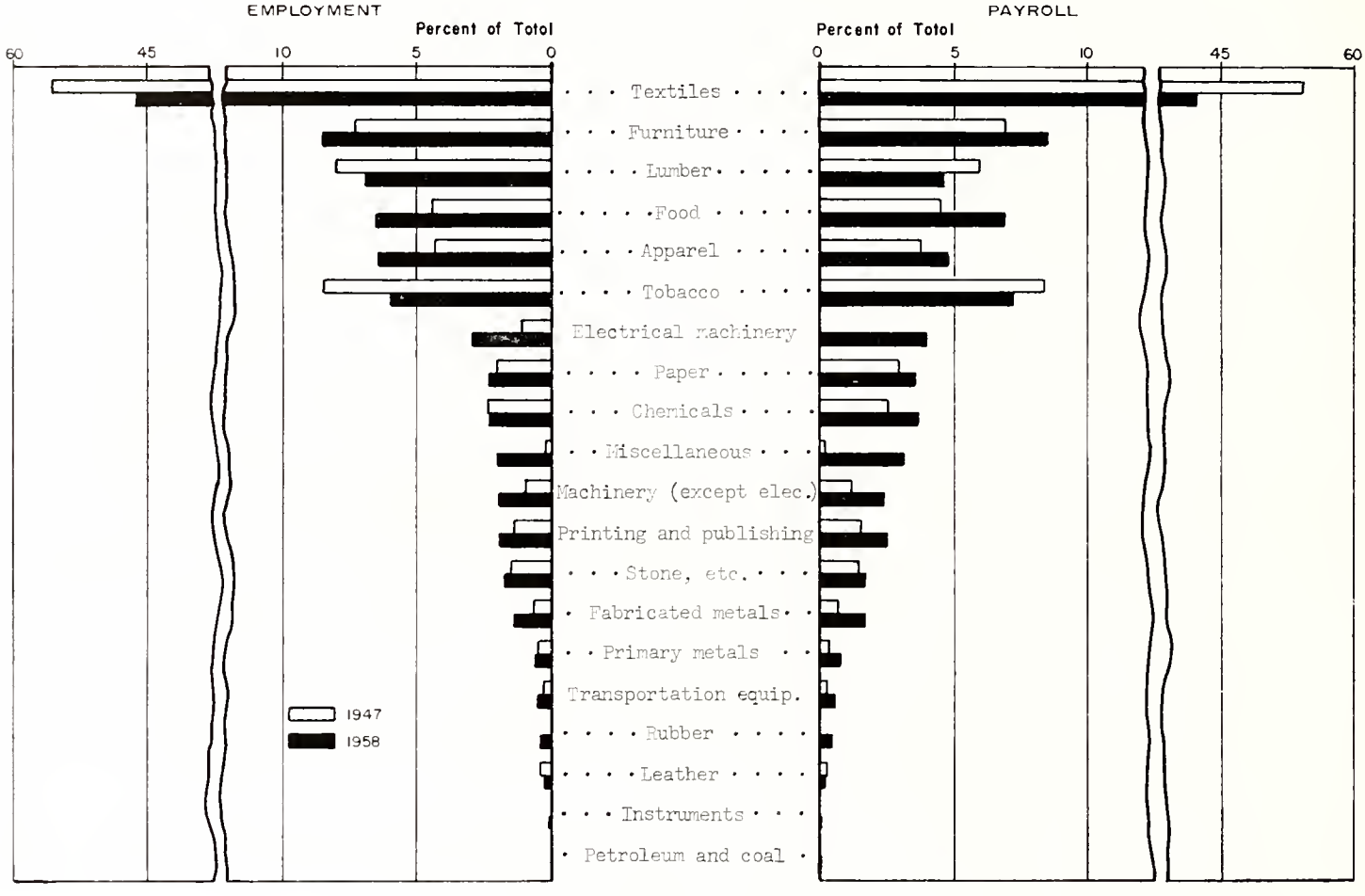
was only ten dollars. The cost in time to the students who attend the schools is a matter for local consideration. The Fayetteville school ran for six hours each day, five days each week, for four weeks. It is submitted that a full-time program is best; however, night classes and other possibly more practical arrangements which would allow the students more time for departmental duties have been discussed and may be feasible. A student who attends the full-time school has little or no time to devote to departmental duties.

It is hoped that the program which was launched at Fayetteville will grow until it becomes a moving force reach- that it will eventually bring into the classroom every peace officer in North Carolina.

INSTITUTE OF GOVERNMENT RELEASES NEW STUDY

This chart is reproduced from a new book, *Industry and City Government,* just issued by the Institute of Government. The book reports on a study of relationships among new plants, industrial development organizations, and city governments in ten North Carolina cities (Asheville, Burlington, Charlotte, Durham, Greensboro, High Point, Lexington, Raleigh, Thomasville, and Winston-Salem). As background for the detailed examination of the ten study areas, the book includes a description of the statewide manufacturing situation, and the illustration shown is from this section of the book.

Relative Importance of North Carolina Manufacturing Industries, 1947 and 1958



Sources: U. S. Censuses of Manufactures 1947 and 1958.

This graph presents trends in North Carolina's manufacturing composition over the eleven year period from 1947 to 1958. Few sweeping changes have occurred in the relative importance of the various members of the industry family. The "backbone" textiles, tobacco, and furniture industries retain their positions of dominance. During these years, however, tobacco employment dropped by some 16 per cent and textile employment barely held its own (actually declining by five per cent from 1954 to 1958). The furniture industry, on the other hand, held firm over the decade and actually registered substantial (though not spectacular) employment gains, increasing by some 42 per cent.

While the changes outlined above were taking place in the old industry families, several other newcomer manufacturing categories, notably food and kindred products, apparel, and electrical machinery, gained at a rapid rate, assuming positions of importance in the state's manufacturing composition. Over the ten-year period, the food and kindred products industry, followed closely by apparel, led in employment gains. Furniture ranked third in employment gains, and the higher wage electrical machinery category claimed fourth rank.

Credits: Photographs by Charles Nakamura. Layout and illustration by Lynn Deal.

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