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This month's cover shows the four North Carolina participants in the National College of State Trial Judges held at the Institute of Government during the summer. From left to right: Superior Court Judges Allen H. Gwyn, Rudolph I. Mintz, James H. Pou Bailey, and James Bowman. Judge Gwyn and Judge Bailey were faculty advisers.

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NO MORE Horse and Buggy COURTS IN NORTH CAROLINA

by C. E. Hinsdale

[*Editor's Note: This article is taken from an address given before the National Association of County Recorders and Clerks* (*see page 17*). *The author is the Institute's courts specialist.*]

In 1915 the president of the North Carolina Bar Association referred in a formal speech to North Carolina's confusing hodgepodge of lower courts as ". . . a real stench in the nostrils of the public . . . ." North Carolina still has almost all of those 1915 courts, and in the intervening 53 years, their number has more than doubled!

As a loyal North Carolinian and a member of the legal profession, I can permit myself to make this humiliating confession only because all of these inferior courts, plus 800 or so fee-paid justices of the peace, are under a death sentence. The execution dates have been set, the last appeals denied. Already 22 of our 100 counties have abolished the old system, and before this year is out in December, 61 more counties will be enjoying a completely new, twentieth-century lower court of limited jurisdiction called the district court. By 1970, as provided in the State Constitution, in all 100 counties the last horse-and-buggy court will be superseded by a new *unified* and *uniform* district court system.

Let me summarize very briefly some of the deficiencies of the old court system. Our appellate courts and our court of general trial jurisdiction, the superior court, were—and are—fairly sound and modern. They needed little reorganization. It was on the level of the lower courts—those below the court of general jurisdiction, the courts of special and limited jurisdiction—that major changes were needed.

The only unifying thread in our crazy quilt of 180-odd lower courts was their criminal jurisdiction—nearly all were authorized to try misdemeanors. There the similarity stopped. All of these courts are creatures of the legislature, most of them individually tailored for individual towns and counties. Some of them are in session nearly full time—others only an hour or two a week, or every other week. Some are presided over by a full-time judge; the majority are not. Some have lawyer judges, but many have layman judges who spend most their time selling insurance, operating a grocery, or farming. Some judges are elected—for one, two, or four-year terms; others are appointed by local governing bodies or by the Governor, and for varying terms.

Salaries of judges and clerks of court range from $15,000 or more down to $1,500 or less per year. Costs of court vary from court to court—sometimes within the same county—from $10 to $30 for identical offenses. This gives rise to the suspicion—not entirely unjustified—that some courts have been established primarily with an eye to producing revenue. Since judges are paid from local sources, the judge sometimes feels pressured to keep the conviction rate and the average fine up to a high level, so that the local budget can be more easily balanced. At the bottom of

the heap comes the lowly justice of the peace—paid only by the fees of his victims, under no supervision, a law unto himself, operating in undignified surroundings, frequently untrained even in the most elementary principles of law, and sometimes charging in costs of court what the traffic will bear.

Our research indicates that lower-court systems similar to this still exist in many states. The trend, fortunately, is toward their replacement, but the rate of change is slow. North Carolina, with a twelve-year head start, is a leader among the states on court modernization. Its new system is already on the law books, and will soon be fully effective throughout all 100 counties.

Let me describe briefly the new system. Our amended Constitution prescribes just *one court* for the whole state— the General Court of Justice. It has three levels or divisions: the appellate division, the superior court division, and the district court division. Total uniformity is required on all levels throughout the state; local or special acts regulating any aspect of the court system are specifically forbidden. Thus the new district court system, which has at least one seat of court in every county of the state, is the same in every county. It is the same in jurisdiction, in procedure, in organization, in structure, in costs and fees. A defendant who receives a traffic citation in Murphy can rely on the same treatment as the defendant who is ticketed for a similar offense in Manteo, 550 miles away. The judge has the same authority in one district as in another. The clerks operate in accordance with one statewide set of laws and rules, and intercounty legal business of the courts is transacted with much greater certainty and convenience.

The new court system is supported entirely by the state. The state pays for everything operational: salaries of judges, clerks, prosecutors, jurors, reporters, and witnesses (when the defendant is acquitted), and equipment, books, supplies, forms, machines, etc., for the clerk's office. The county furnishes only the physical facilities—that is, the courtroom and the clerk's office, and the basic furniture therein—nothing else.

The clerk of court, while still elected by the people of his county, has no other official county ties. He is paid by the state, and he runs his office entirely in accordance with state regulations put out by the state Administrative Office of the Courts.

Judges are now full-time in all cases—no practicing law or running a feed store on the side. The administration of justice come first, second, and always with the judge. The same for the prosecutor; he also is full-time. Both are paid by the state. The judge receives $15,000; the prosecutor $11,000. These salaries are likely to be raised by the 1969 General Assembly.

Finally, the office of justice of the peace is abolished. But since some minor judicial official has to issue warrants and take guilty pleas to petty offenses, the office of magistrate was created to assume these functions, which previously had been discharged by the JP. The magistrate is not simply a JP under a different name, however. The magistrate is on a salary—a state salary—and thus has no pocketbook interest in the outcome of any matter before him. He also tries no cases—he can accept *guilty pleas only*, and then only for the most petty offenses. In traffic cases, his discretion over the sentence is controlled by a uniform statewide schedule issued jointly by the chief district judges. He is under the supervision of the district judge or the clerk of court in all administrative matters. He can try small civil claims, up to $300 in value, but only when they are specifically assigned to him by his chief district judge. He is furnished an office or hearing room by the county. Retired military officers, retired teachers, and a few retired lawyers have been recruited for the office of magistrate. Getting enough good men to serve in this office has been a difficulty so far, but even so the magistrate is a vast improvement over the eighteenth-century JP!

Certain features of the new system are of special interest to clerks and recorders. Shifting from the county to the state payroll and to state supervision has largely freed the clerk from local politics. Of course he still has to get elected, but any incumbent clerk who is doing his job well has a tremendous edge over any challenger. Salary levels of clerks range from $6,500 in the smallest counties (a substantial raise in most cases) to $18,000 in the largest county. For clerks whose efficiency is outstanding, a 10 per cent merit salary increment is possible; and again, all salaries will probably be raised by the next legislature. Fee compensation is forbidden; the salary is the sole and total compensation. Operating the office in accordance with uniform statewide regulations, in the opinion of the twenty-two clerks already under the new system, is also a big improvement. Business is transacted in identical fashion in all counties, no matter what the subject matter. Records are kept in only one way; formerly there were dozens of different ways, with minor variations in every county. State field agents visit each clerk to help him understand and install the uniform system, and schools are held at the Institute of Government at the University to acquaint all officials—judges, clerks, and magistrates—with their duties under the revised law. The clerks have found that they have fewer areas of disagreement among themselves, and broader areas of common understanding. In the long run the result will be a closer, more harmoni-

ons, and more effective professional association of clerks of court.

Assumption by the state of all operating expenses of the new system has proved to be a substantial step forward. No longer is the efficiency of a clerk's office tied to the generosity or penny-pinching of a county board of commissioners; the clerk gets his supplies and equipment from the state. Everything from typewriters to paper clips is a state responsibility. And the county no longer controls the number or the salaries of a clerk's assistants. Clerks in counties with substantially the same population and caseload will have substantially the same number of employees, and their salaries will be closely comparable. These changes, when fully implemented, will remove certain sources of intercounty jealousy and dissatisfaction. This does not mean that every clerk's office will be equipped with two typewriters or two coffee pots per clerk, or two clerks for each job formerly done by one clerk, for the state is no richer than its 100 counties. It does mean, however, that each office will be kept up to a minimum acceptable standard, and this was not always the case when the clerk was operating under the county budget.

So far I have said little about the duties of the clerk and the way he goes about performing them. The clerk in our state was farther behind in this area, perhaps, than in any other. Record-keeping systems were prescribed by century-old statutes which were frequently confusing, overlapping and contradictory, as well as hopelessly out of date. A new system of keeping records—designed from scratch by a committee of clerks themselves—brings the clerk's operations into the twentieth century, and, in fact, is one of the most modern and efficient record-keeping systems in existence in the clerk's office in any state.

The new record-keeping system is built around the flat file and microfilming. All original records (with a very few exceptions not yet worked out) are flat filed. No more "shucks." The flat file becomes the permanent record. It is backed up for security reasons by microfilm. Record books have been almost entirely eliminated. There is simply no need for expensive and time-consuming record books any more. The flat file is now the primary source of information for as long as the case is active or is frequently consulted; thereafter, depending on the nature of the record, the flat file may be destroyed and the microfilm takes over as the permanent record. Of course, certain indexes must be kept, but these have been consolidated and simplified. This system is used for estates, special proceedings, civil cases, and criminal felonies. The volume of misdemeanor cases has so far resisted our efforts to do away with the "shuck," but we are still working on this. One of our difficulties here is the criminal procedure itself; if criminal procedure can be modernized, the keeping of the criminal records can be simplified.

Another major improvement is the reduction in the number of clerks' offices per county. A few counties formerly had as many as six or seven small courts, each with its own clerk. These courts, of course, have been all swept away by the new court system. Each county now has only the superior and the district courts, and only one clerk of court serves both of these trial courts in each county. All court business is transacted at one place in each county (the courthouse, usually), and all permanent records are kept there. This is proving to be a big help to lawyers as well as to litigants, not to mention the clerk himself.

In the reshuffling of responsibilities attendant upon the reorganization of the court system, the clerk was relieved of his function as judge of juvenile court. This was an increasingly time-consuming and painful chore for which most clerks were not thoroughly trained, and which all clerks were pleased to give up. The clerk also lost a few non-court-related duties—such, for example, as the filing of corporation charters. These functions, for the most part, went to the register of deeds, or, in some cases, were simply abolished.

I cannot conclude without mentioning a byproduct of our new court reorganization of which we are very proud. This is the new law for the selection of jurors. The old law required the county commissioners to prepare lists of prospective jurors, and approximately three dozen occupations were excused by law from jury service. An arrangement more susceptible to favoritism and inefficiency could hardly be imagined. The new system requires an independent three-man jury commission to select names at random from the tax rolls, the voter registration books, and any other source deemed reliable. Each name is given a number, and the clerk draws the numbers of prospective jurors at random from a box. The numbers are matched with the names which are held by the register of deeds, and the resulting list of names is summoned by the sheriff. *No occupation or class of persons is excused from jury service.* In fact, the law specifically declares that jury service is an obligation of citizenship to be discharged by *all* qualified citizens. Excuses from jury service can be granted only by a trial judge, and most judges have adhered to the spirit of the law. It is not uncommon now to see doctors, lawyers, and public officials crowding into the courtroom and actually be-

ing seated in the jury box. A news story from the *Winston-Salem Sentinel* dated May 15, 1968, tells of a *uniformed policeman* sitting as a juror in a criminal case. The defense attorney, of course, could have challenged him but took a chance. The verdict: Not guilty. Recently at the annual state conference of clerks of court I learned that the clerk of court from Buncombe County had received a juror summons. (He had drawn his own number!) He didn't ask to be excused, and the judge didn't excuse him. He was never actually selected for a jury, because the docket broke down early in the week before he was called. This particular clerk, far from being resentful, was enthusiastic. He said the novelty of his position gave him an entirely new insight into the administration of justice.

We invite you to North Carolina to look over our new system of courts. We invite you with pride, because we are proud of it. But we invite you also because we know our system is not perfect, and that an exchange of ideas and viewpoints may result in further improvement. Such an exchange is always useful, and we would expect and hope to gain as well as to give. Only by constant examination of ideas and programs from other states can we—any of us—hope to keep up with the latest and best in twentieth-century court administration.

INSTITUTE PERSONNEL CHANGES

A number of changes have occurred in the Institute of Government staff over the summer.

Henry W. Lewis, the Institute's elections and property tax specialist, will serve for the coming year as acting vice-president of the Consolidated University of North Carolina in charge of University relations. He assumes the duties of Fred H. Weaver, who has taken a leave of absence to go with the Ford Foundation as a consultant to a higher education project in India.

Allan Ashman, whose area was criminal procedure, has left the Institute to become Director of Research for the National Legal Aid and Defender Association. His headquarters will be in Chicago.

Harvey D. Miller has taken over responsibility for the Institute's law enforcement programs. He comes from the University of Iowa, where he was a government training specialist at the Institute of Public Affairs. He holds an M.A. degree in political science with a minor in criminology, and has taught in the Bureau of Police Science at the University of Iowa. A Wisconsin native, Miller was an artilleryman during World War II.

William E. Benjamin will move into the field left by Allan Ashman's departure. He is a recent graduate of the Yale Law School and did his undergraduate work at Johns Hopkins University, with graduate study in sociology at Cornell. He interned at the Institute during the summer of 1967 and served briefly with the Denver Opportunity Program.

David M. Lawrence will work in the field of local government and liquor law. He comes from Portland, Oregon, with an A.B. from Princeton and a law degree from Harvard.

Robert E. Stipe, in city planning, has taken a year's leave to go to England on a Fulbright fellowship. He will work in the general area of historic preservation.

Lawrence

Miller

Benjamin

by Ramsey Clark

The Attorney General of the United States Addresses the National College of State Trial Judges

In these dog days of 1968, we have heard much loose talk of shooting looters. This talk must stop. No civilized nation in history has sanctioned summarily shooting thieves caught in the commission of their crime. Will America be the first? China, India, Japan, Brazil, Mexico, France, Italy, Poland—nations throughout the world have experienced wild rioting with physical assaults and property crime. None has used shooting as a control device.

The need is to train adequate numbers of police to prevent riots and looting altogether. Where prevention fails, looters must be arrested, not shot. The first need in a civil disorder is to restore order. To say that when the looting starts, the shooting starts means either that shooting is preferable to arrest, or that there are not enough police present to arrest. By definition, adequate police manpower adequately deployed could prevent looting on any large scale from ever occurring. This failing, it is the clear and unquestioned duty of police to arrest looters, like all other law violators—arrest them immediately and present them for a speedy trial. But even when convicted, they will not be shot. Where a jurisdiction has failed to provide adequate police protection, or the unpredictable nature of a disorder makes arrests impossible, other techniques including the use of tear gas may be necessary. The use of deadly force is neither necessary, effective, nor tolerable.

Anyone who thinks bullets are cheaper than adequate numbers of $10,000 per year, college-trained policemen values life cheaply and misunderstands human nature. A reverence for life is the sure way of reducing violent death. There are few acts more likely to cause guerrilla warfare in our cities and division and hatred among our people than to encourage police to shoot looters or other persons caught committing property crimes. How many dead twelve-year-old boys will it take for us to learn this simple lesson?

Far from being effective, shooting looters divides, angers, embitters, drives to violence. It creates the very problems its advocates claim it their purpose to avoid. The death of the twelve-year-old looter and the innocent bystander will inflame minds and spirits for a generation. Is this American justice?

What terrible fear or hatred would cause us to shoot looters?

Prevent looting wherever possible. Stop looting where adequate force arrives too late to prevent it. Arrest looters, absolutely. But shoot looters, and all human nature rebels at our excess.

Persons under the influence of alcohol killed 25,000 Americans in automobile accidents in 1967. Fewer than 250 people have died in all riots since 1964. Looters, as such, killed no one. Why not shoot drunken drivers? What is it that causes some to call for shooting looters when no one is heard to suggest the same treatment for a far deadlier and less controllable crime?

Is the purpose to protect property? Bank embezzlers steal ten times more money each year than bank robbers. Should we shoot embezzlers?

Is the purpose to intimidate looters? The first rule of law enforcement is never bluff. If you announce you will shoot looters and don't, the next time you will not be believed. Never pull your pistol unless you intend to use it. If you threaten to shoot and don't, you risk the lives of law enforcement officers unnecessarily. Every threat creates danger. The lesson of the empty threat is go ahead and do what you will.

A nation which permitted the lynching of more than 4,500 people, nearly all Negroes, between 1882 and 1930 can ill afford to engage in summary capital punishment without trial in our turbulent times. In three years now only three men have been legally executed for all the horrible murders and assaults we have suffered. Is our sense of equal justice under law such that we imperil the life of the officer and the looter and escalate riots because we fail to build our police?

The problem is far too serious to be dealt with so superficially—for life to be threatened so casually. Throughout the history of law enforcement in our nation the use of deadly force has been restricted generally to circumstances in which the lives of officers or others are threatened. Some laws authorize the use of deadly force when it is necessary to effect the arrest of a fleeing felon or prevent his escape. In practice this has usually been under circumstances where life was imperiled.

The best rule is stated by the FBI:

> The most extreme action which law enforcement officer can take in any situation is the use or firearms. Under no circumstances should firearms be used until all other measures for controlling the violence have been exhausted. Above all, officers should never fire indiscriminately into a crowd or mob. Such extreme action may result in injury or death to innocent citizens and may erupt into a prolonged and fatal clash between the officers and the mob. The decision to resort to the use of firearms is indeed a grave one. Such a decision must be based upon a realistic evaluation of the existing circumstances. Among the important considerations, of course, are the protection of the officer's own life, as well as the lives of fellow officers, and the protection of innocent citizens. A basic rule in police firearms training is that a firearm is used only in self-defense or to protect the lives of others.
>
> The firing of weapons over the heads of the mob as a warning is objectionable. In addition to the possibility of injuring innocent persons by ricocheted bullets or poorly aimed shots, the firing may only incite the mob to further violence, either through fear or anger. At best, this is a bluffing tactic. And a basic rule when dealing with a mob is *never bluff*.

In guidelines prepared for law enforcement agencies, the International Association of Chiefs of Police states: "The use of firearms should be considered as a last resort, and then only when necessary to protect the lives of citizens and officers."

The excessive use of force can have unforeseen consequences. The FBI manual points out: "Unwarranted application of force will incite the mob to further violence as well as kindle seeds of resentment for police that, in turn, could cause a riot to recur."

General Robert H. York, explaining his use of minimum effective force in Baltimore in April, 1968, spoke meaningfully on this subject:

> Force invariably produces counterforce. Here in Baltimore we did not have a race riot as such—and it was my endeavor to prevent that if at all possible. This is what the extremists want, as you know, and I feel we would have been playing directly into their hands if we had created a situation whereby this would have occurred. And, of course, if it had occurred, the loss of lives and the destruction of property would have been immensely greater than I feel it has been. No one—your women, children—would have been safe under these kinds of circumstances, and neither would any home in the city . . . . We know from experience that when there is indiscriminate firing, more innocent people have been killed than guilty ones.

The fundamental purpose of government is to protect the lives and property of its citizens. This requires the maintenance of order under law. We cannot fail to make the effort essential to effective control. We know that riots can usually be prevented and can always be controlled. The question is whether we have the determination to act, or will resort to the law of the pistol.

If our only purpose was order, and life meant little, still the most effective technique would be

For a month during the late summer, the National College of State Trial Judges conducted a program of continuing education at the Institute of Government designed primarily for new judges with trial jurisdiction. Some 135 judges from all over the nation attended.

On August 15 Ramsey Clark, Attorney General of the United States, came to address the group. This article is taken from his remarks on that occasion.

balanced enforcement. Our whole experience tells us this.

Intensive police training through the past winter brought a new discipline and a new effectiveness to police control efforts. Violence with riot potential in more than 100 cities following the murder of Dr. Martin Luther King, Jr., resulted in fewer deaths and less property loss than a single riot in a single city last summer. A firm balance by police in a dozen cities experiencing widespread violence resulted in effective control, minimum loss of life, and less resulting division, bitterness, and anger which can only lead to greater hostility and later violence.

The police must be thoroughly trained to act swiftly; to avoid overaction or underaction, repressiveness, or permissiveness. The chance to snuff the incipient riot is with the local police and with them alone—unless we garrison soldiers throughout our cities. By fast, careful, firm action they can catch trouble before it is out of control.

What do the police themselves believe? It is the police to whom some would say "Pull the trigger" when looters are fleeing—perhaps dozens of looters fleeing toward a crowd; women, children; some making trouble, some committing crime, some trying to talk sense to a mob, to cool it.

I asked the International Association of Chiefs of Police to survey police in eight cities which experienced serious rioting in April, 1968. In the relevant part of the lengthy report, it was found that:

Although police in the United States are trained and equipped to apply several degrees of force, most of the current public controversy centers on the use of firearms—the resort to fatal force. It was the unanimous conclusion of the interview teams, that, except for two departments which will be discussed in greater detail below, policies regarding the use of fatal force were clearly understood and generally endorsed by personnel at all levels of the police structure.

In the present study, police personnel interviewed were asked to select one or more of the following five statements that they felt best described their department's policy regarding the use of fatal force.

(A) Use fatal force only as a last resort to prevent a direct and immediate threat to life.

(B) Use fatal force to *prevent* the commission of other serious felonies such as burglary, arson, etc.

(C) Use fatal force to prevent a fleeing felon from escaping but only after other means of effecting his arrest have failed.

(D) Use fatal force to prevent a fleeing felon from escaping even though lesser means were not tried.

(E) Use fatal force to stop persons from continuing to loot.

With the two exceptions noted below, all of the personnel interviewed agreed that the

policy governing the use of force in effect in their department during the recent disorders were as follows:

6 cities—policy statement A only; that is, use of fatal force only as a last resort to prevent a direct and immediate threat to life.

2 cities—policy statements A and C only; fatal force only as a last resort to prevent a direct and immediate threat to life; and to prevent a fleeing felon from escaping but only after other means of effecting his arrest have failed.

The two exceptions to unanimous agreement were found, as might be expected, in the only two cities which had not reduced their firearms policy to written form. In both of these cities, operational personnel all agreed that the policy was best described by statement A only, while the chiefs reported that their policy was best described by statements A & B, and A, B & C respectively. Irrespective of any confusion created by the failure of two departments to reduced their policy to written form, this study clearly suggests that for most officers most of the time the "preventive" use of fatal force was never considered as a legitimate alternative under existing departmental policy or legislative guidelines.

Most of the interview teams agreed that the explanation for general police agreement regarding the use of force under riot conditions was to be found in the fact that no attempt was made to modify the fatal force policy under which police officers operate during routine operations. Only in one city were supplementary instructions issued, and these simply cautioned officers not to shoot looters. In short, the police use of fatal force is regulated by law and police are trained to comply with this law, whether under riot conditions or not.

Who are the rioters and looters of whom we speak? Nearly all are Negroes.

Of those arrested, in Boston 29.4 per cent and in Grand Rapids 6.4 per cent were white collar. In Grand Rapids 14.2 per cent and in Buffalo 3.5 per cent were skilled employees. In Newark 59 per cent and in Boston 47.1 per cent were unskilled employees.

In Boston 48.4 per cent and in Cincinnati 22.5 per cent were married. In Grand Rapids 19.7 per cent were between 10 and 14 years old. In Cincinnati 73.4 per cent were between 15 and 24 years old. In New Haven 35.4 per cent were between 25 and 34. In Detroit 37 per cent of the self-reported rioters were women.

Of persons arrested for looting in the riots in Buffalo, Cincinnati, Detroit, and Newark, 48.1 per cent were between 10 and 24 years of age.

Of the riot area residents between the ages of 6 and 60, 35 per cent in New Haven and 11 per cent in Detroit are estimated to have participated in rioting.

In every effort at control, law enforcement must always remember that when order is restored, as it will be, we shall have to go on living together, black and white, forever on the same soil. Excessive force, inhumane action, a blood letting can only lead to further division and further violence. The threat of excessive force leads to the cries heard in the disorders in Miami recently, "They want to kill us all," to which a bystander was reported to observe, "The worst part is they believe it."

It takes more courage for the police to act with balance, with careful control than to either overact or underact. Those who without understanding or humaneness encourage a shooting are doing the police no favor. Both overaction and underaction increase danger for the policeman. Balance will encounter fewer risks in the long run. The police understand and are prepared to act with balance. Repressiveness can cause a degeneration into terror tactics and guerrilla warfare. Many nations have experienced this in recent years. America has no natural immunity.

A strong, well-financed, well-trained police department is the first, best line for riot control. Strong police-community relations is the most essential need in riot prevention. In final analysis, police-community relations—far from being public relations—measures the difference between a government of the people, by the people, and for the people and an authoritarian state; between a public protector and an army of occupation; between those who serve and those who subject. Police-community relations is the total measure of attitudes between the police and the public they serve. There can be no relations between police and a people they threaten to shoot.

The police must use such force as is necessary to protect lives and property or to arrest a person who has committed an offense for which arrest is indicated and no more. Firearms should not be used unless there is a threat to life and all other control measures have been exhausted or are inadequate to the peril. Any other use is inconsistent with the ideals of a wise and courageous people.

A well-disciplined, well-trained, adequately manned police department with effective communication with all segments of the public can prevent riots. That failing, it can meet and contain rioting and violence with superior force. By balanced action it can provide us the few precious years needed to activate the massive effort required to rebuild our cities, to restore faith in our citizens, to promise every American the opportunity for his own fulfillment. Excessive force and inadequate force both promise the holocaust.

If America has a conscience, we had best awake from this wild talk of shooting looters and face reality.

The GENERAL ASSEMBLY and the DECISION to SENTENCE

by Allan Ashman

[*Editor's Note: This article is taken from an address before the Fifth Annual Seminar of North Carolina Superior Court Judges on June 17, 1968. The author has recently left the Institute staff to become Director of Research for the National Legal Aid and Defender Association.*]

Foreword

> An enlightened sentencing code . . . should provide for a more selective use of imprisonment. It should ensure that long prison terms are available for habitual, dangerous, and professional criminals who present a substantial threat to the public safety and that it is possible for the less serious offender to be released to community supervision without being subjected to the potentially destructive effects of lengthy imprisonment. Moreover, it should provide the courts and correctional authorities with sufficient flexibility to fix lengths of imprisonment which are appropriate to the facts of each case. [President's Commission on Law Enforcement and Administration of Justice, *Task Force Rep. The Courts* 15 (1967)]

Introduction

Most discussions involving sentencing inevitably begin by asking what are the principal objectives of sentencing, particularly as they relate to the rehabilitation of individual offenders and to the protection of the community.[1] Unfortunately this rather fundamental question defies a simple answer. Whether one responds that the principal objective of sentencing is to punish an offender and remove him from society or that it is to change a convicted offender into a law-abiding citizen, little light is shed on the real sentencing considerations such as the kinds of judicial, penological, and social policies that should dictate the choice of sentence.[2]

Perhaps one reason for the difficulty in engaging this subject is that proper sentencing requires the resolution of three often inconsistent ends: (1) the rehabilitation of a defendant; (2) the deterrence of others who might consider committing a similar offense; and (3) the isolation from society of those who by their criminal conduct have shown that they are a danger to society.[3] Some in the legal profession doubt the ability of any judge to resolve these ends simultaneously. For example, Professor Herbert Wechsler has observed that a judge usually is poorly equipped to make the soundest judgment as to the appropriate period of time for a person to be incarcerated at the precise moment when he is to sentence that offender.[4] Wechsler would have correctional authorities make such a decision only after having observed a particular offender over a period of time within an institution.[5]

The burden upon the court to form a proper sentence is vital to the administration of our system of criminal justice. However, of equal significance are the kinds of legislative decisions that define the limits of a judge's sentencing authority and shape the term of an individual sentence.[6] A legislature probably has no more important or difficult task than to try to give

1. See Ohlin & Remington, *Sentencing Structure: Its Effects Upon Systems for the Administration of Criminal Justice*, 23 LAW & CONTEMP. PROB. 495, 503-7 (1958).

2. See, e.g. Penegar, *Survey of North Carolina Case Law: Criminal Law and Procedure*, 45 N.C. L. REV. 910, 914-15 (1967).

3. See e.g., NATIONAL PROBATION AND PAROLE ASSOCIATION, GUIDES FOR SENTENCING 1-2 (1957).

4. Wechsler, *Sentencing, Correction, and the Model Penal Code*, 109 U. PA. L. REV. 465, 476 (1961).

5. *Ibid.*

6. See ABA STANDARDS, SENTENCING ALTERNATIVES AND PROCEDURES 1 (Tent. Draft; December, 1967).

the courts and the respective correctional agencies "the kind of power and responsibility that each is best equipped to exercise."[7] While it is widely held that state legislatures should re-examine their respective sentencing codes to allow trial judges greater discretion and to provide sound statutory criteria to guide the exercise of sentencing discretion, the feeling is that most state legislatures are not moving in this direction. The President's Commission on Law Enforcement and Administration of Justice comments upon the "piecemeal construction" of most penal codes where "successive legislatures [fix] punishments for new crimes and [adjust] penalties for existing offenses through separate sentencing provisions for each offense," without giving thought to whether the existing structure makes sense.[8]

The immediate task in this paper is to explore the substantive changes effected in the fabric of North Carolina's sentencing structure by the 1967 General Assembly. However, much of the discussion will focus on the scope and complexity of the sentencing decision, particularly upon a judge's decision to sentence offenders to a form of imprisonment. Perhaps this paper will help the reader to make an informed judgment as to whether the 1967 General Assembly moved toward rationalizing sentencing in this state or whether it simply compounded the existing inequities and inconsistencies in our sentencing law.

Punishment for Felonies and Misdemeanors Generally

Prior to 1967, G.S. 14-1 defined a felony as "a crime which is or may be punishable by either death or imprisonment in the State's prison." The 1967 General Assembly rewrote this section, defining a felony as a crime which (1) was a felony at common law; (2) is punishable by death or by imprisonment in the State's prison; and (3) is denominated a felony by statute. All other crimes are classified as misdemeanors. It would appear that this change does not alter the fact that only persons convicted of a felony can be sentenced to the "State's prison" (Central Prison).[9] This is not to say that felons cannot be sentenced to other units of the state prison system or to jails. Such action is authorized by statute.[10] What both the old and new G.S. 14-1 and the cases seem to require is that only upon conviction of a felony can a person be sentenced to Central Prison.

The new G.S. 14-2 provides that all persons who are convicted of any felony for which there is no specific punishment prescribed by statute must be punished by fine or by imprisonment for up to ten years, or by both, in the discretion of the court. Evidently the only significant change made by the 1967 General Assembly in this section is to permit *both* imprisonment and fine, whereas prior to 1967 a felony without a specific punishment could be punished only by imprisonment *or* fine.

G.S. 14-3 was also amended to provide that in the case of a misdemeanor for which there is no specific punishment prescribed by statute, a person convicted of such an offense may be fined or imprisoned for not more than two years, or both, in the discretion of the court. No one can be certain whether this means that a particular crime for which there is no specific punishment—that is, a crime specified as punishable "by fine *or* imprisonment in the discretion of the court"—may now be punished by both fine and imprisonment or by only fine or imprisonment

Fixing an Indeterminate Sentence

A typical indeterminate commitment finds a judge fixing a maximum and a minimum sentence within the limits specified by statute. However, in some jurisdictions the maximum pronounced by the court must be the maximum term set by statute for a particular offense, the judge having little or no discretion in the matter. In other jurisdictions the minimum might be a fixed fraction of the maximum, or the maximum might be automatically fixed with no minimum prescribed.[11] In North Carolina, G.S. 148-42 authorizes the use of indeterminate sentences in the discretion of the court. The court fixes the minimum or maximum term, or both, within the respective ranges provided by statute for the offense.

Although indeterminate sentences are favored because they can be used either to neutralize, and in some cases to eliminate, the dangerous offender or as a means of providing a curable offender with remedial and re-educational treatment,[12] an indeterminate sentence may not always serve the treatment goals of a particular institution. For example, one prisoner may interpret an indeterminate sentence as meaning that he is so bad that maximum control sanctions must be retained over him. Yet, to another inmate an indeterminate sentence may be the instrument that enables him to gain some experience with a non-rigid controlling authority, and one that invests in him some degree of responsibility for determining his future in the institution and eventually in free society.[13]

Prior to the 1967 General Assembly's revision of Chapter 148, G.S. 148-42 authorized superior court judges imposing prison terms of more than one year to fix an indeterminate sentence. Prisoners who were given an indeterminate term under this section be-

7. See Wechsler, *supra* note 4, at 479-80.

8. President's Comm. on Law Enforcement and Administration of Justice, Task Force Report: The Courts 1, 15 (1967).

9. See State v. Cagle, 241 N.C. 134 (1954); State v. Floyd, 246 N.C. 434 (1957).

10. See N.C. Gen. Stat. § 148-32 (Supp. 1967).

11. See Rubin, Weihofen, Edwards, & Rosenzweig, The Law of Criminal Correction 133 (1964).

12. See Paulsen & Kadish, Criminal Law and Its Processes 181 (1962).

13. Reich, *Therapeutic Implications of the Indeterminate Sentence*, Issues in Criminology 24 (Spring, 1966).

came eligible for parole consideration when they had served a fourth of their minimum term.[14] The Director of Prisons (pre-1967 title of the Commissioner of Correction) could, and usually did, authorize the unconditional discharge of any prisoner who had served his minimum term less gained time—the prisoner's earned allowances for good behavior. The Director of Prisons was not required to consult anyone before authorizing the discharge of a prisoner who had served his minimum term. If, at the end of a minimum term, the Director of Prisons did not consider a prisoner's conduct to justify his unconditional discharge, the case had to be reviewed at least once every six months until such time as the Director either authorized the prisoner's discharge or until the prisoner's maximum term expired.

The 1967 General Assembly modified this provision to permit superior court judges to fix, in their discretion, an indeterminate sentence *in any case* in which they sentence an offender to jail or prison. In addition, the new G.S. 148-42 enables the Commissioner of Correction to release a prisoner who has served his minimum term upon certain conditions. The Commissioner may still unconditionally discharge a prisoner who has served his minimum term. However, if a prisoner is discharged conditionally after serving his minimum term, the Commissioner may now either modify the conditions of a prisoner's release or revoke such a release completely at any time before a prisoner's maximum term is served or an unconditional discharge is granted. In any case, the total time that any prisoner may serve, whether in custody or free on conditional release, may not exceed the maximum term set by the court.

It should be emphasized that the pre-existing power of the Board of Paroles to parole a prisoner after he has served one-fourth of his minimum term is not affected by the legislature's modification of G.S. 148-42. What is affected is the power of the executive head of the state prison system (the Commissioner of Correction) with respect to prisoners who are serving indeterminate sentences. Before August, 1967, when a prisoner had completed his minimum sentence the only alternatives available to the Director of Prisons were complete and unconditional discharge of a prisoner or continued incarceration. The Director usually granted an unconditional discharge to a prisoner who had served his minimum sentence. The Board of Paroles never directly entered into this decision. The Commissioner now has the additional option of releasing a prisoner conditionally. However, G.S. 148-42 also requires the Commissioner to consult with the Board of Paroles when exercising this discretionary authority and to seek the Board's cooperation when implementing any agreed-upon release plans.

The General Assembly's action with regard to the indeterminate sentence law is an important step forward toward effecting a sound correctional framework in which treatment programs can be developed. While by no means a complete answer, it is a significant development in this state toward the individualization of punishment and making the punishment fit the criminal rather than the crime. Ideally, a sentencing structure will provide judges with a way to space, appropriately, the limits of a minimum and maximum sentence so that correctional authorities may release a prisoner depending upon his progress in a penal institution rather than by the number of years he serves.[15] G.S. 148-42 now permits this kind of a disposition of an inmate to a greater extent than ever before.

The revised statute in theory broadens the span of time between a minimum and maximum term by permitting the Commission of Correction to retain control over a prisoner for a specified period of time. The Commissioner gradually returns the privileges of freedom to a prisoner who has served his minimum term and demonstrated that he is ready to assume the responsibilities of freedom, or he can pull back into the prison system any prisoner who has been given a conditional release and fails to adhere to the conditions of such a release. The new measure significantly tightens the Commissioner's control over inmates while providing a potentially effective alternative disposition short of outright release or continued incarceration.

Sentencing the Youthful Offender

The 1967 General Assembly repealed Article 21 of G.S. Ch. 15 (segregation of youthful offenders) in its entirety and in the process rewrote Article 3A of G.S. Ch. 148 (facilities and programs for youthful offenders), consolidating the provisions of Article 21 of G.S. Ch. 15 into G.S. Ch. 148. The practical effect of the new legislation is to offer the courts an additional sentencing possibility which they may use in their discretion when sentencing a person under twenty-one who has been convicted of an offense punishable by imprisonment.

The old Article 21 of Chapter 15 of the General Statutes defined a youthful offender as a person under twenty-one when sentenced who had not previously been incarcerated in jail or prison for more than six months. Before 1967 a judge who sentenced a youthful offender to imprisonment could provide, as part of the sentence, that the youthful offender be segregated from the general prison population. The Director of Prisons was authorized to terminate the segregation of any youthful offender who, in the opinion of the Director, exercised a bad influence upon other prisoners or who failed to take proper advantage of the opportunities offered by such segregation.

14. See N.C. Gen. Stat. § 148-52 (Supp. 1967).

15. See Bok, Problems in Criminal Law 77 (1955).

The old Article 3A of Chapter 148 of the General Statutes pertained to youthful offenders who were less than twenty-five when sentenced and who had not previously served any term in jail or prison. The article authorized the Department of Mental Health to establish facilities to receive those youthful offenders who would be sent there by the Director of Prisons. The Umstead Youth Center and the Goldsboro Youth Center were established pursuant to this section.

Under the new law a court may, prior to sentencing a youthful offender who has been convicted of an offense punishable by imprisonment, commit him to the Department of Correction, where a diagnostic study will be made to determine his treatment needs.[16] Also, the law specifically provides that the time a youthful offender spends in custody while undergoing a pre-sentence diagnostic study must not exceed ninety days or the maximum term of imprisonment authorized as punishment for the offense if the maximum is less than ninety days.[17] Any time so spent in custody must be credited on any active prison sentence subsequently imposed on the offender.

G.S. 148-49.4 is probably the most important of the new provisions because it provides the court with a new sentencing alternative when it is ready to impose sentence on a youthful offender. If a court decides that probation is not an appropriate disposition for a particular youthful offender and that the youth should be placed in custody and treated apart from the regular prison population, it may sentence the youthful offender under this provision. If a court selects this course of action, it will commit a youthful offender to the custody of the Commissioner of Correction for treatment and supervision pursuant to the provisions of Article 3A. If it wishes, however, it may still sentence the youthful offender to imprisonment under any other appropriate penalty provision provided by law for the offense.

If, however, the court should choose to commit a youthful offender to the custody of the Commissioner of Correction, it must, at the time of commitment, fix a maximum sentence that may not exceed the term of imprisonment otherwise authorized for the offense. When sentencing a committed youthful offender, the court does not fix a minimum sentence. If, for example, a maximum permitted penalty for an offense is imprisonment for one year or longer, the maximum term that the sentencing court can impose is not to be less than one year.

A committed youthful offender may be released under supervision at any time that the Commissioner of Correction considers him ready for release.[18] At such time, the Commissioner reports his recommendation to the Board of Paroles. The Board of Paroles may, then, after giving reasonable notice to the Commissioner of Correction, release a committed youthful offender conditionally and under supervision. But, a committed youthful offender must be given a conditional release, under proper supervision, no later than four years after his commitment to the custody of the Commissioner of Correction. The Board of Paroles may, if it chooses, discharge the youthful offender *unconditionally* before the expiration of his maximum term. Such action on its part automatically restores the committed youthful offenders' citizenship rights forfeited upon conviction.

Committed youthful offenders who are conditionally released are under the supervision of the Board of Paroles, and any member of the Board may direct that a committed youthful offender be returned to custody at any time during the period of conditional release. The Board may revoke or modify any of its orders with regard to a committed youthful offender except an unconditional discharge.

It should be noted that in conjunction with this new sentencing possibility presented to the courts, the Commissioner of Correction is required to segregate committed youthful offenders (those youthful offenders committed to his custody) from other offenders, and to separate, whenever possible, classes of committed youthful offenders according to their treatment needs.[19] In addition, several sections with regard to pre-sentence diagnostic studies, extension of the limits of confinement, and contractual arrangements for treatment and training of adults are specifically applicable to committed youthful offenders.[20] (See Appendix A, page 13)

The 1967 legislation dealing with youthful offenders closely resembles the federal system and that outlined in the Model Penal Code. The concept of the committed youthful offender is found in the Federal Youth Corrections Act, which provides that a youthful offender may be committed to the custody of the Attorney General for specialized treatment for up to six years, even though the underlying offense for which he was convicted supports a lesser maximum sentence if the youthful offender were to be sentenced under the law like any other offender.[21] A youthful offender committed under provisions of the Youth Act must be released either conditionally, under supervision, within four years from the date of his conviction or discharged unconditionally within six years from the date of his conviction.[22]

While the Model Penal Code calls for specialized treatment of *all* "young adult offenders," not simply

16. See N.C. GEN. STAT. § 148-49.3 (Supp. 1967).
17. *Ibid.*
18. See N.C. GEN. STAT. § 148-49.8 (Supp. 1967).
19. See N.C. GEN. STAT. § 148-49.7 (Supp. 1967).
20. See N.C. GEN. STAT. §§ 148-49.3, -49.5, -49.6, and -49.7 (Supp. 1967).
21. See 18 U.S.C. § 5010 (1964).
22. *Ibid.*

committed youthful offenders, as in North Carolina, it does contribute to this state's law the concept of a special term of imprisonment for young adult offenders. The Code authorizes the sentencing of a young adult offender convicted of a felony, regardless of the degree of the felony involved, to a four-year maximum with no minimum if the court feels that such a special term will contribute toward his correction and rehabilitation and will not jeopardize public safety.[23] Contrary to North Carolina's youthful offender provision, however, the Model Penal Code permits this special term only for a youthful offender who is convicted of a felony. Evidently the reporters of the Code agreed that a longer, flexible term is more reformative than a short, definite sentence to jail, but nevertheless were loath to sentence a youthful offender convicted of only a misdemeanor to a longer term than he could possibly receive were he sentenced like any other offender.[24] The draftsmen for the Model Penal Code observe that they "can perceive no adequate basis for sentencing young adults, whose offenses reveal no substantial danger to the community, to sentences as long as those imposed for major crimes."[25]

Sentencing the Habitual Felon

The penal laws of this country generally agree that persistent offenders should be subject to greater sanctions than those offenders who have been convicted for the first time.[26] The habitual offender laws, as they are called, usually authorize or require a court to impose more severe penalties on recidivists than on first offenders, but people usually are not sentenced under these laws unless and until recidivism is established by proof of prior convictions.[27] The purpose of habitual offender laws is probably twofold: (1) to deter recidivism (an objective which some penologists consider impossible to achieve), and (2) to isolate habitual criminals from society by the imposition of extended or life terms.

Many of the existing habitual offender laws have led to an indefensibly harsh sentencing structure which, in some instances, has resulted in grievously unjust commitments.[28] For example, statutes that make a life sentence mandatory after a certain number of felony convictions illustrates a paucity of thinking about our correctional and criminal processes by reflecting a legislative judgment that all habitual criminals to whom such terms are applicable are incorrigible, and that rehabilitation as an end will not be considered by correctional authorities. Similarly, habitual offender laws that *require* the court to impose longer sentences on second and subsequent convictions must be criticized because such mandatory sentencing precludes the court from fitting an individual sentence to the peculiarities of a specific case.[29]

Until 1967, North Carolina had no law that imposed extended terms of imprisonment on those persons who repeatedly commit felonies. However, the 1967 General Assembly enacted such legislation over the protests of those who argued that habitual offenders laws do not serve the proper ends of sentencing and defeat any attempt to individualize punishment

Appendix A—

Persons Sent to Diagnostic Centers

The text and accompanying footnote make implicit references to G.S. 148-12, which concerns the establishment of pre-sentence diagnostic centers for convicted adult offenders. G.S. 148-12 requires the Department of Correction to establish diagnostic centers to make social, medical, and psychological studies of prisoners for classification purposes. Whenever it is practical to do so, the Department is authorized to comply with the request of any sentencing court for a pre-sentence study of convicted persons who are subject to imprisonment in the state prison system. Persons sent to a diagnostic center cannot be held there longer than authorized by the court and may not be held there for more than 60 days unless the court grants an extension. Since an extension cannot exceed 30 days, a person cannot be detained in a diagnostic center longer than 90 days or the maximum term of imprisonment authorized as punishment for the offense, if the maximum is less than 90 days. Any time spent in the center must be credited on any prison term subsequently imposed.

G.S. 148-49.3 authorizes essentially the same kind of discretionary pre-sentence diagnostic commitment for youthful offenders. The only departure from G.S. 148-12 seems to be that G.S. 148-49.3 sets no provisional maximum period for detention in a diagnostic center short of 90 days such as the 60-day period set forth in G.S. 148-12. However, this variation between the two sections appears to be of no real consequence since it is perfectly clear that both sections, when read together, provide a sentencing judge with the same pre-sentence disposition designed to serve as an additional resource to assist him in rendering a more appropriate sentence for an adult or youthful offender.

23. Model Penal Code § 6.05(2) (Tent. Draft No. 7, 1957).
24. See Model Penal Code § 6.05, comment (Tent. Draft No. 7, 1957).
25. *Ibid.*
26. See ABA Standards, *supra* note 6, at 162.
27. See Caldwell, Criminology 358-359 (1965 2d ed.); see also Model Penal Code § 7.03, comment, (Tent. Draft No. 2, 1954) at 38.
28. See ABA Standards, *supra* note 6, at 162; see also Note, *Statutory Structures for Sentencing Felons to Prison*, 60 Colum. L. Rev. 1134, 1157-58 (1960).
29. See Note, *Statutory Structures for Sentencing Felons to Prison*, *supra* note 28, at 1157-58.

by precluding a court from adjusting the term of imprisonment to that most appropriate for the individual.[30] The new law defines a habitual felon as any person convicted of, or pleading guilty to, three felony offenses in any state or federal court after July 6, 1967—the date of ratification of the act.[31] For purposes of the act, federal offenses involving liquor-law violations are not considered felonies, and all felonies committed before the offender reaches the age of twenty-one count for only one felony.

The commission of second or third felonies does not fall within the province of North Carolina's habitual felon statute unless the felonies are committed after conviction or after a plea of guilty to the first or second felonies respectively.[32] To punish a person as a habitual felon, an indictment must first charge him, within the meaning of G.S. 14-7.1, with the commission of any felony under the laws of North Carolina and must then charge him as a habitual felon.[33] The indictment that charges a person with being a habitual felon must be separate from the indictment charging him with the principal felony. When one indictment charges an offender with a felony and a separate indictment charges that he is a habitual felon, the trial for the principal felony must occur first. The indictment charging a defendant with being a habitual felon must not be revealed to the jury unless the jury finds that he is guilty of the principal felony. Only after he is found guilty of the principal felony can a separate bill of indictment be presented to the same jury for the independent finding of whether he is a habitual felon. The trial on the facts raised by the separate indictment charging a defendant as a habitual felon is then to proceed as if the issue of whether the defendant is a habitual felon were a principal charge.

When a habitual felon is convicted of a felony or pleads guilty to any felony charge, he must be sentenced as a habitual felon. This means that his punishment *must* be fixed for a term of from twenty years to life imprisonment.[34] A person so sentenced is not eligible for parole until he actually has served 75 per cent of his sentence.[35] A life sentence is interpreted, for the purpose of computing the time in which a habitual felon sentenced under these statutes is eligible for parole, as a sentence for forty years.

Without taking direct issue with the fundamental concept of North Carolina's new habitual felon law or the length of the prescribed sentences required by it, little seems to have been gained from making imposition of punishment mandatory. Some feel that the decision whether to sentence a particular offender to a regular term or to a special term on grounds of habitual criminality should be left to the discretion of the sentencing court and be determined at the time of sentencing.[36] These people argue that an additional term should be permitted only if the court finds that such a term is necessary to protect the public from further criminal conduct by the defendant.[37]

The Model Penal Code authorizes, in the discretion of the court, extended terms that involve increased minimum and maximum terms. The Code anticipated that the court will sentence an offender to an extended term when it is determined to be necessary for the protection of the public because the defendant is found to be a persistent offender,[38] a professional criminal,[39] and a dangerous or mentally abnormal person.[40] The draftsmen of the Code note that

> Experience has shown that sanctions of this kind [laws pertaining to habitual offenders] are more effective when they are both flexible and moderate; highly afflictive, mandatory punishment provisions become nullified in practice . . . The draft proposes, therefore, that the use of the extended term should not in any case be mandatory on the court . . . .[41]

Apparently, then, North Carolina's General Assembly ran counter to contemporary thinking when it passed legislation requiring a mandatory prison term to be imposed regardless of the circumstances of the offense. Rather than require mandatory prison terms, with no discretion left to the sentencing judge, it seems more practical and equitable to base any increased term authorized on the basis of repeated criminality on the severity of the sentence otherwise provided for the offense.

North Carolina's habitual felon law, however, does not provide for increased punishment on the basis of repeated misdemeanors, nor does it impose any extended term upon youthful offenders or persons who are under twenty-one. G.S. 14-7.1 specifically states that for the purpose of the act any felonies committed before an individual attains the age of twenty-one shall not constitute more than one felony. This would seem effectively to preclude any extended term from being imposed on a youthful offender.[42]

Habitual offender laws are often justified on the grounds that society must be protected from future crimes perpetrated by individuals who have com-

30. See Gill, *Review of Legislation Passed by 1967 General Assembly: Criminal Law*, Popular Government 41 (September, 1967).

31. See N.C. Gen. Stat. § 14-7.1 (Supp. 1967).

32. *Ibid.*

33. See N.C. Gen. Stat. § 14-7.3 (Supp. 1967).

34. See N.C. Gen. Stat. § 14-7.6 (Supp. 1967).

35. The impact of such a provision is that a sentence cannot be reduced for good behavior.

36. See ABA Standards, *supra* note 6, at 161.

37. *Ibid.*

38. Model Penal Code § 7.03(1) (Tent. Draft No. 4, 1955).

39. Model Penal Code § 7.03(2) (Tent. Draft No. 4, 1955).

40. Model Penal Code § 7.03(3) (Tent. Draft No. 4, 1955).

41. Model Penal Code § 7.03, comment (Tent. Draft No. 2, 1954).

42. In this respect the North Carolina's habitual felon law bears a striking similarity to both the provisions of the Model Penal Code and the American Bar Association's minimum standards with regard to sentencing alternatives and procedures. See Model Penal Code § 7.03(1) (Tent. Draft 2, 1954) and ABA Standards, Sentencing Alternatives and Procedures § 3.3(b)(iii) (Tent Draft; December, 1967).

mitted prior offenses and whose patterns of criminality indicate that there will be recurrences. Few would contend that society deserves no protection from future criminality whether it be from violations against property or from crimes of violence and passion against the person. However, the first prerequisite for the successful application of any habitual offender law would seem to be that a court have the opportunity to determine whether the offender presents such an unusual risk to the public that his long-term commitment is required for the sake of protecting the public. Implicit to this kind of approach is the belief that the primary attention of the court should be directed to those factors that are personal to the offense and to the offender which might justify long-term incarceration as a habitual offender. Can a sentencing court in North Carolina proceed under the new habitual felon provisions in such a manner?

Sentencing for Public Drunkenness and Chronic Alcoholism

The written comment and analysis that have followed in the wake of the two famous test cases, *Easter v. District of Columbia*[43] and *Driver v. Hinnant*,[44] have been legion. Little that is new can be added to what has recently been written on the subject of punishing the chronic alcoholic for public intoxication. Both cases held that chronic alcoholics could not be punished for public intoxication. The long-range implications of these decisions still are not apparent. For example, court-sponsored alcoholism programs have come under attack by those who argue that if an alcoholic cannot properly be convicted on a specific criminal charge, then he cannot be required to participate in a court-sponsored rehabilitation program.[45] Similarly, probation officials have discovered, in at least one judicial circuit, that they can no longer command complete sobriety of an alcoholic as a condition of probation. In *Sweeney v. United States*[46] the Seventh Circuit concluded that such a condition is unreasonable and unjust because the alcoholic's subsequent intoxication is merely a symptom of his illness. The court held, therefore, that an alcoholic's probation may not be revoked when he is later found intoxicated.

Although the *Easter* and *Driver* decisions did not hold that chronic alcoholism was a defense to any other charge, the implications of these two decisions were obvious soon after they were handed down. Arguments were quickly pieced together seeking to justify chronic alcoholism as a defense to any crime and not just to the minor offense of public intoxication. But it was not until this past year that the Supreme Court of the United States decided to hear a case that presented the issues raised in *Easter* and *Driver*.

The Court at first denied certiorari in *Budd v. California*[47] although two justices dissented, saying, essentially, that it was timely and appropriate for the Court to decide whether persons suffering from the illness of alcoholism and exhibiting its symptoms or effects could be punished for public drunkenness.[48] Since *Budd*, the Court has heard oral arguments on a case that squarely presents the issue of whether the conviction of a chronic alcoholic for public drunkenness violates the Eighth Amendment's prohibition against the imposition of cruel and unusual punishment.[49] A decision in the case is expected before the Supreme Court adjourns for the summer. (See *Author's Note.*)

(Author's Note: The day this paper was presented a divided United States Supreme Court evidenced, in part, its fundamental fear of undermining traditional concepts of criminal responsibility. The Court held in *Powell v. Texas*, 36 U.S.L.W. 4619 (U.S. June 17, 1968) (No. 408), that the conviction of a chronic alcoholic for public drunkenness does not violate the Eighth Amendment's prohibition against the imposition of cruel and unusual punishment. While *Powell* overrules the *Driver* and *Easter* cases, it does not appear to affect the 1967 legislation which provides that chronic alcoholism shall be an affirmative defense in North Carolina for the charge of public drunkenness.)

While the President's Crime Commission has recommended that drunkenness should not in itself be a criminal offense,[50] it can be said that the 1967 General Assembly acted to implement the slightly more conservative holding articulated by the Fourth Circuit Court of Appeals in *Driver* by providing that chronic alcoholism shall be an affirmative defense for the charge of public drunkenness.[51] The penalty for public drunkenness in most North Carolina counties had been a fine of not more than $50 or imprisonment for not more than thirty days. Some counties had raised the penalty for repeaters to a general misdemeanor for which a person might be incarcerated for as long as two years.

G.S. 14-335 now provides a statewide penalty provision for the offense of public drunkenness—either (a) a fine of not more than $50, or (b) not more than twenty days in the county jail. A person who is convicted for another offense of public drunkenness

43. 361 F.2d 50 (D.C. Cir. 1966) (en banc), *rev'g* 209 A.2d 625 (D.C. Ct. App. 1965).

44. 356 F.2d 761 (4th Cir. 1966), *rev'g* 243 F. Supp. 95 (E.D. N.C. 1965).

45. Hutt, *The Changing Legal Approach to Public Intoxication*, FEDERAL PROBATION 40-44 (September, 1967).

46. 353 F.2d 10 (7th Cir. 1965).

47. 385 U.S. 909 (1966).

48. *Id.* at 910-913 (dissent from denial of certiorari by Mr. Justice Fortas and joined by Mr. Justice Douglas).

49. See Powell v. Texas, *cert. granted*, 36 U.S.L.W. 3126 (U.S. Oct. 9, 1967) (No. 408).

50. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: DRUNKENNESS 4 (1967).

51. See N.C. GEN. STAT. § 14-355(c) (Supp. 1967).

within a twelve-month period may be sentenced like a first offender or may be committed to the State Department of Correction for an indeterminate sentence of from thirty days to six months. The Department of Correction is authorized to order a conditional release of any individual so sentenced for the purpose of care and treatment from a specified hospital, outpatient clinic, or other appropriate facility or program outside the state correctional system.

In conjunction with its major revision of the public drunkenness law, the 1967 General Assembly created a new Article 7A in G.S. Ch. 122 dealing with the treatment of chronic alcoholics. G.S. 122-65.7 provides that any court may retain jurisdiction over a chronic alcoholic for a period of up to two years for the purpose of treatment if he is acquitted of public drunkenness by reason of his chronic alcoholism. During the time that the court has jurisdiction over the chronic alcoholic, it is authorized to take one or more of the following actions: (1) Enter an order for the clerk of superior court to commence the judicial hospitalization procedures set out in Article 7 of G.S. Ch. 122, such an order serving in lieu of and to have the same effect as the affidavit request for examination required in G.S. 122-60; (2) direct the chronic alcoholic, in cooperation with any member of his family or other responsible person, to make and follow plans for his treatment in a private facility or program approved by the North Carolina Department of Mental Health; (3) refer the chronic alcoholic to a private physician or psychiatrist or to a hospital diagnostic center or to a welfare organization; (4) request the local department of public welfare or other appropriate local governmental agency or official to work with the chronic alcoholic and to make such reports as to his treatment or condition as requested by the court; and (5) make or approve, in the court's discretion, any other plan or arrangement that may be appropriate for the treatment of the chronic alcoholic.

Two aspects of the new sentencing laws with regard to public drunkenness and chronic alcoholism warrant additional comment. First, whereas under the old law a person convicted of public drunkenness might spend up to thirty days in the state prison system, now he may spend up to twenty days in the county jail. Indeed, it appears that county jails now contain more persons convicted of public drunkenness serving time than ever before. Sentencing a person convicted of public drunkenness to serve up to twenty days in a county jail (or the full twenty days, as seems usual) neither corrects the individual nor deters others from committing like offenses. A person convicted of public drunkenness and placed in jail can sober up in about three to five days, and any time spent in jail beyond this time is costly to the county and potentially harmful to the person, considering the sad physical condition of most county jails. The General Assembly's passage of a measure that has had the effect of increasing the amount of time a certain class of people spend in county jails in the same session in which they authorized a Jail Study Commission to review the nature and function of local municipal and county jails is ironic. The Commission presently is studying alternatives to jail and ways of putting alcoholics and persons picked up for public intoxication into detoxification centers, juveniles into detention homes, and the mentally ill into proper medical facilities.

Second, the alternative procedures listed in G.S. 122-65.8 for the treatment of chronic alcoholics who come under the jurisdiction of the court appear fine in theory but questionable in practice. The new procedure has been spurned by many individuals arrested for public drunkenness who are chronic alcoholics; they refuse to raise the affirmative defense of chronic alcoholism even when it is brought to their attention because they would rather serve their time in jail or in prison than be under the jurisdiction of the court for two years. Apparently one aspect of the problem is that the treatment program recommended is somewhat involuntary and the present programs are largely ineffective.

Probably there will always be a fixed number of inebriates who will not materially alter their ways regardless of the kind of treatment program offered to them. The task, therefore, seems to be to devise procedures with regard to the chronic alcoholics that are voluntary and which do not have the effect of replacing the evils of criminal incarceration with the evils of civil commitment. For example, it has been suggested that compulsory or involuntary treatment for alcoholism is unjustifiable from a legal standpoint except in the following limited situations: (1) when a person is not mentally competent to make a rational decision as to whether he wishes to undergo treatment; (2) when a derelict alcoholic becomes so debilitated that he is virtually dying on the street, but in no case should such a person be committed for more than thirty days; and (3) when the alcoholic exhibits a pattern of behavior caused by his intoxication that directly and substantially endangers the safety of other persons.[52] In considering these exceptions, we should also remember that the vast majority of chronic alcoholics do not suffer from any mental illness that would render them, when sober, unable to make a rational decision about treatment.[53] One approach to the problem might be to start converting the facilities and resources that have been previously used to handle inebriates on a criminal basis into facilities that can be staffed by public health, welfare, and rehabilitation agencies. This has been done in the District of Columbia.[54]

52. Hutt, *The Recent Court Decisions on Alcoholism: A Challenge to the North American Judges Association and Its Members*, President's Comm'n on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness 117 (1967) (Appendix H).
53. *Ibid.*
54. *Id.* at 118.

Being lawyers and judges and not psychiatrists, we cannot presume to have the requisite knowledge to determine what kind of noncriminal public health procedures will rehabilitate chronic alcoholics. We can, however, prevent the processing of chronic alcoholics under rules of criminal or civil procedure that are not designed to facilitate voluntary medical treatment. The public cannot be expected to continue respecting or tolerating a system of criminal justice that condemns chronic alcoholics to jail because they are sick or a system of public health and welfare that condemns derelict alcoholics to a life (and a probable death) on the streets.[55] As trial judges, you are in an extremely advantageous position to promote constructive changes in the criminal and social process of our state so that the future for chronic alcoholics can be brighter than the past.

Conclusion

Probably few among us are completely satisfied with North Carolina's existing sentencing code even as it stands today, improved by the past General Assembly. For example, the mandatory imposition of prison sentences on recidivists and the general absence of statutory criteria to direct sentencing courts to those factors which the legislature has already deemed relevant to the sentencing decision should concern everyone here because they indicate that there is still too little comprehensive thinking about sentencing among our legislators and too much emphasis on casual periodic patching and adding to existing codes. This approach often is inadequate because it leads to further internal contradictions and to greater inequities in the existing sentencing structure.

Nevertheless, the 1967 General Assembly should be given appropriate credit for placing before North Carolina's courts several new and viable sentencing alternatives. What the General Assembly has done, in effect, is pass on to the courts an improved but still imperfect instrument which requires, on the one hand, that sentencing judges be particularly sagacious and, on the other hand, that future General Assemblies refine and further rationalize the instrument itself.

55. *Ibid.*

North Carolina Registers of Deeds Attend National Meeting

Twelve North Carolina registers of deeds were present at the annual meeting of the National Association of County Recorders and Clerks in Washington, D. C., in June. They were Eunice Ayers, Forsyth; Duke Paris, Alamance; D. J. Kinlaw, Robeson; Irene Pruitt, Rockingham; Audrey McCaskill, Moore; Carl McCullough, Bladen; Horace Robinson, Vance; Joyce Rudisill (deputy register), Catawba; Mark Stewart, Guilford; Marguerite Trott, Catawba; Ray Welborne, Wilkes; and Betty June Hayes, Orange. Miss Hayes is vice president of the organization and will be its next president.

The pictures shows C. E. Hinsdale of the Institute of Government addressing the group on the new North Carolina court system (see his article on page 1). His talk was part of a panel discussion on "Modernizing of Court Records." Miss Hayes, seated to Hinsdale's left, was moderator. Other panel members were Joan Demus, clerk and Recorder, Marion County, Fairmont, West Virginia (left); Horace Skinner, county clerk, Winnebago County, Rockford, Illinois (second from right); and Ambrose Landry, clerk of court, La Fourche Parish, Thibodaux, Louisiana, and NACRS president.

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Faces at

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the Institute

It was a busy spring and early summer at the Institute of Government—I. David Warren of the Institute staff. 2 and 3. Participants in the Health Directors' conference. 4. Wildlife recruits. 5. Dorothy Kiester of the Institute staff. 6 and 8. Participants in the North Carolina Tax Assessors' school. 7, 9, and 10. Superintendents of School.

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9

The PLANNER and URBAN SOCIAL POLICY

by Michael Brooks

[Editor's Note: Portions of this paper were originally prepared as part of an article written jointly by Mr. Brooks and Michael A. Stegman, "Urban Social Policy, Race, and the Education of Planners," which appeared in the September, 1968, issue of The Journal of the American Institute of Planners. *Both Mr. Brooks and Mr. Stegman are members of the Department of City Planning at the University of North Carolina at Chapel Hill.]*

Introduction

The events of recent months stagger the imagination. Hard as we try to sort them out, to explain them, to react to them in a rational manner, they somehow elude us. We tend to feel that the entire nation has gone mad, that we are swept along by forces totally out of control—and perhaps not even controllable, at least not by the usual procedures we use in managing or operating our communities.

Most of us had intensely personal reactions to the assassination of Martin Luther King and to the events which followed in its aftermath, including the nationwide loss of more than 30 lives and the destruction of millions of dollars' worth of property. My own reaction is shaped by a hodgepodge of people, places, events, and quotations which characterized the State of North Carolina during the spring crisis. In a number of our cities, curfews were put in operation, and out-of-town visitors were shocked to find that they could not leave their hotels. In a small town in the eastern part of the state, a potentially disastrous confrontation was averted when seven carloads of angry Negroes left the town only a short time before twelve carloads of equally angry Klansmen arrived on the scene. In one of our major Piedmont cities, the mayor wisely called a meeting of black and white community leaders in an effort to head off further trouble, then unwisely responded to a request from a Negro participant, concerning the agenda, in a manner so heavy-handed and unsympathetic that most of the Negroes in attendance walked out, thereby leaving the communication gap between the races larger than ever. In Chapel Hill a Negro community organizer told a predominantly white audience that time has run out on them, that the black man must now take by force what the white man has refused to give him, and that many lives will be lost in the process. And many whites, ridden with the collective guilt of their race, rushed to give their time and money to local programs which they would have considered wildly impractical two months earlier. Sol Alinsky, a veteran of many community battles, spoke to a small audience at Duke University and made the remarkable statement that whites actually *want* riots, because violence is something they can cope with. And finally, there were the letters to the editors, including the one appearing in the *Chapel Hill Weekly* which damned the memory of Martin Luther King as "a rabble-rouser, a disciple of communism and violence."

Meanwhile, our communities continue to function in a state of uneasy truce. James Reston expressed the concern of most of us when he suggested that something much "deeper than the law is at stake now," that perhaps "the whole foundation of order, reason and confidence which sustains a civilized community has broken down. . . ."

In the face of this, one of the most critical and complicated bundles of domestic problems ever to face our nation, let us consider the plight of the city planner. As one who has devoted his professional life to the development of a sound, efficient, and attractive city, he is naturally appalled by the chaos, and is particularly dismayed at those who express the desire to burn his city to the ground. At a deeper level, however, he knows that he is somehow involved. His charge, after all, has been to plan the means whereby the city can grow in an orderly manner, a manner that serves the best interests of the entire community. Planning has always considered itself a profession oriented to the general welfare, the common good, the public interest. And yet here is a large segment of the community claiming that its interests have *not* been served, and threatening to do something about it. The planner knows, then, that he has a role to play—

but just what is the role?

I recently attended a conference on the campus of a predominantly Negro college in a nearby city at which the role of the planner in riot prevention was one of the issues being discussed. In response to my own statement that the planner actually has a fairly *small* part to play, compared with that of other professions, I was confronted with the viewpoint, with which most of the persons present agreed, that on the contrary the planner has a very *large* role to play—namely, in the reconstruction of our cities following the total revolution which is assuredly going to take place. In other words, the prevalent view at this conference was that it is too late to head off the mass destruction of cities that would take place this summer, or the next, or the next, and that we must therefore begin to think *now* about the sort of city that we want to build out of the ashes.

Perhaps I am a starry-eyed optimist, but I believe that this group was wrong. And I also believe that we, as planners, can help make them wrong. We can't do it alone, of course, any more than can the social workers and community organizers, the police, the housing officials, the public health professionals, the mayors and city managers, and the many other people who have a stake in preserving community harmony. But we have a role, nevertheless, and we should not shy away from it.

Relationship of Planning to Social Problems

Let me pull back a moment and briefly discuss the relationship of urban planning to social problems in general. From the pages of its major professional journal, as well as from a variety of other sources, the planning profession has recently been subjected to a number of compelling arguments as to why it cannot afford to focus its attention exclusively on the physical or land-use aspects of the city. These arguments are now widely accepted and need not be repeated here, but I would like to summarize three ways in which the planning profession relates to, or interacts with, the range of problems that are explicitly social (as opposed to physical) in nature.

The first, and most long-standing, relationship between the planner and the social problem realm involves the geographical location and distribution of social service facilities, such as hospitals, clinics, and schools. Planners have often participated in studies aimed at determining the appropriate location of such facilities; their primary contributions have been with regard to such matters as accessibility (modes of transportation available, travel time and distance for potential users, etc.) and proper site planning. Here, of course, the emphasis has been upon the physical characteristics of such facilities, rather than upon the nature and quality of the service that they provide.

Second, recent years have seen the development of a greater sensitivity to the impact of the man-made physical environment on a variety of social phenomena, such as social pathology, human interaction in neighborhoods, physical and mental health, and related matters. The "environmental determinism" notion that was fairly widespread at an earlier time—that is, the naive idea that, if we will only create aesthetically stimulating and harmonious structures and spaces, then all manner of social ills will automatically be cured—has now all but vanished. In its place is a steadily increasing sophistication, aided by research in a number of fields, concerning the interaction between man and his house, his neighborhood, and his total urban environment.

Third, and much more recent, it has become increasingly evident that the *planning process*, as employed by professional planners, is as applicable to the solving of *social* problems as it is to the solving of *physical* problems. Thus planners are being asked in increasing numbers to participate in anti-poverty programs and in a variety of health, housing, manpower-training, and related activities. By "planning process" I refer to the analysis of problems; to the identification and elaboration of goals and objectives; to the design of alternative programs for attaining those goals and objectives; to the evaluation of alternatives (through cost-benefit and other analytical methods); to the providing of administrative and political figures with the sorts of data they need to make decisions as rationally as possible; and to monitoring the effectiveness of programs when implemented. To the extent that the planner *is* an expert in these activities, he certainly has much to offer in the realm of social problems. (Only occasionally—usually after going to bed at night—do we permit ourselves to ask whether we really *are* experts in these things.)

Planning and Race

Despite these three points of interaction, however, the planning profession as a whole has been timid in approaching problems associated with race, usually on the grounds that "our client is the *entire* community," or that "the race issue is basically the responsibility of *other* professions and institutions, not ours." And yet the catalogue of ways in which planners have actually worked to the *detriment* of racial minority groups is by now quite extensive, including such items as (1) the widely criticized "Negro removal" and "destruction of community" aspects of urban renewal clearance projects; (2) the increasing movement of industrial plants to suburban areas to which black workers, locked into the central city ghetto, lack ready access; (3) the design of suburban-oriented transportation systems which can carry affluent suburban workers into the downtown core much more efficiently than they can carry the ghetto worker from one part of the city

to another; (4) suburban and exurban zoning ordinances featuring high minimum-acreage requirements for residential development, widely employed to exclude "undesirables"; (5) blind support of the principle of the segregation of land uses so that attempts to provide rental apartment housing opportunities to minority group members can be overcome successfully by neighborhood residents who "deplore the introduction of apartments into a single-family residential zone," when what they are really saying is that "we don't want any of *them* in our neighborhood"; (6) tacitly supporting the segregationist policies of local housing authorities that have sought to maintain the racial composition of the neighborhoods in which their projects are located by accepting black tenants in black neighborhoods, and vice versa; (7) a failure to see the defeatism built into municipal policies supporting the proposition that sewers, paving, curbs, and gutters can be provided on an assessment basis only, thus condemning large segments of the black community—especially those who live in rental units owned by absentee landlords—to doing without one or more of these necessities; and (8) the general tendency to program improvements in community facilities and utilities—street lighting and maintenance, playgrounds, etc.—in such a way that black neighborhoods get theirs last and least, if at all.

Let me give another personal example of the problem I am describing. Less than a year ago I was assigned the task of conducting a training program on the planning process for a group of community organizers, most of whom were Negroes. This was a relatively militant group; their basic interest was in organizing black communities for the acquisition of power vis-à-vis local government and the so-called "white power structure." Their attitude toward the planning function, despite my attempts to convince them otherwise, was that it is malevolent at worst, irrelevant at best. "Aren't planners the very people who have been hurting us all these years? Planning is a power structure tool; what counts is commitment and power, not a bunch of fancy techniques." I came away with a feeling of almost complete failure, and with a sense of dismay that we had been so successful in earning the distrust of the black community.

Some Possible Contributions

Enough, however, of the negatives. What can we do of a positive nature?

As a teacher of city planning, I am happy to say that the present generation of planning students is concerned about social problems and wants to do something about them. Much of their interest is focused on a concept developed a few years ago by Paul Davidoff—namely, the idea of advocate planning. Davidoff's point, in brief, is that many groups who should be are not represented in the planning process at the present time. He would like to see professional planners working not just for a single city agency, but for a variety of organizations that reflect the needs and aspirations of major interest groups. Hence he would like to see physical plans emerging from anti-poverty groups and racial organizations; he would like to see Republican plans and Democratic plans, union plans and chamber of commerce plans. The various plans would compete one with another in the political arena, with ultimate decisions on implementation being made through the normal decision-making instrumentalities of the community.

While I strongly agree with Davidoff's idea in theory, it has several problems in practice. First of all, I'm not satisfied with the way in which the final choice among the competing plans is to be made; if normal political channels are to be used, why will decisions be made which differ from those made in the past? Interest groups will be better represented, in my opinion, only when there are shifts that favor them in the balance of power. Second, who will hire the advocate planners, especially those who are strongly advocating the needs of the poor and minority groups? Third, there has been a tendency for those students who are most excited about advocate planning to be the ones least interested in mastering the technical aspects of the planning profession. He who possesses all the right attitudes and concerns but not the technical skills may be an advocate, but he is probably not a planner.

With regard to the problems at hand, Davidoff is incontestably right on one major point: that black Americans have not shared equally in the benefits flowing from the actions of city planners. And we must alter this situation.

We can begin by recognizing that almost all major planning recommendations and decisions have racial implications. Instead of shying away from these implications, as we have in the past, we should make them explicit, and should weigh them carefully as we formulate our policies and plans. The crisis which confronts our nation at the present time suggests that we must abandon our professed color-blindness in pursuing the public interest. There is good reason to believe that we have never really been color-blind anyway, that in fact most of our efforts have been geared to the needs of the white majority. Whether or not this is true, however, we must now place top priority on planning explicitly and openly for the betterment of the black community. This is imperative to the very common good or general welfare that we profess to be serving.

This need carries with it a number of more specific implications. First, obviously we must recruit and train large numbers of black planners. Second, we must recruit and train persons—both black and white—to deal exclusively with social policy issues. Third, we must

do a far better job of involving citizens in the planning process, from goal-setting through program-planning to implementation. As the cliché goes, we must plan *with* the people, not *for* them, even if this often means the scrapping of our pet schemes or designs. The model cities program, incidentally, shows promise of producing some fruitful methods of citizen participation.

Fourth, we must do a better job of linking up with those professional groups that have better access than we to the dynamics of the ghetto. I have in mind particularly the community organizers who have risen to prominence largely as a result of local community action programs sponsored by the Office of Economic Opportunity.

Fifth, we must actively seek to rectify all the ways mentioned earlier in which planning has operated to the detriment of the black community.

And sixth, I strongly feel that the ultimate solution to many, many problems—those pertaining to schools, to jobs, to dignity and self-respect, etc.—is to be found in residential desegregation. Hard as it may be for many people to swallow, we must accept the cold fact that the hot summer will always remain a threat until the black ghetto has been completely eliminated. The recently passed Civil Rights Bill, with its open-housing provisions, should help in this respect. (It is one of history's little ironies that we find the real estate profession, long one of the most vocal enemies of open-housing laws, now calling for broader legislation so that owners selling their homes will be covered as well.) Laws, however, cannot alone accomplish what is needed; unprecedented levels of good will on the part of white America will have to be achieved. And the planner is a key figure in this effort. His actions will go far in determining the speed with which the order, reason, and confidence of which Reston spoke are restored to our communities.

THE INSTITUTE CALENDAR

October

Driver's License Examiners	Sept. 30-Oct. 3 14-17 21-24
Municipal Fire Administrators	Sept. 30-Oct. 5 14-19
Jail Study Commission	4
North Carolina Bar Association on Continuing Education	4-5
Courts Commission	4-5 18
IAPES Executive Committee	9
Municipal and County Administration (Begins)	10-12
City and County Planners	11
IAPES	17-19
Clerks of Superior Court	17-19
North Carolina Juvenile Correction Association	18
Superior Court Judges' Conference	25-26
School Attendance Counselors	29-31

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City and County Planners	1
Police Administration (Begins)	5-7
Medical Examiners	7-8
Press-Broadcasters' Court Reporting Seminar	8-9
Board of Directors of Education Association	8-9
North Carolina Association of Assessing Officers	12-14
Magistrates' School	18-23

Continuing Schools

North Carolina Highway Patrol Basic School	Through Dec. 14
Municipal and County Administration	Nov. 1-2

North Carolina State Board of Education

Department of Community Colleges

LAW ENFORCEMENT TRAINING

Schedule of Schools and Conferences

Schools and Conferences	Date	Location	Area Consultant
Introduction to Police Science	Sept. 30-Oct. 25	Lexington	Lineberry
Police Firearms	Oct. 1-Oct. 3	Edenton	Langston
Police Administration (F.B.I.)	Oct. 7-Oct. 11	Wilson	Langston
Supervision for Police	Oct. 14-Nov. 8	Wilson	Langston
Police Firearms	Oct. 22-Oct. 24	New Bern	Langston
Crime Scene Photography	Oct. 22-Oct. 24	Elizabeth City	Langston
Police Firearms	Oct. 29-Oct. 31	Jacksonville	Langston
Techniques of Interrogation	Nov. 11-Nov. 15	Greenville	Langston
Supervision for Police	Nov. 18-Dec. 13	Jacksonville	Langston
Accident Investigation	Nov. 25-Nov. 29	Wilson	Langston
Accident Investigation	Dec. 2-Dec. 6	Greenville	Langston
Accident Investigation	Dec. 2-Dec. 6	Jacksonville	Langston
Criminal Investigation	Jan. 13-Jan. 17	Wilson	Langston
Accident Investigation	Jan. 13-Jan. 17	Wilmington	Langston
Accident Investigation	Jan. 20-Jan. 24	Wallace	Langston
Accident Investigation	Jan. 20-Jan. 24	Roanoke Rapids	Langston
Accident Investigation	Feb. 3-Feb. 7	Wilmington	Langston
Accident Investigation	Feb. 10-Feb. 14	New Bern	Langston
Introduction to Police Science	Feb. 10-March 7	Wilson	Langston
Accident Investigation	Feb. 17-Feb. 21	Edenton	Langston
Criminal Investigation	Feb. 17-March 14	Lexington	Lineberry
Riot Control	March 10-March 21	Elizabeth City	Langston
Riot Control	March 17-March 21	New Bern	Langston
Supervision for Police	March 24-April 18	Wilson	Langston
Introduction to Police Science	April 7-May 2	Elizabeth City	Langston
Supervision for Police	April 7-May 2	Lexington	Lineberry
Police Firearms	April 15-April 17	New Bern	Langston
Police Firearms	April 15-April 17	Greenville	Langston
Accident Investigation	April 21-April 25	Wilson	Langston
Introduction to Police Science	April 21-May 16	Wilmington	Langston
Police Firearms	April 22-April 24	Washington	Langston
Accident Investigation	May 5-May 9	Wilson	Langston
Accident Investigation	May 5-May 9	Morehead City	Langston
Police Firearms	May 6-May 8	Edenton	Langston
Police Firearms	May 6-May 8	Wallace	Langston
Accident Investigation	May 12-May 16	New Bern	Langston
Police Firearms	May 13-May 15	Ahoskie	Langston
Police Firearms	May 20-May 22	Wilmington	Langston
Police Firearms	May 20-May 22	Elizabeth City	

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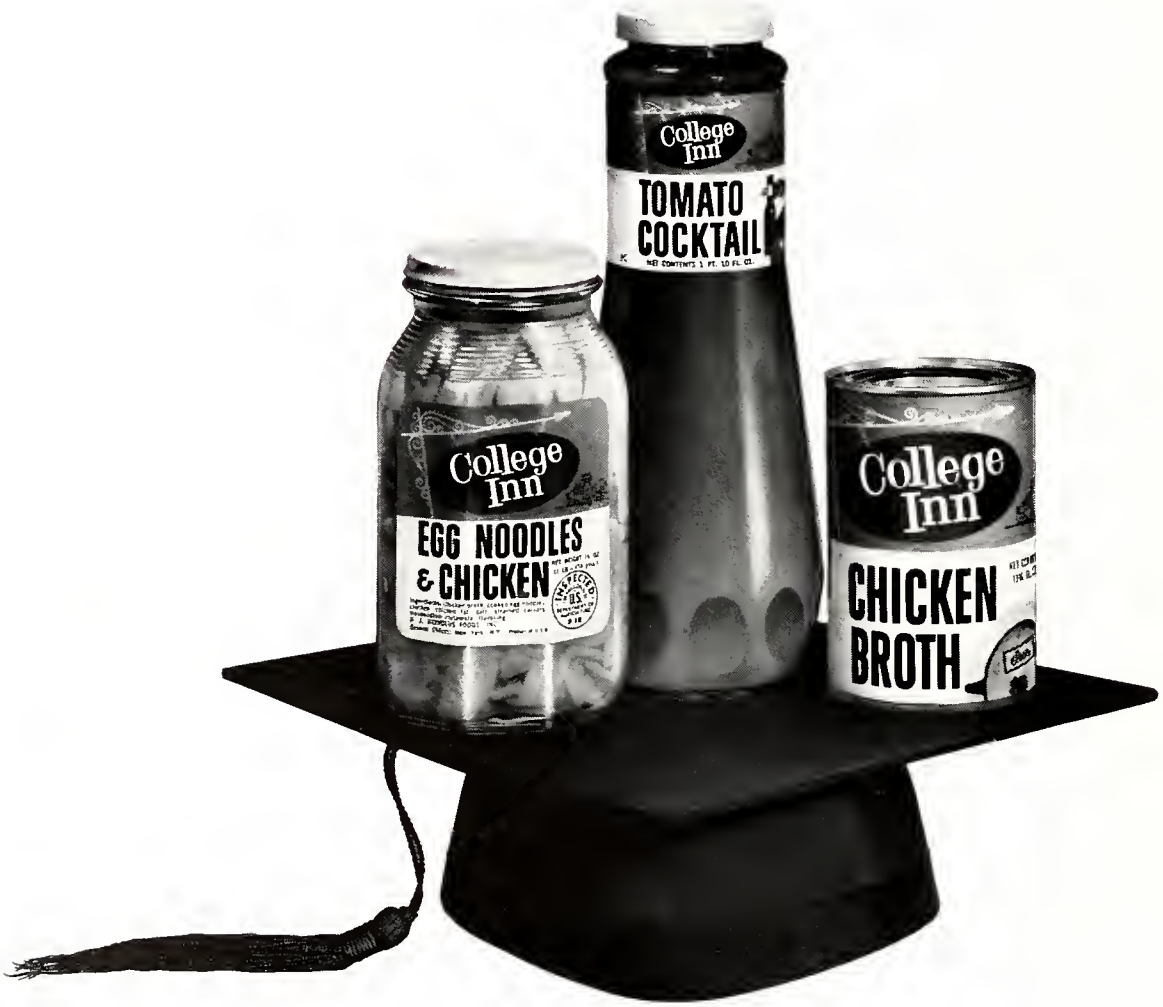

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