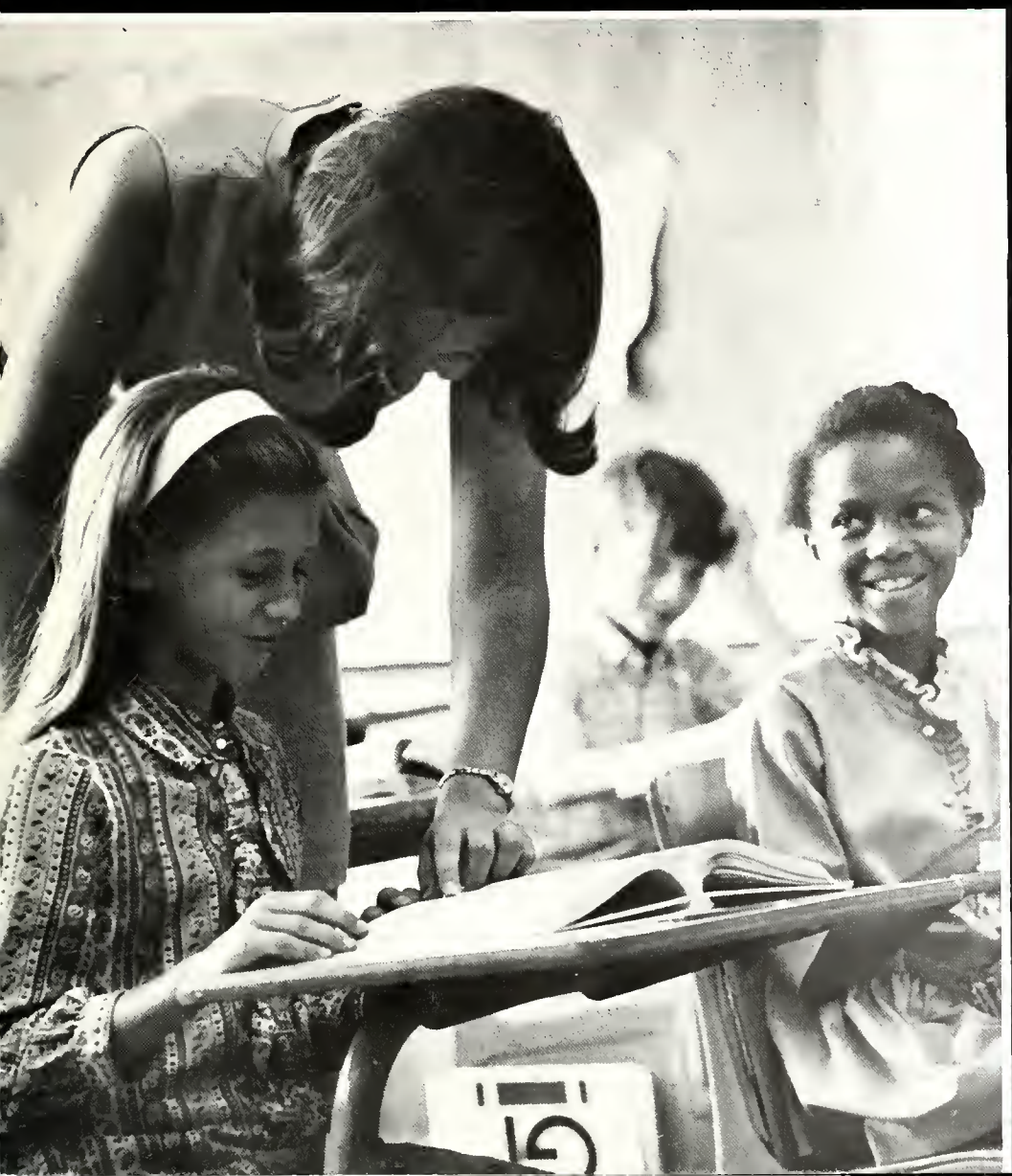
POPULAR GOVERNMENT

September / 1970

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL



This month

POPULAR GOVERNMENT / Published by the Institute of Government

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Another school year has begun. This month's cover photo was taken in the Durham County schools by Ted Clark.

VOLUME 37 SEPTEMBER 1970 NUMBER 1

Published monthly except January, July, and August by the Institute of Government, the University of North Carolina at Chapel Hill. Change of Address, editorial business, and advertising address: Box 990, Chapel Hill, N. C. 27514. Subscription: per year, $3.00; single copy, 35 cents. Advertising rates furnished on request. Second-class postage paid at Chapel Hill, N. C.

MEDICARE– present and future

By RICHARD L. WARREN

EVERYONE KNOWS that Medicare consists of applying the social insurance principles embodied in the social security program to the problem of financing medical care for the nation's older people. And it has made a substantial contribution to the financial security of the aged. However, the mission of the Medicare program is not just to pay out funds to satisfy the liability of the aged for the cost of care. Medicare also has statutory responsibilities related to the cost and quality of the care it pays for. Thus, Medicare program officials have had to deal with the issues that have become so prominent in the last few years, as the sharp rise in medical prices has led to public awareness of problems in the medical care system.

While Medicare is financed through federal taxes and its over-all direction is the job of the Social Security Administration, direct contact with those who provide medical care is handled almost entirely through private agents—Blue Cross, Blue Shield, or commercial insurers, some 130 in total, as well as many private auditors who are subcontractors and state agencies. One of the more difficult administrative duties of the Bureau of Health Insurance is to assure that these somewhat autonomous organizations pay bills properly and promptly; monitor the quality of hospitals, extended care facilities, and home health agencies; measure the reasonable costs of these providers of services; determine what charges of physicians and others are reasonable; and carry out the various other day-to-day tasks for which they are responsible.

One of the problems of dealing well with medical care is that it is composed of a large number of relatively small independently operating units, each with its own characteristics. There are some 7,000 hospitals; 4,000 extended-care facilities; 2,300 home health agencies; 2,600 laboratories; and 200,000 physicians, as well as substantial numbers of other health service providers. So, obtaining enough information about these providers to take actions appropriate to dealing with each of them is hard. One of the most difficult initial operations of Medicare was developing a system to integrate these separate elements into a whole, capable of dealing with a tremendous number of claims—6 million hospital claims paid in a year and 38 million claims paid for medical services. The health benefits paid totaled some $6.8 **billion** last year.

Medical care costs have risen sharply. This increase results from many different factors, one of which is that in medical care there is a relatively small potential for substituting machines for human hands to increase productivity. Further, until recently employees in hospitals and many other segments of the health industry were not organized in labor unions and were not protected by minimum wage laws and generally were paid less than employees elsewhere; the recent catch-up has contributed to the cost rise. Also, the scientific ad-

The author is a staff officer with the Bureau of Health Insurance of the Social Security Administration. This article is adapted from a talk before the southern branch of the American Public Health Association at Wrightsville Beach last spring.

vances in medical care have required not only more capital but also more labor to apply them. More and more consumers of medical care are not directly concerned with its price because it is paid for by insurance or government, and some hospitals tend to exercise insufficient controls over their expenses because they believe that any expenses they incur will be met by insurers without much question. All of these and other factors have contributed to the fact that hospital care costs per day have risen sharply in the country. For example, the yearly increase in hospital costs has been as much as 15 per cent on an average per-patient-day basis.

These cost rises have affected not only Medicare and Medicaid but **all** insurance programs, public or private. The insurance plans for federal employees are one example. The increase in premiums for family coverage under the high-option service benefit—Blue Cross-Blue Shield—plan for federal employees was 61 per cent from January, 1966, to January, 1970. The corresponding indemnity plan premium rose by 73 per cent in the same period.

THAT MEDICARE WOULD INVOLVE very special problems of administration was recognized even in the earliest stages of the program. Therefore, we have tried to identify problems as early as possible and then take vigorous action to try to relieve them. A number of decisions were made at the outset of the program, some before the first benefit was paid, to prepare us to identify problems as they arose, whether they involved only individual cases or were of a more general nature. Most elements of our administrative controls system were planned over four years ago, although not all of them could be translated into processes and systems immediately.

A major element of control in a decentralized system of administration like Medicare's is the development of operating statistics that permit comparison and analysis of the entire process. Before any claims were received, a system was developed for obtaining uniform and reliable program data from intermediaries, carriers, and states about hospitals, extended-care facilities, doctors, and other suppliers of health services. While the system was designed before July 1, 1966, data of this kind — for example, data on extended-care facility costs — take a long time to be produced and made available for analysis. The first year of coverage of extended-care facilities was 1967. Annual costs could not be made available until 1968. Many extended-care facilities had never become very expert at cost accounting, the intermediaries were new at the job, the auditors that were used by Medicare were unfamiliar with the Medicare rules. To get through the process of preparing cost reports that could be called accurate, even when judged by only the most basic criteria of good accounting, was no quick and easy job. The interrnediaries rejected many on desk review for any number of reasons. Auditors found all kinds of difficulties and in some cases had to reconstruct the records in their entirety to produce a report. After they were through, the intermediary in the case went to the provider to settle differences between the report as submitted and the corrected one that the intermediary thought more proper. After that was over, in many cases the national Blue Cross Association, when it examined the final report, found obvious deficiencies and required another reworking. All of this has meant that only in 1969 did the first data of any consequence begin to come to us on the final cost settlements of extended-care facilities. Yet the system design still seems sound and appropriate for the program as enacted. We will be analyzing and comparing the reports as received, and we will be taking actions as indicated by our findings. We hope and expect that the system will be improved in the future as the experience of extended-care facilities, intermediaries, and our own staff are assimilated into the process, and as we find and eliminate kinks in our policies and procedures. Some other examples of administrative controls designed to help eliminate problems are:

(1) **Surveillance of Intermediaries and Carriers** —Financial control is achieved in part through a budget process. We require intermediaries and carriers to submit justifications with their annual budget estimates which sufficiently explain the proposed use of funds requested. Items of possible expenditure must be explained fully and are considered in the light of estimated workloads and productivity.

All pertinent budget information that has been accumulated about each intermediary and carrier becomes part of the contract reporting and monitoring system used to coordinate the entire system.

(2) **Contract Reporting and Monitoring System.** When significant disparities between individual performance and national averages are identified, necessary corrective action is undertaken.

(3) **Audits of Intermediaries and Carriers.** The HEW Audit Agency examines intermediary and carrier Medicare operations. Although the primary purpose of the audits conducted by the audit agency is to review and approve administrative costs, the scope of these audits is not limited to financial considerations. Besides verifying financial transactions, auditors verify that funds were spent according to law, regulations, and procedures, and they consider whether policies, plans, and procedures are adequate for effective operations.

(4) **Contract Performance Review.** The teams make a detailed examination of organization for performance of Medicare functions, staffing of Medicare positions, personnel and management practices, and claims-processing techniques.

A recent addition to this control process has involved the stationing of resident representatives of the Bureau of Health Insurance at the office of many of the larger carriers and intermediaries to obtain immediate, firsthand information and to provide immediate consultation and direction.

Finally, a system was developed so that beneficiaries would be informed of claims paid in their behalf no matter who received the payment. One of the results expected from this process was that beneficiaries would inform the program when they thought an improper payment had been made, thus providing a source of evidence of possible fraud and consequently also a deterrent to claims for services not rendered or for higher charges than were actually made.

I THINK THAT ALMOST EVERYONE agrees that Medicare is a basically good program. It was a massive undertaking and continues to be a massive operation. There is much room for improvement, however, through both administration action and legislative amendment. And I would like now to discuss with you some of the proposed Medicare and Medicaid reforms, and the reasons behind them.

Did you know that the federal government will spend over $10 **billion** this year to buy health care for the aged and poor under the Medicare and Medicaid programs? This is double what was estimated when these programs were enacted in 1965, just five years ago. In another five years, under the present trend the cost will be at least $20 billion.

Even so, the aged and the poor are not getting all of the care they need.

The average citizen loses on two counts: (1) He is paying an increasing share of taxes to support this expenditure, without seeing the desired results for it. (2) He is paying higher medical bills in part because the government has increased the demand for medical service without increasing the supply and without improving the operation of the health care industry.

The nation as a whole loses from the inflation of health care costs. Such inflation means fewer dollars to expand other needed health activities, to improve the efficiency of the health care system, to increase the number of doctors and other health personnel needed to meet the expanding demand, to fight pollution and other environmental factors affecting health, and to increase medical research.

THE QUESTION is not one of placing blame but of recognizing the difficulties and acting on them. Medicare and Medicaid were built on the traditional arrangements for organizing, delivering, and paying for care that prevailed when those programs were enacted. They placed added and unanticipated stress on a health system that was unprepared to respond. Last year HEW directed the nation's attention to this situation and called upon the health community to make drastic changes in our medical care systems. And there have been encouraging responses. Medical societies are beginning to experiment with offering services to the poor at guaranteed annual rates and reviewing the practices of their members to prevent abuses. Medical schools are looking for ways to expand their enrollment and develop paramedical workers. The new medical students are involving their schools in the problems of the inner-city and the rural poor. Hospitals are establishing satellite health centers in neighborhoods that have had no facilities and are expanding outpatient services in order to keep people out of the hospital. Insurance companies are going beyond their traditional role of paying bills to concern themselves with problems of providing health services.

But these efforts are still few and scattered, and they have brought into real view the size of

the job that must be done. Consider some of the current symptoms:

- Costs of hospital care are still rising at 13 per cent per year, more than twice the rate of other parts of the economy.
- One dollar out of every fourteen spent in the national economy goes for health. This is a higher percentage than in any other major nation in the world.
- The federal government is rewarding inefficient hospitals by reimbursing all hospitals on a cost basis.
- Doctors and other medical personnel are badly overworked, many of them laboring an average of 70 hours a week or more, often doing jobs that others could do if our health industry were better adapted to modern needs.

THE GOVERNMENT'S GOAL, then, is to reverse this process of growing expenditures without corresponding increases in health care. This means working toward a system in which the doctor is rewarded financially for keeping the patient healthy, in which the hospital is rewarded for efficiency and can invest cost savings in improved services, in which the doctor and hospital together are rewarded for efficient use of manpower, and in which the health consumer, the individual or the federal government, has a choice between competitive alternatives when he buys health care.

To achieve this goal, the government is proposing basically two steps:

A. To initiate a series of measures aimed at controlling the costs of Medicare and Medicaid and encouraging better distribution of health facilities; and

B. To begin redirecting our Medicare and Medicaid expenditures, through the use of **health maintenance** contracts, toward developing an increasingly efficient and competitive health care industry that can serve all of the population better.

The first proposal concerns such things as:

(1) **Facilities Planning.** The government wants to assure the orderly expansion and improvement of health care facilities while avoiding costly duplication. We are requesting authority to withhold amounts for depreciation and interest related to capital expenditures under Medicare from those health care institutions that make major capital expenditures that are disapproved by local and state planning bodies.

(2) **Medicare Experiments.** We are proposing that the Medicare program be given greater opportunity to conduct area-wide experiments and demonstration projects in the use of financial incentives that offer promise of promoting increased efficiency and cost control.

(3) **Utilization Review.** We want to help the medical profession control overly long hospital stays and other forms of overutilization. We are, therefore, proposing improvements in existing hospital-utilization review procedures by physicians and experiments with new and alternative kinds of medical and utilization review mechanisms, such as the use of computers and medical audits.

(4) **Correction of Abuses.** We are asking for authority to terminate payments for services rendered by health care suppliers found guilty of program abuses, and to facilitate recovery of overpayments.

(5) **Prospective Reimbursement.** Under the present Medicare legislation, reimbursement for hospital services to Medicare beneficiaries is provided on the basis of cost. There is little incentive under retroactively determined cost approaches to produce the services in the most efficient manner. We propose now to move to a required method of determining reimbursement rates on a prospective basis to encourage institutions, through financial incentives, to operate efficiently and to require that they bear the risk of incurring higher costs than contemplated.

(6) **Professional Fees.** We propose that Medicare's recognition of increases in fees of doctors and other professionals be limited so that such increases do not occur at a rate greater than that for prices generally. Under such an approach, allowable charges recognized for Medicare would next year generally be limited either to presently recognized charges or to a new prevailing level set at the seventy-fifth percentile of 1969 average customary charges for a given service in an area. In the future, the reimbursable charges would move upward in proportion to increases in appropriate wage and price increases. This is basically the same approach that has already been instituted in Medicaid.

(7) **Medicaid Reimbursement Changes.** In the economy message sent to the Congress on February 26, the President suggested changes in the federal matching percentage for medical assistance that would encourage states to substitute less expensive care for more expensive care when it is equally beneficial. The proposal provides for increased federal matching to encourage use of outpatient health services and for decreased federal

matching to discourage states' use of institutional services that are largely custodial.

(8) **Medicaid Improvement Program.** Ultimately the structure of the Medicaid program is going to have to be extensively improved. Before changing the nature of the program, we need to gain experience with different approaches to benefits, eligibility, prepayment, and administration.

(9) **Medicaid Standards.** We propose to give the state health agencies responsibility for establishing and maintaining health standards for institutions in which Medicaid beneficiaries receive care and services.

The administration is requesting authorization for federal payment of 90 per cent of the costs incurred by the states in the design, development, and installation of computerized claims-processing and information systems as well as systems to review claims and utilization, thus, zeroing-in on administration costs as well as costs for unnecessary services.

FOR HEALTH MAINTENANCE CONTRACTS, the administration is proposing an even more fundamental change. It is asking for authority, under the Medicare and Medicaid law, to enter into health maintenance contracts guaranteeing health services for the elderly and the poor at a single fixed annual rate for each person served. The interests of all parties—the contracting organization, the person who chooses such services, and the government—will be the same:

- To see that all possible steps are taken to prevent sickness, such as periodic examinations and appropriate immunizations;
- To treat illness as soon as possible to prevent it from becoming more serious;
- To avoid unnecessary hospitalization;
- To provide a full range of services from a single source in a coordinated efficient manner.

In the case of Medicare, the patient will be entitled under such a contract to all of the usual Medicare services plus preventive services. The contract price will be negotiated in advance at an amount less than the Social Security Administration presently pays for conventional Medicare benefits in the locality.

Under Medicaid the administration is seeking authority for the states to offer the poor the option of securing services under such health maintenance contracts.

This is really not a new concept. More than 5 million people in the United States are presently getting medical care under arrangements that include financial incentives to keep the patient healthy and out of the hospital. Virtually all members of a county medical health society in Oregon have joined together with local hospitals to provide health maintenance contracts for the poor. In a newly developed model community, a medical school and an insurance company have teamed up to build a health maintenance organization for the entire population of that community. One of the country's largest corporations has sponsored for many years a nonprofit foundation that now guarantees comprehensive health services at a fixed annual charge for almost 2 million persons. This is the type of thing the government is seeking to expand.

The goal is to encourage a more efficient medical care system, and the proposals the administration is making today should stimulate physicians to align themselves into groups to practice more efficiently.

The essential point is that the federal government is beginning to deal with the health industry as a whole. It will not prescribe the form of a health maintenance organization, but we will be concerned about the result it produces. Under such contracts we will not pay separately for a specific surgical procedure, or a doctor's visit. We will be interested in delivery of an entire product, a guaranteed package of health benefits of high quality, and assurances that the organization can supply that product. The contract will provide a set price per person per year. Savings through efficiencies consistent with quality care will go to the organization and to the consumer, and the organization will assume the risk of any losses through inefficiencies.

IN SUMMARY, the several pieces of legislation now recommended to Congress offer an effective and reasonable over-all approach to meeting the health care needs of the people. Obviously, the federal government by itself cannot and should not direct the health care delivery system. The plan is to develop, in partnership with the private sector, a more effective climate in which private institutions can go about improving the present system of organizing and delivering services.

The chief judge of the North Carolina Court of Appeals speaks before a conference of superior court judges

Maintaining the Judicial Environment in a Trial Court

By RAYMOND B. MALLARD

WHAT SHOULD a judge do and what he must do to protect the rights of the defendant in the trial that generates widespread public interest or one that generates demonstrations and disturbances? The subject is timely and typical.

Judge Frank J. Murphy, Chairman of the Section of Judicial Administration of the American Bar Association, recently said:

When, therefore, judges, lawyers and laymen, as with one voice, express concern for what they read in news reports as a challenge to our traditional system of justice, and call for action by the Bench and Bar to meet it, they indulge neither in overblown rhetoric nor overreaction. What they call for is unequivocal reaffirmation and implementation of the fundamentals of criminal trials; in sum

- That the heart of the judicial process in criminal justice, even in these changing times, is *still* the trial in the courtroom.
- That a public trial is *not* to be equated with a forum for political debate, a market place for the sale of ideas, or an arena for a meeting of gladiators and their votaries.
- That a fair and impartial jury is *still* a bulwark of individual freedom.
- That the jury *must* have fair opportunity to do justice on the law and the evidence presented.
- That the trial judge *must* possess and should exercise the power necessary to prevent frustration of the purposes of the trial, and to direct it to a fair and impartial result.

It is generally conceded in North Carolina that a superior court judge has the power and the duty to take proper action to promote justice; however, he must proceed in an orderly and judicial manner. It is his duty to expedite the business of the court and to act regardless of his feelings or sentiments. In other words, his duty is to fulfill and carry out the function of the court. The function of a judge sitting as a court is, in the main, to hear and determine controversies between litigants, and he must do this without letting personal bias interfere with the performance of his duty.

Inasmuch as this presentation is to deal with the problem from the viewpoint of judicial ethics, I deem it appropriate to call attention to certain Canons of Judicial Ethics.

The American Bar Association adopted or promulgated Canons of Judicial Ethics in 1924. (These are now in the process of being revised by the American Bar Association, and according to the best information I have, the revision is to be considered in February, 1971.)

In conducting any trial, the judge should keep in mind that his primary consideration is to see that the defendant obtains a fair trial, free from prejudicial error. In doing so, the rights of many people other than the defendant are involved—the rights of the public, court officials, witnesses, jurors, and spectators.

The trial judge, when he opens a session of court for the trial of cases, is representing not himself but the people of the State of North Carolina. The trial judge should not tolerate disrespect from anyone to the court over which he presides. (Technically speaking, a judge is not a court; however, when he is presiding over the trial of a case in the superior

courts of the State of North Carolina, he personifies the court.)

Control of the judicial proceedings depends upon the firmness of the trial judge, who, in exercising firm control over the proceedings, is only doing what the Tenth Canon of Judicial Ethics requires of him. This Canon requires that so far as his power extends, he enforce civility and courtesy from everyone in the courtroom to the court, to jurors, witnesses, and litigants.

The judge should be considerate of the jurors, witnesses, and spectators. Canon Ten provides that the judge should require, insofar as his power extends, that all clerks and all court officers and all attorneys be courteous and civil to the court, to the jurors, to witnesses, and to any other person having business in the court.

Witnesses are entitled to the protection of the court to prevent them from being browbeaten by lawyers who might be inclined to do so.

Jurors should be informed by the court of their duty so that they can perform and function as the law anticipates that they will function. Canon Nine requires the judge to be considerate of jurors, witnesses, and others in attendance upon the court.

For a trial judge to operate a court "with fitting dignity and decorum," he must at all times be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political, or partisan influences. These are all required of him under Canon Thirty-Four of the Canons of Judicial Ethics. (The trial judge cannot afford to permit anyone [spectator, witness, court official or any other person] to disrupt the proceedings without immediately reprimanding, and, if the occasion requires, punishing such person.) To postpone prompt action invites misconduct. Any witness or spectator who makes any contemptuous or disruptive remark during a session of court should be immediately dealt with. If it is determined by the judge to be a planned affair, the judge should immediately punish everyone connected therewith. The punishment should be designed to deter any further planned disruption or at least to deter participants for such time as the judge may deem necessary under the authority given him by statute.

If anyone makes an effort to "take over" a trial, immediate action by the judge is demanded. This person must be shown that this kind of conduct will not be tolerated and that the judge will have complete control over his court.

What of the attorney who might be inclined to disrupt the proceedings? I do not know of any attorney in the State of North Carolina who would do this, but from time to time the press has reported instances in which the attorney, in representing his client, has been discourteous, uncivil, and contemptuous to the court. This kind of conduct should not be tolerated by any judge in the State of North Carolina. Canon Eleven of the Canons of Judicial Ethics states: "A judge should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counselors brought to his attention; . . ." If the attorney is discourteous or insulting to the court or makes any remarks tending to unlawfully and willfully disrupt the proceedings, it is the judge's duty to deal with him immediately and summarily.

One way that this could be done in North Carolina is to send the jury out and reprimand the attorney. If a reprimand does not bring about the desired results, the jury can be sent out again and the attorney adjudged to be in contempt of court with the punishment continued until the end of the trial. If this action does not have the desired result, then it is the trial judge's duty to impose such punishment as is proper immediately.

This action should be taken promptly so that everyone will know that the judge is in charge of the court and will operate it in a proper and dignified manner. I repeat, I know of no attorney in the State of North Carolina, nor have I heard of one, so devoid of a sense of duty to his profession that he does not give the proper repect to the court. It is to be hoped that no lawyer licensed to practice in North Carolina would deliberately and intentionally enter upon a course of conduct designed and intended to disrupt a court, as some of the attorneys representing some clients in some of the courts in the United States are reported to have done.

I have heard of an attorney who contended that the trial judge was making errors detrimental to his client and, therefore, he felt it was his duty to oppose the judge in such a manner as to cause the judge to change his mind and that it was proper to do this in a disrespectful manner. In this, he was in error.

In a case submitted to the Committee on Ethics of the American Bar Association, a military lawyer was given a direct order from a commanding officer not to investigate an issue which he, as defense counsel, considered to be an issue in the case. It is said in the opinion of the Committee on Ethics that "(w)ith respect to defense of persons accused of crime, the last sentence of the first paragraph of Canon Five of our Canons of Professional Ethics provides as follows: 'Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense *that the law of the land permits,* to the end that no person may be deprived of life or liberty, but by due process of law.'" The Committee on Ethics calls attention to Canon Fifteen, which states: "Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence

which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause."

The Committee held that any lawyer representing a person accused of an offense is bound by these Canons. It asserted: "The fact that the lawyer is in military service and is being compensated by the United States, and that defending the accused is part of his military duties, does not alter or detract from his ethical obligations.

"In a sense a direct order from a military superior with the authority to issue it is, as far as the military subordinate is concerned, the 'law of the land', and in another sense it would be analogous to the ruling of a court. It appears to us that the Canons require that the military lawyer obey the direct order until such time as it is withdrawn or is rescinded by higher authority. To do otherwise would be analogous to an intentional violation of a criminal statute or deliberate defiance of a court order in furtherance of a client's cause, neither of which is permitted by the Canons."

The foregoing is some additional authority for the proposition that a lawyer who is representing his client in court is bound to be courteous to the court and to submit himself to the rules and orders of the court. If the court is wrong in entering its rulings or making its orders, then the proper procedure is to have errors by a trial court corrected in the appellate courts. Every defendant has the right to appeal from a trial court.

THE TRIAL JUDGE should not do anything which would lead anybody to think that he is prejudging anyone who is likely to come before him. This does not mean that a trial judge is not entitled to have an opinion but rather that he should not specifically point up a situation, like stating that people who were engaged in a racial riot would receive the maximum penalty when those cases are likely to come before him.

The Committee on Ethics of the American Bar Association received a complaint concerning the activity or statements of a judge with respect to conduct of people engaged in racial riots in which the judge is reported to have said that "offenders of riot-connected offenses would receive the maximum penalty under the law." The majority opinion of the Committee on Ethics held that it was apparent that the judge was seeking to curtail racial riots and to discourage others from joining or participating in them. The Committee held that while this was a laudable purpose, such action was in contravention of Canons Twenty-One and Fourteen. Canon Twenty-One states that a judge should adopt the usual and expected method of doing things and not seek to be extreme, peculiar, spectacular or sensational. Canon Fourteen states that a judge should not be swayed by partisan demands, public clamor, or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

I concur with the majority opinion. I do not think that the judge should make any statements with respect to cases that are likely to come before him for sentencing.

The trial judge should not issue a statement to the news media about a case that is to be heard or one that is being heard by him. He should confine any remarks he makes concerning a trial, before it ends, to those he makes in open court.

The judge is and ought to remain neutral and be able to try the case fairly and accurately.

WE COME NOW to the question of unruly defendants. How should the defendant who is inclined to deliberately and intentionally disrupt the court be dealt with? Defendants tend to fall into different categories, depending upon the maximum sentence for the crime charged. It is obvious that techniques which may work with those charged with misdemeanors may not be effective when applied to those charged with felonies. Defendants in a capital case may respond differently from those charged with a non-capital offense. Different procedures for control over the courtroom are called for, depending upon the type of trial under way. In addition, it may be that our courts have required different standards according to the crime charged. A brief discussion of control techniques might be appropriate.

As to the defendant on trial for a misdemeanor who intentionally and willfully tries to disrupt the court to keep it from functioning, I think that upon the first sign of such conduct, the court should find the defendant in contempt of court, put him in jail, and postpone the trial until such time as the defendant is inclined to submit to trial like an ordinary human being; thereafter, if such behavior continues, the judge should continue to put the defendant in jail for thirty-day periods until he does agree to submit to the trial proceeding in an orderly fashion.

For the defendant charged with a capital crime, it might be well to discuss two recent cases, one decided by the United States Supreme Court (*Illinois v. Allen*, 25 L. Ed. 353), and one decided by the North Carolina Supreme Court (*State v. Moore*, 275 N.C. 198).

In *Illinois v. Allen*, the Supreme Court dealt with a non-capital trial for armed robbery. The defendant disrupted the court and was removed from the courtroom while the trial continued. The Court held: "(W)e explicitly hold today that a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disre-

spectful of the court that his trial cannot be carried on with him in the courtroom. . . . No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly."

In *State v. Ferebee*, 266 N.C. 606, it is said: "In the application of this fundamental principle (the right of confrontation) it has been held that in a capital felony the prisoner cannot waive his right to be present at any stage of the trial. Not only has he a right to be present; he must be present. In felonies less than capital the right to be present can be waived by the defendant through his counsel with the consent of the court. True, a sentence imposing corporal punishment may not be pronounced against a defendant in his absence."

In *State v. Moore, supra*, Justice Sharp in dicta stated: ". . . it is well established in this State that an accused cannot waive his right to be present at every stage of his trial upon an indictment charging him with a capital felony. . . . Defendant's presence at his trial for a capital felony, however, is a matter of public as well as private concern. . . . Public policy requires his attendance at such a trial."

Under the law as enunciated by the Supreme Court of North Carolina, the defendant charged with a capital crime may not be removed from the courtroom during his trial. If that be the case, then what can the judge do? The defendant could be cited for contempt. However, a defendant operating on the theory that it is better to receive thirty days than death might delay such a trial indefinitely. Under the *Allen* case, he could be bound and gagged; however, such a procedure does not present a pretty spectacle and is not desirable. It does not seem to be in keeping with the decorum of the courtroom; nor does it allow one of the fundamental reasons for having the defendant present at the trial, that of communication with his counsel. In my opinion, there is one way that will give a defendant his constitutional rights to confrontation of the witnesses, communication with his attorney, and to be present at every stage of the trial, and also to avoid total disruption of a trial. That way is to provide some kind of booth that could be transported from court to court in a state system and in which there is communication from the courtroom to the booth and a means of communication from the booth with the attorney. This could be constructed in such manner that the defendant could see all that was going on in the courtroom, hear all that was going on in the courtroom, communicate with his attorney and actually be present in the courtroom. This would satisfy every constitutional requirement, and in addition, the booth could be so constructed that it would be soundproof from within and in fact it could be constructed so that the people in the courtroom could not even see the defendant if he was making such offensive actions or motions as to be disruptive. The better practice would be to so construct it that he could be seen and that he could see but that he could not by his voice or other means create such an attraction or attention to himself as to disrupt the proceedings.

A further look at the *Allen* case might be helpful. The case is not a panacea. The Supreme Court, by requiring a warning before removal of the defendant from the courtroom, seems to allow the defendant at least one disruption. Also, it might be questioned whether the court in this case required a warning before a defendant might be cited for contempt.

In speaking of the loss of the right to be present at the trial, the Court said: "Once lost, the right to be present can, of course, be claimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings." This seems to permit the defendant to make a mockery of the whole process by a simple promise to behave and then breaking the promise once he is permitted back into the courtroom. This does, in fact, give him another opportunity to disrupt the proceedings. If the judge is required to hold a voir dire after each expulsion, upon receipt of word from a defendant that he is willing to behave, this requirement would permit a defendant to indefinitely delay the proceedings.

It is my conclusion that the opinion in the *Allen* case by the Supreme Court of the United States, while very helpful, does not solve the problem.

We are beginning to see a new kind of coercion being brought to bear on our courts. We have recently seen how students at a great university, supported by the faculty, refused to attend classes and held mass demonstrations in an effort to influence the action of a court. What this seems to be leading to is trial by mass demonstrations or by a show of force. This and other kinds of coercion upon our courts cannot and must not be tolerated if we are to remain a free people. Some way must be devised to keep defendants and their friends from making a mockery of the courts.

It might be noted in passing that the *Allen* case was litigated for 13 years. Some way must be devised to terminate litigation in a particular case in less time than this.

PROPERTY TAX EXEMPTIONS AND CLASSIFICATIONS

By Henry W. Lewis

North Carolina Constitution, Article V

Section 3. *State taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away. . . .

. . . .

Section 5. *Property exempt from taxation.* Property belonging to the State, counties and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding three hundred dollars ($300.00), any personal property. The General Assembly may exempt from taxation not exceeding one thousand dollars ($1,000.00) in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this section.

Constitutional Grant

Article V, Section 5, of the North Carolina Constitution, quoted above, contains the only property tax exemption authorized by the people of the state. The first three sentences speak directly to the kinds of property qualified for exemption; the last two sentences specify the permissible means by which the General Assembly may exercise the exemption powers granted to it by the constitutional provision.

The first sentence of the section is a mandate: "Property belonging to the State, counties and municipal corporations shall be exempt from taxation." It is self-executing; no legislative action is needed to effect the exemption of governmental property. [*Redevelopment Commission v. Guilford County,* 274 N.C. 585, 164 S.E.2d 476 (1968); *Piedmont Memorial Hospital, Inc. v. Guilford County,* 218 N.C. 673, 12 S.E.2d 265 (1940).]

The second and third sentences of Section 5 are not self-executing. They give the legislature discretionary authority to grant exemption to property held for a limited set of uses. As early as 1894 Justice Clark set down the authoritative definition of the constitutional limits of the General Assembly's power to grant exemptions:

This article appears as Chapter I in the author's new book, which also bears the title PROPERTY TAX EXEMPTIONS AND CLASSIFICATIONS. *The book (1) catalogues and analyzes individually every North Carolina statute granting property tax exemption or classifying property for preferential tax treatment; and (2) gathers (in conjunction with each statutory analysis) digests of all judicial decisions and opinions of the Attorney General of North Carolina.*

> The Legislature can exercise this power to the full extent, or in part, or decline to exempt at all. It can exempt one kind of property held for [the constitutionally recognized] purposes, either realty or personalty, and tax other kinds. It can exempt partially, as for instance up to a certain value, and tax all above it. It can exempt the property held for one or more of those purposes and tax that held for others . . . for the constitutional provision is disjunctive. . . . [*United Brethren v. Commissioners of Forsyth County*, 115 N.C. 489, 493, 20 S.E. 626, 627 (1894).]

The North Carolina Supreme Court has not departed from that position. [*Trustees of Lees-McRae Institute v. Avery County*, 184 N.C. 469, 127 S.E. 543 (1922); *State ex rel. Corporation Commission v. Oxford Seminary Construction Co.*, 160 N.C. 582, 76 S.E. 640 (1912).] And the General Assembly has not hesitated to exercise less than its full exemption authority. This is best illustrated by the numerous limitations (in addition to the constitutionally required purposes) which the legislature has imposed in granting exemptions. It is also demonstrated by the fact that the General Assembly has never exercised its authority to exempt homesteads under the third sentence of the constitutional section.

Equality and the Presumption of Taxation

Both of the sections of Article V of the North Carolina Constitution which are quoted at the opening of this article should be read in considering exemptions and the legislative power to exempt. Section 3 opens with a statement of the basic principle in all taxation: "The power of taxation shall be exercised in a just and equitable manner. . . ."

Here again, Justice Clark enunciated the view consistently taken by the courts in dealing with exemption statutes:

> The general rule is liability to taxation, and that all property shall contribute its share to the support of the government which protects it. Exemption from taxation is exceptional. It needs no citation from reiterated precedents that such exemptions should be strictly construed, and that if we had any doubts . . . they should be resolved in favor of liability to taxation. [*United Brethren v. Commissioners of Forsyth County*, 115 N.C. 489, 497, 20 S.E. 626, 627, (1894).]

Although the case in which this statement appeared dealt with a discretionary exercise of the exemption power, the standard enunciated by the court was drafted in language broad enough to cover interpretion of the mandatory exemption of governmental property. However, in a comparable case in 1931, the court wrote:

> The mandatory constitutional provision that property belonging to or owned by the State or municipal corporations shall be exempt from taxation, is in language so free and clear from ambiguity that ordinarily there is no room for construction as to its application to specific property. Statutes enacted by the General Assembly exempting specific property from taxation, *because of the purposes for which such property is held and used*, are and should be construed strictly, when there is room for construction, against exemption and in favor of taxation. Exemption of specific property from taxation because of the purposes for which it is held and used, is a privilege, which the General Assembly has the power to confer on its owner or owners, within the limitations of the Constitution of the State. In the absence of a clearly expressed intention on the part of the General Assembly to confer this privilege of exemption from taxation, with respect to specific property, such property is subject to taxation in accordance with the general rule that all property in this State is liable to taxation for the purpose of supporting the government of the State or of its political subdivisions. [*Latta v. Jenkins*, 200 N.C. 255, 258-59, 156 S.E. 857, 859 (1931). Emphasis added; citations omitted.]

In the case of the discretionary exemption, the court has been mindful of the need for an equity in taxation that would require all property to "contribute its share to the support of the government which protects it." [*United Brethren v. Commissioners of Forsyth County*, 115 N.C. 489, 497, 20 S.E. 626, 627 (1894).] But such a rationale lends little support to a rule of strict construction for the constitutional exemption of governmental property.

In a concurring opinion in *Town of Warrenton v. Warren County*, 215 N.C. 342, 2 S.E.2d 463 (1939), Chief Justice Stacy enunciated a different reason for strictly construing the constitutional grant of immunity to governmental property:

> The reason municipal property is granted immunity from taxation is that it is supposed to be dedicated to a public use. To exempt it for any other reason would run counter to the rule of fair play or the principle of equality. Such a purpose is not to be imputed to the framers of the Constitution. Rather a contrary implication should be indulged. It will be

implied that the intention was to exempt such property only when devoted to a public purpose. When "the State steps down from her sovereignty and embarks with individuals in business enterprises," its property so employed is not exempt from taxation under Art. V, sec. 5, of the Constitution. [215 N.C. at 346, 2 S.E.2d at 465. Citations omitted.]

Not only has this standard been adhered to in subsequent decisions concerned with governmental property [see, for example, *Redevelopment Commission v. Guilford County*, 274 N.C. 585, 164 S.E.2d 476 (1968)], but it has also been relied upon in cases dealing with exemptions granted on the basis of use. Thus, in a case concerned with the exemption of the property of a fraternal order, Chief Justice Stacy again wrote:

> Property held for any of [the exempting] purposes is supposed to be withdrawn from the competitive field of commercial activity, and hence it is not thought violative of the rule of equality or uniformity, to permit its exemption from taxation while occupying this favored position. But when it is thrust into the business life of the community, it loses its sheltered place, regardless of the character of its owner, for it is then held for gain or profit. [*Odd Fellows v. Swain*, 217 N.C. 632, 637, 9 S.E.2d 365, 368 (1940).]

The Use Test

The second sentence of Article V, Section 5, conditions the legislature's authority to grant property tax exemption on the use to which the property is put or the purpose for which it is held. The best analysis of this sentence was written by Chief Justice Stacy:

> The test to be applied in determining the validity of exemptions granted under this provision of the Constitution is the purpose for which the property is held. Note, the language is not that the General Assembly may exempt property *held by* educational, scientific, literary, charitable, or religious institutions, but the grant is in respect of property *held for* one or more of the designated purposes. It is true that property held for one or more of these purposes is usually held by an institution of such like character, still it does not follow that an institution of a given kind necessarily holds all of its property for a kindred purpose, or for any of the purposes enumerated in this section of the Constitution. It is not the character of the corporation or association owning the property which determines its status as respects the privilege of exemption, but the purpose for which it is held. [*Odd Fellows v. Swain*, 217 N.C. 632, 638, 9 S.E.2d 365, 368-69 (1940). Citations omitted.]

It was in the same case that Stacy wrote that, regardless of the character of its owner, property thrust into the business life of the community loses its right to exemption, "for it is then held for gain or profit." [217 N.C. at 638, 9 S.E.2d at 368.] Although this rule applied in *Odd Fellows v. Swain* was wholly correct in that context, tax administrators have tended to oversimplify and use the revenue-producing test as the primary basis for determining the right to exemption. It has led them to assume that any nonincome-producing property held by a religious, educational, or charitable owner is necessarily entitled to exemption and that property of such an owner which produces any revenue at all is necessarily taxable. Such, however, is not a proper standard. For example, under both G.S. 105-296(4) and G.S. 105-296(4a), property primarily held for an exempting purpose does not automatically lose its exempt status simply because it incidentally produces revenue. Similarly, the fact that governmental property brings in revenue as an incident of the primary purpose for which it is held will not defeat exemption. [*Redevelopment Commission v. Guilford County*, 274 N.C. 585, 164 S.E.2d 476 (1968).]

General Rules of Construction

Having adopted a rule of strict construction in treating both the constitutional provision and the statutes dealing with exemption of property from taxation, the North Carolina Supreme Court has on occasion felt constrained to amplify or modify what such a standard implies. Thus, in *Harrison v. Guilford County*, 218 N.C. 718, 12 S.E.2d 269 (1940), a case in which the court was called upon to interpret what was meant by the expression "additional adjacent land" in what is now G.S. 105-296(3), Justice Winborne wrote:

> "By the rule of strict construction however, is not meant that the statute shall be stintingly or even narrowly construed, . . . but it means that everything shall be excluded from its operation which does not clearly come within the scope of the language used . . ." *Stacy, C. J.*, in *S. v. Whitehurst*, 212 N.C., 300, 193 S.E., 657.
>
> The words used in the statute must be given their natural or ordinary meaning. 71 C.J., 353; *Borders v. Cline*, 212 N.C., 472, 193 S.E., 826. [218 N.C. at 722, 12 S.E.2d at 272.]

The court quoted this language in 1960 [*Southern Baptist Theological Seminary, Inc. v. Wake County*, 251 N.C. 775, 782, 112 S.E.2d 528, 533 (1960)]. In 1968 it added:

> When the relevant language of a statute is plain and unambiguous, there is no occasion for construction. Such being the case a statute must be given effect according to its plain and obvious meaning. 82 C.J.S. STATUTES § 322b(2) at 577 and 583. [*Wake County v. Ingle*, 273 N.C. 343, 346, 160 S.E.2d 62, 64 (1968); see also, *Over-Look Cemetery, Inc. v. Rockingham County*, 273 N.C. 467, 160 S.E.2d 293 (1968).]

The difficulty with these statements by the court is that they do little more than affirm that words in an exemption statute will be interpreted according to their common dictionary meaning. Otherwise, the only guidance they afford the attorney and tax administrator is the suggestion that property will be taxable unless it falls clearly "within the scope of the

language used" to grant exemption. This is little more than a rephrasing of the reiterated maxim: "Taxation is the rule; exemption the exception."

These rules offer little help in deciding whether, from subsection to subsection within the general exemption statutes (G.S. 105-296 and G.S. 105-297), apparently synonymous expressions should be given the same interpretation. Nor do they afford guidance in construing words with possibly varying meanings used conjunctively, as, for example, "owned and held" and "wholly and exclusively." Furthermore, the court has remained silent on matters of punctuation even when it would seem that punctuation might be a controlling factor in statutory interpretation. [See, for example, *Wake County v. Ingle*, 273 N.C. 343, 160 S.E.2d 62 (1968).]

Effect of Administrative Interpretation

An inventory of the exemption statutes discloses that relatively few have been the subject of judicial interpretation. Most of them have never been litigated. Yet, year after year, county tax officials, attorneys representing counties, and the Attorney General have necessarily interpreted and applied these statutes. In only one instance has the North Carolina Supreme Court considered the weight to be given administrative interpretation of a property tax exemption provision. In that case, after noting that a particular view of the law had been followed for fifty or more years, the court wrote:

> [T]his interpretation of the law by both the legislative and executive departments of the Government, unchallenged for this period of time, while not conclusive, is deserving of great weight on the construction which should finally prevail as to the proper meaning of the constitutional provision on the subject. . . . [*State ex rel. Corporation Commission v. Oxford Seminary Construction Co.*, 160 N.C. 582, 590, 76 S.E. 640, 643-44 (1912).]

In recent years the court has reiterated this statement in a case dealing with a different kind of tax. [*Hatteras Yacht Co. v. High*, 265 N.C. 653, 144 S.E.2d 821 (1965).] Nevertheless, when faced with a tax statute in which the amount of money likely to be involved would ordinarily be insufficient to warrant litigation, the court added a significant modification:

> This well established principle of statutory construction loses much of its significance, however, where, as here, there are practical reasons which have made it unlikely that the administrative interpretation would be attacked in the courts or before the Legislature. . . . Under these circumstances, the long continued application of the administrative interpretation is not, of itself, persuasive. [*Isaacs v. Clayton*, 270 N.C. 424, 427, 154 S.E.2d 532, 534 (1967).]

Furthermore, in the absence of a showing that the administrative interpretation had been put in written form—a rare procedure in North Carolina counties—and consistently applied, it would be unwise to assume that such an interpretation would have much persuasive weight with the courts.

Nondelegable Legislative Authority to Enact Statewide Exemptions

Until amended by vote of the people in 1962, Section 5 of Article V of the North Carolina Constitution did not contain the last two sentences which appear in the quotation at the opening of this article.

Concerned with a growing tendency of the General Assembly to enact local exemption statutes, the Commission for the Study of the Revenue Structure of the State, in a comprehensive report issued in late 1958, urged that steps be taken to insure that the property tax base be kept uniform throughout the state. It specifically recommended that all exemptions apply throughout the state and that the General Assembly not delegate to local units of government the power to grant exemptions. To this end, the Commission proposed the insertion of appropriate language in Article V, Section 5, and submitted drafts to effect that purpose. [Report of the Tax Study Commission 18, 19, 37 (1958).] As the result of favorable legislative action in 1961, these amendments were submitted to the people and adopted in 1962.

To date, the 1962 amendments have not been the subject of litigation. Thus, it can only be assumed that the courts will find their meaning to be clear:

> Every exemption shall be on a State-wide basis and shall be uniformly applicable in every county, municipality, and other local taxing unit of the State. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this section.

Seven Proposed Amendments *to the* NORTH CAROLINA CONSTITUTION

By JERRY ADAMS

Seven proposed amendments to revise and modernize the North Carolina Constitution will be on the ballot November 3. If approved by a majority voting on them, they will represent the first thorough revision of the state Constitution since it was written in 1868.[1] North Carolina's is the only Reconstruction constitution that has not been entirely rewritten at least once.

The amendments are (1) to revise editorially the text of the entire Constitution; (2) reorganize and consolidate state administrative departments; (3) establish a procedure by which the General Assembly may convene itself in special session; (4) substantially rework provisions for state and local governmental finance; (5) eliminate constitutionally fixed minimum exemptions for state income tax; (6) redistribute escheats; and (7) delete the literacy requirement for voters. Four of the proposals were written by the North Carolina State Constitution Study Commission, a 25-member body initiated by former Governor Dan K. Moore, chaired by former Chief Justice of the North Carolina Supreme Court Emery B. Denny, and co-sponsored by the North Carolina State Bar and the North Carolina Bar Association. The Study Commission also endorsed a fifth proposal that was drafted by the 1967-69 Local Government Study Commission. The other two amendment proposals were originated by individual members of the General Assembly during its 1969 session.

During that session, twenty-one distinct proposals to amend the state Constitution died in committee or on the floor, yet each of the seven proposed amendments that will appear on the November ballot easily obtained the required three-fifths majority vote. In the nearly three years since Governor Moore initiated the effort toward constitutional reform in a speech on October 27, 1967, these seven proposals have yet to evoke significant controversy.

Such quietude has not prevailed with other states' recent efforts at constitutional reform. Michigan's 1962 constitutional convention was divided by partisan considerations, beginning with the election of George Romney as its president, and presented to the voters a revised document that won approval by only 0.2 of a percentage point. New York's 1967 convention produced a rewritten constitution with several controversial aspects most notably one that would have lifted the restriction on state aid to parochial schools, and it was roundly defeated at the polls by a nearly 3-to-1 vote. Maryland's 1968 convention wrote a new

1. Since 1868, the people have voted on 97 proposals to amend the state Constitution, approving 69. Half of the amendment proposals have been made over the past 35 years with the voters approving six of seven (42 of 49). During the 1960s, nine amendments have been approved, including the 1962 reform of the judiciary, and only one rejected. Revised constitutions were drafted in 1933 and in 1959, but in neither case were they submitted to the voters. See John L. Sanders, *State Constitutional Revision*, POPULAR GOVERNMENT, 86-99 (September 1969), for a discussion of the history of constitutional reform in North Carolina, including the progress of the present seven proposals.

The author, formerly with the Charlotte Observer, has been at the Institute over the summer working to provide information on the proposed amendments to interested groups. He is a doctoral candidate in the political science department at the University of North Carolina at Chapel Hill.

constitution that caused little *public* controversy and carried the endorsement of virtually all of the state's leading political figures. Nevertheless, in what might serve as a lesson for proponents of constitutional reform in North Carolina, Maryland's proposed constitution incurred enough dissatisfaction among a few groups to lead to its ultimate rejection by almost three-fifths of the voters.[2]

In each of these cases the constitutional proposals were written in convention, a process not used in North Carolina since 1875 and one that presumably focuses public attention upon itself. Also, in each of these cases there was some question as to whether a new constitution would bring in its wake a higher state budget, a question that has not arisen with the present North Carolina proposals.

Furthermore, each of these states used an all-or-nothing approach that bound together the fate of all the proposed changes by presenting to the voters a "packaged" constitution. Rejection of any one controversial section could mean rejection of the entire reform package. It is for this important tactical reason that the seven proposed amendments to the North Carolina Constitution will be voted upon separately, allowing each to be considered on its own merits. By separate examination, each proposal may be better understood. Also, since each proposal requires a separate vote, the citizen's choices are maximized.

At the time of this writing no particular group is advocating defeat of any or all of the proposals. Governor Scott has given his general endorsement to the proposals and has asked for, and received, the help of the state Junior Chamber of Commerce in explaining the issues. The North Carolina Bar Association, in its June meeting, stopped short of a general endorsement by narrowly rejecting support for the literacy amendment, but it approved the other six proposals and has undertaken a voter-education project. On September 15, barely seven weeks before the vote, Governor Scott announced the appointment of a 25-member committee to promote passage of the amendments.

2. Charles R. Adrian, *Trends in State Constitutions*, Harvard Journal on Legislation, 311-341 (March 1968); New York Times, October 13, 1967; The Washington Post, May 1, 1968. Constitutional revision has been a continuing process in virtually every state, with voters deciding on from one to twenty-five amendments at a time. Kentucky and Rhode Island have also in recent years rejected entire revision "packages."

Editorial Revision*
(Session Laws 1969, ch. 1258)

The first constitutional proposal on the ballot will be the general editorial revision, a rewriting of the entire Constitution in order to make it more easily understood by the contemporary reader. Sections in conflict with the United States Constitution have been deleted; others have been reworded in conformity with interpretations rendered by the North Carolina Supreme Court. Although the original organization into fourteen articles has been retained, sections have been rearranged in a more logical sequence. Archaic and obscure language, like the frequent use of the subjunctive mood in the Declaration of Rights, has been replaced with clearer, more concise sentences. Of its extensive editorial revision, the State Constitutional Study Commission has said:[3]

> Some of the changes are substantive, but none is calculated to impair any present right of the individual or to bring about any fundamental change in the power of state and local government or the distribution of that power. We do not deem any of the changes contained in the proposed constitution to be of sufficient magnitude to justify its treatment as a separate amendment.

The 40-odd minor substantive changes include these: Clauses guaranteeing freedom of speech, equal protection under the law, nondiscrimination by the state, and nonexclusion from jury duty because of race, color, religion, or national origin have been added to Article I; Article I is the Declaration of Rights, which in major part dates from the first North Carolina Constitution written in 1776. The constitutionally required school year is extended from six months to nine months [Article IX, Sec. 2(1)], an action already taken by statute. Article VII, Sec. 2, clarifies the legal consequences of city-county consolidation. In Article IX, Sec. 2(2), which concerns those local governments charged with financing public education, the responsibility of these governments has been extended to post-secondary school programs. Article IX, Sec. 4(2) and Sec. 5, eliminates the potential conflict between the Board of Education and the Superintendent of Public Instruction (both of which are now designated as administrative heads of

* The explanations that follow are primarily the work of John L. Sanders, director of the Institute of Government, and Joseph S. Ferrell, an Institute staff member, although any errors are the responsibility of the author.

3. *Report of the North Carolina State Constitution Study Commission*, Raleigh 1968, p. 4.

the state school system) by making the Superintendent the chief administrative officer of the Board, which supervises and administers the schools. The Superintendent is no longer a voting member of the Board.

In its consideration of the State Constitution Study Commission's proposed editorial revision, the General Assembly made few changes. Only one vote was cast against the bill in seven roll-call votes.

Finance Amendment (Session Laws 1969, ch. 1200)

The most extensive substantive proposal, fourth in ballot order, would revise present limitations on taxing and borrowing by the state and especially by local governments. The proposed amendment was drafted by the Local Government Study Commission and endorsed by the State Constitution Study Commission. The major effects of the amendment would be as follows:

1. The proposal would repeal the 20-cent limit on the rate of property tax that a county can levy for general purposes (Article V, Sec. 6, in the present Constitution). This rate limit applies only to taxes levied for law enforcement, elections, general administration, jails, building maintenance, and a few other activities, but many counties find it increasingly difficult to meet public demand for better services within the limitation. Second, the complex accounting system made necessary by the 20-cent limit has had an adverse effect on marketing county bonds at favorable interest rates. Third, the effect of the 20-cent limit has not been to hold down county tax rates, but rather to encourage legally questionable efforts to get around it. And finally, the rate limit, like other aspects of the present constitutional provisions for finance, stands as an obstacle to city-county consolidation. By repealing the 20-cent limit, the amendment proposes that the General Assembly be able to set county tax rate limits without constitutional restriction in the same manner that city tax rate limits have always been set.

2. Proposed Article V, Sec. 2(4), would authorize the General Assembly to permit cities and counties, in order to provide a higher level of services on less than a unit-wide basis, to create special taxing districts within their territories. Under the present Constitution providing services on a less than a unit-wide basis can be done only by establishing an independent unit of government, by financing the services with taxes levied throughout the city or county, or by finding some source of financing other than taxes. An example of how this authority might be used would be the establishment of a special fire-protection district in which taxes would be levied only in the protected area.

Although the proposed amendment would also apply to cities, it is not so apparent what use might be made of the authority by city governments.

Again, this proposal is important to city-county consolidation.

3. Proposed Article V, Sec. 2(5), would delete the century-old constitutional requirement that voters approve all local taxes and bonds except those for "necessary expenses." A requirement that voters approve all taxes and bonds except those "for purposes authorized by general law uniformly applicable throughout the State" would replace the necessary expense doctrine.

Under the present necessary expense doctrine, the North Carolina Supreme Court, not the General Assembly, has been the final arbiter of what the phrase "necessary expense" means, and the Court has taken a rather restrictive view of the matter. For example, taxes to finance the operation of hospitals, which have been declared by the Court not to be a necessary expense, have in the past required voter approval. The amendment would enable the General Assembly —acting on a uniform, statewide basis—to make the final determination of which local governmental activities are so important that taxes may be levied to support them without a popular referendum on each issue.

4. Proposed Article V, Sec. 3(1) and (3), would redefine the term "debt" so that debts incurred by state and local governments would require a vote of the people only when money is borrowed and the taxing power is pledged to repay the loan, or, in other words, for general obligation bonds. This section is designed to restore the meaning apparently intended when the debt provisions were approved in 1936. In recent years, court decisions have so defined "debt" that there is substantial doubt as to the validity of certain kinds of federal grant agreements and other ordinary contracts unless they are submitted to popular vote. The amendment does not alter the right of the people to vote on bonds and notes pledging the faith and credit of their local governments, but it does eliminate any constitutional requirement for voter approval of those varieties of debt that do not involve borrowed money.

5. Proposed Article V, Sec. 1, would delete the capitation or "poll" tax, which has long been erroneously connected in many people's minds with the right to vote; the payment of the poll tax has not been a requisite to voting for five decades.

Elimination of the poll tax (counties may levy $2 on every male 21 to 50 years old, cities $1) would

have little effect on revenues collected by local governments. In fiscal 1967-68, some 300 cities levying the tax collected only $214,361, the 100 counties only $1,252,962; in each case the sums represented less than 1 per cent of the total revenues collected by local government.

6. Proposed Artiele V, Sec. 2(7), would enable state and local governments to contract with, and appropriate funds to, private entities "for the accomplishment of public purposes only," a provision that would conform to constitutional interpretations of the North Carolina Supreme Court.

The proposed finance amendment does not alter the present two-thirds limitation on state and local governmental borrowing nor the present provisions with respect to the classification and exemption of property for tax purposes.

This proposed amendment, simply because it concerns governmental finance in a time of inflation, has the potential to inspire the quiet sort of opposition that lurked beneath the surface of public discussion in Maryland. But it has the warm support of the League of Municipalities and the Association of County Commissioners.

State Government Consolidation (Session Laws 1969, ch. 932)

Governor Scott has shown the most interest in the amendment proposal, second in ballot order, that would reorganize state administrative agencies and departments. During the 1969 legislative session the proposal also received the endorsement of former Governors Hodges, Sanford, and Moore. It was initiated by the State Constitutional Study Commission and is patterned after the Model State Constitution.

The proposed amendment would (1) require the General Assembly to reduce the number of state administrative departments to not more than 25—from more than 200 at present—by 1975, and (2) authorize the Governor to reorganize administrative agencies, subject to disapproval by either house of the legislature by a majority vote if the Governor's plan affected existing statutory agencies. The legislature would have 60 days after submission of the Governor's plan to register its disapproving vote. After this time the plan would become law if the legislature has failed to act.

The basic framework for the executive reorganization will be provided by the Governor's Reorganization Study Committee, mandated by the legislature and appointed by Governor Scott at the close of the 1969 session. Last April the Committee published a tentative plan calling for 20 "functional" departments, each with a chief administrative officer who would report to the Governor and each encompassing all of those agencies operating within a "functional" area of state government.[4] The seven popularly elected members of the Council of State and the Attorney General would, of course, retain their offices, but their departments would be subject to the same reorganization. This tentative plan will be the subject of further refining by the Governor and the General Assembly and currently does not deal with the politically sensitive area of higher education.[5]

The fact that the proposal concerns already organized departments and agencies—and their corollary interest groups and constituencies—raises the possibility of organized (if quiet) opposition.

Special Sessions (Session Laws 1969, ch. 1270)

A proposed amendment to allow the General Assembly to convene itself in special sessions arises from the 1969 legislative session on the initiative of Sen. Herman A. Moore of Mecklenburg. This power to convene a special session now rests solely with the Governor, acting with the advice of the Council of State. Third in ballot order, the amendment calls for a petition to the presiding officer of each house, signed by three-fifths of the members of that house.

Legislators greeted this proposal with an enthusiasm that was lacking for three others that would have strengthened the office of Governor; all three failed to gain the necessary three-fifths vote. These proposed amendments would have (1) given North Carolina's governor the power of veto (he is the only governor in the Union without it), (2) reduced the number of elected state executives from ten to five, giving the Governor the power to appoint four of those who would no longer be elected, and (3) allowed the people to elect the Governor and Lieutenant-Governor to two successive four-year terms.

Literacy Test Repeal (Session Laws 1969, ch. 1004)

Rep. Henry E. Frye of Guilford originated another amendment proposal that emerged in the 1969 session of the legislature. This amendment, seventh in ballot order, would delete from the Constitution the provision that any person wishing to register to vote

4. *State Government Reorganization in North Carolina*, Raleigh, April, 1970.

5. A North Carolina Attorney General's opinion dated January 28, 1970, concludes that the purpose of the proposed amendment, with its language referring to "all administrative departments, agencies, and offices of the State," was "intended by the General Assembly to include institutions of higher education . . . ." Such a view has the potential of opening a Pandora's box of political and educational considerations.

must be able to read and write any section of the Constitution in English. The literacy requirement, dating from 1900, was originally coupled with the so-called "grandfather clause" and was intended to deny Negroes the vote.

In 39 North Carolina counties, containing 42 per cent of the state's 1960 population, the literacy test is already prohibited under the federal Voting Rights Act of 1965. (Any county in which fewer than half of its eligible Negro population voted in the 1964 presidential election is prohibited from administering the literacy test because, in the view of Congress, under such circumstances the literacy test represents implicit racial discrimination.) Furthermore, 1970 amendments to the act prohibit the rest of the counties, and other states where literacy or similar tests are used, from enforcing the requirement. Nevertheless the proposal, sponsored by the first Negro to serve in the North Carolina General Assembly in this century, has substantial symbolic value for the state's 290,000 black voters and might have similar value to many white voters as well.

Income Tax Amendment (Session Laws 1969, ch. 872)

The proposed income tax amendment would delete from the Constitution the present minimum state income tax exemptions, leaving the establishment of minimums to the General Assembly. This deletion would have two effects. First, it would enable the General Assembly to authorize husbands and wives to file joint state income tax returns, as they now may do with federal returns. Second, it would enable the General Assembly to institute a "piggy-back" system by which state income tax could be calculated as a percentage of federal income tax, relieving the taxpayer of the need to make two sets of calculations.

Escheats Amendment (Session Laws 1969, ch. 827)

This amendment would distribute evenly among the fifteen state-supported institutions of higher learning the benefits of "escheats," which is the property acquired by the state when the owner of the property dies without heirs or other lawful claimants. The benefits of the escheats, as they have been since 1946, would be used to aid "worthy and needy students" with scholarships.

Since 1789, the escheats have been earmarked for The University of North Carolina. The six campuses of the Consolidated University would continue to benefit from the approximately $5.5 million in principal accrued over the years and from the $180,000 in annual interest, as well as from their share of future escheats beginning July 1, 1971, the effective date of the amendment.

Conclusion

If approved, six of the amendments have an effective date of July 1, 1971. The finance amendment would take effect July 1, 1973, a delay required by the necessity of drafting implementing legislation. If the voters approve all seven amendments, the state will have a thoroughly renovated and relatively uncluttered Constitution. Future amendments will be easier to draw and explain.

If the past is a guide, several of the amendment proposals that did not receive the approval of the 1969 General Assembly will be heard from again. Other than those mentioned above, which would have strengthened the Governor's office, the State Constitution Study Commission initiated three other unsuccessful proposals. One would have required that (1) all judges and solicitors be licensed to practice law in North Carolina, (2) the General Assembly provide for the mandatory retirement for age of justices and judges, and (3) the General Assembly provide by general law procedures for the disciplining and removal of judges. Another would have (1) allowed trial upon information in noncapital criminal cases when the accused had counsel, and (2) allowed waiver of jury trial in noncapital cases when the request was made in writing with the consent of counsel and the trial judge. A third would have lowered the residence requirement for voters from one year to six months.

To presume that each voter who goes to the polls November 3 will carefully consider each proposal, having pondered its ultimate ramifications and sought out contrasting views, and finally cast his vote with assurance that his choice is the right one would be naive. But it is not unrealistic, despite the absence of controversy and public discussion that has thus far characterized the seven proposals, to hope that the greatest possible number of voters will seek a basic understanding of the issues as North Carolina moves toward its first opportunity in this century to modernize its basic charter of political principles.

WINSTON-SALEM POLICE DEPARTMENT GAINS COUNSEL

Cleland Becomes Police Legal Adviser

Winston-Salem will soon join a small group of cities, Charlotte among them, to institute an office of police adviser.

The purpose of the police legal adviser is to provide immediate, sometimes on-the-spot, legal advice to working police officers. The concept is relatively new, an outgrowth of the report of President Johnson's Crime Commission. Its institution in Winston-Salem is a joint effort by the City of Winston-Salem and the U. S. Department of Justice through the Law Enforcement Assistance Administration and the Ford Foundation. George M. Cleland, of the Institute of Government staff, will take over the legal adviser's post on October 1. He has taken a year's leave of absence from the Institute.

Cleland is an assistant director of the Institute of Government, where he has worked primarily in the area of the administration of criminal justice. He is now serving as counsel to the Legislative Commission on the Use of Illegal and Harmful Drugs. A native of Larchmont, N. Y., Cleland joined the Institute in 1966, having come from the Office of Counsel to the State University of New York at Albany. He took his law degree at Tulane University in New Orleans and his undergraduate education at the United States Naval Academy and Wake Forest University.

His wife is the former Alice McDevitt, born in Sylva and brought up in Wake Forest; they have four children.

Institute Staff Changes

MICHAEL D. CROWELL

Fall brings both additions and subtractions to the Institute of Government staff. The newcomers include Michael Crowell, who will be working in the areas of court administration and law enforcement. Brought up in Mississippi, he has his undergraduate degree from the University of North Carolina at Chapel Hill and his law degree from Harvard Law School in 1970. He is co-author, with Douglas R. Gill, of the revised edition of *Mapping Out a Valid Search Warrant*, which was published during the summer.

Donald Stephens of Durham, who has both undergraduate and J.D. (with honors) degrees from UNC, has joined the Institute as a research associate.

Mrs. Brenda Kinney is also a research associate. She comes from New York State and has both undergraduate and law degrees from Duke with a year at Harvard Law School.

S. Kenneth Howard, who has been on leave for the past year writing a book on state government budgeting, has returned to his usual responsibilities in the area of public finance, both at the Institute and in the Department of Political Science.

William S. Cape, who took over Howard's Institute duties during 1969-70, has returned to his own bailiwick at the University of Kansas.

George M. Cleland will be on a year's leave to take over the newly established post of police legal adviser in Winston-Salem. See the story on page 18.

New Books in the Institute Library

American Journal of Comparative Law. *Transnational Trends in Tort Law*. Ann Arbor: University of Michigan Press, 1970.

Becker, Howard S. *Campus Power Struggle*. New York: Transaction Books, 1970.

Bible. *New English Standard Edition with Apocrypha*. New York: Oxford University Press, 1970.

Creamer, J. Shane. *Law of Arrest, Search and Seizure*. Philadelphia: W. B. Saunders Co., 1970.

Crecine, John P. *Financing the Metropolis, Public Policy in Urban Economies*. Beverly Hills, Calif.: Sage Publishers, 1970.

Dressler, David. *Practice and Theory of Probation and Parole*. New York: Columbia University Press, 1969.

Eeker-Raez, L. L. *The Politics and Economics of State-Local Finance*. Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970.

Germann, A. C. *Introduction to Law Enforcement and Criminal Justice*. Springfield, Ill.: Charles Thomas, 1970.

Hauser, Philip M. *The Population Dilemma*. Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970.

Hill Directory Company. *Chapel Hill City Directory*. Richmond, Va.: Hill Directory Co., 1970.

Jones, Bosifeuillet. *The Health of Americans*. Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970.

STATE OF NORTH CAROLINA
LOCAL GOVERNMENT COMMISSION

The Bond Buyer Index[1]

Date	20 Bonds	11 Bonds
8-27-70	6.04	5.89
8-20-70	6.17	6.00
7-30-70	6.40	6.24
9-4-69	6.37	6.27

National Volume Outlook, August 27, 1970

Blue List Supply	$533 Million
30-day visible	634 Million
Total Supply	1,167 Million
Total Supply last week	1,192 Million

Yields Currently Available on North Carolina Issues (%)

	Aaa	Aa	A
10 Year	4.90	5.05	5.20
20 Year	5.70	5.80	6.00

RECENT BOND SALES IN NORTH CAROLINA

ISSUER	DATE OF SALE	PURPOSE	AMOUNT	NO. OF BIDDERS	YEARS AVERAGE LIFE	FIRST SECOND & LAST BIDS	WINNING MANAGER	MOODY'S RATING	NCMC RATING
City of Winston-Salem	8-11-1970	Sewage Disposal System	$6,000,000	9	12.91	5.5870, 5.6354, 5.7435	NCNB	Aa	90
County of Mecklenburg	8-18-1970	Various	8,925,000	5	14.78	5.7745, 5.7989, 5.8685	Chase	Aa	89
City of Concord	8-18-1970	Sanitary Sewer	1,500,000	6	13.96	5.7994, 5.8234, 5.9277	Dominick	A	84
County of Randolph	8-18-1970	Sanitary Sewer	110,000	6	6.32	5.2287, 5.2978, 5.4834	NCNB	A	86
County of Macon	8-25-1970	County Courthouse	980,000	4	12.39	6.2493, 6.2859, 6.4740	MLPF&S	Baa	76
County of Surry	8-25-1970	County Courthouse	174,000	5	9.70	5, 5.6853, 6.09	Northwestern Bank	Baa	85

VISIBLE BOND ISSUES, September, 1970

Town of Matthews	9-1-1970	Sanitary Sewer	$ 80,000	NR
County of Rockingham	9-1-1970	Courthouse	270,000	A-1
County of Chatham	9-15-1970	School Building	3,600,000	A
Town of Kernersville	9-15-1970	Sanitary Sewer	1,650,000	Baa
City of Greenville	9-22-1970	Various	2,250,000	A-1
City of Asheville	9-29-1970	Auditorium & Civic Center	5,300,000	A

Edwin Gill, Chairman and Director
Harlan E. Boyles, Secretary
Edwin T. Barnes, Deputy Secretary

1 Weekly Bond Buyer, August 31, 1970

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We used to be tobacco people. And only tobacco people. But that was before we diversified.

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We really like being in the foods business. That's one reason why we built a multi-million dollar Development Center to work out ideas for new products and improved packaging.

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Every man to his own taste in food, but growth is one dish everybody likes.

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