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Contents

This month's cover: Durham goes modern — one of the new downtown office buildings silhouetted against the sky. All photos by Carson Graves.

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DOES THE PRESS PREJUDICE TRIALS?

By Elmer R. Oettinger

COMMUNICATION MAY BE the most difficult problem we face. It is not only a difference in age that makes communication difficult. Differences in sex, race, religion, region, nationality, all contribute to our trouble. The fact that differences in profession or occupation can create seemingly insuperable barriers to communication was never brought home to me more forcefully than on that Saturday morning eight years ago when representatives of different professions and vocations first met to do something about problems attending "free press-fair trial." I had written the presidents of the North Carolina Judges Conference, Bar, Press, and Broadcasters' Associations, and various law enforcement organizations, proposing that we meet at the Institute of Government to try to begin a liaison of the various organizations to discuss matters mutually affecting all. The Warren Commission had recommended that "representatives of the Bar, law enforcement organizations, and the news media work together to establish ethical standards concerning the collection and presentation of information to the public so that there would be no interference with pending criminal investigations, court proceedings, or the right of individuals to a fair trial." The judges and lawyers sat on one side of the long rectangular table. The newspaper and broadcast executives sat on the other side, facing them. They sat there glaring at one another. At the far end sat law enforcement leaders. I had the opposite narrow end of the rectangular table all to myself. Then everyone glared at me.

The challenge of communicating with these twenty individuals representing groups with divergent responsibilities seemed to me at that moment too great to overcome. Yet, following that first meeting, the divisions broke down, the dialogue commenced in earnest, and the results speak for themselves.

Can the press prejudice a trial? Clearly, yes. Both newspaper and radio and television news reporters have the capacity to diminish the rights of defendants.

Does the press prejudice trials? Clearly, yes. But under what circumstances and how often and in which specific cases is not easy to determine. All our attempts to define, delimit and defuse the issues and problems have revealed the existence of widespread disagreement on these questions.

Only by going back to the beginning, to the basic guarantees that have been encapsuled into the pithy but inadequate term "free press-fair trial" (or "fair trial-free press") can we hope to obtain a perspective. We must understand the basic constitutional guarantees to hope to see and analyze the problem. The First Amendment to the Constitution of the United States guarantees that "Congress shall make no law . . . abridging the freedom . . . of the press." The Sixth Amendment to the same document guarantees that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation; to

be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." The two constitutional guarantees at times appear to be in conflict, notably in sensational trials for criminal offenses.

Any careful examination of these constitutional provisions and their history, however, will demonstrate that it is not only the press that can threaten their observance. The law enforcement officer, the attorney—for the defense or prosecution—the witness, even the trial judge *can* and sometimes *do* prejudice the conduct of a trial. Normally that prejudice is considered in terms of the rights of the defendant. It is the accused to whom the constitutional guarantee is made of a speedy, public, and impartial trial. No doubt, however, the implicit guarantee of a fair trial process to the state, however less personal in its implications and possible consequences, can be impaired. And I would submit that that is an aspect needing further exploration.

HOW CAN THE NEWS REPORTER or analyst whose account of the trial is published in the newspaper or broadcast or telecast over a radio or television station or network influence the fairness of a trial? How can a law enforcement officer, attorney or witness, or jurist tilt the scales? The answer is: in many ways through actions, statements, attitudes, orders, and comments. Let me illustrate. The assassination of President John F. Kennedy in November 1963 in a motorcade in Dallas and the subsequent assassination of his accused slayer, Lee Oswald, in the hallway of a Dallas jail raised serious questions as to whether a fair and impartial trial could have been assured for President Kennedy's killer or for the alleged killer's killer. So great was the public indignation and emotion, so sweeping were statements by police and prosecutors, so much was the media exposure accorded the accused and others that many felt it would be impossible to find twelve impartial persons to serve as jurors.

Furthermore, the subsequent murder of Oswald was witnessed by millions on television. There was no question who did it. How would that fact affect the selection and deliberations of the jury at the trial of Jack Ruby? At this time the Warren Commission made recommendations urging the Bar, law enforcement associations, and news media to cooperate in establishing ethical standards for this sensitive area, containing apparent constitutional conflict. Thus began most of the intensive efforts at national and state levels to arrive at flexible yet workable guidelines to promote and preserve both the guarantees of free press and a fair trial.

The liaison through press and bar committees and combinations of the two, with the addition of judges, law enforcement officers, and others, received its initial impetus in the past decade from that admonition of the Warren Commission. Before pursuing those developments, though, let us look at the problem in its most virulent form. Let us consider what can happen at a sensational criminal trial that catches the public interest and fancy. Although the recollection of such trials could sear our memories and, I hope, our consciences, two will serve to make the point: the trial of Bruno Richard Hauptmann for kidnapping the Lindbergh baby in the 1930s and the trial of Dr. Samuel Sheppard in Cleveland for the murder of his wife in the 1950s.

The Hauptmann trial was a circus. Celebrities sat in the front row. That was before the day of television, but newspaper and radio reporters had field days. Interviews, featuring uninformed opinions from uninformed persons without legal background or knowledge or sufficient actual information, were published or broadcast daily before and during the trial. The atmosphere was akin to a daily spectacle. Hauptmann was tried, sentenced to die, and executed. There seems no reason to believe that the conviction was not just on the basis of the facts. Yet the circumstances under which Bruno Hauptmann was tried drew justified criticism. The trial of an individual for his life in a court of law is a grave matter. Anything that turns it into entertainment or spectacle can only derogate the essential dignity of our judicial process.

The trial of Dr. Samuel Sheppard was conducted in what an appellate court later was to call an atmosphere of a "Roman holiday." Broadcasters aired their views from appointed spots within the courtroom during the trial. Members of the press were given seats within the area generally reserved for the judge, attorneys, and witnesses. Prejudicial comment and speculation were rife. Dr. Sheppard was convicted and served some ten years in prison before an appeal was perfected. He may have been guilty. Nonetheless, the United States Supreme Court, remanding for a new trial, made the case a landmark in defining the respective responsibilities under the federal Constitution of court and press in court room proceedings. It called to task not alone the news media but most sternly of all the trial judge, who had failed, in the words of Mr. Justice Clark, "to fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control destructive influences in the courtroom." The Supreme Court specified certain procedures that the trial judge could have used to ensure fair judicial process: change of venue, sequestration of jurors, and others. It did not resolve the question of the appropriateness of a citation for contempt. However, the Court stated the responsibilities of a trial judge in these clear terms:

> The court must take such steps by rules and regulations that will protect their processes from prejudicial outside interferences. Neither prose-

cutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures . . . .

* * *

Due process requires that the accused receive a fair trial by an impartial jury, free from outside influence. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of jurors, the trial court must take strong measures to insure that the balance is never waived against the accused.

The court also defined the role of the press: "The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutor and judicial processors to extensive public scrutiny and criticism."

Thus, the Supreme Court places a primary responsibility not only upon the trial judge but also upon the press, attorneys, police, and court staff to assure the fairness of any trial.

LET US BE EVEN more specific. A reporter asks an arresting officer: "Is he guilty? Did he confess? Does he have a criminal record? Who is going to testify against him? Who is going to testify for him? What are they going to testify? What are you going to tell the jury?" The questions may not be out of bounds. A reporter is free to ask what he wishes.

But let us suppose, as sometimes happens, the law enforcement officer replies: "He is guilty as hell. He has confessed, and he's got a record as long as your arm, including convictions for rape, murder, and shoplifting." And let us suppose that the reporter publishes his answers in the newspaper or broadcasts them on the air.

And let us also conjecture that the attorney responds: "My client is innocent (or the defendant is guilty). Mrs. Jones will testify that she saw him ten miles away from the scene of the crime at the very moment it was committed. (Or Mrs. Jones will testify that she saw him commit the crime.) And Frank Smith will get on the stand and swear that my client is just like the boy next door and was attending a Jaycee meeting the very day someone else was doing this terrible thing. (Or Frank Smith will testify that he saw the accused pick up an axe and strike the victim with it three times in unprovoked assault.)"

If any of these responses are published, broadcast, telecast, or otherwise conveyed to the public, which includes the jurors or jurors to be, there is chance of prejudice and danger that it may be difficult or impossible to obtain a fair-minded or, at least, an open-minded jury.

IT WOULD SEEM OBVIOUS that a law enforcement or court official who speculates upon the guilt or innocence of an accused and the newspaper, radio, or TV newsman who spreads an opinion of guilt can seriously prejudice the minds of jurors or potential jurors against the defendant. But why is a pretrial claim of confession dangerous to the rights of an accused? Let us suppose that a policeman or deputy sheriff or patrolman has told a newsman that X has confessed to the crime of rape and the newsman publishes the story. Now let us suppose that the confession either turns out to be invalid or that it is not introduced or permitted to be introduced in evidence during the trial. Such things happen. Let us say that the court finds that the confession was obtained under duress and the judge will not permit it to be introduced in evidence. Clearly, in such case the prior informing of the public that the defendant has confessed has impaired his rights to a fair and impartial trial.

Such publication of an alleged confession or admission may have other serious consequences. A television station in western North Carolina sent a cameraman and reporter to film an arrest by a deputy sheriff of a man accused of rape, then proceeded to tape and telecast the deputy's claim that the man had confessed to the crime and that the alleged victim would testify in court against him later. The station and the deputy later were sued for libel by the accused when the confession was not introduced into evidence, the alleged victim did not testify, and the man was acquitted. In that case the recovery against the television station and the deputy was substantial. So there can be even larger hazards growing out of questions of "fair trial."

On two occasions just before a trial, a well-known North Carolina newspaper published details of the defendant's prior criminal record. In both cases the judges—different men—declared a mistrial. In the second case the judge wrote a hot letter to the editor, which apparently was never published. Editors of other papers say that they sought to have the paper that published the prior record cease and desist. No such publication of prior criminal record preceded the third trial, which proceeded to an orderly conclusion.

Why should the paper have published the record in the first place? I can only speculate that the editor felt that this was a much closer question than the publication of, say, a confession. Whether publication of a prior criminal record actually is "dirty pool" can be argued at great length. If the police records are accurate, the criminal record is a fact. However, the record cannot be admitted into evidence unless the door is opened by certain circumstances during the trial. In most jurisdictions judges still consider publication of such information immediately before a trial or during a trial prejudicial.

These specific problems of "free press-fair trial" are compounded by some less publicized aspects of court coverage. Radio and television newsmen usually are not permitted to broadcast or telecast actual trials. The underlying reason, as stated in the Billy Sol Estes case, which rejects televising court proceedings, is that cameras in the courtroom derogate the dignity of judicial proceedings. The further argument, generally accepted by the judiciary, is that cameras not only make a show and mockery of the trial but also tend to inhibit some witnesses and attorneys and to inspire others to dramatic, long-winded performances. In other words, television cameras especially create an unnatural climate in which the normal presentation of evidence is changed and distorted. Actually, experiments at the University of Michigan and elsewhere have proved conclusively that modern television equipment can be hidden so that no one in a courtroom need know that a trial is being photographed or telecast. Even so, that mechanical accomplishment does not answer the question. A trial could not be telecast legitimately without the prior permission of the judge and awareness of counsel and defendant, and prior awareness again invites all the elements of performance. For years the states of Texas and Colorado televised court proceedings. So far as I am aware, the other states do not permit televising.

Nor may still photographs be taken in the courtroom itself. The federal and North Carolina rules forbid taking photographs in the courtroom and the corridors adjacent thereto. On the other hand, a finding of contempt by a judge on the grounds that newspaper photographers for a Gastonia paper were violating his court order when they snapped pictures of a jury sequestered in a motel two miles from the courtroom was overruled by a North Carolina appellate court, So, as a consequence of the ban on photography and the very nature of radio and television news—which tends to be brief, tabloid, and frequent —radio and television newsmen rarely cover trials themselves.

The major problem of newspaper coverage is a little different. The newspaper reporter has a beat to cover and rarely feels that he has time to sit at great length throughout a trial or certainly throughout the day covering several trials in a courtroom. Accordingly, he tends to sit in only on "newsworthy" or sensational criminal trials, leaves the courtroom at times, often asks a court attendant to fill him in on the things he misses, and then attempts to write an article based upon a combination of what he has been able to observe personally and what others tell him of the proceedings. Rarely does he have a chance to look at the notes of the court reporter, which usually are still on the machine, yet are the only accurate transcript of the trial. For the most part he has to rely on his own scribbled notes of testimony he has heard. He talks with the lawyers when he can, but they are partisan and what they tell him may be self-serving and incomplete. Infrequently does he bother the august trial judge, his best source of most information. Our Superior Court judges tell me that they wish reporters *would* come to see them to discuss trials.

Thus, too often the write-up of court proceedings in our newspapers is fragmentary, angled, lacking in perspective, inaccurate, or just plain jumble. To put it another way, while much of our court coverage is accurate and informative, it is too selective and distorted to provide a true picture of what goes on in our courts or even in the particular trial.

WHAT CAN BE DONE ABOUT IT? The first answer is that much is being done about it. Almost ten years ago, before the Kennedy assassination, we began seminars for newsmen who cover courts. These seminars have now become annual and are co-sponsored by the Institute of Government, the North Carolina Press Association, and the North Carolina Association of Broadcasters. Literally hundreds of newsmen who cover and write or talk about our courts have attended them. And there is evidence that the quality of courts coverage in North Carolina is being upgraded and enhanced. I recall that a reporter for a major North Carolina daily accosted me in the hall just before our first court reporting seminar to inform me that he had covered courts for 10 years and didn't think there was much that we could tell him. Two days later he quietly apologized: "I never realized till now how little I actually knew about courts." In that awareness lies the beginning of all knowledge and understanding. In addition, we have held special briefing seminars for the press on such occasions as the Report of the President's Commission on Law Enforcement and Administration of Justice.

Meanwhile, throughout the country has spread an awareness of problems attendant on "free press-fair trial" and a broad effort to meet them with cohesive, workable understandings. We have come a long way in a few years. The American Bar Association's first committee, chaired by Judge Reardon, initially came up with a stern, restrictive report that called for judges to use their contempt power to punish newsmen who violated canons of court conduct. The more recent tendency has been in an opposite direction: to establish statements of principle and guidelines, as we have done in North Carolina, upon which judges, lawyers, press, and law enforcement officers can agree. The direction has been toward a process of education. Our North Carolina News Media-Administration of Justice Council has done more to move in creative ways and directions than any similar state group I know. We have, like other states, adopted a statement of principles and guidelines both for the coverage of criminal trials and juvenile proceedings. But, unlike such committees or councils in other states, we have prepared publications and embarked upon

pilot programs to further professional and citizen understanding.

One of these is a publication called *The News Media and the Courts,* which is used by newspaper and radio and television newsmen, law enforcement officers, court reporters and attorneys, and court officials throughout the state. It is a text in the course on "press law" taught in the School of Journalism at the University of North Carolina at Chapel Hill and in a course taught by Supreme Court Marshal-Librarian Raymond Taylor at North Carolina State University. The first edition has been sold out. A second edition is just now ready for distribution.

Two other efforts have been a couple of little book of "fables" on life, law, and justice. Those little stories à la Aesop will be introduced at both the elementary school and junior high school levels in pilot programs in our public school system this fall. They constitute an attempt to reach our children with awareness of our concepts and the realities of law and justice and even codes of conduct at an earlier age and represent a conviction that such awareness can create a built-in deterrence to some of the foolhardy and sometimes criminal escapades now so widespread among youth.

Now our broader challenge is to help North Carolina citizens throughout the state understand the significance and potential of both our problems, our challenge, and our new liaison. In Winston-Salem the bar, bench, press, broadcasters, and law enforcement people have met, adapted their own guidelines, and even prepared laminated capsule pocket-size guidelines for "dissemination of news by police to news media" to be carried at all times by local police. Other pilot programs are planned.

The very fact that more and more organizations are asking us to talk with them is a manifestation of spreading awareness and concern about the very problems that have absorbed us.

We still have much to learn, and the public can help us arrive at sound, forward-looking conclusions and programs. For example, I said at the outset that the press, police, lawyers, judges, and indeed the public itself can prejudice trials. *When* they actually do prejudice the outcome remains in many cases difficult to determine. In his book *The American Jury,* University of Chicago law professor Harry Kalven reports a poll of judges in jury trials indicating that in more than 90 per cent of the cases, juries arrived at the same conclusion as the judges would have arrived at had they been called on to deliver a verdict. That poll suggests that whatever the outside influence, most jury members are not tender plants to be swayed by any prevailing wind. It further suggests that the danger of actual prejudice may be mitigated by the hard-headedness and essential determination to be fairminded of most people. Certainly we have evidence that many people, including jurists and presidents, increase in stature and maturity as they assume responsibilities. It seems a logical assumption that jurors do, too. Especially in North Carolina would that upgrading process be true in recent years, for we now have abolished the old statutory exemptions that eliminated so many good people from jury service.

Our approach to guidelines is to advise the media, law enforcement officers, and others of certain dangers, not try to force them to do or not do certain things. The unanimous continuing agreement on these principles and guidelines is evidence that this approach is valid. Perhaps our basic feeling has been best stated by Lewis F. Powell, Jr., recently appointed to the U. S. Supreme Court. Seven years ago, when he was president of the American Bar Association, Justice Powell wrote:

> The question, now receiving careful re-examination, is how to preserve the essentials of a free press, and at the same time prevent publicity which is prejudicial to an accused person's right to a fair trial.
>
> This should not be viewed as a contest between two competing rights. Nor is it a controversy between the news media and the Bar. Responsible leaders of both agree that fair trial and free press must be preserved and ever strengthened, for each is essential to the survival of the other. The crucial task is to see that both of these rights can still be accommodated in the limited area where there is conflict.

Beyond the clear success of our recent efforts to find a suitable accommodation of these two constitutional rights lies the broad spectrum of criminal justice with all its concomitant rights and problems. Surely this liaison of professions and occupations has moved so effectively to overcome barriers and resolve apparent constitutional conflict that, with the help of a growing public interest, we can broaden and deepen our concerns to embrace the broadest challenge of preserving law within a framework of freedom and justice with a backdrop of the rights and heritage of man.

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when does $1.45 equal $1.00?

Or, the municipal tax rate limitation made plain

By Joseph S. Ferrell

Few statutes enacted in recent years seem to have caused as much confusion as the 1971 General Assembly's revision of the $1.50 tax rate limit applicable to cities and towns. Some newspapers have told their readers that the city's tax rate may be cut in half next year. Others have explained in detail how cities may now fix their own assessment ratios without having to depend on the county. Still others seem to think that all cities will now be able to levy rates of $3.00. All of them are wrong, but the confusion can be understood. Not too many people really understand the mysteries of appraised and assessed value and the assessment ratio in the North Carolina property tax law, and even fewer people can explain how it is that tax analysts can say that City X and City Y have the same property tax rates when one levies a $1.00 rate while the other levies $1.45. We hope that this discussion will clear up the confusion about the new city tax rate limit, and incidentally answer some questions about the assessment ratio.

* * * *

BEFORE JANUARY 1, 1972, cities and towns in North Carolina were not permitted to levy property taxes at a greater rate than $1.50 per $100 property valuation subject to taxation, except for debt service, voted taxes, and taxes necessary to defray the cost of handling civil disorders. The 1971 General Assembly rewrote the law to read as follows:

> The property tax shall not be levied at an effective rate exceeding one dollar and fifty cents ($1.50) on each one hundred dollars ($100.00) of appraised value of property subject to taxation before the application of any assessment ratio. This limitation shall not apply to property taxes levied for the purpose of paying the principal and interest on bonds, notes, or other evidences of indebtedness, nor to special taxes levied for the purpose of meeting the expense of additional law enforcement personnel and equipment that may be required to suppress riots and other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city, nor to property taxes approved by a vote of the people. [G.S. 160A–209(b).]

This new statute does *not* alter the present law with regard to the appraisal and assessment of property for taxation, and does *not* permit cities to adopt their own assessment ratios. Cities have no power to appraise property for taxation; they must accept the county appraisals. Neither have they the power to determine the assessment ratio; they must accept the county assessed value for all property within the city's taxing jurisdiction.

What the new statute does is place the tax rate limit on a new basis. Instead of being expressed in terms of a rate limit on *assessed* value, the legal limit is now on *appraised* value. Let us review the language of the statute:

> The property tax shall not be levied at an *effective rate* exceeding one dollar and fifty cents

($1.50) on each one hundred dollars ($100.00) of *appraised* value of property subject to taxation *before the application of any assessment ratio.*

The term "effective rate" is new to the law, but has been in common use among economists and tax analysts for many years. When property may be *assessed* for taxation at varying percentages of its *appraised* value in different parts of the State, it is impossible to compare taxes from county to county or city to city without adjusting the rates to account for the *assessment ratio* used in each county. On property of equal value, a $1.00 tax rate will produce twice as much tax revenue in a county with a 100 percent assessment ratio as it will in a county with a 50 percent ratio. Therefore, to compare from county to county, the concept of the effective rate is used, and the rate is expressed as if it were levied against property *assessed* at 100 per cent of *appraised* value.

Under the new statute, to find the property tax rate limit applicable to any city in North Carolina, one should divide $1.50 by the county's assessment ratio, as shown in the following table:

Assessment Ratio	Rate Limit*
40%	$3.75
45	3.33
50	3.00
55	2.72
60	2.50
65	2.30
70	2.14
75	2.00
80	1.87
85	1.76
90	1.66
95	1.57
100	1.50

*Rounded to the lowest even cent.

This is the rate limit for *general* purposes. Look back at the quoted statute and read the second sentence setting out three exceptions. The rate limit does not apply to debt service taxes, voted taxes, and taxes levied to handle major civil disorders. For these three purposes there is no rate limit. For example, a city in a county with a 60 per cent assessment ratio may levy the full $2.50 rate permitted for general purposes and also levy taxes for debt service and taxes voted by the people. This may produce a total rate far over $2.50.

The purpose of the new statute is to eliminate the impact on the city's power to raise revenue that formerly resulted from a county decision to raise or lower the assessment ratio. To understand the new statute and the reason for its enactment fully, one must thoroughly understand three concepts used in the North Carolina property tax law: *appraised value*, the *assessment ratio*, and *assessed value*. The remainder of this article will discuss these concepts briefly. More detailed information may be found in Henry W. Lewis, *The Property Tax: An Introduction*, available from the Institute of Government.

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UNDER THE MACHINERY Act (the statute that sets up the procedures or "machinery" for taxing property), all real and personal property in the tax base (property subject to taxation) is appraised at its true value in money (market value). Thus, each lot and tract of land, each building, and each item of personal property on the tax lists has an *appraised* value assigned to it by the county tax supervisor. The *appraised* value of real property does not appear on the abstracts or tax notices in most counties. It is recorded in the tax supervisor's office on appraisal cards prepared during the revaluation that is held every eight years. For personal property, on the other hand, the figures that appear on the taxpayer's abstract (the form that is filled out at tax-listing time) are usually the *appraised* value of the various items of personalty listed. Thus, if one were to inspect a completed abstract, one would see real property values expressed in terms of *assessed value* (this term will be explained later) while personal property values are expressed in terms of *appraised* or "fair market" value.

The total *appraised* value of property subject to taxation by the county is a relatively constant figure because real property—which makes up from 50 per cent to 75 per cent of the tax base, depending on the county—is appraised only once in every eight years. (Real property may be reappraised before a general revaluation under certain circumstances, but we need not go into these rules now.) The total appraised value of personal property, on the other hand, may vary considerably from year to year because it is listed and appraised annually.

If the Machinery Act stopped at this point, matters would be fairly simple to understand. But under North Carolina law, counties are permitted to *assess* property for taxation at some uniform percentage less than its appraised value. We say "uniform percentage" because it is not permissible to assess one class or category of property at one percentage while another is assessed at another percentage: all property must be assessed at the same percentage of appraised value. This uniform percentage is called the *assessment ratio*, and it is fixed *annually* by the board of county commissioners. The assessment ratio is applied to the appraisal figures for each piece of real property and each item of personalty to arrive at the *assessed value* of the property. When the taxpayer receives his tax abstract, the assessment ratio has already been applied to the appraised value of his real property. When he has listed his personal property

and the tax supervisor has assigned an appraised value to each item, the values of various items of personal property are totaled, and the assessment ratio is applied to the total (after deducting the $300 exemption for household and kitchen furniture). This total is the *assessed* value of his personal property. In many counties, taxpayers are permitted to choose between listing their household and kitchen furniture item by item and accepting some percentage of the value of their real property as the fair value of their personal belongings. If this percentage is applied to the *assessed* value of the real estate, the figure obtained is the *assessed* value of the household and kitchen furniture, not its *appraised* value.

The board of county commissioners is theoretically free to select any assessment ratio from 1 per cent to 100 per cent. The most popular ratios among the 100 counties are 50 per cent and 60 per cent. A few counties use a ratio lower than 50 per cent, a few use 70 per cent, and one or two use 100 per cent. Ordinarily, counties do not change their assessment ratios often due to the administrative cost of recalculating assessed values for real property, but they are free to do so at any time. Counties often change their assessment ratios in the year following an octennial revaluation of property.

To illustrate this process, let us consider a hypothetical example. John Jones owns a house and lot in Chapel Hill. He bought the house in 1964 and paid $25,000 for it. Orange County had its last octennial revaluation in 1964, and when the house and lot were appraised, the tax supervisor, with the help of the appraisal firm hired by the county for this purpose, was of the opinion that the fair market value of the property was $24,000. Jones did not appeal this administrative decision, and therefore the *appraised* value of his house and lot appear on the tax supervisor's records as $24,000. In the intervening years, Jones has made no improvements to the property that would call for a reappraisal, and so the *appraised* value of his property has not changed. In 1971, the Orange County commissioners voted to adopt a 60 per cent *assessment ratio*. This ratio was used by the Orange County tax office in making up the tax-listing abstracts, so that when Jones went to list his taxes in January, 1972, his abstract showed that he owned one house and lot in Chapel Hill value at $14,400. This is the correct *assessed* value of property *appraised* at $24,000 in a county using a 60 per cent *assessment ratio*.

Let us further assume that Jones is a nonresident of Orange County and therefore listed no personal property in the county. When he receives his tax notice for 1972, it will show a taxable or *assessed* value of property subject to taxation of $14,400. Against this value, the county will levy a property tax at a rate expressed in so many cents per $100 assessed value. If Orange County adopts a $1.00 tax rate for 1972, Jones's county property taxes will be $144.00. These calculations show how this amount is derived:

Appraised Value	*Assessment Ratio*	*Assessed Value**	*Tax Rate*	*Taxes Due***
$24,000	60%	$14,400	$1.00	$144.00

*Appraised value multiplied by the assessment ratio.
**The number of sets of 100 in the assessed value multiplied by the tax rate.

Now let us change the example by increasing the assessment ratio. Suppose that Orange County had adopted a 70 per cent ratio instead of a 60 per cent ratio. The figures in the table above would change as follows:

Appraised Value	*Assessment Ratio*	*Assessed Value*	*Tax Rate*	*Taxes Due*
$24,000	70%	$16,800	$1.00	$168.00

Finally, suppose that the commissioners had reduced the assessment ratio to 50 per cent. Then Jones's taxes would have been calculated as follows:

Appraised Value	*Assessment Ratio*	*Assessed Value*	*Tax Rate*	*Taxes Due*
$24,000	50%	$12,000	$1.00	$120.00

So far the examples have been fairly simple. But suppose the commissioners adjusted not only the assessment ratio but also the tax rate. By adjustment of these two figures, a county can regulate its property tax income without major adjustments to the tax rate. To illustrate this, let us take Mr. Jones through 1973. During 1972, Orange County is conducting another octennial revaluation of real property. Let us assume that this revaluation shows that the total value of real and personal property in the county is 40 per cent greater than it was in 1972 because of the rise in real property values since 1964 (the year of the last revaluation). In this case, if the county continues to use a $1.00 tax rate, the rate will generate 40 per cent more property tax revenue than it did in the preceding year. If the county commissioners wish simply to maintain the status quo and do not need more revenue, they may do one of three things: (a) reduce the assessment ratio so that the total assessed value of the entire county is not greater than in the preceding year; (b) reduce the tax rate so that the total amount of taxes levied does not increase beyond the previous year, or (c) adjust both the assessment ratio and the tax rate so that the *apparent* increase or reduction in the tax rate is not great.

Now let us return to Mr. Jones. His house was appraised in 1964 at $24,000. Assume that by 1972 it has increased in value to $35,000, and that this is the figure at which it is appraised. Again, in the usual course of property tax administration, only Jones and the tax supervisor will have easy access to this appraisal figure, although it is a matter of public record. Now if Jones's 1972 taxes were $144.00 and the county commissioners wished to take him as a typical taxpayer and adjust the assessment ratio or the tax rate (or both) so that his taxes do not go up because of revaluation, three alternatives are open to them, which we can illustrate by the following examples.

● 1. Reduce the assessment ratio.

Appraised Value	*Assessment Ratio*	*Assessed Value*	*Tax Rate*	*Taxes Due*
$35,000	?	$14,400	$1.00	$144.00

What percentage of $35,000 will produce an assessed value of $14,400? The answer is 41 per cent ($14,400 divided by 35,000); to keep Jones's taxes at $144.00, therefore the commissioners could adopt a 41 per cent assessment ratio.

● 2. Reduce the tax rate.

Appraised Value	*Assessment Ratio*	*Assessed Value*	*Tax Rate*	*Taxes Due*
$35,000	60%	$21,000	?	$144.00

What tax rate will produce a tax of $144.00 on an assessed value of $21,000? The answer is 68.6 cents; to keep Jones's taxes at $144.00, therefore, the commissioners could adopt a tax rate of 68.6 cents on the $100 *assessed* value.

● 3. Adjust both the assessment ratio and the tax rate.

Appraised Value	*Assessment Ratio*	*Assessed Value*	*Tax Rate*	*Taxes Due*
$35,000	?	?	?	$144.00

In this alternative dual calculations are necessary to find the necessary adjustments. If the commissioners adopt a 50 per cent assessment ratio, the figure in the assessed value column will become $17,500. What tax rate will produce $144.00 in taxes on that assessed value? The answer is 82.3 cents.

By making appropriate adjustments to the assessment ratio and the tax rate, the county commissioners can adjust the county's property tax structure so as to produce the necessary revenue without unduly upsetting the voters after a revaluation year. To illustrate this, suppose a revaluation increases the appraised value of the county by 20 percent. If the commissioners retain the current tax rate, in the following year it will produce 20 per cent more tax revenue than it did in the preceding year. The commissioners may simply appropriate this additional revenue while appearing to the uninformed citizen to be "holding the line" on the property tax rate. Or the commissioners might reduce the assessment ratio and hold the old tax rate, thus making it appear to the uninformed citizen that the revaluation did not significantly affect the value of his property (unless it had changed in value more than the average in the county). Or they might hold to the old assessment ratio and reduce the tax rate accordingly, thus appearing to the uninformed citizen to be "cutting taxes" dramatically. Finally, they might adjust both the assessment ratio and the tax rate, thus minimizing the *apparent* impact of the revaluation on most citizens.

Adjustment of the assessment ratio and the tax rate following a revaluation year can be a very delicate political decision for members of the board of county commissioners. This is not to imply that such adjustments are unethical or illegal in any manner, but simply to point out the fact that the consequences of the decision are very important to many people in the county and thus of considerable political significance.

SUCH A DECISION also has an impact on the taxing powers of cities and towns in the county. Remember that cities have no power to appraise property and no power to set the assessment ratio. They must accept the county assessed value of property within the city as their tax base. When the county commissioners alter the assessment ratio for county purposes, they automatically alter it for all cities within the county. Suppose the county commissioners decide to reduce the assessment ratio by 10 per cent. This will have the automatic effect of forcing a city within the county to either (a) increase its tax rate by 10 per cent to offset the reduction in assessed value, or (b) reduce its property tax revenue estimates by 10 per cent and either do without this money or make it up from other sources.

Some cities in the state, particularly those in counties with low assessment ratios, were at or very near the statutory rate limit when the General Assembly convened in 1971. Other cities, especially those in counties with high assessment ratios, were well within the limit with no danger of exceeding it for some time to come. When the General Assembly was considering the complete recodification of Chapter 160 of the General Statutes, the question arose whether any adjustment in the statutory rate limit was needed. Rather than adjust the old limit upward, the legislature chose to make it an *effective* rate limit and to place all cities on a par with those in the one or two counties with 100 per cent assessment ratios.

This action actually restored the municipal tax rate limit statute to the situation that existed (theoretically, at least) before 1963. Before the constitutional amendment that prohibited local acts classifying property for taxation, all counties were required to appraise *and* assess all property at fair market value. In other words, the law assumed that the assessment ratio in all 100 counties would be 100 per cent. The municipal tax rate limit statute was originally written with this statutory scheme in mind. However, it was well known that counties were not appraising property at its fair value, and in an effort to secure compliance with this fundamental requirement of the property tax laws, counties were permitted to adopt a uniform assessment ratio. The immediate impact of the new assessment ratio plan was to place all property on the tax rolls at the same fraction of its true value while under the old system various categories of property were appraised and assessed at widely varying percentages of true value. The effect on the municipal tax rate limit of the adoption of an assessment ratio was not really a part of the 1963 legislative changes—it was necessarily incidental to these changes, but it cannot be said that the General Assembly knowingly intended this result.

An Overview of

THE WHITE HOUSE CONFERENCE ON AGING

By Elmer R. Oettinger

Twice in the almost 300-year history of the United States, conferences have been called to consider and plan for the needs of older citizens. The first was held in Washington during the early days of President John F. Kennedy's administration. The second took place in Washington ten years later in November, 1971, in the administration of President Richard M. Nixon.

There are reasons why only a few days in the time span of a great nation have been devoted specifically to the over-all well-being of those of us who have lived longest and sometimes contributed most: (1) Never before have so many people lived to ripe old ages. Advances in diet, comforts, and health and medicine have contributed to a significant increase in man's longevity. (2) Constant attention has been required for other needs—settling a new land, opening and settling new frontiers, embracing the industrial revolution, fighting Indians and an assortment of wars, developing civil rights, and meeting the complex challenges of other political, economic, and social problems. Those challenges have involved attention to race, sex, and youth. Now, finally, perhaps age will be served. The blunt fact is that most of humanity has not until now believed Robert Browning's poetic proclamation on life in *Rabbi Ben Ezra* to the effect that the last is best.

The 1971 White House Conference on Aging was the culmination of a series of events. It drew on memories and recommendations of the earlier White House Conference and their implementation, however inadequate, through the years. It began with new recommendations from the states, drawn at 50 separate conferences and covering a prearranged gamut of subjects. Specific, fairly well coordinated questions had been asked and state-level answers given; and, therefore, the White House Conference had preliminary sets of state recommendations. Then an agenda had been arranged by the National Planning Board and its staff.

Registration was so large that delegates were housed and meetings held at six major Washington hotels with shuttle buses operated every few minutes between the various conference centers. There were several categories of participants—delegates, observers, staff, guests, and press.

The conference program consisted of section meetings, which through "subsections" worked to provide recommendations to be presented to the conference for consideration and approval, modification, or rejection. Major national figures, including members of the administration and Congress, addressed luncheon and dinner meetings. Regular afternoon news conferences were held in the press room, making daily headlines in the *New York Times*, *Washington Post*, and other dailies and weeklies.

The various sections were responsible for specific subject areas: education; employment and retirement; health; housing; income; nutrition; retirement roles and activities; spiritual well-being; transportation; facilities; programs and services; government and nongovernment organization; planning; research and demonstration; training; and special concerns. Outstanding senior citizens were honored during the course of the conference which was also attended by 100 college-age young people, two chosen by each governor.

So much for the apparatus. What did the conference do? It provided the forum for vigorous and usually intelligent discussion of forward-looking proposals in every major area of our older citi-

zens' needs and concerns. But more than that, it put those recommendations in a form that can be considered by state administrations and legislatures and by the federal administration and Congress and can be implemented, given public will, to the benefit of all. In effect, the conference lived up to President Nixon's formal call: "With careful advance planning and with broad, representative participation, this conference can help develop a more adequate national policy for older Americans. I hope that it will fully consider the many factors which have a special influence on the lives of the aged and that it will address precise recommendations, not only to the federal government but also to government at other levels and to the private and voluntary sectors as well."

The conference did consider many factors having special influences on the lives of the aging, and, in its report, addressed precise recommendations to the federal government, to government at other levels, and to private and voluntary sectors. It was an analytical critical conference, in which representatives of the administration were at times dealt severe criticism for failing to plan or implement programs.

Whether the conference will truly help to develop a better national policy for older Americans depends upon whether its recommendations are actually followed through and implemented with compassion, understanding, and determination by this and subsequent federal administrations, the U. S. Congress, state and local governments, voluntary organizations, and concerned individuals throughout the land.

Let me briefly indicate some of the recommendations in key areas. In the field of **Education,** recommendations included expansion of educational programs for older persons; specific funding of those programs, with an increase in public expenditures; programs to increase the understanding and influence of older persons; use of mass media and educational systems to promote better understanding of the aging process; pre-retirement education programs to help older persons achieve greater fulfillment; greater professional preparation for those working with older persons; and higher status and better financing for the federal Administration on Aging.

In the area of **Employment and Retirement,** the White House Conference defined its long-established goal as to "create a climate of free choice between continuing in employment as long as one wishes and is enabled, or retiring on adequate income with opportunities for meaningful activities." It called the nation's present manpower programs inadequate; and, considering employment problems of older people, it called for larger and earmarked manpower funds (based on population ratio, needs, and special circumstances) for special employment programs for older people and for immediate steps to end discrimination in employment, eliminating the age of 65 as a barrier. Other recommendations would make the government an "employer of last resort," provide public service employment, make the retirement age flexible, emphasize a need for new policies, provide pre-retirement preparation, do away with the earning test for social security and replace it with a retirement test allowing persons to receive social security benefits without reduction up to the point where total social security plus earnings would equal $5,000 per year. In no case, says the report, should benefits be reduced for persons earning under $1,680. The report also recommends an immediate 25 per cent increase in social security benefits, with $150 minimum per month. Not least in importance was a recommendation to fix responsibility in a single agency for the administration of employment and retirement policy.

In the areas of **Physical and Mental Health** there were proposals for a comprehensive system of appropriate health care—providing assessment of health; education to preserve health; appropriate preventive and outreach services; all physical, mental, social, and supportive services necessary to maintain and restore health; and rehabilitation and maintenance of long-term care when disability occurs.

The conference recommended a high-priority national policy on **Housing,** embracing not only shelter but also needed services to permit older persons to live in comfort and dignity, in or outside of institutions, wherever they may choose to live. The housing report emphasizes the need for availability of varied housing and the need for funds to support a massive and varied housing program. Twenty-five housing policy recommendations include such proposals as earmarking the proportion of funds for the elderly's housing; financial incentives for families to house elderly relatives and for state and local governments to provide certain tax exemptions; availability of interest-free nonamortized loans; and the establishment within the Department of Housing and Urban Development of an office of Assistant Secretary of Housing for Elderly.

The recommendations on **Income** specifically call for adequacy and a minimum income floor. These recommendations would liberalize the retirement test; lower the age to 50 for eligibility for widows' benefits; assist disadvantaged groups under social security; help finance social security through general revenues; augment social security through private pensions; remit property taxes; and approve health needs, increasing the benefits of medicare.

Regarding **Nutrition,** the majority proposes that the federal government allocate funds for action programs to rehabilitate the undernourished aged and to prevent malnutrition for those approaching old age, but leave adequate funds for research. The report also calls for strict enforce-

ment of higher standards for food and nutrition services provided by institutions and home-care agencies receiving direct or indirect federal funds. It proposes that government resources for nutrition be concentrated on providing food assistance to those in need. It also calls for strengthening food programs to include nutrition education, expansion of food-stamp usage, and a national school lunch program for senior citizens. Better standards for food quality are also urged.

A choice of **Retirement Roles and Activities** is urged by the conference, which notes the valuable contribution to be made by older persons given proper resources, opportunities, and motivation. Among the 15 policy recommendations are strengthening and expanding opportunities for community service by older persons; awareness of the need for a new life-style for older people; creating opportunities to meet new roles and problems—better preparation for retirement, leisure, and education through employers and government; priority for restructuring the administration on aging; enhancing the image of older persons through the media; encouraging training and research agencies (including university programs) to concern themselves with the needs of older persons; furthering programs of continuing physical fitness; and changing and providing reciprocity of laws through the National Conference of Commissioners on Uniform State Laws and the professions to permit quality professional practice by and for older persons in such fields as medicine, dentistry, and law.

A number of recommendations relating to **Spiritual Well-being** point out that solutions in all areas —education, employment, health, housing, income, nutrition, retirement roles, and transportation—involve personal identification, social acceptance, and human dignity, which in turn require wholesome relationships.

The problem of **Transportation** for the elderly was defined, failures of present transportation network discussed, and programs proposed for the establishment and operation of an adequate transportation system for all the elderly. Ethnic and cultural needs of minority groups, the rural handicapped, and older people who are ill are considered. Specifically, the report urges federal transportation subsidies to make possible reduced or no-fare transit for older people. A maximum use of public vehicles (such as school buses and vans) to help senior citizens and establishing and coordinating publicly funded transportation programs for the elderly are urged. There are special proposals for flexible transportation design and safety standards, and for features such as reduced fare, driver licensing, prohibition of auto insurance cancellation, no-fault insurance, transportation of rural elderly, transportation to and from senior housing projects, volunteer drivers, an official representing the interests of older citizens to aid the Secretary of Transportation, and post-conference work shops.

The section on **Facilities, Programs, and Services** calls for a national policy that would guarantee all older persons real choices as to how they should most independently and usefully spend their later years. It calls for opportunities for continued growth, development, and self-fulfillment, with continued contribution to community activities. It urges a national social policy of protection of older persons' rights and choices. Most specifically, it would provide services to older people through a combination of governmental, private, nonprofit, and commercial agencies, with responsibility placed on the federal government to finance a minimum floor for all services. It urges establishment of a central consumer agency at the federal level, better police protection for the senior citizen, a top priority to end the Vietnam war (a source of inflation), greater mutual involvement of youth and older people, and adequate funds for a variety of services (including a federal independent legal service corporation for older people).

The section on **Government and Nongovernmental Organizations** recognizes that both governmental and nongovernmental agencies must act as advocates for the elderly and be held accountable for what they do and do not do to advance the interest of older persons. It points out the importance of local as well as national identification of problems, multiple solutions, a cooperative correlated approach, and the underwriting of governmental and nongovernmental services by commitments of manpower and sufficient funds. It urges strong reforms and strengthened organizational action. Specifically, public agencies are urged to communicate directly with older persons and to advocate their interests vigorously. Interestingly enough, it proposes that a Central Office of Aging be established in the office of the chief executive at all levels of government, and that relationships between agencies in aging and other public agencies be adjusted. This section calls for far greater planning to meet the needs of older persons. It urges that government encourage private enterprise to participate in voluntary organizations and in planning over-all agency activities. The section urges protection of constitutional rights, including First Amendment guarantees of freedom of association and expression; the right to participate in government-sponsored programs free from religious, racial, ethnic, and age discrimination; and the protection of one's person and property, particularly in institutional settings. One proposal calls for a special Committee on Aging in the United States House of Representatives, comparable with that in the Senate. Another calls for reordering national priorities to allocate a greater share of national resources for meeting the needs of older citizens and continuing "follow-up conferences."

The **Planning** section wants input from many segments and sectors of our economy to permit comprehensive and coordinated planning. It desires creation of a separate entity within the Executive Office of the President to be responsible for planning and advocacy for the aged. A demand is made for adequate technical assistance and consultation in planning at state and local levels to parallel the federal mechanism. It calls for maximum flexibility to facilitate innovation and for federal funds in the form of block grants, without restriction on long-range planning for the aged. Planning would be linked to the budget process so that ultimately our basic social values will be translated into goals, objectives, and priorities that permit planning and the allocation of sufficient resources, including a fair share of the national wealth for the aging.

Recommendations on **Research and Demonstration** list past neglect of responsibilities to the elderly, inadequate levels of funding, and the present inadequate administrative structures for advocating, coordinating, implementing, and administering research programs. It calls for a National Institute of Gerontology to support and conduct research and training in the biomedical and social-behavioral aspects of aging. It also calls for the creation of an official executive position to develop such programs in research, demonstration, and government; a major increase in federal funds for research, training, and demonstration; high priorities recruiting and training women; an appropriate clearinghouse for collecting and disseminating current research findings to the public; and better federal procedures to insure continued operation and funding of demonstration projects.

The section on **Training** points out that there is little educational training particularly related to aging but great need for developing creative training programs for a variety of occupations that provide services to older persons—the technicians, paraprofessionals, professionals, researchers, teachers, and volunteers needed by our older population. A minority recommendation calls for a single although not necessarily new federal agency. It is urged that the subject matter on aging be inserted in the pre-service and in-service curriculum of professional schools of health, law, architecture, social work, etc. Multidisciplinary research and training centers excelling in gerontology, with relationship to service-delivery systems, should be developed and encouraged in a wide range of colleges and universities. The minority urges that priorities be reordered by Congress and funds be diverted from military to human needs.

Other sections deal with **Aging and Blindness, Aging and Aged Blacks, Asian-American Elderly,** the **Elderly Consumer** (and his right to have a choice, to be safe, informed, and heard—all requiring consumer research and education, advocacy and representation, and protection and legislation), **Mental Health Care Strategies,** the **Older Family,** the **Elderly Indian, Legal Aid and the Urban Aged, Long-Term Care for Older Persons,** the **Poor Elderly, Rural Older People, Spanish-Speaking Elderly,** the **Religious Community of the Aging,** and **Physical and Vocational Rehabilitation.** There are even sections on **Volunteer Roles for Older Persons** and on **Youth and Age.** Running through these sections are both new and overlapping recommendations.

Throughout the report run continuing themes: the need for more coordinated programs at all governmental levels which also involve private enterprise and the public; the need for additional funds and for the earmarking and release of already appropriated funds; the need for a more powerful and effective administrative agency at the federal, state, and local levels; the need to make possible better housing, health facilities and health care, educational opportunities, service opportunities, transportation, food and clothing availability—all at a reasonable price; greater physical safety; establishment of more community awareness of both the needs—health, medicine, transportation, housing, and income—and the potential of their older people. The report pinpoints our older people's potential—their accumulated wisdom, talents, and skills for use in continuing service to the community.

Notably, this White House Conference was augmented in North Carolina and in some other states by statewide "follow-up conferences" in which many national recommendations were translated to meet state and local needs. In some instances the North Carolina recommendations showed greater depth, breadth, and specificity than the federal ones, because these recommendations are tailored to meet our state and local needs. They are called to your attention, for they too require awareness, study, and support in the light of the White House Conference.

Out of the dedicated efforts of so many people must come more than talk. There must be action to initiate and bring into existence useful programs that *really* meet the needs of our older people. It is clear that the conclusion of our state report on "Government and Non-Government Organizations" has application to the entire spectrum of the White House Conference on Aging and what we must expect now and in the future. Let me quote from that section:

> If we really mean what we say about involvement at all levels of government and of non-governmental organizations and agencies, it is incumbent upon every organization and agency which now provides or could provide special services, or preferably multi-services, consciously and objectively to look at its present role and potentialities and work out new specifics for the greatest contribution to the overall well-being of older citizens. It is eternally true that neighborhoods, communities, and areas of government all

(Continued on Page 17)

From a statement made by the author before the Commission for the Study of Property Tax Exemptions and Classification.

Exemption from Property Taxation: The Study Commission Takes a New Look

By Henry W. Lewis

Resolution 111 of the 1971 General Assembly

I appear before this commission in gratitude for the work of its predecessor and in awe of the tasks that lie ahead. What I have to say summarizes my thoughts after reading the following portion of the resolution that established this commission:

> It shall be the duty of the Commission to study and review the constitutional history, laws, and practices relating to the exemption and classification of property for ad valorem tax purposes, including proposals for exemption and classification which have yet to become law, and to recommend to the 1973 General Assembly a statement of public policy to guide the future exercise of discretion by the General Assembly; the continuation, addition, or deletion of specific exemptions and classifications; and such other matters related to improvement of property tax administration as time and circumstances may permit.

The Importance of the Tax; Its Place in the Governmental Revenue Scheme; the Political Character of Its Administration

According to the last survey conducted by the United States Census Bureau—before North Carolina allowed local units of government to impose sales taxes—98.67 per cent of county tax revenue and 94.11 per cent of municipal tax revenue in this state was derived from the locally administered property tax. Even with sales tax relief, the percentages remain well above 90 per cent for both categories of local units. The same source discloses that in North Carolina—before local sales taxes—the property tax accounted for 64 per cent of all revenue counties obtained from their own sources and 63 per cent of all revenue municipalities obtained from their own sources.* Thus, the financial dependence of North Carolina counties and municipalities upon the property tax is not subject to debate. Bear in mind, however, that the state itself obtains no revenue from the property tax although, in behalf of the counties and municipalities, it levies, collects, and distributes taxes on selected categories of intangible personal property—a topic beyond the scope of this brief survey.

The administrative structure by which taxes on property are levied and collected in this state may be outlined as follows:

1. The county is the unit of government charged with appraising and assessing real and tangible personal property for tax purposes, except for specified properties of public service companies that are appraised for local taxation by the State Board of Assessment. Cities and towns are required to accept the values assigned property by the counties in which they lie; the one exception applies to municipalities that straddle county lines. On the other hand, municipalities are free to list—and thereby determine the situs and taxable status—of all property subject to their levies.

2. The assessor or appraiser, who is denominated the county tax supervisor, is appointed by the board of county commissioners for a two-year term, and his staff and funds are subject to limitations fixed by the county budget. Initial determinations of taxability and valuation of property are made by the tax supervisor.

*Percentages derived from figures in 1967 Census of Governments, Vol. 7, State Reports, #33 (North Carolina), Table 19.

3. In addition to the administrative functions already noted, the board of county commissioners plays significant roles in the technical aspects of property taxation.

a. It approves the standards of values, rules, etc., used in appraising real property.

b. As the county board of equalization and review, it annually—for a limited period—reviews and, on its own motion, makes listing and valuation decisions necessary to assure that the standards of the law are upheld.

c. As the county board of equalization and review, it annually—for a limited period—hears the complaints of individual taxpayers as to the decisions of the tax supervisor on the liability of their properties to taxation and on the value assigned their properties.

d. In limited situations, the board of county commissioners deals with the same questions each year after it has adjourned as a board of equalization and review.

4. Property owners may appeal decisions of the board of county commissioners to the State Board of Assessment—a five-member board, two members of which are named by the Governor, one by the Lieutenant Governor, and one by the Speaker of the House, the fifth member being the Director of the State Department of Tax Research.

5. Decisions of the State Board of Assessment may be appealed to the courts under the provisions of §§ 143–306 through –316 of the General Statutes, "Judicial Review of Decisions of Certain Administrative Agencies."

6. Questions of tax coverage, i.e., exemption or exclusion from the tax base, may reach the courts by either of two routes:

a. When the county commissioners sit as a board of equalization and review, the property owner may initiate an appeal through administrative channels and thence to the courts, or

b. The property owner, after paying the disputed tax, may make timely appeal for refund on the ground that the property is not subject to taxation. If the refund is denied, he may bring a civil action to force the governmental unit to make the refund.

It is unlikely that when the General Assembly decided to allow local units of government to share in sales tax revenue, serious consideration was given to placing administration of that tax in the hands of boards of county commissioners and city councils. Yet, without a murmur, North Carolina has consistently left primary responsibility for administering the highly complex property tax in the hands of county and municipal governing bodies. The ultimate local decision on exemption, on jurisdiction to tax, and on valuation rests with popularly elected boards of county commissioners and city councilmen.

A highly decentralized system of administration has made it hard to develop statewide policies and to enforce uniform interpretations of applicable statutes. Staff capability differs widely from unit to unit, and legal advice is not uniformly available.

The Move from a General to a Classified Property Tax

When North Carolina first adopted a tax on property in a serious way, its Constitution required the taxation of all property unless it was granted exemption by the State Constitution itself or unless, pursuant to constitutional authority, the General Assembly granted exemption. In the late 1930s, however, North Carolina amended its Constitution to provide for a classified property tax as distinguished from the general property tax just described. Since that time no tax on property has been mandated. Instead, the General Assembly has been authorized to select and define classes of property for taxation, and so long as the classes chosen meet judicial standards and so long as the property within each class is taxed by a uniform rule, the courts will not interfere.

The power to select a class or category of property for taxation by uniform rule embodies two other powers: (1) the power not to choose, i.e., the power to exclude a class of property from the base; and (2) the power to choose a class for taxation at a value standard or rate lower than that applied to property in other classes.

Significantly, when the State Constitution was amended to allow the General Assembly to classify, the provision of the Constitution that regulated the exemption of property was not altered; and its substance remains unaltered today. In fact, the exemption clause of the Constitution has been twice re-affirmed by votes of the people since the classification provision was inserted. Thus, its vitality can hardly be denied. In practical terms, this means that once the legislature has chosen a class of property for taxation, the exemption limitations of the Constitution come into effect as to the class of property chosen: Within the class, government-owned property used for a governmental purpose is exempted; and property within the class that meets the tests for exemption established by statutes enacted under constitutional authority is also exempted. (It should be noted that all classifications and exemptions must apply throughout the state; local variations are not permitted under the Constitution.)

Legal Problems for Local Administrators

In dealing with the practical problems of exemption and preferential classification, our decentralized property tax system thrusts the county tax supervisors, the municipal tax collectors, and the county and municipal governing bodies into the highly complex fields of constitutional law and statutory construction.

Let me explain what I have in mind: The North Carolina Constitution contains specific limitations on the legislature's authority to grant exemption from property taxation. Thus, each exemption statute must

withstand judicial examination as to whether the General Assembly has exceeded its constitutional authority; but before this can be done, the administrator must interpret the language of the statute to determine whether it affords exemption to a specified property. Unhappily, most exemption statutes were written long ago when our society was substantially less sophisticated, and, worse, many of them have been amended in such sloppy fashion that interpretation strains the competence of the most skillful and experienced attorney. Yet our statutes place this responsibility on hundreds of untrained local administrators.

The constitutionally granted power to classify property authorizes the General Assembly to select and define groups or types of property for taxation or exclusion from the tax base. Legislative classifications are presumed to be valid and will not be disturbed by the courts unless they are "unreasonable, discriminatory, or arbitrary." This test is less rigorous than the exemption standards of the State Constitution, and to justify judicial interference, a legislative classification must be based on an invidious and unreasonable distinction or difference with respect to the subject of the tax. But, once more, before the judicial tests are applied, the local official must decide what property falls within or outside a particular class. Here again the statutes themselves are far from simple to construe.

The Institute of Government has demonstrated its concern for these matters. It devoted many months of work and sizable sums of money in producing analyses of the more than 70 separate statutory provisions establishing classes or granting exemptions in this state. The resulting study produced a book of 362 pages. We believe it has been useful to local government officials and attorneys, and we hope it will be useful to this commission.

Reduction of the Tax Base—Its Economic Effect

If a taxing unit is required to raise a specified sum from property taxes to finance its operations in a given year, the rate of tax to be applied to taxable property is derived by matching the needed extraction against the value of the property in the base. If $100,000 must be raised, and the value of the property in the base is $10,000,000, the rate of tax will be $1 per $100 of valuation. But if $100,000 must be raised, and the value of property in the base is only $8,000,000, the rate of tax will be $1.25 per $100 of valuation. In the first instance, an individual with property valued at $5,000 would owe $50 in taxes; in the second example, an individual with property valued at $5,000 would owe $62.50. If the difference between a tax base valued at $10,000,000 and a tax base valued at $8,000,000 was accounted for by $2,000,000 in exempt or excluded property, it should be obvious that a man with $5,000 worth of taxable property would be paying $12.50 per year as his part of the taxes that would have been owed by the excluded or exempt property if it had been subject to taxation. This illustration is not designed to argue against exclusions and exemptions; it is used for the single purpose of pointing out that necessary tax money will have to be raised regardless of the amount of taxable property in the base, and the less value there is in the base, the higher the tax will be on property that is taxable.

It is often argued that exclusions and exemptions, in an ultimate sense, constitute governmental grants or subsidies to the owning organizations, business firms, or agencies.

What troubles many people is what appears to be a growing tendency—one not confined to North Carolina—to remove property from the tax base at the same time the revenue needs of local government are multiplying. A common and often desirable approach to solving this problem is to use different sources of tax revenue. Thus, for example, North Carolina has made sales taxes available to counties and municipalities. The resolution establishing this commission tacitly suggests that a complementary solution may lie in expanding the property tax base, an expansion that may be effected by redefining and limiting the exclusions, preferential treatments, and exemptions presently available. A lack of familiarity with the existing exclusion, preferential treatment, and exemption picture makes it difficult for most people to grapple with this issue.

The Situation in 1972

Most of us are familiar with the exemptions granted property used for religious, educational, and charitable purposes; we have come to expect churches, schools, and hospitals to be free from taxation. With some cynicism, we accept the fact that various fraternal lodges and veterans' clubs pay no property taxes. Other legislatively authorized exemptions and exclusions, however, are less familiar: for example, those granted (a) all cotton so long as it is subject to "transit privileges" under Interstate Commerce Commission tariffs, (b) all farm products held by the original producer for a year following that in which grown, (c) all property stored in this state while awaiting shipment to a foreign country, and (d) the property of private utility companies used to provide sewer service to residential and "outlying" areas. Some may be surprised to learn that banks pay no local taxes on their personal property—whether or not it is employed in traditional banking enterprises—although they do pay on their real estate. Citizens of Forsyth, Durham, and Rockingham counties are more likely than citizens of Mecklenburg to know that stored tobacco owned by manufacturers is taxed at 60 per cent of the rate applied to other property. Similarly, taxpayers in Bertie, Hertford, and Northampton (unlike the average Charlottean) know from experience that, for the year following that in which

grown, peanuts in the hands of one other than the grower are taxed at only 20 per cent of the rate applied to property in general. On the other hand, residents of Mecklenburg and Gaston perhaps know that baled cotton held for manufacturing and processing in this state is taxed at only half the rate applied to other property.

The list is very long. The General Assembly of 1971 contributed some interesting additions: (a) the property of Societies for the Prevention of Cruelty to Animals; (b) the property of nonprofit homes for the aged, sick, and infirm; (c) the first $5,000 in appraised value of the residences of the elderly poor; and (d) the property of nonprofit water and nonprofit sewer associations and corporations. So much for legally authorized exemptions, exclusions, and preferential classifications. There is no way to document the exemptions granted illegally by fiat of local boards and administrators—often through ignorance. The legally authorized exemptions that I have already noted are sufficient to make my point: Each exemption, each exclusion, and each preferential classification represents an affirmative policy or legislative decision. In each instance, the General Assembly has decided that the advantages to the community at large are sufficient to warrant shifting to the shoulders of the remainder of the property in the base the tax that the favored item would have been called upon to carry.

The Issues

This commission, it seems to me, must approach the existing situation through a series of inquiries:

1. With respect to existing classifications and exemptions: (a) Does each have a firm constitutional foundation? If not, should an attempt be made to redraft the grant in an effort to meet constitutional tests, or should the grant be deleted? (b) Is it reasonably possible for tax administrators to understand the statutory grant? If not, should the statute be rewritten for clarity?

2. Even if the grant can be easily understood, and even if it is supported by the Constitution, the commission, in my view, has another field of inquiry. In this connection, I quote a statement I made to a Charlotte civic club in 1964:

> It is generally assumed that once an exemption has been granted it can never be withdrawn. Such, of course, is not the case, but experience shows that it is very near the fact. Would not periodic legislative review of existing exemptions, exclusions, and preferential classifications, in the light of changing conditions and changing attitudes, be a healthy procedure? Before granting new exemptions (however valid), would it not be wise to review those already on the books?

I suggest that this commission is in a position to do just that: Should all existing preferential classifications, exclusions, and exemptions be retained?

It is regrettable to have to report that no one knows the value of exempt property in this state. Our tax statutes require county tax supervisors to make an annual report of the amount and value of such property, but the same statutes plainly excuse owners of exempt property from having to list it. (We do not even require them to *request* exemption.) It is expensive to find and value property, and—even though counties and municipalities bemoan the loss of revenue from exemption—little local effort has been made to gather data to demonstrate that loss, and local authorities are often lax in administering exemption statutes.

As an observer of the General Assembly, I sometimes think I never hear a poor case for exemption. All the arguments are mustered, and the legislature sees their validity and acts. Conversely, one rarely hears a good case for taxation. Yet as the good cases for exemption are presented, it is relevant for the ordinary citizen-taxpayer to give serious thought to both sides of the issue. When respected citizens and officials, with the best motives for improving the economic lot of the state, propose that inventories of manufacturers and processors be removed from the tax base; when representatives of agricultural interests advocate classifying farm land lying near urban centers so that it can be valued as if it were always going to be farmed (omitting that element of its market value known as "potential"); when central city property owners seek classification to permit appraisal of their buildings at a figure that takes into consideration what would have to be spent to make such property competitive with shopping centers—whenever any persuasive voice is raised in favor of granting tax favors to any type or class of property, the ordinary citizen (especially the small homeowner) must think for himself and should ask his legislators to think long and hard before acting. The benefit should be real, substantial, and *general* before the concession is granted.

White House Conference

(Continued from Page 13)

have responsibilities. Any agency that has any claim to help meet needs of older people should crystallize its goals and priorities and initiate action.

Let us never forget that every generation stands on the shoulders of those who have gone before. The inventory and allocation of human experience and resources that we propose will redound to the benefit of our entire society. The greater health and well-being, the greater security, the greater utilization of knowledge and skills of older citizens, as planned and structured by governmental and nongovernmental agencies, will serve to develop programs helpful to all. For ultimately we seek not to divide generations, but to keep the senior citizens as a part of the mainstream, a contributor to, as well as a beneficiary of, the resources of human kind.

We believe that the cause is urgent; let us move forward now.


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