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Closed-circuit television comes to the Institute. Photo by Carson Graves.

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Broader Access to the Franchise and other Election Law Developments

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SHORTLY BEFORE HIS DEATH, Lyndon Johnson told a television newsman[1] that one of the most important achievements of his administration was the passage of the Voting Rights Act of 1965. Indeed, in the early 1960s, politicians from the White House to the court house knew that access to the ballot box was less than equal for many of the nation's voting-age citizens, and the late President could justifiably take pride in equalizing access to the franchise. Yet before the 1960s, remarkable progress in broadening the franchise was made through several routes.

Federal developments, principally the amendment of the federal Constitution, contributed to the progress. In 1868 the ratification of the Fourteenth Amendment guaranteed equal protection of the laws to all people within its jurisdiction and directed Congress to reduce the number of representatives from any state that disfranchised an adult male citizen for any reason other than committing a crime. The ratification of the Fifteenth Amendment in 1870 prohibited states from denying United States citizens the right to vote on account of race, color, or previous condition of servitude. Ratification of the Nineteenth Amendment in 1920 prohibited voting limitations based on sex. Ratification of the Twenty-fourth Amendment in 1964 outlawed denial of voting privileges in federal elections on account of failure to pay poll or other taxes.

In recent years Congress itself has been actively implementing the constitutional amendments. The Civil Rights Act of 1957[2] authorized the United States Attorney General to seek to enjoin interference by any public official or private person with a citizen's right to vote in federal, state, or local elections. The act gave federal courts jurisdiction over those cases and permitted them to initiate contempt proceedings when its orders were disobeyed. The act also provided for the appointment of an additional Assistant Attorney General and thus raised the Civil Rights Section of the Justice Department to full division status.

The Civil Rights Act of 1960[3] made the states themselves fully liable to suits to enforce voting rights when registrars of elections resigned and no successors were appointed. The act declared that registration and voting records were public records and must be preserved for twenty-two months after any general or special election, thus making the records available to the Attorney General in implementing the 1957 Civil Rights Act or in carrying out other duties. Finally, the 1960 act permitted appointment of federal "referees" when state registrars of elections disqualified applicants for registration on discriminatory grounds.

The Civil Rights Act of 1964[4] prohibited unequal application of voter registration requirements. It also prohibited registrars from rejecting registration applications on account of immaterial errors or omissions, required that all literacy tests be administered in writing, and made a sixth-grade education (in English) a presumption of literacy.

The Voting Rights Act of 1965[5] suspended all literacy tests and similar devices in states or their subdivisions where less than 50 per cent of the voting-age population were registered on November 1, 1964,

1. Taped interview with Walter Cronkite, CBS News, televised in January 1973.
2. P.L. 85–315, 71 Stat. 634, as amended.
3. P.L. 86–449, 74 Stat. 86.
4. P.L. 88–352, 78 Stat. 241.
5. P.L. 89–110, 79 Stat. 437.

or had voted in the 1964 presidential election. It also allowed the United States Attorney General to suspend literacy tests in any jurisdiction where the tests were used to discriminate on account of race or color. It allowed the appointment of federal examiners and empowered them to register voters in jurisdictions covered by the act. The "covered" jurisdictions were Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, Virginia, forty counties in North Carolina (Wake County was originally included but became exempt by court action), and one county in Arizona.

Probably more significant than the suspension of the literacy test in its impact upon the North Carolina election law and procedure is the application of section 5 of the Voting Rights Act of 1965.

Section 5 of the 1965 act requires any state or county covered by the act to obtain prior approval by the United States District Court for the District of Columbia of any proposal to alter "any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force and effect on November 1, 1964." This prior approval must take the form of a declaratory judgment that the "qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Before seeking the declaratory judgment, however, the county or state may first submit the proposed alteration to the Attorney General of the United States; if he does not object to the proposed alteration within sixty days after he receives the submission, the state or county may make the change. However, the Attorney General's failure to object within the sixty-day period does not bar a later action from being brought to enjoin enforcement of the altered "qualification, prerequisite, standard, practice, or procedure."

Partly because of two recent decisions of the United States Supreme Court interpreting section 5 of the Voting Rights Act of 1965, this section has enormous influence upon the conduct of elections in any covered states, counties, or subdivisions. In *Allen v. State Board of Elections,*[6] the Court said that the 1965 act was intended by Congress to be given the "broadest possible scope" so that it might reach "any state enactment which altered the election law of a covered state in even a minor way"; the Court interpreted the act as permitting an *individual citizen,* as well as the Attorney General of the United States, to seek a declaratory judgment as to whether an alteration in the voting laws of a covered state, county, or subdivision falls within the purview of section 5. In *Perkins v. Matthews,*[7] the Court was faced with the question of whether changes in both the location of a city's polling places and the city's boundaries (due to annexation) and a shift from ward to at-large election of aldermen were alterations in voting practices, standards, or procedures within the scope of section 5. The Court held that each of these changes was one that must be submitted for federal approval under the provisions of section 5.

In 1970 the 1965 Voting Rights Act was amended[8] in various significant ways. The amendments nullified state residence requirements of longer than 30 days for voting in presidential elections, suspended literacy tests for a five-year period throughout the entire nation, and lowered the minimum voting age from 21 to 18. The Supreme Court upheld the voting age change with respect to federal elections but not with respect to state or local elections; it also upheld, in *Oregon v. Mitchell,*[9] the provisions relating to residence requirements and literacy tests for both state and local elections.

The Twenty-sixth Amendment, ratified in 1971, lowering the voting age to 18 in all elections—federal, state, and local—rendered the 21-year-old voting age set by the North Carolina Constitution ineffective.[10]

The third route toward broadening the franchise has been through the judiciary. Constitutional amendments—particularly the Fourteenth, Fifteenth, Nineteenth, and Twenty-fourth Amendments—have been treated expansively by the United States Supreme Court. For example, in applying the Fifteenth Amendment, the Court, in *Guinn v. U.S.,*[11] has declared state "grandfather clauses" that exempted prospective voters from literacy and other voter qualifications if they or their ancestor had been eligible to vote before Reconstruction to be unconstitutional. In 1944 the Court outlawed the all-white primary by ruling, in essence, that a primary is an essential art of the political process and thus may not be conducted on a limited "private" basis.[12] The poll tax was eliminated as a qualification for voting in state or local elections in the 1966 decision of *Harper v. Virginia Board of Elections,*[13] the Court reasoning that voter qualifications have no relation to wealth and that state legislation that establishes such a relationship is unconstitutional under the Fourteenth Amendment (the equal protection amendment).

Finally, state legislatures[14] themselves have taken positive steps to broaden the franchise.[15] They have relaxed their property and tax-paying qualifications for voting, granted female suffrage, made the ballot

6. 393 U. S. 544 (1969).
7. 500 U.S. 379 (1971).
8. P.L. 91–285, 84 Stat. 314, 315.
9. 400 U.S. 112 (1971).
10. N. C. Const. art. VI, § 1; N. C. Gen. Stat. § 163–55.
11. 238 U.S. 347 (1915).
12. Smith v. Allwright, 321 U.S. 649 (1944).
13. 383 U.S. 663 (1966).
14. N. C. Const. art. I § 2, provides that "the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State Legislature."
15. Generally, see "Who Elects Congress," *Guide to the U.S. Congress,* Congressional Quarterly 450 (1972).

available to Negroes, and suspended literacy tests. The states were also instrumental in lowering voting ages for state and local elections, generally reducing residence requirements to a year (some states required two years' residence; some required only 90 days) and abandoning the convention/caucus method to select nominees in favor of direct primaries.

YET DESPITE THE PROGRESS sketched above, equal access to the franchise is still a live issue. Indeed, the number of law suits challenging restrictions on the right to vote, methods of voter registration, qualifications for voting, qualifications for candidacy, apportionment of legislatures, and control of the political parties appears to be constantly rising. The largest number of these cases arise in federal courts under the theory of the Fourteenth Amendment's equal protection clause—that the states, by legislation, have denied their citizens the equal protection of the laws, i.e., equal opportunity for access to the ballot box.

A thumbnail review of important recent developments in the courtroom wars against restricted franchise and access to the ballots and political power follows. When the judicial developments focus squarely on North Carolina legislation, as a general rule developments in other states are not noted. When the developments are more concerned with action in other states, the North Carolina statutes generally are referred to only incidentally with comments, in some instances, on how they might be affected by the case developments.

AMONG THE MOST OBVIOUS LIMITATIONS on the franchise are statutes and constitutions that establish voter qualifications in terms of one's age, place and length of residence, and status as a felon or a mental incompetent.

The Twenty-sixth Amendment to the federal Constitution guarantees that the rights of citizens who are 18 years of age or older shall not be denied or abridged by the United States or any state on account of age. The amendment supersedes all state requirements fixing a different voter age and renders the provisions of the North Carolina Constitution and General Statutes setting the age at 21[16] ineffective. It also renders partially academic the 1971 decision of the United States Supreme Court that the provisions of the 1970 Voting Rights Act fixing the voting age at 18 for federal elections are valid but the provisions fixing the voting age in state and local elections at 18 are not valid.[17]

The prevailing sentiment in North Carolina is consistent with the Twenty-sixth Amendment. In the November 1972 general election, the following proposed state constitutional amendment was submitted:

> FOR (or AGAINST) State constitutional amendment reducing the voting age to 18 years and providing that only persons 21 years of age or older shall be eligible for elective office.

The vote was 762,651 For and 425,708 Against. Thus, in North Carolina, the voting age is 18 but an 18-year-old may not hold elective office. The State Constitution now contains other office holding limitations based on age—a person must be 25 to be a state senator,[18] 18 to be a state representative,[19] and 30 to be governor or lieutenant governor.[20] Under the federal Constitution, a person must be 30 to be a United States senator,[21] 25 to be a representative,[22] and 35 to be President or Vice President.[23]

Notwithstanding this consistency between the state and federal constitutional schemes, a federal district court recently held that a Detroit city charter requirement that all candidates for city council be at least 25 years old violated the equal protection clause of the Fourteenth Amendment to the federal Constitution.[24] The court started with the premise, for which it finds the United States Supreme Court authority,[25] that the right to vote is a fundamenal right, and any legislation that impinges on it must be tested by whether the state has a compelling interest in limiting the right. The court then found that the right to hold office was inextricably entwined with the right to vote and should likewise be tested by the "compelling interest" formula. The right to vote, said the court, is important in this case because the rejection of the candidacy of one younger than 25 denies some citizens the opportunity to vote for the candidate of their choice. The city, said the court, had not proved that most persons between 18 and 24 do not have the knowledge or wisdom necessary to fulfill the duties of legislator. Moreover, there was no evidence that the requisite skills appear at 25. The court con-

16. U. S. Const. art. VI, § 1, and N. C. Gen. Stat. § 163–55. The General Assembly ratified the Twenty-sixth Amendment in June, 1971, Ch. 585, N. C. Sess. Law (1971).

17. U.S. v. Arizona, 400 U.S. 112 (1971).

18. N. C. Const. art. II, § 6.

19. N. C. Const. art. II, § 7, states that each representative, at the time of his election, shall be a qualified voter of the state. Since a person may qualify to vote at 18, he may be a state representative at 18.

19. S. 284 and H. 400, if enacted by the 1973 General Assembly, would require a statewide referendum on a proposed amendment to the State Constitution making all persons entitled to vote eligible for all offices except governor, lieutenant governor, or state senator.

20. N. C. Const. art. III, § 2(2).

21. N. C. Const. art. I, § 3.

22. N. C. Const. art. I, § 2.

23. N. C. Const. art. II, § 1.

24. Manson v. Edwards, 345 F. Supp. 719 (E.D.Mich. 1972).

25. For the initial case holding that the right to vote is a "fundamental right," to be tested by the "compelling interest" formula, *see* Reynolds v. Sims, 377 U.S. 533, 561–62 (1964). More recently, *see* Dunn v. Blumstein, —U.S.—, 31 L.Ed. 2d 274, 92 S.Ct. —(1972).

cluded that the compelling-interest test requires such proof. Although this opinion was made by a district court, not a federal or state appellate court, it could be the threshold for additional attacks on age-related limitations on access to the franchise and to candidacy.

CONSTITUTIONS OR STATUTES REQUIRING that a person be a resident of the jurisdiction where he seeks to register and vote for a specified period of time before he may do so have recently been attacked successfully.

The provisions of Article VI, section 2(1) of the North Carolina Constitution and G.S. 163–55, requiring that persons "shall have resided in the state of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding a election," were challenged in a recent case.[26] The plaintiffs alleged that they had been residents of Chapel Hill, of a designated Chapel Hill precinct, and of the Chapel Hill-Carrboro City School Administrative Unit for less than one year (July, 1970–April, 1971) but more than thirty days before they filed their complaint. They further alleged that, because their residence did not satisfy the one-year requirement, their request to be registered as voters in a certain election was refused and that thereby they were denied their rights under the equal protection clause of the Fourteenth Amendment. The election was in the Town of Chapel Hill and in the Chapel Hill-Carrboro City School Administrative Unit to select a mayor, aldermen, and members of the board of education and to consider a referendum proposition.

In response to the Andrewses' complaint and after a hearing, the three-judge federal district court, in a narrowly drawn decision, held that the one-year durational residency requirement violates the equal protection clause of the Fourteenth Amendment, and that the plaintiffs were entitled to vote in the local election. The court was careful to note that only the one-year requirement—not the 30-day requirement—was challenged and that only it was found unconstitutional. The court also specially noted that the state was not a defendant in the suit, only members of the Orange County Board of Elections and certain other Orange County election officials. Moreover, the court made a point of the fact that "the factual context in which this question has been presented involves a strictly local election; no candidates for state offices were on the ballot. . . . The only issue . . . concerns the validity of the one-year state residence requirement for voting as it relates to a local election such as that held in Chapel Hill on May 4, 1971." The court stated that it did not reach the question of the validity of the one-year residence requirement for other than local elections.

Whether the principle of the case would be extended to invalidate the one-year residence requirement as it applies to other elections—county or statewide—remained open for debate. The State Board of Elections, however, issued a special bulletin on July 2, 1971, construing local elections "to be those elections up to and including county elections only."

After the decision in the *Andrews* case and apparently in recognition that the decisions of federal district and appellate courts were hopelessly irreconcilable on the issue of the constitutionality of durational residency requirements, the United States Supreme Court held in *Dunn v. Blumstein*[27] that a one-year durational residence requirement violates the equal protection clause of the Fourteenth Amendment since it is not necessary to further a compelling state interest. The Court found that the one-year limitation unduly burdens the fundamental right of travel by penalizing those bona fide residents of a state who recently have traveled from one jurisdiction to another. In *Dunn*, the State of Tennessee advanced two "interests" in support of the one-year requirement: preventing voter fraud and having an intelligent electorate. The Court rejected the argument that the one-year requirement is necessary to prevent the frauds of "dual voting" and "colonization" (dual voting occurs when a person votes twice; colonization occurs when voters are "imported" into a jurisdiction to vote illegally there). Preventing fraud means keeping nonresidents from voting, but, by definition, a durational residence law bars newly arrived residents from the franchise along with nonresidents. Less drastic means of preventing fraud than a one-year residence requirement are available to a state: prosecution for false-swearing when taking voter qualification oaths; cross-checking lists of recently registered voters with their former jurisdictions; double-checking other information given by voters, such as places of dwelling, occupation, car registration, driver's license, property ownership, etc.; and establishing a shorter durational requirement ("[T]hirty days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much"). The waiting period, said the Court, is "not the least restrictive means necessary for preventing fraud" and is unconstitutional. The Court also rejected the state's argument that it has a legitimate interest in an intelligent electorate and found that there is "simply nothing on the record" to support the "conclusive presumption" that residents who have lived in a state less than a year and in a county for less than three months are uninformed about issues.

THE ATTACK ON DURATIONAL RESIDENCE REQUIREMENTS seems a slight matter in comparison with the controversy surrounding the prob-

26. Andrews v. Cody, —F. Supp.— (M.D.N.C. 1972).

27. Dunn v. Blumstein, —U.S.—, 31 L.Ed. 2d 274, 92 S.Ct. (1972).

lem of where a person resides for voting purposes. The enfranchisement of the 18- to 20-year-old persons and the collapse of lengthy durational residence requirements combined to focus attention on the methods by which election officials determine the residence of young voters—especially those attending colleges or universities in jurisdictions other than where their parents live. The background of this student-residence problem is worth noting.

Residence Defined: Residence is generally defined as the existence of a permanent home to which a person, when absent, intends to return. Under this definition, "permanent" is not normally defined in its dictionary preferred sense of "enduring, continuing, remaining, fixed, changeless," but in the secondary sense of "lasting or meant to last indefinitely." The law of this state is consistent with the general law.

The North Carolina Supreme Court has held that for voting purposes *residence* is synonymous with the legal term *domicile,* "denoting a permanent dwelling place, to which the party, when absent, intends to return."[28] Domicile, then, means more than merely living at a particular place; it is a place where one intends to establish a home where one lives for an indefinite period of time, as distinguished from an intent to establish temporary residence. Indefinite is defined in reliable dictionaries as not capable of being clearly defined or determined, unclear, vague, uncertain, undecided, "continuing with no immediate end being fixed: unlimited (as in 'planned to spend an indefinite period at a place')."[29]

The North Carolina Statute: The provisions of G.S. 163–57 define "residence" for registration and voting purposes and indicate that residence is determined by the intent of the person seeking to register. The statute requires all registrars and judges to be governed by the following rules, so far as they may apply:

(1) "That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning." This section states the definition of domicile, and the use of the word "habitation" implies a concept of occupancy.

(2) "A person shall not be considered to have lost his residence who leaves his home and goes into another State or county of this State, for temporary purposes only, with the intention of returning."

Equating residence with domicile leads to another consideration important in determining an individual's residence. A person retains his domicile until he establishes a new domicile. It is this concept that enables a person temporarily living out of the state or in another county of the state to retain his residence and the right to vote at the place of his domicile.

(3) "A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

(4) "If a person removes to another State or county within this State, with the intention of making such State or county his permanent residence, he shall be considered to have lost his residence in the State or county from which he has removed.

(5) "If a person removes to another State or county within this State, with the intention of remaining there an indefinite time and making such State or county his place of residence, he shall be considered to have lost his place of residence in this State or the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.

(6) "If a person goes into another State or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.

(7) "School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.

(8) "If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resides at the time of his removal shall be considered and held to be his place of residence.

(9) "If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention."

Married Persons: A married woman must meet the residence requirements in this state and in the precinct in which she desires to register, whether she resides where her husband does or in a separate location. There is a rebuttable presumption that her place of residence is the same as her husband's for voting purposes; however, she can establish a separate place of residence, and, if she does so, the presumption is

28. Owens v. Chaplin, 228 N.C. 705, 709 (1948).

29. See, e.g., AMERICAN HERITAGE DICTIONARY 668 (W. Morris ed. 1969).

overcome.[30] Presumably also, the husband's place of residence is the same as his wife's for voting purposes.

"Temporary" Residents: G.S. 163–57 uses the term "temporary purposes" in various sections providing, in summary, that domicile is not lost—and the right to vote where a person has domicile is retained—when a person comes or goes from one place to another within or without the state for "temporary purposes." The North Carolina Supreme Court supports this result.[31]

Accordingly, the registrar must determine the applicant's intention regarding the permanence of his presence in the state and in the precinct where he seeks to vote. This is particularly important when the nature of the employment of the person (or the head of his household) suggests that his presence in the precinct may be temporary. If a person comes into a locality for temporary purposes only and without intending to make that place his "permanent place of abode," he is not a resident for voting purposes.

School teachers who live in the place of their employment for the school term only, returning to a former residence on holidays and at vacation time, and who have no intention of becoming permanent residents of their place of employment do not become residents of the teaching community for voting purposes.[32]

An employee of either the federal or state government retains his voting status as a resident of the precinct in which he resided before entering government service unless he demonstrates an intent to adopt a new domicile in another locality.[33]

Construction workers temporarily residing in a locality until a project is complete are included in the classification of "temporary residents." This classification, however, does not mean that such a person is denied the right to vote at his place of domicile, for his domicile has not been changed by a removal to his temporary location.

If someone residing in a home for the aged, nursing home, or similar institution intends to make it his permanent residence and is otherwise qualified, he may be registered in the precinct in which the home is located.[34] Of course, if he considers his presence in such a home to be only temporary, he does not lose the right to vote in the precinct of his domicile. Hospital patients are generally considered to be confined in such institutions only temporarily.

Applying the residence requirements is particularly difficult with respect to persons enrolled as students in institutions of higher education throughout the state. When they have sought to register to vote in the communities where they are attending a college or university, generally they have been treated as being temporarily present and not as residents of the college or university community. Even before the ratification of the Twenty-sixth Amendment lowering the voting age to eighteen, this treatment was required by an opinion of the Attorney General that a student who is present at a college or university "only for the purpose of securing an education and who has the intention of leaving the college and the precinct in which it is located upon the termination of his course of study has not established domicile at the college or in the precinct in which it is located; and therefore, such student is not entitled to register and vote in the precinct in which the college is located."[35] Accordingly, the State Board of Elections has adopted the following rule: "Students shall not be registered in counties where they are *temporarily* residing while attending a business school, trade school, college or university. Any applicant who is determined to be a (student) should be advised that he is eligible to register and vote in the county or state of his legal residence only [emphasis in original]."[36] Thus, a person—of any age—who is present at a college or university "only for the purpose of securing an education" is not considered a resident of the college community unless he has established a permanent home there for an indefinite period of time and does not intend to return to his previously established domicile. This criterion, of course, depends on the element of intent, as do all determinations of residence for everyone.

Inevitably, the North Carolina Supreme Court was presented with the student residency issue.[37] An 18-year-old student at Meredith College in Wake County sought to register to vote in that county. The county elections officials concluded that she was a resident of Edgecombe County (Tarboro), where her parents lived, and denied her application for registration. However, on appeal, the superior court ruled in favor of the student. The defendant county board of elections took no exception to the findings of fact made at the superior court level. Faced only with whether there was any error of law on the record, the Supreme Court held there had been none.

The Supreme Court opinion laid down four ground rules for deciding questions of students' residence. First, it said that whether a student's voting residence is at the location of the college he is attending or where he lived before he entered college "is a question of fact which depends upon the circum-

30. Letters of N. C. Attorney General to: Miss Mildred Whitehurst, May 22, 1950; Glenn W. Brown, September 9, 1952; Raymond C. Harrell, October 31, 1952; H. E. Mevland, July 22, 1960; and R. W. Lyday, February 17, 1964.

31. Owens v. Chaplin, 228 N.C. 705, 709 (1948).

32. N. C. Gen. Stat. § 163-57(7).

33. N. C. Gen Stat. § 163-57(8), (9).

34. Letter of N. C. Attorney General to C. B Winberry, October 20, 1964.

35. Letter to N. C. Attorney General to R. C. Maxwell, October 20, 1960.

36. Memo, State Board of Elections to chairmen and executive secretaries of county boards of elections March 26, 1971.

37. Hall v. Wake County Board of Elections, 280 N.C. 600 (1972).

stances in each individual's case. Domicile is a highly personal matter. The fact that one is a student in a university does not entitle him to vote 'where the university is situated, nor does it of itself prevent his voting there. He may vote at the seat of the university if he has his residence there and is otherwise qualified.' "

Second, "an adult student may acquire a domicile at the place where his university or college is situated, if he regards the place as his home, or intends to stay there indefinitely, and has no intention of resuming his former home. If he goes to a college town merely as a student, intending to remain there only until his education is completed, and does not change his intention, he does not acquire a domicile there."

Third, "the presumption is that a student who leaves his parents' home to enter college is not domiciled in the college town to which he goes. However, this presumption is rebuttable. It is an inference of fact based on probabilities and 'the common experience of mankind' under the circumstances."

Finally, "domicile is a fact which may be proved by direct and circumstantial evidence. It is 'not more difficult of ascertainment, when required as the qualification of a voter, than residence or domicile at the moment of a man's death'—a matter often disputed and determined by probate courts."

Despite these ground rules and a listing of matters that elections officials should consider in determining a person's residence,[38] the case, and its result, applied only to the particular voter; there was no class action before the court. Thus, the thorny problems of determining domicile are left open and will return to plague elections officials and prospective voters.

NORTH CAROLINA SANCTIONS the disqualification of a person as a voter because he is either a felon or mentally incompetent. Persons convicted of felonies against North Carolina or the United States and persons found guilty in another state of a felony that also would be a felony if committed in North Carolina are disqualified from registering or voting (if previously registered) unless their rights of citizenship have first been restored.[39] These provisions recently have been challenged on the grounds that they deny the equal protection of the laws, in violation of the Fourteenth Amendment, to convicted felons. The case was heard in the United States District Court of North Carolina (Middle District)[40] but was decided against the petitioning felon. An appeal has been noted in the United States Supreme Court.

The disqualification of "idiots and lunatics" is sanctioned by statute[41] in North Carolina but not by the State Constitution, a fact that raises questions about the constitutionality of the statute.[42]

Finally, requirements that voters pass literacy tests[43] have been suspended as a result of the 1970 amendments to the Voting Rights Act.[44]

THERE ARE NUMEROUS WAYS other than setting up voter qualifications to restrict the franchise. The most pervasive methods are statutes that regulate the registration process and the maintenance and updating of the registration records. In particular, statutes that create methods of registration and set deadlines when voters must be registered in order to vote in particular elections have been effective devices for limiting access to the polls. Yet these same statutes have been wholly necessary to assure orderly administration of the election process.

The North Carolina registration system[45] illustrates some of the problems raised by the conflict between "access to the polls" and "orderly administration." In this state, a voter applies for registration with the county board of elections in the county where he resides. If he is qualified to be registered, his application is acted on favorably by the board,

38. The checklist included the following questions: has the voter expressed his intention of acquiring a new domicile or retaining his old one; is he maintained and supported by a parent with whom he has been accustomed to reside and to whose home he returns to spend his vacations; does he describe himself as being of his parents' place of residence; does he otherwise manifest his intent to continue his domicile there; if he has no parents or has separated from them and is not supported by them, does he have a family that he has moved to the college town; has he purchased or leased a permanent home in the college town; does he depend on his own property, income, or industry for his support; did he leave his parents' home temporarily to attend school or to cut loose from home ties; does he keep his permanent possessions in the place he claims as his residence; or does he keep there only enough for temporary needs; if he failed at the university or discontinued his studies because of illness, would he return to his parents' home; would he live in the university town if his school were not there; if he transferred in the near future to a school in another town, would he still consider his present residence as his home; for what purposes, other than attending school, is he now in the college town; what occupation does the person intend to follow after graduation and where does he intend to follow it; where does he maintain church or lodge affiliations; where does he maintain banking or business connections; did he leave home temporarily at first but afterward "cut loose entirely" from his parents; did he leave his possessions at his parents' house only for storage; does he return to his parents' house at vacation time only to visit; has he made the university town his actual home even though he would not have gone there but for the university; does he have a separate home from his parents even though he still is supported by them; does he belong to church or other organizations in other towns as well as in the university town; and does he in good faith consider the college town to be his home?

39. N. C. Const. art. VI, § 2(3); G.S. 163-55(3).

40. Fincher v. Scott et al. U.S.D.Ct., M.D.N.C., Civil Action C-148-R-72, cert. den.; appeal noted to U.S.S.Ct. (Nov. 1972).

41. N. C. Gen. Stat. § 163-55(2).

42. Legislation to amend the State Constitution to disqualify persons adjudged mentally incompetent or insane has been introduced in the 1973 General Assembly, H. 1002.

43. N. C. Const. art. VI, § 4.

44. 42 U.S.C.A. § 173, as amended by 84 Stat. 314 (1970).

45. N. C. Gen. Stat. § 163, ch. III, art. 7.

and his name is placed in the county's permanent registration records. He applies originally with a registrar or special registration commissioner, and his application is received and he usually is registered without further ado.

Registration is available at the board's office or in a voter's precinct with the precinct registrar on a year-round basis. However, the voter must apply for registration at least 21 days, excluding Saturdays and Sundays, before an election in order to vote in it. But once he is registered, the registration is permanent, and he is entitled to vote in all elections unless he later becomes disqualified or is challenged or purged from the records. It would seem that the system is infinitely fair, providing permanent registration that is available full time. In addition, the requirement that a voter register 21 weekdays before the election is consonant with other 30-day rules and seems to strike a happy balance between the demands of "access" and "administration."

YET THESE TYPES OF SYSTEMS—and others that are less balanced—are now the source of consternation. The National Municipal League argues that individual responsibility for registration—the premise that underlies the North Carolina and all other state systems—is inadequate and should be replaced by a system of governmental responsibility for registration.[46] Under such a system, state governments would initiate voter registration and the federal government would assist the states financially to encourage them to assume the registration responsibility. Inevitably these types of proposals have found their ways into proposed federal laws.

Senator McGee[47] of Wyoming has championed a federal registration system (Senators Humphrey,[48] Inouye,[49] and Kennedy[50] have each offered an alternative but similar bill). Senator McGee's bill, which was killed by the Senate in March of 1972, illustrates the new approach. It would have established a national voter registration system operated by a National Voter Registration Administration (NVRA) in the Department of Commerce, Bureau of the Census. Before each federal election (defined as an election in which a candidate for the House of Representatives, Senate, Presidency, or Vice-Presidency seeks office), the NVRA would have mailed postcards to each household, using the federal Census Bureau to determine the households. Cards would also have been available at military bases and post offices. Each eligible voter would thereby have had the opportunity to complete, sign, and return (free of charge) the postcard to local or state elections officials. If he had done so, his name would then have been added to the records of eligible voters. Residency requirements for all federal elections would have been reduced to 30 days, and registration by eligible voters would have been allowed up to 30 days before the next election.

The bill would not have affected or altered state-created residency requirements for voting in state or local elections and would have provided that no one may register to vote in any state election under the provisions of the federal act unless the federal registration form is received (i.e., accepted for state registration purposes) by the appropriate registration officials of the state on or before the date, if any, on which registration closes for state purposes. Anyone 18 or more who is a United States citizen and not disqualified by conviction of a crime or mental incompetency would have been eligible to vote in any federal election in the congressional district in which he is registered; furthermore, no state or political subdivision could have imposed requirements or qualifications for registration or voting on anyone registered to vote in a federal election.

The bill also provided for state registration: When a person registering under the bill had been so registered in a state for long enough to satisfy state residency requirements, the NVRA would have notified the person that he was eligible to register for state purposes and the state registration officials that the individual had apparently satisfied the state residency requirements; the NVRA would have been required to request the state officials to notify the individual of his eligibility and to register him. The NVRA would have reimbursed state and local governments (1) the whole cost of processing the federal registration forms, (2) 15 per cent of the cost of converting to the federal mail-registration system in the first year, (3) and between 15 per cent and 30 per cent of the cost of conversion if the state also reduced its residency requirements to 30 days for state and local elections.

The bill's supporters argued that establishing a uniform registration system would reduce existing administrative delays that prevent "millions" of eligible persons from registering. Opponents countered that the bill would encourage wholesale voting fraud and would waste countless dollars re-registering persons already registered.[51] The issue of philosophy—individual or governmental responsibility for registration—was apparently not debated.

The McGee proposal for a 30-day closing period (a voter must register at least 30 days before an election to vote in it) would have been consistent with post-*Dunn* North Carolina law.[52] But it would have seriously conflicted with statutes in other states, where, for example, the closing dates for state purposes and for federal purposes might differ. The

46. See, e.g., Nat'l Civic Rev. issues of December 1971, July 1972, and January 1973.

47. S. 2574 (92d Cong., 1st sess.); S. 352 (93d. Cong., 1st sess.).

48. S. 2445 (92d Cong., 1st sess.)

49. S. 1199 (92d Cong., 1st sess.)

50. S. 2457 (92d Cong., 1st sess.); S. 472 (93d Cong., 1st sess.).

51. Cong. Qtly. (Oct. 16, 1971), at 2136.

52. N. C. Gen. Stat. § 163-67.

statutory conflict has not occurred, but litigation has transpired and has caused confusion.

The Supreme Court dealt tangentially with the closing-period problem in *Dunn v. Blumstein*,[53] stating *obiter dicta* that "It is sufficient to note here that 30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud— and a year, or three months, too much." From this language, one could justifiably infer that, at the least, a 30-day closing period would pass constitutional muster, and that, at the most, a 90-day closing period would not. The 60-day gap between the constitutionally acceptable minimum and the constitutionally unacceptable maximum was filled in March 1973, when the Court upheld[54] state statutes that permitted the closing of registration books as much as 50 days before state and local elections, stating that a 50-day rule "approaches the outer constitutional limits in this area." Now the most that can be said is that a state will be safe in imposing a rule of no more than 50 days, although there may be instances where a longer period, up to 90 days, might be constitutionally permissible. From the administrative point of view, if from no others, it is disappointing, to say the least, to find the Court vacillating on this matter.

A COMMON METHOD of updating registration records is "purging." Under North Carolina law,[55] for example, a county board of elections may purge (i.e., remove from the registration records) the name of any voter who has died or not voted in any election in the past four years. Purging requires that the board notify the voter that his name will be purged for failure to vote for four years; no notice is required if the voter is certified as dead by the register of deeds (who is responsible under North Carolina law for maintaining death records). If the voter appears before the board and proves that his qualifications to register and vote remain as they were when he first registered, his name will not be removed from the records. In addition, anyone whose name has been removed from the registration records for failure to vote for four years may re-register at any time he can demonstrate his qualifications to do so. The statute seems to provide adequate due-process notice to the voter while at the same time satisfying the administrative need for up-to-date records (current records are desirable for statistical reasons, for easy administration of the voting process on election days, and for preventing fraud).

In the only case reported that challenged a state purging process, the federal constitutional issues of due process and equal protection under the Fourteenth Amendment were avoided, but the Michigan Supreme Court that heard the case found a purge statute unconstitutional under its state constitution.[56] That court—under the now predictable rubric of requiring that a compelling state interest exist and be strong enough to overcome the fundamental constitutional right of voting—held that: (1) the state constitutional mandate that the legislature enact laws to guard against abuses in the elective process and to provide for voter registration does not permit the legislature to enact laws that remove from the voter rolls persons qualified to vote except for their failure to vote in a two-year period, since such laws impose a qualification on voters in addition to those qualifications exclusively provided for by the state constitution; and (2) less burdensome statutory methods exist to achieve the same administrative and antifraud purposes. The Michigan statute provided that the voter must be notified before a purge could be effected and that he could reinstate his registration. Thus, it was strikingly similar to the North Carolina statute.

IT IS NOT SURPRISING that election laws regulate participation in party primary elections. The regulation takes two forms: first, by requiring that a voter be affiliated with (registered as a member of) an officially recognized political party for a certain time before being entitled to vote in that party's primary elections; and, second, by prohibiting voters from switching parties within a certain period before a party primary election. These requirements are designed, first, to prevent "raiding," i.e., voters of one party fraudulently designating themselves as voters of another to influence the results of the raided party's primary. They also are designed to forward, in as pure ("unraided") a form as possible, the value of the party system to the operation of the American political process:

> The political parties in the United States, though broad-based enough so that their members' philosophies often range across the political spectrum, stand as deliberate associations of individuals drawn together to advance certain common aims by nominating and electing candidates who will pursue those aims once in office. The entire political process depends largely upon the satisfactory operation of these institutions and it is the rare candidate who can succeed in a general election without the support of the party. Yet the efficiency of the party system in the democratic process—its usefulness in providing a unity of divergent factions in an alliance for power—would be seriously impaired were members of one party entitled to interfere and participate in the opposite party's affairs. In such circumstances, the raided party would be hard-pressed to put

53. —U.S.—, 31 L.Ed. 2d 274, 92 S.Ct. —(1972).

54. —U.S.—, — L.Ed. 2d —, — S.Ct. —, 41 L.W. —(March 20, 1973).

55. N. C. Gen. Stat. § 163-69.

56. Michigan UAW Community Action Program v. Austin, —Mich.— (Mich. Sup. Ct., 6/20/72).

forth the candidates its members deemed most satisfactory. In the end, the chief loser would be the public.[57]

At the same time, the party-affiliation requirements compete with constitutional considerations of free association (First and Fourteenth Amendments) and the right to vote.[58]

The conflict has recently been litigated (under the familiar "compelling interest" and "fundamental right" principles), with diverse results. A federal district court in New Jersey[59] struck down a state statute requiring two successive primaries to lapse before a voter may change party affiliation (i.e., about 24 months). The court ruled that the shorter time would prevent raiding without weighing so heavily on the rights of association. A federal appellate court in the same judicial circuit held,[60] however, that a New York statute providing that affiliation with a party for the purpose of voting in a primary must take place before the general election preceding the primary (a period of eight months before a presidential primary and eleven months before a nonpresidential primary) was constitutional. The United States Supreme Court affirmed, stating that "It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal" and that New York's delayed-enrollment scheme (in order to participate in a primary election, a person must enroll before the preceding general election) accomplishes the anti-raiding purpose in a noninvidious and fair way.

With respect to party switching, a federal district court in Illinois[61] recently struck down a statute that prohibited voters from changing their party affiliations (and becoming able to vote in a party primary) during the 23-month period before the month the primary was held. The state argued that the statute furthered its interest by guarding against distortion of the electoral process in general and by maintaining the integrity of the two-party system in particular (anti-raiding). The court found, however, that the statute not only prevented raiding but also prevented party-switching caused by massive dissatisfaction with a party's prevailing policies. "The state's interest upon which this statute is grounded could be characterized as 'compelling' only if the former alternative is more likely to occur than the latter, or if raiding constitutes a more important danger to constitutionally protected rights (to vote and associate), however often it occurs." A federal district court[62] held a Rhode Island statute (26-month period of no-switching) unconstitutional on similar grounds.

The North Carolina system imposes far fewer constitutional problems than the systems already litigated. Perhaps because North Carolina has been a one-party state for so long, its statute[63] requires that a person register and declare a party affiliation for the first time at least 21 days, excluding Saturdays and Sundays, before a primary; a person may change his party affiliation until 21 days, excluding Saturdays and Sundays, before a primary. If someone is registered as "No Party" (i.e., not affiliated with any party and not registered as an "Independent" voter), he may declare his party affiliation on the day of a primary and vote in the primary of that party. The discrimination between "No-Party" and "Independent" voters may cause some equal protection problems under the Fourteenth Amendment, but the 21-weekday limitation hardly seems susceptible to constitutional attack.

* * *

NOTE: This concludes Part I of a two-part article on the impact of judicial decisions on elections laws. The second part will treat issues relating to candidacy, apportionment, and absentee voting.

57. Rosario v. Rockefeller, 458 F. 2d 649 (2d Cir. 1972), aff'd —U.S.—, 41 L.W. 4001 (March 20, 1973).

58. U. S. Const. art. I, § 2.

59. Nagler v. Stiles, 343 F. Supp. 415 (N.J. 1972).

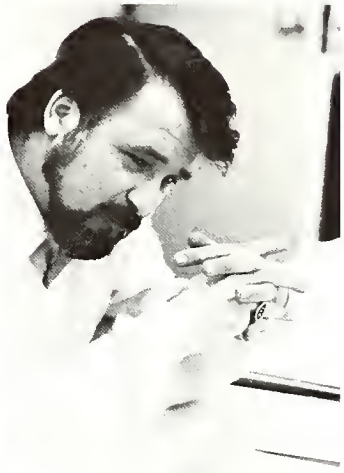
60. Rosario v. Rockefeller, 458 F.2d 649 (2d Cir. 1972), *aff'd*, —U.S.—, 41 L.W. 4001 (March 20, 1973).

61. Pontikes v. Kusper, 345, F. Supp. 1104 (N.D.Ill. 1972). Appeal filed, U.S. S. Ct., #71-1631, Kusper v. Pontikes, 1972.

62. Yale v. Curvin, 345 F. Supp. 447 (D.R.I. 1972).

63. N. C. Gen. Stat. § 163-74.

People at the Institute



Program Inequality Within School Districts: A Constitutional Violation?

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Recent decisions in the school finance area are likely to increase litigation attacking the quality of educational opportunities available to public school students. Following the lead of the California Supreme Court in *Serrano v. Priest*,[1] courts have continued to invalidate public school financing systems on the grounds that they result in interdistrict disparities in educational opportunities in violation of the equal protection clause of either the Fourteenth Amendment to the United States Constitution or the corresponding provision of state constitutions, or both.[2] These decisions were concerned exclusively with inequalities among different school districts (interdistrict inequality) caused by unequal financial support. A study of these decisions raises the question whether one can successfully argue that equal protection also prohibits inequalities, caused by factors other than financial policies, within a single school district (intradistrict inequality). This question, unanswered by *Serrano* and its progeny, is the subject of this article.

As used here, "intradistrict inequality" refers to unequal educational opportunities within a single school district as a result of differences in curricula, program facilities, and physical plant. Previous intradistrict inequality litigation has been based on either racial discrimination or a combination of both racial and economic discrimination.[3] This article is concerned with intradistrict inequality caused not by racial or economic discrimination but by a student's assignment to a school that provides fewer educational opportunities than another school in the same administrative district.

A suit challenging intradistrict inequality is likely. Legislative measures designed to end such inequalities are present on both the national and the state level. Congress requires school districts seeking Title I funds to demonstrate that project schools will provide services comparable with those provided in all other schools within the district.[4] Several states, including neighboring Virginia, are considering legislation that would require all local boards of education to maintain the same quality of education in all schools within their school districts.[5] In view of the current legislative interest in and judicial concern with this issue, it seems appropriate to present and evaluate a possible argument that could be made by the plaintiff in a suit attacking intradistrict inequalities in educational opportunity.

Fact Situation of Possible Suit[6]

An intradistrict suit brought in North Carolina would probably challenge a school district in which substantial differences exist between similar schools in the same district. Farm County, an actual county in North Carolina whose name was changed for this article, is an example.

1. 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971).

2. Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971); Rodriguez v. San Antonio, 337 F. Supp. 280 (W.D.Tex. 1971), rev'd 41 L.W. 4407 (U.S. March 21, 1973). Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972); Sweetwater County Planing Committee v. Hinkle, 491 P.2d 1234 (Wyo. 1971).

3. *See, e.g.*, Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967). *See also* Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971).

4. 20 U.S.C.A. 241e(a)(3)(c) (1970).

5. Virginia General Assembly, H. 483, Reg. Sess. (1972). *See* Hornby and Holmes, *Equalization of Resources Within School Districts*, 58 VA. L. REV. 1119, 1123 (1972).

6. This situation has been adapted from an existing state of facts in a North Carolina county school administrative district. Names have been altered for this article.

Farm County is a predominantly agricultural county with a single school district. On its southern border is heavily populated Industrial County. In 1965 the Farm County Board of Education consolidated its six small high schools into two large schools designed to accommodate equal numbers of students and to provide substantially equal educational opportunities. Attendance zones were drawn to ensure the fulfillment of projected goals of consolidation, i.e., quality education made possible through an equal allocation of resources.

With the large-scale development of the northern suburbs of Metropolis, a major city in Industrial County, the population of the southern areas of Farm County and the enrollment in the southern sector of the Farm County school district have increased substantially. However, the board of education has not revised its attendance zones to adjust for the growth in enrollment of the southern schools. Tables I and II show the program inequalities in Farm County that result primarily from the disparities in pupil enrollment. No discrimination based upon race or per-pupil financial support exists in this fact situation. In fact, a student in High School B receives a greater per-pupil expenditure than a student in High School A, because of economies of scale achieved by School A. What a plaintiff would attack in this situation is the availability of an educational opportunity at School A, e.g., a Distributive Education program, a Special Education program, an Afro-American studies program, etc., that is not available to a student at School B. It may be argued that the availability of such opportunities to only a certain group of students violates both state and federal law.

Do Inequalities in School Programs and Facilities Violate North Carolina Constitutional and Statutory Law?

The Plaintiff's Argument

On the basis of the differences in the two high schools, a plaintiff could argue that the Farm County Board of Education is in violation of Article IX, section 2(1), of the North Carolina Constitution because it has failed to provide uniform schools with equal opportunities. The constitutional provision states, "The General Assembly shall provide by taxation and otherwise for a general and *uniform* system of free public schools, which shall be maintained at least nine months in every year, and *wherein equal opportunities shall be provided for all students.*" (Emphasis added.)

The North Carolina Supreme Court has interpreted "uniform," as used in the educational statutes, as follows:

> The term "uniform" here clearly does not relate to "schools," requiring that each and every school shall be of the same fixed grade, regardless of the age or attainments of the pupils, but the term has reference to and qualifies the word "system" and is sufficiently complied with where, by statute or authorized regulation of the public school authorities, provision is made for the establishment of schools of like kind throughout all sections of the state and available to all of the school population of the territories contributing to their support.[7]

The plaintiff could contend that although the court has confined the application of "uniform" to the school "system," it has also stated that in a uniform

7. Board of Educ. v. Board of County Comm'rs of Granville County, 174 N.C. 469, 473, 93 S.E. 1001, 1002 (1917). *See also* Fletcher v. Board of County Comm'rs of Buncombe County, 218 N.C. 1, 9 S.E.2d 606 (1940).

Table I

Percentage Analysis

Category	*High School A*	*High School B*
Total School Enrollment	1,260	440
Percentage of students who meet or exceed standard achievement test scores	58%	66%
Average total SAT score	940	800
Percentage of graduates who receive academic scholarships for post-high school study	23%	10%
Percentage of graduates who enter a college or university each year	28%–30%	18%
Percentage of graduates who enter a vocational training program each year	32%–35%	25%–30%

Table II

Curriculum Analysis

Number of Courses Offered in Each Department

Subject Area	*High School A*	*High School B*
English	7	6
Foreign Language	7	2
Mathematics	9	6
Social Studies	8	6
Science	4	3
Commercial	9	7
Home Economics	6	4
Agriculture and Industry	23	12
Remedial Education	2	2
Other	6	8
Total	81	56

Partial List of Courses or Programs Offered At School A That Are Not Available at School B

Afro-American Studies
Distributive Education
Electronics
Family Living
Psychology
Special Education

system the schools must be "of like kind," thus requiring that substantially equal opportunities be made available in each school to all citizens charged with the support of that system.

The plaintiff could further maintain that the state constitutional requirement that "equal opportunities shall be provided for all students" is violated by intradistrict inequalities, arguing that the constitutional provision establishes a uniform, statewide policy for allocation of educational resources. The North Carolina Supreme Court has held that local measures destroying such uniformity must yield to the basic demands of general state policy.[8] According to Judge Butler of the Federal District Court for the Eastern District of North Carolina, Article IX, section 2(1), requires a local board of education "to afford all students of all races in all schools equal educational opportunities."[9] As early as 1871, the North Carolina Supreme Court stated that the public school system was "not to be subject to the caprices of localities, but every locality, yea every child, is to have the same advantage and be subject to the same rules and regulations."[10]

G.S. 115–176, which authorizes city and county boards of education to assign and enroll pupils, offers another ground on which the plaintiff could base his argument. This statute requires local boards of education to assign pupils to provide for "the orderly and efficient administration of the public schools and for the effective instruction, health, safety, and general welfare of the pupils." Here the plaintiff could contend that students in School B do not have an opportunity to take advantage of the additional educational programs available at School A, and therefore, Farm County school officials have failed to provide for the effective instruction of all students within the Farm County district.

Merits of the Plaintiff's Argument

As a general proposition, courts will not interfere in the administrative decisions of school authorities unless there is a "manifest abuse of discretion."[11] Typical of the North Carolina language is the statement that the courts should not interfere with the exercise of powers by local authorities charged with providing the necessary facilities for the education of the children of the state in their respective communities unless the legal right of someone who asks for relief is being clearly violated.[12] Recent cases in which North Carolina courts have sustained challenges to local school administrative action involve racial discrimination, an element not present in the factual setting discussed here.[13]

While North Carolina courts have required local boards of education to adhere to general statewide educational policies, these courts also have ruled that local school authorities must respect existing facts and circumstances when they exercise the authority granted to them by constitutional provisions or by statute.[14] Emerging from these decisions is a "balancing test," in which the interests of the school district are balanced with those of the state to determine whether school officials have complied sufficiently with the uniformity and equal opportunity provisions of Article IX, section 2(1). The issue then becomes whether any local facts or circumstances justify a restriction placed upon the rights guaranteed by constitutional provision.

An exhaustive examination of the North Carolina school decisions raising uniformity and equal opportunity questions shows that the judiciary is hesitant to deal with educational resource allocation. The courts have not attempted to define the meaning of the uniformity and equal opportunity requirements of Article IX, section 2(1), in any recent cases except those involving racial discrimination.

Do Inequalities in School Programs and Facilities Violate Federal Constitutional Law?

The Plaintiff's Argument

The equal protection clause of the Fourteenth Amendment is another basis of attack upon intradistrict inequality. It may be contended that recent court decisions concerning race, reapportionment, municipal services, wealth discrimination, and public school finance suggest that the equal protection clause requires an equal educational opportunity for all students.[15] Cases dealing directly with the public schools are most important to the plaintiff.

In the 1954 landmark decision of *Brown v. Board of Education*,[16] the United States Supreme Court emphasized that education is "perhaps the most important function of state and local governments" and "a right which must be made available to all on equal terms."[17] In 1964 the Supreme Court used the *Brown* rationale in holding that a Virginia county could not close its public schools rather than submit to court-ordered integration.[18] University of Minnesota law professor F. P. Schoettle states that despite the

8. State v. Dixon, 215 N.C. 161, 1 S.E.2d 521 (1939).

9. Coppedge v. Franklin Bd. of Educ., 273 F. Supp. 289 (E.D.N.C. 1967), *aff'd* 394 F.2d 410 (4th Cir. 1968).

10. Lane v. Stanley, 65 N.C. 158 (1871).

11. Kreeger v. Durham, 235 N.C. 8, 68 S.E.2d 800 (1952).

12. Davenport v. Bd. of Educ. of McDowell County, 183 N.C. 570, 112 S.E. 246 (1934).

13. *See* Godwin v. Johnston County, 301 F. Supp. 1339 (E.D.N.C. 1969).

14. Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950).

15. For a thorough treatment of this theory, *see* A. Wise, Rich Schools—Poor Schools, The Promise of Equal Educational Opportunity (1968).

16. 347 U.S. 483 (1954).

17. *Id.* at 493.

18. Griffin v. County School Bd., 377 U.S. 218 (1964).

Supreme Court's apparent reliance on the racially discriminatory purpose of the closings as a principle ground of decision, this case has been subsequently cited for the far more sweeping proposition that "the State may not, in the provision of important services or the distribution of governmental payments, supply benefits to some individuals while denying them to others who are similarly situated."[19]

Hobson v. Hansen,[20] is the leading case dealing specifically with intradistrict inequality in educational opportunity and of major importance to the plaintiff in a Farm-County type of litigation. The *Hobson* court sustained an allegation that school authorities of the District of Columbia had, in violation of the Fourteenth Amendment, denied equal educational opportunities to minority and poor children. The court relied on extensive sociological, mathematical, and psychological data to reach its decision that schools in minority and/or poverty areas of Washington, D. C., were inferior to those in other areas of the city school district, thereby resulting in a denial of equal educational opportunities to some students and contravening the equal protection clause.

Serrano v. Priest,[21] the 1971 landmark decision of the California Supreme Court, provides additional support in attacking intradistrict inequality. Speaking about equal educational opportunities, the *Serrano* court stated,

> Unequal education, then, leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society. . . . In view of the importance of education to society and the individual, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis.[22]

The *Serrano* court's determination that education is a "fundamental interest" is of great importance[23] for purposes of the plaintiff's argument. Once an interest is termed fundamental, state action affecting that interest in a discriminatory manner violates the Fourteenth Amendment—unless the state can show a compelling interest that requires such discriminatory action.[24] Implicit in this compelling-interest or "strict scrutiny" standard is the lack of alternatives that would infringe or discriminate to a lesser degree than the chosen method.[25] In the case of unequal educational opportunities in Farm County, the plaintiff may assert the availability of reasonable alternatives to the present system of educational resource allocation. Such alternatives include restructuring present school attendance zones to equalize enrollment, thereby requiring a more nearly equal distribution of educational resources.

Decisions similar to *Serrano* have been reported by other jurisdictions.[26] These decisions reflect a trend by several courts to label education as a fundamental interest in the constitutional sense. The Farm County plaintiff may assert that such a trend in judicial attitude renders highly unlikely the justification of unequal educational opportunities within a school district challenged on the basis of the compelling state interest standard.

It may be argued that inequalities in educational opportunity violate the Fourteenth Amendment even using a lesser standard of equal protection analysis. In *Parker v. Mandel*,[27] a case challenging the constitutionality of the Maryland system of school finance, it was stated that a state's public school finance system could be held invalid on equal protection grounds under the traditional "reasonable relationship" test. Unlike the strict-scrutiny standard, this test permits a wide scope of discretion in enacting regulations that affect some citizens differently from others. Under this standard, the equal protection clause is violated only if the inequalities rest on grounds wholly irrelevant to the achievement of the state objective.[28] The plaintiff may contend that the *Parker* court thus implies that no method of allocating educational resources will be upheld if it results in substantial inequalities in educational opportunity.

Another argument open to the plaintiff is the effect upon the educational opportunity issue of decisions in the areas of voting rights, the rights of indigent defendants, reapportionment, and the quality of municipal services.[29] These decisions exemplify the progression of the equal protection clause in dealing with inequalities relating to such basic needs of society as education.

> The equal protection clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change.[30]

19. Schoettle, *The Equal Protection Clause in Public Education*, 71 COLUM. L. REV. 1355 (1971).

20. 269 F. Supp. 401 (D.D.C. 1967). *See also* Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971).

21. 5 Cal.3d 584, 487 P.2d 1241 (1971).

22. *Id.* at 600, 487 P.2d at 1257.

23. *Id.* at 604, 487 P.2d a t1255.

24. Shapiro v. Thompson, 394 U.S. 618 (1968).

25. *See Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969), and Note, 57 IOWA L. REV. 378 (1971).

26. *See supra* note 2.

27. 344 F. Supp. 1068 (D.C. Md. 1972).

28. McGowan v. Maryland, 366 U.S. 420 (1961).

29. *See* Comment, *The Evolution of Equal Protection—Education, Municipal Services, and Wealth*, 7 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 103 (1972).

30. Harper v. Virginia Board of Elections, 383 U.S. 663, 669 (1965).

Merits of the Plaintiff's Argument

The importance of education cannot be challenged. The plaintiff's contentions as to the impact of the equal protection clause upon the availability of school programs and facilities can be challenged without evidence of racial, sexual, or economic discrimination.

The controlling factor in nearly all Supreme Court cases involving education has been race. The *Brown* and *Griffin* decisions were clearly decided on the racial issue. The Court had not shown any special affinity for education before the *Brown* decision and has not followed that opinion with further decisions indicating that education is a specially protected interest.[31]

Racial discrimination was also a primary issue in the *Hobson* decision. Since its decree prohibited discrimination in educational opportunities on the basis of racial and economic status, the court was not called upon to decide the question whether discrimination on the basis of educational opportunity alone is constitutionally prohibited.[32]

The plaintiff's argument that education is a fundamental interest requiring the protection of the strict-scrutiny standard is subject to criticism. The *Serrano* court recognized that its holding that education is a fundamental interest was not supported by any direct authority.[33] The court drew an analogy between the right to an education with the rights of criminal defendants and the right to vote, interests that had already been termed "fundamental."[34] This basis of the *Serrano* decision has been criticized on the grounds that (1) criminal procedures, unlike education, are characterized by an element of adverseness requiring a special duty of "fair play," and (2) there is a very slight correlation between effective voting and education.[35]

An indication of the judiciary's response to educational opportunity litigation may be found in the cases of *McInnis v. Shapiro*[36] and *Burruss v. Wilkerson*,[37] and the Supreme Court's recent reversal of *Rodriguez*. Plaintiffs in both cases alleged that state financial methods violated the equal protection clause since students from certain school districts were denied educational opportunities substantially equal to those available in other districts. In both cases relief was denied; the decisions were affirmed by the Supreme Court without argument or opinion.

The *McInnis* and *Burruss* courts held that in cases involving equal educational opportunities there are no discoverable and manageable standards by which a court can determine when the equal protection clause is satisfied and when it is violated. Although sympathetic to the plight of the plaintiffs, these courts were of the opinion that the judiciary was not the proper forum for relief and that appeals for educational equalization should be made to the legislature.

Although these decisions show a judicial reluctance to respond to the issue of equal educational opportunity, eliminating intradistrict inequality in Farm County can be distinguished. Farm County has only one school district. Therefore, that school district's methods of allocating educational resources need not be shielded from judicial scrutiny on any theory derived from *McInnis-Burruss* or from similar statements of the Supreme Court in *Rodriguez*. The Farm County Board of Education is not being asked to obtain additional resources. What is being sought is a judicially manageable standard of governing the distribution of presently available resources.

Perhaps the most difficult burden for a plaintiff seeking to force reallocation of resources within a single school district arises from the conclusions reached by several recent studies on the impact of school quality and facilities on future income and success. *Equality of Educational Opportunity*,[38] the well-known Coleman Report, found that variations in pupil achievement are not significantly related to school differences. The Report concludes that home, neighborhood, and peer group have a much greater impact on a child's educational achievement than school facilities. The subsequent studies of Mosteller and Moynihan confirm these findings.[39] These studies indicate that when factors like home environment and aptitude are taken into account, the relationships between resources and performance are at best weak.

Conclusion

Predicting the outcome of future litigation is always risky; it is especially perilous in unsettled and changing areas of law. With the reader thus warned, I would predict the following about a suit brought in North Carolina based on intradistrict inequality.

(1) North Carolina courts will not interfere in the administrative decisions of school authorities unless there is evidence of an oppressive and manifest abuse of discretion. Cases in which our state courts have found such an abuse of discretion are uncommon.

(2) The uniformity and equal opportunity requirements of Article IX, section 2(1), of the North Caro-

continued on page 18 ►

31. *See Recent Developments—Constitutional Law*, 60 GEO. L. J. 799 (1972).

32. *See supra* note 19.

33. 5 Cal.3d at 604, 487 P.2d at 1255.

34. *Id.* at 607, 487 P.2d at 1255. See authorities there cited.

35. Brest, *Book Review*, 23 STAN. L. REV. 591 (1971).

36. 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969).

37. 310 F. Supp. 572 (W.D. Va. 1969), *aff'd mem.* 397 U.S. 44 (1970).

38. OFFICE OF EDUCATION, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, EQUALITY OF EDUCATIONAL OPPORTUNITY (1966).

39. MOSTELLER & MOYNIHAN, *On Equality of Educational Opportunity* (1972). *See also* Moynihan, *Solving the Equal Educational Opportunity Dilemma: Equal Dollars Is Not Equal Opportunity*, 1972 ILL. L. R. 259, and Bateman & Brown, *Some Reflections on* Serrano v. Priest, 49 J. URBAN L. 701 (1972).

Book Review

SAR A. LEVITAN, *The Federal Social Dollar in its Own Back Yard.* The Bureau of National Affairs, Inc., 1973, 272 pp. $7.95.

In an effort to solve the nation's social problems, the federal government has pumped hundreds of millions of dollars into state and local government treasuries in the form of grants-in-aid. These federal contributions have increased from 13.5 per cent of state and local general revenues in 1960 to more than 35 per cent in 1972. As the amount of federal funds spent through grants has increased, however, it seems that more and more people have become critical of this spending and skeptical of the federal government's ability to solve state and local social problems through the grants mechanism. This skepticism at least partly accounted for the new revenue-sharing program, which provides federal funds directly to states and localities to permit them to attack their problems as they see fit. In recent months the Nixon administration has begun to cut the budgets of many programs, charging that they are wasteful and ineffective. Against this background, one welcomes this book, which attempts an objective appraisal of the effectiveness of federal grant programs. The book contains eight articles by journalists on particular federal spending programs in Washington, D. C., plus an introduction and evaluation by Sar Levitan, an economist. The articles cover federal programs in public school and higher education, manpower training, welfare, health, community organization, urban renewal, and housing.

Whether the spending programs can be judged a success depends on one's definition of success as well as upon his values and viewpoints. Certainly none of the programs described here have "solved" the problem to which they were addressed. We still have poor schools, disadvantaged and hungry children, unskilled and unemployed workers, and substandard housing. But given the social circumstances found in Washington, it seems too much to ask for more than modest success. The difficulties are apparent, for example, in the public school system, which has been virtually deserted by whites and middle-class blacks, leaving 95 per cent of the students black, many of them from broken families trapped in the ghettos of northeast Washington.

But if success is measured according to whether the programs made a solid contribution toward solving the problems, rather than whether they completely solved them, the programs described in this book seem to measure up fairly well.

The major exception is the urban renewal and housing programs, which by almost all accounts were dismal failures. The failure began in the 1950s, when large parts of the southeast section were leveled to make way for high-income housing with no provision made for the people whose housing was destroyed. There are almost no cases of success in federal housing efforts, but rather a long list of misguided or mismanaged attempts and even evidence of scandal. It is only fair to say, however, that success in these programs was made much more difficult by the 1968 riots, which not only destroyed housing and businesses but, more important, destroyed the confidence of builders and investors.

The success of some other programs can be told in part with a few numbers. In 1963 only one very inferior public institution of higher learning, D. C. Teachers' College, with 621 students, was available to Washington residents, and the tuition costs of private institutions made them generally out of most residents' reach. Today over 12,000 students are enrolled in the three public institutions that now operate with federal funds. Welfare rolls doubled between 1966 and 1970 and again between 1970 and 1972. The number of people receiving food stamps increased from 3,500 in 1965 to 100,000 in 1972. The number of children receiving free lunches rose from 2,000 in 1960 to 44,000 in 1971.

Although these programs seem now to be operating smoothly, in their first few years they had a difficult time—and not only for lack of funds, although this was certainly a factor. Congressmen were so concerned that a few people would become illegally eligible for welfare and food stamps that the administrators overreacted in setting up stringent controls on eligibility. The results were that social workers spent their time conducting rigid screening procedures rather than performing welfare services, and applicants were subjected to degrading eligibility requirements and long waiting lines.

Among the programs described by these articles the one that seems to have been most successful is manpower training. One often hears complaints about the "proliferation" of grant programs, but for the manpower training programs this proliferation seems to account for much of the success. Instead of one mammoth program designed to meet all needs, numerous programs were designed to meet the needs of different types of people. For example, one program provided immediate employment to ghetto youth without requiring previous training, whereas other programs required months of training before employment. One program was aimed at preparing and placing the unemployed in government positions while another pro-

gram, which had the cooperation of local private employers, was aimed at placing the unemployed in private positions.

The most interesting article is on the Aid to Families with Dependent Children programs. The author uses the case of one mother of three to demonstrate the difficulties, inequities, and inefficiency involved in our current system of welfare.

One question central to the issue of whether revenue-sharing programs should be substituted for federal grants stems from the belief by some people that local officials cannot be trusted to administer programs. The article on use of Title I education funds seems to put much of the blame for ineffective use of these funds on local administrators. Few constraints were placed on the use of these funds, but administration was very erratic, and the funds were spread too thinly to do much good. One authority was quoted as saying that Title I has enabled "a limited number of schools that knew what they were doing to do what they could not otherwise have done. The schools that didn't know what they were doing wasted it."

The success or failure of some of the programs cannot be finally evaluated because they have not gone on long enough, and because their results may not yet be apparent. This is especially true of the community organization programs of the Office of Economic Opportunity. While relatively few tangible benefits are associated with these programs, the intangible benefits may be very important, especially in the long run. These organizations have created a training ground for black administrators and community leaders, and their experience may be the genesis of efforts that will enable low-income black communities to be more self-reliant.

This book will be of special interest to those concerned with the particular programs covered, but it should also be of interest to others who are interested in the role of the federal government in state and local affairs and in the effectiveness of federal grants in solving social problems.—C. D. L.

Program Inequalities

◄ *continued from page 16*

lina Constitution have not been and probably will not soon be extended to the enrollment and curriculum factors of public education without evidence of racial discrimination.

(3) Major decisions of state and federal courts regarding unequal educational opportunities have also involved the issue of racial discrimination. Both state and federal courts have been reluctant to decide issues based on educational need.

(4) The characterization of education as a fundamental interest is still an open issue.

No decision directly concerned with educational inequality within a single school distirct without racial discrimination has yet been successful and the most likely source of a required reordering of educational opportunities is through the legislative process. Concerned residents of districts like Farm County should concentrate on electing to the local board of education members who are sensitive to the inequalities that exist among different schools and will reallocate resources and students so that there is greater parity among the schools of the district.

The First-Aid Dilemma

David G. Warren

DURING THE PAST SEVERAL YEARS, a flurry of health legislation activity has taken place among the fifty states that has almost amounted to joint action for various causes (anatomical-gift acts, liberalized abortion laws, consent to medical treatment, gunshot-wound reporting statutes, measles vaccination requirements, "certification of need" statutes for hospital construction, physician-assistant laws). But no topical health law development has been more overbilled than the enactment of Good Samaritan laws. These special protective statutes, adopted by nearly every state during the 1960s, are remarkably similar in both wording and purpose.[1]

Good Samaritan laws are now questionable statutes because no one seems to know whether they have achieved their purpose or were even needed in the first place. They are, it seems, at least a disappointment.

One of the stimulants in the rush to enact Good Samaritan laws was Paul W. Kearney's article in the May 1963 issue of *Readers' Digest:* "Why Doctors are 'Bad' Samaritans." A number of shocking stories were related on one hand about litigation-shy doctors who deliberately ignored road accidents, ski-slope injuries, and mishaps in public gatherings, and on the other, about doctors who did stop to help and then purportedly were later sued (but no actual cases were cited). Probably similar unfounded tales of rescue refused or ungrateful plaintiffs surrounded the debate on every state's Good Samaritan bills. An essential ingredient of the bills' swift passage was the belief that the problem arose from the possibility of legal liability for failing to achieve perfect results as a rescuer.

Now, ten years later, the January 1973 issue of *Readers' Digest* carries the following story:

The Samaritan Myth

There probably isn't a doctor in the United States who has not on occasion gone past the scene of an accident without stopping, telling himself that if he became involved he might well be slapped with a costly malpractice suit. For many doctors are convinced that large numbers of their colleagues have been victims of just such suits.

Last June, in an attempt to find out how widespread malpractice suits against medical Good Samaritans are, the editors of *Emergency Medicine* offered $100 to the first of its 106,000 readers who could document such a case. To date, reports the journal's editor, there has been only one response—and that turned out not to involve a Good Samaritan situation. Nor has the legal department of the American Medical Association been able to discover,

1. North Carolina's Good Samaritan law was enacted in 1965 with the support of the State Medical Society and, curiously, the truckers' association over virtually no opposition. It is found in the motor vehicle code, since it is limited to road accidents: "Any person who renders first aid or emergency assistance at the scene of a motor vehicle accident on any street or highway to any person injured as a result of such accident, shall not be liable in civil damages for any acts or omissions relating to such services rendered, unless such acts or omissions amount to wanton conduct or intentional wrongdoing." N.C. GEN. STAT. § 20-166(d).

"Good Samaritan" statutes were passed to abrogate or modify the common law doctrine, to the end, in general, that doctors (and in some instances, other persons) might administer aid in such circumstances without incurring liability or civil damages so long as they acted in good faith. The laws were calculated, of course, to encourage such persons to be "Good Samaritans." All of them, while differing in scope and other respects, as hereinafter explained, contain provisions similar to the Arkansas law, especially the two phrases, "who in good faith renders emergency care" and "shall not be liable . . . for acts . . . in good faith." [R. H. Stromberg, "Good Samaritan" Laws, the Library of Congress Legislative Reference Service (1965), p. 3]

in checking appellate-court decisions, any record of a Good Samaritan lawsuit.

The fact is that in most states the physician who volunteers his services to an injured person is at least partially protected from malpractice by special Good Samaritan laws which have been on the books for five to ten years. Such statutes generally apply to any doctor who acts in good faith, is not guilty of gross negligence, and doesn't collect a fee from those he helps. The purpose, explains Harvard professor of legal medicine William J. Curran, is to encourage doctors to give aid in emergencies such as highway accidents. In Vermont, he notes, the law actually requires a physician to assist in an accident—unless he is en route to another one.

While the story seems to attribute the lack of lawsuits to the presence of Good Samaritan laws, another conclusion could be that the concern stirred up in 1963 was only hypothetical. The reasons for the lack of Good Samaritans may well be other than fear of legal liability. Perhaps the problem of rescuing injured victims is real but the solution lies not in Good Samaritan laws. Here is where the inquiring magazine editor or, better, the professional epidemiologist should come to the aid of the lawmakers. To this writer's knowledge, no comprehensive epidemiological survey of the actual results of the Good Samaritan laws has been made. No insurance company has made known its analysis, if it has in fact made an analysis, of the effects of these laws on malpractice suits or settlements. The lawmekers are still in the dark as to whether they provided for the common weal with these statutes that abrogated and modified the common law of first aid or whether they merely cluttered the law books. A relevant step, then, toward solving the issue of emergency assistance is for appropriate persons (some of whom are physicians) to examine scientifically the impact of the protectionist Good Samaritan statutes in the United States and the mandatory-aid laws in Vermont and the several European nations.

EVEN WITHOUT THIS OVERDUE EPIDEMIOLOGICAL WORK, however, it is safe to observe that the first-aid dilemma is still extant. Newspapers in the 1970s are still printing stories about callous passersby and unmoved witnesses, just as in the 1960s. As a matter of fact, the whole issue of emergency aid has taken on a larger dimension and is now a current "hot" political concern: the public's need for "emergency medical services." State legislators speak knowingly of "EMS." In North Carolina, the chairman of the special legislative study committee on emergency medical services was a nonmedical, small-town legislator. 1971, N.C. Session Laws, Senate Resolution 827, directing the Legislative Research Commission study, was sponsored by him.

The U.S. Department of Health, Education, and Welfare has established a Division of Emergency Health Services and has handed out money to local EMS projects and demonstrations through both that Division and the Office of Regional Medical Programs. The Washington Office made EMS a priority funding object, and the state-level Regional Medical Programs followed suit; for example, the North Carolina RMP adopted the following goal in awarding grants of federal money. Promote and assist the development and implementation of appropriate available and accessible Emergency Medical Services. The Division of Emergency Health Services has published and widely distributed its *Recommended Standards for Development of Emergency Medical Service Systems* (U.S. Department of Health, Education, and Welfare, Public Health Service, Health Services and Mental Health Administration, Division of Emergency Health Services publication DEHS-4, July 1971; Rockville Maryland). It describes the basic elements of an EMS system as ambulances, ambulance personnel, hospital emergency facilities, communications, supportive actions (e.g., medical self-help training), and, as tools for implementing the program, organization and legislation.

In response, several states and local communities are intensively engaged in developing effective EMS systems. One highly acclaimed plan is Illinois's, contained in the publication *The Critically Injured Patient: Concept and the Illinois Statewide Plan for Trauma Centers* (Illinois Department of Public Health, Division of Emergency Medical Services and Highway Safety, 1971; Springfield, Ill.). That report points out the increasing rather than decreasing first-aid problem. After describing the extent of death, disablement, and distress from accidents (e.g., "Last year, traumatic injury killed 107,000 and temporarily or permanently disabled another 400,000" and "In the past 60 years more Americans died from accidents than from combat wounds in all of our wars," at pp. 6 and 5, respectively), the report goes on to claim, "The high rates of accidental death and disability are the result of the existing deficiencies in our emergency medical service system" (p. 6).

This new public concern at all levels of government in the United States is the first requisite in achieving a solution to the first-aid dilemma. The problem is bigger than individual effort can effect, and clearly of broader concern than simple legislative reinforcement of the Good Samaritan ethic. Emergency first aid and assistance is unavoidably a *systems* problem, and recognizing this is essential to the efforts of law and medicine to provide safety and rescue assurance to the citizenry. Only by collective action can the goals of the Good Samaritan legislation be achieved.

REGARDLESS OF THE OUTCOME of the earlier-proposed epidemiological study of the Good Samaritan statutes, these enactments are directed at *individual* efforts that, if there is no EMS system, are carried out in isolation and in a hostile context devoid of any

real assurance of successful care and treatment of the injured. Regardless of the rescuer (even if he is a physician), any accident victim, particularly one who is critically injured, faces an uncertain fate if he is not introduced into an organized emergency medical system for the appropriate level and timing of care and follow-up. Therefore, the message of this paper is that the debate about Good Samaritan laws and the ethical dilemma of whether to render first aid should be considered as too narrow and isolated a topic for public concern. The numerous articles in legal journals demonstrate the sufficiency of attention already focused by legal scholars and lawmakers on this legal pinhead. Now is the time for law and medicine to move ahead together toward solving the larger problem of emergency medical services.

That having been said, irony creeps in. The first step in considering a program of emergency services in a jurisdiction is preventing accidents in the first place. Any good curative action will also identify and include preventative measures; otherwise it will eventually be overcome by recidivism. Avoiding accidents in large part depends on *individual* human effort and awareness. Second, before EMS system facilities come into play, chances of survival are greatly improved if immediate steps are taken at the scene to minimize bodily damage and to keep the vital functions of respiration and circulation going. Again this calls for *individual* effort by either the rescuer or the victim himself.

But both of these concerns with individual citizen functions are not at the same level as the isolated attention to liability prophylaxis for the individual Good Samaritan.

Apart from the hardware of ambulances, radios, and hospitals, an EMS system should include public education about preventing accidents, programs to promote care and caution, rewards for safety consciousness, and the inclusion of accident-prevention considerations in the design of both facilities and procedures. An EMS system should include both universal training in basic medical self-help, including the principles of resuscitation, and recognition of the limitations of self-help and first aid. While every citizen should have some familiarity with trauma, obviously certain groups (soldiers, police, firemen, postmen, other service personnel in government employ, and even truckdrivers) should perhaps *by law* have a higher order of training. If more citizens have first-aid capability, the job of the Good Samaritan can become one of referral to another more skilled citizen.

An operational EMS system must have a communications system network sufficient to notify the appropriate resources and cause them to spring into action, whether it be a helicopter rescue team or a hospital emergency department. With a comprehensive public network of phones or flares or whatever else new that technology can provide, the Good Samaritan's job can be to notify the proper authorities.

AN EFFECTIVE EMS SYSTEM, then, uses individual effort to trigger the designed response and not to carry the solo rescue burden. There is no need for lawsuits based on the rescuer's abandonment, nor any reason for a passerby to avoid the Good Samaritan role when it means becoming involved only to the level of his competence and to the point of referral to the EMS system. *The role of the Good Samaritan is diminished in proportion to the development of a community or state emergency care program.*

As the Illinois report rhetorically states at page 6:

> Adequately trained surgeons can treat most traumatic defects if the accident victim is rapidly delivered to them and satisfactorily resuscitated. Competent nurses in intensive care settings can provide specialized care so necessary for the survival of the critically injured. Biomedical instruments and computer systems are available for the management of these patients and new allied health specialists are valuable in providing improved care. Why, then, with the availability of new methods, equipment and personnel, is there such a gap between what is possible and what is actually done in the care of the critically injured patient?

The answer is *not* the better design of Good Samaritan laws—eliminating the drafting vagaries, working toward jurisdictional consistency, providing more secure immunity for physicians, or making the rescue duty affirmative and enforceable—but rather the larger design of a comprehensive and coordinated emergency medical services system.

This is the task before us: to contribute as physicians and lawyers to the technological (medical) and organizational (legal) development of an extensive and effective rescue and emergency medical assistance program within every governmental jurisdiction. Collective action as the context for individual effort is the solution to the universal problem of needless human suffering and death caused by accidents and untended medical emergencies, understated as the "first aid dilemma."

The author is an Institute faculty member who works in the field of health law. This article is adapted from an address he delivered last fall at a conference on Medical Law in Bratislava, Czechoslovakia.

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