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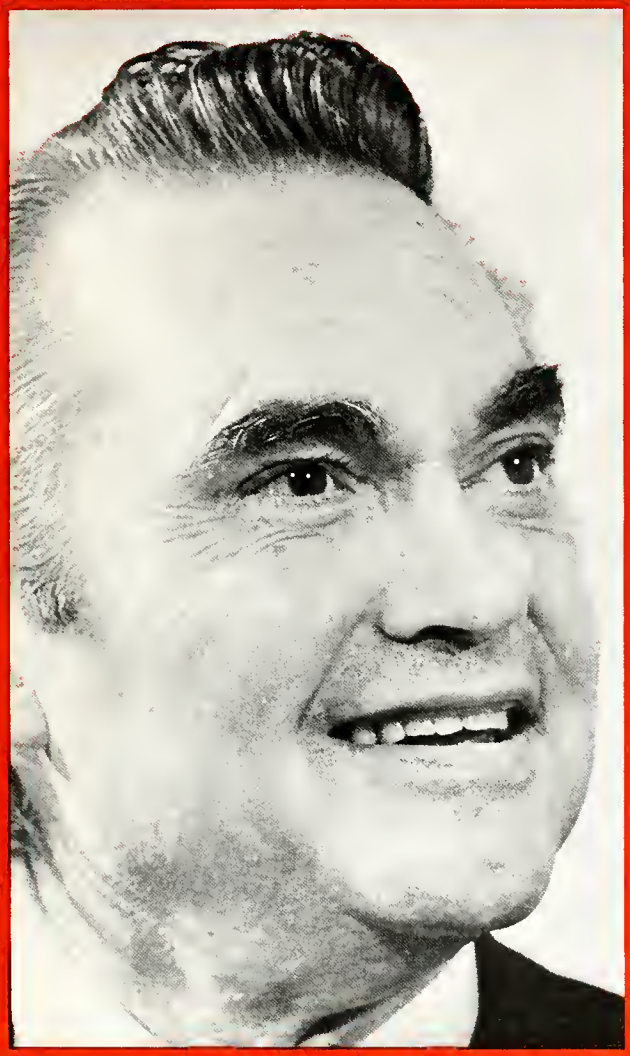

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1976 General Assembly: A Recap

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THE IMPORTANT STORY of the 1976 session of the General Assembly is not so much what happened but how it happened. First of all, the session was very short; it ran exactly two weeks, which meant that most of the legislation passed could not receive more than fleeting attention from the full membership. Second, legislative activity was within the control of a smaller group than usual, partly because time pressures required that someone take charge and partly because the normal procedures for considering legislation were drastically altered. Although according to the rules set in 1975 this session was to be limited to budgetary matters only, and only four subjects were formally approved by the leadership for consideration (the 1976-77 budget, medical malpractice, Utilities Commission nominations, and appointment of Senate committees); and although legislators attempting to have day-care licensing and other subjects put on the agenda were told firmly that the session could not be opened up, a variety of other subjects were indeed acted upon, including the rule-making procedures of administrative agenices, criminal procedure, the local government employees' retirement system, mental commitment hearings, organization of the Youth Services Commission, community college personnel policies, and distribution of state publications. In a significant departure from past practice, all of those subjects, which only indirectly concern state funds, were enacted under cover of the appropriations act (Ch. 983, S954). And generally they were considered in the same manner as appropriations: Because the appropriations committee is so large, most of its important work is done by a "super subcommittee" of no more than ten legislators, with strong pressure not to break the carefully bargained package either in full committee or on the floor. This session the pressure applied not only to the delicately balanced budget but also to the statutory changes made part of the appropriations act, consequently those amendments to the law did not receive the review that would have normally been given in a judiciary, state government, mental health, or other non-money committee. A lot of law was enacted by the Assembly this year—more than the four subjects most often mentioned—but not in the usual manner.

This year's appropriations act may represent a high point in deciding policy matters through the appropriations process rather than through the usual subject-matter committees. That practice is inevitable when revenue is scarce and not all programs can be funded at the level desired—the budget committees are placed in a position of making decisions with a substantial, immediate impact on policy direction—but what happened this year went further, mainly because of the "limited" nature of the session. To be allowed to consider other matters, legislators took a broad view of what affected the budget and loaded the appropriations act with the non-budgetary matters mentioned above. The site for a civil commitment hearing—whether in the county where the person lives or in the county where he is sent to be examined—certainly affects how much money the state and the patient might have to spend on that hearing, but it affects state expenditures no more directly than the great mass of other legislation usually considered and would not normally be thought to be a matter for the appropriations committee to decide finally.

Another broad policy area was addressed in the appropriations act, with the same pressures having been present to prevent long discussion in the full committee or on the floor. That is the relationship between the legislative and executive branches. The act passed this year contains a variety of provisions, discussed below, that limit the Governor's authority to administer the budget under the Executive Budget Act. The wisdom of these provisions will not be judged here, but, significantly, they were enacted through the appropriations committee, traditionally and necessarily dependent on control by a small number of legislators, rather than being fully debated in committee or on the floor.

As the General Assembly increases the number of policy decisions made through the appropriations bills, it may be restricting the help it gets in understanding the implications of those decisions. Having its own professional staff is new for North Carolina's legislature and the function and kind of

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control for that staff has been constantly shifting. Since the end of the 1975 session the Legislative Services Commission, the General Assembly's "board of directors," has reviewed the work of the Fiscal Research Division and, according to newspaper reports, has begun to stock that office with accountants rather than policy analysts. Broad generalizations are not fair, but it might be speculated that the accountants can be expected to give more advice on numbers than on policy alternatives. A fair observation of the just-completed session is that neither Fiscal Research nor any other staff was asked much about the policy involved in the budget bill's special provisions and (keeping in mind the time pressures) relatively little about the implication of budget cuts and additions.

The budget

The 1975 Action. The 1975 General Assembly was the first in many years to be faced with something other than a large surplus of state funds to be appropriated. In both the 1975 and 1976 sessions the legislators had to go through a process of budget "cutting" that was unfamiliar. For the most part, cutting was not an altogether accurate description of what was being done—generally the reductions were from requests for new money rather than from existing programs—but that may be little comfort to state agencies that had become accustomed to larger and larger appropriations each year.

Most appropriations are from the General Fund; the rest—largely transportation items—come from the Highway Fund. The 1975 session of this Assembly appropriated funds for both years of the biennium, returning to the format that had been abandoned in 1973 and 1974 in the experiment with annual sessions. The totals from the General Fund were $1.76 billion for fiscal 1975-76 and $1.84 billion for fiscal 1976-77 for operating expenses. That these amounts did not truly represent a "reduction" in the budget is indicated by a comparison with the General Fund operating appropriation for the preceding fiscal year, 1974-75, when the total spent was $1.63 billion. In fact, the 1975 session found money for such new activities as expansion of the kindergarten program, development of a pilot reading program, bus transportation for an additional 7,000 pupils, transportation of autistic children, construction of the new medical school at East Carolina University, increased aid to students attending private colleges, more community college students, conversion of three technical institutes to community colleges, expansion of the number of rural health-care clinics, establishment of a program for recruiting doctors, coverage for additional AFDC and Medicaid recipients, expansion of group home programs, more employees at mental institutions and new correctional officers in the prisons, two dozen new assistant district attorneys plus five new judges and sixteen magistrates, administrative assistants for all DAs, an attractive retirement program for clerks of court, increased support for the State Zoo, celebration of the bicentennial, taking over federal funding of the Justice Academy, additional SBI agents, and a substantially enlarged staff for the Utilities Commission. All that was accomplished without increasing taxes.

One thing that money could not be found for in 1975 was an increase in the pay of teachers and state employees. It had been hoped that the revenue projections on which the budget were based would be too pessimistic and that by the time the 1976 session convened sufficient funds for that use would be waiting to be added to the appropriation for fiscal 1976-77. That the salary increase should be the first priority for any additional revenue was written into the appropriations act in 1975. What happened between the 1975 and 1976 session was somewhat different from what had been hoped, however, as revenue grew at an even lower rate than had been expected.

Economic Problems. The two-year budget enacted in 1975 was based on certain predictions for the state's economy during the two fiscal years. Among the assumptions was that General Fund tax revenue would increase 9.9 per cent in 1975-76 over the preceding fiscal year, and by another 11.4 per cent in 1976-77. Those were considered fairly conservative figures.

By last winter it began to appear that the revenue estimates would not be met and that if spending continued at the level appropriated, the General Fund would run a deficit. North Carolina's statutes state a policy of a balanced budget and give the Governor, as director of the budget, powers to reduce funds allocated to departments when necessary to avoid overspending. The figures that prompted concern were General Fund revenue (both tax and nontax) increases in October that showed only about a 4 per cent rise over the previous year and January estimates that the growth would be less than 6 per cent by the end of the fiscal year. It seemed likely that executive action could keep 1975-76 expenditures within estimated revenue, but no surplus would be available to begin 1976-77 and the appropriations already made for that year would exceed revenue by anywhere from $35 million to $70 million.

Both the executive and legislative branches responded to the economic difficulty early this year. The Governor and Advisory Budget Commission in February took the first step of eliminating or cutting back capital improvement projects to reduce spending by $13.3 million. At almost the same time, Lieutenant Governor James Hunt and Speaker of the House Jimmy Green called an expanded conference committee on the budget and asked the committee members to consider whether legislative action was necessary before the May session to hold 1975-76 spending to a level that would leave at least some small surplus to begin the 1976-77 year. That committee's goal was to find $43.5 million in cuts from the 1975-76 budget, which it expected would produce a zero budget balance on June 30, 1976, so that any reductions the May session made in the next fiscal year's appropriations would be available for a pay increase for teachers and state employees.

The joint committee met for three days in mid-February but could not identify more than $25 million to take from the appropriations. Frustrated, it decided against suggesting a special pre-May session to enact those reductions and instead recommended to the presiding officers a series of spending controls for the remainder of fiscal 1975-76 that would provide some start toward getting the next year's appropriation under control. The recommendations, taken by the Lieutenant Governor and the Speaker to Governor

Holshouser, included cutting state employees' travel, limiting the use of overrealized receipts, limiting transfers of employees, freezing vacant positions, and prohibiting agencies from ordering goods and services unless they expected to be able to pay for them within the fiscal year (in an effort to prevent the usual end-of-the-fiscal-year spending that is made to keep funds from reverting).

The Governor responded that he could not take actions to create a surplus at the end of the fiscal year but could and would see that no deficit existed. On March 1 he imposed a freeze on filling vacant positions for the remainder of the fiscal year; a strict limit on travel; a freeze on most equipment purchases; and a halt to most expenditures for printing, repairs, and consultants.

Pre-session Committee Work. To expedite the work of the 1976 session, several committees began meeting early in April. First, the House Base Budget and Senate Appropriations committee met to consider the reductions in the amounts already appropriated for 1976-77, then the Joint Economy Committee and the full Appropriations committees of both houses came to Raleigh to decide what revenue estimates should be used in the budget revision and what new appropriations would be required.

The revenue picture accepted by the Economy Committee was somewhat brighter than that projected earlier in the spring. With the savings from the Governor's actions and the reversions that would have occurred anyway, about $29 million could be expected to be available in the General Fund to start 1976-77, and it was decided to abandon past policy and appropriate for next year on the basis of reversions expected this year. Although General Fund tax revenue growth would not reach the 9.9 per cent predicted in 1975, it would not be as low as previously thought; the final estimate for 1975-76 over 1974-75 was set at 6.8 per cent. The lower growth in the first year of the biennium meant that the increase in the second year would appear as a greater percentage, being estimated initially at 12.8 per cent (although during the session as more money was needed this figure would be raised to 13.3 per cent).

With that surplus and with the expected growth in tax revenues, plus the expected continuation of federal revenue-sharing another year, it was anticipated that the 1976-77 General Fund appropriations would be within expected revenue despite the sluggish 1975-76 performance. That meant that each dollar reduced from the 1976-77 appropriation would be available for an increase elsewhere.

Budget Reductions. First to act were the base budget committees. They identified just over $50 million that could be taken from the 1976-77 General Fund. Many of the reductions represented elimination of vacant positions and deferral of items until a later year (the schedule for replacement of state autos was moved back a year, and the $3.8 million bed-tower addition to Pitt County Hospital as part of the ECU medical school was postponed). Reserves for various purposes were reduced to reflect past experience more closely ($2.1 million was taken from the reserve for debt services), and transfers were made to the General Fund from special funds that seemed to have more money than needed ($1.8 million from a Medicaid fund at North Carolina Memorial Hospital, $1.25 million from the Prision Enterprises Fund). Expansion funds were reduced either because they did not seem necessary now ($2.29 million from the community colleges equipment funds where a substantial surplus already existed; funds for transportation of autistic children were reduced since they could not all be spent) or because the legislators now felt that the programs were not effective (part of the Utilities Commission's increases were taken back, with more dissatisfaction being expressed over increased utility rates). Other money was made available by directing agencies to make up General Fund reductions from increased fees and by reducing appropriations by the amount of overrealized receipts that agencies had experienced this year. Finally, some activities and programs were just plain cut. Most agencies lost money for publications and public relations positions, the Human Relations Commission saw a good portion of its budget vanish, and the Bicentennial Commission was directed to phase itself out of business.

Budget Increases. Once the reductions were settled, the Appropriations committees began considering possible increases. Highest on the agenda was the pay raise, with teachers asking for a full 16 per cent to offset the effects of inflation. Since each percentage point of increase for teachers and state employees costs about $13.8 million, the chances for that great a raise were never good. After several proposals were considered, most centering on a 5 to 6½ per cent raise across the board, the House leadership came up with the most acceptable idea: a 4 per cent increase plus an additional $300. Depending on one's present salary, an increase by that formula could result in anything from a 5 per cent increase (if one's salary is now $30,000) to a 10 per cent (if one's salary is $5,000) increase. A proportionate increase was provided for elected state officials (other than the Governor and the Lieutenant Governor), judges, district attorneys, clerks of court, magistrates, and others whose salaries are set by special provision. In addition, the state will fund increases in social security, retirement and hospitalization costs. Superior court judges also received a raise in their travel allotment (they still ride circuit) from $5,500 to $7,000 per year but must file vouchers for the additional funds. The total General Fund cost of this pay-raise package is not quite $100 million.

As usual, the big winner in the budgeting game was the public school system. By shifting existing moneys and adding $7.8 million to the funds previously appropriated for 1976-77, the kindergarten system will be fully implemented this fall. That means raising class size from a maximum of 26 to 28, but the system is to revert to the lower number within two years. Another $6.7 million was added to the funding for teacher positions because turnover had been overestimated and more teachers are in the system at higher salaries than expected. Teachers were given the same sick-leave rate (.83 days per month) as state employees at a cost of $1.5 million; another $435,000 was provided to fully match federal school lunch funds; and textbook funding was increased by $445,000. In an attempt to satisfy those teachers unhappy with the size of the pay raise, a joint committee appointed by the Lieutenant Governor and the Speaker was directed to study teachers' and state employees' pay and make recommendations to the next legislature.

In other increases in the 1975 session's version of the 1976-77 General Fund appropriations, the community college system received $5.3 million for additional students, and UNC got $4.3 million for the same purpose. The Department of Correction at the last moment was given $434,000 to continue the federally supported pre-release and aftercare program, but other expiring grant programs were not picked up. One million dollars was added to the funds for community mental health centers, and various other Human Resources activities received lesser increases, including another $250,000 for community-based programs for juveniles who otherwise would go to training schools (part of the revenue made available from closing the Fountain School). The State Auditor received six new positions and three districts were given new assistant district attorneys.

Revenue Bills. Obviously the revenue already mentioned was not sufficient to fund all those increases, and some measures had to be enacted to increase revenue. The most important of these was Ch. 979 (H 1291), which changes the time by which employers who withhold employees' personal income tax must pay the amount withheld over to the state. G.S. 105-163.6 now requires employers who withhold employees' personal income tax to pay the amount withheld each quarter to the state by the end of the month following that quarter. Amending the law to require payment monthly will generate a one-time windfall of revenues because payments from two months of the last quarter will be made in fiscal year 1976-77 rather than 1977-78. The amount of the windfall depends on the number of employers required to switch to monthly payment and the date by which the payment is due; the proposals ranged from requiring employers to withhold at least $100 per month to pay by the fifteenth day of the month following collection, which would generate a $98 million windfall, to requiring employers who withhold at least $3,000 per month to pay by the last day of the month following collection, which would generate $43.4 million. As enacted, Ch. 979 amends G.S. 105-163.6, effective October 1, 1976, to require employers who withhold an average of $3,000 or more per month to pay the withheld money to the state monthly by the fifteenth day of the month following collection. This $3,000 cut-off figure will require 2 per cent of the employers to shift to monthly filing and will generate a windfall of approximately $67.3 million. Employers who withhold an average of less than $3,000 per month will continue to pay the amount withheld quarterly by the last day of the month following the quarter. The act allows an employer paying monthly who begins to withhold less than $3,000 monthly to apply to the Secretary of Revenue for a change to quarterly filing. Ch. 979 also amends G.S. 105-163.6 to conform the filing time for transient employers and employers engaged in a seasonal business. Currently, those employers pay withheld taxes monthly by the last day of the month following collection; beginning October 1, they will be required to pay their withheld money by the fifteenth day of the month following collection.

The legislators settled on the $3,000 cut-off for two reasons: It will generate approximately the amount of money needed to balance the budget, and it will not greatly disrupt employers' normal operations since it affects only the largest employers, who already have their records computerized.

The new pretrial criminal procedure act (G.S. Ch. 15A) and administration of estates law (G.S. Ch. 28A) enacted by the last two sessions of the General Assembly increased the workload in the offices of the clerks of court. To meet the increased workload, the General Assembly created 155 new deputy clerks of court positions; 96 counties get at least one new deputy and some get up to four. Ch. 980 (H 1299) was enacted to fund those new postions. Effective July 1, 1976, G.S. 7A-304 (a) (4) is amended to raise the court fee for support of the General Court of Justice from $17 to $19 in district court criminal cases and from $20 to $28 in superior court criminal cases. Ch. 980 also amends G.S. 7A-305(a) (2) to raise the General Court of Justice fee from $10 to $18 in district court civil cases and from $20 to $28 in superior court civil cases. As a result, the total costs of court in a criminal case heard in district court will be $27; in a criminal case heard in superior court, $48. In civil cases, the costs will be $24 for cases heard in district court and $34 for cases heard in superior court. (No change was made in court costs in civil actions heard by a magistrate in small-claims court.) These increased court fees will generate an additional $1.9 million in revenue per year.

Ch. 981 (H 1303), effective May 14, 1976, raised from $1 to $3 the fee to be charged by the Secretary of State for receiving service of process as statutory agent of a corporation or of a director of a corporation.

One other revenue-producing measure was included as a special provision in the appropriations act. Since 1971, the University of North Carolina at Chapel Hill has been negotiating to sell its utilities, a sale expected to bring about $42 million. The act authorizing the formation of a commission to negotiate the sale (Ch. 723, SL 1971) provided that the proceeds of the sale would go to UNC-CH improvements. All real property sales by state agencies have been handled essentially the same way in the past, but as discussed below, the rules were changed this year. For this sale, a special compromise was developed to provide that if the utilities are sold in the 1976-77 fiscal year, $10 million will go into the General Fund and the remainder will go to the University at Chapel Hill. If the utilities are sold after the end of the 1976-77 fiscal year, the entire proceeds will go into the General Fund.

In addition to the bills discussed above, which generate more revenue, the General Assembly enacted one bill that will give tax relief to the "meals on wheels" program. Ch. 982 (H 1310), effective July 1, 1976, adds a new subsection (31) to G.S. 105-164.13; it exempts from the retail sales and use tax the nonprofit sale of meals to elderly and incapacitated persons by nonprofit charitable or religious organizations when the meals are delivered to the purchasers' homes.

The end result of all this cutting and adding and shifting was an *increase* in the 1976-77 General Fund operating budget from $1.84 billion to $1.94 billion and a *decrease* in the capital appropriations from $52.1 million to $44.1 million.

Highway Fund. The other, smaller source of state appropriations is the Highway Fund, and it was easier to revise than the General Fund. Gasoline and related tax revenues had done better than expected, so substantial

cutting was not necessary. The total Highway Fund appropriation for 1976-77 was raised from about $400 million to $414 million. The major reductions came in eliminating funds for regional personnel officers, reducing funds for the Governor's Highway Safety Program by 80 per cent, and transferring Motor Vehicles process servers to vacant Highway Patrol positions. The major increase was in salary and benefits identical to those provided for teachers and other state employees.

Budget Controls. As the political science textbooks say, the legislature's control over purse strings is its most effective control over the operation of state government. Over the last several years, and especially this one, an attempt has been made to increase that control not only by regulating how much is to be spent but also by strengthening legislative oversight on the spending itself. The appropriations act this session contains a variety of special provisions other than the simple dollar amounts that concern how the budget is prepared and executed, traditionally the almost exclusive domain of the Governor. For example, the Executive Budget Act, enacted fifty years ago, requires the Governor as director of the budget to prepare a budget proposal each two years and present it to the General Assembly. The preparation is done with the assistance of the Advisory Budget Commission (of which a majority are legislative members), but final decisions rest with the chief executive. This year's ratified appropriations act attempts to remove some of the Governor's discretion in preparing that document; it spells out just what format the Assembly wishes for the proposed budget for the next biennium. Most important, the legislators want the budget submitted in line-item detail, including for each activity the amount budgeted for salaries and other benefits, supplies and equipment, consultants, data processing, and similar matters. The legislators also want a description of each reserve and transfer and an itemized schedule of the additional positions being recommended.

The Executive Budget Act authorizes the Governor to allow agencies to transfer funds from one activity to another. The appropriations act this year requires each agency to give the Legislative Commission on Governmental Operations (the "Crawford Commission" established last session) a copy of each approved budget transfer permitting money to be spent for a purpose for which the legislature did not make an appropriation. Also, the appropriations act authorizes that commission "to use its authority" to insure that the legislative intent is carried out in execution of the 1976-77 budget. With no more specificity than that, it is unclear what the commission might do if it found the execution of the budget to vary from its view of legislative intent. The provision was placed in the act as a compromise in place of several specific provisions limiting personnel transfers and use of overrealized receipts.

But several departments did receive explicit legislative instructions concerning the use of their funds for personnel. The Department of Transportation not only lost funds for regional personnel officers but also was forbidden in the appropriations act to make other funds available for those positions or for any substantially similar job; it also may not fire, transfer, or demote any career employee in order to retain a personnel officer whose job was eliminated. Similar provisions were inserted for the departments of Administration, Commerce, Natural and Economic Resources, Military and Veterans Affairs, and (again) Transportation concerning the positions of chief deputy and chief assistant secretary, for which funding was eliminated. The Human Relations Commission was told that its central staff in Raleigh had to be sliced before its budget reductions could be satisfied from field positions. Instead of having the Administrative Officer of the Courts specify where new deputy clerks of court are to go, the act lists the exact number for each of the 96 counties that are to receive at least one. The Department of Correction has been instructed to fill vacant positions with five additional chaplains. And all agencies that had public relations funds reduced are prohibited from transferring any funds or personnel from other activities to undertake that task. These are all matters that in previous years probably would have had their execution left to the Governor's discretion.

. . .the legislature's control over purse strings is its most effective control over state government.

At the end of a fiscal year, agencies usually make purchases so that their full appropriation will be spent and none will revert to the General Fund, avoiding any risk that future appropriations will be reduced. To discourage that practice, the budget act this year directs each agency to make an effort to see that purchases are made only for goods necessary to operate within the fiscal year and requires each agency to submit to the Department of Administration and the State Auditor by each July 31 a statement of obligations outstanding as of the end of the previous fiscal year.

This year for the first time reversions from the first year of the biennium are being considered as funds available for the second year's appropriation. To prevent executive transfer of reverting funds to other purposes, the appropriations act contains a number of special provisions specifying that certain funds are indeed to revert to the General Fund on June 30, 1976. Also, the expenditure of funds appropriated by the 1975 session for the governmental center capital project and for alterations and renovations at state office buildings now requires the approval of the Advisory Budget Commission if the expenditure is to be for $1,000 or more, but the Commission can delegate its authority to the State Budget Office.

General Fund appropriations are not the only source of revenue for state agencies; many rely on receipts to support part of their activities. Generally, if those receipts run higher than expected, the Governor can reduce the appropriations allotted to that agency to keep the total budget within the relative limits set by the legislature. The appropriations act this time provides, however, that if the community college system or the University of North Carolina system should receive more from tuition and academic fees than anticipated, the director of the budget cannot use that fact as a reason for reducing their appropriations.

A final change in the budgetary procedures affects the Governor's authority only indirectly. Until now, the proceeds from the sale of land by any state agency has gone

into an account for that agency, to be spent on capital projects with the approval of the Governor and Advisory Budget Commission. The appropriations act amends G.S. 146-30 to have those proceeds go into the General Fund instead. This change was needed partly to increase the revenue available to be appropriated this year, but perhaps is more an expression of legislative dissatisfaction with agencies' use of this money to fund projects without specific legislative approval. As mentioned earlier, a special compromise was worked out for the proceeds of the sale of the utilities at UNC-Chapel Hill, and the Wildlife Resources Commission and Department of Agriculture were exempted from the change for certain sales of land, land products, and timber. The Department of Human Resources had the provision applied retroactively, since the act also called for the transfer to the General Fund of land proceeds already on deposit.

Professional malpractice legislation

Background. The budget crunch was not the only "crisis" facing the 1976 session. The legislature was also confronted with a crisis psychology among health-care professionals who are beset by dramatically increased malpractice premiums and who in late 1975 were faced with a real possibility that they would not be able to obtain liability coverage at any price. Indeed, malpractice was the only nonbudgetary issue that received favorable consideration during this session through the normal legislative process.

In 1974, the national medical malpractice dilemma first raised its head in North Carolina when St. Paul Fire and Marine Insurance Company, the principal medical malpractice insurer in the state, threatened to withdraw from the market unless it was granted an 82 per cent rate increase. After hearings by the Department of Insurance, the increase was granted for a period ending June 30, 1975, in the expectation that by then the 1975 session of the General Assembly would have enacted laws to solve the medical malpractice insurance problems.

The 1975 session enacted Ch. 427 (H 74), creating the Health Care Liability Reinsurance Exchange, similar in theory to the Motor Vehicle Reinsurance Facility that insures high-risk drivers. All companies that offered general liability insurance in North Carolina were required to belong to the Exchange and to offer professional malpractice insurance policies. High-risk policies were to be reinsured by the Exchange, with losses in the high-risk pool spread among member companies in proportion to their share of the total state liability insurance market.

The Health Care Reinsurance Exchange was hailed as the solution to the present and future problems of assuring the availability of medical malpractice insurance at reasonable rates, but the plan immediately became controversial. After the insurance industry and the Commissioner of Insurance failed to agree on how the Exchange would operate, the industry mounted a legal attack on the constitutionality of both the Exchange and the commissioner's proposed plan of operation. Most of the companies were granted temporary injunctions exempting them from participation until the courts could determine the constitutionality of the legislation. On November 3, 1975, Wake County Superior Court Judge James H. Pou Bailey found the Reinsurance Exchange Act to be unconstitutional on its face and in its application and implementation by the Commissioner of Insurance. This case is now on appeal to the State Supreme Court, and the Exchange is inoperable pending a ruling by the court.

The 1975 session also created the Professional Liability Insurance Study Commission and directed it "to make a thorough and comprehensive study of any and all aspects of professional liability insurance," particularly the impact of proposed legislation dealing with the statute of limitations, informed consent of patients, and the standard of care required of those who provide health care. In October 1975, the Commission was appointed and called into session by the Lieutenant Governor and the Speaker of the House in the midst of the malpractice crisis caused by the Reinsurance Exchange litigation and the withdrawal from the market of the state's major medical malpractice carrier, St. Paul, making malpractice coverage unavailable for those whose policies had expired. Study commission members helped resolve this crisis and told the presiding officers that while a special session of the General Assembly was unnecessary at that time, the commission would continue hearings and have a report ready to consider at the May budget session.

Commission Report. In its final report and recommendations, submitted on March 12, the study commission concluded that the malpractice problem had two dimensions. First, the possibility remained that companies might again withdraw from the medical malpractice insurance market, leaving health providers without liability coverage and forcing a shutdown of health-care services. Second, the commission concluded that the drastically higher cost of insurance was forcing many physicians to curtail their practice in high-risk services to avoid enormous premium increases (especially small-town general practitioners who reportedly were discontinuing obstetric services). The report included proposed legislation that would make the following major changes in laws governing malpractice:

(1) A reduction in the maximum statute of limitations applicable for adults in professional malpractice actions from ten years to an outside limit of four years (applicable in all professional malpractice cases, not just medical);

(2) A provision making the reduction in the statute of limitations apply to all persons age seven or older (at present the statute does not begin to run against a person until he reaches age 18, when he can sue in his own right);

(3) Codification of case-law rules governing informed consent and the standard of professional competence and care to which a health-care provider is held (basically the same standard and practices to which others engaged in that profession in the same or similar communities are held);

(4) Extension of the "good Samaritan" law to give immunity from civil liability to health-care providers who render treatment in emergency situations except in cases of gross negligence or intentional wrongdoing;

(5) Elimination of the *ad damnum* clause in malpractice

pleadings that states the amount of monetary damages claimed;

(6) Establishment of a "patient's compensation" insurance fund to provide excess liability insurance coverage for health-care providers for awards over $100,000 (the fund to be financed by a surcharge on the health-care provider's primary insurance premium);

(7) Legislation to provide for periodic payment on order of the court of awards in malpractice cases involving future damages of $100,000 or more;

(8) Reduction in any award of damages by the amount recovered from other sources not derived from premiums paid by the plaintiff or on his behalf (collateral sources).

The commission also recommended that the General Assembly consider a bill proposed by North Carolina Memorial Hospital at Chapel Hill to allow it to become a self-insurer.

Hearings/Committee Work. At the request of the Lieutenant Governor and the Speaker, the Senate and House Insurance committees began joint hearings on the study commission's recommendations and proposed legislation one week before the 1976 session convened. The joint insurance committee held four days of hearings and received testimony from representatives of the medical professions, hospitals, the bar association, the insurance industry, the Commissioner of Insurance, and others. The most controversial of the proposals was the recommended reduction in the statute of limitations, particularly as it applied to minors. By week's end, a compromise on this subject clearly would be necessary if legislation was to be enacted. The joint committee was willing to accept a reduction in the statute of limitations applicable to adults (except in the "forgotten sponge" type of case); but felt that a minor should have at least a reasonable time after reaching majority (age 18) to begin a malpractice action in his own name, no matter when the alleged injury occurred.

The committee accepted the concept of legislation creating an excess liability insurance fund, the so-called "patient's compensation fund," to insure sufficient excess insurance protection at rates based on the North Carolina malpractice claims experience. The principal objection to the study commission's proposal was the extensive involvement of the State Treasurer and the Attorney General in the fund's administration and defense. Committee members concluded that this involvement put the state in the insurance business and was therefore unwise and unacceptable.

A joint subcommittee was appointed to redraft the proposed legislation in light of these objections. The periodic payments proposal was abandoned with a suggestion for a more thorough study of the proposal and consideration by the 1977 session of the General Assembly. The committee also eliminated the study commission's proposal to require a reduction in malpractice awards by an amount equal to all payments received by the plaintiff from certain collateral resources. The North Carolina Memorial Hospital self-insurance plan received a favorable recommendation.

Legislative Debate. After several days of long sessions, the joint subcommittee produced three malpractice bills for introduction in both houses during the first week of the session: H 1292 (identical S 957), enabling Memorial Hospital to establish a self-insurance program; H 1293 (identical S 956), amending procedural and substantive laws governing professional malpractice claims; and H 1311 (identical S 959), creating the Health Care Excess Liability Fund. The proposed malpractice legislation was expected to meet stiff floor opposition, but the only real fight came on the resolution allowing consideration of the proposed malpractice legislation (non-budgetary subjects could not be considered in this special session unless authorized by a ratified joint resolution passed by a two-thirds majority in each house). The authorizing resolution for malpractice legislation limited consideration to only those bills resulting from the recommendations of the study commission and introduced by the chairman of the Committee on Insurance of the house considering the measure. The leadership in both houses justified these restrictions as essential because of the nature of the short special session. However, the resolution was attacked in both houses as a gag on members' right to introduce bills on a subject and as a dangerous precedent for future sessions. An attempt to amend the resolution to allow any member to introduce malpractice bills was narrowly defeated in the House (54 to 56) but by a wider margin in the Senate. After this skirmish, the original resolution was passed by an overwhelming majority, and resistance to the substantive proposals evaporated. The three malpractice bills received fairly smooth sailing in both houses with no major substantive floor amendments. All three bills had passed both houses by the middle of the second week, before the budget bills were even completed. The provisions of the ratified bills are discussed below.

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Malpractice Tort Law Revision. Ch. 977 (H 1293) rewrites various statutes governing actions based on alleged professional malpractice.

Statute of Limitations. Under present North Carolina law, a person with a known injury resulting from alleged professional malpractice must file his claim for damages within three years from the time of the malpractice. But if the injury is not discovered and could not reasonably have been discovered within three years, then the action must be brought within three years from the time the injury is discovered or reasonably should have been discovered, but in no case more than ten years from the time of the injury. Ch. 977 retains the three-year statute of limitations for known injuries resulting from alleged malpractice but shortens the maximum statute of limitations in cases of undiscovered or reasonably undiscovered injuries from ten to four years from the date of injury. Now, if a person first discovers an injury two years and one day or more after it occurred, he has one year from the date of discovery in which to file his action (previously he had three years from

that date), but in no case does he have more than four years from the date of injury. The ten-year maximum statute of limitation is retained in only one type of case, one involving injury from a nontherapeutic foreign object left in the body (the "forgotten sponge" cases). In these cases, if the injury is not discovered within three years, the person has one year from the date it is discovered or reasonably should have been discovered to file his action (previously three years), but in no case may he bring an action more than ten years from the date of the injury.

The compromise reached on the proposal to reduce the statute of limitations applicable to minors preserved the minor's right to file an action in his own name even after the statute would have normally run on an adult, but it greatly reduced the potential outside limits on such an action. Under present law, a minor is considered to be under a legal disability until he reaches the age of majority and therefore the statute of limitations does not begin to run against him until he reaches age 18. The tolling of the statute of limitation until age 18 was intended to preserve the minor's rights until he is of age to sue in his own name to protect his own interests. Thus, until now, if a child was injured at birth by medical malpractice, the statute of limitations did not even begin to run until he reached age 18. He then had three years from his eighteenth birthday to sue for a known injury. However, if the injury was not discovered or reasonably discoverable at that time, he had up to ten years from his eighteenth birthday to discover the injury and file his action (potentially a child could sue the physician who delivered him until he reached age 28).

Ch. 977 modifies the statute of limitations provisions applicable to minors in professional malpractice cases by significantly shortening the "long tail" of potential liability. Now, in these cases, the statute of limitations begins to run against a minor when he is injured, but if it expires before the child is 19 years of age and no timely action has been filed on his behalf, he has until age 19 to file his action. The intent is to preserve the minor's right to sue for at least one full year after he reaches the age of majority. At the same time, in no case in which the statute of limitations would have run except for the minor's disability could a minor bring an action after his nineteenth birthday. It should be noted that this modification of the statute of limitations for minors applies only in actions arising from professional malpractice. The present statute of limitations applicable to minors is retained in all other cases.

Under present case law, the statute of limitations does not expire if an injury is fraudulently concealed from an injured party by the person who caused it. Nothing in the new modifications of these statutes changes this exception. A professional who fradulently conceals injuries or defects resulting from his malpractice until the statute of limitations has run will not be allowed to escape liability by his fraud and has gained no advantage from this legislation.

The new statute of limitations provisions are effective January 1, 1977, and apply to all actions filed after that date. The effective date was postponed until 1977 to allow persons with valid claims that would be barred by the new statute of limitations a minimum of six months to file their action and preserve their claims. This procedure is intended to avoid any constitutional attack on the new legislation based on an impermissible taking of property rights without due process of law.

Rules of Evidence. Ch. 977 added to the General Statutes chapter on evidence, Chapter 8, a new Article 13 concerning medical malpractice actions. The new article defines a "health care provider," for purposes of medical malpractice actions—a broad definition that includes licensed, registered, or certified health-care professionals, their assistants and students, and hospitals and nursing homes. All of the persons included in this broad definition are covered by the statutory changes in the rules of evidence that follow.

Standard of Care. Until the enactment of Ch. 977 the standard of care required of health-care professionals was governed by case law. The standard, as set out in *Hunt* v. *Bradshaw*, 242 N.C. 517, 521 (1955), required the following:

> A physician or surgeon who undertakes to render professional services must meet these requirements: (1) He must possess the degree of professional learning, skill and ability which others similarly situated ordinarily possess; (2) He must exercise reasonable care and diligence in the application of his knowledge and skill to the patient's case; and (3) He must use his best judgment in the treatment and care of his patient.

The North Carolina Supreme Court, in setting out this standard, expanded the older court-made law in this area that required only a standard of care based on the practices in the "same locality." The expressed intent of the new statutory definition was to codify the present case law and thereby freeze the standard so that it could not later be expanded by the courts to a "national" standard of care. The new codified standard requires that in the performance of professional services all health-care providers are held to "the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action."

While the statutory language does not track the case law exactly, it should be interpreted as requiring the same standard as present case law. As for the intent to prevent a court-created "national" standard of health care, the courts must still decide what is a "similar community." It was clear from the hearings that the legislators did not intend the phrase to be limited to a community in North Carolina. In the future, a court may well conclude that for health-care purposes the comparable "community" is an entire state, a region, or even the nation. Floor debate on the standard of care focused primarily on the requirement that a health-care provider be held to "the standards of practice among members of the same health care profession with similar training and experience." This language resulted from a floor amendment, and its intention is to insure that within the "same or similar community" the standard of care is not reduced to the level of the lowest common denominator.

Informed Consent. Under North Carolina case law, absent extenuating circumstances such as a medical emergency, a physician must inform a patient of the risks of treatment so that the patient may intelligently decide whether to undergo the treatment. The new malpractice statutes on informed

consent are intended to codify this rule. The basic standard enacted requires: (1) The health-care provider in obtaining consent must act in accordance with the standards of practice among members of the same health profession with similar training and experience situated in the same or similar communities; *and* (2) "the information provided by the health provider under the circumstances" is such that a reasonable person would have "a general understanding of the procedures or treatments and of the usual risks and hazards inherent therein." There is, however, an alternative standard in the statute providing that a health-care provider is not liable for damages on the grounds of lack of informed consent when: "A reasonable person, under the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance . . ." [with the provisions (1) and (2) above]."

Under North Carolina case law ... a physician must inform a patient of the risks of treatment so that the patient may intelligently decide whether to undergo the treatment.

This was the most extensively debated subsection of the bill once it reached the House floor. Its opponents argued that it allowed a doctor to administer treatment without even informing the patient of the risks and obtaining consent, so long as a reasonable person would have consented *if* the doctor had warned him in the manner normally required. Several attempts to delete or amend the subsection failed on the floor of the House. The bill's sponsors argued that the subsection was essential and did not relieve a physician from obtaining consent. They successfully argued that the subsection applied only when the patient acted in a "foolish" or unreasonable manner in giving or refusing consent, and was therefore necessary to protect the physician who acted in a reasonable manner despite the "foolishness."

The meaning of the subsection and the circumstances that justify its application are indeed unclear. It could be interpreted to have either of the above meanings. Despite the declared intent of the bill's sponsors to reduce the quantity of court-made law in the malpractice area, this subsection may well require court interpretation to clarify its meaning.

In addition, the new legislation provides that a consent in writing obtained in compliance with the above standards is presumed to be valid. This presumption may be rebutted only by evidence that the written consent was obtained by fraud, deception, or misrepresentation of a material fact. The statute also requires that a person have a writing signed by the health-care provider whom he is charging before he can sue on the basis that treatment did not produce the result the health-care provider guaranteed or assured.

First Aid or Emergency Treatment. Under "good Samaritan" statutes, a person rendering assistance in emergency situations is not liable for injuries resulting from his action except in cases of gross negligence or intentional wrongdoing. North Carolina now has a "good Samaritan" statute, G.S. 20-166(d), that applies to "any person who renders first aid or emergency assistance at the scene of a motor vehicle accident." Ch. 977 adds new G.S. 8-95, which extends the protection of "good Samaritan" laws to "any person rendering first aid or emergency health care treatment to a person who is unconscious, ill or injured" when it is reasonably apparent that (1) the circumstances require prompt decisions and actions, and (2) delay in rendering treatment would seriously worsen someone's physical condition. The section does not apply to a person who renders emergency health care in the "normal and ordinary course of his business or profession." Thus, a physician operating an emergency room would not be relieved of the normal standard of care discussed earlier.

There was no evidence that the extension of the "good Samaritan" law to all emergency situations was necessary because of increased litigation in this area or that it would decrease insurance premiums. Several physicians testified that under the present law, which holds them liable for "mere" negligence in emergency situations, they feel reluctant to intervene. The intention of the new law is to encourage intervention.

Ad damnum Clause. Ch. 977 also amended the Rules of Civil Procedure [G.S. 1A-1, Rule 8(a)(2)] by eliminating the *ad damnum* clause in all professional malpractice actions claiming damages over $10,000. Previously, when a person filed a malpractice action he was required to state the amount of monetary damages demanded.

This amendment is intended to reduce the pretrial publicity often surrounding claims that are for very great amounts but in fact never go to trial because they are dismissed or settled. Doctors argue that a dismissal, a settlement, or even a judgment for a lesser amount never receives the same degree of press coverage as the initial claim and that pretrial publication of these claims may well encourage frivolous malpractice actions. The $10,000 cut-off is intended to insure that plaintiffs may claim damages sufficient to meet the jurisdictional requirements of state and federal courts.

Under the new law, at any time after service of a claim for relief in malpractice cases, any party may ask the claimant for a statement of the amount of monetary relief sought, which the claimant is required to provide within ten days after the request is made. This statement may be amended by the claimant as provided by G.S. 1A-1, Rule 15. However, the statement of the amount of monetary relief sought is not to be filed with the court until the case is called for trial or entry of default judgment is requested.

Insurance Company Reports. A major complaint throughout the hearings and debate of the study commission and the joint Insurance committees was the scarcity of information concerning the amounts insurers earned on malpractice premiums and the amounts they paid out in claims and administrative costs. Ch. 977 seeks to remedy that problem. New G.S. 58-21.1 requires every insurance company authorized to write professional liability insurance in North Carolina to file an annual report with the Commissioner of Insurance by February 1 of each year. Its form and detail are to be determined by the Commissioner, but the report must include the following information: (1) the number of claims

pending at the beginning and end of each year; (2) the number of claims settled and the highest, lowest, and average awards; (3) the number of claims closed without payment; (4) the number of court cases and their results; (5) total premium collections; (6) average amount per claim in reserves; and (7) total reserves and reserve expenses.

As noted earlier, the sections amending the statute of limitations are effective January 1, 1977, and all other sections are effective July 1, 1976.

UNC Medical Self-Insurance Plan. Ch. 976 (H 1292) authorizes the Board of Governors of the University of North Carolina to purchase liability insurance or to act as a self-insurer for its affiliated health facilities and employees. The legislation was drafted and submitted to the study commission by the staff at North Carolina Memorial Hospital in Chapel Hill. They argued that the self-insurance plan was necessary for two primary reasons: (1) The increasing cost of commercial malpractice insurance, especially in light of the claims experience at Memorial Hospital; and (2) the threat that commercial malpractice insurance may become unavailable at any price. The hospital staff reported that over the last five years the UNC Medical Center had paid over $690,000 in malpractice premiums for coverage of the hospital and its staff, while only $13,000 had been paid in claims. Also, only 12 to 15 possible claims were then outstanding, only one of which was likely to involve any substantial amount—and that one for not more than $50,000.

The legislation authorizes the Board of Governors to establish a self-insurance plan for Memorial Hospital and its employees, including medical doctors, dentists, nurses, residents, interns, technologists, nurses' aides, and orderlies. This coverage is also available to health-care institutions with an affiliation agreement with the University of North Carolina, one of its constituent institutions, or Memorial Hospital. (This provision is intended to allow future participation by the East Carolina University medical school and not to extend coverage to those non-University hospitals that serve as area health education centers.)

If the Board of Governors elects to establish a self-insurance plan, its program of liability insurance is not subject to regulation by the Commissioner of Insurance. One or more insurance trust accounts are to be set up for the exclusive use of the self-insurance program, and all expenses of the program are to be paid from those accounts. The Board is to adopt regulations for establishing and administering the self-insurance program; it is also to create an Insurance Trust Fund Council of not more than 12 members (eight to be appointed by the Board, one by the Attorney General, one by the State Auditor, one by the State Treasurer, and one by the Insurance Commissioner). The Attorney General is authorized to defend actions against an individual health-care practitioner who is covered by the self-insurance program under provisions of G.S. 143-300.4. If he determines that the defense should not be provided by the state, the Liability Insurance Trust Fund Council may employ private counsel from the trust accounts funds. Records held by the fund are declared not to be public records under G.S. Ch. 132 and are not subject to discovery under the Rules of Civil Procedure.

No funds were appropriated to establish the self-insurance plan. North Carolina Memorial Hospital indicated that the funds it now uses for insurance premiums are sufficient to fund the self-insurance plan; it may then be that the future cost of self-insurance coverage will decrease.

Malpractice Excess Liability Fund. The Professional Liability Insurance Study Commission concluded that a major malpractice insurance problem was the unavailability of excess liability insurance coverage in amounts greater than $1 million per occurrence and $1 million annual aggregate. This coverage is reportedly no longer available, and the cost of the amount of excess coverage that is available has increased drastically. To make greater excess coverage available, especially to hospitals and health-care providers in high-risk areas of practice, the study commission proposed legislation creating the Patient's Compensation Fund. As originally proposed, the Patient's Compensation Fund would have offered unlimited excess liability insurance coverage for participating health-care providers, and the State Treasurer and the Attorney General would have been involved in its management and defense.

In the legislative hearings held before the May session convened, substantial objection arose to the state's involvement in the fund and financial wisdom of unlimited coverage. The joint subcommittee on Insurance eliminated these provisions, and Ch. 978 (S. 959) had very little trouble in passing both houses. The legislation enacts a new Art. 26B to G.S. Ch. 58, creating the Health Care Excess Liability Fund. The fund is to be governed by a board of governors appointed as follows: two members by the Lieutenant Governor from the North Carolina Medical Society; two members by the Speaker from the North Carolina Hospital Association; one by the Governor from the North Carolina Nurses' Association; one by the Governor from the North Carolina Dental Society; and one member by the Governor from a health-care profession other than those listed above. Board members are to serve for staggered four-year terms. In addition, the Commissioner of Insurance is an ex officio member of the Board, and he or his designee has a vote on all issues. The first appointments are to be made within 30 days of the bill's ratification (May 13, 1976), and the Commissioner is to call the organizational meeting of the board within 30 days after these appointments are completed. The board is authorized to begin offering coverage by the fund when, in its discretion, the fund has enough money and enough participation agreements.

The board may adopt rules for the fund's administration and is to appoint a manager to conduct the fund's business affairs under the board's general directions. All moneys collected are held in trust and are to be deposited in a segregated account, invested and reinvested pursuant to the statutory safeguards that apply to domestic stock insurance companies (G.S. 58-79.1). The fund is subject to the premium tax that applies to other domestic insurance companies (G.S. 105-228.5). All expenses and salaries necessary for administration are to be paid from the fund.

The fund will provide participating health-care providers with excess liability coverage of $2 million per occurrence and $2 million annual aggregate. To qualify to participate, a health provider must prove that he already has minimum primary malpractice insurance coverage of $100,000 per occurrence and $100,000 annual aggregate. The primary

coverage must be either with an insurer licensed and approved by the Commissioner of Insurance or under a self-insurance plan approved by the board. The primary insurer must be obligated to defend any action against the health-care provider irrespective of payment or offer of payment in excess of its coverage.

A health-care provider may carry more primary insurance than the $100,000/$100,000 minimum, and in that case he would be insured for $2 million over his own coverage (i.e., if he pays for $1 million and participates in the fund, he would have total coverage of $3 million). The fund is to be financed by an assessment to be determined by the board and paid by members. If a member has primary insurance coverage above the minimum, the board may grant a reduction in his assessment.

The board may make payment on only claims that are supported by a certified copy of a final judgment or arbitration award against a participating health-care provider or a certified copy of a board-approved settlement. The fund is not liable for punitive damages. When any claim is made against a participating health-care provider, he, his insurer, and the claimant are required to give the fund notice in writing within a reasonable time. Unless the board receives adequate notice, it may not pay any claim or provide any defense services to a participating member.

The board is required to furnish an audited financial report to the Commissioner, the State Auditor, and any member who requests it. It is also to make an annual report to the General Assembly on its financial conditions and claims experience. The act creating the fund is effective upon ratification.

Conclusion. The stated intent of these new malpractice statutes is to insure the continued availability of malpractice insurance and to reduce or at least stabilize its cost. Clearly, the UNC Medical Self-Insurance Plan and the Health Care Excess Liability Fund will help solve the availability problem and hopefully will result in insurance premium costs that reflect the North Carolina malpractice claims experience. In contrast, no evidence was offered in any of the hearings that the tort law revisions will have any substantial effect on malpractice insurance premiums. Certainly, the reduction in the statute of limitations improves the malpractice claims climate in North Carolina by substantially reducing the long tail of potential liability, which should allow insurance companies to reduce their reserves. However, estimates varied as to what reductions would occur, if any. Some speculated that a reduction of up to one-third would result; others said that a 1 per cent reduction or possibly only a reduction in the percentage of increase was the most probable result of the tort law revisions. Only experience will tell whether limiting a person's right to recover for injuries resulting from professional malpractice will affect professional liability insurance rates in a manner that produces a benefit to the public at large. It may be that the most important legislation on malpractice in this session is that requiring insurance companies to provide detailed information on premium collections and claims experience. Armed with this information in future sessions, legislators will be better able to determine the necessary legislative responses to the malpractice crisis.

Gubernatorial appointments

Utilities Commission. When the 1975 session of the General Assembly expanded the Utilities Commission from five to seven members, it also required that the Governor's appointees be confirmed by the legislature. Two resignations from the Commission were announced just before the 1976 session, and Governor James E. Holshouser nominated Lester Teal, a present member of the Commission, to serve a longer unexpired term; Patricia Locke, a member of the Charlotte City Council, to serve the remainder of an unexpired term; and Scott Harvey, the Secretary of Commerce, to serve the remainder of Teal's term. Res. 125 (H 1307), authorizing the General Assembly to consider the Utilities Commission appointees, was enacted. If the appointments were not confirmed, Res. 125 required the Governor to submit replacement appointees within two days after notification of the failure to confirm. A joint subcommittee of the House and Senate utilities committees held brief hearings on the nominees and recommended against confirmation of Teal and Locke. The refusal to confirm Teal meant that the position for which Harvey was appointed was not vacant and no action on Harvey was necessary. The full Utilities committees accepted the subcommittee recommendations, and the two houses, meeting in joint session, agreed despite strong objections by Republican members that the refusal to confirm arose solely from the fact that the appointees were Republicans.

As a result of the General Assembly's action, the two vacancies remain open. The provision of Res. 125 regarding supplemental nominations had no effect since the legislature adjourned the day after it failed to confirm the original appointees. Dissatisfaction was expressed at the Utilities Commission's continued acquiescence in rate increase despite the addition of two commissioners and considerable staff, and there was some talk of "freezing" the vacant positions, but no such action was taken. If the Governor fills the vacancies, his appointees will be subject to confirmation by the General Assembly at its 1977 session. The Governor has appointed Scott Harvey to the Commission, effective July 1, 1976.

Other Appointments. The Senate is required by law to confirm certain other appointments made by the Governor. This session it confirmed the appointments of John R. Tropman as Commissioner of Banks and Archie K. Davis, Donald R. Lineberger, and Seddon Goode, Jr., as Trustees of the Teachers' and State Employees' Retirement system.

Appointment of Senate committees

On the last day of the session, the Senate resolved, at least tentatively, one aspect of an issue that has been simmering since the Lieutenant Governor's office became a full-time job. The issue is whether the Lieutenant Governor should appoint committee members and chairmen. The Senate, by adopting Senate Res. 969, decided that he should not; to accomplish that purpose, it voted by a wide margin to repeal, effective November 1, 1976, the rules of the 1975 Senate that granted the Lieutenant Governor that power. That action is

tentative, however, because the resolution requires the full Senate to meet sometime before August 1, 1976, to consider this and other proposals that might come from the Rules Committee. If the full Senate agrees at that meeting that the rules should be amended, its recomendations will be transmitted to the 1977 Senate to do with as it wishes.

Concern over the Senate rules became apparent in the 1975 session, when Senate Res. 940 was adopted. It required the Rules Committee to meet before the 1977 session and make recommendations on possible changes. The committee was to have reported to the Senate no later than one month before the 1977 session; the summer meeting required by Senate Res. 969 will presumably fulfill that obligation.

To understand the objections to having the Lieutenant Governor appointe the committees, it is necessary to examine the position the office occupies in state government. The Lieutenant Governor is an officer of the executive branch; he serves as Governor if the elected Governor dies or resigns in office. He has executive duties that are given to him by statute or by the Governor, and his office has a separate budget. Nevertheless, the Lieutenant Governor also has legislative duties. In fact, his only specific constitutional duty is to preside over the Senate, and his office is located in the Legislative Building. Furthermore, statutes require him to make numerous appointments to commissions and boards—appointments that often are required to come from the Senate. In this function, he is usually treated like the Speaker of the House, who is clearly a legislative officer. There is, however, one important difference between him and the Speaker; he is not elected to the Senate and the Senate does not elect him to preside over that body. This point was apparently considered when the Legislative Services Commission was established. The Speaker appoints the House members, but the President Pro Tempore, an officer elected by the Senate, appoints the Senate members. In fact, the Lieutenant Governor is not even a member of the Commission.

Those who want to remove the appointment power from the office of Lieutenant Governor apparently feel that it gives an executive officer too much control over the operation of the legislative branch. Opponents argue that the Lieutenant Governor has customarily had this power and that it places greater responsibility on a single official, elected statewide, instead of dispersing it among several people. They also argue that allowing the senators to appoint committees, either through the President Pro Tempore or through a committee on committees, will result in a form of seniority system in appointments, a device not traditionally used in North Carolina.

Other changes

As already discussed, a variety of substantive law changes crept into the appropriations act. All the matters discussed below were in that legislation (Ch. 983, S 954).

Administrative Procedure Act. One of the frequently recurring complaints during the budget-cutting sessions concerned the Administrative Procedure Act, passed by the General Assembly in 1974 and codified as Ch. 150A of the General Statutes. The act was originally to have become effective on July 1, 1975, but the 1975 legislature postponed the effective date until February 1, 1976, to give state agencies more time to prepare for implementation. The act basically requires all agencies covered by it to file all their regulations with the Attorney General; to follow certain uniform procedures when making regulations; and to follow other uniform procedures when conducting administrative hearings.

The first requirement, the filing of rules and regulations, caused most agencies some problems at first. Formerly, all agencies filed their regulations with the Secretary of State; under the new statute, they had to file with the Attorney General. This shift meant that the agencies had to refile all their regulations, including any adopted in past years that were still effective. Further, unless the agency filed before the February 1 effective date of the statute, they would have had to re-enact the regulations, complying with the more stringent provisions of the new statute concerning notice and hearings. To avoid this possibility, most met the February 1 deadline, but doing so required large amounts of time and money.

The Legislative Commission of Governmental Operations had become concerned about the cost of implementing the statute and asked the State Auditor to conduct an operational audit to find out how much it had cost. That audit estimated that the state had spent $373,400 in direct costs and $535,900 in indirect costs to implement the statute. It also concluded that future costs would largely result from the new procedures for administrative hearings and rule-making procedures and not from filing costs. (The annual estimated costs of the statute for future years are $267,200 in direct costs and $165,100 in indirect costs.)

The Auditor's report included comment from agency heads; generally they were dissatisfied with the statute. Some said that they would seek appropriations for new personnel to administer it, a move that was not popular with legislators.

With this background in mind, a budget subcommittee recommended that the statute be repealed to save the estimated costs of implementation and to satisfy those in state government who felt that the statute served no useful purpose. The full committee approved the measure; then the Attorney General opposed the repeal, arguing that it would leave the state with no statutes governing administrative procedure. He further argued that most costs of implementation had already been incurred and to change the system would require new statute costs after a substitute procedure had been approved. However, to meet some of the objections of excessive paperwork, the Attorney General did propose amendments to the statute designed to eliminate duplicate filings and narrow some definitions that had proved to be unnecessarily broad. A conference committee accepted the Attorney General's proposed amendments and despite strong objections from some members of the House Appropriations Committee who wanted to repeal the statute, the amendments to the statute were included in the appropriations bill.

These amendments narrowed the definitions of contested case, G.S. 150A-2(2), and licensing, G.S. 150A-2(4). The definition of contested case now provides that the only agency proceedings that fall within the definition are those

in which legal rights of persons are required by law to be determined by the agency after a hearing. The former version included all proceedings in which a person's rights were involved. The new definition also excludes awards or denials of scholarships or grants from its coverage.

The new definition of licensing excludes "controversies over whether an examination was fair or whether the applicant passed the examination."

G.S. 150A-23(c) and 150A-36 were amended to allow agencies to use certified, instead of registered, mail in sending notice of proceedings or decisions to parties.

The rule-making procedures require that public hearings be held, that the proposed rules be published, and that the public be allowed to request reasons why an objection to the proposed rule was not followed. The section establishing these procedures, G.S. 150A-12, was amended to exclude from the procedural requirements for rule-making those regulations that describe either an agency's organization or the forms or instructions used by the agency.

G.S. 150A-14, which allows agencies to adopt other regulations by reference, was amended to specify that agencies may adopt only the regulations of other state or federal agencies in this manner. Apparently, this amendment was intended to prohibit agencies from adopting their own regulations by reference.

Finally, the bill amends several other sections of the General Statutes that required agencies to file rules or regulations with the Secretary of State. After G.S. Ch. 150A became effective in February, these agencies had to file with both the Attorney General and the Secretary of State. Pursuant to the amendments, the agencies now file only with the Attorney General.

Unlike the other provisions of the appropriations act, these amendments to the administrative procedure statutes took effect on ratification, May 14, 1976.

After this article was written, the Senate Rules Committee held a public hearing concerning the reinstatement of the rules repealed by Senate Res. 969. This action would restore the Lieutenant Governor's power to appoint committees and committee chairmen. In a meeting held the following day, the committee recommended to the Senate that these rules be reinstated. The full Senate met a few weeks later and decided to make this recommendation to the 1977 Senate. The photo (courtesy of the Raleigh News and Observer) *shows the Senate Rules Committee in session.*

Pretrial Criminal Procedure. Ch. 1286, SL 1973, which took effect on September 1, 1975, completely rewrote North Carolina's pretrial criminal procedure laws. As is true with most major revisions of law, problems in implementing the law cropped up and court officials and law enforcement officers complained about the increased workload and the numerous new forms required by the act. In October 1975, the Speaker of the House and the President Pro Tempore of the Senate, responding to the complaints, directed the Legislative Research Commission's Committee on Criminal Law and State Property Matters to study the increase in paperwork required by the new Pretrial Criminal Procedure Act. The committee studied the problems and then drafted a bill for introduction this session.

H 1321, a resolution authorizing the General Assembly to consider the changes, was introduced. The House proceeded on the belief that since change in criminal procedure was not a bugetary matter, an authorizing resolution was needed; it passed the resolution by two-thirds vote and sent it to the Senate. The Senate, however, decided to handle the changes as a special provision in the budget bill rather than as a separate bill, apparently because it wanted to give the appearance of not opening the session up to matters other than the budget and malpractice issues.

All of the following changes take effect on July 1, 1976.

G.S. 15A-131 provides that the proper venue for pretrial proceedings in misdemeanor cases is the county where the charged offense occurred; for felonies, the proper venue is the county or the judicial district where the crime occurred, depending on the proceeding. If a person is arrested in Carteret County for a crime committed in Mecklenburg, under the venue provisions, the person arrested should be driven to Mecklenburg for an initial appearance before a magistrate. But another provision of the law—G.S. 15A-511—requires an arrested person to be taken before a magistrate for an initial appearance without unnecessary delay. In practice, officers have been taking the arrestee before a magistrate in the county of the arrest for his initial appearance when the county where the crime occurred is too far away to get the defendant before a magistrate there without unnecessary delay. The legislature amended G.S. 15A-131(f) to correct this problem by providing that for the purposes of the venue provisions, pretrial proceedings means proceedings after the initial appearance. Under the new amendment the defendant may properly be taken before a magistrate for an initial appearance either in the county where the crime occurred or in the county where he was arrested.

G.S. 15A-141(3) authorizes an attorney to give written notice or oral notice in open court at the initial appearance that he is representing the defendant for a limited purpose only. The clerks of court expressed concern that because of the oral notice authorization, they cannot tell from the record whether the defendant has counsel representing him.

G.S. 15A-141(3) has been amended to eliminate the authorization for an attorney to give oral notice in open court limiting his representation of the defendant; he will have to give the clerk written notice limiting his representation.

Another statute, G.S. 15A-301(a)(1), was amended to require the clerk to keep only a record of each criminal process issued. As originally enacted, the clerk had to keep a copy of each process issued. Many clerks complained because the processes were cumbersome to keep; they preferred their former method of keeping a warrants-issued register, which allowed them to keep the needed information from processes in shorter, simpler form. The amendment to G.S. 15A-301 will allow clerks to keep either a warrants-issued register or copies of the processes, whichever they prefer.

Another problem raised with G.S. Ch. 15A was an apparent conflict between G.S. 15A-303 and G.S. 15A-601. G.S. 15A-303 provides that an officer issuing a summons must designate on the summons the time and date on which the defendant is to appear in court, but G.S. 15A-601(c) provides that the defendant must appear before a district court judge for a first appearance at the next session of district court held in the county. When the two statutes are read together, the date set for appearance on a criminal summons for a felony would have to be the next session of district court, which could be the very next day after issuance. To clarify the law, a new sentence was added to G.S. 15A-301(d) providing that the issuing official can set an appearance date on a summons of up to one month after the date of issuance. G.S. 15A-601(c) was also amended to make it clear that that section (requiring first appearance to be set for the next session of district court) does not apply to a first appearance date set in a criminal summons. Also, G.S. 15A-301(d)(4) was amended to provide that before reissuing an unserved criminal summons, the clerk must put a new time and date of appearance on the summons.

G.S. 15A-601 was amended by adding a new subsection (d), replacing language found in subsection (c), which provides that with the consent of both the defendant and the district attorney, the judge may continue a first appearance for not more than seven days or until the next session of district court, whichever period is greater. Under new G.S. 15A-601(d) the judge may grant a continuance to a day certain (with no limitation as to time) upon the motion of the defendant alone.

Another problem magistrates have identified is what to do with drunks and disruptive defendants who are brought before them for an initial appearance. G.S. 15A-511 has been read to require the magistrate to conduct the initial appearance even if the defendant is so intoxicated or disruptive that he cannot understand the proceedings. Some magistrates, however, have been committing these defendants to jail until they sober up or calm down, at which time they are brought back for the initial hearing. A new subdivision (3) to G.S. 15A-511(3)(a) authorizes magistrates to do by law what many have been doing in practice. The new section provides that if a defendant who is brought before a magistrate for an initial appearance is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, the magistrate may order him confined and set the initial appearance within a reasonable time when the defendant will be able to understand the proceedings.

Subsection (c) of G.S. 15A-521 has been repealed, eliminating the requirement that a copy of an order of commitment be filed with the clerk.

G.S. 15A-630 was rewritten to provide that the judge must give notice that a bill of indictment has been issued to a defendant by mail or other means unless he is represented by counsel of record. Under the original section, a law enforcement officer was required to serve the defendant unless the defendant was given (or waived) a probable cause hearing and was represented by the same counsel of record at the time of the indictment as the probable cause hearing.

Finally, many judges complained about the tremendous burden put on the system by G.S. 15A-1026. That section requires a verbatim record of a plea of guilty or no contest to be transcribed by a court reporter. Thousands of guilty pleas are entered each year, but only a very few of them are ever contested later. As written the law requires court reporters to spend a great deal of time transcribing all guilty and no-contest pleas. In practice, many judges have been telling court reporters not to transcribe the pleas. The act amends G.S. 15A-1026 to require only that a verbatim record of these proceedings be made and preserved. Only those few that are contested will have to be transcribed.

Mental Commitment Laws. In 1973 and 1974, the General Assembly completely rewrote the involuntary commitment laws for mentally ill persons and inebriates to conform it to constitutional due process requirements. Before a person (respondent) may be committed, a magistrate must find that he is probably mentally ill or inebriate and imminently dangerous to himself or others, and a local physician must concur in this finding. If the magistrate and the physician so find, the sheriff transports the respondent to a mental health facility that may well be in a different (and distant) county. Within ten days after being taken into custody, a sheriff from the county where the proceedings were initiated (home county) must pick up the respondent at the facility and return him to the home county for a hearing before a district court judge. At this hearing, the judge must determine whether the respondent is mentally ill or inebriate and imminently dangerous to himself or others. (If found mentally ill or inebriate, the respondent may be confined to a mental health facility for ninety days.) The sheriffs have complained bitterly about the manpower needed to transport respondents. The problem has been particularly burdensome in some small counties; at times these counties have been left without law enforcement protection because the only deputies on duty have had to drive to a regional hospital to pick up a respondent for a district court hearing. Near the end of the budget act deliberations, the House added a special provision to alleviate the sheriffs' complaints. A new section G.S. 122-58.7A was enacted, effective July 1, 1976. It provides that unless the respondent objects through counsel, the district court hearing will be held in the county in which the facility is located rather than the home county. Records of the proceedings are transferred from the home county to the clerk of court in the county where the facility is located. The

clerk in the latter county sets the date for the hearing and, if the respondent is indigent, appoints the special counsel located at the hospital to represent him. This new provision will relieve the sheriffs of the duty of transporting respondents to and from the hospital for district court hearings. However, it creates another problem: determination of the respondent's mental illness or inebriety will be made in a place strange to him, sometimes many miles from his home, and witnesses for or families of the respondent who wish to be present at the hearing will have to travel long distances. Since the indigent respondent's counsel will be located at the hospital, it is unlikely that he will recommend to his client that he object to the place of hearing. If objection to venue is raised, the law does not specify who will represent the respondent at the hearing in the home county. Presumably, the clerk in the county where the facility is located would return the records of the proceedings to the clerk of the home county and the home county clerk will appoint a local attorney to represent the respondent. However, it is also possible that the special counsel at the facility would represent the respondent at the hearing in the home county.

Local Government Retirement. The appropriations act also made several changes in the statutes establishing the Local Government Employees' Retirement System. The changes cost the state no money; they reportedly cost local government units no additional money. Local government employees must contribute more to the system, but members retiring from the system were given a more favorable formula for determining benefits. Three major changes in the statutes were made to accomplish this purpose. First, G.S. 128-21(5), which defines "average final compensation," was amended to provide that an employee's highest salary for four consecutive years is used to determine his final average compensation. The former version used the highest five years—using four years will generally result in a higher average.

Second, an amendment to G.S. 128-27 increased the annual percentage of the average final compensation allowed for each creditable year of service to 1½ percent. Under the former version, the employee received credit for 1¼ percent up to his first $5,600 in his average final compensation and then received 1½ per cent for all amounts over $5,600. Now an employee's retirement benefits are computed by multiplying the average final compensation by 1½ per cent and multiplying that figure by the employee's years of creditable service. This formula is used when the employee retires either after 30 years of service or after age 65. Early retirement, disability retirement, or other special cases may be subject to slightly different rules.

To fund this more desirable formula for determining benefits, the employee is required to contribute 6 per cent of his salary to the system. G.S. 128-30 was amended to require that percentage (the former version of the statute required contributions of 5 per cent for the first $5,600 and 6 per cent thereafter). The system, as now constituted, parallels the Teachers' and State Employees' Retirement System in benefits and contributions.

Foreign-Trade Zones. The appropriations act also included two sections that allow certain corporations to establish foreign trade zones within North Carolina. The first section allows the Department of Natural and Economic Resources to use up to $25,000 of its appropriation to establish and maintain foreign trade zones. The second section adds a new Chapter 55C to the General Statutes to provide a statutory authorization for the zones. The basic legislation on the subject is federal; this new state statute merely allows public corporations (political subdivisions of the state or public boards, commissions, bureaus, or authorities created by the legislature) as well as private corporations organized for the specific purpose of operating a foreign trade zone to apply to the federal agency regulating the trade zones.

The federal legislation regulating the zones provides that manufacturers using the zones receive favorable treatment in federal custom duty collection both on importing and exporting of component parts and assembled items. This favorable treatment, coupled with other advantages American industrial locations might offer, presumably encourages foreign industries to locate in the trade zones, thereby creating new jobs in the area.

Apart from a brief explanation of the legislation, the only question about it concerned a provision added to the new G.S. 55C-4 at the request of local government officials that makes property located within the zones subject to ad valorem taxes. The Senate Appropriations Committee defeated a motion to delete this provision from the act.

The authority to apply for foreign trade zone status will apparently not be widely used. Charlotte, Wilmington, Greensboro, Raleigh-Durham, Reidsville, and Morehead City are the only areas in North Carolina that might use the provision, according to advocates of the legislation.

Miscellaneous. Another "appropriations" matter passed was an amendment to G.S. 134A-5 concerning the selection of the chairman of the Youth Services Commission. Instead of the Governor's designating one of his appointees as chairman, to serve at his pleasure, the chairman will be elected by the members of the commission. This change apparently clears the way for removal of the present chairman.

Finally, the budget bill suspends from July 1, 1976, to July 1, 1977, the effective date of the State Board of Education's policies for leave and holidays for personnel in the community college system and provides for automatic free distribution of appellate court reports and session laws to Campbell College and an increase in the number of copies for North Carolina Central University.

Matters not considered

In marked contrast to the many items that appeared in the appropriations bill that required no money, several other substantive issues were not considered because they were not "budget" bills. Each bill introduced that did not affect the budget had to be accompanied by a resolution authorizing the consideration of the substantive bill, and the authorizing resolution had to pass each house by a two-thirds majority and be ratified before the bill could be formally introduced. Under this rule, the leadership hoped to limit the session to

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1976 Democratic Presidential Primary in North Carolina

H. Rutherford Turnbull, III

IN 1972, THE North Carolina Democratic presidential primary pitted Governor George C. Wallace of Alabama against former Governor Terry Sanford of North Carolina (Representative Shirley Chisholm, a black woman from New York City, Senator Edmund Muskie of Maine, and Senator Henry Jackson of Washington were also-rans). Wallace defeated Sanford by 413,518 to 306,101 in a stunning upset of the favored former governor. Moreover, the extent of Wallace's victory was impressive—he carried 82 counties to Sanford's 18 and demonstrated strong appeal across the state (only in the northwestern mountain counties did Sanford show any great strength). (See Table 1.) Wallace's rounded percentage of total votes cast was 50 per cent while Sanford's was 37 per cent.

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In 1976, Governor Wallace again ran in North Carolina's presidential primary. This time, however, he was confronted by a new face, former Governor Jimmy Carter of Georgia. Like Sanford, Carter represented the "moderate" or "new" South. Like Sanford, he presented Tar Heel Democrats with a clear choice between "conservative" and "moderate-to-liberal" candidates. Unlike Sanford, however, Carter simply overwhelmed Wallace. He carried 86 of the state's 100 counties and all of its congressional districts, invaded Wallace's stronghold in the "conservative" east, carried the state's Piedmont and Mountain regions, fared well among "moderate" and "liberal" voters, and received most of the black vote. Carter's rounded percentage of total votes cast was 54 per cent while Wallace's was 38 per cent.

The extent of Carter's appeal, and hence of the shifting power within the Democratic party, is apparent in an analysis of the party vote by county, congressional district, region, and urban-rural, racial, and political ideology factors.

County distribution

Whereas in 1972 Wallace carried 82 counties and Sanford carried only 18, in 1976 Wallace carried only 14 and Carter carried 86. The counties that Wallace won in 1976 he also won in 1972—Anson, Caswell, Person, Granville, Vance, Franklin, Nash, Johnston, Greene, Lenoir, Jones, Onslow, Camden, and Currituck—but some of them just barely stayed within the fold. None of the counties that were Sanford's in 1972 switched to Wallace in 1976.

Of the ten most populous counties, seven are in the Piedmont (Mecklenburg, Gaston, Forsyth, Guilford, Alamance, Durham, Wake); one is in the Mountains (Buncombe), one is in the Coastal Plain (Cumberland); and one is in the Tidewater (Onslow). Although in 1972 Wallace carried all but Wake, in 1976 he won only Onslow.

Of the ten counties with the greatest relative population growth between 1960 and 1970, Wallace had six in 1972—Cumberland in the Coastal Plain, and Mecklenburg, Alexander, Catawba, Randolph, and Union in the Piedmont, while Sanford won four—Wake and Orange in the Piedmont and Watauga and Jackson in the Mountains. In 1976, however, Carter carried all ten.

Of the ten counties with the greatest relative decline in population between 1960 and 1970, Wallace retained Jones in the Tidewater and Greene in the Coastal Plain but lost Warren in the Piedmont, Tyrrell and Perquimans in the Tidewater, and Bertie, Martin, and Halifax in the Coastal Plain, while Carter captured all of the counties Wallace lost and added Northampton in the Coastal Plain and Yancey in the Mountains, both of which Sanford won in 1972.

In sum, Wallace retained only one of the state's largest counties (Onslow in the Tidewater), lost all of the fastest-growing counties (including some he won in 1972), and retained only two of the slowest-growing counties (both in the east), and evidenced strength only in the east (Onslow, Jones, and Greene). Since the trend is for greater population concentrations in fewer counties and the Piedmont is the fastest-growing area of the state, it is significant that Carter built on the Sanford strength in the larger and faster-growing counties and cut sharply into Wallace's original base in them. These facts suggest where candidates may concentrate for their efforts to gain statewide votes in forthcoming elections. (See Table 2.)

Congressional district distribution

In 1972, Wallace carried all of the state's eleven congressional districts. In 1976, he carried none and tied in only one. By congressional district, then, Carter was an overwhelming victor.

In 1976, the district distributions (with numbers of counties favoring Wallace over Sanford in 1972 and Carter over Wallace in 1976 indicated in parentheses) were:

1st — Wallace (18-3)	Carter (16-5)
2nd — Wallace (10-2)	Tie (6-6)
3rd — Wallace (9-0)	Carter (7-2)
4th — Wallace (3-1)	Carter (4-0)
5th — Wallace (4-3)	Carter (7-0)
6th — Wallace (3-0)	Carter (3-0)
7th — Wallace (5-1)	Carter (6-0)
8th — Wallace (10-1)	Carter (10-1)
9th — Wallace (3-0)	Carter (3-0)
10th — Wallace (5-2)	Carter (7-0)
11th — Wallace (13-4)	Carter (17-0)

In some districts (4th, 5th, 6th, 7th, 9th, and 11th), Wallace lost to Carter every county he had won in 1972. In the eighth district, he retained only one county (Anson); in the third, he retained only two (Onslow and Johnston); and in the first he won only five counties (having won 18 in 1972). In general the Wallace power was confined (albeit diminished over 1972) in the east (Coastal Plain or Tidewater), where population is declining (see the section on County Distribution).

Regional distribution

Although Wallace carried the entire Tidewater in 1972 except for Carteret, Washington, and Pasquotank, he captured only Onslow, Camden, and Currituck in 1976. Similarly, while he carried all the Coastal Plain but Scotland, Hoke, Northampton, and Gates in 1972, he retained only Johnston, Lenoir, Jones, Nash, and Greene in 1976. In 1972, he trounced Sanford in the Piedmont except for Surry, Wake, and Orange, but in 1976 he held onto only Caswell, Person, Granville, Vance, Franklin, and Anson. And although he won all but Ashe, Watauga, Avery, Yancey, Burke, Jackson, Graham, and Wilkes in 1972, in 1976 he could claim no Mountain counties at all.

In terms of population, of the 18 Tidewater counties, which are declining in proportion to the state's total population (down to 9.1% in 1970), Wallace won only three. Of the 23 Coastal Plain counties, which represent 22.9 per cent of the state's total 1970 population (down from 1960 and declining in proportion to the Piedmont), he carried only five. In the Piedmont, where the greatest population growth occurred between 1960 and 1970 (to 53% of the state's total population in 1970), he carried only the five "Virginia border" counties (Caswell, Person, Granville, Vance, and Franklin) and Anson on the South Carolina border. Of the Mountain counties, whose population declined between 1960 and 1970 (to 15% of the state's total in 1970), he won none. (See Table 3.)

TABLE 1

1972—Counties for Wallace and Percentages by Which He Won

	Total	Wallace / %		Total	Wallace / %
Alamance	15,995	8,808 / 55%	Johnston	10,180	6,239 / 61%
Alexander	2,137	1,180 / 55%	Jones	2,661	1,433 / 54%
Alleghany	1,976	1,155 / 58%	Lee	5,834	3,343 / 57%
Anson	5,188	2,791 / 54%	Lenoir	10,813	6,923 / 64%
Ashe	2,906	1,092 / 38%	Lincoln	5,942	2,738 / 46%
Avery	703	312 / 44%	Macom	2,373	1,088 / 46%
Beaufort	6,702	3,992 / 60%	Madison	2,066	1,053 / 51%
Bertie	4,151	2,050 / 49%	Martin	5,305	2,731 / 51%
Bladen	5,563	3,393 / 61%	McDowell	4,237	2,555 / 60%
Brunswick	5,629	3,436 / 61%	Mecklenburg	51,935	21,786 / 42%
Buncombe	19,794	9,306 / 47%	Mitchell	728	329 / 45%
Burke	6,864	2,944 / 43%	Montgomery	3,775	1,805 / 48%
Cabarrus	10,345	5,785 / 56%	Moore	6,767	3,255 / 48%
Caldwell	5,172	2,485 / 48%	Nash	13,673	7,523 / 55%
Camden	1,403	917 / 65%	New Hanover	13,807	7,809 / 57%
Carteret	5,932	2,665 / 45%	Northampton	6,725	2,614 / 39%
Caswell	3,887	2,061 / 53%	Onslow	9,149	5,649 / 62%
Catawba	9,942	4,716 / 47%	Orange	15,376	3,759 / 24%
Chatham	5,814	2,949 / 51%	Pamlico	1,942	1,030 / 53%
Cherokee	2,086	1,028 / 49%	Pasquotank	4,207	1,884 / 45%
Chowan	2,171	1,096 / 50%	Pender	3,401	2,146 / 63%
Clay	657	305 / 46%	Perquimans	1,543	789 / 51%
Cleveland	12,176	7,146 / 59%	Person	6,554	3,434 / 52%
Columbus	10,536	6,974 / 66%	Pitt	13,678	7,538 / 55%
Craven	8,964	5,304 / 59%	Polk	1,907	1,094 / 57%
Cumberland	23,095	11,258 / 49%	Randolph	8,207	4,210 / 51%
Currituck	1,973	1,287 / 65%	Richmond	7,613	4,064 / 53%
Dare	1,837	931 / 51%	Robeson	17,880	8,061 / 45%
Davidson	11,007	5,986 / 54%	Rockingham	12112	7,305 / 60%
Davie	2,112	1,122 / 53%	Rowan	11,309	6,053 / 54%
Duplin	7,457	4,684 / 63%	Rutherford	6,881	3,814 / 55%
Durham	26,199	10,637 / 41%	Sampson	5,778	2,709 / 47%
Edgecombe	11,693	5,397 / 46%	Scotland	4,207	1,721 / 41%
Forsyth	31,352	14,345 / 46%	Stanly	7,165	3,503 / 49%
Franklin	7,267	4,240 / 58%	Stokes	4,883	3,027 / 38%
Gaston	15,129	9,002 / 60%	Surry	6,792	3,143 / 46%
Gates	2,340	997 / 43%	Swain	1,357	680 / 50%
Graham	998	398 / 40%	Transylvania	3,017	1,486 / 49%
Granville	8,809	4,583 / 52%	Tyrrell	1,205	575 / 48%
Greene	2,897	2,033 / 70%	Union	8,887	5,129 / 58%
Guilford	44,845	21,729 / 48%	Vance	7,669	4,142 / 54%
Halifax	11,484	5,963 / 52%	Wake	49,801	20,502 / 41%
Harnett	8,128	5,124 / 63%	Warren	3,944	1,853 / 47%
Haywood	6,926	3,401 / 35%	Washington	3,265	1,459 / 45%
Henderson	3,978	2,050 / 52%	Watauga	2,732	836 / 31%
Hertford	3,591	1,579 / 44%	Wayne	12,645	7,134 / 56%
Hoke	3,012	1,339 / 44%	Wilkes	4,353	1,767 / 41%
Hyde	1,392	779 / 56%	Wilson	12,924	7,179 / 56%
Iredell	10,787	6,957 / 64%	Yadkin	2,160	1,143 / 53%
Jackson	3,070	1,179 / 38%	Yancey	1,893	586 / 31%

TABLE 2

North Carolina Democratic Presidential Primary Results, 1976

County	Total Votes	Carter	Wallace
Alamance	11,273	5,535 49%	4,602 / 41%
Alexander	2,285	1,404 61%	760 33%
Alleghany	1,309	707 / 54%	453 35%
Anson	3,370	1,390 41%	1,702 / 51%
Ashe	2,334	1,625 / 70%	502 / 22%
Avery	965	527 55%	292 30%
Beaufort	4,610	2,088 45%	2,087 45%
Bertie	2,022	1,093 / 54%	765 / 38%
Bladen	3,844	2,016 / 52%	1,589 / 41%
Brunswick	4,367	2,437 56%	1,599 37%
Buncombe	18,375	9,785 53%	5,612 / 31%
Burke	7,395	4,955 / 67%	1,831 / 25%
Cabarrus	8,438	4,611 / 55%	3,134 / 37%
Caldwell	5,370	3,239 60%	1,632 / 30%
Camden	774	318 41%	376 / 49%
Carteret	4,449	2,583 / 58%	1,344 / 30%
Caswell	2,562	1,161 / 45%	1,216 / 47%
Catawba	9,503	5,881 62%	2,796 / 29%
Chatham	4,069	2,189 54%	1,355 / 33%
Cherokee	1,635	1,176 / 72%	310 / 19%
Chowan	917	438 48%	347 38%
Clay	596	474 80%	95 / 16%
Cleveland	8,123	4,134 / 51%	3,386 / 42%
Columbus	6,251	3,472 / 56%	2,460 / 39%
Craven	6,833	3,453 / 51%	2,860 / 42%
Cumberland	17,718	9,741 55%	6,054 / 34%
Currituck	1,071	443 / 41%	502 / 47%
Dare	1,294	655 51%	410 / 32%
Davidson	9,260	4,941 / 53%	3,161 / 34%
Davie	1,665	936 / 56%	591 / 35%
Duplin	5,139	2,477 / 48%	2,396 / 47%
Durham	18,601	9,623 / 52%	5,651 / 30%
Edgecombe	6,784	3,232 / 48%	2,418 / 36%
Forsyth	23,980	13,288 / 55%	7,154 / 30%
Franklin	4,058	1,784 / 44%	2,006 / 49%
Gaston	12,763	5,915 / 46%	5,730 / 45%
Gates	1,156	698 / 60%	339 / 29%
Graham	671	449 / 67%	141 / 21%
Granville	4,281	1,869 / 44%	1,964 / 46%
Greene	2,072	831 / 40%	1,166 / 56%
Guilford	33,168	17,916 / 54%	9,819 / 30%
Halifax	6,184	2,955 / 48%	2,561 / 41%
Harnett	6,307	3,080 / 49%	2,651 / 42%
Haywood	6,759	3,565 / 53%	2,170 / 32%
Henderson	4,200	2,288 / 54%	1,336 / 32%
Hertford	1,979	1,108 / 56%	645 / 33%
Hoke	2,027	1,231 61%	635 / 31%
Hyde	948	443 / 47%	458 / 48%
Iredell	8,622	4,642 / 54%	3,598 / 42%
Jackson	3,214	2,144 / 67%	576 / 18%
Johnston	7,275	3,290 / 45%	3,430 / 47%
Jones	1,940	892 / 46%	955 / 49%
Lee	3,803	1,757 / 46%	1,635 / 43%
Lenoir	7,408	2,564 / 35%	4,316 / 58%
Lincoln	4,601	2,987 / 65%	1,320 / 29%
Macon	2,681	1,603 / 60%	743 / 28%
Madison	1,484	835 / 56%	494 / 33%
Martin	2,878	1,432 / 50%	1,234 / 43%
McDowell	3,283	1,743 / 53%	1,217 / 37%
Mecklenburg	40,311	23,960 / 59%	10,652 / 26%
Mitchell	765	429 / 56%	240 / 31%
Montgomery	2,602	1,476 / 57%	918 / 35%
Moore	5,261	2,889 / 55%	1,764 / 34%
Nash	7,766	3,596 / 46%	3,656 / 47%
New Hanover	9,840	5,393 / 55%	3,299 / 34%
Northampton	3,501	2,238 / 64%	983 / 28%
Onslow	6,302	2,286 / 36%	3,300 / 52%
Orange	12,797	6,242 / 49%	2,396 / 19%
Pamlico	1,685	1,036 / 61%	549 / 33%
Pasquotank	3,175	1,663 / 52%	1,113 / 35%
Pender	2,831	1,566 / 55%	1,046 / 37%
Perquimans	1,097	556 / 51%	421 / 38%
Person	2,699	1,121 / 42%	1,313 / 49%
Pitt	9,280	4,297 / 46%	3,946 / 43%
Polk	1,546	777 / 50%	640 / 41%
Randolph	6,128	3,320 / 54%	2,183 / 36%
Richmond	7,382	3,802 / 52%	2,878 / 39%
Robeson	10,022	5,762 / 57%	3,428 / 34%
Rockingham	8,320	3,935 / 47%	3,382 / 41%
Rowan	9,711	5,356 / 55%	3,359 / 35%
Rutherford	5,781	3,152 / 55%	2,070 / 36%
Sampson	4,339	2,459 / 57%	1,490 / 34%
Scotland	2,761	1,528 / 55%	973 / 35%
Stanly	5,509	3,473 / 63%	1,691 / 31%
Stokes	3,150	1,479 / 47%	1,443 / 46%
Surry	5,100	3,391 / 66%	1,216 / 24%
Swain	1,092	683 / 63%	291 / 27%
Transylvania	2,562	1,457 / 57%	715 / 28%
Tyrrell	624	357 / 57%	221 / 35%
Union	6,626	3,540 / 53%	2,594 / 39%
Vance	4,124	1,881 / 46%	1,888 / 46%
Wake	38,772	22,382 / 58%	10,529 / 27%
Warren	2,508	1,278 / 51%	1,022 / 41%
Washington	1,891	1,069 / 57%	657 / 35%
Watauga	2,685	1,705 / 64%	443 / 16%
Wayne	8,584	4,157 / 48%	3,754 / 44%
Wilkes	4,156	2,822 / 68%	939 / 23%
Wilson	7,333	3,448 / 47%	3,203 / 44%
Yadkin	1,958	1,227 / 63%	623 / 32%
Yancey	1,656	1,201 / 73%	357 / 22%

Urban-rural distribution

A Standard Metropolitan Statistical Area is a demographic unit that consists of an "urban" population. In 1974 North Carolina had seven of these SMSAs. They encompassed only seventeen counties[1] but represented well over 40 per cent of the state's total 1970 population and included nine of the most populous counties and most of the fastest-growing counties. Twelve of these metropolitan (urban) counties are in the Piedmont, where (as of 1970) 63.7 per cent of the state's urban population lived. Moreover, the population of these seventeen urban counties, more than half of which are in the Piedmont, accounts for approximately 70 per cent of the state's total urban population.

Finally, while in 1970 the state's population was 55 per cent rural, demographers predict that the state may become predominantly urban by 1980. However, between 1960 and 1970, although the rural population declined as a percentage of the total population, it increased in absolute terms, which necessarily means that the urban population increased both proportionately and absolutely. Also, between 1960 and 1970, the proportion of the total population classified as "rural farm" dropped about 10 per cent but the total population classified as "rural nonfarm" increased, indicating a trend toward suburbanization.

[1]These seven Standard Metropolitical Statistical Areas included these counties: (1) Buncombe, Madison; (2) Mecklenburg, Union, Gaston; (3) New Hanover, Brunswick; (4) Cumberland; (5) Stokes, Forsyth, Yadkin, Davidson, Guilford; (6) Alamance; (7) Orange, Durham, Wake.

In 1972 all but two of the SMSA counties went to Wallace; in 1976 they all went to Carter.

Carter's appeal in the urban areas is underscored by newspaper reports concerning his victories in various cities. He carried Durham, Raleigh, Charlotte, Winston-Salem, and Asheville. In Greensboro (Guilford County), he carried 28 of 33 precincts by a vote of 10,575 to 4,511 and was especially strong in the affluent suburbs and in the black precincts (see the section on black vote distribution). By contrast, Wallace was strong in the blue-collar precincts and in the "county precincts" (those outside Greensboro), which he carried 14-12 (there was one tie precinct). In all those "county/blue-collar" precincts, however, Wallace's margin of victory was just short of 200 votes, and the more urban precincts among them voted with Carter. In High Point (Guilford and Davidson counties), Carter won 17 precincts to Wallace's two by more than a 2 to 1 vote margin (3,353-1,605). In Wilmington (New Hanover County), Carter carried the less urban precincts and the blue-collar and middle-class precincts, although he had to share the white middle-class vote with Wallace. In Orange County, Carter carried both Chapel Hill-Carrboro and the county by a 3-1 margin. In Winston-Salem (Forsyth County), Carter won or tied Wallace in the "working class" (middle-class, white-collar) precincts, lost the "blue-collar" precincts, but carried all others (for a margin of 47-4 in the city). Carter prevailed in the middle-class suburbs of Winston-Salem and won the black and liberal city precincts. Even in the rural precincts of Forsyth County, Wallace's margin of victory (20-9) was smaller than in 1972 (by approximately 700 votes). Carter also won Raleigh (Wake County), and even captured the small-town vote in Wake's many municipalities. Finally, in Cumberland County, Carter carried all but one of Fayetteville's 20 precincts; in the county as a whole, he carried 40 precincts, lost 11, and tied in one.

Distribution by race

It was widely reported after the primary that Carter received approximately 90 per cent of the black vote, a majority of the "liberal" vote, approxi-

TABLE 3

North Carolina Democratic Presidential Primary 1972 and 1976, by Region

TIDEWATER

County	1972	1976	County	1972	1976
Brunswick	Wallace	Carter	Washington	Sanford	Carter
New Hanover	Wallace	Carter	Tyrrell	Wallace	Carter
Pender	Wallace	Carter	Dare	Wallace	Carter
Onslow	Wallace	Wallace	Chowan	Wallace	Carter
Carteret	Sanford	Carter	Perquimans	Wallace	Carter
Craven	Wallace	Carter	Pasquotank	Sanford	Carter
Pamlico	Wallace	Carter	Camden	Wallace	Wallace
Beaufort	Wallace	Carter	Currituck	Wallace	Wallace
Hyde	Wallace	Carter	Bertie	Wallace	Carter

COASTAL PLAIN

County	1972	1976	County	1972	1976
Columbus	Wallace	Carter	Nash	Wallace	Wallace
Robeson	Wallace	Carter	Wilson	Wallace	Carter
Scotland	Sanford	Carter	Greene	Wallace	Wallace
Hoke	Sanford	Carter	Pitt	Wallace	Carter
Harnett	Wallace	Carter	Edgecombe	Wallace	Carter
Cumberland	Wallace	Carter	Martin	Wallace	Carter
Sampson	Wallace	Carter	Halifax	Wallace	Carter
Duplin	Wallace	Carter	Bladen	Wallace	Carter
Johnston	Wallace	Wallace	Northampton	Sanford	Carter
Wayne	Wallace	Carter	Hertford	Wallace	Carter
Lenoir	Wallace	Wallace	Gates	Sanford	Carter
Jones	Wallace	Wallace			

PIEDMONT

County	1972	1976	County	1972	1976
Surry	Sanford	Carter	Davie	Wallace	Carter
Stokes	Wallace	Carter	Davidson	Wallace	Carter
Rockingham	Wallace	Carter	Randolph	Wallace	Carter
Caswell	Wallace	Wallace	Chatham	Wallace	Carter
Person	Wallace	Wallace	Lee	Wallace	Carter
Granville	Wallace	Wallace	Montgomery	Wallace	Carter
Vance	Wallace	Wallace	Stanly	Wallace	Carter
Franklin	Wallace	Wallace	Cabarrus	Wallace	Carter
Warren	Wallace	Carter	Mecklenburg	Wallace	Carter
Wake	Sanford	Carter	Lincoln	Wallace	Carter
Durham	Wallace	Carter	Gaston	Wallace	Carter
Orange	Sanford	Carter	Cleveland	Wallace	Carter
Alamance	Wallace	Carter	Union	Wallace	Carter
Guilford	Wallace	Carter	Anson	Wallace	Wallace
Forsyth	Wallace	Carter	Richmond	Wallace	Carter
Yadkin	Wallace	Carter	Catawba	Wallace	Carter
Alexander	Wallace	Carter	Moore	Wallace	Carter
Iredell	Wallace	Carter	Rowan	Wallace	Carter

MOUNTAINS

County	1972	1976	County	1972	1976
Alleghany	Wallace	Carter	Haywood	Wallace	Carter
Ashe	Sanford	Carter	Transylvania	Wallace	Carter
Watauga	Sanford	Carter	Swain	Wallace	Carter
Avery	Sanford	Carter	Jackson	Sanford	Carter
Mitchell	Wallace	Carter	Macon	Wallace	Carter
Yancey	Sanford	Carter	Graham	Sanford	Carter
McDowell	Wallace	Carter	Clay	Wallace	Carter
Burke	Sanford	Carter	Cherokee	Wallace	Carter
Madison	Wallace	Carter	Wilkes	Sanford	Carter
Buncombe	Wallace	Carter	Caldwell	Wallace	Carter
Polk	Wallace	Carter	Rutherford	Wallace	Carter
Henderson	Wallace	Carter			

mately half of the "moderate" vote, and a small percentage of the "conservative" vote. In Greensboro's black precincts, he won by a 2,322-117 margin. He did well in the black precincts in Wilmington, and swamped Wallace by 3,803-60 in Winston-Salem's black precincts, carrying all fifteen of them. In Raleigh he took one black precinct by 411-0 and another by 617-2. In Durham, he carried all of the city's black precincts.

Carter's appeal to blacks can also be measured by relating his vote by county to the black population trends in North Carolina. In 1970, the state's nonwhite population (mostly black, the rest being American Indian) was 23.2 per cent of the state's total population. That figure was lower in relative terms than in 1960 (because of natural increase and the immigration of whites and the emigration of blacks during those ten years) but higher in absolute numbers. Moreover, the state's cities have become increasingly attractive to blacks, so that the black urban population is rising and the black rural population is declining; accordingly, rural areas are becoming increasingly white, while the state's white and black populations are both becoming increasingly urban.

The black population is not evenly distributed throughout the state. The greatest percentage is in the Tidewater or Coastal Plain counties. Thus, the counties with population more than 50 per cent black are Gates, Hertford, Bertie, Northampton, and Warren; each of them voted for Carter over Wallace in 1976. The seventeen counties with populations between 40 and 50 per cent black are Greene, Jones, Pender, Hoke, Granville, Vance, Franklin, Halifax, Edgecombe, Martin, Washington, Tyrrell, Dare, Hyde, Chowan, Perquimans, and Anson; only six were in Wallace's camp (Greene, Jones, Granville, Vance, Franklin, and Anson). Fifteen counties have populations between 30 and 40 per cent black: Person, Durham, Chatham, Scotland, Bladen, Sampson, Duplin, Wayne, Lenoir, Pitt, Beaufort, Wilson, Nash, Camden, and Pasquotank; only four followed Wallace (Person, Lenoir, Nash, and Camden). Eighteen counties have populations between 20 and 30 per cent black (Rockingham, Guilford, Forsyth, Mecklenburg, Cleveland, Montgomery, Richmond, Moore, Lee, Harnett, Cumberland, Wake, Johnston, Robeson, Columbus, Brunswick, New Hanover, and Currituck); two were for Wallace (Johnston and Currituck). The counties with populations between 10 and 20 per cent black are Buncombe, Rutherford, Polk, Catawba, Lincoln, Gaston, Iredell, Davie, Rowan, Columbus, Stanly, Union, Onslow, and Carteret; only Onslow was for Wallace. All other counties have populations less than 10 per cent black; of them, only Caswell voted for Wallace.

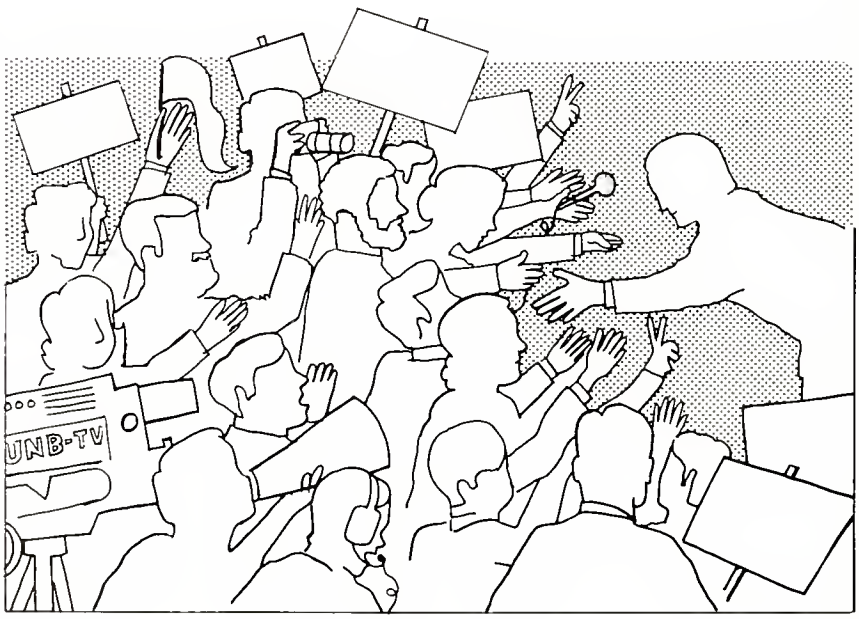
An interesting fact emerges: the farther east a county, the larger black population it is likely to have, and also the more likely it is to have supported Wallace. This phenomenon seems explainable only on the theory that the white voters of that county will polarize around Wallace in greater number than black voters will support Carter (assuming both populations have equal registration and voter turn-out).

Still another apparent anomaly is revealed in the results of Shirley Chisholm's vote in the 1972 presidential primary. Rep. Chisholm, a black woman, ran third among all candidates, behind Wallace and Sanford but ahead of Muskie and Jackson (61,723 for Chisholm; 30,739 for Muskie; 9,416 for Jackson). Moreover, she ran second in eastern Bertie county (in the Coastal Plain) and third in 60 other counties. Of those 60 counties, Wallace carried twelve in 1976 (he carried only 14 counties altogether)—Anson, Caswell, Franklin, Granville, Greene, Johnston, Jones, Lenoir, Nash, Onslow, Person, and Vance. It can at least be argued that white-black voter polarization explains Chisholm's support, Carter's support, and Wallace's victory in those counties.

Finally, voter registration statistics may support the argument that blacks favored Carter among the candidates. In October 1974 (the date of the next-to-most-recent registration statistics from the State Board of Elections), black voters numbered 350,560 or 15.37 per cent of all registered voters. By December 1975 black voters numbered 354,609 or 15.46 per cent of all registered voters. In the 1976 primary, Carter received 53.64 per cent of the total vote and Wallace 34.74 per cent, or 18.90 per cent fewer votes. Without the black vote, which represents 15.37 per cent of the total vote, Carter would have won over Wallace by only 3.53 per cent of the total votes. If we assume that for various reasons blacks voted for Carter over Wallace, the data presented here indicate clearly that the black vote was almost indispensable to Carter's victory.

Distribution by political ideology

Although to say that Carter received the "liberal" and "moderate" votes and



Wallace the "conservative" votes vastly oversimplifies the matter, this approach has some merit. For example, North Carolina voters classified themselves as follows: "conservative"—35%, "middle-of-the-road"—23%, "liberal"—21%, "no-opinion"—21%. Among North Carolina Democrats, about a third considered themselves "conservative," another third said they were "middle-of-the-road" and "liberal," and the rest had "no opinion."

Among North Carolina voters generally, the "liberals" were people with graduate school or professional education. Otherwise, persons with degrees through baccalaureate level tended to be increasingly conservative. Moreover, in North Carolina the high-income voter tended to be conservative. Tar Heel conservatives outnumbered liberal voters in almost every category except that the very old, the blacks, residents of the mountain region, and those with the least education and lowest income tended to fall in the "liberal," "middle-of-the-road," or "no opinion" groups.

Moreover, the proportion of the electorate that claimed to be "conservative" increased as the sample moves from west (Mountain region) to east (Coastal Plain and Tidewater). In the mountains, 23 per cent claimed to be conservative, 36 per cent in the Piedmont, and 39 per cent in the Coastal Plain and Tidewater.

If it is true that a third of the state's Democrats consider themselves "conservative" and that most of them are in the east, then Wallace's percentage of the total vote, 34.74 per cent, approximates the "conservative" electorate. By the same token, Carter's hold on the "liberal" and "moderate" vote is indicated by his 53.64 per cent showing, which can be argued to consist of the 21 per cent of the state who are "liberal" and the 23 per cent who are moderate (total, 44 per cent). It also is a fairly accurate reflection of the Democratic voter preferences among "liberal" and "moderate" preferences.

Summary

By almost every geographic and demographic measure, the urban (Piedmont) regions of the state represent the center of power of the Democratic Party *in the 1976 presidential primary*. The rural (Tidewater, Coastal Plain, and Mountain) regions, while also supporting Carter's candidacy in 1976, do not seem to be the locus of power in the party. Moreover, the centrist position of the Piedmont is emphasized when the Wallace support is shown to come from the Tidewater and Coastal Plain regions.

In terms of the voting power by race, while the power of the party's white voters prevails (because of strength simply in absolute numbers), the black vote clearly played a significant role in Carter's nomination. Also, although his white support tended to coalesce to give Wallace those counties with a large black population, the black vote was strong enough to limit the scope of his victory there.

Moreover, in terms of political ideology, the "moderate" and "liberal" members of the party clearly are in control when allied against the "conservative" members. This control interestingly correlates with the regional, urban/rural, and white/black distribution of power in the party as represented by the 1976 presidential primary results.

Finally, the 1976 results demonstrate how drastic a change has occurred in the voting preferences of the party's members since the 1972 primary. The future will be interesting.

It is, of course, dangerous to make too close a comparison between the 1972 and 1976 presidential primaries. There are, after all, some significant differences.

First, the 1972 presidential primary was run at the same time as the state and county primaries; the 1976 presidential primary was not. The absence of state and local candidates and issues probably had an effect on voter turnout and may have affected the outcome. Indeed, voter turnout was down from approximately 50 per cent in 1972 to approximately 35 per cent in 1976.

Second, the crest of the wave that Wallace had so successfully ridden in 1972—the code word was "busing"—had been dashed on the shores and the "race issue" was no longer such a strong incentive to produce a large voter turnout in the conservative (Wallace) Coastal Plain or Tidewater.

If the turnout had been higher and if there had been a stimulating issue, the results could have been different. Whether they would have been different might be demonstrated by the forthcoming August state and local primaries. If the turn out is higher over all, and if there emerges an indisputable "conservative" and "moderate-liberal" choice or choices among the candidates, and if the Coastal Plain and Tidewater Democrats turn out in force in support of a "conservative" candidate, and, finally, if that candidate becomes the nominee, the tentative conclusion drawn by this analysis might fairly be challenged.

The Effectiveness of Bail Systems

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BAIL, ALSO CALLED PRETRIAL RELEASE, is a legal means of freeing a defendant before court disposition of criminal charges against him. Its purpose is to prevent the defendant from being jailed when still presumed innocent and to assure that he will appear in court when required. There are several forms of pretrial release, which will be discussed later. (Technically the term "bail" is reserved for release upon payment of bond, but in this article, the word will be used for all forms of pretrial release, unless otherwise specified.) The right to bail is not absolute; it is conditional, in the sense that the court may set reasonable conditions intended to insure his appearance at the various stages of his trial. Failure to appear in court when required usually carries some penalty for the bailed defendant. The penalty may take the form of forfeiting a specific sum of money, additional criminal punishment, or loss of pretrial freedom. It reflects the risks that society takes when the defendant is released, including:

1. The risk that the government (and others, including witnesses) will be inconvenienced by a delay in prosecuting the case against the defendant due to his absence;
2. The risk that the policies of judicially resolving issues of criminal liability and of imposing criminal sanctions on those found liable will be frustrated by the defendant's fleeing the jurisdiction and avoiding recapture;
3. The risk that the defendant may commit crimes while on bail before his case can be disposed of.

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Although the law in this area is not settled, the view that may prevail[1] is that the decision whether to release a defendant constitutionally must be based only on the likelihood of nonappearance and (because he is presumed innocent) not on the likelihood that the defendant will commit crimes while on bail. However, a concern for public safety will not let us ignore the risk of new crimes. If it is correct that the initial decision to release must be based (legally) only on the risk of nonappearance and not on the risk that the defendant will commit a crime while on bail, it is good policy to use all lawful means *after release* to reduce the risk of nonappearance and the risk that a crime will be committed.

The administration of bail necessarily involves estimating the likelihood that the defendant will fail to appear in court or will commit a new crime while released. (The likelihood that one or both of these things will happen is called the "bail risk" in this study.) In the most common form of release, bail bond, the defendant obtains his freedom by promising to pay a stated sum, the "bond amount," if he fails to appear. In most cases the bond amount depends entirely on the nature of the charge or charges for which the defendant is currently being tried—the more serious[2] the charge, the greater the bond amount. Relating the bond amount to the seriousness of the charge seems to be based on this reasoning: the more serious the charge, the more reluctant the accused is likely to be to appear in court and face the consequences; the greater the reluctance to appear, the greater disincentive (threat of financial loss) is needed to prevent nonappearance. (Nothing in this study suggests that this reasoning is false.) In some cases the bond amount is intentionally set beyond the defendant's likely ability to raise it or obtain a surety for it; such prohibitive bond-setting may be seen either as a judgment that the defendant cannot be relied on to appear in court under any circumstances or as decision to impose "preventive detention" to protect the public from the defendant.

Since the Vera Institute of Justice initiated the Manhattan Bail Project in 1960 as an alternative to the conventional bail bond system, reformers have advocated a system of release

1. After careful consideration, the American Bar Association's Advisory Committee on Pretrial Proceedings recommended against "preventive detention" (denying bail based on a prediction that the defendant will commit crime if released), not because that practice would violate the U.S. Constitution but because many state constitutions provide an absolute right to bail and because identifying which defendants would commit crime while released would be very difficult. see AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO PRETRIAL RELEASE, § 5.5 *Commentary* 65-71 (1968).

2. In the system employed in Charlotte, "seriousness" in this context corresponds roughly to the maximum fine or prison term for an offense.

in which the calculation of the risk of nonappearance depends not only on what the defendant is charged with but also on his characteristics and background. The American Bar Association has recommended that, in determining whether there is a "substantial risk of nonappearance," the following factors should be considered:

(1) The length of the defendant's residence in the community, his employment history and financial condition;
(2) His family ties and relationships;
(3) His reputation, character, and mental condition;
(4) His criminal record;
(5) Whether there are responsible persons who will vouch for his reliability;
(6) The nature of the offense charged and the likelihood of conviction ("insofar as these factors are relevant to the risk of nonappearance"); and
(7) "Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear."

The American Bar Association's position is that unless these factors indicate a "substantial risk" of nonappearance, the defendant should be released simply with an order to appear in court, or on his own promise to appear, without further conditions. If the degree of risk is "substantial," conditions of release may be set, including placing the defendant under care or supervision while released and imposing reasonable restrictions on his activities. In the ABA view, bail bond should be used only as a last resort, when nothing else "will reasonably assure the defendant's appearance in court." The bond amount—i.e., the degree of financial loss to the defendant if he fails to appear—must depend on all the factors listed earlier, not merely the charge against him, and thus "be the result of an individualized decision, taking into account the special circumstances of each defendant."[3]

Recent innovations in bail have usually been consistent with the ABA recommendations and have involved point systems for calculating risk of nonappearance in which length of residence and other "community ties" have positive values and criminal convictions have a negative value. Both conventiona bail bond and forms of release consistent with the ABA's recommendations will be considered in the analysis that follows. This article will report on what a set of data collected recently in Charlotte, North Carolina,[4] tells us about how various factors affect bail risk and which forms of bail are most effective in controlling bail risk. The specific questions addressed include the following:

— Which factors explain most of the variation in bail risk?
— How do these factors rank in importance?
— Do the factors commonly thought to influence bail risk have the expected effect?
— How do the bail bond and ABA-recommended forms of release compare with regard to control of bail risk?
— What improvements in present forms of release do the data suggest?

The data

The source of the data is the police and criminal court records of Charlotte, North Carolina, reflecting criminal prosecutions begun by arrest during the first three months of 1973. The unit of data is the arrested defendant, who may have one or more specific charges filed against him. A total of 861 defendants were chosen by random sampling from the chronological police record of arrests from January through March 1973.[5] The fact that these defendants were randomly chosen from a particular defendant population in Charlotte does not make them representative of the statewide or national defendant population, yet conclusions reached from the Charlotte data may apply to other communities, allowing for local differences.[6]

The 861 defendants in the sample amounted to about one-third of the defendants arrested in Charlotte during the first quarter of 1973. This third excludes those charged with public drunkenness, hunting and fishing offenses, and traffic and vehicular violations but includes those charged with driving under the influence of alcohol. Of the 861,756 received some form of release before court disposition.[7] All information was captured by tracing the defendants and their charges through police and criminal court files. All court cases (specific criminal charges) were followed through until disposition, including sentence, if any, in the trial court. The cases of those few misdemeanor defendants convicted by a judge in the district (lower) court who exercised their right to a trial de novo by jury in the superior (higher) court were not considered disposed of until the superior court trial had concluded. For the 41 defendants whose cases were still undisposed at the end of 1973, an exception was made:

3. American Bar Association, Standards Relating to Pretrial Release, §§ 5.1, 5.2, 5.3 (1968). The ABA recommends the prohibition of "compensated sureties" (professional bondsmen); *id.* at §§ 5.4.

4. For an earlier study using the same data, examining bail opportunity as well as the dependent variables considered here, see S. H. Clarke, "The Bail System in Charlotte, 1971-73" (National Technical Information Service, Document Number PB-239 827/AS, Arlington, Virginia, 1974).

5. The sample was stratified on race (black or other) and offense type (one of eight categories). The original plan was to stratify the sample on all variables that were related to bail outcomes; among the many variables that at first were thought to have an effect on bail opportunity and bail risk, the only ones available in the police arrest records were race and offense. Later, we decided to use the selected defendants as a total population or "observational sample," even though the sampling fractions varied considerably among the sixteen race and offense subpopulations of defendants. To eliminate any bias introduced into the data in this way, race and offense were treated as independent variables (along with a number of others) in the analysis. The over-all sampling fraction was about a third (861 out of 2,578). The actual sampling fractions based on race and police offense category were as follows (the fraction for blacks is given first): serious crime against persons, 76/161, 59/62; serious crime against property, 40/82, 58/62; serious "vice" (mostly drug distribution), 14/15, 44/44; nonserious crime against persons (simple assault, drunken driving, etc.), 83/422, 84/429; nonserious crime against property, 89/456, 94/489; nonserious "vice" (simple drug possession, prostitution, gambling), 46/47, 65/130; nonserious family (nonsupport), 36/79, 31/62; nonserious "other" (mostly disorderly conduct), 21/22, 21/21.

6. These data are sufficient to allow some tentative conclusions about bail risks and forms of release. For general conclusions, confirmation is needed on the basis of data from other communities and national samples.

7. Because of data collection errors, six released defendants were eliminated, leaving a sample size of 756.

January 4, 1974, was used as a cutoff date. When a defendant had more than one charge (about 19 per cent of the total did) and when these were disposed of on different dates, the disposition date recorded was that of the "principal case"—i.e., the one that received the most severe court disposition according to a weighting scheme. (Usually the "principal case" took longer to be disposed of by the courts than the defendant's other cases.)

Factors considered by the study

The study examined a number of factors, including the defendant's characteristics, the charge against him and his criminal record, the form of bail he received, and court disposition time—the number of days he was free on bail before his case was disposed of by the court. The percentage distributions of these various factors are shown in Table 1. The primary interest of the study was in (1) whether the defendant failed to appear in court, and (2) whether he was rearrested for an alleged new offense after pretrial release and before court disposition. Failure to appear (also called "nonappearance" here) was determined by whether at least one capias (arrest warrant) was issued by a judge because of the defendant's absence at a scheduled court appearance. (Failure to appear resulted almost invariably in issue of a capias, except when the defendant was released on cash bond; this will be discussed later.) Rearrest, which we use here as an indication of whether the released defendant committed crimes while on bail, was determined from the police records of arrest throughout Mecklenburg County, in which Charlotte is located. If these records show that the defendant had been arrested for a new offense other than public drunkenness or hunting and fishing, traffic, or vehicular violations (but including driving under the influence) in the county between the dates of release and court disposition, the defendant was counted as having been rearrested. This definition can be criticized because it includes arrests in which the defendant had not in fact committed a crime and because it includes no information about offenses committed outside the county. The latter criticism is countered by the fact that almost all of the 756 released defendants were present in the county at least often enough for their cases to be disposed of in court; only 19 fled the jurisdiction (i.e., had

Table 1

Description of Released Defendants in Terms of Factors Chosen for Study (756 = N)

	No.	%
Sex		
Male	598	79.1
Female	158	20.9
Age		
14-24	314	41.5
25-34	236	31.2
Over 34	206	27.2
Race		
Black	350	46.3
Other	406	53.7
Income		
Low	392	51.9
High	304	40.2
Unclassified (residence outside Charlotte)	60	7.9
Employment		
Employed	466	61.6
Student	68	9.0
Unemployed	115	15.2
Unknown	107	14.2
Prior Arrests		
None or one	491	64.9
Two or more	265	35.1
Offense Seriousness		
Felony	161	21.3
Misdemeanor	595	78.7
Form of Release		
PTR	217	28.7
Magistrate	69	9.1
Cash	72	9.5
Bondsman	346	45.8
Other	52	6.9
Failure to Appear		
Failed	70	9.3
Did not fail	686	90.7
Rearrest on New Charge		
Rearrest	75	9.9
No rearrest	681	90.1
Combined Bail Risk		
Failed or rearrested or both	137	18.1
Neither	619	81.9
Time at Risk		
1 week or less	29	3.8
1 to 2 weeks	74	9.8
2 to 3 weeks	131	17.3
3 to 4 weeks	74	9.8
4 to 5 weeks	62	8.2
5 to 6 weeks	61	8.1
6 to 7 weeks	80	10.6
7 to 8 weeks	32	4.2
8 to 9 weeks	43	5.7
9 to 10 weeks	30	4.0
10 to 11 weeks	27	3.6
11 to 12 weeks	17	2.2
More than 12 weeks	96	12.7
Offense Category		
Felony-Persons	33	4.4
Felony-Property	66	8.7
Felony-Vice	62	8.2
Misd.-Persons	212	28.0
Misd.-Property	178	23.5
Misd.-Vice	83	11.0
Misd.-Family	77	10.2
Misd.-Other	45	6.0

warrants for nonappearance still outstanding as of January 4, 1974).

Because nonappearance and rearrest are roughly equally important with regard to bail policy, most attention was focused on whether the defendant failed to appear or was rearrested or both. As Table 1 shows, 70 defendants (9.3 per cent) failed to appear, 75 (9.9 per cent) were rearrested while on bail, and 137 (18.1 per cent) either failed or were rearrested. (Eight defendants failed to appear and were also rearrested for new crimes; this explains why the last figure was 137 and not 145.) The probability of nonappearance or rearrest or both is referred to here as "bail risk" or "combined bail risk."

The study relied on information concerning defendants who were actually released. Some defendants (about 12 per cent of the total sample) were not released at all before court disposition of their charges. Exclusion of these defendants probably has not distorted the study's findings, even though there is reason to believe the unreleased defendants would have had higher-than-average nonappearance and rearrest rates if they had been released.

The factors initially thought to be causally related to nonappearance and rearrest are listed below, followed by brief definitions and statements of the reasons for choosing them (as will be seen, most of these factors turned out to have either very little measurable effect on bail risk or an effect contrary to what we expected):

— Sex
— Age
— Race
— Income
— Local residence
— Family ties (not used in this study due to lack of data)
— Employment
— Criminal history
— Type of offense charged in current prosecution
— Court disposition time
— Form of pretrial release

The defendant's sex and age were included because of abundant evidence that males are more likely to commit crime than females and persons in their teens and early twenties are more likely to commit crime than older persons. Therefore, we supposed that bail risk would be greater for males than female defendants and greater for younger defendants than those past their early twenties.

Race and income were included because of the possibility that the social disadvantages experienced by black and low-income defendants might make their bail risk greater than that of whites and higher-income defendants. Race was defined as (1) black or (2) other. Income was defined in terms of the median 1969 income of the census tract of residence. Originally, five income levels were used but seemed to provide no more information than the two that were eventually used: "low," meaning under $7,000, the approximate citywide median; and "high," meaning $7,000 and over. Because census tracts in Charlotte are relatively compact and homogeneous, we considered them an adequate, though indirect, measure of defendants' income.[8] About 9 per cent of the defendants resided outside Charlotte; most of these lived in Mecklenburg County, where rural postal route addresses prevented their assignment to census tracts. Since the median income of suburban Mecklenburg County as a whole exceeds $7,000, we included defendants who were not Charlotte residents in the high-income category.

We initially expected that a defendant who was a local resident would have a lower bail risk than a nonresident and a defendant who was either employed or a full-time student would have a lower bail risk than one who was unemployed. Local residence was considered an indirect measure of attachment to the local community and its values, which in turn was hypothesized to be related to bail risk. Local residence was defined as follows: if the police or court records showed that the defendant had ever had an address in Charlotte, he was considered a Charlotte resident.[9] Employment status (employed, full-time student, or unemployed) at the time of arrest was also included because of its presumed relationship to commitment to conventional values. Family ties—whether the defendant lived with parents, spouse, or other kin and the degree of contact and type of relationship he had with family members—were also thought to be indicators of commitment to conventional values; unfortunately, no data on family ties were available for most defendants.

The defendant's criminal history was thought to be related in general to his future criminal behavior, and thus to rearrest while on bail and perhaps also to nonappearance. Criminal history was measured by prior arrests in Mecklenburg County, which means that the measurement was incomplete for the relatively few defendants who had spent most of their adult lives outside the county. Criminal histories were grouped into two categories: (1) zero or one prior arrest, and (2) two or more prior arrests. Originally, zero and one were made separate categories, but since the analysis revealed little difference between the two in their effect on post-release behavior, they were combined. Arrests for public drunkenness, fishing and hunting violations, and traffic and vehicular offenses (except driving under the influence) were excluded.

The offense with which the defendant was charged was expected to be related to bail risk for the same reasons as criminal history, and also because those charged with serious offenses were presumed to be more reluctant than others to appear in court and face possible punishment. The type of offense was defined in two ways based on the specific breach of North Carolina law alleged in the defendant's court record: (1) as a felony (carrying a maximum penalty of more than two years' imprisonment) or misdemeanor (carrying a maximum penalty of two years or less); and (2) as one of eight categories into which felonies and misdemeanors were divided. The eight offense categories are felonies against the person, felonies against property, "vice" felonies (mostly involving distribution of drugs), misdemeanors against the person (more than half of these were simple assaults and nearly all the rest were driving under the influence), misde-

8. For a defense of this method of determining income, see WOLFGANG, FIGLIO, AND SELLIN, DELINQUENCY IN A BIRTH COHORT, 47-52 (1972).

9. Local residence was determined from police arrest records, which obviously do not provide a full picture of an arrested person's residential history. Most defendants counted as Charlotte residents actually had an address in Charlotte at the time of arrest that caused them to be included in this study; the rest were past but not present residents of the city.

meanors against property, "vice" misdemeanors (mostly simple possession of marijuana and other drugs), "family" misdemeanors (such as nonsupport), and "other" misdemeanors (nearly all disorderly conduct). If more than one charge was filed against the defendant, offense information was taken from the principal case as defined earlier.

Court disposition time (also called "court delay" here) is ordinarily defined as the amount of time between the defendant's arrest and his court disposition. Defining it that way would create a problem in this study. We hypothesized that court disposition time would directly affect the defendant's probability of failing to appear and/or being rearrested, in that the longer he was free before court disposition, the greater opportunity he would have to forget his obligation to appear in court, make plans to flee the jurisdiction, or become involved in illegal activity. In this sense, long court delays can cause failure to appear and rearrest. However, the reverse is also true; failure to appear (and sometimes rearrest while the original case is pending) can cause court delay. When the defendant does not show up in court, a delay of days or weeks occurs while he is found, arrested, and brought back to court. Rearrest on a new charge can also slow the trial of the original charge. In this study, we are interested only in the effect of court delay on failure to appear and rearrest, *not* the effect of failure to appear and rearrest on court delay. To avoid confusing the two effects in the study, "time at risk" has been defined as the number of days from the defendant's first pretrial release date (for most defendants this was within five days after arrest) until (1) his case or cases were disposed of by the court, (2) he failed to appear in court as scheduled, or (3) he was rearrested on a new charge, whichever occurred first. Thus, when the terms "court delay" and "court disposition time" are used here, they do not include any period of time after failure to appear or rearrest in cases where the defendant fails to appear or is rearrested.[10]

The procedure by which the defendant obtained his pretrial freedom—here called "form of release"—was thought to be of major importance in determining bail risk. Releasing procedure includes not only the method of selecting those to be released but also the supervision (if any) of the releasee until court disposition. Forms of release available in Charlotte are explained in the next section.

Forms of pretrial release in Charlotte

There are six distinct forms of pretrial release in Charlotte. Among them are conventional bail, in which sole reliance is placed on the threat of financial loss (bond forfeiture) to insure appearance of the defendant, the bond amount being determined by the seriousness of the charge against the defendant, and release that generally follows the American Bar Association standards stated earlier, in which the decision to release is based on a variety of factors.

In conventional bail, the bond amount is usually set according to a schedule of minimum amounts prescribed by the chief district court judge. These depend solely on seriousness of the offense charged and, in 1973, ranged from $15 for minor offenses such as failure to pay cab fare to $5,000 for safecracking. One form of conventional bail is "cash bond," in which the defendant simply deposits the full bond amount in cash with the court, to be refunded if he appears as required and forfeited if he does not.[11] Of the 72 defendants in the study who were released in this fashion, most were charged with misdemeanors such as drunken driving, passing worthless checks, disorderly conduct, and domestic nonsupport. Apparently, if the defendant on cash bond was charged with a minor offense and did not have a substantial criminal record, he was often permitted to escape further prosecution merely by forfeiting bond—as if he had pled guilty and paid a fine. Because nonappearance in this study was determined by whether the judge issued an arrest warrant for failure to appear, and because judges were probably reluctant to issue such warrants when the defendant was released on cash bond and charged only with a minor offense, the actual nonappearance rate among cash bond releasees is probably much higher than the rate as we measured it. A variant of cash bond is "property bond," in which the defendant or some benefactor pledges property of sufficient value to cover the bond amount. Only 13 defendants in the study were released on property bond; they are included in the "Other" category in the tables.

The most common form of bail, here called "bondsman release," is obtained by paying a professional bondsman's fee in return for the bondsman's acting as surety for the bond amount. At the time of the study, the nonrefundable fee might range from 15 to 30 per cent of the bond amount and was not subject to any legal maximum.[12] As businessmen, bondsmen must be concerned about the risk of nonappearance of the defendant because they may have to forfeit part or all of the bond amount if the defendant fails to appear. Total forfeiture is not automatic, however; a sympathetic judge may entertain motions to delay forfeiture when the bondsman claims he is trying to locate the missing defendant, or he may reduce the amount forfeited. Bondsmen probably calculate the relative reliability of their clients and maintain some sort of surveillance of those they consider most risky. So much can be assumed as a matter of good business practice, although we made no detailed investigation of bondsmen's operations. However, the bondsman and the defendant have no regular contact after release in most cases.

10. Another complicating factor is that nonappearance and rearrest may, once the defendant is reapprehended, result in the setting of a higher bond amount, which may return him to detention until his case is disposed of.

11. In some jurisdictions bail can be obtained by posting some fraction of the bond amount, such as 10 per cent. A proposal to allow this in North Carolina was considered by the General Assembly's Criminal Code Commission in 1973, but was defeated by the professional bondsmen's lobby.

12. Legislation passed in 1975 limits the bondsman's fee to 15 per cent of the bond amount (Ch. 619, 1975 Session Laws, N.C. Gen. Stat. Ch. 85A). Despite the expense of the bondsman's fee, the majority of low-income defendants evidently preferred bondsman release to a form of release not involving any cost to them. In 1973, the ratio of bondsman releasees to releasees of the PTR program (described later in the text) was 1.6 to 1 for the low-income group. Perhaps low-income defendants disliked the half-hour interview by PTR staff, or perhaps they were willing to pay for the quicker release procedures of bondsmen.

Three other forms of pretrial release that are consistent with the American Bar Association standards have resulted in Charlotte from North Carolina's enactment of new law providing for release "other than on bail" of all defendants except those charged with capital crimes (for whom there is no constitutional or statutory right to bail). This legislation, passed in 1967, authorizes release "if it appears likely that [the defendant] will appear . . . at the proper time." In determining the risk of nonappearance and the conditions of release, the releasing officer (a magistrate or judge) is required to take into account

the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.[13]

The law further provides that release of this type may be either (1) by "unsecured appearance bond," whereby the defendant signs a promise to pay a stated sum if he fails to appear but is not required to secure the bond with any cash deposit, property pledge, or surety; or (2) upon the defendant's "own recognizance," whereby he simply signs a promise to appear with no financial penalty.[14] The statute makes failure to appear in these circumstances a criminal offense subject to up to two years' imprisonment; in contrast, the only penalty for nonappearance in conventional bail bond is forfeiture of the bond amount.[15]

The criminal courts in Mecklenburg County have developed three forms of pretrial release on the authority of the 1967 law: magistrate release, PTR release, and "own recognizance" release. (Magistrates are judicial officials of limited jurisdiction before whom defendants are brought immediately after arrest; their office in Charlotte is staffed around the clock daily.) In December 1970, the chief district judge issued rules permitting magistrates to release on "unsecured appearance bond" defendants who are:

1. Residents of the state;
2. Not charged with drunken driving, driving with a revoked or suspended license, assaulting or resisting a public officer, any drug law violation, racing in an automobile, or speeding over 80 mph;
3. Able to qualify under the point system (described below); and
4. Not charged with a felony (in practice, this criterion has been relaxed; magistrates are evidently often authorized or requested by higher-ranking judges to release felony defendants, and 26 per cent of their releasees in our 1973 sample were charged with felonies).

An additional restriction was imposed on magistrate release by Mecklenburg County's chief district court judge in July 1972: magistrates were not allowed to release defendants who were eligible for release by the PTR program (described below). This was done because the magistrates were perceived as competing with the PTR program, which was thought to be a better form of release. Despite this restriction, magistrates continued to release defendants. The defendants they released included (1) those charged with misdemeanors but ineligible for PTR release, often because of residence outside the county; (2) those charged with felonies when judges requested release; and (3) (possibly) some defendants who were eligible for PTR but whom magistrates released despite the instruction not to do so.

In the magistrates' point system, points are assigned on the basis of how long the defendant has lived in the county, how long he has worked for the same employer, whether a family member or employer will co-sign the bond, whether he owns real property in the county, whether he is known by the magistrate or arresting officer to be reliable and likely to appear in court, whether he is married and living with his spouse or children, and whether he is represented by an attorney. (Clearly, at least two of these criteria—owning property and having a privately paid attorney—discriminate against the low-income defendant.) Magistrates are not formally required to take the defendant's criminal record into account, but it is safe to assume that they often do. An arresting officer may recognize an arrestee who has been arrested or convicted several times before and can check police arrest records without much trouble if he is in doubt. If he believes the defendant had a substantial record, the arresting officer will probably tell the magistrate. That magistrates do consider criminal record is supported by the fact that in our study the proportion of defendants with two or more prior arrests was about the same (approximately one-fourth) among those released by magistrates and among those released by the PTR program (described below). The PTR program is formally required to take prior convictions into account. In any event, a defendant with a sufficient point score who meets the other criteria (including whatever subjective criteria the magistrate chooses to apply) is released upon signing a promise to pay the usual bond amount for his alleged offense if he fails to appear, without any pledge of property, cash deposit, or surety. After release by the magistrate, the defendant is on his own; no reminder of court dates or other supervision is provided.

The second form of release based on the 1967 law, here called "PTR release," is similar to magistrate release with regard to releasing procedure, but involves the use of a specialized staff and post-release supervision. The Mecklenburg County Pre-Trial Release ("PTR") Program, which began operating in July 1971 on federal funds, is authorized to consider for release any defendant who resides in the county and is not charged with certain offenses. In 1973, these excluded offenses were public drunkenness, first-degree murder, rape, first-degree burglary, safecracking, being a habitual felon, assault upon a public officer, kidnapping, malicious use of explosives, or a narcotics felony. (Aside from public drunkenness, which is excluded from this study, all of the excluded offenses were quite rare except for drug felonies; the latter constituted about one-fourth of all felony charges filed in 1973. After the period of study, the rule barring those charged with drug felonies began to be

13. N.C. Gen. Stat. § 15-103.1(b) (Supp. 1974). Although not repealed, this section is superseded by N.C. Gen. Stat. Ch. 15A, Art. 26, effective September 1, 1975, which has generally similar provisions.

14. N.C. Gen. Stat. § 15-1 3.1(a) (Supp. 1974).

15. N.C. Gen. Stat. § 15-103.1(c) (Supp. 1974). N.C. Gen. Stat. § 15A-543 (effective September 1, 1975) makes all failure to appear a crime, regardless of type of release—a misdemeanor if the original charge was a misdemeanor and a felony if the original charge was a felony.

relaxed in some instances.) After his appearance before a magistrate, an eligible defendant has an opportunity to be interviewed by a PTR investigator; investigators, like magistrates, are available 24 hours a day. The interview usually takes about half an hour—more time than the typical magistrate or bondsman release requires—and concerns a number of factors thought to be related to the defendant's likelihood of appearing in court, including all of those considered in the magistrates' point system (see preceding paragraph) and the following additional factors:

1. Whether the defendant has ever failed to appear in court,
2. Whether he is a drug addict or alcoholic,
3. Whether he has been convicted of crimes in the county, and
4. How recent and serious his convictions, if any.

The PTR staff is prepared to check all the defendant's responses, if this is thought necessary. Prior convictions are routinely checked in court records (because these records are accessible only on weekdays, a defendant arrested at night who admits to, or is suspected of, a serious criminal record may have to wait overnight or over the weekend for the record check to be completed). On the basis of the defendant's point total, the PTR program recommends for or against his release (the recommendations have been about 85 per cent favorable). A favorable recommendation is nearly equivalent to release, although approval by a magistrate is formally necessary for a misdemeanor defendant and by a judge for a felony defendant. This requirement sometimes means an overnight or over-the-weekend delay for felony defendants arrested when the court is closed. Like the magistrate-released defendant, the PTR-released defendant is required to sign an unsecured appearance bond and is subject to a misdemeanor penalty for failing to appear.

The PTR staff's initial interview, besides serving as a means of selection, may have another function. As this study will suggest, the pre-release interview of the defendant by a person in authority (the PTR staffer), who expresses his concern that the defendant appear in court as required and stay out of trouble in the meantime, may serve the same purpose as post-release contact and supervision.

PTR release is the only form of bail in which the defendant is supervised after release and has regular contact with releasing authorities. All PTR releasees are required to agree in writing to telephone the PTR office at a specified time each week and to report there at 8:15 a.m. on any day of a scheduled court appearance to indicate their readiness to go to court. Before each court date, PTR releasees receive a mailed reminder. In addition, a PTR releasee who seems irresponsible may be warned that his release will be terminated if he does not cooperate, although actual termination is quite rare.

One other form of bail in Charlotte, used infrequently, is release by a judge on "own recognizance"—i.e., on the defendant's unsecured promise to appear in court. According to the 1967 law cited earlier, the judge is required to take into consideration not only the defendant's charge and criminal convictions but also his community ties. Normally no post-release supervision is provided in "own recognizance" release. Failure to appear on "own recognizance" release, as on magistrate and PTR release, is punishable as a misdemeanor, although it involves no forfeiture of money.[16]

Table 2
Defendants Released on Various Forms of Bail

Form of Release	No.	%
No Release (Jail)	99	11.6
Bondsman	346	40.5
Cash Bond	72	8.4
Magistrate	69	8.1
PTR	217	25.4
Other (Property Bond and "Own Recognizance")	52	6.1
TOTAL	855	100.0

The accompanying tables group the 39 defendants from this study who were released on "own recognizance" along with the 13 released on property bond in a category labeled "Other." Because so few defendants were released on "own recognizance" and property bond, the analysis gives little attention to these forms of bail.

Table 2 shows the relative frequency of the various forms of release among the defendants in the sample.[17]

We can now review briefly some of the main features of the various forms of bail in Charlotte:

(1) PTR and magistrate release are consistent with the principles of the ABA in most respects, except that both use the threat of financial loss in all cases by requiring the defendant to sign an appearance bond. All of the four most common forms of release involve an appearance bond whose amount depends on the seriousness of the offense charged. (In cash bond and bondsman release, the bond is secured; in PTR and magistrate release, it is unsecured.) This means that the nonappearing PTR or magistrate releasee in our study had as much reason to fear financial loss as the cash bond or bondsman releasee (in fact, perhaps more; one judge commented that PTR releasees would be dealt with more strictly when the question of enforcing bond forfeiture came up because they had "already had one break").

(2) Only PTR release used post-release contact with and supervision of the defendant. This probably reduces the likelihood that the releasee will forget his court date. It also

16. As Table 3 shows later in the text, defendants released on "own recognizance" were much more likely than others to have been charged with felonies and thus probably had difficulty obtaining other forms of release.

17. The analysis in Clarke, *op. cit. supra* note 4, indicated that when the PTR program's operation went into full swing early in 1972, most of its clients were defendants who would have been released by magistrates on unsecured bond had the PTR program not existed, although some would have become bondsmen's customers and some would not have been released at all. Professional bondsmen steadily lost clients after magistrate and PTR release were introduced, not only to those two forms of release but also to "own recognizance" and cash bond release. The gain in the latter form of release may have been indirectly due to the PTR program, because the PTR staff sometimes informed defendants of their right to cash bond (even though they might have been ineligible for PTR release). The advent of the PTR program produced only a slight reduction in the proportion of defendants who obtained no release at all

may make the releasee feel that his actions are visible to the authorities, and therefore may tend to discourage not only making plans to avoid appearing in court but also becoming involved in new crimes.

(3) Failure to appear while released by the PTR program or magistrates constitutes a separate criminal offense, but failure to appear while on bail bond was not a crime at the time of the study. We do not think this is an important

Table 3
Characteristics of Defendants on Various Forms of Bail
(Figures are percentages*)

	No Release (Jail)	Bonds-Bondsman	Cash Bond	Magis-Magistrate	PTR	Other[5]	All: Released and Not Released
Sex							
Male	91%	83%	85%	62%	73%	92%	81%
Female	9	17	15	38	27	8	19
Age							
14-24	57	38	35	49	43	58	43
25-34	19	32	32	28	32	23	30
Over 34	24	29	33	23	24	17	26
Race							
Black	53	49	21	27	58	42	47
Other	47	51	79	73	42	58	53
Income							
Low	60	59	39	30	50	60	53
High	25	31	53	62	46	29	39
Unclassified[1]	15	10	8	7	4	12	9
Employment							
Employed	43	62	67	57	66	42	60
Student	4	6	10	12	14	4	8
Unemployed	30	15	15	13	10	23	16
Unknown[2]	22	17	8	19	10	31	16
Prior Arrests							
None or one	44	58	76	70	75	50	63
Two or More	56	42	24	30	25	50	37
Offense Seriousness[3]							
Felony	51	22	12	26	12	60	25
Misdemeanor	49	78	88	74	88	40	75
Offense Category[4]							
Felony-Persons	21	5	0	3	1	20	6
Felony-Property	27	8	3	12	8	22	11
Felony-Vice	8	9	10	12	2	20	8
Misd.-Persons	11	31	32	19	28	17	26
Misd.-Property	11	19	19	26	35	8	22
Misd.-Vice	13	12	14	7	12	2	11
Misd.-Family	0	10	13	17	8	10	9
Misd.-Other	9	6	10	4	6	2	6

*Percentages may not add to 100 because of rounding.

1. "Unclassified income" refers to all defendants who resided outside Charlotte at the time of arrest and had no past Charlotte address in police arrest records.

2. No entry as to employment appeared on these defendant's police arrest forms; presumably, the majority were unemployed.

3. Felony carries maximum sentence of more than two years in prison; misdemeanor, two years or less. Two cases with this information missing were included under "misdemeanor."

4. Categories explained in text.

5. Includes 39 defendants released on "own recognizance" and 13 released on property bond.

difference, because prosecution for failing to appear is evidently quite rare.[18]

Table 3 shows that defendants released in various ways differed in their characteristics. For example, magistrate and PTR releasees were somewhat less likely than bondsman releasees to be of low income. Of the characteristics in which the various releasee groups differed, none had much effect on bail risk that we could measure, except for time at risk and prior arrests. When these factors are adjusted for statistically, some tentative conclusions can be made about the relative effectiveness of various forms of release.

Measuring the effect of court disposition time

A full explanation of the statistical method used in the study is beyond the scope of this report, but something needs to be said about the method of measuring the effect of court disposition time in conjunction with other factors. The method involved the use of "survival rates" and "survival curves."[19] Survival curves, represented by the various graphs shown later, represent bailed defendants' dwindling chances of staying out of trouble as time goes by.[20] As one reads the graphs from left to right, the number of weeks that the defendants are free on bail with their cases still not disposed of by the court increases. The height of the graph at any point in time indicates the "survival rate" at that time—the probability that a defendant will "survive" (remain free without either failing to appear in court or being rearrested on a new charge) up to that time. The steeper the slope downward from left to right, the greater is the effect of court disposition time on bail risk.

Survival rates and curves were computed[21] for various groups of defendants, grouped according to whether they had had an arrest record and what type of release they received (bondsman, cash bond, PTR, etc.); by sex, age, race, income, local residence, employment status, and type of offense charged; and also by certain combinations of these factors. (The survival curves for prior arrests and type of release are shown here; the others are not.) To determine the effects of these factors on bail risk, the corresponding survival curves were compared. If the survival curve of one group of defendants is significantly lower and slopes downward to the right more steeply than the survival curve of another group, the first group of defendants has generally higher bail risks than the second group, or—to put it another way—the bail risk of the first group is increased more by court delay than the bail risk of the second group.

It should also be pointed out that an apparent difference in survival rates or curves is not always a statistically significant one. When a difference in rates could have been an accidental result of selecting sample data, the difference is said to be "not significant"; when the difference and/or the amount of data are large enough or that the difference is unlikely to be the accidental result of selecting the sample and instead probably reflects a true difference in the populations studied, the difference is said to be "significant." Certain mathematical quantities, called "significance statistics," are computed to determine whether observed differences in rates are significant.

Findings

Table 4 shows the relationship to bail risk of each factor studied. The 756 defendants studied are grouped according to sex, age, etc., and for each group the percentage is indicated of those who failed to appear, who were rearrested for a new offense, and who failed to appear or were rearrested *or both.* These percentages can be interpreted as the likelihood (probability) that a defendant in a particular group had of failing to appear or being rearrested.

1. Factors that had little or no effect. The data suggest that sex, age, race, local residence, and income had little or no effect on the defendant's probability of failing to appear and being rearrested. This is shown by the various bail risk percentages, which are close in value for defendants of different sex, age, race, and income, and also by the significance statistics ("Pearson Chi-Square") in the rightmost column of Table 4. The bail risk percentages are slightly different for males and females, blacks and others, the three age groups, and the three income groups, but the differences are not significant.

When prior arrests—which turned out to be more important than any other factor except court disposition time in

18. Another disincentive to failure to appear is stiffening of conditions of release after the failed defendant is reapprehended. For example, the bond amount can be raised, or the defendant, if a PTR client, may (rarely) be rejected by PTR. This disincentive affects defendants on all forms of bail more or less equally. Also, if a released defendant merely behaves so as to arouse suspicion that he may fail to appear, it is theoretically possible to revoke his release. The bondsman or the PTR program can be absolved of responsibility and the defendant can be rearrested. This sort of "anticipatory" revocation apparently occurs very rarely.

19. The statistical theory for this approach is explained in G.G. Koch, W.D. Johnson, and H.D. Tolley, *A Linear Models Approach to the Analysis of Survival and Extent of Disease in Multidimensional Contingency Tables,* 67 Journal of the American Statistical Association 783-96 (1972).

20. Our statistical method implicitly assumes that each new day of freedom before court dispisition, or each new time period, brings with it a new risk of failure to appear in court. This is a simplification of reality, of course. Defendants are not required to appear in court each day. Data collected in Charlotte in 1972, similar in relevant respects to the present data, indicate that among defendants charged with misdemeanors, 62 per cent had to appear only once in court for a final disposition, 22 per cent had to appear twice, 10 per cent had to appear three times, and 6 per cent had to appear four, five, or six times. For those charged with felonies, the corresponding figures were: one appearance, 12 per cent; two appearances, 27 per cent; three appearances, 16 per cent; four appearances, 23 per cent; and more than four appearances, 22 per cent. The average amount of time elapsing between successive appearances was 23 days for those charged with felonies and 25 days for those charged with misdemeanors. The scheduling of these court appearances varied with each defendant. The method used in this paper assumes that the exposure to the risk of nonappearance is uniformly distributed over time.

21. Our method of computing survival rates was to estimate them, assuming that (1) those whose cases were disposed of in the *n*th week can be considered equivalent to those who survived *past* the *n*th week; and (2) defendants exposed to longer periods of risk behaved generally in the same way as defendants exposed for shorter periods would have if they had been exposed for longer periods. These assumptions are more acceptable if it is remembered that other factors relevant to bail risk were taken into account in the analysis of survival curves.

influencing bail risk—are taken into account, sex, income, and race do appear to have an effect. Among defendants with two or more prior arrests, the combined risk rates were nearly twice as high for females as males (45.5 versus 25.4 per cent); one and a half times as high for high-income defendants as for low-income defendants (35.0 versus 23.5 per cent), and one and a half times as high for whites and others as for blacks (33.1 versus 23.2 per cent). We originally thought that bail risk would be higher for males than for females, higher for low-income defendants than for high-income defendants, and higher for black defendants than for white defendants. Among defendants with two or more prior arrests, statistically significant differences with regard to sex, income, and race were found; however, these differences were all in the opposite direction from what was expected. When the court-delay factor was taken into account by comparing survival curves of defendants of different sexes, ages, races, residences, and incomes, no significant differences in bail risk were found. We must conclude that our data provided no support for our initial expectations

Table 4
Relationships of Factors Studied to Bail Risk
(Percentage bases are totals in each row.)

	Failed to Appear	Rearrested for New Offense	Combined Bail Risk: Failed or Rearrested or Both	Total	Pearson Chi-Square for Combined Bail Risk
Sex					
Male	58 (9.7%)	55 (9.2%)	108 (18.1%)	598	.01
Female	12 (7.6%)	20 (12.7%)	29 (18.4%)	158	(df=1)
Age					
14-24	29 (9.2%)	34 (10.8%)	59 (18.8%)	314	.50
24-34	23 (9.7%)	23 (9.7%)	44 (18.6%)	236	(df=2)
Over 34	18 (8.7%)	18 (8.7%)	34 (16.5%)	206	
Race					
Black	33 (9.4%)	33 (9.4%)	64 (18.3%)	350	.01
Other	37 (9.1%)	42 (10.3%)	73 (18.0%)	406	(df=1)
Income					
Low	42 (10.7%)	35 (8.9%)	74 (18.9%)	392	1.08
High	22 (7.2%)	36 (11.8%)	55 (18.1%)	304	(df=2)
Unclass. (not local resident)	6 (10.0%)	4 (6.7%)	8 (13.3%)	60	
Employment					
Employed or Student	47 (8.8%)	53 (9.9%)	94 (17.6%)	534	.33 (df=1)
Unemployed or Unknown	23 (10.4%)	22 (9.9%)	43 (19.4%)	222	
Prior Arrests					
None or One	36 (7.3%)	31 (6.3%)	63 (12.8%)	491	26.43
Two or More	34 (12.8%)	44 (16.6%)	74 (27.9%)	265	(df=1)
Offense Seriousness					
Felony	14 (8.7%)	22 (13.7%)	35 (21.7%)	161	1.75
Misdemeanor	56 (9.4%)	53 (8.9%)	102 (17.2%)	595	(df=1)
Offense Category					
Felony-Persons	3 (9.1%)	6 (18.2%)	9 (27.3%)	33	8.13
Felony-Property	7 (10.6%)	10 (15.2%)	16 (24.2%)	66	(df=7)
Felony-Vice	4 (6.5%)	6 (9.7%)	10 (16.1%)	62	
Misd.-Persons	19 (9.0%)	18 (8.5%)	33 (15.6%)	212	
Misd.-Property	17 (9.7%)	22 (12.5%)	38 (21.6%)	178	
Misd.-Vice	10 (12.2%)	4 (4.9%)	14 (17.1%)	83	
Misd.-Family	6 (7.8%)	5 (6.5%)	10 (13.0%)	77	
Misd.-Other	3 (6.7%)	4 (8.9%)	6 (13.3%)	45	
Form of Release					
PTR	3 (1.4%)	16 (7.4%)	19 (8.8%)	217	28.30
Magistrate	7 (10.1%)	4 (5.8%)	11 (15.9%)	69	(df=4)
Cash	3 (4.2%)	5 (6.9%)	8 (11.1%)	72	
Bondsman	50 (14.5%)	42 (12.1%)	84 (24.3%)	346	
Other	7 (13.5%)	8 (15.4%)	15 (28.8%)	52	

regarding the effects of the defendant's sex, age, race, local residence, and income on his likelihood of nonappearance and rearrest.

The data also suggest that whether the defendant had a local residence and whether he was employed (or a full-time student) had no effect on bail risk. This is shown by the figures in Table 4. Adjusting for prior arrests did not reveal any effects of local residence or employment, nor did comparison of survival curves. This finding is somewhat surprising. Local residence and employment status are both generally believed to be related to bail risk and are among the criteria approved by the ABA.

2. The type of offense charged. The study also raises some doubt about the relation of the type of offense charged to bail risk. Among these defendants, the nonappearance, rearrest, and combined risk rates of those charged with misdemeanors differ little from the risk rates of those charged with felonies (see Table 4). The combined bail risks were 17.2 per cent for misdemeanor defendants and 21.7 per cent for felony defendants. The survival curves of these two groups were not significantly different at two, four, six, or eight weeks, and there were no differences when criminal history was taken into account.

A breakdown of the charges into eight offense categories (see Table 4) also showed little difference in bail risk among defendants charged with different types of offenses, and this remained true when criminal history was controlled for. The offense categories with the highest combined bail risk (Table 4) are felonies against persons and felonies against property. Comparing defendants accused of those offenses with all other defendants, the combined bail risk percentages are 25.3 per cent for those charged with felonies against persons and property and 16.9 per cent for all others. Although statistically significant, this difference probably results from the fact that felony defendants are more likely than others to have substantial criminal experience. For defendants with zero or one prior arrests, the risk rates are 16.3 for those charged with felonies against persons and property and 12.4 per cent for others; for those with two or more prior arrests, the respective rates are 34.0 and 26.5 per cent. Neither difference is significant. In other words, when differences in criminal history are taken into account, the apparent bail risk difference disappears.

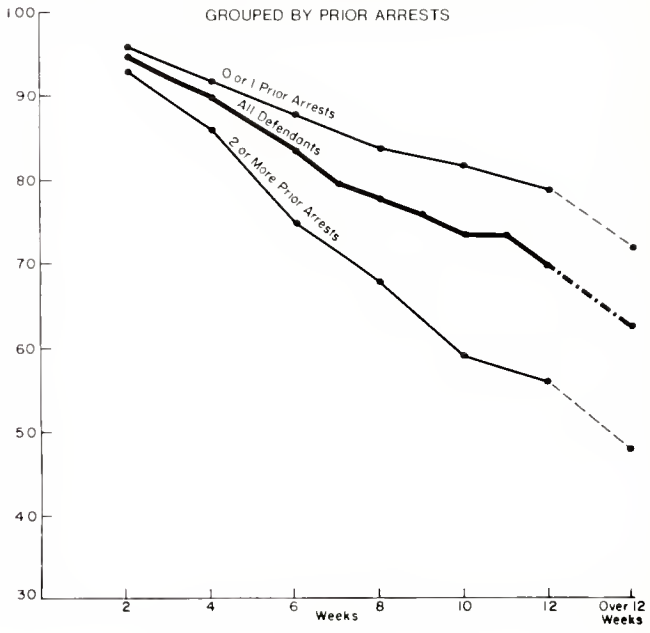
Our data do not support the common belief that the seriousness of the offense charged is strongly related to bail risk, because the apparent effect of seriousness of offense is attributable to criminal history. (As explained earlier, this belief is fundamental to the conventional bail bond system, in which the bond amount is directly related to the seriousness of the charge.) But neither do the data disprove the belief. The fact that the data do not indicate that offense seriousness had an important influence on bail risk may simply indicate that the bail bond system functioned as it was supposed to. Since bond amounts were generally higher for felony defendants, and since almost all of those released were released after signing a bond (even those released by magistrates and the PTR program, as noted earlier), it may be that the threat of bond forfeiture kept the felony defendants' risk down and compensated for the difference between felony and misdemeanor defendants' bail performance. This possibility is somewhat supported by comparing those released on "own recognizance"—the only releasees in the study who were not subject to bond forfeiture—with those released by bondsmen. Adjusted for prior arrests, the survival rates of the "own recognizance" releasees were sometimes lower than those of bondsmen releasees, although the very small size of the former group makes the difference nonsignificant. If these apparent differences are real, they may be attributable to the fact that the "own recognizance" releasees were inherently poor risks, as indicated by the large proportion who were charged with felonies, and that their relatively greater propensity for getting into trouble while on bail was not counteracted by any financial disincentive to nonappearance. (As Table 3 indicates, the "own recognizance" releasees, comprising most of the column labeled "Other," were usually charged with felonies, and often felonies against the person.)

Thus, the seriousness of the defendant's offense may have had a substantial effect on bail risk that was obscured by the countereffect of the bond. This possibility should be kept in mind when considering reform proposals like the ABA's. Even if release like Charlotte's PTR program becomes the standard form of bail, replacing the bondsman system, perhaps it would be wise to retain—as the PTR program did—the threat of financial loss in the form of an unsecured bond, with a higher amount set for those charged with serious crimes.

3. Court delay. The effect of court disposition time on bail risk without adjusting for other factors is shown by the "all defendants" portion of Graph 1, a nearly straight line from a survival rate of .95 at two weeks to .70 at twelve weeks, and .63 for periods over twelve weeks. In other words, during the first twelve weeks after release, the likelihood that defendants would appear and would not be rearrested dropped about five percentage points for each two weeks their cases were open — a clear display of the powerful influence of court delay on bail risk.

Graph 1

SURVIVAL RATES FOR ALL DEFENDANTS AND DEFENDANTS GROUPED BY PRIOR ARRESTS



4. Criminal history. Criminal history, measured here by prior arrests, has a very important relationship to bail risk. To assess the relative importance of the various factors in influencing bail risk (see Table 4), we can use the value of the significance statistic ("Pearson Chi-Square") divided by its degrees of freedom ("df"). For prior arrests, this value is 26.43, a much higher value than that of any other factor. The next highest is form of release, with a value of 7.08 (28.30/4). Table 4 does not take court disposition time into account, of course, but Graph 1 shows that criminal history has an important effect when court disposition time is considered. The survival rate of defendants with two or more prior arrests is significantly lower than that of defendants with one or zero prior arrests at two, four, six, eight, ten, and twelve weeks. Court disposition time has a much worse effect on defendants with two or more prior arrests than on those with zero or one prior arrests. At twelve weeks, only 56 per cent of the former avoid nonappearance and rearrest, compared with 79 per cent of the latter.

5. Form of pretrial release. Graph 2 compares the survival rates of defendants on the four most common forms of bail. These rates are fairly close at two weeks, ranging from 93 to 99 per cent. Thereafter, some fairly clear relationships emerge. The survival rates of PTR and cash bond releases are consistently similar and relatively high. Sharp, significant differences in survival rate are consistently evident between PTR and cash bond releases, on the one hand, and bondsmen releasees, whose survival rate is relatively low and is evidently affected worse by the passing of time. Magistrate and bondsman releasees differ in survival rate at two and four weeks, but show no significant differences from the sixth week onward. PTR and magistrate's releasees' survival rates are not significantly different in any time period but a diverging trend is evident, with the PTR rates staying higher. Magistrate and cash bond releasees' survival rates are not significantly different at any point.

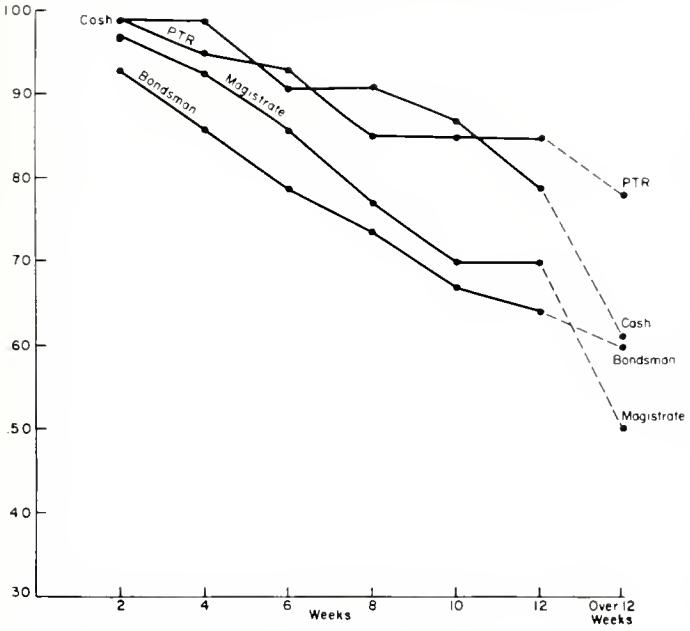
Court disposition time is somewhat different for defendants on different forms of pretrial release. In general, as Table 5 shows, PTR and magistrate releasees were exposed to risk for a somewhat shorter time than cash bond, bondsman, and other releasees, because the cases of PTR and magistrate releasees—for some reason—required more time to be disposed of by the court. This fact makes it important to adjust for the effects of time, as well as criminal history, in comparing forms of release.

6. Form of release, criminal history, and court delay. The analysis so far indicates that, except for court delay, the factors with the strongest relationship to bail risk are the defendant's criminal history and the form of pretrial release he receives. We will now consider the effects of form of release, adjusting for the effects of prior arrests and court delay.

Let us first compare the two conventional forms of bail, cash bond and bondsman release. Cash bond releasees with zero or one prior arrest had significantly higher survival rates for the first eight weeks of release than bondsman releasees with zero or one prior arrest (see Graph 3). For defendants with zero or one prior arrest released by cash bond and bondsmen, the over-all risk rates, respectively, were: failure to appear, 0.0 and 13.6 per cent; rearrest, 3.6 and 8.0 per cent; combined bail risk, 3.6 and 19.6 per cent. Apparently, cash bond releases with zero or one prior arrest *never* failed to appear; this is explained by the fact that (as noted earlier) nonappearance of cash bond releasees tended to be overlooked by judges and prosecutors, with bond forfeiture serving as a sort of "fine paid in advance," and thus did not show up in the court records (the actual cash bond nonappearance rate was probably higher than our data indicate). The relatively few (17) cash bond releasees who had records of two or more prior arrests did not differ significantly in bail risk from bondsman releasees with comparable arrest records, as Graph 3 shows. Judges and prosecutors were probably less willing to overlook nonappearance when cash bond defendants had a substantial criminal history. The

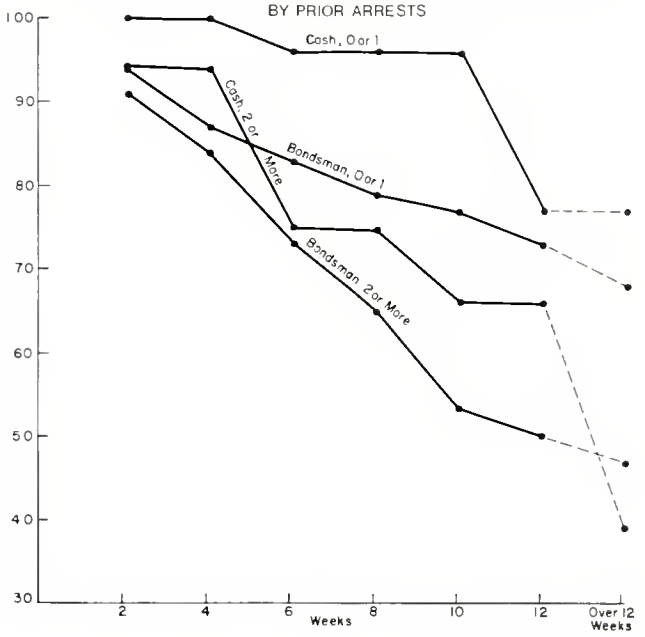
Graph 2

SURVIVAL RATES FOR DEFENDANTS ON VARIOUS FORMS OF RELEASE



Graph 3

CASH BOND AND AND BONDSMAN RELEASEES SURVIVAL RATES BY PRIOR ARRESTS



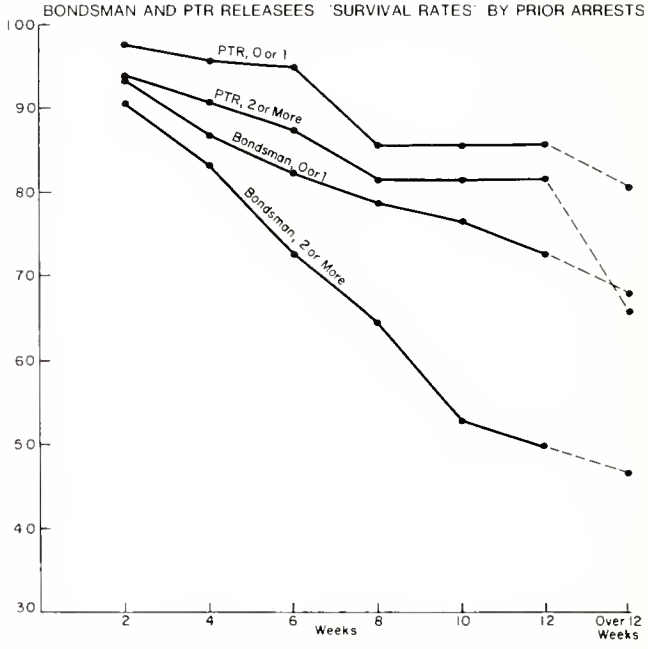
cash bond releasees' survival rate decreased rapidly with the passage of time, just as bondsman releasees' survival rate did. Our conclusion is that there is probably little difference in failure to appear and rearrest between cash bond and bondsman releasees if prior arrests and court disposition time are taken into account.

The comparison of PTR and bondsman releasees (Graph 4) indicates that the PTR releasees were much less likely to fail to appear in court or be rearrested, controlling for criminal history and court disposition time, than the bondsman releasees. Although the differences in survival rate were not significant at all times, the consistent level and slope of the survival curves, plus the significance of some of the survival rate comparisons, support this conclusion. In what ways did PTR release and bondsman release differ? Not with regard to the threat of financial loss if the defendant failed to appear. As noted earlier, all the major forms of release required the signing of a bond. The principal differences were in (1) selection of releasees, and (2) post-release contact and supervision. The PTR program selected its clients from among those who chose to be interviewed by it, applying criteria described earlier, while bail bondsmen presumably accepted anyone who could pay the fee unless he was not a county resident or had unusually serious charges or a notorious criminal history. Our comparison has adjusted for what may be the most important criterion used by PTR, criminal history, but other criteria, such as family ties and the length of local residence and current employment, were considered by the PTR staff that could not be adjusted for in the present study because the necessary data were not available for most defendants. The study did investigate local residence and current employment status (although not their *length*), and neither seemed to have a substantial effect on bail risk even when criminal history and court disposition time were controlled for. Nevertheless, it is possible that other objective criteria employed by PTR, and also the PTR program staff's subjective assessments, may have resulted in the selection of clients whose bail risk was inherently low.

PTR's selection criteria also excluded defendants charged with certain very serious offenses. As explained earlier, all of these were quite rare except for drug felonies—principally illegal distribution of drugs and possession for the purpose of distribution. Those charged with drug felonies were not a group with high bail risk; in Table 4 in the section labeled "Offense Category," we see that defendants charged with "Felony-Vice" offenses (mostly drug felonies) have only average rates of nonappearance and rearrest.

Graph 4

BONDSMAN AND PTR RELEASEES 'SURVIVAL RATES' BY PRIOR ARRESTS



Our tentative conclusion is that selection may explain some but not all of the differences in nonappearance and rearrest between PTR and bondsman releases. Post-release supervision was probably a more important factor in keeping the PTR releasees' survival rate high. The PTR staff maintained regular telephone contact with the releasee, and the PTR releasee was required to report to the program office before each court appearance. It is reasonable to suppose that this had the effect of keeping the releasee aware that someone in authority, acting in his interest, was concerned about his showing up in court as required and staying out of trouble in the meantime. The awareness, in turn, could be expected to increase the likelihood that the releasee would

Table 5
Distribution of Court Disposition Time for Defendants on Various Forms of Release

Time at Risk	PTR	Magis.	Cash	Bondsman	Other	Total
4 weeks or less	46.6%	47.7%	38.9%	37.3%	32.7%	40.7%
4 to 8 weeks	32.6	33.3	25.0	30.0	36.5	31.3
8 to 12 weeks	10.2	8.6	23.6	18.2	17.2	15.5
More than 12 weeks	10.6	10.1	12.5	14.5	13.5	12.7
Defendants who failed to appear or were rearrested or both	19	11	8	84	15	137
Proportion of failed and/or rearrested defendants whose failure or rearrest occurred within 12 weeks of release	89.5% (17/19)	81.8% (9/11)	75.0% (6/8)	96.4% (81/84)	93.3% (14/15)	92.7% (127/137)

appear in court as required, and perhaps also—to a lesser extent—that he would not commit a new offense for which he could be rearrested. (PTR and bondsman releasees differed less in rearrest rates than in nonappearance rates; see Table 4.) The regular reminders also probably helped to overcome the deleterious effect of court delay on the survival rate, since releasees were not allowed to forget their court dates. In contrast, bondsmen maintained no regular contacts, meetings, or reminders. If they had, their clients might have done considerably better.[22]

Comparisons of PTR and magistrate releasees (Graph 5) give further support to the hypothesis that post-release supervision reduces the likelihood of nonappearance and rearrest. As explained earlier, the PTR program and the magistrates used, in some respects, the same criteria in selecting releasees. The releasees they selected (see Table 3) were similar with regard to criminal history, sex, age, and employment, although not with respect to race, income, and type of offense. If subjective assessments entered into the selection of releasees, the assessments made by magistrates were probably more like those made by PTR staff, and vice versa, than like those of bail bondsmen. Since selection procedures were more alike, the selection process probably had less to do with bail risk differences between PTR and magistrate releasees than with bail risk differences between PTR and bondsman releasees. Perhaps because of the similarity in selection procedures, survival curves of PTR and magistrate releasees who had zero or one prior arrests were similar (Graph 5). However, among defendants with two or more prior arrests, a diverging trend seems to have begun after the fourth week of release; by the tenth week, the PTR releasees' survival rate was .82 compared with .55 for magistrate releasees. The differences between the rates were not significant for these two groups, perhaps because the groups were so small (54 and 21, respectively).

These results suggest that post-release supervision of the type provided by PTR counteracted the deleterious effect of court delay on the survival rates of defendants with two or more prior arrests, and that the longer the defendants were exposed to risk, the greater the effect of supervision became (in other words, supervision had a cumulative effect over time). For defendants with zero or one prior arrest, the results are somewhat less clear. Bondsman releasees with zero or one prior arrest had significantly lower survival rates at four and twelve weeks than PTR releasees did. However, magistrate releasees with zero or one prior arrest seem to have done fairly well without post-release supervision, maintaining a survival rate not significantly different from that of PTR releasees. We conclude that defendants with very little or no criminal record probably do not benefit from post-release supervision as much as those with longer records. This suggests that in planning pretrial-release programs, supervision manhours should be allocated first to defendants with longer criminal records and then, if resources permit, to others.

22. When a community is concerned about the poor performance of its bail system but cannot introduce reforms of the ABA-approved type because of lack of funds or political resistance, it may be worthwhile to induce bondsmen to maintain regular post-release supervision, or to provide a minimal staff of court employees to supervise bondsman-released defendants, particularly those with substantial criminal histories.

We have noted that survival rates dropped rapidly as time before court disposition increased, especially for defendants with two or more prior arrests—except for the PTR group, which received post-release supervision. This indicates that reducing court delay, when this is possible consistent with the defendant's procedural rights and other purposes of the criminal court, is an important task for those concerned with improving bail systems. It also suggests that, where post-release supervision is used, more intensive supervision may be desirable if it appears that the court will take a long time to dispose of the defendant's case.

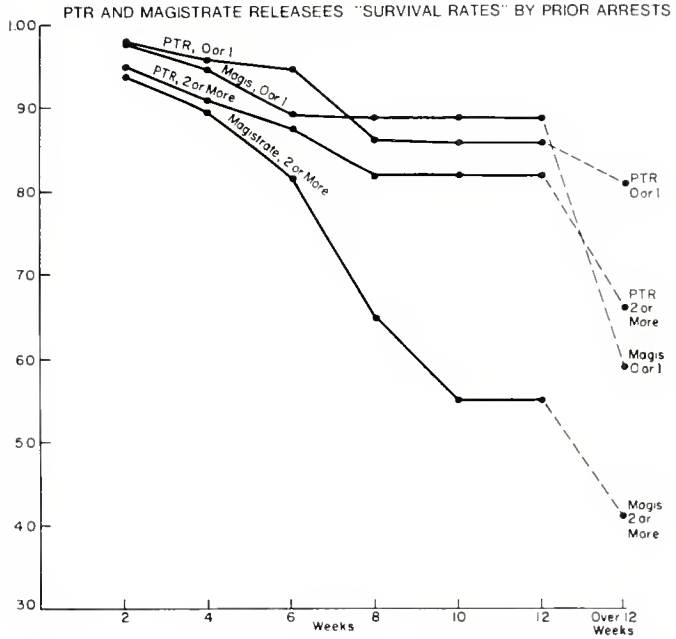
Summary and conclusions

The principal subjects that have been addressed in the study are: (1) the relative importance of various factors in influencing bail risk, defined as the likelihood of failure to appear in court while on bail and/or rearrest on a new charge; (2) the relative effectiveness of various forms of bail in controlling bail risk; and (3) improvements in bail systems suggested by the data. Interpretation of the findings must be cautious because the study was not a scientifically controlled experiment. The following general conclusions seem warranted.

Most important factors. Court disposition time, defined here as the amount of time elapsing from the defendant's release until the disposition of his case by the court (or until he fails to appear or is rearrested, if either of those events occurs before disposition) must be considered the variable of greatest importance. Among the defendants studied, the likelihood of "survival"—avoidance of nonappearance and rearrest—dropped an average of five percentage points for each two weeks their cases remained open. This suggests that reducing court delay should be high on the agenda of those who would reform the bail system, and also that court dispos-

Graph 5

PTR AND MAGISTRATE RELEASEES "SURVIVAL RATES" BY PRIOR ARRESTS



sition time should be taken into account in supervising released defendants (see suggestions below).

Criminal history, here measured in terms of prior arrests, was also of major importance. Without adjusting for court disposition time, the rate of nonappearance and/or rearrest for defendants with two or more prior arrests was twice as great (27.9 per cent) as for those with one or none (12.8 per cent). Criminal history continued to show an important effect when court disposition time and form of release were taken into account.

The particular form of release by which defendants obtained their pretrial freedom was also of great importance in determining their bail risk. The effect of form of release persisted when both criminal history and court disposition time were adjusted for. (More is said below about the relative merits of various forms of release.)

Factors of little or no importance. We originally hypothesized that the likelihood of failing to appear or being rearrested would be higher for male defendants than for female defendants, higher for defendants under 25 than for older defendants, higher for low-income defendants than for high-income defendants, and higher for blacks than for whites. We were wrong. The data showed the relationships of these variables to nonappearance and rearrest to be nonsignificant, even after adjusting for court disposition time. There were significant relationships of sex, income, and race (but not age) to bail risk among defendants with two or more prior arrests, without adjusting for court disposition time, but these relationships were the reverse of those originally expected—females, high-income defendants, and white defendants with two or more prior arrests had higher risk rates than males, low-income defendants, and black defendants, respectively.

The defendant's employment status and whether he had a local residence—both of which are factors included among the American Bar Association's recommended criteria—were not shown by these data to have had any relationship to bail risk among the defendants studied. Because of lack of data, no conclusions were reached about the effects of some related factors on the ABA's list: the length of local residence, employment history, and family ties.[23]

Type of offenses charged. These data showed no significant relationship between the type of offense charged and bail risk, and none emerged when criminal history and court disposition time was controlled for. (Two definitions of type of offense were used: one was simply felony or misdemeanor; the other subdivided felonies and misdemeanors into eight offense categories.) However, a relationship of the seriousness of the offense charged to bail risk may have been concealed by another factor. All defendants released on the four major forms of bail were subject to forfeiture of an amount of money if they failed to appear. In most cases, this bond amount was based on the seriousness of the offense charged, by reference to a standard schedule used for all forms of bail. This financial disincentive may well have counteracted an effect of the seriousness of the offense charged on bail risk. The relationship between offense and bail risk is also indicated by our data concerning the 39 defendants who were released by judges on "own recognizance," with no financial disincentive or post-release supervision. The concentration of felony charges was much higher in this group than in other releasee groups, and the proportion of those who failed to appear and/or were rearrested was the highest of any releasee group.

Relative effectiveness of forms of release. The study centered on the four most common forms of release in Charlotte at the time of the study: bondsman release, cash bond release, PTR release, and magistrate release, described in detail earlier in this article. The first two forms provided release upon a promise to pay the bond amount upon failure to appear in court, with the promise secured by a professional bondsman (bondsman release) or by a deposit of the bond amount in cash (cash bond release). These forms of release were generally available to those who could raise the necessary bondsman's fee or cash amount. PTR and magistrate release involved generally similar selection procedures using criteria of the ABA-approved type, such as local residence, employment history, family ties, and criminal record. The PTR staff supervised their releasees after release; the magistrates did not. Both PTR and magistrate release required forfeiture of the standard bond amount for the defendant's offense if he failed to appear, although the bond was not secured.

We concluded that cash bond releasees probably differed little from bondsman releasees with regard to nonappearance and rearrest; the apparently lower rate of nonappearance and/or rearrest for cash bond releasees with zero or one prior arrest was probably due to the criminal court's overlooking nonappearance and allowing the case to be disposed of by bond forfeiture. PTR and magistrate releasees had generally lower bail risks, adjusting for prior arrests and court disposition time, than cash bond and bondsman releasees, although the observed differences were not always significant. PTR and magistrate releasees performed similarly, although the data suggested that magistrate releasees with two or more arrests might have somewhat higher risks than PTR releasees with two or more arrests.

The different selection procedures used in conventional bond release and in PTR and magistrate release meant, of course, that the groups of defendants released in these ways differed in a number of characteristics that were measured in the study. Some of these characteristics, such as employment status and local residence, had little or no effect on bail risk that could be measured by our data. Criminal history, an important criterion in the PTR screening system, was an important determinant of bail risk; however, even adjusting for court disposition time, defendants with two or more prior arrests released by PTR had lower risk rates (but not significantly lower) than those with equally extensive criminal histories released by bondsmen. If our measurement of the difference in risk rates between PTR and bondsman releasees is reliable, the difference may be explained, in part, by selection criteria employed by the PTR program staff that were subjective in nature or otherwise could not be measured by the study. However, if defendants released by bondsmen had been released instead by the PTR program, using all of the usual PTR procedures except selection, their likelihood of not appearing or of being rearrested would

23. It is possible, of course, that a larger sample might have revealed substantial relationships between bail risk and the factors tentatively treated here as having little or no importance—sex, income, age, race, and employment. We can only say that the present data indicate no such relationships.

probably have been much lower because of the contact and supervision that the PTR program maintained with its clients.

Forms of release can also be compared with regard to the kinds of controls that operate to reduce bail risk after release. All four major forms of release use the threat of financial loss (bond forfeiture) for failure to appear; the bond amount is usually set according to the seriousness of the offense the defendant is charged with, based on the standard schedule. This practice conflicts with the ABA recommendation that the threat of financial loss be used only as a last resort. However, the Charlotte practice of requiring a bond to be signed in all cases may account for the fact that the chance of nonappearance was not significantly different for defendants charged with different types of offenses, if criminal history is taken into account. Our tentative conclusion is that it may be unwise to do away with the requirement that all defendants sign a bond whose amount depends on the offense charged. This does not seem a great hardship for defendants; if the bond is an unsecured one, no bondsman's fee need be paid.

The post-release supervision of its clients maintained by the PTR program substantially reduced the likelihood of nonappearance and (to a somewhat lesser extent) the likelihood of rearrest. Post-release supervision was probably responsible to a large extent for the fact that the nonappearance and rearrest rates of PTR releasees were generally lower than those of defendants released in other ways, adjusting for court disposition time and criminal history. Post-release supervision was evidently more effective with defendants who had a record of two or more prior arrests and therefore presented higher bail risks than others. This finding suggests that in any bail program, priority in supervision should be given to releasees with longer criminal records.

The study indicated that defendants with little or no criminal record who were selected for release by magistrates, using the simple screening procedure described in detail earlier, probably would not have benefited from post-release supervision if they had received it. We think it likely that a great many defendants have an acceptably low probability of nonappearance and rearrest without any post-release supervision whatever. In general, these low-risk defendants are those with little or no criminal record whose cases are not likely to take unusually long to reach court disposition. The releasing procedure used by Charlotte magistrates, which was quite successful in selecting such low-risk defendants, could probably be adapted for use in similar cities at a rather low cost.

The "survival curves" developed in the study suggested that post-release supervision tended to counter the bad effects of court delay on nonappearance and rearrest. This suggests that it is desirable to provide more intensive post-release supervision to defendants whose cases are likely to require an unusually long time to dispose of.

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no more than two weeks and allow the members to concentrate on the budget. Malpractice legislation and utilities nominations received the blessings of the leadership, and each subject was considered during the session. Some other substantive legislation was also introduced, but its sponsors were not so fortunate.

The main subject not allowed to be considered was day care. Legislators interested in day-care regulation, spurred by a fire in a Winston-Salem center that killed two children, introduced an authorizing resolution, H 1304, and a substantive bill, H 1305, to require licensing of those who care for children without receiving compensation, to allow the day-care licensing board to seek injunctive relief when a facility violates an order of the board, to create a prima facie presumption of the need for a license, and to make board orders effective even while on appeal. The resolution was reported unfavorably by the House Rules Committee, but Rep. Cook of Wake led a successful effort to have the resolution considered. The resolution passed the House, receiving the necessary two-thirds vote, but the Senate Rules Committee also reported the resolution unfavorably. Sen. Davis of Forsyth asked the Senate to consider it in spite of the unfavorable report, but, unlike the House, the Senate did not approve the measure by the two-thirds vote necessary to overcome the committee's action. Those who opposed the resolution in the Senate indicated that they voted against it because it was not a budget bill and they wanted to limit the session to budget matters (or "emergency" situations such as malpractice).

Other subjects treated in local bills not affecting the budget received favorable treatment in the House, but the Senate Rules Committee and the full Senate rejected every effort to allow local bills until the last day of the session. After the Senate had approved the appropriations bill on the last day and was waiting on the House to pass it, Sen. Gudger of Buncombe succeeded in passing a resolution previously approved by the House, H 1287, authorizing a local bill affecting only Buncombe County. The Senate quickly agreed to consider all other authorizing resolutions for local bills that had been introduced. Since many of them were in committee, they adjourned to allow the Rules Committee to report all the resolutions to the floor. During the recess, however, the leadership apparently decided to stop the movement before any of the substantive bills were ratified; both Houses adjourned *sine die* two hours later with the Buncombe County bill, H 1288, needing only Senate approval to be ratified. Although the bill arrived from the House at least an hour before adjournment, the Senate never debated the bill.

During the past decade we at R.J. Reynolds have provided more than $1,300,000 for agriculture research at major southeastern universities. We've done this because we feel that research, like seed, needs to be nurtured and carefully tended to achieve maximum yield. These grants have been used to fund research in many areas including the methods of using pesticides, disease control and tobacco harvesting procedures. They have also helped 48 graduate students to achieve higher degrees, many of whom have gone on to work in tobacco research or agri-business. So we feel that our funding is bearing fruit. Not just for us, but for all segments of agriculture.

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