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Gun Control in N.C.

DUI Law

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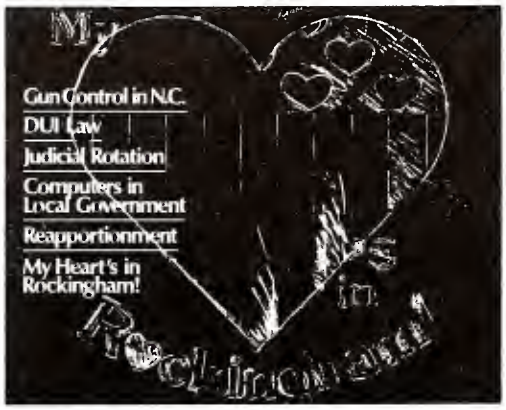
My Heart's in Rockingham!



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North Carolina's Pistol Permit Law: An Evaluation

Philip J. Cook and Karen Hawley

A pistol purchaser in North Carolina must obtain a permit in his county of residence — from the sheriff (in 81 counties) or clerk of superior court (in 19 counties) — before he can take possession of the gun. This article, based on a survey in 81 counties and an intensive investigation of six urban counties, will describe in detail how the pistol permit works.

The current permit system

The pistol permit law, which has been on the statute books with little amendment since 1919,[1] leaves much to the discretion of local officials. The statutes say that the issuing official is to "fully satisfy himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant . . . ," but sheriffs and clerks are free to interpret this requirement and to devise their own ways to check the moral character of applicants. As a result, operational standards and procedures differ widely among the counties — which raises the question whether local discretion should be narrowed by law.

Under the law, a permit may be issued to an applicant only if he needs the pistol for "protection of the home." People who wish to buy handguns for target-shooting, hunting, or collecting must conceal their true intentions in order to obtain a permit from a sheriff who follows the letter of the law. This feature is peculiar, because most people consider collecting and target-shooting as legitimate purposes for owning a handgun. In any event, this provision appears to be largely ignored. Most counties allow applicants to apply for several permits at a time and to acquire virtually any number of handguns over the years — for example, one couple in Forsyth County took out 76 permits in two years. If the state is serious about limiting handgun sales to those who need them to defend their homes, the law should be amended to establish a well-defined ceiling on the number of permits that can be issued to any one household.

While the permit law requires sheriffs and clerks to keep a record of permits issued, it stops short of mandating a registration system. Sheriffs' and clerks' files typically include no information on the weapon to be purchased with the permit, which means that police find these files of little use when they investigate a violent crime.

Not surprisingly, handgun buyers can find ways to circumvent the permit system: Probably more than half of the handgun transactions in North Carolina violate the pistol permit requirement. Many buyers do not apply for permits because they know they are not eligible or because they want to avoid the expense, delay, and hassle of the permit application process.

The legal and policy context

Commerce in firearms is subject to fairly extensive federal regulation, and many states have joined North Carolina in imposing additional regulations on handguns.

The federal law. The Second Amendment to the U.S. Constitution (as well as Article I, Section 30, of the North Carolina Constitution) guarantees "the right of the people to keep and bear Arms." The courts have interpreted the Second Amendment right — which is connected with the maintenance of the state militia — as a collective rather than an individual right. The individual's right to possess firearms — as many court decisions have established — can be reasonably regulated by Congress and state legislatures.

Philip J. Cook is associate professor of public policy studies and economics at Duke University. Karen Hawley was a research assistant at Duke last summer and is now a student at Yale University. The project that the authors describe was supported by the Center for the Study and Prevention of Handgun Violence in Philadelphia, Pa.

1. N.C. GEN. STAT. CH. 14, Art. 52A, 53. In 1959, the responsibility for issuing permits was switched from the clerk of court to the sheriff, although 19 counties were eventually exempted from this change. In 1979 the law was amended (1) to require that permit applications be issued by the sheriff or clerk in the county where the applicant resides rather than where the purchase of transfer of the pistol occurs, and (2) to repeal the permit requirement for pumpguns, bowie knives, dirks, daggers, slungshots, blackjacks, and metallic knuckles.

The Gun Control Act of 1968 is the most recent significant federal legislation in this area. This act severely limits interstate movement of firearms and creates an environment in which states may choose the degree to which sales and possession of firearms are regulated. In particular, the Gun Control Act bans mail-order shipments of firearms to individuals who do not have a federal dealer's license and provides that unlicensed individuals may purchase firearms only in their state of residence.[2] Before these provisions were adopted, each state found it impossible to control the acquisition of firearms by its residents.

The Gun Control Act also denies the right to acquire or possess firearms to certain categories of people: those convicted of or under indictment for felonies, fugitives from justice, drug addicts, those involuntarily committed to mental institutions, illegal aliens, and those with dishonorable discharges from the armed forces. In addition, it is illegal for anyone to sell handguns to persons under 21 years of age or long guns to persons under 18. These restrictions are binding on North Carolina: A person with one of these characteristics cannot legally buy a handgun even if his sheriff decides that he is of "good moral character."

State laws. About half of the states (these states include almost two-thirds of the country's population) have some system for screening handgun buyers that gives law enforcement agencies an opportunity to check an applicant's criminal record. Some jurisdictions have gone even further: Rhode Island now requires handgun purchasers to take a short safety course; New York City has a very intensive and time-consuming system for screening firearms buyers; and Washington, D.C., has banned all handgun acquisition by residents. But most states with legislated handgun transfer provisions have "permissive" systems that are similar to North Carolina's — that is, most adults are eligible and the screening process is not very intensive.[3] The unusual feature of North Carolina's system is the wide discretion given to county officials in determining standards and procedures for issuing permits. Although most provisions of the federal Gun Control Act do not distinguish between handguns and long guns, most state laws are similar to North Carolina's in focusing regulatory restriction primarily on handguns.

One reason why handguns are more stringently regulated than long guns is that they are easily concealed and lend themselves more readily than long guns to criminal use. Over 90 per cent of the gun robberies and three-quarters of the gun murders in the U.S. involve handguns. (The corresponding figures for North Carolina are somewhat different — only 58 per cent of gun murders in this state during 1978 involved handguns.)

Strategies for controlling handgun commerce. Firearms have a variety of uses, most of them legitimate. Half of the households in this country now possess some sort of firearm, and half of these own a handgun. About two million new handguns enter the market each year, and millions more are sold used.[4] The corresponding figures for rifles and shotguns are much larger.

While firearms ownership is widespread and nearly all Americans believe that the Constitution guarantees the right of individuals to possess firearms, it is also true that a large majority favor certain restrictions on firearms commerce. Public opinion surveys consistently show majority support for a purchase permit requirement, a required waiting period between permit application and the transfer of the gun, and universal registration.[5] But they show relatively little public support for an outright ban on the manufacture and sale of handguns (except for "Saturday night specials"). Guns are here to stay. The question now is whether a system can be devised that allows reasonably trustworthy people to enjoy the legitimate benefits of having firearms while at the same time preventing those who may use guns foolishly or in criminal activity from obtaining them.

Reasonable objectives for any screening system are fairness and effectiveness in reducing handgun violence without imposing a hardship on taxpayers and gun purchasers. What should a control system contain in order to achieve these objectives?

Where and how do we draw the line? What sorts of people are too dangerous to be entrusted with deadly weapons? The Gun Control Act specifies several fairly narrow categories (see far left column). Some states have added other categories to the "proscribed" list, including alcohol abusers and people with misdemeanor convictions for violent crimes.

North Carolina's statute is unusual since it leaves the line it draws between "entitled" and "proscribed" (those with "good moral character" are entitled) is vague. As a result, the clerks of superior court and sheriffs in each county have been left to make their own rules for screening applicants. There is a lot to be said for permitting discretion in the screening process, especially when the discretion is exercised by an elected local official who should be sensitive to his constituency's opinions and needs. But such a system also has two problems. First, it may lead to capricious or unjust discrimination in the screening process; second, it generates considerable diversity among counties, and the more lax counties may undermine the efforts of the more stringent counties.

Who are the gatekeepers, and how are they regulated? A permit system cannot be effective in preventing proscribed individuals (however defined) from buying handguns unless it provides a penalty for buyers or sellers who circumvent the system. About half of all handgun sales are made by federally licensed dealers, who face a nominal threat of license revocation or even criminal penalty for knowingly making sales that violate federal or state law. But selling a handgun to a customer who lacks the required permit is a

2. The only exception is that residents of one state may purchase rifles and shotguns in contiguous states if their state of residence authorizes this type of commerce.

3. A detailed review of state systems is presented in James Blose and Philip Cook, *Regulating Handgun Transfers: Current State and Federal Procedures, and an Assessment of the Feasibility and Cost of the Proposed Procedures in the Handgun Crime Conrol Act of 1979* (Durham, N.C.: Institute of Policy Sciences, Duke University, 1980).

4. *Ibid.*

5. James Wright, *Public Opinion and Gun Control: A Comparison of Results of Two National Surveys* (Amherst, Mass: University of Massachusetts, 1979).

victimless crime — there will be no private complainant. Discovering and prosecuting such violations requires proactive policing of dealers' activities by federal and/or state officials. The federal regulatory effort is minimal, because the Bureau of Alcohol, Tobacco, and Firearms lacks the capacity for effective oversight of the 170,000 dealers it licenses each year. A number of states, including North Carolina, also license handgun dealers and could conceivably take responsibility for overseeing their activities.[6] But this is not the practice — at least not in North Carolina.

Sales by nondealers in the secondhand market are still more difficult to regulate effectively. Senator Edward Kennedy's proposed Handgun Crime Control Act of 1979 (which was not enacted by Congress) sought to remedy this problem by requiring that all handgun sales be channeled through licensed dealers. The bill's incentive for compliance with this provision was that handgun owners would be civilly liable for wrongs committed with their guns unless they had reported them lost, stolen, or (legally) transferred to another individual. The bill also required universal registration, which is necessary to a liability system.

Civil liability is in effect a substitute for proactive regulatory efforts. One analogy is the "dram shop laws," which impose civil liability on sellers of alcoholic beverages for wrongful actions of their customers under certain circumstances.[7] Civil liability for handgun dealers who violate state statutes might well be an effective deterrent. Liability for private owners is more doubtful as a deterrent but also deserves consideration.

There is no foolproof screening system for preventing handgun violence. Even if the system is 100 per cent effective in preventing proscribed people from obtaining handguns, some of the entitled people will use their guns in crime. And some proscribed people will inevitably obtain handguns — if not from a dealer, then through theft or the black market. But a moderate system of handgun control, if it is well designed and effectively enforced, can discourage or delay some dangerous people from obtaining guns.

Pistol permits in North Carolina

Volume. Our data on North Carolina's permit system come from the responses to a questionnaire that was mailed to all 100 counties in June 1980. Eighty-one counties (they include 89 per cent of the state's population) responded.[8]

These 81 counties issued 3,148 permits in May 1980. Projecting this rate statewide yields an estimated annual total of about 42,000 permits, or eight for every 1,000 residents.[9] It would be interesting to know how the volume of permits issued has changed over time. Our only information on this is that the number of permits issued in Forsyth County increased from 1,463 in 1975 to 2,361 in 1979 — more than 60 per cent.[10]

The permit application process is by no means a "rubber stamp" operation. Overall, more than one of every nine applicants were denied in May 1980.[11] Durham County denied 100 applicants and Craven County denied 70 in that month. At the other extreme, Cumberland reports issuing 355 permits in May 1980 without a single denial. (Some of these extreme cases could be clerical errors in answering the questionnaire.)

It would be naive to suppose that every handgun transfer in North Carolina is conducted legally. A rough estimate of the fraction of handgun sales that violate the permit law can be made as follows: Nationwide, about four million handguns are sold each year.[12] This translates into a rate of about 18 handguns sold each year for every 1,000 Americans — more than twice the estimated rate (eight per 1,000) at which permits are issued in North Carolina. But it is doubtful that the rate of handgun transactions is actually lower in North Carolina than in the nation as a whole. Indeed, the South is characterized as having a much higher rate of handgun ownership than the rest of the nation,[13] so there is presumably a higher rate of handgun sales in the southern states than elsewhere. We conclude, then, that there are probably more handguns sold illegally in North Carolina than are sold with a permit.

Detailed procedures for issuing permits. Procedures for issuing permits differ among North Carolina counties in a number of ways: the use of character witnesses, the length of the waiting period (if any), the limit on the number of permits that any one applicant may request at one time, the amount of information kept in the sheriffs' or clerks' files, and the fee. It seems not to make much difference whether the clerk of superior court or the sheriff is responsible for issuing permits. Most clerks appear to work closely with the sheriff's office and to use his files in screening permit applicants.

To supplement the information from the questionnaire, we visited six urban counties — the five most heavily populated counties plus Durham County — to interview those officials who are responsible for issuing permits and to inspect their records. Their procedures can be described as follows:

Mecklenburg. An applicant fills out a federal gun registration form for

6. The North Carolina Commissioner of Revenue licenses handgun dealers at an annual fee of $50.

7. For a discussion of such laws, see James F. Mosher, "Dram Shop Liability and the Prevention of Alcohol-Related Problems," *Journal of Studies on Alcohol* 40, no. 9 (1979).

8. The results from each of the responding counties are tabulated in an appendix to this article, which is available from the authors.

9. This estimate assumes that May is a typical month with respect to the volume of permit applications. It also assumes that nonresponding counties issued permits at about the same per capita rate as responding counties.

10. Based on our count of permit records in the Forsyth County files.

11. Many responding counties could not count the number of denials because no records were kept on denials.

12. Blose and Cook, *op. cit. supra* note 3.

13. The National Opinion Research Council's 1973 General Social Survey found that 31 per cent of southern households owned handguns compared with 15 per cent of other households in the U.S. See James Wright and Linda Marston, "The Ownership of the Means of Destruction: Weapons in the United States," *Social Problems* 23 (October 1975).

a specific weapon at a gun dealer's establishment and takes it to the sheriff's office, where he fills out an application.[14] The application is forwarded to the police department for a complete criminal records check that is based on police and sheriff's records as well as the Police Information Network (PIN); county court records on mental hospital commitments and the like are also checked. This process takes about seven work days. If the background check casts doubt on his eligibility, the applicant is interviewed by the sheriff. No more than three permits are issued at a time. Each permit costs $3. Files on both approved and denied applications are kept in alphabetical order in four-year groups. These files constitute a sort of county registration system, since they include the information from the dealer.

Wake. An applicant for a permit must bring a character witness with him to the sheriff's office to cosign the application. The applicant receives a brochure that explains the permit procedure, laws governing the use and transfer of handguns, and safety information. The application process takes seven days while a background check is made that uses sheriff and police files and the PIN. An applicant is denied a permit if he has had almost any type of arrest, but a denied applicant can request a hearing with the sheriff. A maximum of five permits may be issued per application at $3 per permit. Each permit is good for the purchase of any one handgun without time limit. Records are kept in rough chronological order.

Durham. An applicant fills out an application at the sheriff's office after showing identification. During the seven-day waiting period, the applicant's police and sheriff's records are checked and his application will be denied if he has had any convictions other than for minor misdemeanors. Three local character references are required; these character witnesses will be interviewed if the applicant's eligibility is questionable. Only one permit may be issued per year per individual; it costs 50 cents. Records for both approved and denied applications are kept alphabetically and are easily searched.

Forsyth. The Winston-Salem Police Department does a records check on an applicant the same day that he applies for a permit. The application must be signed by two character witnesses, unrelated to the applicant, who also receive a records check. If the applicant has had a felony conviction, the sheriff personally reviews his application. Permits specify the caliber of the weapon to be purchased. The number of permits per visit is not limited, and each permit costs $3. Files are kept alphabetically by quarter-year.

Cumberland. An application for a permit must be cosigned by a law enforcement officer who knows the applicant. Applicants who do not know any officers can request an interview with the sheriff. Sheriff's files are checked on the spot, with no waiting period.[15] Applicants are denied only if they have had a felony conviction. A limit of five permits may be issued per visit, but this limit is exceeded occasionally. Each permit costs $3. Records of permits are kept in chronological order.

Guilford. A permit applicant brings a character witness to the sheriff's office; either he or the witness must be known to someone in the office.[16] No criminal record check is made, and no limit is placed on the number of permits per visit. The permit, which costs $2, does not specify the type of weapon or any time limit on purchase. Records are not filed for convenience in searching.

The sheriffs in these six counties differ considerably in the way they implement the pistol permit law. The other 75 counties that responded to our questionnaire differ still more. Economics may explain why some sheriffs and clerks have chosen not to investigate the applicant's criminal and mental record. Processing permit applications in the urban counties can be a time-consuming activity with several hundred applications per month to handle. The more elaborate the permit system, the more effort is diverted from other law enforcement tasks. In 92 counties state law allows sheriffs and clerks to charge only 50 cents per permit, which may have been reasonable in 1919 but is grossly inadequate to cover costs today. In eight other counties — including Wake, Forsyth, and Mecklenburg — the law now allows fees ranging from $2 to $3. In practice, about half of the responding counties (including five of the six described above) charge more than 50 cents. Greene, Moore, and Rockingham counties charge $5 and Caswell charges $10 per permit. Fees in the $5-$10 range, while not now permitted by law, are appropriate if the intent is to recoup the cost of permit investigations. Counties that feel constrained to charge lower fees may be tempted to minimize the permit investigation because of budget and manpower problems. If the fee were raised substantially statewide, it would deter some people from buying guns and divert others from the legal market to illegal sources.

Checking for "good moral character." North Carolina law requires that pistol permits be issued only to applicants of "good moral character." An applicant's character can be checked in police and court files (in which case that ambiguous phrase is defined as the absence of serious trouble with the law) or by consulting character witnesses and personally interviewing the applicant. The latter approach lends itself to a more open-ended definition of good moral character. Most counties use both approaches.

Of the 81 counties that responded to our questionnaire, 62 (77 per cent) reported that they routinely checked to see whether an applicant had a criminal record; the rest (with one exception) reported *sometimes* making such checks. The sheriff's office can make criminal record checks by using files kept by the local police and court files as well as the sheriff's own files. A few sheriffs also check the files of neighboring counties. The Police Information Network, which includes a statewide computerized criminal history file,[17] was used routinely by 33

14. If the applicant intends to buy the gun from a nondealer, he must bring two character witnesses with him to the sheriff's office.

15. Cumberland's response to the questionnaire included a comment that the system could be improved with a waiting period.

16. Alternatively, the applicant may be vouched for by a notary public, lawyer, doctor, minister, or law enforcement officer.

17. PIN includes information on arrests and convictions reported by local jurisdic-

(41 per cent) of the responding counties and sometimes used by another 24.

Most responding counties reported applying a very stringent standard in screening permit applicants on the basis of criminal history information. The federal Gun Control Act effectively bars applicants who have a felony conviction or are under indictment, who are fugitives, or who have a history of drug abuse (not including alcohol). Eighty-eight per cent of the responding counties reported that they also deny permit to applicants who have been arrested for violent crimes; 69 per cent reported denying permits to applicants who have a history of public drunkenness or have drunk-driving arrests.[18]

Fifty responding counties (62 per cent) require character witnesses — usually in addition to making some sort of criminal record check. The problem with character witnesses is that *their* character may be in doubt. Sixteen of the responding counties have resolved this problem by requiring that one or more of the character witnesses be law enforcement officers in the county. In smaller counties the sheriff knows most applicants personally (a quarter of North Carolina counties have less than 20,000 residents). A permit system that relies heavily on the sheriffs' and deputies' impressions rather than, or in addition to, the concrete evidence of a criminal record may lead to favoritism or improper discrimination. But we have no evidence that such discrimination actually occurs.

Sheriffs and clerks of superior court in North Carolina have unreviewable discretion in issuing pistol permits. Although most sheriffs appear to exercise their discretion conscientiously and to apply a stringent standard in screening applicants, the lack of clear legal guidelines makes the permit system vulnerable to abuse. In fact, some responding sheriffs commented that the state law should contain stronger restrictions — too much discretion was left to issuing officials. Serious thought should be given to a legislative clarification of the "good moral character" requirement. Also, rules governing screening procedures and standards should be enacted to restrict discretion and provide some opportunity for appeal.

Checking the applicant's purpose. The permit law requires that the sheriff or clerk "fully satisfy himself by affidavits, oral evidence, or otherwise . . . that [the applicant] requires the possession of the weapon mentioned for protection of the home." The statutes provide no other legitimate reason for obtaining a handgun. Counties that use application forms fill this requirement by including an open-ended question ("Why do you need a pistol?") or an affirmative statement that the applicant must sign. A few sheriffs discuss this issue with the applicant in an interview.

As a practical matter, it is impossible to determine directly whether the applicant actually "requires" the handgun in question to protect his home. This condition is vague enough that any applicant could attest to it without fear of being legally liable for making a false statement. But sheriffs can elect to implement the spirit of the law by limiting the total number of permits issued to any one household; surely no home "requires" more than three handguns for protection. The sheriff of Tyrrell County appears to enforce the requirement most stringently: He ordinarily issues only one permit per family and does not issue a second even if the first gun is sold. The Rowan County application form states: "Additional permits may be issued only when the Sheriff is fully satisfied that an individual needs more than one pistol for the protection of his and/or her home." Durham limits applicants to one permit per year. Other counties limit the number of permits that can be issued per visit (e.g., Cumberland's and Wake's limit of five). But most respondents to our questionnaire did not mention any limit of this sort.

Forsyth does not limit the number of permits issued per application. We checked the Forsyth permit log, to estimate the incidence of multiple purchasing in that county in recent years. While most applicants (75 per cent in 1975, 64 per cent in 1979) requested one only permit, a few purchased multiple permits. Indeed 9 per cent of the applicants in 1975 purchased 25 per cent of the permits issued in that year. During a two-year period (1974-75), 31 applicants purchased six or more permits; one of these purchased 57, and another — the most extreme case — purchased 76.

Why would people buy so many handguns? Probably because they are collectors. It is also possible that some are in the business of reselling handguns to people who do not wish to apply for a handgun permit or are ineligible to do so because of their age, criminal record, or out-of-state residence. In any event, acquiring so many guns surely does not comport with the statutory requirement that the purchase of a handgun be only "for protection of the home."

Record-keeping. The state law requires that the sheriff or clerk of superior court keep a record of permits issued that includes "the name, date, place of residence, age, former place of residence, etc." of the permit-holder and that this record be available to law enforcement officers on request. Over half (46) of the responding counties indicated that these records had been consulted during the preceding year in the course of a criminal investigation. But with few exceptions, the usefulness of these records is greatly limited because they do not include (and the law does not require them to include) information on the pistol that was purchased with the permit. Therefore they cannot be used to prove ownership if the handgun is stolen or to trace to its owner a handgun suspected of having been used in a crime. The records' usefulness is further limited when they are kept in chronological order (as many counties do) rather than alphabetical order.

Mecklenburg County has adopted a useful registration device: Permit applicants must file a copy of the federal form used by gun dealers with the sheriff. This form includes the dealer's name and the serial number and description of the gun that is to be purchased. But Mecklenburg's system has two major loopholes: After receiving

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tions during the last five years, as well as information on outstanding arrest warrants, etc. Local police files are usually more complete for local arrests but lack information on arrests in other jurisdictions.

18. It should be noted that five respondents apparently misunderstood the question on which these figures are based. Their responses indicated that they had reversed the meaning of the question. In tabulating responses, we transformed their answers.

his permit, an applicant can purchase a handgun other than the one specified on the dealer's form, and handguns purchased from nondealers ordinarily are not registered.

Agenda for a complete evaluation

Our study of the pistol permit law leads us to conclude that it is unnecessarily vague and incomplete if it is intended to create a regulatory framework for commerce in handguns, and we offer the following suggestions. They are not conclusive — we cannot prove their merit. A commission should be appointed to do a comprehensive review of the state handgun law, and these suggestions might be used as its agenda.

1. Sheriffs should be given more specific guidance for screening pistol permit applicants than the current "good moral character" standard.
—A PIN criminal history check should be mandatory.
—A minimum waiting period should be required that allows a "cooling off" period for the applicant and adequate time for the sheriff to complete an investigation.
—The federal "proscribed categories" (felony indictees and convicts, persons aged less than 21, etc.) should be restated explicitly in the state statute.
—The permit fee should be high enough to cover the cost of a criminal record check.
—The practice of requiring that an application be cosigned by a law enforcement officer should be limited. Each county should specify an alternative procedure for applicants who are not acquainted with any officers.
—Applicants who are denied permits should have a limited right to appeal.

2. Applicants should be limited to two or three handgun permits per year.

3. The requirement that permits be issued only to applicants who need the gun to protect their home should be modified to allow acquisition of handguns for sporting purposes.

4. The record-keeping requirement should be expanded.
—Sheriffs should be required to keep records of permit applications that were denied to facilitate prosecution of people who acquire handguns illegally.
—Files should be kept alphabetically so that the names of handgun owners can be easily retrieved.
—Files should include the serial number and description of the handgun to be purchased.

5. Steps should be taken to reduce the illegal trade in handguns.
—Handgun dealers should be civilly liable for harm caused by weapons that they sell in violation of the pistol permit law.
—A state agency should be empowered to regulate the activities of dealers licensed by the state.
—Nondealers who sell their handguns illegally should be civilly liable under some circumstances.

These revisions are intended to make the pistol permit system more effective and fair without substantially increasing its costs. ■

Lewis Atwater Receives Massey Award

Lewis (Jack) Atwater, Sr., who was associated with the Institute of Government from 1940 to 1975, was honored recently for his exceptional service to The University of North Carolina at Chapel Hill when he received a C. Knox Massey Distinguished Service Award.

Atwater was supervisor of the Institute's printing and mailing services when he retired. Over the years he performed and supervised many different support services — housekeeping, printing, binding, and mailing. Because he gave extra time and effort to help staff members, Atwater was regarded often as the right arm of the Institute. In its tentative early days, Atwater was one of an intensely loyal little band of employees who gave outstanding service and without whom the Institute might not have survived.

One of four retired employees of the University at Chapel Hill who received the Massey award this year, Atwater was cited as follows:

> Painstaking attention to every detail, unflagging patience under pressure, willingness and capacity to grow as the Institute of Government grew in size and complexity — all these marked the thirty-five-year career of its first janitor, who, accepting ever-increasing responsibility for support services, including not only housekeeping, but mail-handling and duplicating and binding facilities, trained and supervised a permanent staff of five and a succession of University students working part-time. Durable friend of all his colleagues, willing always to give up his personal convenience in the interests of their and his work, in the fiftieth year of the Institute of Government it is peculiarly appropriate that Lewis Atwater, Sr., receive a C. Knox Massey Distinguished Service Award.

The chancellor presented the Massey awards, each of which included a $1,000 stipend, during a luncheon at the Carolina Inn in April attended by C. Knox Massey and members of his family, friends and families of the recipients, and University officials.

The Massey awards program began in 1980 with a gift from Massey, a 1925 UNC-CH alumnus and former trustee. The awards are for "unusual, meritorious or superior contributions made by an employee, past or present, to the University." — *PMD*

North Carolina DUI Law: Another Update

Ben F. Loeb, Jr.

How do DUI conviction rates for 1979 compare with similar figures in 1975?

ALCOHOL USE is an important element in at least half of all fatal traffic accidents according to a number of studies. Thus the drinking driver gets considerable attention from many state legislatures, including the North Carolina General Assembly. For many years before 1975, North Carolina law had provided that any person with a blood alcohol level of 0.10 per cent or more was presumed to be under the influence. Defendants were, however, increasingly successful in rebutting the presumption and being acquitted. The 1973 North Carolina General Assembly attempted to solve this problem by enacting a new law making it unlawful to drive a vehicle when the driver had a blood alcohol content of 0.10 per cent or more, regardless of the actual extent of intoxication. This new act became effective on January 1, 1975.

There are now several separate statutory provisions dealing with driving under the influence: G.S. 20-139 makes it unlawful to drive under the influence of any drug (or to drive at all if one is a habitual user of a narcotic drug); G.S. 20-138(a) prohibits driving under the influence of intoxicating liquor; and G.S. 20-138(b) prohibits operating a vehicle upon a highway or public vehicular area when the amount of alcohol in the blood is 0.10 per cent or more by weight. Conviction of any of these offenses is punishable by fine and/or imprisonment and also results in revocation of the driver's license.

Conviction data for the first six months of 1975 were discussed in an article in the Winter 1976 issue of *Popular Government*. Those figures indicated that the new law was not having the desired effect. Specifically, they showed that a smaller percentage of those who were arrested for DUI during the first half of 1975 were convicted than in the year before the new law was enacted.

When these 1975 data were presented, no statewide statistics were available to indicate how many of the

The author is an Institute faculty member whose specialties include motor vehicle law.

Table 1

North Carolina DUI Conviction Rate During 1975 for Those Defendants Who Took a Chemical Test

BAC Level	Number Convicted of DUI or 0.10[a]	Number Not Convicted of DUI or 0.10[b]	Percentage Convicted of DUI or 0.10
0.00	50	491	9.2%
0.01-0.05	80	2,089	3.7
0.06-0.09	192	3,657	5.0
0.10-0.15	8,073	6,375	55.9
0.16-0.20	10,816	1,759	86.0
0.21-0.25	6,123	618	90.0
0.26-0.30	2,290	211	91.6
0.31-0.35	569	60	90.5
0.36 and above	134	14	90.5
0.10 and above	28,005	9,037	75.6%

[a] Includes those convicted of driving under the influence of liquor or drugs or having a blood alcohol level of 0.10 per cent or more. Also includes cases disposed of in 1976 if arrest was made in 1975.

[b] Includes those found guilty of a lesser offense, such as reckless driving, or found not guilty of any offense.

Table 2

North Carolina DUI Conviction Rate During 1979 for Those Defendants Who Took a Chemical Test

BAC Level	Number Convicted of DUI or 0.10[a]	Number Not Convicted of DUI or 0.10[b]	Percentage Convicted of DUI or 0.10
0.00	44	716	5.8%
0.01-0.05	73	3,256	2.2
0.06-0.09	173	5,371	3.1
0.10-0.15	8,098	9,172	46.9
0.16-0.20	10,557	1,984	84.2
0.21-0.25	5,053	583	89.7
0.26-0.30	1,679	176	90.5
0.31-0.35	394	37	91.4
0.36 and above	78	8	90.7
0.10 and above	25,859	11,960	68.4%

[a] Includes those convicted of driving under the influence of liquor or drugs or having a blood alcohol level of 0.10 per cent or more. Also includes cases disposed of in 1980 if arrest was made in 1979.

[b] Includes those found guilty of a lesser offense, such as reckless driving, or found not guilty of any offense.

Table 3

A Comparison of North Carolina DUI Conviction Rates by County in 1975 and 1979

(Figures limited to defendants with BAC level of .10 or more only)

County	Percentage Convicted of DUI or .10 1975	1979	Changes from 1975	County	Percentage Convicted of DUI or .10 1975	1979	Changes from 1975
Alamance	64.1	51.6	—12.5	Johnston	85.7	73.5	—12.2
Alexander	68.8	58.9	— 9.9	Jones	86.2	69.8	—16.4
Alleghany	92.1	74.1	—18.0	Lee	81.6	65.8	—15.8
Anson	78.2	52.9	—25.3	Lenoir	83.9	60.8	—23.1
Ashe	77.0	66.4	—10.6	Lincoln	47.7	50.3	+ 2.6
Avery	78.6	62.7	—15.9	Macon	80.4	73.6	— 6.8
Beaufort	83.1	86.8	+ 3.7	Madison	75.7	65.9	— 9.8
Bertie	84.1	79.8	— 4.3	Martin	85.2	86.0	+ 0.8
Bladen	74.7	56.3	—18.4	McDowell	90.5	88.9	— 1.6
Brunswick	73.8	65.7	— 8.1	Mecklenburg	70.0	77.6	+ 7.6
Buncombe	95.0	95.3	+ 0.3	Mitchell	65.0	57.4	— 7.6
Burke	70.2	59.5	—10.7	Montgomery	92.6	76.2	—16.4
Cabarrus	89.6	77.8	—11.8	Moore	76.3	58.9	—17.4
Caldwell	72.3	58.0	—14.3	Nash	77.3	69.1	— 8.2
Camden	89.0	80.6	— 8.4	New Hanover	71.0	66.8	— 4.2
Carteret	83.5	66.6	—16.9	Northampton	83.9	73.9	—10.0
Caswell	82.7	69.7	—13.0	Onslow	88.5	75.2	—13.3
Catawba	65.2	52.4	—12.8	Orange	66.6	45.6	—21.0
Chatham	74.2	60.1	—14.1	Pamlico	79.3	70.6	— 8.7
Cherokee	84.0	80.9	— 3.1	Pasquotank	87.4	75.0	—12.4
Chowan	93.0	80.9	—12.1	Pender	74.1	69.8	— 4.3
Clay	86.5	83.3	— 3.2	Perquimans	95.6	74.1	—21.5
Cleveland	67.9	60.2	— 7.7	Person	69.7	57.8	—11.9
Columbus	72.3	51.5	—20.8	Pitt	81.1	71.5	— 9.6
Craven	85.6	70.2	—15.4	Polk	88.7	89.7	+ 1.0
Cumberland	76.0	70.8	— 5.2	Randolph	91.7	72.8	—18.9
Currituck	92.2	82.9	— 9.3	Richmond	71.3	65.3	— 6.0
Dare	91.7	80.9	—10.8	Robeson	85.5	79.3	— 6.2
Davidson	69.6	61.2	— 8.4	Rockingham	58.3	64.9	+ 6.6
Davie	72.9	68.9	— 4.0	Rowan	88.0	80.1	— 7.9
Duplin	70.4	80.1	+ 9.7	Rutherford	91.4	90.9	— 0.5
Durham	68.9	58.2	—10.7	Sampson	81.6	84.3	+ 2.7
Edgecombe	73.7	66.4	— 7.3	Scotland	89.0	82.4	— 6.6
Forsyth	74.5	70.8	— 3.7	Stanly	69.2	55.7	—13.5
Franklin	66.1	51.4	—14.7	Stokes	59.1	66.2	+ 7.1
Gaston	59.2	66.2	+ 7.0	Surry	68.7	62.4	— 6.3
Gates	90.3	87.7	— 2.6	Swain	91.4	79.8	—11.6
Graham	94.7	90.9	— 3.8	Transylvania	80.6	81.0	+ 0.4
Granville	63.2	46.8	—16.4	Tyrrell	88.2	85.7	— 2.5
Greene	84.2	80.3	— 3.9	Union	74.4	57.6	—16.8
Guilford	78.3	74.3	— 4.0	Vance	67.9	52.8	—15.1
Halifax	81.0	67.5	—13.5	Wake	64.4	58.2	— 6.2
Harnett	83.6	69.7	—13.9	Warren	74.1	73.7	— 0.4
Haywood	88.5	77.6	—10.9	Washington	81.8	82.5	+ 0.7
Henderson	86.1	89.6	+ 3.5	Watauga	72.0	55.8	—16.2
Hertford	79.7	73.2	— 6.5	Wayne	74.8	54.0	—20.8
Hoke	82.4	85.7	+ 3.3	Wilkes	76.3	60.6	—15.7
Hyde	77.8	89.7	+11.9	Wilson	63.9	64.1	+ 0.2
Iredell	73.5	67.9	— 5.6	Yadkin	79.2	67.1	—12.1
Jackson	68.9	71.7	+ 2.8	Yancey	64.3	41.5	—22.8

[a] + indicates rise in conviction rate; — indicates drop in conviction rate.

DUI defendants were driving with a blood alcohol level above the legal limit. (Since only 63 per cent of those arrested were convicted, this figure could have represented the percentage who had a blood alcohol level of 0.10 per cent or more.) The North Carolina Division of Motor Vehicles now has computerized records that show blood alcohol levels of arrested drivers and indicate the disposition of the cases. Statistics on these dispositions are shown in Tables 1, 2, and 3 in this article. It should be noted that, although most drivers charged with DUI are covered by the tables, drivers who did not take a chemical test to determine their blood alcohol level are excluded. There were 8,914 drivers arrested and charged with DUI in 1979 who did not take a chemical test; most of these (7,693) willfully refused to take the test and consequently lost their licenses for six months.

Table 1 covers drivers who were arrested during the calendar year 1975. (These data were analyzed in an article appearing in the Fall 1976 issue of *Popular Government*.) Table 2 contains the same type of data as Table 1 for the year 1979. The second column in Tables 1 and 2, "Number Convicted of DUI or 0.10" includes only those convicted of an offense that requires revocation of a driver's license. The third column, "Number Not Convicted of DUI or 0.10," includes those convicted of a lesser offense, such as reckless driving, as well as those found not guilty.

Table 3 shows the conviction rate by county and compares 1979 with 1975. Differences among counties in Table 3 cannot be explained by varying numbers of defendants with low blood alcohol levels because the county figures are limited to defendants who took a chemical test and registered a blood alcohol level of 0.10 or more. The county conviction rates include convictions of driving under the influence of liquor or drugs or having a blood alcohol level of 0.10 or more; therefore they are comparable with the conviction rates in the bottom rows of Tables 1 and 2.

The following observations should be made concerning these figures:

1. The statewide DUI conviction rate has dropped from 75.6 per cent in 1975 to 68.4 per cent in 1979 for defendants who registered a blood alcohol level of 0.10 or more on a chemical test.

2. The conviction rate decreased in most counties. Only 18 counties had an increase in the conviction rate, and some of these increases were marginal (less than 1 per cent).

3. Buncombe County had the highest 1979 conviction rate (an impressive 95.3 per cent), while Yancey had the lowest rate (41.5 per cent).

4. The conviction rate goes up sharply as blood alcohol level increases. The rate when the blood alcohol level is between 0.10 and 0.15 is only 46.9 per cent but increases to over 90 per cent in the 0.26 to 0.30 range.

5. A substantial number of those who were not convicted of DUI or 0.10 per cent were convicted of a lesser offense, such as reckless driving. But a conviction of reckless driving, standing alone, will not result in revocation of a driver's license.

Although the overall state conviction rate (based on defendants who took a chemical test and registered 0.10 per cent or more) was 68.4 per cent, the individual counties varied greatly. Approximately one-quarter of North Carolina's counties had a conviction rate of 80 per cent or above (a good rate for almost any kind of offense), while a few counties had conviction rates of less than 50 per cent (Granville, Orange, Yancey).

There is nothing whatsoever wrong with the DUI law as now written. It is clear, concise, and as simple to enforce as a speed limit law. The North Carolina General Assembly has done its part. Now it is up to the criminal justice system. ■

Reapportionment in Elections for County Commissioner

Grainger R. Barrett

1980 Census results may oblige some counties that use districts for purposes of electing commissioners to reapportion themselves.

NOW THAT THE 1980 Census year is over, the sensitive issue of reapportionment is with us once more. Reapportionment is a subject overlain with politics, community issues, personalities, minority relations, rural/urban styles, civics, economics, and other concerns. Veteran officials of North Carolina counties will remember the great wave of county reapportionment plans in the late 1960s spurred by the United States Supreme Court's reapportionment decisions and by lawsuits brought in state courts against Carteret and Gaston counties. In response to that need to reapportion, the 1966 special session of the General Assembly authorized county boards of commissioners to comply with the one-man, one-vote principle of the reapportionment decisions either by abolishing commissioner districts and electing the board at large or by redistricting and reapportioning their districts. The 1973 General Assembly repealed the statute but incorporated some of its features in the "home rule" provisions in General Statutes Chapter 153A, Article 4, Part 4, "Modification in the Structure of the Board of Commissioners" (the "home rule statute").

The author is an Institute of Government faculty member whose fields include local government administration.

The 1970 Census results probably had little effect on reapportionment in those counties that had reapportioned themselves in the late 1960s. The 1970s, however, were a decade of rapid growth and movement of population and increased urbanization. As a result, the 1980 Census may prompt the first significant adjustments since the late 1960s to the manner of electing commissioners in those counties that use some form of district election.

Whether reapportionment will be required — and *what* it will require — depends on several variables. The first important consideration is whether a county uses the district system; counties with completely at-large elections are not subject to reapportionment. The second important consideration is how a county established its districts. They may have been established (a) by a local act of the General Assembly; (b) by the board of commissioners under former G.S. 153-5.2 (briefly recodified as G.S. 153A-21); or (c) under the home rule statute, by voter ratification of a board of commissioners resolution.

Another important consideration is the kind of district system used in a county. In the respective counties with districts the commissioners may (a) be nominated and elected by district, or (b) be nominated by district but elected at large, or (c) be required to reside in specified districts but both be nominated and elected at large by all voters of the county. Counties in all three categories will be affected by the Census results if reapportionment is desired. Only counties that use one of the first two district systems will be *required* to reapportion if the districts' populations exceed judicially imposed standards.

A last consideration will be whether the county is subject to the Voting Rights Act of 1965. The forty North Carolina counties[1] that are "covered" under Section 5 of the act must submit voting changes for advance federal clearance before they enforce the change.

How North Carolina county commissioners are elected

With this background, a look at how county commissioners are elected across the state will be helpful. In 56 counties, the board is elected at large; all eligible county residents may vote on all candidates in both primary and general elections. In 35 counties the commissioners are elected at large but candidates must reside in the district from which they run. Four more boards are elected by district residence except for one at-large seat. Three boards are nominated only by district voters but are elected at large by all county voters. One board is nominated and elected entirely by district, and one other board has two at-large members and three members nominated and elected entirely by district.[2]

The one-man, one-vote principle applies to county elections. Will counties have to change how they elect commissioners, then, because of the 1980 Census results? The answer is that some will and some will not.

1. The following North Carolina counties are "covered": Anson, Beaufort, Bertie, Bladen, Caswell, Camden, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Guilford, Halifax, Hertford, Harnett, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Scotland, Vance, Union, Washington, Wayne, and Wilson.

2. FORM OF GOVERNMENT OF NORTH CAROLINA COUNTIES (Chapel Hill, N.C.: 1978). The summary in the text updates the information in the cited reference.

One man, one vote: the reapportionment decisions

In 1964 the United States Supreme Court decided *Reynolds v. Sims*.[3] That case applied to state legislative bodies the one-man, one-vote principle that each legislator should represent about the same number of people.[4] Any citizen's vote must have approximately the same weight, or impact, as any other citizen's vote. The Court said that "representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. . . . Full and effective participation by all citizens requires . . . that each citizen have an equally effective voice in the election of members of his State legislature." So apportionment schemes that "give the same number of representatives to unequal numbers of constituents" unconstitutionally dilute the value of votes in larger population districts. This result violates the equal protection clause of the Fourteenth Amendment.

The Court did not clearly say in *Reynolds v. Sims* whether the one-man, one-vote principle that it applied in *Reynolds* to state legislatures applied equally to local elected bodies. Most informed observers assumed that the Court would sooner or later apply the principle to local governments, at least those with "general" powers. Two *Popular Government* articles forecast that result several years ahead of the fact.[5] The Court's 1968 decision in *Avery v. Midland County*[6] and its 1970 decision in *Hadley v. Junior College District*[7] proved the articles to be correct: The one-man, one-vote principle applies to North Carolina counties as well as to the state.

One man, one vote: as nearly equal as practicable

The one-man, one-vote principle means that each county commissioner should represent about the same number of people. Federal court cases — and North Carolina's home rule statute — say that each commissioner should represent a population that is "as nearly equal as practicable"[8] to the population represented by each other commissioner in the county.

Should district populations of *registered voters* be compared, since the issue is voting and elections?[9] No. Everyone in the district is counted. *Reynolds v. Sims* and its companion cases say that a voting unit's *total* resident population is the basis of comparison. Though only registered voters are qualified to choose a voting unit's elected representatives, the actions of those representatives affect everyone within the voting unit. Although most college students and/or military personnel in a county may not be registered voters, they must be counted for reapportionment purposes.[10]

Also, in *Reynolds v. Sims* the Supreme Court said that ordinarily the "official" figures for reapportionment will be the federal Census, which is the most inclusive, easily available population count. In this state, Onslow, Wayne, and Cumberland counties' Census figures include large numbers of military personnel; Orange, Forsyth, and Wake counties have large student populations. And in eastern counties significant numbers of migrant workers may be included in the Census.

"Nearly equal": current interpretation

Both federal court cases and the home rule statute say that district populations must be "as nearly equal as practicable." It is likely that the language of the home rule statute [G.S. 153A-58(3)(a)] should be read the same as the federal standard. The General Assembly probably intended by that phrase that counties comply with applicable federal requirements as interpreted by the federal judiciary.

The United States Supreme Court has created layers of interpretation for the same "as nearly equal as practicable" standard. That interpretation allows less variation between population districts for congressional districts than for state legislative districts, and it permits "somewhat more" variation for local government districts than for state legislative districts — if only because there are fewer possible combinations of population (locally, usually precincts) and fewer elected officials in local government. Finally, it applies a more rigorous standard to "court-ordered" plans than to legislatively drawn plans.[11]

As applied to local governments, the "as nearly equal as practicable" standard allows variances of up to 10 per cent between the populations of the largest and smallest districts. The variance in any case is the sum of the percentage difference between the smallest district's population and exact equality, and that between the largest district and exact equality. The Supreme Court has called variances of less than 10 per cent relatively minor.[12] It has also suggested that sometimes variations larger than 10 per cent can be sustained if they are justified by appropriate considerations — for example, following the boundary lines of political subdivisions within districts.[13]

The Court has suggested that somewhat greater variations may be permissible for local governments than for state

3. 377 U.S. 533 (1964).

4. The Court analyzed the issue under the "invidious discrimination" test of the equal protection clause. The reader should distinguish cases that involve claims of *racial* gerrymander or dilution of vote. *See, e.g.*, Gomillion v. Lightfoot, 364 U.S. 339 (1960).

5. Sanders, *Equal Representation and the Board of County Commissioners*, 30 POPULAR GOVERNMENT (April 1965); Ferrell, *Local Government Reapportionment*, 31 POPULAR GOVERNMENT (February 1966).

6. 390 U.S. 474 (1968).

7. 397 U.S. 50 (1970).

8. Reynolds v. Sims, 377 U.S. 533 (1964); N.C. GEN. STAT. § 153A-58(3)(a).

9. The reader should distinguish federal and state cases in which it is claimed that groups like students or military personnel are residents for purposes of registering to vote. *See, e.g.*, Symm v. U.S., 439 U.S. 1105 (1979), *summarily aff'd*, U.S. v. Texas, 445 F. Supp. 1245 (S.D. Tex. 1978), *reh. denied* 440 U.S. 951 (1979); Carrington v. Rash, 380 U.S. 89 (1965); Lloyd v. Babb, 296 N.C. 416 (1978); Hall v. Board of Elections, 280 N.C. 600 (1972).

10. *See, e.g.*, Davis v. Mann, 377 U.S. 678, 691-92 (1964) (military personnel).

11. White v. Regester, 412 U.S. 755 (1973); Connor v. Finch, 431 U.S. 407 (1977); East Carroll Parish School District v. Marshall, 424 U.S. 636 (1976).

12. White v. Regester, 412 U.S. 755 (1973); Gaffney v. Cummings, 412 U.S. 735 (1973).

13. Gaffney v. Cummings, *id.*, Mahan v. Howell, 410 U.S. 315 (1973).

legislatures.[14] The 10 per cent principle evolved in cases involving state legislative districts, with the Court also commenting that larger variations might be justified on the basis of "legitimate considerations" that are part of a rational state policy.[15] In a Texas case[16] the Court seemed to adopt the more flexible standard for legislatively drawn plans for local government reapportionment as well as for state-level reapportionment. Somewhat greater variations may be allowed locally because fewer officials sit on local governing boards than sit in state legislatures and because local board members have smaller constituent populations than state legislators.

The Court has not yet squarely said whether the 10 per cent threshold will shield even purposeful — intentional — racial or other unlawful discrimination. Voting rights cases are equal protection clause cases, and under current litigation, *intentional* discrimination is grounds for a lawsuit.[17] The Court probably would hold that consciously trying to minimize the political impact of minority groups is not "legitimate," and thus it seems to have left itself a loophole to cover such cases. Despite the 10 to 15 per cent variances allowed in some cases, the Court could hold that intentional racial or other unlawful discrimination operates to "minimize or cancel" minority voting strength.

Perhaps the most interesting case for county officials is *Abate v. Mundt*,[18] in which the Court approved an 11.9 per cent maximum deviation in the apportionment plan for electing the board of supervisors of Rockland County, New York. At one level, the Court commented on local government apportionment generally. For instance, the facts that "local legislative bodies frequently have fewer representatives than do their state and national counterparts and . . . that some legislative districts may have a much smaller population than do congressional and state legislative districts, lend support to the argument that slightly greater percentage deviations may be tolerable for local government apportionment schemes." Beyond that, larger deviations than this may be justified by "legitimate considerations incident to the effectuation of a rational state policy"; preserving the integrity of political subdivision boundaries within districts is considered such a "legitimate consideration."[19]

The Court found that the Rockland County plan was not *designed* to favor particular groups. Perhaps the Court also intended that a state policy is rational if it is based on considerations other than tilting voting power toward or away from identifiable political groups. The plan created districts that corresponded to the five townships that made up the county's land area. The smallest township was allotted one representative. The larger townships were assigned the other representatives on a proportional population basis. The rational state policy reflected in this arrangement was New York's long history of overlapping local government functions between counties and towns and its consequent tradition of service by township board members who were also county supervisors.

At-large election of commissioners

Over half of North Carolina's counties elect commissioners at large. Will this group of counties have to make any changes because of the census? Here the answer is easy. No.[20] The basic feature of at-large elections is that each person's vote is necessarily equal, proportionately, to every other voter's. If a county has only 100 voters, each vote is equal in impact to all others — 1 per cent of the total. The relative proportion applies whether voters vote for three candidates or for five, six, or seven. Since there are no districts in at-large elections, no gerrymandering can be done in favor of any group.

District election of commissioners

Nearly half of the state's counties use some form of districts to elect county commissioners. Will these counties have to make any changes because of the Census? *All* counties that use districts should evaluate their Census results, but some will be obliged to make adjustments and some will not. County officials should focus on three questions. What kind of district does the county have? If the county uses a district residence scheme, do the districts result from local action under Chapter 153A or from a General Assembly local act? What does the Census reveal about the extent of population changes among districts?

Nomination by district and nomination-election by district

Consider a district where commissioners are (a) either nominated or (b) both nominated and elected entirely by district. If voting at any stage of the election process is based on districts, those districts must have populations that are as nearly equal as is practicable.[21] Few counties use districts as a basis for voting; only six North Carolina counties use districts in either primary or general elections for the office of commissioner. But these counties should have district populations that are as nearly equal as is practicable, whether the districts resulted from action under the home rule law or by a General Assembly local act.

But even in these counties, district populations may vary by a maximum of 10 per cent and still be minor and valid under the current federal rule of thumb. The variation is the total percentage spread between the largest and smallest populations in relationship to exact population equality. For example, assume a

14. *See*, Abate v. Mundt, 403 U.S. 182 (1971).

15. Gaffney v. Cummings, 412 U.S. 735 (1973); White v. Regester, 412 U.S. 755 (1973); Mahan v. Howell, 410 U.S. 315 (1973).

16. Wise v. Lipscomb, 434 U.S. 1329 (1977).

17. Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976).

18. 403 U.S. 182 (1971).

19. Mahan v. Howell, 410 U.S. 315 (1973).

20. A local government that elects its officials at large is not required to switch to district elections to give a racial minority a realistic chance to elect officials if the at-large system is not *intentionally* used to discriminate against the minority and if the minority registers and votes without hindrance. Mobile v. Bolden, ___ U.S. ___, 64 L.Ed.2d 47 (1980) (plurality opinion).

21. Avery v. Midland County, 390 U.S. 474 (1968); Dusch v. Davis, 389 U.S. 112 (1967).

county of 10,000 residents and five commissioners elected from districts. Assume that the district populations are 1,900, 2,120, 1,980, 2,000, and 2,000. The variation is the difference between the smallest district and exact equality, or 5 per cent, plus the difference between the largest and exact equality, or 6 per cent. The deviation thus is 11 per cent, slightly over the 10 per cent threshold. Although this percentage exceeds the rule of thumb, it approximates the variation in the Rockland County case, in which the Court said that slightly greater percentage differences might be more tolerable for local government apportionment than for other apportionments.

Residence districts

Then what about residence districts? Residence by district is not a basis for voting at any stage of the election process. Instead, all candidates are voted on by all county voters for both nomination and election, but each candidate must reside in a specific district. The result is that the board will contain at least one resident of each district (more than one resident of a district might be on the board if one or more at-large seats are used with the residence districts).

All districts established under the home rule statute must have populations as nearly equal as is practicable — at least when they are established. The statute does not distinguish between residence districts and districts that are the basis for nomination or election. Thus districts established under the law, including residence districts, should have populations with a maximum deviation of about 10 per cent, or perhaps up to 15 per cent with justification.

The United States Supreme Court, however, has not imposed the "as nearly equal as practicable" standard on residence districts. In *Dusch v. Davis*[22] the Court spoke about the effect of large disparities in population on elections held in residence districts where all voting is at large. It held that the disparities do not, by themselves, cause the Constitution to be violated. Thus residence districts that were established not under the home rule statute but by the General Assembly are not subject to the "as nearly equal as practicable" standard and apparently can vary by more than 10 per cent.

At issue in *Dusch* (a Virginia case) was the reapportionment plan for the consolidated city-county of Virginia Beach and Princess Anne County. The plan created seven districts for an eleven-member council and followed the boundaries of the former city and of six magistrate districts. Three districts were primarily urban, three rural, and one tourist. Four council members were elected at large; the other seven also were elected at large but had to reside in the districts from which they ran. The Court held that the districts were used "merely as the basis for residence for candidates, not for voting or representation." In a theme that it returned to in a later case, the Court noted that council members represent the entire county, not just their respective districts, because each one was elected by all voters.

This plan had several effects. While it gave every citizen an equal vote in determining the makeup of the council, it also preserved enough flexibility to give rural areas a voice even though they had fewer voters than the urban areas. Still, the three urban districts elected three of eleven council members and, having most of the population, had the most significant voice in electing the four at-large members; thus the plan also preserved for the urban areas a pivotal vote with regard to seven to eleven seats.[23]

The United States Supreme Court adhered to *Dusch* in the 1975 case of *Dallas County, Alabama v. Reese.*[24] In that case, the Court was not convinced that the plan stemmed from something other than legitimate and nondiscriminatory reasons. The plan at issue provided for the election at large of four members of the county commission from their residence districts. A fifth member was the judge of probate who served ex officio and was elected at large without regard to residence. Residents of the City of Selma (Alabama) sued, saying that the city contained about half the county's population but elected only one resident to the commission.

The Court upheld the plan. It stressed that each commissioner represented all citizens of the county and not merely those in his residence district. The Court might have ruled otherwise if the facts had shown that a district's resident on the commission in fact represented only the district and not the whole county. "[A] successful attack raising . . . a constitutional question [whether the plan minimized or cancelled the voting strength of a minority racial or political element] must be based on findings in a particular case that the plan in fact operates impermissibly to dilute the voting strength of an identifiable element of the voting population. Rather than basing its decision on a factual conclusion of this sort, the Court of Appeals [in invalidating the plan] relied on a theoretical presumption to reach its determination that residents of Selma were victims of invidious discrimination. That theoretical presumption is that elected officials will represent the districts in which they reside rather than the electorate which chooses them. But this is precisely the proposition rejected in *Dusch*."[25]

In summary, residence districts that do not comply with the "as nearly equal as practicable" standard are *constitutionally* permissible unless they discriminate in fact — and, perhaps, intentionally — against an identifiable political element. Under the home rule statute, Chapter 153A, residence districts must comply with the standard, which under federal cases would permit population variances of up to 10 per cent.

Changing district lines

The General Assembly can change district boundaries for electing commissioners by local act. The act would define the lines of the new districts by

22. 389 U.S. 112 (1967).

23. *See* Hobbs v. Moore County, 267 N.C. 665 (1966), involving a challenge to a legislatively drafted plan for the county board of education. The plan provided for a seven-member board. Five members were elected at large but had to reside in specified districts. Two of those districts were the county's two municipalities. Two members were elected at large without a residency requirement. The populous urban areas thus could conceivably elect four residents to the seven-member board and also have a voice in selecting the other three members because all voting was at large.

24. 421 U.S. 477 (1975).

25. *Id.* at 480-81.

townships or precincts.[26] It can be drafted to be effective either when ratified or after approval by county voters in a referendum called by the act itself. Using the referendum procedure might cause difficulty: Voters in a county whose Census district populations were malapportioned according to the Census data could defeat the referendum after the General Assembly adjourns for 1981. This would throw the Spring 1982 primaries into confusion. If elections were held on the basis of pre-Census lines, the primary results might be challenged in court, which could in turn lead to court-ordered redistricting.

The only alternatives for the General Assembly would be for it to return to special session early in 1982 (unlikely), for it to enact explicit authority for county boards of commissioners to reapportion themselves, or for all local acts effecting redistricting to do so by fiat without a local referendum.

As originally enacted, Chapter 153A contained explicit authority in G.S. 153A-21 for county boards to reapportion themselves (without voter approval). That section was repealed in 1974,[27] although the city government statute still contains such a provision. Although one could conclude from the repeal that counties could reapportion thereafter only by local act of the General Assembly, he could also conclude that the General Assembly objected to boards of commissioners' having authority to reapportion *without voter approval.*

The original reapportionment authority, former G.S. 153A-21, was not contained in the home rule statute (G.S. 153A, Art. 4, Part 4). Whether a county adopted a district form of government under the home rule statute or under former G.S. 153A-21 (or its predecessor, G.S. 153-5.2), the statute's command that districts be as nearly equal as is practicable is a continuing one. Since the federal Constitution as interpreted in the reapportionment decisions requires that voting unit boundaries recognize the effect of the Census data every ten years, I conclude that a county board of commissioners has the necessary implied power, *at least on the occasion of the Census,* to conform districts from which commissioners are elected to the statutory command that district populations be as nearly equal as is practicable. Another interpretation that reaches the same result is that a reapportionment is itself an "alteration of structure" of the board under the home rule statute. In either case, the board of commissioners would initiate alterations in district boundaries by following the procedure of the home rule statute. Essentially, the commissioners would by resolution propose new district boundaries and submit the resolution to a county referendum.

The contrary interpretation is that G.S. 153A-58(c) is authority to redraw district lines only in conjunction with a change in the manner of electing commissioners. But if boards of commissioners lack authority to redraw district lines merely to reflect the Census data, a county could frustrate the General Assembly's apparent attempt to retain that authority simply by switching to at-large elections or — more to the point — switching from one form of district elections under the home rule statute to another while at the same time altering district boundaries. The result is neither completely sensible nor satisfactory.

In theory, local power to reapportion seems preferable. County boards are elected from the same population that is affected by changes in commissioner districts, and responsibility and accountability therefore merge. (This is often not true of the state's legislative delegations because many legislators are elected from multi-county districts.) County commissioners should be more familiar with local characteristics, sensitivities, and feelings than the General Assembly as a whole. Popular acceptance should be greater for changes made locally than for those sent from Raleigh. And any isolated cases of abuse or ill-conceived plans can be redressed and overridden by the General Assembly.

But theory and practice are not the same. A General Assembly controlled by one party may retain tight control of local reapportionment if its leaders are wary of entrenchment by the other party in local governing boards. In that case, the General Assembly might be tempted to assert its control at each stage of reapportionment. Here again, however, a county's board of commissioners might frustrate a local act's intent merely by altering the *kind* of district employed under the home rule statute as well as redrawing district lines and submitting the issue for county voters' approval.

Section 5 of the Voting Rights Act

If a county decides to alter its district lines for electing commissioners, it should determine whether it is "covered" under the Voting Rights Act of 1965 (scheduled to expire in 1982).[28] The 40 covered counties must obtain advance federal clearance ("preclearance") of any change in a voting qualification, standard, practice, or procedure from either the Attorney General or the District Court for the District of Columbia.[29] Clearance will be denied unless denial or abridgment of the right to vote because of race or color is not the purpose and will not be the effect of the change. Preclearance is not required, however, for "court-ordered" plans.

26. G.S. 153A-20 requires that a current delineation of commissioner districts be filed in the office of the clerk to the board of county commissioners.

27. Some observers attributed the repeal of former G.S. 153A-21 to a partisan tug-of-war between the Republican board of commissioners in Cherokee County and the Democratic General Assembly. That board took action early in 1974 to abolish districts and use at-large elections. The districts had the effect of maximizing the political impact of Democratic enclaves. The General Assembly reversed the board's action by enacting N.C. Sess. Laws 1973, Ch. 884 (2d sess.), which repealed G.S. 153A-21, the reapportionment statute, retroactively. A less severe expedient would have been to exempt Cherokee from the section (as it had been exempted from the 1966 reapportionment legislation). In any event, if the Cherokee situation spurred the repeal of G.S. 153A-21, it was completely futile. The Cherokee board of commissioners could have achieved exactly the same result — abolishing districts and moving to at-large elections — by proceeding after the repeal under the home rule statute (G.S. 153A, Art. 4, Part 4). In fact, Cherokee has moved from district nomination and at-large election to district residence with both nomination and election at large. The result is nearly the same politically as the action the board tried to take in early 1974.

28. *See* note 1.

29. 42 U.S.C. 1873(c).

Reapportionment plans must be precleared. The burden of proving absence of discriminatory purpose or effect will be on the county. A county will have to show that the change will not have the *effect* of abridging minority votes even if there is no discriminatory *intent*. The burden is to show that the change will not "lead to retrogression" in the effective exercise of minority voting rights. That is, minorities cannot be put in a worse voting position than their voting potential before the change.[30]

Section 5 applies to any voting change that alters election laws in even a minor way. It is given the widest possible scope because it is a remedial statute.[31] Federal regulations amplify this: Preclearance is required of "[a]ny change in the constituency of an official or the boundaries of a voting unit"[32] and of "[a]ny change affecting the eligibility of persons to become . . . candidates."[33] If nomination or nomination and election are by district voters only, a change in district lines is a "change in the constituency of an official" and quite likely a change in the "boundaries of a voting unit." If residence districts are the basis of election, then changing district lines would affect "the eligibility of persons to become . . . candidates."

In the covered units it is illegal to enforce any voting change without the U.S. Attorney General's preclearance or a declaratory judgment from the District Court for the District of Columbia. Submissions usually go to the Attorney General because the process is likely to be faster there than in the district court. The Attorney General must object to the proposal within 60 days or the unit may enforce it (but the Attorney General is free to challenge it later). That 60-day period begins when the Attorney General receives a submission from an "appropriate official" that contains all the necessary information.[34] The 60 days stop running (that is, are "tolled") when the Attorney General asks for more information and begin again when the requested information is submitted.[35]

When a change in voting procedure is proposed for a covered unit, federal regulations require that the preclearance request come from a unit's chief legal officer or other "appropriate official."[36] Thus county officials — rather than the State Attorney General — are responsible for submitting this request even though the General Assembly may actually make the change.

The information that must be sent to the U.S. Attorney General's office includes: a copy of the enactment or order that makes the change (such as a local act of the General Assembly), the names of the submitting authority and the authority responsible for the change, an explanation of the difference in old and new procedures, the date when the change was adopted and its effective date, a statement of the anticipated effect on minorities, identification of past or present litigation on voting rights, a statement that the change has not yet been enforced, and any other information that the Attorney General may request. He may ask for geographical and demographic information (such as racial composition and location of the population), maps, a history of the number of candidates (including each candidate's race) that have run for office in recent elections, and the results of those elections. Furthermore, evidence must be presented that public notice has been given, that constituents have had an opportunity to speak out on the proposal, and that minority groups have been informed about the proposal.

The Attorney General's determination of the merits of a proposal is not subject to judicial review. His decision is therefore final on whether the proposed change has the purpose or the effect of denying or abridging the right to vote because of race or color.[37]

If a district appears consciously drawn to create a nonwhite majority, a "reverse discrimination" question may arise. The United States Supreme Court considered this issue in *United Jewish Organizations of Williamsburgh v. Carey*.[38] Organizations in the predominantly Jewish Williamsburgh section of New York City challenged a state legislative reapportionment plan that split up the Jewish neighborhood to create nonwhite majorities in two state legislative districts.

The Court first held that the state could act to anticipate the Attorney General's review even though it was under no compulsion to do so. The state had already received informal indications from the Attorney General that reapportionment of some nature would be required that in turn would trigger his review. The Court held that the state could act to achieve what the Attorney General could have required under Section 5. Second, the Court held that the Constitution does not prevent a state from deliberately creating or preserving nonwhite majorities in particular districts in order to comply with Section 5. District lines may be drawn so that the number of districts with nonwhite majorities roughly approximates the percentage of nonwhites in that political jurisdiction.

Conclusion

Counties that elect commissioners by district should consider the implications of the 1980 Census data. If the districts are the basis for nomination or nomination and election, the district lines should be revised so that the districts' populations are as nearly equal as is practicable. Greater population disparities are permissible for residence districts. Of course, there are purely practical political limits to population disparities that overreach. For now, the United States Supreme Court has said that district populations that vary up to 10 per cent comply with the "as nearly equal as practicable" standard. The General Assembly may change district lines for electing county commissioners by local act. The local act can be effective when ratified or when approved in a county referendum. Also, county boards of commissioners may have authority to redistrict locally under the home rule statute, as an implied but necessary adjunct to the statutory and constitutional command that districts' populations be as nearly equal as is practicable. If a county is covered under Section 5 of the Voting Rights Act, federal preclearance of changes in boundary lines will be necessary. ■

30. Beer v. U.S., 425 U.S. 130 (1976).

31. Allen v. State Board of Elections, 393 U.S. 544 (1969).

32. 28 C.F.R. 51.12(e).

33. 28 C.F.R. 51.12(g).

34. 28 C.F.R. 51.8(a) and (c).

35. *Id.;* Georgia v. U.S., 411 U.S. 526 (1973).

36. 28 C.F.R. 51.21.

37. City of Rome v. U.S., ___ U.S. ___, 64 L.Ed.2d 119 (1980); Morris v. Gressette, 432 U.S. 491 (1977).

38. 430 U.S. 144 (1977).

Blueprint for an

IT HAS BEEN over a year since Rockingham, North Carolina — the Richmond County seat, with a population of about 8,300 — was awarded the All-America City citation by the National League of Municipalities. But these people in the southern sandhills are not sitting back smugly and resting on past accomplishments. They are still continuing to work on city and city-county joint projects.

A senior citizen center near the downtown area, which is partially funded through a Title V grant under the Older American's Act, is nearly completed. Downtown revitalization, which has already made remarkable strides, continues to be a focus of public and private attention. A new library for Rockingham and Richmond County is in the planning stages. Major expansion in city water facilities and major renovations to the city's sewage collection system are also being constructed. And bids have gone out on a pavement recycling program: Asphalt will be removed from exisiting roads, reprocessed, and reapplied to municipal streets, making Rockingham the first city in North Carolina to use this technique on a large scale.

BUT LET'S BACK UP and see how this small North Carolina city planned to enter the National Municipal League's All-America Cities Program. Rockingham was one of the 21 selected from the 500 municipalities that entered the competition last year to make its presentation before a panel of judges at the League's National Conference on Government in Detroit. The 35 people from Rockingham who went to the conference must have been very persuasive! The *Detroit Free Press* said: "The folks from Rockingham, N.C., a small town in the southern part of the state, are well versed in the art of friendly persuasion." The mint candies and the Leggs pantyhose that those who manned the Rockingham booth gave away may have made some

Editor's Note. We appreciate the assistance of Richard Tillis, Rockingham city manager, and Michael Gurnee, planning director, who supplied information and photographs (from the Richmond County Photo Club) for this article. Members of the Rockingham steering committee for the All-America City award — Paul Wilson (former city manager), Ed Chisholm (chairman of the committee), Mark Heath, Watt Long IV, and Gwyn Voss — were also very helpful in describing the city's progress that led to the award. A conversation with Mayor G.R. Kindley, Jr., also gave us additional background information.

The author is an editorial assistant at the Institute of Government.

LOCATED in the sandhills region of North Carolina near the South Carolina line, Rockingham (pop. 8,300) is the economic and cultural center for its general area and the county seat of Richmond County. (Hamlet and Ellerbe in Richmond County have populations of about 4,800 and 1,400 respectively. Total county population is 45,000.) The population is 75 per cent white — like the rest of the state — and has grown slowly.

Agriculture and agribusiness continue to be major income producers. Water-powered mills in the late 1800s produced textiles, which continue to be the backbone of the industrial base. In the last twenty years, new industries have strengthened and diversified the economy — companies that produce metal and plastic goods, marine products, and other non-textile items. Rockingham is also known to racing fans as the site of the American 500 and the Carolina 500, which are run each year at the North Carolina Motor Speedway. The city's thriving downtown business district, two large shopping centers, and several smaller shopping areas provide retail services for a seven-county region.

Rockingham has a council-manager form of city government. The city provides good police, fire protection, and public works services to its citizens. For example, its water system (a joint effort with the county) has been planned to meet community demands until the year 2000.

Rockingham and Richmond County cooperate in financing and planning many services — for example, the hospital, the recreation center, parking areas, and the senior citizen center. In addition to cooperating with each other, the two governments work closely with local chambers of commerce and civic and professional organizations. An outstanding example of this cooperation is the new senior high school for 2,300 students, which serves the entire county and is located on a 94-acre tract outside of Rockingham. The school's campus resembles an attractive small college. A number of special courses are offered here, and the students have their own radio station. The pride that is evident throughout

All-America City

Pauly M. Dodd

friends in Detroit that week in November 1979, but it was hard work, community cooperation, and intelligent planning that won the award. And these attributes give even the casual visitor to the town the impression that Rockingham is a vital, growing place — a good place to live and work.

Rockingham had already made a number of progressive changes when a group of citizens met at the local Pizza Hut one evening in August 1978 and made preliminary plans to enter the All-America competition. A 35-member committee was selected to oversee the work of hundreds of Rockingham citizens who would be involved in the effort. They realized that they had a chance to win the award because of civic changes that had occurred over the past ten years. As the steering committee chairman said later: "No one group dominated the work, nor could one group have turned the town around. The whole city was involved — and that was important."

Enthusiasm for the entry ran over into the schools and the youngsters were asked to describe pictorially what Rockingham meant to them. The campaign motif — "My heart's in Rockingham" — resulted from a drawing of a large heart done by a second-grader.

The committee and other citizens considered ten projects that might be used for the All-America entry, but finally narrowed the list to three important projects: the new recreation center, the hospital expansion, and the community theater.

Rockingham and Richmond County is reflected in small signs that line the high school entry driveway and call attention to the award-winning band and athletic teams, students who excel academically, and so on.

Rockingham is not a well-to-do city. Richmond County's per capita income in 1978 was more than $2,000 below the national average and about $900 under the North Carolina average. Townspeople feel that their limited financial resources have made their accomplishments more difficult but also more rewarding because they could have been done only through broad citizen involvement.

An article in the Winter 1978 issue of *Popular Government* told how Tarboro, N.C., parlayed grant money into a major civic improvement program. Thirty years of civic progress convinced Tarboro to try for an All-America City award, which the town received from the National Municipal League several years ago. The article carried a statement about Tarboro that is worth repeating, for it applies to Rockingham and probably to all cities that are finalists in the All-America Award:

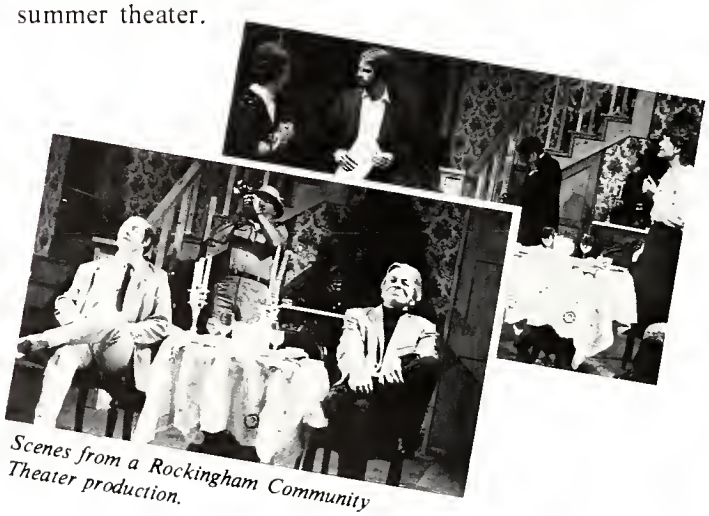
> But when we live in a place every day, [its] charm may fade unless basic living conditions are good. These municipal responsibilities are being met . . . because a number of citizens wanted and worked for these improvements, and there was competent leadership at the town hall.

A number of North Carolina cities have won All-America City designations. The citizens of Rockingham can attest to the fact that it takes a great deal of effort to "go after" the award. Over a year's work was involved — including an initial presentation, a splendid audio-visual presentation by the Rockingham delegation when the 21 finalists were judged at the Municipal League's National Conference on Government, and, finally, an unannounced site visit by a League committee member. (The League's jury is composed of a number of prominent people who represent public, private, and voluntary interests. George H. Gallup was the honorary chairman of the jury when Rockingham received its award.)

George Browder Park. In 1970 recreational opportunities were practically nonexistent in Rockingham — other than school playgrounds. The Rockingham YMCA, which had operated the town's only organized recreational program, went bankrupt in 1974. The "Y" had been building a new recreational center, but all that had been done on the structure was the erection of a steel frame. An ad hoc group of citizens organized to take over the "Y" property and enlisted the support of other citizens, civic and professional groups, and industry. The result is a $2,500,000 recreational system that is jointly sponsored by the city and county governments — George Browder Park. The park is named for a former general manager of the local J.P. Stevens operations who initiated the transfer of approximately $125,000 from a company escrow account for use in the construction of city recreation facilities. A multipurpose building was completed in November 1978 that provides daily activities for Rockingham and Richmond County residents. (The city maintains the building; the county pays for the staff and the program.) An Olympic-sized swimming pool was completed in August 1979. (See the complete list of recreation activities at Browder Park.)

	Indoors
Gymnasium:	Youth and adult basketball; youth and adult volleyball; indoor tennis (to begin next year); classes for karate, gymnastics, and fitness; community functions — secretaries' day lunch, senior citizens' Christmas party (600 attended in 1980), Chamber of Commerce, and NASCAR "roast."
Meeting rooms:	Photography club, chess club, square dance club, dance classes, and other civic groups and clubs.
Game room:	Billiards, table tennis, and foosball.
Weight training room:	For men and women.
Arts and crafts exhibits:	Two in 1980.
	Outdoors
Swimming pool:	Organized lessons; swimming team; and scuba diving club.
Tennis courts (4):	Organized lessons and the Richmond County Tennis Association Tournament.
Ballfield:	Rockingham Church League softball (20 teams); girls' youth softball (6 teams); girls' youth T-ball (4 teams); boys' T-ball (10 teams); colt league (6 teams); youth football (12 teams); youth soccer (10 teams); and adult flag football (4 teams).
Summer day camp activities	
Picnic shelters for community and civic group use	

The community theater. There was no organized cultural activity in Rockingham until recently. But in 1976 local citizens organized to establish a permanent theater and attracted the support of many civic organizations. A professional director was hired through the Richmond Technical Institute and the North Carolina Visiting Artist Program. The owners of an abandoned theater in downtown Rockingham, which had been showing X-rated movies, gave the building for use as a community theater. Within three years over $50,000 was raised from more than 300 individual donors, and an abandoned downtown eyesore became an attractive, well-equipped building for live theater. More than 1,000 people attend the three major plays that are given each year, and over 300 people have worked in theater production. The group also sponsors a children's summer theater.



Scenes from a Rockingham Community Theater production.

Richmond Memorial Hospital. The Richmond County hospital in Rockingham was originally a 50-bed hospital with a nurses' home that was completed in late 1952. The hospital facilities were expanded about ten years later. By the early 1970s the hospital trustees saw that there was need for another expansion — patients were being treated in the halls or sent to distant hospitals. A three-phase expansion program was begun to meet the needs of future generations. The first phase was the establishment of 24-hour emergency service with a doctor always on duty. This was financed by a citizen-directed fund drive that raised $800,000;

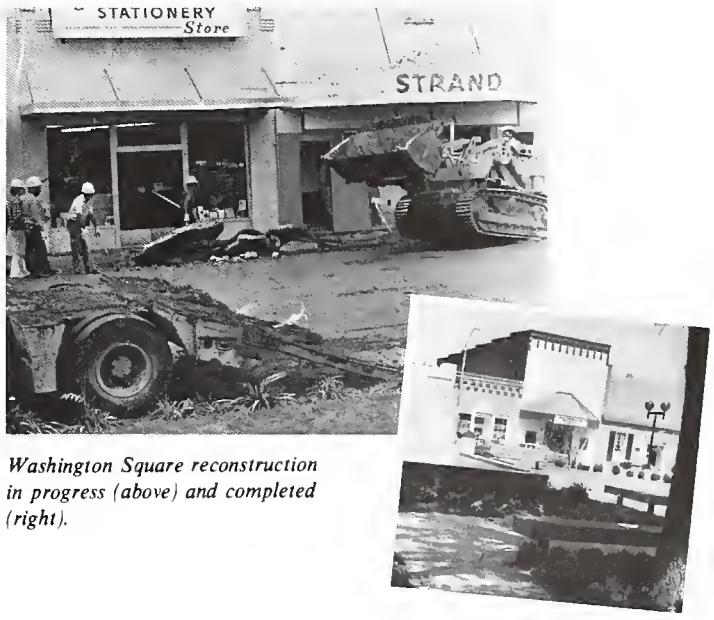
further funds came from the Duke Endowment, the hospital's depreciation and equipment fund, and local bank loans. A county-wide bond referendum paid for the second phase in March 1976 ($8 million). This money was used for a number of improvements, including a 92-bed patient tower.

During the past ten years the hospital has increased its service greatly by adding a department of cardiology, ultrasound and nuclear medicine, a home health department, a coronary care unit, histology and cytology departments, an in-service educational program, and a great deal of highly technical life-saving medical equipment. The hospital expansion has attracted 12 new doctors and a number of paramedical people to an area that desperately needed doctors.

Detailed plans will be laid for Phase III — an additional expansion that will raise the hospital's patient capacity to about 220 beds — soon after the current program is completed.

Since 1974 the City of Rockingham has received a little over $6 million in federal and state funds for a number of projects. Downtown revitalization has been a major goal of city officials, merchants, and other citizens. The attractive park in Washington Square that invites the shopper to sit and pause is the hub of the rehabilitation and revamping of Rockingham's main business district. Stores in this area have been given a genuine "face lifting." And it isn't all cosmetics on the main street. There has been a substantial rejuvenation of the buildings — even to the point of re-doing the rear entrances onto the new parking lot. Trash barrels and other "backdoor" encumbrances of the commercial neighborhood are a thing of the past. Now handsome entrances complete with wrought-iron railings and flower boxes face the parking area, which is a professionally landscaped lot. In downtown Rockingham curb and sidewalk renovations are going on — with the city and the store owners sharing the cost on a 50-50 basis. Underground utilities and decorative lighting also enhance the appearance of the downtown area. Rockingham is proud of "the way things look," and landscaping is high on its list of priorities. The city employs a full-time horticulturist and plans to build a greenhouse to help provide plantings for municipal projects.

The city has established a historic district and has begun a classification survey to identify historic sections of Rockingham and the surrounding area. Many of the big old homes along the main street, which leads into the business area, have been restored, and restoration plans are under way for others in this section. One of these restored houses, along with its extensive garden, forms an attractive property at the entrance



Washington Square reconstruction in progress (above) and completed (right).

ONE GOOD THING led to another. The theater project provided the spark for the revitalization of the downtown area. Once-abandoned buildings are now commercial establishments. Every building in the theater area is renovated and occupied. The buildings face onto Washington Square with its lovely circular park that is a focal point of the downtown area. The park has had some "events" from time to time: For instance, high school students have held pep rallies there before athletic contests, weddings have been performed there, and a rally for the Iranian hostages took place in the square. Fourteen new businesses have moved into the downtown area and merchants have worked to revitalize their own facilities. Private investment in downtown reconstruction since 1977 totals about $3.5 million. In addition, public investment of $3 million has been used for street improvements, creation of Washington Square, extensive beautification, and other projects.

City of Rockingham Major Projects and Funding Sources (1974 — February 1981)

Date	Project Description	Funding Source	Amount	Total
3-74 to 11-76	Comprehensive "201" water and sewer improvement program	1. U.S. Environmental Protection Agency grant (75%) (expansion of waste treatment facilities)	$1,700,000	
9-79 to Current		2. N.C. Department of Natural Resources and Community Development	290,000	
		3. City of Rockingham	300,000	
		4. Richmond County	25,000	
		5. U.S. Environmental Protection Agency	75,000	
				$2,390,000
8-75 to 6-79	Multipurpose recreation facility (gym, meeting rooms, billiard, etc.; football, soccer, baseball field, tennis courts, picnic shelters, junior olympic pool, playground)	1. U.S. Department of Commerce Economic Development Administration Title I, Public Works Grant	455,346	
		2. Bureau of Outdoor Recreation U.S. Department of the Interior (Agent: N.C. Department of Natural and Community Development) Land and Water Conservation Fund	346,400	
		3. J.P. Stevens and Co., Inc. (private contribution)	123,000	
		4. City of Rockingham and Richmond County	107,000	
				1,031,746
12-13-76 to 9-26-79	Community theater (County continues to share a percentage of cost.)	1. Private contribution of theater building to city		
		2. Collection of 331 contributions ranging from $1.00 to $3,500 (Clark Equipment Co. donated $3,500)	42,058	
		3. City of Rockingham	3,000	
		4. Richmond County	2,000	
		5. Z. Smith Reynolds Foundation	5,000	
		6. N.C. Arts Council (initial)	8,000	
				60,058
9-77 to 1-78	Downtown revitalization: Washington Square	1. General revenue-sharing funds	50,000	
		2. CETA	20,000	
		3. City of Rockingham	20,000	
				90,000
9-77 to 9-82	Community redevelopment	1 U.S. Department of HUD Community Development Block Grant Phase I: $800,000 completed Phase II: $998,000 current Phase III: $999,000 FY 81-82	2,797,000	
				2,797,000
1973 to 1975	Richmond Memorial Hospital: Citizen-directed fund drive	1 Community contributions (Emergency service expansion—Phase I)	800,000	
1975 to 1980	Phase II	2. Bond referendum (countywide) (92-bed expansion)	8,000,000	
8-79 to 12-79	Downtown revitalization: 110-space landscaped parking lot	1. City and county jointly formed "Rockingham-Richmond Economic Development Corp." Bank loan at 6 per cent pledging revenue as collateral nonprofit corporation	90,000	
		2. City and county funds	35,000	
				125,000

City of Rockingham Major Projects and Funding Sources (1974 — February 1981)

Date	Project Description	Funding Source	Amount	Total
8-79 to 8-81	Curb and sidewalk renovations Underground utilities, decorative lighting	1. Downtown merchants, 50% 2. City of Rockingham, 50%	30,000 30,000	
				60,000
10-80 to 6-81	701 comprehensive planning	1. Federal HUD — Grant (Agent: N.C. Department of Natural Resources and Community Development) 2. City of Rockingham	19,400 14,800	
				34,200
6-80 to 6-81	Historic classification survey	1. Heritage Conservation and Recreation Service — grant 2. Community contributions 3. City of Rockingham	11,000 3,000 8,000	
				22,000
9-80 to 4-81	Senior Citizen Center and Nutrition Site	1. U.S. Department HEW Older Americans Act, Title V grant 2. Richmond County 3. City of Rockingham 4. Value of trades labor for masonry, carpentry, and electrical work supplied by Richmond Technical College as a live project	32,942 21,000 21,058 20,000	
				95,000
2-81 to 5-81	Asphalt concrete pavement recycling program (first city to do so in N.C. on large scale; asphalt is removed from roadway and reprocessed)	1. U.S. Federal Highway Administration Demonstration Project 39 — grant 2. City of Rockingham	30,000 90,000	
				120,000

Since 1974, Rockingham has used more than $6 million in state and federal grant assistance for a variety of community needs, which has improved the livability — socially, economically, and culturally — of Rockingham.

Future Projects:

FY 83-84	Public library	$1,400,000	FY 81-82	Continue "201" facilities	$ 500,000
FY 81-83	Water facilities expansion	$2,500,000	FY 81-83	Downtown revitalization	$ 100,000

to the business district. This work was done by a savings and loan institution that uses the house for its office building.

Although there is a need for more housing in Rockingham — particularly in the low- and moderate-income levels — 300 apartments and a number of moderately priced houses were built in the late seventies.

Community Development Block Grants enabled Rockingham to rehabilitate over 60 residential and commercial structures and to provide major street and drainage improvements during Phase I of the project. Phase II, now under way, is rehabilitating 97 homes, providing street and drainage improvements, and will include total renovation of a neighborhood park. Phase III, which will start in October this year, will complete the revitalization of Rockingham's only deteriorating neighborhood. Total CDBG grants for these projects are approximately $2.8 million.

When plans for the senior citizen center were discussed, the city was approached by Richmond Technical

Two residences in rehabilitation area. House on the left is waiting for work to begin; its neighbor on the right has been improved through the CDBG program.

College (formerly Richmond Technical Institute) to see whether a "live project" could be arranged. All labor for masonry, carpentry, and electrical construction are now being supplied (estimated value $20,000) for the center at no cost to the city. The school has found this project advantageous in training and educating its students.

A pilot pavement recycling program is being partially funded through the U.S. Federal Highway Administration under the Demonstration Project 39 program. Asphalt will be removed from existing roadways, reprocessed, and reapplied in needed areas throughout the city. Data will be collected on the economic feasibility of asphalt recycling to see whether consumption of energy and natural resources can be reduced and whether the environment will suffer. A final report will be sent to Washington on this project.

WITH ALL OF THESE improvements to the city, how much has Rockingham's tax rate increased? Surprisingly, it is less than in 1974, when the first major project began — the comprehensive "201" water and sewer improvement program. In that year the city had its real property revalued and the rate was set at 85 cents per $100 valuation. It remained at that level until 1978, when it dropped to 82 cents. In 1979 the rate was 80 cents; this past year, 83 cents.

Rockingham continues to strive to make the community a good place to live and work. A new public library is in the planning stage (projected cost: $1.4 million); water and sewer facilities will be further expanded and upgraded; and the downtown revitalization proceeds as an ongoing project.

Street improvements under way — also through Community Development Block Grant money.

At the back of the Rockingham booklet prepared for the All-America City presentation were these words:

> All citizens are proud of the new downtown look. The theatre and downtown plaza have been utilized for weddings, public meetings, celebrations and just resting.
>
> We are proud of these 3 projects: the Hospital Expansion, the Recreation Complex and the Community Theatre. We have proven to ourselves that defeatism and apathy can be overcome when citizens, organizations and governments work together. With a positive outlook, we are attacking the remaining problems in Rockingham. We are a city on the move!

It's true. Rockingham, the All-America city, did not go into retirement when it received the award. ♥

North Carolina's Judicial Rotation System

Henry C. Campen, Jr., and Harry C. Martin

The state's system of rotating superior court judges has both advantages and problems. How can the system's strengths be saved and its shortcomings be eliminated?

NORTH CAROLINA is one of a very few states in which judges of the trial court of general jurisdiction — the superior court in North Carolina — do not preside exclusively in the judicial districts where they live. In fact, a superior court judge who holds court in his home district is the exception rather than the rule. A system known as judicial rotation requires that superior court judges hold court consecutively in all of the courts within a broad geographical region. (It should be noted that judges of the state's district court — the lower trial court of limited jurisdiction, with about twice as many judges as the superior court — are not subject to judicial rotation, and normally preside in their home districts.)

Rotation has been controversial among lawyers and the legislature for nearly 200 years because it affects the efficiency of court operations and the effectiveness of judges as impartial, independent arbiters. This article seeks to inform a wider audience about judicial rotation and its significance to the North Carolina court system.[1]

The state's Constitution mandates the rotation method of assigning superior court judges: "The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed."[2] The Constitution also makes the Chief Justice of the Supreme Court responsible for making judicial assignments in accordance with the principle of rotation and the Supreme Court rules. The basic unit of this assignment system is the judicial district. Under the Constitution, the General Assembly has the authority to establish and modify judicial divisions and districts, as well as the number of resident judges in each district At present the state is divided into four judicial divisions, which in turn are divided into a number of judicial districts — 33 in all (see Figure 1). Each district includes one or more complete counties. Superior court judges are assigned to rotate among the judicial districts within the division where they reside.

Each resident superior court judgeship in a district is a position into which each judge of the division must rotate. During a complete rotation cycle, each regular superior court judge must spend six months in each position in each district — six months in the district if it has one resident judge, 12 months if it has two resident judges, and so on. [Of the 33 present districts, 16 have only one resident judge, 12 have two resident judges, three have three, one (Wake County) has four, and one (Mecklenburg County) has five.] Sessions of superior court are held in all 100 counties. In the 25 judicial districts that have more than one county, superior court judges are assigned to each county within the district for varying numbers of weeks depending on caseloads. In some counties superior court is is session (open) only a few weeks each year, while in others it is in session continuously.

Each year, a calendar is published that sets the terms of court in each county and reflects the rotation pattern for the ensuing twelve months. The administrative assistant to the Chief Justice is responsible for preparing this calendar and administering the rotation system. The judicial itinerary is based on recommendations by the judges in each division. The plans vary for each division: Some are established for as many as ten years in advance, others for shorter periods.

Figure 2 illustrates a typical rotation pattern for a superior court judge in the First Division. The diagram simplifies the actual pattern: Only the total court time in each county is shown. While a judge is assigned to a multi-county district, he actually travels back and forth among the counties within the district, depending on workload. Also, the diagram omits what for many judges may be the most time-consuming and ar-

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Mr. Campen is the Administrator of State Trial Court Services. Formerly, he was Trial Court Administrator for the Twenty-eighth Judicial District (Buncombe County). Judge Martin serves on the North Carolina Court of Appeals and was formerly senior resident superior court judge in the Twenty-eighth Judicial District.

1. The article relies heavily on two earlier analyses by former Chief Justice William H. Bobbitt and Prof. J. Francis Paschal. Bobbitt, *The Rotation of Superior Court Judges*, 26 N.C.L. Rev. 335 (1948); Paschal, *The Rotation of Superior Court Judges*, 27 N.C.L. Rev. 181 (1949).

2. North Carolina Const. art. IV § 11.

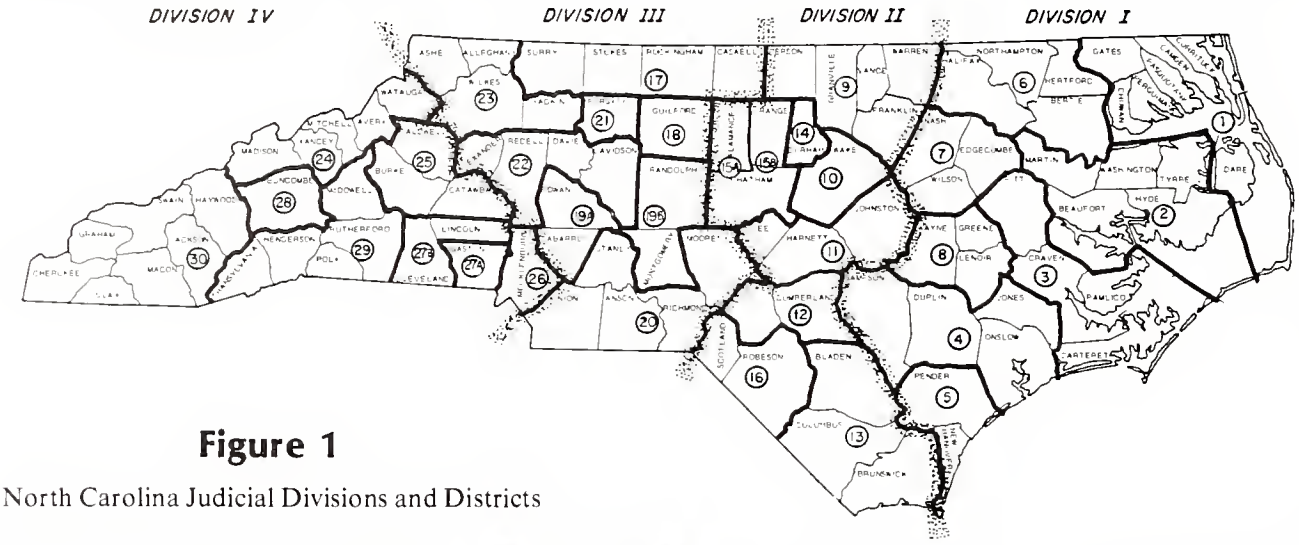

Figure 1

North Carolina Judicial Divisions and Districts

duous part of their travel — back and forth from court to their homes at least weekly and sometimes daily, depending on the distance.

The history of rotation

Unlike many aspects of our legal system, rotation is not a vestige of the English judicial system. English judges rode circuits and left from central locations to hold the courts of a particular geographical area.[3] While rotation was founded on this principle, it differs in that the same judge does not preside over a circuit continuously. Many state and federal courts have employed circuit-riding at some time in their history. The power of the state supreme courts to assign judges is common throughout the country. This authority is "regarded as a flexible means for evenly allocating judicial manpower."[4] The rotation method of assignment is a radical version of transfer authority. We are unable to determine how many other states use the rotation system, but apparently very few do.[5]

The North Carolina General Assembly inaugurated the rotation system in 1790. Its desire to allocate judicial time fairly — not the later, post-Reconstruction concern about judicial impartiality — was the primary reason for enacting the first rotation legislation. Until then the state had eight superior court districts but only three judges, who themselves decided which of them should hold which courts. The result was that the court in Morganton — separated by a long journey from the central part of the state — was neglected. Responding to complaints from the Morgan District, the 1790 General Assembly added a fourth judge and divided the state into eastern and western "ridings" (divisions) with four districts and two judges each. The Act of 1790 provided that one judge from each riding was to pass into the other riding every six months. This change "not only evenly distributed the judicial labors [but]. . . definitely established the identity of the judges responsible for holding any court."[6]

In 1806 the legislature expanded the rotation system by requiring that at least two terms of superior court be held each year in each county.[7]

During Reconstruction, from 1868 until 1875, judges did not rotate. In 1868 the legislature created twelve judicial districts, and judges held court exclusively within their resident districts unless permitted by the Governor to exchange with another judge.[8] With the constitutional revisions in 1875, the rotation method of assignment was resumed. Those amendments made rotation mandatory, elaborating on the pre-Reconstruction legislative version. They not only prohibited judges from holding court successively in any district but also prohibited them from presiding in any district "oftener than once every four years."[9] The revised Constitution also required that judges be elected on a statewide basis rather than from their districts.

After 1875 no significant changes were made until 1915, when the state was divided into two judicial divisions, the judges to hold court only within their division. In 1955 the number of divisions was increased to the present four.

Until the early 1970s the pattern of rotation was predictable. Judges moved in sequence through the assigned districts in their division. No judge presided in the same district more often than the time required to rotate through all of the

3. Winslow, *Remarks Concerning Suggested Changes in the Court System*, 37 N.C.B.A. REPT. 146 (1935).

4. Fish, *Politics Rides the Circuits: State and National Judicial Itinerary*, 512 JUST. SYS. J. 161 (Winter 1979).

5. Fish (*id.* at 117) cites a 1928 letter from the dean of the University of North Carolina Law School to a State Bar Association study committee saying that North and South Carolina were at that time the only states that used rotation [letter from Charles T. McCormick to G.V. Cowper, February 20, 1928, 31 N.C.B.A. REPT. 156 (1929)].

6. Paschal, *op. cit. supra* note 1, at 182-83; F.-X. Martin, 1 LAWS OF NORTH CAROLINA 485 (1804).

7. Winslow, *op. cit. supra* note 3, at 153.

8. *Id.* at 155.

9. *Id.*

other assignments in that division. In 1978 the Chief Justice of the Supreme Court suspended this pattern, and all superior court judges were assigned to their home districts for a six-month term. After this exceptional assignment, the regular sequence was resumed.

In 1980, sequential rotation was abandoned altogether in order to ensure that in multi-judge districts no more than one judge would hold court in his home district at any time. The purpose was to increase the amount of time when a district would have at least one resident judge at home so that the court could be administered by the resident judges for a maximum amount of the total rotation period. This objective was achieved at the expense of predictability in judicial assignments — the path one judge follows through the districts in his division often bears no resemblance to the path followed by a neighboring judge.

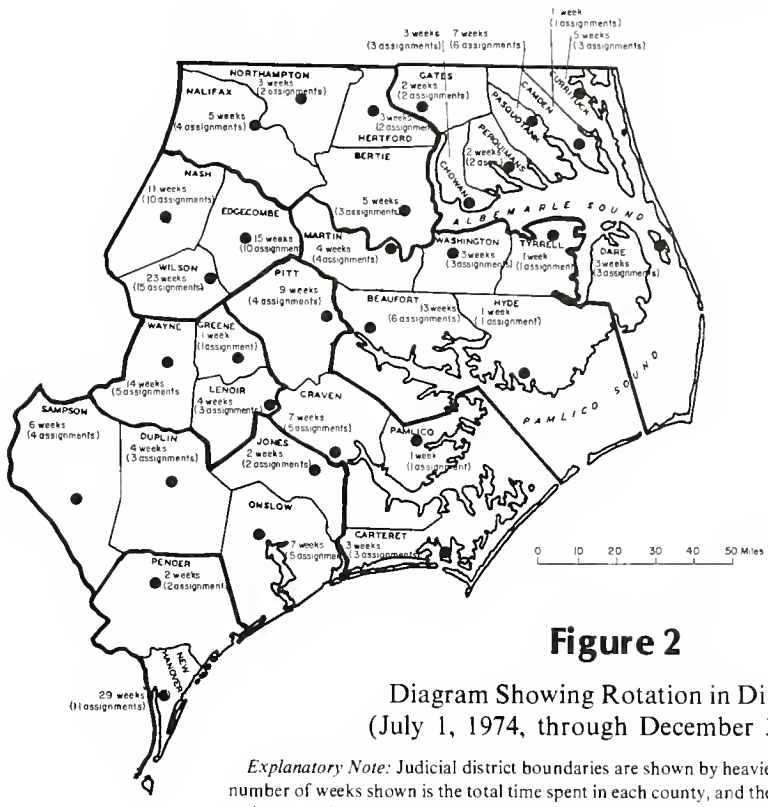

Figure 2

Diagram Showing Rotation in Division I
(July 1, 1974, through December 31, 1979)

Explanatory Note: Judicial district boundaries are shown by heavier lines. The number of weeks shown is the total time spent in each county, and the number of assignments is the number of separate trips to that county — all during the complete 5½-year cycle. The diagram does not account for 77 weeks out of the 5½-year cycle. For 39 of those 77 weeks, the judge actually held court but no record could be found of where he held it. Thirty-eight weeks were periods of vacation, judicial conferences, and public holidays, when the judge was not assigned to any court.

Source: N.C. Administrative Office of the Courts.

The controversy

The rotation system was born and nurtured in controversy. One writer suggested that the system was a result of pressure from special-interest groups.[10] Incumbent judges, he said, were often not popular with some of the state's more prominent attorneys, who tried to limit judicial influence by requiring that no judge hold the same court for two consecutive six-month terms. By constantly moving all of the judges, none could exert his will over a particular court for a long period, and the lawyers could easily avoid judges with whom they had not had a good experience.

As we have seen, a break in the practice of rotation occurred during Reconstruction — from 1868 to 1875. The motives of those then in power were different from the motives that inspired rotation in 1790. In seeking to increase the influence of themselves and those they appointed, the carpetbaggers increased the number of judges to twelve and provided that they were to preside exclusively over the courts of their home district.

In 1875 rotation was the center of controversy again. A state constitutional convention in that year sought to "undo insofar as is possible, the results of Reconstruction and reclaim the State from carpetbaggers and scalawags."[11] Rotation was incorporated into the Constitution not because of the narrow interest of a few lawyers but in reaction to the corruption of Reconstruction — for in the years since 1868, Reconstruction leaders had achieved their objectives. "For the first time in the State's history, some judges had appeared as open and avowed partisans."[12] The 1875 constitutional provision that prohibited a judge from presiding in any district more often than once every four years was designed to ensure that no district would have to suffer a partisan judge for a full eight-year term. Statewide election of judges was instituted to ensure Democratic Party control of judgeships and to dilute the influence of counties where the Democrats were not in power.

The controversy did not end in 1875. The venue was simply moved from the General Assembly to the North Carolina Bar Association. Rotation was debated at the Bar Association's first meeting in 1899 and has often appeared on its agenda since then.

The debate is documented in eighteen of the Bar Association's annual reports,[13] and at least six special committees or commissions have studied the rotation system over the years.[14] The

10. *Id.* at 152.

11. Paschal, *op. cit. supra* note 1, at 184.

12. *Id.* at 185.

13. N.C.B.A. Repts: 1899, 1900-12, 1911-12, 1914, 1916, 1923, 1925, 1927, 1928, 1935, 1936, 1941, 1942, 1948.

14. 1913 Constitutional Commission, 1915 Craig Commission, 1932 Commission, 1937 Judicial Commission, 1947 Commission for the Improvement of the Administration of Justice, 1966 N.C.B.A. Court Study Commission.

issue has always generated spirited argument. The following quotes indicate the conflicting views.

> **It seems to me that in North Carolina the first and most essential reform is to lay the ax at the root of our trouble. Our system of rotating the judges is utterly indefensible. . . .**[15]
>
> * * *
>
> **The system has been arrived at through experiment, and experience is too large a part of the lives of our people to be abandoned without some weighty reason that has been heretofore advanced. . . .**[16]

The case for rotation

As with other longstanding traditions, the longevity of rotation is often cited as justification for its continuance: The system has been used in North Carolina for nearly 200 years. While rotation has regularly been hotly debated, legislation aimed at abolishing it has been seriously considered only twice since 1875 and has always been rejected.[17]

One function of the rotation system is to allocate the limited time of superior court judges fairly to all 100 counties. (As explained earlier, allocation of judicial time was the primary purpose of the 1790 legislation that established rotation.) If the state continues the policy of holding superior court in every county -- and there seems to be no opposition to this policy — then some equitable way of dividing superior court judges' time among all of the counties must be found. Whatever its other merits may be, the rotation system does accomplish this purpose.

But the primary argument for the present rotation system is that it maintains judicial impartiality. Superior court judges are freed from local pressures arising from social, business, or church relationships. The principle of an impartial judiciary is at the foundation of our system of justice. The stakes are high in matters that come before the superior court, ranging from death sentences during criminal terms to million-dollar money judgments in civil court. The public's confidence in the fairness of the courts is essential to the integrity of the judicial system. Former Chief Justice Bobbitt (in 1948, when he was a superior court judge) suggested that without rotation the judge would "tend to lose either in fact or in public estimation, the freedom from entanglements with people and controversies of the community that he now enjoys to a considerable degree."[18]

Rotation has unquestionably afforded judges this freedom from local pressures. Until 1978 judges in some areas of the state spent no more than six months in their home districts once every seven years. Judges commonly hold court more than 200 miles from their home counties.

Another factor closely associated with judicial neutrality is political independence. Candidates for judicial election are nominated from the judicial district in which they reside but run on a statewide ballot in the general election. The low visibility of judicial elections and the short time that judges spend presiding in their home districts renders the judiciary far less vulnerable to political influence than other constitutional officers. The importance of this "arm's length" between judges and politics is underscored by the Code of Judicial Ethics, which severely constrains judges from participating actively in partisan politics. Rotation provides them with an opportunity to work with the people in each county in their division, and voters have a chance to evaluate the performance of superior court judges in that division.

Rotation is an important element in maintaining a statewide judicial system. The unified structure of the North Carolina General Court of Justice is complemented by the practice of rotation, and consistent interpretation of the law is fostered by it. Like all human beings, judges vary in their ability, knowledge, and personality; rotation guarantees that all parts of the state share equally in these diverse characteristics. Also judges themselves can benefit from rotation: Through their travels they are exposed to a variety of legal practices and procedures. This exposure serves to counteract parochial tendencies. The judges "become judicial cosmopolitans as their own horizons expand. . . ."[19]

The judge becomes acquainted with the lawyers in each county in his division and with the community they serve. "The Charlotte lawyer, representing his Mecklenburg client, in litigation pending in Graham County, may find himself among strangers; but there will be one person there who knows him, namely, the judge."[20] The best thinking of lawyers and judges is disseminated to every part of the state.

These advantages of the rotation system are advanced by many of the superior court judges themselves as reasons to keep the system. There is no record of votes taken on the issue by the Conference of Superior Court Judges. However, it would be fair to say that the present system is supported by a majority of superior court judges. The most recent conference action on this subject was in 1978. A committee of judges representing all four divisions considered an increase in the number of divisions and voted to retain the present four.[21] Early in 1981, the chairman of the Superior Court Judges' Legislative Committee conducted a survey of superior court judges, in which 25 favored the status quo with respect to rotation, while 22 preferred to increase the number of divisions, three voted for other options, and the rest did not respond to this question.

The case against rotation

The public record of the debate over rotation is filled with recommendations that the system be modified or dismantled. Of the five special commissions that have considered rotation, none have recommended that it be continued. The North Carolina Bar Association has gone on record to support the system only twice.[22]

The rotation system is an obstacle to more efficient court administration. "[R]oatinized rotation systems strike at the heart of modern theories of judicial administration: Judge-centered control

15. *Address on Reform in Law and Legal Procedure*, 16 N.C.B.A. REPT. 49 (1914).

16. Everett, Gattis, & Hicks, *Majority Report of Special Committee on Judicial System*, 30 N.C.B.A. REPT. 148 (1928).

17. Paschal, *op. cit. supra* note 1, at 197, 199.

18. Bobbitt, *op. cit. supra* note 1, at 339.

19. Fish, *op. cit. supra* note 4, at 120.

20. Bobbitt, *op. cit. supra* note 1, at 340.

21. Report of the Committee on Rotation, Nov. 4, 1978.

22. Paschal, *op. cit. supra* note 1, at 199.

of court business."[23] The senior resident superior court judge has administrative responsibility for a court in which he seldom presides. His predicament is analogous to that of the manager of a department store in Asheville who is stationed in Charlotte for six months as a salesclerk. The manager works in a store over which he has no authority and tries to control the operation of a store over 125 miles away.

The senior resident judge must make appointments to important positons, including that of magistrate, jury commissioner, and (if a vacancy occurs) clerk of court.[24] He is responsible for removing a magistrate, clerk, or district attorney from office in cases of misconduct. And he prescribes bail and pretrial release procedures for his judicial district and appoints and supervises court reporters.

In July 1980, the Supreme Court made senior resident judges fully responsible for monitoring and scheduling all superior court civil cases. This function had been performed by a "calendar committee" of attorneys in each county. Without a resident judge presiding, the committee arrangement was always viewed as a necessity, but the new rule was a response to evidence that the committee system was not performing its function satisfactorily. The average age of a superior court civil case in January 1980 was 475 days. Civil terms of superior court have traditionally been underutilized.[25] Thus the senior resident judge has another important duty in his home court, and he must attend to it by long distance. In this instance, the problems associated with rotation have compounded themselves.

Another administrative function performed by the senior resident judge — while not spelled out in statute — is as important as any other mentioned. By virtue of his position, he is viewed as the final authority on all sorts of policy and procedural questions. The senior resident judge frequently must advise the clerk of court and consult the county commissioners about the court facilities, and he must carry out all of these responsibilities with approximately one six-month term every 30 months and two week-long administrative terms each year in his home district. (Chief Justice Joseph Branch has indicated his intent to assign senior resident judges to their home districts whenever necessary for administrative purposes.)

The impact of rotation extends beyond general administration. The presence of a different judge every six months results in fragmented case management. A civil case may come before as many as half a dozen judges for motions, pre-trial conferences, or trial before it is finally resolved. Consequently, statutory pre-trial procedures that are designed to expedite the disposition of cases lose effectiveness because several judges may be involved in implementing them.

Effective administration of post-trial procedures is also hampered by rotation. Motions for appropriate relief on grounds as broad as violation of the U.S. Constitution are permissible after a criminal trial concludes, and they may be heard by any superior court judge. As a practical matter, however, judges are reluctant to review the trial work of a colleague. Scheduling hearings on motions for appropriate relief becomes uncertain when the trial judge has moved on to another district. Rotation also makes it difficult for the judge to use written pre-sentence reports. Preparing a reliable written pre-sentence report takes several weeks because of the delays involved in obtaining such information as the defendant's criminal record, which may be maintained at federal and state as well as local levels. Rotation tends to discourage the judge from ordering a written pre-sentence report, because he may have moved on to the next district by the time the report is ready, and it is impractical (although not illegal) for the sentencing hearing to follow him to the new district.

One common criticism of rotation is its effect on continuances. The senior resident judge may urge his brethren who hold court in his district to be strict on requests for delay, but he cannot enforce his wishes. Conscientious as a nonresident judge may be, he does not have the same incentive as a resident judge to maintain current dockets in a court to which he may be assigned for only six months.

Effective case scheduling is complicated by the judge's travel schedule. Superior courts around the state do not convene on Monday morning until 10:00 a.m. so that judges can travel from their homes to their assigned courts. Predicting which cases will go to trial and how long the trials will last is extremely difficult. The trial calendar may be completed on Tuesday if many cases are settled or continued. If so, the judge will want to return immediately to his home district. On the other hand, the first case may last all week. Consequently, motions, arraignments, and other nonjury matters are usually scheduled as the first items of business on Monday morning in order to ensure that they are reached. Fridays are very often not used at all because judges are often reluctant to start a new jury trial as late as Thursday afternoon. They frequently have to drive several hours on Friday to reach their homes and understandably prefer not to begin traveling late in the day. There is also the problem of "bumping" cases on the calendar to the next week. The presence of a resident judge would permit courts more flexibility in scheduling cases and maximize the use of available court time.

To deal with some of these maladies, some North Carolina judicial districts now have trial court administrators who aid the district's senior resident judge with professional management.[26] These administrators have reduced the negative impact of the rotation system to some extent. However, as middle managers, their authority is limited, and they cannot overcome all of the discontinuity associated with the system. As often as every six months the administrator must work with a different judge whose policies and attitudes may differ radically from those of the senior resident judge, who may be 100 miles away.

All of these factors have a cumulative effect on the judicial system. They make

23. Fish, *op. cit. supra* note 4, at 123.

24. *North Carolina Trial Judges Benchbook*, p. V.6.1.

25. *Statistical Report of the Administrative Office of the Courts.*

26. Three trial court administrators were employed in 1977 under a pilot grant. Seven more positions were added in 1979 by the General Assembly. Trial court administrators have helped to reduce delay in civil cases because they have improved monitoring and scheduling. Administrators have also achieved more efficient use of jurors and have assisted judges in a number of other aspects of general administration.

it difficult to establish accountability for the administration of justice. The judge who is responsible for a district is seldom there, and the judge who is presiding is concerned foremost with his home court. In 15 out of 33 judicial districts, no judge remains on duty for more than six months at a time. As early as 1925, Judge G.V. Cowper, president of the North Carolina Bar Association, articulated the problem:

> **If things have gone wrong in your district, upon whom can you place the finger of blame? No judge can really become intimately familiar with the conditions in from two to seven or eight counties constituting a district in the space of six months service.[27]**

There are also other objections to rotation. The travel costs for superior court judges are high — for fiscal year 1980-81 they were nearly $522,000.[28] This figure includes the judge's lodging, food, and mileage while he is away from home.

The travel schedule is a significant personal hardship on judges and their families. A judge in western North Carolina estimated that during 1976 he spent an equivalent of eight 40-hour weeks driving to and from a distant court and concluded that "we are exhausting the physical capabilities of our judges by driving tasks that could be performed by anyone with an operator's license."[29] This judge, like many of his brethren, is separated from his wife and children a great deal of the time. Such personal hardships have contributed to resignations from the superior court bench, which has prompted Governor Hunt to cite the rotation system as "the single greatest detriment to getting good people to serve on the superior court bench."[30]

Finally, opponents of rotation argue that its abolition would not materially affect the impartiality of the judiciary. Most other states operate without rotation, and no one has claimed that judicial integrity is limited to the Carolinas. District court judges in North Carolina have never been required to rotate. Nothing in the record of the district court judiciary suggests that localization has detracted from their impartiality. A judge addressed this question of judicial impartiality in his hometown newspaper.

> **The records of North Carolina are replete with directed verdicts against law school roommates, and favorable verdicts to lawyers have been set aside by presiding judges who are closer to them than brothers.[31]**

Common ground

The controversy surrounding rotation is as alive today as ever. Like his predecessor in 1899, the new president of the North Carolina Bar Association attacked rotation in his recent inaugural address. "Long after its historical justification has disappeared, we defy the accumulated experience of American jurisprudence and continue to tolerate rotation."[32] Recent studies by the North Carolina Bar Foundation and the Department of Crime Control and Public Safety include rotation as a major issue of consideration. And the Governor has spoken out against the system.[33]

However, compromise may now be more possible than ever before. A resolution would have to incorporate the salutary aspects of rotation but also adapt the principle to the requirements of an increasingly complex court system. Three recent developments may provide the basis for such a solution.

As mentioned earlier, the rotation pattern has been amended twice since 1978 to counteract the negative effects of rotation. As a result, whereas a resident judge used to sit in his home district for a six-month term only once every seven years, he is now at home every 30 months. This significant change has not diminished the impartiality or independence of superior court judges or reduced the quality of the judicial system.

A second potential catalyst is the eight-division plan. In 1978 both the Bar Foundation and the Department of Crime Control and Public Safety proposed doubling the number of judicial divisions. An eight-division plan would overcome many disadvantages of the current assignment method. Such a move would cut the number of nights spent away from home and reduce the personal hardship of judicial service, thus making the judgeships more attractive for well-qualified candidates. This approach may also save money, because judges would be at home or within reasonable commuting distance more often. Judges would preside in their own district more frequently, thus permitting senior resident judges to carry out their administrative responsibilities more effectively.[34] The smaller group of judges in each division would promote more continuity in court administration in that division.

Both reorganization proposals stress the significance of the Chief Justice's broad assignment authority. Judges who preferred an occasional assignment outside their division could be accommodated, consistent with their home district responsibilities.

A merit selection plan for judges might form another piece of the puzzle. This plan has a variety of options, but the basic scheme is the same:[35] A nominating commission appointed by the Governor, legislative officers, and the

(continued on page 33)

27. Cowper, *Remarks on the Rotation of Judges*, 29 N.C.B.A. Rept. 103 (1927).

28. Figures are from the 1980-81 Budget, Administrative Office of the Courts.

29. Draft of letter by Judge Robert D. Lewis, Senior Resident Judge of the 28th Judicial District.

30. Bystrynski, "Branch Wants Justice System Streamlined," The Raleigh Times, Oct. 18, 1980.

31. Judge Robert D. Lewis in a letter to the editor, The Asheville Citizen-Times, May 28, 1979.

32. Remarks of Dewey W. Wells, president of the State Bar Association to the Association on June 27, 1980.

33. Bystrynski, *op. cit. supra* note 30.

34. At present, from one and one-half to three years of a superior court judge's eight-year term of office is spent on assignments to his home district. In some cases, judges are assigned home twice in 18 months and then not again for two years. With smaller divisions, standard intervals between home assignments could be more easily established. The practice of sending a senior judge home once every 30 months would not be necessary, since the regular pattern would result in more frequent home district assignments for all judges. Such a system would improve continuity in administering of the courts and in case management.

35. The North Carolina plan is contained in *Final Report of the Special Study Committee on the Administration of Justice — Judicial Merit Selection*, 1977.

Introducing Computers into Local Government Administration

Emerson Snipes and Connie Crook

SMALL LOCAL GOVERNMENTS in North Carolina are moving into the computer age. Towns with populations as low as 1,000 people and counties of all sizes are buying computers and computer program packages to aid in their basic accounting, billing, and record-keeping functions (see Table 1). The noisy rattle of semi-programmable accounting machines — so familiar to governmental finance offices — is being replaced by the quiet hum of small computers with rapid high-speed printers. Now affordable to almost any local government, computers represent perhaps the most prevalent technological change being pursued by local governments today.

But getting any new technology up and going inevitably involves some problems. For example, some units have purchased equipment that must have extremely expensive and unexpected maintenance contracts. Machines sometimes have sat idle because no staff member knew how to make them work. In some cases, timetables for setting up the system have stretched out interminably, as one snag after another arises. Some contract computer programmers have promised great things but proved to be very unreliable. Some vendors, discovering a new and untapped market, have pursued local governmental officials with a zeal that borders on harassment. Indeed, some people have lost their jobs because of inadequacies in a computer system or computer services contract.

For the last four years, North Carolina State University's Center for Urban Affairs and Community Services has been working with small towns and counties that are entering the computer marketplace. With cooperation from the North Carolina Local Government Information Systems Association (NCLGISA), the Computer Science Department at North Carolina State University, the Institute of Government, and several state agencies, the Center has conducted training sessions, feasibility studies, and special computer program development projects, and it has set up a resource library so that local units can share information on computer applications in governmental affairs. The Center staff members have seen many of the problems faced by local governments in automating their data-processing operations, and have developed a procedure for selecting and procuring computer equipment and packaged computer programs that will avoid some of these problems.

The problems

Obtaining computing services is full of pitfalls — for several reasons. First, the technology is so complex and changes so rapidly that people who are not technically trained do not understand it. The micro-chip technology that is at the core of today's computer has no counterpart in the layman's physical world, and he simply does not grasp its essence. Furthermore, the technology is constantly changing. Computers are simultaneously getting more powerful, less costly, and smaller. As a result, some equipment becomes obsolete within five years of its introduction. These equipment changes cause modifications in the way computers are used — that is, in how computer programs are written and how data-processing departments are operated. This technological turmoil places the typical governmental manager at the mercy of the computer salesman, who can readily show him how to get more computing power for less money — or at least more for the same amount of money — while perhaps obscuring the product's real cost and value.

Another reason why local governments have such difficulty in adopting computer technology is that most managers are not trained to supervise the installation and operation of a data-processing system. Developing and operating a computer-equipped unit requires a set of activities and a vocabulary that are foreign to many local government managers. Most managers are at a disadvantage because computer personnel often insist on using the terminology, work styles, and operational techniques of their profession in dealing with everyone. The typical manager finds that he cannot effectively

Emerson Snipes is manager of the Systems Development Group (SDG) at the Center for Urban Affairs and Community Services. Connie Crook, a project supervisor in SDG, is an industrial engineer who has concentrated in information systems design. Both have worked with a variety of governmental organizations in designing information systems and procuring equipment.

Editor's Note: This article discusses introducing computers to local government administration. In the next issue two recent examples of computer applications in local government will appear in articles about the processing of food stamp applications in Rockingham County and the automation of land records in Orange County.

Table 1

Recent Computer Acquisitions by Selected North Carolina Local Governments

Governmental Unit	Model	Central Processing Unit[a]	Storage Capacity[a]	Application	Total Cost[b]
Alamance County	Burroughs 2930	1,000,000	1,000 million	General accounting, personnel property tax, human services, others	$430,000
Asheville	Burroughs 1855 (two machines)	524,000	130.5 million	General accounting, utility payroll, criminal justice, others	242,000
Caldwell Community College	Prime 500	512,000	64 million	Student records registration, general accounting, payroll, others	100,000
Chatham County	IBM 34	64,000	64 million	General accounting, property tax, payroll, others	80,000
Farmville	Data General Model CS-30	80,000	12.5 million	General accounting, utility billings, payroll	41,000
Fremont	Data General Model CS-30	64,000	12.5 million	General ledger, utility billings, payroll	36,000
Orange County	Microdata Royal E	128,000	257 million	Property tax, accounting, payroll, voter registration, jury selection, community development, others	88,000

a. Figures given are "bytes"; each byte is roughly equivalent to a letter or numeral.
b. For some figures, software packages and other costs bid with the computer may be included.

supervise the data-processing operator and computer programmer because their work is different from the other activities of local government and they speak a different language.

Local governments are increasingly required to document various aspects of their activities. Computers can expedite the inevitable paperwork and help management control the costs of this increased accountability. Furthermore, most governments can now afford computers. But managers need to know how to deal with computer vendors, how to make wise computer investment and management decisions, and how to get back in control of the fundamental information-processing area of their operation.

The solution: a user-oriented computer study

The technique that the Center for Urban Affairs has developed for acquiring computers and setting up effective information-processing systems in local governments is a thorough study of the kinds of information and services that the unit needs. It does much to overcome the problems faced by managers in obtaining computer services. First, it avoids jargon — the manager can express his needs in plain English. The study process does not often use words like "core," "K," "byte," "mag-disk," "floppy disk," and "modem." And it requires the manager to know only very simple concepts of computer hardware and operational procedures.

This approach does require the manager to be very clear about his own organizational goals and directions — and also requires that he and his staff identify how they do their jobs and what information they need. In short, it requires only a very practical but nontechnical management analysis.

Information processing is an essential part of local government administration. People need information in order to make decisions. These decisions may be large — how many employees does a department need? — or small — how much is a resident's water bill? In the Center's study approach the organization's information-processing needs are specified, and those tasks that often recur and involve large volumes of data become candidates for computerization. Computer vendors are asked to bid on hardware (physical computing equipment) and software (computer programs) that will store and process raw data and ulitmately provide the needed information.

The computer purchase decision is therefore made on functional grounds. Whether to use a computer depends on the degree to which it can meet information processing needs and/or reduce costs. The decision about a particular piece of equipment or vendor rests on how well the vendor can process the data on his equipment and at what cost.

The Center's study procedure follows these steps:[1]

1. *Document existing information processing, operation, and problems.* Staff members are interviewed to determine what functions they perform, what information they need in order to perform their function, and what data they generate. Information is obtained on volume of data, methods and frequency of communications with other departments and persons, and types of forms used. The results of the interview are set down in a narrative document.

2. *Analyze operations and list data-processing objectives.* The data-processing activities identified in step 1 are summarized as objectives. These processing objectives determine what will be required of the system (see Table 2). Most departments' operations can be summarized in five to ten information-processing objectives.

3. *Rank the objectives.* The objectives for each operation are ranked on the basis of likelihood that they can be achieved with computers. Criteria for the ranking include repetitive nature, burdensomeness, volume, need for rapid turnaround, and the function's importance to the unit's overall operations.

4. *Investigate and document the costs and benefits of three to six alternative ways of processing data.* The alternatives that are investigated may include a service bureau, a cooperative arrangement with another governmental entity, and several different configurations of in-house equipment. This step generally requires that vendors be asked for cost estimates for the hardware and software needed to achieve the objectives.

5. *Select the most appropriate alternative.* The alternative that achieves the most information-processing objectives at the least cost and has the most other desirable features (like flexibility, expandability, and user control) is chosen.

6. *Prepare and issue a request for proposal.* A request for proposal (a non-binding bid), specifying the type of service the local unit requires and the objectives that must be met, is issued to vendors. (A good policy is to send the request to all of the vendors on the state government's list of bidders qualified to sell computing equipment. About 30 vendors are on the list.) This procedure gives the unit a chance to obtain some feedback from vendors before the formal bid process begins. The proposal request contains two main parts: the unit's particular requirements for training, support, and contractual relationships; and the functional specifications of the proposed system — including descriptions of departmental operations, forms currently being used, and flowcharts describing the proposed computer-assisted operations.

7. *Review proposals and prepare and issue the invitation to bid.* After the proposals that were submitted have been reviewed, the required statutory formal invitation to bid is prepared and issued. It is essentially a modification of the request for proposal.

8. *Review bids and select the vendor.* The vendor that rates the highest on the most important previously established criteria (which include the type of training provided, the staff needed, the vendor's history in work with other local governments, and of course the cost) is selected and a contract is made.

This study-and-acquisition procedure is generally conducted by a user committee drawn from key staff in the departments or units that will be affected by automation. These staff members give overall direction to the effort and make the key decisions about priorities among objectives (step 3), alternative selection (step 5), and proposals and criteria (steps 7 and 8).

The user committee must have a technical aide to handle all details of documentation and compile the paperwork. Larger units usually have someone on their staff who can perform this function. Smaller units may

Table 2

Selected Local Government Information-Processing Objectives

Department	Typical Objective(s)
Water and sewer (billing)	Each month, within five days after the meters for the residences are read, produce approximately 1,000 water bills that contain the information that appears on the current water bill form.
Tax (listing)	Each December produce for each of 45,000 county property owners a tax-listing form that (a) contains the information that appears on the current form, and (b) can be mailed directly to the owner.
Finance (payroll)	Each month calculate each staff member's pay and designated withholdings and print calculated amounts on his check.
Social services (food stamps)	Each month generate approval-to-purchase cards for all clients who are qualified to receive food stamps.

1. This process has been documented by the Center in a manual that can be used by local government personnel — *Selection and Procurement of Computer Technology, A Methodology for Local Governments*, which is available from the Center for Urban Affairs, Box 5125, Raleigh, North Carolina 27650.

want to request help from a technical assistance organization.

Generally, for a medium-sized county (approximately 50,000 population) or town (approximately 30,000), this process can be completed in six to nine months. The user group will have to meet four to five times during this period for a total of twelve hours. The aide who assists the group will spend forty to eighty days on the task, depending on his expertise. Much larger units or particularly complex operations may require more time.

Two case studies

The Center has used this process to help a number of units in acquiring computers. Three examples are Halifax County and the cities of Fremont and Farmville.

Halifax County. Halifax County, in the northeast-central part of the state, has a population of 55,000 people and 280 county employees. It is now using an NCR399 accounting computer for basic accounting and billing tasks. County officials — and particularly the county manager — had felt for some time that the county needed a computer capability that would serve all of county government. Realizing that setting up such an operation would be a major undertaking, they asked for help from the Center for Urban Affairs.

Halifax began its study early in 1980 and awarded a contract last December. The computer will serve the county's accounting, tax, and property records offices and its major human services agency.

The county generally followed the process outlined above. The Center's staff documented existing operations and handled the paperwork and vendor contracts associated with the request for proposal and the invitation to bid. It also helped the county manager work with a group of thirty users in ranking the information-processing objectives and in discussing alternatives.

As a unit that eventually would use the computer in many agencies, Halifax County presented a very complex problem. It wanted a county government-based computing center that would serve all county agencies and also the special-purpose governments and towns within the county. But not all of the agencies, special-purpose governments, and towns were ready to decide on automation at the same time. As a result, the study did not flow logically in time. Some departments and agencies were still being analyzed for inclusion in the system while the proposal was being prepared. One result was that the user group did not affect the final decision as much as had been expected — partly because the user group was so large. A group of five to ten persons is much more efficient in analyzing alternatives and making decisions.

Fremont and Farmville. A unique approach was used in Fremont and Farmville, which are located in east-central North Carolina. Fremont has 1,700 people and 25 employees; Farmville has a population of 2,510 and 90 employees. Both towns operate electric utility systems, and both wanted a computer system that would aid their utility billings and their general accounting functions.

The studies in the two towns proceeded independently until objectives were established. At that time, it became apparent that both had similar interests and could benefit from a joint bid. They issued bid invitations simultaneously, stating that they were interested in joint procurement and hoped for a lower cost as a result. The winning bid came from a vendor who proposed similar hardware and identical software packages for the two towns.

Fremont and Farmville never formed official user groups. Instead, the town administrators and clerks handled most of the study activities. This method seemed appropriate for these units. In very small towns the middle-management function is not as significant as in larger units. Generally, it is middle managers who serve on user groups. Where there are few middle managers, a user committee seems less important to the process.

Results and conclusions

The Center's success with these local units and others suggests that this study approach is a useful way to tackle the problems of automation in local government. The managers with whom the Center has dealt felt that they were in control of the process and were not mystified when the automated systems were installed.

After four years of active involvement with local governments, the Center's staff has identified problems in local government computing that need to be addressed. These include software costs, staffing problems, duplication of efforts, and lack of cooperative ventures.

Software costs are a problem because they are extremely high and often overlooked. All computers require software (the systems of programs that make the computer carry out desired tasks), and its cost must be carefully considered. Local governments may be able to afford computers but not be able to afford the programs to make them perform.

Acquiring adequate staff poses a large problem in local government computing. Many units have set up fairly elaborate computer systems without the staff to manage them. Staff requirements are often overlooked or oversimplified in the rush to buy the most sophisticated equipment for the least money. Young computer managers may not want to locate in rural North Carolina counties or even medium-sized cities when they can live and work in the Triad, Triangle, or Metrolina areas at a better salary. As a result the level of sophistication of the small local government computing operation may be severely restricted.

Duplication of effort occurs when each town or county develops its own software "from scratch" rather than transferring software already being used in some other governmental unit. Such transfers are often difficult, but developing original programs may well be harder. Unfortunately, there is little incentive to transfer existing software, and few mechanisms are available to promote and support such transfers.

There are also no arrangements for sharing in other areas of the computing field. Some purely voluntary efforts are made to share educational ventures, to develop multi-unit projects, and to promote distributive processing centers, but such joint enterprises are not formally encouraged.

Local governments in North Carolina need to learn about computer applications and to share their knowledge. One vehicle for doing this is the North Carolina Local Government Information Systems Association. The NCLGISA, assisted by the Institute of Government, has regular conferences to exchange ideas and computer programs. Another resource is the Center for Urban Affairs and Community Services, which provides training courses in computer methods and conducts an annual survey of users to foster exchange of software.

Some other ways of addressing problems with information processing include: (1) the use of Councils of Governments as service bureaus for small towns; (2) the greater involvement of state agencies and other statewide professional organizations in sponsoring special projects to develop common software or software design and in providing technical assistance; and (3) cooperation with community colleges to help them shape their data-processing curricula more directly toward local governments' needs.

Local governments should consider the possible automation of their basic functions -- computers can help control rising costs and improve productivity. But these governments should move carefully in implementing new systems and be aware of the difficulties that they may encounter. ■

(continued from page 28)

Judicial Rotation System

Chief Justice would select nominees for judicial vacancies and the Governor would appoint from that list of candidates. Appointees would have to stand for retention on a nonpartisan ballot at the first general election that occurred more than one year after their appointment. Thereafter they would run for reelection whenever their terms expired (eight years for superior court judges). A judge would run for retention within his division. He would have to receive approval by a prescribed percentage of the voters[36] in his division who cast ballots on the question of retaining him.

Merit selection would strengthen judicial independence, which is so often cited as a justification for rotation. Furthermore, judges would be insulated from partisan political pressure. While merit selection is supported by the bar, it has failed in recent legislative sessions.

An eight-division rotation scheme coupled with merit selection would enhance the judiciary's accountability to the public. The lack of accountability inherent in rotation is exacerbated by the current method of statewide election of superior court judges. All voters, from Manteo to Murphy, vote on a statewide ballot for the same judges, most of whom will never preside in their county.

Most judicial vacancies are filled originally by gubernatorial appointment rather than general election. These appointees seldom are opposed in the succeeding general election. A Bar Association report accurately describes the resulting choices for the voter.

> **Even if a great majority of the voters feel that such a judge should not be re-elected, their only choices are to vote for him, or simply not to vote at all on that particular judge. In either event, the judge will be re-elected, even though most of the voters disapprove of him, since he has no opposition. Thus, in these cases, under the present system the voters have no meaningful voice.**[37]

Judges would also be more accountable for the administration of the business of the courts within their division. This is an important point. An argument often posed by lawyers against dropping rotation is that the current system serves to spread the shortcomings of less able judges equally through the division.

The developments discussed above may provide the basis for resolving the perennial conflict between the salutary aspects of rotation and its harmful by-products. The purpose of this article is not to advocate a particular course but to describe some courses that might be taken. Valid arguments have been made both for retaining and for dismantling the North Carolina rotation system. Finally, the article explains a possible area of compromise. Members of the legal profession and the judiciary are familiar with this controversy, and many hold strong opinions about it. Perhaps citizens will have an opportunity to develop an informed opinion after reading the issues presented here. ■

36. The merit selection bill presented to the General Assembly in 1979 proposed 50 per cent.

37. *Op. cit. supra* note 35.

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Institute of Government
Knapp Building 059A
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27514