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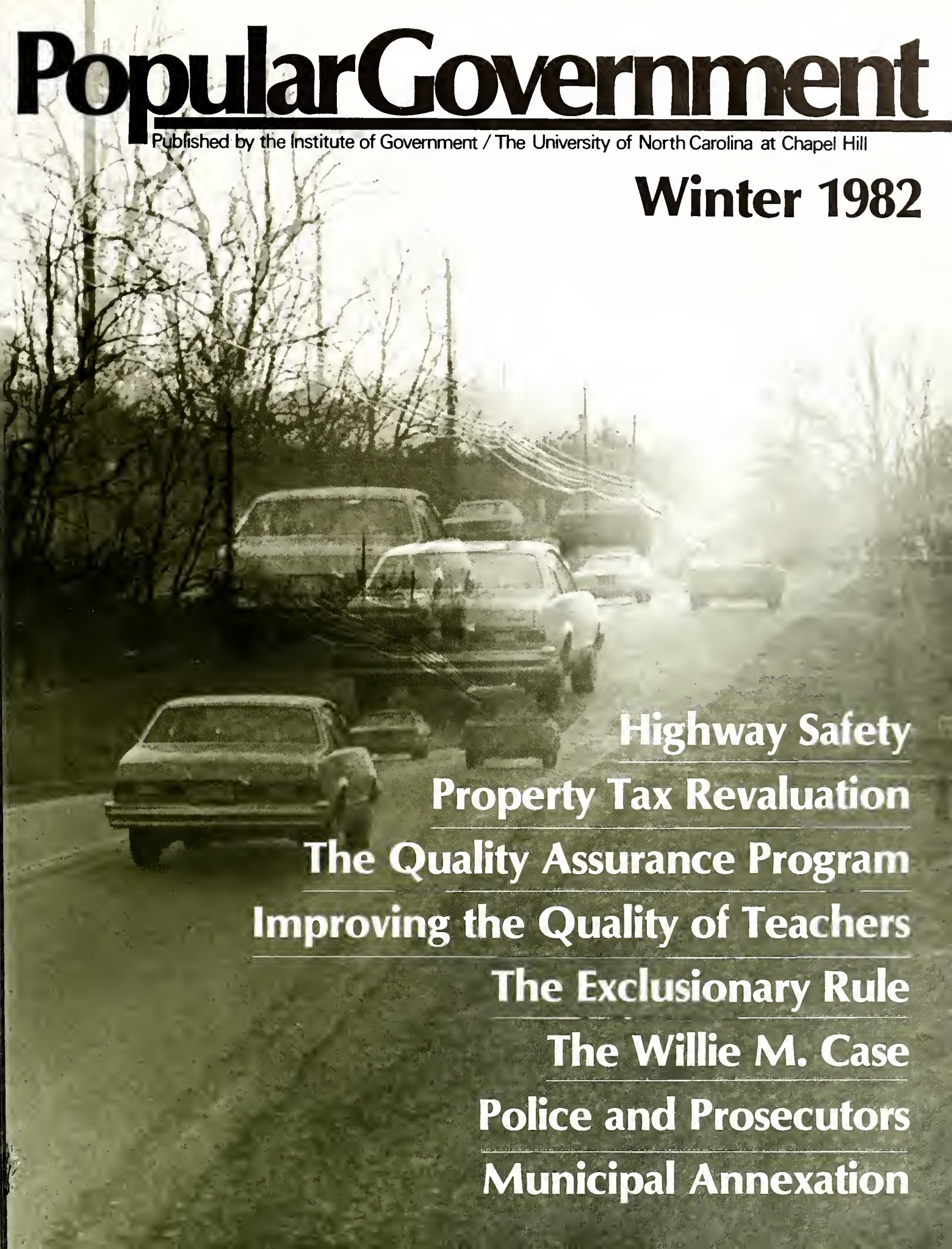

Highway Safety
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Popular Government

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INSTITUTE OF GOVERNMENT

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Highway Safety Issues: Present and Future

B. J. Campbell

Where does the nation stand in terms of highway safety, and what are the factors that affect the accident rate?

Automobile crashes constitute a great loss to our society. Each year more than 50,000 people die, more than 2,000,000 are injured, and tens of billions of dollars are lost in injuries and property damage. Automobile accidents are *the* leading cause of death between the ages of one and thirty-four—that is, among more than half of our population. Further, the annual cost of motor vehicle accidents to society is higher than the annual cost of cardiovascular diseases and two-thirds the cost of cancer.[1] Motor vehicle accidents cause more new cases of epilepsy than any other factor,[2] and they are the leading source of paraplegia and quadriplegia.[3] Yet they remain the nation's most underattended major public health problem.

But there is a paradox. Though highway crashes are a leading cause of death, individual fatal automobile accidents are, statistically speaking, rather rare. If a person drove 10,000 miles per year (as the average driver does), he would have to drive for more than 2,700 years before he accumulated the number of miles statistically associated with one fatality. The rarity of individual fatal accidents makes them difficult to prevent.

The problem

Automobile crashes have many causes. The list includes sleepiness, bald tires, inexperienced drivers, drunk drivers, illness, vehicle defects, roadway defects, and so forth. Because each cause contributes only a small amount, programs aimed at reducing one aspect of the problem are unlikely to have a very large overall impact on the problem. Therefore the problem must be attacked on many fronts; success is gained mostly in small increments. Of course, some components of the problem are not small. Three of the largest factors are drunk drivers, the presence of young male drivers, and the reluctance of vehicle occupants to wear seat belts. Another factor, the "folklore" associated with highway safety, can result in sustaining programs of little or no actual benefit.

Alcohol. Abuse of alcohol is a great problem for this nation, as for most countries. Drunkenness creates problems in the home and the work place—and of course on the highways. The more drunk a person becomes, the more likely he is to have an accident (see Figure 1). A driver with the legally defined level for drunkenness (0.10 per cent blood alcohol) is about seven times more likely to have an accident than if he were sober. Even at the level of .05 (considered the upper reaches of moderate social drinking), the risk is about twice as high. Drivers arrested for drunk driving usually average about 0.12 to 0.15 per cent; at that level, the risk of a crash is twelve to twenty times as high as for a sober driver.

Postmortem examinations indicate that 40 to 50 per cent of fatal crashes involve someone who was legally drunk. (The percentage is much lower for "fender benders.") It is not surprising that many countermeasure programs are aimed at identifying the drunk driver, removing him from the highway, rehabilitating him, and so forth.

These programs are very costly and regrettably often have not shown much benefit. One promising program approach

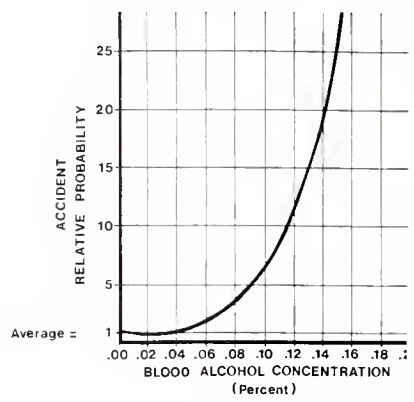
The author is director of the Highway Safety Research Center at the University of North Carolina at Chapel Hill.

1. Nelson S. Hartunian, Charles N. Smart, and Mark S. Thompson, "The Incidence and Economic Costs of Cancer, Motor Vehicle Injuries, Coronary Heart Disease, and Stroke: A Comparative Analysis," *American Journal of Public Health* 70, no. 12 (1980), 1249-60.

2. "Mayo Research Finds Crashes Chief Cause of Head Injuries," *Status Report* (March 26, 1980), 9-10.

3. Charles N. Smart and Claudia R. Sanders, *The Costs of Motor Vehicle Related Spinal Cord Injuries* (Washington, D.C.: Insurance Institute for Highway Safety, 1976).

Figure 1



This graph shows the rapid increase in the likelihood of having an accident when the driver has increased alcohol in the blood from drinking. Even at .06 (a level sometimes reached by moderate social drinkers), the risk is 2 to 3 times higher than at .04 or below. At .10 (legally drunk) the risk is 6 to 7 times higher than at .04 or below.

Source: R. F. Borkenstein, R. F. Crawther, R. P. Shumate, W. B. Ziel, and R. Zylman, *The Role of the Drinking Driver in Traffic Accidents* (Bloomington: Indiana University Dept. of Police Administration, 1964)

is the limited license, which allows an individual to drive under certain conditions specified by the court. Although this approach is apparently disliked by many police officers, research indicates that while a person convicted of drunk driving continues to drive under the conditions allowed by the court, his net risk of an accident is no greater than that of the average driver. This is probably not because he has become safer on a mileage basis but because the license restrictions limit his driving time. Reduced driving, and therefore reduced exposure, means fewer accidents.

Young males. As drivers, young men are extremely high risks. They have six or seven times as many accidents on a miles-driven basis as do middle-aged people (see Figure 2). There are several reasons for this. One is lack of experience. It is sometimes said that since young people have quick reflexes, they ought to be able to avoid accidents. But quickness of reflexes is largely irrelevant in safe driving. The main contributions to safety are judgment and perception—the ability to size up a situation to anticipate hazards as they develop. Developing this ability requires experience.

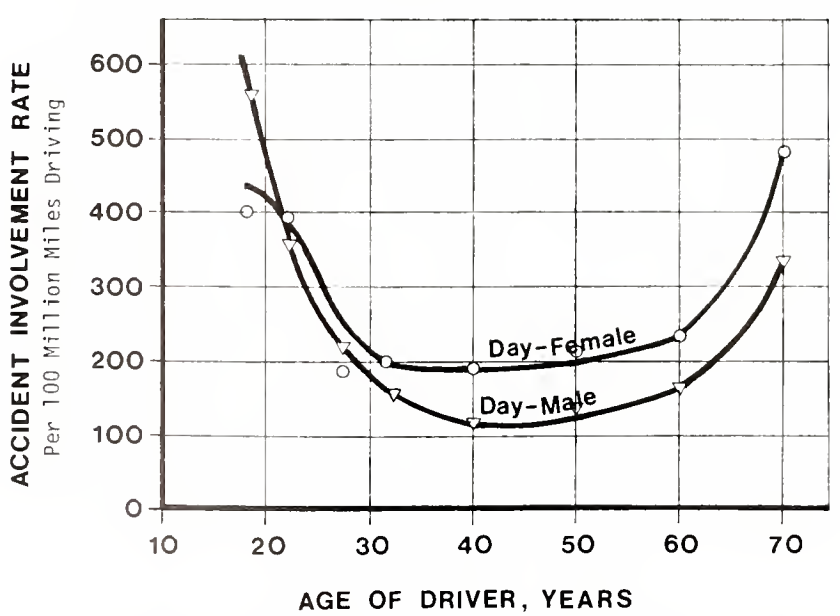
Compounding their inexperience is the tendency of young men to take risks deliberately. No doubt in the past this behavior served mankind well. Probably many things the human race has accomplished were achieved by conscious risk-taking. But today there may be fewer areas in which physical risk-taking is productive, and it is unfortunate that this tendency is manifested in automobile driving.

Ignored seat belts. The death rate from automobile accidents could be reduced greatly if people always used their seat belts. But there should always be ways for society to induce people to wear seat belts. A later section in this article deals with this topic.

"Folklore." Another aspect of the highway accident problem is that the field is beset by folklore. Nearly all of us drive and most of us have rather strong opinions concerning the problem. Objective research in this field has been conducted for years, yet many highway safety program decisions are based more on unsubstantiated opinion than on research. Thus many highway safety activities are substantially without foundation in fact. Too often when these programs are evaluated they fail to show discernible benefits in reducing crashes.

Part of the folklore in this field is the result of a mathematical phenomenon called *regression to the mean*. This mathematical phenomenon has misled highway safety practitioners more than any other single thing. Accident totals, like other phenomena, statistically fluctuate. For example, a yearly tally of accidents at the intersections of a large city would show that some intersections had no accidents, some were average, and some had unusually many crashes. The next year there would be some flip-flopping, and some intersections that had no accidents the year before would have several accidents; others that were bad before would be back to normal—no problem so far. However, a government usually initiates corrective programs based on previous "bad" experience. Thus, with limited funds sufficient only for safety engineering at a few intersections, we would look at the previous record, and pick out the worst intersections. There is

Figure 2



National data show that accident involvement rates are several times higher for young drivers, particularly young males, than for middle-aged drivers.

Source: D. Solomon, *Accidents on Main Rural Highways Related to Speed, Driver, and Vehicle* (Washington, D.C.: U.S. Government Printing Office, 1964).

still no problem—that's what we *should do*. Yet, to an unknown degree, some of those "worst" intersections were bad because of chance fluctuation. The next year such intersections would "improve" or regress back toward their average performance and thus give the *appearance* of a great improvement, much of which was really due to chance fluctuation.

Unfortunately, one is misled into believing that the corrective action initiated was what caused the seemingly generous improvement. This tends to create a sort of superstitious belief that various programs, which in reality may not be effective at all, have a generous benefit. Not only do many practitioners in the highway safety field fail to grasp the operation of regression to the mean, even some published highway safety research fails to take it into account. Therefore, we should be suspicious when the "scenario" goes like this: "We recently had a bad accident situation at such and such an intersection. We introduced such and such an improvement, and sure enough the next year the situation was *greatly* improved."

Such a simple "before and after" evaluation of a deviant accident situation will produce results more likely to reflect chance fluctuation than real improvement. The way one can know the *true* value of the improvement is to set up comparison intersections where no improvement is made. Then the intersections not treated would "improve" due to chance, but if the corrective action were *really* effective, then the treated intersections would improve the chance amount *plus* the amount due to the treatment.

National progress

Probably the best way to measure highway safety progress is to show the number of highway deaths in proportion to miles driven—the number of highway fatalities per 100 million vehicle miles. By this standard, the United States has had the best highway safety record in the world, with about 3.6 highway deaths per 100 million miles of driving. Only one or two other nations have a record comparable with this one, and they have only recently caught up. Most European nations have a mileage death rate two or three times higher, and some developing nations, which have only recently become motorized, have death rates ten or more times higher. Brazilian authorities recently told me that while they have only one-fifteenth as many cars as the United States, they have half as many fatalities.

But driving was not always as safe in the United States as it is now. In the late 1920s and early 1930s, when this nation rushed headlong into the motoring age, the death rate was more than four times as high as it is now. If traffic crashes still killed people today at the mileage rate we endured in the early 1930s, we would have about 235,000 fatalities per year.

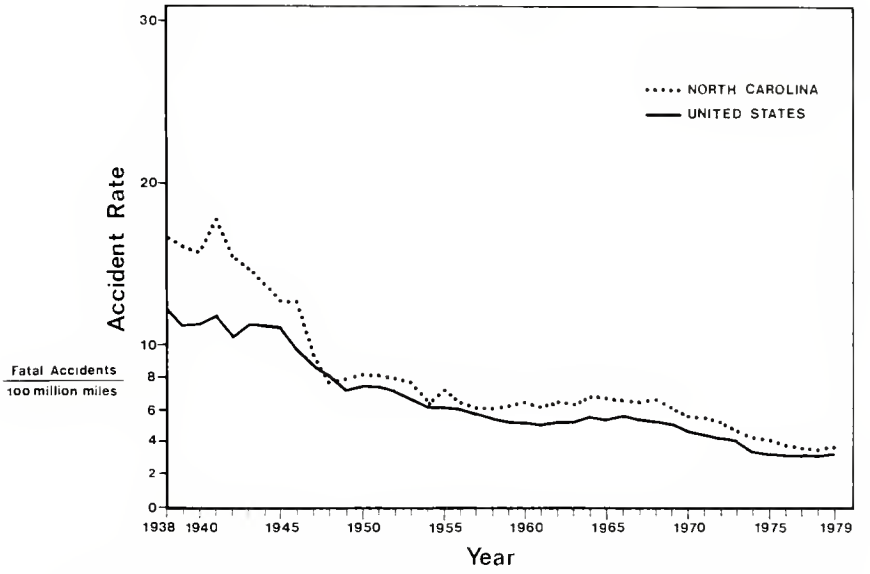
This national progress over the years has had some ups and downs. The two biggest and most abrupt *drops* in American highway deaths occurred during World War II and during the Arab oil embargo in the mid-1970s. In both instances, much of the decline resulted from a sharp drop in the amount of driving. During World War II gasoline and tires were rationed, and people drove less. But the drop was probably also due to the fact that millions of young men were in uniform, many out of the country and in any case not doing as much driving as usual. Young men are the highest risk group, as we have seen. The 1973-74 Arab oil embargo also resulted in reduced driving and also the imposition of a national 55 mph speed limit. Some of the driving that was eliminated was probably of the higher-risk variety—weekend pleasure trips, driving by the younger members of families, and so forth.

The mileage death rate in this country has also turned temporarily upward a few times. But so steady has been the rate of improvement over the last fifty years that only twice has the death rate risen for as many as three years in a row before dropping again. The first time this happened was in the early 1960s, and the second time is right now. Both times correspond with a period of rapid growth in the number of small cars being driven. There is increasing evidence that in an accident occupants of small cars are at a greater risk of death or injury than occupants of larger ones.

North Carolina progress

North Carolina's progress in reducing its highway death rate has roughly paralleled the nation's (see Figure 3). In this

Figure 3



This chart shows the several-fold reduction in death rate in the United States and North Carolina over the last 40 years. The rural character of North Carolina has always resulted in a rate higher than the national average rate.

Source: *North Carolina Traffic Accident Facts 1979* (Raleigh: North Carolina Division of Motor Vehicles, 1980), and *Accident Facts 1980* (Chicago: National Safety Council, 1980).

state, the highway death rate was much higher in the early 1930s than it is today, and much improvement has occurred over the years. If North Carolinians were killed on the highway at the same rate today as in the early 1930s, more than 6,000 people per year would die instead of the 1,500 or so we lose now. In the last fifteen years—a period marked by increased emphasis on highway safety—North Carolina has cut its highway death rate by more than half. This reduction, on a proportionate basis, places the state at the top among all fifty states. North Carolina's death rate is nevertheless still higher than the national average (partly because we have so much open-country, higher-speed driving), but the gap is closing.

Sources of progress

Progress in highway safety has been realized on many fronts. For example, vehicles are much safer today than they were twenty years ago—a person in a crash in more modern vehicles is nearly 50 per cent less likely to suffer serious injury or death than he was in cars designed twenty years ago. This progress is the result of long-term research leading to improved structural design and safety features. Interestingly, a great deal of research has occurred on the nature and strength of various *human* structures, such as the properties and limits of human bone and tissue. For example, over the years knee and pelvic injuries have been significantly reduced by making the lower dashboard of cars more energy-absorbing. But before automotive engineers could know what degree of dashboard crushability to aim for, they had to know something of the strength of knees, leg bones, and hip sockets. This information came from bioengineering research.

Modern cars have many safety features. Specially engineered safety door latches are designed to keep doors from coming open during impact, reducing the chance of being thrown out of a car (which doubles or triples the risk of death). Windshields are more shatterproof. Internal door beams help prevent the side from caving in when a car is hit broadside, and energy-absorbing steering wheels have been designed to collapse in a controlled manner when the driver's chest hits the steering wheel. There is more padding, and knobs are less lethal.

These safety features have paid off in reduced injury, although their benefit is diminished greatly if the passenger is not wearing a seat belt.

Improved roads also contribute to safety, as anyone who has driven down a well-engineered interstate highway can appreciate. The death rate on interstates is only about one-third the rate on the highways they replace. The single greatest feature of the interstate in preventing accidents is its limited access. Traffic can enter or leave only at designated points that have long acceleration lanes for speeding up and slowing down. Eliminating the possibility of turning in front of traffic also promotes safety on the interstates. In addition, when crashes do occur, the interstate is more "forgiving" in that many of the highway appurtenances are themselves crash cushions, such as guardrails that are built to absorb force and to redirect vehicles. Structures like bridge piers are protected by guardrails or crash cushions.

We should also consider whether drivers have improved in the last fifty years. One hopes so, but failure to improve is more often documented than improvement. For example, even though there is a considerable community and professional faith in high school driver education, there is no persuasive scientific evidence that driver education produces safer drivers (nor was there twenty-eight years ago when the Institute of Government first reviewed the literature on driver education).

Comparing American drivers with drivers in some other countries, we see a large difference. American drivers seem more disciplined and more restrained than drivers in many other places. Our flow of traffic is smoother and less turbulent. We need only think of the traffic movement and car-pedestrian interaction (or warfare!) in places like Cairo, Athens, and Sao Paulo to appreciate that American drivers are, on the whole, a safe and disciplined lot. But that does not mean that we have some innate national superiority behind the steering wheel. Rather, we have a strong licensing and enforcement system that over the decades has subjected flagrantly bad drivers to possible severe punishments. And this system is in place all over the country. Many other nations do not have such a system even in major cities, let alone the whole country.

Obstacles to progress

Sometimes people wonder why the problem of highway accidents cannot be solved: Why can't we stop accidents, find out who the bad drivers are, get them off the highways, and build cars and highways that are uniformly crashworthy? For several reasons. One reason is the

Figure 4

		Accidents in Years 3 + 4		
		None	One or More	Total
Violations in Years 1 + 2	Zero or One	2,138,217	257,363	2,395,580
	Two or More	80,443	26,199	106,642
	Total	2,218,660	283,562	2,502,222

The above table shows that of the 106,242 North Carolina drivers with two or more violations in two years, only 26,199 (or 24.6%) have an accident in the next two years. Although drivers with two or more violations have an accident rate more than twice as high as the rate for drivers with one or less violations (24.6% versus 10.7%), it is still true that most drivers with two or more violations—about three-fourths of them—have no accidents in the next two years. This shows the dilemma facing state driver license suspension programs.

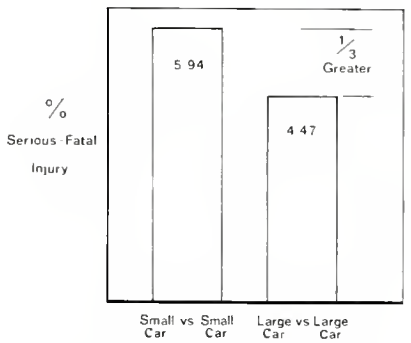
Source: J. R. Stewart and B. J. Campbell, *The Statistical Association Between Past and Future Accidents and Violations* (Chapel Hill: University of North Carolina Highway Safety Research Center, December 1972).

very law of nature that accidents follow. We simply cannot predict who will have an accident. If we knew in advance who was going to have accidents, we could seek them out and re-educate them (or, failing that, lock them up). In trying to predict who will have an accident one can easily identify high-risk *groups*, but those groups will unavoidably include many drivers who do not have accidents (see Figure 4).

About the best forecast that can be obtained from a set of predictors is that for every 100 people that the prediction process says will have an accident, only about twenty-five will actually have one. Therefore, any proposed countermeasure would be directed toward three people who would not have an accident for every person who would. Why not develop better predictors? It cannot be done because of the inherently unstable nature of accidents themselves.

Furthermore, our constitutional form of government very properly limits the kinds of corrective action we might take. In this nation, for example, we do not execute drunk drivers. That is in contrast to the situation in the Soviet Union, where a Russian driver was recently executed after he had drunkenly run over and killed a pedestrian (a practice that does cut down on repeat offenders).

Figure 5



North Carolina accident data show that the risk of serious injury is higher in small cars than in larger cars, and this seems to hold true even when small cars hit each other.

Source: J. R. Stewart and J. C. Stutts, *A Categorical Analysis of the Relationship Between Vehicle Weight and Driver Injury in Automobile Accidents* (Chapel Hill: University of North Carolina Highway Safety Research Center, May 1978).

Some say that maybe we should deal much more harshly with drunk drivers, but there are limits to what can be done because we prize our Bill of Rights more highly than we fear losses from car crashes. North Carolina fortunately has a full array of legislation to attack the drunk driver problem.

In addition, Americans seem to believe that there is an implicit "right to drive." Government agencies therefore find it difficult to exclude from the highway large groups of drivers. For example, by not allowing persons under age eighteen—or even twenty-one—to drive, many lives would be saved. But this approach has not been seriously considered.

A final reason for our failures in achieving highway safety is one that *could* be overcome: society's chronic inattention to the issue itself. Even though the costs of motor vehicle accidents rank right along with the costs of cancer and heart disease, the resources that society devotes to highway safety are trivial.

Seat belts

The most important single highway safety issue facing this nation concerns lap and shoulder belts. I rate this number one because wearing seat belts is the most highly effective large-scale, low-cost countermeasure available to us. Seat belts are so important that if I could choose either that no one would ever drive drunk again or that no one would ever drive with unsecured seat belts again, I would without hesitation choose seat belts because that would save more lives than even removing drunk drivers from the highway. Nearly ever car is equipped with lap and shoulder belts, and using them could do more to change the highway safety picture than any other program.

Government officials should therefore ponder why governmental employees are not required to wear lap-shoulder belts while traveling on government business. Employees who work in various other hazardous environments are required, as a condition of their job, to wear protective devices—goggles, special shoes, gloves, noise protectors, hard hats, or whatever is appropriate to that job. Yet no safety policy protects government employees against auto accidents, the principal killer of younger employees. Requiring that seat belts be worn (as the Highway Safety Research Center and the State Highway Patrol do) would not only help to protect employees but also serve as a model for citizens to follow.

Future progress threatened

The outlook for highway safety during the rest of the century is somewhat bleak. Because of limited supplies and higher price of gasoline, we are shifting to smaller, more fuel-efficient cars. This switch has an adverse effect on highway safety. Smaller cars mean less safety. Occupants of small cars are more likely to be killed or seriously injured in a crash than occupants of large cars. North Carolina accident data also show that even when two small cars collide, the risk of death and injury is appreciably higher than when two large cars collide (see Figure 5).

This trend, combined with the fact that drivers doggedly resist using seat belts, means that both the death *rate* and the *number* of deaths will soar in the next few years. Seat belts, which reduce the odds of dying in a crash by about 4 to 1 (from about 60 per 10,000 unbelted drivers down to about 15 per 10,000 belted drivers), are the single safety countermeasure that can offset the inherent danger involved in the shift to smaller cars.

For the last fifteen years, the controversy over air bags versus seat belts has perhaps given people a good excuse to do nothing—and certainly has paralyzed governmental actions in this area. In any case, restraint of passengers achieved by whatever means is the country's single most important highway safety issue.

The nation still loses 10,000 or so lives per year because the passengers are unrestrained in car crashes. We must try to save those lives through programs designed to increase the use of seat belts that are already installed and paid for, simply waiting to be used.

Children's Safety Restraints

The North Carolina legislature has taken a major step toward protecting children in motor vehicle crashes by passing a law (Ch. 804 of the 1981 Session Laws) requiring parents to restrain their children under two years old in a seat belt or child safety seat while they are riding in a car.

The bill, introduced in the 1981 General Assembly by Rep. George Miller of Durham, was overwhelmingly approved by both houses. North Carolina now joins several other states with similar legislation. The law will become effective on July 1, 1982. Violation is a misdemeanor. For the first two years a violator will be given a warning ticket. After that he will be charged court costs and fined $10.

The need for such legislation is apparent when one considers that:

—Motor vehicle accidents are the leading killer of children over one year of age, exceeding any single disease or other type of accident as a cause a death. In 1979, for example, twenty-three North Carolina children less than five years old were killed in auto crashes and hundreds were seriously injured.

—Yet over 93 per cent of the young children who are in crashes in North Carolina are not properly restrained.

—At least eighty out of every 100 children who died in auto crashes could have survived if their parents had secured them in crash-tested safety seats.

To inform parents about child safety seats, the North Carolina Governor's Highway Safety Program, the UNC Highway Safety Research Center (HSRC), and other public and private groups are preparing radio and television spots, distributing brochures, and setting up loaner programs in communities. In addition, a toll-free "tot-line" has been established at HSRC to provide information about protecting children as automobile passengers. The number to call is 800-672-4527.

The Quality Assurance Program for Preparing Teachers in North Carolina

Kinnard P. White

The two top-level state education boards have expressed concern over the quality of North Carolina's teachers and formulated a new approach to teacher training.

During the past decade people have become increasingly concerned about the low quality of public education. The national press has highlighted both the falling scores of public school students on the Scholastic Aptitude Test (SAT) and the decline in their skills in writing, reading, and mathematics. Furthermore, reports that teachers are inadequately prepared have been widespread.[1] The figures that are given, coupled with the belief that the teacher is the keystone to education, have led to a call for fundamental reform in the training and selection of teachers.[2] The two major criticisms of teachers and teacher training are, first, that teachers do not know enough about the subject they are teaching;[3] and second, that teachers are not being trained effectively in how to teach.[4]

North Carolina's response to these public concerns began several years ago in a unique collaboration of the two state education policy boards. In October 1978, the State Board of Education and the Board of Governors of The University of North Carolina agreed, by joint resolution, to develop an improved program for preparing and certifying teachers in North Carolina. This new approach—known as the Quality Assurance Program—is intended, when complete, to improve both the quality of teachers and in the long run the quality of public education in this state.

This collaboration links the two state policy boards that together are responsible for training and certifying teachers. By law the State Board of Education is authorized to establish rules and regulations governing the certification of public school teachers, and the Board of Governors has similar authority concerning higher education policies of public senior institutions. Thus, when these two statewide school policy boards adopted this joint resolution, they spoke for the entire public education program of the State of North Carolina.

The Quality Assurance resolution as adopted appears on the next page.

The resolution

The Quality Assurance Program, as envisaged by the joint resolution, will extend from the admission of a potential teacher (teachers are called "professional personnel" in the resolution) to a college or university through his or her preparation and employment. The basic framework of the program will contain seven elements, which are described below.

Admission requirements for schools of education. The strength of any educa-

The author is a professor in the School of Education at The University of North Carolina at Chapel Hill.

1. H. M. Breland, *The SAT Score Decline: A Summary of Related Research* (New York: CEEB, 1977); A. Rhonda, "Student Achievement Slump—Is It the Fault of the Schools?" *The Christian Science Monitor*, July 26, 1976; "America's Teachers—Are They to Blame?" *U.S. News and World Report* (September 11, 1978), 53-54; "Help! Teacher Can't Teach!" *Time* (June 16, 1980), 54-63; Gene Lyons, "Why Teachers Can't Teach," *Texas Monthly* (September 1979), 123-28, 208-20.

2. B. Othanel Smith, "Pedagogical Education: How About Reform?" *Phi Delta Kappan* 62, no. 2 (1980), 87-91.

3. Lyons, "Why Teachers Can't Teach"; R. M. Pavalko, "Recruitment to Teaching: Patterns of Selection and Retention," *Sociology of Education* 43 (1970), 340-55; L. M. Sharpe and S. B. Hirshfield, *Who Are the New Teachers? A Hard Look at the 1971 College Graduates* (Washington: Bureau of Social Science Research, 1975); T. W. Weaver, "The Need for New Talent in Teaching," *Phi Delta Kappan* 61 (1979), 29-46.

4. Smith, "Pedagogical Education"; G. Denemark and N. Nutter, "The Case for Extended Programs of Initial Teacher Preparation." Paper presented to the Forum of Educational Organization Leaders, September 7, 1979, Arlington, Va. ERIC: SP015 395; S. B. Sarason, K. Davidson, and B. Blatt. *The Preparation of Teachers: An Unstudied Problem in Education* (New York: John Wiley and Sons, 1962).

CONCURRENT RESOLUTION

The State Board of Education and The Board of Governors of
The University of North Carolina

QUALITY ASSURANCE FOR PROFESSIONAL PERSONNEL

The State Board of Education and the Board of Governors of The University of North Carolina recognize that:

—the State has the responsibility to provide a strong and appropriate instructional program for all of its children;

—the public has expressed its expectation that instructional programs in the schools of this state should provide boys and girls with basic knowledge and competence to meet life's needs in an adult society;

—the cornerstone of the instructional program delivery system is the competence of the professional personnel charged with the responsibility of operating our schools;

—the State, in its search for an adequate supply of competent professional personnel, must make quality the keynote: quality in approved programs of preparation, quality in candidates admitted to teacher education programs, and quality in continuing conditions for professional service in our schools;

—the present procedures of evaluation of institutional programs and the product of approved programs are inadequate; therefore,

The State Board of Education and the Board of Governors of The University of North Carolina join in adopting this resolution supporting a systematic, continuous and extended approach to quality assurance in the initial programs of preparation and continuing conditions of service for professional personnel. The adoption of this resolution establishes the basic framework of a program of quality assurance beginning with admission to an institution of higher education and extending throughout the preservice program and professional service of each individual. The determination of basic academic achievement and proven competence as quality assurance will be continually emphasized throughout this program approach. Essential elements of this program will include:

1. A comprehensive review of requirements for entrance to institutions of higher education as they may apply to future candidates for admission to teacher education programs.
2. The development of more effective screening and counseling procedures to ensure that students who wish to enter professional teacher education programs meet acceptable standards in such academic areas as English and English usage, literature, the fine arts, social studies, mathematics, and science; such procedures are to be administered prior to admission to professional teacher education programs.
3. A structure established whereby there will be a means of clarifying with institutions of higher education and with the public schools the competencies required for inclusion in professional and academic programs (including vocational education) in order to produce competent and effective teachers.
4. Assurance of strong supervision of student teaching experiences through the close coordination of campus-based and field-based program activities which would involve the State Education Agency, institutions of higher education, local education agencies, and successful classroom teachers. This would include the identification, training and uniform compensation of successful classroom teachers who supervise and direct the student teaching experiences to ensure that each individual in professional teacher education has successfully demonstrated his/her ability to perform in an actual classroom situation and to ensure that this supervision would be developed and conducted in close cooperation with appropriate representatives of the institutions of higher education.
5. The development, validation, and implementation of a system of criterion referenced tests covering the various disciplines and program areas, which would serve as a part of the final pre-service evaluation and would be a prerequisite for initial certification.
6. The development and implementation of an evaluation and educational support system designed to assess the performance during professional employment of all individuals qualifying for initial certification as a prerequisite to continuing certification beyond an initial three-year period and as a means of evaluating the effectiveness of teacher education programs and consequently to improve these programs. This system would include a joint comprehensive system of in-service education for the maintenance of professional teacher competencies and systematic opportunities for advanced formal education. This system would include requirements for admission to field-based and campus-based masters and intermediate degree programs which would assure the highest quality of candidates and graduates with advanced degrees in education equal to the emphasis on standards for quality assurance developed for entry to teacher education programs and to the profession.
7. Establishment of a number of pilot centers to develop and evaluate the competency-based approach to certification, the organization and function of the partnership between institutions of higher education and cooperating school systems, and the validity of the evaluation instruments and systems developed to implement this proposed program of quality assurance.

Members of the State Board of Education and the Board of Governors of The University of North Carolina pledge themselves and their respective staff members to the development and implementation of a quality assurance program as outlined and described in this resolution including the preparation for review and approval of each Board of the necessary additional policies, budgetary requirements, procedures, and technical developments, required to implement and to evaluate the appropriateness and effectiveness of this program of quality assurance.

tional program largely depends on the quality of the students who enter the program. The first element of the Quality Assurance Program will be a screening process during undergraduate admission counseling. During this session students will receive advice, based on their SAT scores and their high school rank, as to their potential for success in a teacher education program. This policy differs from current practice in that now anyone who is admitted to a college or university and remains academically eligible at that institution is eligible to enter its teacher education program. As a result, many people who complete a teacher education program fail the National Teacher Examination (NTE).

General education screening. The second element of the Quality Assurance Program is a requirement that those who apply for admission to teacher education programs—usually after one or two years of college—demonstrate a well-rounded general education, both in basic knowledge and in skills in English, literature, the fine arts, mathematics, science, and social studies. This requirement will be based on broad knowledge that any student ought to acquire from a good general college education. Whether the applicant has this broad background of general knowledge will be used as a criterion for admission to a professional teacher education program. At present there are no such statewide admission standards. Since general education courses and grading standards differ among colleges and universities, the level of general education attained by students probably varies widely in North Carolina. This aspect of the Quality Assurance Program seeks to establish a minimum statewide general education standard for prospective teachers.

Teaching area competencies. This part of the Quality Assurance Program seeks a statewide consensus on what "competencies" a teacher must have in order to teach effectively. These competencies include mastery of the specific subject the teacher is certified to teach as well as the skills to get the course content across to the students. Thus the joint resolution treats teacher competency as knowledge and skill that are distinct from a basic store of information. This element of the Quality Assurance Program is intended to give some coherence and unity to the various teacher education programs in the state so that they will all have the same concept of competency.

Laboratory and student teaching experience. This element of the Quality Assurance Program is based on the belief that teaching skill must be developed and demonstrated in actual classroom conditions. It is also based on the principle that the best supervisors of student teachers are successful practicing teachers sometimes called "master teachers." Implementing this part of the Quality Assurance Program will require some changes, for at least three reasons. (1) College professors now do most of the supervision of student teachers. (2) There are now no established statewide procedures for selecting master teachers to work with student teachers. (3) Public school teachers who work with student teachers receive no systematic training for this job.

Test standards of initial certification. The joint resolution contemplates that all graduates of teacher education programs in North Carolina will have to meet minimum standards on both knowledge of subject and teaching skills in order to be certified. The Quality Assurance Program will include "criterion referenced" tests to assure that all initially certified teachers have a certain level of knowledge and skills, regardless of the institution from which they graduated. (A criterion-referenced test involves an absolute standard of achievement rather than a standard that is relative to some specified group.) The NTE is now the only uniform standard for the initial certification. The resolution calls for additional uniform test standards that focus on teaching skills and areas of specialization.

Continued certification. Learning the skills of teaching takes a long time. Therefore teachers need opportunities to acquire and demonstrate teaching skills that extend far beyond a four-year undergraduate college program. The joint resolution requires the Quality Assurance Program to help teachers, after they are certified, to continue to learn and develop these skills. It views initial certification as probationary, with continued certification contingent on satisfactory professional practice during the first three years of teaching. This view differs from current practice in two ways. First, no formal support system now exists for initially certified teachers. New teachers are on their own in seeking to expand their teaching skills. The Quality Assurance Program attempts to change this situation by providing a structured statewide system for improving these skills. Second, although initial certification is now probationary and requires re-evaluation and recertification of the teacher after three years, the evaluation procedures vary from one school system to another. The Quality Assurance Program calls for statewide standardization of this evaluation process.

Pilot centers. This part of the Quality Assurance Program seeks to provide systematic and documented information about how well the various components of the program work. Since much of the program is new and experimental, it will be important to test these various elements on a small scale before introducing them statewide.

The Liaison Committee report

After endorsing the foregoing seven elements, the Board of Governors and the State Board of Education appointed a thirteen-member Liaison Committee to oversee the development of precise policies and procedures related to each of these broad goals and programs. Five task groups with broad representation from all elements of the education community, both public schools and higher education, have been at work on developing recommendations for five of the seven elements (not addressed were admissions requirements and pilot centers). As this article was being written, the Liaison Committee published a detailed proposal that is summarized on page 13.

Testing and implementing the total program will probably take four or five years. The rest of this article analyzes the key components of the Quality Assurance Program, makes suggestions about what should be done, and discusses the limitations of the program.

Selection of teachers

Selection based on knowledge. Students who enter teacher education programs are academically less talented than other college students, and those who graduate from these programs are academically less qualified than other college graduates. This statement is based

> ***. . . the fact that teacher education attracts more than its share of the academically least able must be cause for concern for a profession whose business is learning.***

on recent research that compares the performance of teachers on tests of academic aptitude such as the SAT, the Graduate Record Examination (GRE), and the American College Testing Program (ACT) with the performance of other college graduates. Also, teachers score lower on such measures of knowledge as the National Longitudinal Study (NLS) achievement tests and on college grade point averages (GPA) than do other college graduates.[5] Whether such tests are valid measures of teaching skill is controversial, yet the fact that teacher education attracts more than its share of the academically least able must be cause for concern for a profession whose business is learning. Teaching involves more than telling—one cannot teach unless he knows something to tell. Those who try to impart knowledge to the young must be knowledgeable themselves.

Only those persons should be selected for teacher education programs who have a firm understanding of what is to be taught. Selection based on knowledge of subject would occur in the Quality Assurance Program at two points. First, admission to a teacher education program would require demonstrated knowledge in the basic areas of history, English, literature, fine arts, mathematics, and science. Second, candidates for initial certification would have to demonstrate a mastery of the subject they plan to teach. Unless high standards are set on these selection criteria and are verifiably the same for all colleges and universities in the state, this goal will not be realized. To regain the intellectual status they once had, teachers must be able to make and verify the claim that they know their subject, because knowledge is a prerequisite for teaching.

Selection based on teaching skill. There are at least two kinds of knowledge—"knowing that" and "knowing how." "Knowing that" involves being able to state facts, while "knowing how" involves being able to perform skills.[6] Surely the effective teacher must have both kinds. Therefore selection must also be based on skill in teaching. But written tests of informational background ("knowing that") tell us little about vocational competence and professional talent.[7] Studies involving both undergraduates and graduate students have shown that professional performance in a variety of fields including teaching cannot be predicted accurately from standard written tests taken in college or graduate school. Teaching skill is best measured on the job on the basis of clear specifications of professional competence. The best predictor of excellent professional performance later in a person's career is excellent professional performance on these same tasks early in his career.[8] The message here is clear: Unless the Quality Assurance Program can devise reliable ways to assess systematically a novice teacher's performance, the goal of selecting only high-quality new teachers cannot be met.

Teacher training programs

An excellent teacher training program has two essential characteristics. First, its content reflects the tasks the teacher will be required to perform. Second, because a short initial training period cannot equip a teacher for life, the program provides for continued training throughout his career. Current teacher training practices do not satisfy either of these requirements.[9]

Because professional training for teachers must be based on actual classroom conditions, it should be a clinical rather than an academic activity. The best approach to teacher training is coaching, not lecturing. But today professional education courses in schools and departments of education are frequently taught by the lecture and discussion method. Furthermore, the content of these courses is frequently based not on what teachers do in the classroom but rather on what the faculty member subscribes to as an acceptable doctrine. If physicians or airline pilots were trained entirely from textbooks, lectures, and discussions rather than by working with patients or flying airplanes, and if the content of their training programs were based on doctrinaire points of view rather than on the best information currently available, the consequences of their training would be disastrous. The training of teachers is similar. Although education is a legitimate area for academic scholarship and research, it is important to realize the difference between training scholars and researchers in the field of education and training teachers for the classroom. Unfortunately, this distinction is not now made in colleges and universities. Teacher training programs have suffered as a result.

In my opinion, the best way to train teachers in the skills of teaching is to use outstanding or "master" teachers as models. Training programs for teachers should develop more and better opportunities for students to observe such teachers and to practice the skills they see demonstrated under the master teacher's supervision.

The second major aspect of professional teacher training is the need for continued training. The success of continued training is based on the same principle as successful initial training: Continued training must be anchored in what teachers do in the classroom, and it must be clinical rather than academic. We have already failed miserably with the approach that requires teachers to take a three-credit course no matter what the

5. Pavalko, "Recruitment to Teaching"; Sharpe and Hirshfield, *Who Are the New Teachers?* Weaver, "The Need for New Talent in Teaching."

6. G. Ryle, *The Concept of Mind* (New York: Barnes and Noble, 1949).

7. D. P. Hoyt, "College Grades and Adult Accomplishment. A Review of Research," *Educational Record* (Winter 1966), 70-75; M. A. Wallach, "Tests Tell Us Little About Talents," *American Scientist* 64 (1976), 57-63.

8. *Ibid.*

9. Sarason, Davidson, and Blatt, *The Preparation of Teachers*; Sharpe and Hirshfield, *Who Are the New Teachers?* Denemark and Nutter, "Extended Programs of Initial Teacher Preparation."

course is or how it relates to what or how the teacher teaches.

The Quality Assurance Program must deal directly and forcefully with both the content and the quality of continuing education programs if these programs are to affect the quality of teaching significantly. Both the initial and continued training programs for teachers need a major overhaul. If current teacher training programs are merely tinkered with and only minor adjustments are made in them, no major improvements in the quality of teaching will result. The problem is reminiscent of the state of medical education in America in 1910, when the Flexner report exposed the low quality of medical education in America.[10] The content and quality of medical education have improved ever since. Teacher education is still waiting for its Flexner report.

Problems in implementation

Support for the program. If reform is to occur in the preparation and certification of teachers, the impetus for it must come from outside the teaching profession. Teacher organizations, schools of education, and state departments that certify teachers contain too many special-interest groups with diverse perspectives for internal reform to occur. These groups have placed far too much emphasis on *who* is correct rather than on *what* is correct. Furthermore, the role of public schools in our society means that the forces necessary to bring about reform will have to be political as well as professional. These forces will have to join in a coalition, so that control becomes less of an issue than content. The needed changes in the preparation and selection of teachers cannot be accomplished by either piecemeal changes in undergraduate training programs or add-on in-service education programs. A total revamping of teacher training is needed if the quality of teaching is to be improved.

The Quality Assurance Program begins with a strong basis of support—the Board of Governors and the State Board of Education are powerful, permanent, and broad-based. However, the cooperation and support of *all* interested parties will be critical to the success of the program. Securing this support will be difficult—implementing the program properly will take several years, and maintaining enthusiasm while the tedious groundwork takes place will be a problem. It will be doubly difficult because education has a long history of believing and claiming that major developments can be accomplished overnight. The leaders of the Quality Assurance Program must resist the pressures for quick cures and insist on treating the root causes of the problems. Furthermore, the proposed cures must be based not on majority opinions but on the best knowledge and thinking of which we are capable.

Limited resources. Limitations on key resources will influence the outcome of the Quality Assurance Program.

Money. One of the most important resources is money. Improvements in both selecting and training teachers will be expensive. The difference in costs is great between a classroom "lecture-discussion" training program with one teacher and thirty students and a supervised clinical experience with one master teacher and a small number of students. Consider as a rough comparison the difference between the cost of nursing education, which is based on clinical methods, and the cost of teacher training, which is mostly based on lecture-discussion methods. The "complexity" formula for determining funding, developed by Texas and used by a number of states, demonstrates this difference in costs. This formula uses as a basis of comparison the general undergraduate arts and science program; the cost of that program is treated as 1.0. From this base, officials calculated the cost of undergraduate teacher education in Texas at 1.04 and the cost of undergraduate nursing education at 2.74. At the postgraduate level, teacher education was indexed at 8.79, compared with nursing education at 17.6.[11] Unless the leaders of the Quality Assurance Program can convince the public that the increased cost in the training and selection of teachers will produce improved public education, the program will be doomed to fail for lack of funds.

The costs of keeping competent teachers, especially master teachers, in the profession must also be considered. Being a good teacher must have some monetary rewards. At present it does not. Consequently the most able people do not enter teacher training programs or else do not remain long in the profession—in part because they can earn more elsewhere. Research suggests that many of the most capable young teachers do not stay in teaching—at least not in North Carolina. A recent study of all persons who began teaching in North Carolina between 1973 and 1980 indicates that almost 50 per cent of them were not employed in the state's public schools seven years later. Furthermore, this study found that the NTE scores for those who leave were higher than for those who stay in teaching.[12] Unless there are rewards to entice the more capable people to remain in teaching, no matter how selective the criteria or how rigorous the training program, the goal of providing better teaching will not be met.

People. Human resources are also limited. There are too few master teachers to train teachers: Not all teachers are

10. A. Flexner, *Medical Education in the United States and Canada*, Bulletin No. 4 (New York: Carnegie Foundation for the Advancement of Teaching, 1910).

11. B. Peseau and P. Orr, "The Outrageous Underfunding of Teacher Education," *Phi Delta Kappan* 62, no. 2 (1980), 100-2.

12. P. C. Schlechty and V. Vance, "Do Academically Able Teachers Leave Education? The North Carolina Case," Occasional Papers, School of Education, The University of North Carolina at Chapel Hill, February 1981; P. C. Schlechty and V. Vance, "Teacher Quality and School Quality: A Necessary Relationship," *North Carolina Education* 11, no. 5 (1981), 6-7, 45.

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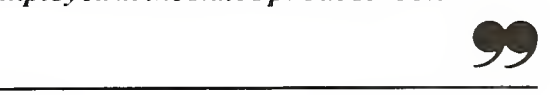

master teachers and not all master teachers are capable of teaching teachers. If master teachers are to be extensively used to train teachers, we probably will be able to train fewer teachers than are now being produced. Also, if more stringent selection standards are set for entry into teacher training programs, the pool of new education students will be significantly reduced — and this too means that we will be able to train fewer teachers.[13]

Quality control. Finally, quality control has limits. The limits of our ability to measure reliably those characteristics that are considered desirable in teachers will also limit our ability to select good teachers. The Quality Assurance Program is based on the premise that to select good teachers, we must be able to measure (a) what they know about their subjects, and (b) how effectively they can teach them. We can measure knowledge by means of standardized written tests like the NTE, but we cannot measure teaching skill so well. Since both knowledge and skill are essential to good teaching, selection must be made on both of these factors. Unless reliable and valid measures of teaching skill are developed, quality control cannot be exercised in this critical area. Developing such measures will be a monumental task.

The Quality Assurance Program is an attempt to solve a problem of major significance for North Carolina: improving the quality of teaching in the public schools. The task is not easy because it is beset with technical, administrative, and political problems. But the fact that the matter is being dealt with by the two statewide policy boards for education that transcend the various interest groups involved in public education increases the likelihood for success. Yet a reform movement like this needs to be realistic about the improvements promised and careful not to promise what cannot be accomplished.

13. A recent study done in the School of Education at UNC-Chapel Hill concludes that — given what we know about selection and retention of the academically able, coupled with higher selection standards and fewer slots for students in schools of education — the net effect of the Quality Assurance Program will be to produce a massive teacher shortage. V. Vance "The Ready, Willing and Academically Able: A Longitudinal Study of Retention and Attrition Among North Carolina's New Classroom Teachers from 1973 Through 1980" (Ph.D. dissertation, School of Education, The University of North Carolina at Chapel Hill, 1981).

QAP: Recommendations on Improving the Quality of Teachers

William P. Pope

Last October the Board of Governors of The University of North Carolina and the State Board of Education received the report[1] of the special Liaison Committee that the State Board had appointed to draw up the specifics for a program to improve the quality of teachers in North Carolina's public schools. (See the article on the "Quality Assurance Program" that begins on page 7 of this magazine.) That thirteen-member Committee worked with five task groups that had wide representation from the public schools, boards of trustees, and the teacher education programs of the state's colleges and universities. Their assignment was to develop methods of achieving the goals set out by the State Board and the Board of Governors in their joint resolution that called for a program to upgrade the quality of the state's elementary and secondary school teachers.

The Quality Assurance Program (QAP) outlined in the Committee's report is based, in a word, on performance—it would require a demonstration of competence before any present or prospective teacher is permitted to preside over a classroom, beginning with a student's admission to a college or university and progressing in stages through his first three years of employment. At each stage the program would insure that each prospective or practicing teacher has an opportunity to "develop, maintain and build" the skills needed to become a first-class teacher.

The Liaison Committee report examines the seven aspects of the Quality Assurance Program proposed in the two boards' joint resolution, describes how these proposals can be carried out, and explains the implications for change if the program is adopted. A summary of these seven elements follows.

Admission and graduation requirements

SAT scores. One place to begin establishing high standards of excellence is in counseling high school students who think they might want to be teachers—in particular, concerning their scores on the Scholastic Aptitude Test (SAT). All major institutions of higher education in North Carolina require applicants to take the SAT. A recent study suggests that SAT scores can help predict performance on the National Teachers Examination (NTE), which a novice teacher must pass before he can be certified. (See "Differences in Student Achievement . . ." by Q. Whitfield Ayres in the Summer 1980 issue of *Popular Government*.) In its report the Committee urges high school counselors and admissions staffs from colleges and universities to make these students aware of the correlation between their score and the likelihood of being a successful teacher, so that if necessary they may seek remedial help or change their career goals.

As a matter of basic good educational policy, the Liaison Committee makes several recommendations. (1) It asks all institutions of higher education to make a strong commitment to excellent teacher education programs and to recruit only good students. (2) If a student's SAT and other scores and his high school class rank suggest that he may not do well enough academically to pass the NTE and ultimately become a good teacher but a college or university nevertheless admits him, the school should keep an eye on him as he moves toward professional training and be sure that he knows the hazards he faces in pursuing teacher education; and then it should offer him whatever remedial help he may need if he chooses to proceed. (3) All institutions that offer teacher education should monitor the performance of the students in their program to see how many of them pass the NTE and then try to determine what academic characteristics they have in common—to see what minimum class rank, or what SAT score, or what other factors may predict success in professional teacher training. This information should be reported periodically to the trustees, administrators, and faculty of all North Carolina institutions of higher education.

The author, a member of the Institute of Government's editorial staff, is assistant editor of *Popular Government*.

1. The Quality Assurance Program (Chapel Hill, N.C.: School of Education, The University of North Carolina at Chapel Hill, October 1981).

General education assessment program. The Liaison Committee recommends that two tests be devised for admission of underclassmen to a teacher education program—a General Education Achievement Test and a Writing Test. The tests would show each student's strengths and weaknesses and would help to indicate whether he should be admitted to the program. And if he fails the tests, his academic advisers would know the amount and type of counseling and remediation he would need in order to be admissible. The tests would also help the colleges and universities evaluate their general education curriculum and make whatever changes are indicated by the scores of their students on these tests. The Committee recommends that the State Board of Education set acceptable levels of performance for each test.

The General Education Achievement Test would measure learning and show deficiencies in the basic areas of knowledge: English and literature, the fine arts, social studies, mathematics, and science. The Committee recommends that the State Board adopt certain specifications for the tests (which it lists in detail in its report) that the educational testing firm chosen to develop the test would be obliged to meet.

Schools of education would be required to explain to prospective students their procedures for admitting candidates to their program and the minimum General Education and Writing Tests scores. They would also have to explain to these students how the general education program and the requirements for admission to professional training are related. In addition, they would have to point out to the students how their curriculum choices when they are underclassmen can help them pass the two admissions tests. The schools of education would also be obliged to tell the students what kind of remediation they need and what counseling opportunities are available.

In collaboration with secondary schools, colleges and universities would recommend procedures for selecting scorers for the Writing Test and for assuring the validity of the test scores. They would also select appropriate staff to serve on the State Writing Test Committee, which would assist the educational testing firm that develops the tests. The tests would be given on dates recommended by the State Board of Education.

Exit evaluation procedures. In addition to planning admission procedures, the Liaison Committee has done some preliminary planning for "exit evaluation" tests of academic and professional knowledge that a prospective teacher would have to pass before graduation. The Committee recommends that these tests be used along with other assessment instruments—the General Education Achievement Test, the Writing Test, and the NTE. The student would have to pass the exit evaluation tests before the college or university could recommend him for initial certification as a teacher.

Student teaching

The Committee found that prospective teachers need to learn by directly participating and observing in a school under the direction of experienced and successful teachers. A necessary part of this learning is student teaching—at least ten weeks of sustained and concentrated training within a school system under the auspices of the student's college or university. During this period the student teacher would assume responsibility for a group of students and perform the same full-time duties as the classroom teacher, with the same rights and responsibilities. The Committee recommends that the State Department of Public Instruction (DPI), the schools, and the colleges and universities cooperatively develop criteria for suitable practice teaching arrangements. These criteria would then be adopted by the State Board.

The Committee identified sixteen "competencies" (skills) to be judged when student teachers are evaluated—for example, effective speaking and listening, lesson preparation, and command of subject matter. It further points out that the teachers who supervise the student teachers also need special skills. The report provides lists of necessary skills for both the classroom teacher with whom the student teacher works (the "cooperating teacher") and the student's supervisor in his college or university. It recommends that the State Board encourage local boards to share responsibility for student teaching with colleges and universities. The schools, in cooperation with the institutions, would develop a plan for the orientation, supervision, and general assistance of the fledgling teacher. They would also periodically identify classroom teachers who are competent to be cooperating teachers.

The Committee recommends that a student teacher's assignment to a cooperating teacher be jointly determined by his college or university supervisor and the local school official who has the responsibility for this assignment. The cooperating teacher and the college supervisor would both provide ongoing supervision and evaluation. The student, the college supervisor, and the cooperating teacher would confer at least three times (before the practice teaching begins, at mid-term, and at a final evaluation conference), and then near the end of the practice teaching period they would submit to the college or university a written summary evaluation that assesses the student's performance and offers recommendations for certification. After a discussion with the cooperating teacher, the college supervisor would determine the final practice teaching grade.

The Committee recommends that a successful student teaching experience be required for certification (though not necessarily for a college degree in education).

The QAP program also contemplates that the colleges and universities would offer a series of workshops or courses to prepare both active and prospective cooperating teachers and college supervisors for professional supervision. In recognition of their special contribution, cooperating teachers would receive compensation in addition to their regular salaries. Furthermore, both the State Board and DPI would need to increase the staff development funds for both active and prospective cooperating teachers.

Certification

Skills. Part of the Liaison Committee's task was to identify skills that would be required before the State Board of Education could certify a

candidate as a teacher. (Certification, including renewal and extension, is controlled by the State Board, pursuant to G.S. 115C-296.) The Committee's report lists a variety of subject-matter skills needed in thirty areas of teaching—including special, early childhood, vocational, and secondary education. (This list has been reviewed by some representative classroom teachers and teacher educators and is on file with DPI.) In addition, a representative sample of teachers, principals, and teacher educators identified forty-nine "core skills." Core skills are those that the Committee recommends be required for initial certification of *all* teachers, regardless of the grade or subject they teach. It urges that the list of these skills be reviewed and updated periodically on the basis of follow-up studies of graduates, evaluation of the teacher's performances, and changing expectations of performance.

Support system for initially certified teachers. The Liaison Committee recommends that teacher certification be a two-stage process: initial certification and continued certification. A teacher would be initially certified after he completes professional training for up to three years. His performance would then be reviewed; if it was adequate, his certification would be continued.

To help teachers improve their performance, an educational support system would be developed through cooperative programs among universities, colleges, and local school systems. Through a "technical assistance program," new knowledge, new materials, special skills, and other information could be provided to teachers who need them. Such a program could take any of several forms. It might be offered by a private organization, by a part of a regional education agency, or by a unit that is affiliated with a public school system or a college or university. The technical assistance program may differ from one region to another in response to local needs, but it must be independent of budgetary or approval constraints that might be imposed on the personnel of local school units or universities.

To analyze the teachers' needs, the technical assistance program would interview each teacher. Further information would be gathered from other sources—such as observations of the teacher by the technical assistance staff, self-evaluation reports by the teacher, and parent-student reports—that would amplify the information obtained through the interview and help identify the teacher's needs.

With this assessment in hand, the teacher would be responsible for requesting help. He and a program staff person would then agree on what kind of help he would receive. His principal or another school administrator would participate in this step to assure the school system's endorsement of the agreement. The technical assistance program would either provide the aid directly or arrange for it to be provided by some other individual or agency. The service might include—among other possibilities—consultation with peers or professional experts, visits to other schools or workshops, additional course work, or the pursuit of an advanced degree. Both while and after the service was delivered, the technical assistance would be evaluated to answer several questions: Was the service delivered as intended? Was the teacher satisfied? Was the service effective?

The Committee views two features of the technical assistance process as crucial: (1) The technical assistance staff would have to be separate from any decision-making power over the teacher regarding such matters as employment or certification; this separation would be necessary to permit the teacher to feel relaxed and trusting with the assistance staff. (2) The technical assistance person who identifies the teacher's needs should also be the person to assist (or arrange assistance for) that teacher.

Review for continued certification. The Committee recommends that newly certified teachers be considered for continued certification at or near the end of their initial certification. A special set of procedures for reviewing performance should be developed to determine whether the teacher merits continuing certification. These procedures should be based on core skills—such as the teacher's command of his subject, his ability to plan and evaluate instruction and to manage a classroom, and his reasoning and judgment in making educational decisions. These skills would be evaluated fairly and uniformly for all teachers. The skills used by the State Board as criteria for continued certification should relate directly to the local schools' criteria for evaluating teachers for reappointment.

The Committee recommends that initially certified teachers have up to three years before they apply for continued certification. When the teacher applies, a teacher certification team would review his performance by observing him and reviewing the pertinent data—which would be the teacher's self-evaluation reports, scores of his pupils on standardized tests, parent-student reports, and recommendations by the professional staff at his school. This information will be analyzed to find out whether he has the skills to be an effective teacher. The review report would be comprehensive, describing the teacher's strengths and weaknesses and recommending whether he should be granted continuing certification.

Potential problems. The Committee acknowledges several potential problems with these proposed changes in the certification process. One is a possible overlap in two similar but separate teacher evaluation programs now being developed. As mentioned before, the State Board of Education and the UNC Board of Governors adopted a joint resolution in October 1978 that called for "the development and implementation of an evaluation and educational support system designed to assess the performance during professional employment of all individuals qualifying for initial certification. . . ." But in 1980 the General Assembly required DPI to develop—and the State Board to adopt by July 1, 1982—"uniform performance standards and criteria to be used in evaluating professional public school employees." (These standards and the evaluation system based on them are now known as the Performance Appraisal Program.) The legislation also required local boards of education to adopt local regulations for an annual evaluation of professional employees that is based on (but not limited to) the performance standards adopted by the State Board.[2] Data from this evaluation will serve as a basis for making decisions on employment and tenure and on plans for staff development.

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2. N.C. Sess. Laws 1979, 2d sess., Ch. 1137, § 35. In its present form, this provision is in G.S. 115C-326, as amended by N.C. Sess. Laws 1981, Ch. 859, § 29.12, and Ch. 1127, § 41.

In the Committee's view, the joint resolution proposes an evaluation for *certifying* of teachers, while the General Assembly's mandate calls for an evaluation for *employing* teachers. Originally the two evaluation efforts seemed to be separate and unrelated. But as plans have evolved it has become increasingly evident that the two approaches have much in common. They propose to use similar processes of observation, assessment, staff development, and evaluation. Moreover, they both use three-year cycles. Managing the two separate programs could be confusing and could work a hardship among teachers.

Another possible problem is that the Committee's proposed support system and review process may conflict with local schools systems' staff development programs. A teacher could be placed in the position of having to choose between a local program and the state's technical assistance program.

The Liaison Committee believes these problems can be resolved. It recommends that the State Board appoint a small committee with representatives from both the Liaison Committee and the group that is working on the General Assembly's Performance Appraisal Program to address these issues and recommend solutions to the State Board.

Pilot projects. The Committee recommends that DPI begin several QAP development activities or pilot projects during 1981-83. Each pilot project should consist of one or more institutions of higher education and one or more local school systems plus any needed state, regional, or local education agency. The Committee anticipates that up to five pilot projects would be needed to test various aspects of the proposed program. The projects should be coordinated by DPI by means of experts drawn from educational research and teacher education.

Implementing the program

Conditions. The Liaison Committee's report concludes by stating some conditions that must be met and some policy and procedural changes that must be made if the proposed program is to be effective.

1. All of the proposed Quality Assurance Program must be implemented. One cannot pick and choose from among the components and expect the partial plan to work. But the program will have to be phased in, and it will therefore not be necessary to wait until all components are developed, field-tested, and financed before beginning others.

2. The program must have cooperation at all levels of education in North Carolina. Teachers, administrators, local school board members, college faculty members, trustees of the respective colleges and universities, parents, and legislators must all work together to make the proposed program succeed. And the program will require the continued support of the Governor.

3. The State Board of Education's policies and procedures for certifying teachers and for approving teacher education programs will have to be revised. The emphasis should be shifted from the *process* of teacher education to its *products* over a longer period of professional development. The current program-approved procedures that involve visits to the campus and "close assessment" would still be needed to start new teacher education programs. But for existing programs, *continuing approval should be based on the performance of their graduates.* As long as a certain percentage of the program's graduates pass the NTE and other required tests, no periodic program review would be necessary or required. But if many graduates fail, then the program should be evaluated to determine whether it should be allowed to continue. This shift in emphasis places a heavy burden on the tests used to certify teachers. Every effort must be made to acquire, develop, and maintain valid and reliable tests and evaluation procedures.

4. Adequate funds must be provided to develop, field test, implement, staff, and evaluate the proposed QAP. Some of these resources are now available and can simply be redirected to new programs. External sources of support, particularly for developing new test instruments and for organization and training, may be available from federal or private foundation sources. But new state appropriations will also be necessary to begin the program, especially during the period 1981 through 1985.

Necessary policy and procedural changes. The Committee recommends:

1. To coordinate and implement the QAP, a special council or commission should be set up to aid the State Board and DPI.

2. A special panel of expert educators, teachers, and teacher educators must meet regularly to assure the relevance of the teaching skills that form the foundation for maintaining the QAP.

3. A computer-based information and data management system will be required to keep track of all aspects of the program.

4. A special study and evaluation unit will be necessary to review and revise the QAP, to help the State Board with educational policy analysis and development, and to promote the educational research and professional training.

5. A statewide staff development and training system will have to be established among elementary and secondary schools, community colleges and technical institutes, and four-year colleges and universities in order to coordinate in-service training and continuing education of teachers.

6. A uniform, statewide system for evaluating teachers' performances will be required.

7. An effective program for developing educational leadership will be needed to assure that the QAP will be pursued energetically and continuously.

8. Certain existing practices need to be modified or discontinued. Practices like "irregular" certification, "teaching out-of-field," and recertification of teachers without adequate efforts at evaluation and further training should be carefully examined. If the revisions proposed in the QAP are to work, procedural "loopholes" must be closed.

9. The certification of trade and industrial teachers needs study. This speciality area has not been addressed adequately because the skills of these teachers differ from the skills of other teachers. This study might best be undertaken in close cooperation with the Department of Community Colleges.

10. The Quality Assurance Program may ultimately have to be applied to all educational personnel, including administrators, supervisors, educational specialists, and teacher educators.

What Police and Prosecutors Need from Each Other

Mary Pipines Easley

For the most effective criminal justice system, police and prosecutors must learn to communicate.

A police officer yawns as he sits on the hard witness bench of the superior courtroom. He completed the midnight shift two hours ago and now sleepily waits for the district attorney to call his armed-robbery case for final disposition.

The defendant is well known to both the officer and the prosecutor; he is a repeat offender. Although just eighteen years old, he is a dangerous man, charged with the armed robbery of a corner store during which the clerk was shot.

The officer is relieved that the defendant is pleading guilty. He'll soon be able to go home and sleep. He doses while the Transcript of Plea is taken by the judge but jerks awake as the judge inquires of the defendant, "Are these all the terms and conditions of your plea: that in return for your plea of guilty to common law robbery, the State will dismiss the count of armed robbery now pending against you?"

The officer is completely awake now. He pokes the district attorney, "What are you doing, taking common law robbery on this guy?" Annoyed, the prosecutor turns and barks, "Look. We're lucky to get that. The clerk can't get her story out straight. When I talked to her last week, she couldn't even select the defendant out of the line-up photos. The poor woman will be ripped to shreds on cross-examination. Her ID was the only real evidence we had. I've got to take this plea and run with it."

The officer persists: "I *know* he did it. After we picked him up, as we put him in the holding room, he said, 'How did she know it was me when I was wearing a mask.' Then he laughed."

The district attorney could feel the heat rising through his ears. "Why did you wait until today to tell me *that*."

Just as frustrated, the officer snaps, "It wasn't a formal statement. Nothing written down. We didn't even have a chance to give him a *Miranda* warning. We figured it wasn't admissible as evidence."

Five minutes later, the defendant is led back to the jail after being sentenced as a committed youthful offender, immediately eligible for parole. His prior robberies were not considered by the court because he was a juvenile when he committed them.

The prosecutor and the police officer have tried to avoid each other ever since.

Frustration is no stranger to members of the criminal justice community. Budget cuts, long hours, and heavy case loads constantly take their toll. But one of the worst causes of frustration lies in the lack of communication between prosecutor and police officer. The exasperated officer must passively witness another criminal case gutted by plea bargaining while the disappointed district attorney shrugs and wonders, "If he had that good a case, why did the officer wait until the day of the trial to tell me?" Cynicism and apathy grow, both the district attorney's office and the police department suffer, and ultimately the community loses.

What can be done to improve the lines of communication between police and prosecutors? This article proposes no cure-alls for the frustrations of the criminal justice system, but it does suggest some ways to bring prosecutors and law enforcement officials together. These suggestions are based on discussions I have had with other prosecutors across the

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state, my personal experiences over the last six years as an assistant district attorney prosecuting felony cases, and ideas from the many conscientious law enforcement officers with whom I have worked.

Over the years, law enforcement agencies have been assigned to process huge amounts of information, which is packaged and repackaged to meet the needs of federal, state, and local law enforcement branches as well as prosecutors. Police use this information to prevent, detect, and help prosecute crimes. This task is enormous. It is difficult for the police to sort out what the prosecutor needs from the requirements of other agencies unless the prosecutor provides clear guidelines about what information he needs, when it should be delivered, and why it is important.

After an offender is charged, the district attorney needs not only facts from the pre-arrest investigation but also information obtained after the arrest. The lack of such major information jeopardizes effective prosecution. In one case a few years ago, a detective investigated the kidnap, rape, and robbery of a young teenager. Several days after the crime, the victim identified the offender in a properly conducted line-up. The detective charged the offender, filed the case "cleared by arrest," and resumed work on a mountain of other assignments. The detective supplied the district attorney with a copy of a statement made by the victim on the night of the rape in which she described the incident in great detail. The prosecutor was greatly relieved to receive the statement, because even months after the crime the victim was so distressed and nervous that she could not adequately answer questions. The prosecutor knew that he would be forced to rely heavily on the officer's corroborative testimony about the victim's earlier statement made to him.

The trial date arrived. After the victim limped through her testimony as expected, the district attorney turned to the detective and whispered, "Okay, get up there and tell that jury what she told you that night." Startled, the detective said, "She didn't *tell* me anything. I put her in a room and told her to write out what happened. I had to get to my desk to return some phone calls in another case. I then went downstairs to check the defendant's criminal record on the computer. When I got back, she had put her statement on my desk."

The prosecutor requested a short recess. The officer and prosecutor exchanged heated words in a secluded interview room. The prosecutor knew that the written statement, if presented to the jury, would not equal the impact of the officer's testimony about a personal interview with the victim. He would also have to recall the victim to lay the proper foundation for the introduction of the written statement into evidence. Because the prosecutor saw that recalling the already distressed victim to the stand would subject her to an entirely new avenue of cross-examination by the defense, he felt compelled to abandon the statement as a trial tactic.

When the recess was over, the detective took the witness stand and described the victim's physical and emotional condition when he observed her. He made the best of the situation in his testimony, but thereafter he always personally interviewed his victims even after the offender was charged. He found that this small investment of time resulted in a vastly improved case at trial.

That story is not the worst example of a failure to continue an investigation after arrest—at least the case was not a total loss. As an assistant district attorney, I have handled cases in which defendants and possible alibi witnesses were left uninterviewed, stolen property was not recouped as evidence after suspects were arrested, victims were not asked to identify recovered stolen property, and latent fingerprints, though obtained, were never analyzed. No matter how strong an officer believes his case to be against a person whom he arrests, he must protect the "prosecutability" of his case by diligently carrying his investigation to its natural conclusion. Only then can the officer expect the district attorney to give the case the attention and care it deserves.

How the police can improve their reports to the district attorney

The information needed by the district attorney prosecuting felony cases can be relayed by police with relative ease. By completing a simple form like the one reproduced in Figure 1—a district attorney's investigative report—the police officer gives the basic facts of each case to the prosecutor so that he can begin an intelligent prosecution. This brief report, properly filled out, can save repeated calls between the district attorney's office and the law enforcement agency.

Many police agencies use standard police report forms when they collect information. The forms are usually completed by the first officer who responds to a call and then supplemented by the detective who is assigned to the case. But while the completed forms are helpful to a prosecutor, they cannot substitute for the district attorney's investigative report because they do not provide all of the vital information. This deficiency is reflected in crimes against property. Most standard police report forms do not state: (1) the full, legal name of a business; (2) whether it is a corporation, partnership, or sole proprietorship; and (3) if the business is not a corporation, the names of the owners. To prosecute a person charged with a property crime, it is necessary to have an accurate allegation of the property's ownership or custody, or both. Failure to include these facts properly is an error fatal to the indictment, which will be quashed or voided upon motion of the defendant. If an indictment is quashed before trial, a corrected bill of indictment may be submitted to the grand jury. After a trial begins, however, any failure to allege these facts properly may cause a dismissal of the case in the trial court or reversal on appeal.

Standard police report forms also do not include information pertaining to the defendant's statements. By "statements" a prosecutor means any verbal utterance made by a defendant. As the prosecutor develops and prepares his case

Figure 1

Suggested District Attorney's Investigative Report

Case Number _____

(1) Defendant. Race Sex Age

(2) Co-defendants (Offense Location

(Date: Time: Weekday

(3) Individual victims: Race Sex Age Address Phone: Home/Work

(

(

(4) Business victim owner information
( ) Corporation
( ) Partnership*
( ) Sole-Proprietorship
*If partnership, list all partners:

Full legal name of business
(
(_____
Source of information as to business name.
(
(_____

(5) Accurate description of property taken. Value: True Owner

(6) Location of property if recovered From where was property recovered

(7) List any and all other physical evidence in this case:

How was this evidence obtained:

Who has custody of it now

(8) List all witnesses involved in this case, including Uniformed Officer
Witness: Address: Phone work home Eyewitness or other

(9) Statement of facts

Complete appropriate sections

(10) ( ) Statements and confessions of defendent
( ) No statements were made to any officer at any time.
( ) Written statements were made to any officer at any time
( ) Oral statements—summaries attached, include exculpatory statements
( ) Tape-recorded statement, in whose custody is tape? _____
( ) Waiver of rights forms attach copies of *all* forms used.

(11) ( ) Identification of defendant Circumstances of identification:
( ) Lineup *
( ) Showup *
( ) Photographs *
( ) Other

(12) ( ) Fingerprints
( ) Search made by _____ Lifted by _____ and matched _____
Compared with prints taken by _____.
( ) Search made by _____ with negative results
( ) No search for prints was made because _____

(13) ( ) Defendant's criminal record—Attach Copy ( ) Defendant has no record

(14) ( ) Officer's preliminary report—Copy Attached

(15) ( ) Search and seizure:
( ) Search warrant
( ) Search without warrant state facts giving probable cause.
( ) Consent to search attach copy of waiver if one exists
( ) Inventory of seized evidence—copy attached
Detendant (was) (was not) present when search was conducted

(16) ( ) Photographs were taken that may be used as evidence, e.g. crime scene, victim, lineup, photos used for identification. Explain below

(17) ( ) Evidence was submitted for expert examination. Explain below

(18) ( ) Explanations and additional information which will assist in preparing this case for trial, including known non-availability of witnesses

Attachments _____ _____
Investigating Officer

Covers period from _____ to _____.

for trial or plea bargaining, seemingly innocuous statements can become a significant part of his prosecution strategy. It is inconsequential whether the officer believes the statement to be inadmissible or irrelevant to the crime itself, as the story at the beginning of this article shows. Even statements not admissible as substantive evidence during the state's case may be used during the cross-examination of a defendant in order to impeach or shake his credibility. But such statements will not be used to full advantage unless they are included in the officer's report to the prosecutor along with how they were obtained and recorded.

Standard police report forms emphasize the description of suspects, but they do not say how the perpetrator was identified. Prosecutors need to know what method of identification was used: line-up, show-up, photographs, etc. Giving the prosecutor the names of those police officers who participated in a pre-trial identification procedure also contributes to proper trial preparation. Without these facts the district attorney cannot prepare adequate, competent evidence justifying the admissibility of the victim's identification of the defendant when the defense attorney objects to it.

The defendant's criminal record is another critical factor the prosecutor weighs when evaluating a case for trial. Although Police Information Network (PIN) computer terminals can be used to obtain defendants' criminal histories, few prosecutors have these terminals in their offices. Standard police report forms do not include information about the defendant's criminal record. The provisions of North Carolina's new Fair Sentencing Act make it even more important to have this information. This legislation requires prosecutors to prove a defendant's prior criminal record either by certified copy of the convictions or by stipulation with the defendant. Obtaining certified copies of criminal records is time-consuming. Therefore district attorneys need to be know about prior convictions as early as possible so that they will have time to get admissible evidence of a defendant's criminal history.

The police officer's report and other information are especially needed during the five days after the offender's arrest, when the district attorney will begin to evaluate the merits of the case for prosecution. Within five days, the prosecutor must prepare for the defendant's first appearance in district court and soon after for the probable cause hearing.

Some prosecutors use the probable cause hearing for "prosecution discovery" (i.e., to obtain information about a felony case that could have been learned several weeks earlier from a proper police investigative report). Where police and prosecutors do not communicate effectively, the probable cause hearing in district court may be the first real contact that any prosecutor has with the facts of a case. The prosecutor calls the case for hearing, and he often probes his way through to get a feel for the evidence that has been gathered and what remains to be done to complete the investigation. After the hearing his notes are usually passed along to the prosecutor who will actually try the case. When a prosecutor is forced to evaluate a case in this way, he will often judge it hastily without knowing all of the facts. This is one way in which errors in plea bargaining are made that eventually benefit the criminal.

A police investigative report is crucial when an indictment is drafted. Without it, the district attorney's office must contact the investigating officer for further information to prepare the indictment. An indictment cannot be adequately drafted merely by reference to the arrest warrant. The warrant often alleges the charge inadequately or does not include all the criminally prosecutable acts committed by the arrestee. If the police investigative report provides this information accurately, no further contact with the police officer is necessary.

Proper investigative reports also reduce the need for further inquiries of the police when the prosecutor is answering defense requests for discovery. Discovery is the process by which the defense counsel and district attorney exchange evidence before trial. Like prosecutors, police officers should remember that the discovery statutes have "teeth." Evidence, including the defendant's own statements, that was not given to the defense in response to a discovery motion must be excluded at trial.

If the police officer supplies a proper investigative report within five days of the defendant's arrest, he can be confident that he has done all he can for the time being to prepare the case against his suspect, and he can pursue other investigations with fewer interruptions. Preparing the report is helpful to the officer in another way: it encourages him to organize and evaluate the evidence he has obtained.

How the district attorney can help the police

While police can help the district attorney by improving their investigative reports, the district attorney can also help

the police in a variety of ways. Prosecutors should try to give the police legal advice that will permit the officers to proceed confidently and to avoid mistakes that might be fatal to the prosecution.

Officers should be encouraged to consult with the district attorney's staff whenever it is necessary. The district attorney should also consider providing the names, addresses, and telephone numbers of his staff to local police agencies for assistance at night and on weekends.

Even after a suspect has been charged with a criminal offense, the officer may seek advice from the district attorney's office, but often the adviser is not the prosecutor who will handle the case. Attorneys have their own style and method of prosecuting a criminal case, and the trial prosecutor might have guided the officer differently. This conflicting point of view can be confusing and frustrating for the police officer. It is therefore best that the attorney who will to prosecute a case be named as early as possible in the court proceedings so that he can work with any police officers involved in the case.

In judicial districts that comprise one or two counties—these usually contain urban areas and have fairly concentrated criminal case loads—assigning a case to a single prosecutor increases efficiency. Because the police officer knows whom to contact for both legal advice and answers to questions, he can contribute better to the prosecutor's trial preparation and is more likely to be satisfied with the court disposition of his case. And an attorney who is solely responsible for the prosecution will usually take more care in preparing the case for trial.

In districts that comprise three or more counties, which usually have a smaller and more dispersed caseload than other districts, the assignment of felony cases to prosecutors is more difficult. Because district and superior court terms are less frequent, members of the district attorney's staff "float" irregularly between the court divisions. If a case cannot be reached during the term of superior court in which it is scheduled, a different prosecutor will probably handle it during the next court session months later. The law enforcement agencies in such judicial districts should be provided with a schedule of future criminal superior court sessions that also indicates which members of the district attorney's staff will be in attendance. Information concerning court sessions can be obtained simply by consulting a chart published every six months by the Administrative Office of the Courts.

It may also be wise for the prosecutor to consult routinely with the law enforcement officer who investigated the case before proceeding with a negotiated plea. This consultation increases police awareness of those elements that the district attorney considers important and may prevent ill-advised pleas from being accepted. It also encourages the officer to continue his interest in the case during plea bargaining, the most common form of disposition for felony cases.

Establishing better communication between prosecutors and police can also be accomplished by interdepartment training sessions and discussion groups. At such sessions, the prosecutor can emphasize why the information requested by the district attorney is critical to a successful prosecution. Also, both parties can air problems before they become deep-seated grievances. And especially, such consultation can help prevent "surprises" in the courtroom.

The Exclusionary Rule in Criminal Procedure

Kenneth S. Cannaday

Several years ago the most important decisions of the United States Supreme Court concerned the constitutionality of capital punishment statutes in various states. Now the state courts are struggling with capital punishment while the most important High Court cases, at least with respect to criminal process, involve the rights of criminal defendants under the Fourth Amendment to the U.S. Constitution (search and seizure). A survey of these cases reveals some interesting insights into the Court's new philosophy.

Much as the Earl Warren Supreme Court in the 1960s was considered "liberal," the Warren Burger Court of today is considered "conservative." However, an analysis of Fourth Amendment cases indicates that the Court's conservative philosophy is a far cry from the conservatism of various single-issue right-wing groups. Indeed, in this area of the rights of the accused, neither law-and-order groups nor civil libertarians are likely to find comfort in the Court's decisions. On the other hand, neither group is likely to feel totally disenchanted.

Amendment IV to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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The purpose of the Fourth Amendment is to protect privacy. A person's house, for example, is his castle—his fortress against even the king. The threshold of his house may not arbitrarily be crossed even by the government. As the text of the amendment indicates, a person is secure in his person, papers, and effects as well as his house.

But in some situations the public interest requires that entry be made or that papers and effects be examined. Normally this may not be done unless authorized by a warrant. The warrant is issued by a judicial official only after sufficient reason has been shown. Searches and seizures without a warrant are generally held to be unreasonable—and thus unlawful—with some "narrow" exceptions.

The Supreme Court has imposed an "exclusionary rule," originally just for the federal courts but later extended to the state courts as well. Under this rule, if a search that violates the Fourth Amendment is carried out, any evidence it produces may not be used in a criminal trial to convict the person whose rights were violated. The rule means that no matter how heinous the crime, no matter how technical the constitutional violation in the search, and no matter how conclusive the evidence of guilt uncovered by the search, the jury may not be informed of the evidence.

In extending the exclusionary rule to the state courts in 1961, the Court said that the rule is "the only effective way... to compel respect for the constitutional gurantee" of the Fourth Amendment [*Mapp v. Ohio* (1961)]. Thus the Court has seen the exclusionary rule as a necessary means of deterring police misconduct. Supporters of the rule believe that it makes law enforcement more professional by giving the police an incentive to learn and obey the law of search and seizure.

On the other hand, citizens outraged at the release of dangerous criminals have strongly opposed the rule. And some Supreme Court justices have had second thoughts about it because of the subtleties and complexities that have developed in the Court's many decisions interpreting the rule. These justices fear that "law enforcement officers . . . must find quite intolerable the present state of uncertainty" in applying Fourth Amendment case law [*Coolidge v. New Hampshire* (1971), Justice Harlan concurring]. They point out that even legal scholars (including Supreme Court justices), with ample time to reflect, often cannot agree on the proper application of the Fourth Amendment. They ask how police officers can be expected to apply this body of law "on the street" without time for reflection. Recent decisions of the Supreme Court have sharply cut back the application of the exclusionary rule.

The exclusionary rule was established by the Supreme Court when its membership was quite different from what it is now. Thus far the Court has felt bound to follow its earlier decisions and apply the rule, but it has narrowed the rule in certain respects.

Application of the exclusionary rule is not automatic. There are a number of highly technical requirements for and exceptions to the rule that have nothing to do with the underlying constitutionality of a particular search. For example, before an inquiry can be made into the constitutionality of a search, the accused must show that he has "standing" to object to the search. That is, he must show that the search (whether constitutional or not) was an invasion of *his* Fourth Amendment interests—not someone else's. Only after such a showing will the court determine whether the invasion was reasonable and thus constitutionally justified. (One must keep in mind that only "unreasonable" searches and seizures are outlawed by the Fourth Amendment.)

The doctrine of standing was recognized even by the Warren Court, but the group of persons who had standing under that Court's decisions was larger than it is today. To illustrate the shrinkage in the size of this group, let us begin with the case of *Jones v. United States*, decided in 1960. The *Jones* case was no doubt the Warren Court's most significant decision on standing. The Court determined that a person had standing to object to a search if (1) he was charged with the crime of unlawful possession of something (such as narcotics or stolen property) seized during the search (this status gave him "automatic standing"), or (2) he could show that he had a possessory interest in either the place searched or the property seized, or (3) he could show that he was present (other than as a trespasser) when the premises were searched. Under these rules, the defendant who lacked standing to object to a search was rare indeed.

Between 1978 and 1980, *Jones* was overruled piece by piece, beginning with the 1978 case of *Rakas v. Illinois*. The defendant, Rakas, had been a passenger in an automobile that was searched. The search revealed evidence of a crime. Clearly Rakas was present during the search, was not a trespasser, and would have had standing under the third part of the *Jones* decision. But the Court discarded the presence-on-the-premises rationale and held that Rakas had no standing because, being a mere passenger in the car, he had no "legitimate expectation of privacy" in the areas of the car (the glove box and under the seat) where the evidence had been found.

Next in the dismantling of *Jones* came *United States v. Salvucci*, which involved an accusation of possession of stolen checks. The defendant, Salvucci, opposed the introduction of the checks as illegally seized evidence. Under the first part of the *Jones* ruling, he should have had automatic standing. The Court, in overruling *Jones*, required of the defendant that he show a legitimate expectation of privacy in the place searched. But because the place searched was the house of his alleged accomplice's mother, Salvucci had no such expectation.

Rawlings v. Kentucky eliminated the remaining rationale of the *Jones* decision: that a person has standing to object to a search that results in the seizure of an item in which he has a possessory interest. When police searched a purse that belonged to Rawlings' female companion, they found narcotics that belonged to Rawlings. Under *Jones* he should have had standing, since he admitted possessing the narcotics, but he too was denied standing because he had no legitimate expectation of privacy in the place searched (his companion's purse).

Defendants Rakas, Salvucci, and Rawlings all would have had standing under *Jones*. All would have successfully challenged the introduction of evidence and won dismissal or new trials. But they all failed under the new rules of standing. This reshaping of standing helps to illustrate just how uncomfortable the Burger Court is with the exclusionary rule.

Another 1980 case serves to illustrate how far the Court will go in requiring a defendant to demonstrate standing before evidence must be excluded at his request. In *United States v. Payner*, the federal district court (the trial court) found that a search supervised by Internal Revenue Service agents was conducted with "bad faith hostility" to the Fourth Amendment. The agents had hired a private investigator who had searched a bank official's briefcase. The official was not charged, but evidence found in his briefcase apparently led to other evidence that was damaging to the defendant Payner. The trial judge concluded from the evidence that the agents had been counseled that, because the exclusionary rule could be invoked only by persons with standing, illegal searches of one person could be conducted to obtain evidence against someone else. The evidence could then be used against this other person, who would not have standing because he was not the one person whose rights were violated. The search in *Payner* was blatantly unconstitutional, but the defendant did not have standing to object because *he* (or his effects) had not been searched. The trial judge excluded the evidence anyway. The Supreme Court reversed; it refused to exclude the evidence at Payner's request because Payner had no legitimate expectation of privacy in the place searched (the bank official's briefcase).

Another series of cases also illustrates the Supreme Court's hostility to the exclusionary rule. It is well-settled law that evidence excluded on constitutional or other grounds becomes admissible if the defendant does something during the trial that "opens the door" to the excluded evidence. For example, if the defendant testifies to something that the excluded evidence can directly disprove, he opens the door to that evidence. A defendant may testify during a narcotics prosecution that he not only is innocent of the present charge but also has *never* possessed, bought, or sold narcotics. Such testimony would open the door for the prosecution to prove that, in fact, the defendant had once been found in possession of narcotics, even though that evidence had been excluded in an earlier prosecution. This was the result in *Walder v. United States* in 1954. This open-door rule has traditionally required that the evidence directly disprove something that the defendant testified to during his direct testimony—that is, during questioning by his own lawyer rather than during cross-examination by the prosecution.

But in 1980 the Supreme Court extended the rule to permit use of excluded evidence to disprove a statement made during cross-examination if there has been some *general* "opening of the door" during direct testimony. The case was *United States v. Havens*. The defendant Havens and a companion were searched on a return trip from Peru. The companion was carrying cocaine in pockets that had been sewn into his undershirt. An illegal search of Haven's luggage uncovered a T-shirt from which the pieces had been cut to make these pockets. Havens succeeded in having this evidence excluded, but at his trial his companion testified against him. Havens then testified in his own behalf that he had not engaged in any activity involving the cocaine. On cross-examination he was asked whether he had the T-shirt with missing patches in his luggage when arrested. He answered, "Not to my knowledge." The government was then allowed to introduce the excluded evidence. On appeal, the Supreme Court approved, noting that the evidence had been admitted for the limited purpose of impeachment (casting doubt on the defendant's credibility as a witness). The jury had been instructed to consider the evidence for impeachment purposes only and not as evidence of guilt (an instruction that a jury might find meaningless), and the prosecuting attorney had not been allowed, while summing up, to argue the evidence other than to impeach the defendant as a witness.

These cases and others show a reluctance on the present Court's part to use the exclusionary rule. But when technical requirements like "standing" do not provide an out and the Court must squarely face the Fourth Amendment issue, different values come into play. In such cases it is likely that the defendant, rather than the prosecutor, will make gains. This is particularly true when government agents have entered the defendant's home.

It is generally held that searches conducted without warrants are unreasonable and thus illegal, subject only to a "few, narrowly drawn exceptions." Most cases before the Supreme Court that involve searches of houses present the issue of whether a search warrant should have been obtained before the search or whether there was an exception to the warrant requirement for the particular search. Even as the Court has become more reluctant to exclude evidence, it has extended Fourth Amendment protection of the home. In 1978, the same year that *Rakas v. Illinois* began the dismantling of the Warren Court rules on standing, the Court decided *Mincey v. Arizona*. When that decision was made, it was widely believed that there was an exception to the Fourth Amendment's warrant requirement for searches of murder scenes. In *Mincey*, a police officer had been shot and killed in the defendant's home during a narcotics raid. Pursuant to the "murder scene exception" recognized by the Arizona Supreme Court, police conducted an exhaustive four-day search of the home. The U.S. Supreme Court found that the search violated the Fourth Amendment because the police had not obtained a warrant. In reversing the Arizona court, the Court held that there was no "murder scene" exception. Of course, police who come "upon the scene of a homicide . . . may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises." While conducting such a limited search, police may seize items that are in plain view and of an obvious evidentiary nature (such as a bloody knife). But before a more extensive search of the crime scene may be conducted, the officers must withdraw and obtain a warrant. This decision was considered a serious setback for law enforcement.

In 1980 the Court further extended the right of a householder to exclude the government from his premises. In *Payton v. New York*, police officers had entered the defendant's home *without consent* to arrest him for murder. It is settled law that in general the Fourth Amendment does not require a warrant before an arrest (though state law may). No arrest warrant had been obtained when Payton was arrested. During the entry at the defendant's home, evidence seen in plain view was seized and later was introduced at his trial. The Supreme Court held that the entry had violated the Fourth Amendment because police had not obtained an *arrest* warrant and the evidence therefore should have been excluded. While it is still good law that an arrest may be made without a warrant, the Fourth Amendment does require an arrest warrant if the arrest is to be made by means of a nonconsensual entry of the defendant's home.

In 1981 the Court took this principle a step further in *Steagald v. United States*. Federal drug enforcement agents had an arrest warrant for one Ricky Lyons, a federal fugitive. But it was not Lyons' home that they entered. Acting on information that established probable cause to believe that Lyons would be found in Steagald's home, police entered the house and found forty-three pounds of cocaine. This time the Court held that though an arrest warrant had been obtained, that fact was insufficient. Since the entry was into Steagald's house rather than into the home of the person named in the warrant (Lyons), a *search* warrant was required for the search that revealed the cocaine. Thus the cocaine and any testimony about it was excluded. That this decision was not predicted only a few years ago can be shown by reference to Article 11 of North Carolina General Statutes Chapter 15A. This Article sets forth the procedure and requirements for search warrants in North Carolina. Adopted in 1973, this statute was drafted by the state's Criminal Code Commission, which consists of legal scholars, judges, and practicing lawyers. The statute provides for searching for "items" of evidence but not for search warrants for persons and thus did not foresee the *Steagald* decision.

The present Court has also demonstrated a willingness to provide greater Fourth Amendment protection for private

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The Death Penalty: Recent North Carolina Supreme Court Decisions

While the United States Supreme Court has been reshaping the search-and-seizure rules of standing and expanding certain Fourth Amendment protections of property and privacy, the North Carolina Supreme Court has been busy interpreting G.S. 15A-2000—North Carolina's capital punishment statute passed in 1975—in an effort to comply with constitutional standards.

Only first-degree murder is punishable as a capital felony in North Carolina. First-degree murder is a homicide committed after premeditation and deliberation or during one of certain specified felonies (such as rape, robbery, or burglary). Under North Carolina law, a capital case is tried in two phases. The guilt or innocence of the defendant is determined during the first phase. If the defendant is acquitted, the trial ends; if he is convicted of a lesser offense than first-degree murder, the judge sentences him as he would in any other case. But if the defendant is convicted of first-degree murder, another phase follows to determine whether the sentence will be death or life in prison. This decision is made by the jury—generally the same jury that convicted the defendant.

During the second phase of a capital trial, the jury determines the presence or absence of certain aggravating and mitigating factors and imposes the death sentence if the aggravating factors are sufficient to require that penalty and are not outweighed by the mitigating factors. Among the aggravating factors that the jury may consider are whether: (1) the defendant had previously been convicted of a violent felony; (2) the murder was committed in connection with a robbery, rape, burglary, or other specified felony; (3) the murder was committed for pecuniary gain; (4) the murder was especially heinous, atrocious, or cruel; and (5) the murder was part of a violent crime spree involving other victims. Among the possible mitigating factors are the lack of a prior criminal history, the defendant's age, the impairment of his ability to appreciate the criminality of his conduct or to conform to the requirements of the law, and anything else the jury finds to have mitigating value. If, after a reasonable time, the jury cannot agree as to punishment, the court must impose a life sentence.

The most important decisions of North Carolina's high court under G.S. 15A-2000 are those that virtually eliminate prosecutorial discretion. In cases like *State v. Johnson* (1979), *State v. Jones* (1980), and *State v. Silhan* (1981), the State Supreme Court's dicta have mandated that a prosecutor must always seek the death penalty if he has evidence of an aggravating factor. He may not plea bargain for a life sentence; he also may not fail to introduce evidence of aggravation nor recommend a life sentence to the jury.

These cases are significant for several reasons. First, they take from the prosecuting attorney his prosecutorial discretion—an extreme departure from traditional American jurisprudence. Second, the Court's dicta are not based on statutory provisions that literally address the point; rather, this startling interpretation is based on the statute's use of the word "shall" in connection with conducting the sentencing hearing after a guilty plea or verdict. Finally, the decisions are significant because they require a long and expensive capital prosecution even if the prosecutor knows that a death verdict is unlikely or feels that such a verdict would be unjust. By contrast, G.S. 15A-2000(c)(2) requires the Court to set aside death sentences that are excessive punishment compared with the sentences imposed in similar cases. Thus, in a case in which death would be excessive, the prosecutor must nevertheless seek the death penalty even though the defendant is willing to plead guilty in exchange for a life sentence. If the defendant then receives a death sentence, the Supreme Court must set the sentence aside as excessive and impose the life sentence that the defendant was willing to plead guilty to.

In *State v. Cherry* (1979), the Court made another decision that had not been generally predicted. Cherry was convicted of a first-degree murder that occurred during a robbery. The jury did not consider whether the murder occurred after premediation and deliberation. Rather, the first-degree verdict was based on the fact that murder occurred during a felony. Cherry was later sentenced to death partly on the basis of the aggravating factor that the murder was in connection with a robbery. The Court vacated the sentence, reasoning that the robbery could not be used both to elevate the murder to first degree and to aggravate the murder so as to call for the death penalty. Only if the conviction is based on premeditation and deliberation may the jury find that the underlying robbery or other felony is an aggravating circumstance.

The effect of *Cherry* was somewhat diminished by *State v. Oliver and Moore* (1981). Oliver and Moore were sentenced to death for two murders committed during a robbery. An aggravating circumstances found by the jury was that the murder was committed for pecuniary gain. Since every robbery includes the elements of larceny or stealing, the defendants contended that every robbery was for pecuniary gain; thus, they said, the robbery had been used both to elevate the murder to first degree and to aggravate the murder—in violation of *Cherry*. The Court disagreed. Robbery involves depriving another of his property but does not *require* that the robber enrich himself. Pecuniary gain is an additional factor that can be used to aggravate a murder. Thus any murder committed in the course of a robbery may (and apparently must) be tried as a capital case, since the aggravating factor of pecuniary gain will virtually always be present.

The Court has also interpreted several other individual aggravating factors. The most important and most numerous cases deal with whether the murder was especially heinous, atrocious, and cruel. In *State v. Goodman* (1979) the Court held that this factor applies only to the "conscienceless or pitiless crime which is unnecessarily torturous to the victim." In adopting this definition, the Court followed decisions of the Florida and Nebraska courts. It noted that while

every murder is heinous, atrocious, and cruel, not every murder is "especially" so. Thus this factor is not a general "catch-all" that can be used to turn any murder case into a capital trial at the whim of the prosecutor. Generally a high degree of brutality must be present before a jury may be instructed to consider this factor.

The case of *State v. Oliver and Moore* (1981) serves as a good illustration. The defendants used pistols to rob a convenience store. The storekeeper begged the defendants to take the money but not to shoot him. Moore shot and killed the victim, and he and Oliver fled from the store. In the store's parking lot Oliver shot and killed a man who had just stopped to buy gasoline. The Court held that the jury could properly consider whether the *first* murder was especially heinous, atrocious, and cruel—the victim had been shot mercilessly after begging for his life. But the second murder was the product of a sudden act, and death apparently was instantaneous. This killing, though heinous, was not *especially* heinous, atrocious, or cruel.

Another aggravating circumstance that the Court has examined is set forth by the statute in this language: "The defendant had been previously convicted of a felony involving the use or threat of violence to the person." The use of the word "had" tends to imply that the conviction must have been entered before the murder was committed. In *State v. Silhan* (1981), however, the Court held that this factor is present if the *conduct* that resulted in the felony conviction occurred before the murder.

In considering mitigating factors, the Court has made two significant decisions, both in the case of *State v. Johnson* (1979). It first decided that, since there was psychiatric evidence that the defendant's ability to appreciate the criminality of his conduct and to conform his conduct to the law was impaired, a full treatment of that mitigating factor during the judge's charge to the jury was required. Specifically, the judge should have explained to the jury the difference between this factor and legal insanity (inability to distinguish right from wrong).

In a second point on mitigating factors, the Court in *Johnson* stated in dictum that, under the last mitigating factor listed in the statute—"any other circumstance arising from the evidence which the jury deems to have mitigating value"—the judge must *specifically* submit any other nonenumerated factor supported by the evidence that might reasonably be considered to have mitigating value. For example, if the defendant presents evidence of good character—not a factor enumerated in the statute—he may request that good character be specifically submitted for consideration by the jury. The judge then will be required to instruct the jury specifically on good character. He will not be justified in submitting only a general factor that consists of "anything else found by the jury to have mitigating value."

Finally, in *State v. Silhan* (1981) the Court discussed the effect of the double-jeopardy doctrine on the phase of a capital trial in which a jury determines whether the penalty will be death. Double jeopardy is the principle that a defendant cannot be tried a second time for the same offense. There are exceptions, such as when the defendant wins a new trial on appeal. But a defendant may *never* be retried after an acquittal. *Silhan* held that the principles that apply to the death-sentence phase are those that apply to a trial rather than those that apply to an ordinary sentencing. Say, for example, that a defendant is tried for a capital offense, is convicted at his first trial, receives a life sentence, appeals, obtains a new trial, and is convicted again. He may not then be sentenced to death. Similarly, if the jury returns a verdict that fails to find a specified aggravating circumstance, the defendant is then acquitted with respect to that circumstance. And if he is sentenced to death anyway but obtains a new sentencing hearing on appeal, that aggravating circumstance may not be submitted to the jury at the second sentencing hearing.

The Exclusionary Rule

property other than houses. While these cases do not go as far as the cases just described, they are nevertheless significant. For example, in *Michigan v. Taylor* (1978) the Court reviewed the warrantless search of the crime scene in a furniture store partially destroyed by arson. While recognizing that no warrant was required for firemen to enter and put out the fire, it rejected a blanket exception to the warrant requirement for investigatory searches of scenes of fires.

These cases demonstrate that the Court indeed takes a conservative view of the Fourth Amendment. The view is conservative in that it promotes traditional values such as punishment of crime and protection of the home and other private property from government intrusion. Punishment of crime is a value reflected in cases that demonstrate hostility to the exclusionary rule—a rule that allows the offender to escape punishment even though his guilt is unquestionable. Justice Cardoza long ago [*People v. Defore* (1926)] put it like this: "The criminal is to go free because the constable has blundered." The value that protects private property is reflected in decisions that increase the right of the individual to exclude the government from his home and his other property. This value was expressed by an English common law judge nearly 400 years ago: "That the house of every one is to him as his castle and fortress" [*Samayne's Case*, 77 Eng. Rep. 194 (K.B. 1603)].

The Willie M. Case: The State's Obligation to Violent Disturbed Children

Robert D. McDonnell with William P. Pope

Some of these children burst out in uncontrollable temper tantrums, lashing out at anyone around them. Others deliberately set fires, torture animals, or attempt to harm themselves. All have one thing in common: They behave in a violent or assaultive manner. They are called "Willie M." children—youngsters under the age of eighteen who represent a small but important segment of North Carolina's population. The name comes from a thirteen-year-old boy who was one of four plaintiffs in an important class-action lawsuit filed against the State of North Carolina in October 1979.[1] In this federal suit, the plaintiffs maintained that severely emotionally disturbed and aggressive youths, like Willie, had been denied appropriate treatment and education to which they have a right, under a host of federal and state laws, if they are involuntarily placed in institutions by the state.[2]

In a settlement reached in September 1980, the parties avoided a long court case by signing a consent decree, agreeing to take steps toward providing such care for a carefully selected group of troubled children. The agreement said that the plaintiffs have a right to "appropriate treatment" and "free appropriate public education in the least restrictive environment." In its regular 1981 session the North Carolina General Assembly approved a 1981-83 budget that includes the first major funding for a treatment program for these children. This article will examine the results of this litigation and its implications for North Carolina.

The typical *Willie M.* child is difficult to profile.[3] Nearly all suffer from serious mental or emotional illness. Some may be schizophrenic, perceiving the world in a paranoid fashion and striking out against it. Others are severely depressed and direct their violence toward themselves. Then there are those who are neurologically impaired (brain-damaged) and may react violently to confusing situations. Many have suffered from child abuse. Indeed, for some, their family life may be so destructive that their violence could be considered almost appropriate.

Many *Willie M.* children come from deprived backgrounds and have experienced a shocking degree of parental abuse and rejection. In a recent study conducted at North Carolina State University and described in the Summer 1981 issue of *Popular Government*, researchers collected information from various state and county agencies regarding the existence and location of children with severe behavioral problems.[4] The study found that the primary wage earner for almost half the children with "high" behavioral problems did not have a high school degree and that over half of the children's families were on some form of public assistance. Typically, there were four siblings per family. More than half of the children had been abused or neglected; over one-third had come from families that had a record of family violence; and a quarter had come from homes that had entirely disintegrated.

The need for appropriate treatment for troubled and violent youths has long been recognized by many officials.[5] A 1972 report by the North Carolina Bar Association's Penal Study Committee noted that "under the present system, except in cases of severe mental retardation or anti-social behavior, children are lumped together and given the same type of institutional care."[6] The authors

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Robert McDonnell was one of the attorneys for the plaintiffs in the *Willie M.* case. William Pope is assistant editor of *Popular Government*.

1. Willie M. v. State of North Carolina, Dist. Ct., Charlotte, N.C. 1979.

2. Reliance for obtaining relief was placed upon the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, Public Law 94-142 (the Federal Education of All Handicapped Children Act), Section 504 of the Rehabilitation Act of 1973, the Federal Developmental Disabilities Act, and Chapters 115, 122, and 134A of the North Carolina General Statutes.

3. A more detailed description of *Willie M.* children is presented in articles by (1) Robert Wilson in the Summer 1981 issue of *Popular Government*, and (2) Hendey Buckley, Paula Clarke, and Charles Kronberg in the Fall 1981 issue.

4. An article on this study by Robert Wilson appeared in the Summer 1981 issue of *Popular Government*.

5. See Mason Thomas's article in the Winter 1980 issue of *Popular Government*.

6. *As the Twig is Bent*, North Carolina Bar Association's Penal System Study Committee Report, 1972.

of that report felt that treatment of a psychopathic or antisocial child should be "quite different from that of a merely anxious, withdrawn or parentally-neglected child . . . . What we observed leads us to the conclusion that the present system is not solving the problems of juvenile crime and delinquency. It is only effective in removing from the community for a limited period of time an individual who is a source of irritation to the community."

A few *Willie M.* children, especially those whose parents could afford proper care, have received careful and thorough diagnostic evaluation and have been placed in well-planned treatment and education programs—generally, in out-of-state locations. Yet, while there are numerous programs in North Carolina designed for troubled children, the *Willie M.* child has consistently been excluded from these programs because of his aggressive behavior.

Juvenile court judges have also been frustrated in dealing with *Willie M.* children. Several years ago, for example, a juvenile court judge in Raleigh called a news conference "as a last resort" to alert the public to the critically inadequate facilities for such children.[7] The judge cited four cases in which seriously disturbed boys had no place to go for treatment. Three of the youths were being cared for at a county detention home but were not receiving proper rehabilitation. The fourth boy had been placed in a state wilderness camp treatment program. The youths could not be treated in the adolescent ward at a state mental health hospital because they were considered too violent to be housed there—two of the boys were discharged after attacking staff members, and the third youth was refused admission after being discharged from a public hospital, where he had set fire to a mattress.

The lack of adequate treatment for violent and aggressive youths was the major reason for the *Willie M.* suit that was filed in September 1979. In addition to Willie, three other juveniles were named as plaintiffs: Jeanette M., Timothy B., and Tom H. They ranged in age from eleven to seventeen. Three were in training schools operated by the Division of Youth Services, and the fourth was in a state mental hospital. The youths were represented by a group called the Carolina Legal Assistance for Mental Health (Raleigh), by the Juvenile Justice Legal Advocacy Project (San Francisco), and by four law firms in Raleigh and one in Charlotte. The defendants named were Governor James B. Hunt and other state officials, who were represented by attorneys from the Attorney General's office.

The case was filed in Western District Court in Charlotte as a class action on behalf of the four named plaintiffs and "the class consisting of North Carolina children under the age of 18 who now or will in the future suffer from serious emotional, mental, or neurological handicaps which handicaps have been accompanied by behavior which is characterized as violent or assaultive and who are, or will in the future be institutionalized or otherwise placed in residential programs which fail to provide appropriate treatment and educational programs." In brief, the plaintiffs wanted (a) a declaratory order that the named officials were violating certain statutory and constitutional provisions; (b) an order requiring the identification of members of the class described; and (c) an order requiring appropriate treatment and education of the plaintiffs and all members of the class. The plaintiffs also asked that the state pay their attorneys' fees.

As the case progressed, various depositions were taken, exhaustive interrogatories were answered, and voluminous records of the plaintiffs were produced. The plaintiffs sought to establish a right, under the U.S. Constitution and other federal and state laws, to be provided appropriate treatment and also their right to a free and appropriate public education in the least restrictive environment. The defense sought to develop evidence that would vindicate the state, spending an estimated 1,800 hours on the case. After none could be found, it became clear that a judgment against the state was inevitable. Because there was no alternative, the state decided to enter into a negotiated settlement.

In October 1980, Judge James McMillan reviewed the findings, and the defendants agreed to several stipulations now in the form of a court order filed February 20, 1981. The court order says that the "defendants agree and acknowledge their obligation to provide all plaintiffs with appropriate treatment." The scope of the defendants' obligation was set out as follows:

(A) Each plaintiff shall be provided habilitation, including medical treatment, education, training and care, suited to his needs, which affords him a reasonable chance to acquire and maintain those life skills that enable him to cope as effectively as his own capabilities permit with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. Such habilitation shall create a reasonable expectation of progress toward the goal of independent community living. Defendants do not guarantee each plaintiff a cure, but do guarantee each plaintiff a program of habilitation which is a "good" faith effort to accomplish the goals set forth herein.

(B) Each plaintiff shall be provided with the least restrictive, i.e., most normal, living conditions appropriate to that person. Among the factors to be considered in determining the least restrictive living conditions appropriate for the individual are the need to minimize institutionalization and the need to minimize the possibility of harm to the individual and society.

(C) The goal of habilitation shall be to enable each plaintiff, as appropriate for that individual, to move from:

1. Living and programming segregated from the community to living and programming integrated with the community;
2. More structured living to less structured living;
3. Group residences to individual residences; and
4. Dependent living to independent living.

(D) Each plaintiff shall be provided such placements and services as are actually needed as determined by an individualized habilitation plan rather than such placements and services as are currently available. If placement and services actually needed are not available, the person shall be entitled to have them developed and implemented within a reasonable period. Prior to development and implementation of needed placements and services, the person shall be entitled to placement and services which meet as nearly as possible his actual needs.

7. *The Raleigh News and Observer*, 23 March 1979.

More specifically, the stipulations provide that the state must:
—Immediately provide appropriate treatment for the named plaintiffs;
—Conduct a survey to identify all other children in the state who may belong to the class;
—Name a five-member review panel to examine the treatment and education of the named plaintiffs and potential class members; and
—Provide rehabilitation, including medical treatment and education, to all members of the class in the least restrictive environment.

The rest of this article will explain these stipulations in further detail.

Identifying Willie M. children

After the defendants had acknowledged their duty to supply treatment to the class of *Willie M.* children, the parties began planning how to provide this treatment. As a first step, they agreed that an independent panel, consisting of experts in treatment and education, would be established "to review and make recommendations with respect to identification and evaluation of plaintiffs and development of appropriate treatment and education plans and programs for plaintiffs." Basically, the panel's task is to make sure that the court's stipulations are being carried out, although the panel has no legal enforcement power. The panel consists of five people, two appointed by the state and two by the plaintiffs. These four appointees then selected a fifth member. Of the five panel members, four are from North Carolina.

The next step was to determine how many children are in the plaintiff class. To locate such children, the defendants asked eighteen different agencies across the state to list the names and locations of potential class members. (This process was still going on when this article was written). Once potential class members are identified, local mental health centers are notified. Signed consent forms then must be obtained from each child's parent(s) or legal guardian. This allows health officials to review records to determine whether further diagnostic work is needed. Next, each child receives a diagnostic examination consisting of a psychiatric, psychological, and educational assessment. A form is then filled out and sent to a certification committee, composed of personnel from the Department of Human Resources (DHR) and the Department of Public Instruction (DPI). Once a child is accepted, he or she is referred to his or her local mental health center for the development of an individual treatment and education program. The child's program is then reviewed by the panel to make sure that the suit's stipulations have been met. As of December 1, a total of 1,164 children had been nominated as possible members of the *Willie M.* class, and about 60 per cent were expected to be certified by the beginning of 1982.

General Assembly action

The 1981 North Carolina legislature, recognizing the problem of *Willie M.* children, appropriated $4.5 million for treatment programs for fiscal year 1981-82. Of this amount, $3.9 million was designated for DHR's Division of Mental Health/Mental Retardation Services and Substance Abuse Services, $139,000 to DHR's Division of Youth Services (which operates the state training schools), and $501,000 to the Department of Public Instruction (DPI). The $139,000 to the Division of Youth Services will be used to replace an expiring federal grant at the C.A. Dillon School, the state training school at Butner. The $501,000 for DPI will be used to provide educational services for *Willie M.* children in areas where such programs will be established. About $1.9 million was also appropriated for fiscal 1982-83; the Governor is expected to ask for an increase in this amount when the General Assembly reconvenes in June 1982.

In acknowledging the state's efforts to provide treatment for *Willie M.* children, the General Assembly said:[8]

> . . . That there is a need in North Carolina to provide appropriate treatment and education programs to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior;
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> . . . That children with these behaviors have been identified as a class in the case of *Willie M., et al. vs. Hunt, et al.*;
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> . . . That these children have a need for a variety of services that may include but are not limited to residential treatment programs, educational programs, and independent living arrangements;
>
> . . . That the plans of the Department of Human Resources and the Department of Public Instruction for children in the *Willie M.* class indicate that not all counties in the State have the same readiness to proceed with providing the full range of services needed by these children;
>
> . . . That an attempt to provide immediately the full range of services needed by these children would result in ill-conceived, poorly executed programs at great public expense;
>
> . . . That, because of multiple practical difficulties which will undoubtedly be encountered before services can be instituted statewide, it is necessary for the General Assembly to establish a schedule of priorities for allocating funds to local area mental health programs and local educational agencies.

The zone plan

The plan of treatment for *Willie M.* children has been a coordinated, well-planned effort with participation by mental health officials from across the state. It calls for the state to be divided into thirteen geographic zones. Each zone will be organized to provide an entire "continuum of care" within that zone. This concept is intended to allow the child to progress from highly structured programs that are segregated from the community to increasingly less restrictive environments; the ultimate goal is

8. N.C. Sess. Laws 1981, first sess., Ch. 1127.

for him to live as independently as an adult as possible. The most restrictive facility might be a regional mental hospital for long-term hospitalization of patients that require intensive, specialized care or a closed local facility that the child cannot leave voluntarily. If a child makes progress, his treatment could shift to other facilities, such as a group home in a residential neighborhood, where varying degrees of supervision would be offered. Other children may receive care in a home with specially trained foster parents or treatment at local mental health facilities, which could also provide educational and vocational services. This process of moving to a less restrictive environment will probably save money, because the most secure treatment is usually the most expensive.

Four zones comprising twenty-seven counties will receive funding first. These areas were considered the most ready to proceed because they already have community mental health programs that could be adapted to the children's needs. These counties are: Durham, Orange, Person, Chatham, Vance, Granville, Franklin, Warren, Wake, Johnston, Lee, Harnett, Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain, Alamance, Caswell, Guilford, Forsyth, Stokes, Rockingham, Surry, and Yadkin. The Division of Mental Health Mental Retardation and Substance Abuse Services will allocate funds to the appropriate area mental health agencies on a grant basis for 1981-82. These agencies will either provide the services themselves or contract with a private, nonprofit program for the service. The DPI will also allocate its funds to local school units in the twenty-seven counties to provide appropriate educational services. For the rest of the state (the other seventy-three counties), funding for 1982-83 will be considered during the June 1982 session of the General Assembly.

What the future holds

The present settlement of the *Willie M.* litigation is just a first step in the development of an acceptable plan of treatment for these children. A number of questions remain unanswered. For example, what will be the role of local mental health programs? Some county governments are beginning to question their role in the delivery of services to *Willie M.* children. They are aware that the state—not the county governments themselves—agreed to the settlement of the litigation. The counties appear willing to provide treatment to *Willie M.* children, but some are concerned about how the state will pay them for such services.

Perhaps the most important question is whether the programs will work. Until now, the *Willie M.* youngsters have usually been placed in training schools and other institutions because there were no local, noninstitutional programs that could handle them. These youngsters are violent and sometimes dangerous. To the extent that they will be transferred from state institutions to their local community, secure local facilities may have to be found—or built—to house them. Also, the court settlement poses a major challenge for mental health professionals in both community mental health programs and state institutions. If they have not been able to treat *Willie M.* youngsters before now, they will need to develop some new skills, and this may be difficult.

Despite these concerns, the *Willie M.* litigation is a landmark in children's mental health care and education in North Carolina. Making the settlement work will require concerted and cooperative efforts by all agencies involved.

Municipal Annexation in North Carolina

Warren Jake Wicker

North Carolina's municipal annexation law is considered a model for the entire nation. But some opponents of the law say that it runs counter to democratic principles.

North Carolina's chief municipal annexation laws, enacted in 1959 and hailed as a model for the nation since 1967, are now being thoroughly reviewed by the General Assembly's Legislative Research Commission (LRC). The study was directed by the 1981 General Assembly,[1] following attempts in recent legislative sessions to alter the annexation statutes substantially. These attempts, in turn, had been prompted by increasing opposition from citizens who faced annexation and from some county commissioners.

Opposition to the statutes appears to be from a minority of legislators and county commissioners and to be rather recent. Before 1975 little opposition arose from either of these groups, although some citizens who were being annexed have probably protested since the municipal annexation laws were first passed.

But general concern among county commissioners about municipal annexation increased, and in 1978 the North Carolina Association of County Commissioners adopted a resolution calling for a study of the state's annexation laws. The Association did not press for the study in the 1979 General Assembly, but attempts were made in that session to modify the laws. And in the fall of 1979 the North Carolina League of Municipalities and the Association of County Commissioners appointed a joint annexation study committee to undertake the task outside the legislative arena.

That committee completed its study in June 1980 and submitted its recommendations to the two organizations' boards of directors. The committee found that the present annexation laws were reasonable and necessary, but called on city and county officials to use them with care and to cooperate so that objections and potential problems might be reduced.[2]

The League's board of directors later endorsed the committee's findings, but the Association's board took no action on the report. Moves to amend the annexation statutes by both local acts and general laws were made in the 1981 General Assembly, but the proposal for the LRC study was the only general act adopted.

Annexation methods

In North Carolina territory may be annexed to cities by five general methods. Only six cities—Scotland Neck and the five Dare County towns (Manteo, Nags Head, Kill Devil Hills, Kitty Hawk, and Southern Shores)—have all five procedures available as clear options. The eight cities in Cumberland County also have all five available, but one of the methods can be blocked by a petition from residents. Pilot Mountain has four of the five available and also has a special referendum procedure (in which voters of the city and of the area to be annexed vote together on the question as a single group) in its charter. Walnut Creek has only two methods available; all other cities and towns may use only four of the five available methods.

Special act. The General Assembly may enlarge a city's boundaries by a special act. Annexations of this type are available to all cities, and they occur in almost every legislative session. This method was the first one used and the only one that existed before 1947.

Referendum. The state' first general annexation statute, now codified as G.S. 160A-24 through -30, was enacted in 1947. It was enacted, in part, because the General Assembly observed that it was spending too much time considering all of the local annexation bills that came before it and thus wanted to provide a general statutory procedure for annexation.

Annexation under this method starts with a resolution by the municipal governing board and a public hearing. The

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1. N.C. Sess. Laws 1981, Res. 61.

2. Report of the Joint Annexation Study Committee of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, June 19, 1980 (Raleigh, The Associations).

board may call for a referendum on the annexation if it wishes to do so, and it *must* call a referendum if it receives a petition from 15 per cent of the qualified voters in the area to be annexed or in the city.

This procedure could be used by almost all of the state's cities from 1947 until 1962, when it was repealed for over 85 per cent of the cities. It is available today to some 65 cities in 15 counties.

100 per cent petition: contiguous area. Any city in the state may annex contiguous territory if it receives a petition signed by all owners of real property within the territory to be annexed (G.S. 160A-31). The simple procedure requires only a petition and a public hearing. In its present form, this procedure dates from 1959; a more restricted form was first enacted in 1947 along with the referendum procedure.

100 per cent petition: satellite area. North Carolina's annexation procedure for a satellite (noncontiguous) area is a special version of the 100 per cent petition approach and appears to be the first of its type in the nation (G.S. 16A-58 through -58.1). First authorized in 1967 for the City of Raleigh, satellite annexation was made a general law in 1974 and is now available to all cities except Walnut Creek. Owners of railroad and utility property and of nontaxed property need not sign the petition. Some portion of the satellite area must be within three miles of the primary boundary of the annexing city, and no portion of it may be closer to the primary boundaries of another city than to the those of the annexing city.

Development standards and service requirements (standards and services). This approach was developed by the Municipal Government Study Commission, a special study group created by the 1957 General Assembly and composed entirely of legislators.[3] The Commission's recommendations, enacted in 1959, are now codified as G.S. 160A-33 through -56. These statutes provide for annexation by governing board action alone, without a referendum within the area being annexed.

An area must meet three general conditions to be subject to annexation under this method: (1) It must be contiguous to the city's boundary. (2) One-eighth of its external boundary must coincide with the city's existing boundary. (3) It may not be a part of another municipality.

The area must also be developed for urban purposes, a term defined for cities with populations under 5,000 in terms of land-use and subdivision standards. The "land-use" standard requires that 60 per cent of all *lots and tracts* be in urban uses (other than vacant, forest, and agriculture). The "subdivision" standard requires that 60 per cent of the *acreage* of land that is vacant or in forest, agricultural, and residential use be in tracts of five acres or less in size.

This "urban purpose" definition also applies to cities with populations of more than 5,000, but these cities may also use two other standards to establish urban purpose: (1) The area to be annexed has an average population density of two persons per acre; or (2) a population of one person per acre in the area to be annexed, if the area also (a) has 60 per cent of its acreage in lots and tracts of less than five acres, and (b) has 60 per cent of its lots and tracts smaller than one acre.

Regardless of size, any city that wishes to annex under this procedure must prepare reports showing that the proposed annexation area meets the statutory standards and that the city can provide services to the areas on the same level as it provides them within the existing city. It also must provide certain services as soon as the area is annexed and must begin construction needed to provide others within a year of annexation. Residents of the area to be annexed may appeal to the courts if the annexing city fails to follow the proper procedure or provide the required services.

This procedure, available to some 395 cities and towns, is the one about which there is the most controversy. It is also the one that has been recommended as a model for the nation since 1967 by the U.S. Advisory Commission on Intergovernmental Relations.[4]

Table 1

North Carolina Annexation Methods Compared with Those of Other Southern States with Substantially Equivalent Methods

North Carolina	Other Southern States
1. Special legislative act	Alabama, Florida, Georgia
2. Referendum in annexed area	Alabama, Florida, Georgia, Kentucky Louisiana, Tennessee, West Virginia
3. Contiguous, 100% petition	Alabama, Georgia, and Florida (six others require less than 100% petition)
4. Satellite petition	None
5. Standards and services	Oklahoma, Tennessee, and Texas

Comparisons with other states

Comparing these approaches with methods used by other states is not easy. While many states share generally similar methods, many minor differences and often substantial variations exist within the same general classification of approaches. Studies are thus difficult and infrequently made. The most recent study of several states was issued in 1980 by the Southern Growth Policies Board. It covers fourteen southern states (see Table 1).[5]

3. N.C. Sess. Laws 1957, J. Res. 51

4. Advisory Commission on Intergovernmental Relations, "Municipal Annexation," *ACIR State Legislative Program, 1970 Cumulative* (Washington: The Commission, August 1969).

5. Patricia J. Dusenbury, and others, *Suburbs in the City: Municipal Boundary Changes in the Southern States* (Research Triangle Park, N.C.: Southern Growth Policies Board, 1980).

Purpose of annexation

The general reason for annexation is the same as the reason for having cities—to provide local governmental services to citizens and areas that are urbanly developed. From early times people who live in urban areas have felt the need for some services not needed by those who live in a rural setting and for higher levels of other services. The traditional approach to providing these has been through a municipal government. But that is not the only way. In some places special districts are formed to provide municipal services in unincorporated areas. Fire protection districts and sanitary districts are examples in North Carolina; road districts are common in other states. And county governments may sometimes provide the services, either from general county revenues or from special taxing areas.

The reorganization of North Carolina state and local government in the early 1930s did away with most special districts and created a system that essentially relies on city and county governments to provide all local governmental services. In 1980, over 95 per cent of all local governmental expenditures in the state were made by city and county governments.

Furthermore, the state has decided—through the annexation statutes and other laws that discourage new incorporations within specified distances of existing cities with populations over 5,000—that it is more economical and more desirable to serve expanding urban populations through annexation to existing cities than by creating new cities or other forms of local government.

The Joint Annexation Study Committee supported this view with an illustration:[6]

> One has only to consider an alternative to illustrate the desirability of encouraging annexation as a state policy in most cases. In 1900 Raleigh's population was about 13,600. Today it is estimated at about 160,000. If Raleigh's boundaries had not been expanded over this period and the surrounding area had grown as it has, Raleigh could be encircled today with 12 cities equal to its 1900 size. Or by 15 cities of Garner's current size. Or with an even larger number of overlapping special districts. It is difficult to imagine that the citizens of the area would be served better by such a large number of governments than they are by a single city. But in the absence of annexation by Raleigh, some alternative arrangement would have been necessary.

The annexation record

Most annexations are made on petitions of those being annexed, but the standards and services method adds the most land area and population, as Table 2 shows. Furthermore, larger cities have undertaken more annexations than the smaller ones (see Table 3). Both Tables 2 and 3 are based on a study made by the author.

No comparable study has been made since 1973, but a Bureau of Census study of annexation by cities with populations over 2,500 from 1970 through 1977 indicates that annexations have continued at a slightly increased rate.[7]

Do North Carolina's annexation statutes permit cities to annex territory that is less urbanly developed than territory annexed under the laws of other states? Apparently not,

Table 2

Types of Annexation Procedures
Used Between July 1, 1959, and June 30, 1973

Annexation method	No. of annex.	Ave. size in acres	Ave. pop.
1. Special legislative act	73	Unknown	Unknown
2. Referendum	88	193	155
3. Contiguous petition	1,703	32	20
4. Satellite petition	15	90	9
5. Standards and services			
Cities under 5,000	104	64	118
Cities 5,000 and up	193	367	726

Source. From a study by the author. Additional findings from the study may be found in *Selected Materials on Municipal Annexation* prepared by the author for the Joint Annexation Study Committee of the North Carolina Association of County Commissioners and the North Carolina League of Municipalities and issued by the Institute of Government in January 1980.

Table 3

Numbers of Annexations, by Size of City
July 1, 1959, and June 30, 1973

1970 pop. class	In Class	No. Cities That reported	No. Cities That reported annex.	Total annex. reported
Above 10,000	38	38	38	1,357
5,000-9,999	32	31	29	285
2,500-4,999	47	40	37	214
1,000-2,499	102	83	57	251
Under 1,000	209	142	39	69
Total	**428**	**334**	**200**	**2,176**

6. Report of the Committee, Joint Annexation Study, p. 21.

7. U.S. Bureau of the Census, *Boundary and Annexation Survey, 1970-1977*, Report GE 30-3, (Washington, D.C.: Government Printing Office, 1979).

according to the Census study. Nationally, the average annexation took in 91.8 acres and 53 people. In North Carolina, the average annexation involved 80.6 acres and 119 people. This means that nationally .57 persons were annexed with each acre compared with 1.54 persons per acre in North Carolina. While this gross measure concerns only population density (commercial, industrial, and institutional properties may be totally urban but have small populations), it does suggest that territory annexed in North Carolina is probably more likely to be urban in character than annexed territory in other states.

The trend in the proportion of the state's population who lives in cities and towns also suggests that North Carolina municipalities are not able (or willing) to annex without any restraint. Perhaps for the first decade in history, the proportion of the state's population who live within cities and towns declined during the 1970s. The percentage of city dwellers over the past fifty years is as follows:

1930	34.0%
1940	34.4
1950	36.9
1960	41.9
1970	42.8
1980	41.6

As those figures show, the proportion of the state's population who live in cities is slightly less than it was in 1960, the year after the new "liberal" annexation law was enacted. This record does not prove that North Carolina's annexation statutes are ideal or that they always have been used wisely. It does suggest, however, that on the whole cities have not been eager to use them to take in huge areas and large populations.

Chief issues

As noted above, the current controversy involves only those annexations carried out under the standards and services method, which involves no petition from either residents or property owners and no referendum.

Two chief issues have arisen around this annexation approach: the absence of a "vote" by those being annexed, and the adjustments of relationships between the annexing city and the county and other local governmental jurisdictions.

Voting. Is annexation without some form of "voting" inconsistent with traditional American principles? No clear line has been drawn in North Carolina between questions that should be voted on and those that should not. For example, if a North Carolina city or county wished to issue bonds to finance new construction and a 10-cent tax increase would be necessary to retire the bonds, it generally could do so only after voter approval. But city and county governing boards can increase taxes by the same amount for current programs or capital improvements without a referendum. County commissioners may zone and rezone land areas without a referendum, but authorizing the sale of beer in a city or county requires voter approval.

The Municipal Government Study Commission, which developed the standards and services annexation plan, devoted much study to the voting question. It concluded that public interest would be better served by a statute that imposed standards and service requirements than by one that resolved annexation questions at the ballot box. On the central issue, the Commission stated:[8]

> We believe in protection of the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby acquires the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself with an urban population, to assume the responsibilities of urban living, and to reap the benefits of such location. Therefore, sooner or later his property must become subject to the regulations and services that have been found necessary and indispensable to the health, welfare, safety, convenience and general prosperity of the entire urban area. Thus we believe that individuals who choose to live on urban-type land adjacent to a city must anticipate annexation sooner or later. And once annexed, they receive the rights and privileges of every other resident of the city, to participate in city elections, and to make their point of view felt in the development of the city. This is the proper arena for the exercise of political rights, as [North Carolina's] General Assembly had evidenced time and again in passing annexation legislation without recourse to an election.

Annexation opponents have often challenged the constitutionality of annexations on the grounds that those being annexed were not able to vote on the question. The courts have repeatedly held that the absence of a referendum does not make the annexation unconstitutional. North Carolina's Supreme Court, in a 1981 decision that cited a list of previous state and federal court decisions, summarized their conclusions in these words:

> It is well settled that annexation without the consent of the residents of the area being annexed does not conflict with the principles of due process.
>
> The courts have likewise upheld annexation without consent as not violative of the equal protection clause of the United States Constitution.[9]

It seems likely that voting will continue to be a central issue in the controversy over annexation procedures.

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8. Supplementary Report of the Commission, February 26, 1959 (Raleigh), p. 10.

9. *In re* Annexation Ordinances, 303 N.C. 226 (1981).

Adjusting relationships. Municipal annexation often requires that previously existing local governmental relationships be modified. And the need to adjust these relationships can create opposition to annexation. Annexation may bring with it a parallel extension of a city's extraterritorial land-use regulation jurisdiction and a reduction of the area under county jurisdiction. Newly annexed territory is often within a special fire district; annexation automatically removes the territory—and therefore much of its tax base—from the fire district. As a result the fire district can face both financing and operating problems. Financing arrangements between the annexing city and the county government for water and sewer services will often need to be modified. At times these modifications are easy, but at other times transferring responsibilities and reaching agreement on a new basis for sharing receipts is difficult. Other service arrangements—for example, those that involve recreation, law enforcement, and solid waste collection—may also need adjustment.

The annexation statutes do not resolve these conflicts or offer a standard solution. In each case, local officials must work out an accommodation that is fair to all citizens concerned. The Joint Study Committee of the League of Municipalities and the Association of Commissioners concluded that developing appropriate arrangements for these services was the most pressing need and the most effective step that city and county officials might take in making the annexation statutes work more satisfactorily.

Summary

Thirty-four years after North Carolina's General Assembly enacted the state's first general annexation statute, its Legislative Research Commission faces the difficult task of reviewing and evaluating those statutes. The review comes at a time when the state's population is still growing but its municipal population seems to have reached at least a temporary plateau. And it comes at a time when all the state's citizens need substantially the same package of local governmental services and new arrangements for meeting them are being worked out between city and county officials under broad and flexible state authorizations. The absence of a "right to vote" raises fundamental objections from many citizens who face annexation, but a change to a "right to vote" would raise equally fundamental questions about the state's basic structure of local government. In this sense, the annexation issue is the current manifestation of the traditional central issue in popular government—establishing the proper line between individual and community interests.

A Taxpayer's Guide to Property Tax Revaluation

Joseph S. Ferrell

Ever wonder why your property tax suddenly jumps by 30 per cent or more? This article explains why.

Each year about a dozen North Carolina counties conduct a general revaluation of real property for property tax purposes.[1] After the revaluation, each property owner in these counties learns that the tax value of his property has been adjusted, usually upward. In recent years, it has not been unusual to find that property values have doubled, tripled, or even quadrupled since the last tax appraisal. To ease the apprehension taxpayers often feel with such large increases, county officials often point out that the owner's tax bill will not necessarily increase to the same extent. The county and city governing boards will reduce the tax rate, they say, in inverse proportion to the total increase in the value of taxable property in the taxing units. Yet when the property owner receives his tax notice in the fall, he often finds that his tax bill has increased by 30 per cent or more. Why? This article will try to answer that question by describing how the appraisal and revaluation processes work and demonstrating the effects of revaluation on various property owners' tax burdens.

The author is an Institute faculty member whose fields include property tax law.

1. For the 1979-1980 fiscal year, the total property tax levy of all North Carolina local governments was $1,268,049,389. State income and sales tax collections in the same year were $1,471,139,203 and $691,902,227, respectively. North Carolina Department of Revenue, *Statistics of Taxation*, pp. 14, 197 (1980) (hereinafter cited as *Statistics of Taxation 1980*).

The Machinery Act

The property tax is the major source of revenue for North Carolina local governments. The law governing the administration of the tax is called the Machinery Act.[2] The quaint name comes from the time, before 1931, when the state also levied a property tax. Each General Assembly would pass a Revenue Act, which included a property tax levy, and a Machinery Act, which prescribed the procedures or "machinery" for levying and collecting the property tax. The same "machinery" was used for locally levied property taxes, and the same local personnel administered both the state and local levies. After North Carolina stopped levying a property tax, the Machinery Act was made a permanent enactment[3] applicable to local taxes only, but the old name persists.

The Machinery Act defines what property is subject to taxation,[4] how it is to be listed,[5] how it is to be appraised and assessed,[6] how tax receipts are to be prepared and handled,[7] and how the tax is to be collected.[8] The act applies uniformly to every county, city, and other local taxing unit with very few (and relatively insignificant) local variations.[9] Its provisions for general revaluations of real property apply in all 100 counties.

2. N.C. Gen. Stat. Ch. 105, subch. II (§§ 105-271 to -395).

The nature of the property tax

The property tax is a tax on property itself.[10] It is measured by the value of the

3. The first permanent revision was enacted by N.C. Pub. Laws 1939, Ch. 310. This version of the act, much amended, formed the basis of the 1971 revision (N.C. Sess. Laws 1971, Ch. 806, as amended), which is the current version.

4. N.C. Gen. Stat. Ch. 105, Art. 12.

5. *Id.* Arts. 14, 16, 17, and 18.

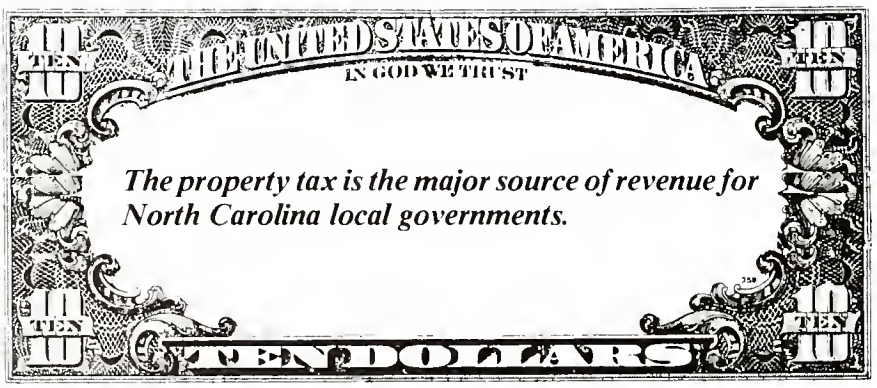
6. *Id.* Arts. 13, 19.

7. *Id.* Art. 20.

8. *Id.* Art. 26.

9. *Id.* § 105-395.

10. *See* generally, Henry W. Lewis, *The Property Tax in North Carolina: An Introduction* (Chapel Hill, N.C.: Institute of Government, 1978).



The property tax is the major source of revenue for North Carolina local governments.

property and is therefore often called the *ad valorem* tax—Latin words meaning "according to value." Thus a primary duty of tax officials is to determine the value of all property subject to taxation by the local taxing unit. That determination must be made honestly, accurately, and according to law. In North Carolina, this is the county tax supervisor's job. He is appointed by the board of county commissioners for a two-year term and has "general charge of the listing and appraising of all property in the county in accordance with the provisions of law."[11] In most other states, officials who handle this function are called assessors—a title that more accurately denotes the function of the office than does our own. We will use the term assessor hereafter in this article to refer to the North Carolina tax supervisor.

The valuation standard

The Machinery Act directs the assessor to appraise all property, real and personal, "at its true value in money."[12] This expression means the same as "market value"—that is, "the price estimated in terms of money at which the property would change hands between a willing and financially able buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all the uses to which the property is adapted and for which it is capable of being used."[13] Much meaning is packed into this statutory definition. We cannot pause here to analyze it in detail; it is enough to say that the market value standard used for North Carolina property tax purposes is the same standard used by professional appraisers throughout the nation for such varied purposes as private financing, condemnation litigation, and estate, gift, and inheritance taxation.

The one exception to the market value standard applies to land used for agricultural, horticultural, and forest purposes. If such land and its owner meet certain other qualifications, it may be appraised at "use value."[14] The Machinery Act defines "use value" in much the same terms as market value, but it directs the appraiser to assume that the present use of the property is the "highest and best use" and to consider "the capability of the property to produce income in its present use."[15] Because the appraiser must disregard other potential uses of the property, the "use value" of agricultural, horticultural, and forest land is often lower than its fair market value. Market value still plays an important part, however, in appraising land eligible for use value appraisal. Land that has been appraised at use value is subject to a three-year tax "roll-back" if it ceases to be eligible for special treatment.[16] For example, agricultural land sold to a developer for residential use would no longer be eligible for use value appraisal. The tax "roll-back" that would then become due would be the difference between the tax on the land at fair market value and the tax at use value over the preceding three years. For this reason, even land appraised at use value must also be appraised at fair market value in case it later becomes ineligible.

Having defined the basic standards by which property is to be appraised—fair market value and, in limited instances, use value—the Machinery Act directs the assessor to consider certain specific characteristics in deciding the value of a particular parcel or building. In appraising land, he must take into account:[17]

- location
- zoning
- quality of soil
- waterpower and water privileges
- mineral, quarry or other valuable deposits
- fertility
- adaptability for agricultural, timber-producing, commercial, industrial, or other uses
- past income
- probable future income
- any other factors that may affect its value except growing crops of a seasonal or annual nature.

In appraising a building or other improvement to land, he must consider:[18]

- location
- type of construction
- age
- replacement cost
- cost
- adaptability for residence, commercial, industrial, or other uses
- past income
- probable future income
- any other factors that may affect its value.

The statute only requires the assessor to *consider* all of the characteristics just listed; it does not say how much *weight* should be given to any particular factor with respect to any particular parcel or structure. That decision is a matter of informed judgment for the assessor, who must be guided at all times by the basic value standard—the fair market value.

The real property revaluation cycle

The market value of real estate fluctuates constantly in response to economic forces at work in the nation, the region, the county, and even the neighborhood. Any estimate of land value is good for the moment only. Therefore, the assessor needs a definite moment or point of reference for making his value estimate. The Machinery Act fixes the reference point for valuing real property as January 1 in a year selected by the board of county commissioners for a general revaluation of real property.[19]

The act divides the state's 100 counties into eight groups or "divisions" and establishes a base revaluation year for each division.[20] It requires the counties in each division to conduct a general revaluation as of January 1 of the base year and at least every eighth year thereafter. For example, Alamance County is in Division VI, base year 1977, which means that this county had its last revaluation in 1977 and *must* revalue real property again in 1985, 1993, 2001, etc. Table 1 shows when each county is required to conduct its next revaluation.

While each county must revalue at least once in every eight years, the law permits any county to accelerate the cycle and to conduct a revaluation earlier than scheduled.[21] The county that does so

11. N.C. GEN. STAT. § 105-296(a).
12. *Id.* § 105-296(a).
13. *Id.*
14. *Id.* § 105-277.2 through -277.7.
15. *Id.* § 105-277.2(5).
16. *Id.* § 105-277.4(c).
17. *Id.* § 105-317(a)(1).
18. *Id.* § 105-317(a)(2).
19. *Id.* § 105-285(d).
20. *Id.* § 105-286(a).
21. *Id.*

Table 1

Real Property Revaluation Schedule Established in 1971

NOTE: The following tabulation is based on G.S. 105-286(a) (2) and indicates the base years (for a 23-year period) in which each county is scheduled under the Machinery Act of 1971 to have real property revaluations go into effect. Counties that accelerate their positions to a different division, as explained in the text, will have to make necessary adjustments.

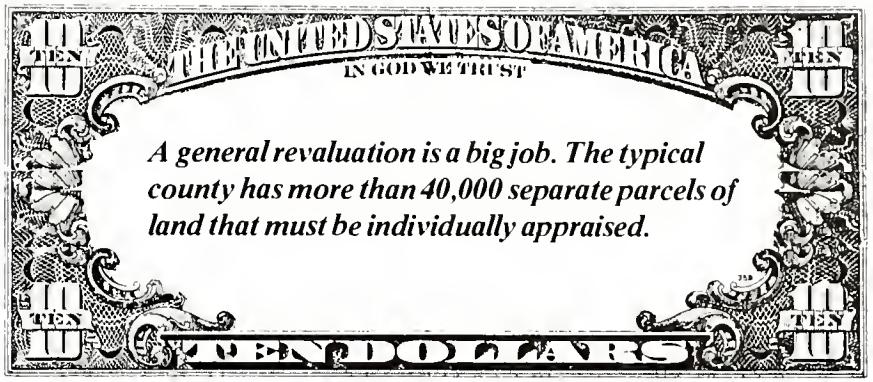
County	Division	Real Property Revaluations Become Effective as of January 1 of Years Listed
Alamance	VI	1985, 1993, 2001, etc
Alexander	VII	1978, 1986, 1994, etc
Alleghany	IV	1983, 1991, 1999, etc.
Anson	VII	1978, 1986, 1994, etc
Ashe	III	1982, 1990, 1998, etc.
Avery	I	1980, 1988, 1996, etc
Beaufort	VII	1978, 1986, 1994, etc.
Bertie	V	1984, 1992, 2000, etc.
Bladen	IV	1983, 1991, 1999, etc.
Brunswick	IV	1983, 1991, 1999, etc.
Buncombe	III	1982, 1990, 1998, etc.
Burke	VIII	1979, 1987, 1995, etc.
Cabarrus	IV	1983, 1991, 1999, etc.
Caldwell	II	1981, 1989, 1997, etc.
Camden	I	1980, 1988, 1996, etc.
Carteret	II	1981, 1989, 1997, etc
Caswell	V	1984, 1992, 2000, etc.
Catawba	IV	1983, 1891, 1999, etc.
Chatham	VIII	1979, 1987, 1995, etc.
Cherokee	I	1980, 1988, 1996, etc.
Chowan	III	1981, 1990, 1998, etc
Clay	VII	1978, 1986, 1994, etc.
Cleveland	I	1980, 1989, 1996, etc.
Columbus	II	1981, 1989, 1997, etc.
Craven	VII	1978, 1986, 1994, etc.
Cumberland	I	1980, 1988, 1996, etc.
Currituck	II	1981, 1989, 1997, etc
Dare	IV	1983, 1991, 1999, etc.
Davidson	II	1981, 1989, 1997, etc.
Davie	VII	1978, 1986, 1994, etc.
Duplin	VII	1978, 1986, 1994, etc.
Durham	VI	1985, 1993, 2001, etc.
Edgecombe	VI	1985, 1993, 2001, etc.
Forsyth	V	1984, 1991, 2000, etc.
Franklin	III	1982, 1990, 1998, etc.
Gaston	II	1981, 1989, 1997, etc.
Gates	VI	1985, 1993, 2001, etc.
Graham	VIII	1979, 1987, 1995, etc.
Granville	VII	1978, 1986, 1994, etc.
Greene	II	1981, 1989, 1997, etc.
Guilford	I	1980, 1988, 1996, etc.
Halifax	IV	1983, 1991, 1999, etc.
Harnett	I	1980, 1988, 1996, etc
Haywood	I	1980, 1988, 1996, etc
Henderson	III	1982, 1990, 1998, etc.
Hertford	VIII	1979, 1987, 1995, etc.
Hoke	III	1982, 1990, 1998, etc.
Hyde	II	1981, 1989, 1997, etc.
Iredell	V	1984, 1992, 2000, etc
Jackson	V	1984, 1992, 2000, etc.
Johnston	VIII	1979, 1987, 1995, etc.
Jones	III	1982, 1990, 1998, etc.
Lee	I	1980, 1988, 1996, etc.
Lenoir	II	1981, 1989, 1997, etc.
Lincoln	V	1984, 1992, 2000, etc.
Macon	IV	1983, 1991, 1999, etc.
Madison	II	1981, 1989, 1997, etc.
Martin	VI	1985, 1993, 2001, etc.
McDowell	VIII	1979, 1987, 1995, etc.
Mecklenburg	VIII	1979, 1987, 1995, etc.
Mitchell	VI	1985, 1993, 2001, etc.
Montgomery	I	1980, 1988, 1996, etc.
Moore	VIII	1979, 1987, 1995, etc.
Nash	VI	1985, 1993, 2001, etc.
New Hanover	IV	1983, 1991, 1999, etc.
Northampton	I	1980, 1988, 1996, etc.
Onslow	V	1984, 1992, 2000, etc.
Orange	II	1981, 1989, 1997, etc.
Pamlico	II	1981, 1989, 1997, etc.
Pasquotank	III	1982, 1990, 1998, etc.
Pender	VIII	1979, 1987, 1995, etc.
Perquimans	V	1984, 1992, 2000, etc
Person	V	1984, 1992, 2000, etc.
Pitt	II	1981, 1989, 1997, etc.
Polk	VI	1985, 1993, 2001, etc.
Randolph	VI	1985, 1993, 2001, etc.
Richmond	II	1981, 1989, 1997, etc.
Robeson	I	1980, 1988, 1996, etc.
Rockingham	VIII	1979, 1987, 1995, etc.
Rowan	III	1982, 1990, 1998, etc.
Rutherford	V	1984, 1992, 2000, etc.
Sampson	VIII	1979, 1987, 1995, etc.
Scotland	VIII	1979, 1987, 1995, etc.
Stanly	VI	1985, 1993, 2001, etc.
Stokes	III	1982, 1990, 1998, etc
Surry	IV	1983, 1991, 1999, etc.
Swain	II	1981, 1989, 1997, etc.
Transylvania	II	1981, 1989, 1997, etc.
Tyrrell	IV	1983, 1991, 1999, etc.
Union	V	1984, 1992, 2000, etc.
Vance	V	1984 1992, 2000, etc.
Wake	V	1984, 1992, 2000, etc.
Warren	VI	1985, 1992, 2001, etc
Washington	II	1981, 1989, 1997, etc.
Watauga	VIII	1979, 1987, 1995, etc.
Wayne	VIII	1979, 1987, 1995, etc
Wilkes	VI	1985, 1993, 2001, etc
Wilson	V	1984, 1992, 2000, etc.
Yadkin	IV	1983, 1991, 1999, etc
Yancey	V	1984, 1992, 2000, etc.

automatically establishes for itself a new eight-year cycle. For example, if Alamance County decided to revalue in 1983, its next required revaluation would move up to 1991.

The North Carolina Constitution requires that property be taxed "by uniform rule."[22] This means that each parcel of land and each building must be appraised on the same basis as all other land and buildings. In order to maintain uniformity through the revaluation cycle, January 1 of the revaluation year remains the fixed reference point for value estimates until the next general revaluation takes place. The Machinery Act recognizes that during the octennial cycle a specific property may change in ways that would have affected its value had it been in its present condition in the revaluation year.[23] For example, a building may be damaged or destroyed; a new building may be built; land may be subdivided and developed; a highway may be relocated. If real property is reappraised in a non-revaluation year, for these reasons or others set out in the law, the value estimate must be made as of January 1 of the revaluation year.[24] Thus a house built in Alamance County in 1980 will be appraised for 1981 property taxes at what it would have been worth on January 1, 1977, had it existed then. This practice maintains uniformity of tax treatment throughout the cycle.

The Machinery Act also recognizes that certain categories of property may change significantly in value during the octennial cycle even though property values in general have remained relatively stable.[25] In the fourth year after a general revaluation, each county is required to review the appraised values of real property to see whether "the appraised value of all real property or of defined types or categories of real property require . . . adjustment."[26] If adjustment is needed, the assessor must "revise the values accordingly by horizontal adjustments rather than by actual appraisal of individual properties; that is, by uniform application of percentages of increase or reduction to the appraised values of properties within defined types or categories or within defined geograph-

22. N.C. CONST. art. V, § 2(2).
23. N.C. GEN. STAT. § 105-287.
24. *Id.* § 105-287(c)
25. *Id.* § 105-286(b).
26. *Id.*



A general revaluation is a big job. The typical county has more than 40,000 separate parcels of land that must be individually appraised.

ic areas of the county."[27] Few counties have taken advantage of this authority. The generally held view is that the amount of work entailed in a horizontal adjustment is such that a full-blown general revaluation could be carried out with relatively little more effort and expense.

Mass appraisal of real property

A general revaluation is a big job. The typical county has more than 40,000 separate parcels of land that must be individually appraised. The process must begin early enough to have the results ready in time for tax-billing in the revaluation year but not so early that the value estimates will be out of date by the time they take effect. And the cost of the revaluation must be reasonable. A person who is borrowing money from a lending institution to buy a new house can expect to pay from $100 to $150 for an appraisal of the house and lot. A tax appraisal must cost much less than that. Most counties want it done for $10 to $12 per parcel—and that figure assumes that the revaluation does not entail extra features such as converting from a manual to a computer-based operation. Obviously, to accomplish a job of such magnitude at reasonable cost requires specialized appraisal techniques that rapidly, efficiently, and economically yield a high degree of accuracy.

The Machinery Act lays out the essential elements of a modern mass appraisal system that accomplishes the objective just summarized.[28] The foundation of the system is the assessor's appraisal manual—or, as the Machinery Act describes it, a "uniform schedule of values, standards, and rules to be used in appraising real property in the county." The appraisal manual is developed from two basic sources: the local real estate market, and nationally developed data on the cost of building construction adjusted to reflect local building costs. The manual identifies a large number of characteristics exhibited by real property in the county and indicates the dollar amount that can be normally expected to be contributed by each characterstic to the value of a given parcel of land or a building according to a unit of measure appropriate to the characteristic. For example, the appraisal manual will contain a land schedule. For agricultural or forest land, the appropriate unit of measure is usually the acre, while urban land is usually measured by square footage, front footage (meaning the number of feet of a lot that front on a street), or standard size lot (such as the 100′ by 200′ lot often found in newer subdivisions). Buildings are usually measured by square foot of area.

The value increments attributed to the various units of measurement vary considerably. Some land may be worth $2,000 per acre, other land only $400 per acre. Buildings of top-quality construction may be priced at $45 or more per square foot, lower-quality buildings at $25. Other characteristics may increase or reduce the value indicated by the basic unit of measurement. Agricultural land may be decreased in value by poor topography or poor soil. The value of an urban residential lot may be adversely affected by other development in the neighborhood. The value of buildings is always adjusted by estimating the amount or percentage of accrued depreciation and reducing the value accordingly. The characteristics mentioned here are but the tip of the iceberg; a well-developed appraisal manual will identify many more. The manual is a comprehensive, complex document designed to enable the assessor to estimate the value of thousands of parcels and buildings accurately, efficiently, and rapidly by means of a manageable number of characteristics that influence value.

Developing the appraisal manual is the single most important step in a revaluation. The manual's designation of the property characteristics to be examined and the value increment to be attributed to each determines the accuracy with which the assessor can estimate the fair market value of real property in his county. If the manual sets values too high, most properties will be appraised higher than market value. If the values are too low, most properties will be underappraised. If too few characteristics are used, the accuracy of appraisals will vary widely from parcel to parcel. If too many are used, the assessor may not be able to complete his job on time. For these reasons, the Machinery Act requires that the appraisal manual be formally approved by the board of county commissioners and permits any property owner of the county to test the manual in court.[29]

After the manual has been prepared, the board of county commissioners adopts it and places a newspaper notice stating that it has done so and that the manual will remain open for public inspection for ten days after the date of the notice. Property owners then have 30 days to appeal to the Property Tax Commission (a state administrative agency located in Raleigh) on grounds that the manual does not adhere to the fair market value standard (i.e., that it will produce values that are too high, too low, or inconsistent). The Property Tax Commission has the power to order the board of commissioners to revise the manual if it does not adhere to the fair market value standard—and has done so on occasion. The Commission's decision may be appealed to the Court of Appeals.

The assessor's next step, after the manual is adopted, is to prepare a separate record card for each parcel of land in the county. On this card he notes all characteristics of that parcel that he will consider in making his appraisal. Although land and the buildings on it are appraised

27. *Id.*

28. *Id.* § 105-317(b). See generally, International Assocation of Assessing Officers, *Improving Real Property Assessment* (Chicago, 1978), p. 444.

29. N.C. GEN. STAT. § 105-317(c).

separately, data for both will appear on the same property record card. The Machinery Act specifically directs the assessor to show on the card all characteristics considered in appraising the parcel, requires that these characteristics be consistent with the appraisal manual, and requires that the data be accurate.[30]

Collecting data about property characteristics is called "listing" the property. For buildings, the listing process consists of measuring the structure's outside perimeter, showing special features such as air conditioning and the number of bathrooms, and recording such crucial factors as depreciation and quality or grade of construction. For agricultural and forest land the process is similar but simpler. Characteristics of such land will usually include the number of acres in the tract, its road frontage (if the manual identifies this as a relevant characteristic), its fertility or productive grade, and any tobacco or peanut allotments. Many of these data elements can be gathered by persons who are not trained appraisers—no advanced training is needed to measure a house or compute the number of acres in a tract of land from the tax map. Other computations, such as estimating depreciation, require more experienced personnel.

After the basic data have been gathered and recorded on the property record card, the parcel is appraised. The Machinery Act requires that this be done for each parcel individually "by a competent appraiser."[31] The first step is usually carried out mechanically. The property characteristics gathered by the listers will be used to compute a preliminary value estimate according to the value increments set out in the manual for those characteristics. This value is tentatively recorded on the property record card. The appraiser then takes the cards into the field and revisits each property. This procedure, known as the review, is the critical "fine-tuning" step in which the training, experience, and judgment of the appraiser play a large part.

Recognizing the crucial importance of appraising property on the basis of accurate data, the Machinery Act gives each property owner the right to have the assessor (or one of his agents or employees) actually visit and observe the property in order to verify the accuracy of characteristics on record for the property.[32]

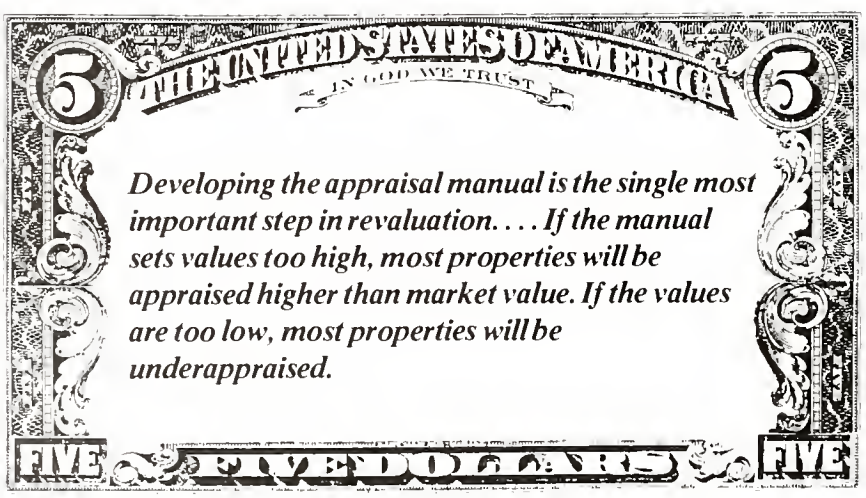
When the final review process has been completed, the Machinery Act requires the assessor to send each property owner a written notice of the appraised value of each parcel owned by that person.[33] At this point, nearly all assessors allow for a period of informal appeals that is not required by law. Typically, the value notice sent to the taxpayer states that he or she may contact the assessor for an appointment to review the appraisal if he believes it to be in error. Most counties engage the services of a professional appraisal company to assist in the evaluation (although the legal responsibility remains entirely in the hands of the assessor, who was appointed by the county commissioners). If professional appraisers helped in the revaluation, the taxpayer will get an appointment with a company representative at which he may be able to persuade the company's appraiser that a mistake was made in measurement, calculation, judgment, or all three. The time allowed for informal appeals is within the discretion of the assessor.

When the informal appeal process is over, the assessor formally adopts the appraisal then current for each parcel as his own. Ideally, he should do this before January 1 of the revaluation year, but he may not always be able to do so—the appraisal process may take more time than was planned, or there may be more informal appeals than were expected. In any event, after the assessor has adopted the appraisals, the taxpayer may appeal directly to the assessor at any time before the county board of equalization and review convenes. The Machinery Act provides that the assessor has full authority to increase or reduce appraised values of real property in a revaluation year until the board of equalization and review begins its work.[34]

Valuation appeals

The county board of equalization and review is the local body charged with hearing valuation appeals. It also has the power to increase or reduce values on its own motion if it finds such action to be warranted. In most counties, the board of equalization and review is the board of county commissioners sitting in another capacity.[35] In others, the board of commissioners has created a special board to hear appeals.[36] In still others, a special board has been created by local act of the General Assembly.[37] In all counties, the primary function of the board of equalization and review is essentially the same: to hear and decide valuation appeals.[38] The board convenes no earlier than the first Monday in April and no later than the first Monday in May.[39] It sits for at least four weeks and may meet longer if needed. It may not sit later than July 1 except to decide appeals filed before that date. Before the board

30. *Id.* § 105-317(b).
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.* § 105-296(i).
35. *Id.* § 105-322(a).
36. *Id.*
37. *E.g.*, N.C. Sess. Laws 1981, Ch. 509 (Mecklenburg County).
38. N.C. Gen. Stat. § 105-322(g)(2).
39. *Id.* § 105-322(e), (f).



Developing the appraisal manual is the single most important step in revaluation. . . . If the manual sets values too high, most properties will be appraised higher than market value. If the values are too low, most properties will be underappraised.

convenes, it must publish its hours of operation in a newspaper; any change in that schedule must also be published.

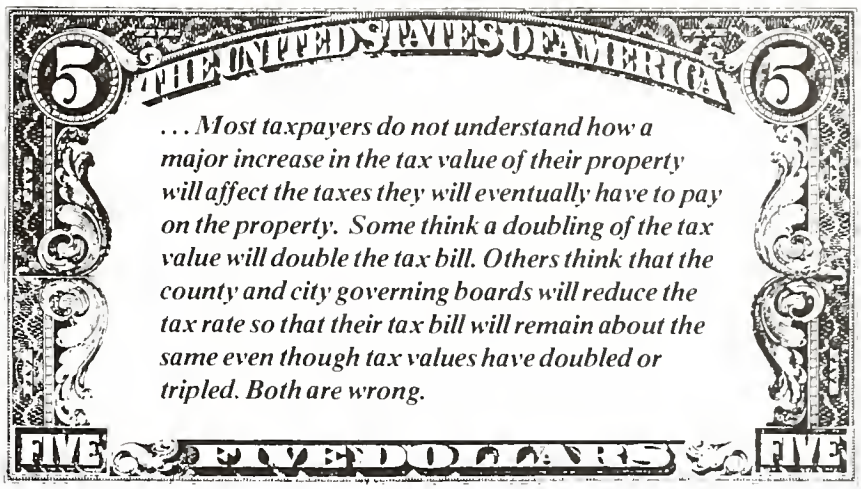
A taxpayer with a valuation to appeal may simply appear at a scheduled meeting of the board of equalization and review.[40] But in a revaluation year the assessor always urges such taxpayers to write or call for an appointment. The volume of business makes it unlikely that one will be heard at any given meeting of the board by simply showing up; others who have made appointments will be heard first.

Proceedings before county boards of equalization and review are informal. The appealing taxpayer should expect, however, that the board will want specific testimony from him as to why the assessor's value is wrong and what the proper value is. The most persuasive evidence in this regard is the testimony (oral or written) of a qualified appraiser who disagrees with the assessor's appraisal.

The Property Tax Commission hears appeals from the county board of equalization and review.[41] This agency hears appeals from county boards across the state. The Commission's hearings are more formal than those of the county boards but are still relatively informal compared with court proceedings. Testimony is recorded and may be transcribed, documentary evidence is formally introduced, and both sides (the county and the taxpayer) are usually represented by attorneys. An appellant taxpayer who believes that the Property Tax Commission made an error of law in reaching its decision on his property may appeal further to the Court of Appeals. Normally, that is the court of last resort. The Supreme Court will hear a property valuation appeal only if it believes that a major issue of law in the case warrants its attention.

Effects of revaluation on tax burdens

Most property owners expect to see the tax value of their property increase when it is revalued. They know generally that property is rising in value, including their own. But most taxpayers do not understand how a major increase in the tax value of their property will affect the taxes they will eventually have to pay on the property. Some think a doubling of the tax value will double the tax bill. Others think that the county and city governing boards will reduce the tax rate so that their tax bill will remain about the same even though tax values have doubled or tripled. Both are wrong. The rest of this article will explain how a general revaluation of real property affects the tax burden in the typical county and city.



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To understand how tax burdens shift as a result of revaluation, we must first understand how tax rates are set and applied. Each county and city in North Carolina operates on a fiscal year that begins on July 1 and ends on the following June 30.[42] The county or city governing board adopts its budget for the next fiscal year toward the end of the current fiscal year. In the budget the board appropriates money for the operation of the unit, and it estimates the size of the property tax levy and the amount of revenues from other sources that will be necessary to fund those appropriations.[43] When it adopts its budget, the board levies property taxes at a rate sufficient to produce the amount of property tax revenue it needs to balance the budget. It does that by finding the rate that, when applied to the total value of all taxable property in the taxing unit, will produce the necessary revenue. The formula is

$$\text{Tax Rate} = \frac{\text{Revenue Needed (the Levy)}}{\text{Total Property Valuation}}$$

For example, suppose that a county needs $5,597,899 in property tax revenue and the total value of taxable property in the county is $777,486,000. In this case, the levy ($5,597,899) divided by total value ($777,486,000) equals .0072. That figure is the county tax rate expressed as a decimal fraction—that is, the tax rate is 0.72 per cent of the unit's total property valuation. In North Carolina, this rate is expressed as the number of cents per $100 value of property subject to taxation. Since 0.72 per cent of $100 is $.72, the county tax rate would be stated as 72 cents per $100.

To determine the tax due from each property owner, the rate is multipled by the value of that person's taxable property. Suppose the taxpayer owns property valued at $37,750. The tax rate is 72 cents per $100, or .72 per cent of the appraised valuation of the taxpayer's property. In this case, value ($37,750) times rate (.0072) equals $271.80, the amount of tax due. The formula is

V (value) x R (rate) = T (tax due).

If the taxpayer knew how much his tax bill was and what the tax rate was but did not know the tax value of his property, he could find the value by dividing the rate into the tax bill. In the example given above, $271.80 divided by .0072 equals $37,750. The formula is

$$\text{Value} = \frac{\text{Tax Due}}{\text{Tax Rate}}$$

40. *Id.* § 105-322(g)(2)a.

41. *See* generally, *id.* Ch. 105, Art. 15; Lewis, *The Property Tax*; p. 10.

42. N.C. GEN. STAT. § 159-8(b).

43. *See* generally, David M. Lawrence, *Local Government Finance in North Carolina* (Chapel Hill, N.C.: Institute of Government, 1977), pp. 81-154.

Changing tax burdens

With this background, let us now turn to the characteristicsof the tax base (i.e., property subject to taxation) in the typical county and city. Table 2 shows the data for a hypothetical county, while Table 3 shows comparable data for a hypothetical city.[44]

In the year just before a general revaluation of real property, the total value of agricultural and forest land typically makes up about 18 per cent of the county tax base. Residential real estate accounts for about 24 per cent of the base, and business real estate (commercial and industrial) makes up about 18 per cent. The typical city has very little, if any, agricultural and forest land. About 40 per cent of the city tax base will be residential real property and about 23 per cent business real estate. The rest of the tax base in both the county and the city will be personal property and the property of public service companies.[45] By far the largest part of taxable personal property is business-related: machinery and equipment, raw materials, goods in the process of manufacture, completed goods held for sale, and packing materials. Business personal property makes up about 21 per cent of the county's tax base and about 22 per cent of the city's. Automobiles and other motor vehicles account for about 6 per cent of the tax base of both county and city, and household personal property (furniture appliances, clothing, etc.) accounts for another 2 or 3 per cent.

The remainder of a county's or city's tax base is the property of public service companies: electric power companies, telephone companies, railroads, pipelines, gas companies, the rolling stock of bus lines and motor freight carriers, and the flight equipment of airlines.[46] This kind of property amounts to 10 per cent of the typical county's base and about 7 per cent of the typical city's base.

Grouped together, these figures show that the typical county's tax base in a year just before revaluation is about 60 per cent real property, about 30 per cent personal property, and about 10 per cent public service company property. For cities, the figures are 63 per cent real property, 30 per cent personal property, and 7 per cent public service company property.

The valuation and tax rate figures in Tables 2 and 3 are representative of a typical North Carolina county and a moderately large city in North Carolina. The tables break down the assessed valuation in these units according to the categories of real and personal property identified above and compute the total property tax levied against each category, giving a rough impression of the incidence or burden of the property tax in typical taxing units before and after a general revaluation of real property.

The tables demonstrate the effect of revaluation on tax burdens. Counties that revalued in 1978, 1979, and 1980 generally found that the value of agricultural and forest land had tripled[47] since their last revaluation in 1970, 1971, or 1972. Residential real estate values doubled and business real estate increased by about 50 per cent. In all counties, this varying pattern of increase in value reflects national economic trends. In most counties, recent steep increases in tax value of agricultural and forest land also indicate more than an increase in real value. In past years, many counties often intentionally undervalued agricultural and forest land. Farm land worth $1,000 per acre in 1970 at market value might be appraised that year for tax purposes at $600 per acre. Similarly, many coun-

44. I have no hard evidence to support the table estimates of the percentage of the tax base represented by the listed categories of taxable property. That information is not at this time available from any reliable source. However, on the basis of extensive contact with county assessors and consultations with representatives of the Ad Valorem Tax Division of the North Carolina Department of Revenue, I believe the breakdown to be reasonably representative of the situation in the typical county. The table estimates of the percentage increase in the categories because of revaluation find general support in *Statistics of Taxation 1980*, pp. 202-5.

45. *See* generally, N.C. GEN. STAT. Ch. 105, Art. 23.

46. *See id.* § 105-333 for a complete listing. These are the major companies.

47. *Statistics of Taxation 1980*, pp. 202-5.

Table 2

Effect of Revaluation on Tax Base and Tax Burden in a Hypothetical North Carolina County

	Year Before Revaluation			*After Revaluation*			
Property category	**Assessed valuation**	**Percentage of total**	**Tax levy ($.72)**	**Assessed valuation**	**Percentage of total**	**Tax levy ($.45)**	**Percentage change**
Real property							
agricultural	$138,144,000	18.0	$ 997,676	$414,432,000	31.4	$1,864,944	+86.9%
residential	184,192,000	24.0	1,330,235	368,384,000	27.9	1,657,728	+24.6
business	138,144,000	18.0	997,676	207,261,000	15.7	932,674	-6.5
Personal property							
business	166,772,000	21.0	1,204,427	175,111,000	13.3	788,000	-34.6
automobiles	47,649,000	6.0	344,121	50,031,000	3.8	225,140	-34.6
household	23,825,000	3.0	172,064	25,016,000	1.9	112,572	-34.6
Public service	78,760,000	10.0	568,805	78,760,000	6.0	354,420	-37.7
Totals	**$777,486,000**	**100.0**	**$5,615,004**	**$1,318,995,000**	**100.0**	**$5,935,478**	**-5.7**

Table 3

Effect of Revaluation on Tax Base and Tax Burden
in a Hypothetical North Carolina City

	Year Before Revaluation			*After Revaluation*			
Property category	**Assessed valuation**	**Percentage of total**	**Tax levy ($.85)**	**Assessed valuation**	**Percentage of total**	**Tax levy ($.58)**	**Percentage change**
Real property							
agricultural	-0-	0.0	-0-	-0-	0.0	-0-	0.0%
residential	$120,000,000	40.0	$1,020,000	$240,000,000	52.3	$1,392,000	+36.5%
business	69,000,000	23.0	586,500	103,500,000	22.5	600,300	-2.4
Personal property							
business	66,000,000	22.0	561,000	69,300,000	15.1	401,940	-28.4
automobiles	18,000,000	6.0	153,000	18,900,000	4.1	109,620	-28.4
household	6,000,000	2.0	51,000	6,300,000	1.4	36,540	-28.4
Public service	21,000,000	7.0	178,500	21,000,000	4.6	121,800	-31.8
Totals	**$300,000,000**	**100.0**	**$2,550,000**	**$459,000,000**	**100.0**	**$2,662,200**	**+4.4**

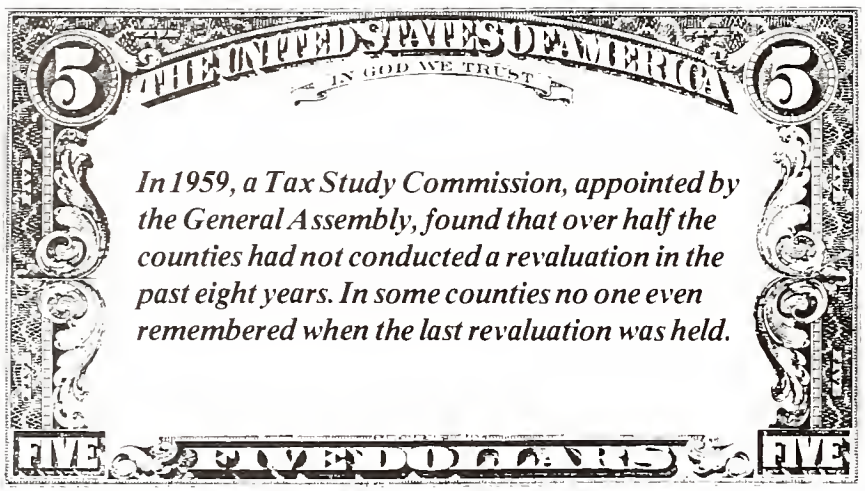
ties intentionally kept the appraised value of residential real estate low. Many assessors believed that tax values hovering around 85 per cent of market value were acceptable for residential property. Thus a house and lot worth $50,000 in 1970 would probably have been valued for taxes at no more than $42,500 that year. By contrast, commercial and industrial real property was probably last appraised for taxes at closer to true value.

Recent revaluations have been conducted in most counties under conditions much different from those that prevailed in the county's last revaluation. Data processing techniques have made it possible to improve significantly the quality of market research that is used to develop the appraisal manual and also to speed up computation and improve appraisal record-keeping. Public awareness of property appraisal techniques and policies have made it more difficult to grant informal tax breaks to some classes of property and not others. The strong leadership of the State Department of Revenue's Ad Valorem Tax Division has encouraged local officials to adhere closely to the fair market value standard. Finally, training opportunities for assessors begun many years ago by the Institute of Government have begun to bear fruit in a growing cadre of competent and experienced personnel in local tax offices. These conditions have combined to produce recent revaluations that more nearly approach appraisal of all property at fair market value than previous revaluations have done.

The changes in the tax base by a revaluation conducted under the conditions just summarized are dramatic. Tables 2 and 3 show that the value of agricultural property rises from 18 per cent to over 31 per cent of the county's tax base, and residential real property values rise from 24 per cent to almost 28 per cent for the county and from 40 per cent to more than 52 per cent for the city, while business real property values decline slightly as a percentage of the total. But the most marked change occurs in the proportion of the base constituted by values of personal property and public service company property. These two categories, which made up about 40 per cent of the tax base before revaluation, fall to about 24 per cent because the value of real property has been adjusted to reflect eight years of increased market value while personal property and public service company properties reflect only change in value from the preceding year. Obviously, a substantial part of the property tax burden will shift in a revaluation year from personal property and public service company property to real property, and the amount shifted will fall in proportion to the extent to which real property values increased compared with other categories.

In most respects, the adoption of a county and city budget is no different in a revaluation year from budget adoption in any other year. About the same amount of money will have to be raised from property taxes each year, with a slight increase needed (because of inflation) even in years in which no program expansion is planned. The tables assume that the typical county and city must raise about 5 per cent more each year in property tax revenues just to stay even with inflation. With that assumption built into the calculations, the increase in taxable value produced by revaluation will permit our hypothetical county to reduce its tax rate from $.72 per $100 to $.45. The city rate can be reduced from $.85 to $.58. But, even with these reductions, the tax burden on agricultural and residential real property increases substantially. As the tables show, county taxes on agricultural property will climb by 87 per cent. The county tax on residential real property will rise by nearly 25 per cent, and the city tax on the same property (if it is within a city) by 36.5 per cent. Because business real property did not increase in value by nearly as much as other categories of real property, taxes on it decrease slightly. But the major declines are in the taxes on personal property and property of public service companies. The county tax on these categories is more than a third less than it was last year, and the city tax only slightly less than that. The difference between the county and city tax amounts is due to the influence of the increases in value of agriculture and forest land on the county tax burden—an effect absent for the city.

The primary reason for this phenomenon is that personal property and the property of public service companies are appraised annually at fair market value while real property is appraised only once every eight years. Revaluation there-



In 1959, a Tax Study Commission, appointed by the General Assembly, found that over half the counties had not conducted a revaluation in the past eight years. In some counties no one even remembered when the last revaluation was held.

fore recognizes eight years of increase in value of real property in a single year. In a revaluation year, the proportionate part of the tax burden borne by the three major categories of taxable property—real property, personal property, and the property of public service companies—is brought into proper balance. Each year thereafter, real property values are kept at the level of the revaluation year while personal property and public service company property is reappraised at fair market value. As the octennial cycle progresses, personal property and public service company property bear an increasing share of the tax burden while real property gets an increasing break.

Keeping current

Historically, one of the weak points in administering the property tax has been the frequency with which real property values are adjusted to reflect current market value. Before 1959, the Machinery Act called for quadrennial revaluation[48]—a prescription widely ignored. The Tax Study Commission, appointed by General Assembly in 1958, found that only 21 counties had held revaluations between 1954 and 1958 even though all 100 counties should have done so under the terms of the Machinery Act.[49] Furthermore, the Commission found that 53 counties had not conducted a revaluation in the past eight years, 28 had not done so for at least 12 years, and 19 counties had not revalued since 1939. Of the latter group, several had held their last revaluation in the 1920s and in some counties no one even remembered when the last revaluation had been held.

The Commission's proposed solution to the revaluation problem was twofold.[50] First, it recommended that each county be required to conduct a revaluation of real property by actual visitation of each parcel of land at least once in every eight years. Second, it recommended that real property values be adjusted in the fourth year by "horizontal" (that is, uniform percentage adjustments for certain categories of property) increases or decreases *without* mandatory visitation of each parcel. Both of these recommendations were enacted by the 1959 General Assembly[51] and still constitute the legal foundation of North Carolina's octennial revaluation system.[52] The first revaluations were conducted under the 1959 plan in 1961. The cycle established in that year has continued without interruption for the past two decades.

The 1959 plan has had mixed success. Its requirement that a full-scale revaluation be conducted at least once in every eight years has been rigidly observed. No county has failed to conduct an octennial revaluation since 1969. On the other hand, the call for four-year horizontal value adjustments has been almost universally ignored.

There seem to be two major reasons for this failure: one practical, the other political. The practical problem has to do with the staffing of the typical assessor's office. To conduct a revaluation by horizontal adjustment of values in the fourth year after a valuation by actual visitation and observation, the county must first do essentially the same amount of market research necessary for a revaluation by actual visitation and observation. Recent property sales must be analyzed and a new appraisal manual developed. New values must be computed, and valuation notices mailed to property owners. Then the assessor must be prepared to handle a large number of valuation appeals. Few assessors' offices have either the expertise or the manpower to handle such a job without employing outside assistance. Assessors argue that if the county is going to have to hire expert help for a horizontal adjustment, it might as well spend a little more money to do a better job in a revaluation by actual visitation and observation.

The political problem is closely allied to the practical problem. A revaluation by horizontal adjustment will result in the same kind of shift in tax burden—though perhaps smaller—that occurs in any revaluation year. Furthermore, doing the job right will also cost a good bit of money.

In this situation, county commissioners—all elected officials—seem to take refuge in the familiar prescript of the Sermon on the Mount:

Therefore take no thought for the morrow; for the morrow shall take thought for the things of itself. Sufficient unto the day is the evil thereof.[53]

It seems beyond question that equitable administration of the property tax demands frequent adjustment of property values and that once in every eight years is not frequent enough. The 1958 Tax Study Commission thought that quadrennial revaluation was both equitable and practical twenty-four years ago. It is time that North Carolina public officials concerned with the administration of the property tax again turn their attention to this issue.

48. *See*, N.C. GEN STAT. § 105-278 (1957).

49. Report of the Tax Study Commission of the State of North Carolina (Raleigh, 1958), pp. 12-13.

50. *Id.*, p. 19.

51. N.C. Sess. Laws 1959, Ch. 704.

52. *See* N.C. GEN. STAT. § 105-286.

53. Matthew 6:34

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