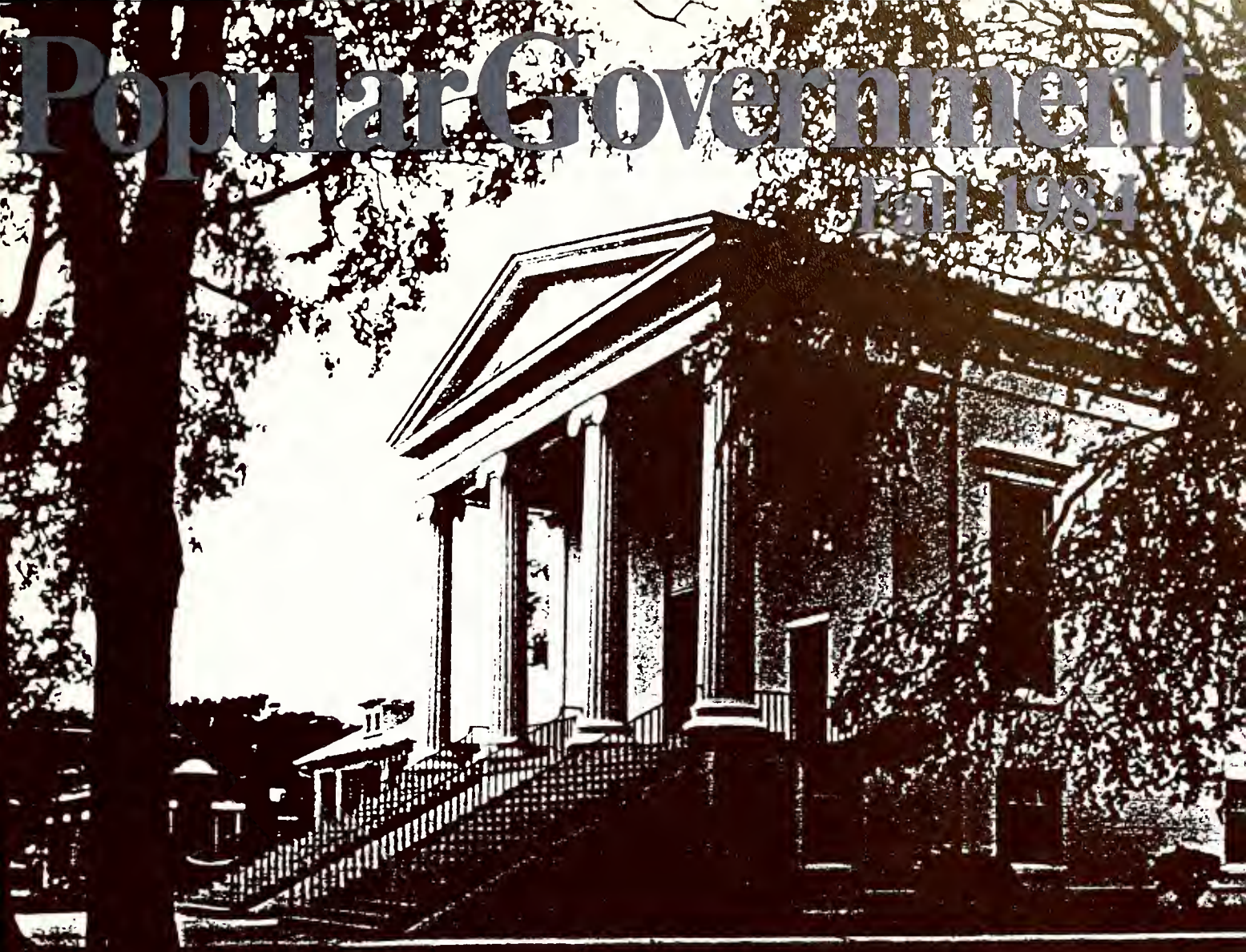
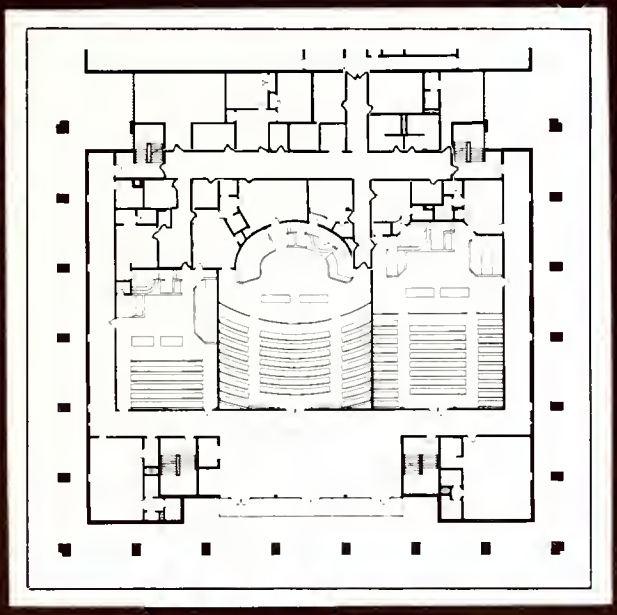
Popular Government

Fall 1984





Courtroom Design
Women and Economic Security
Criminal History Records
Low-Risk Probationers
Principals' Executive Program
Drug-Trafficking Laws
Religion and the Schools

Published by the Institute of Government, The University of North Carolina at Chapel Hill

Popular Government

Vol. 50/No. 2
Fall 1984

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Cover: *The graceful Northampton County Courthouse silhouetted.*

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Popular Government (ISSN 0032-4515) is published four times a year (summer, fall, winter, spring) by the Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, Chapel Hill, N.C. 27514. Subscription: per year $8.00. Second-class postage paid at Chapel Hill, N.C.

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Designing the Good Courtroom

Robert P. Burns

The Courtroom is on the second floor, and is most beautifully and tastefully finished and elicited the admiration of his Honor, the members of the bar, and all who were in attendance. The Courtroom is large, and, as is the case with most large Halls, it was feared that it would be difficult to hear and speak in it, but owing to the admirable construction of the room, no difficulty of this kind was experienced....

An editorial in *The Greensboro Patriot*, October 15, 1858, on the dedication of the Davidson County Courthouse.

The antebellum editorialist knew what was important. After commending the tastefulness and beauty of the room and noting the wide admiration it evoked, he went to the heart of the problem: could one hear and be heard in such a large "Hall?" Fortunately, the verdict was positive. What a collective sigh of relief there must have been from the architects, assembled dignitaries, and especially the citizens of the county whose taxes had been generously increased to erect an edifice so noble that it could be compared in the state only with "the Capitol at Raleigh."

Courtrooms built before and after 1858, when the Davidson County courthouse was completed, have generally received less complimentary appraisals. Poor acoustical performance is only one of the deficiencies encountered in many North Carolina courtrooms. With rare exceptions, they reveal a host of difficulties—poor lighting, obstacles to clear vision, inappropriate seating, inadequate heating and cooling, badly organized plans, worn-out furniture, and deteriorated finishes. All of these shortcomings seriously undermine the effectiveness of the courtroom as settings for the judicial process. That being so, what is a good courtroom, and how can it be achieved?

This article will examine the fundamental issues that affect the design and making of the "good courtroom." Not that there is an ideal courtroom plan. No standardized formula can be expected to produce an entirely satisfactory design for so complex an architectural entity as a courtroom. But there are key decision points that the architect and the client must recognize and address in order to produce a successful courtroom. First, let us touch on the broader problems of courthouse design and on such ancillary spaces as jury rooms and judges' chambers, which serve the courtroom directly. They are critical to the courtroom's success as a trial facility.

The architect who undertakes to design a courthouse and its courtroom(s) must first understand the state's judicial system, its processes, and its principal actors. North Carolina's present judicial system resulted from a long reform movement and a sweeping reorganization

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of the court system during the 1960s. The present judicial system is a three-tiered structure known collectively as the General Court of Justice. Statewide in its jurisdiction, it replaced a hodgepodge of state and local court systems that operated with inconsistent and often confusing mandates.

The three levels of the new system correspond to the division of judicial responsibility that is needed to fulfill these essential functions: review of cases (Appellate Division—the State Supreme Court and the Court of Appeals), trial of major cases (Superior Court Division), and trial of the large volume of minor cases (District Court Division). Our concern is with the superior and district court levels, where courtrooms must be specifically planned for trial purposes. These courtrooms, located in the county courthouse or its associated annex, must accommodate the general public, the press, and a variety of participants in the trial, who may include jurors, litigants, attorneys, witnesses, law enforcement officers, court clerks, and (always) a judge. Their judicial function and legal authority, their comings and goings, and their special requirements can be confusing and intimidating to the uninitiated. The courtroom architect needs a clear understanding of each trial participant's role.

The courthouse

Before examining issues that affect the design of the courtroom proper, we should look briefly at the county courthouse, which provides the context for the courtroom.

The Guilford County Courthouse is a good example of modern courthouse design. Photo by Gordon H. Schenk, Jr.

In North Carolina, the 100 county courthouses vary enormously in their size and complexity, in their actual functional purposes, and of course in their appearance and architectural quality. Contemporary courthouses in large, heavily populated counties like Wake, Guilford, and Durham typically contain a vast array of judicial and county offices and eight or more courtrooms. A small county may have a courthouse of less than 10,000 square feet with only one all-purpose courtroom. Perhaps 10 to 15 per cent of the state's courtrooms are located outside the courthouse—in nearby annexes or in towns other than the county seat if the caseload justifies the second seat of court.

As a rule, courthouses accommodate, side by side, county government functions and the state-mandated and state-operated judicial system. While this arrangement is traditional and seems to be preferred by most counties, it is not required by law or even necessarily desirable in terms of utility. Indeed, disparities in salary between county-paid employees and state-paid employees who do similar work have caused resentment. County commissioners, who are required by statute to provide facilities for the court system, may be unsympathetic to the needs of the judiciary, and conflicts for space in the courthouse are not uncommon. It is interesting to note that both little Brunswick and populous Mecklenburg have constructed separate all-judicial courthouses in the past decade.

The fact is that in most counties the courthouse serves as both the seat of justice and the center of county government. In my view, the advantage of this Siamese-twin act—unification within a single physical form and symbol—tends to outweigh the technical and functional difficulties that sometimes result, but the arrangement makes the architect's task more difficult. The number and

The Ashe County Courthouse exemplifies the traditional.

types of courtrooms having been determined, two immediate questions must be resolved when courtrooms are being planned. Where will they be located within the courthouse, and how can the necessary types of access be provided to them?

The Davidson County Courthouse, referred to in the opening quotation, represents the traditional location: the courtroom is on the second floor and heavily trafficked offices—clerk of court, register of deeds, tax offices, and similar offices—are on the first floor. This pattern has persisted, nearly without exception until this day. Courthouses in Guilford County (built in 1974) and Mecklenburg County (built in 1977) devote their first floor to offices and their second and third floors to courtrooms and related spaces.

Single-story courthouses like as those in Brunswick and Gates counties and high-rise courthouses like those in Buncombe and Wake counties, in which the courtrooms are distributed vertically on several floors, present atypical conditions that defy general guidelines. However, for the two- and three-story courthouses that North Carolinians have historically favored, the standard arrangement presents a persuasive model. Conceding the first floor to the busy administrative functions of county government and the judicial system, courtrooms on the second and third levels can be made visible or at least easily reached by open public stairways. An excellent example of this architectural arrangement is the newly enlarged Lenoir County Courthouse in which an airy, two-story atrium provides an obvious and convenient way to reach the four courtrooms on the second level.

Buncombe County's high-rise courthouse.

Accessibility is central to the design of courthouses and courtrooms. It involves considerations of security, convenience, elimination of barriers for handicapped citizens, and the public's right to observe the judicial system in action. Those who design courthouses often forget that the majority of participants in a trial, especially jurors and witnesses, are in the building for the first time and may well be anxious about this encounter with the court system.[1] Particularly in larger buildings with several courtrooms, they can become disoriented. This problem can be overcome by providing directories and information booths at main entrances and by clearly defining paths to courtrooms. Generously proportioned stairs, visible from the entrance and supplemented by elevators, are the preferred way to reach second-floor courtrooms. The architect's skill in organizing these elements can go far in helping a newcomer to the courthouse reach his destination without difficulty.

But what of prisoners held in custody, judges, and other court officials involved in trials? Ideally, an entirely secure and private passageway that minimizes the need to transfer to elevators, escalators, or similar devices should be provided for law enforcement personnel who conduct prisoners between the county jail and the courtroom. Judges too should be able to enter their chambers and the courtroom by routes that are not open to the general public. Similarly, connections between courtrooms and jury deliberation rooms should be direct and private. It should also be possible to separate and protect witnesses from the public, the accused, and others whose presence might prove intimidating.

Planning for three distinct circulation systems—for the public, for court personnel, and for prisoners—each with its own requirements for control and security, is a demanding but crucial design challenge. These separate systems can also be expensive to build, and the county

1. Allan Greenberg, *Courthouse Design: A Handbook for Judges and Court Administrators* (Published where? American Bar Association Committee on Standards of Judicial Administration, 1975), p. 33.

officials who provide construction funds may prefer expedient, less costly approaches. Resolving these conflicting interests requires skill in those who are designing the courthouse and understanding and sensitivity on the part of both judicial and county officers.

Ancillary spaces

Courtrooms, the essential heart of the trial facility, are supported by and figuratively surrounded by various ancillary spaces. These spaces vary according to courtroom use, but a general-purpose courtroom—that is, one that serves both civil and criminal sessions of court—will require access to a jury deliberation room, a judge's chamber, one or more secure holding rooms for prisoners who are awaiting trial, and two small conference rooms for attorneys to confer with their clients. Larger courthouses need a room for the jury pool that serves all courtrooms in order to facilitate jury selection and to make life more comfortable for jurors, who may have a long wait before they are called to duty.

Older courthouses rarely provide appropriate waiting places for the public, witnesses, and others.

A public waiting room, accessible to the courtrooms, is a welcome convenience for family members (including crying babies) and others who are not directly involved in the trial proceedings. Separate waiting spaces and lounges are sometimes provided for witnesses, attorneys, and law enforcement officers, all of whom may have to spend many hours in the courthouse waiting to appear in court.

These adjuncts to the courtroom are essential to the trial function, and their arrangement and design are as important as the arrangement and design of the courtroom itself.

The courtroom

Now let us go into the courtroom. We approach it through the public entrance—preferably by way of a vestibule that helps to reduce noise from the corridor. A trial is taking place within a dignified, impressive chamber. The room is divided into two main parts—the seating area for public spectators and, beyond a low barrier, the litigation or trial area. This area contains carefully crafted furnishings—counsel tables, a jury box to one side, some additional seating, a witness stand, the clerk's station, and—most prominently—the judge's bench. As we look about the courtroom, we note its handsome finishes and appointments, flags of the State of North Carolina and the United States displayed to either side of the bench, and other symbols that identify the space as a courtroom. We look beyond the spectator area to the more intensely illuminated trial area. We realize that in the nearly full room we can distinctly hear the words of the attorneys and the judge from the far end of the space.

Have we discovered the "good courtroom" on which the noblest purposes of the justice system depend? How did it come about? What are the key issues that must be addressed in order to create it? There are six basic considerations that affect how well a courtroom functions: (1) function and organization; (2) symbolic values; (3) environmental factors; (4) construction, materials, and furniture; (5) security; and (6) provisions for audiovisual displays.

Function and organization. What kinds of trials will be conducted in the courtroom the architect is designing, and what size of audience should be anticipated? Once he knows the answers to these questions, the architect can begin to determine how the courtroom space will be organized.

Older courthouses generally contained a single large and imposing courtroom, sometimes seating 300 or more spectators, that served all court needs from traffic and

domestic cases to trials for murder. These rooms also accommodated special open meetings at which issues of broad public interest were considered. (Even today, courtrooms are used for that purpose, and at least one courtroom in the courthouse should have adequate seating for a public meeting.) While older courtrooms had admirable qualities and considerable flexibility as a result of their size, today's building budgets demand courtrooms tailored to actual operational and technical requirements.

The courtroom architect must determine how a courtroom is to be used before he decides on seating capacity and provisions for the jury. The North Carolina Courthouse Study recommended that courthouses, except for those in the very smallest counties, should have at least one courtroom that seats 100 to 125 spectators and one or more smaller courtrooms that seat 50 to 75 spectators.[2]

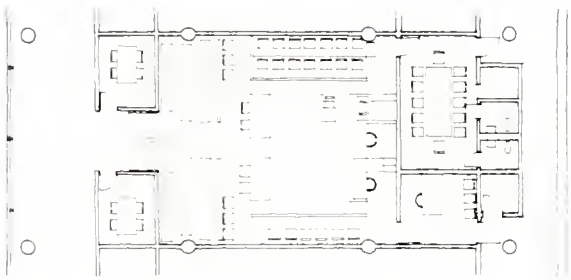
2. Robert P. Burns, *100 Courthouses: A Report on North Carolina Judicial Facilities* (Raleigh: North Carolina State University School of Design and the North Carolina Administrative Office of the Courts, 1978), pp. 61-63. This volume should be available at most county courthouses and in many public libraries.

Most cases are unceremoniously disposed of through dismissals and plea bargains in criminal cases and negotiated settlements in civil cases, yet jury trials do occur. Juries may be used in civil cases in district court and in both civil and criminal cases in superior court.

In large courthouses with several courtrooms, probably one or more courtrooms should be assigned to special purposes. Guilford County, for instance, dedicated the largest of its eleven courtrooms to traffic court, eliminating the need for jury facilities in that space. But it is usually advisable to provide a jury box in each courtroom (or at least to reserve the space necessary to install one later). This action provides long-term flexibility should statutory or other changes ever require jury trials in cases in which they are not now required.

The other elements necessary for trials—the judge's bench, the clerk's station, the witness stand, the reporter's station, the counsel tables, and additional seating for the bailiff and other trial participants—are standard requirements for courtrooms, though their appearance and arrangement may vary greatly. One routine but highly important need, often unrecognized by courtroom

The traditional design of Johnston County's courtroom projects the solemnity of a proceeding before the court.



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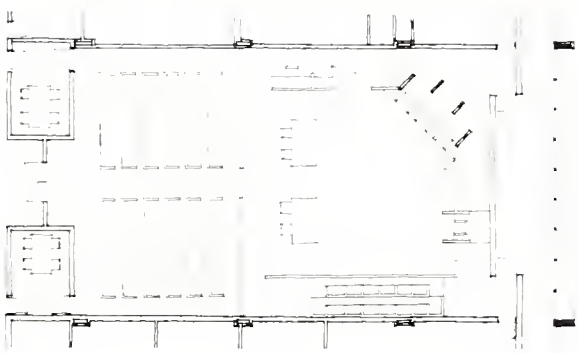

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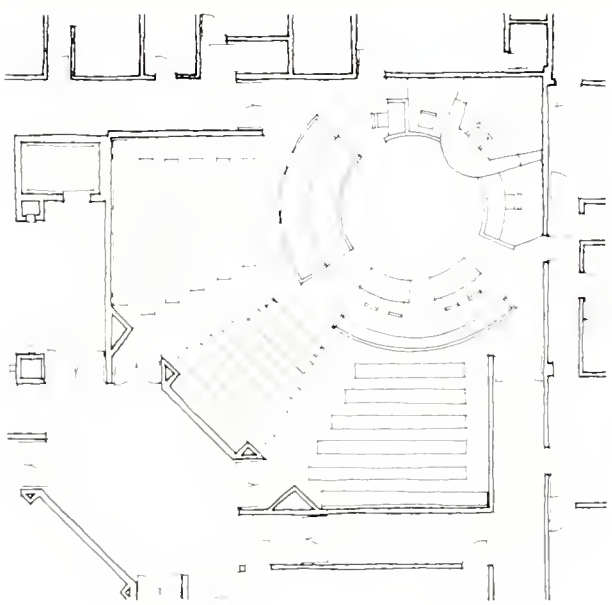

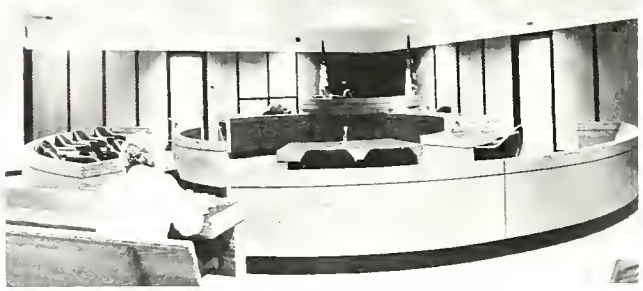

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Three modern approaches to courtroom design: (a) Mecklenburg County's dignified centered arrangement (photo by David Franzen); (b)Guilford's corner arrangement; (c) Iredell's courtroom-in-the-round.

designers, relates to district criminal court. As large numbers of cases are quickly disposed of, fines are often assessed in rapid order. For efficient collection of fines, a clerk's station should be located close to the courtroom. In Chatham County's new district courtroom, defendants who are sentenced to pay a fine must pass through a small vestibule with a pay window before they can leave the courthouse.

Many changes have been made in the organization of the trial area in the past two decades. Courtrooms-in-the-round and courtrooms with the judge's bench in the corner have been increasingly recommended as more efficient and informal than the traditional plan in which with the judge's bench is elevated on the central axis and the jury box sits to one side. Recently built North Carolina courthouses contain interesting examples of these arrangements, but their relative merits have not been conclusively established. Preferences of architects and influential judges seem to be the determining factors in most cases. I prefer the traditional plan for reasons stated in the next section.

Trial areas *can* be too large for the close and careful communication needed in trials; a space that contains 800 to 1,200 square feet with no dimensions greater than 40 feet is recommended. Trial areas can also be too small—constricting movement, the display of evidence, and the physical and psychological distance between trial participants that is essential to trial conduct.

Symbolic values. Allan Greenberg, an experienced courthouse designer and theorist, has said that "the formal arrangement and design of the furniture in the criminal courtroom is a reflection of society's view of the appropriate relationship between a person accused of a crime and judicial authority."[3] So, too, virtually every element in the courtroom—furniture, walls and ceilings, materials, decorative features, the form of the space itself—can express our social and cultural values.

Greenberg argues convincingly that the traditional courtroom plan accurately expresses our unique justice

3. Greenberg, *op. cit. supra* note 1, p. 43.

Allegorical form of Blind Justice flanked by the Ten Commandments in the Haywood County Courthouse.

system and the specific roles of the judge, jury, defense, and prosecution. The courtoom-in-the-round does not, in his view, adequately differentiate between the roles of trial participants and is thereby lacking in symbolic order.

On another level, the display of allegorical and symbolic features like Blind Justice and the Ten Commandments, commonplace in earlier courtrooms, has virtually disappeared, reflecting modernist distaste for overt symbolic references and ornamentation.

Perhaps the older symbols strike us as naive today, but the ideals of justice and the value of law in a free society must be seen as subjects worthy of contemplation. Can they not find expression in the "good courtroom?" Can today's architects and artists not find contemporary visual means to present these ideals in the courtroom? These questions are not raised idly; the potential of symbolic elements to add resonance to the processes of justice is great.

Environmental factors. It is absolutely essential that participants in trials, and in fact everyone in the courtroom, be able to see and hear everything that transpires. It is nearly as important that courtrooms be comfortably heated and air conditioned. Courtrooms both old and new are most often criticized for failures in one of these essentials. Whether people can see and hear and whether the temperature and humidity are comfortable are crucially significant in the design of courtrooms.

In regard to good conditions for seeing, it is of primary importance that the judge, jurors, and other trial participants be able to see well. That means that the trial area needs sufficient light for reading, viewing evidence, and observing facial expressions. The jury box needs variable light levels, from high to moderate; the public seating area needs more subdued levels. It is helpful to be able to modify lighting levels with dimmer switches and to control different parts of the space independently. Chatham County's new district courtroom has a panel with 10 separate dimmer switches, which permits the court clerk to adjust lighting levels throughout the space for a wide variety of conditions.

Natural lighting from windows or skylights can be useful for general lighting or special architectural effects. But natural lighting is unpredictable and therefore unreliable as a source of illumination for the demanding visual tasks associated with trials; direct, unscreened sunlight can also be distracting. Many contemporary courtrooms have dispensed with exterior lighting altogether—at some sacrifice of environmental quality, I believe.

As we saw earlier, the most persistent criticisms of older courtrooms have arisen from difficulty in hearing. Aside from the human flaws of poor enunciation and pronunciation, there are two basic reasons for acoustical problems—background noise from either the exterior or the interior, and inappropriately designed interiors. Poor public address systems ("squawk-boxes"), sometimes used in courtrooms, also occasionally cause trouble.

Some architects, fearful of the mysteries of acoustical design, prefer to engage an acoustical specialist to assist in the design of the courtroom. Acoustical design is indeed a complex subject. Still, there are some useful guides to good acoustical design for courtrooms (see the next page). They may have to be departed from in certain circumstances, but the acoustical implications of such deviations should be thoroughly assessed. In addition, both seeing and hearing in courtrooms can be made easier by locating the various participants properly in the trial area.

Ideal courtroom thermal and atmospheric system are those that produce physical comfort without noticeable distractions. Properly designed contemporary air conditioning systems should keep temperature and humidity levels within normal comfort zones. As in any spaces of public assembly, the need for ventilation peaks in the hot summer months, but air movement must remain unobtrusive.

The importance of environmental comfort in courtroom design cannot be exaggerated. The most beautifully planned and elegantly appointed courtroom will function poorly if it fails in any of these three areas.

Construction, materials, and furniture. The quality and disposition of construction systems, finish materials, and furniture directly affect the appearance and durability of the courtroom. They can also express the value placed by the public on the processes of justice.

In the past, courtrooms were the most expensively and elegantly constructed spaces in the state. Rich wood paneling, finely finished furnishings, and ornate plaster ceilings were typical of many older courthouses. During the prosperous decade of the 1920s the state's most elaborate courthouses were built as expressions of county pride and affluence in Cumberland, Johnston, Buncombe, and other counties.

Courthouse construction projects must now compete for funds with many other programs and services supported by county government, and the architect cannot ignore economic considerations. Construction technology has changed as well; as much as 40 per cent of the construction budget is allocated to environmental systems that were undreamed of in the 1920s.

These realities have had a major impact on the contemporary courtroom. While carved woodwork and ornamental plasterwork have disappeared, creative uses of

modern materials can produce impressive effects. Exposed reinforced concrete structural ceilings, deep red brick walls, and elegantly detailed cherrywood furnishings lend dignity and a sense of permanence to Guilford County's courtrooms. Chatham County's new courtroom, with richly painted wall and ceiling surfaces and natural finished oak furniture and trim, represents a post-modernist approach—traditional elements executed in new and economical terms.

These and other well-designed contemporary courtrooms convincingly demonstrate that reduced budgets do not demand that courtroom interiors descend to the levels found in fast-food restaurants. Unfortunately, some recent courtrooms with plastic laminate furniture and wall surfaces that vainly try to masquerade as walnut paneling simply reflect the low aspirations of some county officials and their tasteless designers.

County officials must recognize that the appearance and quality of courtrooms represent the value their citizens place on a central cultural ideal. Furthermore, courtrooms will be heavily used for many years. Quality, durability, and refinement even in an era of limited resources is a good investment. The architect's task is to transcend the physical and economic realities through creativity and dedication.

Security. Security in the courtroom is just a part of the broader task of maintaining security throughout the courthouse. This task includes protecting the people who occupy the courthouse, preserving the courthouse itself from damage, preventing the escape of those in custody, maintaining judicial decorum in the courthouse, and protecting court records and documents.

Several nationally celebrated incidents involving kidnapping, bombing, and planned disruptions have focused public attention on the need for a secure courthouse. Special provisions such as guarded entrances and metal-detection devices, combined with searches of those who enter the courtroom, may be advisable in trials of unusual sensitivity. Even more extreme measures would involve placing spectators in a separate space to watch the proceedings by means of television and providing a glazed security screen between spectators and the trial area.

Most trials do not require unusual security measures, but certain basic provisions should be made to counteract spontaneous disruptions or attacks in the courtroom. These include defensive design of the judge's bench, the witness stand, and the jury box; a restricting barrier between the spectators and the trial area; and an emergency alarm, operated by the judge or the clerk, that can alert security personnel outside the courtroom.[4]

The extreme measures among those outlined above are certain to affect dramatically the way we experience

4. Burns, *supra* note 2, p. 80.

Courtroom Acoustics
Do's and Don'ts

Do provide vestibules (soundlocks) at public entrances to reduce intrusion of noise from corridors.

Do use double- or triple-glazed windows to reduce exterior noise.

Do provide carpeting throughout to reduce noise created by walking, feet-shuffling, scraping of chair legs, etc.

Do provide seating that will not creak or squeak (fixed wooden pews are preferable).

Do see that movable devices or hardware (doors, gates, furniture) that might cause distracting noise are well maintained and lubricated.

Do not use acoustical tile or similar sound-absorbing material for the central portion of the courtroom ceiling. The ceiling and sidewalls should be of hard material that will reflect and amplify speech. Use of sound-absorbing material is a common error, particularly in renovations of older courtrooms. Poor acoustical properties are aggravated by a new ceiling of acoustical tile.

Do not use electronic speech-amplification systems in most courtrooms. Only rooms that exceed 60,000 cubic feet (40' x 70' x 20' high, for example) require such reinforcement. Even so, the system should be professionally designed and installed.

Do not rely on inexpensive, low-quality public address systems; they tend to make speech less intelligible and will likely be rejected by court officials after a brief, unsatisfactory trial.

and think about trials. For this reason, they should be avoided in all but the most exceptional cases. Security provisions should facilitate judicial procedures, not dominate them.

Audiovisual displays

Trial processes have traditionally relied heavily on oral presentation and argument, supported by the examination of documents, still photographs, and other evidence. But today courtrooms must provide for slide, film, audiotape, and videotape presentations. These require a projection screen placed so that everyone in the courtroom can see it, appropriate power connections and equipment, and the ability to darken the room.

In the past year, the North Carolina judiciary has tentatively moved toward televised courtroom trials. It is too early to know whether this practice will continue and become widespread. If so, it surely will dramatically affect courtroom design. The most obvious concern is how television cameras would be accommodated. Would they be permitted to move about the courtroom, as in public hearings and city council meetings? Or would they be restricted to fixed locations, possibly outside the courtroom with only a window view of the proceedings? An associated problem would be the need for bright light, far exceeding the normal requirements for courtrooms.

Architects and county officials who will plan new courtrooms or renovate older ones in the next decade should pay close attention to developments in this area: simple and inexpensive provisions in advance may avoid costly and disruptive modifications later.

Summary

We have examined the design of the "good courtroom" by looking first at the courthouse as the context within which the courtrooms function and then at the ancillary spaces that are essential to courtroom operations. Finally, we have noted the factors that most directly affect the performance of the courtroom as a trial facility. While acknowledging that no perfect form or model has been created, this article has set out some principles and concerns that may be useful to the architect who is responsible for designing a good courtroom. The courtroom architect should also consult local people like judges, clerks of court, and members of the bar about the design of this particular courtroom. Even with the best of advice and guidance, the task of the courtroom architect is formidable. **pg**

Bibliography

American Bar Association and American Institute of Architects Joint Committee on Design Courtrooms and Court Facilities. *The American Courthouse.* Ann Arbor, Mich.: The Institute for Continuing Legal Education, 1973.

American Judicature Society. *An Analysis of Courtroom Design Criteria,* Report no. 10. Chicago, June 1967.

Burns, Robert P. *100 Courthouses: A Report on North Carolina Judicial Facilities.* Raleigh: School of Design, North Carolina State University, and the North Carolina Administrative Office of the Courts, 1978.

Greenberg, Allan. *Courthouse Design: A Handbook for Judges and Court Administrators.* American Bar Association Commission on Standards of Judicial Administration, 1975.

Larson, C. Theodore. "Future Shock Hits the American Courthouse: Opportunities and Parameters for Design." *AIA Journal* 64 (1975), 36.

North Carolina Architect (May/June 1978). This magazine is published by the North Carolina Chapter of the American Institute of Architects. The entire May/June 1978 issue is devoted to North Carolina courthouses.

Women and Economic Security

Sheron Morgan

Since early in this century the American ideal has included a family situation in which the husband worked outside the home and earned enough income to allow the wife to stay at home and care for the children. But in 1984 the ideal no longer seems to fit. Women are entering the labor force in ever increasing numbers—some because they want to, many because they must if their families' financial needs are to be met.

The notion of "economic security" is familiar in American politics. Though government has been a principal vehicle in protecting the rights of property since the federal Union was formed, in the 1930s, in response to widespread economic hardship, its role expanded to include concern for the economic security of persons.

The Social Security system, unemployment insurance, workmen's compensation, and the Full Employment Act of 1946 are all aimed at one goal: providing individuals with some minimum level of economic well-being. The recent report of the Commission on the Future of North Carolina mentions "individual economic security" in the opening paragraph of its statement of goals and recommendations for the state's economy. The Reagan Administration talks of providing a "safety net." The point of disagreement turns not on *whether* government has responsibility but on how much and what specifically it should do.

But simply to ask how much government should do may not fully address the major issues of the times, especially the problems of women in today's economy. Important changes are occurring in the workplace and in the family. These changes have already altered the role of many women. Perhaps more significant, they call into question some of the traditional assumptions underlying current public policy.

Economic facts of life

The dwindling of the middle class. Perhaps the most alarming change of recent years is the dwindling of the middle class. Historically,

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In the past, women have not been expected to make a lot of money or acquire great power or even support themselves. What they have been expected to do is marry, have children, and care for their family.

the middle class has been a growing, stabilizing force in American political and economic life. It has provided the model around which much public policy was formulated. We have assumed that continued economic growth would expand the middle class, reducing inequality in income and eliminating poverty. But recently, by almost all measures, the degree of disparity in income between rich and poor families has been increasing. The middle class—those families with incomes between $15,000 and $35,000 per year (in constant 1982 dollars)—declined from 51 per cent of all families in 1973 to 44 per cent in 1983. At either end of the spectrum, those with less than $15,000 increased by 7 per cent while those with more than $35,000 increased by only 1 per cent.[1]

One factor in the decline of the middle class is the decrease in high-paying manufacturing jobs and an increase in lower-paying manufacturing, service, and retail-sector jobs.[2] Another factor is the growing inequality in income among full-time male employees that developed between 1977 and 1982. In the fastest-growing industries, polarization in income is occurring between managers and professionals on the one hand and production workers on the other. In the service sector, for example, non-supervisory personnel earned an average of $9,900 per year while managers averaged nearly $30,000.[3]

In increasing numbers women have gone to work to try to halt the decline in family income. And for a while their entry in the labor force masked the underlying erosion of wages that began in the 1970s and is likely to continue through the 1980s.[4] But it now takes the wages from *three* low-paying service jobs to equal the wages from one high-paying skilled manufacturing job. For that reason, even a family with two full-time wage earners can fall out of the middle class.[5]

The collapse of the "family wage system." These changes have affected both men and women, but they have had special consequences for women because they have contributed to the collapse of the "family wage system." One of the proud achievements of the labor movement in the late nineteenth and early twentieth centuries was the "living wage," a wage big enough for a man to support his wife and children. Not all men earned a "living wage," but enough did so to establish the concept firmly in American culture and folklore. From it came the assumption that women participated in the labor force only as "secondary" workers, and therefore—because they did not have to support a family—they did not have to be paid as much as men for the same work.[6]

The family wage system is now collapsing under changing social and economic conditions. First, more and more men earn too little to be the sole support for their families. Second, families are not staying together as they once did. The number of divorced women in North Carolina (and the nation) doubled between 1970 and 1980.[7] The number of North Carolina families headed by women increased from 12 per cent to 18 per cent in that period,[8] and the percentage of children that lived only with their mothers increased from 12 per cent to 17 per cent of all North Carolina children.[9] The rate at which women with children participated in the labor force increased faster than the rate for any other group between 1970 and 1980, rising from 53 per cent to 65 per cent.[10] In fact, it is estimated that two-thirds of all new workers in the labor force for the rest of this century will be women.[11]

1. U.S. Department of Commerce, Bureau of the Census, *Income of Families and Persons in the U.S.*, Current Population Reports, P-60 Series, No. 80 (October 4, 1971), and No. 142 (February 1, 1984).

2. Otto Eckstein, et al., *The DRI Report on U.S. Manufacturing Industries*, (New York: McGraw Hill, 1984); Harry Braverman, *Labor and Monopoly Capital*, (New York: Monthly Review Press, 1974); Wassily Leontief, "What Hope for the Economy?" *New York Review of Books* (August 12, 1982).

3. Bruce Steinberg, "The Mass Market Is Splitting Apart," *Fortune*, (November 23, 1983).

4. Projections by the U.S. Bureau of Labor Statistics indicate that the jobs that are most likely to increase in number will be at opposite ends of the earnings spectrum. The recent decline of employment in traditional high-wage manufacturing industries like steel and automobiles is expected to continue.

5. Barry Bluestone, Director of Social Welfare Research Institute, Boston College, quoted in Steinberg, *op. cit. supra* note 3.

6. For a fuller discussion of this point, see Barbara Ehrenreich and Francis Fox Piven, "The Feminization of Poverty," *Dissent* (Spring 1984).

7. North Carolina Office of Budget and Management, *Newsletter* 5, no. 1 (June 1983).

8. *Ibid.*

9. *Ibid.*

10. *Ibid.*

11. See Pat Choate, "Workers at the Rubicon," draft of a paper prepared for presentation to the National Governors' Association meeting in Washington D.C., May 1982.

But going to work does not necessarily bring economic security. Despite those rising rates of participation by women in the labor force, it appears that many women and their children face serious trouble. Census statistics indicate that one of every two children born in 1980 will spend some portion of his life in poverty before he reaches 18.[12] The National Advisory Council on Economic Opportunity forecasts that if current trends continue, by the year 2000 the population living in poverty will consist entirely of women and their children.[13]

Economic security

Economic security results from two things: a person's ability to tap a flow of income (his or her own or someone else's), and his or her ability to accumulate a stock of wealth (in the form of cash savings, land, stocks and bonds, or retirement and insurance benefits).

How much a person can earn depends on a number of factors. Education, skill, training, experience, and continuity in the labor force are some the elements over which an individual has some control. Other factors—such as prevailing wage rates, the availability of appropriate jobs, hiring practices, personnel management, and promotion policies—are frequently beyond the control of an individual but may be influenced by public policy. If a person does not participate in the paid labor force but depends instead on the income of someone else (generally a spouse), the terms of that relationship dictate the flow of income. In the past, when alimony payments were required in a divorce decree, they were a recognition by the courts that this financial relationship may continue under certain circumstances beyond the end of a marriage.

A person's ability to accumulate a stock of wealth obviously depends on both how much he is able to earn and how much he is able to save. Tax and inheritance laws and employer-provided benefits, such as retirement income and health insurance, may all contribute directly or indirectly to a person's ability to save and accumulate wealth, thus increasing his economic security.

Limitations on a woman's ability to earn income

Women face uncertainty and loss of economic security for all of the reasons that men do. But a number of other factors further complicate their effective participation in the labor force. The following list is not complete, but it does suggest the broad range of things we must be concerned about if we are serious about improving the economic well-being of women.

Lower expectations. A growing body of evidence suggests that the single most powerful factor determining economic success is expectations—what we expect of ourselves and what everyone else expects of us. Each of us is free to choose what we will do, but only in a limited sense. Expectations limit the range of alternatives that we are willing and able to consider. In the past, American society has expected less of women than it has of men—at least in the area of economic performance. Women have not been expected to make a lot of money or acquire great power or even to support themselves. What they have been expected to do is marry, have children, and care for their family. Under certain circumstances, they might need or want to take a job outside the home to supplement the family income. In most cases, this would be a temporary arrangement, and the amount of added income would be small—or so the stereotype goes. But hard economic realities have intervened to modify the circumstances. Temporary jobs have become permanent. Part-time jobs have become full time. The element that has not changed is wages. They are still low.

Traditionally oriented education. For women as well as men, education and income are directly linked. Historically, women have dropped out of the formal educational process earlier than men. As a result, women aged 25 and older in North Carolina's labor force have less education, on the average, than their male counterparts. To some extent they earn less money because they have less education. But this is changing. Women aged 16 to 25 have more education, on the average, than males of the same age.[14] In 1977 there were more women than men in the community college system,[15] and in 1978 more women than men in the state's colleges and universities.[16] By 1981 there were nearly as many women as men in graduate and professional programs;[17] but women tended to be in master's programs rather than in doctoral programs, and they were less likely to complete the program than men.[18]

The hitch in those improved educational statistics for women is that women tend to concentrate their studies in fields that are thought of as reserved for women. Here the links between education and income are

12. Poverty levels are determined by the U.S. Office of Management and Budget on the basis of family size and the cost of a minimum food budget.

13. Arthur I. Blaustein, ed., *The American Promise* (New Brunswick, N.J.: National Advisory Council on Economic Opportunity, 1982), p. 2.

14. North Carolina Office of Management and Budget, *Statistical Abstract*, 5th ed. (Raleigh, 1984).

15. North Carolina Department of Community Colleges, Division of Planning and Research, Office of Federal Compliance Services, "Participation of Minorities and Women" (Raleigh, N.C., 1982), p. 68.

16. University of North Carolina, Division of Institutional Research, *Statistical Abstract, 1972-73*, p. 4; University of North Carolina, Planning Division-General Administration, *Statistical Abstract, 1982-83*, p. 8.

17. University of North Carolina, Planning Division-General Administration, *Statistical Abstract, 1982-83*, pp. 15-17.

18. *Ibid.*, p. 40.

Regardless of the reason for women's current deficiencies in science and mathematics, they must be eliminated if women are to compete for the higher-paying jobs of the future.

complicated by the fact that in occupations like teaching and nursing that are dominated by women, wages tend to be low regardless of the education and special skills required to do the job. One solution is for more women to move into occupations that pay more. Another solution is to raise the wages of these traditional "female" occupations.

Science and math. Most nurses and elementary school teachers are women, but fewer than one in ten engineers is a woman.[19] Also, few women become electricians or telephone repairmen. It has been suggested that women do not usually enter such "male" occupations because they lack the necessary talent and training in science and mathematics. It has also been said that women are not interested in these subjects, and even that they avoid them because they think science and math are too complicated for them to master. These impressions are only partially supported by research. The 1977-78 National Assessment of Educational Progress found that nine-year-old boys and girls scored roughly the same on tests of mathematical knowledge.[20] The results of the 1982 North Carolina Annual Testing Program showed that elementary school girls do relatively better than boys in math at the same grade level. Among college-bound high school students, however, boys throughout the nation— including North Carolina—had higher average Scholastic Aptitude Test (SAT) scores in mathematics than girls.

Research indicates that boys' superior mathematics ability does not usually appear until junior high school, which suggests that environmental factors may be responsible for the difference. As girls grow up, they may be increasingly affected by the stereotype that says that they should not be as interested in mathematics as boys are or do as well in math. National survey data suggest that junior and senior high school girls are also disinclined toward science.[21] It is probably safe to assume that the stereotype often extends to include mechanical skills and knowing how things work.

Regardless of the reason for women's current deficiencies in science and mathematics, they must be eliminated if women are to compete for the higher-paying jobs of the future.

Lack of continuity. One undeniable difference between men and women is that women have babies. They generally leave the labor force for some period of time—ranging from six weeks (just long enough to recover from the delivery) to 18 years (when the child leaves home or goes away to college). Some women never return. Research comparing the incomes of married and never-married women suggests that married women earn lower wages because they leave the labor force to have children, frequently just at the age when men (and never-married women) are beginning to settle into a job and advance to more responsibility;[22] when the women eventually return to the labor force, they begin at entry-level wages with little opportunity to advance.

Furthermore, women who expect to marry and have children may choose occupations that will allow them to move easily in and out of the labor force.[23] Such occupations tend to be low-paying and offer little opportunity for advancement. Some research suggests that many women may be reluctant to assume positions of greater responsibility that entail working late or on weekends because having to do so interferes with their responsibilities for child care and homemaking.[24] Women frequently view their work outside the home as secondary to their family responsibilities. They are willing to sacrifice the opportunity for advancement and additional income in order to meet what they were raised to believe is their primary responsibility as wife and mother.

Inappropriate benefits and personnel policies

Employers have made it very difficult for a woman to combine job and family. But recent research

19. *Ibid.*, pp. 15-17.

20. Education Commission of the States, National Assessment of Educational Progress, *Mathematics Technical Report: Summary Volume* (Denver, April 1980).

21. Noel Dunivant, "Women and Education," in *Final Report to the Governor from the North Carolina Assembly on Women and the Economy* (Raleigh, N.C. Department of Administration, May 1984), p. 7.

22. See Solomon W. Polachek, "Women in North Carolina," unpublished paper prepared for the Commission on the Future of North Carolina (Raleigh, N.C. Department of Administration, Office of Policy and Planning, 1982).

23. *Ibid.*

24. General Mills, *Raising Children in a Changing Society, the American Family Report*, survey conducted by Yankelovich, Shelly and White for General Mills, Inc. (Minneapolis, Minn.: General Mills, 1977), p. 68.

Family-sensitive personnel policies would encourage a woman to maintain continuity in the labor force by helping her plan how to combine her job and family responsibilities.

shows that family-oriented personnel policies can reduce absenteeism, increase productivity, and minimize stress.[25] The 1980 White House Conference on Families urged employers to adopt "such work arrangements as flextime, flexible leave policies, job-sharing programs, dependent care options and part-time jobs with prorated benefits." Family-sensitive personnel policies would encourage a woman to maintain continuity in the labor force by helping her plan how to combine her job and family responsibilities.

Day care. In its last annual report before being disbanded by the Reagan Administration, the National Advisory Council on Economic Opportunity pointed that "without the knowledge that one's children are being taken care of by responsible and loving people, it is impossible, logistically and psychologically, to work at a level that will result in economic self-sufficiency."[26] It has been estimated that 6,000,000 children in the United States—190,000 in North Carolina—are left alone every day without adequate care. Currently there are only 60,000 spaces available in licensed day-care centers in North Carolina. By 1990, nearly half of the female labor force will have preschool children. Many of the women who are now operating the 5,900 family day-care homes across the state will have closed their doors to seek higher-paying jobs in business and industry.

Corporate management is becoming increasingly aware of these statistics and also of the benefits that accrue from helping employees with their day-care needs—benefits such as lower job turnover, reduced absenteeism, and improved work attitudes. Federal and state tax laws permit businesses to deduct 100 per cent of the cost of care for employees' children during working hours as an "ordinary business expense." Given the benefits of a tax write-off and improved worker productivity, many businesses have concluded that providing day-care benefits to their employees makes good sense from the standpoint of the balance sheet. Still, there is much to do in meeting the anticipated demand for good day care by the end of this decade.

Inequities in pay. The Federal Equal Pay Act of 1963 requires equal pay for men and women who work in the same establishment and whose jobs require equal skill, effort, and responsibility.[27] Title VII of the Civil Rights Act of 1964 addresses more broadly defined discriminatory practices. It forbids discrimination in employment on the basis of race, color, religion, or national origin. The act makes it unlawful to discriminate in hiring or firing; in wages; in fringe benefits; in classifying, assigning, or promoting employees; in extending or assigning facilities; in training, retraining, or apprenticeships; or in any other terms, conditions, or privileges of employment. Nevertheless, North Carolina women earn only 59 cents for every dollar earned by white men; white women earn 60 cents and black women earn only 53 cents for every dollar earned by white men. The major reason for the disparity is that women are concentrated in only 20 of the 420 of the occupations listed by the U.S. Department of Labor—mainly jobs in retail sales, clerical work, low-skilled manufacturing, and services, which typically have low wages and are dead ended. In a great many instances, the Equal Pay Act provides the women in these jobs no protection and no hope for higher pay; that is, all the low-paid workers in a particular office or in a particular plant are women; there are no men doing "equal work"—and therefore no opportunities for the women to complain that they are not being paid "equal pay for equal work."

In the last few years, a theory called "comparable worth" has developed.[28] If it became law, it would expand the scope of the sex-discrimination provisions of Title VII and raise the possibility of economic improvement for many of these women. In 1981 the United States Supreme Court took the small first step in the direction of "comparable worth" when it held that there was admissible evidence of unlawful discrimination in the fact that an employer set the pay for female jail guards, but not male jail guards, at a level lower than the employer's own study of outside markets and the worth of the jobs had indicated the pay should be. The bigger step remains to be taken—adoption as law of

25. K. S. Perry, "Survey and Analysis of Employer-Sponsored Day Care in the United States" (doctoral diss., University of Wisconsin-Milwaukee, 1978).

26. Blaustein, *op. cit. supra* note 13, p. 11.

27. 29 U.S.C. § 206 (1976). For a discussion of equal pay and opportunity for men and women, see Robert P. Joyce, "Equal Pay, Equal Opportunity, Comparable Worth," *Popular Government* 49, no. 4 (Spring 1984).

28. *Ibid.*

"Without the knowledge that one's children are being taken care of by responsible and loving people, it is impossible, logistically and psychologically, to work at a level that will result in economic self-sufficiency."

the notion that it is unlawful discrimination to pay workers less than what their jobs are "worth" to the employer, or to society generally. Proponents of the "comparable worth" theory believe that the jobs in which women are concentrated are undervalued by employers in large part because of sex discrimination. They believe that pay based on the "worth" of those jobs, compared with the "worth" of jobs held by men, would result in generally higher pay for the women. Opponents of the theory maintain, among other things, that the only reasonable measure of the "worth" of a job is the amount of money that an employer must pay to get someone to do the job. Whether the theory will be adopted will depend in large part on whether a consensus develops within society that there is another, dependable measure (or measures) of job "worth."

Limitations on the economic security of nonworking women

Full-time homemakers and single nonworking mothers have special problems in assuring economic security for themselves and their children. Because they are not working in the paid labor force, they have no direct access to income; they must depend on someone else to provide for them.

Inadequate child support payments. For many women, poverty begins when their marriage ends. Half of all marriages in the United States now end in divorce, and in 90 per cent of the cases the children remain with the mother.[29] Child support payments by the absent fathers are a negligible source of income for most of these families.[30] Fifty-eight per cent of all divorced fathers contribute nothing to the support of their children.[31] Forty-one per cent are not required to pay anything. Those who do contribute pay less than $2,100 per year.[32] The North Carolina Administrative Office of the Courts estimates that 60 per cent of all alimony and child support payments are in arrears; it also estimates that only 50 per cent will ever be received in full, and 28 per cent of the mothers will receive nothing.[33]

29. For a discussion of child support and recent North Carolina legislation on the subject, see Janet Mason "Child Support in North Carolina," *Popular Government* 50, no. 1 (Summer 1984).

30. *Child Support Enforcement*, Seventh Annual Report to Congress for the Period Ending September 30, 1982, Washington, D.C.: U.S. Department of Health and Human Services, Office of Child Support Enforcement, December 31, 1982.

31. *Ibid.*

32. Ehrenreich and Piven, *op. cit. supra* note 6.

33. Legislative Research Commission Committee on Economic, Social and Legal Problems and Needs of Women of North Carolina, "Women's Needs Report to the 1983 General Assembly of North Carolina" (Raleigh, N.C., 1983).

Inadequate aid and disincentives for working. Between 1975 and 1981, the official poverty level increased by approximately 67 per cent while inflation, as measured by the Consumer Price Index, increased 73.4 per cent. During that time North Carolina increased its Aid to Families with Dependent Children (AFDC) by only 5 per cent. Thus the buying power of AFDC recipients dropped. Before the 5 per cent increase in 1982, North Carolina ranked thirty-ninth in the country in its AFDC benefits levels for a family of three with no other income.[34] Formerly AFDC recipients (usually women) who earned income were allowed to keep a percentage of the benefits they were receiving until their total income reached 200 per cent of the poverty-level income as officially defined. The objective was to encourage women to enter the labor market to supplement their AFDC benefits with earned income. That provision has been eliminated in a cost-cutting move by the Reagan Administration. If an AFDC mother earns a dollar, her benefits are reduced by a dollar. The clear signal to these mothers is that working does not pay.

The homemaker. The full-time homemaker without work experience outside her home usually depends on her husband's income while he works, his pension and Social Security when he retires, and his estate if she survives him. The only source of income or wealth that provides her with any guarantee is the Social Security system, from which she can receive payments if her husband dies or is disabled. The level of benefits will depend on her husband's contributions, his age and physical condition, and whether there are minor children in the home. The National

(continued on page 33)

34. Center for Social Welfare Policy and Law, Report on AFDC Benefits Levels, 1982, p. 12.

Recommendations on Women and the Economy

A Report to the Governor

Merry Chambers

In May 1984 the North Carolina Assembly on Women and the Economy, presented to Governor Hunt a report that contained recommendations for helping women reach their full economic potential.[1] The recommendations deal with problems affecting women—from their education through their treatment under the Social Security program. They address the concerns of all women—women who work outside the home (whether for themselves or in public or private employment) and women who do not. The report extensively discusses the "feminization of poverty," along with inequitable provisions for pensions, IRAs, and other retirement programs that affect women with adequate current incomes.

The Assembly on Women and the Economy, a group of 150 men and women from across North Carolina, spent a year identifying the economic problems of women and discussing possible solutions to them. Working as four task forces—Education, Employment, Financial Security, and Business Development—the Assembly members solicited information and ideas from a wide range of people, including business owners, lawyers, bankers, and university faculty. It also sponsored seven public forums across the state to gather both suggestions as to the major economic issues facing women and ideas for addressing those issues. Nearly 700 people participated in the forums, many of whom shared their personal experiences for the Assembly's information. To facilitate continued discussion across the state, a booklet on the economic issues facing women was distributed to interested organizations and to all public libraries and community colleges. Twenty organizations—including Church Women United, North Carolina Citizens for Business and Industry, and the North Carolina League of Women Voters—endorsed creation of the Assembly and its work.

After six months of work, the Assembly prepared a draft report with over 100 recommendations. This draft report served as the basis of discussion at the Governor's Conference on Women and the Economy, a statewide conference attended by over 1,000 men and women. Each conference participant was assigned to four separate groups, one for each of the task forces, which discussed the recommendations from the respective task forces. Each discussion group had both a facilitator and a recorder to insure that the participants' contributions would be accurately relayed to the Assembly. In addition, speakers with special knowledge of and interest in women's economic issues addressed the conference. They included the Honorary Chair, Juanita Kreps, vice-president emeritus of Duke University and former Secretary of the U.S. Department of Commerce; Virginia Dwyer, vice-president and treasurer of American Telephone & Telegraph; Kinsey Green, executive director of the American Home Economics Association; Eleanor Holmes Norton, professor at Georgetown University Law Center; Mildred Jeffrey, founder of the Coalition of Labor Union Women; and

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1. Copies of the Report are available from the Office of Policy and Planning, North Carolina Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, 919/733-4131).

Jane Bryant Quinn, economist and *Newsweek* columnist. The Conference was sponsored by seventy-seven businesses and organizations that made both financial and in-kind contributions.

The Assembly met after the conference to consider the many comments and suggestions received from the participants and to complete its report. Some of the recommendations presented in the report are philosophical, others pragmatic. Some are addressed to government—federal, state, or local, or some component thereof—while others are addressed to the private sector. Still others are addressed to the general public, and some request additional research. Many of the recommendations are briefly summarized below; they are organized by the agency or group to which they are primarily directed.

State government

Most of the Assembly's recommendations were addressed to state government in general or to specific state agencies and/or the higher education system. While some of these recommendations may be accomplished administratively, nearly all will require appropriations and legislative authorization. Some will require further research to determine how best to implement the proposal.

A primary recommendation for state administrative action was accomplished and announced at the Conference: the creation of the position of Assistant Secretary of Commerce for Women's Economic Development. This recommendation recognized the need for an ongoing office to monitor progress in the areas of concern and to serve as a clearinghouse for and coordinator of the many divergent agencies, groups, and individuals involved.

Education. Most of the recommendations dealing with education are directed to state government, including the community college and state university systems. The report urges increased emphasis on mathematics, science, vocational, and business education especially for women. To get more women involved in areas where they have traditionally been underrepresented, the Assembly recommends that attention be paid to raising the consciousness of school teachers, counselors, and administrators in order to promote equal use of educational opportunities for boys and girls and better career counseling for students. The report also calls for increased education in practical economics and finances even in the elementary grades. The courses should include banking, budgeting, insurance, and similar aspects of personal and family financial management. Such curricula are already developed and available for purchase, but the Department of Public Instruction could also develop one for North Carolina.

Financial assistance and child support. The report expresses the Assembly's concern about those women and their families who are in poverty. Several recent studies have indicated that an increasing proportion of the poor are single-parent families and elderly people; in most cases the single parent or the older adult is a woman. The recommendations concerning immediate assistance for these families were primarily directed to state government. The report calls for an immediate 10 per cent increase in the Aid to Families with Dependent Children Program (AFDC) with later increases to the federally defined minimum "poverty" income level or as close thereto as possible. It also urges repeal of the sales tax on food. The 10 per cent increase was passed in the 1984 session of the General Assembly, effective September 30, 1984;[2] its cost has been estimated at $4.8 million for state and local government jointly.[3] In addition, the report calls for North Carolina to adopt two AFDC programs that are not mandated by the federal government but are optional to those states that choose to pay the matching costs and administer the programs. One of these would allow needful pregnant women to receive AFDC payments during the last three months of their pregnancy, and the other would allow AFDC payments to families in which both parents are present but cannot find employment. These policies would have these benefits: (1) Assistance to women in late pregnancy could promote the health of both mother and child, which could decrease future problems. (2) If aid were extended to needful intact families (a family could qualify after unemployment benefits were exhausted if the principal breadwinner met the job-hunting and other requirements), the provision would help families stay together. The total cost of coverage for pregnant women would be $1.6 million per year, of which the state and local share would be $.5 million. The cost of the unemployed-parents program would be $6.3 million per year, the state and local share being $1.9 million.[4]

The report recommends the improved collection of child support as a way to alleviate or prevent poverty

2. N.C. Sess. Laws 1983, 2d sess. (1984); compare Ch. 1034, Sec. 62(d). Compare N.C. Sess. Laws 1983, Ch. 761, Sec. 6015).]

3. Cost estimates are from the Assistance Payments Division, Department of Human Resources.

4. *Id.*; see the Report, p. 105.

in households headed by women. While the Assembly was still considering the recommendations for its report, the 1983 North Carolina General Assembly amended the child support law to strengthen enforcement.[5]

The Assembly acknowledged these improvements in its Report and recommended increased financial support to implement them. In addition, the Assembly favors mandatory garnishment of wages when parents fall one payment behind. No child support recommendations were addressed to the federal government in anticipation that the Child Support Enforcement Amendments would be passed. That legislation passed this summer, and most of its provisions became effective on October 1, 1984.

Working conditions and benefits. Recommendations for state action to address the employment concerns of women emphasize the need for state government to be a model employer. The General Assembly recently funded a comprehensive reclassification study of all state government positions, as the Assembly on Women and the Economy had requested. The reclassification study is the first step in possibly implementing the concept of comparable worth into the state personnel system. This concept extends the idea of equal pay for equal work by predicating (a) that jobs can be measured and their worth compared on the basis of such factors as education required, exposure to danger, financial responsibilities, etc.; and (b) that pay can then be equalized for jobs that involve comparable work, thus removing any discrimination in regard to occupations that traditionally have been filled by women. The concept of comparable worth is controversial because many feel that the market establishes appropriate pay levels for various occupations and that any measure of comparability would be too subjective.[6]

Other Assembly recommendations for state government to be a model employer include the provision of flexible working conditions and benefits in order to make it easier for women to hold a job and still care properly for their families. The Report advocates "flex-time" (flexible hours that allow employees to adopt work schedules that serve their family's needs as well as their employer's), job-sharing (one job filled by two people), and "flex-place" (the employee works at home or some other nontraditional work site). Many jobs are not suited to flexibility, and job-sharing or part-time positions create problems in allocating benefits. However, the Assembly encourages the public sector, especially state government, to continue experimenting with these options, so that the private sector can adopt those that prove feasible.

Some larger private firms have developed a personnel option that could be adopted by state government—a cafeteria-style benefit package. Employees are allowed a certain dollar amount of benefits, and they "spend" their benefit allowance in ways most helpful to them and/or their families. In such packages on-site day care or day-care vouchers are often available, as well as health insurance for dependents, dental coverage, extra leave days, deferred compensation options, etc. Such an approach is recommended because it offers employees more flexibility in managing their family responsibilities.

Other recommendations in the area of family-sensitive employment practices deal with day care. Many workers have dependents, usually children and/or aged parents, who need care while the worker is away from home. State government is encouraged to upgrade the standards for day-care centers, to provide more information about day-care options, and to increase and expand the day-care tax credit to include all dependents, adults as well as children. Educational institutions are encouraged to provide day-care services on campus, especially during the evening, when most of their part-time students take classes and other child-care options are closed.

Women in business. Another group of recommendations addresses what state government can do for women business owners. The Assembly suggested that the Department of Commerce compile, publish, and distribute a directory of these women. The directory would become the basis of a mailing list for a questionnaire about the kinds of technical assistance they need. Through the mailing list, such information as the availability of training and technical assistance and descriptions of procurement procedures and other aspects of doing business with state government could be distributed.

Tax and inheritance laws. Still another group of recommendations suggests changes to the North Carolina inheritance tax and intestate laws to provide greater benefits to surviving spouses. Under North Carolina law, if a person dies without a will, the state divides his or her estate according to a formula established by statute. Under the current formula, if there are children or descendants of children, the surviving spouse will inherit one-half to one-third of the undivided interest in all the real property, depending on the number of

5. See "Child Support in North Carolina," by Janet Mason, *Popular Government*, 50, No. 1 (Summer 1984), 26.

6. See "Equal Work, Equal Pay, Comparable Work," by Robert Joyce, *Popular Government* 49, no. 4 (1984).

children. The surviving spouse with children also receives the first $15,000 in value of personal property plus one-half to one-third of the remaining personal property, depending on the number of children. The balance of the estate is distributed according to state law. If there are no children or descendants of children, the parents of the deceased spouse automatically inherit a portion of the estate. Most people assume that their "spouse would get it all." While everyone should have a will, it would be easier to change the law than to educate everyone about the intestate law and the need to make a will. The Assembly recommends changing the law so that if there are no children, the surviving spouse would inherit the entire estate (eliminating the parents of the deceased and descendants of children). If there are surviving children or descendants of children, the surviving spouse would receive half the undivided interest in all real property and the first $25,000 in personal property plus half of the remaining personal property.

Under North Carolina law, the surviving spouse has a credit against inheritance taxes of $3,150. If the surviving spouse does not use all of this credit, it can be used by the surviving minor or disabled children. If all the credit is still unused, the remainder is allowed on a pro rata basis to other lineal issue or lineal ancestors or others defined by law to be Class A beneficiaries.[7] The Assembly on Women and the Economy considered this credit inadequate. Many women work for no remuneration at home, on family farms, or in family businesses. The economic value of such work is difficult to measure because the women are unpaid. These farms and businesses may be worth a great deal, but they may not generate enough cash income to allow the surviving spouse to pay the inheritance taxes. The Assembly considered recommending that the entire inheritance tax for the surviving spouse be repealed but decided not to because of the large loss in state revenue that would result, estimated at $18.1 million. Instead, it recommended increasing the tax credit for the surviving spouse. After the Assembly's report appeared, the 1984 legislature raised the inheritance credit for all Class A beneficiaries to $4,650, effective July 1, 1985.[8]

Insurance. The Assembly supports the elimination of discrimination in insurance on the basis of "gender, race, color, religion or national origin." This recommendation was addressed to the Commissioner of Insurance and the North Carolina General Assembly. In addition, the congressional delegation was urged to support federal laws that would forbid such discrimination.

Local government

Most of the Assembly's recommendations are addressed to state government, but some are directed to other levels of government and to the private sector. Most of the recommendations directed at local governments paralleled those to state government about being a model employer and introducing changes in the public schools.

Federal government

The recommendations directed to the federal government are primarily directed to Congress; several of them addressed retirement issues. The Assembly urges Congress to modify the Social Security program to provide fairer treatment for women and to offer more benefits to the lower-income recipients by reinstating the minimum payment. That guaranteed minimum was eliminated to save the system money on the basis that many of those who receive the minimum amount were "double dippers"—that is, they have been covered under other retirement systems for most of their lives but worked in a Social Security-covered position just long enough to qualify for Social Security benefits as well as their pension. However, studies have indicated that most of those affected by eliminating the minimum were widows with no other source of income. Since the taxability of Social Security payments is now based on an individual's income, employing a "means test" for the minimum payment should also be possible, and thus the "minimum" could be restored to those who are below the poverty level.

Another retirement recommendation would change federal law concerning Individual Retirement Accounts (IRAs). A worker who earns income can place up to $2,000 per year in an IRA and take it as a tax deduction. This worker can also invest in an IRA for his/her spouse who has no earned income. A total of up to $2,250 may be invested into two IRAs (one for the income earner and one for the spouse), but neither IRA can exceed $2,000. The spouse who earns no income is generally the wife, and if the husband wishes to take full advantage of an IRA in his own name (i.e., $2,000), only $250 is left to go in an account for her. The Assembly recommends that a nonearning spouse be

7. Class A beneficiaries include the lineal issue (children, grandchildren) or lineal ancestors (parents) or husband or wife of the person who died. Brothers and sisters are not included. Sons-in-law and daughters-in-law may be included if their spouse is not entitled to any beneficial interest in such property. N.C. GEN. STAT. § 105-4.

8. N.C. Sess. Laws 1983, 2d sess. (1984), Ch. 1032.

allowed an IRA of $2,000 in her own right. A proposal for a gradual increase to a $2,000 limit has been supported by the Reagan Administration.

The Assembly also supported proposed changes in federal laws regulating pensions. Pensions have been a fringe benefit for many, and they have been considered the employee's "property." A pension is now often viewed as a family financial asset, and legislation at both the federal and state level is reflecting this attitude. A federal pension reform bill, HR 4280, was enacted and signed by the President in August. This legislation addresses two of the Assembly's recommendations. Under the new law, if an employee was vested in a company or union pension program, the surviving spouse is entitled to benefits from that pension regardless of the employee's age at death. Previously, if the employee died before age 55, the surviving spouse received nothing. In addition, both spouses must now sign any waiver of a right-of-survivorship option. In the past, the employee could unilaterally not choose the right-of-survivorship option; at the employee's death, the spouse was then left with no income from the pension. The Assembly supported these reforms because of their impact on family financial security.

Available capital. The Assembly also addresses recommendations to specific federal agencies, including several to the Small Business Administration (SBA). It suggests that the SBA provide more capital to women business owners by providing loans to nontraditional and cooperative businesses owned by women and by increasing the outreach efforts to women of the Certified Development Corporation, which provides loans. The Federal Reserve Board and other regulators of financial institutions are urged to require that reasons for denying a commercial loan request be put in writing. These recommendations resulted from the Assembly's concern with the problems of small business owners in obtaining the capital they need.

The private sector

Other recommendations by the Assembly are directed to the private sector. Most of them address personnel matters. Private-sector firms are encouraged to adopt the same flex-time, job-sharing, flex-place concepts that were also recommended to state and local governments and to provide more information to their employees and their families about their pensions and retirement options. Employers and labor organizations are urged to examine and change (if necessary) pay schedules, personnel policies, and job classifications to eliminate any disparities without a job-related basis between men and women in benefits and wages. They are also urged to anticipate the displacement of workers by technological change and to provide retraining opportunities for those likely to be affected. Businesses are also encouraged to anticipate expanded job opportunities for women and to put more women in leadership positions.

The Assembly urges chambers of commerce to increase their training for female business owners, to involve more women business owners in their programs and on their boards, and to hire more female staff. Financial institutions especially are urged to provide more public information about personal and business finances, especially to their female customers.

The report contains a pervasive recognition that people must become more aware of both changing roles of women and the problems created by these changes. Implicit in many of the recommendations is the recognition that public information and education are necessary for attitudes to change and that attitudes must change in order for women to become, in the Governor's words, "full economic partners at home and at work." pg

The North Carolina Assembly on Women and the Economy has made recommendations to improve the economic situation of women. Some of these recommendations fall into these areas:

—Educational and career counseling in the public schools that will help girls prepare for opportunities.
—Increased education in practical economics and finance.
—Increased financial aid to women in poverty and their families, including needful women in their last trimester of pregnancy.
—Aid to needful families in which both parents are present but cannot find a job.
—Flexible working arrangements, in both hours and place.
—Day-care arrangements for both children and adults who need such care.
—Revisions in tax and inheritance laws and in pension and Social Security provisions to make them fairer to women.
—Assurances that women business owners will not be discriminated against when they apply for loans of capital.

Improving Criminal History Records in North Carolina

Larry Wilkie

For effective prosecution and sentencing of criminal cases, there must be an efficient way to retrieve records on criminal history. Imagine a prosecutor who is involved in plea negotiations with a defense attorney without knowing anything about the defendant's long conviction record. That prosecutor might agree to recommend a probation sentence to the judge when a prison term would be appropriate because of the defendant's prior conviction record.

When a prosecutor uses a criminal history to argue for a particular sentence, he must be confident that all the charges indicated in that record belong to the defendant. Since fingerprints are considered the best classifiable form of positive identification, they are the instrument used to establish the accuracy of criminal histories. It is necessary to have the *original* fingerprints in the file—copies are not accurate enough. Having the original eliminates the possibility that identities have been confused.

While it is important, in investigating a defendant's criminal history, to know his past criminal charges, it is equally important to know the *court dispositions* of those charges. A person arrested for murder who had been arrested before on another charge and found not guilty would surely want his criminal history to reflect that not-guilty verdict rather than not to indicate what the final disposition was. How does the criminal justice system obtain court disposition data as it occurs and then link that information with the defendant's fingerprints taken when he was charged? This problem has troubled law enforcement identification bureaus for as long as fingerprints have been taken and criminal histories kept.

Until recently, because of problems in the way criminal histories were reported, North Carolina's criminal justice community probably was more likely to find a defendant's traffic record than to find a record of any felonies he might have committed. Steps have been taken to correct these inadequacies and to make other improvements in the recordation system. This article examines the problems—and possible solutions—in maintaining reliable criminal history records.

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In 1975 the FBI recognized the State Bureau of Investigation's Identification Division as the "State Bureau" of North Carolina. This recognition required that all fingerprint documents originating in North Carolina state and local criminal justice agencies be processed by the SBI Identification Division before being submitted to the FBI. But until 1982, criminal justice agencies in North Carolina were not legally *required* to submit any arrest fingerprint cards or final disposition reports on arrested individuals. G.S. 15A-502(a) provides that a defendant *may* be photographed and fingerprinted only if he has been arrested or committed to jail, or if he is convicted of a crime and imprisoned, or if he is convicted of a felony. Until January 1, 1982, this statute did not *require* that any defendant be fingerprinted; fingerprinting was at the arresting agency's discretion. But effective on that date, the law was amended to require a law enforcement agency that makes an arrest on a felony charge to fingerprint the defendant and forward the prints to the State Bureau of Investigation. This revision is very important to the adequacy of criminal histories because it made fingerprinting mandatory.

But not all defendants may be fingerprinted. G.S. 15A-502(a) does not authorize photographs and fingerprints for defendants charged with a traffic misdemeanor for which the authorized penalty does not exceed a $500 fine and/or six months' imprisonment.

The state also recognized the need for legislation that would require the reporting of data on final disposition. G.S. 15A-1382 provides that whenever a defendant is fingerprinted before a court disposition of the charges against him is made, a report of that disposition must be made to the SBI within sixty days. Also, the statute provides that if the defendant is convicted of a felony but somehow missed being fingerprinted before conviction, he must be fingerprinted and the prints plus the disposition report must be sent to the SBI within sixty days after the conviction.

The present law does not permit the photographing or fingerprinting of a juvenile except under the provisions of the Juvenile Code (G.S. 7A-596 through -627). When may a juvenile be fingerprinted? G.S. 7A-608.1 says that when a juvenile is transferred to the superior court for trial on a felony charge, he is to be fingerprinted and his fingerprints sent to SBI. It should be understood that this provision applies only to juveniles fourteen years of age or over. A child under that age should never be fingerprinted for purposes of submitting those prints to the SBI as part of a criminal history.

G.S. 15A-1383 provides the mechanism for implementing the present law. It allows local variations in each of the state's 35 judicial districts with respect to both fingerprinting and the reporting of dispositions. The senior resident superior court judge of each judicial district—in consultation with the district attorney, the clerk of superior court, the Department of Correction, and local sheriffs and chiefs of police, and with technical help from the SBI—must prepare a plan (which applies to his district only) that deals with fingerprinting and reporting of dispositions. G.S. 15A-1383 has been interpreted to authorize district plans that mandate the fingerprinting of defendants charged with misdemeanors as well as those charged with felonies. Though the districts' plans vary, most of them make the clerks of superior court responsible for sending the disposition report to the SBI when fingerprints have been taken. While local flexibility may be desirable, recent study by the Police Information Network (PIN), the Administrative Office of the Courts, and the SBI indicates that the plans have not been fully successful. Apparently, a substantial number of court disposition reports required under G.S. 15A-1382 have not been made, and it is also suspected that a considerable number of defendants who were required to be fingerprinted under G.S. 15A-502 have not been fingerprinted. Nevertheless, the district plan system has been a great improvement over past practices.

Because of the recent fingerprinting legislation and the FBI's "State Bureau" recognition, the SBI's Identification Division has been able to centralize data collections, and criminal justice agencies need check only one source in order to gather information on a defendant's criminal history. The fingerprinting legislation also permits a system to be built by which complete criminal histories can be kept—from arrest to final disposition. In other words, once an arrest fingerprint card is received, it is expected that trial court disposition will soon be made and a disposition report will arrive to match the fingerprinting card in the criminal history files.

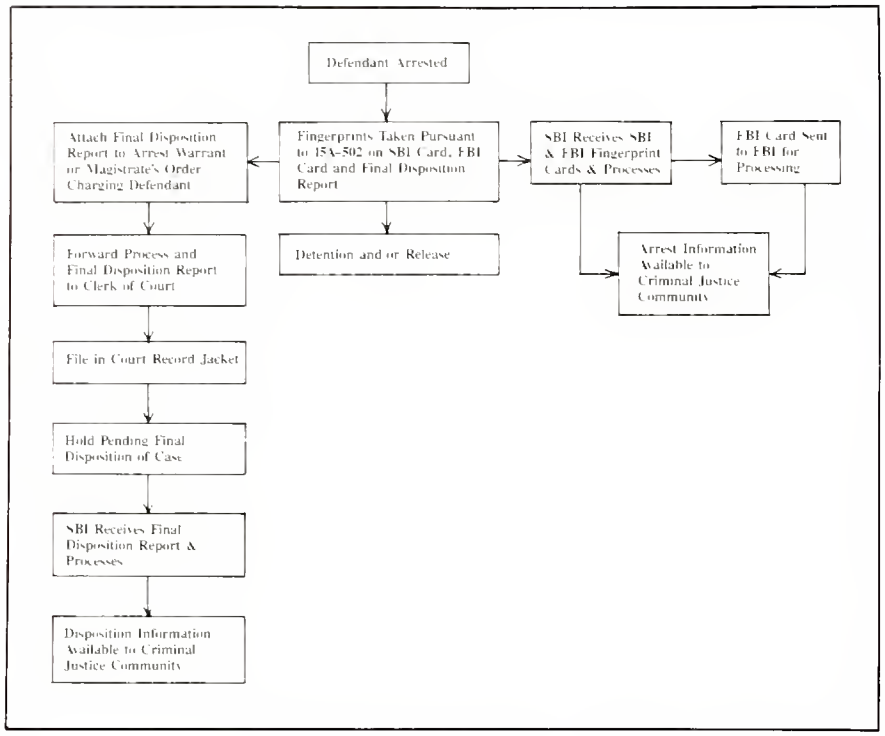
The SBI'S Identification Division, the central repository for criminal fingerprint cards in this state, is responsible for collecting, compiling, and storing criminal history data and for disseminating the data maintained in the Division's files. The Division enters the information it receives into the computer of PIN, which regulates the dissemination of the computerized criminal history data. Both agencies, located in the State Attorney General's Office, are greatly concerned with the accuracy and completeness of criminal histories.

During the past decade, North Carolina has been among the leaders in emphasizing the computerization of criminal history information. In the mid-seventies this state joined the FBI and a few other states in setting up a computerized criminal history program. The plan was for each state's criminal history file to go to the FBI, where a composite computerized file would be maintained and made available to the states. Only a few states participated in the program because of the tremendous cost and because of public fears about possible misuse of a centralized, computerized, complete criminal history file.

North Carolina is now one of fourteen states that participate in a program to test an automated transition from the computerized criminal history program to the Interstate Identification Index, which provides for decentralized storage of criminal histories at the federal level and the interstate exchange of this information. Seven more states are scheduled to begin participation in this program during the next year. Each state will maintain a computerized criminal history for anyone arrested in that state. The FBI will maintain an index that will indicate which states have criminal history data on a given individual.

Using Wake County as an example, let's follow the normal course of events after an arrest. (See Figure 1.) The arrested defendant is taken to the City-County Bureau of Identification (CCBI) in Raleigh, where his fingerprints are taken on three arrest fingerprint cards—one for the SBI, one for the FBI, and one for CCBI. Each card is filled out as completely as possible, certain information being mandatory. A final disposition report

Figure 1. Present Wake County Fingerprinting and Disposition Reporting System



is partially completed, and impressions of the four right fingers are made on it. CCBI forwards the SBI and FBI fingerprint cards to the SBI. The final disposition report with the defendant's fingerprints on it will remain in the defendant's court record jacket until final disposition of his case. The defendant then appears before a magistrate at the Wake County Courthouse for a judicial determination of the legality of his arrest and to have conditions of pretrial release (bail) set. At this time, the final disposition report, in the court record jacket, will be sent to the clerk of court's office.

When the arrest fingerprint cards arrive at the SBI, Identification Division personnel check both cards (theirs and the FBI's) to be sure that the prints are legible and that the necessary information is on each card. They also give the arrestee a state identification number (SID), if he has not been assigned one in an earlier arrest. PIN's computerized record and the two sets of fingerprints are compared to determine whether the defendant had a previous arrest under the name he is currently using. If the two fingerprint cards are not identical, a "characteristic search" will be made in the master criminal fingerprint file to see whether the defendant's fingerprints match any others in that file. (A "characteristic search" is based on a system that classifies fingerprints into categories of gross characteristics; the search for a matching print is made within a category of prints that have characteristics similar to the defendant's prints.)

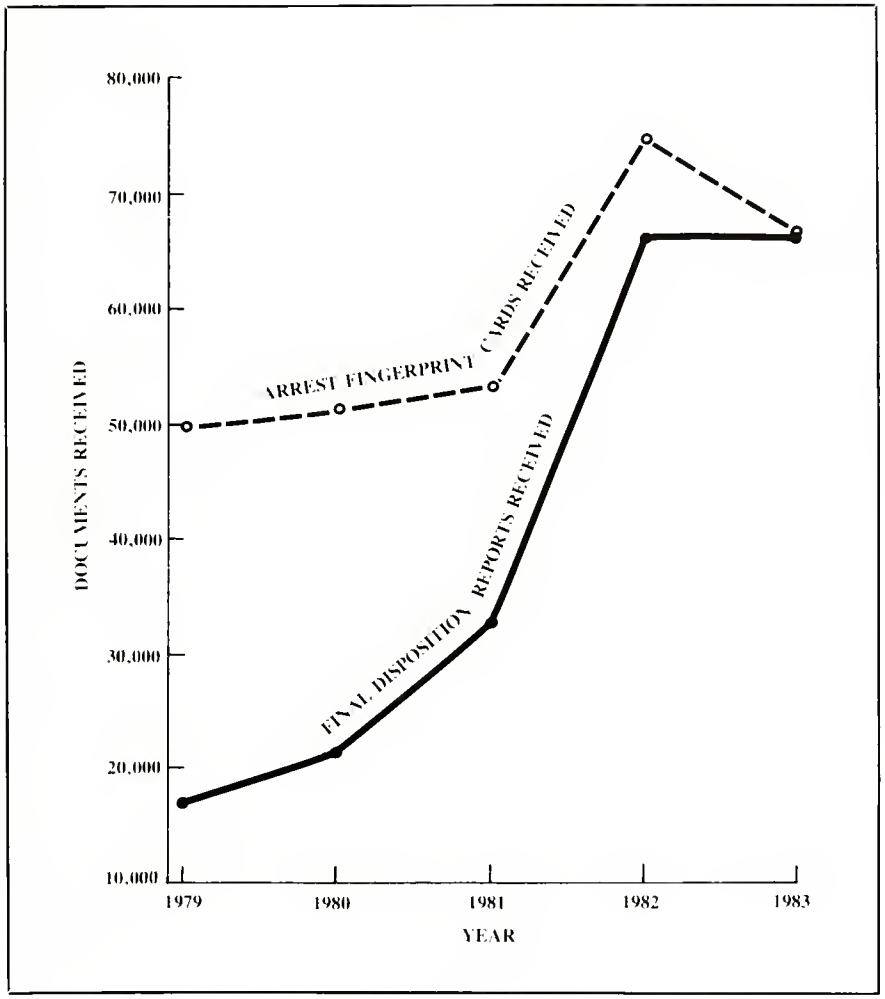
Regardless of whether the defendant's fingerprints have a match in the files, the fingerprint card is coded, using National Crime Information Center standard codes, and entered into the PIN's CCH file. When the card is coded, each charge entered on it is identified by a number; for example, a charge of first-degree murder would be coded "0999." Once this information is entered into the CCH file, it is available to the criminal justice community.

The clerk of court's office in Wake County keeps the defendant's disposition report form until a final disposition is rendered in that case. The clerk then completes the final disposition report form (which already has the defendant's fingerprints on it) and sends it to CCBI. CCBI in turn sends it to the Identification Division, which checks the report name through the CCH file to locate the SID number. When that number is found, the final disposition report can be linked to the defendant's arrest. The defendant's criminal record becomes partially complete with respect to his current charge when the disposition report is coded and entered into the CCH file, along with the information on the arrest fingerprinting card. If the subject is sentenced to prison, custody data will be received at the Identification Division at a later date and then entered into the CCH file.

The complexity of this process makes maintaining accurate, complete, and current criminal history data difficult—for several reasons. The first is the sheer volume of work the Identification Division must process. Since the Division began compiling criminal history data in the early seventies, its workload has increased steadily. The number of criminal fingerprint cards received increased by 87 per cent from February 1974 to February 1984. The number of court disposition reports received have increased *by 4,187 per cent* over the same period. Figure 2 shows the increase in numbers of fingerprint cards and final disposition reports received during the past five years. The Division now receives an average of 260 criminal fingerprinting cards and 290 final disposition reports per day, not including other identification documents received. (The average amount of time needed to complete an arrest or disposition record is seven working days, but the total elapsed time may be much longer.)

Another difficulty in maintaining an accurate criminal record system is that many arrest fingerprint cards

Figure 2. Number of Fingerprint Cards and Final Disposition Reports Received in SBI Identification Division, 1979-83



and final disposition reports are submitted incomplete to the Identification Division and must be returned to the arresting authority for resubmission. This of course delays entry of the data into the PIN computer. In many instances the local agency no longer has access to the fingerprinted defendant and cannot obtain the missing information. The Identification Division works closely with these agencies in showing their personnel how to prepare and submit fingerprint cards and final disposition reports. Training classes are offered when deemed necessary or when requested. These training sessions make the Division's job much easier and improves the working relationship with local law enforcement.

Also, sometimes no disposition report is sent. Division personnel have visited the larger local agencies and searched through many files in an effort to retrieve disposition data in order to make the Division's files complete and current. Still, it is impossible to prepare final disposition reports for all past criminal histories and fully update the files because in many places the records have been destroyed.

A corollary of these two problems—incomplete information on the arrest fingerprinting card and absence of a disposition report—is the impossibility of building a complete record on the subject of the fingerprints or the report. Arrest fingerprint cards returned to the local agency for more information (about 10 per cent) are rarely resubmitted, and when the disposition report for the defendant arrives, there is no fingerprint card to follow it into the files. Or the reverse may happen. The disposition report may never be sent because of oversight or because of faulty handling of paperwork. In any event, frequently some of the identification material on a given defendant is missing from the file, which makes matching with FBI and other records difficult or impossible.

These problems are perpetuated by the fact that the mandatory fingerprinting and disposition-reporting laws are not being enforced. Even if attempts were being made at enforcement, it is extremely difficult to determine whether an agency is actually fingerprinting all persons arrested and charged with felonies and whether it is accurately completing and processing final disposition reports.

During the spring of 1984, personnel from the SBI Identification Division PIN, and the Administrative Office of the Courts made a disposition-reporting study that covered six counties. The study revealed delinquency rates that ranged from 24 per cent to 68 per cent in the processing of dispositional reports. Recommendations for remedying the problems revealed have been made to the Criminal Justice Information Committee of the Governor's Crime Commission.

While it is important to obtain as many delinquent disposition reports as possible, the most important task for the criminal justice community now is to look to the future and develop a process that will enable the Identification Division to obtain disposition data as it occurs. Two processes, one devel-

oped and another in the testing stage, hold some promise.

The first involves PIN's printing computerized letters that list the files that cannot be completed because no disposition has been received. These monthly letters, one per incomplete file, are generated for arrests that are in that month exactly two years old. The letters are then mailed to the appropriate agencies with a request for the missing disposition data. Most agencies realize the need for complete criminal records and cooperate very well in complying with these requests.

The SBI Identification Division and PIN—working in conjunction with the Administrative Office of the Courts, the City-County Bureau of Identification in Raleigh, the Wake County clerk of court, and the Wake County district attorney—have developed a process that should solve the problem of reporting and linking arrest and disposition information in Wake County, and ultimately in other counties if the system can be replicated. The Identification Division has designed a single two-part SBI arrest fingerprint final disposition report form that is now being used by CCBI in Wake County. The SBI fingerprinting card has not been changed, and the final disposition report has been only slightly modified from the green report form now used by all other agencies in the state, but they have been joined. The arrest card and the disposition report are attached but can easily be separated when fingerprinting takes place. The procedure for fingerprinting remains the same. CCBI personnel are responsible for properly filling out both documents. For multiple offenses, a final disposition report must be completed for each charge. Multiple charges may be listed on one fingerprint card but not on one disposition report, because the dispositions of the respective charges may occur at different times. For example, the district attorney may decide to dismiss some of the charges but prosecute others.

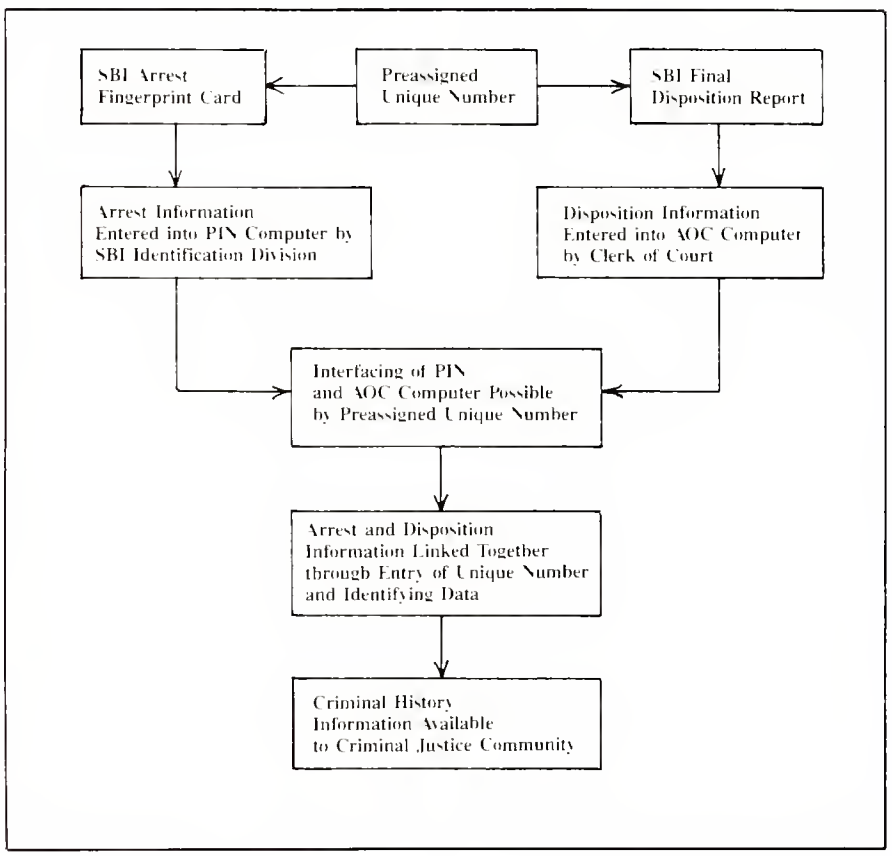
In this system, how will a final disposition report be linked to the fingerprint card that CCBI has already sent to the Identification Division? For checking purposes, a unique number is assigned to each fingerprint card and final disposition report form (see Figure 3). This check number assures that the arrest fingerprinting card and the final disposition report will be correctly linked. If a check number entered into the computer does not correspond with the number of the document with which a match is sought, the computer will not accept it, thus safeguarding against an inaccurate match of a fingerprint card and a final disposition report.

PIN and AOC are beginning to work on an "interface"—a direct computer-to-computer linkage—between the PIN computer and the computer located in the Wake County clerk of court's office. If such an interface is possible, the benefits will be tremendous. It will eliminate the dual reporting system under which the clerk's office now operates. When the clerk's office enters the disposition data into its computer, an automatic link can be made to PIN's computer through the check number and other unique identifiers. This linkage can eliminate manual reporting of the final disposition. Perhaps the greatest benefit will be the prompt availability of the data stored in the computer to the criminal justice community.

The Governor's Crime Commission created the Criminal Justice Information Committee (CJIC) in 1983. This committee has detected some gaps in the scheme established by the present

(continued on page 40)

Figure 3. Unique Number System



Alternatives to Regular Supervision for Low-Risk Probationers: A Study in Baltimore

James J. Collins, Charles L. Usher, and Jay R. Williams

Two factors have encouraged broader use of probation as a sanction for criminal offenders. First, costs of incarceration are greater than costs of community-based correctional programs, including probation. Second, despite increasing probation caseloads, prisons are overcrowded and new facilities usually reach capacity soon after they ready for occupancy.[1] Furthermore, serious questions have been raised about the effectiveness of imprisonment as a sanction and about prisons as an environment within which rehabilitation can occur. Therefore, to minimize costs, to relieve overcrowding, and perhaps to encourage more successful rehabilitative efforts, probation is being widely used as an alternative to prison. The marked increase during recent years in the number of persons per capita who enter probation confirms the trend.[2]

This increased use of probation has had a dramatic effect in some areas. For example, in Maryland during the 1970s the costs of providing probation services tripled while caseloads doubled.[3] In addition, the composition of probation caseloads changed partly because of greater use of probation for serious offenders who previously would have been imprisoned. As a result, Maryland and other states that faced similar circumstances had to re-examine their long-standing practice of delivering an undifferentiated level of service to all probationers.

Over the past few years many states, including North Carolina, have devised caseload management systems that require assessment of each client's need for rehabilitative service and the risk he or she poses to society.[4] Once an assessment has been made, the probationer is classified according to his or her level of risk and need. The activities of low-risk offenders are not monitored as intensively as the activities of probationers whose background suggests that they pose some risk to society. Similarly, clients who need more rehabilitative services are more likely to receive them than those who can function more independently. In this manner, resources are more efficiently allocated, and more clients can be served effectively.

Still, despite efforts to enhance the cost effectiveness of probation services, low-risk cases continue to be a substantial part of probation

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This research was supported under grant no. 81-IJ-CX-0005 from the National Institute of Justice. Points of view or opinions stated here are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

1. Stevens H. Clarke and William P. Pope, "Recent Developments in North Carolina's Prison Population," *Popular Government* 48, no. 1 (Summer 1982); U.S. Department of Justice, National Institute of Justice, *American Prison and Jails*, Vol. II: *Population Trends and Projections* (Washington, D.C., 1980).

2. Bureau of Justice Statistics, *Probation and Parole 1982* (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, September, 1983).

3. Division of Parole and Probation, State of Maryland, *Annual Report 1979* (Towson, Maryland, 1980).

4. A discussion of North Carolina's approach can be found in Richard R. McMahon, Al Sigmon, and Jack Lemons, "Supervising Probation and Parole: A New Management System," *Popular Government* 48, no. 1 (Summer 1982).

workload. For example, in North Carolina, out of 7,022 new probation and parole (primarily probation) cases assessed during April through June 1984, 56 per cent were classified low risk in terms of need for supervision, and 27 per cent were classified as both low risk and "low need" (i.e., having a low need for other services).[5] Low-risk cases entail much less work, individually, than other cases, but they still require periodic contact with a probation officer and the maintenance of a complete case record. As a result, although they need little supervision and service, low-risk clients, being so numerous, impose a heavy burden on state probation agencies.

Recent research suggests that the level of supervision received by probationers may not affect the success of their probation experience.[6] In light of such findings and the cost of supervising low-risk cases, the National Institute of Justice undertook an experimental study of alternatives to probation for low-risk offenders. This article summarizes the results of that study, which was conducted in Maryland by the authors and others at North Carolina's Research Triangle Institute in cooperation with the Maryland Division of Parole and Probation.

The study was designed to determine whether supervision resources could be shifted from low-risk probationers to those more in need of supervision or services without adversely affecting the outcome of probation—that is, without making it more likely that the probationers will commit new crimes. A second goal of the study was to determine whether community service was an appropriate substitute for regular supervised probation.

Study design

Many criminal justice studies have been criticized for not recognizing and controlling factors that produced biases that made it impossible to generalize about the study findings. A committee of the National Academy of Sciences recommended more widespread use of randomized field experiments in which subjects are randomly assigned to receive various kinds of service or to receive no service (this last category is known as a control group).[7] Randomization serves two purposes in experimental research. First, it increases the probability that experimental groups (samples) will be representative of the population to which inferences are to be made. Second, random assignment of subjects to experimental and control groups insures that these groups are equivalent—in other words, that these groups are similar in all respects except for the treatment or service their members receive.

In our study, the cost effectiveness of three types of treatment—supervised probation, unsupervised[8] probation, and community service—for low-risk offenders was analyzed. (The three treatments are explained later in this article.) Low-risk offenders were defined as those who received probation sentences of 12 months or less; these probationers were offered randomly selected assignments to one of the three treatments. Probationers were admitted into the experiment over a five-month period in 1981. Baseline data for each probationer studied, including those who were invited but refused to participate, were drawn from an intake form that is routinely completed for Maryland probation cases. Six months after his (or her) probation ended, each probationer was interviewed to ascertain changes in his socioeconomic circumstances and to inquire about his probation experience and subsequent involvement with criminal justice agencies. This follow-up survey was supplemented by additional data on arrests and outstanding arrest warrants obtained from law enforcement authorities. Twelve months after probation was due to have ended, subjects were again interviewed and their criminal histories (rap sheets) were collected from the Maryland State Police.

While the study was under way, close attention was paid to how the three types of treatment were being implemented. The study staff conducted process and cost analyses to assess the administrative process and to measure the costs of providing probation services in each of the three experimental categories. Information derived from negative outcomes like rearrest—the impact analysis—was joined with information about program costs—the process and cost analyses—to produce an assessment of cost effectiveness.

Setting up the study

Activities that occurred in the first few weeks of the study had a direct bearing on validity and usefulness. An important step in implementation was the resolution of several key issues by the judges, the Department of Parole and Probation staff, and the evaluation team. The Chief Judge of the Maryland District Courts had no objection to the experiment or the random assignment procedure. The

5. North Carolina Department of Correction, Division of Adult Probation and Parole, "Supervision Level Risk Needs Matrix," *Case Management Reports* (Raleigh, N.C., July 19, 1984).

6. Cary M. Lichtman and Sue M. Smock, "The Effects of Social Services on Probationer Recidivism: A Field Experiment," *Journal of Research in Crime and Deliquency* 18 (January 1981).

7. Lee Sechrest, Susan O. White, and Elizabeth Brown, eds., *The Rehabilitation of Criminal Offenders: Problems and Prospects* (Washington, D.C.: National Academy of Sciences, 1979).

8. The unsupervised category was especially created for the research in order to determine supervision effects. No contact was expected between probationer and probation officer. This is not a standard category for management of probation cases in either Maryland or North Carolina. A few probation officers misunderstood the instructions about not contacting the unsupervised study subjects and initiated contact with the probationers. This handful of incidents did not seriously compromise the experiment. Contacts with probation officers and probationers are discussed further below.

team sought the cooperation of judges in each jurisdiction, which was crucial to getting subjects assigned to different probation categories. The judges' cooperation in the experiment, and—perhaps more important—their acceptance of its findings, could be expected only if they understood the effort and agreed with its objectives.

The sample, selected in 1981, came almost exclusively from the City of Baltimore. A total of 371 probationers were included in the study. The target study population were individuals who were sentenced to probation of 12 months or less with no special conditions during the study period. Maryland intake probation officers made assignments at random from the target population to one of the three treatment groups: regular supervised probation, unsupervised probation, and community service.

Probationers assigned to supervised probation according to the standard practice in Maryland were placed in one of the three categories for supervision purposes: maximum, medium, and minimum. Most were put into the medium and minimum categories.

In unsupervised probation, a category created especially for the study, the probationer was to be left with no contacts with a probation officer except for those initiated by himself. The supervising officers agreed that unsupervised cases would be set aside in the files for the duration of the clients' probation, to be dealt with only if the probationer initiated a contact with the officer or violated the conditions of his probation (for example, by committing a new crime that resulted in an arrest and thus came to the attention of his supervising officer).

Baltimore had no community service program during the planning stages of the study, and the Department of Parole and Probation (DPP) assigned a probationer officer to organize a special community service program for the study. Probationers assigned to this program agreed to perform 40 hours of community service work (cleaning up parks, painting park benches, etc.) arranged by the City Park and Recreation Department. When the probationers completed their assignments, the Division of Parole and Probation would recommend to the sentencing judge that their probationary periods be terminated. The judges agreed to honor the requests unless there were compelling reasons for not doing so. At the request of the judges involved in the project, failures to perform community service were not reported to them; the judges had not imposed community service as a condition of probation in the probationers' sentences and therefore felt that it would be inappropriate for them to punish noncompliance.

Description and comparison

More than three-fourths of the probationers studied (78.1 per cent) were males; 79 per cent were black. Their mean age was 28.3 years, although 53 per cent were 25 years old or younger. Only 19.3 per cent were 35 or older. Nearly two-thirds of them (62.5 per cent) were single, 18.2 per cent were married, and 16.9 per cent were divorced or separated. More than half of the subjects (60.9 per cent) had completed fewer than twelve years of education, a fact reflected in the mean years of education for the group—10.9. Twenty-nine per cent had completed high school, and 10.1 per cent had pursued education or training beyond high school. While 38.8 per cent of the subjects were employed full time, 39.4 per cent were unemployed; 21.8 per cent were employed part time. More than one-third of the sample (34.1 per cent) had committed a property crime, usually larceny. The second most common offense (18.6 per cent of the probationers) was possession of marijuana; the third most common offense was assault (13.2 per cent). About as many subjects had been placed on probation for traffic offenses (7.8 per cent) as had been convicted of weapons offenses (8.1 per cent). The term of probation was twelve months in 82.4 per cent of the cases and six months or less in 14.1 per cent of the cases. The use of probation as a sanction for these offenders seems consistent with the fact that most of them (86 per cent) reported no previous arrests, although a check of DPP records at intake revealed that 25 per cent had been on probation before. Nevertheless, the assumption that the project would involve less serious offenders was apparently valid, although 18 per cent of them had official records indicating more than five previous arrests.

Data obtained from intake records indicate that participants and probationers who refused to participate in the study were not significantly different in terms of their sex, race, age, marital status, educational achievement, or employment status from participants. There were some differences between participants and nonparticipants, as well as among experimental groups. For example, we found that proportionately more probationers who declined participation were employed. A significantly higher proportion of nonparticipants had to pay a fine, court costs, or restitution, while relatively fewer persons assigned to unsupervised probation had to pay a fine, court costs, or restitution. However, in most respects participants and nonparticipants did not differ; nor did the membership of the three experimental groups differ from group to group—which tends to confirm the integrity of the assignment process.

Probationers and probation officers

On the basis of subsamples for participants in each of the three experimental groups, case records of the probationers being studied were reviewed after their case had been closed. The data presented in Table 1 describe the frequency of officer-client contact during probation for participants in each study group. As

Table 1. Frequency of Recorded Contacts with Probation Officers During Probation

Assignment	Number of Contacts							
	0	1-5	6-10	11-20	21-30	30	Totals	(N)
Supervised	5.3	8.0	16.0	42.7	16.0	12.0	100.0%	(75)
Unsupervised	54.7	29.3	9.3	2.7	—	4.0	100.0	(75)
Community Service	14.7	20.0	16.0	23.9	13.3	12.0	99.9*	(75)

$\chi^2 = 92.68$ .001

a. Row percentages do not sum to 100 per cent because of rounding.

the table confirms, supervised probationers received the most supervision from their probation officers; a majority of the supervised group had contact with an officer at least monthly.

These data also make clear that those who were randomly assigned to the unsupervised alternative were not often in contact with the department during their probationary period. More than half (54.7 per cent) of their case records showed no contacts, and 29.3 per cent of case records indicated fewer than five contacts. The unsupervised group had only contacts initiated by the probationer or contacts that DPP had to make when the probationer was arrested or did not pay a fine. Overall, probationers in this group averaged 3.5 contacts during their probation.

The frequency of contact for community service volunteers was higher than for the unsupervised group, but not as high as for supervised probationers. Probationers in this category averaged 8.8 contacts with an agent during probation. As Table 1 indicates, approximately half (50.7 per cent) had ten or fewer contacts, but nearly the same proportion had at least monthly contact. Additional information about the experience of this group will shed some light on this inconsistent pattern.

Most probationers assigned to community service failed to complete their assignment and were reassigned to supervised probation.[9] An analysis of these failures suggests that success in a community service program depends on careful screening of individuals for this option and a careful matching of the probationer with the type and location of service to which he was assigned. Random assignment of probationers who participated in the study did not allow for this vital screening. This problem was, of course, compounded by the newness of the program itself in Baltimore and the need to develop more comprehensive assignments and monitoring of those probationers assigned to community service.

Analysis of impact

Recidivism is generally considered the most important indicator of outcome of correctional treatment. If an offender becomes reinvolved in criminal activity during or after his or her probation or is arrested again, the criminal justice experience clearly is not a complete "success." But recidivism and success are not simple concepts. Even if it is accepted that rearrest is the most appropriate indicator of recidivism, the frequency, type, and timing of arrests are aspects of recividism that need to be considered. Moreover, success ought not to be viewed as an all-or-none phenomenon. If an individual reduces the frequency of his criminal activity even though not to zero, the "improvement" should be considered when the effects of criminal justice programs are assessed.

Most recent evidence suggests that level of supervision has little or no effect on the recidivism of criminal justice clients.[10] One study, for example, reported on an evaluation of a field experiment in which newly sentenced property offenders were assigned either to regular probation or to a probation program that included intensive supervision. The two groups and a group of parolees showed no significant differences in recidivism, including type of new charge, conviction, number of charges, number of convictions, and time at which recidivism occurred.[11]

Recidivism data for the Baltimore probationers were gathered from three sources: field interviews, probation case files, and Maryland State Police criminal histories (rap sheets). In interviews, probationers were asked (a) whether they had had contacts with the police since they were put on probation, and (b) to give the date and reason for each contact and the outcome of each one. They were also asked whether and how often

9. The data drawn from case records that describe the status of cases when they were closed indicate that only 28.2 per cent of those assigned to community service completed their assignment. Of those who did not, 26 per cent were assigned to minimum supervision, 46 per cent to medium supervision, and 28 per cent to intensive supervision.

10. J. R. Gottfredson, S. C. Mitchell-Herzfeld, and T. J. Flanagan, "Another Look at the Effectiveness of Parole Supervision," *Journal of Research in Crime and Delinquency* 19 (1982); Lichtman and Smock, "The Effects of Social Services"; D. Star, *Summary Parole: A Six and Twelve Month Follow-up Evaluation*, California Department of Correction Research Report No. 60 (Sacramento, Calif., June 1979).

11. Lichtman and Smock, "The Effects of Social Services."

Table 2. Recidivism by Type of Probation

	Type of probation category			
	Supervised (%)	Unsupervised (%)	Community service (%)	Total (%)
Type of Closing of Probation Case				
Successful termination	79.7 (59)	80.0 (60)	78.4 (58)	79.4 (177)
Revocation or failure to complete	20.3 (15)	20.0 (15)	21.6 (16)	20.6 (46)
Total	100.0 (74)	100.0 (75)	100.0 (74)	100.0 (223)
Self-reported illegal acts				
No offenses reported	13.0 (13)	14.7 (15)	12.7 (14)	13.5 (42)
One or more offenses	87.0 (87)	85.3 (87)	87.3 (96)	86.5 (270)
Total	100.0 (100)	100.0 (102)	100.0 (110)	100.0 (312)
Self-reported arrests				
None	67.0 (67)	63.7 (65)	62.7 (69)	64.4 (201)
One or more offenses	33.0 (33)	36.3 (37)	37.3 (41)	35.6 (111)
Total	32.1 (100)	32.7 (102)	35.3 (110)	100.0 (312)

they committed several kinds of illegal behavior since being on probation and whether they had been arrested.

The length of follow-up differs by as much as five months because subjects entered the study at different times. The length of follow-up is not different among the three experimental groups.

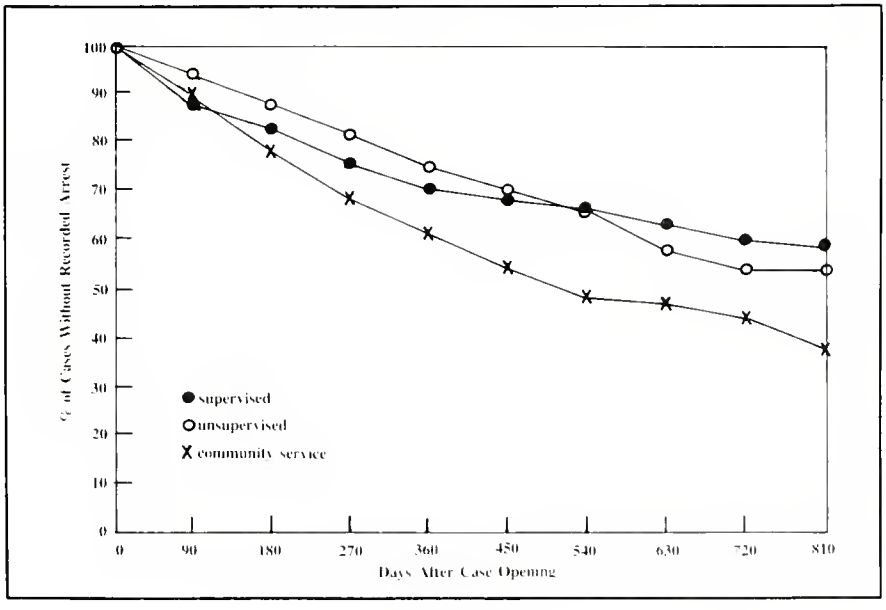
The study examined several indicators of recidivism—noncompletion of probation, reports of criminal behavior by the probationer himself, reports of arrest by the probationer and official records of arrest, and how long a period passed before the offender again engaged in criminal activity. We will compare outcomes for the three experimental groups, even though the community service category had a high dropout rate.

There were no statistically significant differences among the three experimental groups—supervised, unsupervised, and community service—with respect to (a) whether probation ended in revocation or failure to complete community service, and (b) the number of instances of illegal behavior and arrests reported by the participant (see Table 2). Thus one important conclusion suggested by this study is that supervision is not effective in preventing recidivism among probationers categorized as low risk in Baltimore.

Data (shown in Figure 1) from Maryland State Police arrest records indicate a significantly higher rate of arrest for persons assigned to community service than for those on regular supervision and those unsupervised. Nearly two-thirds of that group, as opposed to less than half of those in the other categories, were recorded by police as having been arrested during probation and immediately thereafter.

The inconsistency between arrests reported by offenders in the community service group and their arrests as shown by official sources was examined but could not be confidently

Figure 1. Percentage of Probationers in Experimental Groups Who Survived Without Arrest



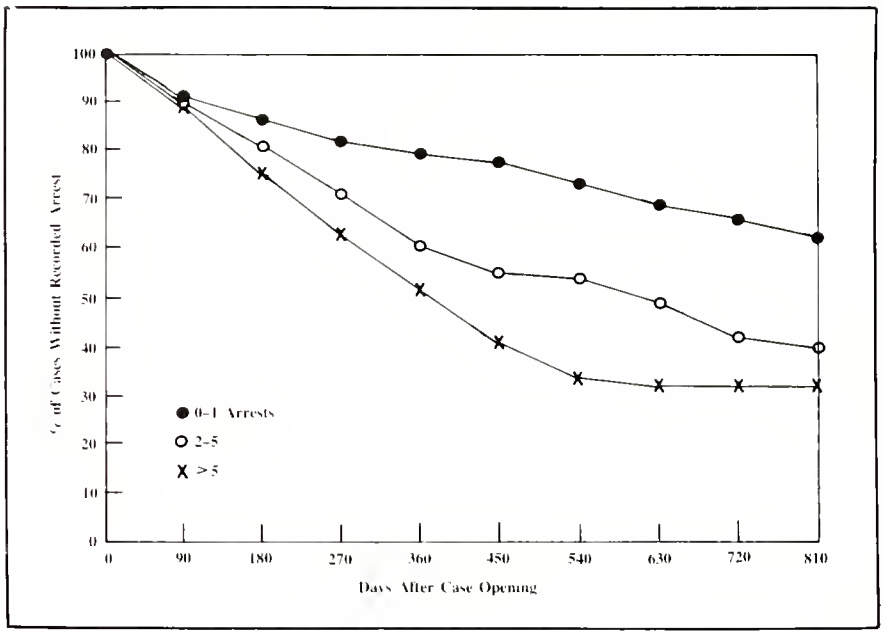
attributed to any factor or factors. A comparative analysis of the previous arrest history of the three groups did suggest that the community service probationers were more likely than offenders in the other two groups to have prior official records of arrest. The higher official arrest recividism of the community service group may be attributable to their more extensive criminal histories.

It is important to assess *when* rearrest takes place as well as *whether* it occurs. Recidivism rates that do not differ for groups of individuals (such as those reported above) may be misleading if timing of the incidents differs for the groups. Recidivism that occurs soon after the beginning of probation should be distinguished from recidivism that occurs two years later. This issue was addressed by the use of survival-analysis techniques.[12]

Survival analysis requires the dating of events—i.e., specification of a time period—so that the time interval between events can be evaluated. The beginning of the time period for the subjects in this study was the date on which each individual's probation case was opened. The ending event for purposes of the analysis was either the date of a recorded arrest (a rap sheet entry) or a notation that the individual had not been arrested by August 23, 1983 (the date on which rap sheets were generated from the Maryland State Police files).

Figure 1 shows, on the basis of official records of arrest, the cumulative survival distributions for the three probation groups. The exhibit represents graphically how the proportions of individuals that survive—i.e., who were *not* arrested—decline over time. The lines for supervised and unsupervised probationers do not diverge markedly, which again supports the conclusion

Figure 2. Percentage of Probationers in Previous Arrest Categories Who Survived Without Arrest



that supervision does not make a difference. The community service curve diverges from the other two, because community service probationers were rearrested more quickly than those in the two other groups.

Arrest rates were also examined for the three probationer groups within the 90-day periods depicted in Figure 1. The arrest rates for these time segments show that arrest was more likely to take place early than late in the study period. This tendency was observable for all three groups. A test statistic[13] confirms that the timing of rearrest for the community service group differs from rearrest for the other two groups of participants.

Figure 2 shows how the timing of rearrest varied according to frequency of previous arrests. The lines for the three previous-arrest categories diverge considerably from each other. Probationers with fewer previous arrests were more likely to "survive" through the study period without being arrested than other probationers—which indicates a strong relationship between previous arrests and recidivism. The rearrest rates increased from 37.6 per cent for those who had had no previous arrests to 67.9 per cent for those with six or more previous arrests. Moreover, those with a higher number of previous arrests were rearrested earlier than those with no previous arrests or only one. Failure rates for the first three time segments ranged between 5 and 9 per cent for the lowest previous-arrest category. Recidivism rates for those with two or more arrests range from 10 to 17 per cent for the first three time segments.

The statistical data on which Figure 2 is based indicate a potentially important point about probation supervision and previous arrests. The unsupervised probationers and the community service group who had six or more previous arrests had very high rates of recividism (68.2 per cent and 82.6 per cent) compared with the supervised probationers (36.4 per

12. The timing of first failure for the three experimental groups is compared by means of the SURVIVAL program of the *Statistical Package for the Social Science* (Chicago: SPSS Inc., 1983).

13. The Lee-Desu statistic indicated that the survival function for the community service group was statistically different from the survival function for the supervised and unsupervised probationers (level of significance $< .04$).

cent). A total of 57 probationers (17.7 per cent) had six or more previous arrests. Even though this is not a large number of clients, the findings suggest that individuals with serious arrest histories ought to be dealt with on supervised probation even if their *current* offense and probation sentence suggest that they are low-risk offenders. If the data on rates of recidivism apply beyond the current study, they indicate that, although supervision does not generally make a difference in preventing recidivism among low-risk probationers as defined in this study, supervision may prevent new crime (as measured by rearrest) among those with more than five previous arrests. This also suggests that previous research indicating little or no effect of supervision should be viewed cautiously, because it may have failed to discern effects on probationers with extensive previous criminal histories.

The foregoing analysis suggests that the three experimental groups do not differ in their rates of recividism. Some differences were observed for officially recorded arrests for the community service probationers, but when the frequency of previous arrests is controlled, the differences are much diminished. The recidivism data do suggest that those who have more than five previous arrests ought to be supervised while on probation. Probationers with this many previous arrests who were included in the unsupervised and community service categories in this study had very high recidivism rates.

The study shows that level of supervision in probation was not important to the recidivism outcomes for most members of this low-risk group of offenders. An exception may be individuals with more than five previous arrests, who appear less likely to be arrested again if they are supervised while on probation. The data presented in this study suggest that most low-risk probationers could be unsupervised during their probation without increased risk to the community. An implication of this result is that a substantial number of low-risk probationers could be left unsupervised, thus reducing the probation workload so that other needier probationers could receive more intensive supervision, assessment of needs, and treatment. pg

Women: Economic Security

(continued from page 16)

Pension Rights Center estimates that the average age of a widow is 56. Unless she has a child under age 16, she cannot collect Social Security until she reaches age 60. Unless her children are willing and able to support her, an under-60 widow (or a newly divorced middle-aged woman) who has never worked outside the home may have no alternative but to go to work—at a low-paying job because she lacks marketable skills.

Private pension plans are generally designed as a benefit to the worker. The fact that a spouse may receive some benefits as part of the worker's estate is almost incidental. Under the Federal Employee Retirement Income Security Act (ERISA), pension plans are not required to pay either the worker or the surviving spouse before he reaches retirement age (usually age 55). If the worker dies before he reaches that age, his spouse gets nothing. (On the other hand, changes in North Carolina law now require that future pension benefits be treated as property that the court can divide in determining an equitable distribution of poverty in divorce cases.)

Conclusion

This article has outlined some of the principal factors that contribute to the economic insecurity of women. How these circumstances came to be is not important. But it is critically important to recognize that as a community of free people we cannot continue to ignore the obvious inequities that permeate the fabric of our social and economic life. In his address to the North Carolina Conference on Women and the Economy, Governor Hunt observed,

Today nearly half of North Carolina's work force is female. Women are in the factories, at the office, behind the counter, in the classroom, on the farm. They also need to be in the boardrooms, in the foreman's office, in the president's office, and in those paneled rooms where the decisions are being made.

When everything else is stripped away, the question is whether we are willing to give women the power to shape their own economic futures. Without that power, they are not free. To the degree that some of us are not free, all of us are not free. pg

The Principals' Executive Program Begins

Robert Phay

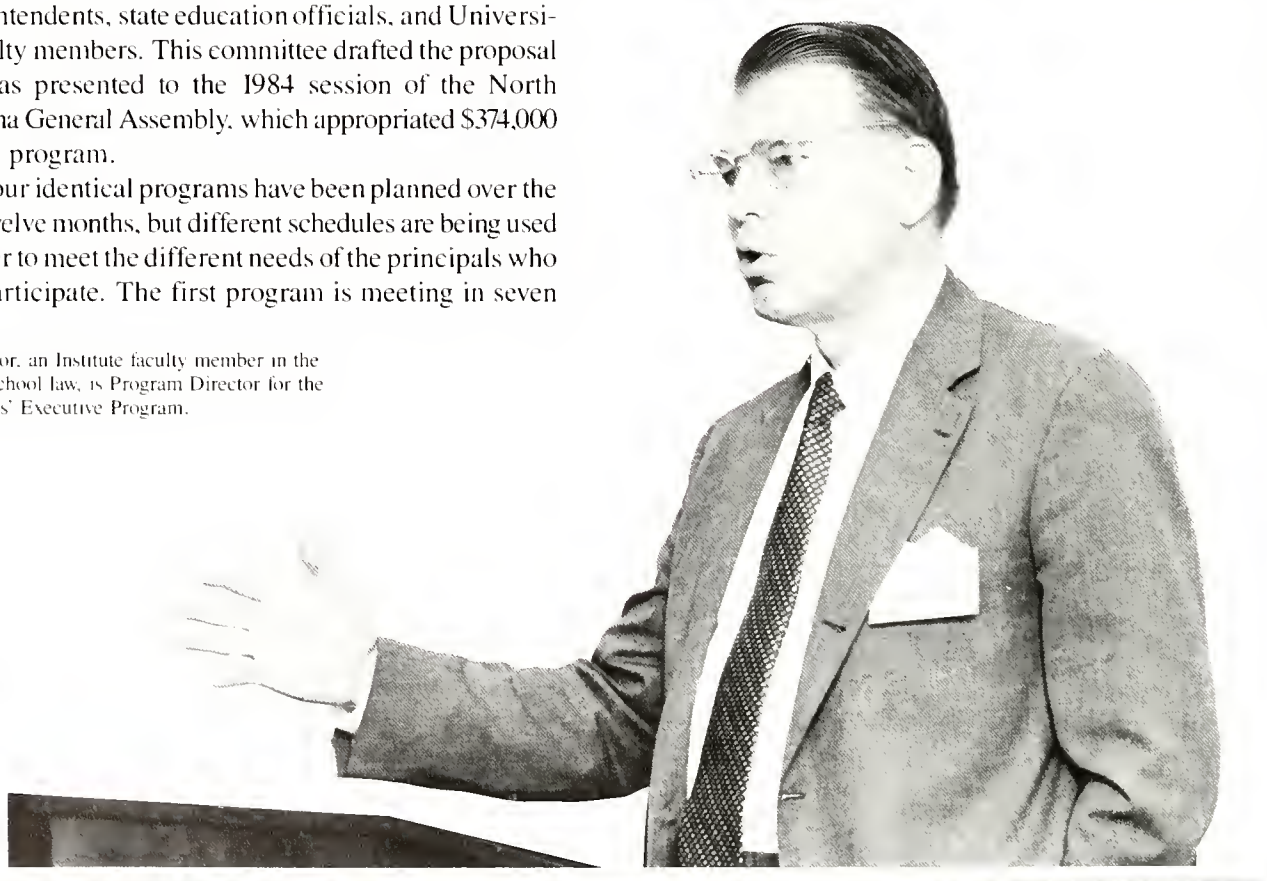
A new professional-level management course for North Carolina public school principals began this fall at the Institute of Government. In September thirty-five principals from around the state returned to the classroom to improve their skills and knowledge in school management. The Principals' Executive Program is an intensive, four-week residence course of instruction (the longest such program in the country) that will build a foundation of basic managerial skills and a better understanding of the fundamental systems and issues that challenge principals on the job.

The program was developed in response to concerns about school management expressed by C. D. Spangler, Jr., Chairman of the State Board of Education. Chancellor Christopher C. Fordham of UNC-Chapel Hill appointed an 18-member committee composed of principals, superintendents, state education officials, and University faculty members. This committee drafted the proposal that was presented to the 1984 session of the North Carolina General Assembly, which appropriated $374,000 for the program.

Four identical programs have been planned over the next twelve months, but different schedules are being used in order to meet the different needs of the principals who will participate. The first program is meeting in seven sessions that run from Tuesday through Thursday. The winter program will meet eight times—Thursday through Saturday noon—from January through March. The spring program meets in four one-week sessions, and the summer program begins with a two-week session in July 1985, followed by a third week in early August and a fourth week in late September. These alternative schedules will be helpful in identifying which program format is most suitable to the largest number of principals.

The curriculum will provide over 150 hours of instruction taught in 20 days and 14 evenings spent either in the classroom or on campus. It is organized around 13 major phases of school management with a heavy emphasis on the case method of teaching. The curriculum begins with a consideration of what leadership is all

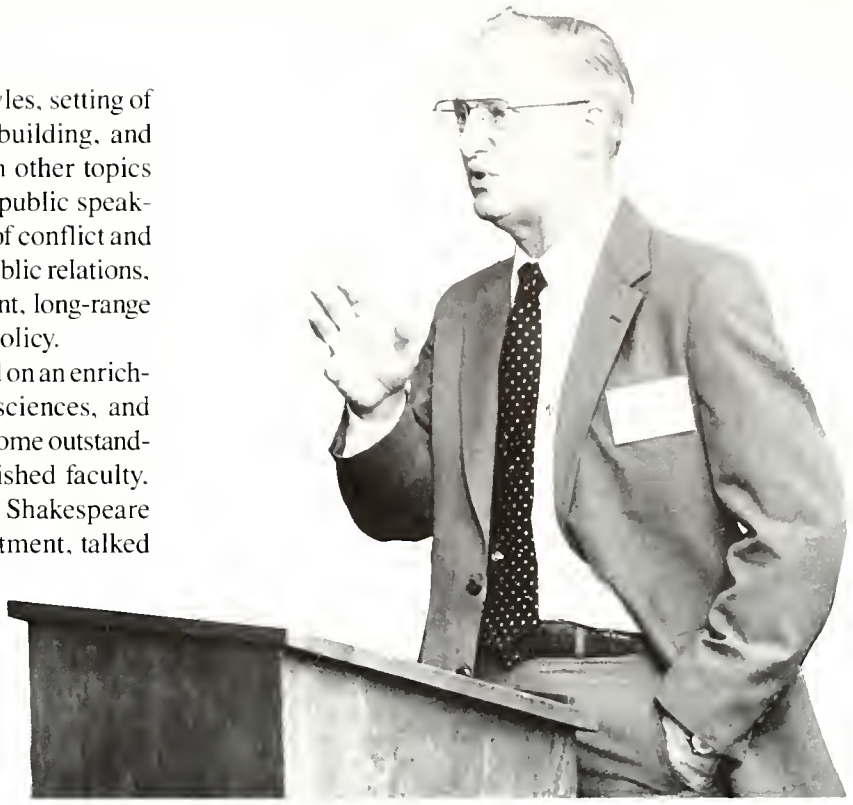
The author, an Institute faculty member in the area of school law, is Program Director for the Principals' Executive Program.



C. D. Spangler, Jr., Chairman of the State Board of Education

about—motivation, effective leadership styles, setting of personal and organizational goals, team-building, and delegation—and then moves through such other topics as teacher evaluation, time management, public speaking, coaching of employees, management of conflict and change, negotiation with adverse groups, public relations, curriculum evaluation, financial management, long-range planning, and the development of clear policy.

A second part of the instruction is based on an enrichment curriculum. It focuses on the arts, sciences, and humanities and will bring before the group some outstanding members of the University's distinguished faculty. For example, Professor Darryl Gless, a Shakespeare scholar and member of the English Department, talked to the first group about the Elizabethan Age and Shakespeare's comedies before the group attended a performance of "The Merry Wives of Windsor." Professor Larry Cook of the Music Department will lecture on the history and form of the oratorio before the group hears a special performance by the Carolina Choir. Innis Shoemaker, Director of the Ackland Art Museum and Adjunct Professor of Art History, will talk about art and museums in the Western culture as she prepares the group for a tour of the University's art galleries. And Dr. Joe Pagano, Professor of Medicine and Director of UNC's Center for Cancer Research, will talk about genetic engineering and the type of research in which the Center is now engaged. The group also attended the Weil Lecture, which this year brought former President Jimmy Carter to the campus to speak on American Citizenship.



UNC-Chapel Hill Chancellor Christopher C. Fordham

Why was the enrichment curriculum included in a program on management? One reason is that it gives the University an important opportunity to bring one of its most important resources—its faculty—before the principals and to provide an example of excellent teaching. Second, the program wants to emphasize that education is a lifelong pursuit that just begins in the public schools.

A faculty of sixty-seven will teach in each program. Most of these instructors will come from the Institute of Government, which has taught management skills to state and local government officials for many years, from the UNC School of Education, and from the UNC School of Business Administration, which offers several executive management programs. In addition, nationally recognized management experts, practicing principals and superintendents, representatives of professional education associations, faculty members from other universities in the state, and staff members of the State Department of Public Instruction will lead parts of the program.

The principals are housed together in the Institute of Government's residence hall and enjoy a dining room reserved for them in the University's main dining hall. The principals are expected to learn much from each other, and since so much has been packed into the curriculum, they need opportunities at mealtime and in the dorm to discuss and react to what they have learned in the classroom.

Principals were nominated for the program by their superintendents. Each superintendent nominated one principal, plus one additional candidate for every fifteen principals in the school district. As a result of this selection method, participants in the first year of the program will come from all parts of the state. All four programs have been filled.

Expectations for the program are high. First, it will be intellectually rigorous and demanding. Second, although the legislature has funded the program only through June 1985, the planning committee intended that most of the state's 2,000 principals—and new principals as they join the North Carolina system—go through the program. If these goals are met, Chancellor Fordham will be correct when he described the program as signaling "a new era of more productive collaboration between the University and the public schools." pg

North Carolina's Drug-Trafficking Law

Ben F. Loeb, Jr.

There are no precise figures on the level of illegal drug sales or trafficking in the United States. Attorney General William French Smith, in a report made on March 24, 1982, estimated that the street value of the nationwide illicit drug trade approached $80 billion annually.[1] By way of comparison, the gross sales of the five largest U.S. business corporations in the same year ranged from $103 billion for Exxon to $40 billion for Standard Oil of California. Other highlights of the Attorney General's report were as follows:

—Heroin sales alone amounted to more than $8 billion; an estimated four metric tons were being smuggled into the United States annually. Approximately 60 per cent of this heroin was refined from opium cultivated in Southwest Asia.

—Approximately 275 million dosage units of dangerous, illicit drugs were diverted from legitimate manufacturing and distribution channels by theft, burglary, fraudulent prescriptions, etc.

—Cocaine trafficking is a major industry. The total smuggled into the United States in 1980 was estimated to be 44 metric tons, and retail sales came to approximately $29 billion. This drug comes principally from South America, where coca cultivation is legal in some countries.

—Marijuana also generates tremendous profits. Street sales are estimated to be at least $24 billion annually. About 75 per cent of the marijuana imported into the United States comes from Colombia.

—In 1980 Colombia's illicit drug exports (marijuana, cocaine, and methaqualone) may have been as high as $4 billion. (Its coffee exports that year came to only $1.8 billion, and coffee is supposedly that country's major export.)

—Domestically grown marijuana is increasing as a percentage (now about 7 per cent) of the total amount consumed in the United States. California, Hawaii, Oregon, Arkansas, Missouri, Kentucky, and Florida are among the leading states in marijuana production.

Statistics like these led North Carolina and other jurisdictions to enact strict (perhaps even harsh) drug-trafficking statutes. Before this state's drug-trafficking law was passed in 1980, North Carolina did not set special punishments for crimes that involved very large amounts of drugs. For example, the sale of a Schedule VI controlled substance (marijuana) could be punished by imprisonment for five years—it made no difference whether the amount of the illegal substance was six pounds or sixty tons.

However, under the drug-trafficking law, the punishment escalates drastically as the amount of the illegal substance increases. The North Carolina marijuana-trafficking statute applies only to sales of over 50 pounds of the substance, and if the amount involved is less than 100 pounds, the maximum prison term is 10 years. But if 10,000 pounds or more are involved, the offense is a Class D felony, for which the maximum punishment is a prison term of 40 years. More important, the minimum sentence is 35 years. (Prison terms are ordinarily reduced 50 to 60 per cent by credit for good behavior and assigned work.) Thus the North Carolina trafficking statute, as well as similar statutes in other states, is clearly aimed at the wholesaler rather than the retailer.

North Carolina, with its long and in places sparsely settled coastline, is said to be a major place of entry for illegal drugs. Table 1 shows the type, amount, and dollar value of drugs

The author is an Institute faculty member who has written extensively on North Carolina drug law.

1. Drug Enforcement 2-6 (United States Department of Justice, Summer 1982).

Table 1. Type, Amount, and Dollar Value of Drugs Seized by the SBI, 1980-83

Type	Quantity	Street Value
1980		
Heroin	473.4 gms.	$ 154,308
Cocaine	24,899.1 gms.	14,329,218
Marijuana	179,890.2 lbs.	143,912,000
Methaqualone	190,805 dosage units	553,751
1981		
Heroin	1,405 gms.	$ 439,944
Cocaine	258,159.1 gms.	204,294,190
Marijuana	140,156.1 lbs.	150,476,771
Methaqualone	296,822 dosage units	1,157,808
1982		
Heroin	3,619.3 gms.	$ 1,471,458
Cocaine	72,407.6 gms.	27,387,300
Marijuana	320,996.6 lbs.	243,587,258
Methaqualone	866,095 dosage units	5,196,571
1983		
Heroin	2,190.0 gms.	$ 5,790,965
Cocaine	96,573.6 gms.	37,380,196
Marijuana	108,016.8 lbs.	73,203,218
Methaqualone	829,339 dosage units	4,976,124

seized by the North Carolina State Bureau of Investigation from 1980 to 1983. (This table does not include activities of either local law enforcement agencies or the federal government.) The drugs listed are those included in the North Carolina Drug Trafficking Law.

The actual size of the illicit drug trade in North Carolina is not known. But since SBI seizures alone often total over $250 million annually (in estimated street value), it seems safe to assume that the trafficking industry amounts to at least a billion dollars per year. Special note should be taken of the increasing prevalence of methaqualone in the SBI statistics. In 1980 only 190,805 dosage units were seized, but by 1982 this figure had increased to over 800,000 units annually. Methaqualone is a synthetic substance with legitimate medicinal uses. For years it was marketed as a prescription drug under the trade name "quaalude." The reason for its recent popularity among users of illegal drugs remains obscure.[2]

North Carolina's statute

The North Carolina Drug Trafficking Law was originally enacted on June 25, 1980, and applied to offenses committed on or after July 1, 1980. It was, in effect, re-enacted in 1981 to conform to provisions of the new Fair Sentencing Act. Four major categories of offenses are set out in that law: trafficking in marijuana, trafficking in methaqualone, trafficking in cocaine, and trafficking in opium or heroin [G.S. 90-95(h) and (i)].

Marijuana. The sale, manufacture, delivery, transportation, or possession of over 50 pounds of marijuana constitutes a felony known as trafficking in marijuana. The punishment for the trafficking offense depends on the amount of marijuana involved (see Table 2).

A few drug-trafficking cases have now reached the appellate courts. One of the first questions presented on appeal was whether the wording of G.S. 90-95(h)(1) created *one* offense of drug trafficking or several different offenses. In *State v. Anderson*,[3] the defendants were charged with possession of 2,000 pounds or more but less than 10,000 pounds of marijuana and the manufacture of 2,000 pounds or more but less than 10,000 pounds of marijuana. The trial court held that G.S. 90-95(h)(1) "creates only a single felony, known as 'Trafficking In Marijuana,' which may be accomplished by selling, delivering, transporting, manufacturing, or possessing more than 50 pounds . . . "[4] The Court of Appeals disagreed. In reversing the lower court, it stated:

> We hold that under G.S. 90-95(h) if a person engages in conduct which constitutes possession of in excess of 50 pounds of marijuana as well as conduct which constitutes manufacture of in excess of 50 pounds of marijuana, then the person may be charged with and convicted of two separate felonies of trafficking in marijuana.[5]

While the *Anderson* case concerned only marijuana, its reasoning should apply with like effect to trafficking in methaqualone, cocaine, or heroin.

Another issue recently addressed by the appellate courts concerned the manufacture of marijuana as a lesser included offense of trafficking by manufacturing marijuana. One of the defendants in *State v. Sanderson*[6] was convicted of manufacturing marijuana and trafficking by manufacturing 100 pounds or more of marijuana. The Court of Appeals, in reversing his convictions in part, stated:

2. Medical Economics Company, Physician's Desk Reference 986-87, (1979).

3. 57 N.C. App. 602 (1982).
4. *Id.* at 603.
5. *Id.* at 606.
6. 60 N.C. App. 604 (1983).

Table 2. Punishments for Trafficking in Marijuana

Pounds	Maximum punishment	Minimum punishment
More than 50, but less than 100	Class H Felony (up to 10 years)	5 years and $5,000 fine
100 or more, but less than 2,000	Class G Felony (up to 15 years)	7 years and $25,000 fine
2,000 or more, but less than 10,000	Class F Felony (up to 20 years)	14 years and $50,000 fine
10,000 or more	Class D Felony (up to 40 years)	35 years and $200,000 fine

Table 3. Punishments for Trafficking in Methaqualone

Dosage Units	Maximum punishment	Minimum punishment
1,000 but less than 5,000	Class G Felony (up to 15 years)	7 years and $25,000 fine
5,000 but less than 10,000	Class F Felony (up to 20 years)	14 years and $50,000 fine
10,000 or more	Class D Felony (up to 40 years)	35 years and $200,000 fine

> Manufacturing or possession under G.S. 90-95(a) [manufacture] does not require proof of any additional facts beyond those required under G.S. 90-95(h)(1) [trafficking], therefore convictions under both statutes violate defendant's protection against double jeopardy, and the convictions for the lesser included offenses should be vacated.[7]

Methaqualone. Methaqualone (formerly sold under the trade name "quaalude") is a sedative and hypnotic agent but chemically unrelated to other sedative-hypnotic drugs. Abuse of this kind of drug may lead to severe psychological or physical dependence. While unknown to the general public, quaaludes are a prime source of income for drug traffickers. A person who sells, manufacturers, delivers, transports, or possesses as many as 1,000 tablets, capsules, or other dosage units of methaqualone (or any mixture containing it) is guilty of trafficking in methaqualone. Table 3 shows the punishments for this offense.

In *State v. Myers* and *State v. Garris*,[8] the defendants were convicted of trafficking by selling or delivering 30,241 methaqualone tablets to an undercover agent. Each defendant was sentenced to imprisonment for 35 years and fined $200,000. The defendants appealed on several grounds, one being the trial court's denial of their request for jury instructions on the lesser-included offense of trafficking in less than 10,000 dosage units of methaqualone. While over 30,000 tablets were seized, only 20 of them (which were randomly selected) were subjected to a chemical analysis and found to contain methaqualone. The defense contended that this presented a question about how many tablets actually contained the drug. In affirming the trial court decision, the Court of Appeals stated: "Our courts have held that when a random sample from a quantity of tablets or capsules identical in appearance is analyzed and is found to contain contraband, the entire quantity may be introduced as the contraband."[9]

Cocaine. The sale, manufacture, delivery, transportation, or possession of 28 grams or more of coca leaves or any salts, compound, derivative, or preparation of coca leaves (or any mixture containing this substance) constitutes trafficking in cocaine. Punishments are set out in Table 4.

It should be noted that G.S. 90-95(h)(3) applies not only to cocaine but also to "any mixture containing such substance." In *State v.*

7. *Id.* at 610.

8. 61 N.C. App. 554 (1983).

9. *Id.* at 556.

Table 4. Punishments for Trafficking in Cocaine

Grams	Maximum punishment	Minimum punishment
28 or more, but less than 200	Class G Felony (up to 15 years)	7 years and $50,000 fine
200 or more, but less than 400	Class F Felony (up to 20 years)	14 years and $100,000 fine
400 or more	Class D Felony (up to 40 years)	35 years and $250,000 fine

Table 5. Punishments for Trafficking in Opium or Heroin

Grams	Maximum punishment	Minimum punishment
4 but less than 14	Class F Felony (up to 20 years)	14 years and $50,000 fine
14 but less than 28	Class E Felony (up to 30 years)	18 years and $100,000 fine
28 or more	Class C Felony (up to 50 years or life)	45 years and $500 fine

Tyndall,[10] the defendant was convicted of feloniously trafficking in cocaine. The total weight of the seized substance was 37.1 grams, but only 5.56 grams was cocaine. The rest of the mixture was a noncontrolled (and apparently legal) substance. The defendant contended on appeal that since less than 28 grams of cocaine were involved, he could not be guilty of trafficking. While this case was reversed on other grounds, the court did state:

> We conclude there was sufficient evidence of a violation of G.S. 90-95(h)(3)(a) to charge the jury on such an offense. The mixture the defendant sold contained cocaine and weighed more than 28 grams but less than 200 grams. Defendant's motion to dismiss was, therefore, properly overruled.[11]

This case concerned only cocaine, but its rationale should be equally applicable to trafficking in methaqualone, opium, or heroin.

Opium or heroin. G.S. 90-95(h)(4) provides that a person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate or any salt, compound, derivative, or preparation of opium or opiate (including heroin) has committed a trafficking offense. Table 5 shows the punishments.

Heroin trafficking is a highly professionalized type of crime, and proof of guilt can be very difficult to come by. Occasionally, however, a conviction can be based almost entirely on circumstantial evidence. In *State v. Porter,*[12] the defendant was found guilty of trafficking in heroin and sentenced to 18 years in prison. She appealed on several grounds, one being that there was not enough evidence to support the conviction. In that case 27.9 grams of heroin were found in a suitcase at the Raleigh-Durham Airport. This suitcase was not in the defendant's possession and was actually tagged in the name of another person. In upholding the conviction, the Court of Appeals stated:

> When considering a motion to dismiss for insufficient evidence, the court must consider all the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference to be drawn from the evidence. The evidence, when viewed in this light, shows the defendant was traveling under an assumed name; that she denied having any luggage; that the suitcase was tagged with the name "Barbara Williams"; that a passenger with this name had cancelled her reservation on the afternoon New York flight and arrived on the evening flight; that "Barbara Williams" was paged but no one claimed the suitcase; that defendant's fingerprints were lifted from the unclaimed suitcase; that defendant's fingerprints were found on some of the contents of the suitcase and that one of the officers recognized a nightgown in the suitcase as identical to one he had seen on defendant prior to 21 January 1982. We find no error in the failure to grant defendant's motion.[13]

Conspiracy. Conviction of conspiracy to traffic in marijuana, methaqualone, cocaine, opium, or heroin results in the same criminal penalties as if the defendant had been convicted of trafficking itself [G.S. 90-95(i)] and may be punished *in addition* to the actual trafficking offense. In *State v. Goforth,*[14] the defendants were indicted for conspiring to traffic in marijuana. They were convicted as charged and given prison sentences of eight years. On appeal, however, the convictions were not upheld because the indictments were incorrectly worded. (The indictments charged conspiracy to traffick in "at least" 50 pounds of marijuana, while the statute refers to "in excess" of 50 pounds.)

Assistance from offenders

While the minimum punishments shown in Tables 2 through 5 are mandatory, the sentencing judge may reduce the fine or prison sentence for a defendant who has provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, coconspirators, or principals [G.S. 90-95(h)(5)]. The judge, if he wishes, may even suspend the prison term entirely and place the defendant on probation. Law enforcement agencies have found this provision extremely helpful in obtaining evidence to be used against traffickers in large amounts of illegal drugs.

Conclusion

Drug-trafficking statutes, no matter how well designed, will not have a sudden or dramatic impact. Trafficking is so profitable that large numbers of persons are willing to risk long

10. 55 N.C. App. 57 (1981).
11. *Id.* at 61.
12. 65 N.C. App. 13 (1983).
13. *Id.* at 23.
14. 65 N.C. App. 302 (1983).

prison sentences rather than leave the business. At best these new statutes will furnish law enforcement authorities with an effective weapon with which to wage a war of attrition. To curtail the drug trade, enough traffickers will have to be given long enough prison sentences so that their ranks are slowly depleted over a period of years. Whether this can or will be done remains very much in doubt. pg

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fingerprinting and disposition-reporting laws. For example, G.S. 15A-502 requires that defendants charged with a felony be fingerprinted by the *arresting* police agency, but defendants are often charged with a felony *without being arrested*—for example, when they are already in jail in connection with an earlier charge, or when they are charged by a summons or an indictment mailed to them. If the amendments to the fingerprinting and reporting statutes recommended by the CJIC and approved by the Governor's Crime Commission are enacted, they should help to ensure compliance with existing statutes and to assure that all defendants charged with felonies are fingerprinted and their dispositions reported. pg

Two New Institute FACULTY MEMBERS

The Institute of Government has two new faculty members—one in the area of school law and one in property taxation.

Joseph E. Hunt joined the Institute faculty after eight years as a private appraiser and consultant to counties in the design and administration of ad valorem tax systems. During that time, he played a major role in the City of Boston's equalization program, and he designed several computer systems that are now in use in real property appraisal. Before entering private business as a consultant, Mr. Hunt was Director of Real Estate Assessments for the City of Alexandria, Virginia. He is a member of the American Institute of Real Estate Appraisers and is a Certified Assessment Evaluator, the two highest designations in the real estate appraisal field. He has been teaching courses sponsored and approved by the International Association of Assessing Officers for fifteen years. At the Institute, he works in the fields of real estate appraisal and property tax administration.

Laurie L. Mesibov is a Phi Beta Kappa graduate of Stanford University and a graduate of The University of North Carolina School of Law. She served as an elementary school teacher and school librarian on Guam for three years and spent one year as an administrative assistant for the Massachusetts Association for Retarded Citizens. While in law school, Mrs. Mesibov worked as a law clerk at the Institute of Government and published the following articles in the School Law Bulletin: "Compelled Medical Examinations of Teachers," "Class Action Suits Against Public Schools," and "An Extended School Year for Handicapped Students?" She will be working in school law, with special responsibility for school finance, the law regarding handicapped students, and programs for principals and school board members.

The Role of Religion in the Public School Curriculum

Benjamin B. Sendor

Disputes over religious activity in public schools have captured the national spotlight recently. An article in the Fall 1983 issue of *Popular Government* explored the law governing such devotional activity as prayer and holiday observances. This article will examine a related issue at the core of the schools' educational mission: the role of religion in instruction and textbooks in public school curriculums.[1]

Controversy over religion in the curriculum reflects an underlying tension between two basic school law principles. First, the law vests school officials with control over curriculum, including material designed to promote community values.[2] But second, to protect the rights of individual students and parents, the First Amendment of the U.S. Constitution limits officials' authority over curriculum.[3]

This article will examine the limits imposed by the First Amendment on the role of religion in the public school curriculum by studying the application of First Amendment principles to the two situations in which the issue typically arises: (1) courses about religion or religious segments of otherwise secular courses; and (2) opposition from some elements of the religious community to instruction about certain topics—specifically, evolution and sex education—in the secular curriculum.

The First Amendment states, in regard to the relation between government and religion, "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof . . . ." As this language shows, the First Amendment contains two distinct provisions restricting government authority over religion: the establishment clause and the free exercise clause. The Fourteenth Amendment, as interpreted by the U.S. Supreme Court, extends these limits on government power to state and local governments, including school units, their officials, and their employees.[4]

The purpose of the free exercise clause is to prevent the government from impairing the liberty of individuals to exercise their religious faith. The clause governs conflicts between religious faith and government actions that coercively burden the beliefs and practices of such faith.[5] It provides absolute protection for freedom to hold religious beliefs but only

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1. Conflicts over the role of religion in the curriculum have plagued a number of North Carolina school systems. *See, e.g.*, "Bible Study Classes Provoke Hot Dispute," The News and Observer, Sept. 18, 1983, p. 1; "Group Questions Schools' Bible Classes," The Charlotte Observer, Sept. 8, 1983, p. 1; and "Religion in the Classroom Getting New Attention," The Charlotte Observer, Dec. 20, 1982, p. 1.

2. Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853 (1982); Ambach v. Norwick, 441 U.S. 68, 76 (1979); Epperson v. Arkansas, 393 U.S. 97, 107 (1968).

3. *Id.*; West Virginia v. Barnette, 319 U.S. 624 (1943).

4. School District of Abington Township v. Schempp, 374 U.S. 203, 215-16 (1963); Cantwell v. Connecticut, 310 U.S. 296, 303-4 (1940) ("The fundamental concept of liberties embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the state as incompetent as Congress to enact such laws.")

5. Wisconsin v. Yoder, 406 U.S. 205 (1972).

qualified protection for freedom to engage in religious activities.[6] To resolve disputes over government interference with faith, courts weigh the strength of a person's interest in exercising the beliefs or practices in question, the strength of the government's interest in a policy that limits the exercise of faith, and the degree of burden imposed by the limitation.[7]

The purpose of the establishment clause is to enforce government neutrality concerning religion by separating the realms of church and state. The clause shapes the relation between government and religion according to these principles:

> *Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.*[8]

The Supreme Court has developed a three-part test to judge establishment clause challenges to government acts: the governmental act that bears on religion must reflect a clearly secular purpose; it may neither advance nor inhibit religion as its primary effect; and it must avoid excessive government entanglement with religion.[9] A governmental act must pass all three parts of the test in order to comply with the establishment clause.[10] Although the test is not a rigid, mechanical procedure facilitating predictable and unassailable answers in concrete cases,[11] it guides courts in their review of religious activities in public schools.

Constitutional debates over the role of religion in the public school curriculum often involve a complex interplay between the free exercise and establishment clauses. As explained above, each clause serves a different purpose: the goal of the free exercise clause is to keep religious faith voluntary, free from government coercion, while the goal of the establishment clause is to prevent excessive government involvement in religion. This distinction becomes important in analyzing controversies over religious activity in public schools. The Supreme Court has stressed that the optional nature of a government-supported religious practice might save the practice from a challenge under the free exercise clause but not from a challenge under the establishment clause.[12] Thus a student's voluntary participation in public school religious activity would not violate his rights under the free exercise clause. However, the voluntary nature of his participation is irrelevant to the establishment clause, which concerns what government (acting in the form of the school administration) does. Even if all students in a class and their parents were to approve of a religious activity in school, the activity might still violate the establishment clause because of excessive government involvement in religion. With these fundamental principles of First Amendment law concerning religion in mind, we can consider the constitutional dimensions of the role of religion in the public school curriculum.

Courses about religion

The primary forms in which religion appears in the curriculum are courses about religion (like Bible study and comparative religion courses) and secular courses (like history or literature) that contain units or materials about religious topics. The Supreme Court set the framework for constitutional analysis of religious instruction in *Illinois ex rel. McCollum v. Board of Education*[13] and *School District of Abington Township v. Schempp.*[14] In *McCollum* the Court ruled that a program of religious instruction in the public schools of Champaign, Illinois, violated the establishment clause. Under the program, a local interfaith religious council hired teachers (usually members of the clergy) to give weekly religious instruction to public school students for 30 minutes during the school day in regular classrooms. Protestant, Catholic, and Jewish students were taught separately by teachers of their own faiths. This instruction was given at no cost to the school district but was subject to the superintendent's approval and supervision. The program included an excusal

6. Sherbert v. Verner, 374 U.S. 398 (1963); Cantwell v. Connecticut, 310 U.S. at 303.
7. Wisconsin v. Yoder, 406 U.S. 205.
8. Epperson v. Arkansas, 393 U.S. at 103-4
9. Lemon v. Nyquist, 403 U.S. 602, 612-13 (1971).
10. Id.
11. Lynch v. Donnelly, _____U.S._____, 104 S.Ct. 1355 (1984).
12. School District of Abington Township v. Schempp, 374 U.S. at 220-23; Engel v. Vitale, 370 U.S. 421, 429-30 (1962).
13. 333 U.S. 203 (1948).
14. 374 U.S. 203 (1963).

*The establishment clause permits neutral, secular instruction **about** religion but forbids sectarian, indoctrinating teaching **of** religion.*

policy: students who chose not to receive religious instruction had to leave their classrooms to pursue secular studies elsewhere in the building. The Court held that this program violated the establishment clause because it employed the force of the state's compulsory education law and public buildings to aid religious groups by providing pupils and facilities to disseminate religious beliefs.[15]

The Supreme Court refined the holding of *McCollum* in *Schempp*, declaring that the establishment clause forbids sectarian, indoctrinating instruction about religion in public schools but permits instruction about religion in a secular, objective, nonindoctrinating manner. The Court stated,

> *[I]t might well be said that one's education is not complete without a study of comparative religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.*[16]

McCollum and *Schempp*, then, establish the ground rules for courses about religion. The establishment clause permits neutral, secular instruction *about* religion but forbids sectarian, indoctrinating teaching *of* religion.

Lower court cases have applied that analysis in actual cases. Those decisions show that courts will permit courses about religion, but only if they satisfy certain criteria of form and content to keep instruction secular rather than sectarian. The most illuminating judicial review of religion courses came in a series of three decisions by a federal district court in *Wiley v. Franklin*.[17] In those cases, the court thoroughly probed the form and content of Bible study courses in public elementary schools in Chattanooga and Hamilton County, Tennessee, in addressing challenges to the courses by parents and students. The *Wiley* trilogy offers a helpful lesson in the constitutional principles governing religion courses.

In the first *Wiley* decision, the court ruled that the courses—similar to the program struck down in *McCollum*—violated the establishment clause. They had been sponsored since 1922 by a voluntary citizens' group called the Public School Bible Study Committee. Committee membership consisted principally of members of evangelical Protestant churches. Local churches donated money to the Committee, and local clergy and lay church leaders played active parts in managing the Committee. The Committee raised funds for and paid Bible teachers' salaries and hired, trained, and assigned teachers.

The only fixed standard for selecting of teachers was a record of previous Bible study; certification was not required. Although the Committee denied that it required teachers to espouse religious faith, the Committee director asked applicants whether they had a "love of God." Local school officials retained authority to supervise and remove teachers.

Classes were taught at each grade level for 30 minutes every week in classrooms other than the students' regular classroom. The courses were given as electives; students were enrolled only with written parental consent. To avoid singling out students who did not elect to take the courses, only half of the students who chose to do so could enroll in a given semester, thereby ensuring that students who did not take the course stayed with the other half of their classmates in a regular classroom.

The Bible Study Committee prepared the curriculum, subject to approval by school officials. The stated objectives of the program were to acquaint students with major Bible characters and stories; with the Bible's contributions to history, literature, art, and music; and with the Bible's role in shaping cultural values. Sample lesson titles included:

15. In the later case of Zorach v. Clauson, 343 U.S. 306 (1952), the Supreme Court held that a released-time program that permitted public school students to leave school during regular school hours for private, off-campus religious training did not violate the establishment clause.

16. 374 U.S. at 225.

17. 468 F. Supp. 133 (E.D. Tenn. 1979) ("Wiley I"); 474 F. Supp. 525 (1980) ("Wiley II"); 497 F. Supp. 390 (1980) ("Wiley III").

First Grade: The Bible: How It Came to Be; The Creation: Part I; The Creation: Part II; Noah; Abraham: Journeys to Canaan; Abraham: Journey into Egypt; Jesus and the Ten Lepers and/or Jesus and the Paralytic; The Feeding of 5000; Family Relationships.

Fourth Grade: The Bible: Archaeology, Geography, etc.; Deborah and Barak; Gideon; Saul Becomes King; Saul and the Amalekites; David Annointed King; David and Goliath; The Crucifixion; The Resurrection; Commitment to One's Beliefs.

In regard to teaching methods, teachers described their goal as letting the Bible "speak for itself." They stressed Biblical storytelling as "the hallmark of classroom instruction," avoiding mere recitation of Bible passages, personal avowals of faith, comments about the beliefs of others, and Biblical interpretation or criticism. Although the Bible Study Committee did not mandate the use of a particular version of the Bible, teachers generally used the King James version of the Old and New Testaments.

The court focused on the form of the program in striking it down under the establishment clause. Applying the three-part test, the court concluded that the Committee's control over the curriculum and selection, training, payment, assignment, and supervision of teachers showed that the program had a religious purpose of promoting Christian beliefs, that it advanced Christianity over other faiths, and that it unduly entangled school officials in the Committee's work. In addition, the Committee director's inquiry of teacher applicants whether they loved God violated the Supreme Court's prohibition in *Torcaso v. Watkins*[18] of tests of faith as a condition of public employment.

The court further concluded that the program's content also violated the establishment clause in two ways. First, some lesson titles appeared to stress religious themes over secular instruction. Second, the philosophy of letting the Bible "speak for itself," without selecting or interpreting passages for secular educational reasons, actually promoted the fundamentalist approach of reading the Bible literally.

In contrast to its ruling in regard to the establishment clause, the court found that the program complied with the free exercise clause. It decided that the

". . . [T]he First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibition of any religious sect or dogma."

facts that (a) the program was elective and required parents' written consent and (b) only half the children were allowed to take the course at any one time adequately protected children from being or feeling coerced into taking the courses.

To correct the constitutional flaws in the form of the program, the court ordered school officials to establish uniform standards for hiring teachers; to exclude profession of religious faith as a condition of employment; and to vest school officials with exclusive control over hiring, training, assignment, and supervision of teachers and curriculum. The court declared that the establishment clause did not bar school officials from accepting funds for the program from the Bible Study Committee or other private sources. To remedy constitutional deficiencies in the content of the program, the court directed school officials to revise the curriculum

> *to eliminate all lesson titles whose only reasonable interpretation and message is a religious message and which lessons are not reasonably capable of being taught within the confines of a secular course in history, literature or other secular subject matter normally included within or recognized as suitable for an elementary school curriculum.*[19]

After *Wiley I*, school officials redesigned the Bible study program within the court's guidelines. The court reviewed their efforts in *Wiley II*. With respect to teacher qualifications, the court approved their proposal to establish qualifications as to college degree, elementary school certification, and training in Bible literature while rejecting a proposal to

18. 367 U.S. 488 (1961).

19. 468 F. Supp. at 152.

authorize the hiring of some teachers with inferior qualifications (for example, teachers who had no college degree and were not certified to teach elementary school). The court also approved school officials' assumption of exclusive control over hiring, training, assignment, and supervision of teachers, suggesting that a teacher-training program include instruction to teachers about the free exercise and establishment clauses.

Turning to the revised curriculum, the court studied the proposed new lesson titles. For example, the sample first- and fourth-grade lesson plans quoted above were changed as follows:

> *First Grade:* The Bible: From Scrolls to Printed Page; Narratives of the Beginning: Earth, Sun, Moon, Stars, Animals, and Man; Adam and Eve in the Garden of Eden; Abraham; Lot, Sodom, and Gomorrah; Belshazzar's Feast; Jesus and the Ten Lepers/Jesus and the Paralytic; Jesus and the Gerasene Swine; The Prodigal Son.
>
> *Fourth Grade:* The Bible: Influence on Sciences; Deborah and Barak; Gideon; David the Musician; David and Jonathan; David As King; Jesus Crucified Between Two Thieves; Reports of the Resurrected Jesus; The Stoning of Stephen.

The court concluded that each lesson could be taught for its secular value, without religious emphasis, except for the fourth-grade lesson entitled "Reports of the Resurrected Jesus." That lesson, the court ruled, would necessarily deal in a religious way with "the central statement of the Christian religious faith"[20] and could not be taught in a secular manner.[21] With respect to teaching methods, the court directed officials to ensure that classes avoid endorsement or criticism of specific beliefs and instead deal only with the objective, nonindoctrinating study of the Bible's relation to history, literature, art, music, and social customs.

In *Wiley III*, the court probed yet further into the content of the curriculum, reviewing tapes of six actual classes. Three lesson covered the stories and historical significance of the battle of Jericho, the establishment of the kingdom of Israel under Saul, and the meaning of "parable" by reference to the New Testament parable of the talents and one of Aesop's fables. Three other lessons dealt with God's punishing the Babylonian King Belshazzar; God's threatening to destroy the Israelites for their worship of the golden calf; and stories of Abraham, including God's promise to Abraham and his descendants of perpetual dominion over Canaan and the destruction of Sodom and Gomorrah for their wickedness.

The court found that the first three lessons were properly confined to nondevotional instruction in Biblical history and literature, given with secular intent and neither advancing nor inhibiting religion as their primary effect. Thus the first three lessons hewed closely to the principles of secular instruction about religion set forth in *Schempp*, in compliance with the establishment clause. In contrast, the court found that the other three lessons improperly were intended to convey religious messages rather than literary or historical messages and that their primary effect was to promote religious doctrine rather than to convey Biblical history or literature in a secular fashion. They ran afoul of the establishment clause by divorcing religion from any secular context and treating Bible stories of divine miracles as factual, historical accounts.

While the *Wiley* trilogy represents the high-water mark of judicial review of public school religion courses, other courts also have addressed the issue. Comparisons among these cases can enhance school officials' grasp of the constitutional principles to govern the courses. In *Hall v. Board of School Commissioners*,[22] the Fifth Circuit Court of Appeals addressed a parent's challenge to an elective Bible literature course in a public high school in Conecuh County, Alabama. The court observed that the textbook for the course followed a fundamentalist Christian approach to Bible study without any discussion of the Bible's secular value. It also noted that the teacher, an ordained Baptist minister and a qualified literature teacher, gave examinations that stressed rote memorizing of the Bible. In view of these problems, the court found that the course failed the second part of the three-part establishment clause test in that the promotion of fundamentalist Christian beliefs would be its primary effect.

20. 474 F. Supp. at 531.

21. Although instruction about New Testament reports of Jesus's resurrection plainly creates a risk of indoctrination, it would appear that the court was unduly pessimistic about the possibility of teaching students about the resurrection story and its role in Christianity and western culture—or, for that matter, about any alleged religious miracle—without either endorsing or criticizing its factual truth.

22. 656 F.2d 999 (5th Cir. 1981).

In *Vaughn v. Reed*,[23] a federal court considered a challenge to a program of religious instruction conducted in certain public elementary schools in Martinsville, Virginia, since 1942. The program's form resembled the structure of the program struck down in *Wiley I:* a private religious group hired and paid instructors to teach religion to third, fourth, and fifth graders in regular classroooms each week for one hour during the school day. The program had an excusal procedure that permitted students who did not wish to take such instruction to attend study hall.

Following *McCollum*, the court held that the program violated the establishment clause because of the private group's control over hiring, payment, and supervision of teachers and the use of public facilities for religious indoctrination. In contrast to *Wiley I's* support of an excusal policy, the court in Vaughn found that the excusal policy itself was evidence that the course was given as religious indoctrination. The court did not review the content of the course, merely directing school officials to follow the guidelines of *Schempp* by avoiding promotion of sectarian beliefs.

In *Crockett v. Sorenson*,[24] the form of a Bible study program offered to fourth and fifth graders in Bristol, Virginia, foundered on the establishment clause. A group of local Protestant ministers hired, paid, and supervised teachers and designed the curriculum. School officials exercised no control over the classes except to monitor attendance. Students attended the classes for 45 minutes each week, receiving no grades or credit. An excusal policy permitted children who chose not to attend the classes to go to study hall or a physical education class. Until 1982, the curriculum called for Bible teaching, prayer, and hymn singing; then prayers and hymns were deleted, leaving a program of Bible instruction and nondevotional music.

Following the lead of *Wiley III*, the federal district court viewed videotapes of the classes and concluded that the lessons were presented objectively in a manner appropriate for the grade levels, without any efforts to indoctrinate students in the tenets of a particular faith. Echoing the position of the Supreme Court in *Schempp*, the court in *Crockett* noted the importance of a grasp of the Bible in studying art, music, literature, and culture—from appreciating the *Last Supper* and the *Messiah* to reading *Moby Dick* and understanding the Biblical sources of common terms in our culture. However, the court found that the control exercised by the ministers had made the courses a state-sponsored religious program, violating the establishment clause. Parting ways with *Vaughn* and joining with *Wiley I*, the court endorsed the elective nature of the program. It observed that even if the course were to shed all trappings of religious education and become fully secular in form and content, requiring a student whose faith forbids even the neutral study of religion to participate in the classes would violate his right to free exercise of his faith.

The court counseled school officials to redesign the program along the following lines: (1) school officials should exercise exclusive control over the program, including personnel matters, curriculum, and textbooks; (2) officials should hire only certified teachers and should not require profession of religious faith as a condition of employment; (3) teachers must teach objectively, without seeking to indoctrinate students; (4) the course should continue as an elective, but students should be offered legitimate academic classes as alternatives; and (5) officials may accept contributions to the program from private sources, if the funds come with no conditions regarding the form or content of the program.

School officials can draw important lessons from these cases. With respect to content, the establishment clause permits instruction about religion for secular educational purposes, using materials that convey religious messages. The *Wiley* cases demonstrate the difficulty of designing a curriculum that will comply with the establishment clause—and the lengths to which courts may go to scrutinize a curriculum. Consider the teaching of Greek mythology as a useful analogy. A teacher in a modern American school could instruct students about Greek myths from the perspectives of literature, art, history, and comparative religion without endorsing or criticizing the religious faith or views of history expressed by the myths. A public school religion teacher should instruct about the Bible or modern Western religions in the same way.

The same principles govern instruction about pertinent religious issues as units of secular courses, such as history, art, music, or literature. For example, religion plainly would be relevant to a course about colonial American history. However, such instruction must pertain directly to a secular purpose. The study of the role of religion in colonial America

23. 313 F. Supp. 431 (W.D. Va. 1970).
24. 568 F. Supp. 1422 (W.D. Va. 1983).

does not open the door to instruction about unrelated religious topics or to religious indoctrination.

With respect to form, courts consistently have struck down programs controlled by private groups in terms of hiring, training, supervising, and assigning teachers and selecting curriculum and textbooks. Courts also prohibit profession of faith as a prerequisite for employment of teachers.

Two issues of form remain unsettled: the elective nature of religion courses and the propriety of private funding of such courses. *Wiley*, *Crockett*, and *Vaughn* show that courts have taken conflicting positions on whether the courses should be offered as electives or, if at all, as required courses. *Wiley* and *Crockett*, which insist on the elective status of such courses, appear most faithful to the dictates of the free exercise clause. As the court observed in Crockett, the free exercise clause protects people from compulsory participation in secular as well as religious activities that impair their exercise of religious faith, such as flag salute ceremonies and military conscription. In the same vein, even if a religion course is conducted as a neutral, secular activity, the free exercise clause should shield a child whose faith opposes such treatment of religion from required attendance of the course.[25]

As to funding, the courts in *Wiley* and *Crockett* ruled that the establishment clause does not bar private funding of religion courses. The *Crockett* court cautioned that such funding may be accepted only with "no strings" attached regarding the form or content of the courses. Despite these judicial blessings of private funding, school officials should consider that such funding might create the appearance of doctrinal support by religious groups. School units that choose to accept private donations for religion courses should heed the warning in *Crockett* and adopt policies that insulate the courses from any influence by donors.

25. While a policy of excusal from religion courses may be constitutionally required to protect the free exercise rights of some students, it is important to consider the limits to a right to excusal from public school activities. There might well be circumstances in which excusal would excessively interfere with a student's education. Exemption from a course peripheral to public school instruction, such as Bible study, would not significantly interfere with a student's education. *See, e.g.*, Spence v. Bailey, 465 F.2d 797 (6th Cir. 1972) (granting exemption from public school ROTC program on religious grounds). However, exemption from an entire course or substantial segments of a course more central to the educational purpose of public schools, such as biology or history, or from use of an entire textbook used in a course could jeopardize the quality of a student's education. In such instances, a court might rule that the state's interest in educating a child outweighs the burden on the child's religious beliefs. *See* Williams v. Board of Educ., 388 F. Supp. 93 (D. W. Va.), *aff'd mem.*, 530 F.2d 972 (4th Cir. 1975); Mozert v. Hawkins County Pub. Schools, 579 F. Supp. 1051 (E.D. Tenn. 1984); Davis v. Page, 385 F. Supp. 395 (D.N.H. 1974). At that point, a parent's only remedy would be to enroll the child in a private school with a curriculum more in harmony with the family's faith.

Religious objections to the secular curriculum

Evolution and creationism. Controversies over religious objections to secular curriculum generally have arisen concerning two topics—evolution and sex education. The conflict over instruction about the Darwinian and Biblical accounts of the origin of man has taken several forms: efforts to prohibit the teaching of evolution, measures to require teachers or textbooks that discuss evolution to give "equal treatment" to the Biblical account, and attempts to require teachers who instruct about evolution to disclaim it as "mere" theory rather than scientific fact. Analysis of these disputes calls for a grasp of the dynamic relationship between the establishment and free exercise clauses.

Efforts to prohibit the teaching of evolution captured nationwide attention in 1927 through the "monkey trial" of *Scopes v. State*.[26] In that case, a teacher was convicted at trial of violating a Tennessee statute by teaching about evolution. His conviction was reversed on appeal by the Tennessee Supreme Court because of a technicality, but the court upheld the law's constitutionality. Not until 1968, in *Epperson v. Arkansas*,[27] did the U.S. Supreme Court finally and decisively address the constitutionality of statutes that prohibit teaching about evolution. In *Epperson* the Court held that an Arkansas statute that prohibited instruction about evolution in public schools violated the establishment clause because it imprinted a government stamp of fundamentalist doctrine on public school education, thereby promoting such doctrine. As the Court observed,

> *The overriding fact is that Arkansas' law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group.*[28]

The Court then explained, "There is and can be no doubt that the First Amendment does not permit the

26. 154 Tenn. 105, 289 S.W. 363 (1927).
27. 393 U.S. 97 (1968).
28. *Id.* at 103.

State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma."[29]

In *Wright v. Houston Independent School District*,[30] a group of parents and students sought to prohibit the teaching of evolution through a court injunction rather than by statute. However, the court ruled that *Epperson* bars a court, as well as a legislature, from prohibiting instruction about evolution. To avoid the force of *Epperson*, the plaintiffs put a novel twist on the debate, arguing that teaching the theory of evolution establishes a religion of "secular humanism," in violation of the establishment and free exercise clauses. Their view—that the neutral, value-free treatment of religiously sensitive issues in secular courses is a basic tenet of an atheist, relativist faith known as "secular humanism"—is a keystone of contemporary religious challenges to secular education.

The court rejected the plaintiffs' argument. Analyzing their contention under the three-part establishment clause test, it ruled that teaching about evolution does not serve a religious purpose, promote religious beliefs, or unduly entangle government in religion. It further explained, "Science and religion necessarily deal with many of the same questions, and they may frequently provide conflicting answers . . . . Teachers of science in the public schools should not be expected to avoid the discussion of every scientific issue on which some religion claims expertise."[31]

The court also rejected the plaintiffs' alternative proposal for an injunction directing teachers who instruct about evolution to give equal time to the Biblical account of creation. Commenting that a court is not qualified to strike a balance among the many views of human origins held by various faiths, it termed the proposal an "impractical, unworkable and ineffective" remedy.

Finally, the court disagreed with the plaintiffs' position that instruction about evolution violates the free exercise rights of students whose religious faith endorses creationism. The free exercise rights of such students, the court ruled, can be protected adequately by an excusal policy that exempts them from instruction about evolution.

While the *Wright* court rejected a balanced-treatment proposal as impractical, a federal district court in *McLean v. Arkansas Board of Education*[32] examined the idea more deeply to find theoretical flaws in a statute that mandated balanced treatment of evolution and "creation-science." Scientific creationism, the court explained, was first promoted by fundamentalist groups in the 1960s; it is based on the view that scientific evidence supports the Biblical view of the creation of the universe and the origin of man.

Assessing the statute under the three-part establishment clause test, the court first found that it had an impermissible purpose of endorsing religious doctrine. In reaching this conclusion, the court examined the religious motivation of the law's sponsors. It also studied the statute's content, concluding that scientific creationism is a theory designed to support the Biblical account of creation and the origin of man, even though its proponents often avoid express reference to God or the Bible.

The court also found that by requiring instruction about religious doctrines, the statute advanced religion. The court further examined evidence that purportedly supports the scientific status of scientific creationism; it determined that creation science is not a genuine scientific theory—and therefore lacks secular educational value—because its principles fail to satisfy the basic criteria of scientific theory: (1) guidance by natural law; (2) reference to natural law to explain phenomena; and (3) offering of tentative hypotheses subject to empirical verification. Since instruction in creation science would advance religious doctrine without serving secular educational goals, the court ruled that it would fail the second prong of the establishment clause test in that advancement of religion would be its primary effect. In accord with *Wright*, the court ruled that the theory of evolution is a scientific theory rather than a religious doctrine and, therefore, instruction about evolution does not violate the establishment clause.

Finally, the court held that the statute failed the third part of the establishment clause test by unduly entangling school officials in religion. Such entanglement would stem from the impossibility of designing a balanced-treatment curriculum while avoiding reference to religion.

Another strategy for opposing the teaching of evolution has been to require teachers and textbooks

29. *Id.* at 106.
30. 366 F. Supp. 1208 (S.D. Tex. 1972).
31. *Id.* at 1211.
32. 529 F. Supp. 1255 (E.D. Ark. 1982).

to qualify evolution as mere theory rather than as proven fact. The court in *Daniel v. Waters*[33] addressed the constitutionality of a Tennessee statute that required biology textbooks to give equal treatment to evolution and the Biblical account of creation and the origin of man and expressly to label evolution as mere theory. Significantly, the statute exempted the creation story in the Book of Genesis from such a disclaimer. The court ruled that the combined effect of the equal treatment and disclaimer requirements violated the establishment clause by giving the Biblical version a preferential position over scientific theories of the origin of man.[34]

As these decisions show, the case law governing the controversy over evolution and creationism in the public school curriculum exhibits striking unanimity. Beginning with *Epperson*, courts uniformly have rejected attempts to exclude the theory of evolution from the curriculum or to dilute it. Courts regard such efforts as intrusions into the curriculum that are prompted by religious motives, in violation of the establishment clause. In light of *Epperson* and *Wright*, school officials should note that the establishment clause forbids such government intrusion in any form, whether by statute, court order, or school board policy.[35]

A key feature of these cases is the firm distinction drawn between scientific theory and religious doctrine, a distinction that merits further discussion. As noted above, opponents of instruction about evolution often charge that the theory of evolution is a tenet of an atheist faith of secular humanism. At first glance, this view appears to gain support from a comment by the Supreme Court in *Schempp*, "that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion and thus preferring those who believe in no religion over those who do believe."[36]

However, the Court's statement prohibits only *indoctrination* about atheism through public instruction; it does not bar teaching of secular theories merely because they conflict with particular religious doctrines. As the Supreme Court stated in *Epperson*, five years after *Schempp*, the First Amendment "forbids alike the preference of a religious doctrine or the prohibition of theory which is deemed antagonistic to a particular dogma."[37] In short, the bare fact of conflict between secular and religious views on the same issue does not transform the secular theory into religious doctrine.[38]

Although the establishment clause shields instruction about evolution from religious opposition, the free exercise clause should alert school officials to the serious, genuine concerns of some parents and students who believe that exposure to such instruction would undermine the students' religious faith. As noted in *Crockett*, the secular nature of a topic does not insulate it from conflicts with students' free exercise rights. The appropriate remedy for students who do not wish to learn about evolution because of their religious beliefs, as the court suggested in *Wright*, is an excusal policy that exempts those students from classes that teach about evolution.[39]

Sex education. Disputes concerning sex education courses generally have taken the form of lawsuits in which parents, students, or taxpayers seek court injunctions against the courses. The results follow the pattern of the evolution cases: courts have held that

33. 515 F.2d 485 (6th Cir. 1975).

34. The court also ruled that the establishment clause barred a provision of the statute excluding "occult" or "Satanical" beliefs from religious beliefs entitled to balanced treatment, leaving the Genesis account of creation potentially as the sole religious account so entitled. Such distinctions among religious views, the court ruled, would cause excessive government entanglement with religion.

35. Principles of academic freedom, based on the free-speech clause of the First Amendment, should protect the right of individual biology teachers to discuss, without either approval or criticism, the Biblical account of creation for the secular purpose of introducing students to alternative theories. Academic freedom, however, would not entitle a teacher to refuse for religious reasons to teach about evolution in defiance of a curriculum adopted by his superiors. *See generally* Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967).

36. 374 U.S. at 225.

37. 393 U.S. at 106-7.

38. *See also* Crowley v. Smithsonian Inst. 636 F.2d 738 (D.C. Cir.). A number of decisions articulating definitions of "religion" under the First Amendment lend support to this view. *See, e.g.*, United States v. Seeger, 380 U.S. 163, 165-66, 176 (1965) (religion means a "sincere and meaningful [belief that] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God," a belief "based upon a power or a being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent"); Malnak v. Yogi, 592 F.2d 197 (3d Cir. 1979) (per curiam) (Adams, J., concurring) (religion generally entails belief in ultimate truths about comprehensive issues in life, along with practice of symbolic rituals). However, as the Supreme Court ruled in *Seeger*, religion within the meaning of the First Amendment can include an atheist faith that plays a role in a person's life equivalent to the role served by theistic faith.

Significantly, such definitions of religion do not include science, an enterprise confined to understanding patterns among observable phenomena by reference to natural principles. Of course, a teacher conceivably could use the theory of evolution (or other secular theories) in an improper way to advance atheism and criticize Judaism and Christianity by citing the theory of evolution as an example of a secular theory superior to Biblical views. Such a use of evolution as a weapon in the conflict between atheism and theism would violate the prohibition in *Schempp* against the establishment of secular humanism as a religion.

39. But see note 25 *supra*, discussing the limits of a right to excusal under the free exercise clause.

the establishment clause protects the courses from such opposition, and that excusal policies adequately protect the free exercise rights of students who oppose the courses for religious reasons. Significant sex education cases include *Smith v. Ricci*,[40] *Citizens for Parental Rights v. San Mateo County Board of Education*,[41] *Medeiros v. Kiyosaki*,[42] and *Cornwell v. State Board of Education*.[43]

Citizens for Parental Rights v. San Mateo County Board of Education is a representative and instructive case. A group of parents brought suit to enjoin the implementation of family life and sex education programs by five local school districts. The programs had excusal policies that exempted students who opposed the courses. The plaintiffs challenged the program on several grounds, including the free exercise and establishment clauses.

The court held in favor of the school districts. In response to the plaintiffs' contention that the courses violate their children's free exercise rights by coercing them to learn about sexual matters in ways that conflict with their religious beliefs, the court stated that the establishment clause, as interpreted in *Epperson*, prohibits school officials from tailoring instruction to anyone's particular religious doctrine. To enjoin sex education, as the plaintiffs' requested, would enshrine the plaintiffs' faith as law by using the court to ensure that public school curriculum conforms to their beliefs. The court concluded that an excusal policy would adequately protect the free exercise rights of parents and students who oppose sex education for religious reasons.

The court also rejected an establishment clause argument analogous to the contentions about evolution that were rejected in *Wright* and *McLean:* that the sex education program would establish secular humanist religious beliefs concerning morality, family life, and reproduction that are hostile to the plaintiffs' religious beliefs. In response, the court observed that the sex education curriculum treats these topics neutrally, from the viewpoint of public health, without advocating any opinions about them. In fact, the curriculum directs teachers to refer students to their parents for specific advice and instruction. The court explained that the mere clash between secular sex education and the plaintiffs' religious beliefs does not convert the secular program into a state-supported religious doctrine in violation of the establishment clause. The opinions in *Smith*, *Medeiros*, and *Cornwell* follow similar analyses to reach the same holdings.

40. 89 N.J. 514, 446 A.2d 501 (1983).

41. 51 Cal. App.3d 1, 124 Cal. Rptr. 68, (1975), *appeal dismissed*, 425 U.S. 908 (1976).

42. 52 Haw. 436, 478 P.2d 314 (1970).

43. 314 F. Supp. 340 (D. Md. 1969), *aff'd*, 428 F.2d 471 (4th Cir.), cert. denied, 400 U.S. 942 (1970).

Conclusion

In the realm of First Amendment case law, court decisions governing the role of religion in public school curriculum exhibit rare consistency. This uniformity offers school officials a valuable opportunity to distill coherent, practical lessons from court opinions. The establishment clause permits any instruction—including instruction about the controversial topics of religion, evolution, and sex education—that, by virtue of its form and content, serves secular educational goals. However, it forbids instruction or the tailoring of instruction with the purpose or primary effect of instilling religious beliefs in children. Although the free exercise clause protects parents and students who oppose such secular courses, their sole remedy under that clause is partial or total exemption from the courses, not abolition or dilution of them. pg

Correction: The Summer 1984 issue of Popular Government carried an article entitled "Child Support in North Carolina." The legislative update that appeared in that article mistakenly said that the date on which counties must assume responsibility for administering the Child Support Enforcement Program is January 1, 1985. The date is July 1, 1985.

Hayman Receives the Stephen B. Sweeney Award

Donald B. Hayman, an assistant director of the Institute of Government for the past 36 years, has been honored by the International City Management Association for his contribution to local government management education. At its annual conference in San Antonio in September, the ICMA presented Hayman with its 1984 Stephen B. Sweeney Award. The award is presented each year to an academic leader or educational institution that has contributed significantly to the formal education of students who are pursuing careers in local government management.

At the Institute, Hayman has specialized in public administration and personnel administration. He developed and directs the Institute's 90-hour Basic Personnel Administration course. Hayman, who also teaches in the Department of Political Science at UNC-CH, was one of the founders of the Master of Public Administration program, offered by the Political Science Department and the Institute of Government. In addition to teaching courses in that program, he has been chiefly responsible for its internship placement work. Since 1965 some 230 graduates of the program have been placed in state and local government.

For the past 22 years Hayman has directed the Institute's annual summer intern program, in which undergraduate students who are interested in a public service career work in a variety of state offices to see up close how state government works.

Hayman was one of the founders of both the Institute's Municipal Administration course in 1953 and its County Administration course 10 years later. Almost 2,000 local government administrators have completed these 165-hour courses since they were started. Hayman is responsible for a major portion of the teaching in these courses and in many others offered by the Institute.

Throughout his work at the Institute, Hayman has sought to increase the University's services to state and local government. His own writings and research in public and personnel administration have afforded the basis for extensive consultation to public officials. In particular, he has helped more than 150 North Carolina cities and counties as they have instituted the manager form of government.

In his years of work for local government from a university base, Hayman's career parallels in many respects that of Stephen B. Sweeney, in whose name the ICMA award is presented. Sweeney is Dean Emeritus of the Fels Institute of State and Local Government at the University of Pennsylvania.

BOOK REVIEW

Express Lanes and Country Roads: The Way We Lived in North Carolina, 1920-1970.

Thomas C. Parramore. Chapel Hill: The University of North Carolina Press, 1983. 110 pages.

This fifth and final volume in the *The Way We Lived* series presents challenging insights and interpretations of "the most dynamic half-century in North Carolina history." The text is illuminated by a fascinating variety of photographs of life during that period. For one who lived through those years in North Carolina, the chosen verbal descriptions and pictorial images revive a flood of memories, a sense of appreciation, and—perhaps inevitably—a covey of questions relating to selection, interpretation, balance, and omissions.

Make no mistake about it: the volume has many virtues. The text covers the economic, political, and social history of the state with a broad range of facts and figures, events and people, movements and analysis. It catches life, quality, and directions with a sense of the ebb and flow of history and the forces that mold it. The canvas moves easily from country to city, Coastal Plains to Piedmont to Mountains, tobacco to textiles to furniture to tourism. Industry, agriculture, finance, press, education, religion, and culture are treated, separately and commingled, with brush, scalpel, or mallet. The pictures present a panorama of buildings, animals, events, and people, ranging from Mattamuskeet Lodge to a Wilson Tobacco warehouse to the Burroughs Wellcome plant in the Research Triangle, from a tractor to a general store to Thomas Wolfe's Asheville home, from a plain pig to a mud-bogged model T, from Jane McKimmon, Pauli Murray, and Ella May Wiggins to Dr. Clarence Poe, Spencer Love, Berry O'Kelly, W. O. Saunders, Billy Graham, and the State Supreme Court.

The sum is an interesting and exciting revival, replay, and reinterpretation of a complex era. The potpourri is never dull, always stimulating; yet in the attempt to cram so much into relatively few pages there are pitfalls not easily avoided.

Although insights into the tradition, character, and prospects of regions and municipalities abound and contain undeniable validity, they do not quite match the "inside" awarenesses of farm life that dot the sod-busting "hog and hominy" sections. Apparent slights and omissions point up the problem of condensing a plethora of materials and choices. Amid the sea of names, of varying familiarity and importance in the fifty-year history of the State, I looked in vain for Frederick H. Koch, Charles L. Coon, Gertrude Weil, Benjamin Swalin, Charles Kuralt, and Robert C. Ruark, among others. Yet to discuss the state's development without mention of such groundbreakers and centerpieces as Koch and the Carolina Playmakers, Swalin with the North Carolina Symphony, Weil in in Women's Leadership, and Kuralt and Ruark among the named press is to underline the dangers of exclusion.

In a "social history," government and political figures may be treated peripherally, yet the gloss is so restrictive as to invite query. For example, although Governors Cameron Morrison, O. Max Gardner, W. Kerr Scott, William B. Umstead, Luther Hodges, and Dan K. Moore are cited briefly for their various roles with regard to the state's labor-management, road-building, industrial, and educational crises and movement, Governor Terry Sanford and his leadership in educational advance seems to have been slighted, and such Governors as Melville Broughton and Gregg Cherry are missing. Similarly, references to the state's congressional delegations, legislative leadership, and local officials are almost negligable. By contrast, evangelist 1920-30s Mordecai Ham is given text treatment and a full-page photograph, and Junior Johnson, the Pettys, and stock-car racing rate a couple of paragraphs.

Some perspectives seem narrow or limited. For example, the citing of W. H. Belk and Paul Rose as leading tradesmen leaves untold the battle between the chain stores, whose spread these merchant "princes" exemplify, and the many local department store owners who were bulwarks in their communities but preferred to compete for business independently rather than to accept, even in depression, tempting partnership or purchase offers from the spreading chains. Use of the Smith-Graham campaign results as proof of the state's innate conservatism and "fragility of liberalism" in North Carolina can be supported by enough evidence to invite easy acceptance, especially in these times; but the state also has a strong tradition of Populism and liberal inclinations and leadership (not just in Chapel Hill) that could leave the validity of any bald assertion to time, circumstance, and the future. The statement that the political career of Jesse Helms proved that a local radio commentator could be elected to high office in the state cannot be challenged for truth but seems to elucidate the obvious. Certainly Helms's air exposure brought name recognition that helped

his campaign, but opportunistic use of Nixon's coattails and ineffective campaigning by the opposition also were major factors in his success at the polls. And confining the application of basketball "fanaticism" to supporters of the University of North Carolina at Chapel Hill would seem to slight backers of teams in West Raleigh and West Durham.

These reservations are illustrative: but were all considered in breadth, they probably would not seriously diminish the inherent worth of Mr. Parramore's work. If his decisions as to selection, emphasis, and interpretation sometimes cause question, his research, perceptions, and writing provide a skillful albeit crowded tapestry of a crucial recent half-century in the Old North State. He has used his sources—including Thomas Wolfe, Jonathan Daniels, Hugh Lefler, William Powell, Albert Coates, and a half-hundred others—with discretion and has drawn astutely on personal experience, observation, and captioned pictures to flesh out his findings and to give them life and substance. If the sum does not always seem in exact balance or proportion, we are still substantially in his debt.—**Elmer O. Oettinger**

Recent Publications of the Institute of Government

North Carolina Legislation 1984: A Summary of Legislation in the 1984 General Assembly of Interest to North Carolina Public Officials. Edited by Robert P. Joyce. 1984. $6.00.

This comprehensive summary of the General Assembly's enactments in public law and administration during the 1984 legislative session is written by Institute faculty members who are experts in the respective fields touched by the new statutes.

Form of Government of North Carolina Counties. Compiled by Joseph S. Ferrell. 1984. $4.50.

Shows the number of commissioners, the term of office, mode of election, and other information for the boards of commissioners in all 100 counties.

Notary Public Guidebook. Fifth edition. By William A. Campbell. 1984. $4.00.

This publication examines the authority and responsibility of notaries public. It includes chapters on taking acknowledgments and depositions and on administering oaths.

North Carolina Marriage Laws and Procedures. Second edition. By Janet Mason. 1984. $1.50 ($1.00 when 50 or more are ordered).

This little book summarizes North Carolina law relating to capacity to marry and requirements as to health certificate, license, and ceremony. It provides a checklist for those about to marry and for those who may perform the marriage ceremony.

Orders and inquiries should be sent to the Publications Office, Institute of Government, Knapp Building 059A, The University of North Carolina at Chapel Hill, N.C. 27514. Please include a check or purchase order for the amount of the order, plus 3 per cent sales tax (4½ per cent for Orange County residents). A complete publications catalog is available from the Publications Office upon request.

POPULAR GOVERNMENT
(ISSN 0032-4515)
Institute of Government
Knapp Building 059A
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27514

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