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INNOVATIONS IN North Carolina Prisons

New ways of deciding where inmates will be assigned to prison, and what privileges and programs will be available to them....New ways of involving families in inmates' rehabilitation....New in-service training.

Michael R. Smith

What *should* happen to a convicted criminal after he enters prison? Perhaps society's demand for punishment should be satisfied by leaving him in a cell to mark Xs on the wall until his release. Keeping convicted criminals out of circulation presumably makes society safer. But the prison system has been asked to do more. Prisons are expected to somehow change inmates and reduce the possibility of future criminal behavior by them. Inevitably, in trying to meet those expectations prison officials confront various obstacles. Their choices are limited by concerns about prison security and the safety of the community. The level of funding also shapes the services available to inmates and the conditions of their confinement. In addition, prison officials always must accommodate the constitutional rights of inmates.

The North Carolina Division of Prisons must balance the often contradictory purposes of criminal punishment and weave them into a coherent policy. In 1981 Rae H. McNamara was named Director of Prisons and became directly responsible for striking that delicate balance. She approached that assignment by asking what happens to inmates in prison, why it happens, and whether it should continue to happen. Task forces composed of prison officials from across the state were directed to take a fresh look at various issues in prison administration. This article examines some of the more significant recommendations from those task forces. Many reflect new approaches to prison administration, and they will influence the treatment of inmates for years to come.

Let's base our discussion on Wilson Doyle, a fictitious character who was caught stealing a valuable bracelet from the counter of a jewelry store at College Mall. He was convicted of felonious larceny and sentenced to three years in prison. Doyle, a 28-year-old black, is married and has an eight-year-old daughter. He is an alcoholic and has a serious heart condition. His wife, Helen, is six months pregnant with their second child. Although Doyle had never been in trouble with the law before, the judge gave him an active prison sentence. Helen is confused and shocked.

Classification of prisoners

Each prison specializes in confining inmates according to their need for security and supervision. For example, maximum custody prisons (concrete and steel facilities with electronically controlled doors and other security devices) confine inmates who pose the greatest threat to security; other inmates are confined in medium or minimum custody road camps that require less security. An inmate's custody status is based on his predicted level of dangerousness and his need for supervision. Wilson Doyle must be evaluated and given a custody status before

The author, an Institute faculty member whose fields include jail law, wishes to thank Hallie Wilson for her help with this article.

he is assigned to a prison unit. That process is called inmate classification. Doyle will be sent to a prison diagnostic center to be evaluated. The diagnostic staff will test and interview him to assess his dangerousness and his overall correctional needs. Its predictions, along with information from other sources, will be used to assign Doyle to one of North Carolina's ninety prison units.

Recognizing that the inmate classification system is the linchpin of the prison system, McNamara assigned a task force to evaluate it. The importance of Wilson Doyle's classification cannot be overstated. His classification determines not only *where* he will be confined but also *how* he will be confined. A maximum custody inmate is held under tight security because he is considered dangerous. He therefore has little freedom and few privileges. A minimum custody inmate, on the other hand, has much more freedom and a greater chance to participate in prison programs, including community programs like work release, study release, and family visits.

The task force started from scratch and developed a basic philosophy of inmate classification. Experienced prison officials tried to identify and balance the most important factors in classifying inmates. The task force concluded that inmates should be classified at the least restrictive custody level needed to insure the safety of the community, prison staff, and the other inmates. At the same time an inmate's classification should maximize his opportunity to participate in rehabilitation programs that might improve his chance of succeeding outside prison.

The basis. After deciding how inmates ideally should be classified, the task force assessed whether the existing classification system satisfied their objectives. It did not. The system fell short largely because inmate classification was based on the subjective impressions of prison officials. Unarticulated biases and inconsistent value judgments heavily influenced classification decisions. Prison officials also placed entirely too much emphasis on two factors: the nature of the inmate's crime and the length of his sentence. But those factors by themselves do not necessarily indicate which inmates pose the greatest threat to the safety of the public, prison staff, and the other inmates. Inmates who remain dangerous and a threat to security should be housed in the most secure cells and have the fewest privileges. The narrow focus of the old system did not necessarily identify those inmates. The task force concluded that inmate classification was too important to be left completely to the subjective judgments of prison officials. A system based on a range of objective factors was needed to increase reliability and consistency in classification decisions made throughout the prison system.

The task force set out to develop such a system. In doing so, it had to decide on the objective factors that would form the basis of the system. Though it was agreed that the nature of an inmate's crime should remain an important factor in his classification, the problem was how to supply standard values for different crimes. Then a solution appeared. In 1981 the General Assembly had adopted a sentencing scheme for criminals that grouped felonies into classes according to their seriousness. Why not provide that inmates convicted of crimes in the same sentencing class must be treated the same for classification purposes? By requiring prison officials to follow the General Assembly's judgment of a crime's seriousness rather than their own subjective view, the task force assured that inmates convicted of the same or similar crimes would be more likely to receive the same consideration in classification.

The task force concluded that the nature of an inmate's crime and its seriousness should be only two of the objective factors that influence classification. For example, it decided that a first offender like Doyle should be classified differently from an inmate with a prior criminal record. An inmate who steals something while on parole from an earlier armed-robbery conviction is probably more dangerous than Doyle and should be assigned to a more secure prison. The inmate who has an extensive criminal record is even more dangerous. An inmate's classification also should be influenced by other criminal charges that may be pending against him.

Another useful piece of information for classification purposes is the conduct record of an inmate who has been in prison before. What if he tried to escape the last time he was in prison? What if he assaulted guards or fellow inmates and violated other prison conduct rules? The task force agreed that such an inmate should be classified differently from someone who was a model prisoner.

Whether an inmate's crime involved violence is another factor that the task force thought should influence his classification. For example, Doyle stole a valuable bracelet from the counter of a jewelry store and was convicted of larceny. But he is not nearly so dangerous as an inmate convicted of the same crime who also mugged someone. Doyle's physical condition is another factor to be considered in determining his custody status.

The task force ultimately modified the classification system largely on the basis of those objective factors and others. The system works like this. Each relevant factor is assigned a standard point value. Doyle will receive the standard number of points assigned to a conviction for felonious larceny. An inmate who has been in prison before will accumulate extra points for those past con-

victions. Even more points will be added to his total if his prison record shows that he tried to escape or attacked someone. An inmate's point total roughly indicates his level of dangerousness and dictates his custody classification. The higher his point total, the more secure his custody status.

A standard classification form is used to document which objective factors are present for each inmate. That factual record permits other prison officials to review the reasons for an inmate's custody assignment and makes consistent classification decisions more likely. Each classification decision also includes a conference with the inmate; he has an opportunity to comment on the proposed classification decision, and he is told what he must do for promotion to a less restrictive custody level. An inmate's custody classification no longer will be the result of a prison official's totally subjective opinion, although individual judgment is not ruled out completely. The more objective system has also improved efficiency in classifying inmates: a single staff member completes the standard classification form and replaces a committee of staff members who spent most of their time making classification decisions.

Common sense and fairness inevitably require some classification decisions to be influenced by subjective factors. Recognizing that fact, the task force built an element of flexibility into the system. Under exceptional circumstances prison officials may override the classification assignment dictated by an inmate's objective point total. For example, the average inmate committed to prison for felonious larceny, like Doyle, will receive the three-year sentence that is standard for that crime. But a felonious larceny conviction may carry as much as a ten-year sentence if the judge finds that there were aggravating factors, such as injury to the victim, that made the crime more serious; the sentence may be shorter than the standard term if he finds mitigating factors that make the crime less reprehensible. Prison officials may override the results of an objective classification and recommend a different custody assignment for an inmate who receives an extremely long or short sentence.

Consider some other factors. Doyle's heart condition may require special medical attention that is not available at every prison. Regardless of the custody assignment suggested by the objective classification factors, Doyle may have to be assigned to a prison with a full-fledged hospital. A former police officer who is sent to prison may be assigned a more secure custody status not because his objective point total indicates that he is dangerous but because he needs the protection that secure custody will give him. The reasons for overriding an inmate's objective classification must be documented on the classification form. The override feature gives prison officials flexibility in classifying inmates, but the emphasis on documentation and review helps insure that the feature will not be abused.

Consider our inmate's wife...ignorant of the prison system, with a child to care for, pregnant, broke. What is her frame of mind?

Reclassification. The system of classifying inmates also includes reclassification. An inmate's custody status will be reviewed regularly following his commitment to a prison unit. The new classification system makes an inmate's dangerousness and need for secure custody the crucial factors in his custody assignment. An inmate will remain in at least medium custody under armed supervision as long as the objective factors indicate that he is dangerous. But the primary goal of the task force was to classify inmates by balancing their dangerousness with their need to participate in rehabilitation programs. An inmate's dangerousness always remains a factor in classification; but if he is promoted to minimum custody, greater weight is given to program considerations. Once it is decided that an inmate is safe enough for promotion to minimum custody, the classification decision shifts its focus to his suitability for prison programs.

Assume that Wilson Doyle is assigned to a minimum custody prison. How he will be treated in minimum custody will depend on his readiness to participate in programs and his need for supervision. Doyle's progress through the three levels of minimum custody will depend on his success in programs at each preceding level. For example, the most restrictive minimum custody status (Level One) permits Doyle to work away from the prison, but only under the direct supervision of prison employees. If he succeeds at this level, he will graduate to a less restrictive custody status (Level Three). At that level, he will be eligible for unsupervised activities away from the prison, like work release, study release, and family visits.

The response to violations of prison conduct rules should be improved by the new objective system. Inmates who violate conduct rules often are punished by reclassification to a more restrictive custody level. The result is more secure custody and a loss of privileges for

the inmate. The old system produced inconsistent results because there were no objective standards. For example, if Wilson Doyle had been found with a marijuana cigarette in prison, his punishment might have varied depending on what prison unit he was in. Prison officials simply made personal judgments about the seriousness of a rule violation, and those judgments varied between prisons in one part of the state and another, and even between prisons in the same region. But now the objective classification system limits the discretion of prison officers by assigning standard point values for infractions of rules. Two prisoners who commit a similar infraction now will receive similar treatment in classification.

In-service training for prison employees

Larry Barnes is a hypothetical 25-year-old correctional officer at Wilson Doyle's prison unit. He has worked for three years with the Division of Prisons. Barnes received 160 hours of basic training at the North Carolina Justice Academy before he started work, but since then he has received virtually no training. From time to time short training sessions have been offered at the prison to cover legal developments or changes in prison policy. Barnes's schedule permitted him to attend only one of the sessions, and that was nearly two years ago. Any questions he has about prison policies and procedures usually are answered by more experienced fellow correctional officers. The prison superintendent, Bob Johnson, started years ago as a correctional officer and has gradually worked his way up to his current position. Largely because of his leadership skills, Johnson was promoted to superintendent, although he has never received formal management training.

McNamara realized soon after she became Director that the Division of Prisons had no organized in-service training program for any of its employees. Initial meetings with prison supervisors indicated that they were also concerned about the inadequate training system. In response, McNamara made employee development a major goal of her administration and assigned the matter to the task force on employee development and training for study. The task force rejected the notion that the basic training course for correctional officers was an educational inoculation that could last a professional lifetime. Instead, it determined that a comprehensive in-service training program was needed for all levels of personnel—correctional officers; prison program staff; medical, psychological, and educational personnel; and supervisors—to maintain high-quality care and custody of inmates.

After deciding the subject-matter areas in which in-service training was most needed, the task force asked prison officials to draw on their reservoirs of practical experience and design a formal curriculum composed of short courses and seminars. A standard lesson plan was developed for each course to help guarantee that the course would be taught in a consistent manner at the various regional locations across the state. What prison administrators then needed was a ready description of the curriculum in order to plan the in-service training of their staff. For example, Superintendent Johnson needed to know what, when, and where training would be available. To permit advance planning by prison superintendents, the standardized curriculum was translated into a training calendar that describes each course and indicates when it will be offered at various locations. Finally, an emphasis on regional training and the use of qualified prison employees as instructors limited the annual total cost of the training program to an affordable level (less than $9,000).

How is it determined which prison a newly sentenced inmate will be sent to?

Today's correctional officers need many special skills. The in-service training program now available to prison employees offers them a wide range of instruction in the areas crucial to successful prison administration. For example, suppose a fight breaks out in the exercise yard and another inmate stabs Wilson Doyle with a homemade knife. A correctional officer often will be the first person to respond to such a medical emergency. Although professional medical services are available at each prison, Officer Barnes's knowledge of emergency first-aid treatment and his ability to stop the bleeding may mean the difference between Doyle's life and death. Each prison now must offer its correctional officers an emergency first-aid course (including CPR—cardiopulmonary resuscitation) at least twice a year. Officer Barnes may also take a course on human behavior or on mental illness. Skills learned in those courses may help him identify and respond to behavioral problems before they become dangerous. The superintendent of each prison also must conduct a monthly review of the emergency procedures applicable at his unit. For example, Officer Barnes will receive detailed and up-to-date explanations

of the procedures to be followed in a prison riot, a dangerous fire, or an escape.

It is important to remember that inmates' constitutional rights do not evaporate when they enter prison. In fact, inmates lose only those rights that pose a direct threat to prison security. The federal courts continuously define the nature and extent of inmates' rights by deciding lawsuits challenging prison procedures and conditions of confinement. How does Officer Barnes find out about a federal court decision that limits how correctional officers may treat inmates? Take a recent example. A federal court in North Carolina decided that correctional officers used excessive force in removing an inmate from his one-man cell after a disturbance. His constitutional rights were violated when they used high-pressure water hoses, mace, and billy clubs to remove him. Officer Barnes has heard his fellow officers comment about the decision, but many of those comments were based on sheer speculation, and they tell him little about the significance of the decision. Officer Barnes needs reliable information about how the decision limits his ability to use force against inmates. He wants to maintain secure custody of inmates without violating their constitutional rights. The in-service training program requires each prison to offer a two-day refresher course four times a year for experienced correctional officers. In those courses Officer Barnes will learn about relevant court decisions and significant changes in prison procedures.

At Director McNamara's suggestion, in-service training was extended to all levels of prison employees. A highlight of the program is the development of intensive training to improve the supervisory skills and administrative competence of prison supervisors. In many ways, a prison superintendent's management skills determine whether the overall goals of criminal punishment are satisfied. In addition to his responsibility for custody of inmates, Superintendent Johnson administers a complex organization with many employees and a substantial budget. His job is made more difficult by concerns about prison security that influence virtually every management decision. Yet the development of his management skills has been left to chance. A series of management courses available through state and federal agencies, along with new courses especially for prison managers, now will be available to improve Superintendent Johnson's management and leadership skills.

Family involvement

Put yourself in Helen Doyle's shoes for a moment. Pregnant and left alone with her little girl, Helen suddenly has to cope with all of the family's problems. And now there are a lot more problems. Wilson's lawyer did not explain the judge's sentence to Helen, and she wonders whether he actually will be away the entire three years.

Increasing complexity in prison administration and law makes it essential for prison officials and correctional officers to increase their skills and to keep up to date on current practice and policy.

Is there any chance of an early release? Helen wants to visit Wilson, but she has no idea when she may do so or whether her daughter can go with her. What if there is a family emergency and Helen needs to contact Wilson? Does he have a telephone in his cell? Helen also worries about Wilson's chronic heart condition and whether he will receive adequate medical attention. The questions race through her mind as she struggles with the difficult problems that face the families of inmates. She lacks the information she needs to plan her future or to provide support for Wilson, and that is only the first of many problems that lie ahead. The financial costs associated with Wilson's conviction, including attorney's fees and his lost wages, plus her imminent childbirth, have left her penniless. Helen's relationship with family and friends also may be drastically altered by Wilson's conviction.

A task force appointed to investigate family involvement in the correctional process discovered that prison officials have usually ignored the problems of inmates' families. It has been difficult for prison officials to tap the support of families for inmates, especially since that support varies from family to family. Whatever the reason, prison officials have focused on inmates and not their families. And yet the few studies of family involvement in prisons indicate that inmates who maintain ties with their families are less likely than others to return to prison. There also is some evidence that an inmate's contact with his family improves his behavior while he is in prison. Although prison officials usually have viewed families as a burden, the task force concluded that families represent a valuable and undeveloped resource. Prison brutally alters family relationships, even under the best of condi-

tions, but the task force offered specific proposals to increase and improve the quality of family involvement.

The average citizen knows and cares little about life in prison. That ignorance forms a barrier as effective as barbed wire in discouraging contact between an inmate and his family. Lack of information also causes tremendous anxiety for an inmate's family. Helen Doyle is left to imagine the worst about Wilson's treatment in prison. Her image is drawn from television coverage about deplorable prison conditions and violent riots—the extraordinary exception rather than the rule. And beyond the barrier of ignorance, the essential web of security that surrounds prisons intimidates family members and further discourages their involvement in the correctional process.

The task force developed an informational brochure designed to eliminate that ignorance. The brochure serves two functions: it answers basic questions that an inmate's friends and family may have about his life in prison, and it encourages them to become involved and provide necessary support for the inmate. At a minimum the informational brochure should erase some of Helen Doyle's worst fears. For example, it says that all inmates receive comprehensive medical care from qualified personnel. Besides the basic medical care provided at each prison, a fully equipped hospital is available if Wilson's heart condition requires special attention. Helen will be relieved to know that. She will also learn about the routine procedures that she must follow in order to communicate with Wilson by mail or telephone. Rules for visiting at the prison are outlined, including the days and times allowed for visitation. Helen also will learn about inmate classification and the significance of Wilson's custody status. The brochure discusses the programs available to him in prison and includes a directory of key prison personnel in case Helen has other questions.

But even this efficiently presented information about prison life is not enough. The task force recommended a face-to-face meeting between prison officials and inmates' families. Approximately once a month each prison holds an orientation session for the families of new inmates. Prison staff members conduct the session immediately after families' visits with the inmates; it lasts about an hour. If she attends an orientation session, Helen will meet the prison staff and hear them describe life at the prison. For example, she will learn about possible job assignments available to Wilson: clean-up jobs around the facility and possible assignments outside the prison will replace her nightmares about Wilson breaking rocks with a sledgehammer. Helen will also have a chance to ask questions that were not addressed in the brochure. When she asks how long Wilson actually will spend in prison, a staff member will tell her that Wilson can cut his sentence in half if he obeys prison conduct rules.

The informational brochure and the orientation session are not earthshaking, but they are sound ideas that represent a basic commitment to increasing family involvement in prisons. Both aim to provide Helen with the perspective she needs to cope with Wilson's imprisonment. For example, what if Doyle tries to conceal his drinking problem from prison officials? Helen at least is in a position to take action. She knows about the prison's Alcoholics Anonymous program. She may talk to Wilson and encourage him to participate in the program. She might even alert prison officials to Wilson's need for assistance. The information from the brochure and the orientation sessions gives families the means to become involved in the inmate's rehabilitation. In other words, knowing about prison programs at least enables Helen to encourage Wilson's participation.

Other task force recommendations currently under consideration focused on improving family communication with inmates by telephone and through prison visits. The task force found that prisons varied dramatically in the degree to which inmates could make telephone calls to their families. It recommended a standard telephone policy in order to prevent unfair differences in access and to promote family communication. An examination of prison visitation policies revealed that most units allow only a single two-hour visitation period each Sunday. The task force recommended expanding visiting schedules at least to include visiting by appointment one day during the week. Another suggestion was planned activities for inmates and visitors. The goal is to improve the overall quality of visitation without threatening security. Finally, the task force recommended a pilot program to determine the feasibility of allowing children to visit overnight with their incarcerated parent.

Other task forces

These developments represent only part of the work accomplished by the Division of Prisons' task forces. Other task forces examined different issues in prison administration. Their recommendations have had an impact on what happens to inmates.

Mentally retarded inmates. The inmate population in many ways reflects the larger population of the free community. Approximately 4 per cent of newly admitted inmates are mentally retarded. Adjusting to prison life is difficult enough for an inmate of normal intelligence; mentally retarded inmates usually need special help—they can neither obey prison rules nor participate

meaningfully in rehabilitation programs. The task force on mentally retarded offenders increased the number who would automatically receive this help by changing the IQ that would trigger this special service from 60 or less to 70 or less. It also designed a checklist to help identify inmates with normal intelligence who may not be able, psychologically, to adapt to prison.

In addition, a management program was developed in which a specially trained case manager is assigned to work with the mentally retarded inmates at each prison unit. Although the task force concluded that mentally retarded inmates should be housed with other inmates whenever possible, a special residential program was created at one prison for inmates who need more intensive care and treatment.

Educational programs. The Division of Prisons offers its inmates a wide range of traditional educational opportunities. Some inmates learn basic reading and arithmetic; others earn credits toward a high school diploma or a college degree. Concern about the quality of those programs has paralleled the concern about the quality of education in the free community. This task force focused on improving the instruction in prison education programs, and it recommended an increase in salaries to a level that will permit the Division of Prisons to recruit and retain good teachers. It also recommended better organizaton of existing school programs (for example, it urged community colleges to monitor the quality of instruction by their personnel who teach in the prison system). The task force recommended a structured library at major prison units. Finally it concluded that the program by which inmates may be released during the day to attend school (study release) is a valuable correctional tool that should be more widely used.

Women. Still another task force investigated some special issues confronting women inmates. It urged that greater attention be given to the needs of women who are serving long sentences. It recommended that certain halfway houses for women inmates be relocated or expanded, but it also recommended that one such facility be closed because it did not serve enough inmates to justify its cost.

Volunteer councils. Each prison superintendent is advised by a community volunteer council composed of private citizens appointed by the Governor. A task force examined the role of volunteer councils and proposed a system of by-laws for their operation. Prison superintendents also were trained in how to use the councils effectively.

Evaluation. Another task force began an ongoing evaluation of programs sponsored by the Division of Prisons. Major programs like the inmate education and vocational programs, the volunteer program, and the home-leave program will be evaluated. The major objectives of each program were identified and audits were developed to determine whether the objectives were being satisfied.

Conclusion

Innovations in prison administration have been possible only because the Division of Prisons has satisfied its basic responsibility: inmates are confined securely and do not threaten the safety of the free community. Prison officials from some states spend much of their time responding to escapes by dangerous inmates and prison riots. But North Carolina prison officials have moved beyond those fundamental concerns for security. As a result, a series of task forces has been able to focus on reaching a reasonable balance between the punishment and rehabilitation of inmates. The task forces have examined aspects of prison administration and generally have defined what *should* happen to prison inmates. Their recommendations have been carefully implemented to see that it *actually* happens. One result is a new classification system that should bring about more rational inmate custody and program assignments. A comprehensive new in-service training program virtually guarantees that all levels of prison employees will be better prepared to carry out correctional goals. And families now are more likely to become involved in what happens to their relatives who are in prison. Overall, the task forces have produced a clearer idea of what should happen to inmates and a more reliable program for getting results.

An Interview with Rae McNamara

Michael R. Smith

Editor's Note: This interview was conducted in February 1985. In March Ms. McNamara resigned as Director of the North Carolina Division of Prisons. She is now a private consultant on issues involving prison administration and women in management.

Q. In 1981 you were appointed Director of the Division of Prisons. What professional experience did you bring to that job?

A. I entered prison administration through personnel work in state government. Beginning in 1969 I helped in a 2½ year job reclassification study in the Department of Correction. In doing that I interviewed everybody from the correctional officers to top administrators—I got to know many of those people and developed a lot of respect for them. I like to say that I was in more prisons back then than any woman had ever been in. Then I began conducting management development seminars that included people in corrections, and I worked closely with the Superintendent of Women's Prison on some management problems. In time I was asked to help staff the Legislative Study Commission on Corrections (the Knox Commission). That Commission studied everything about corrections, including housing, prison programs, and basic sentencing philosophy. The Fair Sentencing Act started with it. I got quite an education, and I changed some of my earlier opinions about corrections. Shortly after the Commission's work was finished, in July of 1977, the Governor appointed me to the Parole Commission. From the outset I had a good working relationship with the Commission chairman, Jim Woodard—at least partly because of my familiarity with state government. Early in 1981 he left the Commission to become Secretary of Correction. One day he called me to his office to ask whether I was interested in becoming Director of the Division of Prisons. I accepted and started that August.

Q. I didn't realize that your background in state government dealt so much with prisons and corrections.

A. I had a lot of experience in and around prisons, but when I started this job most people didn't know that, so in the early days when I was trying to establish credibility I always referred to that background when I spoke before a group. I didn't want people to think I came out from under a cabbage leaf or something.

In fact, I came to this position with some strong beliefs about prisons because of that background. Strong beliefs about what should be done and how it should be done. But they weren't so strong that I didn't test them—I didn't have a closed mind.

Q. How did your work at the Parole Commission prepare you for this job?

A. You learn a lot as a member of the Parole Commission from reading inmates' prison files. You learn how prisons operate. An inmate's prison file contains psychological evaluations, medical records, classification decisions, and disciplinary reports. As a member of the Parole Commission I read thousands and thousands of those files. That experience gave me some of the details about prisons to go with my general background. Take the inmate classification system, for example. By reading prison files on the Parole Commission, I saw that the system for classifying inmates produced inconsistencies across the state and that many of the decisions seemed to be subjective and to reflect personal biases. Improving that classification system was one of my goals when I accepted this position.

Q. Now that you've seen prison inmates as a prison administrator, would your approach be any different if you were back on the Parole Commission? Or was your understanding of inmates at that time essentially accurate?

A. Well, my beliefs haven't changed a lot, and in a way that makes me feel good. I had thought about many of the issues before I took this job, and I was pretty accurate in my conclusions. Of course, my views have been tested in a lot of different ways, but my basic philosophy about inmates still is the same. But I *have* changed my mind about

The interviewer is an Institute faculty member whose field is criminal justice, including jail law.

women inmates. I didn't believe, for example, that women inmates' needs were much different from men's. I learned that sometimes the "typical" male inmate is proud of being a convict and is independent but women are usually ashamed of being in prison and have extremely low self-esteem. Now I also know how difficult it is for women to deal with separation from their children, and I know that they have a lot more medical problems than male inmates. These differences are real. That's one way that my perceptions have changed.

Q. *How would you evaluate the overall condition of the prison system when you were first appointed Director?*

A. About twenty years ago, starting with Lee Bounds, prison administration began coming out of the dark ages. A lot of improvements have been made. I would say, overall, that the prisons were well operated and administered when I became Director. Custody and security was excellent. The escape rate was lower than it had ever been. One need that I saw was for a better management system—for example, the Director had been making basic personnel decisions at all levels. The management system today is much more sophisticated, and greater authority has been delegated to administrators throughout the system. But the Division generally was in excellent shape when I came aboard.

Q. *What was your major objective as Director of the Division of Prisons?*

A. My major objective was to change the overall climate of the organization. The previous administration had used a fairly autocratic management style. Nearly all major decisions were made by one person after talking with two or three other people. That style stifles the creativity of other managers in the organization. It doesn't build leaders for tomorrow, and people don't feel good about themselves. I don't think that's the most effective style of management. I wanted to change that climate—so that everyone who works in this organization would feel important and critical to its success. There are lots of people who like to work hard, who want the opportunity to grow, and who are self-starters—at least when they are given a chance and know that their boss is supportive. Managers need to support their people and brag on them when they do well. If they make mistakes, unless it is something like beating up prisoners, managers need to get behind them, help them mop it up, and start all over again. Managers need to tell people that they expect the best of them. None of this is new, but then nothing is really new in management. That's what I mean by establishing an organizational climate that creates the potential for doing new and creative things. That was my number one goal.

Q. *It sounds as if you tried to lift a burden from prison managers. You told them, "You're free to manage, you're free to take responsibility, let's see what you can do."*

A. I like to think that I gave them vision. Not so much a vision of what a model prison system should look like. The vision I wanted to give them is of what they could be and do as individuals and managers. If managers try to do their personal best and try to bring out the best in others, we're a better organization and a better prison system. I see leaders as men and women who get in there with their people and show their own vulnerabilities but still are a little bit out front. Employees have to identify with you, which means that you have to show them your weaknesses and you can't keep yourself distant, but they also need to respect you. I want the managers to see that they are good and they can grow, and that that's what I want them to do. The name of the game is to be creative, and they have responded. Out of that process will come the leaders of tomorrow and a model prison system.

Q. *Here's a question you're no doubt tired of answering. Both sides of the prison bars, guards and inmates, have traditionally been dominated by men. In what way has your job been made more difficult or easier because you are a woman?*

A. The hardest thing was that the men in the organization had to learn to take me seriously. Some of them didn't think that I knew how to manage prisons, but in a way their conservative attitudes gave me an advantage. The men treated me with respect because that's how they had been taught to treat women. Even though some of the men didn't actually respect me as a prison manager, they still treated me with respect personally. Professional respect had to develop over time. I had to make a couple of sensitive and difficult personnel moves, and that really showed that I could make strong decisions. Although I didn't make them for that reason, those tough decisions certainly made the men pay more attention to my ideas and policies on other matters. When those proposals actually started to accomplish things, that generated additional respect and I gained credibility as a manager and as a professional in the prison system. The men in the Division now are more willing to let women be women and let them contribute the skills and sensitivity that are perhaps more highly developed in women. And they are also more willing to let their own feelings be a positive influence in their work. A different kind of atmosphere has trickled down, an atmosphere that I hope makes it easier for all women in the Division. Women shouldn't have to act like men in order to get ahead.

Q. *It's fairly popular to charge that prison inmates have been granted too many rights. What do you think about that?*

A. That really worries me. Too many lawsuits go to federal court every year from our inmates saying that their constitutional rights have been violated. They sue us for every little thing, and it tends to be just a few inmates who do it all. If you have good people managing your prisons, people who try their best to do the right thing, then I think that the inmates will be treated fairly. But some class action lawsuits by inmates have brought good things about, there's no question about that. If a state has a really bad prison system, a lawsuit may be the only way to get its legislature to provide the funds needed to run a decent system. But the federal courts now are overloaded with frivolous lawsuits. I don't know what the answer is, but the situation is a mess.

Q. *What is the purpose of locking people in prison? What is to be accomplished by putting someone behind bars for a substantial period of time?*

A. The first priority is public safety. I have no problem at all with keeping someone there as long as he poses a physical threat to another human being. I also have no problem with imprisonment as a way of saying that our society will not tolerate certain kinds of behavior. Punishment serves that purpose. But I do have

trouble with punishing people just to get back at them.

As far as changing people in prison, people change for lots of reasons. Some of them change in prison because they are scared and don't want to come back. Others change out of embarrassment and shame. Some inmates, especially the young ones, change because their lives are structured for the first time. The gate slams in their face and they are no longer free to roam the streets. They are told when to get up, when to go to school, and when to go to work. Or it may be an experience like work release that makes the difference. An inmate makes money for the first time, supports his family, develops good work habits, and learns a trade. Some people find religion in prison and it helps them, regardless of whether they keep it when they're released. The prison staff is also an important influence in changing inmates. A prison needs a staff that can be caring and show concern for inmates but still can be strict and impose discipline. Any or all of those factors influence rehabilitation, at least to some extent. But we can't "make people over." The public is unrealistic when it blames the prison staff for recidivism.

How long someone should be locked up is a different and difficult question. The real pros in this business tell me that there is an optimum time for some inmates to be released and that they deteriorate if you hold them beyond that time. I don't know the answer to that. How long is long enough to serve for assaulting someone with a weapon and leaving him scarred for life? How is the victim ever going to be paid back for that? Working in the prison business, you learn that there are more questions than answers.

Q. *Your outlook on the rehabilitation of inmates seems to be that you can't force someone to change but you can give them the opportunity to change.*

A. That's right. We don't have perfect academic programs or vocational programs that meet the needs of every inmate. The taxpayers can't afford that. We have 87 prison units across the state, and we do the best we can. A number of good things are going on. There are 6,000 volunteers a year working in the prison system. The community colleges help us a lot by teaching courses in the prisons. We have many good programs that I believe help a lot of people.

Q. *What will be the crucial issues facing North Carolina prisons over the next five to ten years?*

A. One main issue will be the construction of new prisons. Most of our prisons are field camps that were built in the 1930s. We've done a lot in the last ten years to upgrade those facilities. We keep repairing those older places, renovating the kitchens and the bathrooms. I don't know how long they will last. But I am not in favor of tearing down the old units and replacing them with big prisons with single cells for all inmates. I used to think that single cells were the only way to go in prison design, but I've changed my mind about that. Single cells definitely are needed for inmates who are dangerous to the public, the staff, and other inmates. And single cells are needed for inmates in protective custody, inmates who are endangered in one way or another. Older inmates need privacy and might be placed in single cells. But to build single cells for every prisoner in North Carolina, even for people who don't actually need them, would bankrupt us. I don't see a thing wrong with dormitories if the number of inmates in them is kept at a reasonable level. We are going to need more space—but how much more I don't know. I do know that I don't want to build new prisons at the cost of improved professionalism of our staff. Our people need more and better training. If it comes to dollars and cents going one way or the other, I'd invest it in our people and keep repairing the bathrooms and the kitchens.

Q. *Stand in the shoes of the average prison inmate for a second. How is the life of that inmate different now compared with when you first became Director?*

A. That's a significant question and a tough one. Over the years the focus of my attention has shifted from prisoners to staff. I still care about prisoners, but as a manager I believe that the improvement in the staff will trickle down and improve their work with prisoners. I hope that getting the prison staff to feel good about themselves and to be more conscientious has improved the conditions for the prisoners.

We have also addressed several operational issues that directly affect the inmates, but only because we took care of physical safety first. That was one of my first goals. We addressed the sexual abuse of youthful offenders. I remember reading affidavits from inmates at Polk Youth Center who had filed a lawsuit alleging sexual abuse by other inmates. I told myself that we would do something about it if their allegations were true. One day I overheard one prison manager say to another, "Well, it really is a problem. I guess we've kind of swept it under the rug because we couldn't do anything about it." That was all it took for me. On a blank sheet of paper I wrote "What Do We Owe Youthful Offenders?" Then my managers and I spent an entire day hashing it over. We decided that our first obligation was physical safety. We found that the assaulted inmates who were put in protective custody were marked for the rest of their time in prison. Instead, it was the people who were raping other inmates who needed to be punished. We modified a few of our policies because of the lawsuit, but on our own we converted a local prison unit into single cells to house dangerous youthful offenders.

Another operational issue that we tackled involved Women's Prison. The range of inmates at Women's Prison included death row inmates and inmates who had committed only minor offenses. One big problem was that drug pushers forced minor offenders on work release to take drugs into the prison for women who were more serious offenders. Clearly, these women shouldn't all be in the same prison. As a result, we converted a youth center in Rocky Mount into a separate correctional center for minimum custody women inmates.

But revising our classification system probably was the most significant operational change. [For a description of this system, see pages 1-3.]

Q. *What is your proudest achievement as Director?*

A. The first goal was safety of the general public, and we have accomplished that. The escape rate at the time I became Director was the lowest it had ever been, and the number of escapes has continued to decrease each year. Also, we have had only one serious incident in the last 3½ years—the hostage situation in March 1982. But my proudest achievement is the change in the climate of the organization. I really am proud of that. Some of the things that the staff has accomplished simply would not have happened under the old climate. One thing I did was put potential leaders in key spots. I look around and see all of the talented people and I'm proud of what

they've done and where they're going. It really makes me feel good.

Q. In what ways have you left your personal mark on North Carolina's prison system?

A. My management style is different from what the Division of Prisons was used to. I hope people now believe that prisons can be managed with a more positive approach. Managers and staff now are more likely to believe that it's okay to show feelings, it's okay to make a mistake, it's okay not to be macho all the time. Many of them feel good about themselves because they have had an opportunity to grow and they are proud of their accomplishments. Acceptance of the fact that it's okay to be proud of yourself, it's okay to brag on each other, it's okay to be open, and it's important to support each other. I hope that's what I've left.

Q. In an ideal world, what would you change about North Carolina's prisons?

A. That's hard to say. We need a lot of money to hire additional staff and to train them. We also need money to fix our buildings. But there is another matter that doesn't involve money. I have found a couple of instances where inmates were not treated humanely—though I really believe that there is very little of that. But as long as basic security needs are satisfied, there would be absolutely no mistreatment of inmates in an ideal prison system. Physical brutality just should not happen. You hope that your subordinate managers have positive values and don't let bad things happen.

Q. How would you rate your performance as Director?

A. I feel very good about a lot of the accomplishments. I've never been afraid to ask for help, and I'm a very good listener. As a result, I know much more about prisons than I did, but I still have plenty to learn. I have given my managers the freedom to grow and to be creative, and I try to support and reinforce them. I'm pleased about the performance of the Division of Prisons. Lots of people have grown and developed, and because of that, those changes will live long after I have left.

JUVENILE COURT DISPOSITIONS: An Interagency Evaluation Team

Christopher L. Ringwalt and Gilbert H. Burnett

Since 1973 the district court of New Hanover County has had the benefit of special cooperation among the county's human resources agencies—both public and private—as the court makes dispositions in the juvenile offender cases that come before it.[1] Juvenile offender cases are those that involve either children who have been charged with a crime ("delinquent juveniles") or children who engage in noncriminal but "ungovernable" conduct like running away from home or skipping school ("undisciplined juveniles"). In New Hanover County, when a judge rules (adjudicates) that a child who has been brought before the court is either delinquent or undisciplined, he asks the Evaluation Committee of the Juvenile Services Center to study the case and make recommendations about what should happen to that child.

Considering the difficulty that agencies often have in working together, the degree of cooperation this Committee has achieved is remarkable. It includes representatives from most of the organizations in New Hanover County with an interest in children. These organizations are the office of the chief court counselor, the police, a local group home for children, the social services department, the mental health center, the schools, and private programs for family services and alcohol and drug abuse. Its purpose is to draw and present to the judge as complete a picture as possible of the child's needs and potential and to identify resources both within and outside the community that can help to meet those needs. The Committee's aim is to help the judge arrive at the best disposition, or court-ordered plan, for this particular child. When a judge adjudicates a juvenile as an offender, he generally continues (that is, postpones) the case for two or three weeks before the dispositional hearing (the hearing at which the judge decides what course of action will be best for this child and for the community.) He also usually appoints a juvenile court counselor for the child. Court counselors are staff members of the juvenile court in every judicial district who supervise a juvenile offender for some period of time. The court counselor's tasks include monitoring whether the child follows the plans ordered in the judge's disposition, counseling the child and his or her family as appropriate, and reporting the child's progress and needs to the judge.

In New Hanover County the judge who hears most juvenile cases also orders the child to undergo an evaluation at the Juvenile Services Center, for which the family is asked to contribute $15. The Juvenile Services Center is a public agency located in New Hanover County that houses the regional juvenile detention unit. It lends its social work staff to make assessments for the Evaluation Committee.

Mr. Ringwalt was formerly a research associate at the Institute of Government. He has just completed a doctorate in Public Health at UNC-Chapel Hill. Judge Burnett is Chief District Court Judge for the Fifth Judicial District.

1. In some North Carolina judicial districts, one or more district court judges may specialize in juvenile cases. In other districts, the judges share that responsibility, all of them hearing cases before the juvenile court.

Memorandum

To: The Honorable Gilbert H. Burnett, Chief District Court Judge

From: Juvenile Center Evaluation Committee

Re: Janey M.

General Information

Janey M. is a fifteen-year-old white female who resides with her mother and two brothers. Her father practices medicine in another state. Mrs. M., unemployed, receives $300 per month in child support. Janey's parents were separated ten years ago. She visits her father every summer. The mental health center reports that Mrs. M. is an emotionally unstable person who at times experiences severe depression. She is now having discipline problems with Janey's two older brothers. Both have prior court involvement. Janey is appearing in court for truancy.

Evaluation Information

Janey is in the ninth grade. According to the school report, she made mostly B's until the seventh grade, when her grades dropped to D's. She missed 89 days last year and 53 the year before. The school notes that while Janey responds well to one-on-one situations, she does not have the self-discipline needed to set and attain goals for herself. She has been suspended numerous times over the past two years for truancy, but no other behavior problems have been reported. Janey is a quiet child who daydreams a lot. She offers no reason for her truancy other than that she does not like school and is concerned about her mother. Her overall achievement is approximately three years above her present grade placement, and her adjusted mental age is 16th year, 5th month.

Recommendation for Intervention Plan

Janey's court counselor reported to the committee that because of her emotional condition, Mrs. M. cannot function effectively as a parent to Janey. Janey's grandparents, who live next door, are actually in charge of her welfare. Janey's school attendance has improved since her adjudicatory hearing, and she is now receiving counseling from the school guidance counselor.

Committee members thus unanimously recommend:

1. That Janey's custody be temporarily placed with her grandparents.
2. That Mrs. M. be informed by the court that Janey's grandparents are now in charge of her discipline and welfare.
3. That Mrs. M. enroll in the Parenting Course as well as Family Counseling. This should be done in addition to visiting her medical doctor.
4. That Janey be supervised for six months by a court counselor [a court employee who helps secure services for a child who is before the juvenile court and works with the child's family].
5. That the court counselor explore possible placement with the father.

New Hanover juvenile court is fortunate to have the services of a volunteer experienced in court matters. She sits in the courtroom and listens to every case that involves children alleged to be undisciplined or delinquent. When the hearing at which a child is adjudicated undisciplined or delinquent is over, the volunteer explains to the family what has happened and what that means to the child, tells the family what will happen next, and sets up an appointment for the child to be evaluated at the Juvenile Services Center. The volunteer also takes notes on what happened in the courtroom; these notes are forwarded to the Evaluation Committee, since none of the Committee members but the chief court counselor is usually present at the adjudicatory hearing.

The Juvenile Services Center usually sees the family within three days to a week. During this appointment, which lasts about three hours, a social worker at the Center prepares a comprehensive social history concerning the child and his or her family. This history includes the circumstances of the child's offense and information about his general behavior both within and outside the home, his school record, and information on his physical and mental health, attitude, recreational activities, relationships with family members and friends, and use of drugs or alcohol. The child is given two screening tests—the Peabody Individual Achievement Test (PIAT) and the Slosson Intelligence Test. The PIAT is designed to assess the grade level at which the child is functioning in several subjects, including mathematics and reading. The Slosson Intelligence Test evaluates his mental ability. Both tests are screening mechanisms and are not intended to substitute for more comprehensive instruments available to school personnel or psychologists. The Evaluation Committee uses them to identify any incongruity between the child's level of performance as tested and his placement at school. They may, for instance, indicate some learning disability that may be responsible for a child's poor academic functioning, and thus for his truancy. The judge may use the tests to help him determine how best to communicate with the child and what can be expected of him. While the social worker does not ask either the child or his parents what kind of disposition they would prefer, all three have the opportunity to make their wishes known at the disposition hearing.

The social worker who administered the screening tests and interviewed the child and his parents then presents the results to the Evaluation Committee. The Committee usually meets weekly. It is composed of representatives of fourteen public and voluntary agencies in New Hanover County. Of these fourteen, ten attend the committee meeting on a routine basis. While the juvenile court judge is not a member of the Committee and never attends its meetings, the Committee hears a report from the court counselor assigned to the child. When the Committee meets, the counselor has usually been in touch with the child and his or her family and thus is in a position both to offer something to the Committee's deliberations and to benefit from the information presented. If the judge later recommends that the child be placed on probation or under supervision, this counselor will generally continue to supervise him.

Each agency represented on the Committee sends a staff person qualified to represent the organization, usually someone in a supervisory capacity. The child's attorney (if there is one) may also attend the meeting, although attorneys rarely do. (The Committee found that attorneys initially appeared to misunderstand its purpose and tended to argue their client's case all over again. Attorneys' interest in the proceedings waned once they recognized that the Committee's sole purpose was to make a nonbinding recommendation to the judge concerning what plan it thought was in the best interests of the child and the community.) The parents never attend the Committee meeting. The Committee is chaired by the supervisor of the team of social workers who conduct evaluations at the Juvenile Services Center. He functions as something of a "sergeant-at-arms" to ensure that the Committee's deliberations remain focused and proceed smoothly.

Once the social worker from the Juvenile Services Center has presented the salient findings of the initial evaluation and the notes taken by the court volunteer mentioned earlier, other Committee members give whatever information they have about the child and the family. Typically, the representative from the schools will say something about the child's academic and social experience in school, and the professionals from the social services department and the mental health center will share the record of their organizations' contacts, if any, with the child and his family. The Committee then discusses the merits of various proposed recommendations for the judge's consideration. Each proposed recommendation is voted on individually, and the final report includes both majority and minority opinions. While Committee members express their preferences openly, the report does not say which members favored or opposed what recommendations. The final report to the judge contains general information about the child, the family, the child's offense, a condensed version of his social history, an interpretation of the results of the two screening tests, and a suggested disposition. The judge reads the report at the time of the dispositional hearing. The report is available to the child's attorney on request. Although it is not given to the child or his parents, the

social worker will summarize and explain it for parents who are interested.

There are several key ingredients in the glue that has held the Evaluation Committee in Wilmington together for more than a decade. First, since its inception the Committee has been under the continuous sponsorship of the Chief District Court Judge of the Fifth Judical District. It clearly makes a significant difference that the judge who hears most of the juvenile cases orders all adjudicated juvenile offenders to undergo an evaluation, and thus routinely uses the Evaluation Committee's services. It is probably even more significant that dispositions usually follow the Committee's recommendations rather closely. On rare occasions the judge may decide, even though the Committee had recommended commitment to training school, to order a less restrictive disposition contingent on the child's good behavior. Thus over time the Evaluation Committee has been continually aware that its deliberations have had a major impact on the juvenile court's dispositions and on the lives of the children who have come to its attention.

Committee members suggest other reasons why their record of participation has been so consistent. The Committee enables them to become acquainted on a personal and informal basis, particularly because some agencies rotate attendance among several staff members. It also serves as a means by which professionals can learn about how other agencies perceive their role and what functions they are willing—or unwilling—to perform. Thus interagency consultation about other kinds of cases is greatly enhanced. Because the judge is never told how any individual Committee member voted on any recommendation, agency representatives know that their preferences are received impartially, which encourages all agencies to participate in the process.

Committee members also say that their participation often saves them time and effort and makes it easier for them to serve the child and his family effectively. For example, court counselors no longer need to make the rounds of various agencies each time they get a new juvenile to supervise. School officials report that the results of the achievement screening test (the PIAT) are very useful in determining whether a child's problems with school stem from an inappropriate placement. A mental health psychologist suggested that her participation in the Committee prevented inappropriate requests for psychological testing. A caseworker from the social services department reported that he often could forestall an effort to place a difficult child in foster care when no foster home was available that could meet the child's needs.

Occasionally, however, no representative from some member agency of the Evaluation Committee has shown up for several consecutive meetings. When that occurs, the judge often asks the chief court counselor or the Committee chairman to call the missing agency to learn the reason for the absence. Such subtle—or perhaps not so subtle—pressure has so far been enough to keep attendance high.

The judge also notes any consistent discrepancies between the Committee's suggestions and his decision. If, for example, the Committee repeatedly ignores an option that he thinks is valuable, he will call the chairman to ask the Committee to consider that option more seriously.

The Committee may also have a chance to learn of the effect of its recommendations. This opportunity occurs when a child has been adjudicated for a second or third offense. If its original plan for the child did not have the desired effect, the Committee may consider a different set of recommendations. It thus can learn from its failures. Since the Committee does no follow-up, it is unlikely to hear about those cases in which its recommendations succeeded.

Still another reason for the Committee's longevity is that it incurs no additional costs, since its members are already employees of public or voluntary agencies. In addition, the Committee work requires no special resources that are available only to New Hanover County. If no Juvenile Services Center existed, the tasks performed by the Center could still be performed by the schools, which could administer the two screening instruments, and the court counselor, who could prepare social histories.

From the outset, the Evaluation Committee has been careful to restrict its role to diagnostic assessments. Because it neither provides treatment to juvenile offenders and their families nor monitors the child's progress after disposition, the Committee poses no threat to any of its constituent agencies. That is, none of the agencies perceive that the Committee is watching over or reporting on how they deal with the child and his family as they attempt to implement the court's orders.

While the Evaluation Committee could well serve as a model for similar interagency teams elsewhere in North Carolina, there are several reasons why New Hanover County has been a good place

(continued on page 53)

ADVOCATING FOR CHILDREN: North Carolina's Guardian Ad Litem Program

Virginia G. Weisz

John is a real child, though his name is fictitious. In 1975, when he was only three years old, he was found feeding himself and his younger sister from a dumpster and was referred to the Juvenile Court. He spent the next three years in and out of foster care. He remembers living with his mother—being so hungry that he ate dog food; being whipped with a belt buckle that had been heated until it was red hot; seeing his sister injured during a drunken brawl, watching his father murder a man; living in a car and having no shoes, sweater, or coat and only an open fire for cooking. A few years later, adopted by foster parents, John wrote the judge the letter that appears on the opposite page.

In 1977, the North Carolina legislature allowed children like John a voice in court for the first time through the appointment of a guardian ad litem, an attorney to represent the child in the case. Judges were not required to appoint a guardian ad litem (GAL) but could do so in their discretion. Only attorneys could be appointed to this role. In 1979 the law was revised to *require* the appointment of an attorney to serve as GAL in every child abuse and neglect proceeding.

Unlike most GAL statutes nationwide, North Carolina's statute lists the specific duties of the person appointed to represent the child. In civil court, the GAL is required to (a) investigate the facts of the situation and learn the child's needs, (b) report to the court any information that would aid in the disposition of the matter, (c) help in settling issues when appropriate, and (d) ensure that the best interests of the child are met through the court.[1]

The Juvenile Code that became effective on January 1, 1980, defined basic terminology and outlined new procedures to ensure that the rights of children and families were protected. Issues before the court demanded that the GAL know exactly what the statute meant by terms such as "neglect" and "abuse." Gradually decisions were written by the higher courts that helped to clarify the distinctions between minimum care and care of a child that the court could label as "neglect." Cases of abuse were characterized by serious overt actions against the child, typically in fits of anger or as excessive discipline. Some of these cases involved criminal charges; in them, no GAL was appointed. As sexual abuse petitions began to increase, more petitions were filed in criminal court as well as civil court.

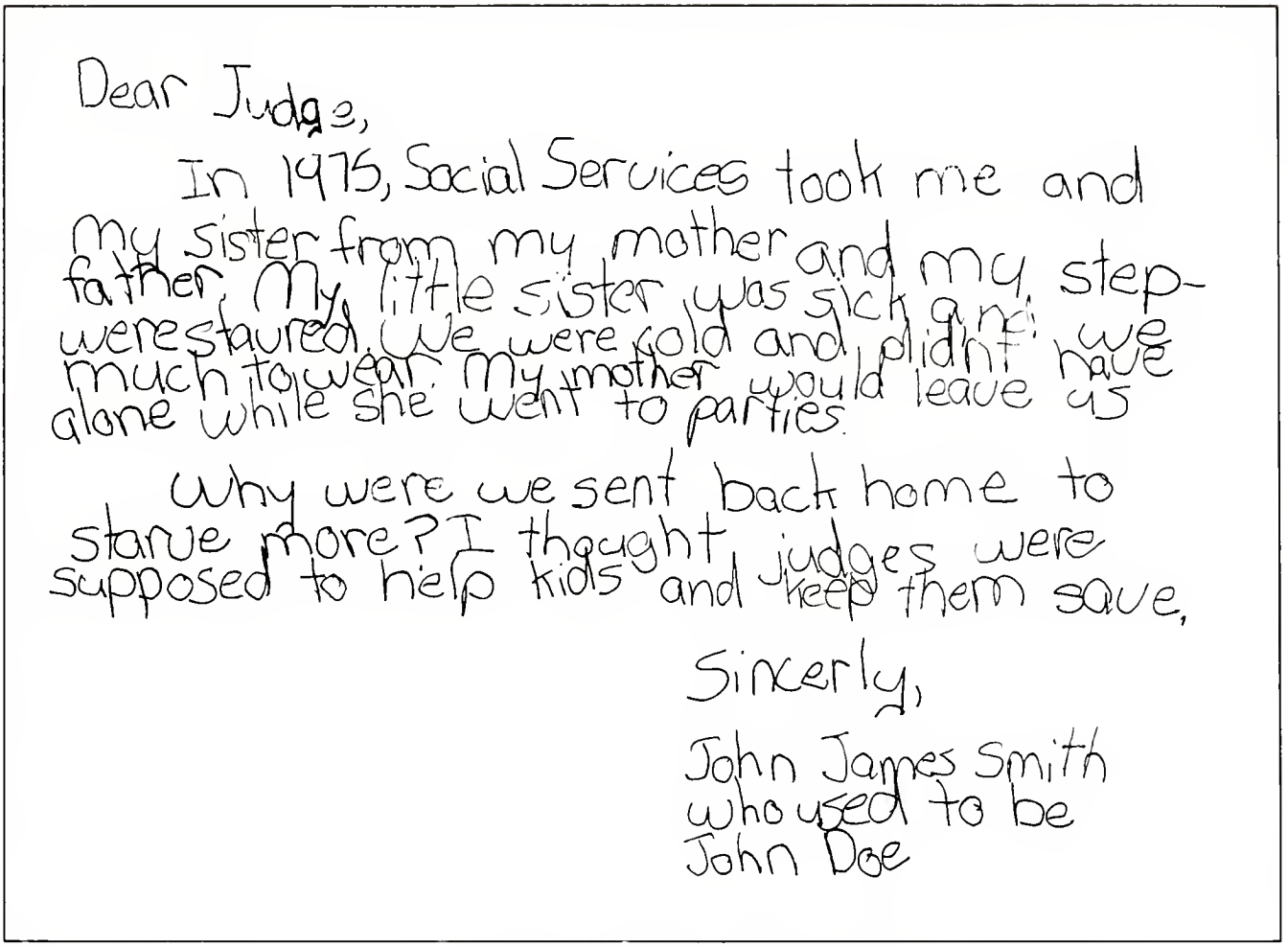
Attorneys who were appointed to this new role found that it could not be taken lightly. Merely showing up in the courtroom was not fair to the child. Thorough research before any court hearing was as necessary in representing a child as in representing adult clients successfully. Some attorneys spent very little time in their appointed role, even though they had a statutory duty to perform. Simply rubberstamping recommendations by the county social services department was not uncommon. An unpublished study by the Bush Institute indicated great variation across the state in quality of guardian ad litem service.

But other attorneys spent enormous amounts of time making sure that the children they represented received the services needed.[2] They visited parents in the home, attended meetings of foster care review boards, and met with school personnel, mental health professionals, and physicians. Often they got in touch with Scout troop leaders

The author is the Guardian Ad Litem Administrator within the North Carolina Administrative Office of the Courts.

1. N.C. Gen. Stat. § 7A-586.

2. Led by Locke Clifford, the Greensboro Bar provided pro bono guardian ad litem services. Members of the Mecklenburg Bar also gave of their time in an organized effort to serve as guardian ad litem.



Dear Judge,

In 1975, Social Services took me and my sister from my mother and my step-father. My little sister was sick and we were starved. We were cold and didn't have much to wear. My mother would leave us alone while she went to parties.

Why were we sent back home to starve more? I thought judges were supposed to help kids and keep them save.

Sincerly,

John James Smith
who used to be
John Doe

or church organizations, community centers, after-school programs, housing officials—anyone who could contribute to an understanding of this child's situation. These dedicated attorneys were being drawn further and further into an unfamiliar arena that took countless hours—all of which had to be paid for by the state.

In an effort both to cap the skyrocketing expense of attorneys fees for the increasing number of cases and to provide improved service, the 1981 General Assembly approved the use of nonattorney volunteers as guardians ad litem. Child Watch, Inc. (a child advocacy group funded by the Mary Reynolds Babcock Foundation) sponsored pilot volunteer projects in Wayne, Wake, and Alamance counties and later in Durham, Mecklenburg, and New Hanover counties. A coordinator was hired in each county to recruit, screen, and train volunteers. Legal service to the project varied from county to county. In some of the projects, an attorney provided legal advice on contract whenever the program asked for help; in others, the attorney worked with every volunteer and appeared with him or her in court. Many judges were reluctant to support the use of volunteers without attorneys because they believed that children should have legal representation in every court proceeding.

The 1983 General Assembly amended the GAL legislation to require increased use of the volunteer model; by 1987 the volunteer system is to be used statewide. Under the amended law, whenever a nonattorney is appointed as GAL, an attorney must also be appointed and be present at any court hearing to protect the child's legal rights. The aim of the legislation is clear: (1) to provide quality representation for children in abuse and neglect matters, and (2) to do so in a cost-effective manner by using volunteers, with professional services from attorneys in every court proceeding. An Office of Guardian Ad Litem Services was created within the Administrative Office of the Courts (AOC) to establish a program by which each judicial district has a GAL program based on these goals by July 1, 1987.[3] Each local district program is to consist of a paid program coordinator whose responsibility includes recruiting, screening, and training volunteers and supervising volunteer service with the attorney. An advisory board appointed by the

3. N.C. GEN. STAT. § 7A-489.

Director of the AOC helped select the personnel who implemented this new program. Programs were established in eight judicial districts during the first year. The district may use an alternate program with the AOC's approval. It may use an alternate program only if the alternate guarantees quality representation and would cost no greater portion of state funds allocated for GAL representation than the case load represents. The Eleventh District uses an alternate in which an attorney in each county is selected and approved by AOC and the district court judges. The attorney recruits, screens, and trains the volunteers.

By March 1985, volunteer programs had been established in 13 of the 34 judicial districts. District court judges, child advocacy groups, departments of social services, and interested attorneys have offered advice and encouragement as new programs are established. District court judges have praised the work of the volunteers, attorneys, and program coordinators. The volunteers (over 180 throughout the state) have been boundless in their commitment to serve these special children.

In 1983 the American Bar Association and Legal Services of North Carolina, Inc., provided funds to the North Carolina Bar Association to produce a handbook concerning representation of children in abuse and neglect proceedings. Written by members of the Bar and volunteer guardians ad litem and distributed to all volunteers as well as to attorneys who serve as GALs, the *Handbook* lays the foundation for training volunteers.

In March 1984, handbooks were distributed to 160 volunteers and attorneys at a Guardian Ad Litem Conference sponsored by the AOC and the Institute of Government. The conference addressed such special issues as representing the adolescent, presenting evidence for adjudication, coordinating juvenile with civil and criminal representation, interviewing the sexually abused child, medical indicators of abuse and neglect, and termination of parental rights. The 1985 conference focused on child testimony, alternatives to foster care, case law, and new legislation.

Volunteers are the secret to the program's success. They have one characteristic in common: dedication to the children they serve.

Volunteers are the secret to the program's success. They have one characteristic in common—dedication to the children they serve.

Some volunteers are employed full time; others are retired, or work in the home, or work with other volunteer groups. Some have only enough time to represent one child; others have been appointed guardian ad litem in several cases. Some prefer to work only with teenagers, while others prefer to serve only children who live in their area of the county. Their backgrounds are as diverse as their ages—a nurse, a stockbroker, a secretary, a retired university administrator, a disabled veteran, a young mother, a retired court counselor, a teacher, and so on.

The coordinators recruit volunteers personally or by speaking to civic or church organizations, on local television shows, or through local newspaper articles. Once the volunteers have been interviewed and screened, they train for at least sixteen hours. Training consists of thorough discussions of the *Handbook*, presentations by court personnel, and observations of juvenile court in action, with step-by-step procedures outlined by an attorney in the county where they will serve. Social workers, mental health professionals, school counselors, and public health nurses help train the volunteers. The training program seeks to build skills in fact-finding and recognizing needs of children and to make each volunteer aware of the spectrum of resources available in the community to meet the needs of the volunteer's particular child.

The children whom these volunteers speak for have complex and demanding problems. Abuse or neglect is never easy to deal with. Each petition that comes into court represents at least one child. In the petition the social services department alleges that that child has unmet needs so great that the state must intervene. One child comes into court, like John, because he has been found living in a car with his parents. Another is a premature infant whose parents, for religious reasons, will not allow a needed blood transfusion. Another child has been raped by her stepfather. Another has to be bathed at school, keeps falling asleep, and eats ravenously, especially on Mondays. Many of the children have problems at school with discipline, achievement, or poor attendance. Some children have parents who are themselves children and have no idea how to parent. Many have siblings whose needs are as complex as theirs. For some, the appointment of the volunteer guardian ad litem gives them a voice for the first time in the decisions made about them.

As soon as the social services department files the petition alleging abuse or neglect, the GAL is appointed for the child. The GAL represents neither the social services department nor the family but rather focuses on the child alone. Sometimes a GAL is appointed to represent a child after the social services department has been granted a custody order that permits the child to be removed from the home and placed in foster care before a court hearing takes place. The first step is to talk with

the child, the parents, the social worker, and anyone else who can give information about the crisis that required removing the child from the home. Within five days the court must hold a custody hearing to determine whether the emergency that warranted the removal still exists.

After making an initial investigation, the GAL might decide that the crisis that warranted the immediate custody order is over and the child can be returned to his or her parents pending the outcome of the hearing. In such a case the guardian cannot be aligned with the social services department, which believes that placement outside the home is the best way to meet this child's needs.

Representing the child and representing the child's best interests can lead to confusion for the guardian ad litem. An attorney represents each client as that client dictates. But when the client is a child who wants to return to his parents in spite of their violent beatings, does the attorney advocate for the return when the child's safety is at risk? Legal literature abounds with discussions on the role of the attorney for children.[4] In North Carolina the statute specifies what the GAL's role is. On that basis the GAL, volunteer and attorney alike, can find specific guidance. The GAL must present all the facts to guide the court in deciding what is in the child's best interest. The child's wishes, no matter what his age, must be taken into account—though age can affect how much weight should be given to those wishes.

Finding resources in the community to meet the child's needs can be a challenge for each volunteer. Food, clothing, shelter, education, psychotherapy, and medical care are all available in every district, but day care, a chore provider, home health services, transportation, or after-school care is sometimes more difficult to find. The specific needs of a handicapped child might mean that a special program must be developed within the community. Often the volunteer serves as a catalyst in establishing a program needed not only by the child that the volunteer represents but by others in the community as well.

After the court proceedings, the volunteer continues to make sure that the child is receiving the care and treatment ordered by the court. A review hearing must be held within six months and annually thereafter. If more frequent review hearings are needed, the GAL will make the court aware of the child's pressing needs, and the attorney guardian ad litem will motion for review.

In serious cases of abuse or neglect, parental rights may have to be terminated. The attorney and the volunteer will carefully prepare for court presentation to make sure that the evidence presented is complete and accurate and focuses on the child. If parental rights are terminated, the guardian ad litem continues to serve the child by reviewing adoption plans and encouraging permanent placement as early as possible.[5]

The guardian ad litem serves the child because of a strong belief in the future. Bringing about positive change in the life of one child is reward enough for this dedicated public servant.

4. See *The Role of Counsel for Children Under Age of 7*, 59 N.Y.U.L. Rev. 76 (1984); Long, *When the Client Is a Child: Dilemmas in the Lawyer's Role*, 21 J. Fam. L. 607 (1982-83).

5. N.C. Gen. Stat. §§ 7A-659, -660.

Social Services in North Carolina: The State-County Relationship

Janet Mason

Social services, perhaps more than any other area of governmental activity, involves complex interrelationships among the federal, state, and local governments. In North Carolina most public social services programs are administered by the counties and county administration of the programs is supervised by the state. That arrangement and the intergovernmental cooperation it requires generate some special frustrations and problems. But while state administration of social services is sometimes advocated, there is no serious movement in North Carolina to adopt the state administration model that exists in most other states.

Since 1937, when North Carolina adopted legislation to implement provisions of the federal Social Security Act, federal dollars, laws, and regulations have had a tremendous impact on both the state and the counties. Many state laws, regulations, and policies that affect the counties have their origins in Washington as funding criteria for bringing federal dollars to the state. Within the overall federal-state-county arrangement, some aspects of the state-county relationship involved in carrying out a massive social services program are very current concerns both to those who work in the field and to county and state officials. Understanding the development and present characteristics of the state-county balance of responsibilities is an important preface to defining and addressing those concerns.

This article will examine the relationship between the state and counties in the area of social services. The development of that relationship has coincided with substantial change within the social services field itself. Public social services—known earlier as public welfare and earlier still as public charity or poor relief—have not been a static group of governmental activities. Some functions, like financial assistance to the poor and child welfare services, have changed significantly while remaining central to what the term social services denotes. New programs and services have proliferated. Some functions like mental health and juvenile delinquency services, which used to be components of public welfare, have become organizationally and conceptually distinct from the social services system.

Development of the relationship[1]

Origins. Early poor relief in North Carolina had its roots in the English Poor Laws, which attached negative moral judgments to poverty and emphasized local community responsibility for the care of the poor. Other characteristics of the Poor Laws that were carried over in North Carolina were the work requirements attached to the receipt of assistance and the two primary methods of providing relief—outdoor relief (assistance to paupers in their own homes) and indoor relief (institutionalization of the poor).

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1 For a more thorough history of the development of the social services system in North Carolina, see Roy M. Brown, *Public Poor Relief in North Carolina* (Chapel Hill: The University of North Carolina Press, 1928); A.

During colonial times, most North Carolinians gave little thought to a need for public poor relief. As in England, relief for the poor was officially the responsibility of each parish, the unit of church government. Between 1755 and 1771 the colonial assembly passed laws to require freeholders in each parish to elect vestrymen who could levy a poll tax for meeting parish expenses, including maintaining the poor. To receive poor relief, a citizen appeared before the vestrymen and stated his own or another poor person's need—the same general method of administering public assistance that was used by county commissioners until 1919. The response to dependent children was usually apprenticeship, an English practice that continued in this state until passage of a juvenile court law in 1919.

The North Carolina Constitution of 1776 made no provision for care of the poor. In 1777 the duties and powers of the vestry were assumed by elected overseers of the poor who were authorized to tax and to dispense aid to the poor through designated wardens. Eventually county courts were authorized to appoint wardens of the poor, to levy taxes, and to build almshouses. The legislature passed local acts—and statewide laws in 1793 and 1831—that authorized counties to build almshouses or poorhouses for the housing and employment of the poor. Many counties were slow to implement such legislation. But eventually the poorhouse system partially replaced outdoor—or direct payment—relief, and caring for the poor with public tax funds became accepted as a function of county government. Details of counties' poor relief programs reflected considerable local autonomy in such matters as whether all the poor should be required to live in poorhouses and how the superintendent of the poorhouse was selected.

The present delineation of state and county roles in social services began to develop after the Civil War with the Constitution of 1868 and legislation that followed. Boards of county commissioners were given a general duty to provide for the poor and authority to levy taxes and employ an overseer of the poor,[2] but the precise means of providing poor relief were left to local discretion. The following provision of the Constitution of 1868 followed the lead of several other states in setting forth the state's role:

> Beneficent provision for the poor, the unfortunate, and orphan being one of the first duties of a civilized and Christian state, the General Assembly shall, at its first session appoint and define the duties of a Board of Public Charities, to whom shall be entrusted the supervision of all charitable and penal State institutions, and who shall annually report to the Governor upon their condition, with suggestions for their improvement.[3]

The State Board of Public Charities that was created pursuant to that provision[4] consisted of five members appointed by the General Assembly. The board surveyed conditions in local poorhouses and reported on the deplorable conditions in many counties' facilities for the mentally ill, criminals, and homeless children. Standards for and supervision of county poor-relief programs were haphazard or virtually nonexistent.

The assumption by the state of a primary role in social services developed slowly. While the State Board of Public Charities attracted some attention to distressing conditions, it operated with no funds except a travel allowance. Although it was authorized to require reports from county officials, it had no enforcement power. The 1869-70 session of the legislature made it a misdemeanor to fail to comply with a proper request for information by the Board,[5] but the next session did away with the Board's travel allowance.[6] The State Board was effectively nonfunctioning for almost 19 years, and even when it was revived in 1889, it received little support. The renewed State Board did facilitate the creation of voluntary county committees that visited county institutions and reported to the Board. While conditions at the county level improved, immense disparities continued among the counties in their provisions for the poor.

The first substantial state action in the welfare field tended to complement rather than impinge on local welfare activity by focusing on certain special classes of citizens. The Constitution of 1868 and subsequent legislation made the state responsible for the care of the insane, the deaf-

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Laurance Aydlett, "The North Carolina State Board of Public Welfare," *The North Carolina Historical Review* 24, no. 1 (January, 1947), 1-33; Mavis Andree Mann, "North Carolina County Government: 1925-1945" (doctoral diss., University of North Carolina, 1946); Clement Harold Donovan, "The Readjustment of State and Local Fiscal Relations in North Carolina, 1929-1938" (doctoral diss., University of North Carolina, 1940); Paul W. Wager, *County Government and Administration in North Carolina* (Chapel Hill: The University of North Carolina Press, 1928); J. S. Kirk, Walter A. Cutter, and Thomas W. Morse (eds.), *Emergency Reliefin North Carolina* (Raleigh: Edwards & Broughton, 1936); Andrew W. Dobelstein (ed.), *Crisis in Social Services in North Carolina* (Raleigh: North Carolina Conference for Social Services, 1974). For historical materials not specific to North Carolina, see Advisory Commission on Intergovernmental Relations, *Public Assistance: The Growth of a Federal Function*, Report A-79 (Washington, D.C.: ACIR, 1980); Walter I. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America*, 2d ed. (New York: The Free Press, 1979).

2. N.C. Pub. Laws 1868, Ch. 20, s. 24.
3. N.C. Const. of 1868, art. XI, § 7.
4. N.C. Pub. Laws 1868-69, Ch. 170.
5. N.C. Pub. Laws 1869-70, Ch. 153.
6. N.C. Pub. Laws 1870-71, Ch. 106.

mute, and the blind. State institutions were created for the insane, the feeble-minded, epileptics, tuberculosis patients, and Confederate soldiers and their wives or widows. At the same time, orphanages for dependent children were being developed through private and religious groups with some state support.

Increased state involvement. A statewide public welfare law that was enacted in 1917[7] and supplemented in 1919[8] marked the beginning of an organized system of state supervision and local administration of social services. The State Board was enlarged to seven members and renamed the State Board of Charities and Public Welfare. Among the Board's expanded duties were to promote the welfare of dependent and neglected children and to inspect child-caring institutions. Provision was made for a state Commissioner of Public Welfare and for a professional staff at the state level. The 1917 law provided for the appointment by the county commissioners of three-member local boards of charity and public welfare, but the 1919 law transferred authority to appoint the local boards to the State Board. It also provided for the appointment of a superintendent of public welfare jointly by the board of commissioners and the board of education in each county. In smaller counties the school superintendent was designated to serve as the superintendent of public welfare. The county superintendent of public welfare was to act both as agent of the State Board and as administrator of public poor funds under the direction of the county commissioners—a dual role that exists for county social services directors today. Although local officials appointed the superintendent, the State Board passed on his qualifications for the position.

Although the law made the county superintendent, under the county commissioners' control, responsible for the care and supervision of the poor and administration of the poor fund, the authority actually delegated to him varied from county to county. Some boards of commissioners set general policy and left its administration up to the superintendent. Other boards continued to handle the discretionary handing-out of funds or only gradually shared responsibility with the superintendent. At the state level the Board and the Commissioner of Public Welfare were involved in implementing the juvenile court law that was enacted in 1919.[9] State-level bureaus in addition to the Division of Child Welfare, were County Organization, Institutional Supervision, Mental Health and Hygiene, and Promotion and Education. By 1925, 57 counties had organized welfare departments, 46 had full-time county superintendents, and 11 had part-time superintendents. In 43 counties the school superintendent served as the welfare head.[10]

In 1923 the state enacted a Mother's Aid law[11] to provide financial assistance to certain indigent mothers with children under the age of 14. The cost of the program was divided equally between the state and the counties that chose to participate. By 1926, 71 counties were participating. Forerunner of the present Aid to Families with Dependent Children program (AFDC), Mother's Aid was state-supervised and county-administered. The standards set for the program by the state created a noticeable contrast to the often arbitrary poor-relief practices of the counties. The inefficiency of operating the large number of county homes in the state and recognition that many people were in the homes because of medical needs led both the State Board of Charities and Public Welfare and the legislature to propose the creation of district hospital-homes. But in 1924, the State Board cited the counties' inability to agree on location, local jealousy, and local pride as the barriers to such change.[12]

Passage of the Social Security Act in 1935 marked the beginning of a drastic redefinition of government's role at every level in the social services field.

During the expansion and growth of governmental functions in the 1920s, spending for public welfare was only a small portion of state and local budgets. School and highway financing were major issues, and levels of taxation and public debt were steadily rising. The legislative battle of 1931-33 that resulted in major shifts of responsibilities from the counties to the state and in the revamping of government financing had little effect on public welfare. Counties remained responsible for poor relief, for the care of the elderly poor, and for the care of dependent children. The state maintained various institutions, contributed to the Mother's Aid program, and established a fund for foster care children.

7. N.C. Pub. Laws 1917, Ch. 170
8. N.C. Pub. Laws 1919, Ch. 46
9. N.C. Pub. Laws 1919, Ch. 97.
10. Aydlett, *supra* note 1, pp. 20-23.
11. N.C. Pub. Laws 1923, Ch. 260.
12. Brown, *supra* note 1, p. 169.

The Depression—increased federal involvement. Public welfare activities by both the state and local governments expanded during the Great Depression. Widespread hardship led to a change in attitudes toward poverty. There was an increased awareness of the seriousness of local disparities that were based on levels of unemployment, agricultural conditions, and other economic factors. Federal and state governmental involvement in addressing the problems of the poor took on a new legitimacy.

In 1935 the State Board's responsibilities increased. The Board became the central registration point for all adoption proceedings.[13] A new state division of Field Social Work was created to provide liaisons between the state office and county welfare departments. The State Board assumed some of the duties of the liquidated federal Emergency Relief Administration. It was also the designated agency for certifying applicants to various federal programs and for sponsoring a statewide commodity-distribution project. These latter functions were relatively short-lived; expansion of the state's role was not.

Passage of the Social Security Act in 1935 marked the beginning of a drastic redefinition of government's role at every level in the social services field. The act brought federal child welfare funds to the state in 1936 and triggered legislation to qualify the state for federal funds. Besides creating important new federal-state relationships, the Social Security Act resulted in a shift of responsibility from the local to the state level. The act required that the state's public assistance plan be in effect in all of its political subdivisions and that a single state agency administer or supervise the administration of the plan. State legislation was passed to make county participation mandatory. The state was responsible for achieving efficient operation of the plan, and it was required to provide appeal hearings to persons whose claims for assistance were denied at the county level.

The expansion required for administering federal cash-assistance programs necessitated the organization of social services activities in 31 counties that still did not have full-time public welfare superintendents. By 1937, all 100 counties had full-time public welfare units. Legislation[14] that was passed in 1937 to qualify the state for federal funds also restored to county commissioners a role in the appointment of local boards—they appointed one member, the state board appointed one member, and those two appointees appointed a third member.

Although the Social Security Act required state financial participation, the burden of providing matching funds to attract federal dollars fell largely on the counties.[15] Having so recently assumed a major portion of the cost for schools and highways (1933),[16] the state was not prepared to shoulder by itself the increased costs of public welfare. By 1945 many counties were seeking special legislative acts to increase the limits on property taxation, and in that year a general act doubled the rate that counties could levy for general relief purposes.[17]

Since 1937 the development of the social services system in North Carolina has largely reflected initiatives and funding criteria at the federal level. For example, in 1941 amendments to the Social Security Act led to the creation of the Merit System Council that governed the personnel operations of the welfare program.[18] As a result of federal requirements, state merit examinations and classification and compensation plans were applied to county welfare employees. But the federal government has not generally been involved in deciding how the state and counties share the nonfederal cost of programs or in this state's continued preference for the system of state supervision and county administration.

The postwar era. The State Board's name was changed in 1945 to the State Board of Public Welfare[19] and in 1969 to the State Board of Social Services.[20] These renamings reflected both changes in philosophy and the fact that the program's scope had become much broader than financial aid. Financial assistance payments began to be viewed as benefits or entitlements rather than charity or welfare. Courts began to play an increasing role in defining and enforcing rights and responsibilities in the social services system.

From World War II through the 1960s social services programs grew tremendously. State supervision of county administration occurred primarily through field representatives whose functions included interpreting state policy, consulting with local superintendents and boards, and reporting to the state office. Annual reviews of county administration were conducted by state office personnel, and the state was divided into six districts to facilitate regular meetings of state and local welfare officials.

Biennial reports of the State Board of Public Welfare during the 1940s and 1950s repeatedly emphasized state-

13. N.C. Pub. Laws 1935, Ch. 243.
14. N.C. Pub. Laws 1937, Ch. 288.
15. See Donovan, *supra* note 1, p. 185.
16. See C. Donald Liner, "The Evaluation of Governmental Roles and Responsibilities," in C. Donald Liner (ed.), *State-Local Relations in North Carolina* (Chapel Hill, N.C.: Institute of Government, 1985).
17. Aydlett, *supra* note 1, p. 32.
18. N.C. Pub. Laws 1941, Ch. 378.
19. N.C. Pub. Laws 1945, Ch. 43.
20. N.C. Pub. Laws 1969, Ch. 546.

local coordination and the state's efforts to keep local welfare boards and county commissioners informed. The reports frequently commented on the disparities among counties' general assistance programs (that is, the county-funded programs that served people who were not covered by the federal assistance programs) and the need for state appropriations for that purpose. The Board also called for additional state moneys to help fund counties' administrative costs. In 1958 formulas were modified to distribute state funds to aid county administration on a basis more objectively related to counties' abilities to raise their share of public assistance costs. Still, the state's appropriation for county administration of welfare was far below its contribution to administrative costs of other locally administered programs like health, education, and agricultural extension.[21]

The fact that they have so little control over the selection and supervision of the county director of social services and his staff—county employees who administer large sums of county money—has been a concern to many commissioners.

During the 1950s professional groups sought more formal input into the social services process. The North Carolina Association of County Commissioners appointed an advisory committee to meet regularly with state welfare personnel. A statewide organization of county welfare board members formed in 1956 and designated a policy committee to advise the State Board. The Association of Superintendents of Public Welfare and the Association of Caseworkers were also active.

Social services programs multiplied through the 1960s at what some considered an uncontrollable rate. Medicaid, added in 1965, became the most expensive and complex of the county-administered programs. Federal and state regulations and red tape plus the increasing cost of programs generated frustration, dissatisfaction, and a new level of intergovernmental suspicion and distrust. Specialization, the creation of new agencies and programs, and frequent changes within programs resulted in fragmentation and a perception of decreased coordination among state and local officials. In 1967 the General Assembly directed its Legislative Research Commission to study the laws structuring the welfare program, and in 1969 it rewrote those laws.[22] In terms of the relationship between the state and the counties, the 1969 legislation was similar to present social services laws that were recodified in 1981.[23]

The North Carolina Constitution of 1970 retained a provision comparable with the language quoted earlier from the Constitution of 1868. In addition, Article XI, Section 3, of the new Constitution provides the following:

> Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

In the early 1970s over thirty state agencies had social services functions, and it was questionable whether either the public good or the human needs of North Carolinians were well served by the level of bureaucracy that had developed. When state government was reorganized in 1971 and 1973, these agencies were brought under the new Department of Human Resources (DHR), and Social Services became one division of that department.[24] The State Social Services Board became the Social Services Commission, which continues to have authority to make rules and to appoint one or two members of the county boards (depending on whether the boards have three or five members). The chief state officer in the area of human services became the Secretary of Human Resources (appointed by the Governor), who appoints and delegates authority to the directors of the various divisions within DHR. DHR relates to the counties through four regional offices as well as through a sizable state office staff.

The social services system today

Finance. According to DHR estimates, in fiscal year 1985-86, county departments of social services will administer programs with a total cost of more than $1.4 billion.[25] That estimate does not include the cost of general assistance or other programs that counties may choose to provide from purely local funds.

21. North Carolina State Board of Public Welfare, *Biennial Report, 1956-58*, p. 20.

22. N.C. Pub. Laws 1969, Ch. 546.

23. N.C. Sess. Laws 1981, Ch. 275.

24. See Dobelstein, *supra* note 1, p. 11.

25. "Estimated Funds Available—1985-86" (Raleigh: North Carolina Department of Human Resources, March 19, 1985).

Most local concerns about social services relate to cost containment and to lack of local control. Both issues are reflected in a special sensitivity when the county receives legislative, regulatory, policy, or judicial mandates that are not accompanied by funds to implement them. County officials tend to perceive the social services system both as consuming an ever increasing share of the county budget and as affording the county less and less control over how those local dollars are spent.[26]

The county share of the nonfederal cost of programs is determined by formulas that vary from program to program. Within programs, the formulas that apply to the costs of benefits and services and those that apply to administrative costs are usually different. The counties generally pay a larger proportion of the administrative costs. Table 1 shows the estimated federal, state, and county shares of the cost of major programs for fiscal year 1985-86.[27] These estimates show the counties paying 9 per cent, the state 19 per cent, and the federal government 72 per cent of overall costs.[28] The General Assembly divides the nonfederal share of costs between the state and the counties.[29] By February 15 of each year, the Secretary of DHR notifies the county social services directors of how much federal and state money the county will probably receive and the percentage of county participation that will probably be required.[30] Each board of county commissioners is required to levy and collect taxes sufficient to meet the share of expenses assigned to the county.[31]

A state public assistance equalization fund[32] reserves some state appropriations for distribution according to a formula determined by the Social Services Commission to equalize the tax burden on the counties. When a county's expenditures exceed the amount that has been estimated and budgeted for program costs, the State Public Assistance Contingency Loan Program[33] enables the county to borrow state funds that must be repaid within two years. These funds may not be applied to administrative costs. The loan fund was established in 1977 when the General Assembly, over the counties' objections, repealed a 1975 law that had provided for county expenses above the state's estimates to be paid out of state funds. State-level support for that approach disappeared when county budget overruns for social services amounted to $1 million, which the state had to make good.[34]

While counties are required to participate in the major social services programs, they are authorized to establish, fund, and operate additional programs or services using only local funds.[35] The extent to which counties do so varies, and the availability of emergency assistance and other benefits to fill gaps left by the major programs is not uniform statewide. Social services also vary from county to county when the state authorizes pilot programs in counties that agree to establish and administer them. A small number of counties, for example, operate Community Work Experience programs in which certain recipients of public assistance are required to work off the value of the benefits they receive.

County social services departments feel the burden of paperwork and data-keeping that is required in being accountable to federal, state, county, and sometimes judicial officials. They are ever aware of the need to control error rates and to avoid the financial sanctions that are attached to excessive errors.

The county commissioners' role. Effective July 1, 1985, boards of county commissioners must administer or provide for the administration of the child support enforcement program that is required in every county. Formerly, a board of commissioners could choose to have the state administer the program in that county, an option that almost a third of the counties exercised. The legislation[36] that required local administration also directed DHR to conduct a study and make recommendations for a single and uniform method of administering the program in all the counties.

26. For the views of a county official and a state official on welfare financing, see John V. Witherspoon, "A County Official Looks at Welfare Budgeting," *Popular Government* 44, no. 1 (Summer 1978), 9-14; and Barbara D. Matula, "Financing Social Services—The State's Perspective," *Popular Government* 44, no. 1 (Summer 1978), 15-18, 51.

27. "Estimated Funds Available—1985-86," *supra* note 25.

28. *Id.*

29. N.C. GEN. STAT. § 108A-87 (1983 Supp.)

30. *Id.* § 108A-88 (1983 Supp.)

31. *Id.* § 108A-90 (1983 Supp.)

32. *Id.* § 108A-92 (1983 Supp.)

33. *Id.* § 108A-89 (1983 Supp.)

34. See Witherspoon, *supra* note 26, p. 10; Matula, *supra* note 26, p. 16.

35. N.C. GEN. STAT. § 108A-41(d) (1983 Supp.); *id.* § 153A-255.

36. N.C. Sess. Laws 1983 (Reg. Sess. 1984), Ch. 1034, §§ 76, 77.

Table 1. Estimated Federal, State, and County Funds Available for Selected Social Services Programs, North Carolina, Fiscal Year 1985-86, Thousands of Dollars

Program	Estimated funds by source				Percentage		
	Total	Federal	State	County	Federal	State	Local
Public assistance programs:							
Medicaid	$ 757,071	$519,461	$201,991	$ 35,619	68.6%	26.7%	4.7%
Special assistance to the blind	1,541	0	770	770	0.0	50.0	50.0
Aid to Families with Dependent Children (AFDC)	173,868	120,438	26,773	26,657	69.3	15.4	15.3
State-county special assistance	36,480	0	18,248	18,232	0.0	50.0	50.0
Certain disabled	275	0	138	138	0.0	50.0	50.0
Food assistance	236,643	236,643	0	0	100.0	0.0	0.0
Adoption and foster care (Titles IV-B and IV-E)	3,960	2,802	618	541	70.8	15.6	13.7
State foster home benefits	4,105	0	2,053	2,053	0.0	50.0	50.0
Low-income energy assistance	27,711	27,711	0	0	100.0	0.0	0.0
Crisis intervention payments	6,200	6,200	0	0	100.0	0.0	0.0
Less: State equalizing assistance to counties	0	0	2,913	(2,913)	0.0	100.0	0.0
Title IV-D (Child Support) collections	0	3,287	0	(3,287)	100.0	0.0	0.0
Total public assistance programs	1,247,854	916,542	253,503	77,808	73.5	20.3	6.2
Administration and service programs:							
Services for the blind	2,650	1,972	325	354	74.4	12.3	13.4
Social services block grant services	54,733	41,640	0	13,093	76.1	0.0	23.9
State in-home services	5,554	1,000	3,859	694	18.0	69.5	12.5
Special adult day care	844	0	739	106	0.0	87.5	12.5
Long-term care screening	0	0	0	0	92.0	8.0	0.0
Medical transportation (Title XIX)	748	474	0	274	63.3	0.0	36.7
Permanency planning	3,340	2,505	552	283	75.0	17.0	8.0
Adolescent parenting	251	188	0	63	75.0	0.0	25.0
AFDC administration	24,512	12,256	22	12,234	0.0	0.0	50.0
State-county special assistance administration	1,877	0	0	1,877	0.0	0.0	100.0
Low income energy assistance and crisis intervention administration	2,657	2,657	0	0	100.0	0.0	0.0
Food assistance administration	38,058	19,748	36	18,273	51.9	0.1	48.0
Offset—Food Stamp Fraud Collections	0	551	0	(551)	100.0	0.0	0.0
Medicaid administration (Title XIX)	20,818	10,409	2	10,407	50.0	0.0	50.0
Child welfare administration (Title IV-E)	294	147	0	147	50.0	0.0	50.0
Child support enforcement administration (Title IV-D)	11,936	8,355	0	3,581	70.0	0.0	30.0
Less offset—Title IV-D INCENTIVE	0	3,604	0	(3,604)	100.0	0.0	0.0
Refugee assistance	370	370	0	0	100.0	0.0	0.0
Employment programs							
Work incentive program	1,888	1,700	0	189	90.0	0.0	10.0
Community Work Experience Program (Workfare)	316	158	79	79	50.0	25.0	25.0
Child day-care services	15,135	7,441	6,859	834	49.2	45.3	5.5
Less: state aid to counties	0	0	5,572	(5,572)	0.0	100.0	0.0
Less: juvenile code proceeds	0	0	200	(200)	0.0	100.0	0.0
Total administration and service programs	185,982	115,174	18,246	52,561	61.9	9.8	28.3
Total social services programs	$1,433,836	$1,031,716	$271,749	$130,370	72.0%	18.9%	9.1%

Note: Figures may not add because of rounding

Source: Estimates of the North Carolina Department of Human Resources, March 29, 1985

Boards of county commissioners are involved in developing, approving, and funding the local social services budget and in deciding what nonmandated programs or services will be provided with county funds. Commissioners determine whether the county social services board will have three or five members and on the basis of that decision appoint either one or two members.[37] They generally take advantage of their statutory authorization to appoint one of their own members to the social services board.[38] The commissioners may review any final action by that board or the county director regarding an application for Aid to Families with Dependent Children to determine whether it complies with federal and state regulations.[39] They are also responsible, through the department of social services, for administering and operating the food stamp program.[40] If a food stamp applicant or recipient appeals a local food stamp decision, the commissioners may seek judicial review of a final decision by DHR,[41] though they rarely do.

The social services board. County social services boards have become primarily advisory bodies. Their most significant responsibility is hiring—according to merit system rules set out by the State Personnel Commission—the county social services director.[42] Implicit in the board's authority to hire the director are the responsibility for evaluating and the authority (when necessary) to fire the director. The board determines the director's salary, with the commissioners' approval, according to the State Personnel Office classification plan.[43] The director is responsible for hiring—and by implication is authorized to fire—all necessary personnel for the social services department.[44] A recent change ended the requirement that county directors hire employees from a state register of qualified applicants, but county social service employees are covered by the State Personnel Act unless the county has been granted an exemption based on its having a comparable county personnel system.[45] County commissioners may be called on to provide funding for new positions, but the hiring of social services staff is the director's responsibility.

The fact that they have so little control over the selection and supervision of the county director of social services and his staff—county employees who administer large sums of county money—has been a concern to many commissioners. The North Carolina Association of County Commissioners has urged the General Assembly to provide that all county social services board members be appointed by the commissioners[46]—a change that would at least indirectly increase the commissioners' involvement in the selection of the director.

In addition to hiring the director, the social services board is authorized to advise county and municipal authorities in regard to improving social conditions in the community, consult with the director about problems relating to his office, assist him in planning budgets, and transmit or present the department's budget to the county commissioners. Other duties may be assigned to the board by the General Assembly, the Department of Human Resources, the Social Services Commission, or the board of county commissioners.[47] Some county social services boards have become involved in reviewing the director's personnel decisions, but they have no statutory authority in that regard. Appeals from personnel actions by the director are properly handled according to the State Personnel Act[48] or the county's comparable system if the county has been granted an exemption.

The social services director. The county social services director's duties are defined by statute.[49] The most significant general duties include, in addition to hiring county social services personnel, administering programs of public assistance and social services under applicable rules and regulations. The director is charged with administering funds provided by the board of commissioners for the care of indigent persons in the county under policies approved by the county social services board. But he or she is also to act as agent of the Social Services Commission and DHR in relation to work required by the Commission and DHR in the county.

When he or she wears the hat of agent of a state-level commission and department, the social services director is viewed as something different from other heads of units or departments of county government. This dual role as agent of the state and employee and agent of the county is most often discussed in terms of control and accountability, or the lack thereof. But the question of for whom the director acts has also been addressed by

37. N.C. Gen. Stat. § 108A-2 (1983 Supp.)
38. *Id.* § 108A-3 (1983 Supp.)
39. *Id.* § 108A-33(c) (1983 Supp.)
40. *Id.* § 108A-51 (1983 Supp.)
41. *Id.* § 108A-79(k) (1983 Supp.)
42. *Id.* § 108A-9(1) (1983 Supp.)
43. *Id.* § 108A-13 (1983 Supp.)
44. *Id.* § 108A-14(2) (1983 Supp.)
45. *Id.* §§ 126-5(a), -11 (1983 Supp.).

46. North Carolina Association of County Commissioners, "Resolution Calling for All Members of County Boards of Social Services To Be Appointed Directly by Boards of County Commissioners," August 13, 1983.
47. N.C. Gen. Stat. § 108A-9 (1983 Supp.)
48. See N.C. Attorney General's Opinion, November 10, 1983.
49. N.C. Gen. Stat. § 108A-14 (1983 Supp.)

courts in the context of liability for the director's actions. In *Fracaro v. Priddy*,[50] a federal district court ruled that a North Carolina county social services director was acting for the state, not the county, when he fired an eligibility supervisor; therefore the county could not be liable to the plaintiff even if she proved that her rights had been violated. The court also stated that social services board members could not be liable in that case because only the director had authority to dismiss the plaintiff/employee. In *Vaughn v. North Carolina Department of Human Resources*,[51] the State Supreme Court held that DHR was liable for negligent acts (performed through the director's employees) of a county social services director with respect to the placement of children in foster care. In reaching that conclusion, the Court pointed to (1) the statutory provision that makes the director the agent of the Social Services Commission and DHR, (2) the Social Services Commission's rules governing the placement of children in foster care, (3) the degree of state control over the director's administration of the foster care program, and (4) the extent of state funding of the program.

County social services departments feel the burden of paperwork and data-keeping that is required in being accountable to federal, state, county, and sometimes judicial officials. They are ever aware of the need to control error rates and to avoid the financial sanctions that are attached to excessive errors. Since part of the state's response to federal funding cuts has been a decrease in state-level training resources, counties struggle to meet the increased needs for adequate staff training.

County social services directors, largely through their statewide organization and its committees, continue to be involved with statewide issues and concerns. The Policy and Liaison Committee of the directors' association meets monthly to review proposed changes in state policy or procedure, to hear from state office personnel about plans and changes, and to provide feedback from the local perspective. County directors, supervisors, and line workers constitute the Services Committee, Income Maintenance Committee, Fiscal Committee, and other committees that meet monthly with state staff. Representatives of the county commissioners' association meet regularly with state officials regarding social services.

Frequent policy changes, inadequate lead time to implement changes, adequacy of some funding formulas, and whether local officials and personnel are sufficiently involved in developing state policy still cause concern. But there also appears to be an improved and welcomed atmosphere of communication and cooperation between the state and the counties in the social services area.

Problems of lead time and frequent policy changes are largely due to federal action over which the state has little control. Simplification, in a full sense, would require major federal reforms such as standardizing eligibility requirements for all programs. But important steps have been taken in achieving simplification in areas over which the state does have control. Administrative rules for one program, AFDC, have been revised and reduced from 312 to 44. An Income Maintenance Simplification Task Force and a Services Simplification Committee consisting of state, regional, and county staff have made a number of recommendations that have been or are being implemented. The food stamp program is now automated in every county with the use of technology developed by the state with county participation. An integrated eligibility information system that will uniformly and simultaneously process eligibility for all major public assistance programs is being pilot-tested.

As the social services system has become increasingly complex, there has also been increased professionalization among county directors, other social services employees, and county government officials. Methods of administration have become more sophisticated, and automation and computerization are becoming accepted as essential features of social services administration. The state and the counties alike are facing the implications of the "new federalism," concerns about federal budget cuts, the implementation of new technology, and the need to simplify regulations and procedures. The effective coordination of social services with health, mental health, and other human services is a growing concern of both state and local officials.

North Carolina has struck a balance of state and county responsibilities for conducting the business of social services across the state. That balance has produced an effective statewide social services system that combines general uniformity of benefits and services with the maintenance of some measure of local flexibility and control. The adequacy of the balance and whether and how it ought to change are subjects that will continue to be debated. The debate itself is a critical part of achieving a better balance. **GP**

50. 514 F. Supp. 191 (1981).
51. 296 N.C. 683 (1979).

MANAGEMENT:
A New Role For District Attorneys

Patton G. Galloway

The district attorney's job, as defined by Constitution and statute, is to prosecute criminal actions on behalf of the State and to advise the officers of justice in his district.

Another, less visible part of the job is becoming increasingly important. As their staffs grow larger and the functions of their offices become more complex, district attorneys' time and efforts are increasingly centered on their job as managers. This article outlines some aspects of that role.

The manager's role

When interviewed recently, sixteen of North Carolina's 35 district attorneys said that they spend an average of 30 per cent of their time handling their own cases and about 15 per cent in public relations or political matters. The balance of their time is spent in management work, if management is defined to include helping assistants with cases. The percentage of time district attorneys devote to their own caseload ranges from 1 per cent to 60 per cent and correlates closely with the size of their staff; as staffs grow, the district attorney's job becomes less that of a trial lawyer and more of a manager.

What is the manager's job? Peter Drucker, in his excellent book on management, tells us that the work of a manager can be defined as planning, organizing, and integrating his work with others, then measuring the results with the objectives he has set.[1] He must use the resources under his control to create a productive entity.

District attorneys are lawyers. Like most members of the profession, they tend to lack both the training and the temperament of managers. Typically, trial lawyers are not team players and do not grasp the extent to which their effectiveness depends on the performance of others. Most are not comfortable with the paperwork and red tape that are endemic to a bureaucracy. Accustomed to dealing with precedents in the law, they may have difficulty dealing with the dynamics of change.

Despite these inherent limitations, most of North Carolina's district attorneys are adapting creditably to the managerial role. This article discusses some of the factors that shape their job as managers and some of the components of their managerial role. It is based primarily on interviews with district attorneys and on visits to twenty-three prosecutorial offices.[2] Here we will talk about the kinds of traditional management tasks listed by Drucker rather than with the more specialized subject of case processing, although that also is subject to managerial decisions.

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1. Peter F. Drucker, *Management* (New York: Harper & Row, 1974).

2. To develop data for a procedures manual, on-site interviews were conducted with twenty-three district attorneys, their administrative assistants, and other personnel concerning various aspects of office management.

Planning and policy implementation

Drucker lists planning as the first task of a manager, who must constantly work to harmonize the demands of the present and the future. The manager must not only prepare to cross distant bridges but also make sure they are built by the time he gets there.

The first step in planning is to develop goals—the organization's "mission." Most district attorneys have a well-defined view of the prosecutor's role. These views tend to reflect those of the district that elected them—and vary accordingly. Public expectations of criminal justice in a metropolitan area are quite different from those in a remote rural county, just as those of a college town vary from those of a close-knit farm community.

Because of the broad discretionary authority that the courts have given them, prosecutors are able to shape statewide statutory and procedural requirements to accommodate local expectations and personal goals. This flexibility is illustrated by the way in which they dispose of cases.

In North Carolina, as in other states, the vast majority of cases are settled by pleas rather than by trial. The defendant pleads guilty to an offense (or offenses) for which the punishment is less than the maximum with which he could be charged. Both sides agree to the plea bargain rather than face the uncertainties and expense of trial. But the extent to which trials are used varies from district to district.

A "hard line" prosecutor who believes that every offender should receive the maximum possible punishment will probably try as many cases as possible and hope for convictions. Conversely, a prosecutor who believes that the goal of the system is to process cases efficently will probably screen out weak cases as early as possible by dismissing some and taking pleas in others. He may also divert some defendants to alternative programs, such as community service. As a result, one prosecutor will set a high trial rate as an objective while another will aim at early disposition of cases.

These differences are apparent in case statistics. In North Carolina as a whole during the 1983-84 fiscal year, 5.7 per cent of felony cases were tried. The rest were dismissed, settled by a guilty plea, or otherwise disposed of. By districts, however, the trial rate ranged from 1.9 to 18.6 per cent. There was an even wider range in the age of cases at disposition.

These different approaches to the handling of cases seldom result from formal policy. Few prosecutors have developed any written guidelines in this area, and only one has prepared a policy manual. A policy and procedures manual is now being developed by the Conference of District Attorneys. Recognizing the differences between districts' policies, however, even this manual will not prescribe a "model." Rather, it will outline alternative ways of doing things.

Policy implementation is complicated by the fact that prosecutors have little control over their resources. When a private attorney's work expands, he can hire more staff, and he can design position specifications according to the kind of practice he plans to pursue. But public-sector attorneys must depend on external funding sources for their staff. The funds available may not match their needs, and the positions allocated may not suit the tasks to be performed.

District attorneys view the *quantity* of personnel available to them as the chief problem in managing their offices but consider the *quality* of that staff as the chief strength.

This situation has a strong effect on policies of North Carolina prosecutors. For example, from fiscal 1978-79 to fiscal 1983-84 the felony caseload grew by 31 per cent, but the number of prosecutors increased by only 17 per cent.

In light of this situation—a caseload that grew much faster than the attorneys available to handle it—case processing might be expected to slow significantly. In fact, that did not happen. District attorneys continued to move cases at about the same rate as before. The percentage of the felony caseload disposed of even increased slightly, from 72 to 74 per cent.

The ratio of felony trials to prosecutors also remained almost constant during this period. But the resource gap did affect some statistics. The age of felony cases at disposition increased from 69 to 80 days, and the percentage of felonies tried dropped from 7.1 to 5.7 per cent.

Organizing resources

These examples illustrate how a district attorney's policies are shaped both by external factors over which he was little or no control, such as the resources allocated to him, and by his own goals for the office. His ability to reconcile these factors is one measure of his skill as an manager. This process involves the second of the tasks

outlined by Drucker—organizing resources into a productive entity.

The organizational unit here is the prosecutorial district. The thirty-five districts are established by statute and, with one exception, correspond to judicial districts. The range in size is striking. At one end of the scale is District 26, which consists of Mecklenburg County. It has a population of almost half a million and about 5,500 cases a year pending in superior court. District 2, in contrast, has a population and caseload about one-fifth the size of the Twenty-sixth's, but it sprawls across five coastal counties. Between these two are various combinations of population and geographical size.

One factor that influences how a district attorney organizes resources is the number of counties he serves. Nine districts consist of a single county each, but 26 consist of two or more. In nine of these 26, the district attorney is responsible for two counties; in ten districts, for three or four counties; and in seven, for five or more.

Normally, the single-county district attorney has all of his staff in one place. But the district attorney who serves more than one county must decide whether (a) to locate his staff in one location and have them "ride circuit" to the various courthouses in the district, or (b) to maintain multiple offices. If he chooses to centralize, he must decide where the office will be located. If he takes the other course, he must decide how his staff should be divided among multiple offices.

Numerous alternative arrangements have evolved. Of the nine two-county districts, for example, five have only one office while four have an office in each county. In one of these, the Twelfth District, all personnel are assigned to Fayetteville except for one prosecutor who staffs an office in Hoke County. In the Fifth District, Pender County courts are staffed from the Wilmington office. In Nineteen A, the staff is split almost evenly between Cabarrus and Rowan counties.

The more counties in a prosecutorial district, the wider the range of organizational choices. The district attorney in the First District, which has seven counties, assigns all staff to a central office. In District 30, however, the district attorney also has seven counties and maintains offices in five of them.

There are tradeoffs with either approach. Consolidation allows more flexibility in assigning attorneys and more efficient use of equipment and support staff. Policies can be applied uniformly. The district attorney can stay in closer touch with his staff in and keep better informed about the cases they handle.

There are also disadvantages to consolidation. Local law enforcement officers may be less likely to turn to the district attorney's office for advice if it is not readily accessible. Citizens may resent the absence of a resident prosecutor, and lack of ongoing contact with a county may be disadvantageous in such matters as jury selection. Distance may pose problems. In the mountainous Twenty-fourth District, for instance, two of the county seats are 83 miles apart and the roads between can be impassable in winter. Whatever decision a district attorney reaches on establishing offices, it will reflect a number of factors and will not necessarily be permanent. His successor may choose to do things differently.

District attorneys' approaches to personnel are diverse. Some pride themselves on "running a tight ship," and they impose stringent controls in such matters as attendance. Others claim that "they hire good people, they turn them loose."

District attorneys who centralize staff still need an office in each county where they can confer with witnesses and defense attorneys when court is in session there, but not all counties offer such a facility. The offices that do exist may be inadequate; only seven of eleven district attorneys who responded to a question on these facilities ranked them as good or very good.

Most of the larger district attorney's offices, which are usually in relatively new courthouses, are already cramped for space. In rural areas, some older courthouses have no space for the district attorney, so he has to work out of the judges' or clerk's offices. But an increasing number of district attorneys have persuaded the county commissioners to provide adequate, attractive quarters. One district attorney, who had to work out of his old law office when he started, now has office space in all counties of the district.

Size of the district and office facilities are two factors that affect a district attorney's operations. A related factor is staff size.

Use of staff

The typical district attorney's staff is not large. The median size is nine, including six attorneys, one administrative assistant, and two other support personnel. Again, the range is substantial. The six smallest offices

each have only six staff members, while seven districts have a staff of fifteen or more; the largest has a staff of thirty.

The number of attorneys ranges from three in one district to twenty in another. Each district has an administrative assistant and at least one secretary, and seventeen have investigators. Only ten have witness coordinators, although the legislature has been asked to fund this position on a statewide basis.

District attorneys' offices average .54 per cent of a support position per prosecutor. By contrast, a recent survey by the North Carolina Bar Association found an average of 1.12 support positions per attorney in private firms.

The district attorneys themselves view the *quantity* of personnel available to them as the chief problem in managing their offices but consider the *quality* of that staff as the chief strength. Nineteen district attorneys were asked to rank certain aspects of their offices. All but one rated quality of support staff as good or very good, and all but three rated quality of attorneys as good or very good. On the other hand, six district attorneys rated the number of attorneys as poor or fair, and twelve placed the number of support staff at less than good.

Staff positions are assigned to districts by the legislature or, in the case of secretaries, by the Administrative Office of the Courts. Still, a district attorney can help shape these decisions by his input into the budget and allocation process. As a result, the personnel mix varies across the state. For example, of the districts that have six attorneys, two have two authorized support staff positions, three have three, and two have four, and one has five support positions.

The district attorney has almost complete flexibility in how he uses his staff resources; there are no state-mandated job descriptions, and position specifications have been developed only recently as a by-product of a salary reclassification. Duties for each position within an office have tended to evolve through practice rather than through planning when they were established. As a result, support staff may have the same titles from district to district, but there is little uniformity in the tasks they perform.

In some districts, especially the larger ones, administrative assistants function as office managers. In many, they have primary responsibility for such substantive matters as developing a trial calendar and assigning cases to attorneys. In some, they perform primarily paralegal functions. In still others, however, the administrative assistant may simply be used as another secretary, often in a satellite office. Other support positions are used in similarly varied ways.

The district attorney also has complete flexibility in how he assigns attorneys within the constraints of such factors as the number of courts to be covered. As a result, there are almost as many assignment systems as there are districts.

For example, compare two four-county districts that have the same number of attorneys. One district attorney assigns three of his assistants one or two counties each,

When a private attorney's work expands, he can hire more staff and select people according to the needs of his practice. But public-sector attorneys must depend on external funding sources for their staff. The funds available may not match their needs, and the positions allocated may not suit the tasks to be performed.

on a permanent basis, while he and the fourth assistant fill in as needed. The assistants cover all sessions of all courts in the counties to which they are assigned. The other district attorney, however, rotates all assistants among all of the courts in all of the counties.

Even single-county districts vary in how they use attorneys. In one, for example, each of the nine prosecutors spends three weeks in superior court, then two weeks in district court. In another, four attorneys are assigned to superior court and five to district court on a continuing basis.

Some district attorneys assign prosecutors solely to district or superior court; they believe that this practice improves performance because the skills required to handle district court, with its high volume of rapidly processed cases, differ significantly from those needed for more complex trials in superior court. Many start new attorneys in district court and then move them to superior court as they gain seniority. Other district attorneys believe that rotating attorneys between contrasting courts helps prevent "burnout," which tends to be a problem with prosecutors, and serves to sharpen their skills.

A few large districts use a system of vertical prosecution by which a prosecutor is assigned a case as the district court level and remains responsible for it until it is dis-

posed of. The advantages of this system are that the prosecutor becomes thoroughly familiar with the case, there is less duplication of effort, and the case is treated consistently at all levels. The disadvantages include scheduling difficulties and the lack of a second opinion on how a case should be handled. Of course, those counties where a single prosecutor is assigned to a satellite office must necessarily use a system of vertical prosecution.

The small size of most districts precludes much specialization in the types of cases a prosecutor handles. Common exceptions are juvenile cases, in which the high recidivism rate can make it desirable for one attorney to learn about cases, and enforcement of child support, which can involve specialized interstate procedures.

Personnel policies

The third task listed by Drucker is interacting. A manager must motivate and communicate. With his own staff, he does this through decisions on such things as pay and promotion and through ongoing matters that are often grouped under the label "personnel policies."

Personnel policies within any district attorney's office tend to be bifurcated. All staff members are appointed by the district attorney and serve at his pleasure. Secretaries and other members of the support staff, however, are subject to policies of the Administrative Office of the Courts, while attorneys are not. This fact leads to differences in such matters as leave time, which is granted to support staff on the same basis as other state employees but is awarded to attorneys at the district attorney's pleasure.

District attorneys' approaches to personnel are as diverse as their approaches to organization. Some pride themselves on running a "tight ship" and impose stringent controls in such matters as attendance, while others claim that "they hire good people, they turn them loose." For example, some district attorneys allow prosecutors to go home when court is finished, while others insist they return to the office to finish out the work day. Those differences are probably less significant than they would appear to be, because the demands of the caseload usually require all prosecutors to put at least a full day's work, and few prosecutors are able to use fully whatever vacation time the district attorney decides to allow them.

The same flexibility exists with regard to attorneys' pay. While support staff salaries are set by the state, the district attorney has leeway in setting attorneys' salaries, so long as he stays within the amount budgeted for his district. This sum is determined by multiplying a legislatively established salary by the number of assistants to which he is entitled. Thus the district attorney may award increments on the basis of longevity, ability, or any other standard.

While this system allows a district attorney to implement his own management views, it does have drawbacks. A district attorney who retains prosecutors by giving them increments that are based on experience must also hire some inexperienced, lower-paid attorneys in order to stay within his salary allotment. This inability to offer many staff members high salaries encourages turnover, which is a problem in some districts. Longevity pay authorized by the 1984 legislature will mitigate this difficulty to some extent.

Interaction with staff is not confined to pay and benefits but extends to broader areas of policy. As noted, a few district attorneys have developed written materials covering policy matters. A larger number hold regular staff meetings. Some hold periodic meetings for the legal staff to discuss matters relating to cases and then call occasional officewide meetings to discuss matters of more general concern. Few multi-county districts, however, use staff meetings as a vehicle for ensuring consistency of policies among attorneys assigned to different districts.

The infrequent use of formal mechanism like manuals and staff meetings does not mean that district attorneys do not communicate effectively with their staffs. Most offices are still small enough to permit ongoing interaction between the district attorney and his staff. There are, however, wide differences in the degree to which staff, particularly prosecutors, are expected to conform to officewide policies or are free to use their own judgment.

Take, for example, the plea-bargaining process. Most district attorneys give their assistants full authority to negotiate and accept pleas within a general framework of office policy. But some require that pleas in cases involving certain types of offenses or offenders be approved in advance by the district attorney. In at least one district, the district attorney personally approves all pleas. Thus managerial interaction with staff in this area of policy ranges from setting broad parameters of policy to requiring specific consultation with the district attorney on each case.

Relations with other agencies

The manager interacts not only with his own staff but also with the people and agencies who contribute to and benefit from the work product of his office. This is particularly true of the district attorney, who is the nexus between law enforcement, the corrections system, and the public as well as between criminals and their victims. The police rely on him to prosecute the cases they develop;

victims rely on him to represent them; and criminal courts must follow the trial calendars he sets. The district attorney, on the other hand, must rely on the state and the county to provide him staff and office space, on the police to bring him cases, and on the judges to take pleas or hold trials.

An example of this critical interpendence is the prosecutor's relation with law enforcement. Studies have shown that the most important determinant of case outcome is the quality of police work. Not only the quality but also the organization of law enforcement agencies varies across the state. Whereas a metropolitan prosecutor deals with only a handful of agencies, a prosecutor in a multi-county district may deal with several dozen. They depend on him for legal advice, and he in turn must depend on them to apprehend criminals, investigate cases, and serve as witnesses.

This functional integration takes many forms and generally works well. Fifteen of the nineteen district attorneys surveyed considered their relations with law enforcement "good," and the rest said that these relations were "very good." In one district in which there are twenty-one separate law enforcement agencies, the district attorney sends out occasional memos to all of them concerning new policies and procedures. Several district attorneys hold regular meetings with heads of law enforcement agencies. Many of them give officers lists of prosecutors' home telephone numbers, so that they can call for advice outside regular office hours.

Some district attorneys also try to shape police reporting at the point of intake. In one district, prosecutors are assigned, on a rotating basis, to discuss cases with officers as they come off duty. This pre-warrant screening is designed not only to review cases at intake but also to help police correct weaknesses in a case while both the evidence and the officer's memory are still fresh. Many prosecutors have designed their own police report forms to help ensure that the information they get on cases is complete and uniform.

Another key group with which the prosecutor interacts is witnesses, including victims. Some district attorneys have coordinators who contact witnesses and, in most cases, put them on telephone standby so that they come to court only when they are actually needed. Otherwise a witness may waste many hours in court waiting for his case to be heard. Coordinators also keep victims informed about the progress of the case and answer their questions about the court system. Coordinator positions are currently authorized in only ten districts, but the legislature is being asked to make them available on a statewide basis.

Measuring the results

After a manager plans, organizes, and integrates his work, one task remains—measuring the results. The manager should analyze and evaluate performance at both the individual and the organizational level.

District attorneys implicitly evaluate individual performance each time they change a staff member's pay or responsibilities. However, very few have established any written standards for performance evaluation or any reporting procedures in those cases in which the employee is supervised by another staff member. Efforts to establish any objective measures based on workload statistics or case outcomes are equally rare.

Measuring organizational performance is difficult because North Carolina district attorneys do not have the facilities necessary to track cases efficiently. Unlike prosecutors in many states, they have no interactive in-house computer capability. The only statistics available to them are those produced by the Administrative Office of the Courts, as part of its judicial information system, on the basis of data supplied by clerks of court. These statistics are neither current nor comprehensive enough to meet district attorney's management analysis needs.

In order to measure performance adequately, a district attorney would need a data processing system that could be programmed to supply whatever basic data he required, on a timely basis, and measured in a way compatible with his needs. An expansion budget request to furnish a microcomputer for each district would, if enacted, make this possible.

Conclusion

North Carolina's district attorneys are devoting ever more of their time and effort to the tasks of management. This change has been forced on them by the increasing size of their offices, the growing complexity of the prosecutorial process, and a widening gap between caseloads and resources. The success with which they have molded the resources available to meet the particular needs of their districts speaks well both for their organizational skills and for the flexibility of the system under which they operate. It is apparent, however, that they need more specialized staff and equipment if they are to continue to cope successfully with mounting caseloads, increasingly stringent paperwork, and procedural requirements. Without such tools as in-house computers to track caseflow and staff to coordinate witnesses' court appearances, even the most resourceful district attorney will have problems managing his office effectively.

Small Claims Procedure in North Carolina

Christen R. Bashor

North Carolina's judicial system includes one or more small claims courts in each county. Each small claims court is presided over by a magistrate; most magistrates are not lawyers. The maximum amount that may be sued for in small claims court is $1,000. The filing fee is $19. Litigants may be represented by attorneys but usually are not, and the informal procedure in these courts is in general designed for litigants who do not have representation. In such an informal legal setting, questions must inevitably be raised about how magistrates deal with the presentation of evidence in the proceedings before them, how the presence of an attorney affects what goes on, and how satisfied litigants are with their experience in small claims court.[1]

This article draws a picture of small claims court procedure that is based on interviews with magistrates, results of a survey of magistrates who hear small claims cases, and observations of activities in small claims courts. It examines the roles of magistrates, lawyers, and rules of evidence and also the effect of each of these on litigants. In addition, it recommends steps that could be taken to help the magistrates and make small claims courts more responsive to the needs of the people who use them.

The sole provision in North Carolina law for the presentation of evidence in small claims court[2] states that "the rules of evidence applicable in the trial of civil actions generally are observed." Unfortunately that phrase is ambiguous: depending on whether "generally" modifies "civil actions" or "observed," the statute can be interpreted to mean that the rules of evidence *are* observed or are *generally* observed. At a minimum the rules of evidence should apply in most instances, but it is not clear from the statutory language alone whether they *must* be applied or whether the magistrate has some discretion. The General Rules of Practice for Superior and District Court contain a number of procedural suggestions for magistrates but none on the subject of evidence.[3]

The North Carolina statutes and rules of court thus provide a rough outline of procedure to be followed, but by and large small claims court procedure is a matter of local practice. A certain amount of variation exists among jurisdictions, primarily in the treatment of certain types of cases and the physical setting in which cases are heard. For example, in one jurisdiction small claims are heard in an office with only the parties and the magistrate present; in another jurisdiction, court is held in

The author is a third-year student in the School of Law at UNC-Chapel Hill. The project reported on here was part of a larger comparative study of narrative style in various legal settings, which is being directed by Professors John Conley of the Law School and William O' Barr of Duke University's Department of Anthropology. It was supported by the Law School and the Law Center Foundation.

1. Small claims courts throughout the United States have procedures much like the procedure in North Carolina's small claims courts. Their filing fees are small, and they apply some monetary limit to damages. Hearings are before a magistrate or judge without a jury. The conduct of trials is informal, usually with relaxed rules for presenting evidence. Lawyers may or may not be permitted; if they are, their role is often restricted. Each party in turn presents his case in his own manner and has a chance to question the other party; the judge usually asks questions of both. The judge often makes a decision on the spot on the basis of the evidence presented, and the winning party is left to collect the judgment. See John Ruhnka and Steven Weller, *Small Claims Courts: A National Examination* (Richmond, Va.: National Center for State Courts, 1978).

2. N.C. GEN. STAT. § 7A-222.

3. "General Rules of Practice for Superior and District Courts," N.C. GEN. STAT. Appendix I.

the city council room—often with quite a few people in attendance.

All magistrates receive general instruction in small claims procedure ("basic training") and also periodic refresher courses. Most of their duties are described in detail in a manual that is their primary procedural reference.[4] The law of evidence is covered in outline form in one chapter of the manual, but "basic training" does not now include classroom instruction in the rules of evidence.[5]

Only three empirical studies have been made of North Carolina small claims court, each restricted in some way by scope of coverage or subject matter.[6] One of them dealt in part with procedural issues but in only one jurisdiction. This study appears to be the first detailed investigation of evidence and procedure in small claims court.

The study

The principal source of information for the study was a survey of North Carolina small claims magistrates, conducted by written questionnaire. The survey ensured a representative sample of statewide range and provided a way to check personal impressions gained from observations and interviews. It was sent to all of the 247 magistrates who hear small claims cases in North Carolina.[7] The survey was divided into five parts: background information, evidence and procedure, role of lawyers, impact on litigants, and attitudes of magistrates. Many respondents accepted the invitation to elaborate on particular questions and on the survey topics generally; all responses were anonymous. A total of 104 questionnaires were returned—a response rate of 40 per cent. At least 55 of the 100 counties were represented among the respondents, including all major urban areas and many rural counties.

The collected data were then organized and evaluated statistically.[8]

The data were confirmed through interviews and personal observations in the small claims court. Two magistrates who served in different jurisdictions were interviewed concerning the same topics as those covered in the survey. They could—and did—explore the topics in more depth and more personally than the magistrates who merely answered the survey questionnaire. Observers spent many hours in small claims courts in three jurisdictions presided over by six magistrates. They often saw details that the magistrates who were interviewed did not speak about and the survey did not cover. One relevant detail is the wide variety of physical settings for small claims court: the differing formality of the court settings produced varying degrees of formality in the proceedings.

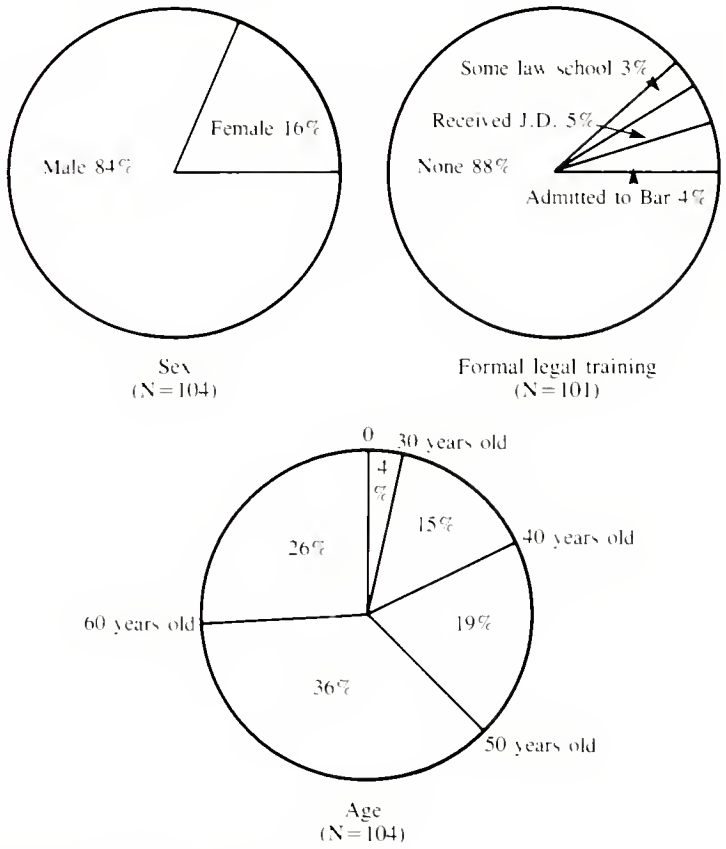


Figure 1. Characteristics of Magistrates

Survey results

Background information. Figure 1 shows a profile of the typical small claims court magistrate. Most magistrates are male and over 50 years old, and most of them have no formal legal training. Those who responded

4. Joan Brannon, *North Carolina Manual for Magistrates* (Chapel Hill, N.C.: Institute of Government, 1980).

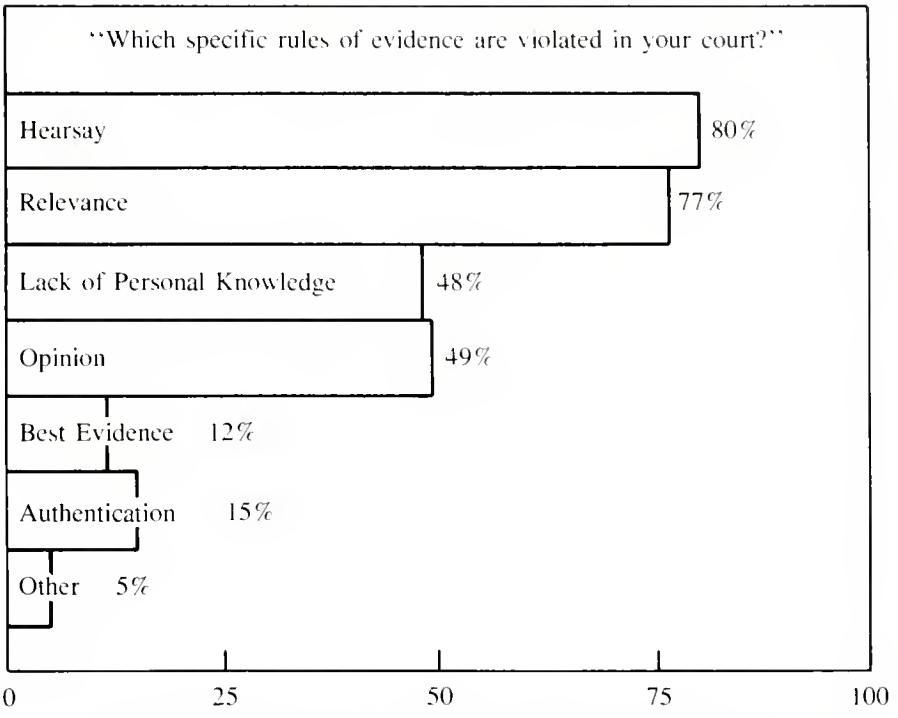
5. Joan Brannon, Institute of Government, The University of North Carolina at Chapel Hill, personal communication.

6. See Lydia Booth and Dick Booth, "Final Report of the Buncombe County Small Claims Court Study, March-September 1982." See also Joan Brannon, "North Carolina's Small Claims Courts," *Popular Government* (Winter 1980); and William Haemmel, "The North Carolina Small Claims Court: An Empirical Study," *Wake Forest Law Review* 9 (1973), 503.

7. Because no list of magistrates that identified those who hear small claims cases was available, the survey was sent to all North Carolina magistrates with the request that only those who hear small claims cases respond. The figure 247 was obtained from Alexander Mendaloff, III, magistrate in Iredell County, who had contacted each judicial district for this information.

8. The assistance of the Institute for Research in Social Science at UNC-Chapel Hill and Thomas Jarvis of the UNC School of Law is gratefully acknowledged.

to the survey had served anywhere from a few months to 17 years in small claims court (mean=6.6 years, median=5.5 years), and they heard widely varying numbers of cases per week (excluding continuances and dismissals); their estimates ranged from one to 250 (mean=21.5, median=14.5). Many factors might explain this variation, including time spent in court per week, number of magistrates assigned to the jurisdiction, size of jurisdiction, and nature of jurisdiction. For example, an urban or university community would have relatively more rental properties and relatively more ejectment actions and landlord-tenant disputes than other places would have. Forty per cent of the respondents estimate the population of their jurisdiction to be over 50,000; only 15 per cent said under 10,000.



Number of respondents identifying the particular violation divided by total respondants identifying any violations (N=100)

Figure 2

Evidence and procedure. The magistrates were first asked general questions concerning trial procedure and the use of evidence in their courtrooms. Only 8 per cent said that questions based on the rules of evidence regarding the admissibility of evidence are *never* raised in their court. Since someone trained in the law of evidence will easily spot objectionable testimony in almost every litigant's testimony, we must assume that (a) lawyers never object in these respondents' courts (which seems unlikely), or (b) these 8 per cent of magistrates simply do not take note of violations of the rules.

Questions as to admissibility are raised more often by lawyers than by the magistrate—which might be expected, given the difference in legal training between magistrates and lawyers as well as the magistrates' tendency to let litigants "tell their story" without interruption. The rules concerning hearsay and relevance are the ones most commonly violated (Fig. 2).

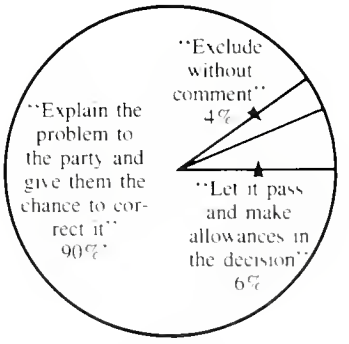
The "general approach" of almost all magistrates when improper evidence is presented is to help the litigant solve the problem of inadmissibility, although some magistrates tend to exclude the evidence and others to ignore the violation (see Fig. 3). In any case, evidence is not often excluded: 79 per cent of the magistrates say that they exclude testimony only occasionally or rarely (see Fig. 4), and even more say that they rarely exclude documentary evidence.

Ninety per cent of the respondents said that they ask questions of the litigants frequently; none said that he never asked questions. A majority of magistrates said that they permit interruptions by others while one party is telling his story (see Fig. 5). Predictably, more magistrates permit themselves to interrupt a narrative than allow a lawyer to interrupt, and even fewer permit the other party to interrupt. Interruptions are most often permitted for objections to evidence or for questions.

When asked whether they placed any "limits" on a litigant's testimony, 70 per cent of those who answered said "no." Twelve per cent limit time and 22 per cent place limits on relevance.

The role of lawyers. The next set of questions concerned the role of lawyers in small claims court procedure. Even though lawyers are permitted to appear, they do not often do so. Eighty per cent of the magistrates estimated that fewer than 10 per cent of litigants had a lawyer. No magistrate estimated that more than 50 per cent of litigants were represented.

Lawyers are most noticeable in small claims court when they raise objections to evidence and when they address organized, directed questions to witnesses. Survey questions were designed



N=96

"What is your general approach to improper evidence?"

Figure 3

to reveal (a) how often lawyers object and question, and (b) what effect the objections and questioning have on magistrates and litigants. Two situations involving attorneys may occur: either both parties are represented by lawyers, or one party is represented and the other is not. From the magistrates' point of view, these situations are very different, and the survey results indicate that their behavior varies with the type of situation.

Objections to evidence are not common even when both parties are represented (see Fig. 6), but they are even less frequent when the lawyer faces an unrepresented opposing party—which perhaps indicates a sense of restraint on the part of lawyers at these times.

Almost all magistrates at least occasionally sustain lawyers' objections to evidence (see Fig. 7). Here whether the other side is represented or not makes little difference; few magistrates have a general "policy not to sustain."

When the magistrate sustains an objection to evidence, he may take time to explain the ruling or help the offending party avoid the problem of inadmissibility. Whether he makes this additional effort depends largely on whether the party is represented (see Fig. 8). When the party who has violated a rule is unrepresented, magistrates are much more likely to explain. But whether the litigant is represented or not, the proportion of magistrates who will make at least occasional efforts to explain is high.

When asked whether objections to evidence by lawyers tend to confuse or fluster an unrepresented litigant, 37 per cent of magistrates replied "usually." Only 3 per cent said that such confusion never occurs.

Seventy-two per cent of magistrates always allow lawyers to question unrepresented parties; most of the others permit questioning under certain circumstances. Ninety per cent admit that such questioning sometimes leads to intimidation or confusion of the litigant. If this situation occurs, only 11 per cent of the magistrates profess to "remain neutral," while 54 per cent will intervene to limit the questions.

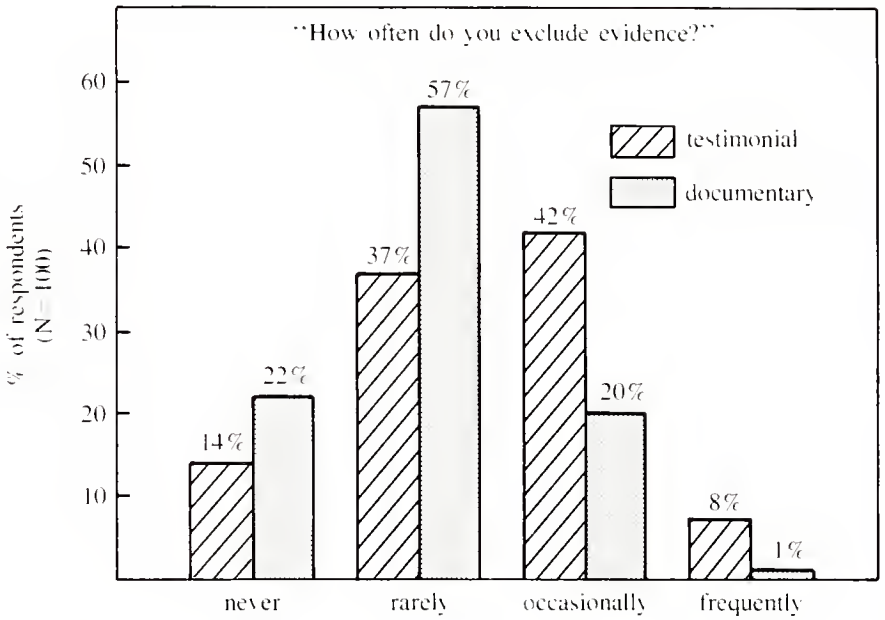


Figure 4

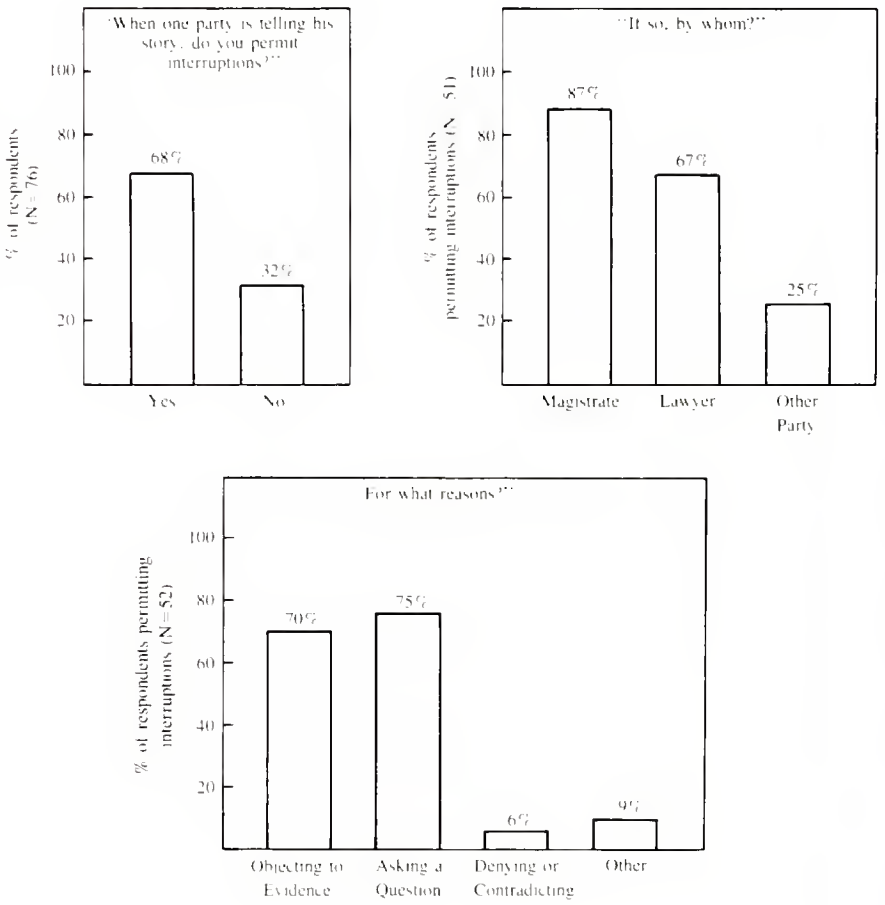


Figure 5

The remaining 27 per cent describe various personal styles of intervention: "explain the questions to the litigant," "relieve their confusion," "keep it fair," or "remind the lawyer that this is small claims court."

Impact on litigants. The magistrates were next asked about whether the litigants in their courts were satisfied about the degree to which they were able to "tell their story" and more particularly about the effect of the rules of evidence on whether the litigants were satisfied. Most magistrates felt that litigants were, on the whole, "reasonably satisfied" that they had been able to tell their story "as completely as they intended" (see Fig. 9). Only one respondent indicated that the average litigant was "generally dissatisfied." Magistrates attributed particular cases of dissatisfaction to various causes (see Fig. 10.)

Eighty-four per cent of the magistrates said that litigants sometimes feel that the rules of evidence impair their ability to tell their story. A few of them indicated that this happens frequently.

Attitudes of magistrates. The final part of the survey requested magistrates' personal opinions concerning small claims court procedure, the rules of evidence, and the role of the magistrate.

The magistrates were asked to categorize their "style" as a magistrate. For this purpose they were given brief descriptions of two contrasting models of magistrate behavior regarding the presentation of evidence: "active" (tend to ask questions whenever the evidence is unclear or missing in order to elicit all facts possible) and "restrained" (tend to allow litigants and lawyers to present evidence as they wish and make a decision on the basis of what is presented). Ninety-five per cent of the magistrates described themselves as either very active or moderately active; only 5 per cent said they were moderately restrained, and none accepted the term of very restrained (see Fig. 11.)

Seventy-seven per cent of magistrates

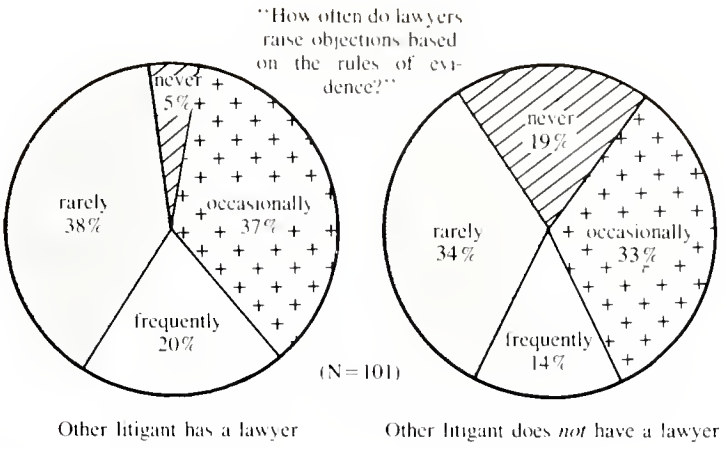


Figure 6

believe that they should permit a litigant to say whatever he or she believes is relevant; 95 per cent of them believe that the more evidence is available, the easier it is to make a fair decision.

When asked whether rules of evidence as they are applied in their courtroom tended more to help or to confuse litigants, 80 per cent of magistrates said that the rules of evidence were more helpful than confusing. Only 15 per cent considered the balance to be tipped in the other direction. Seventy-four per cent said that the rules have no "negative effects" on litigants. The remaining magistrates said that frustration, irritation, lack of understanding, and general dissatisfaction can result if the rules are not explained, or if the litigant is interfered with in presenting his case, or if he faces the disadvantage of being unrepresented when the other party has an attorney.

Finally, magistrates were asked about the relationship between the rules of evidence and "justice" (see Fig. 12). A majority believe that the use of formal rules of evidence is important in order for justice to be served.

Conclusions

The survey results permit some tentative conclusions to be drawn about the presentation of evidence in small claims court.

Magistrates. About magistrates, these points can be made.

Style. There are differences in "style" among magistrates, but they are not as

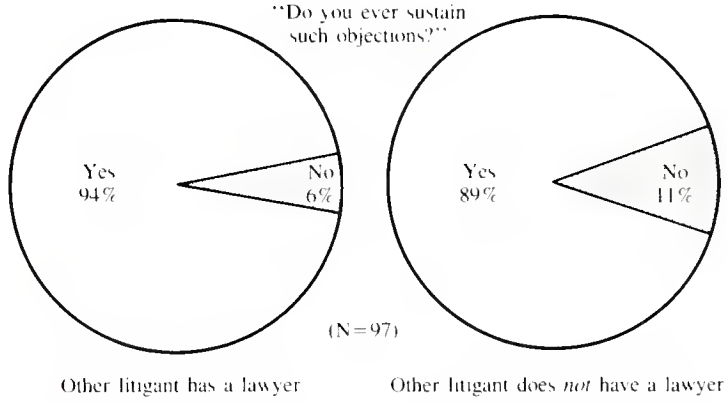


Figure 7

great as previous research[9] would predict. Magistrates almost universally describe themselves as "active" in obtaining the evidence necessary to making their decision. To do so, they question the parties frequently, do not hesitate to interrupt while a litigant is telling his story, and often take time to explain a decision or a ruling on an objection to evidence. This self-perception of "active" judicial style was confirmed by observation.

The difference in behavior between a small claims court magistrate and a district or superior court judge is significant. Magistrates almost always must intervene actively in the trial process in order for the decision to be well founded, because the parties are not trained to present their case in an organized, coherent way. For district and superior court judges, judicial intervention is in fact governed by rules of court and the rules of evidence. Lawyers are responsible for presenting the evidence and are trained to do so, and the judge's role is restricted to that of arbiter of the rules of presentation.

An earlier study found that there are two types of small claims adjudicator —"inquisitorial" and "formal." Inquisitorial judges are active in getting the facts from the parties, whereas formal judges simply let the parties present their cases in their own way.[10] These categories are roughly equivalent to the "active" and "restrained" models used by this study. The findings in this study differ from those in the earlier study; 95 per cent of North Carolina magistrates classify themselves as active, though in varying degrees. One explanation could be that the earlier study covered only large urban jurisdictions, where the same judges who preside over traditional civil and criminal court proceedings also hear small claims court cases. Despite the need to "change hats" when they change courts, some judges may keep only one procedural hat, the formal one. North Carolina magistrates do not

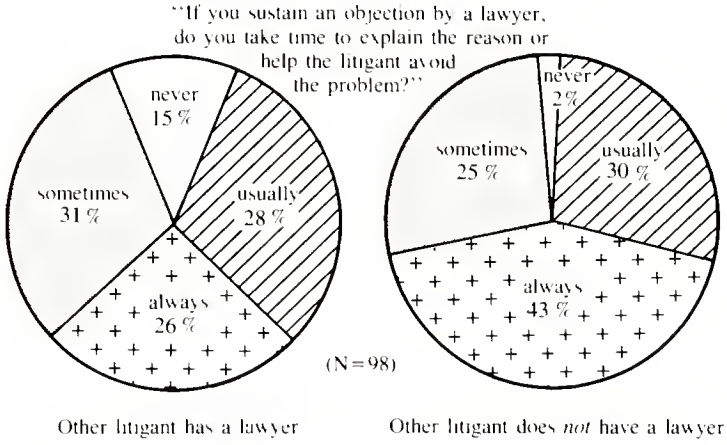


Figure 8

hear cases in district or superior court and therefore appear to develop a style appropriate for informal small claims procedure and untrained participants.

Limits to evidence. The magistrates agree that the evidence presented cannot be unlimited. For most of them, however, evidentiary limits are defined not by the rules of evidence but rather by their own style and the facts of the case. The limitation most often mentioned was that the testimony must be relevant—almost all of the magistrates surveyed either directly or indirectly made this point in their responses to various questions. But in small claims court the concept of relevance is not necessarily tied to legal questions at issue; it is much more elastic and individual.

The principal limit to evidence apart from relevance is established by lawyers' objections. As uncommon as they are, these objections create a bottom line to the procedural flexibility of small claims court. Magistrates have no choice but to rule on them, and they do. Only 5 per cent claimed that they

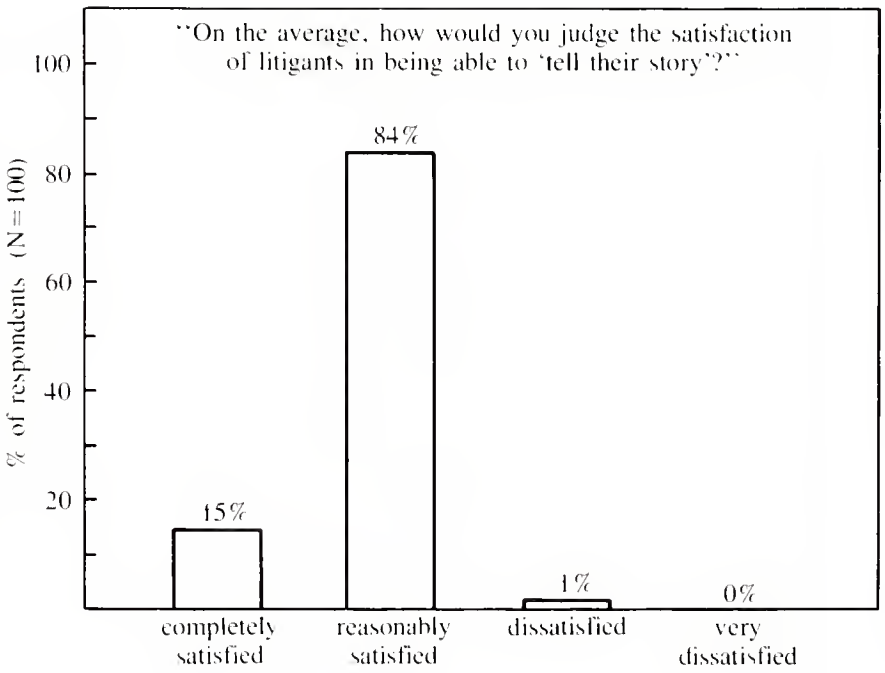
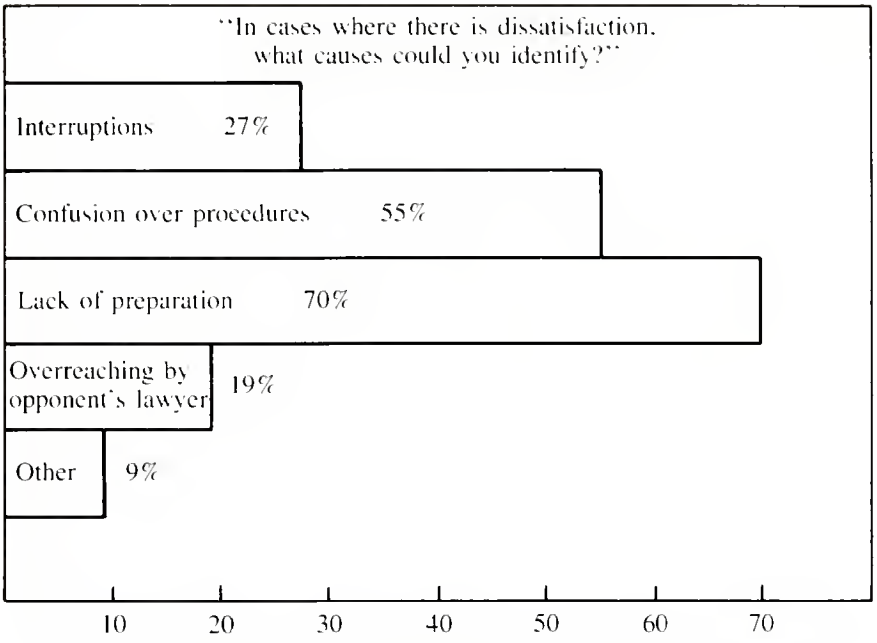


Figure 9

9. Ruhnka and Weller, *supra* note 1.
10. *Ibid.*, pp. 20-21.



Number of respondents identifying the particular cause of dissatisfaction divided by total respondents identifying any dissatisfaction (N=100)

Figure 10

never sustain objections. Yet when no lawyers are present, magistrates tend to let evidence pass that might be objectionable. Thus the boundaries drawn by the rules of evidence are raised almost exclusively by lawyers, who are present in fewer than 10 per cent of the cases and may themselves hesitate to object when the other side is unrepresented.

The response of the 70 per cent of magistrates who said they placed no limits on testimony should be evaluated in this light. It seems likely that they are referring to magistrate-created limits, such as a time limit for a litigant's testimony, rather than limits based on rules of evidence. Given the magistrates' clear beliefs (1) that litigants should be allowed to talk about whatever seems relevant to *them*, and (2) that more evidence makes for better decisions, but also (3) that rules of evidence must be followed, it appears that magistrates in general leave to lawyers the problem of when to object and instead concern themselves with making a fair decision.

Neutrality. Since the typical magistrate takes an active part in the trial process, the concept of judicial neutrality deserves some attention. In the small claims context, neutrality clearly does not mean nonintervention in the legal process. Questioning, interrupting, and explaining by judges—extremely rare in formal courtrooms—is common in small claims court, and such intervention will often assist one of the parties in some way. A magistrate may question an inarticulate litigant or witness to bring out the full story; or if a lawyer's questions or objections have confused an unrepresented litigant, a magistrate may limit the questioning or explain the problem to the litigant.

Neutrality in small claims court should be described as the absence of *substantive* favoring of either party by the magistrate in making a decision. *Procedural* favoring under circumstances like the ones just described is common and at times seems like an instinctive technique. Magistrates will directly help one litigant present his case if the situation demands. In practice, then, neutrality is an active rather than passive concept and may include bringing the "balance of competence" between litigants back to equilibrium in order to make a fair decision possible.

Attitude toward rules of evidence. With regard to the rules of evidence, there is a divergence in belief and practice among small claims magistrates. On the one hand, their respect for the

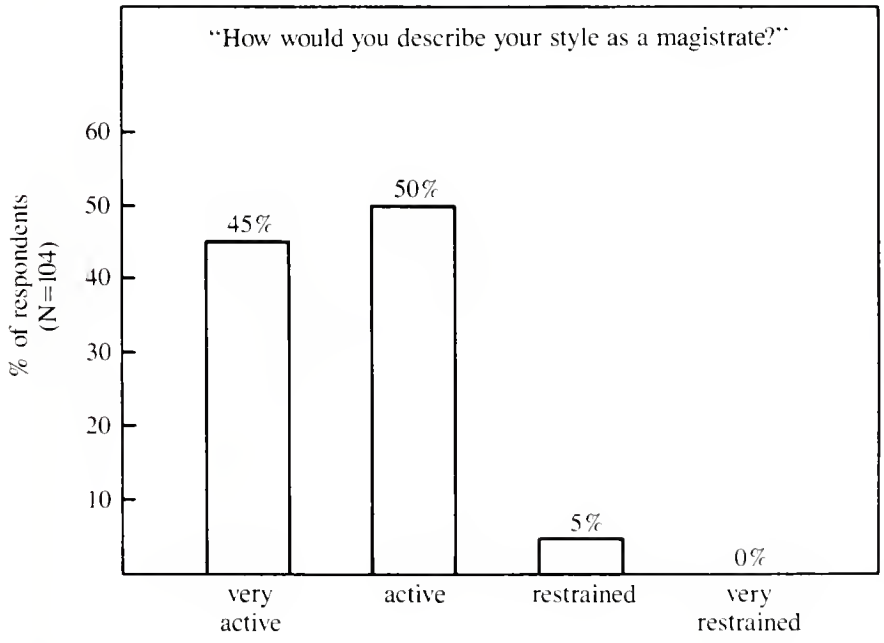


Figure 11

rules is clear. Few magistrates question that the rules must be applied in small claims court. Most of them believe that the rules are consistently more helpful than confusing to litigants, and nearly as many believe that the rules have no "negative effects." A substantial majority of magistrates believes the rules of evidence are important in order for justice to be served.

On the other hand, most violations of the rules of evidence go unnoticed or are simply ignored. Magistrates usually leave enforcement of the rules to lawyers, who are rarely present. The presence or absence of lawyers can determine how violations of the rules are treated. Only 3 per cent of magistrates usually exclude objectionable evidence without comment; the rest explain the problem to the litigant, offer him the chance to correct it, or simply let the evidence in and "make allowances" for its objectionable nature in their decision.

The situation in some ways resembles a trial to the bench in district court, where there is no jury and the judge is responsible not only for ruling on the admissibility of evidence but also for deciding the case on the merits of the evidence admitted. But because the average small claims court magistrate is not trained in the law of evidence as a district court judge is, we should not assume that he will recognize objectionable evidence. The judge/trier of fact, trained to do so, will filter out inadmissible evidence before making a decision.

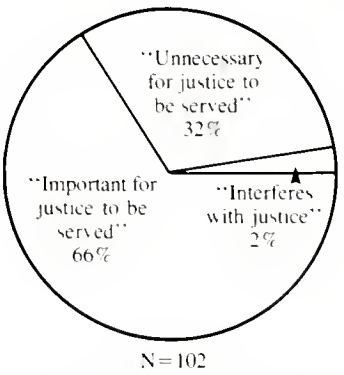
The dichotomy between theory and practice of many magistrates is nicely expressed by one magistrate: "Rules of evidence are important for justice to be served, but sometimes need to be bent some when lawyers are not present and explained more carefully when only one party is represented." Magistrates are aware of the legal standard set by the rules and believe in it, but they also face the practical realities of the small claims courtroom. Competing and equally valid goals like informality and accessibility will often prevail over strict adherence to the rules in order that justice may be served in particular case.

Situational approach. Magistrates clearly take a situational approach to the presentation of evidence. Whereas in district or superior court the judges adhere to the more or less fixed standard set by the rules of evidence, in small claims court the magistrates do not. One magistrate spelled out his approach to improper evidence: if both parties are represented—exclude; if neither party is represented—let it pass; if only one party is represented— explain the violation.

Several factors appear to affect the presentation and treatment of evidence. Some of them are revealed by the survey responses or by observations, and others may be inferred. These factors include the magistrate's "style," whether the jurisdiction is urban or rural, whether a lawyer is present, and the characteristics of the parties and the case. This partial list contains perhaps the most important variables. With further statistical analysis of the results obtained in this study, the relative importance of these factors could be identified.

Such a situational approach is permitted by statute[11] and required by the purpose and context of small claims adjudication. A trial in small claims court represents an accommodation between the need for procedural standards in ascertaining truth and the need for a forum that is accessible and affordable. The burden of striking this balance while meting out justice falls squarely on the shoulders of the magistrate.

Lawyers. Whether one or both litigants have a lawyer substantially affects the presentation of evidence. Lawyers are the principal source of objections to evidence. Their training in legal analysis and trial advocacy ensures that they will present evidence in ways favorable to their client, emphasizing or avoiding facts in a manner very different from that of a nonlawyer telling his story. The represented litigant presents his testimony not in free narration but in response to his lawyer's directed questions. Similarly, the lawyer's methodical questioning of an unrepresented opposing party may unearth facts that would otherwise remain dormant, or he may attack the credibility of a party or a witness. As we have seen, magistrates may respond to improper evidence differently when lawyers are present and when they are not. One of them admitted that "there are times when I feel intimidated by attorneys."



"What do you believe is the relationship between the use of formal rules of evidence and justice being served?"

Figure 12

Respondents most often mentioned confusion, irritation over objections, and questioning by lawyers as sources of dissatisfaction among litigants. Unrepresented litigants do not often face a lawyer, but when they do, the potential for intimidation significantly increases. Lawyers themselves may be dissatisfied with small claims court. One magistrate spoke of the "frustration of lawyers based on improper response by magistrate to rules of evidence objections."

Though this study did not focus on whether lawyers should be allowed in small claims court (an important policy issue on which other states have come to different conclusions), many magistrates felt a need to express themselves on the subject. Their comments, unsolicited, ranged from outright hostility toward lawyers in their court to indifferent accommodation. In any case, lawyers clearly have an impact on procedure in the small claims courtroom.

11. At least under one interpretation of G.S. 7A-222.

Litigants. The typical litigant in small claims court—whether plaintiff or defendant—has a story to tell. Other researchers have observed that small claims court serves a "therapeutic" function: many litigants are seeking their "day in court" to tell their story, and winning or losing the case may be of secondary importance.[12] One measure of the value of any court is whether those who come before it are satisfied that they have been dealt with fairly; small claims court, because of its informal procedure and opportunity for self-representation, has the potential for high satisfaction among litigants.

Little research has been done on whether litigants are satisfied with the judicial system. This study yielded some relevant information about the reaction of litigants in small claims court, though the litigants were not personally interviewed and the data are therefore secondhand.

Magistrates report that most litigants are reasonably satisfied with the degree to which they were able to tell their story in small claims court. At the same time, it appears that the rules of evidence do not contribute to this general satisfaction and may in fact lead to dissatisfaction in particular cases. Eighty-five per cent of magistrates say that litigants tend to react negatively in various ways to objections to evidence (most often by becoming annoyed and confused), and 84 per cent believe that litigants sometimes feel that the rules of evidence impair their ability to tell their story.

When litigants are dissatisfied with their experience in small claims court, one reason is that they are unfamiliar with the procedural rules being used against them. Often they do not anticipate *any* rules of this type—rules of evidence, as opposed to rules of court decorum or substantive rules of law—when they come into small claims court. Litigants, at least those who are unrepresented, arrive in court expecting to be able to tell their story in their own fashion. When their story is interrupted for reasons that are not at all clear, they may feel that the interruptions are contrary to fair play, and they may leave dissatisfied.

Rules of evidence. The study of evidence and procedure in North Carolina small claims court raises questions about the use of formal rules of evidence in these courts. The most obvious concern is the gap between statutory mandate and the training of magistrates. North Carolina law directs magistrates to apply the rules of evidence in small claims trials. Whether application of the rules is mandatory or permissive, from time to time all magistrates must interpret and enforce them. But their training does not sufficiently prepare them for this task. The office of magistrate does not require professional legal education, nor does "basic training" cover the rules of evidence at any length. A certain amount of frustration on the part of magistrates seems inevitable when they must regularly face documents or testimony that may or may not violate some rule of evidence.

Given such a situation, some remedial action appears necessary. At a minimum, magistrates should receive adequate training in this facet of court procedure, as they do in other areas of the law relevant to their work. But in addition, the North Carolina legislature and judiciary should reconsider whether formal rules of evidence should apply in this state's small claims courts.

Such a reconsideration would require a policy decision on the appropriateness of the rules of evidence in adjudicating small claims. It may be helpful to recall that the rules of evidence were developed for a particular purpose in a particular period of legal history—namely, to serve as procedural safeguards in the medieval English courts of law, which were already highly formalized. Small claims courts, on the other hand, were created in an entirely different and later time, in response to certain deficiencies of the traditional court system—particularly the high degree of formality, which was felt to be inappropriate in certain types of cases.[13]

From a historical perspective, then, small claims courts and the rules of evidence serve very different purposes. The marginal gains in reliability of testimony that the rules may produce must be balanced against the magistrates' ability to enforce them properly, the possibility that they will be misused when only one party is represented by a lawyer, and—most important—their cost in terms of satisfaction of the consumers of our judicial system, the litigants. ☙

12. Ruhnka and Weller, *supra* note 1, p. 21.

13. For an excellent study of the history and philosophy of the small claims movement, see, E. H. Steele, "The historical context of small claims court," *American Bar Foundation Research Journal* (1981), 293.

Computer-Assisted Mass Appraisal Systems: Practical Considerations

Joseph E. Hunt

The computer is an integral part of property tax reappraisal. The question is, how does a county obtain a computer-assisted mass appraisal system (CAMA)? That question should be answered only after many factors related to the CAMA system and the jurisdiction itself have been carefully considered. These factors may be grouped into three categories: general considerations, specific considerations, and design considerations.

General considerations

Since the purpose of computerization is to improve the efficiency and capability of the assessment office, the first factor to be contemplated in going to computers is the task whose accomplishment is to be improved by their use. Often the attention of those who make decisions is directed toward what the computer can do rather than toward what the assessment office needs. As a result, unrealistic expectations arise and CAMA systems are designed to operate at a level more complicated than the situation for which they were intended. Consequently, the first consideration in deciding whether to go to computers should be the goals and objectives of the assessment office.

Every assessment office should have an assessment calendar. This calendar, useful for scheduling work, is a listing by deadline date of what the office must do by statutory and administrative mandate (e.g., assessment roll, assessment notices, financial forecasts, etc.). This list is indexed by milestones of accomplishment (e.g., new construction listed, cost tables updated, land values set, etc.). The assessment calendar represents the goals and objectives of the office, arranged by required date of completion. It is these activities that become the standard for measuring the worth of a CAMA system to the assessment office.

Once the assessment office goals and objectives are clear, the CAMA system's ability to improve the efficiency of assessment operations should be considered. Assessment office operations may be grouped into three categories by function type: (1) administrative and tax-roll functions, (2) valuation functions, and (3) performance-analysis functions. A typical (though partial) list of these functions that are common to most assessment offices appears in Table 1.

Table 1. Assessment Office Functions

Administrative and tax roll functions	Valuation functions	Performance analysis functions
Ownership listings	Valuation methods	Sales/assessment ratio studies
Assessment notices	Property characteristics	Assessment simulation studies
Tax bills	Cost tables	Decision support reports
Exemption files	Depreciation tables	Histograms
Legal descriptions	Land tables rates	Statistics
Financial forecast		Sales printouts
Tax districts	Income factors	Depreciation reports
	Market factors	
	Sales file	
	Personal property	

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Finally, the assessment office goals and objectives should be examined in a manner that clarifies questions about what computers can do. Such an examination makes it easier to understand how the CAMA system will function in the assessing office. But unfortunately, most assessment offices do not fully define every step in the assessment procedure, which makes it impossible to identify procedures appropriate for the computer. It is said that assessing/appraising requires judgment and therefore cannot be documented. Certainly the assessing/appraisal process does call for judgment, and for that reason the assessor/appraiser will never be replaced by a computer. But it is also true that 90 per cent of the assessing/appraisal function involves storing, manipulating, and analyzing data—which a computer *can* do very well. This article is intended to help separate the 90 per cent from the 10 per cent.

To separate computer-oriented tasks clearly from judgment-oriented tasks, each assessment function should be broken into what we will call modular working units. A modular working unit may be defined as a function or part of a function that (1) starts with an identifiable set of information, the data group (input); (2) requires a definable operation on the data group (operation); and (3) ends in a result (output). Often these units begin or end with the need for a decision, a request, or a judgment. Some modular working units are easy to describe by precise steps while others tend to be vague, each step depending somewhat on the previous one. The easy-to-describe procedures should be identified as computer oriented and the others as judgment oriented. Besides identifying modular working units, the process of breaking the assessment function down will show the possible interaction between the computer and the assessor/appraiser. An example of a computer-oriented working unit appears in Table 2. The assessment/sale price ratio study requires a definable kind of information (data input), can be described in precise steps of operation, and must produce a certain type of answer (definable output). It starts with the appraiser's request for a ratio study to determine the validity of the assessments and ends with the need for a decision on whether to let them stand.

Table 2. Modular Working Unit Assessment/Sale Ratio Study

Required input	Operation	Required output
Neighborhood Property type Assessment year Sale year(s) Assessment Sale price	1. Divide assessment by sale price for each observation 2. Sum total assessments 3. Sum total sales 4. Divide total assessment by total sales price 5. Sum total individual assessment ratios 6. Divide sum by no. of observations 7. Other operations as required	1. List each property with general description and individual assessment/sales ratio 2. List sum of assessment 3. List sum of sales 4. List aggregate ratio 5. List average ratio 6. Other statistics as required

Specific considerations

Specific considerations pertain to the specific jurisdiction in which the CAMA system will operate. Whereas assessment functions tend to reflect "state of the art" techniques, the working environment in the assessor's office reflects physical, political, and other factors that are difficult if not impossible to change. Consequently the CAMA system must be tailored to the realities in that office. Otherwise, the system will never become fully operative in that office.

Personnel. Personnel costs often represent over 80 per cent of the assessment office budget; therefore employees are of prime importance to the assessment administrator. Also, computerizing an assessment office is usually a traumatic experience for the typical assessment office worker who is accustomed to manual processes, because computerization usually affects a number of major projects in the assessment office. Whereas computerizing a finance office is relatively simple (the data are smoothly converted and the only major problem is learning to use the computer equipment), putting assessment office operations on a computer often involves major re-formation of the data base and revaluation of the assessment base. As a result, the personnel structure may have to be totally reorganized, and employees may have to be retrained.

Therefore, the first concern to the assessment administrator is organization of staff. This task is increasingly difficult in a reappraisal effort because in the planning and design phase of the project, only a few people are needed. Then while the system is being set up, the maximum number of employees are needed. Personnel needs then settle down for the ongoing operation. This variation in personnel requirements calls for planning and industry on the personnel manager's part in seeing that all of the project's needs are met flexibly, efficiently, and economically.

Financial. Except to recommend following a good budgeting manual, this article will give no advice in the area of financing other than to say that if obtaining money for computerization seems likely to be a problem, then forget the project. It is imperative to know nearly exactly how much the project will cost. Earlier it was noted that because of unrealistic expectations and

miscomprehension of what computers can do in the planning phase, many completed systems never become fully operative. But because of poor financial planning, an equal number of attempted projects run out of money and are never finished. Little is said about this unhappy truth. No one talks about his failures, and when a project runs out of money it is usually finished in piecemeal fashion or quietly swept under the rug. Nevertheless, in all probability more systems have "gone broke" than have been completed in the manner originally planned.

Data processing. Thus far this article has discussed concepts that are as necessary in noncomputerized assessment systems as in computerized systems. However, a computer system differs from a manual system in that the computer system is fundamentally grounded on, first, the delineation of functions and then the definition of procedural steps. Also, the concepts of data processing are completely different in a CAMA system from these in a manual system. Computerized data processing involves two elements—hardware and software. Hardware (physical computer equipment) must be compatible with software (programs and routines for the computer). Therefore decisions about which hardware and which software to acquire should be made together.

Traditionally hardware has been available to assessment offices from three sources: (1) existing in-house computer centers, (2) service bureaus, and (3) independent systems. Each source has inherent advantages and disadvantages, but the decision on which source to use is usually based more on the jurisdiction's situation than on the attributes of the various sources.

If the jurisdiction has an *existing computer center*, pressure will be exerted on the assessing office to have its materials processed by that center. Uninformed people at many decision-making levels still think that a single computer, regardless of size, can handle everyone's computer needs. To counter such ignorance, the assessment administrator will need an arsenal of facts. He must obtain answers to questions like these: How many users are now on the central computer? Can the central computer accommodate an on-line system? If not, what will be the turn-around time for assessment office requests? Who controls data maintenance and update? What about security? What about future expansion? These questions must be explored and resolved during the planning and design period in order to avoid future nightmares.

Service bureaus provide, for a profit, computer services to users that do not have their own computer. These bureaus make the advantages of CAMA systems available to units that otherwise would have no access to them. For many assessment offices, service bureaus play a vital role. But they have limitations, which will not be discussed here, that make them third choice among the three options.

An independent computer system for the assessment office is highly desirable. The latest mini-computers are fully functional and highly compatible with the needs of the typical assessment office that is responsible for 20,000 parcels and more. Recent technical development in micro and super-micro computers is making sophisticated CAMA techniques available to even the smallest assessment office on a cost-efficient basis. In addition, and perhaps most important, an independent system gives the assessment administrator full control over the system's operating conditions and security procedures.

However, the advantages of an independent system are not without cost. A computer operation is usually new to the assessment office, and administering it will require additional, more technically trained employees. Nonregular work shifts may be necessary in order to use the computer fully and efficiently, and more office space will be required to house the equipment. Also, the dollar cost is high—the hardware components necessary to accommodate an on-line CAMA system that can process data on 50,000 parcels will cost from $100,000 to $350,000. Micro systems can be set up for less than $15,000 in hardware cost, but even this is a significant expenditure to the small assessment office with under 5,000 parcels.

Software is defined as "programs and routines associated with a computer system as distinct from the equipment."[1] It may be purchased as part of a reappraisal contract, purchased or leased from a software vendor, or developed in-house. Some programs are available on request from other governmental or nonprofit organizations, but problems of conversion and lack of documentation make that approach a risky and perhaps ultimately very expensive venture.

Many companies now offer software packages either as a part of a reappraisal contract or as part of an outright purchase or lease arrangement. These systems range in complexity from simple calculation of RCNLD (replacement cost new less normal depreciation) plus land value to the total-system approach, which includes routines for assessment administration, property valuation, and tax collection that are built around a common data base. Also, the rights to the system purchased may vary from one-time processing by the mass-appraisal contractor to unlimited ownership rights by the purchaser. Therefore the purchaser should be fully aware of the differences in available systems and methods of purchase before it enters into a contract or other binding agreement.

Ironically, the system's complexity is not necessarily a direct measure for the system's cost. Most package systems now on the market cost from $50,000 to $150,000 and are usually derived from the vendor's contract with another jurisdiction to develop a system according to that unit's specifications. (This estimate does not include generic software for micro systems that are following the micro-computer's appearance in the market) As a result, the complexity of the system reflects the

1. Byrl N. Boyce, *Real Estate Appraisal Terminology* (Cambridge, Massachusetts: Ballinger Publishing Company), p. 190.

needs of the jurisdiction for which the system was designed. Consequently, the modifications necessary to fit an assessment office's needs should be fully noted, and the responsibility for making them should be agreed on before a contract is signed. The most flexible systems for selecting alternatives are those that have been installed several times and have had successively more options built into them.

As stated earlier, two things to watch for in purchasing a software package are (1) the limitations that may exist for future modifications, and (2) who is responsible for making any modifications. Most package systems are marketed on a purchase and license-to-use agreement. These license agreements are written to protect the vendor, and rightfully so. Quality control is an important consideration to the reputable vendor, and the license fee provides the necessary funds to provide the support that the purchaser needs. But the purchaser also needs extended protection, and amendments to the license agreement are the place to provide that protection. Maintaining the system in a state-of-the-art condition and the cost of future modifications are both important features that should be agreed on and built into the license agreement.

System design is a critical concern in developing a CAMA system to the needs of one specific user; it will be considered more fully later in this discussion. However, to select intelligently a predesigned package system now on the market, one should understand the philosophy of system design. Today there are generally two kinds of system design—processing-centered and appraisal-centered. Because some CAMA systems were developed almost totally by people trained in computer science, these systems tended to be processing-centered. That is, when the system was designed, most consideration was given to efficiency of processing. For example, an assessment procedure would be defined from point A to point B, and then this process would be reduced to computer programs by using mathematical formula or symbolic language. However, since the people who designed the system knew nothing about assessing/appraising, the resulting system logic had great processing efficiency but no flexibility for the appraisal decisions that were ultimately needed. As a result, the assessment administrator's ability to monitor the assessing/appraisal function was seriously impaired. Appraisal-centered systems are designed with both computer science and appraisal techniques in mind. These systems use the latest available computer technology in such a way that the assessment administrator can still make the decisions that are necessary to the assessing/appraisal function (more will be said later about the design of appraisal-centered systems).

To identify the appraisal-centered system when selecting an already developed package system, one must compare the system logic with the decision points identified by the sequence of the modular working units defined during the planning period (as we saw earlier in this article). Remember, the modular working units were established by isolating operations in the assessment process that started with a definable data input and ended with a product or result. The illustration used was an assessment/sales price ratio study. With a processing-centered system, the format for the sales ratio will be rigid, and few options will be available to the user. The designer will have decided earlier what type of ratio study is most appropriate, and little or no flexibility will be possible. On the other hand, the appraisal-centered system, while fixed with regard to the mathematical operations and statistical output, will permit options with regard to property type, date of sales, adjustments, and other appraisal considerations. This flexibility can easily be recognized when the appraisal-centered system is examined in light of individual assessment operations and the administrators' need to make appraisal decisions.

Data base. Data base is defined as "the collection of data files used by an EDP system to describe a real-world operation."[2] It is the information on which appraisals are grounded. Data files in assessment systems are commonly referred to as (1) the name, address, and legal file; (2) the property-characteristics file; (3) the sales file; and (4) the valuation-factors file. Without complete and accurate data in these four files, a successful CAMA system is impossible.

The name, address, and legal file and the sales file are much the same from one system to another. However, because of the differences in valuation methods, the property-characteristics file can vary from system to system.

Even when two items to be entered into the data base carry the same name, they can be entered differently from system to system, and problems in conversion can result. For example, one system may list the plumbing in a house by total number of fixtures while another system may list it by number of bathrooms. "Building area" in one system may mean merely ground area, while in another it may mean total living area. Because of these possible problems in conversion, the various systems' methods of entering data should be compared with regard to completeness, accuracy, and compatibility in nomenclature with the jurisdiction's existing data base. The extent of data collection efforts required by one system and by another could well affect the decision to purchase.

As indicated earlier, data collection programs are time-consuming and expensive. Listing must be done in the field in order to supply missing data elements. Furthermore, when an assessment goes to computers, existing data must be converted to the new system's format. If existing data are, at time of conversion, stored by some electronic processing device, then perhaps a computer program can be written and the conversion can be machine-processed. But if the data are stored manually, the conversion will

2. Jerome Dasso, *Computerized Assessment Administration* (Chicago: International Association of Assessing Officers), p. 208.

also be manual (some jurisdictions have used electronic scanning devices for conversion of manual records, but these devices have generally been considered inefficient for conversion of assessment records). The amount of experience the vendor being considered has had in this area and whether the vendor will assist in the conversion effort are important considerations. Other vendors that specialize only in data conversion are available, but this service can be a very expensive addition to the project cost and should be avoided if possible.

Design considerations

System analysis and design is defined as "the study of the input, output, operations, and purposes of existing systems, to find an equivalent way to meet the same needs using more efficient methods, equipment, etc."[3] We have followed this definition in our analysis by breaking the assessment process into modular working units. Now we will analyze these working units in a manner that will represent the most efficient and effective assessment system.

One helpful method of analysis in system design is the macro/micro approach. This method breaks a large problem (macro) down into components (micro). The function called ad valorem taxation would be a macro unit; the component subsections of tax administration, valuation and analysis, and tax collection would be the micro units. When these components are taken individually, tax administration then becomes the macro unit, and the first step in that process (listing all taxable property) becomes the first micro component. This procedure continues until all parts of the initial macro unit have been defined in their most minute detail.

For illustration, let us consider a local government assessment office (macro), which is responsible for discovering, listing, and valuing all real

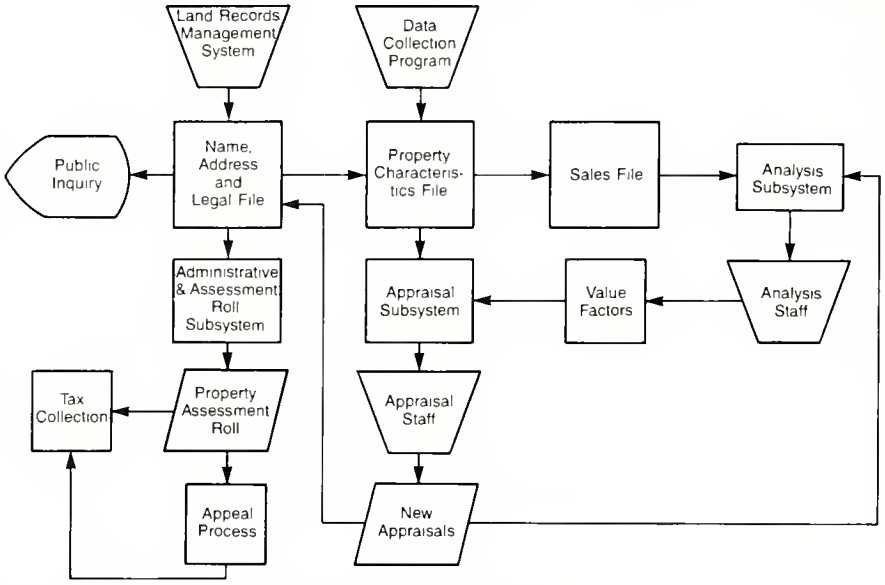

Figure 1. Components of an Ad Valorem Assessment System

property within the jurisdiction. The components (micro) of that working unit would be administrative and tax-roll functions, the property characteristics, the sales file, valuation factors, performance analysis, and valuation methods. A schematic representation for the organization of assessment office components appears in Figure 1.

The next step in macro/micro model-building is to focus, one at a time, on each of the components identified as a micro part of the assessment function. For purpose of analysis, each component now becomes the macro unit and must be broken down into micro modular working units.

We are now at the next level of analysis. For illustration, let us consider the valuation process for commercial/industrial property. Figure 2 shows a sequential breakdown of the working units involved. Again, we focus on each of the micro components identified in the macro commercial/industrial prop-

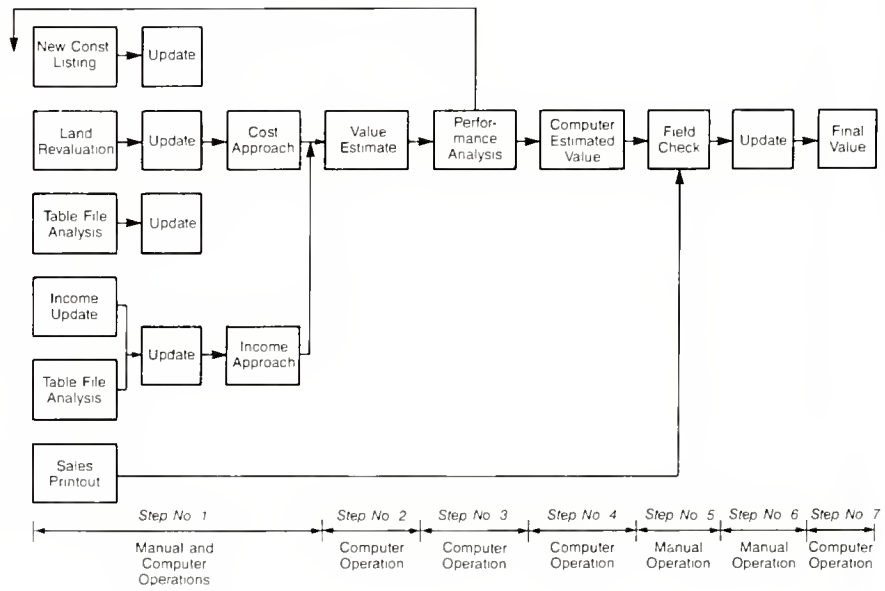

Figure 2. Modular Working Units

3. *Ibid.*, p. 216.

erty valuation function and treat it as the next macro unit to be examined. But now we start separating the computer-oriented tasks from the judgment-oriented tasks. Various procedures to update tables are judgment oriented. These tasks may be supported by the computer, but primarily they require individual review by trained appraisers. This step cannot be fully automated. On the other hand, the mathematical calculations for the cost approach are step procedures that can be fully automated. Input for this operation comes from the property characteristics and valuation-factors files. The computer operation takes the steps of the cost approach in a mechanical manner. Output represents the valuation estimate of the cost approach, and the appraiser will accept or reject it. Figure 3 shows a micro breakdown of the cost approach into sequential and individual steps.

Clearly, system design is very complex. This is one reason why a prepackaged system that meets most of the jurisdiction's needs may be the wisest choice. A number of these systems are now affordably available. But those who must insist on in-house design and development of the CAMA system should note that this present discussion is only a cursory treatment of a very extensive subject.

The macro/micro process continues in the cost model until every possible question on procedure has been explained. After this process has been completed, specifications that serve as a map for development must be written. Once the CAMA system has been developed, tested, and debugged, the reappraisal may begin.

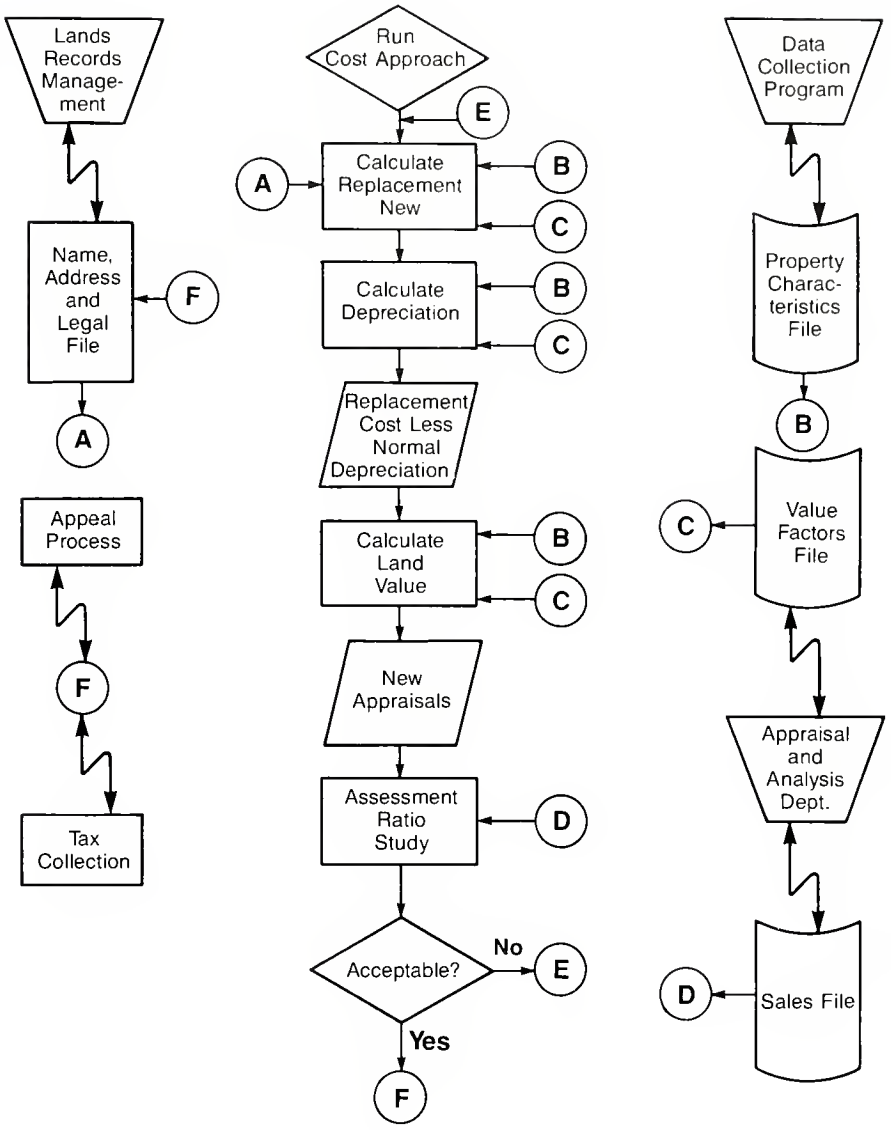

Figure 3. Cost Approach Routine

Summary

This discussion began with the question: How does a county obtain a computer-assisted mass appraisal system? As with many questions we ask, the answer must be discovered through a self-analysis. Every assessment administrator should be asking this question and exploring ways to gain access to a CAMA system. The computer has proved to be a viable tool to the assessment function; and with the ever increasing demand for assessments that are more frequent and more accurate, it will become indispensable. This article has discussed how to identify the appropriate CAMA system for an assessment office. It examined the activities in an assessment office that could be facilitated by the computer and how to order the steps of each activity so that manual operations can mesh with computer operations. Next, the article analyzed both the environment in which the system must operate and the common pitfalls in any new system (like inadequate financing and rejection by present personnel). Finally, it listed types of CAMA systems and explained and the advantages and disadvantages for various methods of obtaining these systems in terms of how appropriate each method would be for the situation in which it will operate. Clearly, the answer to our original question is unique to the county that seeks the computer. But the process of exploring the needs of the assessment office and the computer services available remains the same. Conscientiously applied, it will produce the answer we are looking for.

Questions I'm Most Often Asked

What Is "Spot Zoning?"

Philip P. Green, Jr.

"Spot zoning" is perhaps the most-used, and least-defined, expression in the lexicon of zoning. Nowhere does it appear in the zoning enabling acts. Rarely is it found in a zoning ordinance. No one seems to know who coined the phrase.[1] But generations of zoning officials have reacted like Pavlov's dog to the sound of a dinner bell whenever the term was injected into debate over a pending amendment. Apparently they feel like Justice Potter Stewart of the United States Supreme Court, who confessed that he might not be able to define "hard core pornography" but declared, "I know it when I see it."[2]

Courts as well as zoning officials have reacted in generally predictable ways when they have found that a zoning amendment constituted "spot zoning." They all agree that it is invalid when it is attempted. But I have found no case in which they have pointed to the constitutional or statutory basis of their ruling. And rarely have they defined "spot zoning" with precision.

In general the courts have described "spot zoning" as zoning that does not accord with a comprehensive plan, or is sharply different from the zoning of surrounding or nearby properties, or appears to favor (or punish) a particular property owner. They have enunciated subsets of rules: "It is not 'spot zoning' when the amendment is in accord with a general, previously-adopted policy or plan." "It is not 'spot zoning' when it merely extends an existing district." In some cases they have held the rezoning of very large tracts to be "spot zoning"; in others, they have held the rezoning of small lots not to be "spot zoning."

At the risk of indictment for impersonating a judicial officer, I would like to suggest that at root "spot zoning" is nothing but giving special treatment to one or a few property owners, without adequate justification. The concept is rooted in the North Carolina constitutional provisions that prohibit the grant of "exclusive privileges" (Article I, Sec. 32), the creation of "monopolies" (Article I, Sec. 34), or the denial of equal protection of the laws (Article I, Sec. 19; also, U.S. Constitution, Fourteenth Amendment). It applies only to *legislative* actions (adoption or amendment of a zoning ordinance) and not to administrative or quasi-judicial actions (e.g., grant of a special-use permit or a variance). If there is a reasonable basis for treating particular property differently from nearby or similar properties, that should be enough to support the validity of the zoning; ergo, it is not "spot zoning."

North Carolina cases

Now let us examine what the North Carolina courts have said on the subject.

The first mention of "spot zoning" in a published North Carolina decision was in *Walker v. Elkin*, 254 N.C. 85 (1960). It involved the rezoning of a 3.56-acre tract from RA-6 Residential to Neighborhood Business. The superior court found that the topography of the tract, its location with respect to major highways, and other development in the area rendered it unsuitable for residential development. On appeal, the Supreme Court agreed:

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1. Assiduous research in the early literature of zoning has produced no clues. It might be noted that the word "spot" itself is used in many ways, with widely varying meanings: "He is on the spot." "This is a lovely spot for a picnic." "That was the high spot of his career." "That really hits the spot." "He spots the enemy." "Out, damned spot!" "You have spotted my escutcheon." "My dog Spot."

2. Jacobellis v. Ohio, 378 U.S. 184, 197, 12 L.Ed.2d 793, 803-4 (1964).

The term "spot zoning" has frequently been used by the courts and text writers when referring to changes limited to small areas....We think the basic rule to determine the validity of an amending ordinance is the same rule used to determine the validity of the original ordinance....The legislative body must act in good faith. It cannot act arbitrarily or capriciously. If the conditions existing at the time of the proposed change are such as would have originally justified the proposed action, the legislative body has the power to act.

Next came *Zopfi v. City of Wilmington*, 273 N.C. 430 (1968). The rezoned property was part of a triangular 60-acre tract of land at the intersection of two major highways. One point of the triangle was already zoned for commerce, while the remainder (and property that abutted it) was zoned for single-family residences. The rezoning added some 27½ acres next to the point to the commercial area. It changed the next 12 acres to multi-family, leaving the balance of the tract as single-family. Neighbors charged that the amendments were "spot zoning."

The superior court found that the resulting zone pattern met statutory objectives and upheld the amendments. The State Supreme Court again agreed:

> Spot zoning arises where a small area, usually a single lot or a few lots, surrounded by other property of a similar nature, is placed arbitrarily in a different use zone from that to which the surrounding property is made subject. When that small area is subjected to a more burdensome restriction than that applicable to the surrounding property of like kind, the weight of authority is that the owner of the property so subjected to discriminatory regulation, may successfully attack the validity of the ordinance....The rule denying the validity of spot zoning ordinances has also been applied where a small area previously in a residential zone has been removed, by an amending ordinance, from such zone and reclassified to permit business or commercial use over the objection of adjoining owners of residential property....
>
> [T]he amending ordinances before us do not fall into the category of spot zoning....There is ample support in the record for the conclusion that the rezoning of the...tract was not arbitrary or discriminatory, may reasonably be deemed related to the public welfare and is not inconsistent with the purposes for which the city is authorized by the statute to enact zoning regulations...and [is] consistent with its comprehensive zoning plan....

The first case in which our Court found that "spot zoning" had occurred was *Blades v. City of Raleigh*, 280 N.C. 531 (1972). In that case the property consisted of approximately five acres, surrounded by streets on three sides and a nonconforming woodworking plant and antique store on the other. It was situated in the center of a very large R-4 (essentially, single-family residential) district. The owner sought rezoning to R-6 Residential, so that he could build some 20 townhouse units. In response to a recommendation of the planning commission, the city council adopted the requested amendment. Its action was sustained by the superior court, but the Supreme Court reversed, on the ground that the rezoning constituted both "spot zoning" and "contract zoning."

This time the Supreme Court set forth a more detailed description of "spot zoning":

> A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning." It is beyond the authority of the municipality, in the absence of a clear showing of a reasonable basis for such distinction.

Since that decision, three Court of Appeals decisions have invalidated amendments characterized as "spot zoning." All three quoted the above passage as a primary basis for the decision.

Stutts v. Swaim, 20 N.C. App. 611 (1976), involved the rezoning of a four-acre tract from R-1 Residential to M-H, Mobile Home. The tract was located within a zoned extraterritorial belt half a mile wide around the town of Randleman. This entire extraterritorial belt (some 500 acres) was zoned for single-family and two-family residences, except for two mobile home parks. Applying the definition in *Blades*, both the superior court and the Court of Appeals had little difficulty in finding invalid "spot zoning."

The other two cases were from Union County. In *Lathan v. Board of Commissioners*, 47 N.C. App. 357 (1980), *rev. denied*, 301 N.C. 92 (1980), an 11.412-acre tract in the midst of an R-20 Residential District was rezoned to an L-1 Light Industrial District. A small (one to two acres) B-3 General Business District was located across the road from the property. Both the superior court and the Court of Appeals concluded that the amendment was invalid "spot zoning." Both gave considerable attention to whether any factors were present that would constitute a "reasonable basis" for the rezoning and concluded that there were none—nothing about the rezoned property made it particularly suitable for industrial development.

In *Godfrey v. Union County Board of Commissioners*, 61 N.C. App. 100 (1983), there appeared to be a far more solid basis for rezoning. The tract involved was 17.45 acres lying on a major highway with a railroad running parallel to it. The land was zoned R-20 Single Family Residential and was shown on the county's comprehensive plan as low-density residential. All of the property surrounding it was zoned R-20 or R-10 Residential Suburban. There were 12 residences in the area surrounding the tract, but approximately a half-mile away, a cluster of proper-

ties were zoned for Light Industrial or Heavy Industrial uses. The owner petitioned to have his property rezoned to H-I Heavy Industrial. His petition was supported by the county planning director, who pointed to the major highway, the railroad, and the availability of a public water system as factors that made the tract peculiarly suited for such development, noted that the area was already subject to a high level of noise, and suggested that the size of the property was sufficient to provide for off-street parking and buffering to protect neighboring properties. Despite these factors, the superior court found that there was nothing to distinguish the tract from surrounding properties and invalidated the amendment as "spot zoning." The Court of Appeals affirmed:

> [T]he evidence before the trial court clearly showed that the whole intent and purpose of [defendant's] application for rezoning was to accommodate his plans to relocate his grain bin operation, not to promote the most appropriate use of the land throughout the community....While the evidence clearly does show that the [defendant's] property has certain characteristics that make it suitable for industrial use, *i.e.*, paved public highway and a railroad on the tract and public water available, viewed in the context of the general characteristics of the area in which it is located, the [defendant's] tract is essentially similar to the property or land that surrounds it and the characteristics of the [defendant's] tract provide no reasonable basis for zoning it differently from the surrounding property.

Analysis of the *Blades* rule

It appears that North Carolina cases will continue to measure claims of "spot zoning" against the definition in *Blades v. City of Raleigh*. This suggests that we analyze this definition clause by clause.

"A zoning ordinance, or amendment." In both *Blades* and its forerunners (*Walker* and *Zopfi*) the Court indicates that "spot zoning" can be either by adoption of a comprehensive zoning ordinance or by a subsequent amendment. Most of the cases elsewhere have focused on amendments (as have all of the North Carolina cases). But the Court appears to be on solid ground when it indicates that there may be instances of "spot zoning" within the framework of a comprehensive ordinance—the discriminatory impact is the same, whether it is created by one action or two.

"A relatively small tract." The size of the parcels involved in the North Carolina spot zoning cases appears to be larger than that in many cases elsewhere. In *Blades* the size was five acres in a city, in *Stutts* four acres in a semirural setting, in *Lathan* 11.412 acres and in Godfrey 17.45 acres, both in a rural setting.

The popular image of "spot zoning" is the rezoning of much smaller tracts than these. By "relatively," does the Court mean that the rezoned tract should be compared with (a) the size of the zone that surrounds it, or (b) the size of like zones elsewhere in the jurisdiction, or (c) the size of all zones of whatever nature in the jurisdiction? Under most such comparisons, 17.45 acres would not be termed "relatively small."

"Owned by a single person." This element of the definition no doubt reflects the Court's aversion to "sweetheart deals" of the type it characterized as improper "contract zoning" in *Allred v. City of Raleigh*, 277 N.C. 530 (1971), and also in *Blades* and *Godfrey*.

In most of the North Carolina decisions, the tract was owned by a single person, but the Zopfi tract was owned by two women jointly, and the Blades property was owned by a corporation. While the "smell" of favoritism is clearly stronger where there is a single owner, it would appear that a "spot" might easily be in multiple ownership without having its essential nature changed. On the other hand, many a shopping center is held in single ownership without arousing cries of "spot zoning"—all of which suggests that this particular criterion may not be decisive.

"Surrounded by a much larger area uniformly zoned." Since the Court began by speaking of a "relatively small tract," it is apparent that "a much larger area" must be measured in accordance with the size of that tract. However, we have no guidelines as to how much larger the surrounding zone must be.

"Uniformly zoned" poses a more difficult criterion. It is not common to find a very large *uniform* zone (particularly in an urban setting). It will be noted that in *Lathan* across the road from the subject property was a one- to two-acre tract zoned for General Business, while the other nearby property was R-20 Residential. This would suggest that in determining whether the surrounding area is uniformly zoned, one should overlook any pre-existing spot zones.

In *Godfrey*, most of the surrounding area was subject to one of two different types (and densities) of residential zoning: R-20 (with a 20,000-square-foot minimum lot area) and R-10 (with a 10,000-square-foot minimum lot area). It can hardly be argued that this does not affect uniformity, because in *Blades* the "spot" was rezoned from R-4 Residential to R-6 Residential—essentially both residential, but R-6 allowed a greater density (as R-10 does when compared with R-20). Furthermore, in *Godfrey*, about a half-mile away there were Light Industrial and Heavy Industrial zones. (Possibly the Court overlooked them because they were pre-existing "spot zones.")

"So as to impose upon the small tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected." This is clearly sound. If unjustified differences in treatment of similar properties are the root of the difficulty, it should make no difference whether the spot is favored or discriminated against.

"Is called 'spot' zoning." This statement is too broad, if one believes that

all "spot zoning" is illegitimate (as most courts apparently do). It might have been wiser to include the following limitation (which appears in the next sentence) on the definition:

"In the absence of a clear showing of a reasonable basis for such distinction." Now we come to the real nub of the matter. If there is a reasonable basis for treating properties differently, there is no violation of the "exclusive privileges" or "monopoly" prohibitions, and there is no denial of equal protection. Unfortunately, in many "spot zoning" cases the Court has been slack in this area of analysis.

In *Blades* the planning commission and city council set forth far more rationale supporting the amendment than is common in rezoning matters, but the Court did not buy it. In *Stutts*, essentially none was offered. There was a similar lack in *Lathan*, although the Court made some effort to look for distinguishing features. In *Godfrey* the planning director convinced the planning board and the county commissioners that there were such distinctions, but the courts brushed his reasoning aside.

Conclusion

To anyone familiar with zoning practices throughout the state, it should be apparent that a very high percentage of rezoning amendments by local governing boards meet the courts' criteria for "spot zoning." If opponents challenged all zoning actions that appear to be discriminatory, they would flood our courts with successful litigation.

It is unfortunate, however, to have a rule of law applied in a mechanical fashion. That is why I believe there should be increased emphasis on the existence or nonexistence of factors distinguishing the property from its neighbors. All *zoning* should be based on such analysis; if it were, there would be no "spot zoning."

Juvenile Courts

(continued from page 15)

for such an enterprise. Wilmington is an urban community and thus relatively rich in service agencies. And the county, unfortunately, has enough juvenile offenders that the Committee is called on to meet on regularly and frequently. But every county has certain basic services available for children, including schools, mental health, social services, law enforcement, and court counselors. Even if an interagency committee were to include only these agencies, it could probably be productive. The key ingredient, however, is that the team receives the continuing support and leadership of the district's juvenile court judges. Without frequent referrals and without judges who respect its judgment enough to follow its recommendations frequently, such a committee would probably founder. But with encouragement, it can prove valuable to juvenile court judges as they struggle to come up with effective dispositions of juvenile offender cases.

For further information about the Juvenile Services Center Evaluation Committee: Please feel free to contact either Chief District Court Judge Gilbert Burnett or Tom Koonce, Committee Chairman:

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