POPULAR GOVERNMENT

INSTITUTE OF GOVERNMENT THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

Spring 1989

Federal Welfare Reform
Employment at Will
Educating Our Future Work Force
Effective Groups
Police Use of Force
Water and Sewer Rates
Automobile Liability Insurance Rates

POPULAR GOVERNMENT
Vol. 54/No. 4 Spring 1989

The Cover: Portrait of Albert and Gladys Coates by Sarah Blakeslee (UNC Photo Lab/Chip Beverung).

In the cover photograph of the Winter 1989 issue, the title shot from "The People's Court" was used by permission of Ralph Edwards Productions.

Popular Government (ISSN 0032-4515) is published four times a year (summer, fall, winter, spring) by the Institute of Government, CB# 3330 Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330. Subscription: $8.00 per year. Second-class postage paid at Chapel Hill, NC, and additional mailing offices. POSTMASTER: Please send change of address to Institute of Government, CB# 3330, Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330.

A total of 7,500 copies of this public document were printed by the Institute of Government, The University of North Carolina at Chapel Hill, at a cost of $9,449, or $1.26 per copy. These figures include **only** the direct costs of reproduction. They do not include preparation, handling, or distribution costs.

INSTITUTE OF GOVERNMENT
The University of North Carolina
at Chapel Hill

THE INSTITUTE OF GOVERNMENT, an integral part of The University of North Carolina at Chapel Hill, is devoted to research, teaching, and consultation in state and local government.

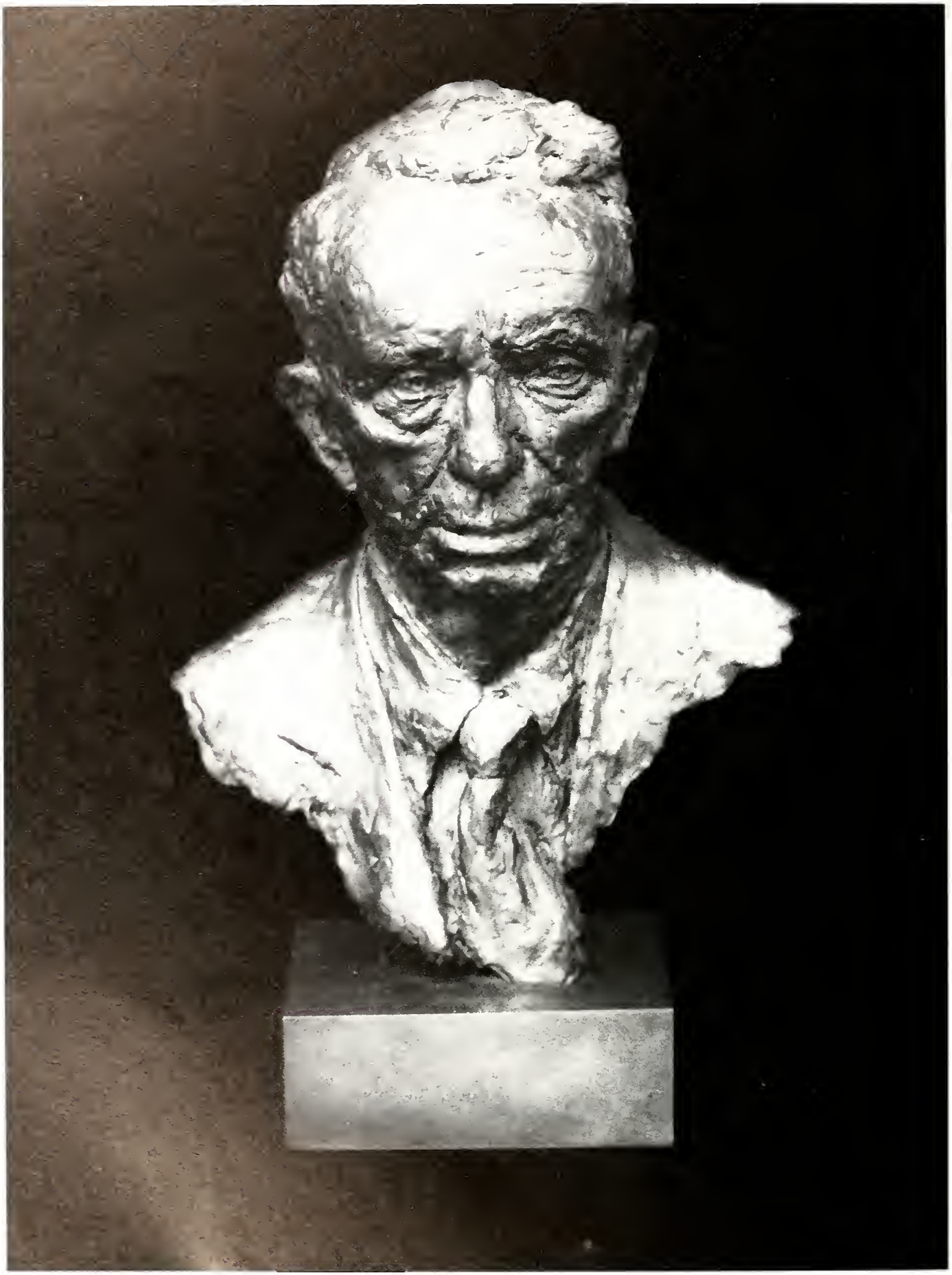
Since 1931 the Institute has conducted schools and short courses for city, county, and state officials. Through guidebooks, special bulletins, and periodicals, the research findings of the Institute are made available to public officials throughout the state.

Each day that the General Assembly is in session, the Institute's Legislative Reporting Service reports on the Assembly's activities for members of the legislature and other state and local officials who need to follow the course of legislative events.

Over the years the Institute has served as the research agency for numerous study commissions of the state and local governments.

In This Issue

Around the State



UNC Photo Lab/Chip Beverung

Albert Coates: Founder of the Institute of Government

Philip P. Green, Jr.

Without Albert Coates's vision, the Institute of Government never would have been created. Without his dogged determination, in the face of incredible difficulties, it never would have survived. It stands today as a monument to the man and his wife, Gladys. On January 28, 1989, Coates died after an extraordinary life extending more than ninety-two years. Who was this man? Whence did he come? And what did he do in that life-span?

Formative Years

Albert Coates was born in Johnston County on August 25, 1896, the child of Daniel Miller and Nancy Lassiter Coates. They were a hard-working farm family. Typical of many North Carolinians of the period, they had nine children in all: two boys and seven girls (Albert was the fourth child and the first son). Also in accordance with the spirit of the time, they placed great faith in "the lifting power of education," in the words of Charles B. Aycock, who was called the education governor. When Albert was five years old, the family moved to a farm closer to the town of Smithfield so that the children could have the benefit of better schools, and the parents encouraged all of their children to go as far academically as they could. The effort paid off. Three of their children—Dora, Albert, and Kenneth—had long and distinguished careers as university professors, while all but one of the others either taught for a while or married educators.

Albert finished the eleven years required by the public schools of his time and entered The University of North Carolina at Chapel Hill in the fall of 1914. He was instantly caught up in the most exhilarating experience of his life. He regarded his teachers as the greatest men he had ever met: Norman Foerster, Frank Graham, Collier Cobb, Herman Baity, Edwin Greenlaw, Horace Williams, William Bernard, E. C. Branson, Charles Raper, and above all, president Edward Kidder Graham. He was equally thrilled by faculty members whose courses he did not take but whom he encountered in other ways: Archibald Henderson, L. R. Wilson, W. C. Coker, William Cain, Henry Van Peters Wilson, Vernon Howell, Charles Mangum, and the University's business manager, Charles T. Woollen. He reveled in his contacts with fellow students: Bill York, Scrubby Rives, William Umstead, Hugh Hester, Robert House, Thomas Wolfe, Francis Bradshaw, Robert DeRosset, and many others in the debating societies, the publications staffs, the student government, and other activities of the period.

World War I interfered with carefree campus life, and following a senior year filled with on-campus training for the military, Coates went directly into service after graduation in 1918. He won a commission as a second lieutenant in the army, but the Armistice arrived before he faced combat. Following his discharge, he returned to the Chapel Hill campus from January, 1919, through the summer of 1920 as a teaching fellow in English and a fund-raiser for the Graham Memorial student activities center.

Another challenging intellectual experience followed. In the fall of 1920 he entered Harvard Law School. He enhanced his classroom education there

The author, professor emeritus, formerly taught at the Institute of Government in the areas of city and county planning and land use.

with a talented set of roommates with North Carolina backgrounds: William T. Polk, later attorney and editorialist for the Greensboro Daily News, and Thomas Wolfe, who was taking a graduate course before beginning his extraordinary writing career. Senator Sam Ervin, a lifelong friend, was a student at Harvard Law School during the same period.

On graduating in 1923, Coates returned to Chapel Hill as an assistant professor in the Law School. As a young faculty member he moved rapidly up the ladder of promotions, becoming an associate professor in 1925 and a professor in 1927. His primary focus was criminal law, but he later developed interests in local government law, family law, and legislation.

In the summer of 1923 Coates met Gladys J. Hall, a Tidewater Virginian who was a junior at Randolph Macon Woman's College, and he was overwhelmed. They were married in 1928, and she brought invaluable support to him from that time forward as an advisor, critic, editor, coauthor, and steadfast helpmate. In the truest sense of the word they were a team, so linked that no one can separate out the contributions that each made as an individual.

The Institute of Government

The story of their long, desperate, and ultimately successful struggle to build the Institute of Government has been told many times—never better than in Coates's *The Story of the Institute of Government*.[1] It all began when the young law professor decided to go beyond the "law in books" recorded in Supreme Court decisions and to study "law in action" with law enforcement officers, lower court officials, and corrections personnel. His initial motivation was solely to increase his understanding of a process, so as to improve his teaching of law students. But it was not long before he discovered that the officials being studied wanted training. And this led to the creation of the Institute of Government.

In a series of short conferences held for law enforcement officers throughout the state, Coates outlined the laws governing them and they set forth the problems they encountered and their experiences in resolving those problems. From this interchange Coates conceived of a permanent institution that could sponsor training programs, place printed guidebooks in the hands of officials on the job, and respond to day-to-day inquiries as problems arose in the course of their duties. Despite intense opposition from the Law School's dean and faculty (who accepted the need for such activities but felt they were an unwarranted diversion from the responsibilities of a law professor), he won the right to devote his spare time, holidays, and unpaid leaves to the development of an institution meeting those needs.

The Institute's formal creation took place in May, 1932, with approval of a plan developed by a steering committee in the preceding December. Its first statewide meeting was held in September, with Dean Roscoe Pound of the Harvard Law School as the featured speaker and Governor O. Max Gardner on hand to introduce him.

But it had no staff and no funds. For these it was totally dependent upon the benefactions of such men as Benjamin and Caesar Cone; James G., Robert, and Huber Hanes; Clay Williams; James A. Gray; A. H. Bahnson; George Watts Hill; Ashby Penn; Ed Millis; Gordon and Bowman Gray; and other prominent North Carolinians. And in the midst of the Depression, these funds were not always sufficient. Coates exhausted his own and his wife's resources, moved into a rented room, borrowed against his insurance policies, ate "on the cuff" in a friend's restaurant until he could make payment, persuaded business concerns to advance supplies on credit, and sought contributions from local governments throughout the state.

Using such resources, Coates hired Henry Brandis (later dean of the Law School) as the first staff member, followed by Dillard Gardner (later marshall and librarian of the North Carolina Supreme Court), Nelson "Buck" Grice (later deputy state auditor), Harry McGalliard (later deputy attorney general), Marion Alexander (later executive officer of the North Carolina State Bar), Malcolm Seawell (later state attorney general), and Edward Scheidt (on leave from the Federal Bureau of Investigation). They initiated a great variety of programs and publications. They pooled their personal funds and solicited more. But eventually funds ran out without replacement.

When funds became available again following the loss of these stalwart individuals, others were added—Elmer Oettinger, Billy Mitchell, and Samray Smith—and their work was abetted by the part-time services of law students, including Terry Sanford and William Cochrane. The corner was finally turned when the beneficence of Julian Price and brothers Gordon and Bowman Gray made possible the construction of a home for the Institute, dedicated on Thanksgiving Day, 1939. In January, 1942 the Institute formally became a part of The University of North Carolina at Chapel Hill, and for the first time it received financial support in the form of state appropriations. And Spencer Love added supplemental contributions for use when state regulations impeded operations.

With this support, a new staff was recruited to carry on for the duration of the war. Such men as Peyton Abbott, John Fries Blair, Clifford Pace, David Monroe, Maurice Hill, George McGehee, Samray Smith, and Lewis Cherry restored the programs pioneered by the first group and carried them forward. And following the end of the war, Terry Sanford and William Cochrane returned, and they were shortly joined by Henry W. Lewis, Donald B. Hayman, J. Dickson Phillips, Donald McCoy, George H. Esser, Jr., J. Alexander McMahon, Philip Green, and V. Lee Bounds. With this infusion of manpower, the Institute's programs began a steady growth that has continued to this day.

By September, 1962, when university regulations dictated that he turn over his administrative responsibilities to a new director, Coates left behind a permanent full-time professional staff of nineteen members, together with an equally large supporting staff—all housed in the million dollar Joseph Palmer Knapp building (half of whose cost was donated by the Knapp Foundation).

That staff has continued to grow and expand its functions, with thousands of state and local officials receiving its services every year. Currently it consists of thirty-seven faculty members, a professional library staff, and an administrative and supporting staff of sixty members. In 1988 its faculty taught 138 courses for governmental officials,

The Ugly Duckling at Chapel Hill

By WARNER OLIVIER

Albert Coates fought poverty and snubs to build the Greek-pillared school where 8000 cops, sheriffs and other officeholders have learned to save taxpayers' money.

Coates talking shop with police heads of Durham, N. C. This sort of unprofessorial research showed him the gap between government in textbooks and government in practice.

These tax supervisors, like thousands of other public servants, will do their jobs better because of the specialized training which they received at the Institute of Government.

Coates and the Institute received national attention in an article published in the February 24, 1945, issue of *The Saturday Evening Post.*

offered in thirty locations throughout the state. To supplement this teaching, the Institute distributed more than 135,000 copies of forty-six publications authored by that faculty. And the faculty answered (by mail and telephone) thousands of inquiries.

The overall impact of such services is impossible to measure. But thousands of current and former officials attest to the assistance that they have received from the Institute. And none would dispute Coates's many references to the "lifting power" that his creation has had on the quality of local and state government throughout North Carolina.

A New Venture

Coates returned to full-time status as a professor in the Law School in 1962 and continued in that position until he reached the age of seventy, followed by two additional years on a half-time basis. For the ordinary man, that would have been enough to cap a long and successful career. But Coates had promised in the Institute's early days to support civics and government teachers in the public schools in their efforts to bring "government in action" to their students, and he was determined to fulfill that promise.

With support from state funds granted by Governor Terry Sanford, Coates created an Institute of Civic Education in the University's Extension Division. Under this aegis, he started producing teaching notes and texts on a variety of subjects, and beginning in 1965 he started holding workshops for those teachers. He himself taught classes from his materials in Needham Broughton High School and Sanderson High School in Raleigh. The Z. Smith Reynolds Foundation then granted additional funds, which enabled him to write, publish, and distribute to high schools throughout the state 10,000 copies of each of four specially prepared books. Again he held a wide series of workshops to familiarize them with the contents and presentation of those books. By then the Department of Public Instruction was participating in and supplementing his efforts. And in 1980 the State Board of Education formally approved the Albert Coates Citizenship Education Program as part of the basic skills instructional program of the public schools, to be included in the regular social studies curriculum.

Further Activities

Throughout the years since his final retirement Coates continued to write

Awards

Over the years Coates received many honors:

Di-Phi Award of the Dialectic and Philanthropic Literary Societies, The University of North Carolina at Chapel Hill, 1951

O. Max Gardner Award of the Consolidated University of North Carolina, as the faculty member who had contributed the most to the welfare of the human race, 1952

John J. Parker Award of the North Carolina Bar Association, 1964

North Carolina Award, 1967

Certificate of Appreciation from the North Carolina State Bar, 1977

Citation for Distinguished Public Service, North Carolina Citizens Association, 1978

North Caroliniana Society Award, 1979

William Richardson Davie Award by the trustees of The University of North Carolina at Chapel Hill, 1984

State Bureau of Investigation Hall of Honor, 1987

Honorary LL.D. degrees from Wake Forest University, 1960; Duke University, 1971; and The University of North Carolina at Chapel Hill, 1974

In addition, the Local Government Center in Raleigh, housing the North Carolina League of Municipalities and the North Carolina Association of County Commissioners, was named for him in 1978.

and publish—paying tributes to his colleagues, his family, the Division of Highway Patrol, law enforcement officers, and the medical professionals who helped him through the first of several strokes. His books, *What the University of North Carolina Meant to Me*[2] and *The University of North Carolina at Chapel Hill: A Magic Gulf Stream in the Life of North Carolina*,[3] would have been best-sellers if they had not been largely distributed free by the University's Alumni Association as an aid to its activities. A collaborative effort with his wife, *The Story of Student Government in the University of North Carolina at Chapel Hill*, is the definitive history of its type.[4] And his final work, published in the months before his death, was another tribute to the university he loved: *Edward Kidder Graham, Harry Woodburn Chase, Frank Porter Graham: Three Men in the Transition of the University of North Carolina at Chapel Hill from a Small College to a Great University*.[5] Altogether, he published more than sixty books and scholarly articles during his long career, twenty-one of them after his retirement in 1968.

Glimpses of the Man

And so, what manner of man was he? Coates had three loves: his lovely wife, Gladys; The University of North Carolina at Chapel Hill; and the state of North Carolina. And he worshipped all three with a passion.

Colorful in his language, both orally and on paper, Coates embodied the wit and wisdom of the North Carolinians of his time. He gravitated naturally to other story-tellers and became a mother lode of anecdotes: he never forgot a good story—instead, he appropriated it as his own.

He was more perceptive than any baseball scout in spotting talented, young individuals to bring to the Institute's staff, and as a recruiter he was without equal. He was overwhelming in his persuasive abilities, and almost no one he really wanted could decline in the midst of his torrent of entreaties. He built an extraordinary faculty, by any measure.

Nevertheless, Coates's greatest fear was that the Institute staff would relax into a life of "slipper'd ease." "No great institution was ever built on a forty-hour week," he warned. And so he admonished us to work "morning, noon, and night, weekdays, and Sundays," and the office lights burned well into every night and throughout the weekends. There were always three or four simultaneous crises to confront—if not, he would manufacture some. And each morning and afternoon he would call several members of the faculty and say, "Drop down to see me on your way [to lunch] [home]." At such times, one would always find four or five colleagues already waiting in line, and most would never enter the inner sanctum.

Coates felt special concern whenever anyone was leaving for a vacation. Always there were last-minute matters that he felt had to be tended to before departure. One faculty member left standing orders with his secretary not to notify the administrative office of his departure on vacation until at least three days had elapsed.

Coates was never one to accept conventional wisdom. If told that Rome was not built in a day, he would set out to prove the speaker wrong. The Institute was not built in a day. But it was built in a succession of days, on each of which he worked as though it were the only day in which to complete the job. He was extraordinarily perceptive in a conference—picking up all the nuances, noticing the side glance, the quick smile or frown. And he was as sensitive to any potential threat to his beloved institute as a mother hen spotting a far-off hawk. When it came to a real battle, he was Machiavellian in dealing with competitors. He was charming, persuasive, inspiring—and dogged in his determination to win his (and the Institute's) battles.

"Thank God for the 40-hour week," Coates once wrote. "It made it possible for me to hold down two jobs at a time." And now, he is gone. We of today's Institute of Government shall honor his memory in the manner he most desired—by continuing to "build a new university of public officials within the framework of the old University of North Carolina." ❖

Notes

1 Chapel Hill, N.C., Institute of Government, 1981.
2 Richmond, Va., William Byrd Press, 1969.
3 1978.
4 Chapel Hill, N.C., Albert Coates, 1986.
5 1988.

Albert Coates

Institution Builder

Let it be said in the beginning that but for Albert Coates, there would have been no Institute of Government.

But institutions are not created *in vacuo* or *in vitro*. They are the products, first, of time, place, circumstances, and resources and, second, of persons who have the intelligence, skill, energy, and perseverance to take advantage of those first four factors to accomplish the act of creation and to sustain the institution, once in being. So it was with the Institute of Government.

The News and Observer

Mr. Coates came to maturity in the hopeful years of the Progressive Era of American politics, when the conviction was widely shared that the public institutions of the nation were perfectable and that perfecting them was worthy of the best efforts of the best citizens. He idolized President Edward Kidder Graham, whose eloquently articulated ideal it was to put the resources of this University to the service of the people of the whole state. And he was a student of Professor Eugene Cunningham Branson, who in nineteen years on the faculty of this University made the governmental, social, and economic institutions of the state of North Carolina and its communities legitimate subjects of research by professors and of study by students.

Joining the Law School faculty in 1923, Mr. Coates found routine law school teaching to provide an inadequate outlet for his high energy and ambition for service. The conviction grew upon him, as he studied criminal law and government administration generally, that the public officials of this state and its counties and cities had a deep need for organized instruction, research, and advice and that meeting that need was not one man's job but a task for a corps of able scholar-teacher-writer-advisers.

His early hope was to enlarge the scope of the Law School to include that public service role in addition to the traditional one of preparing students for law practice. The dean and faculty of the Law School concluded otherwise. The Great Depression was on, the University's budget was being repeatedly cut and with it faculty salaries, and there was no money for new ventures. There were philosophical objections as well. The Law School's decision proved to be a fortunate one, for within the Law School the Institute of Government (or the idea that became the Institute) could never have flourished as ultimately it did; it would always have been subordinated to the primary teaching mission of the Law School and the professional interests of its faculty.

Undaunted, Mr. Coates, while retaining his tenured Law School professorship, launched the Institute in 1931–32 as a personal enterprise. It was sustained for a decade by his own and Mrs. Coates's labor and means and the generous help of several public-spirited citizens of the state, until in 1942, on his petition, it was incorporated into the University.

Mr. Coates's achievements in establishing the Institute and sustaining it for thirty-one years as its director were twofold.

First, he perceptively conceived and advocated with eloquence, unrelenting vigor, and absolute conviction the *idea* of the Institute of Government. He advocated it to the donors whose gifts helped bring it into being and kept it going in the 1930s; to the University and state officials who assumed financial responsibility for it from 1942 forward; to Margaret Rutledge Knapp and the Joseph Palmer Knapp Foundation, whence came in 1953 a $500,000 grant, matched by a like amount from the General Assembly, to build and furnish the Knapp Building; to the public officials of North Carolina; and to the many men and women who on his invitation chose to cast life and lot with the Institute of Government.

And so we have come to his second major achievement: Between 1933 and 1962, he persuaded four score men and women to believe in his dream, to make it their own, and to invest in it their best efforts for a few years or for a professional lifetime. For most of that period, they came with no more job security than their faith in him afforded, for not until 1957 did they acquire full faculty status.

To the directorship of the Institute of Government, Mr. Coates brought a strong proprietary sense, and he exercised close oversight of some elements of its program, notably criminal law and its enforcement. Yet most of the men and women who shared the Institute's labor, and especially those who stayed long at the task, found within it opportunities for individual and creative work whose rewards offset the many hours it required. From 1933 onward, they gave life and substance to the director's rubrics about the teaching, research, writing, publishing, and advisory functions of the Institute.

The most remarkable tribute to Mr. Coates's achievement as an institution builder is the fact that those whom he picked to do the Institute's service were able to recruit others to the dream, and they to recruit others in turn; that more than a quarter of a century after he left its directorship, the Institute still grows and thrives and serves; and that today, the thirty-six men and women of its faculty, most of whom never knew Albert Coates, are still moving to the measure of his thought.

—John S. Sonders, director of the Institute of Government, remarks made at a memariol tribute to Albert Coates, 29 March 1989

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

— United States Constitution, Fourth Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

— United States Constitution, Fourteenth Amendment, Section 1

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

— United States Code, Title 42, Section 1983

Federal Standards Governing Police Use of Force

John Barnwell

Law enforcement officers may, of course, use necessary force to effect and maintain a lawful arrest. But the amount of force used, even in a lawful arrest, is subject to judicial scrutiny. And the line between legal and illegal levels of force is being tested in federal courts with increasing frequency. Although official nationwide statistics on such cases are not available, one source recently estimated that "between 20,000 and 30,000 of these lawsuits are being brought against the police each year."[1] Moreover, a wealth of anecdotal evidence from practitioners indicates that civil litigation involving police as defendants continues to expand.[2] North Carolina officials involved in law enforcement obviously want not only to prevent police misconduct but also to minimize time and money spent in litigation. Making law enforcement practice conform to current legal standards may not prevent a groundless lawsuit, but it does ensure that officers who have acted properly are legally vindicated as quickly and cheaply as possible.

This article will summarize recent developments in case law dealing with excessive force during arrest and pretrial detention; explain the legal standards currently applied by the United States Court of Appeals for the Fourth Circuit, which has jurisdiction over all federal trial courts in North Carolina; and discuss the statute that allows civil suits for excessive force to be brought into federal courts. It will not discuss the separate and distinct standards applicable in state courts to cases brought under North Carolina law[3] or the complex factors that determine whether a municipality may be held liable for the misdeeds of its police officers.[4]

Deadly Force during Arrests

In 1985 the Supreme Court handed down a major decision on the use of force in arrests. The case of *Tennessee v. Garner* began when a Memphis police officer shot a suspected burglar after he ran from a house and tried to escape over a fence. The suspect, fifteen-year-old Edward Garner, died while on a hospital operating table. Garner's father sued, alleging, among other things, that the means used to "seize" (that is, to arrest) his son violated the Fourth Amendment's prohibition of "unreasonable searches and seizures."[5]

Officer Elton Hymon's decision to shoot Garner was in keeping with Tennessee law, which authorized the use of deadly force, if necessary, to seize a fleeing felon.[6] The state of Tennessee argued that as long as an officer has probable cause to arrest a suspect, the Fourth Amendment "has nothing to say about *how* that seizure is made."[7] The Supreme Court disagreed. It held that the reasonableness of an arrest depends on how as well as why it is made.[8]

In reaching its decision the Court focused closely on the following facts. Officer Hymon "was able to see Garner's face and hands" and "saw no sign of a weapon."[9] Moreover, Hymon testified that he "was 'reasonably sure' and 'figured' that Garner was unarmed."[10] Finally, Hymon's decision to shoot was based solely on the belief "that if Garner made it over the fence he would elude capture."[11] Applying the Fourth

The author is a graduate of The University of North Carolina at Chapel Hill School of Law.

Amendment to these facts, the Court held that if a "suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so."[12] Conversely, as the majority opinion was careful to observe, if the "officer has probable cause to believe that the suspect poses a threat of serious physical harm either to the officer or to others," it is reasonable to prevent escape by using deadly force.[13]

The *Garner* decision left several questions unanswered or, at best, ambiguously answered. The Court's opinion did not state explicitly whether deadly force meant shooting to kill or merely shooting. Neither did the opinion indicate explicitly whether deadly force was limited to the use of a firearm or extended to the use of other potentially lethal weapons and techniques.

In a case decided several months after *Garner*, a federal court of appeals rejected the argument that the force used may be considered deadly only when an officer shoots to kill. The court held that the *Garner* decision largely adopted the definition of deadly force found in the Model Penal Code:

> force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily harm. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force.[14]

Other federal courts have agreed that shooting at a suspect constitutes use of deadly force whether or not the shooting is fatal.[15] And the United States Court of Appeals for the Fourth Circuit has indicated that the *Garner* standard applies in cases where officers shoot and wound suspects.[16] In other words, an officer may shoot at a suspect only when there is reason to believe that the suspect poses a threat of serious physical harm to someone.

Although the narrow holding in *Garner* addresses permissible use of deadly force, its broader significance lies in the fact that judicial examination of *how* an arrest is made has been extended to cases involving the use of nondeadly force. To determine whether an arrest is constitutional, a court "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."[17] In striking this balance a court must consider all the facts and circumstances surrounding a particular case. Thus the amount of force that is reasonable (hence constitutional according to the Fourth Amendment) will vary from case to case.

Excessive Force during Arrests

Six months after the Supreme Court delivered its opinion in *Garner*, the fourth circuit court of appeals decided the case of *Kidd v. O'Neil*. The defendants in that case (two Fairfax County, Virginia, police officers) conceded "that one struck Kidd with a nightstick and that both maced him, but they asserted that they used only the force needed to subdue him; that Kidd was violently (and in the end, successfully) resisting arrest . . . [and that] he was attempting to take a gun from one of the officers."[18] The court held, "[The] use of any significant degree of excessive force in effecting otherwise constitutionally valid arrests may constitute an unreasonable seizure of the person in violation of fourth amendment rights."[19] Thus the constitutionality of force used in any arrest or attempted arrest can be determined only by a careful examination of all the facts surrounding the arrest and a consequent decision—in light of particular facts—that the force used was reasonable or unreasonable.[20]

The court reasoned that this result was dictated by the Supreme Court's holding in *Garner*, which necessarily implied that the "use of any significant force, up to and including deadly force, not reasonably necessary to effect an arrest—as where the suspect neither resists nor flees or where the force is used after a suspect's resistance has been overcome or his flight thwarted—would be constitutionally unreasonable."[21] In looking to the Fourth Amendment as the source of protection from excessive force in arrests, the court noted that its holding did not apply to excessive force claims arising in other contexts—for example, force used on pretrial detainees, corporal punishment of schoolchildren, or disciplinary measures against convicted prisoners, none of which would be governed by the Fourth Amendment standard.[22]

The way in which a court examines facts and then balances the government's interest in making an arrest against the force used to effect that arrest can be illustrated best, perhaps, by the recent case of *Martin v. Gentile*. In the early morning darkness of January 15, 1980, members of the Emergency Service Team (EST) of Prince George's County, Maryland, concealed themselves in roadside brush and waited to arrest Felicisimo Martin, who was suspected of committing a series of violent rapes. Another group of officers staged an accident and stopped cars as they approached the scene. When Martin came to the roadblock, the EST members surrounded his car and ordered him to get out. When he refused, officer Donald Chamblee reached inside and grabbed Martin by the shirt. In the ensuing melee, Sergeant William Spalding rammed a loaded shotgun through the car's windshield, forcing Martin to release his grip on the steering wheel. Martin was then pulled from the car and landed with his hands pinned beneath him on the glass-covered road. Several years later, after his conviction and imprisonment for rape, he sued, alleging that the officers who had arrested him had used force in excess of that permitted by the Constitution. The court decided that Martin's constitutional rights were not violated by this arrest.[23]

In explaining its decision the court reviewed the following facts that led to Martin's arrest and influenced the way it was made. Maryland police officers had good reason to believe that Martin had committed a "series of remarkably similar violent rapes and obtained a warrant for his arrest. Because the rapist had used a large knife in the commission of his crimes and cut several of his victims, the detectives were concerned that Martin would be armed and dangerous and likely to resist arrest."[24] This conclusion was supported by the fact that Martin previously had been convicted for attempted robbery, had been arrested for assault with a switchblade, "and was believed to have some training in the martial arts."[25]

As the arrest began, Martin was sitting in an idling car, and the police were on foot. He ignored an order to get out of his car and resisted attempts to pull him out. The court noted further that, in the dim light, Sergeant Spalding "thought he saw Martin reach for a weapon . . . [and] was concerned about the safety of Officer Chamblee, who was locked in hand-to-hand struggle with

Martin. Forced to make a split-second decision, Sergeant Spalding pointed the shotgun at Martin and rammed its barrel at him through the windshield."[26]

On the basis of these facts, the court held that the amount of force used was constitutional. In retrospect the arrest "probably could have been accomplished with fewer officers and without ramming the shotgun through the windshield."[27] But, as the court emphasized, the number of officers and the force employed to make an arrest need not be minimal—only reasonable.[28]

Martin v. Gentile confirms that, in judging claims of excessive force during an arrest, the fourth circuit court of appeals will look exclusively to the Fourth Amendment, "the only part of the Constitution that speaks directly to seizures of the person."[29] The court defines this standard as wholly objective: "The question is whether the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting him, without regard to his own subjective intent or motivation."[30] Subjectively good intentions on the part of an officer will not make an objectively unreasonable use of force constitutional. But, in assessing the objective reasonableness of force used in an arrest, "due regard must be given to the fact that police officers are often forced to make split-second judgements, under tense, dangerous and rapidly moving circumstances, about the amount of force necessary to effect a particular arrest."[31]

On May 15, 1989, when the United States Supreme Court decided *Graham v. Connor*, it confirmed that the legal analysis followed in *Martin v. Gentile* is the correct one. In *Graham* the Court examined the forcible detention of Dethorn Graham, based on what police perceived as suspicious conduct in a convenience store. In fact, Graham, a diabetic, was not engaged in any crime; his erratic behavior was caused by an insulin reaction.[32] He sued the City of Charlotte and several of its police officers for injuries sustained during his arrest. The Court, making "explicit what was implicit in *Garner's* analysis," held that "all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard."[33] The Court expressly limited its holding in *Graham* to cases involving arrests; it did not address the question of "whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins."[34]

Excessive Force during Pretrial Detention

When a plaintiff claims that excessive force was used after arrest but while the plaintiff was still in pretrial detention, a federal court in the fourth circuit will look to the Fourteenth, rather than the Fourth, Amendment to determine whether the plaintiff's constitutional rights were violated. Arrest can extend over a lengthy period and include efforts not only to capture a suspect but also to maintain custody. Therefore, drawing a line between the end of arrest and the beginning of pretrial detention can require considerable subtlety. Nevertheless, in the fourth circuit the placement of that line determines the legal standard to be employed.

Constitutional protection of pretrial detainees was derived from the Fourteenth Amendment in *Rochin v. California*. Antonio Rochin was suspected of selling narcotics and had swallowed two capsules during his arrest. At the direction of three deputy sheriffs of Los Angeles County, a doctor inserted a tube into Rochin's stomach against his will and introduced an emetic solution that produced vomiting. The evidence recovered through this technique was admitted against Rochin at trial. The Supreme Court held that Rochin's conviction had been obtained by means that "shocked the conscience" and violated the Fourteenth Amendment's due process clause, which protects an individual's interest in life, liberty, or property from arbitrary intrusions by a state.[35] Through subsequent interpretation it has become settled law that the Fourteenth Amendment's due process clause protects individuals from excessive force during pretrial detention.

The *Rochin* standard of conduct has been developed into a three-pronged test that, in one version or another, has been adopted by most federal courts, including the United States Court of Appeals for the Fourth Circuit. To determine when the use of force against a suspect in pretrial custody violates his or her constitutional rights, a court must look to the "relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm."[36]

The case of *Justice v. Dennis* presented the question of which constitutional protections—those of the Fourth Amendment, those of the Fourteenth Amendment, or both—extend to a suspect during the process of arrest and pretrial detention. On December 19, 1982, trooper W. B. Rose of the North Carolina Highway Patrol arrested Gary Wayne Justice for driving while impaired. Rose took Justice to the highway patrol office for a breathalyzer test, which revealed a high concentration of alcohol. Because Justice was obstreperous and abusive, Rose asked John Dennis, a fellow trooper, to accompany him in transporting Justice to the Onslow County Courthouse. After a brief appearance before the magistrate, Justice was escorted to a visitors' room and ordered to remain there until he was booked. Nevertheless, Justice tried to leave, and Dennis pushed him against a wall. When Justice was brought into the booking area, he began to struggle with both officers, and Dennis sprayed Justice with mace. Justice sued, claiming that the amount of force used by the trooper violated the Constitution. The ultimate decision favored Dennis.[37]

The pushing and macing about which Justice complained occurred after a magistrate had found probable cause to detain him for trial but before he was booked and released on bond. That fact was crucial to the outcome of the case. A minority of the court argued that an arrest "lasts as long as the arresting officer retains custody of the person arrested, so that fourth amendment protections against reasonable uses of force clearly apply throughout that period."[38] But a majority concluded that Justice's arrest had been completed, that he was entitled only to the protection of the Fourteenth Amendment's due process clause, and that the trial court had properly applied the three-pronged test for permissible force under the due process clause.[39]

In reaching this last conclusion, the court observed that (1) the state's interest in maintaining custody and control of a criminal defendant permits law

enforcement officers to exercise a certain degree of force and (2) force was employed against Justice because he was actively resisting confinement. The court noted further that while Justice had suffered demonstrable injuries, the record did not indicate that they were severe or permanent. On the basis of these facts the court held that the officers detaining Justice did not use force maliciously but rather in good faith and in proportion to a legitimate need.[40]

Justice v. Dennis shows the standards applicable under the Fourth and Fourteenth amendments in sharp relief. While the Fourth Amendment standard is entirely objective, the Fourteenth Amendment standard takes into account a subjective factor: the intent or motivation of the police officer. Under the Fourteenth Amendment standard, objectively unreasonable force does not necessarily violate the Constitution; it is simply one factor to be considered. Further, in theory the Fourth Amendment standard can be violated without inflicting physical injury; violation of the Fourteenth Amendment must be determined in part by the severity of harm inflicted. Federal courts agree that "not every push or shove" infringes constitutional rights.[41]

Civil Liability

The statute that allows plaintiffs to sue in federal court for a violation of the Constitution (or a federal statute) is codified in Section 1983, Title 42 of the United States Code. This law, popularly known as Section 1983, authorizes legal action only when agents of a state are responsible for the deprivation of civil rights. Thus a police officer can be sued under Section 1983 only when acting within the scope of his or her employment. An officer may be sued in either of two capacities—"personal capacity" or "official capacity"—but usually is sued in both. In the first case the plaintiff seeks to recover from the officer's personal assets; in the second case the plaintiff seeks recovery from the governmental entity employing the officer.[42]

The excessive use of force is a deliberate "affirmative abuse of power" and is a valid basis for a suit under Section 1983.[43] But a negligent act that injures life, liberty, or property does not implicate the due process clause.[44] For example, a police officer who accidentally discharges his or her gun, thereby injuring a suspect or a bystander, cannot be sued successfully under Section 1983.[45] When a plaintiff asserts a valid Section 1983 claim and the case meets certain procedural requirements, the plaintiff can have the federal court also hear state law claims that arise from the same incident. Typically these state law claims are for assault, battery, or wrongful death.[46]

Conclusion

The Fourth Amendment regulates not only why but also how an arrest is made, and its reasonableness standard extends to any significant use of force. In the fourth circuit this standard governs excessive force claims arising from arrest, and the Fourteenth Amendment's substantive due process standard governs excessive force claims arising from pretrial detention. The Fourth Amendment standard is an entirely objective one: it determines whether the amount of force used was actually necessary in light of all the facts. In contrast, the Fourteenth Amendment standard is partially subjective: it weighs not only whether the force used was proportionate to the force needed but also whether force was used in a good faith belief that it was necessary. ❖

Notes

1. Martin A. Schwartz, "Federal Practice Notes: Undue Force Exercised by Public Officials," *Clearinghouse Review* 19 (February 1986): 1180. The federal government does not tabulate cases specifically alleging excessive force; those are included in the general category of civil rights. For the fiscal year ending June 30, 1986, excluding petitions from prisoners and cases involving voting, employment, accommodations, and welfare, 10,366 civil rights cases were brought to trial in federal courts. Administrative Office of the United States Courts, *Annual Report of the Director of the Administrative Office of the United States Courts* 1987, 178.

2. See, for example, Jim T. Priest and Reggie N. Whitten, "Police Misconduct Suits: In Defense of Officers and Municipalities," *For the Defense* 28 (August 1986): 21; Emily Couric, "Police Become Target of Malpractice Claims," *National Law Journal* 7 (13 May 1985): 1; Nancy Blodgett, "People v. Police," *American Bar Association Journal* 71 (February 1985): 36.

3. The North Carolina standard for use of force in an arrest is codified in N.C. Gen. Stat. § 15A-401(d) (1983). For a summary of state law on the use of force in making an arrest, see Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (Chapel Hill, N.C.: Institute of Government, 1986), 48–50.

4. For a summary of the law based on cases reported through 1979, see Michael R. Smith, "Civil Liabilities for Police Activities," *Popular Government* 45 (Winter 1980): 42–49; see also Michael R. Smith, "Civil Liability of the City and City Officials," in *Municipal Government in North Carolina*, ed. David M. Lawrence and Warren J. Wicker (Chapel Hill, N.C.: Institute of Government, 1982), 81–99.

5. Tennessee v. Garner, 471 U.S. 1, 3–5 (1985), hereinafter cited as *Garner*.

6. Tenn. Code Ann. § 40.7-108 (1982).

7. *Garner*, 471 U.S. at 7.

8. *Garner*, 471 U.S. at 8.

9. *Garner*, 471 U.S. at 3.

10. *Garner*, 471 U.S. at 4.

11. *Garner*, 471 U.S. at 21.

12. *Garner*, 471 U.S. at 11.

13. *Garner*, 471 U.S. at 11.

14. Pruitt v. City of Montgomery, Ala., 771 F.2d 1475, 1479 n.10 (11th Cir. 1985).

15. Acoff v. Abston, 762 F.2d 1543 (10th Cir. 1987); Ryder v. City of Topeka, 814 F.2d 1412 (10th Cir. 1987); Brown v. City of Clewiston, 848 F.2d 1534 (11th Cir. 1988).

16. Carter v. Rogers, 805 F.2d 1153, 1156 n.3 (4th Cir. 1986).

17. *Garner*, 471 U.S. at 8.

18. Kidd v. O'Neil, 774 F.2d 1252, 1263 (4th Cir. 1985), hereinafter cited as *Kidd*.

19. *Kidd*, 774 F.2d at 1256. In addition to its reliance on *Garner*, the court cited Jenkins v. Averett, 424 F.2d 1228 (4th Cir. 1970) as fourth circuit precedent for its holding.

20. *Kidd*, 774 F.2d at 1256–57.

21. *Kidd*, 774 F.2d at 1256–57.

22. *Kidd*, 774 F.2d at 1259–60.

23. Martin v. Gentile, 849 F.2d 863, 865–66 (4th Cir. 1988), hereinafter cited as *Martin*.

24. *Martin*, 849 F.2d at 865.

25. *Martin*, 849 F.2d at 865.

26. *Martin*, 849 F.2d at 869–70.

27. *Martin*, 849 F.2d at 870.

28. *Martin*, 849 F.2d at 870.

29. See *Martin*, 849 F.2d at 867. Other federal appellate circuits are also taking this position; see, for example, Lester v. City of Chicago, 830 F.2d 706, 713, 713 nn. 6, 7 (7th Cir. 1987) (adopting the Fourth Amendment standard and overruling Gumz v. Morrissette, 772 F.2d 1395 (7th Cir. 1985), *cert. denied*, 475 U.S. 1123 (1986)); Martin v. Malhoyt, 830 F.2d 237, 261 (D.C. Cir. 1987) (expressly adopting the Fourth Amendment standard); Dodd v. City of Norwich, 827 F.2d 1, 4 (2nd Cir. 1987).

30. *Martin*, 849 F.2d at 869.

31. *Martin*, 849 F.2d at 869.

32. Graham v. City of Charlotte, 644 F. Supp. 246 (W.D.N.C. 1986), *aff'd*, 827 F.2d 945 (4th Cir. 1987), *rev'd sub nom.* Graham v. Connor, No. 87-6571 (U.S. May 15, 1989) (1989 U.S. LEXIS 2467).

33. *Id.*

34. *Id.*

35. Rochin v. California, 342 U.S. 165, 172 (1952).

36. Johnson v. Glick, 481 F.2d 1028, 1032 (2nd Cir. 1973), hereinafter cited as *Johnson*.

37. Justice v. Dennis, 793 F.2d 573 (4th Cir. 1986), *rev'd on rehearing*, 834 F.2d 380 (4th Cir. 1987) (*en banc*), hereinafter cited as *Justice*.

38. *Justice*, 834 F.2d at 388 (Phillips, J., dissenting).

39. *Justice*, 834 F.2d at 382–83.

40. *Justice*, 834 F.2d at 382–83.

41. *Johnson*, 481 F.2d at 1033.

42. Kentucky v. Graham, 473 U.S. 159, 165 (1985).

43. Daniels v. Williams, 474 U.S. 327, 330 (1986), hereinafter cited as *Daniels*.

44. *Daniels*, 474 U.S. at 328.

45. Wilson v. Beebe, 770 F.2d 578 (6th Cir. 1985) (*en banc*); Leber v. Smith, 773 F.2d 101 (6th Cir. 1985). While these decisions on accidental shootings technically are not binding on the United States Court of Appeals for the Fourth Circuit, the Supreme Court's decision in *Daniels* confirms that the analysis employed in them was correct.

46. N.C. Gen. § Stat. 28A-18.2 permits the beneficiaries of a deceased person to bring a lawsuit alleging that the death was caused by the negligent or unjustifiable and intentional act of another person.

Employment at Will and the Local Government Employer

Stephen Allred

When a North Carolina employer hires an applicant, the legal presumption that governs their working relationship is that the employment is "at will"—that is, employment is at the will of either party, and the employer is free to dismiss the employee at any time without explanation or legal penalty.[1] The employment at will presumption applies to both public and private sector employment.

In the public sector, the at-will status of employees is, in some instances, explicitly stated in the North Carolina General Statutes.[2] For example, G.S. 153A-103(2) provides that sheriffs' deputies "serve at the pleasure of the appointing officer." Similarly, G.S. 160A-147 states that a city manager is appointed by the council "to serve at its pleasure." For other public employees, the presumption of employment at will holds unless the employee proves otherwise.

The employment at will rule has been described as granting employers the right to dismiss an employee "for good cause, for no cause, or even for cause morally wrong."[3] If this was ever an accurate representation of the rule in North Carolina, however, such a statement is clearly not accurate today. In recent years certain exceptions to the employment at will rule have been recognized by the courts, both in North Carolina and elsewhere, with the result that employers may no longer simply discharge employees without worrying about possible legal challenges. Three broad categories of exceptions to the employment at will rule have developed: statutory exceptions, common-law exceptions, and so-called property right exceptions. This article describes each of these exceptions as it applies to local government employees and employers and discusses recent federal and state court decisions that have eroded the employment at will rule.

Statutory Exceptions

Statutory exceptions represent legislative modifications, at both the federal and state level, of an employer's right to discharge employees. Federal statutes that modify the employment at will rule include the Civil Rights Act of 1964, which prohibits discharge for discriminatory reasons;[4] the Age Discrimination in Employment Act, which prohibits discharge solely on the basis of age;[5] and the Rehabilitation Act of 1973, which bars dismissal of an otherwise qualified handicapped employee if reasonable accommodation of the handicap can be made.[6]

Similarly the North Carolina General Statutes modify the employment at will rule by prohibiting dismissal for employee activities such as serving on a jury;[7] participating in an unemployment compensation hearing;[8] filing a workers' compensation claim;[9] filing a wage and hour complaint;[10] and filing a complaint of unsafe working conditions.[11] Thus the doctrine of employment at will in North Carolina does not, in fact, allow an employer, public or private, to discharge an employee for *any* reason; rather, it allows a discharge for any reason that does not violate federal or state statutes. As discussed below, there are additional reasons for dismissal that may not be relied on by employers.

The author is an Institute of Government faculty member whose fields include personnel law. *This article is based on a chapter in a forthcoming book,* North Carolina Local Government Personnel Law, *to be published by the Institute.*

Judicially Created Exceptions

Judicially created exceptions to the rule of employment at will are based on a finding of breach of contract or the tort of wrongful discharge (as opposed to the legislature or Congress having created a statutory exception). In other words, in this second group of exceptions, the court finds either that the parties themselves, through their actions, have created a contractual exception to the employment at will rule or that the employer's motive in dismissing an employee violates some tenet of public policy.

Implied employment contracts

Obviously one way in which an employer and employee may make their employment relationship other than at will is to execute a written contract setting forth the terms and conditions of employment for a specified length of time. Indeed, in many employment settings such as the public schools and universities, employment contracts are commonplace. However, they are not routinely used in local government employment. Nonetheless, courts sometimes have found that an employment contract has been created by implication, either by representations made at the time of hiring,[12] by statements contained in personnel handbooks,[13] or even by an implied covenant of good faith and fair dealing.[14] Examples of each of these bases for finding an employment contract follow.

A case in which a court found that representations made at the time of hiring created an exception to employment at will is *Sides v. Duke Hospital*.[15] The plaintiff in the case, Marie Sides, worked as a nurse anesthetist at Duke Hospital in Durham, North Carolina. She was discharged after eleven years of service and brought a wrongful discharge action. The court ruled that Sides was entitled to maintain her claim of wrongful discharge, based on representations made to her that if she were to leave Michigan and come to work in North Carolina, she would be discharged only for incompetence. Furthermore, her move from Michigan constituted sufficient consideration (that is, a thing of value) to make her employment contract enforceable.[16]

A case arising outside North Carolina in which a court found statements contained in a personnel handbook sufficient to create an employment contract is *Renny v. Port Huron Hospital*.[17] The plaintiff in the case, Karen Renny, was discharged for insubordination and filed suit for wrongful discharge, claiming that her employer's handbook established a contractual requirement that employees be discharged for good cause only. The Michigan court found that the handbook constituted a just-cause employment contract, irrespective of the fact that the employee had not signed a statement that she agreed to abide by its terms and irrespective of the employee's knowledge of the hospital's policies before being hired:

> A provision in the employment contract providing that an employee shall not be discharged except for cause is legally enforceable whether by express agreement, oral or written, or as a result of an employee's legitimate expectations grounded in an employer s policy statements. These legitimate expectations may be grounded in an employer's written policy statements as set forth in the manual of personnel policies.[18]

In contrast, in the last decade it has become settled North Carolina law that conditions of employment unilaterally promulgated in a handbook or policy manual do not constitute an exception to at-will employment in that no contract is created by the handbook.[19] For example, in *Smith v. Monsanto Company* plaintiff Lura Smith challenged the failure of her employer to follow its employee recall policy as set forth in a booklet distributed to all employees.[20] The policy provided terminated employees with a choice between severance pay or layoff with a possibility of recall for one year. Smith chose layoff but was not recalled when her employer began rehiring employees. The court characterized the recall procedure set forth in the employee handbook as "a gratuitous benefit" and held that there was no enforceable contract.[21]

One note on the handbook cases: in some states, courts have been willing to recognize an exception to the employment at will rule when the employee proves that he or she relied on statements made in a handbook in making employment decisions and thereby suffered adverse consequences (for example, refusing other employment opportunities because the current employer's handbook promised "lifelong job security" and then being fired without cause). The term for the legal theory under which the courts recognize these claims is *detrimental reliance*.[22] A detrimental reliance claim does not require proof that a binding employment contract existed, only proof (1) that the employer should have reasonably expected its promises to be relied upon by the employee and (2) that the employee did in fact act or refrain from acting on the basis of the employer's promises.[23] The North Carolina courts have not determined whether detrimental reliance on a handbook is sufficient to create a contract.[24]

Finally, some state courts have found an exception to the doctrine of employment at will in the case of an implied covenant of good faith and fair dealing. In these cases, an employer's decision to dismiss an employee is challenged as arbitrary, with the employee claiming that the employer had no right to fire employees for a "bad reason." For example, the Montana courts, in *Gates v. Life of Montana*,[25] recognized the theory that there is an implied covenant of good faith and fair dealing in employment contracts and subsequently described the covenant exception this way:

> Whether a covenant of good faith and fair dealing is implied in a particular case depends upon objective manifestations by the employer giving rise to the employee's reasonable belief that he or she has job security and will be treated fairly. . . . [T]he implied covenant protects the investment of the employee who in good faith accepts and maintains employment reasonably believing their job is secure so long as they perform their duties satisfactorily, [and] such an employee is protected from bad faith or unfair treatment by the employer.[26]

The North Carolina courts have not recognized the implied covenant exception to the doctrine of employment at will. In fact, proponents of this theory have found limited acceptance in the courts nationwide.[27]

Wrongful discharge claims

Courts in a number of jurisdictions have recognized an exception based on the tort of wrongful or abusive discharge. This theory, in its narrowest form, holds that an employer may not dismiss an employee in violation of a public policy set forth in a statute.[28] In its broader form, the theory holds that

an employer may not dismiss an employee for reasons of malice, bad faith, or retaliation, as to do so contravenes public policy.[29]

The question of whether the dismissal of an employee violates public policy is obviously one subject to differing interpretations. A broad approach is typified by a decision of the Arizona Supreme Court, in which it attempted to define the scope of the tort of wrongful discharge for violation of public policy:

> There is no precise definition of the term. In general, it can be said that the public policy concerns what is right and just and what effects the citizens of the state have collectively. It is to be found in the state's constitution and statutes and, when they are silent, in its judicial decisions. Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other states involving retaliatory discharges shows that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed.[30]

Thus the broad view of the wrongful discharge tort, not accepted by the North Carolina courts, holds that an employer may not terminate an employee for refusal to commit unlawful acts as set forth by statute, for performing important public obligations, or for exercising certain legal rights or privileges.[31]

The more limited view of the wrongful discharge tort taken by the North Carolina courts is typified by the seminal decision of *Sides v. Duke Hospital*.[32] The plaintiff, a nurse anesthetist, brought a wrongful discharge action against the hospital alleging that she had been dismissed in retaliation for her refusal to commit perjury in a medical malpractice trial. The court agreed that such a dismissal was a wrongful discharge:

> [W]hile there may be a right to terminate a contract at will for no reason, or for an arbitrary or irrational reason, there can be no right to terminate such a contract for an unlawful reason or purpose that contravenes public policy. . . . We hold, therefore, that no employer in this State, notwithstanding that an employment is at will, has the right to discharge an employee and deprive him of his livelihood without civil liability because he refuses to testify untruthfully or incompletely in a court case, as plaintiff alleges happened here.[33]

Subsequent decisions of the North Carolina courts have made it clear that the public policy exception is to be construed quite narrowly. For example, in *Trought v. Richardson* the court refused to recognize an abusive discharge claim where a nurse alleged that she was discharged in retaliation for transferring licensed practical nurses out of the emergency room because they were performing procedures in violation of hospital policy and state law.[34] And in *Coman v. Thomas Manufacturing Company* the court refused to recognize a public policy exception where an employee was fired for refusing to drive his truck longer than the time allowed under United States Department of Transportation regulations.[35] "[W]hile we recognize the strong public policy interests which support the federal motor carrier safety regulations," the court said, "it is not necessary or efficient for this Court to create a state tort cause of action," because the employee could file a complaint with the United States Department of Labor.[36]

In other words, the public policy exception to the doctrine of employment at will is narrow because it requires the employee to show a violation of a specific statutory mandate and requires proof that the statute itself evinces important public policy concerns. In fact, the *Sides* case and its progeny hold only for the limited proposition that one cannot be dismissed for refusal to commit an illegal act in a legal proceeding.[37] The only other North Carolina case in which a discharged employee has sued sucessfully for wrongful discharge in violation of public policy involved an allegation that the employee was fired for testifying at an unemployment compensation hearing on behalf of another employee who had been fired.[38]

Property Right Exceptions

A third source of exceptions to the employment at will rule is found only in public-sector employment: the vesting of a "property right" to employment. The Fourteenth Amendment's guarantee that no person may be deprived of property without due process has been construed to extend to a property interest in employment.[39] A property interest arises when a public employee can demonstrate a reasonable expectation of continued employment because the employer has established a binding policy that dismissal will occur only for stated reasons. For example, county employees subject to the State Personnel Act may be fired only for "just cause."[40] The effect of this language is to create a property right in employment that may be taken from the employee only following the constitutional requirements of substantive and procedural due process.[41]

The question of what acts by the public employer are necessary to create a property interest in employment is not easily answered. Of course, if a statute clearly states that employees may be discharged only for just cause or for misconduct in office, there is little difficulty in concluding that the employment relationship is other than at will. The more difficult question arises when a city or county enacts personnel policies stating that employees may be discharged for failure in personal conduct or performance and that provide detailed procedures for dismissal. A recent case, *Pittman v. Wilson County*,[42] may provide some answers. Note, however, that the *Pittman* case was decided by the United States Court of Appeals of the Fourth Circuit, not the North Carolina state courts. Thus its predictive value may be limited.

In 1971 the Board of County Commissioners of Wilson County adopted a personnel resolution to "govern the appointment, salary, promotion, demotion, dismissal and conditions of employment of employees of Wilson County."[43] The terms of the personnel resolution were printed and distributed to all Wilson County employees in the form of an employee handbook.

According to Article III, Section 5 of the resolution, "Disciplinary Action," "[A]n employee . . . may be dismissed by a department head and/or the County Manager. The degree and kind of action will be based upon the sound and considered judgment of the department head and the County Manager in accordance with the provisions of this policy to assure that the intent of the policy is followed."[44] The policy further stated that "the causes for [employee] demotion or dismissal fall into two categories: (1) causes relating to performance of duties, and (2) causes relating to personal conduct detrimental to public service."[45]

The Wilson County policy also contained an extensive procedure requiring

employees who demonstrate unsatisfactory performance to receive at least three warnings before dismissal and listed representative instances of misconduct that could serve as the basis for discipline or dismissal. In addition, the policy required that an employee dismissed for performance or conduct be afforded a "pre-dismissal conference between the supervisor and/or the department head and the employee."[46] It further required the supervisor or department head to specify the reasons for the proposed dismissal during this conference and to afford the employee an opportunity to respond.

Vickie L. Pittman, an employee in the Wilson County sheriff's office, was accused of misconduct by her supervisor. She resigned her position in lieu of dismissal. A few days later, Pittman contacted her former employer, arguing that her resignation had been coerced and demanding a discharge hearing. The county refused. Pittman then filed suit claiming that her termination without a predismissal hearing before an impartial official violated her due process guarantees under the Fourteenth Amendment.

The district court, contrary to the report and recommendations of a magistrate initially appointed to hear the case, granted Wilson County's motion for judgment without a trial on the pleadings in the case (*summary judgment*). In doing so the court found that Pittman had not been discharged from her job as a telecommunicator and that even if her resignation was construed as a discharge, Pittman had no property interest in her job. Under North Carolina law, held the court, Pittman was an at-will employee entitled to no due process guarantees.[47]

The Court of Appeals for the Fourth Circuit affirmed the holding of the district court.[48] Critical to the court's determination was its finding that her asserted basis for due process guarantees was the Wilson County personnel resolution discussed above. The court rejected Pittman's claim that the resolution's restrictions on the circumstances under which an employee could be discharged, which were communicated to county employees and managers, were sufficient to create a property interest under North Carolina law and thus were binding on the county. Instead, the court held that because the restrictions were *only* set forth in a resolution, not in an ordinance or statute, they were not binding:

> The resolution is a part of a manual that describes itself as merely a "Welcome to All Employees of Wilson County." The language simply is not typical of that used in an ordinance or statute having the effect of law. Moreover, the subject matter of the personnel resolution is administrative in nature. It supplies internal guidelines to County officials for the administration of the County's employment positions, including the disciplining and discharge of employees.[49]

Having found no basis for Pittman's claim that she was other than an at-will employee, the court concluded that she was not entitled to due process in the termination of her employment.

In making the distinction between the nonbinding nature of personnel resolutions and the binding nature of ordinances and statutes, the court examined the North Carolina General Statutes. Noting that the statutes "do not expressly address the distinction between an ordinance and a resolution,"[50] the court nonetheless found significant the requirement that specific procedures be followed in enacting county ordinances. Quoting G.S. 153A-45, the court declared that in order for an ordinance to be enacted by the county board of commissioners, the proposed ordinance "must receive the approval of all the members of the board." In doing so, however, the court apparently ignored two other significant provisions of G.S. 153A-45: first, that the procedures are for the adoption of an ordinance or "any action having *the effect of an ordinance*," which presumably would include a personnel resolution (emphasis added); second, that the procedures also provide for the adoption of an ordinance by a majority vote at a second board meeting.

This finding is troubling, both because it selectively quotes from the statutes to imply that an ordinance may only be enacted by unanimous declaration, thus indicating a greater distinction between an ordinance and a resolution than is perhaps due, and because it indicates that a county can ignore the requirements of a duly enacted personnel resolution with impunity.

The court's distinction between a resolution and an ordinance is simply not supported by history or practice. Since 1973 G.S. 153A-12 has provided that "except as otherwise directed by law, each power, right, duty, function, privilege and immunity of the corporation [the county] shall be . . . carried into execution as provided *by ordinance or resolution* of the board of commissioners" (emphasis added). No explicit distinction is drawn between an ordinance and a resolution. Further, G.S. 153A-94 provides that counties may adopt personnel procedures (which clearly include dismissal procedures) without drawing any distinction between the adoption of such procedures as rules, regulations, ordinances, measures, or policies.

The case also is potentially confusing because of what it inescapably implies but does not clearly express: in North Carolina a person employed by a city or county under the terms of a personnel ordinance stating that employees may be dismissed only for cause *does* have a property interest in continued employment.[51] The confusion arises from the court's emphasis on the fact that the personnel resolution was communicated to the Wilson County employees in the form of a handbook. The real issue is not the form in which any assurance of continued employment was made but, rather, whether in fact such assurances were made at all.

Thus the property right exception to the employment at will rule in North Carolina is not clearly settled. Certainly where a city or county enacts a personnel ordinance analogous to the State Personnel Act provision that employees may be dismissed only for just cause, a property right is created. Where, however, that same statement is contained in a handbook, a resolution, a standard operating procedure, or some other form, the *Pittman* case indicates that no property interest is likely to be found. Whether the North Carolina courts will be willing to follow *Pittman* if the opportunity arises remains to be seen.

Conclusion

To state that an employee in North Carolina may be discharged for "good cause, for no cause, or even for cause morally wrong" is no longer correct (if such was ever the case). The exceptions created to the employment at will rule by state and federal law, by cases finding a public policy exception, and by

recognition of a property interest in employment have modified substantially the latitude of local government employers in dismissals. Public officials responsible for discharging employees are advised to remain vigilant in this rapidly evolving area of the law. ❖

Notes

1. This is referred to as the American rule, as originally stated (arguably without support) by Horace G. Wood in his 1877 treatise, *Law of Master and Servant*. For a full discussion of the development of the American rule, see Lex K. Larson and Philip Borowsky, *Unjust Dismissal* (New York: Matthew Bender, 1986), § 2.04. For an excellent discussion of the history of the employment at will rule in North Carolina, see J. Wilson Parker, "The Uses of the Past: The Surprising History of Terminable-At-Will Employment in North Carolina," *Wake Forest Law Review* 22 (1987): 167–220.

2. Specific statutes of the North Carolina General Statutes will be cited in text and notes as G.S.

3. Payne v. Watkins & A.R.R., 81 Tenn. 507, 519–20 (1884), *overruled on other grounds*, Hutten v. Waters, 132 Tenn. 527 (1915).

4. 42 U.S.C. § 2000e(k).

5. 29 U.S.C. § 629(a).

6. 29 U.S.C. § 701.

7. G.S. 9-32(a) prohibits employers from discharging or demoting any employee because the employee has been called for jury duty or is serving as a grand juror or petit juror.

8. G.S. 96-15.1(a) prohibits discharge, demotion, or threats by any person to one who testifies or is summoned to testify in any proceeding under the Employment Security Act.

9. G.S. 97-6.1 protects claimants under the Workers' Compensation Act from discharge or demotion by employers. An employee may file a lawsuit if discharged or demoted for exercising rights under the act, whether the employee is fired before or after filing a claim. Wright v. Fiber Indus., Inc., 60 N.C. App. 486, 299 S.E.2d 284 (1983).

10. G.S. 95-25.20 states that no employer may discharge or in any manner discriminate against any employee because the employee files a complaint or participates in any investigation or proceeding under the Wage and Hour Act.

11. G.S. 95-130(8) states: "No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection [under the Occupational Safety and Health Act] . . . or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by [the act]."

12. *See, e.g.*, Filcek v. Norris-Schmid, Inc., 156 Mich. App. 80, 401 N.W.2d 318 (1986); Cleary v. American Airlines, Inc., 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980); Unker v. Joseph Markovits, Inc., 643 F. Supp. 1043 (S.D.N.Y. 1986); Janda v. Iowa Indus. Hydraulics, Inc., 326 N.W.2d 339 (Iowa 1982).

13. *See, e.g.*, Pine River State Bank v. Metille, 333 N.W.2d 622 (Minn. 1983); Toussaint v. Blue Cross and Blue Shield of Mich., 408 Mich. 579, 292 N.W.2d 880 (1980); Weiner v. McGraw-Hill, Inc., 57 N.Y.2d 458, 443 N.E.2d 441, 457 N.Y.S.2d 193 (1982).

14. *See, e.g.*, Crenshaw v. Bozeman Deaconess Hosp., 693 P.2d 487 (Mont. 1984).

15. 74 N.C. App. 331, 328 S.E.2d 818, *review denied*, 314 N.C. 331, 333 S.E.2d 490 (1985). *Sides* is also discussed as an exception to employment at will on public policy grounds (see page 15).

16. The court cited Tuttle v. Kernersville Lumber Co., 263 N.C. 216, 139 S.E.2d 249 (1964) for the proposition that an employee's consideration (here, moving from one job to another) in addition to the usual employment obligation (to provide service) can constitute a contract for as long as the services are satisfactorily performed.

17. 427 Mich. 415, 398 N.W.2d 327 (1986).

18. 427 Mich. at 428, 398 N.W.2d at 334.

19. Pittman v. Wilson County, 839 F.2d 225 (4th Cir. 1988); Guy v. Travenol Laboratories, Inc., 812 F.2d 911 (4th Cir. 1987); Trought v. Richardson, 78 N.C. App. 758, 338 S.E.2d 617, *disc. rev. denied*, 316 N.C. 557, 344 S.E.2d 18 (1986); Walker v. Westinghouse Electric Corp., 77 N.C. App. 253, 335 S.E.2d 79 (1985), *disc. rev. denied*, 315 N.C. 597, 341 S.E.2d 39 (1986); Smith v. Monsanto Co., 71 N.C. App. 632, 322 S.E.2d 611 (1984); Griffin v. Housing Auth., 62 N.C. App. 556, 303 S.E.2d 200 (1983); Cote v. Burroughs Wellcome Co., 558 F. Supp. 883 (E.D. Pa. 1982) (applying North Carolina law); Roberts v. Wake Forest Univ., 55 N.C. App. 430, 286 S.E.2d 120, *disc. rev. denied*, 305 N.C. 586, 292 S.E.2d 571 (1982); Williams v. Biscuitville, Inc., 40 N.C. App. 405, 253 S.E.2d 18, *disc. rev. denied*, 297 N.C. 457, 256 S.E.2d 810 (1979); George v. Wake County Opportunities, Inc., 26 N.C. App. 732, 217 S.E.2d 128 (1975).

20. 71 N.C. App. 632, 322 S.E.2d 611 (1984).

21. 71 N.C. App. at 634.

22. It is also called promissory estoppel. See American Law Institute, *Second Restatement of the Law: Contracts*, vol. 1, 2d ed. (St. Paul, Minn.: 1981), sec. 90.

23. *See, e.g.*, McCauley v. Thygerson, 732 F.2d 978 (D.C. Cir. 1984).

24. Harris v. Duke Power Co., 319 N.C. 627, 630–31, 356 S.E.2d 357, 360 (1987).

25. 196 Mont. 178, 638 P.2d 1063 (1982) (*Gates I*); Gates v. Life of Mont., 668 P.2d 213 (Mont. 1983) (*Gates II*).

26. Dare v. Montana Petroleum Marketing Co., 687 P.2d 1015 (Mont. 1984).

27. Only three states—California, Montana, and Massachusetts—have recognized this exception. *See, e.g.*, Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311, 171 Cal. Rptr. 917, *modified* 117 Cal. App. 3d 520 (1981); Flanigan v. Prudential Fed. Sav. and Loan Ass'n, 720 P.2d 257 (Mont.); Gram v. Liberty Mut. Life Ins. Co., 429 N.E.2d 21 (Mass. 1981). Many state courts have considered and rejected the implied covenant of good faith and fair dealing as an exception to the employment at will doctrine. *See, e.g.*, Daniel v. Magma Copper Co., 127 Ariz. 320, 620 P.2d 699 (Ct. App. 1980); Murphy v. American Home Prod. Corp., 58 N.Y.2d 293, 448 N.E.2d 86, 461 N.Y.S.2d 232 (1983); Grunn v. Hawaiian Airlines, Inc., 162 Ga. App. 474, 291 S.E.2d 779 (1982).

28. Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, 335 N.W.2d 834 (Wis. 1983); Wiskotoni v. Michigan Nat'l Bank-West, 716 F.2d 378 (6th Cir. 1983); Hansrote v. American Indus. Technologies, 586 F. Supp. 113 (W.D. Pa. 1984), *aff'd*, 770 F.2d 1070 (3rd Cir. 1985); Frampton v. Central Ind. Gas Co., 260 Ind. 249, 297 N.E.2d 425 (1973); Murphy v. City of Topeka-Shawnee County, 6 Kan. App. 2d 488, 630 P.2d 186 (1981); Lally v. Copygraphics, 85 N.J. 668, 428 A.2d 1317 (1981); Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E.2d 353 (1978). The California Court of Appeal is credited with first recognizing the public policy exception in Petermann v. International Brotherhood of Teamsters, 174 Cal. App. 2d 184, 344 P.2d 25 (1959).

29. Howard v. Dorr Woolen Co., 120 N.H. 295, 414 A.2d 1273 (1980); Geary v. United States Steel Corp., 456 Pa. 171, 319 A.2d 174 (1974); Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385 (1980); Parnar v. Americana Hotels, Inc., 65 Haw. 370, 652 P.2d 625 (1982); Palmateer v. International Harvester Co., 85 Ill. 2d 124, 421 N.E.2d 876 (1981); Trombetta v. Detroit, Toledo & Ironton R.R. Co., 81 Mich. App. 489, 265 N.W.2d 385 (1978); Nees v. Hocks, 272 Or. 210, 536 P.2d 512 (1975); Reuther v. Fowler & Williams, Inc., 255 Pa. Super. 28, 386 A.2d 119 (1978); Harless v. First Nat'l Bank, 246 S.E.2d 270 (W. Va. 1978).

30. Wagenseller v. Scottsdale Memorial Hosp., 147 Ariz. 370, 710 P.2d 1025 (1985).

31. A discussion of these cases is found in "Protecting Employees at Will Against Wrongful Discharge: The Public Policy Exception," *Harvard Law Review* 96 (1983): 1931–51.

32. 74 N.C. App. 331, 328 S.E.2d 818, *disc. review denied*, 314 N.C. 331, 333 S.E.2d 490 (1985).

33. 74 N.C. App. at 342, 328 S.E.2d at 826.

34. 78 N.C. App. 758, 338 S.E.2d 617 (1986).

35. 91 N.C. App. 327 (1988).

36. 91 N.C. App. at 334–35.

37. Coman v. Thomas Mfg. Co., 91 N.C. App. 327 (1988).

38. Williams v. Hillhaven Corp., 91 N.C. App. 35, 370 S.E.2d 423 (1988). Note that dismissal for testifying in an unemployment compensation hearing is now prohibited by G.S. 96-15.1; this statute was not effective until July 1, 1987, which was after the plaintiff in *Williams* had been fired.

39. *See, e.g.* Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541–42 (1985) and cases cited therein.

40. G.S. 126-35.

41. Faulkner v. North Carolina Dep't of Correction, 428 F. Supp. 100 (W.D.N.C. 1977).

42. 839 F.2d 225 (4th Cir. 1988).

43. *Wilson County Employee Handbook* 7. The resolution became effective July 1, 1971, and was revised on March 4, 1985, and February 2, 1986.

44. *Wilson County Employee Handbook*, 11.

45. *Wilson County Employee Handbook*, 11.

46. *Wilson County Employee Handbook*, 13–14.

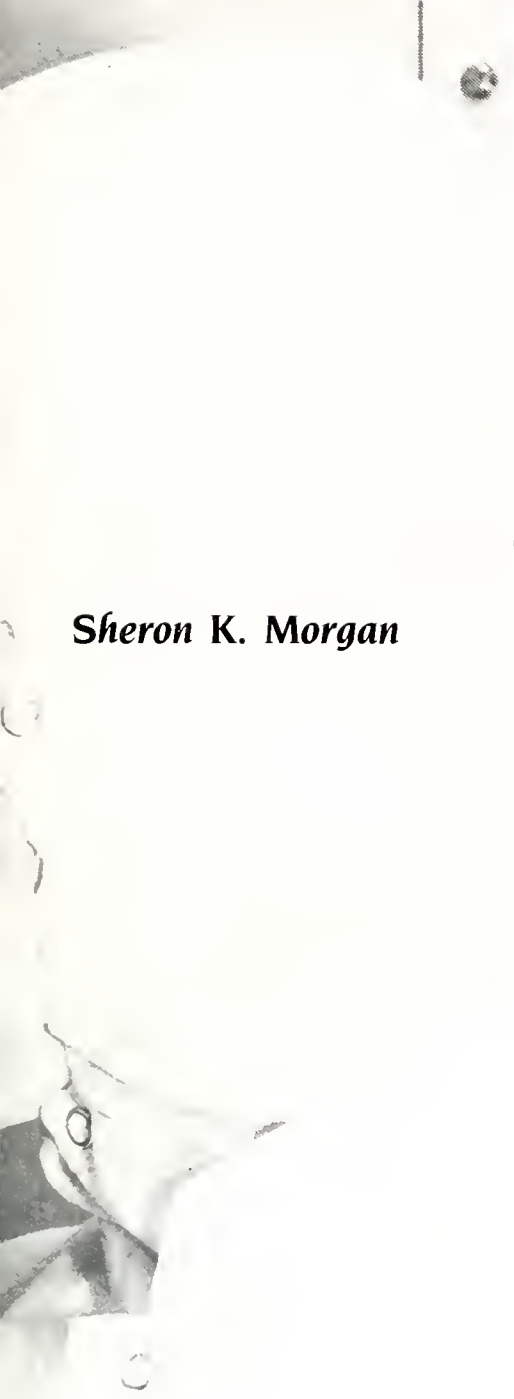
47. 839 F.2d at 226.

48. 839 F.2d at 229. The court cited Board of Regents v. Roth, 408 U.S. 564, 577 (1972), for the proposition that to demonstrate a property right in employment, the employee "clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."

49. 839 F.2d at 229.

50. 839 F.2d at 228.

51. 839 F.2d at 229 n.9.



Jay Mangum/Courtesy North Carolina Microelectronics Center

Preparing Our Work Force for the Future

Sheron K. Morgan

Technology is challenging the fundamental assumptions underlying the organization and content of public education in North Carolina—from preschool through the university. Before the Industrial Revolution, formal education was reserved for the members of social and economic elites. By the mid-nineteenth century, mechanization and the increasing use of printed information in a wide range of economic activities meant that a growing number of workers needed basic reading skills not normally achieved without formal schooling. However, little attention was given to the cultivation of higher-order thinking skills, except among those who were expected—for social and economic reasons—to go on to institutions of higher education.[1]

That level of learning may have been appropriate for those times. However, as the report of the Governor's Commission on Literacy points out, "[t]he level of literacy required for functioning on the job, in the home and in the community changes as our society changes."[2] Today literacy means more than merely being able to read simple sentences. It requires a person not only to read and write but also to analyze fairly complicated written material. It requires a person to reason and to solve problems. Without these skills, today's workers will be limited in the workplace—both in the present and, to an even greater extent, in the future.

A cursory comparison of the college preparatory curriculum and the general and vocational curricula offered in public high schools across the nation reveals a major shortcoming: the preparation offered young people who are not bound for four-year baccalaureate programs assumes that they do not need to understand and master the concepts that support the effective use of mathematics, science, and the English language. The curriculum fails to challenge them to do the "hard stuff." It assumes, in a profound and fundamental sense, that they do not need to think for themselves.[3] In fact, those bound for college may have four more years to develop this skill; but for the rest, this may be their last chance, at least in a classroom setting.

These assumptions about the need to think were developed in the nineteenth century in response to the Industrial Revolution and the mechanized assembly line. But they still provide the pervasive underpinnings of public education in the late twentieth century. In the workplace of the twenty-first century, virtually all workers will need to be able to think for themselves, to communicate orally and in writing, to solve problems working with others, and to work independently.

The impact of the "information revolution" and the application of information-intensive technologies are altering in some radical ways the skills that will be required of the workers in the future—even for what traditionally have been low-skilled jobs such as janitors and fast-food service employees. The skill requirements for virtually every job in North Carolina's economy are changing under the pressures of new technology, new business practices, and stiff international competition. As Lester Thurow pointed out in a *New York Times* editorial, recent advances—such as participatory management, statistical process control, and just-in-time inventory systems—require workers to master

The author served as staff director of the Governor's Commission on Literacy and is director of the Office of Policy and Planning, Department of Administration.

Upgrading the skills of the work force in North Carolina is the single most important economic challenge facing the state today.

—North Carolina State Goals and Policy Board, *Building on Economy for the 21st Century*, 8

The pervasiveness of the literacy issue and the urgency of doing something now to enhance the knowledge and skill of our workforce represent top priority concerns for the leadership of our state. If we are to be competitive in the emerging world markets, we cannot afford further delay in expanding and deepening our efforts to eliminate these devastating circumstances.

—William Friday, chairman, Governor's Commission on Literacy

complex skills, and these techniques cannot be implemented unless the work force has better math and problem-solving capabilities than it has now.[4]

Looking at the skill requirements of the economy of the future, business leaders and education professionals agree that there is a need for fundamental change. They are painfully aware of the statistics that point to the underlying weakness in North Carolina's labor force:

- 1.7 million North Carolinians—nearly 40 percent of adults age sixteen and older—have less than a high school education.[5]
- As of 1980, only about 55 percent of North Carolina's adults age twenty-five and older were high school graduates, compared with 66 percent nationally—a ranking of forty-seventh among the states.[6]
- Approximately 890,000 North Carolinians age twenty-five and older have less than nine years of formal schooling; in 1980 this group included 22 percent of the white population and 34 percent of the nonwhite population.[7]
- An estimated 6.7 percent of North Carolina's public high school pupils (approximately 22,800 students) dropped out of school during the 1986–87 school year.[8]
- If present trends continue, of the students enrolling in the ninth grade, 30 percent will drop out before graduating.[9]

Whose Job Is It?

The seriousness of the problem and the need for far-reaching action cannot be denied. But there is little agreement about what changes are needed and whose responsibility it is to bring them about. Business and education leaders at roundtables held recently by the federal departments of Labor, Education, and Commerce expressed a wide divergence of opinion on whether education and training institutions were meeting the needs of business and industry even in *today's* workplace. Two out of three business people said that entry-level employees did not have the basic skills necessary to meet their requirements; in contrast, 80 percent of the educators thought that their graduates did possess the required skills.[10]

The issue of how responsibility ought to be divided between the public and private sectors is a complex one, both politically and conceptually. It requires that we be very clear-headed about the public purpose we are trying to serve. Are we trying to enhance the skills of students to do a variety of different jobs and respond positively to a rapidly changing workplace? Or are we subsidizing business' costs in hiring and training entry-level workers? Either or both of these may be our purpose, but we must understand that addressing one does not necessarily address the other.

The problem is not limited to entry-level workers and to the question of how much and what specifically they should know. Seasoned workers are frequently called upon to return to the classroom or to learn new skills on the job. Many in recent years have found that they lack the basic skills in reading, math, and the principles of science that would support their efforts to acquire new skills. International Business Machines Corporation (IBM) discovered after installing fancy computers worth millions of dollars in its Burlington, Vermont, plant that it had to teach high school algebra to thousands of workers before they could run them.[11] Similarly General Motors Corporation found that only one out of four experienced mechanics from dealerships in North Carolina could successfully complete training to service the company's new electronically controlled cars without first spending eight to ten weeks in remedial courses covering basic principles in science and math.[12]

What is particularly troubling about the current situation is that these findings are not new. The National Academy of Sciences, together with the National Academy of Engineering and the National Institute of Medicine, published the findings of a similar survey in 1984—five years ago.[13] They also (1) found that two out of three employers were dissatisfied with the quality of entry-level workers and (2) documented the fact that the specific vocational skills a worker brings into the labor force are not nearly as important as his or her ability to learn on the job and to return, as needed, to a traditional classroom setting to acquire new knowledge and to develop new skills.

In the intervening five years many equally prestigious commissions, reports, and studies have been conducted, yet little appears to have

changed. In fact, the chorus of complaints from employers is now louder than ever before.

Meanwhile in North Carolina we have spent a lot of time worrying about declining SAT scores. We adopted the Basic Education Program and have invested substantial resources, particularly to improve the college-preparatory curriculum. What we may have neglected is the fact that the largest segment of North Carolina's work force does not go to college.

The National Academy of Sciences noted this fact back in 1984 and came to a conclusion that was both simple and profound. The primary responsibility of the public schools must be to provide "core competencies" to all students; other goals, whatever their merits, must come second: "Those who enter the work force after earning a high school diploma need virtually the same competencies as those going on to college, but have less opportunity to acquire them. Therefore, the core competencies must always come first during the high school years."[14] The academy's report, *High Schools and the Changing Workplace*, acknowledged that students may vary widely in capability and in learning styles, that no one curriculum will satisfy the needs of all, but that the goal for all must be the same: to develop a set of basic skills and competencies needed for lifelong learning. The remainder of the report described these core competencies—skills in reading, writing, computation, reasoning, and problem solving that enable a person to apply what he or she already knows to a new situation.[15]

A number of reports over the last five years have also identified the need to develop these core competencies in adults already in the work force. Responding to this need is essential when we realize that 80 percent of the work force for the year 2000 has already left the classroom.

Programs in Place

Despite the rising chorus of complaints from business, there have been some very positive efforts. North Carolina already has a number of programs at all levels of instruction and training—in both the public and private sectors—that have been successful in addressing various aspects of the problem. One ex-

Visual Communications, NCSU

Things are changing so quickly that almost half of the jobs of today won't exist in the same form at the turn of the century. That suggests massive retraining. And massive retraining requires people with a good, solid, basic education. A certain amount of on-site training is essential because of the types of skills we need. But it is very difficult to train a person to be a robotics technician if he or she has never worked an algebraic equation.

—Richard L. Daugherty, General Site Manager, IBM, quoted in *The Leader*, 3 December 1987, sect. 1, p. 11

North Carolina's economic growth and progress in a very competitive world will depend upon the education and skills of our people. The rapid pace of technological change has produced a widening gap between the requirements of the workplace and the educational attainment and job skills of workers.

—Sherwood H. Smith, president and chairman of Carolina Power and Light Company, speaking as chairman of the Commission on the Future of the North Carolina Community College System, press release, 15 December 1988

Visual Communications, NCSU

Courtesy North Carolina State Ports Authority

Only 41 percent of local businesses responding indicated they are satisfied with the quality of the high school graduates who apply for employment.

• • •

Employers report that applicants too often are deficient in basic skills of reading, mathematics and communication. Many do not exhibit expected characteristics of workers such as consistent attendance, punctuality and responsibility.

• • •

The vocational technical training of many students is insufficiently relevant to the tasks their jobs require, suggesting that curricula may not match employers' needs.

—Task Force on Education and Employment, Charlotte-Mecklenburg Chamber of Commerce, *Educational Imperatives: A Community at the Threshhold* (Charlotte, N.C.: 1988), 22–23

BASICS

The BASICS program, which integrates academics and vocational skills, is designed to address problems such as those above voiced by the Charlotte business community. The New Bern–Craven County School System is one unit currently using the BASICS concept in the classroom.

For example, Ed Campbell, a graphic communications teacher at New Bern Senior High School, has developed a curriculum that shows students the relationship between printing technologies and math and science skills. Using an offset printing press requires mathematical computations to align ("register") the various layers of images printed, and the composition of inks used involves chemistry. Paper, which is used daily in graphics, also provides exercises in math, science, and English. Students must figure how many sheets of a certain size can be cut from a larger sheet and must calculate the cost per page. They also are required to complete a research project and report on the history and production of paper. While the project teaches them scientific information, the report teaches them how to develop that information into a good written form.

Courtesy New Bern-Craven County School System

ample is BASICS: Bridging Vocational and Academic Skills. This program is being used by several North Carolina school systems as a tool to help them integrate lessons from different subject areas. BASICS offers academic teachers ideas for practical, hands-on projects that vocational teachers have used successfully with students who learn best through application.

Tech Prep in Richmond County is another example. Under this program, students receive academic training in courses at the high school while receiving advanced vocational training at the community college. This program provides a bridge by which students can receive rigorous preparation in both academic and vocational skills.

At the Lincoln County School of Technology in Lincolnton, North Carolina, the public schools, the local community college, and the business community have joined together to prepare students. Although the student population consists primarily of high school juniors and seniors, the school is not a high school. It is a separate institution that also instructs adults in need of remedial education or technical skills. A unique quality of the school is that curricula are planned jointly by the public school system and the community college, with heavy input from the business sector.

One of the issues now being raised is how to pull together what we have learned from these local successes to develop a comprehensive array of services, combining both public and private resources in a system of education and training that responds to the needs of businesses (both large and small) and to the needs of both young people preparing to enter the workplace and adults who are already working.

The jobs of the future will require workers at all levels of the economy to be engaged in lifelong learning. But it is unrealistic to expect everyone, or even a majority of workers, to graduate from high school and then to complete two to four years of post-secondary education and training in the sequences we have traditionally assumed to be the norm. We must devise a system that allows, even encourages, people to enter and leave as appropriate to their individual needs, a system that provides flexibility while ensuring high standards of academic achievement and professional excellence. To accomplish this, we

must begin by acknowledging that there is no quick solution, that we are talking about fundamental institutional changes, and that no "turf" is sacred.

Working Together

If we intend to pull together what works at the local level, to make this information available to professionals in other North Carolina school systems, and to develop a comprehensive array of services, there must be cooperation among the public schools, the community colleges, the colleges and universities (both public and private), and business and industry. Over the years there has been some agreement among commissions and other study groups about some of the problems that need to be addressed, although on many issues there continues to be disagreement over *how* to address them. One difficulty is that all of these problems are interrelated, and one problem cannot be solved without affecting the solutions to other problems.

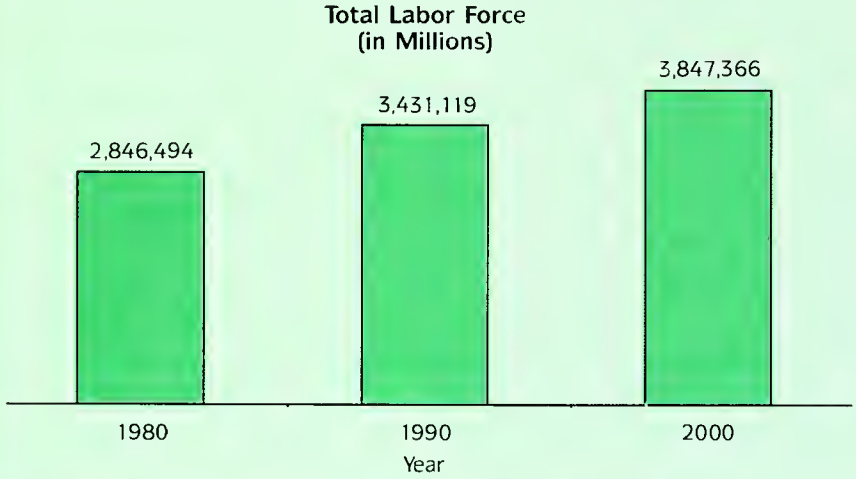
Solutions also have been complicated by the fact that in North Carolina responsibility for public education is shared by the departments of Public Education and Community Colleges and the university system. Thus any one of these institutions can block the best efforts of the others. And because these agencies regularly compete for limited budget resources, cooperation on other levels is more difficult. Without cooperation, progress is unlikely on some of the most difficult issues.

Several recent reports have called for cooperation and coordination among state education agencies. Under the aegis of the Z. Smith Reynolds Foundation's Third Century Project, the foundation's review of education policy was among the first of many studies and commission reports to call attention to this fact.[16] The North Carolina State Goals and Policy Board recommended in its 1987 annual report, "Building an Economy for the 21st Century," that the chief executive officers of the three agencies meet regularly to address such major objectives as improving the teaching of science and math, restructuring vocational education to emphasize core skills, expanding programs for students at risk of dropping out of school, and articulating education and training programs across institutional boundaries.[17]

The Changing Composition of the Labor Force

One fact that will impede efforts to respond to the challenge of technology is that our labor force will be growing markedly more slowly in the future. The number of workers in North Carolina is projected to increase between 1986 and 2000 at a rate of only 1.1 percent per year, compared to an average annual growth rate of 2.3 percent between 1972 and 1986. The reason that future growth is projected to be lower is that birth rates have been lower in recent years, in-migration rates have remained relatively constant, the "baby boomers" have already entered the work force, and, finally, there has been a slowing in the growth rate of female labor-force participation.

Most of our future workers have already left the classroom. Of those who will be in the labor force in the year 2000, only 20 percent are still in school. In the past, we have relied heavily on new entrants to the labor force as a means of injecting new skills and higher levels of technical ability into the workplace. In the future, however, efforts to upgrade the overall skill level of workers will need to focus much more heavily on retraining and upgrading the existing work force. Doing this will require immediate and effective solutions to the widespread problems of illiteracy and lack of technical and mathematical competency. Because the labor force is growing more slowly, we can no longer afford to allow 30 percent of our young people to drop out of high school. Neither can we afford to ignore the costs to all of us of allowing our neighbor's children to grow up poor, disadvantaged, and sometimes functionally illiterate in a highly technical society.



Source: North Carolina Office of State Budget and Management.

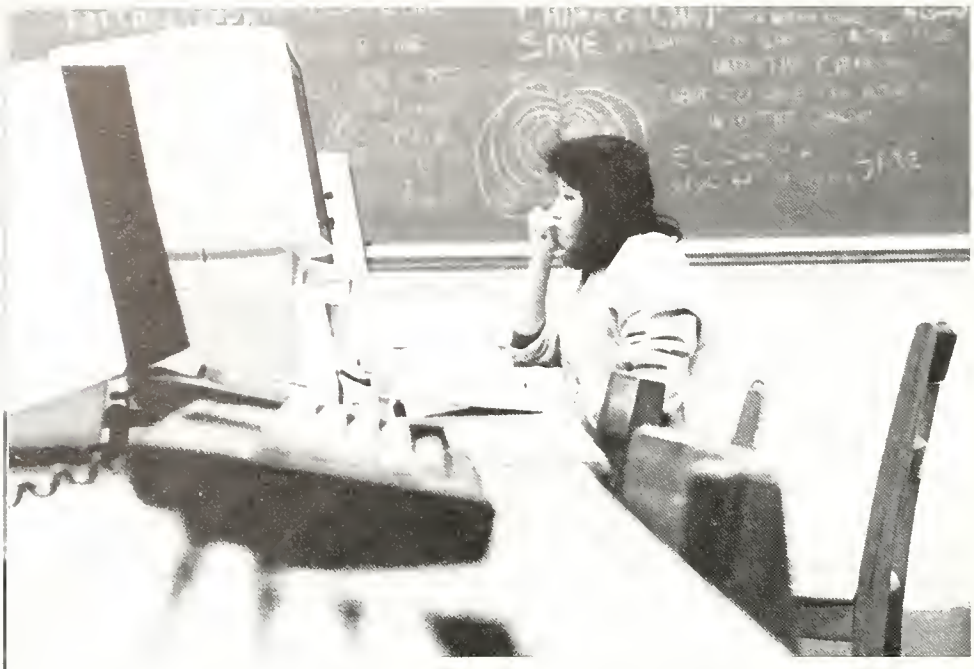
The General Assembly adopted House Bill 245 in 1988, which requires the governing boards of the three agencies to meet at least once a year "to discuss educational matters of mutual interest."[18] The Governor's Commission on Literacy recommended establishing an Advisory Commission on Literacy on which all three agencies would be represented. And most recently, the North Carolina Commission on the Future of the Community College System called for regular meetings of the chief executives.[19]

Clearly, a number of groups agree that North Carolina's three major education agencies should meet and should do so regularly. In February, 1989, Governor Martin convened the first of several education "summits" and invited education leaders, legislators, and representatives of various interest groups to address the issue of teacher salaries. He has proposed that this group meet monthly to address issues of similar importance. For these meetings to be effective, the topics must continue to be serious issues in which two or more of the principal agencies have vested interests and a commitment to resolving them.

How these institutions approach any particular problem is not relevant to this discussion; what is important is that they develop solutions together. No one education agency by itself can solve any of the critical problems facing North Carolina.

North Carolina has a higher percentage of high school dropouts, a lower average wage, a lower per capita income, and a lower life expectancy than most other states.[20] Although we have made improvements in the last few years, we still rank near the bottom on each of these variables. This does not mean that we cannot make additional

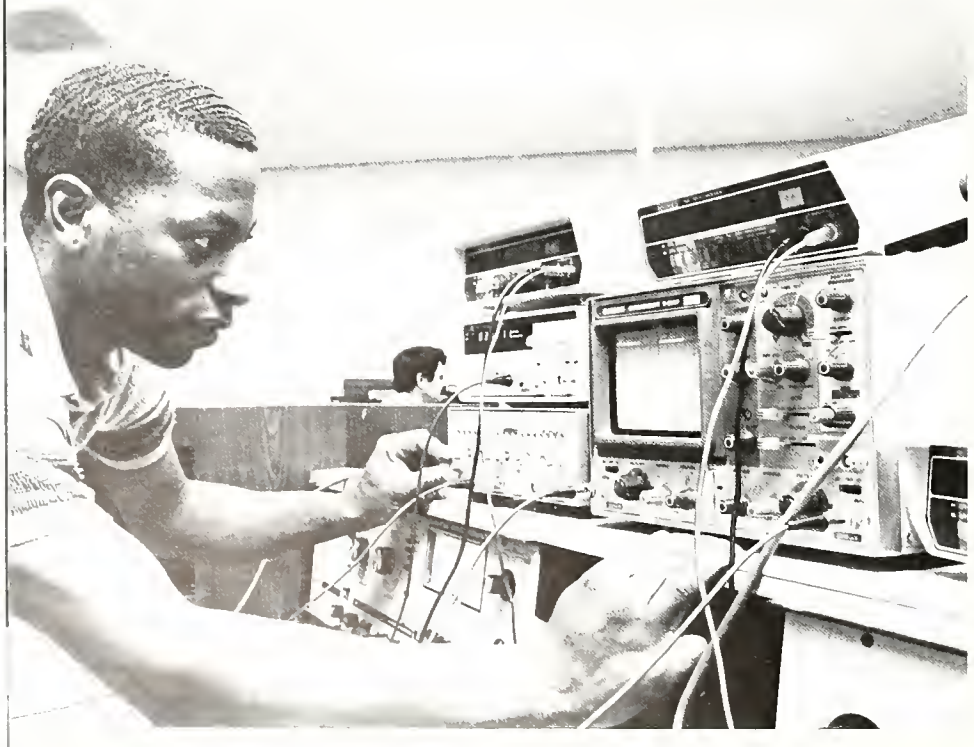
improvements. What it does mean is that while we are making improvements, other states are doing the same. If we hope to make life better for the citizens of North Carolina, to improve income levels, to improve health and other measures of well-being, we must first address the issue of education. Education for all citizens, young and old, is the cornerstone for improving our economic prosperity. If we want to make things better, we must consciously set out now to change the way we do things. ❖



Courtesy Durham Technical Community College

What defines and limits a career is the individual's ability to learn throughout life. Technology will change, businesses will change, the content of a given job will change, and one's employer will change. What will never change is the need to adapt to new opportunities.

—National Research Council, *High Schools in a Changing Workplace*, 14



Courtesy Durham Technical Community College

Notes

1 See Lauren B. Resnick, *Education and Learning to Think* (Washington, D.C.: National Research Council, National Academy Press, 1987).

2 N.C. Department of Administration, Office of Policy and Planning, *Literacy for the 21st Century* (Raleigh, N.C., 1988), 6.

3 Resnick, *Education*.

4 Lester Thurow, "Keeping America Competitive," *New York Times*, 21 August 1988, p. 7.

5 *Literacy for the 21st Century*, 6.

6 N.C. Office of State Budget and Management, *North Carolina State Government Statistical Abstract*, 5th ed. (Raleigh, N.C.: 1984), xxxviii.

7 *Literacy for the 21st Century*, 6; *North Carolina State Government Statistical Abstract*, 153.

8 N.C. Board of Education, *Statistical Profile: North Carolina Public Schools* (Raleigh, N.C.: Controller's Office, Department of Education, 1988), I-28–I-31.

9 *Statistical Profile*, I-28–I-31.

10 U.S. Department of Labor, Department of Education, and Department of Commerce, *Building a Quality Workforce* (Washington, D.C.: Government Printing Office, 1988).

11 *Business Week* 3070 (19 September 1988): 103.

12 Testimony by a representative of the General Motors Corporation before the Commission on the Future of the Community Colleges.

13 *High Schools and the Changing Workplace: The Employers' View* (Washington, D.C.: National Research Council, National Academy Press, 1984).

14 *High Schools*, xii.

15 "Human Capital: The Decline of the American Workforce," a *Business Week* cover story [3070 (19 September 1988): 104–108, 129–136], described these competencies in very similar terms.

16 James Norton, Linda Winter, and Dennis Bartels, *Continuing the Conversation: Observations and Conclusions about Post-secondary Education in North Carolina* (Winston-Salem, N.C.: Third Century Project, Z. Smith Reynolds Foundation, 1987).

17 *Building an Economy for the 21st Century* (Raleigh, N.C.: Department of Administration).

18 N.C. Gen. Stat. § 115C-11.

19 "Commission on the Future of the North Carolina Community College System" (press release issued by Manpower Development Corporation, Inc., Chapel Hill, N.C., 15 December 1988).

20 According to the 1980 Census, of North Carolina adults age twenty-five and older, 55 percent were high school graduates, compared with 66 percent nationally. In 1986, average annual pay in North Carolina was $17,001, compared with $19,966 nationally. This placed North Carolina thirty-ninth among the states. The average lifetime in the 1979–81 biennium in North Carolina was 72.96 years, placing our state forty-second in the nation.

Groundrules for Effective Groups

Roger M. Schwarz

Why is it that some groups are able to tackle difficult tasks, pull together, and solve problems in a way that makes their groups effective while other groups are overcome by their tasks even though their members have the necessary technical skills and are highly motivated? One reason is that some groups have an effective set of groundrules—implicit or explicit—that guides their behavior. When members follow these groundrules, they are better able to communicate, handle conflict, solve problems, and make decisions.

In this article, I describe a set of sixteen groundrules that groups can use to work more effectively. I explain why they work and, using specific examples, illustrate how to use them. A group can benefit from these groundrules to the extent that (1) it is responsible for solving problems, (2) it deals with complex or nonroutine problems, (3) each member is treated as making an important contribution, (4) group decisions require the commitment of every member to be effectively implemented, (5) the group meets regularly, and (6) the group has sufficient time to solve problems. Groups for which the groundrules are appropriate include management teams, regular staff meetings, and task forces. With some modifications, they also are appropriate for elected or appointed boards.

Although these groundrules can help a group become more effective, they are not a panacea. The groundrules neither replace the struggles of group development nor reduce the risks of openness or overcome the lack of trust that often prevents groups from using them in the first place. Using the groundrules will not ensure that members will agree with each other, but it will increase the likelihood that conflicts between members will be constructive. Finally, the groundrules are not a quick solution. Although they are easy to understand, they are difficult to implement. To use them effectively, a group must practice them regularly over time.

The groundrules are based on three values: valid information, free and informed choice, and internal commitment.[1] To solve problems effectively, a group must have *valid information*. Maximizing valid information means that members share all information relevant to an issue. In addition, they share the information in a way that enables other members to determine for themselves whether the information is valid. The second value, *free and informed choice*, requires that members make choices based on valid information and that they can define their own objectives and the methods for achieving those objectives. And the third value, *internal commitment* to the decisions, means that members feel personally responsible for the decisions the group makes. Each member is committed to the decision because it is intrinsically satisfying, not because there are rewards or penalties leading him or her to be committed, as in the case of "external" commitment.

The three values reinforce one another. Members require valid information to make an informed choice. When members make free choices, they are more likely to be internally committed to those choices. When members are internally committed to decisions, they are more likely to monitor the decisions to see that they are implemented effectively. This, in combination with the

The author, an organizational psychologist, is an Institute of Government faculty member who specializes in organizational change and conflict.

ability to make free choices, leads members to seek more valid information.[2]

The Groundrules

Just as the groundrules are based on three reinforcing values, they also are supported by each other and work together. To fully appreciate this, think about how each groundrule reinforces the others.[3]

1) Share all relevant information. This groundrule means that each member tells the group all the information he or she has that will affect how the group solves a problem or makes a decision. The sharing ensures that members have a common base of information, and it includes sharing information that does not support your position. For example, imagine that the group is deciding whether to institute flexible working hours in the department. You want very much to have flexible working hours but think that it may require more careful coordination of scheduling. You also know that if others knew of the increased difficulty, they might not be as supportive of the idea. Here, sharing all relevant information means telling the group about the possibility of increased scheduling difficulties, even though the information may reduce the chances that flexible hours will be established. One indicator of whether members are sharing all relevant information is if they are sharing information that does not support their positions.

2) Be specific—use examples. Specific examples use directly observable behaviors to describe people, places, things, or events. Unlike general statements, specific examples maximize valid information because they enable other members to determine whether the examples are valid. For example, if Bob makes the general statement to the group, "I think some of us are not doing their share of the work," other members cannot determine whether the statement is valid. Members cannot observe who "some of us" are; neither can they directly observe whether some are "not doing their share of the work." In contrast, if Bob states specifically, "Sam and Joe, you did not complete and distribute your section of the report," other members can determine whether the statement is valid by directly observing whether Sam's and Joe's section of the report is complete and whether they distributed it.

3) Explain the reasons behind your statements, questions, and actions. This groundrule simply means telling others why you are doing what you are doing. It is part of sharing all relevant information. For example, if you ask the group for statistics on the number of days that people are late to work, you might say, "I am asking for this information because it will give me a better idea of how flexible working hours may have an effect on tardiness and absenteeism." Explaining your reasoning helps people interpret your behavior correctly and reduces the chances of people assuming or inferring things that may not be true. I will discuss this further in the section on testing assumptions and inferences.

4) Focus on interests, not positions.[4] Focusing on interests enables members to share relevant information so that they can solve problems in a way that all members are internally committed to the solutions. To make decisions to which all members are internally committed, members must find a solution that meets everyone's interests. The most effective way to do this is for members to start by identifying their own interests. Unfortunately, many groups start by talking about solutions or positions. For example, if the group is trying to solve the problem of when to meet, one member may start by saying, " I suggest we meet every other Monday at 7:30 A.M." Another may respond, "My position is that we should meet the second day of each month."

A person takes a position because it meets his or her interests; a person's position is simply that person's interests combined in a way that can be implemented. For example, the person who suggested meeting every other Monday at 7:30 A.M. was interested in meeting early in the morning before work began to pile up on her desk. The person who wanted to meet the second day of each month was interested in meeting immediately after a relevant biweekly computer report became available.

The problem with starting with positions is that people's positions are often in conflict even when their interests are compatible. This occurs because people tend to offer their positions after they have provided for their own interests, but before they have included the other members' interests. In the meeting example, each member's solution was rejected by the other because it failed to meet the other's interests. However, had each member been aware of the other's interests, either one could have offered a solution that satisfied both.

To focus on interests rather than positions, start by asking each member to list the criteria that must be met in order for him or her to accept any solution. For example, if a group were to buy a car, one member might be interested in a car that can hold all six group members. Another might be interested in a car that uses fuel efficiently, while a third member might be interested in a car that has a good repair record. Notice that none of these interests specifies a particular car (position). If a member states a position (such as "I want to buy a Chevy"), point that out and then say something like, "What interests do you have that lead you to favor that position?"

Eventually, when every member has stated his or her interests and the group has agreed to use them, members can begin to generate solutions or positions. In the car example, solutions would be the names of specific cars, such as a Plymouth Reliant. When a member offers a solution, it helps to point out how that solution meets the interests on which the group agreed. In this way, the group is assured that there will be consensus about the solution.

5) Keep the discussion focused. Focusing the discussion means ensuring that members are discussing relevant issues, everyone is focused on the same issue, and everyone fully understands the issue. Sometimes a group spends time discussing issues that are irrelevant to its task. To get a group refocused on relevant issues, it helps to identify how the group got off the track: "We began this discussion talking about work loads, and now we are talking about photocopiers. I think we have gotten off the track; do others agree?"

Other times group members are focused on different issues. To get everyone in the group focused on the same discussion, it helps to identify the vari-

ous issues that people have raised: "I think we are talking about different things. It sounds like Leslie and Debra are talking about the problem of coordinating different schedules, but Nancy and Hank are talking about how it will affect the amount of work we can accomplish. Do other people agree that we are talking about different things?" If other members agree, ask which topic would be best to talk about first.

One particularly crucial time when members need to be focused on the same issue is when the group is defining the problem on which they will work. If various members believe they are solving different problems, the group will not accomplish its task.

Keeping the discussion focused also means discussing an issue until all members understand it. This ensures that every member will have the same information and will be able to make an informed choice. If even one person does not understand something, the group needs to discuss it until it is clear to everyone in the group.

6) Don't take cheap shots or otherwise distract the group. At some time, almost everyone has been the target of a cheap shot—a witty or snide remark that insults someone. In addition to the fact that cheap shots make people feel bad and do not help the group, there is a very practical reason for not using them. After someone is the target of an insult, he or she usually spends some time thinking about the comment—wondering why the comment was made, being angry, or thinking about clever comebacks to use later in the meeting. In any event, the person usually is distracted from the group's conversation. When distracted, he or she cannot participate in identifying and solving the problem being discussed. As a result, the person may later withhold his or her consent.

When everyone's full participation is needed, members cannot afford to distract each other. In general, members should not engage in any behavior—such as sidebar conversations or private jokes—that distracts the group from its task.

7) It is all right to disagree openly with any member of the group. Disagreeing openly increases the amount of valid information. Sometimes the group membership makes it difficult for some members to disagree with others. For example, a member whose supervisor (or whose supervisor's supervisor) is also a member of the group may find it difficult to disagree with him or her. Sometimes groups are made up of subgroups, and members of one subgroup are reluctant to disagree with each other in front of another subgroup. For example, managers may be reluctant to disagree with each other in front of employees.

8) It is all right to discuss undiscussable issues. Every group has what are called undiscussable issues. These are issues that are relevant to the group's task but that members believe they cannot discuss openly in the group without some negative consequences. Some examples include members not performing adequately, members not trusting one another, and members being reluctant to disagree with their superiors who are also group members. Unfortunately, because these issues often raise feelings of mistrust, inadequacy, and defensiveness, members usually deal with the issues either by not talking about them at all or by talking about them outside the group with people they trust. However, such issues are usually critical for the group to resolve, and as long as they remain undiscussable the group's performance may suffer. In order for the group to maximize valid information and allow members to make free and informed choices, members need to make undisscussable issues discussable within the group. One way to achieve this is to show that undiscussable issues can be discussed: "I realize what I'm about to say may be considered an undiscussable issue, but I think we can be a more effective group if we deal with this issue." Group members also can explore their concerns about discussing these issues without actually discussing the issues themselves. If members can be assured that their fears will not be realized, they will be more willing to talk openly about these matters. Finally, once the group successfully discusses one undiscussable issue, members may find it easier to deal with others.

9) Share appropriate information with nongroup members. To be successful, a group must work well internally and must work well with people

Values Underlying the Groundrules

1) Valid information.
2) Free and informed choice.
3) Internal commitment.

Group Groundrules

1) Share all relevant information.
2) Be specific—use examples.
3) Explain the reasons behind your statements, questions, and actions.
4) Focus on interests, not positions.
5) Stay focused: discuss a topic enough for everyone to be clear about it.
6) Don't take cheap shots.
7) Disagree openly with any member of the group.
8) Discuss undiscussable issues.
9) Share appropriate information with nongroup members.
10) Make statements; then invite questions.
11) Test assumptions and inferences publicly.
12) Agree on what important words mean.
13) Jointly design ways of testing disagreements and solutions.
14) Expect all members to identify and solve problems.
15) Make decisions by consensus.
16) Do self-critiques.

outside the group with whom they are interdependent. Working effectively with nongroup members includes continually sharing information with and seeking information from those whose work affects and is affected by the group. Consequently, the group must decide what information is appropriate to share with various nongroup members and how to share it.

10) Make statements; then invite comments about the statements. Making statements and then inviting comments about them means expressing your point of view (making sure to explain your reasons) and then asking others whether they agree or disagree. For example, you might say, "I think it would help to give department heads their own budgets to work within, so that their accountability will be commensurate with their responsibility. But, some of you may feel differently. I'd like to hear what each of you thinks about my idea, even if you disagree."

Inviting others to comment on your statements encourages them to question and challenge your ideas and helps turn the discussion into a dialogue rather than a series of unrelated monologues. The discussion that results enables the group to determine the validity of the ideas and enables each member to make an informed choice. It may seem counterproductive to encourage disagreement, yet reaching a decision to which all members will be committed requires that members identify their disagreements and resolve them.

11) Test assumptions and inferences. When you assume something, you consider it to be true without verifying it. When you infer something, you draw conclusions from things people say. Imagine, for example, that Bob, the group's chairperson, observes that Hank, although very productive, has considerably more work than any other group member. To lighten Hank's work load, Bob begins transferring some of Hank's work to other members. One day, when Bob tells Hank he will no longer have to prepare a certain report, Hank replies, "Is there anything else I'm doing that you don't like?"

Bob had assumed Hank would know why he was trying to lighten his work load, and Hank had incorrectly inferred that Bob was dissatisfied with his work. Furthermore, Hank did not test his inference with Bob and thus could not find out that it was incorrect. Consequently, Hank became angry at Bob unnecessarily.

Testing assumptions and inferences enables members to get valid information to make informed choices. If you are going to react to someone or make a decision based on something you inferred, make sure that you test whether your inference is correct. In this case Hank could have said, "When you started removing some of my duties, I inferred that you were dissatisfied with my performance. Am I correct?"

12) Agree on what important words mean. This groundrule is an extension of "be specific—use examples." When members unintentionally agree or disagree with each other, it is often because the same word means different things to them. For example, imagine that a group decides to make decisions by consensus. However, to some members *consensus* means general agreement, while to others it means unanimous agreement. The first time the group makes a decision that has general but not unanimous support, it will discover that it had not agreed on the meaning of consensus.

One way to determine whether all group members are using a word to mean the same thing is to ask them the first time the word is used. You might say something like, "You used the word *consensus*. To me consensus means unanimous agreement and not general agreement; is that what consensus means to you?" Notice that in describing what a word means to you, it helps also to describe what it does not mean.

13) Jointly design ways of testing disagreements and solutions. Imagine that the group is discussing whether the organization responds quickly enough to citizen complaints. Diane believes that citizens are getting timely responses, but Kate disagrees. Normally in disagreements like this, each person tries to convince the other that he or she is wrong. Diane will offer all her evidence to support her position, and Kate will do the same for her own position. Each may doubt the other's evidence, and neither will offer evidence to weaken her own position. Even when the disagreement is over and won, the "loser" is still likely to believe she is right.

If Diane and Kate jointly designed a way of testing their disagreement, it would work like this: Once the two realized that they disagreed, one would suggest that they work together to discover the "real facts." To do so, each would have to be willing to accept the possibility that her information may be inaccurate. Then they would jointly develop a method to test out which facts are real. The method would include jointly agreeing on who to speak with, what questions to ask them, what statistical data to consider relevant, and how to collect the data. For example, they might agree to speak with several employees, to talk with a sample of callers from past weeks, and to review an agreed-upon number of written complaints. Diane and Kate might also agree to jointly speak to each of these people, so that both can hear the same conversation. Whatever method they use, it is critical that both agree to it and agree to use the information that comes from it. Once Diane and Kate have collected their information, they should discuss it together and reach a joint decision about the real facts.

One important question to ask when jointly testing disagreements is "How is it possible that we are both correct?" Often members have different sets of facts because they are talking about different times, places, or people. In this example, both Diane and Kate could have been correct; calls from citizens could have been responded to timely in some units but not in others.

By jointly resolving disagreements, members are more likely to be internally committed to the outcome because they freely agreed to the test.

14) All members are expected to participate in all phases of the process. This groundrule means simply that each member's participation is essential for the group to work effectively. Because each member has a different position in the organization, he or she will likely have different experiences and views about how to solve problems. In order for the group to benefit most from these different views, everyone must contribute to the extent that they have relevant information to share.

15) Make decisions by consensus. Making decisions by consensus is the heart of these groundrules. Consensus means that everyone in the group freely agrees with the decision and will support it. If even one person cannot agree with a proposed decision, then the group does not have consensus.

Consensus ensures that each member's choices will be free choices and that each will be internally committed to those choices. Consensus decision making equalizes the distribution of power in the group because every member's concerns must be addressed and his or her support is required in order to reach a decision. For example, if a member needs to understand more about an issue, the member can withhold consent until he or she understands the issue. Reaching consensus usually takes more time than voting because it is hard work to find a decision or solution that everyone fully supports. But because people are internally committed to them, in the long run decisions made by consensus usually take less time to implement successfully and encounter less resistance.

When the group thinks it is about to reach consensus, one member should state the decision under consideration, and then each member should say whether he or she consents. This avoids the mistake of assuming that silence means consent. Voting is not allowed in consensus decision making, but the group can take straw polls to see whether it is close to consensus and to see which members still have concerns about the proposed decision. To reach consensus, members must agree without feeling pressured by the group.

Consensus should be used throughout the time a group is solving a problem, not just at the end when members are selecting the best alternative. Each time that the group is about to move to the next step of the problem solving process, it should get consensus.

Individuals are often reluctant to use this groundrule because, in their experiences, groups rarely are able to reach consensus and because they fear that key decisions will not be made. However, the reason many groups are unable to reach consensus is because they do not have an effective set of groundrules; following the other groundrules in this article will increase the chances that a group will reach consensus. Second, it is important to remember that these groundrules are most appropriate when the full group must support the decision in order for it to be implemented effectively. Under this condition, the alternative to reaching consensus is to make a decision that will not be effectively implemented.

16) Do self-critiques. For a group to become more effective over time, it must have some way to systematically incorporate its successes and learn from its mistakes. Self-critiques provide a way to do this. This is how they work: Before the end of each meeting, the group asks itself three questions: (1) what groundrules did we use well? (2) what groundrules do we need to improve on? and (3) exactly what will we do differently next time?

For the critique to be helpful, when answering each of the questions, members must be very specific and give examples (which itself is a groundrule). For example, John might say, "I think Debra helped the group focus on interests, not positions, when she asked Bob what interests led him to oppose flexible working hours. Do others agree?" A general comment like "I think we all could do a better job of staying focused" does not help the group identify exactly how the group lost its focus.

Giving someone negative feedback can be difficult, but it is easier if you give it in a way that is consistent with the groundrules, such as making your statement and then inviting people to disagree with you. If members keep in mind that the purpose of the self-critique is to improve the group's performance, that also makes it easier to give negative feedback.

One way to conduct effective self-critiques while reducing the amount of negative feedback that members must give each other is for each member to identify groundrules that he or she has used well or poorly during the meeting. After each member has taken responsibility for assessing his or her own performance, members can then give each other feedback.

Because self-critiques can be uncomfortable and because groups are often pressed for time, sometimes groups do not conduct them. Ultimately, however, the only way a group can systematically improve its performance is to learn from its own experiences continually—by doing self-critiques.

Putting the Groundrules to Use

For these groundrules to be helpful, everyone in the group must understand them, agree on what they mean, and commit to using them. One way to achieve this is to ask members of the group to read this article, discuss it in the group, and then decide whether they want to use this set of groundrules. Because the groundrules are based on valid information and free and informed choice, group members should agree to use these groundrules only after they have considered them carefully.

Often I am asked whether it is possible to use only a subset of these groundrules.[5] Because each of the sixteen groundrules supports the others, removing one reduces the degree to which the group will be able to maximize valid information, free and informed choice, and internal commitment. Nevertheless, it is probably more effective to use some of the groundrules than to use none. Because valid information is necessary not only for internal commitment and free and informed choice but also for each of the groundrules, groups seeking to use a subset should, at a minimum, adopt those designed to maximize valid information.

Although these groundrules are relevant for a wide range of groups, they are not exhaustive. Some groups may find a need for additional groundrules to help them accomplish their particular tasks.

Once the group has agreed to use these (or other) groundrules, it must develop a way to ensure their use. This requires that the list of groundrules be visible to members when they are meeting as a group. A poster-size list can be hung up in the group's meeting room or each member can receive a pocket-size list. Whatever the method, members should agree to refer to the groundrules during the meeting when they are trying to use them. For example, one member might say, "Beth, I want to test out an inference I made from your statement," or "Tim, what is your interest behind that position?" By explicitly referring to the groundrules, members are better able to evaluate how well

they are using them. Finally, toward the end of each meeting, the group should do a self-critique (which I have described above). This will help the members identify how well they have used the groundrules and where they need to improve.

Getting members to use the sixteen groundrules consistently is a difficult task. It will take numerous meetings before members develop the skills required by the groundrules. Old groups that have worked together before without using these groundrules may already have an implicit set of ineffective groundrules that conflicts with the new ones. In this case, the group may have to identify its implicit, ineffective groundrules and agree to replace them with the new set. Ultimately, the more the group openly discusses how they are using the groundrules, the sooner its effectiveness can increase.

Using these groundrules may require taking risks, to the extent that members of the group distrust one another. Specifically, members will have to risk sharing information that they fear may be used against them. To reduce (but not eliminate) this risk, group members—especially superiors in the group—can agree not to do so. In addition, the group also can decide that if a member believes he or she has had information used against him or her, that issue can be discussed in the group. To build trust, ultimately members must be willing to take these risks. ❖

Notes

1. Chris Argyris and D. A. Schon, *Theory in Practice Increasing Professional Effectiveness* (San Francisco: Jossey-Bass, 1974).

2. Argyris and Schon, *Theory in Practice*.

3. Groundrules 1, 3, 8, 10, 11, and 13 are based on Chris Argyris, *Reasoning, Learning, and Action* (San Francisco: Jossey-Bass, 1982).

4. This groundrule is based on Roger Fisher and William Ury, *Getting to Yes* (New York: Penguin Books, 1982).

5. In some cases people want to omit one or more of these groundrules because they think that the rules and other rules the group follows are mutually exclusive. For example, some groups (such as elected bodies) have bylaws that require decisions to be made by voting, which the groups consider mutually exclusive with consensus. However, groups can attempt to reach consensus even if ultimately they must decide by a vote.

Offprints of this article are available for sale. For more information contact the Publications Office, Institute of Government, CB# 3330 Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330.

New Institute Librarian

UNC Photo Lab/Chip Beverung

Public officials and others who visit or call the Institute of Government library will find that a new librarian is available to help them obtain information. Patricia A. Langelier became the Institute's librarian on May 1. She replaces Rebecca Ballentine, who retired this year after serving for twenty-three years as librarian.

Langelier has had extensive experience with state and local government documents and information. Before coming to the Institute, she was in charge of international and state documents at Davis Library, the main library of The University of North Carolina at Chapel Hill. In 1987 and 1988 she served as a consultant to the Legislative Research Commission Study Commission on State Publications. From 1984 to 1988 she chaired a statewide committee of librarians, which succeeded in persuading the General Assembly to enact state documents depository legislation. That legislation requires agencies to deposit copies of their publications with the North Carolina State Publications Clearinghouse in the State Library, which distributes them to designated libraries throughout the state. She also has written a number of articles on the subject of state documents and has organized workshops on county government for librarians.

A graduate of Boston State College, Langelier received a master's degree in library science from UNC–CH. She is a member of the American Library Association and for many years has been an active member of the North Carolina Library Association. ❖

Rebecca Ballentine Retires

UNC Photo Lab

Rebecca S. Ballentine retired from the Institute of Government in March after serving for more than twenty-three years as its librarian. Among Institute faculty members, Becky was known for her quiet and gracious efficiency. They always could be sure that, no matter how busy she and her staff members were, requests for books, reports, or obscure pieces of information would be attended to immediately. She never forgot that the purpose of the library was not to collect materials but to provide service—service to the faculty, to public officials, to students, and to the general public. She believed in the Institute's mission, and the support that she provided for more than two decades contributed greatly to the Institute's effectiveness. As a public servant, she set an example for all of us. ❖

North Carolina Takes on Federal Welfare Reform

Daniel C. Hudgins

On October 13, 1988, former President Reagan signed into law the Family Support Act of 1988. Hailed by many as the most significant overhaul of the welfare system in fifty years, the new law affects the Aid to Families with Dependent Children (AFDC) and Child Support Enforcement programs and creates a new Job Opportunity and Basic Skills (JOBS) program. While debate lingers as to the merits of the new law, state and local administrators are beginning to struggle with its implementation. Given the prediction of tight state budgets for the next few years, this process could be extremely difficult. Moreover, because of the flexibility of the law, the success or failure of its aims rests largely on the shoulders of state and local government implementation plans. The question now looming is whether North Carolina can take full advantage of the act to reduce welfare dependence and alleviate poverty and, if so, at what cost.

Background

Before looking at the implementation process, it would be helpful to look at some social welfare history. The problems with our current welfare system can be traced to the Social Security Act of 1935.[1] The calamity of the Depression spurred the federal government to take over many social support functions that traditionally had been the responsibility of local and state governments, churches, and charities. The Aid to Dependent Children (ADC) program, Title IV-A of the Social Security Act, was intended to bring federal support for the traditional "mothers' aid" programs that state and local governments had operated for years. ADC began as a program "whose typical beneficiary was a West Virginia mother whose husband had been killed in a mine accident,"[2] and its aim was to aid the dependent children of this mother, who were considered "worthy" recipients of federal aid. Reflecting the federal government's reluctance to take on this welfare function, the program allowed states wide administrative flexibility.[3]

The Roosevelt administration assumed that ADC eventually would wither away as these families began to receive support from other social insurance programs of the New Deal. However, over time the program evolved into the dominant income-support program for poor families. The program's name was changed to Aid to Families with Dependent Children to reflect the reality that the program served children in the context of their families. However, never designed to help intact families, AFDC garnered legitimate criticism that it split up families because fathers would leave home to make their families eligible. Also, over the years the public attitude toward a mother's ability to work outside the home changed. As more mothers with small children went to work, AFDC came to be seen as encouraging young, able-bodied women to become dependent on government aid.

Other federal efforts to expand aid to poor families followed. In 1964, under the Food Stamp Program, the United States Department of Agriculture began selling coupons ("food stamps") to help improve the nutrition of the poor and

The author is director of social services in Durham County and a member of the board of directors of the American Public Welfare Association.

increase the purchase of farm products. The program is noteworthy because it is administered by the federal government with little local flexibility and because it serves families and individuals. Food stamps boost the income of AFDC recipients in states with low AFDC payment levels, thereby equalizing somewhat the AFDC payment differences nationwide. Unlike AFDC, the Food Stamp Program is able to help the "working poor" because its income rules are more generous. Additionally, AFDC was expanded to include payments to intact families with "unemployed parents" and to families in emergency situations. These programs, AFDC–Unemployed Parent and AFDC–Emergency Assistance, have had mixed success, partly because of their tight eligibility requirements. Finally, an array of other federal programs—such as Headstart, Medicaid, Medicare, the Comprehensive Employment and Training Act (later changed to the Job Training Partnership Act), and Low Income Energy Assistance—were established to help poor families, further increasing the federal role in antipoverty efforts.

During the Nixon and Carter years, a wide spectrum of government and advocacy leaders made efforts to reform AFDC so that it would provide higher payments while discouraging unnecessary dependence on welfare. These attempts failed. The huge welfare bureaucracy, with its myriad constituents, proved very difficult to transform. Liberal and conservative groups could not agree on whether the primary purpose of reform was to stop welfare dependency or to end the poverty cycle.

The 1980s welfare reform movement began in 1986 and immediately looked different from former attempts. Advocacy groups like the American Public Welfare Association and the National Governor's Association changed the tone of the debate by focusing on the dramatic rise in childhood poverty. A widely cited statistic was that nationwide one child in four was being born into a poor family. At the same time, conservatives softened their rhetoric and began talking about creating opportunities for poor families, a retreat from their customary punitive approach. Compromise became possible as conservatives joined in the outrage at the childhood poverty statistics and liberal advocates acknowledged the need for young parents to become employed, independent citizens. Both sides agreed that there was a need for child support enforcement and that the welfare bureaucracy was unwieldy.

By late 1987 two welfare reform bills had emerged in Congress. House Bill 1720 and Senate Bill 1511. The House bill contained the most comprehensive overhaul of the welfare system and would cost $7.1 billion over five years;

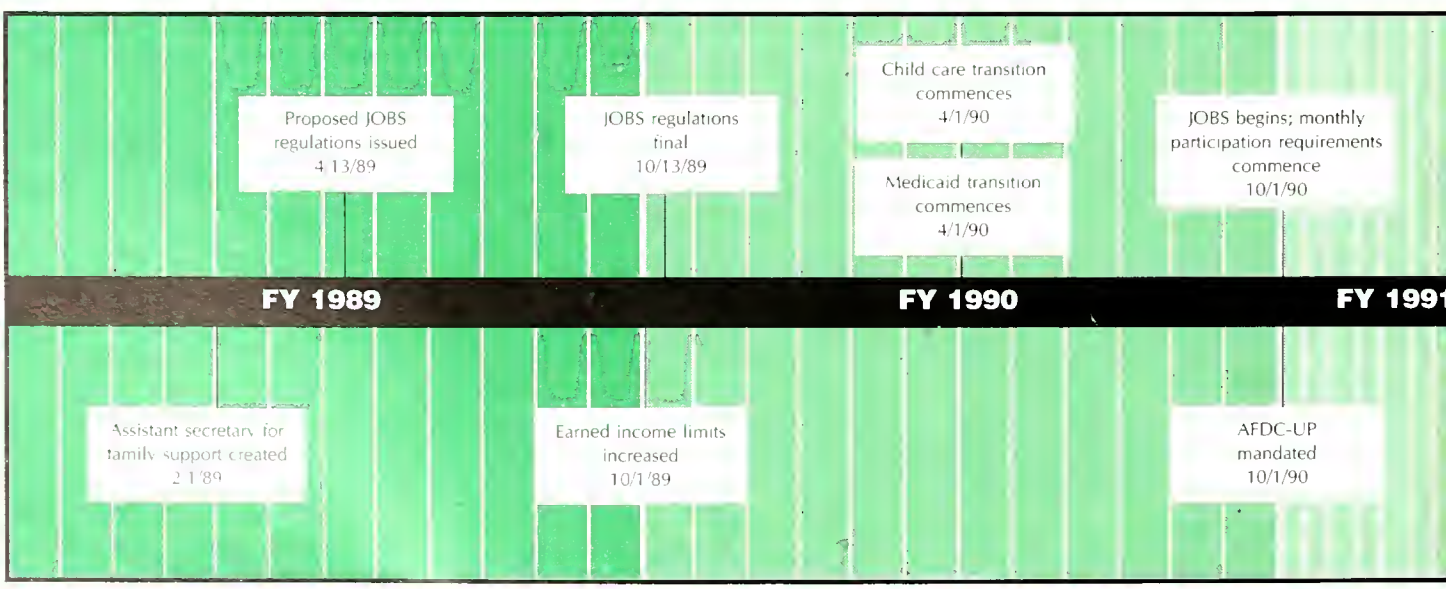


Illustration by Donna S. Slade

the Senate bill contained more modest provisions and had a $3.2 billion price tag. Both bills included welfare-to-work programs and child support provisions. The House bill also specified an expensive "enhanced federal match" (federal funding to match state and local funds at increased rates) to encourage states to raise their AFDC payments. When both bills passed and were sent to a conference committee, the cost of the House bill became a major issue. To get White House approval, legislators eliminated the enhanced match and reduced the funding for the welfare-to-work program. With those compromises completed, the Family Support Act was enacted.

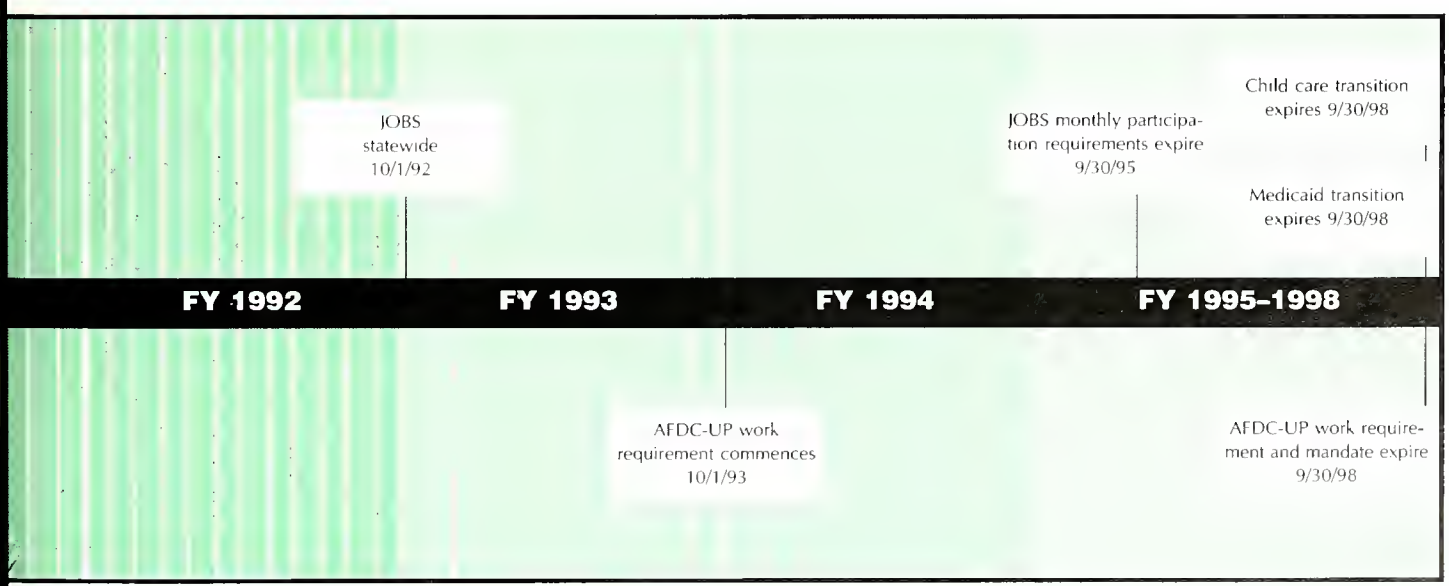
The question that now faces government officials in North Carolina is, What has Congress wrought? The implementation phase can be viewed as either a potential nightmare or a rare opportunity. To see what is going to happen, let us examine the three principal areas of the act.

JOBS vs. CWEP

Within the next year and a half, the Job Opportunities and Basic Skills (JOBS) program will replace the existing Community Work Experience Program (CWEP) as the employment and training program for welfare recipients in North Carolina.[4] Despite its name, CWEP is not primarily a work-experience program in North Carolina. CWEP offers a wide range of employment and training activities that go far beyond providing just work experience for welfare recipients. The program offers assessment and counseling and steers its clients toward one of seven activities: vocational training, high school equivalency training, unpaid work experience (the so-called workfare), diversion of AFDC grants to employer, on-the-job training, post-secondary education, and job counseling/search. In fiscal year 1987–88 over 7,000 welfare recipients in forty-one counties were actively involved in one of these activities.

CWEP is funded with a combination of federal, state, and local funds with a 50 percent federal match rate. Last year the program had a total budget of $2,949,000. An additional $571,000 was provided by the Work Incentive Program (WIN), another federal match program (at a 90–10 rate) for employment and training. The Division of Social Services has combined the CWEP and WIN funds together to create a total employment and training budget of $3.5 million.

So how will the JOBS program be different from CWEP? As envisioned by Congress, JOBS will offer more comprehensive services, reach more recipients, and entail more funding by federal, state, and local governments.



Screening new applicants. Under the present system, a family seeking income assistance first goes through the AFDC eligibility process with the social services agency. After these interviews, the person may be referred to a CWEP worker if the county operates such a program. By the time the CWEP worker meets with the client, the AFDC interviews typically have formed or reinforced in the client a negative view of the welfare system. Research indicates that this occurs because the focus on paperwork in the first interviews ignores the client's feelings and needs.[5] The client's feelings of failure and loss of control are rarely addressed. The interviews also ignore the other aspects of a client's life, such as whether there are problems of substance abuse, domestic violence, or housing. The interview is one dimensional in a situation that clearly calls for more than that. To compound the problem, the CWEP worker may have little in the way of tuition or supportive services to offer. Is it surprising that the effectiveness of the program is severely limited?

The JOBS program is different from CWEP in that JOBS encourages a more systematic and positive approach with individual clients, beginning with the initial interview. As the new system is envisioned, the employment or training process would start from the moment the client first comes to the social services agency. Workers receiving new applicants would be retrained to conduct a thorough initial assessment that does not focus exclusively on the AFDC application. The worker would begin immediately to help the client build a positive self-image and to engender positive feelings toward the agency. Thus, by the end of the first interview, three purposes would have been accomplished: a client assessment, the AFDC application process, and self-esteem building. Recent research at William and Mary University indicates that this kind of interview process does not necessarily take longer than a traditional interview and, because of the positive client-worker relationship, can decrease errors and fraud.[6]

Depending on the agency's characteristics, the worker could refer the client to a separate JOBS office or carry the case through all of its stages. Regardless of procedure, reform advocates suggest using the case-management approach with clients. *Case management* is actually an old social work term, now in its second life: it means that one worker or a team acts as coordinator and advocate to help the client through the system. Tasks for case managers include (1) meeting with the client and together assessing the elements needed for the client to become self-supporting, (2) developing an action plan, (3) arranging for services and resources, and (4) following up on the client's and agency's performance.[7] This type of process naturally requires skilled practitioners and limited case loads.

In addition to providing a new atmosphere of hope and support, the JOBS program has important services to offer recipients, such as tuition for education and training, child care, transportation, and transitional benefits.

Education and training. Currently under CWEP, participants are routed into existing educational programs like those at community colleges or are engaged in non-educational activities like a job search. Thus last year only $14,000 of CWEP funds was spent on actual tuition for vocational training. But welfare reform advocates have long recognized that many AFDC recipients need to increase their education or skills before they can find higher-paying jobs. In light of this, the architects of the JOBS program envision states spending more funds on educational and training opportunities for AFDC clients. This could be particularly significant in areas of the state where educational resources are not as readily available. For instance, JOBS funds could be used to set up new educational programs or to subsidize the budgets of existing ones. Moreover, the JOBS program mandates coordination and communication between social services agencies and the various educational resources in each state.

Child day care. Day care has been shown to be an essential part of any employment program, yet it has been insufficient in CWEP. Although the current program spends over $600,000 per year on child day care, it estimates that an additional $1.2 million in day care assistance is necessary to meet its need. Funding is not the only problem, though. A recent report from The University of North Carolina shows a disturbing lack of day care slots statewide, with the worst conditions existing in rural areas (for example, Camden County had only six slots per 100 children under age five).[8]

With some creativity, the new JOBS program may be able to address both of these problems. JOBS provides uncapped federal day care funding to states at the federal Medicaid match rate (about 68 percent). This means that a state can receive an unlimited amount of federal day care funds if it can put up matching dollars. The challenge to the state will be to use this increase in funding to spur an increase in the total number of day care slots. Options include helping AFDC recipients start their own day care centers and starting day care centers as satellites of social service agencies. At the same time North Carolina must work to ensure that the quality of both new and existing day care is consistently high. Finally, the new law offers one year of free day care to individuals who leave AFDC because of employment. This benefit should help to sustain the former recipient during the transition from welfare to work.

Transportation. Another key issue in any employment program is transportation. At a recent meeting, reform advocates and state social services staff repeatedly voiced concern over the inadequacy of transportation throughout the state. Lack of transportation options limit the employment opportunities of many poor citizens. CWEP spent nearly $100,000 on transportation in fiscal year 1987–88, and that figure is expected to increase under the JOBS program, where states are required to pay for transportation (and other work-related expenses) if it is needed for a client to participate. Federal funds are available at a 50 percent match rate. But the key issue here is not the funding as much as it is the availability of transportation services. State and local government officials must recognize that many poor citizens do not have access to automobiles and that if mass transportation is considered as a solution, it will not be a profit-making enterprise. Transportation services, provided by social service agencies or other local government bodies, should be viewed not as luxuries but as elements essential to increasing the employability of a region's poor citizens. Creative approaches like business shuttles and carpool programs, planned in concert with state and local transportation officials, need to be vigorously pursued.

Transitional benefits. I have already mentioned one transitional benefit—child care—but there is one other. As with day care expenses, the costs associated with losing Medicaid eligibility when a recipient becomes employed can be a major shock to a family. The new law provides a one-year Medicaid transition period. During this period, states have some options to use private providers or employee-based health insurance and in some instances may charge premiums. Regardless of method, the new law should encourage AFDC recipients to accept employment more readily, and at the same time it will provide a continuum of health care coverage for their families.

Staffing. The staffing and funding implications of the JOBS program are of particular importance to both state and local officials. According to statistics for fiscal year 1987–88, 46 percent of all available CWEP clients (in the forty-one counties) could not be served because of a lack of staff. With this figure in mind, the Division of Social Services must decide how to address the overall staffing needs of the JOBS program. Although it is too soon for exact estimates, we do know that some mixture of additional staff and retrained and upgraded staff will have to be considered. In some states AFDC workers were retrained and their salaries were increased 10 to 15 percent to allow them to serve as case managers. Robert Behn, in his analysis of the much-heralded Employment and Training Program (ET) in Massachusetts, points out that the Massachusetts welfare commissioner, Charles Atkins, went to great efforts to persuade his legislature to raise salaries and lower case loads.[9] In four years the average caseworker's salary increased 50 percent, and case loads dropped 36 percent. Behn sees this as a key contribution to the success of the ET program. Similarly, if JOBS is to succeed in North Carolina, the Division of Social Services must be ready to sell the program to the General Assembly as effectively as Atkins did.

As state policy makers decide how extensively they wish to implement the JOBS program, they can begin to estimate the number of additional workers needed. The law requires that the program be implemented statewide by October, 1992, unless there are valid mitigating circumstances in a certain area. As envisioned by Congress, North Carolina would move from partial coverage (forty-one counties, representing 60 percent of the AFDC population) to full coverage (100 counties and 100 percent of the AFDC population). Preliminary state estimates for the JOBS program project thirty additional county employees statewide in the first year, capable of serving 3000 additional participants. The cost is estimated at $886,000. To expand services to reach all of the available CWEP registrants in the forty-one counties (using current case load standards) would require 100 additional employees at the county level. As we can see, a substantial number of new staff could be needed, at a cost of $3 million to $5 million per year.

Funding. The overall funding picture for the state and local governments is yet to be determined, but an early assessment indicates that a county funding crisis may be coming. Since the 1930s, the state government has borne a substantial amount of social services costs. However, over the past few years as Reagan's "new federalism" has shift-

Courtesy Greater Durham Chamber of Commerce

PIC Job Training Programs

The Private Industry Council (PIC), a governing council set up under the Job Training Partnership Act (JTPA) to sponsor employment and training programs, is helping welfare recipients get the training they need to secure quality, full-time employment. Courses are designed by an employer advisory committee that identifies relevant skills needed by an industry.

One council, the Central Piedmont PIC, currently oversees a number of classroom training programs, including Word Processing (pictured above), Electronic Manufacturing, and Medical Insurance Claims, which are taught through Durham Technical Community College at the PIC Job Training Center in Durham. The programs have a placement rate greater than 80 percent, at a wage of more than $6.00 per hour. The Word Processing program, which runs for sixteen weeks, was started in 1984 with equipment and support from International Business Machines, Inc. Electronic Manufacturing gives participants a basic introduction to making and processing printed circuit boards. The curriculum was developed by five local companies—IBM, Data General, Northern Telecom, Sperry Electro Components, and Troxler Electronics—who provided equipment and instructors and have hired many of the graduates. Medical Insurance Claims was started by members of the health care industry, including Blue Cross/Blue Shield of North Carolina, Durham County Hospital, Duke University Medical Center, and People's Security Life Insurance. The course runs eleven weeks and covers medical terminology, insurance claims forms, and related clerical skills. Job seeking skills also are part of the programs.

Participants in PIC training programs are recruited by the employer advisory committee or referred by the county department of social services. The programs are free to all JTPA-eligible people with a high school or equivalent diploma.

ed costs to the states. North Carolina has in turn shifted much of that burden to the counties. County governments, particularly in economically depressed rural counties, are struggling to handle this expanded financial role. Recent programs have compounded the problem, such as the Catastrophic Health Act, to which the state has contributed limited funds. At the same time, many county social services agencies are in overcrowded buildings and do not have the money to expand their facilities to accommodate new staff. When welfare reform is implemented, the problems of funding and facilities are likely to become even worse.

By the mid-1990s the state expects a maximum yearly federal allocation for the JOBS program of roughly $9 million to $12 million. This level of funding would require a match of $3 million to $4 million per year (minus some welfare savings) from combined state and local resources. If the state does not pay all or most of the nonfederal share, some county governments will be stretched past their limit. Not only will inequity between rich and poor counties become more severe, but local political leaders may be forced to challenge the establishment of the new program. Thus it is essential that state leaders make a commitment to support the JOBS program adequately.

Wages and economic development. A concern with any welfare-to-work program is economic opportunity, including the issues of wage scales and the availability of employment. CWEP figures point to serious problems for North Carolina. In fiscal year 1987–88 nearly 10,000 CWEP registrants found some form of paid employment (not necessarily through CWEP activities), yet an alarming three quarters of that group did not earn enough to get off welfare. The average wage of the group, based on a limited sample, was $4.58 an hour. At that wage a person working full-time for fifty-two weeks a year earns only $9,530 annually—$166 below the poverty line for a family of three. In a similar vein, certain parts of the state continue to suffer from depressed economic conditions and do not have available jobs. One would hope that the state would conduct an initial study of the demographic characteristics of the AFDC population and that the study would seek detailed information and recommendations about economic conditions. (The federal government will pay 50 percent of the cost of such a study.) JOBS program officials need to work closely with economic development officials to ensure the creation of adequate employment opportunities statewide. One avenue to follow, for instance, is the burgeoning field of small business development for welfare recipients, in which poor citizens are helped to start their own businesses.

Planning and evaluation. A final area of concern is the extent to which the JOBS program will be properly planned and evaluated, both at the state and at the local levels. Currently the Division of Social Services is talking with service providers from the education, training, and employment fields. This early dialogue should help to create a coordinated JOBS program at the state level. At the local level, it is expected that the Private Industry Councils, made up of representatives from the business, education, and social services communities, will become the focal point for planning.

The evaluation procedures are equally important. The legislation requires that the federal government establish performance standards that measure not only participation but also the amount of increased earnings and reductions in welfare dependence. Unfortunately these standards are not required until October, 1993. Advocates are encouraging the state to begin rigorous evaluation procedures much sooner than that, preferably from the start of the program. Such an evaluation must not only measure what is happening to participants but also show how many are finding their employment because of the JOBS program rather than because of other factors. This will require the use of more sophisticated research techniques, such as control groups.

Child Support

The preceding discussion of the JOBS program describes what welfare reform can bring in the effort to help AFDC recipients become economically self-sufficient. But welfare reform advocates recognize that more than jobs and training is needed. In addition to increasing employment opportunities for AFDC mothers, welfare reform seeks to demand the responsible behavior of absent fathers. The federal Child Support Enforcement Program, Title IV-D of the Social Security Act, was initiated in 1974 to help local officials locate absent fathers who had moved to other areas. By enforcing the child support measures, the program often could ensure that children had adequate support without reliance on welfare dollars. Over the years the program has become increasingly sophisticated, using Internal Revenue Service wage and refund information, tax incentives, and wage withholding. Despite these efforts, however, of 8.8 million women with children under age twenty-one and no father in the home, only slightly more than 2 million received the full amount of their court-ordered child support.[10]

The child support provisions of the Family Support Act were the least controversial of all the reform measures enacted and are estimated to save $385 million in federal dollars over five years. While the provisions will require substantial advance planning, many of the fifteen changes can be accomplished at little or no additional state cost.

The most important change will be the gradual phase-in of mandatory wage withholding from absent parents. Under the new law, beginning in November, 1990, states must begin immediate wage withholding for all new or modified child support orders enforced by the state child support enforcement agency, unless a special agreement is reached in court or between the parents. Normally, wage withholding is not started until the absent parent is at least one month behind in payments. In 1994 all child support awards, whether or not enforced through a child support enforcement agency, must be placed under wage withholding. It is predicted that this change will dramatically increase child support collections and provide much greater income stability for many poor families.

Two other key child support provisions are designed to improve the process of setting award amounts. Beginning in October, 1989, the state must enforce its uniform guidelines in establishing child support awards. Judges will have to follow the state guidelines except in special cases, and these guidelines must be reviewed every four years. Also, individual child support awards must be reviewed every three years, unless this action is deemed inappropriate. This re-

quirement will take effect October, 1993.

Finally, another set of provisions is designed to ensure a more timely and efficient child support program. By August, 1989, the United States Department of Health and Human Services must issue final rules establishing time limits for processing child support enforcement requests. Time limits will also be set governing the distribution of collected child support payments. Currently in North Carolina, because of state accounting procedures, some families must wait an additional one to two months to receive their support payments. Equally important, by 1995 every state must have in effect a computerized tracking and monitoring system for child support cases. These provisions, along with other new rules, demonstrations, and studies, should help to upgrade the performance of child support offices nationwide. North Carolina can help its poor families and save welfare dollars by investing in the prompt implementation of these child support initiatives.

AFDC

In the eyes of reform advocates, the two greatest omissions of the Family Support Act are the absence of a mandate for a simplified welfare system and a lack of progress toward forcing states to raise AFDC payment levels. Serious debate about "simplification," as the issue was dubbed by welfare administrators, did occur in Congress. During the months before passage of the Family Support Act, bills were introduced that proposed eliminating the Food Stamp Program's bureaucracy entirely, creating a single application and eligibility criteria for all welfare programs, and mandating a specified reduction in welfare paperwork and regulations. But the political implications of these ideas proved too much for our legislators in Washington, and each proposal was rejected. However, despite the failure of these initiatives, North Carolina officials still have ample opportunity to create a simpler welfare system at the state level. With a new orientation toward overall efficiency, the Division of Social Services could reduce the paperwork load at the local level substantially. One example of the paperwork problem is the Food Stamp Monthly Report form. Conceived as a way to reduce fraud and errors in the Food Stamp Program, this form is filled out each month by roughly 40 percent of food stamp recipients in North Carolina. Recent studies indicate that the form is confusing to clients and does not produce any cost savings.[11] In Illinois, for instance, overall administrative costs were shown to increase 6 percent because of this reporting. Despite this evidence, North Carolina shows no intention of eliminating this expensive, bureaucratic "red tape."

Welfare reform also failed to produce any dramatic incentive for states with low AFDC payments (such as North Carolina) to raise their payments. Since 1980, AFDC payments nationwide have lost one third of their buying power, and AFDC payments in North Carolina amount to only one third of the poverty level[12]—a scant $241 average monthly payment per family.[13] Congress and our General Assembly must realize that AFDC payments, set at a humane level, can be designed to decrease crisis-level poverty. Advocates are not seeking AFDC levels so high that the incentive to work is lost; but every destitute family does need a level of income from which they can pick up the pieces and begin functioning again. As already mentioned, the enhanced federal match incentive for states to raise their AFDC levels was deemed too expensive by the House-Senate conference committee. What remains in the Family Support Act of the push to raise AFDC levels are three small, yet important, provisions.

The first and most costly of the three items involves the way certain deductions will be counted when determining an individual's AFDC check. The new rule increases the work-expense and child care deductions and reworks a formula, so that an AFDC family with a member working full-time would receive an $80 increase in its AFDC check. Because the formula involves a work incentive that expires after four months, the benefit to the family will be short-lived.

Second, the Family Support Act requires that a state evaluate its AFDC payment levels every three years and report its findings to the federal government and the public. This evaluation requirement could be used by reform advocates to put additional pressure on state governments to raise their AFDC levels.

Third, the Family Support Act will fund a nationwide study of a "national minimum benefit" by the National Academy of Sciences. Based on the American Public Welfare Association's proposed Family Living Standard, the study is an important step toward using scientific data to set minimum benefit levels.

One other AFDC-related provision is not designed to raise AFDC levels but, instead, portends a good deal of controversy. The issue surrounds the AFDC–Unemployed Parent (AFDC–UP) program, formerly a state-option program that North Carolina began in 1988. AFDC–UP extends AFDC eligibility to allow families with an unemployed father to receive benefits and is mandated in all fifty states under the Family Support Act. The controversy concerns not the program's national mandate but its requirement that, beginning in 1994, AFDC–UP participants contribute sixteen hours of unpaid work per week.

This provision has been criticized as unworkable and punitive. Critics charge that the requirement demands work experience activities of a group that would benefit much more from paid employment than from work experience. As the name implies, work experience programs are designed to give participants an understanding of what it is like to be a part of the labor force and to help them establish good work habits. But AFDC–UP recipients do not need the experience; they generally are unemployed men who need a paying job. Thus the requirement can only be viewed as a work-off-your welfare-check idea—a punitive and misguided policy at best.

Summary

Despite the modest accomplishments of the welfare reform movement as enacted in the Family Support Act, state and local governments will have their hands full as they seek to implement the legislation. Social services officials, with the help of an array of other agency officials, will have to decide how to allocate limited resources to create a workable JOBS program statewide. Child support officials will have the task of using the law to enhance the state's efforts to encourage responsible parenting. The social service system and the General Assembly will be challenged by the lack of any real incentives to simplify the wel-

fare bureaucracy or to raise low AFDC payment levels. In all of these areas, state and local administrators and elected officials must talk frankly about the funding needed to alleviate North Carolina's welfare dependency and poverty problems. We cannot let them forget that while all the debate and talk is going on, one child in five is growing up in poverty in our prosperous state. And unless this trend is reversed, the consequences of this cruelty, both for those children and for the state as a whole, will make all of our other problems seem like a light burden. ❖

Notes

1. There are many excellent background sources on the history of social welfare; for one, see Diana M. DiNitto and Thomas R. Dye, *Social Welfare: Politics and Public Policy* (Englewood Cliffs, N.J.: Prentice-Hall, 1987).

2. Daniel Patrick Moynihan, as quoted by DiNitto and Dye, *Social Welfare*, 116.

3. One result of this policy is the current disparity in AFDC payment levels from state to state.

4. All information about CWEP is from Division of Social Services, Department of Human Resources, "Community Work Experience Program, Annual Report, 1987–1988," 1 October 1988; information about the specifics of the Family Support Act of 1988 (Public Law 100-485) is from American Public Welfare Association, "Welfare Reform Legislation Enacted by 100th Congress," Memorandum W-12-14, 19 November 1988; information about state-level implementation is from Division of Social Services, Department of Human Resources, "Welfare Reform Legislation," internal document, 10 October 1988.

5. Ed Mumma, "Client Readiness: A New Basis for Case Management," unpublished report, October 1987, available from the Virginia Beach (Virginia) Department of Social Services.

6. This unpublished study is available from the Virginia Beach (Virginia) Department of Social Services.

7. American Public Welfare Association, "Case Management and Welfare Reform," Memorandum W-7, 31 July 1987, 4–5.

8. See Patricia M. Garrett, "Working Mothers and Child Care in North Carolina," Bush Institute for Child and Family Policy, Frank Porter Graham Child Development Center, The University of North Carolina at Chapel Hill, November 1988.

9. Robert D. Behn, "Managing Innovation in Welfare Training and Work: Some Lessons from ET Choices in Massachusetts," Institute of Policy Sciences and Public Affairs, Duke University (unpublished paper presented at the 1987 annual meeting of the American Political Science Association, Chicago, September 1987), 16.

10. Child Support Enforcement Administration, "12th Annual Report to Congress, period ending September 30, 1987," vol. 1, 5.

11. Robert Greenstein and Marion E. Nichols, *Monthly Reporting in the Food Stamp Program* (Washington, D.C.: Center on Budget and Policy Priorities, 1988), 6–7, 64.

12. North Carolina Child Advocacy Institute, "The 1988 Children's Audit of North Carolina's 100 Counties," August 1988, 3.

13. Department of Human Resources, "Statistical Journal, Fiscal Year 1988," 2.

David Owens Joins Institute Faculty

David W. Owens has joined the Institute of Government faculty. His primary area of responsibility is planning and land-use law, including zoning, subdivision regulation, housing and building codes, and natural resource protection.

Formerly, Owens was director of the Division of Coastal Management of the North Carolina Department of Natural Resources and Community Development, a position he had held since 1984. Before joining the Division of Coastal Management staff in 1978, he was an attorney and planning analyst for the Office of State Planning and Energy of the Wisconsin Department of Administration. He has taught courses in planning at The University of North Carolina at Chapel Hill and the University of Wisconsin.

UNC Photo Lab/Chip Beverung

Owens received his undergraduate degree from The University of North Carolina at Chapel Hill, where he also earned a master's degree in regional planning and a law degree. ❖

UPCOMING in PG

Parole Commission

Court-ordered arbitration

A history of reforms in teacher education

Choosing sites for controversial facilities

Agency for Public Telecommunications

Liability in employee health programs

Setting Water Rates and Sewer Rates

Charles K. Coe

Local governments can choose among four approaches to setting their water rates. In all of the approaches, customers pay a fixed monthly charge to cover a portion of fixed costs, such as meter reading and customer billing costs. Beyond the fixed charge, the type of rate structure varies. The most commonly used structure is the declining block structure, in which rates are lower for large quantities than for small quantities of water consumed.

Since the 1970s, however, some towns have switched to a uniform rate structure, where the rate is the same regardless of the amount used.[1] This change has been prompted in part by the United States Environmental Protection Agency's mandate that uniform rates be charged for sewage treatment as a condition of receiving grants. Communities converting to uniform sewage rates sometimes have used this occasion to impose uniform water rates as well, and switching from a declining block to a uniform rate structure can promote water conservation because users of large quantities have to pay more per gallon.

Two other rate structures, though still used infrequently, also encourage water conservation. Under an ascending rate structure, rates increase with the amount of water used. Under a seasonal rate structure, higher rates are charged for excessive amounts consumed in the summer.

Whichever structure is used, local officials are faced with a number of rate-setting decisions:

- The type of water rate structure to be used.
- If a declining or ascending block structure is used, the number of blocks and the charge for each.
- How much to charge customers living outside the city.
- How much to charge for sewer services.

Some governments hire rate consultants to help make these decisions. However, many governments do not, because of the cost or for other reasons. Towns without expert assistance typically set their rates based on local factors or on what nearby or similar communities charge.

This article is addressed to communities that do not use rate consultants. To give local officials an informed basis for making rate-setting decisions, the paper discusses the question of what type of water rate structure to use and examines each of the four alternatives. Because changing rate methods can have serious financial and political consequences, the paper also describes the experiences of a selected group of North Carolina cities that have switched from the declining block approach. Finally, the paper compares recommended rate-setting principles with actual practices in North Carolina. First, the number of blocks used by cities with the declining block method is compared to the number recommended by the American Water Works Association. Then the paper explains the preferable methods for setting outside-the-city water and sewer rates in light of actual charges.

Rate Structure Options

To make an informed choice between the four rate structures, officials need to understand each type of structure and its historical context. Before water

The author is an associate professor of political science and public administration at North Carolina State University.

meters were used, no distinction was made concerning the amount of water used. Instead, rates were based on criteria such as the number of residents in a building, the type of fixtures, the number of rooms, and the lot size. These methods tended to favor users of large quantities. When water meters were installed for businesses between 1900 and 1910, and for most residences between 1920 and 1935, cities adopted the declining block method, in which successively larger units (blocks) of water are purchased at lower rates.

The main rationale for this method is that it is more economical to produce water for high-volume users because of economies of scale. However, this reasoning may not be valid, because water systems are constructed to meet a peak rate of output as well as total output. The combined demands of all users determine the needed capacity and the level of capital costs.[2] Why, then, should a customer who uses 10,000 gallons per day be charged a lower rate than 100 customers who use 100 gallons per day?

A more persuasive economic argument for declining blocks is that high-volume users characteristically use water more continuously than small-volume, residential users. The hourly peak demand for water usually occurs during mornings and evenings, when meals are prepared, dishes are washed, and children are bathed. Industries and businesses typically contribute less to these peak demands, thereby contributing less to the extra capacity requirements of a water system.[3]

This reasoning, however, needs qualification, for while some businesses are continuous, twenty-four-hour-a-day water users, other industries and commercial establishments only operate during an eight- or twelve-hour work day. Businesses in this latter group may contribute as much to peak use as continuous users. In addition, some communities may sell water to large industrial users at below cost to encourage industrial location.

Notwithstanding the arguments for declining blocks, in the 1970s some water systems began to convert from declining block to uniform rate structures, in which the same rate is charged regardless of the amount used. They changed to uniform rate structures because such rates are (1) simpler to administer, (2) easier for residents to understand, and (3) an incentive for high-volume users to conserve water.[4]

Steve H. Hanke, a leading expert on water rates, has argued that nationally there has been a trend toward using seasonal rate structures.[5] In most water systems, the peak demand for water occurs in the summer, when lawn irrigation and other outdoor uses are greatest. Economists advocate charging customers the true cost of service, and water used in peak seasons is more costly to provide because the system must be built to accommodate these peak periods. The simplest type of seasonal rate structure involves charging a higher rate for water consumed during the summer. A more sophisticated approach is to charge more for use that exceeds average consumption during the rest of the year. This summer-excess method is more complex to administer, but it more accurately assigns the true cost of service.[6]

The final type of rate structure is the ascending block structure, which increases the rate as water consumption increases. Ascending rates are used when conserving water is the dominant objective.

What kinds of rate structures are used in North Carolina? Table 1, which is based on the responses of 210 cities that submitted water- and sewer-rate information in 1986 to the North Carolina League of Municipalities, summarizes the types of rate structures used. According to Robert Hey, director of fiscal management in the Office of State Treasurer, these cities represent about 60 percent of the water systems in the state.[7] The predominant type is the declining block structure, followed by the uniform rate structure. Ascending block and seasonal structures are used little; only three towns used an ascending block structure, and only one community used a seasonal rate structure.

Table 1
North Carolina Systems
Using the Four Rate-Setting Methods for Water Service

Type of Rate	Number of Systems	Percentage of Total
Declining block	127	60.5
Uniform	79	37.6
Ascending block	3	1.4
Seasonal	1	.5
	210	100.0

Source: Data were derived from North Carolina League of Municipalities, *Water and Sewer Rates*, Report No. 207 (Raleigh, N.C.: 1986).

The Politics of Changing Structures

When a town switches from a declining block to a uniform or ascending rate structure, a shift occurs: high-volume users pay more and lower-volume users pay less. The extent of the shift depends on how much water rates have been discounted for large quantities. If the increase in cost to businesses is sizeable, presumably the business community will try to block the change, and city officials will need to adopt strategies to counteract this resistance.

To learn from the experiences of units that have changed their rate structures, the author surveyed six systems in cities with populations greater than 12,500 that have changed from declining block to uniform rate structures,[8] as well as the three towns with ascending rate structures and the one community with a seasonal rate structure.

A population of 12,500 was used as a cutoff for towns with uniform rates because, according to the American Water Works Association's guidelines, cities larger than that should have the most blocks: one each for residential, commercial, and industrial customers. Presumably, cities with a block for industrial customers may encounter more vigorous resistance from the business community, which will pay more if the water system shifts to a uniform rate. Admittedly, this cutoff is an arbitrary distinction. A better, but unavailable, measure of potential opposition would be the actual amount of the increased costs incurred by high-volume customers.

An analysis of the data revealed that in some instances resistance did indeed occur, although it was not as intense as might have been predicted, and that the towns used a variety of strategies to blunt opposition. Those strategies in-

cluded cooperation, separate metering, phase-ins, discounting fixed costs, and appealing to the necessities of crisis.

Cooperation. Local officials in Charlotte had tried unsuccessfully on several occasions to convert to a uniform rate, but groups of industries responded by pooling resources to hire lawyers to lobby against the change.[9] In 1978 city officials were given added leverage to achieve a change. The city received funds from the Environmental Protection Agency (EPA) to improve the sewage treatment system, and the grant stipulated that each class of customers pay its share of operation, maintenance, and repair (OM&R) costs. Most communities, Charlotte included, have met this requirement by charging a uniform sewer rate, even though different rates are permitted by the grant conditions for both OM&R and non-OM&R costs if the difference in rates is justified by differences in costs.

The adoption of a uniform sewer rate allowed local officials to say to industry representatives, "If we have to have a uniform sewer rate, why not a uniform rate for water, too?" Following up on this argument, the city hired a consulting firm to prepare a water-rate study, and with the aid of the consulting firm, officials gained the cooperation of business leaders. First, the city council directed an existing five-member technical advisory committee to oversee the preparation of the rate study. The committee was composed of key business leaders sympathetic to the need for adopting a rate structure that would be easier for residents to understand and for the city to administer. Next, the technical advisory committee's members met with other business officials to sell them on the change. Committee members explained that uniform water rates would be like the already adopted uniform sewer rate, would be easier to administer, and would encourage water conservation. The strategy was successful: the business community did not oppose the change, as it had in previous years.

Separate metering. The cities of Asheboro and Salisbury also converted to a uniform water rate when they received EPA funds but used a different strategy to gain support for the change. In both towns, managers from some firms complained that if the sewer rate was based on the total amount of water used, they would be overpaying because of the evaporation of water that naturally occurs.[10] The city managers in both cities countered this argument by giving firms the option of buying and installing separate meters to monitor sewer use. When the firms' top management compared the cost of installing the meters with the projected reduction in their sewer bills, they decided against separate meters. Salisbury did lose the revenues from one firm, which decided to install its own package water treatment plant, but otherwise no customers were lost in either town. Moreover, because of the increased utility costs, many of the industries in both towns installed water conservation devices, which in part accounted for why neither city had to take mandatory water conservation measures during a severe drought experienced in 1986.[11]

Phase-ins. Expecting opposition from high-volume customers, Cary took the approach of phasing in a uniform rate, going from five blocks to four, to two, and then to one over a three-year period.[12] No opposition surfaced during the phase-in period.

Discounted fixed costs. The Orange Water and Sewer Authority (OWASA) serves mostly residential customers in Orange County. After imposing a uniform rate, its largest customer, The University of North Carolina at Chapel Hill, expressed dissatisfaction with its higher costs.[13] In response, OWASA officials explained that although costs were higher in the aggregate, the rate structure substantially discounted the fixed costs attributable to high-volume users, thus reducing the amount of the increase. This discount occurs because OWASA, like most water systems with uniform rates, charges a fixed rate based on meter size to cover a portion of fixed costs. Thus the method for charging fixed costs resulted in a lower base charge than the previous base charge paid by the university. This adjustment and explanation somewhat mollified university officials.

Appeals to the necessities of crisis. The three towns with ascending rate structures and the town with seasonal rates adopted these structures because of severe water shortages.[14] Three of the towns are resort communities experiencing considerable growth with limited water capacity. Owners of motels and other tourist-related businesses using a lot of water voiced opposition to their higher costs, but city officials muted this criticism by explaining that water supplies were so short that extreme water rationing was the only alternative.

In summary, one might infer—based on this limited sample of experiences—that switching from declining block structures is fairly easy, for in these cases political resistance by the business community was not very intense. Care should be taken, however, in reaching such a conclusion. Although there were no instances of failed attempts to switch from the declining block method (except for previous attempts in Charlotte), we do not know how many towns would like to convert but cannot even try on account of political opposition.

Rate-Setting Practices

In addition to deciding which type of rate structure to use, local officials are faced with a number of rate-setting decisions. Among these are (1) the number of blocks to use if the declining block approach is taken, (2) what to charge customers living outside the city, and (3) what to charge for sewage service.

Number of declining blocks. As a general rule, the American Water Works Association (AWWA) recommends that water utilities serving fewer than 500 customers should only have one block because usually their principal users are residences.[15] Towns serving 500 to 5,000 customers usually have major commercial users and, therefore, should have two blocks. Systems with more than 5,000 customers typically have industrial customers, thereby requiring a third block. These guidelines, however, are flexible. The AWWA notes that water systems serving 500 to 5,000 customers may need a third block for industries. Further, some towns may serve well over 5,000 customers yet still be residential in makeup, thus needing only one block.[16] Moreover, while the AWWA recommends three blocks for large systems, this guideline also is flexible, for the number of blocks should be dictated by the number of customer classes with materially different costs of services. For example, large cities sometimes add blocks for classes such as multifamily housing units and light and heavy industry.

According to census figures the typical North Carolina household has 2.46

individuals.[17] Therefore cities with a population of up to 1,230—that is, 500 customers (households) times 2.46 individuals per household—generally should have a single block. Towns with a population between 1,231 and 12,500 should have two blocks. And those with a population greater than 12,500 should have three blocks.

Table 2 indicates that relatively few towns in North Carolina follow these norms: forty-five towns (56 percent) have more than the recommended one block, eighty-six cities (96 percent) have more or less than the suggested two blocks, and nineteen communities (70 percent) have more or less than the prescribed three blocks. The tendency in all three groups is to have more blocks than recommended. One can only speculate as to why. The AWWA's guidelines are intended to be flexible, which undoubtedly accounts for some of the disparity but does not explain why such a large number of towns in the 0 to 1,230 and the 1,231 to 12,500 population groups have so many blocks. Perhaps these extra blocks have been added over time to give cost reductions to specific businesses or types of businesses. Whatever the reason, communities differing from the AWWA's norms should closely examine the rationale for each block and adjust the number of blocks where no justification is found.

Table 2
Number of Blocks Used in Declining Rate Structures for Water Service in North Carolina Systems

Number of Blocks	Population: Under 1,231	1,231–12,500	Over 12,500
One	36	37	6
Two	8	4	6
Three	11	9	8
Four	8	10	4
Five	7	7	2
Six	3	11	—
Seven	4	10	1
Nine	3	—	—
Twelve	1	2	—
Total	81	90	27

Source: Data were derived from North Carolina League of Municipalities, *Water and Sewer Rates*, Report No. 207 (Raleigh, N.C.: 1986).

Note: Data on twelve of the surveys were confusing; therefore the number of blocks could not be determined. The figures in color indicate the number of systems having the number of blocks recommended by the American Water Works Association.

Outside-the-city rates. According to Table 3, 113 of the 210 communities serve customers who live outside of the city limits. To charge a fair rate for outside service, cities should make a detailed cost analysis of the costs of providing water outside versus inside the city. The method most often used is to prorate the outside-the-city customer's share of the cost of the system's capital assets and debt service. Relatively few cities, however, have the expertise to make such an analysis and, therefore, must pay a consultant to perform a study.[18] Because studies are expensive and the number of customers served outside the city is only 5 to 10 percent of the total customers, the rate is often determined by subjective means rather than by a consulting study.[19]

In deciding what to charge outside customers, cities may consider both economic and political factors. Cost-of-service is the key economic consideration. The cost of serving outlying areas may be higher for two reasons. Problems with water pressure magnify as water is pumped greater distances, thereby creating a greater need for pumping and storage capacity for towns having one centrally located water plant. However, the cost may not be greater, and may even be less, in communities that have one or more treatment plants on the outside perimeter of the city or outside of the town boundaries.

The cost of serving outside customers also may be greater if towns have incurred significant capital costs in constructing treatment facilities and in extending lines outside the city. But care must be taken in automatically assuming increased costs: capital costs of constructing treatment plants and lines may be largely or totally amortized; users may have paid for extension costs either by a special assessment based on property length or by a tap-on fee charged when the user was hooked up to the system; and construction costs may have been defrayed through federal and state grants. Furthermore, 40 percent of cities' revenue from the 1 percent local sales tax must be expended for water and sewer purposes. This means that outside users help to pay for cities' water and sewer costs through their sales taxes.

Political reasons may also explain, but not necessarily justify, rate-setting policies. For example, higher outside-the-city rates mean that inside-the-city rates can be set lower, which may be a very desirable political end for local elected officials. Not only can inside rates be set lower, but cities may be able to create fund surpluses that can be transferred to the general fund, thus lowering property taxes. Finally, high rates can make annexation more attractive to residents of unincorporated areas because their rates would be reduced to the city rate after annexation.

Finally, irrespective of either economic or political considerations, some cities may set their rates simply by charging rates comparable to those of other towns in their local area.

Table 3 shows that most cities (55 percent) charge 200 percent of the inside-the-city rate for water and sewer services. The next most common charge is 150 percent; 19 percent of the cities make this charge for both water and sewer services. Town officials should reflect on whether these and other charges are too high or too low. For example, if the objective is to charge for the cost of service, rates of 200 percent and more should be analyzed to ensure that they are not too high. One very experienced rate consultant finds that upon empirical analysis the cost of serving outside areas is about 150 percent of the inside-the-city rate.[20] However, some cities' rates may be too low. For example, the fifteen cities that charge the same rate (see Table 3) should examine whether it is sufficiently high.

Setting sewer rates. Ideally, water and sewer services should be metered separately to price each service exactly. However, because separate metering is costly, cities with descending water

Table 3
Water Rates Charged to Outside Customers

Rate As a Percentage of City Rate	Number of Systems	Percentage of Total
100	15	13
101–149	7	6
150	21	19
151–199	6	5
200	62	55
200 +	2	2
Total	113	100

Source: Data were derived from North Carolina League of Municipalities, *Water and Sewer Rates*, Report No. 207 (Raleigh, N.C.: 1986).

Table 4
Sewer Rates As a Percentage of Water Bills in Ninety-Two North Carolina Systems

Percentage Charges	Number of Systems	Percentage of Total
40–50	10	11
51–60	3	3
61–70	10	11
71–80	7	8
81–90	11	12
91–100	29	31
101–110	2	2
111–120	2	2
120 +	18	20
Total	92	100

Source: Data were derived from North Carolina League of Municipalities, *Water and Sewer Rates*, Report No. 207 (Raleigh, N.C.: 1986).

rates charge for sewer service by applying a specified percentage of the water bill. In theory, the percentage charged should be determined by means of a cost analysis of actual sewage expenses. In practice, however, most cities simply apply an arbitrary percentage. In the 1950s and 1960s the percentage typically was 50 percent of the water bill.[21] When Congress passed the Clean Water Act, cities had to improve their sewer systems to adhere to legislated water-quality mandates. As sewage costs increased, the charge as a percentage of water bills also increased. After 1977, of course, if EPA funds were received, a uniform sewage rate was used, and sewage operations became self-supporting.

Empirical studies show that sewage expenses generally are about 100 percent of water costs.[22] In some instances, the actual expense is even greater because of the high cost of treating sewage. How do North Carolina cities compare to this general norm? As shown in Table 4, twenty-two cities (24 percent) charge rates over 100 percent; most of these charges fall into the category of 120 percent or more. Most cities (31 percent) charge 91 to 100 percent, with twenty-four cities (26 percent) charging an even 100 percent. Forty-one cities (45 percent), however, charge 90 percent or less.

Recommendations

Communities that use the declining block method and are not familiar with the other three rate approaches should evaluate the possible benefits of changing structures. Town officials might contact other cities with uniform, ascending, or seasonal rates to see what their experiences have been. The economic and political arguments for declining blocks should be weighed against the benefits of increased water conservation and the greater ease of administering a uniform rate. Also, the strategies presented here for countering resistance from the business community should be considered if a change is warranted.

Communities deciding to stay with declining block structures that deviate from the AWWA's recommendations regarding the number of blocks should determine if their blocks reflect justifiable exceptions set forth by the AWWA. If not, cities should increase or decrease their number of blocks so that only one block exists for each class of customer.

Finally, data suggest that some towns are not charging accurately for sewer service or for water service provided to customers living outside the city limits. Cities should reexamine the rationale for these rates. ❖

Notes

1. A number of the water and sewer systems are operated by special district authorities and by counties, but for the sake of convenience, all systems are referred to as either cities, towns, or communities.

2. Robert L. Greene, *Guidelines for Investment and Pricing Decisions of Municipally Owned Water Utilities* (Athens, Ga.: Institute of Government, University of Georgia, 1970), 39.

3. American Water Works Association, *Water Rates Manual*, 3d ed. (Denver: AWWA, 1983), 41.

4. Jack E. Washburn, "Critique on User Charges under the Federal Water Pollution Control Act," in *North Carolina Conference on Water Conservation* (Raleigh, N.C.: Water Resources Research Institute, 1975), 60.

5. Steve H. Hanke, "Water Rates: An Assessment of Current Issues," in *The State of America's Drinking Water* (Raleigh, N.C.: Water Resources Research Institute, 1974), 201.

6. Fred P. Griffith, "An Innovative Approach to Rate-Setting," in *Resources Management Book* (Denver: American Water Works Association, 1979).

7. The 60 percent figure is an estimate. Thus it is not possible to say how representative the sample is. As shown below, compared to the number of small cities in the state, small systems appear to be somewhat underrepresented. However, many of these small towns do not have water or sewer systems, which mitigates the amount of underrepresentation.

	Population		
Type of Unit	Under 1,231	1,231–12,500	Over 12,500
Cities	58%	32%	10%
Systems	41%	45%	14%

8. Only five systems with uniform rates are discussed. The sixth, Jacksonville, had no industries to oppose the change, although it does have a sizeable military base that uses large amounts of water. According to city manager Pat Thomas, the city imposed a uniform rate in 1982 to promote water conservation on the base.

9. Henry Forest, Charlotte chief of treatment operations, telephone conversation, 20 November 1986.

10. Tom McIntosh, Asheboro city manager, telephone conversation, 20 November 1986; Harvey Mathias, former Salsibury city manager, telephone conversation, 21 November 1986.

11. McIntosh and Mathias.

12. Gary McConkey, Cary finance director, telephone conversation, 1 December 1986.

13. David Moreau, former member of the OWASA governing board, personal interview, 17 February 1987.

14. Rick Beasley, Scotland Neck city manager, telephone conversation, 26 November 1986; Jeff Kingsley, Manteo city manager, telephone conversation, 26 November, 1986.

15. *Water Rates Manual*, 66.

16. *Water Rates Manual*, 66.

17. U.S. Bureau of the Census, 1980 *Census of Housing Characteristics* (Washington, D.C.: Government Printing Office, 1980), tab. 1.

18. George Raftelis, national director of Arthur Young & Company's Environmental Consulting Group, telephone conversation, 25 November 1986.

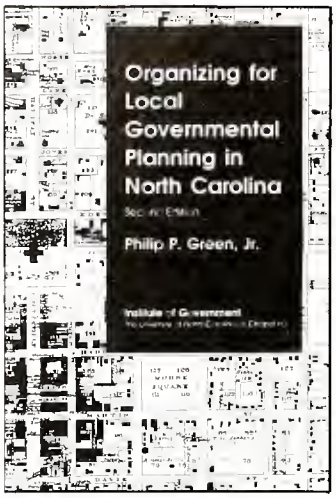
19. David Reynolds, director of the North Carolina League of Municipalities, telephone conversation, 15 May 1987.

20. Raftelis.

21. Raftelis.

22. Raftelis.

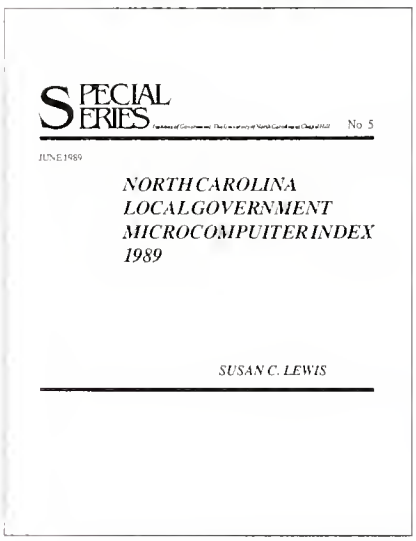
Off the Press



Organizing for Local Governmental Planning in North Carolina, Second Edition

Philip P. Green, Jr.

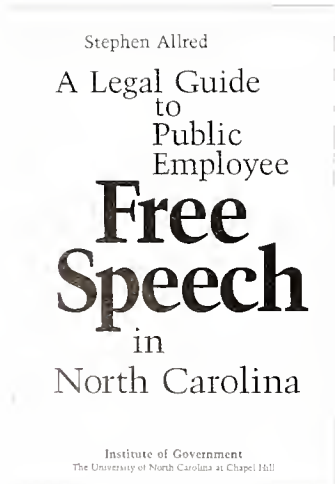
This book outlines the many choices available to local officials as they develop an organizational stucture to carry out a planning program. It sets forth in detail the responsibilities that might be assigned to the governing board, various part-time boards, and permanent staff. It also includes some considerations that may affect the final structure. [89.06]



North Carolina Local Government Microcomputer Index, 1989

Susan C. Lewis

This report presents the results of a 1989 survey by the Computer Technology for Local Governments Program, which compiled information from 392 local government departments about their use of microcomputers. The publication lists applications, software and hardware used, and a contact person in each department for more information. $11.50 [Special Series No. 5]



A Legal Guide to Public Employee Free Speech in North Carolina

Stephen Allred

This monograph examines the legal principles governing the First Amendment right of public employees to speak on matters of public concern and the right of public employers to maintain an efficient workplace. Written for lawyers and nonlawyers alike, it is designed to provide an understanding of the legal framework in which free speech issues are decided by the courts. $7.00 [89.02]

Orders and inquiries should be sent to the Publications Office, Institute of Government, CB# 3330 Knapp Building UNC–CH, Chapel Hill, NC 27599-3330. Please include a check or purchase order for the amount of the order plus 5 percent sales tax. A complete publications catalog is available from the Publications Office on request. (919) 966-4119.

New Rate Plan for Automobile Liability Insurance

Ben F. Loeb, Jr.

The 1987 General Assembly enacted legislation mandating certain changes in the North Carolina automobile insurance laws, including a revision of the point system contained in the Safe Driver Insurance Plan (SDIP).[1] Section 17 of Chapter 869 provides that the new plan becomes effective six months after approval by the North Carolina commissioner of insurance. The commissioner approved the plan on November 15, 1988, making it effective (for most purposes) on May 15, 1989. The provisions of the SDIP apply to "premiums for bodily injury liability, property damage liability, medical payments, fire, theft, combined additional coverage, comprehensive and collision coverages." However, the material that follows will be limited to a discussion and analysis of liability insurance provisions because that is the only kind of automobile insurance required by law in North Carolina. Except as otherwise noted, all material in this article is derived from the *North Carolina Personal Auto Manual* (hereinafter the *Auto Manual*).[2]

Insurance Points

A major factor in determining how much a motor vehicle owner pays for insurance coverage is the number of insurance points on the driving record of the insured owner (or members of the owner's household). The new schedule of points for various "moving violations" and accidents (as continued in Rule 5 of the *Auto Manual*) is set out on page 47. Please note that insurance points are completely different from driver license points, which are used by the North Carolina Division of Motor Vehicles for the purpose of revoking licenses.

Some violations are not considered moving violations for purposes of the SDIP. These are lack of an adequate muffler, improper lights or other equipment (except for brakes), failure to sign or display a registration card, failure to display a license plate, failure to have possession of a driver's license (as long as there is one in existence), and failure to display a current inspection certificate.

In addition, no points are assigned in the case of an accident when (1) the automobile was lawfully parked; (2) the policyholder is reimbursed by the person responsible for the accident or has a judgment against that person; (3) the automobile was struck in the rear by another vehicle, and the policyholder was not convicted of a moving violation in connection with the accident; (4) the operator of the other automobile involved in the accident was convicted of a moving violation, and the policyholder was not; (5) the policyholder's automobile was struck by a hit-and-run vehicle, provided that the accident was reported to the proper authorities within twenty-four hours; (6) the accident involved damage from contact with animals or fowl; or (7) the accident involved physical damage limited to that caused by flying gravel, missiles, or falling objects. The new SDIP also provides that points cannot be assigned for both an accident and a violation arising out of the same occurrence. When both occur, only the higher number of points will be assigned.

A few of the words and terms used in the SDIP need explanation. The word

The author is an Institute of Government faculty member whose fields include motor vehicle law.

conviction means a conviction as defined in Chapter 20, Section 279.1 of the North Carolina General Statutes, including a plea of guilty or nolo contendere; a prayer for judgment continued (PJC); and a forfeiture of bail or collateral deposited to secure appearance in court, unless the forfeiture has been vacated. The new SDIP does not impose points for a PJC unless the vehicle owner or a licensed operator in the owner's household has a driving record consisting of a PJC for a moving violation during the past three years.[3]

Clean risk is defined as any motor vehicle owner if the owner, principal operator, and each licensed operator in the owner's household have two years driving experience and no chargeable accident or conviction of a moving violation for a three-year period.[4] Thus a person who has no insurance points on his or her record still does not qualify as a clean risk driver if the person has received a PJC, has been convicted of speeding less than ten miles per hour over the limit, or is classified as an inexperienced operator. If assigned to the Reinsurance Facility (see below), such a person will have to pay the facility rate rather than the regular (and lower) base rate.

For purposes of the new SDIP, a *moving traffic violation* includes an *infraction*, and the phrase *at-fault* means negligent. No points are assigned for accidents when the operator of an insured vehicle is free of negligence. The *experience period* is the three years immediately preceding the date of application for or preparation of renewal of the policy; and SDIP points are applied to a policy "for a period of not less nor more than three policy years." The SDIP surcharge is, in effect, placed on the car with the "highest total base premium".

Table 1 shows the percentage increase in insurance costs under the old SDIP and the new.

Table 1
Percentage Increase in Premiums on Basis of Points

SDIP Points	Old Percentage Surcharge	New Percentage Surcharge
1	10	15
2	40	40
3	70	65
4	100	90
5	130	120
6	170	150
7	210	180
8	250	220
9	300	260
10	350	300
11	400	350
12 or more	450	400

Age and Sex

By enacting G.S. 58-30.3, the 1975 session of the North Carolina General Assembly prohibited insurance companies from basing any automobile insurance rate upon the age or sex of the person insured. However, an exception was made for inexperienced drivers, who were originally defined as those having less than two years experience as licensed drivers. Rule 4G of the *Auto Manual* has expanded the definition of *inexperienced operator* to include those with less than three years of driving experience. This surcharge will be applied to the automobile most frequently used rather than to the one with the highest total base rate. For most drivers, the surcharge has been applied from age sixteen to age eighteen (now nineteen), but the same rule would be applicable to a fifty-year-old if the person had no previous driving experience. (Covering an inexperienced driver can at least double the cost of insurance.)

The Reinsurance Facility

A major factor affecting the cost of insurance is whether a policy has been transferred to the North Carolina Motor Vehicle Reinsurance Facility. The Reinsurance Facility is a nonprofit legal entity consisting of all insurers engaged in writing motor vehicle insurance in North Carolina. Its purpose is to provide liability insurance for drivers or vehicle owners whom companies do not wish to insure as part of their regular (voluntary) business. In brief, it is a method of transferring the risk of loss from the individual insurance company to all insurance companies.[5]

North Carolina law does not specify which individuals are to be assigned to the facility. If an applicant for motor vehicle insurance is, for some reason, considered an undesirable risk, a company may assign the applicant to the facility even though the person has a clean driving record. In other words, it is possible for a person who has never received a traffic citation (or had an automobile accident) to be transferred to the facility. Obviously those with bad driving records are prime candidates for the facility, but a company may transfer anyone it considers a bad risk for any reason. Reportedly, young drivers, the elderly, and some occupational groups often fall within this category. There is no appeal, but the applicant may seek coverage with another company.

Because the facility has many high risk drivers, it is allowed to set a higher rate than is allowed in the voluntary market. In the 1970s, this rate was only slightly more, but by 1989, rates for drivers in the facility who also had insurance points were 61 percent higher. *However, drivers assigned to the facility who are clean risk drivers pay the same as other policyholders with clean driving records.* An insurance company is not required to inform a policyholder that the policy has been transferred to the facility unless the assignment results in an increase in premium.[6]

Recoupment Surcharge

Even higher rates have not been enough to prevent the Reinsurance Facility from sustaining financial losses. These losses have been recouped by putting an additional surcharge on all drivers with insurance points, whether or not they were in the facility.[7] The current recoupment surcharge is 41 percent, and it is added to the surcharge for insurance points.

This surcharge has been politically unpopular for years, and the 1987 Gener-

al Assembly made major revisions when it enacted Chapter 869. A new statute exempts convictions for minor moving violations from the recoupment surcharge.[8] Nevertheless, the policyholder still will be subject to the comparatively smaller SDIP surcharge for points. To qualify for the exemption, the policyholder must not have caused an accident at the time of the violation, and everyone insured by the policy must have a clean driving record for the preceding three years. The recoupment surcharge will continue to apply to at-fault accidents. Those major violations that will continue to be subject to the recoupment surcharge (as set out in G.S. 58-124.33) are as follows:

1) Being impaired while accompanying a permittee who is learning to drive;
2) Driving while one's license is suspended or revoked;
3) Driving a vehicle while impaired, including driving a vehicle while under the influence of intoxicating liquor or narcotic drugs, and driving a vehicle with a blood alcohol level of 0.10 percent or more;
4) Driving by provisional license (person under age eighteen) after consuming alcohol or drugs;
5) Driving carelessly and heedlessly in willful or wanton disregard of the rights of others;
6) Driving without due caution in a manner so as to endanger other people or property;
7) Driving at least eleven miles per hour over the posted speed limit;
8) Speeding in excess of a legal speed limit of sixty-five miles per hour;
9) Driving in excess of fifty-five miles per hour and at least fifteen miles per hour over the legal limit, while fleeing or attempting to elude arrest by a law enforcement officer;
10) Driving more than fifteen miles per hour over the legal limit;
11) Speeding in a school zone;
12) Engaging in a prearranged speed competition with another motor vehicle;
13) Willfully engaging in a speed competition with another motor vehicle (not prearranged);
14) Allowing or authorizing others to use one's motor vehicle in a prearranged speed competition or placing or receiving a bet or wager on a prearranged speed competition;
15) Death by vehicle (unintentionally causing the death of another while engaged in impaired driving);
16) Death by vehicle (unintentionally causing the death of another as a result of a violation of a motor vehicle law intended to regulate traffic or used to control the operation of a vehicle);
17) Failure to stop by a driver who knew or should have known that he or she was involved in an accident and that the accident caused death or injury to any person;
18) Failure of a driver involved in an accident causing property damage or personal injury or death (if the driver did not know of the injury or death) to stop at the scene of an accident;
19) Failure to yield the right-of-way to a blind person at crossings, inter-

Number of Insurance Points per Violation or Accident

Violations

12 points
- Manslaughter (or negligent homicide)
- Prearranged racing (or lending a motor vehicle to be used in such a race)
- Hit-and-run (with bodily injury or death)
- Driving while impaired or with a blood alcohol level of 0.10 percent or more
- Transportation of illegal liquor for sale

10 points
- Racing that is not prearranged (or lending a vehicle for the race)

8 points
- Driving while one's license or registration is revoked or suspended

4 points
- Hit-and-run (property damage only)
- Reckless driving
- Passing a stopped school bus
- Speeding in excess of 75 MPH

2 points
- Illegal passing
- Speeding between 66 MPH and 75 MPH when the posted limit is 65 MPH
- Speeding more than 10 MPH over the posted limit (provided total speed was in excess of 55 MPH but less than 76 MPH)
- Speeding between 56 MPH and 65 MPH when the posted limit is 55 MPH[a]
- Following too closely
- Driving on the wrong side of the road

1 point
- Speeding 10 MPH or less in excess of a posted speed limit of less than 55 MPH[a]
- Any other moving violation

Accidents

3 points
- An at-fault accident resulting in bodily injury or death or in total damage to all property (including the insured driver's) of $2,000 or more

2 points
- An at-fault accident resulting in total damage to all property (including the insured driver's) in excess of $1,000 but less than $2,000

1 point
- An at-fault accident resulting in total damage to all property (including the insured driver's) of $1,000 or less

[a]With respect to the 56 MPH to 65 MPH violations and those involving speeding 10 MPH or less when the posted limit is less than 55 MPH, the points are not assessed unless the *same driver* has also been convicted of at least one other moving violation during the experience period (last three years). This exemption does not apply to convictions of speeding in a school zone in excess of the posted school-zone speed or if the speed exceeds 65 MPH.

sections, and traffic control signal points;
20) Failure to stop and remain stopped when approaching a stopped school bus engaged in receiving or discharging passengers and while the bus has a mechanical stop signal displayed;
21) Voluntary manslaughter; or
22) Involuntary manslaughter.

In addition to eliminating minor offenses from the recoupment surcharge, the 1987 General Assembly enacted a new statute that will phase out this surcharge over a period of five years.[9] Starting July 1, 1988, the recoupment surcharge is being decreased by 20 percent a year until it is eliminated entirely on June 30, 1992. In lieu of this surcharge, the Reinsurance Facility losses will be allocated among all motor vehicle policies. The net effect of this provision is that policyholders with insurance points probably will be paying proportionately less for their insurance and policyholders with clean driving records will be paying proportionately more.

Calculation of Rate Increase

A policyholder who has insurance points and has been assigned to the Reinsurance Facility pays a great deal more for the same coverage than a clean risk driver. To illustrate by means of a worst-case scenario, suppose a motorist is paying only $100 per year for basic minimum liability insurance when convicted of driving while impaired. In all likelihood the policy will be transferred to the Reinsurance Facility, and for the next three years the policyholder's insurance will be calculated as follows:

1) The basic cost will rise from $100 to $161 because the facility rate is 61 percent higher than the regular base rate.
2) This $161 will be increased by 400 percent (twelve insurance points) because of the driving-while-impaired conviction, for a total of $805.
3) The recoupment surcharge of 41 percent will be added to the $805, for a total of $1,135.

Thus this driver will be paying more than $1,100 for the same coverage that previously cost $100—an increase of more than 1,000 percent. Of course, few motorists pay just $100 a year for their liability insurance coverage. A much more likely scenario would be an increase from $200 to $2,270 or from $300 to $3,405. It should be emphasized that two of the factors affecting this calculation change annually and that although the recoupment surcharge is going down, the Reinsurance Facility rate appears to be going up.

Summary of Changes

The following major changes have been made in the liability insurance rate system:

1) The SDIP point system has been revised. For example, one point now carries a 15 percent surcharge (instead of 10 percent) and a driving-while-impaired conviction carries twelve points (instead of ten).
2) The term *inexperienced driver* has been expanded to include those with less than three years of driving experience (formerly two years).
3) The former law that exempted speeding violations of ten miles per hour or less has been amended to provide that no one speeding in excess of sixty-five miles per hour will be entitled to the exemption.
4) The recoupment surcharge (now 41 percent) will be phased out over a five-year period ending June 30, 1992.
5) There will be an exemption from the SDIP and recoupment surcharges for one prayer for judgment continued per household every three years.

Effective Date

Most of the changes discussed above will apply to all new and renewal policies written on or after May 15, 1989, and to all policies written before May 15 that will become effective on or after July 1, 1989. No policy effective before May 15 may be endorsed, cancelled, or rewritten to take advantage of or to avoid the application of these changes (except at the request of the policyholder). ❖

Notes

1. 1987 Sess. Laws 869
2. Raleigh N.C.: Insurance Services Office, 1988.
3. N.C. Gen. Stat. § 58-124.33(f). Hereinafter the General Statutes will be cited as G.S.
4. G.S. 58-248.33(l).
5. G.S. 58-248.27.
6. G.S. Ch. 58, Art. 25A.
7. G.S. 58-248.34 and -248.41.
8. G.S. 58-124.33
9. G.S. 58-248.41

Around the State

Local Spending Responses to State Aid for School Construction

Charles D. Liner

Institute of Government

In North Carolina the state government pays the operating costs needed to provide a standard course of study in the public schools, but county governments are responsible for providing and maintaining school buildings (they also supplement state operating funds). Since 1983, however, the General Assembly has approved three major initiatives intended to increase school construction spending by providing increased financial resources for local units. These initiatives were in addition to the land-mark Basic Education Program enacted in 1985, which defines the standard course of study that should be provided to every child in the state and makes the state government responsible for operating costs incurred in providing it. When the program is completely phased-in during the 1992–93 school year, it will have increased state appropriations by $800 million per year and will have added thousands of teachers and other school employees.

The General Assembly has approved the following school construction initiatives since 1983:

- In 1983 the General Assembly authorized a one half cent local-option sales tax (in addition to the existing one cent tax).[1] Because this additional tax was authorized in part to help local units cope with a reportedly huge backlog in school construction needs, the law required that a certain percentage of the tax proceeds received by county governments be used for school construction or for paying off school bonds (proceeds received by cities were similarly restricted for water and sewer facility construction).[2]
- In 1986 the General Assembly authorized an additional one half cent local-option sales tax and required that a share of the proceeds be used for school construction or school debt service.[3]
- In 1987 the School Facilities Finance Act provided additional funds for school construction that are expected to exceed $800 million over a ten-year period.[4] That amount was financed mainly by an increase in the corporate income tax rate. In addition, the act required counties to continue allocating 60 percent of distributions from the one half cent retail sales tax authorized in 1986 for the first eleven years the tax is in effect (under the 1986 law, the required percentage would have decreased during that period). Under this initiative all counties receive school construction funds according to average daily membership in the county through the Public School Building Capital Fund. Additional funds are awarded to school units from the Critical School Facility Needs Fund for approved projects in counties with needs that are most critical in relation to available financial resources.

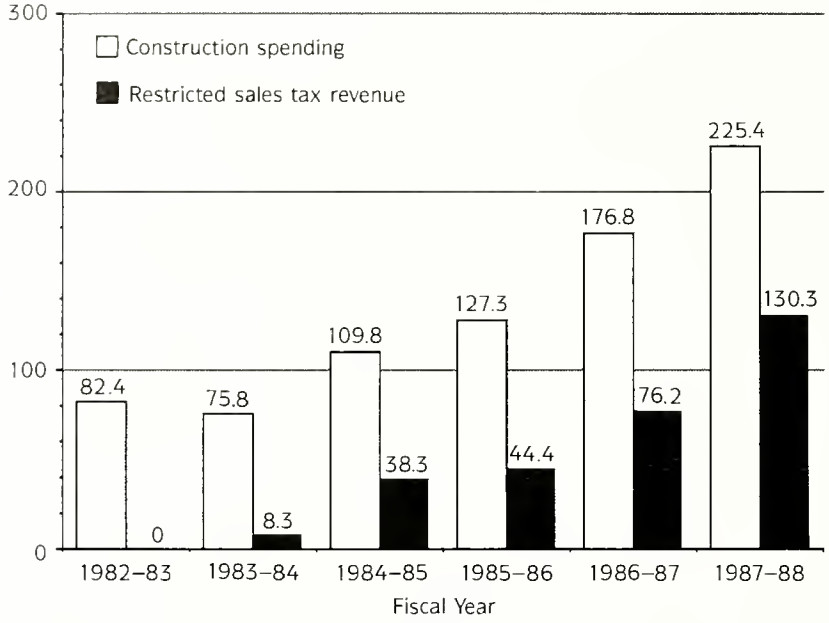
From the time the first sales tax increase was authorized in 1983, legislators and school officials have been concerned that counties might respond to the additional funds by reducing spending from other local revenue sources. The legislature expressed this concern formally in the 1986 statute that authorized the second increase in sales tax. It contained a provision that said, "It is the purpose of this Article for counties to appropriate funds generated under this Article to increase the level of county spending for public elementary and secondary school capital outlay (including retirement of indebtedness incurred by the county for this purpose) above and beyond the level of spending prior to the additional tax . . ." [G.S. 105-503(a)].

The legislature also indicated this concern in a provision that requires the Local Government Commission of the Department of State Treasurer to provide information on county revenue and spending to the General Assembly. The commission's report of January, 1989, provides this information.[5] (The information is reported by county, not by school administrative unit. Therefore it is not possible to analyze spending in city and county school units separately).

The commission's report allows us to examine how local spending has changed during this period of increased state aid for school construction. The report does not provide a total picture, however, because as of fiscal year 1987–88 only a small amount of moneys had been distributed from the funds established by the 1987 initiative. Therefore the following analysis deals primarily with the additional revenue from the local option sales taxes. The report also does not provide complete information on public school construction spending, because it does not distinguish between county spending financed by current revenue, by borrowing, and by use of funds deposited earlier in reserve funds. (We did not attempt to analyze whether each county was fulfilling the intent of the law.)

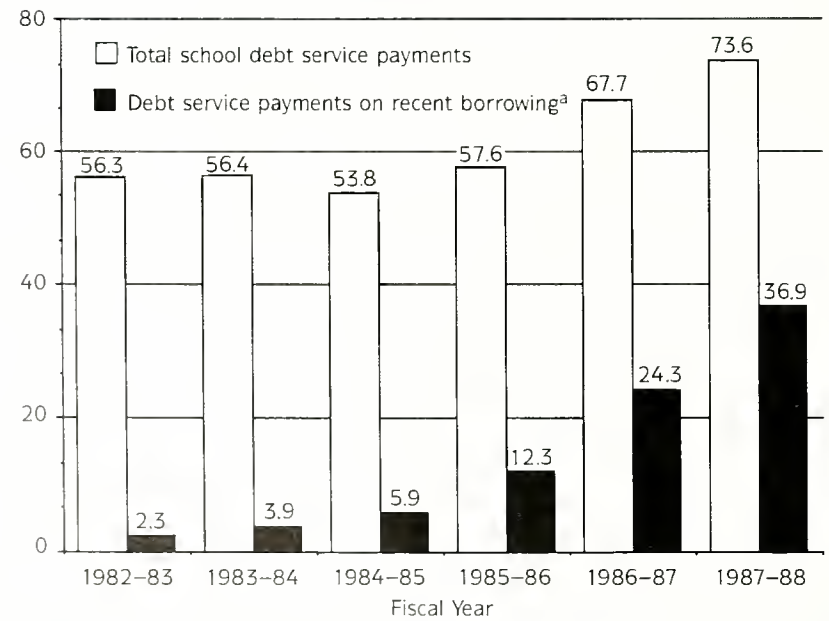
For all 100 counties combined, Figure 1 shows the amount of sales tax revenues restricted for school construction purposes, from fiscal year 1983–84, when some of the counties began receiving these revenues, through fiscal

Figure 1
Sales Tax Revenue Restricted for
School Construction and School Construction Spending,
100 North Carolina Counties
(in Millions of Dollars)



Source: N.C. Local Government Commission, "Report on County Spending for Public School Capital Outlay" (Dept. of State Treasurer, Raleigh, 24 January 1989).

Figure 2
School Debt Service Payments,
100 North Carolina Counties
(in Millions of Dollars)



Source: N.C. Local Government Commission, "Report on County Spending for Public School Capital Outlay" (Dept. of State Treasurer, Raleigh, 24 January 1989).

[a]Borrowing since the five years before the levy of the sales tax authorized in 1986.

year 1987–88. During this period the amount of restricted sales tax distributions received by the counties totaled $297.5 million. The annual amount of restricted revenues increased from nothing in 1982–83 to $130.3 million in 1987–88.

How much did local units spend directly on school construction from 1983–84 to 1987–88? They spent a total of $715.1 million, or 2.4 times the amount of restricted revenue they received during the same period. In all but nineteen counties the amount spent directly on school construction exceeded the amount of restricted sales tax distributions. Of the counties that spent more than they received, fifty-eight spent at least 50 percent more, thirty-nine spent more than twice as much, and eighteen spent more than three times as much. Although nineteen counties spent less than they received, in eight of those counties the amount of capital outlay plus the net addition to school capital reserve funds for the period 1985–86 to 1987–88 exceeded the amount of restricted revenue they received, and three of the other units borrowed substantial amounts for school construction (as indicated by significantly increased debt service payments).

As Figure 1 shows, capital spending from current revenues increased from $75.8 to $225.4 million between fiscal years 1983–84 and 1987–88, a difference of $149.6 million. Subtracting the amount of restricted sales tax revenue received in 1983–84 and 1987–88 reveals a 41 percent increase in capital spending from counties' own revenue sources.

The Local Government Commission's report contains information on contributions to capital reserve funds only for fiscal years 1985–86 through 1987–88. For those years, net contributions to capital reserve funds amounted to $53.1 million in the sixty-five counties where such contributions were made. Thus the net increase in reserve funds for those three years plus the direct spending for school capital outlay from 1983–84 to 1987–88 totaled $768.2 million, or 2.6 times the amount of restricted sales tax distributions received by counties. In ninety-one of the counties, the amount of net contributions to reserve funds plus direct spending from current revenues during the 1983–84 to 1987–88

period was greater than the amount of restricted sales taxes received during that period. And in forty-six counties that amount exceeded restricted sales tax distributions by a factor of two or more.

Local units may "leverage" their sales tax receipts by borrowing money to build new schools and using the receipts to make debt service payments. As noted, the report does not include information on the amount of school construction financed this way, but it does provide information on debt service payments on bonds issued since five years before the levy of the second one half cent sales tax (which we will call recent borrowing). The report shows that in twenty-five counties there were substantial increases in debt service payments between 1983–84 and 1987–88. And in six other counties there were significant amounts of debt service payments on recent borrowing.

This evidence of increased borrowing for school construction is bolstered by recent figures on school bond referenda. During the year ending June 30, 1987, voters approved total borrowing of $108 million in six local bond referenda; the following year, voters approved total borrowing of $341 million in eleven bond referenda.[6]

As shown in Figure 2, total debt service payments in all counties combined increased from $56.4 million in 1983–84 to $73.6 million in 1987–88, a difference of $17.2 million. However, debt service payments on recent debt increased from $3.9 million in 1983–84 to $36.9 million in 1987–88, a difference of $33 million. Still, in sixty-nine counties there was no debt service on such recent borrowing, indicating that most counties are not using bond financing to meet the documented backlog in school construction needs.

As noted above, most funds from the 1987 school construction initiative had not been distributed in fiscal year 1987–88. Therefore the capital outlay figures cited above do not include spending from this new source of funds. However, the report shows that $79.7 million has now been allocated to counties for 1987–88 from the Public School Building Capital Fund, which is expected to provide about $645 million over a ten-year period. These funds must be matched by one dollar of local funds for every three dollars of state funds. In addition, a total of $119.9 million was awarded for 1987–88 to twenty-nine counties from the Critical School Facility Needs Fund for approved projects (although funds were not distributed until fiscal year 1988–89). The amount of funds from that source is expected to total about $185 million over a ten-year period.

Thus it appears that state aid for local school construction has resulted in substantial increases in spending for school construction, in increases in reserve funds for future construction, and in increased borrowing for school construction. These increases are especially noteworthy in view of the fact that, according to the commission's report, county appropriations for current expenses increased by 53 percent between fiscal years 1983–84 and 1987–88. ❖

1. N.C. Gen. Stat. Ch. 105, Art. 40. Because this measure was, at least in part, a response to demands for state assistance for school construction, collections from the tax are allocated to counties according to their population (whereas collections from the 1 percent tax are returned to the county where they are collected) before being divided among the county government and municipalities in the county.

2. As originally adopted, for the first five years the tax is in effect, counties are required to allocate 40 percent of the proceeds for school capital outlay or for debt service on public school bonds; for the second five years they are required to allocate 30 percent for these purposes.

3. N.C. Gen. Stat. Ch. 105, Art. 42. Collections are distributed in the same manner as collections from the first ½ percent tax.

4. 1987 N.C. Sess. Laws 622.

5. N.C. Local Government Commission, "Report on County Spending for Public School Capital Outlay" (Dept. of State Treasurer, Raleigh, 24 January 1989).

6. From annual reports of the state treasurer.

Compromising Taxes on Discovered Property: An Unconstitutional Statute?

William A. Campbell
Institute of Government

The North Carolina property tax law sets out an elaborate procedure for listing and assessing property that was not listed during the regular listing period (usually the month of January).[1] Property listed under G.S. 105-312 is categorized as "discovered" property. After the county assessor has listed and appraised the property and the property owner has exhausted any appeals to the discovery that he or she wishes to pursue, taxes on the property are computed and a late-listing penalty is added to the taxes. The penalty is 10 percent for each year's listing period that the property was not listed. Thus, if property is discovered for one year, the penalty is 10 percent, if it is discovered for two years, the penalty is 20 percent, and so on. The maximum period for which property can be discovered is the current year plus the preceding five years.

After the assessor computes the total amount, prepares the tax receipt, and charges it to the tax collector, the taxpayer may petition the governing board of the taxing unit to "compromise" the tax. This compromise authority allows the board to release any portion of the total tax bill that is legally due. The statute that authorizes this compromise, G.S. 105-312(k), reads as follows:

> (k) Power to Compromise.—After a tax receipt computed and prepared as required by subsections (g) and (h), above, has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county commissioners, [subsection (l) extends this authority to municipal governing boards] upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising therefrom. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the

board of equalization and review, including any board created by resolution pursuant to G.S. 105–322(a) and any special board established by local act.

Three aspects of this statute are significant in considering its possible constitutional deficiencies. First, the power granted to the governing board is not authority to settle a disputed claim for the tax: at this stage of the proceedings the value of the property and the amount of the tax have been established and are not in dispute. Second, the governing board is authorized to compromise the principal amount of the taxes; it is not restricted to a compromise of the late-listing penalty. And third, there are no standards—absolutely none—to guide the governing board in exercising this compromise authority. In the absence of standards, a governing board is free under the statute to treat petitions from three different taxpayers, each owing $10,000 in taxes and penalties on discovered property, in three entirely disparate ways. The board could refuse to make any compromise in the first case, compromise only the penalty in the second case, and compromise the tax and penalties to $1.00 in the third case, based on whatever the board finds to be good policy.

The governing board's compromise authority in the case of discovered property has been in the property tax law for a respectably long time. It first appeared in the Machinery Act of 1935,[2] was carried over unchanged in the Machinery Act of 1939,[3] and was continued with no substantive changes in the Machinery Act of 1971. During this fifty-four year history, only one reported case has considered the application of the statute, and that case did not challenge its constitutionality.[4] But this untroubled history will not preserve the statute if an appropriate challenge is brought. A taxpayer denied a compromise of a tax claim when other taxpayers have received compromises would be sufficiently affected by the board's action (that is, "have standing") to challenge the statute's constitutionality, as would a taxpayer who received less of a compromise than another taxpayer in similar circumstances.

Consider, for example, the case of two taxpayers who fail to list their motor vehicles. The county assessor discovers the vehicles and adds the 10 percent late-listing penalty plus the special $100 penalty for motor vehicles.[5] Then both taxpayers petition the board of commissioners for a compromise of the tax claims. One of the taxpayers owns an automobile, and the other owns a boat trailer. The board decides to compromise the $100 penalty on the trailer and to deny any compromise to the automobile owner. Nothing in G.S. 105-312(k) prevents the board from making that sort of distinction. The owner of the automobile would have standing to challenge the constitutionality of G.S. 105-312(k). Suppose the owner does file suit challenging the statute, what are his or her chances of success? In my opinion, they are good.

By granting to city and county governing boards standardless authority to compromise tax claims on discovered property, the legislature has empowered those governing boards to exercise arbitrary discretion that may deprive taxpayers of property without due process of law, and such a statute is contrary to Article I, Section 19 of the North Carolina Constitution (law of the land clause). Two cases are especially compelling on this point. The first is *Bowie v. Town of West Jefferson*,[6] in which a local act authorized the town to appraise property for ad valorem taxation at a level different from the appraisal made by the county. The act contained no standards for establishing the appraised value of property in the town and no requirements for notifying property owners of their tentative values and giving them a right of appeal. The court held the act unconstitutional under the Fourteenth Amendment of the United States Constitution and the law of the land clause of the North Carolina Constitution. The court found the act constitutionally deficient both because of lack of standards to guide the municipality in appraising property and because of the absence of notice requirements. The town board had, in fact, given property owners notice of their values. But the court said that this would not save the statute; its constitutionality must be measured by what the board could do under the statute, not what it did. The lesson of this part of the decision for present purposes is that even if a local governing board attempted to adopt rules establishing the conditions under which compromises would be granted under G.S. 105-312(k), this would not save the statute, because under its terms the board is not required to proceed on the basis of generally applicable standards.

In the second case, *In re Application of Ellis*,[7] Guilford County adopted a resolution to the effect that (1) in administering its zoning ordinance, applications for special exception permits would be decided by the board of county commissioners and (2) the board could take into account "the public interest" in granting or denying a permit. The North Carolina Supreme Court held that the board's denial of an application pursuant to this resolution denied property owners due process of law. The court summarized the constitutional infirmity in these words: "[T]he commissioners cannot deny applicants a permit in their unguided discretion. . . . [T]hey must . . . proceed under standards, rules, and regulations, uniformly applicable to all who apply for permits."[8]

This zoning case is relevant to the statute under consideration for two reasons. First, the court found the county's procedure to be unconstitutional because it was not in conformity with the requirements of due process of law, not because it was a delegation of legislative authority without sufficient standards. The court has held that the prohibition against standardless delegation of legislative authority, derived from Article II, Section 1 of the North Carolina Constitution, does not apply when the General Assembly delegates broad authority to local governments to legislate regarding local matters.[9] The court left this principle undisturbed in *Ellis*; it did not base its decision on the ground that the General Assembly unconstitutionally granted local governments authority to adopt special exceptions to zoning regulations. Instead, the court stated that in exercising this delegated authority, local governments are bound by the same constitutional limitations that would bind the General Assembly if it chose to exercise its zoning authority directly: "Power to zone rests originally in the General Assembly, but this power is subject to the constitutional limitation forbidding arbitrary and unduly discriminatory interference with the right of property owners."[10] Thus, although the case involved the exercise of a delegated power by a local government, the court, in effect, held that for purposes of constitutional analysis the

county resolution should be treated as though it were a state statute.

Second, the case is important because it rebuts the argument that G.S. 105-312(k) is constitutional because no taxpayer has a right to a compromise, that every taxpayer has a duty to pay the amount of taxes and penalties due, and that no taxpayer can successfully argue that he or she is somehow treated unfairly because the board exercises its discretion not to grant a compromise. No property owner has a "right" under a zoning ordinance to a special exception permit, either, but *Ellis* requires that the power to grant or deny permits not be exercised arbitrarily. In the same way, the power to compromise a tax claim must not be exercised arbitrarily, as G.S. 105-312(k) permits.

If I am correct and G.S. 105-312(k) is indeed an unconstitutional provision, how can it be amended to correct the deficiency? One possibility is simply to repeal G.S. 105-312(k) and to place taxes on discovered property on the same footing as all other taxes. If they are legally due, they must be paid in full.[11] A good case can be made for repeal, if only because it is difficult to explain why—in a rational tax scheme—a property owner who voluntarily lists property for taxes on time must pay the full amount due, but a property owner who fails to list may have the taxes compromised by the governing board.

Short of repeal, a second possibility would be to follow the model of G.S. 105-237, which gives the secretary of revenue authority to reduce or waive any penalties on state taxes, provided the secretary makes a written record of the reasons for the waiver or reduction. This authority would still be without standards to guide the governing board, but perhaps it could withstand constitutional challenge because it extends only to the penalty. However, it could be argued that a statute that allows arbitrary release of penalties suffers from the same constitutional infirmities as one that allows an arbitrary compromise of the tax claim.

The third possibility would be to follow the model of G.S. 105-237.1, which gives the secretary of revenue, with the concurrence of the attorney general, authority to compromise state tax claims in four limited circumstances. Two of those circumstances are relevant to taxes on discovered property: (1) the taxpayer is insolvent, and the taxing unit could not collect an amount greater than that offered as settlement; and (2) collection of a greater amount than that offered in compromise is improbable, and the funds offered in the settlement come from a source from which the taxing unit could not otherwise collect. Placing these, or other similar conditions, on the governing board's power to compromise would provide standards for the exercise of its discretion and would eliminate the unconstitutional arbitrariness that now exists in the statute.

1. N.C. Gen. Stat. § 105-312. Hereinafter the General Statutes will be cited as G.S.
2. 1935 N.C. Code § 7971(50)5.
3. Former G.S. 105-331(d).
4. The case is *Stone v. Board of Commissioners*, 210 N.C. 226, 186 S.E. 342 (1936). The Stoneville town board compromised a tax claim on discovered property for $100, and residents of the town brought suit seeking a writ of mandamus to force the board to collect the full amount of the tax claim. The court denied the application for mandamus upon finding no evidence that the board had acted in bad faith or had abused its discretion.
5. G.S. 105-312(h1).
6. 231 N.C. 408, 57 S.E.2d 369 (1950).
7. 277 N.C. 419, 178 S.E.2d 77 (1970).
8. 277 N.C. at 425, 178 S.E.2d at 81.
9. *See, e.g.*, Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).
10. 277 N.C. at 425, 178 S.E.2d at 80.
11. See G.S. 105-380 and 105-381.

POPULAR GOVERNMENT
(ISSN 0032-4515)
Institute of Government
CB# 3330 Knapp Building
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27599-3330