POPULAR GOVERNMENT

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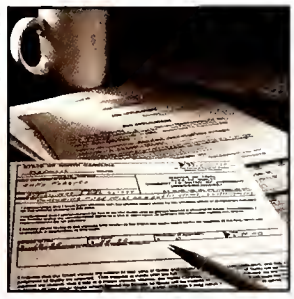

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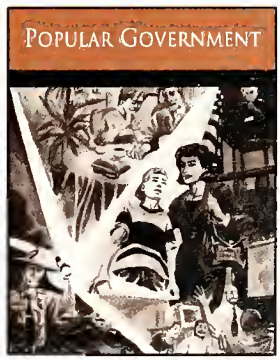


On the cover In making recommendations to the court in a case involving a delinquent juvenile, a North Carolina juvenile court counselor must consider the needs of the young person and his or her family, community protection, and available resources. Illustration by Jeff Parker.

Jeff Parker

North Carolina's Juvenile Court Counselors

Donn Hargrove and Janet Mason

Jeremy, age fifteen, sits on a hard plastic chair in the basement hallway of the county courthouse. It is crowded and noisy. He and his mother are there to meet with an "intake counselor." A police officer has filed a complaint alleging that two weeks ago Jeremy skipped school with a group of friends, broke into a house, and stole money and soft drinks. Waiting silently, Jeremy thinks about what awaits him. Is he going to jail? Is his life ruined? Will he have a record? Will he be thrown out of school? Will he ever get things straight again with his mother? What will the other boys who were involved say? Will he have to face the people whose home he broke into?

Rachel, sitting in her cramped office, hangs up the phone after talking with the attendance counselor at Jeremy's school. Rachel has been a court counselor for

Donn Hargrove is a state-level administrator with the Juvenile Services Division in the North Carolina Administrative Office of the Courts; he has 25 years' experience working in juvenile justice. Janet Mason is an Institute of Government faculty member who specializes in juvenile law and social services law.

Glossary of Juvenile Justice Terminology

Adjudicatory hearing. The hearing at which a judge hears evidence and determines whether the allegations in a petition are true—that is, whether the juvenile is delinquent or undisciplined as alleged in the petition.

Aftercare. Supervision of a juvenile who has been returned to the community from training school.

Alternative-to-detention court counselors. Court counselors who provide daily contact, supervision, and monitoring of a small number of juveniles who otherwise would need to be in secure detention.

Chief court counselor. The person responsible for administration and supervision of juvenile intake, probation, and aftercare services in a judicial district.

Complaint. An oral or written allegation that a juvenile is undisciplined or delinquent.

Court. The district court.

Court counselor. A person responsible for probation and aftercare services to juveniles who are on probation or are released from training school.

Delinquent juvenile. A juvenile who, while under age sixteen, committed a crime or infraction under state law or under a local government ordinance.

Detention. Confinement of a juvenile in an authorized facility pursuant to a secure custody order, pending a court hearing or placement in training school.

Dispositional hearing. The hearing, after a juvenile has been adjudicated to be delinquent or undisciplined, at which the judge (1) considers evidence about the child's needs, available resources, and other relevant factors and (2) designs a plan to meet the child's needs and the interests of the state.

Intake counselor. A person who screens a complaint alleging that a juvenile is delinquent or undisciplined in order to determine whether a petition should be filed.

Intensive service court counselors. Court counselors who provide concentrated probation supervision to a small number of juveniles who need extra attention.

Judge. A district court judge.

Juvenile. A person under age eighteen who is not married, emancipated, or in the armed services. (*See also* Delinquent juvenile and Undisciplined juvenile.)

Juvenile Code. The North Carolina laws (N.C. General Statutes Chap. 7A, Subchap. XI) that address delinquent and undisciplined juveniles (as well as abused, neglected, and dependent juveniles and other matters relating to juveniles).

Nonsecure custody. The physical placement of a juvenile in a licensed foster home or other home or facility before adjudication and pursuant to a written court order.

Petition. The document filed with the court to initiate a juvenile proceeding.

Probation. The status of a juvenile who has been adjudicated delinquent and is subject to specified conditions under the supervision of a court counselor.

Prosecutor. The assistant district attorney assigned to represent the state in delinquency proceedings.

Protective supervision. The status of a juvenile who has been adjudicated delinquent or undisciplined and is under the supervision of a court counselor but is not on probation.

Secure custody. The physical placement of a juvenile in an approved detention facility, pursuant to a court order.

Temporary custody. The physical taking and holding of a juvenile under personal supervision without a court order.

Training school. Any of five residential facilities operated by the Division of Youth Services in the state Department of Health and Human Services for delinquent juveniles who are a danger to persons or property in the community and for whom no less restrictive placement is available or appropriate.

Undisciplined juvenile. A child who, while under age sixteen, (1) was unlawfully absent from school; (2) was regularly disobedient to and beyond the disciplinary control of his or her parent, guardian, or custodian; (3) was regularly found in places where it is unlawful for a juvenile to be; or (4) ran away from home.

ten years and for the last three has functioned as the intake counselor. Already this morning she has participated in a detention hearing for three juveniles who ran away from their homes in Towson, Maryland, and were taken into custody the previous night. They will be detained until a court counselor can arrange for their return home. One of her fellow court counselors was called out at 3:00 a.m. to work with the police and to place the three juveniles in the local detention center.

Rachel reviews the written complaint relating to Jeremy, her next appointment. He is one of four "intakes" that she will see today. Rachel first met Jeremy and his mother six months ago when the mother came in to file a complaint alleging that the boy was "undisciplined" (see the glossary, above). He was skipping school and staying away from home for days at a time. Rachel had diverted the complaint and referred mother and son to a local mental health center for counseling services. Through her involvement with a local interagency group, Rachel knows that though Jeremy and his mother participated in several sessions, school officials still are concerned about his behavior and attendance problems. In addition, Rachel has talked with the couple whose home was broken into. They reported that the damage

to the house was $500 and said that they do not know Jeremy or any of the others involved in the incident.

Rachel glances at a half-written court report that is due tomorrow, then steps into the hall to find Jeremy and his mother.

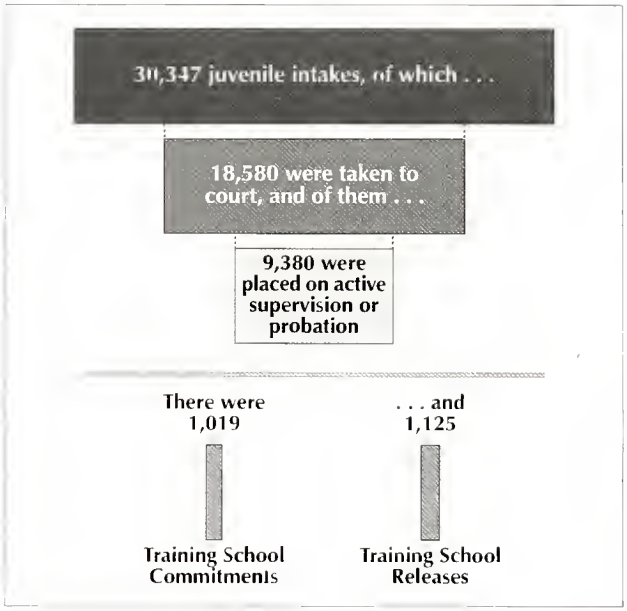
Thus Jeremy, like more than 30,000 other young people in North Carolina every year, enters the juvenile justice system. And Rachel, as other intake counselors across the state do every day, begins a process aimed at answering this key question: How can the juvenile justice system and the community help this child and his family while protecting the community and the rights of other citizens?

It is estimated that fewer than 2.5 percent of the state's population of children under the age of sixteen will be referred to juvenile court intake services.[1] In 1996, of the 30,347 juveniles that court counselors evaluated in the intake process, the counselors referred only 18,580 for court action; the others they diverted from court. Of those who went to court, judges placed 9,380 on active supervision or probation. On any given day, court counselors were providing active supervision services to an average of 8,102 juveniles. Of these, 1,019 were committed to training schools during the year. (See Figure 1.)

The most common offenses that bring juveniles into the system are property crimes such as burglary, larceny, and motor vehicle theft. In 1995 there were 6,498 juvenile arrests for property crimes, a 19.9 percent increase from 1990. A much smaller but growing number of cases involved violent crimes such as murder, rape, sexual offense, robbery, or aggravated assault. In 1995 there were 1,077 juvenile arrests for violent crimes, an increase of 24.7 percent from 1990.[2]

This article describes the role of court counselors in ensuring that the juvenile justice system handles such offenses in a manner consistent with the best interests of the juvenile offenders, their families, and the community. For a description of the state administrative unit that employs court counselors, see "The Juvenile Services Division," page 6.

Figure 1
Number of Juveniles at Key Points in the North Carolina Juvenile Justice System, 1996



Source: Data on juveniles in intake, in court, and on supervision or probation, from North Carolina Administrative Office of the Courts, Juvenile Services Division; data on juveniles committed to and released from training school, from Division of Youth Services.

The Juvenile Court System

Before the turn of the century, children who committed crimes in North Carolina were treated in court just like adults who broke the law. Children who committed serious offenses were placed in prisons along with adult inmates.[3] Today, children who commit criminal offenses when they are under the age of sixteen are subject to special procedures in the juvenile court system. That system, as it has evolved over the past one hundred years, reflects the following beliefs about how the state should respond to juveniles who break the law:

1. Except in the most serious cases, juveniles should be diverted from the court system when that is consistent with the public safety.
2. When juveniles *are* brought into court, they are entitled to procedural fairness and to most of the rights that adult defendants have.
3. When the court finds that a juvenile has violated a criminal law, the response should be a rehabilitative "disposition" designed to address the child's needs and the state's objectives. Dispositions should be consistent with the following principles:
   - Whenever possible, the juvenile should be left at home, and community resources should be used to provide services to the child and his or her family.
   - The disposition should be the least restrictive plan that is appropriate.

The Juvenile Services Division

Since 1973 the Juvenile Services Division of the North Carolina Administrative Office of the Courts has provided a statewide system of services for children who are alleged or found by the court to be delinquent or undisciplined juveniles. These services are provided by court counselors who are employed by the division but work in local communities. From its early days, the division has developed policies to standardize court counselors' work with juveniles who either are on probation or are released from training schools. Division standards address, among other things, the development of treatment plans for each child, the number of personal contacts that counselors have with juveniles and their families, and case reviews by supervisors. The division also developed and provides pre-court intake services in order to divert some children from court to other more appropriate community services.

The Juvenile Services Division operates primarily as a field-based service program, with 426 personnel in the field and 12 administrative and clerical staff in the state office. Of the field staff, 38 are chief court counselors, each heading an office or offices that serve one of the 39 district court districts into which the state is divided. Of the remainder, 63 are intake counselors, 219 are regular court counselors, and 28 are intensive service court counselors. The 1997 General Assembly authorized 25 new court counselor positions.

Court counselors must have a college degree; most of them have majored in social work, psychology, criminal justice, or a related field. They are required to live in the judicial district where they work. All court counselors and other field staff are state employees who work for the Juvenile Services Division of the Administrative Office of the Courts. The chief court counselor in each district hires the court counselors and other local staff.

Personnel in the state office provide overall program management to ensure uniform service standards, coordinate and provide training and consultation for local staff, collect data, and respond to legislators' and other policy makers' requests for information or recommendations. Division administrators encourage local autonomy so that each district office can respond appropriately to local community concerns. For example, one district may need to focus its efforts on problems relating to gang violence, while another district might need to focus on teen pregnancy.

In all districts, court counselors provide intake, probation supervision, and aftercare services. In very small counties, one court counselor might perform all of these duties. In larger counties each of these functions may require the services of many counselors.

In many judicial districts the primary work of court counselors is augmented by specialized services such as alternatives-to-detention and transportation programs. Alternatives-to-detention counselors provide daily contact, supervision, and monitoring of a small number of juveniles who otherwise would need to be in secure detention. Transportation officers provide for the secure movement of individuals between court, detention, and training school.

- A juvenile should not be committed to an institution unless other resources have been exhausted or are not appropriate.

The points in the juvenile system that reflect most concretely the belief that children are entitled to special treatment are "intake" and "disposition." These also are the points at which court counselors are involved most critically. Their decisions and skills play a major role in determining how a child's case progresses through the juvenile justice system. Court counselors, in concert with district court judges, attorneys, social workers, and other professionals, are charged with pursuing the dual—and sometimes competing—goals of rehabilitation and community protection.

To understand the role of court counselors in the juvenile justice system, it is necessary to understand some basic terminology (see the glossary), which children are subject to juvenile laws and procedures, and the primary stages of a juvenile case.

Children Subject to Juvenile Procedures

Court counselors work with children who are alleged to be, or have been found by the court to be, either "delinquent juveniles" or "undisciplined juve-

niles." A juvenile is delinquent if he or she commits a crime or infraction or violates a local government ordinance while under age sixteen. A juvenile is undisciplined if he or she, while under age sixteen, is truant, runs away from home, is beyond his or her parents' control, or frequents a place where it is unlawful for a juvenile to be.

The child's age when the alleged conduct occurred (not when he or she is caught or goes to court) determines whether the child is subject to juvenile procedures. Although a person is a juvenile until he or she reaches age eighteen, children may be classified as delinquent or undisciplined only for conduct that occurred before they become sixteen. Court counselors often work with sixteen- and seventeen-year-olds, but that involvement always is based on conduct that occurred before the juvenile's sixteenth birthday.[4] A child cannot be classified as delinquent or undisciplined for his or her conduct that occurred before the sixth birthday.

Juvenile matters are in the jurisdiction of the district court. The district court judge, however, can transfer a juvenile's case to superior court, where the child will be tried as an adult, if the judge finds probable cause to believe that the juvenile committed a felony while he or she was at least thirteen years old but younger than sixteen. (If the felony is first-degree murder, the judge *must* transfer the case.) These cases begin in the juvenile system, however, and court counselors are involved up to the point at which the case is transferred to superior court.

Court Counselor's Role with the Child and in the Community

The scope of the services provided by juvenile court counselors includes a continuing involvement with the juvenile, his or her family, and the community through intake, court, supervision and probation, training school, and aftercare. These are the core services of the juvenile justice system in North Carolina. Court counselors also serve the court, where their primary responsibilities are to provide information and recommendations, to advocate for the child's and the community's best interest, and to assist with juvenile court management.

Intake

Intake is a screening and evaluation process leading to an intake counselor's decision on whether a juvenile's case will go into court. Complaints alleging that a juvenile is undisciplined or delinquent come to the counselor from law enforcement officers, agencies, and individuals. Unless the counselor approves the filing of a petition, the matter ordinarily will not go to court.[5]

The counselor *must* approve the filing of a petition if the counselor finds reasonable grounds to believe the juvenile committed murder, rape, a sexual offense, arson, a controlled-substance felony, first-degree burglary, a crime against nature, or a felony that involved willful infliction of serious bodily injury or was committed with a deadly weapon. In all other cases, if the counselor finds reasonable grounds to believe the juvenile is delinquent or undisciplined, he or she decides whether to

- approve the filing of a petition,
- refer the juvenile to a community resource, or
- take no further action.

In each case, if practicable, the counselor must interview (1) the person who made the complaint and anyone else who is a victim of the juvenile's conduct; (2) the juvenile and his or her parent, guardian, or custodian; and (3) anyone else who has pertinent information. Throughout intake, the counselor's role is to act as consultant to the parents and the community. Intake also can involve supplying information and reports to the court, assisting in the timely preparation of petitions, assisting victims, and facilitating the resolution of complaints.

Approximately 35 percent of all complaints received are diverted to other community programs, and the parties never appear in court.

During the one-hour meeting, Rachel talks with Jeremy and his mother about the incident that sparked the police officer's complaint. Jeremy admits some limited involvement but places most of the blame on the other boys. They also talk about problems with his behavior at home and at school, for which Jeremy also blames everyone but himself. Rachel must decide whether Jeremy will "go to court." She, Jeremy, and his mother exchange ideas, and Rachel weighs the alternatives for a plan of rehabilitation and treatment for this child. She decides that this time it is in Jeremy's and the community's best interest that he go to court. She approves the filing of the complaint against him as a petition and forwards it to the clerk of court for placement on the docket for hearing. The hearing will be in a juvenile court in approximately two weeks.

Adjudication

The adjudicatory, or fact-finding, hearing looks very much like the trial of an adult, except that all juvenile cases are heard by a judge only, never a jury. In a delinquency case, the juvenile always is represented by an attorney. Formal rules of evidence apply, and to find a juvenile delinquent, the judge must make findings "beyond a reasonable doubt"—the same standard that applies in adult criminal trials.

Statements that the juvenile made to the counselor during intake are not admissible during this hearing. The state must prove the allegations using other evidence. If the juvenile is able to understand the significance and ramifications of doing so, he or she may admit to the offense and focus on the next stage, the disposition.

Two weeks later Jeremy and his mother return to the courthouse. They see Rachel in the crowded hallway, and she directs them to the courtroom. They are joined there by Jeremy's court-appointed attorney, who met with Jeremy the week before. Eleven other "new" juveniles are coming before the court today. The total docket consists of twenty-four cases. As he waits for his case to be called, Jeremy is extremely nervous. He has heard that this judge is tough and sends a lot of juveniles "away." He has asked Rachel a lot of questions about what might happen, and she has told him what her recommendations will be if the judge finds him delinquent.

Jeremy's adjudication hearing starts about two hours later. After hearing testimony from the police officer and the victim, the judge determines that Jeremy committed the offense and is delinquent.

Disposition

The dispositional hearing can follow immediately after the adjudicatory hearing or be held later. An adult at this stage would be "sentenced"—subjected to punitive sanctions that are computed on the basis of the seriousness of the offense and the adult's prior record. In a juvenile case, however, the judge considers not only these factors but also a broad range of information relative to the juvenile's needs, the family situation, and community resources and then designs a plan tailored to the child's specific needs and circumstances. Regardless of the nature of the offense, the judge at this stage would learn about and consider any substance-abuse problems, special educational needs or problems, and medical or psychological problems. The judge would evaluate the family's ability to address the child's needs as well as the availability of resources to help him or her and the family.

A large part of the intake counselor's role is to ensure that the judge has information that is accurate and as complete as possible at this stage. In addition, the court counselor usually makes a recommendation to the judge about the disposition. This hearing is less formal than the adjudicatory hearing, and the rules of evidence are relaxed, so that the judge can consider written summaries and reports, including a written report from the counselor.

When a juvenile is found to be delinquent, the judge often places him or her on probation, which allows a court counselor to provide active supervision, monitor the child's compliance with conditions set by the court, identify his or her need for treatment and services, and mobilize resources. In twenty-five districts, intensive supervision counselors are available to provide concentrated supervision to a small number of juveniles who need extra attention during probation. When a juvenile is found to be undisciplined, the judge may place the child under protective supervision, which is similar to probation but does not place enforceable conditions on the child's behavior.

Other dispositional options for delinquent or undisciplined juveniles include placing the child in the custody of a relative, a county department of social services, or some other suitable person or agency; releasing the child from compulsory school attendance; ordering appropriate evaluations or treatment; or, if no further action is needed, dismissing the case. For delinquent juveniles, the judge also may order the following: restitution, payment of a fine, community service, short-term confinement in a detention facility, or loss of the privilege of obtaining a driver's license. Whenever possible, within the bounds of the need to protect the community, dispositions emphasize working with the juvenile in the community. In some cases, after community resources have been exhausted or found to be inappropriate, a delinquent juvenile is placed in a state-operated training school. Such a commitment usually lasts several months. The court counselor stays involved with the child during this time and provides transitional aftercare services when he or she is released from training school.

The counselor keeps the judge informed of a juvenile's progress throughout the period of probation or other disposition and can take the case back to court for review.

After the judge finds that Jeremy is delinquent, the parties agree to proceed directly to the dispositional hearing. Rachel gives the judge information about the previous diversion and referral to a mental health program and about Jeremy's school record and home situation. She explains that Jeremy is a child with multiple problems: he may have a learning disability; he lives in a poor, "rough" neighborhood with his mother and a younger brother who is developmentally and physically disabled; he has no contact with his father, who deserted the family years ago and provides no support; he has experimented with marijuana and is being pressured by older neighborhood boys to begin dealing. Rachel expresses concern that if these problems are left unattended, they will lead Jeremy into a life of criminal activity. She emphasizes that Jeremy's mother is overwhelmed by the younger child's needs and is increasingly unable to supervise Jeremy adequately. Jeremy's mother confirms this but says that Jeremy is not a bad boy and she does not want him "sent away."

Rachel recommends to the judge that Jeremy be placed on probation under the formal supervision of a court counselor. The judge agrees and orders that the boy be placed on probation for one year. As conditions of probation, the judge orders Jeremy to cooperate and meet regularly with the court counselor, keep a curfew, attend school regularly, participate in a restitution program to reimburse the homeowners for a portion of their damages, and refrain from violating any laws. The hearing concludes about thirty minutes after Jeremy entered the courtroom.

Jeremy and his mother are confused and anxious. Rachel, whose intake role is completed, introduces them and Jeremy's attorney to Anthony, the court counselor who will supervise the boy while he is on probation. They all crowd into a corner of the hallway and talk for fifteen minutes about what has happened. Anthony schedules an appointment for Jeremy and his mother to return to the juvenile services office in several days. Case planning for Jeremy has begun, and Rachel and Anthony return to the courtroom for their next case.

Implementation—Probation and Aftercare Supervision

After the dispositional orders are entered, court counselors offer a broad array of services—counseling, coordinating with other agencies, developing and implementing case supervision plans, explaining and enforcing court orders, supervising regular or intensive probation, and supervising and monitoring juveniles who are released from training schools.

Even when the judge commits a juvenile to training school or orders some other out-of-home placement, the counselor has responsibilities toward the child and the community. The counselor gathers and provides medical and social information that is required for the juvenile's admission; assists in developing residential treatment plans; visits regularly with the child during his or her confinement; makes efforts to prepare the family, the child, and the community for his or her return; participates in prerelease planning; arranges and supervises home visits; and explores other resources when a placement fails or is terminated.

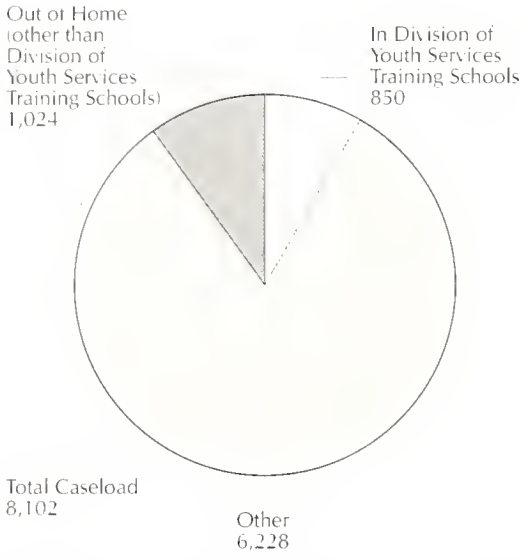
A juvenile's needs, the family situation, the unavailability of resources, or the risk to the community may require that the child be placed away from his or her home—and sometimes out of the community. In 1996, there were 1,024 North Carolina juveniles in court-ordered out-of-home placements other than training schools (see Figure 2). These include wilderness camps, psychiatric treatment centers, residential substance-abuse programs, long- and short-term group homes, private educational programs, and specialized and regular foster homes, among other facilities. The court counselor's biggest challenge may be to know about various placement resources, the kinds of juveniles they will accept, and the appropriateness of their services for children with particular needs. The judges and even the juveniles' families and attorneys often look to the court counselor to explore, understand, and explain the options that are available to meet the child's needs. As resources for delinquent ("criminal") juveniles shrink, this challenge grows.

Besides juveniles who need out-of-home placement, however, counselors supervise many more children who are placed on probation and remain at home. This duty includes maintaining regular contact with the juvenile and his or her family as well as with the personnel at the child's school and anyone involved in treating or counseling him or her. It also includes scheduling court reviews when a juvenile violates probation or when the counselor believes that something in the dispositional order should be changed.

Jeremy sits again in the hallway outside the court counselors' office. The place seems lighter and less threatening than it did a year ago. Jeremy has come to appreciate

Figure 2

Average Caseload of Juveniles, Including Juveniles in Placements (Per Day, 1996)



Source: Data on juveniles in out-of-home placements other than Division of Youth Services training schools and on average daily caseload, from North Carolina Administrative Office of the Courts, Juvenile Services Division; data on juveniles in Division of Youth Services training schools, from Division of Youth Services.

his relationship with Anthony. During his period of supervision, Jeremy has been "successful"—he has not returned to court on either a violation of probation or a new delinquency charge. Anthony and Jeremy have worked together with the local school social workers to improve his position at school. School officials reevaluated Jeremy and determined that he has a severe learning disability. A school-based interagency group, which included Anthony, recommended to the school principal that Jeremy be placed in a special after-school tutoring program. Anthony helped Jeremy realize that if he did not behave well in school and attend regularly, he would lose this opportunity for special services.

Anthony also arranged for Jeremy's mother to participate in a parenting support group operated by a local church. This group helped her gain the confidence she needs to supervise Jeremy more effectively. Jeremy had a face-to-face meeting with the victims, at which he apologized and gave them the $200 restitution payment he had earned through participating in the community service program.

The road was not completely smooth, however. During his first month on probation, Jeremy continued to stay out very late. At Anthony's suggestion, Jeremy and his mother agreed to his placement in a local ninety-day emergency shelter home. While there, Jeremy continued to attend his local school, and he and his mother participated in joint counseling sessions. This short "cooling off" period allowed both Jeremy and his mother to catch their breath and reassess their relationship, and it gave Jeremy a needed period of separation from his neighborhood. It worked very well. Both were better able to use the other resources that were being offered to them.

Anthony's primary role was to lead both Jeremy and his mother to the proper resources, while holding them accountable for meeting the conditions of the court order. His knowledge of these resources and his caring and supportive approach proved to be just the type of intervention that Jeremy needed. Anthony works with thirty-six other clients; not all are as successful as Jeremy. Some parents are not able or willing to participate in getting the help their children need. Some juveniles—about 15 percent of Anthony's cases—engage in such serious criminal behavior that secure lockup is the only option. Some—about 20 percent—need longer-term out-of-home placement.

Community Advocacy

Court counselors cannot be effective without active involvement in the communities where they and the youth they serve live. First, to garner resources for juveniles, counselors need to know what is available in the community and have credibility and rapport with the people who manage those resources. Second, court counselors are in an almost unique position to identify gaps in resources and to advocate filling them. Often they function as resource developers, assisting in community initiatives to develop needed programs and treatment resources. As the needs of North Carolina's juvenile population expand, so do the demands for community advocacy and involvement by court counselors.

Within the community, court counselors work in collaboration with other community agencies, programs, and resources. Counselors try to blend the services they provide into the existing continuum of services in the community because they believe strongly in the effectiveness of interagency cooperation. For example, court counselors, school social workers, mental health personnel, and social services workers all may work together to place a juvenile in a group home, to arrange for substance-abuse treatment, and to enroll the child in educational or

vocational training. Court counselors must be aware of the values, interests, and concerns of their communities and recognize differences among communities even within the judicial district they serve. The services they offer must accurately reflect both the community's needs and its capacity to support the service.

Court counselors carry out a variety of functions. They must be part lawyer, part social worker, part big brother or sister, part community organizer, part psychologist, part probation officer. Court counselors also are role models, both for the juveniles with whom they work and for others in the community. They are called upon frequently to serve as mediators between youth and authority figures concerning conflicts that arise at school, at home, or in the community. Counselors frequently take juveniles to and from detention or training school facilities. They accept invitations to teach in training programs for law enforcement officers and other public and private agency personnel. They like to tell about the work they do.

Today is a happy occasion. Jeremy enters the office to meet with Anthony and discuss the end of his probation. The two sit and talk and enjoy the moment. Jeremy thanks Anthony for sticking with him. Anthony tells Jeremy that he will be placing his case on next week's docket for termination of probation. Anthony wishes Jeremy good luck, knowing that some good things have happened. He fully expects that Jeremy will be one of the kids who "make it."

Jeremy leaves, and Anthony sees Rachel going down the hall. He calls out to her, and, as they leave to have lunch, he smiles and says, "Remember Jeremy? I have some good news for you."

Notes

1. *1996 Juvenile Services Division Monthly Report* (Raleigh, N.C.: North Carolina Administrative Office of the Courts, 1996).

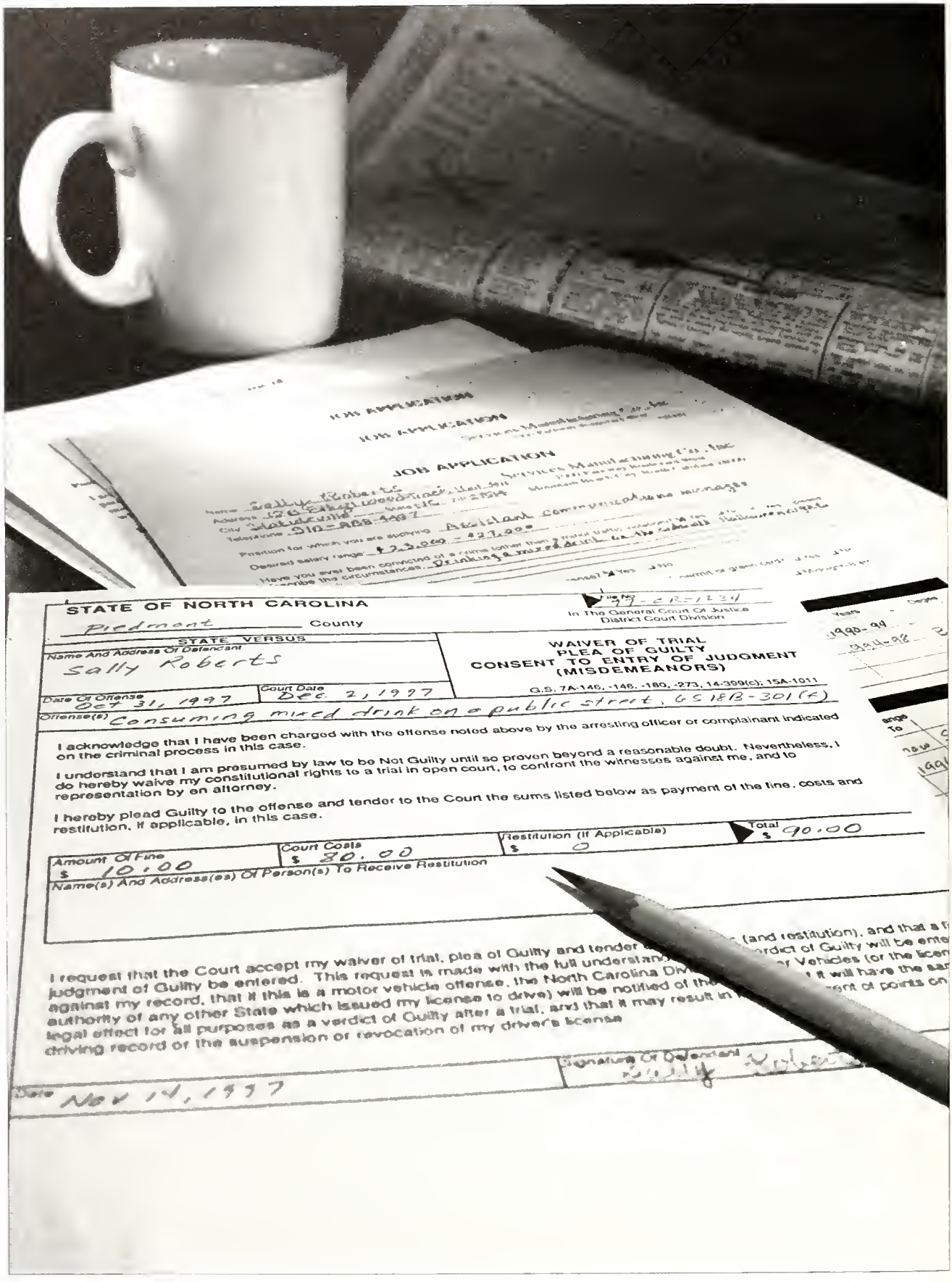
2. State Bureau of Investigation, *Uniform Crime Statistics for North Carolina* (Raleigh, N.C.: SBI, 1995).

3. *See* Betty Gene Alley and John Thomas Wilson, *North Carolina Juvenile Justice System: A History, 1868–1993* (Raleigh, N.C.: North Carolina Administrative Office of the Courts, 1994).

4. A juvenile who commits a crime on or after his or her sixteenth birthday is subject to most of the same procedures that apply to adults, and a court counselor has no role in that child's case. Neither do court counselors have a role with juveniles who, after becoming sixteen, run away from home or are beyond their parents' control.

5. The case can go to court without the counselor's approval if, at the complainant's request, the prosecutor reviews the counselor's decision and overrules it.

Jim Webb


JOB APPLICATION
JOB APPLICATION
JOB APPLICATION
STATE OF NORTH CAROLINA
Piedmont County
In The General Court Of Justice
District Court Division
STATE VERSUS
Name And Address Of Defendant
Sally Roberts
WAIVER OF TRIAL
PLEA OF GUILTY
CONSENT TO ENTRY OF JUDGMENT
(MISDEMEANORS)
G.S. 7A-146, -146, -180, -273, 14-399(c); 15A-1011
Date Of Offense
Oct 31, 1997
Court Date
Dec. 2, 1997
Offense(s)
Consuming mixed drink on a public street, GS 18B-301(f)
I acknowledge that I have been charged with the offense noted above by the arresting officer or complainant indicated on the criminal process in this case.
I understand that I am presumed by law to be Not Guilty until so proven beyond a reasonable doubt. Nevertheless, I do hereby waive my constitutional rights to a trial in open court, to confront the witnesses against me, and to representation by an attorney.
I hereby plead Guilty to the offense and tender to the Court the sums listed below as payment of the fine, costs and restitution, if applicable, in this case.
Amount Of Fine
$ 10.00
Court Costs
$ 80.00
Restitution (If Applicable)
$ 0
Total
$ 90.00
Name(s) And Address(es) Of Person(s) To Receive Restitution
Date
Nov 14, 1997

Employment Consequences of a Criminal Conviction in North Carolina

Michael G. Okun and John Rubin

Sally Roberts is graduating from college this year. She is twenty-two years old and, like many young people, is not certain what she wants to do in the future. Last weekend, Sally was stopped by a police officer and cited for consuming a mixed drink on a public street, a violation of Section 18B-301(f) of the North Carolina General Statutes. Sally has never been in trouble with the law. A friend tells her that she can avoid appearing in court by going to the magistrate's office and paying a fine. If Sally follows this advice, will she have a criminal conviction on her record? Will the incident prevent her from working in certain occupations? Can she ever have the records of the incident sealed or destroyed? This article examines these and other issues concerning the impact of a criminal conviction on employment.

The most obvious consequences of a criminal conviction are the immediate ones: imprisonment, probation, and other sanctions made part of a sentence in a criminal case. Often hidden, but potentially more serious and long lasting, are a diverse set of "collateral consequences" that flow from the conviction but usually are not part of the sentence in the criminal case. For example, someone convicted of a crime may lose the right to vote, to hold public office, or to serve as a juror or may have his or her property subject to forfeiture. He or she also may be barred from a broad range of public and private employment. These potential consequences usually are not contained in the criminal law but are scattered throughout civil statutes, regulations, and case law.[1]

The impact of a conviction on employment, the focus of this article, derives from two specialized areas of law: criminal law and employment law. In deciding how to proceed, people who face criminal charges should understand the potential impact of their decision in both the criminal case and the job market. Furthermore, in dealing with employees and job applicants, employers need to understand the nature of criminal proceedings and their effects. And those concerned with criminal justice issues must consider the impact of employment barriers on recidivism. Not surprisingly, studies show that people with criminal records often have difficulty obtaining employment, both in government and in the private sector. While some individuals may lack the job skills or work habits to obtain or hold employment, others cannot overcome the barriers that are permitted or required by the law.[2]

In considering the potential impact of a criminal conviction on employment, two fundamental questions usually arise. First, *may* an employer either

Michael Okun is of counsel with the firm of Patterson, Harkavy & Lawrence in Raleigh, North Carolina. John Rubin is an Institute of Government faculty member who specializes in criminal law.

refuse to hire an individual or discharge a current employee because of a conviction? Second, *must* the employer refuse to hire or discharge because of a conviction? (For a discussion of other ways in which criminal law and employment law intersect, see "Other Issues in Criminal and Employment Law," page 18.)

There are no simple answers to these questions. As so often happens, the answers depend on the circumstances. The nature of the conviction may be important, of course, but often even more significant is the type of employment involved. Most workers fall into one of three broad groups of employees or job applicants, and their legal rights depend largely on the group into which they fall. The largest group is made up of those who work or seek to work in the private sector and do not have the protection of either an individual contract or a collective-bargaining agreement. The next-largest group is composed of those who work or seek to work for the government, whether federal, state, or local. The smallest group contains those who are protected by an individual employment contract or a collective-bargaining agreement. In general, those in the first group enjoy the least legal protection in the area at issue here, as in most employment matters; those in the third typically enjoy the most.

This article has three main sections. The first outlines the impact of a criminal conviction for each of the above categories. The discussion assumes that the employee or potential employee is physically able to perform the work—he or she is not incarcerated, has not lost his or her driving privileges, and is not otherwise unable to be at the work site. The second section briefly touches on ramifications of a conviction in three other areas of concern: unemployment benefits, workers' compensation benefits, and health insurance benefits. The review in these two sections is a general one. It would be impossible to explain here all of the employment consequences of a criminal conviction, particularly for those in the public sector. Provisions affecting employment have been inserted throughout the law—in statutes, administrative regulations, and even executive orders.[1] Readers interested in particular kinds of work should therefore check any employment statutes, regulations, or other provisions governing the type of employment at issue.

The third section focuses on the meaning of "criminal conviction," the event that triggers the employment consequences reviewed here. (Simply stated, a conviction is a final judgment of a court that finds a person guilty of a criminal offense.) This part of the article considers several issues, including whether the type of plea entered in a criminal case changes the impact of a conviction, when a conviction becomes final, what sorts of proceedings may not result in a conviction, and how a person may remove a conviction from his or her record.

Potential Employment Restrictions

Private-Sector Employment

General Considerations

Unless a worker is protected by a contract or a collective-bargaining agreement, an employer can usually refuse to hire that person or can discharge him or her as it wishes. North Carolina law calls this kind of arrangement "employment at will."

There are two groups of exceptions to this rule, aside from employment contracts. The primary one is that federal and state law protects against certain types of job discrimination. For example, federal statutes prohibit discrimination based on race, color, religion, sex, or national origin;[2] on age;[3] on mental or physical disabilities;[4] and on union activity.[5] State antidiscrimination laws include, for example, protection against discrimination based on pursuit of rights under workers' compensation, wage-and-hour, and OSHA (Occupational Safety and Health Act) laws;[6] on the lawful use of lawful products during nonworking hours;[7] and on the carrying of the sickle-cell trait or the hemoglobin C trait.[8] None of the federal antidiscrimination employment statutes (more than two dozen) and none of the North Carolina antidiscrimination statutes (nearly a dozen) specifically protect applicants or workers in the private sector against discrimination based on a criminal record or even an arrest record. The second exception is the common-law protection against discharges that violate public policy—an exception that has not been read, and is not likely to be read, as prohibiting employment decisions based on criminal convictions.

While no statute by its terms prohibits discrimination against those with convictions, an employer's policy that prohibits the hiring of all applicants who have an arrest record, or even all applicants with a criminal record, may be suspect under Title VII of the Civil Rights Act of 1964 if that policy has an adverse impact on minority applicants and is not job

related. By contrast, an employer that considers criminal convictions but does not use them as an absolute bar to all positions will not likely be in violation of the statute.[11] Of course, an employer cannot rely on a criminal conviction as a pretext to mask a motive prohibited by federal or state law.

On the other hand, an employer in the private sector also is generally free to hire whomever it wishes—but not always, as the discussion below indicates. Under certain circumstances an employer may not be able to hire or continue to employ a person convicted of a crime even if it wishes to do so.

License Restrictions

For many private-sector jobs in North Carolina, the employee must hold the license mandated for his or her specific job. For example, animal dealers, motor vehicle dealers, precious-metal dealers, employees of private protection services, boat pilots, stock salespersons, architects, attorneys, auctioneers, bail bondsmen or runners, barbers, cosmetologists, physicians, dentists, pharmacists, optometrists, chiropractors, nurses, midwives, veterinarians, podiatrists, embalmers, dental hygienists, psychologists, physical therapists, social workers, public accountants, real estate brokers, hearing-aid dealers, pest-control applicators, animal inspectors, meat inspectors, and poultry inspectors all must be licensed.[12] A license may—and in some cases *must*—be revoked if the licensee has been convicted of any of certain crimes. Such a denial or revocation can effectively bar employment in the field at issue.

Statutes and regulations vary in the types of convictions that allow or require a license to be denied or revoked. The actual practices of licensing boards also vary widely.[13] For example, the North Carolina Private Protection Services Board may suspend, revoke, or deny a firearms-registration permit, necessary for employment as an armed security guard, if the applicant has been convicted of any crime involving moral turpitude or illegal use or possession of a weapon.[14] An applicant for the license required for bail bondsmen or runners can be denied the license for conviction of a felony,[15] and applicants for a barber's license may be refused the license for conviction of a felony or misdemeanor related to barbering.[16]

The law often provides that crimes involving "moral turpitude" constitute grounds for denying or revoking a license (and for terminating public employment, discussed below).[17] The North Carolina Supreme Court has stated generally that a crime of moral turpitude is one that involves "an act of inherent baseness in the private, social, or public duties which one owes to his fellowmen or to society, or to his country, her institutions and her government."[18] But there is no ready list of "moral turpitude crimes," and one commentator, critical of the term's subjectivity, has observed that "[t]hus does the serpent of uncertainty crawl into the Eden of trial administration."[19]

The uncertainty about the term's meaning is magnified by the different contexts in which it is used. Thus one who falsely accuses another of a crime of moral turpitude may be sued for slander.[20] In a criminal prosecution, a misdemeanor may be elevated to a felony if the crime is "infamous"—that is, if it involves moral turpitude.[21] At one time a witness's credibility could be impeached by conviction of a crime involving moral turpitude, though not by other criminal convictions.[22] Finally, several court cases have interpreted occupational licensing statutes that authorize revocation or denial of a license for conviction of a crime of moral turpitude.[23] The results vary with each context. For example, in a slander case the court held that to accuse someone of writing a worthless check was to accuse that person of a crime of moral turpitude. Still, such a minor offense might not be viewed as a crime of moral turpitude for purposes of license revocation.

The potential reach of license-disqualification statutes is narrower if they require that the criminal conviction bear some relationship to the person's fitness to pursue the particular occupation—a "nexus" (or connection) requirement. This requirement may come from the licensing statute itself, from implementing regulations, or from case law.[24]

Other Restrictions on Private-Sector Employment

Conviction may create obstacles to private-sector employment in other ways. Some jobs require a fidelity bond.[25] Fidelity insurance companies often refuse to bond ex-convicts, and this effectively bars them from employment in those jobs.[26]

Also, a few federal statutes bar employment of some people in certain fields regulated by the federal government. For example, one law provides that certain felons are ineligible to serve as officers or directors of labor organizations for a specified period.[27] Another provides that, absent consent of the Federal Deposit Insurance Corporation, banks insured by that corporation cannot employ persons who have been convicted of an offense involving dishonesty or breach of trust or who agreed to enter into a pretrial diversion program.[28]

Public Employment

For public employees, the legal consequences of a conviction may depend on whether the employment is with the federal, state, or local government or with the public schools.

Federal Government Employment

Federal law bars certain types of offenders from federal positions. As examples, persons convicted of either advocating the overthrow of the government or promoting insubordination in the armed forces are disqualified from employment by the United States government or any of its departments or agencies for five years.[29] The Omnibus Crime Control and Safe Streets Act of 1968 prevents a person convicted of inciting a riot or civil disorder and sentenced to imprisonment for more than one year from holding federal employment for five years.[30] And an employee convicted of bribery or disclosure of a tax return to an unauthorized person will be dismissed from the Internal Revenue Service.[31] Moreover, one convicted of a felony may not enlist in any branch of the armed services.[32]

Generally, however, a conviction does not automatically disqualify a person from securing federal employment; rather, the conviction is considered in determining suitability.[33] Further, most nonprobationary federal employees can be dismissed from their jobs only for "such cause as will promote the efficiency of the service," and an employee removed from his or her job usually may appeal to the Merit Systems Protection Board.[34] A federal employer that relies on a criminal conviction must demonstrate a nexus, or connection, between the misconduct and the efficiency of the service.[35]

State Government Employment

Except when a conviction prevents a person with a criminal conviction from obtaining a license necessary for public employment, a conviction does not usually constitute an absolute bar to state employment. Further, most career state employees who have "tenure" under the State Personnel Act can be dismissed only for "just cause."[36] In cases involving off-duty criminal conduct, a state agency need not show actual harm to its interest in order to demonstrate "just cause" to support a discharge, but it still must show that "the dismissal is supported by the existence of a rational nexus between the type of criminal conduct committed and the potential adverse impact on the employee's future ability to perform for the agency."[37] The factors considered in determining whether a rational nexus exists include the effect of the conduct on clients or colleagues; the relationship between the type of work and the type of criminal conduct; the likelihood of recurrence; the degree to which the conduct may affect work performance and quality and the agency's goodwill and interests; the proximity of the conduct to the commencement of the disciplinary proceedings; extenuating or aggravating circumstances; the blameworthiness or praiseworthiness of the motives behind the conduct; and the presence or absence of any relevant mitigating factors.[38]

Local Government Employment

Some local government employees, such as sheriffs and police officers, are subject by statute to removal for conviction of a felony.[39] Generally, however, there is no automatic bar to employment in local government for those convicted of a crime, but neither are there the "efficiency of the service" or the "just cause" protections that federal and state employees enjoy.[40] However, county employees in health departments, in social services departments, in substance-abuse authorities, and in the mental health, developmental disabilities, and emergency-management agencies are protected by the State Personnel Act.[41] Most others have little protection except for that offered by a local grievance procedure or the minimal due process hearing required by the United States Constitution.[42]

Public School Employment

Employment in the public schools is regulated by a specific set of statutes. Three points about these statutes are particularly important for this discussion. First, in general, a conviction does not automatically disqualify a person from public school employment; but special legislation gives the schools access to otherwise confidential records of criminal history maintained by the Federal Bureau of Investigation and the State Bureau of Investigation.[43]

Second, only some public school employees—those classified as teachers or administrators—are protected under the statutes. Many—maintenance workers, bus drivers, and other noninstructional personnel—are employed at will. The statutes governing teachers and those governing administrators differ in the job security they afford, but they are similar in permitting (although not requiring) a public school employer to dismiss a teacher or an administrator for conviction of

a felony or crime of moral turpitude.[44] Although the statutes do not explicitly require a connection between a criminal conviction and the employee's fitness to continue work, the courts may require such a connection before they allow dismissal.[45]

Third, teachers, administrators, and other instructional personnel must obtain a certificate, or license, to teach in the public schools. The State Board of Education may deny an application for a license or may suspend or revoke a license for "conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner."[46]

Collective-Bargaining Agreements and Individual Employment Contracts

A substantial number of employees in North Carolina are covered by collective-bargaining agreements and a very few by individual employment contracts. Usually, such agreements do not deal directly with criminal convictions but allow the employer to discharge for "just cause." There is now a body of decisions by arbitrators, who are generally called on to interpret such "just cause" provisions. The majority view is, first, that neither a criminal conviction nor even a guilty plea will normally have a binding, or preclusive, effect in an arbitration involving the same set of facts.[47] Further, off-duty illegal conduct subjects the employee to discharge only if (1) the conviction is known in the community and damages the employer's business or reputation, (2) fellow employees would refuse to work with the individual, or (3) the nature of the offense makes the individual unsuitable for his or her job.[48]

Restrictions Imposed by the Sentencing Court

Usually the employment consequences of a criminal conviction occur after the criminal proceedings end, but the sentencing court does have limited authority to restrict a convicted person's employment.

The North Carolina Constitution sets the outer limits on a court's power to sentence a person—to punish that person—for a criminal offense. The state supreme court has observed that the constitutional limitations, in effect since 1868, were "intended to stop the use of degrading punishments theretofore inflicted."[49] The constitution allows the sentencing court to impose, among other things, imprisonment, fines, restitution, and removal from public office. The court may not impose a punishment greater than what the constitution allows.[50]

The constitution explicitly authorizes restrictions on employment only when the convicted person holds public office, allowing removal from office in some circumstances.[51] In that context, "public office" refers not to all public employees but only to a relatively narrow class of higher-level positions, such as judges or school board members.[52]

Through its power to suspend a sentence and impose probation, however, a sentencing court may affect a broader range of employment. Probation may include any conditions reasonably related to a person's offense and reasonably necessary to his or her rehabilitation, including restrictions on employment.[53] For example, the supreme court held that an attorney convicted of illegally posting a bail bond and interfering with a witness could be required as a condition of probation not to practice law for eighteen months.[54] As with any conditions of probation, an employment restriction may not last longer than the period of probation itself, a maximum of five years.[55]

In some circumstances a court also may have the authority to *regulate* a particular field of employment. The legal profession is the prime example: either the State Bar or the court may, following appropriate procedure, suspend or revoke an attorney's license to practice law. Such action is viewed not as punishment for a criminal offense but as regulation of the legal profession.[56]

Other Employment Consequences

Unemployment benefits. An employee who loses his or her job because of a criminal conviction unconnected to the work and who is available to work will not automatically be denied unemployment benefits. Such a person is generally entitled to receive benefits unless the reason for the separation is misconduct (total disqualification) or substantial fault (partial disqualification) that is "connected with the work."[57] It is not necessary that the criminal conduct occur at the work site to be considered connected with the work.[58] The unemployment statute does specifically provide that conviction of the manufacture, sale, or distribution of a controlled substance punishable under the North Carolina General Statutes[59] is necessarily misconduct connected with the work. Otherwise, the determina-

Other Issues in Criminal and Employment Law

Criminal law and employment law intersect in many respects not covered in this article. Here are two of the more important concerns.

May an employer ask an applicant for employment about prior convictions and later discharge the person if he or she has not answered truthfully?

No law prevents an employer in North Carolina from asking whether an applicant has a criminal record. An at-will employee's failure to answer truthfully can be grounds for discharge, whenever discovered. Of course, as noted earlier, the discharge would be unlawful if the employer used the falsification—or any other reason—as a pretext to conceal a motive prohibited by federal or state statute. With employees who have some form of "just cause" protection, the employer's discretion may not be so absolute. The falsification of an employment application is generally found to be grounds for discharge if the misrepresentation was willful or deliberate, if the misrepresentation was material to the employment at the time it was made or at the time of discharge, and if the employer acted promptly and in good faith.[1] Once hired, an employee has no obligation to report subsequent criminal convictions unless the employer requires disclosure of such future events as a condition of employment.

May an employee refuse to answer an employer's questions on the grounds that the answers may incriminate the employee?

The leading case in North Carolina on this issue is *Debnam v. North Carolina Department of Correction*,[2] which dealt with public employment. *Debnam* recognized that a public employer may question an employee about a job-related matter that could result in criminal prosecution, and refusal to answer may be grounds for discharge. The Fifth Amendment privilege against self-incrimination does not give an employee the right to refuse to answer.

But the Fifth Amendment does prohibit the government from compelling a person to incriminate himself or herself and then using that information to prosecute. Consequently, if a public employer threatens an employee with discharge for failing to answer—a form of government coercion—no information the employee provides may be used against him or her in a future criminal prosecution. For example, if a public employer suspects an employee of stealing government property, it may question him or her about the theft, but nothing the person says under threat of discharge may be used to prosecute.

This protection, called "use immunity," has its limitations. It does not preclude criminal prosecution altogether; it forbids use of compelled information in such prosecution. Thus the employee in the foregoing example could still be prosecuted for larceny, although any information he or she was compelled to provide the employer could not be used in the criminal case. Furthermore, the employer could discharge the employee on the basis of information that person revealed under questioning.

A private employer's threat to discharge an employee for not answering probably does not result in "use immunity" in future criminal proceedings. Generally the Fifth Amendment applies only to compulsion by the government or its agents, not to acts by private parties. But if an employee speaks out of fear or coercion, the investigation by that person's employer, whether in the public or private sector, may be viewed as unreliable and be given little weight by a judge or jury.

Notes

1. *See generally* Tim Bornstein and Ann Gosline, *Labor and Employment Arbitration* (Albany, N.Y.: Matthew Bender, 1995), 20.06[1]; *Grievance Guide*, 8th ed. (Washington, D.C.: Bureau of National Affairs, 1992), 62–63.

2. Debnam v. North Carolina Dep't of Correction, 334 N.C. 380, 432 S.E.2d 324 (1993).

tion of connection with the work is made on a case-by-case basis by the Employment Security Commission, although the commission and the courts generally interpret "connected with the work" broadly.[61]

One other matter is worth noting. The unemployment statutes contain a provision on self-incrimination that limits criminal prosecution concerning the subject matter of any testimony that an employee is compelled to give in an unemployment hearing.[61]

Workers' compensation benefits. Although the

law is far from settled, a person injured on the job who is receiving workers' compensation and is discharged because of a criminal conviction usually will not, unless incarcerated, lose his or her entitlement to those compensation benefits as a result of the conviction.[62]

COBRA (Consolidated Omnibus Budget Reconciliation Act) benefits. A terminated employee is normally entitled to continued coverage under an employer's group health plan for up to eighteen months if he or she pays the total cost of such coverage, unless the termination was for "gross misconduct."[63] Although the law is not yet settled, loss of employment because of a conviction unrelated to the work ought not normally to constitute "gross misconduct."

The Meaning of "Criminal Conviction"

When is a person subject to the employment consequences just discussed? To answer that question, we need to understand when an individual suffers a criminal conviction. Generally a conviction is a final judgment of the court that finds a person guilty of a criminal offense. The most important aspects of this definition, as used in the criminal law, are discussed below. But the reader should check the employment statutes, regulations, or other provisions governing the work at issue, because some of them may not use the commonly accepted definition of conviction as the event that may trigger any adverse actions, including termination of employment.

Nature of the Plea

A person may be convicted of a criminal offense in North Carolina by (1) pleading guilty, (2) pleading no contest, or (3) pleading not guilty but being found guilty by a judge or jury. Generally, once a court enters final judgment, any of the three serves as a conviction; but the nature of the plea may lead to different collateral effects, particularly with respect to civil liability.

The law allows the victim of a crime to bring a civil lawsuit for money damages against the person who committed the crime. For example, suppose John Smith is convicted of assaulting Mary Jones, who then sues Smith concerning the injuries she suffered. The effect of Smith's conviction in that suit depends on the plea he entered in the criminal case. If Smith pleaded guilty, he has admitted doing the act with which he was charged, and that admission may be used in the civil case as evidence that he committed the assault.[64] In contrast, if Smith pleaded no contest in the criminal case, Jones may not introduce evidence of the criminal conviction to show that Smith committed the assault; by definition, a no-contest plea neither admits nor denies the charged conduct.[65] Also, if Smith pleaded not guilty but was found guilty, Jones may *not* use evidence of the conviction to show that Smith committed the assault. Smith has not admitted committing the act, having pleaded not guilty; and, under North Carolina's rules of evidence, Jones may not use the judgment from the criminal case in place of live testimony proving Smith's conduct.[66]

These distinctions are far less important in the employment context. When an employer learns that an at-will employee or an applicant for employment has been convicted, it might terminate the employee or refuse to hire the applicant without pondering the technical differences between a guilty plea, a no-contest plea, and a finding of guilt after a not-guilty plea. Even if the person has statutory or contractual job protections, the nature of his or her plea may make little difference. Thus some statutes provide that the simple fact of conviction is grounds for discharge. For example, a police officer may be subject to termination for conviction of a felony, regardless of the plea.[67]

But under some employment contracts and statutes, the fact of conviction is not itself sufficient to justify discharging an employee. The employer must show that the conviction affects the employee's fitness to do the job, and a decision to terminate is subject to review in an administrative hearing or arbitration.[68] Although the rules of evidence are relaxed in these proceedings—and evidence of a conviction probably will be admissible regardless of the nature of the employee's plea—the conviction normally does not have a binding, or preclusive, effect. The employee probably will be able to present evidence about the conduct underlying the conviction and about whether the conduct warrants discharge.[69]

Finality of Judgment

If an employer does terminate an employee or make other employment decisions on the basis of a conviction, the question of when the conviction becomes final sometimes arises.

If someone is convicted of a misdemeanor in district court, the conviction is not final until the time for appeal has expired (ten days after judgment in district

court) because, in North Carolina's two-tiered trial system, the defendant is entitled to a new trial (trial *de novo*) in superior court after trial in district court. If the defendant does exercise the right to a new trial in superior court, "it is as if the case had been brought there originally and there had been no previous trial. The judgment appealed from is completely annulled and is not thereafter available for any purpose."[70]

If a person is convicted in superior court, whether of a misdemeanor or a felony, the rules on finality vary. The general trend is to treat a superior court's judgment as final even if the defendant has filed a timely appeal. For example, in 1993 the General Assembly amended the rules on sentencing to allow a court to enhance a defendant's sentence on the basis of a prior conviction in superior court regardless of whether an appeal is pending.[71]

Outcomes Not Considered Convictions

Many proceedings in criminal court do not reach judgment and therefore do not result in a conviction. Obviously, no conviction occurs if a person is arrested or indicted and the charges are dismissed or the person is found not guilty. Other proceedings do not result in an unconditional dismissal but are generally viewed as falling short of a conviction, including

- deferred prosecutions,
- prayers for judgment continued, and
- probation without conviction.[72]

A *deferred prosecution* occurs when the state agrees to cease prosecution and give the defendant the opportunity to demonstrate his or her good conduct, such as by making restitution or participating in a treatment program. The court does not enter judgment against the defendant, and the deferred prosecution is generally not considered a conviction.[73]

With a *prayer for judgment continued*, commonly known as a PJC, the court accepts the defendant's guilty plea or finds the defendant guilty after trial but does not impose a sentence or enter judgment. Instead, the court indefinitely postpones—or continues—judgment. If the PJC does not contain conditions amounting to punishment, it is not considered a conviction. For example, a PJC that requires a defendant to pay court costs or not to violate the law is not considered a conviction.[74] If it does include conditions amounting to punishment, such as a fine or imprisonment, the courts generally disregard the PJC label and treat the order as a final judgment and conviction.[75]

Probation without conviction refers to a procedure available for a narrow class of drug offenses.[76] If a defendant pleads guilty or is found guilty, a court may defer further proceedings and place the defendant on probation without entering judgment. The statutes governing this procedure provide that if the defendant fulfills the conditions of probation, the proceedings must be dismissed and "shall not be deemed a conviction . . . for purposes of disqualifications or disabilities imposed by law upon conviction of a crime."[77]

Finally, a proceeding that results in a judgment may not meet the definition of criminal conviction because the law does not consider the proceeding to fall within the realm of criminal law. For example, a juvenile adjudication of delinquency is not a conviction.[78] Infractions, which usually involve minor traffic violations such as running a stop sign or not wearing a seat belt, also are not considered convictions.[79] But many traffic offenses are misdemeanors (for example, driving fifteen miles per hour over the speed limit) and thus could be the basis of a conviction. Violations of some city or county ordinances (for example, those that prohibit possession of an open container of beer or wine on a public street) also may be classified as misdemeanors.[80]

Removal of Convictions

North Carolina law offers limited opportunities for the removal of a conviction. A person may seek

- a gubernatorial pardon,[81]
- expungement of a misdemeanor conviction (that is, destruction of the record) if the convicted person was under eighteen years of age and meets other statutory conditions,[82] and
- expungement of a conviction for a narrow range of drug offenses if the person was under twenty-one years of age and meets other statutory conditions.[83]

A person also may have records removed that do not amount to a conviction but still may adversely affect his or her employment. Thus, in limited circumstances, a person may be able to obtain expungement of records relating to juvenile proceedings,[84] criminal charges that resulted in dismissal or acquittal,[85] and probation without conviction for certain drug offenses.[86]

Revisiting Sally

This article began by posing several questions concerning Sally, a college student who was cited for consuming a mixed drink on a public street. We now return to those questions.

If Sally goes to the magistrate and pays a fine without appearing in court, will she have a criminal conviction on her record? Yes. Consuming certain alcoholic beverages in violation of G.S. 18B-301(f) is a misdemeanor. If she paid the fine to a magistrate, Sally would suffer a criminal conviction. Before she acts on that citation, she might want to consult a lawyer familiar with local practice, because the prosecutor's office may have a policy of offering deferred prosecutions to first offenders—or the court may have a policy of granting prayers for judgment continued. Neither would result in a conviction.

Will a conviction prevent Sally from working in certain occupations? As a legal matter, probably not. Although the law varies with the employment in question (at-will employment, public-sector employment, and employment covered by a collective-bargaining agreement or individual contract), a misdemeanor as minor as this probably would not be a bar to employment. As a practical matter, however, the conviction might create a problem. In hiring, an employer might pass over Sally in favor of job applicants without a criminal record. Further, Sally might not recognize that she has been convicted of a crime and so might not reveal that fact when asked on job applications. This might give an employer grounds to discharge her later.

Can Sally ever have the records of the incident sealed or destroyed? No, if she is convicted, because she was over eighteen, the cutoff age for expungement, when the events occurred. But if the charges are dismissed pursuant to a deferred prosecution agreement, Sally can have all of the records relating to the incident expunged. The right to this type of expungement may be exercised only once. She might therefore want to save the exercise of the right in case one day she is charged with and obtains dismissal of a more serious offense.

Notes

1. *See generally* Stevens H. Clarke, *Law of Sentencing, Probation, and Parole in North Carolina*, 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1997); Michael Crowell, *Collateral Consequences of a Criminal Conviction in North Carolina: Effects on Citizenship, Officeholding, Occupational Licensing, and Forfeiture of Property* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1983); David Rudenstine, *The Rights of Ex-Offenders* (New York: Avon Books, 1979); Special Project, "The Collateral Consequences of a Criminal Conviction," *Vanderbilt Law Review* 23 (1970): 929.

2. *See* Rudenstine, *The Rights of Ex-Offenders*, 71–72.

3. For example, by executive order, the governor prohibited individuals convicted of any of the offenses described in the order from being employed in certain direct-care positions in facilities operated by the North Carolina Department of Human Resources (now called the Department of Health and Human Services). *See* Exec. Order No. 169, 1991 N.C. Sess. Laws 1329 (Reg. Sess. 1992). This past legislative session, the General Assembly enacted Section 114-19.6 of the North Carolina General Statutes (hereinafter G.S.) concerning employment with the department; this statute is intended to take the place of the governor's executive order.

4. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e through 2000e-17.

5. Age Discrimination in Employment Act of 1967, 29 U.S.C. § 623.

6. Americans with Disabilities Act of 1990, 42 U.S.C. § 12111.

7. National Labor Relations Act, 29 U.S.C. § 151.

8. G.S. 95-126.

9. G.S. 95-28.2.

10. G.S. 95-28.1.

11. *See generally* Mack A. Player, *Employment Discrimination Law* (St. Paul, Minn.: West Publishing Company, 1988), 384, 398.

12. *See generally 1996–97 Directory of North Carolina State Business Licenses and Permits* (Raleigh, N.C.: N.C. Dept. of the Secretary of State, Business License Information Office, 1996).

13. *See* Kenneth Olson and Richard A. Pasewark, "Licensing Restrictions for Criminal Offenders," *Journal of Offender Counseling, Services and Rehabilitation* 5, no. 1 (Fall 1980): 19 (finding that many licensing boards, in the exercise of their discretion, do not revoke or deny licenses for conviction of a crime).

14. G.S. 74C-13(g).

15. G.S. 58-71-50.

16. G.S. 86A-18.

17. *See generally* Crowell, *Collateral Consequences in North Carolina*, 5–14.

18. State v. Mann, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986). *See also* Jones v. Brinkley, 174 N.C. 23, 93 S.E. 372 (1917) (to same effect).

19. John W. Strong, *McCormick on Evidence*, 4th ed. (St. Paul, Minn.: West Publishing Company, 1992), 1:143, n. 5.

20. *See, e.g.*, Averitt v. Rozier, 119 N.C. App. 216, 458 S.E.2d 26 (1995) (murder and kidnapping are crimes of moral turpitude); Harris v. Temple, 99 N.C. App. 179, 392 S.E.2d 752 (giving worthless check for merchandise is crime of moral turpitude), *review denied*, 327 N.C. 428, 395 S.E.2d 678 (1990).

21. This enhancement applies only if the law governing the misdemeanor does not specify a particular punishment.

See G.S. 14-3(b). Before 1994, when structured sentencing was adopted in North Carolina, the courts often struggled with whether attempt and solicitation crimes (which generally did not have specific punishments) should be considered infamous. *See, e.g.*, State v. Glidden, 317 N.C. 557, 346 S.E.2d 470 (1986) (reviews cases on issue); State v. Grant, 261 N.C. 652, 135 S.E.2d 666 (1964) (attempted felonious breaking and entering is *not* infamous misdemeanor); State v. Surles, 230 N.C. 272, 52 S.E.2d 880 (1949) (attempted burglary is infamous misdemeanor); State v. Spivey, 213 N.C. 45, 195 S.E. 1 (1938) (attempt to commit crime against nature is infamous misdemeanor); State v. Tyner, 50 N.C. App. 206, 272 S.E.2d 626 (1980) (solicitation to commit crime against nature is *not* infamous misdemeanor), *review denied*, 302 N.C. 633, 280 S.E.2d 451 (1981). Because attempts, solicitations, and most other crimes now have specific punishments under structured sentencing, the courts will rarely need to divine the meaning of "infamous."

22. *See, e.g.*, Ingle v. Roy Stone Transfer Corp., 271 N.C. 276, 156 S.E.2d 265 (1967) (in rejecting any requirement for impeachment that conviction be for crime of moral turpitude, court lists crimes that other jurisdictions have found not to involve moral turpitude, including disorderly conduct, petty larceny, assault, traffic offenses, and others); State v. King, 224 N.C. 329, 30 S.E.2d 230 (1944) (unlawful possession of liquor, assault on female, failure to provide support for wife and child, and disorderly conduct *not* crimes of moral turpitude); Strong, *McCormick on Evidence*, 1:143, n. 5 (ordinance violations, traffic offenses, and other offenses generally *not* crimes of moral turpitude).

23. *See, e.g.*, *In re* Hunt, 308 N.C. 328, 302 S.E.2d 235 (1983) (acceptance of bribe by judge is crime of moral turpitude); *In re* Willis, 288 N.C. 1, 215 S.E.2d 771 (1975) (trespass and driving while impaired *not* crimes of moral turpitude); Dew v. State *ex rel.* North Carolina Dep't of Motor Vehicles, 127 N.C. App. ___, 488 S.E.2d 836 (1997) (possession of marijuana with intent to distribute it in violation of federal law is crime of moral turpitude); North Carolina State Bar v. Speckman, 87 N.C. App. 116, 360 S.E.2d 129 (1987) (appropriating $5,000 of client's funds to own use is crime of moral turpitude); North Carolina Real Estate Licensing Bd. v. Coe, 19 N.C. App. 84, 198 S.E.2d 19 (1973) (filing false tax return *not* crime of moral turpitude). *See also* Martin v. Town of Holly Springs, 230 N.C. 388, 53 S.E.2d 161 (1949) (trial court found that minor assaults, petty traffic violations, and possession of intoxicating liquors were *not* crimes of moral turpitude); Calvert v. General Motors Corp., 327 N.W.2d 342 (Mich. Ct. App. 1982) (in case involving denial of unemployment benefits, carrying unloaded concealed weapon is *not* crime of moral turpitude), *discussed in* Seagraves v. Austin Co., 123 N.C. App. 228, 472 S.E.2d 397 (1996).

24. *See, e.g.*, Schware v. Board of Bar Examiners, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957) (requiring nexus as matter of due process); *In re* Willis, 288 N.C. 1, 215 S.E.2d 771 (1975) (following *Schware* and requiring rational connection between qualifying standards and applicant's fitness to practice law). *See also* page 16 (discussing nexus requirement in public employment).

25. *See generally* G.S. 58-7-15(16)(a) (fidelity insurance guarantees "fidelity of persons holding position of public or private trust").

26. *See* Special Project, "Collateral Consequences," 1001–2.

27. 29 U.S.C. § 504(a).

28. 12 U.S.C. § 1829.

29. 18 U.S.C. §§ 2385, 2387.

30. 5 U.S.C. § 7313.

31. 26 U.S.C. §§ 7213, 7214.

32. 10 U.S.C. § 504.

33. *See* 5 C.F.R. § 731.

34. 5 U.S.C. §§ 7511, 7521.

35. The cases discussing this "nexus" are collected in the annotations to 5 U.S.C. § 7513.

36. G.S. 126-35. Some state employees are not covered at all by the State Personnel Act—for example, employees of the Judicial Department; the General Assembly; the offices of the governor and lieutenant governor; and instructional and research staff, physicians, and dentists of The University of North Carolina. G.S. 126-5(c1). In addition, the governor is authorized to exempt policy-making positions in state departments, as are members of the Council of State for their own offices. G.S. 126-5(d).

37. *See* Eury v. North Carolina Employment Sec. Comm'n, 115 N.C. App. 590, 611, 446 S.E.2d 383, 395–96, *review denied*, 338 N.C. 309, 451 S.E.2d 635 (1994).

38. *Eury*, 115 N.C. App. 590, 446 S.E.2d 383.

39. G.S. 128-16(5).

40. Certain county officers, such as the tax collector and assessor, can be removed only for good cause. G.S. 105-349(a), -294(a). But a county or city employee who discloses privileged information about a taxpayer must be dismissed and cannot hold other public employment for five years. G.S. 153A-148.1, 160A-208.1.

41. G.S. 126-5(a). County commissioners may extend the provisions of the statute to other county employees.

42. *See* Stephen Allred, *Employment Law: A Guide for North Carolina Employers*, 2d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1995), 281, 307.

43. *See* G.S. 114-19.2, 115C-332. G.S. 14-236 provides that a public school employee convicted of acting as an agent for those furnishing supplies to a school, a Class 1 misdemeanor, must be removed from his or her position. Whether this statute overrides job protections for teachers and administrators contained in the public school statutes is unclear.

44. *See* G.S. 115C-325(e) (career teachers may be dismissed only for listed reasons); G.S. 115C-325(m) (probationary teachers may be dismissed during the term of their contract only for reasons for which career teachers may be dismissed); G.S. 115C-287.1 (school administrators—which include principals, assistant principals, supervisors, and directors—may be dismissed or demoted during the term of their contract only for reasons for which career teachers may be dismissed); and G.S. 115C-274, -278 (superintendents and assistant superintendents may be removed during the term of their contract only for listed reasons).

45. The courts have required such a connection, or nexus, for dismissal of a teacher for "immoral conduct."

another of the statutory grounds for dismissal of a career teacher. *See* Barringer v. Caldwell County Bd. of Educ., 123 N.C. App. 373, 473 S.E.2d 435 (1996). There is also a nexus requirement for revoking a teacher's license for conviction of a crime. *See* note 46 and accompanying text.

46. N.C. Admin. Code tit. 16, ch. 6C, § .0312(a)(3) (July 1997).

47. Marvin Hill and Anthony V. Sinicropi, *Evidence in Arbitration*, 2d ed. (Washington, D.C.: Bureau of National Affairs, 1987), 375–85.

48. *See generally* Tim Bornstein and Ann Gosline, *Labor and Employment Arbitration* (Albany, N.Y.: Matthew Bender, 1995), 20.46–20.48.

49. Shore v. Edmisten, 290 N.C. 628, 631, 227 S.E.2d 553, 557 (1976).

50. *See* N.C. Const. art. XI, § 1. In November 1996, the state constitution was amended to broaden the range of permissible punishments. Section 1 of Article XI now provides as follows (new provisions in italics):

> The following punishments only shall be known to the laws of this State: death, imprisonment, fines, *suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs*, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Whatever the effect of these changes, any punishment still must be one that the law authorizes for the particular offense committed by a defendant. Most criminal statutes refer only to imprisonment, monetary sanctions, and probation.

51. For example, a person adjudged guilty of a felony is ineligible to hold public office, whether elected or appointed. N.C. Const. art. VI, § 8. The disqualification from public office lasts until the person has completed his or her sentence.

52. *See generally* Special Project, "Collateral Consequences," 988.

53. G.S. 15A-1343(a), -1343(b1)(10).

54. State v. Rogers, 68 N.C. App. 358, 315 S.E.2d 492, *review denied*, 311 N.C. 767, 319 S.E.2d 284 (1984).

55. G.S. 15A-1342(a). With the defendant's consent, the court may extend the period of probation for three more years but only to allow the defendant to complete a program of restitution or to continue medical or psychiatric treatment. G.S. 15A-1342(b).

56. *See, e.g., In re* Delk, 336 N.C. 543, 444 S.E.2d 198 (1994) (court has inherent power to discipline attorneys). A relatively new statute, G.S. 15A-1331A, appears to give the court greater power over a person's employment in felony cases. It provides that a convicted person's occupational and certain other licenses are forfeited for the term of the original probation if the court revokes his or her probation and finds that the person failed to make reasonable efforts to comply with the conditions of probation. The statute has not yet been challenged, and whether it provides a constitutionally authorized form of punishment remains unclear. *See* Clarke, *Law of Sentencing, Probation, and Parole*, 18–19.

57. G.S. 96-14(2), -14(2)(A).

58. *In re* Collins v. B & G Pie Co., 59 N.C. App. 341, 296 S.E.2d 809 (1982), *review denied*, 307 N.C. 469, 299 S.E.2d 221 (1983).

59. *See* G.S. 90-95(a)(1), -95(a)(2).

60. *See, e.g.*, Lynch v. P.P.G. Industries, 105 N.C. App. 223, 412 S.E.2d 163 (1992) (conviction for possession of cocaine with intent to sell it constitutes misconduct connected with work). *See also* Smith v. Spence & Spence, 80 N.C. App. 636, 343 S.E.2d 256 (secretary's delinquency in her personal financial affairs that caused detrimental effect on employer's relationship with clients constituted substantial fault connected with her work), *review denied*, 317 N.C 707, 347 S.E.2d 440 (1986).

61. *See* G.S. 96-4(j).

62. *See* Seagraves v. The Austin Co., 123 N.C. App. 228, 472 S.E.2d 397 (1996).

63. 29 U.S.C. § 1162.

64. *See generally* Kenneth S. Broun, *Brandis and Broun on North Carolina Evidence*, 4th ed. (Charlottesville, Va.: Michie Company, 1993), 2:57, nn. 246–47. *But compare* Strong, *McCormick on Evidence*, 2:151–52, n. 29 (some jurisdictions exclude guilty pleas from evidence when the offense is fairly minor, such as a traffic offense).

65. N.C. R. EVID. 410 (barring use of no-contest plea). A defendant may plead no contest only if the prosecutor and judge consent. G.S. 15A-1011(b). A defendant also may enter an "*Alford* plea," a type of plea in which the defendant essentially pleads guilty but denies guilt. *See* North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). Whether such a plea would be admissible in a later proceeding is unclear.

66. *See* Broun, *Brandis and Broun*, 2:19–22 (judgment of another court, including judgment of conviction, not admissible in another case as evidence of fact found except when principle of *res judicata* applies); Moore v. Young, 260 N.C. 654, 133 S.E.2d 510 (1963) (criminal conviction ordinarily not *res judicata* in subsequent civil proceeding because parties not identical); Carawan v. Tate, 53 N.C. App. 161, 280 S.E.2d 528 (1981) (evidence of conviction for assault not admissible in lawsuit to recover for same assault), *modified on other grounds*, 304 N.C. 696, 286 S.E.2d 99 (1982). The federal rules of evidence allow a conviction to be used in a subsequent proceeding to prove facts essential to the conviction but only when the crime is a relatively serious one and other conditions are met. *See* FED. R. EVID. 803(22) (crime must be punishable by imprisonment in excess of one year); *see also* Strong, *McCormick on Evidence*, 2:296–99 (explaining rationale for various approaches to admissibility of conviction).

67. G.S. 128-16.

68. *See* pages 16 and 17 (discussing public employment and employment under a collective-bargaining agreement or individual contract).

69. *See In re* Elkins, 308 N.C. 317, 302 S.E.2d 215, *cert. denied*, 464 U.S. 995 (1983); Hill and Sinicropi, *Evidence in Arbitration*, 375–85. As a practical matter, however, an employee may stand on firmer ground in contesting the allegations in an employment proceeding if he or she pleaded no contest to the criminal charge.

70. State v. Sparrow, 276 N.C. 499, 507, 173 S.E.2d 897, 902 (1970); *see also* G.S. 15A-1431 (sentence imposed by

district court judge automatically stayed upon appeal; judgment reinstated only if defendant withdraws appeal), G.S. 15A-1340.11(7)a. (district court conviction counts as prior conviction for sentencing purposes only if defendant has not appealed). A defendant has the right to a new trial in superior court even after pleading guilty in district court; but whether the guilty plea could be used in a subsequent civil proceeding as an admission of the defendant is unclear. *See* Broun, *Brandis and Broun*, 2:57, n. 246.

71. G.S. 15A-1340.11(7)b. Similarly, in 1995 the General Assembly amended the statutes governing attorneys to allow the State Bar to initiate disciplinary proceedings without awaiting the outcome of an appeal of a conviction in superior court. G.S. 84-28(d).

72. Because statutes and regulations may vary, however, readers should check the applicable language to be sure it conforms to the common definition of conviction. *See, e.g.*, G.S. 20-4.01(4a)a.4. (for purposes of revoking a driver's license, a third prayer for judgment continued within five years constitutes a conviction); G.S. 113-166(a) (for purposes of revoking certain fishing licenses, a conviction includes "a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses his guilt").

73. There are two forms of deferred prosecution, formal and informal. Formal deferred prosecution is governed by G.S. 15A-1341(a1), which allows deferral of prosecution for misdemeanors and Class H and I felonies. Prosecutors also informally "defer" prosecution by dismissing the case on the defendant's promise to abide by certain conditions. In either instance, the defendant ordinarily does not enter a plea but may be asked to sign a statement admitting the charged conduct.

74. *See* G.S. 15A-101(4a) (PJC upon payment of costs, without more, does not constitute entry of judgment); State v. Southern, 314 N.C. 110, 331 S.E.2d 688 (1985) (PJC, not being conviction, cannot be used as aggravating factor in sentencing for subsequent offense); Florence v. Hiatt, 101 N.C. App. 539, 400 S.E.2d 118 (1991) (PJC was not conviction and did not authorize revocation of driver's license); State v. Cheek, 31 N.C. App. 379, 229 S.E.2d 227 (1976) (PJC was not final judgment, and defendant had no right to appeal). Although a PJC is not a conviction, a person's guilty plea might be admissible as an admission in a subsequent civil case. *See* note 70.

75. *See* State v. Brown, 110 N.C. App. 658, 430 S.E.2d 433 (1993).

76. G.S. 90-96 and -113.14 authorize probation without conviction for possession of some controlled substances, possession of drug paraphernalia, and inhalation or possession of substances that release toxic vapors.

77. G.S. 90-96(a). Here again, if a defendant pleads guilty and is placed on probation without conviction, the guilty plea might be admissible as an admission in a subsequent civil case. *See* note 70.

78. G.S. 7A-638. Although not convictions, some adjudications of delinquency have collateral consequences. *See* G.S. 15A-1340.16(d)(18a) (delinquency adjudication for act that would have been Class A through E felony if committed by adult may be used as aggravating factor at sentencing for later offense); N.C. R. EVID. 404(b) (making admissible in some circumstances evidence of offense committed by juvenile that would be Class A through E felony if committed by adult); N.C. R. EVID. 609(d) (in criminal case, court may allow evidence of juvenile adjudication of witness other than accused if conviction of same offense would be admissible to impeach).

79. *See* G.S. 14-3.1 (infraction is noncriminal violation of law). For a list of motor vehicle infractions, *see* Ben F. Loeb, Jr., and A. Britt Canady, *Punishment Chart for North Carolina Motor Vehicle Offenses* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, Jan. 1995). Infractions also may involve unlawful conduct outside motor vehicle law. *See, e.g.*, G.S. 14-313 (some tobacco violations); G.S. 14-415.21 (some violations of law on concealed-handgun permits).

80. *See* G.S. 14-4(a) (violation of ordinance other than one regulating parking or operation of vehicle is Class 3 misdemeanor). A city or county has the option of decriminalizing violations of ordinances. *See* G.S. 153A-123, 160A-175.

81. *See* N.C. Const. art. III, § 5(6); G.S. 147-21 through -25. *See also* State v. Clifton, 125 N.C. App. 471, 481 S.E.2d 393 (pardoned conviction, whether conditional or unconditional, may not be used as prior conviction to enhance defendant's sentence), *review granted*, 346 N.C. 182, 486 S.E.2d 200 (1997); G.S. 17C-13 (when person presents evidence of unconditional pardon, Criminal Justice Education and Training Standards Commission may not deny, suspend, or revoke person's certification on basis of offense).

82. G.S. 15A-145.

83. G.S. 90-96(e), -113.14(e).

84. G.S. 7A-676.

85. G.S. 15A-146 (general provisions); G.S. 90-96(d), -113.14(d) (certain drug offenses). Effective June 4, 1997, G.S. 15A-146 allows expungement of a charge under G.S. 18B-302(i), an infraction involving purchase or possession of beer or wine by a person nineteen or twenty years old, if the charge is dismissed or the person is found not responsible.

86. G.S. 90-96(b), -113.14(b). An application form for the types of expungement discussed in this article is available from the clerk of court in any county. *See* North Carolina Administrative Office of the Courts, *North Carolina Judicial Department Forms Manual*, AOC-CR-237 (Raleigh, N.C.: NCAOC, June 1992).

Company Police in North Carolina: Much More Than "Rent-a-Cops"

Jeffrey P. Gray

Bored for lack of game, a group of hunters intrude onto Duke Power Company's property, tearing down gates and cables and shooting at signs and equipment. They are arrested and charged with trespassing, damage to personal property, and various other offenses.

A car careens down a City of Raleigh street adjacent to Shaw University. An officer stops the vehicle and charges its operator with driving while impaired.

Thieves have been looting parked boxcars at Norfolk Southern's railway yard in Charlotte, stealing thousands of dollars worth of designer clothes, electronic equipment, and other consumer goods. After a two-week stakeout, they are caught, arrested, and later indicted.

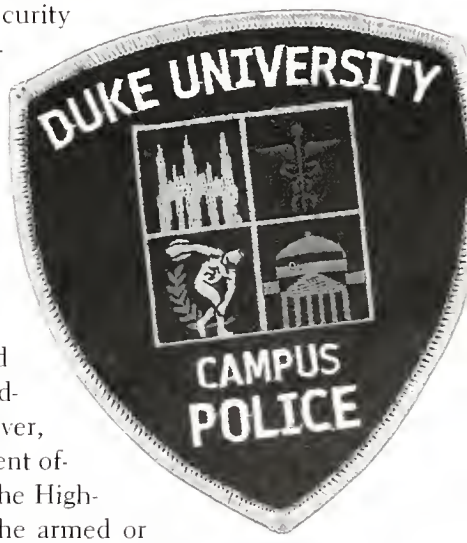
Poachers enter onto the magnificent grounds of the Biltmore Estate, intent on bagging a deer. Officers patrolling the property detect the poachers' presence and cite them.

Vandals are caught at the State Fairgrounds in Raleigh late one night.

A drug addict becomes unmanageable in the emergency room of New Hanover Regional Hospital and must be restrained by force.

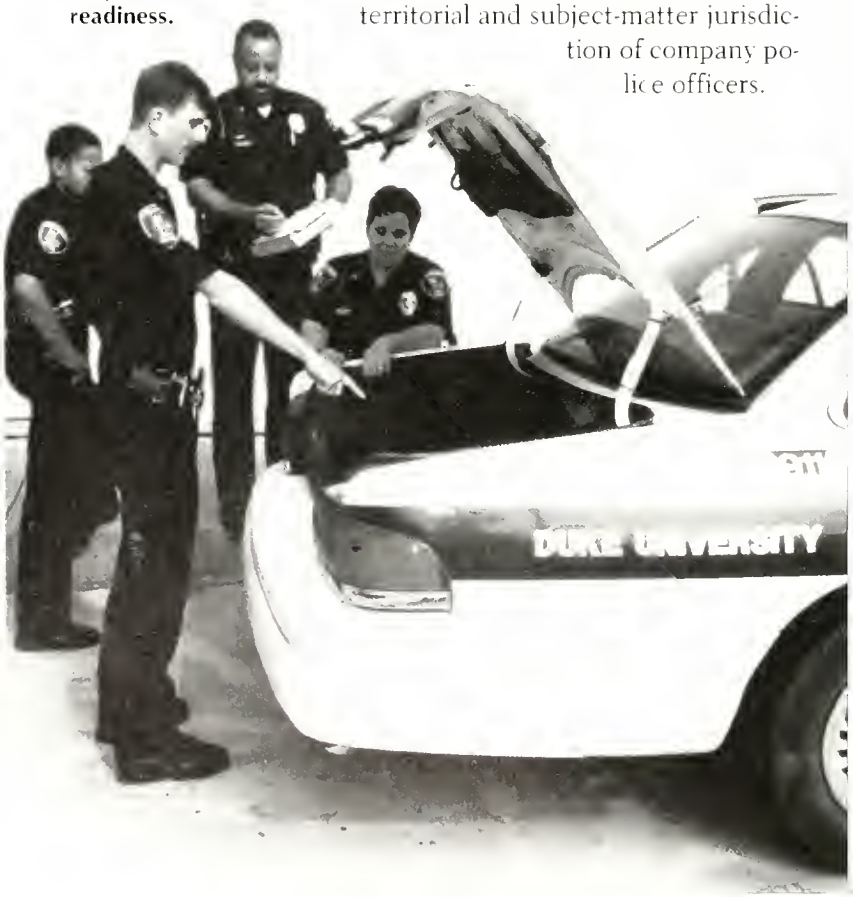
The author is an assistant attorney general of North Carolina. He advises and represents numerous state government agencies, including, until recently, the Company Police Program. He also advises and teaches law enforcement officers and assistant district attorneys.

Every day in North Carolina, a unique form of law enforcement agency is in action, its officers providing law enforcement and security services to a wide array of businesses, industries, citizens, and visitors. Many of these officers wear a uniform just like that of a municipal police officer or a county deputy sheriff, but many more are in "plain clothes" (civilian attire). They drive vehicles that resemble a typical patrol car, and they wear weapons, tote handcuffs, and carry a badge. However, they are not local law enforcement officers or state officers such as the Highway Patrol. Neither are they the armed or unarmed security guards seen at many of the



same locations, who possess only the authority to detain an offender. They are "company police officers," sworn law enforcement officers with the full power of arrest. They are commissioned, and their employing agency is certified, by the attorney general of North Carolina. The agency is required to maintain liability insurance, and the agency and its officers are subject to strict regulatory control. Although the officers in many instances are "for hire," or present on premises under a contractual agreement, they are much more than "rent-a-cops."

The purpose of this article is to help state and local government officials understand what constitutes a company police agency and what the powers of company police officers are. The article discusses the role of company police and identifies public and private entities that use this type of law enforcement organization. It also provides a brief history and an overview of the law and the rules governing company police. Further, it addresses commonly asked questions gleaned from numerous inquiries received by the Attorney General's Office over the past few years. The answers should resolve many uncertainties about the territorial and subject-matter jurisdiction of company police officers.



Courtesy Duke University Police Department

Members of the Duke University Police Department conduct a training session on patrol readiness.

Commonly Asked Questions about

1. Are company police officers authorized to use blue lights and sirens on motor vehicles that they operate in the performance of their duties?

Yes, under certain circumstances. All company police officers may use blue lights on motor vehicles that they operate in the performance of their duties (1) while they are on property owned by or in the possession and the control of their employer, (2) while they are in continuous and immediate pursuit ("hot pursuit") of a person for an offense committed on property owned by or in the possession and the control of their employer, or (3) while they are transporting a person whom they have taken into custody. They may use a siren on their employer's premises at any appropriate time. However, they may use a siren off their employer's premises only when they are in hot pursuit. For lawful use of both blue lights and sirens, the vehicle must be used primarily by the company police agency in the performance of official duties.[1]

2. May all company police officers make arrests and charge for infractions on state roads that pass through, border, or adjoin their employer's premises but are not part of those premises?

No. Only campus company police, and possibly railroad police, may do so. G.S. 74E-6(c) places certain limitations on the territorial jurisdiction of company police officers. G.S. 74E-6(d) gives campus company police additional power to make arrests and charge for infractions "upon that portion of any public road or highway passing through or immediately adjoining" their employer's premises. Further, pursuant to G.S. 74E-6(e), railroad police officers "also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation." Thus to the extent that any federal law or regulation grants railroad police officers power to make arrests and charge for infractions on state roads that pass through, border, or adjoin their employer's premises, such officers have those powers.[2]

3. When company police officers make an arrest on their employer's premises, may they transport the arrested person from the premises to a magistrate to obtain a warrant?

Yes. G.S. 74E-6(c) provides that while they are performing their duties, company police officers have the

same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on their employer's premises. Possessing such authority, company police officers are required to comply with the provisions of G.S. 15A-401 regarding the procedure for arrest without a warrant and the duties of an arresting officer. One of these duties is to take the arrested person before a magistrate (or another judicial officer) without unnecessary delay.

4. May company police officers carry a concealed weapon off their employer's premises?

No, if they are on duty. Company police officers may carry a concealed weapon (1) when they are on their own business property or at home or (2) "while on-duty and acting in the discharge of [their] official duties and while within those property jurisdiction limitations specifically set forth and described under N.C.G.S. § 74E-6."[3]

In 1997 the General Assembly amended G.S. 74E-6(c) to provide that company police officers are authorized to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5). G.S. 14-269 is the general prohibition against carrying a concealed weapon. Law enforcement officers are exempt from the provisions of G.S. 14-269 under certain conditions. The Company Police Program's administrative rules will be amended to reflect the new provision in G.S. 74E-6(c). Nothing in this new provision, however, alters the administrative rule regarding carrying a concealed weapon while on duty.

Although company police officers may now carry a concealed weapon statewide in accordance with G.S. 14-269(b)(5) or obtain a permit to carry a concealed handgun like any other resident pursuant to G.S. 14-415.10 through -435 (the concealed handgun permit law), they still may not carry a concealed weapon, including a handgun, outside their territorial jurisdiction while on duty.

This provision encompasses company police officers who also are certified as federal, state, county, or municipal law enforcement officers and who are in compliance with G.S. 14-269(b)(5).

5. May company police officers carry a concealed weapon statewide pursuant to G.S. 14-269?

Yes. Effective December 1, 1995, off-duty law enforcement officers could carry concealed weapons statewide if certain conditions were met. Although company police officers were "sworn law enforcement officers," the exclusivity provision found in G.S. 74E-6(g) prohibited them from carrying a concealed weapon outside their territorial jurisdiction pursuant to the 1995 law. However, in 1997 the General Assembly amended the law to provide equity between company police officers and all other law enforcement officers. In Senate Bill 561, ratified and effective August 28, 1997, the General Assembly added a provision to G.S. 74E-6(c) stating that "[c]ompany police officers shall have, if duly authorized by the superior officer in charge, the authority to carry weapons pursuant to and in conformity with G.S. 14-269(b)(5)."[4]

6. Do company police officers have the authority to make arrests and charge for infractions on property rented, either short or long term, by their employer?

No, unless the employer has both possession and control of the premises. Under G.S. 74E-6(c), the territorial jurisdiction of company police officers is "property owned by or in the *possession and control* of their employer" (emphasis added).

7. Do company police officers have jurisdiction if state, county, or municipal law enforcement officers request their assistance off their employer's premises?

No. Company police officers outside their territorial jurisdiction (that is, off their employer's premises) who are not campus police officers acting pursuant to a mutual aid agreement or who are not in hot pursuit have no jurisdiction as law enforcement officers. However, they may assist other officers as private citizens. G.S. 15A-405 provides that private citizens may assist law enforcement officers in effecting arrests and preventing escapes from custody when officers request them to do so. As private citizens, company police officers would have the same jurisdiction as the requesting law enforcement officers, just as any other citizens would who received a similar request for assistance.

8. May company police officers make arrests when they are off duty?

No. Unlike public law enforcement officers, com-

pany police officers have no off-duty arrest authority, even on their employer's premises. However, on or off their employer's premises, they have the detention powers of private citizens as provided in G.S. 15A-404.

9. Do company police officers have the one-mile extraterritorial jurisdiction given to municipal police officers by G.S. 15A-402 and 160A-286?

No. Although G.S. 74E-6(c) states that all company police officers have the same powers as "municipal . . . police officers," it then defines the territorial jurisdiction of company police officers. As the answer to question 5 points out, G.S. 74E-6(g) provides that the authority granted to company police officers is limited to that provided in G.S. Chapter 74E.

10. May company police officers serve an arrest warrant on their employer's premises?

Yes. Under G.S. 15A-304, an order for arrest on a warrant is directed to a law enforcement officer. Under G.S. Chapter 74E, company police officers are law enforcement officers and may execute a warrant within their territorial jurisdiction.

11. May company police officers serve a criminal summons on their employer's premises?

Yes. A "criminal summons" is a document that charges a person with an infraction, a misdemeanor, or a felony and orders the person to appear at a stated time and place. Under G.S. 15A-301, a criminal summons may be served by *any* law enforcement officers having authority and territorial jurisdiction to make an arrest for the offense charged.

12. May all company police officers investigate motor vehicle accidents that occur on public streets and roads (that is, city streets, county roads, and state roads) on their employer's premises?

No. Only campus company police may do so. Public roads are not "owned by or in the possession and control of" company police agencies. However, G.S. 74E-6(d) specifically gives this authority to campus company police.

All company police may investigate motor vehicle accidents that occur on private streets and roads owned by or in the possession and control of their employer.

13. May company police officers enforce state wildlife laws on their employer's premises?

Yes. Under G.S. 74E-6, all company police officers have full subject-matter jurisdiction. Therefore they may enforce state wildlife laws, as well as any other criminal laws, in the territory prescribed in G.S. 74E-6(c) and (d) unless the statute that they are enforcing limits enforcement to certain officers.

Notes

1. N.C. Admin. Code tit. 12, ch. 2I, § .0304(4) (Nov. 1994). This question also is controlled by N.C. Admin. Code tit. 12, ch. 2I, § .0304(5) (Nov. 1994). Other limitations on the possession and the use of blue lights may exist. *See, e.g.*, G.S. 20-130.1(b) and (d), which limit possession of a blue light in vehicles not publicly owned to vehicles "used primarily" by law enforcement officers in the performance of their official duties.

A statute in the motor vehicle law essentially reserves blue lights for law enforcement vehicles and red lights for certain emergency vehicles not used for law enforcement. The few municipalities with public safety departments (that is, combined fire and police) use vehicles equipped with both. For activation of a red light to be lawful, the vehicle must be exempted from the provisions of G.S. 20-130.1(b).

2. This question also is controlled by N.C. Admin. Code tit. 12, ch. 2I, § .0304(7) (Nov. 1994).

3. N.C. Admin. Code tit. 12, ch. 2I, § .0304(2) (Nov. 1994).

4. 1997 N.C. Sess. Laws ch. 441. G.S. 14-269(b)(5) provides that the prohibition against carrying a concealed weapon does not apply to sworn law enforcement officers when they are off duty if their agency meets certain statutory requirements. Therefore company police officers are no longer barred by G.S. 74E-6(g) from being included in the provisions of G.S. 14-269(b)(5).

However, company police officers may not carry a concealed weapon, including a handgun, outside their territorial jurisdiction while they are on duty (see question 4).

The Role of Company Police

Many state and local governmental officials (including law enforcement officers), as well as the general public, do not fully understand the role of company police. Once company police officers are commissioned, they have met the minimum standards required for employment and certification as law enforcement officers in North Carolina, including completion of the course Basic Law Enforcement Training. The officers receive law enforcement certification from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Standards Commission). After being officially sworn in by attesting to an oath of office, they are commissioned by the attorney general and governed by that office. The commission entitles them to exercise the same powers that other sworn law enforcement officers exercise.

Company police agencies are a vital part of the criminal justice system's efforts in this state. Many provide unique or special services to law enforcement as a whole. Company police agencies supplement state, municipal, and county police forces. Indeed, they may be a part of state and local government. For example, two counties in North Carolina have contracted with independent company police agencies to conduct courthouse security.

Entities with Company Police

Company police can be found throughout North Carolina. At present, more than seventy-five agencies serve the state, ranging in size from one officer to sixty or so. Company police officers patrol and enforce the criminal laws of the state on private and public school property, at county and state hospitals, at shopping centers, in housing complexes and office buildings, and even on golf courses and recreational lakes. There are company police officers on trains, at train stations, and at a race track. The federal government even has a company police agency. These agencies and their officers provide the same police services within their territorial jurisdiction that municipal law enforcement officers do.

Public Agencies

The largest percentage of company police agencies is in the public sector. These agencies provide law enforcement services directly and indirectly to local government and supplement state and local law enforcement agencies by relieving them of some of the calls for service that would otherwise burden them.

Four units of state government have company police: (1) the North Carolina Arboretum in Asheville, (2) UNC Hospitals in Chapel Hill, (3) the North Carolina Museum of Art in Raleigh, and (4) the State Fairgrounds in Raleigh. Three state universities have obtained certification as company police agencies (the other thirteen members of The University of North Carolina system have opted for a different status—campus law enforcement agencies).[1] Additionally, six state community colleges have company police.

On the local government level, three county school systems have company police—Avery, Lee, and Yancey—and at least two more are strongly considering them. Also, a two-county lake authority, Person-Caswell, has a company police agency. Further, ten county or regional hospitals, generally nonprofit corporations, have company police.

All these law enforcement agencies are government agencies in some ways. They are part of a governmental entity and are funded by that entity. They provide law enforcement services directly for the governmental entity that employs them. However, the officers remain company police. They are not state, county, or municipal officers for purposes of G.S. 15A-402, which governs the territorial jurisdiction of those types of officers.

Private Agencies

Company police agencies that are not related to the government are certified for a variety of private entities. More than twenty are at private colleges and universities. One, at Duke University, is larger than most municipal and county law enforcement agencies in North Carolina—about sixty officers. The largest group overall, however, consists of agencies that are certified for private companies and corporations. These fall into two basic categories: (1) those that provide on-site law enforcement service under contract and (2) those that are "proprietary"—that is, they provide law enforcement services only for their employer.

Agencies Offering Services under Contract

Although any company police agency may legally contract with others to provide on-site security and police services, ten company police agencies certified in North Carolina do so exclusively. The person or the

business that contracts with the company police agency is the "employer."

Proprietary Agencies

The remaining agencies are owned by a single company or corporation and provide services only to their owner. Five are at resort or residential communities: the Country Club of North Carolina at Pinehurst, Sapphire Valley near Cashiers, Lake Royale in Franklin County, Peppertree Fontana Village Resort near Fontana Dam, and Seven Lakes in Moore County. One provides security at Crabtree Valley Mall, while two others (Koury Corporation and York Properties) provide security and law enforcement services not only at malls and shopping centers but also at other commercial, retail, and residential properties. The remaining proprietary agencies are major North Carolina corporations and employers such as Banknote Corporation of America, the Biltmore Company, the Charlotte Motor Speedway, and Duke Power Company. The agencies owned and operated by railroads—Norfolk Southern and CSX—also are proprietary.

A Brief History of Company Police

The history of company police in North Carolina spans almost 125 years but can be told in just a few paragraphs. In the mid to late 1800s, as special law enforcement problems arose that existing local officers (usually just a sheriff and constables) could not adequately handle, the legislature created new law enforcement agencies. The officers of these agencies, called "special policemen," were authorized for railroads in 1871, for electric or water power companies and construction companies in 1907, and for manufacturing companies in 1923.[2] In many small towns and communities, the railroad police, the electric or water company police, or the officers of the local mill often were the only police available to assist the town or county constable or the sheriff and his deputies.

The authority to appoint or commission these officers resided in the governor until 1971, when special police were transferred to the Department of Justice by the State Government Reorganization Act.[3] The attorney general heads the Department of Justice.

For many years, company police operated under former G.S. Chapter 74A. In 1992 the legislature placed the agencies under G.S. Chapter 74E, the Company Police Act.[4] The purpose of the new act was to define the duties of the attorney general in detail, replace an antiquated bond system with a liability insurance requirement, create three distinct classifications of officers based on the employer, expand the territorial and subject-matter jurisdiction of campus company police, and exempt from state control certain acts by certain officers on the basis of preemption by federal law. This act brought the state's company police into modern times.

Powers of the Attorney General

The stated purpose of the Company Police Act "is to ensure a minimum level of integrity, proficiency, and competence among company police agencies and company police officers."[5] To achieve this purpose, the act establishes a Company Police Program, under which the attorney general is authorized to certify organizations as company police agencies and to commission individuals as company police officers.

For both agencies and officers, the attorney general has the power to establish minimum standards for education, experience, and training; establish and require written or oral examinations; require the submission of reports or other information; inspect records; investigate alleged violations of the Company Police Act or its administrative rules; deny, suspend, or revoke a certification or a commission; and apply to the courts for injunctions to prevent a violation of the law or the rules. Further, the attorney general may delegate the authority to administer the program, and has done so. The Criminal Justice Standards Division is required to provide administrative support staff for the program.[6]

One characteristic that distinguishes company police from state, municipal, and county police is the handling of their administrative and personnel records. The attorney general maintains for company police many of the records that a state, municipal, or county police agency legally or customarily maintains itself.[7] For example, the Attorney General's Office keeps a personnel file on each company police officer, which includes his or her law enforcement certifica-

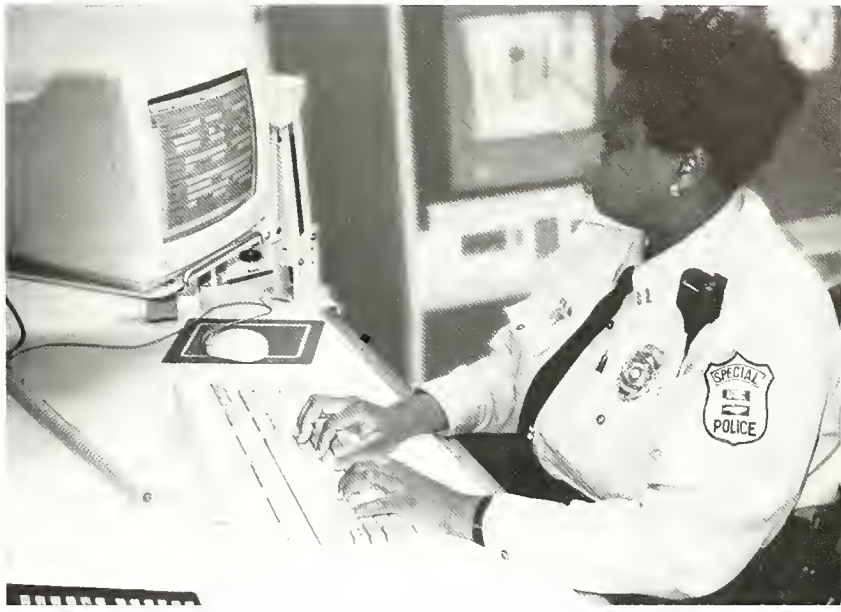
tion documents. Although a duplicate file might exist at the agency, it is not required. This distinction is important because it points out the special position of the attorney general in regard to company police. The attorney general, not an agency manager, is essentially the "chief" of each agency. This is only logical, for the authority of an agency and its officers derives solely from the attorney general.[8]

Certification of a Company Police Agency

Any public or private educational institution or hospital, state institution, or corporation providing on-site police and security services for persons or property may apply to the attorney general to be certified as a company police agency. In addition to filing an application form and paying fees, a prospective company police agency must submit numerous items to the attorney general, including its articles of incorporation or other documentation of its origins; the names and addresses of all its corporate officers and directors; a criminal-history record check on each corporate officer and director; and the names and addresses of all businesses and institutions with which the agency has contracted to provide services.[9] Every applicant that is not a public entity also must file a copy of a liability insurance policy or, if it is self-insured, a certificate of self-insurance that meets the requirements of the act. The attorney general must suspend the certification of a company police agency that fails to maintain a liability insurance policy or a certificate of self-insurance.[10]

Before an agency may receive certification, it must have a "department head," that is, a person who is responsible for the agency's police officers. This person may be the company police chief or a designee formally appointed in writing as the department head. The department head *must* maintain a commission as a company police officer.[11]

A company police agency's certification expires on June 30 following its issuance (unless it is suspended or revoked sooner by the attorney general). An agency may renew the certification on payment of the appropriate fee and on compliance with the Company Police Act and the administrative rules. An entity whose certification has been denied or revoked for a violation of the act or the administrative rules is not eligible to apply for certification again for three years.[12]



Dennis Coleman/UNC Hospitals

Deborah Robinson, captain, UNC Hospitals Police, is shown on duty at the emergency room. The principal responsibilities of the hospital police in the ER are to maintain visitor and parking control and to provide security for ER personnel.

Company police agencies are responsible for ensuring that all their employees, commissioned or not, comply with the provisions of the law and the rules, including those pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles.[13] (See "Limitations on Company Police," page 33.)

Commissioning of a Company Police Officer

Once an agency is established and certified as a company police agency, it may apply to have its officers commissioned. Every company police officer must meet certain requirements to obtain (and maintain) a commission:

1. Be a citizen of the United States
2. Be at least twenty years of age
3. Be a high school graduate or pass the high school equivalency test (GED)[14]
4. Pass the company police written examination
5. Meet the minimum standards for criminal justice officers established by the Standards Commission[15]
6. Submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation[16]

Courtesy the Biltmore Company

Four members of the Biltmore Estate company police on the front lawn of the Asheville, North Carolina, mansion.

7. Produce a negative result on a drug screen
8. Notify the program administrator in writing of all criminal offenses for which he or she has been arrested, pleaded no contest, pleaded guilty, or been found guilty
9. Be of "good moral character" as specified in G.S. 17C-10(c)
10. Not have committed or been convicted of a crime or crimes as specified in the rules governing company police, such that she or he would be ineligible for commissioning[17]

These requirements are more stringent than those for officers of many state and local law enforcement agencies.

Any company police agency that is contemplating commissioning of an applicant as a company police officer must complete a background investigation on the applicant *before* employment. This investigation must examine the applicant's character traits and habits relevant to performance as a company police officer and must determine whether the applicant is of good moral character (see requirement 9). A department head applying for commissioning may not conduct his or her own background investigation. It must be performed by a city or county agency in the county where the company police agency has residency, or by a private investigator under contract.[18]

The Company Police Act and its administrative rules reinforce the fact that company police officers are like any other law enforcement officers in North Carolina.[19] The act specifically provides that, before assuming their duties, persons who are commissioned as company police officers must take the oath of office required of law enforcement officers.[20] Also—and of particular note—the act states that, although the attorney general commissions these officers, their agencies pay them.[21] This provision, which existed in former G.S. Chapter 74A, was probably included because of the broad authority and the complete control over commissioned officers granted to the attorney general. It prevents the argument "If they're yours, you pay them."

Powers of Commissioned Company Police Officers

The Company Police Act establishes three distinct classifications of company police officers, as follows.[22] The powers of an officer depend on the officer's (or agency's) classification.

1. "Campus police officers"—company police officers who are employed by any constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by G.S. 116-15[23]
2. "Railroad police officers"—company police officers who are employed by a certified rail carrier and commissioned under the Company Police Act
3. "Special police officers"—all company police officers not designated campus or railroad police officers[24]

In the performance of their duties of employment, all company police officers have the same powers that municipal and county police officers have to make arrests for both felonies and misdemeanors, and to charge persons with infractions, on

1. real property owned by or in the possession and the control of their employer;
2. real property owned by or in the possession and the control of a person who has contracted with their employer to provide on-site police and security services for the property; or
3. any other real property while in continuous and immediate pursuit ("hot pursuit") of a person for an offense committed on property described in 1 or 2.[25]

The Company Police Act gives campus and railroad police additional powers that expand their territorial limits. Campus police officers have the powers just set forth on that portion of any public road or highway passing through or immediately adjoining the property described, wherever it is located.[26] (See "Commonly Asked Questions," question 2, page 26.) Also, the board of trustees of any college or university that qualifies as a campus police agency may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, the governing board of a county, pursuant to G.S. Chapter 160A.[27] A "mutual aid agreement" is a method by which law enforcement agencies may expand the territorial or subject-matter jurisdiction of their officers under certain circumstances.[28] The agreement must be in writing, as well as meet other criteria. Railroad police officers also have the powers and the authority granted by federal law or by any regulation promulgated by the United States Secretary of Transportation. Further, the limitations on the power to make *arrests*, stated earlier, are not applicable to railroad police officers,[29] who may make arrests anywhere in the state for offenses committed on railroad property.

The statute governing the powers of company police states that the authority given to them is "exclusive." That is, regardless of what any other law provides, the powers granted to company police officers are limited to those authorized in the Company Police Act.[30] Thus provisions of law that expand the power and the authority of other law enforcement officers and agencies are not applicable to company police. For example, railroad and special company police may not enter into mutual aid agreements pursuant to G.S. 160A-288 and -288.2, or G.S. 90-95.2. [Campus company police may enter into such agreements because the Company Police Act authorizes them to do so, under G.S. 74E-6(d).] For other examples, see "Commonly Asked Questions," questions 8 and 9.

Limitations on Company Police

Company police are limited in other ways than those already described. For one, no commissioned officer may transfer her or his commission from one employing company police agency to another.[31] There also are limitations on the tenure of an agency's certification or an officer's commission. A certification or a commission remains in effect until, as appropriate, (1) the attorney general directs its termination, (2) the officer ceases to be employed by a company police agency, (3) the required liability insurance is terminated or suspended, (4) the need for the commission no longer exists, (5) evidence is presented that the officer has committed an act that would originally have caused denial of his or her application or an act that is prohibited by the administrative rules, or (6) the Standards Commission suspends or revokes the officer's certification for cause.[32]

In addition to other acts prohibited by the Company Police Act or the administrative rules, the following acts are *specifically prohibited* by the rules governing company police and may result in revocation or suspension of an agency's certification or an officer's commission, civil or criminal action, or all of the foregoing:[33]

1. Using excess force while performing official duties
2. Carrying a concealed weapon except (a) when they are on their own business property or at home or (b) while they are on duty as company police officers and acting in the discharge of their official duties and while they are within the jurisdiction specifically described in G.S. 74E-6[34] (see also "Commonly Asked Questions," questions 4 and 5)
3. Activating or operating a red light, a blue light, or a siren except under certain circumstances (see "Commonly Asked Questions," question 1)
4. Representing in any manner at any time that they are federal, state, county, or municipal law enforcement officers unless they also are certified as one of these classifications of officers
5. Imposing or attempting to impose their will on another person as police authority unless they are authorized to do so
6. Violating the administrative rule governing badges, uniforms, vehicles, and officer identification for company police[35]

Finally, the administrative rules contain certain limitations regarding any "indicia" (distinctive markings) or symbols that identify company police as such. The administrative rules address three types of officer identification: badges, uniforms, and vehicles.[36]

1. Badges. When they are on duty, all company police officers must wear a badge bearing the name of the certified company police agency and the general title Company Police Officer or the specific title Rail-

Courtesy North Carolina Museum of Art

A North Carolina Museum of Art security officer, Ralph Dent, checks in by radio from the museum's Classical Art sculpture gallery. The museum employs a security staff of approximately 45 members. Some are officers (with police powers); others are gallery security guards (without police powers).

road Police Officer, Campus Police Officer, or Special Police Officer. They must carry the badge at all times. Further, they always must wear the badge in plain view except when their weapon is concealed under the provisions set forth in the administrative rule governing prohibited acts. *No identification card may be issued to or possessed by any company police officer except that issued by the attorney general.*[37]

2. Uniforms. When they are on duty, all company police officers must wear the uniform of their agency unless the department head directs them to wear other attire. The uniform must bear shoulder patches that contain the title Railroad Police Officer, Campus Police Officer, or Special Police Officer and the name of the company police agency. When wearing plain clothes, the officer must comply with the provisions just described regarding badges. Company police agencies that employ both commissioned company police and noncommissioned security personnel, including armed and unarmed security guards, must provide the commissioned officers with a uniform of a different color that clearly distinguishes them from other employees of the agency.[38]

3. Vehicles. Each marked vehicle used by a company police agency must prominently display the agency name and one of the following agency classifications: Railroad Police, Campus Police, or Special Police. The department head must ensure that employees who have not been commissioned as company police officers do not operate any marked vehicle used by the agency and do not operate any company police vehicle equipped with a blue light. Further, the department head must ensure that any marked company police vehicle is not operated outside the territorial jurisdiction set forth in G.S. 74E-6 unless it is operated by an on-duty officer in the performance of her or his duties and the operation is authorized by the department head.[39]

Largely because of the very limited territorial jurisdiction of company police officers and the unique role they play in the criminal justice system, the Company Police Act and the administrative rules have been carefully written to ensure that these officers are not mistaken for state, county, or municipal officers. At the same time, the law and the rules provide numerous methods by which the public, as well as other law enforcement officers, may know that a company police officer is just that—a police officer. These strict guidelines are a vital and necessary component of the act, part of the *quid pro quo* (fair exchange) for being given something otherwise reserved only for the government itself: the power of arrest.

Penalties for Violations of the Company Police Act

The administrative rules specify both the grounds for denial, suspension, or revocation of an agency's certification or an officer's commission, and the duration of these penalties. Also, the attorney general has the authority to suspend summarily either an agency's certification or an officer's commission.[40]

Further, the Company Police Act makes it a criminal violation for any private person, firm, association, or corporation, or any public institution, agency, or other entity to perform any services as or in any way hold itself out as a company police agency, or to engage in the recruitment or the hiring of company police officers without first complying with the act's provisions. Any violation of this provision is punishable as a Class 1 misdemeanor.[41]

Conclusion

Although a concerted effort to clarify the status of company police began with the passage of the Company Police Act in 1992, there is still much confusion about what company police officers are. Many people—private citizens and governmental officials alike—still think of them as security guards or "glorified security guards." Legislators are no exception: witness their unusual reversals in the last few years on provisions in the various assault statutes relating to assaulting a law enforcement officer. Company police officers were first excluded from these statutes, then included in them, then excluded again. The resulting inequity has placed company police officers in a second-class category behind other law enforcement officers.[42]

Company police are widely used across the state but are seldom seen or recognized for what they are. They are not "private police" in the employment of private companies and major corporations or "rent-a-cops" on contract with employers. They are well-trained, highly regulated professional agencies and officers that provide important services to the state's criminal justice system and citizens. Whether they are instruments of a state or local government or a privately or publicly held corporation, company police are an important part of law enforcement. They should be accorded the same respect that other police in this state receive. In many ways, company police officers are more highly regulated than other law enforcement officers. Their services are a tremendous asset to all North Carolinians, but their specialized use causes them to be somewhat unknown. For these reasons, they are underused by state and local government. Once their role is understood, company police may be recognized for the invaluable resource that they are, and government may draw on their services to a greater extent.

Notes

1. There are two types of law enforcement officers and agencies at the constituent institutions of The University of North Carolina: "campus company police," which are certified pursuant to Section 74E-6(b) (part of the Company Police Act) of the North Carolina General Statutes (G.S.) and discussed later in this article (see "Powers of Commissioned Company Police Officers," page 32); and "campus law enforcement agencies," which are established pursuant to G.S. 116-40.5. Under the latter provision, the board of trustees of any constituent institution of UNC may elect to create a campus law enforcement agency and have its officers certified under G.S. Chapter 17C, rather than requesting certification as a company police agency and commissioning them as company police officers pursuant to the provisions of the Company Police Act. This option also is reflected in Section 74E-6(f). Both types of campus police officers have the full power of arrest within their territorial jurisdiction. The most significant difference between them is that officers of a campus law enforcement agency have the one-mile extraterritorial jurisdiction of a municipal officer and off-duty arrest authority. Campus company police officers possess neither. (See "Commonly Asked Questions," questions 8 and 9, pages 27–28.)

2. *See* N.C. Code Ann. §§ 3484–3488 (Charlottesville, Va.: Michie, 1935).

3. *See* G.S. 143A-54. Until 1995 the General Statutes still provided that the governor's private secretary should charge and collect two fees, one for commission of a notary public ($10.00) and the other for commission of a special policeman ($5.00). *See* G.S. 147-15.1 (1993), *repealed by* 1995 N.C. Sess. Laws ch. 379, § 11.

4. Administrative rules under the chapter are found at N.C. Admin. Code tit. 12, subch. 21. (Nov. 1994).

5. G.S. 74E-2.

6. G.S. 74E-4.

7. The files in the attorney general's custody are subject to the same restrictions concerning disclosure that are set forth in G.S. Chapters 126, 153A, and 160A for other personnel records. G.S. 74E-5.

8. However, neither the attorney general nor any of the attorney general's employees may be held criminally or civilly liable for any acts or omissions in carrying out the provisions of the Company Police Act, or for any acts or omissions of agencies certified or officers commissioned under the act. G.S. 74E-11, -10(b).

9. N.C. Admin. Code tit. 12, ch. 21, § .0203 (Nov. 1994).

10.G.S. 74E-3; N.C. Admin. Code tit. 12, ch. 21, § .0210 (Nov. 1994).

11. N.C. Admin. Code tit. 12, ch. 21, § .0104(10) (Nov. 1994).

12. G.S. 74E-10(a).

13. G.S. 74E-7.

14. An exception to this educational requirement is granted to applicants who held a valid company police commission on June 30, 1972, or were properly certified as law enforcement officers by the Standards Commission on March 14, 1973. In either case the exception is not applicable if the applicant has had more than a twelve-month break in service.

15. G.S. Chapter 17C; N.C. Admin. Code tit. 12, subch. 9A (July 1995).

16. This requirement applies only to applicants who are not already certified as state, county, or municipal law enforcement officers in North Carolina.

17. N.C. Admin. Code tit. 12, ch. 21, §§ .0202(8), .0212 (Nov. 1994). The disqualifying crimes include any felony; any crime punishable by more than two years' imprisonment; a crime defined as a Class B misdemeanor by the administrative rules of the Standards Commission (note that this designation is not the same as that found in the

criminal law), if the commission or the conviction occurred within five years of the date of application; four or more Class B misdemeanors regardless of the date of commission or conviction; and certain other combinations of crimes defined by the same rules as Class A misdemeanors.

18. N.C. Admin. Code tit. 12, ch. 21, § .0205 (Nov. 1994).

19. The references to G.S. Chapter 17C found in both the Company Police Act and the administrative rules are to the law governing the Standards Commission and the certification of certain law enforcement officers in this state. Many of the Company Police Program's administrative rules incorporate by reference, refer to, or are identical with the law and the rules governing certification of law enforcement officers generally. With the exception of deputy sheriffs and detention officers, all law enforcement officers in North Carolina must be certified by the Standards Commission.

20. N.C. Admin. Code tit. 12, ch. 21, § .0208 (Nov. 1994); G.S. 11-11.

21. G.S. 74E-9.

22. G.S. 74E-6.

23. The statute prescribing which private colleges and universities are licensed or exempted from licensure is very detailed and technical. Its scope encompasses most colleges and universities in North Carolina, though.

24. G.S. 74E-6(b).

25. G.S. 74E-6(c).

26. G.S. 74E-6(d).

27. G.S. 74E-6(d).

28. Traditionally agencies enter into these agreements to extend their territorial jurisdiction.

29. G.S. 74E-6(e).

30. G.S. 74E-6(g).

31. N.C. Admin. Code tit. 12, ch. 21, § .0305 (Nov. 1994).

32. N.C. Admin. Code tit. 12, ch. 21, § .0301 (Nov. 1994).

33. N.C. Admin. Code tit. 12, ch. 21, § .0304 (Nov. 1994). Many of these acts apply to any law enforcement officer and are already prohibited by law.

34. During its 1997 session, the General Assembly amended G.S. 74E-6(c) to provide that company policy officers shall have the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5). This specified provision of Chapter 14 exempts law enforcement officers, under certain conditions, from the prohibition against carrying concealed weapons. Title 12, Chapter 21, § .0304(2), of the North Carolina Administrative Code will be amended to reflect the addition to G.S. 74E-6(c).

35. The applicable rule is N.C. Admin. Code tit. 12, ch. 21, § .0306 (Nov. 1994).

36. The requirements contained in the administrative rule governing badges, uniforms, and vehicles do not apply to agencies and officers that are regulated by the Tennessee Valley Authority, the United States Nuclear Regulatory Commission, or the Railroad Police Certification Act of 1990. N.C. Admin. Code tit. 12, ch. 21, § .0306(e) (Nov. 1994). However, all other requirements of the act apply to these agencies and officers.

37. G.S. 74E-7; N.C. Admin. Code tit. 12, ch. 21, § .0306(a) (Nov. 1994).

38. G.S. 74E-7; N.C. Admin. Code tit. 12, ch. 21, § .0306(b) (Nov. 1994).

39. G.S. 74E-7; N.C. Admin. Code tit. 12, ch. 21, § .0306(c) (Nov. 1994).

40. An agency or an officer accused of violations is entitled to an administrative hearing. The procedural rules for administrative hearings are governed by G.S. Chapter 150B, Article 3, the Administrative Procedures Act.

41. G.S. 74E-13(a). The Company Police Program also may apply in its own name to the superior court for an injunction to prevent any violation or threatened violation of the Company Police Act or an administrative rule. The venue for an action brought under this subsection may be any county selected by the attorney general. However, nothing in the penalties section of the act relieves a company police agency from any civil liability for the acts of its officers in exercising or attempting to exercise the powers conferred by the act. G.S. 74E-13(a), (b).

42. For example, G.S. 14-33(c) makes it a Class A1 misdemeanor to assault an "officer . . . of the State." Company police officers are not considered to be officers of the state unless they are employed by the state of North Carolina. The legislature amended the General Statutes in 1994 specifically to include company police in the statute prohibiting assault on a law enforcement officer and providing for an increased penalty. However, it repealed this provision [G.S. 14-33(b)(8)] in 1995. G.S. 14-33(b) is now interpreted to mean that an assault on a company police officer is a Class 1 misdemeanor under G.S. 14-33(a) unless the officer is an employee of the state.

Questions also are raised about a 1996 law passed by the legislature that increases the penalty if a person assaults a law enforcement officer by pointing a gun. In 1994 the legislature amended G.S. 14-34.2 specifically to include company police officers or campus police officers (that is, officers certified pursuant to G.S. 116.40.5), making it a Class F felony to assault a governmental officer or employee or one of these law enforcement officers with a firearm or another deadly weapon. In 1995 the legislature added G.S. 14-34.5, which makes it a Class E felony to assault a law enforcement officer. These two statutes, read in conjunction, could be interpreted to mean that it is only a Class F felony to assault a company police officer with a firearm. However, the first sentence of G.S. 14-34.2 begins, "Unless . . . some other provision of law providing a greater punishment. . . ." G.S. 14-34.5 provides a greater punishment. Assaulting a company police officer with "any other deadly weapon," other than a firearm, would be a Class F felony.

To confuse matters further, the legislature enacted G.S. 14-34.7 in 1996 to provide that assaulting a law enforcement officer and inflicting serious bodily injury on him or her is a Class F felony. Unlike G.S. 14-34.2, this statute appears to exclude company and campus police officers; but the best argument is that they are "law enforcement officers."

It is interesting, though, that a company police officer, whether or not employed by a governmental entity, is a "public officer" within the meaning of G.S. 14-223, which makes it a crime to resist a public officer performing official duties. A person may be charged with resisting such officers. *See* Tate v. Southern Railroad Co., 205 N.C. 51 (1933) (holding, under a former statute relating to company police, that railroad police officers appointed under the statute are *prima facie* public officers).

360-Degree Feedback: The Power of Multiple Perspectives

Margaret S. Carlson

O wad some power the giftie gie us
To see oursels as others see us!
Robert Burns, Scottish poet

How'm I doin'?
Ed Koch, former mayor of New York City

The ways that people work together are changing. While the traditional image of an organization may be of a manager and his or her employees working in the same location and conferring frequently throughout the day, the reality may be quite different: a public works crew spending the day repairing potholes, with the supervisor in contact by phone or occasionally in person; two police officers patrolling the streets in a squad car; a safety and occupational health team developing a new training program; or a building inspector checking for code violations in a new subdivision. An employee may well spend most of the day with co-workers, team members, or customers—people who have a great deal of information about that employee's performance. Yet the employee's direct supervisor often remains the sole source of information when it comes to giving formal job-related feedback or assessing the employee's performance at the end of the year. Increasingly, organizations are recognizing the gap between those responsible for evaluating an employee and the way the work is actually structured, and they are turning to new techniques designed to assemble a fuller picture of their employees' performance. One of these techniques is multirater assessment, also known as 360-degree or multisource feedback, designed to round out a view of an individual's performance.

The concept of multirater assessment is fairly straightforward. Employees assess themselves on a number of dimensions and hear from other members of the organization as well—superiors, peers, and subordinates (if the person being rated supervises others). A "full" 360-degree assessment also involves an employee's customers. Despite the growing popularity of 360-degree feedback,[1] there are still many questions about its use as a tool to improve individual performances in organizations:

- What is the purpose of multirater assessment? Should the information be used for strictly developmental feedback, or should it be linked to performance evaluation?
- What are the benefits and risks associated with self-ratings? Ratings by peers? Ratings by subordinates? Ratings by customers?
- How important is it to see ourselves as others see us? Are people who see themselves as others see them likely to become more effective performers than those whose self-assessments differ from others' perceptions of them?
- When is it important to change one's behavior in response to others' perceptions?

Margaret S. Carlson is an Institute of Government faculty member whose areas of specialization include performance evaluation and organizational change.

- What are the key factors an organization should consider before implementing a multirater assessment system?

This article summarizes the current research on multirater assessment to help answer these questions. The report on pages 42 through 45, "Using 360-Degree Feedback in Performance Appraisal," describes the process as used by one North Carolina local government, Mecklenburg County's Engineering and Building Standards Department.

Key Assumptions

The perceived value of multirater assessment is based on several fundamental assumptions.[2] First, this approach assumes that observations from several sources will yield a fuller and more accurate picture of performance strengths and weaknesses than observations from only one source and therefore will be more useful to the person being assessed. A common criticism of supervisor-only assessments is that they are overly subjective and may be based on one or two salient incidents rather than being a comprehensive evaluation of the employee's strengths and weaknesses. But if the same message is communicated from people with different vantage points within the organization, the employee is more likely to accept it as a valid comment on his or her actual behavior. For example, someone whose supervisor points out that she has not followed up on customer complaints may dismiss that view as being biased or based on little information, but if five co-workers agree, she may take the criticism to heart.

A second assumption underlying multirater assessment is that (1) comparing self-perceptions with the perceptions of others increases self-awareness (defined as the degree to which one understands one's own strengths and weaknesses) and (2) greater self-awareness is a good thing. High self-awareness has a number of benefits for both the individual and the organization for which he or she works; for example, it improves the probability that the person will seek a job that matches his or her skills and personality.[3] Virtually all multirater assessment approaches include self-perception as one of the relevant perspectives in the assessment. The person being assessed (the "ratee") is then able to compare his or her self-perceptions with the perceptions of others. A number of researchers have argued that this process of self/other comparison is an important first step in changing behavior: first, the person compares his or her self-perception with others' views; next, the person develops an increased awareness of how his or her actions may affect others in the organization; and ultimately the person may change his or her behavior, with more effective performance as the result.[4]

A third key assumption underlying this technique is that effective individuals will hold a self-view that is reasonably similar to the views of others. That is, under this third assumption, people who see themselves the way others see them will be more effective than those who do not. This view emphasizes holding a realistic assessment of one's own skills and abilities, with "realistic" defined as being in agreement with the views of others. This raises a philosophical issue: Should congruence between self-perceptions and others' perceptions be a goal? Because much of the value of a multirater approach to assessment rests on the belief that a person should actively seek others' perspectives and incorporate others' views into his or her self-assessment, it is worth exploring both the research that supports this assumption and the research that challenges it.

Assessment by Others: How Important Is It?

Although job descriptions, operating manuals, and formal performance-appraisal systems help guide an employee's behavior in an organization, in most cases they provide only general boundaries. People often must develop their own standards and assess their progress toward the standards set by the formal guides. According to control theory,[5] this process—called self-regulation—involves three tasks: (1) setting standards, (2) detecting discrepancies, and (3) reducing discrepancies. For example, an assistant city manager may set a goal of responding promptly to department heads' questions and requests—within, say, a couple of working days (setting standards). If she monitors her performance for six months, she may discover that, on average, she takes three days to respond to those requests (detecting discrepancies). She may then evaluate her list of daily tasks and try to reallocate her time in order to respond more quickly (reducing discrepancies).

But recognizing discrepancies between current actions and standards may not be a straightforward process. An employee needs to verify that the standard he or she has chosen will, in fact, give the employee an

opportunity to succeed in the organization. This person also needs to detect and reduce discrepancies in a way that is consistent with others' expectations of his or her behavior. Both of these tasks require the employee to heed the evaluations and assessments of others. In the example above, the assistant city manager must determine that responding to department heads' requests promptly is, in fact, an important part of her job. She also needs to be aware of how the department heads define "responding to requests"—that is, are they most concerned that their calls be returned promptly, or are they expecting the assistant manager to provide a resolution to their problems within this time frame as well? In most cases, self-regulation, if based solely on a person's own observations of his or her behavior, will not by itself ensure effectiveness; people also must incorporate others' subjective assessments into their self-regulation efforts.[6]

The value underlying the self-regulation orientation is consistent with the view expressed in most multirater assessment studies—namely, that a gap between self-perception and perceptions of others indicates a lack of self-awareness. Indeed, most such studies have measured self-awareness by the degree to which self/other ratings agree; they identify people whose self-assessment agreed with others' assessment of them as being more self-aware than those whose self-assessments were less congruent with others' ratings.[7] In sum, this perspective emphasizes that a person needs to seek feedback—to learn others' perceptions of his or her performance and adjust both self-perception and behavior as needed in order to become more effective.

Another perspective, based on research in the field of social cognition, questions the belief that healthy, effective people integrate others' perceptions of their strengths and weaknesses into their self-assessments. This view asserts that a certain amount of "healthy narcissism" is desirable because people need to maintain a level of self-confidence not easily shaken by others' views.[8] In contrast to the traditional model of mental health that portrays healthy people as possessing a balanced view of their talents and their limitations, a growing body of research suggests that most people do just the opposite: they create "positive illusions" of themselves, constructing their social worlds in a way that allows them to receive positive self-assessments and avoid negative ones.[9] Moreover, this optimistic outlook has behavioral implications: positive illusions have been associated with higher motivation, greater persistence, and more effective performance.[10] It seems that positive illusions regarding one's abilities and likelihood of success may set up a cycle similar to a self-fulfilling prophecy, in which a strong belief in one's ability to reach a goal leads to increased motivation and persistence, which in turn leads to a greater probability of success. Although occasional failure is inevitable, an overly positive self-view may be an effective strategy in many situations and may actually lead to greater success.

To judge the value of multisource feedback, it is important to know whether people who see themselves accurately (that is, similarly to how others see them) are more effective than those who do not. In view of abundant associated research, we might expect that a link between self/other agreement and organizational performance would be well established. Surprisingly, there have been few studies of such a connection; until recently, most research has focused instead on the lack of agreement between self-ratings and ratings by others and the possible reasons for this apparent lack of self-awareness. However, several recent studies show that people whose self-perceptions closely match the perceptions of subordinates, peers, and superiors are more likely to be seen as effective than either overestimators (whose self-ratings are higher than others' ratings) or underestimators (whose self-ratings are lower than others' ratings).[11] Although there is considerable evidence to support the social cognition research on positive illusions in the areas of mental and physical health—coping with tragedy, overcoming personal adversity, and so on—positive illusions apparently are not an effective strategy at work, where confidence in one's own skills may be necessary but does not guarantee organizational success. Understanding others' perceptions of one's strengths and weaknesses and using this information to develop a more accurate view of self may be an important work-related skill.[12] The following quotation summarizes this organizational versus personal dichotomy:

> It may be that accuracy is more important in a contractually based organizational setting where there are some real benefits to be gained in terms of career and performance management from an accurate view of one's self. While individuals may be able to structure the rest of their lives so they receive only self-enhancing feedback and lose little by doing so, in organizations much more may be at stake. In life, others may disagree with their assessment, but those others do not have power over them. In organizations, others have the power to hire, fire, promote, and reward.[13]

The Value of Multiple Perspectives

But acceptance of the importance of integrating others' perceptions into one's self-assessment does not automatically explain the value of gathering *multiple* perspectives. Some may question the need to ask more than one or two key people for their views of a person's performance, believing that everyone knows—and agrees—who the good managers (or good employees) are. Yet a large body of research reveals a pronounced *lack* of agreement among raters: superiors, peers, and subordinates may have quite different views of a person's effectiveness. Different reasons have been offered for this lack of agreement. One possibility is selective perception; that is, different information on performance is available to different raters. For example, a group of peers who have seen a manager make a number of oral presentations in a year may give that manager a different rating on "oral presentation skills" than a group of subordinates who saw the manager deliver only one presentation during that one-year period. A second possible reason for lack of agreement among raters is variability in the criteria used to judge the ratee's effectiveness. Different groups may emphasize different aspects of effectiveness in making their assessments; for example, subordinates may place a premium on interpersonal skills, while superiors value a task-focused "get the job done" attitude.[14] Whatever the reason for the lack of agreement among raters, however, the practical implications are clear: the ratings of one group cannot substitute for the ratings of another group, and each group's ratings yield valuable information. Thus multiple ratings may be considered a necessity, not a luxury, for an organization interested in assessing individual effectiveness accurately and comprehensively.

Purposes

An organization thinking about implementing a multirater assessment process must agree on its purpose: Why is the information being collected, and how will it be used? There are two major purposes of 360-degree feedback. The first is *developmental*—to help employees, particularly managers, become more aware of their strengths and weaknesses and work to improve in the areas that have been identified as needing change. The second is *evaluative*—to provide information that can be used in making personnel decisions (for example, pay increases or promotions). The choice of one purpose or the other may affect employees' attitudes about the process and also may affect their responses. In general, employees prefer that the assessments be used for developmental feedback to themselves, not to make decisions about merit raises or other personnel matters.[15] Employees on both sides of the assessment process—that is, the rater(s) and the ratee—express concerns about linking the feedback to performance evaluation. The primary concern expressed by raters who are providing feedback to peers or superiors is that their co-worker or boss may get defensive in response to negative feedback and retaliate in some way (a particularly troubling possibility for employees who are providing feedback to their superiors). Similarly, ratees worry that raters will see the assessment process as a "payback" opportunity for a past grudge.

In general, 360-degree feedback that is used solely for developmental purposes avoids these problems; raters and ratees are much less likely to fear reprisal when the information is intended for the ratee's self-improvement and has no material consequences. However, the purely developmental use of the feedback may be ineffective; that is, people may not be motivated to change their behavior because there seems to be little incentive to do so. One study found that managers did not necessarily intend to change their behavior as a result of developmental feedback, even when they saw the feedback as useful.[16]

Many consultants and researchers recommend that organizations use a two-step strategy to resolve the developmental versus evaluative dilemma. That is, they should start with the 360-degree feedback process for developmental purposes only so that people can gain familiarity with and trust in the ratings, with the understanding that, after the process has been in place for several years, the information might be used in making pay and promotion decisions.[17] It seems logical that valuable information gained from multirater assessments should prove useful in evaluations as well. The report on Mecklenburg County's Engineering and Building Standards Department (see page 42) describes how that unit incorporated multiple assessments into its performance evaluation process.

Components of 360-Degree Feedback

While a comprehensive 360-degree feedback process gathers information from the target individual as well as from subordinates, peers, superiors, and perhaps customers, an organization may choose to collect

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Using 360-Degree Feedback in Performance Appraisal: A Local

If you ask any member of the leadership team in the Mecklenburg County Engineering and Building Standards Department (EBSD) to explain why they incorporated a 360-degree feedback process into their new performance appraisal system, the response is likely to be "We didn't set out to develop a 360-degree feedback system—it just turned out to be a good method to accomplish what we were looking for." Three years ago, the department set out to design a performance appraisal system that supported its vision and values. "The goal was to create a performance appraisal system that is compatible with the organization we are trying to create—an organization that focuses on values, outcomes, leadership behaviors, and process improvement," said department head Bobbie Shields.

This account describes Mecklenburg County's experience in incorporating 360-degree feedback into the performance appraisal system of one of its operating units. Although the use of peer and upward feedback in that unit departed sharply from the practice then current, it was not the only change at about that time. To show how multisource feedback fits into the EBSD performance appraisal system, this report also (1) briefly reviews the organizational changes that were initiated before the performance appraisal system was redesigned and (2) describes features of the system beyond the 360-degree feedback component.

Background

Over the past five years, Mecklenburg County's EBSD has focused on improving quality. The department created a new structure organized around core processes and measurable outcomes, and it emphasized accountability and job ownership by employees. A five-member leadership team is now responsible for defining the department's strategy, for making broad decisions on allocating resources, and for managing relationships with other departments. Most of the day-to-day operational decisions are made at lower levels of the department.

Two years after the department began its initiative, the leadership team created a nine-member human resources team within EBSD that was charged with realigning departmental systems to support the new philosophy. The human resources team first addressed the performance appraisal system, which was seen as inconsistent with the new departmental direction. The team determined that the purpose of a performance appraisal system should be to build an exceptional workforce that delivers services that exceed customers' expectations for efficiency, effectiveness, and adaptability (see the statement of the EBSD performance appraisal philosophy on page 43). Therefore the new performance appraisal system would include

- assessment of each person's performance by supervisors, peers, and subordinates;
- emphasis on work results and accomplishments rather than tasks, with a review at the end of each fiscal year;
- appraisal of interpersonal skills related to working relationships and leadership behavior;
- emphasis on communication between supervisor and employee to establish clear expectations and agreed-on levels of performance;
- use of coaching sessions throughout the year so that the official "end of the year" review contains no surprises.[1]

Points Emphasized in the New Performance Appraisal System

Outcomes. Approximately 50 percent of the performance appraisal score of leadership team members and core process managers is based on whether measurable outcomes—as established collaboratively by the leadership team and the core process manager at the beginning of the performance cycle—have been met. For other employees, 50 percent of the appraisal score is based on achieving "key accomplishments" that are clearly linked to broader departmental outcomes (as negotiated by the employee and his or her supervisor). Because outcomes are typically measured on a fiscal-year cycle, the annual review dates of all employees were adjusted to coincide with the end of the fiscal year rather than being distributed throughout the year (a practice typical in many organizations).

Leadership/good working relationships. The other 50 percent of the appraisal score is based on ratings of

either "leadership behavior" (for leadership team members and core process managers) or "working relationships" (for all other employees). Unlike a traditional performance appraisal system in which only the supervisor provides employees with information about their interpersonal strengths and weaknesses, this design asks peers to give behavioral feedback to each other. The rationale for this peer-feedback component is the team environment of the EBSD. "An individual employee's behavior and actions usually affect other employees' ability to perform the work," says Gail Young, internal consultant and training specialist in the department. "In a team environment, where the behavior of other people has a direct effect on the overall performance of the team, self-improvement needs to be constant, and, as a result, feedback becomes critical."

Coaching sessions. An employee and his or her supervisor are required to have at least one mid-year coaching session in which the supervisor gives the employee the following information: (1) what the supervisor's perceptions of the employee's performance to date are; (2) how the supervisor would currently rate the employee's performance; and (3) what the employee would need to do in order to receive an exceptional rating at the end of the fiscal year. Additional coaching sessions are encouraged, and either the employee or the supervisor may request them.

Training. Supervisors are trained in handling coaching sessions effectively, and employees are trained in giving specific behavioral feedback as peer reviewers. Attendance at the training sessions is voluntary.

Mecklenburg County, and thus the department, links pay to performance. The yearly merit increase for each front-line employee is based on the combined scores from the accomplishments and behavioral sections. Leadership team members and core process managers have an additional performance requirement that is factored into their potential for a merit increase: leadership team members must explain how they initiated a change that significantly improved the department's ability to carry out its work and fulfill its mission, and core process managers must explain how they improved a work process in the department—for example, by streamlining the billing process. (Note: The additional performance requirements are specified in greater detail by the department.)

The Performance Appraisal Philosophy

Performance appraisal is a continuous, collaborative process between leadership team members, core process managers, and employees that

- uses 360-degree feedback to focus on core process outcomes and leadership behavior of employees, and also communicates expectations;
- reinforces the desire for flexibility, adaptability, and high competency levels among employees;
- gives members of the leadership team, core process managers, and employees an opportunity to assess their accomplishments, to discuss needs, and to clarify what is the necessary knowledge for each position;
- uses coaching sessions throughout the year with a year-end in-depth review.

Peer Feedback

Because 360-degree feedback is the focus of this overall article, this supplemental report explains in some detail how EBSD uses the process. Each employee of EBSD selects four peers to complete the behavioral appraisal for him or her. The appraisers' ratings are anonymous; that is, the ratings are sent to a third party who compiles the responses and gives the averaged scores to the ratee. Individual ratings are not identified.

The criterion for selecting peer appraisers is that the rater must have a "working relationship" with the ratee; appraisers may be employees from any part of the county (or city) government. Employees may not ask customers to act as formal appraisers unless they also are city/county government employees. Customers and clients in general were excluded as formal appraisers because the EBSD human resources team thought it would be questionable practice to have those that the department regulates evaluate its employees.

Although the term "peer" is used, supervisors are

encouraged to ask at least one person they supervise to act as a rater for them, thus adding an upward-review element to the feedback collected.

The peer-review process was implemented in phases, beginning at the top of the department: it was first used by the leadership team, then the core process managers, and then all employees. The human resources team monitored the new system and at the end of the first year asked the entire department whether the system should be continued—and if so, how it could be improved.

Reactions to peer feedback. Overall, the reaction has been positive. Most employees see the new system as an improvement, and a majority would like to see the peer appraisals continued. "Up to this point, we've been getting only one person's perspective, without any idea of whether we're meeting other people's needs," one employee commented. "The feedback is very helpful, particularly if you serve other members of the organization [internal customers] as part of your job."

Some employees reported that anonymity causes problems for the recipient: "If someone had a negative comment about your performance, you don't know whom to go to to work it out." They said that it is difficult to follow up because one might be perceived as defensive or trying to uncover people's promised confidentiality. Others suggested peer coaching sessions, similar to the mid-year coaching sessions between supervisors and employees. "Continuous feedback from supervisors really helps to prevent end-of-the-year surprises, but the peer feedback is more of a one-shot deal," one employee explained. "If 50 percent of our performance appraisal score is going to be based on peer feedback, we need to be able to spot and correct problems earlier in the process."

Consistency with the County's Personnel System

EBSD had a great deal of freedom to design its own performance appraisal system, but it also is part of a larger system. It is one department within the Mecklenburg County organization, which has its own countywide performance appraisal system. Because of this relationship, the department worked closely with the county's human resources staff to ensure that its proposed system was consistent with the county's overall goals.

In 1993 the county established a "performance excellence" policy that requires certain components in any county department's performance appraisal process. These include (1) planning for improvement in performance (that is, the appraisal could not simply look back on past performance); (2) ongoing coaching; (3) a year-end evaluation; (4) use of the county's four-step rating scale (based on the categories "exceptional performance," "exceeds expectations," "meets expectations," and "does not meet expectations"); and (5) use of the county's pay-for-performance system for awarding salary increases. Beyond these guidelines, individual departments could tailor the performance appraisal process to meet their needs.

The county's Human Resources Department (HR) worked closely with EBSD throughout the process. Susan Hutchins, the HR director, described HR as playing the dual roles of technical consultant and monitor. As a technical consultant, it helped the department realign each employee's annual review dates to coincide with the end of the fiscal year rather than with the anniversary of the date he or she was hired; it also developed guidelines for determining how long an employee must be in a position before being appraised. In its monitoring role, HR examines the

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information from only some of these groups, depending on the purpose of the assessment and the organization's needs. For example, a city government that has recently created self-managing teams in several departments may be interested in beginning a peer review process as part of performance evaluation, while a county government that wants to help department heads improve their management skills might establish an upward review process (that is, employees give feedback to managers) for developmental purposes only. Because soliciting input from different groups can have different benefits and risks for the people being assessed, this section will address each possibility sepa-

department's appraisals to confirm the timeliness and quality of reviews. EBSD's Bobbie Shields expressed appreciation for HR's support of their redesign: "We couldn't have created this system ten years ago. They allowed us to 'bend the rules' when necessary to achieve our objectives."

Summary

The EBSD leadership team and human resources team and the Mecklenburg County Human Resources Department all emphasize that a 360-degree feedback process is not necessarily suitable for all organizations. Typically, many other changes need to take place to help lay the foundation for peer and upward review. "The desire for this type of system came up through the ranks, based on all the other changes in our organization," said one employee. "It didn't seem to make sense to give the supervisor total control over the annual performance appraisal after we had been working closely with other team members all year." The department started with a focus on values, outcomes, leadership behaviors, and improvement of the process and designed a performance appraisal system compatible with the organizational culture it wished to create.

Notes

1. Gail Young, "Engineering and Building Standards Performance Appraisal System: Overview and Key Points" (Charlotte, N.C.: Mecklenburg County, Engineering and Building Standards Department, Internal Report, 1996).

rately. (Note: This section does not include a discussion of employee assessment by superiors, since most organizations already have a well-established mechanism by which supervisors and managers give feedback to employees. However, it should be understood that the superior's perspective is an important component of a 360-degree feedback process.)

Self-Assessment

For an organization that has used a traditional hierarchical, supervisor-to-employee performance evaluation system, the first component of multirater assessment added is usually a self-assessment. That is, employees are asked to share their own views of how they are doing. Incorporating the employee's own perspective on his or her performance is now such a common practice that many people may not even consider the practice to be multirater assessment, but it does depart significantly from the unilateral supervisory assessment model. Self-assessment is an important first step because it appears to set the stage for greater acceptance of feedback from other raters.[18] Self-ratings also give employees an opportunity to become more familiar with what is expected of them in the organization; for example, a manager who completes an instrument that asks whether she "lets employees know that they are doing a good job" receives a strong message that this behavior is expected of her.[19]

Supervisors sometimes question the value of a self-assessment, maintaining that employees will inflate their self-ratings and provide a biased, overly positive view of their own performance. If that is the fear, it is important to clarify for everyone the purpose of the assessment. Employees appear not to systematically overestimate their own ratings when those ratings are being used for developmental purposes—that is, to help the employee understand his or her strengths and identify areas that need improvement. But if ratings are being used to make decisions about pay or promotion, employees have more of an incentive to give themselves high ratings. Organizations should examine their own systems to see whether they are sending a mixed message to employees: "We want you to rate yourselves accurately and honestly, but you may be penalized [by not receiving a pay increase] if you identify your weaknesses."

Assessment by Peers

"Peers" are people who work at the same organizational level. "Co-workers" are usually defined as people who work together. "Team members" have more interdependence in their work than peers or co-workers usually have. For the purposes of describing peer assessment, however, these distinctions are blurred, and the term "peer" is used for all three groups.[20]

Peers often are able to provide high-quality feed-

back about an employee's work because they often can see the quality and consistency of that person's day-to-day performance in a way that supervisors cannot.[21] Peer assessments also can be effective motivators. Peer opinions sometimes appear to carry more weight than a single supervisor's evaluation, either because of the perceived credibility of peers or because several voices send a stronger message than one (especially if the peer raters agree).[22]

As indicated earlier, the assessment's purpose usually determines employees' attitudes toward peer appraisal. Peer assessments conducted for developmental purposes appear to be accepted much more readily than those linked to pay or promotions. Employees are more likely to see peer appraisals as helpful and motivating and less likely to see them as generating defensive or vengeful behavior if they are used strictly for developmental purposes.

Assessment by Subordinates (Upward Review)

A third component of multirater assessment is upward review, in which a subordinate assesses the performance of his or her superior (immediate supervisor or higher). The purpose is to let a manager know how he or she is doing from the perspective of the people being managed. Typically, supervisors are assessed only by *their* supervisors, which means that third parties are making judgments about how effective the supervisors are in their jobs. The logic behind upward review is that the people being supervised have a valuable perspective on their supervisor's skills, and their views should be incorporated into any assessment of the supervisor. They may be thought of as the primary "customers" of the manager's work; that is, the subordinates receive—and are in a good position to evaluate—their supervisor's services.[23]

Evidence suggests that ratings by subordinates are good predictors of future supervisory performance. Organizations sometimes use assessment centers (a method for evaluating job candidates that relies on observable behavior rather than on interview data) to fill important management positions. One study found that ratings by subordinates compared favorably with ratings from assessment centers in predicting performance of managers of law enforcement agencies.[24] This is particularly striking, given the time and expense dedicated to assessment centers in many public organizations.

Overall, upward reviews share many of the same advantages and disadvantages as peer assessments: those who provide the ratings may have a unique and valuable perspective on the supervisor's performance, but they can be hesitant to give honest feedback if they anticipate that the supervisor will react negatively. If the feedback is used for developmental purposes only and the raters know that, their apprehension is reduced.

Assessment by Customers

Customers' comments are much less often used in multirater assessments than upward review and ratings by peers. Many organizations collect information from customers in other ways, either anecdotally or by comment cards or surveys. The underlying principle, however, is the same as for the sources already described: if an employee works closely with someone over a period of time, that person should have relevant information about the employee's performance. Therefore an organization may want to consider adding a customer-assessment component if the employee has a long-term working relationship with a few customers, especially if this person does not work closely with other members of the organization. For example, regional transportation planners could be assessed by the local government groups they serve, or a data processing manager could be rated by other departments that use data processing services.

Confidentiality versus Accountability

Most descriptions of 360-degree feedback systems emphasize that the feedback must be confidential in order to ensure that the participants (raters and ratees) will be open and honest in their assessments. The term "confidentiality" is used in several ways. It may refer to the arrangement under which raters provide their evaluations anonymously (for example, subordinates' ratings are often averaged so that the supervisor cannot identify the evaluation of any one person). It also may refer to the practice of sharing the ratings with the rated person only (that is, a manager does not have access to his or her employees' ratings without their permission). The assumption that confidentiality is an essential part of multirater assessment is so deeply rooted that it is difficult to find an instrument—or research study—that does not use this principle as part of the design.

Some critics point to the lack of evidence that feedback leads to behavior change and suggest that the emphasis on confidentiality has led to a lack of *ac-*

countability among raters and ratees. Accountability (defined as being held responsible for one's own actions or having to justify one's actions to others) has been described as the "Achilles' heel" of multisource feedback, since multisource rating procedures usually neither hold raters accountable for the accuracy of the information they provide nor hold ratees accountable for using the feedback to change their behavior.[25] One dilemma is that parties often want low accountability for themselves but high accountability from others; for example, several studies show that raters prefer to remain anonymous, while employees prefer to know the identity of those who rate them.[26] Moreover, it appears that employees rate their supervisors more favorably when they (the employees) are identified than when they are anonymous. Those who believe in the importance of confidentiality use these results to support their claim that raters will give unrealistically high ratings if their identity is revealed.

Those who support accountability interpret these results differently. They suggest that raters may consider the basis for their assessments more carefully when they know they will be identified and express only perceptions they can back up with data—and thereby give higher ratings. The proponents of this view argue that raters who can hide behind a cloak of anonymity are less careful with their judgments and may feel that they have "done their part" (that is, "I shared my views with my boss when I provided anonymous upward feedback, and now it's up to her") without assuming any personal responsibility for direct communication.

Organizations can increase the accountability of raters by asking them to help explain the feedback and offer specific suggestions to the ratee during feedback sessions attended by the raters, the ratee, and possibly a skilled facilitator.[27] This practice can be followed even if individual ratings remain anonymous. Ratees can be held more accountable for using the feedback results by asking them to create a development plan that includes strategies for achieving the desired behavioral change.

Considering a Multirater System for an Organization

This article has emphasized that a multirater assessment system—and each choice associated with it—carries both rewards and risks. A 360-degree feedback system is not necessarily appropriate for every organization, and there is no perfect instrument or model to draw on in deciding whether to adopt such a system. Here are a number of critical factors to consider in determining whether multirater assessment is right for an organization:

Laying the foundation. The report on Mecklenburg County's Engineering and Building Standards Department makes the point that 360-degree feedback is probably not the place to start when thinking about organizational change. Before an agency considers this assessment system, it should analyze other organizational initiatives begun in the past few years. Are employees working in teams in some areas, defining and carrying out their tasks in a fairly autonomous fashion? Is there a focus on management development, with training available to help employees work on their leadership skills? Is there an emphasis on responsibility and accountability throughout all levels of the organization, not just at the top? If the answer to one or more of these questions is yes, the organization may be ready to add multirater assessment. Certain cues may indicate readiness; for example, if employees have noted that the traditional top-down, one-way supervisor assessment of an employee's skills and abilities seems out of step with the rest of their work environment, they may be interested in looking at other ways of gathering information about their performance.

Agreeing on the purpose. As described earlier, much of the research on multirater assessment indicates that employees are more comfortable giving feedback and more satisfied with their own ratings when the assessments are used for developmental rather than evaluative purposes. This does not mean that 360-degree feedback should never be linked to performance evaluation. For example, Mecklenburg's Engineering and Building Standards Department found that using 360-degree feedback in its performance appraisal process complemented its team-based structure very well. But this unease does mean that the decision to use the system for that purpose should be approached carefully.

Determining what to measure. The performance dimensions included in a multirater feedback instrument should be relevant to the job and consistent with the organization's vision of an effective leader, team member, and so on. It is unlikely that one set of measures will meet the needs of everyone—or even all managers—in an organization because job demands differ by organizational level. One way to create a set of relevant performance dimensions is to ask a group

of knowledgeable employees to generate a list of observable behaviors that the ratee will exhibit if that person has the qualities desired by the organization.[5] There are many 360-degree feedback instruments now available from consultants on organization development; they may offer useful guidelines for the types of behavior typically measured, even if the organization decides to create its own instrument.

Providing the necessary support. An organization should be prepared to support a multirater assessment process with time and money (for example, it should explain the purpose of the assessment and teach employees how to give and receive feedback). Additional administrative help may be required to distribute forms and collate the data, or the organization may wish to invest in a computer program that minimizes administrative costs by allowing raters to complete and submit the instrument online. Perhaps most important, the organization should be prepared to respond to the heightened expectations that often accompany this type of organizational change initiative: employees will expect to see behavior change, especially at the top of the organization.

Notes

1. *Choosing 360: A Guide to Evaluating Multi-rater Feedback Instruments*, by Ellen Van Velsor, Jean Brittain Leslie, and John W. Flecnor (Greensboro, N.C.: Center for Creative Leadership, 1997), provides a nontechnical step-by-step process for evaluating the many 360-degree instruments now on the market.

2. *See* Allan H. Church and David W. Bracken, "Advancing the State of the Art of 360-Degree Feedback: Guest Editors' Comments on the Research and Practice of Multirater Assessment Methods," *Group & Organization Management* 22 (June 1997): 149–61.

3. Arthur J. Wohlers and Manuel London, "Ratings of Managerial Characteristics: Evaluation Difficulty, Co-Worker Agreement, and Self-Awareness," *Personnel Psychology* 42 (1989): 235–61.

4. *See, e.g.*, Francis J. Yammarino and Leanne E. Atwater, "Understanding Self-Perception Accuracy: Implications for Human Resource Management," *Human Resource Management* 32 (1993): 2331–47; Wohlers and London, "Ratings of Managerial Characteristics."

5. For a full explanation of control theory, *see* C. S. Carver and M. F. Scheier, *Attention and Self-Regulation: A Control Theory Approach to Human Behavior* (New York: Springer-Verlag, 1981).

6. See Susan J. Ashford and Anne S. Tsui, "Self-Regulation for Managerial Effectiveness: The Role of Active Feedback-Seeking," *Academy of Management Journal* 34 (June 1991): 251–80; and Susan J. Ashford, "Self-Assessment in Organizations: A Literature Review and Integrative Model," *Research in Organizational Behavior* 11 (1989): 133–74.

7. Michael M. Harris and John Schaubroeck, "A Meta-Analysis of Self-Supervisor, Self-Peer, and Peer-Supervisor Ratings," *Personnel Psychology* 41 (1988): 43–62; Paul A. Mabe III and Stephen G. West, "Validity of Self-Evaluation of Ability: A Review and Meta Analysis," *Journal of Applied Psychology* 67 (1982): 280–96; and Wohlers and London, "Ratings of Managerial Characteristics."

8. Harry Levinson, as quoted in "The Dark Side of Charisma," *New York Times* (April 1, 1990).

9. For a comprehensive discussion of this subject, *see* Shelley E. Taylor, *Positive Illusions: Creative Self-Deception and Social Psychology* (New York: Basic Books, 1989).

10. *See* R. B. Felson, "The Effects of Self-Appraisals of Ability on Academic Performance," *Journal of Personality and Social Psychology* 47 (1984): 944–52; R. F. Baumeister et al., "Public vs. Private Expectancy of Success: Confidence Booster or Performance Pressure?" *Journal of Personality and Social Psychology* 48 (1985): 1447–57.

11. For studies on the link between the agreement of self/other ratings and performance, *see* Margaret S. Carlson, "Positive Illusion or Adaptation? A Comparison of Two Theories of Self-Assessment" (unpublished dissertation, University of Michigan, 1991); Leanne E. Atwater and Francis J. Yammarino, "Does Self-Other Agreement on Leadership Perceptions Moderate the Validity of Leadership and Performance Predictions?" *Personnel Psychology* 45 (1992): 141–64; and Bernard M. Bass and Francis J. Yammarino, "Congruence of Self and Others' Leadership Ratings of Naval Officers for Understanding Successful Performance," *Applied Psychology: An International Review* 40 (1991): 437–54.

12. Carlson, "Positive Illusion or Adaptation?"

13. Ashford, "Self-Assessment in Organizations."

14. Anne S. Tsui and Patricia Ohlott, "Multiple Assessment of Managerial Effectiveness: Interrater Agreement and Consensus in Effectiveness Models," *Personnel Psychology* 41 (1988): 779–803.

15. David Antonioni, "Designing an Effective 360-Degree Appraisal Feedback Process," *Organizational Dynamics* 25 (Autumn 1996): 24–38.

16. James W. Smither, Arthur J. Wohlers, and Manuel London, "A Field Study of Reactions to Normative Versus Individualized Upward Feedback," *Group & Organization Management* 20 (March 1995): 61–89.

17. Manuel London and Richard W. Beatty, "360-Degree Feedback as a Competitive Advantage," *Human Resource Management* 32 (1993): 353–72.

18. *See* Allan M. Mohrman, Susan M. Resnick-West, and Edward E. Lawler, *Designing Performance Appraisal Systems* (San Francisco: Jossey-Bass, 1989).

19. James W. Smither et al., "An Examination of the Effects of an Upward Feedback Program over Time," *Personnel Psychology* 48 (1995): 1–34.

20. Kenneth L. Bettenhausen and Donald B. Fedor, "Peer and Upward Appraisal: A Comparison of Their Benefits and Problems," *Group & Organization Management* 22 (June 1997): 236–63.

21. R. F. Zammuto, Manuel London, and K. M. Rowland, "Organization and Rater Differences in Performance Appraisals," *Personnel Psychology* 35 (1982): 643–58.

22. Angelo S. DeNisi, W. A. Randolph, and A. G. Blencoe, "Level and Source of Feedback as Determinants of Feedback Effectiveness," in *Academy of Management Proceedings*, ed. K. H. Chung (Mississippi State, Miss.: Mississippi State University, 1982), 175–80. (The Academy of Management is currently located at Pace University, Briarcliff Manor, N.Y.)

23. London and Beatty, "360-Degree Feedback as a Competitive Advantage."

24. Glenn M. McEvoy and Richard W. Beatty, "Assessment Centers and Subordinate Appraisals of Managers: A Seven-Year Examination of Predictive Validity," *Personnel Psychology* 42 (1989): 37–52.

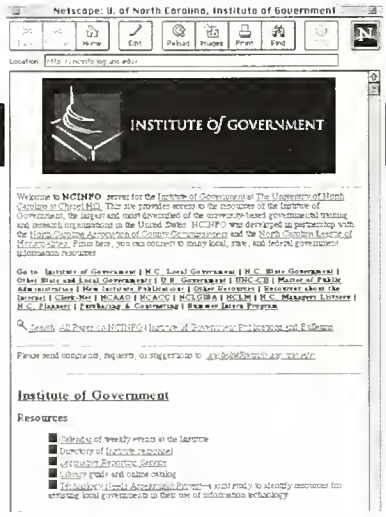
25. Manuel London, James W. Smither, and Dennis J. Adsit, "Accountability: The Achilles' Heel of Multisource Feedback," *Group and Organization Management* 22 (June 1997): 162–84.

26. *See* David Antonioni, "The Effects of Feedback Accountability on Upward Appraisal Ratings," *Personnel Psychology* 47 (1994): 349–56.

27. London, Smither, and Adsit, "Accountability."

28. London and Beatty, "360-Degree Feedback as a Competitive Advantage."

Local Government on the Internet



NCINFO, a World Wide Web site sponsored by the Institute of Government in conjunction with the North Carolina League of Municipalities and the North Carolina Association of County Commissioners, serves as an electronic information resource to individuals interested in local government in North Carolina. For example, where would you look for the most recent changes to legislation affecting purchasing and contracting? How would you determine whether other city or county managers in North Carolina have developed junked-vehicle ordinances or have model leash laws? What would be the most efficient, effective way to gather this type of information, and to explore, develop, and share strategies?

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What's New?

North Carolina Legislation 1997 summarizes acts of the North Carolina General Assembly during its 1997 session that are of interest to the state and local officials served by the Institute. The Institute has summarized legislative action annually in print since 1955. A prepublication, electronic version of this popular book is now available on NCINFO for the first time. Curious about legislation enacted concerning children and families or local government purchasing and contracting during the 1997 session of the N.C. General Assembly? Then you should visit **http://ncinfo.iog.unc.edu/nclegis.htm**.

The North Carolina Local Government Budget Association (NCLGBA) is a professional organization dedicated to the exchange of knowledge concerning budget and evaluation responsibilities of local government. The NCLGBA Web site highlights and encourages the interaction of local government budget officials throughout North Carolina by providing information on membership, future meetings, and an e-list for group discussions of relevant, timely topics. Visit the NCLGBA Web site at **http://ncinfo.iog.unc.edu/nclegis.htm**.

North Carolina Marriage Laws: Some Questions

William A. Campbell

For most people, the legal aspects of getting married in North Carolina are the most problem-free features of the entire process: they present themselves at the local register of deeds' office, fill out an application, pay a fee of $40, and receive a license, which they take to the minister or magistrate who is to perform the ceremony. After they recite their vows, the person who performed the ceremony returns the license to the register's office, and the register records and indexes this legal evidence of the marriage. The procedure does not always run so smoothly, however, and in a number of situations the North Carolina marriage laws either give no guidance about the factors that govern whether the marriage is valid or dictate a result that may be questionable as a matter of public policy. That is not surprising, since the North Carolina marriage statutes have not been comprehensively reviewed in over a century. This article raises some questions about the general clarity of those statutes and the social policies that they reflect.

Consider the following situations:

1. A couple obtains a marriage license in Wake County on March 18, 1997. They are married by a minister in Orange County on April 3. Is the marriage valid?
2. A man and a woman arrive at the register of deeds' office to apply for a marriage license. The woman appears to be distracted and constantly talks to herself. She appears to be addressing some invisible companion. When the register asks whether she understands that she is applying for a marriage license, the woman responds, "I think so." Must the register issue the license even though she has doubts about the woman's mental competence?
3. Two Muslims who have lived in North Carolina[1] for their entire lives wish to be married according to Islamic customs. Does North Carolina law authorize such a marriage?
4. A fourteen-year-old girl who ran away from her parents in Ohio has been living with her seventeen-year-old boyfriend and his father in North Carolina for six months. The father provides her shelter and pays for her food and clothing. She is pregnant. She and her boyfriend, accompanied by his father, appear at the register's office to apply for a marriage license, and the father offers to give his consent to the marriage on the girl's behalf. May he do so?

Before addressing the issues raised in these four situations, we need to look at North Carolina's marriage statutes.[2] Two single persons, male and female,

The author is an Institute of Government faculty member whose areas of specialization include state and local taxation and duties of registers of deeds.

who are at least eighteen years old may apply for a license to marry.[3] The statutes do not require that the applicants be residents of North Carolina or even that they be United States citizens. Nor do the statutes require a waiting period between the date the license was applied for and the date it was issued or between the date the license was issued and the date of the marriage. Further, the law does not require applicants to present the results of a medical examination in order to obtain a license.

An applicant between sixteen and eighteen years of age may obtain a license only with the written consent of one of the following parties: (1) the applicant's mother or father if the applicant lives with both parents; (2) the applicant's father if the applicant lives with the father but not with the mother; (3) the applicant's mother if the applicant lives with the mother but not with the father; and (4) a "person, agency, or institution having legal custody, standing in loco parentis, or serving as guardian of such male or female child applying to marry."[4] If a female applicant is pregnant or has borne a child, is at least twelve years old, and wishes to marry the putative father of the child, written consent may be given by any of the persons listed above and also by the director of the department of social services of the county of residence of either applicant.[5]

The license is valid for sixty days, and it is valid for a marriage only in the county where it was issued.[6]

The North Carolina Supreme Court has said that North Carolina does not recognize marriage by consent (common-law marriage) and requires that the vows be recited in the presence of one of the statutorily recognized officiants.[7] Even so, during some periods in the state's history, marriages by consent were in fact recognized.[8] Be that as it may, the statute now requires that a marriage be solemnized in the presence of a magistrate, an ordained minister of any religious denomination, or a "minister authorized by his church." Marriages performed according to the customs of the Society of Friends and the Baha'is are excepted from this provision. Ministers and magistrates may not marry couples without a valid license,[9] and a $200 penalty may be assessed against a person who violates this prohibition.[10] The minister or magistrate must return the license to the register of deeds within ten days of the ceremony; the penalty for failure to do so is $200.[11]

The statutory requirements regarding who may solemnize a marriage have teeth. If an unqualified person performs the marriage ceremony, the marriage is invalid. We know this from *State v. Lynch*,[12] in which a marriage performed by a person who had obtained a mail-order certificate giving him the "credentials of minister" in the Universal Life Church, Inc., was held void for purposes of a bigamy prosecution. Although the court in that case said that such a person was not an ordained minister or "minister authorized by his church," it unfortunately provided little guidance regarding what characteristics are necessary to meet the statutory requirements. Thus a couple who chooses someone not in the mainstream of ordained or otherwise authorized clergy to solemnize their marriage risks being held not married.

Certain marriages are declared void by statute. These are marriages between persons who are nearer of kin than first cousins, between persons either of whom is under the age of sixteen unless the female is pregnant or a child has been born to the parties, between persons either of whom is impotent, between persons either of whom is incapable of contracting for want of will or understanding, and between parties one of whom is already married.[13] Although the statute provides that these marriages are void, in every case but one the court has held that such marriages are not void but voidable; that is, the marriage is valid for all civil purposes until it is annulled by a court.[14] The exception is when one of the parties to the marriage was already married; such a marriage (bigamous) is absolutely void.[15]

With this background in mind, we can examine the four situations described above.

• The first one dealt with a couple who obtained a marriage license in Wake County but was married in Orange County. A couple's obtaining a marriage license in one county and being married in another county happens fairly often for several reasons. Sometimes the register of deeds or his or her deputy or assistant forgets to tell the couple that the license is valid only in the county where issued; sometimes the couple is told about the jurisdictional limits of the license but forgets; and sometimes, especially when the wedding is held in a rural church, there is genuine uncertainty about which county the wedding is to be performed in. The statute is clear, however, that the license is valid only in the county where it was issued.[16]

Nevertheless, the marriage is valid, even though the license was not. This is one of the interesting twists of North Carolina marriage law: even though the statutes require a marriage license, and even

though a minister or magistrate is subject to a penalty for solemnizing a marriage without a license, the state supreme court has held that a marriage performed by one of the statutorily authorized persons without a license or with an invalid license is still a valid marriage.[17]

Whatever policy reason there may have been for limiting the effectiveness of a marriage license to the county where it was issued, the limitation has been rendered meaningless by court decisions. But it still can cause trouble. Couples who were married in a county other than the one where the license was issued may become concerned about the validity of their marriage. Registers of deeds frequently are uncertain about how they should handle such a license when it is returned. Section 204 of the Uniform Marriage and Divorce Act makes the license effective statewide, and this would seem to be a sensible resolution of the issue in North Carolina.[18] (The Uniform Marriage and Divorce Act is one of a number of uniform acts drafted and recommended by the National Conference of Commissioners on Uniform State Laws for adoption by the states. As of 1996, all or substantial portions of the Uniform Marriage and Divorce Act had been adopted by eight states.)

• The second situation involved an applicant for a license who is visibly disturbed mentally and emotionally. We know from the general discussion of marriage requirements that the marriage of a person who was incapable of understanding that he or she was entering a marriage contract is voidable. The question here is the responsibility of the register of deeds in deciding whether to issue a license when the register has reason to believe that one of the applicants may not be mentally competent. Before 1994, when the requirement for a medical examination was repealed, the examining physician had to certify whether the applicant was mentally competent.[19] This certification relieved the register of responsibility in the matter. Now, however, the register must consider the provisions of G.S. 51-8 and G.S. 51-17. G.S. 51-8 states that a license is to be issued "if it appears that such persons are authorized to be married in accordance with the laws of this State." G.S. 51-17 imposes a $200 penalty on a register who issues a license "for the marriage of any two persons to which there is any lawful impediment, or where either of the persons is under the age of 18 years, without the consent required by law." The matter is further complicated by a decision of the North Carolina Court of Appeals that mental competency to marry is to be determined as of the date the person was married.[20] Thus a register who takes these statutes seriously is forced to make a guess at the time the license is issued about the mental competence of the applicant on some future date.

It should go without saying that G.S. 51-8 and G.S. 51-17 require registers to make decisions regarding the fitness of the applicants that they are neither qualified to make nor, as a practical matter, able to make. In issuing a license, the register of deeds should be responsible for determining that the applicants meet the age or consent requirements and should require statements from the applicants regarding the termination of any prior marriages—matters capable of objective verification—and nothing more.

• The third situation involved a Muslim couple who desires to be married according to Islamic practices. Although practices may vary among different sects, in a typical Islamic wedding ceremony, the marriage contract is witnessed and signed by two adult male Muslims; an "imam" then holds the couple's hands and recites a prayer. The presence of the two witnesses is essential to the validity of the marriage.[21] An imam is a prayer leader at a mosque and may have some advanced religious training.[22] How does such a method of solemnization square with the North Carolina statutory requirements? There is no difficulty with the two witnesses because they are required by North Carolina law.[23] Of more concern is the imam's role. He is not an "ordained minister," terminology applied to Protestant Christians, and it is stretching the meaning of the words considerably to contend that he is a "minister authorized by his church." First, though an imam is a leader of prayers, he is not a minister in the Christian sense. Second, he is not formally authorized to solemnize marriages but gains his role from the respect he is given by other Muslims. Third, while Islam is one of the world's major religions, it is not a "church."

North Carolina's failure to provide for the solemnization of marriages according to Islamic practices represents more than an inconvenience to Muslims, who must choose between a possibly invalid religious ceremony and a civil ceremony before a magistrate. It also is a matter of constitutional concern because under the First Amendment of the United States Constitution,[24] a state may not prohibit the free exercise of religion,[25] and being married according to the practices of one's religious faith would seem to be an important element in the free exercise of religion. The North Carolina statute appears to be especially vulnerable to challenge under the First Amendment because

it makes special exceptions for the Society of Friends and the Baha'is, but not for Muslims or those who follow other religious faiths.

The Uniform Marriage and Divorce Act[26] handles the issue by authorizing solemnization "in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, or Native Group."[27] Although, strictly speaking, Islam is a religion, not a religious denomination—as is, for example, the United Methodist Church—the Uniform Act clearly makes a broader grant of solemnization authority than does the North Carolina statute, probably broad enough to avoid constitutional difficulties.

• The last situation involved a pregnant fourteen-year-old living with her seventeen-year-old boyfriend, who is the putative father of her child, and his father. The boyfriend's father agrees to consent to the marriage on the girl's behalf. May he do so? Yes, apparently so. The statute authorizes consent to be given in a situation like this by a person "standing in loco parentis" to the applicant.[28] The marriage statutes do not say what constitutes standing in loco parentis, but the North Carolina Juvenile Code defines a person who stands in loco parentis as one "other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court."[29] Absent any other definition, it appears that the boyfriend's father fits this definition because for six months he has provided the girl with food, clothing, and shelter—some of the basic obligations of a parent. Thus, with the father's consent, the register of deeds will probably issue the license and the couple will be married.

Is this sound as a matter of public policy, even though the girl's parents might have objected? The North Carolina statutes have a bias toward enabling a marriage when the female applicant for a license, though younger than eighteen, is pregnant or has borne a child to the male applicant—as is shown by the fact that the statute grants consent authority to someone who stands in loco parentis and, as a last resort, to the director of social services. The reason for this bias is probably a concern that the child be legitimate, but it subordinates other interests, such as those of the parents or guardian of the underage applicant and the long-term welfare of both the child and its mother.

The Uniform Marriage and Divorce Act is more restrictive regarding consent to the marriage of persons younger than eighteen, and it makes no exceptions even when the underage female applicant is pregnant. For applicants between the ages of sixteen and eighteen, the act requires (1) the consent of both parents or the guardian or (2) judicial approval. No other persons may give consent.[30] If no parent or guardian can be located to give consent, or if consent is refused, then a court may order the issuance of a marriage license. In every case in which one of the applicants is under age sixteen, the license may be issued only by the court's order.[31] In contrast to the North Carolina statute's liberal policy in allowing the marriage of underage applicants, the Uniform Act provides that a court may order a license issued when one of the applicants is under age "only if the court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served."[32]

There are three fundamental questions to be asked regarding any state's marriage laws: What are the minimum requirements necessary for a valid marriage contract? Who is authorized to give consent to the marriage of underage applicants? What are the precise responsibilities of the public officials who issue marriage licenses? North Carolina's statutes in some cases give uncertain answers to these questions and in others give answers that are questionable as a matter of social policy. This is not surprising, since a comprehensive review of the marriage laws has not been undertaken in the twentieth century. The legislature needs to undertake such a review. The Uniform Marriage and Divorce Act provides a useful starting point and gives guidance on many issues, but its recommendations must be considered in the context of other family and juvenile laws and in light of contemporary society's understanding of the necessary legal prerequisites for a marriage contract.

Notes

1. Albert Shakir, the imam of the Islamic Center in Durham, North Carolina, estimates that about 10,000 Muslims live in the Research Triangle area. Merrill Wolf, "Baha'i to Buddhist, believers cite tolerance," *News & Observer* (Raleigh, N.C.), November 29, 1996, sec. E, p. 2.

2. For a more complete discussion of these statutes, see Janet Mason, *North Carolina Marriage Laws and Procedures*, 3d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1994).

3. N.C. Gen. Stat. §§ 51-1, -2. Hereinafter the General Statutes will be cited as G.S.

4. G.S. 51-2.

5. G.S. 51-2.

6. G.S. 51-16.

7. *See, e.g.*, State v. Lynch, 301 N.C. 479, 272 S.E.2d 349 (1980).

8. John E. Semonche, *Common-Law Marriage in North Carolina: A Study in Legal History*, 9 AM. J. LEGAL HISTORY 320 (1965).

9. G.S. 51-6.

10. G.S. 51-7.

11. G.S. 51-7.

12. *Lynch*, 301 N.C. at 479, 272 S.E.2d at 349.

13. G.S. 51-3.

14. *See* Geitner *ex rel.* First Nat'l Bank v. Townsend, 67 N.C. App. 159, 312 S.E.2d 236, *cert. denied*, 310 N.C. 744, 315 S.E.2d 702 (1984).

15. Pridgen v. Pridgen, 203 N.C. 533, 166 S.E. 591 (1932).

16. G.S. 51-16.

17. *See* Sawyer v. Slack, 196 N.C. 697, 146 S.E. 864 (1929); Wooley v. Bruton, 184 N.C. 438, 114 S.E. 628 (1922); and Maggett v. Roberts, 112 N.C. 71, 16 S.E. 919 (1893).

18. Uniform Marriage and Divorce Act, U.L.A. 157 (1987).

19. G.S. 51-9, *repealed by* 1996 N.C. Sess. Laws ch. 647.

20. *Geitner*, 67 N.C. App. at 159, 312 S.E.2d at 236, *cert. denied*, 310 N.C. at 744, 315 S.E.2d at 702.

21. This description is taken from D. S. Roberts, *Islam: A Concise Introduction* (New York: Harper & Row, 1981), 135.

22. Roberts, *Islam*, 37–38.

23. G.S. 51-16.

24. U.S. Const. amend. 1.

25. *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205 (1972) (children of Old Order Amish may not be required to attend high school because such attendance is contrary to their religious beliefs and practices); and Church of Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217 (1993) (city could not prohibit animal sacrifices that were part of Santeria religious practices).

26. Uniform Marriage and Divorce Act, U.L.A. 157 (1987).

27. Uniform Marriage and Divorce Act § 206.

28. G.S. 51-2.

29. G.S. 7A-517(16.1).

30. Uniform Marriage and Divorce Act § 205.

31. Uniform Marriage and Divorce Act § 205.

32. Uniform Marriage and Divorce Act § 205(b).

At the Institute

Jill Moore

Gregory Allison

Moore and Allison Join Institute Faculty

On September 1, 1997, Jill D. Moore joined the Institute of Government faculty in public health law. She will concentrate on legal issues associated with the structure and functioning of public health agencies in a rapidly changing health care environment.

"I'm delighted to be here," Moore said. "This is the perfect opportunity to combine my public health background with my legal education and to continue my involvement in North Carolina state and local government. Also, as a former client of the Institute, I am excited about the opportunity to return some of the service I have received. I'm looking forward to my conversations with public health officials."

Moore received her J.D. in 1996 from the School of Law at The University of North Carolina at Chapel Hill. Her previous education includes both the bachelor's degree and the master of public health degree from UNC-CH's School of Public Health.

Before attending law school, Moore worked for five years in the public health field, with a focus on childhood injury prevention. She has been research associate with the UNC Injury Prevention Research Center, director of the South Carolina Childhood Injury Reduction Project, and executive director of the North Carolina Child Fatality Task Force.

"I gained not only an understanding of the public health system," Moore relates, "but also an appreciation for the concerns of public health officials, which are not always the same as the concerns of other health care professionals."

"Public health agencies often have clientele who also are served by other social services agencies, so they need to coordinate with those agencies," Moore explains. "Unlike a private clinic, a public agency may need to provide transportation for its clients, or it may get involved with the schools during a measles outbreak."

Moore broadened her perspective with a legal background. At the UNC-CH School of Law, she was a

chancellor's scholar and the executive articles editor for the *North Carolina Law Review*. Before joining the Institute, Moore completed a judicial clerkship with North Carolina Supreme Court Justice Willis P. Whichard.

Moore's current projects include writing the chapter on public health for the fourth edition of *County Government in North Carolina* and describing the health implications of welfare reform for the Institute's annual Health Directors' Law Conference.

"Jill worked at the Institute one summer during law school," said Michael R. Smith, Institute Director. "She impressed everyone with her intelligence and maturity. She has exceptional talent and a practical understanding of the relationship between law and public health practice. Jill's strong commitment to public service makes her a perfect fit for the Institute."

Gregory S. Allison—a native of North Carolina and a nationally recognized trainer, writer, and lecturer in governmental accounting, internal auditing, and financial reporting—joined the Institute faculty on July 1. Allison comes from the Government Finance Officers Association (GFOA) in Chicago, where he had been an assistant director for the Technical Services Center since 1992. The center administers the Certificate of Achievement for Excellence in Financial Reporting Program and provides training and technical assistance throughout the nation.

"I view coming to the Institute as a truly unique opportunity for writing, teaching, and consulting with the outstanding people in North Carolina local government finance," Allison said. "I've worked with them for a long time."

Allison, who grew up in Old Fort, in McDowell County, earned his B.A. in accounting from North Carolina State University in 1984. He then joined Deloitte and Touche as an auditor, working for four years primarily with government organizations and hospitals.

Between 1988 and 1992, he served as finance director for the city of Morganton and in this role attended and taught courses at the Institute. He also became president of the North Carolina Local Government Investment Association and served on the board of the North Carolina Government Finance Officers Association.

At the Institute, Allison will coordinate the accounting and financial reporting seminars. He also will help local governments prepare for an important change in financial reporting. By the year 2000 or soon thereafter, the Governmental Accounting Standards Board will require that a government report its financial status from two perspectives: by fund source and as a whole entity.

"Local governments traditionally report their financial picture by fund source," Allison explained. "But this does not always provide the type of information useful to many readers of financial statements. The new model will total all of these various funds, with some modifications, and show the government entity as a whole, as if it were one big business."

Allison also will teach governmental accounting in the Institute's Master of Public Administration (MPA) program and will work with the North Carolina Center for Nonprofits on accounting issues in the nonprofit sector.

"We are delighted that Greg has returned to North Carolina and joined the Institute faculty," said Michael R. Smith. "His experience at GFOA and his practical understanding of North Carolina local government finance make him a terrific asset. I am confident that he will continue improving our program by building on the work of Grady Fullerton and Lee Carter."

—Jennifer Hobbs

Original Institute Building Renamed for Albert and Gladys Coates

Institute founder Albert Coates and his wife and partner Gladys Hall Coates recently have been honored by The University of North Carolina at Chapel Hill. Chancellor Michael Hooker announced at a private luncheon November 5 that the original Institute of Government building on Franklin Street has been renamed in their honor. (See text of Mrs. Coates's speech at the luncheon, page 56.)

"It is highly fitting to name the Institute's original home after Mr. and Mrs. Coates," said Michael R. Smith, director of the Institute of Government. "They formed a wonderful team in creating the Institute of Government—a dream they shared and realized together. It is wonderful to memorialize their partnership by naming this particular building in their honor."

Albert Coates, in his book *The Story of the Institute of Government*, describes the Institute as "migrat[ing] from one working place to another" in the 1920s and 1930s, from various basements and attics of university buildings to an abandoned fraternity house and abandoned church building. In the late 1930s, when the Coates family was living on loans and credit, Albert Coates nevertheless raised enough money from private sources to erect the Franklin Street building, which was dedicated in 1939. The Institute did not become part of the university until 1942. In 1956 the Institute moved to its current location with the help of a half-million-dollar gift from the Knapp Foundation, which was matched by state funds.

The building at 223 East Franklin Street now houses four international centers.

—Jennifer Hobbs

Gladys Hall Coates Remembers . . .

Text of Mrs. Coates's speech at the luncheon

As I lay on my bed in the North Carolina Memorial Hospital, while happily recovering from a recent hip replacement, I had many hours for contemplation. And when I was told there was to be a celebration of naming the first Institute of Government building, many memories of the early days of the Institute came flooding in—too many to recall now. There is one, however, that will not go away and vividly comes to mind: I was walking one morning on East Franklin Street when I met our good friend, Professor Horace Williams. I think we were joined by one or two other friends when out of the blue Professor Williams turned to me and declared, "Mr. Coates's idea of the Institute of Government is a *great* one, but now he wants to build a cathedral!"

Wooten-Moulten/Institute of Government

The original Institute building in 1949.

Well, the first Institute of Government building was far from being a cathedral, but it was surely built on faith and blood and sweat and tears, and when the day came for its dedication it was far from completion. It was a glorious occasion, however, for all of North Carolina's congressmen and senators, many with their wives, as well as two former governors, and many other officials including members of both political parties throughout the state. William B. Bankhead, Speaker of the United States House of Representatives, made the principal address of the occasion. Mr. Bankhead was related to some good friends of ours in Chapel Hill, Mr. and Mrs. Taul White, and they had been so much impressed with the Institute of Government and its goals that they had invited Mr. Bankhead to come to Chapel Hill for Thanksgiving and make the principal speech. I'm sure they must have told him of the greatest difficulties that the Institute had endured, for I still recall parts of his speech: "I felt it was your will to make this a great occasion. It is indeed a milestone on the highway of your progress. It is typical of the mind and heart of the people of a great state. You once lost a romantic and pioneering colony at Roanoke; but you have found those methods of thought and action that lead always onward to a better and happier life for your people."

The two years that followed the dedication brought even harder times for us, but at long last, in November 1941, word came from South Building that the Executive Committee of the Board of Trustees would vote to make the Institute of Government an integral part of The University of North Carolina, and this action was taken in January 1942.

I beg your indulgence in recalling another thought that came to me while I was recovering from my operation. The proximity of the Graham Memorial to the first Institute of Government Building had never occurred to me before. Graham Memorial was named for one of the greatest presidents who ever served this university, Edward Kidder Graham, who was president in name for only four years —1914 to 1918. Those were the undergraduate years of Albert Coates, and E. K. Graham became his guide, philosopher, and friend, and the man whom he admired beyond all others. Albert, in his senior year, served as an aide in President Graham's office and on graduation became his secretary before enlisting in the army. E. K. Graham's tragic death occurred in the influenza epidemic of 1918. When the Armistice was declared shortly after, Albert was released from the military and returned to Chapel Hill where he was appointed to serve on the committee that had been formed to raise funds for the first student union building—the Edward Kidder Graham Memorial.

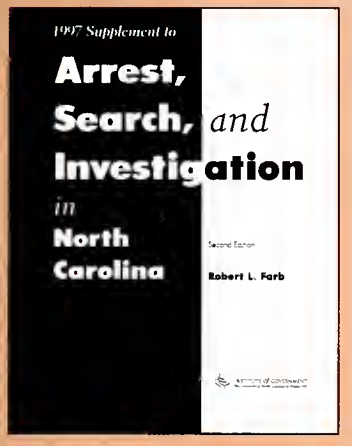
In that role, Albert stumped the state. Perhaps his meetings with the multitude of alumni groups as he traversed the state helped to lay the foundation for the then undreamed of Institute of Government.

I often heard my husband say that he felt the work he began in establishing the Institute of Government was an enterprise Edward Kidder Graham would have wholeheartedly approved, for it followed Graham's noble concept that the university boundaries should be co-extensive with the boundaries of the state.

And so it is a joyous thought that the building which bears the name of Edward Kidder Graham is just across the way from the building you have so graciously named for Albert and for me.

Thank you, with all my heart.

Off the Press



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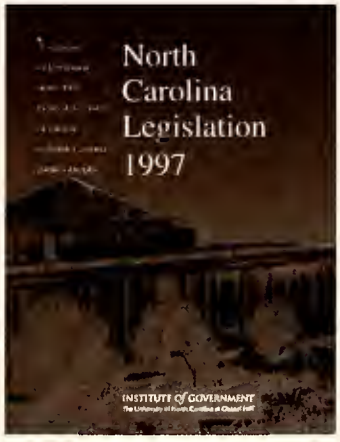

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. . . and at the same time
to preserve the form and spirit of
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—James Madison
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