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NCINSIGHT

Of prisons, milk prices, handicapped people, small farmers, primaries, and more ...

N.C. Center for Public Policy Research

N.C. Insight

Editor: Bill Finger

Bill Finger is a Raleigh free-lance writer whose articles have appeared in the *Washington Post*, *Christian Century*, *Chicago Reader*, *Southern Exposure*, and other publications.

The North Carolina Center is an independent research and educational institution formed to study state government policies and practices without partisan bias or political intent. Its purpose is to enrich the dialogue between private citizens and public officials, and its constituency is the people of this state. The Center's broad institutional goal is the stimulation of greater interest in public affairs and a better understanding of the profound impact state government has each day on everyone in North Carolina.

A non-profit, non-partisan organization, the Center was formed in 1977 by a diverse group of private citizens "for the purposes of gathering, analyzing and disseminating information concerning North Carolina's institutions of government." It is guided by a self-electing Board of Directors, and has some 600 individual and corporate members across the state. The Center's staff of associate directors, fellows, and interns includes various scholars, students, journalists, and professionals from around the state. Several advisory boards provide members of the staff with expert guidance in specific fields such as education, publications, and fund raising. The Center is forbidden by law from lobbying or otherwise attempting to influence directly the passage of legislation.

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NCINSIGHT

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A Word From The Editor

A 60-year-old, two-story frame house on Boylan Avenue in Raleigh is getting a face-lifting. The landlord, Community Group Homes, Inc., is adding some $12,000 to the property's value — aluminum siding, a new porch, and other improvements. "We're putting a lot of money into this home," says Community Group Homes President Chuck Edwards, who lives next door. "But it's worth it."

Living in the home are six women, most of whom were once patients at Dorothea Dix hospital. "I went to Dix when I was real depressed," Doris Jones recently told a neighbor. "I couldn't talk to anybody without crying." But during the past eight years, while Doris Jones has lived on Boylan Avenue and had primary responsibility for preparing the home's meals, her life has changed. Explaining the way the home functions, she sounds like a nurturing grandmother — which she has become — and a mental health professional — which, in a way, she has also become.

Public policy debates rarely focus on people, especially people like Doris Jones. More often than not, forums for policy discusssions either: 1) emphasize theroretical issues rather than practical problems; or 2) examine such broad topics that the personal impact of policy decisions is obscured in macro-analyses that only experts can interpret. But policy discussions can address the personal implications of policy-making. And they can translate the importance of issues of broad concern into recommendations for change.

Examining large-scale issues, important in a self-evident way to all North Carolinians, remains an important goal for *N. C. Insight*. Our winter issue, for example, focused entirely on "North Carolina's Energy Future?" and has already become an important resource for policy makers and for serious-minded citizens. (See "From the Center Out" in this issue.) Similarly, we will devote our entire summer issue to the changes in the tobacco economy and the long-range ramifications for the state of tobacco in transition.

But in this issue, we highlight how policy decisions affect the lives of North Carolinians who represent less visible segments of the citizenry: small farmers, milk producers, prisoners, indigent defendants, and mentally handicapped persons. Because these groups have few advocates, policy discussions affecting them are usually restricted to a handful of professionals.

Our first article examines the difficulties that small farmers are facing, as well as other rural landowners, in keeping their land and maintaining a viable farming operation. In North Carolina, blacks lost 32 percent of their land between 1969 and 1974, a rate that has escalated region-wide to 9,000 acres *per week*. Don Saunders, an attorney specializing in rural housing for Legal Services of North Carolina, and Frank Adams, a community educator with eastern North Carolina farmers, explain the interlocking causes of this land loss and of the credit squeeze on those remaining in rural areas of the state. And they suggest some ways to at least retard this pattern.

Twenty-five years ago, one kind of small farmer did get some attention from state policy makers. The General Assembly established the Milk Commission in order to help dairy farmers survive and insure an adequate milk supply for the state. But in recent years, the Commission has not been adequately equipped to prevent North Carolina milk prices from being among the nation's highest. Noel Allen, an attorney and Public member of the Milk Commission, explains the historical context in which the Commssion finds itself and presents a list of suggested reforms.

Just as the milk-drinking public has few advocates, the voters of the state — that amorphous group known as the "electorate" — have few champions. In the May 6 primary, the North Carolina voters had to contend with a swirl of international, national, and local issues in making choices at the polls. Thad Beyle, political science professor at the University of North Carolina at Chapel Hill and co-editor of *Politics and Policy in North Carolina*, explains why current political thinking leans towards separating the presidential primary from the state electoral process as many states — but not North Carolina — have done.

Perhaps the least visible North Carolinians are those in institutions, particularly mental retardation centers, mental hospitals, and prisons. Historically, the state has placed people who deviate from society's norms in some way into an institutional setting rather than attempting to incorporate them into a community environment. Alan McGregor, North Carolina liaison for the Southern Coalition on Jails and Prisons, and free-lance writer Libby Lewis explain why alternatives to incarceration — community work, restitution, halfway houses — are gaining more advocates, from the Governor to judges to local community groups. But they also point out that much remains to be done.

Similarly, the state has taken some first steps to help mentally handicapped citizens have the rights of full citizenship, such as living in a residential group home. But Roger Manus, attorney for Carolina Legal Assistance for Mental Health, and Barbara Blake of the Asheville *Citizen Times* caution that the state's initiatives might meet increased local opposition — both governmental and neighborhood — if the current legal protections are not strengthened.

Finally, Stan Swofford, award-winning legal reporter for the *Greensboro Daily News*, analyzes the prospects for the North Carolina public defender offices being expanded into a statewide system.

— Bill Finger

Photos Courtesy of North Carolina State Museum of Natural History

How Can A Farmer Survive Without Any Land?

By Frank Adams and Don Saunders

Taking stock as 1979 drew to a close, four black farmers in tiny Gates County in northeastern North Carolina realized their way of life and very livelihoods were in peril.

"About three years ago, I got to feeling something was going wrong," said Willie E. Matthews, who farms about 250 acres. "We had two disaster years in a row and lost most of our crops. I talked with my creditors. It was something unusual for them too and they said they would work along with me."Like other small farmers, Matthews needed $25,000 to $75,000 a year to finance his crops to market. Losing one year's yield meant serious indebtedness.

Frank Adams is a writer and community educator. Don Saunders is an attorney with Legal Services of the Blue Ridge specializing in land and housing problems.

"But the next year," Matthews continued, "it was so dry the county was declared a disaster area. Things were bad. Along about January, I went to the Farmers Home Administration for help." Matthews' weathered face grew more taut. "That's when I got into trouble."

Willie Matthews had good reason to worry about his future. During the 1970s, almost 100 black farmers quit farming in Gates County alone. They were forced to sell out, or they were lured to eight-to-five jobs by regular wages, especially to the shipyards in the neighboring Tidewater Virginia area. Just a generation ago, almost all Gates County blacks made their living from farming. By 1980, only eight full-time black farmers were left.

"It's hard for a lot of people to believe what is going on," declared Cranston S. Costen, one of the Gates County farmers, discussing the agricultural and financial systems on which he depends. "The system is set up to take our land." The evidence he and the other three offer suggests such a conclusion. Only one of them tends more than 250 acres. They can't buy more, and renting is nearly impossible. Because their equipment is old, it's costly to maintain and suffers frequent "down" time. By their own admission, they keep poor records, a critical area for modern farming. And the succession of bad years has hurt.

Costen and Matthews are part of a dying American breed. During the past 20 years, an ominous trend in land ownership patterns has helped decimate the family farmer, particularly black farmers in the South. Over 70 percent of the 1.8 million small farms left in the U.S. are in the South, according to the Emergency Land Fund, an Atlanta-based organization which is working to keep black farmers in business. Between 1966 and 1970 alone, over 28,000 black farmers quit tilling the soil, throwing 2.5 million acres up for sale to large farming operations or agribusinesses. And the losses are accelerating, especially in the South.

Photo by Joseph Vaughan

A 1978 report by the U.S. Department of Agriculture indicates the true severity of the problem. Between 1969 and 1974, blacks in Alabama lost 297,621 acres, 46.7 percent of their land. In Georgia, they lost 44.9 percent. In North Carolina, where blacks now own more acres than in any state except Mississippi, blacks lost 181,306 acres during this period, 32.4 percent of what they owned in 1969.

Blacks across the South are currently losing 9,000 acres **per week**.

Blacks across the South are currently losing 9,000 acres **per week,** according to Joe Brooks, director of the Emergency Land Fund. At this rate, blacks will be landless by 1985.

Traditionally, small farmers, particularly blacks, have had only one substantial economic resource — the land. After the Civil War, huge portions of the South were deeded to freed slaves. As late as 1950, blacks still owned 12 1/2 million acres. But land speculators, among others, are threatening to destroy this primary resource. Isolated rural areas have become bonanzas for sunbelt developers of industry and resorts. Investors are gobbling up the rural fringes of towns and cities, many located in farming areas. And land has become one of the best hedges against inflation for private and institutional investors.

From February, 1978 to February, 1979, the average price of North Carolina farmland rose from $694 an acre to $819 an acre, an 18 percent increase, according to the N.C. Crop and Livestock Reporting Service. In urban areas like Guilford County, farmland is selling for $2,000 to $2,500 an acre. "You can almost name your price" if farmland near the Research Triangle area is rezoned high density residential, said Douglas Harris, a local Farm Credit Service official.

Land ownership in North Carolina is determined by a concept in English common law called title. While the title system provides stability and assurance for landowners who can afford lawyers, it also serves to deprive small landowners, particularly blacks, of vast holdings.

In recent years, speculators have abused the title system most frequently by initiating partition sales of "heirs property," land that has remained within the same family for generations without a will. State law requires that such property be divided equally among those heirs closest to the deceased, usually to the surviving children. After several generations, large numbers of persons have title to a parcel but many of them don't even know of their interest. Dividing a

Willie Matthews,
Gates County farmer.

tract among so many owners is impractical, but any single owner can clear title from distant claims by forcing the sale of the entire tract — a partition sale. Speculators have perfected the art of locating a remote heir and buying the small share for what appears to be a substantial sum. Having become a legal "heir," the speculator then forces such a sale. Often, the heirs living on the land have no funds to bid for the whole tract and the speculators can acquire the entire property for relatively little money.

Speculators can also get property through tax foreclosure sales. When the owner dies and no one shows an interest in carrying the tax burden, speculators are often able to bid in at a fraction of the real value of the land.

These methods are not unique nor are they used only to acquire obscure tracts of marginal land. In Mobile, Alabama, for example, investors used a partition sale to acquire for a few thousand dollars, Citronelle Oil Field, which has yielded millions of dollars. Developers purchased large portions of the Hilton Head Island, S.C., resort area through partition sales on local black farmers who had owned the land for years. Agribusiness firms from as far away as Japan are targetting eastern North Carolina, where thousands of small farmers have tilled the soil for generations.

Despite partition sales and tax foreclosures, small farmers are still working the family tract. But having the acreage to plant is only the first step. They must also find the capital to finance each year's crop. Remaining dependent year after year on lending institutions can be as difficult as holding onto land. Knowing the value of land, conventional lenders — banks, finance companies, pre-fab housing developers, and others — will often demand mortgages on quantities of land far exceeding the value of the money borrowed. Large amounts of land can be lost through a foreclosure sale, even on a small loan for routine agricultural expenses or home repairs. In many cases, small farmers have either learned to avoid conventional lenders or have been forced to depend on government loans. But the primary federal agency on which small farmers depend — the Farmers Home Administration — seems to function as a friend for only certain types of farmers.

Charlie Gatling, one of the eight black farmers left in Gates County, plants 80 cleared acres on his 121-acre farm. "I had loans with that (Farmers Home Administration) office for ten years," said Gatling. "In 1971, he (the FmHA agent) said 'I'll give you the money to farm in 1972, but if you don't pay your bills, I'm going to sell you out.' He told me if I sold out right away he might let me keep my house. I went to the Federal Land Bank and got a loan to pay FmHA off. I've not been back with them since."

Another Gates County farmer, George Lee Norman contends the FmHA agent forced him to sell the breeding stock of his model hog operation to repay a loan. Later, Norman alleges, the agent agreed to give him another loan on the condition he agree "to be liquidated, without recourse, if a 'substantial payment' was not made by a particular date." Norman refused to agree and didn't get the loan.

Photo by Joseph Vaughan

George Norman, Gates County farmer.

As Norman, Gatling, Matthews, and Costen — four Gates County survivors — reflected on the past decade, they remembered that the local Farmers Home Administration office had had a role in virtually every black farmer's demise. Believing that a pattern of discriminatory practices prevailed against blacks, the four turned to a recently opened Legal Services office in nearby Ahoskie, N.C. After evaluating the evidence brought by the farmers, Legal Services filed a formal complaint of discrimination with the U.S. Department of Agriculture on February 8, 1980, alleging that Robert L. Daughtry, FmHA supervisor for Gates County and neighboring Hertford County, had for seventeen years "given loans in amounts less than that which they (the black farmers) applied for and needed to operate their farms in an efficient and business-like manner." White farmers, on the other hand, the complaint alleged, got loans sufficiently large to insure their operations.

> Speculators have perfected the art of locating a remote heir so they can force a partition sale.

The complaint listed ten specific allegations, including the following:

*Loan payment schedules were often accelerated without explanation. Matthews, for example, signed a

Photo Courtesy of Farmers Home Administration

Farmers Home Administration county supervisor (left) with local farmer at Jackson, N.C., office, Northampton County.

Interview with Haywood Harrell

Haywood Harrell, 33, has been an agricultural extension agent in Halifax County, North Carolina, for the past eight years. A native of neighboring Hertford County, he graduated from North Carolina A & T University. On February 23, 1980, Frank Adams interviewed Mr. Harrell at his home in Tillery, N.C. Forty-three out of the state's 233 agricultural extension agents are — like Mr. Harrell — black.

In the last eight years, what trends have you seen with regard to black land ownership?

A steady decline in black farmers and black owned land. We lose 10 or 15 percent of the black farmers each year.

How many full-time black farmers were there when you first came to Halifax County? And how many are left?

There were probably 350 when I came. Today, there are in the neighborhood of 100. The average farm size is about 95 acres.

Can a person make a living farming 95 acres today?

He would have to rent other land in order to make a comfortable living. The value of agricultural goods sold off a farm of this size comes to just over $13,000 annually.

What is causing this sharp decline in black land ownership?

As I see it, black farmers are not getting their share of the pot. For example, they usually learn about changes in technology through the grapevine instead of from the agricultural extension services or the lending agencies. A lot of things could benefit them, but they don't get up-to-date agricultural information firsthand. Blacks don't participate in the planning stages. But they have got to be involved at the grass roots. When programs come out, the blacks say they are not for them. There are no training programs specifically for black farmers.

What about the lending institutions? The Production Credit Association? The banks? The Farmers Home Administration?

Most blacks deal with the Farmers Home Administration. I think the FmHA has contributed more to blacks losing land or discontinuing farming than any other lending institution. I don't think the Farmers Home Administration really has the black farmers' interests at heart.

Is this because of racial attitudes within the FmHA or because it serves large landlords and most black farmers have small farms?

It's a combination of both, but it's primarily because it serves the large landowners. The man with the little farm doesn't get the attention he should. And the Farmers Home Administration was originally set up to serve the small farmer or someone who couldn't get

promissory note for a seven-year disaster loan at 3 percent interest. The FmHA office made an initial disbursement from the loan funds, paying off a portion of Matthew's debts. Then the FmHA officials, according to Matthews, told him to sign what he thought was authorization releasing the balance of the loan to pay off his remaining debts. In fact, the complaint asserts, Matthews signed an FmHA Form 440-9, a supplemental payment agreement which forced him to repay his note in one year.

*The agent routinely told creditors that no loans would be made in the future. "This had the effect of preventing the farmers from obtaining credit and other goods and services needed to operate," the complaint contends. "Several of the complainants are now unable to obtain basic foodstuffs, oil for heating their homes, or supplies to prepare for the planting season."

*The FmHA agent would not let loans be made directly to the farmers. He had checks sent to local banks which acted as overseers. The agent also had FmHA send him the farmers' checks, which he supposedly would disburse to creditors when farmers brought him their bills.

The Legal Services document goes a step further than raising questions of economic parity. The complaint concludes by saying that economic discrimination alone can not highlight "the disrespect, embarrassment, and humiliation these families must suffer."

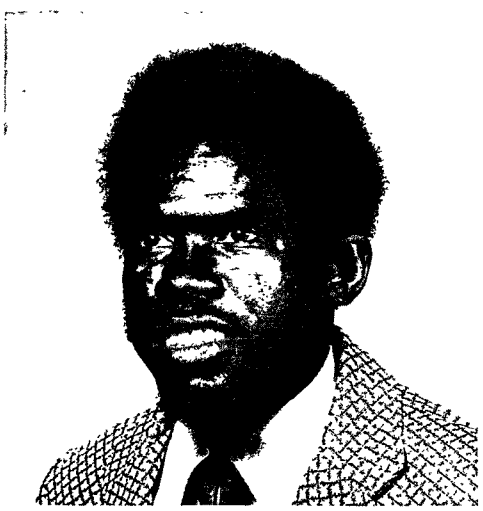
funds elsewhere. The deck is stacked against the black farmers now.

What is happening to the land that is no longer being farmed by black farmers?

It's being engulfed by whites, mostly large farmers and by corporations. The whites are buying it and they are farming it. And what they're not buying, they're renting with the intention of buying. Pretty soon, I see the black farmer and land owner as an endangered species.

Is what you see going on in Halifax County happening in other places?

I'm sure it's happening statewide. And across the South.



In 1946, Congress transformed the New Deal-era Farm Security Administration, which was designed to assist rural Americans survive the Depression, into the Farmers Home Administration. Today, the FmHA is still the most likely source of financing for small farmers. It is authorized by Congress to loan money for construction and improvement of housing in rural areas and for conventional farm-related expenses. But the FmHA has moved away from the New Deal vision of helping the small farmer. Instead of being a resource for people with limited capital who can't get conventional financing, the agency has become a resource for higher-income people who could probably obtain money on the conventional market, as it functioned prior to recent interest rate jumps. The escalating interest rates of 1980 have exacerbated this problem, limiting the numbers of people of any income who can get loans.

A statewide, class-action suit in Mississippi is challenging this FmHA lending pattern. "We are saying, generally that FmHA is definitely qualifying for loans a lot of people who qualify to go elsewhere for money," says Isaiah Madison, attorney for the two farmers who initiated the action. One purpose of the suit, says Madison, is to challenge the FmHA method of dispensing loans, which "compared the small and black farmer to other folks with all kinds of money and all kinds of technology."

> The FmHA has moved away from the New Deal vision of helping the small farmer.

For those who do qualify for FmHA assistance, many programs seem inaccessible or unavailable. FmHA regulations currently require that money for new construction or for purchase or rehabilitation of existing housing be loaned only to owners of unencumbered property. In the case of heirs' property, the land is typically lived on and worked by only a few of the heirs having an interest. These people pay all the taxes, insurance, and maintenance costs but can not obtain financing from FmHA for

improvements because they do not have a clear title. Their huge tracts of valuable land can not be used for collateral.

Federal Home Administration practices have become a source of concern not only in the South, but throughout the nation. Congressional committees are now studying possible changes in the FmHA regulations, and the Mississippi suit may help to alter day-to-day procedures. But the changes can not come too soon.

"The continuing loss of small farmers is an ongoing tragedy in American agriculture," says U.S. Representative Thomas Foley (Dem., Wash.), Chairman of the House Agriculture Committee. "To lose them in greater numbers every year will one day be recorded as a very sad and deeply unfortunate phase of our history."

Shifting patterns of land ownership threaten the lifeline of black and white small farmers. Independence and human dignity, values traditionally nurtured by a closeness with one's land, are being undermined. Several organizations — the National Association of Landowners, the Emergency Land Fund, the Rural Advancement Fund, the Southern Cooperative Development Fund, and the Federation of Southern Co-ops — are working to reverse the land-loss patterns in the South and to provide support systems to small farmers. Even though these groups have focused in the deep South up to this point, some efforts are beginning to pay off in North Carolina.

Almost 500 Gates County registered voters, nearly all of them blacks, have signed a petition urging the FmHA to relocate the office from Hertford County, where it has been for years, to Gates County. The petition also asks assurance that loans be made "without regard to race, creed or national origin."

Meanwhile, the four Gates County farmers are struggling to remain survivors. The state FmHA office in Raleigh has rejected on appeal Cranston Costen's recent loan application. George Norman and Willie Matthews, assisted by Legal Services, have reapplied for loans. And Charlie Gatling, the only one of the four not in debt to FmHA, is wondering where he can turn for this year's financing.

"The continuing loss of small farmers is an ongoing tragedy."
U.S. Representative Thomas Foley

"If I farm this year," said Matthews, "I'll tend 100 acres in corn, 100 in beans, and 50 acres of peanuts." As he spoke, a radio news announcer was reporting that a majority of local fertilizer suppliers had notified all customers that after March 25 all credit would be suspended. Bills would have to be paid within 30 days. Any past due account would be charged 18 percent interest. ■

Farmers Home Administration file photo from national information office. Photos like this one were used in the early 1950's to show the public how the FmHA functioned.

COUNTY COMMITTEES APPROVE APPLICATIONS

Each applicant for a farm housing loan must be approved by a committee of three local farmers. To be eligible, an applicant must be unable to obtain the needed credit elsewhere, and must own a farm that

Photo Courtesy of Farmers Home Administration

Working to Reverse Land Loss

The problems of small farmers and other North Carolinians living in rural areas involve an entangling connection of federal and state laws and institutions as well as local traditions and personalities. The suggestions for reform below might help alleviate some of these interlocking problems.

1. Legal resources can help low-income persons to understand land management and financing and to construct wills in a way to avoid heir property problems. In the past, attorneys have sometimes added to the problems by taking fees for services in the form of an interest in the land and subsequently forcing a partitioning sale, causing the small landowner to lose the entire tract. Legal Services of North Carolina has recently expanded into rural areas and is beginning an educational/legal program for small farmers. But much more needs to be done.

2. A capital pool more accessible than FmHA loans could furnish the resources that small farmers desperately need. Community development projects, agriculture and housing co-ops, and other innovative means could create such capital. Land trusts, land corporations, and state-insured revolving funds could facilitate full use of farmland by the people living on it while protecting the interests of remote or unconcerned heirs.

3. Congress is now studying possible modifications in the title requirements of several FmHA programs, particularly the Section 504 Housing Construction and Rehabilitation Program. FmHA loan requirements and lending practices need to be modified — minimum income requirements totally exclude poor people from some programs — in order to make capital available to low income rural residents. If this were done, some of the suggestions in Number 2 above, which are very difficult to put into practice, would not be so necessary.

4. The North Carolina General Assembly could enact legislation giving clear title to any improvement, such as a house, constructed on land owned in common with others. This would help prevent remote heirs — or speculators — from causing the property to stagnate and eventually have to be sold by making financing more accessible to those without clear title.

5. North Carolina court decisions currently allow the removal of an owner who has shown no interest in the maintenance of his land for 20 years. Known as "ouster" law, this method of transferring land to responsible owners could be strengthened by General Assembly action to codify this generally accepted case law (because many title insurance companies still do not accept it) and to shorten the 20-year ouster period.

Milk Regulation in North Carolina: More Than a Lot of Bull

Consumers are wondering why the North Carolina Milk Commission can't keep milk prices down. The Commission can play an essential role in regulation — if it is reconstituted.

By Noel Allen

Photo by Paul Cooper

In 1979, milk prices on the North Carolina grocery shelf increased at twice the national inflation rate. The jump pushed North Carolina's retail milk prices higher than those in almost every other state. At the same time, however, dairy farmers here were receiving about the same wholesale price for milk as were producers in neighboring states.

I have wondered about this disparity, both as a consumer who pays more and more each month and as a representative of the "public" on the North Carolina Milk Commission. For three years, as an attorney in the Antitrust Division of the North Carolina Department of Justice, I monitored Milk Commission activities, and for the past two years, I have served as a Milk Commissioner. From both perspectives I have seen that the people who milk cows are not necessarily the people who bilk the consumers.

Noel Allen, a Raleigh attorney, is a Public member of the Milk Commission.

There are five parties to milk marketing — producers, processors, retailers, consumers, and the Milk Commission. Of these five, small producers, small processors, small retailers and consumers have suffered most from government intervention in the market place. While the Commission has received most of the blame for high prices, the large operators have reaped most of the profits. Plain old price-fixing might have caused some of the problems, but a broader, more complex set of factors has pushed North Carolina's prices so high. Close scrutiny of the role of the Commission in the milk market can begin to unravel the mystery of milk prices.

The Milk Commission administers a price guarantee system for dairy farmers — the amount processors pay the producers — to insure an adequate milk supply. The Commission does not directly fix the price milk processors (middlemen) charge retailers nor the price the retailers charge the public. Thus, the Commission controls prices only on the first step of a three-tiered system.

To assure fairness of consumer prices, we appear to face two extreme options. Retail and wholesale prices would have to be either: 1) determined by supply and demand in a truly competitive market rather than one controlled informally by processors and retailers; 2) completely regulated by a Leviathan-like Commission.

The first option — a free market for prices — can work only if the Justice Department's Antitrust Division becomes an active and aggressive participant in the milk chain, as it has on occasion in the past.

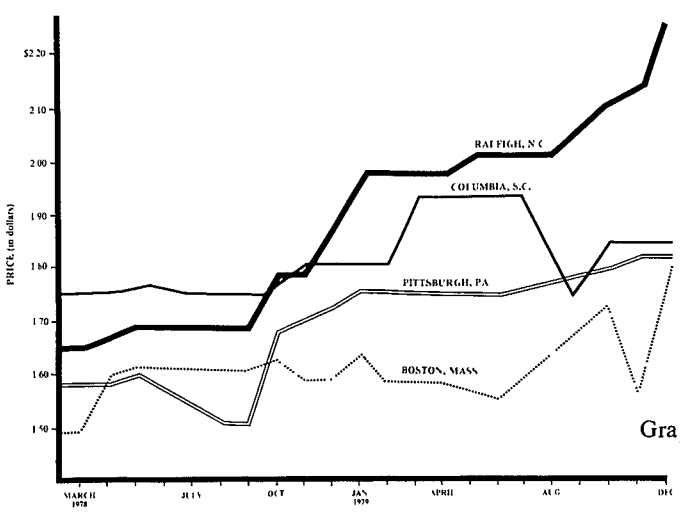
The second option — complete regulation — means unwieldly abandonment of the free market altogether, a step I philosophically oppose. Such an omnipotent Milk Commission would mean more power for government appointments and less reliance on the open market. The Commission might have to function more like the Utilities Commission, working full-time to regulate quasi-monopolies.

There may be a middle ground between abandoning the free market and losing control over the milk market to processors and retailers. The Milk Commission functions today in many ways the same as it did when it was created almost 30 years ago. Changes in Commission operations might equip this agency for regulating today's market conditions, if the Justice Department, at the same time, plays an antitrust watchdog role in the milk chain.

In the late 1940s and early 1950s, not everyone in North Carolina could get enough milk to drink; the state was consuming more than it produced. The technology of cold storage and milk processing had not developed sufficiently to insure that enough milk could come into North Carolina from other states. And when these states that were exporting milk underproduced, importing states like North Carolina suffered.

Some North Carolina leaders, including Gov. Kerr Scott (himself a dairy farmer at one time), felt that a price guarantee system for farmers could help minimize the risk of entering the high-investment dairy business. More dairy farmers would produce more milk, the lawmakers hoped, insuring an adequate supply to the consumer. By 1953, this sentiment prevailed, and the Milk Commission was established to "protect the public interest in a sufficient, regularly flowing supply of wholesome milk."

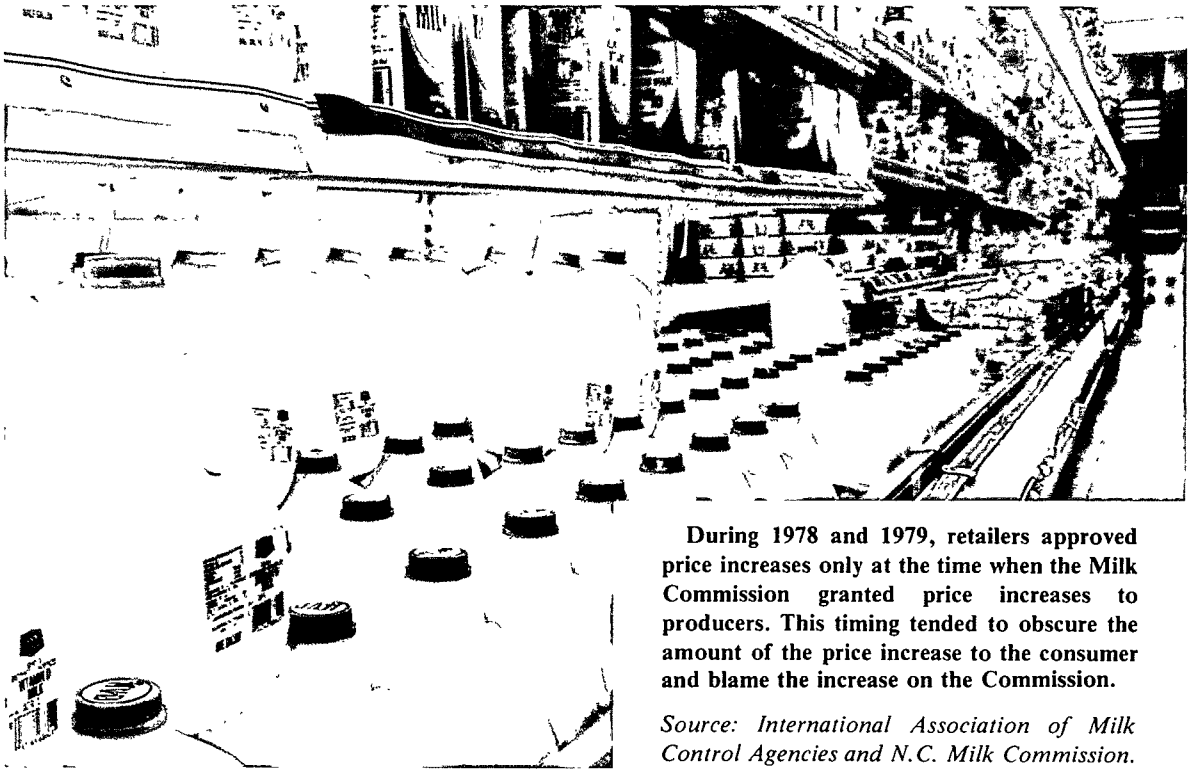
The Commission immediately established a guarantee minimum price to the dairy producer. In 1952, the year before milk regulatory laws were enacted, North Carolina farmers had produced 523 million pounds of Grade A milk, which grossed $32 million in income. Four years later, in 1956, North Carolina production had climbd to 750 million pounds of Grade A milk, a 43 percent increase in in-



RETAIL PRICE OF A GALLON OF WHOLE MILK

Source: International Association of Milk Control Agencies and Supermarket Milk Price Survey.

Graphs prepared by Paul Ridgeway for *N.C. Insight*



During 1978 and 1979, retailers approved price increases only at the time when the Milk Commission granted price increases to producers. This timing tended to obscure the amount of the price increase to the consumer and blame the increase on the Commission.

Source: International Association of Milk Control Agencies and N.C. Milk Commission.

state production. Gross income increased 38 percent to over $44 million.

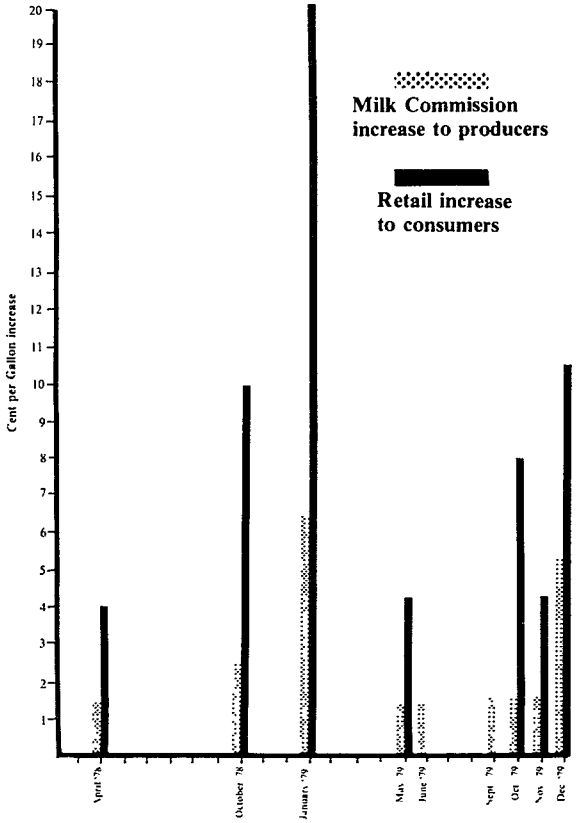
The Milk Commission's purpose seemed to have been fulfilled in just four short years. No longer would anyone in North Carolina have to go without milk since the supply was now plentiful. But another transition was beginning at the same time: the number of milk producers was decreasing rather than increasing, contrary to what the legislators creating the Commission had assumed would happen. An era of consolidation was beginning. The number of Grade A milk producers in the state hit a peak of 5,137 in 1954. Today, there are only some 1,200 producers left.

One goal of the original legislation was reached — the state became a surplus producer of milk. But another function of the Commission — to help more dairy farmers survive — was not realized. The price guarantee system effectively insured more income to fewer and fewer dairy producers.

Many of the circumstances which prompted the creation of the Milk Commission in 1953, have changed dramatically. The state has become a surplus producer. Technology now allows transportation of more kinds of milk products over longer distances and accomodates longer shelf-life in the grocery.

But comparatively little has changed since 1953 regarding the basic regulatory scheme. The Commission still does not set the retail price, for example. Perhaps most importantly, the Commission has not flexed its regulatory muscle over the growing hegemony of the large producers, processors, and retailers.

COMPARATIVE PRICE INCREASES



The Milk Commission, since its inception, has never lacked for statutory authority. The Commission can regulate just about everything with regard to milk except the temperament of the cow. It can set the price to the consumer, to the producer, to the processor, and to other states. It can "investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk." It has broad subpoena and investigatory powers and even has access to "all places where milk is processed, stored, bottled, or manufactured into food products."

But the Commission, for a variety of reasons, has not used its power to set retail prices. Whenever the Commission has come close to setting a retail price, public opposition has beaten the proposition back. But ironically, the public rarely appears at hearings on more complex matters, such as regulating the other aspects of milk marketing, which might ultimately have a greater impact on the retail price itself.

As presently established, the Commission is essentially subservient to the industry it is supposed to regulate, functioning like a trade organization at times. The industry funds its own regulation, assessing milk producers and processors three cents per 100 pounds of milk for the Commission's $400,000 annual budget. Learning the intricacies of the milk industry is difficult for the five public members of the 10-member Commission. The industry representatives, on the other hand, work in the trade full-time and have resources within the industry they represent.

> The Commission is essentially subservient to the industry it is supposed to regulate.

The Commission's public members have a high turnover rate. The $15.00 per diem for serving on the Commission offers no incentive for remaining on the Commission long enough to learn the complexities of milk regulation. But industry representatives develop much greater longevity on the Commission, due in part to self-interest and recognition within their industry. The Commission meets only one or two days a month. Inevitably, full-time industry employees, attorneys, and lobbyists dominate the testimony at public hearings. In the past two and one-half years, only one appearance was made in behalf of the "using and consuming public."

As now constituted, the Milk Commission regulates prices beyond the producer level (the first pricing tier) only with regard to bulk transfers and below cost sales. To curtail anticompetitive and unfair practices beyond the producer level, the Commission should depend on the powers of the Justice Department's Antitrust Division. But last year a majority of the Commission refused to request an investigation by the Antitrust Division into retail pricing.

The Attorney General has the specific duty and power to investigate potential violations of the antitrust laws (Chapter 75, N.C. General Statutes), which would include price fixing, restraints of trade, and predatory pricing. Justice Department officials feel such actions in the milk industry are virtually impossible, however. "They (the processors and retailers) can gouge all they want to, and we can't do a thing about it unless they agree to gouge together and we can prove it," says H. A. Cole, Jr., director of the antitrust division. "It's extremely difficult to prove."

But the Antitrust Division has overcome such difficulties before. In 1974, the Division, led by Deputy Attorney General Jean A. Benoy, filed a suit

Who Appoints The Commission?

The composition of the Milk Commission has varied considerably since its beginning in 1953. The changes are listed below. Since the last change in 1975, all new commission members are appointed for four-year terms, which are staggered. Commissioners can succeed themselves, and each year the Commissioners choose the chairman from among themselves. As now constituted, the Commission is appointed in this manner:

Governor (3) — two public members, one retailer;
Lieutenant Governor (2) — one public member, one producer;
Speaker of the House (2) — one public member, one processor/distributor;
Commissioner of Agriculture (3) — one public member, one processor/distributor, one producer.

Commission Membership:

1953-55 (7): 2 producers
2 distributors
1 public
1 retailer
Commissioner of Agriculture, *Ex Officio*

1955-71 (9): 2 producers
2 distributors
3 public
1 retailer
Commissioner of Agriculture, *ExOfficio*

1971-75 (7): 5 public
1 producer
1 distributor

1975-present (10): 5 public
2 producers
2 distributors
1 retailer

alleging that nine processors in North Carolina rigged bids to school systems. In a consent decree, the Defendants (all nine processors) agreed to submit copies of their bids for the school systems to the Department of Justice for review. In the year following the settlement of the case, when inflation hit 10 percent, the price of milk to public schools in the state declined by 10 percent. The Justice Department undertook this antitrust action without cooperation from the Milk Commission. More recently, after large and uniform leaps in retail milk prices, newspapers reported that the Antitrust Division was "monitoring" the situation. Within weeks, retailers dropped their prices 26 cents per gallon. Even then, however, the various retailers seemed to make the reductions at the same time and at equal rates.

A revamped Milk Commission that would function more independently could at least cooperate with aggressive Justice Department investigations. And hopefully, such a Milk Commission could address the alarming trend within the industry toward concentration. Indeed, only one-fourth the number of producers in business when the regulations were passed are still producing milk. And today, there are about 20 processors for the entire state while a generation ago practically every town of any size had its own dairy. The concentration of production into the hands of a single milk cooperative even looms as a possibility.

Photo by Paul Cooper

Today a single milk cooperative, Dairymen, Inc., controls some 40 percent of the milk production in the state. Based in Louisville, Kentucky, Dairymen has grown from a small group of farmers who pooled their milk so they could have more bargaining power with processors into a region-wide organization that now controls 70 percent of the milk production in the southeast. The fact that North Carolina does have a Milk Commission might have prevented Dairymen from controlling even more milk production here since the Commission does regulate the price paid to the producer. This guarantee minimum price, no doubt, allows some producers to compete without having to join Dairymen. But Dairymen claims that farmers can get greater utilization of their milk — having more milk classified as Class 1 milk, for example — by joining the cooperative and pooling their produce with other members.

In states that do not have milk commissions, federal regulations have been so weak as to allow virtually complete control of milk production by a single cooperative such as Dairymen. Moreover, federal antitrust laws exempt cooperatives such as Dairymen, Inc. from price fixing prohibitions.

Cooperatives like Dairymen have not limited their growing control of the milk market to the producer level. Vertical integration through the milk cycle is a growing problem with which the Milk Commission is having to cope. Last year, for example, a processor appeared before the Commission regarding milk it sought to have transported in bulk from North Carolina to Georgia. In Georgia, this processor's plants were entirely dependent upon Dairymen, Inc., for their milk. But the processor was competing with Flav-O-Rich, a processor company owned entirely by Dairymen. Dairymen was supplying Flav-O-Rich, their own processor, but apparently had stopped supplying the competing processor, an action which could corner a still larger share of the processing market. The Georgia-based milk dispute not only required the North Carolina Commission to involve itself in that individual incident. It also foreshadows what may become a similar pattern within this state as vertical integration increases.

I believe the Milk Commission can be a viable regulatory agency in preserving some pricing fairness and helping to prevent retail prices in North Carolina from topping the national index.

But a commission established nearly 30 years ago must go through some major alterations. I have suggested nine possible reforms of the Commission (see box) which can begin to address the factors now controlling our retail milk price. The wisdom of the 1953 General Assembly, it seems, has helped assure an adequate supply of milk to North Carolina. But more actions are needed to keep consumers fairly served, which was the primary goal of the legislation establishing the Milk Commission in the first place. ■

Editor's note: In proposing reforms for the Milk Commission, Mr. Allen writes as a private attorney and as a member of the Commission. His views are not necessarily those of the Center for Public Policy Research. An equally forceful call for reform might suggest a broader regulatory function for the Commission.

Suggested Reforms

1. The membership of the Commission be increased to 12 by adding two additional public members.

2. A "public staff" be carved out of the existing Commission staff to represent the using and consuming public, similar to the Public Staff of the Utilities Commission.

3. A staff attorney of the North Carolina Department of Justice should be designated to serve as a liaison between the Milk Commission and the Department of Justice. The Department of Justice could then assist in forcing fair and open competition in the marketing of milk.

4. The terms of all members of the Commission including industry representatives should be limited.

5. The producer price of milk should be made more dependent upon a rate of return factor, rather than arbitrary comparisons with other states and inflation indexes.

6. The Commission's authority to fix prices should be limited to setting minimum prices at the producer level. Authority to fix prices on the wholesale and retail levels should be repealed.

7. Industry representatives, who lobby the Commission should be required to register as lobbyists.

North Carolina Milk Commissioners

Herbert C. Hawthorne, 63, Chairman, public member. A North Carolina native, Hawthorne is a cotton broker and partner in the Statesville firm of Greer Cotton Co. He worked for the N.C. Highway Patrol (1939-45) before joining Greer Cotton in 1946. Gov. Scott appointed Hawthorne in 1971; Commissioner of Agriculture Graham reappointed him in 1976. His term expires in 1980.

Noel Allen, 32, public member. An attorney since 1973, Allen worked in the N.C. Department of Justice Antitrust Division before going into private practice in Raleigh. He has also been an English instructor, a curriculum consultant, an adjunct law professor, and a Carter for President coordinator. Appointed in 1977 by Gov. Hunt, Allen's term expires in 1981.

Inez Myles, 34, public member. A New York City native, Ms. Myles now lives in Henderson. She has been Executive Director of the N.C. Senior Citizen's Federation since 1974. She worked previously for Franklin Vance Warren Opportunities (1973-74), N.C. State Economic Opportunity Office (1970-73), National Accounting and Management Association (1969-70), and Shaw University (1968-69). Appointed by Gov. Hunt in 1977, her term expires in 1981.

Norma T. Price, 46, public member. A homemaker and active volunteer, Mrs. Price serves on the Asheville City Council. She has worked for Duke Power Company (1954-58), Transylvania County Schools (1959-60), and Argonne National Laboratories (1960-61). Appointed in 1980, by Speaker of the House Stewart, she is completing a term that expires in 1982.

Vila M. Rosenfeld, 52, public member. Chairman of the Home Economics Education Department at Eastern Carolina University at Greenville. Dr. Rosenfeld has also taught at Penn State, Kansas State, Murray State, and the Virginia secondary schools. Appointed in 1975 by Lt. Gov. Hunt and reappointed in 1979 by Lt. Gov. Jimmy Green, Rosenfeld's term expires in 1981.

Oren J. Heffner, 55, retailer. A North Carolina native, Heffner operates supermarkets in Forsyth, Davie, Davidson, and Yadkin Counties. Previously he was in the U.S. Air Force (1943-46) and worked for Heffner and Bolick Grocery (1946-51). Appointed in 1975 by Gov. Holshouser and reappointed in 1977 by Gov. Hunt, his term expires in 1981.

Russell Davenport, 70, processor/distributor. A South Carolina native now living in Fayetteville, Davenport and his family own the Sycamore Dairy. Prior to beginning work at Sycamore in 1945, Davenport worked for the N.C. State Dairy Dept. (1932-34), as an Agricultural Extension agent in Anson County (1934-39), and as a county farm agent (1939-45). Appointed in 1975 by Speaker of the House Green and reappointed by Speaker Stewart, Davenport's term expires in 1983.

William E. Younts, 59, processor/distributor. Younts is the General Manager of Long Meadow Farms of Flav-O-Rich in Durham. He earlier worked for Montgomery Dairy and served in the Army. First appointed in 1972 and reappointed by Commissioner Graham in 1976, Younts' term expires in 1980.

B. F. Nesbitt, 62, producer. A former Air Force pilot, he has been a dairy farmer since the late 1940s. He lives in Fletcher, near Asheville, where he has worked with local government issues. Appointed in 1965, Nesbitt has been reappointed several times, most recently by Commissioner Graham (1976-80 term).

David A. Smith, 42, producer. Smith is a life-long dairy farmer from Lexington. He has worked closely with Coble Dairy, as a producer and a member of the Board of Directors. He has also been Chairman of a Soil and Water Conservation District. Appointed in 1975 by Lt. Gov. Hunt, he was reappointed by Lt. Gov. Green (1978-82 term).

ARTICLE IV

A Guide to the North Carolina Judiciary

WHO

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The Presidential Primary Sweeping Away Local Stakes

By Thad Beyle

On May 6, 1980, the voters of North Carolina cast ballots for presidential hopefuls and for state and local candidates. The presidential primary and the regular party primaries for North Carolina offices were lumped together into one grand day of voting.

Many political observers feel that such an election has a negative effect on the state's political system, that state and local primaries should be divorced from the presidential primary. A growing number of political scientists contend that the presidential sweepstakes in primary states has a nationalizing influence on state campaigns — obscuring local issues, setting up coattail effects, and dissipating available campaign money, workers, and media attention.

During the 1970s, the North Carolina General Assembly has vacillated on the issue. In 1971, the Legislature voted to hold the state's first presidential primary on the first Tuesday in May, 1972, to coincide with the regular party primaries for all national, state, and local positions. But this first combined primary apparently had sufficient negative effects to change the legislators' minds. The General Assembly decided to move the 1976 presidential primary to March and delay the regular state and local primaries to mid-August.

This shift, however, only raised new problems. Separate primaries cost the taxpayers more. The August primary probably gave an advantage to incumbents with higher name recognition and added a hindrance to challengers who had to get out a high vote in the peak of vacation season. The split schedule also extended primary politics over too long a time.

So for 1980 the General Assembly switched back to the first model with a combined presidential and state primary in early May. Because of the nature of the presidental primary campaigns this year some of the problems encountered in 1972 were absent (availability of money and workers), but the nationalizing effect on issues was more apparent. The debates over Iran, Afghanistan, inflation and presidential competency often obscured issues that candidates for governor, lieutenant governor, and insurance commissioner raised. National and international issues will also influence state and local races in the fall general election. It is likely, therefore, that the 1981 General Assembly will again debate proposals for changing the North Carolina primary so as to disentangle the national and state primary process.

Changes in the presidential nominating process during the last decade have made state primaries the

Thad Beyle, professor of Political Science at the University of North Carolina at Chapel Hill and member of the Center's Board of Directors, coedited **Politics and Policy in North Carolina.**

key element in selecting the Democratic and Republican candidates. In 1968, only 14 states held a presidential primary; this year, 34 states sponsored such a vote — a 143 percent increase in 12 years. The nationalizing effect of this trend has spread across the country, not just into North Carolina.

The solution to the problem of combined national and local primaries seems to lie in changing the state election process to the off-presidential years. Some states have moved elections to even-numbered years in which there are no national contests, and have extended state executives' terms from two to four years, so that state and national elections would never fall on the same year. Others have shifted state elections to odd-numbered years, which accommodates states like North Carolina that elect state legislators biennially. Such a transition is difficult politically, since an extra election becomes necessary, but it can be accomplished. Illinois, for example, recently switched state elections to the even-numbered, off-presidential years. Illinoisans voted in a general election in 1976 for two-year terms. But no other state which switched years has had to hold an extra election. (See chart).

Some states began to implement this solution about the time others, such as North Carolina, were instituting a presidential primary. During the 1968-1980 period, when presidential primaries increased from 14 to 34, eight states switched their local elections to off years. In 1968, 21 states ran combined elections: by 1980, only 13 — including North Carolina — still conducted combined presidential and state primary voting.

Shifting the state elections to off-presidential years could have significant positive results:

*State and national issues and personalities could be more effectively separated and voters could focus on just one set of issues instead of two;

*The media would be able to maintain a steadier and more consistent focus on state or national issues and campaigns;

*Candidates, contributors, workers, observers, and voters would not be torn by competing national and state interests and loyalties; and

*The "coattails effect" of national political personalities would be minimized in state elections.

In North Carolina, the General Assembly could consider holding state-level elections in 1984 for limited (two-year) terms, followed by elections in 1986 and thereafter for regular terms for governor, lieutenant governor, and council of state positions. The General Assembly could restrict those who seek offices with limited terms (governor, lieutenant governor) to six years in office (1984-90) or to ten years, the short term and two full terms.

This system would still require state legislators, who have two-year terms, to run on presidential election years. To remove all conflicts, the General Assembly could vote to hold future elections in odd-numbered years. The phase-in period similar to the one described above could be determined for off-year, even-numbered years.

National and state political observers are decrying the decline of the political party and the rise of personality and media politics. The increasing use of the presidential primary might well have significantly reduced the importance of state parties and their leadership. Separating the presidential and state level contests could help resist any further declines in state political parties. Whether this change would allow state parties to recover lost ground, however, is not clear, especially in North Carolina where personality and factional politics predominate.

Before the General Assembly shuffles the primaries around again, serious attention should be given to new ways — tried and proven in other states — of disentangling federal and state politics and campaigns Changing the state's electoral calendar would allow candidates, campaign workers, political reporters, and most importantly, the voters, to focus on real, local issues rather than overwhelming, less-controllable national and international situations.

States Switching State Level Elections To Non-Presidential Years — 1948-1968-1980*

1948-1968 (11)
Colorado
Connecticut
Florida
Georgia
Maine
Massachusetts
Michigan
Minnesota
Nebraska
Ohio
Tennessee

1968-1980 (8)
Arizona
Illinois
Iowa
Kansas
New Mexico
South Dakota
Texas
Wisconsin

* *All but Illinois also switched from two year terms to four year terms for Governors and hence did not have to hold an extra election.*

Alternatives To Incarceration

By Alan McGregor
and Libby Lewis

"There has been a tendency to overuse prisons, making prison the first choice instead of the last choice. By last choice I mean a conscious decision made about the needs of the offender, the community and the resources available. If any sentence other than imprisonment is appropriate, it should be used."

Amos Reed, Secretary
North Carolina
Department of Correction

Alan McGregor is the North Carolina liaison for the Southern Coalition on Jails and Prisons. Libby Lewis is a free-lance writer from Chapel Hill.

"The kids were responsible and reliable," says David Nickell. "They performed the work we asked them to do. And they worked hard." Nickell has the quick, temperate voice of someone accustomed to efficiency. He has just completed moving the Durham County Library's 80,000 volumes to a new home on North Roxboro Road.

"I spent more time with the kid who couldn't read than with the others," says Nickell. "He was rude and rebellious at first. Then I found out he was embarrassed. He couldn't shelve books because he couldn't read. He was in for truancy. He skipped school all the time."

When Jerry Smith (not his real name) came before a Durham judge for truancy, the judge did not send Jerry to a correctional institution. Instead, the judge assigned him to Offender Aid and Restoration (OAR), which supervises the Durham library project. Like other non-profit agencies participating in the community service program, OAR serves offenders of all ages but primarily young offenders who have little if any criminal record.

"Sure, the community service program takes work," says Nickell, explaining the demands and benefits for the library and the offenders. "During the move, we had him (Jerry) clean books instead of shelve."

"It'll be more difficult to find that kind of job now," says Nickell as he prepares to install the fire alarm system, one of the last steps in the move. "But the library is committed to helping keep people out of jail. It's worth it."

Commitment to corrections alternatives, like OAR's community service program, is growing in North Carolina — and not only on the local level. At a February press conference, Governor James Hunt boasted the success of another alternative which allows non-dangerous offenders to repay crime victims for stolen or damaged property, instead of serving time in prison. In this program, called restitution, offenders work at their regular jobs — the unemployed are aided in finding jobs — and make regular monetary payments until full remuneration is met.

In 1977, the General Assembly funded restitution officer positions so that the program now operates statewide. In January, 1980, offenders in these programs returned over $320,000 to more than 13,000 individuals and businesses. More than $3 million has been paid since the 1977 legislation passed.

The Governor's acclaim for restitution signals a top-level nod to what was once a hypersensitive subject in state corrections policy. The handful of judges and district attorneys who used restitution before the 1977 law was enacted find themselves suddenly in vogue.

"I've been using restitution for years," says District Court Judge Milton Read of Durham, "but there has been more attention paid it in the past six months than ever before."

Secretary of Corrections Amos Reed agrees. There is a "broading consensus among administration officials that alternatives to incarceration are increasingly acceptable and necessary," says Reed.

But Hunt's and Reed's pronouncements are only a beginning. Thus far, the state has made a minimal commitment to alternatives. The Salvation Army and other private groups, for example, operate all six of the halfway houses in the state, which focus on counseling and getting jobs for offenders. Other approaches such as dispute settlement centers and youth alternative programs rely on private funding and volunteer support. Aside from restitution and probation, official support for alternatives has depended mostly upon individual efforts such as those of Judge Read, some district attorneys, and officials at the Department of Crime Control and Public Safety, which is separate from the Department of Corrections.

Even so, corrections reform advocates welcome the new wave of support for restitution and other community-based programs. "We're not used to having so many allies in high places," says Lao Rubert, director of the Prison and Jail Project of North Carolina, a Durham-based group working for alternative sentencing. "But recently, when we talk about community-based corrections," says Rubert, "we find a lot of powerful heads nodding in the affirmative."

What is the impetus for this growing acceptance of corrections alternatives? And how can community groups and state policy makers build on the successes of the limited initiatives to date?

Today, North Carolina's 81 state prisons are holding some 5,000 prisoners over the system's normal capacity of 10,900, an overcrowding rate of 35 percent. Such numbers severely affect minimal comforts, quality of services, and self-respect, says Pauline Frazier, director of Offender Aid and Restoration of North Carolina. "But it usually takes a tragedy — an Attica or a New Mexico State — for the public to see these," says Frazier.

In 1968, a riot at Raleigh's Central Prison left six inmates dead and 77 persons wounded. In 1975, a protest at Women's Correctional Center in Raleigh brought out guards in riot gear, resulting in injuries but no deaths. During this period, officials were attempting to streamline administrative procedures and improve mail delivery, food quality, library access, and other minimal services. Public attention on the inequities for women in the prison system was beginning. And occasional rehabilitation efforts — work release, high school equivalency, and vocational training — were being tried. But the local tragedies and minor reforms did not divert officials' attention from a single preoccupation: solving the problem of overcrowding.

In 1974, corrections officials requested major capital construction funds from the General Assembly. The Legislature then created a Commission on Sentencing, Criminal Punishment, and Rehabilitation, headed by Charlotte Senator Eddie Knox, and charged it to develop "a comprehensive long-range policy recommendation setting forth a coordinated state policy on correctional programs."

In 1977, the Knox Commission reported back with a number of recommendations and a warning that sobered the lawmakers. "Unless immediate action is taken," the Commission reported, "it is likely the Federal courts will intervene in the operations of North Carolina's prisons."

The specter of federal court intervention did what violence at Central Prison and the crush of inmates in facilities throughout the state had not. It prompted some official support from the Department of Corrections for alternative sentencing programs. And most dramatically, it was the catalyst within the General Assembly for a massive $103 million appropriation for prison construction. "It's much easier to get dollars from the General Assembly for new prisons than for alternatives," says OAR Director Frazier, who serves on the Corrections Planning Committee, the official advisory board to the Department of Corrections. A traditionally conservative legislature has led the state to rely heavily on prison construction, Frazier believes.

The Knox Commission report also resulted in the 1977 passage of the Local Confinement Act, which was designed to place short-term misdemeanants in city and county jails rather than in state prisons. Placing over 1,000 misdemeanants into local jails in 1978 reduced the state prison population that year. But the number in local jails rather than state facilities has stabilized at about 1,300, and the state prison population has since expanded back to the pre-1977 levels.

Another Knox Commission initiative may soon have some effect on the overcrowding problem, but perhaps to make it worse rather than better. The presumptive, or fixed, sentencing bill which takes effect this summer, is designed to reduce disparity in sentencing from judge to judge. While the legislation will make sentences more uniform, some crimes will carry longer sentences than many judges presently render. Moreover, the legislation has replaced the parole system, an important instrument in controlling prison population levels, with a standardized good behavior system. Some corrections experts worry privately that presumptive sentencing might contribute to overcrowding.

State officials project more growth in the prison population through at least 1985. In addition to funding construction projects, from the $27 million Central Prison complex to the field units being built in various locations, the state must also absorb increasing maintenance costs, now nearly $7,000 per prisoner each year.

"The state has felt for some time that it is running a few steps in front of the federal courts," says Frazier. "But it has not been able to substantially reduce overcrowding."

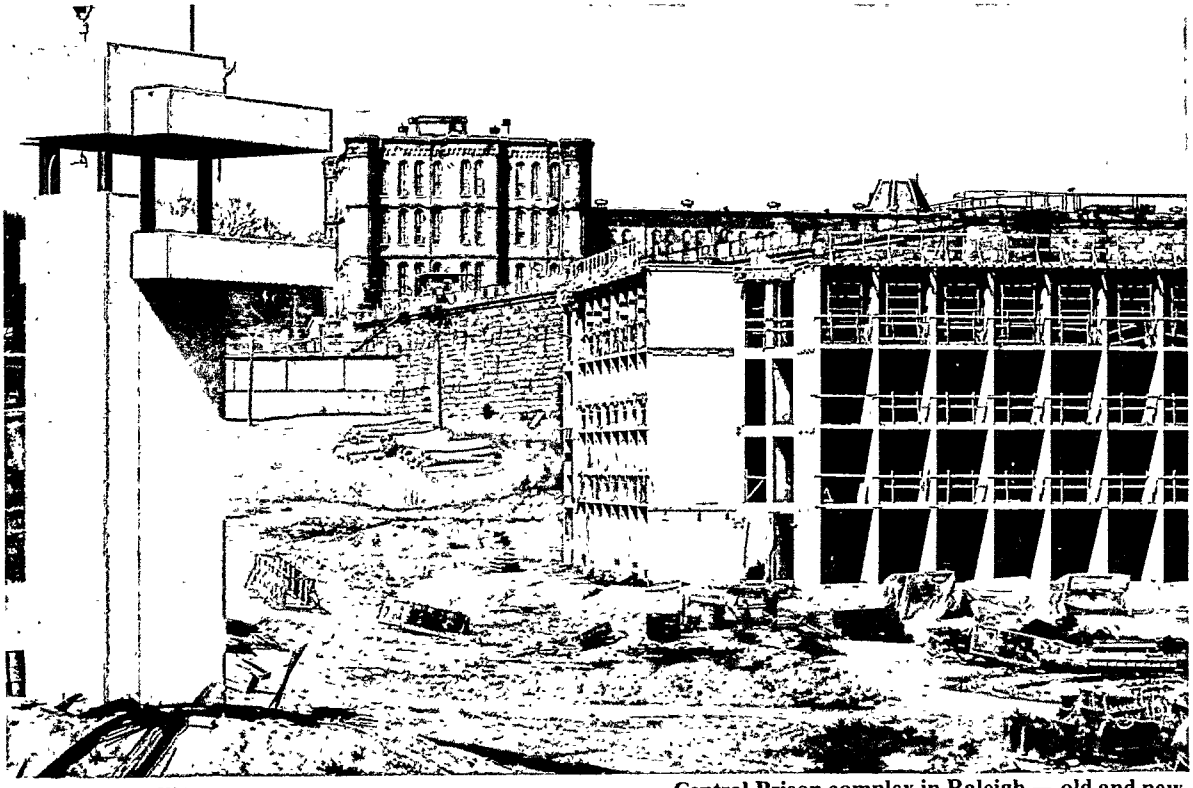

Photo by Jackson Hill

Central Prison complex in Raleigh — old and new.

Who Goes to Prison in North Carolina?

In 1978, North Carolina ranked seventh in the nation in the percentage of population in prison. The state's prisons and jails held 310 of every 100,000 people — even though the state had one of the nation's lowest rates of non-violent crimes. More populous states like Massachusetts and Pennsylvania had far higher non-violent crime rates but less than half the number of prisoners.

Sentence length has contributed heavily to this pattern. In 1969, the average sentence in North Carolina was 2.7 years. After a decade of toughening attitudes on crime, that average has nearly doubled.

A description of the state's prison population suggests that the criminal justice system has filled the prisons with people who have the least power in the society, with little regard for whether prison is the appropriate form of punishment. Moreover, as Pauline Frazier, a member of the Department of Corrections official advisory board puts it, "Discrimination exists in every stage of the criminal justice system."

*Two out of every five prisoners are under 25 years of age.

*Three-fourths of those in state prisons have not graduated high school. Almost half of those admitted to prison left school before the 10th grade.

*Over 50 percent of the state's prisoners are black or members of other minority races. Less than a quarter of the state's population are minorities.

*One of every 20 minority men in North Carolina is either imprisoned, on probation, or on parole. The figures for white males are five times lower.

*About 50 percent of the people in prison were convicted of economic or victimless crimes. Twenty percent of those admitted to prison are charged with forgery, passing worthless checks, traffic violations, crimes against morality, and drug offenses. Only one of every five prisoners was convicted of a physically violent or dangerous crime.

Amos Reed predicts the prison population growth rate will decrease if alternatives are "systematized" and "if people understand that the actions of criminals are being properly addressed by the new programs."

Alternatives, if properly supervised and utilized, can do more though than keep people out of jail. "We told one youth who couldn't read or write about the literacy programs in the area and showed him that the library has materials for him too," says David Nickell.

Four of the six youths who helped Nickell move 80,000 volumes in Durham had never been inside of a public library before. "They got a chance to really know the place," says Nickell. "They checked out films, cassettes, books, and school catalogues." One of the youths serving time in the library applied for a full-time job there after his sentence was fulfilled.

But local successes like the library program are still the exception. Successful alternative programs demand extensive resources, funds, and people from the community in which they operate — for counseling, tutoring, monitoring, finding jobs, providing transportation, and other services. Placing responsibility for corrections in the community is not only difficult but also unfamiliar. Incarceration has always provided local citizens, as well as state officials, a quick, convenient solution to crime. Isolating offenders from community view prevented people from having to understand what prisoners must go through or to face what problems the prison system creates for the larger society.

Corrections experts like Frazier realize that acceptance and involvement in community-based programs will not be automatic. "Alternatives will have to be sold to the community," says Frazier. "So far, no one is claiming responsibility for doing the selling." The authority for developing alternative sentencing programs is dispersed through a number of state, local, and private agencies. These programs depend on the coordination of district attorneys, judges, social service agencies, the Department of Corrections, volunteer groups, and private organizations.

A strong impetus from the community is necessary for so many different groups to work together effectively. At the same time, funding, technical assistance, and cooperation is essential from the state. The legal community, the judicial system, the General Assembly, and the Department of Corrections are as important actors in alternative programs as the Durham County Library, the YMCA, the Salvation Army, and other agencies involved in community corrections.

More and more advocates are emerging to assist

Photo by Lao Rubert

Troy House, in Durham, is a ten-year-old therapeutic community for criminal offenders.

Frazier, Rubert, Reed, and the others. The North Carolina Council of Churches, the Presbyterian Synod of North Carolina, and other denominational agencies have undertaken education campaigns. The Governor's office has proposed an in-depth study of alternative corrections. The Prison and Jail Project of North Carolina is organizing a blue-ribbon citizens committee to prepare an action plan for the 1981 General Assembly.

Even with the support of these diverse groups, developing programs that merge restitution, justice, and rehabilitation will be difficult. As alternative sentencing becomes more prevalent, new problems may emerge.

Additional alternative programs will be dealing with more and more people who have not completed high school or can't even read. (See box describing the state prison population.) David Nickell, for example, had to devise a special task for the youth who couldn't read well enough to re-shelve books. A great deal of imagination — and funding — will be necessary to meet the needs of large numbers of people who have similar problems.

Official expansion of alternatives could also be accompanied by the same racial imbalance found in the current patterns of imprisonment (see box). "It is likely that alternatives will suffer a similar bias," says Frazier. "Whites may be referred to alternative programs more than blacks." The only way to prevent discrimination from seeping into alternatives may be through close monitoring by citizens' groups, private agencies, and local and state government officials — another form of community commitment.

The long-range challenge for alternatives to incarceration — creating programs that provide restitution and at the same time attack the causes of crime — makes equal demands on state officials, like Governor Hunt and Secretary Reed, and on community leaders, like Pauline Frazier and David Nickell. If state and local officials as well as community groups respond to this challenge, North Carolina can move closer to the new corrections philosophy espoused by Reed: "If any sentence other than imprisonment is appropriate, it should be used." But the state has much to do before it can claim Reed's statement as current policy. State officials are standing at a crossroads. Will they choose to continue supporting expensive construction projects, which do not guarantee a solution to overcrowding? Or will they give substantial backing to programs that can make prison the last choice instead of the first? ■

Alternatives That Are Working

Community Service Restitution Project

Begun in 1979 under the sponsorship of Offender Aid and Restoration of Durham, this program has already diverted 75 offenders from the court system in Durham County. The District Attorney's office, judges, and more than thirty public service agencies including the YMCA, Salvation Army, and Durham County Library have cooperated to launch this program. Non-dangerous offenders are assigned for up to 60 hours of labor. For many first offenders, successful completion of their community service results in charges against them being dropped so that they will not retain criminal records.

Court Youth Alternatives Program

Since its inception in 1978, more than 150 youthful offenders have participated in the Court Youth Alternatives Program (CYAP) in Raleigh. All participants in the program, sponsored by Re-Entry, Inc., must work or go to school full-time. Each youth must also do 75 hours of community service work under the sponsorship of one of some 50 cooperating non-profit agencies in Wake County. One-to-one support is provided to each participant by volunteer sponsors. By completing the program successfully, 80 percent of the youths avoided further prosecution.

Dispute Settlement Centers

In Wilmington and Chapel Hill, local district attorneys are referring cases to Dispute Settlement Centers where a trained mediator can best deal with the case away from the costly and formal proceedings of the courts. The mediator helps community members solve problems arising from the case, including conflicts between family members, customers and businesses, and neighbors. Resolutions often occur before the need for criminal prosecution. Offender Aid and Restoration of North Carolina operates the Wilmington center; the Dispute Settlement Center of Chapel Hill operates the Chapel Hill center.

Halfway Houses

Over the last two years, 75 men have been housed at Troy House, a ten-year-old therapeutic community for criminal offenders in Durham. Men come to Troy House under federal and state programs. Some residents are under active prison sentences under contract from the Federal Bureau of Prisons or the state Department of Corrections. Others are on probation or have been sentenced directly to the halfway house. While in residence at Troy House, the men benefit from counseling programs aimed at coping with vocational, personal, and family challenges. Jobs are mandatory for the residents and no less than one-half of their income is kept in savings for use after their release.

Re-Entry's halfway house in downtown Raleigh has housed more than 175 men over the last three-and-a-half years. Life at Re-Entry is much like that at Troy House. Counseling and jobs are integral to the program.

There are four other halfway houses in North Carolina. Houses in Charlotte, Winston-Salem, and High Point are operated by the Salvation Army. The fourth is operated privately in Sanford.

Extended Work Release Program

The South Carolina Department of Corrections uses this program, which William Leeke, the director of the South Carolina system, calls the "most progressive program we've got going." When an individual has been on work release two months and has met other criteria, the person can then live in a sponsor's home while serving the balance of the sentence. Participants pay $5.00 a day for their own supervision. "This decompression chamber approach has given us a lot more flexibility in taking people from confinement and helping them to work their way back into the community," says Leeke.

Ralph Milliken, a resident of Troy House.

Photo by Lao Rubert

Photo by Cliff Haac, Research Triangle Institute

Public Defender System The Verdict Is Out

by Stan Swofford

Early this year, N.C. Supreme Court Chief Justice Joseph Branch, seeming frustrated and somewhat piqued over the irate letters he was receiving from court-appointed attorneys dissatisfied with their fees, said "it might be time to look into the possibility of a statewide public defender system." His predecessor, former Chief Justice Susie Sharp, said the same thing in a speech to the state bar three years ago, and reiterated it in a recent interview — more than 10 years after the state initiated a "pilot" public defender system which has grown to encompass only five judicial districts. And Gov. Jim Hunt this year has indicated strongly in a public statement that he would prefer a vastly expanded public defender system.

Stan Swofford, a reporter for the **Greensboro Daily News,** *broke the story of the court-appointed system's fiscal crisis earlier this year. Swofford has won awards for legal reporting from the N.C. Press Association, the North Carolina State Bar, and the Sidney Hillman Foundation.*

Their reasons have to do mainly with money. The fund set aside by the Administrative Office of the Courts (AOC) to pay court-appointed lawyers ran out in March, almost three months before the end of the fiscal year. The AOC was forced to request — and fortunate to receive — $1.7 million from the state budget office to cover the deficit.

Every available study shows that a public defender office, consisting of a full-time staff of lawyers employed by the state to represent indigents in criminal cases, is less costly than the court-appointed or assigned counsel system. For the fiscal year ending last June 30, the state paid almost $4.6 million for court-appointed lawyers in 28,998 cases — an average of $157.55 per case. At the same time in the five public defender offices (Guilford, Cumberland-Hoke, Mecklenburg, Gaston and Buncombe), the cost to the state to represent 10,972 cases was $1,149,780 or $104.79 per case.

"Generally speaking, the public defender with his experience will be better."

N.C. Chief Justice Joseph Branch

Although money may be the catalyst, it is not the only reason officials are looking toward the possible expansion of the public defender system. Another is fairness, equality of representation for all indigent defendants. Chief Justice Branch believes that "generally speaking, the public defender with his experience will be better." And, says John Haworth of High Point, president of the North Carolina Bar Association, "The public defender system has made available to a class of people who badly need it good, very good representation. The public defender is able to gain a level of expertise in criminal law that private practitioners might not be able to acquire."

Mary Ann Tally has been the chief public defender in Fayetteville for four years and has been with the office since 1974. She says that fairness and equal treatment of indigent defendants should be the main issue. A court-appointed lawyer must file a motion before a judge in order to obtain an investigator at the state's expense, but each public defender office has at least one professional investigator on staff. Tally's office has two. The Guilford County office has three. "The big thing, however, in the public defender's office is expertise," Tally says. "We practice criminal law and that's it."

The limited public defender system in North Carolina had its origin in a flurry of U.S. Supreme Court decisions during the 1960s that broadened the rights of indigent defendants. Prior to 1963, indigent persons were entitled to counsel only in capital cases. Compensation to the court-appointed lawyer was made by the county. That year, however, the U.S. Supreme Court held in *Gideon v. Wainwright* that a state had to furnish counsel to any indigent defendant charged with a felony. The North Carolina General Assembly was in session at that time and enacted a bill providing counsel as a matter of right for indigents charged with a felony and awaiting trial in Superior Court.

In 1967, responding to other decisions of the Supreme Court, the General Assembly extended the right of indigents to counsel in preliminary hearings in felony cases and for juveniles charged with an act which would constitute delinquency. Later in the case of *Argersinger v. Hamlin* the U.S. Supreme Court ruled that no indigent, unless he waived his right, could be imprisoned for any offense unless he was represented by counsel.

Then, in 1970, North Carolina began public defender programs in Guilford and Cumberland Counties. Former state Representatives Sneed High of Fayetteville, and Marcus Short of Greensboro, among others, helped establish these pilot programs.

The question before North Carolina now is how to supply such counsel by the fairest and most economical means possible. The state has at least three options. First, it can continue with a court appointed system and find ways to supplement the current budget. Secondly, the state, in cooperation with local bar associations, can take the legislative and administrative steps necessary to expand the existing public defender programs into a statewide system. Finally, the state bar association, in conjunction with the General Assembly, could fund a private, non-profit organization to oversee the public defender function. Or some combination of these options could be attempted.

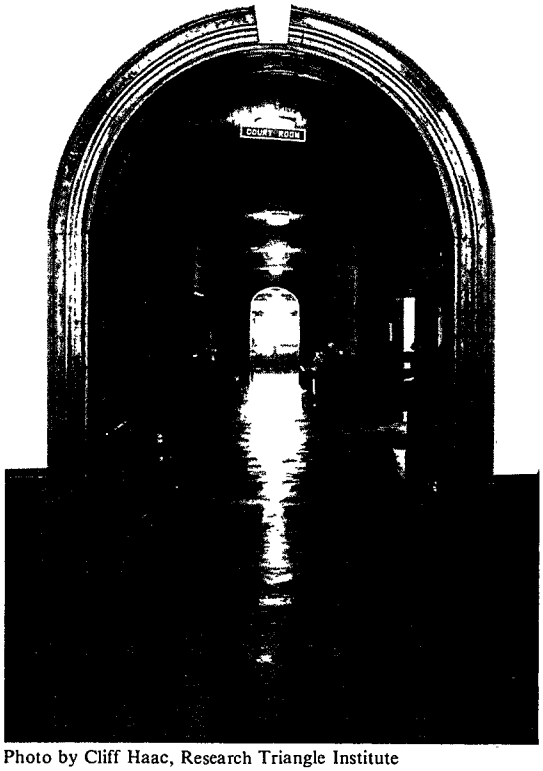

Photo by Cliff Haac, Research Triangle Institute

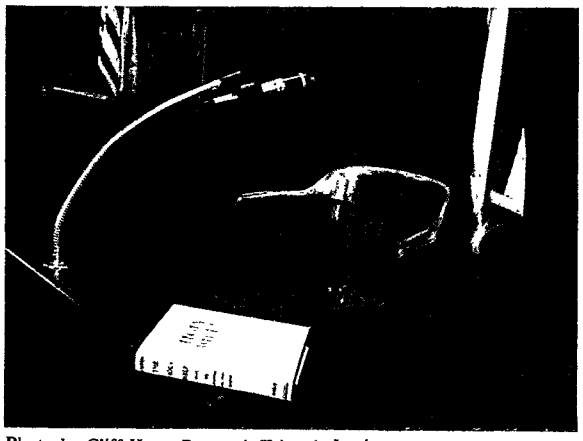

Photo by Cliff Haac, Research Triangle Institute

Almost every state and national authority concerned with the problem believes the answer lies with a vastly expanded statewide public defender system. Ten states have statewide public defender offices supported by state funds, according to Howard Eisenberg, director of the National Legal Aid and Defender Association. Six more, including North Carolina, Eisenberg says, have some type of statewide indigent representation system supported by state funds. The other states have haphazard systems on a county-by-county basis, supported by county tax dollars.

"I think we've got to go to an expanded public defender system," former Chief Justice Sharp has said. "But as undesirable as the present situation is, I would hate to see the socialization of the practice of criminal law. I think the private bar must continue to play an important part in the defense of indigent defendants."

Many state and federal experts share an enthusiasm for an expanded public defender system, so long as it remains closely aligned with the private bar. In the past, local bar associations have decided whether to establish public defender offices in their districts. Some local bars, according to N.C. Bar Association President Haworth, apparently have felt that it would take money away from young lawyers just beginning practice.

"This is true," says Rep. Parks Helms of Charlotte, chairman of the North Carolina Courts Commission, established by the 1979 General Assembly to study such issues as the public defender system. "But the defendant needs to be assured of getting competent counsel." Alternatives for training young lawyers might be established to substitute for the training attorneys now get through the court appointed system, says Helms, himself an attorney.

Jim Little, who served as public defender in Fayetteville, N.C., and who now is in private practice, also believes the private bar should not be left out of a statewide indigent defender program. One reason again is economics. A statewide system probably would not work in the extremely rural areas of the state, he says. In such areas a private attorney or several private attorneys probably could be retained to represent indigents.

Dennison Ray, director of Legal Services of North Carolina, the organization which represents indigents in civil legal proceedings, believes that a public defender office could be established in each of North Carolina's 33 judicial districts. Each should work in conjunction with the private bar, Ray says. "It should not become just another state institution."

Little and other court observers see little danger in statewide public defender offices becoming more of a "political steppingstone" for ambitious court officials than any other public office. Little, former Chief Justice Sharp, and others do feel, however, that public defenders should be chosen by some merit selection process if posible. Little also feels strongly that the system should be independent of the judiciary. That is, judges should not be given the power to determine who represents an indigent defendant, just as a judge does not decide who represents a person with money.

In recent weeks, North Carolina officials responsible for designing the criminal defense system have begun a closer review of the type of system which could best function in this state. On April 14, Governor Hunt wrote state Rep. Helms asking the N.C. Courts Commission to determine whether the state should expand the public defender system. In his letter, Hunt said he hoped the "study could be completed by the fall of this year for consideration by the 1981 General Assembly."

"The Governor has an open mind about it," says Gary Pearce, the Governor's press secretary. "In the past, he (Hunt) felt, as a lawyer, that the court-appointed system worked better," says Pearce. "But he now feels the public defender system may be better."

John Hayworth speaking before the N.C. Courts Commission. Rep. Parks Helms, commission chairman, is seated.

Photo by Paul Cooper

On April 18, the Courts Commission met in Raleigh, its second meeting since being established. The Commission voted to accept the request from the Governor and decided to hold a hearing on the public defender system as a step in preparing recommendations for the General Assembly

The Wisconsin program, which the National Legal Aid and Defender Association considers a model system, combines the public defender system with the assigned counsel system. And it is entirely out of the hands of the judiciary. It is funded by the state and administered by a nine-member board, at least five of whom must be private attorneys.

The participation of the bar "keeps everyone honest."

The board sets standards for indigency, and the public defender or his representative decides whether a defendant meets those standards. The board appoints a chief public defender who "puts out all the fires," according to Eisenberg of the National Legal Aid and Defender Association, and who attends to the day-to-day business of running the system. The board decides on a county-by-county basis the number of indigent defendants to be represented by assigned private counsel and the number to be represented by attorneys working for the public defender offices and establishes standards for attorneys participating in the system.

The Wisconsin judiciary is kept entirely out of the system. "If a judge has nothing to do with determining who represents a person with money," Eisenberg asks, "why should he have anything to say about who represents an indigent defendant?" When a person who feels he cannot afford an attorney is arrested in Wisconsin, he can call a toll-free number which connects him with the nearest representative of the state public defender system. If the defendant is in an area rather far from the nearest public defender office, the central office assigns a private attorney known to be qualified in the field of law involving the charges against the indigent defendant.

All attorneys participating in Wisconsin's indigent defender program — the private lawyers and those working fulltime in the public defender offices — have at their disposal "brief banks" and other collected legal data, private investigators, and the expertise and cooperation of the central public defender office administered by the chief public defender. "I think the arrangement with and the cooperation of the private bar is absolutely essential," Eisenberg says. "Without it, the program would be too institutionalized. The state on the one hand would be trying to imprison the defendant, while on the other it would be trying to allow him to go free." The participation of the bar "keeps everyone honest." ■

Chief Justice Joseph Branch addressing the April 18 meeting of the North Carolina Courts Commission.

Photo by Paul Cooper

Rights of the Mentally Handicapped

Who Should Decide Where People Live?

by Roger Manus and Barbara Blake

"Each handicapped citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes . . ." North Carolina General Statutes Section 168-9 (1975).

"My mother made all the decisions when I lived at home. Now I make my own decisions, a lot of them, and tough ones. I've got lots of friends in this big house. I feel more important living here." Richard Marcus Cohen, a group home resident in Asheville, N.C.

Broughton Hospital, Morganton

Richard Cohen is 23 years old and has "moderate" mental retardation. For the first 20 years of his life, his mother kept him at home, protecting him from many activities of normal children. He had a job as a dishwasher once, when he was living at home in Miami, Florida, but he got fired.

Almost three years ago, Richard moved to Asheville, where he got a job through Handi-Skills, an Asheville program for physically and mentally handicapped people. And he moved into the "big house" sponsored by the Buncombe County Group Homes for the Developmentally Disabled, Inc. Today, Richard is still working through Handi-Skills, sorting equipment for the Asheville Plastic Company.

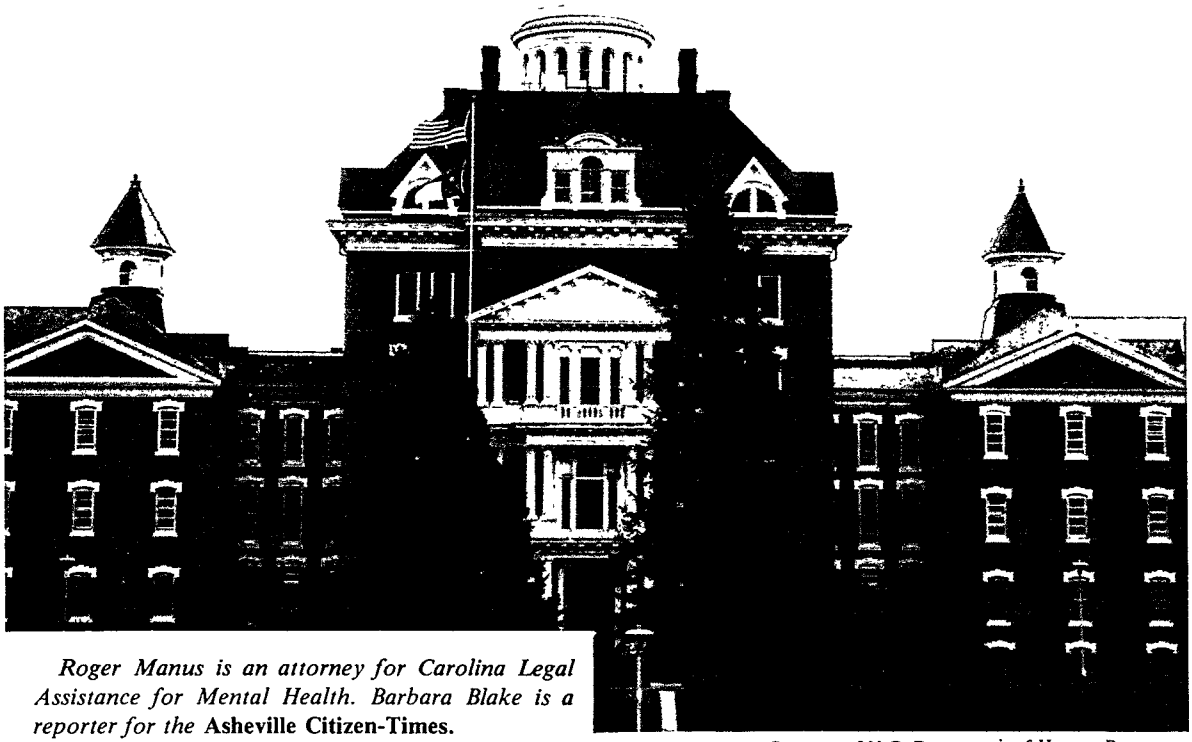

Photo Courtesy of N.C. Department of Human Resources

Roger Manus is an attorney for Carolina Legal Assistance for Mental Health. Barbara Blake is a reporter for the **Asheville Citizen-Times.**

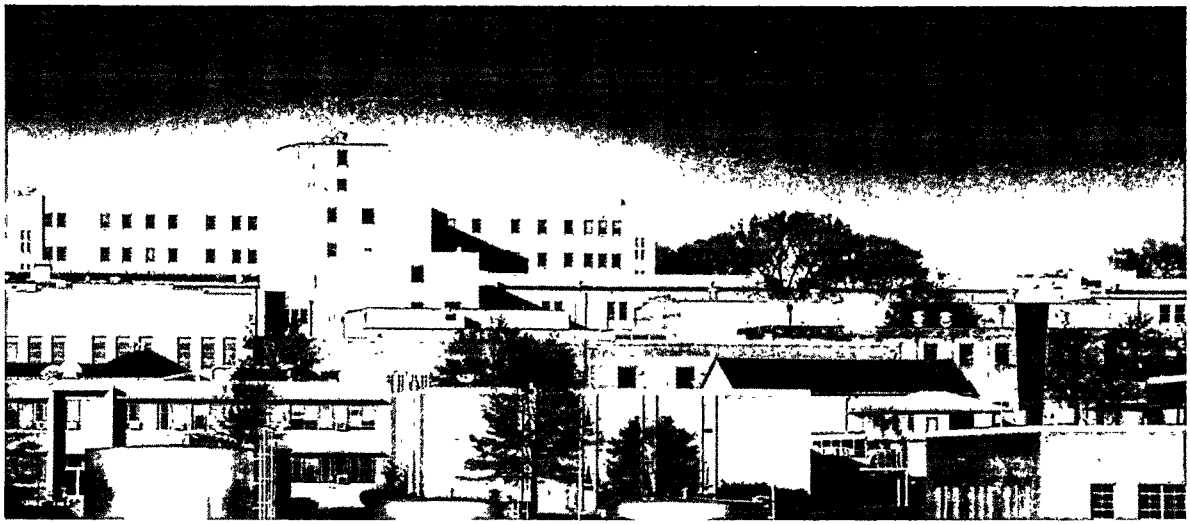

Photo by Paul Cooper

Dorothea Dix Hospital, Raleigh

"We have breakfast together," says Cohen. "Then we go to our jobs. When we get home, we have dinner together. On my cooking nights, my specialty is meatloaf."

Across the state in a downtown Raleigh neighborhood, Doris Jones does most of the cooking for the seven women in a home sponsored by Community Group Homes, Inc. A Raleigh native, Doris has worked as a switchboard operator and a file clerk for Seaboard Railroad. Now 67, she has been living in the two-story frame house since leaving Dorothea Dix Hospital eight years ago.

"Most of the women come here from Dix," says Jones. "This is a place for a lot of people who don't really have any place to go. I went to Dix back when I was real depressed, you know. I couldn't talk to anybody without crying. They (the Dix staff) helped me find this place."

The group homes in Asheville and Raleigh are part of a nationwide de-institutionalization movement — an effort to bring some people with mental handicaps out of institutions and to help others avoid institutions in the first place. Most people with mental retardation and mental health problems — like Richard Cohen and Doris Jones — have spent most of their lives outside of institutions, often living with a family member in a sheltered or isolated situation void of many opportunities. And many other people have spent years in institutions because alternative facilities simply have not existed. Today, about 500 mentally disabled people live in group homes and supervised apartments in North Carolina. But over 1,000 more are waiting to move into a community setting.

Since the late 1800s, states have maintained special institutions for a large number of people who seemed to be mentally different.* At first, institutions were intended to shelter the residents from societal abuses. Reformers such as Dorothea Dix devoted their lives to helping provide a place for the "mentally afflicted," the term used in the 19th century. But by the early 1900s, institutions began expanding for the opposite reason: to protect society, so the rationale went, from the sick, subhuman elements, the menaces to law-abiding citizens. Images of the mentally handicapped as diseased burdens of charity pervaded the society, creating a set of myths that persist today. Many human service providers in hospitals and in the community no longer subscribe to these myths, but little has been done to educate the general public about such false images. People still pity, fear, and resent people like Richard Cohen and Doris Jones, simply because they were once in an institution or have moderate retardation.

Such attitudes have fostered discrimination against handicapped people in employment, education, social services, and housing, all fundamental needs for an independent life. In the last 15 years, federal and state legislation has begun to help handicapped people overcome these barriers to community living. Employers that receive federal funds can not discriminate against the handicapped, for example. And North Carolina school systems must now serve children with special needs. (See box at the end of the article for a summary of existing civil rights legislation for handicapped citizens.)

In 1975, the North Carolina General Assembly voted to allow handicapped citizens the right to live in residential communities. The statute appeared to give group homes the right to exist despite what local zoning ordinances or restrictive convenants in private property estates may say. Since the law passed,

**The confinement of mentally different people actually began much earlier. Connecticut's first house of corrections, for example, was established in 1722 for "rogues, vagabonds, beggars, fortune tellers, diviners, musicians, drunkards, prostitutes, pilferers, brawlers, and the so-called mentally afflicted."*

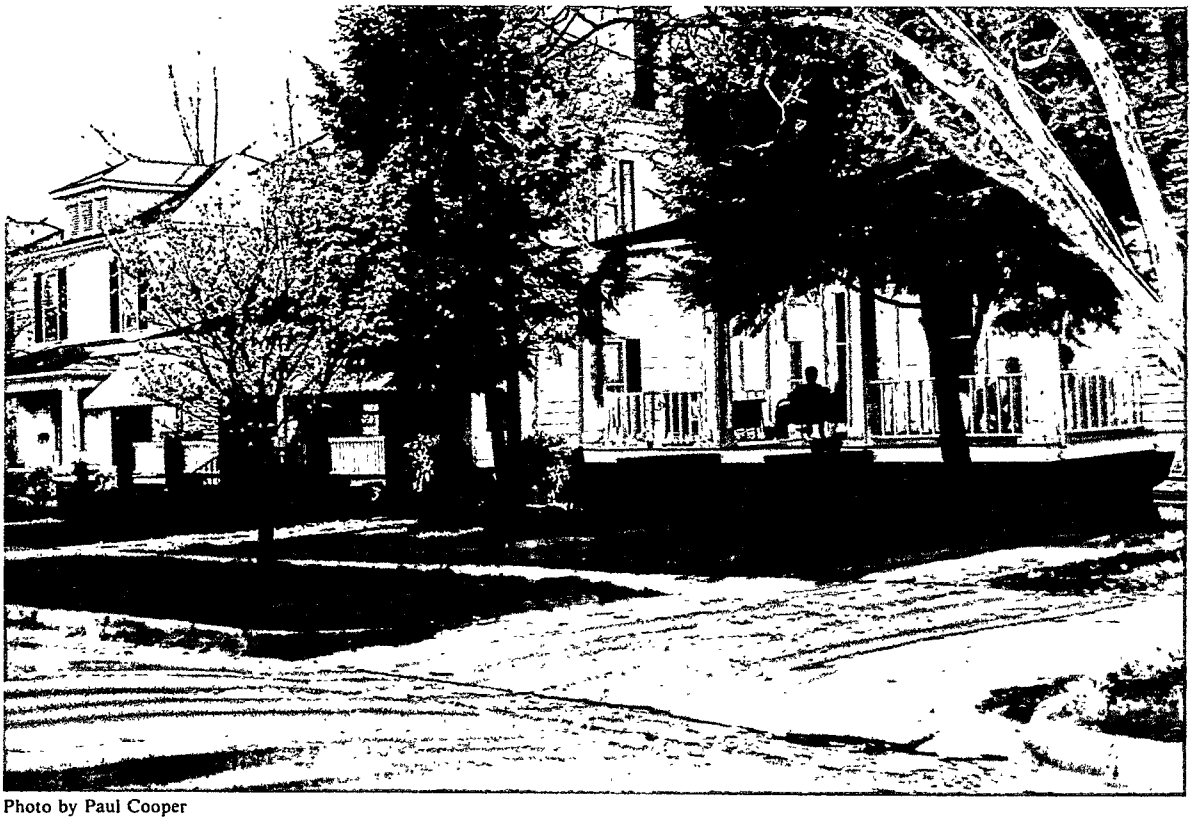

Photo by Paul Cooper

At the far right is the house owned by Community Group Homes, Inc., on S. Boylan Avenue in Raleigh.

nevertheless, people opposed to group homes in their neighborhoods have successfully blocked or delayed group home openings throughout the state.

"The statute is non-specific," says H. Rutherford Turnbull, an attorney at the Institute of Government who specializes in mental health law. "It is not clear how far the courts would give it precedence over local ordinances."

The "non-specific" nature of the statute became very obvious in Asheville last fall, when Buncombe County Group Homes for the Developmentally Disabled requested a zoning permit to build a second home in the middle-income Kenilworth neighborhood. Asheville's City Council had never considered how zoning and building code regulations might apply to group homes. No organized opposition had questioned the first home, the stone house where Richard Cohen lives. But the residents of Kenilworth mounted a campaign to block construction of the second one.

"I think it's a great idea, but I certainly do feel that the residents of Kenilworth need to have a lot more understanding of what the home is for," says Shirley Chamberlain, a resident who attended many of the Council meetings.

"They're afraid their property values will go down," says Cohen. "They think we might rob them or throw rocks in the windows."

Buncombe County Group Homes for the Developmentally Disabled held a meeting to explain the homes to the neighborhood. "We tried to talk frankly and openly about the program," says Dr. Raymond Standley, president of the group's board of directors, "to stop rumors and untruths from going around, to answer any questions."

But even those neighbors receptive to the group home idea didn't feel the meeting was enough. "The people in the community feel we have been dealt somewhat a low blow," says Marvin Chambers, a past president of the Kenilworth Residents Association and the parent of a retarded child. "The feeling seems to be that if someone had tried to educate the people as to what the intent of the home is, there would be a lot less bad feelings now. It's created a lot of animosity, and in my opinion, it does something detrimental to the whole program."

Some people, however, experienced in starting group homes say that a prior community education effort can be counterproductive. "It only emphasizes the differences of handicapped persons and makes them like second-class citizens," says Jean Stager, the mental retardation specialist for Durham County. "You or I didn't have to ask permission to move into a neighborhood. Such efforts more often only serve to heighten community apprehensions by making a big deal out of a very unremarkable occurrence."

The Asheville opposition is just one example of the difficulties group homes have had in finding receptive neighborhoods. Opposition has flared across the

state, from Raleigh and Knightdale to Burlington, Greensboro, China Grove, and Salisbury. Just outside of Chapel Hill, for example, a group of neighbors mounted a petition drive and a vigorous lobbying effort to force the Area Mental Health Board to withdraw its support of a proposed group home for children with mental retardation. The opposition group claimed to be concerned for the welfare of the group home children, afraid that the children would not fare well with neighborhood children on the school bus, for example. But during a hearing before the Area Mental Health Board, other fears emerged. People opposed to the home said that they were scared their property values might go down and that they might not be safe. When the Area Mental Health Board remained committed to the home, the opponents filed a lawsuit. But the suit failed, and after several months of delay the group home was established.

> "You or I didn't have to ask permission to move into a neighborhood."

Community resistance is usually based on a fear of property values going down or a fear of increased crime. But experts suggest that these concerns are groundless. Princeton professor Julian Wolpert, for example, studied 52 group homes in 10 communities, using "control" neighborhoods for comparison. His study, released in 1978, found that group homes have no negative impact on house selling or moving and that group homes were generally better maintained than nearby homes. The study concluded that "property values in communities with group homes had the same increase (or decrease) in market prices as in matched control areas" and that "immediately adjacent properties did not experience property value decline."

North Carolina experts agree that property values are not affected by group homes. "This fear has been shown to be baseless," says Turnbull, the Institute of Government attorney.

Turnbull has also written extensively on the crime issue. "There is substantial evidence that mentally **retarded** people are not more prone to criminal activity than non-handicapped people and that, with proper supervision (such as provided in group homes and in community-based employment, treatment, and education), they are less likely to become involved in the criminal justice process than non-handicapped people."

The situation for mentally **ill** people is more complex. But a recent report of the President's Committee on Employment of the Handicapped, after a three-year study of a halfway house for people with mental health problems, found no evidence of criminal-type offenses. "Recent data indicates that the incidence of violent or felonious acts apparently has no significant relationship to mental illness," writes Turnbull.

And the evidence goes beyond the purview of experts. In 1976, the American Association on Mental Deficiency released a national study of attitudes towards homes for developmentally disabled people. It showed that community opposition decreased **after the homes opened** in 87 percent of the cases. "Neighbors just don't give themselves a chance to become acquainted with people who are mentally different," says Toni James, western regional advocate for the Governor's Advocacy Council for Persons with Disabilities. "Community education is essential, but handicapped people cannot wait until that long process is finished. There ought to be a law to help get the ball rolling."

State law does not specifically forbid the use of restrictive covenants or local zoning ordinances to block the establishment of group homes in residential neighborhoods. During the Asheville debate, the City Council imposed a moratorium on zoning and building permits for such homes until regulations could be agreed upon and made into law. After weeks of debate, the City Council granted a permit for the new home, ruling that the Kenilworth applications had been made before the moratorium was imposed and that zoning restrictions could only affect future group homes. While the new Kenilworth home appears to be proceeding as planned, the fate of future homes — in Asheville at least — rests on a clarification of state law.

Community-Based Service
Requirements of North Carolina Law

1. A judge who presides over an involuntary commitment hearing must determine whether commitment to a program less restrictive than a state psychiatric hospital is appropriate and available.
2. Before admitting a child to a state psychiatric hospital, a judge must first determine that a placement less restrictive than a psychiatric hospital is insufficient to meet the child's needs.
3. Local social service agencies must provide protective services to abused, neglected, or exploited mentally handicapped adults and children.
4. Guardians of adults adjudicated incompetent must prefer community-based treatment and residential services over institutional services.
5. State and local governments may not discriminate in housing against mentally handicapped adults and children.
6. Area mental health authorities must have plans for using state, regional, and local facilities and resources to provide mental health services to the citizens in that area.

Excerpted with permission from "Group Homes for the Mentally Handicapped," by H. Rutherford Turnbull (Institute of Government, University of North Carolina at Chapel Hill, 1980)

Photo by Paul Cooper

Residents of Raleigh home sponsored by Community Group Homes, Inc. Doris Jones is sitting at the end of the table.

The ritual of meals, perhaps better than any other ritual, illustrates the influence of environment. In these contrasting settings, note the difference between "everyday" grooming and closely cropped haircuts and institutional dress.

Mealtime at a mental retardation center.

Photo Courtesy of Training Institute for Human Service Planning, Leadership, and Change Agentry, Syracuse University, Syracuse, New York.

The state has a vital interest in the fate of group homes: it currently licenses group homes; it funds area mental health authorities, which may use some of these funds to help establish group homes; it operates four psychiatric hospitals and four mental retardation centers, where the cost per person is higher than community-based residential placement; and it funds community-based treatment and educational programs. But in 1975 and again in 1979, legislation designed to clarify the group home statute was defeated in the General Assembly. These bills required local governments to grant permits to group homes on the same bases as they do for similar dwellings. The bills, based on model statutes developed by a number of groups including the American Bar Association and the Ohio State University Law Reform Project, included a statement of policy, a definition of a group home, a definition of the types of handicapped people eligible to live in a group home, and a provision that state licensing would override local zoning and building codes and restrictive covenants.

In the 1975 law which did pass, however, the General Assembly seemed to support a policy of de-institutionalization for the state. But this policy has too often been thwarted, usually by neighborhood opposition to group homes, and probably will continue to be without a strengthening of the sort proposed in 1975 or 1979. A coalition of disabled people, parents, advocates, and human service providers will again ask the General Assembly to clarify the current law in 1981.

If the Legislature responds, more people like Richard Cohen and Doris Jones will find a place to live other than a restrictive home or an institution. "I'm a little independent at Handi-Skills but not all the way," says Cohen. "I would like an outside job. My counselor thinks I'm going to be ready before too much longer. Living in the group home was the first step. I'm just taking it one step at a time." ■

Protective Legislation

In the last decade, a number of laws have passed Congress and the North Carolina General Assembly aimed at reversing historical patterns which have segregated disabled people in institutions or isolated them in their homes. Most are based on the constitutional principle of the least restrictive alternative: when a government significantly intrudes in a person's life, it must do so in a way that is least restrictive of the person's freedom. The normalization principle — using means which enable disabled persons to live as normally as possible — has been the other underlying basis for most of the legislative developments. The major ones are listed below:

Education

1. Equal Education Opportunities Act, 1974, 1975, General Assembly). Primarily policy statements and procedures for due process hearings to resolve disputes.
2. Chapter 927 (1977 General Assembly). Known as the Creech bill, it establishes the state policy of providing a free and appropriate public education to children with special needs. An "appropriate" education is one provided in the least restrictive setting, i.e., as integrated as possible with non-handicapped children, and one that also meets the particular needs of each child according to an individualized education plan developed jointly by parents and educators.
3. Public Law 94-142 (1975, Congress). Similar to, but more comprehensive than, the state law discussed above (Chapter 927). Binding on all school systems which receive any federal money.

Non-Discrimination

1. Section 504, Vocational Rehabilitation Act (1973, Congress). Prohibits discrimination against handicapped persons wherever federal funds are used. Implementing regulations refer specifically to public schools, colleges and universities, health and welfare agencies, and federal grantees in areas of employment and architectural accessibility.
2. Section 503, Rehabilitation Act (1973, Congress). Requires affirmative action (more than non-discrimination) to employ handicapped persons by companies with federal contracts over $2,500.
3. Architectural Barriers Act (1968, Congress). Intended to assure the physically handicapped ready access to and use of buildings that are constructed, financed or leased by or on behalf of the United States.

Protective Services

Protection of the Abused, Neglected or Exploited Disabled Adult Act (1975, General Assembly). Provides that a court order can be obtained to protect disabled adults who are neglected, abused, exploited or denied essential services by their caretakers or for whom there is no one to give legally adequate consent for essential services.

Financial Assistance and Benefit Programs

Social Security Disability Insurance, Supplemental Income (SSI), Aid to Families With Dependent Children (AFDC), and state/county Special Assistance all provide financial assistance which can help to make community living financially possible for disabled people who are eligible. Medicare and Medicaid pay the costs of health services in the community, although they have also been used to pay for institutionalization. The federally funded and state administered Vocational Rehabilitation (VR) Program provides rehabilitative services to disabled people with "employment potential." North Carolina also administers the federally funded Title XX Program which makes possible Adult Day Activity Programs (ADAPs) and other social services.

Community Mental Health

Community Mental Health Centers Act (1963, Congress). Makes funds available to community mental health centers that have comprehensive mental health programs for people in a defined geographical area. In North Carolina, 41 locally governed "area programs" administer mental health, alcohol, and drug abuse services as well as mental retardation services. Because of a lack of funding, the community services are not at all comprehensive.

Developmental Disabilities

Mental Retardation Facilities Act (1963, as amended, Congress). Known as the DD Act, it requires statewide planning to improve services and eliminate unnecessary institutionalization.

Developmentally Disabled Assistance and Bill of Rights Act (1975, Congress). This amendment to the DD Act requires the states to assure, in exchange for federal money, quality services, individualized planning, a near-prohibition on the use of physical restraints, a prohibition on excessive drugging, and placement in the least restrictive setting for persons who become severely disabled before the age of 22. One federal appeals court has interpreted this law to mean that practically everyone presently in a Pennsylvania institution should be in community settings instead. This law's requirements as discussed here have had little impact in North Carolina.

Involuntary Commitment

Involuntary Commitment Statute (1973, 1977, and 1979, Congress). Provides that a person with mental health problems may not be committed to a mental health facility without his consent unless he is dangerous to himself or others. A person with mental retardation may only be committed if he has an accompanying behavior disorder that makes him dangerous to others. The commitment decision must be made by a judge and the respondent has the right to an attorney (paid for by the state if necessary). This process may be used to commit a person to an outpatient facility as well as an institution. Commitment must be to the least restrictive setting available.

Advocacy

Governors Advocacy Council for Persons with Disabilities (1979, General Assembly). Consolidated two existing advocacy agencies. Council staff members provide information to legislators, work with parent and consumer groups and are advocates for individual disabled people who face discrimination.

Possible Future Developments

1. enforcement of existing laws to promote de-institutionalization;
2. a more explicit statutory commitment to de-institutionalization;
3. a reordering of state financial commitment to favor community services instead of institutions;
4. the abolition of the commitment to institutions of people who are labeled dangerous to themselves merely because they cannot care for themselves;
5. the expansion of the non-discrimination obligation (Vocational Rehabilitation Act, Section 504) beyond only federal grantees;
6. a state law prohibiting the use of zoning or restrictive covenants to obstruct the establishment of small, scattered supervised community residences for disabled persons.

ARTICLE II

A Guide to the North Carolina Legislature . . .

If you've seen the first edition of *Article II*, you know what we're talking about. If you haven't, this is your opportunity to discover an interesting and informative publication designed for...

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WHERE

The North Carolina Center for Public Policy Research, Inc., Post Office Box 430, Raleigh, N.C. 27602. The Center is a private, non-profit, non-partisan research institution formed to analyze and assess the performance of state government.

WHEN

Order now and you'll receive your copy early. *Article II* will be published in the spring, while many members of the General Assembly will be running for re-election and well before the 1980 session of the legislature convenes.

HOW (MUCH)

$4.00 (including tax and postage)

FROM THE CENTER OUT

In April, the Center released a report called "The Advisory Budget Commission: not as simple as ABC." Mercer Doty, former director of the Center and of the Legislative Fiscal Research Division, wrote the report, which was distributed free of charge. It has received wide attention from the press, legislators, and citizens who monitor government operations. "Despite the (Advisory Budget) Commission's lack of glamor," wrote Ferrel Guillory in an editorial for the Raleigh *News and Observer*, "the N.C. Center for Public Policy Research, Inc. has provided an important fresh examination of this unit ...The report is a valuable primer on North Carolina budget-making." Rep. Howard Coble from Guilford County wrote the Center "to commend you on the fine work that was done in preparing the 'Advisory Budget Commission: not as simple as ABC.' The apparent professionalism that is evident when one reads the report is very impressive."

The winter, 1980 issue of *N.C. Insight*, "North Carolina's Energy Future?," has also been widely utilized. Carolina Power and Light Company reviewed the issue as the lead story in the March 31 issue of their "Energy News Review: a compendium of significant energy industry news." Robert Koger, Chairman of the North Carolina Utilities Commission, wrote the Center "to commend you for the excellent publication, 'North Carolina's Energy Future?' I think the articles are very well written and, in almost all cases fairly state the situation in North Carolina." University of North Carolina Journalism Professor Walter Spearman reviewed the issue as an editorial in *The Smithfield Herald* and the *Alamance-Orange Enterprise*. The *Solar Law Journal* in Golden, Colorado, used the volume in preparing an energy paper. Ole Gade, a professor at Appalachian State University in Boone, ordered 50 copies for a seminar, and the North Carolina Coalition for Renewable Energy Resources distributed 350 copies in a dozen North Carolina towns as part of the ten-year anniversary of Earth Day. David Cameron, whose solar greenhouse was featured in the issue, wrote to correct us for giving "the impression ...that it is 'my' greenhouse." Cameron wants to credit Carolyn Nelson and particularly Gene Messick for helping with the project. "We were very pleased to see OUR greenhouse cited as an example of what can be done, and hope it will help encourage others to turn to passive solar designs," wrote Cameron. "This is, after all, the greater goal."

In late April, the Center released *Article IV: A Guide to the N.C. Judiciary*, which included an evaluation of judicial performance, and *Article II: A Guide to the N.C. Legislature*, which rated the effectiveness of state legislators. Both reports received wide press attention and prompted comments from judges and legislators. Each report was both praised and condemned. Joseph Branch, Chief Justice of the N.C. Supreme Court said, "It's embarrassing to me because some of the people who were rated good were outstanding to me." Associate Justice J. Phil Carlton told the Associated Press that he felt the Center's survey evaluating the overall performance and objectivity of state judges was a "popularity contest among lawyers" and "that objectivity rating, frankly, that smells."

The release of *Article II* which followed *Article IV* by one week prompted a sympathetic statement from one Superior Court Judge: "God, I thought I was upset," the judge told *The News and Observer*, "but those legislators, they'll have it worse. How would you like to be rated a few days before the primary." Legislators' initial reactions have varied. "I wish I'd been higher," said Wake County Representative Wilma Woodard, "I don't think it will hurt my campaign because I don't know what they mean." Representative Mary Pegg from Forsyth County said, "I'd rather be respected by the people back home than gauged by a group of people on whether I played their game or not." Finally, Woodrow Sugg, a spokesman for Representative Carl Stewart (Gaston County), said "We feel it is an accurate record of his ability as speaker of the House."

N.C. Center for Public Policy Research
P.O. Box 430
Raleigh, North Carolina 27602

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