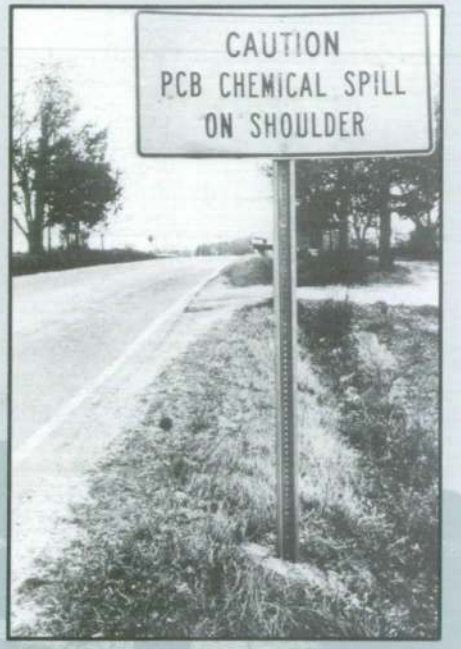
Vol. 4, No. 1

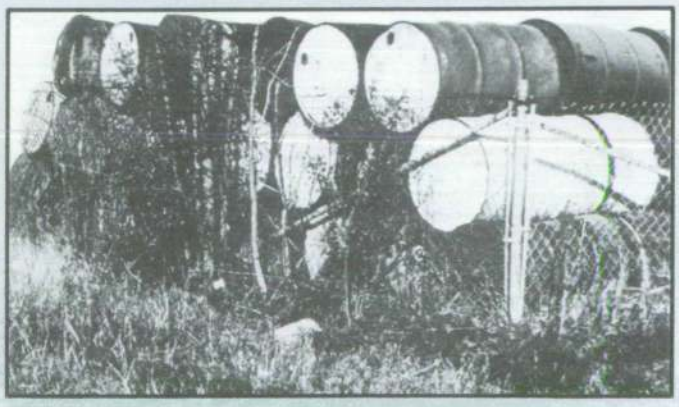
NCINSIGHT

Chemical Wastes...



- Judicial Policy
- Farmworkers
- Annexation

and more



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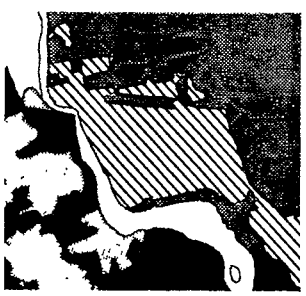
THE ROLE OF THE JUDICIARY



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Waste Policy Challenges Growth Policy

by Wallace Kaufman

Signs like this one dot N.C. Highway 210 in Johnston County, only a few yards from some front porches.

Photo by Paul Cooper

"Hazardous wastes." In the last five years, the headline has jumped across the front pages of newspapers around the nation. In Virginia, the chemical kepone caused sterility among men who worked with it, and when discharged into the James River it killed the fish. In the Niagara Falls neighborhood called Love Canal, women gave birth to children with deformities, leading to the discovery of a chemical waste dump nearby. At Three Mile Island in Pennsylvania, residents were exposed to low levels of radioactivity when a leak developed at a nuclear power plant. In California, men who worked with the chemical DBCP became sterile. And in North Carolina, a trucking firm illegally dumped polychlorinated biphenyls (PCBs) onto 210 miles of rural roads from Halifax County to Randolph County, endangering crops, livestock, and drinking wells.

Because names like polychlorinated biphenyls have recently received wide publicity, the control and disposal of hazardous wastes seems like an alarming new environmental problem. The standard government definition of a hazardous waste, however, applies to many chemicals that have been part of technology in the home, on the farm, and in industry for centuries. In the Roman Empire, for example, lead pipes and glazes poisoned people. In Mesopotamia, excessive nitrates from cattle and goat manure are thought to have contaminated urban drinking wells, weakening city

Wallace Kaufman is a free-lance journalist from Pittsboro. He co-authored The Beaches Are Moving, *which was chosen a Book-of-the-Month Club alternate selection.*

Photo courtesy of Carolina Power & Light Co.

Carolina Power & Light Company's Brunswick nuclear power plant in Southport, N.C.

dwellers. Arsenic was introduced as a pesticide in this country more than 100 years ago.

But the development of radioactive substances and synthetic chemicals marked the beginning of a new crisis caused by dangerous wastes, a time when the use of hazardous substances became commonplace and the safe disposal of technological by-products proved to be difficult, if not impossible. The production of synthetic chemicals had begun to unleash substances to which the human body could not adapt.

Before World War II, the United States produced fewer than one billion pounds of synthetic organic compounds a year. By 1976, the figure, according to the Manufacturing Chemists Associa-

The Resource Conservation and Recovery Act of 1976 requires that a hazardous waste have a least one of four characteristics:

Ignitable Wastes. These wastes catch fire so easily they must be segregated from other wastes. They sometimes burn with a poisonous smoke. Examples include organic solvents like toluene and benzene, oils, some pesticides, paint and varnish removers.

Corrosive Wastes. These alkalis and acids can eat through their own containers at times and they cause burns on skin or plant tissue. The group includes alkaline cleaners, acids, caustic soda, and battery wastes.

Reactive Wastes. These wastes may at any time react spontaneously and violently with air or water. Explosions or the release of toxic gas may result from shock or heat. The group includes obsolete munitions and wastes from manufacturing explosives.

Toxic Wastes. These wastes are particularly dangerous when they contaminate ground water. They are poisonous to humans and/or animals. Not all hazardous wastes are toxic, but all toxic wastes are hazardous. They include arsenic, cadium, pesticides, mercury compounds and formaldehyde.

tion, had soared to 162.9 billion pounds a year. During the 1960s alone, production of PCBs more than doubled, from 40 to 86 million pounds. Modern industry commonly uses some 70,000 chemicals according to the Environmental Protection Agency's (EPA) 1978 Annual Report to Congress. The same report estimates that 2,000 new chemicals enter the environment to "a significant degree" every year.

The terms "hazardous waste," "toxic waste," and "low-level waste" are often used interchangeably to describe this ever growing array of chemicals. In government and professional language these phrases refer to distinct groups of dangerous wastes and by-products. In 1976, in the Resource Conservation and Recovery Act, Congress defined a hazardous waste as one which because of its quantity, its concentration, or its physical, chemical, or infectious characteristics may:

- cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
- pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

A hazardous waste generally refers to an industrial chemical and is classified as toxic, corrosive, ignitable, or reactive. Hence "toxic waste" in government classification systems is one type of "hazardous waste" (see box on page 3).

The government has separate categories for radioactive wastes – high- and low-level. Radioactive wastes include everything from a glove contaminated by radioactive medical materials to a fuel rod salvaged from a nuclear plant. They are proven health hazards, but to very differing degrees. Measuring the danger from radioactive waste is very complex and subject to great debate, especially at the lower levels of radioactivity. Everyone agrees that certain wastes, mainly the fuel and water used inside nuclear power plants and the waste from nuclear weapons, are extremely dangerous. These are called "high-level" radioactive wastes. Almost all the radioactive waste generated by industry, research labs, hospitals, and educational institutions are considered low-level (see box on pages 4-5).

How Radioactive Is Low Level?

Radiation occurs naturally in many substances. The human body seems to have adapted to the natural level of radioactivity from the earth and from cosmic rays. How much additional exposure can be dangerous is hotly debated. It may even vary from person to person. Scientists do agree, however, that low-level waste is dangerous and must be handled with special care.

Radiation is energy emitted as waves or particles as the atoms of a chemical disintegrate. The quantity of radioactivity is the amount of atoms that disintegrate in a given unit of time. The standard unit, the curie (Ci), represents 37 billion nuclear transitions per second, the amount generally emitted by one gram of radium. The human body contains two ten-millionths of a curie of natural radioactive carbon and potassium.

Radiation doses to humans are measured in *rems* or *millirems* (one-thousandth of a rem). Based on studies of people exposed to radiation at Nagasaki and Hiroshima, the National Committee on Radiation Protection has set exposure levels they believe acceptable. Government regulations allow people working with radioactive material an average of 5,000 millirems per year with no more than 3,000 in one quarter. A person living in a brick home receives 40 millirems per year from the brick. Nuclear power plant workers receive 600 to 800 millirems a year.

Not all radiation is the same. Alpha particles are not very penetrating and can be stopped by a thin sheet of aluminum. Gamma rays readily penetrate matter and can only be stopped by shields of earth, lead or concrete. How much radiation a person absorbs can be changed by type of radiation, distance from source and shielding.

Radioactivity which enters the body through food, air, or water is much more dangerous than that which strikes from outside losing much of its energy in air and clothing and skin. How much radioactivity internal sources impart depends on the half-life, or durability of the radioactivity, the kind of radiation, and how fast the body eliminates the substance. Some radioactive atoms are eliminated rapidly with body waste water. Others are absorbed by kidneys, liver, lungs, muscle and bones. The National Committee for Radiation Protection has set

How Hazardous Is North Carolina?

The extent of the hazardous waste problem in North Carolina emerged clearly last November, the deadline for complying with the federal Resource Conservation and Recovery Act's registration provisions. All companies, schools, hospitals and other institutions producing at least 2,200 pounds of hazardous wastes during a month period had to register with the EPA. North Carolina ranked 11th among the 50 states in the total volume of hazardous wastes. Located throughout the state, in all but ten counties, 1,442 companies and other institutions reported at least the minimum amount. Among the companies listed, 872 employed a total of 361,962 people and paid more than $5 billion in annual wages. The producers included some of the most prominent companies in the state: Crown Zellerbach, ITT, Corning Glass, Sherwin Williams, Rockwell International, Coca Cola Bottling, Liggett and Myers, and IBM.

The EPA list, it should be noted, included only major producers. The N.C. Department of Human Resources estimates that more than 6,000 other organizations produce hazardous wastes in the state. A 1976 state survey of seven industries and 825 manufacturers projected a total production of hazardous wastes in the state of 102 million gallons a year.

The extent of the low-level radioactive waste problem in North Carolina had already become known when the data on hazardous wastes first became generally available. In 1979, for example, 1,782,940 gallons, measuring 12,158 curies of low-level radioactive waste, were produced in the state, the fourth highest total in the country. (A curie is the amount of radiation contained in one gram of radium.) Carolina Power & Light Company's Brunswick County nuclear plant and General Electric's fuel fabrication factory outside of Wilmington produced about 90 percent of the total volume (1,605,111 gallons) and over 98 percent of the radioactivity (12,011 curies). Sixty-six research labs, hospitals, colleges, and universities produced the remaining ten percent of the volume (177,829 gallons), and less than two percent of the radioactivity (147 curies).

Just as the extent of the waste problem has suddenly come into focus, so too has the use and misuse of various disposal systems. Recently, low-level radioactive wastes have been discovered in several unauthorized locations. In March 1978,

different concentration levels for different materials.

How Much Does What?

Although there is considerable debate about how radiation produces cancer, the link at high levels of radioactivity is clear.

Radiation sickness: rapid doses of 100,000 millirems to organs and intestinal tract.
Cataract development: doses over 200,000 millirems.
Sterility: doses over 300,000 millirems to the gonads.
Death: whole body doses of around 500,000 millirems when not counteracted medically can kill 50% of the people exposed in a few days or weeks.

The doses above are unlikely to occur from most low-level wastes presently being generated, but radiation in smaller doses can cause damage to unborn babies, chromosome breakage, and mutations. No one has proven a direct link between a specific low-level exposure and these problems. Animal data indicates 1,000 millirems of prenatal exposure to a large group of citizens would produce 5 to 75 serious disorders in every million births.

Who Produces What Kind of Waste?

Medical and research facilities produce very little waste, most of which is composed of short-lived chemicals emitting easily stopped beta rays. Nuclear power plants produce far more hazardous wastes and of a greater variety. Some of this waste requires special shielding in steel and lead casks. These wastes often stay active for several generations and they emit dangerous gamma rays.

What's To Fear?

No one knows exactly how low-level radioactivity affects the body. The debate rages on. At higher doses radioactivity produces such frightening and often irreversible effects that any exposure scares many people. Most low-level waste can be safely buried and easily shielded while it decays into harmlessness. The danger in burying these wastes is that radioactivity will be picked up by ground water or by plants and animals.

The real problem appears to be the more dangerous and more plentiful waste produced by the nuclear power industry. As power plants proliferate the problem will grow in proportion to other sources of low-level waste.

Summary of the Waste Management Act of 1981

On April 9, 1981, Gov. Hunt submitted the Waste Management Act of 1981 to the General Assembly. The most important provisions of the Governor's proposal are below.

1. The Act creates the Governor's Waste Management Board with authority to:

- facilitate coordination and communication among state regulatory agencies, industry, citizens, and local government in this area;
- promote the development of necessary waste management facilities in North Carolina;
- encourage research for developing new methods for reducing and treating waste;
- evaluate the governmental and regulatory process and recommend to the Governor and General Assembly ways to improve the existing system;
- promote public education and involvement in the area of waste management;
- serve as an appeal for the issuance of local privilege license taxes on waste management facilities;
- recommend to the Governor on a case-by-case basis whether to exercise the state's limited preemption authority over local ordinances issued to block construction or operation of a proposed facility.

The Board, to be located within the Department of Human Resources, would be composed of 15 persons: the Secretary or Commissioner of Human Resources, Natural Resources and Community Development, Crime Control and Public Safety, Commerce, and Agriculture; eight members, appointed by the Governor, representing county government, municipal government, higher education, research or technology, private industry, and the public at large; and two members of the General Assembly. The Governor would select the Chairperson of the Board.

2. The Act amends the North Carolina Solid Waste Law to provide that:

- The owner of a hazardous waste landfill facility convey title to the property to the state and enter into a lease back agreement for a nominal sum. This allows the state unlimited access for the purpose of monitoring.
- The Governor is given a mechanism to make the final decision on the location of a facility site. Upon petition by a facility developer who had been blocked by a local ordinance, the Board would recommend to the Governor whether to exercise the state's preemption authority after making four specific statutory findings of fact.
- The state can consider an applicant's past compliance with environmental regulations and its financial condition as a criteria for issuing or denying a permit application.
- The administrative penalty for violations of the hazardous waste law is increased from $5,000 a day to $10,000 a day. Violations of the Act are made a criminal misdemeanor.
- The Department of Human Resources can collect a fee from landfill operators for long-term costs associated with the facility.

3. The Act amends the state Radiation Protection Act to provide the same powers that are listed under the previous number for hazardous wastes.

4. The Act gives counties and municipalities the authority to levy a privilege license tax on facilities located in their jurisdiction. The tax is to be levied in an amount designed to compensate the locality for the costs incurred from having a facility located in it.

5. The Act amends the tax statutes to allow accelerated depreciation over a 60-month period for the purchase of waste reduction and recycling equipment.

6. The Act extends the authority of the Transportation Division of the Utilities Commission to private carriers that transport hazardous and low-level radioactive waste in order to make the coverage and enforcement of transportation regulations more comprehensive.

7. The Act makes financing tools under the Industrial Revenue Bond Act available to waste reduction, recovery, and recycling facilities but not to storage and burial facilities.

8. The Act authorizes the Department of Administration to condemn land for use as a hazardous or low-level radioactive waste facility.

news reporters revealed that Duke University had dumped low-level radioactive wastes inside a fenced-in compound in the Duke Forest. In 1980, journalists disclosed that radioactive waste from the University of North Carolina had been buried by accident in the Chapel Hill landfill. And in 1980, radioactive trash from CP&L's Brunswick nuclear plant turned up in a nearby public dump.

These incidents and others, coupled with the growth of the nuclear power industry, emphasize the importance of finding proper disposal sites to service a state which relies more heavily than most on nuclear power and which is promoting plentiful power in order to attract industry. The nuclear power plants of Duke Power and CP&L already generate one cubic foot of low-level waste

Federal Hazardous Waste Laws

1899. *Congress passed the Refuse Act forbidding the dumping of trash in navigable waterways or tributaries. Law seldom used until 1971, when U.S. District Attorney for eastern North Carolina filed seven suits against waste dumpers.*

1965. *Congress passed Solid Waste Disposal Act at the urging of people concerned about air pollution from open dumps. Created small program of research and technical assistance for state and local government to improve waste disposal at landfills.*

1970. *Congress passed Resource Conservation and Recovery Act with a three year life. Purpose was to develop information on which Congress could base permanent legislation. Called for investigation of hazardous waste management.*

1973. *Hazardous waste report made to Congress. Congress passed one year extension of the Act.*

1976. *A new Resource Conservation and Recovery Act passed. Required firms producing over 2,200 pounds of hazardous waste each month to register with the Environmental Protection Agency (EPA). Established government control of disposal from point of generation to point of disposal. Declared conservation and recovery as the preferred solutions to the problem.*

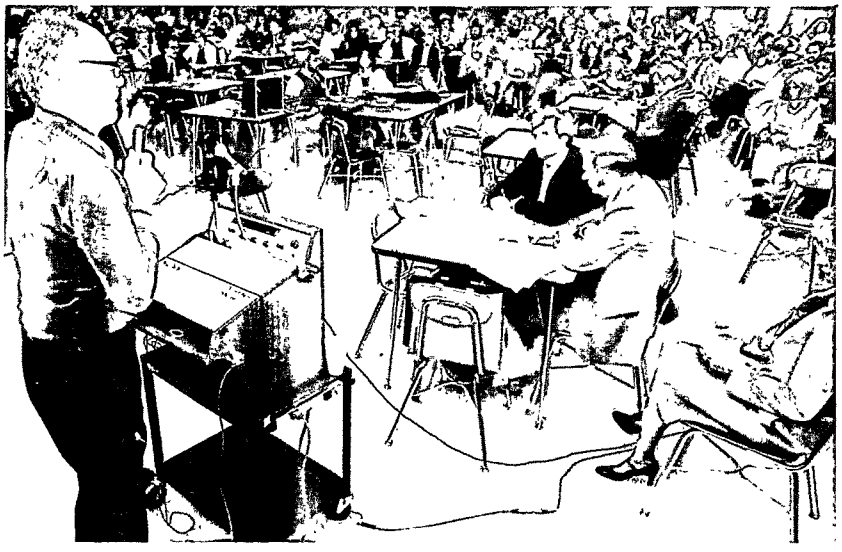
1976. *Congress passed Toxic Substance Control Act. Required any person with knowledge that a chemical presents substantial risk to health to report it to EPA. Chemicals became subject to screening before marketing.*

Nov., 1980. *Fulfilling first requirement of Resource Conservation and Recovery Act of 1976, 1,442 North Carolina firms registered with EPA. By spring of 1981, they must report nature of waste and precise quantities.*

for every ten homes served in a year. In addition, General Electric's fuel fabrication factory in 1979 produced 106,000 cubic feet of low-level waste.

Finding approved burial sites for wastes is becoming an urgent problem in this state as well as others. Through 1980, all government-approved burial sites for low-level radioactive waste had been located outside North Carolina. But other states have warned North Carolina officials that their dump sites are going to be closed to out-of-state wastes. Is North Carolina prepared to deal with its own wastes in its own backyard? The answer seems to be "no."

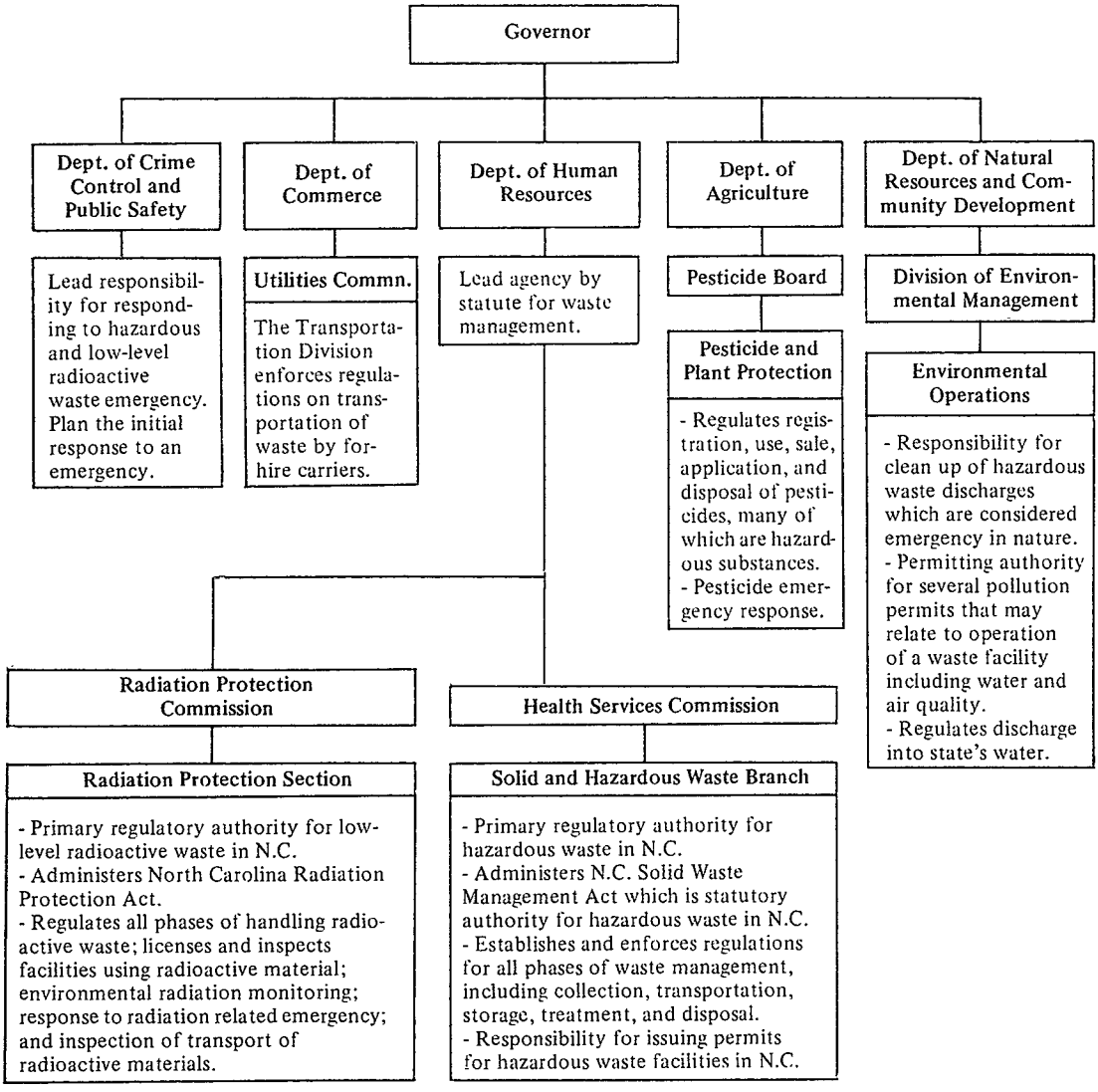
As the public becomes more knowledgeable about the extent of the chemical waste problem and the burial difficulties, waste disposal problems are becoming political problems. When Governor Hunt proposed scraping up the PCBs and burying them, public officials in Warren and Chatham counties at first volunteered cooperation but later reversed themselves under public pressure. The outcry of Charlotte residents caused a waste processing firm to reconsider plans for locating in Mecklenburg County. State officials and Triangle J Council of Governments suggested that low-level radioactive wastes could be buried in the Research Triangle because of a geological formation called the Triassic Basin, but area residents protested.



Wake County residents crowd into the Athens High School to express their views on chemical wastes. This was one of a series of meetings sponsored across the state by the Governor's Task Force on Waste Management.

Photo courtesy of the Raleigh News and Observer

Departments and Boards Which Currently Regulate Hazardous and Low-level Radioactive Wastes in N.C.



The control of chemical wastes has caused a public controversy and become an economic issue at a time when the Hunt administration is trying to increase the pace of industrial development. Both environmentalists and industry hunters talk about attracting clean industry to North Carolina, but they seldom specify what "clean" means. Usually the example given is "an electronics industry." The Governor has proposed a microelectronics center costing over $24 million to help lure a portion of that industry from California and other states. Journalists and environmentalists have already pointed out that the chemicals used to process silicon and other materials in the industry can be quite hazardous. The fact is that modern industry uses modern chemicals. Almost no economic development opportunity can enter North Carolina without bringing along its inevitable shadow – dangerous chemical waste.

North Carolina's Response

The state seems to have recognized quickly that if it is to control its own economic development, it must develop its own program for managing hazardous and radioactive wastes. The federal Resource Conservation and Recovery Act established government control over hazardous wastes from the point of generation to final disposal. The Act authorized the Environmental Protection Agency to track the movement of wastes and regulate their management or to certify state plans

to assume this authority. North Carolina has received interim authority from EPA to run its own regulatory program, the first such certification in the Southeast.

The Department of Human Resources has the primary statutory authority for regulation. The Solid and Hazardous Waste Branch in the Division of Health Services administers the hazardous waste program mandated by the Resource Conservation and Recovery Act. The Radiation Protection Section in the Division of Facility Services administers the low-level radioactive waste program. Both agencies enforce standards for handling wastes at the source, for making proper inventories of wastes, for transportation, and for disposal.

Other responsibilities for chemical wastes are spread across a number of state agencies. The Department of Transportation regulates for-hire carriers of wastes. The Department of Agriculture regulates pesticides. The Department of Natural Resources and Community Development (NRCD) administers the Oil Pollution and Hazardous Substances Control Act of 1978, which prohibits discharges of oil and other hazardous substances. NRCD also issues several kinds of permits necessary to build waste disposal facilities. The Department of Crime Control and Public Safety shoulders primary responsibility for responding to emergencies such as dangerous spills of volatile chemicals or radioactivity. (See flow chart on page 8.)

Governor Hunt, having made strong commitments to both industrialization and environmental protection, appointed a Task Force on Waste Management in July 1980 to evaluate the state's approach to hazardous and low-level wastes. The 17-member group represented utilities, universities, medicine, industry, government, and conservation organizations. Technical advisory committees to the Task Force presented detailed reports on low-level and hazardous wastes which contained extensive background materials and options for action. After a series of highly publicized hearings and working sessions, the Task Force presented a final report to the Governor in February 1981.

The state's economic future may depend in large measure on how its leaders respond to the Task Force's recommendations and findings. Just as President Carter was the first American president to recognize the extent and danger of the waste problem at the national level, Governor Hunt is the first North Carolina governor to give the problem the broad consideration it needs. He has called the waste problem "one of the major issues that faces this state today." As if to show that this is not just another of the many issues he calls major, he told the final meeting of the Task Force: "As soon as I get your report I will begin to work on a bill . . . that I will be prepared to fight for with all that I have as Governor." On April 9, 1981, Governor Hunt announced his legislative package and submitted it to the General Assembly. (See summary of the proposed legislation on page 6.) If the Governor succeeds in creating an effective waste management plan, he will have changed the direction and philosophy of industrialization in North Carolina.

Because North Carolina, like most states, is only now becoming fully aware of the chemical waste problem, a good part of the Governor's proposal focuses on cleaning up wastes created by existing or past industry. When the Technical Advisory Committee on Hazardous Wastes listed known disposal sites, it could account for "only a very small percentage of the total volume of hazardous waste generated in North Carolina." The Committee went on to say, "We do not know, and have no way of verifying at this point how the remaining waste has been treated or disposed of." In other words the Committee had no idea who had been exposed to hazardous wastes, what drinking water has been endangered, or what illnesses might have been caused. Almost every county with any industry had one or more old landfills where hazardous waste may already be seeping away from the borders.

The Governor's Task Force recognized the economic importance of waste management to both industry and the state. Large industries, it said, generally recognize "that it is inefficient to generate waste products during the manufacturing process which have no useful purpose." Emphasizing prevention of waste production if at all possible, the Task Force urged the Governor to consider its technical information and its recommendation for new directions as "vital to the state's economic survival in the future." The Task Force considered the problem so urgent and present state efforts so disorganized that its letter of transmittal to the Governor urged him "to appoint the recommended Governor's Waste Management Board as soon as possible. . . ."

Real action on the Governor's recommendations could cost the state and many industries a lot of money. In these times of economic austerity and tax rebellions, the Governor has opened debate on when the real costs of hazardous wastes should be paid and by whom. Serious debate on this issue will shed new light on the costs of industrial development and the consequences of the state's industry hunting policy. No one who has visited the dark and poisoned landscape of industrial New York, New Jersey, Ohio, Illinois, or Indiana can object to a little light in the shadows.□

Dateline Raleigh

The Gasoline Tax– Testing the Skill of the Governor

by Ferrel Guillory

Governor Hunt has grappled with what political scientist James McGregor Burns has called "one of the oldest questions for representative democracies." It is, Burns wrote in his book *Leadership*, "whether leaders should take stands they believe in when they know their constituents do not support them."

A blue ribbon commission appointed by Hunt in 1979 reported to the Governor this past December that North Carolina's 75,000-mile highway system "faces a very grave future" as a result of rising costs and declining revenues. The commission, chaired by former Gov. Dan K. Moore, recommended that the state raise more Highway Fund revenues, principally by imposing an additional tax on gasoline. But the Governor, who agrees that the highway system is in financial trouble, has been told by state legislators and by voters that they do not want to increase the gasoline tax. The preponderance of constituent mail to the governor's office has expressed opposition. Hunt's friends have assessed a gasoline tax hike as a political "negative."

Further, with the people just having elected a president who promised sweeping tax cuts, the political times hardly seem propitious for a tax increase. Syndicated columnist Neal R. Peirce, who specializes in state and local government, reported that in 1980 legislatures in 30 states were presented with the motor-fuel tax issue. "But only 10 acted, and most of them half-heartedly," Peirce wrote. "A kind of political paralysis seems to seize legislators when asked to charge motorists or truckers the true costs of maintaining roads and bridges."

When leaders are confronted, as Hunt has been, with the dilemma of doing what they feel should be done or following the dictates of the electorate, Burns has said that "democratic theory seems ambivalent on the matter: leaders must be representative but not too representative." Or as conventional political pragmatism would have it, politicians who seek to be successful in the next election must lead their constituents but not get too far out in front of them.

For more than three months after the blue ribbon study commission issued its report, Hunt withheld an endorsement of its conclusion that an increase in the gasoline tax was needed. The Governor temporized, risking an image of timidity. Yet, the delay gave Hunt time to assess his policy options and to survey the political-legislative landscape, while providing no specific target at which opponents could shoot.

Even as he refrained from committing himself on the gasoline tax question – and asked legislators to do likewise – everything the Governor said on the subject led almost inexorably to the conclusion that new revenues indeed must be found. "You may not see any potholes or bad rough spots now," he told a civic club. "But, believe me, before long you are going to feel them."

Hunt's strategy, therefore, was to re-direct the issue, to make it more a good roads question. He sought to build support for whatever financial package he eventually would recommend by first raising the level of public awareness of the state's highway costs and needs.

There has long been a mystique surrounding road-building in North Carolina. It has often been at the center of the state's politics – with governors frequently promising better roads, with regions of the state demanding their fair share, and with contractors fueling campaigns with their monetary contributions. By reminding North Carolinians that their state has the nation's largest system of state-maintained highways, the Governor touched subtly the Tar Heel fondness for gleaming strips of smooth asphalt and concrete.

In addition, Hunt raised people's consciousness of the highway system as an integral part of the state's economic structure. He placed the issue of highway financing in the context of the state's most pressing human need, to increase North Carolina's average wage. Highways, he said in an interview, are "essential to economic growth and balanced economic growth. The overwhelming

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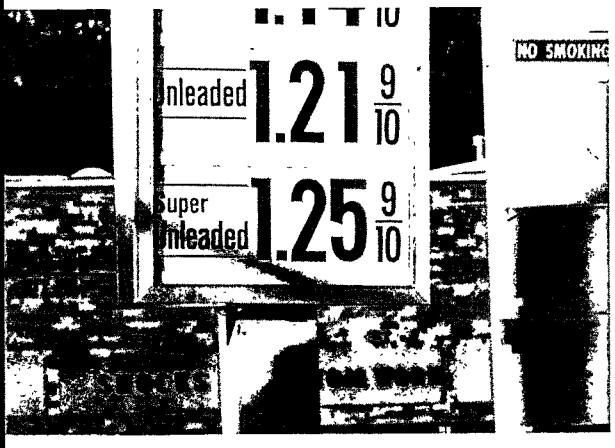
Since 1972, Ferrel Guillory has been a political reporter for the Raleigh News and Observer, *as chief capitol correspondent and head of the Washington Bureau. Now associate editor, he is responsible for the editorial page.*

thing we have to do is provide jobs for people.... We've got to have not just a little bit of growth. I really want North Carolina to make a break economically."

Rather than allowing the gasoline tax to be depicted solely as a governor's problem or a government problem, Hunt has sought to transfer a share of the burden to legislators and the public. To do that, however, entails lowering the "us-they" barrier that exists between the people and their government. In addressing the public on the transportation problem, Hunt said, he casts the issue this way: "You've got a business. You've got a farm. You're driving a car to and from work.... One of these days you've got to stop saying 'they' (for government) because 'they' is 'us.'"

Nevertheless, the state still looks to the Governor to initiate a solution to the Highway Fund decline. Only a governor has the public stature and the political wherewithal to build the support necessary for a major tax package. His leadership is necessary; dealing with such dilemmas comes with the territory. Hunt's political skill and courage are being tested.

The solution, as the Governor outlined his thinking in a conversation in his office, would necessarily come in the form of a package. If there is to be a gasoline tax increase, it would be tied together with other measures, such as cost-savings in the Department of Transportation and tapping some non-gasoline sources of revenue. If there is to be a dipping into what otherwise are regarded as General Fund tax sources, Hunt said, the revenues to be used for highways ought to be tied down into a kind of "trust fund," so competition would not develop between social programs and the highway system. Among the possibilities being mentioned in the 1981 General Assembly are the designation of sales tax revenues from automobiles, lubricants, and automotive parts to the Highway Fund, and perhaps taxes on alcohol and luxuries as well.



Photos courtesy of N.C. Department of Transportation

Gov. Hunt recently commissioned a poll on North Carolinians' attitudes on increasing taxes for highway revenues. The Governor's 1980 campaign pollster, Peter D. Hart of Washington, D.C., conducted the poll, which was paid for with surplus Hunt campaign funds. According to a statement released by the Governor, the poll showed people opposed to a "sweeping" gasoline tax increase but willing to accept a modest increase in taxes if needed to keep highways in good repair.

An assessment has been made, then, in both the Hunt camp and in the legislature, that an increase in the gasoline tax cannot stand alone – and that it has to be as small as possible. "He has to go to that low number (on the amount of gasoline tax increase)," said a Hunt political adviser. "He'll have to do something that will pass and won't kill his friends."

In its report, the blue ribbon study commission offered the option of increasing the motor fuel tax by five cents per gallon (from nine to fourteen cents) or of instituting a four percent sales tax on the wholesale price of gasoline. But, either way, the commission said that its recommendations would finance only a "minimum short-term program" for highway maintenance and that "more aggressive measures will be required in the future." Even if Governor Hunt is successful in pulling off the difficult political feat of raising more highway revenues, he or the next governor may soon be faced with the same dilemma: how to meet evident needs when the solutions are unpopular.□

The Role of the Judiciary in Making Public Policy

by John V. Orth

A hundred years ago in the novel *Billy Budd,* Herman Melville gave us a fictional account of one type of judge. Captain Vere, whose very name means truth, was called upon to judge a crewman who had unintentionally killed one of the ship's officers. While recognizing that the defendant was innocent in the eyes of God, Captain Vere ordered him to be executed. The judge, he said, must enforce the law as it is, and the law required the order he gave. Although Captain Vere himself is fictional, judges with a Captain Vere philosophy are not. Indeed, historians tell us that Captain Vere was modeled on Lemuel Shaw, a famous Massachusetts judge and Herman Melville's father-in-law.

At about the time that Melville was writing *Billy Budd,* North Carolinians were hearing much the same thing about judging that Captain Vere had said. But in North Carolina the spokesman was not a fictional character; he was the state's "fighting judge," Walter Clark, who for over 20 years was Chief Justice of the North Carolina Supreme Court. Clark based his philosophy in terms of popular sovereignty: "Whatever tends to increase the power of the judiciary over the legislature diminishes the control of the people over their government." The question, for Clark, was whether the people governed themselves through their representatives, or were governed by their judges.

The ideal that judges should enforce the law, not make it, has attracted many judges, not just in the last century. Susie Sharp, Justice of the North Carolina Supreme Court from 1962 to 1975 and Chief Justice from 1975 to 1979, often expressed this position. As she once put it, there are four steps in deciding a case: 1) state the facts; 2) state the issue raised by the facts; 3) state the law relevant to the issue; and 4) decide the issue in light of the law. Using this method, any two judges should make the same decision. If a judge thinks legislation is desirable, he may say so, but may not anticipate the legislation by judicial decree.

Charles Becton, the newest member of the North Carolina Court of Appeals and the only black judge on that court, has a similar outlook. "I view the role of the judiciary in the traditional sense," he said, "of applying the law – not making it."

If the judge's role is so limited, why do talented men and women leave lucrative careers in private practice to don judicial robes? Why is an effort made to see that more women and members of minority groups are chosen as judges? And why are judicial decisions so anxiously awaited by persons not party to the suits?

The answer to the last question, of course, is that in the American legal system the judge does

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Photo by Paul Cooper

North Carolina Supreme Court Justices. Front (left to right): J. Frank Huskins, Joseph W. Branch (chief justice), J. William Copeland. Back (l to r): J. Philip Carlton, James G. Exum, Jr., David M. Britt, and Louis B. Meyer.

more than decide disputes: he or she makes precedents, which guide other judges. The rule of following prior decisions in similar cases is known by the Latin phrase *stare decisis*, "to stand by decided matters."

Yet this answer only makes the other questions more perplexing. If the judge is bound by statutes and the decisions of his predecessors, why, aside from the emoluments, should anyone want the office? And why, once minimum qualifications are met, should society care who holds it?

The answers to these questions lie in the process of judicial decision-making. First of all, our law is more than a collection of statutes and precedents. Every judge swears above all to uphold the Constitution of the United States. In addition, every state judge swears to uphold the Constitution of his state, except to the extent that it conflicts with the federal Constitution. Every state judge must swear to deny effect to any law that violates either Constitution. Because the U.S. and state Constitutions embody many American ideals, the judiciary is called upon from time to time to measure laws against fundamental assumptions, and to throw out those laws that do not conform with the expressions of the Constitutions. Our constitutional system encourages an independence of mind among the judiciary.

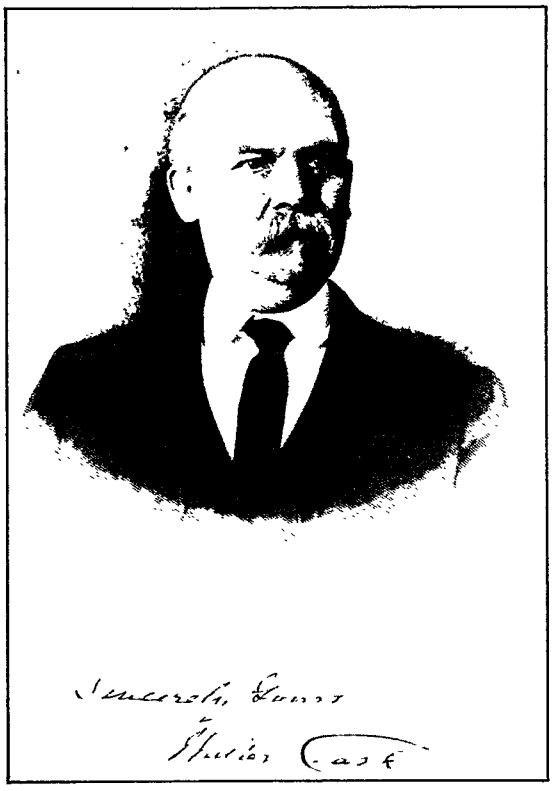

Photo courtesy of N.C. State Archives

Walter Clark, N.C. Supreme Court Chief Justice, 1902-24.

Judges Do Make Law

Much of a judge's day-to-day work, of course, involves matters more mundane than constitutional adjudication. Statutes must be construed, which involves more than reading plain language. Anyone who has ever tried to puzzle his way through a statute knows that the meaning is often far from plain. But statutes in the modern world of regulation must be fitted into the complicated machinery of the modern state. Since a statute is produced in the political give-and-take of legislative bargaining, many gaps and inconsistencies may be left for the courts to deal with, as best they may. Charged with the duty of carrying out the will of the legislature, the modern judge must read the statutes in such a way that public policy will be effectuated, not stymied. In the case of *Morrison v. Burlington Industries*, for example, discussed in the article that follows this one, the North Carolina Supreme Court has been asked to construe the Workers' Compensation Act as it applies to disability caused by brown lung disease. The N.C. Industrial Commission, which administers the workers' compensation laws, needs a definite rule, and the textile industry, insurance companies, textile workers, and the general public are also watching the outcome closely.

In addition to clarifying the statutes, a judge must also restate the common law. When interpreting a statute, the court is enforcing a law made by the legislature. When applying the common law, on the other hand, the court is enforcing a rule made by judges. The common law is, by definition, non-statutory law – law made by past judicial decisions in keeping with the then current views of public policy. As society changes, so does the common law in order to conform to changed conditions. Should the judges fail to update the common law, the legislature will be forced to act. The Workers' Compensation Act, for example, was originally enacted because of public dissatisfaction with common law rules that limited employers' liability for injuries to workers on the job.

The renovation of the common law, however, need not await legislative action. What the judges have done, they also undo. In 1967, for example, Justice Susie Sharp wrote an opinion in which the judges of the N.C. Supreme Court reversed the common law rule of "charitable immunity." Until that decision, charities running hospitals in North

"Whatever tends to increase the power of the judiciary over the legislature diminishes the control of the people over their government."

Chief Justice Walter Clark, c. 1902

The most effective restraint on a judge is his or her own sense of integrity and mission.

Carolina were not liable for injuries to patients caused by the negligence of their employees. Because she recognized that hospitals relying on their immunity might not have taken out liability insurance, Justice Sharp limited the new rule to the case before her and to similar cases arising subsequently. In effect, the decision was like a statute – only it hadn't been passed by the legislature and signed by the governor. On this ground, three of the seven judges dissented from Justice Sharp's opinion.

Within limits, judges *do* make law. The common law is their creation, and statutes require their interpretation. All law must constantly be squared with the Constitution. And the Constitution means what judges decide it means.

Making Public Policy Every Day

The realization that judges are policymakers came early in the history of the United States. More than 150 years ago a campaign began to replace the common law with statutory law in the form of a comprehensive code. Deprived of the common law and under the watchful gaze of the legislature, the judges would have less room to maneuver. But the codification movement failed to reach its goals. After winning a famous victory in modernizing legal procedure, the movement faded away.

A more widespread response to the felt need to make judges more accountable was the movement for an elected judiciary. If they were going to legislate, the argument ran, let them run for office like other legislators. Beginning with Mississippi in 1832, one state after another adopted constitutional provisions requiring the election of all state judges. Chief Justice Walter Clark of North Carolina even called for a national crusade for the election of federal judges.

The election of state judges has not succeeded, however, in making them accountable as policymakers. Even ambitious lawyers have hesitated to turn judicial elections into out-and-out political campaigns. The people have never wanted active politicians on the bench, for fear that the life, liberty, or property of individual litigants could become political footballs. The practice arose early in North Carolina, as elsewhere, to reduce judicial elections to mere form. Every North Carolina judge mentioned in this article was first appointed by the governor to fill a vacancy. In any later election, the judge runs as an incumbent.

The fact that a judge may escape effective challenge at the polls does not mean that he has a free rein. As mentioned above, there are limits to judicial law-making. And a judge who misbehaves may, of course, be impeached. But the most effective restraint on a judge is his or her own sense of integrity and mission.

How activist do North Carolinians expect the state's judges to be? A purely passive bench would have left an outmoded "charitable immunity" on the books, and washed its hands like Captain Vere when he condemned Billy Budd. In time, perhaps, the legislature would have changed the law, but until then individuals would have suffered. Groups that can more easily influence the legislature than the courts will reasonably prefer that the courts in most cases await legislative fiat. Lobbying is an accepted part of the legislative, but not the judicial, process. Investigation is more easily carried out by legislative committees than by judges. And horse trading is an inevitable part of the legislative process.

For present purposes, perhaps, the most that should be said is that, whether activist or not, judges are making public policy every day. They bear watching.□

The Brown Lung Battle
Into the Courtroom
by Marion A. Ellis

"We feel that the North Carolina system – the role of the Industrial Commission and the courts – is working well."
– Dick Byrd, Director of Community Relations, Burlington Industries

"I think the courts have been forced to act because the Industrial Commission hasn't been doing its job."
– Blair Levin, legal staff, Carolina Brown Lung Association

"It's up to the courts to tell us what the law means."
– William Stephenson, chairman of the Industrial Commission

Elsie Morrison doesn't look like a controversial public figure. She's a shy, 53-year-old woman who is quietly making history as the key figure in a case currently before the North Carolina Supreme Court. A former cotton mill worker seeking workers' compensation for an occupational disease called byssinosis (brown lung), Mrs. Morrison didn't know she would be breaking new legal ground when she first filed her claim with the state's Industrial Commission in August 1976. She just felt she was due compensation for having had her work-life cut short by her breathing problems. After several medical examinations, doctors concluded that Mrs. Morrison's disability was due in part to her exposure to cotton dust during 27 years as an employee of Burlington Industries and in part to other factors, including smoking.

Although it has been more than four-and-a-half years since Mrs. Morrison filed her notice with the Industrial Commission, she is still awaiting the final disposition of her claim for total disability.* But she is not waiting alone. The federal government estimates that up to 11,000 textile workers in North Carolina are disabled by brown lung, many of whom may have cases similar to Mrs. Morrison's. Burlington Industries, as well as other textile manufacturers and large industries in the state and major insurance carriers, are also closely following the court's deliberations in this case. The North Carolina Supreme Court is now about to decide, as a result of Elsie Morrison's claim, exactly how the state's workmen's compensation statutes apply to a person whose disability was

* Mrs. Morrison has received compensation benefits, based on 55 percent disability. The case before the N.C. Supreme Court concerns the benefits for the other 45 percent of her disability.

Photo by Michael Russell

Retired textile worker being tested for brown lung disease at a clinic sponsored by the Brown Lung Association.

caused by more than one factor.

As of February 1981, a total of sixteen byssinosis cases were before the state Court of Appeals and Supreme Court. Like the Morrison case, many of them are breaking new legal ground by testing sections of the state workmen's compensation statutes which have never been clearly defined by the courts. Ironically, when the workmen's compensation system was established in North Carolina in 1929, one of its purposes was to keep workers' liability claims out of the courts. To reduce the expense and uncertainty of lengthy suits, industrial and worker advocates designed a kind of compromise – the workmen's compensation system.

The Industrial Commission, set up to administer the law, determines whether a worker's disability is due to employment conditions. If so, the Commission automatically awards the worker a percentage of lost wages, according to a formula based on a rate and maximum amount fixed by statute. This procedure makes it easier for the worker to receive compensation for a job-related disability, but it provides that only a portion of lost wages can be recovered and requires that a person who files a workmen's compensation claim

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cannot file a liability suit against the employer. The Industrial Commission acts in a quasi-judicial fashion, ruling on the evidence of the case just as a court does. Either party can appeal a Commission ruling directly to the N.C. Court of Appeals. From there, the appeal goes to the N.C. Supreme Court.

The statutes have been amended a number of times over the years, including a 1935 change that expanded coverage to include occupational diseases as well as injuries by accident. In 1971, the General Assembly added the broad language that requires compensation for any disease proven "due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of employment."

In the last 50 years, the Commission has routinely handled hundreds of thousands of claims for external injuries such as a broken leg. Until the mid-1970s, there were very few occupational disease claims filed at all. But in the last five years, public awareness of byssinosis has increased dramatically and an organization of disabled textile workers, the Carolina Brown Lung Association with several thousand members in North Carolina, has encouraged disabled workers to utilize the compensation system.

During the 1970s, workers filed a total of 913 byssinosis claims; the number in 1980 *alone* was 684. The volume and variety of brown lung cases have presented the Industrial Commission with a situation it has never faced before. While two to four percent of all compensation cases are disputed and require hearings before the Commission, over 50 percent of byssinosis claims are disputed. *The Charlotte Observer*, in its February 1980 series on brown lung, reported that the Commission takes an average of 26 months to decide a byssinosis claim, a much longer time than other disputed cases. William Stephenson, chairman of the Industrial Commission, says the average is 290 days, a figure which does not include the additional time spent awaiting court rulings for those parties who choose to appeal. "With more byssinosis claims coming down the pike," says Stephenson, "more decisions are being appealed to the courts."

In the next year, the state appeals courts will hand down a series of rulings on byssinosis and disability. The judiciary, all parties seem to agree, will be establishing the guidelines for workmen's compensation claims that will amount to hundreds of millions of dollars. The decisions will affect tens of thousands of workers and the state's largest employers and insurance companies.

Morrison v. Burlington

As the number of byssinosis claims has jumped dramatically, so has the involvement of the courts taken on an added importance. In *Morrison v. Burlington*, Mrs. Morrison is seeking full compensation for her breathing disability, even though her condition is complicated by several other nonpulmonary diseases and a history of cigarette smoking. The defendants, Burlington Industries and its insurer, Liberty Mutual Insurance Co., are

High-speed, shuttleless weaving machinery, recently installed in a Burlington Industries textile plant.

Photo courtesy of Burlington Industries

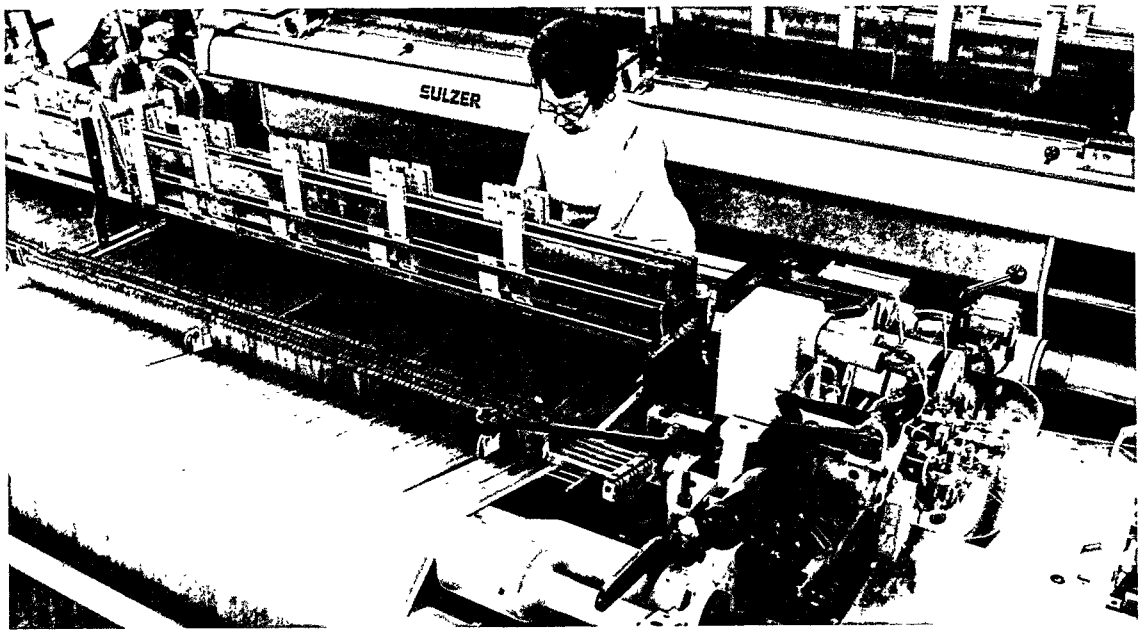

Photo courtesy of Southern Exposure

Traditional weaving room, where high cotton dust concentrations are visible.

asking that Morrison be awarded compensation only for that percentage of her disability which can be traced exclusively to cotton dust exposure. Determining a percentage of disability due to the workplace and basing compensation payment on that percentage is known as "apportionment."

Almost two years after Morrison filed her claim in 1976, the Industrial Commission followed the apportionment concept and ruled that only 55 percent of her disability was caused by cotton dust exposure. The Commission based its computation of lost wages on that percentage and awarded Morrison $43.90 per week for 300 weeks, totalling $13,176. She appealed the decision, and in June 1980 the N.C. Court of Appeals overturned the Commission, ruling that she was due full compensation for total disability. Burlington Industries and its insurer subsequently appealed that decision to the N.C. Supreme Court.

In their brief, the company's lawyers wrote: "The (Court of Appeals) decision, if allowed to stand, will transform the Workers' Compensation Act into a general health and insurance benefit act that awards compensation for disabilities which arise neither out of nor in the course of employment." The National Association of Manufacturers filed an amicus (friend of the court) brief for Burlington, contending that the economic consequences of the Court of Appeals decision would be enormous.

In October 1980, the Supreme Court ruled that the evidence was unclear and remanded the case to the Industrial Commission. The court instructed the Commission to retake the testimony of the three medical witnesses in the case. After considering the new findings the Commission withdrew Morrison's phlebitis, varicose veins, and diabetes from causative factors in her disability but stuck to its apportionment concept. It ruled all disability was due to lung impairment, 55 percent from her workplace and 45 percent from "other factors," including smoking.

On March 11, 1981, after the Supreme Court had received the new Commission ruling, attorneys for the two parties appeared before the high court to argue the Morrison case for the second time. Charles Hassell, Mrs. Morrison's attorney and one of the state's leading plaintiff lawyers on byssinosis cases, contended that the Court of Appeals had ruled correctly, that the law provided for full compensation. McNeill Smith, a prominent Greensboro attorney and former state senator who represented Burlington Industries, argued for the Commission ruling, for apportioning compensation awards according to the percentage of the disability caused by the workplace. As of April 1, the Court had not yet handed down its decision on whether "apportioning" the disability award is legal in North Carolina.

"If the Court decides for apportionment, the employer would be liable only for the degree of impairment caused by occupational exposure," says Commission Chairman Stephenson. "In more than 90 percent of the (byssinosis) cases that come before us, the claimants have some malady other than byssinosis. All the employers and carriers are saying is that they are entitled to pay for only that percentage of the illness caused by cotton dust."

But Hassell strongly disagrees with Stephenson's analysis. "What the apportionment concept comes down to is the destruction of the integrity of the compensation system, which was a compromise to begin with," says Hassell. "Apportionment has never been permitted under the North Carolina

Workers' Compensation Act. We're going to find out here whether the Supreme Court will uphold the statute as written." Mrs. Morrison had to quit work at age 48, totally disabled by her breathing problems, and Hassell says she is entitled to full compensation. "Instead, the Commission's emphasis has been on figuring ways to further reduce the money people will receive," says Hassell. "Who's going to bear the burden? Is it going to be the industry or the individual worker who has to pay? No other state apportions compensation when there happens to be non-occupational factors that contribute to a total loss of wage-earning capacity."

A ruling upholding the Court of Appeals would entitle claimants to total compensation for total disability, if occupational disease played any part in the worker's disability. Burlington estimates that such a ruling could cost the company up to $100 million, based on the number of potential claims. Regardless of the outcome, the Supreme Court decision will clarify questions concerning apportioning disability. "We will then know what the law is on this issue," says Stephenson.

There is disagreement, however, on how such a clarification will affect future claims. If the high court rules in favor of apportionment, for example, Stephenson feels "the person would get less money, but he would get it quicker. . . . There will be less (cases) that go to a hearing." Blair Levin, who heads the Brown Lung Association's legal staff, says that an apportionment ruling would "result in serious delays in the process. Every case will have to be litigated. Under the present system," says Levin, "you just have to prove there is a (workplace-related) disease and that the person is disabled. Then the benefit level is set. Once you start talking about apportionment, you have more difficult factual questions to be decided. The process will be slower and it will be more complicated."

In the lobby of the Justice Building, where the N.C. Supreme Court holds hearings, Mrs. Elsie Morrison (center) confers with her attorneys, Charles Hassell and Robin Hudson.

Photo by Paul Cooper

A Heightened Role for the Courts

The Morrison ruling will join a growing body of state court decisions affecting byssinosis cases. In 1979, the Supreme Court handed down what William Stephenson calls the first "absolutely landmark" decision by the courts on occupational disease compensation. In *Booker v. Duke Medical Center*, the Court defined work-related conditions which must be present to make a claim of occupational disease valid. In addition to the statutorily prescribed elements that a disease be due to causes and conditions which are not found equally among the general public, the Court said the plaintiff's disability must be traceable to some duty of employment. The case involved a Duke Medical Center worker who died after contracting serum hepatitis. The Court ruled he had contracted the disease as part of his job and therefore his dependents were eligible for full death benefits under workers' compensation. "It established in North Carolina what an occupational disease is," says Stephenson.

In 1980, the appeals courts overturned Commission rulings in three prominent cases:

- In *Taylor v. J.P. Stevens*, the Appeals Court and Supreme Court ruled that a person could file for compensation up to two years after being told that he or she has byssinosis, and could subsequently be found totally disabled. Previously, the Commission had ruled that a person could receive compensation only if the employee's disability became known within two years upon leaving the workplace.
- In *Wood v. J.P. Stevens*, the Supreme Court ruled that the Industrial Commission could not deny workers' claims without first hearing medical evidence. Only then, the Court ruled, could the date of disability be established. The date of disability is used to determine compensation (including benefits level, disability definition, etc.), according to statute.
- In *Walston v. Burlington*, the Court of Appeals ruled that if a workplace environment aggravates and contributes to a disabling condition that existed prior to the job, then the condition be-

Photo courtesy of Labor Unity

A typical spinning room in a textile mill.

comes an occupational disease and the worker is eligible for compensation. In March 1981, this case was appealed to the Supreme Court. The legal questions in the Walston case relate closely to those in the Morrison case. In *Walston*, the Court of Appeals ruling said:

> . . . in the view of the Commission, if a condition is non-occupational in its incipience, it is noncompensable as a matter of law notwithstanding the intervention of several years of occupational exposure to hazardous conditions between the time the disease was contracted and the time it became disabling. We view this failure to inquire into the causal relation between plaintiff's intervening occupational exposure and his resulting disability as error. . . .
>
> The occupational disease provisions of the North Carolina Workers' Compensation Act are clearly an integrated part of the entire act and must be construed in light of the same liberal principles as are applied in cases of injury by accident. . . .
>
> Since a disability resulting from an accidental injury which aggravates a pre-existing infirmity is fully compensable we can perceive of no valid reason why a different rule should pertain where, as here, the evidence tends to show that the plaintiff's exposure to environmental irritants on his job precipitated the onset of a disability which did not previously exist.

Determining What The Law Says

The importance of the court decisions in articulating legislative policy on byssinosis is particularly important in North Carolina, says plaintiff attorney Hassell, because the Industrial Commission "operates in sheer secrecy." Moreover, says Hassell, "there's no recorded information on the legislative debate, no committee reports on what the drafters intended the legislation to do." Unlike the U.S. Congress and some state legislatures, North Carolina lacks a legislative history that includes such information. "The Industrial Commission has a far stricter view of what the law is than the courts," says Blair Levin of the Brown Lung Association. "In important cases, the appellate courts have overruled the Industrial Commission."

McNeill Smith, the attorney for Burlington Industries in the Morrison case, says that the state's appellate courts are handing down more byssinosis decisions simply because more are coming to them. "The legislature has made it easier to file a workers' compensation claim for this particular malady without being barred by some lapse of time," says Smith. "And there's a lot more medical literature on occupational diseases and their causes. Therefore, more of these disease cases end up in court. The issues are more complex than injury by an accident on the job."

The courts have not backed away from interpreting the law. When the Supreme Court sent the Morrison case back to the Industrial Commission for more medical testimony last October, it reiterated that the Commission "has the exclusive duty and authority to find the facts relative to disputed claims and such findings are conclusive on appeal when supported by competent evidence." But it left unstated the conclusion that only the legislature – and the courts – can determine what the law says.□

The Judiciary Takes the Lead

Caring for Emotionally Disturbed Children

by Stan Swofford

That old familiar burn was once again sweeping over state District Judge James Samuel Pfaff. He had felt it first in 1976 when, at age 31, he became a judge in Guilford County. It was then that he read the court records of Michael Long, an emotionally disturbed 14-year-old youth. The records told Pfaff that the child had been shunted from agency to agency and institution to institution. It seemed to Pfaff that no one at any of the state's service agencies or hospitals was serious about wanting to treat or care for the youth.

Michael, who was big for his age and could be violent, had been in and out of John Umstead and Dorothea Dix Hospitals numerous times. The pattern was always the same. He would stay for a few days before psychiatrists, who determined he "was not of imminent danger to himself or others," would release him. Within hours Michael would be back on the streets of Greensboro, and the police would pick him up for some type of violent or aggressive behavior. Then he would start the cycle all over again.

Pfaff's second encounter with the long, slow burn occurred about two years later when the case of "Billy Jones" (not the child's real name) came before him. His case was similar to Michael Long's except Billy was only nine years old, a fact that astonished Pfaff when the judge discovered Billy had been held for two months in the county's juvenile detention center. Billy had also been shunted from agency to agency and foster home to foster home. This time, however, Pfaff was able to do something.

In a unique ruling, Judge Pfaff found that Billy, who was before him on a delinquency petition, lacked the capacity to participate in his defense. He also found that Billy would not have that capacity until he received extensive medical and psychiatric treatment. He then ordered that Billy receive that treatment at the child's Psychiatric Institute at John Umstead Hospital, an institution that had rejected Billy several times before. Pfaff ordered specifically that Billy not be released from John Umstead "without orders from this court."

Pfaff's order, which he made known to the state's press, spurred state Division of Mental Health officials to find a way of treating and caring for Billy. They soon found a place for him in one of the state's new Eckerd Wilderness Camps, which are designed to care for – in a structured, wilderness setting – children who have severe emotional and behavioral problems. Billy has progressed remarkably in this setting, camp officials have told Pfaff.

Stan Swofford, a reporter for the Greensboro Daily News, *covers the North Carolina courts on a regular basis. He has won awards for legal reporting from the N.C. Press Association, the North Carolina State Bar, and the Sidney Hillman Foundation.*

Emotionally disturbed children are shunted from agency to agency because of an "avoidance syndrome" on the part of state officials.

Unfortunately, what Pfaff calls an "avoidance syndrome" on the part of state officials in their dealings with emotionally disturbed children did not end with the "Billy Jones" case. Two years later, in August of 1980, still another "Billy Jones" case came before Pfaff's court. The old pattern was there. The child, 14, had been sent from agency to agency and hospital to hospital. It seemed that neither state mental health nor social services officials could treat and care for him.

Pfaff was boiling mad this time. He had learned that Michael Long, by then considered by the legal system to be an adult, had graduated from juvenile institutions to prison. In the new case, Pfaff ordered that the child be sent to a private psychiatric hospital in Winston-Salem for temporary care and treatment. Meanwhile, he ordered Guilford County officials to begin immediately to establish a group home for the care and treatment of emotionally disturbed children.

Two months later, in October 1980, Pfaff received word that no progress had been made, or attempted, toward establishing the home. He ordered the director of Guilford County Social Services, Frank Wilson, into his court, found him in contempt, and fined him $500. He also ordered Wilson and county officials to begin work on the group home immediately. Guilford County appealed Pfaff's order and contempt finding to the N.C. Court of Appeals, maintaining that Pfaff exceeded his judicial authority. As of March 1981, the case had not been heard.

The North Carolina Supreme Court, in a similar case involving a Wake County judge and a troubled youth, sided with county officials. In a 4-2 decision issued in January 1981, the state's highest court held that Wake County Chief District Judge George Bason exceeded his authority when he ordered Wake County officials to send 14-year-old Scott Brownlee to an Austin, Texas, facility and to pay for the treatment he received there.

The court did not disagree with Bason's finding that no adequate facility exists in North Carolina, and it praised Bason for his "tireless efforts" to help the child. It further stated that it hoped the Brownlee case and others like it will "prompt our state to develop an effective means of dealing with children of Scott's nature and disposition." It found, however, that Bason could not require Wake County to pay for the child's out-of-state treatment and care. The state's juvenile code, the court's majority wrote, refers to "community-based" care and treatment. Justices J. Phil Carlton and James Exum dissented sharply from the majority view, declaring Bason was authorized, even required, by state law to make certain the child was provided with care and treatment wherever it could be obtained. "There was not even a

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Director of Guilford County Social Services, Frank Wilson.

Wake County Chief District Judge, George Bason.

hint" that the care and treatment must be provided within the child's community, they said.

Bason believed he had the authority for his ruling. Sandra Johnson, the youth's court-appointed lawyer who represents a number of children in juvenile court, shared Bason's view. "But since there is some question about it, the legislature should rewrite that section of the juvenile code to make clear what judges can do to get needed treatment," says Johnson. Even legislative changes, however, would not provide all that is needed.

Both Judge Bason and Pfaff, who is now in private law practice, are frustrated by the lack of treatment and care facilities for the hundreds of troubled youth who appear in the state's courts every week. "I average one a week in my court alone," Bason says. "It's extremely frustrating. This state is far behind other states in treatment facilities for these children. If North Carolina isn't careful, it will find itself in the position Alabama was in a while back when the federal government had to step in and run its prisons."

There is, in fact, a class action suit before U.S. District Judge James McMillan in Charlotte filed on behalf of a class of children in the state who are both mentally handicapped and exhibit violent and assaultive behaviors. Johnson is one of the lawyers for the plaintiffs in that suit. The state already has admitted most of the plaintiffs' allegations and acknowledged that it has the responsibility of providing care and treatment for this class of children.

Where the money for that care and treatment is going to be found, and how much will be needed, are questions which have not been answered. The state Department of Human Resources, which plans to submit a supplemental budget to the legislature during the 1981 session, is trying to determine how many of these children North Carolina has. Their preliminary findings indicate there may be as many as 800.

"I don't know what it's going to take so far as money is concerned, but I know it's got to be done," Pfaff says. "I keep thinking of that 24-year-old man (Steven Judy) Indiana executed and what he said to all those people trying to save him from the electric chair. He said, 'Hey, you people! Where were you 10 years ago when I really needed you? When your help would have done some good?'" □

"This state is far behind other states in treatment facilities for these children."

District Judge George Bason

Playtime at a Gates County day-care center.

Photo by Joe Vaughan

Allocating Day Care Funds

What's Fair for the Children?

by Frank Adams

One of the most cherished themes of the Hunt administration may be undermined by a little known day care funding formula which, on the surface, appears as even-handed as a judgment by Solomon. Developed at the N.C. Department of Human Resources last year, the formula will be used to distribute over $12.1 million in state and federal funds for day care in the upcoming fiscal year. The formula is based on the total population of a county, not on the percent of the children in the county eligible for day care funding. Critics say the formula contradicts the Hunt administration's policy of regional growth, at least with regard to distributing early childhood development throughout the state equitably. State policymakers, albeit not unanimously, defend the formula as simple to manage, easy for the general public to comprehend, and legally defensible.

Child development advocates and state administrators have bickered privately about the formula for nearly a year. The issue surfaced publicly February 14, 1981, in Littleton, N.C., during ceremonies marking the first anniversary of that farming community's one day care center. Joe Gantt, president of the Rural Day Care Association of Northeastern North Carolina, said in a speech quoted widely in the region's press that sparsely populated counties with higher than average levels of poverty were short-changed by the funding formula. "We are not trying to pit one section of the state against another," he said. "Every county needs additional day care support. But we argue that the formula should distribute funds on the basis of the percentage of eligible children rather than the per capita population method used at present."

Gantt, who administers two day care centers in tiny Gates County, said the 16 northeastern North Carolina counties are currently allotted $488,484 to subsidize day care for some 400 children in about 15 centers. "If the funds were distributed on the basis of the number of children eligible," he said, "the region would receive $756,393 of the

Frank Adams is a writer and community educator with Legal Services of the Coastal Plains.

Photo by Joe Vaughan

Helping time at a Gates County day-care center.

special state and federal day care funds this fiscal year." Across the state, 19.8 percent of children ages 0 to 5 are eligible for subsidized day care, but in the northeastern counties the percentage is 26.7, or a level of need 33 percent higher than the state average, said Gantt. Eligibility is determined according to guidelines under Title XX of the federal Social Security Act.

Robert Fitzgerald, director of the Division of Plans and Operations in the N.C. Department of Human Resources, the office responsible for allocating day care funds, backs the per capita formula. "It is an effort to administer a program with simplicity and equality," he says. "Everyone can understand it. It is easy to defend."

According to Fitzgerald, day care in North Carolina is funded chiefly from three sources, two of which are distributed according to the disputed formula. The state appropriates funds directly to counties; for the fiscal year starting July 1, 1981, the total is expected to be about $6.7 million. The state also passes along to counties federal dollars earmarked for day care under Title XX of the Social Security Act. About eight percent of the state's total Title XX allocation, or an estimated $5.4 million for fiscal 1981-82, goes for day care. These Title XX funds and the state appropriation, totalling over $12 million for the next fiscal year, will be allocated using the controversial formula, where the population of each county is expressed as a percentage of the state's total population and applied to the total funds available.

The third source of funds is not under this allocation system but under county control. Each county gets a block grant under Title XX of which 75 percent comes from the federal treasury, 12.5 percent from state taxes, and the remaining 12.5 percent from county revenues. Counties are free to spend these funds as they see fit, and some in the state spend up to 40 percent on day care, Fitzgerald says.

While North Carolina Department of Human Resources officials cannot control how the counties choose to spend the Title XX block grants, they can insure that $12 million of day care funds are distributed evenly. But some of these officials are hesitant even to discuss the formula. One, who agreed to talk only after gaining assurances of anonymity, said, "Any formula based solely on population would tend to do what critics suggest." He added that Gantt was not the only advocate from a rural area protesting the policy.

Indeed, even people responsible for urban day care centers agree with Gantt. Susan Law directs the Northwest Child Development Council which operates 15 day care centers in Stokes, Forsyth, and Davie counties. She criticizes the formula even though many of her centers serve urban, relatively well-off communities. "It seems logical," she says, "to allocate the funds on the basis of eligibility not population." Suppose county A and county B have the same population, but A has 40 percent of its population eligible and B has 60 percent eligible, says Law. The two counties would get the same appropriation, and "obviously, county A would be better off." She also contends the present distribution formula penalizes counties with large concentrations of low-income blacks such as the northeastern region, or urban centers like Charlotte. Gantt says he agrees with this allegation, although he did not raise the question of race in his February speech at Littleton.

Fitzgerald, when asked about these criticisms, still defended the formula: "I'm not sure it favors metropolitan areas which often have large concentrations of working mothers." At the same time, he at least acknowledged some doubts, adding, "It is difficult to say what is fair and what is not." Another state-level policymaker, who requested anonymity, addressed the issue more frankly. The present formula "put more day care centers in communities where the supply was already ample and where more resources were available to operate day care without subsidies." She added, "This throws the idea of balanced growth out the window so far as day care is concerned."□

"The Biggest Problem With Annexation — It's Not Understood"

by Patricia Dusenbury

"To annex" – to join or add to a larger thing – connotes the taking of something without permission. Most North Carolina cities can do just that, annex an area without the permission of residents or property owners, and such actions – called unilateral annexations – are generating a growing controversy in the state. In recent years, property owners in unincorporated areas bordering Raleigh, Charlotte, Greensboro, Monroe, Carrboro, Lenoir, High Point, Asheville, and other North Carolina towns have actively, and sometimes successfully, resisted annexation into the city.

The key issue in an annexation procedure is which party has control, the annexing city or the property owners in the area being considered for annexation. Today, most North Carolina cities control the process, but opposition to the current law seeks to shift that control. Over the years, local politicians have worked through the General Assembly to create exceptions and exemptions from the state annexation laws. In the 1981 General Assembly, some legislators are trying to gain more exceptions, which would further weaken what a variety of experts call one of the best annexation laws in the country, a law that has facilitated orderly urban growth.

Patricia Dusenbury, associate director for urban affairs at the Southern Growth Policies Board (SGPB), recently directed an SGPB project called "Suburbs in the City: Municipal Boundary Changes in the Southern States."

North Carolina has five procedures for municipal annexation, but annexation laws have been passed, amended, and repealed so many times over the years that today, only five towns out of some 460 active municipalities can now use all five of the methods described below.*

1) Through a special act, the General Assembly can enlarge the boundaries of any municipality in the state. The oldest and at one time the only method of annexation, it is rarely used today. In the 1940s, as urban areas were growing, local annexation bills often crowded the legislative calendar, causing this method to become too cumbersome.

2) In 1947, the General Assembly provided that upon receipt of a petition from property owners, a city could hold a referendum in the area being considered for annexation; if a majority approved, the area was annexed.

3) The 1947 law also allowed the city to hold such a referendum without being petitioned; again, a majority vote meant annexation. The 1947 measure did not allow for orderly expansion of municipal boundaries in growing urban areas. Between 1950 and 1958, two out of every five annexation referendums failed, while others were never put to a vote because defeat was anticipated.

4) In 1959, the General Assembly gave cities the power to annex by ordinance any unincorporated, contiguous area where 100 percent of the property owners had signed a petition requesting annexation. The petition procedure was eventually extended to non-contiguous areas, allowing what is called "satellite" annexation.

5) The 1959 law, referred to as the "new law,"

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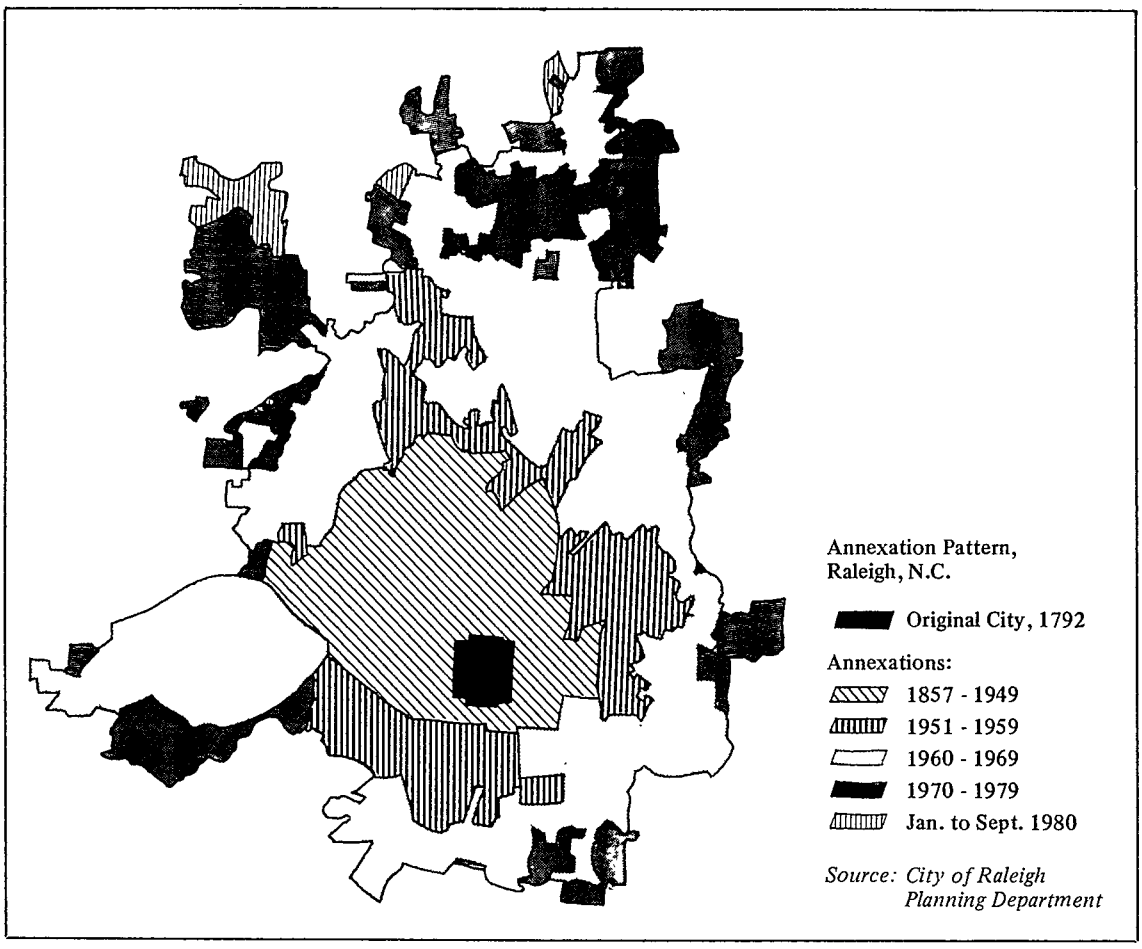
*These five are Kill Devil Hills, Manteo, Nags Head, Scotland Neck, and Southern Shores.

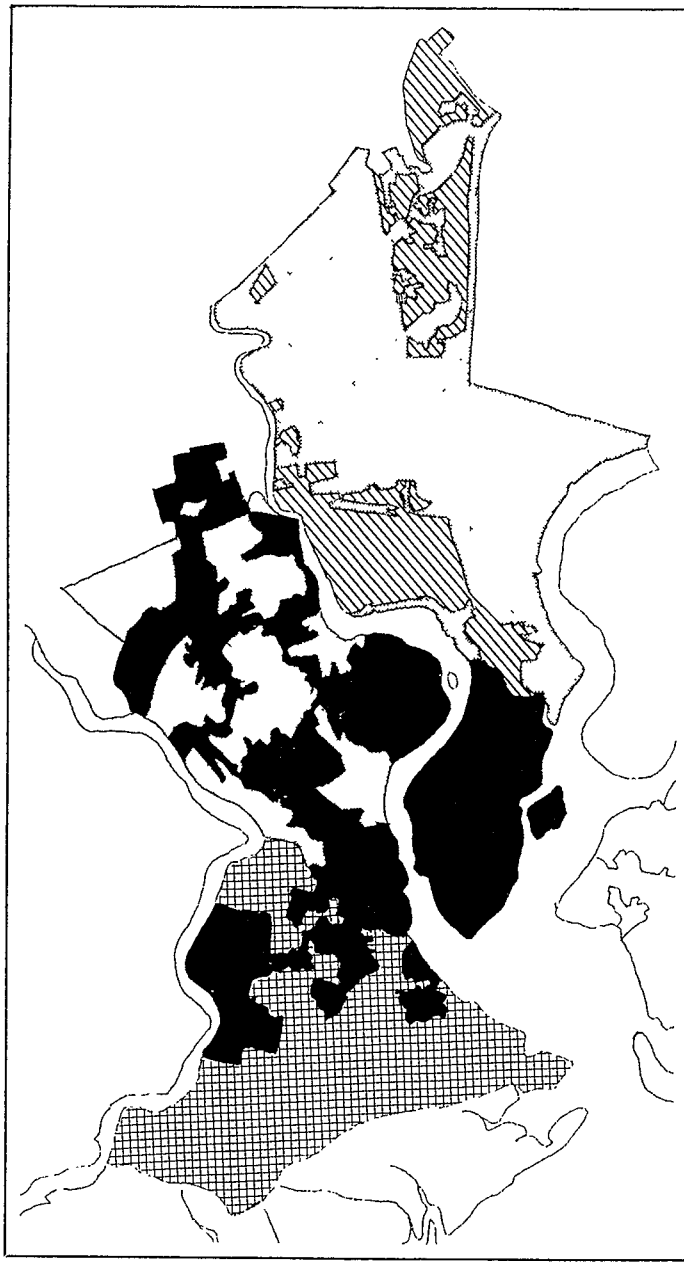
These maps illustrate the sharp contrast between the development patterns of cities under two very different annexation laws. South Carolina has one of the most restrictive laws in the country, from the point of view of the city. North Carolina municipalities have the power of unilateral annexation.



also allowed cities, without having been petitioned, to annex an unincorporated, contiguous area that was developed for urban uses, as defined by legislative standards, and to which the city was prepared to extend full municipal services. Known as the "standards and services" procedure, it does not require the consent of affected property owners or residents and therefore is called *unilateral annexation*. Since the 1959 law passed, only about three out of twenty annexations have been unilateral, but they have accounted for almost all of the controversies across the state.

The 1959 law passed after 60 local exceptions were put into the bill, but they included only three cities over 5,000 population – Fayetteville, Roanoke Rapids, and Whiteville.* Three years later, the General Assembly repealed the statute

* In addition to Fayetteville, Roanoke Rapids, and Whiteville, this group of exceptions includes: Alliance, Arapahoe, Atkinson, Bailey, Bayboro, Belville, Boiling Spring Lake, Bolivia, Burgaw, Calabash, Caswell Beach, Conetoe, Dortches, Enfield, Falcon, Godwin, Halifax, Harmony, Hertford, High Shoals, Hobgood, Holden Beach, Hope Mills, Leggett, Linden, Littleton, Long



"Three Public Service Districts lie in broken pieces around Charleston, North Charleston"

– *Headline from the Sunday edition of the Charleston, S.C.* The News and Courier/The Evening Post, *September 7, 1980*

City of Charleston

City of N. Charleston

N. Charleston PSD

St. Andrew's PSD

James Island PSD

Maps by Jane D. Savage, Southern Growth Policies Board Audio-visual Coordinator, prepared for SGPB annexation case studies.

that provided for referendum annexation (passed in 1947), making the "new law" the primary annexation vehicle in the state. In this repeal, the General Assembly allowed 63 municipalities, including all of those which could not use unilateral annexation because of being exempted by the "new law," to retain the referendum procedure.**

The U.S. Advisory Commission on Intergovernmental Relations has cited the 1959 law as model legislation:

Beach, Love Valley, Macclesfield, Maggie Valley, Mesic, Minnesott Beach, Navassa, Ocean Isle Beach, Oriental, Palmyra, Pilot Mountain, Pinetops, Red Oak, Shallotte, Shady Forest, Southport, Sparta, Speed, Spring Lake, Stedman, Stonewall, Sunset Beach, Surf City, Topsail Beach, Troutman, Vandemere, Wade, Watha, Weldon, Winfall, Yaupon Beach.

** In addition to the 60 towns listed above, Kill Devil Hills, Manteo, and Nags Head were exempted from the 1962 repeal of referendum annexation. Later, the power of referendum annexation was returned to Scotland Neck and Southern Shores.

North Carolina's municipal annexation arrangements constitute a key feature of the state's implicit urban policy. The arrangements encourage the expansion of existing municipalities and discourage the creation of new municipalities or other local governments around them. The state's annexation arrangements are based on the principle that what becomes urban should become municipal and have been cited as a model for the nation since 1967. . . .

The municipal annexation record since 1959, when the principal method was adopted, suggest that annexations are occurring as anticipated. The state's municipal population is growing slightly more rapidly than its total population. That which has become urban generally becomes municipal.*

* Warren Jake Wicker, "Municipal Annexation in North Carolina," paper prepared for the Second Annual Urban Affairs Conference of the University of North Carolina, March 1980.

Not all North Carolinians share this high opinion of the state's annexation law. Property owners in unincorporated areas adjacent to cities – that is, people who stand to be annexed whether they wish it or not – have objected strenuously, usually because they have no vote in the annexation procedure affecting their property. "We have nothing to say about those city officials, who weren't elected by us, perpetrating all this on us," said Hugh J. Lee, a resident of the Brookhaven area north of Raleigh, during annexation battles in the late 1970s. "We have everything in Brookhaven: peace, quiet, tranquility, no city police radar, adequate streets, and sewage." The Brookhaven residents, like other groups across the state, organized and raised funds to challenge the city's proposed annexation. They were successful in fighting off annexation in 1972 and 1979 and, in 1980, in limiting the amount of the area that was finally annexed into Raleigh.

Upon annexation, property is added to the municipal tax rolls while remaining on the county

Annexation— The Best Option for North Carolina Local Governments

In 1980, the N.C. Association of County Commissioners and the N.C. League of Municipalities created a Joint Annexation Study Committee. The excerpt from their report which follows explains why annexation has worked in North Carolina.

There are, of course, other means of bringing local government services and functions to an area that is urban in character and that needs typical municipal services and functions. Several possibilities exist in North Carolina. A simple approach would be to incorporate a new town beside the existing one. A county government could provide many services. If only a few services or functions were needed, a fire district, a water and sewer district, a sanitary district, or some other form of special-purpose local government might be created. Some services can be provided to such an area by an existing city without annexing if it is near one. For example, water and sewer services are frequently extended by cities to areas outside their boundaries. In some other states, cities and counties have consolidated, forming a single government with the powers of both cities and counties and providing services throughout their jurisdictions as needed.

North Carolina has examples of all these approaches to providing services and functions except city-county consolidation. For many years, however, the state's policy has strongly favored annexation over the other alternatives, and properly so.

Unlike the arrangements in most states, essentially all local government responsibilities in North Carolina are vested in counties and cities. Over 98 percent of all local government expenditures in North Carolina are made through city and county governments. In other states, special districts and authorities are responsible for many functions that are city and county responsibilities in North Carolina.

The 1977 Census of Governments reports that North Carolina has nine units of local government for each county area. The national average is 26 governments per county area. At the high extreme are Pennsylvania with an average of 78 units for each county and Cook County, Illinois, which has 520 local government units.

City and county governments in North Carolina are meeting their local governmental responsibilities well. There seems to be no need to adopt policies that would encourage the creation of additional types of local government.

Central to the roles of cities and counties in North Carolina are their jurisdictions and location. Every part of the state is within a county.

tax rolls. No one looks forward to paying higher taxes, and critics of unilateral annexation frequently link the voting issue to the inevitable tax increase that will follow. But this is not "taxation without representation." Rarely is a property tax levy the subject of a referendum, for newly annexed or longtime city residents. (Proposition 13 in California was a notable exception.) Moreover, voters in the annexed area become municipal voters, having the same rights as any other voter to reject local officials who may be asking for too high a tax.

The report of the 1957-59 Municipal Government Study Commission, which drafted the 1959 law, addressed the right to vote in the annexation context:

> We believe in protection of the essential rights of every person, but we believe that the rights and privileges of residents of urban fringe areas must be interpreted in the context of the rights and privileges of every person in the urban area. We do not believe that an individual who chooses to buy a lot and build a home in the vicinity of a city thereby acquires the right to stand in the way of action which is deemed necessary for the good of the entire urban area. By his very choice to build and live in the vicinity of the city, he has chosen to identify himself with an urban population, to assume the responsibilities of urban living, and to reap the benefits of such location. . . . Thus we believe that individuals who choose to live on urban-type land adjacent to a city must anticipate annexation sooner or later. And once annexed, they receive the rights and privileges of every other resident of the city, to participate in city elections, and to make their point of view felt in the development of the city. This is the proper arena for the exercise of political rights as North Carolina's General Assembly has evidenced time and again in passing annexation legislation without recourse to an election.

Thus functions and responsibilities that should be available to every citizen and at approximately the same level are properly placed within county governments. Health, education and welfare are prominent among these. Police and fire protection, streets and sidewalks, sanitation, and recreation illustrate services that are needed at higher levels in urban areas and for which cities are organized.

Furthermore, the pattern of urban growth in North Carolina has resulted in the development of cities that are physically separate. Only 84 of North Carolina's 457 cities are within one mile of another city or town. Of the 38 cities with 1970 populations over 10,000, only nine have a smaller city or town within one mile of their boundaries. Under these circumstances extending present city boundaries to include adjacent urbanizing territory is a logical approach to providing the area with local governmental services. Efficiency and economy dictate that this approach be taken. A recognition that the state's separate urban areas are almost uniformly a single social and economic unit suggests annexation in preference to other possible approaches.

One has only to consider an alternative to illustrate the desirability of encouraging annexation as a state policy in most cases. In 1900 Raleigh's population was about 13,600. Today it is estimated at about 160,000. If Raleigh's boundaries had not been expanded over this period and the surrounding area had grown as it has, Raleigh could be encircled today with 12 cities equal to its 1900 size. Or by 15 cities of Garner's current size. Or with an even larger number of overlapping special districts. It is difficult to imagine that the citizens of the area would be served better by such a large number of governments than they are by a single city. But in the absence of annexation by Raleigh, some alternate arrangement would have been necessary.

By both Constitution and statute North Carolina has appropriately given preference to expanding existing cities as opposed to creating new ones. Both discourage incorporating new cities and towns near existing ones. Except by a three-fifths majority, the General Assembly may not incorporate a new city closer than one mile to an existing city of 5,000-10,000 population, within three miles of one with 10,000-25,000 population, within four miles of one with 25,000-50,000 population, and within five miles of one with over 50,000 population. Similar limitations are placed on administrative incorporations by the Municipal Board of Control.

North Carolina has some 460 cities and towns. About 55 percent of these have populations of less than 1,000. They are spread about the state, and most of the state's urbanization is taking place near one of the existing cities and towns. Under these circumstances the state's policy of encouraging annexation – which means enlarging the existing water plant rather than building a new one, or enlarging an existing police force rather than creating a new one – seems clearly in the best interests of all citizens when done with the safeguards that are built into North Carolina's annexation statutes. □

In addition to the "no-vote" complaint, opposition to unilateral annexation often arises from competition between the annexing city and the entity providing city-type services for the area to be annexed. Non-municipal service providers include special districts, private firms, and more and more often, county governments. North Carolina has fewer special districts than most states, but there are still numerous rural fire districts, rescue squads, and water and sewer districts providing services to unincorporated areas. Annexation removes an area from any special district that had been serving it, which may cause financial problems for the district. Many counties provide funds to the special districts which stand to lose customers to the annexing city.

Where annexation has been slow to follow urban development, the county has often stepped in, or a special district has been created, to meet the needs of area residents. Buncombe County provides a vivid example of what happens when annexation is delayed. Because Asheville, the Buncombe County seat, went bankrupt during the Depression, it was put under a bondholders' agreement for almost 50 years and could not annex. Large communities grew up around Asheville, and the city extended some services. But when it tried to annex, opposition was so strong that the General Assembly imposed a moratorium (1975-81) on annexations by Asheville to allow the city and county to reach an accord on water and sewer service responsibilities.

Union County illustrates another reason why county leaders oppose annexation. According to Joe Hudson, chairman of the County Commissioners, Union County provides such a broad range of services – water and sewer, garbage, fire protection, police protection, ambulance, landfill, zoning, and building inspection – that he questions whether municipalities are really required. As a result, he says that "county commissioners' approval should be required before annexation can occur."

Other county commissioners have joined the battle against unilateral annexation because the people who feel strongly enough to base their vote for county commissioner on this issue are property owners resisting unilateral annexation. Finally, because state revenues from intangibles and sales taxes are distributed according to population, annexation can reduce the county's share of these revenues, to which county commissioners object.

After the new law was passed in 1959, county opposition to unilateral annexation came mostly from commissioners who owned property susceptible to being annexed. But in the seventies, county opposition has developed a broader base. Commissioners in Onslow, Union, and Caldwell counties, among others, have become involved in resisting annexation. And a number of local bills to limit municipal annexation have been introduced in various sessions of the General Assembly. Despite the higher visibility of some county government opposition, however, the self-interest of counties is less clear-cut than that of municipalities. As Butch Gunnels, attorney for the North Carolina Association of County Commissioners, explains, "There are 100 different counties with 100 different stories."

In response to the growing controversy about municipal annexations, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities created a Joint Annexation Study Committee, which issued a 40-page report in June 1980. The Report made three related points: 1) it supported North Carolina's annexation law and the philosophy behind it, as articulated by the 1957-59 Study Commission; 2) it proposed three changes in the law to improve its implementation; and 3) it recommended several procedural changes, again to improve the implementation, that could be effected without new legislation.

Only one of these proposed legislative changes involves a substantive change in the law. Cities would be *required* to annex areas meeting the standards for annexation if area residents petitioned for annexation. Thus municipalities would then have the responsibility, as well as the privilege, of annexing adjacent urban areas. In practice, these areas usually petition for annexation when their services or infrastructure are so inadequate that it would cost the annexing city a great deal to bring the area up to the level of the city. Cities, on the other hand, respond to this situation in various ways, depending on their financial resources and the costs that would be incurred. If the proposed changes were made, the city would have to annex, subject to safeguards to prevent severe fiscal stress.

The North Carolina League of Municipalities endorsed the Report and included the suggested new legislation in its "1981 Municipal Legislative Goals and Policies." The co-sponsor, the North Carolina Association of County Commissioners, neither endorsed nor rejected it.

The Report did not satisfy political opposition to unilateral annexation, and again the issue surfaced in the 1981 session of the General Assembly. A number of local bills have been introduced to create various exceptions to the 1959 law: 1) House Bill (HB) 137 and Senate Bill (SB) 85 would require referendum approval of annexation in New Hanover County; 2) SB 223 would link

Cities or Suburbs — Who Should Control?

In 1980, the Southern Growth Policies Board issued a report on annexation procedures throughout the South, "Suburbs in the City: Municipal Boundary Changes in the Southern States." The excerpt from that report which follows provides an historical perspective on the annexation issue. Specifically, it points out the contrast between North Carolina towns and northeastern urban centers, where control over annexation in most cases was taken away from the cities and given to the suburbs some 75 years ago.

Before 1900, annexation was readily accomplished and frequently employed by large cities through unilateral action, special legislative act, or a single referendum encompassing both the city and the territory being considered for annexation. However, increasing suburbanization, with the tendency of lower-income residents to occupy the urban core while the more affluent moved to newly developed suburban areas, engendered suburban resistance to annexation. Suburban residents were able to get changes in state laws that limited annexation opportunities by changing the procedures.

> [They] succeeded in getting changes in state constitutions and statutes to forestall absorption by their larger neighbors. Many states gave fringe area residents exclusive authority to initiate annexation proceedings, and required separate majority votes in both the annexing city and the territory to be annexed. New villages and cities gradually were incorporated around the edges of central cities. . . .*

This made possible the balkanization of older metropolitan areas, which is associated with the severe financial problems facing many large central cities today. Disparities between local revenue resources and the costs of providing needed facilities and services afflict urban areas which have been divided into several separate municipalities.

Annexation of high-income, urban-fringe neighborhoods against residents' wishes for the benefit of the annexing city's fisc has been characterized as an abuse of annexation power.** However, the harsh reality of financial pressures upon central cities plus a growing awareness of the costs that nonresidents using city infrastructure and services create for the city have made the fiscal motivation for annexation more prevalent and somewhat more respectable. □

* *Alternative Approaches to Governmental Reorganization in Metropolitan Areas*, Advisory Commission on Intergovernmental Relations, June 1962, p. 59.

** *Adjusting Municipal Boundaries: Law and Practice*, National League of Cities, December 1966, p. 79.

annexation in New Hanover County with a guaranteed solid waste disposal system; 3) HB 397 would prohibit Wilmington from annexing at all until after June 1, 1981; 4) SB 228 would require referendum approval of annexation in Forsyth County; 5) HB 465 would prohibit annexation in Davidson County by any city located primarily in another county, i.e., High Point; 6) HB 228 would limit annexation in Davie County.

While these local bills appear to be dead for this session, the issue is still very much alive. SB 4, introduced by Senator Craig Lawing (D-Mecklenburg), would authorize the Legislative Research Commission to study the annexation laws, and SB 10, introduced by Senator Donald Kincaid (R-Caldwell), calls for a study, coupled with a statewide, three-year moratorium on annexation. Senator Lawing's bill has broad support and good prospects for passage. The League of Municipalities, which opposes all local legislation creating additional exceptions to the 1959 legislation, supports the bill calling for a study but not for the moratorium. "If there is this much concern, the legislature should be given a chance to fully review the concepts behind this law," says Leigh Wilson, executive director of the N.C. League of Municipalities. "The biggest problem with annexation is, it's not understood."

In 1959, the General Assembly dealt with the annexation issue by passing a law allowing cities to control the annexation process within the limitation of legislatively set standards for urban development and requirements for service provision. Although most would agree that the law has provided for orderly growth of urban areas in North Carolina, a rising tide of political opposition is leading the state's lawmakers to reconsider the decision made in 1959. Their action will affect the future pattern of development across the state, and its impact will be especially great in the current era of rapid urban growth. □

Finding a Coherent Policy on Migrants and Seasonal Farmworkers — The First Step

by Charles Jeffress

Photo courtesy of N C Employment Security Commission

In June 1980, Dr. Joshua S. Reichert of Duke University submitted a report on migrant and seasonal farmworkers in North Carolina to the Division of Policy Development of the N.C. Department of Administration. Dr. Reichert found that North Carolina, when compared to the other major agricultural states in the country, "ranks last with respect to the existence of state laws and services designed to improve the conditions under which farmworkers live and work." He recommended a host of changes to improve that situation.

Those changes will not be made in the 1981 session of the General Assembly. And they are not likely to be made in future sessions, either, unless a significant alteration occurs in the state policy regarding farmworkers. Currently, fourteen different state agencies, two federal agencies, and a host of local officials and private organizations have responsibility for serving the needs of migrant and seasonal farmworkers (see box on page 38). No central advocacy or coordinating office for farmworkers exists in North Carolina. No government official has the responsibility for ensuring that agencies are not duplicating efforts; none has a mandate to view the problems in a comprehensive way. No agency is assigned to review the effect of state laws on farmworkers, much less to propose any changes in such laws.

The term "farmworker" applies both to migrants, who follow the harvest from state to state, and to seasonal laborers, who work the fields close to home. Migrant farmworkers encounter special

Photo courtesy of N.C Employment Security Commission

problems to which seasonal farmworkers may not be exposed, but both groups experience related problems of low income, poor health, lack of education, and lack of legal assistance. Within this general framework, however, various government and private agencies define "farmworker" in different ways. The U.S. Department of Labor, for example, considers anyone who works at least 25 days per year or earns at least $400 in a year (provided 50 percent of total earnings comes from farm work) from farm labor to be a "seasonal farmworker." In this article, "farmworker" refers to persons – both migrants and seasonal workers – whose primary source of income are wages paid for field work.

In 1979, some 137,000 North Carolina residents worked as seasonal farmworkers. To help harvest the same year's crops, another 35,000 migrants flowed through North Carolina, three times more than had come just five years before. By the end of the 1970s, according to the National Association of Farmworkers Organizations, North Carolina ranked third, behind Texas and Florida, in total number of farmworkers. Migrant and seasonal workers harvest much of the fruits, vegetables, and tobacco produced in North Carolina, crops which together grossed almost $2 billion in 1980.

Actions of the Hunt Administration

The problems of farmworkers are not new, and public attention has been directed to their conditions in North Carolina numerous times in recent years.

- In 1975, Church Women United released findings that the "Fair Labor Standards Act is grossly and flagrantly violated in the North Carolina labor camps." Lucy Hancock, the author of the report, is now chief assistant to N.C. Secretary of Human Resources Sarah Morrow. Ms. Hancock wrote that "having visited migrant labor camps which were extremely overcrowded, structurally unsound, and which had unsanitary toilet and shower facilities, I cannot refrain from saying that this state has not come close to solving the problem of poor housing conditions in migrant labor camps."
- In 1977, the North Carolina Advisory Committee to the U.S. Commission on Civil Rights held a widely-publicized hearing in Raleigh on the enforcement in North Carolina of applicable state and federal laws pertaining to migrant and seasonal farmworkers. The report of the committee, issued in 1979, concluded that "farmworkers remain among the most deprived persons in the state.... Camp conditions are most often deplorable. Abuses in recruitment, in pay, and in the provision of adequate meals are common."
- Television and newspaper specials have dramatized the poor living and working conditions

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Charles Jeffress was appointed Assistant Commissioner of Labor in 1977 by N.C. Commissioner of Labor John C. Brooks. Mr. Jeffress advises Commissioner Brooks on policy issues concerning migrants and seasonal farmworkers.

of migrant and seasonal farmworkers. WFMY-TV (Greensboro) in 1977 and WTVD-TV (Durham) in 1979 vividly portrayed migrant conditions. Tim Smith, a reporter for the *Fayetteville Times*, worked with migrants in Sampson and Johnston counties in 1979 and wrote a series of articles on his experiences. Steve Levin of the Raleigh *News and Observer* did a similar series in 1980.

In the summer of 1977, in response to a question by David Larsen of WFMY-TV, Governor Hunt indicated his concern for the improvement of migrant living conditions: "We've got to pull together and coordinate (our services)." But in the last three years, the response of the Hunt administration to calls for a coordinated policy on farmworker problems has been restrained at best. Various recommendations for coordination have gotten only "careful study and consideration," as Gov. Hunt wrote to one advocacy group.

In 1977, members of the migrant ministry of the North Carolina Council of Churches met with Arnold Zogry, director of the Division of Policy Development, and offered recommendations for state action to improve migrant conditions. Zogry assigned several policy analysts to investigate the area; a year later the Division reported that a recommendation for a migrant commission had been submitted to the Governor. Another year later, however, no overall policy had emerged from the administration, and the State Advisory Committee on Services to Migrants, an *ad hoc* group of representatives of public and private agencies which provide services to migrants, wrote Governor Hunt recommending that a State Farmworker Advocacy Office be created. John A. Williams, executive assistant to the Governor, answered the Committee, explaining that because of a freeze on employment, the Governor's office could not "consider at this time your request that an Office for Farmworker Advocacy be established."

Ironically, at the same time the Governor's office was encouraging Dr. Reichert with his study of farmworker conditions in the state. In June 1980, Reichert submitted this report to the Division of Policy Development, outlining "the most critical problems currently faced by farmworkers in North Carolina." Two months later, the Division declined to release Reichert's report to the N.C. Department of Labor. In March 1981, an analyst in the Division said that Reichert's recommendations were "being considered." Later that month, Secretary of Administration Joe Grimsley told the State Advisory Committee that Gov. Hunt would ask the 1981 General Assembly to appoint a commission to study further the needs of migrants.

Diffusion vs. Coordination

Various state offices have responded to the needs of farmworkers in different ways, but no comprehensive approach to improving migrant living conditions has been formulated. No agency

Reichert Report

Below is an excerpt from "The Agricultural Labor System in North Carolina: Recommendations for Change," a report submitted to the Division of Policy Development, N.C. Department of Administration, by Dr. Joshua S. Reichert of Duke University. The 51-page report includes proposed changes in eight areas of law that affect migrants. In each section, as illustrated below, Reichert first summarizes a problem and then lists the proposed changes in the law. In addition to Wage and Hour Regulations (section shown below), the report contains sections on Workers' Compensation, Unemployment Benefits, Child Labor, Recruitment and Employment of Agricultural Workers by Labor Contractors, In-patient Health Services to Migrants, Migrant Education, and Labor Camp Housing. Through a point system, Reichert ranks the 20 states with the largest farmworker populations according to farm wage rates as well as to the quality of state labor statutes designed to protect agricultural workers. In the summary tabulation, North Carolina ranks last.

For further information on the report, contact Patricia Yancy at the Division of Policy Development, N.C. Department of Administration.

WAGE AND HOUR REGULATIONS

Problem:

The North Carolina Wage and Hour Act which exists for the purpose of protecting the rights of workers in the state and ensuring that they are adequately compensated for their labor specifically excludes agricultural employees. In an ideological sense, this serves to perpetuate, indeed reinforce, self-serving employer myths regarding the inferiority of farmworkers – myths which contribute to their continued exploitation. In an actual sense, it denies them equal benefits under the law and allows widespread labor abuses by growers and crew leaders alike.

Recommendations:

1. Section (2) of Article 95-25.14(a) of the North Carolina Wage and Hour Act which specifically

Photo courtesy of N.C. Employment Security Commission

exempts persons employed in agriculture from provisions related to Minimum Wage (G.S. 95-25. 3), Overtime (95-25.4), Youth Employment (95-25.5) and Record Keeping (95-25.15(b)) should be deleted, thereby providing agricultural workers full protection under the articles of the Act.

2. Moreover, due to the highly seasonal nature of farmwork combined with unique problems stemming from the labor contractor system, the following provisions, specifically applicable to agricultural workers, should be written into North Carolina's Wage and Hour legislation:

a. Agricultural workers employed directly by a farm operator must receive their pay at least twice a month. Those working for a farm labor contractor or crew leader must be paid at least once a week.

b. Whenever an agricultural worker quits his job, he must receive final pay within 48 hours of the end of work, or at the time of quitting if he gave at least 48 hours prior notice of his intention to quit. Also, whenever a worker is fired or laid-off, he must receive final pay immediately.

c. No employer may make any deduction from a worker's pay unless the deduction is authorized by law or authorized in writing by the worker.

d. Each time an agricultural worker is paid, his employer must provide him with a written statement showing the dates for which payment is being made, the wage rate, the number of hours worked or the units of production, any deductions from the worker's pay and the purpose of each deduction, the net amount of pay, the name of the worker, and the name and address of the employer.

3. Finally, it is necessary to realize that any wage and hour legislation designed to protect agricultural workers will be virtually meaningless unless rigorously enforced. Consequently, the General Assembly should provide the N.C. Department of Labor with *adequate* funds to:

a. Print and distribute copies of pertinent state wage and hour regulations to all farm operators and labor contractors in North Carolina, and

b. Hire additional personnel whose job it will be to monitor complaints and conduct random field checks on farm operators and labor contractors throughout the state.

has the authority to examine migrant and seasonal farmworker problems from a broad perspective. Until 1978, no state agency had so much as compiled a listing of known migrant camps within the state.

There are some advantages to a diffusion of responsibilities. Professionals can deliver services in their areas of expertise – educators may provide educational services, sanitarians can check sanitary conditions, and social workers are able to provide

AGENCIES WHICH SERVE FARMWORKERS IN NORTH CAROLINA

FEDERAL AGENCIES

U.S. Department of Agriculture

Farmers Home Administration
(provides loans for construction housing)

U.S. Department of Labor

Wage and Hour Division
(enforces the Farm Labor Contractor Registration Act and the Fair Labor Standards Act)

STATE AGENCIES REPORTING TO THE GOVERNOR*

Department of Human Resources

Division of Mental Health Services
Local Mental Health Centers
(standard community services)

Division of Social Services, County Social Service Agencies
(administers food stamp, AFDC and other social welfare programs)

Division of Vocational Rehabilitation
(provides services to the disabled)

Migrant Health Program
(outpatient health counseling & medical care; short term in-patient care as funds permit)

Sanitation Branch
County Sanitarians
(enforces the state law regulating the sanitation of agricultural labor camps)

Department of Commerce

Employment Security Commission
Rural Employment and Training Service
(places farmworkers with growers)

Department of Administration

Human Relations Council
(promotes equality of opportunity; assists in resolution of human relations complaints)

Department of Natural Resources and Community Development

Division of Employment and Training
(training opportunities to disadvantaged persons through CETA; covers 86 counties)

State Economic Opportunity Office
Local Community Action Agencies
(technical assistance to 35 community action agencies)

STATE AGENCIES INDEPENDENT OF THE GOVERNOR**

Department of Labor

Occupational Safety and Health Division
(enforces OSHA standards in migrant labor housing)

Department of Public Instruction

Migrant Education Section
(educational services to children of migrants)

Board of Community Colleges

Local Community Colleges
(provides training opportunities)

University of North Carolina

NCSU Agriculture Extension Service
(information and training on production, marketing and labor relations)

Department of Agriculture

Food Distribution Division
(surplus food and price support programs)

The amount of state funds and staff time devoted solely to farmworker concerns is impossible to determine. With the exception of the Migrant Health Program and the Migrant Education Section, all of the above programs are designed to serve far broader constituencies than just farmworkers.

* The Governor appoints the heads of the departments grouped in this category.

** The heads of the agencies grouped in this category are either elected by the public (Labor, Agriculture, and Public Instruction) or appointed by a Board, a majority of whom are elected by the General Assembly.

family services. Potentially more resources are available to serve farmworkers through a diversity of agencies than would be the case if a single agency had all the responsibilities, and by spreading these responsibilities among many agencies a greater awareness of the problems of this population group may be generated.

A few interagency agreements have been signed to effect more efficient administration of some laws. At one point, for example, four agencies – two state, one federal, and one local – had responsibility for inspecting housing conditions for migrants, and among these agencies there were three different sets of standards. Recognizing the problem this posed for growers, crew leaders, and migrants, the four agencies attempted to coordinate their activities. Three of them – the N.C. Employment Security Commission (ESC), the federal Wage and Hour Division (U.S. Department of Labor), and the N.C. Department of Labor – adopted the standards of the Occupational Safety and Health Administration (OSHA), which in North Carolina is administered by the state Department of Labor. But the fourth agency, the local county sanitarians, was required by statute to enforce a different set of standards. They have been encouraged, nevertheless, to inform growers at the time of their inspections of the OSHA requirements.

Despite efforts to adopt uniform standards and to sign interagency agreements, coordination remains a tough problem. Efforts to enforce health and safety standards illustrate the difficulties involved. Requests by North Carolina OSHA to have local sanitarians report on inspections which they conduct have been met by demands for reimbursement. In 1978, OSHA paid $50 for each report on a migrant camp inspection submitted to OSHA by local sanitarians in Sampson, Johnston, and Nash counties. This arrangement enabled the N.C. Department of Labor to target its OSHA inspections to those camps in the worst conditions. Since 1978, however, funds have been unavailable to meet the asking price of $75 per report. Despite this lack of assistance from the local sanitarians, during the 1977-79 period the Department of Labor was able to inspect all inhabited migrant camp housing. Commissioner of Labor John C. Brooks, however, often points out that compliance with OSHA standards only means that the camp meets minimum requirements for safety and health. The housing may still appear to be a slum dwelling.

Photo courtesy of Raleigh News and Observer

Comprehensive Policy Needed

For the state to enforce laws pertaining to farmworkers effectively, agencies must continue to find ways to cooperate with one another. Numerous interagency agreements, however, are no substitute for a comprehensive policy which directs resources where they are most needed. With the diffused responsibility for farmworkers that currently exists, their concerns rarely rate a high priority for any state agency. Without a comprehensive state policy, neither new legislation nor additional funds can be expected to be directed toward problems of farmworkers. No agency has the authorization or political support to seek statutory changes or to pursue funding needs.

The size and importance of our farmworker population, the variety of needs that exist within this population, and the current diffusion of responsibility all demand serious attention. In the last decade, the General Assembly has established commissions and advocacy councils for a broad range of groups – women, youth, the elderly, Indians, veterans, exceptional children, the mentally ill, the blind, the hearing impaired, and persons with sickle cell syndrome. No such effort has been made on behalf of farmworkers despite overwhelming evidence of problems among this group of people. Until such an effort is taken, farmworkers will continue to be perhaps the most abused group in North Carolina. As U.S. Congressman Charles Rose (D-N.C.) puts it, "Their destitution seems to bring out the most unholy traits in people." □

FROM THE CENTER OUT

On April 24, 1981, the North Carolina Center for Public Policy Research sponsored a conference on public policy and Indians in North Carolina. The conference was designed to bring together Indians, policymakers, academics, and business leaders to discuss the issues of recognition, health, education, and economic status. The conference focused on existing policies affecting Indians and ways these policies can be made more responsive to the needs of Native Americans, as well as areas in which existing policies can be reformed and new policies initiated. Proceedings of the conference will be published by the Center. For more information, contact Sue Presti, conference project director, at the Center's office.

CONFERENCE AGENDA

INTRODUCTORY SESSION

Keynote Address: **Adolph Dial**, Chairman, Department of American Indian Studies, Pembroke State University

EDUCATION

Betty Mangum, Director, Division of Indian Education, N.C. Department of Public Instruction
Arnold Richardson, Economic Development Specialist, Haliwa-Saponi Tribe, Inc.
Helen Scheirbeck, Director of Program Development, White House Conference for Children and Youth; Project Coordinator, Indian Information Project
Joyce Wasdell, Assistant Superintendent for Instruction, Durham County Schools
Moderator: **Earl Oxendine**, Director of Compensatory Education, Hoke County Schools; member, State Board of Education

HEALTH

Cherry Beasley, Professor, University of Tennessee College of Nursing
Carolyn Emmanuel, Executive Director, Pembroke Medical Services
Wes Halsey, Chief of Urban Programs, Division of Indian Community Development, U.S. Indian Health Service
Ronald Levine, Deputy Director, Division of Health Services, N.C. Department of Human Resources
Moderator: **William Flash**, Professor, School of Public Health, University of North Carolina-Chapel Hill

LUNCHEON ADDRESS

James Abourezk, former U.S. Senator and Chairman, American Indian Policy Review Commission

RECOGNITION

Jeanne Chastain, Lumbee River Legal Services
Jo Jo Hunt, U.S. Senate Select Committee on Indian Affairs
Arlinda Locklear, Native American Rights Fund
Horace Locklear, N.C. State Representative (Robeson County)
Moderator: **Sandra Wurth-Hough**, Professor, Department of Political Science, East Carolina University

ECONOMIC STATUS

Norman De Weaver, Economic Development Specialist, Center for Community Change
Kenneth Maynor, Executive Director, Lumbee Regional Development Association
Ruth Revels, Executive Director, Guilford Native American Association
Gary Shope, Director, Small Community Economic Development, N.C. Department of Commerce
Moderator: **John G. Peck**, Professor, Department of Sociology and Anthropology, North Carolina State University

PLENARY SESSION

Summations: Panel Moderators
Reaction: **Adolph Dial**

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