North Carolina Insight
$6 June 1987 Vol. 9 No. 4

SELECTING JUDGES

N.C. Center for Public Policy Research

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

A nonprofit, non-partisan organization, the Center was formed in 1977 by a diverse group of private citizens "for the purpose of gathering, analyzing and disseminating information concerning North Carolina's institutions of government." It is guided by a self-electing Board of Directors and has individual and corporate members across the state.

Center projects include the issuance of special reports on major policy questions; the publication of a quarterly magazine called *North Carolina Insight;* the production of a symposium or seminar each year; and the regular participation of members of the staff and the Board in public affairs programs around the state. An attempt is made in the various projects undertaken by the Center to synthesize the integrity of scholarly research with the readability of good journalism. Each Center publication represents an effort to amplify conflicting views on the subject under study and to reach conclusions based on sound rationalization of these competing ideas. Whenever possible, Center publications advance recommendations for changes in governmental policies and practices that would seem, based on our research, to hold promise for the improvement of government service to the people of North Carolina.

NORTH CAROLINA INSIGHT is a quarterly magazine published by the North Carolina Center for Public Policy Research, Inc. (a nonprofit, tax-exempt corporation), P.O. Box 430, Raleigh, N.C. 27602. Telephone (919) 832-2839. Annual membership rates: Individual, $24; Organizational, $30; Supporting, $50; Corporate, $100; Supporting Corporate, $250; Patron, $500. Third class postage paid at Raleigh, N.C. Printed by Edwards & Broughton Co. Raleigh, N.C. The Center is supported in part by grants from the Mary Reynolds Babcock Foundation and the Z. Smith Reynolds Foundation, as well as by corporate contributions and 600 corporate and individual members across the state. The views expressed in this publication are those of the authors and are not necessarily those of the Center's Board of Directors or staff. Published June 1987.

Cover: Dwane Powell

North Carolina **Insight**

Vol. 9, No. 4 June 1987

FEATURES

DEPARTMENTS

Editor
Bill Finger
Associate Editor
Jack Betts
Production/Art Director
Carol Majors
Production
PUBLICATIONS UNLIMITED

Open Records— The Key to Good Government

by Robert Conn and Bill Finger

In North Carolina, the public has the right to see almost any government record because of a broadly worded "public records" law. Recent court decisions have helped define the parameters of this law. Four problem areas continue to arise — an individual's right to privacy versus the public's right to know, when a report is completed and therefore is a public record, law enforcement officers' needs to keep investigations confidential versus the public's right to know, and how the statute will adjust to new computer technology. Nevertheless, a huge volume of information is available to the public, without conflict or controversy.

On Oct. 30, 1985, reporters for *The News and Observer* of Raleigh suspected they were onto something big. Police cars and state government officials were crowding around an industrial site near downtown Raleigh. No one was talking to reporters, but rumors were circulating that some kind of toxic spill was under investigation.

"We couldn't get anybody to explain what was going on," recalls Monte Basgall, then the paper's environmental reporter. "Our deadline was approaching, and we had no story. Finally, we realized that a search warrant is a public document."

The News and Observer's crime reporter rushed to the police station and got a copy of the warrant—as any person is entitled to do. "The warrant alleged that hazardous wastes had been spilled," explains Basgall. Not only did the search warrant get the police into the door at Ashland

Robert Conn, former reporter for The Charlotte Observer, *is a science writer in the Office of Information and Publications at Bowman Gray School of Medicine, Wake Forest University, in Winston-Salem. Bill Finger is editor of* North Carolina Insight.

"Until a report on an investigation is completed and filed, it is not a matter of public record."

— Andrew A. Vanore Jr.
Chief Deputy Attorney General

Chemical Company, it also gave the paper the opening it needed for what became one of the most important series of environmental stories of the year.

A good public records law ensures that reporters—and the general public—have clear access to important information. But it does far more. "Public access to public records provides the key to good government, a key that unlocks a storehouse of information, a key that upholds our democratic spirit," says attorney William McBlief.[1]

The North Carolina law (G.S. 132-1), at first glance, seems to provide that "key to good government." It defines a "public record" very broadly, covering everything from pieces of paper to computer disks to artifacts —"made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions." (See full statute on page 4.)

Just eight years ago, however, this very broad language caused considerable confusion. "Because the words and phrases used in G.S. 132-1 are not themselves defined in the statute, such a definition cannot be interpreted without referring to common law, to the pre-1935 judge-made law. . .," explained attorney Fred Harwell in a 1978 report by the N.C. Center for Public Policy Research.[2]

The report examined state and federal laws concerning public access to information, including the federal Freedom of Information Act and right-to-privacy issues.[3] Harwell called the N.C. statute "half a loaf at best in terms of providing access to state government information, and perhaps not much better than no loaf at all. . . . [I]t should be struck from the books in favor of legislation that will insure both prompt access and the efficient management of government business."

Three years later, the N.C. Court of Appeals decided two pivotal cases that spoke directly to the law's broad language.[4] The two 1981 decisions viewed together had the effect of establishing much clearer parameters for how the law should apply to ambiguous situations. In *The News and Observer Publishing Co. v. Wake County Hospital System, Inc.*, the court held that the hospital system was a "public body." In *Advance Publications v. The City of Elizabeth City*, a letter received by the city manager from a consulting engineer was construed to be "a public record subject to disclosure." By defining a public body and a public record, these two decisions turned the corner of ambiguity for the state's open records law, explains Henry Underhill, attorney for the city of Charlotte.

"The '81 decisions, I think, really for the first time underscored what a lot of city attorneys believed to be the law," says Underhill. "The public records law, as interpreted by the courts, is extremely broad and covers virtually any record or file that a governmental body might have in its possession. What those cases indicated was unless the General Assembly has made some exception to it, then they are public records. A record is a public record."

N.C. Attorney General Lacy Thornburg says he agrees: "I think that's the intent of the statute. There would be no use to have the law if it weren't the intent that the content be revealed."

"If it has been bound and copied, it is a document"

— Hugh Stevens
General Counsel
N.C. Press Association

N. C. Laws Affecting Public Records

N.C.G.S. 132-1. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

N.C.G.S. 132-6. Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law.

N.C.G.S. 132-9. Any person who is denied access to public records for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

N.C.G.S. 6-19.2. In any civil action in which a party successfully compels the disclosure of public records pursuant to G.S. 132-9 or other appropriate provisions of the law, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

1) The court finds that the agency acted without substantial justification in denying access to the public records; and

2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source.

Creating Exemptions from the Law—How Far Should They Go?

The *General Assembly* has passed a few specific exceptions to the law. Communications between attorneys and public bodies they represent, for example, are not public records until three years after these communications.[5] The *N.C. Supreme Court* has also created exemptions, holding in 1984, for example, that records of the State Bureau of Investigation are excluded from the public records act and regulated instead by N.C.G.S. 114-15.[6] Finally, various *attorneys general* have issued formal opinions that certain kinds of records are excluded from the statute.[7] For example, in 1978, Attorney General Rufus Edmisten issued an opinion that "investigative reports and memoranda concerning investigations of crimes are not public records. . .and are therefore not subject to public inspection."[8] These formal opinions are published and carry the force of law until challenged in court.

But the attorney general's office, in advising and counseling state officials (i.e., its clients) also issues informal opinions on a regular basis. Such an informal role can have a powerful effect in preventing the release of documents which some be-

lieve should be available to the public. In 1986, for example, East Carolina University investigated its football program concerning compliance with the rules of the National Collegiate Athletic Association. The investigation stemmed from the firing of ECU football coach Ed Emory. Thornburg and Chief Deputy Attorney General Andrew A. Vanore Jr. advised the ECU officials not to release to the public a sworn statement by Emory, made during the investigation while the investigation was still in progress. They claimed that the statement was part of an ongoing investigation and hence an "interim document," as Vanore puts it, and not covered by the public records law.

The News and Observer wrote a stinging editorial criticizing Thornburg's office for acting "contrary to the public's interest in failing to release that public record promptly." The Jan. 21, 1986 editorial went on to say, "[I]n keeping with its repeated practice of quashing public information at the slightest mention of an 'investigation,' Thornburg and Vanore bring no credit to the Attorney General's Office by defying the state's long commitment to open records."

During the Ashland Chemical spill investigation, officials from the Department of Human Resources (DHR) refused to release preliminary findings, including laboratory test results, for the same reason. They told reporters, including Monte Basgall of *The News and Observer*, that such information could not be made public until the investigation was completed, and referred repeated inquiries to the attorney general's office.

In both cases, the officials eventually released the documents, after the investigations were completed. But the information was lost to the public during the interim, including potential dangers to the public from the Ashland Chemical spill. Only a lawsuit could have forced the ECU and DHR officials to release the information sooner. Without a lawsuit, the informal opinion of the attorney general's office ruled the day. Or as Vanore asserts: "Until a report on an investigation is completed and filed, it is not a matter of public record."

Is The Statute Working?

Under the state law, the most highly publicized cases often stem from newspapers trying to get information for their coverage of a story. What people don't hear much about, however, are the many types of records that are readily available to the public—without conflict or controversy. An enormous amount of information is available to the public, in county courthouses and municipal buildings. Such information can be helpful to everyone from neighborhood groups to potential home buyers to private detectives (see sidebar on pp. 6-9).

Despite the large volume of information readily available under the state's public records act, four important issues have surfaced in recent years regarding how well the statute satisfies various conflicting needs: 1) an individual's right to privacy versus the public's right to know, 2) when is a report completed and therefore a public record?, 3) law enforcement officers' needs to keep investigations confidential versus the public's right to know, and 4) how will the statute adjust to new computer technology?

An individual's right to privacy versus the public's right to know. How much should the public be allowed to know about the private lives of government employees, people seeking government benefits, people who went to a hospital in an ambulance, nursing home patients, or welfare recipients? The answer to this question varies, often depending upon the circumstances.

The law specifies what information about a government employee can be released: name, age, and date of original employment; current position title, most recent promotion, demotion, transfer, suspension, or separation; office to which the employee is currently assigned; and salary, with dates of most recent increase or decrease. Releasing any other information is a misdemeanor, punishable by a fine up to $500.[9] But the law does allow additional information to be released to the public if the city, county, or state officials determine in writing that release "is essential to maintaining public confidence in the administration of . . . services or to maintaining the level and quality of . . . service."[10] Such language establishes room for some subjective judgments, which can lead to differences of opinion regarding information that should be covered by the public records statute.

Usually, when people apply for government benefits of some kind, they have to tell the government something about themselves. The courts have held that those applications are public records, explains David Lawrence of the Institute of Government at the University of North Carolina at Chapel Hill. Public officials, however, often "tenaciously fight giving up that information," says Lawrence, because of the privacy issues involved. Such tenacious fighting reflects the strength and weakness of a broadly worded statute: the law can apply to nearly any situation but it can lead to an invasion of an individual's privacy if abused.

— continued on page 8

A "Tour" of Public Records in a Local Area

If you are active in a neighborhood organization, thinking of buying a house, about to hire someone, or even curious about your girlfriend's divorce proceedings, you can find out a lot in your own county courthouse, municipal building, and other nearby offices. An enormous amount of information is on the public record in North Carolina. *There are no restrictions based on need to know.* Below is a short "tour" of how to find information in your own area. The tour is divided according to whether you want information on: 1) a person, 2) a piece of property, or 3) some other matter. The tour is organized by type of record, listed with the primary location of that record.

Records on People

There are six major types of documents on individuals that can be valuable: driving records, arrest records, criminal court records, voting records, civil court documents, and probate department records. This information can be valuable to citizens for many reasons, ranging from becoming knowledgeable about a public official running for office to finding out background information on a person you might hire for a job.

Driving Record —
N.C. Division of Motor Vehicles. For $4.00, you can write and obtain a person's driving record, which contains a person's address, date of birth, and driving convictions. Having this information is valuable in itself—to know more about a public official, for example. But it also can streamline other types of research in a county courthouse or municipal building. The office might require a person's name and either a birthday or a driver's license number to be sure it is sending the record of the correct person. Contact the N.C. Division of Motor Vehicles, Driving Record Section, 1100 New Bern Ave., Raleigh, N.C. 27697, (919) 733-6838. (You can also obtain information on the owner of a particular vehicle, using only a license tag number; call (919) 733-3025 or write to Vehicle Registration, same address as above.)

Arrest Records —
Local Police Department. If you rent housing or hire people, you might want to check arrest records —all of which are public records. To obtain a listing of all the times a person has been *arrested* in a specific jurisdiction, you'll need full name, address, and probably date of birth. The arrest record does not give the outcome of trials, so the person may have been found *not guilty* of everything listed or the charge might have been dropped. (If you can't get address and birthday from the Division of Motor Vehicles, you can get a person's address from voter records, alphabetical listings of real property owners and personal property owners, a county tax department's motor vehicle listings, or commercial city directories in your area. Voter registration cards also list birthdays.)

Criminal Records —
County Clerk of Court Office. To find out what happened to those arrests *which have come to trial* in both district and superior court, go to the criminal records section of the county clerk of court. The files will include dismissals and acquittals as well as convictions. You can also see the files themselves and in some cases read the record of what happened in court. The clerk of court will also have copies of indictments for crimes that have not yet come to trial, as well as court calendars. In some counties, such as Forsyth County, all police and criminal court records are on the same computer system.

— continued

Jack Betts

Deeds to parcels of property are recorded in thick ledger books in each county courthouse, but many counties have begun transferring these records to computer files.

Campaign and Voting Records —
Local Board of Elections Office. This office, usually in the county courthouse, keeps results of all elections, candidates' campaign expense reports, and candidates' financial disclosure statements. This information, usually made public by reporters, can help voters make more informed decisions. You may also see the files of individuals to see how often they have voted. Voting registration cards provide information on party affiliation, date and place of birth, and sometimes prior addresses. Such information also helps with other research (see "arrest records" above, for example), and it can help inform you about public officials.

Civil Documents —
County Clerk of Court Office. Records concerning lawsuits and divorce cases can be obtained through the clerk's civil division. Such background information can be important for many reasons, from being informed about a public official, to knowing where a neighborhood lawsuit stands, to finding out about your boyfriend's previous marriage. Checking civil lawsuits filed *by* or *against* an individual can tell you a lot, including the amount of a judgment in a suit, whether the judgment has been satisfied, and liens against a person's property. Check with the clerk in your county regarding the index system. It will probably be arranged alphabetically, but you must cover a span of years, which may require more than one volume (i.e., all entries on Mr. John Doe may not be listed together, but according to the date the suit was filed). The index will also tell you which court heard the case (magistrate, district, or superior). Using the case number, you can then ask for the trial record. Usually, divorce cases can be found in the same index. A separate index usually exists for judgments; this index tells you which judgment book to read to find out if the judgment has been paid. This index usually includes liens as well.

Probate Affairs —
County Clerk of Court Office (Civil Division). Here you can typically find wills, records of adoptions, copies of disciplinary actions taken against local lawyers, and a special proceedings index (foreclosures, commitments to mental hospitals, and name changes). If you know the date of a person's death, you can go directly to the proper index and look up a will. Otherwise, you will have to scan volumes for a period of years. Probate records are important for many reasons, from settling estates to tracing one's birthparents.

— continued on next page

Sometimes, situations arise where public and private information are contained within the same record. For example, information on an ambulance trip (called a "trip ticket") might contain private information on a patient's medical condition as well as public information, such as how fast the ambulance responded to the emergency.

What about the privacy of nursing home patients and welfare recipients? In both cases, county departments of social services have to juggle public and private information. For example, after the Cleveland County Department of Social Services studied possible neglect of disabled adults at the Cleveland Care Center (a nursing home) in Shelby, *The Shelby Star* (the local newspaper) and WSOC-TV in nearby Charlotte sought a copy of the report. The Cleveland County Department of Social Services resisted. On Aug. 2, 1985, Superior Court Judge Peter W. Hairston ordered that the report be made public in accordance with the N.C.

Tour, *continued*

Records on Property

Whether you're in the real estate business or just looking for a place to live, a tremendous amount of information is available in public records. The three most important kinds of records are tax records, title/deed information, and building permits and inspections.

Tax Records —

County Tax Office. Here, you can find the amount of taxes levied on real property (buildings and land) and personal property (cars, boats, etc.). This is important if you are considering buying a piece of property or learning background information on an individual (public official, client, etc.). Some counties maintain an alphabetical listing by name of owner and a listing by address. If you know either name or address, finding the property number is quicker. Then you can find out the tax on the property. But property tax records are generally organized by *property number*, which you can get from official county property maps. The maps have broad sectors, subsectors, and individual tracts; hence a typical property number has three parts, e.g., 143-151-08. Map books are organized by the first number; you can find your tract from there, if you know the exact location of the tract (e.g., three tracts down from a specific intersection).

In Mecklenburg County, when you enter the eight-digit property number into one of several computer terminals available to the public, dozens of key facts about the property flash on the screen—number and date of deed, precise location of the property, name and address of the owner, appraised value of the property and improvements, whether taxes were paid, and other facts about the property (acreage, current zoning, year it was built, square footage, etc.). In smaller counties without such full computerized information, you might have to look a little harder, but the property number is the key you need to unlock this storehouse of information.

Finally, the tax office will also have a master list of recent sales and appraisal cards on each house. From these, you can figure out room by room what is on the inside.

Title/Deed Information —

Register of Deeds Office. Using the book and page number of the deed (which you may have or you have just gotten from the tax record), you can find a lot of information in the deed book in the county courthouse. You may need such information if you plan to buy the piece of property. The deed books may be bound volumes or on microfilm (or both). The deed will show you the date the property was last sold, the previous owner, a precise description of the property, and the revenue tax stamps (which give you a good idea of the previous purchase price—revenue stamps are at the rate of $1.00 per $1,000 of purchase price). Since each deed will tell you the number of the preceding deed, you can walk back through the entire history of the house to the time when the property was vacant land. (Many other technical matters could be involved with the property; if you want to buy the property, you should consider a formal title examination.)

If you don't know the book and page number of the deed but do know the name of the current owner, you'll have a more cumbersome task using either the grantor (seller) or

—continued

public record statute.[11] Before releasing the report, Judge Hairston excised the names of those who received public assistance and of those who registered complaints or furnished information for the investigation, along with some personal and medical information.

In 1975, in another significant case, *The Alamance [County] News* of Graham sought the names of welfare recipients from the Alamance County Department of Social Services (DSS). The county DSS resisted, but the newspaper did get the names from the county's finance office —and then published the names. The N.C. Division of Social Services requested a ruling on the issue from the attorney general's office. On May 3, 1976, Attorney General Edmisten responded with a formal opinion.[12] It interpreted the N.C. social services statute, which said that the monthly public assistance recipient register must be available to the public but that "information contained

grantee (buyer) index. With the exact name of the current owner, you can find the property deed information through the grantee index, which is grouped by periods of years. Then you can follow the procedure explained above.

Building Permits and Inspections —
Office Varies. Depending on where a piece of property is located, you will find a building inspector's office in either a municipal or county building. This office will have a record of all building permits and inspections, including electrical, plumbing, heating and air conditioning, etc. These records should be available for every major remodeling job as well as for initial construction. Here you can find reports of violations of building codes, which can be very important regarding everything from rundown nursing homes to a non-residential-looking addition to your neighbor's house.

Other Records

A wealth of information is available from county and municipal records. A few of these records are included below.

Corporate Records —
Register of Deeds Office. Here you can locate an index to, and copies of, articles of incorporation of virtually every local company (including records of mergers, dissolutions, and suspensions of corporations), partnership agreements, and notaries public (past and present). The office can help you determine what has been pledged as collateral in a loan (but not the amount of the loan). (The N.C. Secretary of State's office also has the charter of every company and organization licensed to do business in North Carolina.) Such records can help supply important information on the involvement of public officials with private ventures.

General County Records —
County Courthouse or Office Building. Public records include minutes of meetings of the boards of county commissioners, county ordinances, check ledgers showing who got checks from the county, general ledgers, and county budgets. You can ask for a line item budget. Some county records might be difficult to obtain, especially those from departments of social services (see main article, pp. 8-10).

Municipal Records —
City Hall. The documents most often requested are city council minutes and copies of city ordinances. A tape of a city council meeting is a public record as well.

Death and Birth Certificates —
County Health Department. You will need the approximate year and full name of the deceased for a death certificate. For a birth certificate, you'll need the approximate year of birth and full name of the child and/or the parents. You might need a birth certificate to travel abroad or for school purposes.

Zoning Records —
Planning Departments. To check the zoning of a tract and surrounding property, check the maps maintained by the planning department. This department (in counties and large cities) will also have records of zoning requests and master plans that may suggest future rezonings that could alter the residential character of your neighborhood. Such information is invaluable to neighborhood groups, the building industry, and others involved in how fast a community grows. *—Robert Conn*

therein may not be used for any commercial or political purpose."[13] This language "would preclude in our opinion, the publication of the names of public assistance recipients, their addresses, and the amounts of individual monthly grants by the media," concluded Edmisten and then Assistant Attorney General William "Woody" Webb. "Neither a copy of the register [of welfare recipients] nor information derived therefrom may be published by the news media."

When is a report completed and therefore a public record? This question remains one of the grayest areas of the law. In both the East Carolina University and Ashland Chemical investigations, the disputes over documents hinged on timing—*when* would a document become available to the press, and hence the public. "When investigations are completed—general *non*-criminal investigations—then those investigations become public records," contends Vanore of the attorney general's office. But others insist that documents must become public earlier, including a judge in another sports-related issue involving state universities.

In 1985, the University of North Carolina Board of Governors directed the president to issue a report about athletics within the university system. In 1986, C.D. Spangler Jr., the new president of the UNC system, directed the chancellors of the 16 universities in the system to provide him with information on their athletic programs. With the role of athletics at universities prominent in the news, *The News and Observer* wanted to see copies of the reports from the 16-member schools to President Spangler. Spangler resisted, saying this information was an interim document until he released it to his Board of Governors, and hence not available to the press until his Board of Governors had seen it first.

On Oct. 24, 1986, *The News and Observer* filed a complaint in Wake County Superior Court asking for the material under the public records law. On Nov. 6, 1986, Superior Court Judge D. Marsh McLelland concluded that the information under debate *was* a public record under N.C. law. President Spangler did release the material after he presented it to the UNC Board of Governors. He is also appealing the ruling to the N.C. Court of Appeals.

Despite such complex situations, Hugh Stevens, general counsel for the N.C. Press Association, says that some guideposts can determine when a document becomes a public record. "A document or a report results from an evolutionary process," says Stevens. "It is presumptuous of us to want to see a document in the process of being created." Stevens looks for evidence that a document is essentially complete, even if in draft form. "If it has been bound and copied, it's a document," whether a city manager or other official has signed it or not, says Stevens.

Law enforcement officers' needs to keep investigations confidential versus the public's right to know. The N.C. Supreme Court, as mentioned earlier, has exempted investigations *by the SBI* from the open records law. But the status of other law enforcement investigations under the public records law is not always clear. Currently, some cities rely on a 1975 attorney general's opinion as the basis for withholding *police* investigation files and supplemental reports from the public.[14]

Police investigative reports have to be confidential and outside the public records statute, says Vanore, because "we've got to balance the right of the public to know with good law enforcement." At issue is permanent confidentiality, not a question of timing. "Oftentimes, a person will not give information to the police about alleged crimes unless their names are kept confidential," continues Vanore. "After a case was over, if a complete report was then released, that would undermine that confidence that the public must have in the police. Attorney general opinions going back to 1972 have consistently expressed the same view. This indicates that the General Assembly has essentially agreed with that view," asserts Vanore. "If it had not, [the legislators] could have changed the law or put something in the law to make it clearer."

The SBI and police investigative files should be withheld because much of what goes into such investigative files is hearsay and because opening up these files would identify informants and thus dry up sources for law enforcement officials, adds Thornburg.

The issue is not always so clearcut, however. In Charlotte, for example, city attorney Underhill applies the attorney general's opinion not only to police investigative reports but also to what are known as supplementary reports. Routine crime reports, which *are* open to the public, often contain very little information, with a note saying "see supplement." Without access to the supplement, a citizen cannot find out what happened in a particular crime. Closed criminal investigation files can keep the public from knowing important information, such as a suspected series of murders.

"The problem comes in controlling what really is part and parcel of an investigation versus what someone just throws into an investigation

— *continued on page 12*

N.C. "Right-to-Know" Law — New Information for the Public

In 1985, the N.C. General Assembly granted the public access to a sizable new body of information. After a spirited debate, the legislature passed the "Hazardous Chemicals Right To Know Act" in the closing days of the session.[1] The law provided that by May 25, 1986, employers had to notify the fire chief in their area if they have more than 55 gallons or 500 pounds of a hazardous material on the premises. Also, these employers have to provide information on such chemicals to any citizen requesting it. The law has come to be known as the "right-to-know" act.

This act has the capability of making a large body of information available to the public, as does the state's public records law. While both laws establish a system for getting information to the public, the right-to-know act goes a step further than requiring *government documents* be available to the public. It requires *private businesses* to report information on hazardous chemicals to the public. The law also contains a special section called "withholding hazardous substance trade secret information," providing companies a means of reporting the necessary information on hazardous chemicals without revealing industry trade secrets, which could give competitors an unfair advantage.[2]

The right-to-know act reflects a belief that citizens have a right to information from private companies if a company uses or produces chemicals that are hazardous. In a June 28, 1985 editorial, *The Charlotte Observer* explained this right as "the principle that people potentially affected by hazardous chemicals ought to be warned of the risks around them."

Under the public records law, a citizen generally goes to a depository of information and uses those records. Under the right-to-know law, a citizen must go directly to the business involved and has to follow a procedure to obtain the information. In other words, the information is not as readily available—except to fire chiefs and emergency planning personnel.

Shortly after May 25, 1986, the date the law took effect, a nonprofit advocacy group called the N.C. Occupational Safety and Health Project (NCOSH) submitted some 25 requests for information under the law. The group felt that 15 companies did not comply with their request and filed complaints about these 15 companies with the N.C. Department of Labor. "We investigated all of these and resolved them successfully," says Charles Jeffress, assistant commissioner of labor. The companies eventually provided the information to NCOSH.

The Department of Labor is seeking action from the 1987 General Assembly to amend the state's right-to-know act to match new federal reporting requirements.[3] The staggered dates of the federal requirements, beginning in 1987 and reaching the most detailed reporting stage in 1988, stem from Title 3 of the federal Superfund Amendments and Reauthorization Act of 1986, commonly known as SARA.

An estimated 575,000 different chemical products now exist in the United States. As technology changes, so do the needs of the public regarding access to records. The right-to-know law adds another avenue to information, which can work in a complementary way with the state's public records law.

— Bill Finger

FOOTNOTES

[1]N.C.G.S. Chapter 95, Article 18.
[2]N.C.G.S. 95-197.
[3]40 Code of Federal Regulations 370; see HB 649.

Jack Betts

Wake County Register of Deeds Kenneth Wilkins demonstrates his office's new computerized records file, which includes information on deeds, ownership, a parcel's ownership history, and tax information.

file to keep it confidential," says Hugh Stevens. "There is a pretty professional attitude in most law enforcement in North Carolina. But there are always a few who see law enforcement as none of the people's business and throw everything into an investigation file. You can cover up everything from ineptitude to corruption," he continues. "No policy or law will solve that problem. Eternal vigilance is how you can deal with it. That is the responsibility of the press."

How will the statute adjust to new computer technology? An overriding concern spans many of the areas discussed above—access to computer records. Computer records are generally considered just as public as if the information were kept on paper, or "hard" copy. "Computers are just a more sophisticated method of record keeping, governed by the same rules," says Thornburg. "I don't see any distinction." But that doesn't mean there aren't problems.

David Lawrence of the Institute of Government raises one of the issues. "There's no question you have a right to a copy," says Lawrence, "*if* you are willing to pay."

The level of fees can be difficult for the supplier of the data as well as for the public. "The question of charging for access is a hotly debated issue," writes Pamela Akison in a *State Legislatures* magazine article focusing on computerized records.[15] "It is a question not so much of whether a legislature should charge some fee (as it does for many of its published documents) but how much it should charge."

Another technological issue is weighing ease of access against dangers of having computer records altered. More and more government offices are setting up public terminals to allow easy access to some records but on a "read only" basis, so a person can't accidentally (or intentionally) alter the record while working at a terminal.

"There's a lot of tension on how to regulate access to computerized records," says Lawrence. "This question has not been sorted out by any legislature in any state. It will be the big issue in the next 10 years or so."

Conclusion

Should the public records law be changed? Probably not, say attorneys in the field. David Lawrence of the Institute of Government notes that about six years ago—*before* the 1981 decisions interpreted the statute—a committee with representatives of the press, broadcasters, local government, and the state Division of Archives and History in the Department of Cultural Resources considered revising the statute. "Everyone agreed that the best thing to do was not to touch it," he explains. "Everyone was afraid what might happen if the legislature started to mess with it. They didn't want to lose what they had."[16]

The feeling seems even stronger today. "The press has a great reluctance to tamper with a law that is as broadly worded as ours is," says Hugh Stevens. "The law is so broad, so clear, so concise—the burden lies with someone trying to get out from under it."

This sentiment seems to hold for those government officials that have to comply with the law most often. "I don't think municipal officers have any problems with [the law]," says Laura Krani-

feld, assistant general counsel for the N.C. League of Municipalities.

What if North Carolina tried to alter its law? "It might look like a Christmas tree when all the exceptions got attached to it," says Jonathan Buchan, *The Charlotte Observer*'s attorney. When Illinois went from a statute like North Carolina's to a Freedom of Information Act, "problems went up several hundred percent," says Elaine English, director of the Freedom of Information Service Center in Washington. Information that once was speedily released now is routinely delayed.

But does the law have any teeth? There is no penalty in G.S. 132-6, which requires people who watch over public records to make them available. The only remedy found for violations of the public records law is G.S. 132-9, which allows a citizen to apply for a court order compelling disclosure.

In 1983, the legislature partially addressed this concern, but many people don't know about it, because the new law was not codified with the public records law (G.S. Chapter 132). The remedy was added instead to G.S. 6-19.2, within a section of the statutes dealing with civil court actions. This remedy says that if the court agrees with a citizen's claim that a record is public, the agency that withheld the record *may* be compelled to pay the attorney's fees of the citizen. The law goes on to mandate that any such fees have to be paid from the agency's operating budget and "shall not be reimbursed from any other source."

Another issue concerning better implementation of the current law is how to get information available to the public during litigation. When a case goes to court, the material under question can remain outside of public view for years. "There is the need for some type of summary procedure, so newspapers can get it more quickly," says William Lassiter, for many years counsel for the N.C. Press Association.

The real key to public records is educating public officials, says Hugh Stevens. "Too many public officials at all levels don't really approach questions about public documents in the right spirit. They react as if what is in the file is a personal document."

A broadly worded statute seems to provide North Carolinians with the best access to information about how their government works. Even with it, however, questions will continue to arise. Complying with the *spirit* of the law, then, becomes critical. "If public officials have the day-in, day-out knowledge that they are subject to being looked at by anybody who walks in off the street, there is little risk that government will be corrupt or that the public will lack confidence in the honesty of its elected officials," says Jonathan Buchan.

Indeed, perhaps no other single law provides as valuable a "key to good government" as the state's guarantee of public access to government records.

FOOTNOTES

[1]William McBlief, "Public Access to Public Records in North Carolina: The Key to Good Government," 60 N.C.L. Rev. 853 (1982).

[2]Fred Harwell, *The Right to Be Able to Know: Public Access to Public Information* (1978), a report by the N.C. Center for Public Policy Research, pp. 31–32; quote in the next paragraph, p. 33.

[3]For more on the Freedom of Information Act, see "How to Use the Federal FOI Act," FOI Service Center (Washington), 1985 (available for $3 from 800 18th St. N.W., Suite 300, Washington, D.C. 20006); *The Reporter's Handbook*, edited by John Ullman and Steve Honeyman, St. Martin's Press (New York), 1983; and for direct assistance, call the FOI Hotline, 1-800-336-4243.

[4]*The News and Observer Publishing Co. v. Wake County Hospital System, Inc.*, 55 N.C. App. 1, 284 S.E.2d 542 (1981) *pet. for discret. rev. denied*, 305 N.C. 302, 291 S.E.2d 151 (1982); *app. dismissed, cert. denied*, 459 U.S. 803, 103 S.Ct. 26, 74 L.Ed.2d 42 (1982); 27 A.L.R. 4th 731; and *Advance Publications v. The City of Elizabeth City*, 53 N.C. App. 504, 281 S.E.2d 69-71 (1981).

[5]N.C.G.S. 132-1.1. The N.C. Press Association and the N.C. Association of Broadcasters publish pamphlets on public records, public meetings, and other so-called "sunshine" laws. They are currently preparing an updated version of this information, which contains statutory exceptions to the open records law. For a copy of the pamphlet, contact the N.C. Press Association, 5 W. Hargett St., Raleigh, N.C. 27602, (919) 821-1435, or the N.C. Association of Broadcasters, P.O. Box 627, Raleigh, N.C. 27602, (919) 821-7300.

[6]*The News and Observer Publishing Co. v. State ex rel. Starling*, 312 N.C. 276, 322 S.E.2d 133 (1984). The second paragraph of N.C.G.S. 114-15 reads, in part: "All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1 . . . ."

[7]For a summary of these opinions, and of major court decisions regarding public records, see the notes in the statute books that follow N.C.G.S. 132-1.

[8]48 N.C. Attorney General 66 (1978). Formal attorney general opinions are published by the attorney general's office ($5.25 per volume); also formal opinions affecting the Administrative Procedure Act (N.C.G.S. Chapter 150B) are published in *The North Carolina Register*. Informal opinions, made through correspondence, memoranda, and other means, are not published but can be examined in the attorney general's office — if you know what to ask for.

[9]For city employee records, see G.S. 160A-168(b), (e), and (f); for county employees, see G.S. 153A-98(b), (e), and (f); for state employees, see G.S. 126-23 and 126-27.

[10]G.S. 160A-168(c)(7) and 153A-98(c)(7); regarding state employees, see G.S. 126-24, final paragraph.

[11]*Carolina Broadcasting Co. v. Smith*, Superior Court, Cleveland County, 85 CVS 722.

[12]45 N.C. Attorney General 273 (1976), quotes later in the paragraph from p. 275 and p. 274, respectfully.

[13]N.C.G.S. 108-45(b), now codified as 108A-80(b).

[14]44 N.C. Attorney General 340 (1975).

[15]Pamela Akison, "State Records: Are They Up for Grabs?" *State Legislatures* magazine, Conference on State Legislatures, (Denver, Col.), August 1986, p. 29.

[16]For a current overview of the law, see David M. Lawrence and Joseph D. Johnson, "Interpreting North Carolina's Public Records Law," Local Government Law Bulletin No. 27, Institute of Government, University of North Carolina at Chapel Hill, April 1987.

THE MERIT SELECTION DEBATE

For decades, politicians, lawyers, and political scientists have debated how to choose judges—by popular election, by direct appointment, or by a screening process that has come to be known as "merit selection." Nationally, 17 states use a form of merit selection that includes (1) a nominating commission to screen judicial candidates, (2) gubernatorial appointments of judges from a list of those nominees, sometimes with legislative confirmation, and (3) retention elections in which voters determine whether a judge serves another term.

Should North Carolina switch from its current elective system to a merit selection system? Judges in this state must run for election, but the record shows that most of our judges first get to the bench via gubernatorial appointment, and then usually win re-election. Would merit selection improve the selection of judges? Or would the state be wiser to retain its current system, with perhaps some modifications that would enhance public confidence in the judiciary?

This three-part package—an introduction describing North Carolina's system, a "pro"-merit selection article by former state Rep. Parks Helms of Charlotte, and a "con"-merit selection article by N.C. State University professors Joel Rosch and Eva R. Rubin —explores what's involved in the debate over judicial election reform.

Still Waiting in Legislative Wings

by Jack Betts

Voters in the 1974 Republican primary for Supreme Court Chief Justice had an intriguing choice of candidates from which to choose—something of an anomaly in North Carolina, where seldom is there more than one GOP candidate for a statewide post or even a Republican primary. But in that race, Republicans could choose between two candidates whose background presented a razor-sharp contrast: District Court Judge Elreta Alexander of Greensboro, a black woman and outspoken trial judge with years of courtroom experience; and James Newcombe, a fire extinguisher equipment salesman from Laurinburg who not only had no judicial experience, he didn't even have a law degree.

Guess who won? That's right—Newcombe, who took 59 percent of the vote in the primary. To his dismay, however, the Republican Party hierarchy declined to support him in the general election, and Associate Justice Susie Sharp, the Democratic nominee, handily won the race. A few years later, North Carolina voters adopted a constitutional amendment requiring that all judges be licensed to practice law in North Carolina; a direct outgrowth of the 1974 primary.[1] But ever since, the debate has waxed and waned as to whether North Carolina has the proper method of choosing its judges.

In fact, North Carolinians have been bickering since Colonial days over the way its judges have been chosen. More than 200 years ago, the British Crown appointed judges in this colony, antagonizing the Lords Proprietors who saw the Crown's influence as an abridgment of their powers granted by Royal Charter, and annoying colonists who thought they should be allowed to judge their own affairs. When that unseemly system was dispatched by the American Revolution, such weighty matters as choosing judges and governors were delegated to the North Carolina General Assembly. For nearly a century, the legislature appointed the state's judiciary to "hold their offices during good behavior," as the 1776 Constitution allowed.

Another war once again changed the way judges were chosen. In the Reconstruction aftermath of the Civil War, a new Constitution was adopted in 1868 that for the first time embraced Jacksonian democracy and gave the citizens of North Carolina the power to elect trial and appellate judges. So it has remained ever since—despite periodic calls for yet another change in the selection of District, Superior, Court of Appeals, and Supreme Court judges. This movement to alter the selection process has generally proposed instead a process known around the country as "merit selection" of judges. It refers to choosing judges by:

- Naming a bipartisan commission to screen a pool of candidates for a judicial vacancy and making a recommendation to an appointing authority, usually a governor but sometimes a legislature;
- Authorizing appointment of a qualified candidate, and sometimes requiring confirmation by a legislative body; and
- Usually requiring the judge to stand for a "retention" vote after a certain period in office. Voters are asked only whether a judge should be retained in office. If a certain percentage—sometimes a simple majority, sometimes a three-fifths majority—vote yes, the judge then serves a full term, whereupon another retention vote is taken; if the vote is no, a vacancy is declared and the nominating and appointment process begins anew.

Jack Betts is associate editor of North Carolina Insight.

Scores of permutations and combinations of certain elements of these plans and of other methods—such as non-partisan statewide elections —have been debated and sometimes adopted by various states. Some use merit plans only for trial judges; others, for appellate judges only. See Table 1, p. 18, for more.

Why adopt such a change? The arguments for a merit selection plan generally include the following: The present, partisan system of election discourages qualified lawyers from running for judgeships; the cost of politicking on a statewide basis is too high and requires candidates to seek funds from lawyers who may have cases before that judge; voters already faced with an unusally long statewide ballot and a lack of information about candidates don't have the time or resources to become familiar with them and make a good choice, and merit selection has worked well in other states. Attorney and former state Rep. Parks Helms of Charlotte outlines the case *for* merit selection on page 22.

The arguments against merit selection generally include: Merit selection plans have not worked that well in other states; the system yanks power from its proper place—with the people—and deposits it in the hands of the select few; North Carolina has had a good judiciary under the current system; and changing to merit selection merely alters the way judicial candidates must run for office, rather than eliminating such politicking. The case *against* merit selection is prosecuted on page 28 by N.C. State Political Science Professors Joel Rosch and Eva Rubin.

These arguments have been batted back and forth for most of the 20th century following growing national dissatisfaction with the politicization of the judicial selection process, according to Keith Goehring, a staff attorney with the National Center for State Courts in Williamsburg, Va.[2] Goehring's research attributes the development of merit selection plans in the early 1900s to Albert M. Kales, a law professor at Northwestern University, and Harold Laski, an English political scientist. They developed what eventually came to be known as the Missouri Plan—not to be confused with the Missouri Compromise. Their plan was first adopted by the state of Missouri in 1940, and has been embraced in some form by at least 30 states, according to *The National Law Journal*.[3] Other states have adopted elements of the Missouri Plan for use in choosing their judges. The Missouri Plan in Missouri, by the way, applies to appellate and circuit court judges; lower court judges continue to be chosen by partisan election.

North Carolina has been toying with the notion of merit selection for 12 years. In the 1975 General Assembly, efforts were made to push for a constitutional amendment after the N.C. Courts Commission endorsed merit selection, but it ultimately failed. In part, the bill went nowhere because it lacked the support of then-Lt. Gov. James B. Hunt Jr., at the time the state's chief Democratic official, and of Chief Justice Susie Sharp. It wasn't that Sharp opposed merit selection. In fact, she supported it but objected to the 1975 legislation because she believed the nominating commission would not have adequately reflected the state's judicial districts.[4] Two years later, she endorsed another attempt, sponsored by Rep. Parks Helms, (D-Mecklenburg), that resolved her concerns.

Sharp was especially concerned over the quality of the state's lower courts. "We have many excellent district court judges," she wrote Helms in 1977. "Some are outstanding jurists. Unfortunately, however, a minority of these judges are so highly unqualified that they are damaging the image of that echelon; and if we continue to elect such judges, they will inevitably tarnish the image of the entire judiciary."


SUSIE SHARP

However, the bill still lacked the support of Governor Hunt, who waited until the proposal had been killed in committee before he endorsed it—at least as a proposal worth further debate. Hunt's attitude at first was rather like that of Chicago Mayor Richard J. Daley. Under some lobbying heat to have judges appointed rather than elected, Daley is said to have asked, "What's all this fuss about merit selection? We already got it. If they have merit, we select 'em." The Governor's belief was that no such plan was needed to fill vacancies in North Carolina.

But that summer, as Hunt was about to fill several judicial vacancies created by action of the legislature, political allies warned him that some of the candidates he was about to pick might cause him embarrassment. A short time later, the Governor signed his Executive Order Number 12, setting up a merit selection plan for the selection of Superior Court judges in North Carolina.[5] Hunt used that process to fill dozens of Superior Court judgeships—though not appellate vacancies—during his administrations. Hunt demurred on extending the process to Court of Appeals and Supreme Court vacancies because, he said, he knew the

meritorious candidates well enough to make choices without a nominating commission's help.

North Carolina's Constitution, of course, requires that judgeships be filled by elections, except when vacancies occur between elections.[6] Judges of the Supreme Court, the Court of Appeals, and Superior Courts run on the statewide ballot, while District Court judges run within their judicial districts. This can make for an extremely long ballot. As many as 26 Superior Court judges and nine appellate judges can appear on the statewide ballot—35 judges in all, plus whatever District Judges are running within a voter's individual county.

But the fact of the matter is that most judgeships are *not* filled by election. In practice, most state judgeship vacancies are filled by appointment of the governor, which does not require the confirmation of the legislature. These vacancies routinely occur because of resignations, retirements, and occasionally death in office. The chief executive appoints judges to fill these posts, and the judge must stand for election for his post in the next regularly scheduled general election.

That means a lot of elections. North Carolina has 242 judgeships—not counting retired judges who may be called upon to fill in during busy court dockets. There are seven Supreme Court justices, 12 judges of the Court of Appeals, eight Special Superior Court judges (who must be appointed by the governor and who do *not* stand for election or re-election), 64 regular Superior Court judges, and 151 District Court judges. That's a total of 242 judgeships, and 234 of those are subject to regular elections. (District Court judges serve four-year terms; all others serve eight-year terms, except Special Superior Court judges, who are appointed for four-year terms.)

Despite North Carolina's electoral system, most of our judges initially are *appointed* to the bench. For instance, of the seven Supreme Court judges, only three reached the court first by election—Chief Justice Jim Exum and Associate Justices Willis Whichard and John Webb. But all three of *those* judges first got to the bench via a governor's appointment—Exum to the Superior Court by Gov. Dan K. Moore, and Webb and Whichard to the Court of Appeals by Governor Hunt. In other words, 100 percent of the Supreme Court first became judges by gubernatorial appointments.

On the Court of Appeals, only five of the 12 judges were elected to the court originally, while seven first reached the court by gubernatorial appointment—nearly 60 percent of the judges. For the appellate division as a whole, 13 of the 19 judges first reached the appellate courts thanks to gubernatorial largesse—68 percent of the appellate judiciary.

A majority of the state's trial division judges also reach the bench first through appointment, says Franklin Freeman, Administrative Officer of the Courts. "The majority of District and Superior Court judges are appointed," says Freeman. "The greater majority of these are Superior Court judges. Only fairly recently have we had a majority of District Court judges appointed, too." A 1985 study by the legislature's General Research Division found that of the 237 then-sitting judges, only one-third had reached the bench via elections, while two-thirds had been appointed. An update of that research on April 1, 1987 by the N.C. Center for Public Policy Research shows that following the 1986 election, about 59 percent of North Carolina's judiciary were appointed, and about 41 percent were elected (See Table 2, p. 20).

FRANKLIN FREEMAN

Occasionally, some of North Carolina's judges have run afoul of the law themselves and have been defrocked by the state Supreme Court, which has final authority. The N.C. Judicial Standards Commission was created in 1973 to make recommendations to the N.C. Supreme Court in cases of misconduct in office. Since 1973, four N.C. judges have been removed from the bench, six more have been censured, and one censure recommendation is pending before the Supreme Court (See Table 5, p. 31, for more).

Another issue vexing North Carolina policymakers is the perennial flap over whether North Carolina's 64 regular Superior Court judges should be elected statewide. Under present law, the candidates for these judgeships are nominated within their own judicial districts, but they appear on the statewide ballot. As a consequence, say opponents, voters in other areas of the state often do not know who these judges are or how to make a choice among the candidates. Republicans particularly argue that the system works to keep both Republicans and blacks off the bench, because the measure dilutes their voting strength and assures that Democratic candidates, running statewide where the voter registration ratio is more than 2-1 Democrat-Republican, will always win. No Republicans, and only two blacks, have been elected to Superior Court judgeships in this century under

Table 1. State Systems for Regular Selection of State Judges

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan
Alabama	X				
Alaska					X
Arizona		X			X
Arkansas	X				
California		X	X		
Colorado					X
Connecticut			X		
Delaware			X		
Florida		X			X
Georgia		X			
Hawaii					X
Idaho		X			
Illinois	X				
Indiana	X				X
Iowa					X
Kansas	X				X
Kentucky		X			
Louisiana		X			
Maine			X		
Maryland			X		
Massachusetts			X		
Michigan		X			
Minnesota		X			
Mississippi	X				
Missouri	X				X
Montana		X			
Nebraska					X
Nevada		X			
New Hampshire			X		
New Jersey			X		
New Mexico	X				
New York	X				X
North Carolina	X				
North Dakota		X			
Ohio		X			
Oklahoma		X			X
Oregon		X			
Pennsylvania	X				
Rhode Island			X	X	
South Carolina				X	
South Dakota		X			X
Tennessee	X				X
Texas	X				
Utah					X
Vermont					X
Virginia				X	
Washington		X			
West Virginia	X				
Wisconsin		X			
Wyoming					X
TOTALS:	**14**	**18**	**9**	**3**	**17**

Note: Many states have a mixture of judicial selection plans, and states may appear in more than one category in this list. States are classified according to the system they use for the regular selection of judges, rather than for the filling of vacancies or for staffing minor trial courts.

Sources: The Book of the States, 1986-87 edition; and Lawrence Baum, *American Courts*, Houghton Mifflin, 1986, p. 94.

Rhoda Billings was appointed by Governor Martin as the first Republican Chief Justice since 1902.

the system.

Curiously, the North Carolina Constitution *allows* the General Assembly to approve elections of Superior Court judges within their own districts.[7] That provision was adopted in 1875, but the legislature has never seen fit to employ it, and now the state Republican Party has sued the state in an effort to force a change in the way Superior Court judges are elected.[8] In a similar case in Mississippi, a federal judge ruled April 2, 1987 that judges are legally representatives of the people and their election is subject to the U.S. Voting Rights Act, which bans any election procedure that would make it difficult for blacks or other minorities to elect their own representatives.

Meanwhile, GOP members of the legislature, led by state Sen. Laurence Cobb (R-Mecklenburg), are pushing for legislation to require that Superior Court judges be elected within their judicial districts and not statewide. Actually, Cobb would go further, by putting Superior Court and District Court judicial elections on a *nonpartisan* basis as well as electing both within their judicial districts only. Democrats have responded by sponsoring another bill that would redistrict Superior Court judges across the state, a ploy they hope will stave off judicial intervention.[9] This new law (if passed) would eliminate the Special Superior Court judgeships appointed by the Governor and convert them to elected judgeships; create 10 Superior Court districts with black voting majorities, allowing black judges to be nominated from within those districts; and expand the number of Superior Court judges by one, to 73. Supporters of the legislation believe it will encourage the plaintiffs to withdraw their lawsuits against the state, but opponents are not so sure. And, some opponents say, the bill will have to be submitted to the U.S. Justice Department for clearing on Voting Rights Act grounds.

The merit selection movement in North Carolina was making no headway by the mid-1980s. The big push for such judicial election reform had peaked a decade earlier,[10] and though Gov. Jim Martin supports merit selection, it was not given much chance in the legislature—until the judicial campaign of 1986. In that race, Martin sought to put his imprint on the state judiciary. Chucking caution and tradition out the window when then-Chief Justice Joseph Branch announced his retirement in mid-1986, Martin elevated GOP Associate Justice Rhoda Billings over Associate Justice Exum, then the most senior associate justice, for the Chief Justice vacancy. Longtime tradition required that governors appoint the next most experienced justice as Chief Justice, and every Democratic governor in the 20th century had followed the custom when the opportunity arose. For Hunt in 1977, that had been a hard pill to swallow. Hunt had wanted to anoint his college chum, J. Phil Carlton, as the new Chief Justice. In the end, however, Hunt had gone along with tradition and chosen Branch. Now Martin, the first GOP governor in this century with a crack at picking a chief, declined to jump through the Democrats' hoop. Instead, Martin went with party loyalty despite an extraordinary public plea for the post by Exum. For a brief time—September, October and November—Billings was Chief Justice, her party's first since 1902. But the law required her to run for the unexpired portion of Branch's old term, and Exum retired from his post to campaign for it too.

Chief Justice James Exum, who won the 1986 election, has asked the N.C. Courts Commission for a study commission to examine judicial selection methods.

Table 2. Number of N.C. Judges Who First Reached Bench Via Appointment vs. Election

Court	Number of Judges	Number Appointed	% of Whole	Number Elected	% of Whole
Supreme Court	7	4	57%	3	43%
Court of Appeals	12	7	58%	5	42%
Superior Court	64	46	72%	18	28%
District Court	151	81	54%	70	46%
TOTALS	**234**	**138**	**59%**	**96**	**41%**

Source: General Research Division, N.C. General Assembly; and Governor's Appointments Office, Office of the Governor.

Note: Chart includes only active judges, not emergency, retired, or Special Superior Court judges, *all* of whom must be *appointed* by the Governor. Table refers to how a judge originally reached his current judgeship. Re-elections are not reflected in table.

The fall of 1986 witnessed what many political observers describe as the most bitter election in N.C. Supreme Court history. A group calling itself Citizens for a Conservative Court attacked Exum's record, charging that he was not sufficiently conservative because in a number of cases he had voted against upholding the state's death penalty. The committee's charges created a stink, despite the fact that the record showed a number of inconsistencies in its charges. Exum had also, it turned out, voted to uphold the death penalty in some cases, while Billings had voted against imposing the death penalty on occasion. And the chairman of Citizens for a Conservative Court was former Gov. Jim Holshouser—himself a supporter of merit selection —and who had *opposed the death penalty* when he was a member of the House of Representatives.

Rather than harm Exum's chances, the committee's attack seemed to focus attention on the race, and may have backfired by creating a backlash vote for Exum from voters concerned about politicizing the courts. In the end, Exum won the race handily (by slightly over 55 percent, polling 152,000 more votes than Billings). That was the first defeat of a sitting Chief Justice since 1902, when Democrat Walter Clark defeated Republican Chief Justice David Furches for the top spot. The 1986 election returned the high court to total Democratic domination as three Republicans lost their seats.

Exum, himself a long supporter of merit selection, is using the unseemly specter of the 1986 election as evidence that North Carolina should devise a better way of choosing its judges. In January 1987, the Chief Justice asked the N.C. Courts Commission to name a special study commission to examine North Carolina's judicial selection methods. Exum said the state's Democratic leadership would have to be persuaded that a change should be undertaken, and that a study commission might help attract support for a merit selection plan. "I have no illusions about the difficulty of devising this kind of mechanism," Exum said.

Not everyone is satisfied with that strategy, of course. C. Allen Foster, a Republican activist from Greensboro who has filed two lawsuits against the state challenging judicial selection methods, said the Courts Commission should have urged swift action. "This matter has been studied to death," said Foster. "My clients are not willing to let another election pass."

He and his clients may have to wait, unless

the courts act first. State Sen. Charles Hipps (D-Haywood) has introduced legislation to create a commission of 20 members to research the various methods of judicial selection in the United States, devise a new plan for North Carolina, and make a final report to the 1989 General Assembly.[11] The bill has the backing of Lt. Gov. Robert B. Jordan III, who is not committed to any one particular plan but who hopes to build consensus for a change. That means it may be two years before the legislature can make a decision on judicial election reform—and two years in which Governor Martin can help make the case for merit selection of judges.

The Governor has campaigned for merit selection since he took office in 1985. In June 1986, Martin told the N.C. Bar Association that the current system "is a perk of partisanship. It is the outmoded legacy of single-party dominance in our state, to a large extent institutionalized by law. It is a holdover patronage system cloaked in constitutional respectability." Martin said he did not know which merit system would be best for North Carolina, "But I do know that the present system is outmoded and wrong and is unfair and is against the best interests of our people."[12]

Martin promised the group that he would appoint "in the near future" a special nonpartisan commission to develop a merit system to recommend to the people "a system by which the members of our judiciary may be selected in a fair, understandable, and nonpartisan manner."

Nearly a year later, the Governor has *not yet* appointed that commission—nor has he followed in Governor Hunt's footsteps by issuing an executive order setting up a voluntary merit system even for Superior Court judges. Without a stronger gubernatorial commitment to merit selection, legislators may be reluctant to rush pell-mell into the merit-selection thicket.

Martin insists he's still committed to merit selection but says his efforts have been frustrated by a series of events. He said he had planned to set up his merit-selection study in the summer of 1986, but, "It got bogged down by the election campaign and because I appointed Republicans to the Supreme Court." Following the campaign, he said he met opposition to his plan from the bar and from legislative leaders. He added ruefully, "Right now, I don't know how we'll get out of this jam."

FOOTNOTES

[1]Article IV, Section 22, N.C. Constitution, first passed by the legislature as Chapter 638 of the 1979 Session Laws, and then approved by the voters November 4, 1980.

[2]Keith Goehring, "Judicial Selection Procedures," memorandum prepared for the National Center for State Courts, Williamsburg, Va., June 28, 1985, p 2.

[3]Paul Wenske, "Dissension Rocks Missouri Justices," *The National Law Journal*, May 27, 1985, p. 26.

[4]Correspondence from Chief Justice Susie Sharp to the Hon. H. Parks Helms, March 9, 1977, p. 2.

[5]Executive Order Number 12, by James B. Hunt Jr., Governor of North Carolina, July 28, 1977.

[6]Article IV, Section 19, N.C. Constitution.

[7]Article IV, Section 16, N.C. Constitution.

[8]*Haith v. Hunt*, 84-1319-CIV-5, U.S. Eastern District N.C.; *Alexander v. Martin*, 86-1048-CIV-5, U.S. Eastern District N.C. See also *N.C. v. U.S.A.*, Civil Action 86-1490, District of Columbia Circuit Court of Appeals.

[9]Senate Bill 214, "Nonpartisan Trial Judge Election," introduced March 24, 1987, by Sen. Laurence A. Cobb (R-Mecklenburg); and Senate Bill 287, "Superior Court Elections," introduced April 3, 1987 by Sen. R.C. Soles (D-Columbus) *et al.*

[10]Goehring, p. 2.

[11]Senate Bill 31, "Judicial Selection Study," introduced Feb. 12, 1987, by Sen. Charles Hipps.

[12]Address by Gov. James G. Martin, General Session, N.C. Bar Association Meeting, Myrtle Beach, S.C., June 21, 1986.

"A candidate, including an incumbent judge, for a judicial office . . . should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact."

— Canon 7, Section B, Paragraph 1(c), the Code of Judicial Conduct

The Case For Judicial Election Reform

by H. Parks Helms

Nearly two decades ago, the President's Commission on Law Enforcement and Administration of Justice declared, "The quality of the judiciary largely determines the quality of justice . . . . No procedural or administrative reforms will help the courts and no reorganization will avail unless judges have the highest qualifications, are fully trained and competent, and have high standards of performance."[1] The passage of time has not diminished the importance of this finding, and any effort at judicial election reform—nationally and in North Carolina —should acknowledge this fact.

We are now embarked upon a course in the state of North Carolina that will determine whether we can continue to maintain the high standards of competence and judicial integrity that have marked our courts for decades. Because of recent political developments and of potential problems associated with the election of judges, *North Carolina should adopt a model merit selection system of choosing and retaining future judges.* Contested partisan elections and pending litigation in the federal courts have raised severe doubts about our ability to attract and retain the quality of judges that will sustain the credibility of our court system. The manner and method of selecting judges has long been a subject of discussion and debate, and while we have for years enjoyed a partisan election system that has resulted in a judiciary made up of competent and capable judges, the 1986 judicial elections have raised the question as to whether we can expect our good fortune to continue.

For the first time in recent memory, contested partisan elections were conducted for seats on the N.C. Supreme Court, the N.C. Court of Appeals, and for three seats on the Superior Court bench. The election opened a new chapter in judicial selection in North Carolina. For the first time, our Governor became actively involved in the campaign to place Republicans on the appellate courts in what he characterized as an effort to make our judicial branch "more conservative." Along with the Governor's strong support for the Republican nominees for these seats, a group calling itself "Citizens for a Conservative Court," chaired by a former Governor, made a concerted effort to influence the outcome of the judicial races. They focused on the race for Chief Justice of North Carolina, implying that the Democratic nominee (now Chief Justice James G. Exum) was opposed to capital punishment. The record did not support that contention, because Exum had voted to impose capital punishment in some cases.

In the midst of the politicking that took place during the months leading up to the election in November 1986, it became apparent that the traditional method of electing our Superior Court judges and our appellate judges in partisan statewide campaigns was at risk. As a practical matter, North Carolina has been dominated by one political party—the Democrats—since the early 1900s, and the overwhelming political influence of Democrats in this state has served to make partisan elections more imagined than real. Even though our judges ran in partisan elections, once they were nominated in the Democratic primary, the politicking was over and they ran without opposition—and with seldom an issue—in the general election in November.

The effect of this was to insulate the judiciary from partisan political pressures, and judges and justices were free to be fair and objective in ruling on cases without regard to litigants' personal or

H. Parks Helms is a former member of the N.C. General Assembly, a former chairman of the N.C. Courts Commission, and a partner in the Charlotte law firm of Hamel, Helms, Cannon, Hamel & Pearce.

Department of Cultural Resources

Reidsville lawyer Susie Sharp, second from right, at her swearing-in ceremony on July 1, 1949, after being appointed a Superior Court judge. Later appointed to the N.C. Supreme Court before her election as Chief Justice, she became an advocate of merit selection.

political philosophy or the public's perception of his decision. The one-party dominance of the Democratic Party also meant that, as a practical matter, most judges and justices were initially appointed by the Governor to fill unexpired terms or newly created judgeships (see Table 2, p. 20, for more). Only rarely did judges or justices run for election in the same sense that legislators, or Council of State officers in the executive branch of government, run for office.

In 1971, the original N.C. Courts Commission made a recommendation that North Carolina modify its method of judicial selection to establish a merit selection and retention system.[2] While circumstances have changed since that time, the evolving political climate in North Carolina has reinforced the validity of the findings of the President's Commission on Law Enforcement and Administration of Justice, and underscored the need to develop a procedure to ensure the quality, integrity, and independence of the judiciary.

What's Wrong With The Present System?

North Carolina's Constitution requires that judges be elected at regular intervals, but the fact is that more than half North Carolina's judges are initially appointed by the Governor—and many of those judges have never faced opposition at the polls. In practice, a system that purports to give the voters complete control over the selection of judges gives them almost no control. And it gives the Governor almost complete control over judicial selection.

In such a system, the decision of who to appoint is affected by political considerations. When any Governor is elected, he is elected to represent a point of view that some call political. In his appointments, it is unreasonable to expect the Governor to ignore political considerations, and no system could be devised that will eliminate political considerations altogether. The problem with the North Carolina system is that it does not encourage the Governor to consider other, non-political factors in making his appointments.

It's no secret that some of the most highly qualified lawyers refuse to make themselves available for judicial office. One of the reasons, of course, is money. For the outstanding practitioner who would be a credit to the bench, judicial salaries are not, and perhaps never will be, as attractive as the money to be earned in a private practice (see Table 6, p. 32, for judicial salaries). But a more frequently heard reason that leaders of the bar in private practice will not consider a judicial career is the possibility of having to engage in partisan political campaigns. Campaigning can be expensive, and it requires political know-how in a degree not always present in the best qualified judicial candidates; and the specter of defeat after four or eight years on the bench—and having to rebuild a private practice in middle age at severe financial sacrifice—is hardly an incentive for otherwise well-

qualified lawyers to file for election. Even if the judge is fortunate and does not have opposition, he would be foolish not to maintain amicable relationships with party leaders in his area—ties that might raise questions about judicial independence. The result, then, is a system where judges must always remain sensitive to partisan political concerns.

If a judge is forced into a contested election, there are few, if any, public issues on which the judge can—or should—campaign. Judges are not like legislators. They do not formulate public policies. Their job is to interpret and apply the law and public policy of this state as established by the General Assembly. As administrators of the law, judges can find it embarrassing and unethical to take sides on political issues which may eventually come to litigation in their courts. Campaigning of this sort is inappropriate, to say the least, and demeans both the office and the individual. Consider the case of the judge who is challenged by an unscrupulous opponent. If a campaigner ignores or bends the rules, then the judge must choose between matching the unethical technique, or risking the loss of the election. In 1986, the Citizens for a Conservative Court conducted a campaign *in opposition to* individual candidates, and clearly crossed the bounds of judicial ethics which have marked the limited number of judicial campaigns conducted in North Carolina in recent years.[3]

Another drawback to judicial independence lies with the fact that judges must closely identify themselves with, and financially support, a political party. The vice in that process is that it does not attract, as judicial candidates, many qualified individuals, because they are unwilling to become involved in party politics to be appointed and to remain involved to stay elected.

Perhaps the most important question is whether partisan campaigns succeed in informing the voters of a judge's qualifications for office. How many voters in last November's election were well informed as to the qualifications of the judges on the statewide ballot? If they were not informed, on what basis did they vote? The fact is that most people tend to vote on party affiliation, and this raises a serious question about the effect on the judiciary as this state inexorably moves toward a two-party political state. As we progress toward political parties with roughly equal strength, two things are bound to happen:

- First, candidates or incumbents may lose or win based mostly on the party's candidate for President, or U.S. Senate, or on the unemployment or inflation rate—factors totally unrelated to a candidate's fitness or temperament for the bench.
- And second, the *possibility* of that kind of result has an undetermined but almost certainly negative effect on the quality of applicants for judicial office. It is in this context that the equally important concept of retention elections should be considered.

Arguments For the Principles of Merit Selection and Retention

Many who oppose any substantive change in the process of nominating and electing judges and justices do so out of a sense of the history of our system and how it has worked under a state dominated by the Democratic Party. With Democrats winning big in 1986, that opposition has become even stronger. The point most often made is that judges and justices need to be subject to a vote of the people as a part of the process of checks and balances in our system of government. With that in mind, the nonpartisan merit selection plans which were introduced in the legislature during the decade of the 1970s had three basic elements:

- Submission of a list of judicial nominees by a nonpartisan commission composed of professionals and lay persons;
- Selection of a judge by an appointing authority (usually the governor) from the list submitted by the nominating commission; and
- Approval or rejection by the voters of the governor's selection in nonpartisan elections in which the judge runs unopposed on the sole question of his record in office.

This plan is now in use, in whole or in part, in at least 39 states (17 states with a formal Missouri Plan, 22 more with elements of the plan, such as nonpartisan elections or gubernatorial appointment with legislative confirmation. See Table 1, p. 18 for more.) And according to separate studies conducted by the American Judicature Society and the University of Illinois' Institute of Government and Public Affairs, most jurisdictions employing the plan have relatively few judges failing in retention elections.[4] In a 1987 study, the number failing at retention elections was less than 1.2 percent, the American Judicature Society found, while the 1985 Illinois study found that about 1.5 percent failed in that state. This result is consistent with the view that a nominating commission does a good job, and refutes the contention that elections will expose good judges to defeat by single-issue voting blocs. The fact that there is a

small number who do not get retained indicates that merit selection and retention do not confer a lifetime appointment. The most recent example of such a defeat is former California Chief Justice Rose Bird, a controversial figure who was defeated in a retention vote in the 1986 election. The prospect of having to face an electorate, with the beneficial effect that has on a person's humility and conduct, is preserved by merit selection and retention. It also addresses the need for responsiveness that seems to be the concern of many people.

Obviously, the judicial nominating commission is one of the most important parts of any merit selection plan, and in order for it to be successful, it should be created in such a way as to bring in to the judicial system those persons who are best qualified by training, experience, temperament, and character to serve as judges and justices. The judicial nominating commission can guarantee qualified judges by screening out the obviously unfit and mediocre, and can increase the available pool of qualified candidates from which nominees can be selected. It can also enable judges to be politically independent and to concentrate their time and attention on the business of the courts. Perhaps equally as important, the attention of voters can be focused on a judge's record including his legal skills and objectivity, rather than his political affiliation. Opportunity for minority group representation on the bench is increased, and the likelihood of increased confidence in the role that the courts play in our lives is enhanced.

Finally, such a plan would address the concerns which have been raised in pending litigation to abolish our system of statewide election for trial judges and to replace it with a district system to ensure that minorities would have an opportunity to be elected to the bench.[5] While judges are not "representatives" in the same sense that members of the legislative branch are, there is a genuine need for minorities to serve in the judicial branch if our courts are to maintain the confidence and respect of the public.

Other states have found, in fact, that merit plans enhance the prospect for women and minority judges. A 1986 study by the Fund for Modern Courts in New York found that women and minority lawyers are far more likely to become judges in states where they are appointed rather than elected. "The old rationale for judicial elections is that it was the only way to open things up to women and minorities," said David G. Trage, Dean of Brooklyn Law School and the chairman of the New York City Judicial Nominating Commission. In an article in *The National Law Journal,* Trage added, "This study blows that notion right out of the water."[6] Table 3, below, indicates that North Carolina runs behind the national averages in the percentage of women, Hispanics, Asians, and Indians on the state bench.

A Recommended Nonpartisan Plan

The decade of the 1970s saw dramatic changes in the makeup of the N.C. General Assembly and the economical and political status of the people of this state. The early advocates of merit selection wanted to preserve and protect the integrity, credibility, and effectiveness of the judiciary in a growing and changing state. The members of the General Assembly could not be persuaded, however, and relied on the old adage, "If it ain't broke, don't fix it." As a result of the political upheaval of the 1980s and the emergence of the two-party system in North Carolina, we now see that while "it ain't broke," it is badly in need of preventive maintenance. The likelihood of major problems in our judicial selection system are obvious for anyone who examines the system objectively. Indications are that some members of the N.C. legis-

Table 3. Percentage of Minorities in Judicial Positions

Type of Court	Total Minorities	Women	Blacks	Hispanic	Asian	Indian
Federal Courts	17.4%	7.4%	7.0%	3.1%	0.4%	0%
State Courts	12.6%	7.2%	3.8%	1.2%	0.6%	0.2%
North Carolina Courts	11.4%	5.0%	7.2%	0%	0%	0%

Source: Fund for Modern Courts, Inc., New York, 1986

lature also recognize this possibility, and bills to create a study commission on judicial selection made up of appointees of the executive, legislative, and judicial branches are now working their way through the legislature.[7] Any honest appraisal of where we have been and where we are going would indicate that the soundest approach for North Carolina would be to revise Article IV, Section 16 of the N.C. Constitution to:

- Authorize a judicial nominating commission to recommend to the Governor a list of qualified nominees for vacant judgeships;
- Direct the Governor to select a judge from this list;
- Establish a method for the General Assembly to confirm the gubernatorial appointment; and
- Provide that the appointee must stand for reelection on a nonpartisan "yes" or "no" ballot at the next general election which occurs more than one year after his initial appointment. If the voters vote "yes," the judge then serves a regular term; if the voters vote "no," the judge's office is declared vacant and the judicial nominating commission submits a new list of names to the Governor as before. Terms of judges—eight years for appellate and superior court judges, and not more than eight years at the option of the General Assembly for district court judges—should be specified.

One possibility for the makeup of the judicial nominating commission would be to name lawyers from each judicial district to constitute a nonpartisan commission with guidelines for the nominating procedure. This would ensure that those doing the nominating would have knowledge of the qualifications of the nominee as well as an understanding of the nominee's responsibilities if appointed and confirmed to the bench.

Perhaps most significantly, the plan outlined above would involve the legislature in the confirmation process and would also give the citizens of this state an important role in a retention election to ensure the necessary responsiveness without sacrificing the objectivity and independence of the judiciary.

A judge selected under this plan who desired to serve a successive term would be required to file, within specified time limits, a declaration of his intention to stay in office. The ballot at the next general election would then bear the question:

"Shall Judge _____ of _____ Court be retained in office?"

An affirmative vote by a majority of voters would return the judge to office, and a negative vote would vacate the office and trigger the nominating process described above to fill the vacancy.

A Time For Change

North Carolina has been fortunate in the quality of the judiciary that has served the state in both the trial and appellate courts. Our system of partisan elections has served us well in the past, and few judges have abused the trust of the people. It is clear, however, that the changing economic, political, and social makeup of this state is placing excessive pressures on our judicial system— pressures not envisioned when the framers of our Constitution created the partisan election process by which we are now governed. Partisanship has its proper place in the executive and legislative branches of government, but the role of the judiciary in our system of government transcends any political considerations. A changing political climate and an activist federal court, coupled with a changing citizenry, has brought about the need for fundamental changes in the method of North Carolina's judicial selection. More importantly, the concepts of merit selection are absolutely essential if a stable, independent, and objective judiciary is to be preserved. Ultimately, the choice must be made as to whether our system for the election of judges and justices will be changed by the federal courts or by the General Assembly and the people of North Carolina. The far better choice as we enter an era of two-party politics is for the legislature and the populace to act—and produce a far better method of choosing North Carolina's justices and judges.

FOOTNOTES

[1]"The Courts," Chapter 5 of the President's Commission on Law Enforcement and Administration of Justice, 1968, p. 146.

[2]"A Recommended Nonpartisan Merit Selection Plan for North Carolina," *Report of the Courts Commission to the North Carolina General Assembly,* 1971, pp. 11-15.

[3]Canon 7, "A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office," Code of Judicial Conduct, adopted by N.C. Supreme Court for N.C. Judiciary as a guide to the meaning of N.C.G.S. 7A-376, "Grounds for censure or removal," adopted by the General Assembly as Chapter 590, Section 1, of the 1971 Session Laws.

[4]William K. Hall and Larry T. Aspin, "What twenty years of judicial retention elections have told us," *Judicature* magazine, American Judicature Society, April-May 1987; and William K. Hall, "Judicial Retention Elections: Do Bar Association Polls Increase Voter Awareness?", Institute of Government and Public Affairs, University of Illinois, September 1985, p. 16.

[5]*Haith v. Hunt,* 84-1319-CIV-5, U.S. Eastern District N.C.; *Alexander v. Martin,* 86-1048-CIV-5, U.S. Eastern District N.C. See also *N.C. v. U.S.A.,* Civil Action 86-1490, District of Columbia Circuit Court of Appeals.

[6]Alexander Stille, "The Judiciary's New Look—Election v. Appointment: Who Wins?," *The National Law Journal,* Dec. 30, 1985-Jan. 6, 1986, pp. 1-4.

[7]Senate Bill 31, "Judicial Selection Study," introduced Feb. 12, 1987, by Sen. Charles Hipps. Also see Senate Bill 214, "Nonpartisan Trial Judge Election," introduced March 24, 1987, by Sen. Laurence Cobb.

Table 4. Arguments For and Against Merit Selection of Judges

For Merit Selection	Against Merit Selection
It takes politics out of the judicial selection process.	Shifts politics from elections decisions by voters to political decisions by nominating committee in the appointment process.
Judges will be selected on a meritorious basis.	Judges still will be selected on the basis of political alliances with those in power.
Merit selection will attract qualified candidates who do not now seek election to judicial office.	Merit selection does not produce more qualified judges than the electoral process does.
Merit selection will prohibit judicial candidates from having to seek campaign funds from lawyers who later must appear before those judges.	Judicial candidates will still have to drum up pledges of support from judicial nominating committee members.
Merit selection will produce a more independent judiciary without ties to party, politicians, or lawyers who appear before judges.	Few problems stem from judicial ties to political parties, and merit selection cannot eradicate party alliances or beliefs.
A judicial nominating committee will be able to make a better choice than voters because it will have access to better information on the candidates' actual performance in the legal profession.	As North Carolina increasingly becomes a two-party state, more contested judicial elections will mean that more information is available to voters.
Merit selection will eliminate bitter political campaigns such as the race for N.C. Supreme Court Chief Justice in the fall of 1986, when judges were attacked for being soft on capital punishment.	Such "campaigns" can still exist because voter groups can oppose a judge who is up for a retention vote under a merit selection system, as happened in California in 1986.
Merit selection will shorten N.C.'s "long ballot" and relieve voters of the burden of having to vote for scores of judges they do not know.	Merit selection would remove choice of judges from the electorate, where it belongs, and place that choice in the hands of the select few.
Merit selection will produce better judges in North Carolina, where some judges have been removed or censured for misconduct in office.	Judges in North Carolina are already good ones, and merit selection in other states has not produced better judges.

The Case Against Judicial Election Reform

by Joel Rosch and Eva R. Rubin

It is part of the genius of American politics that our 50 states are in essence 50 laboratories of democracy allowing policymakers to learn from and build on the experience of other states. At N.C. Supreme Court Justice James G. Exum's request, the General Assembly is considering embarking upon just such an experiment in merit selection of future Tar Heel judges. By improving the *way* we choose our judges, supporters of merit selection believe, we *will get* better judges. But these advocates of merit selection —however sincere and well-intentioned they may be—would do well to consider the less-than-satisfactory experiences other states have had with merit selection. *So far, there is no evidence that merit selection has either improved the quality of judges in any of the states where it has been tried or that it has successfully removed politics from the selection of judges.* Those experiences ought to make North Carolina policymakers cautious about changing from a system that has, after all, worked reasonably well.

An initial problem with merit selection is the question of what 'merit' is, and another is who is meritorious. One person's notion of merit may not be another's, and the legal profession itself is sharply split on the issue. While the North Carolina Bar Association is in favor of merit selection, the N.C. Academy of Trial Lawyers, representing those lawyers most likely to try cases before judges, opposes that plan—not because they oppose the theory of 'merit,' but rather because they do not believe that it will ensure the selection of meritorious judges. A look at the past tells why.

During our nation's 200-year history, there have been a number of changes in the way our state judges are chosen. Until the 1840s, most states, as well as the federal government, allowed either the chief executive (the governor or the president) or the legislature to select judges. The election of Andrew Jackson as president in 1828 symbolized a growing movement for popular control over government. As this demand for popular control grew, a number of states adopted systems to choose their judges in partisan elections like other public officials. But during the Progressive Era, which began at the end of the 19th century, many states, expecially in the American west, opted for nonpartisan elections where judges run for election without a party label.[1]

In 1913, the American Judicature Society was founded to improve the way our courts worked. In this period, state judges—most of them still elected—began to reflect the anti-business sentiments associated with the growing tide of populism. The federal bench, which was appointed, was for the most part much friendlier to big business than the state judiciaries. Dominated by prominent attorneys who mostly represented commercial interests, the Judicature Society recommended isolating judicial selection as much as possible from popular control. Instead of holding elections, it recommended that governors choose judges only from lists generated by an independent commission composed mostly of lawyers. Citizens would only have the option of approving or disapproving the governor's choice after the judge has served for a brief period of time. This system was first adopted in 1940 by Missouri and is often called the Missouri Plan.[2] Supporters prefer the term merit selection while others call it the Bar Association Plan—because it would give state bar associations a dominant role in selecting judges. Supporters of merit selection in North Carolina today advocate something like the Missouri Plan.

Joel Rosch and Eva R. Rubin teach political science at N.C. State University.

Methods used by each state to select judges usually reflect that particular state's culture and political history. (See Table 1, p. 18). Twelve states, including nine of the original 13 colonies, as well as the federal governmnent, continue to allow elected officials to choose judges. Nonpartisan elections are most often found in the West, where statehood coincided with the Progressive Era. True to their Jacksonian traditions, southern states like North Carolina usually chose their judges in partisan elections.

Court Packing and Silk Stockings

The North Carolina Bar Association argues that a system modeled after the Missouri Plan is a better way to choose judges than having them run as politicians. Whenever there is a judicial vacancy, a panel of lawyers and nonlawyers would prepare a list of qualified attorneys from which the governor would appoint a judge. Unlike the present system, where judges run against each other, the merit system gives voters only the opportunity to decide whether to retain a judge. There would be no opposing candidate in such "elections."

The Bar Association says the present system of partisan elections discourages qualified lawyers, who do not want to be politicians, from running for judgeships. But David Blackwell, executive director of the North Carolina Academy of Trial Lawyers, sees things in a different light. Blackwell worries that under merit selection, the nomination process would become secretive and vested in the hands of a small, elite group of lawyers. He even objects to calling the bar association plan "merit selection." He asks, "Whose merit?" Calling the proposed plan "merit selection" implies that present judges are not meritorious, Blackwell contends. That's an implication with which he disagrees.

North Carolina judges have in fact had a good record with only isolated judicial scandals and few complaints about judicial incompetence, Blackwell notes. Many states with "merit selection," including Missouri, have in fact been rocked by judicial controversy.[3] In that state, one Supreme Court justice has accused the Chief Justice of influencing the judicial nominating commission in an effort to "pack" the court with three new justices who would vote with the chief on court administration issues. That brouhaha has undermined public confidence in Missouri's model system and eroded support for merit selection systems generally.

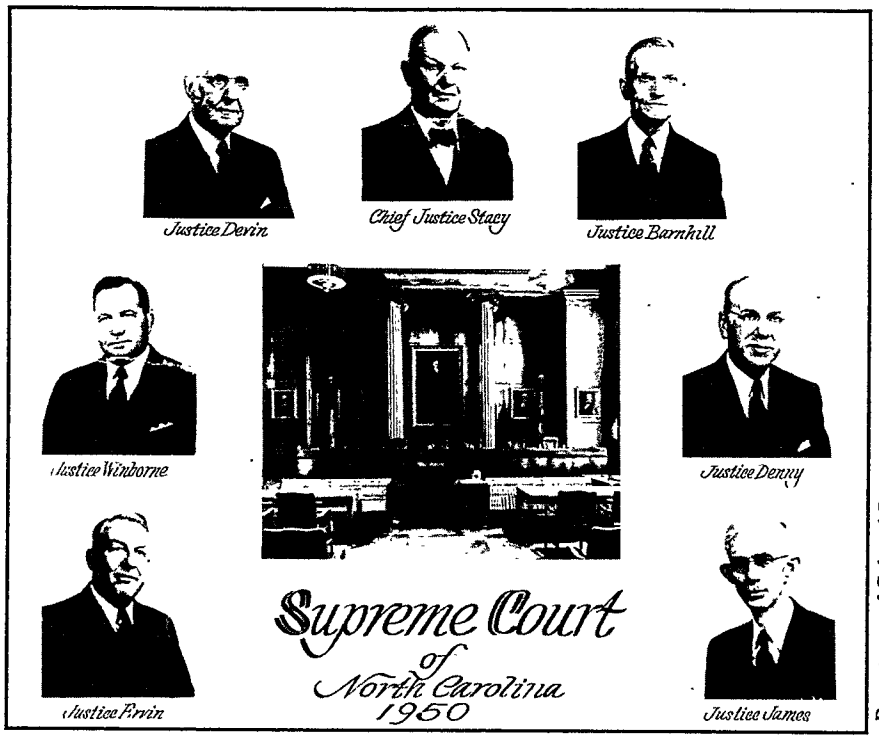
The concern of trial lawyers, both in North Carolina and elsewhere, is that merit selection plans would give bar associations far too much power over who becomes a judge. Traditionally bar associations, which are umbrella organizations representing many different kinds of attorneys, are dominated by lawyers who represent corporate clients and business interests.[4] Blackwell worries that merit selection would turn the selection of judges over to what he calls "silk stocking lawyers" representing corporate clients as opposed to trial lawyers who represent consumers, accident victims, and workers. That's what happened in Missouri. Blackwell contends that American history has proven the ballot box to be a good way to get things done.

The Elections Flap

The renewed interest in merit selection stems primarily from the 1986 judicial elections, when Democrats and Republicans fought bitterly over five seats on the state Supreme Court. A squad of conservatives interested in electing judges in harmony with their ideology leveled sharp attacks on the Democratic candidate for Chief Justice, Jim Exum. Both he and his Republican opponent, then-Chief Justice Rhoda Billings, were distressed by the virulent and partisan attacks, and Billings let it be known that she would prefer that the attacks cease. Both Billings and Exum support a merit form rather than an electoral system, but neither has explained how a merit system would eliminate scathing attacks on a sitting justice when he must stand for a retention vote. Nothing could halt an attack on the judge's character or on his record. In short, even with a merit system, there still might be partisan attacks that smack of the current system, and little would be gained.

Consider what happened just last year in California. In 1986, Chief Justice Rose Bird ran for retention under rules much like those proposed for North Carolina. The election was far nastier than the one in North Carolina and did far more damage to the legitimacy of that state's judiciary. It also proved to be one of the most expensive races for state judicial office in American history, (more than $7 million spent) and Bird lost her seat in the fracas. Among other things, Bird was accused of coddling criminals. Bird had voted against the death penalty in several capital cases, and one ad run by her detractors pictured the mothers of murder victims beseeching voters to "cast three votes for the death penalty."[5] The lesson seems clear. Not only will merit selection not encourage

Traditionally, judges in North Carolina are appointed to fill vacancies. Of the seven judges in this 1950 photo of the N.C. Supreme Court, six were first appointed to the court, and the seventh — Justice Walter Stacy, the only member elected to the court — became Chief Justice by appointment.



Department of Cultural Resources

lawyers to seek judicial office, but based on the experience from both California and Missouri, merit selection will not eliminate partisan conflict, either. Instead, it may prompt one-issue groups to target candidates they don't like and attempt to turn them out in a single-shot campaign.

Over the last 45 years, many states have experimented with merit selection plans similar to the one proposed for North Carolina. If these plans really resulted in better judges, we should be able to see some improvements in states that have adopted merit selection. But the best research we have on this question bears little evidence that merit selection produces better judges than an election system.

Consider these studies:

■ Judges chosen under merit selection have no more experience, and no better educational backgrounds, than judges chosen in partisan elections.[6] A 1972 study by Bradley Canon, a professor of political science at the University of Kentucky, examined judicial selection before and after merit selection, and found merit selection had no effect in producing more experienced or better educated judges.

■ Worse yet, in Missouri the quality of education among judges selected actually declined after the adoption of merit selection, according to a 1969 study by University of Missouri researchers Richard Watson and Ronald Downing.[7]

■ Rather than opening up the judicial profession to lawyers who otherwise would not run, as proponents claim, Henry Glick of the University of Florida found in a 1983 study that merit selection actually narrowed the pool of eligible lawyers by concentrating more heavily on local candidates for judgeships than elections had.[8]

■ Despite constant research, no one has found any evidence that judges chosen under merit selection do any better job than judges chosen under partisan election. Lawrence Baum, a specialist in judicial politics at Ohio State University, contends that the experiences of more than a dozen states over the last 45 years provide no objective evidence of this.[9]

Advocates of merit selection believe that turning judicial election over to a panel of lawyers and laymen will "take politics out" of the judicial selection process. Contrary to what supporters believe, the Academy of Trial Lawyers' Blackwell speculates, judicial politics under a system where judges are chosen in private by a small group are likely to be just as partisan and far nastier than when they are chosen in a public election. That is what has happened in other states. "I've long maintained that you can't keep politics out of the judiciary completely," says the University of Kentucky's Canon. "The Missouri Plan may keep politics out in the overtly partisan sense, but it doesn't keep it out in the ideological sense."[10]

Table 5. Actions Against North Carolina Judges by N.C. Supreme Court Since 1973

Judges Removed from the Bench for Misconduct

1. Judge Linwood Peoples of Henderson

Peoples, a District Court judge, resigned his seat in 1977 after he was accused by the N.C. Judicial Standards Commission of accepting money from defendants to settle traffic cases out of court. The Commission had recommended that Peoples be removed from office. In 1978, Peoples ran for Superior Court and won a seat, but the N.C. Supreme Court refused to seat him, ruling that his misconduct in office made him ineligible to retain his seat.

2. Judge William Martin of Hickory

Martin, a District Court judge, was removed from the bench by the N.C. Supreme Court in 1981 after the Judicial Standards Commission accused him of trying "to obtain sexual favors from female defendants who had matters pending before the courts." The Commission earlier had recommended in 1978 that Martin be removed from office, but the N.C. Supreme Court reduced that recommendation to a public censure of Judge Martin.

3. Judge Charles Kivett of Greensboro

Kivett, a Superior Court judge, was accused by N.C. Justice Department prosecutors in 1982 of sexual misconduct in office and of meting out light sentences to certain defendants at the request of a friend. The Judicial Standards Commission recommended that Kivett be removed, and the N.C. Supreme Court removed him from office in 1983.

4. Judge Wilton Hunt of Whiteville

Hunt, a District Court judge, was accused by the Commission of accepting bribes in an undercover operation conducted by law enforcement authorities. The N.C. Supreme Court removed Hunt from the bench in 1983.

Judges Censured

1. District Court Judge E. E. Crutchfield of Albemarle, 20th Judicial District, 1975, for *ex parte* disposition of several court cases.

2. District Court Judge Joseph P. Edens of Hickory, 25th Judicial District, 1976, for *ex parte* disposition of a case.

3. District Court Judge George Stuhl of Fayetteville, 12th Judicial District, 1977, for *ex parte* disposition of cases, making overtures to an arresting officer about his testimony, and improperly urging an assistant district attorney to take a dismissal in a case.

4. District Court Judge Milton Nowell of Goldsboro, 8th Judicial District, 1977, for *ex parte* disposition of cases.

5. District Court Judge Herbert Hardy of Goldsboro, 8th Judicial District, 1978, for *ex parte* disposition of cases and for writing another judge urging him to enter a certain sentence in a pending court case.

6. Superior Court Judge Paul Wright of Goldsboro, 8th Judicial District, 1985, for making a campaign contribution to a candidate in another race, contrary to judicial canon proscribing such political activity.

Censure Recommendation Pending

Superior Court Judge Kenneth Griffin of Charlotte, 26th Judicial District. Censure recommendation filed in 1986 for making inappropriate courtroom comment and making a derogatory gesture in court.

Note: The Judicial Standards Commission was set up in 1973. It recommends actions against judges to the N.C. Supreme Court, which is empowered to take disciplinary action against judges. Prior to that, the only way to remove a sitting judge in North Carolina was by impeachment.

Table 6. Salaries of N.C. Judges

Chief Justice of the Supreme Court, $74,136
Associate Justices of the Supreme Court, $72,600
Chief Judge of the Court of Appeals, $70,284
Judges of the Court of Appeals, $68,748
Senior Resident Superior Court Judges, $63,048
Regular and Special Superior Court Judges, $61,044
Chief District Court Judges, $51,396
District Court Judges, $49,428

Note: These are base salaries, and do not include longevity increases.

Although there is no evidence that merit selection schemes remove politics from the process, they do change the nature of politics. According to a 1974 study conducted by the American Judicature Society—the group that first proposed merit selection—merit plans have not been able to remove partisan politics from the selection process. Instead, what actually appears to happen in states with merit selection is that bar associations split along partisan lines in ways resembling the political culture of the state when they choose panel members.[11]

Governors do not appoint lay people randomly to nominating commissions, but rather choose people who will do their bidding—political allies, friends, and other trusted water carriers. What we know of judicial selection in states with variants of the Missouri Plan is that governors use their appointees to put forward names of individuals they would like to see on the bench.[12] In some cases, merit selection allows governors to reward political supporters with judgeships while not appearing to make embarrassing patronage appointments. North Carolina Gov. Jim Hunt may have tried to do just that—avoid embarrassing appointments—in 1977 when he created by executive order his own merit nominating process, according to *The Charlotte Observer*.[13]

What Do You Get?

One further problem of merit selection plans is the demographics of the nominating commission. While the governor is usually the appointing authority, and while the legislature may do the confirming, it is the nominating commission which has enormous influence because it can choose the nominees—and it can choose *who will not* be a nominee for a judgeship. Surveys done of Missouri plan nominating committees around the United States have found that 97.8 percent of the members were white and 89.6 percent were male. While this might be explained by the predominantly white, male structure of the bar, even among the nonlawyers on these panels, business and banking executives tend to predominate.[14] Why is this important? If business, corporate and legal interests have such great influence on the nominating process, the successful judicial candidate may tend to reflect their views, rather than those of the populace at large.

Legitimate questions ought to be raised about the ability of such a system to produce a judiciary that will be sensitive to all interests. "The prevalence of these particular interests on the selection committees raises very serious doubts about the commissions' ability to produce a judiciary sensitive to all interests of the general public, writes Patrick Dunn in "Judicial Selection Process and the Missouri Plan."[15] While electoral politics is crude, it at least is relatively open for those who will see, and it can be analyzed, digested, and assessed.

But merit selection would offer little hope to N.C. Republicans, at least under Democratic governors. Traditionally, Republicans have not fared very well under our state's system of partisan elections, but they would not do well with merit selection, either, unless panels also reflect geographical distributions of Republican and Democratic strength. In the Appellate Division, only one state judge is Republican—Judge Robert Orr of the Court of Appeals, appointed to a post-election vacancy. There are no GOP members of the Superior Court, and a scant handful of District Judges. But, based upon what has happened in other states, they would probably have little to gain from merit selection here. In Missouri, it was believed that merit selection would break the hold the Democratic party had over the state judiciary. However, after the merit selection system was put in place, the percentage of Democratic

judges actually increased as the locus of politics shifted from elections to bar associations. The lesson here is that no matter which selection process is used, there is considerable room for the influence of other political institutions—including political parties and the other branches of government —to influence judicial selection.

How Can We Improve Judicial Elections?

By and large, North Carolina has not been troubled with the major judicial scandals that have rocked some other states. Apart from some problems with District Court judges and traffic cases, our judges have been relatively well behaved. That's not to say there aren't some pitfalls with judicial elections, however.

Consider these traditional drawbacks in North Carolina:

- Low voter participation in judicial elections and a lack of voter knowledge about candidates;
- Inadequate representation on the bench of women and minority judges; and
- An electoral system for Superior Court judges that discriminates against the minority political party because of the requirement that Superior Court judges run statewide, rather than within districts.

Low interest in judicial elections in North Carolina stems partly from the fact that many judicial candidates run unopposed—the minority party simply does not often nominate candidates for these posts. In part, this is due to the fact that all Superior Court judges have to run in statewide elections where voters are unlikely to have any information about a candidate except their political party, their gender, and possibly their race. This system is presently under court challenge by both the state Republican Party and the NAACP (see p. 19 for more). If Superior Court elections were held within judicial districts, as they are in most states, scores of contests would be more competitive. Citizens are more likely to take an interest in races that personally affect them and over which they have some measure of control.

Allowing Superior Court judges to be elected from the districts where they primarily reside is more likely to give qualified blacks, women and Republicans an opportunity to serve as judges than the proposed merit selection system. And it certainly would be fairer than the present electoral system.

One of the shortcomings of using popular elections to fill judicial posts is related to restraints on judicial campaigning. Judges cannot make political promises or take sides on controversial issues. They must build their campaigns around issues of training, character, family stability, church affiliation and education background. The typical election handout shows the candidate, his wife, his five children and his golden retriever posed in front of a fireplace in the family den. It tells us little about the qualifications of the candidate beyond

The News and Observer

Then – Associate Justice Rhoda Billings with Gov. Jim Martin on Aug. 1, 1986 when Billings was appointed Chief Justice. In the 1986 election, she was defeated by former Associate Justice Jim Exum for the Chief Justice post.

education and membership in civic or religious groups. Any method that could increase public knowledge about judicial races and increase the information flow about candidates would be helpful to North Carolina's citizens.

Some states, for instance, have developed ratings systems for judges. While early efforts at rating judges have been sharply criticized, usually by the rated judges, recent efforts have been well received. The N.C. Bar Association could do a great service by conducting periodic surveys of judges and those who practice before them and publishing those results regularly. In 1983, the Bar Association conducted such a survey, but the results were not published because, it said, it had made a commitment to keep the results confidential. Instead, a judicial evaluation was furnished to each judge so that he might see how he was perceived by the lawyers who practiced before him. The bar has no such follow-up in the works, says N.C. Bar Association President John Beard.[16]

An earlier survey, published in 1980 by the N.C. Center for Public Policy Research, asked lawyers for their opinions on members of the trial and appellate courts.[17] That survey was made public by the Center, and has been cited frequently in the media as one indication of a judge's overall performance, his perception by the bar, his professional characteristcs, and the perception of his work by fellow members of the judiciary. The Center is considering conducting another such survey of the judiciary in 1988.

Judicial Politics in the Future

Whether a state uses partisan elections, merit selection, nonpartisan elections, or any other method to choose its judges, the politics of judicial selection is always going to be more a function of the *political culture* of a state than the *form* of selection. The problem with recent judicial elections in North Carolina is not the system itself, but the fact that the political culture of the state is changing. As judicial elections become more partisan (and more expensive), a number of people, including former Chief Justice Susie Sharp and Chief Justice Exum, are worried that good candidates will not seek judicial office. Sharp rightly pointed out in 1977 that partisan elections worked well in the past because North Carolina was a one-party state, and real judicial elections were the exception rather than the rule.[18]

North Carolina is still evolving as a two-party state. What we have seen in other states indicates that increased competition will take place no matter which method we use to choose our judges. As partisan politics in North Carolina becomes more partisan, as it did in Missouri, or more ideological, as it has in California, the politics of judicial selection will get nastier and more expensive whether we turn it over to a small group of elite lawyers or leave it in the hands of the people. Partisan combat, in spite of Justice Exum's distaste for it, does not endanger the process unless it produces inferior and subservient judges. So far in North Carolina, it has not. There is no evidence that partisan elections are more likely to give us judges inferior to those who would be chosen under so-called merit selection. And with open elections, at least, we know who to blame if the quality of justice declines.

FOOTNOTES

[1]Lawrence Baum, *American Courts,* Houghton Mifflin, 1986, p. 92.

[2]*Ibid.*

[3]Paul Wenske, "Dissension Rocks Missouri Justices," *The National Law Journal,* May 27, 1985, p. 1.

[4]See Edward Lauman and John Heinz, "Specialization and Prestige in the Legal Profession: The Structure of Deference," *American Bar Foundation Research Journal,* 1977, pp. 155-216; Jerald Auerbach, *Unequal Justice,* Oxford University Press, 1976; John Heinz and Edward Lauman, *Chicago Lawyers: The Social Structure of the Bar,* Russell Sage, 1982.

[5]William Endicott, "'Twas the season to be nasty," *The California Journal,* Vol. 17, No. 12, December 1986, p. 582.

[6]Bradley Canon, "The Impact of Formal Selection Processes on the Characteristics of Judges — Reconsidered," *Law and Society Review,* 1972, pp. 588-589.

[7]Richard Watson and Ronald Downing, *The Politics of Bench and Bar,* John Wiley and Sons, 1963, pp. 205-219.

[8]Henry Glick, *Courts, Politics and Justice,* McGraw Hill, 1983, p. 89.

[9]Baum, pp. 106-107.

[10]Quoted from Wenske, p. 26.

[11]See esp. Allan Ashman and James Alfini, *The Key to Merit Selection: The Nominating Process,* American Judicature Society, 1974.

[12]Jerome R. Corsi, *An Introduction to Judicial Politics,* Prentice Hall, 1984, pp. 104-107.

[13]Ned Cline, "Hunt Was Warned About Patronage List for Judges," *The Charlotte Observer,* Sept. 1, 1977, p. 1A.

[14]Ashman and Alfini. See also Greg Casey et al., "A State Supreme Court in Crisis: The Case of Missouri," presented at the annual meeting of the Southwest Political Science Association, March 19, 1986, San Antonio, Texas.

[15]Patrick Dunn, "Judicial Selection and the Missouri Plan," *Courts, Law and Judicial Processes,* The Free Press, 1981, p. 109.

[16]The N.C. Bar Association, which conducted the survey, is sometimes confused with the N.C. State Bar, which is the regulatory agency that licenses and disciplines lawyers in North Carolina, and to which all licensed lawyers must belong. The N.C. Bar Association, on the other hand, is a voluntary professional association of lawyers in North Carolina for a variety of educational and other purposes, and membership is not mandatory.

[17]*Article IV: A Guide to the N.C. Judiciary,* First Edition, N.C. Center for Public Policy Research, 1980.

[18]Correspondence from Chief Justice Susie Sharp to the Hon. H. Parks Helms, March 9, 1977, pp. 1-2.

Three Key Trends Shaping the General Assembly Since 1971

by Ran Coble

This regular Insight *feature focuses on the makeup and process of the N.C. General Assembly and how they affect policymaking. This column examines how internal changes in process since 1971 have transformed lawmaking in North Carolina.*

For generations of legislators in the 19th and 20th centuries, lawmaking remained much the same as it always had—enduring even after the General Assembly pulled up stakes from its old digs in the 1840 State Capitol and moved down the street to the modernistic Legislative Building in 1963. But fundamental change in the way the legislature goes about its business finally began eight years later in 1971 and 1972. In that two-year period, three key events occurred that changed the face of the legislature in North Carolina and of many other legislatures across the country as well.

The first key event was redistricting. The 1971 session of the legislature was the first session in which redistricting made a real impact in North Carolina. Redistricting transformed the assembly from a rural to a more urban body and eventually changed legislative demographics, attracting a new breed of urban professional to the legislature. The second key event was the release of a national ranking and evaluation of the legislature by the Citizens Conference on State Legislatures in August 1971 that branded North Carolina's General Assembly as the fourth worst legislature in the country. That report eventually led to the addition of staffing for the General Assembly and to the increasing independence of the legislature from information that once came solely from the executive branch. And the third key event was the election in 1972 of the state's first Republican governor in the 20th century. This led to further changes in legislative demographics because it strengthened the Republican party and brought about changes in the state budget process.

Redistricting and The Law of Unintended Consequences

When the U.S. Supreme Court issued its famous "one person, one vote" decisions in 1962 and 1964,[1] it set off waves of redistricting across the country. By 1966, every legislature in the country had reapportioned in line with that principle, which required equal representation of geographic areas based on population. But it was not until much later that redistricting had its greatest effect in North Carolina—during the 1971 session, after the 1970 census was released. That census showed how markedly the state's population had shifted from rural to urban areas. In order to comply with the court decisions, the 1971 redistricting had to reflect that shift.

All of a sudden, there were more legislative seats available for cities and fewer for the farmlands. This had an undeniable effect on political elections as well as local referendums and bills in

Ran Coble, executive director of the N.C. Center for Public Policy Research, served on the staff of the General Assembly's Fiscal Research Division in 1971-72. This column is based on a speech the author presented to N.C. members of the Public Affairs Council, a group of corporations and associations, on March 2, 1987.

the legislature. For example, after that shift occurred, it was only a matter of time before the urban legislators favoring liquor-by-the-drink legislation were able to form the majority coalition needed to pass such a bill—as it finally did in 1978.[2] With this dramatic shift toward increasing *numbers* of urban legislators came speculation that there would also be a shift in *power*—particularly a question whether the key positions of power, such as the Speakership and the Appropriations Committee chairmanships, would pass to urban legislators.

That didn't happen. Instead, the Law of Unintended Consequences struck. Rather than automatically shifting legislative power to urban areas, redistricting caused increased competition for legislative seats in urban areas, which also meant increased biennial turnover among the city legislators. By contrast, lawmakers from rural areas faced less competition locally, often running unopposed, and thus they were—and to this day still are—able to build up the seniority needed to become chairman of an important legislative committee or become Speaker of the House. Just to illustrate the point, the Center's latest biennial rankings of legislative effectiveness show that the top three House members and three of the top seven Senate members are from rural districts.[3]

Leadership in the House is predominantly rural, from the Speaker down through the appropriations committee chairmen. Eight of those 10 chairmen come from rural districts. In the Senate, there's more of an urban cast, but not much more. The president pro tem is rural; his deputy is urban. The chairman of the appropriations committee is rural, but the base budget chairman is urban. The subcommittee chairmen are about evenly split between urban and rural —but the fact is that even where urban legislators are in power, they come not from the four largest urban areas of Charlotte, Raleigh, Greensboro and Winston-Salem, but from middle-sized cities such as Asheville, Durham, or Fayetteville.

Redistricting—particularly the single member districts created in the 1980s—also produced more counties with split delegations, containing both Democrats *and* Republicans. Thus, though Mecklenburg, Forsyth and Guilford counties saw increases in the total number of legislators they could send to the General Assembly, the split delegations from those counties often couldn't *agree* on many *statewide* issues and policies (and sometimes, incredibly, even on local issues), thereby ceding the power to decide these issues back to rural legislators. It is likely that higher turnover rates in urban districts will continue—and thus power will remain concentrated in legislators from rural areas.

A Report by the Citizens Conference on State Legislatures

Redistricting had shaken the foundations of the legislature, but no sooner had the dust began to settle than another earthquake hit. This tremor came in the form of a report by the Citizens Conference on State Legislatures in August 1971 declaring that North Carolina had the fourth-worst legislature in the country. The Citizens Conference evaluated and ranked all 50 state legislatures and published its findings in a book called *The Sometime Governments*. With forceful language and exhaustive research, the report brought renewed pressure to reform on most legislatures. North Carolina's legislature ranked 47th in the country, and one of the reasons was its inability to compete with the executive branch. To remedy the state's shortcomings, the report recommended that the legislature be "completely staffed with bill drafters, fiscal specialists and [research] specialists"; that "all committees have permanent, full-time staff as soon as possible"; that an "electric roll-call recorder be installed" to enhance accountability on voting; that the system of rotating leadership where the Speaker of the House was limited to one term be discontinued; and that committee meetings be opened to the public.[4]

Legislators reacted strongly to their low rankings. Members thought they were fairly independent of the executive branch already because North Carolina was the *only* state in the country to deny the governor a veto. At first there was little sentiment for adopting these recommendations. Yet, quietly but surely, over the next few sessions, many of them were implemented.

The recommendation to add staff came first. The legislature had already created the Fiscal Research Division in 1971. The Fiscal Research Division staffs the money committees—the Finance Committees, which decide where the revenue will come from, and the Appropriations Committees, which decide where the money will go. Before Fiscal Research was established, the legislature had relied on the Governor's Budget Office for information about the budget. Following the creation of the Fiscal Research Division, the General Research Division was established to staff the committees dealing with "other-than-money" matters—subjects like education, aging, and transportation. Before, the Institute of Government at UNC-CH had

staffed these committees.[5] Next, the Bill Drafting Division was set up, thereby replacing the Attorney General's staff which had previously drafted most bills. Finally, the Automated Systems Division, providing and servicing the legislature's sophisticated computer system, was established.

With new staff came better accountability and new leadership patterns. An electronic voting apparatus was installed in 1975, and Rep. Carl Stewart (D-Gaston) became the first full-two-term Speaker in 1977 and 1979. He was also instrumental in opening up the legislative committee process and passing an Open Meetings Law affecting *all* governmental bodies in North Carolina.

Because the legislature has its own staff, this session it is breaking with the past to draft its own budget. For the first time, instead of taking the Governor's recommended budget, the General Assembly is building its own by beginning with the expenditure figures of executive agencies in the past year (i.e., the certified budget). In this way, the legislature will develop its own spending priorities and come up with a new budget that will reflect those priorities. The legislature could not have done this in the days before it had its own staff.

Another possible effect of this new staff is a reduction in the number of bills passed. In 1957, *76%* of all bills *introduced* were *passed.* Since 1971, however, the legislature has passed only about 40 to 50 percent of the bills introduced each session (see table).

The Election of a Republican Governor

*B*y far the most significant of the three key trends was the election of James T. Holshouser in 1972 as the state's first Republican Governor since early in the 20th century. Holshouser took office in 1973, and the General Assembly immediately switched from biennial sessions to meeting annually. This shift to annual sessions is consistent with national trends. In 1941, only four state legislatures met annually. Now all but seven do.[6] The presence of a Republican Governor also was a factor in prodding the legislature to hire its own staff, especially to review the state budget. Soon, fundamental changes in the budget process began to take place.

The debate continues as to whether annual sessions were a direct result of electing a Republican Governor. Obviously, the budget was already getting more and more complex, and the federal government was forcing new reponsibilities on the states with Revenue Sharing and Medicaid program administration, just to mention two programs. In addition, the economic instability permeating the nation in late 1973 and 1974, due to the Arab oil crisis, made legislators leery of adopting a two-year budget in 1973 when they did not know what the economic climate in 1974 might be. They decided to meet again in 1974 to review the budget and make necessary revisions. But applying the rule that "If it walks like a duck and quacks like a duck, it's a duck," the fact remains that the state inaugurated a Republican Governor in 1973 and the legislature inaugurated annual sessions the next year in 1974.

The conventional wisdom among mavens of the legislature is that sessions have gotten longer here since 1971. That's wrong, at least for *regular* sessions of the legislature. In *odd*-numbered years, the number of legislative working days has been fairly constant since 1967. There were 126 working days in 1967, 123 in 1977, and 118 in 1985. North Carolina is one of 12 states that has no statutory or constitutional limit on the length of legislative sessions. However, the *short* sessions in the *even* years do increase the length of legislative sessions. The longest "short" session was the 64-day session in 1974; it dropped to 10 days in 1976 and gradually grew to 29 days in 1986. Perhaps the amount of time spent on legislative study committees between sessions and other interim activity have also increased.

The Law of Unintended Consequences applies here, too. When the legislature began meeting more frequently, the demographics of the legislature changed. In 1971, there were 68 lawyers in the legislature. Now there are but 44. There also are more women, more blacks, more Republicans, more retirees, more educators (many of them retired) and more members who describe their occupations as real estate.[7] What's more, from 1971 to 1985, the legislative turnover rate remained fairly constant, about 36 percent. But in 1987, the turnover rate dropped dramatically, to 19 percent (12 percent in the Senate, 21 percent in the House), tracking a national decline in legislative turnover.[8]

To counteract the presence of first a Republican Governor in 1973 and later a governor with the power to succeed himself, the legislative leaders began serving multiple terms themselves. Carl Stewart was succeeded by Liston Ramsey (now in his fourth two-year term as Speaker) in 1981. The first Lieutenant Governor to succeed himself (and serve a second, four-year term as president of the Senate) was Jimmy Green, first elected in 1976 and re-elected in 1980.

Perhaps the most important reactions to the

Trends in Length of N.C. Legislative Sesssions, Bills Introduced, and Percent of Bills Passed

Year	Number of Working Legislative Days			Total Bills		Percentage of Bills Ratified	
	Long Sessions in Odd Years	Short Session in Even Years	Totals	Introduced	Ratified	Per session	Cumulative
1957	109			1986		76%	
1967	126			2184		62.3%	
1971	141			2622		53.4%	
1973	97		161	2317	826	35.6%	40.0%
1974		64		1384	656	47.3%	
1975	117		127	2236	975	43.6%	42.5%
1976		10		76	8	10.5%	
1977	123		136	2451	1131	46.1%	47.6%
1978		13		275	167	60.7%	
1979	108		123	2480	1077	43.4%	46.2%
1980		15		402	255	63.4%	
1981	127		143	2156	1048	48.6%	53.0%
1982		16		329	270	82.0%	
1983	138		161	2177	992	45.6%	45.7%
1984		23		525	243	46.2%	
1985	118		147	2278	793	36.8%	29.9%
1986		29		1170	239	22.7%	

Source: Compiled from various tables in the UNC-CH Institute of Government's summaries of legislation, published annually since 1934, entitled, for example, *North Carolina Legislation 1985*; and Senate Clerk's office records.

Note: Number of bills introduced includes House and Senate bills and resolutions. Number of bills ratified includes only ratified session laws.

first Republican Governor, however, were the changes in the budget process—forces that are still at work today. The budget now is much more a *legislative* budget than it was in 1969. The budget *proposed* at the start of the session used to be a joint effort—arrived at through a consensus reached by the Governor and the eight to 10 legislators who served on the Advisory Budget Commission. The Governor and Advisory Budget Commission used to submit a budget *together* to the General Assembly, thereby raising questions whether the constitutional power vested in the governor regarding the *preparation* of the budget was being undermined by the involvement of legislators so early in the process. Obviously, it made the budget pass smoothly through the legislature, but the N.C. Supreme Court said that wasn't what the constitutional framers intended.[9] Instead, the Court said the legislature independently should review the budget that was submitted by the governor. In the future, Advisory Budget Commission opinions on what items to propose in the budget would be purely advisory and not the final word. This session, for the first time since 1925 when the Advisory Budget Commission was created, the legislature seems to be drafting its own budget.

In reacting to a Republican Governor, the General Assembly also made two other changes in the budget process—one using an old tool in a new way and the other inventing a new tool. The old tool was pork barrel money, and the new tool was special provisions in budget bills.[10] Both these tools have been abused in the budget process, but promised reforms by the Lieutenant Governor and the Speaker may halt these problems and help restore public confidence in the budget process.

Not to be overlooked in any discussion of legislative changes is the dramatic effect that gubernatorial succession has had. When succession passed the General Assembly in 1977 and was adopted by voters that fall, it affected far more than the Executive Mansion. It meant that the Lieutenant Governor—then James C. Green—could not run effectively for governor, so he sought reelection in 1980, won, and stayed in charge of the Senate. That meant no one moved up, and the committee chairmen stayed about the same. House Speaker Carl Stewart, who already had made history with a second term, tried to buck the odds and ran for Lieutenant Governor, but lost to Green in the Democratic primary. Still, his two-term speakership, and the four-term speakership of Stewart's successor, Liston Ramsey, have effectively cut off the means for the House to produce new leaders—at least as it did prior to 1977. "In effect, what that amendment did was have even greater impact on the legislature than on the executive side," says Thad Beyle, professor of political science at UNC-Chapel Hill. "Leadership has become set, ambition ladders clogged up, and a relatively few run the show. How many good or potentially good legislators have bailed out due to a lack of upward mobility?" he adds.

All these changes have come about during a relatively brief period—in less than a quarter-century—yet they have transformed the N.C. General Assembly into a modern and more efficient legislative body. In terms of professional staffing, in the use of sophisticated equipment, and in terms of openness, the legislature has made great strides —and has become more independent of and more an equal to the executive branch.

FOOTNOTES

[1]*Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964). In 1960, the urban/rural population split was 39.5 percent urban, 60.5 percent rural; in 1970, its was 45.5 urban, 54.5 rural; in 1980 it was 48 percent urban, 52 percent rural.

[2]Chapter 1138 of the 1977 Session Laws (2nd Session, 1978). The 1978 legislature passed such legislation despite a 1973 statewide referendum vote against liquor-by-the-drink.

[3]*Article II: A Guide to the 1987-88 N.C. Legislature*, N.C. Center for Public Policy Research, April 1987, pp. 200-214. The top three House members in effectiveness were from the rural counties of Madison (Speaker Liston Ramsey), Granville (Rep. William T. Watkins) and Harnett (Rep. Bobby Etheridge). Three of the top seven Senators in effectiveness were from the rural counties of Union (Sen. Aaron Plyler), Lenoir (Sen. Harold Hardison), and Bertie (Sen. J.J. Harrington).

[4]John Burns, *The Sometime Governments*, Citizens Conference on State Legislatures, (Bantam Books: New York, N.Y.) 1971, pp. 274-276.

[5]Milton Heath of the Institute of Government reports that the IOG began to provide staff services to the General Assembly in 1967 and 1969, mostly on local government issues. The IOG's workload at the legislature grew through the 1970s and began to taper off during the 1981 and 1983 sessions.

[6]"The State Legislatures," by William T. Pound, *The Book of the States, 1986-87 Edition*, The Council of State Governments, Lexington, Ky., 1986, pp. 76-144.

[7]"Legislative Demographics: Where Have All the Lawyers Gone?" by Paul T. O'Connor, *North Carolina Insight*, Vol. 9, No. 2, September 1986, p. 44, and 1987-88 *Article II*, pp. 215-216. See note 3 above.

[8]Lucinda Simon, "The Mighty Incumbent," *State Legislatures*, July 1986, pp. 31-34.

[9]*Wallace v. Bone*, 304 N.C. 591, 286 S.E. 2d 79 (1982), N.C. Supreme Court Advisory Opinion (Feb. 16, 1982), and letter from Attorney General to legislature (Feb. 19, 1982).

[10]Coble's speech has been shortened for space reasons. For more on this point, see Ran Coble, *Special Provisions in Budget Bills, A Pandora's Box for N.C. Citizens*, June 1986, and March 4, 1987 follow-up report, N.C. Center for Public Policy Research. See also "Reforming Pork Barrel, Special Provisions and the Appropriations Process: There's Less Than Meets the Eye," by Paul T. O'Connor, *North Carolina Insight*, Vol. 9, No. 3, March 1987, p. 96.

When It Comes to Economic Development, Jim Martin and Bob Jordan Have Big Plans

by Paul T. O'Connor

With this article, North Carolina Insight *launches its newest feature, which periodically will examine the executive branch of state government and its role in public policymaking. This initial column compares the competing economic development plans put forward by the state's two top executives, Gov. James G. Martin and Lt. Gov. Robert B. Jordan III.*

Two thousand miles west of the State Government Mall in Raleigh, a Montana entrepreneur wants to establish a wildlife park the size of the state of Maryland. The developer envisions multiple tourist uses for the park—including buffalo hunting. Whether armed with high-powered rifles or cameras, he contends, tourists would flock to the Great Plains, and economic development would follow.

While Montana may just be turning to buffalo hunting as a tool of economic development, North Carolina is just entering its post-buffalo hunt era. In the Old North State, "buffalo hunt" has been a metaphor used to describe the state's decades-old policy of recruiting mammoth out-of-state industries for relocation to North Carolina. But in the latter part of the 1980s, the buffalo hunt is over.

The N.C. Economic Development Board, in its "Blueprint for Economic Development," says, "There is general consensus within the state's development community that future competition among states for investment dollars for both manufacturing and non-manufacturing will be greatly increased. There are now over 10,000 development organizations within the United States. We know that in 1984 there were only 1,200 major manufacturing sitings in this country; thus, it is clear ... that the 'buffalo hunt' is becoming more scarce."[1]

This realization that industrial recruitment—the cornerstone of the state's economic development strategy for decades—will play a diminishing role in the creation of new jobs in North Carolina has sparked creation of two major economic development plans over the past two years. One, the Blueprint for Economic Development, was designed as Republican Gov. Jim Martin's policy statement on economic development. The other, the report of the N.C. Commission on Jobs and Economic Growth, was the brainchild of Lt. Gov. Bob Jordan, a Democrat, who steered creation of the commission through the General Assembly in 1985.[2] Because the two men are likely opponents in the 1988 gubernatorial campaign, the documents are just as important for political as for economic reasons.

To no one's surprise, the economic development ideas of these two very different politicians differ significantly—even in size and detail. The Martin administration Blueprint, drafted largely by former Secretary of Commerce Howard Haworth, is relatively thin, running to only 14 pages and addressing the subject mostly in generalities.[3] By contrast, the Report of the Commission on Jobs

Paul T. O'Connor, a frequent contributor to North Carolina Insight, *is a Raleigh columnist for the 53-member N.C. Association of Afternoon Daily Newspapers.*

and Economic Growth runs 61 pages, plus appendices, and is accompanied by a follow-up study of rural growth problems in North Carolina produced for the Commission by MDC, Inc. of Chapel Hill, a private, nonprofit employment research group.[4] Both the Martin and the Jordan plans examine the problems of economic growth in detail—Jordan's far more than Martin's— and both serve as a guideline to how the two officials would approach economic development. Some aspects of each plan require legislative approval before they can be implemented.

The Echo Effect

The Martin Blueprint and the Jordan Report are quite similar in some major regards. Both, for example, start with the basic premise that education is the most critical element of any successful economic growth plan. "The most important ingredient required for continued future economic development momentum is dramatic improvement in the quality of our primary/secondary public school delivery system," says Martin's Blueprint. Jordan's Report, in listing 14 education recommendations, described educational improvements as investments in the state's human resources.

The two plans also recognize the need to improve upon the state's infrastructure of public works. Both plans advocate spending for water and wastewater treatment facilities, better roads, and ports.

Both plans also recognize the government's job of providing basic support to private business. For example, both advocate establishment of government clearing houses for market and work force information. And both recognize the need for government to get out of the way, sometimes. For example, both plans advocate one-stop business licensing, an innovation designed to reduce government hassle a businessman encounters when beginning a new venture—though Jordan's proposal would let businesses arrange for all state permits through one office while Martin's would not.

And both plans call for emphasis on rural economic development. The Martin Blueprint calls for a "Non-Metropolitan Task Force" to guide "economic development 'hubs'" in rural areas. The Jordan plan calls for a "Rural Economic Development Center" to create an "action agenda for rural economic development."

Common Goals, Divergent Strategies

Despite these common goals, the plans' similarities end when it comes to the two officials' strategies for economic development. Martin says the state should provide the basics of an educated work force and a working infrastructure, and then step aside. "Our nation, unlike any other nation in the world, was founded on the principle of limited government," Martin, expanding on his Blueprint, said at the Emerging Issues Forum at N.C. State University in February. "It has been that principle which has given wings to the human spirit. And it has established an environment in which private enterprise has flourished and become our great source of jobs and wealth and abundance."

Jordan, however, says government must be used as a partner in the development of new businesses. "We're going to have to use government," Jordan said in a speech to the N.C. Retail Merchants Association in February, when he also elaborated on his report. "The government is going to have to create some jobs."[5]

A sports metaphor may best illustrate the differences in approach of the state's two top officials. Suppose North Carolina sought to build for itself a basketball industry. Martin would contend that the state should teach people to play the game, and to build courts on which they could play. With those basic elements in place, Martin would argue, the marketplace would go to work to attract an industry around a highly skilled basketball population.

Jordan's approach would be similar to Martin's, but would seek other ways to capitalize —such as developing companies to silk-screen the uniforms, print the game programs, market the half-time hot dogs, and even grow the hot green peppers for the nachos-and-cheese platters.

The Martin administration bristles at this analogy. "We already do that," says Commerce Department spokesman Sam Taylor. "But we wouldn't give a low-interest loan to the hot dog company."

How do these two different strategies manifest themselves in specific proposals? Let's look at several. Anyone who wants to start a new business needs money, but it is North Carolina's misfortune not to be a fount of speculative capital.[6] This lack of start-up money may explain why the nation's two other centers of high technology research—Silicon Valley, Cal., and Boston, Mass., have seen explosive indigenous entrepreneurial development while the Research Triangle continues to grow mostly from outside business relocations and some expansion of existing companies. Obviously, more venture capital would help, and both plans seek to increase the amount of venture capital available in the state. But they would go about it in markedly different fashions.

Comparison of Economic Development Plans

	Martin's Blueprint	Jordan's Report
Education:	Emphasizes need for improvement in elementary and secondary education; Supports Basic Education Plan; Supports school bond issue; Promotes teacher career ladder plan	Puts forth 14 specific recommendations for improving education; Supports Basic Education Plan; Supports school bond issue
Public Works:	Supports water/sewer bond issue and promotes spending for roads, bridges, ports facilities	Recommends 13 steps to promote and ensure adequate public works facilities and services
Rural Development:	Rural Development "Hubs" guided by "Non-Metropolitan Task Force"	"Rural Economic Development Center" to set agenda for rural development*
Licensing:	Office in state Department of Commerce to counsel businesses on obtaining permits from Commerce Department only	Comprehensive office to help arrange for *all* state business licenses and permits**
Venture Capital:	Authorizes state trust funds to invest in private venture capital funds	Creates governing body to direct a state venture capital fund
Tax Incentives:	No direct tax incentives to business to create jobs; However, would eliminate intangibles and manufacturers' inventory taxes	Selective tax credits to certain industries which agree to create new jobs in depressed areas with high unemployment
Growth Strategy:	Courts major infrastructure projects such as Superconducting Super Collider and various technical research centers; Enhances business environment; Promotes small business	More emphasis on "Growth From Within" rather than on winning big federal projects; Promotes job creation; Promotes small business

* Identical bills pending in N.C. General Assembly (H 195 and S 35) to accomplish goal of Jordan Report.

** Identical bills pending in N.C. General Assembly (H 109 and S 82) to accomplish goal of Jordan Report.

Jordan's Commission on Jobs and Economic Growth did not endorse a specific venture capital strategy, but Billy Ray Hall, executive director of the commission, says it is obvious that "the state needs to establish a start-up, or seed-capital, fund. We advocate that the government do something with venture capital. Maybe, like Arkansas, we could provide a tax credit for venture capital funds." The Jordan approach would have the state create a quasi-governmental body that would control the venture capital fund. Tax credits or government incentives would lure money into the fund.

Martin also would involve the government, but in an entirely different approach. Martin worries that the Jordan idea for government funding of a venture capital fund "would likely degenerate into pork barrel—like political decisions as to who would be favored." Instead, Martin proposes that the legislature authorize the investment of state trust funds in private venture capital funds. "The legislature would authorize the state trust funds (such as the state employee pension fund) to make investments in investment quality venture capital funds," says Commerce Secretary Claude E. Pope, who was head of Martin's Economic Development Board when the Blueprint was written by Haworth.

"We don't think the trust funds should be directed to do this (invest in venture capital funds)," Pope says. Martin would only seek to give the state trust funds the authority to invest, if their directors sought to do so. The Martin plan would require the State Treasurer to approve which funds could be used for investment. But directors of these trust funds may be reluctant to commit, for instance, retirement funds to risky ventures—even those that promise high returns if successful. Martin also is working on a plan to deposit state funds in certificates of deposit with banks that agree to make that money available to small businesses for long-term, fixed-rate loans, and also to develop a secondary market for small business loans to encourage lenders to make more capital available.

The debate over venture capital includes another basic difference in the two plans. While Martin is opposed to *any* form of tax incentives, Jordan favors their use. In the Jordan plan, tax incentives would be used selectively for expressed purposes. Hall says the state should direct tax credits to industries willing to create new jobs in economically distressed areas. "Let's say, hypothetically, that we offered a tax credit for new jobs created in, say, the state's 20 counties with highest unemployment," Hall says. "Our job is to find a way to get the business community to pay attention to these hardest hit areas. At least with these tax credits, a businessman would want to go and see if he could put his job opportunities in these counties."

But the Martin Blueprint calls tax incentives "expensive giveaways," and argues that they would not be a cost-effective lure for bringing out-of-state industries to North Carolina. The Blueprint says that existing industries would resent the fact that newcomers, and possibly competitors, were getting tax breaks from the state. In that sense, the incentives would be counterproductive. Martin argues that such tax breaks are so selective that they raise the basic fairness question, "Who decides who gets a tax break?"

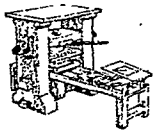
Yet Martin's Blueprint is not devoid of tax breaks for business, setting up an obvious contradiction for the Governor. On one hand, Martin's Blueprint argues that "One does not successfully merchandise a quality product simply on price." The Blueprint then lists the state's many qualities that industry should find attractive, including "one of the nation's 10 lowest tax rates with taxes existent." Tax incentives, Martin argues, would only drain needed resources away from education improvements.

On the other hand, several pages over in the Blueprint, Martin reverses course and argues *for* a specific tax incentive—the elimination of the inventory and intangibles taxes.[7] Martin argues that this would be fairer than selected tax breaks because it would affect businesses across the board. Ironically, however, such a move would drain far more revenue from the state treasury than would Jordan's limited and targeted tax incentives. The Martin proposal to cut inventory and intangibles taxes would cost $180 million each year in lost tax revenues, according to General Assembly Fiscal Research Analyst David Crotts; the Jordan plan would cost about $50 million in tax revenues over *an eight-year period*, according to the N.C. Department of Revenue. Martin advocates further tax cuts while Jordan advocates retention of the current tax structure with increased government spending on programs aimed at encouraging business development.

Both plans also have budget costs for certain new programs. The Martin plan would cost $3 million the first year and $2.5 million the second if adopted in toto; the Jordan plan would cost $2.6 million in 1987-88 and $4.5 million the following year.

Curiously, while Martin calls for eliminating the inventory and intangibles taxes in his Blue-

— *continued on page 52*



Radio Journalism in North Carolina: Listening for Less News

by Jack Betts

This regular feature of Insight *examines how the news media—newspapers, television, and radio stations—cover public affairs in North Carolina. In this issue,* Insight *examines radio journalism and how it has fared in an era of deregulation and intense competition within the commercial radio industry.*

In the waning days of Jimmy Carter's presidency, the Federal Communications Commission (FCC) handed down an order that is still reverberating throughout the broadcasting industry —and which has had a dramatic effect on the amount and, some say, the quality of news that America's citizens get via the radio. Just a week before Ronald Reagan took over the White House, the FCC adopted an order scrapping its long-standing requirements for a minimum amount of news and public affairs programming for any commercial station licensed to do business in the United States.[1] For years, AM radio stations had been required to air at least 8 percent such "non-entertainment" programming; FM stations had been required to commit 6 percent of their air time to news, information, and other public affairs material.

But all that changed on Jan. 14, 1981, when the FCC deregulated radio. In the ensuing six years, radio stations across the country have cut back on their news operations—paring down the number of daily newscasts, cutting the length of newscasts, cutting newsroom budgets, and all too often, cutting news entirely. Other stations have dropped a once-proud tradition of strong local reporting in favor of "rip 'n read" journalism —saddling disc jockeys and announcers with the job of reading wire copy right off the Associated Press or United Press International teletypes, or subscribing to "canned" news networks that may be played over the airwaves without further effort by local stations. The long-standing tradition of radio news excellence—what Edward R. Murrow called "that most satisfying and rewarding instrument"[2]—is in jeopardy in North Carolina. "Deregulation was the culprit that is doing us in," says one prominent Raleigh radio journalist, who asked not to be identified for fear of losing his job. "We've had a wholesale decline in the number of self-operated radio news staffs, and no one knows how far it's going to go."

John Wheeling, a veteran of WCBS in New York and now news director of Raleigh's WRAL-FM and the N.C. News Network (NCNN), says of the industry in general, "We lost that hole card (the minimum news requirement) and the predictable happened—there no longer was a real reason to keep news programming at the same level. And since then, we have seen a significant if not alarming decrease in the amount of resources committed to radio news."

Even WRAL, which has a professional staff, has trimmed its newscasts, concentrating mainly on the "drive-time" during morning and evening rush hours. "Even though we've reduced the number of scheduled broadcast minutes," adds Wheeling, "our commitment is still there. We try to provide as broad a cross-section of news as we can."

Jack Betts, associate editor of North Carolina Insight, *is a former Washington and Raleigh correspondent for the* Greensboro News & Record, *a regular panelist on UNC-TV's "North Carolina This Week," and an occasional guest on various radio public affairs programs.*

What has happened in North Carolina mirrors a national trend. "Once the backbone of electronic journalism and the first source of live reporting, radio news is on the skids," reported *The New York Times* in December 1986. "Its decline in many cases reflects a deliberate retreat by station owners who see cutting news as an easy way to reduce costs. In other instances the trend reflects acquiescence to ambitious television stations that have used video and satellite technology to gain the edge in local news. Whatever the reasons, the number of all-news radio stations is dwindling, and many other stations that have maintained news staffs are eliminating or reducing them and the air time allotted to news."[3]

Does it make a difference whether radio covers the news? Consider: When the nuclear accident occurred at Three Mile Island in Pennsylvania in 1979, 56 percent of the local residents found out about it from radio news—compared to about 14 percent from television and fewer still from newspapers. When Sen. Robert F. Kennedy was shot in 1968 while campaigning for the presidency, nearly 57 percent of the public heard about it on radio, while 20 percent got the word from television and 6 percent from newspapers. When Alabama Gov. George Wallace was shot while campaigning in Maryland in 1972, radio beat television by a four-to-one margin.[4] In other words, there is no other medium on earth that can get the word out as quickly and to as many people as radio.

Yet, with fewer resources going to radio news, the public stands a greater chance of going without substantive coverage of dramatic, critical events. But what if there were a serious nuclear accident at the new Shearon Harris Nuclear Station near Raleigh? Or at the Catawba Station near Charlotte? Or a chemical spill in a critical watershed of Asheville? An oil spill off the coast of Wilmington? In those instances, radio news would play a critical role, but stations without a competent news staff might only confuse its listeners.

But emergency news is hardly radio's only role. The fact is that radio news operations also are important cogs in the reporting of many other types of stories—weather, school board, city council, courthouse, politics, and the entire range of public affairs. The same expertise that newspapers and television stations require is essential to an effective radio news operation. Yet few stations commit these types of resources to covering the news daily. There are, of course, major exceptions. In Raleigh, for instance, WPTF-AM, which always has had a strong commitment to news and public affairs, and WRAL-FM both regularly cover state government, the General Assembly, and other important news. In other major radio markets, old-line stations like WBT and WSOC in Charlotte, WSJS in Winston-Salem, and WDNC in Durham remain committed to covering *local* and *regional* news, but only a few stations make a serious effort to cover state government news beyond the headlines. And in 1986, one of the oldest radio stations in the state, Greensboro's WBIG-AM, for years a mainstay of radio journalism in the Piedmont, went off the air when its owner, Jefferson-Pilot Communications, decided to staunch the flow of red ink.

The cutbacks in news operations around the state concern serious journalists who view the state's far-flung scattering of small radio stations as reporting *assets* as well as *outlets*. Sue Wilson, broadcast editor for the Associated Press Raleigh Bureau, puts it this way: "What scares me about this is that there are parts of the state where we don't know what is going on on a daily basis. There may be some giant story out there that we don't know about because there is no news reporter in the area."

North Carolina's journalistic community reflects its population—dispersed, traditionally more rural than urban, and concentrated in small towns. The state has literally scores of small newspapers —dailies, biweeklies and weeklies—but it has hundreds of radio stations scattered from the coast to the mountains. The 1986 Broadcasting Cablecasting Yearbook lists 361 radio stations operating in the state—225 of them AM stations, 136 of them FM stations.[5] But of these stations, how many have active news operations? No one knows, because the FCC no longer keeps statistics on radio news operations, nor do other industry groups.

John Harris, broadcast sales manager for the Associated Press in North Carolina, says the number of radio stations going without even a state wire service has increased over the years, partly because of deregulation and also partly because many old-line AM stations have been squeezed financially by the proliferation of FM stations. "A number of AM stations have gone dark (off the air) in recent years and I fully expect more to succumb in the next 10 years," he says. The AP now has 136 radio clients in North Carolina—a little more than a third of the radio stations operating. By contrast, the AP has as clients more than 90 percent of the television stations and the daily newspapers operating in North Carolina. These clients are AP members who exchange news stories and who pay a fee for AP services based on the size of circulation or audiences.

While the decline in radio journalism has cut the number of newscasts and of professional radio

journalists in the state, it has also strengthened one segment of the profession—the radio news network. The sole radio audio network operating in North Carolina is the N.C. News Network, a for-profit venture of Capitol Broadcasting Co. (Other audio services—from AP and UPI, and the Southern Farm Network operated by Durham Life Broadcasting Co.—are available, but they are not specifically designed *solely* for North Carolina listeners.) The N.C. News Network, says Wheeling, has nearly doubled its list of clients in the past three years, to about 100 users, although only about 30 stations carry every item that NCNN transmits. "We protect those stations which don't have a wire machine or their own news staff," says Wheeling. NCNN clients receive the service for free, save for the cost of transmission devices. NCNN revenues come from advertisements that client stations must broadcast along with newscasts.

Ernie Shultz, executive secretary of the Radio/Television News Directors Association in Washington, says the NCNN reflects another national trend—more regional newscasts. "There has been a swing from local radio news to regional news," he says. But Schultz also says local radio news is in for a renaissance. "It may be that local radio news is about to be rediscovered," he ventures.

Schultz may be whistling in the graveyard, but if he is, he's got a lot of company: "I think the pendulum is starting to swing back," says Wheeling of WRAL, "maybe not to the extent that we will be regulated again and required to have a minimum amount of news, but I think the news will reach an equilibrium." Says Margaret Murchison of Sanford's WWGP-AM, "Some stations perhaps had too many reporters originally, and some of them are still having trouble." A veteran reporter, former president of the Associated Press Broadcasters Association, and currently secretary-treasurer of the Radio and Television News Directors Association of the Carolinas, Murchison senses that "radio news is on its way back."

There are some encouraging trends. Harris of the Associated Press finds a new willingness on the part of FM stations—traditionally the stations which concentrate more on music than public affairs—to operate their own news departments. "For 10 years, most of these stations were in a strictly music-box format," says Harris. "But now the FM stations, even the rockers, are going back and doing newscasts and two-man teams in drive-time with a lot of news and information." Often this programming content includes "soft" news and lifestyle features—what the stations call "news you can use."

Radio experts have long debated whether radio news—like its television counterpart—can be a money-maker. Increasingly, industry officials have pointed out how radio news not only can make money, but also can help hold an audience for the station's other programming. In an age where the populace is demanding more information about a variety of subjects, radio stations might well profit by beefing up their news and public affairs operations.

One way to help ensure that more—and better—information goes across the airways is to insist that local radio reporters do more digging. Tim Pittman, press secretary to Gov. Jim Martin, notes that his office gets regular calls from radio stations. But instead of asking hard questions of the Governor, or independently pursuing a news story, they usually call for an audio feed from the Governor's weekly press conference. "They call to take whatever we can give them," says Pittman. One reason for that is that too often, one-person news staffs must do everything—research, report, write, produce, and announce the news. And even at the larger radio stations, there rarely are "beat" reporters who cover one or two fields exclusively, as there are on newspapers and on television. There often is little time for a radio reporter to become an expert on, say, public education, or hazardous waste disposal.

Beefing up news staffs and newscasts, as well as insisting that radio reporters dig harder for the story, requires a renewed commitment from radio station owners and operators. And it will cost some cold, hard cash. But freeing up reporters to pursue difficult stories, with no guarantee that the story will pan out, has long been the mark of successful newspapers and, increasingly, of successful television news departments. When radio has recommitted itself to original newscasts and begins to assign reporters to probe behind the headlines and the blue smoke and mirrors, we'll know that Edward R. Murrow's "most satisfying and rewarding instrument" is indeed back where it belongs.

FOOTNOTES

[1]"Report and Order of the Federal Communications Commission," Broadcast Docket 79-218, Deregulation of AM and FM Radio, Jan. 14, 1981.

[2]"This Just Might Do Nobody Any Good," address delivered by Edward R. Murrow to annual convention of the Radio/Television News Directors Association in Chicago, Oct. 15, 1958. This was Murrow's major career speech on the broadcasting industry.

[3]"Fewer Radio Listeners Are Hearing the News," by Reginald Stuart, *The New York Times*, Dec. 28, 1986, p. 12E.

[4]*Radio In The Television Age*, by Peter Fornatale and Joshua E. Mills, The Overlook Press, Woodstock, N.Y., 1980, p. 95.

[5]*Broadcasting Cablecasting Yearbook 1986*, Broadcast Publishing Inc., Washington, D.C., 1986, pp. B-200–B-212.

Legislative Committee Hears Center's Research on Older Adults

On April 16, 1987, North Carolina Insight *Editor Bill Finger made an hour-long presentation to the N.C. House of Representatives Committee on Aging. Rep. C. R. Edwards (D-Cumberland), chairman of the committee, invited Finger to summarize what the Center had learned from its three-year project in the aging field. In 1985, the Center released its findings from the first phase of the project in a special issue of* Insight, *"Policy and the Aging—Moving Toward a Crossroads." That issue attracted a great deal of attention, from local communities throughout North Carolina to The Ford Foundation in New York City.*

Early in 1986, The Ford Foundation asked the Center to sponsor a series of local forums where policymakers would come together with the older adult community, using the magazine as a springboard for discussions. This was part of a three-year national project of The Ford Foundation examining the overall policy direction of various social welfare issues, including aging. So last October, the Center held four, day-long forums called, "Sitting Down Together—Older Adults and Elected Officials Tackle the Future," in Asheville, Charlotte, Lumberton, and Raleigh. Seventy-three people were speakers or resource people, and 433 attended. Also, five members of the House Aging Committee participated in the forums. Press coverage of the conferences generally picked up on local issues, such as the shortage of nursing home beds in the Charlotte area, which then-Secretary of Human Resources Phil Kirk addressed in his speech and discussed during a question-and-answer period.

Below are excerpts from Finger's presentation, edited here for space.

The people who elect this Committee are increasingly over age 65. And about 65 percent of this group actually vote, compared to only 60 percent—at best—of the overall voting population. But politics aside, the sheer numbers involved represent one of the greatest transitions of the nation's population this century. At the turn of the century, one of every 25 people was 65 or older. Today, one of every eight is what policymakers call "elderly" and by the year 2030, it'll be one of five. We're a healthier and wealthier nation, but we have a lot more people who are retired and who are in the "very old" category—80 and over.

Moreover, this very old population—those with the greatest medical needs—are growing at the fastest rate. The N.C. Office of Budget and Management projects, Mr. Chairman, that in three years, your county of Cumberland will have 2,622 people *80 years* or older. The State Budget Office estimated an increase of 152 percent in the 80-plus population for Cumberland County, from 1980 to the year 2000. Meanwhile, the number of people 65 or older will grow by 107 percent, much faster than the general population but not as fast as the over-80 group. I've compiled the same figures for each of the counties that the members of this Committee represent (see Table 1). In most cases, that group in your county is growing *twice as fast* as the 65-and-over group.

More diversity exists among people 65 and older than within any other segment of the population. No simple stereotype exists. Older people are not always poor, in bad health, and retired. The differences in income, health, family support systems, skills, housing, and many other areas have accumulated over a lifetime. The longer span of years allows for more diversity and accentuates the differences. The poor are often very poor; the well-off sometimes very rich. Recognizing this diversity is important in developing any policy in this arena.

This wide range of needs and abilities makes the mission and responsibilities of government par-

ticularly complex regarding older Americans. Historically, the federal government has taken the lead in initiating programs for older adults. After the initial passage of the Social Security Act in 1935, 30 years passed before the landmark year for all aging legislation, 1965. That year, Congress passed Medicare, Medicaid, *and* the Older Americans Act. Together with Social Security, these four programs form the backbone of governmental assistance to older Americans.

The federal government is the primary source of funds for these programs, while state and local governments together shoulder about one-third of Medicaid costs. The states also administer the Older Americans Act funds through what's known as the aging network. In North Carolina, as you may know, these funds come from the federal government to the N.C. Division of Aging in the state Department of Human Resources; they go on to the area agencies on aging, which are based in the councils of government, and finally to various local service delivery agencies.

When we began documenting the major social service programs for older persons, frankly we assumed that if we researched the funds going through the aging network, we would have done most of our work. But we were wrong. After much digging for budget figures, and after a lot of cooperation from various state offices, we were able to put together the first comprehensive listing of government programs targeted for the elderly —with expenditures, eligibility criteria, and the cost to the client.

Who administers the most money for services to older adults in North Carolina? Surprisingly, it's not the Division of Aging. In fact, this Division is a distant third, far behind the Division of Medical Assistance, in top place, and lagging well behind the Division of Social Services, in second place (see Table 2).

We spent nine months researching aging issues before a single person mentioned to us that the state Division of Social Services (and therefore the *county* Departments of Social Services) were key agencies in examining policies affecting the aging. The point here bears repeating. When an agency administers nearly twice as much as the namesake agency—the Division of Aging—the money tells us something. It tells us which agencies are making policy decisions affecting the most people.

There's not time this morning to go further with this funding discussion. I do want to make clear, however, that I'm not suggesting that any particular division is doing better work than any other. Before moving on, let me make just two points about these figures.

First, outside of Social Security payments, funding for health services dominates aging programs. And in the state budget, that means Medi*caid.* Anyone concerned about aging issues must understand the Medicaid budget, the services provided under Medicaid, and what specialists call the "window" of eligibility—the income levels that determine who may receive Medicaid benefits. The state legislature plays a significant role in determining the benefits and the eligibility requirements, and hence controls the Medicaid budget.

Second, note that the Division of Social Services plays as important a role in delivering social services to older adults as the Division of Aging does. For legislators concerned about aging issues, then, understanding *how* funds flow through these administrative structures to service providers and finally to older people is critically important. Examining these two divisions together raises one of the policy questions underlying most services for the aging—the question of eligibility for a service. Most programs through the Division of Social Services include a means test; that is, the service is available to people who fall *below* certain income levels. By contrast, most services through the Division of Aging are available in theory to *anyone* over age 60, regardless of income—but often there is not enough money to go around.

Policymakers and Older Adults— What Did They Say to Each Other?

We tried to involve as many points of view as possible in the forums, and thus we got a wealth of input from people actually working in the field. In discussions concerning social service issues, two major themes dominated: first, access, availability, and fragmentation of services and the delivery system for those services; and second, the extent to which social services—nutrition, chore services, transportation—slide into a discussion of specific medical issues.

In fact, medical issues seemed to come up in almost any discussion, everything from the fear of having to go into poverty in order to qualify for Medicaid to the concerns about specific items like prescriptions and burned-out family caregivers. "The overriding concern I heard was the cost of health care," John Tanner, of the Division of Social Services, told me. John represented the division at all four forums and was a resource person at the workshops. "People were afraid of

what would happen to them, to their spouses, especially with a long-term illness. They fear their life savings might go up in smoke—then they'll rely on Medicaid."

President Reagan's Administration is considering a new catastrophic health insurance plan, and I'm told several states have adopted limited plans in this area. Because this seemed to be the number-one fear or need expressed by the elderly at our forums, this Committee may want to consider whether the state should get involved in catastrophic health care or whether to leave that to the federal government.

In discussing medical issues, concerns about the funding systems dominated. "If the Medicaid eligibility criteria were a little bit broader, so that Medicaid could kick in with a little more of the home care costs, that would diminish some of the high institutional costs," said one participant in the Charlotte forum. "Right, and we should cover other alternative types of community support services," added another person, "like respite care, chore services, sitter services, personal care. Those are the stress issues for the family."

Sen. Helen Marvin (D-Gaston), who was chairing this medical discussion, then picked up the conversation and identified one of the key findings of the forums. "We tried to segregate the social services and the health services. But this morning and this afternoon, we keep finding them coming back together. Maybe we need to start being creative and look at them together."

Table 1. Older Adult Population and Projected Percentage Increases, Selected Counties

Members of N.C. House of Rep. Committee on Aging	Home County	No. of People 80 and older (1990)	Percent Increase (1980-2000)	
			80 & over	65 & over
Bertha Holt	Alamance	3,217	161%	67%
Gordon H. Greenwood	Buncombe	6,513	86%	43%
Bill Alexander	Cabarrus	2,867	164%	57%
Raymond M. Thompson	Chowan	540	117%	59%
Beverly M. Perdue	Craven	1,593	209%	123%
C.R. Edwards & Joseph B. Raynor Jr.	Cumberland	2,622	152%	107%
Logan Burke & Frank E. Rhodes	Forsyth	7,533	127%	72%
David Bumgardner Jr.	Gaston	4,482	159%	65%
Barney Paul Woodard	Johnston	1,966	169%	69%
Howard C. Barnhill, W. Pete Cunningham & Jo Graham Foster	Mecklenburg	10,122	147%	90%
Charles F. Buchanan	Mitchell	590	80%	25%
A.M. (Alex) Hall	New Hanover	2,768	127%	63%
Sidney Locks	Robeson	2,226	118%	49%
Bradford V. Ligon	Rowan	3,781	130%	55%
Ed C. Bowen	Sampson	1,479	108%	31%
Bobby H. Barbee Sr.	Stanly	1,543	150%	54%
Aaron E. Fussell & Betty Wiser	Wake	6,713	165%	120%
Judy Hunt	Watauga	983	101%	64%
John W. Brown	Wilkes	1,523	91%	47%

Source: N.C. Office of Budget and Management, April 1987

Proposals for Legislative Leadership

"Start being creative," was the way Senator Marvin put the challenge at our conference in Charlotte. But what does that mean for policymakers concerned with aging issues generally, and for this Committee specifically? The first challenge for this Committee is to determine where you fit in the current forums in North Carolina where policy issues can be examined and policy decisions can be made. In the last 10 years, as aging issues have moved into prominence, no single forum has evolved into the recognized place for focusing on state government policies affecting older adults.

In 1977, the legislature created the Division of Aging within the Department of Human Resources. Many aging advocates and state officials have looked to this division for policy leadership. But remember the dollar figures we reviewed earlier. The Divisions of Medical Assistance and of Social Services are at least as important for policy decisions. If you subscribe to the view that dollars reflect policy, then you must conclude that the Secretary's Office in the Department of Human Resources—which has the job of coordinating agendas among these three divisions—plays the central leadership role in the executive branch. Yet every Secretary of Human Resources has so many responsibilities that aging issues have rarely moved to the front burner in this very large department.

Your first function, then, it seems to me, is to hold the Secretary of Human Resources accountable for planning and implementing policies affecting older adults. To incorporate the complex interactions between medical and social services issues, to anticipate how to cope with the inevitable needs of the rapidly increasingly 80-and-over population in your counties, you must demand leadership from the Secretary's office. For example, you might ask the Secretary of Human Resources to submit a plan to the 1988 General Assembly documenting the needs of N.C.'s older adults and recommendations for what the state's role should be in meeting those needs.

Also since 1977, aging issues have had a forum in the legislative branch. Ernest Messer, then a representative from Haywood County, headed the first aging committee in 1977 and the first Legislative Research Commission (LRC) Committee on Aging in the same year. The LRC committee has met every year since, issuing its 10th consecutive report to the 1987 legislature. Yet even people closely involved with these legislative efforts are quick to point out that the LRC committee tends to *react* to issues more than it *anticipates* long-term trends. Usually with a budget of only $3,000 to $4,000, which funds just three or four meetings, each LRC committee has generally focused on several specific issues that have surfaced as problem areas. No legislative forum has emerged as a breeding ground for long-term thinking on aging issues in the same way that the Mental Health Study Commission has evolved to examine issues about mentally handicapped persons.

Developing a bipartisan forum on aging issues with clout remains a serious challenge for this committee. Rep. Sidney Locks (D-Robeson) has floated one idea that might help the legislature move in this direction—a statewide forum sponsored by this Committee (or the LRC committee), perhaps in conjunction with Governor Martin's Administration. Alternatively, this Committee could hold a series of public hearings on the needs of older adults in the state.

Having such a state-level forum would meet a critical need for leadership that emerged from our conferences. Over and over again, we heard people working in the aging field defend their turf—their particular program or service. The competition for funds is so keen as to make a larger view virtually impossible for local administrators.

A discussion over delivering services based on age or need at the Lumberton forum illustrates the point. An area agency on aging staff member from Cumberland County spoke strongly in favor of the current system where anyone over age 60 is entitled to most services. Another participant challenged her on the point. "But do you have enough funds in your agency to serve *everyone* over 60?" asked the person who favored some means testing.

"No," the staff person admitted. "We have to establish priority groups in the counties we serve." The area agency may not be means testing in the traditional sense but it does have to decide how to allocate limited resources within its service area.

A state-level forum could focus on concerns that go beyond the day-to-day pressures of delivering much-needed services with limited resources. If this Committee can help develop such a forum, the single most important issue to examine, in my opinion, is long-term care. Specifically, this Committee should be concerned with the impact of the Medicaid budget on long-term care. As we saw in our budget discussion earlier, the state spends more through the Medicaid budget than in all other programs targeted for the elderly combined—home services, transportation, employment, etc. How much could a $500,000 appropriation now for respite care or adult day care or home-health ser-

Table 2. Major State-Funded Programs Targeted for the Elderly

Program	Expenditures in N.C. (FY 84, in millions)			
	State	Federal	Other	Total
Division of Medical Assistance				
Medicaid (all Medicaid payments)	$168	$426	$ 54	$648
Medicaid (payments to 65 & over only)	62	$161	$ 18	$242
Division of Social Services				
N.C. State-County Special Assistance for Adults (65 & over only)	$ 13.1	$ 0	$ 5.6	$ 18.7
Social Services	4.7	11.9	4.6	21.2
Total, Division of Social Services	$ 17.8	$ 11.9	$ 10.2	$ 39.9
Division of Aging				
Older Americans Act	$ 1.0	$ 17.8	$ 2.2	$ 21.1
Home Health and Other	1.2	.2	.03	1.4
Total, Division of Aging	$ 2.2	$ 18.0	$ 2.2	$ 22.5

Source: Department of Human Resources, Division of Budget and Analysis. Data collected and compiled by Cynthia Lambert and Bill Finger for *North Carolina Insight* (see Vol. 8, No. 1, pp. 14-30).

vices do to keep the Medicaid nursing-home bill down in the future?

Viewing the health-care services funded by Medicaid, together with the social services and related programs like respite care, requires thoughtful, deliberate planning and policy formulation. Without it, the Medicaid budget will keep creeping up even as the needs get greater. And we won't know whether we're meeting more or less needs—or worse yet, whether Medicaid policies are forcing someone into poverty and into a nursing home, just so they can get their bills paid.

Another critical issue is the access and availability of social services, as mentioned earlier. The single approach that has consistently emerged to address this need is the concept of a senior center. A comprehensive statewide effort must be made to examine how areas can benefit from different kinds of senior center models. Senior centers can do far, far more than provide crafts and recreation services. A senior center can be a central place in the community for many kinds of coordination and outreach efforts. But that takes money and a sophisticated view of what a senior center can become. One speaker at our Raleigh forum, after summarizing some of the demographics of our aging population, called the senior center *the* most important single institution of the future.

There are many other issues that are important, and your Committee will be dealing with some of them this year. You've already addressed the need for disclosure issues regarding lifetime retirement centers, and you'll be considering some tax issues. Without going down a laundry list of needs, ranging from housing to transportation to adult day care and respite care, I will say that an overall strategic plan for these programs needs to exist. How does the need for more home services relate to the skyrocketing Medicaid budget? That question cannot be answered in an hour-long committee session, squeezed into a morning of many other concerns. Such questions require intense study and strong political leadership.

Funding for programs for older adults, outside the Medicaid budget, remains extremely limited. The only way to increase that funding in the short run may be specific bills for funding senior centers or respite care. Both of these areas desperately need funds and can help enormously with long-term cost issues, such as the expensive Medicaid bills for nursing home patients who have spent their lifelong savings.

The older adult population is growing faster than any other segment of our country, and the 80-and-over group is growing at the fastest rate by far. The N.C. state budget will continue to reflect that profound demographic transition in its Medicaid costs. This Committee has a critical role to play in anticipating these transitions and taking actions to meet future needs. The Center's suggestions for

FROM THE CENTER OUT—

action by the Committee on Aging, in summary, are:

1. to hold public hearings or take Representative Locks' suggestion to hold a statewide conference so that you can hear directly the needs of older adults;

2. to examine the types of senior centers that can best work in North Carolina and to help fund a meaningful network of such centers in every county;

3. to decide whether the state should get involved in catastrophic health care or leave that to the federal government;

4. to ask the Secretary of Human Resources to present a plan documenting the needs of the elderly and what the state's role should be in meeting those needs; and perhaps most importantly,

5. to examine the long-term care system—both the services within the system and the budget for the next five to 10 years.

"The rapid growth in the size of our population 65 and over has caught us unprepared, conceptually as well as pragmatically, to deal with many of the issues our society faces," John Cornman, the executive director of the Gerontological Society of America, told our forum in Asheville. Cornman ended his speech quoting Robert Ball, a former U.S. Social Security Administration Commissioner. Let me close the same way today: "We owe much of what we are to the past. We all stand on the shoulders of generations that came before. They built the schools and established the ideals of an educated society. . . . Because we owe so much to the past, we all have the obligation to try to pass on a world to the next generation which is a little better than the one we inherited, so that those who come after, standing on our shoulders, can see a little farther and do a little better in their turn."

IN THE EXECUTIVE BRANCH

—continued from page 43

print, the Governor did *not* propose cutting those taxes in his 1987 budget. But on May 15, 1987 Martin did propose cutting intangibles taxes.

One final example illustrates how the two plans differ: Both men advocate expansion of the state's intellectual infrastructure, the complex of research and technology facilities that has spawned growth in the urban areas, particularly the Research Triangle. Jordan, as a state Senator, supported creation of business incubator facilities and the N.C. Biotechnology Center. Martin, in his first year as Governor, recommended an end to biotechnology funding but later changed his mind in the face of legislative opposition to his plan. Martin now offers four major intellectual infrastructure projects: the Superconducting Super Collider and three research and technology centers in the Triangle. While Jordan has a record of promoting the establishment of *state* facilities, all four of the projects backed by Martin depend on the *federal* government. The collider is a massive U.S. Department of Energy project for which a number of states are competing. The three research and technology centers—on biomedical engineering, textile engineering, and electronic materials research—will be awarded by the National Science Foundation. For a Republican Governor friendly with a Republican president and with a Republican U.S. Senator in a position of seniority—both of whom can direct some federal favors to North Carolina—this may be a promising strategy.

Perhaps that difference highlights the basic difference between the Martin and Jordan plans. Martin feels that if the state lays the groundwork for economic development, someone else will pick up the ball and dribble with it. If the state educates its work force and provides a healthy infrastructure, businesses will move here, the federal government will award major research facilities here, and the state will enjoy continued economic growth, Martin argues.

Jordan calls that the "status quo" policy. He says that along with educational and infrastructural improvements, the state must go a step further to assist "growth from within." Jordan is not betting his chips on the federal government's largesse, but instead seeks to foment growth from within these borders. The state ought to identify its resources, be they healthy forests or a basketball-crazy population, and capitalize on them by assisting and guiding growth from one end of the court—or the state—to the other.

FOOTNOTES

[1]"North Carolina's Blueprint for Economic Development: A Strategic Business Plan for Quality Growth," N.C. Economic Development Board, N.C. Department of Commerce, April 1986, p. 3.

[2]"Report of the N.C. Commission on Jobs and Economic Growth," Office of the Lieutenant Governor, November 12, 1986, created by a special provision in the 1985 budget bill, Chapter 757, Section 52 of the 1985 Session Laws.

[3]For more on the development of the Martin administration Blueprint, see "Who Makes Economic Development Policy?" by Ann Sternlicht and Bill Finger, *North Carolina Insight*, Vol. 8, No. 3-4, April 1986, pp. 31-32. This issue also serves as a general resource on state economic development policies.

[4]"Three Faces of Rural North Carolina: A Summary Report to the N.C. Commission on Jobs and Economic Growth," by MDC, Inc., Chapel Hill, December 1986.

[5]"Economy becomes stage for Martin-Jordan battle," by Steve Riley, *The News and Observer*, Feb. 9, 1987, p. 1C.

[6]"Small Businesses: Big Business in North Carolina," by Todd Cohen, *North Carolina Insight*, Vol. 8, No. 3-4, April 1986, p. 57.

[7]For more on the arguments for and against the inventory and intangibles taxes, see "Rendering Unto Caesar—A Taxing Problem for the 1985 Legislature," *North Carolina Insight*, Vol. 7, No. 4, April 1985, pp. 2-23.

Letters to the Editor

Aging

Bravo! Bill Finger's presentation to the House Committee on Aging [see article on p. 47 for more] on April 16 was received with practically as much respect and enthusiasm as [former state Rep. Ernest] Messer's several weeks ago. Whereas he is considered by the legislators as a colleague and ex-officio member of the committee before he even addresses them, you've won a position at the table as a participant in the Goals Subcommittee deliberations. They knew from every aspect of your presentation that they should settle for no less.

If you have a chance, please send me a copy of your material so I can keep my counterparts informed. We are all eager to work with the legislators as they strive to focus their efforts.

David M. Moser
Director, Aging Unit
Triangle J Council of Governments
Research Triangle Park

Vol. 9, No. 3 N.C. Prisons: Old Problems, Tough Choices

I want to congratulate you for your outstanding *North Carolina Insight* issue on prisons, alternatives and correctional policy.

Since the Whichard Commission report was published in 1982, there has been a strong need for an update, a re-focus on the issues that the Commission raised and the General Assembly acted upon several years ago.

Your March issue filled that need at a most critical point in North Carolina's history.

I am hoping that you can somehow continue to periodically look at the issues you addressed and report progress, problems and changes to a readership that is not only increasingly interested in the subject matter, but continually frustrated at the lack of objective information regarding it.

I think one good follow-up story will be how community service work is beginning to be *the* main punishment sanction placed upon convicted, prison-bound felons. The Intensive Probation/ Parole Program, the Community Penalties Program, and "430 Parole" are dramatically increasing their caseloads and are using community service as the selling point and the reference point by which to convince the judiciary and the public that alternatives are beneficial.

I have always felt that community service paved the way for the existing "new generation" of alternative programs by showing the public and elected officials that offenders CAN successfully work in public jobs that greatly benefit the community. Community service is the infrastructure upon which these other alternatives are built.

And I see an ever-growing intent by the judiciary, the Parole Commission, and others to use the sanction as an element in diverting people from prison.

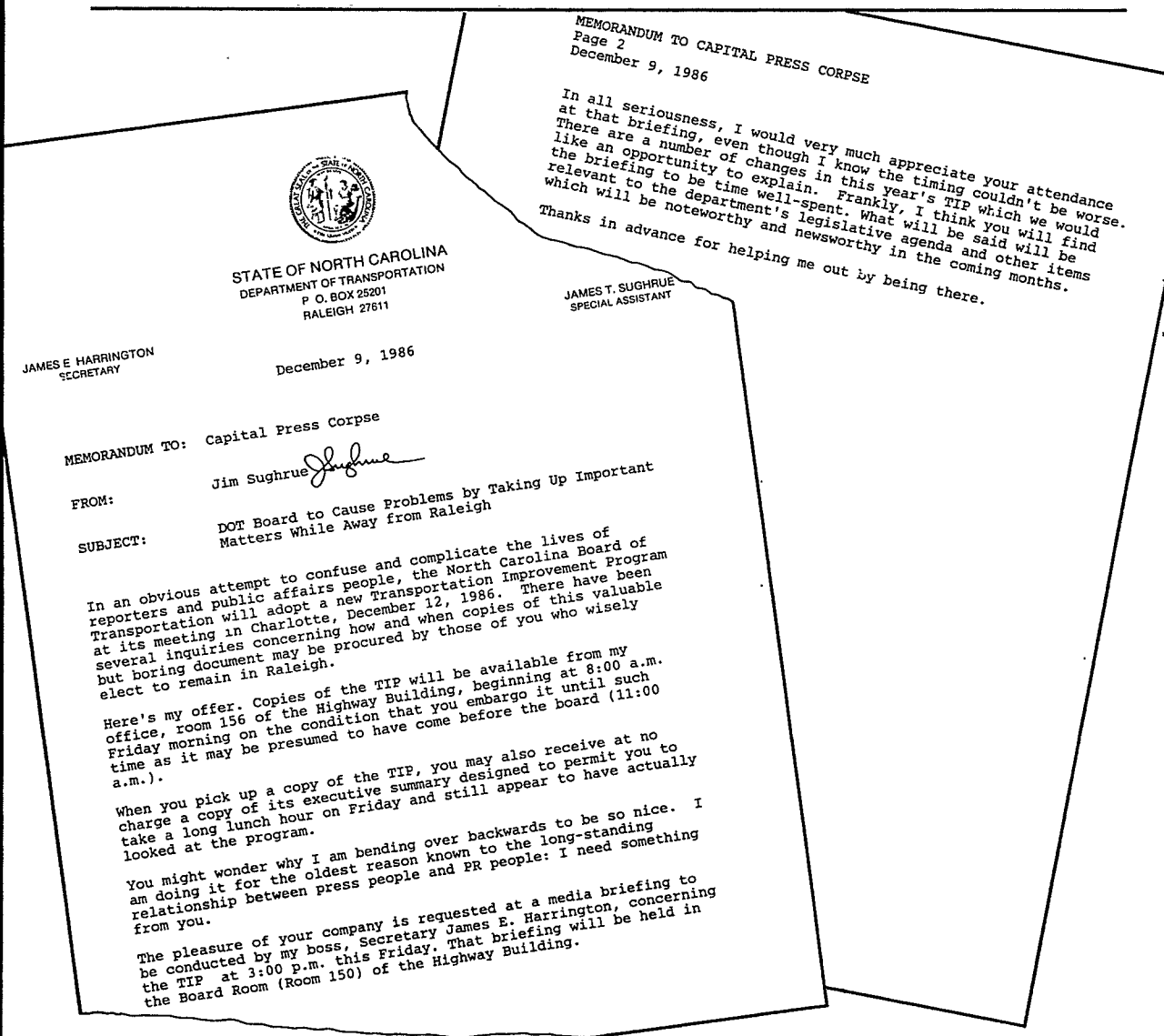
This may require closer scrutiny in the next couple of years as our criminal justice environment forces programs and their goals to change.

Dennis S. Schrantz
Grants Administrator
Division of Victim and Justice Services
N.C. Department of Crime Control & Public Safety
Raleigh

This issue of *Insight* delineates thoroughly all the programs of the state's punishment system and identifies the missing links. *Insight* makes us all concious of two key words—"comprehensive" and "leadership" We've just bought time with the emergency actions. Now, there is an imperative to act.

Stephanie Bass
Executive Director
N.C. Center on Crime and Punishment
Raleigh

MEMORABLE MEMO



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
P. O. BOX 25201
RALEIGH 27611

JAMES E HARRINGTON
SECRETARY

December 9, 1986

MEMORANDUM TO: Capital Press Corpse

FROM: Jim Sughrue

SUBJECT: DOT Board to Cause Problems by Taking Up Important Matters While Away from Raleigh

In an obvious attempt to confuse and complicate the lives of reporters and public affairs people, the North Carolina Board of Transportation will adopt a new Transportation Improvement Program at its meeting in Charlotte, December 12, 1986. There have been several inquiries concerning how and when copies of this valuable but boring document may be procured by those of you who wisely elect to remain in Raleigh.

Here's my offer. Copies of the TIP will be available from my office, room 156 of the Highway Building, beginning at 8:00 a.m. Friday morning on the condition that you embargo it until such time as it may be presumed to have come before the board (11:00 a.m.).

When you pick up a copy of the TIP, you may also receive at no charge a copy of its executive summary designed to permit you to take a long lunch hour on Friday and still appear to have actually looked at the program.

You might wonder why I am bending over backwards to be so nice. I am doing it for the oldest reason known to the long-standing relationship between press people and PR people: I need something from you.

The pleasure of your company is requested at a media briefing to be conducted by my boss, Secretary James E. Harrington, concerning the TIP at 3:00 p.m. this Friday. That briefing will be held in the Board Room (Room 150) of the Highway Building.

MEMORANDUM TO CAPITAL PRESS CORPSE
Page 2
December 9, 1986

In all seriousness, I would very much appreciate your attendance at that briefing, even though I know the timing couldn't be worse. There are a number of changes in this year's TIP which we would like an opportunity to explain. Frankly, I think you will find the briefing to be time well-spent. What will be said will be relevant to the department's legislative agenda and other items which will be noteworthy and newsworthy in the coming months.

Thanks in advance for helping me out by being there.

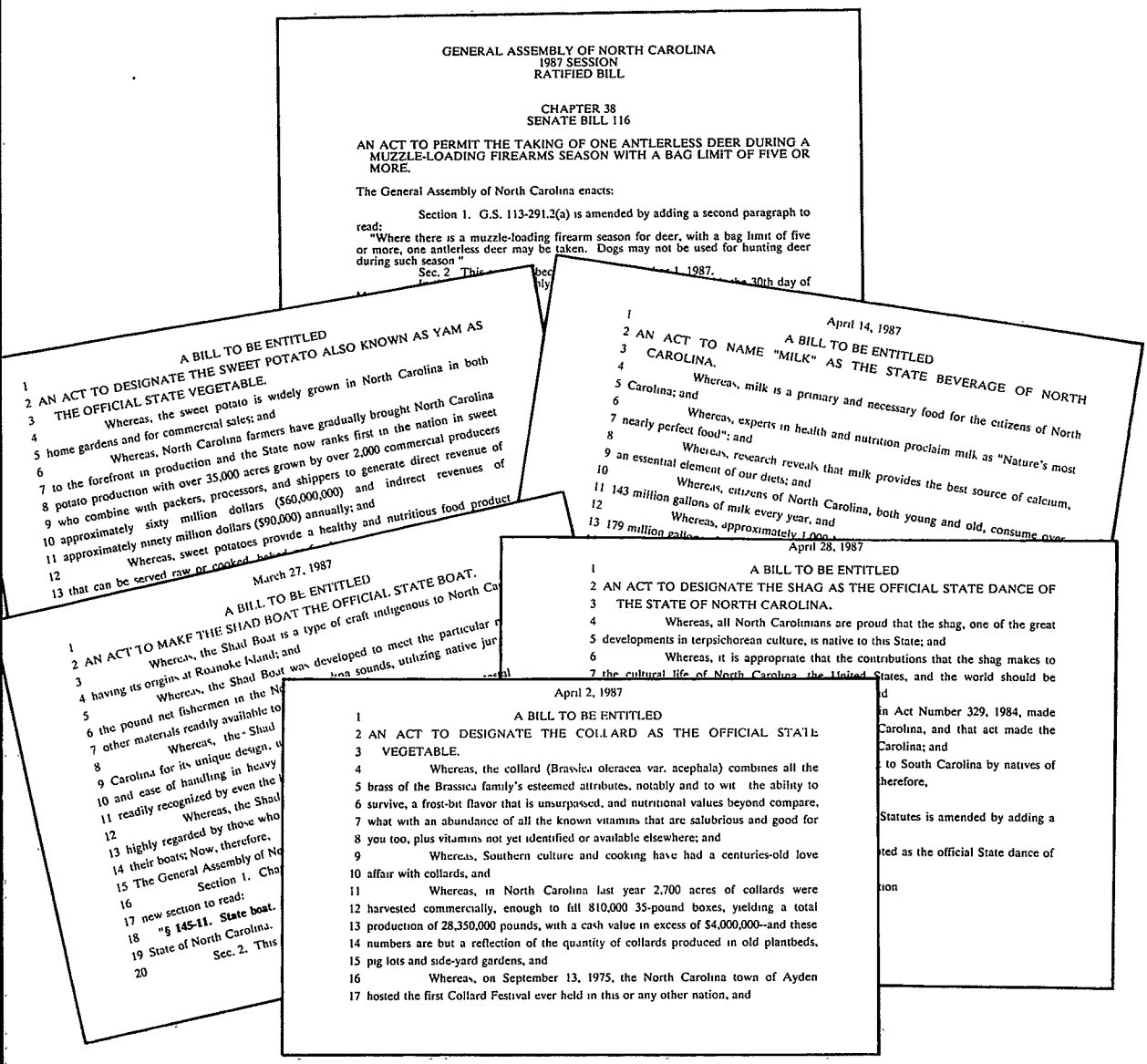
JAMES T. SUGHRUE
SPECIAL ASSISTANT

The least that we can say about the accompanying memo from Department of Transportation spokesman Jim Sughrue is that it has a certain air of integrity about it. Not every bureaucrat is honest enough to admit that a document might be boring, however valuable it might be, or to confess that he's trying to make the boss look good, either. Alas, we know not whether the Capital Press Corps—or Corpse, as it is known—assembled en masse for the DOT TIP PDQ, but we're betting that reporters took a long lunch that day in vain attempts to digest the Transportation Improvement Program.

Meanwhile, if you've spotted a Memorable Memo somewhere along the road, and you'd like to bridge the gap between government and gobbledygook, transport it to Insight *via the quickest common carrier. Anonymity guaranteed, and we'll pay the freight.*

. . . And in this corner . . .

. . . we have official state stuff. North Carolina has been collecting official state stuff since at least 1893, when the legislature adopted "Esse Quam Videri" as the State Motto. That was followed in 1927 by the legislature's adoption of "The Old North State" as the State Song. That was followed in 1941 with the dogwood as the State Flower; in 1943 with the Cardinal as the State Bird, and in 1945 with Red and Blue as the State Colors. No kidding. No Official State Stuff was adopted in the 1950s, but in 1965 the honorables got back on track with the Scotch Bonnet shell (that's pronounced bonay, as any mother's child can tell you). A few others have been added along the way (including the Honeybee as the State Insect in 1973 and the Eastern Box Turtle as the State Reptile in 1979). But obviously, things have gotten out of hand, and the 1987 General Assembly may be noted for doing nothing more than adopting more state stuff, as these bills indicate.



GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 38
SENATE BILL 116

AN ACT TO PERMIT THE TAKING OF ONE ANTLERLESS DEER DURING A MUZZLE-LOADING FIREARMS SEASON WITH A BAG LIMIT OF FIVE OR MORE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.2(a) is amended by adding a second paragraph to read:

"Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season."

Sec. 2. This

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE SWEET POTATO ALSO KNOWN AS YAM AS THE OFFICIAL STATE VEGETABLE.

Whereas, the sweet potato is widely grown in North Carolina in both home gardens and for commercial sales; and

Whereas, North Carolina farmers have gradually brought North Carolina to the forefront in production and the State now ranks first in the nation in sweet potato production with over 35,000 acres grown by over 2,000 commercial producers who combine with packers, processors, and shippers to generate direct revenue of approximately sixty million dollars ($60,000,000) and indirect revenues of approximately ninety million dollars ($90,000) annually; and

Whereas, sweet potatoes provide a healthy and nutritious food product that can be served raw or cooked

April 14, 1987

A BILL TO BE ENTITLED

AN ACT TO NAME "MILK" AS THE STATE BEVERAGE OF NORTH CAROLINA.

Whereas, milk is a primary and necessary food for the citizens of North Carolina; and

Whereas, experts in health and nutrition proclaim milk as "Nature's most nearly perfect food"; and

Whereas, research reveals that milk provides the best source of calcium, an essential element of our diets; and

Whereas, citizens of North Carolina, both young and old, consume over 143 million gallons of milk every year, and

Whereas, approximately 1,000

March 27, 1987

A BILL TO BE ENTITLED

AN ACT TO MAKE THE SHAD BOAT THE OFFICIAL STATE BOAT.

Whereas, the Shad Boat is a type of craft indigenous to North Ca

having its origins at Roanoke Island; and

Whereas, the Shad Boat was developed to meet the particular

the pound net fishermen in the N

other materials readily available to

Whereas, the Shad

Carolina for its unique design,

and ease of handling in heavy

readily recognized by even the

Whereas, the Shad

highly regarded by those who

their boats; Now, therefore,

The General Assembly of N

Section 1. Cha

new section to read:

"§ 145-11. State boat.

State of North Carolina.

Sec. 2. This

April 28, 1987

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE SHAG AS THE OFFICIAL STATE DANCE OF THE STATE OF NORTH CAROLINA.

Whereas, all North Carolinians are proud that the shag, one of the great developments in terpsichorean culture, is native to this State; and

Whereas, it is appropriate that the contributions that the shag makes to the cultural life of North Carolina, the United States, and the world should be

in Act Number 329, 1984, made Carolina, and that act made the Carolina; and

to South Carolina by natives of herefore,

Statutes is amended by adding a

ted as the official State dance of

ion

April 2, 1987

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE COLLARD AS THE OFFICIAL STATE VEGETABLE.

Whereas, the collard (Brassica oleracea var. acephala) combines all the brass of the Brassica family's esteemed attributes, notably and to wit the ability to survive, a frost-bit flavor that is unsurpassed, and nutritional values beyond compare, what with an abundance of all the known vitamins that are salubrious and good for you too, plus vitamins not yet identified or available elsewhere; and

Whereas, Southern culture and cooking have had a centuries-old love affair with collards, and

Whereas, in North Carolina last year 2,700 acres of collards were harvested commercially, enough to fill 810,000 35-pound boxes, yielding a total production of 28,350,000 pounds, with a cash value in excess of $4,000,000--and these numbers are but a reflection of the quantity of collards produced in old plantbeds, pig lots and side-yard gardens, and

Whereas, on September 13, 1975, the North Carolina town of Ayden hosted the first Collard Festival ever held in this or any other nation, and

Contributors to the N.C. Center for Public Policy Research

Major funding for The North Carolina Center is provided by:

THE MARY REYNOLDS BABCOCK FOUNDATION
THE Z. SMITH REYNOLDS FOUNDATION
THE FORD FOUNDATION
THE KATE B. REYNOLDS HEALTH CARE TRUST
THE HENRY J. KAISER FAMILY FOUNDATION
THE A. J. FLETCHER FOUNDATION
THE NEW YORK TIMES COMPANY FOUNDATION
and
THE JAMES E. & MARY Z. BRYAN FOUNDATION

Corporate and individual support for the Center is provided by:

PATRONS

Burlington Industries
The Charlotte Observer
Josephus Daniels Charitable Foundation
Philip Morris, USA
First Citizens Bank and Trust
R.J. Reynolds Tobacco Company
Angell Care Inc.
ARA Services, Inc.
AT&T
Bank of Granite
Barnhill Contracting Company
Branch Banking and Trust Company
Carolina Power & Light Company
Carolina Telephone & Telegraph Company
Consolidated Diesel Company
Data General Corporation
Ecusta Corporation
First Union National Bank
General Electric
Glaxo, Inc.
Golden Corral Corporation
Jefferson-Pilot Corporation
Lorillard Inc.
Lowe's Charitable and Educational Foundation
NCNB Corporation
The John William Pope Foundation
Royal Insurance
Southern Bell
Unifi, Inc.
Universal Leaf Tobacco Co.
Westover Products, Inc.
Wilmington Star-News, Inc.
Arthur Andersen & Company
Brendle's, Inc.
Burroughs Wellcome Company
Greensboro News and Record
GTE Corporation
Hardee's Food Systems
IBM Corporation
Kaiser Foundation Health Plan of North Carolina
Macfield Texturing, Inc.
N.C. Farm Bureau Mutual Insurance Company
North Carolina Power Company
Nucor Corporation
Olson Management Group, Inc.
Piedmont Airlines
Southern National Bank
Spanco Industries, Inc.
Stedman Corporation
United Carolina Bank
Wachovia Bank and Trust Company
Weyerhaeuser Company
Alphanumeric Systems, Inc.
Commercial Printing Company
Ernst & Whinney

SUPPORTING CORPORATIONS

American Television and Communications Corporation
Astro, Inc.
Champion International Corporation
Ciba-Geigy Corporation
Coastal Lumber Company
Cooper Group
DeVries and Associates, Inc.
Epley Associates, Inc.
Fayetteville Publishing Company
Georgia-Pacific Corporation
Gilbarco, Inc.
The Kroger Co.
Peoples Bank and Trust Company
Piedmont Natural Gas Company
Planters National Bank
TRW, Inc.

CORPORATE MEMBERS

Acme-McCrary Corporation
BarclaysAmericanCorporation
Capitol Broadcasting Company
Carolina Asphalt Pavement Association
Celanese Fibers, Inc.
Central Carolina Bank
Cone Mills Corporation
The Daily Reflector of Greenville
Datis Corporation
E.I. duPont de Nemours & Company
Durham Herald Company
Firstcorp, Inc.
First National Bank of Randolph County
Glen Raven Mills
Great Southern Finance
Harper Companies International
Integon Foundation
N.C. Health Care Facilities Association
North Carolina Natural Gas Corporation
Northern Telecom
J. Lee Peeler & Company, Inc.
Sara Lee Corporation
The Southland Corporation
Spectator Publications
Texasgulf Inc.
United Guaranty Corporation

SPECIAL DONORS

Adams, McCullough & Beard
T. Cass Ballenger
Wade Barber
John Carwhile
Maureen Clark
Ran Coble
Joel Fleishman
John A. Forlines Jr.
George Watts Hill
Marshall H. Johnson
Jordan, Price, Wall, Gray & Jones
Robert Lane
Craig Lawing
Thelma Lennon
James E. Long
N.C. School Boards Association
Russell L. Norburn, Jr.
Edward H. O'Neil
McNeill Smith
Margaret Tennille
G. Smedes York

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

Nonprofit Org.
U.S. POSTAGE
PAID
Raleigh, N.C.
Permit No. 1121