POPULAR GOVERNMENT

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POPULAR GOVERNMENT

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The new building shown on the front cover now has an ofcial name. It is the State Legislative Building. Within its walls the 1963 North Carolina General Assembly has been in session since early February and likely will remain so until June.

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SEARCH

INCIDENTAL TO A TRAFFIC ARREST

By David N. Smith

Assistant Director, Institute of Government

The general statement has often been made, by judges and other legal writers, that "where an arrest with or without warrant is authorized by law, a reasonable search may be made as an incident to that arrest." This general proposition has led many law enforcement officers, and some courts, to assume that once an arrest is made, an officer is automatically permitted to make a search of the person arrested and some indeterminate surrounding area. For example, in *Edmonds v. Commonwealth*,[1] where the defendant was arrested by state highway patrolmen for driving in Kentucky with Tennessee license plates, the court upheld an incidental search of the defendant's truck, stating that "We have held that officers have a right to search an automobile after making a lawful arrest of the driver."[2] It is the purpose of this article to place in legal focus the right of a law enforcement officer to make a search incidental to a traffic arrest, and to point out that in many situations an incidental search of a motor vehicle is *not* authorized by law.

1. 287 S.W. 2d 445 (Ky. 1956).
2. See also People v. Davis, 247 Mich. 536, 226 N.W. 337 (1929) where the defendant was arrested for speeding and the court, in upholding the search of defendant's car, stated: "The arrest here was lawful, and that it therefore was proper for the officers to search the person of defendant and the vehicle in which he was riding is settled . . ."

It is important to note at the outset that we are dealing here with only one of four possible methods of legally searching a motor vehicle. It is within the legal boundaries of constitutional law to execute a search (1) under a valid search warrant;[3] (2) without a search warrant when the officer has absolute personal knowledge that the vehicle contains intoxicating beverages;[4] (3) when the person in control of the vehicle gives a valid consent;[5] and (4) incidental to a lawful arrest.[6] A fifth type of situation, often significant in seizing illegal property, but not involving a "search" in the strict sense, is where the officer is standing next to the vehicle and, by daylight or flashlight, observes contraband in open view within the vehicle.[7] In varying situations, each of these methods may result in the lawful obtaining of evidence or contraband. The present article is concerned with only one of these methods, however—search incidental to an arrest. It will be assumed in the following discussion that the officer has no search warrant, that there is no probable cause to believe that the vehicle contains contraband, and that the person in control of the car does not give consent to search. When the only possible basis for a search is the fact that the driver has been arrested for a traffic violation, may the officer make a search of defendant's person or vehicle? How much, if any, of the vehicle may be searched?

3. State v. Banks, 250 N.C. 728 (1958).
4. State v. Giles, 254 N.C. 499 (1961). It may be that a search of a vehicle is authorized in North Carolina for things other than intoxicating beverages where the officer has reasonable grounds to believe that the vehicle contains illegal goods. This is permitted under federal constitutional law. Carroll v. United States, 267 U.S. 132 (1925). The North Carolina Court has never passed on this question and it is possible that the Court may interpret §15 of the North Carolina Constitution to forbid such searches without warrant—even though that provision of the Constitution does not prohibit "unreasonable searches" in express words.
5. State v. Hauser, 257 N.C. 158 (1962).
6. State v. Grant, 248 N.C. 341 (1958).
7. State v. Hammonds, 241 N.C. 226 (1954).

Justification for Searches Incidental to Arrest

To understand the scope of permissible searches incidental to traffic arrests, it is necessary to note that constitutional law permits such searches only for two general reasons. In 1925, in the case of *Agnello v. United States*,[8] the United States Supreme Court recognized

> the right without a search warrant contemporaneously to search persons lawfully arrested while committing crime and to search the place where the arrest is made *in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons and other things to effect an*

8. 269 U.S. 20 (1925).

escape from custody . . . [Emphasis added].

It is to this basic principle that the courts and the law enforcement officer must turn to justify the search of a person or the surrounding area incidental to an arrest. The officer must ask whether the search is reasonable in terms of there being a legitimate reason for looking for (1) things connected with the crime such as instruments by which the crime was committd or fruits of the crime, or (2) weapons or other things which might be used to effect escape or injure the officer. If there are no instruments or fruits connected with the crime for which the person was arrested, or if the arrestee has no access to a particular area so that he might seize a weapon therefrom, a search of that area would be unconstitutional, resulting in the exclusion of that evidence from trial, and possible civil and criminal liability to the officer.[9] Clearly, then, a general statement to the effect that an officer may make a search of "an automobile in which the accused was riding at the time of . . . [a] lawful arrest"[10] does not carry the analysis far enough. The more correct statement is that an officer may search a vehicle in which the arrestee was riding if there are fruits or instruments of the crime to look for or if a search is necessary for the officer's self-protection and to prevent escape. A discussion of several recent cases will illustrate the scope of authorized search. The analysis will proceed first in terms of search for fruits and instruments and then in terms of search for weapons. In connection with search for weapons, a distinction will have to be drawn between searching the *person* and searching the *vehicle*.

Search of Person or Vehicle for Fruits or Instruments of Crime

To determine whether the search of a person or vehicle for fruits or instruments of a crime is constitutional, as incident to a lawful arrest, it is necessary to examine "the nature of the offense."[11] The officer must ask whether this is the type of crime with which fruits or instruments are associated. In the recent case of *State v. Michaels*,[12] the defendant was arrested for failing to signal for a left turn. Incidental to the arrest, an officer searched the trunk of the defendant's car and found suitcases containing dice, magnets and other gambling equipment. In a prosecution for possessing gambling equipment illegally, the discovered equipment was held inadmissible as evidence. The search was invalid, the court held, because "a search of the automobile could reveal nothing useful in establishing *the offense for which the defendant was arrested*, and there was no reason to suspect that he would attempt to flee with the aid of something that might be found in the trunk of his car."[13]

A similar result was reached in *Travers v. United States*.[14] The defendant was arrested for speeding and passing a stop sign. Shortly after the arrest, a search was made of the defendant's car and contraband was discovered. In holding the search to be illegal, the court stated that "the search could not be justified as one aimed at discovering the 'fruits and evidence' of the crime, since there are no 'fruits and evidences' of the instant crimes, i.e., traffic violations."

United States v. Tate[15] is another case in which defendant was arrested for a speeding violation and where the arresting officer made an incidental search of the vehicle. In declaring this search invalid the court observed that the officer "quite obviously . . . could not have been looking for the fruits of the crime for which Tate was arrested—there are no fruits of speeding. He certainly could not have been searching under the car seat for the means by which the crime was committed—the whole automobile itself was the means."

Following this same general line of reasoning, other courts have held that an officer would not be justified in searching for the fruits or instrumentality of a crime when the offense was driving with only one headlight burning;[16] parking too close to a crosswalk;[17] or parking too far from the curb.[18] These cases, of course, stand for the proposition that neither the person *nor* the vehicle could be searched for the fruits or instruments of the crime where fruits and instruments could not be associated with the offense.[19]

Of course, if the traffic violation is one with which fruits or instruments are associated, an incidental search would be justified. For example, if the defendant is arrested for driving while intoxicated, a search of the area within his control would be justified for the purpose of looking for instrumentalities of the offense—liquor, wine or beer bottles.[20]

Search of Person or Vehicle for Weapons

The second phase of our inquiry is to determine the constitutionality of a search for weapons or other means of escape incidental to an arrest. In this connection, we are not concerned with the *nature* of the offense, as we were with regard to search for fruits or instrumentalities. Rather, the only relevant inquiry is whether a search of the person or vehicle is *reasonable* in order to protect the officer or prevent escape. Stated in another manner, the question to be asked is whether there is a reasonable danger that the offender will escape or will injure the officer if a particular area is not searched.

Search of the Person For Weapons

Unfortunately, some courts and legal writers who recognize the importance of examining the nature of the offense for the purpose of justifying a search for fruits or instruments of the crime also apply this analysis in determining whether a search for weapons is authorized. These commentators, while attempting to correct the mistaken belief that a valid arrest always justifies an incidental search, err in the opposite direction by stating that where the offense is a "minor traffic violation" a search of the person or vehicle—even for weapons—is unconstitutional. For example, in *People v. Watkins*[21] the Illinois court recently stated that "when no more is shown than that a car was parked too close to a crosswalk or too far from a curb, the constitution does not permit a policeman to search the driver . . . ." Another writer, after reviewing the cases involving searches incidental to traffic arrests, concludes that "in the absence of additional circumstances a search of the *person and vehicle* following an arrest for a minor traffic violation would be violative of the constitutional provisions."[22] Elsewhere it has been stated that for such offenses as passing a light, illegal parking, im-

9. Evidence would be excluded under G.S. 15-27; G.S. 15-27.1 and Mapp v. Ohio, 367 U.S. 643 (1961). The possibility of civil liability has been increased by the holding in Monroe v. Pape, 365 U.S. 167 (1961) which permits civil action under a federal statute.
10. Haverstick v. State, 147 N.E. 625 (Ind. 1925).
11. People v. Watkins, 19 Ill. 2d 11, 166 N.E. 2d 433, 437 (1960).
12. 374 P.2d 989 (Wash. 1962).
13. Emphasis added.
14. 114 A.2d 889 (D.C. 1958).
15. 209 F. Supp. 762 (Del. Dist. 1962).
16. People v. Gonzales, 356 Mich. 247, 97 N.W. 2d 16 (1959).
17. People v. Watkins, 19 Ill.2d 11, 166 N.E. 2d 433 (1960). (Search upheld on other grounds).
18. People v. Mayo, 19 Ill.2d 136, 166 N.E.2d 440 (1960).
19. In *Watkins* the search was of the person; in *Mayo*, it was of the glove compartment
20. See Church v. State, 333 S.W.2d 799 (Tenn. 1960); State v. Taft, 110 S.E.2d 727 (W.Va. 1959).
21. 19 Ill.2d 11, 166 N.E.2d 433 (1960).
22. Simeone, *Search and Seizure Incidental to Traffic Violations*, St. Louis U.L.J. 506, 518 (1961).

proper turning and the like "there is no right whatsoever to search the person or the automobile."[23] Still another writer has suggested that

> when searches are made incident to arrest for minor traffic violations, a proper analysis seems to require inquiry into the type of offense committed. A search for weapons that might be used to escape custody can hardly be said to be reasonable when incident to an arrest for failing to obey a traffic sign.[24]

Conclusions of this sort seem clearly contrary to the generally recognized principles of constitutional law. The United States Supreme Court has never stated that the right to search for *weapons* must be determined by the nature of the offense. In the important case of *United States v. Rabinowitz*[25] the Supreme Court stated

> . . . no one questions the right, without a search warrant, to search the person after a valid arrest. The right to search the person incident to arrest always has been recognized in this country and in England. . . . [W]here one had been placed in custody of the law by valid action of officers, it was not unreasonable to search him.

There appears to be no valid basis for singling out traffic offenses for separate treatment when questioning the justification for a search for weapons What would seem to be the correct result—treating traffic offenses in the same manner as other offenses—has been effectively stated by Professor Agata:

> The fear has been expressed that no respectable citizen is able to drive without some possibility and, in fact, probability, of violating a traffic law. In order to protect this respectable citizen from the harassment and embarrassment of searches by the police, it is contended that the mere fact of arrest should not authorize a search. This argument misses the issue. Conceding that the search of an innocent person involves embarrassment, the search of an innocent person lawfully arrested on charges other than a traffic violation also results in embarrassment and harassment. Yet, no objection is heard in this regard. . . .
>
> The reason for permitting the search is to protect the officer, and it is not untenable that even the respectable citizen who finds himself under lawful arrest may panic or attempt to escape and perhaps use a weapon which he might have lawfully in his possession to harm the officer.[26]

23. SOBEL, THE LAW OF SEARCH AND SEIZURE (Kings County Criminal Bar) 69 (1962).
24. 46 Iowa L. Rev. 802 (1961).
25. 339 U.S. 56, 60 (1950).
26. Agata, *Searches and Seizures Incident to Traffic Violations—A Reply to Professor Simeone*, 7 St. Louis U.L.J. 1, 16-17 (1962).

State Highway Patrolmen not only are taught the Law of Search and Seizure at Institute of Government basic and in-service training schools, but also practice the various techniques of search and seizure as part of their Patrol training. The above picture taken at one of the training sessions is in no way typical of the search methods used on the motorist or vehicle, but represents a technique which may be necessary for searching suspected dangerous offenders.

Justice Daily, concurring in *People v. Watkins*,[27] presents an equally forceful argument for permitting searches of persons incidental to traffic arrests:

> [W]e are dealing here with the situation where an officer confronts an offender face to face and detains him from going on his way. When experience has proved to the contrary, on occasions at the cost of the life of an arresting officer, it is illogical that we should establish by judicial fiat that all minor traffic offenders must be accepted by arresting officers as persons who pose no threat to their personal safety.
>
> Arrests for traffic violations can have serious consequences in our society such as loss of driving privileges, substantial fines or confinement in jail, loss of employment or disqualification therefor, and we always have those cases in which an officer may unwittingly halt a stolen car for a minor violation, or confront a driver or occupant wanted for more serious violations. . . . The only practical view, as recognized by the majority of ancient and modern courts, is that it is not unreasonable to search the person of one who has been validly arrested.

Those who limit the right to search a person incidental to a lawful arrest usually qualify the statement by adding that a search for weapons might be justified if the "arrestee is known as a persistent law violator"[28] or as a "dangerous man."[29] This modification seems of slight validity in an age of super highways when the traffic violator may well be unknown to the arresting officer. Certainly the unknown persistent law violator is as potentially dangerous as the known persistent law violator.

The conclusion reached by those who say that the right to make any search—even one for weapons—depends on the nature of the offense appears to result from two basic errors: (1) a failure to correctly analyse the relevant cases and (2) a failure to distinguish between a true arrest and the giving of a citation or summons. The following cases are generally cited by those who say that the nature of the offense determines the right not only to search for fruits and instruments but also weapons: *People v. Gonzales*;[30] *People v. Zeigler*;[31] *Burley v. State*;[32] *People v. Blodgett*;[33] *Elliot v. State*;[34] *Brinegar v. State*;[35] *People v. Watkins*;[36] and *People v. Mayo*.[37] Of these, only the companion cases of *Watkins* and *Mayo* may be considered as upholding the proposition that no search at all is allowed incidental to a traffic arrest, and even these cases have a weak basis.

In *Gonzales* and *Zeigler* there were no arrests at all—only the issuance of traffic tickets. In *Blodgett* there was neither an arrest nor the issuance of a ticket for the traffic offense. In *Burley* there was an arrest but it was illegal. It is hornbook knowledge that the validity of a search incidental to a lawful arrest stands or falls with the validity of the arrest. The giving of a citation is, of course, not an arrest.[38] Thus, these cases cannot be held to stand for the proposition that no search is valid as incidental to a lawful arrest. There were simply no lawful arrests in these cases. The *Gonzales* court itself recognized this problem:

> [W]e feel the record clearly shows that the officers had no intention of incarcerating [the arrestee] or detaining him further. . . . [S]ince

27. 19 Ill.2d 11, 166 N.E.2d 433 (1960) (concurring opinion).
28. See Simeone, *supra* note 22, at page 517.
29. See 1959 Wisc. L. Rev. 347, 350.
30. *Supra*, note 16.
31. 358 Mich. 355, 100 N.W.2d 456 (1960).
32. 95 S.2d 744 (Fla. 1952).
33. 46 Cal.2d 114, 293 P.2d 57 (1956).
34. 173 Tenn. 203, 116 S.W.2d 1009 (1938).
35. 97 Okla. Crim. 299, 262 P.2d 464 (1953).
36. *Supra*, note 17.
37. *Supra*, note 18.
38. See HALL, THE LAW OF ARREST, Second Edition 10 (1961).

(Continued on page 16)

INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
CHAPEL HILL

MEMORANDUM

TO: Mayors and Governing Board Members, City Managers, Planning Commissioners, and City Planners

FROM: Ruth L. Mace, Research Associate, Institute of Government

DATE: February 1, 1963

SUBJECT: # Shopping Center Side Effects - Whose Responsibility?

Not long ago I had lunch in one of our larger Piedmont cities with a leading local realtor. We were talking about shopping centers. "You know," he said, "it's crazy. I'm helping to develop one shopping center after another around the city here. One is killing another -- and altogether they're killing the downtown. And what's even crazier," he added, "is that our firm is managing many of these and a sizable slice of the commercial property downtown."

"If it's so crazy," I asked, "why are you doing it?"

He answered without hesitation, "We're in business to provide a service. Some of these developments are going to succeed. Others will fail. People are looking for a way of investing their money. It's not my responsibility to discourage them from going ahead."

As he spoke, I could see his city five, ten, or fifteen years from now, when the shopping center wars of today and tomorrow are over. The darkened windows of vacant stores looked out on a once-flourishing downtown, where few now walked and fewer shopped. Around the town, I saw a landscape pock-marked with other brick, mortar, and asphalt remains of the private investors' battles -- a residue that may blight the city into the 21st Century. There were massive commercial developments, some bustling with life, others all but abandoned -- littered, ill-cared for wastes.

Later in the day, as I drove back to Chapel Hill, that dismal picture came back to me. I thought also of the many shopping centers that I have seen around the state and in other parts of the country -- and of the joy and convenience that they can be. At the same time, I was oppressed by the knowledge of the many needless and heedless mistakes that are being made and the far reaching effects of these mistakes on our communities.

Have you given any thought to the unpleasant side effects of shopping center developments? I believe that these are of very immediate and real concern to those who are responsible for the well being of our cities and the people who live in them. Here, very briefly, are some of the problems.

Fearful traffic hazards are being created in and around poorly located, haphazardly planned shopping center developments. Highways and interchanges, built at considerable expense to the taxpayers, to move volumes of traffic speedily and efficiently, are being ruined.

Our communities are being over "stored." The new developments are going up at a much faster rate than the markets that they serve. There are at least three serious consequences of this. (1) Existing businesses suffer as competitors move into town to take up some of the new space. With a limited number of people to serve, downtown stores are feeling the pinch. (2) Downtown is emptying and deteriorating as merchants move out to suburban shopping centers. There, at the rents they now pay for old buildings with inadequate parking, they can lease new and larger space with ample parking. Frequently they can expect to do an equal or greater volume of business. (3) The attractiveness of many small towns as retail centers is being undermined. In the small community, which cannot really support both central business district and shopping center, the range of goods and services downtown may well decline without being replaced by the shopping center. The town is left with two inadequate commercial districts, and its residents take to the highways to shop in neighboring larger towns with more attractive offerings.

The valuable central business district tax base is being weakened. Downtown property values are falling in many cities. Shopping centers are not the only culprit here, but this trend has come at the same time as the recent boom in shopping center construction and certainly has been influenced by it. A recent Institute of Government study of real property value trends in the downtowns of two large North Carolina cities identified the beginning of a marked decline in their retailing economies, dating from the 1957-1958 period, when numbers of new shopping centers were opened.

Massive ugliness is being set down on our lovely land. Even the smallest shopping center is conspicuous because of the vast parking areas required. The do-it-yourself developer, whose center is built as if he designed it on the back of an envelope, sees no need to spend money to hire a good designer or any designer at all. He is not concerned that the eyesore he creates will be with us and our children when he no longer is. Even if the center itself is good to look at, ugliness mushrooms at its fringes as unattractive extensive commercial land users -- drive-ins, used car lots, service stations -- cluster around.

Obviously, a shopping center can be a mixed blessing to your town. Well-conceived, properly located and carefully designed. It can be a very real asset. On the other hand, the little needed, poorly located, slip-dash development can be a severe liability. My friend the realtor said, "its not my responsibility..." Is it your responsibility? Should you be exercising some measure of control (or a greater measure than you are now) over these new commercial giants that can make or break your whole city or a large part of it?

EDITOR'S NOTE: The post World War II period has seen revolutionary changes in the field of retail merchandising. The boom in shopping center construction has been the most conspicuous feature of this revolution. Slow in moving in on our state, these developments have been making up for lost time in recent years. Today, there are about 100 shopping centers of various kinds in approximately three dozen North Carolina cities. Most of these have been built since 1959, many of them without benefit of professional architectural and land planning advice. Frequently a service and convenience, these centers have also brought and are bringing hardship and headaches to the communities where they settle.

This memorandum asks municipal officials to consider whether or not they should be looking into the total package of benefits and costs associated with shopping center developments. Does a proposed project represent a potential net asset or liability to the community as a whole? And is this their concern?

More specifically, municipal officials should be facing up to the following kinds of questions:

- *Should local governments, either by regulation or persuasion, require that the need for a new center be established before construction is permitted?*
- *Should the location of new centers be more carefully controlled, both in relation to the markets to be served and to the thoroughfare system?*
- *Should minimum standards be set, governing the internal layout and circulation system, to guarantee the safety of shoppers?*
- *Should there be careful control of the location and design of exits and entrances to minimize traffic congestion and hazards, and to protect the public investment in highways and interchanges?*
- *Should there be greater attention given to regulating the land uses around shopping centers to forestall the mushrooming of undesirable related development and resulting ugliness and increased traffic congestion and hazard?*
- *Should local government seek to regulate, or in any way to influence, the appearance of these large developments to prevent the creation of permanent, conspicuous eyesores in their communities?*
- *Who's responsible?*

COMMISSION TO STUDY PUBLIC WELFARE PROGRAMS RECOMMENDS LEGISLATIVE CHANGES

by Roddey M. Ligon, Jr.
Assistant Director, Institute of Government

Resolution Number 66 of the 1961 General Assembly called for the creation of a seven member Commission To Study Public Welfare Programs. The Commission was charged with the duty of studying public assistance procedures and financing, child welfare matters, and "such other problems as may be brought to its attention or as its members may deem appropriate for study."

Governor Sanford appointed the following persons to the Commission: Senator Dallas L. Alford, Jr., Rocky Mount; Mrs. John B. Chase, Eureka; Mr. I. P. Davis, Manteo; Senator J. Worth Gentry, King; Dr. W. C. Reed, Kinston; Mr. L. Stacy Weaver, Jr., Fayetteville; and Dr. Jack Wofford, Forest City. The Governor appointed Senator Alford Chairman; the members elected Dr. Reed vice-chairman; and the Commission asked the writer to serve as Secretary.

After a year of intensive study, the Commission presented to the Governor a 66 page report containing 26 recommendations, 13 of which call for legislative changes. The recommendations which do not require legislative action to become effective, included the following: (1) that the Merit System Council and State Board of Public Welfare go forward with a study of caseworker qualifications and pay, and the matching of caseworker qualifications to various types of cases; (2) that boards of county commissioners make full time legal services available to county departments of public welfare; (3) that the Institute of Government hold an annual conference or school for newly appointed members of county boards of public welfare; (4) that mentally and physically capable children 16 or 17 years of age not be included in an Aid to Dependent Children budget unless they are regularly attending school; (5) that the policies of the State Board of Public Welfare relating to contributions of relatives be changed so as to make it clear that able relatives are expected to contribute to the support of the assistance recipient, without regard to whether the recipient is living in the home of the relative or elsewhere; (6) that home consumption produce not be counted as a resource in preparing public assistance grants; (7) that the public assistance maximum budget allowance for medical expenses be increased from $10 to $12; (8) that public welfare departments and county medical societies make continued efforts to co-operate in areas of mutual interest; (9) that equalizing funds apply to the Aid to the Permanently and Totally Disabled program and that further study of an appropriate equalizing formula be made; (10) that the experiments with oral contraceptives be carefully studied and that other counties adopt their use if the experiments show that the oral contraceptives are medically safe; (11) that the State Board of Public Welfare develop an extensive day care program; (12) that the state and counties be encouraged to initiate demonstration projects; and (13) that more counties participate in the surplus food program.

The recommendations of the Commission which require legislation to become effective are set out verbatim below:

1. We recommend that the 1963 General Assembly approve the "B" budget request of the State Board of Public Welfare calling for an increase in appropriations for state aid to public welfare administration so that the state share can be increased from 12.5% to 15% of the total administrative cost.

2. We recommend that all county boards of public welfare be increased in size from three members to five members; that the manner of appointment be the same as it is at the present time except that the State Board of Public Welfare

and the board of county commissioners each appoint two members rather than one; and that the county board of public welfare and board of county commissioners continue to hold joint sessions to determine the number and salaries of employees but without the members of the county board of public welfare having a vote at such sessions.

3. We recommend that legislation be enacted permitting two or more county boards of public welfare to employ jointly one director of public welfare to serve the employing counties.

4. We recommend that the statutory provisions requiring the salary of the Director of Public Assistance to be fixed by the Governor subject to the approval of the Advisory Budget Commission be deleted and that the Director of Public Assistance be brought within Merit System provisions so that his status will be the same as that of all other division directors within the State Board of Public Welfare.

5. We recommend that members of the State Board of Public Welfare be paid the same per diem as is customarily paid to other state boards and commissions.

6. We recommend that the state adopt as a part of the state plan the provisions of the Public Welfare Amendments of 1962 that authorize states, in determining need in old age assistance cases, to disregard the first ten dollars of earned income.

7. We recommend that counties consider making use of community work and training programs of a constructive nature designed to conserve and develop work skills, and that the Aid to Dependent Children—Unemployed Parent Law be extended so as to cover the needy children of persons who are unemployed and who would have been eligible for unemployment compensation benefits except for the fact that they had not worked in covered employment.

8. We recommend that the provisions of the Public Welfare Amendments of 1962 authorizing so-called "protective payments"—*i.e.*, payments to an individual interested in the welfare of the family in those cases where it is found that the parent or relative with whom a dependent child is living, is not spending the grant for the welfare of the child —be adopted to the full extent allowed by federal law.

9. We recommend that North Carolina continue the 1961 law authorizing aid to dependent children to children residing in foster homes, and that this be extended to cover children residing in a child care institution if the institution meets federal and state standards and requests to be covered.

10. We recommend that the present limitation of five cents on the one hundred dollar valuation on the amount of tax that may be levied for Aid to the Permanently and Totally Disabled program be repealed so as to eliminate this limitation.

11. We recommend that legislation be enacted, to become effective upon the appropriation of funds for this purpose by the U. S. Congress, combining the Old Age Assistance and the Aid to the Permanently and Totally Disabled programs; and that the lien law and residence requirements of the Old Age Assistance program be made applicable to the combined program.

12. We recommend that the birth of a third child out of wedlock be made a legal presumption that the mother of such child is an unfit person for the rearing of her children; that such a finding of unfitness be made a basis for removal, by a juvenile court judge, of one or all of the children from the mother for placement in a foster home; that upon such finding the necessity that the mother consent to the adoption of her children born out of wedlock be eliminated; but that the presumption herein created could be rebutted by the presentation of sufficient evidence to show that the mother is not, in fact, an unfit person for the rearing of her children.

13. We recommend that legislation be enacted making it clear that licensed physicians and surgeons have authority, after consultations, to perform operations in licensed hospitals for the sexual sterilization of patients who desire the operation, subject to the consent of the spouse of any such patient who is married and subject in the case of an unmarried minor, to the consent of a parent or guardian and a determination by the appropriate juvenile court that the operation would be in the best interest of the minor.

THE GOVERNOR'S CONFERENCE ON MAP RESOURCES

We like to think that North Carolina's on the map. Yet the fact is that a considerable portion of urban and rural North Carolina is not adequately mapped and the lack of sufficient map resources has and will continue to handicap the State in its efforts to realize its potential in industrial and urban development. It was with this in mind that the Governor's Conference on Map Resources was called and held in December at the Institute of Government. Institute Assistant Director Robert E. Stipe was in charge. Governor Sanford sent a message to key the occasion, and under the leadership of various State officials and cartographic experts, plans were begun to fill the hiatus in mapping and to make the State's physiognamy as well known as that of, let us say, President John F. Kennedy or Jackie.

General James R. Townsend set forth the purpose of the conference. General Townsend, former Greensboro City Manager and now Chairman of the North Carolina Water Resources Commission, was Governor Sanford's personal representative at the conference. Stipe presented to the group the substantive heart of the subject: "North Carolina's Map Resources: Background, Problems, and Needs." A number of conference participants made statements on current map resources problems, including uses being made of topographic maps, map requirements as to scale, geographical coverage, how current map needs are being met, and problems in meeting these needs.

"The Cooperative Mapping Program of the U.S. Geological Survey" was discussed in the line of North Carolina requirements by Earle J. Fennell, Associate Chief Topographic Engineer, and Charles F. Fueschel, Atlantic Region Engineer, both of the U.S. Geological Survey.

At the closing session General Townsend served as moderator for a summary discussion of the conference and the planning of the next steps in putting North Carolina's full face on the map.

(See pictures on page 10)

COUNTY GOVERNMENT: Both LOCAL GOVERNMENT and ARM OF THE STATE

by George H. Esser, Jr.

(Excerpts from an address by George H. Esser, Jr., Assistant Director of the Institute of Government at the University of North Carolina, delivered at the 68th National Conference on Government of the National Municipal League in Washington, D. C., on November 16, 1962).

. . . About the only thing common to the 3,000-odd counties in the United States is the name. With respect to legal status, purpose, attitude of officials, basic problems with which the county must deal, counties vary greatly—from county to county as well as from state to state.

But one thing is certain—the county is here and it is here to stay.

In the context of "Leadership to Form a More Perfect Union," there is the obvious temptation to be optimistic and urge county officials to rally round the flag of governmental reform. Certainly an unrestrained optimism shines through the proceedings of the annual Convention of the National Association of Counties, held last summer in New York City.

That note was appropriate for the national association to take. And it is doing an excellent job of giving imaginative leadership to county officials, just as stronger state associations of counties are beginning to give similar leadership.

In other circles, pessimism is evident. The recently-published report of the Municipal Manpower Commission doubts that local government can secure needed trained manpower or successfully tackle the problems of urban communities without far-reaching revision of governmental structure as well as a complete overhaul of local governmental administrative machinery and policies.[1]

Such action would be tantamount to a revolution. But where are the chances of revolutionary change? Most observers would agree with Robert Wood who answered that question with respect to local government in the New York Metropolitan area by saying:[2]

> We simply record that we know of no other time when a revolution took place when the existing sys-

1. Municipal Manpower Commission, *Governmental Manpower for Tomorrow's Cities* (New York: McGraw-Hill Book Company, 1962).
2. Robert C. Wood, *1400 Governments* (Cambridge: Harvard University Press, 1961) p. 199.

tem was solidly established and its citizens, as they understood the goals of their domestic society, content.

Both Wood and the Commission were talking of local government that would do more than provide essential public services efficiently. At issue was local government's capacity to fix long-range community objectives—economic, physical and fiscal. . . .

However much we may need to put the imprint of revolution on local government—its powers, administration and policy decisions—I doubt that we as a people yet feel the urgent pressure of crisis. What, then, are the chances of an evolutionary change? In my opinion, they are reasonably good.

I have three principal points to make.

1. Continued emphasis on the county as an arm of the state serves no useful purpose. The county, like the city, is more appropriately considered as a governmental unit, exercising delegated powers and responsibilities. The problem is to determine, for each major governmental activity, the appropriate division of responsibility between the state and its counties and cities.

2. County government, in general, needs reorganization if it is to carry out its existing functions more effectively and its new urban responsibilities successfully. Compared to the similar process for cities over the past half century, the problems are more complex, the opposition stronger. A successful strategy requires able leadership, committment to step-by-step progress toward the long-range objectives, and, probably, retaining county government within the partisan political framework.

3. County government cannot successfully meet its urban responsibilities without close cooperation with cities, as well as with the state and federal governments. More attention needs to be paid to the requirements for successful intergovernmental cooperation at the local level. Cooperation must not be allowed to become an excuse for inaction rather than an instrument for constructive action.

* * *

In our concern that the county today is unable to handle the problems that have spilled over from the cities and are represented by children, automobiles and septic tanks, we should not seek to make an artificial distinction between the powers of a county as a local government and as an arm of the state. Despite the tortured legal definitions of the 19th century and the restrictive constitutional provisions which are the very real heritage of an earlier, simpler, frontier civilization, the county, I submit, is simply a local governmental unit, deriving powers and responsibilities from the state through legislation and used frequently as the appropriate subdivision for sharing state responsibilities.

These men are vitally concerned with and about county government. They are a cross-section of North Carolina County Commissioners attending the February Institute of Government School for County Commissioners.

For the failure to broaden the powers of the county as the 20th century intensified urban development, I blame not only the state legislatures but the counties and their people who failed to see the handwriting on the wall. We can list all the obstacles—outmoded constitutions, short-sighted judges, courthouse gangs, fear of high taxes, domination by rural legislators—but the fact remains that if there had been an insistent public demand, the necessary powers would have been given counties. . . .

The place to start in defining the proper role of the county today is not to separate "local governmental" functions from functions performed as an "arm of the State," but to look at each important activity of state or local government in terms of the extent to which responsibility for that function should be divided between the state and the local governmental unit. Governor Terry Sanford of North Carolina spoke directly to this point before the annual convention of the National Association of Counties this summer.[3]

> "My point is that necessarily there is a statewide interest and a local interest in most of our responsibilities. The statewide interest is often phrased in terms of a minimum, or basic program. The state, acting in response to citizens' demands, provides that each child shall be given a certain minimum education; that each needy person shall receive a grant based on a minimum standard of decency and health; that certain conditions detrimental to public health shall be eliminated. Home Rule, then, cannot mean a reduction of the statewide minimum level, no matter what the wishes of a particular area. A majority of the people of the entire state have decided the matter, and they will not have their will frustrated by local inaction.
> The proper responsibility for local decision is how to provide each child with the minimum education that child needs, plus additional education to make the child as productive an adult as possible; how to distinguish the needy from the lazy, and how to rehabilitate the physically and mentally disabled; how to identify and deal with public health problems that truly are harmful."

The county, then, is a local governmental unit with varying powers and responsibilities. In areas where the state has defined a statewide interest, such as highways or education or welfare, the state may administer some activities and fix minimum standards for others. In other areas, such as fire protection and garbage collection and zoning, the state may simply delegate broad discretionary powers to local governing boards. But each activity is governmental in nature; the state has placed its stamp of approval on each; the only difference is the extent to which the state limits the area of local decision-making.

. . . The fact of the county as ill-equipped to govern effectively is still with us. What might have been done has not been done. Can the county be re-born? I believe so.

3. "Political Action—Key to Home Rule," in *An Action Program from The County Home Rule Congress* (Washington: National Association of Counties, 1962) p. 58.

PANEL

The panel discussion pictured above occurred bejore the audience shown below during the January City-County Manager Seminar conducted by the Institute of Government. The panel members, left to right are Moderator George H. Esser, Jr., C. A. McKnight, George Watts Hill, Jr., and H. P. Taylor, Jr. Charlotte editor McKnight, State legislator Taylor and former legislator Hill joined with Moderator Esser in a lively discussion of effective city-county action in cooperation which was a highlight of the seminar. Their interested audience is composed of city and county managers throughout North Carolina.

AUDIENCE

GOVERNOR'S CONFERENCE ON NORTH CAROLINA MAP RESOURCE PROBLEMS

Officials and private citizens listen to speakers at the Governor's Conference on Map Resources.

General James R. Townsend, State Water Resources Board Chairman and former Greensboro City Manager, addresses Map Resources Conference.

Group attending Map Resources Conference look over topographic maps which were part of exhibit at the Institute of Government showing North Carolina's needs and mapping potential.

(See article on page 7)

CITY-COUNTY RELATIONS IN PERSPECTIVE

City and County Managers Present for Seminar

City and County Managers who attended the City-County Seminar January 24-26 included the following: A. E. Aiken, Garner; Numa R. Baker, Jr., Reidsville; Bill Batchelor, Rocky Mount; James E. Blue, Kinston; E. C. Brandon, Wilmington; B. B. Britt, Sanford; Cyrus L. Brooks, Mooresville; Walter Busbee, Charlotte; Harold R. Cheek, High Point; W. D. Coleman, Albemarle; Jack Coss, Washington; W. Tom Cox, Jacksonville; H. E. Dickerson, Statesville; William E. Edens, Brevard; Sam Gattis, Orange County; John Gold, Winston-Salem; H. R. Gray, Pitt County; Ray Grupenhaf, Winston-Salem; Watts Hill, Jr., Durham; Phin Horton, Shelby; Bob House, Forsyth County; W. B. Howard, Tarboro; Ralph G. Jones, Goldsboro; C. L. Lineback, Salisbury; Pete Lydens, Thomasville;

C. A. McKnight, Charlotte; J. D. Mackintosh, Jr., Burlington; Jack F. Neel, Roxboro; Cleveland M. Paylor, Ayden; Bob Peck, Chapel Hill; W. F. Pierce, Madison; F. F. Rainey, Southern Pines; G. W. Ray, Fayetteville; Bob Shuford, Davidson County; J. G. Smith, Laurinburg; Howard L. Stewart, Cary; O. B. Stokes, Valdese; W. Clyde Stone, Jr., Clinton; Bruce Turney, Graham; Bill Veeder, Charlotte; Edgar E. Welch, New Bern; L. P. Zachary. Also attending the seminar were Robert R. Harris, N. C. League of Municipalities, Raleigh; I. L. McDowell, Chairman, Board of Commissioners, Asheboro; W. S. Overton, Jr., Chairman, Board of Commissioners, Rowan County; and S. Leigh Wilson, N. C. League of Municipalities, Raleigh.

A second session of the seminar was held at the Institute of Government February 7-9 and will be reported in our next issue.

1963 Seminar for City and County Managers looks at respective city-county roles in meeting essential community needs.

"Our objective is to examine the respective roles of city and county governments in meeting the essential needs of each community in the State."

The speaker was George H. Esser, Jr. The place was the Institute of Government's Knapp Building in Chapel Hill. The time was the afternoon of Thursday, January 24. The occasion was the beginning of a three-day seminar for city and county managers.

During the lively sessions that followed, the 46 city and county managers listened to and participated in analyses and discussions of some of the most immediate and demanding problems in local government. "City-County Relationships in Perspective" was the theme of Esser's opening remarks. Other subjects, and the panels which delved into them, included: "Cities and Counties: Common Goals and Conflicting Points of View," by Henry W. Lewis, Assistant Director, Institute of Government; John A. McMahon, General Counsel, North Carolina Association of County Commissioners; S. Leigh Wilson, Assistant Executive Director, North Carolina League of Municipalities; and Robert S. Rankin, Professor of Political Science, Duke University. "Industrial or Management Engineering in City Government," by Donald B. Hayman, Assistant Director, Institute of Government; John Gold, City Manager, Winston-Salem; R. W. Newsome, Jr., R. J. Reynolds Tobacco Company; and R. W. Grupenhof, Western Electric Company. "A Strategy for Effective City-County Action and Cooperation," by George H. Esser, Jr., C. A. McKnight, Editor, The Charlotte Observer, Charlotte; H. P. Taylor, Jr., Attorney and Member, North Carolina House of Representatives, Wadesboro; and George Watts Hill, Jr., President, Home Security Life Insurance Company, Durham.

The basic consideration of the seminar, despite a departure in the panel on engineering in local government, was the problem of city-county relationships now and in the future. Esser pointed out the historical division of power and responsibility between cities and counties; factors which have influenced a re-allocation of governmental functions in North Carolina; types of city-county relationships in counties today — programs, policies, finances; influences of state and federal policies on city-county relationships; case studies on particular local government problems; and the alternatives facing cities and counties. Wicker and Green presented in detail two case studies involving city-county relationships in North Carolina.

Lewis, McMahon, Wilson, and Rankin found areas of agreement and disagreement in long-range goals in the light of long-range objectives of county and city, suggested areas of constructive cooperation, and defined and emphasized areas where local governments must face probable policy conflicts. Gold, Newsome, Grupenhof, and Hayman dealt with the recommendations of a committee of industrial engineers from Winston-Salem industries, requested by the City Council to review the operations of that city and to make recommendations for an effective industrial engineering program, looking to more efficient operation of the city government.

McKnight, Hill, and Taylor, with Esser moderating, spoke from the standpoint of close observers of local government on the unusual opportunities of North Carolina in the face of the challenge of increasing urban growth and added demands on local government, to make its system of local government a model for the nation through constructive steps toward better city-county-state relationships.

THE CITIZEN'S ROLE IN COMMUNITY PLANNING

Here are scenes from the conference on "The Citizen's Role in Community Planning," held in January at the Institute of Government under the direction of Assistant Director Robert E. Stipe. Some 400 community planners from all over North Carolina attended the day-long session and heard local, state, and national figures participate in speeches and panel discussions.

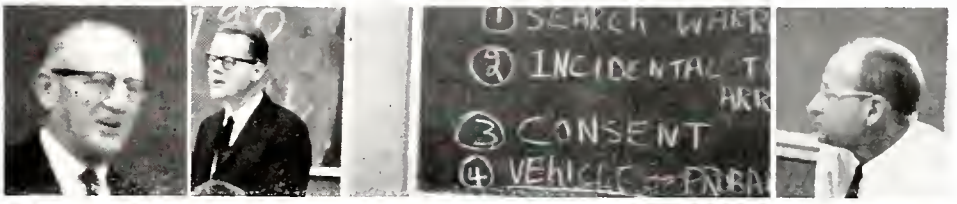
Here are some of the speakers at the planning conference, pictured in the midst of their comments. They are, left to right Ronald F. Scott, Director of Planning, Greensboro; Mrs. Jasper L. Cummings, HANDS Chairman, Rocky Mount; Admiral T. J. Van Metre, Winston-Salem Chamber of Commerce.

The registration line looked like this between 9:00 and 10:00 a.m. Inset shows Commissioner William L. Slayton of the Urban Renewal Administration, Housing and Home Finance Agency, Washington, D. C., who came down to speak on this occasion. Other speakers from out of the State included Carl Feiss, Planning and Urban Renewal Consultant, Washington, D. C. and Harry N. Osgood, Director of Urban Programs, Sears, Roebuck Foundation, Chicago.

Mrs. Josephine Rowland, delegate from Kinston to the conference and Vice-President of the North Carolina Planning Association is shown here as she makes a point following the panel discussion. Audience participation was an interesting feature of the occasion. This shot was taken during the afternoon session in the Knapp Building auditorium. (Note murals on North Carolina history which adorn the auditorium walls.) At the breaks between planning speeches and panels, informal lively discussions continued in the foyer of the auditorium.

SOME OFFICIALS' ROLES IN COURTS AND LAW ENFORCEMENT

Among the many hundreds of officials who attended Institute schools and conferences in January and February, 1963, were a number whose official duties related to the court system and law enforcement. Some of these groups are shown on class at the Institute of Government in the selected shots on this page. Others, including the State Highway Patrol will be shown in the course of their training in succeeding issues of *Popular Government*.



Left—Harry Barkley, Inspector of Correctional Institutions for the North Carolina Department of Public Welfare, talks to the Institutes school for newly-elected sheriffs. Center—Institute of Government Assistant Director L. Poindexter Watts teaches Jail Management School. Right—Institute Assistant Director C. E. Hinsdale works with Clerks of Court and Deputy and Assistant Clerks.

Clerks of Superior Court listen attentively during January Institute course.

Driver License Examiners meet in a series of schools for Institute instruction.

Forestry Division Management training school also was held in the Knapp Building in January.

Newly-elected Sheriffs listen to classroom speaker during February school. Institute Assistant Director Neal Forney was in charge.

North Carolina Jail officials look over classroom materials during Jail Management school held in January.

DEFINITION OF WEAPONS COVERED BY NORTH CAROLINA LAW

by Perry Powell, Research Assistant, Institute of Government

Editor's note: *This article and that on the page opposite are corollaries relating to weapons as defined, and their possession and use under North Carolina law. In the article below, the author sets forth definitions of weapons referred to in North Carolina statutory law. These definitions take on significance in the light of the use and possession requirements explained on the following page.*

Many enforcement problems turn on the definitions of the weapons listed in the two important statutes regulating weapons in North Carolina. These statutes are G.S. 14-269 (carrying concealed weapons) and G.S. 14-402 (permit to receive or dispose of pistols and certain other weapons). Although there is not a great deal of North Carolina law setting forth definitions of these weapons, a number of other states have similar statutes which have been construed in reported decisions. These cases, where applicable, plus the available North Carolina cases and material from standard reference works have been drawn upon in writing the definitions set out below.

The first list of weapons is contained in the following part of G.S. 14-269:

> §14-269. *Carrying concealed weapons.*—If anyone, except when on his own premises, shall wilfully and intentionally carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, brass, iron or metallic knuckles, razor, pistol, gun or other deadly weapon of like kind, he shall be guilty of a misdemeanor and shall be fined or imprisoned at the discretion of the court. . . .

1. BOWIE KNIFE—A bowie knife ordinarily designates a knife with a blade ten to fifteen inches long and sharp on only one edge of the blade. It also has a handle that is four to five inches long and a hand guard.

2. DAGGER—A dagger is a knife that is sharp on both edges of a relatively short blade. It is primarily designed for stabbing rather than cutting. Daggers may or may not have a hand guard. The dagger classification is usually considered to include dirks, poniards, stilettos, and other short two-edged weapons.

3. DIRK—A dirk is generally considered a type of dagger. It has a relatively short blade, sharp on both edges. It is primarily used for stabbing.

4. SLUNG SHOT—A slung shot is a small mass of metal or stone fixed on a flexible handle, strap, or the like, used as a weapon. It should not be confused with the slingshot, which i a type of catapult. [The General Assembly, however, appears on one occasion to have confused the two. G.S. 14-315 makes it a misdemeanor to sell or give a minor "any pistol, or pistol cartridge, brass knucks, bowie-knife dirk, loaded cane or *slingshot* . . ." (Emphasis added.)]

5. LOADED CANE—No formal definition of a loaded cane has been found in reference works, and there does not appear to have been any cases concerned with this weapon. However, law enforcement officers generally consider a loaded cane to be one that has been weighted with lead or other metal so as to increase its weight.

6. BRASS, IRON, OR METALLIC KNUCKLES—This weapon consists of a ridge of metal worn over the knuckles of the fist in order to protect them in striking a blow and to make the blow more effective. The weapon may additionally have a bar along its outer edge. It is frequently called either "brass knucks" or "brass knuckles" regardless of the metal used because it was originally made of brass. The statute, of course, specifically applies to knuckles made of any metal.

7. RAZOR—A razor is a sharp steel blade that is designed primarily for shaving purposes.

8. PISTOL—A pistol is a short firearm intended to be aimed and fired with one hand. If the weapon was designed or manufactured with a stock to be placed against the shoulder, it would not be considered as a pistol.

9. GUN—A gun is a portable firearm and generally includes pistols, rifles, and shotguns.

10. OTHER DEADLY WEAPONS OF LIKE KIND—The list of weapons in the statute concludes with the phrase "or other deadly weapon of like kind." Examples of weapons held to be sufficiently similar in nature to those listed to come within the terms of the statute are butcher knives and shortened bayonets which were held to be of like kind to bowie knives. A length of rubber hose plugged at each end has been held to be sufficiently similar to a slungshot to come within the terms of a statute similar to North Carolina's. A blackjack would be included under the statute as either a type of slung shot or of as being of like kind to a slung shot.

Some other weapons that are not usually considered to be of like kind to those listed are hand knives in which the blade folds into the handle, such as a pocketknife or a switchblade knife. The Attorney General of North Carolina has given an opinion to this effect, basing his conclusion in part on the fact that the weapons listed are characterized by a fixed blade. Other states with statutes similar to North Carolina's have also held that pocketknifes are not included.

The next statute to be considered in G.S. 14-402 making it a misdemeanor to buy, sell, receive, or dispose of certain weapons without a permit. This statute reads in part as follows:

> §14-402. *Sale of certain weapons without permit forbidden.*—It shall be unlawful for any person, firm, or corporation in this State to sell, give away, or dispose of, or to purchase or receive, at any place within the State from any other place within or without the State, unless a license or permit therefor shall have first been obtained by such purchaser or receiver from the sheriff of the county [or clerk of the superior court, as the case may be] in which such purchase, sale, or transfer is intended to be made, any pistol, so-called pump-gun, bowie knife, dirk, dagger, slung-shot, blackjack or metallic knucks. . . .

All but two of the weapons listed in this statute are also in the concealed-weapon status. The definitions already given would apply here. The "so-called pump-gun" and the "blackjack" are the additional ones included in the permit statute.

11. BLACKJACK—A blackjack is a short buldgeon consisting of a heavy head, as of metal, on an elastic shaft or with a flexible handle. The question of whether a blackjack is a specific type of slung shot will not arise under the permit statute since it is specifically listed. This could become an issue, however, under the language of G.S. 14-315 (weapons to minors).

12. PUMP GUN—A pump gun is a

(Continued on page 17)

IN RE: NORTH CAROLINA LAW ON POSSESSION AND USE OF WEAPONS

by L. Poindexter Watts, Assistant Director, Institute of Government

[Editor's Note: *The problems of easy access to dangerous weapons has been in the public prints lately. Law enforcement officials at national, state, and local levels have been quoted on these problems. The Institute of Government receives many letters of inquiry daily from officials and private citizens. Some of them have been concerned with the North Carolina law on firearms. The following article was written by Mr. Watts first as a letter in response to an inquiry. The widespread interest of officials and public alike in its subject matter makes its inclusion in the pages of Popular Government especially appropriate at this time.*]

(1) **What are the laws regarding the carrying of pistols in the open in a holster?**

There is no specific statute on this point as to individuals. If the weapon is not concealed, it is lawful to carry it under the general law of North Carolina. This does not mean, however, that in certain localities there may not be city ordinances or local acts of the General Assembly imposing some further restriction upon the use or carrying of firearms.

In addition, there could be a common-law indictment for public nuisance if a person carrying a pistol threatened or terrorized the public with it in some fashion. This would be by analogy to the ancient offense of "riding armed to the terror of the populace" described by Blackstone. Our modern G.S. 14-276 stems from this legal concept in making it unlawful for detectives to go armed in a body of more than three persons.

(2) **What is the law regarding carrying or transporting pistols in automobiles? From home to firing range or to and fro from work or on a trip?**

There is no North Carolina law governing transport of weapons as such. But the concealed-weapon law will apply if the pistol is hidden from view within the car but yet within reach of one of the occupants. A pistol in the trunk of the car would probably not be accessible enough to constitute a concealed weapon. A pistol in the glove compartment probably would be considered a concealed weapon if getting the weapon merely consisted of opening the unlocked compartment. If the compartment is locked—so that opening it is too cumbersome to allow a person in the car to get hold of the pistol with surprising quickness—, a very close question of fact is presented. This might be a jury question whether under the facts of the particular case the weapon should be considered concealed. For example, I would consider it a concealed weapon if the driver kept the glove compartment key in a special pocket so he could get to it easily and then quickly open the locked glove compartment.

Again, there may be local acts or city ordinances to modify the general rule as to transportation of weapons. Also, there are restrictions on carrying weapons that apply in state and federal parks and forests and on certain publicly-owned game preserves.

(3) **Is it against the law to fire or target practice on Sunday with a pistol or rifle?**

G.S. 103-2 states:

> "If any person shall, except in defense of his own property, hunt on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a misdemeanor and pay a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty days."

There is no General Statute to my knowledge prohibiting the firing of weapons as such on Sunday. There will, however, be numerous city ordinances either to this effect or prohibiting the discharging of weapons at any time within city limits.

There could be a public-nuisance type prosecution (any day of the week) if the firing of the weapon unduly disturbed residents of the area or persons lawfully gathered for some meeting or social occasion. Several of the more common public nuisance indictments are now codified in G.S. 14-272 through 275.

(4) **Is it legal to carry a pistol for protection or for killing snakes while fishing on state or private land?**

Certain state wildlife management areas are covered by regulations prohibiting carrying a pistol without a permit. Otherwise, I know of no restriction as to carrying pistols while fishing. Of course, using a pistol or any other firearm to shoot fresh-water fish is generally unlawful.

(5) **What procedure does a private citizen have to follow or do in regard to selling or trading a pistol to another private citizen? Does he have to receive a purchase permit and report to the Clerk of Court the sale?**

Before 1959 the Clerk of Superior Court in each county issued the permits to purchase or receive pistols and other hand weapons. In 1959, the law was amended to transfer this duty to the Sheriff in each county, but forty-one counties were exempted from the amendment. This means that the Sheriff controls permits in fifty-nine counties and the Clerk of Superior Court controls them in forty-one counties. The forty-one counties where the Clerk of Superior Court still issues weapons permits are: Ashe, Avery, Bertie, Bladen, Cherokee, Currituck, Davie, Duplin, Franklin, Greene, Halifax, Harnett, Haywood, Hertford, Iredell, Jackson, Johnston, Jones, Lee, Lincoln, Macon, Madison, Mecklenburg, Mitchell, Moore, Pamlico, Pender, Perquimans, Person, Polk, Rockingham, Sampson, Stokes, Tyrrell, Union, Vance, Warren, Washington, Watauga, Wilson, and Yancey.

G.S. 14-402 makes it unlawful to deliver certain hand weapons from one person to another upon a transfer of ownership, whether by sale or gift, unless the person receiving the weapon has first obtained from the Sheriff (or Clerk, as the case may be) a permit to receive the weapon. Both the person delivering ownership as well as the person receiving it will be guilty if there is no permit. There need not be any report after the delivery under the statutes as they are now written, but dealers in weapons must keep an accurate record of all sales of pistols and other hand weapons covered under the permit law, including name of buyer, place of residence, and date of sale. This record kept by the dealer is open to inspection by law enforcement officers.

In addition to the pistol, the permit law covers the "so-called pump-gun, bowie knife, dirk, dagger, slung-shot, blackjack or metallic knucks."

(See opposite page.)

– SEARCH –

(Continued from page 3)

> no further detention was contemplated, there was no need to search for weapons or other means of possible escape from custody.

In *Elliot* and *Brinegar* the courts were concerned not with searches of the person but searches of the vehicles. In fact, the proposition is stated in *Brinegar* that the officers

> had no right . . . to do more than search the person and immediate surroundings for weapons, which would be in the interest of the safety of the arresting officers and to prevent the escape of the prisoner.

Thus these cases cannot be held to support the proposition that a search of the person is not justified after a traffic arrest. Only in the *Watkins* and *Mayo* cases is it suggested that a search of the person is not justified after an arrest for a traffic violation. In *Watkins* it is stated that "when no more is shown than that a car was parked too close to a crosswalk or too far from a curb, the constitution does not permit a policeman to search the driver . . . ." The weakness of these cases has been painstakingly exposed elsewhere.[39] It may be pointed out here, however, that the North Carolina Court might well hesitate to follow the gratuitous holdings of these cases because (1) *Watkins* involved not an arrest but the issuance of a summons; (2) *Mayo* involved the search of a glove compartment, not of a person; (3) *Watkins* relied on *Gonzales*, *Blodgett* and *Elliot* to support its conclusion.

Until the North Carolina Supreme Court holds to the contrary, it appears that the officer who arrests for a traffic violation may be guided by the conclusion in *State v. Kirkman*:[40] "Clearly, the officer after making the arrest [for driving while intoxicated] was justified in relieving the prisoner of an article which might be used as a weapon."

Search of the Automobile for Weapons

Up to this point it has been stated that a search of the person or vehicle for fruits of the offense or instruments of the offense would not be justified where no fruits or instruments could possibly exist. Further it has been stated that a search of the person for weapons, incidental to a valid arrest, would be justified. It remains to be determined whether the vehicle may be searched for weapons, and if so, how much of the vehicle. Again we must turn to the reason behind the rule: a search for weapons is justified to prevent escape and protect the officer. Thus, a search of the vehicle would be justified only when the arrestee has access to the vehicle after the arrest. Two cases will illustrate this point.

In *United States v. Tate*,[41] the defendant was arrested for speeding along the highway at night. A Delaware State Highway Patrolman overtook the car after a 100 mile an hour chase. The officer placed the defendant under arrest and told the defendant that he would not be able to drive his own car to the station. Defendant offered resistance, but the trooper subdued him, handcuffed him, put him in the front seat of the patrol car, and shut the doors. Feeling secure, the officer proceeded to make a search of defendant's car where he found a sawed-off shotgun. This search was declared to be invalid by the court. Since the defendant had no access to his car after being put in the patrol car, there was no danger that anything in the car could be used to effect escape or injure the officer. The court stated that

> While it cannot be denied that a search for weapons which may be used to assault the arresting officer or to effect an escape may be necessary in many or most instances, and conceding that great deference should be paid to an officer's decision that a search for weapons is necessary, nevertheless, to consider all searches for weapons incidental to an arrest as reasonable *per se* would permit wholesale fishing expeditions whenever a legal arrest is made.

In *Travers v. United States*[42] officers arrested defendant for speeding and passing a stop sign. After defendant was placed under arrest, one of the officers got into defendant's car with him and directed him to drive to police headquarters. While defendant was being "booked" at the station, an officer searched his car and found a blackjack. This search was declared illegal. The important factor here was the time element. As the court pointed out,

> If . . . appellant's car had been searched at the time and place where the arrest occurred, as an incident to the arrest, such a search would have been proper. The police would certainly have such a right if for no other reason than their own protection, in view of the appellant's highly suspicious behaviour. . . .

Certainly the officer could have searched the front seat of the car and the glove compartment before taking the defendant to the station in defendant's car. These were areas to which the defendant would have had access to weapons with which to assault the officer. Equally certain is the fact that the trunk could not be searched since the defendant would not have had immediate access to this area. But once the traffic offender was in the police station, there was no need to search any part of the vehicle for the officer's protection. Thus, a search of a vehicle for weapons is justified only to the extent that the offender has access to the vehicle and the officer's life may be thereby endangered.

There remain several related problems that will be commented on to ensure an adequate understanding of the problems involved in a search incidental to a traffic arrest. These are: the right to impound and inventory the contents of a vehicle; search on a pretext; and search where the officer has reasonable grounds to believe or absolute knowledge that the vehicle carries contraband.

The Right to Impound and Inventory

In *State v. Giles*,[43] the North Carolina Supreme Court stated that after officers arrested defendant for driving while intoxicated "it was the duty of the officers to return to defendant's car and to see that it was taken care of and not abandoned." This constitutes a recognition that the vehicle cannot be abandoned at the scene of the arrest when there is danger that the vehicle or its contents may be stolen or damaged. It has been held, in a case where a truck was left abandoned after arrest and the truck was damaged by someone attempting to steal it, that the officers making the arrest were liable for damages.[44] It would seem reasonable that if the right to impound is given to the officer, the right to inventory the contents of the vehicle would be legal if the inventory were justified under the circumstances. In a recent California case[45] it was stated:

> In the circumstances . . . it was not unreasonable for the police officer to make an inventory of the contents of the automobile prior to impounding it. Such inventory was a protection to the owner of the vehicle, the garage owner, and the officer.

If during an inventory of contents which is reasonable under the circumstances the officer comes across con-

39. Agata, *supra*, note 26.
40. 234 N.C. 670 (1951).
41. 209 F. Supp. 762 (Del. Dist. 1962).
42. 144 A 2d 889 (D.C. 1958).
43. 254 N.C. 499 (1961).
44. Whitehead v. Stringer, 105 Wash. 501, 180 P. 486 (1919).
45. People v. Nebbitt, 183 Cal. App.2d 452, 7 Cal. Rptr. 8 (1960).

traband or goods illegally possessed, it seems clear that the evidence could be legally seized since the officer is in the act of performing a legal duty.

Search on Pretext

In every situation where a search is made the officer must, of course, intend to search for a justifiable reason. Even though an officer has the legal authority to search the person incidental to an arrest, if the purpose of the search is really to look for contraband which the officer suspects the arrestee possesses the search would be illegal. In *Courington v. State*,[46] for example, the court declared a search of defendant's trunk after an arrest for drunk driving to be invalid partly because the officer's *motive* was to look for lottery papers.

In addition, the arrest itself cannot be a mere sham or front for the purpose of making a search. In *Taglavore v. United States*[47] officers suspected that defendant was connected with certain narcotics violations. An arrest warrant for two minor traffic violations—failing to signal for a right turn and having faulty brake and signal lights—was issued on the information of an officer who said that he had witnessed these violations. Defendant was arrested under the warrant and a search of his person yielded marijuana. The court declared the search to be illegal:

> [T]he traffic warrant was being used as a mere excuse to search appellant for marijuana cigarettes. . . . The violation of a constitutional right by a subterfuge cannot be justified, and the circumstances of this case leave no other inference than that this is what was done with the traffic arrest warrant here. Were the use of misdemeanor arrest warrants as a pretext for searching people suspected of felonies to be permitted, a mockery could be made of the Fourth Amendment and its guarantees. The courts must be vigilant to detect and prevent such a misuse of legal processes.

46. 74 S.2d 652 (Fla. 1954).
47. 291 F.2d 262 (1961).

Search on Other Grounds

It must, of course, be understood that while a traffic arrest may not justify a search of the vehicle, if the officer has another legal basis for making a valid search and seizure he may do so. An example is provided by the recent North Carolina case of *State v. Giles*.[48] Officers clocked defendant's car and discovered that he was speeding. A chase ensued until defendant slid his car to a stop and ran from the vehicle. One officer caught the defendant and returned to the place where the defendant's car was stopped. The other officer testified that he could smell the odor of some intoxicating beverage emanating from the car. He flashed his light into the car and saw five cases, three of which contained jars with a liquid substance inside. Since the officer had "absolute personal knowledge"[49] that there was intoxicating liquor in the car, the seizure of the liquor was lawful. Similarly, if an officer obtains consent to search a vehicle after arresting the driver, a subsequent search would generally be valid.[50]

Conclusion

It is important to recognize that the limitations on the right to search a person or his vehicle incident to a lawful arrest are not peculiar to traffic violations, although the limitations are perhaps felt most significantly in this general area of offenses. After completing an arrest for *any* offense, the officer must determine whether a search of the person or his immediate surroundings is reasonable in terms of finding fruits or instruments connected with the crime or weapons which may be used as a means of escape.

One example may be provided by an arrest for vagrancy. Suppose an officer finds three men sitting in a car late at night. He questions them and learns that they are able-bodied but have no money and no jobs. The officer arrests the men for vagrancy.[51] Would the officer be justified in searching the automobile? In a concurring opinion in a recent federal case[52] District Judge Darr made this statement:

> . . . I believe that an arrest for vagrancy does not warrant a search extending beyond the person of the vagrant. There would be no reason to search a house or an automobile as an incident to such arrest. An able-bodied person, who is loitering without visible means of support, may be arrested by police officers for vagrancy, his person searched to insure safe custody, but nothing connected with the offense could be found by an extended search.
>
> My judgment is that the offense of vagrancy falls into the same category as minor traffic violations.

On the other hand, an arrest for possessing stolen goods would permit an incidental search of defendant's automobile for the stolen goods while an arrest for murder would permit a search of the automobile for the murder weapon, assuming, in each situation, that the automobile is in the defendant's immediate control. In the one case the officer is legitimately searching for fruits of the crime; in the other, he is legitimately searching for an instrument of the crime.

48. 254 N.C. 499 (1961).
49. In North Carolina, a search for intoxicating beverages in a vehicle without a warrant requires absolute personal knowledge on the part of the officer. G.S. 18-6.
50. State v. Hauser, 257 N.C. 158 (1962).
51. See G.S. 14-336 for definitions of persons classed as vagrants.
52. United States v. Sykes, 305 F.2d 172 (6th Cir. 1962).

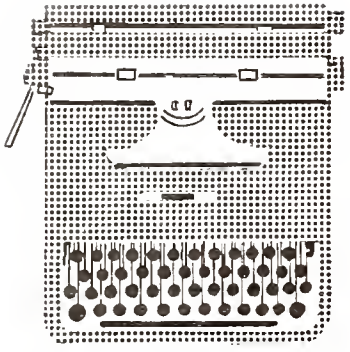
–DEFINITIONS OF WEAPONS– *(Continued from page 14)*

magazine shotgun or other gun containing a magazine into which the cartridges are first inserted. The term "pump gun" is generally considered to apply to weapons in which the insertion of the cartridge into the chamber from the magazine is accomplished by a backward-forward motion of a handle surrounding the magazine. This type is frequently called a slide-action rifle or shotgun.

It is very common for stores to sell slide-action rifles and shotguns in North Carolina without requiring the buyer to have a permit. For this reason, a careful search of legislative and reference materials was made to discover whether there was any other weapon to which the term "pump gun" might feasibly have applied in 1919 when the permit law was passed.

Although nothing else was discovered under the name "pump gun" in standard reference works or the statutes of other states, it is possible that the North Carolina General Assembly had some other weapon in mind when this statute was passed. All the other weapons in the permit list were hand weapons capable of easy concealment. However, it should be kept in mind that this type of pump-action weapon developed around the turn of the century and is generally considered to be the fastest type of action except the automatic or semi-automatic. It is entirely conceivable that the General Assembly in 1919 intended to put the pump-action shotgun and rifle under the restrictions of the permit law. If the General Assembly did mean to include these shotguns and rifles then their sale without a permit is unlawful.

One final point is pertinent. The statute concerning permits does not contain the phrase "or other deadly weapons of like kind" and therefore is not as broad in its coverage as the concealed-weapon statute. Butcher knives, hunting knives, and other knives that are not listed may be bought and sold without a permit.



NOTES FROM . . .

CITIES AND COUNTIES

CITIES

Plans for major downtown improvement programs for **GREENSBORO, HIGH POINT,** and **WINSTON-SALEM,** anxiously awaited since last summer, are starting to come in. High Point's plans, developed for the Downtown Corporation and the City through the Redevelopment Commission and the Planning Department, were completed late last year. The Greensboro Chamber's Downtown Improvement Committee received a preliminary reconnaisance report from its design consultants in January (1963). The final report, to contain a detailed physical plan involving major reconstruction in the downtown area, is due late this spring. With fanfare suitable to the ambitious program that is proposed, the Winston-Salem plan for central business district revitalization was unveiled on February 14 by the three-firm consulting team retained by the City and the Total Development Committee of the Chamber of Commerce. Public and private investments in the proposed projects could run to a minimum of $60 million over the next twelve years. A major feature of the plan is a new retail complex, Piedmont Plaza, to be built on a two block site in the center of the city at an estimated cost of $23 million. (Look for a *Popular Government* feature article later this year on these and other downtown improvement programs around the state.)

* * *

DURHAM general services director E. H. Johnson has decided that the city may save money and help some residents by doing its demolition work for urban renewal and expressway purposes during the winter months. It seems that the city got free help from citizens in need of firewood when debris from an old frame structure flattened by a city bulldozer was left overnight. Work crews returning to remove the timbers found that nothing remained. Durham has large clearance programs ahead designed to prepare the right-of-way for a projected east-west expressway and to initiate two projects in its urban renewal program.

FAYETTEVILLE residents are scheduled to vote on a $1 million bond issue prior to April 7. The bonds would go for sewer and electrical projects.

* * *

DOBSON in Surry County has approved a $297,000 bond issue to modernize its sewerage system and provide a sewerage disposal plant. A federal government grant will add some $160,000 to the total expenditure.

* * *

PRINCETON, reversing two previous votes on bond proposals, voted for sewerage and treatment bonds totaling $40,000. The vote reversal in the Johnson County town was a 216 to 22 margin.

* * *

OXFORD has voted for three proposals which will result in the sale of $385,000 in municipal bonds to finance various street, sewerage, and water storage improvements. The town expects a matching grant to help carry forward a large public works program. Only slightly more than 1% of eligible Oxford residents voted in the bond referendum.

* * *

WINDSOR approved $290,000 to go with a federal grant of $140,000. The vote margin was 11 to 1 but only 121 votes were cast out of 574 eligible voters.

* * *

NORLINA has approved $165,000 bond issue for extension of sewer lines and construction of sewerage disposal lagoon.

* * *

GREENVILLE and **PITT COUNTY** had quite a day when Director Edward R. Murrow of the United States Information Agency joined with local, State and other federal officials in dedicating the Voice of America's powerful new transmitters. The new installation was described as "the largest and strongest short wave facility in the world," doubling the power of the Voice. In a telephone salute from the White House, President Kennedy conveyed his congratulations, saying in part: ". . . Today is the beginning. More peoples in many new lands will now hear the sound of the voice of this country—the Voice of America.

". . . To you [USIA] I say congratulations on the new Greenville facility. Your burden in the years ahead is one of truth and challenge. I am confident it will be well discharged and free men everywhere will listen to the sounds of your words of truth that seek out men and women of the world that wish to listen to the voice of freedom . . ."

WINSTON-SALEM Mayor John Surratt joined President Kennedy in proclaiming the week of January 13th for observance of the 80th anniversary of the Civil Service Act. There are 29 federal agencies and more than 1,000 employees under Civil Service in Winston-Salem.

CHAPEL HILL'S handicapped children from 6 to 11 may learn ways of using their capabilities creatively through arts, crafts, games and discussions. The new program is sponsored two afternoons a month by the town Recreation Department.

LINCOLNTON, with a recently revamped 24 man volunteer fire department, had a fire loss in 1962 of only $12,000. Fire Chief Woodrow Armstrong next hopes to end the fire department's dependency on the police radio hookup, suggesting that a base station be installed at the fire department with a radio in each truck.

NAGS HEAD voters have approved, 131 to 19, a $945,000 bond issue for construction of a city owned water distribution facility. It is expected to be in operation by the beginning of next year.

Voters of **BRYSON CITY** have turned down, 462 to 152, legalizing the sale of wine and beer for off-premises consumption.

GASTONIA Building Inspector, Raymond Wallace, reports a "New Look" in the city's Negro section, only 5 months after enactment of the new slum clearance ordinance. Owners, for their part, have spent money for new plumbing, new wiring and white paint. Much of the credit, however, is being given to the residents who voluntarily

(Continued on page 20)

SUGGESTED CHANGES IN MOTOR VEHICLE LEGISLATION

by Robert L. Gunn, Research Associate, Institute of Government

Among the changes in Motor Vehicle laws recommended by the Department of Motor Vehicles this year are two perennials: The Chemical Tests for Intoxication and the Safety Equipment Inspection bills. Another area to be urged as needing legislative action this year is that of the teenage driver. In addition to these areas, several amendments to existing legislation are to be proposed. The following discussion of these bills is in the order of their mention above.

Chemical Tests for Intoxication

The drinking driver is causing increased concern among government officials, traffic safety officials, and the motoring public. For the enforcement of laws prohibiting driving while under the influence, the courts have traditionally relied upon testimony of those who observed the behavior and appearance of the driver at or near the time of the offense charged. The integrity of this system is open to attack because doctors recognize more than 60 bodily conditions that bear a remarkable resemblance to intoxication. These conditions can and do deceive even the most experienced observer, and medical authorities have recognized that without chemical tests even a competent physician cannot swear with certainty that the individual had a drop of alcohol in his body.

The proposed bill on Chemical Tests, for Intoxication is designed to strengthen present laws[1] which prohibit driving while under the influence of intoxicants. This would be accomplished by enacting an implied consent provision and prescribing the evidentiary weight to be given various levels of alcohol in the blood.

Under existing law chemical tests may be given and the results admitted into evidence.[2] This law is inadequate because chemical tests cannot be performed without the defendant's consent and expert testimony is required to interpret the test results. The proposed bill would overcome the "consent" problem which presently exists by means if an "implied consent" provision. This in effect says that when a person drives a motor vehicle in North Carolina, he is deemed to have consented to undergo chemical tests to determine intoxication if he is arrested for driving while under the influence. A person may still refuse to undergo chemical tests, but the Commissioner of Motor Vehicles would be required to suspend his driver's license for six months. Substances to be tested are blood, breath and urine. Tests must be performed according to methods approved by the State Board of Health and by a person holding a valid permit issued by the State Board of Health for this purpose. As a precaution against inaccurate test results, the individual may request and undergo a test in addition to the one directed by the law enforcement officer. The second test would be performed by a qualified person of the defendant's own choosing.

Another significant provision of the proposed bill makes results of the tests admissible into evidence. This applies only to criminal cases. Evidentiary weight to be given various levels of alcohol in the blood are prescribed. The effect of this provision is to eliminate the present requirement of expert testimony which is expensive and not often available in the smaller cities and towns. If the test results should show an alcohol concentration in the blood of 0.05 per cent or less, it would be presumed that the defendant driver was not under the influence of intoxicating liquor. Test results showing a concentration in excess of 0.05 per cent but less than 0.10 per cent would be relevant evidence but would not create a presumption of intoxication. Test results showing a concentration of 0.10 per cent or more alcohol in the defendant's blood would create a presumption that he was under the influence of intoxicating liquor.

Several states have already enacted a similar law. Both the "implied consent" and "evidentiary weight" provision have withstood constitutional challenges of compulsory self-incrimination and illegal search and seizure.

Safety Equipment Inspection

During 1961, approximately eight per cent of all motor vehicle accidents in North Carolina involved a vehicle with defective safety equipment which was or could have been a contributing factor in causing the accident. In an effort to reduce this problem, the State Highway Patrol initiated a "stepped-up" vehicle inspection program in December of that year.

In September of 1962 the Patrol inspected 23,385 vehicles and found that 4,856 (one out of five) had defects in one or more of the following items of equipment: Brakes, horn, lights, steering, tires, or windshield wipers.

North Carolina has a number of statutory requirements relating to the equipment and condition of motor vehicles.[3] Law enforcement officers have authority to stop vehicles for inspection in order to ascertain compliance with the various statutory requirements.[4] Inspection programs conducted by enforcement personnel under these provisions are inadequate because all

1. G.S. § 20-138 and G.S. § 20-139.

2. State v. Dixon, 256 N.C. 698 (1962); State v. Willard, 241 N.C. 259 (1954).

3. G.S. § 20-122 thru § 20-137.

4. G.S. § 20-183 and G.S. § 20-49(d).

vehicles are not inspected. They result in enforcement of the safety equipment laws by criminal procedures. Since the promotion of safety is the objective to be achieved it seems that a systematic safety equipment inspection law would be more desirable.

The proposed bill would require all vehicles registered in the State to be inspected and approved annually. It provides for the Commissioner of Motor Vehicles to set up a program for licensing and supervising inspection stations, with definite standards required. The charge for inspecting a vehicle is one dollar, twenty-five cents of which goes to the Department of Motor Vehicles to help defray costs of administering the program.

Items required to be inspected include brakes, lights, horn, steering, tires, and windshield wipers. Registration would also be checked as a means of detecting stolen vehicles. In order to pass the inspection, those items specified must meet the requirements prescribed by law with reference to that particular item.

Under the proposed bill, the commissioner could set up a system providing for inspecting year around. This would prevent any inconvenience to the motorist that might arise if all vehicles were required to be inspected during a shorter period of time.

Provisional Licensees

Recent statistical studies indicate that drivers under the age of 20 are involved in a proportionately higher percentage of motor vehicle accidents than any other four-year age group. The problem in this area is not peculiar to North Carolina, but rather, is one of national concern.

Other states have attacked this problem in a number of ways. Their methods may be said to fall into two general categories: (1) Licensing at an earlier age for those persons who complete an approved driver education course; and (2) Issuing a limited license to those persons under 20 years of age.

Michigan is in the first category. That state fixes the minimum age for licensing at 18, but will license at age 16 upon completion of an approved driver education course.

Those states issuing a limited license generally provide that the holder may drive only under certain conditions, or they provide more strict rules for suspension or revocation. Florida will license at 14 instead of the minimum age of 16, but the holder is limited to daylight driving accompanied by a licensed operator who is at least 18 years old. Indiana will license at 16 but the license is probationary and may be revoked up to age 18 at the discretion of the Commissioner of Motor Vehicles for conviction of a moving violation involving personal injury or property damage.

A bill to be proposed in this area combines elements of both these approaches. It requires completion of an approved driver education course, or its equivalent, for all persons under the age of 18 as a prerequisite to obtaining a driver's license or permit. No special restrictions are placed on teenage drivers, but more stringent rules for license suspension are imposed. Suspension would be based upon conviction of offenses committed by the licensee prior to reaching age 20. It provides for mandatory suspension of license for a period of sixty days upon conviction of a second moving violation, or one moving violation in connection with an accident. Conviction of a third moving violation would result in suspension for six months, and a fourth or subsequent offense, for one year.

Amendments to Existing Legislation

A number of amendments to existing legislation will be proposed. These are designed to accomplish the following results.

(1) Authorize the assessment of points for out-of-state convictions of motor vehicle laws.

(2) Eliminate the requirement of the FS 1 and FS 4 forms and substitute therefor a certificate by the owner that he has financial responsibility in force in the required amount. Severe penalties would be provided for false certification.

(3) Require seat belts on all new motor vehicles registered in the State and manufactured or assembled after January 1, 1964.

NOTES FROM . . . CITIES and COUNTIES

(Continued from page 18)

cleaned up their premises after the housing ordinance had been explained to them.

The **CHAPEL HILL** Human Relations Commission now has an almost totally new membership. The Commission met recently to review its first four years of existence and pinpoint several particular problems of community concern, such as employment opportunities, on which to concentrate in the coming year. The Chapel Hill Commission has functioned for some years and, according to town officials, makes unnecessary the creation of any new board along the lines suggested by Governor Sanford for North Carolina communities to further local race relations.

The **CHAPEL HILL** Recreation Commission has asked for a referendum in the next election on a recreation tax of 3 to 10 cents per $100 property evaluation. Currently, the Community Chest supplies the major share of local recreation funds.

An 86 page recodification of the ordinances of the City of **HICKORY** has been prepared by the Municipal Code Corporation of Tallahassee, Florida.

HICKORY City Manager, Craig L. Barnhardt, appeared at a weekly meeting of the local Lion's Club to discuss various phases of city government and planning of interest to civic-minded people of the area. Members submitted 32 questions on such diverse topics as water and sewer rates, a new water line, condemnation of old houses, wider streets, zoning, city license tags, disposal plants, traffic control devices and proposed shopping centers.

After a recommendation from the Chief of Police and the City Manager, **WINSTON-SALEM** ordered cream colored patrol cars rather than black ones. The main reasons for the switch are that the cream colored cars will give a cooler ride in summer and also will be easier to keep clean looking than black colored ones.

COUNTIES

ANSON county (population 24,962) has adopted the council-manager form of government. Anson is listed along with nine cities from different parts of the nation in the *City Manager News Letter* as comprising the list of new council-manager communities since the first of the year.

* * *

The **ROWAN** County Health Department reports "an outstandingly successful" food service school. So great was the interest in this "do it yourself" school that almost 800 persons attended, overflowing into the lobby of the auditorium used for the program.

* * *

MECKLENBURG County commission has declined to participate in the erection of a memorial to President James K. Polk, who was born in Mecklenburg. The commission had been asked to appropriate $2,500 in matching funds to make possible a $55,000 memorial park. The State had appropriated $35,000 for the Polk Museum, $7,500 in matching fund and the Richardson foundation had offered $10,000 in the matching process.

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REPORT FROM RALEIGH

1963 NORTH CAROLINA GENERAL ASSEMBLY

THE FIRST MONTH

THE GOVERNOR'S MESSAGE

Governor Terry Sanford made it clear in his biennial message that he does not expect to accept the role of a relatively inactive "lame-duck" chief executive in his last two years in office. Instead, he pointed out possible new dimensions for present State programs, noted a number of areas of challenge and concern, and pictured opportunities for service and progress. His interest, he said, was not in a "Governor's Program" but in showing that much remains to be done in North Carolina and in pledging himself to work with the North Carolina General Assembly toward realizing possible goals.

The areas he listed where legislation is needed comprise an impressive list: Agriculture, Art, Atomic Energy, Civil Defense Agencies, Commission for the Blind, Schools for the Blind and Deaf, Cities and Towns, Commercial Fisheries, Community Planning, County Government, Court Improvement, Drama, Public School Education, Election Laws, Employment, Fiscal Affairs, Forests, Public Health, Higher Education, History, Industrial Development, Insurance Laws, Juvenile Correction, Labor, Libraries, Medical Care Commission, Mental Hospitals, Migrant Labor, Music, National Guard, Paroles, Prisons, Probation, Public Welfare, State Parks, State Ports, Retarded Children, Roads and Highways, Rural Electrification, Sanitorium System, Science, Space Technology, State Personnel, Senate Redistricting, Talented Children, Educational Television, Tourists, Traffic Safety, Utilities, Water Resources, Wildlife, Workman's Compensation.

More specifically, he indicated that legislation would be presented in the following areas or for the listed purposes: redistricting of the State Senate in accordance with the State Constitution and possible provision for automatic redistricting henceforth through a Constitutional amendment; revision of the State's utilities laws, including changes in the rate making laws and the method of increasing rates under bond prior to any hearing, improved definition of lines between private utility companies and co-operatives, and provision for a full-time legal advocate and a full-time rate expert, both to represent the public before the Utilities Commission; possible creation of a new separate Department of Mental Health and further support for research in mental health; protection for migrant workers; increasing the minimum wage, possibly to $1.00; setting up a permanent commission to plan and put into effect a program for retarded children; establishing firmer control of billboards on roadsides; expanding workmen's compensation coverage and increasing its maximum benefits; abating air pollution; providing for a more comprehensive traffic safety program (this subject to be covered by special gubernatorial message later); initial implementing of court reforms under the Court Reform Amendment; constructing a Hall of History containing facilities for the State Library; modifying the Work Release Law to extend to Prison inmates with longer sentences; providing higher

LEGISLATIVE ACTION

Appropriations and Finance. The budget bills were introduced on the same day that Governor Sanford delivered his budget message (February 8). The total budget, if approved, will run about $1.8 billion. Increases were proposed in various fields, including $35 million (from the General Fund for the "A" budget) to maintain State services at current levels; $51 million additional for public schools to provide for more teachers, salary increases, sick leave, etc.; $9 million additional for the Consolidated University of North Carolina; $2 million to convert community colleges to four-year institutions; marked increases for mental institutions and paroles and probations programs; and $18 thousand increase in salaries for Council of State members. In addition, expenditures from the Agriculture Fund were boosted by some $3 million; and gasoline and oil inspection fees (heretofore used for the General Fund) would be applied to highways, boosting funds available for secondary roads. Due partly to the failure of the 1961 proposed bond issues to pass, $117 million was sought for capital improvements. Some $47 million may be applied to this need from the General Fund.

While the Appropriations Committees, shared by Senator Tom White of Lenoir and Representative David Britt of Robeson, began holding hearings almost immediately, the Finance Committees found themselves with the remarkable challenge to consider ways to reduce taxes. These committees, headed by Senator J. V. Johnson of Iredell and Representative Clyde Harriss of Rowan, had fresh in mind a special message from the Governor recommending increased exemptions for dependency in the State income tax, and exemption of news vendors and prepared medicines from the sales tax, and had fresh before them several bills to carry through this proposed reduction of taxes: bills to raise income tax exemptions to $500 for each dependent, repeal the sales tax on news vendors, exempt from the sales tax medicines sold on veterinarian's prescriptions, reduce taxes on commercial fishing boats, and exempt certain resort cottages and apartments from the 3% tax on gross rentals.

Other Major Proposed Legislation. Among proposals submitted in the first weeks of the 1963 session were a number in line with recommendations of commissions. These included bills to carry out the recommendations of the Governor's Commission on Education Beyond the High School (see *Popular Government*, November-December, 1962), and the Commission to Study Public Welfare Programs (see page 6). They also included four bills on the problematical subject of Senate redistricting, made more urgent by some 40 court cases growing out of the United States Supreme Court opinion in *Baker v. Carr* (see *Popular Government*, May 1962). Other vital legislation introduced early concerned schools, public utilities, agriculture, wildlife resources, motor vehicles, public health, and counties, cities, and towns.

1963 GENERAL ASSEMBLY: FIRST MONTH (Contd.)

salaries for state employed professional personnel; making essential changes in legislation designed to protect rights-of-ways and open spaces in municipalities; improving procedures under the Powell Bill to aid cities and towns; expanding rehabilitation programs for alcoholics, young offenders, and inmates requiring medical and psychiatric help; increasing medical care for the indigent; with implementation of the federal Kerr-Mills Act; implementing the recommendations of the Governor's Commission on Education Beyond the High School through appropriate definition of a university, through cooperation with private colleges, program enrichment at state-supported colleges—including the expansion of the community colleges at Wilmington, Charlotte, and Asheville to four-year colleges—, and developing a comprehensive system of community colleges; and establishing a State Guard on the cadre basis to supplant the National Guard if the latter should be mobilzeid for national service.

Some of the legislation dealt with controversial names. The General Assembly in creating a Legislative Building Governing Commission, adopted as "State Legislative Building" as the official name of the new statehouse. The bill containing the recommendations on higher education proposed as the official names of the three existing campuses of the University of North Carolina the following: The University of North Carolina at Chapel Hill, The University of North Carolina at Greensboro, and North Carolina State, The University of North Carolina at Raleigh (see Report From Raleigh, page 00). But most of the legislative work dealt with more than name calling. The challenge of forward-looking legislation was emphasized not only by the call of the Governor and the voices of constituents, but also by the release of new federal figures showing North Carolina in the lower echelon of states in per capita income, wage rates, and other significant areas. The 1963 General Assembly obviously is called upon to be a "do something" legislature. Just what probably will be finally determined between now and early June.

● NOTES FROM CITIES AND COUNTIES *(Continued from page 20)*

DARE COUNTY'S Commissioners have requested legislation to establish the office of tax collector and relieve the sheriff of these duties. At present, a deputy tax collector does the work, but the sheriff retains the title of tax collector.

The **WAKE COUNTY** Housing Authority has signed contracts for construction of 112 units of low cost housing in 4 Wake communities, Wake Forest, Zebulon, Wendell and Apex. The housing, to cost $1,033,743, will be completed by January, 1964.

The **WAKE COUNTY** Commissioners have taken action aimed at closing the County home within 12 to 18 months. Conditions at the home had been criticized by the Wake County Grand Jury. Renovations, however, to bring the Home up to standards maintained by private and nursing homes would have cost $200,000.

New Sheriff Clayton Jones says that shortly every regular member of the **GUILFORD COUNTY** Sheriff's Department will be thoroughly trained in first aid, and every vehicle will carry first aid kits, blankets and dry chemical fire extinguishers. The Greensboro Chapter of the American Red Cross will conduct the courses.

Dave Clark, chairman of the newly created **LINCOLN COUNTY** Planning Board, is optimistic that the industry-hunting activities of the Board can produce 300 new jobs per year in the county. There is presently a surplus of 1000 in the county's labor force.

The Legal Aid Society of **FORSYTH COUNTY** for legal assistance in civil cases was swamped with 297 applications for aid in its first 11 months of operation.

Uncollected criminal court costs are a real problem to **LEE COUNTY.** They total some $41,000.

Dallas T. Daily, an industry hunter with 34 years experience and now employed by **ROBESON COUNTY,** suggests expansion of the Business Development Corporation by the next legislature along with liberalization of its lending rules. He sees this course of action as making possible the expansion of North Carolina industries without offering tax concessions or other artificial lures.

A multi-million dollar resort and recreation area opened year round has been proposed as a possibility for **YANCEY COUNTY.**

STOKES COUNTY commissioners have taken first steps to make for the construction of a new County Welfare Department-County Library Building.

The **HENDERSON COUNTY** commissioners have been urged to initiate a planning study of the entire county with a view to establishing a "master plan of development." The resolution was presented to the commissioners by the Hendersonville Chamber of Commerce.

CARTERET COUNTY school district offices are spearheading a drive to obtain a favorable vote on a $2 million school bond issue for the county.

Legislation to establish the office of "tax collector" in **DARE COUNTY** has been introduced in the General Assembly. Under the bill the sheriff's department would be relieved of tax collection duties.

HARNETT COUNTY, with an assist from the PTA has begun a program aimed at reducing the number of school drop-outs. In 1962, 180 students dropped out of the county's schools prior to graduation.

The counties of **VANCE, GRANVILLE,** and **DURHAM** were treated recently to the sight of a State legislator walking along Super Highway Interstate 85. Durham County's Representative Nick Galifianakis was joined by various local and State officials during parts of his 19-mile hike to point up the need for completion of the 36-mile "missing link" between Henderson and Durham.

The **LINCOLN COUNTY** Board of Commissioners have appointed J. Robert Willis as Civil Defense director, succeeding Paul Varner.

WARREN COUNTY is without an electrical inspector. The official who held the job for many years has informed the county commissioners that he has been notified by the State that he can no longer serve in that capacity in that he is not a licensed electrician.

The **PERQUIMANS COUNTY** Board of Education has accepted two new school buildings.

NASH COUNTY has begun a 4-year educational program designed to increase the county's farm income to $40 million annually.

The **HAYWOOD COUNTY** Mental Health Association has received the award as the outstanding mental health group in the State in 1962.

SAVED BY SEAT BELTS!

by Robert L. Gunn
Research Associate, Institute of Government

SEAT BELT BILL

The North Carolina Department of Motor Vehicles and the State Board of Health are cooperating in sponsoring a bill this year to require two sets of seat belts for the front seat of all passenger vehicles manufactured, assembled, or sold within the State after January 1, 1964. A bill was introduced in the House of Representatives by Representative Uzzell on the second day of the 1963 General Assembly. It requires the vehicle to be equipped with seat belts, but does not require the occupants to make use of them.

It has been said that of the 38,200 persons who died in automobile accidents in 1960, 5,000 (13 per cent) could have been saved by the use of seat belts. Recent studies also indicate that serious injuries to occupants of vehicles, involved in accidents, could have been reduced by at least one-third.[1]

Seat belts will help in the following ways in case of an accident:

Keep the wearer from being ejected through a door opened by the impact of the accident; reduce the impact if he should hit an interior surface of the car; help keep the driver in his seat after a jolt and enable him to maintain better control of his car; help the wearer survive crashes which would otherwise mean certain death.

In case of a crash, seat belts will not prevent all injuries or help in a nonsurvivable collision. If the car is crushed or demolished, it makes little difference if an occupant is wearing a seat belt or not, but there are a good many accidents, both fatal and non-fatal, in which the car is only slightly damaged. In those cases the seat belt is of utmost importance in preventing injuries and fatalities.

In some crashes an occupant may be bruised by the restraining belt, but chances are that the impact would have killed or badly injured him without a belt.

Accident crash injury research conducted by Cornell University indicates that seat belts are a most valuable safety device. This study was based on accident reports from 22 states and resulted in the following findings: The greatest protection the seat belt has to offer is that it keeps people from being ejected. Ejected occupants suffer fatal injuries five times as often as those remaining inside the automobile. Some of the ejected people would undoubtedly have died had they stayed inside their cars, but statistical comparisons indicate that at least 25 per cent of the lives lost because of ejection could be saved if ejection could be prevented.

The belts will not prevent accidents, but in case of an accident they should help the person wearing them by saving his life or preventing more serious injury. They also serve as a constant reminder to be careful.

Seat Belt Laws in Other States

Several states require seat belts on state-owned vehicles or a particular class of state-owned vehicles. Wisconsin became the first state to enact a mandatory seat belt law in 1961 when it required all automobiles, beginning with the 1962 models, to be equipped with at least two sets of belts for the front seat. Virginia and Mississippi have similar laws effective with the 1963 models; Rhode Island, and the District of Columbia beginning with the 1964 models; and New York beginning with the 1965 models. Several other states will consider some type of legislation on seat belts this year.

In 1957 the North Carolina General Assembly passed a law requiring all seat belts sold within the state to be of a type approved by the Commissioner of Motor Vehicles.[2]

The 1961 General Assembly also directed its attention to this subject. It enacted legislation requiring all new motor vehicles registered in this State and manufactured, assembled, or sold after July 1, 1962 to be equipped with anchorage units for at least two sets of seat belts.[3]

In summary, the enactment of a mandatory seat belt law would be a step forward in the field of traffic safety. It would require that automobiles be equipped with a potentially highly effective safety device. The actual effectiveness of the device will depend upon its use.

1. Cong. Rec. App. A 6924, Sept., 1961.

2. G.S. 20-135.1.
3. G.S. 20-135.2.

Book Reviews

CHALLENGE OF A NEW ERA. Edited by Edgar A. Jones, Jr. Albany, N.Y.: Matthew Bender & Company, 1962. 353 pages. $10.00.

With the computer moving steadily into more and more fields of human endeavor, it was predictable that someone would wonder about its application to the practice of law. This book consists of the proceedings of the First National Law and Electronics Conference at Lake Arrowhead, California, in 1960, at which this general speculation began to shift to detailed analysis of the problems involved in such application. Many of the papers and floor comments reported are highly tentative in nature, but the practicing attorney will almost certainly be interested in this introduction to what may be his future way of life.

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AND ON THE EIGHTH DAY. . . . By Richard Hedman and Frederick H. Bair, Jr. Available from Bair, P.O. Box 818, Auburndale, Florida. 1961. $3.

Planners, other governmental officials, and laymen alike will take pleasure at this illustrated spoofing of city planners and their foibles. Beneath the comedy lies perceptive satire of widely held (or widely abused) "planning principles." This is a nice gift for a friend who is a planner—especially if he shows signs of taking himself and his work too seriously.

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LAND-USE PLANNING: A CASEBOOK ON THE USE, MISUSE, AND RE-USE OF URBAN LAND. By Charles M. Haar. Boston: Little, Brown & Company, 1959. 764 pp. $10.

For the lawyer or the city planner interested in the developing law of city planning, this collection of materials (designed as a casebook for use in a law school course) represents an introduction-in-depth to most of the problems in the field. Of particular interest are the piercing inquiries into the rationale of various activities of the governmental planner. As a sourcebook and beginning point for research, this book deserves inclusion in every "basic" library relating to planning.

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URBAN ZONING AND LAND-USE THEORY, by Sidney M. Willhelm. The Free Press of Glencoe (a division of The Macmillan Company), Crowell-Collier Publishing Co., 60 Fifth Avenue, New York 11. 1962. 240 pp. $6.00.

The title of this book will prove deceptive for the city official or planner who thinks of "land-use theory" in terms of physical design. This is a book *by* a sociologist and *for* sociologists, although the author speaks in terms of giving planners a broader theoretical understanding of the "social values attributed to the physical setting within our highly developed industrial society." Basically, the author takes data derived from observation of the zoning process in Austin, Texas, and uses it to test hypotheses within a highly-elaborated framework of sociological theory. The average official will not find the end result worth the difficulty of mastering the specialized language of this particular group of social scientists.

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INTERSTATE APPORTIONMENT OF BUSINESS INCOME FOR STATE INCOME TAX PURPOSES WITH SPECIFIC REFERENCE TO NORTH CAROLINA. By Charles E. Ratliff, Jr., Chapel Hill: The University of North Carolina Press 1962. $4.00.

This volume is concerned with "the determination of the portion of net income attributable to a particular state" in the matter of corporate income taxes levied by states, and with particular reference to North Carolina, upon business firms engaged in interstate commerce. Dr. Ratliff takes up economic and legal developments in apportionment, reviews court decisions, and presents ideas of "proper apportionment methods." The book has especial usefulness in North Carolina because the State recently revised its method of apportionment.

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RURAL PLANNING: A CONCEPT STUDY FOR PLANNING IN RURAL NEW JERSEY, by Rutgers University Planning Service. Rutgers University, New Brunswick, N. J., 1961. 66 pp.

As more and more rural residents begin to seek the protection of zoning, planners are becoming uncomfortably aware that they lack on adequate theoretical basis on which to build rural zoning ordinances—or even to plan for rural areas. In consequence, many such ordinances are nothing but modified versions of urban zoning ordinances, fitted in a rough-and-ready

(Continued on inside back cover)

BOND SALES

From December 4 through January 29, 1963, the Local Government Commission sold bonds for the following governmental units. The unit, the amount of bonds, the purpose for which the bonds were issued, and the effective interest rate are given.

Unit	*Amount*	*Purpose*	*Rate*
Cities:			
Ahoskie	$ 225,000	Sanitary Sewer	2.98
Winston-Salem	6,660,000	Water, Sanitary Sewer	2.86
Cherryville	645,000	Water	3.34
Hendersonville	585,000	Sanitary Sewer	3.48
Carthage	23,000	Water	3.77
Statesville	1,750,000	Water, Sanitary Sewer, Electric Light and Power, Police Headquarters Building and Fire Station	2.96
Whiteville	95,000	Water, Municipal Equipment, Town Hall	3.61
Lumberton	225,000	Water	2.85
Edenton	370,000	Sanitary Sewer	2.95
Counties:			
Wilkes	750,000	School Building	3.37

Credits: Cover picture courtesy Raleigh News & Observer. Other photographs by Charles Nakamura.

BOOK REVIEWS (Contd.)

REGIONALIZATION AND RURAL HEALTH CARE, by Walter J. McNerney and Donald C. Riedel. The University of Michigan, Ann Arbor, Michigan. Ann Arbor: 1962. 209 pp. $5.00.

This is a study of an actual, formal regionalization compact entered into several years ago by three health centers and two regional hospitals in northern Michigan. The author studies utilization of health facilities by residents of the three areas before and after the centers were founded. In addition, they ascertained the awareness and support of the regional relationship by hospital board members, community leaders, patients, doctors, and selected personnel at both the rural health centers and the regional hospitals.

The authors are thus in a position to present not only their conclusions as to how this experiment in regionalization worked in practice, but also the data on which these conclusions are based.

This book, discussing the many factors affecting the success of regionalization in practice—as opposed to theoretical considerations—should be of significant help to health administrators involved in or contemplating the development of regionalization patterns.

GREEN BELTS AND URBAN GROWTH, by Daniel R. Mandelker. Univ. of Wisconsin Press, 430 Sterling Court, Madison 6, Wis., 1962. 156 pp. $5.00.

The title of this book is somewhat misleading. Actually it is perhaps the best short statement in print of the mechanics of British land use controls, with emphasis upon those operating in the so-called "green belt" areas. With his background of American legal training, the author made a penetrating analysis during his year in England. On the whole, the British system does not come off well in the telling, but American lawyers and planners will find the analysis interesting.

SURVEY OF METROPOLITAN COURTS FINAL REPORT, by Maxine Boord Virtue, (Asst. Atty.-Gen., Michigan) 1962. University of Michigan Press. $10.00.

This volume completes a study begun in 1947 of the functions of the metropolitan trial court. It contains much valuable data on the special problems of the courts of the major cities. While North Carolina has only a half-dozen areas that fall into this category, there is nevertheless much material in this study which should be useful to the architects of North Carolina's new system of district courts. Attention is especially invited to Chap. X, Safeguarding Due Process, Chap. XI, Remedies, and the extensive Bibliography.

WASHINGTON, VILLAGE AND CAPITAL, 1800-1878, by Constance McLaughlin Green. Princeton, N. J., Princeton University Press, 1962. 445 pp. $8.50.

This book, the first of a two volume study, presents a detailed but fascinating account of the formative years of our nation's capital and of the people who lived there during those years. Since much of the nation's history was made in the capital by these people, the book also is a history of 19th Century America seen from a new vantage point. Municipal officials will find of particular interest the details of growing needs for municipal services and facilities in the new city and the report on how services and facilities were developed to meet these needs. Washington, of course, has many distinctive characteristics, but at the same time many aspects of its growth were common to other cities and thus illuminate American urban development generally.


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