POPULAR GOVERNMENT

DECEMBER, 1966

Published by the Institute of Government
The University of North Carolina at Chapel Hill

In This Issue:

Our cover picture shows a cross section of the members of the 1967 North Carolina General Assembly as they listen to a briefing at the first Legislative Orientation Conference. (See p. 1 ff.)

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The Governor and the Institute Sponsor a LEGISLATIVE ORIENTATION CONFERENCE

North Carolina's 1967 State Legislators met in Chapel Hill on December 2 and 3 in a first Legislative Orientation Conference. Sponsored jointly by Governor Dan K. Moore and the Institute of Government, the Conference was attended by 153 of the 170 members elected to the 1967 North Carolina General Assembly. (*See picture story on pages* 3 *through* 7.) The two-day event broke new ground and was well received by the participants.

The Friday session was designed to give new lawmakers a background and perspective on the General Assembly and their legislative responsibilities. Of the 15 Senators and 55 Representatives without previous legislative experience, all but two attended the Orientation.

Following a welcome by Director John L. Sanders of the Institute of Government, they were briefed on "The Role and Responsibilities of the General Assembly" by House Speaker H. P. Taylor, Jr. Other subjects and speakers, in order of presentation, were "Legislative Staff and Services" by Mrs. Annie Cooper and S. Ray Byerly, Principal Clerks of the House and Senate, respectively; "State Legislative Building" by Senator Thomas J. White, Chairman of the Legislative Building Governing Commission; "The Legislative Session Begins" by Secretary of State Thad Eure; "Legislative Committees" by Representative David M. Britt, who is expected to be the new Speaker of the House.

In the afternoon the new legislators learned about "Biography of a Bill" from State Senator Robert B. Morgan; the "Attorney General's Office" from Assistant Attorney General James F. Bullock, representing Attorney General T. Wade Bruton; "Other State Agencies," from Assistant Director Milton S. Heath, Jr., of the Institute of Government, who arranged and presided over the program; and "The General Assembly and the State Budget," from Director of Administration Ed L. Rankin and Senator White, Chairman of the Advisory Budget Commission. Time was reserved for discussion of the topics.

The Saturday session brought veteran legislators to join the new. That segment of the program was devoted to a preview of the reports of study commissions. In each instance the commission chairman reported in person to the members of the upcoming Assembly. Former Governor Luther H. Hodges presented the report of the Commission on the Study of the Board of Trustees of the University of North Carolina. (*See pages* 4 *and* 26.) Former Senator Oral Yates reported

for the Election Laws Revision Commission; K. V. Braugh, Jr., for the Commission on Aviation; and Senator Morgan and Speaker Taylor, the Co-Chairmen, for the Legislative Research Commission. In the afternoon Senator Lindsay Warren gave the recommendations of the Courts Commission; Senator Ruffin Bailey, for the Motor Vehicle Financial Responsibility and Compulsory Insurance Commission; General James R. Townsend, for the Department of Water Resources Water Law Study; and Chairman Thomas Alexander, for the Commission for the Study of the Revenue Structure of the State. The proposals of most of these commissions will appear in the February issue of *Popular Government.*

As the picture story on the following pages indicate, the legislators listened intently to the wealth of information provided them and, between sessions, discussed the problems and challenges which confront them. In addition to such matters as education and taxes, they talked of the recent State Supreme Court decision on "brown-bagging."

Perhaps the theme and purpose of the unprecedented advance briefing of the North Carolina General Assembly members were stated at the outset by Speaker Taylor, who told the legislators: "Basically you can shape the course and future of State Government in North Carolina. It is a tremendous responsibility. It is up to you to determine where we will go and how fast we will go." □

CO-HOSTS: *Governor Dan K. Moore and Director John L. Sanders of the Institute of Government confer just prior to the opening of the Legislative Orientation Program.*

IN CLASSROOM: *New legislators listen intently as speakers explain legislative processes and procedures.*

Pictured on these two pages are the speakers who appeared on the first Legislative Orientation Seminar at the Institute of Government, December 2-3.

A. John L. Sanders, Director of the Institute of Government. B. Mrs. Annie Cooper, Chief Clerk of the House. C. Ray Byerly, Chief Clerk of the Senate. D. Milton S. Heath, Jr., Assistant Director of the Institute of Government and presiding officer for the seminar. E. Senator Thomas J. White, Chairman of the Legislative Building Governing Commission. F. Secretary of State Thad Eure. G. Representative David M. Britt. H. Senator Robert B. Morgan. I. Assistant Attorney General James F. Bullock. J. E. L. Rankin, Director of Administation. K. Hon. Luther H. Hodges, Chairman of the Commission on the Study of the Board of Trustees of the University of North Carolina. L. Former State Senator Oral Yates, Chairman of the Election Laws Revision Commission. K. V. Braugh, Jr., of the Commission on Aviation. N. Speaker H. P. Taylor, Jr., Co-Chairman (with Senator

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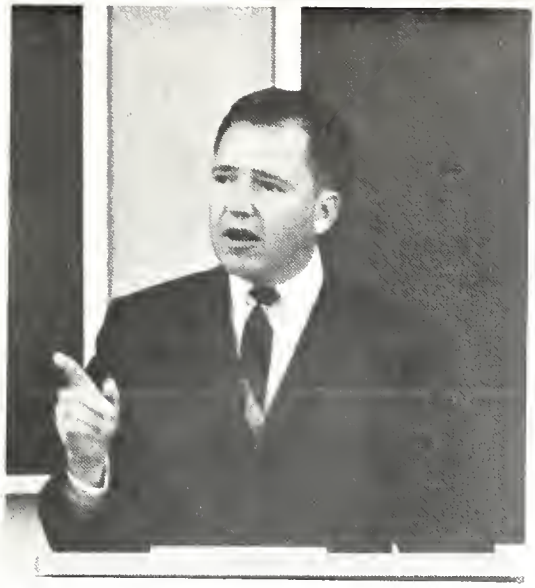

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Robert B. Morgan) of the Legislative Research Commission. O. Senator Lindsay Warren, Jr., Chairman of the Courts Commission. P. Senator Ruffin Bailey, Chairman, Motor Vehicle Financial Responsibility and Compulsory Insurance Commission. Q. General James R. Townsend, Chairman, Board of Water Resources and the Department of the Water Resources-Water Law Study. R. Thomas Alexander, Chairman, Commission for the Study of the Revenue Structure of the State.

↑ *The Governor and legislators . . .*

The Chief Clerks of
← House and Senate . . .

General Assembly members
← with exhibit in background . . .

↑ *Talk informally at breaks.* →

BETWEEN SESSIONS: *General Assembly members, the Governor, administrative officials, and Institute staff chat over coffee.*

← *The Chancellor welcomes the legislators . . .*

In behalf of the University . . . →

↑ *Amid good food and lively conversation . . .*

AT THE CAROLINA INN: *Chancellor Carlyle Sitterson of the University of North Carolina at Chapel Hill and his audience at the Legislative Orientation Luncheon. Sitterson told the solons that a State University must compete in the nation and the world for academic distinction.*

Others at the head table, left to right, include David G. Warren and Milton S. Heath, Jr., of the Institute of Government; H. Pat Taylor, Jr., former House Speaker; Wayne Corpening, Administrative Assistant to the Governor; John L. Sanders, Director, Institute of Government; Former Governor Luther H. Hodges; Sitterson; and Lieutenant Governor Robert Scott.

The 1967 North Carolina General Assembly

MEMBERS OF THE SENATE

Senatorial District	*Party*	*Name and County*	*Residence*
1st	D	J. J. (Monk) Harrington (Bertie)	Lewiston
	D	George M. Wood (Camden)	Camden
2nd	D	Ashley B. Futrell (Beaufort)	Washington (Summit Avenue)
3rd	D	Sam L. Whitehurst (Craven)	New Bern (Bayboro Road)
4th	D	Julian R. Allsbrook (Halifax)	Roanoke Rapids (Box 108)
	D	Vinson Bridgers (Edgecombe)	Tarboro (612 Lucille Dr.)
5th	D	Thomas J. White (Lenoir)	Kinston (Box 187)
6th	D	Albert J. Ellis (Onslow)	Jacksonville (105 Keller Court)
7th	D	Wills Hancock (Granville)	Oxford (103 Front Street)
8th	D	Dallas L. Alford, Jr. (Nash)	Rocky Mount (100 Wildwood Ave.)
	D	Jesse H. Austin, Jr. (Johnston)	Clayton (Box 245)
9th	D	Lindsay C. Warren, Jr. (Wayne)	Goldsboro (208 Ridgewood Dr.)
10th	D	John J. Burney, Jr. (New Hanover)	Wilmington (720 Forest Hills Dr.)
	D	LeRoy G. Simmons (Duplin)	Albertson (Rt. 1)
11th	D	Claude Currie (Durham)	Durham (Box 1491)
	D	Don S. Matheson (Orange)	Hillsborough
12th	D	Ruffin Bailey (Wake)	Raleigh (2502 Kenmore Dr.)
	D	Jyles J. (Jack) Coggins (Wake)	Raleigh (3601 Ridge Rd.)
13th	D	Robert B. Morgan (Harnett)	Lillington
14th	D	John T. Henley (Cumberland)	Hope Mills (200 S. Main St.)
	D	N. H. (Hec) McGeachy, Jr. (Cumberland)	Fayetteville (2011 Winterlochen Rd.)
15th	D	James C. Green (Bladen)	Clarkton (Lumberton Highway)
16th	D	Frank R. Penn (Rockingham)	Reidsville (1202 Crescent Dr.)
17th	D	Ralph H. Scott (Alamance)	Haw River (Rt. 1)
18th	D	Ed Kemp (Guilford)	High Point (809 Oakview Rd.)
	D	L. P. McLendon, Jr. (Guilford)	Greensboro (201 Kimberly)
	R	John L. Osteen (Guilford)	Greensboro (1013 Madison Ave.)
19th	D	J. F. (Jeff) Allen (Montgomery)	Biscoe (P. O. Box 8)
	D	Voit Gilmore (Moore)	Southern Pines (700 E. Indiana Ave.)
20th	D	Hector MacLean (Robeson)	Lumberton (N. Elm St.)
21st	D	Worth Gentry (Stokes)	King
22nd	R	Harry Bagnal (Forsyth)	Winston-Salem (Rt. 1, Murray Rd.)
	R	Mrs. Geraldine R. (Gerry) Nielson (Forsyth)	Winston-Salem (3521 Kirklees Rd.)
23rd	R	C. U. Parrish (Rowan)	Salisbury (301 Maupin St.)
24th	D	John R. Boger, Jr. (Cabarrus)	Concord (101 Louise Ave., S.E.)
	D	C. Frank Griffin (Union)	Monroe (1200 Lancaster Ave.)
25th	R	T. R. Bryan, Sr. (Wilkes)	Wilkesboro (500 W. Main St.)
26th	D	C. V. Henkel (Iredell)	Turnersburg (P. O. Box 391)
	D	Adrian Shuford, Jr. (Catawba)	Conover (Second Avenue Place)
27th	D	Mrs. Martha W. Evans (Mecklenburg)	Charlotte (2441 Hassell Pl.)
	D	Charles K. Maxwell (Mecklenburg)	Huntersville (Rt. 1, Box 348)
	D	Herman A. Moore (Mecklenburg)	Charlotte (1521 Dilworth Rd.)
28th	D	Joe K. Byrd (Burke)	Morganton (Mimosa Bldg.)
29th	D	Marshall A. Rauch (Gaston)	Gastonia (1121 Scotch Dr.)
	D	Jack H. White (Cleveland)	Kings Mountain (218 Edgemont Rd.)
30th	D	Clyde M. Norton (McDowell)	Old Fort (Box 477)
31st	R	Bruce B. Briggs (Buncombe)	Asheville (Sunset Parkway)
	R	R. T. (Ted) Dent (Mitchell)	Spruce Pine
32nd	D	Harry E. Buchanan (Henderson)	Hendersonville (1205 Hyman Ave.)
33rd	D	Mrs. Mary Faye Brumby (Cherokee)	Murphy (P. O. Box 6)

The 1967 North Carolina General Assembly

MEMBERS OF THE HOUSE

House District	*Party*	*Name and County*	*Residence*
1st	D	W. T. (Bill) Culpepper (Pasquotank)	Elizabeth City (1705 Parkview Dr.)
	D	Philip P. Godwin (Gates)	Gatesville
2nd	D	Archie Burrus (Dare)	Manteo
	D	W. R. (Bill) Roberson, Jr. (Beaufort)	Washington (313 College Ave.)
3rd	D	R. C. Godwin (Craven)	New Bern (1118 National Ave.)
	D	James R. Sugg (Craven)	New Bern (Elks Building)
	D	Nelson W. Taylor (Carteret)	Morehead City (2001 Shepard St.)
4th	D	W. D. (Billy) Mills (Onslow)	Maysville (Rt. 1)
	D	J. F. Mohn (Onslow)	Richlands (P. O. Box 265)
	D	Hugh A. Ragsdale (Onslow)	Richlands
5th	D	William L. Hill, II (New Hanover)	Wilmington (1163 Country Club Rd.)
	R	George T. Clark, Jr. (New Hanover)	Wilmington (1218 Fairway Dr.)
6th	D	Emmett W. Burden (Bertie)	Aulander
	D	Roberts H. Jernigan, Jr. (Hertford)	Ahoskie (401 N. Curtis St.)
7th	D	J. A. Everett (Martin)	Palmyra (27859)
	D	Thorne Gregory (Halifax)	Scotland Neck (1601 North Church St.)
8th	D	W. A. (Red) Forbes (Pitt)	Winterville
	D	H. Horton Rountree (Pitt)	Greenville (110 East 3rd St.)
9th	D	Guy Elliott (Lenoir)	Kinston (Box 974)
	D	I. Joseph Horton (Greene)	Snow Hill
10th	D	Mrs. John B. Chase (Wayne)	Eureka
	D	Thomas E. Strickland (Wayne)	Goldsboro (P. O. Box 1357)
11th	D	Hugh S. Johnson, Jr. (Duplin)	Rose Hill (208 East Main)
12th	D	Chatham C. Clark (Bladen)	Elizabethtown (P. O. Box 2[illegible])
	D	C. Graham Tart (Sampson)	Clinton (709 Cutchin St.)
13th	D	Clyde M. Collier (Columbus)	Hallsboro (Rt. 1)
	D	Odell Williamson (Brunswick)	Shallotte
14th	D	Allen C. Barbee (Nash)	Spring Hope (Box 338)
	D	Joe E. Eagles (Edgecombe)	Macclesfield (Crisp Rural Station)
	D	Julian B. Fenner (Nash)	Rocky Mount (1604 Waverly Dr.)
15th	D	W. R. (Billy) Britt (Johnston)	Smithfield (408 Hancock St.)
	D	J. E. Paschall (Wilson)	Wilson (1718 Wilshire Blvd.)
	D	Barney Paul Woodard (Johnston)	Princeton (Box 5)
16th	D	John T. Church (Vance)	Henderson (Woodland Rd.)
	D	James D. Speed (Franklin)	Louisburg (Rt. 3)
17th	D	Jno. O. Gunn (Caswell)	Yanceyville (Box 389)
	D	James E. Ramsey (Person)	Roxboro (White Oak Drive)
18th	D	W. Hance Hofler (Durham)	Durham (1532 Hermitage Ct.)
	D	Wade H. Penny, Jr. (Durham)	Durham (3937 Nottaway Rd.)
	D	Kenneth C. Royall, Jr. (Durham)	Durham (64 Beverly Dr.)
19th	D	Thomas D. Bunn (Wake)	Raleigh (2507 Wake Dr.)
	D	Samuel H. Johnson (Wake)	Raleigh (4816 Morehead Dr.)
	D	A. A. McMillan (Wake)	Raleigh (406 Chesterfield Rd.)
	D	Howard Twiggs (Wake)	Raleigh (525 Marlowe Rd.)
20th	D	Ike F. Andrews (Chatham)	Siler City (301 Park Drive)
	D	Donald M. Stanford (Orange)	Chapel Hill (420 Whitehead Circle)
21st	D	Jack M. Euliss (Alamance)	Burlington (Box 913)
	D	M. Glenn Pickard (Alamance)	Burlington (1119 Sherwood Dr., Box 913)
22nd	D	Jimmy L. Love (Lee)	Sanford (713 Lawrence St.)
	D	William W. Staton (Lee)	Sanford (636 Palmer Dr.)

House District	*Party*	*Name and County*	*Residence*
23rd	D	Norwood E. Bryan, Jr. (Cumberland)	Fayetteville (Carvers Falls Rd.)
	D	Sneed High (Cumberland)	Fayetteville (338 DeVane St.)
	D	I. H. (Ike) O'Hanlon (Cumberland)	Fayetteville (2605 Morganton Rd.)
	D	Joe B. Raynor, Jr. (Cumberland)	Fayetteville (5234 Raeford Rd.)
24th	D	David M. Britt (Robeson)	Fairmont
	D	Roger C. Kiser (Scotland)	Laurinburg (Vance St.)
	D	Neill L. McFadyen (Hoke)	Raeford (111 S. Highland St.)
	D	R. D. McMillan, Jr. (Robeson)	Red Springs (Box 352)
25th	D	Jule McMichael (Rockingham)	Reidsville (1601 Country Club Dr.)
	D	Earl W. Vaughn (Rockingham)	Draper (Fieldcrest Rd.)
26th	D	Hargrove (Skipper) Bowles, Jr. (Guilford)	Greensboro (700 Country Club Dr.)
	D	Elton Edwards (Guilford)	Greensboro (309 N. Tremont Dr.)
	D	James G. Exum (Guilford)	Greensboro (521 Woodland Drive)
	D	C. W. (Charlie) Phillips (Guilford)	Greensboro (210 S. Tremont Dr.)
	D	W. M. (Mark) Short (Guilford)	Greensboro (2004 Kylemore Dr.)
	D	D. P. (Dan) Whitley, Jr. (Guilford)	High Point (1101 Clyde Pl.)
27th	R	Colon Blake (Montgomery)	Candor (P. O. Box 157)
	R	C. Roby Garner, Sr. (Randolph)	Asheboro (509 E. Salisbury St.)
28th	D	T. Clyde Auman (Moore)	West End
29th	D	Thomas B. Hunter (Richmond)	Rockingham (618 Fayetteville Rd.)
30th	R	Ronald K. Ingle (Forsyth)	Winston-Salem (4636 Walden Dr.)
	D	Wesley Bailey (Forsyth)	Winston-Salem (707 Ransom Rd.)
	R	Howard A. Jemison (Forsyth)	Winston-Salem (Rt. 8, Robin Hood Rd.)
	R	E. M. McKnight (Forsyth)	Clemmons (Rt. 2, Keithgayle Dr.)
	D	Claude M. Hamrick (Forsyth)	Winston-Salem (2841 Holyoke Pl.)
31st	R	Joe H. Hege, Jr. (Davidson)	Lexington (1526 Greensboro St.)
	R	Wayne Whicker (Davidson)	Winston-Salem (Rt. 5)
32nd	R	Clyde Hampton Whitley (Stanly)	Albemarle (2310 Charlotte Rd.)
33rd	D	Richard S. Clark (Union)	Monroe (702 Kintyre Dr.)
	D	Fred M. Mills, Jr. (Anson)	Wadesboro (607 Camden Rd.)
34th	R	Austin A. Mitchell (Rowan)	Kannapolis (1302 West A St.)
	R	Samuel A. Troxell (Rowan)	Rockwell
35th	R	James C. Johnson, Jr. (Cabarrus)	Concord (124 Sedgefield Dr.)
	D	Dwight W. Quinn (Cabarrus)	Kannapolis (213 S. Main St.)
36th	D	Jack Baugh (Mecklenburg)	Charlotte (2018 Sharon Rd.)
	D	Jim Beatty (Mecklenburg)	Charlotte (3716 Rhodes Ave.)
	D	Pat Hunter (Mecklenburg)	Charlotte (3123 Cloverfield Dr.)
	D	A. H. (Art) Jones (Mecklenburg)	Charlotte (6510 Sharon Hills Rd.)
	D	James B. Vogler (Mecklenburg)	Charlotte (2011 Randolph Rd.)
	R	Richard B. Calvert (Mecklenburg)	Charlotte (417 Jefferson Dr.)
	R	James H. Carson, Jr. (Mecklenburg)	Charlotte (419 Ellsworth Rd.)
37th	D	Basil D. Barr (Ashe)	West Jefferson
	D	P. C. Collins, Jr. (Alleghany)	Laurel Springs
	D	Hugh L. Merritt (Surry)	Mt. Airy (Country Club Rd.)
38th	R	Claude Billings (Wilkes)	Traphill (Rt. 1, Box 2A)
	R	Jeter L. Haynes (Yadkin)	Jonesville
39th	R	Gilbert Lee Boger (Davie)	Mocksville (Rt. 3)
	R	Homer B. Tolbert (Iredell)	Cleveland (Rt. 2)
40th	D	Lloyd A. Mullinax, Jr. (Catawba)	Newton (628 West 8th St.)
	R	J. Reid Poovey (Catawba)	Hickory (61 20th Ave., N.W.)
41st	D	David W. Bumgardner, Jr. (Gaston)	Belmont (209 Peachtree St.)
	D	Clarence E. Leatherman (Lincoln)	Lincolnton (307 Roberta Ave.)
	D	Carl J. Stewart, Jr. (Gaston)	Gastonia (1855 Westbrook Circle)
	R	H. Max Craig, Jr. (Gaston)	Stanly (General Wheeler St.)

House District	*Party*	*Name and County*	*Residence*
42nd	D	Sam J. Ervin, III (Burke)	Morganton (First Nat'l Bank Bldg.)
	D	Earl H. Tate (Caldwell)	Lenoir (229 Norwood St.)
	R	Donald R. Kincaid (Caldwell)	Lenoir (R.F.D., Old Morganton Rd.)
43rd	D	Robert Z. Falls (Cleveland)	Shelby (1308 Wesson Rd.)
	D	William D. Harrill (Rutherford)	Forest City (811 Georgia Ave.)
	D	W. K. Mauney, Jr. (Cleveland)	Kings Mountain (Box 628)
44th	R	Mack S. Isaac (Avery)	Newland (Box 395)
45th	D	Gordon H. Greenwood (Buncombe)	Black Mountain (Box 8)
	D	Herschel S. Harkins (Buncombe)	Asheville (5 Griffing Blvd.)
	R	C. Edley Hutchins (Buncombe)	Black Mountain (Rt. 1, Box 368-B)
	R	David D. Jordan (Buncombe)	Asheville (22-A Westall Dr.)
46th	R	Don H. Garren (Henderson)	Hendersonville (Box 1616)
47th	D	Ernest B. Messer (Haywood)	Canton (15 Forest View Cirele)
	D	Liston B. Ramsey (Madison)	Marshall
48th	R	Charles H. Taylor (Transylvania)	Brevard (Box 66)
49th	D	Wiley A. McGlamery (Clay)	Hayesville

IN INSTITUTE AUDITORIUM: *On the second day of the session, veteran State Senator Sam Whitehurst of Craven asks a question of a study commission chairman.*

DURING A BREAK: *Three legislators talk with Director of Administration Ed Rankin. From left to right: Wade Penny and Kenneth Royal, Representatives from Durham County; Rankin; Jim Beatty, Representative from Mecklenburg County.*

PUBLIC UNDERSTANDING OF WELFARE:

The Challenge to the County Welfare Board Member

by C. Wilson Anderson

[*Editor's Note: Dr. Anderson is Dean of the School of Social Work at the University of North Carolina at Chapel Hill. This article was adapted from his address to the Institute for County Welfare Board Members held at the Institute of Government on October 21-22.*]

The other day I stopped to leaf through Quentin Reynolds' book *Courtroom*. It contains the story of Harry L. Barck, who in 1896 was rewarded for his party regularity by an appointment as Poormaster of Hoboken, New Jersey. Barck had little or nothing to do until the market crash of 1929, when poverty came to Hoboken. By 1938 the city was in deplorable condition, and Barck's job took on considerable importance with over 7,000 persons on the poor-relief rolls.

Barck's method of dealing with the situation was harsh and his tongue harsher. To those faced with having lights cut off, he suggested they burn candles; to a man with an eviction notice he snapped, "Go home and frame it." His policies were tough and hard fisted—lacking in understanding, full of contempt for the poor. On February 25, 1938, Barck died a violent death at the hands of a relief applicant. This applicant had been required to file ten forms for a check of eight dollars, and thereafter had been arbitrarily refused further assistance for himself, his wife, and his two children. The New York *Post*, in its editorial on Barck's murder stated, "For this homicide the entire community of Hoboken—not one, pitiful, desperate, jobless man—stands indicted. The pillars of society in the city across the Hudson are guilty of this crime. The smug, the sleek, the self-satisfied who cheered Barck on from the sidelines as he pinched every penny, as he rolled up an appalling record of inhumanity, killed Barck."

It is unlikely that any Barcks exist in our public welfare system today, but in our current automated, somewhat impersonal age—in which we have computers that program computers—we still have some of the same attitudes toward those in need of services and assistance.

Public Lack of Understanding

Recently two students in a graduate school of social work decided to make some home calls in selected neighborhoods to ask people to support increased appropriations for the state's AFDC program.[1] Going to a well-established blue-collar area, one student identified herself as a "spokesman" for the AFDC program, without saying whether or not she was herself an AFDC mother. Her experience was shocking. Only one of the fifteen families visited invited her to explain fully the purpose of her visit. This one exception was a little old lady who wanted to know about the student's sexual experiences as an AFDC mother. Another woman lectured her for getting herself into "trouble" and offered to have her husband drive her to a local church where she could be cleansed of her sins. On two other occasions the girl was criticized for living on relief and having a ring and glasses. On one block, where apparently most of the housewives were out bowling, two males cordially invited her in, but not to explain her story.

A second student tested her reception in a suburban area ranked among the highest in income and education. Here again ignorance and prejudice were reflected. One man offered the student $200 to leave the state and get a fresh start. At a second home the butler gave her $5 and told her to go around to the back of the house, where the maid would give her something to eat. In her random selection of homes, the student happened upon the home of a psychiatrist who told her that her difficulties were related to

1. As described by Thomas H. Walz, "Use of Field Experience in Teaching Social Welfare as a Social Institution," *Social Work Education Reporter*, XIII (December, 1965), 24.

childhood experienees. He offered to refer her to the county mental health elinie for psychiatric treatment. Only in the home of a minister was she invited in and listened to. The minister subsequently asked her to address the parish ladies' organization on the plight of the AFDC family.

These stories are not presented to eontend that it is hopeless to interpret our public welfare programs or that the community is entirely without understanding and compassion. Their intent is to focus attention on the full measure of the county welfare board member's job. No board member—no matter how competent, talented, or creative—ever makes his fullest contribution until he has realized the dimensions of his task.

Board members have responsibilities for "planning" and "interpretation"—surely two of the most diffieult and sophisticated jobs in any organization. They are, unhappily, fairly abstraet eoncepts, elusive in nature. Left undefined, they allow a board member to flounder and then perhaps settle down to rather apathetic meeting patterns as he waits to find direction. Some of you have surely experienced going into board membership with good intent and high motivation, only to find disillusionment, no place to take hold, and no particular direction to pursue. It is fortunate that we have opportunities like this where board members can come together to reexamine the full measure of their role and responsibilities, because never before has the county welfare board had such a valuable role to play. Never before has there been such potential for real and meaningful accomplishment. Surely today is the time to take a new look at where we have been and where we are going in our public welfare programs. This kind of understanding is also the best possible preparation for the board member's task of interpretation.

Interpreting Public Welfare

Interpretation is a careful, studied, and constant process, continued over a long period of time. A speech eiting facts and figures and urging people to support your program is not necessarily interpretation. It does not become that until you have gone through the important steps of analyzing your audience, recognizing the misconceptions they may have about public welfare and those dependent on it, and making a conscious effort to help them recognize where these misconceptions came from, helping them to put these ideas aside as they listen to you, and then presenting your case.

Beating your county commissioners over the head is not interpretation. Most of us, I think, have a rather naive approach when we deal with political figures. We somehow do not want them to be answerable to a constituency. We forget that the politician has a job to do and that he has to face the voters next election time. Have you ever stopped to think what it must be like to be a dentist, or a businessman, or a labor leader, or a farmer, or a radio announcer one day, and wake up the next day to find that you have been elected county commisioner? Have you ever considered what it must be like a week later to have knocking at your door an expert on highways who expects you to have become, suddenly, overnight, a highway engineer? To have knocking on your door an architect who expects you to have become an expert on building county homes for the aged and detention homes for children awaiting court hearing? To have waiting at your door a committee of educators to discuss with you community colleges? To have waiting outside your office a social worker and a group of citizens who also expect you overnight to have become an expert on children's services?

Begin at the beginning with your commissioners and show where you have to go—why your county must move this way, how you see the orderly development of your program, what appropriate services save, and why they are more economical of money and of human resources than the inadequate services you may now have .And tell them about the support you are developing throughout the county that will enable and permit them to make additional expenditures without having the whole county jump all over them because they are spending more money this year on "that thing" called "welfare." Let them know you are doing the kind of interpretive job that will permit them to point with pride next election time to the county welfare program just as they now might point to new highways, new public buildings, or anything else new under their jurisdiction. Your commissioners are responsive to the electorate and serve their needs. This is the way it should be. It is your job, not theirs, to educate the electorate to the county's welfare needs.

Interpretation, then, begins with understanding: Understanding that other people have the same misconceptions you may have had, and that these must be dispelled before you can talk program. Understanding that most people in the community know nothing about child welfare, for example, and that therefore we do not talk about "subsidized foster homes" without explaining what they mean, what they offer for emergency shelter care, why they are a good investment, and why we must have them.

Need for Emotional Understanding

More importantly, understanding is in large measure emotional as well as intellectual in nature. Your listener may understand the term "neglected child" intellectually, but he will not be interested in having anything done about it until his emotions are involved. Exposure, confrontation, shock, anger are more important than words alone.

This emotional component needs to be a part of your own understanding, too. Have you ever felt the devastating despair of the slums, or seen the bewildered hurt face of the abused child, or been touched by the indignities of old age? For that matter, have you ever seen the institutions your county uses for children? And if you have, have you ever felt what "institution" means?

Recently in an institution for delinquent girls, some people visiting during an open house said to the social worker, "How nice and clean the rooms are. The girls must love it here after the dreadful homes they come from." The social worker responded by saying, "Please notice that the door to each room locks from the outside." The visitors had forgotten about freedom and what its absence means.

I wonder, too, whether the visitors were aware that many of the girls had been committed by their juvenile courts because no appropriate community resource existed to meet their needs—perhaps no early help from child welfare services; later, no qualified probation supervision, no special group homes, no foster homes for teen-age girls whose own homes were inadequate. Would these visitors have been so pleased over the nice, clean rooms if they had understood that the girls had lost their freedom due to community failure to provide the appropriate resources to meet their needs?

Interpretation has to do with telling people something in a language they understand—touching feelings that need to be touched, arousing indignation that needs to be aroused, and paving the way to well-programed county public welfare services in which the measure of appropriate service is only the presence of human need.

Public Welfare in a New Age

We have come a long way in public welfare in recent years, and we have much to tell and much to do. But somehow, when we are a part of history we fail to realize that what is happening is significant. Only when we look back at it do we begin to grasp the real measure of our involvement and achievement.

Public responsibility for needy people has not always been a sensitive, responsive function of government. This responsibility was taken for granted in ancient Greece and Rome, each of which had vast programs of public works and systems for distribution of money and grain to the needy, but in the gloom of the Middle Ages and in the dour, moralistic Elizabethan and Victorian eras, poverty became equated with inadequacy—the just reward of the socially, economically, and personally incompetent. Poverty was not a concern of society nor seen as a by-product of its own processes. Poverty was an offense against society.

But since those days, the development of man's public responsibility for his needy fellow man has come at an ever quickening pace. Since the depression of the 1930's and the passage of the Social Security Act in 1935, greater strides have been made than in all of our previous history, and in the past ten years, the expansion of this concept has been greater than in the previous twenty. Even in the brief historical life of modern public welfare, radical changes have occurred. In the thirties the measure of adequate means was often a dollar a week per person in the family. Today our measuring sticks apply to the adequacy of means necessary to meet the needs of individuals of all ages to develop their fullest potential and adjust to the responsibilities of a complex, changing world. Today public welfare is the ultimate guarantee against social disaster for every member of the community.

Five years ago, another Barck, the city manager of Newburgh, New York, announced his famous—or infamous—thirteen points, which constituted a punitive, medieval manual for torturing the poor. While they were never put into effect—indeed Newburgh was legally enjoined from doing so—they evoked a national wave of hostility to the needy and to public welfare that was almost frightening because of its intensity, its shallowness of understanding, and its rejection of moral concepts, and because of the responsible reputation of many who professed support of this vicious statement of policy.[2]

To prove that this reaction was as shallow and as unrepresentative as the document itself, that same year Secretary Ribicoff of HEW announced the major program elements that were to become the basis for the 1962 federal amendments to the Social Security Act. These amendments changed the whole federal law from a concept of matching on grants to eligible persons and on administrative costs to one with emphasis on, and money for, constructive remedial services to enable needy persons to improve their conditions or become self-supporting.[3]

In the 1962 amendments and those that have followed, the national policy on public welfare has broadened and deepened. In consequence, the quality of our public welfare services can now be the measure of the community's conscience. Its comprehensiveness can determine that degree of social hardship below which no one is permitted to fall. It can be the ultimate provider for unmet need.

But the bread of poverty still has a bitter taste, and 20,000,000 children are growing up on it. There is still much to be done. And it is your task to see that it is done. No one says that this will be easy. That is probably why you were selected for the job. Do it well. Write some bright pages. □

2. Antonio A. Lorieri, "It's a New Ball Game," *Social Service Outlook*, I (October, 1966), 5-6.
3. *Ibid.*

Clifton M. Craig

CRAIG SUCCEEDS BROWN

On November 1, 1966, Clifton M. Craig succeeded R. Eugene Brown as Commissioner of Public Welfare. Mr. Brown retired from that post after 41 years of service to public welfare in North Carolina.

Mr. Craig joined the State Board of Public Welfare as Assistant Commissioner in February 1, 1965. He retired from the U. S. Marine Corps as a colonel in 1962 after 22 years of service in the area of business procedures and administration. For two years before joining the Welfare Department, Mr. Craig was with the Durham Chamber of Commerce.

He holds a B.S. degree in Commerce from the University of North Carolina and an M.A. in Business Administration from George Washington University.

County Welfare Board Members Meet

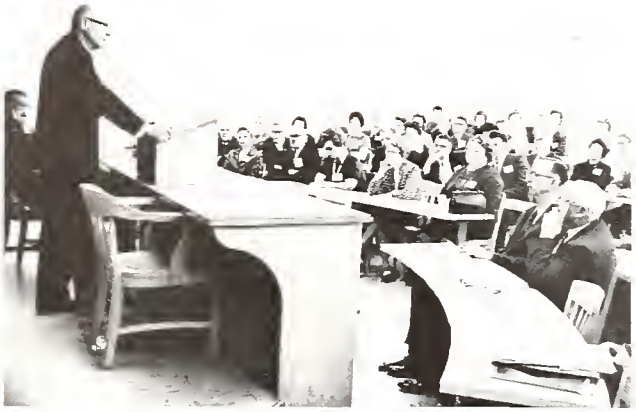
The Institute of Government and the State Board of Public Welfare jointly sponsored an Institute for County Welfare Board Members at the Institute of Government in Chapel Hill on October 21-22. Some 120 public welfare officials attended the conference, including 80 county welfare board members, 30 county welfare directors, and six administrative officials from the State Department of Public Welfare.

The program committee, appointed by Commissioner R. Eugene Brown, consisted of three staff members from the State Welfare Department—Miss Ellen Bush, Mrs. Grace M. Hartzog, and A. William Safriet; two county directors—Villard C. Blevins of Catawba County and Curlee Joyce of Caldwell County; and two county welfare board members—Mrs. J. C. Rabb of McDowell County and William R. Peel of Martin County. Miss Dorothy Kiester and Mason P. Thomas, Jr., of the Institute of Government staff also participated in the planning.

The purpose of this institute was to deal with the practical issues and problems that confront county welfare board members; thus speakers were experienced people in public welfare from the state and county levels. The topics discussed included the history of public welfare; the leadership role of the county welfare board member; the role of federal, state, and local units of government; county commissioners' responsibilities; legal duties of county welfare board members; administration of an effective program; coordination of public welfare and poverty programs; policy decisions and areas of discretion for welfare board members; and public understanding of public welfare.

The program speakers included Robert C. Howison, Chairman, State Board of Public Welfare; retiring Commissioner R. Eugene Brown; new Commissioner Clifton M. Craig; Paul N. Guthrie, Jr., Assistant Executive Director, N. C. Association of County Commissioners; Miss Constance F. S. Rabin, Director of Craven County; Louis G. Christian, State Department; Miss Mary Taylor, Director of Martin County; Beverly G. Moss of Beaufort County; Miss Ellen Douglass Bush, State Department; Dr. C. Wilson Anderson, Dean, School of Social Work, University of North Carolina at Chapel Hill; Mrs. Christine Farrior, Executive Director, Martin County Community Action, Inc.; Mason P. Thomas, Jr., Institute of Government.

Others who participated in panel discussions were Mrs. J. C. Rabb, Dr. John E. Dotterer, E. L. Hauser, Weston Hatfield, Curlee Joyce, and Mrs. Grace M. Hartzog.



Retiring Welfare Commissioner R. Eugene Brown discusses the History of Public Welfare in North Carolina.

A group of county welfare board members in informal discussions at coffee break.

Robert C. Howison, Jr., Chairman, State Board of Public Welfare, speaks on Leadership in Public Welfare.

Mason P. Thomas, Jr., of the Institute of Government, talks with a county welfare board member.

A panel discussion on Administrative and Policy Decisions of County Welfare Board members. Left to right: R. Eugene Brown, former State Commissioner of Public Welfare; Beverly G. Moss, former member, Beaufort County Welfare Board; Curlee Joyce, Director, Caldwell County Welfare Department; Grace M. Hartzog, Director of Personnel, State Board of Public Welfare; Weston Hatfield, member, Forsyth County Welfare Board.

The Legal Aspects of Child Abuse

by Mason P. Thomas, Jr.

[*Editor's Note: Mr. Thomas, an Assistant Director of the Institute of Government, was formerly judge of the juvenile court of Wake County. This article is based on his address before the Governor's Conference on Child Abuse on November 22.*]

In 1874, a church worker learned of a child named Mary Ellen who lived in a New York tenement. Mary Ellen was beaten daily by her parents and was seriously malnourished. The church worker sought protection for her from the police and the courts. These agencies were unable to help, for there were no laws concerning neglect of children. In desperation, the church worker turned to the Society for the Prevention of Cruelty to Animals. She plead that Mary Ellen was part of God's animal kingdom and thus entitled to protection under existing laws concerning abuse of animals. The court took protective action on this basis and removed Mary Ellen from her parents. This case led to the subsequent founding of a society to protect children in 1875—the New York Society for the Prevention of Cruelty to Children.

Fortunately, times have changed. We now have laws protecting children against neglect and abuse. We have juvenile courts in all states to protect children. We have adult criminal courts to punish parents who neglect or abuse their children. We have national organizations with broad concerns for child welfare—the Children's Bureau of the U.S. Department of Health, Education, and Welfare; the Child Welfare League of America; and the Children's Division of the American Humane Association. And we have a number of resources at the community level which provide various protective services to children, including county welfare and health departments.

The Broad Picture

Child abuse—the "battered-child syndrome"—must be viewed in relation to the broad problem of child neglect. Each day many children are involved in neglect cases. Available statistics show that 1,811 children appeared in juvenile courts in North Carolina in neglect cases during 1965.

Child abuse is the most sensational aspect of this broader problem of child neglect. Someone has compared child abuse with an iceberg—you see only part of the problem. Many cases are never reported, are never seen by a physician or in a hospital, are never known to child-protective agencies. We are dealing with a problem of unknown dimensions—a problem that could mean life or death for a child, or lead to mental retardation or permanent physical injury, not to speak of the emotional damage to him.

Confusions and Complexities

Within the last ten years, primarily because of the medical profession's leadership, we have begun to recognize child abuse as a distinct problem within the broader field of child neglect. Yet society is reluctant to look at the problem, for we expect parents to love and protect their children. We do not want to believe that child abuse occurs.

When we are forced to look at child abuse through a sensationalized press story, we react with emotion and anger: Why are there

Thomas

not stricter and more punitive laws to punish such parents?

But we have rarely thought objectively and carefully about child abuse. Why do parents abuse their children? What does their abusive behavior mean? What resources are needed to deal effectively with this complex problem?

Available research indicates that child abuse is rarely willful or deliberate cruelty by parents. These parents are often emotionally disturbed, immature people who are unable to cope with the pressures of parenthood and life. They often have personality defects; they are neurotic, mentally ill, or mentally retarded.

Since child abuse is not rational parental behavior, there is no simple solution to the problem. Severe criminal penalties for child abuse

will not effectively deter abusing parents nor provide effective protection for abused children.

Recently, most states (49 to date) have passed laws related to the reporting of child-abuse cases. Most states require doctors and hospitals to report such cases. A few states have permissive laws designed to encourage reporting. North Carolina is one of these; its law authorizes, but does not require, reporting of child-abuse cases.

The objectives of this legislation are not always clear. Are we interested in punishing abusive parents or in protecting abused children? For example, most state laws require that reports be made to police. The natural consequences of such a report might be police investigation, issuance of a criminal warrant, and arrest of the alleged abusive parents. Thus punishment of the parents appears the more important objective.

North Carolina has a different approach. Its law authorizes the report to be made to the county welfare director, who has traditionally worked with child-neglect problems. It requires the director to investigate and to "take such action in accordance with law necessary to *prevent* the child from being subjected to further abuse, neglect, injury or illness." Thus further action is left to the discretion of the county welfare director. He may provide protective case-work services through his staff. He may seek juvenile court protection for the child. In some cases, he may sign a warrant for criminal neglect and have the parents arrested.

North Carolina law has another interesting difference. Most states require reports of child abuse from doctors and hospitals under penalty of law. The law in this state authorizes reports from a wider range of professional persons who might have occasion to know about cases of child abuse—doctors, surgeons, nurses, teachers, school principals, school superintendents, or welfare department personnel.

In these two ways North Carolina law seems aimed more at protection of children than at punishment of abusive parents.

Results of North Carolina's Law

We must now ask the crucial question: Under its new law, is North Carolina achieving the legislature's intention to protect children from abuse? Probably not, for the law has stimulated no new activity in child-abuse prevention. A recent informal poll of juvenile court judges, public welfare departments, and police officials indicates little change in North Carolina in child-abuse reporting. No noticeable increase of reports of child abuse to county welfare directors has occurred.

Does this mean that North Carolina has no child abuse? No, for we know of such cases. Several reasons why more cases have not been reported seem possible. There is little public understanding of child abuse or the broader problems of child neglect. We have given little real thought to these problems or how to recognize and identify such cases at the community level. Public education is needed to create public sensitivity. Also, the roles of other community agencies in child-abuse prevention have not yet been clearly defined.

Role of the Police

Law enforcement officers encounter child abuse and neglect every day as they handle various types of criminal cases—alcoholic parents, assault cases between parents, prostitution, etc. But they tend to see their function as enforcement of the criminal law—to arrest the "bad guy" and lock him up. When they pick up the public drunk, the wife-beating husband, or the prostitute, they do not think much about what is happening to the child in this family. They tend to regard child neglect and abuse as somebody else's business—welfare departments, juvenile courts, case workers, probation officers, etc. They rarely take official action in such cases unless it is gross and they feel that the case warrants a criminal prosecution.

This reluctance of law enforcement to be involved is understandable: The police have their hands full with traditional criminal investigation work. Law enforcement agencies are short of personnel. Police training has emphasized criminal investigation. Very few police officers in our state have any training in working with children's cases, and while they seem comfortable in handling the prostitute and the murderer, the police prefer to side-step the unavoidable emotional element in child neglect and abuse cases. Also, the police may tend to regard children's cases as degrading to law enforcement's public image—the protector of society from the criminal.

But this reluctance to be involved is changing: The police are becoming more concerned with professionalization, salaries, and recruitment. More police personnel are seeking training in specialized fields, including the juvenile court and work with children. This training is emphasizing prevention as a proper function of law enforcement. Also, the police field is beginning to talk about the social responsibility of the police; it is beginning to understand social problems and their relationships to criminal behavior; it is becoming accustomed to using community agencies as resources for help. (An outstanding example is the Community Services Unit of the Crime Prevention Bureau of the Winston-Salem Police Department. See the November issue of *Popular Government* for an article on this unit.)

Role of the Courts

In considering the role of the courts in child abuse, it is important to recognize that we are talking about two very different kinds of courts—the juvenile court and the adult criminal court. These courts operate under different laws and procedures, have somewhat different purposes and philosophies, and also differ in their au-

thority over people. A brief outline view of each may clarify this point:

(1) The juvenile court has noncriminal procedures, similar to a civil proceeding. It is designed to provide treatment and protection to delinquent and neglected children. It has nonadversary juvenile court hearings without strict rules of evidence. It has authority over the child and very limited authority over parents.

(2) In the criminal court, the case begins with a criminal warrant, arrest, jail of the offender, etc. The accused has certain constitutional rights which must be respected (attorney, bond, jury). The accused is presumed innocent until proved guilty beyond reasonable doubt. The trial is an adversary proceeding, with the results depending somewhat on the respective skills of the solicitor and the defense attorney. Criminal courts usually think more about punishment than about treatment. The punishment is determined more by the offense than by the needs of the offender.

Thus a child-neglect or abuse case may go into these two different courts for different purposes—to the juvenile court for protection of the child, to remove custody from his parents, etc.; to the criminal court for prosecution and punishment of the abusive parents. Certain evidence might be admissible in juvenile court which would not be allowed in the criminal court under its stricter rules of criminal procedure. Thus, the juvenile court might take protective action—remove the child from the custody of the parents—while the criminal court would have to dismiss the case because the offense is not proved beyond a reasonable doubt. A case in which both courts were involved may illustrate these points:

A Classic Case

In January, 1966, a North Carolina newspaper reported a case of abuse involving a two-year-old boy—one of four children in the family of a 24-year-old father and his wife. His parents took him into the hospital in a semiconscious condition. The doctor testified in court that the boy's skull was fractured and that both arms were broken and several ribs fractured. The child had "numerous cuts, lacerations and abrasions all over its body." The doctor's opinion was that the child had been beaten. Some of the fractures were several weeks old; others were recent. The skull fracture extended all the way across the child's head from front to rear; it was "a day or so old." The cuts and bruises were in various stages of healing, indicating that the injuries were received piecemeal rather than all at once. There was no indication that any of the injuries had ever been treated. When the physician asked the mother whether she had beaten the child, she denied it.

The child was brought into juvenile court on a petition alleging neglect. He was found to be neglected and placed in the custody of the county department of public welfare. This agency placed the child in a foster home after his release from the hospital.

These young parents were prosecuted in criminal court for child neglect. They plead not guilty. Both parents testified in their own defense, denying that they had beaten the child. They said that he had fallen and hurt himself twice recently. They denied that the child had cuts and abrasions on his body when they took him to the hospital. Other defense witnesses testified that the parents had a high reputation in their community and that they had not been known to beat or mistreat their children. The criminal charges against the parents were dismissed.

This case illustrates some of the problems that criminal courts have with such cases:

(1) Lack of evidence comes at the top of the list, for there is seldom any witness other than the parents to child abuse; in North Carolina, neither husband nor wife is a competent witness to testify against the other in a criminal case in which either is charged with child abuse or neglect.

(2) Another difficulty is the requirement that the offense be proved beyond a reasonable doubt. No evidence exists except the condition of the child, and courts are reluctant to presume neglect and abuse. Some perhaps would rule that the condition of the child speaks for itself—proves neglect and abuse.

(3) Even if the parents are convicted of violating the criminal law, the court faces a dilemma about how to use its authority. Should the court order prison? Probation? Psychiatric treatment? The judgment would vary with the understanding of the judge and the available community resources.

What about the child in this case? The case worker in the county department of public welfare has been working with the parents during the time he has been in foster care. After considerable improvement and change by the parents, the child has been returned to them. This fact illustrates that good case-work services at the community level can help parents become more responsible and mature people.

Much remains to be learned about child abuse. This case is "classic" in view of what we know from the existing studies of child abuse:

(1) It is frequently the abusing parent who brings the child into the hospital—perhaps symbolically a plea that society "stop me before I do more damage"; this fact underscores the basic irrationality of such parental behavior.

(2) The parents involved are young, immature people who are unable to cope with the pressures of parenthood—in this case, a 24-year-old father with four children.

(3) The child victim is often an infant too young to talk about the abuse—in this case, a two-year-old boy.

(4) Child abuse usually occurs in the privacy of the home, where there are not witnesses outside the family.

What About the Future?

How can we take constructive steps for the future?

Can we develop programs that will increase public understanding of problems of child neglect and abuse? This would lead to public support for appropriate action; people care about children.

Can we make greater use of existing community agencies which are traditionally available at the community level to identify child-abuse problems early so that appropriate protective action may be taken? Such agencies are law enforcement, courts, public welfare, public health, family-counseling services, schools, recreational personnel, etc.

Once child-abuse victims are identified, can we develop approaches to help these community resources work effectively together for effective protective planning and parental rehabilitation? Identification of these children will have no meaning unless protective planning can be implemented.

We cannot solve the complex social-legal-medical problems of child abuse by passing a law. The important factor is how we use this law with the community resources available. □

Attorney General's Rulings *by George M. Cleland*

ELECTIONS

Effect of Candidate's Loyalty Pledge

31 October 1966
A.G. to Don Evans

Question: Under G.S. 163-119 each person filing a notice of candidacy in a party primary must sign a pledge "to abide by the results of the said primary and to support in the next general election all candidates nominated" by the party whose nomination he seeks. Does a party nominee (having taken the required pledge) lose his right to have his name appear on the general election ballot and, if elected, the right to serve, if between the primary and general election he gives active support to a different party's candidate for a different office?

Answer: No. There is no statutory provision for enforcing the pledge required by G.S. 163-119, and although the existence of the pledge was recognized in *States' Rights Democratic Party v. Board of Elections*, 229 N.C. 179 (1948), that decision did not deal with the issue here. Similarly, *Clark v. Meyland*, 261 N.C. 140 (1964), dealt with the registrant's oath of party loyalty rather than with the candidate's pledge. We cannot give a positive answer to this question, but the North Carolina Supreme Court might draw an analogy from the reasoning in *Clark v. Meyland* and hold that the pledge imposes only a moral obligation which the courts will not attempt to enforce. Thus, since this candidate has been nominated, his name should be placed upon the general election ballot, and, if elected, he would have the right to serve until such time as a court of competent jurisdiction rules otherwise.

PUBLIC SCHOOLS

Compulsory Attendance

8 October 1966

A.G. to Donald P. Brock

Question: In light of G.S. § 115-166 (compulsory-attendance statute) is school attendance compulsory when a child is assigned to an integrated school against the wishes of his parent?

Answer: That portion of G.S. § 115-166 which would allow exception to the compulsory attendance rule on the basis of a parent's objection to an integrated school was declared unconstitutional and invalid by a three-judge federal court. G.S. § 115-166 should be enforced without consideration to the invalid portion; therefore, school attendance is compulsory in the situation that your question contemplates.

Liability for Assessments

17 October 1966
A.G. to Fred G. Morrison, Jr.

Question: Our City Board of Education recently deeded, without compensation, certain lands to the City to be used for the widening of a street in front of the senior high school and for utility easements. The Board has been notified by the City that it will be assessed so much per foot for the improvements. Is the Board liable for this assessment?

Answer: On the basis of *Raleigh v. Public School System*, 223 N.C. 316 (1943), it is our opinion that the Board would be liable for the assessment. Assessments on public school property for special benefits caused by the improvement are permissible. The fact that the Board deeded the property to the City does not alter the rule.

PUBLIC WELFARE

Licensing of Child-Care Institutions

6 September 1966
A.G. to Emmett C. Willis

Question: Our city council plans to adopt a local ordinance to read substantially: "No person shall establish or operate a business for the purpose of furnishing care to more than five (5) children under the age of ten (10) years without first securing an annual written permit from the State Board of Public Welfare." Is such an ordinance necessary; if so, is the form proper?

Answer: There is no State law requiring a license for the sort of child-care activity contemplated by the proposed ordinance; therefore, in that sense, there is a need for the ordinance. The ordinance would not be valid because it would not [could not] impose a duty on the State Board of Public Welfare to determine whether a license [permit] should be issued. However, a valid ordinance could be drafted to cover this situation, and at least two alternatives immediately suggest themselves: (1) draft the ordinance to provide that the operator must have either a license from the State Board of Public Welfare *or* a license from a local agency to be named in the ordinance; (2) have the ordinance require a local permit and require the same standards used by the State Board of Public Welfare in determining whether the permit should be issued.

Old-Age Assistance Lien Estates by the Entirety

25 August 1966
A.G. to Thomas M. Ward

Question: In 1945 H and W (husband and wife) became owners of a tract of land in an estate by the entirety. In 1951 H and W each began drawing welfare funds and each continued to do so until the death of H in 1960. During the time that the couple was receiving welfare assistance (1959), they conveyed the tract of land to their son. Did the sums drawn from the Welfare Department by H and/or W ever become an enforceable lien upon the land owned as an estate by the entirety? Since W survived H, did the funds drawn between 1951 and 1959, with lien notice on record, attach against the land in the hands of the son at the death of H?

Answer: No part of the sums drawn by W or H from the Welfare Department ever became a lien upon the land owned as an estate by the entirety. Also, no welfare lien attached against the land in the hands of the son. If there was no [valid] lien on the property in the hands of H and W, there is no way that the lien could attach by reason of transfer of the property or by the death of H and/or W after such transfer. The recent case of *Duplin County v. Jones*, 267 N.C. 68 (1966), crystallizes earlier opinions pertinent to your inquiry, and although it involved a tax lien it is analogous to the welfare lien situation. Pertinent excerpts from that case follow:

> The husband and wife are, in contemplation of the law, a separate person from either with reference to land owned by them as tenants by the entirety . . . . Since the taxes claimed by the county were levied by it on account of property owned by the husband, individually, and property owned by the wife, individually, and the land in question was never that of the husband or that of the wife, but belonged to that third person recognized by the law, the husband and wife (*Bruce vs. Nicholson*, 109 N.C. 202), the county never acquired a lien for those taxes upon such land and may not proceed in the present action . . .

Old-Age Assistance Liens

16 September 1966
A.G. to Laurence A. Stith

Question: In settling an estate that consists only of real property, is an old-age assistance lien to be preferred over a claim for funeral expenses?

Answer: The old-age assistance lien takes priority over a claim for funeral expenses. The assistance lien is a lien against the land and, therefore, like all liens against realty, it must be discharged out of the proceeds of the sale of the land before any sums may be turned over to the administrator. This despite *Lenoir County v. Outlaw*, 241 N.C. 97.

Old-Age Assistance Liens Estates by the Entirety

20 September 1966
A.G. to G. M. Beam, Jr.

Question: Does a public assistance lien attach to a tenancy by the entireties?

Answer: No. However, when one spouse dies and the survivor takes the entire fee, the estate will then become subject to the assistance lien to the extent of payments made by the Welfare Department to such surviving spouse. The lien cannot apply to any interest conveyed away by the husband and wife during the lifetime of both.

Question: What is the position of an old-age assistance lien in relation to a deed of trust and a note given to secure a loan for the purchase of real estate?

Answer: The deed of trust will have priority. The public assistance lien can attach only to the extent of the interest acquired by the welfare recipients, and that interest would be limited by the deed of trust. □

INSTITUTE OF GOVERNMENT
THE UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL 27515

Loeb

MEMORANDUM

TO: Law Enforcement Officers

FROM: Ben F. Loeb, Jr.

DATE: December 2, 1966

BROWN BAG DECISION

Wednesday, November 30, 1966, the North Carolina Supreme Court handed down an opinion in the case of D & W, Inc., etc., et al. v. City of Charlotte, etc., et al. (#286--Mecklenburg), thereby resolving many uncertainties in the State's liquor law.

It should be noted that the case deals almost exclusively with the possession, transportation, etc., of taxpaid "alcoholic beverages" as that term is defined by G.S. 18-60--in other words, beverages containing over 14% of alcohol by volume. Therefore the ensuing remarks do not apply to unfortified wines, beer, ales, and other beverages defined by G.S. 18-64, nor to the "homemade wines" authorized by G.S. 18-100. The following paragraphs summarize the major points made by this landmark decision.

1. G.S. 18-58 expressly permits a person to bring into North Carolina from out of state as much as one gallon of legally acquired alcoholic beverages for his own personal use, provided that the cap or seal on the container or containers has not been opened or broken. In interpreting this section the State Supreme Court stated:

> G.S. 18-58, without making any distinction between dry and wet counties, authorized one to purchase "outside of this State and bring into the same for his own personal use" not more than one gallon. Thus not more than one gallon can legally be brought from outside the State into either area.

The decision thus permits transportation to be made from out of state into

either a wet area (an area that has elected to establish ABC stores) or a dry area (an area that has not elected to establish ABC stores).

2. G.S. 18-49 makes it lawful for a person to transport as much as one gallon of alcoholic beverages from a wet county to or through a dry county provided that the cap or seal on the container or containers of the alcoholic beverages has not been opened or broken. As to this section the Court stated:

> G.S. 18-49 does not specifically authorize the transportation of any quantity of alcoholic beverage from an ABC store to any place in the wet county where purchased. Obviously, however, the right to buy the liquor includes the right to take it home. It was equally obvious that the legislature intended G.S. 18-49 to have statewide application. To have licensed residents of a wet county to transport an unlimited quantity of liquor within the county would have defeated its stated purpose. . . .

In light of this language it appears that up to one gallon of alcoholic beverages (with the seal unbroken) may be lawfully transported anywhere in the State. The transportation of over one gallon of alcoholic beverages, or the transportation of any quantity thereof with the seal broken, is evidently prohibited in all counties.

3. G.S. Chapter 18 does not expressly state where alcoholic beverages may be transported after their purchase. To this the Court stated:

> Neither G.S. 18-49 nor G.S. 19-58 specifically designates the place to which liquor legally purchased may be transported. Such a designation was unnecessary. Since the only place where liquor may be legally possessed is in one's private dwelling, that is the only place to which it may be legally transported.

It would thus appear that alcoholic beverages must be transported directly home from the place where they are purchased.

4. As to the quantity of alcoholic beverages which may be lawfully possessed in the home, the Court stated:

> Although one may possess in his home an unlimited amount of alcoholic beverages for the use of himself and his bona fide guests, if he possesses more than one gallon, the burden devolves upon him to establish not only that the possession thereof comes within the exceptive provisions of G.S. 18-11, but also "that it was legally acquired and transported to his private dwelling and there kept, not for sale, but for family uses only."

5. G.S. 18-18 provides that "It is unlawful for any person to serve with meals, or otherwise, any liquor or intoxicating bitters where any charge is made for such meal or service." In construing this section the Court stated:

> No provision of the ABC act modifies this section, which recognizes the right given one by G.S. 18-11 to serve liquor in one's home to one's bona fide guests and outlaws serving it with meals in any place where a charge is made for the meal or service. Restaurants charge for meals and their service. The prohibition of G.S. 18-18 extends to <u>any person</u>: It thus includes the restaurateur and his employees; the host who entertains his guests at a restaurant or club; and the patron who brings his bottle and serves himself--none of whom may legally transport the liquor to the restaurant in the first place.

Apparently, therefore, the consumption of alcoholic beverages at a restaurant--whether before, during, or after the meal--is prohibited.

6. The Court also commented on the consumption of alcoholic beverages on premises licensed to sell beer or wine as follows:

> Plaintiffs' contention that the 1959 amendment to G.S. 18-78.1(5) . . . authorized the consumption of tax paid whiskey on the premises of those places holding beer and wine permits from the ABC board is likewise without merit.

Therefore the consumption of alcoholic beverages on "licensed premises" is unlawful, whether such establishment is located in a wet area or a dry area.

7. G.S. 18-99, which relates to the sale and consumption of sweet wines (a type of alcoholic beverage), states in part:

> Provided, in any county in which the operation of alcoholic beverage control stores is authorized by law, it shall be legal to sell sweet wines for consumption on the premises in hotels and restaurants which have a Grade A rating from the State Board of Health, and it shall be legal to sell said wines in drug stores and grocery stores for off premises consumption; such sales however shall be subject to the rules and regulations of the State Alcoholic Beverage Control Board. For the purpose of this section, sweet wines shall be any wine made by fermentation from grapes, fruits or berries, to which nothing but pure brandy has been added, which brandy is made from the same type of grape, fruit or berry, which is contained in the base wine to which it is added, and having an alcoholic content of not less than fourteen per centum (14%) and not more than twenty per centum (20%) of absolute alcohol, reckoned by volume, and approved by the State Board of Alcoholic Control as to identity, quality and purity as provided in this chapter. . . .

The decision did not construe this particular section, but evidently the sale or consumption of sweet wines on premises having an appropriate permit is still lawful.

8. The opinion stated in summary:

> Whether the area be wet or dry, conforming or nonconforming, a person may legally possess alcoholic liquors as defined by G.S. 18-60 only in his private dwelling as provided by G.S. 18-11 and while transporting not in excess of one gallon purchased out of the State or from an ABC store within the State to his dwelling as provided by G.S. 18-49 and G.S. 18-58. This has been the law since the passage of the ABC Act of 1937. (Emphasis added.)

The law, as enunciated in this opinion, is quite explicit. A person may lawfully purchase as much as one gallon of alcoholic beverages and transport it home, but nowhere else. Once home the beverages may not thereafter be lawfully transported anywhere. A person may possess any amount of alcoholic beverages in his own home, but possession of more than one gallon of spirituous liquor or more than one gallon of fortified wine constitutes prima facie evidence that the possession is for the purpose of sale in violation of G.S. 18-32. These rules are statewide in application, with no distinction being made between wet and dry counties.

Trustee Commission Proposes Changes in University Board

by Robert E. Phay

[*Editor's Note: On November 22, 1966, former Governor Luther H. Hodges presented to Governor Moore the Report of the Commission on the Study of The Board of Trustees of The University of North Carolina. In February, when the General Assembly convenes for the 1967 session, this Report will be presented to the legislators along with a bill to accomplish the recommendations made. The recommendations are summarized in this article.*

The author is a member of the Institute of Government staff whose fields include public education.]

Phay

The great size of the Board of Trustees of The University of North Carolina and the political process by which its members are chosen have long caused concern among citizens of North Carolina interested in higher edueation. A desire to give the entire subject careful and comprehensive study led Governor Dan K. Moore to reeommend and the 1965 General Assembly to adopt Resolution 73, which established the Commission to Study the Board of Trustees of The University of North Carolina.

The resolution provided for a commission of nine members—five appointed by the Governor, two by the Lieutenant-Governor from the membership of the Senate, and two by the Speaker of the House of Representatives from the membership of the House. Those appointed to the Commission were former Governor Luther H. Hodges, Chairman; Brodie S. Griffith, Charlotte newspaper executive; Dr. D. Grier Martin, president of Davidson College; Neill L. McFadyen, farmer and State Representative from Raeford; L. P. McLendon, Jr., attorney and State Senator from Greensboro; Miss Naomi Morris, attorney from Wilson; Hugh A. Ragsdale, businessman and State Representative from Richlands; Dr. Robert S. Rankin, political scientist from Duke University; and Roy Rowe, businessman from Burgaw.

The Commission was charged to make

> a detailed and exhaustive study of the manner in which the trustees of the University of North Carolina are selected, the number which should constitute the Board of Trustees, the terms of office of the trustees, the relationship between the Board of Trustees and the General Assembly, and the relationship between the Board of Trustees and other interrelated agencies of the state.

The Commission studied the problem over a twelve-month period, during which it heard twenty-five witnesses who appeared before it and considered proposals and suggestions from many other citizens and individuals knowledgeable in the area of higher education. On the basis of its study, the Commission adopted by unanimous vote ten recommendations that it will present to the General Assembly at the beginning of the 1967 session. These recommendations and the major reasons for them and criticisms of them are summarized below.

1. Size of the Board

Of the ten recommendations made by the Commission, the one it considers most crucial for the future growth and development of the consolidated University is that the Board be made smaller. The Report recommends that the Board be reduced from its present 107 members (100 members elected by the legislature and seven honorary and ex officio members) to 24 members. The Commission's study of the North Carolina Board of Trustees and similar boards in other states revealed that the North Carolina Board is more than three times the size of the next largest state university governing board and ten times the average size of governing boards in other states that control two or more in-

stitutional units. (Illustration 1 below shows the disproportion of the North Carolina Board to the average.)

The Commission considered both the advantages and disadvantages of the large Board. It concluded that the present size of the Board makes it a cumbersome, unwieldy, and inefficient body for the transaction of business. The Commission found that its size makes frequent Board meetings impractical, and when the full Board does meet, its large size hampers full discussion of policy issues. As a result, the twelve-member Executive Committee has become the real policy formulator of the Board. A number of witnesses and correspondents, including several trustees, reported to the Commission that the Board of Trustees has become a rubber stamp for the Executive Committee's decisions.

The Commission also lists numerous benefits to be expected from having a smaller board. It anticipates that by reducing the membership to twenty-four, the role of the individual trustee will be substantially enlarged and his prestige correspondingly enhanced. Reduction in board size also should result in a more informed and responsible control over the affairs of the University than is now possible, to the benefit of the University. Most important, however, the Commission foresees that reducing the number and increasing the power and responsibility of the individual trustees will produce a hard-working, dedicated Board that will provide the leadership that a Board of Trustees should give to the University.

The Commission found that the large size of the Board has a long history. The Board of Trustees established upon the chartering of the University in 1789 had forty members, more than the governing board of any state university in the nation has today except for the present North Carolina Board. The Board continued to grow, and by 1917 it had reached its present elected membership of 100. The Commission observes that "whatever the historical reasons for this development, it is obvious that if the State were beginning afresh it would not create a board of this magnitude to govern the University."

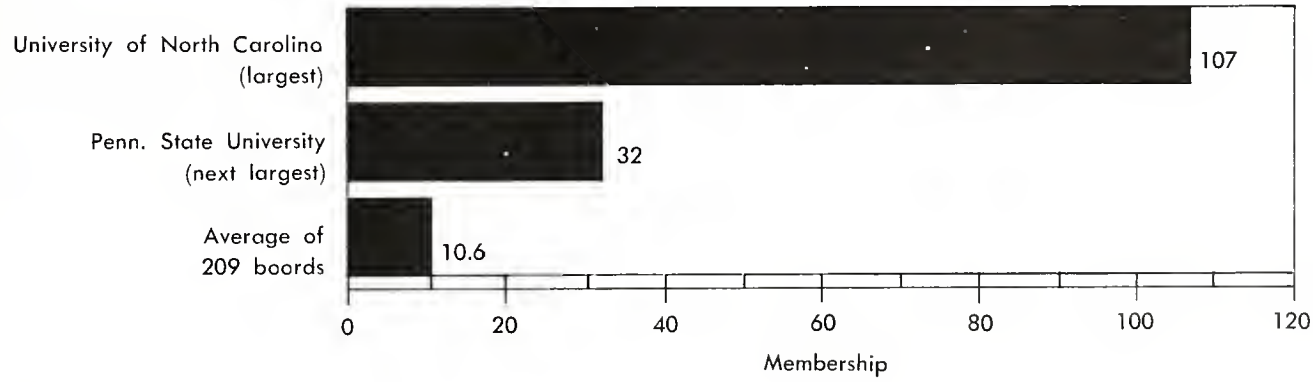
In its study the Commission sought to ascertain the reasons for keeping the Board as it is presently constituted. In the hearings before the Commission, advocates of the big board argued that large numbers strengthen public confidence in the University by providing numerous and widely distributed contacts between the people of the State and the University. Opponents of change also maintained that the Board should not be reduced because the University has achieved prominence under the present Board and changing a system that has worked well in the past would be a mistake. The editor of the *Greensboro Daily News* observed, "The University of North Carolina has been storm-tossed durthe last 15 years . . . [and] unless it can be guaranteed that the new works better than the old," the size of the Board should not be decreased. Advocates of no change also pointed out that the large Board insures its geographical representativeness, creates a pool of trustees from which the smaller Executive Committee may be selected, and decreases the possibility of its control by any political faction.

The Commission weighed these arguments for leaving the Board at its present size against the disadvantages of the large Board and the corresponding advantages of a smaller board. It concluded that a reduction is justified.

The Commission found that some of the advantages claimed for the large Board are important and worth keeping in the trustee arrangement. Geographical representation, a characteristic of the present Board because of its large size, is insured in the Commission's recommendation that the new Board include at least one resident of each congressional district of the State. To give the University numerous and widely distributed contacts between the people of the

Illustration 1

COMPARATIVE SIZES OF GOVERNING BOARDS
OF PUBLIC INSTITUTIONS OF HIGHER LEARNING



State and the University—the chief advantage claimed for retaining the large membership — the Commission recommends the creation of a 100-man advisory board.

The Commission found that most of the other advantages claimed to accrue to the Board because of its size were illusory. For example, the Report rejects the rationale that to reduce the size of the Board would be to make the mistake of changing a successful and tried system. The greatness of The University of North Carolina today, the Commission suggests, has been achieved in spite of the present size of the Board, not because of it. Chairman Hodges also points out to the opponents of change that while some risk is always involved in change, a sometimes-forgotten corollary of this risk-in-change aphorism exists—there is risk in not changing. In the Chairman's opinion, failure to change the Board structure now will keep the University in a "storm-tossed situation." Echoing a statement made to the Commission by a University trustee, Chairman Hodges stated that "if something is not done about the trustee . . . situation, the University will continue to have its serious problems."

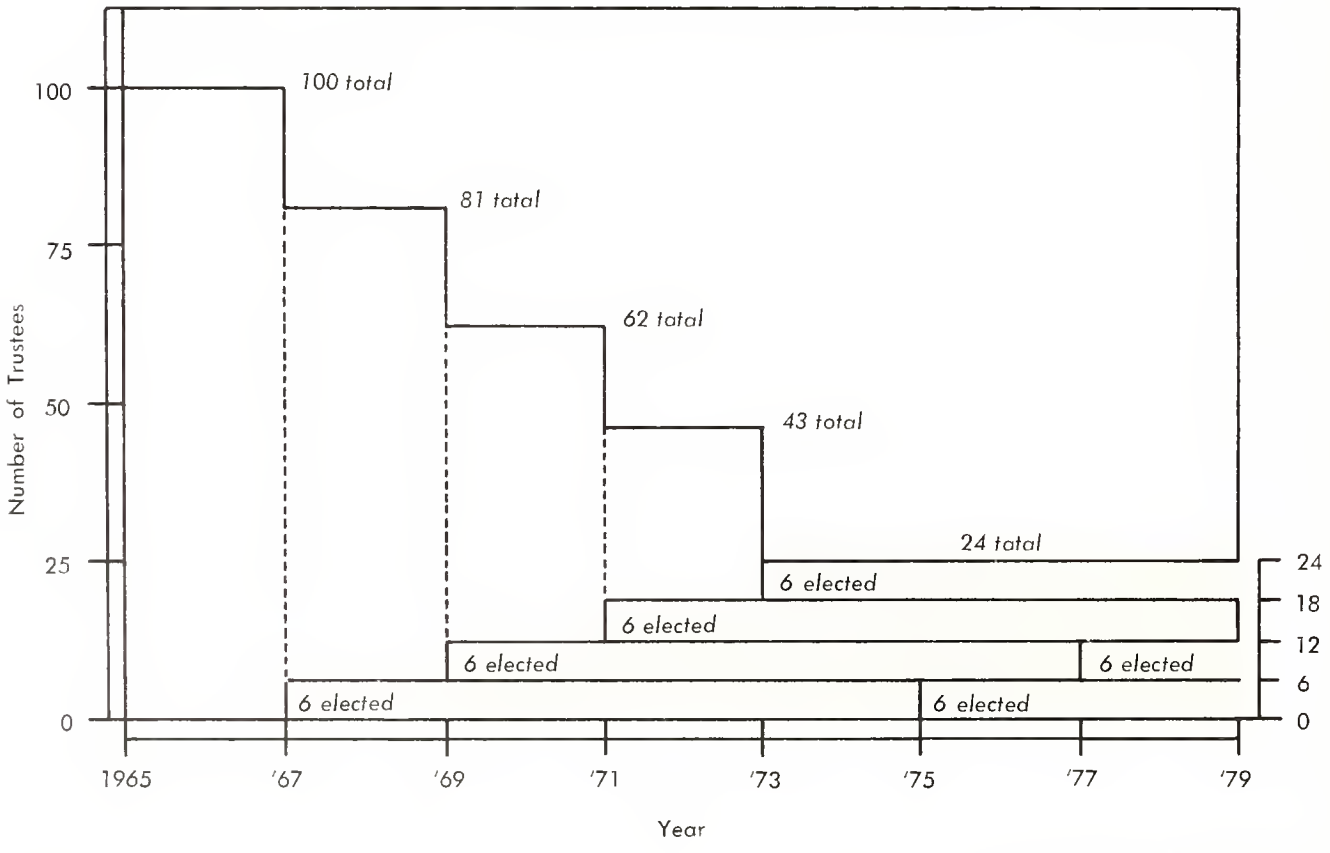
The Commission has also questioned whether the large numbers of the Board actually strengthen public confidence in the University, as those who prefer to see the size of the Board unchanged declare. On WUNC's North Carolina News Conference, Chairman Hodges later stated that it is "basically correct to say the present Board of Trustees of The University of North Carolina does not have the confidence of the people," and that the members of his Commission felt that there would be a "much greater feeling of confidence with a smaller board." A reduction to a smaller board, he continued, would produce an "outstanding, hard-hitting board that can run the University," and as such would inspire the public confidence that the current Board now lacks.

2. Selection of Trustees

To reduce the size of the Board of Trustees from 100 to 24 elected members in orderly fashion, the Commission recommends that the current members of the Board serve out the remainder of their terms (25 of which expire each two years) and that beginning in 1967, the General Assembly each two years elect six trustees for eight-year terms, together with the number necessary to fill vacancies for the remainder of unexpired terms. (This arrangement is depicted in Illustration 2.) This selection procedure makes possible the addition

Illustration 2

BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA
TRANSITION FROM 100 TO 24 ELECTED MEMBERS



of new people to the Board without abruptly ending the terms of the present members. It permits an overlap of old and new members, while gradually reducing the Board to the desired membership of 24 by 1973. Some, however, have criticized this recommendation. They argue that the changeover should be immediate if the reduction of number is as critical to the well-being of the University as the Commission contends.

The Commission's recommendation on selection involves no statutory change in the responsibility for choosing trustees. The Commission points out in its Report that the great majority of the members of the governing boards of state institutions of higher learning elsewhere are appointed by the governor rather than elected by the legislature, and that the Board of Trustees of The University of North Carolina is the only state board in North Carolina whose members are chosen by the General Assembly. Nevertheless, no change in the present authority for selection is recommended. Although some of the members preferred that the selection of the trustees be removed from the political arena of the General Assembly and vested primarily in the Governor, the Commission unanimously concludes that recommending such a change is not now feasible. The Commission does, however, commend the efforts of the 1965 session to improve the trustee-selection procedure through a more careful screening of candidates, efforts that the Commission considers to be indicative of a legislative determination to exercise the greatest care in trustee selection.

3. Qualifications of Trustees

The Commission makes four separate recommendations on qualifications of trustees. It recommends that the basic consideration which should underlie the entire selection process is that trustees be chosen on the basis of the candidates' capacity to contribute significantly to the advancement of the University and their willingness to give the necessary time to duties as trustees. The Commission further recommends that members of the General Assembly and their spouses be ineligible for election to the Board of Trustees, that Board membership include at least one resident of each congressional district of the State, and that the present requirement that there be at least ten women on the Board be repealed.

The first of these recommendations on qualifications needs no explanation. The reason for the second recommendation—that members of the General Assembly and their spouses not be eligible for election to the Board—is also apparent. The Commission recognizes that some of the most valuable trustees have been men and women who were elected to the Board while serving in the General Assembly. However, the fact that the legislator-trustee may find himself in a difficult position when he must act as a legislator on proposals that he has approved as a trustee—for example, the formulation of budgetary and other University proposals to the General Assembly—was considered a sufficient basis for recommending the elimination of members and their spouses from consideration for selection.

The third recommendation as to qualifications—that the Board include at least one resident of each congressional district—is made to insure the statewide representativeness of the Board. A geographical requirement for its constitution is not new to the Board,[1] and it is not uncommon for institutional governing boards.

There are some, however, who disagree. They see this requirement as an undesirable restriction on the process of selecting members for the Board. The best-qualified men and women, they contend, are not necessarily distributed on a geographical basis.

Finally, the Commission recommends that the statutory requirement that at least ten of the trustees be women be repealed. The Commission states in its Report that this requirement "serves no useful purpose" and the basic aim of trustee selection—to choose the best available people—could be frustrated by such a requirement.

Also, the Commission does not favor a statutory guarantee that the membership of the Board include a certain minimum or maximum number or proportion of alumni from the institutions within the University. It maintains that such a statute would also restrict the selection process—the best available people are not necessarily distributed among the alumni of any of the four institutions in any specified proportion. Witnesses representing both the alumni of the Greensboro branch of the University and the Board of Trustees itself supported these two judgments. Both groups suggested the elimination of the requirement for women and opposed any plan to compose the Board of Trustees with specific reference to any alumni-distribution proportion among the branches of the University.

4. Ex Officio Service on the Board of Trustees

The Governor has been Chairman ex officio of the Board of Trustees by statutory provision since 1805. Under the bylaws of the Board, he is also Chairman ex officio of the Executive Committee of the Board. The Commission recommends that the Governor be relieved of these duties, effective June 30, 1973, and that the Board thereafter elect its Chairman and other officers biennially from its own membership.

Two basic reasons underlie this recommendation. First, the Governor, as chief executive of a state of 5,000,000 people and a government that spends over $1,000,000,000 a year, cannot be expected to give to

1 The last geographical requirement of the Board provided that there be one trustee from each county. This requirement was repealed in 1874, when the authorized membership was reduced below the number of North Carolina counties.

the affairs of the University the degree of attention that they need. Second, his position as Director of the Budget ex officio puts him in a dual position with respect to University fiscal matters. Moreover, the Commission notes that the Governor does not serve as a member or chairman ex officio of the board of trustees of any other North Carolina institution of higher education. The Commission concluded that to relieve him of the duty of presiding over the Board and its Executive Committee would be a favor to the Governor, and probably to the University.

Since 1909, the Superintendent of Public Instruction has been an ex officio member of the Board. The Commission saw no advantage to be gained from the retention on the Board of that busy officer of the State. It recommends that, as a part of the reduction of Board membership, and simultaneous with the termination of the Governor's service as Chairman of the Board, the Superintendent of Public Instruction be relieved of his ex officio duty. The Board noted that in recent years ex officio membership on boards of trustees has declined, and that most commentators on the trustee system favor its elimination.

5. Honorary Trustees

In 1959 the General Assembly began the practice of electing, by joint resolution of the two houses, honorary life-tenure trustees of the University. Three major benefactors of the University (all now deceased), two long-time trustees, and the two former presidents of the University have been so honored.

Although the Commission recognizes the desirability of acknowledging valuable services to the University, it felt that more appropriate and beneficial ways to do so were available than to create honorary trusteeships. Accordingly, it recommends that no more honorary trustees be chosen but the men who already have been so designated should serve out their life terms. Central to this recommendation is the Commission's conception of the Board as an active, hard-working body, all of whose members must be full participants in the affairs of the Board.

6. Former Governors as Trustees

Since 1941 the General Statutes have conferred upon each Governor, as he relinquished office, a life-time trusteeship with voting powers. The Commission recommends that this statute be repealed. It considers this recommendation to be one that helps achieve its basic objective of obtaining a relatively small, active body. It is also consistent with the recommendation that the Governor no longer be the presiding officer of the Board of Trustees. The Commission recognized, however, that former Governors would have much to contribute to the Board. The way is open, the Report points out, for the State to have such services through election in the regular manner.

7. Expense Reimbursement of Trustees

Trustees of the University traditionally have served without pay or reimbursement of any kind. If the Commission's other recommendations are accepted by the General Assembly, the Board of Trustees will become a more active body and will meet more frequently than it now does. Consequently, the Commission recommends that the State reimburse the travel and subsistence expenses of trustees as it does members of nearly all state boards and commissions, and at the same rates. (The current maximum rates are $20 a day for food and lodging and eight cents a mile or actual fare for travel.)

8. The Executive Committee of the Board of Trustees

Its large size has required the Board of Trustees to delegate to the Executive Committee the power to act for the Board on all matters except a limited few. As a result, the real power of the Board has come to reside in this Committee, which has become the primary decision maker and policy formulator within the Board.

The Executive Committee is made up of twelve members who, according to the Board's bylaws, are elected for overlapping terms of six years. In practice, once a trustee is elected to the Committee, he usually remains a member for as long as he is a trustee. (The current members, for example, have served for an average of twelve years on this Committee, reflecting a tendency towards repeated re-election of members.) In an attempt to insure rotation of membership on this powerful Committee, the Commission recommends that if the reorganized Board decides to retain an Executive Committee, no member of the Committee serve two successive six-year terms. The Commission recommends, however, that after two years off the Committee, a former member become eligible for membership once more.

It is interesting to note that the Board itself felt a need for participation of more trustees on the Executive Committee. At its fall meeting in Charlotte, the Board amended its bylaws to increase the number of the Committee to fifteen and to limit service on the Committee to two terms.

9. Relationship of the Board of Trustees with Other Agencies

The resolution creating the Commission directed it to study not only the organization of the Board but also "the relationship between the Board of Trustees and the General Assembly, and the relationship between the Board of Trustees and other interrelated agencies of the State." Although the Commission had no opportunity to study many of these relationships in detail, it did learn from University officials that the University is severely handicapped by the present budget administration procedures. Conse-

quently, the Commission recommends that representatives of both the Board of Trustees and the Governor, as Director of the Budget, undertake a detailed examination of the procedures now employed in administering the budgets of the University with a view to making those procedures as simple and expeditious as possible, consistent with the need to insure that the budgeted funds are spent to the maximum educational benefit of the State.

10. Board of Advisers of The University of North Carolina

In conjunction with the recommended reduction of Board size, the Commission recommends that a Board of Advisers be established. The primary purpose of this recommendation is to provide a means for retaining the chief advantage claimed for the size of the present Board—that it strengthens public confidence in the University by providing numerous and widely distributed contacts between the people of the State and the University. The expectation is that the Board of Advisers will keep informed on the progress and problems of the University and will serve as a vital supplementary channel of communication and interpretation among the Board of Trustees, the University, and the public. It will function only in an advisory capacity, however, and have no authority either to formulate or to implement policy.

The Commission recommends that this board be constituted in the same manner as the present Board of Trustees: 100 members, elected by the General Assembly for overlapping terms of eight years. The Commission suggests that in selecting the members of the Board of Advisers, the General Assembly give consideration to such factors as residence and alumni status, and to the recommendations made by such interested groups as the alumni associations and representative faculty assemblies of the several institutions in the University. It recommends that the first Board of Advisers be chosen in 1973, when the Board of Trustees is fully reorganized.

More public criticism has developed from this recommendation than from any other except the recommendation to reduce the size of the Board of Trustees. The criticism has centered around the powerless nature of the advisory board. As one legislator put it, "Why would anyone want to serve on a board that has no authority whatsoever?" Others have asked why even have such a board.

Commission Chairman Hodges has pointed out that the Board of Advisers can become an important asset to the University, as similar boards have done at Davidson College and Duke University. At these institutions, membership on the analogous Board of Visitors is an honor, and the Board of Visitors has served an important money-raising function for each school. The recommended Board of Advisers would provide for a wide representation across the State and, if it develops as its counterparts at Duke and Davidson have, can be both a valuable sounding board for the University administration and an organization through which the University can inform the State about the problems of higher education. The Commission apparently believed that the success of the power of the Board of Advisers will depend largely on how well the University administration and the Board of Trustees develop its potential. It recommended periodical briefing sessions for the Board of Advisers by University officials and regular visits to the various campuses by the Board of Advisers.

Conclusion

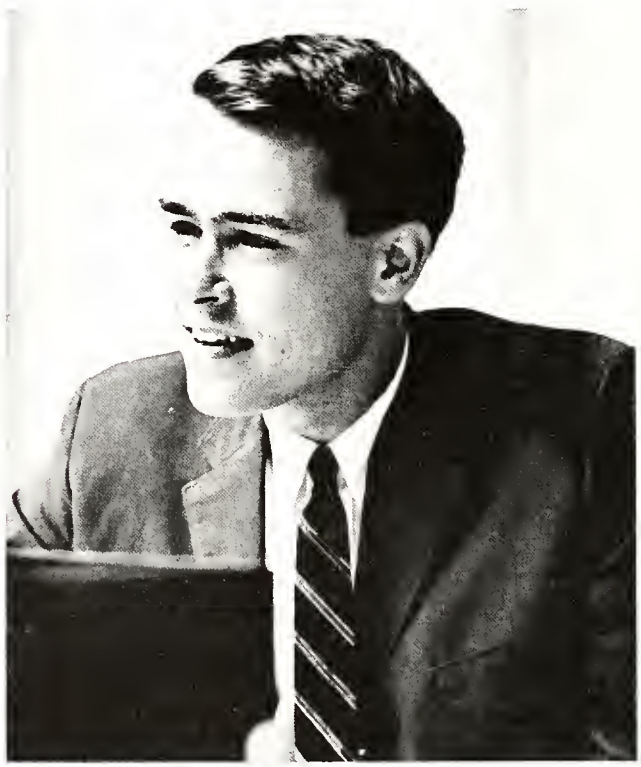
The Commission states in its Report that it has attempted to follow a conservative and practical approach in devising these recommendations and that the changes recommended, though extensive, are no greater than the problem under study requires. The Commission expects that these recommendations, when fully effectuated, "not only will put at rest a vexing public issue but will strengthen greatly the Board of Trustees and, in turn, The University of North Carolina." Whether these recommendations will be enacted into law and whether the result will be what the Commission anticipates remain to be seen. Clearly, however, the Commission has given much time and thought to the problem of the Board of Trustees and has provided many North Carolinians with the opportunity to re-examine and become informed on the policy-making process currently used for our principal institutions of higher learning. For this alone the entire State and the University are greatly in its debt. □

LAWS OF SEARCH AND SEIZURE

by Douglas R. Gill

[*Editor's Note: This article is the second of a series on the laws of arrest, search and seizure, and evidence. Its author, Douglas R. Gill, is an Assistant Director of the Institute whose field is criminal law and procedure. The first article on the laws of arrest appeared in the November* Popular Government, *and the one on evidence will appear in February. The three will eventually come out in booklet form.*]

Author's Note: In the area of search and seizure, clear statements of rules by those in authority are sporadic, and it is questionable whether some rules that once seemed clear would be adhered to if re-examined today. For this reason, the guidelines that emerge from this article are not an outline of clearly established rules. Instead, they combine the clear rules that do exist with logical extensions from the principles underlying presently clear rules and with courses of conduct that seem prudent when a clear rule is lacking. A set of notes pointing out the areas covered in the article that do not represent clear rules will be included when the article is published in booklet form.



Gill

I. INTRODUCTION

The laws of search and seizure are aimed at protecting for everyone a basic American right—the right to be let alone. The law helps preserve this right by restricting government officials' power to interfere with people's privacy. If they want to search people's persons or property, they may do so only in carefully limited circumstances.

Strict rules of search and seizure aimed at guaranteeing the right to be let alone have always existed, but they have not always been strictly enforced. Recent court decisions have resulted in making the rules stricter, and the rules are also being enforced more rigorously. Law enforcement officers will therefore need to have them in mind.

The penalties used to enforce these rules are: (1) criminal prosecution against one who has made an illegal search; (2) civil suit for money damages from the one who made the illegal search; (3) the exclusion from evidence in a trial of anything found during illegal search. It is this last penalty in particular that has been used more and more to enforce the laws of search and seizure. It means that no matter what you find in a search, it cannot be used to convict the defendant unless the search was legal.

Those are the penalties for any misuse of the rules of search and seizure. The rules themselves concern problems that come up during the attempt to discover something connected with a crime—the search—and the further problems of holding anything that has been found—the seizure. While it discusses seizure briefly, most of this article deals with the discovery of things connected with a crime—that is, the search. It is the search that can most easily lead to unnecessary interferences with privacy if the rules are not followed carefully.

The rules about search can be grouped into three main areas: (1) circumstances when a person's privacy may be interfered with even if he is not willing that it be interfered with; (2) interferences with his privacy that are permitted because he is willing; and (3) interferences with his privacy that are permitted because they are slight.

II. SEARCH: SUBSTANTIAL INTERFERENCE FOR GOOD REASON WITH PRIVACY WHETHER OR NOT THE PERSON INVOLVED IS WILLING

The law of search does not say that there should never be substantial interference with privacy. What it says is that a person should be let alone unless there is a good reason for not doing so. When there is a good enough reason, a person may be searched whether he wants to be or not. When you have good reasons for interfering with a person's privacy even when he does not want you to interfere with it, two principal kinds of searching situations can result: you are able to (1) search with a warrant, or (2) search incident to an arrest. (For additional powers to make searches related to intoxicating liquors, see Appendix A.)

A. Search Made With a Warrant

The importance of a search warrant as the basis for a search is that it establishes that there is an important reason for invading someone's privacy with a search. In short, a search warrant shows this: (1) an officer thought that a person had something that needed searching for; (2) he went to a judicial officer to whom he told the reasons for thinking so; (3) the judicial officer heard the reasons and agreed with him. This sets up a double check. To get a warrant, you not only must believe yourself that someone has something that calls for searching, but you must also get a judicial officer to agree with you.

Because searches with warrants may be made only after this double check, the law regards searching with a warrant as the best way to make a search. The law permits other kinds of searches—in some special circumstances when getting a warrant would not be practical—but using a warrant is the preferred way. A useful rule of thumb is that whenever you want to make a search without a warrant, you should see whether there is any reason why a warrant should not be required; if there seems no good reason for an exception to the general rule that a warrant be used, then probably a search without the warrant is illegal.

Therefore, if you have reason to believe that someone has something that you should look for, you should determine whether getting a search warrant for your purpose is possible. If so, go to an official authorized to issue warrants and tell him the facts; if he agrees that you have a good reason, you may then take the warrant that he gives you and make the search.

1. *Limits on the Availability of Search Warrants*

- a. Things for Which a Search Warrant May Be Issued

The categories of things that law enforcement officers can have an interest in searching for are (1) contraband—something that it is illegal to possess, (2) instrumentalities of a crime—articles that have been used to commit crimes (3) fruits of crime—whatever has been obtained through crime, (4) or evidence of crime.

Nevertheless, the laws of North Carolina do not provide for search warrants to be issued for everything that can fall into one of those groups. It is impossible to get a search warrant for some kinds of contraband, instrumentalities, evidence, or fruit of misdemeanors. A list of the items that search warrants can be issued for appears in Appendix B at the end of this article.

- b. Officials Who Can Issue Warrants

If you have a good reason to look for something that a search warrant can be issued for, you first go to a judicial official. But which official? There are all kinds—Supreme Court, superior court, recorder's court, justice of the peace, etc.—but not all judicial officers can give warrants to search for all of those things for which warrants can be obtained. If you want a warrant to search for barbiturate drugs, it can be issued by a superior court judge, but if you want a warrant to search for gambling equipment, you must go to somebody else. There seems to be no explanation for this difference, but it exists. Appendix C at the end of this article contains a list of all those officials who can issue search warrants, with a statement of what they can issue warrants for.

If you know what to search for, and if you have found an official who can issue the kind of warrant you need, then tell him your story. If he thinks you have good reason, you can get the warrant and go ahead with the search.

But it is not quite that simple. The search that is conducted with a warrant will be legal only if the search warrant itself meets certain standards that make it legal. These standards will be discussed in the next few sections of this article.

2. *Need For More Than One Search Warrant*

One factor to remember is that you may not always do all the searching you want to do with just one warrant. Clearly, if you want to search two entirely different places, you will need two search warrants. But more complicated situations can arise that are confusing about how many search warrants are needed.

To set out some of these situations, the word "curtilage" will be used. This is a word that cannot be exactly defined, but, roughly, it means the area around a building that is in everyday use—usually what might be called the yard.

In determining whether you will need more than one search warrant, there are three general rules to follow:

(1) If buildings are on different curtilages, you must have a separate warrant for each building, whether or not the buildings are possessed by the same person.
(2) If some buildings or parts of buildings are possessed by one person, and other buildings or other parts of the same building are possessed by another, you need separate warrants whether or not the buildings or parts of the same building are on the same curtilage.
(3) If more than one building are on a single curtilage and if they are in the possession of the same person, you need only one warrant.

3. *Parts of a Search Warrant*

- a. Requirements of Form for Legal Search Warrants

Certain details about the mechanics of getting a warrant and about the form need to be checked to make sure that a search warrant will be legal. These appear in Appendix C at the end of this article, but they are not discussed here because usually they will be taken care of if the judicial officer uses the proper form. The form itself also appears in Appendix D so that you can see how these requirements look on the form.

- b. Statement of Probable Cause

Warrants are not the only important documents in making searches. Even more important than the warrant, which is really only a piece of paper that says that you are authorized to make a search, is the affidavit. This is the written account of all the facts that make you and the judicial official think that there is a good reason to make the search. Telling the good reason for making a search is called the statement of probable cause.

The thing to remember is that the statement of probable cause in the affidavit must contain in writing all of those facts and details that come together in the mind of the person seeking the warrant and that he tells the official that make the two of them feel that there is a good reason for making a search. If those things are not written down, a judge at some later time might look at the affidavit, decide that there is not enough justification for probable cause, and declare the whole search illegal. Any evidence obtained would then be inadmissible. Appendix E contains comparisons between a statement of probable cause that is sufficiently full and one that is not full enough.

- c. Description of Person or Place To Be Searched

The warrant must describe the place to be searched; otherwise it would not be clear that the warrant authorizes the particular search you make. Generally, the description of the place must be full enough so that the officer executing the warrant cannot reasonably make a mistake and search the wrong place. This rule ensures that the search covers only the place for which a good reason for searching has been shown. It is also a good idea, whenever possible, to state in the warrant the name of the person who possesses the place you want to search.

- d. Description of the Property Being Searched For

The warrant also must say precisely what it is that you are looking for. You cannot simply grab everything in the place you are searching and cart it away. The description of the property you are looking for tells you what it is that you are to seize so that you will know it when you see it. Obviously the description must be complete enough so that you are not misled into taking things that are not to be taken. If you are looking for a stolen refrigerator, you need a clear enough idea of what the stolen refrigerator looks like so that you will be unlikely to take one that is owned legally.

At the same time, if the warrant says only to seize "non-taxpaid liquor," then there is no way that something that the property owner is entitled to have left alone might be taken away, because he is *never* entitled to have non-taxpaid liquor. Thus, the description of what is being searched for must be detailed enough so that it is unlikely to be understood to cover something that should not be taken. When the kind of property you are searching for can never be possessed legally, the description need not be as detailed as when the property you are searching for can be confused with something that is legally possessed.

4. *Execution and Return of the Warrant*

The general rules of conducting searches that apply to any kind of search, with or without warrant, will be discussed later, but some problems that are encountered only with search warrants need to be considered here.

- a. Protection Given to Officer by Warrant Valid on Its Face

We have discussed the various requirements that must be met to make a search warrant valid—particularly the need to demonstrate probable cause to the judicial officer to whom you go so that he will be justified in giving you a warrant. What happens, however, if you should obtain a search warrant that later turns out not to have met all of the requirements? In such a situation, where do you stand as an officer who is supposed to execute search warrants? The three penalties that can sometimes occur as a result of an illegal search are: (1) exclusion of any evidence turned up by the illegal search; (2) charging the person who makes the

search with a crime; (3) and civil suit of the person who makes the search by the person whose privacy is invaded.

If you use a warrant that does not meet all the legal requirements, then any evidence you turn up may not be admitted in court. This in itself establishes a good reason why you should want to make absolutely certain, when getting a search warrant, that neither you nor the judicial official makes a mistake that hurts the legality of the warrant.

But despite your best efforts, you may sometimes receive a warrant that a court will later declare illegal. When that happens, however—even when the evidence is thrown out — under certain circumstances you still cannot be sued or prosecuted for searching with that warrant. These circumstances exist when the warrant is "valid on its face." The idea behind protecting an officer who searches with a warrant valid on its face is that he should be held responsible only if there is something that he should reasonably have recognized wrong with the warrant. Therefore, a search warrant that is "valid on its face" and protects an officer from criminal prosecution and civil suit meets certain requirements that are obvious enough so that the officer himself can tell whether they have been met.

These are the requirements:

(1) The warrant must be in writing.
(2) The affidavit must be signed under oath or affirmation.
(3) The warrant must be issued in the name of the state.
(4) The warrant must be issued by an authorized official.
(5) The warrant must be directed to the officer authorized to execute it.
(6) The warrant must contain an adequate description of the place to be searched.
(7) The warrant must contain an adequate description of the property to be seized.
(8) The statement of facts in the affidavit must not be clearly inadequate to show probable cause.

If a search warrant meets these minimum requirements, then you may use it without fear of civil or criminal suit, although it is still possible that evidence turned up through its use can be thrown out. If the warrant does not meet these minimum requirements, you should not use it.

• b. Execution of Warrant After Issuance

The search warrant should be used as soon as possible after it is issued, but there is no absolute time limit. A search warrant will not automatically lose its validity four, or six, or eight hours after it is issued. However, if a court feels that you merely held on to the warrant and used it at your convenience, the warrant may be declared invalid.

• c. Reading Warrant Before Execution

No hard and fast rule exists about reading the search warrant aloud before making the search. Generally, the warrant should be read or shown to the person who possesses the premises before you make the search. But if the possessor of the premises you are about to search is using the reading of the warrant as a chance to get rid of what you are looking for, you need not finish reading the warrant.

• d. Execution While Possessor is Absent; Execution at Night

It is better to delay making a search until the possessor of the place you are going to search is there. If, however, the possessor is not present, you need not wait when waiting will give him a chance to remove what you are looking for. Nearly the same thing can be said about searching at night. It is better not to search at night unless there is a strong reason to do so.

• e. Return of Warrant

After its use, a search warrant must be returned to the official to whom the warrant says it is returnable.

B. Search Made Incident to Arrest

A search made as an incident to an arrest (that is, as a necessary sidelight of an arrest) is the other principal circumstance when you may search even when the person involved is unwilling to be searched. To understand this method of search, two points need to be remembered: (1) No government official should ever search a person without that person's consent unless he has a good reason for the search, and (2) even when he has a good reason, the official should not search without a warrant unless there is a particular need to proceed without a search warrant. The search incident to arrest meets these two points this way:

First, is there a good reason to make the search? Pretty clearly there is—you have just arrested somebody and you do not want him either to injure you or to get away; you therefore want to make sure that he has nothing available to use against you or to escape. Sometimes you will have another reason: The person you have just arrested may have been picked up for the kind of crime that involves his carrying something related to that crime with him (narcotics, for example). Thus you ordinarily have good reasons for searching those you have just arrested.

Second, is there a need to proceed without a warrant? Yes. This is an exception to the usual rule that you should search only with a warrant, and the reason for it is simply that in the time it takes to get a search warrant, the person you arrest could shoot you, escape, or destroy the evidence.

Thus when you make an arrest, you are justified in searching even without the consent of the person involved because (1) there is a need for making a search along with the arrest, and (2) there is a good reason for not getting a search warrant to make that search.

1. *Need for Arrest*

Several limits have been set on the use of searches incident to arrest. These are easy to understand if you keep in mind the points just presented. If the *reason* for allowing this kind of search disappears, then the search is not legal. If you have not arrested him, the person will not escape, and will not injure you, and will not think it necessary to destroy any evidence. Therefore, the reasons for making the search do not exist. This means that a search incident to an arrest may be made only if the person searched has been arrested.

2. *Closeness in Time to Arrest*

Another point to remember is that the reason you need not obtain a warrant for this kind of search is the necessity to prevent escape or destruction of evidence during the time it takes to get a search warrant. But if you wait very long after the arrest to search the person you arrested, then you have demonstrated that delay before making the search is not serious; you could just as well delay the search even longer while you obtain a warrant. Thus, a search incident to an arrest must be made at very nearly the same time as the arrest.

3. *Area Searched As Incident to Arrest*

By looking to the reasons why a search incident to an arrest is allowed, you can determine how much of the person of the individual arrested and how much of the area around him you may search as an incident to his arrest. The search incident to his arrest is permitted in order to find any weapons or evidence that he might be able to reach during the delay that would result from getting a search warrant. But the delay will be no problem if the arrested person cannot get the weapons and evidence. This means that a search incident to an arrest should be only broad enough to find things that the arrested person might be able to reach after he has been arrested. If he cannot reach weapons or evidence, it is possible for you to take the arrested person into custody and then get a search warrant without hazard, and the reason for an exception is the general rule that a search should be made only with a warrant is gone.

C. Object of Any Search Made When Person Involved Is Unwilling

The two principal searches that can be made when the person being searched is not necessarily willing are (1) those made with a search warrant, and (2) those made incident to a lawful arrest. But even though you are authorized to make both of these kinds of search, you may not carry out just any kind of search in any manner you want to in either of these circumstances.

1. *What May Be Looked For*

When you make a search, the search must be limited to looking for those things for which there is a reason to look. Thus, if you have a warrant to search a person's curtilage for stolen automobile parts, you may not use the authority of the warrant as an opportunity to search for non-taxpaid liquor. If you have just arrested someone for assault with a deadly weapon, you clearly may search him at the time of arrest for weapons, but you may not use this search to see whether he has any narcotic drugs in his possession.

The basic idea behind the laws of search and seizure is that people are to be left alone unless there is a good reason not to leave them alone. These rules about what may be searched for and where and when you may make a search incident to arrest carry that idea a bit further—even when you have a good reason for not leaving people alone completely, you may still interfere with their privacy only as much as is called for by your original reason for searching.

2. *Discovery of Things Not Looked For*

If you should come across something illegal while you are searching for something else, your find is legal; even though something else turned up, you have been searching for only what you were authorized to look for. If you are searching a person for weapons after you have arrested him and discover a bottle of non-taxpaid liquor, you have found it legally even though you have no reason to be looking for it originally. If you have a warrant to search a building for stolen automobile parts, and while searching you come across an illegally possessed machine gun, it is legally found. In short, anything that is turned up in a legal search for something else has been legally found itself.

3. *Use of Force in Making Search*

Using too much force in making a search can destroy the legality of that search. Force is permissible if it is necessary. If the circumstances permit a legal search, it is legal to use as much force as is required to carry out the search, but no more than necessary. This applies to the force used with people who resist a search. It also applies to the force used in looking. Being destructive to personal property during the course of the search can also make the whole search illegal.

III. SEARCH: SUBSTANTIAL INTERFERENCE WITH PRIVACY EVEN WITHOUT GOOD REASON WHEN PERSON INVOLVED IS WILLING

The problem is to decide when a person that you want to search does not care about using his right to be let alone. Probably most people *do* normally want to be let alone. Recognizing this is important in understanding why the law does not always accept at face value a person's apparent indication that he is willing to be searched.

The discussion thus far has concerned those very limited situations in which you can interfere with a person's privacy by searching against his will. The laws of search and seizure are meant to protect his right to be let alone. But the need to protect that right disappears if the person being searched does not care whether he is let alone.

A. Elements of Consent

The expression of willingness to be searched is called "consent." The laws of search and seizure require that a consent, in order to validate a search even when there is no good reason for the search, must be (1) understanding, (2) uncoerced, and (3) unequivocal. When there is true consent, probable cause is not necessary in order to make the search.

1. *Understanding*

For a consent to be understanding, the person who gives it must know what is going on. Unless he does, the consent will be invalid. He must understand what you will do if he gives his consent, and he must understand what you cannot do if he refuses his consent. Thus, if you say to somebody, "May we search your house?" and he says "Yes," the consent is worthless if he thought you said, "Have you ever been hurt in your house," or some other question. The consent would also be invalid if he thought you were going to search his house whether he was willing or not. (Many people do not know that their refusal will have any effect.)

2. *Uncoerced*

A consent that is uncoerced is one that is not forced out of the person who gave it. If he was forced to give it, then what he said does not truly mean that he was willing that the search take place. Recently the courts have regarded more and more circumstances as ones that force a man to give consent and therefore make the consent worthless. In some situations "consent" is clearly forced—when a person is beaten until he "consents," or when he must "consent" to remove a threat to some member of his family. But a person's consent can be forced in ways that are not nearly so obvious. Whenever a person who does not truly want to be searched expresses willingness to be searched because of *any* form of pressure he may think is being put on him, that expression is unlikely to be treated as valid consent. For example, many courts might regard a "consent" as coerced if it was given by a man confronted at his door by several policemen, his house surrounded by additional policemen, because of the possibility that "consent" had resulted from fear. Also, some courts treat as coerced any consent that is obtained from one who is under illegal arrest.

3. *Unequivocal*

A consent that is unequivocal is one clearly meant by the person who gives it as consent that a search may take place. To be regarded as a consent, the statement or act must clearly be intended by the person who gives it as positive consent, and not as either just giving in to the authority that he thinks the searcher has or an invitation to enter for some purpose other than searching (such as talking).

B. Area of Search After Consent

All of these points make it clear that gaining consent is not just a simple matter of getting the person you want to search to say "yes" or "no." Nor is it simple, once the person has given his consent, to determine exactly what you are entitled to search as a result of that consent. As a general rule, the search that follows a consent may be directed only to those places and to looking for those things that the person who consented could have expected from what was told to him of the search. If a person has consented to a search of his house for narcotics, his consent does not authorize you to search the house for anything else. If the person who gives consent understands that you are going to search the house, his consent does not entitle you also to search his garage and automobile. Also, the person who gives consent may limit that consent in any way he wants to. Thus, if he says, "You may search my house every place but in the basement," you must accept that limitation.

C. Who Can Give Valid Consent

Even if a consent would otherwise be valid, it does not authorize you to search the place you have in mind if the person who gave it was not in a position to consent to a search of that place. All these rules of search and seizure are concerned with the right to be let alone. Although someone may choose not to be let alone, it ought to be up to him, and nobody else, to make that choice. Therefore a consent to invade a person's privacy must be given either by him or by someone whom he has authorized to give his consent for him.

The most obvious problem in this regard is whether the consent of a wife is valid to authorize a search for something to be used against the husband, and vice versa. Pretty clearly, a search for

something to be used against the husband or wife cannot be consented to by the other, despite their close relationship and regardless of which one is the legal owner of the property to be searched.

Whether a parent may consent to the search of his child's room in the house is a question without a clear answer. Probably a parent's consent is good when his child is young, but when the child is over eighteen or is supporting himself but still living with his parents, the consent of only the parents to search the child's room should not be relied on.

A separate search warrant is necessary to search an individual room or dwelling unit within a larger dwelling that you have a warrant to search. The same idea applies to consent—the consent of the owner or landlord does not validate the search of his tenant's private room or dwelling unit although it is in a larger building that the owner could give consent to search.

D. Proof of Consent

Even if somebody gives what you know is legal consent, you may need to prove in court that the consent was given. If you find something during your search that you can use against a person in court, it may occur to that person to claim that he gave no consent, that the search therefore was illegal, and that the evidence should be excluded. If he takes that course, and it is just your word against his, he may very well win. Since giving consent is regarded as unusual, in a close case his denial will tip the scales against believing that consent was given. Therefore it is necessary to establish so clearly that consent *was* given that the scales cannot be tipped the other direction.

One way to do this is to get the consent before other witnesses who can then testify that consent was given. The presence of a witness also may keep the person you searched from even attempting to claim that he did not consent.

The other principle way to protect yourself is to obtain written consent. However, this is not always foolproof. A signature on a piece of paper does not necessarily mean that the person who signed it knew what the paper meant. Also, even when the consent is written, the signer still may not have understood what he could or could not have done in that situation. Nor does his signature on a piece of paper mean that he was not coerced into signing; he can still claim that he was.

Clearly, searching with consent must be done carefully. Even when the consent is valid in every respect, care must be taken that its validity can be proved in court.

IV. SEARCH: INTERFERENCE WITH PRIVACY SO SLIGHT AS NOT TO REQUIRE USUAL PRECAUTIONS

To this point we have discussed the steps you must take to search legally—and thus ensure the usefulness in court of the evidence you find and protect yourself against civil and criminal liability. The reason behind the rules of search and seizure is to guard the individual's right to be let alone. There are times, however, when you can discover things with so little interference with a person's privacy that not all of the precautions need be taken.

A. Abandoned Property

The reason why not all the precautions are required before searching property that is abandoned is fairly clear—if property is abandoned, no one's privacy will be interfered with by searching it. The trick is to tell when something has been abandoned —that is, when somebody has given up all of his interest in it.

1. *Real Property*

Telling whether the owner of real property has actually abandoned it is almost impossible; therefore this idea of abandonment is not a sound basis for searching real property *owned* by the person you want to find evidence against. If he has only *rented* property, however, you may be able to show that he has abandoned his interest in it. The consent of a landlord to search a room or apartment that he has rented does not entitle you to search that room or apartment. But if the person who rented it no longer has any interest in it, the consent of the landlord is enough. If the room in question is a hotel room, abandonment will usually be shown by checking out and removing personal belongings. Abandonment of a place that has been rented for a longer term might be harder to establish. Removal of personal belongings, prolonged absence, and failure to pay rent all might indicate that the premises have been abandoned.

2. *Personal Property*

Abandonment is a more useful justification for searching and seizing personal property. Recognizing the indications that personal property is abandoned is usually easier than determining when an interest in real property is abandoned; when personal property is abandoned it is often simply thrown away. The search and seizure of discarded personal property is unlikely to be illegal.

However, when a person only *acts* as if he is abandoning something (simply because he does not

want you to catch him with the article), you should not search whatever it is he is acting as if he has abandoned, because he has not actually given up his interest in it.

This does not mean that you are powerless. For example, if a person, when he sees you coming, sets aside a suitcase that he is carrying, you should not search that suitcase on the grounds that it is abandoned. But there may be other justifications for your searching it. If you have reason to arrest the man, you may be able to search the suitcase as an incident to the arrest, and even if you have no reason to arrest him, you might have adequate grounds for obtaining a search warrant. If you cannot search incident to arrest or get a search warrant, this indicates that you probably do not have a strong reason to believe that there is something in the suitcase that needs to be searched for, and being unable to search it should be no particular hardship for you.

A final point to remember is that if a person abandons something as a response to an illegal act, then searching whatever is abandoned is illegal. For example, if you enter someone's house illegally and the owner throws a box out the window, you may not search the box by claiming that it is abandoned property.

B. Observation Without Substantial Invasion of Privacy

Living in society without having your privacy interfered with in small ways is impossible. Your neighbors can see through your windows as they go by on the sidewalk, but they are not breaking any laws. A certain loss of privacy comes from just living, and in certain situations you can obtain facts about someone by utilizing the opportunities to observe him that are available to all people. Information so gained can be legally used against the person observed without having first followed the precautions that we have discussed. The difficulty is to recognize when you are interfering with an individual's privacy to such an extent that you must follow those precautions and when you are interfering with his privacy in such a limited way that you do not have to worry about them.

1. *Observation from Public Place*

If you see from a public place an object that would be part of your concern if discovered legally, has that object been validly discovered so that it can be used in evidence after seizure? The answer is what common sense indicates: Yes, the discovery is legal. If you see something from a public place, without any additional prying, then the person involved is still left alone as much as could be expected. You make the discovery without interfering with his privacy more than it is normally interfered with.

This idea applies to many situations. It applies to walking by on a sidewalk and seeing liquor-making equipment in somebody's yard, or to seeing counterfeit money in the cash box on the counter of a store that is open to the public. The discovery in both of these cases would have been illegal had it required intrusion on a private place to see the equipment or the counterfeit money, but in each case the discovery is legal because it was made without additional interference with anyone's privacy from a place where the public could be expected to be.

2. *Open Fields and Woods*

Going onto open fields or woods, even if privately owned, for the purpose of finding something is not regarded as an illegal search if the fields or woods are not within someone's curtilage. The reason for this becomes clear if you consider the area in which a person feels particularly entitled to privacy. Nobody expects quite the same privacy in his fields as he does around his house; to a certain extent, people expect others in their fields and woods.

3. *Observation from Private Place After Legitimate Access*

Also, under certain circumstances a legal discovery of something in a private place can be made without taking all the usual precautions before making the discovery. Primarily a discovery in a private place is legal when it is made without additional interference with privacy after access has been made to the private place for a legitimate reason and not for the purpose of trying to make the discovery. Thus, if you go to a house to issue a summons or to interview a person and, after being admitted, see some contraband in plain sight inside the house, the discovery of the contraband is legal. However, if your apparent reason for going to the house was only an excuse to get inside and try to make the discovery, then the discovery is the result of an illegal search and is not admissible as evidence.

V. SEIZURE

Thus far we have talked about how contraband, evidence, instrumentalities, or fruits of crimes can be discovered. After they have been discovered, the next step is to seize them—that is, take them into official custody. When can something you have discovered be seized?

Most things can be seized only if they have been discovered legally. The one exception to this rule is when it is illegal to possess what has been found—

for example, non-taxpaid liquor. If possession of what has been discovered is illegal, then it may be seized despite the illegality of the discovery. However, it still may not be used as evidence against the possessor, and there still is the possibility of civil or criminal suit against the one who made the discovery.

When can you seize something after it has been discovered legally? Generally, anything that fairly clearly is contraband, evidence, instrumentality, or fruit of crime may be seized at the time that it is discovered. One exception to this rule seems advisable: if one of these things in a private place has been discovered without a search from a public place, it should not be seized without a warrant except by consent or as incident to an arrest. For example, if, while walking down the sidewalk, you recognize some stolen goods inside someone's home, you should obtain a search warrant for those goods rather than enter the house then and remove the goods.

APPENDICES

The following appendices will be useful guides in preserving the legality of the searches you may make in the course of your work.

Appendix A

Searches Without Warrant for Intoxicating Liquor and Related Material

In addition to your powers to search with a warrant or incident to an arrest, you may search even when the person involved is unwilling in one other circumstance — you may search baggage or a vehicle for intoxicating liquor or for equipment or materials designed or intended for use in the manufacture of intoxicating liquor when you have a strong enough reason for the search.

This exception to the usual rule is based on recognition of the likelihood that items concealed in vehicles or baggage would disappear during the time necessary to get a warrant. But it is important to remember that even though a warrant is not required in these circumstances, a good reason for the search must still exist; mere suspicion is not enough. In fact, to make this kind of search, you must have more than the probable cause that is necessary to get a search warrant. To search a vehicle or baggage without warrant, an officer must have absolute personal knowledge that it contains intoxicating liquor or liquor-making equipment or materials. The requirement of absolute personal knowledge means that you must have directly obtained knowledge of the presence of the liquor, equipment, or materials through one of your senses—sight, hearing, smell, taste, or touch.

Appendix B

Items for Which Search Warrant May Be Issued

Stolen property
Property used in any gaming
Any counterfeit money, bond, or note of any government
Counterfeiting equipment
Barbiturate drugs
Stimulant drugs
Instrumentalities of felony
Evidence of felony
Liquor possessed for purpose of sale
Liquor-making equipment

Appendix C

Officials Who May Issue Warrants to Search for Various Items

Official	*Type of Warrant*
Chief Justice of Supreme Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale and liquor-making equipment.
Associate Justices of Supreme Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Judge of Superior Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of Superior Court (For other powers when acting as ex officio clerk of lower courts, see powers of clerks in lower courts; for powers in county where district court is established, see next entry.)	Barbiturate or stimulant drugs; evidence or instrumentality of felony.
Clerk of Superior Court in counties* wherein district courts are established	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and any liquor-making equipment.
Assistant Clerk of Superior Court (For other powers when acting as ex officio clerk of lower courts, see powers of clerk in lower courts.)	Barbiturate or stimulant drugs; evidence or instrumentality of felony.
Assistant Clerk of Superior Court when Clerk of Superior Court is ex officio Clerk of County Recorder's Court**	Liquor possessed for purpose of sale, and liquor-making equipment.
Deputy Clerk of Superior Court when Clerk of Superior Court is ex officio Clerk of County Recorder's Court**	Liquor possessed for purpose of sale, and liquor-making equipment.
Recorder of Municipal Recorder's Court	Liquor possessed for purpose of sale, and liquor-making equipment.
Vice-Recorder of Municipal Recorder's Court	Liquor possessed for purpose of sale, and liquor-making equipment.

*In December, 1966, these are Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans, Cumberland, Hoke, Durham, Scotland, Robeson, Burke, Caldwell, Catawba, Cherokee, Clay, Graham, Jackson, Macon, Swain, and Haywood counties.

**Except in Brunswick, Camden, Forsyth, Gates, Halifax, Martin, Moore, Perquimans, and Vance counties.

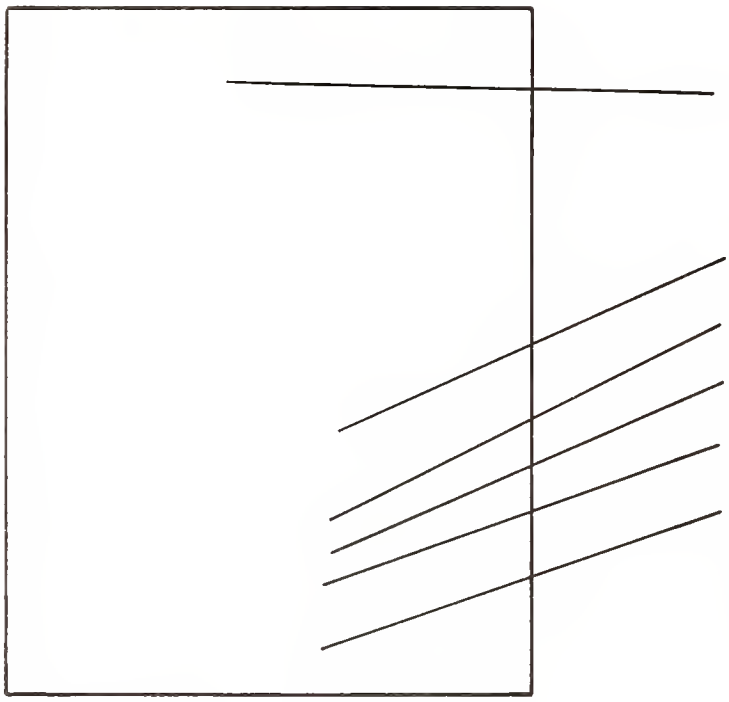
Clerk of Municipal Recorder's Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentality or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Assistant Clerk of Municipal Recorder's Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Recorder of County Recorder's Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of County Recorder's Court (who may be Clerk, Assistant Clerk, or Deputy Clerk of Superior Court acting ex officio)	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale; and liquor-making equipment.
Recorder of Municipal-County Recorder's Court	Barbiturate and stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale; and liquor-making equipment.
Vice-Recorder of Municipal-County Recorder's Court	Barbiturate and stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of Municipal-County Recorder's Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Assistant Clerk of Municipal-County Recorder's Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale; and liquor-making equipment.
Judge of General County Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale; and liquor-making equipment.
Clerk of General County Court (who may be Clerk, Assistant Clerk, or Deputy Clerk of Superior Court when Clerk of Superior Court is ex officio Clerk of General County Court)***	Stolen property; property used in any gaming, any counterfeit money, bond, or note of any government, and any counterfeiting equipment; barbiturate or stimulant drugs; insturmentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Judge of District County Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, and any counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of District County Court (who may be Clerk, Assistant Clerk, or Deputy Clerk of Superior Court acting ex officio)	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, and any counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of County Criminal Court (who may be Clerk of Superior Court acting ex officio)	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, and any counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.

***Except in Alexander, Alleghany, Ashe, Caldwell, Camden, Clay, Dare, Davidson, Duplin, Durham, Edgecombe, Forsyth, Haywood, Hertford, Hoke, Hyde, Jackson, Johnston, Lincoln, Mecklenburg, Nash, New Hanover, Person, Pitt, Robeson, Rockingham, Scotland, Tyrrell, Union, Vance, Wake, Watauga, Wayne, Wilkes, Yadkin, and Yancey counties.

Deputy Clerk of County Criminal Court	Liquor possessed for purpose of sale, and liquor-making equipment.
Judge of Special County Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of Special County Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, and any counterfeiting equipment; barbiturate and stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Judge of District Court of General Court of Justice	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, and any counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Judge of Domestic Relations Court	Barbiturate or stimulant drugs; instrumentalities and evidence of felony.
Clerk of Domestic Relations Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and any liquor-making equipment.
Judge of Police Court	Barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of Police Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and any liquor-making equipment.
Magistrate of General Court of Justice	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and any liquor-making equipment.
Justice of the Peace	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; barbiturate or stimulant drugs; instrumentalities or evidence of felony; liquor possessed for purpose of sale, and any liquor-making equipment.
Mayor Presiding over Mayor's Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; liquor possessed for purpose of sale, and liquor-making equipment.
Judge of Trial Justice Court	Liquor possessed for purpose of sale, and liquor-making equipment.
Clerk of Trial Justice Court	Stolen property; property used in any gaming; any counterfeit money, bond, or note of any government, or counterfeiting equipment; liquor possessed for purpose of sale, and liquor-making equipment.

Appendix D

Requirements of Form for Search Warrant and Affidavit



Affidavit

name of affiant

reference to continued material

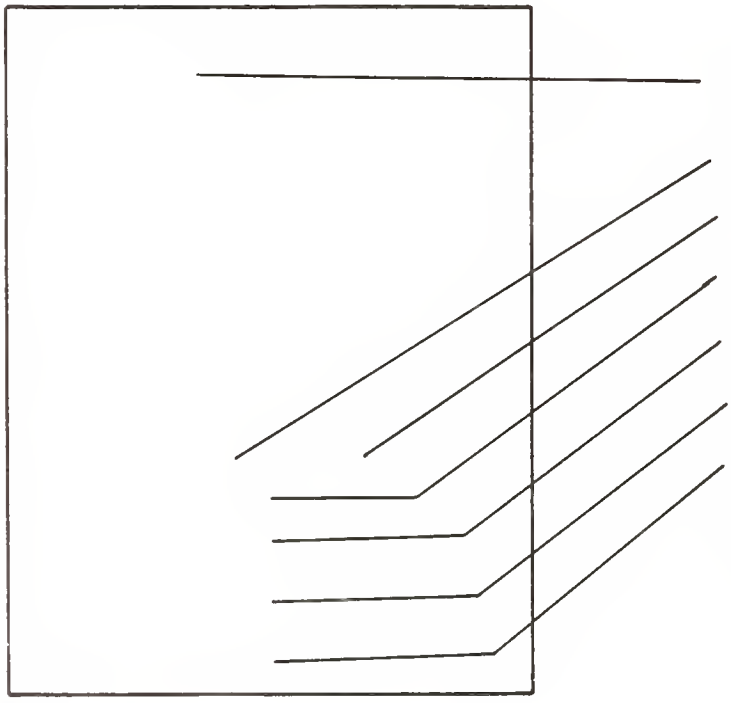
signature of affiant

date of affidavit

signature of warrant-issuing official

title of warrant-issuing official

[If statement of probable cause is continued on additional sheets, those sheets should be dated and signed by official and affiant.]



Warrant

statement made under oath

date of issue

time of issue

name of affiant

names of other witnesses

all appearing above official's signature

signature of warrant-issuing official

title of warrant-issuing official

[If warrant and affidavit are not included on the same sheet, they should be attached to each other.]

Appendix E

Comparison Between Adequate and Inadequate Statements of Probable Cause

The importance of stating in the affidavit all of the facts and details that indicate probable cause for a search was stressed on page 34 of the text. The following statements are intended to demonstrate the difference between an adequately detailed statement and a statement that is probably too scanty to demonstrate probable cause. Each statement is based upon the same hypothetical situation.

I. *Inadequate Statement*

It was reported that illegal non - taxpaid liquor would be delivered to the Harkins Brothers Warehouse. Certain activities were seen that suggested that liquor was then delivered. John Harkins is thought to be involved in the illegal sale of liquor.

II. *Adequately Detailed Statement*

At 10:10 p.m., July 21, 1964, affiant received a telephone call from a confidential informant who has given information leading to liquor law convictions in seven previous instances. The informant stated that 500 cases containing one - pint bottles of 86 proof bourbon whiskey of mixed brands, on which the federal but not the North Carolina taxes have been paid, were being transported to the Harkins Brothers Warehouse (address as given in the affidavit portion of the warrant to which this continuation is attached) and were due to arrive about noon on July 22, 1964, on board a 1963 Chevrolet truck - tractor, Model 1000, pulling and attached to an aluminum-sided closed trailer. Informant further stated that the over-all length of the tractor-trailer combination was about 45 feet, and that it bore Virginia license plates for the year 1964: 98042 on the tractor; TR 4733 on the trailer.

At 1:15 p.m., July 22, 1964, affiant personally observed a tractor-trailer of the above description pull up before a loading platform at Harkins Brothers Warehouse. Affiant was unable to check the license number of the tractor, but that for the trailer was TR 4733. One of the drivers went into the warehouse; the other stayed in the cab of the truck. John D. Harkins next came out with the driver who had gone inside; the two drivers and Harkins talked together about 15 minutes. The two drivers stationed themselves on the street along with two other men from inside the warehouse—apparently to prevent anyone from coming too close to the tractor-trailor during unloading period. (Affiant was observing from a building across the street.) Still other persons inside the warehouse actually conducted the unloading of the tractor-trailer, the doors of which were kept carefully propped open at right angles to the rear of the trailer body in order to shield what was being unloaded from the view of persons passing by on the street.

A recent recruit on the force of the Raleigh Police Department, Patrolman Charles B. Jackson, wearing plain clothes, did walk by Harkins Brothers Warehouse during the unloading process. He was approached by one of the truck drivers and one of the men from within the warehouse and warned not to loiter in the neighborhood—so he left.

Affiant checked with Lt. Henry Johnson of the Records Division of the Raleigh Police Department and discovered there recorded the following data pertaining to John D. Harkins: January 7, 1953, convicted and sentenced for unlawful transportation of intoxicating liquor, Wake County Superior Court; March 24, 1958, convicted and sentenced for unlawful transportation of intoxicating liquor, Randolph County Recorder's Court; September 18, 1959, acquitted upon charge of unlawful possession of intoxicating liquor for purpose of sale, Forsyth County Superior Court; February 27, 1961, acquitted upon charge of unlawful possession of intoxicating liquor for purpose of sale, Wake County Superior Court.

Affiant checked with Detective Lt. Robert Starnes, Raleigh Police Department, who stated that at least five of his reliable informers have mentioned that John D. Harkins is actively engaged in the business of selling liquor unlawfully. Detective Sgt. Harry Townsend can recall at least four specific instances in the past year when informers made the same statement concerning Harkins. Mr. Charles Blank, State ABC Peace Officer stationed in Wake County, confirms that John D. Harkins has a very widespread reputation as a large-scale bootlegger.

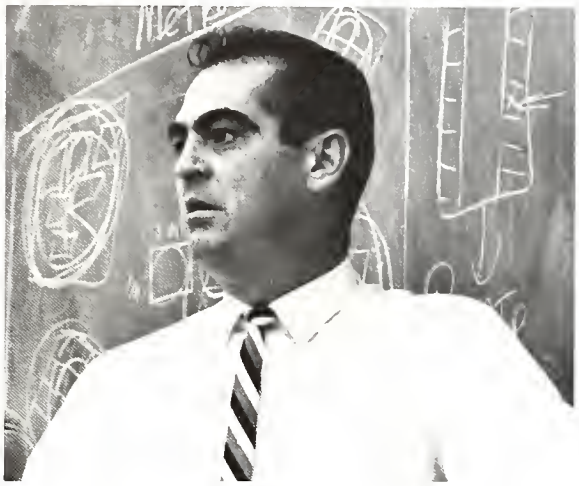
Tax Assessing Officers

This group of new officials met at the Institute of Government on October 17-21. Henry W. Lewis, whose fields of specialty include local taxation, was responsible for the school.

Institute Schools and Conferences

Careers for Carolina

Sponsored by Student Government of the University of North Carolina at Chapel Hill, this conference for college students interested in career government service met at the Institute on October 28. The students met both formally and informally with Institute staff and with state, federal, and local officials engaged in a wide variety of government activities. At left, Don Hayman of the Institute talks with a young candidate for government service.



Police Administration

The members of the Police Administration class listen attentively. The course is running from October through March. Norman E. Pomrenke, whose field at the Institute is Police Administration, appears in the insert.

Magistrates

On November 10-12 a Magistrates class was held at the Institute of Government. Allan Ashman, of the Institute staff, leads the group.

Photo credits: Charles Nakamura

Audrey McCaskill, President of the North Carolina Registers of Deeds, opens the program.

Three participants in the conference meet at the Institute registration desk.

Registers of Deeds

On November 18 and 19 the North Carolina Registers of Deeds met at the Institute of Government for a session on recording procedures and proposed legislation that will affect the work of these officials.

David Boring, of the Cott Index Company, talks to the group about record-keeping procedures.

What's Going On at the Institute . . .

Schools and Conferences for January and February

Training Impact Project	January 3-5 February 21-23
*Municipal and County Administration	January 6-7, 20-21 February 3-4, 17-18
*Police Management Institute	January 9-13 January 30-February 3 February 27- March 3
*Police Administration	January 10-12 February 17-18
Probation Supervisors	January 10-11
Health Directors	January 12-13
County Commissioners	January 16-18
County Accountants	January 18-20
Utility Management School	January 23-26
Forest Rangers	January 23-27
Assistant Probation Supervisors	February 1-2
City Managers' Seminar	February 1-3
Wildlie Investigative Techniques School	February 6-10
Sheriffs' School	February 8-10
Building Inspectors' School	February 10-11, 24-25
Wildlife Investigative Techniques School	February 16-18 February 27-March 1
County Attorneys	February 24-25
*Basic Highway Patrol School	Through March 15

*Already in session. Enrollment closed.