POPULAR GOVERNMENT

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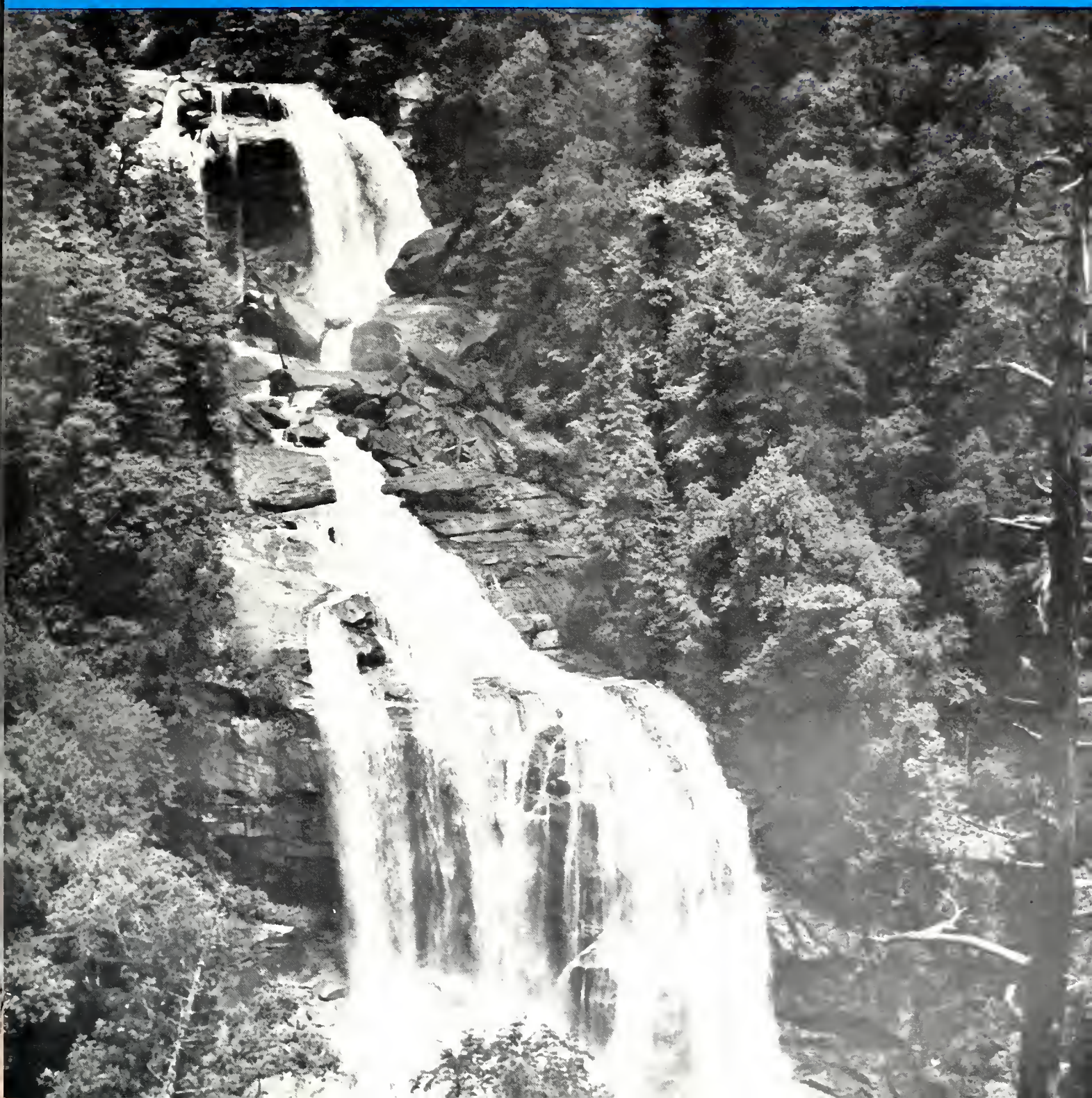

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This month's cover shows one of the reasons that Western North Carolina ranks high among the nation's favorite vacation areas. It's Whitewater Falls near Brevard. (Photo courtesy of the North Carolina Department of Conservation and Development.)

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STUDENT DISCIPLINE and STUDENT RIGHTS

A Changing Area of School Law

by Robin L. Hinson

[*Editor's Note: This article was adopted from an address made before a meeting of school board members at the Institute this spring. The author is a member of the law firm of Leath, Bynum, Blount, and Hinson in Rockingham, which represents the Richmond County school administrative unit. Also formerly a member of the UNC law faculty, he now teaches the bar review course held at the Institute each summer.*]

Student activism and campus disorders in our colleges and universities have wrought fundamental changes in school law pertaining to student discipline and student rights. Most of the decided cases involve collegiate or graduate school education, and some authorities have recognized that the relative immaturity of students in secondary schools may require somewhat different treatment. In the main, however, the evolving concepts of constitutional protection of student rights and appropriate judicial safeguards are generally applicable to students in secondary schools.

The purpose of this discussion will be to point out the major changes in the areas of student discipline and student rights, with particular emphasis upon the constitutional restraints upon school disciplinary proceedings. Suggestions will be made for appropriate procedures to be utilized by school officials compatible with modern constitutional concepts. Also, limitations upon substantive rules for student conduct will be briefly discussed.

Background

Student rights and freedoms derive at the federal level from the Fourteenth Amendment, providing that a state may not deprive an individual of life, liberty, or property without due process of law. Student rights may also derive in this state from the North Carolina constitutional provision that no person shall be deprived of his life, liberty, or property but by the law of the land.[1] Since there have been no interpretations of the state constitutional provision in the area of student rights, attention will be focused upon the federal constitutional provisions.

The question whether a student's continued presence in a school is an interest that warrants constitutional protection has been much discussed. The argument has been made that school attendance is a privilege that is revocable at will, as opposed to a legally protectable right. If school attendance were only a privilege, the due process clause of the Fourteenth Amendment would not apply. This may seem largely semantic, but many judicial opinions have wrestled with the point. For our present purposes we need not trace the tortured path of this argument through the courts. They have now recognized educational opportunity as a right. For example, in *Brown v. Board of Education*,[2] the United States Supreme Court stated: "[I]n these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." A federal judge in Tennessee went to the heart of the problem, when he said:

> Whether the interest involved be described as a right or a privilege, the fact remains that it is an interest of almost incalculable value . . . . Private interests are to be evaluated under the due process clause of the Fourteenth Amendment, not in terms of labels or fictions, but in terms of their true significance and worth.[3]

1. N. C. Const. Art. I, § 17.
2. 347 U. S. 483 (1954).
3. Knight v. State Board of Education, 200 F. Supp. 174, 178 (M.D. Tenn. 1961).

Whether the constitutional safeguards applicable to institutions operated by the state apply also to private institutions is a matter of controversy. The Fourteenth Amendment, it should be remembered, proscribes *state* action. Since we are here concerned with state institutions, this question need not detain us. It should be noted in passing, however, that the private status of many schools will, in all probability, be gradually eroded as they become increasingly dependent upon state and federal resources.[4]

In North Carolina, constitutional and statutory provisions grant broad authority and discretion to school authorities. The North Carolina Constitution delegates to the State Board of Education the authority "to supervise and administer the free public school system of the state and make all needful rules and regulations in relation thereto."[5] Teachers are required by statute "to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils . . . ."[6] Moreover, principals and teachers in the public schools are permitted to use "reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order," and local boards of education may not adopt any rule or regulation prohibiting the use of such force.[7] Under G.S. 115-147 the principal of a school has authority to suspend or dismiss any pupil "who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. . . ." These statutes are typical of those in other states granting broad authority and discretion in the management of schools, but such statutes must be construed against the background of recent federal constitutional doctrine. In the past, courts have generally respected this delegation of authority and have refrained from reviewing or interfering with internal school disciplinary problems. Many feared that intervention in school affairs by courts would undermine the authority of the schools. Also, it was felt that a court should not undertake to substitute its judgment for that of educational experts. Some courts have taken the position that the school stands *in loco parentis*—that is, "in the place of the parents"—and that the merits and methods of discipline should be left to the school authorities or the parents. In substance, schools, and particularly colleges and universities, were viewed as having about the same disciplinary authority as the parents. This doctrine has now been generally repudiated as a basis for sustaining various aspects of school discipline and procedure.[8]

In the last few years courts have increasingly responded to student demands for vindication of personal rights. The courts have been concerned that students be accorded minimum standards of fairness and due process of law in disciplinary cases. There has been widespread judicial recognition of the importance of education and the protection of personal liberties. Indeed, the preservation and protection of individual liberties has become what some have called a "preferred constitutional value." The position is taken that if secondary school students are to become citizens trained in the democratic process, they must have rights "broadly analogous to those of adult citizens. In this basic sense, students are entitled to freedom of expression, of assembly, of petition, and of conscience, and to due process and equal treatment under the law."[9] Obviously the exercise of these rights may conflict with the interests of the school. It is here that legal formulas have developed to protect the interests of all parties concerned.

The judicial safeguards that will be discussed in some detail apply only in a disciplinary proceeding in which the student may be suspended or expelled, or in which he may be deprived of some other important and substantial right. The student who is not paying attention in class, or who is unruly or rude, may be dealt with summarily. Also, the courts will generally be concerned only with whether the *proceeding itself* was basically fair. In other words, in most cases the question is not whether the action of the school in disciplining the student was right or wrong. Rather, the question is whether the proceeding itself satisfies the minimum requirements of due process of law under the Fourteenth Amendment.

Procedural Requirements in Disciplinary Proceedings

One of the leading cases in the area of student rights is *Dixon v. Alabama State Board of Education*.[10] The court specifically outlined the elements necessary to accord due process of law in student disciplinary proceedings.

> [W]e state our views on the nature of the notice and hearing required by due process prior to expulsion from a state college or university. . . . The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case. . . . [A] hearing which gives the . . . administrative authority of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. . . . [T]he rudiments of an ad-

4. See "Reasonable Rules, Reasonably Enforced—Guidelines for University Disciplinary Proceedings," 53 MINN. L. REV. 301, 305-10 (1968).

5. N. C. CONST. Art. IX, § 9.

6. N.C. GEN. STAT. § 115-146.

7. *Ibid.*

8. *Op. cit. supra* note 4 at 310-12.

9. AMERICAN CIVIL LIBERTIES UNION, ACADEMIC FREEDOM IN THE SECONDARY SCHOOLS (February, 1968), pp. 9-10.

10. 294 F.2d 150 (5th Cir. 1961).

versary proceeding may be preserved without encroaching upon the interests of the college . . . . [T]he student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present. . . his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf.[11]

The views of the court are addressed to a state college or university, but the requirements are generally applicable to secondary school education.

While the *Dixon* case outlined the basic elements of due process in student disciplinary proceedings, several recent cases have expanded and, in some instances, redefined these elements. The various elements of due process will be discussed in some detail below.

● *Notice.* Recent cases have held that the notice to the student must be a written notice, and it must be served upon him at least three to ten days prior to the actual disciplinary proceedings. The length of the period of notice is problematical. Since the purpose of notice is to alert the student to the charges against him and to give him an opportunity to prepare a defense, the longer the period the better. Some authorities have indicated a minimum period of one week, but it is believed a three-day period would pass muster from the constitutional standpoint. Certainly the student should not be served with notice and tried the same day. The notice must contain a recital of the factual allegations and the precise charge.[12] It must refer to a specific rule or regulation which has been violated.

● *Promulgation of Regulations.* One aspect of notice to the student is that he must be apprised in advance of his actions of just what conduct is prohibited. As the court stated in *Zanders v. Louisiana State Board of Education*,[13] it is recommended that "disciplinary rules and regulations adopted by a school board should be set forth in writing and promulgated in such manner as to reach all parties subjected to their effects." In other words, telling a student that certain past conduct justifies disciplinary action will not do unless the student had reasonable advance notice that the conduct would subject him to disciplinary action. Moreover, the prohibited conduct may not be outlined in vague and general terms, or else the rule will be subject to attack on the ground of vagueness. For example, a rule authorizing dismissal for "conduct unbecoming a student" would assuredly not impart notice as to the exact type of conduct that would invoke disciplinary action. While school regulations may not be held to the standards of draftsmanship and precision required of a criminal statute, nevertheless the rules and regulations governing student conduct and discipline should be stated with as much clarity and detail as possible.

● *Hearing.* The hearing required need not be a full-blown adversary judicial proceeding like that in a court of law. On the other hand, a formal meeting at which both the student and the complaining teacher or other school official or other complaining student have the opportunity to express their views and present each side of the controversy would seem essential. It does not appear necessary that the hearing be public, because public hearings might disrupt the educational process.

The makeup of the hearing board has been the subject of some decisions. While writers have usually suggested that the hearing board should consist of students and faculty, this requirement has not been enforced by the courts. The courts have indicated, however, that the hearing board should not include the administrator or official directly concerned in bringing charges against the student. In other words, it should be impartial.

The hearing need not be conducted like a trial. The student should, however, be given the opportunity to present witnesses in his own behalf, and it is clear that he should have the right to confront the person accusing him. Also, most courts have permitted the student to question or cross-examine his accuser.

Opinion on whether the student is entitled to have counsel represent him at the hearing conflicts. A district court decision in West Virginia held that the student was not entitled to assistance by counsel in disciplinary proceedings,[14] but this decision is probably in the minority. Therefore, if a student wishes to have an attorney represent him, it would be advisable to permit him to do so. It is believed that the presence of attorneys at a hearing would tend to place the proceeding in an adversary posture. Ideally, the hearing should be conducted on the basis of helping and counseling the student. Therefore, it is recommended that the use of attorneys at these hearings should not be encouraged. It should be clear that if the student insists upon having an attorney, counsel for the school board should also be present.

The requirement of a hearing applies only when student discipline is involved. Decisions on the student's academic performance are not suited to determination by hearing. These are best left to academic experts. Hence, if a student is expelled or suspended for making failing grades, no hearing is required. However, if there were blatant unfairness or discrimination in such a case, the student might well be entitled to judicial review of the school's action.[15]

● *Inspection of Evidence.* The courts will require that a student be "permitted to inspect in advance

11. *Id.* at 158-59.
12. Esteban v. Central Mo. State College, 277 F. Supp. 649 (W.D. Mo. 1968).
13. 281 F. Supp. 747 (W.D. La. 1968).
14. Barker v. Hardway, 283 F. Supp 228 (S.D. W. Va., 1968).
15. *Developments In The Law—Academic Freedom*, 81 HARV. L. R. 1045, 1139 (1968).

of any . . . hearing any affidavits or exhibits which the college intends to submit at the hearing."[16] This should include not only the evidence to be used against the student at the hearing, but also a list of witnesses and copies of their complaints and statements.

These points, then, constitute the basic ground rules that must be followed by the school in disciplinary proceedings of a serious nature against the student.[17] For minor infractions, summary handling would be warranted. These more elaborate procedural safeguards should be utilized only when the consequences of an adverse determination could be most serious to the student—for example, expulsion, suspension, or dismissal.

It should be emphasized that these procedural steps presuppose the enforcement of a valid rule or regulation. While the courts are loath to interfere in internal school disciplinary problems, nevertheless there are additional constitutional restrictions upon school regulation of individual conduct. Therefore, we now turn to substantive limitations upon school rules and regulations.

Substantive Limitations on Rules and Regulations

At the outset the point should be made that there are some "offenses" that are unique to educational institutions. For example, failure to maintain satisfactory academic progress, cheating on examinations, and plagiarism are not offenses except in the academic world. The handling of these offenses or, more properly, problems will be left largely to the discretion of the educator. The problem area insofar as substantive limitations on school rules is concerned is the situation in which a student is disciplined by the school for a nonacademic offense. It is here that the rule-making power of school authorities is circumscribed by constitutional limitations.

In the first place, it is clear, both in this area and in other areas of constitutional law, that the enjoyment of a benefit or privilege provided by the government may not be conditioned upon the waiver or relinquishment of a constitutional right absent *overriding* countervailing interests. In substance, this means that neither the state nor the school authorities may condition attendance in school upon the abandonment of a constitutionally protected right, unless there is some countervailing public interest that justifies abrogation of the constitutional right. For example, the school authorities clearly could not prohibit students from attending a political rally off school grounds, because this would condition school attendance upon the relinquishment of the protections of freedom of speech and of association guaranteed by the First Amendment.[18] In *Dickey v. Alabama State Board of Education*,[19] a student editor was suspended for attempting to publish an editorial that was offensive to his faculty adviser. While he was ostensibly suspended for "insubordination," the rule actually violated was one prohibiting editorial criticism of officers of the state. The court ordered reinstatement of the student and held that the state could not require a college student to forego his constitutional right to freedom of speech as a condition to his attending his state-supported institution.

On the other hand, when the exercise of student freedom would materially and substantially interfere with the requirements of order and discipline in the operation of the school, restrictions upon student rights may validly be imposed. In *Goldberg v. Regents of the University of California*,[20] members of a "Filthy Speech Movement" were suspended for conducting a very obscene and disorderly rally on campus. The suspension of these students was upheld because the rally was calculated to disrupt the educational functions of the university. In *Barker v. Hardway*,[21] West Virginia students disrupted a football game and rocked and hit the car of the college president. They were suspended for what a lower federal court judge called a "riotous" protest. Mr. Justice Fortas, concurring in denying the students' request for Supreme Court review, stated: "The petitioners were suspended from college not for expressing their opinions on a matter of substance, but for violent and destructive interference with the rights of others."[22] As *The News and Observer's* editorial said, the Court's message is that "freedom of speech doesn't mean free-for-alls. . . ."

In *Hammond v. South Carolina State College*,[23] a college rule prohibited all parades, celebrations, and demonstrations without prior approval of administrative officials. Student violators of the rule were reinstated because the rule was incompatible with the constitutional guaranty of freedom of speech. The court was particularly concerned that this was a *prior* restraint on rights guaranteed by the First Amendment.

A particularly important case in this area is *Tinker v. Des Moines Independent Community School District*, decided by the United States Supreme Court on February 24, 1969.[24] Here two high school students and one junior high school student wore black arm bands to school to publicize their objections to the war in Vietnam. When the principals of the schools became aware of this plan, a policy was adopted that any student wearing an arm band to school would be asked to remove it; if he did not, he would be suspended. The United States Supreme Court held that the three students suspended pursuant to this

16. Esteban v. Central Mo. State College, 277 F. Supp. 649, 651 (W.D. Mo., 1968).
17. See *op. cit. supra* note 4 at 325-26 for a summary of the requirements of procedural due process.
18. *Id.* at 327.
19. 273 F. Supp. 613 (M.D. Ala. 1967).
20. 57 CAL. RPTR. 463 (Ct. App. 1967).
21. 283 F. Supp. 228 (S.D. W. Va. 1968).
22. 37 U. S. LAW WEEK 3335 (March 11, 1969).
23. 272 F. Supp. 949 (D. S.C. 1967).
24. 37 U. S. LAW WEEK 4121 (Feb. 24, 1969).

policy had been denied their constitutional right of freedom of expression. The Court noted that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." School officials here sought to ban and to punish students for "silent, passive, expression of opinion, unaccompanied by any disorder or disturbance . . ." While school authorities feared a disturbance, to justify prohibition of expression of opinion the state must be able to show that its action was caused by more than "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." The Court emphasized that any conduct by a student which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guaranty of freedom of speech." There were two dissents to this decision. Mr. Justice Black felt this case marked the beginning of a "new revolutionary era of permissiveness in this country fostered by the judiciary." In his view, public school students are not sent to schools "at public expense to broadcast political or any other views to educate and inform the public." He felt that wearing of the arm bands was done to distract the attention of other students and that this was a disruptive influence sufficient to warrant restrictions upon freedom of expression.

The equal protection clause of the Fourteenth Amendment is yet another constitutional safeguard to the rights of students. Many writers have taken the position that the equal protection clause requires that the rule-making power of a school be used only to control conduct within the scope of school authority. For example, a student could not be constitutionally expelled for violation of a criminal statute unless he has also abused a privilege extended to him by the school. Suppose, for example, that a student was convicted of violating a traffic ordinance. Surely this would not justify dimissal from school. On the other hand, suppose a school rule prohibited demonstrations directly interfering with classroom activities on the school grounds. Just as clearly, violation of this rule would justify dismissal. Between these extremes lie many gray or problem areas. One example suggested is the theft of a book. A school regulation might prohibit theft of school library books or equipment. Such a theft might constitute a material interference with the educational opportunity of others. Hence, a rule providing for dismissal in such a case would probably be valid. On the other hand, suppose the book were stolen from a downtown book store. This would not interfere with the educational mission of the school. The position is taken that disciplinary action by the school based on the criminal conviction of theft from an off-campus book store would not be permitted.[25] A more controversial situation is the off-campus morality of students. If the student's off-campus conduct has no tendency to disrupt or to interfere with the educational process, violation of criminal statutes does not warrant disciplinary action by the school. This is a matter between the student and civil authorities.

Stated in simplest terms, a student should not be inflicted with multiple punishments for a single offense, unless the offense interferes with the school's basic educational purpose and mission. It has been said that "the best way students can learn responsible citizenship is by being responsible for their actions. Thus, if students violate the law, they should be punished by the civil authorities, not the university. Consistent adherence to such a policy would, in turn, teach the nonacademic community that the university cannot and will not assume responsibility for the actions of its students outside the educational environment."[26] Another writer says:

> The student's conduct off campus should justify expulsion only if it indicates his unfitness to be a member of the academic community. School discipline should have as its only aim the deterrence of conduct, or removal of persons, harmful to the university, and not mere duplication of civil and criminal penalties.[27]

This position has not found unanimous favor with the courts. Of particular concern are married students, pregnant students, and unwed mothers. To permit an unwed mother to continue in school might taint her teenage friends and associates. A federal judge in Mississippi sustained exclusion of an unwed mother on the ground, among others, that she was a "threat to the moral health" of other teenage girls.[28] This is a minority view. The Supreme Court of Kansas upheld the right of a mother to attend school when her child was conceived out of wedlock but born after the marriage. In this situation, said the court, she should not be prevented from "gaining an education which would better fit her to meet the problems of life."[29] Exclusion of married students solely because of their marital status would probably not be sustained. After all, teenage marriage with parental consent is recognized in most states. Whether married students may be deprived of participation in extracurricular activities because of their marital status would depend, in the opinion of one writer, upon whether "there exists a *reasonable likelihood* that participation of these students in such activities would lead to the serious moral pollution of their classmates that the [school] board has a right to prevent."[30] It is most doubtful under present law that married students may be deprived of participation in extracurricular activities.

25. *Op. cit. supra* note 4 at 330, 337 (note 179).

26. *Id.* at 339.

27. *Op. cit. supra* note 15 at 1132.

28. Perry v. Grenada, Miss., Separate School Dist. No. W. C. 6736 (N.D. Miss., December 27, 1967).

29. Nutt v. Board of Educ., 128 Kan. 507, 509, 278 Pac. 1065, 1066 (1929).

30. Goldstein, *The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis*, 117 U. Pa. L. Rev. 373, 410 (1969).

Another area of current concern is the regulation of personal appearance. The position of many is that education is too important to be granted or denied on the basis of standards of personal appearance. "As long as a student's appearance does not, *in fact*, disrupt the educational process, or constitute a threat to safety, it should be no concern of the school. Dress and personal adornment are forms of self-expression; the freedom of personal preference should be guaranteed along with other liberties."[31] Judicial opinion on the question is divided. In *Ferrell v. Dallas Independent School District*,[32] suit was brought against a school district to force the reinstatement of three male students who failed to comply with school regulations banning long hair. The students were members of a musical group and each had what is commonly known as a "Beatle"-type haircut. The principal of the school felt that the length and style of the boys' hair caused commotion, trouble, distraction, and disturbance in the school. Therefore, he told them that they would have to have a haircut before they would be permitted to attend school. There was testimony that problems had been caused in school by the hair styles. Obscene language had been used, the boys had been challenged to fight, and they had been told that "the girl's restroom is right down the hall." Several students sporting "Beatle" haircuts gave conflicting testimony. They stated that they had encountered no problems with regard to their hair. The court assumed, but did not decide, that one's hair style is a constitutionally protected *mode of expression*. It was held that the state could constitutionally prohibit this type of expression in these circumstances on the grounds that the regulation was reasonably calculated to maintain school discipline and prevent disruptions and interferences with the educational process. Other judges take a different view. Judge Tuttle, dissenting in the *Ferrell* case, stated that this was an utterly unreasonable classification of students by the state in granting or denying the right of a public education. These students were barred because it was anticipated that their fellow students would "do things that would disrupt the serenity or calm of the school. It is these acts that should be prohibited; not the expressions of individuality by the suspended students," said Judge Tuttle. While the Supreme Court of the United States refused to review the *Ferrell* decision, Mr. Justice Douglas would rule against these school authorities. In his view, constitutional guarantees permit idiosyncrasies to flourish, "especially when they concern the image of one's personality and his philosophy toward government and his fellowmen."

In *Breen v. Cahl*,[33] the court held that a school regulation forbidding high school students' long hair violated the Fourteenth Amendment. The court noted that adult freedom to wear one's hair at a certain length or to wear a beard is constitutionally protected, even though it expresses nothing but individual taste. The court felt that the same freedom should be accorded students. There was no direct testimony that any distractions had occurred, and the court firmly rejected the argument that discipline alone should justify regulation of hair length.[34]

Another sensitive area is the regulation of the length of girl students' skirts. Certainly school authorities may regulate obscene dress or dress that is clearly inappropriate (e.g., bathing suits in classes). The question is whether a school board has power to impose *reasonable* dress regulations. At least one author has concluded that, while it is a close case, "on balance I would conclude that school boards do have the power to adopt reasonable restrictions on dress as an education per se device."[35] The argument is that skirts may be quickly changed for out-of-school activity, while one's hair style cannot; regulations governing dress in public places such as restaurants, are fairly common; and finally, the wearing of extremely short skirts or other extreme clothing may certainly be provocative and disruptive of the educational process. Hence, this is an area in which the school's legitimate educational concerns should outweigh the student's personal tastes. The difficult question what is a "reasonable" regulation (i.e., how short is too short?) remains, and it defies concrete solution. (One regulation with which the writer is familiar requires skirts to be worn in the "vicinity of the knee.") It would seem that the administration's discretion should govern.

One last comment on substantive limitations on school regulations in passing: school authorities should not impose a purely academic sanction for disciplinary purposes. For example, a reduction in an academic grade because of unruly conduct is unwise and, in all probability, illegal. While no authority on this point has been found, it is believed that this practice should definitely be prohibited.

Conclusion

The evolution of student rights and the judicial protection of these rights will be regarded by many as a mixed blessing at best and at worst as a serious interference with internal school discipline and affairs. It should be remembered, however, that the schools must have, and they do have, plenary authority to regulate conduct calculated to cause disorder and interfere with educational functions. In secondary schools, discipline and order are more difficult to maintain than in colleges and universities because of the students' lack of maturity and responsibility.

31. *Op. cit supra* note 9.
32. 392 F.2d 697 (5th Cir. 1968).
33. 37 U. S. Law Week 2506 (D.C. W. Wis., February 20, 1969).
34. *Supra* note 15 at 1154. See also Goldstein, *op. cit. supra* note 30 at 400, where the author states that "on the education per se rationale, the balance is clearly against school board power to dictate the length of boys' hair."
35. *Id.* at 401.

It can be argued with force, therefore, that the rights of students in secondary schools should be more narrowly defined and the authority and discretion of school authorities correspondingly more broadly defined in public schools below the college level. This may well be the explanation for court decisions upholding prohibitions on "Beatle" haircuts, high school secret societies, and the participation of married students in extracurricular activities upon a showing of need.[36] The precise limits are not yet clear and probably will not be for many years in this evolving area of law.

The primary concern of the courts is that students be fairly treated and that they be accorded *minimum* standards of due process of law. They are not to be treated as preferred citizens. But neither are they to be relegated to a "second class" status of citizenship. It would be a tragic mistake to place unlimited and unfettered power and discretion in the hands of school authorities over the lives of our children, because school authorities, like everyone else, are human. They are capable of prejudice, of unfairness, and of errors in judgment. We must protect our children and their opportunity for an education that is vital to their lives against occasional injustice at the hands of an errant school official. The pendulum may swing back and forth between too much permissiveness on the one hand and too many restrictions and controls on the other, but we must not forget the central point: the protection of the individual against unfair and unreasonable action.

If we take this point of view, we should find it easy to bring our school procedures in line with these developing constitutional concepts. At the very minimum, each school administrative unit should see that reasonable regulations governing student conduct are disseminated to all students, and that in disciplinary proceedings that may lead to dismissal, suspension, expulsion, or the denial of some other important substantive right, the student is accorded notice and a hearing. This should not prove unduly burdensome, and may in fact prove highly beneficial to all concerned.

36. *Supra* note 15 at 1154.

. . . a leadership workshop for school board members

Together Dr. Neill H. Tracy (left), Professor of Education at the University of North Carolina at Chapel Hill, and Jerome H. Melton (right), Assistant Superintendent of the State Department of Public Instruction, presented a session on "Long-Range Planning: The Need to Look Ahead" at the leadership workshop for school board members held at the Institute on May 2-3.

Governmental Administration of Health Systems

SOME GOOD POINTS AND SOME BAD

by David G. Warren

[*Editor's Note: The author is a member of the Institute of Government staff. His field is health law. This article is from a speech to the Southern Regional Legislative Seminar on State Health Problems, sponsored by the Council of State Governments on April 10-12, 1969, in Atlanta.*]

The premise with which we begin is that there are governmentally administered health systems in the several southern states and that there are bad points and good points in the administration of each of them. As we must realize, however, this is a false premise from the start: in no state does a health system truly exist yet—only fragmented health programs, variously managed and singularly uncoordinated. We might call governmental health programs in the various states "non-systems."

Multiplicity of Health Efforts

It is true that today nearly everybody accepts the idea that organized public health services (and mental health services) are a fundamental responsibility of government in our society. Government at every level is now engaged in some part of the work—*federal*, through the USPHS, NIH, OEO, and many, many agencies either directly or indirectly; *states*, through state boards of health, and mental health, health profession licensing agencies, health facilities, regulatory bodies, vocational rehabilitation agencies, health planning agencies, etc.; *local governments*, through district, county, and municipal health departments, community mental health centers, alcoholic information centers, and some programs in welfare departments. There are in addition many special health, or health-related, programs and projects cutting across all three levels plus the substantial involvement of voluntary organizations in official, semi-official, nonofficial, and even pseudo-official ways (foundations, Lions Clubs, ministerial associations, women's organizations, etc.).

Herein lies one of the most recognizable symptoms of administrative maladies: the wildly overlapping, conflicting, uncoordinated, duplicative federal, state and local efforts in separate agencies too often result in inefficient and shamefully ineffective use of existing health resources (men, money, materials, and time), as well as the resulting confusion of the ordinary citizen-patient. We hear about the "pillar to post syndrome" that some suffer in seeking help, by being referred from agency to agency and back again. And the administrator himself may be more confused than the recipients of the program. There are now, for example, about four hundred federal grant-in-aid programs, including a couple of dozen directly relating to health.

Failure of Health Programs

On the other hand, while there are many duplicative, overlapping efforts in governmentally administered health programs, there are countless persons who are not being reached and problems not being met. Despite the attractive menu of programs, the service is poor. Why? Because of failure in the design or scope of the program available to the administrator to reach the needy persons? Because of failure of program administrators to find all the persons the program was designed for? Some of the poor service is a result of inadequate staff (including incompetent administrators), lack of communication with the object group, or resistance by the object group to participation (not everybody wants free food stamps).

There is also a strange reluctance, or ineptness, in administrators (and/or legislators) to implement available federal schemes. North Carolina and a few other states have not yet become engaged

in Medicaid, though the deadline is only seven months away.

There are also other reasons that many people's health needs are not being served: perhaps the intended exclusion of groups from coverage under the programs for political or pragmatic reasons, or assignment of low priorities to programs, resulting in nonavailability of funds for implementation or, in the case of some intergovernmental programs, the required matching share (either at the local level or the state level). The administrator can influence both of these factors but the legislator usually holds the true key.

Comprehensive Health Planning

Now for a clear understatement: all of this indicates the need for some planning—*comprehensive health planning*—for determining the demand, direction, degree and timing of governmental action in the health sphere. The peoples' health has traditionally involved a public/private division of function—governmental concern for public health matters and private responsibility for personal health care. But it is now seen by anyone who looks at the situation as demanding a different mix. Comprehensive planning is needed as a vehicle for pointing out better combinations of public/private activity. Thus, comprehensive health planning must involve the non-governmental health administrators. Nevertheless, the immediate payoff for such planning will be in the better management of existing governmental programs and in the design and enactment of more effective health projects.

Most states now have comprehensive health planning agencies. Some are simply on paper and perhaps too much identified with federal promotions, but they are generally directed and staffed by state employees and involve citizens on a statewide basis through an advisory council. These efforts are, or can be, supplemented by local health planning councils. The goals? Establishing a system for data collection and analysis of the characteristics and health problems of the entire population of the state and the availability and utilization of health services, facilities, and manpower. This is commendable and common sense.

Lack of Health Planning

But we are way behind even before we begin. All the states have programs, policies, and projects enacted or proposed, or being administered, which are based on no hard data (not even soft data in some cases). We have hospitals established where the needs are not the greatest. We have medical schools proposed without sufficient evaluation of alternative methods of producing more physicians. We have a dozen dumps in a county where one landfill operation would do the trick. We have a health director not fully occupied in serving one county when adjacent counties have none.

These may be acute symptoms of a chronic lack of health planning in the past, but admittedly *health planning* will *not* eliminate or solve *all* the problems or result in perfect distribution of resources. Nevertheless health planning on a comprehensive, continuing scale is necessary—indeed crucial—to the successful administration of even *existing* health programs.

The Benefits of Planning

The *legislature* needs to have good recommendations as to goals, priorities, plans, and policies for developing and then improving a health care system for the state. The *administrator* needs the benefit of coordination of his efforts with others, evaluation of programs and more information on which to act. If we cannot hire better administrators, we need at least to help the ones we have to do a better job. A high priority then, because of their present absence, goes to active, well-supported, competently staffed health planning offices within the state administrative structure, in addition to whatever efforts are made elsewhere, in order to correct one of the wrongs in existing governmental administration.

Planning in fact can result directly and quickly in an improved system. In the far western tip of North Carolina, a seven-county phenomenon has developed that calls itself the State of Franklin. It is a relatively poor area in Appalachia with scattered resources and population. But it has, through local planning efforts with federal and state (including university) assistance, identified its health needs and resources and is seeking to have an accredited medical care system composed of the aggregate collection of facilities (hospital beds, labs, personnel, etc.) and services available in the region through coordination.

Independence vs. Coordination

This favorable development points up the dilemma elsewhere of independence versus cooperation that plagues the administration of health programs in licensing boards, agencies, counties, cities, districts, etc. The agency in North Carolina that administers Hill-Burton funds for health facilities construction reports that no counties have been able to get together to jointly finance a hospital. These *is* some authorization to do so in the statutes. There *is* desire on the part of the county with a hospital to share the financial burden of expansion of facilities with neighboring counties with smaller or no facilities. But there is no state program for promoting or requiring the development of regional or district hospitals. Each county or community wants its own hospital, complete with cobalt machine. Hospitals are not yet considered public utilities for which service areas may be assigned, rates set, and quality standardized. But the hospital as a public utility is not inconceivable.

A similar problem is seen in the administration of the traditional

public health system. Where counties or cities have their own local department, there is resistance against districting. But yet over half of the 100 North Carolina counties are served by some form of local district arrangement, with varying degrees of coordination. In states where the state health department controls the public health system there are still problems with county lines and with county-city jealousies. Thus, one of the hurdles that blocks the effective administration of the health programs in most states is the imaginary but undeniable wall called "city limits" or "county line." If we cannot break down this barrier, perhaps we must use the county as part of a larger entity called something else.

What some areas have discovered, sometimes painfully, is that functions *can* be shared *without* the loss of identity. While two energetic county-city government total merger attempts have failed in North Carolina and recently one in Georgia (though Tennessee and Florida have examples of successes), many communities are beginning to administer some programs jointly. For example, most of the community mental health centers, in varying stages of planning and development in North Carolina, are multi-county. (Perhaps with the incentive of additional federal support?) There are indications not of the elimination of county lines but of sharing of responsibilities. This is one of the good signs in governmental administration.

Some Specific Health Problems

Skipping around to a few good and bad points of state and local health programs, we find a number of obvious examples of hopeful developments and distressing practices:

- Lack of full utilization of state funds by medical and para-medical students because of the obligation to practice in rural areas; but taxpayers want some device to get something in return from the governmental medical loan program.

- State mental institutions need modernization, more staff, equipment, but mental health administrators are now realizing that better prospects for the return of sick persons to "normalcy" lie in local treatment, except that local facilities are sorely lacking as well.

- Alcoholics had traditionally been considered a criminal problem (if drunk in public) until the courts suggested alcoholism is a health management problem. If not a criminal problem, then the state's prison should not be used as a means of dealing with the chronic alcoholic; but what if it has a good medical staff, or AA program? The prisoner still has to go home someday if he is to be returned to normal. Therefore there is a need for new emphasis on local alcoholism facilities and programs—the community mental health center, detoxification center, hospitals, etc.

- State licensing boards need balance between control and independence in order to carry out state policy, but there is always a danger that they will reinforce medical monopolies.

- Public health department programs have come a long way from the time when public health meant simply dealing with epidemics, nuisances, and similar urgent threats to community health, usually after they had begun. Prevention is now the policy—through maternal and child health clinics, multiphasic screening programs, sanitation inspections, and innoculation programs. All these reach many citizens. But states are not providing financial support to local public health commensurate with state concern (e.g., in North Carolina only 15% of the local health budget is state money), and some local health departments are getting only what the county is paying for: old, retired, non-public health trained medical doctors. One new development is the training of lay health administrators. They are now running health departments in several counties. This also slows the drain off from private practice of needed practitioners.

Cooperation: A Function of Planning

No state can expect to administer totally from the capital all the government health programs. Local units are essential; community needs must be recognized and met, and local administrators are in the best position to do so. While local administrators have the same suspicions about the state capital that state administrators have about Washington, they must realize they are on the same team so far as the consumer sees it. And some programs defy separation. Air pollution control cannot be only a state responsibility; local personnel (in health departments, city engineering departments, etc.) must be trained and used. The state control agency can certify programs but it cannot put itself in every city, village, and hamlet.

This same problem of separation and distrust manifests itself in the legislative arena. The administrator of health or any other programs is fearful of the power of the politician to cut his appropriations or transfer his functions. The legislator is skeptical of the demand of the bureaucrat for more authority or money. Both should, for the people's health, play their respective roles of general policy-making and health policy-administering. But in order to do so, both need the benefits of comprehensive health planning.

In establishing legislative guidelines as well as in carrying out health programs, the facts and figures, the methods and means, and the goals and objectives presented by the planning process are necessary if an effective health system is to be achieved.

HELPING TO MAKE MINORITY-GROUP MEMBERS OF PUBLIC BOARDS EFFECTIVE

by Elmer Oettinger

[*Editor's Note: The author's fields at the Institute include communications and public relations.*]

It isn't easy to serve effectively on a public board. New members, especially, have trouble making their voices heard and their hands felt. They must master board responsibilities and relationships, internal and external. They must learn the inside of problems and the many sides of human motivations. More often than not, they come with little if any training or preparation for their new roles. Substantive concepts and procedures are new and strange. So is the assumption of public power and responsibility. The demands of public service cause problems for almost any newcomer. They create especial problems for members from minority groups.

New Type of Leadership Training Institute

Two recent leadership training institutes in Charlotte have pointed a way to reach new Negro board members with training programs specifically designed to improve their governmental knowledge and effectiveness. The two institutes were conducted on the campus of Johnson C. Smith University in September and October, 1968, and in February and March, 1969. Twenty-five new board members were registered for the first session, fifty-three for the second. Each institute consisted of six two-hour programs conducted on successive Monday nights. So great was the demand for additional sessions in certain subjects that two more programs for twenty-five selected board members from the second institute were held in May, 1969.

A careful evaluation of the program has led to two general conclusions:

(1) This type of program can be feasible and effective in upgrading the capacities for effective participation of minority-group board members.

(2) An extension of similar training institutes needs to be initiated in other communities where minority groups recently have achieved board representation.

The Charlotte program came out of the mind and initiative of Professor William C. Bluford, director of the office of community services at Johnson C. Smith University. Bluford brought his ideas to the Institute of Government and requested assistance in bringing such a program to realization. The Institute felt the idea had merit. I became consultant for the project.

Planning the Training Program

Our first step was to think through the goals and needs of the proposed training institute and to give priorities to subject matter most relevant to the needs of participants. Then we had to survey, and begin putting together, human and other resources in a program pattern. It was decided that the course should include information, background, and workshops in both substantive and procedural aspects of local government and board functioning. It was apparent that our "students" would need to know as much as possible about board responsibilities, applicable law, parliamentary procedure, human motivations, member relationships, and resource materials. More than most members, they needed to establish a base of self-confidence in their ability to understand governmental problems, communicate with other board members, and effectively motivate change in what some tend to consider a "stacked deck" dealt and shuffled by "the establishment." It was imperative that rapport be established between the institute

The Institute of Government Cooperates with Johnson C. Smith University in an Unusual Program.

"faculty" and "student" board members from the outset of each session. With these factors in mind, the program was set.

The first evening was devoted to "Elementary Parliamentary Procedure and the Role and Responsibility of Board Members." Dr. S. W. Byuarm, a psychologist, and C. D. Rippy, a political scientist, both of Johnson C. Smith University, conducted this opening session. A week later Charles A. Lowe, a long-time public official and civic leader in Charlotte, analyzed "Preparation for Meetings: Principles and Guidelines," and Dr. Byuarm and Mr. Rippy discussed "Discovery and Use of Resource Materials." The third meeting saw Professor Warren J. Wicker of the Institute of Government delve into "Local Government psychologist, and I conducted a "Demonnext Monday Richard McMahon, the Institute of Government psychologist, and I conducted a "Demonstration Session with Emphasis on Role Playing and Communication." The fifth week the group was afforded an observation session at a meeting of the Charlotte Bureau on Employment, Common Training, and Placement, Inc. The final session dealt with "Summary and Evaluation" of the observation meeting and the entire leadership training institute. McMahon and I, along with Bluford, had charge of that one. The same program order was followed for the winter institute, except that Professor Dorothy J. Kiester joined Bluford and me for the wrap-up. The two extra May sessions were a "Workshop on Parliamentary Procedure," which I conducted, and an evening on "Problem Solving" with Miss Kiester.

The participants did not include members of major governing boards. Those attending the first leadership training institute served on such boards as the Charlotte Area Fund, Model Cities Commission, Opportunity Industrial Center, Domestics United, parent-teacher associations, and the Charlotte Bureau on Employment, Training, and Placement. One member of the city school board attended the sessions. She was the only white person among the registrants. Individual and group participation was regular and impressive; the desire to learn and grow was everywhere; involvement was intense and total.

Funding the Program

Funding for the program was obtained through the North Carolina Board of Higher Education under provisions of Title I of the Higher Education Act of 1965. In the proposal for "A Community Service Program" and "A Leadership Training Program for Board and Commission Members in the Charlotte-Mecklenburg Area," Bluford wrote:

> Citizens are appointed or elected to board and commissions in order that some community service may be more effectively rendered. The participation of many members of these boards and commissions is ineffective because the members lack the knowledge, skills, and attitudes which are basic to effective group participation. This ineffectiveness may be due, in part, to one or all of the following: lack of knowledge of and the use of elementary group procedures; a lack of skill in discovery and use of resource materials and persons; a lack of skill in the preparation and presentation of their own ideas. Too, the only preparation that some members make for a meeting is to be present. These, then, are some of the factors which contribute to the problem of ineffective participation on the part of members in the work of boards and commissions. The problem has become more significant because of the practice today of electing and appointing representatives of deprived areas to many important boards and commissions. The effectiveness of boards and commissions is limited because many of their members lack the training and sophistication for proper participation. . . .
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> In the preparation of this proposal we have conferred here with representatives of the Charlotte Area Fund and our Mayor. In Chapel Hill we conferred with representatives of the Institute of Government. They all recognize the significance of the problem, made suggestions as to contents of this proposal and promised assistance in its implementation.
>
> The Institute of Government reports it knows of no program designed to train the board members indicated in this proposal. The Institute considered the program unique. . . .
>
> The specific objective of this program is to aid selected board and commission members in the acquiring of knowledge and skills which will make for more effective participation in the work of the agencies which they serve. We expect that those who attend this Institute will improve their knowledge of and skill in the use of basic parliamentary procedure. They will develop principles and guidelines that are basic to the effective participation in the work of any board or commission. We hope to increase their skill and discovery and use of resource materials and persons. We expect to improve their skill in defining, refining, and researching ideas or proposals which they present to their boards or commissions.

These hopes and expectations were substantial. Yet the Leadership Training Institute appeared to accomplish more than was set forth in the proposal, more perhaps than the fondest wish of the sponsors. The role-playing and problem-solving conferences led to benefits in unanticipated degree through enhanced understanding of human motivations and their impact upon board performance. The opportunity to attend and observe the meeting of another board and then to discuss and evaluate the meeting from the standpoints of knowledge and information obtained at earlier sessions proved invaluable in providing fresh insight and competence. Side benefits came from new awareness of individual predispositions, strengths, weaknesses, and potential for effective board participation.

The makeup of the group included businessmen, ministers, public school teachers, and domesties. There was even one radio announcer, a man held in esteem by his peers. The group was lacking doctors, lawyers, engineers, or other professional people. The one requirement for acceptance in the course was that the individual had been appointed or elected (in almost all cases, those attending were appointed) to a public board in Charlotte or Mecklenburg County and be serving or about to serve on that board.

A Varied Methodology

The teaching and training techniques employed in the session were many and varied. In addition to the traditional lecture method, leaders used panels, round tables, debates, question-answer, and group discussions. Beyond that, they brought the group together in the performance of playlets in the role-playing and parliamentary procedure sessions, respectively. Study materials were integral parts of almost every session, providing not only guides for notes and discussion during the sessions but also bookshelf items for continued future reference. For example, a table setting forth the precedence of motions, points, and questions in parliamentary procedure proved immensely helpful and popular. So did an extensive questionnaire providing guides to observation of board meetings. And a coupling of explanation with mimeographed character sketches brought concepts of role-playing and problem-solving into focus. It was possible to sense the excitement of new recognitions when such terms as "gate-keeping" were used for the first time. Until then, many had sensed only vaguely, if at all, the functions required of and served by various board members in assuming leadership in discussions, holding the gate open for others to participate effectively (thus assuring a democratic process), and summarizing the nature or the status of business before the board. Although the group was entirely adult, ranging in age from about twenty-five to sixty-five, their enthusiasm had the freshness of youth. Their thinking, though, was adult. Minds and hearts expanded, almost visibly, as the mysteries of local government, parliamentary procedure, human psychology, and effective communication began to be transformed into clear and understandable combinations and configurations of fact, law, ideas, techniques, and sense. The burgeoning of a new trust and confidence in self and their ability to relate to board systems and procedures was evident.

Comments of the participants on evaluation sheets give some inkling of their first insights and appreciation of the opportunities provided by the program.

Evaluations by "Student" Board Members

Representative excerpts from the evaluations of the program by participants are revealing. One participating board member wrote: "It allowed me to see myself in the role of someone else, therefore strengthening my opinions of my own ideas and responsibilities to my board." "I have more confidence," said another, "and believe that I can do a better job." Others attributed increased confidence to "learning the function of organizations" "new ideas," and "to be natural." A general comment was: "The choice of instructors was excellent." There was also general agreement that "you get to know yourself and to know your fellow members."

Many comments were constructive, aimed at improving future institutes. "Give advance training for the next session," one person requested. "More meetings," asked another. Others suggested two sessions of observation rather than one, advance research by board members in preparation for the Institute, additional studies in the curriculum, and bringing the classes "out into the community where the people are." One potentially useful suggestion would have the class divided into smaller groups to observe different boards at work. This evaluator went on to say: "If the class [was] divided into small groups and observed several different meetings, the host board may not feel that it has to play act. . . . [It would have] the advantage of observing the mistakes or proper procedures of a good board meeting. . . . Several groups [could] cover several kinds of meetings and relate the ideas and experiences, thus broadening the group's learning."

What did group members wish to learn that they did not have an opportunity to study? More about the handling of questions that are never answered by the board. "Correct functions of an agency and a [*sic*] sole purpose of board members." ". . . [T]he flexibility of [parliamentary procedure] rules and regulations as applied to various boards." "How to avoid a riot or a mass misunderstanding of one or more groups." ". . . How to carry out a meeting in the correct order." These statements indicate that some members would like more training in depth in areas covered as well as in expansion of subject matter. Professor Bluford sees "a need for more sessions for each institute or a

reduction in the number such is dealt with." His own evaluation of "outstanding outcomes" include "the greater participation of those who have attended the session and the work of the board and a greater respect . . . for the 'frame' of reference."

Evaluation by the Program Director

In his evaluation of the institutes Bluford said:

> The purpose of this program was to aid selected board and commission members in the acquiring of knowledge and skills which will make for more effective participation in the work of the agencies which they serve. This type of program has become more significant because of the practice today of electing and appointing representatives of deprived areas to many important boards and commissions.
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> The boards selected the persons to attend these sessions.
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> The first Leadership Training Institute for six weekly sessions began on September 23, 1968 and ended on October 28, 1968. Thirty board members representing the Charlotte Area Fund, Domestics United, the Model Cities Planning Commission, the Opportunity Industrial Center and the Charlotte Bureau on Employment, Training and Placement participated. Twenty of these were in regular attendance and received certificates of merit. While the majority of the participants represented the "deprived" areas on their respective boards, nearly half of those in attendance represented the "advantage" sections of our community.
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> The chairman of the boards represented in the institute, the leadership called the results very effective. . . .
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> * * *
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> The sessions held in February and March, 1969. Seventy-nine persons attended one or more of the six sessions. Forty-seven attended four or more sessions. As you know, this was too many people. This was due, however, in a large measure to the effectiveness of the fall sessions and the fact that chairmen of boards and participants in the first sessions spoke so highly of their worth. You know that we took steps to keep the numbers small in the two "extra" sessions. In the number that registered for the February and March sessions, 39 were members of boards and commissions that are a part of the War on Poverty. Fifteen (15) were members or presidents of local P.T.A. groups and 25 represented a wide range of community organizations.

Personal Perspective

My own perspective cannot be fully objective. After all, in addition to frequent telephonic, written, and face-to-face consultations on various aspects of program philosophy and planning, I taught all or part of four of the twelve sessions. However, I was present for eight of the twelve sessions, including four in which I had opportunity to observe with considerable objectivity while others were teaching and leading. I saw opportunities for enhancing the program through a refinement of subject matter, treatment in greater depth, rearrangement of schedule, recourse to smaller group arrangements, and some shift in emphasis and methodology to meet individual and group needs better. Yet, over all, my impression was one of worth beyond easy estimation. The mere totality of individual and group involvement in most sessions alone brought dividends in dedication and growth rarely possible in large groups, and especially in groups of adults with variant education, experience, and needs.

The program left me with at least one strong conviction. Its worth demonstrates a need not alone for its continuation but for its extension to other communities in the state and beyond state borders. As I wrote Professor Bluford in response to his request for an evaluation: ". . . [T]his sort of program has merit sufficient for others to emulate in our state and nation." Perhaps "emulate" is an inadequate word. The need is to seize upon this kind of program, draw upon its lessons, and use it as a basis for creating other and better programs. As I see it, such a program gains from having a university or college base of operations. The availability of capable instruction and the atmosphere of academic freedom can contribute to the quality of the content and environment. It would be a mistake, though, not to recognize the availability of leadership for such a program among the ranks of public officials, present and former, at both local and state level. Certain benefits can attach simply from initiating and locating such programs in or near the centers of government at community level. But ultimately underscoring the need for and utility of such institutes is an incontestable and pervasive element in democratic government: the public interest. Not alone disadvantaged board members but the entire community stands to gain from the increased awareness, competence, and effectiveness of those elected or appointed to serve as members of public boards.

Training Public Officials In Underdeveloped Areas

by William A. Parker

[*Editor's Note: William A. Parker is Program Development Officer, East Asia Branch, Office of International Training, in the Agency for International Development, the State Department. This article is based upon his recent address to North Carolina journalists at the Fifth Annual North Carolina Press-Broadcasters Local Government Reporting Seminar, conducted by the Institute of Government. His responsibilities include planning the training programs at educational and other institutions in the United States for public officials from East Asia countries. The Institute of Government has participated in these programs. In this article the author seeks to explain and analyze the purposes and philosophy underlying such American programs of technical assistance.*]

While I focus on our U.S. effort abroad in technical assistance to developing nations, much of what I say, and the scholarly techniques which give the statements some measure of validity, is applicable to our own situation today in the U.S.

Technical assistance is the process through which the U.S. Government helps what we call "Cooperating Countries" to develop human skills and attitudes and to create and support in these countries the institutions that are necessary for social, economic, and political growth and development.

Technical assistance is particularly designed, hopefully, to stimulate change, improve the capabilities of people, and create the governmental, educational, economic, social, and other institutions upon which political, economic, and social development depend. The effective transfer and adaptation of intangibles—ideas, values, abilities, and experience—from one society to another, and within a society from one level to another, are the center of the technical assistance process.

This process can be made actual by example, by advice, by experimentation, by training (observational, on-the-job, or academic), and by other methods. The use of techniques that actually help people search for and find their own answers to their developmental problems is of vital importance.

The initial results of technical assistance are often untouchable—new methods of problem-solving, altered work habits, a higher level of general knowledge, improved skills, the emergence of new values, improved governmental and private institutions, and subtle changes in the ways people work.

The more traditional societies of new developing countries often lack the interest to change, the most appropriate human skills, and the institutions needed to bring about the modernization of their societies. Traditions attitudes prevail, and there is little innovation, small reaching out, minimal change.

In countries and areas that are in the earlier stages of economic development, it is important to emphasize developmental programs of education and human resources improvement until such time as the requisite knowledge and skills have been achieved.

The technical assistance process cannot succeed without the full cooperation of the recipents of such assistance and a willingness on the part of both those assisting and those being assisted to acquire knowledge, to adapt methods, and to evaluate experience. Success is gained through careful selection and design of specific activities that will accelerate the rate of change and give momentum to what must become a self-sustaining process.

Technologies, methods of work, attitudes, and values adapted to conditions in the United States or in Western Europe may well be unsuited to the circumstances and traditions of newly developing nations. These countries, of course, have their own cultural patterns, histories, and traditions. Change, even toward desirable goals, is painful for any people and takes time. Furthermore, the skills, abilities, and attitudes to be transplanted ordinarily require adaptation to live in their new environment. Technical assistance can make a permanent impact mainly by inculcating the habits of systematic experimentation, evaluation, and innovation.

The development of human and educational resources by training cooperating country nationals is an integral part of the assistance that the United States and other donor governments give to newly developing countries to stimulate their social, technical, and economic development. The success of technical assistance efforts, however, depends in large part on skillful selection and perceptive planning of programs and projects.

I need hardly say that generalization in this complex area is extremely difficult because of the wide diversity of developmental needs in the variety of countries in which technical assistance programs are now under way, the range and complexity of donor objectives, and the noticeable absence still of a substantially complete and widely accepted body of doctrine on development planning.

Goal of Technical Assistance

To rush in where angels fear to tread, however—in general it can be said that as people learn to plan for themselves, to develop hypotheses, and to subject them to scientific testing, they will have absorbed almost without realizing it the essentials of modern problem-solving and scientific approaches that are basic to industrialization and modernization. The goal of technical assistance is not a worldwide re-creation of U.S. or western society. What *is* hoped for is a blend of the old and the new that will maintain for each society the best elements of each. The choices made in each instance, though informed by outside advice, must in the final analysis be those of the local people.

As Sir Francis Bacon wrote: "He that will not apply new remedies must expect new evils." So all of us are driven to change, whether we really want it or not.

As in the United States, people in other countries want for themselves and for their children better lives as "better" is thought of in their cultural terms.

My work is—and for some twenty years has been—essentially people-oriented, and it is this approach that I should like to take up with you. The human element in society is not a simple subject, as I have already warned you. But if we are to achieve any behavioral changes in this world, we must try to scale the mountain of humanity.

First, a few definitions: (1) A participant in A.I.D. terminology refers to a foreign national proposed and accepted for overseas training who is approved as a part of a project jointly managed by his or her government and by our government. (2) Elites are the small minority of officials in responsible national positions. (3) Roles are the ways in which people are expected to act in certain job positions.

Traditional cultural characteristics can be summarized, although you must realize that there are many aspects to tradition and also that there are different levels in society (what Edward Hall calls "informal, formal, and technical"). The roles people play in a traditional society and their status in that society are usually based on age, rank, and wealth. The two named last may be, indeed often are, strongly connected to family.

Religions and religious institutions are generally more centrally important to traditional peoples than they are to most U.S. citizens; only in the United States is the separation of church and state as complete as it is here. However, although in some cultures religious beliefs may offer motivations for literacy, for example, in many countries today commercial needs are more likely to be the single greatest motivating factor in literacy.

The civil service structures of developing societies, particularly in Asia, are the nucleus of the status quo and are built on rigid examinations for entrance, on promotions through personal connections, on degree acquisition more important for raises than many years of job experience, and on lack of officials in management positions who have the qualifications and new skills required for modernization. Low government salaries and inflation caused by development itself and by outside assistance necessitate part-time work, or "moonlighting," by host government officials essential to economic and social development.

Problems of Fitting U.S. Projects to Local Circumstances

Lack of action along the lines urged by our U.S. mission officials is often the outward sign of an inward hostility on the part of our hosts. This brings us to the problems of how U.S. projects fit local circumstances. To be at all successful there must be: (1) integration or association with traditional institutions in terms of social forms and values; (2) adaptation of new tools and techniques to pre-existing motor patterns or ways of using the body; and (3) full utilization of supporting circumstances. Successful adaptation of innovation, moreover, depends on recognition by the people being innovated of the need for the new idea or thing.

Modernization of a traditional society is most readily achieved through technical improvements thoughtfully introduced. For instance, competitive motivation (the traditional hallmark of U.S. society) is far less important in bringing change to most nationals of traditional cultures than it is among U.S. citizens. Even in the United States I find that a federal official has observed in print that in practice the profit motive is limited to those who actually expect to make a profit. More important are: personal responsibility, recognition, interest in work, advancement, and growth. Worldwide, more universal motivations are: prestige, economic gain, the obligations of friendship and religion. Land ownership, for instance, may

be more important to a farmer in a developing country than promise of increased income.

Planning is much more important to U.S. citizens than it is in traditional societies, but the United States and host central governments must learn to anticipate the effects of various kinds of planning on the developing country as an integral part of the programming process. Planned change programs assume that success comes primarily when people make decisions voluntarily.

The uses of authority—"executive methods," as it is sometimes called—vary in specifics according to the culture, but there is little room for doubt that authority is required in ruling a nation. As a compulsory preventive measure, it is used for the improvement of the nation's health in such specific instances as vaccination against disease and water chlorination. It is used in many other obvious and subtle ways which some of you may be able to call to mind. Authority, then, comes in many different forms in traditional and transitional societies. Whatever the composition of the authority nucleus group—whether, to take two examples, oligarchic or military—power (especially in countries marked by a wide variety of religious, geographical, or ethnic diversity) can be usefully applied to modernization only when allied with a broad range of other groups of national significance.

Executive department emphasis in participant training may well be at the expense of training programs for officials of other branches of the host government. To take a recent example, a royal government budget bureau official reported that more than half of all third- and second-grade officers in the bureau were trained in overseas universities, the majority in the United States.

A large participant program over a period of ten or more years may train all of the available elite in a developing country and give insufficient attention to the key non-elite in the countryside. As first targets of development, however, pottery-makers are even more traditionally conservative than farmers or fishermen. To effect any real changes in society, other elements initially must be converted to modernity. Motivations for general change may be strong; but, unless the innovation fits local cultural, social, and ideological values, it will have a weak reception. To the extent that existing cultural and social values can be maintained in project planning, an environment is created in which a variety of individual and group motivations operate to determine the success or failure of a program. In overcoming barriers to change ways must be found to neutralize or get around them or to select initially work areas where they are weak. For instance, in contrast to the farmers, fishermen, and pottery-makers, those people in the midst of the socioeconomic scale (the so-called middle class) have enough funds to be able to gamble with limited experiments without unduly threatening their well-being, but their positions are not so secure that they will not respond to the attraction of greater income or the possibility of satisfying other felt needs.

Agriculture has been viewed as a source of surplus manpower that could supply the needs for labor of the modern industrialization sector and also be a source of domestic capital. This view of agricultural development possibly was motivated more by a desire to exploit the rural sector as an immediate source of domestic savings or as foreign exchange for industrialization than as an investment required by balanced development.

Realization that the modern industrial sector must increasingly depend for growth on internal markets for raw materials and for customers has led to an appreciation that traditional agriculture must be modernized before the economy can truly improve. With the urgency imparted by pressure of population on food supply, agriculture is now seen in human terms as a major consumer of higher-level manpower. Increased agricultural productivity requires higher skills, but increasing agricultural productivity through greatly improved crops and mechanization may do little good in national development if the host government is unwilling or unable to implement widely some effective form of population control.

Changed Roles and Realized Ideals

Development of a nation means changing the roles of at least the key people in it and it also means giving these people opportunities to realize their ideals. Such opportunities for training depend for their effectiveness on a readiness for change on the part of host nationals. In general and considered only in the context of their own society, the more formal education and the more exposure to city life they have, the more their modernity. Cross-cultural experience through participant training in a more advanced nation is very likely to assist in the modernization process. Even in a traditional host government department or bureau, a small portion of modernized culture is probable through appropriate group or sequential training of its staff. Even if their traditional institutions change slowly, if participants are highly motivated, their development and that of their country is possible.

Modernity involves the expansion of an individual's identification with things outside himself from the family, the town, or the locality to the nation. With regard to the government, modernity develops the shift from sheer power to control. In changing behavior nationally through laws and directives, the probability of acceptance of central government orders is increased with modernity. Other elements in modernity (besides formal education and city life) are: factory experience, exposure to mass media, and exposure to a modern family. Elites worldwide are similar regarding their approaches to modernity. Modernity

involves achievement and initiative. Initiative is novelty applied to behavior. Need-for-achievement language is worldwide, but verbal achievement is only talk. Goal-setting (prestige suggestion) is important to introduction of significant changes in a traditional society.

As changes take place, traditional cultures become transitional cultures, where the tendency is to minimize roles, to increase the unpredictability of behavior, to necessitate personalism, and to result in suspicion about others. Some predictability is needed for social order. So is some belief in the reliability of others (their honor, values, and prestige).

The problems of applying exposure to our U.S. ideals of government to participant training center around the acceptability in the host society of western democratic concepts. Efforts at modernization should be shaped to the traditional culture.

Adverse sensitivity to our U.S. suggestions, if they tend to be overbearing, is found often in host nationals. It should be remembered that whether their nations are recently or anciently sovereign, host country nationals have not only minds of their own but also their own cultural traditions to back them.

The total effectiveness of overseas training programs on developing countries depends on appropriate combinations of as many as possible of the favorable factors given in the preceding paragraphs and also on the abilities and motivations of the individuals being trained.

More highly trained human power in developing countries is a vital reality which may take years to achieve. Without this kind of power, however, modernization of a developing society is not possible and force alone becomes the reality.

DON'T WAIT FOR NEW LAWS TO IMPROVE LOCAL JAILS

Much Can Be Done With Existing Statutes

by William E. Benjamin

EARLY THIS YEAR, the Jail Study Commission submitted its report, *A Challenge to Excellence,* to the General Assembly. With that act, the Commission completed the task it started two years ago—to study local jails in North Carolina and to propose legislative solutions for the problems it found. The bills recommended by the Commission are, as of this writing, before the General Assembly and awaiting its consideration.

In reaching its recommendations, the Jail Study Commission first visited representative jails around the state to see at first hand the condition that jails are in. The following written comments of Commission members illustrate what they found:

The entire jail was filthy and in extremely bad condition. At the time of our visit, an 18 year old boy was confined there in the same common cell with 13 other inmates.

The only space for women prisoners is a room on the first floor, facing on the hall, into which any passerby may peek.

This jail is something out of the last century. The jailer and his family live on the first floor. He is paid $187 per month [and] furnished with living quarters. . .

An old, run down, ill kept, dirty, smelly jail with no segregation facilities; 17 prisoners in one large cell . . . Jail appeared to me to be unsatisfactory in every respect.

While these remarks do not apply to all the jails visited by the Commission, they indicate the long way that some counties must still travel to obtain decent jails.

To propose new legislation, the Commission had to determine how well existing laws work and how far they reach. It found that present laws can solve some local jail problems but are not always put into practice because the local officials who must carry them out are not aware of the authority that these laws give them. This article, therefore, is an attempt to bring a few of these existing laws to the attention of public officials and suggest how local action can be taken to improve North Carolina jails.

County Commissioners

County commissioners have the duty to "erect and maintain" necessary county buildings, including jails, and may levy taxes to do so. Today, many counties are faced with the need to build new jails or substantially rebuild old ones under the pressure of the state's new minimum jail standards, which became effective in late 1968. Because jails are not popular items on which to spend tax money, county commissioners might well consider joining with nearby counties that also need to improve their jails and, together, building and operating a modern regional jail to serve their common needs. The Jail Study Commission strongly recommended

regional jails in such situations. New laws are not needed to permit such cooperative efforts: under G.S. 153-53.7, "any two or more units of local government (county or municipal) may agree to jointly construct, finance, and operate a district confinement facility or jail."

A regional jail has at least two advantages over individual county jails. It can cut jail-keeping costs by eliminating some supervisory personnel and permitting more efficient operation of a single facility, as opposed to the separate facilities that would otherwise be maintained by the participating counties. Also, a regional jail can provide facilities for special types of prisoners (such as women, juveniles, and alcoholics) that a single county could not afford by itself.

Before any new jail is built, county commissioners are well advised at least to look into the possibilities of joining with their neighbors in this area.

A few counties still operate so-called "houses of correction" for convicted prisoners who would otherwise be sent to state prison camps. Houses of correction are relics of the nineteenth century, before the state began to provide confinement facilities for all long-term prisoners. Today, however, they are often only an unnecessary drain on county revenues and offer no rehabilitative services of the kind needed in contemporary penology. By simply closing the few remaining houses of correction, county commissioners would achieve instant savings with no loss in public security.

In thirty-four counties, jailers still receive part of their salary from the fees they are paid to care for their prisoners. Since this amount naturally varies from day to day, depending on the numbers to be fed and the cost of food, these jailers' pay changes accordingly. As any personnel manager knows, well-qualified men do not accept such instable incomes, especially when they tend to be pretty low in the first place. One thing that county commissioners can do to stabilize their jailer's position and hopefully attract good people to it is pay an annual salary sufficient to maintain a decent living standard and eliminate the archaic fee system.

Judicial Officers

Magistrates and district court judges, in setting bail for persons arrested and brought before them, have an important role in determining the number of persons kept in jail. If bail is set above the amount that most persons can raise, jails will become congested. To lessen this burden on jails, many persons who are trustworthy but unable to make even low bail could be released upon their unsecured promise to return for trial under the procedure called release on recognizance, authorized by G.S. 15-103.1.

Another way magistrates and judges can deal with minor offenders is to avoid their arrest entirely by issuing criminal summonses in place of arrest warrants. The summons is similar to a traffic ticket in that it orders the person named on it to appear for trial on stated charges at a certain time and place. It differs from a ticket in that failure to respond to it constitutes a separate criminal offense. The summons, more fully described in G.S. 15-20, may be used in all misdemeanor cases. If release on recognizance and summonses were used more often, jail costs could be reduced and fewer persons would unnecessarily spend time in jail before trial.

About a third to a half of all persons in North Carolina's jails are there with the charge of public drunkenness. Many of these are alcoholics who require medical treatment, not jail, to overcome their illness; but present law provides only for fines or imprisonment—up to $50 fine, up to 20 days in jail, or (for repeated offenses) between one and six months in the state prison system. The most common sentences for those who cannot pay a fine is a full 20 days in the local jail, with the result that jails are full of persons convicted of public drunkenness. If such persons were sentenced to shorter terms (five days or less, for example), they would be sober when released without having spent a needless two weeks longer at county expense. If they become publicly intoxicated again in a 12-month period, then treatment in the State Department of Correction would at least offer more opportunity for rehabilitation than a dozen 20-day stays in the county "cooler."

Solicitor

Before every term of criminal court, the district solicitor arranges the order of trials during the forthcoming term for those persons awaiting trial either at home or in jail. Since he has authority to arrange this order, the solicitor could schedule it so as to substantially shorten the time some persons then in jail must remain there before their trials by placing their trials ahead of those for persons free on bail or otherwise. By this simple procedure justice can be served without unduly subjecting those who cannot raise bail to long pretrial detention.

Clerk of Superior Court

Jails are used to hold not only those accused of crime. Many must stay in jails each year in North Carolina for the "crime" of being mentally ill. They are there because someone has "accused" them of being "dangerous" to themselves or others, and their "judge," a clerk of superior court, has put them in jail until they can be sent to state mental

hospitals. Under the authorizing statute, G.S. 122-61, mentally ill persons can be jailed only "because of and during an extreme emergency." But such emergencies are evidently common: records from 67 (of the 100) counties in the last fiscal year showed that 1,585 mentally disturbed persons had spent some time in jail. Needless to say, few of these people's mental illnesses were aided by their stay in a barren, iron-barred cell. Much mental anguish could be avoided for these unfortunate people if clerks of superior court would arrange in advance with hospitals, clinics, or other suitable places to accept temporarily the mentally ill who now are sent to jails. Modern sedatives and tranquilizers could be used in such facilities to prevent disruption by the mentally disturbed for the few days they have to wait for admittance into state hospitals, so that there should not be any practical objections to keeping them out of jails. By refusing to subject innocent people to the trauma of imprisonment, clerks of superior court can advance this state one step further in the treatment of mental illness.

This article has suggested several ways by which public officials in North Carolina can use existing laws to reduce jail populations in the counties and obtain significant savings without endangering the public safety. All that is required is the desire of local officials to change present practices to achieve these ends. The Jail Study Commission found local confinement facilities to be the "challenge to excellence" that its report was entitled. Local action on jail problems can go a long way toward meeting that challenge and achieving excellence in all parts of North Carolina's correctional system.

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State of North Carolina
LOCAL GOVERNMENT COMMISSION

Date	(1)*The Bond Buyers Index* 20 bonds	11 bonds
5-22-69	5.46	5.36
5-15-69	5.31	5.20
4-24-69	5.09	4.98
6- 6-68	4.51	4.40

National Volume Outlook, May 23, 1969

Blue List Supply	$ 557 million
30 day visible	739 million
Total Supply	1,296 million
Total Supply last week	1,415 million

Yields Currently Available on North Carolina Issues (%)

	Aaa	*Aa*	*A*
10 year	4.70	4.80	4.95
20 year	5.10	5.20	5.35

Recent Bond Sales in North Carolina

Issuer	*Purpose*		*Amount*	*No. of Bidders*	*Years Average Life*	*First, Second and Last Bids*	*Winning Manager*	*Moody's Rating*	*NCMA Rating*
City of Winston-Salem	5- 6-69	Various Purpose	$12,000,000	5	13.82	4.8151,4,8855-4.9607	Wachovia	Aa	91
City of Gastonia	5- 6-69	Water	280,000	6	12.84	5.0503,5.1205-5.4054	Interstate	A	83
Town of Bakersville	5- 6-69	Sewer	115,000	(2)1	23.01	4.5000	F.H.A.	NR	NR
Town of Chocowinity	5- 6-69	Water	135,000	(2)1	24.14	4.5000	F.H.A.	NR	NR
County of Gaston	5-13-69	School Bldg.	4,000,000	7	12.11	5.0675,5.0876-5.3691	Dominick	A	91
City of Raleigh	5-20-69	Water	600,000	7	10.50	5.0838,5.1416-5.2593	NCNB	Aa	87
Town of Selma	5-20-69	Various Purpose	133,000	4	6.89	5.6624,5.7672-5.9317	First Ctzns.	NR	72

Visible Bond Issues June 1, 1969-July 15, 1969

City of Concord	6-10-69	Electric	1,000,000
County of Davie	6-10-69	School Bldg.	2,495,000
County of Chowan	6-10-69	Hospital	1,000,000
County of Person	7-17-69	School Bldg.	2,250,000
Town of Laurinburg	6-17-69	Sanitary Sewer	800,000
Town of Smithfield	6-17-69	Water	995,000

(1) The Weekly Bond Buyer, May 26, 1969, p. 59.
(2) United States Government Financing, Farmers Home Administration

Edwin Gill, Chairman & Director
H. E. Boyles, Secretary
E. T. Barnes, Deputy Secretary