POPULAR GOVERNMENT

PUBLISHED BY THE INSTITUTE OF GOVERNMENT / UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

The Criminal [illegible] System / Fall 1974

POPULAR GOVERNMENT

INSTITUTE OF GOVERNMENT
University of North Carolina at Chapel Hill

CONTENTS

Fingerprinting, the subject of this month's photograph, symbolizes entry into the criminal justice system. (Photo by Ned Earle.)

VOLUME 40 FALL 1974 NUMBER 2

Published four times a year (summer, fall, winter, spring) by the Institute of Government, the University of North Carolina at Chapel Hill. Change of Address, editorial business, and advertising address: Box 990, Chapel Hill, N. C. 27514. Subscription: per year, $6.00. Advertising rates furnished on request. Second-class postage paid at Chapel Hill, N. C.

THE USE OF THE CRIMINAL SANCTION

Douglas R. Gill

CRIMES—THE SUBJECT of the criminal justice process—are not natural phenomena. They exist entirely because society, through its legislatures and courts, has chosen to call some types of behavior crimes. The entire criminal justice process can come into play only with respect to those things we have chosen to call crimes. This article tries to deal with the questions of what determines, and ought to determine, whether an action (or failure of action) is called a crime and to suggest ways of thinking about what sorts of acts ought to be dealt with as crimes. What purposes are sought to be served by criminal punishment? Which of these purposes does the criminal law serve particularly well? Why are special procedural requirements imposed before a person may be judged a criminal? How can the criminal sanction be used best?

PURPOSES SERVED BY THE CRIMINAL SANCTION

A variety of purposes may be served by convicting a person of a crime and imposing a sentence on him. In some cases, the sentence may serve only one purpose. In other cases, it may serve several purposes at the same time. Although there is no uniformly accepted classification of the purposes that may be served by imposing a criminal sentence, the following classification at least embraces all of the major ideas.

Reformation. Variously called rehabilitation, or habilitation, or treatment, or correction, reformation expresses one of the deepest hopes for the criminal sanction—the hope, or belief, that a convicted offender can be dealt with so that when he has completed his sentence (whether it be imprisonment or a less complete loss of freedom), he will be less likely to commit crime. A variety of approaches to achieving this effect have been suggested. Among them are trying to change the individual offender by treating the psychological (or even physiological) "causes" of his propensity to commit crime, to educate him or give him skills for coping with society, or to change his expectations about himself and the world he will return to when he completes his sentence. The important characteristic about reformation as an intended effect of imposing the criminal sanction is that the effect is supposed to be on the individual offender—it is intended to control the future behavior of that individual.

For the purpose of reformation, it is only indirectly relevant that the subject of the reformation has already committed a crime. If he has committed a crime but is not going to commit another one (a likely circumstance for many murderers, for example), reformation is beside the point. Trying to treat him so that he will not commit another crime is pointless since he would not commit another crime anyway. And, at least theoretically, a person who has never committed a crime but is very likely to do so in the future could be just as much in "need" of reformation as another who has committed a crime. The appropriate length of sentence for the purpose of reformation would be whatever length of time it would take to "reform" the offender. If the idea of reformation is carried to its logical extreme, the length of sentence would depend entirely on the susceptibility of the offender to reformation and not at all on the characteristics of the crime he had committed.

Intimidation. Intimidation represents the idea of sentencing an offender to "teach him a lesson," as a child is taught a lesson if he touches a hot stove or if his parent spanks him after he runs into the street without looking. The child then knows that if he runs into the street again he will be spanked. The hope is that the sentenced offender will thereafter take the threat of the law seriously, as a result of having been punished by the law, even though he did not take it seriously when it was only an abstraction. In many respects, intimidation is only a special kind of reformation—the kind of reformation that takes place is a change in the offender's perception of what can happen to him if he commits a crime, which reduces the likelihood that he will commit a crime again. One important difference, however, is that intimidation, unlike reformation, makes no sense unless the sentence is linked with a crime. If the sentence is not seen as a consequence of committing the crime, the lesson is lost. If a sentence were to serve only the purpose of intimidation, it should be only severe enough that the offender would take the threat seriously next time.

Incapacitation. This aim of the criminal sanction also looks to the future behavior of an individual who has been convicted of a crime. It is, however, a substitute for reformation: If the offender cannot be changed, he will be so handled that he cannot commit future crimes. The ultimate form of incapacitation is, of course, the death

The author's field at the Institute is criminal justice.

sentence, but prison sentences and even probation can also incapacitate. The persistent burglar will not commit further burglaries while in prison, nor will he commit further burglaries (or at least not as many) if he is closely enough supervised while outside of prison. Historically, there have been less subtle forms of incapacitation, such as cutting off the hand of a pickpocket. Incapacitation is a close relative of reformation. It, too, looks to the future of the offender, and its usefulness is theoretically independent of whether the subject of the incapacitation has previously committed a crime. Incapacitation can work only if the person would otherwise commit future crimes, and will work if he is going to commit future crimes regardless of whether he has committed one in the past. If the sole purpose of a criminal punishment were to incapacitate, the appropriate length of the sentence would be as long as the offender's tendency to commit another crime continued.

General Deterrence. With general deterrence we move from aims for the criminal sanction that are intended to affect the individual offender to an aim that is intended to affect others. The idea of general deterrence is to use the individual offender to set an example. When considering general deterrence as a basis for a criminal sentence, the key question is not what effect the sentence will have on the future criminality of the person being sentenced but what effect it will have on the future criminality of other people. The idea of general deterrence is premised on potential offenders' being aware, at least generally, of what consequences others suffer as a result of their crimes and weighing, either consciously or subconsciously, the possible benefits from committing a crime against the chances of suffering a penalty as a result of committing the crime. We should note that it is what the potential offender *thinks* is the penalty and not the *actual* penalty that would influence his actions. Even if 90 per cent of armed robbers are apprehended and are sentenced to an average of 25 years' imprisonment, the general deterrent effect is likely to be slight if potential robbers nevertheless *believe* that only a handful are ever caught and even then are given only token sentences. And the general deterrent effect may be very strong if a potential offender thinks he is highly likely to be caught and heavily sentenced, even if in fact his chances of being convicted and sentenced are very slight. If the sole purpose of the criminal sanction were to act as a general deterrent, then the sentence would be scaled to what it takes to set an effective example for others. If this were the only purpose of the criminal sanction, it might be enough to sentence only every other offender because that might be a sufficient reminder to potential offenders that they are running too much of a risk by committing a crime.

Moral Reinforcement. Some argue that the most powerful factor that prevents us from committing crimes is strong feelings, shared widely within society, that certain kinds of behavior are wrong and should not be done, whether or not there is a criminal penalty for doing them. In other words, we do not commit crimes because of our sense of morals. One aim for the criminal sanction, then, is simply to reinforce this feeling that exists independently.

In this view, the imposition of a criminal sanction serves as a symbol of society's belief that criminal behavior is wrong, and thus keeps alive, or even strengthens, that moral sense.

Moral reinforcement is closely related to general deterrence. The effect of both is upon other people, rather than upon the person who has been convicted of the crime, and neither is dependent for its presumed effect on the "justice" of the conviction. In fact, the effect could be just as great if the individual were erroneously convicted, so long as the error was not evident to the public. Moral reinforcement, however, is substantially different from general deterrence in one important respect—general deterrence can work regardless of whether the conduct being deterred is otherwise regarded as morally wrong; moral reinforcement can work only if it builds upon pre-existing feelings. Whether the criminal sanction has the effect of moral reinforcement probably depends on whether a finding of criminality is seen as reflecting a moral judgment. If a finding of criminality is morally neutral, it is unlikely to have any reinforcing effect. A criminal sentence imposed only for the purpose of reinforcing morals would be severe enough to reflect society's moral judgment of the offense. Moral reinforcement would also require that the sanction be imposed on every possible offense, because selectivity would suggest that the sanction did not reflect a moral judgment, but only a judgment of convenience.

Retribution. Retribution might also be called revenge, vengeance, doing justice, getting even, or paying for a crime. By whatever name, this aim of the criminal sanction differs from other aims of the criminal law we have reviewed in that it is backward-looking. All of the other purposes of the criminal sanction look to the prevention of future crime, by whatever method. Retribution, however, is unconcerned with future crime. It looks solely to providing "just desserts" for a crime that already has occurred (providing just desserts might also have side effects of moral reinforcement, or intimidation, or whatever, but retribution is an end in itself regardless of those collateral consequences). Some believe that retribution is a valid purpose of the criminal law because it simply is right that the wicked be punished; others believe that retribution is a proper purpose because vengeance is a basic human instinct best met in an orderly manner; and others contend that it is not a sufficient end in itself but should be only a standard for limiting the criminal sanctions being imposed for other purposes: no sanction

should be imposed to achieve incapacitation, general deterrence, or anything else if it is greater than what is appropriate as just desserts for the crime the person has committed. Retribution requires that the criminal sanction represent an appropriate payment for the offense committed. Thus the sentence based solely on retribution would be in direct proportion to the seriousness of the offense and would be uninfluenced by the likelihood of the offender's committing another crime.

The criminal sanction does not, of course, serve all of these purposes each time it is used. But every time it is used, it serves at least one of the purposes, and usually more than one.

OTHER MEANS OF SERVING THE CRIMINAL LAW'S PURPOSES

There are other ways the law can be made to serve many of the purposes of the criminal sanction. Intimidation and general deterrence are probably served by almost any provision of the law through which a person suffers some loss or penalty if he does not behave according to societal standard. For example, the law provides that a person who makes a promise in return for some benefit and then breaks that promise can be made to carry through with his promise. This law certainly acts as a general deterrent to breaking contractual promises, even though breaking a promise is not a crime. A person who has once been sued for breaking a contract probably is also intimidated from doing it again. The law also provides that a person who holds two public offices must forfeit the "emoluments" (his profits) of the second office—and until 1971 provided that he had to pay $200 to any citizen who sued him for it. The law provides that a person who is nonwillfully late in listing his property with the tax supervisor must pay a penalty proportional to the amount of his taxes (instead of making nonwillful late-listing a crime). And the law provides that one who negligently leaves an object on his sidewalk is liable for any harm a passerby might suffer from falling over that object at night (instead of making a crime of leaving things on the sidewalk). All of these provisions seem likely to intimidate the person who has once suffered their consequences and to act as a deterrent to other people.

Laws other than criminal laws also can be used to reform or incapacitate people involuntarily. A person who is mentally ill and dangerous to others can be committed to a mental hospital and kept there until he is no longer mentally ill and dangerous. This is an example of an attempt to prevent dangerous conduct, without resorting to the criminal law, by either reformation or incapacitation. The dangerous mentally ill person may be locked away until he is cured (or reformed), or if he cannot be cured, he can be kept in the hospital (incapacitated). People with certain contagious diseases can be quarantined, a form of incapacitation.

The only purposes served by the criminal sanction for which we can not find ready equivalents in law outside of the criminal sanction are moral reinforcement and retribution.

Not only are many of the purposes of the criminal sanction the same as many of the purposes of civil laws, but also the consequences are much the same. Under the criminal law, a person might lose money through a fine; under the civil law he might suffer a financial loss to a person who sued him. Under the criminal law he might suffer a loss of freedom through imprisonment or probation; under the civil law he might suffer a loss of freedom through involuntary commitment to an institution or through quarantine.

THE DISTINGUISHING FEATURES OF THE CRIMINAL SANCTION

Even though there is a substantial overlap in the purposes and consequences to the individual of criminal and civil law, the criminal law does have a few distinguishing characteristics.

Loss of Freedom As Punishment. Only under the criminal sanction may a person be deprived of his freedom for the purposes of deterrence, intimidation, moral reinforcement, or retribution. Almost no kind of *civil* restraint on freedom is ever authorized unless it is needed to prevent one from harming himself or someone else. A person can be imprisoned for a crime—for example, the person who kills another in a once-in-a-lifetime fit of rage and presents no danger of ever repeating his action—even though no claim can be made that incarceration is necessary to afford protection from that person in the future. This characteristic, however, does not distinguish all crimes from civil sanctions. Many acts that are called crimes carry only a theoretical possibility of loss of freedom (most motor vehicle offenses, for example), and a substantial number of crimes can be punished only by fine.

Blameworthiness. Much of the criminal law is applicable to a person only if he has committed the undesirable behavior with a blameworthy state of mind. This is reflected in the traditional requirement that a criminal defendant be shown to have "*mens rea*" (a guilty state of mind). It also is reflected in the insanity defense, which provides that a person may not be convicted of a crime if he did the criminal act (such as killing another person) as a result of "insanity." The rationale underlying the insanity defense is that if a person is insane, he is not blameworthy and thus not criminal. Also, with many crimes a good-faith mistake about an important fact could exonerate a person from what otherwise would be a crime. For example, a person who took a piece of property believing that it was his could not be convicted for stealing the property, even though in fact it was not his. The reason is that he had no guilty state of mind. The characteristic of

blameworthiness, however, does not distinguish all crimes. Many crimes today can be punished without regard to blameworthiness. For example, a person whose speedometer registers incorrectly because the service station has put tires of the wrong size on his car may nevertheless be convicted of speeding.

Moral Condemnation. Traditionally, there has been a moral stigma attached to conviction of a crime. This stigma arises from the recognition that conviction of a crime represents a judgment that the convicted person has willfully violated one of his basic obligations to his fellows. This moral condemnation could in some circumstances be as serious, or even more serious, than the direct consequences of the conviction, such as imprisonment or fine. Now, however, moral condemnation does not distinguish all criminal convictions. Many traffic offenses and other regulatory crimes carry no stigma and reflect no moral condemnation.

Criminal Procedure. If a person is charged with a crime, he can be convicted only after a special procedure is followed. In short, a person may claim a number of protections, not available in other kinds of legal actions, that assure special care and great certainty before criminal liability can be found. The criminal defendant is, for example, entitled to confront the witnesses against him, to have counsel for his defense, to refuse to give self-incriminating evidence, to be convicted only upon the unanimous verdict of a jury of his peers, and to be convicted only upon proof beyond a reasonable doubt. This procedure that is followed in dealing with them is the one consistently distinguishing feature of those things called crimes (although some of the procedural requirements are slightly less demanding for "minor" criminal offenses).

This review of the features of the criminal sanction that distinguish it from other types of sanctions (such as civil liability or civil commitment) has suggested that the only distinguishing characteristic that unites all crimes is the procedure that must be followed before the sanction is imposed. Other significant characteristics of crimes—the possibility of the loss of freedom as a punishment, the requirement of blameworthiness, and the implication of moral condemnation—apply only to some crimes. In the main, these are the "traditional" crimes that constituted most of the criminal law a hundred years ago—murder, assault, rape, theft, fraud, and so on. The remainder of the crimes, which far outnumber the traditional crimes, represent mainly twentieth-century additions to the list of crimes. Many of these violations are of regulatory measures—laws that require people and organizations on penalty of criminal conviction to file papers on time, to obtain permits, to keep premises and equipment clean, to have the proper credentials before engaging in a trade, to handle materials in a certain way, to operate equipment according to rules, and so on. This kind of criminal offense has come to be known as *malum prohibitum*, or an act that is wrong solely because the law says it is wrong and not because it is among those acts generally regarded as being "not right."

These offenses differ markedly in one important respect from more traditional crimes—to be guilty of one of these crimes, a person need not have a state of mind that is morally blameworthy—that is, it is not necessary that he have either willfully or recklessly violated the law. Thus, one who speeds because the tires on his car are too big and the speedometer registers incorrectly can be guilty of the criminal offense of speeding even though he is morally innocent.

An important distinction also exists in regard to whether the offender knows the behavior is criminal. With offenses that represent minimum moral standards of the community, we can say that a person either knows or ought to know that the action is wrong, regardless of whether he knows the specifics of the criminal offense. With regulatory offenses, there is no basis for assuming that a person should know what is wrong.

These twentieth-century regulatory crimes are unlikely to result in the loss of freedom of the offender (although most carry that possibility), do not require blameworthiness, and do not usually reflect any moral condemnation. The purposes of the criminal sanction in these regulatory offenses are limited almost entirely to intimidation (showing the convicted offender that it is a bad idea to commit this violation again) and deterrence (convincing others that the violation does not pay). There is no intent to obtain reformation, incapacitation, moral reinforcement, or retribution through the application of the criminal sanction to regulatory matters. But a person charged with any of them can claim the protection of criminal procedure.

THE APPLICATION OF CRIMINAL PROCEDURAL REQUIREMENTS TO REGULATORY OFFENSES

The rules of criminal procedure make the imposition of a criminal sanction more difficult than the imposition of a civil sanction. Why should the law impose barriers to a criminal conviction that do not also exist in regard to a finding of civil liability? Or, to pose the question differently, why would a legislature, in seeking to control certain kinds of conduct, seek to do it by a method that can come into play only after overcoming these special barriers? If the idea behind the special requirements of criminal procedure is that no one should be deprived of his liberty without a showing, for example, that the deprivation is appropriate beyond a reasonable doubt, then the requirement of proof beyond a reasonable doubt should also apply to civil commitments and quarantines. But it does not. Or, for example, if the idea behind the right to have legal representation is that no one should run the risk of a financial loss from court action without adequate representation, then the right should apply as well to civil suits for monetary damages. But it does not.

It seems more likely that the special protection for criminal cases came about in response to "traditional" crimes, not regulatory crimes. Conviction of a "traditional" crime is especially and uniquely serious—not just serious in that the convicted person can lose his liberty or his money (for equal or even more serious losses can be suffered in civil court), but serious in that a criminal conviction represents, as Henry Hart has argued, "a formal and solemn pronouncement of the moral condemnation of the community" for defaulting in "minimum obligations of conduct which the conditions of community life impose upon every participating member . . . ." Certainly, if a criminal conviction is the most serious consequence a society can visit upon one of its members, then it is fitting that the most careful consideration possible be given to the question of whether that "solemn pronouncement" should be made.

But why, then, do the same rules of criminal procedure apply to other offenses that can be found in the statutes, such as failing to clean milk bottles as soon as practicable after emptying them (G.S. 106-249) and participating in more than one dance marathon in a 48-hour period (G.S. 14-310)? Certainly these offenses, and scores more like them, are not failures to meet "minimum obligations of conduct," and conviction of one of them is not a "formal pronouncement of moral condemnation."

Instead, it seems likely that criminal procedure applies to the imposition of sanctions to enforce regulatory matters simply because we readily slip into the practice of making violations of regulatory matters "crimes," instead of imposing civil sanctions of some kind. (Recently, there has been some use of civil monetary penalties as a substitute for criminal penalties in certain forms of regulation such as pollution control. But making the violation of a regulation a misdemeanor is still the usual practice.) The profusion of criminal regulatory offenses seems less a result of a conscious choice to use the criminal sanction than it is a result of the force of habit. When we want something to happen, we make it a misdemeanor not to do it. When we want something not to happen, we make it a misdemeanor to do it. Rarely do we ask whether this is the best way to bring about the desired result; we assume that it is not only the best way but also the only way.

[*Continued on page 15*]

How well does the criminal sanction serve its theoretical purposes? The following material summarizes some of what is known about the criminal sanction and each of the five ways in which it is thought to have some effect on crime.

Reformation. The record on reformation, or rehabilitation, is not encouraging. There are relatively few careful examinations made of rehabilitative programs. Of these, most reveal no discernible differences between the likelihood that its subjects will return to crime and the likelihood that they would return to crime if never exposed to the program. Rehabilitative effectiveness, to the extent that it has been shown, has been very limited and has occurred under special conditions difficult to generalize or duplicate.

Intimidation. The limited evidence is mixed on whether the operation of the criminal sanction serves to intimidate from further crime those who are caught. For example, an examination of juvenile offenders suggested that the convicted offender was as likely to commit further crimes as one who had gone unapprehended. On the other hand, adult shoplifters have been shown to be far less likely to return to shoplifting if they have ever been apprehended (even if not convicted) than are shoplifters who have gone undetected.

Incapacitation. With present patterns in criminal sentences, the effect of incapacitation on the over-all crime rate is probably slight. Some very frequent crimes (breaking and entering and bad checks, for example) are committed largely by people who previously have been convicted of a nontraffic offense. Thus, they are crimes that might not have occurred if all offenders were effectively incapacitated. Their previous offenses, however, usually are not ones for which extensive sentences seem "just," so the prospect of preventing those crimes through incapacitation is not great.

General Deterrence. There can be little real question about the criminal sanction's having a deterrent effect: in general, it has such an effect. Substantial questions do exist, however, about what types of crime can be prevented by general deterrence and what sort of risk must exist before the deterrent is effective. There is considerable evidence that general deterrence operates for regulatory crimes such as motor vehicle offenses and good indication that it is important in preventing property crimes. Both the severity of the threatened punishment and the certainty of its being imposed seem to affect the deterrent, but most evidence points to certainty of punishment as being more important than severity.

Moral Reinforcement. There is good evidence that "internal controls"—inhibitions or moral values—lead people to conform to social norms and thus keep them from committing crime. But little is known about the "moral reinforcement" effect of the criminal law—that is, the extent to which the existence of criminal laws, or their enforcement, contributes to the maintenance of these internal controls and thereby reduces crime.

CRIME AND DELINQUENCY IN NORTH CAROLINA

Stevens H. Clarke

WHAT FIRST COMES TO MIND when one thinks about crime are exceptional cases—kidnappings of celebrities, multiple murders, multimillion-dollar robberies – which are widely publicized but affect very few persons directly. This article will deal with common crimes like burglary, larceny, assault, and robbery that rarely receive publicity but victimize many persons. Most of what is said here will be in terms of numbers: crime rates, trends, and related figures. Statistics give the reader a highly abstract view that cannot convey the feeling of a person who returns from a vacation and finds his home broken into and his television set or clothing taken, or the feeling of a person who is robbed on the street at knifepoint, or the daily experience of someone who must walk through an unsafe neighborhood every day. Perhaps the facts and figures here will be more meaningful if one remembers that they represent real human experiences of a rather grim and nasty sort.

This essay will be limited, for the most part, to "index" crimes as defined by the Federal Bureau of Investigation: burglary (including breaking and entering), larceny, aggravated assault,[1] robbery, rape, and homicide. Certain important areas will receive little or no attention: drug offenses,[2] vice (gambling, prostitution), organized crime, vehicular offenses such as drunken driving (a major killer), "white collar" crimes, and economic crimes such as consumer fraud. The principal questions addressed will be these: How do North Carolinians perceive the relative importance of crime as a problem? What are the trends of FBI index crime in the recent past? Can these trends be projected into the future? What are some of the factors causally related to crime trends? What is the extent of crime victimization in North Carolina? Who are the victims? Who are the offenders?

THE IMPORTANCE OF CRIME AS PERCEIVED IN NORTH CAROLINA

Crime is at present near the top of the list of North Carolina citizens' concerns and will continue to be so at least in the near future. Two surveys, one conducted in 1971 by the Institute for Research in the Social Sciences (IRSS) of the University of North Carolina at Chapel Hill and one conducted in 1973 by the North Carolina Agricultural Extension Service (NCAES) of North Carolina State University, provide ample evidence of this fact. The IRSS survey involved personal interviews with 1,145 adult North Carolinians, selected randomly from households across the state so as to provide a reliable cross-section. Ninety-one per cent of the survey respondents listed "crime" as an important problem facing people in the country; crime was second only to the high cost of living (94 per cent), rated ahead of the Vietnam war, pollution, race relations, and other problems. Fifty-one per cent of the respondents were "somewhat" or "very" worried about physical attack or theft of property affecting themselves or a member of their households. However, only about one-fifth of the respondents said that they had recently taken defensive measures against crime, such as purchasing locks, alarms, or other security devices or purchasing a watchdog or weapon.[3]

The 1973 NCAES survey of 3,115 heads of households —like the IRSS survey, a cross-section of the state— employed a self-administered questionnaire concerning community problems and the expenditure of public funds. Crime as such was apparently not listed as a possible community problem for the respondent to choose. The cost of living ranked first; 83 per cent of the respondents saw it as a moderate or serious community problem. The use of illegal drugs ranked second with 61 per cent. Adequacy of law enforcement ranked twenty-second with 40 per cent, well behind such concerns as recreation needs, medical needs, and assistance to the aged and poor. The responses regarding the allocation of public funds suggested that crime might have outranked other community problems if it had been listed as a possible choice. Seventy-two per cent of the respondents favored spending more public funds for "crime prevention and control," 67 per cent favored spending for "control of organized crime," and 76 per cent for "control of illegal drug use"—making "law and order" (composed of these three items) the top-ranking expenditure category, ahead of health and welfare, pollution, education, and job op-

1. As the FBI defines it, aggravated assault is essentially assault with a dangerous weapon or assault resulting in serious injury. See Federal Bureau of Investigation, *Uniform Crime Reporting Handbook* (U.S. Government Printing Office, Washington, D.C. 1966), p. 23.

2. Readers interested in drug abuse and related data may wish to consult the North Carolina Drug Authority in Raleigh, the Charlotte Drug Education Center (Dr. J. McLeod), and the Institute of Government in Chapel Hill (Dr. G. Grizzle).

3. R. Richardson, O. Williams, et al., *Perspectives on the Legal Justice System, Public Attitudes and Criminal Victimization* (Chapel Hill: Institute for Research in the Social Sciences, University of North Carolina at Chapel Hill, 1972), pp. 1-9.

The author's field at the Institute is criminal justice. He has special expertise in statistics.

portunities (ranked second, third, and fourth respectively). Respondents in rural areas, small towns, larger towns, and cities over 50,000 population all agreed on ranking the law-and-order category first with regard to increased expenditure of public funds. Respondents with various levels of education, ranging from grade school to graduate school, also agreed on ranking law and order first. There were some differences among racial and income groups with respect to the importance of crime control as an object of public spending. Whites at all income levels ranked it number one. Blacks' responses varied with income; the low-income black group ranked it fourth, the middle-income group third, and the high-income group second; among blacks as a whole, job opportunities, health and welfare, and education ranked higher.[4]

Thus far, citizen concern about crime has been discussed as if crime were one homogeneous entity, which of course it is not. Which *kinds* of crime are North Carolinians most disturbed about? The 1973 survey by the NCAES suggests that there is more concern about drug offenses than about other crimes; however, this is probably more a reflection of attitudes about health and morals than of assessments of harm directly caused by crime—property loss and personal injury. Some recent data from Mecklenburg County provide an assessment of relative seriousness of various crimes in terms of harmfulness to persons and property. All reports to the police in Charlotte and Mecklenburg County in 1971 of crimes of the FBI index type were scored for seriousness by means of the Wolfgang-Sellin index. (The Wolfgang-Sellin index,[5] a scoring technique developed from the subjective responses of many different groups of people, assigns to each crime incident a total score in which each element of property loss or personal injury receives a certain number of points. For example, if the crime results in the victim's death, 26 points are assigned, while minor injury only rates one point. Property loss can add from one to seven points, depending on the dollar value). As might be expected, offenses involving personal violence received very high individual scores in the Mecklenburg study—especially homicide, rape, and robbery—while the individual scores of larceny, breaking and entering, and other property offenses were lower. However, when multiplied by their total frequencies, the total scores of breaking and entering and larceny were much higher than the scores of violent crimes. This fact led the Mecklenburg Criminal Justice Planning Council—a group composed of city, county, police, court, and correctional officials—to designate larceny and breaking and entering as the highest-priority offenses for use of available federal crime prevention funds.[6]

CRIME TRENDS IN NORTH CAROLINA

Graphs 1A, 1B, and 1C show North Carolina's rates per 100,000 population of total index crime and of individual index offenses as reported by the FBI yearly from 1960 through 1972.[7] (Rates are used rather than numbers of offenses to identify trends over and above what would be expected as a result of population growth).

As in the rest of the country,[8] the state's total index crime rate (Graph 1A) increased enormously during the 1960s but in the early 1970s has shown signs of leveling off,[8A] primarily because of a pause in the increase of the two most frequent index offenses, burglary and larceny (Graph 1B). The robbery rate (Graph 1C), although only a small part of the total index offenses, has increased very rapidly in the thirteen-year period and has not decelerated in the early 1970s. This may be due to the fact that robbery offenders tend to be somewhat older than burglary and larceny offenders, and to be concentrated in the 20 to 24 age group (see Graph 4, page 9). If index crime rates are strongly related to the relative size of the 15 to 24 age group in the population, the passing of the crest of the postwar "baby boom" may not be reflected in decreasing robbery rates until the mid-1970s. (The age distribution is considered further in a later section on offenders' characteristics.)

The rate of the most frequent violent crime, aggravated assault (Graph 1B), has not climbed as rapidly as

4. J. A. Christenson, *People's Goals and Needs in North Carolina*, Vol. 1, pp. 19-22, Vol. 3, pp. 8-44 (North Carolina Agricultural Extension Service, North Carolina State University at Raleigh, 1974). Unlike the IRSS survey, the NCAES study underrepresented low-income, black, aged, and young persons somewhat, because sampling was done from a telephone book rather than from Census Bureau records. The possible distortions of this sampling method are discussed in Vol. 1, pp. 4-11.

5. T. Sellin, and M. Wolfgang, *The Measurement of Delinquency* (New York: Wiley, 1964), pp. 401-12.

6. See D. R. Gill, "Harm Caused by Crimes in Charlotte-Mecklenburg," and "Supplementary Information on Harm Caused by Crimes in Charlotte-Mecklenburg" (Chapel Hill: Institute of Government, University of North Carolina at Chapel Hill, 1972), and Mecklenburg Criminal Justice Planning Council, "A Strategy for the Reduction of Crime in Charlotte-Mecklenburg" (unpublished; issued February 15, 1973; copies may be available from the Mecklenburg County manager's office in Charlotte).

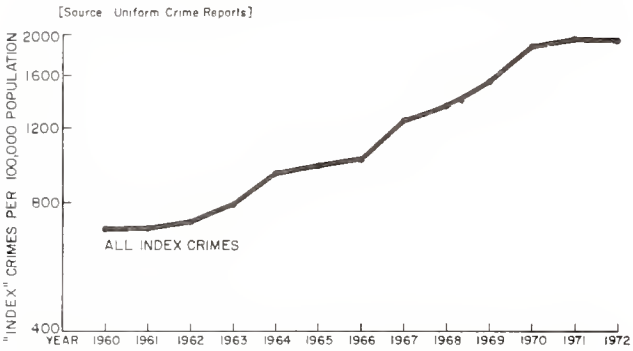
7. Uniform Crime Report data from 1973 will not be available until August 1974 and are therefore not included in this paper. The graphs appearing herein are all ratio-scale graphs; i.e., the amount of vertical increase or decrease from one point to the next on each graph is proportional to the *percentage change* rather than the absolute change.

8. From 1960 through 1972, the North Carolina index crime rate remained about two-thirds of the rate for the United States as a whole. In 1972, the rates of violent crime (homicide, rape, robbery, aggravated assault) were about the same in North Carolina (414.5) as in the United States as a whole (397.7), but the property crime rates (burglary and larceny) were much less for the state (1518.5) than for the entire country (2431 8).

8A. Crime data for 1973 were not available when this article was written. Changes in crime reporting - more inclusive reporting made possible by the Police Information Network and the FBI's redefinition of "index crime" to include larcenies under $50 - make the 1973 index crime rate not strictly comparable with the 1972 index crime rate. North Carolina's index crime rate in 1972 (old definition) was 1,933 per 100,000; the comparable figure in 1973, adjusted to remove effects of reporting changes, was about 2,050 - about 6 per cent higher than 1972. Thus, the crime rate is still increasing, but not nearly as rapidly as in the years 1965-70, when the crime rate went from 980 to 1,861 - an average yearly increase of 18 per cent.

GRAPH 1A

RATIO—SCALE GRAPH OF
NORTH CAROLINA INDEX CRIMES PER 100,000 POPULATION,
AS REPORTED BY F.B.I., 1960—72



the total index crime rate during the thirteen-year period. Since most of those who commit this offense are probably over age 25, its rate may not be subject to changes in the population age 15 to 24, and thus may behave differently in the 1970s and 1980s from burglary, larceny, and robbery rates. The rates of motor vehicle theft and forcible rape (not shown in graphs) seem to have leveled off in the early 1970s. The homicide rate has remained fairly stable throughout the thirteen-year period, ranging from 7.5 to 12.8.

During the 1960s and early 1970s, the index crime rate in metropolitan areas of the state increased rapidly, but no more rapidly than in nonmetropolitan areas; however, the index crime rate in metropolitan areas remained about twice that of nonmetropolitan areas from 1960 through 1972. Partly as a result of population shifts and partly as a result of enlarged census definitions of metropolitan areas ("SMSAs"), the *number of offenses* in metropolitan areas, (note that this is not the same as the crime *rate*) increased from 37 per cent of the total offenses in 1960 to 60 per cent in 1972.

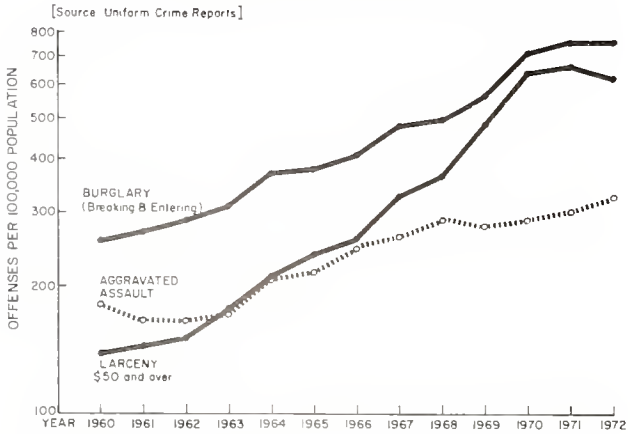
Could the crime increase of the 1960s be primarily a result of changes in crime-reporting procedures or in the willingness of citizens to report crimes? The available information suggests that such changes were not a dominant factor in the crime increase. It is known, of course, that revision of police procedures has at times affected crime statistics dramatically.[9] In North Carolina, the movement to improve police reporting and record-keeping techniques, assisted during the 1960s by the International Association of Chiefs of Police, was limited to metropolitan areas such as Greensboro and Charlotte; nevertheless, the crime rate increased equally fast in nonmetropolitan and metropolitan areas of the state. If Charlotte's crime rate, depicted in Graph 2, can serve as an illustration, the proportionate increase was no greater during the years likely to have been affected by police department reporting and recording improvements (1967 and 1968) than for the two prior years and the following year.

If changes in police procedures did not play a substantial role, it still is possible that part of the crime rate increase was the result of a greater willingness of victims or observers of crimes to report those crimes to the police, possibly due to a growing public consciousness of crime and readiness to communicate with law enforcement agencies. However, if this greater willingness to report crime to the police were a major factor, one would expect its impact on metropolitan crime rates to differ from its impact on nonmetropolitan crime rates—but, as we have seen, these rates have increased equally fast. It seems likely that most of the crime rate's growth during the last decade has been real rather than apparent.

Can North Carolina's crime rate be expected to increase, to decrease, or to remain at its 1972 level? As already noted, there are signs that the rate's growth (see Graph 1A) may level off in the late 1970s. To consider what may happen to the crime rate in the future, we must consider some of the factors that may be causally related to the crime rate. Changes in the age distribution, urban-

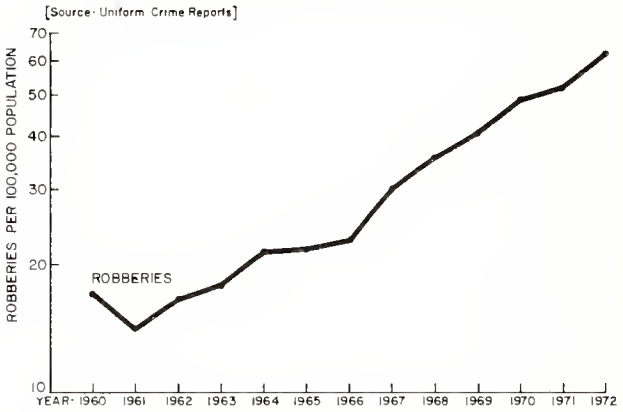
GRAPH 1B

RATIO—SCALE GRAPH OF BURGLARY, LARCENY $50 AND OVER,
AND AGGRAVATED ASSAULT PER 100,000 POPULATION
IN NORTH CAROLINA, 1960—72



GRAPH 1C

RATIO—SCALE GRAPH OF ROBBERIES
PER 100,000 POPULATION IN NORTH CAROLINA, 1960—72

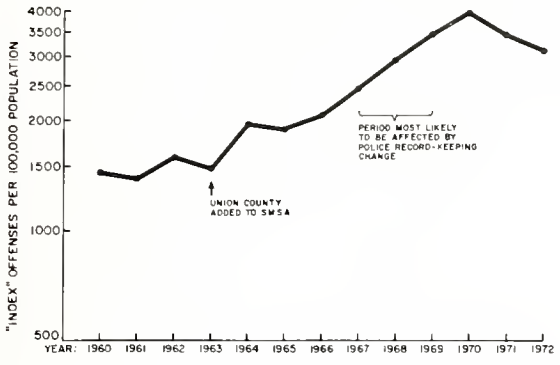


9. A classic example is described in J. F. Coates, "The Future of Crime in the United States from Now to the Year 2000," *Policy Sciences* 3 (1972), 27, 30. Official crime statistics in New York City increased enormously from 1965 and 1966, the first year after Howard Leary became police commissioner and insisted on full reporting.

GRAPH 2

RATIO–SCALE GRAPH OF 'INDEX' CRIMES PER 100,000 POPULATION IN THE CHARLOTTE, N.C., SMSA, 1960–1972

[The SMSA consists of Mecklenburg County only for 1960 and 1961, and of Mecklenburg and Union Counties from 1963 to 1972.]



ization, and the possible effect of an economic recession will be considered here. Other factors may also influence delinquency and crime in various ways—the nature of family relationships, the equality of social and economic opportunity, systems of education, and possible changes in the criminal law and juvenile offense law or the criminal justice system—but they are beyond the scope of this discussion.

Let us first consider the age distribution of the state's population. Age is a measure of the stage of physical, emotional, and intellectual development a person has reached, and may well be the most important factor, next to sex,[10] in determining the likelihood that a person will commit a criminal offense of a given type. Judging by arrest statistics (discussed in more detail below), those between 15 and 24 years of age are much more likely to commit index crimes than older or younger persons. The comparatively rapid growth of the 15 to 24 age group in the national population during the 1960s may have been responsible for a geometric increase in social disorder, including crime, because socializing institutions (composed primarily of older adults) were simply not prepared for the increase. As youths enter their middle and late teens, they must be integrated socially and economically into the adult world. The burden is on older people to help them make the transition to adulthood. Sudden changes in the ratio of the number of persons just entering adulthood to the number of older adults can be expected to dislocate normal practices of socialization, and this seems to have happened following World War II in the United States, especially during the decade of the 1960s—a result of the postwar "baby boom." Available past and projected data indicate that from 1900 to 1990, this age ratio has drifted downward (due to decreasing birth rates and longer life expectancy), except for an upsurge during the 1960s. As the Panel on Youth of the President's Science Advisory Committee recently put it:

> There has been only one major interruption in [the downward trend of the ratio]—a brief reproductive renaissance between the mid-1940s and the mid-1960s—which produced a gross malformation of the age distribution, the immediate consequence of which has been the recent extraordinary exaggeration of the size of the ordinarily problematic youth group, relative to the numbers of adults available to cope with it.[11]

Two eminent writers on crime and drug abuse recently described the effects of the change of the age structure and associated factors during the 1960s as follows:

> . . . [M]uch of the increase in crime, welfare utilization, and heroin addiction can be explained by the sheer numbers of young persons involved without adducing any theory about breakdown of the family, or the church, or of society . . . . But . . . changes in the age structure of the population cannot alone account for the social dislocations [including increased crime] of the 1960s . . . . It is possible that the sudden increase in the number of "risk" persons set off an explosive increase in the amount of crime, addiction, and welfare dependency. What have once been relatively isolated and furtive acts (copping a fix, stealing a TV) become widespread and group-supported activities . . . . The institutional mechanisms which could handle problems in ordinary numbers were suddenly swamped [in the 1960s] and may, in some cases, have broken down entirely [due in part to the change in the age structure]. The deterrent force of the police and the courts may not be great in normal times but it may have declined absolutely, not just relatively, in those exceptional times. The increase in crime produced a less than proportionate increase in arrests and, of those arrested, probably a less than proportionate increase in penalties. If the supply and value of legitimate opportunities (that is, jobs [for young people]) were declining at the very time that the cost of illegitimate activities (that is, fines and jail terms) was also declining, a rational teenager might well have concluded that it made more sense to steal cars than to wash them.[12]

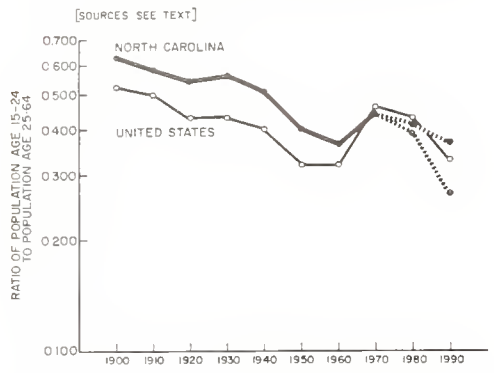
Graph 3 shows patterns of change in the ratio of the age 15 to 24 population to the older population from 1900 to 1990, in North Carolina and the nation—and the two patterns are quite similar. (The 1980 and 1990 data

10. All statistical compilations I have looked at indicate that males are much more overtly delinquent and or criminal than females. E.g., a national cross-sectional study of 847 boys and girls aged 13 to 16, based on confidential interviews, indicates that the percentage of boys who are more *frequently* delinquent than the median of the total group is twice that of girls, and that the percentage of boys who are more *seriously* delinquent than the median is twice that of girls; J. R. Williams and M. Gold, "From Delinquent Behavior to Official Delinquency," *Social Problems* 20 (1972), 209, 215. In 1972, the number of males arrested for Part I offenses, as reported to the FBI, was 4.5 times the number of females arrested; Federal Bureau of Investigation, *Uniform Crime Reports—1973* (Washington, D.C.; Government Printing Office, 1973), p. 131. This should not be interpreted to mean that girls and women do not play a large role in the "crime problem"—after all, they are the mothers, sisters, girl friends, and wives of the male offenders.

11. N. B. Ryder, "The Demography of Youth," in J. S. Coleman, et al., *Youth: Transition to Adulthood*, Report of the Panel on Youth of the President's Science Advisory Committee (Chicago: University of Chicago Press, 1974), pp. 45, 47-48.

12. J. Q. Wilson and R. L. DuPont, "The Sick Sixties," *The Atlantic Monthly* 232 (1973), 91, 98. Other factors mentioned as accompanying the change in the age structure were the creation by the media of a "youth culture" tending to legitimize deviant behavior, enhanced personal mobility, and interclass contacts brought about by civil rights and poverty programs.

GRAPH 3
RATIO OF POPULATION AGE 15–24 TO POPULATION AGE 25–64, NORTH CAROLINA AND UNITED STATES, FROM 1900 TO 1970 AND PROJECTED FOR 1980 AND 1990



are based on projections by the Census Bureau and the Carolina Population Center at the University of North Carolina at Chapel Hill.[13]) The lower of the two North Carolina projections (see broken lines in Graph 3) suggests that the age ratio may decrease below its 1950 level by 1990. It is probably too much to hope for that the crime rate will return to its 1950 or even its 1960 level, but if the age ratio is an important factor in crime trends, there may be hope for some decrease or at least a stabilization in the index crime rate by the 1980s.

How will urbanization of its population affect North Carolina's crime rate? Although farm population has been declining rapidly for many years (from 17.7 per cent of the total population in 1960 to 7.4 per cent in 1970), a majority of the state's residents (57.9 per cent) still lived outside metropolitan areas in 1970. However, the metropolitan areas are growing fast; while the state population increased by 11.5 per cent from 1960 to 1970, the metropolitan population increased by 22.8 per cent. (Much of this metropolitan growth—41.4 per cent—was in the "urban fringe" areas immediately surrounding central cities of 50,000 or more population, which are now the fastest-growing areas of the state). The gradual increase in the concentration of the state's population in and around urbanized areas has continued since the last century, and is not likely to stop.[14] This will probably exert an upward pressure on the statewide crime rate. However, it should be remembered that during the 1960s the crime rate increased no faster in metropolitan areas of the state than in nonmetropolitan areas, and that the apparent stabilization or downturn of the statewide crime rate in the early 1970s appears in both the metropolitan rate and the nonmetropolitan rate. It would seem that whatever the other factors were that forced the state's crime rate up during the 1960s, they were acting much faster (nearly tripling the crime rate) than the metropolitan population increased. It seems reasonable to conclude that, while urbanization will continue to exert an upward force on the crime rate, it is probably not nearly so significant in its influence as the other factors—probably including the changing age distribution—that pushed crime up in the 1960s and will have a dominant effect on crime in the next ten to twenty years.

If there is an economic recession in the 1970s, will it have an important effect on crime? A paper prepared recently for the United States Department of Justice concludes that, although the economy is now entering a recession (an increase in unemployment and a decrease in production and real income), there is no strong indication that the recession will increase crime. From his survey of the literature, the writer concludes:

> In brief, based on the evidence which we have at hand, economic hardship, as reflected in declining real income and rising unemployment, cannot be securely linked to a rise in the level of criminal activity.[15]

THE EXTENT OF CRIME VICTIMIZATION AND THE CHARACTERISTICS OF VICTIMS

As early as 1966, it has been known that a great deal of serious crime is never reported to police by victims or eye-witnesses. A study published in the report of the President's Crime Commission, carried out by the National Opinion Research Center (NORC) in 1965-66, surveyed 10,000 households (32,966 persons) across the United States. It revealed an index crime rate about twice that reported by the FBI Uniform Crime Reports (UCR) for 1965, as Table 1 shows.

The NORC study also inquired into the reasons victims gave for not reporting crimes. The reasons most frequently given were that the police could do nothing about the crime incident, that the incident was a "private matter," and that the victim did not want to harm the offender. (The last reason was especially common in connection with aggravated assaults, many of which occur within a family relationship.)

Although the milestone NORC victimization survey and similar contemporaneous studies pointed to a large gap between the extent of crime as reported to the police and the extent of actual crime, several years passed before the federal government began to monitor crime victimization regularly. The results of this program have (as

13. In Graph 4, the United States projections were found in Ryder, "The Demography of Youth," p. 47, and based on United States Bureau of the Census, *Current Population Reports*, Series P-25, No. 470, "Projections of the Population of the United States, by Age and Sex: 1970 to 2020," Table 2, Series D (Washington, D.C.: Government Printing Office, 1971). The North Carolina projections were supplied by Robert Krasowski and Professor C. H. Hamilton of the Carolina Population Center (University of North Carolina at Chapel Hill), and are based on two different sets of assumptions about migration, mortality, and age-specific fertility rates.

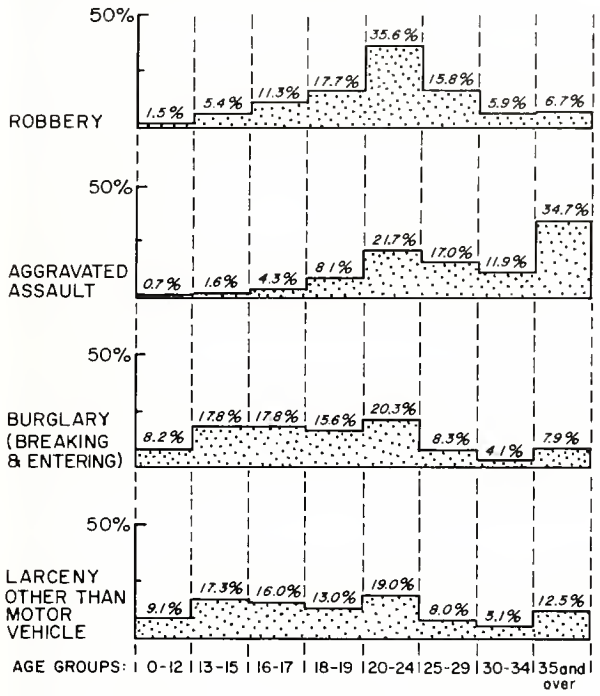
14. C. H. Hamilton, *North Carolina Population Trends*, Vol. 1 (Chapel Hill: Carolina Population Center, University of North Carolina at Chapel Hill, 1974); pp. 66, 76; also see T. E. Steahr, *North Carolina's Changing Population* (Chapel Hill: Carolina Population Center, University of North Carolina at Chapel Hill, 1973), pp. 39-43.

15. T. J. Orsagh, "The Potential Effect of Recession and the Energy Shortage on the Crime Rate," (Department of Economics, University of North Carolina at Chapel Hill, February 1974), p. 21.

GRAPH 4

NORTH CAROLINA ARRESTS REPORTED TO F.B.I. FOR 1972, BY OFFENSE AND AGE GROUP

[based on reports from 88 agencies serving 46% of the total state population, including all metropolitan areas.]



of May 1974) still not been published in their entirety; however, some advance information about the findings is available. Covering experience with crime during the year 1972 in thirteen major cities, a survey conducted by the Census Bureau for the Law Enforcement Assistance Administration found that the ratio of reported to unreported crime (including larceny of property valued under $50 as well as "index" crime, but excluding homicide) varied among the thirteen cities—ranging from 1.4 to 5.1, with an over-all ratio of about 2.6. Assault and rape were most often unreported, and—presumably for insurance reasons—automobile theft was most often reported. Victimization rates varied widely from city to city.[16]

What is the extent of crime victimization in North Carolina? The IRSS interview survey in 1971 of 1,145 adults across the state inquired about experiences with crime during the year 1970-71. The resulting data are difficult to compare with those published by the FBI and other victimization studies because nonstandard definitions of offenses are used (for example, the category of "theft" apparently includes breaking and entering in which no property damage occurred as well as larceny). The survey does include consumer fraud, which, although not necessarily a crime in a legal sense, may cause losses equal to those caused by thieves and burglars. Table 2 indicates the proportions victimized by various offenses.

About 53 per cent of adult North Carolinians reported that they had been victimized in one or more of the ways listed in Table 2. Thirteen per cent reported "thefts" from themselves or members of their households during 1970-71; as defined in this study, theft includes all larceny and most burglary and breaking and entering. Nine per cent were victimized by consumer fraud, including nondelivery of goods and defective merchandise not replaced by the seller. Nearly 6 per cent reported property damage, if damage resulting from vandalism and from breaking and entering is included. Three and six-tenths per cent sustained losses due to worthless checks or other credit fraud. Nearly 3 per cent suffered personal injury or property damage attributed to a reckless or drunken driver. Two and six-tenths per cent were victims of completed or attempted assaults or robberies.[17]

In the IRSS survey, half of the respondents who said that they had known about or observed an incident about which they "thought that maybe the police should be called" also said that no one had reported the incident to the police. No figures for reporting specific types of incidents or offenses are available in the survey publication. Among the reasons given for failing to report to the police, the most common were desire to avoid involvement or trouble, fear of being harmed by the offender, desire not to harm the offender, feeling that reporting was someone else's responsibility, belief that the evidence was insufficient, and belief that the police could not do anything about the incident. Nearly 12 per cent of those who did not report said they could not or did not know how to contact the police.[18]

Which characteristics of North Carolina citizens influence their chance of becoming targets of various types of

Table 1

Comparison of Index Crime Rates per 100,000 Population as Indicated by National Opinion Research Center Victimization Survey (1965-66) and by UCR for 1965 (Uniform Crime Reports figures adjusted to remove offenses not committed against individuals and households)

	NORC	UCR	Ratio of NORC to UCR
Offenses against persons (homicide, rape, robbery, aggravated assault)	357.8	184.7	1.94
Offenses against property (burglary, breaking and entering, larceny $50 and over)	1761.8	793.0	2.22

16. *Criminal Justice Newsletter* 5, no. 8 (National Council on Crime and Delinquency, Hackensack, N.J., April 22, 1974), 25-26; The New York Times, Jan. 7, 1974, pp. 1, 34, and April 21, 1974, sec. IV, p. 6 (articles by David Burnham); United States Department of Justice, *Crime in the Nation's Five Largest Cities: Advance Report* (Washington, D.C.: United States Government Printing Office, April, 1974).

17. Richardson, Williams, et al., *Perspectives on the Legal Justice System*, pp. 17-24. Table 2 is taken, with clarifying modification of definitions, from Table II-4, pp. 23-24.

18. *Ibid.*, pp. 30-32.

Table 2

Crime Victimization During Year 1970-71 of Members of Households of 1,145 North Carolina Adults Interviewed by UNC Institute for Research in Social Sciences

Type of Victimization	Percentage (N = 1,145)	Content of Victimization
1. Theft	13.2%	Attempted, completed thefts from respondent or member of his household: from vehicles, persons or their property. Thefts involving property reported separately. (This category apparently includes breaking and entering and burglary combined with larceny, in which no property damage was done).
2. Consumer fraud	9.3	Includes nondelivery of mail-ordered goods; defective merchandise not replaced or refunded; deficient repair work; interest charges greater than original agreements; fraudulently billed telephone calls; refusals to make repairs by landlords, builders, and realtors. Excludes incidents in which no monetary loss was reported.
3. Neighborhood nuisances, disturbances	8.6	Disorderly neighbors, public drunkenness, window-peeping, trespass, and loud and speeding vehicles. Excludes incidents in which police are not called.
4. Property damage, vandalism	4.5	Destruction, disfigurement or defacement of any person's property. Damage resulting from a reckless or drunken driver excluded and coded under vehicular offenses.
5. Credit fraud	3.6	Forging and uttering bad and worthless checks; illegal use of credit devices. Excludes compensated worthless checks.
6. Threatened assault	3.0	Threats in person or by phone, threatened sexual assaults and threatened assaults accompanying property damage or attempted theft.
7. Vehicular	2.8	Instances in which the respondent or a member of his household was injured, or his vehicles or property damaged, by someone the respondent felt was a drunken or reckless driver.
8. Assault or robbery, armed and unarmed	2.6	Attempted and executed assaults against respondent or member of his household; robberies both attempted and completed.
9. Familial	1.7	Abandonment or nonsupport of spouse or children in direct violation of court orders.
10. Theft with property damage (breaking and entering, burglary)	1.4	Breaking and entering of vehicle or structures pursuant to larceny.
11. Drug offenses	1.0	The attempted sale or attempted transfer of drugs.
12. Sexual assault and molestation	0.2	Sexual assault and abuse of any kind.

Source: R. Richardson, O. Williams, et al., *Perspectives on the Legal Justice System: Public Attitudes and Criminal Victimization* (Chapel Hill: Institute for Research in Social Sciences, University of North Carolina at Chapel Hill, 1972), pp. 18-24.

crime? This question cannot be answered definitively, but some recent data shed considerable light on the subject. Unfortunately, the only available statewide North Carolina victimization data—those of the 1971 IRSS survey—are not helpful. The IRSS survey report presents its findings with all forms of victimization combined, ranging from the serious (such as armed robbery) to the trivial (such as being disturbed by disorderly neighbors.) This all-inclusive definition of victimization practically guarantees that the measurement of victimization (so defined) will be greatly influenced by the willingness of the respondent to talk to the interviewer—so greatly that many aspects of specific crime victimization are obscured. The IRSS researchers concluded that their finding of somewhat greater victimization for high-status, white, and young respondents was probably due to a greater tendency of such respondents to answer questions.[19]

With regard to the characteristics of crime victims, some data relating to Charlotte—probably fairly representative of other urbanized areas of the state—suggest that the racial characteristics of the area where a person resides, and to a much lesser extent the income characteristics of the area, have a great influence on his chance of becoming a victim of certain types of crime. The Charlotte data concern residential burglaries reported by the police to the FBI for the year 1971. (Burglary, including breaking and entering, is the largest category of FBI index crimes, and more than half of the burglaries committed have homes as their target.) Comparing the reported residential burglaries per thousand housing units with race and income data across census tracts (58 small, relatively homogeneous areas used for aggregation of census data) revealed that the percentage of nonwhite residents in a census tract was strongly related to the chance that a residence located within the tract would be broken into in the course of a year—so strongly that the percentage of nonwhites accounted for 66 per cent of the variation in the residential burglary rate among all tracts.[20] Median income was very much less important; when combined with race, it proved to be insignificant, but

19. *Ibid.*, pp. 27, 24-27.

20. See S. H. Clarke, "Burglary and Larceny in Charlotte-Mecklenburg: A Description Based on Police Data" (Chapel Hill: Institute of Government, University of North Carolina at Chapel Hill, 1972), pp. 6-7, Graphs 1, 2. Multiple regression analysis performed later showed a multiple R of 0.81 for percentage of nonwhite (F equals 55.9), and showed the insignificance of median tract income and the ratio of the population age 15 to 24 to the population age 25 to 64.

when analyzed by itself, it explained 28 per cent of the variation and was negatively correlated with burglary. In other words, the greater the percentage of nonwhite residents in an area, the greater the chance that a home would be victimized; and to a much lesser extent, the lower the median income, the greater the chance of victimization.[21]

The study cited earlier of the nation's largest cities agreed with the Charlotte burglary study in finding that households headed by members of minority races were more likely than white households to be burglarized; no clear pattern with respect to income was found. Persons from families with incomes of less than $10,000 had a higher rate of victimization with respect to robbery and larceny "with contact" (pocket-picking and purse-snatching) than those from more affluent families; however, the chance of incurring larceny "without contact" (theft from home or automobile) tended to rise with the level of family income. Blacks and other minority-group members had higher victimization rates than whites with regard to robbery and aggravated assault. For most types of victimization, persons under age 35 were more likely to be victimized than older persons, and males more likely than females.[22]

To conclude the discussion of characteristics of crime victims, we may say that although there are no published data adequate to describe the entire state, available information suggests that minority group and lower-income citizens bear a greater burden than other citizens of victimization from residential burglary, robbery, larceny with contact, and aggravated assault, at least in urbanized areas. Therefore, although we are far from having a well-developed "victimology" (a method of determining the likelihood that a person will be victimized based on his personal and social characteristics), we can at least conclude that crime victimization is not primarily a white middle-class problem.

CHARACTERISTICS OF CRIMINAL OFFENDERS

Regrettably, when people commit crimes, they do not leave at the scene a note listing their sex, age, IQ, and other statistics that crime researchers are so fond of. Observers' reports are not uniformly reliable, and the most common index crimes—property offenses—are rarely observed by anyone other than the offenders. Therefore, answering the question "What kinds of people commit index crimes in North Carolina?" can be by estimation only. The best data available for this purpose are arrest statistics.[23] One who uses data on arrestees must assume that arrestees are more or less typical of the offenders that commit offenses of the type which they are charged. This assumption is, I think, safe enough for the present purpose—providing a broad, general picture of crime in North Carolina.[24] The fact is, however, that the perpetrators of most index offenses escape arrest.[25]

The FBI Uniform Crime Report for 1972 provides data[26] on arrests in North Carolina for "Part I" fenses (index offenses plus larceny under $50 and manslaughter by negligence), based on reports received from 88 law enforcement agencies serving 46 per cent of the state's population and including all metropolitan areas. These data indicate that 82 per cent of those arrested were male, 43 per cent were white, and 57 per cent nonwhite. The age distribution of those arrested for the four most frequent Part I offenses is shown in Graph 4 (page 9).

The Graph 4 data suggest strongly that most of those who commit Part I offenses are under age 25, even though these data may exaggerate the contribution of teenagers to the total number of offenses.[27] The various Part I offenses apparently have quite different age distributions for which there are no clear explanations at the present time, even in theory.[28] Most burglary and larceny arrestees are under 20, one-fifth are 20 to 24, and between one-fourth and one-fifth are over 24. We may hypothesize tentatively that teenagers are attracted to

21. The negative relationship with income seems to hold for burglaries involving up to $500 worth of stolen goods, but not for the comparatively few involving greater amounts. For those involving more than $2,000, higher-income homes have—as might be imagined—a greater chance of being the target of burglars. Clarke, "Burglary and Larceny in Charlotte-Mecklenburg."

22. United States Department of Justice, *Crime in the Nation's Five Largest Cities*, pp. 2-3.

23. Data on actual delinquency, based on anonymous self-administered questionnaires recently completed by junior and senior high school students in Charlotte-Mecklenburg schools, are now being analyzed and should provide a better profile of school-age offenders (in urbanized areas, at least) than police and court data can.

24. Two possible objections to using arrestee data for the purpose of describing the offender population are: More skillful criminals are not so likely to be arrested as less skillful criminals, and are therefore inadequately represented in arrestee statistics. This objection is not too problematic if one assumes, as I do, that most burglaries, larcenies, and robberies are committed by opportunistic (and relatively unskilled) offenders and the number committed by "professionals" constitutes only a small fraction of the total index offenses. (2) The most frequent offenders are mostly likely to be arrested, other things being equal, and are therefore overrepresented in arrestee data. This objection is valid if we are interested in who the typical *offender* is, but not if we are interested in who commits the typical *offense*.

25. In 1972, for the South Atlantic states including North Carolina, the FBI reported the following percentages of crimes reported to the police as being "cleared" (solved) by arrest: burglary, 20.0 per cent; larceny of $50 and over, 12.8 per cent; aggravated assault, 67.7 per cent; auto theft, 20.4 per cent; robbery, 27.9 per cent; forcible rape, 62.1 per cent; and homicide, 85.0 per cent. (The true clearance-by-arrest percentages are usually much less than these, of course, since in all categories except homicide and auto theft, many offenses are not reported to the police.)

26. The data referred to was provided by the FBI upon request in computer printout form, and have not been published elsewhere.

27. The age distribution of arrestees probably exaggerates the contribution of offenders under 20 to the total numbers of offenses committed, because younger offenders probably have a somewhat greater chance of being arrested than older offenders.

28. One criminologist regards the failure to explain age variations in criminality as the major shortcoming in theories of crime and delinquency at the present time. See Robert Martinson, "The Myth of Treatment and the Reality of Life Process" (paper delivered at meeting of the Eastern Psychological Association, Philadelphia, April 18, 1974; the author is chairman of the Department of Sociology at City College of New York).

burglary and larceny because of the low risk of apprehension (see footnote 25), but "outgrow" these offenses by their late twenties. Robbery is much less frequent in the early teens, but more frequent later, peaking sharply in the early twenties.

Aggravated assault—like robbery a violent offense, but presumably characterized by less "rational" motives—also peaks somewhat in the early twenties, but persists into later adulthood, with a majority of the offenders (according to these data) over age 24. Since aggravated assault usually occurs in the context of a personal or family relationship, we may suppose that this offense is often the product of strains affecting family members or acquaintances that occur later in life, when adult roles are firmly established.

Table 3 shows the comparison of the income distribution for persons arrested in Charlotte in 1971 for burglary and for larceny (the two most numerous index offenses) with the income distribution of all Charlotte men aged 16 to 44, including those from a few contiguous census tracts lying partly outside the city.[29] (There is no reason to suppose that these Charlotte data are untypical of other urbanized areas of the state.) The median family income of those arrested for these two crimes was substantially less than that of the comparable general male population ($5,110 and $5,573, respectively, compared with $8,857), and the fraction of those in the lowest income group was more than three times as large for the arrested persons as for the comparable general male population, while the fraction in the next-to-lowest income group was 1½ times as large for the arrestees. These figures support what common sense would suggest: that those who commit burglary and larceny are likely to live in the poorer neighborhoods of the city and to be individually poorer than members of the comparable general population.

Table 3

Comparison of Income Distribution of Persons Arrested in Charlotte in 1971 with That of All Male Residents Age 16-44 in 1970

	Persons Arrested for Burglary (Breaking and Entering) (Total 310)	Persons Arrested for Larceny (Total 289)	Charlotte Male Residents, Age 16-44 (Total 58,244)
Median 1969 income of census tract of residence			
$0-3,999	37.1%	31.5%	10.0%
$4,000-6,999	34.8%	35.3%	20.5%
$7,000-9,999	17.7%	18.3%	31.4%
$10,000-12,999	5.5%	10.4%	22.6%
$13,000 and over	4.8%	4.5%	15.4%
Median income of group (estimated by interpolation)	$5,110	$5,573	$8,857

29. Actual individual income of the arrestees was not available; therefore the median 1969 income of families and unrelated individuals of the census tracts in which they resided was used as a proxy. Because all burglary-larceny arrestees were age 16 or over, 94 per cent were under age 45, and most were male (96 per cent for burglary arrestees and 87 per cent for larceny arrestees), the arrestees' income data are compared with the figures for males age 16 to 44 living in the same areas in which the arrestees resided. (The arrestee data were collected by the Institute of Government, University of North Carolina at Chapel Hill, from police and court records).

Those arrested for index offenses tend to have low incomes and to be disproportionately nonwhite (57 per cent, at a time when about 23 per cent of the total state population was nonwhite). Can the greater likelihood of arrest for nonwhite and low-income persons be a result of selectivity (conscious or unconscious) with regard to race and social class by law enforcement agencies? Studies of self-reported delinquency in the United States suggest that such selectivity *partly, but not entirely,* explains the greater arrest rate among nonwhite and low-income persons.[30] Some of the differences in the frequency and ably due to true differences in the frequency and seriousness of criminal behavior between whites and nonwhites and between low-income and higher-income persons.

To summarize, the available data indicate that persons who commit index offenses are typically male, young (often in their teens and usually under 25), and are nonwhite and poor (or from low-income areas) more often than the general population. Among those who commit robbery and aggravated assault, there is a greater proportion in the early twenties and a greater proportion over 24 than among those who commit burglary and larceny. Finally, it appears that a great many, perhaps four-fifths, of those who commit the most frequent index offenses, burglary and larceny, are in their middle or late teens.

CONCLUSION

We have seen that North Carolinians are quite concerned about crime, and justifiably so. The index crime rate has nearly tripled since 1960, probably reflecting a real increase in per capita crime rather than a change in crime reporting—an increase that potentially affects everyone in the state, especially members of minority groups and low-income persons in metropolitan areas. Although an-

30. There are several reasons why the nonwhite or low-status person who commits an offense may be more likely to be apprehended than a white or higher-status person who commits the same offense. Racial or social prejudice cannot be discounted as a factor. Police probably tend to patrol low-income and nonwhite neighborhoods more heavily; this may raise the chance of apprehension of low-income offenders, who are probably more likely than higher-income offenders to commit their offenses in such neighborhoods. Victims of crime in low-income neighborhoods, less able to bear their losses than more affluent citizens, may be more desirous of vigorous law enforcement. In exercising their considerable discretion to arrest or release a suspect, law enforcement officers may be influenced by perceived attitudes toward authority of lower-status suspects. Unfortunately, there are no self-report data on adult crime that can be used to establish whether race and income selectivity does affect arrest practices. There are considerable data on juvenile offenders, generally tending to show somewhat higher frequency and/or seriousness of delinquency among blacks than among whites and among lower-status youngsters than among higher-status youngsters, but not so great a difference as official arrest figures would suggest. Findings vary on whether there is social class discrimination involved in apprehension by police. See, e.g., T. Hirschi, *Causes of Delinquency* (Berkeley: University of California Press, 1969), and Williams and Gold "From Delinquent Behavior to Official Delinquency," pp. 209-29.

alysis of demographic trends suggests a downturn or stabilization of the crime rate by the 1980s, when the postwar "baby boom" has passed, this gives us little comfort in 1974. Despite our ability to describe crime, offenders, and victims – which is much greater now than fifteen or twenty years ago, probably due to the great upsurge of interest in crime during the 1960s – it is fair to say that we still do not know what to do about it.

A number of approaches to reducing crime have been recommended in recent years, including intensified offender rehabilitation efforts, diversion of the offender from the criminal justice system, crime-specific deterrent tactics by police, general social reform, reform of criminal and juvenile offense laws, and improvement of the criminal justice system according to some objective standard of quality. Each of these approaches has some merit, but each is also controversial in some respect with regard to its effectiveness in preventing crime. A general discussion of effectiveness is beyond the scope of this article, but it is safe to say – despite often-heard claims – that no method of crime prevention can guarantee results. The best policy may be to encourage *cautious experimentation* – to try a limited number of judiciously chosen approaches and to evaluate them as rigorously as possible. It is unrealistic to expect a "cure" for the crime problem as dramatic as, say, the Salk vaccine, but if we keep trying cautiously, evaluating honestly, and then trying again, using whatever we can learn about what does and does not work, perhaps we can reduce the crime problem to manageable dimensions.

THE USE OF THE CRIMINAL SANCTION

[*continued from page 5*]

LIMITING THE USE OF THE CRIMINAL SANCTION

The traditional (pre-twentieth century) use of the criminal sanction in America for intimidation, deterrence, moral reinforcement, or retribution in cases of morally condemnable behavior has been undercut by the twentieth-century explosion in the use of the criminal sanction to enforce regulatory measures.

If regulatory measures are to be complied with, must violations of them be made crimes? Probably not. It seems that intimidation or deterrence in regulatory matters could be served as well by civil monetary penalties as by criminal monetary penalties.

But even if civil penalties would work as well as criminal penalties in enforcing merely regulatory laws, is there any reason to prefer the civil to the criminal penalty? Proponents of the argument that criminal regulatory offenses could better be handled as civil matters make two claims: (1) using the criminal sanction to control the kind of behavior dealt with by regulatory offenses squanders the unique attributes of the criminal sanction; and (2) the purposes served by applying the criminal sanction to regulatory requirements can be better served by the use of other sanctions. They argue that the criminal sanction is better reserved for behavior that is morally blameworthy – that to treat noncleaning of milk bottles and overly frequent marathon dancing as criminal is to run the risk of diluting the solemnity and seriousness that should attach to criminal judgments in order that the criminal sanction have maximum effects of deterrence and moral reinforcement. These proponents of civil sanctions further argue that to use the criminal sanction to enforce regulatory requirements is only second best, since the same effect could be more efficiently achieved through other legal devices, especially a civil monetary penalty, which the state could call into play for violation of its regulations without the necessity of meeting the special procedural requirements for a criminal conviction. Effective enforcement of regulatory measures demands prompt findings of violations and imposition of penalties. In these circumstances, the careful but cumbersome criminal procedures get in the way needlessly and they should no more be required in cases of these sorts than they should in countless civil proceedings with comparable consequences involved.

Clearly, questions can be raised about how the criminal sanction should be used. (Another article in this issue of *Popular Government* contains a discussion of using criminal sanction against the so-called victimless crimes.) But some may feel that the questions are misplaced – that the criminal sanction and its unique procedural underpinnings are best regarded as a historical accident with little practical significance. This view would hold that the criminal sanction has no special attributes that should guide its use. The constant expansion in behavior to which criminal sanctions are applied and the absence of any practical reflection on whether the expansion is proper suggests that this view is the predominant one.

DECRIMINALIZATION, DIVERSION, AND PRETRIAL RELEASE: AN INTRODUCTION

Michael Crowell

> This fellow will not go wrong again; he is too terribly frightened. Send him to jail now and you make him a jailbird for life. Besides, it is the season of forgiveness.
>
> —Sherlock Holmes,
> in *The Adventure of the Blue Carbuncle*

WRITERS IN CRIMINAL JUSTICE have more and more accepted that incarcerating a person increases the chances of his becoming "a jailbird for life." Consequently, a current theme in national literature on criminal justice is how to deal with offenders other than jailing them, particularly those who have not yet been found guilty of any offense and are awaiting trial.

The traditional way of handling someone who has committed a crime (or, more specifically, one for whom there is probable cause to believe he has committed a crime) is to place him under arrest and either release him on money bail or keep him in jail until trial. It is now being suggested that some of these people ought not to be subject to arrest at all; that even if they have violated a criminal statute, some need not be taken into custody before trial, and after being arrested some should be released without posting bail; and that even if arrested and held, some should have the charges against them dropped if they do well in some sort of rehabilitative program. A common presumption of all these alternatives is that jailing a person is the least desirable option, that other kinds of "treatment" can do him more good, and that other treatment may be more economical for society in the long run.

The purpose of this article is to survey the kinds of nonimprisonment recommendations that are being made nationally and to indicate what effect the current law in North Carolina would have (or has already had) on those alternatives. The article is limited to those laws and programs for putting offenders some place other than jail *before* trial. Programs implemented after trial are not discussed since they are more properly a matter of corrections, though the basic rationale for many sentencing alternatives is the same as for the pretrial proposals.

What follows is organized into four main sections. The first discusses decriminalization, the repeal of various offenses that are thought not appropriate for the criminal law. The next section deals with those programs usually referred to as diversion; their common characteristic is that the defendant who has been arrested and held may have the charges against him dropped if he successfully completes a program of work and counseling. The third section concerns methods of keeping the offender in the criminal justice system pending trial by processes other than arrest and jailing. Included in that broad category are such alternatives as use of the citation and summons and release with and without bail. The last section makes general observations concerning all of these proposals.

DECRIMINALIZATION

In their book *The Honest Politician's Guide to Crime Control*, Norval Morris and Gordon Hawkins propose removal of criminal sanctions for the following kinds of conduct: drunkenness, narcotics and drug abuse, gambling, disorderly conduct and vagrancy, and consensual sexual behavior (including prostitution, fornication and adultery, and obscenity). The decriminalization of some or all of those offenses has also been recommended by many other commentators and by such prestigious agencies as the President's Commission on Law Enforcement and the Administration of Justice (the 1967 President's Crime Commission) and the National Advisory Commission on Criminal Justice Standards and Goals (1973). The rationale generally put forward is that the criminal sanction is appropriate only for dealing with forms of conduct that present a substantial danger of harm to others and the forms of conduct named above harm only the perpetrator, if anyone. The proponents of decriminalizing these offenses, the "victimless crimes," note that they account for a high percentage of the work police do, roughly half of all nontraffic arrests in this country each year. If freed from enforcing those statutes, they assert, the police would become available to deal with "true" crime, with prevention and solution of rapes and assaults and robberies and the like. Those who maintain this position also contend that since so many of these offenses are violated each day by so many people, they provide an unhealthy opportunity for misuse of police discretion; police use these offenses as a "handle" to deal with people they find undesirable but who are not really criminals. Also, since demand for some of these activities (especially drug use, prostitution, and gambling) seems to remain high despite their illegality, to continue to prohibit the activities only serves to raise the price and encourage the development of organized crime to meet the demand. Finally, the feeling is that for some of those offenses, "treatment" is a more appropriate response than the "punishment" implied by criminal disposition; for example, many drunkenness offenders are derelict alcoholics who cannot help getting drunk, and they need de-

At the Institute the author works in the area of criminal justice.

toxification and alcohol rehabilitation rather than jail.

There are other categories of offenses for which decriminalization is proposed but for different reasons. Some commentators (including the National Advisory Commission on Criminal Justice Standards and Goals) suggest treating traffic offenses as administrative matters. Hearing officers rather than judges would resolve disputes, and the maximum punishment would be a fine. This approach argues that most traffic offenses do not really represent "criminal" conduct, that there is no requirement of an intent to violate the law (as there is with most crimes), and that violating a traffic statute does not show the kind of social deviance the criminal courts are supposed to deal with. But mainly, there are just so many traffic cases that the criminal system cannot handle them all and provide real justice. For traffic offenses that do involve some form of truly dangerous conduct, such as drunken driving and careless and reckless driving, the criminal sanction could remain available.

Decriminalization is also proposed for bad-check and nonsupport offenses. For these "crimes," the law enforcement system is serving primarily as a debt-collection or social service agency. Generally, both of these offenses involve no more than one person's owing money to another, and the collection of that debt should be handled, it is argued, in the civil courts by means of a suit by the person to whom the money is owed. Some bad checks do involve substantially more than just writing a check for more than is in one's account, and in those instances when fraud is involved the applicability of the criminal law might be retained.

North Carolina has not yet voluntarily adopted any of the proposed decriminalizations just mentioned. One change in regard to vagrancy has been imposed by a federal court and some action short of decriminalization has taken place on other offenses at the state level, which indicates some sympathy with the reasoning given at the beginning of this discussion. These shifts in attitude are discussed below.

Vagrancy. In North Carolina there is still a statute, G.S. 14-336, that prohibits vagrancy, classifying as vagrants "persons wandering or strolling about in idleness who are able to work"; "persons leading an idle, immoral or profligate life" and "who are able to work but do not"; persons who do not work and have no "visible and known means of a fair, honest and reputable livelihood"; and so forth. The punishment is $50 or 30 days for the first offense and $500 and/or six months for subsequent offenses, but in 1969 the statute was declared unconstitutionally vague and its enforcement enjoined by the United States District Court for the Western District of North Carolina (*Wheeler v. Goodman*, 306 F. Supp. 58). There may be local ordinances covering the same sort of conduct that are still being enforced, but probably they also suffer from terminal constitutional deficiencies.

Disorderly Conduct. North Carolina had no statewide disorderly conduct statute until 1969, and G.S. 14-288.4, which was enacted then as part of the Riot and Civil Disorder Act, is probably now sufficient to withstand challenges for unconstitutional vagueness [a 1971 amendment corrected the problems observed by the North Carolina Supreme Court in *State v. Summrell,* 282 N.C. 157 (1972)]. Since the conduct prohibited is now rather tightly defined, the statute may not be objectionable to those who generally call for the repeal of disorderly conduct laws. Presumably still objectionable is the vague G.S. 14-334, which makes it unlawful "to be drunk and disorderly in any public place or on any public road or street . . . ." That is a separate offense from simply being drunk in public (see below), but it seems unlikely that charges are often brought under that act when the more specific and trustworthy G.S. 14-288.4 is available.

Drug Offenses. Recent revisions of the drug laws, though falling short of repeal, indicate some responsiveness to the argument that drug abuse is not conduct that deserves harsh punishment. In recent sessions of the General Assembly, the punishment for possession of marijuana [G.S. 90-95(d)(4)] has been reduced to a maximum of $500 fine and/or imprisonment for six months if the amount possessed is one ounce or less (and keep in mind that in practice a plea of guilty to this charge might be accepted even though the amount possessed was greater). Another section of the Controlled Substances Act, G.S. 90-96, also now provides that if the charge is possession of a substance in schedule III through schedule VI (barbital, marijuana, for example) and the offense is the defendant's first, the court can place the convicted defendant on conditional probation before actually entering judgment and can then dismiss the charges upon compliance with the terms of the probation, leaving no formal conviction. The same statute allows the defendant then to go back to the court and, if he was under 21 at the time of the offense, have all records of his arrest and trial expunged. The 1973 General Assembly added an additional provision that if the charge is for a misdemeanor drug possession and the defendant is under 21 and he is acquitted, or the charge is dismissed or nol prossed, then he can have the court expunge the records.

For those who wish decriminalization of the drug offenses, these changes obviously are not satisfactory. But they indicate some shift in attitude, a feeling by recent legislatures that perhaps the use of drugs is not wholly "criminal" conduct and some of the traditional punishments (such as stigmatization of the offender as a criminal, a person with a record) should be removed. (Another statute enacted in 1973, G.S. 15-233, extends expunction to all misdemeanor convictions of those under 18 who do not have another conviction within two years and generally are of "good behavior.")

Obscenity. Although probably not by intention, a 1974 change in the antiobscenity statutes may effectively

remove criminal sanctions from distribution of pornography. The General Assembly made it somewhat easier to define writings, photographs, movies, etc., as obscene, but it also provided that criminal liability does not attach until a person has disseminated such material *after* it has been found to be obscene in an adversary hearing. That is, only a fool would be guilty under the new statute since he could avoid violating the law by simply not disseminating material once a hearing has declared it obscene. The legislation was passed in the dying days of the session, and it is not altogether clear that it represents a conscious decision on the part of all the legislators to liberalize the pornography statutes.

Sex Offenses. This state has several statutes that might cover consensual sexual activity, most notably crime against nature, fornication and adultery (limited to lewd and lascivious cohabitation), prostitution, and occupying a hotel room for immoral purposes. Repeal of these offenses has not been seriously considered by the legislature; in fact, the only changes proposed in recent years have been for expansion of the coverage. The last several sessions have seen bills proposing statewide regulation of massage parlors (already done locally in several places), banning X-rated movies from television, requiring screening of drive-in theaters, and increasing punishment for sexual assaults. None of this legislation has been enacted, but North Carolina seems a good way from decriminalizing consensual sexual offenses.

Gambling. Again, a variety of statutes now regulate gambling. Subject to criminal penalties are such activities as dealing in and advertising lotteries, selling numbers tickets, promoting pyramid and chain schemes, gambling, betting on games of chance, and keeping gaming tables or punchboards or slot machines. No effort has been made to do away with these laws altogether, although the 1973 General Assembly had before it a proposal to eliminate imprisonment as a punishment for most gambling offenses; that bill received no action. Nevertheless, bingo and skilo have been legalized in a number of counties by local acts of the legislature. These acts usually specify that the games are lawful only when conducted by religious, charitable, veterans', civic, and similar groups or at bazaars or fairs sponsored by such groups. In 1974, a local act specified that the authorization for bingo and skilo in Wake County extends to the state fairgrounds. But no serious proposals have been made for a state lottery or publicly operated numbers game as in some other states.

Public Drunkenness. Of all the proposed decriminalizations, the one heard most often is that for repeal of the laws prohibiting simple public drunkenness. And as a result, more changes have been made in this area than in any other, both here and in other states. Legislators have probably been receptive to these proposals primarily because of the enormous drain on the police that handling of public drunks imposes. About one-quarter of all arrests in the country are for simple public drunkenness—about one-third of the nontraffic arrests in North Carolina. That takes up a lot of police, court, and jail time and space. And since many of those arrested for drunkenness are alcoholics, logically it would seem a wiser expenditure to have them treated rather than arrested, hoping that they will not come back as often for treatment as they do for arrest.

The President's Crime Commission, the National Conference of Commissioners of Uniform State Laws, the National Institute of Mental Health, and the American Bar Association have all recommended that states repeal their public drunkenness criminal statutes and substitute new legislation authorizing law enforcement officers to take protective custody of those incapacitated by drinking. Once taken into custody, the drunk would be taken to a detoxification center or other treatment facility and held until sober, and from there the commitment laws would apply. The jurisdictions that have adopted this form of legislation include the District of Columbia, Maryland, Florida, Washington, California, and Massachusetts. Various other states have taken slightly different routes to reduce the burden of public drunkenness on the police.

Decriminalization of public drunkenness generally has not been so successful as many have hoped. Most of the problem lies in the kind of alcoholics being dealt with—those likely to be found in public are usually derelicts who are approaching middle age and have a host of physical, medical, and social problems. Spending a few dollars on detoxifying them does little more good than letting them dry out in jail. To make a real effort to solve the problems that cause their alcoholism would require large amounts of money. So what happens generally in those states that have decriminalized public drunkenness is that the drunks dry out in nicer places but still return to the streets, though not quite so quickly. The police are less involved because the protective custody law does not authorize them to pick up as many drunks as the criminal law did (the drunk must be incapacitated before he may be picked up) and because they seem not to consider taking protective custody as important a job as picking someone up for a criminal offense. But that means also that more drunks are being left on the streets.

Public Drunkenness in North Carolina. North Carolina was involuntarily required to rewrite its drunkenness law when the Fourth Circuit Court of Appeals ruled in a 1966 case from Durham that an alcoholic could not be criminally punished for the involuntary act of being intoxicated in public (*Driver v. Hinnant,* 356 F.2d 761). The response of the General Assembly was the enactment in 1967 of a new Article 7A in Chapter 122 and the amendment of the drunkenness statute, G.S. 14-335, to provide that chronic alcoholism is a defense to a charge of drunkenness. However, the statute puts the burden of raising the defense on the defendant and provides that if he is successful, he will be subject to up to two years of court-ordered treatment or other care. The maximum

imprisonment for a first offense of public drunkenness is 20 days; for subsequent offenses, 30 days to six months. It is not difficult to see why few defendants have exercised this defense.

Although the United States Supreme Court effectively overruled *Driver* in 1968 (*Powell v. Texas,* 392 U.S. 514), North Carolina has retained the defense of alcoholism to prosecutions for public drunkenness. Outright repeal of the offense has been proposed in recent sessions of the General Assembly, but the legislators have not been willing to go that far. Their greatest fear has been the absence of other facilities to handle the drunks if jails are not used (leaving them on the streets is not considered a realistic option). The legislators have been primarily concerned with relieving the burden on the police, and it was because of this concern that G.S. 14-335.1 was added to the statutes in 1973. The criminal offense of drunkenness in G.S. 14-335 is retained, but the new statute says that the officer who takes a drunk into custody may do so not only for purposes of arrest but also to transport him to his residence or to a detoxification center or hospital if one is available and willing to admit him. The choice is entirely within the discretion of the officer.

The new statute is apparently intended to codify existing practice and thus encourage the further use of those alternatives to arrest. It appears, however, that in putting that discretion in the law, the legislature may have created an unconstitutional statute. In effect, the General Assembly has delegated to the law enforcement agencies of the state the authority to determine which forms of drunkenness are criminal and which are not. But no guide has been provided for making that determination. No indication has been given of which drunks are to be handled which way. Generally, the Supreme Court of this state has held that when the power of regulation is left to the discretion of some administrative agency, to be exercised without legislative standards as a guide, that statute is not only discriminatory but also an attempted delegation of the legislative function, which is offensive to both the state and federal constitutions. As an example, in *Harvell v. Scheidt* [249 N.C. 699 (1959)], the Court held a law that gave the Department of Motor Vehicles power to suspend the license of habitual traffic law offenders an unconstitutional delegation of legislative authority when no guidelines had been given for defining a habitual offender. That principle appears to apply to the drunkenness statute, since it leaves the definition of criminal conduct wholly within the discretion of the police.

Regardless of the possible unlawfulness of the course chosen, the legislature's action indicates that North Carolina is gradually moving toward handling public drunkenness as something other than a criminal problem. Police would probably prefer that, since dealing with drunks is not a particularly pleasant job, but it seems doubtful that any other agency will soon be able to do the job as economically and efficiently as the police. And the legislators' present judgment is still that some form of compulsion remains necessary to deal with derelict alcoholics. The coming years will probably bring gradual liberalizing of the law and perhaps an eventual decriminalization with the protective custody alternative; the experience of other jurisdictions indicates that this step should be taken cautiously.

Problems with Decriminalization. The most obvious barrier to decriminalizing the offenses mentioned above is whether the public to whom the decisionmaker is accountable will accept the decision to decriminalize. Though empirical evidence is not available, it would appear that the most North Carolinians are not now willing to legalize prostitution, gambling, and drug use. A majority may well tolerate minimal enforcement but are probably unwilling to take an action—decriminalization—that seems to represent approval of those activities.

Failure to have public support, and especially failure to have the support of that part of the public that is employed by the police department, could well mean that a change in the law will be of little practical impact. That is, if the public and the police want certain people dealt with—e.g., drunks and prostitutes—the police are likely to find some way to deal with them regardless of what the statutes say. The charge may have to be different, but the effect will probably be the same. Or the effect may be noticeably worse, such as the initial reaction of the St. Louis police to a no-arrest policy for public drunks: dumping derelict alcoholics by the riverfront.

The removal of the discretion to arrest for these offenses might be opposed by the police precisely because it removes one of their handles for dealing with "undesirable" persons. Public drunkenness is used not only to arrest derelict alcoholics on city streets but also to take into custody drivers who obviously had driven under the influence but had not done so in the officer's presence, or to control a boisterous fellow who has not quite got to the stage of committing an assault. Likewise, a minor gambling offense may be used for someone believed to be much more deeply involved in another criminal activity but against whom the more substantial offense cannot be proved. Obvious related examples come to mind for the drug offenses. Whether or not police discretion is being properly used, before these offenses are decriminalized it should be recognized that classifying them as crimes sometimes serves purposes other than what appears on the face of the statute.

The biggest barrier to the decriminalization of some of the offenses for which it is proposed may be the availability of alternative forms of "treatment," especially for drunkenness and drug offenses. The traditional wisdom on public drunkenness is that the criminal offense should not be repealed until detoxification centers and various treatment facilities are made available. The rationale is that the police do provide some minimal service—a place to dry out, a decent meal—and that service should not be discontinued until some other agency can provide it. Illogical is the assertion that the minimal police service should not be discontinued until a substantially more

sophisticated clinical service is provided. And one must also wonder whether the service that the police are providing—which includes such fringe benefits as a criminal record and the indignities of arrest—is really so valuable that it cannot be ceased without a replacement.

DIVERSION

Currently the most popular (at least in the literature) of the new ways to deal with offenders is the "diversion" alternative. Also known as "pretrial intervention projects," these programs represent more or less a formalization of the prosecutor's long and well-recognized discretion in whether to prosecute. But instead of the decision's being wholly within the discretion of the prosecutor and based on standards formulated by him (by placing conditions on the granting of a dismissal), in diversion programs the arrangement becomes almost a contractual matter. The defendant promises to enter a particular program upon the prosecutor's promise that the charges against him will be dropped if he completes that program successfully.

North Carolina now has no formal diversion programs, and no legislation has been enacted (or proposed) to sanction that use of the district attorney's discretion. Diversion is becoming well enough known, however, that some further description here might be useful.

Experiments in Diversion. The pioneer pretrial intervention projects are the Manhattan Court Employment Project (MCEP) and Project Crossroads in the District of Columbia. The MCEP was developed by the Vera Institute of New York City and began in 1968 with a grant from the Manpower Administration of the United States Department of Labor.

Criminal defendants who are between 17 and 45, who reside in New York City, who are unemployed or earn very little, who have not been charged with crimes of extreme violence, who do not have a lucrative illegal occupation (such as numbers), who do not have serious drug or alcohol problems, and who have not spent more than a short time in prison are eligible for the program. If they want to participate, they are given that option at the time of arraignment and the criminal case is "adjourned" for three months. During those three months, the defendant is given personal and vocational counseling by a mostly nonprofessional staff and is placed in a job or training program. If the defendant has performed satisfactorily during this period of adjournment and during any additional period that may have been granted, the district attorney will ask the court to dismiss the charges.

Project Crossroads in Washington began at about the same time and operates in much the same way as the MCEP. The main differences are that Crossroads is only for those between 16 and 26, and it seems to exclude more categories of defendants. At the end of two years Crossroads seemed to have a bit more success, indicating that only 285 of 825 offenders had been returned for normal court processing, as compared with 532 of 1,067 in MCEP.

Rationale for Diversion. The basic assumption behind these programs is that criminal careers often develop casually, especially in a ghetto, where the only "successful" people the young offender has seen are those in numbers, prostitution, narcotics, and the like. It is thought that by breaking the routine for young offenders and by showing them some other ways to make successes of themselves, they can be diverted from a mostly unintended drifting into crime.

The Labor Department has been sufficiently impressed with pretrial intervention to fund projects based on that concept; the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals both recommend such programs; several states have enacted legislation to encourage the idea; and a number of cities (Minneapolis, New Haven, Miami, Atlanta, Baltimore, Boston, Kansas City, Philadelphia, for example) already have programs modeled after MCEP and Crossroads.

Questions About Diversion. But despite all these endorsements and utilizations of pretrial intervention, the programs are not without some controversy. In fact, many people have considerable doubt about the whole idea—mainly, it seems, because this kind of program makes substantial incursions into the life of the offender before any judicial determination of guilt has been made. And although the programs are advertised as voluntary, an offender may not have a real choice. If he refuses to go along with the program, he may be labeled as uncooperative and be subjected to harsher treatment in court than if he had participated. If he does cooperate, he has had to surrender a number of basic constitutional rights. That is, if the offender is not acting truly voluntarily, then he is also being "diverted" from such right as the privilege against self-incrimination, the right to confront one's accusers, and the right to a speedy trial by a jury of one's peers. The question of what rights have been forfeited also arises when an offender fails to complete the program successfully (and the MCEP figures indicate a number do). Is credit to be given for the time spent in the program, or is that just time the offender is to chalk up to experience? And does failure in the program mean that the defendant will be subject to greater punishment than if he had simply stood trial at the start?

Whether the criminal justice system should be used to impose "good" on people before they have been formally adjudicated guilty of a crime is an open question. The state's intervention in the life of a citizen by way of criminal prosecution has been considered such a significant event that it has not been allowed without strict compliance with a number of due process safeguards. Yet the pretrial intervention program seeks to substantially alter the life of the offender without clearly providing those safeguards. The consensus thinking in criminal justice recently has been away from informality and low-visibility decision-making—for example, in recent years it has become commonly accepted that plea-bargaining be-

tween prosecutor and defendant should be formalized and reviewed in court—yet the diversion programs can involve substantial law enforcement activity conducted in private.

The other principal matter of controversy concerning the pretrial intervention projects is just how much good they do. The booming popularity of the programs can be partly explained by the purported success of MCEP in avoiding recidivism. In its final report the project reported that only 16 per cent of those who went through its program were rearrested within a year, as compared with 31 to 32 per cent for those who failed to complete the program and for a control group of defendants who were arraigned before the project began but would have been eligible. In the Winter 1974 issue of the *Chicago Law Review,* Franklin E. Zimring, an avowed sympathizer with MCEP, questions the reliability of those recidivism statistics. Zimring's basic point is that because of the kind of control defendants with which the project compared its graduates, the comparison was weighted unfairly in favor of the project. His conclusion is that the statistics available so far really indicate only that those who go through MCEP are no more likely than those put through the normal criminal process to be rearrested within a year. The conclusions to be drawn from that statement may be different from those made by the project.

PRETRIAL RELEASE

Of all the alternatives to jailing a defendant before trail that have been mentioned, the various forms of pretrial release have the longest history and probably are most often used. That is primarily because bail programs are considered under this alternative, and they are based on ancient English legal principles (see the Eighth Amendment to the United States Constitution). And although the use of the citation and summons has been narrower than necessary, those forms of criminal process are not new by any means.

The feature that all of the programs mentioned below have in common—and one that is contrary to those mentioned above—is that their use has no effect on the charge against the defendant. That is, the defendant finally must stand trial for the crime with which he is originally charged; the prosecution is not to be dropped or the punishment altered. All that happens as a result of pretrial release is that he awaits the trial in some place other than jail.

Citation and Summons. "Every police agency immediately should make maximum effective use of State statutes permitting police agencies to issue written summonses and citations in lieu of physical arrest or prearraignment confinement." That standard of the National Advisory Commission on Criminal Justice Standards and Goals is only the latest of a succession of recommendations for finding alternatives other than arrest for bringing defendants to trial. In 1967 the President's Crime Commission observed that the citation and summons alternative would save police the time and resources consumed in transporting the offender to the stationhouse and guarding him until a court appearance. It would also benefit the offender in removing the bad publicity of a public arrest and in eliminating the disruption of his home and business life. When the offender has committed only a minor crime, when his being loose constitutes no threat to the community, and when his presence is not needed for investigation purposes, it seems logical to forego taking custody if his presence at trial can be assured in other ways. For those reasons, many violators of minor criminal offenses—most of those who violate traffic regulations—are now in fact given citations and told to appear rather than being formally taken into custody. And in practice some "arrests" for other crimes are made in much the same manner. But most people who violate nontraffic criminal laws are indeed actually taken into custody for some period before trial.

North Carolina law at present provides authority for handling offenders other than by arrest. G.S. 15-20 authorizes any official who has authority to issue an arrest warrant to issue instead a summons for a misdemeanor when it is reasonable to believe that the defendant will appear in response to a summons. Failure to appear causes issuance of a warrant and subjects the defendant to a fine of up to $25. This statute is not often used, and an attempt was made to revitalize it in 1969 by requiring the chief district court judge of each district to formulate a recommended policy on using summonses rather than arrest. That policy is not mandatory, however, and the summons remains little used.

Although, as indicated above, the citation is commonly used for traffic law violations, there is now no statutory authority for it. Legally, the citation is simply a warrant form that has not been acted upon by a judicial official. As such, it carries no legal force, and failure to appear in response to it is not an offense. The only remedy for failure to appear is issuance of an arrest warrant.

New Law. When the Criminal Code Commission's legislation on pretrial criminal procedure, enacted by the General Assembly in 1974, goes into effect on July 1, 1975, the provisions for citations and summons will be expanded. The citation will be formally recognized. It will be issued by a law enforcement officer and will instruct the person to whom it is directed to appear in court to answer specified criminal charges. Issuance of a citation will not prevent issuance of a summons or arrest warrant, and the district attorney will be free to dismiss the charge in the citation. There will still be no punishment for failure to obey the citation (although the new act makes reference to loss of the driving privilege for failure to appear when cited for a motor vehicle offense, a conforming substantive provision in the motor vehicle law was omitted).

Under the new law a summons can be issued by a war-

rant-issuing official upon a showing of probable cause. The summons orders the defendant to appear to answer specified charges, and the failure to appear will be punished for contempt. Again, the issuance of the summons does not preclude the issuance of an arrest warrant for the same offense.

The use of citations and summons will remain in the discretion of officers and court officials, but the Commission hoped that the more prominent and orderly display of this authority in the statutes would encourage wider use. As the Criminal Code Commission said about the current underutilization of the summons: "There appears to be no good reason, for in many cases in which a criminal summons could have been used, the law enforcement officer simply 'serves' the warrant and does not take the defendant into custody."

The Peace Warrant. One of the more frustrating and difficult duties of the police is mediating domestic squabbles. Although some violence may be involved, many officers do not consider these assaults as truly criminal, particularly since often there will be no prosecution. The purpose of arresting in such a situation is primarily to give tempers time to cool. North Carolina now has a procedure short of arrest that is available for that purpose, the peace warrant. The process, detailed in G.S. 15-28 through -38, allows a warrant-issuing official to direct a law enforcement officer to take a person into custody when he receives a complaint that that person has threatened to commit an offense against the person or property of another. The official issues a peace warrant when he determines that there is "just reason" to fear the commission of an offense. When the one who has made the threat is brought before the official, he is required to post a bond in an amount not exceeding $1,000. The bond is to be held for six months, and it obligates the one who made the threat "to keep the peace and be of good behavior towards all the people of the State, and particularly towards the person requiring such security." Failure to post the bond can result in confinement, and failure to comply with the conditions of bond after posting it can result in its forfeiture.

Authorization of the peace warrant and bonding dates back to 1868, and the peace warrant has declined in recent years. Although not so limited on its face, the most common use today—to the extent that it is used—is with domestic quarrels. But from July 1, 1975, the peace warrant procedure will no longer be available. The Criminal Code Commission's legislation repeals the peace warrant statutes. They are replaced by a new law that prohibits communicating a threat to injure another's person or property. Violation is a misdemeanor punishable by six months' imprisonment and/or a $500 fine. The new statute contains none of the bonding features of the present law.

Bail. The oldest and best known of the pretrial release alternatives is bail. As generally practiced, the bail system works as follows: A defendant is arrested and the warrant-issuing official sets his bail in a certain dollar amount. If the defendant has the amount of money on him, he can simply deposit it and go home. In the usual case, the defendant does not have the money himself and cannot raise it quickly from friends, so he turns to a professional bondsman. The bondsman posts a bond in the amount of the bail, which entitles the defendant to be released, but charges a fee—perhaps 10 to 15 per cent of the amount of the bond—which the defendant must pay. That fee is the bondsman's charge for doing business—his charge for providing the bond—and the defendant does not receive the money back if he appears at trial. The law says that the bondsman will forfeit the amount of the bond if the defendant does not appear, which gives him an incentive to have the defendant appear, but in practice the full amount of the bond is seldom forfeited. Because of his interest, both the common law and the statutes give the bondsman authority to bring the defendant to trial, including pursuing him out-of-state and taking him into custody without an arrest warrant.

The bail bondsman system has a number of obvious deficiencies. For one thing, it imposes a punishment on each defendant whether he is guilty or not: he must pay the bondsman's fee and retains that loss even if he is innocent. For those who cannot raise bail and cannot afford the bondsman's fee, the additional pretrial punishment of incarceration is provided. And studies have shown that defendants who have to remain in jail before trial are likely to receive stiffer sentences than defendants who are charged with similar crimes and have essentially the same characteristics but manage to secure release before trial. Also, as the system now operates, there is substantial inconsistency in the way similar defendants are treated. The amount of bail to be required is in the discretion of the setting official, and different officials can treat similar defendants quite differently. Although the only criterion generally accepted in the law for determining the amount of bail is what is necessary to see that the defendant will appear at trial, bail-setting officials tend to have personal biases that can be expressed in the amounts set. Finally, no logical connection has been shown between a defendant's ability to raise a certain amount of bail and the likelihood that he will appear at trial. Unless he has had to post collateral with the bondsman, the defendant is no worse off for not showing up at trial. He has already paid the bondsman his fee, and there is no additional punishment in this state for failure to appear.

Bail Changes. The changes in the bail system that have been instituted in other parts of the country over the last decade or so are aimed at either providing some direct incentive for the defendant to appear or making a judgment of his likelihood to appear on more logical considerations. Some states have adopted so-called 10 per cent bail bond statutes that are based on the incentive principle: The defendant's bail is set at a certain amount

and he is required to post a bond for that amount. To be released, however, he need pay only 10 per cent of the amount of that bond. If he fails to appear at trial, the entire bond is forfeited and he becomes liable for the amount of the bond. But if he does appear, he receives back 90 per cent of what he originally paid—that is, of the original 10 per cent. Thus there is a direct financial incentive to appear at trial, and the total cost to the defendant (if he appears, 1 per cent of the total bond) is much less than it would be if a bondsman were involved.

The 10 per cent bail bond plan has been proposed to the General Assembly in each of the last several sessions, but the legislature has rejected it each time. The Courts Commission was the first agency to put the idea forward, and then the Criminal Code Commission included it in its package.

The other major innovation in the bail system is the "pretrial release programs" that sprang from the Manhattan Bail Project of the Vera Institute. Under this kind of program, those who have been arrested are interviewed; if their answers indicate a certain minimum number of ties with the community (job, family, etc.), they are released without bail but receive regular reminders of when trial is to be. These programs have proved successful at judging which defendants are likely to appear at a trial even without bail, and this kind of operation has received endorsement in North Carolina law, as indicated below.

Basic North Carolina Bail Law. By statute, all defendants except those charged in capital cases are entitled to have bail fixed in a reasonable sum. In capital cases, whether to grant bail is a decision for a judge. Those who can grant bail are generally those who can issue warrants: judges, magistrates, and clerks of court—but only judges may set bail in capital cases. (The federal and state constitutions do not on their face provide a right to bail; they only prohibit setting bail in an excessive amount when it is granted.)

In the late 1960s the General Assembly began to alter the bail statutes. In 1967, G.S. 15-103.1 was enacted, specifically authorizing release on recognizance in all except capital cases. This means that a defendant may be released simply on his promise to appear. The statute also authorizes the use of the unsecured appearance bond; that is, the defendant signs a bond that is to be forfeited if he fails to appear, but he is not required to give any security for that bond. Both release on recognizance and release on the unsecured appearance bond were possible before the enactment of G.S. 15-103.1, but it was hoped that the authorization would encourage their use. Also, the statute sets out the factors that are to be taken into account in determining whether the defendant is likely to appear at trial without posting bond: "the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings." Finally, the statute empowers the official who sets bail to place conditions on the defendant's release (for example, not to leave the county without permission), and it makes failing to appear after being released on one's own recognizance or on an unsecured appearance bond a misdemeanor (fine and/or two years' imprisonment, but no penalty was added for failure to appear on bond).

The other major change, which came in 1969, was the enactment of G.S. 15-103.2, which requires the chief district court judge of each district to "devise and issue recommended policies which may be followed on the use of bail and the amounts thereof; the use of release on a person's own recognizance, and the use of unsecured appearance bonds and the amount thereof." The intention was to reduce the disparities between the practices of the different bail-setting officials in a judicial district, but the final determination of bail or other forms of release remains with the individual official.

The Charlotte Program. In 1971 Charlotte began a pretrial release program patterned after that of the Vera Institute. Funded partly by the federal Law Enforcement Assistance Administration (LEAA) and partly by the Mecklenburg county government, the program offers an alternative to bail for defendants who are not charged with certain offenses such as murder, rape, burglary, assault on an officer, arson, and felony drug violations. Those who are eligible are interviewed by the program's counselors when they are taken to the county jail for booking (the program has an office in the jail itself). If interested in the program, the person who has been arrested is asked a number of questions concerning his residence, his family, his job, his prior record, how long he has been in Charlotte. He is also asked to supply the names of others who can verify the information; that verification is made and his record is checked with the local police immediately after the interview. The information is then charted on a form and points are awarded under the categories of residence, time in the Charlotte area, local family ties, employment, character, and prior record. If the person scores a certain minimum number of points, and if the counselor feels that he will probably appear for trial, then the defendant is recommended for release without bail. The recommendation must still be accepted by the bail-granting official, since whether to release is still formally his decision, but he nearly always grants approval. To be released, the defendant must sign an unsecured appearance bond plus two forms, one explaining the consequences of failing to appear at trial and the other obligating the defendant to follow certain restrictions of the pretrial release program. Those restrictions include not leaving the country without permission, staying employed, advising the program of changes of address, and calling the program office at a set time each week. Violation of those restrictions can mean revocation of the

At the heart of some of the predicaments in which the criminal law finds itself has been too ready acceptance of the notion that the way to deal with any kind of reprehensible conduct is to make it criminal.

—The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 126 (1967)

Some current provisions of Chapter 14 (Criminal Law) of the General Statutes of North Carolina:

G.S. §	Offense	Punishment
14-117.1	unauthorized use of words "army" or "navy" in name of mercantile establishment	fine from $25 to $500 (first offense)
14-129.1	selling, bartering or exporting for sale or barter, any Venus flytrap plant or any part thereof	$500 and/or 6 months
14-171	removing, defacing, altering or destroying the word "rental" on any rental battery	$50 or 30 days
14-198	commission of "act of lewdness" by any "loose woman or woman of ill fame" with or in the presence of a student under 18 within 3 miles of that student's boarding school or college	$50 or 30 days
14-201	allowing a stone-horse or stone-mule of two years or older to run at large	$50 or 30 days
14-285	opening a marl bed without surrounding it with a lawful fence (unless the marl bed is within one's own enclosure)	$50 or 30 days
14-310	promoting, advertising, or conducting any marathon dance contest, or participating in any contest of more than 8 consecutive hours	30 to 90 days and/or $50 to $500
14-313	selling or giving away cigarettes to persons under 17	$500 and/or 6 months
14-369	hurting, pursuing, taking, capturing, wounding, maiming, disfiguring, or killing any homing pigeon owned by another	$500 and/or 6 months
14-392	digging ginseng on land of another and not for purpose of replanting, between 1 April and 1 September	forfeiture of $10 for each day's digging, plus general misdemeanor (2 years and/or fine)
14-395	wearing of American Legion emblem by nonmember	$50 or 30 days
14-396	allowing dog to "pursue, worry or harass" any squirrel on Capitol Square in Raleigh	$50 or 30 days
14-397	unauthorized use of name of denominational college in connection with any dance hall	$500 and/or 6 months
14-400	tattooing the arm, limb, or any part of the body of any other person under age 18	$500 and/or 6 months
14-401.3	erecting any gravestone or monument bearing any inscription charging any person with the commission of a crime	$500 and/or 6 months
14-401.5	practicing the arts of phrenology, palmistry, clairvoyance, fortune-telling and other crafts of a similar kind (but amateurs doing so in connection with church and school socials exempted)	$500 and/or 6 months applicable in about 65 counties

14-401.10	soliciting advertisement for law enforcement officers' association's official magazine or yearbook without disclosing name of association and displaying written authority from president or secretary of association	$500 and/or 6 months
14-418	intentionally handling reptile of poisonous nature, whose venom is not removed, by taking or holding such reptile in bare hands or by placing or holding against any exposed part of the human anatomy (but employees of museums, laboratories, etc. exempted when in course of educational or scientific work).	$500 and/or 6 months

unsecured appearance bond and the necessity of putting up bail. The entire procedure generally takes no more than 45 minutes.

In most cases the only supervision of those released is the released offender's weekly phone call, at which he is reminded of the time of trial. Each person under the program's supervision is also sent a letter reminding him of the date and time of trial. The experience of the program is that less than 1 per cent of those under its supervision fail to appear for trial.

Stevens Clarke of the Institute of Government has made several studies of the effects of the Charlotte pretrial release program; these studies show that while the program has been in operation, the number of defendants who are not released before trial has dropped from 12 to 8 per cent. Part of that decrease is a direct effect of the program, but part is probably indirect; for example, fewer prisoners are eligible as clients for bail bondsmen, and bondsmen are forced to take risks on some people they might not have dealt with before. The program has also helped reduce discrimination based on race and income.

The pretrial release "no-show" rate of 1 per cent compares rather favorably with the 10 per cent rate of bail bondsmen, but then the program is mainly dealing with people who are the best risks. Clarke concludes that of those in the program, about two-thirds would probably have been released by magistrates on unsecured appearance bond anyway (but the program still has a better no-show rate than other unsecured appearance bond releases—1 per cent versus 6 per cent), about one-sixth would have been bail bondsmen's clients, and the remaining sixth probably would not have been released at all.

Clarke's work indicates that many people can be expected to appear for trial even though released without bail if they are given some minimal reminders of when the trial is. It also suggests that selecting most of those people and giving reminders could probably be done about as well by magistrates and other court clerical personnel as by the pretrial release program counselors. The studies also show that the kind of supervision practiced by the pretrial release program might be expected to perform reasonably well for prisoners with slightly worse recommendations than those now being handled and perhaps expansion in that direction is worth a try.

Although it has not yet been tried anywhere else in the state, the Charlotte program has drawn the attention of other cities and might soon find itself copied.

OBSERVATIONS

The most obvious observation about these alternatives to jailing is that so little of what is being suggested is truly new. Police and prosecutors have always diverted a number of offenders from the criminal justice system, the police by exercising their discretion on arresting and the prosecutor by deciding whether to proceed to trial. In fact, the "innovative" Manhattan Court Employment Project is not greatly different in principle from the North Carolina district attorney's common use of nol pros, to hold in abeyance the prosecution while the defendant is given a period to prove that he can straighten himself out. The generally new element about most diversion recommendations is the addition of formality. The trend in the administration of criminal justice is to have more decisions made in the open, to have the reasons put on the record, to increase the visibility of the processes by which some offenders are given "favored" treatment. The recent recommendations of the President's Crime Commission, the American Bar Association, the American Law Institute, and the National Advisory Commission on Criminal Justice Standards and Goals all support that theme. These groups all agree that enormous discretion has existed within the system and some guidelines on how that discretion is to be exercised are needed. The objective is not only to remove inconsistency in enforcement but also to make the basis of enforcement decisions publicly known so that these decisions can be debated and challenged.

Also, implementation of many of the diversion alternatives represents a triumph for those who could consider rehabilitation the primary objective of the criminal justice process. The common assumption of many of these programs is that the offender is only partially at fault in committing the offense that brought him into the system, that he was to some extent induced into crime by the kind of society he lives in. If the proposition that the conditions in which the offender finds himself may con-

tribute to his tendency to commit crime is accepted, then it follows that correcting those conditions, or at least alleviating their effect on this particular individual, will reduce the likelihood of crime. In other words, the criminal justice system is being modeled more and more on the health treatment system: find the causes of the illness (criminal conduct) and correct them.

The adoption of the treatment model, however, seems to mean the acceptance of operating procedures that may disturb some. Until recently, a great deal of informality was allowed in handling the mentally ill and juveniles, generally on the assumption that since the objective was treatment, the usual due process safeguards of the criminal law were not necessary. The adversary-like ritual of criminal proceedings was thought to be positively harmful to handling those kinds of people successfully. But substantial abuse of rights without much benefit has been found to occur in the mental health and juvenile systems without the due process safeguards, and courts and legislatures in recent years have imposed a number of procedural limitations in dealing with the mentally ill and juveniles. The United States Supreme Court began with *In Re Gault* in 1967 to require minimum due process for juveniles, and the General Assembly in 1973 finally put real restrictions on the manner and length of civil mental commitments.

Some diversion programs now seem to be adopting the old attitude that when good things are being done for people, those people do not need the same protections as if they were being prosecuted (even though it is the supposed commission of a criminal offense that triggers the treatment). For example, when the Senate's Judiciary Committee was considering legislation on federal pretrial intervention programs in 1973, testimony was taken on the Citizens Probation Authority (CPA) in Genessee County, Michigan (a program similar to the Manhattan Court Employment Project), and an analysis of the legal problems associated with such a program was put in the record. That analysis states that allowing counsel when an offender is deciding whether to participate in the program or proceed to trial "might interfere with the atmosphere of rehabilitation necessary . . . ." And on the question of how much incriminating information a participant in such a program should have to reveal, the analysis says, "Since CPA's primary purpose of rehabilitative [sic], it is important to maintain a relationship of confidence and full disclosure between the client and the CPA worker. To give *Miranda*-type warnings would be counterproductive to the maintenance of such a relationship." That sounds a great deal like the kind of things that were said about proceedings against juveniles before the Supreme Court imposed certain due process safeguards for children.

Another observation that might be made about many of these programs is that they are not subject to very strict evaluation. Especially when a project is funded by LEAA does it seem that its evaluation becomes suspect. The St. Louis detoxification center (LEAA-supported) reported great help for its alcoholic clients and at substantial savings, but a closer look showed that the success was not so substantial and that the savings had been more than offset by new costs. The Manhattan Court Employment Project reported significant differences in recidivism rates, but its computations have been shown to be faulty. And these examples are not at all uncommon. Robert Martinson's excellent article in the Spring 1974 issue of *The Public Interest* reviews the evaluations of correctional programs; it shows that when looked at closely, hardly any show real improvement in recidivism rates (castration does seem to have some effect on sex offenders). His article is interesting not only for its conclusion that virtually none of the rehabilitative efforts that have been reported so far have had any appreciable effect on recidivism, but also for his observations on the questionable conclusions drawn by many of the reports. It seems that few people working in criminal justice are willing to admit that their new ideas just do not make that much difference—that many offenders proceed on their same course despite having had special care and treatment.

It might also be suggested that some diversion programs are simply ways to accomplish indirectly that which could not be accomplished directly by decriminalization. That is, some of these programs are being used to divert offenders primarily because the promoters of those alternatives do not think that the offenses with which the persons being diverted are charged belong within the criminal system. If it is not politic to have the offender's conduct legalized, then the next best thing is to see that punishment for that conduct is ameliorated as much as possible.

To the extent that this observation is correct, diversion can represent a dilution of legislative control over the criminal justice system. When the legislature declares conduct criminal but other agencies channel numerous offenders into alternatives other than punishment, then the legislature's decision is being to some extent ignored. But this is a result that the legislature has very much brought on itself. By classifying more and more conduct as criminal and leaving prohibitions on the statutes even though public opinion has long since changed, the legislators assure that many of their laws will not be enforced and that efforts will be made to reduce the harshness when punishment does occur. Most of those charged with enforcing the criminal law see very clearly that much of what is prohibited is not truly reprehensible conduct and that those who are brought into the system as the result of such behavior should not be dealt with severely. For the legislature to regain its proper control, it needs to define more closely what is and is not acceptable behavior and to give more thoughtful consideration to when the criminal punishment is appropriate for misconduct and when other sanctions might more properly be used.

THE SOLICITOR: HIS INFLUENCE AND POWER

Jack Thompson

WHAT IS A DISTRICT ATTORNEY?[1] First and foremost, he is the "people's attorney." In his district, he represents all of the people for the State and prosecutes persons charged with crimes against the citizens of the State. This obvious aspect of the occupation is actually only one of the many duties and responsibilities of the district attorney and his staff.

A district attorney must be a criminal trial attorney, criminal law expert, legal researcher, adviser, teacher, court manager, policy-maker, ombudsman, investigator, fortune-teller, judge, juror, defender of right, prosecutor of wrong, arbitrator, family counselor, public relations expert, and politician. He is an individual who, when he brings a case to trial expeditiously, is accused of trying to railroad the defendant and deny him his right to counsel. (The defendant's counsel doesn't want to go to trial until he has been paid.) If the district attorney is having trouble locating a material witness and has to delay calendaring the case for trial, he is accused of not giving the defendant a fair and speedy trial. (A fair-and-speedy-trial motion never seems to be made by the defendant when the district attorney stands ready for trial.) If there is a backlog of pending cases, the district attorney is accused of being inept. If he is current in his caseload, the presiding judges are praised for being so efficient! If the district attorney refuses to accept reduced charges and tries all cases as charged, he is "inflexible." If he plea-bargains, he is "giving the courthouse away" and is too liberal! If a defendant is found not guilty, it was the brilliance of the defense attorney. If a defendant is found guilty, it was the brilliant investigation of the police! If the district attorney spends his time properly preparing his cases for trial, he is accused of being "inaccessible" to the public, and when he is trying his cases he is accused of being "inaccessible" to attorneys and law enforcement.

If the district attorney treats all people the same, regardless of their politics or political status, he is a maverick in his own political party, and if he bows to political pressure, he is condemned as corrupt.

1. Formerly the district attorney was known as the solicitor. Ch. 47 (SL 1973) amended G.S. 7A-66.1 by authorizing the solicitor to call himself district attorney. In the 1974 general election, voters will decide whether to change the title of the constitutional office from solicitor to district attorney (Ch. 394, N.C. Sess. Laws 1973).

ADMINISTRATIVE DUTIES

In the past, the most important qualification for a district attorney was that he be a good trial lawyer. But in recent years, since the office has become full time and criminal procedural matters have expanded to require more time and paperwork, the district attorney must primarily be an administrator, an organizer, and a supervisor. (A few district attorneys in larger North Carolina cities rarely try cases, and spend most of their time as administrators.) No other court officer has the responsibility of insuring that a criminal case, once initiated, progresses properly through the many steps necessary to reach a disposition. From the moment a warrant is served until a final judgment is entered in a case, the district attorney is responsible for ushering the case through the various levels and processes of the criminal court system and for initiating the actions that lead to the conclusion of the case. The district attorney oversees the entire spectrum of activity within the criminal court system. The quality and efficiency of the criminal courts in a particular district are reflections upon the district attorney's administrative abilities in insuring the proper flow and disposition of the criminal cases.

Setting the Calendar. Perhaps the most difficult of the district attorney's administrative chores (and the one most likely to produce a chronic headache) is his duty to prepare the trial calendars.[2] In other states senior resident judges prepare the calendars or share that duty with the district attorney. But in North Carolina our judges rotate, and the district attorney therefore has sole responsibility for the task. And he is the proper court official to have this responsibility because he is the only one who remains in the district all the time and therefore the only one who knows enough about the cases to determine when they are ready for trial. In addition, he must be concerned with what will happen not only next week but also next month and next year in the operation of the courts of his district. And he must be concerned with what the statistics reveal for the past in order to evaluate his efforts for the future. A judge, on the other hand,

2. G.S. 7A-61 provides that the solicitor shall prepare the trial docket.

The author is District Attorney for the Twelfth Judicial District.

need be concerned only with what is occurring in the particular court where he is now presiding and not what will occur next week when he will not be there.

The district attorney is responsible for calendaring cases in both the district and superior courts. Because of the large volume of cases in district court, he must establish general procedures for that court that work almost automatically and will result in the scheduling of a relatively uniform number of cases per court day. Among the factors that the district attorney must consider in preparing the district court calendar are working hours of the police officers who have cases (and whose work shifts change from week to week), the approximate number of cases that a particular officer normally initiates, the types of offenses involved, the probable number of guilty pleas and not-guilty pleas, and the probable length of particular trials. The same factors must be considered in calendaring cases for superior court, but this process cannot be done by a general automatic procedure. Each time he makes up a calendar, the district attorney must go through the cases and determine whether they are ready for trial. Estimating the length of time of a particular trial is likely to be a more crucial determination in calendaring a case in superior court than in district court since trial time is likely to vary a great deal more. In addition, more witnesses are likely to be called in superior court than in district court, and thus more attention must be given to setting a time when all witnesses are available—particularly expert witnesses, who are generally the most difficult to schedule. For example, if the district attorney wants to calendar a drug case in which the substance confiscated was sent to the SBI laboratory for analysis, he needs the lab agent who analyzed that material to testify in the trial. The SBI currently has eight lab agents who are responsible for analyzing all drugs confiscated throughout the state and therefore must testify throughout the state. The district attorney must notify the agent involved in a particular case far in advance of the actual trial date in order to have him available. Weighing all these factors, relying on past experience, and using his "fortune-telling" talents, the district attorney prepares the trial dockets with the goal of full utilization of court time in mind.

Because he has no control over the matter, the greatest hindrance to the proper scheduling of cases from the district attorney's point of view is the continuance of cases by defendants and their attorneys on the scheduled trial date. The most common reasons given for a request for continuances are not having an attorney, the need for additional time to pay an attorney, and the necessity for more time to prepare the defense case. Repeated continuances result in witnesses' having to return to court on several occasions before the case is finally concluded and quite often suffering more of an inconvenience and loss of pay than the defendant.

The next greatest calendaring disadvantage is not knowing what the defendant's plea will be until the case is called for trial, which creates uncertainty as to the number of cases set for trial that must actually be tried. Not knowing the plea is particularly troublesome in superior court, where fewer cases are placed on the calendar for trial; two or three guilty pleas can leave the district attorney with no cases ready for trial and a judge and jury sitting in the courtroom.

Arraignment Procedure. The degree of uncertainty involved in calendaring cases could be eliminated almost entirely by a modification of arraignment procedures. The concept of a separate arraignment procedure is not unique, but usually it is applied only in superior court. It is my opinion that an arraignment procedure would be a valuable addition to district court (particularly in urban districts where several district courts are going every day) as well as in superior court. An arraignment procedure in district court might well work as follows:

All district court cases would be scheduled for arraignment before a district judge a few days after the citation or arrest warrant is issued. At arraignment, the judge would inquire into the defendant's plea, his intentions as to retaining counsel, whether he is indigent (if so, the judge would appoint counsel at that time), the approximate period of time his preparation for trial would require, and bond matters.

If the defendant enters a plea of guilty at arraignment, judgment could be entered at that time or delayed to a future date. A copy of the law enforcement complaint sheet could be attached to the warrant or the citation so that the court, with the consent of the defendant or his counsel, has a basis on which to enter a judgment without the necessity of having the officer present.

If the defendant enters a plea of not guilty at arraignment and has counsel at that time, the case would be scheduled for trial for a day certain in the future. The calendar book would be maintained by the clerk in the arraignment court so that only a certain number of trials would be set for a particular day. This procedure would insure that court time would be efficiently used and that too many cases would not be set for a particular day, thus avoiding the necessity for continuances due to an overload of cases on a particular day. For this system to operate, the presiding judge would have to refuse requests for continuances on the scheduled court date except for emergency reasons.

If, at arraignment, the defendant had not yet retained counsel but was attempting to do so, the arraignment could be continued for a certain time to give him the opportunity to retain counsel. Once counsel is retained, the defendant would reappear with counsel and advise the court of his plea and when they would be prepared for trial. Once a case is scheduled for trial, then and only then would the witnesses be notified to appear in court.

The results of this type of system would be: (1) witnesses need appear only once for any one case in district court; (2) full utilization of court personnel and court days; (3) expeditious disposition of guilty pleas; (4) elimination of continuances due to case overload for a particular court date; and (5) less time spent in court by law enforcement officers.

A similar system could operate in superior court, and in fact after July 1, 1975, the new criminal code bill (Ch. 1286, Sess. Laws 1973) will require an arraignment procedure to be used at least one day every other week of court in counties where 20 or more weeks of criminal trial sessions of superior court are regularly scheduled per year (and may be used in districts with fewer weeks of court). In superior court, the arraignment procedure could work as follows: A particular day each week or every other week would be set for arraignment, and on that day all cases appealed from district court or on indictments returned since the previous arraignment day would be calendared. At arraignment, the judge would determine whether the defendant had counsel and, if not, whether he was indigent and counsel should be appointed for him, the approximate time necessary to prepare the case for trial, and the defendant's intention as to a plea. Only after counsel and time necessary for preparation had been determined would a case be set for trial, and only the number of cases that could reasonably be reached for trial or other disposition would be set on a particular day.

This system, which I call "realistic calendaring," prevents multiple appearances of witnesses for any one trial and eliminates overscheduling of cases on the superior court calendar. Because of the notice it gives to defense counsel and prosecuting attorneys that a case will be reached for trial when set, realistic calendaring results in less procrastination by defense as well as prosecuting attorneys and in the likely disposition of cases at the first scheduled trial date. Again, the system will operate efficiently only with judicial cooperation by refusing to grant continuances except in emergencies.

DISCRETION OF THE DISTRICT ATTORNEY

A second major function of the district attorney is the evaluation of the merits and evidence of each case. His evaluation of a case may result in the case's being prosecuted or dismissed or in the acceptance of a lesser plea than that for which the defendant was charged. This discretionary power and authority is an essential ingredient in expediting criminal cases. It is often a controversial area in the court system and is often misunderstood by the public.

Deciding When to Prosecute. In North Carolina warrants are issued upon the complaint of a police officer or citizen without an evaluation of the facts by a legally trained individual. Only after a warrant has been issued and served does it reach the attention of the district attorney, and only at this point does the first legal evaluation of the case take place. In many other states, a warrant cannot be issued without prior approval of the district attorney, so that a warrant is not issued if there is insufficient evidence to support a charge. In North Carolina, a district attorney must screen cases before trial (at least one district attorney I know has a formal procedure for pretrial screening of every felony) to determine whether they are triable and whether a lesser plea should be accepted. A district attorney could, and some do, prosecute every case that is brought into the court system, especially if he wants to avoid making difficult decisions. But this practice results in an inefficient use of the court's time on defective and frivolous cases.

The district attorney must consider many factors in evaluating a criminal case. The first factor is whether there are sufficient facts and evidence to prove the charge in a trial. Another factor in the evaluation process is the "spirit of the law." It is essential for the district attorney to consider, regardless of whether a technical violation might be proved, whether the public good would be served by prosecuting the case. Examples of cases in which the spirit of the law might call for nonprosecution are minor traffic accidents in which compensation for the damage has already been paid or a husband-wife minor assault when the couple is at the moment living peacefully together.

A quasi-judicial evaluation quite often must be made concerning the credibility and motives of the complaining witnesses. If the district attorney has a reasonable doubt as to the defendant's guilt, then it is his duty to dismiss the case at that point and not to prosecute. If he has a reasonable doubt, he certainly cannot expect a judge or jury to be convinced of the defendant's guilt and justice would not be served by prosecuting the defendant. Who is in a better position to judge the case than the one most familiar with it—the district attorney?

What this duty to evaluate criminal cases boils down to is seeking "quality and not quantity" in prosecution. The authority to dismiss charges is essential for an expeditious disposition of criminal cases with a minimum of court time expended; it should not be infringed upon or limited by any other court official, since the district attorney is in the best position to make such a decision.

Plea-bargaining. Another consideration when evaluating a case is whether to engage in plea negotiations, or plea-bargaining, as it is most often called. Much nationwide attention has been focused on plea-bargaining in recent years. All[3] but one[4] of the major studies have come out in favor of continuing plea-bargaining, and the

3. See AMERICAN BAR PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PLEAS OF GUILTY, 1-4, 60-78, (1968); American Law Institute: A Model Code of Pre-Arraignment Procedure, Tentative Draft No. 5, 65-68 (1972); A Report by the President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime in a Free Society, 134-37 (1967).

new North Carolina pretrial criminal procedure bill has for the first time statutorily recognized plea-bargaining.[5] With Watergate, plea-bargaining has become a front-page news item, and citizens who might have only casually heard the term are now reading about a Vice-President and several high administration officials who have engaged in the process.

Plea-bargaining has been the most publicly criticized aspect of prosecutorial discretion, largely because the public does not understand the impracticality and impossibility of trying every case out before a jury. Most court systems depend on an approximate 90 per cent ratio of guilty pleas to operate efficiently. There are not enough courtrooms, judges, and prosecutors to try even the majority of cases before a jury. The effect of a district attorney's failure to engage in plea negotiations has been clearly illustrated in one North Carolina urban district, where a backlog of pending cases reached such unbelievable proportions that cases were not reached for trial until at least a year after they were initiated. In that instance, the direct result of the district attorney's not being practical was that the court system was rendered ineffective.

The common-sense reason behind plea negotiation is to offer the defendant, through his counsel, some inducement to plead guilty rather than to try the case out. If no inducement is offered, the defendant theoretically would have no reason not to take his chances with the jury in each and every case.

A practical aspect of plea negotiations is that the experienced district attorney should know from past encounters what a particular judge will probably do in a given factual situation. Therefore, if the district attorney tenders a bargain that incorporates a recommendation in the general area of what the judge would do anyway, the same result would be reached as would be if the case were tried out. For instance, if the district attorney knew from experience that a particular judge would place a youthful defendant on probation for his first conviction of breaking and entering, then a bargain could be offered the defendant that if he pled guilty to a felony breaking and entering, the state would not prosecute the larceny count and would recommend probation. The defendant would thereby be given an inducement (not prosecuting the second charge and recommending probation) that would actually dispose of the case in the same manner that the judge would have disposed of it had it been tried out.

Notwithstanding the importance of what a presiding judge would probably do, the district attorney should consider the factors of "fairness" and "propriety" in disposing of the case. Although some district attorneys feel that these considerations are "up to the judge," a district attorney has an opportunity in his recommendation and in the plea-negotiation stage to truly effect justice as it applies to individual defendants. If the district attorney does not take the initiative at this stage, the law becomes inflexible and injustice can result from his failure to act.

The most common situation in which plea negotiations are undertaken occurs when the district attorney has evaluated a case and knows from experience even though he is convinced of the defendant's guilt, that the evidence is extremely weak or that important evidence might be suppressed because of procedural errors by law enforcement officers. He has a choice, under these circumstances, of trying the case out "as is" and running the very real risk of a not-guilty verdict or of tendering to the defendant a reduced charge in exchange for a guilty plea. When a district attorney plea-bargains in this situation, the goals are "substantial justice" and the avoidance of social harm that could result from the release of a criminal.

When a defendant is charged with a series of crimes, a plea bargain might be used to drop some of the charges when he pleads to the remaining charges, especially if his plea to the several charges would give the judge sufficient leeway to punish his actions. From experience, the district attorney quite often knows that the judge would give the defendant a certain sentence regardless of the number of charges of which he might be found guilty, so that once more the same result has been achieved as would have been accomplished by a jury trial.

Since the district attorney is the only individual in a judicial district with comprehensive awareness of the strengths and weaknesses of the law enforcement in his area, the strength of his criminal cases, the mores and the reactions of jurors in a community to the facts constituting alleged violations of the law, and (from experience) the probable dispositions of the various judges presiding in the district from time to time, he must have unlimited discretion to dismiss charges and to negotiate pleas. This discretion must be exercised carefully and, as nearly as possible, uniformly to effect a "fair" disposition of criminal cases. The independence of a district attorney in exercising his discretion is essential to prevent abuse of power. The district attorney alone is responsible to the people who elect him. If he abuses his power, the people should and probably will vote him out at the next election.

Nonsecrecy in Discretionary Decisions. When a district attorney decides to dismiss a criminal case or to accept a plea to a lesser charge, he should tell the public as well as those directly involved in a case the reason for the dismissal. Communication with the people directly involved, whether they be law enforcement officers or lay witnesses, can be accomplished by letter or in person. The importance of notifying those directly involved lies in the need to insure that the proper reasons for the dismissal are known. People tend to believe the worst possible motives, especially in matters involving the court system. Too often, because of a lack of communication

4. National Advisory Commission on Criminal Justice Standards and Goals, Courts, 42-49 (1973).

5. N.C. Sess. Laws 1973, Ch. 1286 (N.C. Gen. Stat. § 15A-1021 to 1027).

with the public, when a case is dismissed or a lesser plea accepted, interested persons immediately conclude that the "fix" is on. If this impression is not corrected, it will remain forever in their minds, and they will influence others who have had no direct contact with the system. It is important not only that actions be proper but also that they *appear* to be proper.

Similarly, the district attorney must maintain good communication with law enforcement officers to prevent their drawing false conclusions. The attitude of law enforcement officers is directly affected by what happens to their cases when they reach court. If they feel that improper motives are involved in the dispositions of cases, their attitudes toward the courts and their duties may be adversely affected. Furthermore, if the reason for dismissing a case or accepting a lesser plea is related to lack of evidence to convict or illegally obtained evidence, feedback to the officer helps teach him to avoid the same pitfalls in the future.

Maintaining a written record of the reasons why a case was dismissed or a lesser plea accepted is important, and can be accomplished by a notation on the court file for district court cases and by including a form in the court file for superior court cases. Again, publicly stating and recording reasons for discretionary actions will help prevent misinterpretation of the district attorney's motives. The public record gives an explanation to anyone who inquires as to the reason for a particular action. If much time has transpired since the action had been taken, the district attorney, with his heavy volume of cases, may not remember all of his reasons and will have the written record to rely on.

IMPORTANCE OF INDEPENDENCE

The independence of a district attorney prevents outside influences from affecting policies and the integrity of his office. If one man or a small group of men had the power to control the various district attorney's offices across the state, the interest of the community as a whole would cease to be a factor in the operation of the district attorney's office and abuse of the court system would be highly likely. The sum total of how a district attorney administers his office and the basis upon which he decides whether to prosecute a case or what plea negotiations to engage in has a very real influence upon his community—that is, his judicial district. His actions and effort are clear evidence of his attitude, and that attitude sets the climate and influences the manner in which law enforcement personnel handle the public.

The district attorney is first and foremost an advocate—an advocate of and for the people, and not merely an advocate for law enforcement. He must always present and maintain an attitude of fairness. He is in the best position possible to influence law enforcement officers in their attitude toward their occupation, duties, and the people of the community. A district attorney can well influence law enforcement by discouraging unethical practices. If he maintains a "win at all costs" attitude, then he is suggesting or laying the groundwork for overenthusiastic officers to "fudge" in their testimony and investigation. Well-prepared prosecution by its very nature has the effect of influencing officers to investigate their cases thoroughly. They readily realize from competent prosecution what will be expected of them in future trials. On the other hand, ill-prepared prosecution can result in apathetic law enforcement and officers who lack confidence in the prosecution of their cases.

A DISTRICT ATTORNEY has and exercises great power in carrying out his many and varied duties. How he uses this power influences directly the quality of justice and life in a community. The burden is upon him to use the power effectively and with integrity. At the same time, if he is to give his best service in his many capacities, his freedom and discretion must remain unbridled.

THE ROLE OF THE PRIVATE ATTORNEY

Wade Smith

THE LECTURER IN A COURSE I took as a new member of the Bar once said: "The criminal law is the red-headed stepchild of the court system." There is much truth in what he said. And, while many criminal lawyers have outstanding credentials, often they avoid the blue-chip image and gravitate toward a more rough-hewn, less genteel life-style. When they invite the district attorneys to their annual Christmas gala, they are likely to serve opossum, raccoon, grits and eggs, and streaky lean meat. To cuss occasionally is a criminal lawyer's prerogative and, indeed, it is expected of him. You might find him a little too opinionated or contentious to suit the sensibilities of the Ladies' Auxiliary. But for most folks, the criminal lawyer is the best company for a fishing trip or a wedding party or almost any other occasion, for that matter. He is a forgiving fellow and apt to look for redeeming qualities rather than condemning ones. He is accustomed to struggling hard to see the good in his clients. I have practiced in the courts of North Carolina for ten years and rubbed elbows with the finest practitioners at the Bar. I have tried cases all over North Carolina in the federal and state courts. I have made friends with Sunday School teachers, preachers, judges, college professors, and faith healers. But the people who know most about life and philosophy and religion and politics are the criminal lawyers. I like criminal lawyers. When I was a child, I sat and listened to my father talk shop with fellow workers. They would discuss production and the effect of cold weather on machinery. Hearing criminal lawyers talk shop is like being at the first meeting of Oliver Wendell Holmes, Felix Frankfurter, John Marshall, and Hugo Black. One hears Fifth Amendment, Fourth Amendment, First Amendment, due process, and other such phrases tossed about. And one hears them discuss their role in our system of criminal justice. But enough of drama. Let's examine the role of the criminal lawyer.

THE CRIMINAL LAWYER knows his job is increasingly important. There should be no rejoicing that the criminal lawyer is now on the list of vanishing species. Our system is adversary. Police officers enter the courtroom with briefcases stuffed with good notes. They do not blunder as they used to. Asher L. Cornelius's description of the police officer in 1929 makes one laugh today:

> Policemen as a class are not well educated, skilled mechanically or industrious. They are men above average in physical strength and appearance who have lacked sufficient persistence to acquire an education or learn a trade. Their contacts with the criminal element tend to make them suspicious of human nature. It naturally follows that where a person is charged with a crime, the officer is predisposed toward a belief in his guilt. [*Cross-Examination of Witnesses.*]

Today the police officer is well trained. His case preparation is thorough, and he has at his disposal a wealth of scientific gadgetry, all of which make him a formidable opponent. He speaks glibly of potassium dichromate and tuning forks.

The district attorney is no different. He is well paid and competent. He has an unlimited supply of help. Almost every new man you meet in town is one of his assistants. He is able to read, and he can do it quickly. He can draw indictments in the twinkling of an eye. And the grand jury returns them to him just as fast. He has a secretary, and she has a typewriter. The D.A. is furnished memos and texts from the Institute of Government, the Attorney General, and Administrative Office of the Courts. The district attorney does not aid the defense. He knows what to do and when to do it, and defendants can no longer rely upon him to blunder and boggle a case into its least noxious included offense.

Jurors are also different. They no longer go for Bible quotations. They go for facts and reasonable inferences arising from facts. Once in a while a Bible verse might help, but they are dangerous when used too frequently. Jurors are sophisticated. They will not be hornswoggled.

There once was a time when a judge could be depended upon to make an error. Nowadays judges all have a set of pattern jury instructions covering virtually all crimes, and they are always on target. Lawyers can no longer rely on judges for any real help. A defendant who walks into an adversary system, the component parts of which are as highly trained and skilled and as zealous as the police officer and the district attorney and as dedicated as the judge and the jury, is likely to become a victim in addition to a defendant unless he has competent counsel. Judges do not protect defendants' rights, lawyers do. Solicitors are not solicitous of defendants' rights, lawyers are. The names Gideon, Escobedo, and Miranda are all

The author is a Raleigh attorney and also a member of the North Carolina House of Representatives from Wake County.

monuments to the view held by people who have examined our system carefully about the role of lawyers. A criminal trial is no tea party, and the system will not work without good lawyers. The day has vanished when lawyers could walk around with a list of their cases in their hip pockets or practice law using nothing but the statutes and the annotations to the statutes. Today they must know how to handle juvenile proceedings, probation and parole revocations, and understand postconviction remedies as well as keep up with the myriad of criminal procedure court decisions.

And even the best criminal lawyers lose most of their cases. I have often wondered what it does to a man to lose a fight on nearly every working day of his life. Indeed, measured by the standards applied in the business community, a criminal lawyer's career is a catastrophe. The criminal lawyer seldom enjoys the rarefied air of jury victory. What, then, is the criminal lawyer accomplishing? "I am making the state prove its case," he says. "I am holding the state's feet to the fire. I am requiring them to prove beyond a reasonable doubt and to a moral certainty that my client committed the crime." The rewards of such activities are not as ephemeral as one might think. Good criminal lawyers not only are paid well; they also believe they make the system better. For example, search warrants drawn up by police officers who work in a city with a strong criminal Bar are better search warrants. Every time a lawyer scrutinizes a search warrant and cross-examines an officer about the details of the affidavit or the oath, he announces to the world that search warrants will be scrutinized. Good criminal lawyers help to make good police officers. Indeed, the betterment of our system of criminal justice is one of the outgrowths of good criminal law practice. Every criminal lawyer knows that a high standard of professional excellence on his part in the practice of his skill may be the basis upon which countless people are more fairly tried. Thus, the criminal lawyer sees himself as being a positive influence upon the court system and upon the entire system of criminal justice.

Once in a while lawyers rumble and mutter about pleading not guilty in all their cases. Perhaps the district attorney has been unfair or a judge has revealed that he is really in the D.A.'s corner and that this business of impartiality is a fiction. There is a feeling, occasionally, that "we don't get no respect around here." The debate then rages on about what effect "not-guilty pleas" would have upon our court system. Suppose all the criminal lawyers pleaded all their clients not guilty and fought them out. What would happen to the system? No one knows the answer to this question because the lawyers have never done it, and I am sure they never will. However, the lawyers are acutely aware of the value of guilty pleas. The system will not work without them. We are not in a position to joyfully give every defendant a jury trial. But, for that matter, not many defendants really need one. Most of them are guilty. And, ultimately most of them want to plead guilty. But one of the reasons they do plead guilty is the counsel of a competent lawyer who develops an arm's-length professional relationship with the defendant and is able to satisfy him his best hope is a guilty plea. Defendants keep hoping for a miracle. They keep looking for a lawyer who has never lost a case. But once they have talked with a lawyer whose ability they trust, most defendants throw in the towel. This is one of the criminal lawyer's most important roles. Through him the community is introduced to the system. His explanation that money cannot buy the police officer and his insistence upon honestly representing his client does much to restore a defendant's confidence in the fairness of the court. When the attorney explains to the client that he cannot take the witness stand and lie about his defense and that his witnesses will not be permitted to lie, he may restore confidence in the system. And his fact-finding efforts on behalf of his client may aid the judge immensely in determining the kind of punishment that should be imposed.

THE LAWYER'S FIRST job is to get the facts. This is his most difficult task. Justice Cardozo once observed:

> We lawyers are awakening to perception of the truth that what divides and distracts us in the solution of the legal problem is not so much uncertainty about the law as uncertainty about the facts—the facts which generate the law. Let the facts be known as they are and the law will sprout from the seed.

And Lloyd Paul Stryker once observed:

> The really difficult problem in preparation of the case is to learn what the facts are and no matter how long or conscientiously you work you will never know them all. The law seldom decides the issue, the facts do; and as contrasted with the ascertainment of the facts, the law is relatively easy to discover. There are a hundred good researchers of the law to one who has a genius, I may say a nose, for discovery of the true facts.

The lawyer also must recognize that there is a natural inclination on the part of his client to minimize each detail. Every lawyer has his own technique for extracting facts, but the lawyers who do it well are rare. Here patience is the virtue that is the lawyer's best ally.

The lawyer is confronted with critical decisions. Is it necessary that he believe his client innocent to accept the case? Can the lawyer in good conscience represent a guilty man? What is his obligation to the unpopular cause? Should he represent the flag burner? Of course, no attorney is bound to represent a man he does not like, but he may represent him if he wishes. No attorney is obligated to represent a man who is guilty unless he wants to. But the Constitution assures the defendant the right to counsel, and a lawyer may certainly accept the case of a guilty

man and plead him not guilty, giving him a vigorous defense and the assurance of a fair trial. As for the acceptance of an unpopular cause, it may be that this is the lawyer's highest calling. There are lawyers who have genuinely suffered by acceptance of unpopular cases. The courage demonstrated by lawyers who have represented dissident groups has been admirable. In 1954 Judge Harold A. Medina made this statement about unpopular cases:

> Despite all the resolutions of the bar associations and the practically unanimous views of the bench and bar on the subject, the average man and woman who make up our great American public still seem to have no clear idea of the importance to American democracy of a skilled and competent defense of those charged with crime. The more odious and despicable the crime, the more important it is that justice be done.

Ostracism of lawyers for taking such cases has occasionally surpassed exclusion from the local garden club. But this is one of the criminal lawyer's roles in the system.

The initial interview is the stage at which the attorney exercises another aspect of his role that helps to keep him active in the system. He sets his fee. Henry Rothblatt recently said, "About fifty percent of the clients who come into the office of the criminal lawyer lie to their lawyers about the facts of the case. At least eighty percent think they are so cunning as to be able to con the attorney out of his fee, an aspect of the practice that would alone warrant being the subject for a short text." Fee-setting is difficult. Criminal lawyers recognize the importance of fairness but often it is impossible to predict the extent of work that will be required. And, as was the case in the novel *Anatomy of a Murder,* if the attorney is not paid before trial he may learn that his client had an irresistible impulse to leave without upholding his end of the fee arrangement.

Subsequently the lawyer confronts the problem of bail, and through his efforts to resolve the bail problem he learns about bail bondsmen and the unusual powers they possess. The lawyer learns to work with people who have power and have discretion to use it. In working with bondsmen, as well as with police officers and district attorneys, he serves as a public relations agent for his client. His efforts to obtain information and to give information are all a part of getting the case ready for either a guilty plea or for trial. An interesting insight into the attorney's role is this statement by Lloyd Paul Stryker in his book *The Art of Advocacy:*

> (The lawyer's) most effective posture is one of complete sincerity and unquestioning commitment to protect every right which the law gives to his client, of unflagging willingness to work as hard as necessary in his client's behalf, yet of infinite reasonableness in seeking some fair accommodation that will dispose of the case in the most just and efficient manner.

The lawyer as investigator keeps in mind the necessity that his efforts not only *be* circumspect but *look* circumspect. If he fails to remember this rule, he damages the system of criminal justice. It is easy for witnesses to misinterpret what the lawyer means when he interviews them in behalf of his client. Conferences with police officers and district attorneys may appear to be something they are not. Lawyers learn early that they must preserve a record of having done those things they ought to have done. In spite of his most tedious and careful efforts in this regard, a lawyer may find himself a witness at a postconviction hearing held in his honor.

The criminal lawyer learns that physical facts change and that people forget. He learns that for most folks life is not punctuated by unforgettable adventure and that witnesses may not remember next week what happened today. While he may not have "confidential, reliable informants," he does have sources. His sources are police reports, log books, coroner's reports, newspaper files, weather records, time clocks, hospital records, doctors' reports, and a host of others. And he soon learns how to deal with the comment "I don't want to get involved." A criminal lawyer gets people involved.

SINCE GETTING FACTS is his most important job, especially in the early stages of his case, a criminal lawyer is constantly involved in discovery. The process of discovery may not be the formal kind. Every conversation with the investigating officers is discovery. Every plea-bargaining session with the district attorney is discovery. The lawyer learns that through preliminary hearings, bail hearings, coroner's inquests, and pretrial conferences, he can discover most of the facts of his case without resorting to formal discovery techniques. The lawyer's role in the trial itself is that of an advocate. In *State v. Lynch* , [279 N.C. 1 (1971)], our Court used the following language in describing the role of a lawyer at trial:

> In this day of congested criminal dockets and overcrowded calendars, a lawyer's objections and exceptions frequently harass the judge. However, it is a lawyer's duty to represent his client. In doing so he is required "to present everything admissible that favors his client and to scrutinize by cross-examination everything unfavorable. The inevitable result is that the lawyer usually feels that he is unfairly prodded by the judge, while the judge feels the lawyer obstinately drags his feet." This conflict tests the metal of both as officers of the court. The trial judge, who occupies "an exalted position," must abstain from conduct or language which tends to discredit the defendant or his cause in the eyes of the jury.

It is thus the lawyer's duty to represent his client and to do it vigorously even if it unnerves the judge. Our system will not work if judges, by overpowering egos, can make lawyers cower. A lawyer renders a disservice to the Bar, to his community, and to his country if he permits the judge for one moment to run roughshod over him and his client. Happily, most judges are too professional and

much too competent to engage in such antics in the courtroom. Nevertheless, the lawyer's job is to be respectful, independent, and unafraid.

The lawyer as an independent advocate for his client's cause participates in the quest for truth by providing another side or another point of view for discussion. The theory of the jury trial is that in the clash by opposing sides and opposing points of view, the jury may discover the truth. Cross-examination is one of the criminal lawyer's most important roles. The skillful criminal lawyer knows when to cross-examine but, more important, when not to cross-examine. A lifetime of study and practice is required to become proficient at this art. The principles of cross-examination are as varied as human nature, and no attorney has ever mastered the art completely. The key to successful cross-examination is preparation, and good criminal lawyers recognize that they are preparing their cross-examination at every stage of the proceeding. A careful study of one's adversary is necessary. The criminal lawyer recognizes that his approach to children would differ greatly from his approach to other categories of witnesses. Asher Cornelius is not off-base in *Cross-Examination of Witnesses* when he describes the approach to the female witness:

A woman witness is ofttimes death to the cross-examiner. If you press her too hard, she will weep or faint and thus get the sympathy of the jury in spite of the fact that you have revealed startling discrepancies in her story. If you exert the necessary patience to pin her down and make her answer your question, the jury may get the impression that you are persecuting her.

Frederick T. Harward, of the Detroit Bar, had this to say about the female witness in 1929. Perhaps it is appropriate today:

That man who cross-examines a woman faces indeed, a delicate task. They are quicker-witted than men and some of them seem to know intuitively what your next question is going to be and have the answer ready before you can ask the question. Then too, they use every weapon in their armory, smiles, coquetry, shrugs, sauciness, and if you press them too closely, they will resort to tears; then too they always have the last resort, the ability to faint at a convenient and dramatic time. Approach them warily and with awe. Have your armor in good shape and your visor down, otherwise, you may be the most seriously wounded when the combat is over.

Despite the dangers of cross-examination, it remains one of the criminal lawyer's most important tools and its use aids the lawyer in his function in our system.

SOMEONE HAS SAID that nothing is so certain as the certainty of change. Will the privately retained criminal lawyer disappear along with the sable antelope, the black-maned lion, and the cougar? Obviously, the need for criminal lawyers will continue. Criminal procedure is becoming more complicated, and it is less likely that laymen will be able to grasp it sufficiently well to use it. Appointed cases in 1972-73 in North Carolina totaled 16,304. But in the district and superior courts there were over a million cases for that period—50,000 cases in superior court alone. No move seems afoot to make the public defender system statewide, and even if it were statewide, no hard data are at hand that would put an end to the use of privately retained counsel in North Carolina. Judge Harold R. Medina made this statement about the need for trial lawyers in 1954, and I believe it is pertinent today:

Never during my professional lifetime—and I have spent well over thirty-five years constantly in courtrooms which varied all the way from the Municipal Courts of New York City and Courts of Justices of the Peace to the Supreme Court of the United States—was there so great a need as there is today for the well-trained advocate. Few seem to realize the arduous training which is absolutely indispensable for top-notch performance. Nothing could be further from the truth than the common supposition that a ready tongue and glib speech form the principal stock in trade of a trial lawyer. Only the most arduous application and much practice will suffice to develop proficiency in the formulation of questions to witnesses, and the planning of the involutions, suggestions and hints by which the minds of judges and jurors are guided to a certain conclusion. How close the analogy is between this phase of the trial lawyer's work and that of the skilled and experienced surgeon is all too seldom perceived.

Perhaps the key to preserving the criminal trial lawyer is encouragement of young men to enter the field of criminal trials. Judge Medina put the case very well:

No one with any show of reason can deny that there is a spiritual quality of justice. When once the spark is fired and a young lawyer becomes thoroughly imbued with a grim determination to see that justice is done as between man and man, and as between man and the state, there is a reasonable basis for hope that this young man will dedicate himself to the cause of justice, as every lawyer should. The phases and compartments of the law are legion; but if a lawyer chooses to devote his talents to the art of advocacy, he may rest assured that there will be ample opportunity to make a lasting contribution to the spirit of justice.

THE COURTS AND THE CRIMINAL JUSTICE SYSTEM

Bert M. Montague

Ye shall know them by their fruits. [Matt. 7:16]

ALMOST A DECADE has passed since the Judicial Department Act of 1965 capped a ten-year effort to establish a unified court system in North Carolina. Nearly eight years of operation under the new system have gone on in the pilot districts. Almost four years have passed since complete implementation of the modern system. Therefore, it seems appropriate now to apply this ancient and stern but fair evaluation device in an effort to see whether the courts are living up to the goals set for them.

Tremendous strides have been made in the administration of justice under the new system and, comparatively speaking, we can view it with pride. To begin with, we were furnished an ideal court structure. North Carolina is one of a bare handful of states that have a unified court system with uniform jurisdiction, procedures, and costs throughout the system and complete state responsibility for funding. People who come into the courts may expect similar treatment wherever they enter the system. Personnel with whom they come in contact are full-time and trained for the jobs they perform. In terms of quality, improvements have been made in the adjudication process. However, we have barely begun to realize the vast potential within this ideal structural system available to us, and much remains to be done. No matter how nearly perfect the system, the final measure of performance is the action taken by those personnel who deal directly with the people brought before the courts. Management, which has become difficult under the best of circumstances, becomes almost impossible in a court system with independently elected judges, district attorneys, and others. The Chief Justice is looked to as being responsible for management of the court system, but he has none of the traditional management tools, such as authority to appoint or remove personnel. He cannot grant salary raises or promotions to judges as rewards for performance, nor demote or remove them as penalty for failure. The primary motivation of a judge or district attorney to perform well is within himself. Thus, the only effective management is self-management, and the initial selection process for these people becomes critical.

AS IN MOST OTHER SYSTEMS, we might begin our measure of performance of the court system by a quantitative analysis. Just a few years ago, delay and congestion in the criminal division of the superior court was represented as reaching crisis proportions. This is clearly no longer the case: 1972 was a "turn-around year" for this division when the number of pending cases *decreased* by 9.9 per cent as opposed to increases of 28.3 per cent in 1971 and 32.3 per cent in 1970. In 1973, the cases pending in this division were further reduced by 13.7 per cent. Although filings in 1973 increased by 5.0 per cent, dispositions increased comparably.

This division is currently demonstrating a capacity not only to dispose of current cases but also to make inroads into the cases remaining from prior years. The rate of disposition (the percentage of filings that were disposed of) has exceeded 100 per cent for only the second time since 1965. It was 105.4 per cent in 1973, compared with 104.7 per cent in 1972, 89.3 per cent in 1971, and 89.8 per cent in 1970. Moreover, the pending ratio (the percentage relationship that the number of cases pending at year's end bears to the number of cases disposed of during the year) dropped from 40.5 in 1972 to 32.3 in 1973, which indicates (all other things being equal) that the estimated amount of time for the court to dispose of all criminal cases pending has been reduced from less than five months to less than four months. Our current estimate of four months is most encouraging considering that the pending ratio in 1971 was 50.9, a figure suggesting that more than six months would have been required to dispose of all criminal cases pending. This period of less than four months compares favorably with the 101-day standard recommended by the President's Commission on Crime and the Administration of Justice and the 90-day standard contained in the newly enacted Criminal Procedure Act (Sess. Laws 1973, Ch. 1286).

No single variable can explain this continued improvement in superior court criminal dockets, but one factor deserves mention. The impact of appeals from the district court for trial de novo in the superior court is very significant. Any minor change in the number of cases being appealed from the district court (a high-volume court) has a significant impact upon the superior court (a low-volume court). The number of cases being appealed to the superior court dropped further in 1973 from 20,899 to 20,268,

or 3.0 per cent. The 20,268 cases that were appealed constitute 5.3 per cent of the total number of cases tried in the district court and amount to 47.8 per cent of total superior court filings. The comparable figures for 1972 were 5.5 per cent and 51.9 per cent. Although we traditionally view the superior court as the forum for the trial of serious felonies, since the reorganization of the court system our statistics have indicated that over half of the superior court's dockets were relatively simple misdemeanors (mostly traffic cases). In fact, 1973 is the first year since the district court has been operating in all 100 counties of the state that misdemeanors have constituted less than half of superior court filings.

The statistics demonstrate that the longer the district court is in operation, the lower the rate of appeals and the smaller the proportion of superior court filings that are appealed cases. For the eighty-three counties where the district court has been in operation for five or more years, the appeal rate from the district court is 4.8 per cent, and appeals constitute 44.9 per cent of superior court filings. This is in marked contrast to the seventeen counties that entered the system in December of 1970; in these counties the appeal rate is 8.5 per cent and appeals constitute 62.1 per cent of superior court filings. In fact, the rate of appeals varies greatly from district to district and from county to county. For example, 82.9 per cent of the superior court filings in the First Judicial District are cases on appeal from the district court, whereas only 20.4 per cent of superior court filings in the Fourteenth Judicial District are cases on appeal from the district court. It is hoped that the number of cases being appealed in those counties with high rates of appeal will come down in 1974.

It is interesting to note (to the disillusionment of Perry Mason fans) that only a very few criminal cases are disposed of through the drama of a courtroom trial. Of the 44,636 cases that were disposed of in 1973, only 4,221 (9.5 per cent) followed a not-guilty plea for which a jury was impaneled. The largest percentage of cases were disposed of by guilty pleas (21,288, or 47.7 per cent). The remaining cases—19,127, or 42.8 per cent—were disposed of by other means. We assume that most of these "other" dispositions were nol prosses. As Table I indicates, the percentage of cases that reach a jury has changed very little during the past five years. But the table seems to indicate a trend toward decreasing dispositions by guilty pleas and increasing dispositions by "other" means. This trend may be another factor in the improvement of the dockets in recent years. Since our assumption is that nol prosses constitute the bulk of "other" dispositions, it is reasonable to assume that the number of nol prosses granted by district attorneys has been increasing of late. At any rate, the table shows that the number of cases that actually reach trial has remained fairly constant over the last five years. It is clear, from the figures in the table, that any radical change in the number of cases that reach trial would seriously unbalance the system. All planning and budgeting rests upon the premise that only a limited number of cases will get that far.

By its nature, the criminal division of the district court is always congested, but our statistics reveal no serious problems of delay. This court now receives and disposes of over a million misdemeanors each year. In 1973, 1,028,532 cases were filed; 1,023,310 cases—or 99.5 per cent of the cases filed—were disposed of. The number of cases pending at the end of 1973 increased by 6.3 per cent over 1972, but the increase appears to reflect normal growth trends for this high-volume court. The pending ratio for this division is 8.7, which indicates that it would require about one month for the court to dispose of its criminal docket.

From year to year, the percentage breakdown for the types of cases handled and the manner of dispositions has remained fairly constant. As one might expect, traffic cases make up most of this court's business. In 1973, 64.4 per cent (662,545) of all criminal cases filed were for violations of the traffic laws. Other petty misdemeanors made up the remaining 35.6 per cent (365,987) of the cases filed.

Table II indicates that little change has occurred in the manner of disposition during the three years since the district court has been operational in all 100 counties of the state. Interestingly, the percentage of cases that result in a full-fledged trial before a district court judge is almost identical to the percentage of cases that receive full-fledged trials in the superior court. In 1973, only 9.5 per cent of dispositions were by trial before the district court judge following a not-guilty plea. As with the superior court, any substantial increase in not-guilty pleas would disrupt the system.

The table indicates an encouraging trend with respect to waivers in traffic cases. The use of the waiver procedure in certain traffic cases has continued to increase each year and presumably has helped to alleviate courtroom congestion and delay. In 1971, 65.7 per cent of all traffic cases were disposed of by waiver. The figure in

Table I

Manner of Disposition
of Criminal Cases in the Superior Courts of North Carolina

	Percentage of Cases Disposed of by			
	Jury	Plea	Other	Total
1973	9.5%	47.7%	42.8%	100.0%
1972	9.9	49.3	40.8	100.0
1971	9.7	51.9	38.4	100.0
1970	9.8	54.5	35.7	100.0
1969	10.4	53.8	35.8	100.0

Source: Annual Reports of the Administrative Office of the Courts, Raleigh, N.C.

1972 was 69.4 per cent and in 1973, 69.6 per cent (the table indicates waivers as a percentage of *all* cases). Almost all counties now make proper use of the waiver procedure. Nevertheless, in a few counties court time is still taken accepting guilty pleas to waivable cases. Court officials should make every effort to let the public know about waiver procedures in order to reduce the number of guilty pleas in the courtroom.

Table II

Manner of Disposition
of Criminal Cases in the District Court

	Percentage of cases disposed of by					
	Judge	Plea	Waiver	Prelim. Hearing	Other	Total
1973	9.5%	27.6%	45.1%	1.9%	15.9%	100.0%
1972	10.7	27.2	44.8	1.9	15.4	100.0
1971	11.4	30.1	41.3	1.8	15.4	100.0

Source: Annual Reports of the Administrative Office of the Courts, Raleigh, N.C.

From time to time proposals are made that motor vehicle cases be "decriminalized" and an administrative procedure be substituted. In North Carolina, most traffic cases are handled administratively by the waiver procedure.

OUR STATISTICS INDICATE that on the whole, both criminal divisions of the General Court of Justice are performing satisfactorily. Nevertheless, our perspective is based upon statewide totals, averages, and percentages. Courts deal with people, and our statistics do not reveal the stories that can be told by individual defendants, witnesses, victims, jurors, defense attorneys, law enforcement officers, court officials, and citizens who become involved in actual cases. A mere listing of these people illustrates the complexity of getting all of them together at one time for a trial. Those who become involved have different roles to play, different sets of priorities, different objectives, different resources in terms of time and money, and different perspectives as to the roles of the other participants. Even under the best of circumstances, it is easy to understand that some participants will leave the trial with a feeling that they have seen inefficiency personified. The courts must make every effort to eliminate inefficiencies and practices that work unnecessary hardships on participants. At a minimum, when inefficiency and hardship are unavoidable, court officials should make every effort to explain to the participant what has gone on and why.

By a quantitative measure, it appears that the court system is satisfactorily performing its responsibility. However, a steady flow of complaints about unfair treatment; revelations of abuses in granting prayer for judgment continued; poor scheduling techniques that result in court breakdowns and repeated appearances by witnesses and others involved in the system; bonds being set in cases in which they are not necessary to assure appearance of the defendant; cases being continued repeatedly, sometimes for a dozen or more times; too many jurors being called just to sit and wait; disparate sentences; unnecessary delay in trials; and other critical factors serve to remind us continually that much remains to be done to improve the quality of justice in North Carolina. One problem has been that, in the drive to keep up with a steadily mounting caseload, expediency may sometimes have been put before justice.

The calendaring process in the superior court lies at the heart of the problem of calendar breakdowns and the inefficient utilization of court time. It often wastes time for litigants, lawyers, the court, witnesses, jurors, and all others connected with the court operation. As the article on district attorneys in this issue of *Popular Government* points out, calendaring of criminal cases is handled by the district attorney. Proposals in North Carolina have been made for relieving him of his responsibility—or, if he is to retain the duty, for giving him administrative help. None of the proposals has greatly improved the calendaring process. Unexcusable delay still regularly occurs in the court. Perhaps some inefficiency and lost time are inevitable in an operation as complicated as a session of court. Still, improvements clearly can be made and, unless the distict attorneys achieve greater efficiency, it is probable that someone else will be given the opportunity to try.

THE SUPERIOR COURT has been operating with less than the necessary number of judges. The 1974 General Assembly corrected that problem by authorizing six additional judgeships. This additional manpower should provide an adequate supply to enable needs to be met without a continual strain and battle against an impossible caseload. Improved training programs at the state and national level will serve to upgrade personnel. The Code of Judicial Conduct adopted by the Supreme Court and the Judicial Standards Commission established by the General Assembly will serve as restraining influences and will help solve some of the problems that have faced us. The Conference of Superior Court Judges has recently demonstrated a renewed interest in solving the dilemma of juror utilization and the long-standing problem with respect to fairness and justice in allowing fees to counsel assigned to represent indigents.

The program for furnishing representation to indigents, incidentally, is a typical example of the impact that demands of an unprecedented growth rate have on the courts. The number of cases in which counsel were required to represent indigents increased 44.6 per cent during the fiscal year 1972-73, compared with the number for 1971-72. That increase was mild, however, compared with the 78.6 per cent increase during the 1973-74 fiscal year. The remarkable growth rates during these two years resulted primarily from the new entitlement to counsel established by the United States Supreme Court or by the General Assembly. During the 1973-74 fiscal year, the dramatic increase resulted primarily from the

provision of counsel to represent respondents in proceedings for involuntary commitments. Full-time special counsel will be provided in many of these cases during the current fiscal year, and, therefore, some reduction should occur in the number of cases that require assigned counsel. More important than money in measuring the impact of court-appointed counsel on the criminal justice system is the quality of representation. Public defender staffs now represent indigents in three judicial districts and assigned counsel work in the other twenty-seven. A decision must be made soon on whether the public defender system should be extended into more districts. In addition to work being done by the Court Commission, a plan is under way to study in detail the entire question of delivering legal services to indigents. The study will be done under the supervision of a special committee of the North Carolina Bar Association and should provide useful guidance to the best method of representation.

THE FUTURE OFFERS some grounds for optimism. For example, in 1974 the General Assembly made a forward step in regard to children. To replace a fragmented system for provision of juvenile probation services, the legislature ordered a division of juvenile services established in the Administrative Office of the Courts and charged it with the responsibility of furnishing uniform probation and aftercare service throughout the state. Many people believe that the best time to correct criminals or potential criminals is at the time of their first offense—and for some, that is when they are children. The theory is that the success rate among adults is very poor but the proper type of program has a good chance of success with children. Therefore, besides helping children in trouble now, the Administrative Office of the Courts has a possibility of affecting the area of criminal justice very substantially by turning potential offenders in other directions.

Also, bail reform is being considered in the General Assembly. Although the fee-supported professional bondsman is still the main source of securing pretrial release, the chief district court judges have been granted authority to design uniform bail schedules and encourage release on recognizance or release on unsecured appearance bonds. Further, the superior court judges will be granted authority to set bond policies by the new Code of Criminal Procedure.

A solution is in sight for one glaring deficiency that we have faced—that is, insufficient information relating to the work of the courts. Necessary planning and management are impossible without an adequate information base. A system for providing the necessary information about the courts has not existed in the past. We are now planning an automated court information system to be established on a statewide basis. Besides providing needed planning and management information for the internal operation of the courts, such a system could be integrated with law enforcement and corrections departments to enable us to follow offenders through the criminal justice system and evaluate the effectiveness of the various procedures. A plan has been designed for the court system, but its implementation has been slowed by various technical problems and of course by funding problems. The project has been launched with the aid of a federal grant, but the General Assembly must make a sizable appropriation if the project is to be fulfilled.

The Supreme Court has adopted a new rotation plan designed to place more management at the trial-court level. Under this plan, particularly in the multi-judge districts, a resident judge will be in his home district more often and thus able to maintain greater control over the operation of the courts in his district.

Courthouse facilities have been greatly improved in many areas of the state—especially in the additional seats of the district court. But some below-par inadequate facilities are being used in some places, and other means of encouraging compliance with the requirement for adequate facilities are needed.

DESPITE ALL THESE PROBLEMS, North Carolina is far ahead of most states in the operation of its court system. Many states are now going through the struggle that North Carolina endured from 1955 to 1965 while the new court structure was studied, designed, and implemented. Having a structure and machinery similar to that proposed by the American Bar Association Commission on Standards of Judicial Administration, we are looked upon as a model. And we are also in a position to stay ahead. The machinery and necessary funding are available. The only factor that is now keeping a good system for the administration of justice from becoming a great system is the personnel—by which we primarily mean judges. Although other personnel in the system play important roles, it is the crucial management and decision-making functions of the judge that have the greatest impact upon people involved in the court system. The Courts Commission recognized this problem in its 1971 Report to the General Assembly:

> The Courts Commission must now turn its attention to another judicial problem as large and important as reorganization itself. That problem is personnel. The quality of the judiciary, in large measure, determines the quality of justice. No procedural or administrative reforms will help the courts, and no reorganizational plan will avail unless judges have the highest qualifications, are fully trained and competent, and have high standards of performance.

The Commission concluded that the state needs a nonpartisan merit selection plan for judges. This plan has three essential elements:

(1) submission of a list of judicial nominees by a nonpartisan commission composed of professional and lay persons; (2) selection of a judge by the Governor from the list submitted by the nominating commission; and (3) approval or rejection by the voters of the Governor's selec-

[*continued on page 57*]

REHABILITATION OF CRIMINAL OFFENDERS

Seymour L. Halleck, M.D.

THE AMERICAN SYSTEM of correctional justice fails dismally in its efforts to rehabilitate criminal offenders, and only the most naive reformers can hope that this situation will soon change. While it may now be possible for a greater number of offenders to escape the retribution or incapacitation society wishes to impose upon them, the offender who is unfortunate enough to be sentenced to prison is treated in a manner that is depressingly similar to the way offenders were treated 50 years ago.

Our society's failure to rehabilitate criminals has many political and economic explanations. It is also true, however, that we have never had a clear and dispassionate idea of what we mean by rehabilitation. The term lends itself to propagandistic or pejorative uses. Some reformers insist that rehabilitation is the only legitimate goal of criminal justice, ignoring society's right to impose retribution on those who violate its laws, to use such retribution to deter potential offenders, and to restrain or incapacitate those who are dangerous. Administrators of our system of correctional justice have a distressing tendency to use the term to confuse their critics. By constantly emphasizing rehabilitative aspects of their programs, correctional administrators are able to distract the public's attention from the harsh realities of penal treatment. "Hard liners" feel we have already invested too much time and money trying to rehabilitate criminals who should simply be punished. And finally, even some reformers, who feel that emphasis on rehabilitation often justifies repressive practices such as prolonged indeterminate confinement, have begun to question the value of rehabilitation in correctional justice.[1]

Any definition of rehabilitation must be based upon behavioral change. Society's primary goal in seeking to rehabilitate the offender is to get him to stop behaving in an illegal manner once he is freed from the restraints of prison. A more lofty goal of rehabilitation is not only to stop certain behaviors but also to teach the offender new behaviors that are socially acceptable or socially desirable. We are not content merely to stop the offender from repeating criminal acts; we also want to make him a better citizen.

The definition of rehabilitation that says "bad" behavior should stop and "good" behavior should take its place is primarily based on the needs of the society rather than upon the needs of the individual offender. If the definition were to be sufficient to meet the needs of both society and the offender, we would have to assume that an offender who behaves the way others want him to behave will be happy. Unfortunately, this is not always the case. The offender may find that the things that have been done to him chemically, surgically, psychologically, and socially to make him a "better" citizen have so impaired him that he is actually more miserable than he was before his treatment began. In this regard it should be noted that rehabilitation must take place through a process of intervention into the patient's life and into his environment. We do things to the patient and sometimes to those around him that we call treatment. Such treatment requires some degree of trust on the part of the offender toward those who wish to treat him. If the offender does not have some hope that treatment will leave him at least as happy as he was before treatment, his trust and cooperation will not be forthcoming. If those who treat do not have some belief that treatment will leave the offender at least as happy as he was before treatment, they may not be motivated to seek to rehabilitate the client.

But the ethical problem of rehabilitation has implications that go beyond the matter of cooperation between the treater and treated. In an age when the technologies for changing behavior are becoming more precise, we have come to appreciate that even those who have violated the law have certain basic rights. There are limits to the extent to which we can legally try to change an individual's behavior, if the individual does not welcome such change. Even if the therapist or treating agency is deeply concerned with the patient's ultimate happiness or well-being, the law increasingly puts limits upon society's right to try to alter the criminal's behavior without the offender's consenting to such change or understanding the risk to his future well-being that may be implicit in such change.[2]

The conflict between the interest of society and the interest of the individual offender is illustrated most powerfully by the "political" prisoner. Some men violate the law out of conscience or as part of a deliberate effort to

1. American Friends Service Committee, *Struggle for Justice—A Report on Crime and Punishment in America* (6) (1971).

2. S. L. Halleck, 'Legal and Ethical Aspects of Behavior Control," *American journal of Psychiatry* (in press).

The author, a psychiatrist, is a professor in the University of North Carolina School of Medicine. This article is adapted from one that appeared originally in Annals of Psychiatry.

change the society. If we "rehabilitated" these men and trained them to behave in a manner that the mass of citizens might find desirable, we would be negating their freedom to dissent and depriving society of one important channel for social change. Consider, for example, the impact on society if our prisons had succeeded in rehabilitating such convicted offenders as Henry Thoreau, Eugene Debs, Martin Luther King, or Malcolm X. These examples dramatize the need to consider the issue of rehabilitation not only in terms of our capacity to change human behavior but also in terms of the circumstances under which and the extent to which we should be allowed to do so.

Some penologists doubt that we have the technical skills to change criminal behavior and replace it with "desirable" behavior. Others acknowledge that criminal behavior can be changed but question whether such change is worth the economic effort. Economic cost is a key issue in deciding to undertake any behavior change program. But even if we are convinced that we can change criminal behavior at an acceptable economic cost, we must consider the ethical justification for doing so. And finally, we must be concerned about political ramifications. Thus, each behavior change program must be considered not only in terms of its effectiveness, but also in terms of its economic, ethical, and political implications.

CHANGING CRIMINAL BEHAVIOR

All human behavior, including criminal behavior, is determined by the individual's interaction with his environment, by who the individual is (the characteristics he was born with plus his lifetime experiences), and by where he is (the nature of stresses and satisfactions in his immediate environment). This conception of behavior suggests four major strategies for changing criminal behavior.

(1) An offender's *biological state* may be changed. If a person is given psychoactive drugs or convulsive therapy or is subjected to psychosurgery, his brain chemistry or physiology and his behavioral responses to what goes on around him can be altered in a manner that will reduce the probability of criminal behavior. Obviously, such biological methods can be either voluntarily accepted by the offender or imposed upon him.

(2) An offender's *environment* can be changed to provide new learning experiences in which certain behavior is "reinforced" (rewarded) and other behavior discouraged by withholding rewards or by punishment. Often, behavioral scientists set up limited environments in which the client is either advised or directed to change some part of his daily life. In conventional group and individual psychotherapy, the new environment consists of regular contact with a therapist who provides a climate of intimacy in which new behavior can be learned. Such a climate relies on a close, trusting relationship that usually cannot be created without the client's consent. In contrast, some of the newer behavior modification therapies depend not on intimate interpersonal relationships but on impersonal systems such as the token economy, in which desired behavior is rewarded by tokens that are exchangeable for privileges. Although behavior modification techniques can be used *with* the client's consent, they can also be used *without* consent; in fact, the offender may not even be aware of how his environment has been restructured to change his behavior. These techniques are potentially so powerful that, if they were used without any legal or ethical restraints (as in "brainwashing"), prison administrators could conceivably control the offender's behavior totally in prison and perhaps for a long time after release.

(3) Another way of altering an offender's environment to change his behavior is to *reduce the amount of stress he experiences.* Criminals often change their behavior when they find even temporary relief from the stresses of bigotry and poverty or from oppression in any form. They also change when the level of stress in their own families is diminished—a result that can be achieved by family therapy.

(4) An offender's behavior can be changed, at least moderately, by providing him with *new information*—insight about his own motivations, about the way he affects other people, and about the nature of his environment. These kinds of insight may alter his motivations and the way he sees or feels about his surroundings, and therefore may alter his behavior. For example, a person who is being treated badly by someone close to him may not know he is being treated badly or may not even be aware of his own angry feelings about the bad treatment; he may therefore lash out at inappropriate targets. Once he perceives the source of his anger, his behavior is likely to change. All of the conventional psychotherapies—individual, group, and family—are in part designed to help the individual gain greater information about himself. Group therapies are particularly suitable for helping the client to understand his impact upon others. Family therapies often provide the client with new information about how significant figures in his life are reacting toward him. In recent years we have also seen the development of a series of consciousness raising techniques in which behavioral change, often in the form of political activism, is facilitated by seeking to expand the awareness of oppressed people about the sources of their misery.

THE USE OF BEHAVIORAL TECHNOLOGY IN PRISONS

Having considered a variety of methods that can at least theoretically change criminal behavior, we can now examine how these methods are used in current penology. Biological techniques are used sparsely. Psychoactive drugs are primarily used to control the aggressive behavior of those confined in prison. Few, if any, prisons have psychiatric services that are sophisticated enough to diagnose and treat offenders with drugs in a manner designed to help them change their behavior in a salutary way once they have left prison.

A few years ago there was a brief resurgence of interest in psychosurgery for violent offenders suspected of having brain disorders. This practice resulted in such an enormous outcry from civil liberties groups that for all practical purposes psychosurgery in prison is now nonexistent. Certain drugs have been used in "aversive conditioning," in which the offender is taught to associate the unpleasant effects of a drug with specific undesirable behavior. This potentially sadistic form of treatment has also been vigorously criticized and curtailed.[3]

The major rehabilitative emphasis in modern penology is upon the total prison environment, in which it is hoped that the offender will be exposed to new learning experiences that are unfavorable to criminal behavior and favorable to law-abiding behavior.[4] In theory, the prison environment tries to teach offenders that "crime does not pay," while also teaching them new behaviors that will be so satisfying, both to them and to society, that motivations toward antisociality will diminish. The efficiency of this process has grave shortcomings. In a society in which only a tiny percentage of those who commit crimes are apprehended, convicted, and imprisoned, it is hard to see how any form of learning, even learning based on extreme punishment, could teach offenders that "crime does not pay." Rather, the offender, through punishment, is more likely to learn the imperative of avoiding future apprehension, conviction, or sentencing. He will be brutally taught that being too poor and powerless to afford the legal assistance that might keep him out of prison is highly undesirable. Even if our society could provide a system of equal justice in which most offenders did end up in prison, there would still be a question as to how much punishment would be necessary to teach those offenders that "crime does not pay." Our current system provides for punishment that far exceeds what is necessary to teach this lesson. Public condemnation, fines, restrictions of freedom within the community, or a few months of deprivation of freedom within an institution would probably teach that "crime does not pay" better than the overkill of the absurdly long sentences we now impose upon offenders. Whatever aversive conditioning to criminality itself takes place in our penal institutions is imprecise, unscientific, and, judging by our recidivism statistics, highly ineffective. (All of this says nothing about the usefulness of punishment in deterring other offenders, an issue that will not be considered here.)

What does our current system of correctional justice do to teach offenders new behavior that might help them lead satisfying and socially acceptable lives once released? The answer to this question has a few pluses and many minuses. Some of the better prison systems do have adequate educational and vocational training programs. Almost all prison systems offer a respectable amount of spiritual guidance. Almost all prisons also have some type of program for rewarding inmates who demonstrate socially accepted behavior. The degree of precision involved in such programs varies. Some have relied on specific behavioral techniques such as a token economy, but such programs have recently fallen into disuse, partly on the grounds that they may be a too powerful tool for shaping behavior without the individual's consent. (There is a bitter irony here: The sadistic and sloppy behavior modification involved in traditional treatment of incarcerated offenders has rarely been attacked. It is only with the development of more precise and more powerful means of changing behavior that civil libertarians have become alarmed.) Other programs have tried to teach offenders desirable behavior by placing them in situations in which they have few privileges and gradually granting them privileges as their behavior becomes more socially acceptable. These programs too are under legal attack on the grounds that they cruelly and inhumanely deprive the offender of basic gratifications.

Serious deficiencies are present in the efforts of modern prisons to shape behavior through either systematic or unsystematic rewards and punishments. In the first place, the incarcerated offender is living in a situation of extreme stress that makes it difficult for him to conform to the expectations of those in authority. Second, the "desirable" behavior that the institution is trying to shape may not in any way meet the offender's needs once he is released from the institution. Prisons try to enforce a rigid conformity, an attitude of self-abnegation, and an exaggerated humility upon their inmates. They also teach offenders how to survive under conditions of extreme loneliness and emotional deprivation. Learning these traits may help the offender in his efforts to be released from prison, but they are unlikely to help him relate to people in the free world or find a job and enjoy being productive.

3. B. Ennis, "Prisoners of Psychiatry: Mental Patients," in *Psychiatry and the Law* (New York: Harcourt, Brace, Jovanovich, 1972). See *Knecht v. Gillman*, 488 F.2d 1136 (8th Cir. 1973), in which the court held that administration of a drug that induces vomiting as part of the treatment of a mental institution inmate for violating a minor behavioral rule of the institution as "aversive stimuli" constitutes cruel and unusual punishment unless the inmate gives written consent. If such a drug is to be administered, the inmate must be given an opportunity to revoke the consent at any time and the injection must be authorized by a doctor and administered by a doctor or nurse only upon information based upon personal observation of a member of the professional staff.

4. D. C. Gibbons, *Changing the Law-Breaker* (Englewood Cliffs, N.J.: Prentice-Hall, 1965).

Opportunities to learn how to live more adaptively in the free world through the experience of intimacy with a psychotherapist or counselor are also sorely limited in our current prisons. Nowhere in this country can the offender find the kind of individual counseling or psychotherapy that is available to the average middle-class person who seeks help. And, unfortunately, the availability of therapeutic services for the offender is getting worse, not better. For the profession of psychiatry, alone, it is a shameful fact that more psychiatrists were working in prisons in the 1930s than in the 1960s.[5] This is in spite of an enormous increase in the number of institutionalized offenders. Mental health professionals have learned, of course, that it is not easy to do counseling or psychotherapy within prison walls. The offender has difficulty in developing trust toward a person who is an employee of the system that is determined to punish him. Even if the offender is able to have a good learning experience within the limited time he sees his therapist or counselor, it is unlikely that these experiences can be generalized and reinforced during the major part of his day that is spent in a cruel and dangerous environment.

In fairness, it must be said that a certain amount of salutary learning through intimacy and through altering the contingencies of environmental reinforcement does take place in therapeutic prison groups. Group therapy is probably the most available and the most effective intervention in modern penology. Its effectiveness, however, is subject to the same limitations as individual therapy in a prison environment.

While the extent of positive learning available to offenders is limited, the possibilities of maladaptive learning in American prisons are almost unlimited. Our prisons provide a number of learning experiences that may not be directly related to whether the offender will later continue to commit antisocial acts but are nevertheless antagonistic to developing qualities that make for happy survival in a free society. The worst aspect of the prison environment is that it teaches offenders to be fearful of intimacy. Close relationships between prison employees and offenders are discouraged, and close relationships between offenders carry the connotation of homosexuality, with subsequent guilt or actual punishment. Prisons also ruthlessly suppress all manifestations of normal aggressiveness or assertiveness—qualities essential for effective survival in a competitive society. An offender who is too assertive or any way aggressive is punished. Finally, the prisoner is taught to be passive and dependent. While in the institution, he has practically no control over his own life and he is systematically deprived of the opportunity to make decisions. Almost every hour of his day, every work or recreational experience is structured by forces he cannot control. This kind of training in no way allows him to develop the sense of personal responsibility that is needed for effective functioning within a democratic society. As the prisoner loses his sense of autonomy, he will increasingly view himself as a person who is not responsible for his subsequent behavior.

When the possibility of changing behavior through reducing stress in the offender's life is considered, the inadequacy of modern penology becomes even more blatant. While the offender is in prison, he is deliberately exposed to a series of formidable stresses that cause considerable psychological pain. Not only do these stresses require heroic adaptions to survive the prison experience, but also the memory of them is firmly imprinted in the offender's mind and is a constant source of embitterment once he leaves prison. Furthermore, the offender's prolonged isolation from his community usually guarantees that he will be exposed to a more stressful environment when he leaves prison than he experienced before he committed his crime. The released offender is stigmatized. He is discriminated against both overtly and covertly. While in prison he has missed out on job training and job opportunities that might have enabled him to compete effectively in the free world.

In addition, he often loses many of his sources of emotional support. When men spend years in prison, there is a considerable risk that their wives will leave them. Friends forget about them or avoid them; parents or children may reject them. Prisons have few organized programs for helping offenders deal with these stresses. Even when he is about to be released from prison, few efforts are made to work with the offender's family, friends, employers, or community. The paroled offender, at least in theory, has a parole agent who is supposed to help him with problems of re-entry. But the parole officer rarely has the skill, the time, or the power to help reduce stress in the parolee's life. The conditions of parole may, in fact, add to the stress. When parolees are directed to live in certain places, avoid certain people, regulate their life styles, and deprive themselves of satisfactions that are available to others, such as sex and alcohol, they are likely to experience their lives as oppressive. Their situation is made even worse when they are periodically investigated by law authorities who consider parolees as prime suspects for new crimes in the community.[6]

Current efforts to alter criminal behavior by providing offenders with more information about themselves and others are also inadequate. Little insight therapy—that is, therapy in which the offender learns about his own motivations through an intensive therapeutic relationship—is conducted in prisons. When long-term insight-oriented psychotherapy is available, its effectiveness is limited by the harsh conditions of imprisonment. The offender exposed to a highly oppressive environment tends to view his behavior in terms of what others have done to him. So much suffering is imposed from without

5. S. L. Halleck, "American Psychiatry and the Criminal: A Historical Review," *Supplement to American Journal of Psychiatry* (March 1965).

6. Corrections, Federal and State Parole Systems, Hearings before Subcommittee Number 3, Corrections Part VII-B Serial Number 15 (Washington, D.C.: U.S. Government Printing Office, 1972).

that it is difficult for him to gain the motivation to look within. Even if there were enough therapists to provide adequate insight therapy (which seems unlikely ever to happen), it is hard to see how offenders could obtain the introspective attitude needed for such therapy unless conditions of imprisonment are drastically changed. One of the few kinds of useful information an offender does often receive in prison relates to the impact he has upon others. One good way to provide this information is through group therapy. As noted previously, group therapies in a prison setting have been one of the most effective techniques not only for helping produce more conforming behavior within the institution but also for motivating some offenders to change their behavior outside the institution.

Because the offender's criminal acts are, at least in part, determined by oppressive attitudes and actions of other members of his family, family therapy would seem to be a treatment of choice for many offenders. But it is almost impossible to conduct family therapy in penal institutions. Prisons are usually located in remote areas, and most families cannot afford to visit their incarcerated relatives with any regularity. Furthermore, family therapy is difficult to conduct when one member of the group is incarcerated and the others are free: The inmate fears that too much expression of his own feelings, particularly expression of anger, may discourage his loved ones from returning.

Consciousness-raising groups are not encouraged by prison administrators. When inmates learn how society has oppressed them, there is a risk that their new anger and pride will make them more difficult to manage within the prison environment. Yet much consciousness-raising does go on at a covert level in many prisons. Black offenders surrounded by such a disproportionate number of black men in similar unfortunate circumstances have developed distinctly negative views of society. Both white and black offenders are now gaining new knowledge of how the social and legal system has contributed to what they see as their victimization. They have developed a new sense of pride, have tended to blame society rather than themselves for their plight, and have tried to free themselves of the self-hatred that contributes to their passivity. The over-all usefulness of this new consciousness is, at this point, far from clear. It seems that some offenders have used their new consciousness to develop a constructive life of social activism once they leave prison. Others have been able to gain a new self-esteem that makes it easier for them to adapt to the free world. But it is also probable that many offenders who gain new information about what their society has done to them merely become embittered. Some feel justified in continuing a life of crime, and some are able to rationalize their future self-serving criminality as political action. Consciousness-raising also has an impact upon other aspects of rehabilitation. On the one hand, it enables the offender to resist some of the most oppressive autonomy-destroying aspects of the prison environment. On the other hand, it also makes the offender more resistant to potentially liberating interventions, such as psychotherapy or counseling.

Finally, it must be noted that one kind of information that is always available in the prison setting relates to how to become a better criminal. Living with other convicted offenders exposes the inmate to almost unlimited sources of information as to how to engage in criminal activity and (although his teachers may not be the best) how to avoid apprehension.

WHAT COULD BE DONE?

With this review of the depressingly inadequate way in which our current system of penology uses various methods of intervention to change criminal behavior, it is now possible to examine how the same methods could be used more effectively. Throughout this discussion, however, we must distinguish between "what could we do?" and "what should we do?"

In considering biological methods, the powerful things that could be done and the ethical problems involved in doing them can be highlighted by some exaggerated examples. We could probably eliminate a good deal of repetitive criminal behavior by enforcing massive tranquilization of offenders, and eliminate almost all repetitive criminal behavior by brain surgery. It may be hoped that we will never consider such actions seriously. But as more effective biological technologies are developed, there will be temptations to use drugs and surgery to control criminal behavior.[7] Even in a democratic society, many voices will call for use of these technologies as a weapon of total behavioral control.

Most of the biological methods currently available can drastically reduce the individual's capacity to enjoy a successful and happy life. If we are to consider the offender's well-being as well as society's needs, their use must be carefully regulated. There is at this time little ethical justification for enforcing biological treatments upon nonconsenting patients. Because it can destroy an individual's abilities, brain surgery should never be used without the offender's consent. Even if the offender should be willing to accept such a treatment, his consent should be based upon full knowledge of the dangers of the treatment and the availability of alternative treatments.

The situation with regard to psychoactive drugs is somewhat more complex. A certain number of people in any prison population exhibit manic or schizophrenic behavior; these people are often happier and behave more appropriately when treated with tranquilizing drugs such as phenothiazines and lithium. Many can avoid criminality if they use these drugs in an appropriate manner. Such drugs should, after proper psychiatric diagnosis, be available to offenders who are willing to take them. A few offenders could benefit from psychoactive drugs, but are

7. For a brief review of some of the current technological developments see "The Mind of the Murders," *Medical World News* (November 23, 1973).

so deranged that they lack the competency to consent to receiving such drugs. In such cases, involuntary use of these psychoactive agents might be permissible after careful psychiatric and judicial review. The guiding principle in the use of psychoactive drugs with offenders should be that they be used not to control behavior that society views as undesirable, but only when there is a suspected mental disorder that has been shown, on the basis of good medical evidence, to be treatable with drugs.

The method of creating an environment for the offender in which new and socially acceptable learning takes place is valuable and can be used more effectively now than in the past. A major question here is whether such an environment can be created in prison. Far more socially useful learning could be offered if the majority of convicted offenders were treated outside of prison—in half-way houses, group homes, or community clinics. Here again, society must make an ethical decision about how willing it is to abandon its commitment to retribution. It must also decide whether it wishes to risk the possible deterrent value of incarceration in favor of the expanded rehabilitative possibilities of community treatment. My opinion is that the risk is overwhelmingly worth taking. Still, the issue of deterrence cannot be dismissed in a cavalier fashion. Fear of incarceration may deter at least a few white-collar criminals. Whether it deters the majority of oppressed, alienated, and unreasonable men who end up in prison is more debatable. The argument over the usefulness of imprisonment as deterrence could go on endlessly. It does seem likely, however, that we could gain some real knowledge on this issue if our society would be courageous enough to experiment with new correctional practices.

Society must also consider whether it has the right to impose new learning upon offenders even if such learning takes place outside of prison. As noted previously, not all offenders want to be rehabilitated. This problem could be partly resolved by offering each convicted offender a choice of community treatment or imprisonment. In effect, we would preserve the offender's "right to punishment."

Even in the kind of system of correctional justice being considered here, there would still be the need for forceable restraint of certain offenders. Some offenders are dangerous to society. Others will not respond to treatment in a community setting and if they continue to commit crimes may have to be temporarily restrained. The restraining institution, however, could offer a far more therapeutic environment than that now available in our prisons if the society were willing to make the necessary economic investment. With regard to offenders for whom incarceration is necessary, conventional and behavioral therapies could be used within prisons far more frequently and effectively than they are now. The use of group therapy and academic and vocational training could be expanded. Family therapy could be more extensively used if we were willing to provide transportation and housing for the offender's relatives. And, most important, a prison environment could be created in which values such as intimacy, assertiveness, and autonomy were not massively negated. Again, some imprisoned offenders might not wish to be rehabilitated. These individuals, like those who reject community rehabilitation, could simply be restrained in a relatively benevolent environment in which no effort would be made to change their behavior.

These changes might reduce some of the environmental stress generated by the prison itself. In addition, other approaches could be used to reduce stress in the lives of offenders once they return to the free world. We might, for example, help offenders find jobs, or provide them with adequate income so as to diminish the ravages of poverty. A question arises here as to how far the society is willing to go, economically and politically, in providing special care for offenders. It might be argued that if society invested too many of its resources in trying to help those who had already committed criminal acts, rather than in alleviating stress upon those who are similarly oppressed but do not commit criminal acts, we would be discriminating against the law-abiding and perhaps even encouraging oppressed people to violate the law. Far fewer political issues are involved in reducing stress produced by the offender's family situation. Family therapies, if extended to the ex-offender in the community, could be a powerful tool in changing criminal behavior.

CONCLUSIONS

I have tried to show how the concept of rehabilitation must be viewed not only in terms of systematic effort to change behavior but also in terms of complex ethical, political, and economic issues. For want of space, most of the issues have not been explored in depth and some critical issues such as the usefulness of indeterminate confinement and the gross injustices in the processes of convicting and sentencing offenders have been almost entirely omitted. The effort here has been to phrase questions regarding rehabilitation in a new light. Such questions as "Does rehabilitation work?" are banal and misleading. Rather, the critical questions are, first, "How can we change criminal behavior?" and, second, "Assuming that we know how to change criminal behavior, what ethical, political and economic restraints should limit our interventions?" The answers to the first question are not so difficult as most criminologists would have us believe. It is in our quest for finding a moral basis for rehabilitative intervention that we will encounter the greatest difficulty.

THE NORTH CAROLINA PRISON SYSTEM IN RESPONSIVE TRANSITION

Walter L. Kautzky

ELSEWHERE IN THIS ISSUE of *Popular Government*, Dr. Seymour Halleck has made a number of suggestions regarding correctional treatment. What follows represents an effort to describe present policy directions and specific programs of the North Carolina Division of Prisons. This effort is conceived, in part, as a response to the formidable challenges posed by Dr. Halleck, and is also intended to acquaint the reader with correctional needs and problems from the perspective of North Carolina's prison administrators. The discussion of policy issues and specific programs is selective, not comprehensive, but may provide a good idea of current thinking and activities of the Division of Prisons.

HISTORICAL DEVELOPMENTS

The Division of Prisons now receives about 13,000 inmates each year and releases about the same number. It has in custody approximately 12,000 inmates; 70 per cent are serving felony sentences and the rest misdemeanor sentences. Unlike many other state prison systems, the Division houses a substantial number of persons sentenced to short terms, some as short as 30 days; at present about 16 per cent of the resident population are serving sentences under one year, and 37 per cent are serving less than two years. One reason for this is that the state prison system was developed as an alternative to local jails. From 1868 to the mid-1930s, the state prison system gradually expanded, taking over increasing numbers of offenders from local jails and housing them in small units or prison camps. This development is reflected today in the fact that North Carolina has 68 small prison units of 75 to 200 inmates, organized in six geographic area commands, and only nine larger units. (In contrast, most states incarcerate most of their offenders in a few large institutions.) However, during the late 1960s and early 1970s, the number of misdemeanants has been decreasing, while the number of felons, with their characteristically longer terms, has been increasing.

The mid-1930s saw not only the culmination of the gradual transition from local jails to a state-dominated system, but also the merger of the State Prison Department (as it was then known) with the State Highway Department. Until 1957, a dominant consideration in prison administration was the provision of inmate labor on highway maintenance. Appropriations from the state highway fund for such prisoner labor were used to cover costs of prison construction and maintenance, thus making the prison system self-supporting.

In 1957, due to dissatisfaction with the administration of the prisons by the Highway Department and Public Works Commission, the Prison Department was separated from the Highway Department, although the use of unpaid prison labor on road maintenance did not cease until 1973. Also in 1957, the General Assembly established the work-release program, making North Carolina one of the first states to do so. (A description of the current work-release program appears below.)

Special prison programs for youthful offenders began in 1947, when the legislature gave sentencing judges the option of requiring segregated handling of certain male convicts while they were in prison: those under 21 years of age receiving a term of six months or more who had not already served more than six months in prison for previous offenses. In its present form, the youthful offender statute includes offenders under 21 of either sex who are convicted of any offense punishable by imprisonment, regardless of prior imprisonment. The court may sentence such an offender to prison subject to youthful offender treatment (in which case he becomes a "committed youthful offender"). Committed youthful offenders must be segregated in prison from other offenders, "insofar as practical" (G.S. 148-49.7), and must be handled by specially qualified personnel. A committed youthful offender may lose his separate-treatment status if he behaves badly. Under certain circumstances he may be released from prison before serving his full term, either unconditionally or conditionally under supervision of the Parole Commission, and must be released within four years of his commitment. In 1963, the Department of Prisons identified Polk Prison in Raleigh as the facility to handle the special needs of youthful offenders, later renaming it Polk Youth Center. Since that time, three more institutions and eight field units have been identified as youthful offender facilities. These facilities serve not only committed youthful offenders (sentenced as such by the court that convicted them) but also "regular" youthful offenders—those under 21 years of age at the time of conviction whose sentence does not specifically require special treatment—and thus provide a means of separating

The author is Director of Program Services, Division of Prisons, within the Department of Correction

this entire age group from the older offender population.

In 1967, the Department of Prisons was renamed the Department of Correction. In 1972, as part of a comprehensive reorganization of all state agencies, the Department of Correction was combined with the Probation Commission, the Board of Paroles, and the Department of Youth Development to form the Department of Social Rehabilitation and Control. In 1974, as part of the second stage of governmental reorganization, the Department of Correction was given its current name of Division of Prisons; the parent agency (the Department of Social Rehabilitation and Control) was renamed the Department of Correction; and the office of Commissioner of Correction was abolished as a statutory entity, the former Commissioner becoming Director of Prisons, reporting to the Secretary of Correction. A simplification in management was achieved in reducing the number of persons who report to the Director (formerly Commissioner) from seventeen to six. A youth services complex was established to provide separate treatment for youthful offenders under 18 years of age. The position of Director of Program Services was established with responsibility for work release, inmate education, and community volunteer programs.

SOME ISSUES IN CORRECTIONAL POLICY

The prison administrator's job is not an enviable one. He must weigh the needs of the offender and the needs of society, and at the same time be aware of the increasing concern of the courts and the criticism of treatment professionals, criminologists, and the informed public. To understand the prison administrator's position, it may be helpful to examine some of the controversies that surround much of what is done today in American prison systems.

The Medical Model. The concept that crime is like a disease—that the offender is sick, antisocial, or culturally deprived and needs treatment to bring about his "cure" or rehabilitation—has become known as the "medical model" of correction. This model and the correctional philosophy upon which it is based were a long time gaining acceptance in North Carolina, and they had hardly got a toehold in our prison system before they came under heavy attack. The basis of this attack is that many researchers have found very little evidence to support the contention that correctional treatment programs—of any type—actually reduce criminal behavior after treatment and much evidence that such programs make no difference in later criminality. To quote but one of many recent studies, a criminologist surveying all correctional treatment evaluations published in the English language from 1945 to 1967 concludes:

> . . . I am bound to say that these data, involving over two hundred studies and hundreds of thousands of individuals as they do, are the best available and give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation. This is not to say that we found no instances of success or partial success; it is only to say that these instances have been isolated, producing no clear pattern to indicate the efficacy of any particular method of treatment.

This finding leads the author, as it has many others, to question the medical model:

> Our present treatment programs are based on a theory of crime as a "disease"—that is to say, as something foreign and abnormal in the individual which can presumably be cured. This theory may well be flawed, in that it overlooks—indeed, denies—both the normality of crime in society and the personal normality of a very large proportion of offenders, criminals who are merely responding to the facts and conditions of our society.[1]

Thinking of this type, which accepts the offender as normal, has led to an emphasis on modifying the offender's *behavior* rather than on trying to modify his psychological condition and to a concern for providing positive incentives to the offender to change his ways, encouraging him to act more rationally and independently, and reducing the passivity and dependency that results from the entire prison experience and is reinforced by the idea that the offender is a sick person. Also, thinking of the offender as a normal rather than a sick person has increased interest in the contribution of economic theory to the understanding of crime. Economists tend to assume that the offender, like anyone else, surveys the legal and illegal opportunities open to him, estimates his gains and costs, and then decides—"rationally"—that criminal conduct will maximize net benefits as he sees them. If this assumption is true, then the best approach to crime prevention is either deterrence—raising the "cost" (risk) of crime to the potential offender—or provision of better *legitimate* opportunities than the offender now has by increasing his employability (vocational skills) and job opportunities. This line of thinking suggests that vocational training coupled with work release and help in finding a job after leaving prison may reduce recidivism. It still leaves open the possibility that some offenders may need help with psychological or behavioral problems before they are able to take advantage of assistance designed to improve their legitimate economic opportunities.

Deterrence and Incapacitation Versus Rehabilitation. Another issue the correctional administrator must deal with is the conflict between the goals of deterrence and

1. Robert Martinson, "What Works?—Questions and Answers about Prison Reform," *The Public Interest* 35 (1974), 22, 49.

incapacitation and the goal of rehabilitation of offenders. There is no inherent reason why these goals should be in conflict, since deterrence (the threat of punishment), incapacitation (removing the convicted offender from society), and rehabilitation (treating the offender so as to reduce his subsequent offending) all serve the same purpose: reduction of crime. The conflict probably arises from the fact that quite different groups of people act as spokesman for the goals—law enforcement officials for deterrence and incapacitation, and treatment professionals for rehabilitation. At present, the conflict is more emotional than intellectual—more characterized by feelings and allegiances than by informed calculation. This is partly due to the fact that, while measurement of rehabilitative effects is not especially difficult, measurement of deterrent and incapacitative effects of correctional policies is very difficult indeed (in fact, even the experts are just beginning to develop measurement techniques). Still, the correctional administrator cannot ignore considerations of deterrence and incapacitation, even though his main concern, after prison security, must be rehabilitation.

The Prisoners' Rights Movement. Until recently, an offender was deemed as a matter of law to have forfeited virtually all rights upon conviction and being sentenced to prison, retaining only such rights as were expressly granted by statute or prison regulation. In the last decade, there has been a dramatic change in the willingness of courts to respond to the grievances of incarcerated offenders, taking the form of an explosion in the number of court decisions affecting correctional policies and programs. Courts are being asked to resolve questions regarding the use of solitary confinement, physical force, inadequate heating and lighting, insufficient treatment staff, and behavior modification programs within prisons. Generally courts have placed fewer limitations on rehabilitative treatment than on the imposition of punishment or discipline, leaving open the major question of whether treatment should be imposed on involuntary recipients. A legal theory of the "right to rehabilitation" is evolving that stems from litigation of the rights of persons committed involuntarily to mental institutions and is based on the idea that to the extent that taking away a person's liberty is justified in terms of rehabilitation, genuinely rehabilitative treatment must be provided. The court decisions not only heighten the conflict between the need for control and the personal needs of prisoners but also pose the question of whether legislatures are ready to provide the money to pay for what the courts require.

WHAT DIRECTION FOR NORTH CAROLINA'S CORRECTIONAL POLICY?

Against the background of controversy over prisons and correctional treatment, North Carolina finds itself searching for a positive direction. The Division of Prisons and its parent agency, the Department of Correction, are seeking a merger of various correctional objectives to form a higher-level goal: minimizing the social cost of crime. The concept of minimizing social cost includes not only reducing the harm caused by crime and the harm that may be done to the offender in the correctional system, but also making the most effective use of available public funds. For this reason, the new programs now being undertaken by the Division of Prisons, as well as some of the old ones being given renewed emphasis, reflect considerations not only of protecting the public, rehabilitation, positive behavior change, and improved economic opportunity of offenders, but also of limiting the costs of programs to the taxpayers. For example, work release continues to be emphasized by the Division not only because it offers advantages to the offender and his family, but also because it reduces costs to the public welfare system and the costs of the offender's daily upkeep in prison. (Payments for dependents are deducted from the work releasee's paycheck, as well as $3.45 daily for room and board in prison, not to exceed five days per week.) Satellite mental health centers are being developed not only because of their rehabilitative value (discussed in more detail below) but because they reduce administrative costs incurred in transporting offenders with psychological problems to Central Prison's mental health facility in Raleigh. The state has assumed the cost of the five reception and diagnostic centers (formerly funded by the U.S. Department of Labor) not only because the regional centers make it easier to help the offender and his family but also because the geographic proximity to the offender's environment makes it easier to verify the information he gives to correctional staff during the reception process, to determine his employment history, and to mobilize local resources in anticipation of his release from prison. (Performing such tasks has proved to be more efficient when done near the offender's home than when done at a central location for all offenders.) Another example of administrative economy is the pre-release and aftercare services program, funded by the Law Enforcement Assistance Administration (U.S. Department of Justice), which was developed to pull together a variety of earlier federally funded projects that provide service to the offender in preparation for his release from prison and return to his community. The pre-release and aftercare program (described further below) is expected to provide "re-entry" service much more efficiently and comprehensively than the earlier projects, whose operation involved considerable duplication of effort.

One way in which North Carolina has responded to the emerging law of prisoners' rights has been to establish an inmate grievance procedure.[2] The General Assembly enacted a law in 1974 (1973 Sess. Laws, Ch. 1307) creating an Inmate Grievance Commission, to consist of five members appointed by the Governor from a list of ten rec-

2. Another response has been the Department of Correction's proposed building program, designed to improve inmate privacy as well as security. This proposal is discussed below.

ommended by the Council of the North Carolina State Bar. The Commission will have general power to hear "any grievance or complaint" of any inmate "against any officials or employees of the Department of Correction" (presumably, this refers to what is now called the Division of Prisons), but must require that the complainant first exhaust the internal grievance procedures of the Division, provided these are "reasonable and fair." The Commission may take a variety of actions on a complaint, including dismissal without a hearing if the complaint is wholly without merit. If the Commission holds a hearing, the complainant has the right to appear and to call witnesses but not the right to be represented by an attorney, although he may be represented by an employee of the Division of Prisons. The Commission will forward its decision to the Secretary of Correction, who may take whatever action he deems appropriate within fifteen days; his action is final. Judicial review of the Secretary's action will then be available to the complainant in the Superior Court of Wake County. The Inmate Grievance Commission and the internal grievance procedures now being developed are expected to discourage future litigation by providing a remedy to which courts may defer, under doctrines of exhaustion or abstention, and which inmates may prefer to petitioning the courts. It is hoped that the grievance procedure, besides reducing litigation, will reduce tension in prisons and promote rehabilitation by encouraging inmates to use legitimate means to solve problems.

SOME CURRENT PROGRAMS OF THE DIVISION OF PRISONS

Work Release.[3] The work release program began in 1957 and has expanded gradually since that time. With the abolition of "road quotas" (requirements to provide manpower to the State Highway Commission for road work) in July 1973 and the sharp decline of the labor service program (the employment of inmates in state and local government agencies), the number of inmates on work release on any given day has now increased to nearly 2,000—about 17 per cent of the total prison population. Of these 2,000, about half are serving felony sentences; the over-all median sentence length is about 16 months. (About 51 per cent are white, and 98 per cent are male.)

Under present state law (G.S. 148-33.1), the sentencing judge may recommend work release for any convicted person sentenced to no more than five years. The Parole Commission (formerly the Board of Paroles) may authorize work release for any inmate, regardless of the judge's recommendation; the only limitation is that the Commission must "consider" the recommendation of the judge if the inmate has not yet served one-fourth of his minimum sentence. The decision whether to grant work release requires at least one month in all cases, and may take years for those serving longer sentences. A favorable recommendation by the sentencing judge does not guarantee work release; the Division of Prisons must decide whether to follow the recommendation, and often does not do so. Anyone granted work release must have behaved well enough to achieve a status known as "minimum custody, honor grade, outside activity level III," which means that he can be trusted to engage in activities outside the prison under the supervision of persons other than correctional officers. Also, the prospective work releasee must be able to develop, with the help of prison personnel, a satisfactory job plan involving a job within his capability with good pay and hours and a stable employer who will offer the inmate possible employment upon release from prison. Proper supervision during working hours must be provided.

Some typical jobs held by work releasees (based on a random sample taken in August 1973) are: (1) service station mechanic working six days per week for $100 per week; (2) doffer trainee with a textile firm working five days per week for $1.70 per hour; (3) painter with a decorating firm working five days per week for $2.25 per hour; (4) laborer with the State Highway Commission working five days per week for $2.19 per hour. The time spent on work release ranges from a few days to several years, with the average (as of 1972) being about six months. While the inmate is on work release, deductions from his pay are made that include $3.45 per working day for room and board in prison, various amounts to support dependents as ordered by courts or departments of social services, and of course income taxes and social security. The prisoner retains $10 per week for his personal use. He may bank any amount that remains after deductions, and he may make withdrawals for purposes deemed legitimate by the Division of Prisons.

Construction Program. The recent gradual increase in the number of long-term inmates is expected to continue until the 1980s. This means an increasing need for sustained, programmatic treatment that the predominantly short-term prison population of the past did not require; such treatment requires proper physical facilities, which are now in short supply. Greater security and inmate privacy are also needed, and at present all units designated as medium custody are either crowded or overcrowded. The Department of Correction has proposed a construction program calling for the addition of 1,000 single cells for adult inmates each year for six years, in the form of prison units that will each contain 200 to 500 inmates and will have adequate space for treatment and service programs. The cost of such facilities built elsewhere in the United States in the early 1970s has ranged from $17,000 to $26,000 per inmate, according to information available to the Department.

3. This section is based on information contained in Department of Correction publications and also on A. D. Witte, "Work Release in North Carolina: The Program and the Process" (Institute of Government, University of North Carolina at Chapel Hill, 1973).

Reception and Diagnostic Centers. Since 1971, one prison facility in each of the six prison administrative areas of the state has been designated as a reception and diagnostic center. About 7,900 misdemeanants per year are now entering the prison system. Almost all of these are sent first to the reception and diagnostic center in their geographical area (in contrast, most felons go directly to Central Prison, Polk Youth Center, Harnett Youth Center, Western Correctional Center, or the Correctional Center for Women). There an inmate receives orientation, classification, and employment-oriented services formerly provided by the United States Department of Labor, whose cost has now been assumed by the state. The inmate is given IQ and other tests, receives a general explanation of the prison experience that faces him, and meets with a case analyst, who puts together various information about him and makes some projections about the kind of progress he can make during his prison stay. In particular, the case analyst consults local sources to check employment and other information given by the inmate in order to develop a plan of employment and other activity during the prison term. The case analyst also helps with the crisis presented by the offender's departure for prison, making contact with his family and bringing local social services into the picture as needed.

Satellite Mental Health Center. A satellite mental health center was established in Mecklenburg County in 1971 by Mecklenburg officials, the Department of Correction, and the Law Enforcement Assistance Administration (United States Department of Justice), which provided funding through the Charlotte-Mecklenburg Criminal Justice Pilot Project. The center's goal has been to provide mental health service locally, rather than at Central Prison, for inmates (including some felons as well as misdemeanants) committed from Mecklenburg and surrounding counties with psychological or behavioral problems. (In the past, all such inmates would have been sent to the mental health facility at Central Prison.) During its first year, the satellite mental health center served over 500 inmates—more than twice as many as the Central Prison mental health facility. The center's basic concept is that treatment of inmates is most effective if shared with their local community—in particular, with local agencies such as (in this case) the Mecklenburg Mental Health Center, the Randolph Clinic for Alcoholic Treatment, the Department of Social Services, and the local Vocational Rehabilitation Office. This approach relates the offender's in-prison treatment to his experience and attachments in the community, and also allows a firm foundation to be established for "aftercare"—services to the offender after release from prison. The availability of psychiatrists and psychologists at the satellite mental health center has permitted pre-sentence diagnosis to be provided to the local criminal courts; this diagnosis includes medical, psychiatric, and social evaluation with a full recommendation to the sentencing judge. The center's proximity to sources of information and community agencies like the mental health center has made it possible to recommend, in appropriate cases, sentences other than imprisonment. As a result of the Mecklenburg demonstration project, the satellite mental health concept is being considered by the Division of Prisons for use throughout the prison system.

Pre-release and Aftercare Services Program. This program, which is funded by the Law Enforcement Assistance Administration, and combines the elements of several earlier federal projects, provides service to inmates about to be unconditionally discharged from prison during the last six months of their terms. Pre-release and aftercare service centers were established early in 1974 in five cities—Charlotte, Greensboro, Raleigh, Wilmington, and Asheville—under supervision of a statewide director. The program, expected to have a total staff of 75, provides a variety of pre-release services to eligible inmates, with an emphasis on satisfactory employment after release. Before 1974, about 5,000 to 6,000 inmates per year were discharged unconditionally—i.e., released without any conditions imposed by the Secretary of Correction (under G.S. 148-42) or the Parole Commission (under G.S. Ch. 148, Art. 4). The pre-release and aftercare services program will serve all inmates in this category during the last six months of their prison term unless they want no help. A classification committee in each of five geographic areas of the state determines, under criteria issued by the Parole Commission, whether an inmate needs pre-release and aftercare aid. Working with the inmate at his prison unit, the staff of the pre-release center explains the program to him and tries to identify the types of adjustment problems he will encounter upon release. Job skills are measured through diagnostic tests to form an employment profile to guide the staff in finding employment opportunities for the inmate. The pre-release center staff then decides—again on the basis of criteria issued by the Parole Commission—as to further service, which may be of three kinds: (1) five weeks of motivation training and a supervised 90-day release (also known as a "re-entry parole"); (2) supervised 90-day early release without motivation training; and (3) general pre-release and aftercare assistance. Motivation training is a confidence-building exercise intended to overcome significant adjustment problems expected when the inmate is released, including family, drug, or alcohol problems and unacceptable social or employment behavior. Both those who receive the motivation training and those who are determined not to need it may be eligible for 90-day early release unless they have committed a major infraction while in prison, have a charge pending against them in another jurisdiction, have escaped recently, or refuse to participate. Those who qualify for neither motivation training nor early release will still be contacted by the pre-release center staff 45 days before discharge to determine what services are needed, and will in any case receive help with finding a job and a suitable place to live. Thus, all inmates ap-

proaching unconditional discharge will receive some service from the program. Service will continue to be offered for one year after release to those who wish to take advantage of it.

Youthful Offender Programs. The special handling of youthful offenders has already been described. Typically, youthful offenders go first to Polk Youth Center in Raleigh (a medium-custody facility housing about 500 inmates) or Harnett Youth Center in Lillington (a medium- and minimum-custody facility housing about 460). These two facilities provide reception and diagnostic service similar to that described above under the heading "reception and diagnostic centers." After a program of prison activities is developed for a youthful offender, he may remain at Polk or Harnett—these centers offer training in such skills as electronics, auto mechanics, brick masonry, and barbering, as well as academic education—or he may be assigned to one of the smaller field units for youthful offenders such as the Duplin County or Gastonia unit, where study release, work release, and other programs are available.

The youth services complex was created within the Division of Prisons to serve youthful offenders under 18, and thus constitutes a "system within a system." This complex, with headquarters at the Western Correctional Center in Morganton and other facilities at the Sandhills Youth Center in McCain and in Burke County, makes extensive use of the behavioral contracting method. In this method, the inmate is encouraged to set his own behavioral goal while in prison—for example, completing a vocational or educational program, participating in psychotherapy, or avoiding disciplinary infractions for a specific period of time. Depending on the degree to which he achieves his goal, he receives some agreed-upon reward such as home leave, permission to participate in an activity outside the prison with a community volunteer, or work or study release. Behavioral contracting is now widely used not only with the under-18 group but also with other youthful offenders and to some extent with the older prison population. Reflecting new thinking that has taken place as confidence in the "medical model" has diminished, the behavioral contracting approach stresses the normality, rationality, and independence of the offender and is based on the premise that behavior-change programs are most effective when undertaken voluntarily by the inmate to achieve some objective of his own.

Study Release. In 1973, 488 inmates participated in the study release program; 275 of these completed their high school training, and others received vocational training or worked for junior college or college degrees. All study releasees shared their educational experience with other young people and adults in the free community; this is thought to have rehabilitative value in that releasees are stimulated to obtain skills for jobs in a competitive, real world, rather than in a more confined, less competitive prison setting.

Community Volunteer Program. This program has a great variety of forms, including in many cases a one-to-one relationship between the volunteer and the participating inmate in which the volunteer sponsors some extramural activity of the inmate. To qualify for the program, an inmate must have served 15 per cent of his sentence and be classified as "honor grade." In 1973, there were 41,885 leaves for community activities within this program, less than one per cent of which resulted in an infraction of regulations.

Programs for Women. All of the programs described above are of course open to women as well as to men within the prison system. But because females constitute less than 4 per cent of the total prison population and are required by law (G.S. 148-44) to be segregated from males, women's programs are carried on somewhat differently. The only prison facility for women is the North Carolina Correctional Center for Women in Raleigh, usually housing just over 400 inmates. Female youthful offenders are segregated from older women by separate cottage assignments. A classification committee assigns each incoming female offender to a work project, based on her aptitudes (as determined from tests and other information obtained during reception) and on the needs of the Correctional Center. Work assignments include laundry work, sewing uniforms, and yard and kitchen duties. Study release and a variety of educational and vocational courses offered within the Center are available to residents. Eligible inmates may obtain work release while residing at the Center, or they may obtain work release and live at work release cottages ("halfway houses") in Raleigh, Charlotte, Lumberton, and North Wilkesboro. Work release cottage residents, who are assigned to a location close to their home towns, do their own shopping and cooking under supervision and live much like free citizens.

CONCLUSION

We have seen that the purpose of the North Carolina prison system has evolved considerably since its origin in 1868. While it has continued to provide punishment, deterrence to crime, and secure incapacitation of offenders, as required by our criminal laws, its objective in handling those offenders committed to its care has changed considerably. This objective was first to provide an alternative to custody in local jails, later to make the prison system pay for itself through inmate labor, and most recently, to rehabilitate offenders to the extent possible consistent with security and public safety.

In the early 1970s, with the entire concept of rehabilitation subject to criticism and re-examination, the Division of Prisons has searched for a new policy direction. While favorably inclined to programs such as work release, which tend to reduce the bad effects of prison life without unduly threatening public safety or requiring

large expenditures, the Division has tended to undertake other kinds of rehabilitative programs only when they have proved their value in pilot projects (like the satellite mental health center) or when they afford administrative efficiencies (like regionalized reception and diagnostic centers for misdemeanants, and consolidated pre-release and aftercare service). Thus, while rehabilitation remains a primary goal of the Division of Prisons, it is not held to with blind faith; program planning today has a strong element of administrative realism and pragmatism.

Giving due credit to the pragmatic element in prison programs today, it is still possible to see a number of ways in which North Carolina's adult correctional system[4] is moving toward the kind of transformation envisioned in the article by Dr. Halleck—although it is fair to say that the system has a long way to go.

To summarize the prison programs described above, we can use Dr. Halleck's list of possible approaches to rehabilitation: An offender's behavior can be changed (1) by changing his biological state with drugs and psychosurgery (which Dr. Halleck does not recommend), (2) by changing his environment to encourage learning new behavior, (3) by reducing the amount of stress he experiences, and (4) by providing him with new insight about his own motivation and the way he affects others in his environment. In Dr. Halleck's view, behavior change is best achieved outside prison walls; he favors treatment of most offenders in "half-way houses, group homes or community clinics."

1. *Changing the offender's biological state.* North Carolina prisons do not use psychosurgery at all and do not employ psychoactive drugs to change behavior. These drugs are administered only to those few inmates who have been medically diagnosed as having mental disorders treatable with drugs. This practice is consistent with Dr. Halleck's position.

2. *Changing the offender's environment to promote learning new behavior.* One example of this behavioral approach in North Carolina prisons is the behavioral contracting system, in which privileges are obtained by achieving some behavioral objective the offender sets for himself. Other examples are work release and study release, in which the offender leaves the prison environment and participates in work or study with others in the free community. Presumably, the work release or study release experience—which in itself is a reward for good behavior while in prison—also has the effect of showing the offender what kinds of conduct are rewarded "on the outside."

3. *Reducing the amount of stress the offender experiences and utilizing insight therapy.* One of Dr. Halleck's main points is that the experience of being in prison produces great stress on the inmate, "massively negating" intimacy, assertiveness, and autonomy. To alleviate this stress, Dr. Halleck recommends greater use of psychotherapy in prison, especially group therapy, family therapy, and academic and vocational training. Academic and vocational training is a mainstay of correctional treatment in North Carolina. Group therapy and family therapy have been employed only in the satellite mental health center, but are expected to be used more widely as satellite mental health care expands to new areas within the prison system. The policy of the Division of Prisons is to encourage the partial or complete return to the free community of those offenders who have shown a readiness to become law-abiding citizens through the use of conditional release, "re-entry parole," work release, and study release; this policy tends to reduce the stress caused by the prison experience. The inmate grievance procedures now being developed for use within the Division of Prisons are hoped to provide a "safety valve" for tension and thus reduce stress. The planned building program, emphasizing quarters with greater privacy, may also reduce stress. The Division continues to emphasize the work release program, which is one of the ways Dr. Halleck suggests might be used to reduce stress upon return to the community. The pre-release and aftercare services program is aimed at increasing the ex-offender's employability and also his ability to cope with other problems once he returns home.

4. *Treatment of offenders in the community rather than in prison.* Community treatment of offenders is still a fairly new concept in North Carolina but is rapidly gaining acceptance. If work release or study release can be considered "treatment," in the sense that exposure to student or working life in the free community can be beneficial to the offender, then a large segment of the prison population is receiving a type of community treatment already. Although they affect only a few inmates, the work release cottages for female work releasees are probably similar to the "half-way houses" or "group homes" mentioned by Dr. Halleck. The satellite mental health center in Mecklenburg County has been a successful experiment in treating the psychological problems of offenders close to their home community, although because those treated have remained in the custody of the Division of Prisons, the satellite center is probably not a "community clinic" of the kind Dr. Halleck means. The program that is perhaps closest to the kind of community program Dr. Halleck has in mind is the pre-release and aftercare services program. This program does involve a certain amount of "de-carceration" in the form of 90-day early release for qualified inmates, plus service for early releasees during the 90-day period and also for those ex-offenders who want help after their prison obligation has been discharged. It seems entirely possible that programs like these may provide a model for a greatly transformed penal system as North Carolina continues to search for solutions to the problem of crime.

4 Probation and parole programs are not included in this discussion.

THE NORTH CAROLINA PAROLE SYSTEM

J. Mac Boxley, Foil Essick, and Meredith F. Miller

PAROLE in North Carolina is the release of a prison inmate after a portion of his sentence has been served, under the supervision of the Parole Commission and its officers, to an approved plan of residence and employment under provisions that permit the parolee to be returned to prison if the terms and conditions of parole are violated. Justification for parole lies in the probability that the offender has been rehabilitated and that releasing him will be compatible with the community welfare as well as the prisoner's. The concept of parole in this country has undergone much change and, as crime has increased, some outspoken critics of the criminal justice system have seriously questioned the effectiveness of parole. Before examining the use and effectiveness of parole in North Carolina, it is helpful to understand the development of parole in this state.

THE PAROLE COMMISSION

The Constitution of North Carolina adopted in 1776 empowered the Governor to grant pardons and reprieves, but not commutations.[1] This provision of the Constitution was continued in effect until 1868, when a new constitution was adopted. The new constitution provided for the Governor to grant not only pardons and reprieves but commutations as well.

For years the Governor, acting under his constitutional power of pardon, granted parole to prison inmates, and the Supreme Court held that a parole was a conditional pardon and therefore an executive function.[2]

The first parole legislation for North Carolina was enacted in 1917 when the General Assembly established an Advisory Board of Parole to act in an advisory capacity to the Governor. In its first years, the parole program had little structure and was not notably successful.

In 1925 the General Assembly provided the Governor with a full time Commissioner of Pardons who assisted the Governor in connection with applications for pardons, paroles, commutations and reprieves, but the real beginning of parole in North Carolina was in 1933-35, when new legislation was passed that provided functional parole machinery. The new legislation provided for a Commissioner of Paroles to administer the program under the direction of the Governor, established criteria for parole selection, and provided for an investigative staff to assist the Commissioner in processing cases for parole and a staff of field supervisors to assist those paroled by the Governor in becoming law-abiding citizens. Thus, with the assistance and cooperation of welfare, law enforcement, and court officials, an effective statewide parole system had been launched.

By 1953 the system had outgrown this arrangement, and the General Assembly in that year created a three-member Board of Paroles as an independent parole agency. The intention of the sponsors of this legislation was to transfer the authority to grant, revoke, and terminate paroles to this board, but before this could be done it was necessary to remove the power of parole from the Governor. This was accomplished by a constitutional amendment approved by the electorate in 1954, and the 1955 General Assembly implemented the parole law by providing for a three-member Board of Paroles appointed by the Governor with full parole power. Effective July 1, 1974, that body has been renamed the Parole Commission, and it now has five members appointed by the Governor for four-year terms. North Carolina's parole agency is now more in line, in terms of size, with the parole agencies of most other states, which have five members or more. North Carolina has one of the largest prison populations in the nation, and until the Parole Commission was enlarged, its members were reviewing more cases per member than the parole board members in any other state except Texas.

The Parole Commission is responsible for granting paroles, both regular and temporary (G.S. 148-52), and granting approval for work release (G.S. 148-49.1). It is also responsible under G.S. 148-33.1 for granting conditional release to those committed youthful offenders who are eligible for it. Having determined which prison inmates are suitable candidates for parole and granting that parole, the Commission supervises the activities of those who are released in an effort to help them move successfully back into society and to protect society against possible future criminal acts.

The law (G.S. 148-58) provides that inmates shall be eligible for parole when they have served one-fourth of their sentence, if their sentence is determinate, or one-fourth of their minimum sentence if the sentence is indeterminate; except that any inmate sentenced for life

1. *See* State v. Twitty, 11 N.C. 194 (1825).
2. State v. Yates, 183 N.C. 753 (1922).

Mr Boxley and Mr Essick are former members of the Board of Paroles Mr Boxley was until July 1974 Chairman of the Board [later Parole Commission], and Mr. Essick was a Board employee for 35 years Mr Miller is a training and planning officer with the Parole Commission

before April 8, 1974, must serve 10 years of his sentence before he is eligible for parole consideration, and an inmate sentenced for a life term after that date must serve 20 years before he is eligible to be considered for parole. Only actual time served is considered in the one-fourth requirement. The Parole Commission follows a policy of reviewing each case 60 days before the one-fourth of the sentence has been served. All inmates sentenced for 12 months or more come up for review automatically. If an inmate's sentence is less than 12 months, the Commission will not consider him for regular parole unless he or another interested party requests review. The Commission does, however, consider these cases for pre-release and after-care services. In 1973, the Commission (then Board) reviewed approximately 1,500 cases a month for all types of release consideration. The number considered per month during the first five months of 1974 is much greater than the number reviewed in the same period for 1973, which reflects the Commission's attempt to review inmates' cases more frequently.

Parole provides an orderly process by which a large percentage of inmates may be returned to the community. Parole insures an approved residence and work plan and essential supervision that would otherwise be unavailable to an inmate. In considering inmates for parole, the Commission takes many factors into account. Among them are the nature and circumstances of the crime for which the inmate was convicted; his previous criminal and court record; his conduct and attitude while in prison; length of time served; and available psychiatric and medical information. The Commission also considers the information that it obtains on the inmate's social and economic background from the community in which he lived, which helps it understand the person being dealt with and how the community will react to his return to the free society. The Commission's impression, gained through personal interviews, of how stable the inmate may be, what his attitudes are, and how able he is to exercise self-control is another important factor. The Commission further considers facts submitted by correctional officials, how much the inmate needs supervision, how willing and able he is to follow supervision, the particular job and residence plan made for him, and other items that appear relevant. In deciding whether to grant parole, the Commission tries to consider the inmate's total situation. This is an important decision that the Commission makes, and it must bear the responsibility for that decision.

Even as it is responsible for granting parole, the Parole Commission is also responsible for revoking, terminating, and suspending paroles (G.S. 148-61.1), if the parolee violates the conditions of his release. As a result of two recent United States Supreme Court decisions extending due process considerations to revocation procedure,[3] parole officials now must conduct due process preliminary and Commission revocation hearings for a parolee who violates the conditions of his release. The Commission holds its hearings at Central Prison every Wednesday; it hears about seven cases a week. In 1974 the Commission proposed legislation ultimately enacted by the General Assembly to give the Commission discretion to permit appointment of counsel for indigent parolees in certain cases at these revocation hearings.

THE PAROLE ORGANIZATION

The Parole Commission's work is based on the work of a parole organization that operates throughout the state. Its personnel are responsible for doing background investigation on inmates, helping them plan and prepare for re-entry into the free community, and aiding and supervising them after their release during the parole period.

Analysts. Nine case analysts and one chief analyst help the Parole Commission review cases. Their primary functions and responsibilities include reviewing new cases, computing eligibility dates, setting cases for review, holding hearings, and analyzing file materials for presentation to the Commission. The case analyst hears interested parties argue for either granting or denying an inmate parole, assimilates and analyzes information received from the field, and then prepares a memorandum containing the substance of this information. The memo, as well as the entire file, is then available for all Commission members to review when the case comes before the entire Commission for a decision.

Case analysts also conduct the correspondence in each case for the Commission and the Governor. In addition, they initiate investigations at the Commission's direction, obtaining versions of the crime, social background information, comments of officials, and approval of job and residence plans. They also initiate investigations of cases for executive clemency. Once such information has been obtained, case analysts analyze the data and present recommendations to the Commission. Case analysts are assigned to inmates according to alphabet. Each analyst now carries an average caseload of about 1,300 cases.

Field Services and Supervision. When inmates are paroled, they are placed under the supervision of the Commission's parole officers and remain under supervision until parole is terminated or revoked. To provide adequate supervision and administration, the state is divided into six divisions with a divisional parole

3. Gagnon v. Scarpelli, 411 U.S. 778 (1973); Morrisey v. Brewer, 408 U.S. 471 (1972).

officer supervisor in charge of each division. Each supervisor has one assistant supervisor. In the six divisions there are a total of 101 parole officers, and over-all responsibility for parole field services is vested in a chief and an assistant chief parole officer.

Before the parole officer removes him from the prison unit, the Parole Agreement is explained to the inmate and he signs the agreement. The parole officer then gives the unit superintendent the authority to release the inmate to his custody. After discussing the proposed plan with the parolee, the parole officer delivers him to his place of residence, and then takes him to his place of employment. The conditions of employment are then explained and any attendant problems are worked out.

The parolee is required to submit a written monthly report to the parole officer, who in turn submits periodic written reports to the Commission and maintains general supervisory responsibilities for the parolee.

Parole officers also interview inmates as the Commission requests; conduct pre-parole, pardon, commutation, and special investigations at the Commission's request; investigate each complaint filed against the parolee and submit written reports to the Commission; participate in preliminary hearings with parole supervisors, parolees, and interested parties; participate in parole-revocation hearings before the Commission; and submit recommendations for terminating successful cases.

Investigative areas include parole, temporary parole, work release, reinstatement, detainer, transfer for in-state and out-of-state acceptance, pardon, commutation, and permanent-injury investigations. These pre-parole investigation reports include such information as version of crime, social and economic background, proposed residence and employment, and evaluation of these plans, reports on social attitude from prison personnel, and community sentiment.

LENGTH, REVOCATION, AND DISCHARGE OF PAROLE

The parole period is usually from one to five years, but the minimum by law[4] in every case is one year. The Parole Commission may extend the parole period beyond five years if a longer period of supervision seems advisable. When a parole is terminated, the parolee is granted a discharge that also terminates the sentence or sentences under which he was paroled and his citizenship is automatically restored.[5] The Parole Commission determines when a parole should be terminated, basing the decision upon the parolee's performance while under parole supervision.

When a parolee is alleged to have violated the technical conditions of his parole, a preliminary hearing is held by a division supervisor or his assistant from an adjoining division to establish the facts. If the facts show that the parolee has not violated the conditions of the parole, he is continued on parole. But if the facts are sufficient to indicate that the parole conditions have been violated, the case is referred to the Parole Commission for further consideration.

The Commission hears revocation cases once each week and attempts to have at least two members present. In cases in which the parolee has been convicted in court of a new crime while under parole supervision, the Commission has the authority to determine whether the original sentence is to be served at the expiration of the new sentence or served concurrently with the new sentence. Counsel may plead on behalf of the parolee at both the preliminary and Commission hearings. In 1974 the General Assembly[6] authorized the Parole Commission, in its discretion, to appoint counsel for indigents at revocation hearings when the parolee claims not to have committed the alleged violation, when he claims there are substantial mitigating matters surrounding the offense, or when he is incapable of speaking effectively for himself.

Temporary parole is a program of release of inmates from prison confinement for a definite period of time in cases of critical illness in the immediate family, release for physical examination and/or treatment, release to a Veterans Administration facility, for pre-release and after-care services, and in certain cases when release is appropriate before a regular parole eligibility date. Temporary paroles or "leaves of absences" are also issued for more specific and unique purposes to meet definite needs of the inmate or his family. Investigation, analysis, and evaluation is required in each case of temporary parole. The inmate is eligible for consideration for such an abbreviated parole as soon as he enters the prison system.

OTHER PAROLE COMMISSION RESPONSIBILITIES

The Parole Commission also has responsibilities other than the paroling of inmates. These include its responsibilities for indeterminate sentence conditional release, for the release of those committed for habitual public drunkenness, for the release of committed youthful offenders, and for work release.

The *Indeterminate Sentence Conditional Release* program permits inmates who have been given a sentence of indeterminate length to be placed on parole after they have served the minimum portion of their indeterminate sentence. The parolees can be placed under parole supervision until the maximum length of their sentence would have been served. The parole field staff investigates, analyzes, and evaluates an inmate after he has served the

4. N.C. Gen. Stat. § 148-58.1.
5. N.C. Gen. Stat. § 13-1.
6. N.C. Sess. Laws 1973, Ch. 1116.

minimum portion of an indeterminate sentence, and, with the Complex Committee (staff committee of corrections and parole officials), determines whether he is a good prospect for a conditional release until his maximum sentence would be served. The Parole Commission makes the ultimate decision, but the Division of Prisons must first recommend release.

Public Drunk. The Commission assists the Division of Prisons with the supervision of an offender who receives a sentence of 30 days to six months. One who receives such a sentence as a habitual drinker may be released under supervision after he has completed the minimum of 30 days' flat time. In 1972, 281 inmates were released under this program, and in 1973 approximately 132 inmates were released.

The *Committed Youthful Offender* program provides for the youthful offender whom the judge considered to need some correctional treatment and punishment but for a period no longer than necessary for the Commission to determine readiness for conditional release. Almost immediately after the committed youthful offender's entry into a youthful offender institution, the Parole Commission conducts a preliminary investigation, including the version of the crime and social and economic background for use in diagnostic studies. Also from this point of entry, the institutional parole officer begins working with the committed youthful offender with a view toward release. He contacts the family and prospective employers and may develop plans related to correctional treatment while the youth is still confined. Conditional release supervision of the committed youthful offender is very much like parole supervision. A committed youthful offender becomes eligible whenever the Department of Correction recommends to the Commission that he is ready for a period of supervised freedom. Approximately 600 committed youthful offenders were released under this program in 1973.

Work Release is a program under which an inmate goes to employment in the community during the day and returns to prison custody at night. The Commission participates in investigating, analyzing, evaluating, and approving applications for work release. The purpose of the program is to reintegrate the inmate into the community, help him earn his own money, continue contact with the community, and support his family while serving his sentence. While on work release, the inmate is required to pay $3.45 per day for his room and board in prison and to pay for his transportation to and from work. Work release is often used as a stepping-stone to parole. In 1973, the Commission approved 1,895 inmates for participation in the work-release program, and the Division of Prisons placed 2,295 inmates on work release in arrangements that did not require Commission approval. The Commission looks upon work release as one of the finest programs now available to inmates to demonstrate their readiness for return to the community.

SPECIAL PAROLE SERVICES

The *Pre-Release and Aftercare Services* program provides an individualized treatment plan of pre-release aid and post-release aftercare services to eligible inmates who face unconditional discharge from the North Carolina correctional system. Services available to inmates about to re-enter society include vocational aptitude and interest testing; employment counseling; help in finding a job; counseling; help in finding a place to live and in removing various financial and legal encumbrances, so that the inmate's legal status is cleared; referral to such community agencies as may be needed; re-entry supervision on a personal basis; and follow-up contact when the inmate is released for up to one year, which is a unique service previously not offered in this state.

Charlotte, Greensboro, Raleigh, Wilmington, and Asheville all have pre-release and aftercare centers. A Director of Pre-Release and Aftercare Services has statewide responsibility for general administrative supervision and coordination of all project activities. A total of thirty-one field service counselors and additional counseling staff members at the five centers serve under his direction.

The *Volunteer Parole Aide Program* involves young lawyers, Jaycees, and other interested people in a plan to provide one-to-one relationships with paroled offenders who need a degree of support that professional parole officers with heavy caseloads cannot always give. The volunteer effort serves as a back-up resource for parole officers. During its first year, this program, which is funded by the Governor's Committee on Law and Order and the American Bar Association, has had the modest goal of matching 100 volunteers in participating communities with parolees on a one-to-one basis. The program has already begun in Raleigh and Charlotte, and similar ventures will be started in Greensboro, Asheville, and Wilmington. It is hoped that the program will help further reduce the recidivism rate of ex-offenders.

Interstate Parole Compact. Another area of Commission activity involves North Carolina's membership in the Interstate Parole Compact, which provides for the legal and business-like cooperation among the 50 states – plus the Virgin Islands, Puerto Rico, and the District of Columbia – in supervising parolees. It also permits parolees to move from one state to another where they may have a better opportunity for adjustment. It provides a uniform method for cooperation among the states with respect to:

1. Prior investigation before an inmate may be permitted to go into another state to live and work.
2. Acceptance of supervision by the receiving state.
3. Semiannual supervision reports to the sending state on parolees under supervision.
4. Apprehension and return to the paroling state of those who violate the conditions of their parole.

The Interstate Compact has enabled the parole depart-

ments to effect the return of parole violators without the delay and expense that is inherent in the extradition process.

PUBLIC RELATIONS

The Parole Commission makes a great effort to give information and develop understanding. Members of its staff give speeches to clubs and schools throughout the state, and they speak to training schools for law enforcement officers from three to four hours weekly about nine months a year. Obviously, the Commission believes that public knowledge of its program can mean support of and better performance by its staff.

IN A RECENT ARTICLE in *Reader's Digest*,[7] a leading critic of parole, Professor Herman Schwartz, suggested that parole be abolished. While containing some valid criticisms of the parole process in this country, Schwartz's article does not appear generally applicable to North Carolina. One of his contentions that appears valid in North Carolina is that traditionally only about 3½ per cent of the total dollars spent in the corrections area are spent on parole programs. His criticism that inmates in many states are not advised of the reasons for their parole decision is not true in North Carolina. Here when the Commission declines to grant parole, an inmate is given written notice of the decision, with the reasons for the refusal. Another major criticism not applicable to North Carolina is that parole boards persist in thinking they can compel good behavior by requiring parolees to sign agreements to abide by certain regulations that are not tailored to the individual's particular situation. In 1973 the North Carolina Parole Commission conducted a national survey in an attempt to modernize its parole agreement and has revised its agreement to reflect more realistic requirements of the parolee. The American Bar Association recently published a report on parole agreement conditions throughout the United States that included a model agreement that closely parallels North Carolina's agreement.[8] Finally, Professor Schwartz's suggestions regarding revocation of parole and community supervision have previously been implemented in this state.

During 1973 in North Carolina, 2,286 paroles were granted and 530 committed youthful offenders given their conditional release, all of whom each came under the supervision of parole supervision staff. During this same time, 2,026 parolees had their parole terminated. The number of individuals under parole supervision during 1973 averaged 4,904. The Commission operated in 1973 with a budget of $1,981,313, with a per-day operating cost of $5,428.25. The per-day cost of supervising each parolee was approximately $1.10, as compared with the $10.03 per day cost of confining one inmate in the Division of Prisons. Per parolee, parole supervision therefore cost $8.93 less than the cost of keeping him in prison per day – for a total saving during the calendar year of $15,984,342.80. Because these people were out of prison and holding jobs, approximately $181,542.86 in welfare grants to parolees' families were terminated. Also, it is estimated that parolees under supervision in 1973 earned approximately $14,239,961.76 of taxable income. It seems clear, then, not only from a humanitarian point of view but also from a business viewpoint, that parole in North Carolina is an effective alternative to continued confinement that better serves the inmate and the community and increases the likelihood that the inmate will not return to prison.

In 1974 the General Assembly, as part of Phase Two of state reorganization, combined the offices of parole and probation. While this merger offers opportunity for continued improvement in the parole area, at the time this article was written the details of the merger remained to be worked out.

7. Herman Schwartz, "Let's Abolish Parole," *Reader's Digest* 103, no. 616 (August, 1973), 185.

8. Resource Center on Correctional Law and Legal Services, ABA Commission on Correctional Facilities and Services, Survey on Parole Revocation Procedures (1973).

COURTS AND THE CRIMINAL JUSTICE SYSTEM

[*continued from page 39*]

tion in nonpartisan elections in which the judge runs unopposed on the sole question of his record in office.

Such a selection plan has been called a "capstone" to North Carolina's system for the administration of justice. In this nation millions of dollars have been spent in research, experimentation, and other efforts to find a short cut or some easy way to administer justice better. In the final analysis, all problems and all solutions come back to the person on the bench. The quality of justice will go up or down in direct proportion to the quality of those who administer it. Much progress has been made, but a lot remains to be done.

THE CRIMINAL JUSTICE SYSTEM IN NORTH CAROLINA: SUMMARY AND COMMENT

Mason P. Thomas, Jr.

THE NINE ARTICLES in this issue of *Popular Government* discuss definitions and extent of crime, diversion, and several component parts of the criminal justice system, including the courts and corrections. The major significance of these articles may be that this is the first time that this type of analysis of the criminal justice system in North Carolina has been made; perhaps they presage a new awareness of the problems within the criminal justice system and a new commitment to trying to solve those problems. This analysis is not complete, for several significant parts are omitted. Law enforcement—a major component part and the typical point of entry into the criminal justice system—is not discussed. Probation, a significant program of community-based corrections, is also omitted.

A major strength of this issue is that it contains information, evaluations, legal analyses, and program summaries from a variety of types of professionals—educators and legal researchers, two attorneys who write from opposing points of view as district attorney and private defense counsel, a psychiatrist who examines the issue of rehabilitation, a prison program administrator, and an official who is a decision-maker in paroles.

The authors differ in their professional training and perspective. Several of the articles raise important issues concerning definitions of crime, objectives of the criminal justice system, and the possibility of rehabilitation in corrections. Thus, an appropriate function for this summary is to identify some important issues that have been raised for future discussion, thought, and possible reform and perhaps also to suggest some opportunities for reform within North Carolina.

ISSUES FOR FURTHER THOUGHT AND STUDY

1. *What is a crime in North Carolina?* Some readers will be surprised to learn that crime is defined in the North Carolina statutes to include a wide variety of types of behavior. Some behavior defined as crime is dangerous to persons or property; other behavior defined as crime harms only the participants, if anyone—the so-called "victimless crimes." Criminal conduct in North Carolina includes such acts as traffic violations, public drunkenness, certain sexual behavior between consenting adults, rape, murder, failure to clean milk bottles after emptying them, and participating in more than one dance marathon within a forty-eight-hour period.

2. *What kinds of human behavior should be legally defined as criminal?* There are a number of points of view on this issue. Some would include only behavior that is dangerous to persons or property; others would include behavior that is disapproved on moral grounds or acts (such as being drunk in public) that offend our sensibilities or suggest a need to protect the actor from himself.

Several of the articles force the reader to ask whether North Carolina legislation through the years has tended to overcriminalize human behavior. One concludes that this has happened out of habit rather than as a result of thoughtful and serious planning. Further, it appears that alternative strategies, such as civil sanctions, to discourage undesirable behavior have not been adequately considered.

The reader is also forced to conclude that overcriminalization of human behavior (such as including traffic offenses as crimes) has contributed to crowded dockets and congestion in the court system. For example in the district court, traffic cases accounted for 60 per cent of the work load in 1973. Could an administrative agency handle these cases more efficiently without attaching the stigma of a criminal conviction upon the traffic violator?

3. *What is the purpose of defining certain behavior as a crime?* When one examines General Statutes Chapter 14, which contains the North Carolina criminal code, he must conclude that it is a series of statutes defining criminal behavior and establishing penalties that were viewed as appropriate in relation to the seriousness of the offense. In other words, the existing criminal law is clearly punitive. Yet the criminal justice system and the correction program may have other related purposes, including reformation, intimidation, incapacitation, deterrence, moral re-enforcement, and retribution.

The essential point is that we were not always clear on our purposes or objectives. Further, if the criminal justice system has a clear purpose, such as deterrence, we do not often stop to measure objectively whether the system achieves this purpose. After years of enacting legislation to enlarge the kinds of human behavior defined as a crime, we ought to take a look at the total criminal code and consider whether it makes sense.

The author, a former juvenile judge, works at the Institute in the fields of social services and juvenile justice.

4. *What is the extent of crime and delinquency in North Carolina?* The best available data on the extent of crime relates to "index" offenses (defined by the F.B.I. to include burglary, larceny, aggravated assault, robbery, rape, and homicide) and comes from arrest reports from law enforcement agencies. The 1972 data indicate that 82 per cent of those arrested were male, 43 per cent were white, 57 per cent were nonwhite. The bulk of those who commit index offenses are under age 25. Most of those arrested for burglary or larceny were under 20. Most offenders arrested for aggravated assault or robbery are over 24. Those who commit index offenses are primarily male, young (often in their teens and usually under 25), nonwhite, and poor.

The rate of crime in North Carolina has grown during the last ten years. Apparently age and sex are important indicators of which persons will commit crimes. Persons between ages 15 and 24 are more likely to commit index crimes than older or younger persons. There is no clear evidence that an economic recession will increase crime.

Apparently much crime never gets reported. Thus, the amount of actual crime is considerably greater than the amount of crime as reported. Assault and rape are the offenses that most often are not reported. The available data suggest that minority groups and lower-income citizens bear a greater burden of being victims of certain types of crimes than middle-class persons; these crimes include residential burglary, robbery, larceny with contact, and aggravated assault. Being a victim of crime is not primarily a white, middle-class problem.

We have better information about crime, criminals, and victims than ever before, primarily because of better information systems and technology. Yet we still do not have adequate information about what kinds of policies and programs are effective in preventing or reducing crime.

5. *When should an offender be diverted from the criminal justice system?* While there has been considerable recent interest in diversion, diversion from the criminal justice system is nothing new. Law enforcement officers have always diverted selected offenders from the system by deciding not to arrest. This selective law enforcement by diversion or by exercising discretion not to prosecute is a fact of life. There is no legal authority for diversion, and there are no clear standards about who should be diverted, when, by whom, and to what alternative resource.

One possible conclusion is that diversion tends to occur when the particular offense is viewed as behavior that should not be included in the criminal justice system. Thus, to avoid consequences that are viewed as too harsh for a minor offense, the offender is diverted. The net effect of this diversion is to change legislative policy without any changes in legislation or definitions of crime.

The opportunity to divert represents power over people. It can be well used or unfairly applied. It permits an officer to make decisions based on his own values and standards. It can be used to favor middle-class persons or others with power or to discriminate against the poor, the black, and the powerless.

Police have always exercised judgment in handling arrests, and district attorneys have always had discretion in whom they prosecute. The public has limited opportunity for information about these decisions so that it is hard for the public to evaluate what is happening, and police agencies have had little opportunity for administrative review or control over what happens in the exercise of personal discretion. Yet diversion may have sound social value if it is practiced fairly with appropriate consideration of the needs of society and of the individual offender. One alternative would be a policy of total enforcement and prosecution for every violation. Would this be better?

6. *What is crime prevention?* The definition of crime prevention seems to vary with who uses the term. In any event, there is clearly no guaranteed method of crime prevention. But the public is much concerned about causes and prevention of crime—particularly such offenses as drug offenses, breaking and entering, and larceny—and seems to have a limited commitment to evaluating causes of crime and dealing with the complex social problems that contribute to crime.

7. *What is the quality and extent of legal services in the criminal courts in North Carolina?* The two articles on the district attorney and private defense counsel raise many important and interrelated issues. What is the appropriate role of the district attorney? How much power and discretion should he have (including docket management, plea-bargaining, discretion to prosecute)? How should he be selected? To what extent should his actions be subject to administrative review by some other official? Which official? The district attorney who writes in this issue suggests that the power and discretion of the district attorney should be unlimited and that the remedy for incompetence or abuse of power is at the ballot box. One must ask what kind of information the voters need in order to make informed decisions on these issues.

The article about the role and value of private counsel underscores the value and importance of competent legal counsel in criminal court. The writer believes in the adversary process as the best way to seek truth. He assumes that private counsel will always have an appropriate commitment to the interests and rights of the client. Nevertheless, there are important unsettled issues about equal justice for poor and rich, particularly related to the quality of representation when counsel is assigned at state expense on the basis of indigency or through the public defender program that exists in three judicial districts.

During the past decade we at R.J. Reynolds have provided more than $1,300,000 for agriculture research at major southeastern universities. We've done this because we feel that research, like seed, needs to be nurtured and carefully tended to achieve maximum yield. These grants have been used to fund research in many areas including the methods of using pesticides, disease control and tobacco harvesting procedures. They have also helped 48 graduate students to achieve higher degrees, many of whom have gone on to work in tobacco research or agri-business. So we feel that our funding is bearing fruit. Not just for us, but for all segments of agriculture.

R.J. Reynolds
Tobacco Company
Winston-Salem, North Carolina