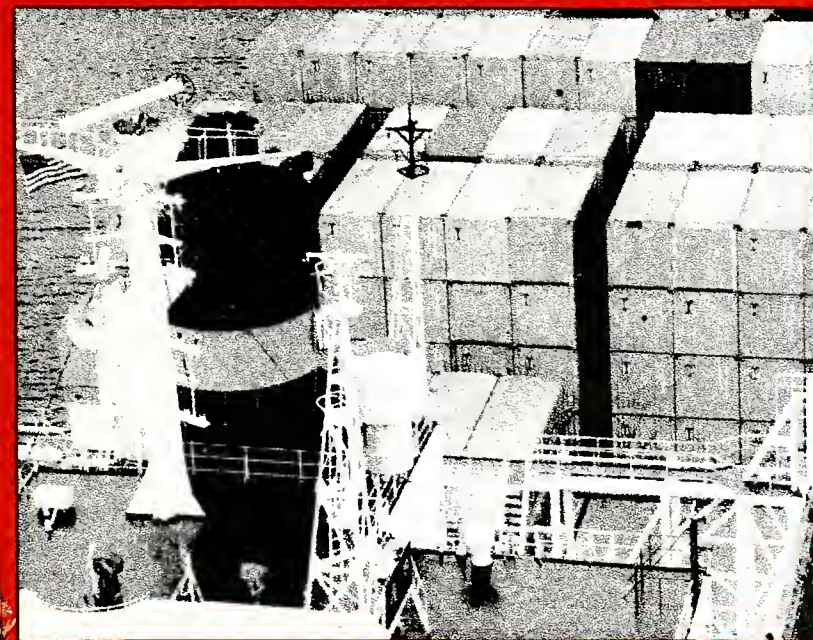
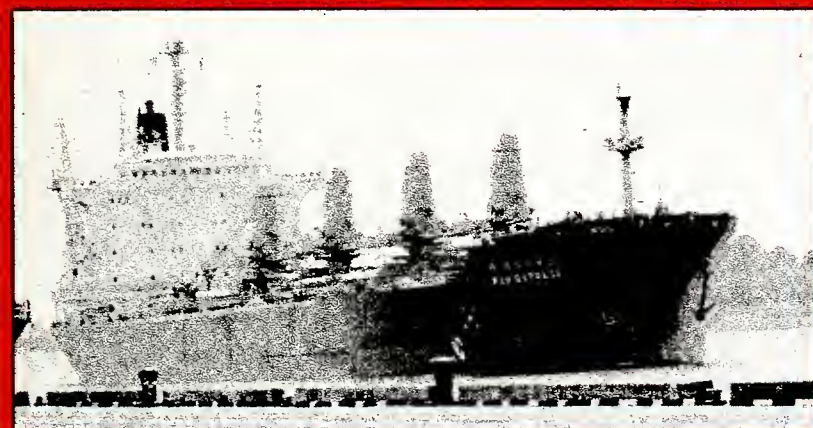
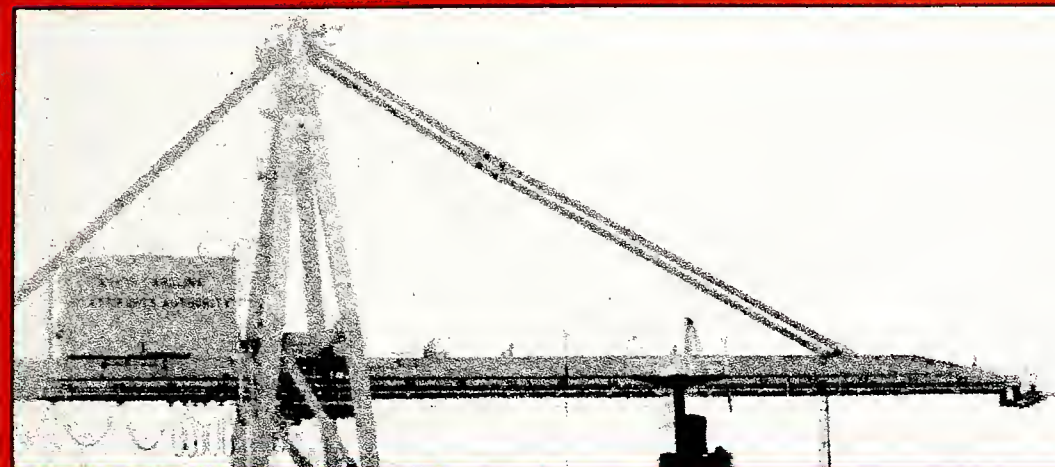


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*State Ports Authority*  
*Child Safety Seats*  
*Public Education*  
*Willie M. Program*  
*Juvenile Courts*





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# North Carolina's Seaports and the State Ports Authority

Gloria Sajgo

Many North Carolinians, though they are familiar with Wilmington and Morehead City, are not much aware of these cities as seaports that have prospered over the past several years. This article examines the history and development of the ports and takes a look at their impact on the local economy.

We might begin by noting that though the recent recession brought a worldwide slowdown in manufacturing, building, and spending, and though the general cargo tonnages in the nation's ports declined by about 5.7 per cent, the tonnage at Wilmington and Morehead City, North Carolina, *increased* by 5.3 per cent.<sup>1</sup> This growth is partly attributable to the fact that the recession did not affect this state as much as it did the industrial North, but other factors also contributed to the economic health of the North Carolina ports. These factors are rooted in the ports' history and geography, the expenditures made by the state in order to make the ports successful, and finally the ports' facilities and services.

The combined public and private docks of the Wilmington and Morehead City ports were responsible for a yearly

average volume of 10,973,000 short tons between 1972 and 1981.<sup>2</sup> (One short ton equals 2,000 pounds, or 907.2 kilograms.) Of this amount, Wilmington Harbor contributed 77 per cent. Wilmington's average yearly volume was 0.46 per cent of the total U.S. average for that period (1,859,895,000 short tons)<sup>3</sup>—nearly the same as Charleston's (0.50 per cent). On the average, Morehead City handled 2,481,000 short tons per year, or 0.13 per cent of the total U.S. traffic.<sup>4</sup> The five major Atlantic ports south of Baltimore are Norfolk (Hampton Roads), Jacksonville, Savannah, Charleston, and Wilmington. In the 1972-81 period, Wilmington captured 8 per cent of the total average yearly volume (105,692,000 short tons) for these five ports.<sup>5</sup>

## Historical notes

Of the two ports, Wilmington—established during the colonial period—is the older and larger. Since the seventeenth century Wilmington has played a key role in the economic and historic development

of southeastern North Carolina and the state as a whole.<sup>6</sup> Morehead City, which started as part of a scheme to bring economic development to the state about 130 years ago, has had a primarily local influence.<sup>7</sup>

Wilmington Harbor, located on the Cape Fear River approximately 30 miles from the Atlantic Ocean, attracted considerable commerce during the seventeenth, eighteenth, and nineteenth centuries, when the production of naval stores (pitch, tar, and turpentine) and cotton were important to the city. Early settlers, attracted by the availability of large stretches of land, established the region's plantation system. With the area's vast pine tracts, its plantations that produced naval stores, and an immediate ocean outlet, the Lower Cape Fear River developed into a port of considerable activity.<sup>8</sup> Many of the townspeople were merchants, sea captains, or seamen or were otherwise occupied in some phase of trade and shipping. Others were lawyers, doctors, civil officials, shopkeepers, craftsmen, and laborers. As business increased, the population boomed. In 1790 Wilmington had a pop-

2. Department of the Army, Corps of Engineers, *Waterborne Commerce of the United States Calendar Year 1981*, Part 1, *Waterways and Harbors Atlantic Coast* (New Orleans, La.: Corps of Engineers, 1982), pp. 105-12.

3. *Ibid.*, Part 5 *Waterways and Harbors Atlantic Coast*, p. 5.

4. *Ibid.*, Part 1 *Waterways and Harbors Atlantic Coast*, pp. 105-12.

5. *Ibid.*

6. Joseph E. Dunn, *Wilmington Harbor and Selected Features of Transportation*, (Wilmington, N.C.: University of North Carolina at Wilmington, 1968).

7. *The Transition of North Carolina Ports at Wilmington and Morehead City from Colonial Days to the Present* (North Carolina State Ports Authority bulletin, undated).

8. Dunn, *supra* note 6.

The author is a planner in the New Hanover County Planning Department.

1. Debbie Norton, "State Ports Defied Economic Drought," *Wilmington Star News*, February 27, 1983, p. 70.

ulation of 1,000; seventy years later, in 1860, its population had increased to nearly 10,000.<sup>9</sup>

When the Civil War began, Wilmington was one of the most important ports along the eastern seaboard. While the Confederacy had a number of ports at its disposition, none was more important than Wilmington. Because the mouth of the Cape Fear River had two inlets, in order to stop blockade runners from ferrying goods to Wilmington, the Union blockade had to stretch out over an arc of almost fifty miles. Having such a broad area to maneuver in, blockade runners could evade Union ships.<sup>10</sup> The staples and munitions brought into Wilmington could be transported to the Confederate Army of Virginia on the good rail connections from Wilmington. The city was the last port to remain open to the Confederacy; less than two months after it fell in 1865, General Lee surrendered at Appomattox. The Confederacy came to an end; and with Reconstruction, Wilmington entered its modern era.<sup>11</sup>

In contrast to Wilmington, Morehead City began as nothing more than an idea for bringing economic prosperity to the state. In the mid-nineteenth century, Archibald DeBow Murphey—lawyer, professor of ancient languages and law at the University of North Carolina, state senator from Orange County (1812-18), vocal advocate of improved transportation in the state—determined that North Carolina needed a railroad that ran from the coast to the mountains.<sup>12</sup> He chose the land jutting out between Bogue Sound and the mouth of the Newport River in Carteret County as the site for the eastern terminus of the railroad and called it Carolina City. The planning of that railroad and the drawing-up of the site specifications began.<sup>13</sup>

Most of these plans ran up against economic hurdles, but John Motley Morehead, seeing the potential of the area seaport, bought it and the surrounding acreage. Morehead, a law student under Murphey and Governor of North Carolina from 1841 to 1845, was—like Murphey—an advocate of railroad advancement in the state.<sup>14</sup> A pier and small warehouses were built; lime and salt as well as the rails for the railroad to Goldsboro were imported and naval stores exported. The name of the town was changed to Morehead City, and by 1857 the tracks to Goldsboro were completed.<sup>15</sup>

After the Civil War the port developed slowly, but by the late 1920s tobacco growers in eastern North Carolina felt that they needed a port to serve their needs. With the local Rotary Club, they enlisted the aid of Governor O. Max Gardner to develop the area's port.<sup>16</sup> In 1931 the General Assembly authorized construction of a railroad terminal at Morehead City, which helped to develop the port by providing easy access to markets farther inland. The port continued to increase in importance, so that by 1945 the Standard Oil Company was leasing property there. In 1951 the State Ports Authority (SPA) bought the Morehead City port facilities in order to open the state docks. At present the entrance to the Morehead City SPA terminals is by way of Beaufort Inlet, five miles from the city.<sup>17</sup>

## The SPA's role

From Reconstruction to the present, perhaps the single major influence on North Carolina's ports has been the State Ports Authority, created in 1945 by the General Assembly after nearly a quarter-century of lobbying for harbor develop-

ment. The agitation for state aid for port and harbor development began in the early 1920s during the administration of Governor Cameron Morrison, who attempted to explain to the Piedmont and western sections of the state the importance of the seaports to the entire state.<sup>18</sup>

At present, the SPA is overseen by an eleven-member board of directors. Seven of the board's members are appointed by the Governor for six-year staggered terms. The others are named by the legislature to two-year terms. The board's chairman is appointed by the Governor.<sup>19</sup> The Secretary of Commerce is its secretary; he appoints, with the board's approval, an executive director to administer and manage the development and operation of the state ports.<sup>20</sup>

The SPA plays very different roles in port development in Wilmington and in Morehead City. At Wilmington Harbor the private docks and the SPA's public docks supplement each other; the former handle bulk cargo and the latter handle containerized cargo.<sup>21</sup> (Containers are large, preloaded metal boxes that hold tons of cargo; they can be taken off a train flatbed car or a truck and loaded on a ship by crane in a few steps. The unloading is just as simple. Since containers were introduced in the mid-1950s, they have revolutionized the shipping industry by reducing the cost of handling cargo and increasing cargo security.) Three-fourths of the volume of cargo is handled at the private docks in bulk form; these cargoes include large quantities of basic chemicals, residual fuel oil, iron ore, jet fuel, gasoline, asphalt, crude tars, and alcohols.<sup>22</sup> The remaining fourth is handled at the public terminals and is transported in containers.<sup>23</sup>

9. U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States Colonial Times to 1970* (Washington, D.C., 1975).

10. Lawrence Lee, *New Hanover County: A Brief History* (Raleigh, N.C.: State Department of Archives and History, 1971), pp. 60-75.

11. *Ibid.*

12. *The National Cyclopaedia of American Biography*, Vol. VIII (Clifton, N.J.: James T. White and Co., 1892), p. 168.

13. *Op. cit. supra*, note 7.

14. Beth G. Crabtree, *North Carolina Governors, 1585-1968, Brief Sketches* (Raleigh, N.C.: State Department of Archives and History, 1968), p. 83.

15. *History of the Port of Morehead City, North Carolina* (North Carolina State Ports Authority Bulletin, undated.)

16. *Ibid.*

17. Charles E. Landon, *The North Carolina State Ports Authority* (Durham, N.C.: Duke University Press, 1963), p. 27.

18. *Ibid.*

19. Interview with John C. Cheney, Jr., Director of Publications for the North Carolina Secretary of State, June 18, 1984. Currently the chairman is Thomas T. Taft of Greenville, N.C.

20. Interview with Joan Capps, staff member of the State Ports Authority, June 1984.

21. Interview with Estelle Lee, President of Almont Shipping Company, Wilmington, July 1983.

22. *Op. cit. supra* note 2.

23. *North Carolina State Ports Terminal*, Wilmington (North Carolina State Ports Authority data sheet summarizing shipping estimates at the state





*A crane loading containers at Wilmington*

Today the SPA facilities located in Wilmington provide transit sheds and warehouses that contain 1.1 million square feet of covered storage with fire-sprinkler protection. For exterior storage, the terminal has 72 acres of paved area. For processing containerized cargo, the terminal is equipped with three container cranes, each with a capacity of 40 long tons. (One long ton equals 2,240 pounds, or 1,016 kilograms.) The first was installed in 1975, the second in 1979-80, and the third in 1984. Four gantry cranes and a 140-ton mobile crane provide additional lifting capacity.<sup>24</sup> Between 1975 and 1981 a yearly average of 8,492,000 short tons of cargo moved through the harbor.<sup>25</sup> Of these, 2,100,420 short tons

(25 per cent of the total) were handled at the SPA terminal.<sup>26</sup> As the SPA increases its container-handling facilities, this percentage will likely rise.

In Morehead City, both public and private docks specialize in bulk (not containerized) cargo; they have a capacity to handle three million short tons annually.<sup>27</sup> The public docks handle more than half of the total traffic volume.<sup>28</sup> The large-volume commodities are shipped primarily through the SPA terminals rather than through private docks. The Morehead City harbor facilities include over 5,000 feet of continuous concrete

wharf space for ships and 1,200 feet of docking space, as well as 14 acres of open concrete floor storage. In 1979-80, Morehead City's only full-sized container crane was moved to Wilmington, leaving Morehead's SPA facilities to specialize in bulk commodities. The port has two gantry cranes, which are used to load and unload a small number of containerized shipments.<sup>29</sup> Between 1975 and 1981 an annual average of 2,959,097 short tons moved through the Morehead City harbor, of which 63 per cent (1,852,294 short tons) were handled at the public docks.<sup>30</sup>

Although the public docks at the two facilities handle similar volumes of cargo, their financial statements differ greatly. From 1975 to 1981, the SPA terminals at Wilmington handled an average yearly volume of cargo that was only 13 per cent (248,126 short tons) greater than the

26. *Op. cit. supra* note 23.

27. Interview with William M. A. Greene, executive director of the State Ports Authority, July 1983.

28. *Op. cit. supra* note 2; *North Carolina State Ports Terminal, Morehead City* (North Carolina State Ports Authority data sheet summarizing shipping activities at the state port facilities at Morehead City; available at the State Ports Terminal in Wilmington. Undated.)

29. *Op. cit. supra* note 24.

30. *Op. cit. supra* note 28.

port facilities at Wilmington; available at the State Ports Terminal in Wilmington. Undated).

24. North Carolina State Ports Authority, *Port Services Directory, 1983-84* (Wilmington, N.C. North Carolina State Ports Authority, 1983).

25. *Op. cit. supra* note 2.

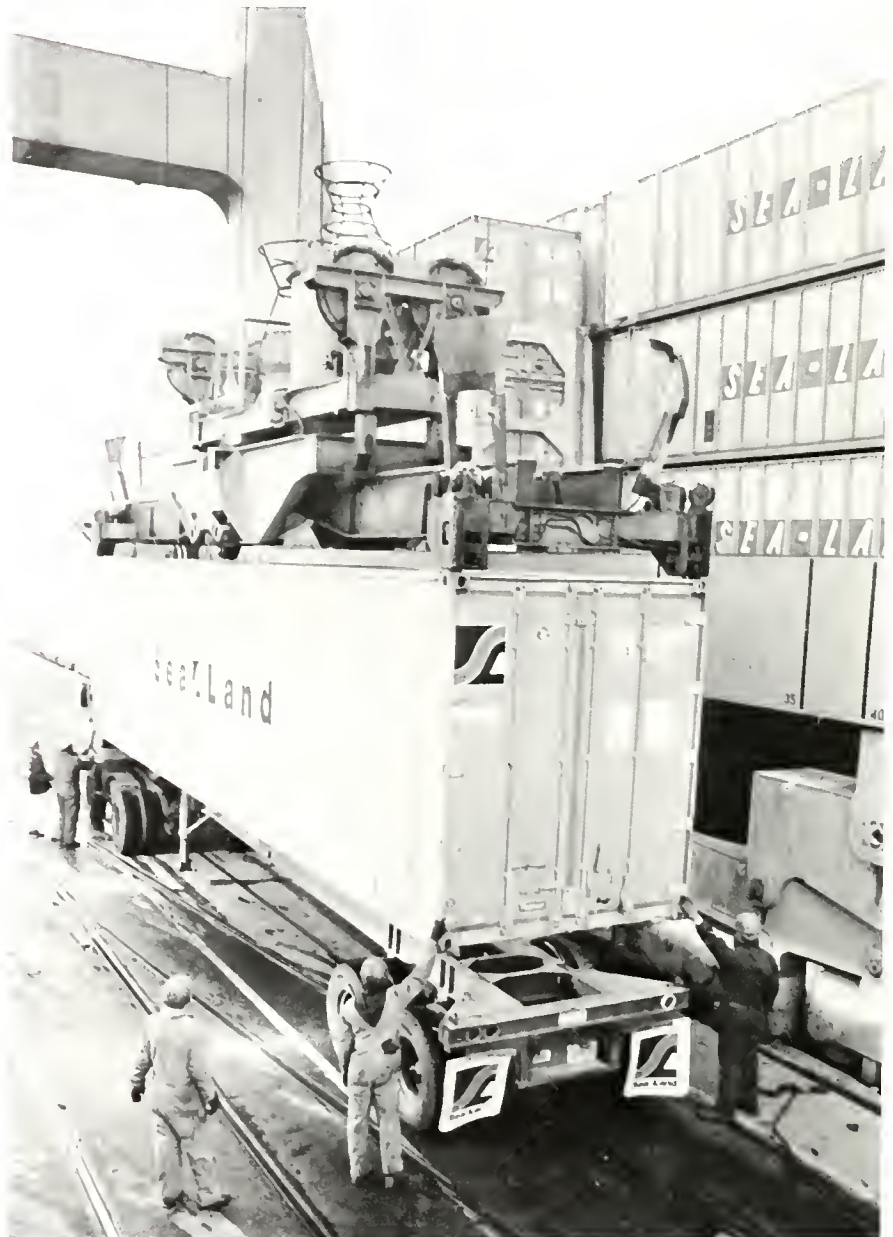
volume handled by Morehead City's SPA terminals. But during this period, in constant (1967) dollars, Wilmington's average annual revenues were \$2,837,612, compared with \$1,154,108 for Morehead—146 per cent higher. The main reason for this large differential is that containerized cargo is generally more valuable than bulk cargo.<sup>31</sup>

In considering the two ports' prospects for the future, it is important to take into account both their profits and the amount of state aid they have received. The SPA's original mission was (1) to promote and facilitate commercial and water transportation of all types in the state, and (2) to stimulate and promote economic development. That mission remains, but the means to accomplish these goals have been refocused. In keeping with the international trend that emphasizes the development of self-sufficient ports and the reduction of public financing for ports,<sup>32</sup> Governor James B. Hunt's administration has also emphasized the importance of financial self-sufficiency for North Carolina's ports. To underscore this approach, the Hunt administration transferred the SPA from the Department of Transportation and Highway Safety to the Department of Commerce.<sup>33</sup> If the SPA's performance for the immediate past is measured against the benchmark of self-sufficiency, the North Carolina ports' performance has been good. At a time when ports across the nation saw their revenues dwindle and profits give way to deficits, both Wilmington and Morehead City made profits, if one defines profits (as the SPA does) as revenues less expenses and straight-line depreciation. But it should be noted that the SPA pays neither debt service nor taxes.<sup>34</sup>

In fiscal year 1983 Wilmington's profits, as officially defined, were \$1.65 million, down (by 15 per cent) from \$1.9 million in profits for fiscal year 1982. In Morehead City, profits were \$162,000 during fiscal year (FY) 1983, down by 56 per cent from \$370,579 in FY 1982. In general, over the last 13 years, Wilmington's financial performance has been good, and Morehead City's has been improving steadily. Though Wilmington suffered a loss in the recession of 1974, its profits have climbed from

\$268,000 in FY 1970 to \$1.65 million in FY 1983. Adjusted for inflation, this growth represents a 141 per cent increase. In 1970 Morehead City suffered a loss of \$280,000. Gradually it reduced its losses and by 1981 was showing a profit—an average of \$215,167 per year from fiscal 1981 to fiscal 1983.<sup>35</sup> As a result of this

35. *North Carolina State Ports Authority Financial Statement: Twelve Months Ended June 30, 1983* (North Carolina State Ports Terminal, Wilmington).



*Sea-Land is one of five major container lines that serve Wilmington.*

31. *Op. cit. supra* note 23; *op. cit. supra* note 27; *op. cit. supra* note 28.

32. Walter P. Hedden, *Mission: Port Development* (Washington, D.C.: The American Association of Port Authorities, 1967), p. 50.

33. Interview with Victor Barfield, Deputy Secretary of Commerce, North Carolina Department of Commerce, August 1983.

34. Interview with Ruff A. DeVane, Comptroller and Assistant Treasurer, North Carolina State Ports Authority, September 1983.



favorable performance, the General Assembly, which began its help to the ports with a legislative appropriation of \$7.4 million in 1951, made its last contribution (of \$4,800,000) in 1980.<sup>36</sup>

## Economic benefits

The total public capital invested in the SPA is \$58,414,600.<sup>37</sup> The benefits of this expenditure can be estimated in terms of job opportunities. In June 1983 a study sponsored by the Appalachian Regional Commission (ARC) measured the extent to which the ports, in using the state moneys invested in them, generated economic development. The ARC study described the impact of the SPA ports on the state's economy in terms of three measures: *employment, payroll, and tax revenues* paid to state and local governments. Three kinds of firms produced the increases:

—*Firms That Are Required.* They provide transportation and other services essential to port operations.

—*Firms That Are Attracted.* They export and/or import products and are attracted to North Carolina by the ports.

—*Firms That Are Induced.* They expand their markets by exporting through the state's ports.<sup>38</sup>

The ARC study divided the principal impact of these three types of firms into primary and secondary effects. Primary effects refer to employment, payroll, and tax payments of the specific firms that are required by, attracted by, or induced by the ports. Secondary effects result from the multiplier phenomenon, which occurs when the firms associated with a direct effect do business with other firms and enterprises in the state's economy. The relationship between these primary

and secondary effects was estimated through multiplier factors for employment and income that were derived through techniques of input-output analysis.<sup>39</sup>

The study reported that the *primary* and *secondary* economic effects of port activities at Wilmington and Morehead City by firms that were *required, attracted, or induced* to deal with the ports generated 49,600 full-time equivalent jobs for North Carolina in 1982. The jobs paid a total of \$736 million in salaries and benefits to workers and \$93.5 million in state and local taxes. Even though in 1982 Wilmington handled only slightly over 50 per cent of the total tonnage that moved through the North Carolina public ports (2,506,000 of 4,791,000 short tons), slightly over 70 per cent of the jobs (35,207 full-time equivalent jobs) and salaries and benefits (\$555 million) that were attributed to the state as a whole resulted from port activities at Wilmington (see Table 1).<sup>40</sup>

Earlier economic studies that focused on Wilmington appear to support the ARC study's findings that the harbor makes an important contribution to the economy. In 1979 the U.S. Army Corps of Engineers published its 1977 feasibility report for the improvement of Wilmington Harbor. It found that navigation improvements stimulated growth in industries, income, and population for the Wilmington area. After every series of major improvements to the river channels in Wilmington between 1912 and 1975, income and population surged.<sup>41</sup>

In 1981 a study by the University of North Carolina at Wilmington found that the dredging of the harbor and the resulting accessibility of the ocean played a significant part in attracting nine large manufacturers to the Wilmington area. The study indicated that approximately one out of every four jobs (roughly 14,250

in all) in the greater Wilmington area is harbor-related.<sup>42</sup> This figure is in keeping with ARC's findings. According to the ARC study, primary required and attracted industries associated with the Wilmington port in 1982 were located in the greater Wilmington area and respectively contributed 1,495 and 961 full-time equivalent jobs or—a total of 2,456 full-time equivalent jobs (see Table 1). However, of the total (estimated) 20,189 full-time equivalent jobs that were provided in North Carolina by primary *induced* industries (see Table 1), the ARC study estimated that 66 per cent (13,329 full-time equivalent jobs) were located in southeastern North Carolina. (Southeastern North Carolina means the four-county area that comprises New Hanover, Brunswick, Pender, and Columbus counties.) Thus the ARC study indicated that the three types of primary industries in southeastern North Carolina that deal with the Wilmington port provided 15,785 full-time equivalent jobs—("primary required" industries provided 1,495, "primary attracted" industries provided 961, and "primary induced" industries provided 13,329).<sup>43</sup>

Another benefit of the SPA's activity is that Wilmington and Morehead City have become regular ports of call for a number of steamship lines.<sup>44</sup> Before 1970, the vessels stopped at these ports only if they were guaranteed a shipment as an inducement; consequently, sailing schedules were irregular and shippers could not guarantee their customers regular delivery.<sup>45</sup> Beginning early in the 1970s,

N.C.); North Carolina State Ports Authority Condensed Comparative Statement of Operations (North Carolina State Ports Terminal, Wilmington, N.C.).

36. State Ports Authority financial audit for the year ending June 30, 1981 (North Carolina State Ports Terminal, Wilmington, N.C.).

37. *Ibid.*

38. Sandra Emerson, Hemrick Harwood, and Alvin M. Cruze, *Contribution of State Ports to the North Carolina Economy* (Research Triangle Park, N.C.: Research Triangle Institute, 1983), pp. 35-62.

39. *Ibid.*

40. *Ibid.*

41. United States Army Corps of Engineers, *Wilmington Harbor: Northeast Cape Fear River, Wilmington North Carolina Plan for Improvement for Navigation and Environmental Quality. Economic Profile* (Wilmington, N.C., December 1977; revised December 1979.)

42. Dennis G. Carter, *Economic Impact of the Wilmington Harbor* (Wilmington, N.C.: University of North Carolina at Wilmington, 1981). The term "greater Wilmington" refers to the city of Wilmington and the surrounding developed regions of Brunswick, New Hanover, and Pender counties.

43. *Op. cit. supra*, note 38.

44. Bob Hill, "State Port Pier Business Doubles During Decade," *Wilmington Star News*, January 6, 1980.

45. Because the principal expense of calling at a port is the docking cost and not the loading costs, a vessel pays the same docking cost whether it loads one ton or 1,000. Thus shippers try to cut losses by docking at "inducement ports" only when they are guaranteed large, profitable shipments. Interview with Richard Corbett, Marine Consultant and Shipping Adviser, Wilmington, N.C., July 1983.

**Table 1.** Impact of Public Port Activities on the North Carolina Economy in 1982

	Wilmington			Morehead City			State total
	Primary	Secondary	Total	Primary	Secondary	Total	
Employment (full-time equivalent)							
"Required" firms	1,495	75	1,570	435	21	456	2,026
"Attracted" firms	961	163	1,124	N/A	N/A	N/A	1,124
"Induced" firms	20,189	12,324	32,513	3,944	10,019	13,963	46,476
Total	22,645	12,562	35,207	4,379	10,040	14,419	49,626
Salaries and Benefits (\$ in 000's)							
"Required" firms	\$ 27,418	\$ 1,421	\$ 28,839	\$ 8,217	\$ 408	\$ 8,625	\$ 37,464
"Attracted" firms	25,206	4,285	29,491	N/A	N/A	N/A	29,491
"Induced" firms	302,985	183,551	486,436	50,943	132,159	183,102	669,538
Total	\$355,509	\$189,257	\$554,766	\$59,160	\$132,567	\$191,727	\$736,493
State and Local Taxes (\$ in 000's)							
"Required" firms	\$ 4,297	\$ 217	\$ 4,514	\$ 1,755	\$ 88	\$ 1,843	\$ 6,357
"Attracted" firms	4,533	770	5,303	N/A	N/A	N/A	5,303
"Induced" firms	39,785	24,100	63,885	6,687	11,360	18,047	81,932
Total	\$ 48,615	\$ 25,087	\$ 73,702	\$ 8,442	\$ 11,448	\$ 19,890	\$ 93,592

Source: Sandra Emerson, Henrick Harwood and Alvin Croze *Contribution of State Ports to the North Carolina Economy* (Research Triangle Park, N.C.: Research Triangle Institute, June 1983) (study done for the Appalachian Regional Commission by the Research Triangle Institute).

however, Wilmington and Morehead City became much like stops along a railroad route: like trains, ships now put in at regular, scheduled intervals. Shippers no longer need to make arrangements in advance: the vessels of each line dock on their reserved "preferred day" and expect shipment to be on hand. Under this system shippers can use their labor and working capital more efficiently because they can rely on consistent sailing schedules published ahead of time.<sup>46</sup> The number of ocean lines that call on a port is an indicator of port size, and any increase in their numbers shows port growth. Seventy-seven shipping lines call at Hampton Roads, Virginia.<sup>47</sup> In contrast, only a few call at North Carolina ports. But their number is growing—from

zero in 1970 to two at Morehead City and 23 at Wilmington in 1983.<sup>48</sup>

Two factors account for the successful establishment of ports of call in North Carolina. First, as already mentioned, the General Assembly and the SPA have made capital expenditures that provide shipping lines the kind of facilities they need in order to operate. Second, and just as important, the two ports have modern, efficient management that gives careful attention to shipments. This has turned the ports' smallness into an advantage in that they are able to act quickly in order to capture a shipper's business.<sup>49</sup>

That fact is illustrated by an incident involving the Japan Tobacco and Salt Public Corporation. Formerly North Carolina tobacco moved from Morehead City to Japan, the state's major tobacco

purchaser, in big unwieldy barrels as "break bulk" cargo. But in 1981 the Japanese company, having decided to move tobacco in containers, chose Wilmington for a trial shipment in order to determine the feasibility of moving large containerized shipments through North Carolina. During the trial shipment of 228 containers, a big Japanese ship was temporarily grounded in the Cape Fear River's turning basin. North Carolina state officials feared that the Japanese shipping lines would use this incident to advise tobacco authorities that they considered Wilmington Harbor unsafe and thus make it difficult for the tobacco interests to oppose the use of Norfolk. Steamship lines prefer to make as few calls along a coast as possible; in this instance, since they were already calling at Norfolk, they would have found it more convenient to pick up tobacco there and avoid the additional stop at Wilmington.<sup>50</sup>

46. Ibid.

47. Virginia Port Authority, *The Greater Hampton Roads Port Sciences Directory 1983* (Norfolk, Va.: Virginia Port Authority, 1983).

48. *Op. cit. supra* note 24. "Greater Wilmington" refers to the city of Wilmington and the surrounding developed regions of Brunswick, New Hanover, and Pender counties.

49. *Op. cit. supra* note 17, pp. 38-54.

50. Letter to Colonel Robert K. Hughes, District Engineer, U.S. Army Corps of Engineers, from D.



The immediate response from the state and SPA officials to the grounding of the Japanese ship was to work with the U.S. Army Corps of Engineers to widen the turning basin in the Cape Fear River by 100 feet and avoid the possibility of further mishaps. As a result the Japanese company has committed itself to move

almost 1,000 containers of tobacco and other cargo through Wilmington.

### Specialized services and facilities

The SPA affords some special services and facilities that make the port attractive to shippers. In January 1984, it opened an "inland port" shipping terminal in Charlotte. Dubbed the Charlotte Intermodal Terminal, the facility is a

container-staging and -storage area. Trucks bring the containers to the terminal, where they are loaded aboard trains and shipped to Wilmington en masse. Port officials say that using the terminal could cut costs to shippers by more than half, because they will be sharing the total expense of rail movement to Wilmington.<sup>51</sup> SPA officials expect that the terminal will meet its target of 2,700 containers shipped by July 1985.<sup>52</sup> SPA marketing estimates indicate that eventually the new terminal could produce as much as \$1 million in revenue by handling a potential load of 7,000 containers a year. The terminal is expected to open a new market area for the Wilmington port, since Charlotte is nearer to many industrial areas than Wilmington's rival ports. It is as close to Atlanta as Savannah is, and the cities in Tennessee and Kentucky are closer to Charlotte than they are to any seaport.<sup>53</sup>

The Charlotte Intermodal Terminal is also expected to benefit from the anticipated closing of a similar facility in South Carolina—the International Transport Center in Greer, South Carolina—because it has not been much used. That facility was built for shippers who transport goods to or from the Charleston port and make the return trip without any cargo. The transport center allows businesses to pay only one-way transportation costs by providing shipping containers until the businesses are ready to export products through Charleston. In contrast, at the Charlotte terminal full containers are transferred between trucks and rail cars for shipment to and from Wilmington—thus avoiding the costs that the South Carolina facility incurs by handling empty containers. As of October 1984, officials of the SPA were negotiating with Seaboard System Railroad officials for a separate train to carry an expected increase in the number of containers moved through the Charlotte



*Plastic-wrapped cargo bound for China is loaded at the public docks in Wilmington.*

51. Debbie Norton, "Charlotte 'Port' Expected to Aid Wilmington," *Wilmington Star News*, January 11, 1984.

52. Debbie Norton, "Neighboring Inland Port Is Losing Money, May Close," *Wilmington Star News*, October 23, 1984.

53. *Op. cit.* *supra* note 51.

Intermodal Terminal to Wilmington's port.<sup>54</sup>

Another SPA special service is its designation (in 1981) of a foreign trade zone in each port. A foreign trade zone is a special customs area into which goods can be imported with no payment of duty until the goods are shipped domestically. If they are re-exported, no duty is paid. While a shipment is in the foreign trade zone, any number of activities may be performed on it—from simple storage to sorting, separation of damaged goods, repackaging, inventory, assembly, processing, or blending with domestic merchandise. Users of the zone benefit from it in terms of deferred duty payment, reduction in duty payment, or avoidance of duty on re-exported items, damaged goods, and packing. The SPA benefits from the fees paid for the use of the zone. Although there are over 85 foreign trade zones in the country, only 19 are in operation, and Wilmington's is among the few that have succeeded.

Wilmington's zone had opened for only limited operations until the summer of 1983, when the first two permanent residents began operations. These are L & L Ltd., a foreign car import operation, and BCI, Inc., an export trading company. L & L, which will be based in Wilmington, has begun importing cars from around the world to be refitted to meet U.S. emission and safety standards and then resold world wide. In June 1983 the firm had about \$1 million in cars at the port. BCI is a Belgian-based operation: its first shipment (container loads of Spanish furniture) also moved through the zone in June 1983. Future shipments will include plastic toys from Holland and small compost shredders from Belgium.<sup>55</sup>

Another specialized service that the SPA is cautiously considering is the formation of an export trading company in an effort to encourage more North Carolina businesses to become involved in foreign trade. Congress approved the Export Trading Company Act in October 1982 as a way to expand the export market

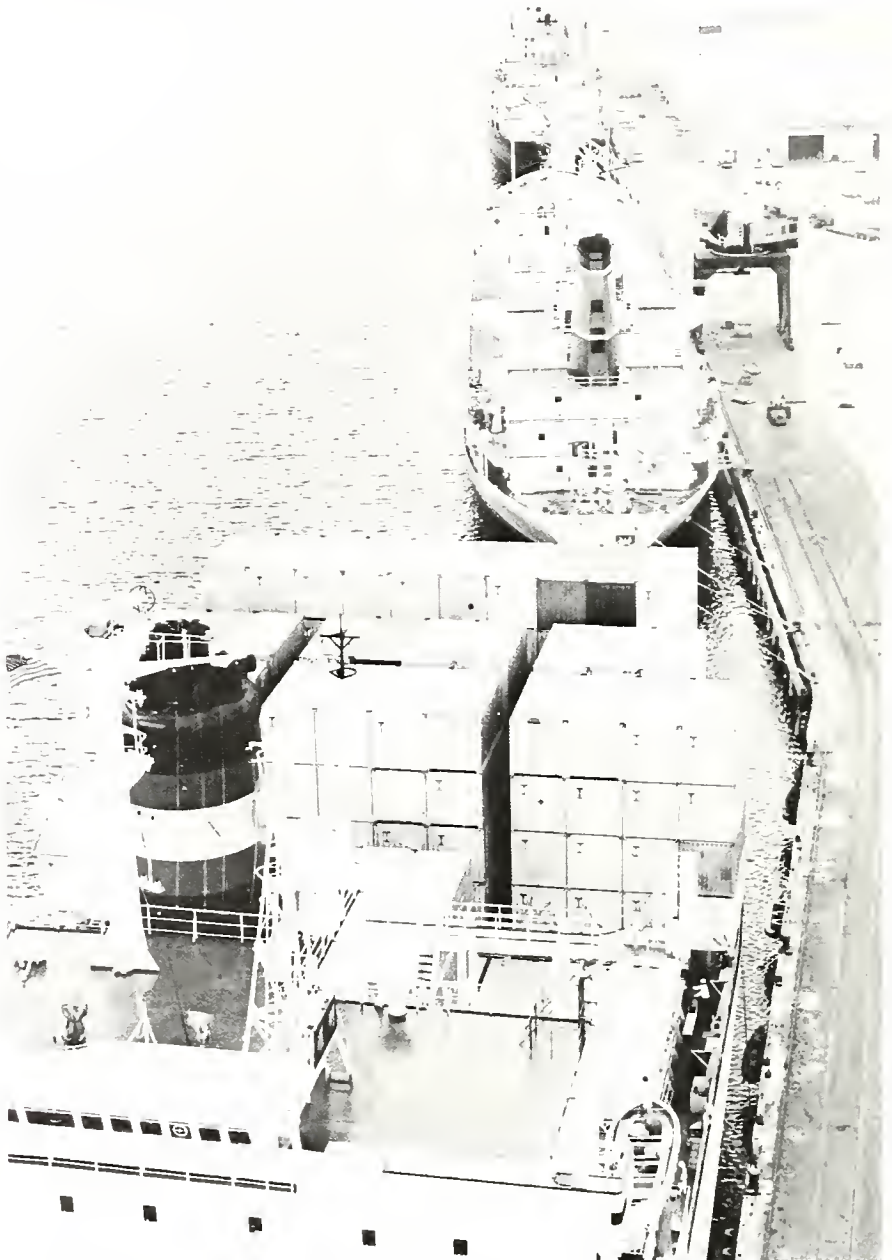
opportunities for American industry, particularly small and medium-sized companies. The act basically allows industries—through antitrust exemption—to combine their export efforts to make international trade more profitable. It also allows certain banking organizations that formerly were prohibited from equity participation in corporations to invest in trading companies.<sup>56</sup>

## Difficulties

Despite all of these accomplishments, port expansion has been controversial. Having shared the Tar Heel coastline for over a century and most recently having had their public docks under the auspices of the same state entity (the SPA), the cities of Wilmington and Morehead City have had many opportunities for

56. Debbie Norton, "Businessbeat: State Ports

Study Trading Company," *Wilmington Star News*, August 9, 1983.



*Ships bearing goods from every corner of the world call regularly at North Carolina's ports.*

54 *Op. cit. supra* note 52.

55. "Foreign Trade Zone Tenants," *American Shippers* (August 1983), 71.



rivalry and political squabbling. Perhaps the most intense of these disputes thus far occurred in the mid-1970s, when the SPA decided to assign specialized roles to the public terminals—container cargo in Wilmington and bulk cargo in Morehead. In 1979 it acted on this decision by moving Morehead City's only container crane to Wilmington, so that Wilmington had two identical cranes and Morehead none. SPA officials explained that the crane had been installed in Morehead in the first place because of early attempts at developing the two ports at the same pace and in the same way. But that proved to be impractical because container ships preferred larger, more industrialized Wilmington, closer to the industries of the Piedmont.<sup>57</sup> As a result, when the Japan Tobacco and Salt Public Corporation announced in 1981 that it would start shipping tobacco in containers rather than "break bulk" barrels, Morehead City faced the transfer of its traditional and most lucrative commodity to Wilmington. Carteret County officials say that opening the rail connection between Charlotte and the SPA facilities in Wilmington is yet another move to keep the Morehead City port out of the profitable containerized cargo market.<sup>58</sup>

The earnings of Morehead City, as a bulk port, can be expected to wax and wane in direct proportion to the supply of and demand for the port's bulk commodities in the world markets.<sup>59</sup> But some Carteret County residents believe that a bulk port will offer the town neither the number of jobs nor the job stability of a general cargo port. As a bulk port, the town will be directly exposed to the world economic swings and the boom/bust phenomenon.<sup>60</sup>

Coal and phosphates provide vivid examples of the volatility of commodities markets. In 1980, when high oil prices

and strikes in the coal fields of Australia and Poland gave a boost to American exports, Alla-Ohio Valley, Inc., of Washington, D.C., signed a contract to build a terminal at Morehead City. The company agreed to pay \$1 million a year in rent for seven acres at the state port, and soon the coal started moving. But declining oil prices and energy conservation ended the coal rush, and Alla-Ohio went bankrupt. In 1983, as the company's bankruptcy case was making its way through the courts, the SPA agreed to reduce Alla-Ohio's rent by half for the fiscal year 1983.<sup>61</sup>

Another commodity shipped through Morehead City in large quantities is phosphate, a prime fertilizer. Like coal, phosphate is a blessing or a curse, depending on world demand. Texasgulf Chemicals Co. of Raleigh—a division of Texasgulf, Inc.—mines most of the phosphate shipped through Morehead City. Another company, North Carolina Phosphate Corporation (NCPC)—a subsidiary of Agrico Chemical Co.—also mines and exports somewhat less phosphate.

In 1983 North Carolina was suffering a phosphate bust. The recession and high interest rates limited the amount of fertilizer that farmers bought domestically, and the unstable world economy diminished phosphate export markets. In fiscal year 1983-84 Texasgulf shipped only 33,400 tons of the mineral through Morehead City. But since then prospects for phosphate have improved, and there may be a new market in India and China. Dwindling reserves in Florida made North Carolina's deeper deposits more competitive. In the first ten months of fiscal 1984, Texasgulf shipped more than 1.25 million tons of phosphate through Morehead City—a 36-fold increase from fiscal 1983.<sup>62</sup>

In November 1983 the SPA board of directors approved a 50-year lease agreement with NCPC, which plans to build

a \$400 million storage and shipping facility to tie in with the bulk-handling system at Morehead City.<sup>63</sup> Under the agreement, NCPC will pay the port at least \$250,000 a year in fees when the facility is in operation. Payments will reach nearly \$1 million per year if annual shipments reach a million tons, rising to \$1.28 million for two million tons and about \$1.58 million for three million tons. NCPC has told the SPA that it expects to ship at least 2.25 million tons of phosphate a year. The year 1984 will probably have been a boom year for one of Morehead City's volatile commodities.<sup>64</sup>

**H**eartened by their present success at Wilmington and Morehead City, SPA officials are planning for continued growth by expanding and upgrading facilities at both ports. But all plans are viewed as guidelines for future action and not as an agenda. Above all, the SPA officials want to continue to finance development through port-generated revenues and not new legislative appropriations. Thus they hope to avoid draining state coffers, to keep political entanglements at a minimum, and to continue to be flexible enough to change plans with the customer needs and cargo flow—the latter viewed by many observers as the key to the success of the State Ports Authority.<sup>65</sup> **P**

57. Michael Flagg, "Morehead City Struggles to Keep its Head Above Water," *The News and Observer*, August 9, 1983, pp. 1, 28.

58. *Ibid.*

59. *Ibid.*

60. Interview with Roy Stevens, Executive Director of the Carteret County Economic Development Council, Inc., Morehead City, July 1983.

61. *Op. cit. supra* note 57.

62. Debbie Norton, "Phosphate Industry Gaining Importance for Region, State," *Wilmington Star News*, May 22, 1984.

63. *Ibid.*

64. Debbie Norton, "Money-Making Ports Approve Phosphate Contract," *Wilmington Star News*, November 23, 1983, p. 1B.

65. *Op. cit. supra* note 27.

# Automobile Child Passenger Restraint Systems: Do They Work?

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Ben F. Loeb, Jr.

The 1981 session of the North Carolina General Assembly enacted a new G.S. 20-137.1 mandating the use of passenger restraint systems (safety seats or seat belts) for children under age two when they are riding in an automobile. This act—which became effective on July 1, 1982—will, by its own terms, expire on June 30, 1985. Thus, absent legislative action, North Carolina will not have a child passenger restraint law after June of this year. Forty-nine states and the District of Columbia have adopted statutes similar to North Carolina's; only Wyoming is now without any type of child restraint law. While these laws vary considerably, all require that children under a specified age (or weight) be properly secured when traveling in designated types of vehicles.

Table 1 shows the effective date of each state's child restraint law, the age group that is subject to the law, the age at which a regular seat belt may be substituted for the child safety seat, and the penalty for violating the act. One state (Alaska) requires that a restraint system be used for any child under age seven, while the laws of two states (Mississippi and North Carolina) apply only to children under age two. The Kentucky act does not refer to age at all, but instead requires the use of a child safety seat if the child weighs less than forty pounds. Most states allow a regular seat belt to be used in lieu of the child safety seat at a certain age. In Alaska, for example, a child between ages four and seven may use the seat belt, while in Nebraska the seat belt may be used after the child reaches his first birthday. The penalties for a violation also vary greatly from state to state. In Indiana a person may be fined as much as \$500 for violating of the child

restraint law, while in a few states (Kentucky, Oklahoma, South Dakota) the penalty is limited to a warning (or warning ticket).<sup>1</sup>

## The North Carolina law

The North Carolina law requires:

- (1) every driver required to have a North Carolina driver's license,
- (2) who is transporting his *own* child of less than two years of age,
- (3) in his own motor vehicle (or a family purpose vehicle),
- (4) to have the child properly secured in a child passenger restraint system of a type approved by the Commissioner of Motor Vehicles.

This statute has several exceptions. It does not, for instance, apply to a child occupying a seating position where seat belts are not required by federal law or regulation. Thus, a child could probably be placed in the back (cargo area) of a station wagon without violating the restraint law. In addition, the law does not apply (1) to vehicles registered in another state; (2) to ambulances or other emergency vehicles; (3) when the child's personal needs are being attended to; or (4) if all seating posi-

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The author is an Institute faculty member whose fields include motor vehicle laws.

1. *Traffic Safety Newsletter*, published by the National Highway Traffic Safety Administration (August 1984).



**Table 1. Child Passenger Safety Seat Laws by State**  
(As of July 15, 1984)

State	Eff. date	Restraint requirement age	May substitute safety belt	Penalty for failure to obey restraint law
Alabama	7/82	Under 3	No	\$10
Alaska	7/85	Under 7	Between 4 & 7	2 pts. & up to \$300
Arizona	8/83	Through 4	No	\$60
Arkansas	8/83	Under 5	Between 3 & 5	\$10-\$25
California	1/83	Under 4	If not in parent's vehicle	\$50
Colorado	1/84	Under 4	No	\$25-\$200
Connecticut	5/82	Under 4	Between 1 & 4 in rear seat	\$25-\$100
Delaware	6/82	Under 4	No	\$25
Florida	7/83	Under 6	Between 4 & 6	\$15
Georgia	7/84	Under 4	Between 3 & 4	\$25
Hawaii	7/83	Under 4	Between 3 & 4	Maximum \$100
Idaho	1/85	Under 4	No	Maximum \$100
Illinois	7/83	Under 6	Between 4 & 6	\$25-\$50
Indiana	1/84	Under 4	Between 3 & 4	\$50-\$500
Iowa	1/85	Under 6	Between 3 & 6	\$10
Kansas	1/82	Under 4	No	\$10
Kentucky	7/82	Under 40 lbs.	No	Warning
Louisiana	9/84	Under 5	Between 3 & 5 in rear seat	\$25-\$50
Maine	9/83	Under 4	Between 1 & 4 if not in parent's vehicle	\$25-\$50
Maryland	1/84	Under 5	Between 3 & 5	\$25
Massachusetts	4/82	Under 5	Under 5	\$25
Michigan	4/82	Thru 4	1 thru 4 in rear seat	\$15
Minnesota	8/83	Under 4	No	\$25 for 2d offense
Mississippi	7/83	Under 2	No	\$10
Missouri	1/84	Under 4	Under 4 in rear seat	\$25
Montana	1/84	Under 4	Between 2 & 4	\$10-\$25 for 2d offense
Nebraska	8/83	Under 4	Between 1 & 4	\$25
Nevada	7/83	Under 5	Under 5 in rear seat	\$35-\$100
New Hampshire	7/83	Under 5	Under 5	\$30
New Jersey	7/83	Under 5	Between 1½ & 5 in rear seat	\$10-\$25
New Mexico	6/83	Under 5	Between 1 & 5 in rear seat	\$50
New York	4/82	Under 5	Between 4 & 5	\$25
North Carolina	7/82	Under 2	Between 1 & 2	\$10
North Dakota	1/84	Under 4	Between 2 & 4	\$20
Ohio	3/83	Under 4	Between 1 & 4 if not in parent's vehicle	\$10
Oklahoma	11/83	Under 5	Under 4 in rear; 4-5 in front or rear	Warning
Oregon	1/84	Under 5	Under 5	\$20
Pennsylvania	11/83	Under 4	Between 1 & 4 in rear seat	\$25 after 1/1/85
Rhode Island	7/80	Thru 3	No	\$15
South Carolina	7/84	Under 4	Between 1 & 4 in rear seat	\$25
South Dakota	7/84	Under 5	Between 2 & 5	Warning
Tennessee	1/78	Under 4	No	\$2-\$10
Texas	10/84	Under 4	Between 2 & 4	25-\$50 after 1/1/85
Utah	7/84	Under 4	Between 2 & 4	\$20
Vermont	7/84	Under 4	Between 1 & 4 in rear seat	\$25
Virginia	1/83	Under 4	Between 3 & 4	\$25
Washington	1/84	Under 5	Between 1 & 5	\$30
West Virginia	7/81	Under 5	Between 3 & 5	\$10-\$20
Wisconsin	11/82	Under 4	Between 2 & 4	\$10-\$200
Wyoming	No law			
Dist. of Col.	7/83	Under 6	Between 3 & 6 in rear seat	\$25

tions equipped with child passenger restraint systems or seat belts are occupied. Finally, a child age one (or older) may be secured in a regular seat belt rather than a child safety seat.

From July 1, 1982, to June 30, 1984, a violation of G.S. 20-137.1 resulted in only a warning ticket. Since July 1, 1984, a fine of \$10 has been levied against violators, but no driver license points are assessed for a violation.

### The accident statistics

Data compiled by the National Highway Traffic Safety Administration indicates that during 1983 approximately 374,000 children under four years of age were involved in motor vehicle accidents.<sup>2</sup> Of these, 623 were killed while riding in passenger cars. It is highly significant that only 79 of the 623 killed were secured in a passenger restraint system, while 491 were unrestrained (in the remaining cases it is not known whether the child was secured).<sup>3</sup>


The use and effectiveness of child restraints has been studied extensively in this state by the University of North Carolina Highway Safety Research Center (HSRC). In a recent publication entitled *Effects of the North Carolina Child Passenger Protection Law*, Dr. B. J. Campbell and William L. Hall traced use and injury data from 1974 to 1984. Table 2 (which HSRC based on Division of Motor Vehicle data and Medical Examiner records) shows restraint usage and fatalities for children under six years of age for the last decade. In 1974 only 5.4 per cent of those children under age six who were involved in motor vehicle accidents were secured by either a child safety seat or a regular seat belt, but by 1983 this figure had risen to 25.1 per cent. More important, only four of the children who were killed (one each in 1981 and 1982 and the other two in 1983) were restrained when the accident occurred. None of the children killed before 1981 were restrained, probably because restraint systems were not in general use before the 1980s. (The three restrained children who were killed in 1982 and 1983 were involved in survivable accidents but were improperly secured.) In summary, only one of the 249 fatalities shown in the righthand column of Table 2 was "properly secured" in a child restraint system.

**Table 2.** Percentage of Occupants Aged Five and Younger Who Used Restraints in North Carolina Crashes and Number of Occupants Aged Five and Younger Who Were Killed Each Year (1974-83)

Year	Restrained	No. killed
1974	5.4%	28
1975	5.0	29
1976	4.6	26
1977	5.9	28
1978	4.7	36
1979	7.0	24
1980	10.5	18
1981	11.0	22
1982	17.4	17
1983	25.1	21

The HSRC study also found that the "fatal and serious injury rate for unrestrained children (less than two) is 2.22%, but is only .67% for restrained children, a 70% reduction." *To state it another way, an unrestrained child is more than three times as likely to suffer serious injury or death than a properly restrained child.* In addition, the HSRC data shows that child restraint use increased sharply in this state after G.S. 20-137.1 was enacted, at least for the "under two" age group covered by the act.<sup>4</sup>

### Conclusion

The current data (state and national) strongly indicate that child passenger restraint systems save lives and prevent serious injuries among an age group that cannot make decisions as to their own safety. Some parents understandably resent laws that prescribe how they should care for their own children, even when riding in a motor vehicle. However, child passenger restraint systems (and laws) are not in any sense experimental devices. They were carefully engineered and extensively tested, and (if correctly used) they work extremely well. 

2. Unpublished data supplied from the National Accident Samples System of the National Highway Traffic Safety Administration (November 1984).

3. Unpublished data supplied from the Fatal Accidents Reporting System of the National Highway Traffic Safety Administration (November 1984).

4. William L. Hall and B. J. Campbell, *Effects of the North Carolina Child Passenger Protection Law*, July 1982-June 1984 (UNC Highway Safety Research Center, October 1984).



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# Improving Public Education: Recommendations from Recent Study Commissions

Betsy Lowman

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Few issues in this quarter of the century have produced such national concern as the quality of the public education. A number of groups, both public and private, have studied the current status of American primary and secondary schools and have drawn up recommendations for improving our educational system. This article reviews the recommendations of several of those groups (see the summary in Table 1). Though the focus of these studies and reports was national, the recommendations may influence the curriculum, organization, and personnel of all North Carolina schools over the next several decades. The groups represent slightly different cross-sections of the educational establishment, and it is important to be aware of their compositions.

The issue of "quality" or "excellence" is the focus of several recently published reports by commissions and task forces on education: *A Nation at Risk*, from the National Commission on Excellence in Education; *Report on Federal Elementary and Secondary Education Policy*, from the Twentieth Century Fund; *America's Competitive Challenge*, from the Business-Higher Education Forum; *Academic Preparation for College*, from the College Entrance Examination Board; *Action for Excellence*, from the

States' Task Force on Education for Economic Growth; *The Paideia Proposal*, by Mortimer Adler; and *Horace's Compromise*, by TheodoreSizer for the National Association of Independent Schools and the National Association of Secondary School Principals. (See the detailed bibliography on page 20.)

All of these reports decry the lack of academic skills among high school graduates. All of them point to the differences between American students and their counterparts in other developed nations, particularly in mathematics and science. All of them warn that the viability of the national economy (some even suggest the integrity of the national defense) depends on improving the educational system so that a good supply of bright and energetic scientists, engineers, and businessmen is assured.

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## Comparing the recommendations

Considered together, the recommendations of all of the reports reflect consensus on a number of points. The time to begin improvements is *now*, they all agree, because change is long overdue. And the place to begin is in the public secondary schools. There will be

spillover effects into the primary schools, private schools, colleges and universities, community colleges, and technical schools (some of the reports are more careful than others to point out these spillovers), but the reports primarily cite American high schools as needing reform. All of them emphasize the need to revamp the high schools' "cafeteria-style curriculum in which the appetizers and the desserts can easily be mistaken for the main course."<sup>1</sup> *A Nation at Risk* lists minimum requirements for high school graduation: 4 years of English, 4 of math, 3 of science, 3 of history, 2 of a foreign language, and ½ year of computer science—for every student.

While few will mourn the demise of cream-puff courses, it is important to realize that only the *Nation at Risk* group talks about specific course requirements. All of the others, while stressing the importance of improved curriculum, discuss broader competency in reading,

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The author, a Ph.D. in educational psychology, has written widely on improving educational quality. She is a research associate at the School of Medicine at UNC-Chapel Hill.

1. National Commission on Excellence in Education, *A Nation at Risk* (Washington, D.C.: U.S. Government Printing Office, April 1983).

**Table 1. Summary of Major Reports on Education, 1982-84**

The report	Source	Recommendations	Implementers
<i>A Nation at Risk</i>	National Commission on Excellence in Education, a group of educators and legislators assembled by Terrel Bell, U.S. Secretary of Education.	<ol style="list-style-type: none"> <li>1. Schools, colleges and universities should adopt more rigorous measurable standards and higher expectations for academic performance and student conduct. (This includes higher admissions standards for colleges.</li> <li>2. The high school curriculum for all students should include 4 years of English and math, 3 years of science and social studies, 5 years of computer science, 2 years of foreign language for college-bound students.</li> <li>3. Teaching should be improved by attracting better teachers and paying them more. Higher entrance requirements for preparation programs, scholarships for better students, recognition of "master teachers," and use of outside school resources to alleviate shortages in math and science are suggested.</li> <li>4. More time should be spent on teaching and learning. The present school day should be used more effectively, the day and year lengthened, and more homework required.</li> </ol>	<ol style="list-style-type: none"> <li>1. Federal government.</li> <li>2. State and local officials.</li> <li>3. School boards, principals, superintendents.</li> <li>4. Citizens, educators, parents, students.</li> </ol>
<i>Report of the Task Force on Federal Elementary and Secondary Education Policy, 1983</i>	The Twentieth Century Fund Task Force on Education, a report to the U.S. House of Representatives Budget Committee.	<ol style="list-style-type: none"> <li>1. The federal government should stress better schooling for <i>all</i> students.</li> <li>2. A national master teacher program should be instituted to improve the quality of teachers.</li> <li>3. Federal "impact" aid should be sent to school systems with large enrollments of immigrant students.</li> <li>4. The primary language taught in schools should be English; all students should be offered a second language.</li> <li>5. Schools should offer advanced courses in math and science.</li> <li>6. School districts should be awarded federal moneys to create small, individual programs for students who are failing.</li> </ol>	<ol style="list-style-type: none"> <li>1. Elementary and secondary schools.</li> <li>2. Federal government.</li> </ol>
<i>Action for Excellence</i>	Education Commission of the States Task Force on Education, a Denver-based group of governors. The Commission was headed by Governor Hunt of North Carolina.	<ol style="list-style-type: none"> <li>1. Goals for improving educational performance should be clear, compelling, and widely agreed on.</li> <li>2. Basic skills should include these competencies: reading, writing, mathematics, science, listening and speaking, computer science, "basic employment," and economic competency.</li> <li>3. States should have plans for improving the curriculum in grades K-12.</li> <li>4. The academic experiences of children should be more intense and productive.</li> <li>5. Instructional management should allow more effective and efficient use of classroom resources.</li> <li>6. Student progress should be closely monitored.</li> <li>7. States should change their methods of recruiting, training, and compensating teachers.</li> <li>8. Certification for teachers and administrators should be changed to reflect new training and recruitment policies.</li> <li>9. Principals should become curriculum leaders rather than professional bureaucrats.</li> </ol>	<ol style="list-style-type: none"> <li>1. State and corporate leaders.</li> <li>2. Elementary and secondary schools.</li> </ol>



**Table 1.** Summary of Major Reports on Education, 1982-84 (*continued*)

The report	Source	Recommendations	Implementers
		<p>10. States should foster partnerships between public schools and the private sector.</p> <p>11. States and corporations should ensure that unserved or underserved students (members of minority groups, women, handicapped, gifted) receive the same quality of education as all other students.</p>	
<i>Academic Preparation for College</i>	The College Board, publishers of the College Entrance Examinations.	<p>1. To read critically and analytically to respond imaginatively to what is read.</p> <p>2. To compute (add, subtract, multiply, and divide) and do statistics, algebra, and geometry.</p> <p>3. To write English clearly and precisely.</p> <p>4. To understand the principles, structure, and use of the English language.</p> <p>5. To speak, listen, and separate fact from fiction.</p> <p>6. To master fundamental concepts in at least one scientific field through laboratory and field work.</p> <p>7. To know general political, social, and cultural history, particularly of the U.S.</p> <p>8. To be proficient in another language.</p> <p>9. To understand and appreciate different art forms.</p> <p>10. To program computers for personal use.</p>	Secondary schools.
<i>The Paideia Proposals</i>	Consortium of nationally recognized liberal arts educators (among them Mortimer Adler).	<p>1. Basic education should be general liberal arts, not vocational, for all students with no electives except a second foreign language.</p> <p>2. Instruction should have three phases:</p> <ul style="list-style-type: none"> <li>—Didactic instruction and use of textbooks in language, literature and arts, math and natural science, and history, geography, and social studies.</li> <li>—Coaching to develop intellectual skills in reading, writing, speaking, listening, calculating, problem-solving, observing, measuring, estimating, and criticizing.</li> <li>—Socratic discussion of books and works of art to expand students' understanding of ideas and values.</li> </ul> <p>3. Teachers should be trained in general liberal arts before specializing to teach a particular field. Teachers should be better paid.</p> <p>4. The principal should provide educational leadership, not manage a business, and should be able to hire and fire teachers and enforce standards of conduct.</p> <p>5. Preschool tutoring should be established for children from disadvantaged homes.</p> <p>6. Children with deficiencies should receive special help.</p>	<p>1. Local communities through local school boards.</p> <p>2. Elementary and secondary schools through school administrators, who are crucial to the process.</p>
<i>America's Competitive Challenge: The Need for a National Response</i>	The Business-Higher Education Forum, a group of businessmen and high school and college administrators	<p>1. In order for America to compete in world markets, the current and future work force should be nurtured along with long-term capital investments and technological innovations.</p> <p>2. The federal government should upgrade and replace obsolete equipment and facilities in universities.</p>	<p>1. Industry and university leaders.</p> <p>2. Federal government through public policies relating to these problems.</p>

**Table 1.** Summary of Major Reports on Education, 1982-84 (*continued*)

The report	Source	Recommendations	Implementers
		3. The federal government should use tax incentives to get industries to invest in the training and retraining of workers, including apprenticeships. 4. Industries should use academicians as consultants. 5. Universities and industries should collaborate on problem-oriented research.	
<i>Horace's Compromise</i>	The National Association on Independent Schools and the National Association of Secondary School Principals.	1. Basic competencies in reading, writing, and mathematics should be acquired in elementary school. 2. High school should be voluntary for all children. It should have a common curriculum for all students, and no tracking should occur. 3. The curriculum should include (a) inquiry and expression, (b) math and science, (c) literature and the arts, and (d) philosophy and history. 4. Teachers should assume the role of academic coach, helping students to pass examinations in specific subjects. Teachers would work with small groups of students in small schools. 5. Students should be able to move through the curriculum at their own speed, without being locked into a grade by their age.	

writing, computational skills, science, history and philosophy, and a foreign language. Every report emphasizes science and mathematics as areas of particular national concern. Most of them include literature and the performing arts as essential to the high-quality education sought for American society.

Another broad area of agreement among all of the commissions is the need to improve the quality of teaching in public high schools. All of the groups agree that teachers' salaries should be raised and that outstanding teachers should be recognized publicly and financially and should help less capable teachers improve their performance. They also commonly recognize that efforts must be made to recruit math and science teachers and that higher salaries must be paid in the fields of math and science in order to attract and hold competent people. At the same time, the groups maintain that teacher training programs must raise their admission requirements, the quality and length of training, and the standards of certification.

The reports further agree about who is to implement the recommended changes. Though all of the commissions are national in scope, none advocates that the federal government assume full responsibility for the task. The federal role, if mentioned at all, is to provide money for prospective math and science teachers among college students, loans and grants to teachers to upgrade their skills, and "impact" aid both to schools with high concentrations of disadvantaged students and to handicapped students. The Twentieth Century Fund suggests that the federal government assume the achievement-testing function now handled separately by the states and manage the test data for the states. The recommendations of other commissions in large measure agree.

All of the reports give the job of implementing these changes to state and local boards of education. The commissions that include representatives from business spell out a cooperative role for business to play in the education improvement enterprise, and those with representatives from universities suggest that col-

lege faculties should assist the local educational efforts. But all of the reports say that most of the changes and most of the financing must be directed by state and local agencies and governing bodies.

And who will lead the local effort? Most of the reports mention this important function and cite the superintendent or principal(s) as the initiator/supervisor, the "curriculum leader" who presumably has the expertise to decide which changes to make in course offerings and to coach teachers in the classroom arts. Local boards of education and state boards and administrative offices are also called on to provide leadership for educational improvements.

Though the recent studies of educational maladies have many common themes, there are several areas of disagreement among them. Chief among the disagreements is how the recommended changes are to be effected—especially how the curriculum should be modified. Everybody wants students to know more, but some will be happy with requiring more difficult courses for graduation while others stress the impor-



tance of the underlying competencies—writing, listening, reading, and speaking. Most but not all of the study groups feel that a second language is essential; all insist that students must master English as their primary language. Most but not all of the commissions consider the arts an essential element of the high school curriculum. Business interests represented on several of the commissions would retain an improved vocational training program at the high school level, while several other groups feel that vocational training would be cheaper, more effective, and more efficient if managed by private industry, community colleges, and technical schools.

Upgrading American high schools to resemble the academic preparatory schools of Europe and Asia is attractive. But will all students who now attend comprehensive high schools be able to complete such requirements as four years of math, three years of science, and two of foreign language? Adler simply assumes that all students can cope with the curriculum he proposes.Sizer suggests that high school be voluntary and that dropouts find their place in industry. Most of the reports simply ignore the possibility that large numbers of students will not finish school. The assumption that most students will rise to the academic challenges put before them is interesting and debatable.

The reports offer varied suggestions of how students should spend their time both at school and at home. The authors of *A Nation at Risk* want a longer school day and a longer school year in order to accommodate an expanded curriculum. Other writers mention using the existing school day to better advantage by eliminating assemblies, school picture-taking, and study halls. Some insist on more homework; others never mention it. Several want more flexible scheduling to give longer blocks of time to laboratory sciences in particular. Several reports recommend that scheduling problems be relieved by organizing smaller schools.

Another source of variance among the reports is the kind of teaching prescribed. Most groups feel that raising standards for admission to training programs for

teachers and paying higher salaries to teachers who follow the classic lecture style will suffice. However, Adler andSizer argue for an altogether different model of teaching; they stress the importance of individual tutoring and coaching and the Socratic technique of questioning rather than lecturing. Many of the reports also suggest bringing in people from universities, business, and industry to teach courses or to lecture on particular topics whether or not they have a teaching certificate; others assume that only certified teachers can instruct students effectively.

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### Considering the implications

The study groups have all stressed that the goal is to develop in the students *competence in specific fundamental subjects* rather than simply to add more difficult required courses. This approach is one that I applaud. It emphasizes the quality of the teaching and learning and deemphasizes mere accumulation of course credits. If the broader definitions of *competencies* of the curriculum are adopted, the changes will be more far-reaching and longer-lasting than changes based on a narrower view.

The study groups were also wise to expect changes to be initiated at the state and local level. Legally, responsibility for and power over educational matters rests with the state and local governments. It is also there that most of the money to finance these changes must be found. And though states are becoming more and more alike in their educational goals, some local differences remain, such as the need to speak Spanish in Texas and Florida.

All of these national study groups endorse improving the teaching profession and increasing teachers' salaries, but they do not agree on how to accomplish this goal. Raising salaries and standards for admission to teacher training programs and funding teacher retraining and college loan programs for prospective science and math teachers will not rid the system of some ineffective teachers who already have tenure. The "best and brightest" novice teachers leave the pro-

fession because they see no future and feel no comfort in a profession that harbors people with limited teaching skills, however well intentioned.

In discussing teaching, only Adler andSizer indicated a need to change the teaching style most prevalent in American high schools, in which the teacher mostly talks and the students mostly listen. Both of them favor more individual tutorials, more coaching of individuals and small groups, and more debate and public speaking among students. This mode of instruction assumes that students have read their texts and done their homework and are ready with their questions. I think that these are reasonable expectations to have of most students.

Both Adler andSizer describe a teacher as a scholar—constantly learning more about his or her subject, excited about sharing its intricacies, and caring about students, whatever their interest in the subject. Adler details the liberal arts training needed to produce such teachers but not how to choose those with the personal strength required for great teaching. Effective teachers are frequently described as having understanding, patience, friendliness, intelligence, a sense of humor, and high moral character. Perhaps a student teacher shows some promise and begins teaching; too often the school environment does not foster further development of his desirable characteristics as a teacher. With 300 students, a teacher cannot easily develop a personal relationship with each student or even respond to students individually every day, especially when precious class time is absorbed by administrative matters and petty discipline problems.

Though most of the commissions reported on here ignored the question of who was to lead efforts to achieve excellence in education, those that did mentioned either the local superintendent or the principal as the school's *curriculum leader*. But not all principals have an academic background in a curriculum area: some have been coaches, ministers, businessmen, or vocational instructors. A principal's in-service education is frequently "education administration." Principals and superintendents are also

expected to evaluate teachers' performance, though they may have not taught a course in years, if ever.

The commissions as a group can be criticized for several broad omissions. None said how their recommended improvements are to be financed. They did not consider those students who may be unable to handle the tougher curriculum. None of the reports emphasize physical education as essential to an educated citizenry, though surely it is. Finally, the disciplines that nurture the soul—music, art, literature, drama, and dance—were mentioned only very briefly.

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## Looking at North Carolina

The sources quoted thus far in this article have been national in scope. Do these national concerns extend to the more local level, to North Carolina? Good education has long concerned North Carolinians, perhaps conscious of the state's very low national rankings in public expenditures for schools and in student achievement.<sup>2</sup> Several very encouraging activities have already begun.

While chairing the national Task Force on Education for Economic Growth, Governor James B. Hunt brought together a similar group to address the particular education problems of North Carolina in 1984. The North Carolina Commission on Education for Economic Growth was composed of legislators, parents, educators, business leaders, students, and economists and was co-chaired by a member of the State Board of Education and a businessman. This group made six recommendations:

1. Create local business and community task forces on education, local foundations for public education, and local school and advisory councils.

2. Improve the school curriculum by promoting students only when they have mastered certain competencies at the third-, sixth-, and ninth-grade levels and provide summer schools for those who fail. Teach more science and math at all

grade levels and upgrade vocational offerings. Teach honesty, loyalty, and patriotism in schools.

3. Raise teachers' pay, offer a career growth program, create a center for advancement of teaching, and strengthen the quality assurance program and extend it to experienced teachers.

4. To improve the learning environment, reduce class size, give teachers more clerical help, establish more rigorous discipline, improve laboratory and vocational education facilities, and purchase more computers.

5. Increase administrators' pay, establish quality assurance and career growth programs for them, and offer them more training in management.

6. Support special-needs children with more counseling, more programs for the gifted, and programs for dropouts; attract more women and minority-group members to math, science, and foreign language programs; and establish an Office of Rural Education.

The North Carolina Commission on Education for Economic Growth mentions setting competency standards for promotion in elementary and junior high schools, but it makes no suggestions for upgrading the high school curriculum. It apparently assumes that better pay will improve the quality of teaching. Unlike several of the national groups, the North Carolina commission apparently favors keeping—but also improving—vocational education at the high school level.

In 1984 the North Carolina Association of Educators (NCAE) Task Force on Excellence in Education produced a report that recommended: curriculum revisions that emphasize mastery of integrated knowledge, equal educational opportunities for all students, decentralized decision-making in which teachers can participate more fully, more research in education, and more public involvement in schools. For the teaching profession, the NCAE would (a) raise base pay with cost-of-living increases and establish a career ladder for teachers, (b) require more rigorous teacher preparation, (c) institute loan programs and scholarships for prospective math and science teachers, and (d) provide better working conditions and continuing edu-

cation for teachers who are currently certified.

The NCAE report suggests more advanced science courses and courses in civics, logic, and philosophy in the high school curriculum. The report writers wonder why courses and facilities are duplicated in high schools, community colleges, and universities in the same North Carolina cities (for example, Greensboro, Charlotte, Durham, and Raleigh). They also identify discipline and attendance problems as symptoms of poor programs, not separate issues.

The NCAE report made an interesting recommendation about leading curriculum reform. Teachers, not principals, should decide how to change the curriculum: they should also train new teachers and evaluate those currently under contract, thus assuming much of the decision-making now done by principals. Taking the idea further, it suggested that the principalship be an appointed office with a term of five to ten years, rotated among the teaching staff, like many departmental chairmanships in colleges. One advantage of a rotating principalship is that it would increase the number of female high school principals in the state (there are now fewer than ten) because most of the teachers who represent the pool of candidates for the principalship are women.<sup>3</sup>

North Carolina was among the first states to begin testing competencies in reading and mathematics for high school graduation. A third competency test—of writing skills—is scheduled to be added in 1985. Almost all students are expected to take these exams, and almost all (93 per cent) pass them (some on the second or third try). The same basic skills are tested at grades 3, 6, and 9, so that parents know how their children are doing and teachers can remedy deficiencies if necessary.

Over the past ten years, the University of North Carolina has completed several major studies of teachers in the state and the teacher training programs in the

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2. "State SAT Averages...and Caveats," *Education USA* (October 12, 1981), 53.

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3. *North Carolina Education Directory 1983-84* (Raleigh, N.C.: State Department of Public Instruction), pp. 26-115.



state higher education system. Standards have already been raised (beginning in 1973 at UNC-Chapel Hill), and several weak programs have been eliminated or upgraded. Applicants for teaching positions in mathematics and science remain in short supply, and these positions are widely advertised. In my opinion, it would be easy to institute a system in which undergraduate grants-in-aid are provided in exchange for a pledge of a certain number of years spent in teaching in "needful areas"—both in geographic areas where teachers are needed and in subject areas where teachers are needed. The University is also establishing a summer institute to retrain school administrators.

Even more encouraging are the General Assembly's recent efforts to improve the corps of teacher. In 1980 the training period and supervision of provisional teachers were extended and intensified under the Quality Assurance Program (QAP) and annual evaluation of all teachers was instituted under the Performance Appraisal Program (PAP).<sup>4</sup> In the 1983 session the legislature clarified some of the procedures with respect to teacher dismissals and expanded the grounds for dismissal to include incompetent performance, but it did not pass a much-debated bill concerning merit pay for teachers. The North Carolina Association of Educators, while endorsing most of the national recommendations to improve education, opposed merit pay on the basis that it would replace "collegiality with competitiveness" and successfully lobbied against it in 1983.

One experiment in teacher improvement was endorsed, even financed, by the 1983 General Assembly. The Charlotte-Mecklenburg school system was granted exemption from the tenure laws until 1985 in order to develop new procedures for granting tenure, new patterns of staff development, and a clearer career ladder.<sup>5</sup> Under this experimental system,

## New Legislation for North Carolina Public Schools

In its 1984 short session, the General Assembly passed legislation<sup>1</sup> that was based on its finding "that it is essential to attract and retain the best people in teaching and in school administration...." The legislation requires that the State Board of Education develop a career growth program for teachers that includes a series of salary classifications based on a teacher's initiative and success in increasing his or her professional abilities. The program must include methods of annual examination of teachers and dismissal of those who cannot perform adequately after ample opportunity. The State Board must "devise methods and instruments of evaluation that will determine what levels of performance, effort and ability and what accomplishments warrant different salary classifications and at what point failure to rehire a nontenured teacher *or dismissal or demotion of a tenured teacher* is appropriate" [emphasis added]. The Board must also establish a similar program for principals and other school administrators. By the time this article appears, the State Board must have submitted a report on its career growth program to the 1985 General Assembly (within five days after it convenes).<sup>2</sup> The 1984

legislation requires that the career growth program, as approved by the General Assembly, be implemented by July 1, 1986, and states that "no funds for annual increments, cost-of-living increases, or other salary increments for teachers shall be appropriated for certified personnel of the public schools until these pilot career development programs are implemented."

In other 1984 legislation, the General Assembly required the State Board "to develop a standard course of study to be offered to every child in North Carolina public schools and to submit the proposed standard course of study to the General Assembly by October 15, 1984." The State Board must perform a statewide audit of present curricula and refine them to produce a course of study "stress[ing] mastery of integrated knowledge based on mastery of competencies in the basic skill areas rather than the study of isolated disciplines." The standard course of study must prescribe "standards for student performance and promotion and may consider appropriate levels at which remediation should begin...." This course must also describe appropriate class sizes and staffing levels for each required course and may include minimum requirements for facilities, staff, and material.—SHC

1. N.C. Sess. Laws 1983, Ch. 971, Part III, § 4.

2. N.C. Sess. Laws 1983, Ch. 1003, § 2.

4. William P. Pope, "QAP: Recommendations on Improving the Quality of Teachers," *Popular Government* 47, no. 3 (Winter 1982), 13-16.

5. Philip Schlechty and Anne Joslin, "The Charlotte-Mecklenburg Teacher Career Develop-

the probationary period for a new teacher is extended to six years and several levels of teacher expertise or competence with corresponding differences in pay are recognized.

Over the past year the State Department of Public Education has studied the

ment Program," *Popular Government* 49, no. 1 (Winter 1984).

effects of a longer school day and a longer school year. Several school systems have experimented with one or both of these changes, and the effects on students' achievement will be measured. Longer class periods and increased homework are also being tried in a number of junior high and high schools. These "structural" changes can be quickly effected and do not have the potential for chang-

ing the *quality* of secondary education that modifications in what is taught and who does the teaching may have.

Enduring signs that North Carolina promotes excellence in education have existed for many years. The state schools for the arts and math and science<sup>6</sup> show willingness to recognize and deliberately challenge especially gifted students. The system of community colleges is extremely well situated geographically and well equipped to expand vocational offerings if public high schools ever become exclusively preparatory academies for colleges and universities. The Governor's Schools, summer programs for academically talented high school students, are almost 20 years old.

## In conclusion

It is to be hoped that teachers and other educators who are expected to effect these changes will be given enough time to effect the in-depth, long-range reforms that are needed. The Charlotte-Mecklenburg experiment needs at least five years to produce results; it has been given only two. Legislatures and newspapers have in the past been too quick to pronounce educational programs like Head Start a failure after only four or five years. For once, research indicating the kinds of programs and people that are needed has been done and provides a sound basis for change.

Public opinion at present supports educational improvement. Last year a Gallup poll found widespread dissatisfaction with public schooling, including teachers and curriculum, and a willingness to finance reform. The poll also found that a majority of taxpayers favored merit pay for teachers, tuition tax credits for private schools, and more homework. But public opinion and interest shift easily as new national emergencies arise. Action to improve education should be taken now while the present favorable climate of opinion exists.

6. Charles R. Eibler, "Report Card: the First Year at the School of Science and Math," *Popular Government* 47, no. 1 (Fall 1981), 23-26.

A major obstacle in the struggle for excellent high schools may be teachers themselves. Despite the financial benefits and additional prestige being offered in these improvement plans, professional teachers' organizations have opposed merit pay, voucher systems, professional evaluations, and the lifting of tenure from any teacher. They have further opposed admitting noncertified but well-educated individuals to their ranks even to meet desperate personnel needs in math and science. National and state teachers' organizations sponsor significant lobbying efforts in both Washington and Raleigh. It is encouraging that the NCAE has embraced and even supported some of the proposals offered by the national commissions.

In sum, state and national experts and leaders agree in large measure on the changes needed in education. There seems to be wide popular support for these improvements and a willingness to finance them. North Carolina has demonstrated leadership in this reform movement, the state's economy can support improved high school programs and will clearly benefit from it, and the state teachers' organizations have shown some signs of accepting the proposed changes in certification, tenure, pay, and promotion. All of these indicators engender optimism among supporters of high-quality education. **D**

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# State and Local Relations in North Carolina Public Education

Benjamin B. Sendor

**N**orth Carolina's public school system began with a seed sown in the Constitution of 1776, which directed the General Assembly to establish public schools. The system evolved during the next 200 years into today's intricate division of responsibilities and control among the state, county governments, and local school administrative units. This article will trace the history of that development with respect to basic issues of governance, finance, teachers, students, curriculum, and textbooks. It will also explain the present allocation of responsibility and control and discuss major current questions about that allocation.

## 1776 through the Civil War

The Constitution of 1776 required the General Assembly to establish schools staffed by teachers paid by public funds. The legislature took its first step to carry out that mandate in 1825 by creating the Literary Fund, administered by the Literary Board, as a source of revenue for public schools.<sup>1</sup>

The public schools began to function as a statewide system in 1839. That year the General Assembly created the first formal local government bodies to supervise public education, ordering the justices of the peace in each county to appoint a body known as the board of coun-

ty superintendents to administer that county's public schools. The General Assembly further required the superintendents to divide their counties into school districts and to appoint school committees to manage the schools in each district.<sup>2</sup> By the mid-1840s all counties had established a public school system.<sup>3</sup>

The General Assembly also authorized the first distribution of money from the Literary Fund in 1839. Each school district that raised \$20 a year locally was entitled to receive \$40 from the Literary Fund.<sup>4</sup> With that distribution the General Assembly began the search, which continues today, for a fair division between the state and local governments of the fiscal burden for public education.

Other major developments before the Civil War included creation of the appointive post of State Superintendent of Public Instruction<sup>5</sup> and (in 1852) adoption of the first statewide requirement that all teachers be certified by local committees of examination.<sup>6</sup> Local officials had full control over the curriculum and textbook selection.<sup>7</sup>

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2. Edgar E. Knight, *Public School Education in North Carolina* (Boston: Houghton-Mifflin Co., 1916), pp. 140-47.

3. *Ibid.*, pp. 148-49.

4. N.C. Sess. Laws 1839, Ch. 8.

5. Knight, *supra* note 2, pp. 156-57. Calvin H. Wiley, an ardent supporter of public education, was selected as the first state superintendent.

6. M. C. S. Noble, *A History of the Public Schools of North Carolina* (Chapel Hill: University of North Carolina Press, 1930), pp. 204-05.

7. *Ibid.*, p. 199.

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The author is an Institute faculty member who has worked in the area of school law.

1. N.C. Sess. Laws 1825, Ch. 1.

But North Carolina's new public school system, growing and improving under the leadership of Superintendent Calvin H. Wiley, was another casualty of the Civil War. When the war ended, Wiley was removed as State Superintendent, and the Literary Fund collapsed because the North Carolina and Confederate securities that supported the fund's endowment were worthless.<sup>8</sup>

## 1868 to 1900

With the adoption of the Constitution of 1868, the state began the task of reviving the public school system. The Constitution directed the General Assembly to maintain, through taxation or otherwise, a general and uniform system of free public schools for a minimum four-month term. That provision still defines the state's responsibility for public education; only the length of the minimum term has changed (now nine months).

The Constitution of 1868 also changed the form of governance for the school system. It created a new state agency—the State Board of Education, composed of designated state officials—to replace the old Literary Board, and it empowered the new board to manage state school funds and issue rules to govern the public schools. The office of State Superintendent of Public Instruction became elective. Boards of county superintendents were abolished and local supervision of schools was transferred to the boards of county commissioners. Commissioners were required to divide their counties into districts and to maintain from county resources one or more schools in each district for at least four months a year. The Constitution authorized the General Assembly to require at least 16 months of compulsory education for children between the ages of six and 18.<sup>9</sup>

The General Assembly implemented the provisions of the Constitution of 1868 in Chapter 184 of the Public Laws of 1868-69. That statute set the framework for the school system that prevailed until 1900. It carried out the constitutional mandate by establishing a State Board of Education and vesting county commissioners with local control over public schools. It also created for all townships popularly elected school committees with duties similar to the duties of today's local school boards: to maintain schools for the minimum term with free tuition for all children between the ages of six and 21, to hire and fire teachers, and to provide schoolhouses and furnishings.

In finance, the statute earmarked 75 per cent of total state and county poll tax proceeds as school revenue in addition to the General Assembly's appropriation of \$100,000 to the schools from the state's general fund. Chapter 184 required that all state-appropriated school money be apportioned according to population. The law further required county commissioners to levy local school taxes sufficient to raise revenue to operate schools for a four-month term.

The statute directed county commissioners to appoint a county examiner to examine teachers and issue certificates. Local school committees were empowered to hire and fire teachers. The statute entitled all resident children of all races between the ages of six and 21 years old to attend public school free of tuition; but it required dual school systems, segregated by race.

Chapter 184 contained a legislatively prescribed outline course of study for the first time: reading, writing, spelling, arithmetic, geography, and grammar. It also began the practice of state adoption of textbooks. The State Board of Education was to adopt texts, and all schools were required to use these books exclusively.

The system established in 1868 and 1869 evolved through the rest of the century. In 1872 the General Assembly designated the boards of county commissioners as boards of education, the boards having the same chairman.<sup>10</sup> The 1881 legislature created the post of county superintendent, identical to today's local superintendent; the superintendent was elected by joint action of the county board of education and the county justices of the peace.<sup>11</sup> In creating the new executive position, the legislature brought local operation of public education under consolidated, countywide management. In 1885 the General Assembly created three-member county boards of education as separate agencies, with members chosen biennially by the board of county commissioners and the county justices of the peace.<sup>12</sup>

The State Supreme Court dealt a serious blow to the rehabilitation of public education after the Civil War through a series of decisions that culminated in *Barksdale v. Commissioners of Sampson County* in 1885.<sup>13</sup> In that case the Court declared that local school expenses were not "necessary expenses," and therefore the Constitution required a vote of the people before local taxes could be levied for schools.

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8. *Ibid.*, pp. 233-49, Hugh T. Lefler and Albert R. Newsome, *North Carolina, The History of a Southern State*, rev. ed. (Chapel Hill: University of North Carolina Press, 1963), pp. 380-81.

9. N.C. CONST. OF 1868, arts. III, IX.

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10. N.C. Pub. Laws 1872-73, Ch. 90.

11. N.C. Pub. Laws 1881, Ch. 200.

12. N.C. Pub. Laws 1885, Ch. 174.

13. 93 N.C. 472 (1885).



## 1900 through 1930

The first years of the twentieth century marked a turning point for North Carolina's public school system. They ushered in a period of heightened public support for education, spurred by the efforts and enthusiasm of Governor Charles B. Aycock (1901-05). It also marked a new approach in state funding of education: direct financing from the state's tax revenue. The state began its new financing role in 1899, when the General Assembly appropriated \$100,000 to be distributed to the counties on a per capita basis.<sup>14</sup>

In 1901 the legislature appropriated a second \$100,000 to be distributed through the state's first equalization fund: the size of a county's share of that money was inversely proportional to the size of its property tax base and the county's ability to finance its schools through a property tax levy.<sup>15</sup> In 1903 the General Assembly re-established the Literary Fund to serve as a loan fund for school construction.<sup>16</sup>

A major financial breakthrough occurred in 1907, when the North Carolina Supreme Court, in *Collie v. Commissioners*,<sup>17</sup> reversed the *Barksdale* decision. This decision made it possible for counties to levy local taxes without a vote in order to raise the revenue needed to support the minimum four-month school term. The General Assembly increased the state-levied property tax in 1913<sup>18</sup> in order to fund appropriations to the counties that enabled local school boards to lengthen the school terms, and in 1918 the Constitution was amended to make the minimum term six months statewide. To provide more financial support for the longer term, the General Assembly instituted a system in 1919 under which the state and counties equally shared the burden of paying for the six-month term; it also established an equalization fund to help poorer counties meet this obligation.<sup>19</sup>

Equity was a chief financial concern in public education in the 1920s. In 1919 the General Assembly had ordered a statewide revaluation of all property in order to prevent counties from minimizing the amount their citizens owed in state property taxes by underassessing property values.<sup>20</sup> But after a constitutional amendment that authorized the income tax in 1920, the legislature began levying a state income tax as a chief source of state

revenue and abandoned the property tax, leaving it entirely to local governments.<sup>21</sup>

The appropriation of state revenue to public schools in Chapter 146 of the Public Laws of 1921 included a new equalization procedure known today as "power equalization": the statute directed the State Board of Education to distribute to each county the amount needed to finance a six-month term after the county had levied a local property tax of 30 cents on every \$100 valuation.<sup>22</sup> Despite the 1920 revaluation of property, the problem of fair and accurate valuation continued to spark controversy throughout the twenties. To ensure the uniformity of property assessment required for effective power equalization, the General Assembly established a State Board of Equalization in 1927. The legislature directed the board to standardize local property values and to distribute to the respective counties the money necessary to finance a six-month term after they had levied local property tax of 40 cents on every \$100 valuation.<sup>23</sup>

The period from 1900 through 1930 saw major changes in other facets of public education as well. The General Assembly enacted statewide compulsory education in 1913, requiring all children between the ages of eight and twelve to attend school for four months each year.<sup>24</sup> To facilitate attendance, the legislature passed child labor laws that limited the hours in which children could work in factories.<sup>25</sup>

In 1901 the General Assembly designated the State Board of Education as a textbook commission, responsible for adopting texts for elementary schools on the basis of recommendations from a subcommission.<sup>26</sup> In 1923 the legislature changed the procedure for adopting elementary school textbooks by creating a separate textbook commission to recommend books to the State Board of Education; the board then selected books for adoption. High school texts were selected differently—the State Board of Education approved a list of books, and the local school boards made final choices on the basis of recommendations by the county commissioners.<sup>27</sup> The General Assembly made the State Board responsible for adopting high school textbooks in 1931.<sup>28</sup> The 1923 legislation

21. Lefler and Newsome, *supra* note 8, pp. 541-42.

22. N.C. Pub. Laws 1921, Ch. 146; Betters, *supra* note 14, p. 32.

23. N.C. Pub. Laws 1927, Ch. 256; Betters, *supra* note 14, pp. 37-39, 54-56; Charles D. Liner, "Public School Finance," *Popular Government* 42, no. 2 (Spring 1977), 13.

24. N.C. Pub. Laws 1913, Ch. 173.

25. N.C. Pub. Laws 1913, Ch. 64; Knight, *supra* note 2, pp. 347-48; Lefler and Newsome, *supra* note 8, p. 558.

26. N.C. Pub. Laws 1901, Ch. 1.

27. N.C. Pub. Laws 1923, Ch. 136.

28. N.C. Pub. Laws 1931, Ch. 359.

14. N.C. Pub. Laws 1899, Ch. 637; *State Centralization in North Carolina*, ed. Paul V. Betters (Washington: The Brookings Institution, 1932), p. 23.

15. N.C. Pub. Laws 1901, Ch. 543; Betters, *supra* note 14, p. 23.

16. N.C. Pub. Laws 1903, Ch. 567.

17. 145 N.C. 170 (1907).

18. N.C. Pub. Laws 1913, Ch. 33.

19. N.C. Pub. Laws 1919, Ch. 102; Betters, *supra* note 14, pp. 30-31.

20. N.C. Pub. Laws, 1919, Ch. 84; Betters, *supra* note 14, p. 31.

also directed the textbook commission to prepare an outline course of study, subject to approval by the Superintendent of Public Instruction.

### Fiscal Reforms of 1931 and 1933

By 1931 the Depression and the problems faced by taxpayers in paying property taxes had thrown the public school finance system into disarray. Many counties were defaulting on debts, and many teachers were not paid.<sup>29</sup> The General Assembly responded by enacting the School Machinery Act (1931), which radically changed the structure of public school finance.<sup>30</sup> This legislation made the state responsible for paying all current expenses necessary to finance a minimum six-month school term but left the burden of financing capital expenses to the counties. State responsibility for financing a uniform statewide basic level of education for a minimum term remains the framework of public school finance in North Carolina. In 1933 the legislature completed the reform of 1931 by extending the minimum term financed by state funds to eight months, abolishing all existing local school taxes, and authorizing counties to levy new supplemental school taxes to support schools at standards higher than minimum state requirements.<sup>31</sup>

In undertaking a foundation system of financing a basic level of education throughout North Carolina, the state acted decisively and dramatically to rescue public schools from economic collapse. Yet the legislation of 1931 and 1933 was more than a practical measure to avoid economic disaster; it also held forth the prospect of equal opportunity for all North Carolina children.

### The current system

**Governance.** The State Constitution sets out the basic structure of public school governance. Section 2 of Article IX requires the General Assembly to provide for a general and uniform system of free public schools for a minimum nine-month term. Section 4 of Article IX provides for a State Board of Education composed of the Lieutenant Governor, the State Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly. The State Board determines education policy for the state, including distribution of state school funds, regulation of the grade and salary of school employees, adoption of a standard course

of study, adoption and supply of textbooks, and supervision of student transportation.<sup>32</sup>

Section 7 of Article III and Section 4 of Article IX designate the Superintendent of Public Instruction, elected by statewide popular election, as the secretary and chief administrative officer of the State Board of Education. The Superintendent is charged with administering, through the Department of Public Instruction, the policies established by the Board.<sup>33</sup> G.S. 115C-27 directs the Board to appoint a Controller, subject to approval by the Governor, to oversee the Board's fiscal affairs, including administration of the state school budget and federal education funds, allotment of teachers, and purchase of textbooks. Thus the chief financial officer of the school system is responsible to the Board, not to the Superintendent.

Local boards of education are responsible for local administration of the public schools. As of school year 1983-84, the state was divided into 142 school units—100 county units and 42 city units—each administered by its own school board. (With only a few exceptions, "city" units have nothing to do with municipalities. A city school unit merely takes its name from the city that is geographically most closely associated with it. A city unit has its own governing board and is administered separately from the county unit, but it too depends on appropriations by the county commissioners for its local funding.) Members of county school boards are chosen by popular election; members of city school boards are either elected or appointed, as provided in the respective local acts that created these boards. Local boards have five major types of duties: (1) to hire and fire school employees, (2) to set education policy within the guidelines of state education policy, (3) to preserve the assets of the school unit and manage the local school budget, (4) to inform the county commissioners of the school unit's fiscal needs, and (5) to serve as a hearing board for local education disputes.<sup>34</sup> Local boards appoint superintendents as chief administrative officers to implement state and local board policies in their units.<sup>35</sup>

**Finance.** As explained above, the current structure for public school finance was set by the School Machinery Act of 1931. That law is the keystone of a system that makes the state responsible for all current expenses necessary to maintain the minimum nine-month term; it also authorizes counties to supplement that funding and makes

29. By November 1933, 61 counties and 146 municipalities had defaulted on debts. See *Report of the Local Government Commission* (Raleigh, N.C., 1934), p. 8.

30. N.C. Pub. Laws 1931, Ch. 728; Betters, *supra* note 14, pp. 48-54.

31. N.C. Pub. Laws 1933, Ch. 562.

32. N.C. CONST. art. IX, § 5; N.C. GEN. STAT. § 115C-12.

33. N.C. GEN. STAT. § 115C-21.

34. *Id.* §§ 115C-45 and -47; Anne M. Dellinger, *A Legal Guide For North Carolina School Board Members* (Chapel Hill: Institute of Government, 1978), pp. 2-3.

35. N.C. GEN. STAT. §§ 115C-271 through -276.



**Table 1. Sources of Funds for Current and Capital Expenditure, North Carolina Public Schools, 1982-83**

	Current operating expenditure		Capital expenditure	
	Amount	%	Amount	%
State	\$1,469,972,022	64.4%	\$ 739,195	0.8%
Federal	240,511,649	10.5	1,119,642	1.2
Local	572,196,311	25.1	93,763,593	98.0
Total	\$2,282,679,982	100.0%	\$ 95,622,430	100.0%

Source: N.C. State Board of Education, *Statistical Profile, North Carolina Public Schools* (Raleigh: State Board of Public Education, 1984).

them responsible for financing all capital outlay. The state's fiscal responsibility has two dimensions: financing a term of minimum length and providing a level of support, defined by numerous programs and formulas, that will maintain an educational program of basic content and quality throughout the state. The degree of support required to meet this responsibility is comparatively high; in fiscal 1982-83 the state provided 64 per cent of all primary and secondary education current expense funds—the tenth highest percentage in the nation.<sup>36</sup>

Two significant developments have occurred in the state-local fiscal partnership since 1933. First, the local supplements first authorized by the General Assembly in 1933 have increased steadily, so that by fiscal year 1982-83 local revenue sources provided 25.1 per cent (compared with 10.7 per cent in 1933-34) of total state and local current expense funds, as Table 1 shows.<sup>37</sup>

Second, while local units and counties remain responsible for financing school construction and maintenance, several times since 1949 the state has issued bonds to finance grants to local school boards for school construction. Those bond issues were: \$25 million in 1949 (combined with \$25 million from the postwar reserve fund), \$50 million in 1953, \$100 million in 1963, and \$300 million in 1973. As of January 1983, only \$2.6 million remained unspent from the proceeds of the 1973 bond issue. As the money obtained from the 1963 and 1973 bond issues has been depleted in recent years, the percentage of the state's contribution to school capital outlay has

dropped from the 26.61 per cent average for 1970 to 1978 to less than 1 per cent in 1980-82 (see Table 1).<sup>38</sup>

A major feature of local public school finance is that unlike school boards in many states, school boards in North Carolina have no authority to levy taxes. Boards of county commissioners (and city councils in a few cities) are the sole local tax-levying agents for the schools. Each year a local school board must request local school funds from the board of county commissioners. The commissioners set the county's appropriation to the schools and levy property taxes to raise the necessary revenue. County commissioners also decide whether to levy the voted supplemental school tax (if any), and they set the rate for that tax (within the voted limit). A school board's only recourse if it and the county commissioners disagree over the budget is arbitration by the superior court clerk, followed by an appeal to the courts.<sup>39</sup>

**Teachers and students.** Local boards of education have sole authority to hire, fire, and reappoint individual teachers. However, they must act within state guidelines. Boards may hire only certified teachers.<sup>40</sup> Teachers obtain initial certification through graduation from university programs approved by the State Board of Education and by scoring passing grades on the standardized National Teachers Examination.<sup>41</sup> G.S. 115C-325 mandates a two-tiered system of probationary and career (tenured) teachers, and it establishes procedural requirements for local school boards in hiring, firing, and reappointment decisions. The State Board of Education sets a statewide salary schedule for teachers, and it determines, on the basis of average daily enrollment, the number of teachers to be allotted to each local unit.<sup>42</sup> The salary schedule and allotment determine the amount of money a unit is entitled to receive from the state to pay teachers' salaries. Local boards may supplement salaries or hire additional teachers with local funds. In Chapter 1103 of the Session Laws of 1983, the General Assembly directed the State Board of Education to develop a five-step career ladder system for determining teachers' duties and the state-funded component of teachers' salaries. The new feature of the system is its use of merit as a factor in determining a teacher's position on the career ladder. The program will be tested in selected pilot units in 1985-86 and instituted statewide in 1986-87.

38. *Id.*, p. 1-92; *Public School Facility Needs* (Raleigh, N.C.: Legislative Research Commission, 1980).

39. N.C. GEN. STAT. §§ 115C-426 through -431; David Lawrence, *Local Government Finance in North Carolina* (Chapel Hill, N.C.: Institute of Government, 1977), pp. 214-26.

40. N.C. GEN. STAT. § 115C-299.

41. *Id.* §§ 115C-295 through -298.

42. *Id.* §§ 115C-12, -301.

36. *Statistical Profile, North Carolina Public Schools* (Raleigh, N.C.: State Board of Education, 1984), p. 1-46; *The Condition of Education* (Washington, D.C.: National Center for Education Statistics, 1984), pp. 44-45.

37. *Statistical Profile*, *supra* note 36, p. 1-46.



Article IX, Sections 2 and 3, of the State Constitution and G.S. 115C-378 require compulsory education for at least nine months of each year for all children between the ages of seven and 16. Under Article IX, Section 2, and G.S. 115C-1 and -366.1, North Carolina residents may attend schools in their units without paying tuition. Since the United States Supreme Court's decision in *Brown v. Board of Education*,<sup>43</sup> students may not be segregated by race.

**Curriculum and textbooks.** The General Assembly requires that a few specific subjects be taught: music, health and physical education, driver education, state and federal government, free enterprise, fire prevention, and the harmful aspects of drugs and alcohol.<sup>44</sup> State law further requires annual testing of students in basic skills in the first, second, third, sixth, and ninth grades, and it requires all students to pass a competency test in order to graduate from high school.<sup>45</sup>

Other curriculum decisions are left to the State Board of Education and each local school board. The State Board issues a course of study that sets forth a broad outline of the required curriculum. Instruction must be given in the following six areas: (1) citizenship, (2) communications, (3) cultural arts, (4) health, (5) mathematics and science, and (6) occupational education. The State Board also sets the number of units a student must accumulate in the six areas in order to graduate from high school. Local school boards, administrators, and teachers are responsible for developing a detailed curriculum to implement these state policies. The required state curriculum merely sets a minimum standard that local boards are free to supplement.<sup>46</sup>

Basic textbooks for the state course of study are adopted by the State Board after they are evaluated by the State Textbook Commission. The State Board may adopt several different books for given subjects at the same grade level, thereby permitting local school boards to select books from several on an approved list. The State Board purchases such texts and distributes them, through local units, free of charge to students.<sup>47</sup> Besides the basic state textbooks, local boards may authorize the use of supplementary texts and other instructional materials, paying for them through an additional state appropriation, local funds, or direct charges to students.

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**Since the turn of the century, North Carolina school officials, parents, and taxpayers have been concerned about the differences in the counties' abilities to raise funds for the schools. . . .**

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## Major issues

Today the major questions regarding state and local relations in education concern school finance. As discussed above, the current structure of school finance stems from the School Machinery Act of 1931 and from legislation passed in 1933. Through those acts the General Assembly made crucial decisions about two related financial issues: (1) the division of fiscal responsibility between the state and the counties, and (2) educational and fiscal equity among the counties.

**State-Local Division of Fiscal Responsibility.** Through the fiscal reforms of 1931 and 1933, the General Assembly sought to insure a basic education of at least minimum duration, content, and quality for all North Carolina children. The legislation left counties free to supplement that minimum standard through local current expenditures. It also left to counties the duty of financing school construction.

Questions have arisen in recent years about this division. First, with respect to current expenses, in order to finance a basic education the state must define the content and quality of the program. What is "basic" and what is "supplemental?" In 1983, the General Assembly directed the State Board of Education to determine the appropriate content of a basic education through an eight-unit pilot project.<sup>48</sup> In 1984 the General Assembly directed the State Board to take specific issues into account in developing a "standard course of study to be offered to every child in North Carolina public schools," a program designed to "reflect a rigorous academic course of study." Those issues include establishing a core curriculum for all students, prescribing standards for performance and promotion, recommending appropriate class sizes and staffing levels, and setting a minimum length of the in-

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43. 347 U.S. 483 (1954).

44. N.C. GEN. STAT. § 115C-81.

45. *Id.* §§ 115C-189 through -195, -175 through -181.

46. Dellinger, *supra* note 34, pp. 25-27. As discussed below, the Elementary and Secondary School Reform Act of 1984, N.C. Sess. Laws 1983, Ch. 1103, directed the State Board of Education to develop a revised standard course of study by October 1984.

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47. N.C. GEN. STAT. §§ 115C-85 through -102.

48. N.C. Sess. Laws 1983, Ch. 761. The pilot project also includes an experiment in which eight school units will receive state allocations on a per-student, rather than line-item, basis to give the units greater flexibility in education policy. See also Select Committee on the Department of Public Instruction, *Report to the 1983 General Assembly of North Carolina* (Raleigh, N.C., 1983), p. 66; *Report of the Public Education Policy Council* (Raleigh, N.C., 1984), pp. 11-14.

structional day.<sup>49</sup> Once a basic program is defined, financing responsibility must be allocated between the state and local units: Should North Carolina continue the present foundation system of state-financed basic education and locally financed supplemental education? Should it return to the pre-1931 approach in which local units help fund basic education, as recommended by the 1968 Governor's Study Commission on the Public School System of North Carolina?<sup>50</sup> Or should it go to the other extreme and pay the entire cost of operating the schools from the state treasury?

Second, counties throughout the state have faced problems in financing school construction. Several state agencies and commissions have prepared estimates of school construction needs in recent years. In 1978 the Superintendent of Public Instruction questioned local school officials about their construction needs. On the basis of that survey in 1979, he estimated total statewide needs to be \$1.8 billion. A 1981 update estimated statewide needs of \$2.4 billion. These surveys documented substantial needs in regard to school facilities. However, they were based on local school boards' estimates of their own needs. Without questioning the accuracy of these estimates, it nevertheless is important to consider that if the state assumes a role in providing school construction aid, the state and local school boards might differ in their assessments of the scale, priority, and urgency of local needs.

The funding wells created by the 1963 and 1973 state bond issues have run dry, and local school units have faced increasing difficulty in paying for necessary school construction with local funds. In 1979 the Governor's Commission on Public School Finance recommended additional bond issues to aid local school construction.<sup>51</sup> The General Assembly has not adopted that recommendation. Instead, it provided alternative relief in 1983 by authorizing counties to levy an additional ½ cent sales and use tax, with a specified percentage of the resulting revenue earmarked for school capital outlay. Through that legislation, the General Assembly chose to continue local responsibility for financing school capital outlay.

**Equity.** Current nationwide concern with equity was sparked in 1971 by *Serrano v. Priest*.<sup>52</sup> In that landmark case, the California Supreme Court held that, because of the disparity in local units' fiscal capacity that results

from widely varying property values, the state's school finance system—which relied heavily on local property taxes for revenue—violated students' rights to equal education. Equity in school finance has two facets: (1) the relative capacity of local units to raise revenue to finance education of a particular duration, content, and quality; and (2) the educational opportunity actually given to students, as measured by spending per student. In North Carolina, school officials, parents, and taxpayers have been concerned since the turn of the century about the differences in the respective counties' ability to raise funds to support the schools through property taxes and other local revenue sources. Such disparities put taxpayers and students in poorer counties at a disadvantage. Beginning in 1901 and continuing through the 1920s, the General Assembly established equalization funds to combat the problem. The legislature then adopted a different strategy in 1931 by giving the state the full burden of supporting a basic education. A. T. Allen, State Superintendent of Education when the School Machinery Act was passed, described the vision of equity behind the act:

The principle of complete support carries with it, not only primary responsibility to pay the whole bill, but also a fundamental responsibility for the kind and quality of educational opportunity to be furnished in every community in the State. It no longer matters whether a child lives on a sand dune or on top of a gold mine so far as his educational opportunities are concerned. His rights are the same in every case. Eventually he must have the same opportunity at the hands of the State. The accident of residence or birth no longer affects him. A district line cannot exclude him. He can no longer be confronted with a tuition bill, and restricted in his educational opportunity because his neighbors are unprogressive.<sup>53</sup>

However, the School Machinery Act and the 1933 legislation set the stage for future concerns about equity by permitting school units to supplement the basic program through local funds. As stated above, local units now supplement state current expenditures by providing approximately 25 per cent of all combined state and local current expenditures. In fiscal year 1982-83, the highest per-pupil current expenditure from all sources was \$2,626 (Durham City Schools) and the lowest was \$1,731 (Davidson County Schools), a difference of \$895.<sup>54</sup>

Still, although disparities exist in the level of total current expenditures across the state, relative fiscal capacity plays only a small role in causing the differences. For

49. N.C. Sess. Laws 1983, Ch. 1103.

50. *Report of the Governor's Study Commission on the Public School System of North Carolina* (Raleigh, N.C., 1968).

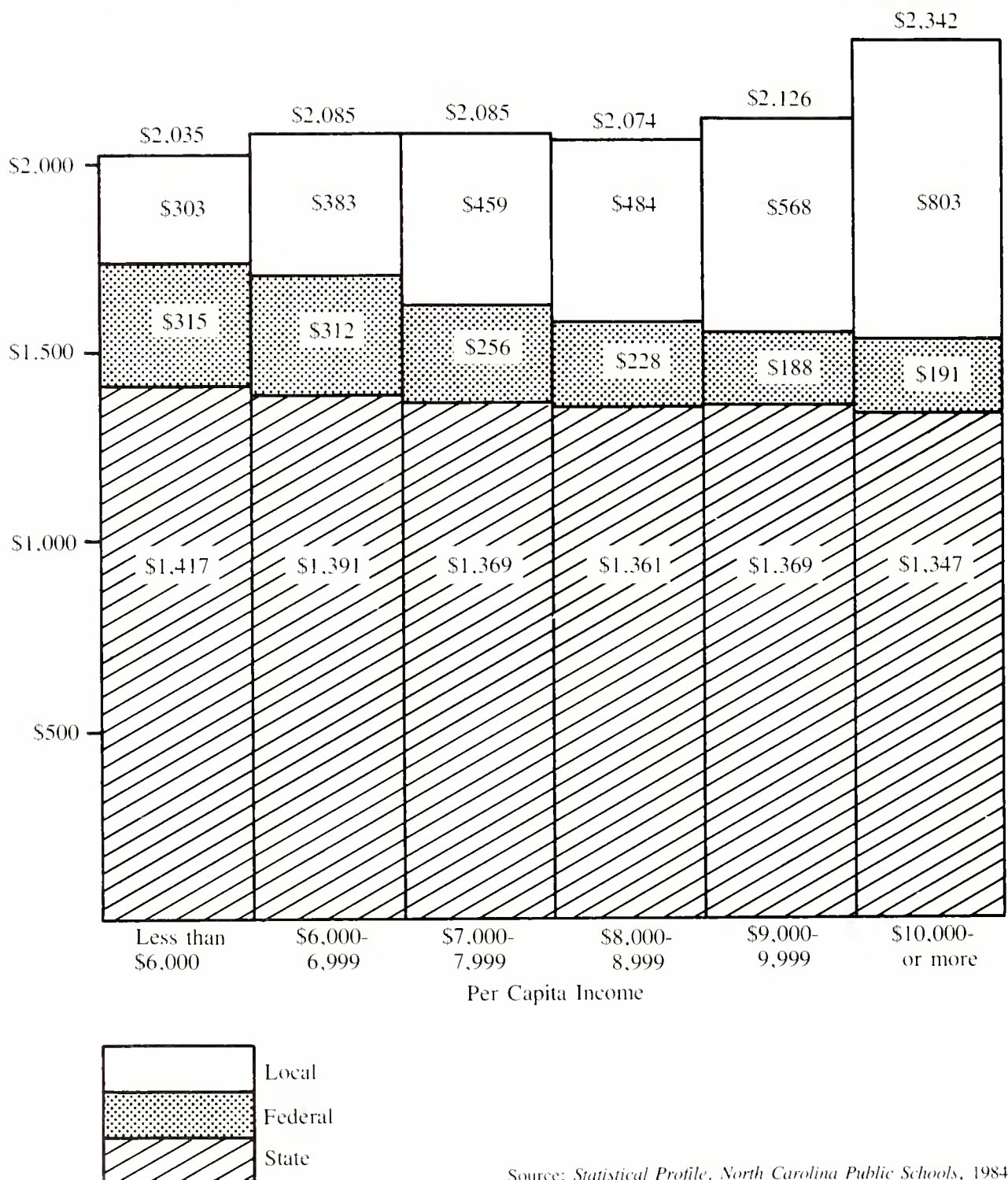
51. *Access to Equal Educational Opportunity in North Carolina, The Report of the Governor's Commission on Public School Finance* (Raleigh, N.C., 1979).

52. 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971).

53. *Biennial Reports of the Superintendent of Public Instruction, 1930-31, 1931-32* (Raleigh, N.C.).

54. *Statistical Profile*, *supra* note 36.

**Chart 1. Average Spending for Operations**  
Per Pupil (ADM) from State, Federal, and Local Sources  
by Per Capita Income of Counties, 1982-83, 143 School Units



Source: Statistical Profile, North Carolina Public Schools, 1984.



**Table 2.** Average Salary Expense Per Pupil and Average Pupil-Teacher Ratios in School Units Classified by Per Capita Income of Counties, North Carolina, 1982-83

1981 per capita income of county	Number of units	Average per capita income	Average salary expense per ADM <sup>1</sup>	Number of students (ADM) per teacher, professional, and teacher's aide		
				Teachers	Other professionals <sup>2</sup>	Teacher's aides
Less than \$6,000	8	\$ 5,680	\$1,384	20.0	234	70.0
\$ 6,000—6,999	30	6,588	1,428	19.2	244	65.6
\$ 7,000—7,999	36	7,600	1,436	19.1	217	64.1
\$ 8,000—8,999	46	8,400	1,430	19.7	201	69.9
\$ 9,000—9,999	15	9,309	1,439	19.0	203	62.4
\$10,000 or more	8	10,765	1,473	19.7	162	74.7

Notes:

1. Average daily membership.

2. Guidance, psychology, library, audiovisual, consulting, and other professionals.

Source: *Statistical Profile, North Carolina Public Schools* (Raleigh: State Board of Education), 1983 and 1984 editions.

example, Chart 1 shows a difference of only \$307 in average total spending per pupil between the poorest and wealthiest groups of counties, measured by per capita income of counties. Table 2 shows a difference of only \$89 in average salary expenses per pupil between the poorest and wealthiest groups of counties, measured by per capita income. Table 2 also shows a difference of only 0.3 in the average ratio of pupils to teachers between the poorest and wealthiest units, and the number of pupils per teacher's aide is actually lower in the poorest units than in the wealthiest units. However, the poorest units have substantially more pupils in relation to "other professionals" (whose salaries are not financed as much from state and federal funds). The small degree of the disparities measured by per capita income results from two major factors: North Carolina's high level of foundation support acts as a powerful equalizing force, and federal aid tends to offset such differences as exist.

Two basic approaches are available to reduce the disparities. First, as recommended in the 1979 Report of the Governor's Commission on Public School Finance,<sup>55</sup>

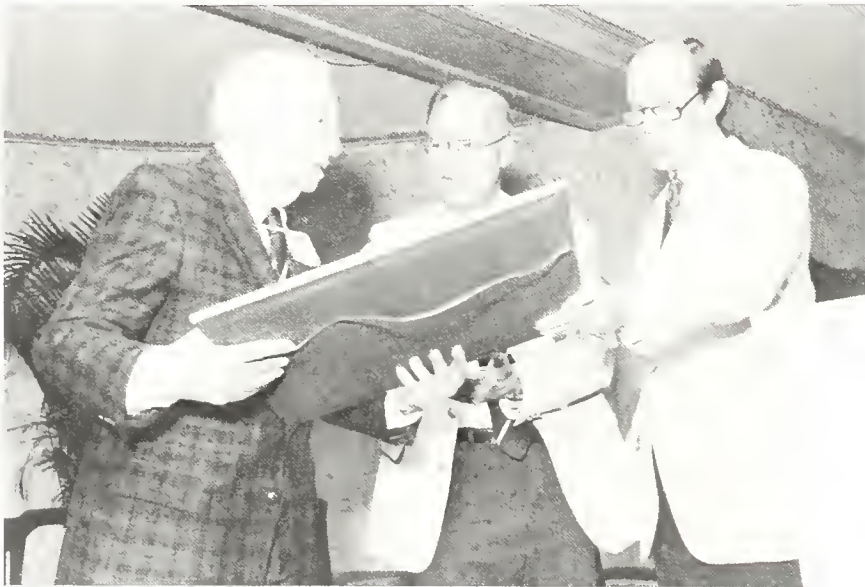
the state could continue to finance the basic education program fully and equalize the abilities of local units to supplement that basic level of support through equalization grants. As an alternative, the state could continue the present system of foundation support and increase its foundation support, effectively converting some present objects of supplemental expenditures into elements of the basic state program.<sup>56</sup> Any equalization proposal should be evaluated from the instructive perspective of history: North Carolina pioneered the system of foundation support in 1931 after three decades of unsuccessful experiments with equalization grants. The School Machinery Act established a highly equalizing system designed to guarantee a uniform minimum level of educational opportunity. ¶

55. William A. Campbell, Charles D. Liner, John M. Payne, and Robert E. Phay, *Report on North Carolina Finance: Responses to Serrano-Rodriguez*, (Chapel Hill, N.C.: Institute of Government, 1972); Liner, *supra* note 23; Charles D. Liner, "Financing the Public Schools," *Popular Government* 45, no. 4 (Fall 1980), 6.

55. *Op. cit.* *supra* note 51.

# Albert Coates Receives the Davie Award

*On October 29, 1984, the Board of Trustees of the University of North Carolina at Chapel Hill presented the William Richardson Davie Award to Albert Coates. Coates is the first recipient of this prestigious award, which is to be conferred from time to time "upon those whose lives and work reflect Davie's dreams for a great state and a great University." Davie selected the site for the University and is in large measure responsible for its establishment. Coates was the founder and director of the Institute of Government until his retirement in 1962. The following remarks were delivered at the award ceremony by George R. Ragsdale, Chairman of the Board of Trustees.*



*Albert Coates, UNC-CH Chancellor Christopher Fordham, and George R. Ragsdale, Chairman of the Board of Trustees.*

**T**his is a story of two boys. The first was from Halifax County, North Carolina. He was a student at Princeton University when the American Revolution broke out and he came home to fight for Independence. His name was William Richardson Davie. Later in his life, he wrote—and, in November of 1789, the General Assembly, sitting in the Cumberland County Courthouse, adopted—the charter of the University of North Carolina.

William Richardson Davie is known today as the Father and Founder of this University.

One hundred and ninety-five years later, in the Summer of 1984, the Board of Trustees named a special award after him, to be conferred from time to time upon those whose lives and work reflect Davie's dreams for a great State and a great University.

In September of 1914, a Johnston County farm boy named Albert Coates entered

the University and, as far as I can tell, nothing has ever been the same again. His life is the very explosion of the human spirit and the fulfillment of Davie's dreams for what a great University could do for the people of North Carolina.

After graduation here and a degree from Harvard Law School, President Harry Woodburn Chase gave him the only job he ever held for the balance of his life. He became a professor in the Law School at The University at Chapel Hill.

One day, the Mayor of one of North Carolina's largest cities came to his home to talk about the problems he was facing in office. He found that the public officials in his City had no awareness of their responsibilities, and so he had organized the first training school for law enforcement officers in North Carolina. His City was Winston-Salem; his County was Forsyth; his name was J. Gordon Hanes, and he helped Albert Coates begin to think about how to form, create, and bring to life the work that would consume him for the next fifty years, the Institute of Government.

Albert Coates had already seen that there was law on the books and there was law in action, but they were parallel lines and never met. He knew that the people to whom the General Assembly was appropriating funds and delegating duties did not know how to do what was expected of them. Albert Coates went to work. He followed convicted men into prisons, he joined police forces, he helped solicitors prosecute cases, he crawled through the bloodstream of interlocking governmental units to learn how North Carolina was supposed to work and how it was not working.

Albert Coates learned that the laws of North Carolina were scattered to the point of practical inaccessibility. There were thousands of printed pages of statutes, court decisions, public laws,

private laws, and special acts. He sought to bring them together in a clearing-house in Chapel Hill, where all the laws and practices bearing on the responsibilities of public officials could be made available to the people who needed to know what and where they were. The Institute of Government was conceived, and then born.

But he was using his own salary to fund and suckle the fledgling and as a result, both were starving.

But the Lord blessed Albert Coates with great friends who believed in him. Ben and Ceasar Cone, James Hanes and his brother Bob, Huber Hanes, Spencer Love, and James Gray helped him. In the five years between 1933 and 1938, the Institute of Government struggled weakly to life, but it was not weaned and it was not walking.

Albert and Gladys Coates moved out of their house and lived in a rented room for two years. He borrowed money on his life insurance policy. He sold the lot on which he and Gladys hoped to build their home. If he learned the dews and damps of disappointment and despair, it was because for a long time, he was like Isaiah's vintner, who, no matter what he did, could harvest only wild grapes. When everything else fell short, he resorted to credit. Local merchants, gas station operators, automobile repair shops and, generally, the good people of Chapel Hill came to his aid and helped his small staff live and work here for Albert Coates' Institute of Government.

He hired Terry Sanford and Bill Cochrane to work for him for 50 cents an hour. Other people joined him. Julian Price and Watts Hill endorsed his notes for further loans. Senator Josiah Bailey appealed to President Roosevelt to extend a Public Works Administration grant. Gordon Gray gave him money for operating expenses in 1936, and Bowman Gray, whose son is now a distinguished member of the Board of Trustees, promised him \$25,000 toward a building for the Institute on the condition that the full amount be raised. It could not be raised. Mr. Gray withdrew the condition and gave him the money anyway. Albert Coates says with gratitude that the Institute of Government was saved by the

Gray brothers. He finally got his building and it was dedicated on Thanksgiving Day, 1939.

Chancellor Robert Burton House called him into his office and said "Albert, you are over the hump. For a long time a lot of people around here thought you were full of wind. Then they thought you might be pregnant. Then they predicted that there was going to be a miscarriage. Now everybody knows a baby has been born. Everybody swears it's a bastard. And everybody is secretly hoping that the paternity will be ascribed to him."

Albert Coates galloped across the thin ice of life at full speed, knowing if he stopped, he would break through and lose his dream. If he had stopped or stumbled on all that was there to stop or stumble on, the Institute of Government would not have gotten high enough off the ground to end in much of a rubble when it fell.

In the '50s, through the generosity of the widow of Joseph Palmer Knapp, who gave \$500,000 for a new and proper building, and the General Assembly of North Carolina, which matched it, the Institute of Government was built where it now stands, at the east gate of the University campus. The grapes had turned sweet.

Reaching out of that classroom in the Law School at Chapel Hill, he extended the mind and mission of the University to people who did not know what they needed to know and who could not do what they needed to do, until he taught them.

Today, the Institute is the largest and most diversified State-funded, University-based governmental training and research institution in the United States. It has taught mayors, city councilmen, city and county managers, county commissioners, city and county attorneys, tax supervisors, finance officers, clerks, judges, magistrates, district attorneys, school principals, law enforcement officers, correctional personnel, social services officers, public health officials and, yes, even members of the General Assembly.

In its last fiscal year alone, the faculty of the Institute of Government taught more than 20,000 adults in classrooms in-

side and outside Chapel Hill for a total of more than 180,000 student-contact hours.

As far back as 1935, the General Assembly must have decided that the Institute of Government was indispensable. Since then, the Institute has provided the only complete daily published source of information on the work of the General Assembly. It enables its members and hundreds of North Carolinians to keep accurately informed about legislative proposals and proceedings. In last year's Short Session alone, the Institute published nearly 120,000 items about the work of that Session of the General Assembly.

Comparisons may be odious, but they are not illegal. I will dare to say it: no one in the history of this University has taught more people more things they needed to know for the benefit of North Carolina than Albert Coates. And it is good for the General Assembly to hear us praise and thank him, for it was your predecessors who, following Davie's injunction that it is the "indispensable duty of every Legislature to consult the happiness of a rising generation by paying the strictest attention to their education." It was they who made sure The University was here seventy years ago, waiting for that freshman from Johnston County to strike the spark that ignited his spirit and changed government in North Carolina for all time.

Upon Albert Coates, who has given his life and work to the service of this University and his fellow man, the Board of Trustees is proud to confer the William Richardson Davie Award.





# North Carolina's Willie M. Program: A Current Perspective

Gary Macbeth

In 1980 a class action lawsuit—*Willie M., et al. v. Governor James B. Hunt, Jr., et al.*<sup>1</sup>—was brought against the State of North Carolina on behalf of more than 1,100 of the state's most severely handicapped children. Under a court order from the settlement of that suit, the state undertook an enormously difficult task: organizing and implementing treatment and educational services at the local level for a group of children, to be found in all parts of the state, who were emotionally disturbed, mentally retarded, or neurologically handicapped and also had a history of assaultive or aggressive behavior. Long-recognized inadequacies in services for these children were addressed in the settlement of the *Willie M.* lawsuit.<sup>2</sup>

The Willie M. Program in North Carolina has just completed its second full year of statewide operations. During this time, treatment and educational services of unprecedented number and diversity have been started, over 600 staff have been employed in 41 area mental health programs to provide services to all certified members of the Willie M. class, and many lessons have been learned. Compared with most treatment initiatives for children, the Willie M. Program is uniquely innovative, dynamic,

and creative. Consequently, it has been studied nationally as a model for services to seriously disturbed children. A group of nationally recognized experts reported that

... North Carolina is breaking new ground: there is no previous tradition that can be built upon; no other state has ever made such a substantial commitment of resources and staff to a group of children who typically are failed not only by mental health departments, but by other service systems as well. Nor has any other state made a commitment to implement an integrated service delivery system to assure that each child receives a full range of needed services in the least restrictive setting.<sup>3</sup>

The uniqueness of the Willie M. Program is highlighted by the following characteristics:

- The severity of the handicap in a population served in community settings that provide living and educational opportunities that are as close to normal as possible.
- Comprehensive interagency involvement in developing individual treatment/service plans and in delivering coordinated services; development of services based on the needs of each child rather than (as heretofore was done) placement of the child into an existing program, regardless of whether it met his or her needs.
- Building of interconnected local services, from restrictive settings to normal environments, so that Willie M.

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Until recently the author was Program Coordinator in the Willie M. Program in the Division of Mental Health/Mental Retardation/Substance Abuse Services. He is now on leave to study in England.

1. *Willie M. v. Hunt*, Civil Action No. CC-79-0294 (W.D.N.C., filed February 20, 1981); see also *Willie M. v. Hunt*, 657 F.2d (4th Cir. 1981).

2. Children's Defense Fund, *Children Without Homes: An Examination of Public Responsibility to Children in Out of Home Care* (Washington, D.C.: Children's Defense Fund, 1978).

3. Jane Knitzer, Ronald LaNeve, A. J. Pappanikou, Milton F. Shore, and John Steffek, "Report to the Division of Mental Health/Mental Retardation/Substance Abuse Services Regarding the Implementation of Willie M." (December 1, 1983), p. 2.

children can receive the broad range of services they need as their behavior improves and as they become able to function in more normal but structured environments.

—A management system that uses zones, rather than individual localities, for planning and providing services.<sup>4</sup>

The *Willie M.* lawsuit, filed in federal district court in Charlotte in 1979, was settled out of court in September 1980. The history of the lawsuit, its settlement and settlement stipulations, and its subsequent funding have been well documented.<sup>5</sup> This article reviews the progress made since the suit was settled as well as the challenges that must still be faced if North Carolina is to provide appropriate services to all children in the *Willie M.* class.

### Current service delivery

Since the lawsuit was settled, 1,466 North Carolina children have been certified as *Willie M.* class members. Of this number, 1,137 were eligible for services as of June 15, 1984. A class member becomes ineligible for services when he or she turns 18 years old, moves out of state, dies, enters the military, is sent to adult prison, or is emancipated (that is, legally released from parental control) and refuses services.

Two trends are emerging in the certification process. First, the average age of children when they are certified has decreased slightly—from 15.7 years old to 14.6 years old. This trend indicates that children are being identified at a younger age, allowing *Willie M.* programs more time to work with them. Second, the number of class members eligible for services is beginning to stabilize. Earlier identification of class members and stabilization of class size will enable *Willie M.* programs to undertake more long-range planning for services needed and for their staff and budget requirements.

Recent on-site monitoring of approximately 40 per cent of the children in the class by the state *Willie M.* Program office and the Court Review Panel<sup>6</sup> indicates

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**The settlement of the *Willie M.* lawsuit stipulated that services to class members must be provided on the basis of the individual child's needs in the areas of treatment, education, vocational training, shelter, nutrition, life skills, and medical care. This concept is not new in human services thinking but is very new in service delivery.**

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that continued progress is being made to address their treatment and education needs appropriately, as the settlement of the lawsuit outlined.<sup>7</sup> Although the state agreed that it would attempt to serve 100 per cent of all class members appropriately by July 1, 1983, this goal has not been accomplished and in retrospect was unrealistic. The tasks involved in starting new programs and developing effective treatment models to meet the needs of this very difficult population, the growing numbers of certified class members, the difficulty of changing the attitudes and behaviors of traditional service-delivery systems, and the need to build effective state and local management systems have delayed the Program more than had been anticipated.

The two lead agencies in implementing the stipulations agreed to by the state are the Division of Mental Health, Mental Retardation and Substance Abuse Services in the Department of Human Resources and the Division of Exceptional Children in the Department of Public Instruction. Area and regional mental health programs and local educational agencies moved ahead in developing and implementing services. In just three years, complex networks of services, management systems, and crisis systems were established. Zone 13 in the eastern part of the state illustrates what has been achieved in management. Zone 13 includes four area mental health programs covering eight counties and about 15 school districts, which had to respond to the diverse treatment and education needs of the *Willie M.* children (approximately 65) in that zone. The four area mental health centers had to develop a management structure to plan services needed, decide which area program would provide them, and discuss how to ensure that all class members in the zone would have access to these services. Once planning began, local school systems and departments of social services needed to be involved in plan-

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4. Lenore Behar, "An Integrated System of Services for Seriously Disturbed Children" (prepublication draft, National Institute of Drug Abuse Conference Proceedings, April 1984); Jane Knitzer, *Unclaimed Children: The Failure of Public Responsibility to Children and Adolescents in Need of Mental Health Services* (Washington, D.C., Children's Defense Fund, 1982); Joint Commission on Mental Health of Children, *Crisis in Child Mental Health: Challenge for the 1970's* (New York: Harper and Row, 1969).

5. Robert D. McDonnell, "The *Willie M.* Case: The State's Obligations to Violent Disturbed Children," *Popular Government* 47, no. 3 (Winter 1982), 27-30; Kendall Guthrie and Bill Finger, "Willie M. Treatment for Disturbed Youngsters," *N.C. Insight* (October 1983), 55-68.

6. The Court Review Panel is a group of five experts in the fields of education and mental health who oversee the state's work in meeting the stipulations of the *Willie M.* lawsuit. It serves under the auspices of the federal district court in Charlotte.

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7. *Willie M. et al. v. James B. Hunt, Jr., et al.*, Civil Action No. CC-79-0294 (W.D.N.C., Charlotte Division, September 2, 1980), "Second Set of Stipulations."



ning and setting up the programs. Then came the tasks of actually beginning these new programs. Staff were hired and trained, program sites were located, program models were developed, approval was obtained from the agencies involved, necessary licenses were secured, and mechanisms to deliver services were put in place. The zone now has a wide variety of treatment and educational services—including case management, two group homes with emergency backup in local inpatient units, two-day treatment/educational programs, one-day treatment/vocational programs, specialized foster care homes, in-home support workers, job apprenticeship programs, summer recreation and treatment programs, and outpatient therapy. The pace was feverish and exhausting, but large strides were made. Local service-delivery systems, local and state management systems, interagency liaison and working relationships, a statewide data- and service-reporting system, and statewide evaluation mechanisms have been established.

In December 1983, in response to a contempt-of-court motion filed by the plaintiffs' attorneys,<sup>8</sup> a significant organizational change occurred within the Division of Mental Health/Mental Retardation/Substance Abuse Services (MH/MR/SAS). The Willie M. Program was established as a separate agency within the Division, a move that increased its status within the Division's organizational structure. With the change, four more staff persons (one for each mental health region in the state) were hired to devote full time to the state's efforts to implement the actions that the state had agreed to in the settlement of the lawsuit. The experience gained and the data collected during three years of program-building became the basis for the new challenge of systematizing the Willie M. Program.

One critical task of the systematizing process is to balance flexibility in individual programming, quick responses to children in crisis, and creative solutions to complex programs within the framework of systematic program policies and procedures. Such a balance is essential to meet the settlement of the lawsuit but difficult to achieve and maintain in a bureaucratic setting.

The settlement of the Willie M. lawsuit stipulated that services to class members must be provided on the basis of the individual child's needs in the areas of treatment, education, vocational training, shelter, nutrition, life skills, and medical care. This concept is not new in human services thinking but is very new in service

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**But now agencies that once often believed that secure, locked settings were necessary to provide effective treatment are considering community alternatives. Agencies, working together, have come to see that Willie M. children can be served in community settings that more closely approximate the living and educational situations of most nondisturbed children. This recognition represents an immense change in attitude.**

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delivery. In the past, human services programs, such as group homes, have been developed to respond to general categories of children with problems: If an individual child met the admission requirements for, say, a group home, then the service was made available. Once admitted, the child was expected to respond to the specific structure and treatment model of the home. The group home had a limited number of staff to carry out its program. A set treatment model was followed, and school attendance and participation in group and/or individual therapy were expected. A child who did not (or could not) adapt to the existing program structure was referred elsewhere. It was not expected that the program would adapt to the child. This group home would probably not have available to it the specialized staff or other backup services that would enable it to meet the individual requirements of a child who did not easily fit into the home. Clearly, building a statewide system to respond to the individual needs of over 1,100 children with exceptionally difficult problems requires a unique process for planning such component services as group homes or day treatment/educational programs.

For fiscal year 1984-85, a budgeting and planning process was inaugurated in which the special needs of over 1,100 individual children were tied to the budget and service-development process of each area program and each larger zone. Area programs and zone management teams used data on individual needs, provided by the state Willie M. Program office on computer printouts for each class member, in deciding which component services to budget for in fiscal year 1984-85. Money was shifted and reallocated by area programs, zones, and the state Willie M. Program office to provide as close a fit as possible between anticipated individual needs and necessary component services.

Providing services on the basis of individual needs of class members who have numerous severe problems requires quick responses from the state Willie M. Program office to the crises that occur. Most mental health

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8. "Motion for Appointment of An Administrator and For Contempt," Willie M. *et al.* v James B. Hunt, Jr., *et al.*, Civil Action No. CC-79-294-M (W.D.N.C. Charlotte Division, October 1983).



funding is tied to each area program and its specific services. Programming for Willie M. children requires more flexibility in the use of allocations. Procedures were developed in 1984 to allow for the identification and reallocation of unspent money from one area program to another. For example, an area program may need money to hire staff to work intensively with a child in his or her own home. The area program looks first within its own budget for the money, and then to the other area programs in its zone. If money still cannot be found, the state Willie M. Program office attempts to locate money from area programs across the state to reallocate to the area program with the service need. This reallocation of funds is done on a one-time basis for each fiscal year.

When a child is certified as a Willie M. class member, the local area mental health case manager is responsible for putting together a comprehensive treatment and service plan that addresses all the problems this child presents, and the manager specifies what will be done, by whom, and when. A planning conference of all persons involved with the child is called to put together the plan. This conference might include the mental health case manager, an outpatient clinician, the school system's director of exceptional children, a vocational rehabilitation counselor, the department of social services worker, a court counselor, parents, and others who work with the child.

This initial planning process is critical. Success with a child who has repeatedly met failure at home, in school, in foster homes, and in other areas of life depends heavily on the accurate assessments of his or her strengths and problems; realistic goals to address problem areas; proper living, treatment, and educational settings; and a full commitment for coordinated interagency involvement. This planning process is often very hard to accomplish thoroughly and quickly. The result of poor planning is often more failure for the child and months of wasted treatment and educational services.

Ray, for example, benefited from good planning. At age 17, Ray stood 6 feet, 1 inch tall and weighed 190 pounds. He was certified as a class member two years ago. Before he was certified, Ray had spent the previous six years in three training schools, a state hospital, a group home, and several foster homes. His behavior continued to be defiant. He did not trust adults and seemed beyond their reach or control. Ray spent most of his time on the streets, where he began to steal. He rarely attended school. His life held no stability. Behind in school, he also had few skills to prepare him for living on his own as an adult. At age 15, Ray was large and intimidating. He already had two convictions for breaking and entering, and it appeared likely that he would eventually end up in jail.

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**Yet fostering interagency cooperation in providing coordinated planning and comprehensive service delivery has been difficult in many localities. Agencies have not been accustomed to planning together, sharing scarce resources, or being accountable to each other for what they actually do.**

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After his certification as a class member, the agencies that worked with Ray developed a plan that attempted to meet his needs to learn vocational skills, live on his own, and handle conflicts without fighting. The planning conference included the area mental health program's case manager, and group home director, Ray's court counselor, a representative of the training school, a vocational counselor, Ray's DSS worker, and his grandmother. Ray was moved out of training school into a highly staffed and supervised group home. He attended a day treatment/educational program to provide socialization and education. Eight months went by before Ray began to trust the adults in the group home and to exercise some control in his life. He will soon move into a supervised apartment in order to learn to live on his own. He holds a part-time job and also works on a high school equivalency certificate. It will be some time yet before Ray can live on his own; but for now, his life offers him hope that he can make it in his community.

The state Willie M. Program office is currently developing an approach for insuring that critical comprehensive individual planning takes place. Extensive psychological evaluations, social histories, and educational information are available on most class members. These data, however, have often been inadequately used by mental health professionals, because mental health workers have not been accustomed to writing specific goals and objectives that have measurable outcomes. Mental health professionals also have not typically developed plans that encompass the whole-life needs of a child, beyond just the psychological needs. This fact has meant that needs assessments and plans are often not specific enough to provide direction for all the agencies and individuals involved in coordinating treatment and education services. But now an Individualized Habilitation Planning System is being established. This system will be innovative in several ways. First, it will provide a format within which to assess a child's strengths and problems. Second, it will require specific goals, objectives, strategies, time frames, and persons responsible for all aspects of service delivery. Third, it will be coordinated with educational and vocational plans used by other in-

volved agencies. Fourth, it will tie into a statewide monitoring and evaluation process that assesses progress toward meeting class members' needs appropriately under the lawsuit settlement. Finally, through a series of computerized information checkpoints at the state level, this new Individualized Habilitation Planning System will have the added benefit of identifying (a) area programs and local educational agencies whose approaches are especially effective so that they can then be replicated, and (b) those that are having difficulties in providing appropriate services to class members so that they can be helped.

One of the most controversial and complex aspects of the Willie M. Program is how to implement a unit-cost reimbursement system for Willie M. Program services, a requirement added by the North Carolina General Assembly in 1983. This system ties the budgets of area mental health programs to the actual numbers of hours or days that each service is offered by the program provided to Willie M. class members. The Willie M. Program is so complex that a unit-cost reimbursement system is necessarily intricate. It has 38 categories of services, with numerous variations of staffing and programming. Individualized programming can mean that any given service can vary in cost, depending on the child being served. Each area program projects the number of hours or days of each budgeted service it will provide during the fiscal year. A reimbursement rate is calculated for each service and each service provider in all 41 area programs and for private statewide programs. New services and rates are added as necessary. The extent of use of program services is communicated each month to the state Willie M. Program office and the Division fiscal office for verification and reimbursement to the area programs. Clearly, fiscal and program staff at the local and state levels need to understand what the other is doing and to cooperate.

The unit-cost reimbursement system offers a number of benefits. Services that are exceptionally costly in one area program compared with similar services in another area program can be identified so that steps can be taken to insure quality services at lower cost. Area programs can accurately develop program and budget plans that reflect actual use of services, freeing money to be channeled into other needed services. Finally, the development of the unit-cost reimbursement system has meant that the monthly data reports sent to the state Willie M. Program office that describes services provided to each class member have had to be revised. Each month the area programs submit a Monthly Transaction Summary Sheet (MTSS) on each of their class members, identified by code. The specific services the child received are noted, with the total number of hours or days of each service

and the specific provider of each service. This information is fed into the computer data bank and into the unit-cost reimbursement system. The revised data reporting system is extremely specific and extensive for tracking services provided. It is, to my knowledge, unprecedented in human services.

### **Accomplishments and difficulties**

Many of the aggressive and disturbed children who make up the class have been repeatedly expelled from the public schools and have moved from foster home to foster home or from group home to inpatient hospitalization. Take, for example, the case of Jerry.

Jerry, now age 15, is a recently certified Willie M. class member who was removed from his mother's care several years ago because of neglect and abuse. The woman is an alcoholic and is now in prison. Jerry's two brothers are also in prison after being convicted of violent crimes. Over the past three years, Jerry has lived in 30 foster homes and attended numerous schools. Currently in trouble with the law, Jerry said at his hearing that it didn't matter what he did (what crime he committed or to whom) because no one cared anyway. Certainly his life at home and his contact with social agencies reinforced that hopelessness.

One of the most important accomplishments of the Willie M. Program has been the positive changes in attitudes of area mental health programs, school systems, and other local agency staff toward children like Jerry. Many of these children who in the past were considered untreatable through traditional service approaches (such as outpatient therapy, special classrooms, foster homes, and psychiatric inpatient units) were not being reached. But now agencies that once often believed that secure, locked settings were necessary to provide effective treatment are considering community alternatives. Agencies, working together, have come to see that Willie M. children can be served in community settings that more closely approximate the living and educational situations of most nondisturbed children. This recognition represents an immense change in attitude. Sherry's case demonstrates this shift.

Sherry, a 15-year-old girl, had lived most of her life with her grandmother. She began to spend two or three days at a time away from home, and her grandmother felt powerless to control her. Sherry was often truant from school and had been caught shoplifting. At night she frequented bars and wandered the streets. Any social services worker who tried to intervene with her was verbally abused. Sherry had several younger children stealing for her, under threats of being beaten. She had been placed



in several secure treatment settings, but each time she ran away and went back to the streets. The agencies that worked with Sherry insisted that she needed to be in training school or a secure treatment setting, despite the failure of these programs in the past. After much struggle, the agencies agreed to put together a plan that provided "wrapped-around" services to Sherry in her home community. Foster care with an in-home support worker, transportation, day treatment/educational programming, and vocational services were all coordinated by the Willie M. case manager. This structure provided control, while also allowing for relationships to develop that could influence Sherry's decisions about her life. This plan worked, although there were some setbacks along the way. When these setbacks occurred, the agencies viewed the community plan and tried again.

In the past, mental health and social services personnel sometimes blamed the children they were working with for failures of their agencies. If a child could not be managed in a group home, the reason supposedly was that the child was "unmotivated to change." The idea that the group home staffing and programming should change in order to be able to work with an individual child was not seriously considered. Even if such flexibility and responsiveness had been desired, where would the money have come from for new staff? Often the inflexibility of agency rules, procedures, and services requirements resulted in agencies' working against the children they were supposed to help. One way to rationalize this outcome was to blame the child for not fitting into the agency systems.

The Willie M. Program has made great strides in changing these attitudes and behaviors. As comprehensive, coordinated interagency services provided in the community have resulted in successes for some very disturbed children, agencies have begun to see hope. Along with this hope has come the willingness to take risks, bend the rules, and—most important—take responsibility for helping these children succeed.

Agencies have begun to understand that these children, by definition and personal histories, have problems that cannot be successfully handled by any single agency. Yet fostering interagency cooperation in delivering coordinated planning and comprehensive services delivery has been difficult in many localities. Agencies have not been accustomed to planning together, sharing scarce resources, or being accountable to each other for what they actually do. In local areas, especially rural areas where cooperation historically occurred because there were so few resources from individual agencies, coordinated planning and service delivery has often happened quickly. In other localities, however, agency isolation,

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**Increasingly, class members who have needed these secure settings are ready to move into less restrictive settings as their behaviors have improved and their needs have changed. The General Assembly appropriated \$2.6 million in the 1984 short session for expansion of Willie M. services. This amount is approximately half of what is needed to continue these successes and appropriately meet the needs of all the children in the Willie M. class. More funding will be needed in 1985.**

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inflexibility, and suspiciousness have been hard to overcome. The task has become easier as successes have occurred with children who appeared hopeless and as concern and commitment have been demonstrated. For example, one social services worker's attitude became more cooperative when the area mental health case manager went out with her in the middle of the night to help with a family in crisis.

Nevertheless, several difficulties remain in the development of this critical interagency approach to working with Willie M. class members. Local school systems and area mental health programs must coordinate Individual Educational Plans and Individual Habilitation Plans. Agency issues of territory, entitlements, and "rejection" from services must be resolved. Under the lawsuit settlement, Willie M. class members *must* be provided the treatment and education services they need and may not be "rejected" from services because of their behavior problems. If a service is not working, it must be modified or a more appropriate one must be provided. Finding the most effective approach to a Willie M. child will require more cooperation and leadership between agencies at the state and local levels. Some local agency personnel still believe that, since Mental Health was designated as the lead agency under the settlement of the lawsuit, only Mental Health is responsible for services after a child has been certified. Such attitudes and beliefs make it difficult to develop the coordination essential for providing comprehensive and effective services to these children.

The recognition that less restrictive settings may be very effective for treating class members, by providing intensive structure and support, had led to a change in budget requests from area mental health programs for fiscal year 1984-1985. Examples of services for which funding is being requested include in-home therapeutic workers, vocational training, and supervised community living. In the past, budget requests emphasized high-security group homes and day treatment/educational pro-



grams isolated from normal public school settings. Increasingly, class members who have needed these secure settings are ready to move into less restrictive settings as their behaviors have improved and their needs have changed. The General Assembly appropriated \$2.6 million in the 1984 short session for expansion of Willie M. services. This amount is approximately half of what is needed to continue these successes and appropriately meet the needs of all the children in the Willie M. class. More funding will be needed in 1985.

Although the program has developed innovative services, there are still some weak areas. Adequate vocational training programs are not available. Because their disturbances are so severe, many class members do not meet the eligibility requirements for state vocational services programs, and public school vocational classes have not been geared for these children. Area mental health programs have tried to meet this need for vocational training through such arrangements as contracts with private employers to provide apprenticeships and use of public school vocational classrooms at night for training. But these efforts are not adequate. Similarly, as Willie M. class members turn 18 and "age out" of the program, they often find that the treatment and vocational services they need are not available. This issue has been the focus of a contempt motion filed against the state by the lawyers for the Willie M. class.<sup>9</sup> The Division of MH/MR/SAS has identified one-time funding to respond to the needs of some of these young adults, but continuing funds will be needed.

The stressful nature of the tasks required to develop and provide services to Willie M. class members has led to much burnout among local staff. The rewards for staff are often few when compared with the energy required to turn around the life of an aggressive 16- or 17-year-old, to build working relationships with traditionally isolated agencies, or to handle inevitable crises just when things seemed to be going well. In addition, high expectations are placed on Willie M. staff, yet meeting the expectations may depend on succeeding in some very difficult tasks. Staff members may need to change the way that human service agencies—such as area mental health programs, departments of social services, local schools, and vocational rehabilitation services—normally do business. Consequently, expectations and reality often conflict, leaving staff feeling frustrated. Sometimes low salaries, especially for Willie M. case managers and group home personnel, result in high staff turnover. Personal commitment can carry a person only so far and so long.

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9. *Ibid.*

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**Adult mental health services do not provide the comprehensive, coordinated, and innovative community services that have led to success with these difficult children. Such services need to be developed. The cost to the State of North Carolina will be very high if many of these class members, who have begun to experience success, are abandoned after they reach age 18. Inpatient hospitalization or prison are expensive and unnecessary alternatives that may be the fate of many aging-out class members.**

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Recently, a committee studied staff-burnout issues and made recommendations to the Division of MH/MR/SAS<sup>10</sup> that are now under study.

A few Willie M. children—the most difficult of an already difficult-to-serve population—have assaultive behaviors and emotional disturbances or mental retardation so severe that the Willie M. Program has not succeeded with them. Their needs are specialized and longer-term, and the Willie M. Program must continue to find intervention models that can meet those needs.

### **The future**

A major element for improving any system of services is an evaluation of outcomes that can be used to reorient services, to discover successful program treatment models and service combinations so that they can be replicated, and to measure progress toward serving 100 per cent of the Willie M. children appropriately, as the settlement of the lawsuit specified. An ongoing evaluation system will necessarily be complex, and its development is a major focus of the Willie M. Program. Several elements are being strengthened toward this goal. The data collection and analysis system is being refined so that it can identify both the types and intensity of services provided to each class member by every area program and local educational agency. The data system will tie into an evaluation and monitoring system to assess the progress that each class member is making toward being able to live in a less restrictive, more normal treatment and educational setting. The evaluation system will also tie directly back to the individual needs assessment and

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10. "Factors Contributing to Staff Burnout in Programs for Class Action Suit Youth" (North Carolina Department of Human Resources, Division of MH/MR/SAS, Willie M. Office, June 27, 1984).

treatment planning that is done for each class member. The data and evaluation systems can combine with the unit-cost reimbursement system to insure that needs-based planning will be reflected in budgeting and program development.

The state Willie M. Program will contract in fiscal year 1984 for an independent evaluation of the outcomes of the program. This 1 ½-year study will help develop the Willie M. evaluation system as well as provide important information on successful program and intervention models that can be replicated. The study will also catalog cost-efficient high-quality services and identify the successful elements of these services for replication.

I hope that in the future the concepts of the Willie M. Program will be incorporated into programming of the other child-serving agency—child mental health, mental retardation, and public education. As the Willie M. Program proves successful and outcome evaluation can measure the extent of this success, the program could become a significant model for implementing comprehensive, innovative, and coordinated services to other children in need, in North Carolina and nationally.

Some of the information developed in the Willie M. Program can be used in prevention services. The Willie M. Program intervenes in a child's life after he or she has a long history of disturbance and failure by agencies. Yet the information gathered on the factors that seem to lead to severe problems for a child can be analyzed and used to develop prevention programs. Such programs would allow many children to receive the types of services they need at an earlier age, thus possible preventing the severe disturbances that appear later.

## Finally

Nationally, much has been written about the need to provide comprehensive, coordinated, and intensive treatment and educational services to emotionally disturbed children. Writers have emphasized community-based approaches, bringing mental health workers into the community itself and out of their centers. Writers have also discussed needs-based planning and individualized services. North Carolina, through the Willie M. Program, is a national leader in putting these concepts into practice. Many tasks are still ahead, but already this approach has led to successes with many children for whom agencies had given up hope. As Willie M. programs continue to develop and refine successful treatment and educational approaches for difficult children, there will likely be an eventual improvement in all children's services in North Carolina and a model will emerge that can be replicated nationally. **P**

## The Willie M. Program 1983-84 Legislation

In Sec. 61 of Ch. 1034, the 1984 General Assembly declared the need to serve Willie M. children—those with emotional, or neurological handicaps accompanied by violent or assaultive behavior—and acknowledged the efforts of state agencies to comply with the court order in *Willie M., et al. vs. Hunt, et al.*, but it also asserted the legislature's responsibility to assess the needs of all citizens and to allocate limited resources to meet those needs. The act specified that:

- To the maximum extent possible, funds appropriated to DHR for Willie M. programs are to be spent solely for programs that serve members of the class, including evaluations of potential class members.
- Willie M. funds appropriated to the Department of Public Instruction (DPE) are to establish a supplemental reserve fund to serve only members of the class. The funds are to be used (a) for Willie M. children who are not included in the regular average daily membership or the census of children with special needs, and (b) to pay program costs that exceed the per-pupil allocation for children with special needs.
- No state funds other than funds appropriated to DHR or DPE or to other agencies specifically for such purposes may be spent on Willie M. programs.

Other provisions of Ch. 1034, Sec. 61, affecting the Willie M. program include:

- DHR is to implement the first year of a prospective cost-reimbursement system and report to the General Assembly by March 1, 1985, on the system's operation.
- By March 1, 1985, DHR and DPE must submit a joint report to the Governor and the General Assembly showing the following data for each county: number of children nominated for Willie M. class membership; number actually identified as class members; number served as members of the class; number who remain unserved; types and locations of treatment and education services provided to class members; cost of services, by type, to class members; and the impact of treatment and education services on members of the class.
- Both departments must report periodically to the Joint Legislative Commission on Governmental Operations on Willie M. expenditures.
- If DHR determines that a local program is not providing appropriate services to class members, it may contract with public or private agencies to provide the services or operate the program itself.

In addition to the other Willie M. reports, DHR and DPE are required by Ch. 1116, Sec. 76, to report periodically as requested by the Commission on Children With Special Needs. —Janet Mason



# KIDS WHO ARE BEYOND CONTROL:

## *Should Juvenile Courts Have Authority Over Them If Their Misbehavior Is Not Criminal?*

Christopher L. Ringwalt, Andrea Ciminello, and Stevens H. Clarke

Cathy is only fourteen, though she looks older. She has just run away from home for the fourth time. Cathy has a history of repeated unexcused absences from school. Her teachers report that she could do the work if she would just come to school regularly. The last time she ran away from home her parents called the police, who advised them to report her to the intake counselor at juvenile court. The intake counselor filed a petition on her and ordered the police to pick her up. It didn't take long to find her, playing the video games in a downtown game parlor. While she sat quietly in juvenile court, she appeared not to listen when the judge reminded her of the law and told her that she had to go to school until she was sixteen and mind her parents. In a strained voice she said that she was old enough to look after herself, that school meant nothing to her, and that all she ever got from her parents was "aggravation." Now it is four days later, and her parents have again reported Cathy as missing.

Cathy is an example of an "undisciplined juvenile," a classification of children subject to court

proceedings that faces an uncertain future. Under the North Carolina Juvenile Code, "undisciplined juveniles"—also referred to in this article as "non-criminal juvenile offenders"—are children under age 16 who commit offenses that would not be criminal if committed by an adult.<sup>1</sup> These offenses include truancy, regular disobedience to parents or guardians, and running away from home. The classification thus includes children like a girl who runs away to her boyfriend's house, a boy who frequently skips school, and a girl who comes and goes as she pleases with no regard for her parents' wishes. "Delinquent juveniles," on the other hand, are children under 16 who commit acts that *would* be criminal if committed by adults—such as stealing or assault. In North Carolina the district courts have jurisdiction over both undisciplined juveniles and delinquent juveniles. (North Carolina has no separate juvenile court. The phrase "juvenile court" as used in this article will mean North Carolina district courts, which have juvenile jurisdiction, and any courts elsewhere that have jurisdiction over juvenile misconduct.)

Juvenile court proceedings have two parts, adjudication and disposition. In adjudication, the judge determines whether a child has committed the offense or series of offenses as alleged. If he rules that the youngster is undisciplined or delinquent, he may then order a "disposition" (i.e., judicial remedy) for him or her. When a judge in North Carolina finds

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The authors have just completed a study of how the North Carolina juvenile courts handle noncriminal offenders; the study was done at the request of the Governor's Crime Commission. Mr. Ringwalt is a doctoral candidate in public health education at the UNC School of Public Health. He has been a children's protective services worker with the Chatham County social services department and has studied the use of nonlawyers as guardians ad litem in juvenile court. Mrs. Ciminello, whose degrees are in child development and public administration, has been involved in a variety of policy studies for local governments. Mr. Clarke is an Institute of Government faculty member whose fields include criminal and juvenile justice and court administration.

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1. N.C. GEN. STAT. § 7A-517(28).



the child undisciplined, he may do any of the following things: (1) continue (that is, postpone) the case for up to six months to allow the child's family to try to meet his needs better, perhaps with the help of some treatment agency or plan approved by the court; (2) excuse the child from compulsory school attendance; or (3) place him under a court counselor's protective supervision for up to a year so that the counselor "may assist the juvenile in securing social, medical, and educational services and may work with the family . . . to insure the juvenile is provided proper supervision and care . . ." <sup>2</sup> Until 1978 (see pages for a discussion of the history and current status of the courts' jurisdiction over undisciplined juveniles in North Carolina), if the undisciplined child did not abide by conditions of protective supervision (formerly known as "probation") the judge could commit him to a state correctional institution until he reached age 18. That is, if the child had been instructed to attend school regularly as a condition of being placed under protective supervision and if he did not go to school—or if he was to report regularly to the court counselor and did not do so—the judge could send him to training school until he turned 18. The court lost this option in 1978 as a result of a legislative change that has been criticized by those who believe that the court's hands effectively have been tied when it comes to dealing with undisciplined youth. Yet the juvenile court's authority over undisciplined juveniles is also criticized by those who consider that the court's power is too broad and should be restricted or abolished.

The purposes of this article are (1) to review the recent history of the national movement to curtail or abolish the juvenile court's authority over non-criminal juvenile offenders, (2) to discuss the arguments both for and against the court's retaining such authority, and (3) to examine the experience of one state that has abolished its juvenile courts' jurisdiction over noncriminal offenders.

## The abolition movement

In recent years, there has been a national movement to abolish the courts' authority concerning non-criminal misconduct by children. A major event in the movement was the publication in 1967 of a report by the Task Force on Juvenile Delinquency of the

President's Commission on Law Enforcement and Administration of Justice. In 1967 juveniles who were classified as delinquents were still largely undifferentiated by state laws (including North Carolina's) from those who committed noncriminal offenses. Only six years earlier, California had become the first state to make a distinction between delinquent and undisciplined juveniles. The authors of the Task Force Report, however, were concerned that youngsters in this new undisciplined category would be stigmatized as a result of their passage through the juvenile court, regardless of the judge's eventual disposition. The Task Force therefore recommended that the coercive power of the court be reserved exclusively for behavior for which there was "a real risk of long-term harm to the child."<sup>3</sup> The Task Force suggested further that court hearings be limited to those cases for which the "extreme sanction of incarceration" appeared "unavoidable" and that parents no longer be permitted to directly petition the court to take action in regard to their child. The Task Force believed that parents too often used juvenile court action as a means to avoid responsibility for, or to express their hostility toward, their children. The report concluded by recommending that

. . . in view of the serious stigma and the uncertain gain accompanying official action, serious consideration should be given [to] complete elimination from the court's jurisdiction of conduct illegal only for a child.<sup>4</sup>

While the report acknowledged that the adoption of this recommendation might result in the courts' failure to respond to a few "seriously self-destructive children,"<sup>5</sup> it warned that the juvenile courts could offer very little service to noncriminal juvenile offenders and might even be as harmful as they were beneficial.

By the mid-1970s, several states (including North Carolina) had moved to abolish or limit the authority of juvenile courts over children who committed non-criminal offenses. Whether the courts should keep this authority became a public issue. Federal legislation passed in 1974 required that states, as a condition of receiving federal funds, stop committing children

3. Task Force on Juvenile Delinquency, *Task Force Report: Juvenile Delinquency and Youth Crime* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 27.

4. *Ibid.*

5. *Ibid.*

2. *Id.* § 7A-648.

to correctional institutions for noncriminal offenses. Also in 1974, the National Council on Crime and Delinquency advocated that undisciplined children be entirely removed from the juvenile justice system, asserting that the court's response to "juvenile victimless crimes" often proved destructive to both the child and society.<sup>6</sup>

But there were opposing views. In 1975 the National Council of Juvenile and Family Court Judges adopted a resolution reaffirming the need for court authority with respect to noncriminal juvenile offenders. In its view, the court's power was necessary to serve the needs of children, their families, and society as a whole.<sup>7</sup>

The Standards of the Joint Commission on Juvenile Justice Standards of the Institute of Judicial Administration (IJA) and the American Bar Association (ABA) were published in 1977. The IJA/ABA Joint Commission was charged with reviewing the entire juvenile justice system and reporting its findings to the American Bar Association House of Delegates.

The Joint Commission's proposed standards, most of which were eventually approved by the ABA, covered every aspect of the juvenile justice system. Its conclusion concerning noncriminal juvenile misbehavior was controversial:

A juvenile's acts of misbehavior, ungovernability or unruliness which do not violate the criminal law should not constitute a ground for asserting juvenile court jurisdiction over the juvenile committing them.<sup>8</sup>

The Joint Commission believed that noncriminal juvenile offenders were better served by community agencies on a voluntary basis than by the juvenile court. However, its proposed standards would allow the juvenile court to retain the power to order an alternative residential placement for a child if it was petitioned to do so by the child or the parents and it determined that the family could not be kept intact by counseling.<sup>9</sup> The Commission also recommended that a law enforcement officer be authorized to take a

noncriminal offender into custody for up to six hours if he believed that the child was in immediate physical danger.<sup>10</sup> The standards offered no remedy to schools regarding truants and other children who refuse to obey school authority.

The proposed IJA/ABA standards regarding non-criminal misbehavior have never been approved by the American Bar Association House of Delegates. They were attacked by the American Psychiatric Association's Council on Children, Adolescents, and their Families, which suggested that the primary problem of juvenile courts was insufficient funding. Because "children are, by nature, involuntary patients," the Council warned, they must "be coerced to treatment," and without such coercion many adolescents would avoid all efforts to help them. "Don't throw out the baby with the bath water," the Council's report concluded.<sup>11</sup> The National Council of Juvenile and Family Court Judges reacted in a similar vein. "Court services," it advised, should be available "as a last resort for truants and runaways who refuse to avail themselves of voluntary services."<sup>12</sup>

Since the proposed IJA/ABA standards concerning noncriminal misbehavior were published, the national controversy concerning the court's authority over noncriminal juvenile offenders has died down but not disappeared. At least six states have moved to abolish or curtail the authority. Florida, Minnesota, and Pennsylvania,<sup>13</sup> for example, have classified these offenders as "dependent"—i.e., lacking a responsible parent or guardian. Indiana has restricted the coverage of the court's authority to juveniles whose parents or other custodians have allowed them to engage in sexual offenses or who are in need of treatment for acts that may substantially endanger their own health or the health of others. Utah<sup>14</sup> and Washington<sup>15</sup> have abolished the court's jurisdiction

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6. Board of Directors, National Council on Crime and Delinquency, "Jurisdiction over Status Offenses Should be Removed from the Juvenile Court. A Policy Statement," *Crime and Delinquency* 21 (April 1975), 97-99.

7. *Juvenile Court Newsletter*, 5 (September 1975), 9.

8. *Standards Relating to Noncriminal Misbehavior Recommended by the IJA/ABA Joint Commission on Juvenile Justice Standards* § 1.1 (Cambridge, Mass.: Ballinger Publishing Co., 1982) (henceforth IJA/ABA Standards).

9. *Id.* §§ 5.1-5.4.

10. *Id.* §§ 2.1, 2.2.

11. *Juvenile and Family Court Newsletter* 8 (December 1978), 7.

12. *Id.* at 10.

13. John L. Hutzler, *Juvenile Court Jurisdiction over Children's Conduct: 1982 Comparative Analysis of Juvenile and Family Codes and National Standards* (Pittsburgh, Pa: National Center for Juvenile Justice, 1983). Since this summary of state laws pertaining to the undisciplined offenders is now two years old, some of the information summarized here may be out of date.

14. Arnold Binder, "The Juvenile Justice System: Where Pretense and Reality Clash," *American Behavioral Scientist* 22 (July/August 1979), 621-52.

15. Monrad Paulsen, "Current Reforms and the Legal Status of Children," in LaMar T. Empey (ed.), *The Future of Childhood and Juvenile Justice*, (Charlottesville, Va.: University of Virginia Press, 1979), pp. 211-33.



over noncriminal juvenile offenders almost completely, although some court authority remains in regard to runaways.

The rest of this article will review the issues involved in the debate over the purpose and function of the court's power regarding noncriminal juvenile offenders and will consider what some have found of value in the court's role and why others think it should be abolished. The primary questions are:

- Do noncriminal juvenile offenders belong in court at all?
- What value does the juvenile court have in meeting the needs of these youngsters and their families?
- Could these needs be met better without the court's intervention?
- What negative effects does the court's intervention have on children, their families, and the services provided them?

## The abolition debate

The debate about the courts' jurisdiction over noncriminal offenders is difficult and complex. Issues concerning what is effective are confounded by issues concerning what *ought* to be done (without regard to whether the recommended measures work) and what *can* be done with limited resources. Because all of these dimensions are present (if not always articulated) in almost every facet of the debate, rational discussion is sometimes difficult. This section summarizes arguments for and against the jurisdiction. In most cases, no attempt is made to evaluate the merits of the arguments presented because there is no empirical evidence by which they can be assessed.

**Favoring abolition.** Those who favor abolishing the juvenile courts' authority to consider cases of noncriminal juvenile misbehavior argue that courts have too much discretion, which invites abuse of power and leads to decisions that may damage the children whom the court was intended to help. They note that juveniles who have committed similar offenses often receive entirely different dispositions. Runaway girls, for example, tend to be held in secure custody longer than boys.<sup>16</sup> Also, complaints made to juvenile courts of noncriminal misbehavior by middle and upper class youngsters tend to be diverted—that is, the children are referred to community agencies

rather than sent into court—more often than complaints concerning misbehavior by children from poor or minority-group families.<sup>17</sup>

Critics have further complained that the focus of the court's authority—on the *behavior* of juvenile offenders—is inappropriate. The offenders' parents, they argue, are just as responsible for their children's behavior as are the children themselves, and thus children may be penalized for what is in reality their parents' fault. The abolitionists also assert that since the actions taken by the court to rehabilitate juvenile offenders are widely acknowledged to be ineffective, the rationale for the court's authority is weak.<sup>18</sup>

Those who favor abolition also contend that the resources now allocated to noncriminal offenders could better be devoted to delinquents, since delinquents are more dangerous to the public and more in need of services. They further argue that noncriminal juvenile offenders should be reclassified as “neglected” or “dependent,” and thus should properly be served by the department of social services. In North Carolina, neglected juveniles<sup>19</sup> are youngsters under 18 who do not receive “proper care, supervision, or discipline” from their parents, and dependent juveniles<sup>20</sup> are youngsters under 18 who need help or placement in foster care because either they have no parents or their parents are unable to supervise or care for them. Often children officially labeled “undisciplined” are also “neglected,” in the sense that they lack proper parental care and discipline. They may also be “dependent”—that is, without support from their parents. Some critics of juvenile court jurisdiction over noncriminal juvenile offenders point out that departments of social services, which serve neglected and dependent children, have qualified professionals that the juvenile court system lacks; the social service departments are therefore more able than the courts to respond to the problems of noncriminal juvenile offenders and their families, which often require intensive and continuing intervention. In the view of those who support curtailment of the court's authority, social service agencies tend to focus on the problems of the family

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16. Judy Calof, *Status Offenders and the Juvenile Court: A Review of the Problem* (Hackensack, N.J.: National Council on Crime and Delinquency, 1975).

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17. Michael Sosin and Rosemary Sarri, “Due Process—Reality or Myth,” in P. F. Cromwell, Jr., et al. (eds.), *Introduction to Juvenile Delinquency* (St. Paul, Minn.: West Publishing Co., 1978).

18. Solomon Kobrin and Malcolm Klein, “Deinstitutionalization and Diversion of Juvenile Offenders: A Litany of Impediments,” in Norval Morris and Michael Tonry (eds.), *Crime and Justice 1978* (Chicago, Ill.: University of Chicago Press, 1979).

19. N.C. GEN. STAT. § 7A-517(21).

20. *Id.* § 7A-517(13).



# Jurisdiction over Undisciplined Juveniles in North Carolina

Before 1971, North Carolina law made no distinction, as far as courts' dispositional powers were concerned, between delinquent juvenile conduct (acts that would be criminal if committed by an adult) and undisciplined behavior (noncriminal juvenile misconduct). Whether the court found the child to be delinquent, undisciplined (as the law now uses that term), neglected by his parents, or destitute, it could place him on probation, place him in the custody of some person other than his parents, commit him to the local social services department for placement in a foster home, or commit him to a state-operated or other public or private residential institution for an indefinite period.<sup>1</sup> In legislation that became effective in 1970, undisciplined behavior was made a category separate from

delinquent behavior, although the juvenile court still had the same dispositional options for both delinquents and undisciplined youngsters, including commitment to a state training school until the child reached age 18. The former Board of Juvenile Correction determined when the offender was ready for release from training school.<sup>2</sup>

Events in North Carolina in the 1970s reflected national developments in juvenile justice. In 1971 the General Assembly passed legislation<sup>3</sup> that limited the courts' powers with respect to undisciplined children: while the courts could still place them on probation, they could not commit them to training school unless they were found to be delinquent. At that time, "delinquent" juveniles included not only those who com-

mitted acts that would be criminal if done by an adult but also those who violated conditions of probation imposed for an earlier undisciplined act, even if the probation violation did not involve criminal misconduct.

In North Carolina in the early 1970s, there was considerable concern about the legal status of undisciplined children, especially about the juvenile court's power to commit them to training schools. The North Carolina Bar Association's Penal System Study Committee, in a 1972 report entitled *As the Twig Is Bent*, strongly disapproved of committing children for non-criminal misbehavior like truancy and running away from home. In its Interim Report, the 1975 General Assembly's Commission on Sentencing, Criminal Punishment, and Rehabilitation recommended abolishing such commitments. The push to remove undisciplined juveniles from training schools was strengthened in 1974,

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1. N.C. GEN. STAT. §§ 110-21 through -44 (1966).

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2. *Id.* §§ 7A-278, -286 (1969).

3. N.C. Sess. Laws 1971, Ch. 1180.

as a whole and thus avoid the "victim-blaming" that emerges when the court has jurisdiction over non-criminal juvenile offenders. Also, these critics of the juvenile court's jurisdiction believe that substituting a social services system for the juvenile court would stimulate the development of a wider and more innovative range of services.<sup>21</sup>

Some abolitionists question whether noncriminal juvenile offenders really need treatment. In their view, the behavior of these children is deviant only because society has labeled it so; in reality, the offenders are either reacting to an intolerable home or school situation or are exerting their readiness to

become independent of their families. According to this view, not only have children been served inappropriately by juvenile court when they should have been served (if at all) by community agencies, but also these agencies and the children's parents have been encouraged to become dependent on the court. Schools, social agencies, and parents have thus been given the tacit message that they are free to abdicate their child-protecting roles to the juvenile justice system.<sup>22</sup>

A final argument made by some who favor abolition relates to their concern that juveniles who come into contact with the court are "stigmatized" or

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21. *IJA/ABA Standards*, *supra* note 8.

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22. *Ibid.*

when Congress passed the Juvenile Justice and Delinquency Prevention Act,<sup>4</sup> which provided federal funds for juvenile justice only to states that stopped committing status offenders to correctional institutions.

The population of North Carolina's juvenile training schools dropped by about 50 per cent during the early 1970s—from about 2,000 in 1970 to about 1,000 in 1974. This decrease in the training school population was due not to a decrease in admissions to training schools during the early 1970s (admissions remained fairly steady), but rather to an acceleration of releases.<sup>5</sup> The reason for this acceleration is unclear, but it may have been a response to influential opinion at that time that favored removing noncriminal offenders from institutions.

North Carolina law regarding undisciplined children underwent another change in 1974, when legislation was enacted that

authorized chief court counselors in each judicial district to establish intake services.<sup>6</sup> Intake personnel were to be responsible for screening complaints regarding children—i.e., for deciding whether it was in the child's best interest for a formal juvenile petition to be filed with the court. This screening of complaints probably contributed to reduced numbers of petitions regarding undisciplined offenses and, as a consequence, fewer admissions to training schools beginning in 1975.

A third major change in North Carolina law brings us to the present situation. In 1975 a law was enacted<sup>7</sup> that took away all of the juvenile court's power to commit noncriminal juvenile offenders to training school. After postponement, this law went into effect on July 1, 1978. The result—which was preserved in the 1980 Juvenile Code—is that while juvenile court judges may still place undisciplined children under the supervi-

sion of a court counselor, they may not find them delinquent or commit them to training school for violating conditions of supervision. Thus the only basis at present for committing juveniles to training school is delinquency—conduct that would be criminal for an adult.<sup>8</sup>

The legislative change that became effective in 1978 probably was at least partly responsible for the sharp drop in commitments to training school from about 1,500 in 1978 to about 800 in 1981.<sup>9</sup> But it has also resulted in considerable frustration among judges and court counselors who work with undisciplined juveniles. While they still must handle cases involving such children, they have no ultimate sanction to make them comply with the court's protective supervision orders. Some of these officials feel that the legal changes of the 1970s have rendered the juvenile court totally ineffective in dealing with undisciplined children.—SHC

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4. 42 U.S. Code §§ 5601 et seq.

5. Michael Watson, "Progress and Problems in North Carolina's Juvenile Justice System," *Popular Government* 47, no. 4 (Spring 1982), 21.

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6. N.C. Sess. Laws 1973 (1974 sess.), Ch. 1339; N.C. GEN. STAT. § 7A-287.7 (1974 Supp.).

7. N.C. Sess. Laws 1975 (Ch. 929).

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8. N.C. GEN. STAT. §§ 7A-646 through -649, -652.

9. Watson, *supra* note 4.

"labeled." Their view, called the "labeling theory," is that a youth who has been in juvenile court becomes identified as deviant, is gradually isolated by his acquaintances, comes to perceive himself as different, and consequently behaves according to his and others' new expectations of him. According to the labeling theory, involvement with the juvenile court increases the likelihood that the child will repeat the very offenses that the court was designed to prevent.<sup>23</sup>

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23. Suzanne S. Ageton and Delbert S. Elliot, "The Effects of Legal Processing on Delinquent Orientation," *Social Problems* 22 (October 1974), 87-100. Gene Fisher and Maynard Erickson, "On Assessing the Effects of Official Reactions to Juvenile Delinquency," *Journal of Research in Crime and Delinquency* 10 (July 1973), 117-94.

**Against abolition.** Those who would retain the court's authority over status offenders question the argument concerning the insidious effects of labeling. They assert that the case for labeling is at best inconclusive, and in this they are supported by research. A recent comprehensive review of the literature on the subject concludes that little evidence supports the labeling theory and that the kids who come before the court do not themselves perceive their court experience as highly stigmatizing.<sup>24</sup>

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24. Anne R. Mahoney, "The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence," *Law and Society Review* 8 (Summer 1974), 583-614.

Others who support the court's jurisdiction have refuted the argument that removing the jurisdiction would shift a greater proportion of the courts' resources to delinquents. In North Carolina, petitions regarding undisciplined children constitute 15 per cent of the total petitions concerning juvenile offenders;<sup>25</sup> and in the nation at large, such petitions constitute 20 per cent of the total.<sup>26</sup> At most, then, the resources that the court could devote to delinquents could be increased by only one-quarter if the court's jurisdiction over noncriminal juvenile offenders were curtailed. Even that figure might be misleading, because if jurisdiction of such offenders were ended, some of them might be "re-labeled" as delinquent, neglected, or dependent, so that they might well come before the court in any event.

Furthermore, those who oppose abolishing the court's jurisdiction over noncriminal juvenile offenders believe that such a move would cause so many offenders to be relabeled as neglected or dependent that the resources of community agencies would be overloaded.<sup>27</sup> In their view, community agencies are less willing to serve children who are constantly running away from home, frequently truant, and the like, than they are to serve children who are abused, neglected, or mentally disturbed. Also, those opposed to abolition think that many noncriminal juvenile offenders and their families will not accept help voluntarily, and the court's authority is needed to compel them to obtain the help they need.<sup>28</sup>

The anti-abolitionists believe that the school and the child's family should be able to turn to the juvenile justice system if the child is beyond the family's control. In this view, many noncriminal juvenile offenders are simply incorrigible, although their misconduct is not necessarily the fault of the family and the school. Further, many of these children have already either been turned away from community agencies or have exhausted the resources of these agencies.<sup>29</sup>

## Another state's experience

At least six states have modified their courts' authority over noncriminal juvenile offenders either in whole or in part. Most of them have not yet assessed the effects of their actions, but a study has been done in Washington.

Following closely the recommendations of the IJA/ABA Joint Commission, discussed earlier in this article, the State of Washington enacted legislation in 1977 that removed noncriminal juvenile offenders from the juvenile court's jurisdiction. While the law retreated from this extreme position by means of several qualifying amendments during the three years after it was passed, noncriminal offenses per se remain insufficient as grounds for court intervention. In place of juvenile court, the reform established a voluntary social service system to be operated through the State Department of Health and Human Services. As the ABA/IJA Joint Commission had proposed, the Washington court retained the authority to place children out of their parents' home. This authority may be invoked by either a child or his parents when they cannot agree on where the child should live. A later amendment allows up to seven days of secure confinement as a penalty for youngsters who run away from these court-ordered placements.<sup>30</sup>

A recently published study<sup>31</sup> assessed the impact of Washington's legislation on several areas of the juvenile justice system. The study examined changes in caseload data before and after the legislation was passed. It found that children whose only offenses were noncriminal had virtually disappeared from Washington juvenile courts by 1980. Children and their families appeared to be receiving about the same level of service under Washington's voluntary social service system as they did from juvenile court, although the system was not fully prepared at first for its new role. The study did not assess the *quality* of services either before or after the legislation was passed.

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25. Administrative Office of the Courts, *North Carolina Courts: 1981-1982 Annual Report* (Raleigh, N.C.).

26. Yeheskel Hasenfeld and Rosemary Sarri, "The Juvenile Court Reexamined," in Rosemary Sarri and Yeheskel Hasenfeld (eds.), *Brought to Justice? Juveniles, the Courts, and the Law* (Ann Arbor, Mich.: The University of Michigan Press, 1976), pp. 207-18.

27. Arthur Lindsay, "Status Offenders Need a Court of Last Resort," *Boston University Law Review* 57 (July 1977), 631-44.

28. Justine Wise Polier, "Dissenting View," in *IJA/ABA Standards*, *supra* note 8, p. 67.

29. Brooke E. Spiro, "Abolishing Court Jurisdiction over Status Offenders: Anticipating the Unintended Consequences," in Scott H. Decker

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(ed.), *Juvenile Justice Policy: Analyzing Trends and Outcomes* (Beverly Hills, Calif.: Sage Publications, 1984), pp. 77-94.

30. Anne L. Schneider, Jill G. McKelvy, and Donna D. Schram, *Divestiture of Court Jurisdiction over Status Offenders, Assessment of Washington's Juvenile Justice Code*, Vol. VI (Seattle, Washington: Institute of Policy Analysis, March 1983).

31. Anne L. Schneider, "Divesting Status Offenses from Juvenile Court Jurisdiction," *Crime and Delinquency* 30 (July 1984), 347-70.



The Washington study found that some children who once would have come to the juvenile court's attention as noncriminal juvenile offenders had been "reabeled" (reclassified) as delinquents. The researchers noted that many noncriminal juvenile offenders also had committed minor criminal offenses, which facilitated their relabeling. The study concluded with a warning that states that wish to abolish the jurisdiction of juvenile courts over noncriminal juvenile offenders should frame their legislation carefully to avoid the relabeling of children who commit minor criminal offenses along with noncriminal ones.

## Conclusions

The debate concerning the juvenile court's authority with respect to noncriminal offenders probably will continue. Children who are beyond the con-

trol of their parents, who run away from home, or who are truant from school present challenging and complex needs for service. While we may sometimes despair of finding effective means to serve them, they should not be ignored.

In North Carolina at present, while there is still some interest in removing undisciplined children completely from the juvenile court's jurisdiction, there seems to be more interest in finding sanctions to help the court enforce what it directs these children to do. In our view, whether the courts should be involved in responding to the problems of undisciplined children and how they should enforce their orders are less important questions than what sort of help these children should receive and how effective this help is, or can be. The debate over the extent of the juvenile court's authority should not obscure the real needs and problems of the children and their families. ¶



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