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Defending Yourself and Your Property

Robert L. Farb

No law-abiding person wants to use physical force against another person without justification. Sometimes, however, you may need to use physical force to defend yourself or others from harm or to protect your property. Are you justified in doing so? This article discusses some of the general principles[1] of self-defense and defense of property. It will not discuss, however, the intricate rules[2] of self-defense that apply when you are initially at "fault"—for example, by starting a fight and then attempting to exercise self-defense. It also will not discuss situations in which you may resist a law enforcement officer's unlawful arrest, or circumstances in which a law enforcement officer may use force to arrest.[3]

Examples of issues in self-defense and defense of property. Consider the following situations, which will be discussed later in this article:

1. It is 3:00 a.m. You and your spouse are asleep in your bedroom, and your two children are asleep in their bedroom. You are awakened by the sound of breaking glass that seems to be coming from your kitchen. You take your handgun and enter the kitchen. You see the silhouette of a person about six feet tall, with one hand apparently holding a handgun and with his other hand reaching through a broken pane in the kitchen door for the door knob. You yell loudly, "Who are you—what do you want?" There is no response. The door starts to open. You shoot at the intruder. Did you act properly to defend yourself and your family?
2. You are sitting on a bench in a shopping mall. You put your recently-purchased radio next to you. Tired, you begin to close your eyes. A person sitting beside you stands up and starts to leave. You notice that your radio is missing and see that person walking quickly away with it. You run and catch up with him and say, "Give me back that radio. It's mine." He says, "No, it's not." You grab his arm and take it away. The thief says, "Oh, okay. I'm sorry. I didn't know it was yours. I thought someone just left it there. That's why I took it." Angered by this explanation, you punch him in the stomach. Did you act properly in defending your property?
3. You are working alone at your convenience store late at night when a teenager walks into the store. While you are giving change to a customer who has purchased a gallon of milk, you see the teenager reach into the cooler for a six-

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1. For an excellent discussion of the law of self-defense and defense of property, *see* R. Perkins & R. Boyce, Criminal Law (3d ed. 1982) 1113-60 (hereinafter Criminal Law). For North Carolina cases, *see* State v. Norris, 303 N.C. 526, 279 S.E.2d 570 (1981); State v. Hunter, 315 N.C. 371, 338 S.E.2d 99 (1986).

2. *See* an excellent summary of these rules in State v. Mize, 316 N.C. 48, 340 S.E.2d 439 (1986).

3. *See generally* R. Farb, Arrest, Search, and Investigation in North Carolina (1986) 48-50.

pack of beer and walk quickly out of the store. You yell at him to stop. He runs out of the store and gets into a waiting car with several occupants. You run toward the car with your handgun and loudly yell, "Stop. He stole that beer." As the car begins to move quickly from the parking lot, you shoot into it to stop him. Did you act properly to defend your property?

Defending Yourself

When an assailant uses or attempts to use force (whether by fists, a weapon, or the like) against you, and you are without fault (for example, you did not start a fight) in causing that person to use force, you may defend yourself by using whatever force you *reasonably believe* is *actually or apparently necessary* to prevent harm to yourself. You may not, however, use deadly force (force that is likely to cause death or serious harm)[4] to defend yourself unless your assailant is attempting to use deadly force against you or is attempting to commit a sexual assault against you.[5]

Reasonableness of belief. Your belief in using self-defense must be both subjectively and objectively reasonable. You must *in fact* reasonably believe that you need to defend yourself. Your belief must also be objectively reasonable: A person of "ordinary firmness" standing in your shoes when you were attacked would believe that your use of force in self-defense was necessary.[6]

Actual or apparent necessity. When an assailant attacks you (and you are without fault in bringing on the attack), the after-the-fact judgment of whether you used reasonable force—deadly or non-deadly—focuses on whether you reasonably believed that using that force was actually *or* apparently necessary. The phrase "actually necessary" means that the situation *in fact* required your use of force—for example, your assailant pointed a shotgun at you and threatened to kill you, and you then used deadly force to defend yourself. If the shotgun was loaded and working properly, you *in fact* faced deadly force when you defended yourself. The phrase "apparently necessary" means that although the force used was not *in fact* necessary, the circumstances as they appeared to you were sufficient to create a belief in the necessity of force in a reasonable person standing in your shoes. For example, say that a robber approaches you in a store's parking lot late at night and demands your money. You refuse to comply. He pulls out what appears to be a gun and threatens to kill you. Before he can shoot, you pull out a pocketknife and stab him. The gun is actually a toy pistol. Your life was not *in fact* threatened, but you properly used deadly force because it was apparently necessary to do so.

Excessive force when exercising self-defense. If you use excessive force when you otherwise properly exercise self-defense (for example, you shoot your assailant when shoving him away would have been sufficient), you have committed a crime. If you use excessive force and kill someone, you have committed voluntary manslaughter; if your victim suffered serious injury through your use of a deadly weapon, you have committed a felonious assault.

Defense of Habitation

The defense of habitation[7] permits you to use deadly force in your home[8] to prevent an intruder's forcible entry when you reasonably believe that deadly force is necessary to prevent the entry and you reasonably believe that (1) the intruder intends to commit a felony there [felonies include robbery (threatening violence to take property from a person), felonious larceny (which includes taking property after breaking or entering a home with intent to steal), or felonious assaults (which include an assault with a deadly weapon with intent to kill)], *or* (2) the intruder presents a danger of death

4. State v. Hunter, 315 N.C. 371, 338 S.E.2d 99 (1986).

5. The use of deadly force to repel a sexual assault was recognized in State v. Hunter, 315 N.C. 371, 338 S.E.2d 99 (1986).

6. *See* the discussion in State v. Bush, 307 N.C. 152, 297 S.E.2d 563 (1982).

7. *See* State v. McCombs, 297 N.C. 151, 253 S.E.2d 906 (1979); State v. Hedgepeth, 46 N.C. App. 569, 265 S.E.2d 413 (1980).

8. This defense probably would also apply to a place, like a hotel room, where you temporarily are residing.

or serious bodily harm to you or other occupants in the house. The defense of habitation only permits you to use deadly force to prevent a *forcible entry* into your home. Once the intruder has entered, the normal rules (discussed above) of using deadly force in self-defense apply. The law assumes that once the intruder has entered, you should be better able to determine his intentions.

Defense of Others

Although North Carolina law recognizes the right to defend others, the rules are somewhat complex. The defense of others has developed from two separate legal sources: (1) the defense of family members, an ancient property privilege that a man could protect what was "his," his family and servants—a defense that now probably extends to defending any innocent person; and (2) the privilege of crime prevention, the right to use reasonable force to prevent the commission of a felonious assault (an assault likely to result in death or serious bodily harm) upon an innocent victim. These two justifications[9] need to be discussed separately because their scopes may differ.

Defense of family members and others. This privilege permitted family members or servants to come to the aid of another who was being assaulted (assuming the person offering assistance was not at fault in bringing on the assault). Although not explicitly recognized by older North Carolina appellate cases, it is probably the law today (as it is in most other states) that the defense of others is not limited to family members or servants; you may defend any innocent victim. Your right to defend another is the same as your right to defend yourself, including the right to use deadly force to prevent death or serious bodily harm to the person you are defending. Of course, you must reasonably believe that the amount of force you need to use is actually or apparently necessary, and that force must not be excessive.

But what if you come to the defense of another—whether family member or stranger—who is actually at fault in the fight and has no right to defend himself, even though you reasonably believe that your defense is proper? North Carolina appellate cases[10] say that the legality of your right to defend another is determined by the legality of the right of the person defended to defend himself—that is, you step into that person's shoes: Your reasonable but mistaken belief is no defense to a criminal charge against you. Thus, you take a risk of being found guilty of a crime when you defend another, if the person you defended is later determined to have had no right to defend himself. (The rule in some states protects your reasonable but mistaken belief in defending another.)[11]

Crime prevention privilege—preventing the commission of a felonious assault. North Carolina law recognizes your right to use reasonable force to prevent the commission of a felonious assault[12] against an innocent victim. Under this privilege—unlike the defense of others—the appellate cases[13] appear to protect you from criminal liability if you have a reasonable but mistaken belief that a felonious assault is being committed upon an innocent victim. Therefore, you would not be guilty of a crime if it later was determined that the "innocent" person you protected from an apparent felonious assault had no legal right to defend himself—and thus a felonious assault was not in fact being committed

9. The North Carolina Supreme Court has required that both concepts be given separate consideration. State v. Robinson, 213 N.C. 273, 195 S.E. 824 (1938). I believe that merging both concepts into a single concept of defense of others would be a useful legal reform, as well as deleting (except for defending another who is being arrested by a law enforcement officer) the harsh rule that does not recognize a reasonable mistake of fact defense. *See generally* CRIMINAL LAW *supra* note 1, at 1144-47.

10. State v. Cox, 153 N.C. 638, 69 S.E. 419 (1910); State v. Greer, 162 N.C. 640, 78 S.E. 310 (1913); State v. Ritter, 239 N.C. 89, 79 S.E.2d 164 (1953); State v. McLawhorn, 270 N.C. 622, 155 S.E.2d 198 (1967).

11. *See generally* CRIMINAL LAW *supra* note 1, at 1144-47.

12. The common law also recognized, under the crime-prevention privilege, the right to prevent the commission of other dangerous felonies as well as misdemeanors that were breaches of the peace, such as an assault and battery. *See generally* CRIMINAL LAW *supra* note 1, at 1108-12. I am unaware of North Carolina cases that have included misdemeanor assaults under this privilege; thus I have limited my discussion in the text to felonious assaults. Of course, one may defend another from a misdemeanor assault under the defense-of-others justification and, as discussed later in the text, detain another who has committed a misdemeanor assault in one's presence.

13. State v. Robinson, 213 N.C. 273, 195 S.E. 824 (1938); State v. Fields, 268 N.C. 456, 150 S.E.2d 852 (1966); State v. Graves, 18 N.C. App. 177, 196 S.E.2d 582 (1973).

against him. Thus, this privilege may provide broader protection for you than the defense-of-others justification, at least when a felonious assault is involved. However, North Carolina appellate cases have not directly addressed this issue.

Defense of Property

You may use reasonable nondeadly force to protect the lawful possession of your real or personal property when you reasonably believe that your property is in immediate danger of unlawful interference, and it is necessary to use force to prevent that interference. Ordinarily you should request an alleged thief to return your personal property (or a trespasser to leave your real property) before you use nondeadly force—unless you reasonably believe that your request would be useless or dangerous.[14] Deadly force to protect property is never permitted (but note the defense of habitation discussed above).[15] Of course, if you are attacked with deadly force while using lawful nondeadly force to protect your property, the principles of self-defense may then permit you to use deadly force to protect yourself.

It is unclear under North Carolina law whether you can use this defense to protect the property of another[16] (but see the following discussion of a private person's right to detain).

Private Person's Right to Detain

With one limited exception,[17] a private person in North Carolina has no authority to arrest an offender, but may detain him under some circumstances. It is worth discussing this detention authority because sometimes it may be used when principles of self-defense or defense of property do not apply.

A private person may detain an offender whenever he has "probable cause" (reasonable grounds to believe) that the offender has committed *in his presence* (for example, he sees or hears the offense being committed) a felony, a "breach of the peace" (an offense that disturbs public order and tends to incite others to break the peace, like an assault), a crime involving physical injury to another, or a crime involving theft or destruction of property.[18] The person may use only reasonable force (rarely, if ever, would deadly force be justified)[19] in holding the person detained, must immediately notify a law enforcement officer of his action, and must release the offender when the officer arrives.

Discussion of Examples

1. In example one, the use of deadly force would probably be justified by the defense of habitation (and probably defense of oneself and others). The example indicates that you reasonably believed that deadly force was actually or apparently necessary to prevent the intruder's forcible entry, and the intruder apparently intended to commit a felony or presented a danger of death or serious bodily harm to you and your family.

2. The use of force to retrieve the radio in example two appears justified by the defense of property. Grabbing the alleged thief's arm appears reasonable, especially since he refused to give the radio back after your request. However, your punching the alleged thief in the stomach after taking the radio from him is not justified by the defense of property or self-defense. That act was a criminal assault.

3. The use of deadly force to stop the thief in example three is not justified by defense of property or by using reasonable force to detain a person who

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14. *See* CRIMINAL LAW *supra* note 1, at 1156; State v. McCombs, 297 N.C. 151, 253 S.E.2d 906 (1979).

15. State v. McCombs, 297 N.C. 151, 253 S.E.2d 906 (1979); State v. Brandon, 53 N.C. 463 (1861); State v. McLawhorn, 270 N.C. 622, 155 S.E.2d 198 (1967).

16. Some states recognize the defense. *See* CRIMINAL LAW *supra* note 1, at 1158.

17. N.C. GEN. STAT. § 15A-734 (1983) permits a private person to arrest without a warrant a person who is charged in another state with a crime punishable by more than one year's imprisonment and who has fled from that state into North Carolina. As a practical matter, however, a private person should simply detain the fugitive and call a law enforcement officer to take custody of him.

18. N.C. GEN. STAT. § 15A-404 (1983).

19. *See* State v. Wall, 304 N.C. 609, 286 S.E.2d 68 (1982); State v. Ataei-Kachuei, 68 N.C. App. 209, 314 S.E.2d 751, *disc. review denied*, 311 N.C. 763, 321 S.E.2d 146 (1984). For a discussion of these cases, see R. FARB, *supra* note 3, at 275-76.

committed a theft of property in your presence. Even a law enforcement officer would not have been justified in using deadly force to stop the alleged thief. You committed the felony of discharging a firearm into occupied property. If an occupant of the car had been seriously wounded by your shooting, you also would have committed the felony of assault with a deadly weapon inflicting serious injury. If an occupant had been killed, you would have committed first-degree felony murder (a murder committed during the commission of the discharging-firearm felony), punishable by death or life imprisonment.[20]

20. *See* State v. Wall, 304 N.C. 609, 286 S.E.2d 68 (1982).

Margaret E. Taylor Retires

Margaret Taylor retired from the Institute of Government June 30, 1987, after serving as its editor for 23 years. She served as Managing Editor of *Popular Government* with 6 editors: Elmer Oettinger, Joan Brannon, Douglas Gill, Jack Vogt, Steve Clarke, and me. Margaret is a defender of and standard-bearer for the plain style. The writing must be clear; it must be accurate; and in *Popular Government* at any rate, it must be understandable to the general reader. My own writing and the writing of every person who has written for *Popular Government* has been improved by her editing, by her insistence on the plain style. William Strunk and E. B. White have surely had few disciples as able as she. Her legacy is a *Popular Government* of greater clarity and accuracy. Her diligence and high standards have been an inspiration to every editor, and each of us who has served as editor is greatly in her debt. We wish her well.

William A. Campbell
Editor, *Popular Government*

Collecting Property Taxes When the Taxpayer Is in Bankruptcy[1]

William A. Campbell

Introduction

A bankruptcy proceeding is a federal proceeding under the jurisdiction of a federal bankruptcy court and is governed by Title 11 of the United States Code. Once a taxpayer is in bankruptcy, the North Carolina Machinery Act provisions concerning payment of local property taxes and the status and priority of tax liens—while still relevant—are no longer the controlling law; instead, the bankruptcy statutes are paramount. Thus, while the Machinery Act gives the property tax lien priority over almost all other liens and encumbrances and gives the tax collector extraordinary collection remedies against personal property, the bankruptcy statutes balance the need of local governments to collect tax revenue against the claims of other creditors and against the underlying purpose of bankruptcy to give the debtor a "fresh start" or to allow him to pay his creditors over an extended period of time.

Relief is made available to debtors under four different chapters of the bankruptcy code: 7, 11, 12, and 13. Chapter 7, sometimes called "straight" bankruptcy, is the most familiar and most widely used form of bankruptcy. In a chapter 7 proceeding, the debtor's property is sold to make assets for the estate—if the debtor has enough equity in nonexempt property to make a sale worthwhile. Creditors are paid some, but usually far from all, of what they are owed, and the debtor is then discharged from the claims of nearly all of his creditors, whether or not the claims have been fully paid.

Chapter 11 provides for the reorganization of business debtors; instead of liquidation, chapter 11 contemplates that payment of certain debts will be postponed or new types of securities will be issued, but the debtor will continue as a going concern.

Chapter 12 is an emergency provision available only to certain qualifying family farmers,[2] and unless Congress extends its life, it will expire October 1, 1993.[3] Under chapter 12, instead of liquidating his business, a farmer is allowed to continue farming by filing a plan that provides for the payment of his debts over three or five years. Some of the farmer's property may be sold during the period covered by the plan, but a complete liquidation is not authorized under chapter 12.

Chapter 13 is available to individual wage-earners and self-employed persons (not corporations

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1. For a more detailed discussion of the issues treated in this article, *see* PROPERTY TAX BULLETINS Nos. 52 (Sept. 1979), 66 (July 1984), and 76 (Oct. 1986) (Institute of Government).

2. *See* definitions in 11 U.S.C.A. § 101(17) and (18) (West, *Bankruptcy Code, Rules and Forms*, 1987).

3. Public Law 99-554 § 302(f).

or partnerships), allowing them to pay their debts over three or five years under the supervision of the bankruptcy court. In a chapter 13 proceeding, as in proceedings under chapters 11 and 12, liquidation of the debtor's property and distribution of assets to creditors are not involved.

In each federal judicial district there are one or more bankruptcy judges with jurisdiction over all bankruptcy matters. A trustee is appointed in each case to handle day-to-day administration of the case and to exercise control over the property of the estate. The extent of the trustee's involvement depends on the nature of the individual case and the chapter under which the debtor is proceeding. Usually, the trustee is more extensively involved in chapter 7 and 13 proceedings than he is in chapter 11 proceedings. If a tax collector has questions about how a tax claim is being handled in a particular case, he should write or call the trustee.

A debtor commences a case in bankruptcy by filing a petition with the bankruptcy court.[4] The date the petition is filed, which is the date of the "order for relief,"[5] is a watershed date: the tax collector may not commence any enforcement proceeding against the taxpayer after that date, he must cease any proceeding commenced before that date,[6] and the status of tax liens is fixed as of that date.[7] Once a tax collector learns that a taxpayer has filed a petition in bankruptcy, he should file a proof of claim with the clerk of the bankruptcy court[8] on Bankruptcy Form No. 19 within the time stated in the notice to creditors. In many chapter 7 cases, it is unnecessary to file a proof of claim. In these cases, called "no-asset cases," the trustee has made a preliminary determination that the debtor has no assets from which a dividend can be paid to creditors, has stated this determination in the notice to creditors, and has further stated that claims need not be filed.[9] If the trustee later discovers that a dividend can be paid, he will notify the creditors to submit proofs of claim.[10] When a tax collector submits a proof of claim, he should itemize the taxes by year and should indicate those that are a lien on real property and briefly describe the property. Interest and late-listing penalties should be itemized separately.

The Automatic Stay, Abandoned Property, and Exempt Property

(1) The automatic stay

At the time the debtor files his petition in bankruptcy, the automatic stay becomes effective,[11] and it continues in effect until it is lifted,[12] or the debtor is discharged,[13] or the case is closed.[14] The automatic stay prevents any creditor from commencing or continuing any judicial, administrative, or other enforcement proceeding against the debtor,[15] including any action to create, perfect, or enforce any lien against property of the estate,[16] or to create, perfect, or enforce any lien against property of the debtor to the extent that the lien secures a claim that arose before the petition was filed.[17] The stay clearly stops the tax collector from using the remedies of levy and garnishment and foreclosure against the debtor's property. It does not, however, appear to prevent the collector from advertising the lien against the debtor's real property pursuant to G.S. 105-369. The advertisement is not an enforcement action and is in fact more in the nature of a notice of tax deficiency, which is expressly excluded from the operation of the stay.[18]

4. 11 U.S.C.A. § 301 (West 1987).
5. *Id.*
6. *Id.* § 362.
7. *See id.* § 502 and § 506.
8. Bankr.Rule 5005.
9. *See id.* 2002(e).
10. *See id.*

11. 11 U.S.C.A. § 362(a) (West 1987).
12. *Id.* § 362(d).
13. *Id.* § 362(c)(2)(C).
14. *Id.* § 362(c)(2)(A).
15. *Id.* § 362(a)(1).
16. *Id.* § 362(a)(4).
17. *Id.* § 362(a)(5). All property of the debtor becomes property of the estate when the petition is filed. Some of the property may be abandoned by the trustee and returned to the debtor; 11 U.S.C.A. § 362(a)(5) extends the protection of the automatic stay to the enforcement of liens on property returned to the debtor, and 11 U.S.C.A. § 362(a)(6) extends the protection of the stay to the enforcement of non-lien claims against property of the debtor.
18. 11 U.S.C.A. § 362(b)(9) (West 1987).

(2) Abandoned property

When a debtor files his petition in bankruptcy, all the property in which he has a legal or equitable interest becomes property of the estate[19] and is under the control of the bankruptcy court and trustee. During the bankruptcy case, property may be abandoned by the trustee, or exempted by the debtor and abandoned by the trustee, and returned to the debtor. This property is of special interest to tax collectors because some tax claims can be enforced against it.

A trustee in bankruptcy may abandon property "that is burdensome to the estate or that is of inconsequential value to the estate."[20] Tax collectors and their attorneys should be alert for any property that is abandoned, and they may, in certain instances, find it useful to request the trustee to abandon property. Real estate in which the debtor has a small amount of equity or that is burdened with tax and other liens the sum of which exceeds the value of the property is a good candidate for abandonment. When property is abandoned, the local rules of the Bankruptcy Courts for the Eastern and Middle Districts of North Carolina provide that the stay is lifted as to the property abandoned.[21] As a result, in those districts a tax collector may initiate lien foreclosure proceedings against abandoned real property to enforce pre-petition liens and may levy on or attach abandoned personal property for the enforced collection of pre-petition taxes while the estate is still being administered in bankruptcy.[22] The ability to foreclose the tax lien on abandoned real property is especially important because of the first priority G.S. 105-356(a) gives the property tax lien. This is in contrast to the second-class status given the lien if the property is sold during bankruptcy, and the lien is transferred to the proceeds of sale, a matter discussed below. Property of the estate that is not administered during the bankruptcy proceeding (typically, property in a no-asset case in which the debtor's exemptions and liens on the property leave nothing to be administered) and was scheduled under 11 U.S.C. § 521 is deemed abandoned when the case is closed.[23] This property may be proceeded against after the case is closed to enforce tax liens on real estate and to enforce taxes that were not discharged against personal property. Taxes that were discharged and those that were secured by liens but were not paid when the liens were foreclosed—if they would have been discharged in the absence of the liens—may not be enforced against the debtor's property because of the discharge injunction imposed by 11 U.S.C. § 524(a)(2).

(3) Exempt property

Another category of property in which tax collectors and their attorneys should be interested is exempt property. A debtor who is an individual is allowed—under either federal bankruptcy law or state law—to exempt certain property from the estate and thereby retain it for his own use, free from the claims of most creditors.[24] North Carolina has elected to restrict debtors to the exemptions contained in G.S. Chapter 1C,[25] which bankruptcy law permits the state to do.[26] The following exemptions may be claimed under North Carolina law:

(1) The debtor's interest, not to exceed $7,500 in value, of real or personal property that the debtor or a dependent uses as a residence;
(2) The debtor's interest in any property, not to exceed $2,500 in value, less any amount of the exemption used in category (1), above;
(3) The debtor's interest, not to exceed $1,000 in value, in one motor vehicle;
(4) The debtor's interest, not to exceed $2,500 in value for the debtor plus $500 for each dependent of the debtor, not to exceed $2,000 total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

19. *Id.* § 541(a).
20. *Id.* § 554(a).
21. U.S. Bankr. Ct., E.D. N.C., L.B.R. 4001.1(4); U.S. Bankr. Ct. M.D. N.C., L.B.R. 4001(a). The Eastern District rule applies only in chapter 7 proceedings, the Middle District rule applies in chapters 7, 11, and 13 proceedings.
22. *See In re* Pierce, 29 Bankr. 612 (Bankr. E.D. N.C. 1983).
23. 11 U.S.C.A. § 554(c) (West 1987).
24. *Id.* § 522.
25. N.C. GEN. STAT. § 1C-1601(f) (Supp. 1985).
26. 11 U.S.C.A. § 522(b) (West 1987).

(5) The debtor's interest, not to exceed $500 in value, in any implements, professional books, or tools of the trade of the debtor or of a dependent of the debtor;
(6) Life insurance on the debtor's life for the benefit of his spouse or children;
(7) Professionally prescribed health aids for the debtor or a dependent; and
(8) Compensation for personal injury or death of a person upon whom the debtor was dependent for support.[27]

In addition, any property in which the debtor has an interest as a tenant by the entirety may be exempted under bankruptcy law to the same extent that it is exempt under state law.[28] This means that if a debtor husband or wife has filed a petition as an individual—and not jointly—all entireties property in which the debtor has an interest is exempt.[29]

Once the debtor files the list of property in which he claims exemptions, if there is no objection to the list, the property claimed is exempt from the estate.[30] A pre-petition tax lien on real estate is a lien that cannot be avoided in bankruptcy,[31] and therefore it may be enforced against exempt property.[32] Property tax claims may be enforced against exempt personal property only if they are for taxes that are entitled to the seventh priority granted by 11 U.S.C. § 507(a)(7)(B).[33]

Property in which exemptions are claimed may be abandoned by the trustee,[34] and in the Eastern and Middle Districts of North Carolina, tax liens on real property and tax claims that qualify for the seventh priority may be enforced against the property during the bankruptcy proceeding after abandonment. If the exempt property is not abandoned (and, in the Western District, even if it is), liens and other claims may not be enforced against it during the bankruptcy case, unless the tax collector applies for and receives an order lifting the stay as to the exempt property pursuant to 11 U.S.C. § 3672(d).[35] Exempt property that is not abandoned during the proceeding and is not administered is deemed abandoned pursuant to 11 U.S.C. § 554(d) when the case is closed.

The discharge in bankruptcy does not affect or impair pre-petition tax liens on real property.[36] The discharge terminates the automatic stay;[37] after discharge and the closing of the case, the tax collector may proceed to enforce unpaid pre-petition liens against abandoned and exempt real property[38] and to enforce unpaid tax claims that qualify for the seventh priority against abandoned and exempt personal property, because seventh-priority tax claims are not discharged.[39]

Tax Claims Given Priority Status

(1) Certain unsecured tax claims—seventh priority

The bankruptcy code gives certain unsecured tax claims a seventh priority in the payment of claims against the estate. The significance of a priority is that priority claims are paid after secured claims, but before general, unsecured claims. Therefore, if the taxing unit's claim for property taxes is not secured by a lien on the taxpayer's property, the unit's next best position is to have the claim qualified as a priority tax claim. If the claim cannot qualify for priority status, it must share whatever is left with all other unsecured claims; since in most cases nothing is left, the claim will be unpaid. Although all claims given a priority are in a preferred position in relation to general, unsecured claims, there is a hierarchy among the priori-

27. N.C. GEN. STAT. § 1C-1601(a) (Supp. 1985).
28. 11 U.S.C.A. § 522(b)(2)(B) (West 1987).
29. *See* Johnson v. Leavitt, 188 N.C. 682, 125 S.E. 490 (1924).
30. 11 U.S.C.A. § 522(l) (West 1987).
31. It is a statutory lien as defined by 11 U.S.C.A. § 101(47) (West 1987) and cannot be avoided under any of the relevant provisions of the bankruptcy code. *See In re* Wilson, 25 Bankr. 61 (Bankr. W.D. Pa. 1982).
32. 11 U.S.C.A. § 522(c)(2)(A) (West 1987).
33. *Id.* § 522(c)(1).
34. *See In re* Andrews, 22 Bankr. 623 (Bankr. D. Del. 1982).
35. *See In re* Berry, 11 Bankr. 886 (Bankr. W.D. Pa. 1981).
36. *See* the discussion of liens below.
37. 11 U.S.C.A. § 362(c)(2)(C) (West 1987). *See also In re* Berry, 11 Bankr. 886 (Bankr. W.D. Pa. 1981).
38. *In re* Smiley, 26 Bankr. 680 (Bankr. D. Kan. 1982); *In re* Berry, 11 Bankr. 886 (Bankr. W.D. Pa. 1981); and *In re* Childers, 20 Bankr. 681 S (Bankr. W.D. Ky. 1981).
39. 11 U.S.C.A. § 523(a)(1)(A) (West 1987).

ty claims—that is, some are more "prior" than others. Seven categories of claims have priority over general, unsecured claims, and tax claims occupy the seventh—last—priority.[40]

Tax claims generally and property tax claims in particular are relegated to the seventh and last priority; furthermore, only relatively "fresh" tax claims are entitled to the priority. If the tax is "stale," it does not qualify for the priority and must share with general creditors. To qualify for priority status, a property tax claim must have been "assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition."[41] What this language apparently means is that to qualify for the priority, the tax must have been assessed before the petition in bankruptcy was filed, and it must have been payable at par (without interest) within one year before the date of the filing of the petition. What North Carolina property taxes will qualify for the priority?

Property taxes are assessed on the date the annual budget ordinance is adopted, which must occur no later than July 1.[42] Taxes levied by the budget ordinance become due the following September 1,[43] and interest begins to accrue on January 6, following the due date.[44] When these dates are considered together with the bankruptcy code's priority provision, the result is that taxes more than two years delinquent will never qualify for the seventh priority, and in some cases only taxes for the current year will qualify. Taxes, other than those for the current year, will always be disqualified for the priority if the debtor files his petition more than one year after interest first accrued on those taxes. To put it another way, if the taxpayer files his petition after the date taxes were levied for the current year, but before January 6, the taxing unit will be entitled to priority status for the current year's taxes and also those for the previous year. If, however, the taxpayer files his petition on or after January 6, he thereby eliminates from priority status all taxes except those for the current year.

40. *Id.* § 507(a)(7).
41. *Id.* § 507(a)(7)(B).
42. N.C. GEN. STAT. § 159-13(a); *id.* § 105-347 (1985).
43. *Id.* § 105-360(a).
44. *Id.*

(2) Tax claims as administrative expenses—first priority

Property taxes that accrue during bankruptcy on the property of the estate are treated as administrative expenses and therefore qualify as first-priority claims.[45] The statutory language granting this priority requires the tax to be one "incurred by the estate."[46] This language imposes two important qualifications that must be met before a tax can ascend to the first priority. The first is that the tax must have been assessed against property of the estate and also have become due *after* the petition was filed; if the tax was assessed and due then, it was "incurred" by the estate.[47] The second is that the tax must be on property of the *estate*, which is defined as all property in which the debtor had an equitable or legal interest at the date the petition was filed.[48] Thus, only taxes assessed against property the debtor owns when he files his petition—property of the estate—can qualify for the first priority. Taxes on property the debtor listed on January 1 but sold before he filed his petition would not qualify.

A tax assessed against the debtor's property *before* he filed his petition but that became due *after* the date of the petition is treated as a pre-petition tax claim rather than as an administrative expense.[49] As such, it is entitled to seventh priority rather than first priority.

Tax Liens

(1) Real and personal property distinction

The differences between the tax lien on real property and the tax lien on personal property are of critical importance in bankruptcy. The lien on

45. 11 U.S.C. § 503(b)(1)(B) (1985).
46. *Id.*
47. A tax assessed before the petition was filed is either a seventh priority or a general claim—if stale. A seventh priority tax claim is prevented from becoming an administrative expense by 11 U.S.C.A. § 503(b)(1)(B)(i) (West 1985). A tax assessed on property of the estate after the petition was filed is, however, an administrative expense entitled to the first priority. *See* United States v. Friendship College, Inc., 737 F.2d 430 (4th Cir. 1984).
48. 11 U.S.C.A. § 541(a) (West 1987).
49. *Id.* § 502(i).

real property is a statutory lien that comes into existence automatically every January 1.[50] The lien on personal property, on the other hand, comes into existence only after levy or attachment and garnishment.[51] The lien on real property cannot be avoided during the bankruptcy proceeding.[52] If, however, a lien on personal property is obtained by levy or attachment and garnishment within 90 days before the date the taxpayer filed his petition in bankruptcy, the trustee may avoid the lien as a preference.[53]

The tax lien on real property is not displaced by bankruptcy, and even if the tax collector fails to file a proof of claim for the taxes, the lien still remains on the land during and after bankruptcy.[54] As pointed out above, the lien is enforceable against exempt and abandoned property, and (as is pointed out below) it remains enforceable after discharge. The tax lien may be affected, however, by a sale of the property during bankruptcy by the trustee. If the trustee sells the land subject to the tax liens, the taxing unit is protected, and no problems should arise. But the trustee is authorized to sell property free and clear of liens,[55] and when a tax collector receives a notice that a trustee proposes to sell land free and clear of liens, he should treat that notice as a red warning flag. If the collector does not object, and the trustee sells the land free and clear of liens in a chapter 7 proceeding, the liens are transferred to the proceeds of the sale and distributed in accordance with the bankruptcy statutes.[56] The provisions of 11 U.S.C. § 724(b) then operate to subordinate the tax lien to the payment of many claims to which the lien would be superior under state law. These subordination provisions operate as follows:

> (1) Payment is made to claims secured by any lien senior to the tax lien. The courts that have considered the issue have held that seniority for this purpose is to be determined by reference to state law;[57] since G.S. 105-356(a) makes property tax liens superior to all other liens, with the exception of certain state tax liens, there will rarely be any liens senior to the tax lien.
>
> (2) Payment is made to claims in the first six priorities established by § 507(a) to the extent of the amount of the allowed tax claim secured by the lien.
>
> (3) Payment is made to the tax lien to the extent that the amount of the claim secured by the lien exceeds any amount distributed under item (2), above.
>
> (4) Payment is made to the holder of an allowed claim secured by a lien that is junior to the tax lien.
>
> (5) Payment is made to any remaining balance of the tax lien.
>
> (6) Payment is made to the estate.

These provisions apply only in a chapter 7 case, and their effect is to impair the tax lien in most instances.

Tax collectors are provided a means of blocking a sale free and clear of liens and the subordination of the tax lien by *In re Stroud Wholesale, Inc.*[58] That case held that the trustee cannot sell land free and clear of liens unless all liens will be fully paid as a result of the sale. When a tax collector receives a notice from a trustee pursuant to section 363 that the trustee proposes to sell the debtor's property free and clear of liens, the collector should forward the notice to the city or county attorney so that he can determine whether provision is made for full payment of the tax liens. If provision for full payment is not made, the attorney should object to the sale and request a hearing on the objection pursuant to Bankruptcy Rule 6004(b). The objection must be filed with the bankruptcy court and served on the trustee not less than five days before the date of the proposed sale. An appeal from an adverse order may be taken to the district court pursuant to Rule 8001 and—pending resolution of the appeal—a stay of the sale may be requested pursuant to Rule 8005.

The trustee is also authorized to sell property free and clear of liens in a chapter 12 (family farm-

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50. N.C. GEN. STAT. § 105-355(a) (1985).

51. *Id.* § 105-355(b).

52. *See* 11 U.S.C.A. §§ 101(47) and 545 (West 1987).

53. *Id.* § 547. The lien is avoidable as a preference only if the levy or attachment was made for taxes on which interest had begun to accrue. If the levy or attachment was made between September 1 and January 6 for the current year's taxes, no preference is involved. *See* 11 U.S.C.A. § 547(a)(4) (West 1987).

54. *See id.* §§ 524(a)(2) and 506(d), Long v. Bullard, 117 U.S. 617 (1886), *In re* Tarnow, 749 F.2d 464 (7th Cir. 1984), and *In re* Gerulis, 56 Bankr. 283 (Bankr. D. Minn. 1985).

55. 11 U.S.C.A. § 363(f) (West 1987).

56. *See In re* Lambdin, 33 Bankr. 11 (Bankr. M.D. Tenn. 1983), and *In re* Terrell, 27 Bankr. 130 (Bankr. W.D. La. 1983).

57. Pearlstein v. Small Business Adm'n, 719 F.2d 1169 (D.C. Cir. 1983).

58. 47 Bankr. 999 (E.D. N.C. 1985), *aff'd per curiam*, Fourth Circuit Court of Appeals, Jan. 21, 1986 (No. 85-1422, unpublished).

er) proceeding.[59] But the tax lien in this case should be protected because the lien will be transferred to the proceeds of sale,[60] and payment will be made according to state law priorities.[61] The subordination provisions of section 724 do not apply in a case under chapter 12.[62]

Interest

(1) Pre-petition interest generally

Whether interest will be paid on tax claims and the rate of interest allowed, depend on whether the interest accrued pre-petition (before the taxpayer filed his petition in bankruptcy) or post-petition, and which chapter of the bankruptcy code the case is being administered under. Pre-petition interest is allowed at the rate provided in the Machinery Act in all chapters.[63] The allowance of post-petition interest must be determined on a chapter by chapter basis.

(2) Chapter 7

Post-petition interest is allowed on secured claims (secured by liens) to the extent they are over-secured.[64] An over-secured claim is one in which the amount of the lien is less than the value of the property to which it attaches. Interest is allowed on taxes that qualify for the first priority as administrative expenses.[65] Although interest is allowed on seventh priority and unsecured tax claims, it is only allowed after secured claims, priority claims, and unsecured claims have been paid,[66] thus as a practical matter it will almost never be paid.

(3) Chapter 11

Post-petition interest is allowed on tax claims secured by liens[67] and on seventh priority claims.[68] The rate allowed, however, may be less than the rate prescribed by the Machinery Act because the bankruptcy courts have discretionary authority to set the rate that will be allowed.[69]

(4) Chapter 12

The language of chapter 12 does not appear to allow post-petition interest on secured claims;[70] however, interest on over-secured claims must be allowed under section 506(b).[71] Chapter 12 does not appear to allow post-petition interest on priority claims.[72]

(5) Chapter 13

Post-petition interest is allowed on secured claims.[73] Language in chapter 13 supports the position that interest should be allowed on both priority and non-priority claims,[74] but at least one court has held that interest should be allowed only on non-priority claims.[75]

Discharge

The purpose of the discharge in bankruptcy is to free the debtor from most of his pre-petition debts and allow him to make a fresh start. As noted

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59. 11 U.S.C.A. § 1206 (West 1987).

60. *Id.*

61. *See* Pearlstein v. Small Business Administration, 719 F.2d 1169 (D.C. Cir. 1983).

62. 11 U.S.C.A. § 103(b) (West 1987).

63. *Id.* § 502(b); *see In re* Burgess Wholesale Mfg. Opticians, Inc., 16 Bankr. 733 (Bankr. N.D. Ill. 1982), *aff'd* 24 Bankr. 554 (N.D. Ill. 1982).

64. 11 U.S.C.A. § 506(b) (West 1987) and Best Repair Co., Inc. v. United States, 789 F.2d 1080 (4th Cir. 1986).

65. 11 U.S.C.A. § 503(b)(1)(C) (West 1987). Although the cited statutory provision expressly includes only a "penalty" on a first priority tax and not "interest," United States v. Friendship College, Inc., 737 F.2d 430 (4th Cir. 1984) held that for the sake of consistency, interest should also be entitled to the priority. *Accord In re* Allen, 67 Bankr. 46 (Bankr. W.D.N.Y. 1986); *contra In re* Hirsch-Franklin, Enterprises, Inc., 63 Bankr. 864 (Bankr. M.D. Ga. 1986).

66. 11 U.S.C.A. § 726(a)(5) (West 1987).

67. *Id.* § 1129(b)(2)(A)(i)(II).

68. *Id.* § 1129(a)(9)(C), and *see In re* Burgess Wholesale Mfg. Opticians, Inc. 721 F.2d 1146 (7th Cir. 1983).

69. *See, e.g., In re* Smith, 58 Bankr. 652 (Bankr. W.D. Va. 1985), *affirmed*, 59 Bankr. 1019 (W.D. Va. 1986), and *In re* Hernando Appliances, Inc., 41 Bankr. 24 (Bankr. N.D. Miss. 1983).

70. *See* 11 U.S.C.A. §§ 1222(b)(9) and 1225(a)(5)(B)(ii) (West 1987).

71. Best Repair Co. v. United States, 789 F.2d 1080 (4th Cir. 1986).

72. *See* 11 U.S.C.A. § 1222(a)(2) (West 1987).

73. *Id.* § 1325(a)(5)(B)(ii).

74. *See id.* § 1325(a)(4).

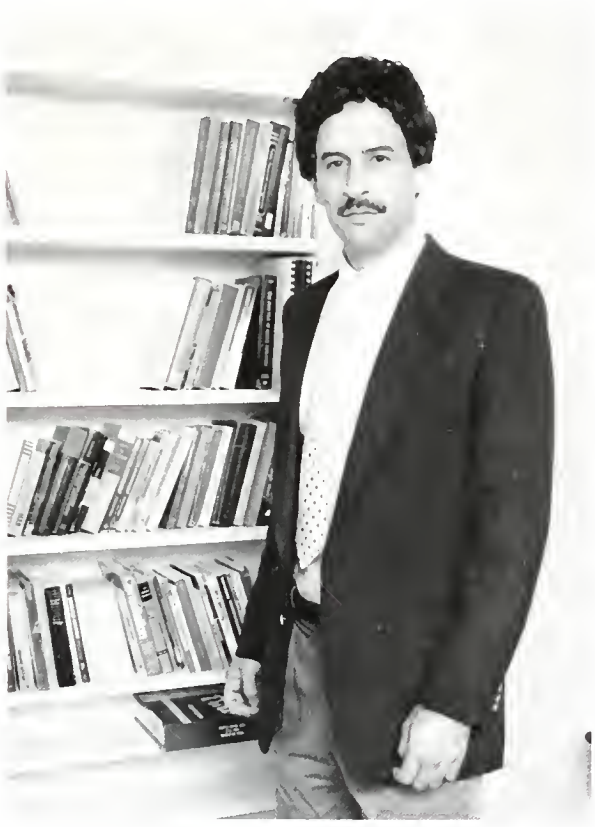
75. *See In re* Christian, 25 Bankr. 438 (Bankr. D. N.M. 1982).

earlier, a tax lien on property—if not paid during the bankruptcy proceeding—is not discharged.[76] Thus, unsatisfied tax liens can still be enforced against the debtor's property after his discharge. Also, taxes that qualify for the seventh priority are not discharged in proceedings under chapters 7, 11, 12, and in chapter 13 "hardship proceedings" (those in which a discharge is granted even though the debtor has not completed his payments under the plan);[77] they are discharged in a regular chapter 13 proceeding.[78] The tax collector can enforce these undischarged taxes against any personal property the taxpayer acquires after bankruptcy. All other taxes are discharged and may not be enforced against any property of the debtor. ☙

76. 11 U.S.C.A. § 524(a)(2) (West 1987); Long v. Bullard, 117 U.S. 617 (1886), and *In re* Tarnow, 749 F.2d 464 (7th Cir. 1984).

77. 11 U.S.C.A. §§ 523(a)(1)(A) and 1328(b) (West 1987).

78. *Id.* § 1328(a).



New Institute Faculty Member

Stephen K. Straus received B.S. degrees in economics and sociology from the University of Pennsylvania in 1972, a Master of Public Administration from The University of North Carolina at Chapel Hill in 1976, and is a candidate for the Ph.D. degree in political science at Duke University. His experience in local government includes service as Research Coordinator, Asheville-Buncombe Community Relations Council and Assistant Town Manager, Town of Southern Pines. He has taught political science and public administration courses at Duke University, North Carolina A. and T. State University, The University of North Carolina at Greensboro, and North Carolina State University.

Mr. Straus's primary responsibility at the Institute of Government is the field of public personnel. He teaches the basic personnel courses, coaching and supervision, and sessions on personnel in various administration courses. He also participates in management training courses for government executives. His special research interest is measuring the effectiveness of personnel departments in local and state government.

Sexual Harassment

New Grounds for Employer Liability

Stephen Allred

Paulette Barnes worked for a federal agency as an administrative assistant. Shortly after she was hired, her male supervisor began making repeated suggestions that they meet socially after hours and frequently made sexually suggestive remarks to her. The supervisor also stated that if Ms. Barnes were to agree to a sexual affair, her chances for promotion would be enhanced. When Ms. Barnes declined these continued propositions, the supervisor abolished her position. Paulette Barnes sued for sexual harassment.[1]

Hortencia Bohen was a dispatcher for a city fire department. The senior dispatcher, Ms. Bohen's supervisor, constantly spoke to her in a lewd manner, made repeated attempts to touch her, and forced her to leave the bathroom door open when she occupied it. Repeated complaints to higher management about her supervisor's behavior met with no response. Ms. Bohen was later fired; she filed suit claiming sexual harassment.[2]

Joanne Murphy was a staff attorney for a city transit authority. For the five-month period following her hiring, Ms. Murphy was subjected to continuous degrading sexual remarks from three co-workers. When her complaints to her supervisors failed to elicit any attempt at correcting the situation, Ms. Murphy resigned and sued for sexual harassment.[3]

These cases demonstrate the unfortunate reality of sexual harassment in the workplace. For a city or county employer, however, an additional unfortunate aspect of sexual harassment may arise: the public employer may be found liable. This article will discuss the legal bases for sexual harassment claims by employees, review some important recent developments in sexual harassment case law, and recommend steps to reduce an employer's liability.

Legal Bases for Sexual Harassment claims

Title VII Violations

Title VII of the Civil Rights Act of 1964, as amended,[4] prohibits discrimination "against any individual with respect to . . . compensation, terms, conditions, or privileges of employment because of such individual's . . . sex." It was not initially clear that claims of sexual harassment could be brought

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The author is an Institute faculty member whose fields include personnel law.

1. Barnes v. Costle, 561 F.2d 983 (D.C. Cir. 1977).
2. Bohen v. City of East Chicago, 799 F. 2d 1180 (7th Cir. 1986).
3. Murphy v. Chicago Transit Authority, 638 F.Supp. 464 (N.D. Ill. 1986).
4. 42 U.S.C. §§ 2000e *et seq.* The Equal Employment Opportunity Act of 1972 extended coverage of the Act to federal, state, and local employers.

under Title VII. Beginning with the case of Paulette Barnes, however, many federal courts ruled that Title VII's prohibition of sex discrimination included discrimination in the form of sexual harassment.[5] Following these initial court rulings, the Equal Employment Opportunity Commission (EEOC) issued guidelines to employers in 1980 defining sexual harassment as one type of sex discrimination prohibited by Title VII.[6] According to the EEOC:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

It is now well settled that sexual harassment, although not specifically prohibited as an unlawful employment practice in Title VII, may be challenged as a violation of that Act.[7] We now turn to the two types of sexual harassment cases that may be brought under Title VII.

"Quid Pro Quo" Cases

The courts refer to cases in which an employee claims she[8] was denied a tangible economic benefit, such as a promotion or salary increase, because of her refusal to succumb to an unwanted sexual relationship, as "quid pro quo" cases. A "quid pro quo" is a trade of one valuable thing for another. In this instance, the employee is either rewarded for her cooperation or punished for her refusal to trade sexual favors for job benefits. These are the most common types of sexual harassment cases. The case of *Henson v. City of Dundee*[9] is illustrative.

Barbara Henson was a dispatcher in a city police department. She alleged in her Title VII claim, among other violations, that she was denied permission to attend a police academy because of her refusal to have a sexual relationship with her supervisor. In evaluating her claim, the court described four elements necessary to prove a quid pro quo case.[10]

First, the employee must belong to a protected group. Because Title VII prohibits discrimination against either sex, this requirement is automatically satisfied.

Second, the employee must show that she was subjected to unwelcome sexual harassment. In defining unwelcome sexual harassment, the court noted with approval the EEOC guidelines, adding that the conduct in question must be "unwelcome in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive."[11]

Third, the harassment complained of must have been based upon sex. That is, the employee must show that but for her sex, she would not have been subjected to the harassment. Of course, the easiest means of proof of this element is to show that the offending supervisor, if male, treated only females in the offending manner.

Fourth, the employee's reaction to the harassment must have affected some tangible aspect of the employee's terms of employment. The employee must show that she was deprived of a job benefit (here, opportunity for training at the police academy) to which she was otherwise entitled because of her refusal to tolerate the harassment or to succumb to unwanted advances.

If an employee proves all four elements of a quid pro quo case, the local government employer may be held liable for the acts of the offending supervisor. The *Henson* court ruled that where the

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5. *Barnes*, 561 F.2d at 995. *See also* Miller v. Bank of America, 600 F.2d 211 (9th Cir. 1979); Garber v. Saxon Business Products, Inc., 552 F.2d 1032 (4th Cir. 1977) (per curiam); Tomkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3rd Cir. 1977).

6. EEOC Regs., 29 CFR § 1604.11(a).

7. Title VII prohibits employers from discriminating on the basis of race, color, religion, sex, or national origin on matters of hiring, discharge, compensation, classification, recruitment, and terms, conditions or privileges of employment, and prohibits retaliatory discharge. §§ 703, 704(a).

8. Because plaintiffs in sexual harassment cases are usually women, the references in this article are feminine. However, Title VII also protects men from sexual harassment.

9. 682 F.2d 897 (11th Cir. 1982).

10. *Henson*, 682 F.2d at 903, 909.

11. *Id.* at 903.

quid pro quo claim is proved, the employer is strictly liable—that is, liable even though no one in authority knew of the supervisor's actions. Thus, where Barbara Henson was able to prove that she belonged to a protected group, was subjected to unwanted harassment while her male co-workers were not, and, as a result of her refusal to submit, she was denied training, the city (employer) was liable even though it had no knowledge of the supervisor's actions. Other courts, such as the Third Circuit court in the case of *Tomkins v. Public Service Electric & Gas Co.*[12] ruled that an employer could escape liability for sexual harassment by taking appropriate remedial action immediately upon discovery of the offending conduct. As explained below, the United States Supreme Court recently addressed the question of employer liablilty for sexual harassment and rejected the strict liablity rule. Although the Court considered the question of employer liability in a "hostile environment" case, its ruling is instructive for "quid pro quo" cases as well.

"Hostile Environment" Cases

Unlike the "quid pro quo" cases discussed above, an employee may be able to recover damages for sexual harassment even without showing the loss of a tangible job benefit. In the United States Supreme Court's first decision concerning sexual harassment, *Meritor Savings Bank v. Vinson*,[13] the Court addressed the question of the circumstances under which an employer could be found liable for the existence of a "hostile environment."

Mechelle Vinson, an employee of a Washington, D.C. bank, alleged that she was required to submit to the sexual demands of her supervisor or risk losing her job. Her supervisor denied the existence of any sexual relationship, and the lower court found in favor of the bank. On appeal, the Court of Appeals for the District of Columbia reversed the lower court, finding that Vinson's allegation that she was required to participate in an involuntary sexual relationship constituted a hostile environment claim under Title VII. The Supreme Court agreed, and ruled that an employee states a claim of sexual harassment by proving the existence of a hostile or abusive work environment. The Court remanded the case to the district court so that further evidence on the question of the existence of a hostile environment could be heard.

The Court cited with approval the EEOC definition of a hostile environment noted above. The Court also relied in part on the language of the court in the *Henson* case:

> Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.[14]

The Court recognized, however, that not all inappropriate conduct that may occur in the workplace constitutes harassment. Rather, the Court ruled, the sexual harassment must be sufficiently severe or pervasive to alter the conditions of the victim's employment, thus creating an abusive workplace environment. In Mechelle Vinson's case, sufficient allegations of the existence of an abusive workplace environment were shown. Significantly, Ms. Vinson did not have to quit or be fired to state a claim of sexual harassment, or show any other economic effect on her employment; the Court held that the psychological aspects of the workplace environment were actionable.

Unlike the Court of Appeals, however, the Court rejected the view that an employer should be held automatically liable for the acts of its supervisors in creating a hostile environment. Although the Court declined the opportunity to declare a definitive rule on employer liability, it did rule that the lower courts should look to principles from the law of agency for guidance—that is, do the circumstances of the case suggest that the individual supervisor was acting on behalf of the employer, or acting purely as an individual whose conduct cannot

12. 568 F.2d 1044 (3d Cir. 1977).
13. 477 U.S.—, 91 L.Ed.2d 49 (1986).
14. Meritor Savings Bank v. Vinson, 91 L.Ed.2d at 59, citing Henson v. Dundee, 682 F.2d 897, 902 (11th Cir. 1982).

be fairly attributed to his employer? The Court determined that Title VII should be construed to place some limits on the acts of employees for which employers are to be held responsible, but noted that absence of notice to an employer that harassment is taking place does not necessarily protect that employer from liability. In other words, a defense asserted by an employer that it simply did not know the harassment was taking place would not insulate it when the harassment occurred in the open, coworkers and supervisors knew of it, and yet no one in management moved to stop it. By contrast, an employer might avoid liability when the harassment took place in such a manner that no one but the two parties involved would be aware of it (for example, where a supervisor made suggestive remarks to an employee in the privacy of his office) and, upon discovery by another manager that the harassment was occurring, the employer disciplined the offending supervisor immediately.

In sum, Title VII enables an employee to bring two different types of claims of sexual harassment: the quid pro quo claim, in which actual economic loss is demonstrated, and the hostile environment claim, in which the purely psychological aspects of the workplace may be challenged. In addition to these Title VII claims, a separate legal basis for redressing claims of sexual harassment exists, to which we now turn.

Section 1983 Violations

In addition to the Title VII actions discussed above, a public employee may bring an action against a local government employer under the Civil Rights Act of 1871, 42 U.S.C. § 1983, for alleged deprivation of a right secured by the United States Constitution or by federal statute.[15] Thus, a municipal employee may claim that her fourteenth amendment rights were violated by maintenance of a policy or custom of tolerating sexual harassment that deprived her of equal protection under the fourteenth amendment.

Section 1983 claims alleging sexual harassment are a recent phenomenon. It is important to remember that a claim of sexual harassment brought under Title VII, as discussed above, may result in liability for the employer, even when the employer did not know of the harassment. A key difference between the Title VII and Section 1983 case is that in the latter, the offending acts are presumed to be the individual acts of the supervisor. In other words, a plaintiff in a Section 1983 action has the burden of proving not only that the harassment occurred, but also that the employer maintained a policy of sexual harassment or, at least, maintained a policy of tolerating sexual harassment.

In both the *Murphy* and *Bohen* cases noted above, the employees alleged that their respective city employers maintained a policy of "deliberate indifference" to claims of sexual harassment, thus depriving them of their constitutional guarantees of equal protection. Thus, argued the female employees, because their supervisors knew of the ongoing sexual harassment and failed to take steps to stop it, the supervisors' indifference was fairly attributable to the city as official policy. Finally, claimed the employees, because the actions of the supervisors constituted not only the deliberate acts of individuals, but also the policy of the employer, the city itself was liable for damages.[16] In both cases, the court agreed with the employees, ruling that the city did in fact know of and tolerate the sexual harassment. In the Bohen case, the court noted the failure of Bohen's supervisors to take corrective action:

> In sum, sexual harassment was the general, ongoing, and accepted practice at the East Chicago Fire Department, and high-ranking, supervisory, and management officials responsible for working conditions at the department knew of, tolerated, and participated in the harassment. This satisfies § 1983's requirement that the actions complained of be the policy or custom of the state entity.[17]

Thus, a local government employer may be liable for sexual harassment under Title VII when the

15. A full discussion of § 1983 liablilty is beyond the scope of this article. The Supreme Court held in Monell v. Department of Social Services, 436 U.S. 658 (1978), that municipalities may be sued under § 1983 for damages and injunctive relief. Further, a municipality may not claim qualified immunity from liability by asserting good faith of its officials as a defense. Owens v. City of Independence, 445 U.S. 622 (1980).

16. *Murphy*, 638 F. Supp. at 471; *Bohen*, 799 F.2d at 1189.

17. *Bohen*, 799 F.2d at 1189.

supervisor or co-worker's actions are attributable to the employer under agency principles, or under Section 1983 when the practice of sexual harassment can be shown to be the accepted policy or custom of the employer. Nevertheless, certain steps may be taken to reduce liability, as described below.

Reducing Liability for Sexual Harassment

Obviously, no employer can guarantee that its employees will not engage in sexual harassment. But an employer can take steps to show that such harassment is not consistent with its policies or practices, and thus reduce the chances that a court attributes the harassment to the employer.

First, the employer should develop and publicize a strong policy statement on sexual harassment, indicating that harassment in any form will not be tolerated and may lead to dismissal of the offenders. Given the acceptance by the courts of EEOC's definition of sexual harassment, and the difficulty of formulating a clear definition of what constitutes such conduct, it is suggested that an employer simply incorporate the EEOC definition noted above. The policy should be posted on all official bulletin boards and reviewed in orientation sessions for new employees. In this way, the employer is officially on record as opposing sexual harassment.

Second, training should be provided. The existence of a policy and adherence to it are sometimes two different things. The employer should train all supervisors and employees on sexual harassment to help them understand what conduct is prohibited and to increase their understanding of the possible legal consequences of harassment.

Third, the employer should review its grievance procedure and, where necessary, revise it to include complaints of sexual harassment. It is important that the grievance procedure allow an employee alleging sexual harassment to bypass the immediate supervisor if that individual is the alleged offender. In the *Vinson* case, the employer argued that Ms. Vinson's claim of harassment should be dismissed because she failed to file a grievance under the bank's grievance procedure. But as the Supreme Court noted, since the grievance procedure required Ms. Vinson to file her complaint with her supervisor—the alleged perpetrator of the harassment—it was not surprising that she failed to file a grievance. The Court stated that such an argument would be "substantially stronger if its procedures were better calculated to encourage victims of harassment to come forward."[18] It is thus in the employer's interest to revise its grievance procedure (or perhaps establish a completely separate procedure) to encourage those who suffer harassment to come forward.

Conclusion

It is now clear that in the workplace sexual harassment, in whatever form, is illegal and may be redressed in the courts. Although an employer may be held liable under any of the theories discussed above, a careful program of monitoring the workplace for problems, educating supervisors and employees, and maintaining sound grievance or complaint procedures may reduce an employer's liability. ☙

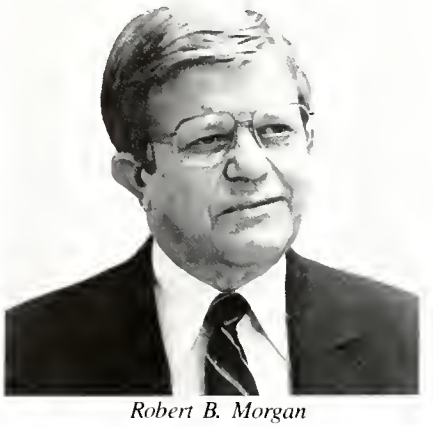
18. Meritor Savings Bank v. Vinson, 91 L.Ed.2d at 63.

The Formative Years

SBI

Frederick C. Handy
(First Director)

Dick Brown



Robert B. Morgan
(Present Director)

> The Bureau, for the most part, has managed to attract to its ranks capable and dedicated men, who have done a remarkable job, considering the handicaps under which they have labored. . . . We cannot allow the Bureau to continue to be a stepchild of State Government, operating with a minimum of staff, inadequate equipment, and in quarters too cramped to describe.[1]

This was the picture newly-elected Attorney General Robert Morgan painted in 1968 as he announced the appointment of Charles Dunn as Director of the North Carolina State Bureau of Investigation (SBI). By 1968, many of the original names and faces of the SBI had changed. Their early legends, embellished with the telling and retelling, had grown taller with time. The game was the same, but there were more players, and the stakes were higher. Despite constant change and less flexibility, the 1968 rules were still the basic law-and-order cornerstones on which the State Bureau of Identification and Investigation had been laid in 1937.

Thirty-one years later, after taking stock of the SBI's overall resources, Dunn, who had spent the four previous years as Administrative Assistant to Governor Dan Moore, agreed emphatically with the Attorney General's summary. He found an agency, considered for three decades to be the elite in state law enforcement, woefully short in manpower, lacking basic equipment, and in need of more and better training. In short, the Bureau was floundering. A former newspaper man with a keen eye and ear for the practical political track, Dunn soon realized that the phrase, "stepchild of State Government," aptly described the Bureau's position. His analysis, critical to an unprecedented degree, raised more questions than it answered as it focused on the shortcomings of an agency originally intended to become North Carolina's counterpart of the prestigious "G-Men" of national fame.

At its formation in March 1937, the State Bureau of Identification and Investigation represented the culmination of the dreams and ambitions

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The author is Public Relations Officer of the North Carolina State Bureau of Investigation.

1. Attorney General Robert Morgan, Press Release (Dec. 1968).

of a long line of governors who had fervently preached the fundamental principles of law and order since the turn of the twentieth century. For various political, economic, and social reasons, and because of the threat of a possible centralization of power, their rhetoric had produced no tangible results, and the formation of a team of highly trained scientific and criminal investigators with statewide authority remained a dream. Other people had also touched upon the necessity and desirability of such an organization, but not until 1937, almost four generations later, had Governor Clyde R. Hoey been able to cement legislative support for an act[2] allowing him to set up a State Bureau of Identification and Investigation (SBI & I) to be activated "at his discretion."[3]

The Bureau was a dream hinted at as early as the eve of the twentieth century, when Charles B. Aycock declared "life, property and liberty from the mountains to the sea shall rest secure in the guardianship of the law." Such oratory had won an election, but produced no results beyond the articulation of problems that would grow with the future. For the first two decades of the twentieth century, state politics was a unique blend of flamboyant speeches and smoke-filled back rooms to a degree succeeding generations have yet to match. The same law-and-order theme was orchestrated through later administrations, but continued to fall on deaf ears. The silver tongues grew tarnished, and the vintage oratory turned sour as the attention of state lawmakers focused on other, more pressing problems.

There were many valid reasons for legislative lethargy, particularly in the latter 1920s and the 1930s during the administrations of Governors Gardner and Ehringhaus. Gardner rode into office in the boom days of 1928, only to see the economic bubble burst within the year. Ehringhaus made the first positive move when he appointed a Paroles Commissioner and set up a branch of government to deal extensively with types of state-imposed punishment, ranging from Central Prison's death row to county work camps.[4]

Aycock may have composed the original law-and-order theme song, and his successors may have added to it, but criminal justice did not find a champion until 1936, when Clyde R. Hoey, the last of the "Shelby Dynasty," and well known for his stiff-collared shirts and long-tailed English walking suits, came out of a bitter democratic primary election against Ralph McDonald and Alexander (Sandy) Graham with the gubernatorial nomination. The State Bureau of Identification and Investigation had been one of Hoey's campaign planks, and it took shape after his inauguration with the promise and understanding that it would be free from political taint, and would primarily provide expert scientific and investigative assistance to local law enforcement only as needed and requested.

Neither the Governor nor the General Assembly was setting any precedent with the formation of an SBI&I. That ground had been broken almost a century earlier by Governor William W. Holden with the organization of a "State Detective" force to combat the escalating bitterness and violence that had grown with the Ku Klux Klan as an aftermath of Civil War. Holden, who was later impeached, instituted an embryonic state police force in 1868, and it numbered as many as 24 men before it was disbanded within two years. Major railroad systems were later granted limited police privileges by state law. As early as 1871, the General Assembly authorized steam railroad companies to apply to the Governor for the appointment of special officers, with the powers of city police on railroad lines, wherever they ran, and on railroad property, wherever it was located within the state.[5] In 1907, railroad station masters and railroad conductors were given similar powers.[6]

In 1909, Attorney General Bickett, who was later to become Governor, had urged the necessity for special investigators not unlike those provided for in the 1937 statute. In his biennial report in 1909-1910, Bickett wrote:

> There are a number of criminal statutes of proper enforcement which require a vast amount of preliminary investigation. The state should be in a position

2. H 393, ch. 349, 1937 Public Laws (N.C. GEN. STAT. 114-12).

3. *Id. See also* S. Massengill, 62 NORTH CAROLINA HISTORICAL REVIEW No. 4, 452-55 (Oct. 1985).

4. 1933 Public Laws ch. 3.

5. 1907 Pell's Revised Code §§ 2605, 2606 and 1871-72 Public Laws 128.

6. 1907 Public Laws ch. 470.

> to ascertain all the material facts before beginning the criminal action. The individual gets his facts before he starts his suit. The state is compelled to begin an action before it can find out the facts.

But aside from the Highway Patrol, organized in 1929 to promote law and safety on the highways, no serious efforts were made to establish any type of state police system until Governor Hoey's election in 1936.

The bill[7] that established a State Bureau of Indentification and Investigation was introduced in the House of Representatives by Representative Cyrus Conrad "Con" Johnston from Iredell County, who was Chairman of the House Roads Committee. It was ratified on March 22, 1937, and was to be financed with one-half the proceeds of a special $1.00 court charge at the local level. The remaining 50 cents from each dollar collected was earmarked for a law enforcement officers' benefit fund. Interestingly enough, some two weeks earlier, the General Assembly had ratified a resolution authorizing the Governor to appoint a commission to study the advisability and feasibility of establishing a Department of Justice for the state.[8]

At this point, the Governor and legislators were moving toward a common goal of consolidating state law enforcement and related activities, and by 1939 would have accomplished their purpose, placing the Attorney General, rather than the Governor, in charge of the new SBI.

Governor Hoey waited a full year before activating the original SBI&I with his appointment of Frederick C. Handy as Director. If ever a man fit a role by demeanor, as well as name, it was Frederick Handy. In the first place, he looked every bit the part of the classic intellectual detective, "a tall, lean attorney with a long upper lip adorned with a brown-black mustach; a man who would need only a calabash pipe and a fore-and-aft hat to play the role of Sherlock Holmes," was the way one reporter put it.[9] Second, his age, maturity, and experience as a government Secret Service Agent during World War I, and later as an investigator for a major insurance company, added an aura of mystery that appealed to many people. And finally, as the press quickly dubbed his tiny crew of agents the "Handy Men," the Director himself was in actuality law enforcement's handy man on a statewide scale. He was responsible only to the Governor, and could and would be called upon to investigate anything from a brush fire to murder, with tangible results expected.

Operations began with a working capital of $25,622. The Bureau's balance as of June 1, 1938, was $24,000.[10] Almost half of the total had been collected by John Morris, a former New Hanover County sheriff who had been employed to ensure that the various counties filed their share of the new court costs under the Law Enforcement Officers' Benefit Act. Morris divided his duties between the officers' benefit portion and the SBI&I's part of the legislation.

Director Handy's first estimated budget for fiscal year 1938-1939 totaled approximately $35,000. His salary was pegged at $300 per month, and the monthly salaries for all nine staff members totaled $1,560. In addition, the Director received $50 per month for travel, and the field agents were allowed expenses of $45 per week.[11]

Shortly after his appointment, Handy outlined his ideas for the State Bureau of Identification and Investigation. He wrote:

> In planning the Bureau, two thoughts should be kept in mind,
>
> (1) That the first year after establishment of the Bureau must of necessity, be spent in training the personnel, getting together needed equipment, insuring the collection of the fees provided for the support of the Bureau, and promoting good will amongst the citizens and local officers of the state.
>
> (2) Growing out of this preliminary program, the ideas obtained during the first year of the Bureau must be the basis for the permanent program. In other words, the work of the first year must be the foundation for the years to follow.
>
> This memorandum will deal with a temporary setup with suggestions for a permanent program to follow.

7. H 393, ch. 349, 1937 Public Laws.

8. 1939 Report of Legislative Study Commission on formation of State Department of Justice.

9. Frank Gilbreath in the *Winston-Salem Journal*, June 29, 1939.

10. January 16, 1939, letter from Frederick C. Handy to Governor Hoey, p. 2, included in Governor Clyde R. Hoey Papers, N.C. Department of Archives and History.

11. *Id.*

> The Bureau should, from the beginning, be divided into three Divisions: Identification, Investigation and Criminal Statistics.[12]

The original 1937 Act establishing the Bureau assigned it the responsibility for compiling criminal statistics, formerly a prerogative of the Attorney General's Office. Later the Bureau was relieved of this responsibility, only to have it subsequently returned.[13] Now, as the Division of Criminal Information (DCI), it has become an integral division of the SBI, along with the divisions of investigation and identification. In his original outline plan for the Bureau, the Director said:

> Local law enforcement agencies should not be required to send fingerprints to [the] State Bureau of Identification and Investigation.
>
> To require them to do so would result in antagonism and possible loss of cooperation with the State Bureau. They should be permitted to continue to clear fingerprints through the Federal Bureau of Investigation. Each man paroled should be fingerprinted and his prints especially indexed in the Bureau, the same being done with each person placed on probation; if such parolee or probationer is arrested and his prints are sent to Raleigh, North Carolina, the proper officials would be notified immediately by the Bureau of Identification and Investigation.[14]

The Division of Investigation, Handy pointed out, would in the beginning require the appointment of only two or three special agents, "whose chief work shall be to investigate cases."[15]

"They should, if possible, be lawyers,"[16] he said, adding that:

> It will be best to select the men for their character and ability and to train them, rather than to select men because they have police experience. It might be possible to obtain North Carolina graduates of the FBI training school. . . .
>
> These special agents should work on request of the Governor from the Raleigh Office. It will not be wise to assign them to different parts of the State
>
> . . . .
>
> If possible, the special agents of the Bureau should be sent to the FBI school for training just as soon as possible.[17]

But despite such ambitious goals, the first three special agents appointed included two former county sheriffs, and an ex-police officer, none with any college or FBI background.

Also in outlining the role of the investigative division, Handy emphasized that, from the outset, the Bureau:

> should call upon existing agencies, as much as possible, to aid in investigations. Particularly, to aid in doing the physical work of searching and making arrests. The Highway Patrol may be used, as many as needed, for a particular case. The chief concern of the Bureau should be to offer local units an independent agency for the enforcement of the laws and to furnish the work necessary to ensure arrests and convictions. . . .
>
> The Bureau should not interest itself in liquor control, but here also is a chance for the SBI&I to cooperate with the State Commission and to obtain cooperation from the liquor commission and its undercover men.[18]

In reference to laboratory facilities and other technical skills that might be required, Handy pointed out:

> the bill creating the Bureau provides that state institutional and departmental laboratories may be used and that scientists employed by the state in such laboratories may be called on for scientific investigation upon payment of a small fee to them. Because of the expense involved in establishing a scientific and technical laboratory and the small amount of money now available, it will be wise, in the beginning, to use these laboratories and scientists. Such procedures will give the Bureau a great number of scientists with laboratory facilities at a small cost.
>
> It would be well to employ a chemist to attend to such work as needs to be done in the various state and institutional laboratories. If the chemical and biological laboratories of the university are

12. Governor Clyde R. Hoey Papers, Director Handy's Plan for a State Bureau of Identification and Investigation, N.C. Department of Archives and History.

13. 1908 Pell's Revised Code ch. 341; 1939 Public Laws ch. 349, ch. 315.

14. Director Handy's Plan for a State Bureau of Identification and Investigation in Governor Clyde R. Hoey Papers, N.C. Department of Archives and History

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

First SBI Staff

Photographs courtesy of the North Carolina State Bureau of Investigation

Third Row (*Standing*) - Left to Right

H. L. Pierce Agent — *W. A. Shulenberger, Jr.* Agent — *H. W. Zimmerman* Agent — *W. L. Gattling* Agent — *Guy L. Scott* Agent — *James P. Bradshaw, Jr.* Agent

Second Row (*Seated*) - Left to Right — *Thomas Creekmore* Assistant Director — *Helen Pickard* Secretary — *Laura Jones Neville* Secretary — *Rosa Lee Allen* Secretary

First Row (*Seated*) - Left to Right — *Harry McMullen* Attorney General — *J. Melville Broughton* Govenor — *Frederick C. Handy* Director

used, this chemist might take special work at the institution while employed by the Bureau. In that way, he would become an expert in dealing with all forms of physical evidence needing chemical or other analysis.

The Medical School of the University might be called on for autopsies.

At first it may not be wise to employ a ballistics expert. Such an expert comes at a high figure and the FBI will, for a time at least, do this work.

Cases in which questioned documents will figure can, for the time being, be taken care of by the FBI.[19]

19. *Id.*

Proposed structuring of the Division of Criminal Statistics rounded out Handy's organizational outline, and indicated that he was well aware that cost-of-court funding would be the department's life line. Under the section of the outline dealing with the Division of Criminal Statistics, he wrote:

> A competent person should be set in charge to correct, classify, and establish filing procedure for the reports sent in from the courts. This would begin the criminal statistic study and a check of the reports would also be a check against the particular court in the matter of payment of the legal fee. The head of this Division should have a filing clerk and a stenographer.
>
> A field representative with the title, Special Agent, should be appointed to be a contact man between the Director of the Bureau and the Clerks of Courts and the court officials of the State. He would check against the court records to determine whether or not the fine or cost of $1.00 had been paid and accounted for in each conviction, and also to see that the monthly report on criminal statistics is being sent to the Bureau. The contacts formed by him with the judges and the solicitors would promote good will among them, as well as . . . impress them with the necessity of imposing the tax.
>
> Officials are prone to be lax in the obedience to laws requiring the collection of costs and the reporting of convictions, unless the law is brought home to them by a personal representative of the department of government interested. A letter does not serve the purpose. For example, the greatest step in the administration of the parole program of this state was the appointment of Parole Supervisors, whose jobs are to visit the local officials and to work with them. They are contact men between the Parole Commissioner and the local officials, and as a result of the appointment of these Supervisors revocations have dropped off and the local officials are cooperating one hundred per cent with the Parole Commission.[20]

The provisions of the Act splitting the extra-dollar court costs between the SBI&I and the law enforcement officers' benefit fund was to become campaign fodder for then Lieutenant Governor Wilkins P. Horton of Pittsboro, who in 1940 ran unsuccessfully for the democratic gubernatorial nomination, which went to J. Melville Broughton, who would play a prominent role in Bureau operations through 1944. In a speech at Jackson, North Carolina, Horton said,

> I favor a discontinuance of the diversion of revenue received under the law creating the State Bureau of Identification and Investigation and the Law Enforcement Officers' Benefit Fund. The State Bureau of Identification and Investigation should be maintained out of the general fund of the State, and all money derived under the law creating these agencies should be paid into the treasury for the benefit of officers disabled while injured in the performance of their duty, and for [their] families in the event of death.[21]

Director Handy compiled the agency's first published report, covering the period of March 1938 to July 1, 1939, after the Bureau had become a part of the new State Department of Justice, under the direction of the Attorney General. In the introduction of the report he wrote, "he [the Governor] instructed the Director to take all necessary steps to set up and operate an efficient and well equipped Bureau."[22]

No office was available for the Bureau until Handy was given desk space on the first floor of the State Highway Department building. After employing a secretary (Laura Jones Neville), he spent the next three months visiting and observing similar agencies in Boston, Massachusetts; Providence, Rhode Island; Mineola, New York, and New York City, as well as the FBI in Washington, "to secure all possible information and advice that would be of assistance in establishing the North Carolina Bureau."[23]

The agency next rented three rooms in the annex of the Carolina Hotel and hired its first agent, Oscar F. Adkins of Mount Airy, a 46-year-old former McDowell County Sheriff and Inspector for the North Carolina Prison Department. He was named a senior investigator and stationed in Marion at an annual salary of $2,400.

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20. *Id.*

21. Miscellaneous personal papers of Edwin Gill in possession of Scotland County Historical Properties Commission.

22. Report of the Director of the State Bureau of Identification and Investigation to the Attorney General, covering the period from 15 March 1938 through 1 July 1939.

23. *Id.*

In the following weeks, Director Handy employed James Powell, later to become a Director and a key figure in the Bureau's first major controversy, as firearms and documents expert. Next came Henry Paul, from Washington, North Carolina, a field agent who was to resign within the year. Paul was followed by Melvin Curtis Hoover who went on the payroll as the Bureau's fingerprint expert. The final member of the original team was Guy Leonard Scott, a 44-year-old former Forsyth County Sheriff, who became a resident agent stationed in Winston-Salem. With two secretaries, three special agents, a firearms and documents expert, and a fingerprint expert, Handy's new agency was ready for business.[24]

In mid-August, once the staff was in place, Director Handy personally wrote the sheriff in each of the state's 100 counties:

> When sufficient money is available, this Bureau will be equipped with the most modern and scientific aids for the detection, identification, and apprehension of criminals and the analysis of evidence. The staff will be composed of men specially trained in the various fields of criminal investigation. Special agents are now available to you for assistance in investigations and about September 15, there will be available a specially trained man to assist in the search for, development of, and preservation of fingerprints at the scene of the crime.[25]

Handy very carefully emphasized the Bureau's aim to cooperate with local officers only in a support role. "It is not the intention, nor desire, of the Bureau or any members of its staff to, at any time, appear in the foreground of the case or seek publicity, but principally to work with and be of assistance to those law enforcement agencies desiring such assistance," he concluded the letter.[26] Success of the Bureau from infancy seemed to hinge on this cardinal point. The policy was "hands off local cases and assistance upon request only."

From the day he was hired in 1939 until his resignation five years later, Handy steadfastly held to the ground rule that no Bureau agent become involved in an investigation unless such involvement is requested by local authorities, or ordered by the Governor or Attorney General, with few exceptions.

These limitations and philosophies, coupled with the original legislation's failure to provide for any funding other than court costs, laid out a tough course for any director to follow. The General Assembly approved a small appropriation for the SBI in 1941, but as of July 1, 1943, according to an August 7 letter and memorandum from Assistant Director Thomas Creekmore to Governor Broughton,[27] the total annual payroll for the entire staff of 13 persons was only $26,220. Beginning with 1938-39 and continuing through 1942-43, Creekmore's memorandum showed total expenditures by the Bureau of $229,201 over the five-year period. This was almost $11,000 under the funds budgeted for salaries and operations, as the Assistant Director pointed out, with the first annual budget of $32,555 and the 1942-43 total listed at $51,655.[28]

On October 6, 1943, Attorney General McMullan issued a brief release announcing Handy's resignation and the appointments of Creekmore as Director and Willard Gattling as Chief of the Investigating Staff. These appointments, the Attorney General said, came after he had conferred with the Governor, "who fully concurred." The records show that Governor Broughton, and not Attorney General McMullan, made the Creekmore appointment. Several months earlier (March 15, 1943), Raleigh Attorney A. J. Fletcher, had written Governor Broughton a personal letter recommending Gattling for the Director's job, "if there should ever be a change in the SBI setup."[29]

Even though the war years had cut SBI personnel to the bare minimum and reduced the workload, the calls for investigative assistance continued to mount. Broughton, more than his predecessor, involved the Bureau in an increasing number of investigations that required extra time and manpower, but provided little help in obtaining additional financial support. Thus the ranks were spread even thinner

24. *Id.*

25. Excerpt from letter to North Carolina Sheriffs (n.d.) in Governor Clyde R. Hoey Papers, N.C. Department of Archives and History.

26. *Id.*

27. August 7, 1943, letter from Thomas Creekmore in Governor J. Melville Broughton Papers, N.C. Department of Archives and History.

28. *Id.*

29. Governor J. Melville Broughton Papers, N.C. Department of Archives and History.

than they might have been under ordinary circumstances.

R. Gregg Cherry had become Governor by the time Creekmore moved to a federal government job, prosecuting Japanese war criminals. Creekmore's move brought Walter Anderson, former Charlotte Chief of Police, on the scene as Director. Anderson held the job until August 1951, when Governor Kerr Scott appointed him director of the North Carolina prison system. Later he would head the State Wildlife Resource Commission's Law Enforcement Division before being reappointed by Attorney General George Patton as SBI Director.

Morgan and Dunn learned first hand in 1969 that they had inherited an agency that, despite its bulging files of confidential reports and investigations and glowing letters of commendation, had never risen from its humble origins to take a seat at the main table of state government. In its formative years it had depended on a constant share of court costs (which averaged approximately $45,000 per year) for operations. Such figures left little, if any, room for expansion of either manpower or equipment.

The emphasis on tight financing dated back to the origins of the Bureau. In January 1939, Handy, when he had been Director of the new agency for less than a year, wrote Governor Hoey:

> When I saw you the latter part of last week you stated that you would like to have the Bureau of Investigation, for the next two years, operated as economically and with as small a personnel as possible, consistent with efficiency.
>
> In an effort to carry out your wishes, I have carefully revised my estimate of needs for the next two years, and submit herewith a memorandum showing what in my judgment is the minimum amount of money and the least personnel with which the Bureau can operate efficiently.
>
> The memorandum showed nine persons, including the Director, on the payroll at a monthly total of $1,347.50. The personnel is having difficulty in taking care of the present volume of business, . . . it being necessary to send the two technical men from the office into the field to assist in making investigations. All of the present personnel are greatly under paid, especially the two technical men.[30]

The memo apparently fell on deaf ears. Handy recommended a "bare bones" budget of $51,700, which was eventually trimmed by some $2,000.

As late as fiscal year 1955-56, 18 years after its formation, the SBI operated on a total annual appropriation of $234,290 with a staff of 34 persons, including 24 special agents, five stenographers and clerks, two technicians, an assistant director, and a director.[31] At the time Dunn became Director in 1969, the budget had grown to $750,000 and the staff totaled around 70 persons, including 40 agents and supervisory personnel, and 10 technicians.

In spite of financial constraints, the Bureau managed to stay clear of the political arena until 1956, when a bitter split between Attorney General George Patton and Director James Powell erupted. That dispute made headlines across the state and resulted in a Wilmington investment securities dealer firing a letter to Governor Luther Hodges. "Personally," M. H. Vaughn wrote, "my confidence in any effective action in the immediate future by the SBI is destroyed. Whatever may be the true facts, the taste left in my mind at this early date is one of bumbling political destruction of an organization that must be kept above politics at all costs."[32]

In reply, Governor Hodges wrote Vaughn,

> I suppose with a state as big as ours and with as many agencies we have less difficulty or problems arising than most others. Generally speaking, our employees and department heads are very high grade.
>
> There is nothing for you to be disturbed about in connection with the SBI. Nothing has happened to cause any undue concern. Attorney General Patton has now as head of the SBI, Mr. Walter Anderson, in whom I believe everybody in the State has great confidence. There is no politics whatsoever in the situation which you read in the papers, and, as usual, the Raleigh paper played it up all out of proportion and sometimes without proper regard for the whole truth.[33]

A decade later the scenario was repeated with Attorney General Wade Bruton (who would be un-

30. January 16, 1939, letter from Director Handy in Governor Clyde R. Hoey Papers, N.C. Department of Archives and History.

31. Governor Luther H. Hodges Papers, N.C. Department of Archives and History.

32. Letter from M. H. Vaughn in Governor Luther H. Hodges Papers, N.C. Department of Archives and History.

33. July 3, 1957, letter to M. H. Vaughn in Governor Luther H. Hodges Papers, N.C. Department of Archives and History.

seated by Morgan two years later) and Anderson playing the lead roles. December 7, 1966, was "Pearl Harbor Day" for Anderson, whose career in state government had been studded with controversy. SBI historians of that time described the incident in these words:

> Attorney General Wade Bruton requested Walter Anderson to resign in December 1966 without making public any justification. Every agent of the Bureau met in Raleigh on December 7 and requested an audience with Bruton. The majority of the agents met with Bruton that day in an attempt to intervene on Anderson's behalf. Bruton listened to the agents but failed to make any comment or answer any questions. On that afternoon Anderson advised Bruton that he refused to resign. Bruton promptly fired him.
>
> Supporters of Anderson in the 1967 Legislature made an effort to remove the SBI from under the control of the Attorney General and place it under the supervision of a Commission. However, no legislation was introduced to that effect.[34]

Through its first fifty years the SBI has had its share of ups and downs. Its current operating budget of approximately $25 million dollars is evidence that it is no longer a state government stepchild. In 1986 it opened 4,494 investigative cases and worked 30,246 laboratory cases. But there was a familiar ring when, in 1969, Director Dunn told the Legislative Joint Appropriations Sub-Committee:

> The assignment given the Bureau was of major proportions under the standards of 1937. It was little, however, compared to the role of the Bureau in 1969. Not only has the population grown by leaps and bounds in the last 32 years, the criminal element has become more professional and more organized and the State has been confronted with problems today that were unthought of in 1937. The Bureau may never have had adequate resources. Certainly, it does not today. The development of the Bureau, in my opinion, has lagged seriously.[35]

In his dramatic and successful appeal for extra funding, Dunn may have answered most of the questions he had raised. His reference to the original SBI&I focused attention on the economic climate that existed when the agency was born. It was intended to be self-supporting and through necessity remained small. The Agency had hoped to depend on federal resources, the FBI for fingerprint and scientific work, and it was unable to generate the widespread support it needed because of its secondary role to local law enforcement. True, its scrapbook is filled with press clippings, complimentary for the most part, but major credit went elsewhere, and most of the long, time-consuming investigative work remained under the secrecy that surrounded the Bureau's major activities. The SBI came at the tail end of a depression era, when state dollars were hard to come by; it was a child of its time as far as funding went.

The Powell and Anderson incidents were proof that state law enforcement and political trails were bound to cross at some point. Nevertheless, the Bureau has never been the political football that similar agencies in other states have become. It has remained constant in its aims and purposes and earned the loyalty of its employees and the general public.

Today Morgan and Dunn again lead the SBI, though in different roles: the former as Director and the latter as Deputy Director. The agency they head is a far cry from the meager days of the "Handy Men."

The Bureau currently employs some 508 persons, 298 of them being sworn agents, chemists and technicians. It operates out of a central headquarters in Raleigh, located on Old Garner Road on the campus of the former Governor Morehead School, and maintains eight regional offices, plus a Western Laboratory in Asheville.

The Bureau's role in drug enforcement has grown tremendously since the Agency was granted original jurisdiction in this area in the 1950s. In 1986 its drug agents were involved in the seizure of cocaine with an estimated street value of approximately $200 million, and it handled a total of 3,083 drug-related cases.

Drugs have become the Bureau's major emphasis, but activity in other areas has not lagged. A $2 million automated fingerprint identification system went into operation in spring of 1987, computer systems have been enhanced and enlarged, and a $10.8 million new laboratory building is the major item in this year's projected budget.

34. SBI Manual History, § 3, p. 6.

35. Director Charles Dunn's "B" Budget Supplement Request (1969) in Governor Robert W. Scott Papers, N.C. Department of Archives and History.

How Long Will It Take? Scheduling an Octennial Revaluation

Joseph E. Hunt

Do You Play Tennis? Have you ever tried to figure out whether or not you will have time to run some errands and still make it to the tennis court in time for your three o'clock game? To get a realistic idea, you would have to decide how much time is needed for each thing you do. That process would go something like this: "It's now one o'clock; 15 minutes to stop at the post office; 30 minutes at the grocery store; 15 minutes to pick up the kids at the ball game; 20 minutes to drive home; 10 minutes to unload the groceries; 10 minutes to change into tennis clothes; 20 minutes to drive to the tennis court and arrive promptly at 3:00." If your estimates are correct, and everything runs on schedule, your tennis game will start on time.

At least every eight years, North Carolina counties must reappraise every parcel of real property—homes, commercial properties, offices, industrial parks, and farms—in the county.[1] The appraisal, according to the North Carolina Machinery Act, must be conducted at the same standard of accuracy required of professional fee appraisers and real estate brokers.[2] In the past, many counties hired mass-appraisal companies to do this job; however, for such reasons as increasing costs and close public scrutiny, many counties are now directing the county assessor to conduct the reappraisal with in-house resources. Faced with this awesome responsibility for the first time, a county assessor is often nonplused by the question of how long it will take to complete the reappraisal. Estimating the time required to complete a county-wide reappraisal can be done accurately if one takes the time to look at each step of the project independently. This is not as difficult as it may sound.

Planning for a mass appraisal can be much the same as planning for a tennis game—if estimates are correct and everything runs on schedule, the project should be completed and notices sent out on time. This article will describe how to determine how long it will take to complete a mass appraisal. As with the tennis game, other factors requisite to the primary task must be considered if everything is to be completed on time. This larger picture is referred to as revaluation, and accurate "time to complete" projections for all tasks are essential to any successful project.

The Place of Mass Appraisal

Before we get into this subject, we need to recognize that a mass appraisal is only one part of a revaluation, which includes planning, assessment-system analysis, system specifications, system update, mass-appraisal specifications, implementation of the mass appraisal, and the assessment notification and appeal process. Mass appraisal includes

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1. N.C. GEN. STAT. 105-286(a) (1985).
2. "True value in money," N.C. GEN. STAT. 105-283 (1985).

development of valuation schedules, data collection, processing and review of values, and administrative review. But again, mass appraisal is but a part of the total revaluation effort, and when the time required to make the reappraisal is being estimated, it is essential to consider which components of the assessment system the reappraisal will affect because these supporting activities will require most of the time.

Major Components of the Assessment System

In addition to mass appraisal, there are three basic elements in property assessment: a system for managing the process, a land records system, and a data base. Each one comprises many people and many activities.

The management control system directs an operation. It governs the relationships among personnel, equipment, and the various activities that must be carried out. It has been said that form follows function; therefore, the management control system should be organized around the major functions of the assessment system—discovery of property, listing and description of property, and the valuation of property. Once defined, the management control system should contain an organizational chart that shows chain of command, levels of accountability and responsibility, individual job descriptions, and standards of practice for each activity in the system. It should also contain a list of equipment requirements and written instruction manuals for conducting each activity. Along with this description of internal organization should be a design for production reporting, so that the manager can be in constant touch with production at the level of individual jobs, department quotas (deeds, data collection, clerical duties, appraisals, etc.), and total system production (number of completed parcels processed). A good management control system clearly defines the organizational structure, details production requirements from the standpoints of quantity and quality, and provides information to the administrator, who must keep the project on schedule.

Land records management (LRM) provides the mechanism by which the governmental unit keeps track of property and provides the information on land that the assessment system needs. LRM combines the legal and graphic systems of land identification in maintaining information pertaining to social, economic, political, and physical features for each parcel of land located in a given jurisdiction. That is, it maintains a parcel inventory system. Using the information gathered by the legal system for deed registration along with its property-mapping and electronic data processing capabilities, LRM provides a fast, flexible, and accurate information system pertaining to land records. A land records management system can start with a basic assessment administration computer software package that uses a land map parcel identification number (PIN) as its record-processing number and extend to a more sophisticated data base system that (a) is consistent with state standards,[3] and (b) contains land records information used by many agencies. Because land records management is complex and because it serves many purposes, the trend is to place this activity outside the assessment system.

The data base system for property assessments is one of the largest and most complex data bases in state and local government. Data must be maintained completely and accurately for tax administration, analysis and appraisal, and for tax collection. This data base can easily grow to 1,000-1,500 bytes of information for each parcel in the jurisdiction, representing a 45 megabyte data base requirement for a jurisdiction with 30,000 parcels. Furthermore, the assessment data base is volatile and must be constantly updated. Also, much of the data is hard to obtain. Therefore, the assessment data base must be identified and described with regard to type of data, accuracy requirement, source and updating requirements, and instructions must be written in training manuals for those responsible for data collection. The assessment data base system is the most time-consuming component of a properly maintained assessing system.

Mass appraisal is "the process of valuing the worth of a universe of properties, as of a given date, in uniform order, utilizing a common reference for data, and allowing for statistical testing."[4] In general terms, this process calls for developing a

3. *See* N.C. GEN. STAT. §§ 102-1 through -17.

4. INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION (Chicago, Ill.: IAAO Education Department, 1977), p. 277.

schedule of values, computerized application of the three approaches to value, and procedures for appraiser review of the results and for setting final values. It is best carried out through a modern computer-assisted mass appraisal system (CAMA), by trained professional mass appraisal personnel. The results should be tested statistically and then made available for public review. The mass appraisal is central to the assessment process. It is performed cyclically; in North Carolina the cycle is at least every eight years unless the county elects to shorten it. This paper is concerned with in-house mass appraisal performed by teams of county personnel. But no matter who does it, the appraisal should be efficiently carried out, and the results should be accurate.[5]

A recent trend is to include the tax accounting and collection system in the same organization as the assessing system. Traditionally the functions of property tax levy, property tax assessing, and property tax collection have been separated in order to avoid any appearance of impropriety. But separating related functions makes little administrative sense. Assessments and collections affect rates and levies, and good administrative and political decisions require clear lines of communication among these systems. Therefore, tax accounting and tax collection should be connected, and this unified operation should be an integral part of the property assessment system. Consequently, these systems should be considered during revaluation planning.

Goal-Setting

Being good students of management, we know that planning involves "setting goals," "identifying milestones," and "delineating project tasks and steps to each task." These terms are buzz words for asking yourself what do I want to accomplish (the goal), what changes or additions (milestones) must be made to the present arrangements in order to reach the goal, and what tasks and what steps within the tasks must be done in order to achieve the goal? There is absolutely no way around this identification process if the revaluation is to be managed properly. Many people seem to be skittish about undertaking such an analysis, and they tend to blaze forward and answer questions as they arise—thereby inducing nervous breakdowns in half the staff before the project is completed. Or else they blindly turn the problem over to a vendor and hope for the best. This second alternative often results in a completed project, if the vendor is reliable, but the cost may be very high. Furthermore, such uninformed discharge of responsibility is not what the taxpayer or the employer expects. Delineation of tasks is not hard, and it can be simply, yet effectively, done.

All revaluation projects have the same objective—to assess all property accurately and uniformly. To do this, it is necessary to evaluate all major components of the assessment system to establish whether they are accurate, complete, and up to date. For present purposes, let us assume that management control and land records management systems are in place, but the data base system and the computer system's software and hardware must be upgraded, and a mass appraisal must be carried out. Now our goal can be stated: to complete a computer-assisted revaluation with a complete appraisal of all property. Note that our goal has three parts: (1) mass appraisal, (2) revaluation, (3) computer-assisted revaluation. In the planning phase, each part will be broken down into independent functional parts. However, in final analysis they become one project: Computer-assisted revaluation.

Now we must identify project milestones. Milestones are the "what-does-it-take-to-get-the-big-job-done" sub-projects. Once these essential sub-projects are identified, they can be further broken down into tasks, and the steps that must be taken to accomplish each task can be listed. At this point it becomes possible to start making reliable estimates of time required to perform each task. These individual estimates will lead to a reliable time estimate for the total project. Making time and production estimates requires that the three parts of the ultimate goal be subdivided into milestones:

Part I. MASS APPRAISAL

Milestones

1. Develop and adopt a schedule of values.

5. For a more detailed discussion of assessment accuracy and assessment efficiency, see THE INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS, IMPROVING REAL PROPERTY ASSESSMENT (Chicago, Ill., 1978), pp. 1-3.

2. Conduct the data collection program.
3. Process and review the values.
4. Mail revaluation notices and conduct administrative review.

Part II. REVALUATION

Milestones

1. Plan the procedure.
2. Upgrade the major components of the assessment system.
3. Prepare mass-appraisal specifications.
4. Conduct the mass appraisal. (This milestone is achieved with the completion of Part I.)
5. Mail assessment notices and process the appeals.

Part III. COMPUTER ASSISTED REVALUATION

Milestones

1. Conduct planning.
2. Prepare hardware/software specifications.
3. Write the request for proposals.
4. Select a vendor.
5. Prepare and sign a contract.
6. Order and accept delivery of the hardware and software.
7. Install and test the hardware and software.
8. Convert and test the data.
9. Complete the revaluation. (This milestone is achieved when Parts I and II have been accomplished.)

Estimates of Production Time

Estimates of production time for project milestones by means of a modified critical-path analysis (defined below) reliably indicate how long it will take to complete the revaluation. Such estimates are usually made by (1) historical analysis, (2) comparative analysis, or (3) engineering analysis. A historical-analysis estimate is based on past experience. A comparative-analysis estimate is based on a study of experience by similar jurisdictions. An engineering-analysis estimate is based on a time and motion study of each activity. I will not discuss these three methods here, although the estimates that will be used come from them. Estimates are based on a typical 30,000-parcel county subject to ad valorem property tax laws in North Carolina. A modified critical-path analysis is an estimate of project time required, assuming that activities occur in sequence. Modified critical-path analysis differs from true critical-path analysis, in that concurrent activity sequence is not considered, so that the estimate of project time is slightly longer. But because true critical-path analysis requires a more detailed breakdown of a project than this article includes, we should recognize that the following time estimates could be somewhat shorter if concurrent order were considered.

Part I. MASS APPRAISAL

Milestone 1. Develop and adopt a schedule of values.

Steps:
a. Prepare sales file.
b. Analyze data.
c. Write manual.
d. Test for accuracy.
e. Advertise and offer public inspection.
f. Conduct appeals.

Assumptions: An analysis team is in place, and time estimates are based on the comparison method.

Time estimate:
Step a. 4 weeks.
Step b. 4 weeks.
Step c. 2 weeks.
Step d. 4 weeks.
Step e. 2 weeks.
Step f. 4 weeks.
Total: 20 weeks (5 months).

Milestone 2. Conduct data collection program.

Assumptions: This is a detailed project, and the steps needed to accomplish it are too numerous to list and analyze here. The estimate is based on IAAO's production-calculation formula as demonstrated in Mass-Appraisal Courses 301 and 302.
Formula = P x SPL x CDP x SWD/365 = SP
Whereas: P = Personnel = 10

SPL = Standard Production Level = 25
CDP = Calendar Day in Phase = unknown
SWD = Standard Working Days = 210
SP = Standard Parcels = 30,000

Time estimate: 10 X 25 X CDP X 210/365 = 30,000
144 CDP = 30,000 CDP = 208 days/30 weeks/7.5 mo.

Milestone 3. Process and review values.

Steps: A description of this phase is beyond the scope of this article. It involves breaking the district to be appraised into neighborhoods, setting land values, producing computer-estimated values, performing a statistical analysis, a review by appraisers, and making final estimates of value. Actual procedures are developed in the revaluation goal analysis under Part III.

Assumptions: Estimates are made by the comparison method.

Time estimate: 6 months.

Milestone 4. Mail revaluation notices and conduct administrative review.

Steps:
a. Send notices.
b. Conduct reviews and make inspections when necessary.
c. Adjustments.

Assumptions: Estimates are by the comparison method.

Time estimate: 1 month.

Mass Appraisal Critical Path: 19.5 months/1.625 years.

Start I (5 months) II (7.5 months) III (6 months) IV (1 month) END

Part II. REVALUATION

Milestone 1. Planning.

Assumptions: Planning the revaluation has been discussed earlier in this article. Planning involves analysis of all assessment systems, personnel needs, and financial support; it also involves goal-setting. This phase will vary greatly from one revaluation to another. The estimate is based on historical experience.

Time estimate: 3 months.

Milestone 2. Upgrading the major components of the assessment systems.

Assumptions: The major assessment systems have been identified as management control, land records management, data base, and mass appraisal. For this analysis, it is assumed that all systems are adequate except the data base and the mass appraisal (which have been dealt with under Part I, Mass Appraisal). Acquisition of a computer-assisted system will also be necessary, and this will be discussed below. The time estimated is for setting up the management control apparatus, including hiring and training personnel.

Time estimate: 3 months.

Milestone 3. Prepare mass-appraisal specifications.

Assumptions: This very important step is to specify how the mass appraisal project will be conducted. The data base description, appraisal software requirements, valuation routines, and many other important management decisions result from this set of specifications. It is a complete management document for implementation of the mass appraisal.

Time estimate: 1 month.

Milestone 4. Mass appraisal.

Assumptions: An analysis team is in place, and

time estimates are based on the comparison method. This milestone is achieved with the completion of Part I: Mass Appraisal.

Time estimate: 19.5 months (see Part I, Mass Appraisal).

Milestone 5. Mail assessment notices and process appeals.

Assumptions: Under North Carolina law, notice of a change in appraisal made by the county assessor must be given to the taxpayer before the first meeting of the board of equalization and review.[6] The board of equalization and review must hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May.[7] The board of equalization and review's meeting marks the end of the mass appraisal project. Although this appeal period is a part of the total revaluation, the time spent on it will not be considered in the time spent on the project plan because the appeal period comes after the production phase of the project is over.

Time estimate: Not applicable.

Revaluation Critical Path: 26.5 months/2.208 years.

Start I (3 months II (3 Months) III (1 month) IV (19.5 months) V END

Part III. COMPUTER-ASSISTED REVALUATION

Milestone 1. Planning.

Assumptions: A new computer system will affect every assessment function. Consequently, planning becomes an extensive and involved activity. It is often referred to as system design.[8] The time estimate is based on historical comparison.

Time estimate: 3 months.

Milestone 2. Hardware/software specifications.

Assumptions: This activity will involve preparing a document from specifications developed under Part I.

Time estimate: 1 month.

Milestone 3. Request proposals.

Assumptions: A list of vendors must be developed from professional journals, IAAO research department, the state ad valorem tax department, etc.; system specifications must be prepared in a bid packet; and the request for bids must be mailed.

Time estimate: 1 month.

Milestone 4. Select the vendor.

Assumptions: Bidders that have operating installations will be visited, grading criteria will be developed, and the vendor will be selected.

Time estimate: 1 month.

Milestone 5. Prepare and sign a contract.

Assumptions: During this period, contracts will be written, reviewed by attorneys, and signed.

Time estimate: 1 month.

Milestone 6. Order and accept delivery of hardware/software.

Assumptions: Time required for delivery of hardware will vary and is impossible to predict accurately. Delivery time will depend on the vendor and should be addressed in contractual arrangements.

Time estimate: 1-6 months.

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6. N.C. GEN STAT. 105-296(i) (1985).
8. N.C. GEN STAT. 105-322(e) (1985).
8. For a more complete description of system design, *see* Joseph E. Hunt, *Practical Considerations When Contemplating a Computer-Assisted Mass Appraisal System*, 3 PROPERTY TAX JOURNAL No. 1, 91-105 (June 1984).

Milestone 7. Install and test hardware/software.

Assumptions: Time required for installation and testing will vary and is impossible to predict accurately. This factor will depend on the vendor and should be addressed in contractual arrangements. But the system should be fully installed and tested before it is used in an actual mass appraisal. Testing should include system testing, application testing, and market testing, using actual market data if possible.

Time estimate: 1-6 months.

Milestone 8. Converting and testing data.

Assumptions: The existing data base will have to be converted to the new system. If the existing data are stored manually, they will have to be coded and entered into the new equipment. Time to complete this task can be estimated with an engineered time-and-motion study. If the data are electronically stored, perhaps most of the conversion can be done with the computer and special programs. In either case the new data base requirements must be compared with existing data, and conversion routines will have to be established. After conversion, the data should be audited and tested for accuracy.

Time estimate: 6 months.

Milestone 9. Completing the revaluaton.

Assumptions: This milestone is achieved with the completion of Part II: Revaluation. The estimate is explained in that section.

Time estimate: 26.5 months (see Part II: Revaluation).

Computer-Assisted Revaluation Critical Path: 45.5 months/3.792 years.

Start I (3 months) II (1 month) III (1 month) IV (1 month) V (1 month) VI (3 months) VII (3 months) (VIII) (6 months) IX (26.5 months) END.

Working Backward

The next step is to fit the project to a calendar, starting with the due date and working backward. The schedule for sub-projects (milestones) should be clearly noted; these beginning and ending dates are flags by which the revaluation can be kept on schedule. When the target date for completing the revaluation is known, the length of time required to accomplish each milestone (determined by critical-path analysis) should be subtracted from the due date to determine the beginning date of that activity. When the total time necessary for all milestones (allowing for some overlapping activities) is computed, the date on which the first step in the revaluation should be taken can be determined by subtracting the total lapsed time from the target date. For example, if the revaluation is to be complete by February 15, 1992, we can calculate that planning should begin on May 1, 1988—45.5 months earlier. Computer hardware and software should be selected and contracted for by December 1, 1988, and the mass appraisal project should start by January 1, 1990.

True critical-path analysis will be necessary in some parts of this calculation. The milestone projects should be broken down into further detail, and priorities should be set according to the order in which they are to occur. By analyzing the overlapping times for these sub-projects, overall time may be shortened or reordered to make more efficient use of personnel. Several generic software packages for micro-computers are now available to help in this type of analysis.

Conclusion

Now we have an estimate of how long it will take to complete the revaluation. The process of estimation is only roughly described in this article, which barely touches on critical-path analysis. Still, the time estimate is an absolute requisite for intelligent planning. The revaluation described in this article will take approximately four years to complete. What happens if the land records management system needs updating? Obviously the revaluation would take another two to four years. What if the

county commissioners voted to shorten the octennial revaluation cycle to three years? Since our projection is for four years, the project will have to be restructured and some parts of it, such as acquisition of computers, will have to be done over two revaluation cycles. The important thing is to know how much time is required for each facet of the revaluation before making a commitment to a charge that may prove to be impossible because time is too short.

Time estimation makes planning easier. After each project has been subdivided, the duties and responsibilities can be identified, and personnel and equipment can tentatively be assigned. In a word, what results is organization.

ALL PROJECTS should start with a time-planning estimate because time is the single element that cannot be altered. We can hire more people and spend more money for equipment or services—but we cannot buy more time without extending the project. And, when we in assessment work are controlled by inflexible legal deadlines, project extensions can be deadly. GP

Generic Training for County Departments of Social Services

Joe Raymond

North Carolina's county administered, state supervised social services system operates through 100 county Departments of Social Services. Each agency administers income maintenance and family social services programs and provides essentially the same mix of services. Collectively these county departments employ over 7,000 employees, ranging from over 450 workers in the Mecklenburg County Department to eight staff members in Camden County. Under law, each county department of social services is required to provide professional and high quality service despite large salary differentials, a variety of position and program combinations, a widespread lack of training opportunities, and a sometimes extremely negative political environment.

Local agencies also face increasing demands for accountability, legal liability, public review processes, and practice standards. These pressures, along with the drastic decline of federal Title XX training monies, have left county agencies isolated in their attempts to provide staff members with appropriate training.

Pilot program

A pilot program is providing generic skills training to some county social services employees in North Carolina. A statewide generic skills training program is a possibility today because a small group of county social service employees and one state employee formed the Region IV (Eastern North Carolina) Training Committee in May of 1984 and requested that the State Division of Social Services explore the possibility of generic training. This committee's work has resulted in funding a pilot training project for a 33-county area and also in the possibility that this pilot will become a permanent statewide training system.[1]

North Carolina's social services system ensures that all employees meet minimum education and experience requirements, which vary according to position. While this system helps employ persons with broadly appropriate backgrounds, who should be able to learn policy and programs, it does not ensure that new staff members have the generic skills required to perform their jobs adequately. For this reason and because North Carolina already provides a system of *program and policy* training, the com-

The author is Director of the Pamlico County Department of Social Services. He wishes to acknowledge the commitment of the Region IV Training Committee whose work has made development of a statewide training system become a realistic possibility

1. The following 33 eastern North Carolina counties make up Region IV: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell, Washington, Wayne, and Wilson.

mittee decided to concentrate its efforts on the development of generic skills training.

What is generic skills training?

Generic training may be defined as training in a wide range of theories, concepts, techniques, and skills specific to a profession or field (in this case, social work). All county social service positions (social workers, eligibility specialists, clerical, supervisory and middle management positions, and directors) need generic training. *Ideally*, new employees have such skills; however, the committee realized that this has too often not been the case. And program and policy training does not provide the generic skills necessary for these employees to perform their work.

For example, a person serving as income-maintenance line staff (eligibility specialist) must hold a high school diploma and have three years of clerical or para-professional experience to be hired in North Carolina. Employees with this basic background are capable of becoming excellent eligibility specialists; however, somewhere they must acquire the generic skills involved in interviewing, time management, work scheduling, stress management, documentation, basics of human behavior, handling confrontation and conflict, and supervision (these were some of the skill areas identified for the eligibility specialist position; position-specific lists have been made for all positions). An employee who is quite knowledgeable in Medicaid policy may not be able to perform his duties because he lacks these generic skills. Unless training is provided to these employees, some social services staff members will not be prepared to meet the demands of their positions. Since counties have not been able to provide such training, the Region IV Training Committee decided to design a system that would.

This committee has developed a series of goals and objectives, employee performance standards, training needs assessment data, and generally has helped spark interest and debate. The committee's requests to North Carolina's State Division of Social Services for funding to meet the state's generic training needs have resulted in the formation of a Statewide Training Committee, the involvement of the Institute of Government, strong support from East Carolina University's School of Social Work, and the support of the North Carolina Association of County Directors of Social Services and the North Carolina Social Services Association.

The Region IV committee begins its work

The regional committee began meeting in May 1984. Its first important act was to examine needs of *all* Department of Social Services positions and to include representatives from these positions in its membership. The concept of one training committee reviewing all positions is important. Currently, training resources are divided and uncoordinated. While the state has provided training in program areas, no system ensures that such training occurs equitably and regularly. The Regional Committee sought to establish the idea that all Department of Social Services positions are equally important to the counties, thus encouraging state officials to develop a system reflecting this equality.

The Region IV committee decided that the need for generic training was so important that the committee should become a permanent group whose work, by definition, would never be finished. The committee then designed a basic needs assessment survey for the position of social worker (DSS social workers provide a wide range of service and therapeutic treatment to families; these services relate to child abuse, foster care, adoptions, and family adjustment). This survey was sent to all 33 Region IV counties. Thirty-two counties responded.

This positive response from such a large percentage of counties reinforced the committee's ambitions; in October, 1984, the committee developed a set of goals and objectives that included a request for $25,000 from the State Division of Social Services for funding Region IV as a "Pilot Project." This amount was the minimum necessary to begin even basic activities. While the State Division Director did not immediately agree to the funding request, he did not refuse either, and he encouraged the committee to continue its work. The committee interpreted this response positively and expanded its needs assessment questionnaire to include most Department of Social Services positions. The responses to the questionnaire provided solid information on which to base generic training courses and allowed field practitioners to have significant input into the process. The philosophy of including opinions from practitioners underlies the Region IV effort.

First, the new survey results demonstrated a need for generic skills training (24 of 33 counties responded). Second, the survey identified the ten top generic areas for each position for which counties indicated training content should be developed. As an example, the generic areas identified for supervisory personnel appear below. As one can see, the needs are independent of program assignment.

Supervisory Personnel:

1. The role of middle management
2. Employment and discipline of personnel
3. Performance standards
4. Employee motivation
5. Legal liability
6. Management styles
7. Program planning
8. Role change—worker to supervisor
9. Assertiveness training
10. Public relations

The state begins to respond

After further requests from the Region IV social services directors and after several months of preliminary meetings, the state Division of Social Services formed a statewide training committee on June 5, 1985. This committee was given responsibility for assessing the generic training needs of all county social services positions and for developing a statewide generic training plan.

As this committee began its work, Region IV asked the Institute of Government to develop a training curriculum for social services directors. The Institute offered this course for the first time to 20 directors in September, 1986. Subject matter covered in the course included decision making, leadership, program planning, financial trends, policy analysis, public relations, and other management-related topics. The course was favorably received by the participants.

Region IV continued to request that a pilot project be funded in Region IV and that a generic training position be created to help lead the pilot. The statewide training committee (chaired by the Division's Deputy Director) reviewed this request and continued its work on needs assessments, performance standards, and the development of a statewide training plan.

Region IV becomes a pilot

Region IV submitted a detailed three-tiered training plan to the state as a part of its request for a pilot project. This plan proposed dividing generic training for all social services staff into three levels: (1) orientation, (2) position specific, and (3) professional education. The progressive structure of this model is significant, as is the need to develop a system to handle such details as training availability, quality, coordination, and uniformity.

In April, 1986, the State Division Director announced the designation of Region IV as a pilot training region (including the assignment of a generic trainer). The Director specified that work should begin on establishing training committees in the state's other three regions and that the proposed three-tier plan should be as used a pilot model. In August, 1986, the Division provided $29,000 for the pilot. As mentioned above, Region IV's model is a progressive, three-tiered approach to training for all levels of staff.

The first training tier (orientation) was designed as a three-day session for all levels of new staff (3 months and below). Material was designed to orient the new employee to the North Carolina social services system generally and to public welfare specifically. Topics include an overview of the social services system; history, philosophy, and ethics of the profession; foundation knowledge for human services delivery (basic social work process); and such special topics as teamwork, employee-supervisor relationships, legal liability, and public relations. The committee expects that training in these areas will not only provide introductory material to the new employee, but also help him understand the purpose and values of a human services agency (most new employees have no social services background).

The second training tier (position specific) would require the employee to attend a one-week course designed specifically for his position classification. Curricula for these courses are being developed. For example, social workers would attend a course that would introduce them to the structured family therapy model endorsed by the state division.[2] All new social workers would attend this ses-

2. Social workers are only one group of employees in county departments; other groups include eligibility specialists, clerical staff,

sion after their orientation, regardless of their program assignment (protective services, foster care, etc.). This second tier of training would ensure that all county staff would begin their jobs with a common understanding of the basic skills and techniques necessary to their position. These position-specific curricula would be used for all positions (clerical, supervisory, eligibility specialist, etc.). The systematic provision of this tier of training for all levels of staff is perhaps the most important part of the model because it is intended to provide basic position-specific skills that many staff lack.

The third tier has been labeled "professional education." At this point the employee would have available a course, or a series of courses (which may or may not lead to a degree), in a speciality area. For example, advanced training might be provided in either program areas or broader topics (aging, advanced family therapy, child development, etc.). The aim of this tier is to build advanced skills leading to improved performance and job advancement. It is hoped that discussions with the East Carolina School of Social Work will result in course offerings to meet the needs of employees who cannot leave their jobs to receive this level of training.[3]

As of March, 1987, three orientations have been provided for 100 new employees representing all levels of staff. Several more orientations are scheduled through June, 1987. Feedback from participating staff and agencies has been consistently strong and positive. Additionally, work on the second tier is progressing as the Region IV Committee develops position-specific curricula for all positions. Assuming that the pilot develops into a fully implemented plan, both the orientation and position-specific curricula should be in place during the 1987-88 fiscal year.

Despite this progress, the statewide training committee has not (as of March, 1987) developed a statewide training plan. Regional training committees are, however, in the process of setting up training in the other three regions. It is hoped that these regions will soon begin to implement the Region IV model.

Conclusion

It has taken almost three years (since the Region IV group began its efforts) for generic training to become a realistic possibility. In my opinion, the central issue remaining is whether North Carolina will provide the leadership, support, and funding for the creation of a statewide generic training system. Specifically, the Division of Social Services should develop a statewide plan to meet these needs. That plan should reflect serious thought about the training model to be used and about the resources needed to accomplish the job. This plan should address the issues of statewide training coordination, quality, and uniformity. The need to design a permanent *system* of progressive training should be emphasized.

State officials have been vague in their comments about future support. Nevertheless, county departments of social services have over 7,000 employees who are required to perform complex and professionally demanding job responsibilities. These employees need access to a training system that will allow them to develop appropriate job skills and abilities. As time passes, more and more responsibilities are being placed on the staff of county departments of social services. The courts, advocacy groups, and the families who receive our services are expecting high quality professional service, and they are expecting the quality and professional service in all 100 North Carolina counties to be equal. Standardized training for the staff of the state's two-billion-dollar-a-year social services system appears to be a logical and reasonable initiative. One wonders what other profession of this magnitude would not provide its employees with basic training opportunities. A solid financial investment in generic training would meet many of the counties', state's, and clients' needs. Two current needs are to lower the rate of employee turnover, which is currently quite high, and to improve the delivery of services to families.[4]

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supervisory personnel, child support agents, fraud investigators, social services assistants, and directors. Each group or "position" needs specialized training in this second tier.

3. Such training may include weekend or evening courses, courses offered through agencies, or workshops held at central locations.

4. A study conducted by the Eastern Regional Personnel Office in Greenville, North Carolina showed that region's turnover rate from July

In summary, several key points should be emphasized. First, the training design must include input from practitioners in the field. University staff and training experts are useful, but their expertise cannot replace the experience of those who face real-world issues daily. One reason Region IV's efforts have been well received by local staff is that the committee has included practitioners in the process. Second, a training system should be part of an on-going process. Third, solid performance standards must be developed if training design is to be appropriately applied. It is difficult, if not impossible, to design training if one cannot specifically define the expectations and skills required by the job. Fourth, some type of statewide coordinating mechanism must be in place that will allocate resources and training rationally and uniformly, while remaining independent of politics and "turfism."

Debate over Region IV's efforts should stimulate the creation of a statewide generic training system. Many questions about what form such a system might take arise. A central issue is the amount of input and control a state-supervised, county-administered system will allow the counties. Is such a system capable of developing a creative and responsive structure that listens to front-line practitioners' requests for assistance? And finally, to what extent will our state legislature be willing to support funding for this program?

County interest in the training concerns of public social services staff has demonstrated the need for state leadership and support of this initiative. Unless the state develops specific plans and commitments, it is likely that the progress made thus far will quickly fade. Only the future will reveal whether North Carolina and the North Carolina State Division of Social Services will meet this challenge. **P**

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1. 1985, through June 20, 1986 to be 25.9 per cent for the social worker position (79 out of 304) and 27.0 per cent for the eligibility specialist position (146 out of 504.5). Significantly, the study indicated that 91.1 per cent of social workers' and 95.9 per cent of eligibility specialists' turnover was "avoidable."

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