Summer 1991 Vol. 57, No. 1

Popular Government

Institute of Government • The University of North Carolina at Chapel Hill

Spouse abuse: Is arrest effective in preventing it?

Also

Tax changes in the last decade

Liability in revoking employment offers

Protecting abused children

On the Cover

Christian Bertram and Virgil Smithers portray one of the methods law-enforcement officers use to deal with spouse abusers: arrest. Photograph by Gary D. Knight of the City-County Bureau of Identification in Raleigh.

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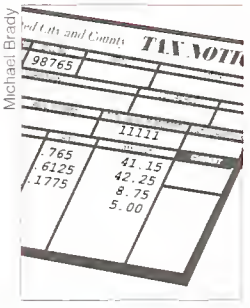

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Feature Articles

Around the State

At the Institute

Changes in North Carolina's Tax System: The Last Decade

Charles D. Liner

From the early 1930s, when major tax reforms were made, until the 1980s, North Carolina's tax structure remained relatively stable.[1] During the 1980s major changes were made in every major revenue source, including the retail sales tax, personal and corporate income taxes, the property tax, and the motor fuel tax. Now at the beginning of the 1990s additional major changes have been made—the 1991 General Assembly, in response to the worst budget crisis since the early 1930s, has increased rates on income and retail sales taxes. This article examines how North Carolina's revenue structure changed during the 1980s and how those changes and the 1991 changes affect taxpayers.

Background

First, it is important to look at the background against which those changes occurred by examining some major developments during this period:

- The 1980s brought a substantial reduction in the availability of federal funds, especially for local governments. The budget cuts in major federal grant programs during the early Reagan years were followed by a repeal of federal revenue sharing for local governments and a general retrenchment in the role of the federal government in programs administered by states and local governments.

The author is an Institute of Government faculty member who specializes in public finance. Illustrations by Michael Brady.

- In 1986 Congress reformed the federal corporate and personal income taxes. These reforms directly affected how North Carolina taxed corporations because the federal tax is the basis for the state corporate income tax. and in 1989 the General Assembly adopted the reformed federal definition of taxable income as the basis for the state personal income tax.
- In North Carolina the 1980s were marked by increased demand for public spending. These increased demands followed partly from normal growth in the state's population and income—population increased 11.9 percent and per capita income adjusted for inflation increased 39.6 percent between 1980 and 1989. But the greatest influences on spending were movements to improve the public schools and highways. These movements resulted in major new initiatives in education. such as the Basic Education Program enacted in 1985. increased teacher salaries. and the beginning of an ambitious highway construction program.
- Public finance policies during the 1980s were greatly influenced by the national economy and its effects on the state's economy. During most of the decade the nation was experiencing an unprecedentedly long boom in the national economy. and during the boom years the resulting growth in North Carolina's economy led to substantial growth in its tax base. But those good years were sandwiched between severe recessions at the beginning and end of the decade. North Carolina's commitment to multi-year spending programs. escalation in medical care costs. federal government and federal court mandates. together with the recession and other factors led to a severe budget crisis that has lasted from 1989 to the present. The budget crisis resulted in major budget cuts. retrenchment in spending programs. and further changes in the state's tax system in 1991.

Legislated Tax Changes

This section examines the more significant changes that the General Assembly has made since the 1979–80 fiscal year in the major revenue sources used by the state and its local governments.

Property Tax

In 1985 Governor James Martin proposed a major tax-cutting initiative that called for exempting intangible property and business inventories from the property tax

and exempting food purchases from the retail sales tax. The 1985 General Assembly responded by exempting some forms of intangible property—money on deposit, money on hand, funds on deposit with insurance companies, and credit balances with investment and securities firms—and provided an income tax credit for a portion of property taxes paid on business inventories. Food was not exempted from the retail sales tax, but food purchased with food stamps was exempted. In 1987, when the corporate income tax rate was raised to provide funds for school construction, the General Assembly exempted business inventories and certain agricultural inventories.

Tax Cut Reimbursements

When the General Assembly exempted some forms of intangible property from taxation in 1985, it compensated local governments by reimbursing them for lost revenue. These reimbursements were later increased to include compensation for revenues lost as a result of exempting business inventories from property taxation, exempting food purchased with food stamps from the retail sales tax, and increasing the property tax homestead exemption. These reimbursements became a significant revenue source for local governments, and by the end of the decade they claimed about $250 million in state revenue.[2]

Personal Income Tax

In the decades after the personal income tax was enacted in 1921, inflation eroded the value of personal exemptions so that low-income taxpayers were paying a tax that had originally been intended to fall only on those who had a substantial ability to pay.[3] The value of those exemptions was increased in 1979, and in 1985 a low-income credit was enacted to provide relief for low-income taxpayers. On the recommendation of a special tax study commission, in 1989 the General Assembly enacted legislation that based the North Carolina tax on taxable income as defined under the federal tax code. This substantially increased personal and dependent exemptions and the standard deduction, the result being that several hundred thousand low-income taxpayers were no longer liable for paying the state income tax, and tax liabilities of other lower-income taxpayers were reduced. The existing rate structure, comprising five rates varying from 3 percent to 7 percent, was replaced with two rates, 6 and 7 percent. The higher rate applied to taxable income over $21,250 for married couples filing jointly.[4] In 1991 a third tax rate of 7.75 percent was added. That rate takes effect at the taxable income of $100,000 for married couples filing jointly.[5]

Corporate Income Tax

As noted above, changes in the federal tax also affected how North Carolina taxed corporations because the federal definition of income was used as the basis for the state's tax. As a partial means to pay for a school construction initiative, the corporate tax rate was increased from 6 to 7 percent in 1987. However, that measure was part of a package of measures that included a business tax cut, the elimination of property taxes on business inventories. In 1991 the corporate income tax rate was increased to 7.75 percent (a temporary surtax also was added).

Retail Sales Tax

The rate of the combined state and local retail sales taxes was increased from 4 to 5 percent by two new half-cent local-option sales taxes enacted in 1983 and 1986. Unlike the previous one-cent local option sales tax enacted in 1971, the proceeds of which were returned to county and city governments in the county in which the taxes were collected, the proceeds of the new taxes were distributed according to each county's share of population. Thus these new taxes were more like a state revenue sharing scheme than a local tax. The reason is apparent from the implicit intent of the General Assembly in enacting the taxes. The revenues were intended to substitute in part for state aid for school construction and water and sewer facilities, and therefore counties were required to spend part of the proceeds for school construction, and cities were required to spend a portion for water and sewer facilities.

As noted earlier, food purchased with food stamps was exempted from the tax in 1985, and in 1987 the General Assembly repealed the 3 percent discount allowed merchants for collecting and remitting the tax. In 1989 the 2 percent rate on sales of motor vehicles was replaced with a 3 percent privilege excise tax on motor vehicles, the proceeds of which were to be used for highways (though a share of the proceeds was retained for a period in the General Fund). The maximum tax, which had been increased from $120 to $300 in 1983, was increased to $1,000; it will increase to $1,500 in 1993.

In 1991 the general rate of the state sales tax was increased from 3 to 4 percent, except that the rate on utility sales remained at 3 percent. This was the first increase in the state rate since the tax was enacted in 1933 (the only other major change had been repeal of the exemption of food sales in 1961). It brought the combined state and local retail sales tax rate to 6 percent.

Highway Taxes and Fees

In the early 1980s Highway Fund revenue collections suffered as a result of the increase in oil prices associated with the Iranian crisis. In 1981 the motor fuel tax was increased from 9 to 12 cents per gallon. Part of the increase was designated to increase the share going to cities (so-called Powell Bill funds). In 1986 the rate was increased from 12 to 14 cents per gallon and a new tax was enacted in the form of a 3 percent tax on the wholesale price. To implement an ambitious, multi-year highway construction program recommended by a blue ribbon commission, in 1989 the per gallon and wholesale price taxes were raised substantially, and today the two taxes are equivalent to 22.6 cents per gallon. Also, as mentioned above, the retail sales tax of 2 percent on motor vehicle sales (the proceeds of which went to the General Fund) was replaced with a privilege excise tax of 3 percent of sales price, to be used for the new highway construction program. In 1991 the 2 percent rate on boats and locomotives also was increased to 3 percent, and the basic motor fuel tax rate was increased from 17 to 17.5 cents per gallon, effective January 1, 1992.

Growth in Taxes

Table 1 shows the percentage changes in inflation-adjusted (or constant-dollar) per capita revenue in North Carolina between fiscal years 1979–80 and 1988–89 (the last year for which consistent data are available). This growth can be compared with growth in constant-dollar per capita personal income in North Carolina during the same period (39.6 percent) and with corresponding changes for the nation as a whole. *Total revenue*, as defined in the Census reports, includes revenue received for utility enterprises (such as water, electricity, or transit systems), insurance trust fund revenue (such as unemployment insurance receipts), and liquor store receipts. *General revenue* excludes these items because it is intended to reflect revenue available for general governmental uses.

Table 1
Changes in Constant-Dollar Per Capita Revenue
between Fiscal Years 1979–80 and 1988–89

	Percentage Change				
	Total State & Local	State	Local	Counties	Municipalities[a]
North Carolina					
Total revenue	13.1%	35.9%	55.3%	52.8%	14.2%
General revenue, total	36.6	34.0	46.4	58.5	3.6
From federal government	–9.7	5.0	–55.2	–66.9	–76.7
From taxes and charges	45.9	41.5	55.0	–	–
Taxes	46.3	42.7	56.3	63.6	18.5
Charges	43.7	32.6	52.2	–	–
United States					
Total revenue	31.2	35.0	30.9	35.9	–
General revenue, total	30.6	31.3	28.1	34.5	–
From federal government	–3.7	11.1	–47.1	–67.3	–
From taxes and charges	36.0	33.5	39.3	–	–
Taxes	33.3	32.1	35.7	–	–
Charges	49.7	48.2	50.6	–	–

[a]Based on municipal population rather than statewide population.

Source: U.S. Department of Commerce, Bureau of the Census, *Governmental Finances*, annual.

The figures in Table 1, all of which refer to inflation-adjusted per capita amounts, may be summarized as follows:

- In inflation-adjusted dollars, per capita total revenue of North Carolina's state and local governments increased slightly more than per capita personal income (13.1 versus 39.6 percent). But per capita general revenue (which excludes insurance trust, liquor store, and utility revenue) increased slightly less than per capita income (36.6 versus 39.6 percent).
- The components of general revenue are federal aid, revenues from taxes and current charges, and miscellaneous revenue. In constant dollars per capita, federal aid fell 9.7 percent, while miscellaneous revenue increased 139 percent. Constant-dollar per capita revenue from taxes and current charges combined increased 45.9 percent. Thus revenue from taxes and current charges combined increased slightly as a percentage of state personal income—from 13 percent to 13.6 percent. Growth in revenue from North Carolina state and local tax sources alone increased 46.3 percent, while revenue from current charges (including user charges, fees, and tuition) increased 43.7 percent. The growth in revenue from current charges is attributable mainly to increases in hospital charges;

Table 2
Changes in Constant-Dollar Per Capita Revenue from Major Revenue Sources between Fiscal Years 1979–80 and 1988–89

	Percentage Change	
	North Carolina	United States
Motor fuel taxes	28.6%	21.1%
Property taxes	31.2	26.6
Personal income taxes	59.9	39.5
Corporate income taxes	68.4	16.6
Retail sales taxes	76.8	96.4
Utility fees	171.5	50.4

Source: U.S. Department of Commerce, Bureau of the Census, *Governmental Finances*, annual.

education charges increased 27.1 percent, while hospital charges increased 75.9 percent.

- Growth in general revenue was substantially greater for local governments than for the state government. Whereas state general revenue increased 34 percent, local government general revenue increased 46.4 percent (58.5 percent for counties and 3.6 percent for municipalities).
- Constant-dollar per capita revenues received by local governments from the federal government fell by half—55.2 percent. In fact, the actual amount of federal funds received by local units fell from $476 to $312 million between fiscal years 1979–80 and 1988–89, a drop of 28 percent. For counties, constant-dollar per capita revenue from the federal government fell 66.9 percent, while for municipalities the drop was 76.7 percent (based on municipal, not statewide, population). These declines were offset by a substantial increase in constant-dollar per capita federal dollars for special districts, an increase that most likely reflects increased federal funds for health care. Federal revenues received by the state government increased 5 percent.
- Revenue from North Carolina taxes increased 46.3 percent. Local tax revenue increased more than state tax revenue (56.3 versus 42.7 percent). County tax revenue increased 63.6 percent, while municipal revenue increased 48.5 percent.

Table 2 shows growth in constant-dollar per capita income from the major revenue sources. The largest growth in North Carolina was in utility fees (171.5 percent), retail sales tax collections (76.8 percent), corporate income tax collections (68.4 percent), and personal income tax collections (59.9 percent). Property tax revenue increased 31.2 percent and motor fuel tax collections increased 28.6 percent.

The result of these varying growth rates was that the composition of revenues from these sources changed significantly. Utility fees increased from 11.4 to 18.5 percent of the total; of the other sources only retail sales tax collections increased as a percentage of the total. If we consider only the tax sources, the property tax fell from 27.4 to 23.3 percent of the total and motor fuel tax revenue fell from 8.1 to 6.7 percent. Retail sales tax collections increased from 24.3 to 27.9 percent, while revenues from the personal and corporate income taxes increased slightly.

Effects of Tax Changes on Taxpayers

Practically all taxpayers, including both individuals and businesses, were affected significantly by the tax changes discussed above. The combined state and local retail sales tax rate increased by 50 percent—from 4 to 6 percent (though the rate on utility sales remained at 3 percent). The sales tax rate on vehicle purchases also increased 50 percent—from 2 to 3 percent—and the cap was raised significantly (also, the sales tax rate was made to apply to used car purchases). On the other hand, low-income families that purchased food with food stamps were exempted from the retail sales tax on those purchases. The motor fuel tax increased from 9 cents per gallon to the equivalent of 22.6 cents per gallon.[6] Some taxpayers were affected by several increases in alcohol-related taxes and the 1991 increase from 2 to 5 cents per pack in the cigarette tax rate.

The reform of the personal income tax in 1989 removed thousands of low-income taxpayers from the tax rolls and reduced tax liabilities of lower-income families. The effect on middle- and upper-income families depended on their income level and the type of deductions they were entitled to before the changes. The tax rate of 7.75 percent added in 1991 of course affected only upper-income taxpayers—for example, married couples with a taxable income exceeding $100,000.

Businesses also were affected by increased sales and excise tax rates, but the largest change in taxation of businesses came from changes in the corporate income tax and the property tax on inventories. The corporate income tax rate was increased from 6 percent to 7 percent in 1987. That increase was offset to some extent by the simultaneous repeal of property taxes on business inventories and partial repeal of taxes on intangible property (which also affected some individuals). And

in 1991 the corporate income tax rate was increased to 7.75 percent.

The crucial question about recent tax changes, from the standpoint of public policy, is whether the changes had the effect of making North Carolina's tax structure more fair or less fair. The term fairness refers to the principle that the burden of taxes levied to support government services that provide general benefits should be related to an individual's ability to pay, and that the net burden of all taxes and charges should also be related to ability to pay, as measured by income. When tax burdens as a percentage of income rise with income, we say the tax burdens are progressive, and when tax burdens fall as income increases, we say that tax burdens are regressive. Fairness requires that tax burdens should be at least proportional to income, and many believe that fairness requires that the net burden rise progressively with income.

Unfortunately it is difficult, both for conceptual and practical reasons, to estimate the effect of taxes or tax changes on tax burdens at different income levels. We can make rough estimates of the amount of direct taxes, like sales and income taxes, paid by individuals. But who bears the final burden of taxes paid by businesses? Businesses whose taxes are increased may try to offset those increases by raising prices, but whether or not they can do so without consequential changes in profits depends upon the circumstances of the industry they operate in and market conditions they face. Firms that increase prices to offset higher taxes may see a reduction in sales and profits, particularly if they operate in very competitive industries, and therefore they may not be able to pass all tax increases on to their customers in the form of higher prices.

Although it is not feasible to estimate the total effects of recent tax changes, it is possible to gauge, at least roughly, the effects of changes in the major taxes that fall directly on families and individuals. Table 3 shows estimates of the taxes that would have been paid by four representative families with different levels of income in 1990. The effect of the major tax changes is shown by calculating the taxes estimated to have been paid in 1990 and comparing those amounts with the amounts that would have been paid on 1990 income if 1989 tax provisions were still in effect and with the amounts that would have been paid if the 1991 tax changes had been in effect.

As Table 3 shows, the 1989 changes in North Carolina's personal income tax reduced income tax liability substantially for the representative family with an income of $15,000. Under 1989 laws that family would have paid $215 in taxes on 1990 income, or 1.4 percent of its gross income. Under 1990 laws the family would have owed only $108, or 0.7 percent of its income. The 1989 changes had little effect on the other families. However, that result might have been different if this exercise had included a family that before the change took advantage of various tax deductions eliminated by the changes, such as those commonly accrued to investors in tax shelter schemes. In any event, the 1989 reform of North Carolina's income tax increased the progressivity of the tax by reducing or eliminating income taxes previously imposed on lower-income taxpayers.

All the representative families were affected significantly by the increases in rates of the retail sales and motor fuel taxes. As the table demonstrates, these taxes are regressive—they fall disproportionately on lower-income families. For example, under 1991 laws estimated retail sales taxes represent 2.5 percent of income for the lowest-income family but only 1.5 percent for the highest-income family. (User charges and fees, which are not analyzed here, also are regressive.)

What was the net result of the income tax reform, which made the income tax more progressive, and the increased rates on the regressive retail sales and motor fuel taxes? As Table 3 shows, the total tax liability under the income, retail sales, and motor fuel taxes increased substantially for all families. The total tax liability for the family with 1990 income of $15,000 was 20 percent higher under 1991 laws than under 1989 laws. This change reflects the fact that increased sales and motor fuel tax rates were partly offset by income tax reductions. For the other families, the corresponding percentage changes declined as income increased—the increase was 34 percent for the family with income of $25,000, 23 percent for the family with income of $40,000, and 15 percent for the family with income of $75,000. Thus the increase was relatively less for higher-income taxpayers because they spend proportionately less of their income on items subject to the sales and motor fuel taxes.

The relative effects of these changes can be seen in the table's figures that show for each family the ratio of the combined taxes as a percentage of income to the corresponding percentage for the highest-income family. For the family with income of $15,000, the income tax reform offset somewhat the effects of the other increases, so that its percentage relative to the percentage for the highest-income family increased only slightly

Table 3
Estimated Retail Sales, Income, and Motor Fuel Taxes of Four Representative Families under 1980, 1990, and 1991 Tax Laws

	Estimated Taxes on 1990 Income				As Percentage of Income			
	$15,000	$25,000	$40,000	$75,000	$15,000	$25,000	$40,000	$75,000
1990 tax liability under 1980 laws:								
Personal income tax	$215	$573	$1,251	$3,012	1.4%	2.3%	3.1%	4.0%
Retail sales tax[a]	253	392	474	713	1.7	1.6	1.2	1.0
Motor fuel tax	56	93	135	154	0.4	0.4	0.3	0.2
Total	521	1,058	1,863	3,909	3.5	4.2	4.7	5.2
Percentage relative to that of highest-income family[b]					67.3	80.8	90.4	100.0
1990 tax liability under 1990 laws:								
Personal income tax	108	599	1,217	3,008	0.7	2.4	3.1	4.0
Retail sales tax[a]	317	490	593	928	2.1	2.0	1.5	1.2
Motor fuel tax	135	222	322	368	0.9	0.9	0.8	0.5
Total	560	1,311	2,162	4,304	3.7	5.2	5.4	5.7
Percentage relative to that of highest-income family[b]					64.9	91.2	94.7	100.0
1990 tax liability under 1991 laws:								
Personal income tax	108	599	1,247	3,008	0.7	2.4	3.1	4.0
Retail sales tax[a]	380	587	711	1,114	2.5	2.3	1.8	1.5
Motor fuel tax	112	233	338	387	0.9	0.9	0.8	0.5
Total	630	1,419	2,296	4,509	4.2	5.7	5.7	6.0
Percentage relative to that of highest-income family[b]					70.0	95.0	95.0	100.0
Percentage difference in estimated taxes under 1980 and 1991 laws	20.2%	34.1%	23.2%	15.3%				

[a]The calculated amounts include retail sales taxes on utility sales. In 1984 the state franchise tax on utility sales was converted to a 3 percent retail sales tax. Because this was merely a shift in the form of the tax, it would be misleading not to calculate retail sales taxes on utility sales.

[b]Ratio of total percentage for each family to the total percentage for the family with a $75,000 income.

Source: Income and spending figures are based on U.S. Department of Labor Consumer Expenditure Survey. "Representative family" assumes a married couple having two children, owning their home, and receiving all income from wages and salaries. It was assumed that none of the families purchased a vehicle.

(an increase from 67 to 70 percent). For the other families, the effect was to make tax burdens in this income range less progressive. For example, consider the family with $25,000 income. The estimated taxes as a percentage of this family's income, 1.2 percent, increased from 81 percent of the corresponding percentage for the highest-income family to 95 percent, when tax liabilities under the 1980 and 1991 laws are compared. Similarly, the corresponding ratio for the family with $40,000 income increased from 90 percent to 95 percent. In other words, although the regressive effect of increasing retail sales and motor fuel tax rates was offset by income tax changes for the lowest-income families, those increases caused the combined burden of these major taxes to be less progressive than before for taxpayers with moderate incomes.

Unfortunately we cannot provide estimates for two important classes of taxpayers, the very poor and the very well-to-do, because the data needed are not available. For the poorest taxpayers, increased retail sales and motor fuel taxes would not have been offset by income tax changes, because they would not have been liable for income taxes even under 1980 laws. However, they might have benefited from the exemption from retail sales taxes of food purchased with food stamps. For upper-income taxpayers, the 1991 changes, by increasing the tax rate from 7 to 7.75 percent on incomes above $100,000 (for married couples filing jointly), would have partly offset

the relative advantage they enjoyed from increased sales and motor fuel tax rate increases.

Conclusion

After having remained relatively stable for more than half a century, North Carolina's tax structure underwent substantial changes during the past decade. That decade was a turbulent one for state and local government finances. It began with high inflation, followed by a severe recession. That recession was followed by an unprecedented expansion in the national economy, which in turn was followed by a recession that caught most states, including North Carolina, in a severe fiscal bind. The decade also brought a major shift in fiscal responsibility from the federal government to states and local governments. That shift began with President Reagan's 1981 program of tax cuts and federal aid cutbacks, including the end of federal revenue sharing. The federal deficit placed a stranglehold on federal aid for the rest of the decade. Thus it was left to states and local governments to cope with fiscal pressures created by escalating costs, federal mandates, and demands for improving schools and highways.

As we have seen, growth in state and local government general revenue in North Carolina was about in line with growth in personal income in the state. But revenue from the federal government, in inflation-adjusted dollars per capita, declined almost 10 percent, and in the same terms federal aid to North Carolina local governments was cut in half. The net result was that inflation-adjusted per capita revenue from taxes and from current charges increased more than state personal income.

Tax increases came mainly in the form of substantial rate increases in the retail sales, gasoline, and corporate income taxes. Utility charges and health care charges also increased greatly, and, although not documented here, there appears to have been a general trend toward greater use of user charges and fees. Although this article did not analyze changes in property tax rates, Table 2 shows that property tax revenue grew less than other tax revenue (except for motor fuel tax revenue). Property taxes paid by businesses were reduced by elimination of the property tax on business inventories. Although the 1989 reform of the state's personal income tax, the largest of all tax sources, reduced income taxes for taxpayers with low and moderate incomes, revenues from that tax also increased substantially more than state personal income (Table 2).

The analysis of changes in the retail sales, motor fuel, and personal income taxes suggests that the net result was to make the state's tax system less progressive. That is, increased sales and motor fuel taxes were regressive in that the increases were relatively greater for lower-income taxpayers than for higher-income taxpayers. This regressive effect was offset in part for low-income taxpayers whose income tax liabilities were reduced by the 1989 income tax reforms. The regressive effect also was countered to some extent by the 1991 increase in income tax rates on high-income taxpayers. And increases in the corporate income tax rate were counter to a long-term trend that has reduced the proportion of tax revenue coming from businesses and increased the proportion coming from individuals and consumers. ❖

Notes

1. Charles D. Liner, "Providing Government Services: State and Local Government Responsibilities in North Carolina," *Popular Government* 51 (Spring 1985): 2–7.

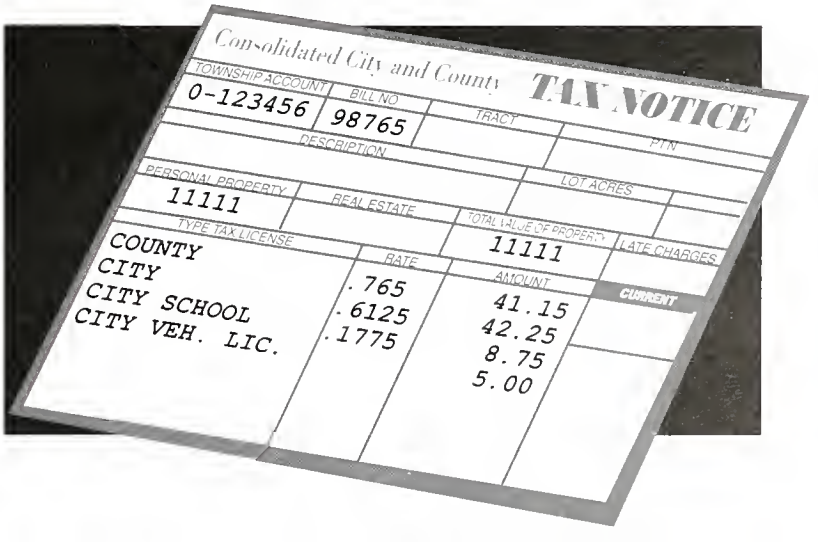
2. These reimbursements in effect amount to a state revenue sharing scheme in which state revenues are distributed according to the amount of revenues local units once received from taxes that have been repealed or modified. Local officials have complained that they are not being reimbursed for the revenue growth that would have occurred without the changes. They claim that the effect of the reimbursements has been to substitute a nongrowing revenue source for growing revenue sources.

3. Charles D. Liner, "The Erosion in Value of Exemptions and Tax Brackets of North Carolina's Personal Income Tax," *Popular Government* 54 (Fall 1988): 33–40.

4. The higher rate takes effect at $17,000 for heads of household, $12,750 for single taxpayers, and $10,625 for married persons filing separate returns.

5. It takes effect at $80,000 for heads of household, $60,000 for unmarried persons, and $50,000 for married spouses filing separately.

6. This figure represents the combined effect per gallon of the per gallon and wholesale rate for the last half of 1991. The wholesale rate is adjusted every six months.



The Charlotte Spouse Abuse Study

J. David Hirschel, Ira W. Hutchison III, and Charles W. Dean

What constitutes the most effective, or the most appropriate, law-enforcement response to sponse abuse? This question has stirred considerable controversy for decades as law enforcement has moved its emphasis from restoring order with minimal involvement in family matters to employing mediation and crisis intervention techniques to arresting the offender. These changes have not been guided by the results of scientific research. Although there were some field experiments in other substantive areas, such as medicine and education, only in the past ten years did the law-enforcement community begin to engage in such a research approach. The first experimental study involving police response to spouse assault was a study in Minneapolis in 1981 and 1982.

The Minneapolis study compared three kinds of police responses to spouse abuse situations: (1) advising the couple (perhaps referring them to a social service agency), (2) separating the couple temporarily (by ordering the offender to leave), and (3) arresting the alleged assailant on an assault charge. In the Minneapolis study, police chose one of these three responses at random so that the efficacy of each response could be compared. The study concluded that arresting the assailant was the most effective police response in deterring subsequent spouse abuse.[1]

There were doubts about the Minneapolis study because of methodological problems and the limited area studied.[2] To gain more reliable data, the National Institute of Justice funded additional experiments in six sites across the country, one in Charlotte, North Carolina.[3]

Description of the Charlotte Study

The Charlotte study was a replication and extension of the Minneapolis study. One difference in the Charlotte study was the use of the entire patrol division of the Charlotte Police Department in round-the-clock and citywide sampling for the full duration of the project. Another variation from the Minneapolis study lay in the choice of police responses for examination: (1) advising (and possibly separating) the parties, (2) arresting the alleged offender, and (3) issuing a citation to the alleged offender. Thus the Charlotte study differed from the Minneapolis study in combining the advising and separating responses and adding citation as a response.

All of these responses were allowed by North Carolina law, but none was specifically required.[4] One of the three responses was selected at random for each case eligible for the study. Random assignment was necessary so that each of the three responses had an equal chance of being delivered in every eligible case, thus making the characteristics of the cases in each of the response groups similar. Without random assignment, the groups of cases receiving each type of police response would not have been comparable because they would have been selected at the police officers' discretion. The eligible cases were followed for a period of at least six months after the police response to discern whether further abuse occurred.

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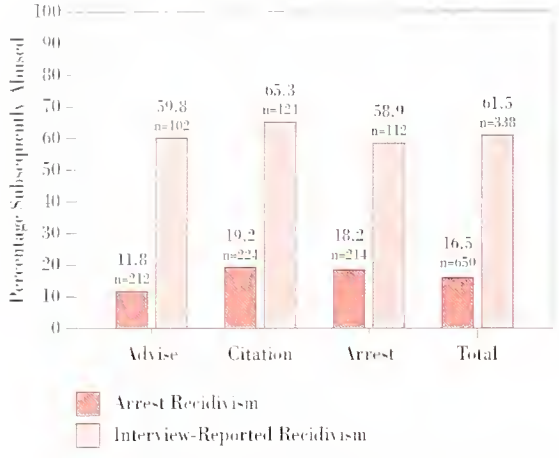
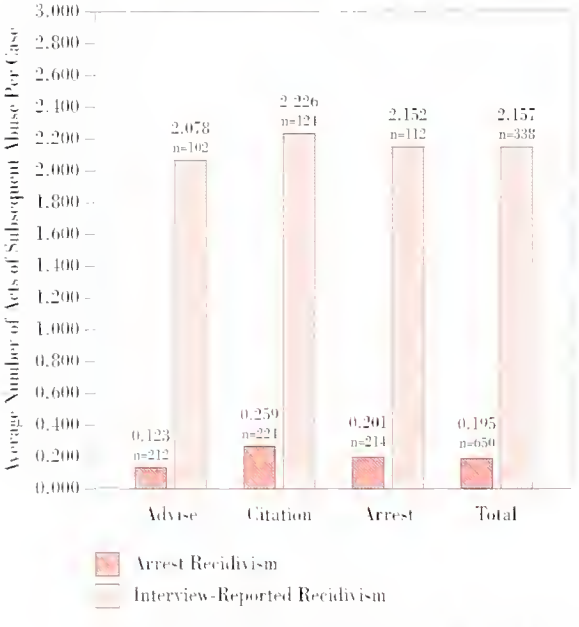
Figure 1
Prevalence of Spouse Abuse Recidivism



Note: Data were collected from official arrest records and victim interviews during a six-month follow-up period.

Figure 2
Mean Incidence of Spouse Abuse Recidivism



Note: Data were collected from official arrest records and victim interviews during a six-month follow-up period.

Eligibility Criteria

For a case (a call for police assistance involving a domestic dispute between a couple) to be eligible for the experiment, it had to meet several criteria. The overriding criteria guiding this experiment were that eligible cases must have been classified as misdemeanor assaults rather than more serious felonies, and a judicially issued warrant or other arrest orders must not have been involved. The reasons for these criteria are that police would have been legally obligated to make arrests if judicial arrest orders had been involved, and they might have felt compelled to make arrests if a felony were involved, with the result that the other responses (advising or issuing a citation) would have been ruled out.

The Charlotte study took a relatively literal interpretation of the concept of *spouse* and focused only on heterosexual spousal and "spouse-like" relationships. Included were married, separated, divorced, cohabitating, and ex-cohabitating couples. Excluded were other family relationships and non-cohabiting boyfriend-girlfriend relationships. Cases in which either the victim or the offender was under the age of eighteen were also excluded because special research instruments and approval procedures would have been required.

A fundamental guideline of the research design was that the project should not pose any additional danger to either the victim or the responding officers. As a consequence, cases in which the victim insisted on the arrest of the offender, cases where the offender threatened or assaulted the officer, and cases where the officers believed the offender posed imminent (serious present) danger to the victim were all excluded from the study.[5] Police thus remained free to make arrests in these types of situations without being restrained by any features of the research design.

Cases also were excluded if either the victim or the suspect was not present when the officers arrived on the scene. In such cases it would have been impossible for the officers to respond to the situation in all of the three ways.

Operational Procedures

Officers responded to a call for service by going to the scene and determining whether the case met all of the eligibility criteria. If so, the officers radioed the police dispatcher for instructions regarding which of the three responses to make (advising and perhaps separating, issuing a citation, or arresting). The response assigned to them was randomly selected by a computer. The officers then carried out the assigned response unless something occurred that prevented them from doing so. If, for example, the officers were instructed to advise the parties, but the suspect then assaulted an officer, the officers might arrest the suspect; in this situation the case was treated as a *misassignment* of response. It was still

counted as an eligible case because it had, at the time of treatment assignment, met all of the eligibility criteria. Regardless of which of the three responses they made, the responding officers were instructed to attempt to calm matters down and restore some semblance of order. They also were to give the victim printed information about the local victim-assistance program and the battered women's shelter. In addition, general police procedures allowed officers to transport a person to another location, for example to a hospital for treatment or to a relative's house to spend the night.

Training was conducted in June, 1987. The field experiment began on June 13, 1987, with a pretest phase that lasted until August 7, 1987. Collection of eligible cases began August 8, 1987, and ended June 30, 1989.

Case Flow

Eligible cases constituted only a small percentage of the domestic calls the police received. During the research study period the Charlotte Police Department received 591,661 calls for assistance, most of which (90.8 percent) resulted in an officer being sent to the scene. A total of 18,963 calls were determined at the scene to involve people with spousal relationships as we defined them. Of these, 3,380 were cases in which police officers decided that they had probable cause to believe that a misdemeanor offense had occurred.[6] However, 2,694 of these cases were deemed ineligible by the responding officers because they did not meet all eligibility criteria. The most common ground for exclusion of these cases was that the offender was gone when the officers arrived (53.3 percent). During the ninety-nine weeks of case collection, the project received 686 eligible cases at the rate of almost exactly one case per day. A total of 252 officers contributed the 686 eligible cases.

Analysis of victim and offender data for eligible cases revealed the following characteristics. While 18.1 percent of the couples were married and 2.0 percent separated or divorced, 42.7 percent were cohabitants and 7.1 percent ex-cohabitants. As dictated by the research design, all of the victims were female; all of the offenders were male. A total of 69.1 percent of the victims were black and 29.8 percent white. The average age was thirty years. Among the victims, 62.2 percent were employed, and 30.2 percent were under the influence of alcohol or drugs at the time of the presenting incident. Among offenders, 70.1 percent were black, and 27.3 percent were white. Their average age was thirty-three. A total of 75.7 percent of the offenders were employed, and 54.7 percent of them were under the influence of alcohol or drugs at the time of the presenting incident. Finally, 69.4 percent of the offenders had been arrested before.

Most of the eligible cases received the response that had been assigned by the police computer, but as mentioned above, in some cases a response was carried out that was different from the one assigned. Altogether 573 (83.5 percent) of the 686 eligible cases were carried out as assigned, and 113 (16.5 percent) cases were misassigned.[7]

Findings

Eligible cases were tracked for six months after they entered the experiment to determine whether any further acts of abuse were perpetrated by the offender upon the victim (recidivism). Recidivism was measured using two kinds of data: (1) police records of arrest for later instances of abuse and (2) researchers' interviews of victims (these occurred once shortly after the first incident recorded by the study and again six months after the incident). The definition of recidivism employed in the interviews was far broader than that encompassed by police records of arrest and included both acts and threats of acts of abuse directed toward the victim, the family, or property.

Analysis of recidivism focused on three aspects: prevalence, incidence, and time to recidivism. Prevalence refers to whether or not a subject became a recidivist and is defined as the percentage of offenders that had at least one act of recidivism (a repeat arrest or an interview-reported incident of abuse) within a specified period of time (six months). Incidence refers to the number of times a subject "recidivated" and is defined as the average number of acts of recidivism per case within a given response group. Time to recidivism focuses on the date of the first act of recidivism—when, as well as if, the offender recidivated.

The prevalence rates of both arrest and interview-reported recidivism are presented in Figure 1. Figure 1 indicates an overall recidivism prevalence rate of 16.5 percent for those cases reported in official arrest records, with rates of 18.2 percent for the arrest response, 11.8 percent for the advise response, and 19.2 percent for the citation response.

The overall prevalence rate for interview-reported recidivism was 61.5 percent, with 58.9 percent for the arrest response, 59.8 percent for the advise response, and 65.3 percent for the citation response. Neither the differences in rates of arrest recidivism nor the differences

New Legislation on Arrest of Spouse Abusers

In its 1991 session, the North Carolina General Assembly broadened the authority of law-enforcement officers to arrest without a warrant people suspected of spouse abuse. The new legislation is found at Chapter 150 of the 1991 Session Laws and is effective October 1, 1991. In addition to officers' existing authority (see footnotes 4 and 5 in the accompanying article), the legislation allows an officer to arrest a person if the officer has probable cause to believe the person has committed certain spouse abuse offenses, even if the officer does not believe that the offender will cause physical injury if not immediately arrested. The offenses covered by the legislation are domestic criminal trespass under General Statutes Section 14-134.3 (where the offender enters the premises of the victim after being forbidden to enter by the lawful occupant) and simple assault, assault with a deadly weapon, and assault on a female under Section 14-33. In all of these cases the offense must have been committed by the victim's spouse or former spouse or by "a person with whom the alleged victim is living or has lived as if married." While officers *may*, under the new legislation, make warrantless arrests of people suspected of such offenses without believing that physical injury is otherwise likely, they still are not *required* to do so. —*Stevens H. Clarke*

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in rates of interview-reported recidivism were statistically significant.[8] Thus, based on prevalence, arrest was no more effective at preventing subsequent abuse than were the other two responses.

Figure 2 shows the average incidence rates indicated by arrest records and victim interviews. The incidence rate of arrest recidivism for the total sample was 0.195, with a rate of 0.201 for offenders in the arrest response, 0.123 for those in the advise response, and 0.259 for those in the citation response. Statistical analyses of the data suggest that in terms of recidivism measured by subsequent arrest, a policy of arresting the offender is not more effective than the other responses in preventing subsequent abuse.[9] The same is true of interview-reported recidivism. The overall incidence rate in this category was 2.157. The rates were 2.152 for cases where an arrest was made, 2.078 for cases where the advise response was made, and 2.226 for cases where a citation was issued. The difference in these rates was not statistically significant.[10]

Finally, there were no significant differences among the response groups with respect to time to recidivism, whether recurrence was measured in terms of arrest or through interviews of victims.[11]

The general pattern emerging from these findings is clear and decisive. Arrest was no better and no worse than the other two responses at preventing subsequent abuse.

Thus far the results of the outcome analyses have been reported separately by arrest records and victim interviews. The most notable differences between the results obtained through use of the two data sources were the far higher prevalence and incidence rates of recidivism reported in the victim interviews. These higher rates may be attributed to the broader definition of recidivism employed in the victim interviews and the factors that limit the amount of recidivism revealed by arrest records (for instance, the fact that the incident must be reported to the police and the offender must be arrested).[12]

Discussion

Like the Minneapolis study of the early 1980s, the Charlotte study addressed the question of whether arrest is the most effective law-enforcement response for deterring spouse abusers from committing subsequent acts of abuse. The results of this study are decisive and unambiguous and indicate that arrest of misdemeanor spouse abusers is no more or less effective in preventing recurrence of abuse than advising or issuing a citation. This is significant in that while complementing the results of a similar study conducted in Omaha,[13] the results are not in agreement with the earlier Minneapolis study that found arrest to be a more effective deterrent than the other responses.[14] The results of the Charlotte and Omaha studies suggest that there is not adequate support for a mandatory or presumptive arrest policy based on specific deterrence. The hope that arrest alone could contribute to the solution of this serious problem is unfulfilled.

The victim-interview data in this study reveal alarmingly high levels of repeat incidents of spouse abuse, suggesting that the scope of the problem is far greater than police data indicate. Official records, those based on rearrest by police, show predictably lower prevalence and incidence rates of recidivism than do interview data. Rearrest rates are an extremely conservative measure of recidivism, as they are a conservative measure of spouse

abuse in general. Based on police data, repeat incidents are the exception rather than the rule. Based on interviews, however, repeat incidents are the rule rather than the exception, with the *majority* of women who were interviewed having experienced at least one more abusive incident since the original presenting incident six months earlier.

The apparent discrepancy between police data and interview data is easy to explain. First, a significant percentage of abusive incidents that occur are not reported to the police. Second, some of the abusive incidents reported in the initial or six-month interview are relatively minor and do not legally qualify as crimes. That is, there is an absence of probable cause for arrest or the act committed does not constitute a criminal offense.

As there was reason to hope that arrest would be a successful deterrent (based, for example, on the results of the Minneapolis experiment or the theory of "empowerment" of the victim), we can only speculate about why it was not so in this study. First, local record checks revealed that the majority (69.1 percent) of male offenders in our sample had previous criminal histories. Thus in many cases arrest was neither a new nor an unusual experience for the offender. Second, for many of the couples in this study, abuse was a common rather than an occasional occurrence. Indeed, for some, abuse was chronic. For offenders who have criminal histories, or for those in chronically abusive relationships, it is unrealistic to think that arrest will have much impact.

A third reason why arrest may not have been effective in Charlotte is that arrest alone, without other consequences such as pretrial detention, conviction, or court-imposed punishment, may not have much impact on the offender. The fact is that "time in jail" is often nonexistent or minimal beyond the booking time required. Arrest with immediate release may simply not mean very much, particularly when the offenders have been arrested before. It was rare in the Charlotte study for an alleged spouse abuser to be convicted and ordered to spend any significant time in jail. In only 35.5 percent of the cases in which the citation or arrest responses were delivered was the offender prosecuted, and in less than 1 percent of the cases did the offender spend time in jail beyond the initial arrest. As jails become more crowded, and as the public learns that even felons are receiving community-based punishments and early release from correctional institutions, it does not take much imagination to conclude that premium jail space will not be used on spouse abusers.

The Charlotte study indicates that arrest is not a significant deterrent for *misdemeanor* spouse abuse. We have no way of knowing if arrest would be more of a deterrent for felony spouse abuse, or for lower levels of abuse that do not now satisfy the criteria for misdemeanor arrest.

Value Considerations

Questions concerning the appropriate societal response to spouse abuse and the role of the police in this response are not answered by this research. The answers are affected by value judgments about the appropriate role of the criminal justice system in spouse abuse. There is little doubt that misdemeanant spouse abuse has been added to the list of actions that subordinate family privacy considerations to the greater public interest in reducing this kind of behavior. Such action reflects some change in social values. Further, there is no doubt that police will continue to be involved in spouse abuse situations because they are the only agency available in all areas at all hours of the day and night. Defining spouse abuse as criminal is a requisite step in reinforcing changed social values. At a practical level, such a definition places the police in a linchpin role, connecting the offender and victim with other social, community, and criminal justice resources through arrest or referral.

The results of this study are likely to disappoint those who strongly support pro-arrest policies for spouse abusers. Despite the failure of arrest to have a particular deterrent effect, and despite the inadequacies of the present criminal justice system, arrest may still constitute a viable and appropriate response for the police to pursue in many spouse abuse situations.

Even though arrest has not been shown to have a particular deterrent value, and even if arrest may not have much of a punitive benefit, it may still constitute a more conscionable value choice than nonarrest. Not to arrest may communicate to men that abuse is not serious and to women the message that they are on their own. It may communicate to children, who very often witness abuse of their mothers, that the abuse of women is tolerated, if not legitimated. It may communicate to the public at large that a level of violence that is unacceptable when inflicted by a stranger is acceptable when inflicted by an intimate. It is imperative that we recognize the seriousness of spouse abuse and employ measures, however imperfect, to reduce it, even if we do not yet know how to achieve a dramatic reduction in its occurrence. ❖

Notes

1. Lawrence W. Sherman and Richard A. Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," *American Sociological Review* 49 (1984): 261–72.

2. For a discussion of these issues, see, e.g., Arnold Binder and James W. Meeker, "Experiments as Reforms," *Journal of Criminal Justice* 16 (1988): 347–58; and Richard Lempert, "Humility Is a Virtue: On the Publicization of Policy Relevant Research," *Law and Society Review* 23 (1989): 145–61. Binder and Meeker pointed out a number of difficulties with the Minneapolis study in addition to the fact that the people involved in it might not have been typical of those involved in spouse abuse in other large cities. For example, many police officers failed to participate in the study, with the result that the sample might have reflected the biases of a few officers. In addition, Binder and Meeker reanalyzed some of the Sherman and Berk data and found almost no significant differences between arrest and the other two responses.

3. The other sites were Atlanta, Colorado Springs, Dade County, Milwaukee, and Omaha.

4. At the time of the Charlotte study, General Statutes Section 15A-401(b) allowed (but did not require) a police officer discretion to arrest someone without a warrant or other judicial order if the officer had probable cause to believe that the person (1) had committed a felony (whether or not it occurred in the officer's presence), (2) had committed a misdemeanor in the officer's presence (this usually does not occur in spouse abuse situations), or (3) had committed a misdemeanor not in the officer's presence and would not be apprehended unless immediately arrested or might cause physical injury to him or herself or others or damage to property unless immediately arrested. See "New Legislation on Arrest of Spouse Abusers" on page 14.

5. In this context, "posed imminent (serious present) danger to the victim" means that the officer believed that injury to the victim was *almost certain to occur* if the suspect was not arrested immediately. As explained in footnote 1, Section 15A-401(b)(2) allows warrantless arrest if the officer has probable cause to believe that the suspect "[m]ay cause physical injury to . . . others . . . unless immediately arrested." Of course, legally the officer also may advise the parties or issue a citation to the suspect. But if physical injury is virtually certain to occur if the suspect is not arrested immediately, then the officer will feel compelled to make the arrest and not use the other responses; therefore cases meeting this criterion were excluded from the study.

6. What about cases where no probable cause was found? Typically, in these cases the responding officers encountered a "shouting match" (26.1 percent of the time) or found that the complainant was gone when they arrived (21.5 percent of the time). After arriving on the scene the officers generally took no action (50.4 percent of the time) or simply calmed things down (26.2 percent of the time).

7. The rates of misassignment were 9.1 percent where the assigned response was arresting, 12.8 percent where the assigned response was advising, and 26.7 percent where the assigned response was issuing a citation. In general the movement was from a less severe to a more severe response (for instance, from advising or issuing a citation to arrest). The most common reason for misassignment was "escalation of imminent danger" (fifty-two cases).

8. The differences were not statistically significant at the .05 level. (Arrest recidivism: $X^2 = 5.063$, $d_f = 2$, $p. = .080$; interview-reported recidivism: $X^2 = 1.202$, $d_f = 2$, $p. = .548$.)

9. Analysis of variance conducted on these incidence rates produced an overall F ratio significant at the .05 level. [F ratio = 1.211, $d_f(1) = 2$, $d_f(2) = 647$, $p. = .015$.] However, Scheffe Multiple Range Comparisons yielded significance at the .05 level only for the advise-citation comparison.

10. F ratio = 0.132, $d_f(1) = 2$, $d_f(2) = 335$, $p. = .875$.

11. Arrest recidivism: Lee-Desu = 1.115, $d_f = 2$, $p. = .110$; interview-reported recidivism: Lee-Desu = 0.958, $d_f = 2$, $p. = .619$.

12. It was important to examine whether there was a strong agreement between those cases reporting recidivism in the victim interviews. When the prevalence of arrest recidivism was cross-tabulated with the prevalence of victim-reported recidivism, there was strong agreement between the two data sources, with statistical association significant beyond the .001 level. When this analysis was repeated controlling for response as assigned, similar results were obtained. There was consistency among the results obtained for the three responses individually, and these results paralleled those reported for the combined responses.

13. Franklyn W. Dunford, David Huizinga, and Del S. Elliot, "The Role of Arrest in Domestic Assault: The Omaha Police Experiment," *Criminology* 28 (1990): 183–206.

14. Lawrence W. Sherman and Richard A. Berk, "The Specific Deterrent Effects of Arrest for Domestic Assault," *American Sociological Review* 49 (1984): 261–72.

Local Government Liability in Revoking Employment Offers

James A. Dickens

Consider these facts:

Jeanette Thornton, an experienced municipal accountant in Too Cold, Ohio, interviewed for a position as an assistant city manager of Budget Crisis, North Carolina. On January 1, 1991, Thornton received a letter from the Budget Crisis city manager stating that she had been chosen as the new assistant city manager and that she should report to work on February 1, 1991. Jeanette accepted the offer in a formal acceptance letter on January 5, 1991, and gave notice of termination to her current employer. Two weeks later, on January 19, Jeanette moved from Too Cold, Ohio, to Budget Crisis, North Carolina, to begin her duties as assistant city manager on February 1, 1991. However, on January 28, 1991, the Budget Crisis city manager notified Thornton that because of unforeseen budget cuts, the city was forced to revoke its offer of employment.

Thornton filed a lawsuit against the city of Budget Crisis for breach of employment contract. Thornton argues that an enforceable contract was formed on January 5, 1991, when she mailed the acceptance letter, and that both the city manager and the city council breached her employment contract by not employing her on February 1 as they had promised to do. She claims that the city should not be allowed to break its promise of employment, because she terminated her former job and moved from Ohio to North Carolina in reliance on that promise. Thornton asserts that the court should at least require the city to pay her the agreed upon salary until she can find other comparable employment in the state.

Does Thornton have a cause of action against Budget Crisis?

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Thornton is actually presenting two separate legal arguments. Her first argument is a breach of contract claim. She maintains that she made an enforceable contract with the city of Budget Crisis, and it breached that contract by revoking its employment offer. Her second argument is a promissory estoppel claim. She argues that even if the contract is not enforceable, she reasonably relied on the city council's promise of employment to her detriment. She now lives in a new state without a job, and it would be unfair not to give her a judicial remedy. Let's look at Thornton's two claims independently.

The Breach of Employment Contract Claim

Thornton is correct that a contract is formed when there is an offer and acceptance of the same essential terms.[1] However, in North Carolina employment contracts are unenforceable unless the contract contains a provision specifying the term or the duration of the employment.[2] An oral or written contract of employment that does not contain such a provision, or a provision concerning the means by which it may be terminated, is terminable at will: that is, it can be terminated at the will of either party, with or without cause.[3] Even a contract for "permanent employment," without any other provision concerning duration, is terminable at will.[4]

There is an exception to this rule. When a business usage or other circumstance shows that the parties intended the employment to continue through a fixed term, the contract cannot be terminated at an earlier period except for cause (reasons based on law or public policy) or by mutual consent.[5] The business usage exception only applies when the intention of the parties indicates a fixed term of employment. It does not apply when the business usage indicates that the employment is for a long

indefinite term.[6] For example, if Thornton had accepted a teaching position at a North Carolina community college for the following school year, the court would presume that her contract was intended to continue to the end of the school year because community colleges customarily employ their teachers on a yearly contract.[7] Thus neither party could terminate the contract before the end of the year without liability, unless they mutually consented to terminate the contract, or unless one party could show legal cause for terminating the contract. However, if Thornton had accepted a position where the previous holders of that position were employed for various terms of at least six years, the court would not presume that the contract was intended to last six years. In the latter case, no specific term of employment could be inferred from business usage or custom; thus her contract would be terminable at will.[8]

If Thornton's contract contained a provision concerning the duration of her employment, she could not be discharged before the expiration of the term without cause or mutual consent. She could sue for breach of contract, and she would be entitled to the salary she would have received during the remainder of the term minus the income she earned or could have earned during the remainder of the term.[9] However, under the facts of this hypothetical case, Thornton's contract contains no specific term or duration of employment, so her contract may be terminated by the city of Budget Crisis.

Thornton's employment contract is terminable at will, but it may be enforceable if she gave some additional consideration beyond the usual obligation of service. Consideration is something of value exchanged between the parties that causes them to enter into a binding contract. The fact that Thornton gave up her old job to begin work for the city of Budget Crisis does not constitute sufficient additional consideration under North Carolina law.[10] However, acts such as "relinquishing a claim for personal injuries against the employer, removing h[er] residence from one place to another in order to accept employment, or assisting in breaking a strike" may constitute additional consideration.[11]

In *Sides v. Duke University*,[12] plaintiff Marie Sides sued Duke University Medical Center (DUMC) for wrongful discharge and breach of employment contract. She alleged in her complaint that she moved from Michigan to Durham, North Carolina, to work at DUMC, because she was promised job security and was told that she would be fired only for incompetence. She claimed that when she refused to give false testimony in support of a DUMC doctor involved in a malpractice suit, DUMC fired her. The superior court dismissed both claims because it found that even if Sides's allegations were true, her contract was terminable at will and unenforceable. The North Carolina Court of Appeals reversed that decision. Even if the plaintiff's employment contract was terminable at will, the court said that it would be against public policy to allow an employer to fire an employee for refusing to perjure herself. Thus it allowed the plaintiff a cause of action on both claims for public policy reasons. However, the court went further and added that the plaintiff's employment contract may not have been terminable at will:

> [T]he additional consideration that the complaint alleges, her move from Michigan, was sufficient, we believe, to remove plaintiff's employment contract from the terminable at will rule and allow her to state a claim for breach of contract since it is also alleged that her discharge was for a reason other than the unsatisfactory performance of her duties.[13]

On its face, this quote might indicate that a change of residence alone in reliance upon a promise of permanent employment is sufficient additional consideration to remove the contract from the terminable-at-will rule. North Carolina state courts have not dealt with this precise issue since *Sides*. However, federal district courts applying North Carolina law in two cases have held that *Sides* does not stand for the proposition that a change of residence *alone* constitutes sufficient additional consideration to remove a contract from the terminable-at-will rule.

The first case, *Rupinsky v. Miller Brewing Co.*,[14] involved a plaintiff who, relying on *Sides*, argued that his relocation from Pittsburgh, Pennsylvania, to North Carolina was the additional consideration needed to remove his contract from the terminable-at-will rule. The court refused to find additional consideration and stated that *Sides* was distinguishable from this case because *Sides* called into play the public policy exception. The court found that Rupinsky was fired for managerial incompetence and that the record did not show any unlawful behavior similar to that in *Sides*.

The second case, *House v. Cannon Mills Co.*,[15] also involved a plaintiff who relied on *Sides*. He argued that the fact that he and his wife gave up jobs with Burlington Industries and moved from Erwin to Concord, North Carolina, on an oral promise that he would be discharged only for unsatisfactory performance was sufficient additional consideration under *Sides* to remove his contract

from the terminable-at-will rule. The court disagreed and found that *Sides* was distinguishable for two reasons. First, in *Sides* it was DUMC's policy to discharge nurses only for incompetence, and the plaintiff based her move from Michigan on that policy. Thus Sides's discharge was clearly against DUMC's express policy. Second, the court said that *Sides* focused much more on the issue of public policy, and the *Sides* court took that opportunity to create a public policy exception to the terminable-at-will rule. The combination of these two factors dictated the result in *Sides*. Lastly, the court discussed and agreed with the rationale of the *Rupinsky* decision. The court added that "recognition of a general exception whenever relocation or a job change is involved would emasculate the terminable at will rule, because many if not most hirings involve either a job change or a change of residence or both."[16]

Although these federal district court interpretations of North Carolina law do not regard Thornton's move from Too Cold, Ohio, to Budget Crisis, North Carolina, as additional consideration, their interpretations of state law are not binding on the North Carolina state courts. Thus the North Carolina state courts might decide that Thornton's move is sufficient additional consideration to remove her contract from the terminable-at-will rule.

The Promissory Estoppel Claim

Thornton's second argument is a promissory estoppel claim. The doctrine of promissory estoppel states that a promise is enforceable if a person reasonably relies on that promise to his or her detriment, and injustice would result if the promise is not enforced.[17] Thornton is arguing that she reasonably relied on the city's promise of employment to her detriment. She has quit her old job and moved from Ohio to North Carolina in reliance on that promise, and injustice will result if that promise is not enforced.

The North Carolina Court of Appeals, in *Tatum v. Brown*, held without explanation that the doctrine of promissory estoppel does not apply in actions for breach of employment contract.[18] Teresa Tatum accepted Brown's offer of "long term career" employment. She relied upon that promise and gave notice of termination to her prior employer. Brown subsequently revoked his offer of employment before she began work. The court found that Tatum's contract was terminable at will and unenforceable. In response to Tatum's promissory estoppel argument, the court simply said that promissory estoppel does not apply in actions for breach of employment contracts.

Generally it is more difficult to assert promissory estoppel against a state or local government than a private employer.[19] Because the *Tatum* court refused to apply the doctrine against a private employer, it would be unlikely to apply the doctrine against a city. Thus promissory estoppel apparently gives Thornton no remedy under North Carolina law.

The most likely reason that the North Carolina Court of Appeals refused to apply the doctrine of promissory estoppel is that promissory estoppel would seriously undermine the terminable-at-will rule. Ordinarily promissory estoppel allows a court to enforce a promise that is unsupported by consideration if an injustice would result from its nonenforcement. Before the doctrine of promissory estoppel emerged, courts would not enforce a promise that was unsupported by consideration: that is, the courts required that something of value be exchanged for the promise. This often yielded unfair results. Many people suffered severe hardships when they found out that the promises they had relied upon were not enforceable, because they had not given any consideration in exchange for the promise. The courts developed the doctrine of promissory estoppel to alleviate these unjust results and enforce these promises even though they were unsupported by consideration. The courts simply allowed promissory estoppel to substitute for the necessary consideration, thus making the promise enforceable.

> The doctrine of promissory estoppel applies in cases where a promisee has not given consideration for a promise, but the promisee has reasonably relied, to his detriment, on a promise and injustice can be avoided only by enforcement of the promise. In such cases, promissory estoppel acts as a substitute for consideration and renders the promise enforceable.[20]

Recall that an otherwise terminable-at-will employment contract may be enforceable if the employee gives some additional consideration beyond the usual obligation of service. In the employment setting, the employee renders his or her service in exchange for the employer's money. Additional consideration means that the employee must give something else of value, apart from the services that the employee is paid for, in exchange for an enforceable promise of permanent employment. For example, if the employee gives up a legal right to sue the employer in exchange for a promise of permanent employment, the promise of permanent employment is

enforceable. The employee has given additional consideration, a legal right, in exchange for the promise of permanent employment. Without additional consideration, an offer of permanent employment is indefinite and unenforceable. If promissory estoppel acts as a substitute for consideration, it could conceivably act as a substitute for the additional consideration required to enforce this promise of permanent employment.

Although Thornton and the plaintiff in *Tatum v. Brown* were not expressly promised permanent employment, the principle is the same. They were both promised employment, and those promises were unenforceable without additional consideration. Promissory estoppel could be used as a substitute for the additional consideration needed to enforce their offers of employment. Thus the doctrine would enforce an employer's offer of employment or an employer's promise of permanent employment if the employee reasonably relied on that promise to his or her detriment. North Carolina's terminable-at-will rule would be seriously weakened if courts ever accepted promissory estoppel as a substitute.

How Does North Carolina Law Compare with Other States?

In *Burkhimer v. Gealy*[21] the North Carolina Supreme Court said that "removing one's residence from one place to another in order to accept employment" constituted additional consideration. This language was repeated in *Sides*. However, the North Carolina state courts have not decided whether a change of residence alone will remove an employment contract from the terminable-at-will rule. Nor have the North Carolina courts reconsidered the application of the doctrine of promissory estoppel since *Tatum v. Brown*. If and when the North Carolina courts reconsider these issues, they might examine the laws of other states to see how they have decided these issues. A representative sampling of the differing approaches follows.

Georgia and New York

Like North Carolina, Georgia and New York adhere to the general rule that an employment contract without a provision for a specific duration of employment is terminable at will.[22] Unlike North Carolina, Georgia and New York also require that employment contracts with a stated duration of more than one year be in writing, or the statute of frauds makes them unenforceable.[23] The statute of frauds states that a contract that cannot be performed within one year of its making must be in writing or the contract is unenforceable.[24] Thus, although an oral employment contract with a stated duration of two years is not a terminable-at-will contract, it is still unenforceable because the contract is oral and cannot be performed within one year. The statute of frauds does not affect a terminable-at-will employment contract, however, because those contracts are by definition unenforceable.[25] Thus an enforceable employment contract in Georgia and New York must contain a definite term of employment, and it must satisfy the requirements of the statute of frauds. Georgia and New York also do not allow promissory estoppel in a breach of contract action where the employment contract is terminable at will or within the statute of frauds.[26]

A contract can be removed from Georgia's statute of frauds, however, through the doctrine of part performance.[27] Generally, part performance means that a party has taken such substantial steps toward fulfilling his or her obligations under the contract, that the only rational explanation for performing those acts is that they were done in pursuance of the contract.[28] Georgia adds two additional requirements to this general rule. First, part performance that is consistent with a terminable-at-will contract will not remove the contract from the statute of frauds. Second, the detriment suffered by the employee must be so great that the employee would be the victim of fraud if the court did not enforce the contract. Thus an employee's part performance must show severe detriment amounting to fraud and the presence of an enforceable employment contract for the contract to be taken out of Georgia's statute of frauds.[29]

Ely v. Stratoflex, Inc.[30] illustrates Georgia's terminable-at-will rule. Ely alleged that he was orally promised a permanent job with Stratoflex if he would leave his job at a rival corporation and bring Stratoflex that company's accounts. Stratoflex fired Ely three years later because it could not afford to retain him. Ely argued that delivering the rival accounts was such part performance that removed his oral contract from the statute of frauds. The court of appeals said that even if Ely demonstrated part performance, and the statute of frauds did not apply, Ely's contract was terminable at will and unenforceable because his contract did not contain a definite term of employment.

In *Presto v. Scientific-Atlanta, Inc.*[31] the Georgia Court of Appeals refused to apply the doctrine of promissory estoppel to the plaintiff's wrongful discharge claim.

The plaintiff claimed that his oral acceptance of the defendant's written offer of employment constituted a written contract outside of the statute of frauds. The court held that the asserted contract was within the statute of frauds and unenforceable because it could not be performed within one year and the written offer that the plaintiff relied on did not contain the duration of the contract. The court responded to the plaintiff's assertion of promissory estoppel by saying that "[p]romises which are wholly unenforceable, as we have held appellant's purported contract of employment to be, may not be relied upon."[32]

The plaintiff also argued that his act of leaving another job to take a job with the defendant and working three years was such part performance to take his contract out of the statute of frauds. The court replied that "giving up another job, moving to a new location, and starting employment are not such part performance as will take a contract of employment out of the statute of frauds because those acts are not inconsistent with employment terminable at will without a contract."[33] Because giving up another job and relocating are not inconsistent with employment terminable at will, it follows that these acts will not make a terminable-at-will employment contract enforceable under Georgia law.

In *Lerman v. Medical Associates of Woodhull, P.C.*[34] the Appellate Division of the New York Supreme Court affirmed the dismissal of the plaintiff's breach of contract claim. In this case, the plaintiff accepted in writing an offer of employment that the defendant subsequently revoked before the plaintiff began work. In affirming the dismissal of the plaintiff's breach of contract claim, the court held that an employment contract without a specified duration was terminable at will and neither party had a cause of action for breach of employment contract. The court also refused to apply the doctrine of promissory estoppel.[35]

Thus if Thornton had moved to Georgia or New York, her fate would be the same as if she had moved to North Carolina: her employment contract would be terminable at will and unenforceable, and neither of these states would apply the doctrine of promissory estoppel.

California, Minnesota, and Texas

California, Minnesota, and Texas allow promissory estoppel in actions for breach of a terminable-at-will contract.[36] In a case decided by the California courts, *Sheppard v. Morgan Keegan & Co.*,[37] Sheppard accepted Morgan Keegan's offer of employment over the phone. The acceptance did not include a specific period of time for employment. Sheppard quit his job and flew from California to Memphis, Tennessee, to begin work on the specified date. For no stated reason, Morgan Keegan withdrew their offer of employment the day before Sheppard was to begin work. The California Court of Appeals held that although a terminable-at-will contract can be terminated at the will of either party, a contract implies a covenant of good faith and fair dealing:

> [I]mplicit within the implied covenant of good faith and fair dealing, is the understanding that an employer cannot expect a new employee to sever his former employment and move across the country only to be terminated before the ink dries on his new lease, or before he has had a chance to demonstrate his ability to satisfy the requirements of the job.[38]

The court also indicated that the doctrine of promissory estoppel was applicable.

In a Minnesota case, *Grouse v. Group Health Plan, Inc.*,[39] Grouse accepted Group Health Plan's offer of employment and turned down another job offer in reliance upon their promise of employment. Group Health then decided not to hire him because it could not obtain any favorable references about him. Group Health argued that Grouse had no cause of action because his employment contract was terminable at will. The Minnesota Supreme Court held that the doctrine of promissory estoppel was applicable because "under the facts of this case the appellant had a right to assume he would be given a good faith opportunity to perform his duties to the satisfaction of respondent once he was on the job."[40]

Finally, in a Texas case, *Roberts v. Geosource Drilling Services, Inc.*,[41] Roberts signed Geosource's employment agreement and terminated his old job in reliance on Geosource's offer of employment. Geosource informed Roberts a few days later that it would not be able to hire him. The Texas Court of Appeals held that despite a terminable-at-will contract, "[i]f the appellant/promisee acts to his detriment in reliance upon the promise of employment, or parts with some legal right or sustains some legal injury as the inducement for the employment agreement, we hold that there is sufficient consideration to bind the employer/promisor to its promise."[42]

If Thornton had quit her job and moved to one of these three states, they would probably allow her a judicial remedy under promissory estoppel. Generally when a promise is enforced by promissory estoppel, the remedy for breach may be limited as justice requires.[43] The

court in *Grouse* stated that, "[s]ince . . . the prospective employment might have been terminated at any time, the measure of damages is not so much what he would have earned from respondent as what he lost in quitting the job he held and in declining at least one other offer of employment elsewhere."[44] Thus the employer would most likely be required to pay Thornton the salary she would have earned at her previous job in Ohio for a period of time that would be fair to both parties under the particular circumstances.

What If Thornton Had Applied with a Federal Agency?

If Thornton had been hired by an agency of the federal government and all other facts remained the same, she would probably not sustain an action for breach of employment contract or promissory estoppel.

Unlike state government employees or private employees, federal government employees serve by appointment, not contract, and their employment rights are determined by federal statutes and regulations instead of contract principles.[45] However, Thornton would not come within the statutory definition of a federal employee. A federal employee is defined as one who is (1) appointed by the appropriate authority acting in an official capacity, (2) engaged in the performance of a federal function, and (3) subject to the supervision of the appointing person.[46] Because Thornton did not begin working before her offer of employment was revoked, she would not meet the second and third requirements of this definition. Thus she would not be entitled to any of the statutory protections for federal employees.[47] Instead, Thornton would be considered a federal appointee, whose appointment could be revoked by the appointing authority at any time prior to her beginning work. In *National Treasury Employers Union v. Reagan*[48] the plaintiffs were issued written confirmation of their selection for employment by various federal agencies. Before most of the plaintiffs began their duties, President Reagan issued a federal hiring freeze, and the federal agencies were required to revoke the plaintiffs' appointments. The court held that although the plaintiffs were duly appointed, their appointment could be revoked by the appointing authority.

Promissory estoppel applies less broadly against the federal government than against a private employer.[49] In *Reagan* the court held that the plaintiffs could not sustain an action of estoppel against the government, because they were not justified in relying on the assumption that their appointments were irrevocable. The court said that if they had known that their appointments were revocable, they would have no grounds for complaint.[50] Even if an agent of the appointing authority had promised the plaintiffs that their appointments were irrevocable, estoppel would still be barred because the agent acted outside the scope of his or her authority.[51] The *Reagan* court did not dismiss the possibility of promissory estoppel action in appropriate individual cases but stated that the district court would make that determination on remand.[52] Therefore, although no case has allowed it so far, it is possible that Thornton would be allowed to assert promissory estoppel against the federal government, but it is unlikely.

Conclusion

Thornton has no cause of action for breach of employment contract in North Carolina because her employment contract does not contain a provision for a specific term of employment. Neither can she show additional bargained-for consideration that will remove her contract from the terminable-at-will rule. The giving up of her prior job and relocation is not sufficient consideration under North Carolina law, and the doctrine of promissory estoppel does not apply in actions for breach of employment contract in North Carolina. The result would be the same in Georgia and New York. However, in California, Minnesota, and Texas, she might be allowed to assert promissory estoppel and enforce the offer of employment and obtain what she lost in reliance on the promise. If the employer were the federal government, it is possible that Thornton would be allowed to assert promissory estoppel, but it is unlikely. ❖

Notes

1. Walker v. Goodson Farms, Inc., 90 N.C. App. 478, 486, 369 S.E.2d 122, 126 (1988).

2. Still v. Lance, 279 N.C. 254, 259, 182 S.E.2d 403, 406 (1971); Rosby v. General Baptist State Convention Inc., 97 N.C. App. 77, 79, 370 S.E.2d 605, 607–8 (1988); Humphrey v. Hill, 55 N.C. App. 361, 362, 285 S.E. 2d 293, 295 (1982).

3. Still v. Lance, 279 N.C. 254, 259, 182 S.E.2d 403, 406 (1971).

4. Malever v. Kay Jewelry Co., 223 N.C. 148, 149, 25 S.E.2d 436, 437 (1943).

5. *Still*, 279 N.C. at 259, 182 S.E.2d at 406.

6. *See* Roberts v. Wake Forest Univ., 55 N.C. App. 430, 286 S.E.2d 120 (1982).

7. *See Still*, 279 N.C. at 259, 182 S.E.2d at 407.

8. *Roberts*. 55 N.C. App. at 435. 286 S.E.2d at 120.

9. John D. Calamari and Joseph M. Perillo. *The Law of Contracts*. 3d ed. (St. Paul. Minn.: West Pub. Co.. 1987). § 11-18. *See also* Walker v. Goodson Farms. Inc.. 90 N.C. App. 478. 369 S.E.2d 122 (1988).

10. Humphrey v. Hill. 55 N.C. App. 359. 362. 285 S.E.2d 293. 296 (1982).

11. Burkhimer v. Gealy. 39 N.C. App. 450. 454. 250 S.E.2d 678. 682. *cert. denied*. 297 N.C. 298. 254 S.E.2d 918 (1979).

12. 71 N.C. App. 331. 328 S.E.2d 818 (1985).

13. *Sides*. 71 N.C. App. at 335. 328 S.E.2d at 828.

14. 627 F. Supp. 1181 (W.D. Pa. 1986).

15. 713 F. Supp. 159 (M.D.N.C. 1988).

16. *House*. 713 F. Supp. at 161.

17. *Restatement (Second) of Contracts* § 90 (1981).

18. 29 N.C. App. 501. 224 S.E.2d 698 (1976).

19. Thrash v. City of Asheville. 95 N.C. App. 457. 474. 383 S.E.2d 657. 667 (1989); Land-of-Sky Regional Council v. Henderson County 78 N.C. App. 85. 91. 336 S.E.2d 653. 657 (1985).

20. Forstmann v. Culp. 648 F. Supp. 1379. 1384 (M.D.N.C. 1986). *See also Forstmann*. 648 F. Supp. at 1384 n.3.

21. 39 N.C. App. 450. 454. 250 S.E.2d 678. 682. *cert. denied*. 297 N.C. 298. 254 S.E.2d 918 (1979).

22. Ely v. Stratoflex. Inc.. 132 Ga. App. 569. 571. 208 S.E.2d 583. 584 (1974); Murphy v. American Home Prods. Corp.. 58 N.Y.2d 293. 448 N.E.2d 86. 461 N.Y.S.2d 232 (1983).

23. Ga. Code Ann. § 20-401(5) (1977); N.Y. Gen. Oblig. Law § 5-701 (a)[1] (McKinney 1989).

24. Ga. Code Ann. § 20-401(5) (1977). *See also* N.Y. Gen. Oblig. Law § 5-701(a)[1] (McKinney 1989).

25. Wood v. Dan P. Hull & Co.. 169 Ga. App. 839. 315 S.E.2d 51 (1984).

26. Presto v. Scientific-Atlanta. Inc.. 193 Ga. App. 606. 388 S.E.2d 719 (1989); Lerman v. Medical Assoc. of Woodhull. P.C.. 160 A.D.2d 838. 554 N.Y.S.2d 272 (1990).

27. Ga. Code Ann. § 20-402(3) (1977).

28. *Black's Law Dictionary* 1121 (6th ed. 1990).

29. Utica Tool Co. v. Mitchell. 135 Ga. App. 635. 218 S.E.2d 650 (1975).

30. 132 Ga. App. 569. 208 S.E.2d 583 (1974).

31. 193 Ga. App. 606. 388 S.E.2d 719 (1989).

32. *Presto*. 193 Ga. App. at 607. 388 S.E.2d at 720.

33. *Presto*. 193 Ga. App. at 607. 388 S.E.2d at 721. citing Hudson v. Venture Indus.. Inc.. 243 Ga. 116. 252 S.E.2d 606 (1979).

34. 160 A.D.2d 838. 554 N.Y.S.2d 272 (1990).

35. *Lerman*. 160 A.D.2d at 840. 554 N.Y.S.2d at 274. *See also* Cunnison v. Richardson Greenshields SEC. 107 A.D.2d 50. 485 N.Y.S.2d 272 (1990) (change of job or residence insufficient to trigger promissory estoppel).

36. Sheppard v. Morgan Keegan & Co.. 218 Cal. App. 3d 61. 266 Cal. Rptr. 784 (1990); Grouse v. Group Health Plan. Inc.. 306 N.W.2d 111 (Minn. 1981); Roberts v. Geosource Drilling Serv.. Inc.. 757 S.W.2d 18 (Tex. Ct. App. 1988).

37. 218 Cal. App. 3d 61. 266 Cal. Rptr. 781 (1990).

38. *Sheppard*. 218 Cal. App. 3d at 67. 266 Cal. Rptr. at 787.

39. 306 N.W.2d 111 (Minn. 1981).

40. *Grouse*. 306 N.W.2d at 116.

41. 757 S.W.2d 48 (Tex. Ct. App. 1988).

42. *Roberts*. 757 S.W.2d at 50.

43. *Grouse*. 306 N.W.2d at 116. *See also* John D. Calamari and Joseph M. Perillo. *The Law of Contracts*. 3d ed. (St. Paul. Minn.: West Pub. Co.. 1987) § 6-6 at 290.

44. *Grouse*. 306 N.W.2d at 116.

45. McCauley v. Thygerson. 732 F.2d 978. 981 (D.C. Cir. 1984).

46. 5 U.S.C. § 2105(a) (1988).

47. *See* National Treasury Employees Union v. Reagan. 663 F.2d. 239. 246 (D.C. Cir. 1981). applying 5 U.S.C. § 2105(a).

48. 663 F.2d 239 (D.C. Cir. 1981).

49. *McCauley*. 732 F.2d at 980.

50. *Reagan*. 663 F.2d at 249.

51. *Reagan*. 663 F.2d at 249. *See also* Pratte v. National Labor Relations Bd.. 683 F.2d 1038 (7th Cir. 1982).

52. *Reagan*. 663 F.2d at 248 n.16.

Institute Publication Wins Award

Local Government Finance in North Carolina. written by David M. Lawrence and published by the Institute of Government in 1990. recently received a 1991 Award for Excellence in Financial Management from the Government Finance Officers Association. Each year the national association presents the awards to organizations sponsoring projects that offer outstanding contributions to the practice of governmental finance. Award categories include accounting. auditing. and financial reporting; budgeting; cash management; debt management; financial management; and retirement administration. *Local Government Finance* won in the research and publications category.

David Lawrence is an Institute of Government faculty member who specializes in municipal and county government and finance. and he is the author of a number of Institute publications. In *Local Government Finance* he covers such issues as the public purpose limitation. sources of revenue. governmental budgeting. accounting and fiscal control. school budgeting. and others. The book is considered an important part of the library of North Carolina finance officers. budget officers. accountants. clerks. and attorneys.

—Liz McGeachy

Questions about Child Abuse: How Can an Abused Child Be Protected in an Emergency?

Janet Mason

Mark, age eight, arrives at school with a black eye and bruises and dried blood on his face and arms. He is quite upset and tells his teacher that he is afraid his father is going to come take him from school and hit him some more.

Tonya's parents take her to the emergency room and tell the resident who examines her that the nine-month-old fell off the bed. The doctor does not think that Tonya's injuries are accidental. He also thinks that she is undernourished, and he is afraid to send her home with her parents.

What does North Carolina law say about protecting children in situations such as those described above? Parents have a natural and legal right to the custody of their children. However, that right is not absolute, and the state may interfere with it when there is substantial reason to do so.[1] Ordinarily the state may not interfere with parents' right to custody without first giving the parents notice and a hearing—an opportunity to know what substantial reason is being alleged and to dispute it before a neutral decision maker. Sometimes, though, the state's interest in protecting a child who is at risk justifies intervening in the parent-child relationship before it is possible to give the parents notice and a hearing. In these cases, the parents' procedural rights may be postponed.

The North Carolina Juvenile Code[2] authorizes a county social services director to initiate a court proceeding when he or she believes that a child[3] is abused or neglected and that the court's intervention is necessary to protect the child.[4] In such cases the code also provides for (1) written notice of the proceeding to the child's parent, guardian, or custodian; (2) appointment of counsel to represent a parent who cannot afford an attorney; (3) appointment of a guardian ad litem to represent the child's interests;[5] (4) the opportunity for the parents or other parties to conduct discovery;[6] (5) a hearing at which a judge considers evidence and decides whether the allegations in the petition are true;[7] and, if the judge finds that the child is abused or neglected, (6) a further hearing at which the judge reviews evidence about the child's needs and decides what response to the abuse or neglect is appropriate.[8] One possible response is removal of the child from the parents' custody.

The remainder of this article describes three types of prehearing custody that are designed to protect a child before all of the steps listed above take place.

Immediate, Prehearing Custody without a Court Order

In the case of Mark, described above, school personnel should call the county department of social services to report suspected abuse[9] and let the department know that Mark's situation is an emergency. If school personnel think that a law-enforcement officer will arrive more promptly than a social worker or if they are concerned about dealing with Mark's father if he should come to the school, they should also call the appropriate police or sheriff's department.

Either a law-enforcement officer or a social worker could assume immediate custody of Mark without a court order. (The term for this is *temporary custody*.[10]) The law gives that authority to any law-enforcement officer or social worker from a county department of social services who has reason to believe (1) that a child is abused, neglected, or dependent[11] and (2) that the child would be injured or could not be taken into custody if the officer or social worker took time to request a court

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order before assuming custody. *Thus anyone who thinks that a child is abused, neglected, or dependent and in need of immediate protection should contact a law-enforcement agency or county social services department immediately.*

The person who assumes temporary custody of a child has certain responsibilities. In Mark's case, for example, if a police officer assumed custody of Mark, she or he would be required to care for and supervise him personally, to notify his parents that he was in custody, and to let them know that they could be with him until a decision was made about the need to keep him in custody. The authority of a law-enforcement officer or social worker to keep custody of the child without a court order lasts a maximum of twelve hours. In Mark's case, if the officer determined that it was not safe to release Mark to his parents, she or he would notify the county social services director, who would decide whether to file a petition and seek a court order to keep Mark in custody beyond the twelve-hour period.[12] If the court did not enter such an order within the twelve-hour period, the officer would have to release Mark to his parents.

Prehearing Retention of Custody by Medical Professionals

In addition to the procedures described above, the Juvenile Code contains special provisions on medical professionals' authority to retain custody of a child who may have been abused.[13] In the case of Tonya, described above, the doctor could use these provisions to keep Tonya at the hospital for up to twelve hours without a court order.

Authority to Retain Custody

Any physician or administrator of a medical facility may retain physical custody of a child-patient when there is cause to suspect that the child has been abused and the chief district judge authorizes the retention of custody.[14] Such custody may not exceed twelve hours without a court order. The judge's authorization must be based on the examining physician's certification that he or she suspects abuse and that either (1) the child should remain for medical treatment or (2) it is unsafe for the child to return to the parent, guardian, or custodian. Thus, in Tonya's case, the doctor could seek authority to keep her at the facility, even if she did not need further treatment, if the doctor suspected abuse and considered it unsafe for her to return home.

Written Certification Requirements

The physician's certification and the judge's authorization will almost always be given by telephone initially, but they must be reduced to writing. The written certification must be signed by the physician and include the time and date that the judicial authority to retain custody was given. The authority to retain custody is limited to twelve hours from that time. Copies of the certification must be attached to the child's medical and court records and given to the child's parent, guardian, custodian, or caretaker.

Duties Following Judicial Authorization

Immediately after receiving judicial authorization to retain custody, the physician or administrator must notify the county social services director, who must begin an abuse investigation immediately. Within the twelve-hour period, the social services director must file a petition alleging abuse and seek a custody order if the investigation reveals that (1) the certifying physician believes that the child needs medical treatment, but (2) the child's parent, guardian, custodian, or caretaker cannot be reached or will not consent to the treatment.[15] If the court does not enter a custody order within the twelve-hour period, the child must be released to the parents.

Court Hearing

If the social services director files a petition and obtains a custody order within the twelve-hour period, the case must be scheduled for hearing as a regular juvenile proceeding unless the social services director and the certifying physician agree to drop the matter. If at the hearing the judge determines that the child is not a resident of the county, the judge may transfer custody of the child to the social services department in the county of the child's residence. If the judge determines that the child was given necessary and appropriate medical treatment, he or she may charge the cost of that treatment to the parents, guardian, custodian, or caretaker. If the parents are unable to pay, the judge may charge the cost to the county of the child's residence.

Prehearing Custody with a Court Order

When a social services director has filed a petition alleging that a child is abused, neglected, or dependent, a district court judge may order the child placed in

nonsecure custody[16]—temporary residential placement with a county department of social services or some other person or agency named in the judge's order.[17] Often a nonsecure custody order is sought after the child has been taken into temporary custody under the procedures described above. In both Mark's and Tonya's cases, for example, the social services director might well, within the initial twelve-hour period, file a petition alleging abuse and ask a judge for an order authorizing the department to keep Mark or Tonya in custody.

A judge may order nonsecure custody only after first considering release of the child to a parent or other responsible adult. Before ordering nonsecure custody, the judge must find that there is reason to believe that the allegations of abuse, neglect, or dependency are true; that there is no other reasonable way to protect the child; and that one of the following criteria applies:

1. the child has been abandoned;
2. the child has been physically injured or sexually abused;
3. the child is exposed to a substantial risk of physical injury or sexual abuse;
4. the child needs medical treatment to cure, alleviate, or prevent serious physical harm, and the parent, guardian, or custodian is unwilling or unable to provide or consent to the treatment; or
5. the parent, guardian, or custodian consents to the nonsecure custody order.

Orders for nonsecure custody are extraordinary—they interfere with parents' custodial rights without first giving parents the procedural safeguards to which they are entitled. Because there appears to be a need to act quickly to protect the child, those safeguards are postponed; but the parents are still entitled to those safeguards. In Tonya's case, for example, suppose that while the hospital is retaining custody pursuant to a judge's authorization, the social services director files an abuse petition and a judge enters an order placing her in the department's custody.[18] Within five calendar days there must be a hearing to determine whether it is necessary for Tonya to remain in custody pending a full hearing on the issues alleged in the petition.[19] If the judge orders that Tonya remain in the social services department's custody, hearings to determine the need for her to remain there must be held at least every seven calendar days until the full hearing on the petition.

The law favors keeping children with or returning them to their own families when that can be done safely.

In every order authorizing continued out-of-home custody before a full hearing on the petition, the judge must find whether reasonable efforts have been made to prevent or eliminate the need for the child's placement. In addition, the order may provide for services or other efforts aimed at returning the child home promptly.

Conclusion

Social services workers and law-enforcement officers can, in limited circumstances, assume immediate custody of children who may be abused, neglected, or dependent. Usually, though, decisions affecting such a child's custody require judicial approval. A chief district judge may authorize a medical provider to retain custody for up to twelve hours when a physician thinks that a child is abused and needs treatment or protection. The court may authorize a social services department or other person or agency to keep a child pending a hearing on an abuse, neglect, or dependency petition. Because such orders have a serious effect on the child and affect a substantial right of the parents, the court must review the continued need for such orders regularly until it holds a full hearing on the merits of the petition. ❖

Notes

1. *See, e.g.*, Tucker v. Tucker, 288 N.C. 81, 216 S.E.2d 1 (1975); *In re* Devone, 86 N.C. App. 57, 356 S.E.2d 389 (1987); *In re* McMillan, 30 N.C. App. 235, 226 S.E.2d 693 (1976).

2. N.C. Gen. Stat. (hereinafter G.S.) §§ 7A-516 through -744. The Juvenile Code is the group of state laws that addresses the protective, noncriminal aspects of abuse and neglect.

3. As used in this article and in the Juvenile Code, the terms *child* and *juvenile* refer to all persons who are under age eighteen and are not married, have not been declared by a court to be emancipated, and are not in the armed services.

4. The director initiates a proceeding in the district court by filing with the clerk of superior court a document called a petition, alleging facts that indicate that the child is abused or neglected.

5. A *guardian ad litem*, unlike a general guardian or guardian of the person, has responsibilities only in relation to a particular court proceeding. In every abuse or neglect proceeding, the court appoints a guardian ad litem—usually a volunteer—to represent the child's best interests in the proceeding. If the guardian ad litem is not an attorney, an attorney advocate is also appointed to protect the child's legal interests.

6. Discovery procedures enable parties to learn before trial information that may be relevant to the proceeding.

7. This is the adjudicatory hearing.

8. This is the dispositional hearing.

9. The law requires anyone who has cause to suspect that a child is abused or neglected to contact the county department of social services. G.S. 7A-543.

10. *See* G.S. 7A-571, -572.

11. These terms are defined in G.S. 7A-517.

12. See the section on prehearing custody with a court order.

13. *See* G.S. 7A-549.

14. The chief district judge may delegate authority to provide this authorization.

15. As described in the following section on prehearing custody with a court order, there are additional grounds on which a social services director *could* seek a custody order at this point.

16. *See* G.S. 7A-573 through -578. The term *nonsecure custody* is unfortunate. It derives from the fact that the other form of custody available at this prehearing stage is *secure custody*—the placement of an alleged delinquent or undisciplined child in a locked detention facility. Nonsecure custody might better be called temporary custody; however, the Juvenile Code uses that term to describe what might better be called emergency or immediate custody.

17. A chief district judge may delegate the authority to issue such orders to persons other than district court judges, such as the chief juvenile court counselor in the district. An administrative order making such a delegation must be filed in the office of the clerk of superior court.

18. The petition and order must be served on the parent, but at this point the parent will not have had a hearing before the judge.

19. If the parties agree, the court may proceed to the full hearing immediately.

AROUND THE STATE

State Treasurer's Governmental Accounting/ Financial Management Awards Program

Donald E. Horton and Charles N. Hicks

The second annual State Treasurer's Governmental Accounting/ Financial Management Awards Program successfully concluded this summer with thirteen winners. The program was established in 1989 by State Treasurer Harlan E. Boyles to encourage North Carolina units of local government to continually strive to upgrade their accounting and financial management systems and procedures.

The financial management and fiscal condition of North Carolina's local governments is very strong. This enables them to issue debt at a much lower interest rate than the national average and has earned the highest possible credit rating for five municipalities, three counties, and one special district. This enviable standing in the marketplace has been due, to a great extent, to the high quality of those individuals working in local government accounting and financial management, coupled with support by the public accounting profession. Recognizing this, Boyles initiated the awards program to publicly acknowledge those governmental units that have implemented innovative programs ultimately leading to the better use of public funds.

The North Carolina Association of Certified Public Accountants added its support by agreeing to have its Governmental Accounting and Auditing Committee evaluate all applications to the awards program. This was no small task due to the quantity and quality of applications submitted. The Institute of Government, and particularly Institute faculty member S. Grady Fullerton, also deserve credit for providing guidance and promotional support for the program.

The awards are given to those governmental units (municipalities, counties, school systems, and special districts and authorities) demonstrating the most improved accounting or financial management programs, systems, methods, and procedures during the fiscal year. In 1989, the first year the awards were presented, nine governmental units were winners: the Village of Pinehurst for improved internal controls and financial management; the City of Salisbury for "Go With The Flow," a utility connection incentive program; the Town of Waynesville for its utility fee collection policy; the City of Winston-Salem for its risk management program; Craven County for its on-line tax collection system; Martin County for its creative use of word processing in its financial department; Burlington City Schools for its standard accounting system for special funds of individual schools; Monroe City Schools for its computerized fixed asset system and school property accounting manual; and the Western Piedmont Council of Governments for the computerization of its accounting system.

Thirteen units received the award for projects implemented during the 1989–90 fiscal year. The winning programs are described below, including the contact person for each project. These descriptions provide an insight into the quality of innovations and improvements being made to the accounting and financial management programs in units of local government in North Carolina.

Municipalities

City of Asheville—automation upgrade. Asheville installed an integrated citywide computer system capable of utilizing data entry and access from offices located throughout the city. The immediate access to current information has significantly improved management's ability to make informed decisions. The contact person is Larry A. Fisher, director of finance, (704) 259-5598.

Town of Emerald Isle—new policies on internal controls and cash management and fixed assets improvements. Emerald Isle developed and implemented written policies on internal controls and cash management. Also, a new computerized system allows fixed assets to be recorded and monitored properly. All employees have been cross-trained in each area of responsibility, which allows all four employees in the finance department to carry out these policies, providing checks and balances in the system. The contact person is John A. Crumpton, town administrator, (919) 354-3424.

City of Jacksonville—revenue projections manual. Jacksonville prepared a revenue projections manual to provide staff and council

Don Horton is assistant secretary of the Local Government Commission, North Carolina Department of State Treasurer. Chuck Hicks is a certified public accountant with Dixon, Odom & Co.

AROUND THE STATE

with documentation for the revenue projections used in preparing the budget. Spreadsheets were designed for each revenue source using Lotus 1-2-3 software. Basic information for all cities and the county was used to determine the actual distribution of shared revenues. The contact person is Debra Bailey, finance director, (919) 455-2600, extension 215.

City of Sanford—improved budget process and Bond Review Committee formation. Sanford improved its budget process by incorporating goals and objectives into the line item budget and acknowledging results through the publication of a fiscal year-end report. The process encourages review and evaluation of costs as they relate to departmental activity. The Bond Review Committee brought together city officials and employees with community and industrial leaders to develop a successful presentation for bond rating agencies during their rating site visit. The contact person is Barbara Cox, budget director, (919) 774-6501.

Town of Southern Shores—improved financial management policies and procedures. This relatively new town developed and implemented a cash management plan and a financial procedures manual. The formal policies and procedures and the use of a fully integrated computer system for payroll and financial records provide an orderly process for making informed management decisions. The contact person is Myra Ledyard, council member, (919) 261-2391.

Town of Tarboro—improvement of utility billing, collection, and fiscal policies. Tarboro upgraded its computer system and purchased electronic meter reading devices. This allows it to send second notices, implement late payment fees, add a $15.00 returned check fee, and increase meter test charges. The program provides more accurate accounting for services and increased revenues. The contact person is Sam W. Noble, Jr., manager, (919) 641-4200.

Counties

Davidson County—central billing for landfill and ambulance service. Davidson County developed a detailed procedures manual and software for implementing a centralized billing and collection system for landfill and ambulance fees. The county's finance department now has strong controls and procedures relating to these difficult areas of handling revenues. The contact person is William E. Bryan, Jr., assistant manager, (704) 242-2020.

Martin County—procedures manual for finance department. Before 1990 Martin County's office procedures, if they were in fact written down, were in many different forms—some typed, some handwritten, many of them on miscellaneous scraps of paper. The county developed a manual detailing procedures for accounts payable, encumbrances, departmental reports, payroll, and revenue. The manual assures the complete training of new employees. The contact person is Danette B. Minshaw, finance officer, (919) 792-3315.

Wake County—automation upgrade. Wake County's finance department completely revamped its accounting and financial management programs and systems methods and procedures. It also provided graphics and flow charts to assist the board and staff in understanding the flow of the system. The contact person is Cam Frazier, finance officer, (919) 856-6120.

School Units

Lee County Schools—improved budget and financial reports and internal controls. Lee County Schools computerized its fixed asset system, with all items valued at more than $300 being added to the system, to provide the school system with information on fixed asset control. The county also computerized employee personal leave records, including annual leave, professional leave, and sick leave accrued and taken. Each employee's current balances are listed on their payroll check stub. With the number of teachers and other personnel in the Lee County system, manual records were time consuming, inefficient, and inaccurate before the implementation of the new system. The contact person is Pat Kelly, acting finance officer, (919) 774-6226.

Stanly County Schools—improved accounting and financial management. The primary component of this project was the development of an accounting policies and procedures manual that was prepared by the school system. The manual includes poficies on cash receipts, payroll check distribution, purchase order and invoice control, fixed assets, payroll procedures, general ledger entry control, activity buses, segregation of duties, company vehicles, and bonding of employees. The contact person is Larry G. Wood, finance officer, (704) 983-5151.

Yancey County Schools—financial statements detailing profit and loss for individual schools. Yancey County Schools prepared a school food service profit and loss

AROUND THE STATE

1991 Awards

Applications are now being accepted for the 1990–91 State Treasurer's Governmental Accounting/Financial Management Awards. Awards are being considered for the following categories: municipalities with a population of 25,000 or over; municipalities with a population of 7,500 or over, but under 25,000; municipalities with a population under 7,500; counties with a population of 50,000 or over; counties with a population under 50,000; school units with an average daily membership of 6,000 or over; school units with an average daily membership under 6,000; and special districts and public authorities. The Department of State Treasurer is encouraging all local governments and public authorities to submit an entry for any significant improvement in their accounting and financial management systems.

Additional details and application forms may be obtained by calling Donald E. Horton, assistant secretary of the Local Government Commission, at (919) 733-3064. Applications should be mailed to and will be evaluated by the Governmental Accounting and Auditing Committee, North Carolina Association of Certified Public Accountants, P.O. Box 80188, Raleigh, NC 27623. The awards will be announced at appropriate state meetings during February and March of 1992, and the award to each unit will be presented at a meeting of its governing body.

—Don Horton and Chuck Hicks

statement for each school utilizing the uniform education reporting system as required for local boards of education. This allows management to identify school sites that were operating at a loss and compare them to schools of similar size. They can determine any component of costs that may be out of line and compare the overall cost structure of the school food service program. The contact person is Lynne E. Hensley, finance officer, (704) 682-6101.

Special Districts and Public Authorities

BHM Regional Library—innovative uses of Lotus 1-2-3. BHM, which serves Bertie, Hertford, and Martin counties, used Lotus templates to facilitate computerization of the accounting system. The templates provide for the accumulation of totals to be used in summary posting to the general ledger. The contact person is Hilda Lane, finance officer, (919) 946-6401.

Raleigh Housing Authority—internal controls and processing controls for warehouse operations. The Raleigh Housing Authority made a number of improvements. First, the authority computerized its entire warehouse operations, allowing the authority to track materials from the time they are actually utilized. This improvement decreased the inventory error rate from 30 percent in 1989 to 0.2 percent in March, 1990. Second, the authority developed a computer program to handle certain calculations of its General Fund cash balance required by the United States Department of Housing and Urban Development, resulting in a correction to its audit finding. Third, the authority developed a computerized general ledgers graphics program, which interfaces directly with the general ledger history file. This allows the user of the program to prepare graphs of the last twenty-four months' activity for all or selected accounts. The contact person is Steve Beam, director of administration, (919) 831-6416. ❖

AT THE INSTITUTE

Wicker Retires from the Institute

On June 30, 1991, Warren Jake Wicker—universally known as Jake—retired as Gladys Hall Coates professor of public law and government, ending almost thirty-six years of service to the Institute and to the officials and citizens of North Carolina. To many in North Carolina local government, Jake Wicker has been the Institute of Government: the nature of his work and the nature of his personality has undoubtedly made him known by, and liked and respected by, a larger number of local government officials than any of his colleagues.

Jake Wicker is a native of Lee County and is probably the only Institute faculty member to be born in a log cabin. He was brought up on a farm and was the first graduate of his small, rural high school to attend college. After a couple of initial years of engineering school, first at North Carolina State University and then at Baylor University, and then a couple of years more in the army at the end of World War II, Wicker came to Chapel Hill and began an association with the University that has never ended. He stayed in Chapel Hill that first time until 1951, when he received a master's degree in political science. After four years in Raleigh with the Farmers Cooperative Exchange, first as assistant personnel director, then as personnel director, he returned to Chapel Hill in August, 1955, to join the faculty of the Institute of Government.

It was suggested earlier that Wicker is the most widely known member of the Institute's faculty; one reason for that was his long-time responsibility for two of the foundation courses offered by the Institute of Government. The course in municipal administration was started a year or so before Wicker joined the Institute, but he assumed responsibility for it in the late 1950s and retained that responsibility until his retirement. He also was responsible for the companion course in county administration, which he started in the early 1960s. Most of the state's city and county managers and many local government department heads and professionals graduated from one or the other of the administration courses and thereby came to know Wicker well over the eight months of course work involved in those programs. And Wicker, for more than thirty years, came to know each of them, becoming their friend as well as their instructor and adviser. The strength of those personal ties was evident each year, when the class saluted Wicker during the activities associated with graduation.

In the early 1960s Wicker took over, from George Esser, the other foundation course with which he has become identified—the biennial course for new mayors and council members. Through his administration of that course he developed the same sorts of personal ties with city elected officials that he has with city and county employees.

Wicker's other major course-related responsibility at the Institute was for purchasing and contracting officials' programs. When he arrived at the Institute, there essentially was no program in this area. Today there are between twelve and fifteen separate courses each year, as well as a certification program for purchasing officials. This was all Wicker's accomplishment.

UNC Photo Lab

Warren Jake Wicker

Although Wicker was in charge of Institute purchasing programs and is well-recognized as the state's leading authority in interpreting the purchasing and contracting statutes, it would be misleading to characterize him solely in terms of that substantive field. His interests in local government have been catholic, and it is far more accurate to characterize him as one of the Institute's local government "generalists." To some extent that term indicates his willingness to take a stab at any inquiry that comes his way. More accurately, it reflects the variety of substantive areas that he worked in and mastered: incorporation of new towns, annexation, water and sewer organization and finance, personnel administration, and city-county consolidation.

Two of these substantive areas deserve special comment. There were a half-dozen serious investigations of city-county consolidation in North

AT THE INSTITUTE

Carolina during Wicker's years at the Institute, and Wicker was involved, usually as lead investigator, in each of them. Wicker is an essentially optimistic person, and that trait showed clearly when he became involved in yet another consolidation effort. Despite an unbroken record of defeat at the polls, Wicker began each new study with the hope that this one might actually be the one that wins electoral approval.

Much more successful was his work with numerous local governments mediating arrangements for extending and operating water and sewer systems on the periphery of cities and towns. Cities and counties in North Carolina by and large get along well together, but the one continuing area of strain is provision of utilities in the areas just outside cities. The questions of which government is to be responsible for service in such areas, how extensions are to be financed, and what happens upon a city annexation of county-owned or -operated lines are difficult to resolve in county after county. Over the years Wicker came to many such disputes and helped the parties develop arrangements acceptable to each. He enjoyed the trust of each party and reminded them that their ultimate goal was the same: provision of water and sewer services to the citizens.

Jake Wicker's contributions to the Institute, the University, and the state were recognized in 1982, when he became the first Gladys Hall Coates professor in the Institute. It was fully appropriate that this honor come to one who so fully embodies the ideals of service that motivated Albert Coates and his wife, Gladys, in the establishment of the Institute of Government.

No appreciation of Wicker would be complete without some mention of his personal qualities. His ability to make and hold friendships has been mentioned, as has his underlying optimism in himself and others. He has been devoted to his work at the Institute, setting an example of working hours that will not be followed by his colleagues. He also has maintained a continuing vision of the Institute that has illuminated faculty discussions for thirty-odd years. He has been devoted as well to the University, serving for many years as secretary of the faculty club and being honored by faculty election to a term on the Chancellor's Advisory Committee. Finally, his wit and good humor has helped him appreciate the humor of everyday life, has eased tensions in many difficult negotiations (and faculty meetings), and has permitted his colleagues and students to forgive him for some of the worst jokes known to man.

We, and the state, will miss Jake Wicker's everyday contributions to the Institute and to good government in North Carolina. Fortunately we will not have to make do without him entirely. He plans to undertake a number of projects for the Institute, including a new edition of the Institute's textbook on municipal government and a history of the development of local government in North Carolina. He also plans to maintain his friendships with government officials all over the state, and we hope his wise counsel will be available to us for years to come.

—David M. Lawrence

The author is an Institute of Government faculty member who specializes in municipal and county government.

Suzannah Odenwelder

Robert G. Shreve

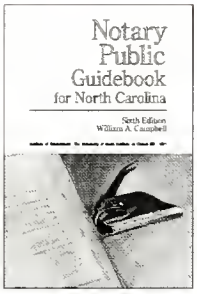
Shreve Joins Institute Faculty

Robert G. Shreve joined the Institute of Government this summer as a faculty member of the Principals' Executive Program. Shreve will be working in the area of basic training for the executive program.

Shreve is completing his Ed.D. in educational leadership and policy studies from The University of Virginia in Charlottesville, and he has an M.S. in educational administration and supervision from The University of Tennessee in Knoxville. Before entering graduate school, Shreve was a high school principal with the Wise County (Virginia) Public School System. He also taught government and history in the Knoxville City School System from 1977 to 1983.

—Liz McGeachy

Off the Press



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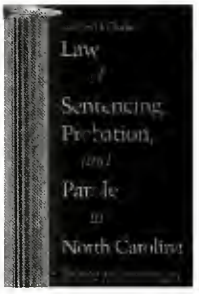

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