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Popular Government

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Feature Articles

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On the cover: Critics say control of the criminal trial calendar should be taken away from district attorneys. (North Carolina is the only state that grants its prosecutors such power.) In this issue, District Attorney Thomas Keith discusses calendaring in the context of state funding for prosecutions. Photo by Will Owens.


Greasing justice's wheels

In the Spring 1994 issue of *Popular Government*, Stanley Hammer argued that control of the criminal trial calendar should be taken away from North Carolina's district attorneys. In his article "Should Prosecutors Control the Criminal Trial Calendar?" Hammer, an assistant public defender in High Point, contended that the current system "represents an indefensible concentration of power that is ineffective in meeting its original goals, damaging to the integrity of the criminal justice system, and arguably unconstitutional." Hammer noted that North Carolina is the only state that gives exclusive control of the criminal trial calendar to the prosecutor.

At the time that Hammer wrote, the constitutionality of this system for calendaring criminal cases was under review by the North Carolina Supreme Court. In December 1994 the court ruled that the statutes on calendaring are not unconstitutional *on their face* but that the evidence offered by the parties challenging the statutes, if true, would support a finding that the statutes

A Prosecutor's View of Criminal Trial Calendaring

Thomas J. Keith

For fiscal year 1993–94, North Carolina's 337 prosecutors disposed of 83,734 felonies[1] sent to them by 16,436 law enforcement officers.[2] If all thirty-eight prosecutorial districts had court available five days a week, fifty-two weeks a year, they would have to dispose of more than 1.4 felony cases per hour to stay even.

One aspect of North Carolina's overworked criminal justice system permits it to cope with modern society's explosion of crime: the district attorney's authority to calendar cases for trial. North Carolina prosecutors handle double the cases with half the resources of other states because of the efficiency resulting from this authority.

This system for scheduling criminal cases is now under attack as unfair or unconstitutional. A formidable list of critics ranging from North Carolina Prisoner Legal Services, Inc., to the North Carolina Academy of Trial Lawyers Association, to the North Carolina Association of Public Defenders argue that the power to calendar cases should rest with someone else, such as a judge or a court administrator.

Those critics must face the reality that systemic neglect is the real cause of problems in the criminal justice system, not prosecutors' use of the calendaring authority. The North Carolina legislature in 1949, acting on recommendations of a commission headed by then Supreme Court Justice Sam Ervin, decided that the elected district attorney (then called "solicitor") should have the responsibility to decide *when* a criminal case would be put on for trial.[3] Until that time there was no statewide uniformity as to which court official determined when a case would be set for trial.

Amid the debate in recent years over this decades-old system, critics have proposed myriad solutions that often are untenable. To take the radical step of removing the prosecutors' authority over the calendar would only further degrade the quality of justice in our system and would prove very expensive, as the experience of other states has borne out.

Proposals for Change

One critic, assistant public defender Stanley Hammer, in a recent article in *Popular Government*, suggested that the calendaring authority and prosecutors' *misuse* of it infringe on a criminal defendant's constitutional rights.[4] Hammer's article set out a reasoned argument, but, after its publication, the North Carolina Supreme Court held in *Simeon v. Hardin*[5] that the statutes awarding district attorneys the calendaring responsibility "are constitutional on their face." The court went on to rule that "whether the statutes are being applied in an unconstitutional manner" is for the trial court to decide;[6] allegations of misuse are now under examination by the superior court in Durham.

The North Carolina Academy of Trial Lawyers Association, which has lobbied in the legislature against the prosecutor calendaring system, has filed briefs in the *Simeon* case as *amicus curiae*, along with the North Caro-

were being *applied* by prosecutors in a way that is unconstitutional. This claim therefore has been returned to the superior court in Durham for trial. At the time this issue of *Popular Government* went to press, the parties in the case were negotiating a possible settlement.

In the following article, Tom Keith argues that control of the criminal trial calendar must remain in the hands of the prosecutors. Keith, the elected district attorney for the 21st Prosecutorial District (Forsyth County), is vice-president of the Conference of District Attorneys. He maintains here that North Carolina's criminal court system, in general, and the prosecutors' offices, especially, are grossly underfunded and understaffed. They cope, he says, largely because of their power over the calendar. In other states, most notably other Southern states, where prosecutors lack full calendar control, the costs of the criminal court system are much higher.

His article is followed by a brief response from Stanley Hammer (page 15).

Popular Government is pleased to be able to present two such thoughtful points of view on an issue of great importance to the application of justice in North Carolina.

—Editors


THE NEWS & OBSERVER
SUNDAY, APRIL 30, 1995
Under the DOME
Calendar bill running out of time
District attorneys can sleep easy. Control of criminal cou calendars remains firmly in their hands, at least for now A bill threatening their nopoly on court calendar is dying a quiet death in House Judiciary II Co

lina Association of Public Defenders and the National Association of Criminal Defense Lawyers. Joining forces with them are the American Civil Liberties Union of North Carolina and the North Carolina Bar Association.

The Critics' Proposals

The voices of these critics have been heard. The state House of Representatives in its 1994 budget session voted to transfer the authority over criminal case calendaring from prosecutors to the senior resident superior court judge in each judicial district, but that bill was rejected by the state Senate as an improper inclusion in a budget bill. The General Assembly's Legislative Study Commission Criminal Case Disposition Committee, after studying the issue for several years,[1] in January 1995 similarly recommended legislation to transfer the calendaring responsibility to the senior resident superior court judge.

The critics have charged most forcefully that power to say *when* a case will come to trial is concomitant with the power to say *who* the case will be set before. Prosecutors, they say, abuse the system by choosing the judge. The heart of the critics' complaint, this aspect has been completely excised by the recent adoption of the structured sentencing laws[2] (or "Truth in Sentencing" law, as it is touted). Under this new law, all judges must give essentially the same sentence to all similarly situated criminals, selecting from a legislatively set menu of punishments for offenses, which are increased by any prior criminal record.

The critics propose to transfer the calendaring responsibility to the superior court through its senior resident judge or in conjunction with a trial court administrator. These proposals inevitably would require North Carolina's system of rotation of superior court judges to cease for these senior resident judges in order for them to be available continuously to properly supervise the calendar. Dozens of trial court administrators and scores of paralegals would have to be hired to do what district attorneys already do as part of their job.

The critics are slow to recognize these complications and seemingly blind to the single biggest issue: The criminal calendaring system allows North Carolina to get by with prosecution on a shoestring. To go to judge-calendaring systems like those in other Southern states would require—judging by what those states spend on prosecutions—tremendous extra expenditures on resources for district attorneys' offices as well as for superior court judges' offices.

The District Attorneys' Response

District attorneys understand that there are valid criticisms to be made concerning the present system. The Conference of District Attorneys—representing all thirty-nine elected district attorneys—itself has proposed

specific statutory changes to the calendaring system (see opposite page). The district attorneys' proposals are designed to address specific, identifiable objections to practices under the current system. These proposals would keep in place the advantages that the criminal justice system derives from prosecutor calendaring, and they could be accomplished with *no additional cost* to the criminal justice system. They respect the fact that any shifting of the calendaring responsibility to the superior court would reduce the efficiency of the district attorney, increase the burden on judges, add uncertainty to the work of jailers, clerks, law enforcement officers, and city and county government officials, and ultimately rest on the backs of taxpayers.

To better understand these points, it is helpful to examine how the state currently allocates its prosecution resources.

Prosecution Resources

The crowding of criminal court dockets in North Carolina is the real cause of the current calendaring debate. That crowding has resulted from an explosion of violent crime as we have become an urban state over the last ten years. Without the prosecutor calendaring authority, the crowding would be far *worse*.

The National Center for State Courts says that "[p]opulation is the best predictor of a state's criminal caseload."[9] North Carolina is outpacing that predictor. While tenth in population among the states, North Carolina was fourth in new felony filings out of the forty-five states reporting in 1992.[10] Felony filings (as a part of total criminal filings) increased 65 percent from 1985 to 1992 in the thirty-three states with general-jurisdiction trial court systems.[11] In North Carolina during the same period, they increased 109 percent from 40,915 felony filings to 85,748 felony filings.[12] This was the *highest rate* in the nation of the thirty-six reported states.[13] Fortunately the rate has slowed during the last reported three-year period of 1990–92,[14] but North Carolina felony filings were still up 23 percent during that period.[15] Of these states North Carolina had the third-highest rate of felony filings at 1,253 felony filings per 100,000 population in 1992.[16]

Court and prosecutor resources have not nearly kept pace with this explosion in crime.

In fiscal 1984–85 there were 253 North Carolina prosecutors (that is, elected district attorneys and hired assistant district attorneys).[17] Between that year and fiscal 1991–92, while felony case filings were increasing 109 percent, the number of prosecutors to handle them grew by only 20 percent, to 304.

Slowdown in processing. The inevitable result has been a slowdown in the processing of criminal cases and longer waits in jail for defendants; for example, the median age of criminal superior court cases pending increased from eighty-three days for felonies in fiscal 1985–86[18] to ninety-seven days in fiscal 1991–92.[19] The number of cases awaiting trial that were more than six months old increased from 21.5 percent of felony cases pending as late as fiscal 1988–89 to 34 percent by fiscal 1991–92.[20] In fiscal 1983–84 North Carolina had 23.6 percent of its felonies pending more than six months, but by fiscal 1991–92, that rate had increased to 34.3 percent.[21]

Increase in plea bargaining. Prosecutors turned increasingly to plea bargaining to try to keep from getting completely overrun. Instead of having jury trials in two or three cases a week, a district attorney could move a hundred or more cases by negotiated pleas. Felony jury trials as a method of case disposal dropped consistently from 7 percent of cases in fiscal 1980–81 to 5.2 percent in fiscal 1984–85, and then to 3.4 percent in fiscal 1989–90[22] and to 2.4 percent in fiscal 1993–94.[23]

North Carolina's Low-Cost Prosecution System

Spending below National Average

North Carolina is consistently near the bottom of any list of what states spend on criminal prosecutions.

Of the fifty states in a category that the U.S. Department of Justice calls "prosecution and legal services," North Carolina spent $7.01 per capita in fiscal 1989–90, when the national average was $16.01; only four states spent less than North Carolina.[24] "Legal services" include appeal costs borne by the state attorney general's office, because they handle all appeals.[25]

In that same year "prosecution and legal services" employees made up only 2.6 percent of North Carolina's total justice system employment while the national average was 5.7 percent. Only South Carolina employed fewer prosecutors as a percentage of its justice system officials. (See Table 1, page 6.)[26]

In that same survey, covering fiscal 1989–90 (the last year for which such comparative data are available), "prosecution and legal services" in North Carolina accounted for only 3.9 percent of the "total justice system payroll" while the national average was 6.5 percent; again only South Carolina of the fifty states spent less than North Carolina on its prosecutors as a percentage of its court officials expenditures.[27]

In the Justice Department category "courts," North

North Carolina Conference of District Attorneys' Proposals

The North Carolina Conference of District Attorneys has prepared a set of proposals to address the inadequacies that now occur due to the stress to the system of too many cases and too few resources. Their solution would require no fundamental change to the entire court system.

These proposals and the problems they seek to address are as follows:

Getting a motion heard before a judge. The defense bar suggests that its clients cannot get justice now because the district attorney controls when motions will be heard. The North Carolina Conference of District Attorneys suggests that the following simple change would answer that complaint.

G.S. 15A-952 is amended by adding the following:

(f) Motions by either party shall be scheduled at a time agreed upon by the parties. If the parties cannot agree, a hearing shall be set for the next regularly scheduled session of criminal or mixed term of court occurring after ten business days following filing of the motion. A motion to set or modify conditions of pre-trial release must be set at the next regular session of criminal or mixed court, unless the parties agree to another hearing date.

The Court, in its discretion, may hear the motions before trial, on the date set for arraignment, on the date set for trial before the jury trial is impaneled, or during trial.

This section shall not prejudice either party's right to file motions after the hearing so long as the filing complies with other sections of the General Statutes.

Defendants are being forced to sit in court too long awaiting trial. The North Carolina Academy of Trial Lawyers contends that the district attorneys use the calendaring authority to make defendants appear repeatedly in court and sit around waiting for trial. This practice, they say, causes innocent defendants to plead guilty as a matter of convenience rather than wait for a trial. The district attorneys propose the following to answer that complaint.

G.S. 7A-49.3 is amended by adding the following:

(c) A defendant shall be required to appear upon the initial calling of the calendar during a session of court. After the call of the calendar, the Court, in its discretion, upon motion by the defendant in open court, may place a defendant on standby.

Defendants whose cases are dismissed still sit in jail. While this problem does not appear to be related to the authority to calendar cases, several occasions of a breakdown in notification of a dismissal have caused complaints. Both the district attorneys and the criminal lawyers basically agree that the following would curb this problem.

G.S. 15A-931 is amended by adding the following:

(c) The prosecutor, after taking a dismissal, shall notify a defendant or his counsel, if represented, of such action by the end of the next business day following such dismissal. The clerk of court shall promptly notify the official in charge of the custody of any defendant known to be confined in any State or local facility of the filing of a dismissal of charges for which the defendant is being held.

Power in the court to address unnecessary delays. Critics argue that the current system is used to weaken defendants by keeping them in jail for long periods of time and delaying trials. The Conference of District Attorneys offers the following as a way of ensuring that defendants can have their right to a timely hearing.

G.S. 49.3 (d) is amended by adding the following:

(d) When a case has not otherwise been scheduled for trial after 120 days from a Defendant's arrest pursuant to an indictment, or from service of notice of indictment as required by statute, or appeal of a misdemeanor to Superior Court, upon motion by the Defendant at any time thereafter, the Senior Resident Superior Court Judge for the district may hold a hearing for the purpose of establishing a date for trial of the defendant. The Court shall retain jurisdiction to modify a trial date upon motion by either party.

Carolina's spending was also very low; $17.69 per capita when the nationwide average was $31.18; North Carolina was sixth from the *bottom* of this list.[28] North Carolina court employees made up 9.4 percent of total justice system employment while the national average was 12.5 percent. Only Maine had less than North Carolina's figure.[29] Courts' payroll accounted for 11.2 percent of the Justice Department's category "total justice payroll," while the national average was 12.1 percent. Only ten states spent less on their judges as a percentage of their respective justice system officials.[30] North Carolina has fewer people involved in its "prosecution and legal services" and "courts" as a percentage of all justice system personnel than do any of the fourteen Southern states (excepting South Carolina only in the category of prosecution and legal services). (See Table 1.)

Table 1
Southern States' Courts and Prosecution Personnel as a Percentage of Their Justice System Employment (FY 1989–90)

State	Courts Personnel	Prosecution and Legal Services
North Carolina	**9.4%**	**2.6%**
Tennessee	12.3	4.4
Virginia	11.0	3.5
Georgia	12.1	3.4
Alabama	13.0	4.7
Arkansas	12.1	4.7
Kentucky	14.1	7.0
Louisiana	11.4	4.0
Maryland	13.1	4.5
Mississippi	11.6	3.7
Missouri	13.8	4.6
South Carolina	10.5	2.3
Texas	12.4	6.2
West Virginia	18.4	6.5
Average without North Carolina	12.8%	4.6%

Source: *Sourcebook of Criminal Justice Statistics, 1992*, Fig. 1.20 at 24. (See note 24.)

Comparisons to Federal Costs Meaningless

Critics who would have us follow the federal judge-calendaring system miss an essential difference between federal and state criminal prosecutions: The caseloads are not in the same galaxy. Senator Joseph Biden of Delaware has said, "Before anyone tries to compare a state's system to our federal system, one must keep in mind that the District Attorney's Office of Philadelphia prosecutes and disposes of more cases than the entire Federal Court system."[31]

In fiscal 1990–91 there were only 907 felony cases filed in all the federal district courts of North Carolina.[32] Each federal judge averaged seeing only 90 new cases filed.[33] By contrast, our eighty-three superior court judges[34] saw 1,033 new felony filings each out of 85,748 for fiscal 1991–92.[35]

Even though the U.S. attorneys for North Carolina declined to prosecute 32 percent of all their cases in 1990,[36] and had a seventy-day "speedy trial" requirement,[37] their median age of case at time of disposition was still 6.1 months,[38] considerably older than North Carolina's median of ninety-six days.[39] North Carolina has no statutory speedy trial requirement, and screen-

Table 2
Ratio of District Attorneys to Types of UCR Arrests for 3 Southern States and North Carolina (1991)

State	Number of District Attorneys	Crime Index Arrests (CI)[a]	District Attorney per CI Arrests	Violent Crime Arrests (VC)[a]	District Attorney per VC Arrests
Georgia	283[b]	58,375	1:206	15,670	1:55
Tennessee	154[b]	22,126	1:143	4,399	1:28
Virginia	396[b]	66,980	1:169	10,770	1:27
Average of Georgia, Tennessee, and Virginia	277	49,160	1:177	10,280	1:37
North Carolina	304[c]	83,059	1:273	24,799	1:82

[a] *Sourcebook, 1992*, Table 4.4 at 425. (See note 24.)

[b] Wilbur Linton, *North Carolina's Calendaring Authority: Undue Power or Model?* 1994, unpublished. Mr. Linton was a summer intern in the District Attorney's Office for the 21st Prosecutorial District (Forsyth County, N.C.).

[c] *Year-End Statistics, 1993–94*. (See note 1.)

ing cases prior to arrest is used only by local convention by a few North Carolina district attorneys.

North Carolina's High Caseload

High Caseload per Prosecutor

In large part because of their case-calendaring authority, North Carolina prosecutors are able to handle a much higher caseload than their counterparts in other states, as demonstrated by arrest statistics[40] using the common characterization of crimes established by the Uniform Crime Reporting Program, the Crime Index (CI)[41] and Violent Crime (VC).[42] CI consists of seven major crimes: murder, rape, robbery, aggravated assault, burglary, larceny, and motor-vehicle theft. VC consists of the first four of these: murder, rape, robbery, and aggravated assault,[43] generally considered the most serious of all crimes.

Stanley Hammer, in his article in *Popular Government*, mentions several Southern states including Georgia, Tennessee, and Virginia that have given the calendaring responsibility to the court. When we look at the 1991 data, we learn that in Tennessee one prosecutor disposed of 143 CI arrests, while in North Carolina one prosecutor disposed of 273 CI arrests that same year. (See Table 2.) Georgia, Tennessee, and Virginia together averaged 177 CI arrests per prosecutor during that period. As for VC arrests, while a Tennessee prosecutor handled 28, his or

Table 3
Ratio of District Attorneys (1994) to Crime Index Arrests and Violent Crime Arrests (1991), by State

State	Number of District Attorneys[a]	Crime Index Arrests (CI)[b]	District Attorney per CI Arrests	Violent Crime Arrests (VC)[b]	District Attorney per VC Arrests
California	2,158	429,656	1:199	142,536	1:66
Texas	1,876	210,388	1:112	38,440	1:21
Ohio	1,486[c]	55,508	1:37	13,255	1:9
Florida	1,428	N/A	N/A	N/A	N/A
Michigan	733	85,722	1:117	23,199	1:32
Washington	700	45,607	1:65	6,167	1:9
Minnesota	563	30,808	1:55	3,022	1:5
Arizona	550	60,264	1:110	9,991	1:18
Louisiana	541	34,761	1:64	9,101	1:17
Missouri	514	51,960	1:101	12,500	1:24
Maryland	500	63,469	1:126	13,793	1:28
Kentucky	477	33,514	1:70	11,632	1:24
Mississippi	474	13,210	1:28	2,196	1:5
Colorado	400	45,047	1:112	8,492	1:21
Oregon	400	35,548	1:89	4,047	1:10
North Carolina	338	83,059	1:245	24,799	1:73
Alabama	283	29,323	1:103	8,467	1:30
Tennessee	281	22,126	1:79	4,399	1:16
Nebraska	274	13,515	1:49	1,303	1:5
Kansas	260	22,497	1:87	3,282	1:13
Connecticut	200	35,944	1:180	7,897	1:39
West Virginia	175	11,364	1:65	1,632	1:9
Utah	150	26,156	1:174	2,343	1:16
Idaho	150	10,662	1:71	2,254	1:15
South Carolina	136	37,787	1:277	9,392	1:69
North Dakota	100	2,391	1:24	86	1:1
South Dakota	88	3,668	1:42	360	1:4
Vermont	49	1,136	1:23	167	1:3

[a] Steve Urse, director, and Jim Mancuro, intern. *Prosecutor Coordinator Survey Results* (as of Dec. 6, 1994), Florida Prosecuting Attorneys Association.

[b] *Sourcebook, 1992*, Table 4.4 at 42.5. (See note 24.)

[c] Ohio has 86 elected district attorneys. There are 1,400 more felony prosecutors plus part-time city prosecutors. As per telephone conversation with John Murphy, executive director of Ohio District Attorneys Association, January 23, 1995. There are now 88 elected prosecutors.

Table 4
Ratio of Judges to Types of UCR Arrests for 3 Southern States and North Carolina (1991)

State	Number of Judges per General Trial Court[a]	Crime Index Arrests (CI)[b]	Judges per CI Arrests	Violent Crime Arrests (VC)[b]	Judges per VC Arrests
Georgia	159	52,934	1:333	12,023	1:76
Tennessee	105	34,457	1:328	8,311	1:79
Virginia	135	65,991	1:489	11,475	1:85
Average of Georgia, Tennessee, and Virginia	133	51,100	1:384	10,603	1:80
North Carolina	77	87,744	1:1,140	26,254	1:341

[a] *Caseload Statistics, 1992*, pp. 171–223. (See note 9.)

[b] *Sourcebook, 1993*, Table 4.6 at 423. (See note 24.)

her North Carolina counterpart handled 82. The three-state average was 37 VC arrests per prosecutor. As a practical matter violent crime takes many more times the amount of preparation than a property offense. In short, where North Carolina prosecutors need the most firepower, they are weakest.

Comparisons on a national basis yield similar results: North Carolina prosecutors handle more cases. The twenty-eight states shown in Table 3 (page 7) differ widely in their ratios of prosecutors to CI and VC arrests. North Carolina is second to last in prosecutors per CI arrests and dead last in prosecutors per VC arrests. In fact, by averaging the last column in Table 3 (without North Carolina) and deleting Ohio (which has a unique, noncomparable system), we see that each prosecutor handled 20 VC arrests nationally, while North Carolina prosecutors operated at three and one-half times the pace.[44]

Table 5
Ratio of Judges to Types of UCR Arrests for 14 Southern States (1992)

State	Population in Millions (1990)[a]	Number of Trial Judges[b]	Crime Index Arrests (CI)[a]	Judges per CI Arrests	Violent Crime Arrests (VC)[a]	Judges per VC Arrests
Alabama	3.8	127	35,067	1:276	12,796	1:132
Arkansas	2.3	70	23,847	1:340	4,917	1:70
Georgia	4.9	159	52,934	1:333	12,023	1:76
Kentucky	3.6	91	42,394	1:466	16,977	1:187
Louisiana	2.6	191	38,100	1:199	10,820	1:57
Maryland	4.9	123	64,261	1:522	14,014	1:114
Mississippi	.9	40	12,236	1:306	1,926	1:48
Missouri	2.2	309	31,659	1:102	7,773	1:25
North Carolina	6.6	77	87,744	1:1,140	26,254	1:341
South Carolina	3.5	40	15,433	1:386	5,164	1:129
Tennessee	2.5	105	34,457	1:328	8,311	1:79
Texas	17.6	386	202,033	1:523	40,877	1:106
Virginia	6.4	135	65,997	1:488	11,475	1:85
West Virginia	1.8	60	10,653	1:177	1,670	1:28
Total without North Carolina		1,836	629,065		147,743	
Average without North Carolina	4.4			1:343		1:80

[a] *Sourcebook, 1993*, Table 4.6 at 423. (See note 24.)

[b] *Caseload Statistics, 1992*, pp.171–223. (See note 9.)

High Caseload per Judge

North Carolina's present calendaring system allows it to operate with a ratio of superior court judges to UCR arrests that is even worse than the state's ratio of prosecutors to UCR arrests. North Carolina's superior court judges each handled an average of 326 percent more violent crime arrests than Virginia, Tennessee, and Georgia judges averaged together. They also handled 197 percent more Crime Index arrests than did the average judge in those three states. (See Table 4.)

When fourteen Southern states are examined, North Carolina has the highest caseload ratio of CI and VC arrests per superior court judge. The other thirteen states average 343 CI arrests per judge; and in North Carolina it is 1,140 per judge, double that of the closest state of Texas, which has 523 CI arrests per judge. For VC arrests the other thirteen states average 80 per judge, but for North Carolina the figure is 341. (See Table 5.)

Respectable Disposition Rate

Despite our low ranking in prosecution resources and high ratio of crime to prosecutors, North Carolina's prosecutors maintain a reasonable record of dispositions as a percentage of filings. At a 94 percent rate for 1992, we were doing better than many other Southern states, including Alabama, Florida, Kentucky, Louisiana, Maryland, and Missouri.[45] The three-state Virginia/Tennessee/Georgia average was 97 percent. (See Table 6.) For fiscal 1992–93 the North Carolina disposition rate increased to 99 percent.[46]

In spite of chronic underfunding and an immense workload of violent felonies, the district attorneys of North Carolina have kept up their dispositions largely because they are able to determine *when* they can be ready to set a case for trial.

Inequity in Allocation of Resources

In addition to North Carolina's rise in violent crime and low level of resources compared to that of other states, there are additional internal problems peculiar to North Carolina. The explosion in felony filings has not been uniform throughout the state, so in some prosecutorial districts the ratio of prosecutors to arrests is much higher than in others. For example, District 26 (Mecklenburg County) has 2,525 CI arrests per prosecutor, while District 24 (Avery, Madison, Mitchell, Watauga, and Yancey counties) has 490 per prosecutor. (See Table 7, at right, and compare with Figures 1 and 2, page 10.)

Table 6
Disposition of Criminal Cases as a Percentage of Filings (FY 1991–92)

State	Total Criminal Filings for General Trial Courts	Total Criminal Dispositions for General Trial Courts	Dispositions as a Percentage of Filings
Georgia[a]	96,715	94,159	97%
Tennessee[a]	66,604	62,555	94
Virginia[a]	109,565	107,261	98
Average of Georgia, Tennessee, and Virginia	90,962	87,992	97%
North Carolina[b]	126,924[b]	119,256[b]	94%

[a] *Caseload Statistics, 1992*, Table 10 at 117. (See note 9.)

[b] *N.C. Courts, 1991–92*, at 132. (See note 18.)

Table 7
Crime Index and Violent Crime Arrests per District Attorney (FY 1992–93), by Prosecutorial District

District	Crime Index Arrests	Violent Crime Arrests	District	Crime Index Arrests	Violent Crime Arrests
1	569	44	16A	1,105	96
2	1,163	139	16B	670	84
3A	1,534	159	17A	903	100
3B	1,236	115	17B	703	70
4	1,051	103	18	1,581	174
5	1,320	120	19A	1,179	101
6A	1,024	80	19B	927	62
6B	636	83	20	1,083	266
7	1,299	169	21	1,828	256
8	1,282	186	22	834	70
9A	1,015	106	23	641	47
9B	770	96	24	490	21
10	1,346	321	25	1,060	112
11	1,299	158	26	2,525	440
12	1,940	221	27A	1,330	183
13	704	83	27B	1,170	95
14	1,981	216	28	1,056	92
15A	804	70	29	715	59
15B	1,716	143	30	538	27

Source: Report by Andrea Crumpler. (See note 47.)

Figure 1
Crime Index Arrests per District Attorney
(FY 1992–93), by Number of Arrests

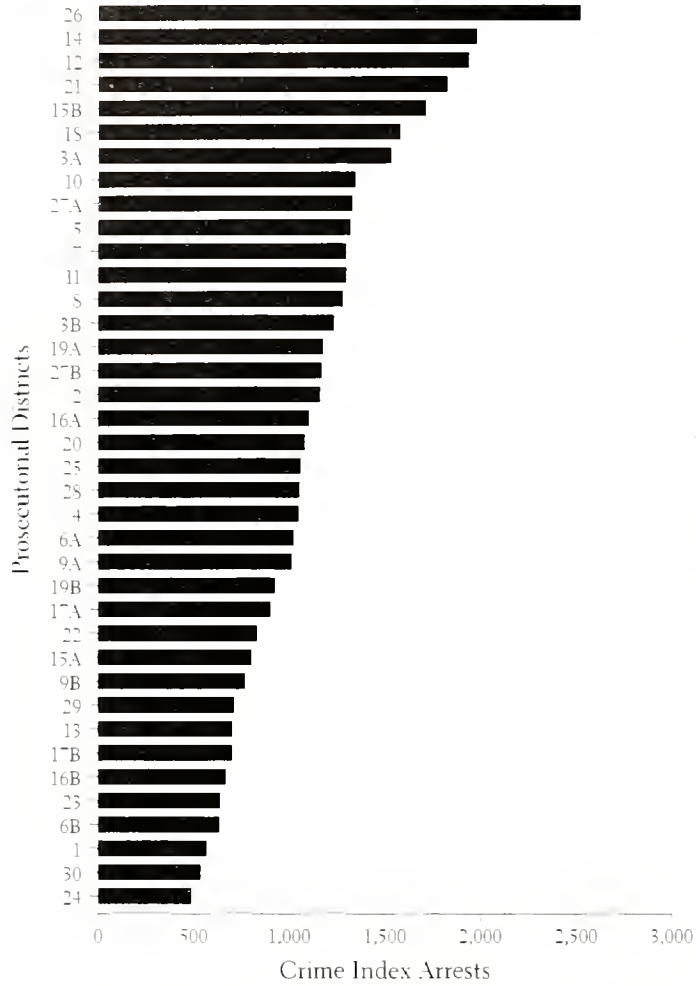
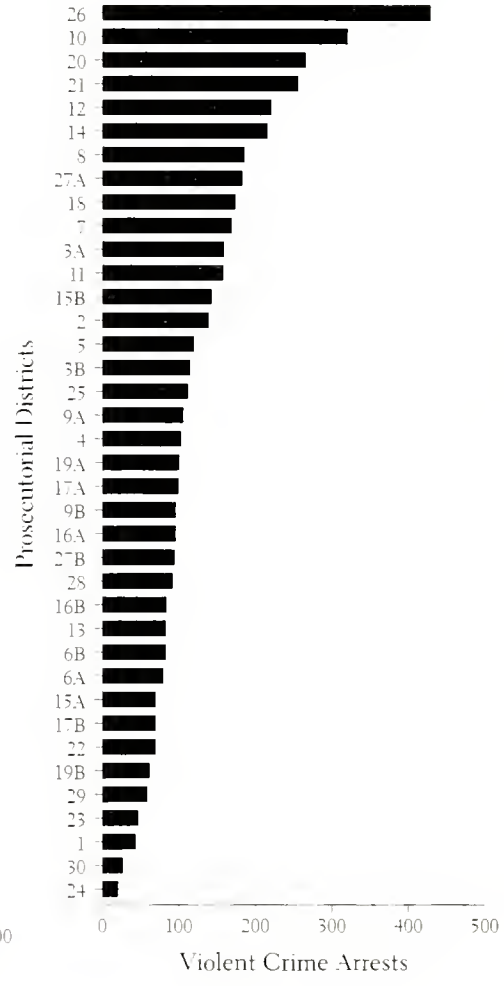


Figure 2
Violent Crime Arrests per District Attorney
(FY 1992–93), by Number of Arrests



Source for Figures 1 and 2: Report by Andrea Crumpler. (See note 47.)

The VC disparity can be even greater. For example, the 440 violent crime arrests per prosecutor in District 26 was twenty times the number in District 24. As mentioned earlier, violent crimes require more resources and are not evenly distributed across the state, with some rural districts having high rates. The more violent the case, the more time it takes to prepare for trial, the greater the delay, and thus the more complaints about the calendaring responsibility.

The North Carolina legislature determines how many prosecutors each district will have, based on a complicated formula. This formula is undergoing revision, but even a revised formula will not correct the basic problem of having only a fraction of the number of prosecutorial resources of other states. A new formula, without more prosecutors, may only spread out the problems proportionally, making *every* district statewide grossly, albeit evenly, understaffed.

Further, not only are prosecutors in short supply, their support is equally inadequate, especially in multicounty districts where multiple offices must be maintained. (See Table 8.)[47]

The Burden in a Typical Urban District

District 21 is a typical single-county urban district, covering Forsyth County, which includes Winston-Salem. (See Table 9, page 12, for the disposition of criminal cases in superior court in that district in fiscal 1993–94.)[48]

The Administrative Office of the Courts (AOC) assigned superior court judges to Forsyth County for sixty-four weeks of criminal terms for the fiscal year. Prosecutors disposed of forty-eight murder cases filed during that period and tried twelve to a verdict.[49] Hypothetically, if it took an average of two weeks a murder trial, only forty weeks of court remained for the other 114 jury trials and 3,416 cases (2,601 felonies). That is an average of 2.85 jury trials per week and 2.6 cases per hour (305 misdemeanors were remanded and are not counted).

The district attorney in the 21st District, like all district attorneys, has no budget and has no *serious* input into one, but receives all funds from the AOC. Only recently have district attorneys been provided with computers to try to manage this kind of caseload, with the first "486" personal computers arriving in the 21st District only in the last year. Previously, the district attorney resorted to a $13,000 grant from the Integon Corporation to buy the necessary computer equipment to manage the caseload in 1991. He had to ask the county management information services department to donate time to help develop the case-management software that is now maintained and supported by the Winston-Salem Police Department. That service still is not available to district attorney's offices in other districts, but by June 1995 the AOC will install case-management software in seventeen districts including Forsyth. Where will this service come from if someone else receives the calendaring responsibility before the hardware and software are made available on a statewide basis?

Calendaring Considerations

With such large caseloads, prosecutors must be able to select which cases they are ready to try, not rely on someone else to determine readiness. The prosecutor must take into account the following factors:

- Is the victim emotionally ready to testify? Has a victim impact statement been prepared?
- Is the defendant in jail? If so, for how long?
- Has the law enforcement agency turned in a report?
- Does the report present a winnable case for the state, or is further police work necessary?
- Have the witnesses, law enforcement officers, and lay witness been interviewed by the assistant district attorney?
- Have the witnesses been located by letter or telephone since the time of arrest to see if they have moved and can still be subpoenaed?
- Has the defendant's criminal record been prepared? Is he or she a habitual felon? Has the structured sentencing score been computed?

Table 8
Allocations of Assistant District Attorneys (1/1/95)

Dist.	Counties	Asst. DAs	Secretaries	Victim/ Witness Assts.
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	7	5	2
2	Beaufort, Hyde, Martin, Tyrrell, Washington	4	4	2
3A	Pitt	7	3	3
3B	Carteret, Craven, Pamlico	7	4	2
4	Duplin, Jones, Onslow, Sampson	10	8	2
5	New Hanover, Pender	9	6	2
6A	Halifax	3	3	1
6B	Bertie, Hertford, Northampton	3	3	1
7	Edgecombe, Nash, Wilson	10	7	2
8	Greene, Lenoir, Wayne	8	6	2
9	Franklin, Granville, Vance, Warren	7	5	2
9A	Person, Caswell	2	2	1
10	Wake	19	8	4
11	Harnett, Johnston, Lee	9	4	1
12	Cumberland	13	7	3
13	Bladen, Brunswick, Columbus	6	5	2
14	Durham	10	6	2
15A	Alamance	6	5	2
15B	Orange, Chatham	5	4	1
16A	Scotland, Hoke	4	3	1
16B	Robeson	7	5	1
17A	Rockingham	4	4	1
17B	Stokes, Surry	4	2	2
18	Guilford	17	8	3
19A	Cabarrus	4	3	1
19B	Montgomery, Randolph	5	4	1
19C	Rowan	4	2	1
20	Anson, Moore, Richmond, Stanley, Union	10	6	2
21	Forsyth	12	6	2
22	Alexander, Davidson, Davie, Iredell	11	6	2
23	Alleghany, Ashe, Wilkes, Yadkin	4	4	1
24	Avery, Madison, Mitchell, Watauga, Yancey	3	4	2
25	Burke, Caldwell, Catawba	11	5	2
26	Mecklenburg	29	19	2
27A	Gaston	8	5	2
27B	Cleveland, Lincoln	5	4	2
28	Buncombe	8	5	3
29	Henderson, McDowell, Polk, Rutherford, Transylvania	8	3	3
30	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	7	4	3

Note: The numbers for assistant district attorneys, secretaries, and victim/witness assistants were prepared by the North Carolina Conference of District Attorneys from AOC data.

Table 9
Disposition of Criminal Cases in Superior Court in 21st District, FY 1993–94

Felony Cases		Misdemeanor Cases	
48	Murders	183	DWI appeals
5	Manslaughters	136	Motor vehicle appeals
64	Rape and first degree sex offenses	397	Non MV Appeals
78	Other sex offenses	99	Misdemeanors originating in Superior Court
251	Robberies		
114	Felony assaults		
651	Breaking and entering		
181	Larcenies		
6	Arsons		
76	Forgeries		
105	Frauds		
788	Controlled substances		
246	Other		

2,613 Felony Cases + 815 Misdemeanor Cases = 3,428 Total of Criminal Cases

- Is the lead investigator on duty or otherwise available for trial on a certain day?
- What other incidental law enforcement witnesses are needed and will be available on a certain day?
- What forensic or laboratory witnesses are available, and have they been interviewed?
- Is discovery prepared?
- How many other cases does the assistant district attorney have to try the same week that have to be prepared?
- Will the assistant district attorney be assigned to court the week trial is proposed?
- Will the defense attorney be available for trial the week trial is proposed or be on vacation, in another court, or otherwise unavailable? Have any pretrial motions been disposed? Has the state prepared legal memoranda in opposition? Has defense counsel been contacted as to a certain trial date?
- Have all plea negotiations ended?

Once the trial date is selected by the assistant district attorney assigned to handle the case, a secretary is notified and the case is put on the trial calendar according to the district attorney's office policies.

If the case is not reached the week it is set, it must be recalendared and some of the above factors accounted for again. A ready trial calendar of at least ten cases is prepared in District 21 from a larger trial calendar. These ten cases have been vouchsafed by defense attorneys as absolutely ready for trial. In reality, most result in guilty pleas rather than trials. Few defendants really want a trial; they just want a better plea offer than the one the prosecutor wants to make. In fact statewide only 2.5 percent of all felony cases are tried, of which the state wins 63.4 percent of all felony trials.[50] One complaint of the critics may be that large numbers of innocent defendants languish in jail until freed by a trial—in reality, such occurrences represent an extremely low number; of 83,734 felony dispositions in North Carolina's superior courts in fiscal 1992–93, only 654 felony defendants were found not guilty by a jury.[51] Even if all felons were in jail, which clearly they are not, this group of cases would make up only 0.78 percent of all felony dispositions.

Problems in Changing to Judge-Calendaring

Threat to Judicial Rotation

A change in the law that would vest calendaring authority in the senior resident superior court judge would result in a change in the judicial rotation system for at least those judges. Unlike district attorneys, who stay within their prosecutorial districts, superior court judges rotate within four statewide multicounty divisions. The late superior court judge of the 1st District, Thomas S. Watts, in legislative testimony regarding the calendaring authority, called judicial rotation "the most sacred thing in our entire Superior Court Judicial System. It is the one thing that has brought competent, free, impartial and fair justice to the people of North Carolina for more than two hundred (200) years."[52]

It would be nearly impossible under the current rotation system for the senior resident superior court judge of a district to be available to handle the calendaring of cases. Judge Watts pointed out that he was 212 miles away from his home county when he was holding court in Wilmington.[53] But requiring the judge to remain in his or her home county in order to supervise calendaring could cause the breakup of our rotation system.

The argument against rotation of judges is that it does not maximize court utilization. Chief Justice Burley B. Mitchell, Jr., addressed this in a memorandum to all superior court judges on March 7, 1995. He directed all regular resident superior court judges to their resident districts beginning April 3, 1995, continuing through June 26, 1995. They are to assess the state of the docket in each county. Additionally, the senior resident judges are to recommend the mix of criminal and civil courts

necessary to "deal with the criminal case backlogs in certain districts." While this is not a permanent end to the rotation system, it is a tacit acknowledgment that the resident judges will best know how to address the criminal case backlog problems in their home districts.

Lack of Judicial Accountability

Some senior resident superior court judges are not elected by the same pool of voters as the prosecutor, because some judicial districts are carved out of a single county. For example, in the 21st Prosecutorial District the district attorney runs countywide, but Forsyth County is divided into four superior court judicial districts: 21A, B, C, and D.[54] Each of the four superior court judges runs only in his or her own district, not countywide—and only one of the four can be the senior resident superior court judge. Only a fraction of the people in Forsyth County who could vote to unseat a district attorney would be eligible to vote to unseat the senior resident judge if the judge did not manage the docket efficiently. While the district attorney in Forsyth County can be voted on by the entire county registration of 149,848 voters, the four resident superior court judges have respectively 47,627; 33,677; 41,112; and 27,432 voters in their districts.[55] As little as 18 percent of the registered voters should not be allowed to determine which judge controls the *entire* county's calendar.

Urban single-county prosecutorial districts such as 10, 12, 14, 18, 21, and 26 have this problem.

Electoral changes would have to occur to allow the senior resident judge to run at large in order to retain accountability. Is this constitutional? This also would have to be approved by the U.S. Justice Department, which, under the Voting Rights Act of 1965, currently oversees and must approve any changes in forty counties.[56]

Multicounty prosecutorial districts such as the 30th have another set of problems: The seven counties in the 30th Prosecutorial District have two senior resident superior court judges, one in 30A (Cherokee, Clay, Graham, Macon, and Swain) and one in 30B (Haywood and Jackson)—but only one district attorney.[57] Which judge would handle the district attorney's calendar?

Even if the superior court judicial districts could be redrawn to make the senior resident judge accountable to the people at election, the case-management issue could not be made an election issue. The Canons of Judicial Ethics prevent an opposing judicial candidate from "announc[ing] his views on disputed legal or political issues. . . ."[58]

Table 10
Comparison of Similar Factors in
North Carolina Civil and Criminal Superior Court
FY 1991–92

	Civil	Criminal (Felonies)
Cases disposed	19,455[a]	79,680[b]
Median age at disposal	276 days[c]	97 days[d]
Median age pending	235 days[e]	119 days[f]
Jury trial	761[g]	2,207[h] felonies and 902[i] misdemeanors
Nonjury trial	2,582[g]	N/A
Median age at jury trial	533 days[j]	209 days[k]
Median age at nonjury trial	263 days[j]	N/A
Dismissal rate	53.8%[i]	30.4%[k]
Percentage of cases tried by jury	3.9%[g]	2.8%[k]
Percentage of cases tried by nonjury	13.3%[j]	N/A

[a] *N.C. Courts, 1991–92*, at 125. (See note 18.)
[b] *N.C. Courts*, 133.
[c] *N.C. Courts*, 125.
[d] *N.C. Courts*, 188.
[e] *N.C. Courts*, 120.
[f] *N.C. Courts*, 174.
[g] *N.C. Courts*, 115.
[h] *N.C. Courts*, 148.
[i] *N.C. Courts*, 158.
[j] *N.C. Courts*, 108.
[k] *N.C. Courts*, 141.

Comparisons to Civil Court Calendaring

Superior court judges have control now over the civil superior court docket. They are as overworked and backlogged as the district attorneys are, especially since criminal courts are given priority over civil court sessions.

No comparison should be made between civil and criminal cases due to the different nature of the matters each court handles. Moreover, the time limits are much longer for civil cases, because they start at least sixty days after the filing of a complaint, and the clerk may grant one extension. By the time four to five months for discovery have passed, the cases already are quite old by criminal case standards; for aging purposes, criminal cases count only from the date of arrest of a felony warrant or the date of indictment, whichever is *later*. However, imagine what would happen to the civil docket if the superior court judges, already overworked, have a fourfold increase in cases to manage. The time in Table 10 would increase dramatically.

Table 11
Median Case Age in Districts with and without Trial Court Administrator FY 1991–92

Superior Court Judicial District	Filed[a]	Disposed[a]	Median Case Age[b]
Districts with no court administrator			
1	354	354	328
2	150	175	260
4A	196	191	273
6A	131	144	262
6B	124	135	264
7A	231	204	185
7B–C	383	299	236
8A	226	245	189
8B	275	228	293.5
9	299	307	407
11	545	486	286
15A	214	231	289
15B	378	386	244
16A	93	89	292
16B	350	352	275
17A	193	199	264
17B	214	210	294.5
18A–E	1,415	1,223	264
19A	186	172	229
19B	231	230	273
19C	210	174	294
20A	348	302	301
20B	279	258	363
22	659	566	244.5
23	242	245	259
24	251	224	289
25A	365	370	308.5
25B	431	539	323
27B	298	243	341
30A	136	109	360
30B	168	148	280
Totals/Average	9,575	9,038	275.9

Superior Court Judicial District	Filed	Disposed	Median Case Age
Districts with a court administrator			
3A	337	313	221
3B	435	404	230
4B	278	259	348
5	563	628	410
10A–D	1,880	1,683	312
12A–C	640	553	276
13	355	324	412
14A–B	759	630	232
21A–D	955	1,002	229
26A–C	3,072	3,093	287
27A	599	586	183
28	575	544	259
29	476	405	304
Totals/Average	10,924	10,424	284.8

Note: Percentage disposed with no court administrator was 94.3; percentage disposed with court administrator was 95.4.

[a] N.C. *Courts*, 103.

[b] N.C. *Courts*, 121.

Trial Court Administrators as an Alternative

Accountability

Some critics argue that if calendaring authority is not to be given to senior resident superior court judges, then it could be given to civil trial court administrators. But what about *their* accountability? District attorneys are elected to a four-year term. If a district attorney has a backlog of cases, he or she can be removed by the voters. How then could voters remove a trial court administrator if a case backlog occurred?

Administrators' Track Record

While the track record of some trial court administrators is very good, such as in the 21st District (Forsyth), the average case age in districts with a trial court administrator is no better than that in counties without one. In fiscal 1991–92 the fourteen counties with a court administrator had an *older* median case age at time of disposition (284.8 days) than did those districts without trial court administrators (275.9 days). (See Table 11.) Two years later trial court administrators were disposing of civil cases 5 days faster than districts without them. But the median age of the trial court administrators' pending cases was 25 days older than districts without them.[59]

The fiscal 1991–92 disposition rate of the districts with court administrators is just 1 percent better than those districts without a court administrator, practically a dead heat. The statewide disposition rate for superior court civil cases in fiscal 1991–92 was 94.9 percent, based on 20,546 filings and 19,455 dispositions[60]—not much different from the criminal superior court disposition rate for the same year (94.1 percent).[61]

As of June 30, 1992, there were twelve trial court administrators for fourteen judicial districts (two trial court administrators had two judicial districts each to oversee).[62] If administrators are to be given criminal calendaring responsibility, the legislature will have to hire twenty-six more trial court administrators. In districts that already have civil trial administrators, an increased number of assistants and secretaries will be necessary to handle the fourfold increase of cases if all criminal cases are under their control.

Conclusion

The North Carolina Conference of District Attorneys has proposed low-cost ways to address objections to the present calendaring system. The proposals would offer additional protection to defendants but not jeopardize the historically cost-effective system in place now. They

Hammer's Response

In this brief response to Mr. Keith's article, I wish to mention two concerns: funding and fairness. All who labor in the court system—including prosecutors, defense attorneys, clerks, and judges—experience daily the results of insufficient funding. From the unassailable premise that our court system is underfunded, Mr. Keith draws the unwarranted conclusion that prosecutors are efficient court managers. His logic has escaped professional court watchers (such as the National Center for State Courts), who consistently conclude that trial courts or their administrators—not litigants—are the best managers of crowded dockets.

As for fairness, it is the mortar that binds the bricks of our criminal justice system. The North Carolina Supreme Court recognized as much in *Simeon v. Hardin*, decided after the publication of my article. The court held that the statutes authorizing the district attorney's control over calendar are facially valid, but it directed the trial court to determine whether the statutes are being applied in an unconstitutional manner, as the plaintiffs contended. The court noted that the plaintiffs' "notebook of exhibits tended to support" their allegations. Thus in operation North Carolina's calendaring system may well deprive the accused of those constitutional guarantees ensuring adversarial fairness and prohibiting undue delay, which results in the equivalent of punishment prior to trial. Mr. Keith relies on a cloak of statistics to minimize the importance of these guarantees and the fact that they are too often denied to citizens of North Carolina.

In times of limited funding we must seek efficient methods for operation of our court system. Fairness and efficiency are not, however, mutually exclusive goals in the criminal justice system. The 12th Judicial District, which includes Cumberland County, has adopted calendaring rules that establish early deadlines for completion of discovery and other pretrial matters. The rules ensure close judicial supervision of the superior court trial docket and provide for the setting of firm trial dates by the judge in consultation with the district attorney and defense counsel. The Cumberland County approach tends to substantiate my original position, which is supported by the practice in virtually all jurisdictions and is consistent with the conclusion of those who have studied the matter: that there are fair and efficient alternatives to prosecutorial control of the criminal trial docket. —*Stanley Hammer*

would have virtually no negative systemwide impact. North Carolina's elected district attorneys are opposed to a radical change, which could sink the already floundering criminal justice system. Transferring the calendaring authority would be like dropping a cinder block in a bathtub; it would not be a minor ripple through the rest of the criminal justice system but a tsunami.

In the meantime the legislature needs to increase the number of assistant district attorneys and superior court judges throughout the state to comparable levels in other states. (Courtroom facilities cannot be overlooked since they are in short supply, but they are furnished by the counties.) North Carolina's Chief Justice Burley B. Mitchell, Jr., mentioned this fact in his March 21, 1995, State of the Judiciary address to the House and Senate. He said that "the district attorneys believe . . . [they] justify . . . considerably more personnel . . . [and] they make a rather strong argument for their position."

Later on, if there are still case backlogs, we could look at other solutions, including changing the calendaring responsibility. If any change be in order, a few districts could be tested to see if any new system will work instead of instituting a radical statewide change without knowing its costs or consequences.

Until then we should not change the only case-management tool that keeps the system going: the historic responsibility of the district attorney to calendar criminal cases. Up until now North Carolina's district attorneys have had to be content to make bricks without straw. Taking away their calendaring responsibility would be like telling them to build a brick wall without mortar.

Notes

Note: Any comparison of data in this area is made more difficult because there is no uniform depository of information. Therefore data for fiscal years occasionally may be compared to data for calendar years, because no other sources are available. References in the text that do not specifically mention "fiscal" year (that is, year ending June 30) refer to the calendar year.

1. North Carolina Conference of District Attorneys, *Year-End Statistics, FY 1993–94* (Raleigh, N.C., unpublished) (hereinafter cited as *Year-End Statistics, 1993–94*).

2. State Bureau of Investigation, Division of Criminal Information, *Crime in North Carolina, Uniform Crime Report, 1993* (Raleigh, N.C.: SBI, DCI, 1994), 18 (hereinafter cited as *Crime in North Carolina, 1993*).

3. An Act to Require a Calendar for All Terms of the Superior Court for the Trial of Criminal Cases. H.B. 157, 1949 N.C. Sess. Laws ch. 169, § 1. This is now represented by N.C. Gen. Stat. (hereinafter G.S.) § 7A-49.3. Also see G.S. 7A-61, which sets out the duties of the district attorney: "The District Attorney shall prepare the trial docket. . . ." While North Carolina may be the only state that has a *statute* giving the district attorney responsibility to calendar cases, we are not unique in *how* our calendaring really works. Many states allow the district attorney *de facto* calendaring responsibility by drafting a tentative calendar and presenting it to the judge for approval. Only those cases the district attorney can reasonably be expected to prepare for trial are ordered by the judge for trial.

4. Stanley Hammer, "Should Prosecutors Control the Criminal Trial Calendar?" *Popular Government* 59 (Spring 1994): 2.

5. Simeon v. Hardin, 339 N.C. 358, 451 S.E.2d 858 (1994).

6. *Simeon*, 339 N.C. at 373, 451 S.E.2d at 869.

7. *See Report to the 1993 General Assembly of North Carolina*, Legislative Research Commission, Criminal Case Disposition, Jan. 27, 1993.

8. G.S. 15A-1340.11 through -1340.23.

9. Brian J. Ostrom et al., *State Courts Caseload Statistics: Annual Report 1992* (Washington, D.C.: National Center for State Courts, 1994), 32 (hereinafter cited by year as *Caseload Statistics*).

10. *Caseload Statistics, 1992*, Fig. 1.48, at 31.

11. *Caseload Statistics, 1992*, 39.

12. *Caseload Statistics, 1992*, Fig. 1.58 at 40.

13. *Caseload Statistics, 1992*, Fig. 1.58 at 40.

14. *Caseload Statistics, 1992*, Fig. 1.58 at 40.

15. *Caseload Statistics, 1992*, Fig. 1.58 at 40.

16. *Caseload Statistics, 1992*, Fig. 1.59 at 41.

17. *Year-End Statistics, 1993–94*.

18. *North Carolina Courts 1985–86*, Annual Report of the Administrative Office of the Courts, 75 (hereinafter cited by year as *N.C. Courts*).

19. *N.C. Courts,1991–92*, 44.

20. *N.C. Courts,1991–92*, 174.

21. *N.C. Courts, 1991–92*, 174.

22. North Carolina Conference of District Attorneys, *Problems in Prosecution* (Raleigh, N.C.: Oct. 1990, unpublished).

23. *Year-End Statistics, 1993–94*.

24. Kathleen Maguire, Ann L. Pastore, and Timothy J. Flanagan, eds., *Sourcebook of Criminal Justice Statistics, 1992* (Washington D.C.: U.S. Department of Justice, Bureau of Justice Statistics, USGPO, 1993), Table 1.5 at 5 (hereinafter cited by year as *Sourcebook*).

25. "Prosecutors and Legal Services includes Civil and Criminal Justice Activities of the Attorney Generals, District Attorneys, States Attorneys and their variously named Equivalents . . ." *Sourcebook, 1992*, 707.

26. *Sourcebook, 1992*, Table 1.20 at 27.

27. *Sourcebook, 1992*, Table 1.21 at 29.

28. *Sourcebook, 1992*, Table 1.5 at 5.

29. *Sourcebook, 1992*, Table 1.20 at 24.

30. *Sourcebook, 1992*, Table 1.21 at 29.

31. U.S. Senate, "Crime Bill Debate," Aug. 9, 1994.

32. *Sourcebook, 1992*, Table 5.27 at 496.

33. *Sourcebook, 1992*, Table 1.81 at 77.

34. *N.C. Courts, 1991–92*, 36.

35. *N.C. Courts, 1991–92*, 133.

36. *Sourcebook, 1992*, Table 5.12 at 483.

37. 18 U.S. Code § 3161 (c)(1).

38. *Sourcebook, 1992*, Table 5.29 at 502.

39. *N.C. Courts, 1990–91*, 179.

40. Arrests are selected instead of cases filed since the prosecutor is not able to manipulate the former by overcharging. Arrest statistics are controlled by law enforcement agencies.

41. *Crime in North Carolina, 1993*, 18.

42. *Crime in North Carolina, 1993*, 23.

43. *Crime in North Carolina, 1993*, 200, 201.

44. Explanatory note: While the data for prosecutors are for 1994 and the UCR arrests are for 1991, the ratios are still valid in a relation sense when used for comparative purposes. The *Sourcebook, 1992*, contains the UCR arrests for 1991. There is no printed data on the number of prosecutors nationwide. The best available data was an unpublished survey by Steve Urse, director, and Jim Mancuro, intern (as of Dec. 6, 1994), Florida Prosecuting Attorneys Association.

45. *Caseload Statistics, 1992*, Table 10 at 117.

46. Administrative Office of the Courts, *North Carolina Judicial Branch Superior Court Criminal (CRS) Disposition Activity, AOC Cases Disposed: 07/01/92 to 06/30/93* (Raleigh, N.C., unpublished; hereinafter cited as *N.C. Judicial Branch*).

47. Report by Andrea Crumpler, legal intern to Office of District Attorney 21st Prosecutorial District, Winston-Salem, N.C., unpublished. It is based on data as found in note 46 and in G.S. 7A-60.

48. *N.C. Judicial Branch*.

49. *N.C. Judicial Branch*.

50. *N.C. Judicial Branch*.

51. *N.C. Judicial Branch*.

52. Judge Thomas S. Watts, Hearing before the North Carolina General Assembly, Extra Session on Crime, Feb. 8, 1994, 55 (hereinafter cited as *Watts*).

53. *Watts*, 55.

54. G.S. 7A-41 (b)(17–20).

55. Forsyth County Board of Elections as of Oct. 28, 1994.

56. *See* 42 U.S.C. 1973c; counties covered by the act are Anson, Beaufort, Bertie, Bladen, Camden, Caswell, Chowan, Cleveland, Craven, Cumberland, Edgecombe, Franklin,

Gaston, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Jackson, Lee, Lenoir, Martin, Nash, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Robeson, Rockingham, Scotland, Union, Vance, Washington, Wayne, and Wilson.

57. G.S. 7A-41(a).

58. Canon 7B(1)(c), Code of Judicial Conduct.

59. Administrative Office of the Courts, *Superior Court Civil (CVS) TCA Aging Summary, by District Cases Pending: 6/30/94 Cases Disposed 7/01/93 to 6/30/94* (Raleigh, N.C., unpublished).

60. N.C. *Courts, 1991–92*, 101.

61. N.C. *Courts, 1991–92*, 133.

62. N.C. *Courts, 1991–92*, 49. ❖

Single- and Multi-Prime Contracting in North Carolina Public Construction

Frayda S. Bluestein

What is the best contracting method for the state and local governments in North Carolina to use for large building construction projects? For that matter, what does *best* mean? Does it mean lowest in cost, fastest in time to completion, most efficient in terms of administration, most fair (and if so, fair to whom?), least likely to result in costly and time-consuming claims, most protective of subcontractors, most inclusive of minority- and women-owned businesses, or *best* by some other measure?

Under a law that dates back to 1925, the North Carolina General Assembly requires cities, counties, and the state to use the *multi-prime* method of contracting.[1] That is, they receive bids separately on and contract separately for heating, plumbing, electrical, and general contracting work in large construction projects. In 1989 the General Assembly authorized the use of *single-prime* contracting in addition to—not instead of—multi-prime contracting for any large building project.[2] Under the single-prime method, the government may take a bid from a single contractor for all the construction work—heating, plumbing, electrical, and general. If the government receives bids using both methods it must pick whichever is the "lowest responsible bidder" or set of bidders for the entire project.[3]

The 1989 General Assembly scheduled the authorization for single-prime contracting to expire June 30, 1995. It directed the State Building Commission to study the comparative costs of multi- and single-prime contracting and report its results to the 1995 General Assembly.[4]

The State Building Commission has completed its study. This article describes the analysis of the data the commission collected from governmental units that had awarded construction contracts under the 1989 amendments. The author prepared the commission's final report and facilitated several meetings of the commission as it discussed what to include in its report to the legislature. During those meetings, the commission identified some alternative contracting methods it chose to include in its report for the General Assembly to consider. The State Building Commission approved its report, including the data analysis and recommendations summarized here, on February 28, 1995, and submitted it to the General Assembly.[5]

The Multi-Prime and Single-Prime Statute

When the multi-prime requirement in Section 143-128 of the North Carolina General Statutes was first enacted in 1925, it required cities, counties, and the state to prepare specifications and receive bids separately for projects costing over $10,000, in two categories of work: (1) heating and ventilating and (2) plumbing and gas fittings. G.S. 143-128 has been amended over the years[6] to increase the dollar amount of projects covered by the law. The current version of the law applies to contracts for the erection, construction, alteration, or repair of buildings where the entire cost of the work exceeds $100,000. The law has also been amended to add to the categories of work that must be bid separately. The current categories were established in 1977 and have remained essentially in this form:

The author is an Institute of Government faculty member whose specialties include local government contracting. *This article incorporates the summary of data analysis performed by Michael Munger, Pearsall Associate Professor of State and Local Government and director of the Master's in Public Administration Program, The University of North Carolina at Chapel Hill. The author acknowledges his contribution to the article and is grateful for his collaboration on the project. This article also appears in* School Law Bulletin *26 (Spring 1995): 1–8.*

- heating, ventilating, air conditioning (HVAC) and accessories and/or refrigeration for cold storage, and all work kindred thereto;
- plumbing and gas fittings and accessories, and all work kindred thereto;
- electrical wiring and installations, and all work kindred thereto; and
- general work relating to the erection, construction, alteration, repair of any building, which work is not included in the other three categories.[7]

Where work in one category is estimated to cost less than $10,000, it can be included in one of the other categories.[8] For example, if the electrical portion of a construction project were estimated to cost $8,000, it could be incorporated into the specifications for the general work, and separate bids for electrical work would not be necessary.

In 1989 the legislature considered several proposals for revising G.S. 143-128. Some proposals not enacted would have amended the statute to allow design-build contracting and construction management in addition to multi-prime bidding. The rest of the proposals found their way into Chapter 480 of the 1989 Session Laws.

The most significant effect of the 1989 amendments was to allow single-prime bidding in addition to, not instead of, multi-prime bidding. Under the statute as amended, when bids are received under both the multi-prime and single-prime methods, contracts are awarded to the lowest bidder or set of bidders for the total project. Single-prime bidders must identify on their bids the subcontractors they have selected for each category of work specified in the law (HVAC, plumbing, electrical, general).[9] The law also allows the contracting authority to prequalify bidders.

In addition the 1989 amendments established minority participation requirements.[10] Under 143-128(c), cities, counties, and the state must establish a percentage goal for participation of minority-owned businesses[11] and identify good faith efforts that must be taken to meet those goals.[12] Finally a new subsection (d) states that awards are to be made without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition and clarified that the law does not require contractors or awarding authorities to award contracts or subcontracts to or to purchase materials from minority-owned businesses that do not submit the lowest responsible bids.

Both the single-prime contracting option and the minority business provisions contained in the 1989 amendments expire on June 30, 1995.[13]

Judging the Effects of Single-Prime Bidding

Job of the State Building Commission

When the legislature passed the 1989 amendments allowing single-prime contracting, it also set up a mechanism to measure the effect of that change on the cost of contracting for public entities throughout the state, giving the State Construction Office and the State Building Commission responsibility for receiving and reporting on the data collected.

Specifically the 1989 session law required the following agencies to "monitor and study the separate prime and single-prime contract systems":

- State Construction Office of the Department of Administration
- Division of School Planning of the Department of Public Education
- Division of Human Resources
- North Carolina Association of County Commissioners
- North Carolina League of Municipalities
- North Carolina School Boards Association
- North Carolina Hospital Association

The law instructed these entities to compile data on what it called "the total verifiable contractual, legal, and administrative cost" to the public for multi- and single-prime contracts. It directed the commission to develop the necessary forms and procedures to survey public contracts let, and it required public bodies responsible for awarding contracts to supply records and information as directed by the commission. Finally, the law required that the data be compiled and analyzed in a report made to the 1995 General Assembly.

Data Collection and Analysis

The State Construction Office and the State Building Commission developed a survey to study contract costs under the single-prime and multi-prime methods. The commission discussed how best to capture the "total verifiable contractual, legal, and administrative cost" as directed by the General Assembly. The commission sent the first draft of the survey through a review process, asking reporting entities for input and comment.

This process resulted in the development of two separate survey forms and a set of instructions for each. The first form was the individual Public Contract Project Information form (SBC 89-01), which would detail the

history of single- and multi-prime bids received on a project as well as the costs of the contract once awarded. An 89-01 form was to be completed by the *agency awarding the contract* for each building construction project estimated to cost over $100,000.[14] The second form, the Summary of Public Contract Information form (SBC 89-02), was to be completed by each of the *reporting entities* listed in the law.[15] Each reporting entity was to use the 89-02 form to compile data from the 89-01 forms of the agencies within its jurisdiction. Thus, for example, the League of Municipalities would be responsible for completing the 89-02 form for all projects of cities reported on 89-01 forms. The instructions required 89-02 forms to be submitted to the State Construction Office annually.[16]

In addition to preparing 89-01 and 89-02 forms for projects under its own jurisdiction, the State Construction Office collected the 89-02 forms from the responding entities and compiled the 89-02 data in order to prepare interim reports. These interim reports were forwarded to the North Carolina General Assembly's Joint Legislative Commission on Governmental Operations.[17]

In April 1994 the commission solicited proposals from consultants to analyze the data collected on the 89-01 and 89-02 forms. The commission contracted with The University of North Carolina at Chapel Hill to conduct the analysis.[18]

The Data

The consultants first reviewed both the 89-01 and the 89-02 forms. They concluded that the 89-02 forms, which contained the annual summary of 89-01 forms, did not provide the specific data necessary for comparison of the two contracting methods as called for in the legislation. They determined that a more accurate comparison

The State Building Commission

The General Assembly created the State Building Commission in 1987 to develop procedures to direct and guide the state's capital facilities development and management program.[1] The commission's responsibilities include selecting designers for capital improvement projects and architectural and engineering consultants for state projects[2] as well as adopting rules and developing procedures for various aspects of the state construction and design process. The State Construction Office provides staff for the commission and the Department of Administration provides offices.

The commission has nine members. Listed below are the statutory requirements[3] for the makeup of the commission, along with the members presently serving in each position:

1. A licensed architect appointed by the governor:
   Gordon Rutherford, Director, Facility Planning & Design
   The University of North Carolina at Chapel Hill;
2. A registered engineer appointed by the General Assembly upon recommendation of the president of the Senate:
   Robert E. Turner, Professional Engineer;
3. A licensed building contractor appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives:
   Charles T. Wilson, Jr.
   C.T. Wilson Construction Co., Inc.;
4. A licensed electrical contractor appointed by the governor:
   Eugene L. Presley
   Hayes & Lunsford Electrical Contractor, Inc.;
5. A member of the public appointed by the General Assembly upon recommendation of the president of the Senate:
   Carl H. Ricker;
6. A licensed mechanical contractor appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives:
   Benny Hockaday
   Hockaday Heating & Air;
7. An employee of the university system involved in capital facilities development appointed by the governor:
   (position vacant);
8. A member of the public who is knowledgeable in the building construction or maintenance area appointed by the General Assembly upon recommendation of the president of the Senate:
   John Talbot Johnson
   John T. Johnson Construction; and
9. A manager of physical plant operations whose responsibilities are or were in operations and maintenance of physical facilities, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives:
   Jack Colby (Chairman)
   Director, Physical Plant, University of North Carolina at Greensboro.

1. *See generally* G.S. 143, Art. 8B; G.S. 143-135.25.
2. The commission does not make the final selection of designers or consultants for university, community college, or General Assembly projects.
3. *See* G.S. 143.25(c).

would result from analyzing the original data from the 89-01 forms.

According to records compiled by the State Construction Office, a total of 1,137 89-01 forms were filled out by contracting agencies for projects undertaken between June 28, 1989 (the date the legislation was enacted), and June 30, 1994 (the cutoff date for analysis of data).[19] However, the consultants were able to obtain only 1,044 of these. Of the forms obtained, 64 were duplicates, 114 were from organizations that did not construct any projects within the scope of the statute, and 85 were grossly incomplete or contained information that was contradictory. The cost data for these 263 forms was judged unusable. Forty-five of these otherwise unusable forms contained adequate data about time, however, and could be used in that portion of the analysis.

Some forms described projects that required only one construction discipline. For example, the replacement of a heating and cooling system on a public building, no matter how large, might be reported as a contract for HVAC work on an 89-01 form. Because the project involved only one category of work, multi-prime bidding on this project would have been impossible. It could be misleading, however, to count such a project as single-prime, even though it involves only one contract. This kind of project simply does not allow comparison between the single- and multi-prime methods. Data from 368 such single-discipline projects were for the most part judged unusable.[20]

In all, 413 89-01 forms contained usable cost data. Unless otherwise noted, the analysis and conclusions are based on the 413 projects detailed on these forms.

The consultants conducted a number of interviews with state and local government employees, both in person and by telephone, to check the reliability of information contained on the 89-01 forms and to learn what procedures were used to complete them. In particular, the consultants wanted to know how these employees' organizations calculated legal and administrative cost information supplied on the 89-01 forms.

The interviews were particularly valuable in one respect. More than 90 percent of the organizations submitting a form reported zero legal or administrative costs. The interviews disclosed, however, that this was mostly because the government employees weren't sure how to compute these costs in a way that could be verified or backed up by written records. Many of those interviewed said there were costs but listed none because they were hard to attribute or document. Although the consultants interviewed only a very small number of organizations submitting data, the consultants felt the responses were representative of the broad experience of public organizations completing forms.[21]

Finally the consultants noted that the requirements of G.S. 143-128 resulted in a built-in asymmetry in the data: There were many more multi-prime than single-prime contracts available for study. Under the law, projects *must always* be bid multi-prime but *may also* be bid single-prime at the option of the governmental unit bidding the project. Since, according to the data, sets of multi-prime bids constituted the "lowest responsible" bid three-quarters of the time, there were relatively few single-prime contracts to use for comparison of contract cost and time data. The consultants compared the data that was available and offered information and interpretation supported by that data, but the results should be viewed in light of the fundamental asymmetry of data resulting from the procedure mandated by law.

How Multi-Prime and Single-Prime Compared

The consultants compared projects on five separate bases: (1) time to completion, (2) bid prices, (3) cost per square foot, (4) administrative costs, and (5) change orders. In each case, the goal of the analysis was to compare information on the surveys and identify differences between the multi-prime and single-prime forms of contracting. Following is a summary of the conclusions drawn from the data collected in the 89-01 forms.

Time to completion. There appeared to be no statistically significant difference between the single- and multi-prime contracting forms in time to completion. However, many projects take much longer than the initial contract time to complete. Looking just at "late" projects, multi-primes had a longer average time to completion. That is, in projects where there were significant difficulties or delays, the delays for multi-prime projects were more than a month longer than those for single-prime.

Bid prices. Overall, more than three-quarters of the projects analyzed were won by multi-prime contractors. Of those projects that were bid both ways, the same three-quarters proportion holds, with the lowest responsible bid coming from a set of multi-primes 76 percent of the time. The average difference in the lowest bid prices for the two types of contracts (on projects bid both ways), however, was fairly small: about $15,000, or less than 1.6 percent of mean project cost.

Cost per square foot. Excluding administrative, legal, and other post-contractual costs, there was no evidence of any difference between cost per square foot for single-

and multi-prime contracts overall. These results also held true when comparing costs for structures of a similar type.

Administrative costs. The consultants found significant problems in interpreting "verifiable administrative costs" data on the survey forms. Interviews with a number of organizations that filled out the forms, and comparison of the data for similar projects, indicated that no statistically reliable conclusions on administrative costs could be drawn from the survey data.

Change orders. The consultants found no substantive differences between the pattern of change orders on single- and multi-prime projects, except for those differences by definition associated with the form of contracting. Change orders on single-prime projects were larger, on average; change orders on multi-prime projects were more numerous. A revision in a single-prime project may be larger, however, precisely because there is just one contract; a revision for a multi-prime project will require more changes just because there are more contracts.

Changes for the General Assembly to Consider

Development of Alternative Methods of Contracting

After considering the data analysis prepared by the consultants, the commission invited each of the agencies that submitted surveys, along with representatives from professional organizations involved in public contracting, to address the commission on this issue.[22] The commission devoted several meetings in the fall of 1994 to a wide-ranging discussion about public contracting in North Carolina. With the assistance of a facilitator, the commission worked to develop recommendations that would be useful to the General Assembly as it considered this issue in the upcoming legislative session. During these meetings, the commission used the "ground rules for effective groups" developed by Institute of Government faculty member Roger M. Schwarz.[23] By following these ground rules, which include "focus on interests rather than positions" and "make decisions by consensus,"[24] the commission was able to identify the underlying issues of concern to all those involved in the construction contracting process, to explore numerous options for public contracting, and to relate each option to the identified issues of concern.

Some of the members of the commission voiced strong support for use of a multi-prime-only method, while others favored a single-prime-only method; the group reached no consensus to favor either of these two options. However, commission members did find four alternative methods of contracting worthy of consideration by the General Assembly and made several other more general recommendations regarding the contracting process.

Overriding Issues

The commission members identified three main issues of concern for all participants in the contracting process. These issues are (1) ensuring project control, (2) eliminating bid shopping, and (3) facilitating prompt payment of contractors.

The commission members felt that prompt payment of contractors is an issue of overriding concern under all methods of contracting used. They noted that late payment is less of a problem for traditional prime contractors (HVAC, plumbing, electrical, and general) than it is for subcontractors who provide materials or labor to the project through the traditional primes. While the law currently contains provisions for payment of subcontractors,[25] commission members felt that the existing law should be strengthened.

Four Alternative Contracting Methods

The commission identified four alternative methods of contracting that address the issues described above in various ways. In addition the commission agreed that the project cost threshold above which the mandatory procedure would apply should be increased for each of the methods listed below. The commissioners did not agree on a threshold amount for each method but did agree that the threshold should be no less than $300,000 for project cost and that the threshold amount for merging contracts should be no less than $30,000.

For each method, this section lists (1) the major components, (2) a brief description of those components, and (3) how the issues of concern identified by the commission would be addressed by the alternative method.

Method 1

Major Components

- Strengthen subcontractor listing requirements.
- Add provisions for a project expediter.
- Increase dollar threshold for multi-prime requirement.
- Increase dollar amount of contracts that can be merged.

Description

This method would retain the basic structure of the current multi-prime system and would increase the dollar threshold above which the mandatory multi-prime requirement would apply. Below the new dollar threshold, the choice of contracting method would be left to the unit, as under current law.[26] For contracts over $300,000, the multi-prime system would be mandatory, but units would have the option of using single-prime contracting in addition to multi-prime. When using the single-prime method, bidders would still be required to list the contractors they have selected for each of the areas of work currently listed in the statute (HVAC, plumbing, electrical, and general). However, the commission recommended that the general contractor be required under this method to use the contractors listed unless a substitution is approved by the unit.

For multi-prime contracts over the dollar threshold, the commission recommended adding a provision allowing the unit to assign to one contractor the role of *project expediter*. The project expediter would receive payment requests and would be required to approve them within a set period of time. If, however, the expediter deemed the schedule (but not the quality) of work to be unacceptable, the expediter could delay approval of payment by filing a documented objection.

Issues Addressed

The commission felt that this method would eliminate the multi-prime requirement for projects that are too small to justify the use of that system and would increase participation by small and minority businesses who would participate in contracts as subcontractors rather than prime contractors. Requiring contractors to use listed subcontractors would reduce bid shopping. The project expediter provisions would facilitate prompt payment as well as allowing for more project control and more timely completion of construction.

Method 2

Major Components

- Receive single-prime bids.
- Award multi-prime contracts.
- Increase dollar threshold for multi-prime requirement.
- Increase dollar amount of contracts that can be merged.

Description

In Method 2, single-prime contractors would submit bids listing the subcontractors they would use along with the prices each subcontractor would charge. Once the successful bidder was chosen, separate contracts would be awarded to each of the contractors listed in the bid in the categories listed in the current law (HVAC, plumbing, electrical, and general). Liquidated damages would be assessed to all contractors in proportion to their percentage of the total cost of the project. In all other respects, the project would function as a multi-prime contract from the point that contracts were awarded.

Issues Addressed

Under the present system, contractors do not choose to work together but are chosen based on being the lowest responsible bidder in their area of work. Method 2 would avoid the problems resulting from "bid day marriages" that occur under the present multi-prime system. Project control would be improved based on the assumption that contractors who have chosen to work together will get along better on the job. Bid shopping would be reduced because the separate contracts lock in the subcontractor bid amounts and all of the subcontractor bids would be public. In this situation the unit might be tempted to encourage the successful bidders to meet lower subcontractor bids that were not part of the overall low bid, but there would be no legal obligation for a successful contractor to do so. Finally this method addresses prompt payment concerns since payment is made by the unit directly rather than through the general contractor.

Method 3

Major Components

- Receive multi-prime bids early.
- Award single-prime contracts.
- General contractor may choose subcontractors.
- Subcontractors may decline.
- Increase dollar threshold for multi-prime requirement.
- Increase dollar amount of contracts that can be merged.

Description

This method might be considered the opposite of Method 2. Rather than receiving single-prime bids and awarding multi-prime contracts, under this method bids would be received on a multi-prime basis and awarded on a single-prime basis. Subcontractors for HVAC, plumbing, and electrical would submit bids before the general contractors submit theirs. General contractors

would then choose from among the subcontractor bids received. Subcontractors could decline offers from general contractors with whom they prefer not to work. General contractors would then submit bids for the entire project, and contracts would be awarded on a single-prime basis.

Issues Addressed

Method 3 reduces bid shopping, because all subcontractor bids would be established and made public before opening and awarding bids for general contractors. It also enhances project control since there would be a single contract and contractors would agree to work together on their own rather than being matched on bid day.

Method 4

Major Components

- Prebid multi-prime contracts.
- Assign lowest multi-prime bids to general contractors.
- Award contracts on a single-prime basis.
- Increase dollar threshold for multi-prime requirement.
- Increase dollar amount of contracts that can be merged.

Description

Under Method 4, "prebids" for the HVAC, plumbing, and electrical work would be received and opened, and the lowest responsible bidders in each category would be determined before opening final bids. General contractors wishing to bid would be notified of the successful subcontractor bids and bid amounts, and would be required to use these bidders in preparing their single-prime bids. Contracts would then be awarded on a single-prime basis.

Issues Addressed

The single contract system used in Method 4 would improve project control. This method would also eliminate bid shopping, because the subcontractors would be identified through the prebid process.

Methods Rejected as Inappropriate

The commission members agreed that public construction contracts should be let using a public, competitive bidding process. As such, the commission determined that certain methods of contracting are not consistent with this goal. Specifically, the commission members recommended against the use of the following:

1. design-build (single contract for design and construction in which construction contracts are not separately competitively bid);
2. cost-plus or similar systems (including fixed fee, or cost-plus with a guaranteed maximum) in which there is no bidding process that results in a set contract amount for the project; and
3. construction management, in which the unit contracts with a third party (other than the contractor or design professional on the project) to manage the project on behalf of the unit.

In addition, the commission felt that local acts exempting particular units of government from the bidding requirements should be discouraged.

Conclusion

The State Building Commission's report does not answer the question: Which contracting method is best? It is equally clear that the data collected over the past five years and the analysis of that data as set forth in the commission report do not conclusively answer and will not lay to rest the question of which method of contracting is most cost effective. However, the approach taken by the commission during its discussion of contracting methods allowed that body to identify many of the underlying issues that arise in the construction contracting process and to reach consensus on possible solutions to some of these problems. Other issues, including fairness, ease of administration, and access to contracts by various sectors of the contracting community, will no doubt be debated if the legislature takes up this issue.[27]

Notes

1. The terms *multi-prime*, *multiple prime*, and *separate prime* all have the same meaning: a method of contracting for construction in which the unit awards separate contracts for specific categories of work, as opposed to the single-prime method, in which the unit awards a single contract to a general contractor, who then subcontracts the specialty work to other contractors.
2. 1989 N.C. Sess. Laws ch. 480, § 1.
3. N.C. Gen. Stat. 143-128(b) (hereinafter G.S.).
4. 1989 Sess. Laws ch. 480, § 3.
5. Frayda Bluestein, "Single- and Multi-Prime Contracting in North Carolina Public Construction: 1989–1994: A Report to the North Carolina General Assembly." This report, including numerous appendixes, is on file in the North Carolina Department of Administration, State Construction Office, in Raleigh.
6. In 1929 the law was amended to make multi-prime contracting optional rather than mandatory (*see* 1929 N.C. Sess.

Laws ch. 46), but this action was repealed in the 1931 session, returning the law to its original, mandatory form (1931 N.C. Sess. Laws ch. 46).

7. G.S. 143-128(a).

8. For a more detailed explanation of the law, *see* A. Fleming Bell, II, "Bidding on Buildings: The Requirements of G.S. 143-128," *Popular Government* 56 (Winter 1991): 26–30.

9. G.S. 143-132 was also amended to define when the three-bid requirement contained in that statute has been met in cases where bids are received on a multi-prime and single-prime basis. *See* G.S. 143-132(b). The State Building Commission has produced guidelines for opening bids under the law as amended. The guidelines are available from the State Construction Office.

10. For a more thorough discussion of minority- and women-owned business enterprise program requirements for North Carolina local governments, *see* Frayda S. Bluestein, "Local Government Minority- and Women-Owned Business Programs: Questions and Answers," *Popular Government* 59 (Spring 1994): 19–26.

11. The statute includes blacks, Hispanics, Asians, American Indians or Alaskan natives, and females in its definition of "minority persons."

12. The law does not establish a set-aside or quota and does not require that the goals actually be met, only that good faith efforts be made. The statute does not specify whether the good faith efforts must be made by the unit, the bidders, or both. It is usually interpreted to apply to both.

13. 1989 N.C. Sess. Laws ch. 480, § 4.

14. For state agencies, "state buildings" are defined in G.S. 143-336 as including buildings, utilities, and other property developments, but not including the State Legislative Building, railroads, highway structures, bridge structures, and projects owned by the N.C. Air Cargo Airport Authority. This definition does not govern projects by local governments, which generally apply the statute only to vertical construction, that is, to repair or construction of buildings. Therefore, state agencies' surveys covered a broader scope of projects than those of local governments.

15. Although the law listed seven reporting agencies, only six reported. This is because the Division of School Planning and the School Boards Association are responsible for the same set of contracting agencies and projects, and these projects were reported only once.

16. The first reporting period covered from June 28, 1989 (the date of enactment of the law), to December 31, 1990, and included all projects for which contracts were awarded and final contract completion was achieved during that time. For each subsequent year the period ran from January through December, with reports due by January 31 of the following year. The State Building Commission determined that it was not necessary to continue receiving reports after the data analysis was begun, since the data they contained could not be included in the analysis after that point. Therefore agencies were instructed not to complete surveys for projects completed after June 30, 1994.

17. Interim reports were submitted in May 1991, April 1992, and May 1993.

18. The contract was performed by Michael Munger, Department of Political Science, and Frayda S. Bluestein, Institute of Government, The University of North Carolina at Chapel Hill.

19. There is no way to know how many projects were completed during this period that were subject to G.S. 143-128 but for which no form was completed.

20. These projects were included, however, in the "time to completion" analysis.

21. The forms completed by the State Construction Office do reflect that agency's allocation of administrative and legal costs for each project.

22. A list of organizations invited and of those appearing before the commission, along with their written statements, is contained in Appendixes E and F of Frayda Bluestein, "Single- and Multi-Prime Contracting in North Carolina Public Construction: 1989–1994," A Report to the North Carolina State Building Commission.

23. *See* Roger M. Schwarz, "Groundrules for Effective Groups," *Popular Government* 54 (Spring 1989): 25–30.

24. Schwarz, "Groundrules," rule numbers 4 and 15, respectively.

25. *See* G.S. 143-134.1.

26. Of course the requirements for formal competitive bidding, which are contained in a different statute, G.S. 143-129, would not be affected by the changes in contracting method.

27. Given the number of local and state agencies affected by G.S. 143-128, it is difficult to imagine that the issue would not be taken up during this legislative session. However, the sunset provision in the current law does not *require* any action by the General Assembly. If no action is taken, the single-prime option and minority business enterprise provisions enacted in 1989 will simply expire. ❖

What Do Citizens Really Want? Developing a Public-Sector Model of Service Quality

Margaret S. Carlson and Roger M. Schwarz

Citizens increasingly demand that government deliver high-quality service. They want trash collection, water billing, and streetlight repair to be quick and reliable and provided to them fairly and conveniently. The government organizations that provide those services do not generally compete directly with the bank and the dry cleaner, but they do compete in another way: in *how* they deliver their services. For example, citizens compare the quality of service they can get from a private business with the quality of service they get from the register of deeds or the health department.[1] Citizens who routinely pay for private services with credit cards or have their home mortgage automatically paid from their checking account may wonder why they cannot pay their sewer bill the same way.

As citizens' expectations for high-quality service rise, a gap may open—or widen—between those expectations and the services that government agencies actually provide. That gap is a problem for governmental officials. To close it, they can either improve service quality or change citizens' expectations about what constitutes quality service.

The authors, both organizational psychologists, are Institute of Government faculty members. Carlson's areas of specialization include organizational development and performance evaluation; Schwarz's include organizational change and conflict. *They wish to thank research assistant David Currey for his help in preparing and analyzing the data used in this article.*

Members of the Lincoln County Tax Mapping Office assist county citizens.

Courtesy Lincoln County Office of County Manager

But before they can close the gap, many government organizations must face a more basic problem—they have no systematic way of knowing either the quality of service that citizens expect or the quality of service that citizens believe they are currently receiving. When public officials try to improve service quality without this information, they may waste money or take unnecessary risks and still fail to improve service quality. They must make assumptions about citizens' perceptions of service quality, and the assumptions may be wrong.

Consider, for example, a city government that expands parking at town hall assuming it will increase convenience for citizens. But with an effective way of learning its citizens' needs and expectations, the city might instead have built a drive-through window so that citizens could transact simple business without having to leave their cars. Or, it might have set up automatic teller machines in the local mall or supermarkets, so that citizens could make transactions at a location they normally frequent. Without a systematic way to find out how citizens rate the quality of service they expect and receive, public officials are like navigators who do not know their destination, or the direction and distance they must travel to reach it.

The Need for a Public-Sector Approach

As government organizations have sought ways to find out how citizens rate the quality of service they receive, they have turned with some success to private-sector approaches. Many aspects of service that are important to private-sector customers are also important to government citizens. Whether consumers are paying a credit card bill or a property tax bill, they expect the bill to be accurate. Whether they are going to a private doctor's office or to a public health clinic, they expect to be treated courteously, receive personal attention, and not have to wait a long time.

But private- and public-sector organizations differ in ways that may affect how service quality is measured. First, the nature of services provided is generally different. Although private-sector organizations aim to please those who directly consume their services, government often provides services that are designed to benefit both the individual who consumes them directly and the general public that experiences some kind of indirect effect. For example, providing primary education benefits not only the children who are educated but also the larger community that will depend on these children to eventually contribute to the community. Consequently, for services that benefit the community at large, the decision to pay for a particular service is made on a jurisdiction-wide, rather than an individual, basis.

Second, because the purposes of government and business differ, some of the factors that determine the quality of service may be weighed differently in the public and private sectors. Consider the concept of fairness. Voters expect that the supervisor of elections will treat them fairly compared to one another, but shoppers may have a lower expectation that the used car dealer will treat them fairly compared to one another. Private-sector organizations must, of course, be concerned with fairness at least at some minimal level to avoid discrimination lawsuits, but the issue is more central to the question of service quality in the public sector, where the relationship between how much people pay and the services they receive is seldom direct and where funds and benefits are allocated not by a market mechanism but by public-policy decisions.

Third, the relationship between governments and their citizens is different from the relationship between private-sector organizations and their customers. Typically, customers are not concerned about whether their supermarket spends its money wisely to provide its products and services (unless the customer is also a shareholder). However, in democracies citizens are by definition "shareholders" as well as consumers. They are concerned about whether their government delivers services in a fiscally responsible manner. And they pay not only for the services they use directly but also for services that contribute to the public good.

Finally, citizens expect to be able to influence how the government offers services. Citizens contact elected or appointed officials, speak at board meetings, are appointed to committees, and even run for office. In contrast, private-sector customers do not usually expect a local bank or car dealer to involve them in their internal business dealings.

Because of these differences, when government organizations seek to find out how citizens rate the quality of service they receive, governments must use a specially designed tool, rather than simply borrow a market research tool from the private sector.

The Need for a Conceptual Approach

The Limitations of a General Approach

Some public-sector organizations try to assess the quality of their services by asking citizens how satisfied they are in general with various services. A city might ask citi-

zens to indicate levels of satisfaction with police services, or a county might ask about services provided by the sheriff's department. The state department of motor vehicles might ask citizens to rate how satisfied they are with the process for renewing driver's licenses. Unfortunately, these general assessments of quality do not specify what aspect of the service the citizens are dissatisfied (or satisfied) with. Consequently, the organization may not know what to change to raise low ratings.

The Limitations of the Specific Approach

Other public organizations measure service quality by asking citizens specific questions about particular services. A city might ask citizens how well its ballfields are lighted or how often citizens' trash is collected late or not at all. These more specific measures provide organizations with the kind of information they need to improve their services. But they have several limitations. First, because the measures are specific to a given department, organizations cannot compare service quality across departments. Second, this approach limits a department's ability to compare the quality of a service after it has been changed. Asking people how long they had to wait in line to obtain a dog license becomes irrelevant when citizens can dial into a computerized system or use their computer and modem to apply for the license.

Because neither general nor specific approaches to measuring service quality ask citizens what level of service they expect in order to be satisfied, the approaches assume that citizens expect government services to be delivered at the top of the scale. Yet private-sector research suggests that citizens do not expect the highest level of service possible in every regard.[2] Understanding what level of service quality citizens expect is critical; it provides a goal for government and helps avoid allocating resources to improve quality in areas where citizens' expectations are already being met.

The Principles of a Conceptual Approach

The conceptual approach to measuring service quality described in this article attempts to address the drawbacks described above. It is based on several premises.

First, service quality is a multidimensional concept: When citizens evaluate the quality of a government service, they make several evaluations, such as whether the service is convenient to use, is performed accurately or reliably, and is performed courteously. We assume that these dimensions are stable. That is, over time citizens use the same set of dimensions to evaluate the quality of government services.

Second, we assume that the same set of dimensions can be used to evaluate different government services. Citizens can evaluate how courteously services were delivered in the health, police, or parks and recreation departments. They can evaluate the fairness of services provided by the library, planning department, or public works department.

And third, for each of the dimensions of quality, citizens can distinguish between the quality of service they expect in order to be satisfied and the quality of service they are actually receiving. Governments provide quality service by closing the gap between the levels of service citizens expect and the levels of service they receive.[3]

The Conceptual Approach in Practice

We have put the conceptual approach to work as part of a long-term organizational change project with the government of Lincoln County, North Carolina. The project goal is to improve the quality of service delivered to county citizens. The project has two general phases: In the first phase, we collected information from county government employees and citizens to identify the gap between people's perceptions of the current level of service provided by the government and what citizens expect in order to be satisfied. The identified gap reveals areas that need improvement. In the second phase, this information will be used to make changes to improve service quality. These changes, proposed and implemented by employee teams, may include new methods for coordinating services of different departments, restructuring work within a department, or providing additional training for employees so that they have the information needed to respond to a citizen's request. The first phase of the project has been completed. In the remainder of this article, we will describe this first phase: the development of the survey instrument, the data collection procedure, and the preliminary results of the survey.

Development of the Survey Instrument

Our first goal was to create a survey instrument that would (1) accurately describe the dimensions of service quality in the county government and (2) allow the county to collect citizen and employee perceptions of how it was doing on these dimensions. In our review of the literature on private- and public-sector management,

we did not find an existing survey instrument that fit our goals; therefore, we had to develop our own. We did so in three steps.

First, we searched the service quality literature to identify concepts and measures that might be relevant. We adopted as a starting point one private sector–based survey instrument[4] that had several advantages over other models: It had been empirically tested in a wide variety of organizations; it could be administered easily; and it allowed an organization to measure a number of "gaps" in service quality (e.g., gaps between what customers expected and what they believed they received, gaps between what customers expected and what employees thought customers expected).

Next, we asked a group of fourteen county government employees that constituted the steering committee for this project to respond to the question, "What are all the things citizens expect when they say they expect quality service from the county?" Steering committee members wrote answers to this question on cards, which the group then sorted into categories representing various elements of service quality. The steering committee also reviewed the private-sector survey instrument and identified which of its items were relevant for assessing quality in a local government organization.

Our third step in developing the survey instrument was to conduct three focus groups of approximately ten county citizens each. We asked citizens to identify times when they had received very good service and very poor service from the county government. Participants shared their experiences, and a focus group facilitator asked follow-up questions to clarify the elements of service with which citizens were either satisfied or dissatisfied.

For example, a citizen described an interaction with the planning department in which he felt he had received very good service. The employee had helped him solve his problem rather than merely repeating regulations about property use. Another citizen described an unsatisfactory experience in which she had questioned the amount of a monthly bill and was told, "The computer never makes mistakes." We tape-recorded the focus group sessions and analyzed the content of the discussions to further identify the elements of service quality in local government.

We used the relevant private-sector survey items and developed many new survey items based on our conversations with citizens and steering committee members. As our survey development continued, the steering committee reviewed several versions of the instrument that was ultimately administered to employees and citizens.

The Lincoln County Service-Quality Survey

Combining what we had learned in these three steps, we identified eight dimensions of public-sector service quality and designed a survey instrument to measure them (see Figure 1, page 30):

1. *Convenience* measures the degree to which government services are easily accessible and available to citizens.
2. *Security* measures the degree to which services are provided in a way that makes citizens feel safe and confident when using them. This dimension covers psychological as well as physical safety (e.g., citizens can trust that confidentiality is observed when appropriate).
3. *Reliability* assesses the degree to which government services are provided correctly and on time.
4. *Personal Attention* measures the degree to which employees provide services in a way that is polite, courteous, and attentive.
5. *Problem-Solving Approach* measures the degree to which employees provide information to citizens and work with them to help meet their needs.
6. *Fairness* measures the degree to which citizens believe that government services are provided in a way that is equitable to all.
7. *Fiscal Responsibility* measures the degree to which citizens believe the local government is providing services in a way that uses money responsibly.
8. *Citizen Influence* measures the degree to which citizens feel they can influence the quality of service they receive from the local government.

The Data Collection Process

Data for the analyses came from three samples (two citizen samples and one employee sample). First, the survey was administered to 295 employees eligible to take the survey. Of those 295 employees, 273 returned usable surveys for a 93 percent response rate. Second, 500 surveys were mailed randomly to county citizens, who were asked to evaluate overall quality of the county's services. One hundred eighty-seven surveys were returned, yielding a 37 percent response rate. Third, 1,000 surveys were made available to citizens at different county departments, at the time they were receiving service from that department. These respondents were asked to evaluate the quality of the service from the department that provided the survey. Two hundred fifty-three usable surveys were returned, yielding a response rate of 25 percent.

Figure 1. Service-Quality Survey Items

Citizen Survey: *I believe that . . . In order to be satisfied, I expect that . . .*	Employee Survey: *Citizens in Lincoln County believe that . . .*
1. Convenience	
. . . Lincoln County has locations that are convenient to all of its citizens.	
. . . I [they] can find a parking place when I [they] visit a Lincoln County office.	
. . . Lincoln County employees help me [them] without my [their] having to give employees the same information again and again.	
. . . Lincoln County provides services at hours that are convenient to all of its citizens.	
2. Security	
. . . Lincoln County has modern equipment, machines, and tools.	
. . . the physical facilities at Lincoln County look nice.	
. . . I [they] can trust the competence of Lincoln County employees.	
. . . Lincoln County employees have the knowledge to answer my [their] questions.	
. . . I [they] can trust Lincoln County employees to keep confidential information.	
. . . I [they] can feel safe using Lincoln County services.	
. . . I [they] can use Lincoln County services without feeling embarrassed.	
3. Reliability	
. . . when Lincoln County employees promise to do something by a certain time, they will do so.	. . . Lincoln County employees provide their service right the first time.
	. . . Lincoln County keeps up-to-date and accurate records.
	. . . I [they] can get service from Lincoln County without having to wait a long time.
	. . . Lincoln County employees give me [them] different answers to the same question.
4. Personal Attention	
. . . when I [they] have a problem, Lincoln County employees show a sincere interest in solving it.	
. . . Lincoln County employees are always willing to help me [them].	
. . . Lincoln County employees give me [them] personal attention.	
. . . Lincoln County employees are courteous and polite.	
5. Problem-Solving Approach	
. . . when Lincoln County makes a mistake when dealing with me [them], Lincoln County admits it.	
. . . Lincoln County employees tell citizens how long it will take before a service is performed.	
. . . Lincoln County employees tell me [them] what information to bring to Lincoln County offices to help save time.	
. . . Lincoln County employees help me [them] without passing the buck.	. . . Lincoln County employees will work with me [them] to help me [them] solve my [their] problems.
	. . . Lincoln County employees understand my [their] needs.
6. Fairness	
. . . some people get better service than others from Lincoln County employees.	
. . . overall, Lincoln County employees treat all citizens fairly.	
. . . Lincoln County does a good job of meeting the needs of citizens in different parts of the county.	
7. Fiscal Responsibility	
. . . Lincoln County government spends money responsibly.	
. . . Lincoln County government provides its services without wasting money.	
8. Citizen Influence	
. . . Lincoln County employees listen to my [their] suggestions for improving how the county delivers its services.	
. . . voting is the only way I [they] can have any say about how Lincoln County government runs.	
. . . Lincoln County commissioners have my [their] best interests at heart.	

The third sample ensured responses from citizens who had recently used a county service and also made it possible to conduct department-level analyses.

Employee survey. County government employees[5] were asked to respond to each item as they believed citizens would respond, *not* as how they would respond personally as an employee. Each item begins with the phrase "Citizens in Lincoln County believe that . . ." and ends with a statement measuring some aspect of service quality. For example, employees were asked to respond to the statement, "Citizens in Lincoln County believe that Lincoln County has locations that are convenient to all of its citizens." Response scales for each item are on a five-point scale ranging from "strongly agree" (5) to "strongly disagree" (1).

Citizen survey. The citizens' version of the survey instrument was slightly different, although it included the same basic measures of service quality. In the citizen version, citizens were first asked to give their perceptions of the quality of service actually provided by the county

government. Each item in this section of the survey begins with the phrase, "I believe that . . . " For example, one item states, "I believe that I can get service from Lincoln County without having to wait a long time." In the next section, citizens were asked to describe the level of service they would *expect* in order to be satisfied. All the service-quality items are the same as before, but now the opening phrase reads, "In order to be satisfied, I expect that . . . " For example, "In order to be satisfied, I expect that I can get service from Lincoln County without having to wait a long time." As in the employee survey, all items are rated on a five-point scale ranging from "strongly agree" (5) to "strongly disagree" (1).

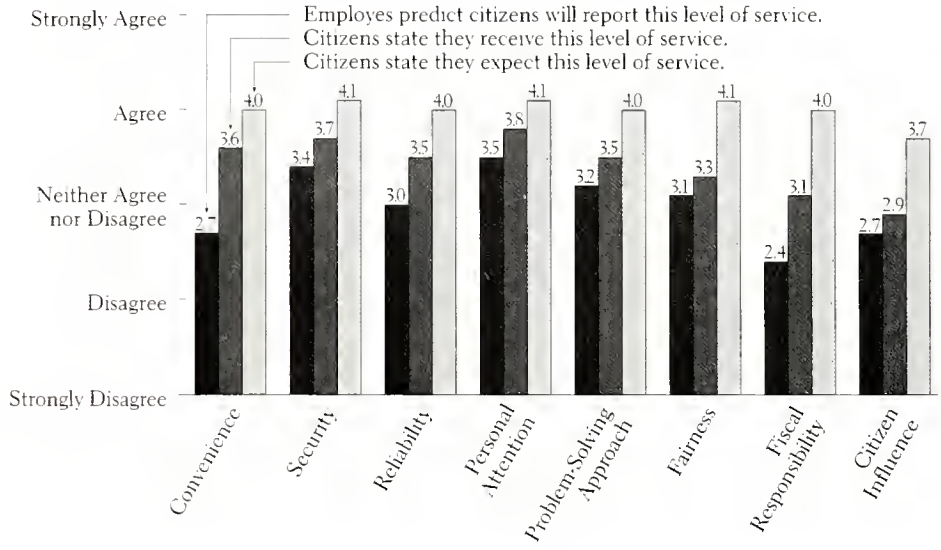
Measuring the gaps. By asking citizens to assess the level of service they are currently receiving as well as what level they expect in order to be satisfied, it is possible to measure the perceived *gap* in service quality. In addition, by asking employees to predict how citizens will respond, it is possible to measure the gap between citizens' perceptions of service and employees' awareness of these perceptions. Taken together, these three measures—what citizens believe they are currently receiving in the way of service, what citizens expect in order to be satisfied, and what employees predict citizens will say—give a useful picture of perceptions of service quality in Lincoln County.

Finally, we thought it was important to determine which dimensions of service quality mattered most to citizens. This information enables a local government to make an informed decision about where to focus a change effort. For example, it may be that citizens give the local government only average marks for "convenience," but if they also report that this dimension of service quality isn't particularly important to them, the jurisdiction may decide that resources should be allocated to make changes in other more important areas. On the other hand, if citizens perceive that the level of "personal attention" they receive from employees is insufficient, and they also say that this dimension of service is very important to them, the local government may determine that this is a key area to improve, since the increase in citizen satisfaction may be great.

In order to assess this in the survey, we asked respondents to rate the importance of each of the eight dimensions of service quality on a ten-point response scale ranging from "not at all important" (0) to "extremely important" (10). In addition, respondents were asked to rate which of the eight features was (1) *most* important, (2) *second* most important, (3) *third* most important, and (4) *least* important to them. Both citizens and employees completed this section of the survey, so it is possible to compare the potential gap between what citizens perceive as most important and employees' awareness of these perceptions.

Figure 2
How Lincoln County Citizens and Employees Rate Dimensions of Government Services

Each dimension is represented by an *index* score; that is, the ratings for all of the items that make up a given dimension are added and divided by the number of items in the dimension to yield an average score that is represented as an index.

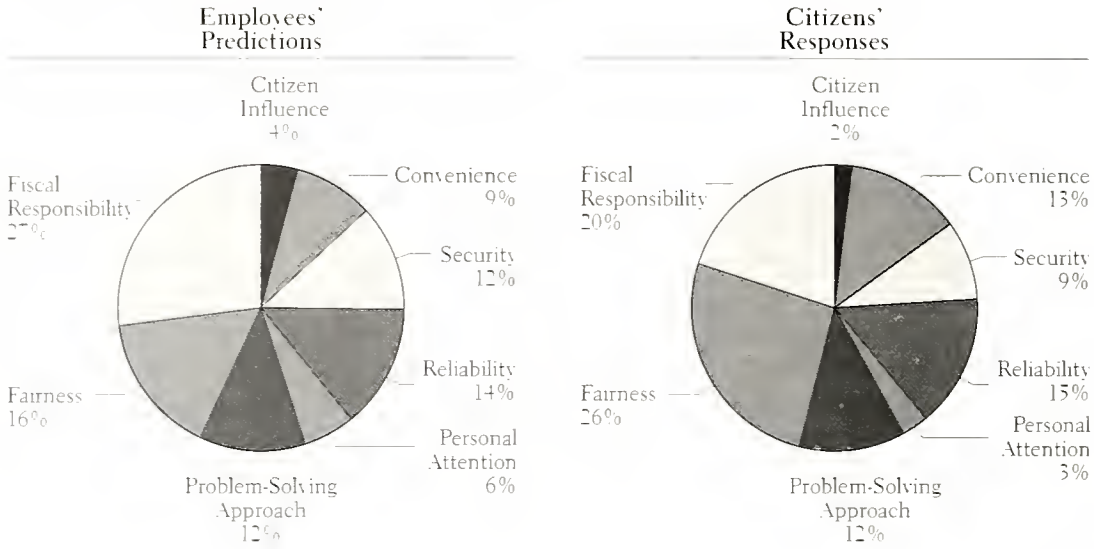


The Lincoln County Initial Results

Our survey yielded three main results (Figure 2).

- The pattern is the same across all eight dimensions of service quality: Citizens expect a higher level of service than they believe they are currently receiving, but they also report that they receive a higher level of service than employees thought they would say.
- Citizens did not simply use the "top of the scale" (i.e., a 5 on a five-point scale) as their anchor for expectations; it appears they thought about what they would reasonably expect in order to be satisfied, and this did not mean that service needed to be perfect.
- The three dimensions in which citizens were least

Figure 3
The Aspects of Government Services Most Important to Citizens in Lincoln County



satisfied (also the dimensions with the biggest gap between what citizens receive and what they expect) were citizen influence, fairness, and fiscal responsibility. Two of these three dimensions—fairness and fiscal responsibility—were also identified as the aspects of service that were *most important* to a large percentage of citizens (see Figure 3). When these two pieces of information are combined, they send a clear message about where the local government may best focus its efforts to improve services. By contrast, the dimension of citizen influence received the lowest average rating of all eight service dimensions, but it was also least likely to be rated "most important" by citizens (only 2 percent listed it as the most important factor). The employees' responses show that employees predicted accurately that fairness and fiscal responsibility would be most important to citizens, although they reversed the order of the two dimensions.

Implications

Employees consistently *under*estimated citizens' perceptions of current service quality. What is a possible explanation for this? It may be that employees develop a negatively skewed view of citizens' perceptions of local government because, in the absence of any systematic means to measure citizen satisfaction, employees rely on face-to-face feedback or anecdotal information. Many public and private organizations have found that customers are more likely to complain than to give positive feedback. Thus it may be easy for employees to recall incidents in which a citizen complained about a service while failing to consider that the majority of customers walked away satisfied but silent. As a result, employees may conclude that citizens hold a more negative view of government services than they actually do.

The results of this survey illustrate the need to assess the gap between how customers feel about the service they currently receive and their expectations for that service before a local government makes changes. Frequently, local governments have responded to feedback from a small number of citizens, only to discover that these individuals did not represent the wishes and interests of the majority of people served by the government.

We hope that eventually our Lincoln County survey instrument will serve as a model that can be easily modified to enable other local governments to conduct systematic assessments of citizen views, rather than responding to a few individuals or "guessing" what their customers want. It provides a guide for managers seeking to improve the quality of government services. Local governments can redesign the way they deliver services by paying attention to the service dimensions for which there are large gaps, or by examining which services citizens say are most important. For public officials who are

skeptical about whether local governments can ever meet or exceed citizens' expectations, our results may give them some reason for optimism—the results from individual departments in Lincoln County showed that, in some cases, citizens actually received better service than they expected in order to be satisfied.

This research represents our first attempt to develop a public-sector model of assessing service quality. We believe that this study, based on one county government, has yielded interesting and informative results that will help the jurisdiction make changes to improve the quality of service delivered to citizens. However, we want to emphasize that this model is still under development; more analyses—and more surveys in other local governments—are required to determine whether the eight dimensions of service quality we have identified reflect accurately citizens' perceptions of public-sector service quality.

Notes

1. Russell M. Linden, *Seamless Government: A Practical Guide to Re-engineering in the Public Sector* (San Francisco: Jossey-Bass, 1994).

2. Leonard L. Berry, A. Parasuraman, and Valarie A. Zeithaml, "Improving Service Quality in America: Lessons Learned," *The Academy of Management Executives* 8, no. 2 (May 1994): 32–45.

3. Valarie A. Zeithaml, A. Parasuraman, and Leonard L. Berry, *Delivering Quality Service: Balancing Customer Perceptions and Expectations* (New York: The Free Press, 1990).

4. A. Parasuraman, Valarie A. Zeithaml, and Leonard L. Berry, "SERVQUAL: A Multiple-item Scale for Measuring Customer Perceptions of Service Quality," *Journal of Retailing* 64, no. 1 (Spring 1988): 12–40.

5. Full-time county employees whose departments participated in this project responded to these items as part of a larger organizational survey that measured their perceptions of many aspects of their work, including communication, coordination, decision making, and supervision. ❖

Governmental Exceptions to Bankruptcy's Automatic Stay

Hope A. Root

Example One. *Raintight Roofing fixes the roof at Everclean Dry Cleaners and sends a bill for $2,400. Everclean refuses to pay. Raintight files a suit in state court, and Everclean files a bankruptcy petition in federal court. For the time being, Raintight is out of luck, its lawsuit is halted. Once a debtor files a bankruptcy petition, the bankruptcy law prohibits anyone from starting or continuing an action against the debtor that was or could have been started before the bankruptcy petition was filed. This provision is known as the automatic stay.*

Example Two. *An old gas station is dangerous to the public and violates several sections of the housing code ordinance. The city orders the owner to demolish the building. When the owner refuses, the city exercises its authority under the ordinance and demolishes the building itself. The city is just about to begin an action under the ordinance for reimbursement of the demolition costs—and for civil penalties for the period of time that the property was not in compliance—when the owner files a petition in bankruptcy. The owner then asserts that the bankruptcy automatic stay prevents the city from seeking the reimbursement or the penalties. Is the owner correct?*

Local government officials are often faced with a decision of how to handle enforcement actions when an individual or company has filed a petition in bankruptcy. Regardless of what type of bankruptcy is filed, the debtor[1] will usually assert bankruptcy's automatic stay as a shield to governmental action. In fact, often a debtor will file bankruptcy for the sole purpose of stopping the government from enforcing zoning ordinances, housing codes, public nuisance laws, licensing procedures, environmental laws (such as reclamation work, sedimentation control measures, water quality statutes, and a host of others), and other proceedings designed to protect the public health and welfare.

This article addresses when and how a governmental entity can proceed against a debtor in actions of these types[2] in light of bankruptcy's automatic stay, gives examples in which these issues may arise, and suggests procedures for considering and implementing actions against various debtors.

The Automatic Stay and Its Exceptions

When an individual or company files a petition in bankruptcy—like Everclean in example one—the United States Bankruptcy Code protects the debtor's assets by prohibiting anyone from starting or continuing an action against the debtor[3] or from taking possession of or exercising control over any property that is part of the debtor's bankruptcy estate.[4] This way, the debtor's assets are preserved for the benefit of all creditors. Raintight cannot go after the $2,400 owed to it by Everclean in a separate lawsuit. Its claim must be adjudicated in the bankruptcy proceeding along with any other claims by Everclean's creditors.

But the automatic stay does not prevent every possible lawsuit against a debtor who has filed a bankruptcy petition. There are, in fact, eleven exceptions to the automatic stay,[5] two of which apply to governmental units[6] such as the city in example two. The main governmental exception provides that the automatic stay does not operate for "the commencement or continuation of an action or proceeding by a governmental unit to enforce such unit's police or regulatory powers."[7] At first blush, it would appear from this provision that the automatic

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stay does not apply to any action involving police or regulatory powers exercised by the government against a debtor in bankruptcy. That exception is limited, though, by another Bankruptcy Code section, often called the "exception within the exception," which states that the automatic stay does not operate to stop an action or proceeding by a governmental unit—using its police or regulatory power—to enforce a judgment "other than a money judgment."[8]

These two governmental exceptions to the automatic stay, considered together, create the following standard: A governmental unit may implement or continue an action against a debtor in bankruptcy as long as that action is one of enforcement of police or regulatory powers and does not constitute an action for enforcement of a money judgment. As courts have applied this standard, they have recognized that it may constitute an exception to the normal goal of the bankruptcy proceeding, which is to preserve the debtor's estate for the benefit of creditors.[9] In effect, this standard confirms that bankruptcy is not intended to "provide an automatic mechanism for relieving property owners of the unpleasant effects of valid local laws embodying police and regulatory powers."[10]

When governmental officials are faced with the issue of deciding whether bankruptcy's automatic stay bars an action by the government against a particular debtor, they must consider first whether the action is under a police or regulatory power. If the answer is no, the action is stayed. If the answer is yes, does the action itself seek enforcement of a money judgment? If the answer is no, the action may go forward. If the answer is yes, the action is stayed.

What Are Police and Regulatory Powers?

The term "police or regulatory power" is not specifically defined within the automatic stay exception. For guidance, courts[11] have turned to the legislative history of Section 362(b)(4) of the Bankruptcy Code, which describes the exception and is explanatory in nature. The legislative history states:

> Paragraph (4) excepts commencement or continuation of actions and proceedings of governmental units to enforce police or regulatory powers. Thus, where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.[12]

The legislative history suggests, and a review of case law confirms, that the general guideline for determining whether a governmental unit is using its police or regulatory powers is whether the proceeding in question is primarily related to public health and safety.[13]

In the few North Carolina cases that exist on this issue, the courts have not, to date, applied any systematic reasoning in determining whether a particular action was within police or regulatory powers.[14] Instead, courts here (like many other courts across the country) have made the determination on a case-by-case basis considering the totality of the circumstances.[15] For example, in *In re Laurinburg Oil Co.*, a federal bankruptcy judge in North Carolina held that an action in which the government sought an injunction directing a company to restore its waste disposal facility to a condition where it would not violate pollution and public nuisance laws was one "within the police or regulatory powers of the State to enforce its environmental pollution laws."[16]

At least one court, however, has taken a more systematic approach to determining whether an action constitutes one of police or regulatory power. In *In re Commerce Oil Co.*,[17] the Federal Court of Appeals for the Sixth Circuit developed two tests: the pecuniary-purpose test and the public-policy test. The pecuniary-purpose test turns on whether the governmental proceeding relates *primarily* to the protection of the government's pecuniary interests in the debtor's property and not to matters of public health and safety.[18] Those proceedings that relate to public health and safety fall within the automatic stay exception. In applying the public-policy test, the task for the court is to "distinguish between proceedings that adjudicate private rights and those that effectuate public policy. Those proceedings that effectuate a public policy are excepted from the stay."[19]

Two courts that have applied the pecuniary-interest and public-policy tests have determined that the following kinds of governmental actions are not subject to the automatic stay: (1) notices for violation of ordinances related to maintaining standards regarding housing, fire prevention, and nuisances;[20] and (2) proceedings to fix civil liability for violations of state water quality control statutes.[21] The pecuniary-interest and public-policy tests appear to be the most objective way of determining whether an action is one of police or regulatory power and, although not widely used now, may be adopted by more courts as litigation in this area increases.

In short, it appears that no consistent test exists for determining whether an action constitutes one of police

or regulatory powers, and such a determination must be made on a case-by-case basis.

Is This an Action to Enforce a Money Judgment?

It seems clear that in the case of most local ordinances, the enforcement of which promotes public health and safety, a local government can proceed with its normal course of business despite a debtor's bankruptcy filing[22]—unless, that is, the government, by enforcing the law, is in reality attempting to collect a money judgment. That is the second question that governmental officials must ask themselves.

There is no clear-cut definition regarding what constitutes a "money judgment" under the automatic stay exception created by Section 362(b)(5) of the Bankruptcy Code, but courts have contemplated several factors. Some courts have considered whether an action for an injunction is merely a disguised request for money.[23] Other courts have considered whether the remedy being sought would compensate for *past* wrongful acts that have resulted in injuries, or whether it would protect against *future* harm.[24] Under that theory, any action seeking to prevent future harm, even though it may result in the expenditure of money, is normally one that is an attempt to enforce police and regulatory powers.

The issue arises frequently in two situations: cases in which the government pursues an action that would require the debtor to spend some of its own money to clear up a menace to public health or safety; and cases in which the government itself undertakes to clear up such a menace and then seeks reimbursement for the costs from the debtor.

In a case involving the first of these situations, *Penn Terra Limited v. Department of Environmental Resources*,[25] the Commonwealth of Pennsylvania sought an injunction directing a bankruptcy debtor to correct violations of state antipollution laws.[26] The federal circuit court of appeals held that the automatic stay did *not* prohibit entry of the judgment, even though complying with the judgment would entail an expenditure of funds from the debtor's bankruptcy estate, which would deplete assets that would otherwise be available to repay debts owed to other creditors.[27] The *Penn Terra* court based its holding on a narrow construction of the "money judgment" exception and an examination of the common understanding of the term "money judgment."[28] The court distinguished between the situations of (1) ordering compliance with laws, even though it might cost money to comply and (2) seizure of a debtor's property to satisfy a judgment.[29] The former, the court strongly implied, does not involve enforcement of a money judgment—and therefore is excepted from the automatic stay—but the latter may constitute enforcement of a money judgment and therefore may be subject to the stay. The court refused to make a finding that any order requiring the expenditure of money constitutes a "money judgment," stating that such a finding would narrow the code Section 365(b)(5) exception into virtual nonexistence.[30] In light of *Penn Terra,* other courts have permitted actions to go forward and have ordered bankruptcy debtors to expend funds in various circumstances to perform work needed to bring property into compliance with environmental laws.[31]

In the second situation, at least one court has allowed a governmental unit to obtain a judgment for funds that the government had expended in order to bring a debtor into compliance with environmental laws.[32] In *City of New York v. Exxon Corp.*[33] the city was allowed to obtain a judgment for reimbursement of costs of cleaning up hazardous substances contained in landfills, with the court stating:

> The availability of a reimbursement action encourages a quick response to environment crisis by a government, secure in the knowledge that reimbursement will follow. Such a quick response is a direct exercise of a government's police power to protect the health and safety of its citizens.[34]

The court held that the reimbursement action was a valid exercise of police and regulatory power and held that the action was not subject to the automatic stay.[35] Note that although the *Exxon* case has a very positive outcome for the government, it may be at odds with dicta in other cases in which courts have stated that the payment of a sum certain to a governmental unit indicates a money judgment.[36]

As a practical matter, many cases involving enforcement of local laws never reach the issue of determining whether the government is attempting to enforce a money judgment, because the government does not seek reimbursement. In one case, for example, the court held that a local government could remove automotive parts and scrap metal from property violating local zoning laws without concern for the automatic stay. But in that case the government was not seeking reimbursement of the cost of removal. It is difficult to tell whether a demand by the government for reimbursement would have been considered an action for enforcement of a money judgment.[37] Likewise, one bankruptcy court held that a city could demolish a debtor's property that did not conform to the local housing code and posed a threat to public

health and safety, but again reimbursement for that action was not an issue.[38]

Whether or not an action is interpreted as one for enforcement of a money judgment is the second step taken in determining whether the automatic stay applies to a governmental action. As with the first step—whether the action involves police or regulatory powers—the courts have applied no standard test to reach a decision on the money judgment issue. In light of the cases cited above, it appears that the trend is to give government the benefit of the doubt by allowing it to proceed, even when a debtor must expend funds from the bankruptcy estate. Once it is determined that the police powers and money judgment exceptions have been met, a governmental unit can proceed against a debtor without having to obtain relief from the automatic stay.

Procedural Concerns

Whether or not a governmental unit is able to successfully enforce a local ordinance or state law against a bankrupt debtor may depend on the procedure asserted by that governmental unit. If there is no expenditure of funds at issue, the government must only comply with the standards set forth in the law it is enforcing (such as notice requirements) and does not need to get the bankruptcy court involved at all, because the automatic stay does not apply. Where expenditure of funds is involved, it appears from the cases that a motion for injunctive relief to compel a debtor to comply with local laws, even if it requires the debtor to expend funds, is viewed more favorably by the courts than a motion for reimbursement of government money already spent to bring the debtor into compliance. Finally, it is often better for the government to proceed with its action on the premise that the automatic stay does not apply, forcing the debtor to take the initiative to assert the protection of the stay. That way the debtor has the burden of proof to show that the automatic stay *does* apply, rather than the government having to prove that the automatic stay *does not* apply.

Applying the Law

In example two at the beginning of this article, the debtor argued that the automatic stay provision of the Bankruptcy Code prevented the government from proceeding against him for reimbursement of the costs it incurred in tearing down his dilapidated gas station. It appears the debtor would lose, though the issue is not free from doubt. Clearly, demolition of the property is within the city's police or regulatory powers. Therefore, the city is not stopped by the automatic stay from demolishing the building. Whether reimbursement for the demolition of the property would be considered enforcement of a money judgment subject to the automatic stay is less clear, though courts seem to lean that way.

Collection of the civil penalties, however, is a more troublesome issue. It can be argued that such collection is not within police or regulatory powers because the collection of civil penalties does not promote public health or safety. The courts have not definitively addressed this issue. In example two the city may be stopped from asserting the civil penalties claim.

The city might be wise to file a state court action for an injunctive order compelling the debtor to expend his own funds to demolish the property and thereby force the debtor to the position of raising the automatic stay question. However, if the city is willing to risk the amount of money spent on demolition, its best approach may be to proceed under the ordinance, thereby forcing the debtor to institute a legal proceeding in the nature of a temporary restraining order to stop the city from demolishing the property. It is also important always to keep in mind when dealing with a debtor that the bankruptcy estate may not have the money to comply with a court order, regardless of the outcome.

Each case must be considered on an individual basis and a determination must be made regarding the possible outcomes while considering which procedure would best serve that situation.

Conclusion

The automatic stay of bankruptcy does not necessarily stop governmental units—as it would stop private parties—from instituting or continuing some actions against a debtor for violations of laws designed to protect the public's welfare. It is up to government officials to examine each case and determine when to continue and when to stop any actions against a debtor in bankruptcy.

Notes

1. The term "debtor" is defined at 11 U.S.C. § 101(13) (1993) as a "person or municipality concerning which a case under [the Bankruptcy Code] has been commenced." The term "person" is defined at 11 U.S.C. § 101(41) (1993) and includes an individual, partnership, and corporation.

2. Actions for collection of property taxes, often a concern of local governments, are afforded special and separate consideration in the Bankruptcy Code and are therefore not subject to the same analysis as other governmental actions. A discussion of property taxes is beyond the scope of this article.

3. 11 U.S.C. § 362(a)(1) (1993).

4. 11 U.S.C. § 362(a)(3) (1993).
5. 11 U.S.C. § 362(b) (1993).
6. 11 U.S.C. § 362(b)(4)(5) (1993).
7. 11 U.S.C. § 362(b)(4) (1993).
8. 11 U.S.C. § 362(b)(5) (1993).
9. Penn Terra Limited v. Department of Environmental Resources, 733 F.2d 267, 278 (3d Cir. 1984); *In re* Smith-Goodson, 144 B.R. 72, 74 (Bankr. S.D. Ohio 1992).
10. Matter of Kennise Diversified Corp., 34 B.R. 237, 245 (Bankr. S.D.N.Y. 1983); *In re Smith-Goodson*, 144 B.R. at 74.
11. City of New York v. Exxon Corp., 932 F.2d 1020, 1024 (2d Cir. 1991); *In re* Commerce Oil Co., 847 F.2d 291, 295 (6th Cir. 1988); EEOC v. McLean Trucking Co., 834 F.2d 398, 401 (4th Cir. 1987); Cournoyer v. Town of Lincoln, 790 F.2d 971, 975 (1st Cir. 1986); *In re* Commonwealth Oil Refining Co., 805 F.2d 1175, 1182–83 (5th Cir. 1986); *Penn Terra*, 733 F.2d at 272.
12. S. Rep. No. 989, 95th Cong., 2d Sess. at 52 (1978); H.R. Rep. No. 595, 95th Cong., 2d Sess. at 343 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5838, 6299.
13. See cases cited in note 11 above. In pursuing claims for money owed in areas that are not within the public health and safety field, governments are subject to the automatic stay just as other creditors are. Collection of general, unsecured debts such as water and sewer bills, for example, appear to be fully subject to the automatic stay.
14. *See McLean Trucking Co.*, 834 F.2d 398 (EEOC discrimination lawsuits were within police powers and therefore not subject to automatic stay); *In re* Laurinburg Oil Co., 49 B.R. 652 (Bankr. M.D.N.C. 1984) (injunction action to order compliance with state water pollution laws within police and regulatory powers).
15. *In re* Morgan, 109 B.R. 297 (Bankr. W.D. Tenn. 1989).
16. *In re Morgan*, 109 B.R. 297 at 654.
17. *In re* Commerce Oil Co., 847 F.2d 291 (6th Cir. 1988).
18. *In re Commerce Oil Co.*, 847 F.2d at 295.
19. *In re Commerce Oil Co.*, 847 F.2d at 295.
20. *In re* Smith-Goodson, 144 B.R. 72, 74 (Bankr. S.D. Ohio 1992).
21. *In re Commerce Oil Co.*, 847 F.2d at 295.
22. Some debtors have argued that the risk to public health and/or safety must be imminent in order for the police or regulatory powers stay exception to apply. In *In re Commonwealth Oil Refining Co.*, the court specifically addressed that the language of the stay exceptions did *not* "limit the exercise of police or regulatory powers to instances where there can be shown imminent and identifiable harm or urgent public necessity." *In re* Commonwealth Oil Refining Co., 805 F.2d 1175, 1184 (5th Cir. 1986).
23. *See, e.g., In re Commonwealth Oil Refining Co.*, 805 F.2d 1175.
24. *See, e.g.,* Penn Terra Limited v. Department of Environmental Resources, 733 F.2d 267 (3d Cir. 1984); United States v. F. E. Gregory & Sons, Inc., 58 B.R. 590 (Bankr. W.D. Pa. 1986).
25. *Penn Terra*, 733 F.2d 267.
26. *Penn Terra*, 733 F.2d at 269.
27. *Penn Terra*, 733 F.2d at 269, 278.
28. *Penn Terra*, 733 F.2d at 273, 275. A common understanding of the term "money judgment" consists of two elements: (1) identification of the parties to the judgment and (2) a definite and certain designation of the amount which plaintiff is owed by a debtor. *Penn Terra*, 733 F.2d at 273, 275.
29. *Penn Terra*, 733 F.2d 267.
30. *Penn Terra*, 733 F.2d at 278.
31. *See, e.g., In re* Commonwealth Oil Refining Co., 805 F.2d 1175 (5th Cir. 1986) (debtor ordered to comply with EPA order to bring hazardous waste facility into compliance with environmental laws); United States v. F. E. Gregory & Sons, Inc., 58 B.R. 590 (Bankr. W.D. Pa. 1986) (debtor ordered to perform reclamation work at an abandoned mine site); *In re* Laurinburg Oil Co., 49 B.R. 652, 654 (Bankr. M.D.N.C. 1984) (debtor ordered to restore a waste disposal site to condition where it no longer constituted a public nuisance).
32. City of New York v. Exxon Corp., 932 F.2d 1020 (2d Cir. 1991).
33. *Exxon*, 932 F.2d 1020.
34. *Exxon*, 932 F.2d at 1024.
35. *Exxon*, 932 F.2d at 1024.
36. *See Penn Terra*, 733 F.2d at 275; United States v. F. E. Gregory & Sons, Inc., 58 B.R. 590, 591 (W.D. Pa. 1986).
37. Cournoyer v. Town of Lincoln, 790 F.2d 971, 976–77 (1st Cir. 1986).
38. *In re* Catalano, 155 B.R. 219, 224 (Bankr. D. Neb. 1993). ❖

At the Institute

Sanders, Institute's Former Director, Retires

John L. Sanders, director of the Institute of Government for a quarter of a century, retired from the Institute faculty at the end of 1994.

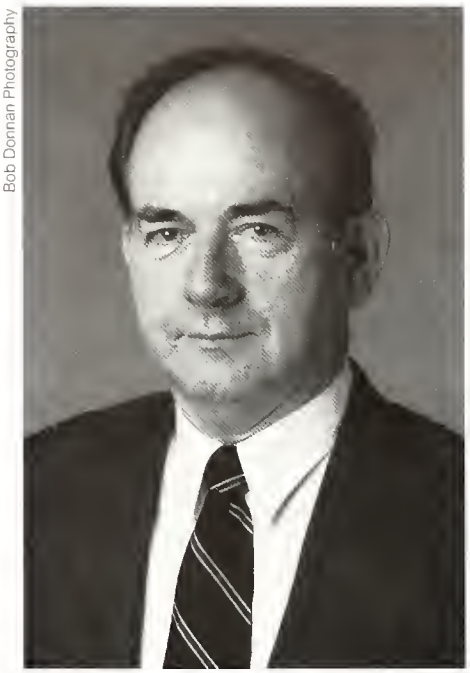
Sanders, whose career is closely intertwined with the modern history of The University of North Carolina, served as director of the Institute from 1962 to 1973 and again from 1978 until 1993. In the interim he was vice president of the university during an era characterized by the stresses of desegregation and the early formation of the sixteen-campus system stretching from Elizabeth City State to Western Carolina. During a decade of explosive growth of the physical campus at Chapel Hill, he was chairman of the building and grounds committee. For class after class of Carolina undergraduates, Sanders has been an informal mentor and guide to the history and governance of North Carolina.

His career is also closely intertwined with the modern history of government in North Carolina. At the Institute he developed special expertise in state constitutional law, legislative representation, and state government organization. He served as counsel to commissions established by the General Assembly to rewrite the state constitution (a revision approved by the voters in 1971) and to redesign the structure of state government. He acted as chief legal consultant in the legislative reapportionment work following the 1960 and 1970 censuses. He has served as advisor to leaders at the highest levels of government in all three branches. When Sanders stepped down as director of the Institute in 1993, Jack Betts, associate editor of the *Charlotte Observer*, described him as "a scholar, a historian and a model of the selfless public servant." Retired university president William Friday called him "North Carolina's unsung hero."

Sanders was succeeded by Michael R. Smith, the Institute's current director. Since that time Sanders has worked as a member of the faculty and as a member of the search committee charged with recommending a successor to the retiring chancellor, Paul Hardin.

Sanders also has made great contributions to the state outside his formal roles in the university. As an undergraduate in the early 1940s, he wrote a term paper on the old State Capitol. Over the years, as time would allow, he pursued an active study of the building, spending arduous hours in the state archives and traveling at his own expense to research the lives and work of the principal architects and builders. In 1978 he helped form the State Capitol Foundation to preserve and restore the building; in 1986 the group surprised him with the creation of a trust in his honor for further work with the grand old building. He continues this work actively.

Sanders and his wife, Ann, are benefactors of the university. When the faculty marched into Kenan Stadium in procession at the bicentennial celebration convocation at which President Clinton spoke, a new ceremonial staff—a gift from the Sanderses—led the way. They have also given to the university a ceremonial chancellor's medallion and the cornerstone to mark the 1993 refurbishment of Old East.



Bob Donnan Photography

John L. Sanders

Former Institute Faculty Member Hinsdale Dies

Charles Edwin Hinsdale, Institute of Government faculty member from 1961 until his retirement in 1981, died earlier this year at his home in Chapel Hill.

"Ed" Hinsdale was born in Rutherford County, North Carolina, in 1918 and graduated from Hendersonville High School. At The University of North Carolina, he was inducted into Phi Beta Kappa and in 1939 entered the law school. In 1941 he was called into active duty in the United States Marine Corps and served as an officer in the Pacific theater of operations during the Second World War. Following the war he remained in the military and, while in the service, received his law degree (with highest honors) from the George Washington University School of Law. He held several legal posts with the Marine Corps, including military judge, rising to the rank of lieutenant colonel. He retired from the military in 1961.

Immediately thereafter, Hinsdale joined the faculty of the Institute, specializing in judicial education, legislation, and administration. He arranged continuing education short courses for trial judges and orientation sessions for new judges. He was author of approximately thirty-five articles in the Institute's magazine *Popular Government*, and he was editor and contributing author of the *North Carolina Trial Judges' Bench Book*.

Hinsdale also coordinated courses for clerks of superior court and public defenders. From 1963 to 1974 he was the chief of research and drafting for the North Carolina Courts Commission. He

Charles Edwin Hinsdale

had major responsibility for drafting the Judicial Department Act of 1965; the Court of Appeals Act of 1967; and legislation resulting in revision of the jury selection and exemption laws in 1967, reorganization of the solicitorial system in 1967, and creation of the public defender system and the Judicial Standards Commission. From 1963 to 1976 he was counsel to the courts committees of the North Carolina Senate and the North Carolina House of Representatives.

In a 1975 letter Hamilton Hobgood, then a superior court judge, wrote to Hinsdale: "You mean so much to the Judiciary of the State of North Carolina that I would feel remiss in my moral responsibility if I did not tell you every now and then that you are a very important cog in the administration of justice in the State of North Carolina. Your type of work does not make headlines, but it certainly promotes more efficient administration of justice in this great State."

One of Hinsdale's longtime colleagues at the Institute, James C. Drennan (now serving as director of North Carolina's Administrative Office of the Courts), said, "Our system has for twenty years been regarded as one of the models for states that want a uniform court system. That high regard can be attributed to the collective efforts of many people, but none more than Ed Hinsdale. As the research director and draftsman for the Courts Commission, Ed was the constant—the person who asked the tough questions, found the information to enable others to make good decisions, and translated that to the statutory language that has stood the test of time. It is a legacy that benefits everyone who today uses the courts." ❖

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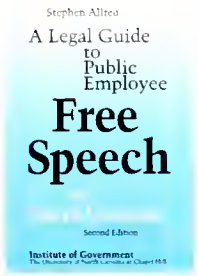

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