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# Popular Government

WINTER 2000 • VOL. 65, NO. 2

## Firearms and Violence
### Is there a connection?

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# Popular Government

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# Popular Government

WINTER 2000 • VOLUME 65, NUMBER 2


With this issue we present a new look for *Popular Government*. The mission of the magazine remains the same—to provide in-depth discussion of current matters affecting North Carolina. We hope that these modest design changes, some of which have been introduced in recent issues, will encourage readers to linger longer and read more of the good work that the authors have produced.

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ON THE COVER
Photos © 1998 Corbis Corporation

COVER ARTICLE

# Firearms and Violence

## INTERPRETING THE CONNECTION

Stevens H. Clarke

- Does the United States have a higher level of fatal violence than comparable countries?
- How much of the violence in the United States is due to crimes committed with guns?
- Does the United States have a higher level of gun ownership and possession than comparable countries?
- Why do people acquire firearms?
- How often do gun owners actually use their guns to defend themselves against crime?
- Do higher levels of gun ownership cause rates of violent crime to be higher in the United States than in comparable countries?
- Have restrictions on firearms been effective in reducing violence?
- What should be done about possession and use of guns by minors?

This article interprets available information and discusses a variety of viewpoints on the association between possession of firearms and rates of violence, especially criminal violence that can or does cause death. Most of the article has a national or international perspective but, where possible, it includes comparable information on North Carolina.

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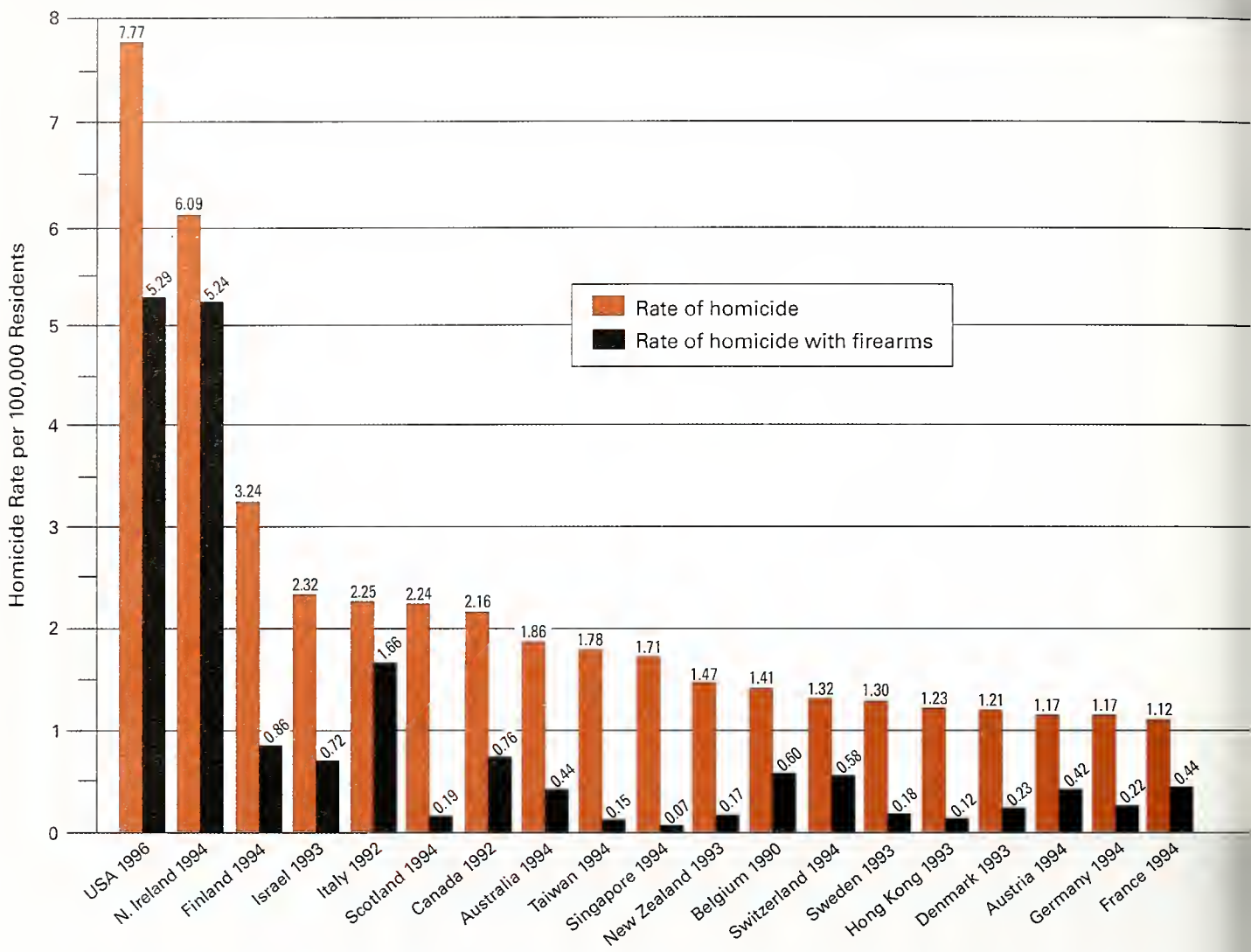
*The author is an Institute of Government faculty member who specializes in correctional law and criminology.*

**Figure 1.** Homicide Rates, 26 Industrialized Countries, 1990s




*Source:* Data from Etienne G. Krug et al., *Firearm-Related Deaths in the United States and 35 Other High- and Upper-Middle-Income Countries,* 1998 International Journal of Epidemiology 214–21; U.S. Centers for Disease Control and Prevention, Mortality Database, available at http://wonder.cdc.gov.

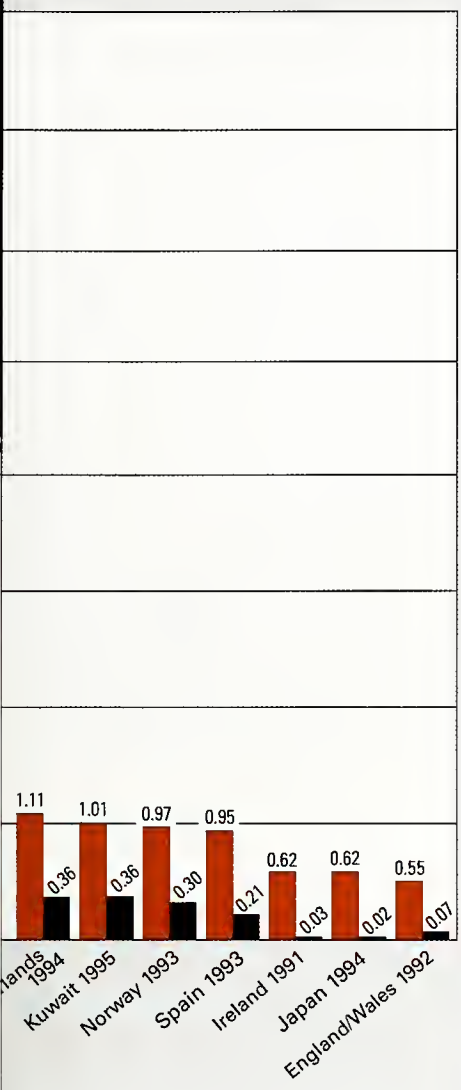
## Levels of Fatal Violence

The annual homicide rate in the United States reached its highest point ever in the twentieth century—10.7 homicides per 100,000 residents, in 1980. The rate declined afterward, to 8.4 in 1984, but subsequently increased again, to 10.5 in 1991. Since then it has declined, reaching 7.8 in 1996, the latest year for which mortality data are available from the U.S. Centers for Disease Control and Prevention. North Carolina's homicide rate also declined from 1991 to 1996, from 13.1 per 100,000 residents to 9.1.[1]

Despite the recent drop, the United States has a much higher level of homicide than comparable nations. A comparison of homicide rates during the 1990s in the twenty-six nations that the World Bank considers highly industrialized reveals that the United States has the highest rate (see Figure 1). In fact, the U.S. rate is more than twice that of every other highly industrialized nation except Northern Ireland (treated in these statistics as a separate country), whose rate of 6.1 is a close second.

A comparison of rates of homicide committed with firearms reveals an even more striking difference: the U.S. rate of 5.29 in 1996 was more than five times that of every other highly industrialized country except Northern Ireland with 5.24 and Italy with 1.66 (see Figure 1).[2]

The United States also leads the highly industrialized nations in fatal violence involving children and youth. On the basis of annual rates measured during 1990–95, the United States had 2.57 homicides per 100,000 children under age fifteen, compared with 0.51 for the twenty-five other highly industrialized countries combined (that is, for the total population of the twenty-five countries). For homicide with firearms, the U.S. rate was 0.94, compared with 0.06 for the other twenty-five countries, a ratio of nearly 16 to 1. Suicides and accidental deaths by firearm also were much higher for the United States.[3] Among teenagers and young adults as well as among young children, in the late 1980s the United States had a rate of 8.6 homi-




cides per 100,000 people aged five to twenty-four, more than six times that of Canada (1.3), which had the second-highest rate among the G-7 countries (the Group of Seven Industrial Nations).[4]

Homicides with firearms account for most of the difference in homicide rates between the United States and other nations. For this reason, people seeking to explain the high level of fatal violence in the United States tend to look first at firearms as a possible cause. Franklin Zimring and Gordon Hawkins have observed that "those who analyze American violence by first making international comparisons tend to be adamant in their belief that gun use is a major explanation of the elevated death toll from violence. . . . [I]t is hard to get them to consider anything else."[5]

Nevertheless, the connection between firearms and violence is subject to a variety of interpretations. To examine this connection, one must first ask how many firearms people have and why people have them.

## Levels of Gun Ownership

Gun ownership is much more widespread in the United States than it is in similar countries (see Figure 2). An international survey measured gun ownership in seventeen highly industrialized countries in 1989 and 1992.[6] The percentage of households whose residents said that they or someone else in their household owned any kind of firearm ranged from less than 1 percent in Scotland, England, and Wales to 48 percent in the United States. The U.S. rate was more than twice that of most of the countries included in the survey.

The United States also led in households with handguns, and in this comparison the difference was more striking: the U.S. rate of 28.4 percent was more than three times the rates of all but one of the other countries included in the survey. The exception was Switzerland, whose handgun rate of 12.2 percent was probably relatively high because members of the Swiss defense forces are required to keep their service guns at home.[7] The U.S. proportion of households that possess guns, although still much higher than that of comparable nations, may have declined recently. The National Survey of Private Ownership of Firearms (NSPOF), conducted in 1994 after the international study just mentioned, indicated that a lower proportion of U.S. households, 35 percent, owned guns.[8] Gallup Polls indicate that the proportion of adults who say they have a gun in their home rose to 51 percent in 1993 and then dropped, reaching 36 percent in 1999.[9]

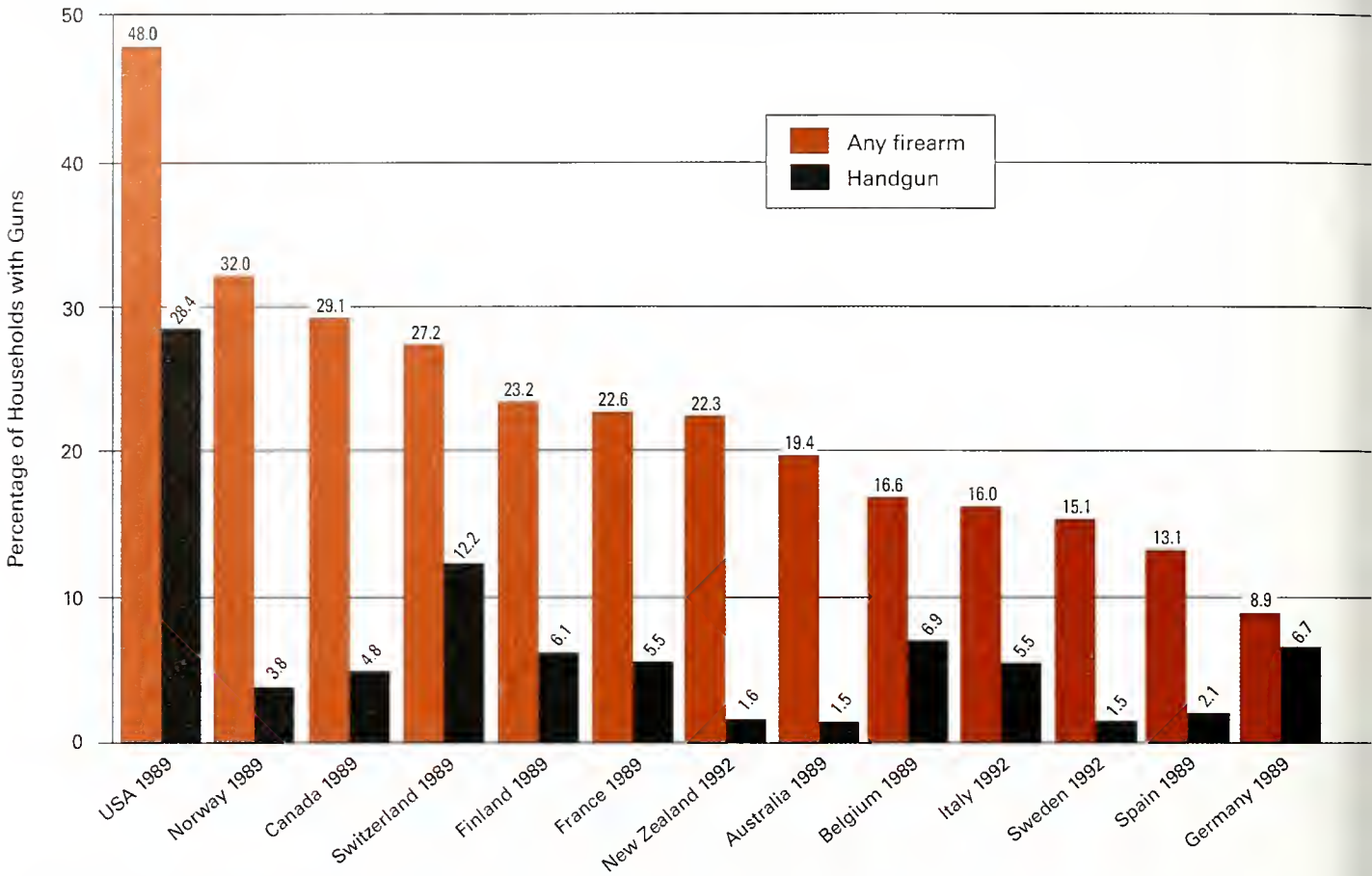
According to estimates reviewed by Albert J. Reiss and Jeffrey A. Roth, the total number of firearms in the United States was 60 million to 100 million in 1968 and has gradually increased since then, reaching 200 million in 1990.[10] Gary Kleck reports that the number of guns of all types per 1,000 U.S. residents more than doubled from 1946, when it was 344, to 1987, when it was 816. The number of handguns per 1,000 residents during the same period nearly tripled, from 91 to 271.[11] The data of the NSPOF, mentioned earlier, yield a rate in 1994 of about 737 firearms of all types per 1,000 U.S. residents, and 250 handguns. These figures on guns per capita, like the data on the household ownership rate, suggest that gun ownership may have declined somewhat in the late 1980s and early 1990s, although it still is considerably higher than it was in the 1940s.[12]

Apparently a large number of guns are concentrated in the hands of relatively few owners. According to estimates from the NSPOF in 1994, there were 192 million firearms (65 million of which were handguns), owned by 44 million people. Although that was enough guns to provide every adult in the nation with one, the NSPOF indicates that only 25 percent of adults actually owned firearms, while 74 percent of the owners had two or more. Cook and Ludwig cite NSPOF data indicating that in 1994, 10 million people owned 105 million guns, while the remaining 87 million guns were dispersed among 34 million other owners.[13]

A comparison of homicide rates . . . in the 26 nations that the World Bank considers highly industrialized reveals that the United States has the highest rate.

The proportion of adults who report having a gun in their home, according to a 1999 Gallup Poll, is higher for males than for females (47 percent versus 27 percent), higher for whites than for nonwhites (40 percent versus 19 percent), and higher in the South

**Figure 2.** Households with Guns, 17 Industrialized Countries, 1989 and 1992




*Source:* Data from Martin Killias, *Gun Ownership, Suicide, and Homicide: An International Perspective,* in UNDERSTANDING CRIME: EXPERIENCES OF CRIME AND CRIME CONTROL at 289–303 (Anna Alvazzi del Frate et al. eds., Rome: United Nations Interregional Crime and Justice Research Institute, 1993).

(46 percent) than in the Midwest (39 percent), the East (26 percent), or the West (33 percent).[14]

In North Carolina the most recent available data on gun ownership, from the Carolina Poll of 1994, indicate that 43 percent of residents aged eighteen or older possessed a gun and 28 percent possessed a handgun. Of North Carolinians who possessed a gun, 66 percent possessed more than one. Although some of the multiple-gun group had long guns (rifles or shotguns), 72 percent possessed handguns.[15]

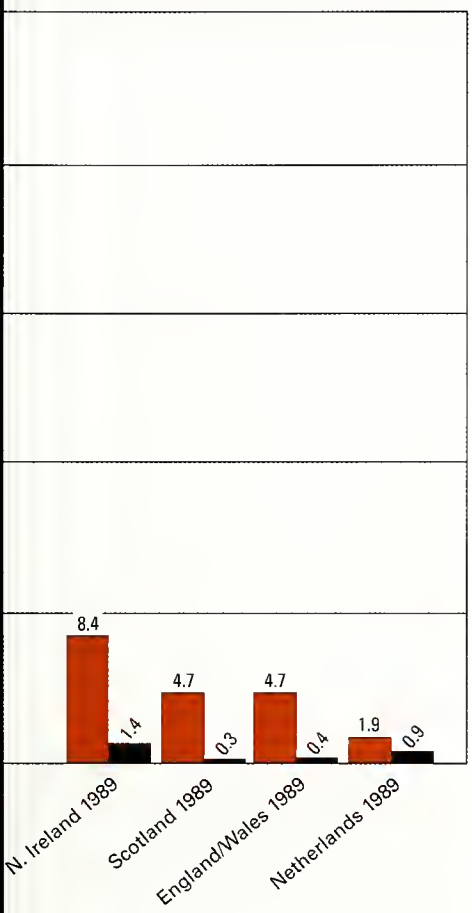
## Reasons for Gun Ownership

One of the most common reasons that people want firearms is to protect themselves, other people, or their businesses. In national surveys in the 1970s, 74 percent of gun owners mentioned hunting, 65 percent protection, 40 percent sport or target shooting, and 21 percent gun collecting, as one of their reasons for ownership.[16] Among people who owned only handguns, 73 percent gave defense or protection as a primary or secondary reason. The NSPOF of 1994 produced similar results: About half of gun owners had guns for hunting or other recreational shooting, while 46 percent possessed them primarily for self-protection. Almost three-quarters of those who owned only handguns kept them primarily for self-protection. The Carolina Poll found that, among North Carolinians who had guns in 1985, 64 percent gave "self-defense at home or work" as one of their reasons for possession.[17]

People's desire to possess handguns may stem from lack of confidence in the government's ability to protect them. According to Gallup Polls since 1981, a fourth to a half of adults have little or no confidence in the ability of the police to protect them from violent crime—although, as explained later, their confidence has increased in the last few years.[18] About one-third of teenagers are concerned about their safety while in school, as documented later in this article.

The connection between gun ownership and lack of confidence in police protection was the subject of a study by David McDowall and Colin Loftin. These researchers analyzed annual variations in the number of applications for handgun licenses in Detroit from 1951 to 1977. Controlling statistically for per capita income and the age distribution of the population, they found that handgun purchases went up when the 1967 riot occurred and when violent crime increased, and went down when the number of police increased relative to the population. The authors suggest that people are more apt to take protective measures if their faith in communal security is low.[19]

McDowall and Loftin's analysis may explain why, as indicated by the Gallup Poll, the proportion of adults having a




gun in their home decreased from 1993 to 1999. While this decline was occurring, according to the same poll, the proportion expressing "a great deal" or "quite a lot" of confidence in the police to protect them from violent crime was increasing, from 45 percent in 1993, to 50 percent in 1995, to 70 percent in 1999.[20]

McDowall and Loftin's analysis also helps explain public ambivalence toward guns and security, depending on whether people are thinking of community interests or their individual interests. If people feel that crime or civil unrest threatens their community, they may think of restrictions on gun possession to improve the community's safety. On the other hand, when it comes to their own personal safety, they may want to acquire a gun for self-protection. This conflict between collective security and individual security may help explain why public policy toward firearms is so controversial. Later in this article, I return to the questions of whether people's owning firearms is effective in protecting them and whether restrictions on gun possession are effective in preventing crime.

## Use of Guns for Protection

To measure defensive gun use,[21] a number of researchers have used the National Crime Victimization Survey (NCVS) conducted by the Census Bureau for the U.S. Department of Justice.[22] In the NCVS a representative sample of U.S. residents are asked about their experiences as crime victims and measures that they may have taken to protect themselves. One study of NCVS data indicates about 82,500 defensive uses of guns annually in the United States from 1987 to 1992 in connection with assaults, robberies, thefts, and household burglaries.[23] A more recent study suggests about 108,000 defensive uses per year.[24]

Gary Kleck, a criminologist at Florida State University, has published an extensive body of work challenging the notion that gun prevalence causes the high level of violence in the United States and supporting the notion that guns actually prevent crime. Because the work of Kleck and his coauthors is important in the debate about the connection between guns and violent crime, I give it considerable attention in this article.

Kleck and Marc Gertz assert that the measurement of defensive gun use derived from the NCVS is a gross underestimate, for several reasons:[25]

- NCVS interviewers never directly ask whether the respondent used a gun for self-protection—only whether the respondent did anything to protect himself or herself or his or her property while the incident was going on. Thus the respondent has to volunteer the information that he or she used a gun.
- NCVS interviewers do not ask about protection unless the respondent already has said that he or she has been the victim of a crime or an attempted crime. If the respondent does not want to talk about the crime of which he or she was a victim (for example, a domestic assault or rape), he or she also will not report any gun used to fend off the crime.
- NCVS respondents are aware that the interviewer works for the government and knows where they live. Gun use is a sensitive and controversial matter, and respondents are unlikely to know whether their defensive use or their possession of the gun is lawful; therefore they may be reluctant to report.

Kleck and Gertz think that the true annual number of legitimately defensive gun uses in the United States is in the millions. In a recent publication, they reanalyzed thirteen surveys by private polling organizations. Their results implied more than 700,000



Nearly three-quarters of gun owners surveyed in the 1970s cited hunting as one of their reasons for gun ownership.

defensive gun uses per year. Pointing out that these surveys had a variety of flaws,[26] Kleck and Gertz turned to their own National Self-Defense Survey. Conducted in 1993 and involving nearly 5,000 respondents, it was designed to correct the flaws of previous surveys.[27] The authors excluded uses in military and police work as well as against animals, and did not count a use as genuinely defensive unless it involved a threat against a person that the respondent actually saw. Thus, verbally threatening the perceived offender ("I've got a gun!"), brandishing or showing a gun, pointing it at the offender, or firing it was counted as a defensive use, but merely carrying a gun without confronting a person was not.

Kleck and Gertz estimated from their survey that 1.13 percent of people aged eighteen and older used guns defensively one or more times per year. Applying their results to the national population, the authors estimated 2.2–2.5 million defensive gun uses annually, of which 1.5–1.9 million involved handguns.[28]

Other researchers, such as Philip Cook, Jens Ludwig, and David McDowall, believe that Kleck and Gertz's estimates of defensive gun use are enormously exaggerated.[29] Their main criticisms (technical details omitted) are as follows:

- Some exaggeration is likely in responding to surveys, because respondents tend to magnify the danger in incidents that they report as defensive gun use and because standing up to an intruder is considered socially desirable or heroic.
- Because defensive gun use is a rare occurrence (even in Kleck's estimation), just a small amount of untruthfulness or exaggeration in survey responses can greatly inflate the measurement of defensive gun use.
- Survey interviewers hear from only one person involved in a gun use incident. If they were to hear from the person on the other side of the gun, some gun uses would be revealed as aggressive rather than defensive.
- Defensive gun use estimates are overstated in that they include some defensive use by criminals in the course of committing crimes.

## Role of Defensive Gun Use in Preventing Crime

Some people have guns to protect themselves, although, as explained earlier, estimates of how often the guns are used vary. How much crime such uses actually prevent is debatable.

Gary Kleck thinks that defensive gun use either limits or prevents a substantial number of crimes.[30] He identifies two ways in which people may use guns to defend themselves against crime:

- People with guns may *disrupt* crimes—that is, they may prevent completion of crimes that are attempted or threatened, in ways ranging from merely telling an offender that they have a gun to shooting and killing the offender.
- People with guns may deter some criminals from attempting crimes because criminals fear being shot by their potential victims.

Kleck argues that the crimes most likely to be affected by private possession of guns are those occurring in homes (where potential victims are mostly likely to have access to a gun) and business establishments (where proprietors may keep guns). Such crimes include assault in the home, residential burglary, and retail store robbery.

Kleck thinks that armed private citizens may present a more effective deterrent than the criminal justice system because

> [b]eing threatened or shot at by a gun-wielding victim is about as probable as arrest and substantially more probable than conviction or incarceration. . . . There are . . . tens of millions of civilians who have immediate access to firearms and are well motivated to disrupt crimes directed at themselves, their families, or their property.[31]

Kleck presents the following kinds of evidence to support his view that armed private citizens stop, disrupt, or deter many crimes by means of their firearms.

*Killing and wounding felons.* Kleck estimates the number of legal killings by private citizens of people in the act of committing felonies at 1,500–2,800 in 1980.[32] This is much greater than the number reported by the FBI—around 300 annually.[33] But Kleck thinks that such killings are greatly underreported. He estimates that they greatly exceed legal killings of felons by police, which number 300–600 per year. He also estimates that justifiable woundings (nonfatal shootings) of criminals by civilians occur about six times as often as justifiable killings. (For further perspective on Kleck's position, see the sidebar, which describes a study indicating that injurious shootings rarely involve justifiable defense.)

*Preventing completion and injury in robbery and assault.* From NCVS data for 1979–85, Kleck finds that robberies were much less often completed when the victim used a gun in self-protection than when the victim did not use a weapon or did not protect himself or herself at all. In both robberies and assaults, gun-using victims were much less likely to be physically injured than victims using other weapons or not protecting themselves.

Kleck thinks that armed private citizens may present a more effective deterrent than the criminal justice system.

*Thwarting attempted rape.* Kleck cites his own study based on NCVS data indicating that victims of attempted rape who used guns to resist were less likely to have the attempt completed than were victims who used any other mode of resistance.[34]

*Reducing injuries of victims of burglaries.* Kleck believes that having guns in homes reduces the harm caused by burglary through deterrence. Burglars tend to pick times when no one is home to do their break-ins, in part because they fear that the occupants may be armed. Their avoidance of confronta-

tions reduces deaths and injuries that might otherwise occur.

*Deterring felons.* Kleck cites surveys of imprisoned criminals suggesting that their fear of firearms in the hands of potential victims may have reduced their criminal destructiveness. For example, in a study of imprisoned felons, 34 percent said that they had been scared off, shot at, wounded, or captured by an armed victim at one time or another, and 40 percent said that, in at least one instance, they had decided not to commit a crime because they thought the victim was carrying a gun.[35]

Kleck's assessment of crime prevention through defensive gun ownership or use is controversial. One criticism is that he greatly exaggerates the number of defensive uses, for reasons summarized in the previous section. Another criticism is that the crime-*inducing* effect of guns may exceed their crime-*preventing* effect.

### Defensive Gun Use versus Criminal Gun Use

Some studies that address the crime-inducing effect of guns measure how often guns are used to kill in self-protection, compared with how often they are used in criminal homicides, suicides, and accidental deaths. For example, looking at all 743 gunshot deaths in King County, Washington, from 1978 and from 1983, physicians Arthur Kellermann and Donald Reay found that 398 (54 percent) had occurred *in the home where the firearm was kept.* Only 11 of the gun killings in the home were justifiable in that they involved either the killing of a felon during the commission of a crime or legitimate self-defense as determined by police. For every instance in which a gun in the home was used in justifiable killing, the authors reported 4.6 criminal homicides, 37.0 firearm suicides, and 1.3 unintentional deaths.[36] The inference from such studies is that guns in the home are far more likely to be used in illegal or undesirable killings than in legitimate ones.

Kleck contemptuously rejects the Kellermann-Reay study and others like it, contending that they enormously undercount uses of guns to defend people against crime. Very few defensive

## Types of Shootings and Victims

For information on nonfatal as well as fatal shootings, one must turn to specific studies because there are no regularly published reports. In a particularly informative study, Arthur Kellermann and his colleagues investigated both nonfatal and fatal shootings, including noncriminal and criminal cases occurring at home or elsewhere, and including any shooting severe enough to cause death or require emergency medical attention.[1] The study involved three cities, whose approximate populations in 1992 were as indicated: Memphis, Tennessee, 610,000; Seattle, Washington, 516,000; and Galveston, Texas, 59,000. These cities are not necessarily typical—nor do the researchers claim that they are—but the study of them does give a fuller picture than other sources of the "mix" of types of shootings and victims.[2] The researchers combined the records of hospital emergency departments, medical examiners, and police to offset the deficiencies of each type of record.

The researchers identified 1,915 shooting cases from November 1992 through May 1994. From this database they computed an annual rate of firearm injury ranging from 54 per 100,000 residents in Seattle to 223 in Memphis. Males were much more likely to be shot than females, and blacks were more likely to be shot than whites. Young black males had by far the highest victimization rates, reaching 1,708 per 100,000 residents for those aged fifteen to twenty-nine.[3] The shooter and the victim were strangers to each other in 42 percent of the assaultive shootings, were nonintimate acquaintances in 38 percent, were known as rivals or adversaries in 8 percent, had intimate or family relationships in 7 percent, and had other relationships in 4 percent. Forty-seven percent of the assaultive shootings occurred on a street or in a parking lot, 32 percent in someone's home, and the rest in motor vehicles, workplaces, bars, and other locations.

Nineteen percent of the injured persons died. Eighty-eight percent of the victims received care in a hospital emergency department, with a median stay of three days and a median cost of $10,000, not counting professional fees.

Four and five-tenths percent of all the shootings were unintentional, and 7.2 percent were suicide attempts, whereas 78 percent involved assaults. *Of the assaults, only 2 percent were found to be justifiable*—1 percent by police in the course of law enforcement and 1 percent by private citizens. These results suggest that justifiable shootings are quite rare compared with criminal ones.

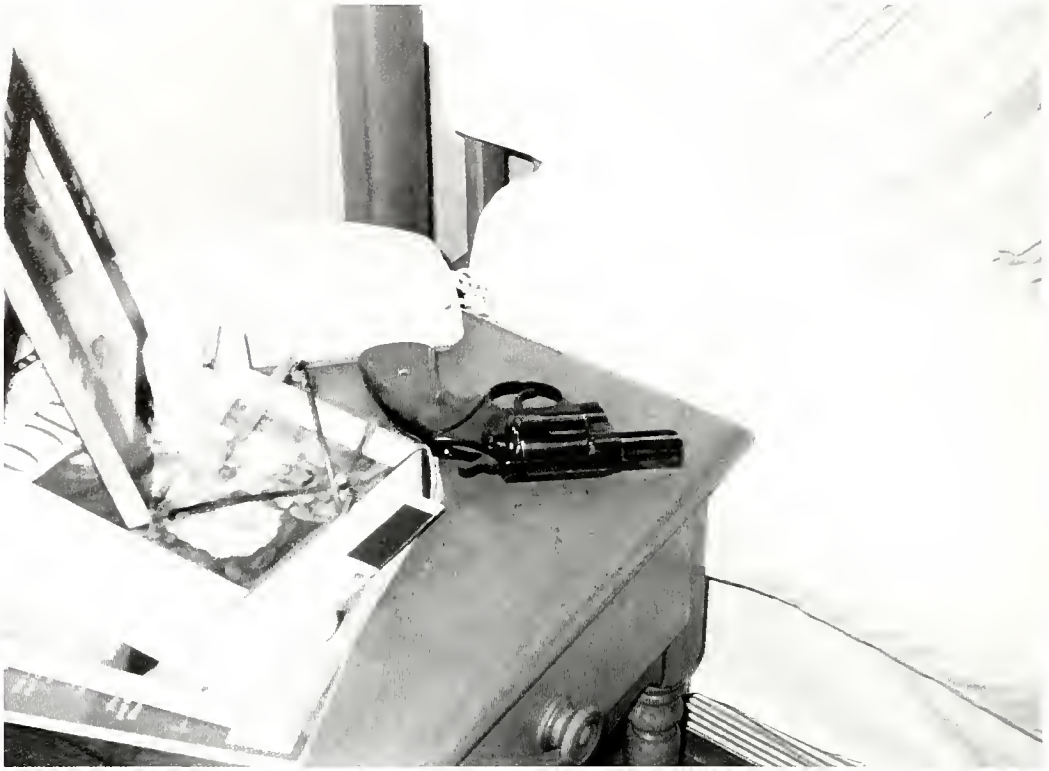
### Notes

1. Arthur L. Kellermann et al., *Injuries Due to Firearms in Three Cities*, 335 New England Journal of Medicine 1438 (1996).

2. The murder rates per 100,000 residents in 1993 for the three cities, based on FBI data, were Memphis, 32.0; Seattle, 12.6; and Galveston, 39.5. According to the FBI, the average murder rate in 1993 for cities with populations in the 500,000–999,999 range was 21.6, and for cities in the 50,000–99,999 range, 7.5. Thus both Memphis and Galveston had much higher rates than the average city in their population group, whereas Seattle had a much lower rate. U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States, 1993: Uniform Crime Reports at 196, tbl. 16 (Washington, D.C.: U.S. Government Printing Office, 1994).

3. On the high rate of victimization among young black males, *see* Stevens H. Clarke, *Murder in North Carolina*, 61 Popular Government, Summer 1995, at 2; and Stevens H. Clarke, *At Last, Some Good News about Violent Crime*, 63 Popular Government, Summer 1998, at 2.

In a 1999 Gallup poll, more than one-third of adults said that they had a gun in their home.



gun uses involve killing a criminal, Kleck asserts. To assess the true defensive benefits of guns in the home, one must count not only defensive killings but also instances in which people or property are protected without killing—for example, "the number of burglars captured, frightened off, deterred from attempting burglaries, or displaced to unoccupied premises [by deterrence through the fear of armed householders] where they could not injure any victims."[37]

Kleck makes a good point that nonfatal defensive uses should be counted. On the other hand, one must consider as well the nonfatal *undesirable or criminal* uses of guns, which also are not counted in the studies of deaths by gunshot. For example, a gun could be used unjustifiably to threaten or to shoot other members of a household, with no one dying as a result. Undesirable nonfatal use, like defensive nonfatal use, probably is more common than fatal use.[38]

Other studies have examined nonfatal as well as fatal uses of firearms. These studies help answer some of Kleck's criticisms and also raise doubts about his position on the relative frequency of justifiable defensive use compared with criminal use. For example, a study by Arthur Kellermann and others of fatal and nonfatal gunshot injuries in three cities in the United States (see the sidebar, page 9) suggests that defensive use is almost insignificant. *Fewer than one percent of the injurious shootings in the three cities were justifiably defensive actions by private citizens.* More than three-quarters involved criminal assault or homicide, and most of the rest were accidental injuries, suicides, or attempted suicides.

Kleck does not dispute that when fatal use of guns in the home is involved, undesirable or illegal killings far outnumber desirable or justifiable killings. Even if in some instances private citizens use firearms to prevent crime, the much larger number of criminal shootings may be a high price to pay for the crime prevention.

## The Contribution of High Gun Availability to Homicide

"Guns don't kill people—people kill people" was once a popular bumper-sticker statement. Zimring and Hawkins analyze its meaning. The statement is true in the sense that guns are harmless without people firing them—and most people who own guns do not attack other people with them. The statement is true in another sense: people can and do kill one another without guns (according to FBI data, 32 percent of homicides in 1996 were committed without firearms).[39] However, the statement also suggests a more doubtful proposition: that the same number of people would be killed regardless of guns. Zimring and Hawkins reject this proposition:

> The most accurate label for the role of firearms in those cases of death and injury from intentional attacks in which they are used is *contributing cause*. Even where the availability of a gun plays no important role in the decision to commit an assault, the use of a gun can be an important contributing cause in the death and injury that results [from] gun attacks. When guns are used in a high proportion of such attacks, the death rate from violent attack will be high. Current evidence suggests that a combination of the ready availability of guns and the willingness to use maximum force in interpersonal conflict is the most important single contribution to the high U.S. death rate from violence. Our rate of assault is not exceptional; our death rate from assault is exceptional.[40]

"Our death rate from assault"—that is, the homicide rate in the United States—is far greater than the homicide rates of other highly industrialized countries, as explained earlier. For robbery and assault,[41] the most common serious nonfatal violent crimes, international comparison tells a different story: U.S. rates, though on the high side, do not greatly differ from those of comparable nations. Zimring and Hawkins discuss crime victimization surveys carried out by United Nations–sponsored

researchers in twenty nations in the late 1980s and early 1990s, using an identical telephone survey instrument in each country.[42] According to these surveys, five countries had robbery rates per 100 residents aged sixteen or older within 30 percent of the U.S. rate, and seven had assault rates within 30 percent of the U.S. rate.[43] This comparison is quite different from the homicide rate comparison, in which the United States far exceeds the other countries.

These data suggest that, although Americans do not commit more robberies and assaults than the residents of comparable countries do, they commit far more murders. If Americans decide to commit a robbery or an assault, so Zimring and Hawkins's thinking goes, the greater availability of guns in this country means that the crime is more likely to result in the victim's death. The perpetrator may not necessarily intend to kill the victim, but the instrumentality of the firearm makes killing much more likely. "People kill people" is a true statement, but armed attackers are more likely than unarmed attackers to kill their victims.

Kleck has different views on this issue, expressed in his latest book, *Targeting Guns*.[44] He concedes that the United States has high levels of both violence and gun ownership. Nevertheless, he says, high levels of gun ownership are not necessarily the cause of high levels of violence; the same amount of violence might occur without the guns. Kleck rejects analysis based on international comparisons because, he says, it all rests on just one special case, the United States, with uniquely high rates of both homicide and gun ownership.[45] Also, Kleck says, there may be a causal connection between gun ownership and violence, but the causation may work the other way: a high level of violence may cause people to acquire guns.

The reasoning in *Targeting Guns* can be summarized as follows: According to NCVS data, about half of assaults are threats without any physical attack. When physical attacks occur, about half result in injury. Only 1.4 percent of these injuries result in death. What is the possible contribution of gun possession at each of the points in this "hierarchy of violence"? With regard to *initiating assaults*, research is inconclusive on whether gun possession encourages this behavior—for example, whether having a gun makes attacking a stronger adversary easier or stimulates people to behave more aggressively than they otherwise would. With regard to *causing injury*, NCVS data show that attacks with guns resulted in wounding the victim only 18 percent of the time while attacks with knives resulted in injuries 45 percent of the time. Kleck implies that if assailants de-escalated from guns to knives, injuries would not lessen. However, Kleck offers no evidence that if guns were harder to get, people would use knives rather than other less dangerous weapons or no weapons. With regard to *causing death*, research by Zimring and others suggests that firearm use makes some assault injuries fatal that otherwise would not be fatal. Killers frequently do not intend to kill, or are just "average Joes" (not hardened felons) who lose their temper and happen to have a gun handy. But Kleck rejects these studies,

"People kill people" is a true statement, but armed attackers are more likely than unarmed attackers to kill their victims.

asserting that the average killer has a long criminal history, even the perpetrator of a "crime of passion" in a domestic dispute. Thus one cannot assume that a killer did not intend to kill or would not have killed if he or she had not had a gun.

Kleck cites research by himself and Gary Patterson on the association between gun ownership levels and violent crime rates in 170 cities in the United States. He and Patterson concluded that, although the level of gun ownership had no effect on the total rate of violent crime, the rates of homicide, gun assault, and rape all tended to increase the level of gun ownership.[46]

Kleck concludes as follows:

> When aggressors possess guns, this has many effects on the outcome of violent incidents, some tending to make harmful outcomes more likely, some making them less likely. . . . On the other hand, aggressor possession of guns has the overall effect of reducing the likelihood of attack, probably because it often makes attack unnecessary, and of reducing the probability of an injury being inflicted, while [defensive] gun use by victims reduces the likelihood of injury or crime completion. . . . Consequently, *the hypothesis that general gun availability causes increases in rates of homicide and other violent crimes is not supported. The policy implication is that nothing appears to be gained from reducing the general gun ownership level.*[47]

Kleck's analyses and conclusions differ in a number of respects from those of other distinguished criminologists who have studied this issue. Perhaps the most important difference is in the degree to which they consider the crime-preventing effects of gun possession to outweigh the crime-causing effects. Other criminologists concede that having firearms prevents or disrupts some crime, but they think that such prevention is far too little to outweigh the role that guns play as a contributing cause of violent crime. Their position is based on (1) their conclusion (explained earlier) that Kleck enormously overestimates the frequency of justifiable defensive gun use and (2) the lack of solid evidence that defensive gun ownership deters crime.[48]

Regardless of how much violent crime defensive gun ownership may prevent, other means of prevention may be preferable to relying on fear of armed retaliation. Richard Alba and Steven Messner make this comment on the implications of Kleck's views:

> We wonder, finally, about the quality of life in the kind of society where routine social order depends upon the massive armament of the citizenry. Fear is a keynote, we presume, because in a society where

> many are armed, others will be afraid to assert their rights in ordinary encounters with strangers —to honk their horn when their car is cut off, for example—out of fear of being confronted with a gun. [Kleck does not consider] the psychological effect on a community's residents of the knowledge that many guns are in its homes, on its streets, and even in its schools. These are the conditions in many inner-city, minority communities in the United States. . . . [F]ear is the dominant emotion inspired by the pervasiveness of guns and gun crime. Are these the conditions we should be willing to accept in a hellish bargain to obtain, if Kleck is right, some check on criminal propensities?[49]

## Gun Control Measures

National opinion polls indicate that a majority of Americans support a variety of restrictions on guns. This support increased after the well-publicized school shootings in Colorado and Georgia in spring 1999. For example, Gallup Polls indicate that the proportion of adults who favor registration of all firearms increased from 67 percent in fall 1998 to 79 percent in June 1999. Large majorities responding to the June 1999 poll also supported such gun control policies as mandatory background checks before gun purchases at gun shows; mandatory prison sentences for felonies committed with guns; and mandatory safety locks or trigger guards on all newly purchased firearms.[50]

Policy makers and researchers have conducted and evaluated a variety of interventions to reduce the availability of firearms. Reiss and Roth, in a book stemming from the work of the National Research Council's Panel on the Understanding and Control of Violent Behavior, recognize four strategies for intervention:[51]

1. *Altering the uses or the storage of guns*—for example, by restricting the carrying of guns; enhancing criminal sentences for gun use; making owners liable for damage caused by their guns; improving the detectability of guns; and educating the public about safe use and storage of firearms
2. *Changing gun allocation*—for example, by licensing gun ownership to exclude felons, drug users, and minors; establishing waiting periods for gun purchases; disrupting illegal gun markets; and putting combination locks on guns
3. *Reducing the destructiveness of guns*—for example, by reducing barrel lengths, muzzle bores, and magazine sizes; and banning dangerous ammunition
4. *Reducing the number of guns*—for example, by restricting licensing, imports, or ownership

Reiss and Roth list most of these strategies as not having been evaluated. Of those that have been evaluated, they consider three to be effective or partially effective:[52]

- *Restricting the carrying of firearms.* The 1974 Bartley-Fox Amendment expanded gun licensing procedures in Massachusetts and mandated a one-year sentence for unlicensed carrying of firearms in public. During the first two years the law was in effect, gun use in assaults, robberies, and homicides decreased in Massachusetts, compared with neighboring states.[53]
- *Enhancing sentences for gun use.* This approach was evaluated in six jurisdictions. Analysis of the findings revealed that sentence enhancements for using a gun decreased gun homicide rates, left nongun homicide levels unchanged, and had no consistent effect on rates of gun robbery or assault.[54]
- *Restricting licensing.* The 1977 District of Columbia Firearms Control Act has been, according to Reiss and Roth (writing in 1993), this country's most ambitious effort to reduce the number of firearms in a community. It prohibited handgun ownership by virtually everyone except police officers, security guards, and previous gun owners. Several researchers concluded that this law reduced the rates of gun robbery, assault, and homicide during the three years following implementation of the law and, to a lesser extent, until 1988, when gun homicides associated with crack cocaine increased. Furthermore, there were no compensating increases in homicides committed without guns.[55]

Besides the strategies that have been evaluated, Reiss and Roth urge testing of three strategies that they consider promising: disrupting illegal gun markets; conducting community-oriented police work to reduce gun prevalence and gun violence; and enforcing existing laws forbidding juvenile possession of handguns. (The next section of this article deals with juvenile possession.)

Kleck disputes the efficacy of the gun control programs that Reiss and Roth think are promising, questioning both the methods and the findings of the studies they cite.[56] In fact, Kleck thinks that gun control programs thus far have had little or no effect on either gun prevalence or violence. One basis for his doubts is his study with Patterson of

In a society where many are armed, others will be afraid to assert their rights in ordinary encounters with strangers—to honk their horn when their car is cut off, for example—out of fear of being confronted with a gun.

all 170 U.S. cities with a population of at least 100,000 in 1980.[57] The authors looked for effects of nineteen types of gun regulations that existed in these cities around 1980 (of course, cities varied in the regulations they had). Some examples of these regulations are as follows: requiring a license to possess a gun in the home; requiring a permit to purchase a gun; establishing a waiting period to buy or receive a gun; prohibiting possession of guns by criminal, mentally ill, or incompetent people; requiring gun registration; and imposing

additional criminal penalties for committing crimes with a gun.

Perhaps the most important finding of the Kleck and Patterson study was that the various gun regulations had practically no effect on gun prevalence and little effect on rates of violent crime. Of course, Kleck does not support gun regulations because he does not think that gun prevalence has a net effect on violence. Those who disagree on this point and support gun regulations as a possible means of reducing violence should be aware that reducing the availability of guns will not be easy, according to the research thus far.

## Involvement of Children and Youth with Firearms

As explained at the beginning of this article, the United States leads the industrialized world in homicides of children and youth, especially homicides committed with firearms. Many homicides *of* young people are committed *by* young people. For example, in North Carolina in 1992, of murders of white males aged fifteen to twenty-four, according to police data, 27 percent of the suspected killers were in the same age range, and another 39 percent were twenty-five to thirty-four years of age. Of murders of black males aged fifteen to twenty-four, 67 percent of the suspected killers were in the same age group.[58] Most of these murders were committed with firearms, primarily handguns.

Young people sometimes kill older people as well. The State Bureau of Investigation reports that in 1997, of murders of victims of all ages in which police believed they knew the age of the killer (these constituted 77 percent of all murders), youth aged fifteen to nineteen were responsible for 24 percent, and those aged eleven to fourteen were responsible for just under 1 percent. Again, many of these murders were committed with firearms.

How many young people have or carry guns? The U.S. Centers for Disease Control and Prevention, in their 1997 survey of risk behavior by students in grades 9–12 nationwide, indicated that 9.6 percent of male students and 1.5 percent of female students reported carrying a gun *within the previous thirty days*. The gun-carrying proportion was higher for black males (16.3 percent) and Hispanic males (16.9 percent) than for white males (7.2 percent).[59] A recent Gallup Poll, conducted just before the well-publicized shooting incident in Littleton, Colorado, indicates that 17 percent of teenagers regard students bringing weapons to school as a "big" or "very big" problem in their school. A 1996 poll indicates that 30 percent of teenagers fear for their physical safety when they are in school.[60]

Other studies have found that gun-owning youth are disproportionately represented among those in serious trouble with the law. For example, Joseph Sheley and James Wright surveyed 835 male inmates in juvenile correctional facilities in California, Illinois, Louisiana, and New Jersey in 1991, as well as 758 male students in ten inner-city public high schools near these correctional institutions. Twenty-two percent of the students said that they owned some kind of firearm at the time of the survey; in contrast, 83 percent of the inmates said that they had owned one just before confinement. Ninety percent of the inmates had friends or associates who owned and carried guns routinely. Sheley and Wright comment as follows:

> Thus, in the street environment inhabited by these juvenile offenders, owning and carrying guns were virtually universal behaviors. Further, in this same environment, the inmate respondents regularly experienced threats of violence and violence itself. A total of 84 percent reported that they had been threatened with a gun or shot at during their lives.[61]

How do juveniles get guns? Of the inmates in the Sheley and Wright study, 22 percent said that they had obtained their most recently acquired gun from someone "off the street," 36 percent from a family member or a friend, 21 percent from a drug dealer or addict, and 12 percent from someone's house or car (from which the inmate "took" it). Only 7 percent bought their gun from a gun shop or a pawnshop. Compared with the inmates, the students in this study more often acquired their guns from a friend or a family member (61 percent) and less often from "the street," a drug dealer, or a drug addict (20 percent). The studies of minors' access to guns have not attempted to measure to what extent gun possession might have been authorized or supervised by responsible adults.

The Bureau of Alcohol, Tobacco, and Firearms (BATF) of the U.S. Treasury Department regularly traces weapons used in crimes to see how the offenders obtained them. Concerned about the increase in juvenile and youth homicides in the late 1980s and early 1990s, Congress approved the Youth



Crime Gun Interdiction Initiative (YCGII) to support BATF in investigating illegal trafficking that puts guns in the hands of young people. A 1999 BATF report covers investigations of 1,604 firearms that were illegally trafficked in twenty-seven cities.[62] Of these investigations, 13 percent involved juveniles under age eighteen, and 39 percent involved youth aged eighteen to twenty-four. In the 648 cases involving juveniles and youth, the investigations



**Table 1.** Sources of Firearms Obtained by Juveniles and Youth

| Source | Percentage |
|---|---|
| Trafficked by "straw purchaser" (ostensibly legal purchaser) | 51 |
| Stolen from federally licensed dealer | 21 |
| Trafficked by unregulated private seller | 14 |
| Stolen from residence | 14 |
| Trafficked at gun shows and auctions, in want ads and gun magazines | 10 |
| Trafficked by licensed dealer | 6 |
| Bought or sold by street criminal | 4 |
| Stolen from common carrier | 3 |
| Other sources | 1 |

*Source:* From U.S. Treasury Department, Bureau of Alcohol, Tobacco, and Firearms, The Youth Crime Gun Interdiction Initiative (YCGII): 27 Communities, at app., pp. 10, 13 (Washington, D.C.: BATF, 1999).

*Note:* The percentages add to more than 100 because a single firearm may have more than one source.

revealed that most of the guns came from illegal sources (see Table 1).

## Reduction of Minors' Access to Guns

Most Americans seem to agree that minors should not possess or have access to guns without adult supervision. The 1994 Carolina Poll found that 79 percent of 673 adult North Carolinians favored making it a felony to sell a handgun to a minor. The state's legislators also apparently favor restrictions on minors' access to guns. North Carolina law prohibits possession of a handgun by a minor (under age eighteen), with certain exceptions,[63] and imposes tough restrictions on possession of guns and other weapons on school property.[64]

The surge in homicides of children and youth in the late 1980s and early 1990s stimulated many violence-prevention efforts, both governmental and nongovernmental, involving citizens' groups as well as law enforcement and social service agencies. A new report by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) offers some examples.[65] The OJJDP report reviews four types of strategies to reduce gun violence: community organizing in areas with high levels of gun violence; disrupting sources of illegal guns; deterring illegal gun possession; and other.

*Community organizing in areas with high levels of gun violence.* The report describes violence-prevention efforts in eight cities in considerable detail.[66] The efforts begin with the community recognizing its gun-violence problem. A partnership of community residents—such as victims, offenders, and families associated with gun violence—and law enforcement and other governmental agencies then faces the challenge to

> convince those who carry guns that they can survive in their neighborhoods without being armed. Programs in these communities must work to dispel the perception of many residents that the authorities can neither protect them nor maintain order in their neighborhoods.[67]

The partnership must have resources, including professional staff, volunteers, and funding from sources within and outside the community. It develops a comprehensive plan, which is likely to be most successful, according to OJJDP, if it addresses not one but a variety of risk factors, and the demand for illegal firearms as well as the supply. The risk factors associated with violence include aggressive behavior in young children; gun possession and carrying; gang membership; drug abuse; poor parental supervision; low academic achievement and truancy; and unemployment.

The American public may expect adults to be able to protect themselves with guns, but it does not think that minors should do so.

Operation Cease-fire, a gun-violence prevention effort in Boston aimed at youth aged eight to eighteen, involves police initiatives to (1) identify and disrupt illegal gun markets by tracing guns used in crime; and (2) conduct unannounced visits to the homes of high-risk youth probationers in the evening to enforce curfews imposed on these offenders and encourage their parents to keep them out of trouble. Along with the police initiatives, a Streetworkers Program brings members of youth gangs together with police and probation officers for informational meetings and referrals to employment opportunities. A related initiative offers residents of high-crime areas the opportunity to work with law enforcement and governmental officials to expedite city services, rehabilitate abandoned property, and obtain job training.

*Disrupting sources of illegal guns.* Tracing guns used in crimes serves two functions. It enables police to reconstruct the history of a firearm used in a crime and may lead to the arrest of a network of people associated with that crime and perhaps related cases. Also, it helps identify patterns of illegal gun trafficking. This can provide evidence for prosecution of trafficking rings.

Another approach is to focus on the few federally licensed firearms dealers who may be involved in systematic illegal transfer of guns to minors and fel-

ons. Joint federal and local police task forces can take advantage of gun-tracing information, especially when it is geographically coded, to find and shut down illegal firearms markets.

*Deterring illegal gun possession.* This strategy focuses on making it harder for youth to gain access to guns. This may be done, for example, through "silent witness" or "weapons hotline" systems, involving anonymity and a cash reward for reporting illegal gun possession; and through police seizures of guns from juveniles by obtaining their parents' consent.

*Other strategies.* Other strategies reviewed by OJJDP include specialized prosecution of firearms offenders (a strategy that usually involves federal prosecutors and adult offenders) and education of citizens about guns and violence.

## Conclusions

The evidence discussed in this article suggests the following answers to the questions posed at the beginning:

- The United States has a much higher level of lethal violence (homicide) than comparable countries.
- Most of the difference in homicide rates is attributable to crimes committed with guns.
- The United States also has a much higher level of gun ownership than comparable countries.
- Most people cite protection (of people or property) as a primary reason for possessing firearms. Other common purposes are hunting, target shooting, and amassing a gun collection.
- Experts disagree on how often guns are used for legitimate defense.
- The relationship between gun ownership and violent crime is a "chicken and egg" issue: availability of guns contributes to violence, but the level of violence also probably motivates people to acquire guns.
- Some restrictions on firearms have shown some results in reducing violence, although the research makes it clear that this is not an easy task. In particular, there seem to be some effective strategies for reducing the number of guns in the hands of unsupervised juveniles, such as identifying and disrupting illegal gun markets.

The reader must make up his or her own mind about whether guns prevent more crimes than they cause. My view, based on research on typical firearms usage (illustrated by the study described in the sidebar), is that criminal uses of guns enormously outnumber justifiable defensive uses.

Most readers probably would agree that the argument that guns are needed for self-protection does not apply to the possession of guns by minors without adult supervision. The American public may expect adults to be able to protect themselves with guns, but it does not think that minors should do so. That is why, even though some children believe that they need guns for protection, laws forbid guns in schools.

That the United States leads the industrialized world in homicide and firearms possession is no doubt troubling to most readers. That this country stands out even more in gun homicides among children and youth probably is even more troubling. To reduce the levels of violence in this country, the first step should be to put an end to illegal firearms possession by minors. This step is important to take even as schools and parents put more emphasis on teaching children to deal with conflicts without violence. As Philip Cook notes,[65] despite the best efforts to teach nonviolence, there may be a few youngsters who are inclined to violence, and all it takes is one per high school. If these few are able to get guns, tragedies like the recent school shootings will continue to occur.

## Notes

1. Stevens H. Clarke, *At Last, Some Good News about Violent Crime*, 63 POPULAR GOVERNMENT, Summer 1998, at 2. This article contains information on these and related trends.

2. The data in Figure 1 were taken from Etienne G. Krug et al., *Firearm-Related Deaths in the United States and 35 Other High- and Upper-Middle-Income Countries*, 1998 INTERNATIONAL JOURNAL OF EPIDEMIOLOGY 214. Krug and his colleagues based their publication on data provided by the ministries of health or the national statistical institutes of the various countries. For the United States, I have inserted 1996 data from the U.S. Centers for Disease Control and Prevention, taken from the agency's mortality data set, on the Web at http://wonder.cdc.gov/.

3. U.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Rates of Homicide, Suicide, and Firearm-Related Death among Children—26 Industrialized Countries*, 46 MORTALITY AND MORBIDITY WEEKLY REPORT 101 (1997).

4. For the five other G-7 countries, the youth homicide rates were France, 0.6; Germany, 0.7; Italy, 0.9; Japan, 0.4; and the United Kingdom, 1.1. The source for these data is WORLD HEALTH ORGANIZATION, WORLD HEALTH STATISTICS ANNUAL § D, tbl. 9 (Geneva, Switzerland: WHO, 1990), cited by the National Center for Education Statistics at its Web site, http://nces01.ed.gov/NCES/pubs/esn/n07a.html.

5. FRANKLIN E. ZIMRING & GORDON HAWKINS, CRIME IS NOT THE PROBLEM: FATAL VIOLENCE IN AMERICA at 110 (New York: Oxford University Press, 1997).

6. Martin Killias, Gun Ownership, Suicide, and Homicide: An International Perspective, in UNDERSTANDING CRIME: EXPERIENCES OF CRIME AND CRIME CONTROL at 289 (Anna Alvazzi del Frate et al. eds., Rome: United Nations Interregional Crime and Justice Research Institute, 1993).

7. JAN J. M. VAN DIJK ET AL., EXPERIENCES OF CRIME ACROSS THE WORLD: KEY FINDINGS OF THE 1989 INTERNATIONAL CRIME SURVEY at 42 (Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1990). These authors report that in Swiss homes "52% of all handguns were said to be army guns."

8. PHILIP J. COOK & JENS LUDWIG, GUNS IN AMERICA: NATIONAL SURVEY ON PRIVATE OWNERSHIP AND USE OF FIREARMS (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1997).

9. The Gallup Organization, U.S. Gun Ownership Continues Broad Decline, POLL RELEASES, Apr. 6, 1999, obtained from the organization's Web site, http://www.gallup.com/poll/releases/pr990406.asp. According to this same series of polls, from 1965 to 1991, the proportion of adults having a gun in their home ranged from 40 to 50 percent and averaged about 45 percent.

10. ALBERT J. REISS, JR., & JEFFREY A. ROTH, UNDERSTANDING AND PREVENTING VIOLENCE at 256 (Washington, D.C.: National Academy Press, 1993).

11. GARY KLECK, POINT BLANK: GUNS AND VIOLENCE IN AMERICA at 49 (New York: Aldine, 1991).

12. These per capita rates were computed on the basis of the number of guns

reported in Cook & Ludwig, Guns in America, and an estimated U.S. population of 260,341,000 in 1994.

13. Cook & Ludwig, Guns in America at 2.

14. Gallup Organization, *U.S. Gun Ownership*.

15. The Carolina Poll is conducted by the School of Journalism and the Institute for Research in Social Science, both at The University of North Carolina at Chapel Hill. These results were obtained from the poll's Internet site (http://veblen.irss.unc.edu/data_archive) and are based on responses from 673 North Carolina residents. The Carolina Poll responses are not directly comparable to the Gallup Poll responses because the Gallup Poll asked whether the respondent had a gun *in his or her home*, whereas the Carolina Poll asked whether the respondent *possessed* a gun (which could be somewhere besides home).

16. Kleck, Point Blank at 25–26.

17. Carolina Poll, at http://veblen.irss.unc.edu/data_archive.

18. These Gallup Poll results were obtained from The Polling Report in Washington, D.C., through its Web site, http://www.pollingreport.com.

19. David McDowall & Colin Loftin, *Collective Security and the Demand for Legal Handguns*, 88 American Journal of Sociology 1146 (1983).

20. Gallup Poll results obtained from the Polling Report, at http://www.pollingreport.com.

21. By "defensive gun use," I mean use by private citizens, not by police.

22. For an explanation of the NCVS, *see* Clarke, *At Last, Some Good News*.

23. Michael R. Rand, Guns and Crime (Publication No. NCJ-147003, Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice, Apr. 1994).

24. Philip J. Cook et al., *The Gun Debate's New Mythical Number: How Many Defensive Uses Per Year?* 16 Journal of Policy Analysis and Management 463 (1997), cited in Philip J. Cook & Jens Ludwig, *Defensive Gun Uses: New Evidence from a National Survey*, 14 Journal of Quantitative Criminology 111 (1998).

25. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 Journal of Criminal Law and Criminology 150 (1995).

26. Following are some examples of the flaws that Kleck found: using an unrepresentative sample of survey respondents (such as only gun owners or only registered voters); using a lifetime-recall period, making it impossible to estimate uses within any specified time period; and failing to ask enough questions to establish exactly what was done with the gun in a reported defensive incident.

27. Employing random-digit telephone dialing, the survey involved a nationally representative sample of 4,977 adults aged eighteen and older in the lower forty-eight states living in households with telephones. The sample was stratified to represent each state's population adequately. The survey inquired about experiences during both the last year and the last five years, and included detailed questions to establish exactly what the gun-using respondents did with their guns. Other questions established what specific crime or crimes the user sought to prevent (burglary, robbery, assault, and so on). The interviewers worked for a private professional polling firm and did not know the names or addresses of the respondents.

28. Kleck & Gertz, *Armed Resistance* at 164.

29. *See* Cook & Ludwig, *Defensive Gun Uses*; David McDowall, *Firearms and Self-Defense*, 539 Annals of the American Academy of Political and Social Sciences 130 (1995).

30. Kleck, Point Blank at 120–51.

31. Kleck, Point Blank at 132.

32. Kleck bases this estimate on homicide studies in Dade County, Florida, and Detroit, Michigan.

33. Federal Bureau of Investigation, Crime in the United States, 1996: Uniform Crime Reports at 22, tbl. 2.17 (Washington, D.C.: U.S. Government Printing Office, 1997).

34. Gary Kleck & Susan Sayles, *Rape and Resistance*, 37 Social Problems 149 (1990), cited in Kleck, Point Blank at 126.

35. James D. Wright & Peter H. Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms at 155 (New York: Aldine, 1986). The sample sizes for these two percentages were 1,673 and 1,627, respectively.

36. A. L. Kellermann & D. T. Reay, *Protection or Peril? An Analysis of Firearm-Related Deaths in the Home*, 314 New England Journal of Medicine 1557 (1986). The earliest study of this type, involving Cuyahoga County, Ohio, from 1958 to 1973, reached similar results: accidental killings in the home outnumbered justifiable-defense killings by six to one. N. B. Rushforth et al., *Accidental Firearm Fatalities in a Metropolitan County*, 100 American Journal of Epidemiology 499 (1975).

37. Kleck, Point Blank at 128. Kellermann and his colleagues did later research that matched households in which homicides occurred with similar households in which homicides had not occurred. They found that gun ownership was more common in the households of homicide victims and concluded that guns kept in the home pose a substantial threat to members of the household. Arthur L. Kellermann et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 New England Journal of Medicine 1084 (1993). Kleck rejects this research because it failed to control for confounding factors that increase the risk of homicide victimization. Most factors that increase the risk of homicide victimization, Kleck notes, also could increase the likelihood that people exposed to those factors would acquire a gun for self-protection. Furthermore, Kellermann and his colleagues did not document a single case in which the victim was killed *with a gun kept in his or her home*, and it was likely that most of the guns used came from outside the home because most of the killers did. Gary Kleck, Targeting Guns: Firearms and Their Control at 224–25 (New York: Aldine, 1997).

38. Marianne Zawitz looked at shootings that were part of criminal assaults and resulted in serious injuries, regardless of where the shootings occurred. She estimated that 57,500 nonfatal gunshot wounds from criminal assaults were treated in hospital emergency departments from June 1992 to May 1993 throughout the United States. Sixteen percent of these, or about 9,200, were reported by hospital staff to have occurred in a home. The true number may be considerably larger because, in more than half of the cases, hospital staff did not know where the shooting took place. Zawitz's study did not distinguish shootings committed with a gun kept in the home from those committed with a gun brought in from outside the home. Marianne W. Zawitz, Firearm Injury from Crime (Selected Findings series, Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice, 1995).

39. Federal Bureau of Investigation, Crime in the United States, 1996, at 18, tbl. 2.11.

40. Zimring & Hawkins, Crime Is Not the Problem at 122–23.

41. The crime of robbery involves assault—that is, the physical attack or the threatened attack that is used to take another person's property from his or her personal control. What is referred to as assault here is physical attack, which does not involve taking another person's property. Both categories of crimes may result in the death of the victim, in which case they would be counted as murders.

42. In the countries studied, most homes had telephones. In Northern Ireland and rural Spain, where fewer homes had

telephones, personal interviews were used. VAN DIJK ET AL., EXPERIENCES OF CRIME at 7.

43. "Within 30 percent of the U.S. rate" means plus or minus 30 percent of that rate. So, to use the 1996 U.S. homicide rate of 7.8 per 100,000 residents as an example, rates within 30 percent of that would range from 5.5 to 10.1. Within 30 percent in their robbery rate were (in increasing order by rate) England, Canada, Czechoslovakia, Australia, Italy, and Poland. Within 30 percent in their assault rate were (in increasing order by rate) Sweden, Czechoslovakia, England, Poland, The Netherlands, Finland, and Canada. ZIMRING & HAWKINS, CRIME IS NOT THE PROBLEM at 38–39, citing JAN J. M. VAN DIJK & PAT MAYHEW, CRIMINAL VICTIMIZATION IN THE INDUSTRIAL WORLD (The Hague, The Netherlands: Ministry of Justice, 1992). Zimring and Hawkins's graphs of the data on pages 38–39 refer to the robbery and assault rates as rates per 1,000 persons, but apparently these actually are rates per 100 persons, as explained in VAN DIJK ET AL., EXPERIENCES OF CRIME at 13.

44. KLECK, TARGETING GUNS at 215–64.

45. Kleck reviews research by Killias (*Gun Ownership*) that showed a positive correlation between household gun ownership and homicide rates in eighteen countries. Looking at all eighteen countries, Killias found a statistically significant correlation of .610 between gun ownership and homicide rates. Killias then removed the two "outliers," the United States and Northern Ireland, both of which have very high homicide rates, from the analysis. For the remaining sixteen more "normal" nations, the correlation between gun ownership and homicide rates was lower (.476) but still statistically significant. However, Kleck notes that if one removes only the United States from the data, the correlation ceases to be statistically significant. He therefore concludes that Killias's findings merely reflect the unique status of the United States as a country with high levels of both violence and gun ownership.

46. Gary Kleck & E. Britt Patterson, *The Impact of Gun Control and Gun Ownership Levels on Violence Rates*, 9 JOURNAL OF QUANTITATIVE CRIMINOLOGY 249 (1993). Kleck and Patterson used a statistical-modeling technique that took into account a possible two-way relationship between violence and gun prevalence—that is, a relationship in which gun availability can cause violence, and violence can cause gun availability. Their measurements of violence were the rates of homicide, suicide, aggravated assault, robbery, rape, and fatal gun accidents, per 100,000 residents. The models controlled for various characteristics of the cities' populations that could be associated with levels of violence, such as percentage of males aged fifteen to twenty-four, percentage of families headed by females, and percentage of families with incomes below the poverty line. Like other researchers, Kleck and Patterson were unable to measure gun prevalence directly in the cities they studied. Instead, they measured it indirectly with a variety of indicators, such as percentages of certain crimes committed with guns.

47. KLECK, TARGETING GUNS at 258 (emphasis added).

48. Richard D. Alba & Steven F. Messner, Point Blank *against Itself: Evidence and Inference about Guns, Crime, and Gun Control*, 11 JOURNAL OF QUANTITATIVE CRIMINOLOGY 391 (1995). It is difficult to prove deterrent effects of any policy or behavior on crime because one cannot be sure how much crime would take place in the absence of the policy or the behavior. Kleck himself concedes the difficulty (KLECK, POINT BLANK at 131–32).

49. Alba & Messner, Point Blank *against Itself* at 408–9.

50. Frank Newport, *Americans Support Wide Variety of Gun Control Measures*, POLL RELEASES (The Gallup Organization), June 16, 1999, available at the organization's Web site, http://www.gallup.com/poll/releases/pr990616.asp.

51. REISS & ROTH, UNDERSTANDING AND PREVENTING VIOLENCE at 255 (Washington, D.C.: National Academy Press, 1993).

52. *See* REISS & ROTH, UNDERSTANDING AND PREVENTING VIOLENCE at 275–79.

53. REISS & ROTH, UNDERSTANDING AND PREVENTING VIOLENCE at 275, citing Glenn L. Pierce & William J. Bowers, The Impact of the Bartley-Fox Gun Law on Crime in Massachusetts (unpublished manuscript, Northeastern University, Center for Applied Social Research, 1979). A published version of this work is Glenn L. Pierce & William J. Bowers, *The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston*, 455 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 120 (1981).

54. REISS & ROTH, UNDERSTANDING AND PREVENTING VIOLENCE at 275–76, citing David McDowall et al., *A Comparative Study of the Preventive Effects of Mandatory Sentencing Laws for Gun Crimes*, 29 CRIMINOLOGY 541 (1992); and citing David McDowall et al., *Preventive Effects of Mandatory Sentencing Laws for Gun Crimes*, in PROCEEDINGS OF THE SOCIAL STATISTICS SECTION, ANNUAL MEETING OF THE AMERICAN STATISTICAL ASSOCIATION, 1991, at 87 (Alexandria, Va.: American Statistical Association, 1992).

55. REISS & ROTH, UNDERSTANDING AND PREVENTING VIOLENCE at 278, citing Philip J. Cook, *The Technology of Personal Violence*, in 14 CRIME AND JUSTICE: A REVIEW OF RESEARCH 1 (Michael Tonry ed.) (Chicago: University of Chicago Press, 1991); and citing Colin Loftin et al., *Effects of Restrictive Licensing of Handguns on Homicide and Suicide in the District of Columbia*, 325 NEW ENGLAND JOURNAL OF MEDICINE 1615 (1991).

56. KLECK, POINT BLANK at 390–416.

57. Kleck & Patterson, *The Impact of Gun Control*.

58. Stevens H. Clarke, *Murder in North Carolina*, 61 POPULAR GOVERNMENT, Summer 1995, at 2.

59. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Youth Risk Behavior Surveillance—United States, 1997*, 47 MORBIDITY AND MORTALITY WEEKLY REPORT SS-3, at i-89, 38 (tbl.), 6–7. The study employed a three-stage cluster sample involving 151 schools nationally; 16,292 questionnaires were completed, for an overall response rate of 69 percent. Participation was anonymous and voluntary.

60. The Gallup Organization, *One-Third of Teenagers Feel Unsafe at School*, POLL RELEASES, Apr. 22, 1999, obtained from the organization's Web site, http://www.gallup.com/poll/releases/pr990422b.asp.

61. JOSEPH F. SHELEY & JAMES D. WRIGHT, GUN ACQUISITION AND POSSESSION IN SELECTED JUVENILE SAMPLES at 4 (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 1993).

62. U.S. TREASURY DEPARTMENT, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, THE YOUTH CRIME GUN INTERDICTION INITIATIVE (YCGII): 27 COMMUNITIES, at app., pp. 10, 13 (Washington, D.C.: BATF, 1999).

63. N.C. GEN. STAT. § 14-269.7 (hereinafter G.S.). This statute makes an exception for minors using handguns for educational or recreational purposes under the supervision of an adult.

64. *See, e.g.*, G.S. 14-269.2.

65. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, PROMISING STRATEGIES TO REDUCE GUN VIOLENCE (Washington, D.C.: OJJDP, 1999).

66. The eight cities (as presented in the report) are as follows: Baltimore; Boston; Buffalo, New York; Richmond, California; Oakland, California; Indianapolis; Minneapolis–St. Paul; and Baton Rouge, Louisiana.

67. OJJDP, PROMISING STRATEGIES at 17.

68. Philip J. Cook, personal communication with John Rubin, editor of POPULAR GOVERNMENT, July 1, 1999.

# The ADA's Reasonable Accommodation Requirement Ten Years Later

*L. Lynnette Fuller*



In 1990, in landmark legislation, Congress sought to eradicate unwarranted discrimination against people with disabilities by enacting the Americans with Disabilities Act (ADA).[1] The law provides a range of federal civil rights protections. Among other things, it protects people with physical or mental impairments that substantially limit a major life activity, from adverse employment actions.[2] The statute covers all state[3] and local government employees, regardless of the number of people the governmental unit employs.[4]

Although the ADA is one of the most important civil rights laws ever enacted, it also is among the most misunderstood. Ten years after its passage, many issues remain unresolved.[5] Much of the confusion can be traced to the law's vague and somewhat ambiguous language. Understanding the act often requires dissecting several terms of art, such as "major life activity," "essential job functions," and "reasonable accommodation." Even the word "disability" takes on a different meaning from people's normal understanding of it. Although some opinions from the U.S. Supreme Court and federal appellate courts have clarified the statute, inconsistent decisions from federal judges and disagreements among the appellate courts have only created more confusion. As courts continue to grapple with interpretation of the ADA, North Carolina employers are seeking practical guidance on compliance with its requirements.

Perhaps more than any other ADA issue, the employer's duty to accommodate people with disabilities frequently raises questions. This article briefly explores what the term "rea-

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sonable accommodation" means, who is entitled to reasonable accommodation, what the various types of reasonable accommodations are, and what constitutes an undue hardship excusing an employer from the duty to accommodate. This article also addresses important aspects of *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*,[6] recently released by the Equal Employment Opportunity Commission (EEOC). This document contains the agency's clarification of ambiguities arising under existing case law.

## An Overview of the Reasonable Accommodation Requirement

The ADA requires that employers make

> reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business. . . .[7]

This duty is considered one of the ADA's most important statutory requirements. It also is one of the most confusing of the statute's mandates and therefore has resulted in much litigation.

Regulations interpreting the ADA, issued by the EEOC, define "accommodation" as "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."[8]

The reasonable accommodation requirement is intended to remove barriers that prevent people with disabilities from entering or remaining in the workforce. Generally, reasonable accommodations fall into one of three broad categories:[9]

- Changes to the application process for a job so that a qualified applicant with a disability may be considered for the job
- Modifications to the work environment, including how a job is performed, so that a qualified person with a disability can perform the job
- Changes so that an employee with a disability can enjoy equal privileges and benefits of employment

The ADA, the EEOC's regulations, and case law identify many types of reasonable accommodations that an employer may be required to provide. They include, but are not limited to, providing assistants; providing special equipment; restructuring a job; providing light-duty work; offering part-time or modified work schedules; reassigning an employee to a vacant position; and offering leave without pay.

Employers are not required to address nonworkplace barriers or provide personal-use items that aid someone in daily activities both on and off the job. Such items might include prosthetic limbs, wheelchairs, eyeglasses, service animals, or hearing aids if those items are used off the job. However, when such items are specifically designed or required to meet job-related needs, the ADA may require employers to provide them as reasonable accommodation.

> Inconsistent decisions from federal judges and disagreements among the appellate courts have only created more confusion.

Both qualified applicants and current employees with disabilities are entitled to reasonable accommodation.[10] An employee's status as temporary, probationary, or part-time is irrelevant. Generally, people with disabilities must inform their employers or prospective employers that they may need an accommodation.[11]

## The Meaning of "Reasonable"

Congress did not define the term "reasonable accommodation" in the ADA. Instead, it gave examples of what the term encompasses. The only statutory limitation on an employer's duty to provide reasonable accommodation is that such accommodation is not required if it would impose an "undue hardship" on the employer. According to the EEOC, the word "reasonable" has no independent definition. It simply means that the accommodation must be effective in removing workplace barriers.[12] In other words, if a modification or an adjustment enables the employee to perform the essential functions of a job, or in the case of an applicant, to have an equal opportunity to apply and be considered for employment, it is reasonable.

Courts have developed various interpretations of the term. For example, in *Vande Zande v. Wisconsin Department of Administration*, the court held that a proposed accommodation is not reasonable if an employer can show that the cost is not worth the resulting gain.[13] The case involved an employee who wanted, among numerous other accommodations, the sink in the break room to be lowered so that she could use it instead of the sink in the restroom. The court commented as follows:

> [R]easonable may be intended to . . . weaken "accommodation," in just the same way that if one requires a "reasonable effort" of someone this means less than the maximum possible effort. . . . Even if the employer is so large or wealthy . . . that it may not be able to plead "undue hardship," it would not be required to expend enormous sums in order to bring about a trivial improvement in the life of a disabled employee.[14]

According to the Seventh Circuit Court of Appeals, the employee must show not only that the accommodation is effective but also that its benefit is proportional to its cost. After the employee meets this threshold, the employer may introduce evidence that the costs are excessive in relation to either the benefits of the accommodation or the employer's financial well-being.

## People Entitled to Reasonable Accommodation

Qualified current employees, regardless of their position or status, are entitled to reasonable accommodation. Further,

## North Carolina Office on the ADA

In 1994 the North Carolina General Assembly created a special office to consult with state and local governments, businesses, and industries on complying with the Americans with Disabilities Act (ADA) of 1990. Operating under the state's Department of Administration, the office promotes compliance through training, technical assistance, and the provision of an alternative process for resolving disputes. It also serves as a resource center on the ADA, disseminating accurate and relevant information to government, business, professionals, and consumers.

Larry Jones, a longtime employee of the Department of Administration, was recently named coordinator of the ADA Office. Jones has worked in state government for more than nineteen years. Before assuming his present position, he worked for the Governor's Advocacy Council for Persons with Disabilities, most recently as manager of the council's North Central Regional Office in Butner, North Carolina.

Services that are available through the ADA Office include the following:

**State and Local Governments**

*Seminars for staff*
- Requirements for building accessibility
- Effective communication
- Employment obligations

*Technical assistance*
- Self-evaluation and transition plans (ADA Office staff help agencies determine whether they are in compliance with the ADA and, if necessary, help them develop a plan to ensure compliance)
- Program and communication compliance
- Identification of resources and training materials

*Information (through telephone inquiries and publications)—for example, on significant case decisions*

**Businesses and Industries Covered by the ADA**

*Seminars for groups and associations*
- Obligations under Title III (which prohibits discrimination in public accommodations)
- "Readily achievable" barrier removal
- Achievement of "good faith effort" status
- Available tax benefits

*Technical assistance*
- Effective communication
- Alternative ways to provide service
- Identification of resources and training materials

*Information (through telephone inquiries and publications)*

For more information, contact the ADA Office, 217 West Jones Street, Raleigh, NC 27603, phone (919) 715-2302.

employers must accommodate applicants for employment. An employer may be aware of a current employee's disability, whereas it will usually know little about the physical or mental condition of an applicant. Therefore the law allows an employer to tell an applicant what the screening process involves—for example, an interview, a written test, a physical agility test, or a job demonstration (a demonstration of ability to perform certain aspects of the job)—and to ask the applicant whether he or she will need a reasonable accommodation to complete the screening process. Before making a conditional offer of employment, however, the employer should not ask the applicant whether he or she needs a reasonable accommodation to perform the essential functions of the job unless the applicant voluntarily discloses his or her disability or the disability is obvious.

Although an employer may suspect that it will be unable to accommodate an applicant's disability if the person is ultimately hired, the employer must nonetheless enable the person to have an equal opportunity to participate in the application process and be considered for the position, unless the employer can establish that even this step poses an undue hardship. People with disabilities who meet the prerequisites to be considered for a job should not be excluded because the employer speculates, on the basis of a request for reasonable accommodation during the application process, that it will be unable to provide the person with reasonable accommodation to perform the job. The employer must assess the need for accommodations for the application process separately from the need for accommodations to perform the job.

The ADA also covers people whom employers perceive as having a disability.[15] The EEOC maintains, however, that employers do not have a duty to provide a reasonable accommodation to these people. This position is consistent with the rationale for the reasonable accommodation requirement—to eliminate workplace barriers. In "perceived as" cases, there is no legitimate workplace barrier because no real disability exists.

Most federal courts that have addressed this issue have concurred with the EEOC. In *Newberry v. East Texas State University*, for example, the court stated that "an employer need not provide reasonable accommodation to an employee who does not suffer from a substantially limiting impairment merely because the employer thinks the employee has such an impairment."[16]

On the other hand, in *Corrigan v. Perry*, North Carolina's own Fourth Circuit Court of Appeals determined that the plaintiff employee did not have a disability. However, it assumed that the plaintiff might have been regarded as disabled, and it analyzed whether he was denied a reasonable accommodation.[17]

Because this issue remains unsettled, employers still should determine whether a reasonable accommodation

is needed when interviewing people who have a record of a disability or are regarded as having a disability.

### Requests for Reasonable Accommodation

Generally it is the applicant's or the employee's responsibility to inform the employer that he or she needs a reasonable accommodation.[18] Employers are not required to speculate about an employee's physical or mental impairment or need for assistance. In *Huppenbauer v. May Department Stores Co.*, the court said that a person must "make a clear request for an accommodation and communicate it to his employer." The court found that general knowledge in the workplace of the plaintiff's "heart condition" was not enough to trigger the employer's obligation to provide reasonable accommodation.[19]

A request for reasonable accommodation may be made at any time during the application process or during the period of employment. A proper request not only asks for a change in work requirements but describes the disability necessitating the change. When requesting a reasonable accommodation, however, an employee does not have to use the term or even mention the ADA. The request may be made either orally or in writing, and it need not be made by the employee himself or herself. An external source, such as a family member, a friend, or a health care provider, may make the request on the employee's behalf.

### The Employer's Responsibilities

Once an employee has made a request for reasonable accommodation, the employer should engage in an informal, interactive process[20] with the employee to clarify what he or she needs and to identify an appropriate accommodation. The following steps usually enable an employer to find an effective accommodation for the person to perform the essential functions of the job:

1. Examine the particular job to determine its purpose and essential functions.
2. Consult with the person to find out his or her specific physical or mental abilities and limitations as they relate to the essential job functions.
3. In consultation with the person, identify potential accommodations and assess how effective each would be in enabling the person to perform essential job functions. If this consultation does not identify an appropriate accommodation, technical assistance is available from a number of sources, many without cost.

Employers should take the interactive process seriously, for failure to engage in it may constitute a violation of the ADA.[21] At the very least, the employer's interaction with the employee may be used as a measure of the employer's good faith in attempting to accommodate the employee.

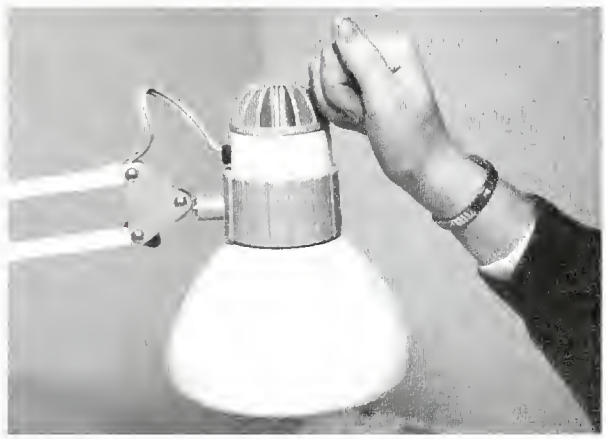
Unless the disability and the need for an accommodation are obvious, current ADA regulations permit an employer to request medical documentation relating to the employee's disability or functional limitations.[22] However, an employer may not ask for all of the employee's medical records, which are likely to contain information irrelevant to the disability or the limitation. Rather, employers should delineate the types of information they are seeking regarding the disability, the limitations on the functions the employee can perform, and the need for reasonable accommodation. If the employee fails to provide the requested documentation, he or she may not be entitled to the accommodation.[23]

In responding to a request for an accommodation, an employer should act promptly. An unnecessary delay in accommodating a qualified employee may amount to a denial of an accommodation and result in liability under the ADA.[24] The EEOC's recent *Enforcement Guidance on Reasonable Accommodation* clarifies the circumstances under which an employer will be liable for a delay in providing a reasonable accommodation. There are five relevant factors: (1) why the delay occurred; (2) how long the delay was; (3) how much the person with a disability and the employer each contributed to the delay; (4) what the employer was doing during the delay; and (5) whether the accommodation was simple or complex to provide.[25]

> An employer's obligation is to provide an *effective* accommodation—not necessarily the best accommodation or the one desired by the employee.

### Options for Reasonably Accommodating Disabled Employees

Just as employees' disabilities vary, so do the appropriate accommodations. There may be countless ways to accommodate an employee's physical or



Courtesy of the Center for Universal Design, School of Design, N.C. State University

**The top of the lamp is the control on this new-style drafting lamp. People with limited dexterity can use their palm or fist to turn the control.**

For information about accessible and universal design, contact the Center for Universal Design, North Carolina State University, phone (919) 515-3082, e-mail cud@ncsu.edu. For information about products, contact the Job Accommodation Network, phone (800) 526-7234, e-mail jan@jan.icdi.wvu.edu, or the North Carolina Assistive Technology Project, phone (919) 850-2787, e-mail ncatp@mindspring.com.

mental impairment. An employer's obligation is to provide an *effective* accommodation—not necessarily the best accommodation or the one desired by the employee.[26] Following is a discussion of the most common types of accommodations.

### Providing Assistants

The ADA is clear that reasonable accommodation may include providing an assistant such as a reader or an interpreter to enable an employee to do his or her job. Nonetheless, the employee must be able to perform the essential functions of the job. In *Reigel v. Kaiser Foundation Health Plan*, the court held that the plaintiff, a physician with a shoulder injury, was not qualified for a particular job because she could not perform the job's essential functions, which included lifting patients. The court noted that the employer did not need to hire someone to assist the physician in performing evaluations because "the law does not require an employer to hire two individuals to do the tasks ordinarily assigned to one."[27]

Similarly, in *Sieberns v. Wal-Mart Stores*, the court noted that the plaintiff could not stock and price certain merchandise. Because these were essential functions of her job as a sales clerk, the court held that Wal-Mart did not have to accommodate her by hiring someone else to perform these duties.[28]

### Providing Special Equipment

Acquiring or modifying equipment to enable a disabled employee to perform his or her job also is a reasonable accommodation under the ADA.[29] For example, employers may be required to provide optical scanners (reading machines) for employees with visual impairments, or a TTY-relay system (a customer talks to a relay operator, who types the customer's words and relays them to a screen) for employees with auditory impairments. The additional equipment or device is required unless acquiring it poses an undue hardship on the employer.

### Restructuring a Job

Job restructuring generally refers to modifying a job to reallocate or redistribute nonessential functions, or altering when or how a function is to be performed. The statute requires job restructuring as a means of reasonably accommodating a disabled employee.[30]

The employer of this woman with diabetes accommodates her with periodic breaks to check her blood-sugar levels.

An employer does not have to reallocate *essential* functions as an accommodation. In *Reigel* the court said that the employer was not required to limit an internal medicine physician's duties to supervisory and administrative work, because this would eliminate essential functions of her position.[31]

### Providing Light-Duty Work

An employer has no affirmative duty to create a light-duty position when no such position previously existed. However, if an employer has existing light-duty jobs, it may have to consider reassigning an employee with disabilities to one of these positions as a reasonable accommodation.

A question that often arises is whether an employer may create a light-duty job for a limited time. The EEOC has stated that "an employer is free to determine that a light duty position will be temporary rather than permanent."[32] In *Champ v. Baltimore County*, the court held that the em-

Courtesy of the Center for Universal Design, School of Design, N.C. State University

Providing special equipment such as a TDD (telecommunication device for deaf persons, pictured above; also called a TTY, from its origin in teletype technology) can be a reasonable accommodation under the ADA.

ployer did not have to keep an injured police officer in a temporary light-duty position permanently, even though the officer had been in the position for nearly sixteen years.[33]

A related question is whether an employer may reserve light-duty work for employees who have sustained on-the-job injuries. The EEOC's position is that an employer may not reserve existing light-duty jobs for on-the-job injuries,[34] but one can make a strong argument otherwise. Reserving light-duty jobs for people with injuries that qualify for workers' compensation does not discriminate on the basis of disability. It does differentiate on the basis of where a person is injured, but an employee with any type of a disability is eligible for such a light-duty job if he or she has sustained a workplace injury.

The Seventh Circuit Court recently addressed this issue in *Dalton v. Subaru-Isuzu Automotive*. Disagreeing with the EEOC, the court held that light-duty positions could be reserved for employees who had sustained work-related injuries. "[N]othing in the ADA," the court noted, "requires an employer to abandon its legitimate, nondiscriminatory company policies defining job qualifications, prerequisites, and entitlements to intracompany transfers."[35]

### Offering Part-Time or Modified Work Schedules

An employer may be required to change an employee's work schedule as reasonable accommodation. A modified work schedule can include any number of changes, including different arrival and departure times, periodic breaks during the day, or different times at which certain functions must be performed. Employers should carefully assess whether a modification of an employee's work hours would significantly disrupt their business operations, thus causing an undue hardship, or whether the essential functions may be performed at varying times with little or no impact.

With respect to part-time employment, an employer is not required to create a position if none previously existed. For example, in *Terrell v. USAir*, the court examined whether the airline should have allowed a reservations agent with carpal tunnel syndrome to work part-time. The court held that if USAir had no part-time jobs available, it was not required to create one. Specifically, the court stated, "[W]hether a company will staff itself with part-time workers, full-time workers, or a mix of both is a core management policy with which the ADA was not intended to interfere." The court rejected the employee's claim that the part-time work was inherently reasonable merely because the employer had temporarily reduced the employee's hours on prior occasions.[36] Similarly, in *Millner v. Co-Operative Savings Bank*, the court found that full-time work was an essential function of a staff real estate appraiser's job and the employer therefore was not required to allow her to work on a part-time basis.[37]

> Job restructuring generally refers to modifying a job to reallocate or redistribute nonessential functions, or altering when or how a function is to be performed. . . . An employer does not have to reallocate *essential* functions as an accommodation.

### Reassigning an Employee to a Vacant Position

The ADA specifically lists reassignment as a form of reasonable accommodation.[38] Despite this, some employers have argued that reassignment is not a reasonable accommodation because, by virtue of having to be reassigned, a person is not "qualified" to perform the essential functions of his or her position and therefore is not protected under the statute. Courts have generally rejected this argument, as have the EEOC and the U.S. Department of Justice.[39]

The EEOC declares that, when an employer reassigns an employee, the reassignment must be to a vacant position that is substantially equivalent in terms of pay, status, geographic location, and so forth. "Vacant" means that the position is available when the employee requests reasonable accommodation or that it soon will become available. If there is no vacant, equivalent position, the employer may reassign the employee to a vacant, lower-level position.[40]

Employers frequently ask whether, in carrying out their reassignment obligation, they may require the employee to compete with other applicants for the vacant position. The EEOC maintains that if an employee is qualified for a position, he or she is entitled to it without having to compete.[41] Likewise, some courts have held that reassignment does not mean simply allowing the employee to compete for an open position. For example, in *Aka v. Washington Hospital Center*, the court noted as follows:

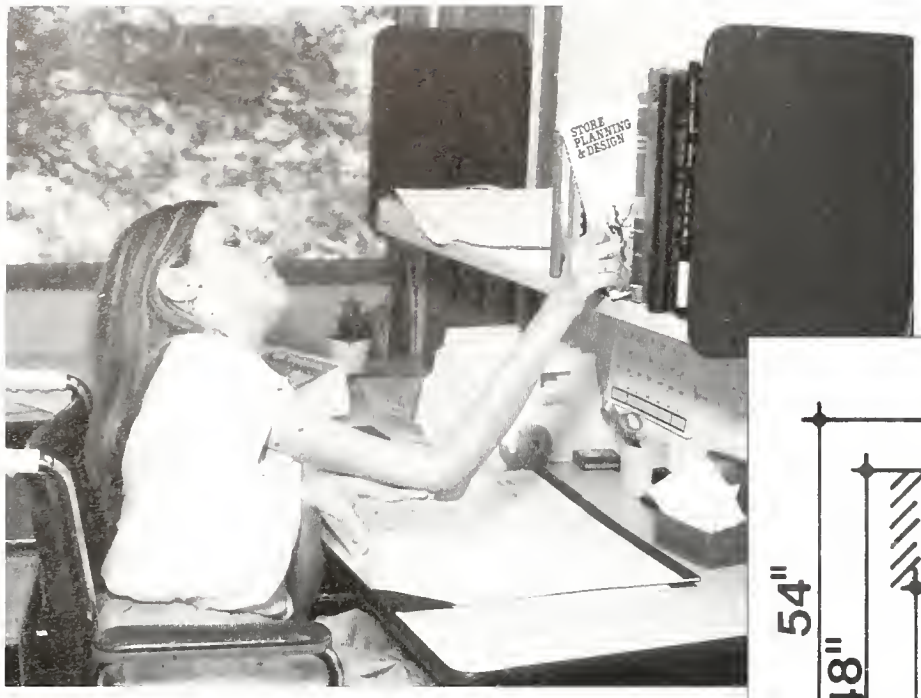
> [T]he word reassign must mean more than allowing the employee to apply for a job on the same basis as anyone else. An employee who on his own initiative applies for and obtains a job elsewhere in the enterprise would not be described as having been "reassigned"; the core word "assign" implies some active effort on the part of the employer.[42]

At least one appellate court, however, has suggested that reassignment simply means having the opportunity to compete for a vacant position.[43]

Employers should be aware of the limitations on their reassignment obligations. First, reassignment is available to employees only, not to applicants. Second, an employer does not have to bump another employee from a job or create a new position in order to reassign an employee with disabilities. Third, the ADA does not require an employer to promote a disabled employee as an accommodation. Finally, a person must be reassigned only to a job for which he or she is qualified (with an accommodation if necessary).

### Changing an Employee's Supervisor

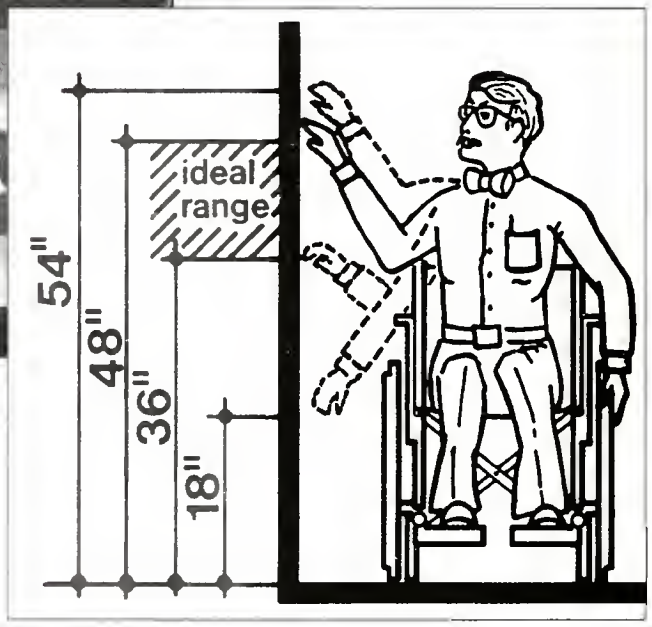
An employer is not required to change an employee's supervisor as a reasonable accommodation. In *Weiler v. Household Finance Corporation*, the plaintiff alleged that she was experi-




Courtesy of the Center for Universal Design, School of Design, N.C. State University

Left: A woman with limited reach demonstrates the top of the range for a reach by a person seated in a wheelchair.

Below: A diagram, courtesy of the Center for Universal Design, shows the reach range for a person for wall-mounted objects such as light switches, electrical outlets, and bathroom dispensers.




encing job-related stress and anxiety. She claimed that, by denying her request to transfer her to a new supervisor, the employer had failed to reasonably accommodate her. The court concluded that

> the ADA does not require HFC to transfer Weiler to work for a supervisor other than Skorupka, or to transfer Skorupka. . . . Weiler asks us to allow her to establish the conditions of her employment, most notably, who will supervise her. Nothing in the ADA allows this shift in responsibility.[44]

Similarly, in *Wernick v. Federal Reserve Bank*, the court held that the employee's request for a different supervisor was unreasonable because "one of the essential functions of Wernick's job was to work under her assigned supervisor."[45]

Although an employer is not required to provide an employee with a new supervisor as a reasonable accommodation, nothing in the ADA prohibits the employer from doing so. Moreover, the ADA may require alteration of supervisory methods as a reasonable accommodation.

### Offering Leave without Pay

The EEOC maintains that unpaid leave is a form of reasonable accommodation, and most courts seem to agree. Unpaid leave may be appropriate when a person expects to return to work after receiving treatment for a disability, recovering from an illness, or taking some other action related to his or her disability.

The question that often arises is how much leave a person must be given as a reasonable accommodation. The analysis requires a very fact-specific inquiry into whether a particular amount of time imposes an undue hardship on the employer. The courts, however, have provided some guidance. In *Nunes v. Wal-Mart Stores*, the court suggested that holding a job open for a lengthy period might not be an undue hardship for an employer when the employer's policy allowed employees to take up to one year of leave and it regularly hired seasonal employees to fill vacant positions.[46] Similarly, in *Haschmann v. Time Warner Entertainment Company*, the court held that holding an employee's job open for two to four weeks would not pose an undue hardship in light of the evidence that the job had been vacant for a number of months before the employee was hired, it had taken six months to fill the position after the employee was fired, and other employees were able to do the job on an interim basis.[47]

Although the EEOC's stance on this issue has fluctuated, the agency's most recent position is that if an employee cannot provide a fixed date of return, the employer may deny the leave if it can show undue hardship because of the uncertainty.[48] The courts have agreed. For example, in *Rawlings v. Runyon*, the court stated that reasonable accommodation does not require providing indefinite leave while an employee processes a disability retirement application.[49] Likewise, in *Mitchell v. AT&T Corporation*, the court held that "reasonable accommodation does not require the employer to wait indefinitely for the employee's medical conditions to be corrected."[50]

As is the case with leave taken under the Family and Medical Leave Act, a person may not be penalized for work missed during leave that was taken as a reasonable accommodation. According to the EEOC, if an employer has a "no-fault" attendance policy (a policy of

disciplining or terminating an employee based on a certain number of absences, regardless of the reasons for them), it must modify this policy to provide additional leave unless another accommodation would enable the person to perform the essential functions of the position or additional leave would cause an undue hardship on the employer.[51]

## The Meaning of "Undue Hardship"

The ADA does not require an employer to provide accommodations when doing so would pose an undue hardship to the employer. Establishing an undue hardship, however, requires the employer to show more than mere inconvenience. The employer must present evidence that providing the accommodation would significantly affect its business operations. For example, an accommodation might cause an undue hardship under the ADA because it was unduly costly. But simply comparing the cost of an accommodation to the salary of the person in need of the accommodation does not suffice. The employer has to show that the cost is excessive compared with the employer's overall budget.

Unfortunately there is no magic formula for determining when a proposed accommodation will pose an undue hardship. However, when evaluating whether providing a reasonable accommodation constitutes an undue hardship, employers should take the following factors into consideration:

- The nature and the net cost of the accommodation
- The employer's financial resources, including the number of employees, the size of the business, and the number, the type, and the location of the employer's facilities
- The type of operations of the overall entity, including the composition, structure, and functions of the workforce, and the geographic separateness and the administrative or fiscal relationship of the facility or department in question to the overall entity
- The effect of the proposed accommodation on the employer's expenses and resources as well as any other effect on the operation of the business

An accommodation may be too disruptive or extensive, even though it may not be expensive. For example, an employee working as a waiter in a nightclub may not be able to see well because of the club's dim lighting. In such a case, an employer probably would not be required to brighten the lights in the nightclub, even though doing so would not be costly. Such an alteration of the club's atmosphere would cause an undue hardship because it would alter and adversely affect the nature of the business. When one accommodation will not work, however, an employer still is required to evaluate the alternatives to determine whether an effective accommodation exists.

Although a negative effect on the morale of other employees is not an undue hardship, an accommodation that inhibits the ability of employees to do their jobs is an undue hardship. The EEOC has stated that if modifying one employee's schedule as a reasonable accommodation would so overburden another employee that he or she would not be able to handle his or her own duties, the employer could establish undue hardship.[52] Disruption, however, must be established on the basis of objective facts, not on the basis of employees' unfounded fears and prejudices.

Courtesy of the Center for Universal Design, School of Design, N.C. State University

Modifying an employees' restroom is often necessary to accommodate a person in a wheelchair, whose needs include more space to maneuver and lowered sinks with knee space below.

The burden of proof is on the employer to present credible evidence that an accommodation poses an undue hardship. In *Bryant v. Better Business Bureau*, the court noted that the employer's defense of undue hardship must have "a strong factual basis and be free of speculation or generalization about the nature of the individual's desirability or the demands of a particular job."[53] Moreover, the court suggested that an employer may not rely on the undue hardship defense unless it has conducted an analysis to determine whether the accommodation presents an undue hardship.

## Conclusion

The ADA remains a legal labyrinth to be explored warily by employers, employees, and their counsel. The EEOC's recent *Enforcement Guidance on Reasonable Accommodation* provides a useful roadmap, but the courts have frequently disagreed with the EEOC's interpretations of the statute and have not gone as far as the agency in protecting workers. Reasonable accommodation is an extremely fact-sensitive issue that requires dialogue among all parties on a case-by-case basis to iron out the ADA's ambiguities and to ascertain what will work effectively for both an employee with disabilities and an accommodating employer.

## Notes

1. 42 U.S.C. §§ 12101–12213.
2. 42 U.S.C. §§ 12111–12117.
3. In Alden v. Maine, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999), the U.S. Supreme Court held that individual employees may no longer sue a state agency for a violation of the Fair Labor Standards Act. Similarly, in Kimel v. Florida Board of Regents, 2000 WL 14165 (U.S. Jan. 11, 2000), the Court held that, although the Age Discrimination in Employment Act (ADEA) contains a clear statement of Congress's intent to abrogate the states' immunity, that abrogation exceeded Congress's authority under Section 5 of the Fourteenth Amendment; therefore an individual employee may not bring a lawsuit under the ADEA to recover monetary damages from his or her state employer. These holdings greatly expand the states' sovereign immunity against claims by individuals alleging violations of federal em-

ployment laws. The full impact of the decisions on claims brought by employees is yet to be determined, but arguably the rulings will apply to state employees' claims for alleged violations of the ADA.

4. Title I of the ADA covers all employers, including state and local governments, with fifteen or more employees. Public entities not covered by Title I because they do not have the requisite number of employees are covered by Section 504 of the Rehabilitation Act, which serves as the means of implementing the ADA. 28 C.F.R. § 35.140(2).

5. In its last term, the U.S. Supreme Court ended some of the confusion regarding the statute by deciding an unprecedented four ADA cases. In Cleveland v. Policy Management Sys. Corp., 526 U.S. 795, 119 S. Ct. 1597, 143 L. Ed. 2d 966 (1999), the Court held that people who have applied for or are receiving disability benefits are not necessarily foreclosed from pursuing a claim under the ADA. In Sutton v. United Air Lines, 119 S. Ct. 2139, 144 L. Ed. 2d 450 (1999), Murphy v. United Parcel Service, 119 S. Ct. 2133, 144 L. Ed. 2d 484 (1999), and Albertsons, Inc. v. Kirkingburg, 119 S. Ct. 2162, 144 L. Ed. 2d 518 (1999), the Court ruled that measures that mitigate or correct a person's impairment must be considered in determining whether the person is disabled.

6. *Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act*, No. 915.002 (3/1/99) (hereinafter *Enforcement Guidance on Reasonable Accommodation*). The EEOC guidelines are not binding on a court of law but "do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).

7. 42 U.S.C. § 12112(b)(5)(A).

8. 29 C.F.R. pt. 1630, app. § 1630.2(o).

9. 29 C.F.R. § 1630.2(o)(1)(i–iii).

10. A "qualified individual" is defined as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

11. 29 C.F.R. pt. 1630, app. § 1630.9.

12. Enforcement Guidance on Reasonable Accommodation at p. 5.

13. Vande Zande v. Wisconsin Dep't of Admin., 44 F.3d 538 (7th Cir. 1995).

14. Vande Zande, 44 F.3d at 542–43.

15. 42 U.S.C. § 12102(2)(B), (C).

16. Newberry v. East Texas State Univ., 161 F.3d 276, 280 (5th Cir. 1998).

17. Corrigan v. Perry, 1998 WL 129929 (4th Cir. 1998) (unpublished).

18. Some courts have suggested that if an employer knows both about a disability and the need for an accommodation, it may have an obligation to provide the accommodation despite the absence of an express request. For example, in Schmidt v. Safeway, Inc., 864 F. Supp. 991 (D. Ore. 1994), the court said that the employer had an obligation because (1) it knew of the employee's underlying alcohol problem; (2) it "had reason to believe the employee could continue to perform the job providing an accommodation was made"; and (3) an accommodation request would have been futile, given the employer's policy of immediate termination of an employee with alcohol in his or her urine.

19. Huppenbauer v. May Dep't Stores Co., 1996 WL 607087 (4th Cir. 1996) (unpublished).

20. See 29 C.F.R. § 1630.2(o)(3). The EEOC regulation states that this process may be necessary to identify the precise limitations resulting from the disability and reasonable accommodations that might overcome those limitations.

21. The extent of the employer's obligation to participate in the interactive process as set forth in EEOC regulations has divided the appellate courts. In Jacques v. Clean-Up Group, 96 F.3d 506 (1st Cir. 1996), the court acknowledged in dicta that "[t]here may well be situations in which the employer's failure to engage in an informal interactive process would constitute a failure to provide reasonable accommodation that amounts to a violation of that act." *Jacques*, 96 F.3d at 514. On the other hand, in Barnett v. U.S. Air, 157 F.3d 744 (9th Cir. 1998), the court rejected the notion that an employer can be independently liable for failing to engage in an interactive process.

22. *See* 29 C.F.R. § 1630.9.

23. *See* Templeton v. Neodata Services, 162 F.3d 617 (10th Cir. 1998) (concluding that plaintiff's refusal to provide information from her physician on her medical condition constituted breakdown in interactive process required under ADA and therefore was sufficient to preclude her claims).

24. *See* Dalton v. Subaru-Isuzu Automotive, 141 F.3d 667 (7th Cir. 1998).

25. *Enforcement Guidance on Reasonable Accommodation* at p. 19.

26. *See* Hankins v. The Gap, Inc., 84 F.3d 797, 800 (6th Cir. 1996) (holding that employer does not have to provide accommodation that person wants, as long as it has "made available other reasonable and effective accommodations").

27. Reigel v. Kaiser Foundation Health Plan, 859 F. Supp. 963, 973 (E.D.N.C. 1994).

28. Sieberns v. Wal-Mart Stores, 125 F.3d 1019 (7th Cir. 1997).

29. 42 U.S.C. § 12111(9)(A).

30. 42 U.S.C. § 12111(9)(B).

31. *Reigel*, 859 F. Supp. at 973–74.

32. *EEOC Enforcement Guidance: Workers' Compensation and the ADA*, No. 915.002 (9/3/96), at p. 22.

33. Champ v. Baltimore County, 884 F. Supp. 991 (D. Md. 1995), *aff'd*, 91 F.3d 129 (4th Cir. 1996).

34. *Champ*, 884 F. Supp. at 22.

35. Dalton v. Subaru-Isuzu Automotive, 141 F.3d 677, 678 (7th Cir. 1998).

36. Terrell v. USAir, 132 F.3d 621, 627 (11th Cir. 1998).

37. Millner v. Co-Operative Savings Bank, 1998 WL 377931 (4th Cir. 1998) (unpublished).

38. 42 U.S.C. § 12111(9)(B).

39. *See* Gile v. United Airlines, 95 F.3d 492, 498 (7th Cir. 1996). In this case the court held that it was the employer's obligation to accommodate a disabled employee, even though the employee was not able to perform the essential functions of her job. The court relied in part on the legislative history of the ADA, which states, "'Reasonable accommodation may include reassignment to a vacant position. If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified may prevent the employee from being out of work and the employer from losing a valuable worker.'"

40. 29 C.F.R. § 1630.2(o)(2).

41. *Enforcement Guidance on Reasonable Accommodation* at p. 44.

42. Aka v. Washington Hosp. Center, 156 F.3d 1284, 1304–05 (D.C. Cir. 1998).

43. *See* Daugherty v. City of El Paso, 56 F.3d 695 (5th Cir. 1995).

44. Weiler v. Household Finance Corp., 101 F.3d 519, 526 (7th Cir. 1996).

45. Wernick v. Federal Reserve Bank, 91 F.3d 379, 384 (2d Cir. 1996).

46. Nunes v. Wal-Mart Stores, 164 F.3d 1243 (9th Cir. 1999).

47. Haschmann v. Time Warner Entertainment Co., 151 F.3d 591 (7th Cir. 1998).

48. *Enforcement Guidance on Reasonable Accommodation* at p. 57.

49. Rawlings v. Runyon, 1997 WL 128533 (4th Cir. 1997) (unpublished).

50. Mitchell v. AT&T Corp., 1997 WL 770929 (4th Cir. 1997) (unpublished).

51. *Enforcement Guidance on Reasonable Accommodation* at p. 27.

52. *Enforcement Guidance on Reasonable Accommodation* at pp. 55–56.

53. Bryant v. Better Business Bureau, 923 F. Supp. 720, 741 (D. Md. 1996).

# Stay or Go? County Commissioners on Social Services Boards

*John L. Saxon*

**SCENARIO 1**

*In June 1999 the commissioners of (fictional) Carolina County appointed Janet Greene, a county resident, to the county's social services board, effective July 1, 1999. How long is Greene's term on the board?*

The answer is clear. Under Section 108A-4 of the North Carolina General Statutes (hereinafter G.S.), her appointment is for a three-year term that expires on June 30, 2002 (unless she was appointed to fill an unexpired term resulting from a vacancy on the board).

**SCENARIO 2**

*In November 1998 the voters of Carolina County elected Janet Greene to the board of county commissioners. After Greene assumed office, the county commissioners appointed her to the social services board, effective July 1, 1999, when the term of an incumbent social services board member expired. How long is Greene's term on the board?*

The answer depends on whether one thinks that Greene's appointment to the social services board is (1) governed by G.S. 108A-4 or (2) not governed by G.S. 108A-4 because it is *ex officio* and therefore concurrent with her term as a county commissioner.

This article examines the legal arguments for and against these two views: the "three-year term position" and the "*ex officio* position." (For background information on appointment and terms of social services board members, see the sidebar, page 30.)

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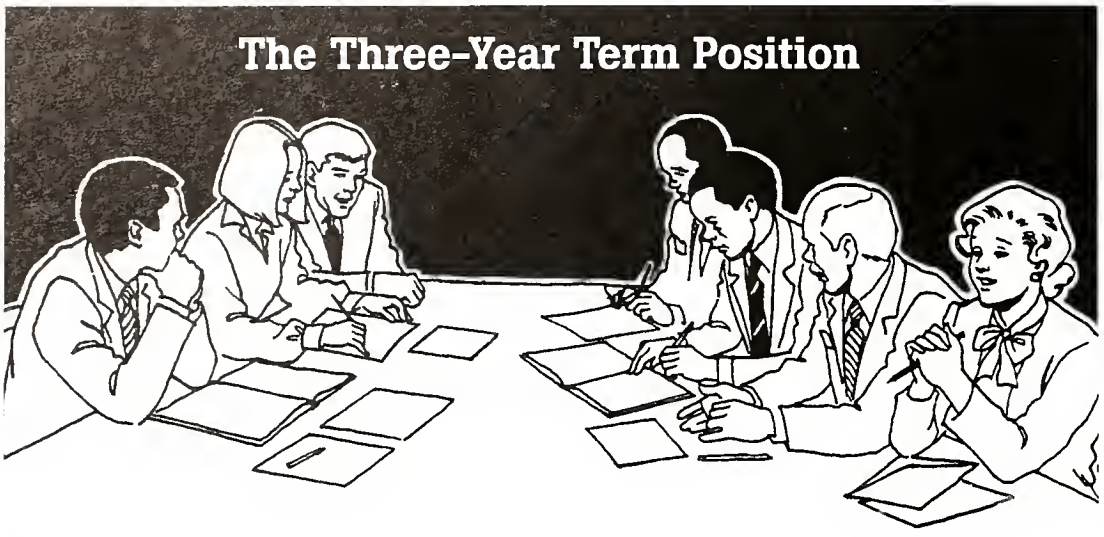



The three-year term position is based on the literal wording of G.S. 108A-4: "each member of a county board of social services shall serve for a term of three years." Proponents argue that G.S. 108A-4's wording and meaning are clear and unambiguous. The three-year term established by the statute applies to *all* members, including county commissioners who are appointed to the social services board. Three years means just that—not more, not less. Nothing in the statute links a county commissioner's appointment to the social services board to his or her term as a county commissioner.

A comparison of G.S. 108A-4 with G.S. 130A-35(c) and G.S. 122C-118(f), the statutes respectively governing appointment and terms of members of county public health boards and area mental health authorities, supports this literal interpretation, its proponents argue. All the members of a county health board are appointed by the county commissioners. One member of the county health board must be a county commissioner. The terms of all the members of the county health board, other than the county commissioner who is appointed to it, are three years.[1] G.S. 130A-35(c), however, expressly provides that, rather than serving a three-year term, the county commissioner who is appointed to serve on the county health board "shall serve only as long as the [county commissioner] member is a county commissioner."

A multicounty area mental health authority board consists of fifteen to twenty-five members appointed by the boards of county commissioners within the area.[2] These mental health authority boards must include at least one county commissioner from each county in the area. Members of a mental health authority board who are not county commissioners serve four-year terms. G.S. 122C-118(f), however, expressly provides that members of a mental health authority board who are county commissioners serve in an *ex officio* capacity and that their terms on the mental health authority board "are concurrent with their terms as county commissioners."

Proponents of the three-year term position argue that if the General Assembly had intended to link the term of a county commissioner on the social services board to his or her term as a county commissioner, it could have done so quite easily (and may still do so) by amending G.S. 108A-4 to include language similar to that found in G.S. 130A-35(c) and G.S. 122C-118(f). The absence of similar language in G.S. 108A-4, they contend, provides additional evidence that the term of a county commissioner who serves on the social services board is three years and is not concurrent with his or her term as a county commissioner.

Finally, proponents of the three-year term position argue, the question of a county commissioner's term on the social services board was decided by a 1963 decision of the North Carolina Supreme Court, *State ex rel. Pitts v. Williams*. In this case the court held that a county commissioner's term as an *ex officio* social services board member does not expire if his or her term as a county commissioner expires before the end of his or her three-year term on the social services board.[3]

The *Pitts* case involved the Craven County Board of Commissioners' appointment of one of its members, J. Ben Pitts, to the social services board on July 2, 1962, for a three-year term expiring June 30, 1965. Pitts's term on the board of county commissioners expired on December 3, 1962, after he was defeated for reelection. On December 17, 1962, the county commissioners adopted a resolution appointing another county commissioner, Dexter F. Williams, to replace Pitts on the social services board. Pitts filed a lawsuit challenging the commissioners' action. The North Carolina Supreme Court ruled in Pitts's favor.

The supreme court first held that, although Pitts's appointment to the county social services board was characterized under G.S. 108-11 as *ex officio*, the *ex officio* nature of his appointment did not affect the length of his appointment to the social services board.[4] The court then held that the statute governing the terms of social services board members (former G.S. 108-10, now G.S. 108A-4) clearly established three-year terms for all social services board members, including county commissioners appointed to the social services board; that Pitts had been appointed to a three-year term on the social services board; that his three-year term on the social services board had not expired when the county commissioners attempted to replace him; that state law "contains no provision sufficient to support the view that the expiration of the term of office of Pitts as county commissioner disqualified him from further service as a member of the welfare board or created a vacancy in the office to which he had been appointed"; and that the county commissioners' attempt to replace Pitts was therefore illegal, null, and void.[5]

# The *Ex Officio* Position

*Ex officio* means "by virtue of one's office." A person who holds an office *ex officio* does so "without any other warrant or appointment than that resulting from the holding of [another] particular office" and performs the duties of the appointed office (office B) as part of his or her responsibilities of the office (office A) by virtue of which the appointment was made.[6]

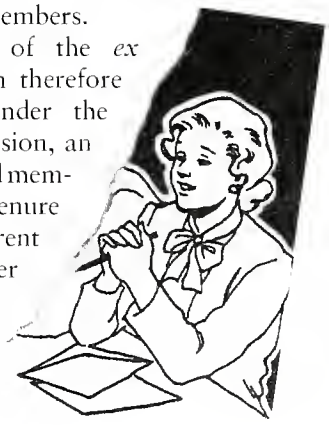
Proponents of the *ex officio* position argue, first, that the county commissioners' appointment of one of their own to the social services board is an *ex officio* appointment, and second, that as an *ex officio* appointee, the appointed commissioner serves a term that is concurrent with or linked to his or her term as a county commissioner, rather than a definite three-year term under G.S. 108A-4.

Although G.S. 108A-3 does not use the term *ex officio* with respect to the county commissioners' appointment of one of their members to the social services board,[7] proponents of the *ex officio* position argue that such an appointment is *ex officio* under G.S. 153A-76 and G.S. 128-1.2. The first of these two statutes, G.S. 153A-76, authorizes the board of county commissioners to create, change, abolish, or consolidate offices, departments, and agencies of the county government, to change the composition and the manner of selection of county boards, and to "impose *ex officio* the duties of more than one office on a single officer."[8] G.S. 128-1.2 provides that, unless the resolution of appointment provides otherwise, when the board of county commissioners appoints one of its own members to another public board or commission, the appointed commissioner is considered to serve on the other body as part of his or her duties as a county commissioner (that is, in an *ex officio* capacity) and is not considered to be serving in a separate office.

The question then becomes, Does considering a commissioner's appointment to the county social services board *ex officio* under G.S. 153A-76 or G.S. 128-1.2 override the provisions of G.S. 108A-4 establishing a definite, three-year term for *all* people appointed to the board of social services? According to proponents of the *ex officio* position, the answer is yes. If a county commissioner is appointed *ex officio* to the social services board, he or she performs the duties of a social services board member as part of his or her responsibilities as a county commissioner. The commissioner's *ex officio* duties on the social services board continue only as long as he or she remains a county commissioner. Thus the position of a county commissioner who is an *ex officio* social services board member is different from that of other social services board members in two respects: his or her position on the social services board is not considered a separate office for purposes of North Carolina's laws on holding multiple offices, and his or her appointment to the social services board is not for a definite, three-year term.[9]

Neither G.S. 153A-76 nor G.S. 128-1.2, however, addresses the terms or the tenure of *ex officio* office-holders. Therefore neither statute provides any explicit legal support for the position that the term of an *ex officio* appointment is concurrent with the term of the office by virtue of which the appointment was made.[10]

Proponents of the *ex officio* position therefore rely instead on language in a 1911 decision by the North Carolina Supreme Court, *McCullers v. Wake County Board of Commissioners*.[11] The *McCullers* case involved a state law that designated the chair of the county commissioners, the mayor of the county seat, and the county clerk of superior court as three of the five members of a county health board. The supreme court held that these three public officials were *ex officio* members of the county health board and that, as such, they did not violate North Carolina's constitutional prohibition against holding multiple offices by serving both on the county health board and in their other public offices. The court went on to state, however, that because their *ex officio* positions on the county health board were conferred on them as the holders of particular public offices and not as particular individuals, they remained *ex officio* members of the board only as long as they held their other public offices, even though another provision of the law established definite two-year terms for health board members.



Proponents of the *ex officio* position therefore argue that, under the *McCullers* decision, an *ex officio* board member's term or tenure *must* be concurrent with his or her tenure or term in the office that served as the basis for the appointment and is not determined by a statute establishing a different, definite term for the appointed office. If so, a county commissioner who is appointed as an *ex officio* member of the social services board remains a member only as long as he or she remains a county commissioner, rather than serving a definite, three-year term.


Proponents of the three-year term position counter that the *McCullers* decision does not constitute binding legal precedent with respect to the terms of county commissioners who are appointed *ex officio* to the social services board. First, they say, the only legal issue that was actually decided in the *McCullers* case was whether the *ex officio* service of three public officials on the county health board violated North Carolina's constitutional prohibition against holding multiple offices. The case did not involve the tenure or the terms of these *ex officio* health board members, and the supreme court therefore did not actually decide that their tenure as *ex officio* board members was necessarily concurrent with their tenure in their other public offices.

Second, the *ex officio* offices involved in the *McCullers* case were qualitatively different from the *ex officio* appointment of a particular county commissioner to the social services board. The statute at issue in *McCullers* required the holders of three particular public offices to serve as *ex officio* members of the county health board. Under the "traditional" approach to *ex officio* office-holding, their tenure as *ex officio* board members was necessarily linked to their tenure or terms in the public offices on which their *ex officio* positions were based.[12] G.S. 108A-3, by contrast, does not require the *ex officio* appointment of a county commissioner to the social services board. More important, if the county commissioners choose to appoint one of their members as an *ex officio* member of the social services board, they generally do so by appointing a *particular individual* who is a county commissioner (as opposed to

## Appointment and Terms of County Social Services Board Members

Most North Carolina counties have five-member social services boards. In these counties the board of county commissioners appoints two members of the social services board, the state Social Services Commission appoints two members, and the remaining board member is appointed by the other social services board members.[1]

Although state law does not require that a county commissioner serve on the county social services board, it clearly permits the county commissioners to appoint one of their own to the social services board,[2] and this is a long-standing practice in many counties. The appointment of a county commissioner to the social services board may improve the communication between the county commissioners and the county's social services board and director, facilitate the commissioners' oversight of the county social services department, and allow the commissioners to exercise greater control over the social services director and department.

Except for appointments to fill unexpired terms resulting from vacancies on the board, state law provides that "each member of a county board of social services shall serve for a term of three years" that begins on July 1 and ends on June 30. With one exception, social services board members may serve no more than two consecutive three-year terms.[3] In the absence of "good cause," social services board members may not be replaced or removed before the end of their terms.[4]

### Notes

1. State law requires that each North Carolina county have a social services board (or a consolidated human services board). G.S. 108A-1, -3. Wake County has a consolidated human services board. G.S. 153A-77(b). In Mecklenburg County the board of county commissioners also is the county social services board. G.S. 153A-77(a). A few counties have three-member social services boards. G.S. 108A-2. In these counties the board of county commissioners and the state Social Services Commission appoint one member each, and the remaining member is appointed by the other two members.

2. *See* G.S. 108A-3(a).

3. G.S. 108A-4. An appointment to fill an unexpired term resulting from a vacancy on the social services board is not considered a term for purposes of the two-term limit. G.S. 108A-6. Also, the two-term limit does not apply to a social services board member who was a county commissioner at any time during his or her first two consecutive terms on the social services board and is a county commissioner at the time of his or her reappointment to the social services board. G.S. 108A-4.

4. The "good cause" requirement for removal of county social services board members, and the procedures for removing them, are discussed in more detail in John L. Saxon, *Removal of Members of County Social Services Boards from Office during Their Terms*, SOCIAL SERVICES LAW BULLETIN no. 17 (Institute of Government, Feb. 1993).

their appointing the holder of a *particular seat* on the board, such as the chair or the commissioner elected from district two).

This difference—between designating the holder of a particular public office as an *ex officio* board member and appointing a particular individual who is a public official as an *ex officio* board member—is more than semantic. When the board of commissioners appoints a particular individual who is a commissioner as an *ex officio* member of the social services board, it cannot be said that the commissioner's position on the social services board is *solely* by virtue of his or her office as a county commissioner—that is, "without any other warrant or appointment than that resulting from the holding of [another] particular office." For example, in opening scenario 2, although the Carolina County commissioners undoubtedly appointed Greene to the social services board because she was a county commissioner, the legal basis for her position on the social services board is her appointment by the board of commissioners, not her office as a county commissioner. Her appointment may be characterized as *ex officio*, but it is not *ex officio* in the same sense as the *ex officio* offices involved in *McCullers*.

Third, proponents of the three-year term position argue that the *McCullers* decision is inconsistent with the supreme court's 1963 decision in *Pitts*. Again, in that case the court expressly held that, when a statute (G.S. 108A-4) clearly establishes a definite term for an appointed office (social services board member), the appointment's being characterized as *ex officio* does not necessarily mean that the tenure or the term of the *ex officio* appointment is concurrent with the appointee's term in the office that serves as the basis for the *ex officio* appointment.[13]

## Conclusion

Although the issue may not be completely free from doubt, it seems that, given the supreme court's decision in *Pitts* and the literal wording of G.S. 108A-4, county commissioners who are appointed as *ex officio* members of social services boards are appointed for a definite term of three years and their service on the social services board is not linked to or concurrent with their tenure as county commissioners.

Thus, back to opening scenario 2, unless the supreme court overrules the *Pitts* decision or the General Assembly amends G.S. 108A-4 or other statutes governing *ex officio* appointments, Greene's term on the social services board will expire on June 30, 2002. If her term as a county commissioner ends in December 2000, and she is not reelected, she may continue serving on the social services board in a non–*ex officio* capacity until June 30, 2002, and the county commissioners may not, without good cause, replace or remove her before that date.[14]

## Notes

1. G.S. 130A-35(b), (c), (g). The statute does not use the term *ex officio* to describe the board of county commissioners' appointment of a county commissioner to the county public health board.

2. G.S. 122C-118(e)(1), (f).

3. State *ex rel.* Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

4. *Pitts*, 260 N.C. at 173, 132 S.E.2d at 332. In reaching this conclusion, the court reasoned that former G.S. 108-11 "obviously" used the term *ex officio* not in "its technical sense" but for the more limited purpose of allowing county commissioners to serve as social services board members without violating North Carolina's constitutional restrictions on holding multiple offices.

5. *Pitts*, 260 N.C. at 173, 132 S.E.2d at 332. The court held that Pitts's service on the social services board was *ex officio* while he was a county commissioner (July 2, 1962–December 3, 1962); that his service after December 3, 1962, was as "an appointed member who was not a county commissioner"; and that he was required to take an oath of office as a social services board member when this change in status occurred.

6. Black's Law Dictionary (6th ed. 1990). Many people incorrectly assume that an *ex officio* board member is an "honorary" member who may not vote. *Ex officio* office-holding is discussed in more detail in chapter 6 of A. Fleming Bell, II, Ethics, Conflicts, and Offices: A Guide for Local Officials (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1997).

7. The General Assembly removed the term *ex officio* from a prior version of the statute in 1969. Former G.S. 108-11 provided that "one or both of [the persons appointed by the board of county commissioners to the county social services board] may be a member or members of the board of county commissioners to serve as *ex officio* members of the county [social services] board. . . . [O]r the commissioners may appoint one or both members to the county board from persons other than their own membership."

8. G.S. 153A-76 also provides that, notwithstanding the county commissioners' authority to make *ex officio* appointments and organize county government, they "may not change the composition or manner of selection" of the county social services board.

9. *See* Bell, Ethics, Conflicts, and Offices at 112–13.

10. G.S. 128-1.2 applies only to the question of whether *ex officio* appointments violate North Carolina's restrictions on holding multiple offices. Under G.S. 128-1.1, a person may hold concurrently no more than one elective office (such as county commissioner) and one appointive office (such as social services board member). G.S. 128-1.2 simply makes it clear that county commissioners who are appointed *ex officio* to other public boards or commissions are not considered to be holding a separate appointive office for purposes of the restrictions in G.S. 128-1.1 on holding multiple offices.

11. McCullers v. Wake County Bd. of Comm'rs, 158 N.C. 75, 73 S.E. 816 (1911).

12. The "traditional" and "expanded" views of *ex officio* office-holding are discussed in Bell, Ethics, Conflicts, and Offices at 108–10.

13. *Pitts*, 260 N.C. at 173, 132 S.E.2d at 332. Although the supreme court's reasoning in the *Pitts* case has been criticized (*see* Bell, Ethics, Conflicts, and Offices at 113–14), the *Pitts* decision has not been overruled by subsequent court decisions or legislative enactments and still is binding legal precedent on the issues it decided.

14. Greene may, of course, resign from the social services board when her term as a county commissioner expires, thereby allowing the board of county commissioners to appoint one of its members or another county resident to fill her unexpired term on the social services board. If Greene continues to serve on the social services board after her term as a county commissioner expires, she must take an oath of office as a social services board member (if she has not already done so), and she becomes subject to North Carolina's restrictions on holding multiple offices, with respect to her continued service on the board.

# County Vehicle Services: Preventing Wear, Repairing Tear

*Matthew J. Michel, Nathan Bell, Matthew Bronson, M. Michael Owens, and Matthew Roylance*

County governments are constantly trying to do more with less. One area that county officials often evaluate for potential savings is maintenance and repair services on fleet vehicles. Counties take two basic approaches to providing these services: "in-house" counties operate their own garages, and "contracting" counties purchase services from private garages.

To compare these two modes of service provision, we conducted a survey of North Carolina counties for fiscal year 1997,[1] gathering information on number of fleet vehicles operated and serviced (in two categories—heavy trucks; and autos, light trucks, vans, etc.); actual expenditures for vehicle service; fixed costs for vehicle service (direct costs for administration, facilities, etc., plus overhead); percentage of vehicles serviced within a specified number of days; percentage of vehicles returned for the same repair within six months; process for contracting if used; and formal preventive maintenance policy, if any.

This article presents the results of the survey. It also suggests several management practices to improve both in-house and contracted vehicle services.

## Results

Thirty-two counties responded to the survey. Of these, 18 operated an in-house facility, and 14 contracted with private garages. Demographic information on the responding counties indicates that the in-house counties are predominantly larger and urban, whereas the contracting counties are generally smaller and mostly rural (see Table 1).

### Average Cost per Vehicle

We calculated an average annual service cost per vehicle by adding actual expenditures and fixed costs and dividing the total by the number of heavy trucks plus the number of autos, light trucks, vans, and so forth. The 18 in-house counties reported an average cost per vehicle of $2,046, with a range of $923 to $4,218. In contrast, the 14 contracting counties reported an average cost of $1,320, with a range of $358 to $2,414. (See Table 2.)

### Threshold for In-House Operations

Most counties with 150 vehicles or more reported servicing their vehicles in-house, whereas most counties with fewer than 150 vehicles reported contracting for services (see Figures 1 and 2, pages 34 and 35, respectively). We offer two possible reasons for this 150-vehicle threshold, based on both survey responses and research that we conducted for Person County, which wanted to evaluate the cost-effectiveness of developing an in-house operation at an abandoned solid-waste transfer station.[2]

First, 150 vehicles may be the level at which a county begins to realize sufficient economies of scale to justify construction and operation of an in-house garage. For example, in Person County we found that renovating an existing facility and furnishing it with equipment for two bays to service 120 ve-

**This section features the work of students and recent graduates of UNC–CH's Master of Public Administration Program at the Institute of Government. The authors are 1999 graduates of the program.**

hicles was not cost-effective. Given the small size of the county's fleet, a garage could not realize enough savings in maintenance and repairs to justify the county's discontinuing its practice of contracting for vehicle services.

Second, as a county's number of vehicles increases, obtaining a sufficient level of vehicle service from private vendors may become more difficult. When a county contracts for vehicle services, it competes with private customers for service time. At the 150-vehicle level, garage operators may be unable to accommodate both a county's demand for prioritized service and the demand of their private customers. This situation becomes a concern when a backlog of vehicles to be repaired begins to delay county services.

### Quality of Service

The survey focused on two measurements of quality: the mean percentage of vehicles serviced within one day and the mean percentage of vehicles returned for the same repair within six months (see Table 3). On both measurements, in-house counties reported better performance than contracting counties: 74 percent of their vehicles serviced within one day, compared with 55 percent of contracting counties' vehicles; and 1.9 percent of their vehicles returned for the same repair within six months, compared with 6.5 percent of contracting counties' vehicles.

## Suggested Practices

Regardless of how a county provides vehicle maintenance services, it might implement several practices to improve cost-effectiveness and quality. Survey respondents reported some of these practices. We have supplemented those they reported with recommendations from Institute of Government faculty who specialize in local government.

**Table 1.** Demographic Data on Survey Respondents

| | In-House Counties | Contracting Counties | State Average |
|---|---|---|---|
| Average population | 130,357 | 35,284 | 73,231 |
| Mean proportion of population rural | 44.0% | 69.0% | 50.3% |
| Average per capita income | $18,855 | $17,002 | $19,567 |
| Average unemployment rate | 4.6% | 5.9% | 4.3% |
| Average poverty rate | 12.2% | 16.3% | 13.0% |
| Average cost of living (state = 100) | 90.5 | 80.0 | 100.0 |
| Average growth rate | 1.2% | 0.6% | 1.2% |
| No. of counties in metropolitan statistical area | 9 | 3 | 36 |

*Source:* North Carolina Department of Commerce and North Carolina Office of State Planning, 1995 and 1996 data.

**Table 2.** Average Costs of Vehicle Service

| | In-House Counties | Contracting Counties |
|---|---|---|
| Number of responses | 18 | 14 |
| Average number of vehicles | 271 | 67 |
| Heavy trucks | 16 | 3 |
| Autos, light trucks, vans, etc. | 255 | 64 |
| Average service cost per vehicle | $2,046* | $1,320* |

*The probability of this cost difference occurring at random is 10 percent (that is, the figures have a 90 percent confidence level).

### In-House Counties

#### *Establishment of Quality Measurement Standards*

In-house counties should establish goals specifying the types of services needed, the time intervals at which preventive maintenance should occur, and service standards. County mechanics and other department employees responsible for vehicle services should participate in setting these goals and standards. For example, a county might set the following standards:

- Ninety-five percent of vehicles will be repaired within two days.
- No more than 5 percent of vehicles should be returned for the same repair within six months.

Using performance measures is important to track services performed on vehicles, to hold the garage staff accountable for the quality of its work, and to provide the head mechanic with the necessary information to make management decisions.[3]

#### *In-House Vehicle Service as a Separate County Department*

Many counties that currently use an in-house operation set it up as a separate internal-service department rather than as a division within one of the units the operation serves. The reason for this arrangement is most likely to allow the service department to recover its costs for providing the service to the county. There also may be greater accountability to and oversight by administrators and elected officials if the garage stands on its own instead of being placed within an existing department. Such a garage still should establish service expectations and performance measures to enhance its ability to oversee its work.

#### *Fee-for-Service Budgeting Method/Internal Service Fund Accounting*

A vehicle maintenance and repair department may want to charge individ-

ual departments for services.[4] Vehicle service fees can be reflected in the county budget as both expenses to the departments whose vehicles are serviced and revenues for the vehicle service department. These figures could be used to monitor how much each department spends on vehicle services. The vehicle service expenses and revenues would be accounted for in an internal service fund in the county budget.

*Triage Systems*

Many counties use a "triage" system to prioritize vehicles for services and repairs. For example, emergency medical services and sheriff's department vehicles often have priority over other county vehicles. This system allows vehicles needed for critical public services to be available at all times, and makes vehicles used in nonemergency functions (for example, library services or public works) wait a short while, if necessary, for service or repair. To implement such a system, department heads or the county manager might devise a list of essential and nonessential county vehicles.

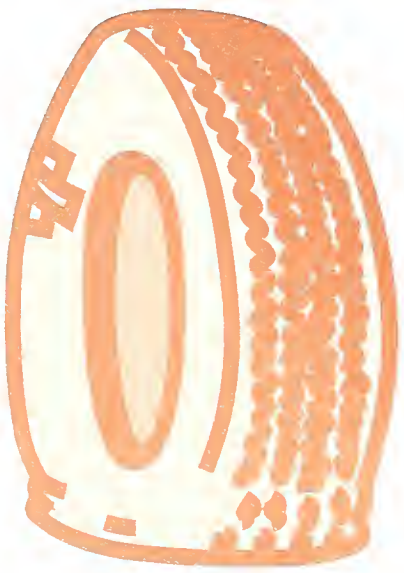
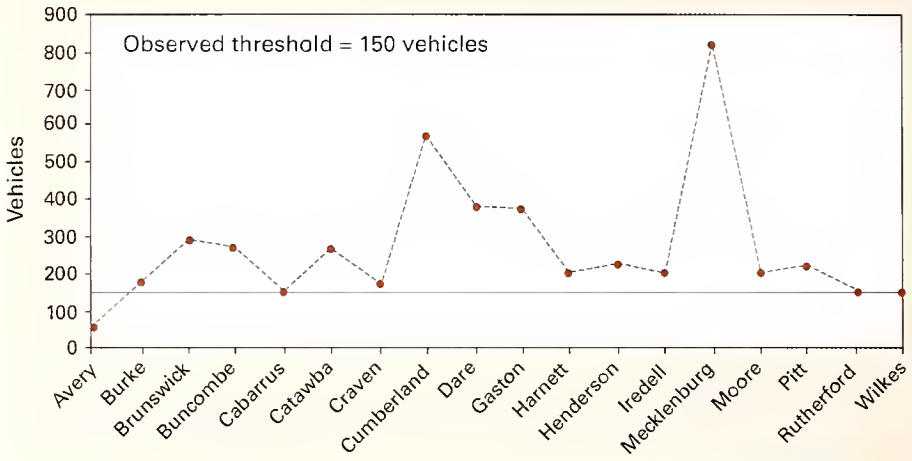


**Figure 1.** Number of Vehicles in 18 Counties with In-House Vehicle Services




## Contracting Counties

*Centralized Competitive Bidding for Vehicle Services*

County departments typically prefer to choose their own vendors. However, decentralized, noncompetitive bidding can lead to significantly different charges across departments. Instituting a centralized competitive-bidding process in which different vendors earn all departments' business for particular services (preventive maintenance, tire replacement and repairs, major overhauls, and so forth) would reduce price differences and should result in more competitive rates. In the contracting counties that responded to our survey, those using competitive bidding for some of their vehicle services paid an average of $230 less per vehicle than those without formal bidding. Additionally, contracting counties using competitive bidding had a higher percentage of vehicles repaired within one day than those without this process (73 percent versus 60 percent).

Through competitive bidding, officials could select a list of vendors for each service and allow departments to choose from that list. New requests for bids to be on the list would go out every two to four years to ensure competitiveness. This practice would provide departments with some contracting flexibility, while allowing a county to realize volume discounts in services through formal contracting.

*Tracking of Repair Quality*

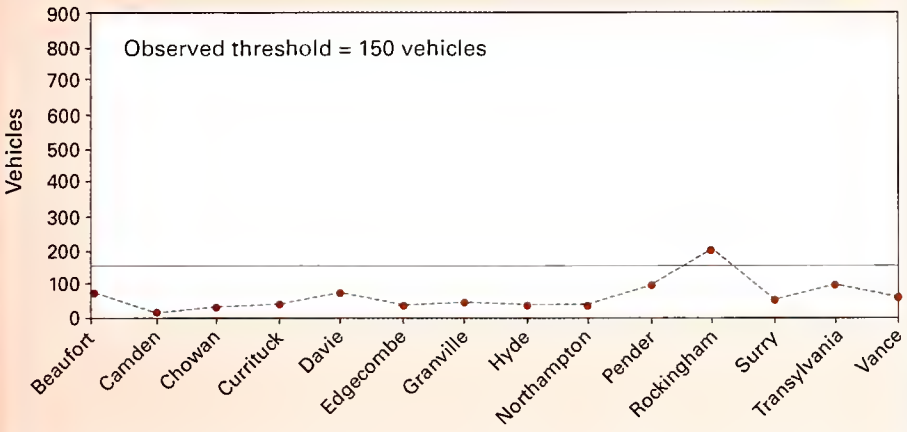
One of the most noticeable differences between the in-house and the contracting counties is in the quality of service. In-house counties had a higher percent-

**Table 3.** Data on Quality

| | In-House Counties | Contracting Counties |
|---|---|---|
| Average number of vehicles | 271 | 67 |
| Mean proportion of vehicles serviced within 1 day | 74%* | 55%* |
| Mean proportion of vehicles returned for same repair within 6 months | 1.9%* | 6.5%* |

*The probability of this percentage difference in quality occurring at random is 10 percent (that is, the figures have a 90 percent confidence level).

**Figure 2.** Number of Vehicles in 14 Counties Contracting for Vehicle Services




age of vehicles repaired within one or two days and a lower percentage of vehicles returned for the same repair within six months, than contracting counties. To remedy this deficiency, a contracting county might monitor how well local garages are servicing county vehicles as indicated by these two measurements, and provide the data to the people responsible for selecting where to send vehicles for service. The departments themselves might track these figures, or the county manager's office might do so.

## Limitations

Confidence in the trends that this survey analysis highlights is limited by the low number of respondents—just under one-third of North Carolina's counties. At this low response rate, we can achieve only an 89 percent confidence level for the conclusions. Further, that



confidence level is overly optimistic because we could not estimate the total number of contracting and in-house counties to calculate accurately the statistical significance of variations within each group.

## Conclusion

This study identifies factors that affect the provision of vehicle maintenance services. Perhaps the most important factor is the number of vehicles in a county's fleet. Above a threshold of approximately 150 vehicles, a county may realize economies of scale from in-house services, while gaining greater oversight of the quality of vehicle service. Of course, a county could and probably should use a number of other factors to determine whether to provide services in-house or continue contracting for them—for example, the availability and the capacity of contractors in the specific market area and the effect of those variables on price and quality; the structure and the personnel capacity of a county's departments; and the extent of variation within a fleet and the resulting array of service needs.

Another interesting finding is the quality advantage of in-house vehicle services as measured by the differences in turnaround time and frequency of reservicing. Taken together, the factors discussed in this article provide a basis for county officials to determine how to provide vehicle services.

## Notes

1. We mailed two surveys, one blue and one yellow, to all 100 county managers, asking them to forward the surveys to the county staff members qualified to respond. The blue survey, which contained 17 questions, focused on in-house operations; the yellow survey, which contained 13 questions, focused on contracting operations. Counties were asked to complete the survey appropriate to their mode of service delivery. If their mode of service delivery combined elements of the two approaches, we asked that they fill out the appropriate data on both surveys. We conducted a follow-up interview with the 32 respondents by telephone. Our findings reflect the information provided in both the surveys and the follow-up interviews. Occasionally, to account for gaps, we have supplemented the data with our best estimates, based on research.

2. Students in the Master of Public Administration Program at the Institute of Government performed the analysis as part of a course.

3. For performance measurements and benchmarks for fleet maintenance and other local government functions, *see* DAVID N. AMMONS, MUNICIPAL BENCHMARKS: ASSESSING LOCAL PERFORMANCE AND ESTABLISHING COMMUNITY STANDARDS (Thousand Oaks, Calif.: Sage Publications, 1996).

4. This recommendation came from Gregory S. Allison, an Institute of Government faculty member specializing in public finance, governmental accounting, and financial reporting.

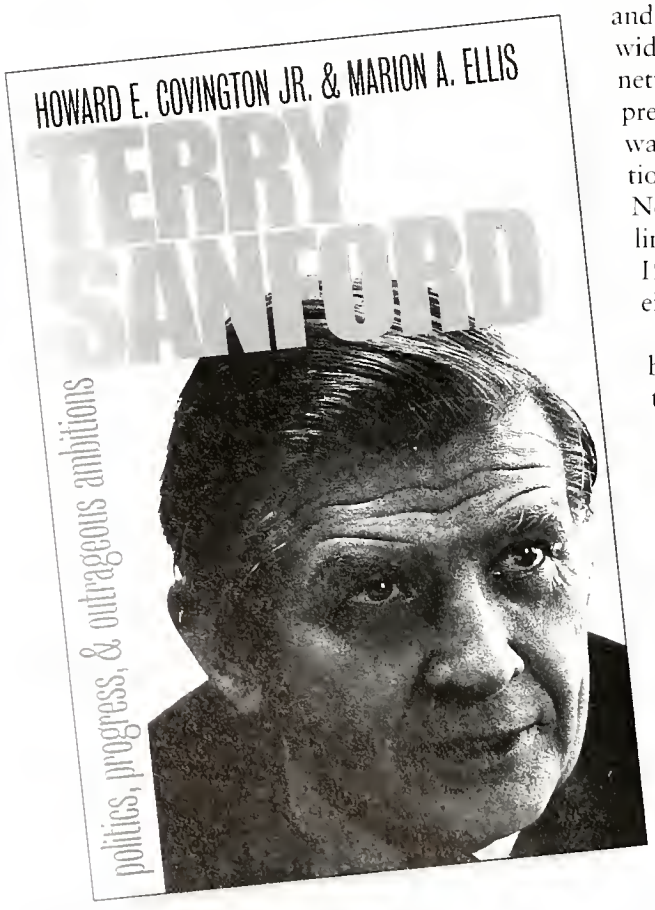
# Outrageous Ambitions, Remarkable Success

*Review by John Sanders*

*Terry Sanford: Politics, Progress, and Outrageous Ambitions*, by Howard E. Covington, Jr., and Marion A. Ellis. Duke University Press, Fall 1999. 550 pages. $34.95 hardback.

This is the first book-length biography of Terry Sanford (1917–98), one of North Carolina's most creative and constructive citizens of this century. It should not be the last.

Sanford's long life was so action filled, from his high school years in Laurinburg to his final months in Durham, that a mere catalog of his doings becomes tedious. As an undergraduate at The University of North Carolina at Chapel Hill, he experienced the salutary influence of President Frank Graham. His study of law at Chapel Hill was interrupted by service with the Federal Bureau of Investigation and by combat as a paratrooper in Europe during World War II. After receiving his law degree in 1946, he joined the Institute of Government staff, where he taught criminal law to law enforcement officers, especially the State Highway Patrol, for two years. On entering law practice in Fayetteville in 1948, he began building the record of civic and church activities and the statewide political network that prepared his way for election to the North Carolina Senate in 1952 and the governorship eight years later.




All photos from the book, courtesy of Duke University Press

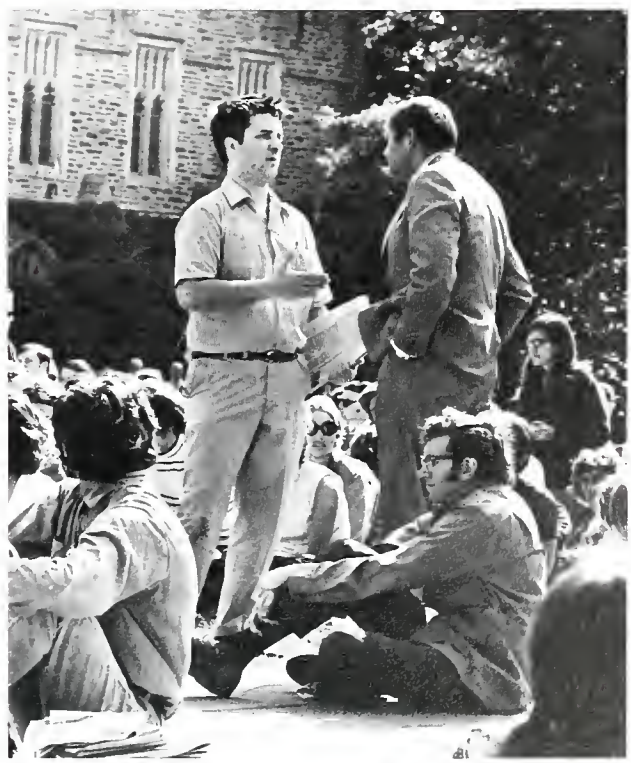
The chief part of this book is properly devoted to Sanford's race for governor in 1960 and his four-year term of office. (Governors could not be immediately reelected until 1977.) What an eventful four years they were! No governor of North Carolina (and few of any other state) has been as fruitful of ideas for improving existing programs and starting new ones, or as creative in finding ways to use the powers of the governor's office to identify and address social, economic, and especially educational needs of the people. And when the formal state structures would not suffice, Sanford created nonprofit entities, such as the North Carolina Fund, which was financed chiefly by the Ford Foundation and North Carolina foundations, to find and work to eliminate the causes of poverty in the state.

As Covington and Ellis relate, some of Sanford's initiatives—dramatic improvement of state funding for public schools with the aid of a new sales tax on food, creation of the North Carolina School of the Arts, and establishment of the Community College System with state financing, for example—were successful and enduring. Others—the Learning Institute of North Carolina and the North Carolina Film Board,

among them—did not last. But the risk of failure did not deter Sanford from attempting to cope with public needs, especially the need for better education for all citizens, not just the college bound. And his success record was remarkable.

Sanford's ability to persuade the General Assembly to fund bold new ventures such as the School of the Arts did not depend entirely on his eloquent advocacy on their behalf. He well understood and skillfully practiced the traditional political arts of bestowing (or withholding) jobs, roads, and other favors within the governor's gift, and so built up capital that was convertible in aid of his causes in the legislature. (It also helped that the General Assembly then functioned largely on a nonpartisan basis, being almost entirely Democratic and thus inclined to look to Sanford as their leader to an extent less familiar today.)

The authors pay inadequate tribute to a great strength of Sanford's, one that enabled him to accomplish so much in four years. That was his ability to identify and attract into his service a remarkably creative group of young men; to encourage them to devise new approaches, new policies, and new programs; and to give his full political support to many of their innovations. He did not draw his governor's office staff chiefly from his campaign staff and so avoided being constrained by their limitations. He was not afraid to surround himself with people who were, in their



Clockwise from top left: Governor-elect Sanford meeting with President-elect John F. Kennedy in November 1960; former paratrooper Sanford preparing to jump from a training tower in August 1964, at the twentieth reunion of the 517th Parachute Regimental Combat Team; Governor Sanford joining President Lyndon B. Johnson during the latter's visit to a tenant farmer's home in Rocky Mount, N.C., in 1964; Duke University President Sanford making himself accessible to student antiwar demonstrators in spring 1970.

Clockwise from top left: Candidate Sanford campaigning in western North Carolina for the U.S. Senate, flanked by basketball stars Tommy Amaker (left) and Tommy Burleson (right); Senator Sanford talking with Soviet Union President Mikhail Gorbachev; Senator Sanford greeting Queen Elizabeth II at a reception in London; Duke Professor Sanford greeting Duke Professor Emeritus John Hope Franklin, whom President Bill Clinton later appointed chair of a national commission on racial conflict in America.

spheres, smarter than he was. He knew that, in the retrospect of history, he would be credited with their achievements.

The book treats Sanford's years and accomplishments as president of Duke University (1970–85) in only sixty pages, leaving to others the more detailed review that episode deserves. There too he was served by several able subordinates who saw to the internal management of the institution (and often took the criticism for unpopular decisions and actions), while he played the loftier public role of advocate and fundraiser.

Due note is taken of Sanford's two runs for the presidency of the United States, conducted while he was president of Duke. The first was in 1972, when he was humiliated in the North Carolina presidential primary by the demagogic governor of Alabama, George Wallace, who took 50 percent of the vote to Sanford's 37 percent (three other candidates shared the remaining 13 percent). Sanford even trailed Wallace badly in his home county, Cumberland. His second run was aborted early in 1976, following a heart attack scare.

The account of Sanford's term in the U.S. Senate (1987–93) is limited and depends heavily on Sanford's own journal and other writings.

The reader who did not observe the Sanford years from 1960 to 1965 will learn much of interest from this factual account. But one finds almost no critical evaluation of Sanford the man —his motives, his methods, or his actions. The authors are both experienced newspapermen, and they give us essentially a straightforward, always kindly, newsman's account of Sanford's life and works. Oh yes; they do reveal one little-known fact, suppressed by Sanford from early childhood: he shared with all North Carolina governors since 1977 the first name of James.

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Terry Sanford: Politics, Progress, and Outrageous Ambitions *is available at bookstores or by contacting Duke University Press, phone (888) 651-0122, fax (888) 651-0124.*

# "To Provide a Service"

## Don Liner's Career at the Institute of Government

The mid-seventies were the days of large, inaccessible mainframe computers, observes Charles D. "Don" Liner. Only the larger counties and cities had them, although others were beginning to use minicomputers, which were just small mainframe computers. No one on the Institute of Government faculty knew much about computers, and there were no Institute programs or services for local government computer officials.

Charles D. Liner

| | |
|---|---|
| **Place and date of birth** | Chattanooga, Tenn., May 16, 1940 |
| **Education** | B.S. in economics and business administration, University of Tennessee at Chattanooga, 1961; M.A. in economics, George Washington University (Washington, D.C.), 1967; Ph.D. in economics, Washington University (St. Louis), 1972 |
| **Military service** | Officer, U.S. Navy, 1961–64 |
| **Career** | Economist, U.S. Department of Defense, U.S. Department of Commerce, 1965–68; assistant professor of economics, Department of Economics, UNC–CH, 1971–77; professor of public finance and government, Institute of Government, 1971–present |
| **Areas of specialization** | State and local taxation, finance of public schools and other governmental functions, and state and local government fiscal relations |
| **Family** | Wife, Camilla "Kitty" Tulloch; sons, Stephen and David Liner |

Don was trained in economics, not computers, and his normal work at the Institute was in public finance, but he worked with three data processing officials to organize the North Carolina Local Government Information Systems Association (NCLGISA) as a resource through which information technology professionals in local government could find solutions to common problems and learn from one another. Creating this group "was just something that needed to be done," Don says in his matter-of-fact way.

The revolution in information technology that soon followed proved Don correct. The advent of the personal computer in the late seventies and early eighties, and of networking and the Internet in the nineties, has intensified the need for training and cooperation. In the late seventies, the Institute began providing computer training through a joint project with North Carolina State University. NCLGISA, whose first conference was attended by fewer than twenty officials, now is a thriving organization with more than three hundred members representing almost all local governments that have information systems departments. Don currently serves as faculty coordinator for the association, and his collaboration with it continues to be a source of pride.

After nearly thirty years of providing these and other services as an Institute faculty member, Don has entered UNC–CH's phased-retirement program. For the next three years, until he reaches full retirement, he will continue to teach, do research, and be available to Institute clients for advice and consultation—but on a more limited basis. Don is enjoying the mix of work and personal projects afforded by part-time employment. He also is relishing the prospect of more travel. If you visit Don at the Institute, you will see several stunning dry-mounted photographs on his office walls. Taken by Don on trips to various parts of the world with his wife, Camilla "Kitty" Tulloch, they illustrate his love of travel and the beauty he finds in the places he visits.

Don came to the Institute in 1971, straight from graduate school. Before attending graduate school, he was an officer in the U.S. Navy and later an economist with the federal government. At the Institute, Don has focused on public finance, including state and local taxation, finance of public schools and other governmental functions, and state and local government fiscal relations. For more than twenty-five years, he taught in the Economic Development Course, and he continues to serve on the steering committee for the course.

In addition to teaching, Don served as director of the Institute's Municipal and County Administration program in 1998–99 and as editor of *Popular Government* from 1988 to 1992. His research and writing have addressed a wide variety of topics, including taxation, school finance, coastal area regulation, highway financing, and economic development. He edited *State and Local Government Relations in*


continued from page 39

*North Carolina*, which grew out of the Institute's work with a statewide study commission.

The future holds many challenges in the areas he has covered in his work at the Institute, Don says. The most fundamental challenges include adapting North Carolina's state and local tax system to meet the needs of the next century while achieving an equitable distribution of tax burdens, and fulfilling the state's promise that all children will have the school resources needed to provide a sound basic education.

Don's associates at NCLGISA face an equity problem of another sort, he notes. As information technology develops, local information technology professionals will have to continue sharing knowledge and working to ensure that small counties and municipalities keep pace technologically with their larger counterparts across the state.

Don's work in public finance will undoubtedly be an important Institute legacy for many years to come. "Don has always cut through passing trends and short-term concerns to focus on the essence of economic policy proposals," says Michael R. Smith, director of the Institute. "He has a deep understanding of North Carolina and government relations, which he has used to help public officials see the historical context for contemporary issues." Of his nearly three decades of work at the Institute and its effect on state and local government, Don says simply, "I am just trying to provide a service." This modest comment speaks volumes about Don's commitment to the Institute and to the people of North Carolina.

*—Jennifer Henderson*

# FOLLOWING UP ON . . .

## "How We Die in North Carolina"

Popular Government, Spring 1999

A year ago the boards of medicine, nursing, and pharmacy sponsored a historic conference, described in the Spring 1999 issue, to consider the difficult question of how health care professionals can help people who are terminally ill obtain the kind of care they want. In fall 1999 the boards adopted a *Joint Statement on Pain Management in End-of-Life Care*. The statement tries to correct misperceptions that prevent some health care professionals from acting forcefully enough to relieve pain. It advises physicians to tell patients and families that effective pain relief can be provided but that such relief carries risks, including the hastening of death. All providers are to look first to the "expressed desires of the patient" regarding pain control.

The statement addresses several important points and emphasizes two: (1) the Board of Medicine will assume that the amount of opioids prescribed for a dying person is appropriate if the physician follows appropriate medical guidelines, understands pain relief, and keeps records of the pain management plan; and (2) a nurse may adjust medication levels within the boundaries of the prescriber's plan and the health agency's protocol.

By clarifying and putting in writing what many North Carolina professionals have considered standard practice, the boards aim to reduce providers' fears of discipline and, as a result, to protect patients from unnecessary suffering. North Carolina appears to be the first state whose health boards have cooperated in such an effort.

*—Anne Dellinger*

*For a copy of the statement, contact the Board of Nursing, phone (919) 782-3211, Web site www.ncbon.org; the Medical Board, phone (919) 326-1100, Web site www.docboard.org/nc; or the Pharmacy Board, phone (919) 942-4454, Web site www.ncbop.org.*

## "North Carolina Marriage Laws: Some Questions"

Popular Government, Winter 1998

## "No Social Security Number? No License"

Popular Government, Spring 1999

In the past two years, *Popular Government* has published two articles that could be classified under the heading "What's Wrong with North Carolina Marriage Laws and Why They Need to Be Fixed." The first described several major problems in the state's marriage laws. The second dealt with the recently enacted requirement that applicants for a marriage license enter their Social Security numbers on the application, and the effect of this requirement on persons—mostly foreign nationals—who do not have such a number.

The 1999 General Assembly dealt with the issues discussed in both articles. Regarding the Social Security number requirement, the General Assembly amended Section 51-8 of the North Carolina General Statutes to provide that applicants without Social Security numbers could sign an affidavit to that effect and then be issued a license (S.L. 1999-375). To deal with the multitude of other problems with the marriage laws, the General Assembly authorized the Legislative Research Commission to undertake a study of the laws (S.L. 1999-395). This study is to include an examination of who is authorized to perform marriage ceremonies, the role of the register of deeds in issuing marriage licenses, and the marriage of persons under age eighteen, all matters discussed in the 1998 article.

*—William A. Campbell*

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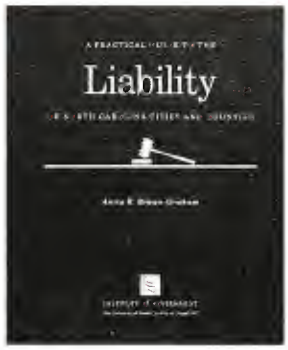


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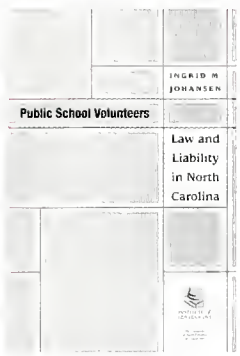


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JAMES MADISON
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