

# POPULAR GOVERNMENT

Published by the Institute of Government  
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*This month . . .*

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County Commissioners**

**Copying and Copyrights**

**The Law and  
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**Can Counties Carry the  
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**Greensboro Sponsors  
a Unique Program**



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This month's cover shot is a portrait of W. E. Easterling, who retired this month as Secretary of the Local Government Commission. See the story on page 8.

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# THE FOREST LANDOWNER

## and NORTH CAROLINA LAW

by Keith A. Argow

*[Editor's Note: The author of this article is an instructor in the Forestry and Recreation Resources Administration, School of Forest Resources, North Carolina State University at Raleigh. The article is adapted from a term paper written by the author for a course in Natural Resource Law taught in the Graduate School of the University by Institute Associate Director Milton Heath. Its publication here is especially opportune at a time when the state's basic organization and policies concerning state forests and forestry are undergoing thorough study by two interim legislative study commissions the Conservation and Development Study Commission and the State Parks and State Forests Study Commission.]*

North Carolina has more forest landowners than any other state in the Union. Our forests are broken into small ownerships that are managed with many different purposes in mind. The state ranks third in value of forest products produced behind only Oregon and Washington, both heavily timbered states in the Pacific Northwest.

In North Carolina, more than in any other state, small private landowners affect a significant part of the forest wealth. This important fact was recently brought to public attention by the Governor.<sup>1</sup>

In a film made for the North Carolina Forestry Association in 1966, Governor Dan Moore noted the importance of our "Green Treasure" and urged proper management and protection of all forest lands.

About 77 per cent of the commercial forest land in the Tarheel state is owned by 225,600 non-industrial private owners. Of the remainder, 15 per cent is held by forest industries and 8 per cent is in public ownership.<sup>2</sup> According to a study made in 1963 by Kenneth Pomeroy, of the American Forestry Association, and Dr. James Yoho of the Duke University School of Forestry, two-thirds of the small non-industrial forest owners have a medium to high "pride of ownership" but an average to low-average comprehension of good forestry practices.<sup>3</sup> Ranging from farmers to businessmen to weekend home owners, these people have a significant role in North Carolina's economic future. It is, therefore, in the public interest as well as to their personal benefit that as many citizens as possible be made aware of good forest practice and understand the laws designed to protect our forest resources.

### Early Laws

Over the years, the North Carolina General Assembly has enacted

a number of statutes and regulations concerning forestry. The earliest dates back to 1777, when intentional woods-burning was declared illegal and punishable by a fine or 39 lashes "well laid on" a bare back.<sup>4</sup> Through the years additional laws have been passed and periodically updated. Public interest has grown so that in recent times it has almost been a certainty that some form of legislation relating to forestry will be brought before each General Assembly for consideration.

It is not surprising that the first forest law should relate to woods-burning. It has been and remains today a vital problem and potential threat to continuous forest productivity. In 1967, 5,501 fires burned 100,445 acres in North Carolina. At an average damage of \$35 per acre, this amounted to a \$3,500,000 loss.<sup>5</sup> Although in the last two decades there has been a downward trend in number of acres burned, it is distressing that in recent years the number of fires has been increasing. Some 90 per cent of forest fires in North Carolina are man-caused by incendiaryism, debris-burning, and human carelessness. Many a small landowner has a deep dread of fire, and properly so, for it can wipe out a lifetime investment in one blazing afternoon.

1. Governor's Conference on Forest Utilization, Raleigh, October 21, 1966.

2. Pomeroy, Kenneth, and James Yoho. *North Carolina Lands*. (Washington, D. C., American Forestry Association, 1964).

3. *Op. cit.*

4. *Laws of 1777*, November, Chapter 25.

5. N.C. Division of Forestry, Raleigh, North Carolina 1968.



## Incendiarism

North Carolina law is explicit regarding anyone convicted of intentionally setting fire to another's grass, brush, or woodland. Each such offense is classed as a misdemeanor punishable by no less than \$50 nor more than \$500 in fines, or imprisonment for not less than sixty days nor more than four months for the first offense, and for not less than four months or more than one year for subsequent offenses.<sup>6</sup> Moreover, if willful or malicious intent to damage property can be shown, the violator is guilty of a felony and subject to a sentence of one to five years in the state prison. This law, originally drafted in 1925 and revised in 1943, further stipulates that conviction for incendiarism shall not preclude those whose property is destroyed from attempting to collect damages. In addition, any person who furnishes the state with evidence sufficient to obtain a conviction is given a \$50 reward, the amount being added to the court costs payable by the defendant.

Another law applicable to all counties except New Hanover, Clay, Currituck, Rockingham, Forsyth, Mecklenburg, and Union counties—which are not under protection by the North Carolina Division of Forestry—defines the act of willfully and negligently setting fire to the woods and fields of another as a misdemeanor punishable by a fine or imprisonment at the discretion of the court.<sup>7</sup> This less stringent statute could be used against landowners whose clearing fires get away and spread to adjoining lands. In such cases the defendants are liable for both the damages through civil action and fire-fighting costs when assessed by court.

Dating from 1855 is a law declaring that any "wagoner" or other person who builds a campfire must clear an area within 10 feet of the fire of all combustible material and fully extinguish the fire

when leaving.<sup>8</sup> Violations of this statute are punishable by a fine of \$10 to \$50 or imprisonment for not more than 30 days.

But the ultimate answer to the problem of reducing the number of man-caused fires lies not with law and prescribed punishment alone. Law enforcement officers cannot be everywhere at once. The most hopeful solution lies with public understanding of the value of our forests and an appreciation for programs developed to protect them. Until education programs can achieve this objective, the General Assembly has provided a more direct course. During periods of prolonged drought and high fire danger, the Governor is empowered to close the woods to hunting, fishing, and trapping.<sup>9</sup> Imposed only after consultation with the Department of Conservation and Development (which includes the North Carolina Division of Forestry) and the North Carolina Wildlife Resources Commission, the ban is continued until the fire danger is abated.

## Woods Closure and Fire-Fighting

A related clause of the woods-closure law provides authority for the State Forester to prohibit the kindling of any open fire within 500 feet of forest during periods of extended drought and fire emergency. An additional but little used provision (extensively used in West Coast states) permits the Governor to close any woodlands in the state completely to anyone except landowners and their agents during the duration of the emergency. Violation of the proclamation of closure is a misdemeanor.<sup>10</sup>

Helpful as these regulations are, forest fires can still get out of hand, particularly under adverse weather conditions. During the first three memorable days of April, 1966, 435 fires burned 74,000 acres in North Carolina. An addi-

tional 70,000 acres were lost in South Carolina.<sup>11</sup>

In such times most people volunteer to help but a few refuse, even when asked. The law defines the responsibilities of citizens to help forest rangers suppress a wildfire when requested to do so.<sup>12</sup> Any physically able male citizen may be required to assist and provide available tools and equipment at the request of a state forestry officer. In doing so, he will receive an hourly wage for his services and will be covered by provisions of the Workmen's Compensation Act as it applies to state employees.<sup>13</sup> Failure to respond to a request for help is punishable by a fine ranging between \$5 and \$50.

## Burning Permits

Many landowners ask about brush-burning regulations and are sometimes surprised to learn that they have violated the law when burning brush on their own lands. The brush-burning permit statute requires that everyone must first obtain a permit from the North Carolina Forest Service before burning brush or any material between the hours of midnight and 4:00 p.m. any day between October 1 and June 1 within 500 feet of woodlands.<sup>14</sup> These free permits are available from state forestry offices and other designated places (some stores, county courthouses, etc.). After 4:00 p.m. and up to midnight, fires may be kindled without permits unless the state forester or the Governor has declared a period of high fire danger, during which time all permits are canceled and no fires shall be kindled at any hour. The act does not apply to small refuse fires located within 100 feet of an occupied dwelling house. Neither does it apply in the six counties without state forest fire protection. A similar law—covering Dare, Hyde, Tyrrell, and Washington

11. Keith A. Argow, "The Carolina Blowup," *American Forests Magazine*, LXXII, 7 (July, 1966).

12. N.C. GEN. STAT. § 113-55.

13. *Moore v. State*, 200 N.C. 300, 156 S.E. 806 (1931), Cited in *Tomlinson v. Norwood*, 208 N.C. 716, 182 S.E. 659 (1935).

14. N.C. GEN. STAT. § 14-139.

6. N.C. GEN. STAT. § 14-136.

7. N.C. GEN. STAT. § 14-137.

8. N.C. GEN. STAT. § 14-138.

9. N.C. GEN. STAT. § 113-60.1.

10. N.C. GEN. STAT. § 113-60.3.

counties—extends the period during which burning permits are required from February 1 through December 1.<sup>15</sup>

Having a permit, however, does not excuse one's liability if a fire escapes to adjacent land. The fact that fire escapes is *prima facie* evidence of a violation of the fire-watchman law, which specifies that all persons setting fires to burn brush and other materials must maintain a careful and competent watchman on the fire at all times.<sup>16</sup>

### **Insect and Disease Outbreaks**

Serious as they may be, fires do not account for all forest losses. Every year an equal or greater amount of destruction is caused by insect and disease attacks. The North Carolina Forest Service, in cooperation with the pest-control division of the U. S. Forest Service, is charged with the responsibility of detecting and investigating such attacks and devising control measures for interested landowners.<sup>17</sup> If an outbreak is detected the owner, upon proper notification, is expected to take effective measures for control. Failing this, the state forester may initiate the necessary control action upon determination that the insect infestation or disease infection is a menace to the timber and forest growth of the state. If the landowner objects, the state forester is directed to seek an injunction or "other appropriate remedy" in the superior court of the county in which the land is located.<sup>18</sup> Such misunderstandings are rare, however. Most forest landowners welcome help in controlling epidemics, and many keep a constant alert on their own.

### **Forest Seed Trees**

Forest seed trees are those left after logging to reseed the harvested tract. A law enacted in 1953 provided that at least four cone or seed-bearing trees larger than 12 inches diameter at a point 4½ feet above the ground are

to be left per acre. The act also identified desirable species, stated how long the seed trees must remain before being cut, and had a provision for the substitution of an approved forest-management plan utilizing an alternative regeneration method.

The purpose of the law was to "assure the continued productivity of forest lands" which is thereby declared to be in the public interest. Unfortunately it has not been put to use as widely as the backers had hoped. The act was adopted, as a local bill, by only two of North Carolina's 100 counties (Gates and Northampton).<sup>19</sup> In 1963 the Northampton County Commissioners voted to exclude Northampton from the law under a provision permitting the county commissioners to withdraw their county from application of the law at their discretion.

Proponents of legislation of this type point out that stringent regeneration laws are in effect in Oregon and Washington. However, their arguments overlook two important points: (1) The forests in the Northwest are almost entirely held by large industrial companies and public agencies. The opposite is true with North Carolina's multitude of small forest landowners, many of whom prefer as little regulation as possible. (2) Seed trees are effective in North Carolina only with adequate site preparation. Unless the soil is turned up, control burned, or otherwise disturbed, the desirable tree seeds cannot gain a foothold, and unwanted sprouts and brush soon take over the area. Without adequate site preparation, which is seldom provided prior to seedfall, seed trees usually fail to achieve the objective of the legislation. Repeated regeneration failures contributed to Northampton County's decision to drop the law.

### **Forest Taxation**

It is the declared policy in North Carolina to use real estate taxation so as "to encourage the conserva-

tion of natural resources and the beautification of homes and roadsides."<sup>20</sup> Tax assessors are instructed to make no increase in valuation as a result of the following efforts by a landowner:

1. The planting of lawns, shade trees, shrubs, and flowers
2. Repainting buildings
3. Terracing or other methods of soil conservation to the extent that they preserve values already existing
4. Protection of forests against fire
5. Planting of forest trees on vacant land for reforestation purposes (for 10 years after such planting)

Other laws define the criteria appraisers shall use in determining the value of real property, including location, physical characteristics, adaptability for use, past income, and potential for future income.<sup>21</sup> Some states have recently modified similar legislation by establishing a maximum valuation chargeable to landowners who are not interested in speculating with their lands for capital gain. Such provisions are designed to make it possible for small landowners to maintain open spaces and forests without penalty of high taxes in regions undergoing rapid development and commercialization.

### **Landowner Liability**

One of the most talked-about forest laws in recent years was a statute passed in 1963 limiting the liability of landowners (including forest landowners) to hunters, fishermen, and others who may use their land.<sup>22</sup> The objective, as in other states which have recently passed similar legislation, is to permit willing landowners to open their lands to public use without fear of liability in suits brought by hunters, fishermen, and others whom they have allowed to use their land. For instance, if a hunter falls on a steep road embankment and breaks his leg, the

15. Sess. L. 1963, Ch. 617.

16. N.C. GEN. STAT. § 14-140.

17. N.C. GEN. STAT. § 113-60.4.

18. N.C. GEN. STAT. § 113-60.8.

19. Sess. L. 1953, Ch. 1301; Sess. L. 1957, Ch. 740.

20. N.C. GEN. STAT. § 105-294.

21. N.C. GEN. STAT. § 105-295.

22. N.C. GEN. STAT. § 113-120.5.



landowner is not liable for damages unless extenuating circumstances such as unreasonable lack of notice of a dangerous condition or an attractive nuisance can be established. Notwithstanding the passage of this law, some large forest owners are proceeding with caution until a test case is decided by the courts.

### Other Forest Laws

A resumé of the remaining forest laws includes designation of the dogwood as the official state flower and the pine (species undefined) as the state tree.<sup>23</sup> There are a number of statutes regarding theft of shrubs and other plants including specific legislation aimed at preserving the rare Venus fly trap.<sup>24</sup>

### Establishing Valuations

Several measurement scales have been used over the years to de-

termine growth, inventory, and valuation of forest products to be sold. Any person with timber for sale should understand this and specify to bidders from which log rule he will accept prices. For instance, the Doyle Rule measures fewer board feet in smaller-diameter timber—the size class that many farmers and small landowners have to sell. This is why it is called a “buyer’s rule.” One bidder could quote a higher price per thousand board feet using Doyle than the others could using International  $\frac{1}{4}$ . This price might sound like the highest bid, but could turn out to be the lowest in total price.

In order to settle controversy, the General Assembly has designated the International  $\frac{1}{4}$ -inch Log Rule as the standard measure statewide.<sup>25</sup> However, the legislators made exception possible when both parties agree. “This section shall not prevent the buyer and

seller from agreeing that some other log rule shall be used.”<sup>26</sup>

The less controversial cord of wood is also defined by law. It shall be a stack of wood measuring 4' x 4' x 8' or any other dimensions that will equal 128 cubic feet. Of that volume, 70 per cent (or 90 solid cubic feet) will be considered to be solid wood and 30 per cent air space.<sup>27</sup>

### Conclusion

North Carolina is unique in having the third highest value of forest products produced and the largest number of forest landowners. The future of the state’s forest resources lies in good forest practice by many thousands of small landowners.

This is a big order. To reach this objective, it is important to understand and be able to apply forestry laws.

23. N.C. GEN. STAT. §§ 145-1, -3.

24. N.C. GEN. STAT. §§ 14-129, -129.1.

25. N.C. GEN. STAT. § 81-23.1.

26. *Ibid.*

27. N.C. GEN. STAT. § 81-14.5.



*A calculation of diameter at breast height. (Courtesy School of Forestry Resources, North Carolina State University.)*

# THE PRAGMATIC VIEW:

## The SCHOOL BOARD and FREEDOM of CHOICE

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by Joseph E. Bryson

[Editor's Note: The author is Director of Extension at the University of North Carolina at Greensboro.]

The American philosopher William James once described the substance and common properties of philosophical pragmatism in these words: "Pragmatism is willing to take anything, to follow either logic or the senses and to count the humblest and most personal experiences. . . ." Pragmatism's "only test of probable truth is what works best in the way of leading us. . . ." The pragmatist "turns away from abstraction and insufficiency, from verbal solutions, from bad *a priori* reasons, from fixed principles, closed systems, and pretended absolutes and origins" and "turns toward concreteness and adequacy toward facts, towards action and toward power."

Professor James' lucid and precise description-definition of pragmatism and the pragmatist fits the United States Supreme Court exactly and distinctly in making the "freedom of choice" decisions of May 27, 1968. Three cases were decided: (1) *Green v. County School Board of New Kent County* (Fourth Circuit); (2) *Ramey v. The Board of Education of the Gould School District* (Eighth Circuit); and (3) *Monroe v. Board of Commissioners of the City of Jackson, Tennessee* (Sixth Circuit).

The Supreme Court espoused no dogmas, no doctrines, and no theories. Philosophically speaking, the Supreme Court's attitude was one of looking away from first things—principles, categories, supposed necessities—and looking toward last things—fruits, consequences, and acts. The Supreme Court, in

essence, asked the simple question "What is the cash value of your pupil assignment plans under 'freedom of choice'?"

It is the purpose of this article: (1) to examine the "freedom of choice" cases, and (2) to make suggested recommendations for maximum effectiveness in achieving integration to those school boards that choose "freedom of choice" as their pupil assignment plan and/or how to get the most out of "freedom of choice."

### The "Freedom of Choice" Cases

The pragmatism that has dominated the American pattern of thought over the last fifty years was never more evident than in the Supreme Court's decision in the *Green* case. (The other two cases are similar in nature and scope, but *Green* commanded greater attention from the Court.) The *Green* case was received on certiorari from the Fourth Circuit, in which petitioners brought action seeking relief from segregated New Kent County public schools, located in eastern Virginia. The geographic and demographic facts in the case are these: (1) total population 4,500—half Negroes; (2) no residential segregated—blacks intermittently mingle with whites throughout; (3) 1,290 pupils—740 black, 550 white; (4) two union schools—one for black children, one for white children; and (5) each school serves the entire county (no attendance zones) with overlapping bus routes.

In 1965 in order to comply with HEW Form 441 and continue receiving federal funds, the board of education adopted a "freedom of choice" pupil



assignment plan for integrating the two schools. The plan contained the following provisions: (1) All pupils except those in grades one and eight may choose the school they wish to attend; if no choice is made, the pupil is automatically assigned to the school attended the previous year. (2) Pupils in grades one and eight must affirmatively choose a school.

The school board in argument before the Court vigorously maintained that such a "freedom of choice" plan was in the great American tradition. Pupils were being allowed freely to choose the schools they wished to attend. What pupil assignment plan could possibly be more democratic? The school board suggested that its plan could be faulted only by reading "compulsory integration" into the Fourteenth Amendment—a reading which the school board contended would not be supported by the wording of the amendment.

The Supreme Court ignored the school board's logic and held that the true issue and question before the Court was whether the school board had achieved "a racially nondiscriminatory school system."

It is significant at this point to note that after three years of "freedom of choice" in New Kent County: (1) no white child had attended the Negro school; (2) 115 black children had enrolled in the white school (1967); and (3) 85 per cent of Negro children still attended the Negro school—the dual school system remained. The "freedom of choice" plan, said Justice Brennan, "has operated simply to burden children and their parents with a responsibility which *Brown II* placed squarely on the School Board." The school board must come forth with new ideas, strategies, plans, and approaches that pragmatically work and will work now. The School Board, continued Justice Brennan, must "have a system without a 'white' school and a 'Negro' school, but just schools."

The Supreme Court did not decide on the constitutionality of the "freedom of choice" pupil assignment plan. It did couch the decision in such language as: (1) "'freedom of choice' is not an end in itself"; (2) "ineffectiveness as a tool of desegregation"; and (3) "other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary non-racial school system, 'freedom of choice' must be held unacceptable."

The Court said, however, that it had no objection to "freedom of choice" if it can serve as an effective tool in eliminating segregation and/or gives promise of eliminating segregation. It is precisely at this point that I wish to make the important thrust of this paper. "Freedom of choice" is a feasible and democratic plan of pupil assignment, and it has achieved pupil integration. "Freedom of choice" was never designed to bring about total integration in the public schools. However, Court decisions make clear that it is no longer enough for a school board to

point esoterically to "freedom of choice" plans and say that "no pupil has been denied an integrated education." The simple pragmatic test of validity is how much integrated clout your "freedom of choice" plan has. For the Supreme Court, as I have already suggested, is no longer interested in a priori philosophical approaches—just the workability of a plan. The Supreme Court is willing, as in Professor James' best description of pragmatism, to "take anything, to follow either the logic or the senses, to count the humblest and most personal experiences and the only test of probable truth is what works best."

### **How To Get Maximum Pupil Participation in "Freedom of Choice" Assignment Plans**

Getting the greatest number of students possible to participate seems to be the nub of the issue for school boards that elect "freedom of choice" as their pupil assignment plan. (May I remind school boards that there are many alternatives in pupil assignment plans.) These recommendations for implementing "freedom of choice" perhaps are simplistic at best, but they are designed to insure maximum pupil participation.

- *Advertisements.*—The communication media have been called the "prime mover" of society today. And indeed, in effectuating the "freedom of choice" plan, the operative equation is this: School Board + Mass Communication Media + "Freedom of Choice" Pupil Assignment Plan = Maximum Pupil-Parent Participation. The school board must use the mass communication media to advertise the "freedom of choice" plan. The mimeographed sheet sent home with the pupil explaining the rules of the game is fine, but there must be more. Television, newspapers (in the most readable sections), radio, PTA, service clubs, etc. All must be used. The advertisement should include at least: (1) a listing of all schools and exact location (a map in the style of the real estate advertisement should be included); (2) a brief description of the strengths and weaknesses of each school; (3) a notation of general neighborhood conditions; and (4) a statement of the specific characteristics of each school. I have been particularly impressed with real estate developers who publish an entire map of a new neighborhood development to insure sales. This is a kind of model for school boards to follow. If nothing else, advertisement should be a positive step in helping to avoid the impression that the school board really does not want pupil integration. "Freedom of choice" is a good product, and if properly advertised, it will be successful.

- *Counseling Service.*—The school board should set up a counseling service for both pupils and parents in which the slogan and the spirit are "Let us help you plan and attend the school of your choice." This



service should be available at all hours during the day and into the early evening. One of the great fears of mankind is of the unknown. This fear is intensified at the low socio-economic level. The counseling service should include at least: (1) general talk about education; (2) planning and selecting a school; (3) discussion of general neighborhood conditions; (4) how and where to catch the free transportation; and (5) miscellaneous. The counseling service would relieve one of the major criticisms of Justice Brennan by making the burden of choice more of a responsibility for the School Board.

• *Free Transportation.*—The basic matrix for success of "freedom of choice" is free transportation. The school board must realize there is no real free choice unless free transportation is provided for those who have elected a school outside of their attendance area. If bus routes are gerrymandered in such a manner as to provide transportation to normally designated attendance areas, then "freedom of choice" is not "freedom of choice." Transportation must be free to all schools because transportation is the key to "freedom of choice."

• *Prosecution.*—School boards as a governmental entity duly cloaked with the authority and responsibility for insuring the effective operations of the schools must go on public record as being willing to use the power of their governmental creation and resources at their disposal to prosecute anyone who

interferes, intimidates, or circumvents participation in "freedom of choice" selections. They must be willing to state this willingness publicly and emphatically; and they cannot show timidity at the first challenge.

If a school board follows these four recommendations to the degree and fully and enthusiastically, then it has done about all that it can in implementing "freedom of choice." In the final analysis, this is really the school board's last option. (At least two other steps might be taken in bringing about maximum effectiveness of "freedom of choice" but I do not allude to them in this paper because they are not a part of all administrative units but apply only to certain kinds and types.) The beautiful possibilities are that the recommendations might work.

Finally, as a long-range recommendation and perhaps the real answer to pupil assignment, may I urge school boards to stop building schools in general neighborhood locations and start developing educational centers (educational parks) with several elementary, junior high, and senior high schools as intelligence and demands dictate—where the promise of quality integrated education exists without the threats and onus of disturbing geographical neighborhood patterns. This approach is the epitome of pragmatism—it works! It works for all concerned—taxpayers, school boards, superintendents, supervisors, principals, teachers, students, and parents.

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**A New Edition Coming**



# COUNTY GOVERNMENT

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INSTITUTE OF GOVERNMENT

# THE STATE HONORS

## W. E. EASTERLING

### An Extraordinary Public Servant Retires

Editor's Note: When William Ewart Easterling was employed by the County Government Advisory Commission in March, 1927, to conduct a training course for county accountants, he could have had no inkling that this would be the beginning of more than four decades of continuous public service to the State of North Carolina. When that course in budgetary accounting and application of the newly enacted County Fiscal Control Act was completed, Easterling remained in government. In 1932 he was appointed by Governor O. Max Gardner to be the first Secretary of the Local Government Commission (which had superseded the County Government Advisory Commission the year earlier). In 1933 the General Assembly made the Commission a division of the State Treasury Department and empowered the State Treasurer as ex officio chairman to appoint the Secretary. Reappointed by three State Treasurers, Easterling became a fixture in the post until his retirement this October 1.

A native of South Carolina, a graduate of Wofford College, a marine in World War I, he had completed the course in higher accounting at Eastman-Gaines School of Business in Poughkeepsie, New York, prior to becoming a certified public accountant in North Carolina. Through years of top-flight service to the State of North Carolina and its people, Bill Easterling came to symbolize the dedicated, knowledgeable public official. Always a friend of the Institute of Government and its founder, Albert Coates, Easterling participated in Institute programs and cooperated and consulted with the Institute in many useful and continuing ways.

The Easterlings have one son, Dr. W. E. Easterling, Jr., of the staff of N. C. Memorial Hospital in Chapel Hill and a member of the faculty of the University of North Carolina Medical school.

Now, as Bill Easterling retires to enjoy a more relaxed life, the appreciation of his friends and peers in state government has been made known to him as honoree at a special dinner. Three of these tributes follow:

# TRIBUTES

## **From Albert Coates, founder of the Institute of Government**

For nearly forty years Bill Easterling has been guiding counties, cities, and towns in North Carolina with good advice and counsel. For nearly forty years he has been giving good advice and counsel to the General Assembly of North Carolina about local government units and officials. For nearly forty years he guided me with good advice and counsel in my teaching of local government in the University Law School and in building the Institute of Government and as an ever present help in time of trouble to local governmental units and officials. That is why all of us delight to do him honor on this commemoration evening.

As he goes from a distinguished career in the public service into the rewards of private living, I send him this personal greeting in the words of an ancient Irish blessing:

May the road rise to meet you.

May the wind always be at your back.

May the sun shine warm upon your face, the rains  
Fall soft upon your fields.

And until we meet again—May God

Hold you in the palm of his hand.

## **From Edwin Gill, State Treasurer**

We take pride in the distinguished record of public service of Mr. Easterling, covering a period of over forty years. We are pleased that we will retain his services as a consultant, in which capacity he will be available for advice concerning specific assignments.

At a time like this, we realize the important service that Mr. Easterling has rendered in building up the credit of our local governments following the Great Depression. In addition to being their adviser, he has gone the second mile in guiding them along the road of sound public policy. Although since 1933 the treasurers of North Carolina have been the legal head of the Local Government Commission, it has been Mr. Easterling's privilege to guide this agency in its day-to-day operations. To the many mayors and county commissioners of North Carolina, Mr. Easterling has become the symbol of all that is good in local government. His fame has gone far beyond the borders of North Carolina. He is noted everywhere for his integrity and his competency in all matters affecting local government.

In every sense of the word, Mr. Easterling has been a career official. It is due to him and others like him in every important agency that the major functions of government are carried on with efficient continuity.

On this occasion we take pride in all that the Local Government Commission has accomplished since it was created by the General Assembly in 1931. It has served our state well in one of its most critical periods. We expect to be equally proud of what this independent agency will accomplish as it strives to meet changing conditions and to anticipate a new era in municipal progress and responsibility.

## **From Dan K. Moore, Governor of the State of North Carolina**

I am very happy to come here tonight to pay tribute to a splendid public servant who has served the State of North Carolina well for many years. His work has been characterized by efficiency and integrity. He is typical of the best in state service; and, on behalf of the people of North Carolina I would like to say to the man we honor tonight, Mr. Bill Easterling: "Well done, good and faithful servant."

I was thinking the other day that when a Governor has finished his term of office, he has served the people in that capacity for only four years. Mr. Easterling, combining his service with the County Government Advisory Commission and the Local Government Commission, has served the needs of our counties and municipalities for over forty years!

I am delighted that Mr. Easterling will continue to be of help to the state as a consultant. While the responsibility for administration will pass from him, his rich store of experience will still be available to us.

I am delighted that the State Treasurer has seen fit to name Mr. Harlan Boyles to succeed Mr. Easterling. He is a young man of vision and knowledge, entirely loyal to the welfare of the state and its people. I am sure that he too will make an enviable record in this important office.

You here tonight are abundantly familiar with the major responsibilities of the Local Government Commission as it functions today. But let us go back into history for a moment.

During the era of progress that followed World War I, heavy demands for such improvements as better streets and highways, better school buildings, water and sewer systems and many other facilities brought about the need for bond financing. It was a time of great optimism and no state control. So it is not surprising that some of the bonds were issued for unwise and uneconomical purposes without proper consideration of the local unit's ability to make repayment.



The General Assembly of 1931 sought to preserve and protect the integrity of our great state by restoring local government credit as expeditiously as possible.

Out of the desire of both state and local officials to improve local governmental operations came the Local Government Act. While it may be said that the Local Government Commission was born of chaos, even so, I can think of no greater tribute to the commission than the fact that not a single amendment has been made to the Local Government Act modifying any of its provisions relating to the powers conferred upon the commission.

A law may be good, but it is not self-executing. The success of a reform often depends upon the wisdom and the care with which it is administered. And North Carolina was fortunate in having a young man, already schooled in municipal affairs, to assume the unprecedented duties connected with the administration of this new agency. It is true that the legal head of the Local Government office is the Treasurer of the State, and yet the day-to-day handling of difficult and delicate problems has been the job of Mr. Easterling.

As we moved out of the Depression and the credit of the localities once more became a fact, the Local Government Commission exercised a restraining influence on units that seemed inclined to repeat the errors of the past.

As I pay this tribute to a man and his work, I wish to point out that although we are a government of laws and not of men, men are terribly important. Easterling's life is woven into the customs and practices that the Local Government Commission carries on. He has made the act a living thing—one that has meant much to our mayors, our county commissioners, our financial institutions, and through them to the people.

All of us know of the fiscal and administrative limitations that have been placed upon local governments. I agree that the time has come to take a new look at these limitations and that steps be taken to give our local units more leeway in tax matters.

There are many people who think that local governments are not able to assume additional burdens incident to the major development programs of the state. It is argued that the federal government has pre-empted sources of revenue and that the localities have a hard time carrying on the basic functions of government with the revenue sources that are left to them. They also say that the state cannot become too deeply involved, contending that it would require

substantial increases in taxes at the state level which might, along with other needs for revenue, put North Carolina in a non-competitive position with other states of the Southeast in bidding for new industry. It is suggested that the money we get from Washington is really our own; that the federal government does not have the problem of competition; that, in fact, it has a tax monopoly, and therefore, we should look mainly to the federal jurisdiction for financing public facilities.

And then, of course, there are those who take the doctrinaire position that we should not look to Washington for aid, contending that the more money we accept from our national government the more of our independence we give up.

I think the answer is that if we are to make progress we must lay aside our personal prejudices and take a long objective look at the importance of our goal. It is obvious to me that success will crown our efforts only if we enlist the wise and co-ordinated aid of government on all levels, as well as the private sector, which may in the end hold the key to a great accomplishment.

We owe a debt of gratitude to private enterprise. Let me say with great emphasis, if we are to develop the State of North Carolina we will need the aid of government on all levels but we will also need the help of private enterprise.

It is my opinion that rapid development will come throughout North Carolina. Our concern is what direction will it take? Will we conserve our natural and human resources? Or, will we permit this great state to be exploited, growing and expanding helter-skelter? I am convinced that there is no substitute for orderly and wise planning on the part of our governments and private enterprise.

As we face the future, local governments will need all the help they can get from the State of North Carolina. Every agency that can render service will be doing so, and, as in the past, the Local Government Commission, taking always an objective and far-sighted view, will be doing its best to guide the economic development of our counties, cities, and towns into sound paths and channels of economic growth under the leadership of Mr. Boyles, who will have the continuing benefit of the advice of Mr. Easterling.

And so, I say to Bill Easterling, the people of North Carolina are our greatest asset, and you have served our people well, and in doing so have brought credit to North Carolina and to yourself.

# GREENSBORO HOLDS A MINORITY SENSITIVITY PROGRAM

by Ruth B. Cowan

The City of Greensboro completed recently a sensitivity program, focusing on problems associated with minority races in the Greensboro area, for employees in supervisory positions. More than 140 department heads, assistants foremen, and other supervisors (including Negroes) attended these sessions. These supervisors represented all city departments except the police department, which recently completed a similar program for its employees.

Three one-week programs were presented, the first starting August 12, 1968 and the third ending August 30, 1968. The sessions were scheduled to begin at 9:00 a.m. and to end around noon each day, Monday through Friday.

The participants during the first week were mostly department and division heads; assistants and other supervisors during the second week; and foremen, along with others who were unable to attend one of the first two programs, during the third. The programs for the first two weeks were held in the central library in the downtown area; the last week's program was held in the City Service Center, where the large majority of foremen report to duty.

The program was initiated and developed by the City Personnel Office. The sessions were under the direction of Mrs. Ruth B. Cowan, Personnel Director, and Miss Kathleen Soles, Training officer. They were assisted by Mr. George A. Seay, Jr., Community Relations Director. Some of the sessions were followed by discussion groups in which one of the above acting as leader to bring out comments on the previous sessions.

The city library staff prepared a book display for exhibition in the principal meeting room and also prepared for distribution an annotated book list entitled "Meet the Minority." Twenty-five copies of the *Report of the National Advisory Commission on Civil Disorders* were available for borrowing.

One week before the first program was scheduled to begin, an invitational memorandum from the city manager was sent to each supervisor. The memo-

randum explained the purpose of the program and listed the schedules, including dates and places of meetings.

Each week's program was launched by an orientation and introduction by City Manager John G. Turner. He thanked the employees for arranging time to attend these sessions and explained that while the city administration was not espousing any particular point of view, it was important to understand other groups of people. He reviewed the progress that City of Greensboro has made in understanding racial problems—establishing a human relations department, a community relations department and a community relations division of the Police Department and presenting programs such as these which give an opportunity to hear what others have to say.

A film of a television program "Civil Disorder," prepared by Public Broadcast Laboratory and originally presented over a national network, was announced by an officer of the Police Community Relations Department. The program was largely based on *The Report of the National Advisory Commission on Civil Disorders* and was divided into two main parts: (1) why civil disorders occur, and (2) what can be done to prevent them from happening

This article, written by the Director of Personnel of the City of Greensboro reports on a unique effort of a municipal government to help its employees to understand the various racial groups within the community that are different from themselves.

again. Due to the length of the film, a short discussion ended the day's sessions.

On the second day Dr. C. B. Thorpe, a professor of sociology at A & T State University, spoke on "The System, How We Got This Way." Dr. Thorpe stressed how economics controls all the other major institutions of family, government, religion, and education and to a lesser degree the other social structures of recreation, athletics, and communications. (Mr. Van S. Allen, then with the Guilford County Office of Economic Opportunity, substituted for Dr. Thorpe during the second week.)

The first week's session on Negro history was presented by Mr. Robert Hayes, Assistant Principal of Proximity Elementary School. His specific topic was *Negro Press and Literature*. He described some of the Negro publications which have survived and taken rank as literature as distinguished from history, economics, or the like.

The last two sessions on Negro history were given by Mrs. B. H. Jenkins, Chairman of the Social Studies Department at Dudley High School. She spoke generally on how the Negroes came to this country and the part they have in our history. She said that she had to do a lot of research to learn any Negro history. It is not in the textbooks—the textbooks used by both the white and the black. Asked Mrs. Jenkins: Did anyone ever tell you that a black man piloted the boat that brought Christopher Columbus to this country? That there was a black man, and the first to die, at the Boston massacre? That Negroes fought to gain America's independence from England and they have fought in every one of our wars since then? (For further information she recommended especially two books *The Negro Vanguard* by Richard Bardolph and *Eye Witness: The Negro in American History* by William L. Katz.)

Tuesdays' program ended with the playing of The McDonald Tape, which was recorded in 1966 at Little Switzerland, North Carolina, during a community relations seminar conducted by the National Conference of Christians and Jews. A man by the name of Jim McDonald, who was then the community services representative for the North Carolina Fund, made a talk to the members of the seminar. The object of this talk was to give the people an idea of what goes on in an equal rights program presented by black people to black people and to see how easily one can be moved emotionally.

Mr. Louis V. Brooks, Executive Director of the City Human Relations Department, began Wednesday's program with a summary and discussion entitled "Kerner Report—White Racism, Black Racism." This report is actually that of the National Advisory Commission on Civil Disorders, which had as its chairman Governor Otto Kerner of Illinois. It is also referred to as the U. S. Riot Commission Report. Mr. Brooks pointed out that after the racial disorders during the summer of 1967 the Commission was

established by the President of the United States and directed to answer three basic questions: (1) What happened? (2) Why did it happen? and (3) What can be done to prevent it from happening again? In the time available he reviewed the answers to these questions as presented in the summary of the Report.

Mr. Richard Lee, Assistant Executive Director of the Greensboro Housing Authority, substituted for Mr. Brooks during the third week. He was able to describe riot conditions which he personally observed in the Watts District of Los Angeles and other cities while he was serving in the armed forces of the United States.

Mr. Andrew W. Gottschall, Jr., Regional Director of the National Conference of Christians and Jews, Inc., was in charge of the session entitled "The Nature of Prejudice," or "The Rumor Clinic." This was a demonstration to show how a rumor grows and changes as it travels from person to person. It vividly demonstrated that changes in a story arise out of the attitudes and prejudices of the person who tells or retells it.

The Wednesday movie during the first two weeks was "The New Girl." This is a thirty-minute human relations film from the Anti-Defamation League of B'nai B'rith. It was produced during the Eisenhower administration by the President's Committee on Government Contracts. During the third week this movie was replaced by "Cast the First Stone," a 42-minute documentary, originally shown on ABC-TV with commentary by John Daly. It features interviews on location with Americans whose lives have been affected by prejudice and discrimination.

Thursday morning's sessions began with "Legislation on Employment," discussed by Mr. McNeill Smith of Greensboro, who is past chairman of the North Carolina Advisory Committee to the United States Commission on Civil Rights. He reviewed the history of legislation concerning civil rights in North Carolina particularly and also stressed the provisions of the Fourteenth Amendment to the Constitution.

On Thursday the movie for the first group of supervisors was "Walk in My Shoes," a 42-minute documentary exploring the innermost feelings of the Negro as he reacts to prejudice and discrimination in America. Originally presented by ABC-TV, the film endeavors to project what it is like to "walk in the shoes" of the Negro—whether as a professional in Chicago or a laborer in New York.

During the last two weeks "Walk in My Shoes" was replaced by "No Man Is an Island," a 29-minute film telling a moving story of two young men, one black and one white, who have become close friends during their military service. Both are confronted with the fears and prejudices from their families and friends when they try to maintain their friendship in civilian life. The question of the Negro's joining the



congregation of the white man's church is included.

On Friday mornings "Indian History" was discussed by the Reverend W. Joe West, Minister of Education at the Immanuel Baptist Church and a student of the history of the Lumbee Indians. Rev. West touched on the history of the various Indian tribes in North Carolina. He gave a detailed and impressive background on the Lumbee Indians, many of whom have migrated to Greensboro from the southeastern section of North Carolina.

Each week's program ended with a panel discussion on "Community (Negro) Images of City Hall." The panelists were Mrs. Susie M. Taylor, a public school teacher for several years and now a mathematics instructor at Caldwell School, and Rev. Otis L. Hairston, pastor of Shiloh Baptist and also chairman of the Greensboro Citizens Emergency Committee. The moderator for the session was Mr. George A. Seay, Jr., Greensboro Community Relations Director.

Mrs. Taylor stated that after she accepted the invitation to appear on this program, she had interviews with about thirty Negro citizens and asked this question: "What is your idea of city hall?" She

summarized that in general the average black man regards city hall as one of the many high-walled fortresses in America that includes, protects, and houses the power structure and systematically and deliberately excludes the black and the poor.

Mr. Hairston stated that generally the black man's image of city hall can be determined by what he sees when he walks through the offices of city hall. The people he sees are almost 100 per cent white. When he does see other races, it is "the white man with the pencil and the black man with the broom." He said that more blacks should be in supervisory positions—this would help change the black man's image of city hall.

What is the value of such a program? That is difficult to determine. The City Manager says that it is the consensus that it afforded the most worthwhile training of any sessions conducted by the City of Greensboro to date. Opinions about the value of specific subjects varied widely but the overwhelming majority of the participants said that the over-all program was effective and worthwhile. True value will be realized when we begin to act, not react, to problem situations.

## New Books on Government in the Institute Library

September 1968

Demerath, Nicholas J., Stephens, Richard W., and Taylor, R. Robb. *Power, Presidents, and Professors*. New York: Basic Books, Inc., 1967.

Durden, Robert F. *Reconstruction Bonds and Twentieth-Century Politics*. Durham, North Carolina: Duke University Press, 1962.

Jencks, Christopher, and Riesman, David. *The Academic Revolution*. Garden City, New York: Doubleday & Company, 1968.

Lomas, Charles W. *The Agitator in American Society*. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1968.

McGregor, Douglas. *The Professional Manager*. New York: McGraw-Hill, 1967.

Momboisse, Raymond M. *Community Relations and Riot Prevention*. Springfield, Illinois: Charles C. Thomas, 1967.

Sehurnacher, B. G. *Computer Dynamics in Public Administration*. Washington, D. C.: Spartan Books, 1967.

Schwartz, James, ed. *The Publicity Process*. Ames, Iowa: The Iowa State University Press, 1966.

Selzer, Melvin L. *Psychiatry for Lawyers Handbook*. Ann Arbor, Michigan: Institute of Continuing Legal Education, 1967.

Shapiro, Donald E., Steingold, Fred, and Needham, Roger A. *Medical Malpractice*. Ann Arbor, Michigan: Institute of Continuing Legal Education, 1965.

Urban Land Institute. *The Community Builders Handbook*. Washington, D. C.: Urban Land Institute, 1968.

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# The POLICEMAN and the PURSUIT of EXCELLENCE

by Harvey D. Miller

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Bringing higher levels of education to policemen and bringing policemen to higher levels of education has not been an easy task. Most of us, as present or former police officers, are quite aware that this is true. But the question is, "Why now?" Why should the public we serve now demand a measure of professionalism in law enforcement as never before?

The answers are not simple, but we may be able to piece together some fragments of what we already know to help shed some light on the subject. First, two related factors must be considered. The people of our nation are becoming more educated, and the accumulation of knowledge has reached explosive—almost epidemic—proportions. School systems in our country have improved enormously over the past ten to twenty-five years. Compared with the level of achievement of today's twelfth-grader, the high school graduate of a dozen years ago is almost uneducated, unless he has continued to train himself. In addition, the so-called knowledge explosion is not an academic myth but a reality that affects the life and actions of all people. And this knowledge accumulation has occurred in our own time—yours and mine. If all the accumulation of the knowledge of man were repre-

sented graphically, the first 6,000 years of man's existence would never get beyond the lowest line of the figure. During the fifty years before the youngest member of this class was born, man's knowledge doubled, so the graphic line would be raised to about the second or third increment of the figure. But in the past ten years the amount of knowledge that man has to work with has trebled, and is now going up by the square of the present figure each seven and one-half years.

Almost 15 per cent of all Americans have attended a four-year college or university . . . and nearly 8 per cent of all the adult members of our culture are degree holders from these same colleges and universities. The simple fact is that we are becoming a better-educated nation . . . and the demands for increasingly higher quantities and qualities of governmental services, including professionalized law enforcement have increased apace with the educational level.

Where do we stand as policemen in relation to this cultural phenomenon of increasing education? Let me illustrate from the very recent past. In a 1965 survey of 445 local police officers in Wisconsin (along with North Carolina, one of the better-policed

states in the nation), of the 445 officers interviewed, only 5 per cent had attended a four-year college or university, and only four officers—less than 1 per cent of those interviewed—were degree holders.

So it appears that in education we are outgunned, outsmarted, and outnumbered. However, there is a bright spot to this otherwise grim recital. We policemen, like the teachers of twenty-five years ago, recognize that we have been shorted by ourselves and our employers for a long, long time. Many of us are not only aware of this fact, but are now willing and able to correct this imbalance. Certainly, those of you who have completed this course of instruction are proof of the desire of most law enforcement officers to grasp the brass ring of education to better their lot.

Let us carry this argument a step or two further. Most of us as law enforcement officers would like to be called professionals and be treated and compensated like professionals in other walks of life. But the sad fact is that we are not professionals as the word is defined today. Oh yes, we have some of the attributes of professionalism. We have a vocabulary that is unique to our kind. We indicate a set of personal values and atti-

tudes that set us apart from people in other occupations. We have some special skills and knowledge that others do not have. And we have fraternal ties and associations with those doing work similar to ours. But it is at this point that the comparison between us as law enforcement officers and those true professionals in other occupations ends, because we do not possess, as an occupational class, the general and special educational attainments that separates the nonprofessional from the professional.

That we are *trying* to overcome this gap is obvious from this graduating class. That we *must* overcome this gap is apparent from the demands placed upon us by our colleagues in the administration of general justice. The lawyer and the judge in their practice of the legal arts, the doctor, the social worker or the minister that we often call upon for assistance—these are professionals, and as their associates we are expected to speak and act and think and respond as professionals. I believe that we can and we will, in the not too distant future.

Most important, education such as you are completing here offers us as peace officers a chance to contribute materially to the stability and welfare of our communities. And we must contribute

substantially in these vital areas or be forever damned by all who now or in the future look to our democratic institutions for hope, opportunity, and a chance to better the lives that they and their children will live.

In this day, when storms of doubt, mistrust, hate, and violence sweep across our nation in recurring waves—when tempers heat with the weather—when every oppression, regardless of the perpetrators or their motives, breeds new oppressions—we find ourselves as law enforcement officers caught squarely in the middle of the forces that rage around us.

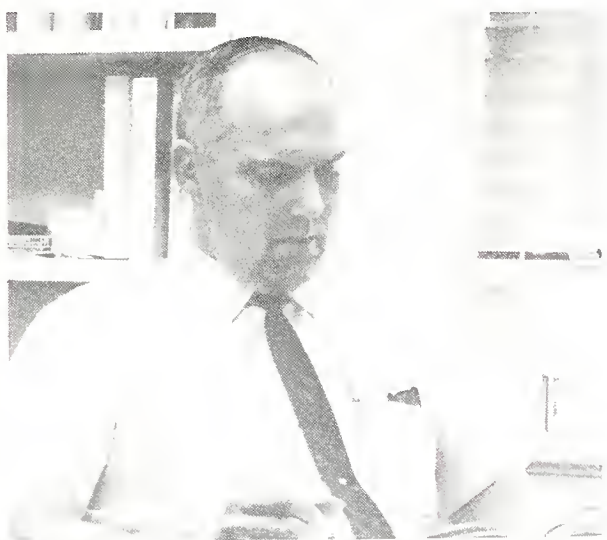
Damned if we act—damned if we don't act; caught up in passions and emotions not entirely of our own making, yet saddled with the nearly hopeless task of leading men to reason in a time when reason is in short supply. Untrained in the subtle arts of persuasion; undereducated in social control, perhaps; sometimes deserted as we attempt to cope with situations that have no parallel in the memory of recent times—how can we hope to survive in a social revolution in which there is no middle ground?

You here tonight offer the best answer and perhaps the last best hope for the survival of the grand traditions and the great institutions

that have continually breathed the breath of life into this republic. For you represent the consensus of concerned America that change *can* take place in peace; that the future can be bought in the bargaining of the ballot box; and that opportunity can find expression and fulfillment of most of the desires of our people in thoughtful discourse, wise choices of action, and through the continuous efforts of men of good will rather than through violence on the streets.

So you are to be commended for the course of thoughtful action you take as policemen in your duties as well as in the classroom. Continue to learn. Continue to apply your knowledge so that your role in our public and private life will be counted as a blessing and not as a burden. Continue to educate yourself to challenge the old without destroying its value. Continue to question the new and untried without trampling upon its vitality. And continue to search for those things that we may never know—for this may be the beginning of wisdom. And surely, wisdom is what we desperately need in this world—wisdom, coupled with action.

With the coming of some kind of wisdom, we may reach the day when all people realize that more than ever before, free men must



*Harvey D. Miller has recently joined the Institute faculty as a specialist in police administration. This article comes from the commencement address he gave before a law enforcement class at Alamance Technical Institute.*



oppose hysteria, extremism, and error—even when error is wrapped in patriotism and mouthed by those we like. With wisdom we will know that it is impossible for society not to change and that we must always try to seek change without violence; that we must try to understand men by recognizing that most men never mature at all—they simply grow taller, and the motivations of the child are but written large in men.

With the beginnings of wisdom we shall learn to meet fanaticism with courage, and idealism with great care: for we will learn to be skeptical of what is promised, even

by virtuous men, but has not been proved.

Wisdom will allow us the strength to be kind in a day when others regard kindness as a weakness. Wisdom will teach us that life will always have unbearable stretches of loneliness, uncertainty, and pain, and tell us that we might as well stop running around insisting that everyone "try to understand us," because we can never be completely understood by anyone, no matter how highly they regard us.

Above all, education and some degree of wisdom may teach us that we can only meet the require-

ments of our lives and jobs in a series of imperfect and sometimes unsatisfying confrontations, knowing that we may never reach the last vital truths that lead to understanding among all men—and that life holds nothing more precious than the processes by which we stretch the minds and hearts of ourselves and the communities we serve.

You may have taken the first steps to wisdom and understanding in the past several weeks of instruction. I hope you have—for your communities, the State of North Carolina, and the nation desperately need the best that you have to offer.

## THE INSTITUTE CALENDAR

### November

Police Administration (Begins)	5-7
Human Relations Seminar	7-8
Medical Examiners Seminar	8
Board of Directors of Education Association	8-9
Press-Broadcasters Court Reporting Seminar	8-9
N. C. Association of Assessing Officers	12-13
District Court Judges-Elect	14-16
Magistrates Schools	18-19
	20-21
	22-23
Health Directors	25-26
Probation Assistant Supervisors	25-27

### December

License Examiner Hearing Officers	2-6
Small Community Water Conference	4
District Court Judges	9
Newly Elected County Commissioners	9-11
New Superior Court Judges	13-14
Forest Rangers	16-20
Day-Care Consultants	18-20

### Continuing Schools

Municipal and County Administration	Nov. 1-2
	Dec. 12-14
Police Administration	Dec. 17-19

# The PARTNERSHIP of STATE and LOCAL GOVERNMENTS

by Dan K. Moore

## The Governor Speaks to the North Carolina Association of County Commissioners

Historically and in fact, there is a close tie between state government in North Carolina and the 100 counties. In a legal sense, the county is the creature of the state, formed for the purposes of the state. In practice, however, the counties and the state are active partners in working together to provide essential services to the people. This partnership has worked well and it has provided excellent service to our people. It has given this state better government and the means for its outstanding progress. And, this partnership remains today the best vehicle to make the most of the golden opportunities that are North Carolina's.

In all probability, this will be my last opportunity to speak before this fine organization. I would be remiss if I did not commend you for your past and present service, your contributions to the counties you serve *and to the state*. I would be equally remiss if I did not leave with you a few of my thoughts on some of the state-county services and on the need for strengthening the partnership role. Two things are certain in so far as we are concerned tonight. One is that the rapid change in just about every aspect of human involvement will continue. The second is that we must not and we cannot afford to stand still.

Education is the prime example. Providing a sound education for the young people is the most important governmental service that state and local governments undertake. The state spends 73 cents of every General Fund tax dollar for education, and about two-thirds of all county revenue goes for the same purpose. I pride myself on the fact that each of the General Assemblies during my administration has established a new record high appropriation for

education. I am sure that many of you have a similar pride over your county appropriations. And yet, are we actually doing enough for every child?

I suspect that the recommendations of the Governor's Study Commission on the Public School System of North Carolina are going to have an impact on the future of public school education in your county. One area under study is money, and there is no question that education will cost more in the future. Where is the money to be obtained?

I believe that local governments must participate to a greater extent in the financing of public education. The state certainly will continue to increase its efforts. Without greater local participation, however, I expect the federal government will become even more involved in public school education. In my opinion, the closer the control of the schools to the people, the greater their efficiency, effectiveness, and response to local education needs. This calls for substantially higher appropriations on the part of many local governmental units.

The community college system provides us with another area where state-county partnership cannot afford to stand still. A 63 per cent budget increase by the 1967 General Assembly has permitted this system to expand its programs and operations. There are now 50 institutions within the system, one within commuting distance of at least 85 per cent of our population. This system is North Carolina's best hope to bridge the growing technological gap between people and jobs. Unless we are able to close this gap, the increasing standard of living and rate of industrialization we are now experiencing will be slowed.

Early in the summer we held in Raleigh a conference on how the community college system could

meet the manpower challenge of an industrializing and urbanizing society. Work sessions were held and suggestions made on how the role of the community college system could be strengthened. These recommendations are being sent to you, and I urge their consideration in light of the present and future needs of your county. Let me emphasize this one point: We must provide more learning opportunities for those who want to work with their hands as well as with their minds. This is the only way we can close the technological gap between people and jobs. Let's not try to make our community college system a university system. Let's keep it close to the people and provide job training our state so badly needs.

The state and the counties have worked as partners in providing meaningful welfare programs for the poor, the aged, the indigent, the sick, and dependent children. The term "welfare" has a bad connotation for some. Yet, in North Carolina, with the administration in the hands of the counties and with supervision provided by the state, public welfare has been a blessing, a helping hand, and a way to a more meaningful life for many who could not help themselves. While participation in some programs has been reduced, in others it has been increased because of a growing population.

The need and the responsibility to provide for unfortunate citizens will remain a major duty of government. The state and the counties, along with the federal government, have the job of maintaining a meaningful and sound program. It is essential that

*Governor Dan K. Moore spoke on August 20, 1968, before the annual meeting of the North Carolina Association of County Commissioners, held this year in Asheville.*



we seek closer cooperation and improved administration as well as adequate provisions for those served. In this regard, I believe that this is the time for North Carolina to undertake a comprehensive study of the problems of welfare, even as have been doing in public school education. I hope such a study will receive the favorable consideration of the next Governor and the next General Assembly.

In considering the welfare of the people, let me thank you for the response I have received from my communication about hunger and malnutrition in our state. As you may recall, I wrote county commission chairmen in July, urging a review of efforts under way to provide food for needy families. I pointed out that North Carolina now must make every effort to rid itself of any hunger and malnutrition which might exist. The replies I have received have shown a determination to see that existing food programs are available to all that are actively in need and that they are being utilized to the fullest extent possible.

Chairman Jack Brock of Harnett County told me that he had appointed a study group consisting of the county manager, the welfare director, the health officer, the community services consultant, the assistant school superintendent, and the agriculture extension agent. The group was charged with formulating a plan of action and with coordinating its implementation among all appropriate agencies. I believe that Harnett is approaching this problem in a sound manner. I urge other counties to consider similar studies.

A final example of state-county partnership in action is evident in the field of health services. As in education and welfare, the times are creating new demands for health services, and the state and the counties are moving rapidly to meet the challenges. It is evident, however, that we must find better ways of doing things, and that we must avoid unnecessary and costly duplication. We must see to it that a meaningful and adequate program of health services is provided all of our citizens. This is the goal of the Office of Health Planning, which was established earlier in my administration.

The president of your organization is a member of an advisory council to the Office of Health Planning. Alex McMahon, formerly general counsel to this Association, is the chairman of that group. One of the purposes of this advisory council is to provide for a strengthening of state and local decision making in all health fields through the comprehensive approach to health planning. I am sure that this study will provide the means for an even more beneficial partner relationship between state and county governments in the field of health.

I have worked during my administration to strengthen the partnership role between the state and local governments. Education, welfare, and health are but three of the many areas where the state and local



governments work together to benefit the people. I want to emphasize the partner relationship. Even as I believe the state must be a full partner with the federal government in domestic programs, so, too, do I believe that local government must be a full and active partner with the state.

During my administration, I have worked to strengthen this partnership and unity. The State Planning Task Force was established shortly after I came into office and one of its major responsibilities has been to stimulate the coordination of state and local efforts in a variety of programs. I have called upon this association and the League of Municipalities for advice and for assistance. Your help has been essential in the efforts to find solutions to problems in many areas, including employment, housing, recreation, education, and human relations. Together we—the state and the counties—have come a long way and together we have a long way to go.

I expect that my remarks tonight have caused you to think of money. The cost of providing services to the people is climbing, and, yet, I think that we cannot afford to stand still—we can't afford to drag our feet. The State of North Carolina has for many years assumed the major burdens of taxation required of local governments in many other states. Highways and education are but two of the many examples of this. I think the state commitment will continue to grow, but so, too, must the local commitment. Counties, in particular, need to look at themselves and to seek to make maximum use of their own resources.

As I have before, I would urge counties to carefully review their utilization of the property tax. The average per capita property tax in North Carolina is about half the national average. Yet, in some counties it has truly become oppressive. For this reason, and as I did before the 1967 General Assembly, I support the recommendation of the Tax Study Commission for a "local option tax." I believe the General Assembly should grant local governments the power to help themselves by the addition of a local-option 1 per cent sales tax. The people of Mecklenburg County have adopted this sales tax, and it is providing substantial revenue. I hope this association will support before the next General Assembly a bill to allow the people of a county to vote on a local-option sales tax.

Careful attention also should be given to the need for updating county governments and modernizing their structure. Review should be given, in my opinion, by the legislature and by this association to the authorities and the responsibilities of boards of county commissioners. Perhaps some changes would be beneficial. Perhaps some constitutional changes are indicated. If so, you should seek such changes through the constitutional study now under way. Counties themselves should consider their present governmental operations. Government in general must become more professional, and this is certainly true

of the counties. Already North Carolina has professional managers in 25 counties—more than any other state besides California. This is a good beginning.

I believe that there is a need for greater regional cooperation among county governments. Councils of governments can be beneficial, and so can economic development commissions and regional commissions such as the Appalachia program in the west and the Coastal Plains Regional Development Commission in the east. The movement in this direction in North Carolina should continue. A next step, I feel, should be consideration of a regional consolidation of services where it would be of value to our citizens. This approach has been successfully utilized by health departments. Perhaps a cooperation in and coordination of certain services would strengthen them while reducing their cost to the taxpayer. Certainly I think every effort should be considered by county governments to avoid unnecessary duplication in providing first-class services. This might require the consolidation of certain municipal and county services or even the consolidation of certain counties themselves. I think this is the time in the history of the state to consider such consolidation.

Tonight I have talked about some of the problems and opportunities of the counties and the State of North Carolina. I could more easily have talked of the tremendous progress which together we have made in these last few years. I believe that with the cooperation of private business and industry, we have provided the means for a better way of life for every man, woman and child in this state.

It all is but a new beginning. Yet, we cannot rest. As I hope I have indicated tonight, there remains much to be done by the state and the counties in the months and years ahead. Education, welfare and health, and practically everything else can be improved. The challenges are but opportunities for a better North Carolina.

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# WHAT WELFARE PROGRAMS

## CAN COUNTIES INITIATE?

by Daylon Greene

[Editor's Note: The author is director of the Caswell County Department of Public Welfare. This article comes from his address before the Institute for County Welfare Board Members, held September 12-13 at the Institute of Government.]

During the eulogy to his brother, Senator Robert Kennedy, Senator Edward Kennedy referred to a favorite quote used by the late senator and President Kennedy as well.

Some men see things as they are and say "Why?" I dream things that never were and say, "Why not?"

The changes occurring in public welfare programs today are causing all of us to look at new ideas, new methods, and new approaches on how to serve the people in our counties. We have heard from many sources that public welfare has not done the job in eliminating or helping people to get out of poverty. Therefore, public welfare must be changed. We have faced change, and from the things we have learned in this meeting and from what we read in newspapers and journals, we can anticipate more change—most likely, a very radical change to some type of guaranteed annual income.

The right kind of change can be very constructive. All of us must be alert and aware of the needs in our particular county, and the

department of public welfare must be ready and willing to do its part in trying to meet them. We must dream of things that never have been, but which are sound and needed in our county, and say, "Why not?"—and then try to bring this dream about. It is in keeping with this spirit that I want to talk to you about optional programs that counties may develop to serve families.

A few of the programs that I shall mention may soon be required through the implementation of the 1967 amendments to the Social Security Act. A few are already being carried out to some degree by many, if not most, of the counties. But the spirit in which these programs are carried out and the extent to which they are carried out are most important. A program cannot be successful unless there is first a *need* for it, unless there is a *belief* in it, and unless there is *adequate financial support* for it.

These programs may be divided into three groups—those related to administration, those related to services for children, and those related to services for the aged and disabled.

### Programs Related to Administration

One of the very valuable programs related to administration is the *public information project* called "Come Visit With Us. The

purpose of this program is to provide county leaders and those who affect the opinion of policy makers an opportunity to visit with a welfare caseworker and to obtain a firsthand understanding of both how people on public assistance really live and of what we in public welfare are trying to do. Most of the people who are extremely critical of public welfare do not know the smell and feel of poverty and have no real understanding of public welfare. This visitation program is being tried by several of the counties and has met with much success. I commend it to you, and if you want more information about it, I suggest you contact Commissioner Craig or Mr. James Burns, Public Information Officer in the State Department of Public Welfare.

Another program concerns *food distribution*. Food stamps are now being distributed in more than twenty counties and the Surplus Commodity Program operates in



sixty or more counties. Only about seven counties are not now in a food distribution program.

I know of no one in our county who is starving, as we usually think of the term. But many people have become draft rejects, or have done poorly in school, or developed health problems because of inadequate diet. A food program can help with this problem.

Accompanying a food program, attention needs to be given to demonstrations on how to prepare food, the development of cook books, the use of volunteers, and other methods of helping people to obtain and appropriately use the food they receive.

*Family planning* can be a tremendous help to the people with whom we work as well as to the public assistance budget. Mrs. Katherine B. Oettinger, Deputy Assistant Secretary for Population and Family Planning with the Department of Health, Education, and Welfare, has said,

The mission of family planning impinges directly on the mission of preventive social work: to bypass a measure of personal and community ills by eradicating some of the root causes of social pathology.

Dr. J. F. Hulka, an obstetrician and gynecologist with the University of North Carolina School of Medicine and associate director of the Carolina Population Center, has written a paper entitled "How Much Does Family Planning Cost?" Dr. Hulka does not attempt to give a dollar value to how family planning is reflected in the improved quality of the home or in the increased opportunities for the parents and children. He talks specifically about how a small expenditure for family planning can be a big savings in terms of tax dollars for schooling; for medical and health needs; for food, clothing, and other subsistence needs. He estimates these needs to be approximately \$10,000 per child.

In 1963 the board of commissioners in Caswell County, at the request of the welfare board, allowed some unused general assistance money to be used for helping with volunteer sterilizations and

in 1965 to begin distribution of the birth control pill and, later, the intrauterine device. At that time, at least twenty-five to thirty welfare recipients became pregnant and had an illegitimate child each year. Through a family planning program this number was cut to eight during 1966-67.

We have found that most of our recipients and other low-income persons do want to use family planning when it is offered to them in an acceptable manner. They are concerned about their situation and do not want to have more children than they can support and care for.

Family planning, as we now know it, does not seem to prevent the first child, primarily because people do not use family planning until after the first pregnancy. A good family planning program can, however, be most effective in preventing additional births that are not wanted by the couple and allows for children to come only when they are wanted.

I understand that only about 80 to 85 per cent of the counties have a program of *general assistance*. It seems to me that it would be extremely helpful for each department to have some county money available to use for emergency medical care, food, shelter, or clothing needs; and for use in the child welfare program to pay for foster home care; or for the medical needs of a nursing home patient who is without a family and has medical problems which cannot be provided for through the public assistance grant or the drug program.

#### **Programs Related to the Needs of Children**

One of the greatest needs in the area of child welfare is *good casework service*. Our welfare departments are already offering many services in child welfare such as adoptions, foster care, protective services in the area of child neglect and abuse, services to the juvenile delinquent and to the families involved in these protective services. But these services

need to be looked at in terms of how sufficient is the staff, are there resources for the staff to use in coping with these social problems, and what causes them. Are there situations within the community that helps to create these problems, and if so, can something be done to help eliminate them and to offer something constructive in their place.

Although some of us have had some bad experiences with some community action agencies, many constructive things have developed through the cooperative efforts in *community organization*. There is definitely a need for community projects and a need for welfare's leadership in these projects to help develop work-training programs for adults, employment opportunities for young people with the PACE Program, which help young people go to college, or the Neighborhood Youth Program, which helps them stay in high school.

Simple things like *play areas* for children can often be overlooked, but may be badly needed. One of the greatest needs is a *tutoring program* to help school-age children keep up in their school work.

Some programs have been developed to *help teen-age pregnant girls (married or single) attend classes* and keep up with their school work during their pregnancy. This has been available for some time for those going into a maternity home, but too often girls in this situation drop out of school and never go back after the child is born. A school program like that of Forsyth and Durham counties can help these girls keep up their interest in school work and ultimately graduate, which will certainly mean a better future for both the mother and child.

The use of *homemakers* can be extremely helpful in working with children and their families. The roles of the caseworker and the homemaker need to be clearly defined so that their work with the family will not conflict, but rather complement one another.



Homemakers can do all kinds of things. One homemaker, during the past year, has helped several mothers learn to purchase more nutritious and economical groceries than they had been buying. Also, she has spent many sessions playing, talking, and reading to four children in a family trying to help them learn to talk. These children had a language of their own, and the homemaker's work with them was done under the direction of a speech therapist and the caseworker. She is currently helping some of the parents learn to use surplus commodities and is planning to demonstrate some of the uses in group meetings with the help of the home extension agent.

Families may have a great need for help from the homemaker when the mother becomes ill and perhaps hospitalized and the father must work and no one is left to care for the children. In an urban and mobile society, family or friends may not be available to help a young couple when one of them becomes ill, as they were in our society of a hundred years ago.

For this same reason and because a high percentage of mothers are now working, *day care* has become a much needed and utilized program. To be beneficial and not detrimental to the child, day-care programs need to be well planned and of a good quality. I hope that all of us will work for a day-care licensing program that will insure a good quality of day care to children.



Many counties do not yet have a day-care facility. The welfare department and the board members may well be the ones to help inspire, plan, and promote a day-care program for normal children, and perhaps also, for retarded, emotionally disturbed, physically

handicapped, or migrant children. A 1967 amendment to the Social Security Act requires that day care be available to the children of AFDC mothers who are required to seek jobs or job training. With the implementation of this amendment, welfare departments and their board members may be in a position to influence the quality of these programs and to help plan and develop day-care programs to meet specialized needs such as those of the handicapped child.

### Programs Related to the Aged and Disabled

Our senior population is growing, and with it the need for programs designed to meet the needs of the aged and disabled. I would like to refer you to the commendable activities of Forsyth County in its project for the aged. The Forsyth project gives a good example of what can be accomplished with good casework services, homemaker services, and the development and use of many community resources. Among other things, Forsyth, with help from the community, has developed a "meals-on-wheels" program to provide two meals a day for those unable to prepare them for themselves.

I read recently of a *telephone project* going on in Florida for people who live alone. The elderly people participating call the police department before 9:00 a.m. each day to say they are all right. If they do not call, the police department tries to call them. If no answer is received, a patrol car is sent to check on them. A similar project is the *window shade project* whereby an individual is assigned to notice the window shade of an elderly or disabled person living alone as he passes the house each day. If the shade is up, everything is fine. If the window shade is down, the old person should be checked on. There are many elderly or disabled people living alone for whom a program such as this can be a great comfort, perhaps even a life saver. In our county over sixty O.A.A. and

APTD recipients are living alone.

Many elderly people want and need to stay busy. Something should be done to *utilize their talents* and their experience. Some need employment opportunities. Others may be valuable aides in some type of volunteer program. Recreation and other activities may be needed like those offered by many churches and senior citizen programs.

Again, the homemaker service can be a valuable asset in *helping the elderly* or disabled keep house, secure their groceries, and remain in their own homes instead of going into an adult boarding home.



*Day-care programs for adults* are also being used very effectively to provide a safe plan for the elderly person during the day while the other members of the household are away at work.

There is also a need for adequate *adult boarding and nursing homes* located in or near each county. It is difficult for old people to go a long way from home and away from their friends and family to a boarding or nursing home.

### Conclusion

There are scores of other programs that I have not mentioned. The area of medical and health services, facilities for serving the mentally ill, the mentally retarded, or physically handicapped—such as half-way houses, rehabilitation centers, or sheltered workshops; the need for good housing; for legal services; the multiple use of volunteers, and others—these programs are no less important than those that were mentioned.

The availability of these programs varies from county to county. *The one thing certain is*

*the need for each county to be alert to the needs of its people and to work toward developing programs that will fit those particular needs.*

The public welfare department cannot implement all of these pro-

grams, but the welfare department and its board need to be concerned and to help promote or give leadership toward developing the programs that its people need. To do this will require a close cooperation with government and with

other agencies and organizations within the county.

Let us plan now to dream of things that have never been, and if we see their usefulness, let us say "Why not?"—and then pursue their achievement.

## PENDING STATE CONSTITUTIONAL AMENDMENTS

by John L. Sanders

*[Editor's Note: The author is director of the Institute of Government.]*

The General Assembly of 1967 approved and submitted to the voters of the state for their approval or disapproval at the November 5, 1968, general election two amendments to the State Constitution. Both affect the General Assembly. One would alter the method of setting legislators' compensation. The other would rewrite the constitutional provisions governing the apportionment of the Senate and House of Representatives.

### Legislative Pay Amendment

The Constitution now allows members of the General Assembly \$15 a day for their services for not more than 120 calendar days of a regular session and 25 days of an extra session. (The presiding officers receive \$20 a day for like periods.) Members also receive \$20 a day in subsistence expenses for the length of their session and eight cents a mile for one round trip a week between their homes and Raleigh. The subsistence and allowance figures are set by statute. Every session held since the 120-day limit was set in 1956 has exceeded that length. The 1967 session ran for 149 calendar days. For the days in excess of 120, the legislators serve without pay. Moreover, the pay for the first 120 days is a modest recompense for the services expected of members of the General Assembly. In addition to their in-session duties, members have many responsibilities growing out of their legislative positions that require their time and attention between sessions, and for which they receive no pay.

The proposed amendment would remove from the Constitution the present limits on legislative pay and authorize the General Assembly to fix the pay and allowances of its members. To discourage abuse

of this authority, the Constitution would not allow any session of the legislature to raise its own compensation (as it can now do by increasing the subsistence allowance). Instead, any increase voted could take effect only for the *next* General Assembly. This limitation, plus the power of the voters to defeat any legislator who voted for extravagant pay increases, should keep legislative compensation increases within reason.

### Legislative Apportionment

The second pending amendment would revise the provisions of the Constitution prescribing the method of establishing districts for the election of state senators and representatives and the apportionment of senators and representatives among these districts, so that those provisions would conform to the present actual districting and apportionment. The United States District Court in 1965 held the present constitutional provision for the apportionment of representatives (one for each county and the remainder to the larger counties) to be invalid, since it did not allow representation in proportion to population. The General Assembly reapportioned itself in 1966 in response to this court decision. Among other things, it had to set up multi-county House districts, whereas the Constitution contemplates that each county will be a separate House district.

This amendment would merely make the constitutional language conform to the realities of the current legislative arrangements. Thus one reading the Constitution would get a true picture (as he cannot now do) of how the Senate and House of Representatives are apportioned. The amendment would make no difference in practice or in the number of senators and representatives any citizen would be able to vote for.

# MEMO: The Dilemma of Copyright and Copying

by Elmer R. Oettinger

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[*Editor's Note: The author is the Editor of Popular Government. This article is an excerpt from his publication, Copyright Laws and Copying Practices, published by the Institute of Government, 1968.*]

The advent of rapid reprographic technology and the computer have brought near chaos to the interpretation and enforcement of copyright law. The standard of "fair use" has become the subject of bitter debate between authors and publishers on the one hand and librarians, teachers, and other users of copyrighted materials on the other. Certain things remain rather clear: copyright procedure, constitutional and statutory bases for copyright law, a body of earlier case law. Yet much more is in a state of flux: pending legislation, revising the copyright law; hearings, with conflicting testimony; lengthy committee reports; and conflicting ideas promulgated in recent books, articles, pamphlets, and in library and organizational practices.

Accordingly, this article can only sketch pertinent copyright law, practices, dilemmas, and directions.

## *The Basic Copyright Law*

The law of copyright has its constitutional base in Article 1, § 8 of the United States Constitution:

The Congress shall have Power . . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right<sup>1</sup> to their respective Writings and Discoveries;  
. . . .

Statutory regulation of copyright began with the passage of the first copyright act on May 31, 1790.<sup>2</sup> The law underwent major changes in 1831 and 1870, and, with the third major revision, took its present form in the Copyright Act of 1909 (effective July 1, 1909).

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United States Constitution, Article 1, § 8 (8).

2

An act "for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned."



The first federal copyright statute was enacted in 1790, largely through the vigorous efforts of Noah Webster, seeking protection for the publication of his famous 'blue-backed speller.' This first act extended protection only to books, maps, and charts. In 1802 prints were added, musical compositions in 1831, dramatic compositions in 1856, photographs in 1865, paintings, drawings, sculpture, models and design in 1870. The present law is based upon the copyright act of 1909, with only minor amendments.<sup>3</sup>

In 1947 Title 17 was enacted into positive law<sup>4</sup> but no substantive changes were made in the provisions of the 1909 act and its amendments, other than to omit provisions that had become obsolete. Although legislation to overhaul the copyright act was introduced in the Congress in 1961, and amended, rewritten and reintroduced in 1965 and 1967, it has been all but stymied by the press of opposing views presented at meetings and hearings by authors and publishers on the one hand and librarians, teachers and educational administrators on the other. The result is that a copyright law, geared to the requirements of the past and annotated largely through cases decided in the pre-mass copying decades, controls at a time when such unforeseen developments as Xerox and computers make reassessment, reinterpretation, and legislative action imperative.

*The Appearance of "Exclusive Monopoly" vs. the Actuality of "Fair Use"*

The constitutional and statutory provisions governing copyright, on their face, give exclusive rights to authors to "exploit their writings, to encourage them to create and disseminate new works," on the theory that these rights will further progress in science and art. Section 1 of the copyright statute specifically grants exclusive rights to a copyright owner "to print, reprint, publish, copy, and vend the copyrighted work."<sup>5</sup>

A copyright has been defined as "the right of an author to control the reproduction of his intellectual creation."<sup>6</sup> It is designed to stimulate creativity and control of reproduction of works of the mind and, by so doing, to advance literature, arts, and science. Copyright often is explained in terms of property, monopoly, and personal right, but it is more than each or the sum of these. As originally conceived, it provides exclusive control to an author or composer over the market for his work *for a limited time*. It thus stops others from legally copying his own, original form of expression, comprising a literary, musical, graphic, or artistic expression of intellectual concepts. But copyright does not prevent others from using similar, or the same, ideas or subject matter.

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"The Colleges and the Law of Copyright" from Blackwell, T. E., *Current Legal Problems of Colleges and Universities*, 1949-50, Washington University, St. Louis, Missouri.

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17 U.S.C.A. § 1.

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17 U.S.C.A. § 1.

6

Howard Walls, *The Copyright Handbook for Fine and Applied Arts*, New York: Watson-Guption Publications, 1963, p. 6.

And, although the provisions of the United States Constitution and statutes relating to copyrights give an apparent monopoly to the copyright holder, the rights it bestows, though exclusive, have proved not to be absolute (e.g., an exclusive right to performance is limited to public performance "for profit"). Statutory limitations and the non-statutory doctrine of "fair use" have combined with judicial interpretation to make the right of copyright considerably less than the cold verbiage of the Constitution and statutes might indicate.

### *What May Be Copyrighted?*

Copyright covers writings which are classified under the copyright law as (a) books, (b) periodicals, including newspapers, (c) lectures, addresses, sermons, (d) dramatic or dramatico - musical compositions, (e) musical compositions, (f) maps, (g) works of art, including models or designs for such work, (h) reproductions of a work of art, (i) drawings or plastic works of a scientific or technical character, (j) photographs, (k) prints and pictorial illustrations, including prints or labels used for articles of merchandise, (l) motion-picture photoplays, (m) motion pictures other than photoplays.<sup>7</sup>

### *Procedure for Copyrighting*

An application for copyright must specify to which of the classes (a) through (m) the work in which a copyright is claimed belongs.<sup>8</sup> Prior to publication, an author's rights in his unpublished works are fully protected under the common law which forbids copying publication or use of such works without the author's consent and entitles him to damages for injury. Both published and unpublished works may be copyrighted.

To copyright a published work, one must actually produce copies of the work by printing or other means of reproduction and the copies must carry a copyright notice.

Upon publication the claimant must submit his claim for registration. Submission should be made to the Register of Copyright, Copyright Office, The Library of Congress, Washington, D. C. The Copyright Office requires a filled-out application form, two copies of the best edition of the work published with the copyright notice, and payment of a registration fee. The fee for the registration of a published work is \$6.00. For a claim to renewal of copyright, the fee is \$4.00. The date of publication is defined as the earliest date when copies of the first authorized edition of the work were placed on sale, sold, or otherwise publicly distributed. The term of copyright runs from the publication date. Registration of copyright should be made promptly after publication.

Under the statute,<sup>9</sup> the form of the copyright notice in the book requires the word *Copyright*, the abbreviation *COPR.*, or the symbol ©; the name of the copyright owner; and the year of publication. Thus, a copyright notice may read as follows: *Copyright 1968, Institute of Government,*

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17 U.S.C.A. § 5.

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17 U.S.C.A. § 5.

9

17 U.S.C.A. § 19.

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A work by a United States citizen may be copyrighted to provide protection not only in this country, but automatically in those countries that are party to the Universal Copyright Convention (37) or to the Buenos Aires Convention (16). For copyright protection among UCC countries, the copyright notice is to consist of the symbol *c*, together with the name of the copyright owner and the year date of publication: *© Institute of Government, The University of North Carolina at Chapel Hill, 1968.* By adding the phrase "All Rights Reserved" copyright protection applies to BAC countries.

Under present law a copyright is good for 28 years, with the option in the holder for a 28 year renewal. Application for renewal should be made the year before expiration of the initial copyright.

If a work is designed for publication, the author must copyright it upon publication or lose the work to the public domain. Works which are primarily intended for performance or exhibition may be copyrighted in unpublished form. The requirement for such voluntary copyright is submission of a properly executed application form to the copyright office, deposit of one complete copy of the works (exceptions are noted in the case of photographs and motion pictures), and the deposit of the \$6.00 registration fee. Such unpublished works require no copyright notice. An author has the common law right in perpetuity until publication, at which point a new copyrighting is required.

#### *The Doctrine of Fair Use: A Safety Valve*

What is "fair use?"

The doctrine of fair use has been called the "safety valve" of copyright. The need for a safety valve arises from the essentiality of striking a fair balance between the right of an author, publisher, or other copyright holder to control and restrict the use of a work as against the need or desire of a teacher, librarian, scholar, or other potential user of the work to have access to, to use, and to disseminate every resource appropriate to the spread of knowledge and understanding.

. . . If the author's exclusive rights were absolute, if they restricted every use of his work, then copyright could indeed become a roadblock to the growth and spread of learning and culture. To achieve the

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17 U.S.C.A. § 20.



purposes stated in the Constitution, the work of authors must be available for use by the public while, at the same time, the author enjoys such exclusive rights as will give him a just reward for his contribution to society. The underlying problem of the copyright law is to achieve both of these things in some kind of fair balance. And one of the important elements in maintaining this balance is the doctrine of fair use.<sup>11</sup>

The present copyright statute makes no reference to fair use. Under Title 17 of the United States Code, the right of a copyright owner "to print, re-print, publish, copy, and vend the copyrighted work" appears unqualified. But the exclusive right to "copy" has been subjected to a "rule of reason" by court interpretation for some time.

At least one source finds anticipation of the "fair use" doctrine in as early as the 18th Century English cases (decided under the common law).<sup>12</sup> The earliest American case in which the expression "fair use" was employed appears to have been *Lawrence v. Dana*.<sup>13</sup> The case, decided in 1869, concerned the alleged plagiarism by the defendant of the plaintiff's earlier edition of Wharton's *Elements of International Law*. Justice Clifford's opinion for the plaintiff interpreted "fair use" as a sort of non-infringement through the taking of one author's scholarly book by another person for research use. Three quarters of a century later, Judge Learned Hand in two other cases<sup>14</sup> wrote similarly of "fair use" as merely the opposite of infringement. Others, including Cohen<sup>15</sup> and Nimmer<sup>16</sup> considered "fair use" in terms of certain justifications which relieve liability despite apparent infringement.

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11 *Reprography and Copyright Law*, ed. Lowell H. Hattery and George P. Bush. Washington: American Institute of Biological Sciences, 1964, pp. 12-13.

12 Benjamin Kaplan, *An Unhurried View of Copyright*. New York: Columbia University Press, 1967, pp. 17, 21, 29.

13 15 Fed. Cas. 26, 60 (No. 8136) (C.C.D. Mass. 1869). For a discussion of the early statements on "fair use" and related expressions, see Cohen, *Fair Use in the Law of Copyright*, in 6 ASCAP, Copyright Law Symposium 43, 48-49 (1955).

14 *Nichols v. Universal Pictures Corp.*, 45 F. 2d 119, 121 (2d Cir. 1930), 282 U.S. 902 (1931) and *Sheldon v. Metro-Goldwyn Pictures Corp.* 81 F. 2d 49, 54 (2d Cir.), 298 U.S. 669 (1936).

15 *Supra*, note 89, at 45-48.

16 *Copyright*, § 145, at 645 (1965).

This tends to leave the impression that infringement itself is decided without contamination by notions of policy, with fair use coming in later to supply those notions.<sup>17</sup>

In effect, then, "fair use" is a rule of reason "without which copyright could become an intolerable restraint on the public's use of copyrighted material."<sup>18</sup>

"Fair use" has been defined both by the courts and by the Register of Copyrights. The judicial definition is as follows:

Fair use may be defined as a privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner by the copyright.<sup>19</sup>

The Register of Copyrights says:

That term [fair use] eludes precise definition; broadly speaking it means that a reasonable portion of a copyrighted work may be reproduced without permission when necessary for a legitimate purpose which is not competitive with the copyright owner's market for the work.<sup>20</sup>

The Register's *Report* lists four general criteria used by the courts in deciding whether the use of part of copyrighted work has constituted an infringement or a fair use:

1. *The purpose of the use.*
2. *The nature of the copyrighted work.*
3. *The amount and substantiality of the material used in relation to the copyrighted work as a whole.*
4. *The effect of the use on the copyright owner's potential market for his work.*

Each of these criteria merits discussion in terms of applications. The purpose of criticism, summation, or comment has been said to permit the quotation of excerpts from a copyrighted work when the purpose of

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Kaplan, *supra* 67.

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*Reprography and Copyright Law, supra.*

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*Wihtol v. Crow*, 199 F. Supp. 682 (S.D. Iowa 1961); *Lowe's Inc. v. Columbia Broadcasting System*, 131 F. Supp. 165 (S.D. Cal. 1955); *Toksdia v. Bruce Publishing Co.*, 181 F. 2d 664 (7th Cir. 1950).

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*Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law*, July 1961. U. S. Congress, House Committee on the Judiciary. Government Printing Office, Washington, D. C. 1961, p. 24 (87th Congress, 1st session, committee print).

quoting the same excerpts in a book may not. Similarly, the purposes of a scholarly work may permit freer quotation than those of a commercial advertisement. Furthermore the nature of a piece of technical writing normally would permit a more justified reproducing than that of a musical score, a play, or a painting. Quoting a page or two from a four-hundred page book clearly is a less substantial plucking in terms of fair use than quoting a page or two from a six page article or pamphlet. Yet, if the page or two quoted comes from the summary or concluding chapter of the larger work, the fairness of the use may be open to question. Finally, it is obvious that quoting a significant portion of an article or book in a publication of medium or large circulation would have an effect on a copyright owner's potential market whereas making a single copy for personal use, or even a few copies for class use, may cause no serious loss of market.

### *Photocopying and Fair Use: The Problem and The Library Rule*

Recent figures indicate that photocopying is now more than a quarter of a billion dollars per year industry and that it has been growing steadily at some 20% per year. The easy access to reprographic machines is tempting. A person who formerly would copy a few sentences in a work in his own handwriting for personal or classroom use now finds it easy simply to reproduce a complete article or chapter in a book, and in multiple, for his colleagues or students. Obviously, new lines of "fair use" need to be drawn. Case law appears to be lacking to the point that a reluctance to test the doctrine of "fair use" as applied to reprography under the present Copyright Law seems evident. Possibly the continuing effort over the past six years to agree upon and push through Congress a revised copyright act is a primary reason for current inaction in the courts. Yet the problem becomes more acute with passing time. It has been stated with clarity:

Aside from the impossibility of controlling copying done in private, the acceptance of this practice may have been based on the inherent limitation of the extent to which copying could be done by hand. But copying has now taken on new dimensions with the development of photocopying devices by which any quantity of materials can be reproduced readily and in multiple copies.

Researchers need to have available for reference and study the growing mass of published material in their particular fields. This is true especially, though not solely, of material published in scientific, technical and scholarly journals. Researchers must rely on libraries for much of this material. When a published copy in a library's collections is not available for loan, which is very often the case, the researcher's need can be met by a photocopy.

On the other hand, the supplying of photocopies of any work to a substantial number of researchers may diminish the copyright owner's market for the work. Publishers of



scientific, technical and scholarly works have pointed out that their market is small; and they have expressed a fear that if many of their potential subscribers or purchasers were furnished with photocopies, they might be forced to discontinue publication.<sup>21</sup>

Regarding the applicability of the principle of fair use to photocopying, the *Report* states:

The application of the principle of fair use to the making of a photocopy by a library for the use of a person engaged in research is an important question which merits special consideration. This question has not been decided by the courts, and it is uncertain how far a library may go in supplying a photocopy of copyrighted material in its collections. Many libraries and researchers feel that this uncertainty has hampered research and should be resolved to permit the making of photocopies for research purpose to the fullest extent compatible with the interest of copyright owners.<sup>22</sup>

The Register of Copyrights has made the following recommendations to the Congress:

The statute should permit a library whose collections are available to the public without charge to supply a single photocopy of copyrighted material and its collections to any applicant under the following conditions:

- (a) a single photocopy of one article in any issue of a periodical, or a reasonable part of any other publication, may be supplied when the applicant states in writing that he needs and will use such material solely for his own research.
- (b) a single photocopy of an entire publication may be supplied when the applicant also states in writing, and the library is not otherwise informed, that a copy is not available from the publisher.
- (c) when the work bears a copyright notice, the library should be required to affix to the photocopy a warning that the material appears to be copyrighted.<sup>23</sup>

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*Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law*, July 1961, *supra*, pp. 25-26.

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*Supra*.

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*Supra*.

According to one authority, "The library consensus on fair use has been developed and stated by the Joint Committee on Fair Use and Photocopying."<sup>24</sup> The Committee findings are summarized as follows:

1. *The making of a single copy by a library is a direct and natural extension of traditional library service.*
2. *Such service, employing modern copying methods, has become essential.*
3. *The present demands can be satisfied without inflicting measurable damage on publishers and copyright owners.*
4. *Improved copying processes will not materially affect the demand for single-copy library duplication for research purposes.*<sup>25</sup>

The policy recommended by the American Library Association has been adopted by the University of North Carolina Library. A notice which appears over the signature of Samuel M. Boone runs as follows:

- (a) *A single photocopy of one article in any issue of a periodical, or any reasonable part of any other publication, may be supplied when the applicant states in writing that he needs and will use such materials solely for his own research.*
- (b) *A single photocopy of an entire publication may be supplied when the applicant also states in writing, and the library is not otherwise informed that a copy is not available from the publisher.*<sup>26</sup>

At best this is a stop-gap procedure without legal sanction. More than one authority has claimed that "the justification for the photocopying of copyrighted material would seem to be founded on the doctrine of 'fair use.'"<sup>27</sup> The *Report* of the Register of Copyright also links the problem of reprography with fair use. However, one leading critic claims that "if there is one thing which library photocopying is *not*, it is *not* fair use within any judicial usage of that doctrine."<sup>28</sup>

It requires little knowledge or imagination to be aware that the challenge of Xerox and other reprographic machines to copyrighting is only part of a mushrooming complex of problems.

The development of computers and electronic storage, retrieval, and transmission systems is bringing forth a multitude of new copyright problems and controversies. The solutions to these problems will surely have their impact on present practice, . . . but no firm predictions can be made at this writing. Yet it is obvious that, if the day ever comes when one storage copy can serve the nation or the world through transmission and expandable reproductions, our present system of copyright will have to be revolutionized.<sup>29</sup>

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*ALA Bulletin*, Volume 35 (Feb. 1941), p. 64; Vol. 55 (June 1961), pp. 571-73; *Special Libraries*, Vol. 55, No. 2 (Feb. 1964), pp. 104-06; *Library Journal*, Vol. 90, No. 15 (Sept. 1965), pp. 3403-3405.

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Charles F. Gosnell, "Copyright," in *Copying Methods Manual*, Appendix C, p. 313.

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See letter dated November 2, 1951, from Andrew H. Ham to George F. Taylor, describing the UNC library policy on disseminating copies of copyrighted materials.

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Varner. *Photo Duplication of Copyrighted Materials by Libraries*. Study No. 15, U. S. Senate Committee on Judiciary, 1960; Clapp, *Library Photocopying and Copyright*, 55 *Law Library Journal* 10 (Feb. 1964); Smith, *The Copying of Literary Property in Library Collections*, 46 *Law Lib. J.* 197 (1953), 47 *Law Lib. J.* 204 (1954).

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*Reprography and Copyright Law*, *supra*.

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Gosnell, *supra*.



Department of Community Colleges

**LAW ENFORCEMENT TRAINING**  
**Schedule of Schools and Conferences**

<b>Schools and Conferences</b>	<b>Date</b>	<b>Location</b>	<b>Area Consultant</b>
Breathalyzer Retraining	Nov. 5-Nov. 8	Goldsboro	Abernethy
Techniques of Interrogation	Nov. 11-Nov. 15	Greenville	Langston
Supervision for Police	Nov. 18-Dec. 13	Jacksonville	Langston
Breathalyzer Retraining	Nov. 19-Nov. 22	Jamestown	Abernethy
Accident Investigation	Nov. 25-Nov. 29	Wilson	Langston
Accident Investigation	Dec. 2-Dec. 6	Greenville	Langston
Accident Investigation	Dec. 2-Dec. 6	Jacksonville	Langston
Breathalyzer Retraining	Dec. 10-Dec. 13	Charlotte	Abernethy
Criminal Investigation	Jan. 6-Jan. 31	Wilson	Langston
Breathalyzer Operator	Jan. 8-Jan. 17	Wilson	Abernethy
Accident Investigation	Jan. 13-Jan. 17	Wilmington	Langston
Accident Investigation	Jan. 20-Jan. 24	Wallace	Langston
Accident Investigation	Jan. 20-Jan. 24	Roanoke Rapids	Langston
Accident Investigation	Feb. 3-Feb. 7	Wilmington	Langston
Accident Investigation	Feb. 10-Feb. 14	New Bern	Langston
Introduction to Police Science	Feb. 10-March 7	Wilson	Langston
Accident Investigation	Feb. 17-Feb. 21	Edenton	Langston
Criminal Investigation	Feb. 17-March 14	Lexington	Lineberry
Riot Control	March 10-March 21	Elizabeth City	Langston
Riot Control	March 17-March 21	New Bern	Langston
Supervision for Police	March 24-April 18	Wilson	Langston
Introduction to Police Science	April 7-May 2	Elizabeth City	Langston
Supervision for Police	April 7-May 2	Lexington	Lineberry
Police Firearms	April 15-April 17	New Bern	Langston
Police Firearms	April 15-April 17	Greenville	Langston
Accident Investigation	April 21-April 25	Wilson	Langston
Introduction to Police Science	April 21-May 16	Wilmington	Langston
Police Firearms	April 22-April 24	Washington	Langston
Accident Investigation	May 5-May 9	Wilson	Langston
Accident Investigation	May 5-May 9	Morehead City	Langston
Police Firearms	May 6-May 8	Edenton	Langston
Police Firearms	May 6-May 8	Wallace	Langston
Accident Investigation	May 12-May 16	New Bern	Langston
Police Firearms	May 13-May 15	Ahoskie	Langston
Police Firearms	May 20-May 22	Wilmington	Langston
Police Firearms	May 20-May 22	Elizabeth City	Langston