Equal Protection of the Laws in NORTH CAROLINA

ERRATA

Equal Protection of the Laws in North Carolina

Page 19, line 41 -- delete the words "as in (a) and (b) above."

Page 27, Table 8 -- the "Nonwhite potential registered, percent" for Gaston County is 59.2.

Page 42, Figure 4 -- the bars indicating voter participation should show:

Year	Percent	Year	Percent	Year	Percent	Year	Percent
1888	84	1908	52	1928	43	1948	35
1892	75	1912	48	1932	45	1952	52
1896	85	1916	53	1936	48	1956	48
1900	70	1920	45	1940	43	1960	54
1904	45	1924	38	1944	40		

Page 75, footnote -- second sentence should read, "In any event, the merit system percentage of 7.9 is significantly lower than these indicators of Negro participation in State employment."

Page 102, line 9 -- title should read "TEACHER LOADS".

Page 107, Figure 7 -- Rutherford and Forsyth counties should be shaded to correspond with the legends representing 51-60 percent and 81-90 percent, respectively. Each county on the chart may be checked against Appendices 9-10, pages 245-247.

Page 108, Figure 8 -- Gaston, New Hanover, and Rowan counties should be shaded to correspond with the shading of the legend representing 51-60 percent.

Page 138 -- the correct figure for Mississippi (next to the last in the right table) is 11.3.

Page 173 -- the second sentence within the second paragraph, under the title "Nonwhite Access to Public Housing," should read: "According to North Carolina law, the rent is one-fifth of the family income for families having no children or as many as two dependents and is one-sixth of the family income for families having three or more minor dependents."

Page 222, line 31 -- after sentence ending ". . . refuse to serve him at all." insert: In 1903 the legislature enacted G.S. 72-1 reading: "Every innkeeper shall at all times provide suitable food, rooms, beds and bedding for strangers and travelers whom he may accept as guests in his inn or hotel." Whether and to what extent this changed the common law rule is not clear.

Page 248, Appendix 11 -- the last two vertical lines falling between the titles "Negro" and "Percent for Negro" should be moved to the right and fall between the titles "Percent for Negro" and "Total."

EQUAL PROTECTION OF THE LAWS IN NORTH CAROLINA

"Esse Quam Videri"

—*The State motto since 1893.*

"Our State constitution contains provisions that are the equivalent of the due process of law and equal protection of the law clauses.

"We know that the law applies with equal force and with equal protection to the Negro, to the white, to the Indian—to the Protestant, to the Catholic, to the Jew—and to those even who respect no Higher Being. This knowledge has not come from any Federal court decision nor from any act of Congress. It has been with us for a long, long time."

—*The Attorney General of North Carolina Malcolm B. Seawell, before the U.S. Senate Committee on Constitutional Rights, 1959.*

Report of the North Carolina Advisory Committee to the United States Commission on Civil Rights
1959–62

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[1] Appointed March 1960.
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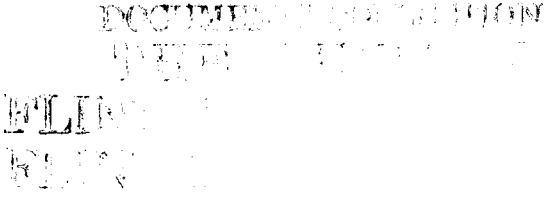
Preface

This series of reports on equal protection of the laws in North Carolina was submitted to the U.S Commission on Civil Rights by the North Carolina Advisory Committee.

The North Carolina Committee was established by the Commission in January 1959 in accordance with the Civil Rights Act of 1957, section 105(c) of which provides that "the Commission may constitute such advisory committees within States composed of citizens of that State . . . as it deems advisable." The North Carolina Committee is one of 51 similar committees which have now been established in all 50 States and in the District of Columbia. It is the purpose of these committees to assist the Commission in its statutory duties, which are exclusively fact-finding in nature. The Commission's duties include investigating denials of the right to vote by reason of color, race, religion, or national origin; studying denials of equal protection of the laws under the Constitution; and appraising the laws and policies of the Federal Government with regard to equal protection of the laws. The committees' members serve without compensation.

The Commission has received numerous reports from the State advisory committees and has on two occasions issued bound volumes containing the collected reports of all of the committees.

In the case of North Carolina, however, the range and quality of the reports was so extraordinary, that only complete publication in a separate volume could do justice to them. In issuing this publication, the Commission wishes to express its profound appreciation to the chairman and members of the North Carolina Advisory Committee for their selfless and dedicated efforts on behalf of their State and Nation.



Contents

Foreword

The North Carolina Advisory Committee has no enforcement powers. It is not a court. Its proceedings are not adversary in nature. It is a bipartisan, biracial, and geographically representative committee of North Carolinians. The Committee has met about every 2 months and in various parts of the State, including Asheville, Charlotte, Winston-Salem, Greensboro, Durham, Raleigh, Rocky Mount, Greenville, New Bern, and Fayetteville. All of its meetings have been open to the public and many persons appeared before the Committee to file written complaints or make oral statements. Other complaints were filed with individual members and later considered by the Committee. These complaints related to alleged denials of equal protection of the laws on account of race or color; none related to discrimination on account of religion or national origin.

In addition to receiving complaints, the Committee itself undertook to collect facts about the laws in North Carolina and how they applied to white and nonwhite citizens. In collecting such information, the Committee sought the help of the colleges and libraries in North Carolina to determine what other studies had been or were being made. Then the Committee, working through subcommittees in the fields of voting, employment, education, housing, medical care, and the administration of justice, solicited by personal interviews and by mail from many government officials and agencies in the State the answers to many questions which had not been asked before. These officials and agencies cooperated voluntarily, and their time and effort in assisting the Committee has been invaluable.

The information thus collected and presented in this report is in many respects new information; that is, much of it comes from new inquiries made on a statewide basis and directed to official and responsible sources. In a larger sense, all of it is new, even the historical portions, because it represents a first effort by a North Carolina committee to look at the impact of government in our State on whites and nonwhites and to assemble in one place the data available to date.

No doubt many areas proper for this inquiry have been missed or only partially explored. As the people of North Carolina examine this report, many suggestions for further study will be made to the successors

on the Committee. Time and circumstance will raise new questions of equal protection of the laws for our citizens. This is only natural and as it should be. "Government is not an academic matter," said Gov. O. Max Gardner. "It is not, in its ultimate implications, something to which any citizen, white or colored, high or low, may safely be indifferent. It is something which during every hour of every day, touches the life, security, and happiness of every man, woman, and child and upon it in the final analysis depend many of life's profoundest issues."

AUGUST 15, 1962.

I. The Impact of Government

> . . . it is the mildest and best established Government in the World, and the Place where any Man may peaceably enjoy his own without being invaded by another; Rank and Superiority ever giving Place to Justice and Equity . . .
>
> —John Lawson, *History of North Carolina,* 1709.

In the following pages, an examination is made of the way the laws in North Carolina have affected white and nonwhite citizens. Each chapter deals with an area of governmental action: voting, administration of justice, employment, education, housing, medical care, and compulsory segregation in public and private facilities. The statutes and court decisions in each field have been examined to determine what the law says. The practices of government officials and others acting under the authority of the law have been examined to find out what has been and is being done. The thousands of daily decisions by public officials and private citizens acting under color of law measure the quality and extent of the "protection of the laws" afforded the citizens of our State. And finally, an examination has been made of the status of whites and nonwhites in each of these areas to see if there are any marked differences between them; and if so, whether those differences were caused, even in part, by governmental action.

By governmental action is meant the action of local, county, State, or Federal government operating in North Carolina. This tier of legal influences reflects our historical emphasis on the greatest possible local self-government consistent with both efficiency and the preservation to all the people of the State of North Carolina "of our civil, political, and religious liberties" as declared in our State constitution.

COLOR BLIND OR COLOR CONSCIOUS

The Committee received no complaints and no evidence of any denial of protection of the laws on account of religion or national origin. All the complaints were based on racial or color discrimination.

In trying to find out how the law was being applied, the Committee took the view that whatever any government did in North Carolina,

it did by law; and whatever any government officials or those acting under the color of law did in their official capacity they did as a part of the application of law. Therefore, it became a question of seeing whether the law, that is the government and the government officials, were color blind in the discharge of their duties. Aside from the issue of separation or segregation by race or color, were government expenditures equal for all citizens? If State services were graded as to quality, were there any differences in the quality of services afforded to whites and nonwhites? Did the written law, whether in statutes, ordinances, or court decisions, classify citizens by race or color? Did officials choose between citizens on account of their color or race?

In each instance it was necessary to go back into our State history because race and color have from time to time, but not always, been the basis for legal distinction and classification of citizens, in each of the areas under consideration. No such distinction and classification was required in many aspects of government action in the early history of the State and certain later periods. In 1879, Chief Justice William N. H. Smith declared: [1]

> The law knows no distinction among the people of the State in their civil and political rights and corresponding obligations, and none should be recognized by those who are charged with its administration.

In a later period, many acts were passed which did undertake to make "class distinction" between whites and nonwhites. State policy was for a while avowedly color conscious, though often coupled with statements that there should be no discrimination. At the time various explanations were given for these racial and color classifications of citizens, and one of the recurring questions is whether these explanations or justifications are valid on the basis of presently available facts. The question arises, furthermore, whether governmental action in one area, such as education, may not lay the groundwork for widely recognized and accepted classifications and distinctions between the races in another area, such as employment.

EXAMINING THE RESULTS

Another way of looking at equal protection of the laws is to disregard what the government says it is doing and look instead at the end product. For example, look at the product of the schools. North Carolina is the most "public school" State in the country; it has the highest propor-

[1] *Capehart v. Stewart*, 80 N.C. 101, 102.

tion of public school enrollment in ratio to private school enrollment. As early as 1907, Justice Henry G. Connor expressed our State's policy: "The education of the children in the public schools is peculiarly, and in a large measure exclusively, a function of the State—a trust which she cannot delegate to any other agency." Therefore, if more than 50 years later the products of the public schools are demonstrably different, as between the races; that is, if the white students show a much better educational attainment or achievement than Negro students, it can reasonably be said that this is some evidence that the public school system over the years has not provided equal protection to all of our citizens. Obviously other factors outside of the schools themselves affect school achievement, but one way of testing our own experience with the separate-but-equal policies which prevailed in an earlier period is not merely to compare the equipment, buildings, and teacher pay, nor even to compare teacher ratings or school accreditations, but to look at the end product, the pupils as they come out. That is the reason for the inquiring into the uneducated in North Carolina—who they are and where they live. This information might not only suggest that the school system was not operating with an even hand but it might also reveal deficiencies in homelife, the employment of the parents, particularly fathers, and in their opportunities to participate in medical care and public office, and in the practical prospects for the children themselves in these areas.

THE CLOSED CIRCLE

There is an interrelation between the government's impact in all these areas. For example, if infrequent employment of Negroes in State government could be justified on the grounds of inadequate education, the next question is whether the government is in any way responsible for the educational deficiency? Or if Negro housing is demonstrably worse than white housing, has government policy in regard to employment contributed to that difference in housing? If the school authorities justify the separation of white and nonwhite pupils on the basis of differences in school achievement, and explain that achievement differences are due to home and health conditions and to the incentive for future employment, then the question arises as to whether the government in turn has by its action contributed to deficiencies in the home, health, and employment conditions of nonwhites. If the law has been color conscious, instead of color blind, in word or deed, to what extent has this policy resulted from the lack of participation by nonwhites in the duties of citizenship, such as registration and voting and service in the instrumentalities of justice? Thus the impact of the government

on any one area of life influences all of the other areas. One of the most interesting discoveries in the course of the Committee's study has been the extent to which public officials in one area of inquiry would explain differences in treatment of whites and nonwhites in that area because of conditions over which the particular officials had no control. As each area was explored, the finger was pointed to the next one, and the next one, and the next one, all the way around the circle. This is understandable and if all of our people see and understand these relationships, we as a Commonwealth may work together to eliminate, insofar as government is involved, whatever deprivation exists in all of these areas. The end result cannot help but be an increase in the usefulness and happiness of every citizen.

It should be remembered that the principle of equality, of opposition to class distinctions, is rooted in the earliest traditions in our State, long before the Revolution of 1776, long before the declaration of Chief Justice Smith in 1879 or the adoption of the 14th amendment or any recent interpretations of that amendment.

CIVIL RIGHTS AND CIVIL RESPONSIBILITIES

The Committee shares the general sentiment of the people of our State that all civil rights carry civil responsibilities. The State cannot realize its true potential unless the talents of all of its citizens are utilized, and the operation of the laws has a considerable influence on the use or neglect of those talents. The value of this study is not in vindicating the claims or securing the advancement of any persons or groups but rather in releasing the energies and securing the advancement of all our people. Thus, in a sense, the Committee's inquiry is the inquiry of all the people into a current, continuing, and essential aspect of our life together. As Gov. O. Max Gardner put it: "If both races will remember, and I am sure they will, that every problem is a mutual problem, that every right implies an obligation and a duty, and that all genuine progress must include all, the future, I think, is secure."

II. Voting

> . . . All government of right originates from the people, is founded upon their will only, and is instituted for the good of the whole.
>
> —*North Carolina Constitution,* art. I, sec. 2.

Free elections are a prerequisite to democracy. Government by the consent of the governed, the essence of our State, is a reality only when every qualified person in North Carolina is given the opportunity to vote and have that vote counted. This must be the concern of every citizen, white and nonwhite alike.

HISTORICAL PERSPECTIVE

Free Negroes had the right to vote in North Carolina under our first State constitution adopted at Halifax in 1776. They were not deprived of this right until 1835, almost 60 years later.

There was no suggestion of any racial restriction in our Revolutionary constitution. It could be complained that there were economic and religious discriminations. Only owners of 50 acres of land could vote for State senators and only taxpayers could vote for members of the House of Commons. No one who denied "the truth of the Protestant religion" could hold any civil office "within this State." The word "Christian" was substituted for "Protestant" in the amendments of 1835, at the same time that free Negroes were forbidden the right to vote.

Prior to the Revolution, no one in North Carolina could vote for members of Parliament. Only substantial landowners could vote for representatives in the general assembly. Neither Negroes (slaves or free) nor Indians could vote at all. The North Carolina constitution of 1776 granted suffrage to all resident freemen, white or colored, and provided that every foreigner who came to settle in the State, having first taken an oath of allegiance, could, after 1 year's residence, be deemed a free citizen of the State. Thus the U.S. Supreme Court was in error in the *Dred Scott*[1] case in saying that free Negroes were not citizens of any State when the U.S. Constitution was adopted. That

[1] *Scott* v. *Sandford,* 19 How. 393, 15 L. ed. 691 (U.S. 1857).

may have been the prevailing view in many parts of the country in 1857, but it was not the case in North Carolina in 1776.

> Before our Revolution all free persons born within the dominions of the King of Great Britain, *whatever their color or complexion,* were native born British subjects—those born out of his allegiance were aliens. Slavery did not exist in England, but it did exist in in the British colonies. Slaves were not in legal parlance persons, but property. The moment the incapacity—or disqualification of slavery was removed—they became persons, and were then either British subjects or not British subjects, accordingly as they were or were not born within the allegiance of the British King. Upon the Revolution, no other change took place in the law of North Carolina, than was consequent upon the transition from a colony dependent on an European king to a free and sovereign State. Slaves remained slaves. British subjects in North Carolina became North Carolina free-men. Foreigners until made members of the State continued aliens. Slaves manumitted here became free-men—and, therefore, if born within North Carolina are citizens of North Carolina—and all free persons born within the State are born citizens of the State . . . it is a matter of universal notoriety that under [the North Carolina Constitution] free persons, without regard to color, claimed and exercised the franchise until it was taken from free men of color a few years since by our amended Constitution. [Emphasis added.] [2]

In the Constitutional Convention of 1835, the resolution to deprive the free Negro of suffrage carried 65 to 62. Judge William Gaston of New Bern declared in the Convention debate that he did not like to see a free man, "an honest man, and perhaps a Christian . . . politically excommunicated" and "an additional mark of degradation fixed upon him, solely on account of his color."

Under the 1835 provisions, though not allowed to vote, Negroes, both free and slave, were counted to the extent of three-fifths of their total number in the allocation of representation in the general assembly. Thus whites in the area of Negro concentration had a decided advantage over the rest of the voters in the State.

Even after the constitutional amendment of 1835 depriving free Negroes of the vote in State elections, they continued to vote in municipal elections in Fayetteville because of an early law which gave them the privilege.[3]

After 1835 the only change in regard to voting in the North Carolina constitution, prior to the end of the Civil War, was made in 1857, when the constitution was amended to eliminate the requirement of owner-

[2] *State* v. *Manuel*, 20 N.C. 114, 119–20 (1838).

[3] Johnson, *Ante-Bellum North Carolina* 603–04 (1937).

ship of land to vote for State senators. From that time on, both branches of the general assembly were elected by vote of the adult white male population.

The war ended in April 1865. The legislature of 1865–66, elected in the old way with Negroes not voting, enacted a code of Negro legal rights. Though more liberal than the so-called "black codes" enacted at the same time by most other Southern States, it did not give Negroes the right to vote. The 14th amendment to the U.S. Constitution was rejected by this legislature.

In 1867, Congress passed the Reconstruction Act [4] requiring each Southern State, before readmission to the United States, to frame a new constitution granting Negro suffrage and to ratify the 14th amendment. A large portion of the white adult male population was disfranchised because of participation in the war. All other adult males, white and nonwhite, were eligible to vote. Some Negro leaders protested to Congress and the President about the disfranchisement of so many white men. One Negro spokesman (from South Carolina) declared the Negroes of the South would never stop petitioning for the return to the ballot of their white brethren.

The Constitution of 1868 provided for universal manhood suffrage, white and Negro, popular election of State and county officials, and the elimination of all property and religious qualifications for voting and officeholding. The injustice of denying women the franchise was raised in the minority report of the convention suffrage committee. "Is there any reason why Negroes should be advanced to a higher position?" [5]

When universal manhood suffrage was introduced in 1868 in North Carolina, only five States in the North permitted Negroes to vote. None of these had any appreciable colored population. Connecticut, Minnesota, and Wisconsin had defeated proposals to allow the Negro to vote in 1856; New Jersey and Ohio in 1867, Michigan and Pennsylvania in 1868. The Nebraska constitution of 1866 permitted only whites to vote. After the adoption of the 15th amendment in 1870, however, no State could constitutionally prohibit any man from voting on account of his race.

In the new registration of 1868, a total of 196,872 voters were registered; 117,428 of these were white and 70,444 were Negroes. In the election of that year, the new constitution was adopted by a vote of 93,084 to 74,015, which would indicate that a substantial number of whites voted for it. Congress thereupon approved the new constitution and readmitted North Carolina to the United States, receiving the Representatives and Senators from North Carolina into the Congress on July 20, 1868.

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[4] Act of Mar. 3, 1867, ch. 153, 14 Stat. 428.
[5] Journal of the Convention of 1868, p. 236.

Justice William B. Rodman, concurring in an opinion of the North Carolina Supreme Court in 1869, observed that: [6]

> The Constitution admitted to the suffrage a class of persons who had never been entitled to it before, equal in number to about one-half of the former voting population, and this class was at that time almost universally destitute of property.

In view of the right of free Negroes to vote from 1776 to 1835, Justice Rodman must have had in mind slaves, not all Negroes.

In the presidential campaign in the fall of 1868, the Conservative Party "inflamed the hatred of whites for Negroes and used the Ku Klux Klan to intimidate Negroes and frighten them from the polls. Republicans denounced the Klan and warned the Conservatives that this treatment of the Negroes might goad them to rapine and insurrection." [7] Nevertheless, there were 14,000 more votes cast than in the adoption of the new constitution only a few months earlier. The Republicans won all seats in the U.S. House of Representatives, except one, and Grant carried the State for President. Two years later the election produced significantly different results: [8]

> [In the campaign of 1870] the Klan was especially active near election time, and it was highly effective in deterring the superstitious, ignorant, and indifferent Negroes from voting. Though many thoughtful, sincere people belonged to the Klan, and were able to control its activities at times, it was a secret society enforcing mob law and, therefore, irresponsible, uncontrollable, and illegal; but to the Conservatives, any means were justifiable to intimidate the Negroes, frighten them from political activity, and drive the Republicans from power . . . It is noteworthy that the chief Ku Klux activity was not in the East where Negroes were most numerous, but in such Piedmont counties as Alamance, Caswell, Chatham, Orange, Cleveland, and Rutherford . . . By rallying most of the native whites to its standard and keeping many Negroes from the polls, the Conservative Party won an overwhelming victory, electing five of the seven representatives to Congress and capturing by large majorities both houses of the State legislature.

Thus the Radical Republicans were in control of the State government for 2 years, 1868 to 1870. Subsequent campaign oratory and romantic literature gave the impression that the reign of the Radical Republicans lasted two generations instead of 2 years.

G.S. 14-10, prohibiting secret political and military organizations, was first enacted in the 1868 general assembly and subsequently amended

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[6] *University Railroad Co. v. Holden*, 63 N.C. 401, 416 (1869).

[7] Lefler Newsome, *North Carolina, The History of a Southern State* 463 (1954).

[8] *Id.* at 468-69.

in 1870 and 1871.[9] More recently, in 1953, the general assembly adopted a much more detailed act prohibiting secret societies and specific activities including wearing of masks, hoods, and other disguises, permitting meetings of secret societies on one's property, and planting crosses or other exhibits designed to intimidate.

In 1875, a Constitutional Convention raised residence requirements for voting, but, "the most significant change was the replacement of popular vote by legislative control of county government—to insure white and Conservative control, especially in the eastern counties with large Negro populations." [10]

The North Carolina Supreme Court endeavored to prevent discrimination against Negro voters. It declared invalid an 1875 act of the General Assembly amending the charter of Wilmington to vest its corporate powers in a Board of Aldermen of nine members, three to be elected by each of three newly defined wards. Wards 1 and 2 contained only 400 voters, largely white, whereas ward 3 contained 2,800 voters, of whom about 2,000 were colored. A large portion of ward 3 was not included in any precinct.

> Suppose the act had excluded all white men and declared that only colored persons should be entitled to register and vote. Would the Court wait to inquire whether there were enough whites to have changed the result? And would it be said that these whites should have tendered their votes and have had witnesses to prove it? . . . An election begun and held with the avowed purpose of taking the sense of a *part* only of the electoral body—with full notice to the rest that they are to be ignored. Does it stand on the same ground with a legitimate and regular election . . .? [11]

Two other opinions of the court, though not explicitly directed to Negro suffrage, demonstrate the court's great concern for fair elections and equal opportunity for all to register and vote.

> Opportunity must be offered to all persons eligible to become qualified voters, to register as such, next before each election, as prescribed by law. The law encourages electors to vote, and it provides and intends that each person eligible shall have opportunity to qualify himself to that end, before an approaching election. And if such opportunity shall be withheld or denied, on purpose, by accident, or by inadvertence, such denial would vitiate and render void the election, certainly if such denial should materially affect the results.[12]

[9] Cited in *State* v. *Pelley*, 221 N.C. 487 (1942), dealing with "Silvershirts." This statute is in the section of the criminal law entitled "Offenses Against the State" such as Rebellion and Subversive Activities.

[10] Lefler-Newsome, *supra* note 7, at 472.

[11] *Van Bokkelen* v. *Canady*, 73 N.C. 198, 208 (1875).

[12] *McDowell* v. *Construction Company*, 96 N.C. 514 (1887).

> In construing these provisions of the Constitution, we should keep in mind that this is a government of the people, in which the will of the people—the majority—legally expressed, must govern and that these provisions and all Acts providing for elections should be liberally construed, that tend to promote a fair election or expression of this popular will . . . And a qualified elector cannot be deprived of his right to vote, and the theory of our government that the majority shall govern, be destroyed by either the wilful or negligent acts of the registrar, a sworn officer of the law. This would be self-destruction, governmental suicide . . . These rules are intended for the guidance and government of registrars, which they should observe in the discharge of their duties as registrars, so as to *promote* the object to be attained—the free, full, and fair expression of the will of the qualified voters, as prescribed in section 1, article VI of the Constitution.[13]

During this period, 1870 to 1894, "the majority of native whites rallied to the Democratic Party which remained in power year after year, though by closer vote than most historians have realized. More and more the Negroes—unsupported by carpetbaggers and Federal troops, indifferent to politics, and reluctant to court the displeasure and discrimination of dominant whites ceased to vote." [14]

> The impression often left by cursory histories of the subject is that Negro disfranchisement followed quickly if not immediately upon the overthrow of Reconstruction. It is perfectly true the Negroes were often coerced, defrauded, or intimidated, but they continued to vote in large numbers in most parts of the South for more than two decades after Reconstruction. In the judgment of the abolitionist Higginson, "The Southern whites accept them precisely as northern men in cities accept the ignorant Irish vote—not cheerfully, but with acquiescence in the inevitable; and when the strict color-line is once broken, they are just as ready to reconciliate the Negro as the Northern politician to flatter the Irishman. Any powerful body of voters may be cajoled today and intimidated tomorrow and hated always, but it can never be left out of sight." As a voter the Negro was both hated and cajoled, both intimidated and courted, but he could never be ignored so long as he voted.[15]

As late as 1891, the Democrat-controlled legislature, referring to the earlier period of antagonism of the races and instability of society, declared that "now happily that period has passed and comparative contentment, competence, and repose have been established." [16]

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[13] *Quinn* v. *Lattimore*, 120 N.C. 426, 428-30 (1897).
[14] Lefler-Newsome, *supra* note 7, at 472.
[15] Woodward, *The Strange Career of Jim Crow* 45 (1957).
[16] *Public and Private Laws and Resolutions* 654 (1891).

By the next year, however, the Populist or People's Party had begun to show political progress as a third party in North Carolina, consisting principally of farmers pledged to railroad regulation, graduated income tax, limitation of interest charges to 6 percent, a 10-hour workday for labor, and local self-government.

In 1894, an alliance of Populist and Republican Parties in North Carolina captured the general assembly. This alliance between the Populists and the Republicans was called "fusion." The voting support of the Negroes was an essential element in fusion victory, and there followed an increase in the number of Negro officeholders. In 1896, the Fusionists elected the Republican candidate, D. L. Russell, as Governor.

The Democrats in 1898 reacted with an out and out white supremacy campaign and won. Thereupon, the legislature of 1899 proposed and submitted to the voters in the election of 1900 an amendment to the constitution to prevent any person from registering unless he could read and write a section of the North Carolina constitution to the satisfaction of the registrar. This was openly designed to eliminate the Negro voters, most of whom were illiterate. The white illiterates were accommodated by a grandfather clause which permitted them to register and vote even though they could not read or write, provided they could trace their ancestry to someone who voted prior to January 1, 1867. Since Negroes had been forbidden to vote between 1835 and 1868, it was unlikely that many Negroes would qualify under this grandfather clause. That this clause was an "hereditary privilege" forbidden by the State constitution since 1776 seems not to have been raised in any suit.

During the debate on the grandfather clause, George H. Rountree, chairman of the committee on constitutional amendments in the legislature, declared that "fitness for self-government was largely a matter of heredity. It must be obtained by inheritance and not by schools and learning." A Negro member of the legislature called him to terms on his history: "This talk of inheriting the power of self-government," he said, "is nothing but a revival of the doctrine of the divine right of kings . . . The doctrine of this country is that all men are created free and equal. This doctrine must and will prevail." This debate is reported in the Raleigh News and Observer, February 18, 1899. When some members of the legislature charged that ignorance disqualified all Negroes from being voters, a Negro member asked, "Why is a Negro ignorant? Is it not your fault? Wasn't there a law on the books in 1831 making it a crime for a Negro to learn to read and write?" Francis Winston, the introducer of the bill, closed the debate: "I do not care to discuss the constitutional side of this question." [17]

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[17] Edmonds, *The Negro and Fusion Politics in North Carolina* 181–82 (1951).

Running for Governor in the campaign in 1900, Charles B. Aycock asserted the superiority of white men, demanded the disfranchisement of illiterate Negroes, justified the grandfather clause on the ground that illiterate whites had political intelligence by inheritance, and pledged justice to the Negro. When it appeared that the amendment might be endangered by fear of disfranchisement of illiterate whites, Aycock injected a note of statesmanship and turned the white supremacy campaign into a crusade for universal popular education.

The Republicans maintained that the proposed amendment was undemocratic, violative of the United States Constitution and of the 1868 Act of Congress re-admitting North Carolina to the Union, and certain to disfranchise thousands of illiterate whites in the State. Many Populists and some western Republicans, desirous of eliminating the Negro and making that party "lily white," endorsed the amendment.[18]

In the election of 1900, the literacy amendment carried 182,217 to 128,285; Aycock defeated Spencer B. Adams by an even larger margin; the Democrats won an overwhelming majority of seats in the general assembly, and seven of nine in the congressional House of Representatives.[19]

The adoption of the suffrage amendment of 1900 deprived the Republican Party of about 50,000 voters, confirmed the Democratic dominance of North Carolina politics, and strengthened the one-party system. The Negro ceased to vote in large numbers; but the Negro issue, though largely academic, continued to be used effectively by the Democrats and at times against "insurgent Democrats" who were branded as Republicans. The amendment did not put an end to corrupt ballot practices when they were needed against Republicans or even against insurgent elements within the Democratic Party. Neither did it result in the frank discussion of public issues by the two parties. The chief discussion of and division on current issues was henceforth between factions of the Democratic Party, though such discussions and division was deplored by Democratic leaders in power.

After the constitutional amendment took effect, apathy and indifference toward voting and taking part in government grew and spread. One of the principal arguments of the disfranchisers had been that, with

[18] Lefler-Newsome, *North Carolina, The History of a Southern State* 524 (1954). See also Orr, *Charles Brantley Aycock*, chs. 7, 8 (1961).

[19] Lefler-Newsome, *supra* note 18, at 525.

the Negro eliminated, there would be less excuse for fraud, violence, and other illegalities in elections.[20]

> While their remedies somewhat suggest throwing out the baby with the bath, the disfranchisers could claim with a degree of truth that after their work was done, Southern elections were more decorous. Disgraceful scenes of ballot-box stealing, bribery, and intimidation were much rarer after disfranchisement. One effective means of stopping the stealing of ballots, of course, is to stop the people from casting them. Elections are also likely to be more decorous when the electorate of the opposition parties has been disfranchised or decimated and the election becomes a formality in a one-party system. Opponents of the new system held that it perpetuated old evils in a legalized form. "Elections under it would turn," said one critic "not primarily upon the will of the people but upon the partisan or factional allegiance of the registrars." The debates of the conventions indicate what the registration officials were expected to do, whether they did it or not. "At best it is an enameled lie," wrote Trinity [now Duke] Professor John Spencer Bassett of the North Carolina law. To him it was "one more step in the educating of our people that it is right to lie, to steal, and to defy all honesty in order to keep a certain party in power." The majority of southerners, however, were taught to regard disfranchisement as reform.[21]

[20] See *In re* Reid, 119 N.C. 641 (1896) for alleged conspiracy to prevent lawful registration by prolonged questioning of applicants in Winston, Forsyth County. The North Carolina Supreme Court held that under the 1895 election law, a few very specific questions could be asked "and that no more questions can be asked by the registrars under said act." The record contains many charges and counter charges as to partisan efforts to secure or prevent registration. Some of the affidavits are revealing:

"Just in front of Affiant was one J. J. Hopper, a white Republican, who registered but instead of handing the book to Affiant who was in line and by reason of his position was entitled next to register, the said Hopper handed the book back over Affiant's head to a notorious colored Republican."

"A number of strong white and Republican partisans from different parts of the County were there moving among the colored people, and affiant . . . alleges were urging the electors to press up and vote, . . ."

"Every thing was going nicely, and there was no disturbance. A rope had been stretched up, and the electors, white and black were going up and registering without friction or hindrance as rapidly as could be done. John C. Stewart, a white Republican, approached the Registrars from the entrance arranged for the exits of the electors, and demanded that he be then and there registered, seized the book, and said the Law demanded that he should be registered when presented. This created a confusion, and the colored electors said they intended to be registered too, and rushed in and over the rope and crowded around the Registrars. . . . That at this time there were a number of Democratic Electors entitled to register who had been waiting behind the others their turn, and when the said Stewart broke over the rope or entered from the exit, much confusion prevailed and some of them left and went home."

"More time was consumed with the examination of the one white man than any other elector during that or any other day."

"A colored elector was examined and he was asked about his family, his occupation and other questions and this affiant protested that these were unnecessary questions, and the Chairman, E. L. Reed, remarked that we will do it according to law . . . One elector who applied for registration was asked . . . Did you vote here two years ago? He answered he registered but they told him when he offered to vote that the wind had blown his name off the books. He was asked Did the wind blow his vote away? and he replied he reckoned not. 'Mighty poor land out about Prince George is there not?' He said tolerably poor."

"That much time was consumed by questions . . . that among those asked especially of the colored applicants were whether the elector had listed his taxes for the year 1896, and the electors were told that they were guilty of a misdemeanor if they had not so listed."

[21] Woodward, *Origins of the New South* 348 (1951).

After the campaigns of 1898 and 1900, the Populist Party faded away, most of its followers voting Democratic. The Republican Party itself excluded all Negro delegates to its State Convention in 1902. Negro voting in elections in North Carolina all but ceased for many years.

Henry G. Connor, Speaker of the House of Representatives which framed the suffrage bill (later Associate Justice of the North Carolina Supreme Court), expressed regret that the amendment, supposedly designed to eliminate illiterate Negroes, had proscribed the entire Negro race. He wrote in 1902: [22]

> I have been very much surprised at the small number of Negroes who have registered. I fear that the shrinkage in the number will make the Negro absolutely indifferent to his political interests and welfare and the whites will be emboldened to oppress him in his material and educational interests. It is a serious question whether 100,000 freemen can maintain any satisfactory status in North Carolina without any political power or influence.

For a long period after 1900, no Negroes participated in the political life of the State, except as the butt of campaign oratory. In 1912, Josephus Daniels wrote in The News and Observer that the political subjugation of the Negro and the social separation of the races was the only solution to the race problem, and that there was no chance for an emancipation of the South until the rest of the country adopted this same policy.

In reviewing the experience of Negro enfranchisement in 1868 and disfranchisement in 1900, from the vantage point of an English historian 60 years later, W. R. Brock recently drew the following conclusions: [23]

> Reconstruction did not hand the South over to an illiterate and ignorant Negro majority. Negroes were in a majority in only two states and there the margin was narrow; they were in a majority in the "Black belt" (the plantation areas) but except in South Carolina and Mississippi, these were outweighed by the white counties. The Negroes were often ignorant and bewildered, but there is no evidence that they were more irresponsible than the voters in any democratic state; indeed their very lack of political training and the simplicity of their demands made them more likely to support conservative than radical regimes. A few of their leaders were ignorant and coarse, but most of them belonged to the semi-educated class of former free Negroes or to those who had been superior slave artisans. They enjoyed the vote at a time when it was still denied to the English agricultural labourer and to all women, but the case against

[22] Mabry, "'White Supremacy' and the Suffrage Amendment," *North Carolina Historical Review*, Jan. 1936, p. 23.

[23] Brock, *The Character of American History* 161 (1960).

their enfranchisement was the same as that against enfranchising the poor in any country. To rest the responsibility for the failure of Reconstruction upon Negro incapacity is too easy and too prejudiced an explanation for the failure of the nineteenth century's boldest experiment in democratic government.

In 1915, the U.S. Supreme Court declared clauses similar to our grandfather clause unconstitutional in *Guinn* v. *United States,* 238 U.S. 347. Inasmuch as registration under our clause closed in 1908, it had no application in recent years. It was repealed in 1957 (G.S. 163–28).

The Constitution of 1868 authorized a per capita (or poll) tax not to exceed "two dollars on the head." The 1900 amendment to the Constitution deprived citizens of the right to vote unless their poll tax for the previous year had been paid. This requirement was repealed in 1920.

Debate over granting woman suffrage again coupled this issue with the question of Negro suffrage. Chief Justice Walter Clark at the State convention on woman suffrage in Charlotte, in 1914, urged that women be given the vote: "Why should the mothers, the daughters, the wives, and sisters of the white voters of North Carolina be thus grouped with idiots, lunatics, convicts, and the Negroes?" [24]

But opponents of woman suffrage argued that Negro women would be entitled to vote, too. When the North Carolina Senate discussed woman suffrage in 1915, "R. D. Johnson of Warsaw said that votes for women meant jury service for women. He described 'the scene of the household disrupted' as follows: 'Mrs. Jones is in the jury box sitting beside the Negro nurse and the Negro cook, also women and also voters, while Mr. Jones, hubby, is at home rocking the cradle.' Johnson called the movement 'trash' and 'urged that its proponents wear skirts and take in sewing.' " [25]

When the U.S. Supreme Court in *Smith* v. *Allwright* (321 U.S. 649 (1944)), held unconstitutional the exclusion of Negroes from the Democratic primary in Texas, there was a great outcry and the adoption of many special measures to circumvent the decision in Mississippi, Alabama, South Carolina, and Georgia. However, Florida, Texas, Tennessee, North Carolina, and Virginia made no constitutional changes to offset the decision. North Carolina had never had any statute or party bylaw specifically purporting to bar Negroes from participation in party primaries.

In 1930, it was possible to point to eight States in which the Democratic party by a definite State-wide rule barred Negroes from a share in the nominating process. . . . In three more—Florida, North Carolina, and Tennessee—there was no State-wide rule; but

[24] *North Carolina Historical Review,* Jan. 1961, pp. 53–54.
[25] *Id.* at 59. See also (Raleigh) News and Observer, Feb. 10, 1915.

the rules of county and city Democratic committees took its place, with a few important exceptions. . . .[26]

In Virginia, North Carolina, and Tennessee the ("white") primary had already been abandoned since about 1930, either as the outcome of court action or as a mere change of public sentiment.[27]

In Virginia, Tennessee, and North Carolina, states in which the white primary was breached more than a decade before the Supreme Court decision, Negroes were actively participating in the Democratic primaries . . .[28]

In 1933 the legislature specifically required that registrars and judges of election "prevent and stop improper practices or attempts to obstruct, intimidate or interfere with any elector in registering or voting."[29] No case has been found where a nonwhite has relied on this statute in seeking to register.

In *Allison* v. *Sharp* (209 N.C. 477 (1936)), two Negroes sued an Iredell County registrar and the County and State Boards of Election for a judgment declaring void the reading and writing test for registration and voting. The plaintiffs alleged that they were graduates of a college approved by the State, with a grade A rating, that they held certificates from the State to teach the children of North Carolina in the public schools to read and write the constitution of the State, and that the registrar requested them to read and write certain sections of the constitution, which they did, one of the plaintiffs alleging that he read and wrote in the English language "as said language had been taught to him, in the public schools, high school, and college of the State of North Carolina." The registrar refused to register the plaintiffs giving as his reason: "You do not satisfy me." The defendants admitted these facts to be true for the purpose of their motion to dismiss the suit, which the trial judge allowed. The North Carolina Supreme Court affirmed, holding that the literacy requirement was constitutional as it applied to all citizens and that the plaintiffs had alleged no abuse of discretion by the registrar and had sought no affirmative relief and therefore the question was moot. The court added:[30]

It would not be amiss to say that this constitutional amendment providing for an educational test . . . brought light out of darkness as to education for all the people of the State. Religious, educational, and material uplift went forward by leaps and bounds.

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[26] Lewinson, *Race, Class, and Party* 112 (1932).

[27] Jackson, Luther P., "Race and Suffrage in the South Since 1940," *New South*, June-July 1948.

[28] Moon, *Balance of Power: The Negro Vote* 177 (1948).

[29] G.S. 163-21 (N.C. Laws 1933, ch. 165, sec. 3).

[30] 209 N.C. 477, 482 (1936).

	1900	1934
Value of white school property	$839, 269	$94, 910, 979
Value of colored school property	258, 295	12, 170, 324

* * * * * * *

> The rich and poor, the white and colored, alike have an equal chance and opportunity for an elementary and high school education. It may be of interest to state that this Commonwealth has an eight-months school, under State control, and is now being operated without a cent of tax on land. It goes without saying that judging the future by the past the school system will naturally improve as the years go by.

According to the values stated by the court, colored school property in 1900, before the election amendment became effective, was 23.5 percent of the total value of public school property. Thirty-four years after the election amendment, the relative value of colored school property had dropped to 11.3 percent.

In 1945–46 two cases involving refusal of election officials to register qualified Negroes for voting were concluded by pleas of guilty and *nolo contendere: United States* v. *Henry McMillan,* in the middle district, in which a fine of $500 was imposed, and *United States* v. *Robert Lewis,* in the eastern district, each of two defendants being fined $25. In the latter case one of the registrars stated that his decision not to register the Negro was based solely on "the disfranchisement of the colored people in this county" (i.e., Washington County), rather than on his ability to read, write, and explain the constitution.

In *Lassiter* v. *Northampton County Board of Elections* (248 N.C. 102 (1958), *aff'd,* 360 U.S. 45 (1959)), the U.S. Supreme Court sustained the validity, on its face, of the North Carolina literacy requirement. The case presented no claim of discrimination in the way the test was administered.

In April 1961, the North Carolina Supreme Court held that "excessive reading and writing may not be required. Writing from dictation is not a requirement. The test may not be administered so as to discriminate between citizens." [31]

During and after World War II, Negro participation in the elections in North Carolina began to increase.

RECENT EXPERIENCE

On October 4, 1959, this Committee made its first report on equal protection of the law in respect to voting in North Carolina. At that

[31] *Bazemore* v. *Bertie County Board of Elections,* 254 N.C. 398, 406 (1961).

time, the Committee had collected registration statistics by county and by race from 91 counties in the State. These data related to the general election of 1958 and, to some extent, to registrations in prior years. Such data had never been collected before in North Carolina. The chairmen of the various county boards of elections cooperated with the Committee in the collection of this information.

On April 25, 1960, the Committee published a tabulation of the estimated voting potential by race and by county in each of the 100 counties and the registrations by race and by county as of the time of the general election in 1958, based on reports which had by that time been received from all 100 counties in North Carolina. This summary was circulated widely in the State. Inasmuch as 1960 was both a census year and the year for a presidential election, it was apparent that it would be possible to make a more accurate tabulation of the actual voting-age population and of the actual registration as of the closing of registration for the general election in November 1960. The county boards of elections were again asked to compute the total number of registrants in their respective counties, this time as of the November 1960 general election, and to report the number of such registrants who were white and the number of such registrants who were nonwhite. In addition, the county boards of elections were asked to report the number of times since January 1, 1960, that applicants were rejected on account of inability to read and write, and the number of appeals to the county boards of elections that arose out of such denials of registration.

Information was also requested as to the manner in which registration is maintained in each county, the time of the last purge or new registration, and the method of administering the literacy test.

The reports from 100 counties were analyzed by Donald R. Matthews, associate professor of political science at the University of North Carolina, with the assistance of Douglas S. Gatlin. The results of their study, including the tables, charts, and maps, are incorporated in this report. They performed a similarly valuable service in analyzing the data collected for 1958 and prior years, so that it was possible for them to make comparisons between the 1960 data and that for previous years.

In addition to the new data collected by the Committee from the county boards of elections, the Committee continued to hold hearings in the principal cities and towns in North Carolina, at which time anyone who had been denied the right to register or vote was given the opportunity to file a complaint if, in his opinion, the denial was based on race, religion, or national origin. Also, the members of the Committee, living in various parts of the State, have been available for the purpose of receiving written complaints under oath as to the denial of the right to register or to vote.

To date, the Committee has received sworn written complaints from 5 of the 100 counties in the State. These counties are Franklin, Bertie, Greene, Northampton, and Halifax. The complaints from Northampton and Halifax were received in 1959, together with a complaint from a citizen and resident of Greene County. The complaints from Franklin and Bertie, together with additional complaints from Greene County, were all received in May 1960 at the time of the registration for the 1960 primary.

All of these complaints were from Negroes. The substance of their complaint was that, although qualified under the laws of North Carolina to register, they were denied registration on account of their race. It was alleged that the reading and writing tests were applied to the complainants in a manner different from the way in which such tests were applied to white applicants, so as to discriminate against the complainants and deny them the privilege of registering and voting, solely because of their race.

In the more than 3 years that this Committee has been in existence, there have been no such complaints from any of the other 95 counties in the State.

In accordance with the 1957 act of Congress, the sworn voting complaints which were received from the five counties mentioned above were referred to the U.S. Commission on Civil Rights for appropriate investigation. In some instances the complainants had also filed notices of appeal to the county boards of elections. One of the complainants carried her case to the Supreme Court of North Carolina, which held that she should be given another opportunity to register, and that it was unreasonable and beyond the intent of the North Carolina law for her to be required to write a section of the Constitution as it was read to her.[32]

Analyses have also been made of the 1960 voter turnout by counties, and of the representative character of the present North Carolina Senate—which is more nearly representative of the population than the house of representatives. John L. Sanders, now director of the Institute of Government, prepared the table showing the relative weight of votes cast for the senate in the several senatorial districts. By assigning the district index to each county in the district, a table of the weight of each vote, by counties, was prepared. See table 12, p. 45.) Tables 8, 11, and 12 (pp. 26–28, 41, 45) show the relationships between—

(*a*) Disproportionately low registration of nonwhites in some counties;

(*b*) Disproportionately low voter turnout in some of the same counties as in (*a*) and (*b*) above.

(*c*) Disproportionately high representation in the North Carolina Senate in some of the same counties.

[32] *Id.* at 398.

It must be acknowledged at once that the following figures are approximate at best. In the first place, the registration books in many North Carolina counties are kept in such a way that an accurate count of registered voters is not easily obtained. Many county boards of elections were able to supply only the crudest estimates of the number of registered voters—white and nonwhite—within their jurisdiction.

Second, many counties have not purged their books or held a new registration for decades (table 1). The names of those who have moved to other States or localities—to say nothing of those residing in local cemeteries—are still on their registration books. The chairman of one county board of elections reported that "there are about 8,000 names on our registration books that should not be there." Over half the counties reported more white registrants than there are white adults residing in their counties.

Third, final 1960 census figures on the number of adults, by county and by race, were not available in time for use in this analysis. Preliminary counts of the total population, by race, were used in their stead. The proportion of the total population, by race, over 21 in 1950, was then used to arrive at estimates of the white and nonwhite adult populations in 1960. While it seems safe to assume that little change has occurred in the population's age distribution since 1950, this procedure has no doubt added some small errors to the analysis.

TABLE 1.—*Date of last countywide purge or new registration*

Year	*Number of counties*
Unknown	43
1960	14
1958	8
1956	5
1954	1
1952	1
1950	11
1948	5
1946	2
1944	0
1942	0
1940	7
1930–39	1
1920–29	1
1910–19	1
Total	100

The net effects of these three sources of error will never be precisely known. However, internal evidence suggests that the estimates provided

by the county boards of elections for 1960 are more realistic than those furnished to the Committee in 1958. Nonetheless, these figures substantially exaggerate the level of political participation found in the State as a whole. Overestimates came most frequently from sparsely settled rural counties; the urban counties have supplied more realistic figures. Nonwhite registration figures are probably more accurate than those for whites. Substantial Negro registration is a relatively recent phenomenon in many parts of the State and there has been less time for the names of deceased or moved-away voters to accumulate on the books. Thus the disparity in registration rates between the races may not be quite as large as the data suggest.

With all these limitations, the data at hand are the only and thus necessarily the best evidence available on voter registration in North Carolina. So long as one allows for a considerable margin for error, valid general conclusions can be drawn from this evidence.

REGISTRATION

According to reports received from all 100 county boards of elections, there were slightly more than 2 million registered voters in North Carolina at the time of the general election of 1960. Of these, about 1,369,000, or 70 percent (54 percent of the total adult population), voted in the presidential election. This represents a definite increase in participation. In 1958, about 1,832,000 names were carried on the registration books of the State, and about 616,000 voted in the senatorial election of that year; 1,136,000 voted in the presidential election of 1956.

In 1958, about 90 percent of the registered voters in North Carolina were white and 10 percent were nonwhite. The situation has changed very little since. Of the new names added to the voters' lists during the last 2 years, about 87 percent were white and 13 percent nonwhite. The registered electorate of North Carolina remains overwhelmingly and disproportionately white.

TABLE 2.—*Statewide registration, 1958–60, by race*

	1958	*1960*	*Change*
Total registrants	1,832,093	2,071,780	+239,687
White registrants	1,652,658	1,861,330	+208,672
Nonwhite registrants	179,435	210,450	+31,015

Another way of examining the same thing is to estimate the proportion of those North Carolinians over 21 who are registered voters, by race. This has been done for 1958 and 1960 (table 3). Again, the overall picture is gratifying—the proportion of the adult citizens of this State who are registered increased from about 71 percent to about 76 percent

in 2 years. However, the proportion of nonwhites registered scarcely changed at all. The apparent increase in political activity since 1958 has been largely confined to whites.

TABLE 3.—*Percentage of potential voters registered, 1958–60, by race*

	1958	*1960*	*Change*
Total potential voters registered	71.2	76.4	+5.2
White potential voters registered	84.0	90.2	+6.2
Nonwhite potential voters registered	30.9	31.2	+0.3

COUNTY-BY-COUNTY VARIATIONS

Statewide figures obscure the considerable variation in rates of voting and registration found within North Carolina. The basic facts are presented in table 4. Less than 50 percent of the adult whites were reported as registered to vote in three counties. These are Craven, Cumberland, and Onslow, but the presence of large military bases in these counties may be a relevant factor. In 74 counties, the number of names—living, dead, and moved away—on the registration books was over 90 percent of the white population. While the proportion of nonwhite adults registered is substantially lower throughout the State, there are wide differences, here, too. In four counties, less than 10 percent of the nonwhite adults are registered; in eight, the local boards of elections reported that more than 90 percent of the nonwhites were registered.

TABLE 4.—*Potential voters registered in 1960, by race*

Percent	*White*	*Nonwhite*
0–9.9	0	4
10–19.9	0	20
20–29.9	0	21
30–39.9	1	15
40–49.9	2	7
50–59.9	1	10
60–69.9	6	14
70–79.9	11	1
80–89.9	5	0
90–99.9	17	3
100+	57	5
Total counties	100	100

As might be expected, the highest proportion of nonwhites registered to vote is reported by the counties with the smallest number of nonwhite residents. The areas of heavy nonwhite concentration in the State have the smallest proportion of nonwhites registered (fig. 1 and 2, pp. 23, 24). While this is the classic pattern found in most Southern

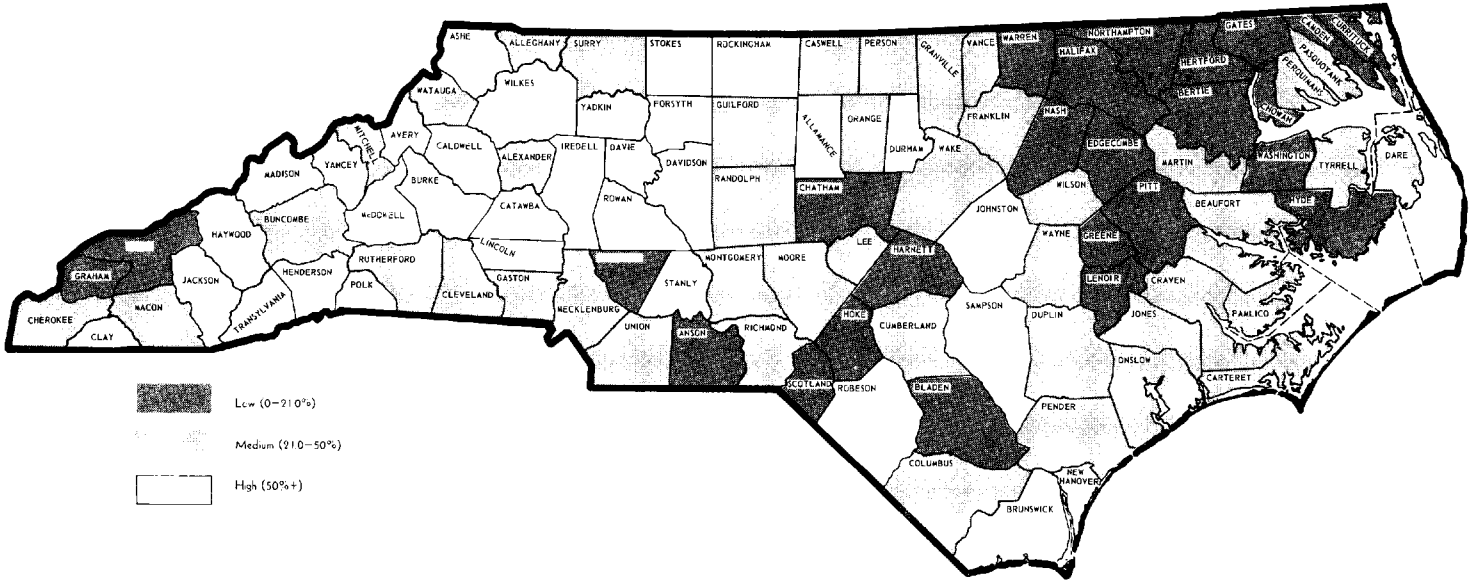

FIGURE 1.—*Nonwhite potential voters registered, 1960.*

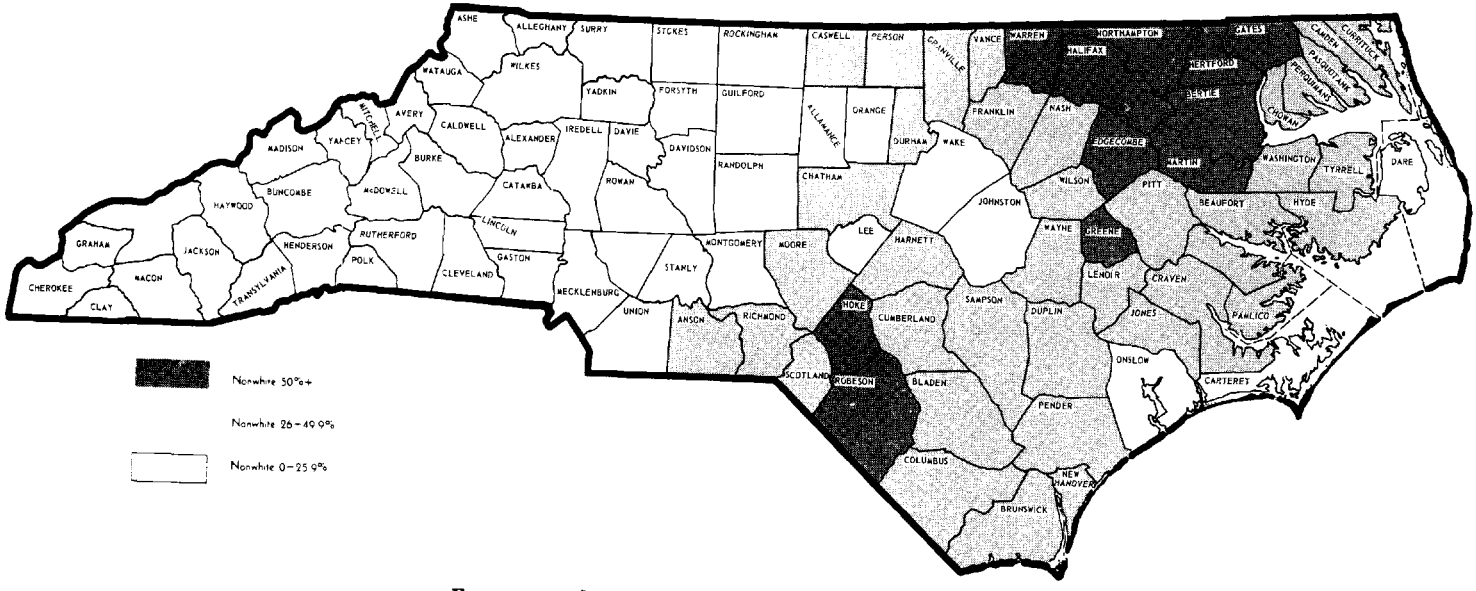

FIGURE 2.—*Concentration of nonwhite population, 1960.*

States, there is some indication that it is in the process of gradual change in North Carolina.

In 59 of the counties, there was very little change in the proportion of adult nonwhites registered between 1958 and 1960 (table 5). However, in 28 of the counties the proportion registered appears to have increased by at least 10 percentage points, while in another 13, it declined by at least as much. In what situations is the proportion of the nonwhite adult population registered to vote increasing? In what kinds of counties is it decreasing? Additional analysis gives us at least some clues.

TABLE 5.—*Changes in potential voters registered, 1958–60, by county and race*

	Percent whites	*Percent nonwhites*
Substantial increase	50	28
Little change	38	59
Substantial decrease	12	13
Number of counties	100	100

NOTE.—"Substantial"=more than 10 percent change.

In table 6, the average percentage point increase or decrease in nonwhite adult registration is indicated by the level of nonwhite registration reported in 1958. The proportion of nonwhites registered *tended to go up in areas of low nonwhite registration in 1958, and to decline in counties reporting high nonwhite registration in 1958.*

TABLE 6.—*Mean percentage change in nonwhite potential voters registered, 1958–60*

Percent potential voters, 1958	*Number of counties*	*Percent change in adults registered, 1958–60*
100+	6	−24.4
90–99.9	3	−25.8
80–89.9	3	−30.4
70–79.9	4	+6.0
60–69.9	6	−4.3
50–59.9	8	+1.0
40–49.9	5	+4.5
30–39.9	7	+8.4
20–29.9	23	+10.7
10–19.9	28	+6.2
0–9.9	7	+10.0
Total	100	

However, this improvement occurred at different rates depending upon the concentration of nonwhites in the county (table 7). Slow but consistent increases in the proportion of nonwhites registered were

reported in counties with heavy concentrations of nonwhites. But the increases occurred more frequently in areas with relatively few nonwhites.

TABLE 7.—*Nonwhite concentration and change in potential voters registered, 1958–60, by county*

Number of counties	*Percent of nonwhite population*	*Change in proportion registered 1958–60*		
		Substantial increase (percent)	*Little change (percent)*	*Substantial decrease (percent)*
11	50+	10	90	0
37	26–49	14	84	2
52	0–25	35	45	20

NOTE.—"Substantial" = more than 10 percent change.

What does this all mean? Two factors—past level of registration and nonwhite concentration—are related to the 1958–60 increases in nonwhite registration in North Carolina. Nonwhite registration increases are occurring most frequently in areas with few nonwhites and in which the nonwhites generally were not registered in large numbers in 1958. Smaller increases are occurring in counties with heavy nonwhite populations if, in the past, nonwhite registration was low. Nonwhite registration increases are rarer in the counties which have had substantial nonwhite registration in the past; if such a county had a fairly large nonwhite minority, registration is actually on the decline. The net effect of these shifts appear to be a gradual "evening out" of nonwhite registration throughout the State.

The details of the 1960 registration for each county are set out in table 8.

TABLE 8.—*Whites and nonwhites registered and percentage of white and nonwhite potential vote registered, 1960*

County	*White registered*	*White potential registered, percent*	*Nonwhites registered*	*Nonwhite potential registered, percent*
Alamance	47, 604	108. 4	4, 801	61. 9
Alexander	8, 300	103. 8	200	37. 7
Alleghany	6, 458	148. 7	54	42. 5
Anson	7, 600	100. 1	600	10. 6
Ashe	12, 293	116. 8	67	61. 5
Avery	7, 507	124. 9	68	58. 6
Beaufort	16, 212	121. 3	3, 319	49. 1
Bertie	6, 242	103. 8	713	11. 1
Bladen	8, 277	95. 1	954	17. 4
Brunswick	9, 900	142. 8	2, 100	61. 9
Buncombe	53, 036	72. 8	4, 523	49. 0
Burke	38, 000	135. 0	2, 000	99. 7
Cabarrus	27, 067	77. 7	1, 019	17. 8
Caldwell	26, 150	105. 8	1, 181	63. 9
Camden	1, 915	97. 0	187	16. 2
Carteret	16, 620	100. 7	812	38. 6

TABLE 8.—*Whites and nonwhites registered and percentage of white and nonwhite potential vote registered, 1960*—Continued

County	*White registered*	*White potential registered, percent*	*Nonwhites registered*	*Nonwhite potential registered, percent*
Caswell	5, 177	90. 9	1, 240	29. 4
Catawba	45, 312	117. 3	2, 670	76. 3
Chatham	12, 062	107. 8	800	19. 7
Cherokee	7, 450	88. 2	100	46. 9
Chowan	3, 465	92. 8	550	20. 5
Clay	3, 471	118. 3	35	106. 1
Cleveland	29, 239	99. 4	1, 792	25. 7
Columbus	14, 185	84. 4	2, 992	38. 1
Craven	10, 950	46. 5	2, 150	23. 7
Cumberland	25, 173	40. 2	5, 097	24. 3
Currituck	2, 739	94. 9	177	15. 3
Dare	3, 725	107. 6	75	29. 3
Davidson	42, 385	102. 1	2, 484	51. 5
Davie	8, 475	97. 7	669	60. 9
Duplin	14, 923	109. 4	1, 539	21. 0
Durham	46, 213	93. 8	13, 201	61. 6
Edgecombe	11, 129	70. 8	1, 787	13. 3
Forsyth	73, 992	80. 6	14, 798	53. 5
Franklin	8, 600	90. 1	1, 600	27. 0
Gaston	72, 671	114. 1	4, 954	5. 4
Gates	2, 654	99. 0	351	15. 0
Graham	4, 025	126. 3	0	0. 0
Granville	8, 550	73. 9	1, 487	20. 9
Greene	4, 882	110. 3	385	10. 4
Guilford	81, 816	66. 8	10, 296	33. 5
Halifax	15, 406	93. 7	1, 954	13. 9
Harnett	12, 207	63. 5	600	9. 5
Haywood	24, 889	113. 9	329	61. 4
Henderson	33, 838	162. 2	629	50. 6
Hertford	6, 415	110. 7	537	8. 3
Hoke	4, 454	107. 1	650	15. 7
Hyde	1, 949	89. 2	173	16. 1
Iredell	31, 180	95. 5	3, 106	51. 5
Jackson	8, 570	99. 1	1, 531	176. 1
Johnston	43, 883	165. 2	4, 252	64. 7
Jones	3, 336	104. 4	562	24. 3
Lee	9, 267	76. 3	947	30. 6
Lenoir	14, 603	74. 8	2, 220	19. 6
Lincoln	14, 068	98. 1	978	60. 9
McDowell	20, 095	143. 7	785	104. 2
Macon	9, 045	114. 0	55	33. 5
Madison	12, 200	135. 2	200	303. 0
Martin	8, 040	106. 0	1, 253	21. 3
Mecklenburg	96, 074	72. 8	14, 729	37. 4
Mitchell	6, 127	81. 7	13	43. 3
Montgomery	9, 988	122. 5	812	35. 8
Moore	17, 022	108. 0	1, 750	34. 6
Nash	25, 914	121. 0	2, 015	18. 0
New Hanover	31, 421	95. 4	7, 353	62. 5
Northampton	6, 700	108. 7	1, 300	16. 9

TABLE 8.—*Whites and nonwhites registered and percentage of white and nonwhite potential vote registered, 1960*—Continued

County	*White registered*	*White potential registered, percent*	*Nonwhites registered*	*Nonwhite potential registered, percent*
Onslow	13, 574	37. 9	1, 303	23. 9
Orange	13, 988	68. 6	1, 510	29. 3
Pamlico	4, 017	109. 4	442	27. 3
Pasquotank	7, 527	76. 4	1, 894	35. 1
Pender	6, 240	116. 0	889	21. 3
Perquimans	3, 559	117. 0	610	28. 4
Person	10, 098	103. 4	2, 042	46. 2
Pitt	23, 441	103. 5	2, 520	17. 4
Polk	10, 103	175. 9	705	93. 6
Randolph	34, 000	102. 0	1, 000	37. 2
Richmond	14, 349	91. 8	1, 793	30. 2
Robeson	25, 537	125. 1	11, 994	52. 1
Rockingham	19, 250	58. 7	4, 800	61. 1
Rowan	47, 074	111. 1	4, 798	62. 7
Rutherford	24, 500	107. 4	1, 050	39. 0
Sampson	23, 790	145. 1	5, 726	66. 8
Scotland	11, 903	152. 1	1, 045	20. 4
Stanly	24, 625	114. 9	1, 500	60. 7
Stokes	13, 574	121. 0	562	51. 2
Surry	27, 042	106. 0	469	31. 9
Swain	4, 650	131. 8	150	19. 8
Transylvania	11, 435	134. 6	478	107. 9
Tyrrell	1, 976	125. 6	298	33. 6
Union	15, 582	78. 7	2, 098	44. 6
Vance	13, 912	79. 1	1, 526	22. 1
Wake	53, 625	66. 2	6, 576	27. 3
Warren	6, 123	143. 1	881	15. 7
Washington	4, 700	108. 1	600	20. 8
Watauga	9, 535	103. 8	65	50. 4
Wayne	18, 779	62. 3	3, 165	18. 8
Wilkes	27, 116	120. 0	1, 374	93. 0
Wilson	14, 256	70. 8	2, 662	23. 1
Yadkin	11, 480	92. 8	1, 314	220. 1
Yancey	6, 935	95. 2	51	57. 9
Total	1, 861, 330		210, 450	

THE LITERACY TEST

Article VI, Section 4, of the North Carolina constitution states that "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language."

The Committee included a question in its 1960 questionnaire asking the chairmen of the county boards of elections to describe the procedures followed to determine literacy in their respective counties. A bewildering variety of methods was found.

Many counties responded by saying that they determined the literacy of applicants "according to law," which suggests that no standardized procedure is followed. Others indicate that a test on "reading and writing" is administered without specifying its contents; still others acknowledge that the test is left entirely to the discretion of local registrars. A good many counties require the applicant to read aloud a section of the North Carolina constitution; others report that registrars are instructed to dictate a portion of the constitution which the applicant must write down and read back. Some counties take a correctly filled-out application form as evidence of literacy; a few report that applicants are required to read, write, and understand the constitution. In other counties, the applicant is required to read aloud the registration oath prescribed in G.S. 163–29. Some counties use the U.S. Constitution as a basis of their test; a few report that an ability to read aloud from any book or newspaper will do. One county reports an "oral test" of literacy; others require only that the applicant be able to sign his own name and show an ability to read the names of others; a handful of counties report that the literacy test is not enforced at all.

Here are a few representative comments of county officials as to how the literacy test is administered in their counties—

Ashe County Board of Elections, H. H. Lemly, chairman:

"Read and write so you can read it and understand. No one rejected because of race or color."

Beaufort County Board of Elections, Edward N. Rodman, chairman:

"An applicant is asked to read a portion of the North Carolina constitution. The applicant does not have to be able to pronounce all the words, but only to demonstrate to the registrar that he or she has the required educational background to meet the minimum statutory requirements.

"*a.* Of the 27 rejected for registration, 24 were Negro and 3 white.

"*b.* The county board of elections of this county is presently considering discarding the present registration books in favor of a looseleaf system, and at the same time ordering a completely new registration of eligible voters. There are about 8,000 names on our registration books that should not be there."

Carteret County Board of Elections, C. G. Chappell, chairman:

"If they can read at all, we register them. The usual requirement is for them to read the first line of the law requiring them to be able to read."

Caswell County Board of Elections, W. D. McMullen, chairman:

"I instructed my registrars to satisfy themselves that the applicant could read well enough to know one name from another."

Catawba County Board of Elections, Neva G. Herman, secretary:

"No literacy [test] has ever been administered in this county to my knowledge."

Macon County Board of Elections, J. Lee Barnard, chairman:

"No literacy test required."

Northampton County Board of Elections, Russell Johnson, Jr., chairman:

"There has been one attempted appeal to the county board of elections in the last 2 years. The appeal was not perfected. I am unable to state the number of applicants for registration rejected due to inability to read and write during 1960. I would estimate the number to be 100."

Perquimans County Board of Elections, W. Jarvis Ward, chairman:

"Some admit they can't read or write and are denied registration on their own admission; some sign their names well and are registered on the basis of signing their names. Others are asked to read and write parts of the State or Federal Constitutions."

Person County Board of Elections, D. D. Long, chairman:

"Registrars request applicant read any part of constitution—if he fails, he is told to report back again for another test if he or she so desires."

Scotland County Board of Elections, F. W. Nichols, chairman:

"To be able to write their name and read any one else's name.

"We have not had a new registration since 1940. We plan to have one the next time we have election. I would say about one-third of the names on books have moved or died."

Warren County Board of Elections, Wiley G. Coleman, chairman:

"The registrar will read a sentence or two from the constitution of North Carolina and have the applicant write it, and then read it back to the registrar. Both white and colored are required the same."

1960 conference for chairmen of county boards of elections.—For many years the Institute of Government at Chapel Hill prepared an election law guidebook which was made available without charge, through county election board chairmen, to every precinct registrar and

judge in the State. With more than 2,000 registrars in the State and with only 1 person on the staff of the Institute of Government to handle this work, the institute did not schedule schools or conferences for registrars.

On March 30–31, 1960, for the first time, the institute took an additional step. As soon as the new county board chairmen were selected and with the sponsorship of the State board of elections, the institute held a conference at Chapel Hill for county election board chairmen. In advance of the session a series of questions designed to arouse interest in topics of importance in conducting the primary (not the general election) was prepared and from these questions Hon. R. C. Maxwell, executive secretary of the State board of elections, and Henry W. Lewis, assistant director of the Institute of Government, conducted the conference. Attendance at the conference was entirely voluntary. Twenty-eight counties were represented at this first conference and those present organized the North Carolina Association of Election Boards.

After the March 1960 conference at Chapel Hill, many county chairmen (for example: Robeson, Lenoir, and Orange) held instruction for their registrars before the primary.

Subsequent conferences were conducted at the institute in Chapel Hill, September 26–27, 1960 (47 counties represented) and April 5–6, 1962 (39 counties represented, 68 election officials present). A fourth conference is scheduled for Asheville, September 24–25, 1962.

This development is to be highly commended and should lead, in time, to a more thorough understanding and a more uniform administration of the election laws. The support and encouragement of the State board of elections, the cooperation and effort on the part of county election boards, and the availability of funds in the counties to pay the expenses of persons attending such conferences make this possible.

Opinion of the State attorney general.—In an opinion dated September 19, 1956, the attorney general answered questions "as to when an applicant who has been refused registration because of illiteracy is to be given another test." He stated that this—

> . . . should depend upon the circumstances of the particular case. If the applicant is totally illiterate, of course he cannot learn to read and write within the 2 weeks' period allowed for registration; but if the applicant can read and write to some extent but simply fails to satisfy the registrar that he can read and write any section of the State constitution, it seems to this office fair that such applicants should be given another opportunity during the registration period. For instance, if an applicant missed only a few words in his reading test or could not write some of the words legibly, it is the view of this office that in a test case, our courts would probably require the registrar to give such an applicant another test during the same

registration period. In other words, the registrar should use his sound judgment in each case, but he has no legal right to act arbitrarily or capriciously in depriving American citizens of their rights to register and vote.

The statute allows registration on primary day if the applicant has become qualified since the close of the regular registration period. Applying the above line of reasoning, it has been suggested that the registrar could administer the test again on the day of the primary if he feels that there is a reasonable possibility that the applicant may have qualified himself since the close of registration.

In a brief filed in the Supreme Court of North Carolina, spring term 1961, the attorney general stated:

> Neither the constitution nor the statute as to reading and writing for registration prescribes the method of how the applicant for registration shall know the provisions and words which he or she shall write. It was, therefore, within the discretion of the registrar, as well as the Board of Elections of Bertie County, to acquaint the plaintiff with the provisions of the constitution which she was to write out for them, either by pointing out the provisions and having the plaintiff write or by dictating to the plaintiff in a reasonable manner and having her write. It is not claimed by us that the written version of the constitution submitted by an applicant must be perfect, either in spelling or in punctuation, but it should be of such a nature that any literate person who does know how to read and write can read the applicant's written version and understand what the applicant is saying as compared to the actual text of the constitution.

Failures of the literacy test in 1960.—All told, at least 759 persons failed to pass these haphazard tests of literacy between January 1, 1960, and the date of the county board of elections' reports. As might be expected, the failure rate varies greatly from one county to the next. No failures at all were reported by one-third of the counties; less than 10 failures by another third. Almost all of the counties reporting more than 10 failures were in the eastern portion of the State, which has the heaviest nonwhite population concentration and the lowest literacy rate for both whites and nonwhites.

The determinations of literacy made by the local registrars were seldom appealed to the county boards of elections. During the period under study, only 11 such appeals were reported. These appeals were made in Bertie, Camden, Chowan, Halifax, and Union Counties.

Complaints.—In 1959, the Committee received 17 voting complaints in writing and under oath. All of these complaints were from Negroes.

They complained that they had been denied permission to register on account of their race, although according to their complaints they were qualified under the laws of North Carolina to register. They com-

TABLE 9.—*Number of failures of literacy test Jan. 1, 1960, to date*

Failures	*Counties*
0	37
1–9	31
10–19	7
20–29	5
30–39	1
40–49	1
50–59	0
60–69	1
70–79	1
80-plus	2
Unknown	14
Total	100

plained that the reading and writing tests were applied to them in a manner so as to discriminate against them and deny them the privilege of registering and voting. Ten of these complaints in 1959 were from residents and citizens of Halifax County; six from residents and citizens of Northampton County; and one from a resident and citizen of Greene County.

In May 1960, at the time of the registration for the primary, the Committee received 19 additional sworn complaints, alleging that the complainants were unjustly deprived of their right to register on account of their race. All of the complainants were Negroes. Nine of the complainants were residents and citizens of Franklin County; seven of Bertie County; and three of Greene County.

Franklin County.—Nine Negroes, including one graduate and three others who had finished one or more grades of Person High School at Franklinton, stated in their complaint that not only were they required to read sections of the U.S. and North Carolina Constitutions, they were asked by the registrar to define "habeas corpus," explain how a person could be imprisoned for debt in North Carolina, who created the world, and what "create" meant. The complainants stated that they were told by the registrar that they "didn't satisfy him."

One of the complainants stated that she told the registrar that " 'habeas corpus' is a Latin word," but that this was not an acceptable answer. She added that when the registrar denied her the right to register, he did tell her "to come up some more."

Another complainant said that although she could not say what "habeas corpus" was on April 30, when she first applied, she looked it up and came back again on May 7, but on that occasion the registrar

did not ask her to define "habeas corpus." This time she was asked to read two more sections of the Constitution of North Carolina, section 22, that "No property qualification ought to affect the right to vote," and section 23, that "The people ought not to be taxed . . . without the consent of themselves . . . freely given." She was refused again.

The chairman of the Franklin County Board of Elections stated to a representative of this Committee, in discussing these complaints, that on April 29, 1960, all of the registrars in Franklin County had met together and at that time were furnished printed forms requiring only that applicants to register give their names, residence, place and date of birth, name of mother and father, and whether they had ever been convicted of any crimes. The chairman of the county board of elections stated that he did not know anything about questions which the individual registrar might ask applicants. "The law says they must satisfy the registrar—any little questions he might ask them. The county board will hear any complaints it receives in writing. Let the applicant come, and the registrar, and we will have a meeting and see who's right. We are treating all alike. We have tried to be fair and square with everybody. I don't think anyone who is capable of registering has been denied the right to register."

It should be noted that G.S. 163–28 was amended in 1957 and the previous language which stated that the applicant must "satisfy" the registrar as to his ability to read and write was eliminated, so as to make it clear that no registrar has had or now has any personal veto over any registration.

Greene County.—On May 21, 1960, three Greene County Negroes filed sworn complaints with this Committee charging that they had been denied the right to register and vote because of their race.

The Greene County registrar, in commenting upon these complaints, stated that he put each applicant through "a little test. Nine or ten Negroes passed and were registered, seven or eight failed. One white person also failed but later came back and took the test again and passed." The registrar stated that he gave each applicant a copy of the North Carolina constitution, allowed him time to read it, and then asked him four questions: (1) How is registration accomplished? (2) What are the general qualifications of voters? (3) What are the procedural qualifications for registration? (4) Can you read and write the Constitution of North Carolina?

"I let them read it and then I asked them the questions," the registrar stated. "The last one is about the only one they could answer. Most of them could say the constitution by heart. I believe that some of them can go right through it from one end to the other."

When anyone could not answer the other questions, the registrar said that he told them to come back later and try again. "I read the ques-

tions out and gave them time to copy them down so they could take them away and study them. I tried to show one just as much favor as the other. Actually, I have had more complaints about the test from white people than from the colored people." The registrar added that he did not think any of the applicants who were denied had been to high school. "Most of the colored people down here can't read and write. They don't go to school. In fact, for the last 4 or 5 years they have just started to school. The school attendance law is not enforced strictly enough."

There were no appeals to the Greene County Board of Elections from these complainants.

Bertie County.—Seven Negroes filed sworn complaints on May 20, 1960, that registrars in Bertie County denied them the right to register because of race. Two of these complainants stated that the registrar turned them down because they did not spell correctly. The registrar in commenting upon this complaint stated to a representative of this Committee that he had during this registration period registered about 40 Negroes while refusing to register some 40 or 50 other Negroes who had applied but who, in his judgment, "were not able to read and write any section of the constitution of North Carolina in the English language."

He stated: "No one was denied because of his race. Some of the 40 or 50 who were refused may have been to high school, but they still couldn't read or write. I don't know how that happens, unless they have had poor schooling." He added that none of those refused gave notice of appeal to the county board of elections, "and now it is too late." The 1957 election statute requires the applicant who is denied registration to file a notice of appeal with the registrar on the same date as the denial, or no later than 5 p.m. the following day.

In another precinct in Bertie County, two of the complainants said that they were high school graduates and could read and write, but that they were denied registration because of "misspelling and punctuation." Two others made similar allegations as to the reason for their denial. This registrar, in commenting on these complaints to a representative of this Committee, stated "they wrote better than they read. They could not read what they had written. I have copies of what they have written. About seven or eight Negroes applied and two of them passed." The registrar added that all of the complainants except one had filed notice of appeal to the Bertie Elections Board and that their appeals would be heard soon.

In a third precinct in Bertie County, another Negro complained that a registrar had refused to permit him to register on the gound of misspelling, although according to the complainant he was a high school graduate with 5 years' service in the Army.

When interviewed by members of this Committee, these registrars discussed these complaints freely and cooperatively. One of them, when asked whether any white people had failed to pass the reading and writing test, replied, "No. I mean I didn't have any to try it. . . ."

One of the Bertie complainants who appealed to the Bertie Board of Elections was asked on the hearing of her appeal to write a section of the constitution as it was read to her. On the advice of her counsel at that hearing, she refused to do so. In superior court her appeal was dismissed on the ground that she had refused to take the literacy test. On appeal the North Carolina Supreme Court said that this complainant was entitled to another chance to register in her precinct in Bertie County. The supreme court said:

> . . . excessive reading and writing may not be required. Writing from dictation is not a requirement. The test may not be administered so as to discriminate between citizens.
>
> We do not intimate or suggest that the registrar of Woodville Township precinct or the Bertie County Board of Elections has in any way acted in bad faith. But it is our opinion that the literacy test as administered by them is unreasonable and beyond the intent of the statute.[33]

APPEAL PROCEDURE AND RECOMMENDATION

All of the complaints received by this Committee in 1959 and 1960 arrived after the 24-hour period for giving notice of appeal had expired. The Committee advised the complainants that their complaints would be forwarded to the U.S. Commission on Civil Rights for such further investigation as might be appropriate, but that the complaints to this Committee were no substitute for appeals from the registrar to the county board of elections and thereafter to the superior court or the Supreme Court of North Carolina, if the applicant was so advised.

Any person who is denied registration for any reason may appeal the decision of the registrar to the county board of elections. The procedure is simple—he must hand the registrar a paper setting forth his name, age, and address, and the phrase "I appeal to the county board of elections because I have been refused registration though qualified." Other words to the same effect will be sufficient.

He must sign this himself. It must be delivered to the registrar on the day of the denial or by 5 p.m. on the day following denial. If the denial takes place on Saturday, G.S. 103–5 would permit the notice of appeal to be delivered up until 5 p.m. on the Monday following.

[33] *Bazemore* v. *Bertie Board of Elections*, 254 N.C. 398, 406 (1961).

That is all he needs to do, but it must be done if his right to register is to be established. Most people wait too long. Writing the State board of elections or the county board of elections, the Commission on Civil Rights, or anyone else, is useless unless that first step is taken.

This procedure has been clearly stated in the North Carolina elections laws since 1957, when the general assembly amended the statute to make plain just what the person desiring to register must do if denied registration. The county board will then set a time for the applicant to appear, and if he is qualified the board will register him. If not, he can then give written notice of appeal to the superior court, which can order him registered if he is qualified. But the official first step is this short written statement handed to the registrar any time on the day of or following the denial.

If this simple procedure is followed, it will be far more effective than petitions, investigations, new laws, or demonstrations in the presence of any particular registrar who appears reluctant to register anyone.

We would recommend to the general assembly that the election law be amended to require the State board of elections to furnish the registrars an appropriate notice, to be posted at each place of registration, advising applicants in simple language how to give notice of appeal and the time limit for giving it. In addition, we would also recommend to the general assembly that consideration be given to extending the time for giving such notice, inasmuch as a period of 24 hours is perhaps shorter than that permitted for appeals from other administrative decisions. We realize that there may be some factors requiring a relatively short time in order that registration may be completed before the actual day of the election, but a period of approximately 24 hours seems very short to foreclose a person's right of franchise. If in fact such a short time for appeal leaves the record bare of timely appeals, the impression is given that there has been no discrimination because no appeals have been taken. If later complaints are made in other channels, the answer is given: This is not the way to raise the question; you should have appealed to the county board of elections.

There are some, of course, who would not appeal, regardless of the time limit, and even if they felt themselves aggrieved, because of the trouble it would take, the prospect of a hearing and a test before a county board, and a feeling of "why bother with all this just to register." We concur in former Governor Hodges' endorsement of public advertisements calling for greater participation in politics by the people of North Carolina by encouraging them to register.

Even more important, however, than publicizing the procedure for appeal and allow a longer period for notice of appeal to be given, is the real need for reconsideration, revision, and standardization of the literacy test. Quite apart from making any judgment on the complaints

from Franklin, Bertie, Greene, Northampton, and Halifax, it is apparent from the reports from all of the other county boards of elections that the administration of the literacy tests is anything but standard and uniform, varying from registrar to registrar and from county to county. In the *Bazemore* case, the North Carolina Supreme Court raised the question as to whether the State board of elections might prescribe rules and regulations for administering this test throughout the State.

A good electoral system must not only provide a system of judicial review for variations in the judgment and methods of the election officials, but those methods should be as uniform and as equally applicable to all persons in the body politic as it is possible to devise.

There were no voting complaints filed with this Committee after the May registration prior to the general election in November 1960. This fact, plus the fact that there have been no complaints from 95 out of the 100 counties, may mean that the disproportionately low registration and low voting of Negroes in North Carolina is due more to apathy or, as the registrars in Bertie and Greene Counties suggested, to poor schooling and poor school attendance, than to election officials' arbitrary denial of the right to register on account of race. Even if there were only one case of denial of the right to vote on account of race, all of us as citizens of North Carolina should protest. When there is disproportionately low registration and low voting of any large segment of our citizenry, we should seek out the cause and correct it. To have a democracy we must have the consent of the governed. The ballot is the vehicle of consent.

VOTER TURNOUT

Figure 3 and table 11 (pp. 40, 41) show the places or sections of the State where voter turnout was highest and lowest. Most of the counties with the highest voter turnout were located in the mountains, but some were located along the coast as well. Voter turnout was lowest on the coastal plain in the counties with the lowest percentage of registration of nonwhite (fig. 1, p. 23), and the highest concentration of nonwhite population (fig. 2, p. 24).

For the State as a whole, 54 percent of the adult population voted in the presidential election in 1960. This is an increase of six points over the percentage which voted in 1956, but only an increase of one point over 1952.

Citizens' participation in North Carolina's general elections, which is greater than in its primaries, appears to be increasing gradually, but is still far below the high voting levels of the late 19th century. In 1888, 84 percent of the male inhabitants over 21 voted in the presidential election; in 1892, 75 percent; in 1896, 85 percent; in 1900, 70 percent. As figure 4 (p. 42) shows, participation fell off sharply in subsequent general elections as white supremacy and the one-party system took hold. It hit an alltime low of 35 percent in 1948.

The 1960 figure of 54 percent voter turnout in North Carolina is to be compared with the national average of 64 percent. Furthermore, this very national average is held down to 64 percent by the low voter turnout in the Southern States—only 40 percent.

The highest average turnout of potential voters in the presidential elections of 1952, 1956, and 1960 occurred in the Rocky Mountain and midwestern farm States, while the lowest occurred in the South. North Carolina lies about midway between the two extremes of voter turnout.

TABLE 10.—*Civilian population casting votes for presidential electors*

Percent of voting age casting ballots:	*1952*	*1956*	*1960*
The United States	63	60	64
The South [1]	37	36	40
North Carolina	53	48	54

[1] States of the Confederacy.

While North Carolina's turnout of potential voters in these elections has lagged behind the national average and behind the majority of States in the Nation, it has been greater than in the other Southern States.

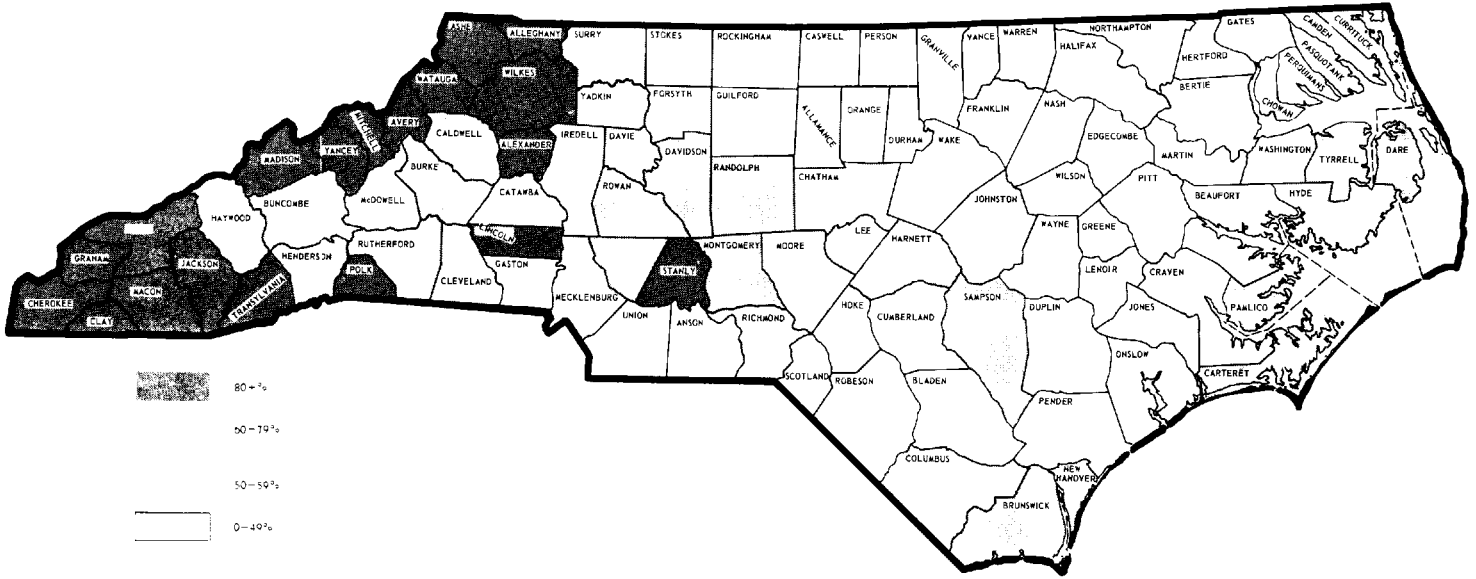

FIGURE 3.—*Electoral turnout, 1960 presidential election.*

TABLE 11.—*1960 election turnout as percentage of total adult population*

County	*Percent*	*County*	*Percent*
Alamance	55.0	Jones	45.4
Alexander	95.4	Lee	47.5
Alleghany	91.7	Lenoir	38.2
Anson	43.2	Lincoln	84.9
Ashe	87.4	McDowell	74.9
Avery	85.3	Macon	84.4
Beaufort	43.4	Madison	98.6
Bertie	34.3	Martin	48.7
Bladen	43.8	Mecklenburg	51.1
Brunswick	70.0	Mitchell	79.7
Buncombe	62.5	Montgomery	66.6
Burke	76.1	Moore	55.9
Cabarrus	60.0	Nash	42.9
Caldwell	76.3	New Hanover	51.3
Camden	43.2	Northampton	39.3
Carteret	52.4	Onslow	20.3
Caswell	41.4	Orange	48.6
Catawba	77.4	Pamlico	52.1
Chatham	58.9	Pasquotank	41.7
Cherokee	86.5	Pender	42.1
Chowan	38.3	Perquimans	40.4
Clay	98.4	Person	43.9
Cleveland	51.7	Pitt	43.0
Columbus	57.3	Polk	86.5
Craven	33.3	Randolph	71.0
Cumberland	23.5	Richmond	53.7
Currituck	52.3	Robeson	35.0
Dare	62.0	Rockingham	50.8
Davidson	68.9	Rowan	61.3
Davie	74.3	Rutherford	68.8
Duplin	48.8	Sampson	60.0
Durham	47.6	Scotland	38.0
Edgecombe	35.3	Stanly	81.0
Forsyth	51.5	Stokes	76.0
Franklin	40.0	Surry	67.5
Gaston	26.7	Swain	99.9
Gates	38.5	Transylvania	85.4
Graham	92.1	Tyrrell	51.8
Granville	36.1	Union	46.6
Greene	43.6	Vance	43.1
Guilford	46.9	Wake	42.3
Halifax	36.7	Warren	37.6
Harnett	51.6	Washington	47.6
Haywood	74.3	Watauga	90.8
Henderson	69.9	Wayne	28.4
Hertford	31.7	Wilkes	87.2
Hoke	32.6	Wilson	35.2
Hyde	50.0	Yadkin	77.5
Iredell	54.6	Yancey	89.5
Jackson	83.2	North Carolina turnout	54.0
Johnston	50.0		

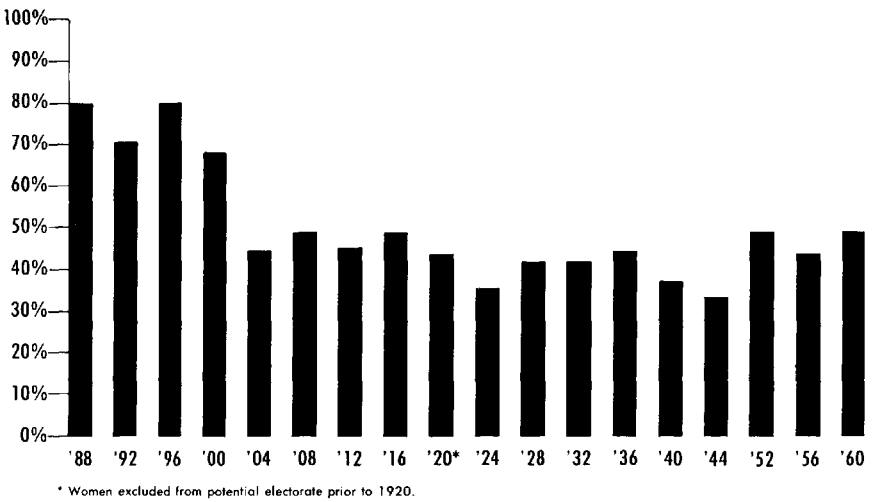

FIGURE 4.—*Participation by voters in presidential elections, 1888–1960.*

Article II, Section 3, of the North Carolina constitution establishes a senate of 50 members. Section 4 states "that each senate district shall contain, as near as may be, an equal number of inhabitants." Districts are to be altered by the general assembly at the first session after each census.

The representative character of the present senate is shown in table 12 (p. 45). The "ratio" for each district was obtained by dividing 91,123 (one-fiftieth of the State population) by the population per senator for that district. Thus a ratio of 1.00 would represent an equal share of senatorial representation; a ratio in excess of 1.00 indicates overrepresentation; and a ratio of less than 1.00 indicates underrepresentation. The extremes are the 29th district with a ratio of 2.02 and the 20th district with a ratio of 0.34.

In spite of the wide differences in the representation in the present senate, it is still more nearly representative of population than the present house in which each of the 100 counties has 1 representative and the 20 remaining representatives are allotted to certain counties according to population.

There has been no reapportionment of the senate since 1941, despite the constitution and two censuses.

The overrepresentation of certain counties if all those of voting age could and did vote is illustrated by figure 5 and accompanying table (pp. 44, 45). Figures 1 and 3 (pp. 23, 40) show the counties with lowest percentage of nonwhite registration and the lowest voter turnout Obviously, the voters who do vote in those counties where all three factors are combined enjoy even greater "overrepresentation."

The high voter turnout of the rural western counties at least partially compensates for their overrepresentation in legislative seats. When the overrepresentation in the general assembly is combined with low voter turnout and low nonwhite registration, this suggests that the dice of State politics are loaded in favor of the whites in the black belt.

CONCLUSIONS

From the reports of the county boards of elections, the series of hearings held by this Committee, and the nature of the complaints received by the Committee, the analyses of voter turnout and the index of representative character of the State senate, all of which are set out in detail in the body of this report, the following conclusions are indicated.

1. The registered electorate of North Carolina remains overwhelmingly and disproportionately white.

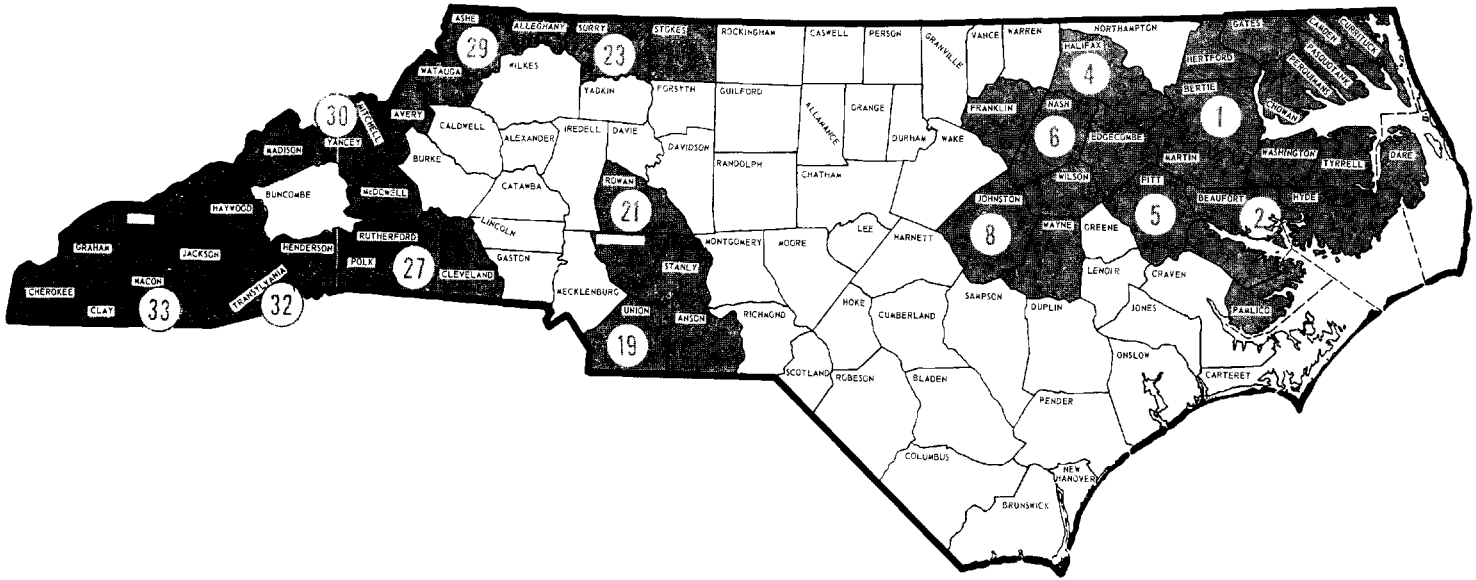

FIGURE 5.—*State senate districts overrepresented by at least 20 percent.*

TABLE 12.—*Representative character of State senate, 1960 census*

Districts	*Senators*	*Population*	*Population per senator*	*Representation ratio*
1. Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, Perquimans	2	115, 058	57, 529	1. 58
2. Beaufort, Dare, Hyde, Martin, Pamlico, Tyrrell, Washington	2	102, 711	51, 355	1. 77
3. Northampton, Vance, Warren	1	78, 465	78, 465	1. 15
4. Edgecombe, Halifax	2	113, 182	56, 591	1. 61
5. Pitt	1	69, 942	69, 942	1. 30
6. Franklin, Nash, Wilson	2	147, 473	73, 736	1. 24
7. Carteret, Craven, Greene, Jones, Lenoir, Onslow	2	255, 441	127, 720	. 72
8. Johnston, Wayne	2	144, 995	72, 497	1. 26
9. Duplin, New Hanover, Pender, Sampson	2	178, 533	89, 266	1. 02
10. Bladen, Brunswick, Columbus, Cumberland	2	246, 550	123, 275	. 74
11. Robeson	1	89, 102	89, 102	1. 02
12. Hartnett, Hoke, Moore, Randolph	2	162, 822	81, 411	1. 12
13. Chatham, Lee, Wake	2	222, 428	111, 214	. 82
14. Durham, Granville, Person	2	171, 499	85, 749	1. 06
15. Caswell, Rockingham	1	89, 541	89, 541	1. 02
16. Alamance, Orange	1	128, 644	128, 644	. 71
17. Guilford	1	246, 520	246, 520	. 37
18. Davidson, Montgomery, Richmond, Scotland	2	162, 286	81, 143	1. 12
19. Anson, Stanly, Union	2	110, 505	55, 252	1. 65
20. Mecklenburg	1	272, 111	272, 111	. 34
21. Cabarrus, Rowan	2	150, 954	75, 477	1. 21
22. Forsyth	1	189, 428	189, 428	. 48
23. Stokes, Surry	1	70, 519	70, 519	1. 30
24. Davie, Wilkes, Yadkin	1	84, 801	84, 801	1. 08
25. Catawba, Iredell, Lincoln	2	164, 531	82, 265	1. 11
26. Gaston	1	127, 074	127, 074	. 72
27. Cleveland, McDowell, Rutherford	2	137, 881	68, 940	1. 32
28. Alexander, Burke, Caldwell	1	117, 878	117, 878	. 78
29. Alleghany, Ashe, Watauga	1	45, 031	45, 031	2. 02
30. Avery, Madison, Mitchell, Yancey	1	57, 140	57, 140	1. 60
31. Buncombe	1	130, 074	130, 074	. 70
32. Haywood, Henderson, Jackson, Polk, Transylvania	2	121, 421	60, 710	1. 50
33. Cherokee, Clay, Graham, Macon, Swain	1	51, 615	51, 615	1. 77
Total	50	4, 556, 155	.....	.....

2. The apparent increase in political activity since 1958 has been largely confined to whites.

3. The proportion of nonwhites registered tended to go up in 1960 in those areas which had low nonwhite registration in 1958, and to decline in counties which reported high nonwhite registration in 1958. Thus, there would appear to be a gradual "evening out" of nonwhite registrations throughout the State.

4. The procedures followed by registrars to determine literacy vary widely from registrar to registrar, and from county to county. There is no standardized procedure for administering this test throughout the State.

5. When a person is denied the right to register, he must give a written notice of appeal to the registrar before 5 p.m. of the date following the denial. This is a very short time to give notice, and the requirement is not well known by the citizenry. In most of the complaints received by this Committee, the complainant had waited too long to give notice of appeal. This means that complaints to this Committee or to the State board of elections, or even to the county boards of elections, are ineffectual, as a matter of law, because the initial simple written notice of appeal to the registrar was not given within the time prescribed by the 1957 North Carolina statute. A simple notice of how to appeal should be posted at every place of registration. This would eliminate a great deal of misunderstanding and confusion, and would be more effective than petitions, complaints, investigations, new laws, or demonstrations in the presence of any particular registrar who appears reluctant to register a person who believes himself to be qualified.

6. Some counties which have disproportionately low nonwhite registration and disproportionately low voter turnout also have disproportionately high representation in the general assembly. These are, for the most part, counties with the highest concentration of nonwhite population.

7. We believe that in respect to voting, the people of North Carolina are in agreement that no citizen of our State should be denied the right to register, vote, and have that vote counted, on account of his race, religion, or national origin.

8. Where registrars have arbitrarily imposed more difficult literacy tests on Negro applicants than on white, or where there has been discrimination against Negroes in respect to their right to register and to vote, such denial of a basic right of citizenship does not have the approval, either open or tacit, of the vast majority of the officials and citizens of our State. We believe that where such discrimination has been practiced, it has already disappeared, or soon will disappear.

The connection between representation, turnout, and the qualification of voters must always concern the citizens of our State. This is nothing new. Long before the Revolution, men debated these considerations.

Many changes have been made in both language and practice of the law.

Our history helps us understand our present situation and measure the extent to which we have yet to make real the North Carolina Declaration of Rights adopted at Halifax in 1776:

> That all political power is vested in, and derived from, the people only.
>
> That no men, or set of men, are entitled to exclusive or separate emoluments or privileges from the community. . . .
>
> That elections of members to serve as representatives in general assembly ought to be free.

III. Administration of Justice

> There can be no such thing as one system of justice for one race and another for the other.
>
> —Gov. O. Max Gardner, 1930.

Any meaningful appraisal of current Negro participation in the instrumentalities of justice must take into account that 64 years ago the participation by Negroes in North Carolina law enforcement and administration was the most politically sensitive point of attack in the all-out, unabashed white supremacy political campaign of 1898. This is an important reference point because the attitudes of that day, deliberately fanned to white heat in the rough and tumble political campaigns of 1898 and 1900, have been reflected in North Carolina's attitude in racial matters in all the succeeding years.

Even though the specific community "memory" of those days has steadily dimmed as the participants passed on and as the hearers-at-first-hand have begun, by reason of age, to pass from positions of influence, nevertheless, a bedimmed recollection of Negro participation in all areas of government in those days continues to provide a hard core of white resistance to fuller participation by Negroes today.

Actually the Reconstruction, Radical Republican or "Carpetbag" government lasted only about 2 years in North Carolina, from 1868 to 1870. After 1870, the Conservative (later called Democratic) Party was in control of the general assembly until 1894. Likewise, the Democrats elected the Governors from 1876 to 1894. During all of these years Negroes held some offices and both Republican and Democratic parties received Negro votes, though the Republicans counted much more heavily on the Negro vote. As late as 1891, the Democratic legislature, referring to the earlier period of antagonism of the races and instability of society, declared that "now happily that period has passed and comparative contentment, confidence, and repose have been established." [1]

By the next year, however, the Populist or People's Party had begun to show political progress as a third party consisting principally of farmers pledged to railroad regulation, graduated income tax, a limitation of interest to 6 percent, a 10-hour workday for labor, and local self-government.

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[1] *Public and Private Laws and Resolutions* 653 (1891).

In 1894 the eminently practical, if superficially incongruous, alliance of Populist and Republican parties in North Carolina captured the legislature. This alliance was called "Fusion." The voting support of the Negroes had been an essential element in Fusion victory and there followed an increase in the number of Negro officeholders. Many of these offices were connected with the administration of justice.

The way that participation was used to evoke resentment from the white majority is reflected in the pages of the Raleigh News and Observer during the political campaign of 1898. The paper was avowedly the voice of the Democratic Party. It was the rallying point of the white supremacy political campaign by which the deposed Democratic Party fought successfully to "defuse" the Fusion. Clearly the Democratic politicians thought then that the way to win the election was to harp on Negroes serving as constables, policemen, and magistrates. In the issue of Oct. 8, 1898, for example, an editorial entitled "Does Negro Rule Exist?" stated that in Craven County 27 magistrates and all 5 of the county's deputy sheriffs were Negroes. New Bern had 5 Negro policemen; in New Hanover County there were 40 Negro magistrates; in Wilmington, 13 out of 24 policemen were Negroes; Richmond County had 11 Negro magistrates, and Lenoir County had 4; in Wake County where 1 of the deputy clerks of court was a Negro, a Negro deputy sheriff had served summons on a number of white persons including the mayor of Raleigh; in Anson County a Negro magistrate had tried a white citizen upon a charge made by another Negro; in Sampson County a white farmer had been arrested on a warrant issued by a Negro magistrate; and in Warren County a Negro magistrate had issued a warrant and delivered it for service to a Negro constable who deputized another Negro to help him serve it. Neither the performance of these officers nor the merits of the cases nor their outcome were mentioned by the editor.

Many other articles of the time were directed at participation by Negroes in law enforcement and lower level judiciary posts, and the political reaction indicated greater concern by the white majority at such participation in the instrumentalities of justice than in legislative and executive functions of government.

The most detailed study of Negro officeholding in the period 1894–1901 is Helen Edmonds, *The Negro and Fusion Politics in North Carolina.* Its conclusion is that more Negroes held minor offices in this period than in the 1870's and 1880's, but that there was no extensive office-holding by Negroes and no "Negro domination."

> One Negro was elected to Congress; ten to the state legislature; four aldermen were elected in Wilmington, two in New Bern, two in Greenville, one or two in Raleigh; one county treasurer and one county coroner in New Hanover; one register of deeds in Craven;

one Negro jailer in Wilmington; and one county commissioner in Warren and one in Craven. There were a few Negroes in minor positions as assistant deputies to the sheriff, register of deeds, and coroner. The largest number of Negro officeholders was included under magistrates, who were largely powerless under the Fusion county government law. Through Federal patronage one Negro was collector of the port of customs in Wilmington, one was deputy collector of internal revenue in Raleigh, and some were postmasters. But the public offices held by Negroes were neither sufficiently important nor numerous to warrant the Democratic cry of Negro domination.[2]

Editor Daniels himself, in 1941, viewed the campaign of 1898 in a different light: [3]

> *The News and Observer's* partisanship was open, fierce, and sometimes vindictive, and was carried in news stories as well as in editorials . . . The paper was cruel in its flagellations. In the perspective of time, I think it was too cruel . . . Whenever there was any gross crime on the part of Negroes, *The News and Observer* printed it in a lurid way, sometimes too lurid, in keeping with the spirit of the times . . . We were never very careful about winnowing out the stories or running them down . . . they were played up in big type.

Be that as it may, the white supremacy campaign of 1898, which generated a very considerable part of its steam by allusions to Negro participation in the administration of justice, brought victory to the Democrats. Whatever the actual facts, what the white people of the State were told or came to believe, even if it was only partially true, is a critical element in understanding subsequent attitudes.

After the campaigns of 1898 and 1900, the Populist Party faded away, most of its followers voting Democratic, and the Republican Party was so sensitive to the "Negro domination" attack that it adopted a "lily white" policy in 1902, excluding all Negro delegates to its State convention. After the election laws were changed to require proof of literacy, except for those whose ancestors voted before 1867, Negro voting in elections all but ceased for many years.

For a long period after 1900 no Negroes participated in the instrumentalities of justice. For example, until the 1930's no Negro served as policeman or deputy sheriff in the State. The following figures reveal the story on policemen:

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[2] Edmonds, *The Negro and Fusion Politics in North Carolina* 219–20 (1951).
[3] Daniels, *Editor in Politics* 147, 145, 253, 295–96 (1941).

U.S. Census: Policemen in North Carolina

Year	*White*	*Negro*	*Other*
1920	659	0	1
1930	1, 340	2	4
1940	2, 155	3	3
1950 [1]	3, 192	68	3

[1] Includes sheriffs and marshals.

Thus in historical perspective, Negro participation in the instrumentalities of justice must be seen not as a steady and increasing climb from zero, but as an eruption into fairly extensive (even if not in any way proportionate) participation between 1868 and 1898, followed by an overwhelming, sudden, and complete retrogression, engendered by the furious political overthrow of "Fusion"; and from that new point zero there was a long delay before reentry of the Negro into any of these agencies. Even the gradual climb since World War II has been more difficult because of the tensions and turmoil of the advance and sudden retrogression of the late 19th century.

In the summer of 1961 the Committee surveyed the extent to which Negroes currently participate in the various instrumentalities of justice in North Carolina. The "instrumentalities" include law enforcement agencies, prosecuting agencies, court administrative offices, and penal institutions.

The enforcement agencies embrace the highway patrol, bureau of investigation, county sheriff departments, and city police. The prosecuting agencies include the attorney general and the solicitors or prosecutors of superior, county, and city recorders' courts. The administrative offices of the courts include the offices of the clerks of superior, county, and city courts, and practicing attorneys. The penal institutions include the various branches of the State prison system, but no county, city, or town jails.

Information was secured from all of the appropriate State agencies, but for the county and city agencies, the survey represents a sampling of counties and cities selected for a comprehensive and balanced picture. The sample areas cover the coastal, Piedmont, and mountain sections, sparsely settled and more densely populated rural areas, and also the intermediate and largest urban areas.

Sample areas—urban

1. Cities with population in excess of 100,000:
   - Charlotte
   - Greensboro
   - Winston-Salem
2. Cities with population between 25,000 and 79,000:
   - Asheville
   - Burlington
   - Durham
   - Fayetteville
   - High Point
   - Kinston
   - Rocky Mount
   - Wilmington

Sample areas—rural

1. Counties with population in excess of 30,000:

Buncombe	Mecklenburg
Burke	Nash
Caldwell	Pitt
Cartaret	Robeson
Durham	Rowan
Edgecombe	Rutherford
Forsyth	Wayne
Guilford	Wilson
Halifax	

2. Counties with less than 28,000 population:

Dare	Stokes
Martin	Swain
McDowell	Warren
Montgomery	

There was prompt, courteous, and apparently accurate reporting by a majority of the officials to whom questionnaires were submitted. Not all of the questionnaires were completed despite two letters of request. Overall response was roughly 75 percent.

ENFORCEMENT AGENCIES

At the State level, neither of our statewide law enforcement agencies, State highway patrol and the State bureau of investigation has any Negroes among its personnel. The reason given by the highway patrol for nonemployment of Negroes is that four reported applicants failed their examination. The Bureau of Investigation ascribed nonemployment of Negroes to lack of qualification. No indication was given of how many, if any, applications had been made.

At the county level, questionnaires were sent to 24 sheriffs and returned or otherwise answered by 11. Three counties now employ a total of seven Negro deputies. These three counties are all among the most heavily populated in the State. The prevailing practice among these sheriffs' departments is to put no restriction on the arresting powers of the Negro deputies. One sheriff notes that his Negro deputies customarily arrest only Negroes, and another sheriff assigns his Negro deputies to duty in principally Negro residential areas. Four of those sheriffs' offices which reported employing no Negroes give "no applicants" as the reason. The remaining four give no reason.

At the city level, questionnaires were sent to 11 chiefs of city police departments and 9 of these made generally complete reports. All of

these employ Negro policeman, a total of 70 of all grades, including 6 noncommissioned officers of the rank of sergeant or above, 6 detectives, and 1 commissioned officer. It is assumed that this fairly limited sampling would indicate a substantial increase over the reported statewide total of 79 Negro policemen of all grades in 1952 as reported in "The State Magazine," February 9, 1952, or even the 117 in 1955 as reported by John Larkins.[4] Since 1955 Negro law enforcement officers including policewomen and school guards have, from time to time, according to various newspaper reports, been employed in the following cities and towns:

Place	*Uniformed policemen and policewomen*	*Detectives*
Ahoskie	2	.....
Asheville	6	.....
Burlington	4	.....
Carrboro	2	.....
Chapel Hill	4	.....
Charlotte	23	.....
Concord	1	.....
Durham	17	2
Dunn	2	.....
Fayetteville	8	.....
Gastonia	6	.....
Goldsboro	2	.....
Greensboro	15	.....
Greenville	3	.....
High Point	7	2
Kinston	5	.....
Lenoir	2	.....
Morganton	1	.....
Mount Gilead	1	.....
Oxford	2	.....
Raleigh	12	.....
Reidsville	2	.....
Rocky Mount	5	.....
Sanford	1	.....
Salisbury	2	.....
Statesville	1	.....
Wilson	3	.....
Winston-Salem	19	.....
Total	158	4

The practice reported by police departments employing Negro policemen is to assign them to principally Negro residential areas but to put no restrictions upon their powers of duties of arrest based upon either the identity of the person arrested or the nature of the crime.

The conclusion is that in the more populous counties and in practically every city of the State, Negroes are being employed or may be expected

[4] Larkins, *The Negro Population of North Carolina* (1957).

to be employed in the immediate future as deputy sheriffs or policemen in limited numbers not approximating the proportion of Negroes to total population, but in numbers required for policing essentially Negro residential areas. Opportunities for advancement exist and have been realized. All the evidence is that public acceptance, after initial strangeness, has been good. An increasing use of merit systems in police personnel practices also indicates the likelihood of some further increases in the number of Negro policemen or policewomen. There does not appear to be any concerted drive by Negroes for such employment.

PROSECUTING AGENCIES

Attorney general.—At the State level, the attorney general reported 24 attorneys on his staff, none of whom were Negroes. All are appointed by the attorney general. He is elected by statewide vote. The reason given for not employing any Negroes in the attorney general's office was that "no vacancies existed." The report did not indicate whether or not there had been any Negro applicants.

Superior court solicitors.—Twenty-one questionnaires were sent out and 17 were returned. The district solicitor holds an elective position created by the North Carolina constitution. There is no State statute providing assistants of any kind to the solicitors paid by the State, but in a few districts a few counties provide assistant solicitors. These are appointed by the county commissioners. Negro attorneys in private practice sometimes appear with the solicitor in the role of private prosecutors. There are no Negroes employed by the State or counties in any of the solicitors' offices. The reason given was that none had applied. One solicitor reported that the only participation by Negroes was that they made up the majority of the defendants prosecuted in his district.

A Negro has never been elected a superior court solicitor in North Carolina during this century. There appears to be no chance at the present time of such an election. The office of assistant solicitor would seem to provide an excellent place for a Negro to take part in the prosecuting agencies, but it should be pointed out that the districts and counties in the State have been slow to provide district solicitors with assistants, white or nonwhite, even though the respondents to the questionnaires indicated that the solicitors in the more populous districts were understaffed.

At the county level, 21 questionnaires were sent out and 11 returned by solicitors of county recorders' courts. There were no Negroes reported serving as solicitors in any of these courts. This is an elective office and there is little chance of a Negro being elected solicitor. None of the solicitors answering had any employed assistants or clerical help.

At the level of city recorders court, 11 questionnaires were sent out and 4 returned by solicitors of these courts. There were no Negroes reported serving as solicitors in any of these courts. This post usually is elective or appointive by the town council, which in turn is elective. None of those answering had any assistants or clerical help.

ORGANIZATION OF THE COURTS

Judges

No Negro has ever served as superior or supreme court judge. A few Negroes have in recent years been elected or appointed justices of the peace in some of the larger cities.

Hon. Lacey Maynor, a Lumbee Indian who resides at Pembroke, is Judge of Maxton Recorders Court in Robeson County, having won an election in which whites and Negroes, as well as Indians participated.

Juries

In recent years, in most counties, Negroes have regularly been included in jury panels, in both the State and U.S. courts. As late as 1961 in Catawba County, a Negro defendant successfully challenged the indictment against him on the ground that Negroes had been systematically excluded from the grand juries in that county. Judge J. Will Pless, Jr., stated: "Upon this showing, there has been no Negro grand juror serving in Catawba County for 11 years and only about a dozen Negroes have served on trial juries. I have no choice therefore but to sustain the motion." *State* v. *Hewitt,* Catawba Superior Court, Feb. 1961 term.

In a 1948 case from Bertie County, *State* v. *Speller,* 229 N.C. 67, the evidence showed that the names of Negroes in the box from which the jury lists were drawn were always printed in red while the names of whites were printed in black. Although Negroes comprised 35 to 40 percent of the taxpayers in the county, and approximately 60 percent of the population, it was "common knowledge and generally known that Negroes do not serve and have not served on grand or petit juries in Bertie County" and that none had ever been summoned for jury duty. The trial judge found that there had been no intentional discrimination against the colored race in the selection of jurors for that term of court, but the North Carolina Supreme Court reversed on the grounds that the trial judge's finding was without support. There was no statute requiring the names to be printed in different colors or requiring the county

officials to segregate or exclude the Negroes from the jury. But as the Court had said as early as 1902 in a case from Mecklenberg: [5]

> . . . the fact that it may have been caused through the administrative officers of the State, instead of by legislative enactment, does not relieve the situation. It would still be a wrong . . . It is incomprehensible that while all white persons entitled to jury trials have only white jurors selected by the authorities to pass upon their conduct and their rights, and the Negro has no such privilege, the Negro can be said to have equal protection with the white man. How can the forcing of a Negro to submit to a criminal trial by jury drawn from a list, from which has been excluded all of his race purely and simply because of color, although possessed of the requisite qualifications prescribed by law, be defended? Is not such a proceeding a denial to him of equal protection? There can be but one answer, and that is that it is an unlawful discrimination. A wrong then has been done against the defendant if the facts set forth in the motion and affidavit be true, and in this age of the world there must be a remedy for every wrong.

In many if not most counties, Negroes did not participate to any appreciable extent in juries for many years prior to 1935 when the U.S. Supreme Court decided the *Scottsboro* cases.[6] After that, according to many references in North Carolina Supreme Court reports, county commissioners included more Negroes on the jury lists.

For example, in *Miller* v. *State,* 237 N.C. 29 (1952), *cert. denied,* 345 U.S. 930 (1953), it is pointed out that "Ever since 1935 the Board of Commissioners of Beaufort County has earnestly endeavored to select for jury service in the county without regard to their race or color . . . There has been an 'observable increase' in the number of Negroes called" since 1937. Again in regard to Mecklenburg, ever since 1936 "we have had colored men drawn and on the civil jury frequently." *State* v. *Walls,* 211 N.C. 487 (1937), *cert. denied,* 302 U.S. 635 (1937).

As to New Hanover County, "a number of names of the Negro race were placed" in the jury box in 1936. *State* v. *Henderson,* 216 N.C. 99 (1939).

> In October 1946 Forsyth County with its large Negro population at that time had a jury pool of 10,622 white and 255 colored citizens. At that time a Sheriff, then in office for ten years, testified that he had summoned only about 12 Negroes for jury service in that time . . . Before [1949] no Negro had served on a Vance County jury in recent years. No Negro had ever been summoned. That this was the result of unconstitutional discrimination is made

[5] *State* v. *Peoples,* 131 N.C. 784, (1902).
[6] *Norris* v. *Alabama* 294 U.S. 587 (1935).

clear by the fact that Negroes constitute 45% of the county's population and 38% of its taxpayers . . . Negroes constituted about 47% of the population of [Pitt] County and about one-third of the taxpayers. But the jury box of 10,000 names included at most 185 Negroes. And up to and including the Daniels' trial no Negro had ever served on a grand jury in modern times.[7]

In 1947, G.S. 9–1 was amended to permit women to serve on juries and to eliminate the requirement that only those who had paid all taxes for the preceding year could be jurors.

The pool of eligible jurors was thus enlarged. This enlargement and the practice of selecting jurors under the new statute worked a radical change in the racial proportions of drawing jurors in Forsyth County. . . In the two years 1949 and 1950 the percentage of the Negroes drawn on grand jury panels in Forsyth County varied between 7% and 10% of all persons drawn. In 1950 the percentage of Negroes drawn on petit jury panels varied between 9% and 17% of all persons drawn . . . We recognize the fact that these lists have a higher proportion of white citizens than of colored, doubtless due to inequality of educational and economic opportunities. . . . In Vance County, where the special venire for Speller's trial was drawn, the names of substantial numbers of Negroes appeared thereafter in the jury box. 145 Negroes out of a total of 2,126 names were in this jury box. As this venire was the first drawing of jurors from the box after its purge in 1949 following the new statute and *Bunson* v. *North Carolina* decided here March 15, 1948, 333 U.S. 851, the long history of alleged discrimination against its Negro citizens by Vance County jury commissioners is not decisive of discrimination in the present case . . . The fact that causes further consideration in this case of the selection of prospective jurors is that the tax lists show 8,233 individual taxpayers in Vance County of whom 3,136 or 38% are Negroes In the jury box involved, selected from that list, there were 2,126 names. Of that number 145 were Negroes, 7%. This disparity between the races would not be accepted by this court solely on the evidence of the clerk of the commissioners that he selected names of citizens of "good moral character and qualified to serve as jurors, and who had paid their taxes." It would not be assumed that in Vance County there is not a much larger percentage of Negroes with qualifications of jurymen. The action of the commissioner's clerk however in selecting those with "the most property," an economic basis not attacked here, might well account for the few Negroes appear-

[7] *Brown* v. *Allen*, 344 U.S. 443, 470, 551–52 (1952).

ing in the box. Evidence of discrimination based solely on race in the selection actually made is lacking.[8]

Other cases involved the same question of exclusion of Negroes from the juries in Warren, Union, Durham, Columbus, Wilson, Jones, and Rowan counties.[9]

The North Carolina court has stated repeatedly that the right to be tried by jury chosen from a panel from which the members of the defendant's race have not been systematically excluded is not merely a right under the Federal Constitution but under the North Carolina constitution as well, particularly article I, section 17, which declares that "no person ought to be . . . in any manner deprived of his right, liberty, or property, but by the law of the land."

The law neither expects nor requires that a pro rata number of Negroes or whites be on every jury. If from all of the qualified jurors in the county a jury panel is chosen which, by chance, includes a disproportionate number of whites or Negroes, no one has a right to complain; but if the pool, box, or list from which the drawing is made does not contain a representative number of each race, then the absence of jurors of that race when the jury is drawn is the result not of chance but of design.

Jurors are to be selected without inclusion or exclusion because of race. In a civil case tried in 1876 in Northampton County, the plaintiff, a white man, appealed from a verdict for the defendant, a colored man. At the beginning of the trial, only one of the jurors was colored and this one the plaintiff excused. Thereupon, there being no other jurors left in the panel, the judge requested the sheriff to summon from the bystanders a colored person to serve as juror. Later, the plaintiff excused a white juror and another colored juror was summoned in his place. On appeal the judgment for the defendant was affirmed, but the North Carolina Supreme Court expressly disapproved the trial judge's action: [10]

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[8] *Id.* at 470, 473, 479, 481.

[9] *State* v. *Speller*, 230 N.C. 345 (1949); *State* v. *Perry*, 248 N.C. 334 (1958) and again 250 N.C. 119 (1959), *cert. denied*, 361 U.S. 833 (1959); *State* v. *Cooper*, 205 N.C. 657 (1933); *State* v. *Kirksey*, 227 N.C. 445 (1947); *State* v. *Reid*, 230 N.C. 561 (1949); *State* v. *Koritz*, 227 N.C. 552, *cert. denied*, 332 U.S. 768; *State* v. *Brown*, 233 N.C. 202 (1950), *cert. denied*, 341 U.S. 943; *State* v. *Brunson*, 227 N.C. 558 (1947); *rev'd* by U.S. Court 333 U.S. 851; new trial ordered on mandate from U.S. Supreme Court in 229 N.C. 37 (1948); *State* v. *Bell*, 212 N.C. 20 (1937); *State* v. *Sloan*, 97 N.C. 499 (1887); *State* v. *Daniel*, 134 N.C. 641 (1904). Significantly, no such case reached the N.C. Supreme Court during the period 1904–1933 when Negroes neither voted nor held public office.

In *State* v. *Dunlap*, 65 N.C. 441 (1871), the defendant secured a removal of his murder trial to the Federal Court on ground that he was a Negro Republican and the victim was a Democrat and Mecklenburg County was then governed by a Democratic Board of Commissioners who prepared the jury list. After the U.S. Supreme Court decision in the *Slaughterhouse Cases*, 83 U.S. 394 (1872), interpreting the 1866 Civil Rights Act, no more cases were removed to the Federal court on account of local race prejudice. Instead, the proper procedure was to remove the case to another county "where such prejudice does not exist and a fair trial may be had." *Fitzgerald* v. *Allman*, 82 N.C. 492 (1880).

In 1880 a Raleigh assembly of colored persons issued a statement of grievances "of which the colored do justly complain." One of these was "that in many of the counties, colored men are not permitted to act as jurors, notwithstanding the bill of rights declare that every man shall have the right to be tried by a jury of his peers." Frenise A. Logan, "The Movement of Negroes from North Carolina, 1876–1894," 33 *North Carolina Historical Review* 47 (Jan. 1956).

[10] *Capehart* v. *Stewart*, 80 N.C. 90, 92.

> If the Judge may direct the summoning of a colored juror in place of one removed, he may with equal propriety direct the summoning of a white juror, and thus class distinctions, which the recent amendments to the Constitution of the United States and our own Constitution conforming thereto are intended to abolish, would be introduced in the practical operations of our judicial system, and in trials by jury, its most vital and valuable part . . . The law knows no distinction among the people of the State in their civil and political rights and correspondent obligations and none should be recognized by those who are charged with its administration.

Attorneys

Even though in private practice, attorneys are officers of the court and essential to the administration of justice. There are now approximately 70 Negro attorneys practicing in North Carolina. They practice primarily in the larger cities of the State, about two-thirds of them in the five cities of Charlotte, Greensboro, Durham, Winston-Salem, and Raleigh. Outside of these 5 cities there are only 23 Negro attorneys practicing in the remaining 95 counties in the State. Although Negroes make up about one-fourth of the population, less than 2 percent of the practicing attorneys are Negroes.

Until 1939 there was no law school in the State to which Negroes were admitted. As Judge Johnson J. Hayes pointed out in *Epps* v. *Carmichael:* [11]

> Following the Gaines case [305 U.S. 337 (1938) which held that Missouri could not exclude Negroes from a State-maintained law school even though it paid the tuition for Negroes to attend law schools outside the State], the legislature of North Carolina established the College School of Law [at Durham] without a law suit or the threat of a law suit and it has proceeded with the development of the school of law with the fixed purpose to provide equal facilities for the Negroes with those furnished to the white students at the University of North Carolina.

In this case Judge Hayes denied admission of the Negro students to the University Law School at Chapel Hill, holding that there would be no substantial advantage to admit them and that "the best interests of the plaintiffs will be served by denying the relief sought." This decision was reversed by the Court of Appeals in *McKissick* v. *Carmichael,* 187 F. 2d 949 (1951), *cert. denied,* 341 U.S. 951 (1951). Thereafter Negroes were permitted to attend the Law School of the University of North Carolina. In the spring of 1961, one such Negro student,

[11] 93 F. Supp. 327, 331 (1950).

by reason of his achievement in this law school, became editor in chief of *The North Carolina Law Review.*

Negroes may also attend law school at North Carolina College at Durham, Wake Forest College, or Duke University. Before being licensed to practice, lawyers must pass the examination and character requirements of the State bar to which all licensed attorneys belong. This integrated bar was established by the legislature in 1933. It licenses and disciplines the legal profession in the State. A separate voluntary organization of lawyers is the North Carolina Bar Association, organized in 1898. It sponsors studies and legislation to improve the administration of justice and postgraduate training seminars. No Negroes have been admitted to the association.

In 1955 the Mecklenburg County Bar Association was dissolved voluntarily and since then all professional activities have been conducted by the 26th Judicial District (Mecklenburg) Bar, membership in which by all practicing attorneys is required by statute. Negroes have not been excluded from any of its activities. Thus the bar in Mecklenburg County has been integrated since 1955.

Witnesses

In 1762 all colored persons within the fourth degree were prohibited from testifying against white persons. This law was re-enacted in 1777. In *State* v. *Newsom*, 27 N.C. 203 (1844), the Supreme Court observed that "innumerable cases have been tried in our various courts, in which white persons and colored have been parties litigant, and in which the testimony of colored witnesses would have been important, and yet, in no instance, has the constitutionality of the act of 1777 been questioned." However, this statute was repealed by the Constitution of 1868.[12]

> According to that instrument persons of color are entitled to vote and to hold office. The greater includes the less, and the effect is to take away the mark of degradation imposed by the statute under consideration. We see every day persons of color holding seats in the Senate and in the House of Representatives, and filling places in the executive departments of the State; so it would be incongruous and absolutely absurd to rule that a free person of color is incompetent as a witness against a white man charged with the offense of mismarking one of his neighbor's sheep. The statute must be taken to be repugnant to the spirit, if not the letter, of the Constitution.

After this decision there is no record of any person being excluded, on account of his race or color, as a witness in any of our courts.

[12] *State* v. *Underwood*, 63 N.C. 111 (1869).

As to clerks of superior court, 24 questionnaires were sent out and 15 returned. There were no Negroes reported as serving in administrative offices of the superior courts. In most counties there are assistant clerks and deputy clerks and other clerical employees. Those clerks giving reasons for not employing Negroes reported that none had applied. Because the clerk is elected, and in most counties only a small proportion of Negroes are registered voters, there is little incentive for a clerk to employ a Negro in his office.

No county courthouse facilities were reported to be fully segregated as to courtroom seating, waiting rooms, restrooms, eating places, jury boxes, or other facilities. Four courthouses were not segregated in any respect and the remaining 11 were only partially segregated in some of these facilities. All but four reported segregated restrooms. One reported segregated jury boxes.

As to clerks of county recorders court, 20 questionnaires were sent out and 10 returned. They indicated that no Negroes were employed in the offices of these clerks of court. Most of the courthouse facilities were partially segregated, typically with racially segregated restrooms. Only county recorders court reported segregation of jurors.

As to the clerks of city recorders court, 11 questionnaires were sent out and 8 returned. There were no Negroes reported serving in the offices of any of the clerks of city recorders courts. These offices are generally appointive by the elected city council. Few have assistants or clerical help except in larger cities. Only one clerk reported fully segregated facilities. One indicated some facilities were segregated and others were not, and six reported that all facilities were unsegregated.

PRISON SYSTEM

In 1957, Dr. M. B. Davis, Negro physician of High Point, was appointed by Governor Hodges to be one of seven members of the Prison Commission. He was reappointed in 1961 for a second 4-year term. No Negroes have ever served on the probation commission, board of paroles, or board of correction and training.

The board of paroles employs 31 parole supervisors; no Negro has held a parole position. The probation commission employs 58 probation officers; 3 are Negroes, 1 each in Wake, Durham, and Forsyth Counties. The first Negro probation officer was employed in 1958, the second in 1959, and the third in 1960. Negro probation officers are used only in cases involving Negro defendants.

The State prison department regularly employs more than 2,000 persons of whom 31 are Negroes. Fifteen of these are in supervisory or professional jobs. Eleven are guards and five are matrons. Nineteen Negroes are employed as part-time teachers. The performance of Negroes in each category is reported to be comparable to similar white employees. Eighteen of the Negroes employed full time by the prison department were hired during 1961.

Ninety-one questionnaires were sent to units of the prison system in North Carolina and of these 84 were returned by the heads of the units. Forty units are all white, 42 are all Negro, 8 are mixed and 1 is all Indian. The eight mixed units reported a substantial number of majority and minority races. In these eight mixed units, separate sleeping quarters and separate eating spaces are provided for two races, but other facilities and inmate activities are integrated.

Of the 84 units reporting, at least 73 did not employ any Negroes. Some of the others employed colored persons as guards and five employed them in educational, rehabilitative, and hospital work.

In 56 instances an identical reason was given for not employing any Negroes: That the employees were referred to them by their supervisor. The large percentage of questionnaires returned and the identical wording of the responses indicate that the prison heads had received instructions from prison headquarters in answering the questionnaires. One additional reason sometimes given for failure to employ Negroes was that they were "not considered competent." However, the director of the prison department stated to the Committee: "Our Negro personnel have done and are doing outstanding jobs for the prison department. New Negro custodial personnel have very satisfactorily completed our training school for custodial officers and they are operating in a very competent way at the present time."

Of the 84 prison units reporting, only 9 gave the manner in which the employees were selected. Of these only three reported the use of competitive examinations.

There was no report of the integration of eating or sleeping facilities, and many of the prison heads referred to G.S. 148–43, adopted in 1909: "white and colored prisoners shall not be confined or shackled together in the same room of any building or tent, either in the State prison or any State or county convict camp, during the eating or sleeping hours, and at all other times the separation of the two races shall be as complete as practicable." In 1933, G.S. 148–44 was adopted: "The department shall provide separate sleeping quarters and separate eating space for the different races and the different sexes."

One official, in reviewing the results of this survey, stated: [12a] "A critical element in explaining the lack of employment of Negroes in instrumentalities of justice is their lack of professional and other training. This is not only a condition in itself, but it is a reflection of the lack of educational opportunities and facilities and the failure to take advantage of them in the State. Many of the employing officers in these agencies would be correct in saying that they cannot find enough competent people to give anything like equal opportunity to Negroes and that goes right back to the educational system. This is a root condition. It is just as important in understanding the present situations as the historical perspective."

In many similar comments, reference was made to the connection between certain posts in the administration of justice and the election process. There may be some correlation between the gradual return of Negro participation in the instrumentalities of justice and the success of some Negro candidates in election to the governing boards in some of the principal cities and towns. Between 1901 and 1947 no Negroes were elected to any city council.

Since 1947, a Negro in each of the following cities has been successful in winning an election to a seat on the city council: Winston-Salem (1947), Fayetteville (1949), Greensboro (1951), Wilson (1953), Chapel Hill (1953), Gastonia (1953), Durham (1953), Southern Pines (1955), Lumberton (1960), Raleigh (1960). In addition, Negro candidates have entered elections to the city council in Burlington, Charlotte, Henderson, Kinston, Laurinburg, Madison, Monroe, Rocky Mount, and Wilmington, among other places in the State. In those cities where Negroes have been elected, they have served on the various committees of the council and in at least one city the Negro member of the council has been chairman of the committees on public safety.

It should be noted that this survey does not cover the Federal instrumentalities of justice which function in North Carolina, for example: the U.S. judges, district attorneys, clerks, marshals, the offices of the FBI and Treasury Department.

This report is quantitative, setting out the proportion or relative numbers of Negroes taking part in the administration of justice. It is in no sense an appraisal of the quality of justice administered in North Carolina. Indeed, the Committee has received no complaint of police mistreatment because of race nor of differences in sentences or penal conditions on that account, and no inquiry has been made into these aspects of justice.

One North Carolina decision did consider the propriety of instructing the jury that the prosecutrix was a white girl and the defendant was a

[12a] Statement to member of Committee.

Negro man where the latter was convicted of assault by addressing obscene language and an obscene request to her. On appeal, the defendant's counsel argued that the difference in the color of the parties "can make no difference . . . the law would have been the same, if the prosecutrix had been a Negro girl and the defendant a white man, or both had been white or both black; and we think the charge of the court must be considered as conveying to the minds of the jury that the difference in the color of the parties was a matter material for their consideration, and that less evidence would be required to convict the defendant because he is a Negro than would have been required if he had been a white man." The supreme court however approved the language used by the trial judge and affirmed the conviction. The court added the following declaration: [13]

> We believe in this State that the Negro has "the equal protection of the laws." In fact, the best friends that the Negro has are his white neighbors. The Negro has been in many respects a chosen people—brought here, the land of opportunity, among civilized people, without any effort on their part, from Africa. The burden, "imposed, not sought," has been on the white people of this State to civilize and Christianize them. The trust has been, and is being, faithfully performed. The race is making great strides. It is a matter of common knowledge that if, in a trial of a case before a jury involves a moneyed transaction between a white man and a Negro man, if there is the least evidence that the white man has overreached or cheated a Negro, the juries invariably decide for the Negro . . . The policy of the legislative branch of the government is to have separation of the races . . . with equal accomodations. The same policy has been pursued in the cities . . . In all of the cases the expenditure of money to give equal accommodations, etc., has far exceeded the taxes paid by the Negro in proportion to that paid by the white people. Our State Constitution (article XI, sec. 7), says:
>
> "Beneficient provision for the poor, the unfortunate and orphan, being one of the first duties of a civilized and Christian state," etc.
>
> This State, through the legislative branch of the government, is trying to meet this obligation to the white and Negro population alike, in that station of life that each has been called. The exception by defendant to the court's charge in this case may seem to imply a lack of duty by the white race to the Negro race. We give the legislative conduct in this matter to show that those to whom a sacred duty is imposed are performing this duty through other branches of the government. It is important in the administration of law that all the citizens of the State feel that the courts will do equal and exact justice.

[13] *State* v. *Williams*, 186 N.C. 627, 633–34 (1923).

In this 1923 view the race or color of parties in court did have a bearing on the results, sometimes more favorable to the Negro than not, depending upon the type of case. Furthermore it seemed relevant at that time to refer to the separate provisions for Negroes by the legislative branch of the government in accordance with the then current theory of separate but equal treatment of citizens, classified by race or color. Whatever its merits, in theory or practice, State policy at that time was clearly not colorblind.

In 1961, Negro participation in the administration of justice in North Carolina is insubstantial. It nowhere approaches the proportion of the Negro population of the State. It is confined almost entirely to participation as attorneys, as policemen in the city police departments of our larger cities, and as deputy sheriffs in a few of our most heavily populated counties. It is confined (apparently entirely) to appointive and professional positions. Finally, there seems to be no concerted effort on the part of Negroes to obtain appointment or election to positions in the various instrumentalities of justice.

IV. Employment

> If any citizen is interfered with in earning his living on account of his race or color, then he has a deep and well-founded complaint against society and must be listened to.
>
> —Gov. Robert Gregg Cherry, 1945.

> Your untrained inefficient man is not only a poverty-breeder for himself, but the contagion of it curses every man in the community that is guilty of leaving him untrained.
>
> —Clarence Poe, Editor of *The Progressive Farmer.*

The government is the biggest employer in North Carolina. Its hiring, firing, promoting, training, and referring persons for jobs is clearly "State action." Therefore, in such action, government agencies should not discriminate on account of race or color.

TOTAL EXCLUSION: STATE MILITIA

Enlistments in the North Carolina National Guard constitute employment. Membership in the guard entails performance of services for which compensation is paid, which is the usual characteristic of employment. Through all publicity media, enlistment in the guard, as well as in other military services, is urged as a "career." One's career is usually the business or occupation in which he is engaged or employed.

As of June 30, 1959, 11,345 white persons were members of the North Carolina National Guard. There were no Negro members.

North Carolina's annual appropriation for guard salaries at that time was:

Members of adjutant general's staff	$127, 239
For distribution to officers	69, 500
Total State appropriation	196, 739

The Federal Government's annual appropriation for guard salaries at the same time was (round figures):

Full-time employees	$2,600,000
Drill pay for members who are not full-time employees	2,500,000
Total Federal Government appropriation	5,100,000

Thus, the total annual compensation for 11,345 employees, including 10,786 members paid only for drilling, was $5,296,739. The average annual compensation for each of these employees was $466.88. This entire compensation goes only to white persons, since there are no Negro members.

Inasmuch as Negroes compose one-fourth of the State's population, and assuming employment in the guard at that ratio, Negro members would total 2,836 and their compensation would be $1,324,184.

In the event of being drafted, or other entry into the military services of the Nation, membership in the guard does not automatically confer a preferred status, but it does give the inductee the distinct advantage which comes from prior training and experience. There has never been a Negro member of the guard, although a few applications for membership have been made by Negroes.

The pertinent statutory provision is G.S. 127–6:

WHITE AND COLORED ENROLLED SEPARATELY

> The white and colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available, and while permitted to be organized, colored troops shall be under command of white officers. (1917, ch. 200 sec. 6; C.S., sec. 6796.)

As a matter of practice and of law, insofar as employment in its National Guard is concerned, North Carolina's discrimination against its Negro citizens is total and complete.

This results in deprivation of a means of livelihood and of earning. It contributes to the disparity of annual income. According to the 1960 census, the median income of white families and unrelated individuals was $3,947, whereas for Negroes it was $1,685. Thus Negro income was only 42.7 percent that of white income in North Carolina. This ratio is even less favorable to Negroes than it was in the 1950 census when the ratio was 47.7 percent. In the last decade the white income figure increased by $1,732, an amount in itself greater than the total Negro income for 1960.

The State's exclusion of Negroes from the National Guard further discourages the qualified Negro from entry upon a military career, and, when he so enters, handicaps him in competition with whites.

In times of racial tension, if the guard should be called out, it would be reassuring to Negro citizens to observe that members of their race were on duty. Thereby would be implanted the justified conviction that the sole mission of the guard is to uphold the law. At least 28 North Carolina cities which employ Negro policemen feel that such employment is a distinct contribution to fair enforcement of law.

Appropriations for salaries of guardsmen is 3.72 percent by the State, and 96.28 percent by the Federal Government. The policy of the Federal Government is one of nondiscrimination in the military services. Since membership in the National Guard is, at least, quasi-Federal in nature, it should be possible to extend such policy to the State guard.

The constitutionality of the statute quoted above is beyond the special competence of this committee. But, even to laymen, it would seem to afford slender support for policies which it is designed to sanction.

In the view of some local officials, admission to the guard is a matter for the Federal Government to determine. In April 1961, when Wake County commissioners were asked to join the State and Federal Government in providing funds for expansion of the guard facilities at the Raleigh-Durham Airport, it was argued in support of the request that the aviation unit was "like an industry with 300 employees." Negro citizens of Wake County asked whether the unit employed Negroes and the guard colonel replied, "No."

"Are there any Negroes employed in the National Guard in North Carolina?" asked one Negro citizen.

"To the best of my knowledge, there are not," replied the guard colonel.

Wake County Commissioner W. W. Holding asked the colonel: "Does the Federal Government understand the situation in North Carolina?"

"Yes," replied the colonel.

"And they continue to appropriate money?" asked Holding.

"Yes," replied the colonel.

Commission Chairman Ben Haigh then pointed out that the Federal Government had already agreed to erect a $200,000 hanger at the airport for guard use, and that Wake and Durham Counties and the cities of Raleigh and Durham jointly deeded 5 acres of land and leased 11 initial acres for guard use at the airport.

"The National Guard protects colored as well as white in case of an emergency, doesn't it?" asked Commissioner Holding. "You don't think this board can dictate to the National Guard?" [1]

Federal officials take the view that admission to the National Guard in North Carolina is controlled by the State. In either event, whether

[1] (Raleigh) News and Observer, Apr. 5, 1961, p. 10.

admission is controlled by the county, State, or Federal government, the government bears the responsibility for this exclusion of Negro citizens.

PARTIAL EXCLUSION: NORTH CAROLINA EMPLOYMENT SECURITY COMMISSION

The 1960 budget of the North Carolina Employment Security Commission was $5,555,960. This entire amount comes from the Federal Government.[2]

The stated policy of the Federal Government is the employment of all persons on the basis of merit, uninfluenced by consideration of race, religion, or national origin. Serious question that such policy is strictly followed by the North Carolina Employment Security Commission is raised by the admitted facts of its operation.

Employment by the agency itself.—As of July 1960 in the State office of the Commission at Raleigh there were only 10 Negro employees. These were: One maid, two elevator operators, five janitors, and two janitor messengers. There were no employees above the rank of janitor messenger, which means no typists, stenographers, clerks, bookkeepers, accountants, or persons in administrative or executive capacity.

The Commission in its operation throughout the State had a total of 945 white and 51 nonwhite employees. By categories these were divided as follows:

Category	*Whites*	*Nonwhites*
Managerial and professional	681	39
Clerical	264	2
Unskilled	0	10

There were in the State 54 district offices. Not one of these had a Negro director.

However, there were in the State 11 divisional offices staffed by nonwhite personnel. These are used, according to the Commission, for "processing nonwhite applicants."

Not only is the stated policy of the Federal Government to employ upon the basis of merit, but in the statute establishing the Employment Security Commission, the North Carolina General Assembly specified a similar policy: "All positions shall be filled by persons selected and appointed on a nonpartisan merit basis." G.S. 96-4.

Duties of the Commission.—In addition to administering the payment of benefits to unemployed individuals under the unemployment insurance program, the other major function of the Employment Security Commission is to operate a system of public employment offices

[2] 29 U.S.C.A. 49(d) and the report of the Commission.

throughout the State. G.S. 96–20. This statewide free employment service assists employers in finding employees and assists employees in finding jobs.

The entire program is financed by the Federal Government and is operated under the general supervision of the U.S. Secretary of Labor.[3]

In addition to job placement services, the commission is authorized to provide employment counseling and special assistance to veterans, youth, and handicapped persons, and occupational testing facilities and technical materials concerning personnel management. By G.S. 96–22 it is authorized to aid minors to undertake promising skilled employment, to take special courses in night schools, vocational schools, part-time schools, trade schools, business schools, library schools, and university extension courses, so as to become more skilled workers, to aid in securing vocational employment on farms for town and city boys interested in agricultural work, and to cooperate with social agencies and schools in group organization of employed minors "in order to promote the development of real, practical Americanism through a broader knowledge of the duties of citizenship."

Job referral service.—In the operation of the job referral service, the commission maintains a written record of all applications for jobs. These applications for jobs designate the race of the applicant. The procedure in effect for many years, and at the beginning of 1961, is as follows: [4]

Where the applications are for jobs outside the commission and the applicants are nonwhite, they are referred to the Negro-staffed divisional offices where they exist. Applications of whites are not referred to such offices. There is, therefore, segregation of applicants by race from the outset of the commission's handling of the application.

The commission also maintains a written record of job orders. When a "job order"—that is, a request from an employer for a certain number of employees—is received by the commission, the method of handling seems to be as follows:

If the order specifies white employees, the order is handled by offices manned by whites; if the order specifies Negro employees, the order is handled by the Negro-manned divisional offices. If the order does not specify race, it is "ordinarily placed in both offices since divisional offices (for nonwhite applicants) are housed in the same building as the white office."

However, in the absence of specifications of race of the desired employees, the commission may request the employer to indicate a preference. This is done "only in cases where there is doubt about the employer's requirements." The decision to do so may be determined, in the commission's words, by "social and economic characteristics of

[3] 29 U.S.C.A. 49(g).

[4] Some of the Commission's procedures may have changed in recent months.

the community and local knowledge of customary hiring requirements." The nature of the job may also be considered, "depending on the community and knowledge of usual community practice."

The facts on applicants placed in nonfarm jobs by the commission in 1959 are as follows:

Category	*White*	*Nonwhite*
Professional managerial	1, 851	25
Clerical and sales	19, 811	320
Skilled	12, 824	1, 315
Semiskilled	33, 609	4, 241
Service	8, 109	29, 376
Unskilled and other	19, 372	38, 196
	95, 576	73, 473

Consideration of the foregoing statistics raises significant questions, answers to which are not readily available:

Are Negroes in substantial numbers not applying for white-collar jobs? If not, why not?

Are they not properly prepared for such jobs?

Are employers excluding Negroes from consideration for these positions?

Is the method of handling job orders calculated to preserve customary patterns of employment?

Does the described operation of the job referral service mean that private employers in North Carolina, who depend upon the commission to send them prospective employees and who do not specify race on their job orders, are being deprived of their freedom to employ on the basis of merit, regardless of race, because the government employment agency sends the employer only white applicants or only Negro applicants, depending upon what the government official determines to be suitable for the employer under the government official's view of "the social and economic characteristics of the community," "customary hiring requirements," and "usual community practice?"

If this is the case, employers who hire Negroes only for unskilled or service jobs may properly say that they have not discriminated against any person on account of his race because no persons of that race have ever been referred by the government employment agency for any other jobs. In such a case, by reason of the intervening action of the government official, the employer is denied both the opportunity and the responsibility to make such a decision.

Aside from the rights of both employer and employee to impartial application of the law, there is another basic question which affects the economic prosperity of all the citizens of our State. It is involved in any study of the operation of the law on employment in North Carolina, not merely in the National Guard and the Employment Security Com-

mission, but also in other government employment and in employment on Government contracts. Is the law being applied in a way to hinder or permit the fullest development and use of the skills and abilities of all our people? Our people are our greatest natural resource.

Negroes comprise one-fourth of the people of North Carolina. Are we, in the production of goods and services, making full use of the Negro potential?

Agency facilities.—In the Employment Security Commission's headquarters in Raleigh, restrooms are racially segregated; all other facilities, including lunchrooms and working quarters are not. The same pattern exists in the district offices.

First Negro Commissioner.—During 1961 the Governor appointed Dr. J. W. Seabrook, president emeritus of Fayetteville State Teacher's College, to be a member of the Employment Security Commission, the first Negro ever to serve on the commission.

EMPLOYMENT BY THE STATE GOVERNMENT

In October 1960, there were 164,354 government employees, full time and part time, in North Carolina. This figure included 28,834 Federal employees, 101,345 State employees, and 34,175 local government employees.

Considering only the full-time employees, there were in October 1960, a total of 90,649 State employees and 30,356 local employees. The ratio of State and local full-time employees to the population of the State was 265.6 per 10,000 population. Only two States, Kentucky and Pennsylvania, had fewer State and local employees per capita than North Carolina. No doubt because public-school teachers were included in State as opposed to local employees, North Carolina had more State employees per 10,000 population than any other State except Hawaii; on the other hand, it had far fewer local government employees per 10,000 population than any other State in the Union.[5]

In order to get as accurate a picture as possible of the employment of Negroes by the State government, the Committee mailed questionnaires to the 119 State agencies listed in the 1960 North Carolina Manual. Political subdivisions such as counties or cities were not included, nor were public schools or teachers. Aside from the National Guard and the Employment Security Commission, whose operations have already been described, there were 88 replies from these agencies which were adequate for analysis and constitute the sample on which the following observations are based. Inasmuch as this sample con-

[5] Department of Commerce, Bulletin G–GE 60–1, "State Distribution of Public Employment 1960," release of Mar. 31, 1961.

stitutes about three-fourths of all the State public agencies, the nature and size of this response are ample to provide significant findings.

In the State government, including all of its boards, agencies, and institutions, relatively few Negroes are employed in skilled or "white collar" jobs. The vast majority of Negroes who do fill jobs with the State government, occupy menial positions, such as janitor, maid, waitress, and elevator operator. This is so despite the complete absence of statutes or legal regulations requiring that Negro employees be assigned to menial positions, and that the professed policy of the State is one of employment upon merit only.

Custom and tradition are perhaps more powerful than law. These forces operate to exclude the Negro from the more responsible positions when he does apply; they likewise deter him from applying.

In reply to a questionnaire addressed to all branches of the State government, in 24 instances there were answers to the following question:

"If Negroes are not employed above the semiskilled level in your establishment, what are some of the reasons why they are not employed?"

In three instances the answers to the foregoing question were simply and frankly "custom," "tradition," "segregation."

The force of custom and tradition operates not merely upon the prospective employer; it operates also upon the potential Negro applicant. Out of 24 answers assigning reasons for nonemployment of Negroes above the semiskilled level, in 16 instances the reason was the failure of Negroes to apply.

There is a third consideration of some significance. In five instances, the reason for nonemployment above the semiskilled level was lack of training for the better types of position. If North Carolina is to utilize its available manpower resources, it is imperative that Negroes be trained to fill positions of higher responsibility. In part, this means that the State's vocational training programs should be extended and enlarged to the point that every capable Negro has unrestricted access to the type of education they provide.

In 63 of the 88 replies, there was no answer to the question of nonemployment of Negroes or their employment only in menial capacities. It may, perhaps, be reasonable to conclude that, where the question was applicable but remained, nevertheless, unanswered, the respondents' discriminatory policies are based on tradition or custom.

Two answers to the questionnaire are not typical. One is simply: "Do not use any." The other, from a constitutional officer, says: "This office at this time does not have any Negroes in its employment. Our employees are professional, fiscal, and secretarial. The [name of office omitted] employs such persons as in his discretion he thinks are trustworthy and he is under the impression that, since he is a constitutional officer of the State of North Carolina, he has the right to employ such persons as he

chooses. . . . The General Service Division of the State of North Carolina furnishes the janitorial and maid services for the building."

A fair inference is that this constitutional officer does not consider Negroes for professional, fiscal, and secretarial positions.

A consideration of all the answers, however, leads to the view that State officials generally are becoming more openminded on the question of employment and more willing to consider applicants, and to confer promotions, strictly upon merit.

About 32,000 persons were employed in the agencies replying, and less than 5,000 of these were Negroes. Two-fifths of the agencies reported that they employed no Negroes. Negro men were represented in more agencies than Negro women, but where women were utilized, the number per agency was on the average larger than that of men, i.e., the median number of Negro men was 9.6 and that for Negro women was 24.9. On the average, about 13 percent of the total labor of these agencies was Negro.[6]

More than four-fifths of the agencies which did employ Negroes utilized them mainly in service categories. Less than half of these agencies employed them in any other occupational category. Very few agencies employed Negroes in any white-collar jobs.

For the most part, the agencies which do employ Negroes are those with large numbers of employees. Among those agencies which do not employ any Negroes, the median number of employees was only 9.9; for all the other agencies which did employ Negroes, it was 212.5. Thus the qualified Negro applicant may have a better chance of employment in the larger units of State government.

Appendix 1 shows the distribution of State agencies by types of services rendered, indicating which types employ Negroes and which do not.

Appendix 2 shows the distribution and rank of Negroes in those State agencies which do employ Negroes.

The principal sources of recruitment are friends and relatives of present employees and the North Carolina Employment Security Commission. In view of the limited representation of Negroes in the present employment in State agencies, and of their relatively low status in those agencies, the friends and relatives whom they recommend for State employment are likely to be neither numerous nor highly qualified. The procedure followed for many years by the Employment Security Commission has already been described. Many of the agencies passed over educational and training institutions, the Merit System Council, and non-governmental personnel agencies as sources for recruiting employees, but a large number did reply by saying that they got their employees from "other sources." This miscellaneous source no doubt

[6] If State and local public school employees are included, the percentage of Negro employees is 26.6 (see app. 6). In any event, the merit system percentage of 7.9 is significantly lower than indicators of Negro participation in State employment.

includes political channels. In view of the low participation by Negroes in voting and in public office, as described in the previous chapters, this could hardly be a significant source of Negro recruitment, on an individual merit basis or otherwise.

In 14 of 48 agencies employing Negroes, an eighth grade education is the prerequisite for the lowest job; in 13 others, a high school diploma is a prerequisite for the lowest job. But the State agencies that employ no Negroes at all have even higher education requirements; nearly half of them require high school diplomas and more than 10 percent require college degrees and 5 percent required degrees from professional or business schools.

The minimum educational requirements, while likely to have a more severe effect on Negroes than on whites *as a group,* do not adequately explain the complete absence of Negro employees in the large number of agencies that employ no Negroes, particularly in the light of quantity and quality of educational facilities available to Negroes in North Carolina.

More than one-half of the agencies reported that they had not upgraded any Negro employees during the past year and only a few were promoted by most of the remaining agencies.

The scarcity of Negroes among technicians and technical assistants is noteworthy. In general, technicians are recruited from persons who have completed at least 2 years of college work, while professional status usually requires college graduation as a minimum. Yet almost twice as many agencies have Negro professionals as have Negro technicians, i.e., 19 and 11 respectively.

Four-fifths of the agencies said that their Negro employees were the "same as or better than" their white employees in efficiency on the job, but that they were considered worse than their white counterparts in regard to absenteeism (by one-fourth of the agencies) and in responsibility on the job (by one-fifth of them).

The agencies were asked whether they had experienced any difficulties in employing Negroes. Nine-tenths of those who had employed Negroes stated that they had not had any difficulties. Five of these, however, reported difficulties in finding qualified Negro applicants to fill their needs, and one reported that problems had arisen in regard to the acceptance of Negroes by white fellow employees. Only three of the agencies which do not employ any Negroes answered this question; two of these reported difficulties in finding qualified Negro applicants.

It would appear that operational difficulties are not a significant obstacle to the employment of Negroes by the State agencies of North Carolina. Furthermore, the responding agencies reported that they were not aware of any policies designed to restrict the employment of Negroes. They were asked: Is there any statute, regulation, or policy effective in the State or in your agency which particularly affects your

employment of Negroes? Over 95 percent of the agencies answered in the negative, including all of those that do not employ any Negroes.

It is clearly apparent, therefore, that neither problems experienced in connection with the employment of Negroes nor governmental restrictions appear to be serious impediments to the hiring of qualified Negro personnel.

MERIT SYSTEM AGENCIES

In 1941, North Carolina established a Merit System Council to administer a system of employment on a merit basis for certain State agencies. Only 7, out of approximately 100 State agencies, are subject to this merit system. These are the State board of health, State board of public welfare, medical care commission, civil defense agency, employment security commission, State commission for the blind, and the Merit System Council itself.

Data from 88 agencies in the State, including all seven of the merit system agencies, indicate that the percentage of Negroes employed by the latter (7.9) is *lower* than that for other State agencies not under the merit system.

Even so, in employment by the State government, the overall percentage of Negro employees (13) is significantly lower than the Negro percentage of the total population of North Carolina (25.4). These 88 State agencies do not include the public schools where on May 31, 1962, more than 15,000 Negroes were employed. See appendix 6 for detailed breakdown of public school employment by race and overall total of other State employment by race as reported on July 30, 1962, by Walter E. Fuller, State personnel director.

Applicable law.—G.S. 126–1 authorized the Governor to appoint a Merit System Council of five citizens of recognized ability "in the impartial selection of efficient government personnel."

> All applicants for positions in the agencies or departments affected by this chapter shall be subjected to an examination by the Merit System Council which shall be competitive and free to all persons meeting requirements prescribed by said Council, subject to reasonable and proper limitations as to age, health, and moral character, which said examinations shall be practical in their character, and shall relate to those matters tending fairly to test the capacity and qualifications of the applicants to discharge proficiently the duties of the position to which they seek appointment, and shall include examinations as to physical and mental qualifications as well as general fitness; but no such applicant shall be examined concerning

his or her political or religious opinions or affiliations. The said Council shall establish such necessary and proper regulations as it sees fit relating to the moral worth and character of all applicants for positions in the agencies and departments affected by this chapter, to the end that all persons certified by said Council as eligible for employment in said agencies or departments shall be persons of good character as well as possessing necessary mental and physical qualifications. (G.S. 126–4.)

The council is required to keep a permanent register of all persons successfully passing such examinations and their grades.

Whenever any appointment is to be made to any of said agencies or departments the Council shall certify from said registered list of successful applicants 3 names for each appointment so to be made, and the appointments shall be made only from among the names thus certified by the Council, exclusive of the names of those persons who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing which objection is sustained by the supervisor with the approval of the Council. (G.S. 126–8.)

Other provisions of the Merit System Act relate to promotion and dismissal or suspension of employees, and the maintenance of service ratings and seniority. Since all these agencies administer Federal funds in North Carolina, G.S. 126–15 provides that wherever the Federal agency providing such funds uses "other or higher, civil service or merit standards or different classifications" then the latter may be adopted by the council for these North Carolina agencies which are subject to the merit system.

In addition, G.S. 128–15 gives all citizens who are war veterans 10 points extra credit on all such examinations for positions with the State or any of its agencies, and directs the agencies to give preference in employment and in promotion to such veterans, and to their widows or the wives of disabled veterans. And this preference applies regardless of age, if the applicant is otherwise qualified. In promotional examinations, an additional preference rating of one point for each year of service in time of war, up to a total of five such extra points, is to be added to the applicant's examination grade.

Thus the statutes regulating employment by these agencies do not discriminate against any citizens on account of their race or color. Indeed the statutes are couched in language to insure "impartial selection of efficient Government personnel . . . on a merit basis." Whatever preference is allowed to veterans, their widows, or wives of disabled veterans would be as available to Negro veterans as to white.

Application of the statute.—The table below summarizes white and Negro employment in the seven merit system agencies.

	Total employment	*White employment*	*Negro employment*	*Percent white*	*Percent Negro*
Merit system	17	17	0	100.0	0
Medical care	13	13	0	100.0	0
Civil defense	26	26	0	100.0	0
Public welfare	164	161	3	98.2	1.8
Employment security	996	945	51	94.9	5.1
Board of health	352	333	19	94.6	5.4
Blind commission	361	281	80	77.8	22.2
Total	1,929	1,776	153	92.1	7.9

The Board of Health figures refer only to employees at the State level and information as to employment by the county boards of health has not been collected. About 1,500 persons are employed by these county boards of health. As indicated in *Hunter* v. *Retirement System,* 224 N.C. 359, 362 (1944), "the employees of the county board are therefore operating under the Merit System . . . and for this reason neither the city nor county have jurisdiction over their salaries." Of the 1,515 professional and clerical positions in the State and local health departments, only 84 are held by Negroes, the great majority of these being nurses.

Nor do the above figures for the State board of public welfare refer to any employees except at the State level. The commissioner of public welfare wrote:

> Since the present appointment forms do not give information as to race, we would be unable to give an accurate breakdown of staff by race in the county departments of public welfare. We are also unable to give you from our records the number of employees upgraded or promoted last year in the county departments of public welfare. We did a summary of Negro employees as of January 1961. The numbers have increased since that date but the data would be consistent with the other figures which you have used. We continue to have great difficulty in recruiting qualified applicants and always have vacancies. Your discussion of certification helps to explain why there are not enough qualified workers to meet the demand.

There are about 1,500 county welfare employees subject to the merit system. In January 1961, 72 of these were Negroes. They were employed in 24 of the 100 counties in the State, 67 of them in the following 22 counties: Alamance, Bladen, Buncombe, Chatham, Cleveland, Craven, Cumberland, Durham, Forsyth, Gaston, Guilford, Harnett, Henderson, Lenoir, Mecklenburg, New Hanover, Orange, Pitt,

Rockingham, Rowan, Wake, and Wilson. Qualified applicants to fill 5 budgeted positions for Negro workers were not available, resulting in vacancies in four counties: Anson, Craven, Mecklenburg (2), and Richmond.

Prior to 1961, Negroes were employed in county departments of public welfare as follows:

December 1952	32	in 15 counties
April 1954	42	in 17 counties
February 1957	43	in 16 counties
November 1958	50	in 16 counties

As indicated in the preceding section the percentage of Negroes employed by State agencies (excluding public schools) is 13. The percentage of nonwhite population of North Carolina is 25.4. Thus the rate of Negro employment in these State agencies (7.9) is far below the population ratio.

North Carolina has prided itself for many years upon its excellent Negro schools and colleges. Thus it might be expected that in the Negro population there would be many persons qualified to fill higher positions than they now occupy in the merit-system agencies.

Examinations.—The Committee requested data on how many Negroes took the merit-system examinations, what grades they made, and how their grades compared to those of other applicants. All examinations offered during the period April 1, 1961, through March 31, 1962, were reviewed. Appendices 3 and 4, prepared by the council supervisor, give the details. In general, it can be seen that during this period there were no Negro applicants in 66 classes of jobs. Except for interviewer I, sanitarian I, and public welfare worker I (all of these applicants are qualified for any one of the three classes), intermittent interviewer I, clerk I and typist I, there were relatively few Negroes applying in any of the other classes. In six classes, some of them advanced, there was only one Negro applicant but his or her score was equal to or higher than that of the average of the white applicants. In nearly all the other classes, the percentage of Negroes passing and their average scores were lower than for the white applicants.

Recruitment.—On examinations for the entrance clerical positions, recruitment is conducted to a large extent through high school commercial teachers and business schools. These teachers arrange for a group examination for their students who are interested in such employment. "Looking at last year's experience," said Mr. Claude E. Caldwell, council supervisor, "I note that no Negro high school commercial teachers or Negro business schools made such arrangements during this period. Such groups have been included in the past in these examinations, and their students have seldom passed the examination.

This may account for the current lack of interest on the part of these schools, and, therefore, partially account for the relatively low number of Negro applicants in these categories." [6a]

On May 9, 1962, which was after the period covered by appendices 3 and 4, one group of examinations was given to a group of students from one of the State teachers colleges. Twenty-six individual applicants were examined and seven of these passed one or more of the examinations, as shown in appendix 5. This table is set up in the same manner as appendix 3 and may be used for comparison with it.

Certification.—The council's certification records for the period April 1, 1961, through March 31, 1962, indicate that Negro applicants were certified in only three classes of employment: Public welfare worker I (nine), interviewer I (five), and intermittent interviewer I (five). In each of these cases, Negro applicants were appointed.

According to Mr. Caldwell, "there is generally a greater demand for qualified Negro applicants than we can supply, although in some cases well-qualified applicants of the Negro race are not placed due to the problems of location. In some cases the applicant is simply not available in any place where vacancies occur; but, more frequently, they are not reached because the local welfare, health department, or the local employment security office having the vacancy requests that applicants of that area be given preference. The merit system rule permits these local departments this discretion, and it is widely used. For this reason, well-qualified white or Negro applicants may fail to be considered even though others with less suitable grades are appointed if the more highly qualified applicant does not happen to live in one of the areas in which the vacancies occur."

Mr. Caldwell also added, "Our certification records do not give a full and complete picture of all appointments. In many cases where there is not an adequate certificate (less than three available eligibles), this fact is well known to the appointing authority and individuals are recruited locally for provisional appointment. When these provisional employees qualify through examination, they are certified by memorandum after ascertaining that they are high enough on the register of eligibles to be reached. It is certain that more than nineteen Negroes have been appointed during the year, but only a complete review of all employees' records would permit us to give accurate information on this point."

When an agency requested a Negro, and there were qualified Negroes on the register, Negroes were certified for the job even if it meant skipping over white applicants who had higher scores. On the other hand, Mr. Caldwell stated that where there was no specific request for a Negro to fill a position, he could not recall and the council records did not show any instances where a Negro was certified for a job request. "I think this is almost entirely true that the only way we can get a Negro

[6a] Statement to a member of the Committee.

on the certificate is by skipping over the white applicants who have higher scores."

When asked whether it would be fair to say that insofar as he had been able to determine, no Negroes had been certified to blanket job requests unless they were specifically called for by the agency, Mr. Caldwell replied "That's right. I talked this over with men who've been on this job for a long time, longer than I have, and it was our experience that the only way you could certify Negro applicants was for the agency specifically asking for it. Our rule is to permit them to give them preference. Although it could be used to discriminate against the Negroes, it actually has worked to give them preference when they've been asked for. This is about the only time that anything is different."

The application forms and the council's records do not contain photographs of any applicants. There is a reference on the application to the race of the applicant, but when the council submits the list of registered candidates, only the names, addresses, and ranks are given. The employing agency does not see the applications.

The "rule of three" set out in the statute requires that three names of those who have passed the examination be submitted for each job, and the vacancy must be filled by hiring one of those three. Even if the three names submitted are those with the highest grades, and even if one or two of these should be Negroes, the agency or department head may choose the third person for the job. Thus it is not sufficient for any candidate, white or Negro, to pass the examination. He must demonstrate superior acceptability in order to get the job.

Conclusions.—This information on the participation of Negroes in merit-system employment in North Carolina, after more than 20 years' experience, raises the question as to whether qualified Negroes sufficiently interest themselves in applying for available positions in the State's merit system. It is probable that both the employing agencies and the potential Negro employee are influenced by traditional views of suitable employment for nonwhite persons, but it would seem that the merit system should offer opportunity just as good if not better than any other opportunity for employment on the basis of individual ability and without discrimination as to race or color.

If qualified North Carolina Negroes are not applying for such positions in our State, but are moving elsewhere, this in the long run is a net loss to our State and the investment which it has made in the education of all its people.

On the other hand, if Negroes are taking the examinations but making disproportionately low grades, this may indicate deficiencies of Negro schooling and other training influences.

The merit system is intended to find and place the most efficient workers for certain State jobs; not to provide jobs. There may be

certain skilled positions, such as nursing or counseling, where a person's racial experience enables him to be more effective in working with other citizens of his race. But the general practice of passing over white applicants in order to favor Negro applicants with lower grades for certain jobs where only Negroes are requested (or vice versa) is a departure from the principle on which the merit system was established; namely the "impartial selection of efficient government personnel . . . on a merit basis." It encourages the idea that certain jobs are "Negro jobs" or "white jobs." Our aim should be that a man should not expect to get a job because of his race or color. Even if it should deprive a Negro of a preferred call for certain jobs at the outset, the steady adherence to this principle will, in the long run, bring out the best performance in all of our citizens.

Whatever the reasons, the discrepancy in nonwhite employment by the State government, particularly in agencies charged by law with the duty of employment only by merit, is a proper concern of all of our citizens, white and nonwhite alike.

OTHER GOVERNMENT EMPLOYMENT

No direct inquiry was made by the Committee to determine Negro employment by the Federal Government, nor by county and city governments. Some indication of the extent, but not the level, of such employment is contained in recent census reports.

In 1960, the North Carolina labor force was 1,605,478, of which 1,257,530 were white and 347,948 were nonwhite. This represents a ratio of white to nonwhite employment of approximately 3.6:1. In 1950, the ratio was 3:1 in favor of whites. The difference is that in 1960 there were relatively fewer nonwhites employed in North Carolina. Part of this is accounted for by the out-migration of nonwhites, particularly of nonwhites with high school education.[7] There was an absolute loss of about 20,000 nonwhite employees during that period, whereas white employment rose more than 160,000.

If all other things were equal, it might reasonably be expected that nonwhite participation in government employment, whether local, State, or Federal, would be roughly in accordance with the above ratios for those years. However, the 1950 census shows that the expected parity of 3:1 was found only among schoolteachers and persons employed in water supply and sanitation. Some of the other types of government employment in North Carolina in 1950 showed the following ratios:

[7] See Hamilton, "Educational Selectivity of Rural-Urban Migration: Preliminary Results of a North Carolina Study," *Selected Studies of Migration Since World War II* (Milbank Fund, New York); and "Educational Selectivity of Net Migration From the South," 38 *Social Forces* 1, Oct. 1959.

Government jobs in North Carolina	*In favor of whites*
Federal public administration	10:1
Postal service	20:1
Firemen	33:1
Police, sheriffs, and marshals	47:1
State and local officials and inspectors	99:1

The detailed characteristics of the North Carolina population as shown by the 1960 census have not yet been published, so that it is not possible to compare all of the above categories for 1960. However, the data for the two following general classifications have been published: [8]

Police, sheriffs, marshals, detectives, guards and watchmen	16:1
All public administration (including postal service, Federal, State, and local public administration)	10:1

Although these 1960 reports would indicate relatively greater participation by Negroes in government jobs, the ratio is still far from parity in these categories.

STATE INFLUENCE ON PRIVATE EMPLOYMENT

No North Carolina statute expressly discriminates against nonwhites in private employment. The indirect effect of statutes requiring separate facilities for each race in certain employment is considered in chapter IX. Also, chapter VII on housing and chapter VIII on medical care mention the indirect effect on nonwhite employment of statutes which require that certain licensing boards be composed, at least in part, of representatives of otherwise private organizations which exclude nonwhites, or that on occasion State agencies employ persons whose qualifications are certified by otherwise private organizations which exclude nonwhites. There are other State licensing boards selected from private organizations:

Chiropody examiners by Pedic Association (G.S. 90–190);
Chiropractic examiners from list submitted by Chiropractic Association (G.S. 90–140);
Board of embalmers and funeral directors by Funeral Directors and Burial Association (G.S. 90–203);
Board of opticians from list submitted by Opticians Association (G.S. 90–238);
Optometry examiners, from members of Optometric Society (G.S. 90–116);
Osteopathic examiners, from list submitted by Osteopathic Society (G.S. 90–130);

[8] *U.S. Census of Population, 1960*, General Social and Economic Characteristics, North Carolina, PC(1)–35–C, tables 58 and 61.

Board of pharmacy, from members of Pharmaceutical Association (G.S. 90–55);
Examining committee of physical therapists, from list submitted by Physical Therapy Association (G.S. 90–257); and
Examiners of electrical contractors (one member is secretary of Association of Electrical Contractors) (G.S. 87–39).

Whether these organizations include or exclude nonwhites, the Committee has not had an opportunity to determine.

One statute was passed originally for the purpose of keeping Negro labor in North Carolina, according to the North Carolina Supreme Court. The earlier form of G.S. 105–90 taxing employment agents was passed in 1891 to keep on the farms in North Carolina "the colored laborers on whom many farmers depended for the cultivation of their crops, which alone maintained the value of their land." *State* v. *Darnell,* 166 N.C. 300 (1914). The 1891 statute was declared unconstitutional in *State* v. *Moore,* 113 N.C. 697 (1893) because it applied only to counties in the east and because the tax was unreasonably high. The court stated that it was not constitutional to "forbid any person or class of persons, whether citizens or resident aliens, offering their services in lawful business, or to subject others to penalties for employing them." The statute was modified and reenacted in 1901 and upheld in *State* v. *Hunt,* 129 N.C. 686 (1901).[9]

None of these statutes, however, have as much influence on a person's opportunity for employment as his home environment, health, general education, job training, and his participation as a citizen in the public affairs of the community. The extent to which all persons in North Carolina enjoy equal protection of the laws, regardless of race or color, in all these areas, is the subject of this whole report.

The earlier policy of the State to keep Negro labor on the farm for the benefit of the landowners should be viewed in the light of the statement August 1, 1962, by Hargrove Bowles, director of the State department of conservation and development, in regard to new industry for the State and its effect on "one of the State's most vexing problems—the Negro male laborer. I wish someone would come up with a pat answer. That man wants to work. He can work. But he's underemployed and unemployed."

The following map (fig. 6), showing areas of substantial unemployment in the State as of March 1962, and those areas which have been designated as redevelopment areas under the 1961 Federal Area Redevelopment Act, might be compared to other maps of the State in this report showing voter turnout, nonwhite registration, concentration of nonwhite population, and the school age attained by white and nonwhite.

[9] See Logan, "The Movement of Negroes From North Carolina 1876–1894," 33 *North Carolina Historical Review* 45, Jan. 1956.

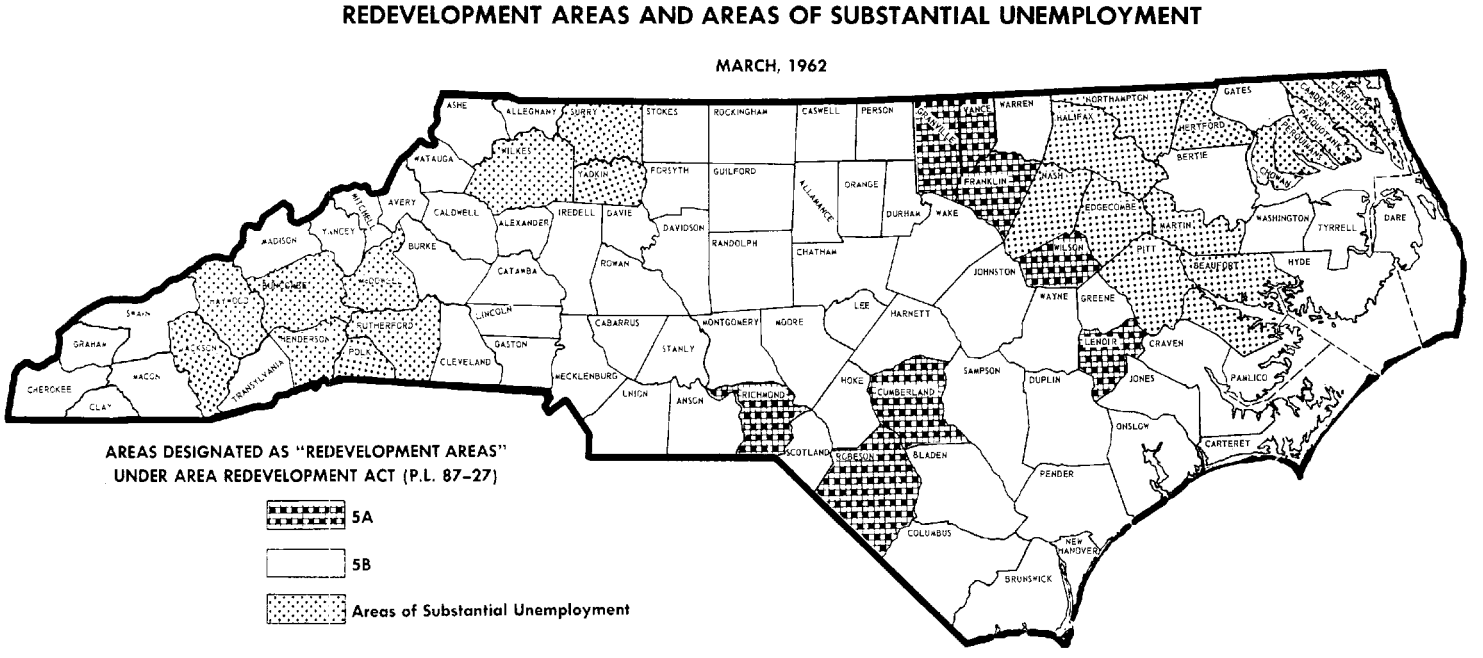


FIGURE 6.—*Redevelopment areas and areas of substantial unemployment.*

Private firms with Federal contracts in North Carolina are bound by their contracts not to discriminate against any employee or applicant because of race, religion, color, or national origin. The contracts require the contractor not to practice discrimination in "employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates or pay or other forms of compensation; in the selection for training, including apprenticeship." These terms have been in Federal contracts since 1953. They applied to all Federal contractors operating in North Carolina in 1961 when the Committee made its inquiry.

Since March 7, 1961, all such Federal contracts have included a promise that the contractor "will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." A number of contractors have recently told the Committee that they are reexamining their employment policies with a view to "affirmative action."

The present inquiry is the first on the extent of Negro employment by firms holding Government contracts in this State. Since it was conducted with mailed questionnaires, it has serious limitations. Tabulations are based on the number of replies rather than on the number of employees involved. Consequently, the report gives equal weight to the small family-owned shop and the large plant with thousands of workers. The statistical sampling is heavier in some cases than in others. Further study is needed. Of 262 contractors to whom questionnaires were sent, 149, or 56.9 percent, replied.

North Carolina, in common with States of its region, has traditions which more or less automatically assign Negroes to menial or unskilled positions.[10] For example, most Federal contractors replying to the questionnaires said they employ managerial or supervisory personnel; but only 3.7 percent employ Negroes in such positions. Also, 71.4 percent reported that they fill clerical and stenographic positions; but only 4.5 percent employed Negro clerks or typists. One such contractor employs in excess of 1,600 persons, of whom only 40 are Negroes. Of the 40, only 12 are rated as skilled, while 949 whites are so rated. This ratio is rather typical. (Appendix 7 shows occupational distribution of Negroes in contracting firms.)

In the questionnaire the following question was asked:

"If Negroes are not employed above the semi-skilled level, what are some of the reasons why they are not so employed?"

[10] For an account of "job ghettoing" in North Carolina see Logan, "The Economic Status of the Town Negro in Post-Reconstruction North Carolina," 35 *North Carolina Historical Review* 448, Oct. 1958.

Seventy-two employers gave no answer; 28 said Negroes did not apply; 17 listed lack of training or capacity.

Characteristics of the firms.—Manufacturers are the dominant Government contractors in North Carolina. Most of these contractors manufacture nondurable goods. More manufacturers of nondurable goods than of durable goods hire Negroes.

The majority are small firms with fewer than 100 employees; 20 firms were branches of larger organizations and of these, 12 have their headquarters in the Southeast. Only 1 of the 12 does not employ Negroes; all the rest do. Six of the 8 large firms with headquarters outside the South employ Negroes, while 2 do not.

Source and value of Government contracts.—Several of the firms hold more than one Government contract and with more than one department or agency of the Federal Government. The Department of Defense is the major contractor, followed by the General Services Administration, the Atomic Energy Commission, and the Veterans Administration. Since the Defense Department has 74 percent of the contracts reported, clearly this Department is an important source of initiative if the antidiscrimination provisions of Government contracts with North Carolina firms are to be implemented.

The dollar value of the contracts in relation to the size of the labor force reflects the "dollar investment" per employee by the Federal Government. The contracts held by North Carolina firms range in value from less than $10,000 for one firm to over $1,000,000 for another. The average value of the contracts for 68 firms reporting on this question was $87,500. The firms which employ no Negroes hold contracts of a median value of $75,000; for the firms which employ Negroes, the median value is $90,000. Firms that employ no Negroes reported contracts valued below $400,000.

The median dollar value of these contracts was $1,579.42 per employee. For firms employing Negroes this value was $2,106.74, and for the firms not employing Negroes this value was $1,200.

Most of the contractors were located outside of the six major cities listed in the questionnaire, but there were 19 firms in Charlotte, 16 of which employ Negroes; 15 in the Raleigh-Durham area, of which 11 employ Negroes; and 13 in the Greensboro-High Point area, of which 11 employ Negroes. Winston-Salem has 5 Federal contractors, and all 5 employ Negroes. Only 2 of the 5 firms in Asheville employ Negroes. Of the remaining firms whose locations are not given, 68 or 78.2 percent employ Negroes.

Size of Negro employment.—According to the report of the 149 firms, 53,407 persons are employed, of whom 8,770, or about 16.6 percent, are Negroes; 32 of the 149 firms (21 percent) do not hire Negroes in any capacity. Forty percent of those who do, hire less than 5 Negroes and almost 60 percent hire less than 10.

White females enjoy substantially greater opportunity for employment in North Carolina contracting firms than Negro females. The latter make up only 3.5 percent of the total employees reported, and 74 percent of the firms with Negro personnel do not employ Negro females.

Occupational levels.—Ordinarily, unskilled occupations rank fourth and service jobs rank sixth out of 10 occupational categories in which all persons are employed by the responding firms. However, these menial occupational categories rank first and second respectively so far as the use of Negro manpower by these companies is concerned. (See appendix 7)

Only 34 percent of the firms that employ Negroes use one or more in semiskilled production jobs. Only 2 of 106 firms employ one or more Negroes as salesmen. In only three firms are Negroes employed as technicians, and no more than 6 companies have Negro clerks and stenographers.

These patterns suggest that while contractors are apparently using Negroes in some operations, Negroes are excluded from professional, clerical and stenographic jobs and from occupations as technicians.

Educational and training requirements and recruitment.—Since most of the reporting firms have no minimum educational requirements in the lowest occupational categories, total exclusion of Negroes can rarely be justified on the basis of the Negroes' lower educational qualifications. An eighth grade education is required by only 4.5 percent of the firms, and only 11.5 percent require a high school education. Even though 9 percent of the firms indicated that they have other educational requirements none of them requires any college education for initial employment in the lowest occupational categories.

Recruitment and referrals.—Recruitment from high schools, colleges, and trade schools appears to be rare among the North Carolina companies responding to the questionnaire. 87 percent of the firms that employ Negroes, and 85 percent of those that do not, said that they recruit neither Negro employees nor white employees from such schools. As a matter of fact, friends and relatives of the present labor force are the chief source of new employees. The company office ranked second and the Employment Security Commission third as a source of labor.

These sources may discourage more Negro hiring. Since most of the Negroes who are employed by responding companies are employed in low ranking jobs, they are not likely to know of openings at higher levels, nor is it probable that their friends and relatives are qualified to fill such openings. Also, qualified Negroes hesitate to apply to company employment offices because they take it for granted (though they may be mistaken) that such offices rarely employ on a nonracial basis. The Employment Security Commission seems to observe traditional hiring

practices. These factors tends to perpetuate underuse of Negro manpower in the State.

Employer sponsored training programs.—Training programs provide an important means by which employees improve skill and efficiency and advance to higher and more productive jobs. Such programs help to increase proficiency and reduce labor turnover. The extent to which Negroes participate in various training programs gives some index as to use of Negro manpower.

The Committee asked about training programs and Negro participation in them. Slightly more than half the firms had no employer sponsored training programs; 44 of 100 firms with Negro personnel had no such training programs. Of the 56 firms which employ Negroes and have training programs, 79 percent indicated that Negroes participate in the training.

On-the-job training ranks first among the programs in which Negro employees participate. Negroes seem to participate in this type of training program almost 2½ times as often as Negroes participate in apprentice programs, and over 3 times as often as in supervisory training.

In three-fourths of all the contracting firms, Negroes have very little opportunity to advance to supervisory positions by way of employer sponsored training programs. Similarly, in 70 percent of the firms that employ Negroes, and in 75 percent of all the responding firms, Negroes are not participating in apprenticeship training.

Up-grading and promotion.—The Committee also sought to find out (1) the extent to which Negroes are up-graded and the levels to which they are up-graded; and (2) the reasons for the infrequency of such up-gradings.

In 58 percent of firms with one or more Negroes, no Negroes were promoted during the past year. Almost two-thirds of the 41 firms that did promote Negro employees promoted fewer than 5. In 16 firms, no more than 2 Negro employees had been promoted during the past year; 3 companies reported that 40 or more Negroes had been promoted during the year in question. Significantly, more than half the firms if they had promoted Negroes at all had raised them to skilled positions. But the number of firms in which Negroes reach supervisory positions (3), professional positions (1), clerical positions (4), or positions as technicians (2), seems small.

Eleven of the 51 firms answering the question about why promotion is so infrequent said that Negro applicants were not qualified for promotion while 40 simply stated that "other" reasons exist for not promoting Negroes.

Employer evaluations of Negro employees.—Appendix 8 sets forth selected evaluations of Negro employees by responding contractors. In each category, over one-half of the employers rated Negro employees

equal to white employees. In two categories, job efficiency and deportment, three-fourths of the employers indicated that Negro employees do not differ from white employees; 13 of 100 firms reported that Negro employees are not as efficient as white employees and one firm indicated that Negroes are more efficient.

The Negro employees received their most favorable rating on job efficiency and deportment, and their most unfavorable rating on absenteeism and quitting.

Problems and the role of Government.—The employers were asked to indicate whether Negro labor, especially above the semiskilled levels, is hard to use; 90 firms indicated that they had experienced no difficulty.

Seven of the fourteen firms that experienced difficulty in employing Negroes mentioned a lack of qualified applicants. Only three of these firms had found white employees unwilling to accept Negroes as fellow workers. Only 3 of 17 firms said relationships with labor unions had an adverse effect on the use of Negro manpower.

Among the firms that do employ Negroes, only 2 of the 108 that responded to this questionnaire reported problems in complying with the nondiscrimination clause of the contracts; 21 of the 25 firms with no Negro employees indicated that they had never discussed the matter of Negro employment with any Federal agency; 87 of 100 firms employing Negroes said they had never discussed the problem with any Federal agency.

INDUSTRIAL EDUCATION CENTERS

Are Negroes now being trained in the industrial education centers of North Carolina? If only a relatively few Negroes are being trained at these centers, is it in part because they have been excluded on account of their race or color?

These questions were raised by a series of complaints received by the Committee in 1961. The complaints alleged that some of the centers were refusing admission to Negroes unless they could prove that they had the assurance of employment in the skill for which they sought training, whereas white students were solicited to enroll even though their training was only to be used in personal hobbies.

The Committee asked each of the industrial education centers for the enrollment figures by race, the number of applications rejected during the past year, the reasons for rejection, whether applicants are required to have the promise of employment upon completion of training, the types of training given in the previous year for whites and nonwhites, and the extent to which, if any, the students are segregated by race in classes or facilities.

Detailed information was received from the following centers:

Catawba County
Durham (city)
Gastonia (city)
Goldsboro (city)
Guilford County
Leaksville (city)
Lenoir County
New Hanover County
Winston-Salem (city)

The following centers reported that they were not in operation in 1960–61 and hence could not reply:

Asheboro (city)
Asheville (city)
Davidson County
Fayetteville (city)
Lee County
Rowan County
Pitt County
Wake County

The following centers, although in operation, did not make quantitative information available, although they did respond with other information:

Mecklenburg County
Wilson (city)

No reply was received from the Burlington Industrial Education Center, but a letter was received from the superintendent of the Burlington city schools in regard to the operation of the center.

Enrollment.—The following tables shows the registration in the industrial education centers of North Carolina by race and sex in 1960–61:

TABLE 1.—*Registration in industrial education centers in North Carolina by race and sex, 1960–61*

	White Students		*Negro Students*		
Center	*Male*	*Female*	*Male*	*Female*	*Total*
Catawba County	457	5	3	0	465
Durham (1961–62)	218	18	10	137	383
Gastonia	219	10	47	34	310
Goldsboro	1, 595	1	0	0	1, 596
Guilford County	1, 178	32	2	0	1, 212
Leaksville	381	0	36	0	417
Lenoir County	121	35	0	13	169
New Hanover County	143	0	120	0	263
Winston-Salem	1, 065	103	135	0	1, 303
Totals [1]	5, 377	204	353	184	6, 118

[1] Total white—5,581.
Total Negro—537.

Wilson City reports a total enrollment of 965 with no breakdown by sex or race. This figure is not included in the total. The total number enrolled in all these centers in 1960 was 11,099; in 1961, approximately 16,000. As other centers open and these original ones expand, this figure will continue to climb.

TABLE 2.—*Percentage of registration in industrial education centers in North Carolina by race and sex, 1960–61*

	Registration	*Percentage of total*
White male	5, 377	87. 9
White female	204	3. 3
Negro male	353	5. 7
Negro female	184	3. 0
All white	5, 581	91. 2
All Negro	537	8. 7

These data make very clear that the registration in these schools is predominantly white. According to the 1960 census, Negroes constituted 25.4 percent of the total population of North Carolina. Only 8.7 percent of the registration in industrial education centers is Negro.

Segregation.—Table 3 shows the training courses in which each race participated during the last year. The number following the name of the course indicates the number of schools in which such a course was mentioned.

TABLE 3.—*Courses of study offered in 6 industrial centers*

Negro	*White*
Electronics (3)	Auto mechanics (4)
Mechanical	Drafting (4)
Practical nursing	Electrical
Power sewing	Electronics (5)
Auto mechanics (4)	Heating and air conditioning (4)
Bricklaying (3)	Mechanical
Cosmetology	Secretarial
Machine shop (2)	Carpentry (2)
Air conditioning	Machine shop (5)
Cook	Welding
Tailor	Knitting (2)
Graphic arts	Machine fixing (2)
Drafting	Furniture (3)
	Graphic arts
	Practical nursing

Two centers reported that they operated separate locations for Negroes and whites. One of those pointed out that the programs in the two locations were different, which means that there was a difference in the training offered to these trainees on account of their race. Another center stated that segregation by race was followed in classrooms, lunchrooms, and restrooms. Six centers reported that there was no segregation in the use of any of their facilities.

The superintendent of the Burlington city schools wrote the Committee:

> We have an Industrial Center on Camp Road and one on the Jordan Sellars School campus. The one on the Jordan Sellars School campus was devised for the trades which were requested by our Negro citizens.
>
> There is no discrimination of the enrollment at the central Industrial Education Center. It is true that we have had only one Negro to attend and there was no difficulty during his period of attendance. We admit both white and Negro without discrimination to the classes at the Industrial Education Center. We do not have any separate facilities. It has been and is our hope that more Negroes apply for the technical courses at the central Industrial Center.

Admission policies and practices.—There is some degree of confusion concerning admissions policies and practices among the various centers responding to the questionnaire. Of 10 respondents, 7 stated that their admission policies were directed by the North Carolina State Department of Public Instruction while the remaining 3 said that no State or Federal agency prescribed or determined their admission policies and practices. The view of the State department of public instruction is that the centers are entirely administered by the local educational authorities. The role of the State agency in this case is purely advisory. It is clear that this variance in responses reflects an underlying confusion and uncertainty concerning admission policies in the industrial educational centers.

The questionnaire contained three questions which directly inquired concerning the policy of the centers about race as a factor in admission. All 10 centers responded in direct terms that race was not a factor in admission and that it was their policy to admit all qualified applicants without respect to race.

The questionnaire did not inquire into the specific steps which the centers employ in deciding to admit or reject applicants. The procedure recommended by the State department of public instruction is for each center to administer the General Aptitude Test Battery of the U.S. Employment Service or to have the battery administered by the local employment security office. If the candidate scores below a recommended score for the training which he seeks to enter, he is rejected. If he scores above the score he may or may not be admitted. Apparently certain aspects of the admission decision are discretionary with each director of the center. Each center has an advisory board composed of persons who, according to the State plan, "know the industrial needs of the area served." Some centers have this board, or an admissions

committee from the board, pass on questionable applications referred by the director.

Nine of the 10 centers which furnished detailed information categorically denied that they required a promise or guarantee of a job before admitting any applicants. The 10th said that such a promise was required in some cases, but furnished no further information concerning this practice.

When the State board of education first published its plan for industrial education, it stated that "instruction shall be available to both adults and selected high school students who have completed those courses that are prerequisite to the specific instruction desired *and for whom specific job opportunities are available.*" [Emphasis added.] Correspondence and discussion with officials of some of the centers indicated that the above language was at one time taken to mean that applicants could be refused unless they had the promise of a job.

For example, if it was known not to be the custom for Negroes to be employed as upholsterers in the area served by the center, then it could be said that a Negro should not be admitted to a course in upholstering, unless a "specific job" was assured. As one of the members of the advisory board of one of the centers stated to a member of this Committee, "Upholstering is a white job!"

Another advisory board member stated, "We knew if we broke the line, they would break the line in the whole industrial setup. . . . I do think we have to seek to determine if there are possible job openings."

However, this point of view does not reflect the policy of any of the centers and it is not the view of the State department of public instruction. According to Gerald B. James, director of vocational education for the State:

> When it is decided that a particular course or curriculum is to be offered, that course is not limited to one race while denying citizens of another race. Our interest is in meeting the educational needs of North Carolina irrespective of race. It is, however, the responsibility of the local administrative unit to deal with student assignments consistent with North Carolina statutes.

His reference is to General Statute 115–230 which provides, in an amendment adopted in 1959, that "assignments to an Industrial Educational Center shall be made under the provisions of Article 21 of this Chapter." Article 21 includes the Pupil Assignment Act adopted in 1955 and 1956. This act authorizes the county and city boards of education to assign to a public school "each child residing in the administrative unit." The words "child" and "children" appear throughout. Dissatisfied parents or guardians of the child may apply for reassignment of the child. Adults outnumber high school students 6 to 1 in these centers.

Insofar as can be determined by the Committee, these provisions have never been applied to adults desiring to attend an industrial training center, or for that matter to "mature or select high school students" for whom these industrial education centers are also available. Indeed it is difficult to conceive just how the Pupil Assignment Act could be applied to these adults; they are not "children" and their admission, assignment, and reassignment to industrial training courses could hardly be intended to turn on their parents' wishes and petitions, instead of their own. This statutory ambiguity may be yet another reason for the lack of clarity in admission policies and responsibility.

The general policy of providing training only for jobs which are available for anyone in the State is well understood and widely approved. A great variety of courses are being offered in these industrial training centers and the decision as to what courses are offered is made on the basis of occupational surveys showing the need for such training in general and on the recommendation of the advisory board members who "know the industrial needs of the area served." Therefore, when a course is given, it is expected that jobs are or will be available for those who complete the training. It would appear that the government, which provides this training, could not constitutionally decide in advance that such training would be offered to citizens of one race but denied to citizens of another race. Anyone in the area served, regardless of race or color, who can qualify by the tests given to determine his or her capability, should be permitted to take the training. Whether he or she is later denied a job on account of race or color is a private decision to be made by the prospective employer and employee, and not by the government, in advance, in the administration of the training program.

Reasons for lack of Negro participation.—These schools were established by our State for adults and "mature or select high school students" after studies in 1957 and 1958 showed the great need for industrial education. A statewide system of such industrial education centers was adopted by the State board of education and subsequently by the advisory budget commission. Funds for program development were provided by the General Assembly of North Carolina and by Congress in the National Defense Education Act of 1958.

According to the State department of public instruction, 60 out of 100 pupils do not now graduate from high school, and of the remainder, only 16 enter college and only 4 to 6 graduate from college. "The more than 90 out of every 100 constitute the masses of North Carolina's population; and the development of these appears to be the major hope for an improved economy, improved social conditions, and improved citizenship in general."

As to why so few Negroes are taking part in this statewide industrial training program, the data collected by this Committee show that there may be several reasons. There is some evidence of exclusion of Negroes

in some situations, and some evidence of segregation of Negroes by courses or classes or facilities, but neither exclusion nor segregation exists in any large degree, and present policies of the centers are stated to be nondiscriminatory.

Even if all the administrators of these centers enthusiastically welcomed all Negroes who apply for training for which there is no customary expectation of employment, nevertheless many Negroes may not be willing or determined enough to prepare themselves by undergoing the training when to them there seems little likelihood of being employed in such work upon completion of training. They remain untrained and unskilled and a drag on the economy of the State. Obviously, they should seek to be trained to their fullest capability; meantime the rest of the economy, the "industrial setup," should provide unrestricted competition for their skills. This is a challenge to all our employees as well as all our employers, white as well as Negro.

Admission to these centers may also be limited because of generally poor prior training. As one administrator stated to the Committee: "For admission, an individual must present appropriate academic achievements in math, science, English and related subjects as well as a reasonable assurance he will profit from the courses offered. . . . It may be that some friends associate the industrial education center with the old vocational program offered in prior years which was primarily designed for those who would not succeed in academic subjects. Courses offered in our industrial education center are technical and many can neither meet the requirements nor would they profit by taking the courses offered." If a disproportionate number of Negroes fail to meet these requirements, this may indicate greater deficiencies in earlier public school preparation of Negroes.

One administrator stated that he had "recently shown forty-seven Negro men through the school and invited them to take courses; that only four applied, and of these only one completed the necessary examinations and he did so poorly that he was not admitted." He advised that he had "denied between twenty-five and thirty-five white applicants on the same basis."

Another administrator said that he "had attempted to set up programs for Negroes, but that in many cases sufficient Negroes had not applied, or had not applied in time, or had failed to complete the examination."

Despite this indication of a desire to recruit Negroes, another reason for the low enrollment of Negroes is that present recruiting practices reach more whites than Negroes. The administration of these schools and their faculties are white. The normal channels for recruitment are more likely to be those which reach potential white applicants but not Negro applicants in substantial numbers. It is also likely that Negroes have a customary reluctance to enter into new situations like the indus-

trial education centers. If they are to receive the training, they may need extra encouragement. Otherwise, the State as a whole will continue to bear the burden of a large pool of untrained and unskilled labor and low per capita income.

We concur with the State board of education that "there is a direct relationship between one's educational achievement and his earning capacity, his qualifications as a citizen and his contribution to society. This program, therefore, has a direct bearing upon the solution of the State's problem of low per capita income as its industrial economy expands."

Summary

1. Registration in the industrial education centers is disproportionately in favor of white students with 91.2 percent of the total student body white and 8.7 percent Negro.

2. The disproportionately low Negro registration is due to to a number of factors including inadequate recruiting of Negroes, insufficient prior training and inadequate motivation of Negroes, and in some cases discriminatory admission practices and segregated facilities and courses.

3. The stated admission policies of all the responding centers exclude race as a factor in admission.

4. Requirement of a promise of employment as a condition of admission would discriminate against Negro candidates.

5. Racial segregation of students in educational activities is practiced in some of these centers. In at least three this includes separate courses of study. The data furnished by a fourth center is too ambiguous to permit a clear statement as to whether its courses are segregated by race or not.

6. All of these industrial education centers are operated by the government and are subject to the constitutional requirement that no citizen be denied equal protection of the law on account of race or color.

7. As in other situations, admission practices that distinguish between applicants because of race or separate students on this basis tend to promote inequality of training and deny students, faculty, and the whole State, both white and Negro, the benefits of competition.

V. Education

It is our plain duty to make no discrimination in the matter of public education.

—Gov. Zebulon B. Vance, 1877.

. . . the public schools, nurseries of the State's citizenship.

—Justice Henry G. Connor, 1907.

THE PUBLIC SCHOOL SYSTEM

Although the North Carolina constitution of 1776 incorporated provisions for education, the first public school law was not enacted until 1839. From that time until the Civil War, school districts were to be established "having regard to the number of white children in each." [1] No provision was made for education of even free persons of color, and it was forbidden to teach slaves to read or write or to give or sell them books or pamphlets.[2]

The constitution of North Carolina requires that every child be afforded an education at public expense:

ART. I, SEC. 27. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain the right.

ART. IX, SEC. 2. The general assembly, at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of public schools wherein tuition shall be free of charge to all children of the state between the ages of six and twenty-one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.

[1] Laws of North Carolina, 1838–39 : ch. VIII, sec. 3, p. 13.
[2] Laws of North Carolina, 1830–31, ch. VI, p. 11. See also N.C. Rev. Stat., ch. III (1837).

The last sentence was not in the constitution upon which the State was readmitted to the Union, but was added by the convention of 1875.

In *Lane* v. *Stanly,* 65 N.C. 153 (1871) the North Carolina Supreme Court pointed out that "the Constitution establishes the public school system, and the General Assembly provides for it, by its own taxing power, and by the taxing power of the counties, and the State Board of Education, by the aid of school committees, manage it. It will be observed that it is to be a 'system'; it is to be 'general,' and it is to be 'uniform.' It is not to be subject to the caprices of localities, but every locality, yea, every child, is to have the same advantage and be subject to the same rules and regulation."

Again in *Hooker* v. *Greenville,* 130 N.C. 472 (1902) the Court held that "one white child of the school age shall have the same amount of money *per capita* as a colored child, and no more; and the colored child shall have the same amount *per capita,* as any white child; and no more; that both races shall have equal opportunities for an education, so far as the public money is concerned." The Court was unanimous, but three years later, with new judges replacing four of the five members of the 1902 Court, the above language was expressly disapproved.[3]

In 1956, after the U.S. Supreme Court decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), and 349 U.S. 294 (1955), the North Carolina Supreme Court held that only that portion of the 1875 amendment which purports to make mandatory the enforced separation of the races in the public schools is now invalid, and that otherwise the mandates of this section of the North Carolina constitution are still in full force and effect. *Constantian* v. *Anson County,* 244 N.C. 221. In spite of the constitutional requirement, however, public schools were in a poor condition for a long time. In 1900 there were 5,028 white school districts whose schoolhouses had an average value of only $231, and in 2,236 colored school districts the average value was only $136. A total of 830 school districts had no schoolhouses whatever. In all, 8,663 teachers taught 245,000 children about 3 or 4 months per year. "Many of these teachers had little more than a grammar grade education themselves, especially in the colored schools . . . By 1919 only 20 percent of the State's white teachers and only 7 percent of the Negro teachers held the highest grade certificate, while 16 percent of the white teachers and 43 percent of the Negro teachers had themselves never finished high school." [4]

In 1919, "the Negroes had school houses not much improved over those in 1902; their rural school terms were usually no longer than the minimum requirement; and their school equipment remained crude, meager, and inadequate." Nor was there a single standard Negro high

[3] *Lowery* v. *School Trustees of Kernersville,* 140 N.C. 33 (1905).

[4] Johnson, Elmer D., "James Yadkin Joyner, Education Statesman," *North Carolina Historical Review,* July 1956, pp. 365–66, 377.

school or farmlife school in the State.[5] Gov. J. C. B. Ehringhaus pointed out that in 1931–32 only 13 counties had any school with terms of 8 months or longer for Negro children, and that only recently in 80 counties the average education of the Negro teachers was below high school graduation. He estimated that in 1933 80 to 90 percent of the Negro children would attend school that year, *"three times the percentage of two years ago."* [6]

In the school year 1961–62 there were 800,281 white children and 341,293 Negro children enrolled in the public schools of North Carolina, or a total of 1,141,574. These children were furnished free textbooks, library facilities and, in the rural areas, free transportation by State-owned buses.

In the school year 1961–62, the State of North Carolina employed 29,009 white teachers and 11,255 Negro teachers. Incidentally, North Carolina employs more Negro teachers than any other State in the Union. In fact, the State employs more Negro teachers than the 31 Northern and Western States of the Union combined.

TEACHERS' SALARIES

Though salaries were low for all teachers by present standards, they were more nearly equal in 1884, when Negro teachers drew 94 percent of the average salary of white teachers, than at any other time until the 1940's. After the endorsement of the separate but equal doctrine by the U.S. Supreme Court in 1896 and the disfranchisement of the Negro in 1900, there was a greater difference between white and Negro teachers' salaries. In 1915 and 1925, the ratio was nearly 2 to 1 in favor of white teachers.

In 1940 the Court of Appeals for the Fourth Circuit, in an opinion by Chief Judge John J. Parker of North Carolina involving the School Board of Norfolk, Virginia, held that the fixing by local school boards of salary schedules for teachers was "action by the State" and that fixing salaries of Negro teachers in the public schools at a lower rate than that paid to white teachers of equal qualifications and experience, and performing the same duties, on the sole basis of race and color, violated the due process and equal protection clauses of the 14th amendment of the United States Constitution.[7]

[5] Gatewood, Willard B., Jr., "Eugene Clyde Brooks and Negro Education in North Carolina, 1919–1923," *North Carolina Historical Review*, July 1961, p. 365.

[6] Addresses and Papers of Gov. J. C. B. Ehringhouse, 1933–39, pp. 109–110.

[7] *Alston* v. *School Board*, 112 F. 2d 992.

Since 1944 the average annual salaries of Negro teachers in North Carolina, in the elementary as well as the high schools, has exceeded that of white teachers. One of the reasons for the difference has been that more Negro teachers hold higher certificates, and more Negro teachers remain in their teaching jobs for longer periods of time, thus building up longevity pay. The greater supply of Negro teachers in North Carolina tends to admit of greater selectivity in the employment of Negro teachers with higher certificates.

DAILY ATTENDANCE

The average daily attendance per teacher (including vocational teachers and principals) was 27.7 for white teachers and 29.1 for Negro teachers in 1960–61. The ratio was more nearly equal in 1944–48.

TABLE 3.—*Pupils in average daily attendance per teacher employed (not including vocational teachers and classified principals)*

Year	*White*	*Negro*
1944–45	28. 9	29. 5
1945–46	29. 2	29. 7
1946–47	29. 2	29. 8
1947–48	29. 4	30. 8
1948–49	30. 1	31. 8
1949–50	29. 7	31. 8
1950–51	29. 4	31. 7
1951–52	29. 1	30. 7
1952–53	28. 3	30. 0
1953–54	27. 6	29. 7
1954–55	27. 4	29. 4
1955–56	27. 2	29. 2
1956–57	27. 0	28. 9
1957–58	27. 8	29. 6
1958–59	28. 1	29. 8
1959–60	27. 6	29. 1
1960–61	27. 7	29. 1

ANNUAL EXPENDITURES

The annual per pupil expenditure for all children has risen from $29.65 in 1935 to $279.92 in 1960 61, the latest figure available.

These figures include State, local, and Federal funds used for current expenses as well as capital outlays made during these years.

No official breakdown of these figures as between white and Negro pupils is available.

There is published each year a summary of expenditures made by the State nine months' school fund, including schoolbus replacements, and this is broken down as to expenditures, according to the white and Negro races, for instructional service, operation of plant, fixed charges, and auxiliary agencies.

Since the average daily attendance for the year 1960–61 was 727,611 white pupils and 297,332 Negro pupils, the average annual per pupil expenditure for 1960–61 from the State nine months' school fund for these categories was as follows:

Objects and items	*White*	*Negro*
Instructional service	$146.79	$146.41
Operation of plant	8.56	7.27
Fixed charges	0.18	0.11
Auxiliary agencies	10.02	9.84

There is one further classification of objects and items for which the State nine months' school fund is used, and that is for general control which includes salaries of clerical assistants and property and cost clerks, office expense, and per diem and travel of county board members. This might be called overall administrative expense at the State level. All of these funds are classified as spent for white and none for Negro. They have not been included in determining the average per pupil expenditure.

INVESTMENT IN SCHOOL PROPERTY

As consolidation has progressed, there has been a steady diminution in the number of schoolhouses. For example, in 1919–20, there were 5,552 white schoolhouses, and 2,442 Negro schoolhouses. The corresponding figures for 1959–60 are 2,206 white and 996 Negro.

The total has thus dropped from 7,994 schoolhouses in 1920 to 3,202 schoolhouses in 1960.

This trend toward consolidation of schools and reduction in number of school buildings was recently reversed in the case of Yancey County where, with State aid, a new building to accomodate only 27 Negro pupils was erected.

The school properties used by white pupils have a higher appraised value than the school properties used by Negro pupils, although the disparity is not nearly so great now as it was in 1920. The relevant figures are shown in table 4.

The average investment in school property per pupil without regard to race for the session 1959–60 was $643.46. Hence the white pupil is $66.08 above the average and the Negro pupil is $156.36 below it.

TABLE 4.—*Appraised value of school property per pupil*

Year	*White* [1]	*Negro* [1]
1919–20	$45.32	$11.20
1924–25	113.40	29.03
1929–30	162.92	44.20
1934–35	152.99	44.55
1939–40	167.36	55.93
1944–45	203.80	73.08
1949–50	314.29	127.38
1950–51	370.54	170.91
1951–52	448.09	232.01
1952–53	484.94	280.06
1953–54	511.35	314.31
1954–55	539.70	336.65
1955–56	569.09	359.99
1956–57	604.33	396.35
1957–58	645.55	441.80
1958–59	674.56	465.94
1959–60	709.54	487.10

[1] Enrolled.

DROPOUTS AND ABSENCES

Recently the dropout rate has been the same for both races (4.4 percent in 1956–57 and 4.1 percent in 1957–58). Before that, the incidence of dropouts was higher among white students than among Negroes. However, in 1959–60, this earlier pattern was reversed; the rate for white students fell to 3.8 percent while that for Negro students was 4.2 percent.

As to absences, the rate of the average daily absence was higher among Negro students than among white students during all these years. In 1934–35, the rate was 10.3 percent for Negro pupils, compared to 7.5 percent for white pupils. In 1959–60, it was 8.8 percent for Negro pupils, compared to 5.2 percent for white pupils.

Negro pupils attended 164.2 days for the school year 1959–60, compared to 170.6 days for the white pupils. Back in 1934–35, the number was 142.6 days for Negroes and 148.3 for white pupils.

This average number of days attended per pupil reached a high for Negroes in 1950–51 when it was 165.9. Among the white pupils it reached a high in 1956–57 when it was 171.0.

BOOKS AND LIBRARIES

The average expenditure per pupil in average daily attendance for school libraries has risen from 32 cents in 1929–30 to $1.68 in 1957–58.

The number of volumes per pupil has risen from 1.8 books per pupil in 1934–35 to 6.1 per pupil in 1957–58. The circulation of these books averaged 7.5 per pupil in 1934–35 as compared to 20.8 per pupil in 1957–58. Table 5 shows the average expenditures for school libraries per pupil and the average per pupil circulation of books for both races.

TABLE 5.—*Total expenditures for school libraries*

Year	*Average per white pupil*	*Average per Negro pupil*
1944–45	$0.73	$0.35
1949–50	1.27	.70
1950–51	1.42	.77
1951–52	1.73	1.07
1952–53	1.86	1.25
1953–54	1.79	1.22
1954–55	1.67	1.05
1955–56	1.71	1.01
1956–57	1.76	1.11
1957–58	1.84	1.28
Circulation of library books		
1944–45	17	6
1949–50	19	7
1950–51	20	6
1951–52	21	8
1952–53	24	13
1953–54	25	11
1954–55	25	10
1955–56	27	12
1956–57	28	12
1957–58	29	13

LUNCHROOM PROGRAM

In the year 1959–60, 1,391 out of 2,206 white schools participated in the lunchroom program.

For the same year, 396 out of 996 Negro schools participated in such programs.

The percentage of white participation was 64 percent, and the percentage of Negro participation was 39 percent.

Since the average Negro income is approximately one-half the white average, the Negro need for lunchroom service is presumably twice as great. We have no means of knowing all the reasons for this disparity, and have not had the opportunity of making a complete investigation on this point.

There are two ways in which high schools are judged as to overall quality. One is by the designation "accredited" by the State department of public instruction; the other and much more rigorous test is by approval or accreditation by the Southern Association of Colleges and Secondary Schools. The latter does not include any nonwhite high schools as members, but does judge such schools by standards similar to those applied to the white member schools. Nonwhite schools which meet these tests are designated "approved," rather than "accredited." Table 6 shows the number and percentage of accredited and approved schools by race.

TABLE 6.—*Accreditation status, high schools, 1959–60*

	White	*Negro*	*Total*
Number of high schools	634	240	874
Number accredited by State	621	223	844
Percent accredited by State	97.95	92.92	96.57
High school enrollment	192,823	68,255	261,078
Enrollment in schools accredited by State	189,832	66,524	256,356
Percent of students enrolled in schools accredited by State	98.44	97.46	98.19
Number of high schools accredited or approved by Southern Association [1]	109	47	156
Percent of high schools accredited or approved by Southern Association [1]	17.19	19.58	17.84
Enrollment in Southern Association accredited or approved schools [1]	68,280	21.563	89,843
Percent of students enrolled in Southern Association accredited or approved schools [1]	35.41	31.59	34.41

[1] Does not include nonpublic schools.

Figure 7 (p. 107) indicates the county-by-county percentage of high school population enrolled in schools "accredited" by Southern Association, and figure 8 (p. 108) gives the same breakdown as to "approved" schools (nonwhite). Appendix 9 is a table comparing the percentages by county of enrollment in these designated schools.

North Carolina ranks lowest among the 11 Southern States in the percentage of white students attending public high schools that are accredited by the Southern Association of Colleges and Secondary Schools. The State ranks seventh in the percentage of Negroes attending approved high schools. The relevant percentages are shown in table 7.

WHITE

Percentage High School Population Enrolled in Schools Accredited by Southern Association

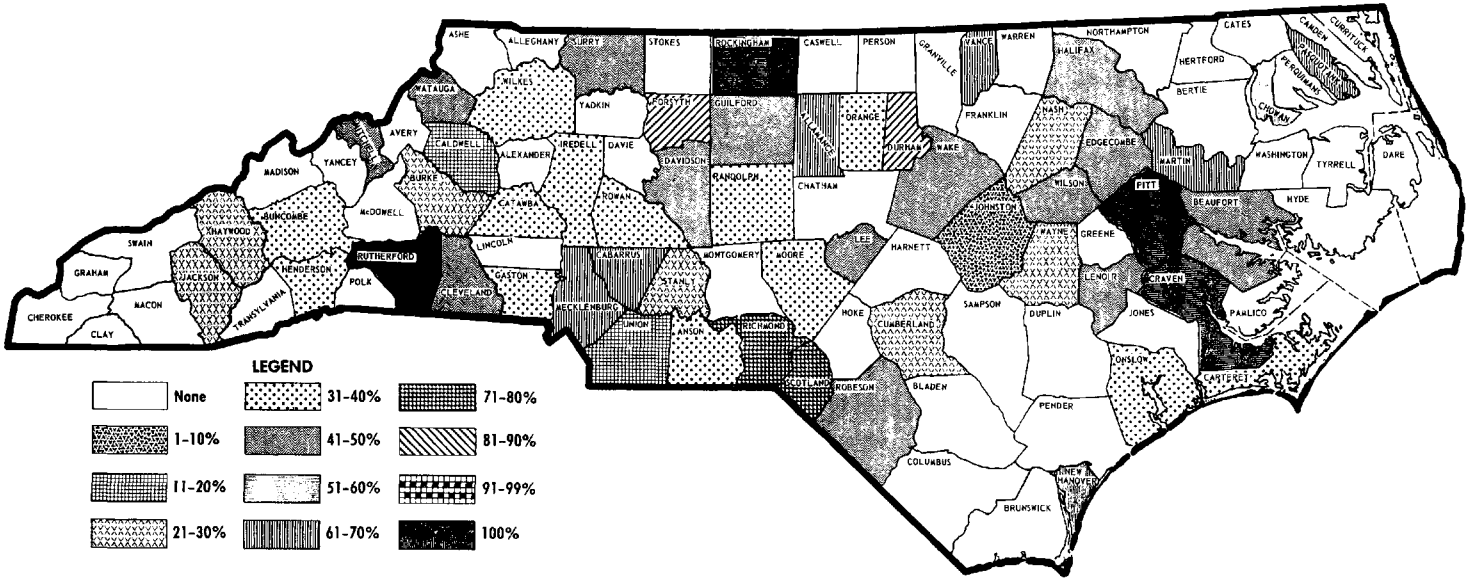
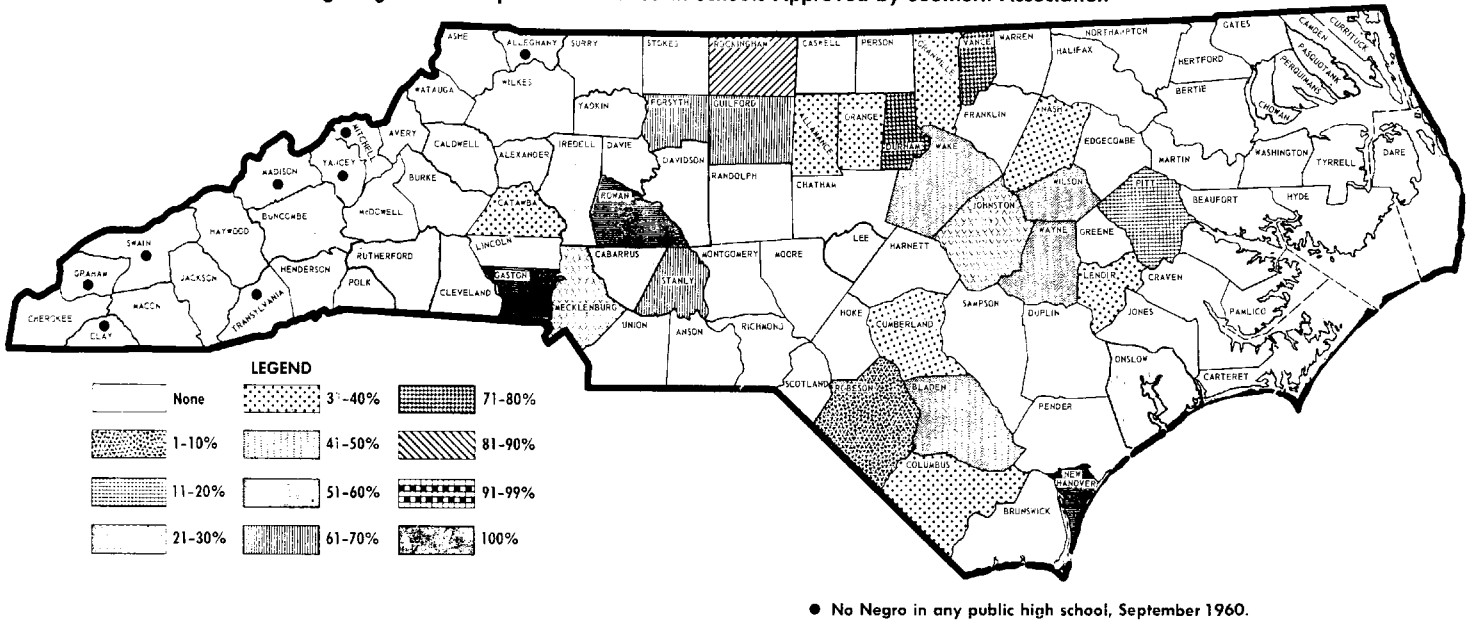


FIGURE 7.—*Percentage of white high school population enrolled in schools accredited by Southern Association.*

NEGRO

Percentage High School Population Enrolled in Schools Approved by Southern Association



● No Negro in any public high school, September 1960.

FIGURE 8.—*Percentage of Negro high school population enrolled in schools approved by Southern Association.*

TABLE 7

	White students in accredited schools, percent	*Rank*	*Negro students in approved schools, percent*	*Rank*	*All students in accredited-approved schools, percent*	*Rank*
Florida	72.02	3	66.18	1	71.02	1
Georgia	78.49	2	48.76	2	70.51	2
Louisiana	89.39	1	28.44	8	63.34	3
Virginia	47.09	5	37.10	4	45.00	4
Tennessee	44.83	7	32.43	6	42.82	5
Mississippi	62.19	4	7.57	11	41.37	6
Texas	42.55	8	33.26	5	41.35	7
Kentucky	39.58	9	41.25	3	39.69	8
North Carolina	35.41	11	31.59	7	34.41	9
Alabama	37.15	10	26.06	9	33.74	10
South Carolina	46.10	6	20.40	10	33.25	11

In regard to the racial distribution of North Carolina students in accredited and approved high schools, the following observations are of interest:

1. There are seven counties in western North Carolina where *no* Negro high school students are enrolled in *any* public school. The counties in this category are: Alleghany, Clay, Graham, Madison, Mitchell, Swain, and Transylvania. Yancey County was also in this category when school opened in September 1960, but later eight Negro students whose petitions had been pending in the U.S. District Court for the Western District of North Carolina were ordered admitted to high schools in the county.

In 1960 the nonwhite population in these counties was—

Alleghany	232
Clay	50
Graham	257
Madison	121
Mitchell	42
Swain	1,669
Transylvania	868
Yancey	140

Clay, Graham, and Mitchell have no Negro students enrolled in any schools. Alleghany has 55 Negro elementary students; Madison, 19; Swain, 26; and Transylvania, 218.

2. In 11 counties in North Carolina, 100 percent of the Negro high school population is enrolled in schools approved by the Southern Association. These counties are: Chowan, Pasquotank, Onslow, Lee, Cabarrus, Davidson, Caswell, Iredell, Caldwell, Rutherford, and Buncombe. In only two counties, New Hanover and Chowan, are 100 percent of the white high school students enrolled in schools accredited by the Southern Association.

3. It should be noted, however, that these statistics are based on counties rather than on school administrative units. If they were prepared on the basis of school administrative units, there would be many more units which would show higher percentages of the white population enrolled in schools accredited by the Southern Association. Sixty-eight of the 108 white accredited schools are in city administrative units, and in many cases, the students enrolled in these schools represent the entire white high school population of the unit.

4. Thirty-two of the 52 accredited Negro high schools are located in city administrative units. In some cases, these high schools represent the entire Negro high school population from the city administrative unit and also the entire Negro high school population in the county in which the administrative unit is located.

5. There are 43 counties in which there were no high school students, white or Negro, enrolled in schools accredited by the Southern Association at the opening of school in September 1960. These were:

Alexander	Dare	Jones	Polk
Alleghany	Davie	Lincoln	Sampson
Ashe	Duplin	Macon	Stokes
Avery	Franklin	Madison	Swain
Bertie	Gates	McDowell	Transylvania
Brunswick	Graham	Montgomery	Tyrrell
Camden	Greene	Northampton	Warren
Chatham	Harnett	Pamlico	Washington
Cherokee	Hertford	Pender	Yadkin
Clay	Hoke	Perquimans	Yancey
Currituck	Hyde	Person	

6. In addition to the foregoing 43 counties, there are 4 other counties where no white students were enrolled in schools accredited by the Southern Association, although in these counties some Negro students were so enrolled. These are: Bladen, Caswell, Columbus, and Granville.

7. Furthermore there are 21 other counties where no Negro students were enrolled in schools accredited or approved by the Southern Association, although in these counties some white students were so enrolled. These are:

Anson	Edgecombe	Mitchell	Union
Beaufort	Halifax	Moore	Watauga
Burke	Haywood	Randolph	Wilkes
Carteret	Henderson	Richmond	
Cleveland	Jackson	Scotland	
Craven	Martin	Surry	

8. While Southern Association accreditation is not an absolute standard, it does have a bearing on the quality of the schools available to the high school students in North Carolina.

In addition, it has a direct effect on the admission of high school graduates from North Carolina public schools to many colleges in the United States. Therefore, these figures are of interest to the people of North Carolina in determining the equality of access of all our citizens to quality schools.

THE ONE-, TWO-, AND THREE-TEACHER SCHOOLS

The standards of accreditation used by many States (not to mention the Southern Association of Colleges and Secondary Schools, whose standards are usually higher than State accreditation standards) require that a school before being considered for accreditation must have at least four teachers. This is a very minimal requirement and schools which fail to meet this requirement can be said without reservation to be too small.

No doubt some of the teachers in these schools are capable and there may be special geographical and economic factors affecting the location and enrollment of these schools, nevertheless it can be said that such schools do not offer the students the same educational opportunity as other schools in the State with larger faculties and facilities. To some extent this observation also applies to four- and five-teacher schools of which there are many.

The disparity in the quality of education of the child is clearly shown when the child who has been making good marks in one of these schools is transferred to another school where the competition among faculty as well as students is keener and the standards of instruction and achievement are higher from the outset. Some children making such transfers must drop back two or three grades. With diligent effort they may begin to catch up and close the gap, but the loss is hard to retrieve. Not only the child but the community, indeed the whole State, suffers from the failure to develop each citizen to his full capacity.

Much progress has been made in consolidation of schools in our State. It appears, however, that a disproportionate number of the remaining one-, two-, and three-teacher schools are being assigned nonwhite pupils.

In North Carolina the white population outnumbers the nonwhite by 3 to 1. In public school enrollment the ratio is 70 percent white to 30 percent nonwhite. Other things being equal, it might be expected that assignments of pupils to one-, two-, and three-teacher schools would reflect either no discernible racial pattern or else the white pupils assigned to such schools would outnumber the nonwhites by more than 2 to 1. However, the reverse is the case: Almost twice as many nonwhite pupils are assigned to such schools as are white pupils—6,138 to 3,181. In the elementary schools alone, it is 5,525 to 2,353, the nonwhite pupils ac-

counting for more than 70 percent of those assigned to these 1-, 2-, and 3-teacher schools.

Of the 111 such elementary schools, 32 are composed of all white students, 79 of all nonwhite students (74 Negro, 5 Indian or other). Of the 29 such high schools, 11 are composed of all white students, 18 of all nonwhite students (11 Negro, 7 Indian or other).

The five Indian or other elementary schools are Indian schools in Harnett, Person, and Columbus counties, an "Independent" school in Robeson County (see *In re Smiling*, 193 N.C. 448, 137 S.E. 319 (1927)), and a "Portuguese" school in Northhampton County.

The seven Indian or other high schools include two Indian schools in Columbus County, one Indian school each in Cumberland, Hoke, and Person counties, one Haliwa school in Warren, and one "Independent" school in Robeson County.

In Clay, Graham, and Mitchell counties, there are no elementary schools to which any Negroes are assigned. In Alleghany, Clay, Graham, Madison, Mitchell, Swain, and Transylvania there are no high schools to which any Negroes are assigned. For the Negroes who live in these counties there are no nearby school facilities. Through the last school term, all Negro students in Buncombe County were assigned to Stephen-Lee High School in Asheville, and in addition Negro students from several other counties were also assigned to this school in Asheville. Of the 9 high schools within 16 counties in the western part of the State to which Negroes have been assigned, 3 are 1-teacher schools in Cherokee, Macon, and Avery Counties; 1 is a 2-teacher school in Polk County; 2 are 3-teacher schools in Jackson and Haywood Counties; and 1 is a 4-teacher school in McDowell County.

This is not a new problem in these or any other counties in the State. In 1870 the State superintendent of public instruction asked the attorney general of North Carolina: "If there is no adequate provision for their separate accommodation in the public schools of the township in which they reside, can colored children of lawful age be excluded from attending and receiving instruction in any free school that may be in operation?" No answer is recorded.[8]

LAWSUITS CONCERNING EQUAL FACILITIES

Hooker v. *Greenville*, 130 N.C. 472 (1902), invalidated an act of the 1901 legislature establishing a school district, the boundaries of which the Court described as "remarkable" and as "the gerrymandering of the territory of the town for the purposes of this school." The act had

[8] Noble, *A History of the Public Schools in North Carolina* p. 325 (1930).

authorized the school trustees, in case there were so few of either race in the district that a separate school for that race would not be justified, to give the children their pro rata portion of the funds raised by the special tax or to give such pro rata portion to the public schools for that race adjoining the district. The Court asked: "Would this be fair treatment to the *white* children in the district, and would it be treating them equally with the colored race? Would it not be a discrimination against them? But if we are in error in supposing that it was the *white race* that this section had reference to, and it was the *colored race,* the rule would be the same. We do not think that the act could authorize giving the money of 'either race' to some other district. The Constitution has given it to them, and the Legislature can not take it away from them and give it to someone else."

However, in the *Lowery* case,[9] in 1905, the court held that the *Hooker* language "that in no other way than by per capita distribution of all taxes collected for public schools can the Constitution be observed, does not meet with our approval." Instead, the court said, it must rely upon the judgment and discretion of the school administrators to avoid discrimination between the races. "Much must be left to the good faith, integrity and judgment of local boards in working out the difficult problem of providing equal facilities for each race in the education of all the children of the State . . . If they should not do so, the courts would promptly aid any class of persons discriminated against."

In the period 1905 to 1912 there were five other lawsuits which questioned the quality of school facilities and the legality, under the State constitution of local bonds or taxes alleged to be used for schools "for the white race." [10] Except for the *Williams* case where the court held that the bonds were invalid because the tax was limited to a school "for the whites" with no discretion in the local authorities, the court upheld the bonds or the taxes.

In the *McLeod* case only a portion of the town was included in the newly created school district which contained only white children. Only property owners inside the new district were to be taxed for the new school. There was no question of discrimination between the races, the court said, "as there are no colored children in the school district, and there is no suggestion that those in the town, outside the district, have not been provided with ample means and facilities for their education."

In the *Whitford* case the statute authorizing bonds for farm life schools prohibited more than one such school in any county. The plaintiff contended the statute thus deprived the local school authorities of the

[9] *Supra* note 3.

[10] *Smith* v. *School Trustees of Robersonville,* 141 N.C. 143 (1906), *McLeod* v. *Commissioners of Carthage,* 148 N.C. 77 (1908) ; *Williams* v. *Bradford,* 158 N.C. 36 (1911) ; *Bonitz* v. *School Trustees of Ahoskie,* 154 N.C. 375 (1911) ; *Whitford* v. *Commissioners of Craven County,* 159 N.C. 160 (1912).

power to provide equal facilities for the two races. The court, however, upheld the act: "the statute does not provide for each race exclusively, and it might just as reasonably be argued that the benefit of the school was confined to the colored race, as it can be that it is restricted to the white race . . . The act under consideration makes no discrimination between the races, and there is no expression in it which leads us to think that the school was intended for the exclusive benefit of the one race or the other." The court suggested that one school could be established in which the children of each race would be taught in separate buildings and by separate teachers. Since the State constitution at that time expressly commanded it to be done, the court read that requirement into the act in order to sustain it. The record does not show whether in fact separate buildings and separate faculties were established at that time or not.

These suits appear to have been brought as test cases to validate the bonds so they could be sold on the bond market, not really to secure better schools for nonwhites. The cases were decided on the language of the particular enabling acts. There was no evidence in the record as to the relative condition of school facilities available to white and nonwhite children.

In the *Smith* case, the court stated, in language subsequently quoted with approval in later cases:[11]

> There are no facts or data given by which the Court may determine whether the contemplated expenditure is or is not an unequal and unlawful disbursement of the school funds. The defendants, in their sworn answer aver that they have no desire or intent but to administer their trust in accordance with the law of the land, and it is right that we should act upon this statement till the contrary is made to appear by proceedings duly entered.
>
> . . . If defendants, contrary to their avowed purpose shall endeavor to exercise the authority conferred upon them with an "evil eye and unequal hand" so as to practically make unjust discrimination between the races in the school facilities afforded, it is open to the parties who may be interested in the question, by proper action to correct the abuse and enforce compliance with the law.

In another bond suit in 1922, *Galloway* v. *Board of Education of Brunswick County*, the plaintiff alleged that the taxes levied in support of the bond issue were illegal because of an unlawful discrimination against the colored race, but this ground of objection was abandoned by plaintiff's attorneys in the course of the proceeding as not sufficiently sustained by the record. In approving the bonds the Supreme Court of North Carolina stated:[12]

[11] See note 10, *supra*, 141 N.C. at 160.
[12] 184 N.C. 245, 247.

> The decisions of this Court have been very insistent in upholding the constitutional guarantee against race discrimination in the distribution and use of the public school funds, and it is gratifying that in the present case there were no facts in evidence to sustain such an allegation [citing the above cases].

It was not until 1951 that a court in North Carolina actually found that Negro children had been discriminated against on account of their race in public school facilities. *Blue* v. *Durham Board of Education*, 95 F. Supp. 441 (M.D.N.C. 1951). This suit was started in 1949 and decided by Judge Johnson J. Hayes.[13]

> The local officials concede many disparities between the facilities available to the Negro school children as compared to those afforded white children, most of which arises from unequal plant facilities . . . we have three excellent junior high schools well distributed over the city for the convenience of these white children and none for the Negroes; arrangements exist for cafeterias, gymnasium, music, art, home economics, laboratories and equipment, and playgrounds for the white children, while some of these facilities are denied in many of the Negro schools. By reason of the existence of more abundant building space for white children and the crowded conditions in the Negro schools, white children enjoy many superior advantages to those available to the Negro children, to wit: More and better supervision, greater extra curricular opportunities, better laboratory equipment and facilities, in music and art, lighter teacher load, better recreation facilities and better accomodations . . . The fact remains, however, that the net results of what has been done still leaves the Negro school children at many disadvantages which must be overcome before substantially equal facilities are made available to the Negro children . . . "The burdens inherent in segregation must be met by the state which maintains the practice" . . . It follows from what has been stated above that the plaintiffs have been, and are, discriminated against on account of their race and that they are entitled to injunctive relief.

DESEGREGATION

Legislation.—The 1955 session of the North Carolina General Assembly enacted chapter 366 (sec. 115–176 to 115–179 of the General Statutes of North Carolina), which, as amended by chapter 7 of the 1956 extra session of the North Carolina General Assembly, has become the assignment and enrollment of pupils act in the State of North Carolina. This

[13] 95 F. Supp. 441, 444–45 (1951).

legislation provides the administrative procedure under which the local boards of education annually assign pupils to the various schools. The enactment of this legislation recognized that the enrollment and assignment of children in the schools throughout the State is by its nature a local matter and the assignment and enrollment of pupils act apparently vests in local boards of education full authority in this respect. However, certain criteria are set forth in the act to be considered by the local school boards in making assignments of pupils. These include:

(1) The best interest of the child involved.
(2) Proper administration of the school.
(3) Proper instruction of the pupils therein enrolled.
(4) The health and safety of the children enrolled in the school.

The statute makes no mention of race as a criterion for assignment. The local boards of education are given authority under the act to make such reasonable rules and regulations as may be necessary for the administration of the act. The law requires the local boards of education to give notice to the parent or guardian of every child of the school to which that child is assigned.

If any parent, guardian, or child is dissatisfied with the assignment made by the board of education, he may apply for reassignment to a different public school. If the application for reassignment is not approved, the applicant may apply for and the board must give him a "prompt and fair hearing on the question of reassignment." The local school board upon such a hearing is authorized to render its final decision. However, any person aggrieved by the final order of the local school board may appeal therefrom to the superior court where the matter shall be heard de novo before a jury, and from judgment of the superior court an appeal may be taken by any interested party or by the board of education to the supreme court.

Pupil assignment.—Prior to the decision of the U.S. Supreme Court in the *School Segregation Cases* in 1954, Negro students in Old Fort sued the McDowell County Board of Education to secure facilities equal to those provided the white children of Old Fort. The plaintiffs had not been allowed to attend schools in Old Fort, but had been required to go to a school for Negroes in Marion, 15 miles away. The district judge, after the U.S. Supreme Court school segregation decision, dismissed the suit on the ground that the relief prayed for (i.e., separate but equal educational facilities) was no longer appropriate. The court of appeals agreed that a separate school for Negro children in Old Fort was inappropriate, but held that the plaintiffs were entitled to a hearing on their complaint that they had been denied the right to attend schools in Old Fort because of their race. The district judge was directed to consider the Pupil Assignment Act, pointing out that an administrative remedy had been provided by the State. "The Federal

courts manifestly cannot operate the schools. All they have the power to do in the premises is to enjoin violation of constitutional rights in the operation of schools by state authorities." *Carson* v. *Bd. of Education of McDowell County*, 227 F. 2d 789 (C.A. 4, 1955).

The district judge then held that the complainants had not exhausted their administrative remedies, whereupon the plaintiffs petitioned the court of appeals to direct the judge to hear the case on its merits. Meantime, the Supreme Court of North Carolina handed down a decision involving two of the plaintiffs construing the Pupil Assignment Act, *Joyner* v. *McDowell County Bd. of Education*, 244 N.C. 164 (1956), which held that the right to apply for reassignment was a personal right and that suit on behalf of a group of pupils could not be brought. Then the court of appeals noted that the plaintiffs had not attempted to comply with the North Carolina statute as interpreted by the North Carolina Supreme Court and denied their petition. "It is argued that the Pupil Enrollment and Assignment Act is unconstitutional; but we cannot hold that the Statute is unconstitutional upon its face, and the question as to whether it has been unconstitutionally applied is not before us, as the administrative remedy which it provides has not been invoked." The court pointed out that an aggrieved person, after exhausting the administrative remedies provided in that act, could apply directly to the Federal courts if he felt that his constitutional rights had been denied. *Carson* v. *Warlick*, 238 F. 2d 724 (C.A. 4, 1956), *cert. denied*, 353 U.S. 910.

In 1955 Negro students in Montgomery County applied to the district court for relief from alleged discrimination by the county board of education in requiring the plaintiffs to attend or not attend certain public schools in the county solely on account of their race or color. The district court held that no real constitutional issue was presented and that decision should be deferred to a later hearing to determine whether discrimination had actually occurred. *Covington* v. *Montgomery County School Board*, 139 F. Supp. 161 (1956). Later the district court dismissed the complaint because the plaintiffs had not followed the procedure set out in the North Carolina Pupil Assignment Act. *Sub nom., Covington* v. *Edwards*, 165 F. Supp. 957 (1958), *affirmed*, 264 F. 2d 780 (C.A. 4, 1959).

In 1956 Caswell County Negro parents and pupils brought suit against both State and county school officials asking the district court to order a plan of desegregation in the Caswell County schools. The district court held that the State board of education and the state superintendent of public instruction were neither indispensible nor necessary parties and that if the plainiffs were entitled to relief it was only against the county officials. *Jeffers* v. *Whitley*, 165 F. Supp. 951 (1958). The Caswell school officials answered alleging that the plaintiffs had not personally appeared at hearings on reassignments provided for them. Plain-

tiffs then moved for a stay of proceedings allowing them an opportunity to exhaust their administrative remedies for the reason that at the time the plaintiffs pursued the administrative procedures, the case of *McKissick* v. *Durham City Board of Education*, infra, had not been decided. This motion was allowed and plaintiffs in the summer of 1960 filed a supplemental complaint alleging that nine of the original plaintiffs had been assigned to all-Negro schools for the 1960–61 school year and their applications for reassignment had been denied after they had pursued proper administrative procedures. After hearing the evidence, the district court ruled: (1) One of the plaintiffs was no longer eligible to attend public schools; (2) three of the plaintiffs had not followed State procedure because they did not attend the school board's hearing on their application for reassignment; (3) five of the plaintiffs had followed proper procedure, but had failed to furnish the court with pertinent data in connection with their individual applications. "The record in this case strongly indicates that some of the minor plaintiffs, particularly the Saunders children, were denied reassignment solely on the basis of their race. The court would not hesitate to declare their rights to attend the school of their choice without regard to their race if they had first made a good faith effort to gain admission to a particular school, and had sought a declaration of their constitutional rights rather than the constitutional rights of the class of persons they represent." The court permitted the case to remain on the docket to give plaintiffs an opportunity to have their individual grievances adjudicated, 197 F. Supp. 84 (1961). In December 1961 the court held two plaintiffs entitled to enter the school they had requested, but dismissed the remaining plaintiffs who appealed. This appeal is pending.

Holt v. *Raleigh Board of Education*, 164 F. Supp. 853 (1958), *aff'd* 256 F. 2d 95 (1959) and *McKissick* v. *Durham Board of Education*, 176 F. Supp. 3 (1959), *aff'd* 265 F. 2d 95, *cert. denied*, 361 U.S. 818, held that the child and parents who failed to appear at a school board hearing could not complain of the board's refusal to reassign. The appearance by an attorney is insufficient. *Becton* v. *Greene County Board of Education*, Civil Case No. 458, Eastern District, instituted in 1959, is awaiting decision in the district court.

While the above cases were proceeding in the Federal courts, others were progressing through the State courts. At the opening of school in September 1957, the Greensboro, Winston-Salem, and Charlotte boards, while no suit against them was pending, assigned certain Negro students to schools previously attended only by whites. In Greensboro, the parents of white pupils attending one of these schools objected and requested that the nonwhite pupil be reassigned to another school. The school board refused. The Superior Court and the Supreme Court of North Carolina affirmed. "If a parent is dissatisfied with the operation of the school because of the assignment of another pupil to that

school, his remedy is to request reassignment of his child, not to appeal the assignment of the other pupil." *In re Application for Reassignment,* 247 N.C 413, 101 S.E. 2d 359 (1958).

Morrow v. *Mecklenburg County Board of Education,* 195 F. Supp. 109 (1961), involved a controversy as to whether the Pupil Assignment Act was unconstitutionally applied to the Negro plaintiffs in 1957 and 1958. The district judge dismissed the complaint, holding that there was no evidence that defendant board had made a deliberate attempt to thwart the plaintiffs' rights. He stated that a factor to be considered was the interest of the citizens of the community; and as the board was for the first time acting under the Pupil Assignment Act, it was only natural that it approached the matter with extreme caution. He pointed out the availability of school buses and the board's position that distance from a school had never been a determinative factor in its assignment of pupils.

In February 1959, *McCoy* v. *Greensboro Board of Education,* was started on behalf of four Negro children who had been denied admission to Caldwell School in Greensboro, which was at the time the suit started attended only by white children. Thereupon the Greensboro School Board assigned three of the plaintiffs to the Caldwell School and the fourth to a junior high school. The board then combined an all-Negro school, which the plaintiffs had been attending previously, with the Caldwell School, and in the summer of 1959 approved reassignment of white students to other city or county schools, including one school to which Negro children had previously been assigned. Upon application by the white faculty, the board transferred all of them to an all-white school, filling the new vacancies at Caldwell with an all-Negro faculty. Then the board moved for summary judgment on the ground the suit was moot, inasmuch as the plaintiffs had been assigned to the school they requested. Judgment granted. 179 F. Supp. 745 (1960). The court of appeals reversed, holding that the original request of the plaintiffs had been completely frustrated and that the *plaintiffs need not pursue administrative remedies which were inherently inadequate or were applied in such a manner as effectively to deny the petitioners their rights.* 283 F. 2d 667 (1960). On remand, the district court retained jurisdiction so that the board might assign the plaintiffs to an appropriate school in accordance with their constitutional rights.

In *Griffith* v. *Yancey County Board of Education,* 186 F. Supp. 511 (1960) Negro students complained that Yancey County did not maintain any schools for Negro children in that county but transported such students 80 miles each day round trip to Asheville schools. After the suit started, the board erected a two-room school building and assigned the plaintiffs to that school. The court held that failure to allow the Negro children to attend school in their own county was discriminatory and not authorized by the North Carolina pupil assignment laws. The

high school plaintiffs were ordered admitted to one of the two previously all-white high schools and reassignment of the elementary school plaintiffs was referred to the board for reconsideration. The board reassigned the elementary pupils to the two-room school. The one remaining elementary pupil has reapplied to the court for relief. This case is still pending.

Vickers v. *Chapel Hill Board of Education* was begun in 1960 by a Negro student asking to attend a specified school. His parents had applied in 1959 for reassignment to an all-white elementary school closer to his home, but this application had been rejected. In 1960, he applied for reassignment to an all-white junior-senior high school further from his home than the Negro junior high school to which he had been assigned and this application was also rejected. Previously in 1959, the defendant board had announced a policy that all prospective first grade students would be reassigned upon request to a school closer by than any to which they had previously been assigned. In 1960–61 all first grade Negro children who requested such transfer were reassigned, some of them to schools formerly attended only by white students. The chairman of the defendant board testified in this case that Vickers, had he been a white student, would have been assigned both years to all-white schools. The district court found for the plaintiff, holding that he had exhausted his administrative remedy under the Pupil Assignment Act and had been denied reassignment to the all-white junior-senior high school solely because of his race. The court stated that the policy of reassigning first grade students without regard to race, while most commendable, was an indication that a majority of the board was of the opinion that it was not feasible to treat reassignment applications by other students in the same manner. 196 F. Supp. 97 (1961).

In *Wheeler* v. *Durham Board of Education,* started in 1960, the district court denied the Negro plaintiffs' request that integration of the entire school system be decreed. The court stated that the board, by maintaining dual attendance areas, one for each race, by failing to adopt any criteria or standards for reassignment applications and by rendering notice of school assignments too late, had followed discriminatory practices forbidden by the U.S. Constitution. The board was ordered to reconsider the applications of those individual plaintiffs who had previously followed the prescribed procedure and to report to the court. When it did so, the district court approved the report, which allowed some of the applications for reassignment. 196 F. Supp. 71 (1961). The remaining plaintiffs were dismissed in April 1962. Their appeal is pending.

In September 1960, Indian high school students in Harnett County who had previously been assigned to and had attended an all-Indian school in Sampson County refused to go back to that school and staged a sit-in at Dunn High School. On October 17, 1960, *James Chance,*

et al., v. *Harnett County Board of Education*, was filed in the eastern district court. In June 1961, however, before the case was decided, the Indian parents filed a reassignment request and the board transferred the high school students to Dunn High School for the 1961–62 term. This case therefore became moot. Meantime the parents of 25 Indian elementary students in Harnett County requested transfer of their children to a white elementary school in Dunn. The board denied the request and a second Harnett County Indian case was filed against the board in August 1961. This case has not been decided.

Another desegregation suit in the eastern district was filed May 31, 1961: *Gloria Hunter* v. *Raleigh City Board of Education*. This case is still pending.

In Wayne County and Havelock (Craven County), public schools attended altogether or mostly by children of U.S. military personnel have been desegregated since 1959. In Wayne County, the Meadow Lane Elementary School near Goldsboro was desegregated in 1959 when it admitted 14 Negro students. By 1960, there were 17 Negro students in the school. The Havelock Elementary School in Craven County was also desegregated in 1959 when it accepted 17 Negro students. By 1960, there were 25 Negro students in the school. A few white children of nonmilitary persons attend each school, but most of the students in these schools are children of personnel of nearby military bases. Provisions for assignment or reassignment to these two schools are rather flexible for military personnel children because of the transient status of such persons.

As of the school year 1960–61, there were 334,200 Negro students enrolled in the public schools of North Carolina (226,018 in county administrative units, and 108,182 in city administrative units). As tables 1 and 2 show, 226, or less than one-tenth of 1 percent, of these pupils were enrolled in desegregated schools. It should be noted, furthermore, that this figure includes students who attend schools serving military personnel. Table 1 shows the requests made by and granted to nonwhite pupils for transfer to predominantly white schools from 1957 through the 1961–62 school term. Table 2 shows the 1961 enrollment of nonwhite pupils in such schools. Several school boards have announced additional assignments for the 1962–63 term, some of them in schools not previously desegregated, as in Brevard, Clinton, Fayetteville, Goldsboro, Lumberton, Salisbury, and Wilmington.

In some counties the school system is triracial. Former G.S. 115–2 and 115–66 required separate schools for Indians in Robeson, Richmond, Sampson, and Person Counties. Prior to 1885, the Croatan Indians were assigned to colored schools. "The laws under which the Croatan schools were started gave to the children of that race equal advantages with the children of the colored race, requiring that the census should be taken in the same way, and the school money divided accord-

TABLE I

	1961			1960		1959		1958		1957	
	Present nonwhite enrollment	*Transfers requested*	*Transfers made*	*Transfers requested*	*Transfers made*	*Transfers requested*	*Transfers made*	*Transfers requested*	*Transfers made*	*Transfers requested*	*Transfers made*
Asheville	5	11	5	.....	.....	.....	.....	.....	.....	.....	.....
Caswell County (Yanceyville)[1]	0	5	0	12	0	.....	.....	.....	.....	.....	.....
Chapel Hill [2]	34	10	44	12	3	1	0	.....	.....	1	0
Charlotte-Mecklenburg County [1]	27	137	27	4	1	8	0	31	2	51	5
Cleveland County (Kings Mountain)	0	3	0	.....	.....	.....	.....	.....	.....	.....	.....
Craven County (Havelock)[3]	35	0	0	25	25	17	17	27	0	.....	.....
Cumberland County [4]	0	5	0	.....	.....	.....	.....	.....	.....	.....	.....
Durham [1]	15	133	4	206	7	225	8	.....	.....	14	0
Greene County [1]	0	0	0	.....	.....	5	0	.....	.....	.....	.....
Greensboro [1]	15	13	8	1	1	2	2	19	2	8	6
Harnett County (Dunn) [1 4]	20	33	20	4	0	.....	.....	.....	.....	.....	.....
High Point	11	7	6	13	1	13	2	.....	.....	.....	.....
McDowell County (Old Fort)	0	.....	.....	.....	.....	.....	.....	.....	.....	66	0
Monroe	0	.....	.....	.....	.....	2	0	2	0	.....	.....
Montgomery County (Troy)	0	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Orange County (White Cross)[1]	0	19	0	.....	.....	.....	.....	.....	.....	.....	.....
Raleigh [1]	10	11	9	3	1	.....	.....	.....	.....	1	0
Reidsville	0	6	0	1	0	.....	.....	.....	.....	.....	.....
Swain County (Bryson City)	0	.....	.....	.....	.....	.....	.....	.....	.....	6	0
Wayne County [3]	25	.....	.....	17	17	14	14	.....	.....	.....	.....
Winston-Salem	20	6	6	2	2	4	4	8	3	6	1
Yancey County (Burnsville) [1]	9	7	3	27	9	27	0	.....	.....	.....	.....

[1] Court suit pending.

[2] The Chapel Hill Board of Education assigned all first graders to schools nearest their home for the 1961–62 school year. There are now 34 Negro students attending desegregated schools in Chapel Hill.

[3] There is 1 desegregated school in this county. Children attending this school are mostly children of U.S. military personnel. The school is located near a military base, but is operated by the local school board.

[4] The students involved in this situation are Indians who requested transfers to a school previously serving only white students.

TABLE 2

Communities and schools	*Desegregated in—*	*1961 nonwhite enrollment*
Asheville: Newton Elementary	1961	5
Chapel Hill:		
Carrboro Elementary	1961	4
Estes Hill Elementary	1960	6
Glenwood Elementary	1961	20
Chapel Hill Junior High	1961	4
Charlotte-Mecklenburg County:		
Bethune Elementary	1960	15
Derita Elementary	1961	3
Dilworth Elementary	1961	5
Wesley Heights Elementary	1961	3
Harding High	1957	[1] 0
Garinger High	1957	[2] 0
Myers Park High	1961	1
Durham:		
Fuller Elementary	1961	1
Brogden Junior High	1959	
Carr Junior High	1959	14
Durham High	1959	
Greensboro:		
Gillespie Park Elementary and Junior High	1957	15
Greensboro Senior High	1957	[2] 0
Harnett County: Dunn High	1961	20
Havelock (Craven County):		
West Havelock Elementary	1959	14
Graham Borden Elementary	1959	19
Havelock Junior High	1961	2
High Point:		
Montlieu Elementary	1961	2
Ferndale Junior High	1959	5
Ferndale Senior High	1959	4
Raleigh:		
Murphy Elementary	1960	2
Daniels Junior High	1961	5
Needham Broughton High	1961	3
Wayne County: Meadow Lane Elementary	1959	25
Winston-Salem:		
Easton Elementary	1958	13
R. J. Reynolds High Advanced Placement Courses	1959	7
Yancey County:		
East Yancey High	1960	5
Cane River High	1960	4

[1] Student withdrawn.
[2] Student graduated.

ing to numbers, for the benefit of the children of the three, instead of two, races. . . . The plaintiff is not calling in question the power of the Legislature to provide separate schools for three distinct races, but, on the contrary, he insists only that his children have been classified improperly, and have not been given the opportunity to associate with others of the same caste in the Croatan school." *McMillan* v. *School Committee (Croatan)*, 107 N.C. 609 (1890).

Later Robeson acquired a fourth category: *In re Smiling,* 193 N.C. 448 (1927). The Indian committee found that the petitioners "were not Indians and not entitled to enter the Indian school." They refused to go to school with Negroes so the county built them a separate school, listed "Independent" in the 1961 Educational Directory of North Carolina. According to one recent report, the total cost to the State of administering the Robeson school system is $80,000 per year; by contrast, the cost of administering the largest system in the State (Mecklenburg) is only $45,000.[14]

In addition to the foregoing counties, separate Indian schools are also maintained in Harnett, Columbus, Cumberland, and Hoke Counties. One school in Northampton County is listed as "Portuguese" and one in Warren County as "Haliwa." In many other counties and cities in the State, the few Indians are, and have for some time been, assigned to "white" schools.

CONCLUSIONS

Based upon the court decisions, the following conclusions as to the law may be drawn with reference to segregation of the school systems of the State of North Carolina at this time:

(1) Prior to the decision of the U.S. Supreme Court in the *School Segregation Cases*, the school systems in North Carolina were strictly segregated between white and colored students.

(2) The pupil assignment and enrollment act adopted by the Legislature of the State of North Carolina places the responsibility for the assignment of pupils in the hands of the local school boards, and provides administrative remedies to be pursued by any aggrieved person upon the failure of any school board to comply with his or her request for reassignment to a different school. This act has been held constitutional upon its face.

(3) The only necessary parties in any such action are the aggrieved person or persons and the local school officials.

(4) Before seeking the aid of the court, the administrative procedures must be exhausted.

[14] The Charlotte Observer, July 8, 1962.

(5) After the administrative procedures have been exhausted, the aggrieved person may raise his constitutional rights in the Federal courts without first prosecuting an action in the State superior and supreme courts.

In addition to the foregoing conclusions of law, there are certain other obvious conclusions:

(1) In the expenditure of public funds, there has been discrimination against nonwhite pupils. The gap has been narrowed in recent years.

(2) Under existing law, segregation because of race in public education violates the U.S. Constitution.

(3) Under the State's Pupil Assignment Act adopted after the *Brown* decision of the Supreme Court, local school boards were authorized and directed to assign pupils to schools upon the basis of many factors, none of which was race. Except for Chapel Hill, the boards have made initial assignments of white pupils to previously white schools and Negro children to previously Negro schools.

(4) The pupil assignment law, however, permits any child dissatisfied with his assignment to petition for reassignment to another school. Such transfers have been granted in various districts in North Carolina, as shown in tables 1 and 2 (pp. 122, 123).

(5) The movement of nonwhites to enter public schools attended solely or predominantly by whites is by no means confined to communities where there has been integration on a limited basis. Its scope includes Swain, McDowell, Caswell, Greene, Montgomery, Cumberland and Sampson counties, as well as Monroe, Brevard, Lumberton, Reidsville, Clinton, Whiteville, Salisbury, Fayetteville, Spring Lake, Fairmont, Trinity, Goldsboro, Shelby and Morganton, among other cities and counties where desegregation petitions have been made. Some of these have been granted for the 1962–63 school term.

(6) The course of action in North Carolina is token integration; that is, the admission of a minimum number of Negro children into white schools. The lone Negro child or handful of Negro children in a large white student body endure substantial handicaps and disadvantages. They are vastly outnumbered in a new environment, hence they are conspicuous objects of attention and curiosity. Under such abnormal conditions, normal adjustment is difficult.

(7) No school board in North Carolina, except in Chapel Hill, Asheville, and Durham, has as yet announced any voluntary plan of desegregation in the public schools. These three have indicated that 1962–63 assignments would, for elementary pupils, be made on the basis of geography and without regard to race. In Charlotte certain Negro children have been given a choice between a nearby predominantly white school or an all-Negro school farther away.

(8) The department of public instruction apparently has given no guidance to local school boards toward integration of the schools, although until 1960 it maintained a section for Negro education.

(9) It is obvious that North Carolina still thinks of the education of its 1,123,829 pupils as a responsibility to be discharged biracially (or triracially in some places) under a continuing pattern of segregation.

(10) If, as the Court has held, segregation and discrimination are synonymous, discrimination on account of race in public schools is general in North Carolina.

VI. The Uneducated

> . . . the equal right of every child born on earth to have the opportunity to burgeon out all that there is within him.
>
> —Gov. Charles B. Aycock, 1912.

> The question in education is whether there had been progress which can be counted not merely in buildings and buses but in the heads of the children.
>
> —Jonathan Daniels, *Tar Heels,* 1941.

North Carolina is the most "public school" State in the Union: 98.9 percent of our students are enrolled in the State school system. School attendance has been required by law for nearly 50 years. The education of our citizens is and has been a State responsibility. Therefore, one test as to how fairly and effectively that responsibility has been discharged is to examine the extent and location of illiteracy in the State.

Whereas the previous chapter dealt with the schools, this one might be said to deal with the products of the schools, but that would not be altogether accurate because the prevalence of illiteracy would not be the product of such schools as were provided but rather the result of the lack of educational or other environmental opportunities.

In North Carolina, widespread illiteracy among whites, as well as among Negroes, has a long but not always uniform history directly related to the attitude of the people of the State toward education. The following excerpts are from Lefler and Newsome, *North Carolina, The History of a Southern State:*

> During the first third of the nineteenth century North Carolina was so undeveloped, backward, and indifferent to its condition that it was often called "the second Nazareth," the "Ireland of America," and the "Rip Van Winkle" State . . .
>
> Intelligent citizens and visitors were shocked at the colossal ignorance and intellectual degradation of the people of North Carolina. In 1840 one-third of the adult whites were illiterate. If the Negroes and whites under 20 years of age are included, more than half of the population was illiterate . . . But the great mass of children grew up in ignorance, with no opportunity to acquire any education.

The university, with less than 100 students, like the private academies and other schools, served only the small class with sufficient wealth and interest to pay for its own children's education. In 1826 Governor Burton reported that many well-informed observers believed it more difficult to obtain a primary education in North Carolina than it had been 50 years before.

Poverty, sparse population, sectionalism, rurality, and the large number of Negro slaves were in part responsible for educational backwardness, but more important were the attitudes and beliefs of the people. The prevailing philosophy was that education was a private, not a public, matter and was therefore the responsibility of individuals, not the state. The leaders, the masses, and the General Assembly were notoriously indifferent, and there was general contentment with ignorance and mediocrity. The dominant aristocracy of wealth regarded education as a privilege for the favored few who could afford it; education was for gentlemen and the professions only. Its extension to the common people would be costly and even dangerous. Joseph Caldwell, President of the University, referring to the educational inertia of North Carolina, said: "Our habits of legislation have been long established. . . . To provide for the education of the people has unhappily never entered as a consistent part of these habits." He said that people were "sometimes seen glorying in ignorance as their privilege and boast" and that there was a tendency for "ignorance to perpetuate itself. . . ."

The greatest social and educational achievement in antebellum North Carolina was the adoption in 1839 of a statewide publicly supported system of free common schools for all white children. Each year after 1840, for the first time in the history of the State, a large portion of the white children went to school to learn such basic things as reading, writing, and arithmetic. The school system was a disappointment in the 1840's, but, as first State Superintendent of Common Schools from 1853 to 1865, Calvin H. Wiley, revolutionized the system and made it a credit to North Carolina. . . . There was much popular indifference to public education, but Wiley allayed opposition, improved the system and inspired public confidence. His statement that "North Carolina has the start of all her Southern sisters in educational matters" was no exaggeration, and the reduction in the percentage of illiterate voters from 30 per cent in 1840 to 23 per cent in 1860 was one indication of the state's progress in education. But many of the people were still indifferent; most school buildings were poor and inadequately furnished; the teachers were mostly men unfit for the work; salaries of teachers averaged about $25 per month; the school term was less than four months; textbooks and equipment were scarce and inadequate; the

curriculum included only reading, writing, arithmetic, grammar, and geography; and the pupils of all ages studied and recited aloud in the same room. Practically all of the schools were one-teacher schools. Since the chief support of the system was the proceeds of the Literary Fund, in the nature of an endowment fund, most of which had been granted by the Federal government, the average North Carolinian before 1860 was not habituated to the payment of taxes for public education. . . .

Despite the fact that North Carolina had about 3,500 public and private schools, illiteracy was widespread. In the South only Virginia, with a much larger population, had more illiterates. In 1860 there were nearly 70,000 white illiterates over 20 years of age in a total white population of 629,942. Virtually all Negroes, who comprised 27 per cent of the total population, and many whites under 20 years of age were also illiterate. Still the illiteracy rate had shown a marked decrease since 1849. . . .

During their brief tenure of power from 1865 to 1868, the Conservatives abolished the office of State superintendent of common schools, refused to make State appropriations for schools, and threw the responsibility for public education upon localities.

Towns and counties were empowered to levy taxes for schools, but this failed to solve the problem, since few of the local governments took favorable action. The lack of State aid and the prevalence of poverty, educational apathy and indifference, and popular aversion to taxation forestalled any appreciable achievement in public education.

The State government under radical Republican control from 1868 to 1870 manifested a striking interest in public education. Devoting an entire article to education, the Constitution of 1868 provided for an elective superintendent of public instruction and required the General Assembly at its first session to provide, by taxation and otherwise, a general and uniform system of free public schools for all children between the ages of six and twenty-one. . . . But the effective school system envisioned by the authors of the 1869 law was only partially established . . . Meager records indicate that in 1870 there were 1,398 schools operating in 74 counties at a cost of $43,000 and with an enrollment of 49,999, nearly half of whom were Negroes, though in separate schools from the whites. The total enrollment was only one-fifth to one-seventh of the children of school age. . . .

Illiteracy actually increased in the 1870's. In 1880 in a total population of 1,399,750, there were 463,975 persons over ten years of age, more than two-fifths of whom were whites, who could not write. In the 1880's there was some reduction of illiteracy, chiefly among the Negroes. Prior to 1900 the State failed dismally to live up to the educational provisions of the Constitution and the law. In that year its public school system was actually and relatively worse than it had been in 1860. It was perhaps the poorest in the United States. Yet only 19.5 percent of the whites and 47.6 percent of the Negroes were illiterate—a marked decrease since 1880 . . .

The standard explanations for educational backwardness were two: the Negro with the danger of mixed schools, and poverty resulting from the war. In reality there was no danger of mixed schools either from local demand or outside compulsion. Poverty was a valid explanation for only a portion of the backwardness and relative decline. Economic recovery from the war was achieved long before 1900; the State repudiated most of its debt; the valuations of taxable property were increasing; and the tax rate was decreasing. The per capita school tax in North Carolina in 1890 was 44 cents a year in comparison with the national average of $2.11 . . . The real explanations for the State's loss of educational rank, even in the South, were a colossal general indifference to public education and a sterile, reactionary political leadership . . .[1]

At the turn of the century Charles B. Aycock was elected Governor on a campaign to wage a statewide "war upon illiteracy." [2]

Negro children along with white children were beneficiaries of this fight for public schools. When a movement to restrict the Negro's opportunity for schooling by limiting Negro schools to Negro taxes, an idea prevalent in the 1880's and three times declared illegal by the North Carolina Supreme Court, revived as he went into office, Governor Aycock told members of the general assembly that "he would regard enactment of such legislation as a violation of his pledge to the people and of the plighted faith of his party, and if it were enacted he would resign his office and retire to private life." [3]

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[1] Leffler and Newsome, *North Carolina, The History of a Southern State* 304, 381–82, 499, 500, 503 (1954).

[2] Connor and Poe, *The Life and Speeches of Charles Brantley Aycock* 117 (1912).

[3] *Id.* at 133–34. In the following cases the North Carolina Supreme Court held void local laws directing taxes raised from whites to be used for white children exclusively and taxes from the colored race to be used for such race exclusively. *Markham* v. *Manning*, 96 N.C. 132, *Puitt* v. *Comrs.*, 94 N.C. 609 (1886), *Riggsbee* v. *Durham*, 94 N.C. 800. See also Frenise A. Logan, *The Legal Status of Public School Education for Negroes in North Carolina, 1887–1894*, 32 N.C. Historical Review 346, July 1955.

When a similar movement gathered strength toward the end of his term of office he threw his weight against it in a formal message to the general assembly which struck it down so decisively that it never again became a serious issue: [4]

> It appears that both parties represented in your Honorable Body are pledged to at least a four months' school in every school district in the State and this, of course, includes the Negro districts. . . . It must be manifest that such a provision as this [segregating taxes] is an injustice to the Negro and injurious to us. No reason can be given for dividing the school fund according to the proportion paid by each race which would not equally apply to a division of the taxes paid by each race on every other subject. . . .
>
> The amendment proposed is unjust, unwise, and would wrong both races. . . . This would be a leadership that would bring us no honor and much shame. . . . Let us be done with this question, for while we discuss it the white children of the State are growing up in ignorance.

Governor Aycock's fight for Negro schooling is illustrated in the following utterances while he was in office: "I would not have the white people forget their duty to the Negro. . . . We must not only educate ourselves but see to it that the Negro has an opportunity for education. . . . Universal education means educating white and black alike. . . . If I had the power and the wealth to put a public schoolhouse in every district in North Carolina, I would enter into a guarantee that no child, white or black, in ten years from now should reach the age of twelve without being able to read and write. . . . As a white man I am afraid of but one thing for my race and is that we shall become afraid to give the Negro a fair chance. . . . The white man in the South can never attain to his fullest growth until he does absolute justice to the Negro race." Aycock "pledged his administration to the development of public schools for whites and Negroes, so that after the registration of 1908 no white man need be disfranchised because of illiteracy." [5]

This problem of white illiteracy was very real throughout the South. "Of the 231 counties in the United States in which 20 percent or more of the whites of voting age were illiterate, 204 were in the South. . . . The proportion of native-white illiterates in the South was approximately 12 percent, as compared with 1.6 percent in the North Atlantic States and 4.6 percent in the United States. North Carolina led with 19.5 percent, Louisiana followed with 17.3, then Alabama with 14.8, and Tennessee with 14.2." [6]

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[4] Connor and Poe, *supra* note 3, at 134–36.
[5] Lefler and Newsome, *North Carolina, The History of a Southern State* 524.
[6] Woodward, *Origins of the New South* 331–32, 400.

SOURCES OF DATA

1. Rejections for military service 1940–44, 1958, 1959, and 1960;
2. U.S. census reports;
3. A special survey made by the Commissioner of Motor Vehicles of North Carolina; and
4. Data from certain television stations in North Carolina engaged in a program of teaching people to read and write.

MILITARY REJECTIONS

A vast amount of significant data about the mental and physical characteristics of the American population is contained in the record of registration and rejection of the male population, particularly the young men, during the period 1940 through 1944. This information has since been studied in great detail by a special research project established in 1950 by General Eisenhower while he was President of Columbia University. This research project entitled "Conservation of Human Resources" was established within the Graduate School of Business of Columbia University and has been sponsored by a large number of American business corporations. The Department of Defense made available to this project the records of our country's military manpower experience during World War II. One of the first reports entitled "The Uneducated" was published by Columbia University Press in 1953.

By special arrangement with the publisher and the director of this research project, the relevant information relating to North Carolina and the Southeast is included in this report.

More than 22 million persons in the age group 18 through 37 were registered in the whole country, and of these, 5.2 million were rejected for military service and classified 4–F. The four major causes for rejection, and the distribution of those rejected for these causes are shown on the following table:

Selective service registrants, 18–37, classified 4–F, August 1945

Reason for rejection	*Total*	*White*	*Negro*
Mental deficiency	716, 000	391, 000	325, 000
Mental disease	970, 000	855, 000	115, 000
Physical defects	3, 475, 000	2, 933, 000	542, 000
Administrative (moral, etc.)	87, 000	71, 000	16, 000
Total	5, 248, 000	4, 250, 000	998, 000

This report will concern itself only with the first category: those rejected for mental deficiency. For this purpose a mentally deficient person was one who was so educationally deprived as to be considered unsuitable for military service.

The following table shows the total number of men rejected on this basis, by region and by race:

Rejections for mental deficiency by region and race

Region	*Total*	*White*	*Negro*
New England	20, 765	19, 803	962
Middle Atlantic	71, 416	49, 708	21, 708
Southeast	435, 639	167, 599	268, 040
Southwest	89, 881	70, 661	19, 220
Central	70, 460	57, 274	13, 186
Northwest	13, 089	12, 530	559
Far West	15, 150	13, 725	1, 425
Total United States	716, 400	391, 300	325, 100

More revealing than the absolute number of persons rejected are the rates per thousand examined, as shown by the following table:

Rejection rates per thousand registrants, by region and race

Region	*Total*	*White*	*Negro*
Total United States	40	25	152
New England	17	16	65
Middle Atlantic	15	11	67
Southeast	97	52	202
Southwest	60	54	107
Central	14	12	61
Northwest	14	13	40
Far West	10	9	50

Several striking facts are revealed by this table. First, the rate of rejection in the Southeast is almost 10 times as large as that in the Far West. All of the regions of the country except two have a total rejection rate between 10 and 17 per 1,000 examined; the Southeast and the Southwest have rates of 97 and 60, respectively. Although the range is less for the white population, it is still striking. The Far West has a rejection rate of 9 while the Southeast and the Southwest each have a rate of more than 50. The Negro rate is so much larger in every region that it might appear to be a different population; the overall Negro rate is just over six times the white race. However, there is evidence within the Negro distribution to suggest that the population is basically parallel.

One finds, for instance, that the rate of rejection for Negroes in the Northwest and the Far West is actually below the white rate in the Southeast and Southwest. Even in the other three regions—New England, Middle Atlantic, and Central, the Negro rate is only slightly above the white rate in the South. The sixfold difference in total rates between Negroes and whites results from the exceptionally high rejection rate for Negroes in the Southeast and the lower but still high rate in the Southwest. The most extreme regional and racial differences are between the rejection rate for whites in the Far West of 9 per 1,000, or less than 1 percent, and the rate of 202 per 1,000, or more than 20 percent, for Negroes in the Southeast. Unless there were evidence that there are gross differences in mental capacity among various racial and ethnic groups, here is an overwhelming demonstration that the results of the screening examination reflected primarily differences in the educational and environmental opportunities in different regions.[7]

An analysis of the number of white registrants rejected for mental deficiency and the rate per thousand shows the following by States and the comparative position of North Carolina:

	Number	*Rate per thousand*
Florida	4, 800	21
Mississippi	4, 700	28
Georgia	12, 700	41
South Carolina	8, 300	43
Alabama	13, 900	47
Louisiana	14, 100	55
Arkansas	14, 300	59
Virginia	20, 100	59
North Carolina	26, 700	62
Tennessee	23, 400	64
Kentucky	24, 600	64

A similar breakdown of the nonwhite registrants by States shows the following comparative position of North Carolina:

	Number	*Rate per thousand*
Kentucky	2, 500	73
Tennessee	9, 800	120
Florida	16, 400	148
Virginia	20, 300	178
Mississippi	33, 400	205
Georgia	30, 500	206
North Carolina	36, 100	209
Arkansas	15, 900	212
Alabama	31, 500	214
Louisiana	37, 500	247
South Carolina	34, 100	277

[7] Ginzberg and Bray, *The Uneducated* 44 (1953).

The foregoing rejection rates for "mental deficiency" were, in general, the result of the quantity and quality of education available in the 1920's and early 1930's. It is obvious that the Southeast produced the largest number of rejections. In the Southeast in 1930, among the children between the ages of 10 and 14, 6 white children and 13 Negro children out of every 100 children in this age group were no longer in school. This was the highest such rate for the whole country and it showed up in the high rate of rejections for military service in the 1940's.

There is also a correlation between the rejection rate in the 1940's and the amount spent on schools per pupil in the school year 1929–30 as shown by the following table:

Rejection rate per 1,000 examined by States, classified according to educational expenditures per pupil, 1929–30

Division	*Total*	*White*	*Negro*
Total	37	22	155
12 States [1] and District of Columbia with high educational expenditures ($102.57–$137.55)	13	11	57
12 States [2] with medium high educational expenditures ($92.80–$102.56)	12	11	55
12 States [3] with medium low educational expenditures ($60.00–$92.77)	21	11	80
12 States [4] with low educational expenditures ($31.89–$59.99)	91	54	192

[1] New York, Nevada, California, District of Columbia, Wyoming, New Jersey, Michigan, Colorado, Montana, Massachusetts, Arizona, Oregon, Connecticut.
[2] Illinois, Minnesota, Washington, North Dakota, Iowa, Rhode Island, Ohio, South Dakota, Delaware, Wisconsin, Nebraska, Kansas.
[3] New Hampshire, Indiana, Pennsylvania, Idaho, Vermont, Maryland, New Mexico, Utah, West Virginia, Missouri, Maine, Oklahoma.
[4] Texas, Florida, Louisiana, Kentucky, Virginia, North Carolina, Tennessee, South Carolina, Alabama, Mississippi, Arkansas, Georgia.

It can be seen that the rejection rate for Negroes in the 12 States with the lowest educational expenditure was 18 times as great as that for whites in the States with the highest expenditure.

In order to relate the above table to present expenditures per pupil in average daily attendance, the amount of such expenditure for 1960–61 was $240 per pupil in North Carolina compared with a national average of $390 per pupil. In this respect, North Carolina ranked 45th out of the 50 States.

The 1960–61 order and ranking of the same 13 States that appeared in the "low educational expenditures category above for 1929–30" is as follows: [8]

[8] National Education Association, *Rankings of the States, 1961* (1961).

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State	Expenditure per pupil 1960–61	Rank 1960–61 (among 50 States)
Louisiana	$370.00	27
Texas	330.00	35
Florida	310.00	39
Kentucky	275.00	41
Virginia	275.00	42
West Virginia	255.00	43
Arkansas	242.48	44
North Carolina	240.00	45
Georgia	236.00	46
Tennessee	228.00	47
Mississippi	225.86	48
South Carolina	223.00	49
Alabama	217.00	50

For 1961–62 the North Carolina expenditure per pupil rose to $290, the national average to $414, and our rank among the States to 42d.

The above low relative expenditure per pupil in Southern schools has a long history. In 1900–1901 in North Carolina the expenditure per child in attendance was $4.56; in South Carolina $4.62; in Alabama $3.10; and in no Southern State was the amount spent half as much as the national average of $21.14 per student. Furthermore, the amount spent for education on the white child in these Southern States was more than twice the average spent on education of the Negro child, $4.92 to $2.21.[9]

> The public schools of the South at the opening of the new century were for the most part miserably supported, poorly attended, wretchedly taught, and wholly inadequate for the education of the people. Far behind the rest of the country in nearly all respects, Southern education suffered from a greater lag than any other public institution in the region.[10]

Even today the current expenditure per pupil in North Carolina schools is only 61.5 percent of the national average; only 41 percent of the amount per pupil in schools in New York or Alaska. The 1960–61 figure of $240 expenditure per pupil is the same amount spent per pupil on the island of Guam, $60 less than the expenditure per pupil in the Virgin Islands, and $130 less than the expenditure per pupil in the State of Hawaii.

The records in the previous section of this chapter related to rejection for military service in the 1940's and the correlation between such rejections and the schools of the 1920's and the early 1930's. Inasmuch as many changes have taken place since that time in the economic, social, and educational structure of the South, which was the source

[9] *Report of the Commissioner of Education for Year 1900–1901*, Washington, D.C. (1902).
[10] Woodward, *supra* note 6, at 398.

of most of the rejections during World War II, it would be helpful to know how the South and particularly North Carolina registrants are faring on the preinduction and induction examinations given in recent years by the military service.

An analysis of these results has been published each year in the "Health of the Army" by the Surgeon General of the United States. While there have been some changes since the 1940's in the nature of the mental tests to which registrants are subjected, the relative performance is still significant. These tests were given to young persons for the most part born in the 1940's and in the public schools during the last decade.

No breakdown of the recent rejections is presently available as between whites and nonwhites. It is still apparent that the Southeast as an area is producing a significantly larger proportion of educational rejectees than any other section of the country.

North Carolina still shows a larger proportion of educational failures than the national average for each year as indicated below:

	1960	*1959*	*1958*
Total for United States	21. 7	24. 7	21. 3
North Carolina	38. 7	40. 9	34. 6

In this respect North Carolina ranked 47th among the States and Puerto Rico and the District of Columbia.

Within the region of the South, Virginia, West Virginia, Florida, Georgia, Tennessee, Kentucky, and Texas did better than North Carolina for each of these years. So, also did Alaska, Hawaii, the District of Columbia and Puerto Rico, among others.

In February 1960 the Surgeon General in publishing the preinduction and induction examination results for 1959 added a new table which sheds additional light on the application of mental standards to North Carolina registrants. The Surgeon General explained that late in 1958, the mental standards for acceptability of registrants for military service were modified as a result of Public Law 85–564 approved July 1958 by Congress, authorizing the President to modify the minimum physical and mental requirements, except in time of war and national emergency declared by Congress. No basic change was made in respect to medical requirements; but the mental requirements were raised. In addition to the Armed Forces Qualification Test (AFQT), supplementary tests known as Army Classification Battery (ACB) were given. These supplementary tests were developed to determine the individual's potential usefulness in particular kinds of military jobs or assignments; specifically, in the eight major occupational categories into which jobs for enlisted men are grouped. Experience with ACB testing at the reception centers revealed that an appreciable number of the inductees in mental group IV, the lowest group passing the Armed Forces Qualification Test (AFQT), did not possess sufficient aptitude to assimilate

training in even the most basic military skills, much less in those relating to newly developed weapons and equipment requiring skilled personnel for their operation and maintenance.

Examinees in mental group IV who failed to attain the minimum on the ACB were classified as "Trainability Limited (V–O)" provided they were otherwise (administratively and medically) found qualified. These examinees are not currently acceptable, though they would qualify under mobilization or emergency conditions.

The wide variation in the disqualification rates, noted year by year among the Army areas and States, became more conspicuous in 1959, especially in regard to disqualification for mental reasons. This was explained by the fact that the States with higher disqualification rates because of AFQT failures have also a relatively greater proportion in mental group IV, and a relatively greater proportion of this group is classified in such States as "Trainability Limited (V–O)."

The following table indicates in detail the effects of the ACB testing. The States varied from 1.4 percent for South Dakota to 13.4 percent for North Carolina in terms of the proportion of examinees who failed the ACB test.

Percentage distribution of examinees classified as "Trainability Limited (V–O)" because of ACB failures

Percentage of all examinees who were so classified

Total	6.2	Michigan	5.0
		Missouri	5.4
South Dakota	1.4	New York	5.4
Iowa	1.6	Maine	5.5
Minnesota	1.8	Rhode Island	5.5
Washington	1.8	Connecticut	5.9
Montana	2.2	Ohio	5.9
Oregon	2.2	Arizona	6.0
Wyoming	2.3	Illinois	6.4
Utah	2.4	Pennsylvania	6.4
North Dakota	2.5	Texas	7.4
Nebraska	2.6	Georgia	7.5
Kansas	3.0	New Jersey	8.0
Vermont	3.0	Virginia	8.1
Idaho	3.1	Alabama	8.3
Oklahoma	3.2	Kentucky	8.5
New Hampshire	3.4	Delaware	8.6
Wisconsin	3.4	South Carolina	9.0
Nevada	3.7	Florida	9.3
Indiana	3.8	District of Columbia	9.7
Massachusetts	4.1	Arkansas	9.9
Maryland	4.2	Tennessee	10.5
West Virginia	4.3	Louisiana	11.1
New Mexico	4.4	Mississippi	21.3
California	4.5	North Carolina	13.4
Colorado	5.0		

BUREAU OF CENSUS RECORDS OF ILLITERACY

Prior to the census of 1940, the Bureau of the Census sought information about the number of illiterates in the population by defining the term as "persons unable to read and write in any language." This gave rise to many problems, however. It was easy to identify a person who was completely unable to read or write, but it was much more difficult to distinguish those who had only a limited ability to read and write. For example, those who could recognize words like "danger," "exit," or "men," or "women," could not necessarily be said to know how to read. Likewise, the ability to write one's own name and address and perhaps a few other phrases is not necessarily the same as being able to write.

Therefore, in the census of 1940, the question about literacy was replaced by a question relating to the number of years of schooling that the individual had completed.

Nevertheless, the early census records do give a perspective on the current problem of illiteracy.

In 1870, the U.S. census showed 5.7 million persons to be illiterate. This was 20 percent of the total population 15 years old or older. Comparable data for 1950 shows 3.6 million illiterates, or 3.2 percent.

In the 1870 census, native-born Americans accounted for 4.9 out of the 5.7 million illiterates. The rate of illiteracy among the foreign born was less than that among the native born.

Approximately 50 percent of all the illiterates in the country were Negro (2.8 million), and the rate of illiteracy among the Negroes in 1870 was 80 percent. This is not surprising since in North Carolina as in most of the other former Confederate States prior to that time, no provision was made for education of even free persons of color, and it was forbidden to teach slaves to read and write or to give or sell them books or pamphlets.

The rate of illiteracy among Northern whites (native and foreign born combined) was 8 percent in 1870; the rate of illiteracy among the Southern whites was approximately 24 percent, or three times as great. Thus, the high incidence of illiteracy in the South was not confined to the Negro population, but was shared by a substantial proportion of the white population as well.

According to the 1950 census, illiteracy in North Carolina was 5.5 percent which by a similar standard should be compared to the following:

Country	*Percent illiterate*
Japan	2.
Belgium	3.
France	4.
Hungary	5.
Sweden	0.
Northern and Western Europe	1 to 2.
Central Europe	2 to 3.

The latest State-by-State tabulation of illiteracy, based on ability to read and write, was issued November 1959 by the Census Bureau (No. 6, p. 23–26). This report shows the illiteracy by States for the period 1900 through 1950. In 1950 North Carolina ranked 41st among the 48 States, and the relative position of North Carolina among the South Atlantic States was unchanged from 1900 to 1950: That is, North Carolina was 7th out of 9 in 1900 and was still 7th out of 9 in 1950.

Another report was issued by the Census Bureau in February 1960 giving illiteracy statistics by race and other classifications, as of March 1959. In summary, this latest report showed that for the country as a whole, for both white and nonwhite persons, illiteracy rates have been diminishing ever since statistics on the subject were first collected by the Census Bureau, but the decline has been more dramatic for nonwhites. In the 89-year period, 1870 to 1959, the percentage of the population which was illiterate dropped steadily from 12 percent to 2 percent for whites and from 80 percent to 8 percent for nonwhites.

As in past years, illiteracy rates were higher in 1959 for men than for women, for older than younger persons, in the South than in other parts of the country, in the farm than in the nonfarm population, among the unemployed and those not in the labor force than the employed, and among farm laborers and nonagricultural workers than workers in other occupational fields.

In the 1940 census the Bureau adopted a new test of literacy; instead of asking each person if he could read and write, he was asked how many grades in school he had completed. If a person had not completed the fifth grade, he was deemed to be "functionally illiterate," that is, his education is so limited that he must be considered uneducated. This test is more in line with the minimum draft standard described above.

In terms of the number of years of schooling that individuals have obtained, the following table presents the number of children per 1,000 of ages 10–14 enrolled in school, by region, in the years indicated.[11]

School enrollment per 1,000 children, 10–14 years of age

	1890		*1910*		*1930*		*1940*	
Region	*White*	*Negro*	*White*	*Negro*	*White*	*Negro*	*White*	*Negro*
Total United States	846	517	910	686	970	892	953	911
Northeast	901	849	941	943	983	982	975	968
Middle Atlantic	849	654	925	854	980	962	964	965
Southeast	714	478	833	649	940	869	892	887
Central	904	776	938	881	981	970	969	966
Southwest	766	641	872	802	939	928	944	952
Northwest	907	830	937	916	981	974	970	970
Far West	905	470	940	928	987	984	976	974

[11] Ginzberg and Bray, *The Uneducated* 23.

It will be noted that in 1890, in the Southeast, 3 out of every 10 white children were out of school before reaching the age of 10. More than half of the Negro children were out of school before they reached 10.

When the Southeast region is broken down into States, the figures for 1890 show that in Louisiana, nearly half of the white children were out of school by age 10. South Carolina, Alabama, North Carolina, and Georgia had more than a third of the white children out of school by age 10. Florida, Mississippi, and Kentucky showed the best record of school attendance for white children for the whole region.

As for Negro children, Louisiana was again the low State with more than two-thirds of the children out of school by age 10, and again Alabama, Georgia, South Carolina, and North Carolina had a good bit more than half of the Negro children out of school by age 10.

By 1940, North Carolina had become the high State for the region, with 928 out of 1,000 Negroes in the age group in school. The average for the Southeast as indicated in the table was 887 per thousand.

In 1960–61 North Carolina has an estimated 1,120,000 pupils in public schools. This is 87.6 percent of the estimated population 5–17 years of age on July 1, 1960. Since North Carolina has the lowest ratio of private to public school enrollment of any State,[12] the following comparison of current enrollment is as favorable to North Carolina as available statistics permit:

Public school enrollment as percentage of population 5–17 years, 1960–61

Florida	95.5
Mississippi	91.4
Arkansas	91.4
Alabama	89.3
Tennessee	88.6
Georgia	88.5
North Carolina	87.6
West Virginia	87.0
South Carolina	84.4
Virginia	83.7
Louisiana	78.3

In addition to enrolling, students must attend regularly. North Carolina has the highest average daily attendance of those enrolled in public schools of any Southern State (91.4 percent) and ranks 16th among 50 States in this respect. Even so, the 1960–61 average daily attendance is only 1,024,000 out of an estimated population 5–17 years of 1,278,000. This is 80 percent.

The North Carolina Superintendent of Public Instruction calculated the 1959–60 school attendance as the relationship between the average length of the school term and the percent of membership in attendance:

[12] U.S. Department of Health, Education, and Welfare, Office of Education, *Biennial Survey of Education in U.S. 1954–56* at 114–15 (1959).

White			Negro		
Elementary	*High school*	*Total*	*Elementary*	*High school*	*Total*
94.8	94.8	94.8	91.3	91.1	91.2

Since these figures relate only to enrollment and not to the actual school population or potential enrollment, the superintendent of public instruction made this the subject of a special recommendation to the 1961 general assembly:

> The General Assembly, responsible for the education of *all* children, together with educational officials and this State's entire citizenry, should *know* that all children eligible and required to be in school are actually in attendance at either a public, a private, or a parochial school.
>
> The results of non-attendance or poor attendance at school are clearly evident:
>
> 1. Official census data reveal that many thousands of adults who have grown up in North Carolina since this State's compulsory attendance law was enacted in 1913 are classified as functionally illiterate.
> 2. In this era when there is increasing evidence that high school graduation represents little enough educational achievement for civic, vocational, and political responsibilities, it is anything but pleasing to observe that less than fifty percent of the children entering the first grade in North Carolina schools ultimately complete the twelfth grade.
> 3. The number of North Carolina youth rejected for military service for mental and physical reasons gives no cause for pride.
> 4. There is definite relationship between low educational achievement and incidence of criminal behavior, poverty, and disease. . . .
>
> It is therefore recommended that the 1961 General Assembly enact legislation whereby: (1) the provision for employment of attendance personnel by county and city boards of education shall be changed from an option to a requirement; (2) the question of whether attendance personnel is to be paid from local and/or State funds shall be resolved; and (3) the Department of Public Instruction shall be provided with an appropriation sufficient to employ personnel to assist county and city attendance personnel. [13]

In May 1960, in connection with complaints of denial of the right to register to vote, a Greene County registrar stated he did not think any

[13] Superintendent of Public Instruction, "North Carolina Public Schools, 1956-60," Publication No. 337.

of the applicants who were denied had been to high school. "Most of the colored people down here can't read and write," the registrar said. "They don't go to school. In fact, for the last four of five years they have just started to school. The school attendance law is not enforced strictly enough." [14]

The 1950 census shows the years of school completed by persons in the population 25 years of age or older, according to race.

Median school years completed (by persons 25 years old or older—1950)

	White	*Rank in South*	*Negro*	*Rank in South*	*Total*	*Rank in South*
Florida	10.9	1	5.8	6	9.6	1
Texas	9.7	3	7.0	2	9.3	2
Virginia	9.3	4	6.1	4	8.5	3
Tennessee	8.6	10	6.5	3	8.4	4
Kentucky	8.5	12	7.3	1	8.4	4
Arkansas	8.7	9	5.6	7	8.3	6
Mississippi	9.9	2	5.1	9	8.1	7
North Carolina	8.6	10	5.9	5	7.9	[1] 8
Alabama	8.8	6	5.4	8	7.9	8
Georgia	8.8	6	4.9	10	7.8	10
South Carolina	9.0	5	4.8	11	7.6	11
Louisiana	8.8	6	4.7	12	7.6	11

[1] North Carolina ranks in this respect 47th among 50 States.

In order to relate the above figures to some of the other States outside the South, the following comparisons may be made:

	White	*Nonwhite*
District of Columbia	12.4	8.8
California	11.8	8.9
Massachusetts	10.9	9.1
North Carolina	8.6	5.9

Thus, the nonwhite persons in the District of Columbia in 1950 had completed more years in school than white persons in North Carolina, Kentucky, Arkansas, and Tennessee, and as many as white persons in Alabama, Georgia, and Louisiana.

In no North Carolina county did the nonwhite record reach the median of 8.6 years established for white persons in 1950. The closest to this figure was 8 years completed schooling for nonwhite persons in the Greensboro "urbanized area." Figure 9 (p. 144) shows the median school years completed by nonwhites by county as of 1950.

The median school years completed for nonwhites was above the State nonwhite average (5.9) in the "standard metropolitan areas" of Asheville, Charlotte, Durham, Greensboro, High Point, Raleigh, Winston-Salem, and also in all of the "urban places" as defined by the

[14] The (Raleigh) News and Observer, May 22, 1960.

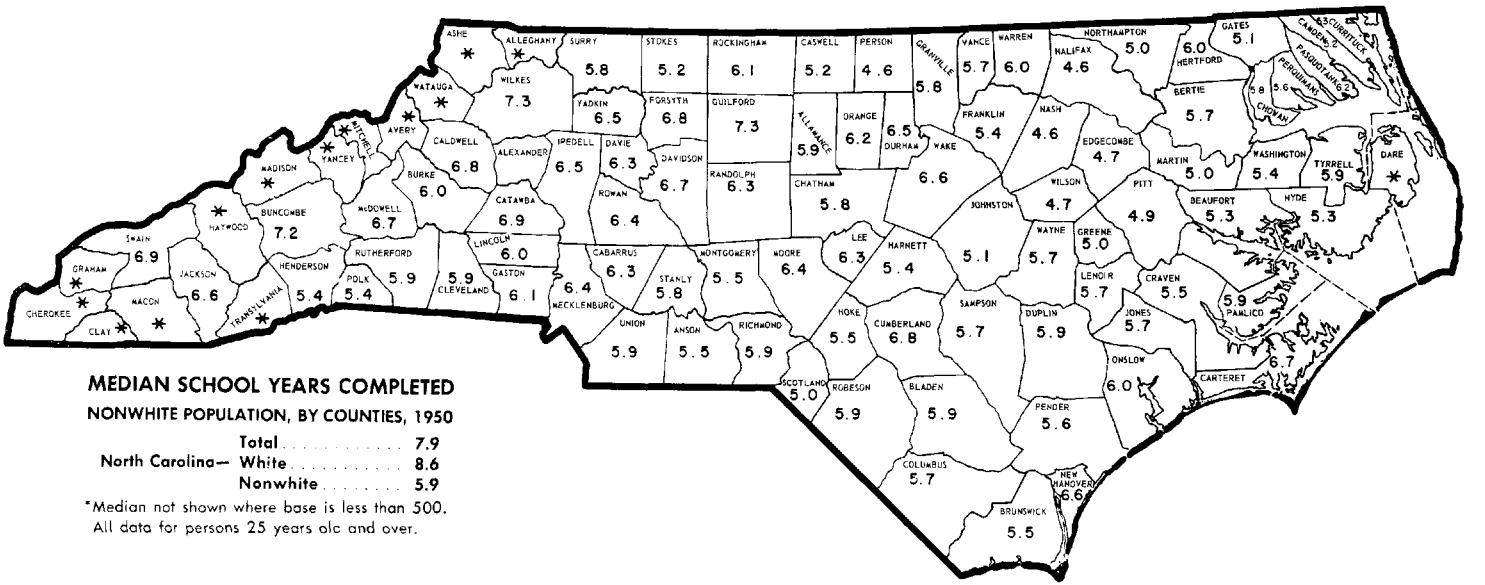

FIGURE 9.—*Median school years completed: nonwhite population by counties, 1950.*

Census Bureau, except in Greenville, New Bern, Rocky Mount, and Wilson which were below the State nonwhite average.

In no county did the median school years completed by nonwhites reach the State average (7.9). Guilford was closest with 7.3; Halifax, Nash, and Person lowest with 4.6 each.

The connection between educational attainment and income is illustrated in a special study made by the Census Bureau in 1952, entitled *Farms and Farm People*. In this study, the following table made a cross classification for 1949 between farms by gross farm income and educational attainment of their farm operators:

Full-time commercial farms with gross cash farm income of—	*Median years of school completed by farm operator*	
	South	*Non-South*
$250–$1,199	6.1	8.3
$1,200–$2,499	6.8	8.6
$2,500–$4,999	7.6	8.6
$5,000–$9,999	8.5	8.8
Over $10,000	10.5	10.2
All-farm average	7.1	8.7

These figures are revealing on several counts, indicating (1) that the inequalities of educational opportunity between low-income and high-income farmers are much greater in the South than in the rest of the nation (compare the ranges of 6.1–10.5 and 8.3–10.2); (2) that farm operators of any given income class (though the class intervals are admittedly wide) are better educated in other regions than in the South except (3) that the highest-income farm operators of the South are actually somewhat better educated (10.5 years) than their counterparts (10.2 years) in the other American regions!

The South's relatively poorer showing on the first two counts undoubtedly reflects its educational neglect of rural Negroes (who are largely concentrated in the two lowest-income classes) and its much larger proportion of low-income farmers of both races who are unable to contribute much to the educational needs of either their own children or those of their rural communities. But the data indicates that for their own families if not their broader communities the highest-income farmers of the South have found the means of overcoming the educational handicaps faced by their numerous low-income neighbors.[15]

The following table shows that in the South functional illiteracy in 1950 was still three times as frequent among young Negro men as among

[15] Nicholls, *Southern Tradition and Regional Progress* 111 (1960).

young white men, whereas outside the South there were few functional illiterates among either Negroes or whites.[16]

Elementary schooling of men born in 1931–32, by race and region, 1950

	South		Other regions	
	White (percent)	Negro (percent)	White (percent)	Negro (percent)
Less than 5 years of schooling completed	6.2	19.4	1.7	5.2
5 to 8 years of schooling completed	25.5	41.7	13.9	21.9
Total with no more than elementary schooling	31.7	61.1	15.6	27.1

The above table also shows the percentage of young adult Negro males who, according to the 1950 census, terminated their formal education with graduation from elementary school or before. In spite of striking improvement in Negro education, three out of every five young Negro males in the South had no high school education. The proportion of Negroes in other regions who did not attend high school was much lower, about one out of four. Indeed, in this respect, Negroes in other regions had a better record than southern whites.[17]

In the South the main loss of Negroes from the educational system occurs before high school graduation. Of those who graduate from high school in the South, the proportion who enter or complete college is almost as high for Negroes as for whites.[18]

In the South there are twice as many functional illiterates among young Negro men as among young Negro women.[19]

Thus far in this chapter we have considered only the quantity of education received by our citizens, both white and nonwhite. There is some evidence that Negroes not only complete fewer years of schooling than whites, but also that the education they do receive is for the most part inferior in quality. This may also be so as to the quality of rural schools, whether the students are white or nonwhite. If on further investigation this should turn out to be the case, then it is not entirely adequate for our purpose to accept as final evidence of attainment of a minimum standard of education, the report to the census taker that the person has completed the fourth grade, if what the child got in the fourth grade was not up to an adequate standard for the fourth grade.

> The psychologists who work in the armed forces induction stations in the Southeastern region occasionally discover a graduate of a Negro high school who is unable to pass the mental examination,

[16] Ginzberg, *The Negro Potential* 45 (1956).
[17] *Id.* at 46.
[18] *Id.* at 48.
[19] *Ibid.*

even though a passing score represents approximately fifth grade achievement. While the failure of a Negro high school graduate is unusual, there is a considerable number of failures among Negroes who have completed as much as nine or ten years of school. . . .

On the average white men screened for military service have completed about twelve years of school, compared to about eight years for Negroes. Nearly three-fourths of the white men achieve scores on the Armed Forces Qualification Test which place them in "Group III," or above, which means that they have an average or above average capacity to absorb military training. Among the Negroes, only a little over one-fourth are in the highest three groups. The difference in test scores is very much greater than we might expect from the difference in years of schooling alone. It is so great that it would seem to be explicable only in terms of the poorer quality as well as the smaller quantity of schooling received by Negroes.[20]

In illustration of this same condition in North Carolina is the statement of a Bertie County registrar in connection with complaints of the denial of the right to register to vote in May 1960. This registrar refused to register some 40 or 50 out of a total of about 90 Negroes who had applied for registration. In his judgment those refused "were not able to read or write any section of the Constitution of North Carolina in the English language. No one was denied because of his race. Some of the 40 or 50 who were refused may have been to high school, but they still couldn't read or write. I don't know how that happens, unless they have had poor schooling." [21]

DRIVER EXAMINATIONS

The North Carolina Department of Motor Vehicles, during the period January 4–8, 1959, took a special sampling of all applicants for driver's licenses who were unable to take a written test because of inability to read and write. Out of approximately 10,000 examined that week, 2,054 or 20 percent, stated that they were unable to read sufficiently to take the written test.

The figures were released by W. C. Poe, chief examiner of the motor vehicles department's drivers examiner bureau. The tally was kept at the request of agencies sponsoring an adult televised reading program now underway throughout central and eastern North Carolina. Poe said when an applicant is unable to take a written license test, he is given an oral one.

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[20] *Id.* at 53–55.

[21] The (Raleigh) News and Observer, May 20, 1960.

He said his men usually can spot nonreaders. "They will come in and ask for a test and just sit around," he said. "Finally, one of our men will ask, 'Can I help you?' and the applicant will ask for the oral test."

The department of motor vehicles, in releasing this report, pointed out that many North Carolina drivers fail to heed directional signals because they cannot read. Here are some highway signs which all drivers should be able to read.

"No left turn between 4 and 6 P.M."

"Tunnel restrictions—no stopping at any time, stay in your lane"

"Illegal to pick up or discharge passengers on thruway"

"Do not pass when yellow line is in your lane"

"Pavement narrows"

"All traffic use next exit"

"Left turn only from this lane"

TELEVISION TEACHING

In 1960 a number of television stations in North Carolina cooperated in producing a series of telecasts designed to teach illiterate adults how to read and write. The sponsors of these programs began with the assumption that there were the following "functional illiterates" in North Carolina and neighboring Southern States. The functional illiterate is one who has less than 5 grades of schooling.

Experience shows that while many of these adults may once have been able to read and write, many of them have, through lack of use, lost these abilities.

	North Carolina	*South Carolina*	*Alabama*	*Tennessee (eastern 3d)*
Adults 25 and over	2, 000, 000	1, 000, 000	1, 550, 000	585, 000
Functional illiterates	425, 000	275, 000	353, 000	107, 000
Percent functional illiterates	21	27. 5	23	18
No school	75, 000	53, 000	70, 000	16, 000
Percent no school	3. 75	5. 3	4. 5	2. 7

The total population of the three-and-one-third-States' area is 5,135,000 (adults, 25 and over). There are 1,160,000 functional illiterates or 22.5 percent of the adult population; 214,000 of these people or 3.2 percent never went to school at all.

It will be noted that the North Carolina figure of 21 percent of functional illiterates is substantially the same as that reported by the commissioner of motor vehicles in the independent study of applicants for driver's license who professed an inability to read and write.

The "No school" classification above reflects the number of persons in these States who never had any formal education. North Carolina has had a compulsory school attendance law since 1913, but the State superintendent of public instruction has recommended to the 1961 general assembly that enforcement officers, now optional, should be required by law throughout the State. This is a serious problem affecting not only initial enrollment but daily attendance through age 15.

Detailed charts were made from the 1950 census indicating the number of illiterates, male and female, in each county covered by the various cooperating TV stations. Some of these stations have made available to us the comments of some of the viewers who took part in these reading and writing programs. For example:

A taxi driver: "I had only five grades of school, now faded out; I want to get into that library down the street and read lots of good stuff there; my teenage son is helping me with the lessons."

"Thanks for helping the grown-ups of Greensboro learn how to read and write."

An Alamance County resident: "The most wonderful thing on television."

"It takes longer for farmers to learn because they don't have the time to study."

A Rockingham County resident: "Would like it better in the winter as I am a farmer."

"I want to learn all I can—I work on the second shift."

"Hope you can continue. The State of North Carolina needs something like this."

"The worst thing is the whites do not seem to take the interest in these courses that the colored people [who] are so anxious to learn to read and write. I have spoken to several white people in regard to learning to read and write. Most of these people works in the mills . . . and are leaving for work when the program is on TV. If one member of the family would copy the lessons, they could go over these lessons at night with the members that has no education. Several people in town has offered to teach classes at night. I understand the colored people organized a class after Christmas. There is a 1,900 acre farm near my home and half of the renters "whites" has no education or hardly any to speak of."

"The reading program is splendid. Have watched the lessons several times. They explain everything so anyone could understand. I think the people sponsoring these courses should explain how necessary it is to learn to read for self-protection in time of war, or any other disaster, not to say anything about the pleasure they would find in keeping up with what is happening in the world today, and being able to read their Bible."

Principal of elementary school in a river valley: "I can easily believe that two out of ten of our adults are either absolutely or functionally illiterate; sometimes I think the six hours we have the children is about canceled out by the other 18 hours at home. Down here there has been a drain-out with too many adults not caring about their own education or that of their children."

"People hide their illiteracy; the biggest problem is to bring them out from their embarrassment or apathy or defensiveness."

When the program ran at 7 in the morning, many viewers sent word that the time conflicted with their going to work on the first shift and urged that the station move it up to an even earlier hour in the morning.

CONCLUSIONS

It is obvious that the above data do not exhaust the inquiry as to the quantity, quality, and representative character of the education of the people of North Carolina. They are merely gross signs of the existence and extent of the issue. They do, however, reflect the following:

1. The Southeast is the most uneducated part of the United States.

2. North Carolina has more illiteracy, among whites as well as nonwhites, than most other States in the Southeast.

3. The recent draft rejection record, revealing widespread illiteracy among North Carolina youth (those who should have been educated in the last 10 years), demonstrates the need for improvement in our public school system.

4. Illiteracy in North Carolina is greater in rural areas than in urban areas where the schools are larger and better equipped and where school attendance of all eligible children is more nearly achieved.

5. The number of years of schooling completed is less for nonwhites than for whites, in every State in the Southeast, although the disparity between whites and nonwhites is not so great in North Carolina as it is in some other Southeastern States.

6. In 1950, which is the last report available, North Carolina ranked 47th among the States in the number of school years completed by a person 25 years of age or older. North Carolina ranked 48th in the percent of population 25 years and older with at least 4 years of high school. It ranked 41st in the percent of the population 14 years old and older able to read and write, and 44th in percent of population 25 years old and older with more than 4 years of schooling.

7. The percent of the North Carolina population with less than 5 years of schooling was 21.1 percent in 1950. The Armed Forces have found that unless a person can read and write at least as well as the average fifth grade student, he must be regarded as "functionally illiterate."

Compare this 21.1 percent with the 1959 report of the North Carolina Commissioner of Motor Vehicles that in a 1-week test 20 percent of the applicants for a North Carolina driver's license professed to be unable to read and write.

These ratings, all within the lowest 20 percent of the States, are to be compared with similar ratings for:

	Rank Among States
Percent of selective service registrants passing mental test, 1960	45th
Per capita income, 1960	44th
Per capita retail sales, 1960	43d
Percent of dwelling units in good condition, 1960	44th
Percent of population classified as urban, 1960	44th
Percent surviving infancy per 1,000, 1960	44th
Per pupil expenditure for schools, 1961–62	42d

The cause and effect relationship between low income, poor housing, and low current expenditure for schools appears obvious, but this may need further study and documentation.

Furthermore, it would be of value to the people of the State to know where the uneducated citizens in North Carolina are located; that is to say, in what areas or counties is their proportion the highest. The maps included in this report give some indication. This is a concern of all of the people of our State since it has to do with the full development of our human resources. This has been and still is conceived by most of our citizens to be a responsibility of the State to be discharged through the public school system; but there are other environmental factors which determine whether a citizen's full potential will be developed or not. These have to do with the conditions of the home in which the children grow up, the employment opportunities of the parents, and the expectations which the community holds for all of its children. In this connection, it would be revealing to compare a map of the State showing county by county and race by race: (*a*) Percentage of substandard dwelling houses, (*b*) per capita income, (*c*) investment in school property, (*d*) percentage of pupils attending schools accredited by the Southern Association, (*e*) percentage of eligible citizens who are registered to vote, and (*f*) the number of grades of school completed.

It is probable that all of these maps of North Carolina would be somewhat similar in appearance, that is, that these factors would tend to coincide or be very similarly located. However, we have not been able to complete such a comparative study; furthermore, the 1960 census data should be incorporated into such a study. We are unanimous in the opinion that such a study should be made and that the results should be widely published and understood by all of the citizens of the State.

This information would provide our people with a better understanding of the difference between white and nonwhite and between urban and rural peoples in our State as to their opportunities, income, and educational development, and the extent to which the provision previously made for public schools in the State has not been uniform in its application or the results achieved. When these disparities are better known and understood, policies which have contributed to these disparities in the educational and income opportunities for our people will be less justified, and we can more intelligently set about eliminating the deficiencies in our State system of education.

Edward Kidder Graham's earlier summary of our situation is still true today:

> If North Carolina needs and wants greatly to extend and deepen its educational activities, there is no issue of poverty involved. North Carolina is sufficiently prosperous. It is spending money for what it wants . . . North Carolina has just as much money to spend for education as it wants to spend for education. But even if it were not prosperous, poverty is not an excuse from but a reason for education. What John Owen said in 1830 is as tragically true today as then: "It is a *policy* that has kept the State in ignorance and the poor in poverty."
>
> Let us have done forever with this fatally inverted logic. What we spend is a question of our preference in terms of our wise or unwise choice, and the inevitable index to our desires. A Christian may as well say that the Church is too poor to be honest as for a citizen of North Carolina to say that the State is too poor to educate, and to the limit of its desire.
>
> There is no greater issue in North Carolina public policy today then this fundamental issue of education. The permanent names in North Carolina statesmanship are those of men who put not words alone but their lives behind the great steps in our educational progress. This is plainly because the fundamentals of democracy have all of their vital roots in education. Equality of opportunity is there, and there alone. To talk of equality of opportunity in circumstances that now exist in our Southern States is political cant.
>
> Our own situation is well known. If we were not callous to it by repetition, if we truly saw it, and keenly sensed the fact that in the full and free education of our people lies the whole secret of progress for which our State exists, we would courageously declare now and make effective a policy that would startle the nation, and make this section what by right it ought to be, the center of the next great forward movement in American progress.[22]

[22] Graham, *Education and Citizenship* 179 (1919).

VII. Housing

North Carolina has learned that it is not in the public interest that any of its citizens should be reared in ignorance and live in poverty.
—James E. Shepherd, President, North Carolina College, 1941.

The forces that bar minorities from employment, decent housing, adequate educational facilities, and social benefits make a shocking contribution to slums and crime and disease. The real economic vigor our economy needs today is not possible as long as one segment of the population has these artificial limits on its freedom and earning power.
—Secretary of Commerce Luther H. Hodges, 1961.

Is Negro housing in North Carolina worse than white? Are Negroes, because of their race, restricted in what housing they can buy or rent in North Carolina? Do Negroes, because of their race, have to pay more than white persons for comparable housing in our State?

If the answer to any or all of these questions is "yes," is it because of any action of the city, State, or Federal governments?

The first question is easy. The answer is "yes, very much worse." Conditions have greatly improved since 1930, but the discrepancy is clearly evident in the 1960 census. The evidence is set out below.

The second question is also fairly easy. For many years, in the towns and cities in North Carolina, a substantial part of all the residential property has been restricted against sale or rental to Negroes. Even though the older parts of the older cities contained some Negroes interspersed among whites, this was not so in the large scale real estate and housing subdivisions which began to be developed after 1900. The developers imposed deed restrictions against sale or occupancy by Negroes (except as domestic servants). Some of these deed restrictions also excluded Jews and Orientals. Race restrictions were required by the Federal Housing Administration from its inception in 1934 until 1949. In addition to this form of governmental action, some of the larger cities like Greensboro, Winston-Salem, and Asheville undertook by city ordinance to compel segregation in private housing. Such ordinances were declared void by our own North Carolina Supreme Court in 1914 and again in 1940. Racial deed restrictions were declared unenforce-

able in the courts in 1948. Nevertheless, patterns were established under governmental auspices which continue to influence the housing market.

There have been and are definite "Negro sections" in every town or city in our State. In some cities these sections are encircled and confined by white housing. In others there are open lands available for purchase or rental by Negroes. Wherever, in fact, a Negro's bid cannot be seriously considered because of his race, or conversely a property owner cannot offer property for sale or rental to a Negro because of his race, there is to that extent a denial of free competition in the housing market.

No clear answer can be made to the third question, as to whether Negroes in North Carolina pay more than white persons for comparable housing. In most of the towns in the State the rents or prices paid by Negroes are reported by some observers to be no higher than those paid by whites for similar quarters. One city official described to the committee ". . . a class of investors who prefer to invest in and operate rental housing for Negroes because the return on their investment is considerably greater than would be the case if they operated facilities for white tenants. . . ." He concluded that "if it were possible to transplant the units rented to Negroes including their immediate environs into a white neighborhood, it would be clearly shown that those units in their customary state of repair and maintenance could hardly be rented at the same price to white occupants."

Because of the crowding into the cities of a large number of Negroes and their displacement as slum areas are cleared, the demand has been greater than the restricted supply in a few of the larger cities. The Committee has received numerous complaints that Negroes in the principal cities in the State pay higher rents for poorer accommodations than do whites. In recent years, low cost accommodations have been provided, from private as well as from public sources, and many of these have been rented to Negroes. This has alleviated in some measure the pressure of the restricted market to run up the price of housing for Negroes, but the pressures continue to mount.

The last question, as to the responsibility of the city, State, and Federal governments for the inequality in housing, is much harder to answer. The role of the FHA and of the courts, prior to 1948, in encouraging and enforcing restrictive covenants, is only one facet of the problem. Most housing is privately owned, whether the occupants are the owners or tenants. Its quality is more often than not a reflection of the purchasing power of the family. The average Negro family in North Carolina has less than half the income or purchasing power of the average white family. Education, employment, health, and voting all affect income, and the impact of the law on Negro education, employment, health and voting is considered in other chapters. But even beyond this indirect influence on housing, the governments of our cities, State, and

Nation, have been and are involved in the location, construction, financing, servicing, and protection of most housing in North Carolina.

Relatively few persons occupy government-owned and government-operated housing. More persons live in slums just beginning to be condemned and cleared and resold by city agencies under the provisions of the North Carolina Urban Redevelopment Law, G.S. 160–454 (1951). New highways, streets, and other government construction often supplant blighted houses and force their occupants to seek other shelter. Everyone is affected by the enforcement of zoning, building, sanitary, and safety codes where they exist, by the provisions for municipal sewer and water services, and by the protection afforded by firemen and police. According to Ronald Scott, Director of the Greensboro Planning Department:

> A great deal of the poor environment surrounding Negro rental properties has come about because of the nonexistence or the nonenforcement of building, zoning and housing codes in North Carolina municipalities. In recent years, we have seen a great change in this picture. Many communities have recently adopted building, zoning and housing codes for the first time. Others have done a great deal to improve and modernize their existing codes. In addition, inspection and enforcement practices have been greatly improved. These changes, coupled with the efforts at redevelopment, are undoubtedly operating to improve the quality of housing available to all citizens of North Carolina in future years.

Even more pervasive is the role of the Federal Government as the guarantor of credit, through FHA, VA, and the supervision of the building and loan associations, without which the real estate developers and building contractors could not have built the hundreds of thousands of homes which have been built in North Carolina since World War II.

The question remains whether this extensive involvement of government in North Carolina housing is color blind. It has not always been so in the past.

SUBSTANDARD HOUSING

Extent and location

In 1960, North Carolina ranked 44th among 50 States in the percentage of dwelling units in good condition, our percentage being 56.1. In 1950, our rank was 43d. In the meantime, however, two new States, Alaska and Hawaii, came into the Union and their records were better

than ours in this regard. Also, since 1950, North Dakota passed ahead of our State. If it had not been that West Virginia and Kentucky dropped below us, our record would have appeared even worse. North Carolina is outranked, even in the South, by Florida, Texas, Virginia, Louisiana, Georgia, and Tennessee.

The high percentages of nonwhite occupancy do not always correspond to low rank of dwelling units in good condition. For example, the District of Columbia ranks well above the national average even though it has the second highest percentage of dwelling units occupied by nonwhites (44.2 percent). Hawaii, with 64.1 percent nonwhite occupancy outranks 22 other States with much lower percentages of nonwhite occupancy. On the other hand, Kentucky, West Virginia, and Arkansas have a lower percentage of occupancy by nonwhites than North Carolina, yet they rank below North Carolina in the percentage of dwelling units in good condition.

It is clearly apparent, however, that houses in the South are in the poorest condition of any section of the country.

Distribution by race

In the cities of North Carolina, from 9.2 to 29.2 percent of the white families lives in dilapidated or deteriorating houses, while 40.6 to 62.3 percent of the nonwhite families live in such houses. The following figures are from the 1960 census for places of 10,000 inhabitants or more:

TABLE 1.—*Percentage of white and nonwhite households occupying dilapidated or deteriorating houses, 1960*

Place	*White*	*Nonwhite*
Albemarle	10.1	54.2
Asheville	19.6	53.7
Burlington	12.6	51.3
Charlotte	9.7	45.6
Concord	15.5	47.7
Durham	12.0	38.6
Elizabeth City	14.8	59.4
Fayetteville	17.5	47.5
Gastonia	19.7	38.6
Goldsboro	16.2	56.3
Greensboro	9.3	34.5
Greenville	10.7	61.9
Henderson	15.1	42.8
Hickory	18.7	49.6
High Point	18.1	47.7
Kannapolis	12.4	32.9
Kinston	19.7	51.2
Lenoir	16.7	62.3
Lexington	15.4	61.0

TABLE 1.—*Percentage of white and nonwhite households occupying dilapidated or deteriorating houses, 1960—Continued*

Place	*White*	*Nonwhite*
Lumberton	29.2	62.3
Monroe	16.9	47.5
New Bern	17.2	54.3
Raleigh	9.2	41.1
Reidsville	12.9	43.3
Rocky Mount	14.8	47.3
Salisbury	15.2	57.9
Sanford	12.1	55.0
Shelby	16.9	59.2
Statesville	15.9	46.6
Thomasville	20.2	44.0
Wilmington	15.5	53.0
Wilson	12.3	49.9
Winston-Salem	10.7	40.6

According to Mason E. Swearingen, executive director of the Redevelopment Commission of Winston-Salem: "These statistical figures do not tell the entire story because the Negro population is so much poorer housed than the white population generally."

Robert E. Barkley, executive director of the Greensboro Redevelopment Commission also stated that the Greensboro statistics "do not begin to indicate the much poorer environmental conditions that generally exist in Negro areas as contrasted with white areas."

The following table compares the number and condition of the houses occupied by the white and nonwhite population for the State as a whole:

TABLE 2.—*Number and condition of houses occupied by whites and nonwhites, 1960*

Condition	*White occupied*	*Nonwhite occupied*
Sound	747,736	100,875
Deteriorating	158,182	85,263
Dilapidated	48,348	64,311
Total	954,266	250,449

Thus, nonwhites occupy 20.7 percent of all residential housing, but only 11.8 percent of the houses in sound condition. Moreover, they occupy approximately 35 percent of the deteriorating houses and 56.9 percent of the dilapidated houses.

Slightly more than 60 percent of North Carolina's dwelling units are owner occupied (Michigan is the State with the highest owner occupany at 74.4 percent). Whites occupy more than 86 percent of these units. Thirty-nine percent of the North Carolina houses are occupied by renters; nonwhites account for 32 percent of the renter-occupied houses. Thus, nonwhites own far fewer and rent far more houses in proportion to their population than do whites.

While 80 percent of the owner-occupied houses are in sound condition, only 55 percent of the renter-occupied houses are sound. More than twice as many renter-occupied houses are dilapidated than are owner-occupied houses.

Although nonwhites occupy 14 percent of the owner-occupied houses, they own less than 9 percent of those in sound condition. By the same token, nonwhites occupy 32 percent of the renter-occupied houses but only 18 percent of those that are in sound condition.

Appendix 10 shows the percentage of the occupied dwelling units with nonwhite household heads in each North Carolina city of 10,000 or more inhabitants in 1960, together with the condition of these nonwhite dwellings compared to the condition of white dwellings.

In proportion to their share of the total population of our State, nonwhites occupy fewer houses than whites, own fewer houses than whites, rent more houses than whites, occupy fewer sound houses than whites, occupy more deteriorating houses than whites, and occupy a proportion of dilapidated houses that is more than twice as great as their share of the population. Nonwhite renters live in poorer houses than nonwhite owners. Whether urban or rural, whites are less crowded, per household, than nonwhites.

On March 23, 1961, the Bureau of the Census reported:

> Housing occupied by nonwhites which lacked private bath, toilet, hot water, or was dilapidated, was distributed somewhat unevenly throughout the Nation. The South, for example, which accounts for about half of the 1960 nonwhite housing inventory units had about three-fourths of the housing which was dilapidated or lacked plumbing facilities. The Northeast had nine percent, the North Central region 11 percent and the West, four percent. In terms of the numbers of units involved, all regions reported a significantly smaller number of units in this classification than they had ten years ago.

RESTRICTIONS IN BUYING OR RENTING

Building and loan associations

In North Carolina as well as elsewhere, mortgage lenders perform an essential function in the provision of housing. Many of the mortgage lenders depend upon Government guarantees of credit and are subject to Government supervision and policy. The Committee sought the advice of the principal credit agencies in the State to determine the extent to which nonwhite citizens in North Carolina are, on account of

their color or race, restricted in the houses they can buy or obtain credit to buy.

There are 163 building and loan associations in North Carolina which are members of the Federal Home Loan Bank System. Two of these, one in Durham and one in Greensboro, are operated by Negroes. This list includes not only those associations operating under Federal charters, but also those originally chartered by the State which subsequently converted to membership in the Federal System.

The supervising agency is the Federal Home Loan Bank of Greensboro, which advised the Committee that the Federal Home Loan Bank Board adopted on July 1, 1961, the following resolution which was sent to all members in North Carolina:

> IT IS HEREBY RESOLVED That the Federal Home Loan Bank Board, as a matter of policy, opposes discrimination, by financial institutions over which it has supervisory authority, against borrowers solely because of race, color or creed.

John A. Fogarty, president of the Federal Home Loan Bank of Greensboro, wrote the Committee:

> We have no evidence that the members of the Federal Home Loan Bank System located in North Carolina consider race, color, or religion as a factor in granting loans. It is our opinion that most, if not all, of the members of the system make no differentiation in their records as to the borrower's race, color, or religion. According to the best information we have, all applicants for loans are judged on the basis of the same criteria.

Concerning the question whether Negroes in this State are restricted in their choice of housing on the basis of race due to the policies of lending institutions, Mr. Fogarty wrote:

> We do not believe that, as such, race or religion would be a factor. However, we recognize that all lenders are interested in protecting the value of collateral safeguarding their loans and would be reluctant to take any action that might have an adverse effect on the value of such collateral.

Forty-seven other building and loan officials answered similar inquiries. Their replies indicate that there is no conscious or deliberate denial of credit to anyone on the basis of race. The responding officials clearly demonstrated that they were businessmen approaching a situation in a businesslike manner. Because they are in the lending business, they are willing and anxious to provide credit whenever their investment seems secure.

At the same time, while there may be no intentional discrimination, a businesslike analysis involves the acknowledgment of certain factors which may affect building and loan institutions in their relations with Negroes.

Henry Gregory of the First Federal Savings & Loan in Rocky Mount suggests that consideration of race may at times favor Negro applicants:

> If there is any difference made in connection with our loans to Negroes borrowing in relation to white borrowers, it would be that we are more liberal in appraising properties in old residential areas, and do not penalize Negro housing because of adverse influence in the neighborhood, as we would in the case of white properties. We recognize the fact that if we do not encourage better housing in areas in which substandard housing and adverse situations already exist, the result would be nothing but further deterioration of such areas.

On the other hand, the following excerpts reveal how economic factors handicap Negroes in obtaining credit:

> . . . I do not believe that nonwhite citizens in North Carolina are restricted in what housing they can buy or procure mortgage loans to buy except from an economic standpoint. Were a colored person to apply to us for a mortgage loan to purchase a $15,000.00 house in a white residential section, he would be somewhat restricted in the amount he could borrow. A white person would probably be able to negotiate a loan of $11,000.00, but should the colored person buy the same house, its value and the value of all the neighboring property owned by whites would immediately drop in value an estimated one-third, in which event we could not make a $11,000.00 loan . . . (Frank L. Hoyle, Jr., First Federal Savings and Loan, Hendersonville.)

> . . . FHA loans have been limited, because of the type of structures which are usually sold to Negroes, the construction of which, and the age, would generally prohibit FHA lending, as well as financial requirements which are based almost entirely on the earning of the male member of the family. Many Negro families are supported by both man and wife, and the income of the women is reasonably as stable as that of the men . . . (Frederick Willtes, Jr., Cooperative Savings & Loan, Wilmington.)

> . . . It is the opinion of this institution that a mortgage loan to a Negro in excess of $10,000.00 or $12,000.00 is considerably risky, because of the limited market to which property of that value could be disposed of, in the event of foreclosure . . . (Frederick Willtes, Jr.)

. . . One of the major problems is the economic status of the Negro. His needs are unlimited, but his ability to buy is restricted because of his lack of economic opportunity. As a white citizen, I am ashamed of the difference between the housing conditions of our Negro citizens and our white citizens. I say this, notwithstanding the fact that I believe Negro housing in Rocky Mount is somewhat better than generally found throughout the State. I do not see how our Negro citizens can improve their living standards by acquiring better housing, or being able to pay the rent on better rental housing, until restrictions by custom are eliminated from employment opportunities. If our Negro citizenship is going to improve its lot, it must have a fair opportunity in employment. In my humble judgment, nothing else will correct the situation . . . (Henry Gregory.)

Whether these factors will handicap rather than benefit Negroes may depend upon the given circumstances. It is clear, however, that men of good will, with no intention of denying equal service to all, thus do consider race.

While almost all the replying officials informed the Committee that there were restrictions as to where Negroes could build, all but two indicated that there was still ample room for expansion of nonwhite housing. In Rocky Mount, one of the two exceptions, the following situation was reported by Mr. Gregory:

Our Negro residents are concentrated in central areas of the city, which are surrounded substantially by white residential areas and suburbs restricted to white occupants, both by restrictive covenants or by custom. The only exception to this situation has been in the Northeastern section of Rocky Mount, where there is the largest concentration of Negro residents and there is no white residential section or suburb in its path of expansion. Accordingly, the majority of the growth in Negro residential housing has been in the northeastern direction. However, they have been thoroughly exploited with substandard housing of the slum category in suburbs developed outside the city limits, where they are not subject to the city building restrictions.

Lenoir Keesler of the Mutual Savings & Loan in Charlotte reported:

. . . In Charlotte open land is generally not available for the expansion of nonwhites sections beyond the present boundaries of these sections. Most of the nonwhite sections are limited in their expansion possibilities by existing white developments and communities . . .

The replies also show that transition can be made in an orderly fashion and in a manner not affecting adversely the value of houses formerly occupied by whites. For example, according to George E. Walston of the Home Federal Savings & Loan in Greensboro,

> . . . the Negro neighborhood was surrounded by white areas some years ago, but Negro residential use of properties has expanded southwardly and eastwardly into former white areas. . . . There are very fine Negro neighborhoods off Benbow Road with large areas for expansion . . .

Mr. Willtes from Wilmington reported:

> Generally speaking, Negro housing is concentrated within the central parts of the communities in which this institution lends, which areas are confined by white residences or geographical boundaries, such as water, etc. Some of the better old homes in some of the communities are now being occupied by Negroes. This gradual absorption of some formerly white properties which adjoin Negro areas has worked very satisfactorily from the standpoint of racial harmony. Blockbusting is not a term for this gradual growth of the Negro occupied areas, but rather a process of a gradual spreading in order to accommodate the needs of the Negroes. Frankly, this has created a market demand for houses near or adjoining Negro areas, which had not existed for a number of years.

Insurance Companies

In 1954, the Life Insurance Association of America advanced the proposal for a voluntary home mortgage credit program to "assure the general availability of insured and guaranteed mortgage credit in small communities and remote areas, and for minority groups." It advanced the theory that private financing institutions can, if organized, handle the problem without the need for more direct Government assistance. Following an act of Congress in 1954, President Eisenhower declared: "Under this new law, private financial institutions have a really good chance to mobilize their own resources to supply adequate credit without regard to race, creed, or color to homeowners in every part of our country." [1] The program is operated by a national home mortgage credit committee and regional committees, all of whose members serve without compensation.

About 100 life insurance companies pledged their active participation in this program. Many of these companies indicated their willingness to receive VHMCP loan referrals from North Carolina. The program did not contemplate dependence entirely upon local insurance companies in North Carolina, but instead envisioned that out-of-State com-

[1] N.Y. Times, Aug. 3, 1954, p. 25.

panies operating in North Carolina would be willing to participate in North Carolina.

As of October 1, 1961, the VHMCP had located FHA or VA loans for 3,344 families in North Carolina, amounting to approximately $35 million. Of this total, 460 were nonwhite families who were unable to locate mortgage funds through their own efforts.

The Administrator of the Housing and Home Finance Agency advised the Committee that:

> The VHMCP placed 2,900 or 87 percent of the total loans with investors domiciled outside North Carolina. However, these loans are serviced by North Carolina mortgage banking companies for the investors. About 444, or 13 percent, of the total loans were made by lenders located in North Carolina, such as savings and loan associations, commercial banks and life insurance companies. The North Carolina Mutual Life Insurance Company in Durham and the Pilot Life Insurance Company in Greensboro have been active in the VHMCP while the Durham Life Insurance Company, the Jefferson Standard Life Insurance Company and the Occidental Life of North Carolina have not participated to any great extent. Mr. Asa T. Spaulding, President of the North Carolina Mutual Life Insurance Company, is one of the two representatives from the life insurance industry on the National Committee of the VHMCP; Mr. C. C. Cameron, President of Cameron-Brown Company of Raleigh; and Mr. Ed Mendenhall, partner, Mendenhall Moore, Realtors of High Point, are members of the Region II Committee of the VHMCP.

Mr. Asa T. Spaulding, president of the North Carolina Mutual Life Insurance Co., expressed doubt that:

> . . . many Negroes find difficulty in securing mortgage loans for the purchase of homes in our urban areas based on race, unless it should happen to be for the purchase of a home in what might be referred to as a white neighborhood. It is my judgment that it is more of a problem in the small towns and rural areas. I base this on letters which we receive from applicants expressing difficulty in securing mortgage loans in their respective areas.

FHA and VA

The Committee inquired of the State Director of the Federal Housing Administration of North Carolina and also the manager of the Veterans' Administration in Winston-Salem as to the percentage of loans insured by FHA or VA since 1946 that were made to nonwhites.

J. P. McRae, the State Director of FHA, wrote the Committee:

> There would be no possible way to estimate the percentage of these homes which have been occupied by other than white occupants. The application form which is used for applying for an FHA insured loan does not indicate the race of the applicant, and the credit reporting form on which credit information is secured does not indicate the race of the applicant. We have a total of 2716 FHA insured rental units in Charlotte; of these 1098 are occupied by Negroes. There are 636 FHA insured rental housing units in Durham; of these 123 units are occupied by Negroes. There are 1,089 rental units insured by FHA in Raleigh, of these 276 units are occupied by Negroes. We have 1306 rental units insured by FHA, in Winston-Salem; of these 521 units were built for Negro occupancy in two projects; Park Terrace, 355 units and Columbia Terrace, 176 units. The Park Terrace Project was not a success and was later converted to white occupancy.
>
> There are a number of builders in North Carolina who have developed new areas with houses that are built for sale to Negro occupants. We do not have information as to the number of houses that have been built in various subdivisions to be sold to Negroes . . .
>
> As you know, the Federal Housing Administration insures loans for private institutions who are in business for profit. I do not believe that any borrowers are discriminated against in North Carolina because of their race, color, or religion, and that lending practices are controlled by other things including the credit reputation of the Credit Bureau of the individual. There appear to be adequate funds available for financing Negro housing in this State.

J. D. DeRamus, Manager of the Veterans' Administration's regional office in Winston-Salem, advised the Committee that there were no comparative figures on either VA guaranteed or direct loans. However, as to the latter, he said:

> In this program we feel that nonwhites have benefited to a very large degree, since each loan is handled strictly on its merits, and the race or color of the borrowers is unknown. Minority groups have benefited since the G.I. loan program has assured availability of financing, and certainly has maintained quality of construction.

Since its creation by the National Housing Act of 1934, FHA has been the principal agency in carrying out the Federal Government's role in housing. It was not until after the decision in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), that the FHA eliminated from its Underwriting

Manual the requirement of a racially restrictive covenant in deeds to property on which loans were insured by FHA. After February 15, 1950, the FHA refused to insure mortgages on homes for which racially restrictive agreements or covenants were filed after that date. Also since February 15, 1950, all FHA mortgage forms have contained a covenant under which the mortgagor agrees that so long as the insured mortgage is in existence, he will not file for record any racially restrictive covenant. FHA now treats racial covenants executed before February 15, 1950, as void.

Urban redevelopment

In 1951, the general assembly enacted the urban redevelopment law, G.S. 160–454, 160–474. It declared that there exist in urban communities in North Carolina blighted areas; that is, areas in which the predominant buildings or residences are so dilapidated, deteriorated, overcrowded, or unsanitary as to impair substantially the sound growth of the community. When the governing body of a municipality finds that such areas do exist, it may create a redevelopment commission with power to acquire by purchase or eminent domain the blighted areas, clear them, and sell the land in whole or in parts to persons or firms under contract to rebuild the site in accordance with an approved plan for future use.

To date, about 18 cities have created redevelopment commissions and about 10 have begun slum clearance under this law. The difference between this law and the North Carolina housing authorities law, G.S. 157–1 to 157–398, adopted in 1935, is that the latter authorizes public agencies to build and operate public housing projects for low-income families, whereas the 1951 law authorizes the clearance of blighted areas and the sale of the cleared land to private developers. The 1951 law has been upheld by the North Carolina Supreme Court in *Redevelopment Commission of Greensboro* v. *Bank,* 252 N.C. 595 (1960).

Each redevelopment commission so far established has commenced by surveying in detail its own community to determine its blighted areas and housing needs. Upon request of the Committee, the directors of these commissions furnished reports of the nonwhite housing opportunities in their respective cities. These reports were generally in accord with those of the building and loan officials. The consensus in both groups was that there is available land for Negro housing and that there is no deliberate discrimination against nonwhites seeking credit for the purchase of homes. However, Mason E. Swearingen of Winston-Salem suggested that while progress had been made, still more was necessary:

Recently, there seems to be a lessening in the restrictions in our building and loan and other lending institutions, and it seems in most every case now that a Negro homeowner has quite a distinct advantage in trying to own a home over what he had five to 10 years ago. This lessening of restricted loans is still not enough to give every Negro citizen an opportunity to own a home, and we would like to see the lending institutions be a little more active in this matter.

There is not complete agreement as to whether or not Negroes must pay more than whites for comparable housing. The majority of replies parallel this statement of Vernon L. Sawyer of Charlotte:

To my knowledge, there is no practice among property managers in Charlotte of charging higher rents from Negroes for comparable quarters than whites pay. There is a practice here that involves a collection policy which we shall mention as information. As a rule rent is collected from white tenants on a monthly basis and from Negroes on a weekly basis. The collection of rent on a weekly basis naturally involves more expense to the managing agent and I have heard of instances where this additional charge is added to the rent merely to cover the additional cost of management and not as an additional profit.

On the other hand, Mr. Robert E. Barkley of Greensboro represents those who felt there was such a problem:

It is probable that nonwhites have to pay a higher rent for quarters than do whites for comparable accomodations. This situation exists for several reasons: (a) the creation of new supply has not kept pace with new demands; (b) many rental agents feel that nonwhites incur heavier rental and credit losses than do whites; and (c) investors in Negro property have traditionally demanded a shorter period of amortization than for comparable white properties. Governmental assistance programs have greatly increased the creation of new housing supply and extended the terms of amortization; this may ultimately reduce the inequities between white and nonwhite housing rentals.

Several of the responding officials agreed with the building and loan officers that the problems encountered by Negroes in purchasing and financing housing are intimately connected with problems of employment:

Of course, the basic solution to the Negro housing problem is an economic one. Expanded employment opportunities would certainly assist the Negro in obtaining better housing. Until this

goal is achieved, redevelopment can contribute substantially towards improving Negro housing conditions.

The only limiting factor in the ability of nonwhite to purchase housing is financial. No rental differentials for nonwhite and white exist, as far as I know. Since only about 17 percent of our population is nonwhite, and that group is in low-income brackets, we have no large-scale developments for nonwhites. We hope that low-rent public housing, recently started in Mooresville, will produce lower crime and delinquency rates among citizens whom we already consider valuable.

The solution to the Negro housing problems is economic, and, in my opinion, expanded employment opportunities would be one of the better solutions for this problem.

Ordinances compelling segregation by race

On July 12, 1912, the board of aldermen of Winston adopted an ordinance which made it a crime for any colored person to occupy as a residence any house upon any street or alley between two adjacent streets on which a majority of the houses were occupied as residences by white people. In 1913 a colored man named Darnell was convicted and fined for violating this ordinance. On appeal, the Supreme Court of North Carolina declared the Winston ordinance unconstitutional and invalid. This was 2 years before a similar decision by the U.S. Supreme Court. Chief Justice Walter Clark of the North Carolina Supreme Court wrote the opinion, which contained the following language.[1a]

If the board of aldermen is thereby authorized to make this restriction, a bare majority of the board could, if they may deem it wise and proper, require Republicans to live on certain streets and Democrats on others or that Protestants shall reside only in certain parts of town and Catholics in another, or that Germans or people of German descent should reside only where they are in the majority, and that Irish and those of Irish descent should dwell only in certain localities, designated for them by the arbitrary judgment and permission of a majority of the aldermen. They could apply the restriction as well to business occupations as to residences, and could also prescribe the localities allotted to each class of people without reference to whether the majority already therein is of the prescribed race, nationality, or political or religious faith. Besides an ordinance of this kind forbids the owner of property to sell or to lease it to whomsoever he sees fit, as well as forbids those who may desire

[1a] *State v. Darnell*, 166 N.C. 300, 302–04 (1914).

to buy or rent property from doing so where they can make the best bargain. Yet this right of disposing of property, the *jus disponendi,* has always been held one of the inalienable rights incident to the ownership of property, which no statute will be construed as having power to take away. . . . This ordinance forbids a white man or a colored man to live in his own house if it should descend to him by inheritance and should happen to be located on a street where the majority of the residents happen to be of such different race. There is no reason why the power of the county commissioners to provide for the public welfare should not be as broad as those of the town commissioners, and if under such general authority similar regulations are prescribed for the county districts, one who would buy or inherit property in a section where the opposite race is in the majority could not reside on his own property, and he could not sell it or rent it out except to persons of such different race, since none other could reside there. Neither a white manager nor any white tenants could reside on a farm where a majority of tenants or hands are colored.

In Ireland there were years ago limits prescribed beyond which the native Irish or Celtic population could not reside. This was called the "Irish Pale," and one of the results was continued disorder and unrest in that unhappy island, which had as one of its consequences that more than half its population came to this country. That policy has since been reversed. But in Russia, to this day, there are certain districts to which the Jews are restricted, with the results that vast numbers of them are emigrating to this country. We can hardly believe that the legislature by the ordinary words in a charter authorizing the aldermen to "provide for the public welfare" intended to initiate so revolutionary a public policy. . . .

Judging by the experience of the "Irish Pale" and of the similar restrictions upon the Jews in Russia, the result of this policy might well be a large exodus, and naturally of the most enterprising and thrifty element of the colored race, leaving the unthrifty and less desirable element in this State on the taxpayers. . . .

An ordinance identical to the above Winston ordinance was adopted by the Greensboro City Council in February 1914 and repealed in June 1929. Thus, the Greensboro ordinance was adopted while the Winston ordinance was pending before the North Carolina Supreme Court, but it was not formally repealed until 15 years after the *Darnell* decision.

In 1930, the board of aldermen of Winston-Salem adopted a new zoning ordinance, dividing the city into white and Negro residential districts. In 1939, the boundaries of some of these districts were changed so that several houses owned by Negroes were thereafter sit-

uated in a district designated for occupancy only by white persons. The city served notice upon the Negro occupants to vacate. In a suit by the Negro owners to restrain the city officials from enforcing the racial zoning ordinance the Supreme Court of North Carolina held the ordinance invalid. *Clinard* v. *Winston-Salem,* 217 N.C. 119 (1940).

In 1934, Asheville adopted an ordinance to prevent colored persons, firms, or associations of colored persons, or corporations the majority voting stock of which is owned by colored persons from using any property not then owned by such persons for residences or for the conduct or use of colored persons to supervise any institution thereon, when the majority portion of the improved property on the same side of the street and same block is occupied or used for such purposes by white persons. In the event of equal usage (*i.e.,* a tie) "the occupancy or usage to which it is thereafter first changed, from white persons to colored persons or from colored persons to white persons, shall determine accordingly which race shall constitute the majority portion of the usage on such side of a street, from the date of such change of occupancy, for the purposes set forth in this ordinance. . . . The intention of this ordinance is to retain the status quo between the races as to the use of property as now located." Occupancy by watchmen, caretakers, or "accessory uses customarily incident to any use permitted by this ordinance, such as servants' quarters, are not intended to be restricted by this ordinance, provided such inhabitant is an employee of the owner, lessee or tenant of the premises." Asheville Code, ch. III, art. 23, secs. 636 to 647. This ordinance has not been formally repealed. Mr. O. E. Starnes, Jr., corporation counsel for the city of Asheville, advised the Committee that it has not been enforced for at least the last 8 years.

Deed restrictions

Typical of the private restraints imposed by covenants in deeds is the restriction quoted in *Pepper* v. *Development Co.:* [2]

> The lot herein conveyed, or any part thereof, or any interest therein, shall not be leased, sold, or otherwise disposed of to or be occupied by any Negro, or any person, firm or corporation for the use of any Negro, within 90 years from the date of this deed. This provision, however, shall not apply to Negro servants in the employ of the owners or the occupant of the property who may occupy rooms on the premises.

This deed was made in 1929 and was similar to other deeds for lots carved out of a tract of land located immediately west of Winston-Salem, in a development known as West Highland.

[2] 211 N.C. 166, 167 (1937).

Restrictive covenants as to many other matters are still commonplace in deeds conveying residential property. "The North Carolina court cases dealing with restrictive covenants date largely from the 1920's, when the pressure of changing conditions first began to be felt with regard to the covenants of the 1890's and early 1900's. Since then there has been a fairly strong stream of cases. The courts have generally sustained covenants restricting the use of property where reasonable, not contrary to public policy, not in restraint of trade, and not for the purpose of creating a monopoly." *Sheets* v. *Dillon*, 221 N.C. 426, 431 (1942). "Among the most common restrictions to be found in North Carolina deeds are those limiting use of the lot to residential purposes, those forbidding ownership or occupancy by Negroes (which are no longer enforceable) and those setting minimum costs for residences erected on the land." [3]

Racially restrictive covenants in deeds were held unforceable in any courts in the United States in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948) and *Hurd* v. *Hodge*, 334 U.S. 24 (1948). These cases, the earlier North Carolina decisions, and many historical and economic data in connection with such restrictions are reviewed in an article by the late O. Max Gardner, Jr., of Shelby: [4]

> Invasion of white neighborhoods by Negroes is alleged to cause immediate depreciation in property values. Investigation of this allegation established the view that if the depreciation is immediate as it respects the white owners, it is also temporary . . . "Sacrifice sales" by the white owner may work for the benefit of the Negro, or may have the opposite result . . . See Brief for Appellants, p. 11, *Vernon* v. *R. J. Reynolds Realty Co.*, 226 N.C. 58, 36 S.E. 2d 610 (1945), "a very large area of valuable real property in Winston Salem is under the blight of a covenant that restricts against its ownership or occupancy by Negroes. Because the area is surrounded by extensive areas exclusively occupied by Negroes, every part of the restricted area is valueless except for use and occupancy by Negroes."

Immediately after the *Shelley* and *Hurd* decisions, the Greensboro Daily News interviewed real estate men in Greensboro, N.C., and published their comments on May 4, 1948:

> LITTLE EFFECT EXPECTED HERE—REAL ESTATE AGENTS COMMENT ON RULING. Most of the real estate dealers said present practices and customs in regard to white and Negro property sales will continue . . . "For two or three years now we have been seeing a section in South Greensboro gradually

[3] Green, Philip P., Jr., *Zoning in North Carolina* 23, 26 (1952).
[4] 27 *N.C. L. Rev.* 224, 227 (1949).

purchased by Negroes. It was inevitable because the section was adjacent to Negro residential areas," a spokesman for the realtors said . . . Questioned as to whether or not there would be a mass movement of Negroes into white areas, one agent said: "It's a long way from us." Another replied, "We are not likely to be bothered by requests from Negroes to buy property in sections like, say Irving Park or Starmount. In the first place property owners hardly would sell to Negroes, and in the second place, the Negroes couldn't afford to buy such property."

Insofar as the Committee can determine these predictions have been accurate. No case has been found in North Carolina where a Negro has attempted to buy property from a white person where the property was covered by a restrictive covenant. The brief for the appellants in *Vernon* v. *Reynolds Realty Co.*, 226 N.C. 58, 36 S.E. 2d 710 (1945) stated: "Numerous Negroes are desirous of purchasing lots in the development, but none will buy or offer to buy any lot until the restriction is annulled." In that case the plaintiffs sought to remove the "burden" of a restrictive covenant in deeds to property in Skyland, a residential section in Winston-Salem. The whole surrounding area for the depth of a quarter of a mile had been acquired by Negroes. The court held that the changed conditions outside the development afforded no grounds for relief of the plaintiffs and decided for the defendants, the white persons who wanted to keep the covenants in effect. This, of course, was prior to 1948 and the result would probably be different today.

In *Eason* v. *Buffaloe,* 198 N.C. 520, 152 S.E. 496 (1930), the defendant, owner of a tract which he proposed to divide into residential lots, sold some of the lots to the plaintiff and contracted with him that all remaining lots would be conveyed by deeds containing restrictions against sale or to occupancy by any Negro. The defendant sold some lots to the State School for the Blind and Deaf by deeds which omitted the promised racial restriction. The plaintiff was held entitled to maintain an action for damages (alleged as $2,000) against the defendant for failure to put the promised restrictions in the deeds, since the school had announced its purpose to erect and maintain on the lots a school for Negroes. Again, there would probably be a different result on such facts today.

Social and economic pressures and fears

Even where there are no restrictive covenants, whether enforceable in the courts or not, there are social pressures of custom and conflicting economic fears which continue to restrict nonwhites, on account of their race and regardless of their talents or decorum, in their choice of housing.

Three recent episodes illustrate these pressures and fears: In the summer of 1956 at Southern Pines a Negro couple named White purchased a house in a formerly all-white development. According to one of the leading citizens of the community:

> The White couple were very high-class people. Mrs. White was in social work in New York and since they have lived here she has worked with the colored people and done much for their section of town. There has been absolutely no 'trouble' where they are living, perhaps due a little to the fact that some of the others who live there are transients and Army people, Northerners or Westerners. The first thing the Whites did on moving in was to paint the house and fix up the yard; they put up a nice white painted fence. It is always very tidy, and I am told, they never have rowdy parties. But there has been one big objection: there is no doubt that the property values have dropped mightily. The realtors tell me that it is next to impossible to sell houses in that neighborhood. On one house, originally priced at $30,000, the price was gradually lowered to $10,000 and it is still not sold. There was much fuss when the sale was made. The Negroes were pressured to sell out and move into the Negro settlement, and there were ugly stories spread which turned out to be without foundation. There was no violence, no so-called incident of any sort, and the fuss died down very quickly, as people realized these were nice people, not in any way objectionable.

In *State* v. *Cole*, 49 N.C. 733 (1959) the North Carolina Supreme Court affirmed the conviction of James Cole of Marion, S.C., alleged Grand Wizard of the Knights of the Ku Klux Klan in North Carolina, on a charge of inciting a riot near Maxton, Robeson County, N.C. The indictment charged that the purpose of the rally was "to preach racial dissension and to coerce and intimidate the populace . . . although they had been warned that their prior conduct and pronouncements against the Indians of Robeson County had incensed and inflamed said Indians against them, and that a large number of said Indians intended to appear in armed force at said meeting." According to the testimony, Cole and other Klansmen had burned crosses. "Cole said they were burning this particular cross in East Lumberton *because the Klan had been informed that an Indian family had moved into East Lumberton.*" [Emphasis added.]

On October 23, 1961, the Charlotte Observer reported the efforts of certain white property owners in Charlotte to have their residential lots rezoned for business. They alleged that the conditions where they were "living were so bad that they just couldn't stand it any longer and unless their properties could be converted to business use, they would

be forced to sell to colored persons. The noise, danger to children, lack of parking space, general inconvenience, and finally beer cans thrown in yards by motorists harassed the residents, they said. They cannot afford to move unless they can sell their homes for a fair price and white people will not buy, they said. 'I have stood just as much as I can stand,' said one white owner. 'I don't want to sell my home to colored people. But I want to sell it and if a colored person wants to buy it I will sell it to him.' "

Vernon L. Sawyer, executive director of the Redevelopment Commission of Charlotte stated to the Committee:

> I can find no evidence at all among the realtors in the City with whom I have talked that there is such a thing as 'block-busting' in Charlotte such as that experienced in some of the large cities of the North. It is true that there are several neighborhoods in the city where a gradual transition from white to Negro occupancy is taking place. This, however, is taking place peaceably and without panic and whites and Negroes are residing side by side without any trouble and in some cases for long periods of time.

NONWHITE ACCESS TO PUBLIC HOUSING

Appendix 11 presents a current picture of the public housing units in North Carolina for low-income families. There are 11,172 such units now in operation, 1,266 other units in the process of development, and additional units have been requested and are listed as "programed." There is no certainty that all of these units will be built.

All tenants in these units pay rent according to the total income of all the persons living in the dwelling unit. According to North Carolina law, the rent is one-fifth of the family income where there are three or more minor dependents. Rent means gross rent, including shelter, space, heat, water, electricity, fuel for cooking and heating water.

Several of these housing authorities have one to three Indian families dwelling among white families. There are also a few oriental wives living in these projects and they, according to one of the directors, are "housed according to the race of their husbands."

The percentage of nonwhite households in each city is also indicated in appendix 11. In every place where such public housing units are in actual operation, the percentage of units being occupied by Negroes is substantially in excess of the percentage of nonwhite households in such cities. No doubt the reason for this is that Negro families constitute a substantially greater percentage of the low-income families than their pro rata share of the total number of households in the community.

In addition to the project shown in appendix 11, the Eastern Carolina Regional Housing Authority also owns and manages two projects for white occupancy (210 dwelling units at Holly Ridge and 476 units at Seymour Johnson Field) that were built for war housing units and were transferred to the Eastern Carolina Regional Authority when the Department of Defense no longer had any use for them. The tenants in these projects pay rent according to the size of the unit. There is no income limitation. These units are not included in appendix 11 because they are not aided by subsidies from the Public Housing Administration, nor are they designated for low-income families.

As to the housing units located on military reservations in North Carolina, the public information officer and the billeting officer at Fort Bragg have advised the Committee that there is absolutely no racial segregation at Fort Bragg or in any other military establishment in the United States or overseas, either in housing or in any other activity. At Fort Bragg, Negro families live interspersed among white families. This applies to officers as well as enlisted personnel.

Each of the housing authorities shown in appendix 11 has been granted a certificate of convenience and necessity by the North Carolina Utilities Commission under G.S. 157–28, enacted in 1935. At that time the general assembly declared that "there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants," that "consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;" and that "these conditions cannot be remedied by the ordinary operation of private enterprise." G.S. 157–2. Under this grant of authority from the State, these housing authorities exercise the power of eminent domain, condemning property required for public use in a manner similar to the acquisition of land for highways, streets, or other public buildings. G.S. 157–11.

It is apparent that while this authority of the State has been used to provide more public housing units for Negroes than their proportionate share of the population, all of the projects in North Carolina have been and are being operated on a segregated basis; that is, certain groups of units or projects have been designated for white occupancy and other groups and units or projects have been designated for Negro occupancy.

IMPACT OF HIGHWAY AND STREET CONSTRUCTION

New highways and streets frequently displace dwellings. The right-of-way chosen for condemnation by the Government is chosen on the basis of many considerations, some of which include the value of the property and also the advantages to the whole community to be gained by the clearance of slums.

To illustrate the effect of this form of governmental action on the housing market, the Committee examined the recent expressway construction program in Winston-Salem. Three expressways have been built by a combination of Federal, State, and city funds, and the right of eminent domain has been used to acquire property on which many persons had previously been living.

Although white families outnumber nonwhite by two-to-one, the East-West Expressway displaced 200 nonwhite families and 100 white families. The Cherry Marshall Expressway displaced 100 nonwhite families and 25 white families. The North-South Expressway which is still in the process of construction has to date displaced 100 nonwhite families and no white families.

Most of the displaced families have found other accommodations in and around the city of Winston-Salem. They were given first choice to acquire 300 privately built houses financed by 40-year loans, insured by FHA. All of the displaced families, both white and nonwhite, are reported to have acquired adequate dwellings and most of the families have actually improved their housing accommodations over what they had before they were displaced. Of course, their displacement did increase the competition for available accommodations. This experience is probably typical; many more nonwhites than whites are displaced by such Government action in our cities. The public duty to provide adequate opportunity for these families to find decent dwellings is just as great as the public right to oust them.

NONWHITE PARTICIPATION IN STATE ACTION AFFECTING HOUSING

To what extent are nonwhites represented on the policymaking boards or on the staffs of city, county, State, and Federal agencies in North Carolina which act on behalf of Government in matters affecting housing?

Appendix 12 shows the white and nonwhite membership for 10 cities in North Carolina on (1) city councils, (2) housing authorities, (3) planning boards, (4) board of adjustments for zoning matters, (5) redevelopment or urban renewal commissions, and (6) citizens advisory committees. Although the nonwhite population in the 10 cities shown ranges from a low of 18.5 percent in Mooresville to a high of 39.6 percent in Laurinburg, nonwhites are represented in only about 5 percent of the total membership of local governing boards, planning boards, and boards of adjustment. The percentage is highest on the citizens advisory committees, which are required by law to be in existence in areas engaged in urban renewal programs.

Inasmuch as nonwhites occupy a much larger share of the poor housing in North Carolina, and the elimination of such poor housing is a principal aim of government, the participation by nonwhites in these agencies is disproportionately low.

In addition to the control of policies by the governing boards listed in appendix 12, full-time employees are engaged on behalf of the cities in carrying out policies in day-to-day decisions affecting housing of nonwhites. Appendix 13 reflects the extent to which nonwhite personnel are employed by some of these cities in their planning departments or on the staffs of their housing and redevelopment commissions.

ROLE OF REAL ESTATE AGENTS AND BOARDS

The North Carolina Real Estate Licensing Board advised the Committee on October 17, 1961, that there were 4,600 individual real estate licenses currently in active status in North Carolina. No records are kept concerning the licensee's race. All members of the North Carolina Real Estate Licensing Board are white.

There are approximately 75 licensed real estate brokers who are Negroes. None are members of the North Carolina Association of Realtors, Inc., nor the National Association of Real Estate Boards as well as their affiliates, the local boards of realtors. According to a publication of the National Association of Real Estate Boards entitled "Ask for Preferred Attention," the term *realtor* "is the distinctive and exclusive designation for men and women within the membership of real estate boards." Negro real estate agents, although licensed by the State, have been excluded from membership in these real estate boards and are therefore forbidden to use the term *realtor* and do not participate in the activities of the boards of realtors at either the city, State, or national level.

According to Mrs. Shirley Stainback, office secretary of the North Carolina Association of Realtors, Inc., there are 1,340 members of the association in North Carolina. All of these are white.

For the most part the activities of local real estate boards (or boards of realtors) are private in nature, but they do play an important part in providing housing for all Americans. In addition, they have a direct connection with the government in that it is from their list of approved appraisers and negotiators that many governmental agencies select appraisers to be used in carrying out State action.

Many of the Negro real estate agents have joined together to form the Carolina Real Estate Brokers & Builders Association. Alfred Scott of Winston-Salem is the president. In a statement to the Committee he said:

> The only area, so far as we can ascertain, that has employed Negro appraisers and negotiators has been the Redevelopment Commission of Winston-Salem. There are two negotiators and one appraiser, all of whom are licensed real estate brokers and employed by the Land Planning Agency [local public agency] on a fee basis. We feel that any licensed real estate broker can qualify as an appraiser for the average type of property located in most Urban Renewal areas. The latest announcement as to the employment of appraisers is found in the Urban Renewal Manual, Nov. 22, 1960, Section 14–1–2, also Section 13–2–1 July 1960. Neither of the sections requires a certified appraiser, but leaves the employment of appraisers up to the Land Planning Agency [local public agency] in each area.

The Committee has been advised that in Winston-Salem there are no restrictions on employment of appraisers or negotiators. Negroes there are represented on the housing authority and the redevelopment commission. One out of five of the appraisers used by the latter is a Negro and two out of seven of the approved negotiators are Negroes.

We do not know what the facts are with respect to the use of appraisers or negotiators by other city governments, State highway commission, the FHA, the VA, or any of the other local, State, and Federal agencies. What additional training and experience, if any, is required for a licensed broker to qualify as an appraiser, we do not know.

Mr. Ben T. Perry III, executive director of the Redevelopment Commission of Durham, wrote the Committee on this point that "we do have qualified Negro urban renewal appraisers in our city, even though they have declined the job in favor of negotiating for the property."

One Negro real estate broker who has successfully completed the course in appraisals as offered by the American Institute of Real Estate Appraisers at Northwestern University, advised the Committee that he had not been able to receive the institute's designation "M.A.I." because one of the requirements is that the designee must be a member of a local real estate board and no such real estate boards are open to Negroes in North Carolina. On the other hand, he stated that he could "point with much gratitude to cooperation and seeming respect of local [white] persons so designated."

CONCLUSIONS

1. The houses in which the people of North Carolina live are in worse condition than those in more than 80 percent of the rest of the United States.

2. The houses in which nonwhite North Carolinians live are on the average in much worse condition than those in which white North Carolinians live.

3. Many factors contribute to poor housing of nonwhites in North Carolina, including: low incomes, limited job opportunities, inferior training, poor health, and nonparticipation in voting and government.

4. In addition, the housing market has in the past been artificially restricted by government action so as to prevent free competition: The requirement of racial restrictions in deeds where FHA and VA loans were to be insured, city ordinances compelling racial segregation by blocks and zones, court enforcement of deed restrictions on transfers of property to Negroes. These three forms of government action are not now being taken by government agencies, but the effects of such action in prior years is still being felt.

5. In recent years, State and Federal agencies have been engaged in a program of providing and insuring credit through building and loan associations, VHMA, FHA, and VA, for homebuilding and home improvement. Although the race of the borrower is not supposed to be considered and these agencies are making strong efforts to dispel such a consideration, nevertheless it does sometimes enter into the appraisal of the lender's risk, especially where the price of the house and the amount of the loan is higher than is customary for Negroes or the location is outside the Negro section.

6. In certain cities, government agencies are providing low-rent housing in greater proportion for nonwhites than for whites and are providing improved housing for families being displaced by government construction and redevelopment.

7. Nonwhites have very little representation on any governing boards, planning, zoning, housing, and redevelopment commissions in North Carolina. In addition very few nonwhites are employed on the staffs of these governmental agencies. The actions of these governmental agencies probably have more effect, pro rata, on the housing of nonwhite families than on white.

8. There is greater racial segregation in housing now than there was before the turn of the century; that is, more white families live far removed from any colored family, and vice versa. This resulted from the development of large tracts for one particular race through deed restrictions and zoning ordinances. Also, where public housing has been built and is operated by the government, separate projects are maintained exclusively for Negroes on the one hand or for whites and a few Indians on the other.

9. Practically all of the urban areas in North Carolina have ample open land available for nonwhite expansion.

10. In some of the cities transition from white to nonwhite occupancy is occurring with little or no disturbance, either to real estate values or to personal feelings.

11. There are indications of recent opportunities in most of the larger cities in North Carolina for Negroes to acquire good quality medium and even high-priced homes, especially in new developments.

VIII. Medical Care

> In great wars we showed both the world and ourselves that we could marshal all our resources, all our people, all our treasure in the defense of democracy on this earth. There remains now the cheaper, clearer, equally necessary demonstration that in the very basic things—in health and in education—we can give some real meaning to equality of opportunity at home. This is the only firm foundation of democracy itself.
>
> —Jonathan Daniels, UNC *Newsletter,* 1946.

STATUTES AND CASES

There are no North Carolina statutes requiring racial segregation in medical care except in regard to treatment of the mentally disordered and feebleminded in certain State institutions. The pertinent statutes follow:

> G.S. 122–3. *Division of patients among the several institutions under the North Carolina Hospitals Board of Control.* The Dorothea Dix Hospital, Broughton Hospital, and The John Umstead Hospital shall be exclusively for the accommodation, maintenance, care and treatment of white mentally disordered persons of the State, and Cherry Hospital shall be exclusively for the accommodation, maintenance, care and treatment for the colored mentally disordered, feeble-minded, and inebriate of the State.

The first segregation of Negro mental patients of the State was ordered in 1875 by "An Act to Provide for the Colored Insane of North Carolina," establishing a branch asylum in the Marine Hospital building at Wilmington and providing that "no more colored insane shall be received in the asylum at Raleigh, and that all the colored inmates now in the asylum at Raleigh, North Carolina, be removed to Wilmington . . ." Laws 1874–75, ch. 250, sec. 1. A 1959 amendment changed the names of the hospitals but retained the segregation provision.

G.S. 122–5. *Care and treatment of Indians in mental hospitals.* The authorities of Dorothea Dix Hospital and Broughton Hospital may also receive for care and treatment mentally disordered and inebriate Indians who are resident within the State, and who may, within the discretion of the superintendent, be assigned to any of the wards of the hospital.

The first provision for the Indian mentally disordered was for "a department separate and distinct from the white insane" for Croatan Indians in the white hospital at Raleigh. Public Laws, Session 1899, ch. 355. In 1919 "Cherokee Indians of Robeson County" were added to the provision. The separate ward requirement was dropped in 1947. Session Laws 1947, ch. 537, sec. 7.

G.S. 122–6 formerly read: . . . Commitment of Negro epileptic persons shall be made to the State Hospital at Goldsboro. Commitment of white epileptic persons shall be made to the State Hospital at Raleigh.

By chapter 1005 of the Laws of 1959, this section was rewritten to direct commitment in the same manner as other mentally disordered persons. In addition, the hospitals board of control was given authority to admit epileptics to any hospital under its control.

G.S. 116–126 provides for the Caswell School for mental defectives and does not mention race; however, G.S. 116–142.1 authorizes the creation of a Negro Training School for Feeble-Minded Children, to be controlled by the North Carolina Hospitals Board of Control. Session Laws 1945, ch. 459.

Additionally, the legislature has required that mentally disordered persons charged with crime (G.S. 122–83); persons acquitted of certain crimes or incapable of being tried on account of mental disorder (G.S. 122–84); convicts becoming mentally disordered (G.S. 122–85); and ex-convicts with homicidal tendency (G.S. 122–88) are to be committed to the State hospital at Raleigh (Dorothea Dix Hospital) if white, and to the State hospital at Goldsboro (Cherry Hospital) if colored.

No information is available on municipal or county ordinances relating to compulsory segregation in health facilities or medical care.

No Federal statute requires segregation. Conversely no statute, not even the Federal Hill-Burton Act under which substantial sums for hospital construction have been provided in North Carolina and in other States, forbids segregation according to race. The applicable section of Hill-Burton is: [1]

[1] 42 U.S.C. 291e (1944).

(f) That the State Plan shall provide for adequate hospital facilities for the people residing in a State, without discrimination on account of race, creed, or color, and shall provide for adequate hospital facilities for persons unable to pay therefor. Such regulation may require that before approval of any application for a hospital or addition to a hospital is recommended by a State agency, assurance shall be received by the State from the applicant that (1) such hospital or addition to a hospital will be made available to all persons residing in the territorial area of the applicant, without discrimination on account of race, creed, or color, but an exception shall be made in cases where separate hospital facilties are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group; and (2) there will be made available in each such hospital or addition to a hospital a reasonable volume of hospital services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial standpoint.

The constitutionality of the foregoing provision has been explicitly challenged in *Simkins et al* v. *Cone Memorial Hospital and Wesley Long Community Hospital* filed February 21, 1962, in the U.S. District Court for the Middle District of North Carolina at Greensboro. The Attorney General of the United States requested permission to intervene in this suit on behalf of the plaintiffs. On June 26, 1962, the judge granted the motion of the United States to intervene "as a party to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of the statute above referred to." This case is still pending.

Hospitals and health facilities in North Carolina which are owned by the government or are operated by the government, whether at the Federal, State, county, or city level, are agencies of the government, and the conduct of these facilities constitutes State action within the meaning of the U.S. Constitution. To the extent that these government-owned or operated facilities require the separation or exclusion of patients on the basis of race, they would appear to conflict with the Constitution. As stated by the Court of Appeals for the Fourth Circuit (Chief Judge John J. Parker of North Carolina, Dobie of Virginia, and Timmerman of South Carolina sitting): [2]

> The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of the voluntary action. It merely forbids the use of governmental power to enforce segregation.

[2] *Briggs* v. *Elliott*, 132 F. Supp. 766, 777 (1955).

And the same Court (Parker, Dobie, and Soper of Maryland sitting): [3]

> It is now obvious, however, that segregation cannot be justified as a means to preserve the public peace merely because the tangible facilities furnished to one race are equal to those furnished to the other . . . With this in mind, it is obvious that racial segregation in recreational activities can no longer be sustained as a proper exercise of the police power of the State; for if that power cannot be invoked to sustain racial segregation in the schools, where attendance is compulsory and racial friction may be apprehended from the enforced commingling of the races, it cannot be sustained with respect to public beach and bath-house facilities, the use of which is entirely optional.

What is said there as to recreational activities would in all likelihood apply as well to health and medical facilities owned and operated by the government, the use of which is optional. In *State* v. *Cooke*, 248 N.C. 485 (1958), the North Carolina Supreme Court said: "Separation of the races in the use of public property cannot be required."

There are no decisions of the North Carolina Supreme Court defining the duty of hospitals or other medical facilities with respect to the admission or exclusion of patients according to their race. One probable reason for the scarcity of cases is that persons requiring hospitalization are rarely in a position to litigate.

The North Carolina Advisory Committee has received complaints that certain hospitals in the State, built with the aid of Hill-Burton funds, have not maintained an adequate ratio of beds and other space to meet the needs of Negro patients. These complaints were not directed at segregation per se, but at the inequality of the separate provision made for Negro patients. The Committee has also received numerous inquiries as to whether separate but equal facilities, especially in hospitals constructed with Federal grants, could be legally maintained in the light of the foregoing constitutional principle forbidding compulsory, as opposed to voluntary, racial segregation. The language quoted above from the Hill-Burton Act recognized "separate hospital facilities . . . for separate population groups," and hospitals have been and are being constructed in North Carolina and operated under admissions policies requiring racial segregation, as indicated later in this report.

Two other suits are now pending in the U.S. district courts in North Carolina involving alleged denial of equal protection of the law to Negro doctors and dentists and to some of their Negro patients.

In *Eaton* v. *The Board of Managers of James Walker Memorial Hospital*, a suit started in 1961 in the Wilmington District of the U.S. District Court for the Eastern District of North Carolina, three of the plaintiffs are licensed Negro physicians and two of the plantiffs are Negro

[3] *Dawson* v. *Mayor and City Council of Baltimore*, 220 Fed. 2d 386, 387 (1955).

citizens residing in Wilmington who seek admission to the defendant hospital for "diagnosis and treatment of illness without racial discrimination and by a physician of their choice who without regard to his race is qualified to practice in said hospital." The suit seeks an injunction prohibiting the defendants from refusing to grant courtesy staff privileges to the plaintiff-physicians and requiring the defendants to grant the patients access to the facilities of the defendant hospital without distinction based upon race or color. The complaint contains numerous allegations purporting to show various connections between the city of Wilmington, the county of New Hanover, and the hospital, and the use of public funds derived from taxation for the expansion and maintenance of its facilities. It is alleged that the hospital, "as the chosen instrumentality of the city of Wilmington and the county of New Hanover for furnishing medical care to their white citizens and affording a place to practice for qualified white physicians, as such and as the institution which offers the highest standard of medical care in the city of Wilmington and the county of New Hanover, is in the nature of a public utility carrying out functions for the city of Wilmington and the county of New Hanover, N.C. and is, therefore, performing State action subject to the 14th amendment to the Constitution of the United States."

The defendants have moved to dismiss the complaint. No decision has yet been made by the district court.

A similar but less detailed complaint was involved in *Eaton* v. *The Board of Managers of the James Walker Memorial Hospital* which was dismissed by the district court in 164 Fed. Supp. 191 (1958) on the ground that the court had no jurisdiction of the complaint. This judgment was affirmed by the Court of Appeals for the Fourth Circuit in 261 Fed. 2d 521 (1958) and *certiorari* was denied by the U.S. Supreme Court at 358 U.S. 948 (1959).

In its opinion in that case, the court of appeals said: [4]

> The plaintiffs rightfully confine their effort on this appeal to showing that the hospital is an instrumentality of the State. They do not argue that the exclusion of qualified physicians solely because of their race from an institution devoted to the care of the sick is indefensible, as they might well do if this court was the proper forum to determine the ethical quality of the action. As a Federal Court we are powerless to take into account this aspect of the case. We may not interfere unless there is State action which offends the Federal Constitution. From this viewpoint we find no error in the decision of the district court for the facts clearly show that when the present suit was brought, and for years before, the hospital was not an instrumentality of the State but a corporation managed and operated by an independent board free from State control.

[4] 261 Fed. 2d 521, 525.

This has not always been the case. In 1881, when the hospital was established, and thereafter during the period ending in 1901, when it was supported and operated by municipal authority, it might well have been described as a State agency even though the funds for its operation had been illegally appropriated by the municipalities.

In *Hawkins* v. *North Carolina Dental Society and Second District Dental Society,* filed in 1960 in the U.S. District Court for the Western District of North Carolina, Charlotte Division, the plaintiff on behalf of himself and others similarly situated, seeks a permanent injunction to restrain the defendants from refusing to admit the plaintiff to membership.

The complaint alleges that the Negro plaintiff is, by being denied membership in the dental society, excluded "from participating in the selection of officers of the State of North Carolina, to wit, members of the North Carolina State Board of Dental Examiners, from holding State office on said board, from participating in activities of professional benefit to dentists in North Carolina, including the right to practice in hospitals wherein membership in defendant societies is a prerequsite to practice."

The complaint alleges that the State board of dental examiners is the agency of the State of North Carolina charged with licensing and regulating the practice of dentistry and dental hygiene.

The complaint alleges that G.S. 90–22 limits membership on the State board of dental examiners to persons who are members of the defendant North Carolina Dental Society. The 1961 legislature, after this suit had been filed, amended G.S. 90–22 to provide election of the dental examiners by all the licensed dentists in the State, whether they belong to the dental society or not.

In addition, the complaint alleges that the Dental Society, from which the plaintiff and other Negro dentists have been excluded, exercises influence over various State agencies, contending that employment of dental personnel at State institutions is upon recommendation of the society, that certification of dentists to participate in dental care of veterans is made by the society, that the schedule of fees fixed by the industrial commission is made upon the recommendation of the Dental Society, and that "various clinics and hospitals operated by State, local, and Federal funds permit only dentists who are members of the society to practice in their facilities."

The defendants moved to dismiss the complaint; Judge Wilson Warlick denied this motion on December 16, 1960. The defendants have filed answer, but the case has not yet come to trial. It should be noted that in neither of these suits has the plaintiff doctor or dentists alleged that he was denied a license to practice his profession on account of his race, but rather that, being licensed, he has not been permitted to use

the facilties of a hospital or belong to a society which, according to the complaints, are so closely identified with the government to make their policies and procedures "State action."

STATE OWNED AND OPERATED HOSPITALS

Turberculosis hospitals.—There are four tuberculosis hospitals. Bed complement, considerably reduced in recent years, was as follows on June 30, 1960:

1. North Carolina Sanatorium, McCain	485
2. Western North Carolina Sanatorium, Black Mountain	399
3. Eastern North Carolina Sanatorium, Wilson	552
4. Gravely Sanatorium, Chapel Hill	100

Gravely is a research and teaching institution.

The number of patient days at all units, for the year ending June 30, 1961, was 430,335. Though the reporting procedures of the sanatorium system, with headquarters at Gravely, do not tabulate according to white and Negro, the administrator advises that at Wilson, McCain, and Gravely the census is always over 50 percent Negro while at Black Mountain white patients outnumber Negroes by 2 to 1. For the system as a whole, a ratio of 55 Negro to 45 white prevails.

Throughout this vast system, there is every degree of segregation and desegregation, and the director and administrator observed that they received about as much criticism on one account as upon the other.

Typically, the pattern is one of segregation within a large unit or corridor. If the white census goes up and the number of Negroes drops, white patients are simply installed a bit further along that particular corridor, or vice versa. On certain of the floors requiring very strict patient supervision, postsurgical for example, there may be Negro male and female and white male and female on the same floor. Again, certain whole units are designed to be used by Negroes at one period and by whites at another, depending upon the major need.

In all four units all patients are under one roof, cared for by one medical staff, served in each unit from a central kitchen and accorded identical medical care. Two decades have seen a great deal of progress, especially the abandonment of two buildings formerly used for Negroes, at McCain and at Wilson, removed quite some distance from the main installations.

The hospitalization of long-term tuberculosis patients requires the segregation of "positives" from "negatives," those with drug-resistant bacilli from those with nonresistant bacilli, those undiagnosed from those diagnosed as being tuberculous, children from adults, and males from

females. In spite of these five, or any other type of temporary or permanent segregation, it is rare in the North Carolina Sanatorium System that the admission of a patient is even delayed.

From time to time, there have been Negro medical doctors on the staff. Efforts have been made, to no avail, to secure others. There are none at present. If medical doctors were available, they would be employed. Dentists are secured on a consultant basis.

The North Carolina Cerebral Palsy Hospital.—This institution, located in Durham, is a high grade rehabilitation center which came into being through the efforts of those concerned with the devastation inherent in cerebral palsy.

Of 40 beds, the average occupancy is 37; patients are almost exclusively very small children.

This is the State's only hospital where there is no segregation by race. According to the administrator there are, typically, two-thirds white and one-third Negro patients on any given day, and virtually the sole criterion for admission is the availability of a bed for a child that has some chance of being helped.

Feeble objection is occasionally raised concerning absence of segregation. So pathetic are these children, and so small, that none but the cruelest could shut the door in the face of any of them.

More patients come from eastern North Carolina than elsewhere since similar facilities under other auspices exist in the Piedmont area and in the west.

The North Carolina Orthopedic Hospital.—The Orthopedic Hospital at Gastonia is a relatively old structure. Built in a day when separation on account of race was compelling even at great cost in time, effort, and money, the unit comprises two structures—one where all the functions of any hospital are carried out, and a second, some 500 feet removed, connected by a covered walkway, where the Negro children are housed.

It would be more efficient to have everything under one roof, but what is there is usable, and not likely to be replaced.

In the main building, all children are kept on the same floor post-surgically, first in a common recovery room, then in nearby private rooms to convalesce.

The 140 beds, 50 for Negroes and 90 for white, are all fully occupied. The average stay is 5½ months. The standard 12-grade school curriculum is provided, and many graduate from high school while in the hospital. Morale is superb. Every county in the State sends patients.

North Carolina mental hospitals.—Under the direction of a hospitals board of control, North Carolina operates four mental hospitals:

	Beds
1. Broughton Hospital at Morganton	2, 806
2. John Umstead Hospital at Camp Butner	2, 223
3. Dorothea Dix Hospital at Raleigh	2, 956
4. Cherry Hospital at Goldsboro	3, 272

The first three are for white patients and Cherry is for Negroes, segregation according to race being, in this single instance, required by statute, G.S. 122–3. There is no waiting list at any hospital.

Table 1 reflects certain aspects of the care tendered at each institution.

TABLE 1

June 30, 1961

	Broughton	*Dorothea Dix*	*Cherry*	*Umpstead*	*Recommended standard* [1]
Medical doctors	22	22	20	23	.....
Ratio to patients	1:119	1:109	1:153	1:81	1:98
Nurses	58	57	27	15	.....
Ratio to patients	1:45	1:42	1:113	1:124	1:15
Attendants	401	389	411	309	.....
Ratio to patients	1:7	1:6	1:7	1:6	1:50
Social workers	5	8	6	10	.....
Ratio to patients	1:523	1:298	1:508	1:186	1:80
Per diem cost	$3.87	$4.31	$2.67	$4.19	.....
Patients	2,615	2,389	3,050	1,862	.....

[1] By the American Psychiatric Association.

In recognition of inequalities with regard to the Cherry Hospital, the 1961 general assembly created a reserve fund of $132,000 for procurement of added personnel in whatever categories were deemed most needed by the administration.

In a State nearly 600 miles long, a single hospital for one population group creates problems with regard to referral, transportation, and visiting. So it is with Cherry. Those far to the east of it and far to the west are greatly inconvenienced.

In bygone days, when all humanity seemed to shun the mentally ill, Cherry suffered most. Now, however, Cherry has under construction a new unit incorporating concepts, equipment, and facilities more modern than any other in the system.

Phenomenal progress in financial support, physical plant, staff, shortened patient stay, better care—in any category pertinent to the relief of the mentally ill—has been made in all of these mental hospitals. There is no discernible disposition to admit Negro and white patients to the same institution. In this respect, the State's mental hospitals differ from the State's tuberculosis, rehabilitation, and orthopedic hospitals. This difference can be attributed to G.S. 122–3 which remains on the statute books, even though its constitutionality is doubtful.

In June 1962 parents of a Durham Negro child filed suit asking that the North Carolina statutes requiring racial segregation in State mental hospitals be declared unconstitutional. *Porter* v. *State Hospital Board of Control,* Middle District of North Carolina. The complaint asked the court to enjoin the defendants from operating separate hos-

pitals for Negro and white citizens or holding any hospital exclusively for a particular race. This case is still pending.

Also in June 1962, the southern regional education board in a report to the Governor stated that North Carolina, Virginia, and Oklahoma are the only States "in which Negroes and whites are kept in separate State mental hospitals," and that mental health services "for Negro citizens are of a necessity geographically removed from the vast majority of Negroes. This is for the simple reason that there are now only one State institution for mentally ill Negroes and one for mentally retarded Negroes." According to this report, Negro mentally ill patients of North Carolina "are sicker when they arrive at the hospital" than white patients and "when they are returned to their homes it is much more difficult to get them back into their family setting and into their community of origin than is true of whites . . . This pattern of delay in admission to hospital and difficulty in being accepted into the home is not observed to this extent with reference to Negroes in other States." The report suggested three benefits would accrue if the hospitals were desegregated or if white and Negro units were maintained on the same campus: "1. Hospital service would be closer to Negroes. 2. If present Negro institutions served white people this would reduce the distance factor for these white people. 3. The problem of duplication of staff which exists at the present time would be less. The same staff could serve both Negro and white in each institution as is done elsewhere in the Southern region."

The North Carolina Memorial Hospital and the North Carolina Memorial Psychiatric Unit.—Under common management, these units comprise the teaching hospital for the University of North Carolina School of Medicine. Memorial Hospital, with a bed complement of 296, receives both white and Negro patients.

Negroes are allotted 59 beds in medicine, surgery, and obstetrics. They also occupy 34 of the 57 beds to be found in the hospital's integrated areas—pediatrics, special care unit, and the premature nursery. Thus they use 93 of 296 beds, or 31.4 percent, while comprising 24.5 percent of North Carolina's population.

Were the whole hospital converted to the service of Negroes, their medical needs statewide would be but little better met. These day-to-day needs are functions of local hospitals, not of teaching institutions.

Further, there is no State program of medical care save for tuberculosis, mental illness, rehabilitation, and crippled children. The North Carolina Memorial Hospital cannot afford to be maneuvered into the position of trying to fill such a role in the field of general medical care. In order to remain solvent, the hospital must admit a certain percentage of pay patients. Thus, there is, for all practical purposes, a ceiling on admissions with regard to race. The question is whether race, as such,

should continue to be the principal determinant, or should indigency become the criterion?

In addition to the inpatient care described above, a tremendous volume of work, much of it staff, but a considerable amount private, is done for Negroes on an outpatient basis at this hospital.

The psychiatric unit, with a bed complement of 54, originally accommodated both races but discontinued service to Negroes as inpatients in 1955. Admission of Negroes was resumed in the fall of 1961. Outpatient service to Negroes was never suspended.

GENERAL AND ALLIED HOSPITALS

In May 1961, there were 116 general hospitals in North Carolina accepting white and Negro patients, 27 accepting only white patients, and 10 accepting only Negro patients. In 1947, at the inception of the Federal hospital construction program (Hill-Burton), corresponding figures were 66, 48, and 9, respectively. All-new general hospitals planned under Hill-Burton were: 54 for white and colored; 2 for white only; and 2 for colored only.[5] These figures include the many public hospitals owned and operated by county and city authorities. Except for a few privately owned facilities for mental and nervous conditions which are by State statute licensed by the State board of public welfare, all hospitals must be licensed by the North Carolina Medical Care Commission and must be operated in accordance with its licensing standards. G.S. 131–126.3 and 131–126.4.

This is what has happened since 1947 to hospital ownership in North Carolina:

TABLE 2

	Number of hospitals		
Ownership	*1947*	*1961*	*Percent change*
Public	16	55	243.8 increase
Nonprofit	87	73	16.1 decrease.
Private	19	25	31.6 increase.

The general trend is as follows: Hospital construction of tremendous import has taken place. One Negro hospital has recently closed, yielding to a new institution caring for both races; a second Negro hospital will soon close under the same circumstances. Nine seem destined to operate for many years; some, perhaps, changing to special programs. More all-white hospitals are opening their doors to Negroes or are considering it. In those institutions now receiving white and

[5] Letter from William F. Henderson, executive secretary, the North Carolina Medical Care Commission, to Dr. M. B. Bethel, Apr. 18, 1961.

Negro patients, segregation usually prevails according to wing, corridor, ward, or on some area basis. In certain of these, space is being used interchangeably for white or for Negroes, but not simultaneously save in the premature nurseries.

It is appropriate to note that four veterans hospitals located in North Carolina are completely desegregated and are fully patronized. These are at Durham, Fayetteville, Salisbury, and Oteen.

A statement as to beds available and percentage of occupancy is almost beyond the realm of the possible with the shifting that goes on. However, for the fiscal year ending September 30, 1960, in 122 Duke-aided general hospitals, a very large sample, there were 10,797 beds classified as white, or 79.6 percent, while 2,771 were accounted Negro, 20.4 percent. Yet, 81.4 percent of the total patients discharged during the fiscal year were white and 18.6 percent were Negro.

Duke Endowment figures show that Negro hospitalization is rapidly increasing, up 213.8 percent in 1960 over 1940 while that for white had climbed 113.2 percent, a 20-year total increase of 129.8 percent. The incidence of Negro hospital usage is today what it was for whites in 1951. Hospitalization per 1,000 in general hospitals in 1960 was 145 for white, 91 for Negro, 131 for the total North Carolina population.

According to the "North Carolina Hospital Discharge Study, 1959–60," published by the Medical Society of the State of North Carolina, there was a slight difference between white ($23.87) and nonwhites ($20.73) as to per diem charge. The length of stay for nonwhites was slightly higher than for white patients, with the exception of the 65-and-over age group. Length of stay, however, increased with age, regardless of color. Nonwhites had a higher proportion of unpaid balance for all age groups. The highest percentage for all patients was in the group under 25 years of age.

The facilities in the all-Negro hospitals are not comparable to those existing in the State's average and leading white or mixed institutions. This is not to condemn the all-Negro hospitals, which do as well as they can with the facilities and finances at their disposal. But would it not be better if their 719 beds were in modern desegregated hospitals? Who can doubt that the long existing Negro hospital has provided the community wherein it is located an excuse to bypass the Negro where new hospital construction is concerned?

A complete list of North Carolina hospitals (non-Federal), including ownership, operation, license, type, and capacity, is maintained by the medical care commission in Raleigh. The following are excerpts from the written policy and procedure for admitting Negro patients of one North Carolina hospital, illustrating the way the governing authority of a hospital provides explicit rules for the admission or exclusion of Negroes. These rules are, of course, as binding upon the staff and personnel of the hospital and the prospective patients as if incorporated

in a statute. To the extent a facility is government-owned or its board is a county or city or other agency of the government, the adoption and observance of admissions and other operating policies are State action and subject to the constitutional requirement that no person be denied equal protection of the law on account of race, religion, or national origin.

POLICY AND PROCEDURES FOR ADMITTING NEGRO PATIENTS

Adopted by the Board of Trustees December 11, 1952

The X Memorial Hospital will admit as patients Negroes whose medical conditions require facilities and services available at this Hospital and not also available in Y Memorial Hospital. To be considered for admission, a Negro must first have been admitted to and be a patient in Y Memorial Hospital from which transfer will be made to this Hospital. To insure continuity of medical management, the patient will be admitted only to the service of the doctor on whose service he is a patient in Y Memorial Hospital.

Request for transfer from Y Memorial Hospital to this Hospital is to be made to the Admitting Office by the Negro patient's physician. Only a physician who is a member of the staffs of both hospitals may make such a request. Approval to make such request must first be obtained from the Administrator of Y Memorial Hospital. Except in extreme emergency, request may be made only after the history and physical examination of the patient have been completed and recorded and all necessary diagnostic procedures for which facilities are available at Y Memorial Hospital have been carried out.

Amended as follows by the Board of Trustees, February 25, 1960

In cases where in the judgment of the attending physician hospitalization is required primarily for studies or treatment, facilities for which are not available at Y Hospital, direct admission to X Hospital may be arranged with the prior approval of the Administrator of Y Hospital, provided final authority to approve such admissions rests with the Admitting Office of X Memorial Hospital.

PUBLIC HEALTH

A detailed breakdown of North Carolina's 4,556,155 people shows that, as of April 1, 1960, there were 74.6 percent white, 24.5 percent Negro, and 0.9 percent other. Of this last group, most were Indians.

The public health service, entirely tax supported, is a servant of all these people. Eighty-six health centers have been built with Hill-Burton aid. According to the State board of health, ". . . as a matter of record, and as we all know, it might be stated that all facilities of the State board of health and of the local health departments are used without regard to race." [6] It was easier, simpler, and cheaper for public health service to develop without segregation.

A statewide sampling of the public health nurses' family folder caseload has been undertaken. A family folder is a composite record of a health department's knowledge of, relations with, and service to a family. Entries may pertain to a single member of that family or to every member thereof. One family member might be included for a solitary reason or for the listing of numerous ills.

A family folder caseload check is a valid indicator of public health nursing service rendered. Questionnaires were sent on May 18, 1961, to the 100 counties. Fifty-seven replies, representing a cross-section of the State, indicate that of a total of 63,817 entries, 32,496 were made on behalf of Negroes. In other words, 50.9 percent of the public health service is rendered to 24.5 percent of the population.

Of the 1,515 professional and clerical positions in the State and local health departments, only 84 are held by Negroes, the great majority of these being nurses. We have never had a Negro health officer or director in any of North Carolina's 100 counties

Inasmuch as the State Board of Health and county, city, and district health departments, as well as the State board of public welfare and county welfare departments, the medical care commission, the employment security commission, and State, county, and civil defense agencies which also receive Federal funds, are under the merit system for employment of personnel, G.S. 126, this lack of Negro employees in the public health service is all the more remarkable. Negro teachers abound in North Carolina and teaching posts are coveted, but few comparably trained and skilled public health professionals present themselves for employment. The lack of applicants for professional positions is due at least in part to a dearth of educational opportunities, and poor facilities where they do exist. Discrimination is common practice where clerical workers in the public health are concerned.

The white person in North Carolina (and elsewhere, too) enjoys considerable advantage over the Negro in good health and longevity. Fetal and infant death rates, for example, are more than twice as high for nonwhites as for whites, and maternal death rates are five times as

[6] Letter from Dr. Robert D. Higgins, director, local health division, State board of health, to Dr. M. B. Bethel, Apr. 24, 1961.

high.[7] Throughout the world, as medicine attempts to evaluate its progress, fetal, infant, and maternal death rates are among those used as indices of the adequacy of medical care.

> It is . . . important that we know something about the causes of these differences in morbidity and mortality rates, not merely from the standpoint of scientific curiosity but because, if we know more about causes, we can do more about prevention and cure.[8]

There is no lack of equal protection of the laws where public health service is concerned, but rather the clinical and service elements of the statewide program favor availability to the Negro. The increasing use of personal health cards as required for many jobs and the requirement of immunization of infants against diphtheria, tetanus, whooping cough (G.S. 130–87), and of smallpox vaccinations for admissions to school (G.S. 130–91) accustom Negroes to the location and use of public health facilities. There is some evidence of refusal to accept available care—as witness reluctance to take measures against poliomyelitis, syphilis, gonorrhea, tuberculosis, problems in maternal and child care, and many other health hazards. This is not to chide but rather to deplore. Such reticence is not limited to the Negro; it is merely more pronounced than among the white population.

Likewise, educational inequalities, poor housing and nutrition, and unequal social and economic opportunities are devasting in their effects upon the attitude, outlook, and health of many more Negroes than whites in North Carolina.

PUBLIC WELFARE MEDICAL CARE EXPENDITURES

Inquiry into public welfare medical care expenditures at the State board of public welfare disclosed that distinction by race has no place whatever in the disbursement of such funds. The policies of the individual counties were not examined.

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[7] In terms of infant deaths (under 1 year) per 1,000 live births, 1960, North Carolina ranked 44th among 49 States. Only Alabama, New Mexico, South Carolina, Mississippi, and Alaska had poorer records. Massachusetts was listed last because no data was available. U.S. Public Health Service, 9 Monthly Vital Statistics Report 1–12, May 31, 1961.

[8] Perrott as quoted in *Backgrounds of Social Medicine,* 167 (New York: Milbank Memorial Fund, 1949).

Negroes should be encouraged to enter medicine and dentistry. They constitute but 3 percent of the doctors and 6 percent of dentists in the State, and even these rates are declining. The situation of the Negro doctor is of concern in the total health picture, even though service to the whole people remains the paramount objective. There are certain inequalities that stem indirectly from the law.

The Medical Society of the State of North Carolina, chartered as a "body politic" by a special act of the general assembly in 1858, has within recent years provided scientific membership for Negro physicians and surgeons. This membership carries full privileges for voting, holding office, and attending the scientific and business sessions of the society, as well as eligibility for membership on the board of medical examiners and election to the State board of health. It is less than full membership in that Negroes may not participate in the society's social functions.

Some of the component county societies have an arrangement identical to that of the State. Others do not offer even a scientific membership. The Mecklenburg County Society in 1957 deleted the word "white" from its constitution and bylaws, and has since that time provided full membership for Negroes in the local society. The Forsyth County Society has recently accepted two Negro doctors into full membership.

Certain hospitals require membership in the county medical society as a prerequisite to treating patients in the hospital. Most Negroes have declined scientific membership, considering it degrading. It follows that certain Negro doctors are denied hospital privileges. This presents an economic problem, for often the Negro doctor loses the business of his patients when they enter such a hospital. Furthermore, the quality of medical care is impaired to the extent that the Negro doctor's standards in the Negro hospital to which he is confined are not as high as they would be if he were in contact and competition with the white doctors in the leading community hospital; moreover some of the better trained Negro doctors do not locate in North Carolina because of such bar to practicing the kind of medicine they have been taught to practice in medical school.

The leaders in medicine in this State, and the preponderant number of doctors practicing medicine, are white. Offered scientific membership only, and declining because he is unwilling to accept limited status, the Negro is thus awash in medical affairs. He is separated from the mainstream. Scientific membership in the Medical Society of the State of North Carolina is, in this State, the Negro's only route to membership in the American Medical Association.

North Carolina's Negro doctors have banded themselves together, almost without exception, into the Old North State Medical Society

which, in turn, is affiliated with the National Medical Association—a group composed of Negroes. Negro physicians and surgeons who are qualified and sufficiently determined can become "board certified" (i.e., can take a national examination given by a board of medical specialists; those who pass are certified as qualified as specialists in the particular subject of the examination) through the Old North State Society and the National Medical Association. There are 19 specialty boards in various fields of medicine and surgery. It is not necessary to be a member of AMA or NMA to become board certified in pediatrics. There may be other exceptions.

There were 5,984 medical doctors licensed to practice in North Carolina as of August 4, 1961. In December of 1960, a count showed that 1,140 such licenseholders lived in other States or were in the armed services. This leaves 4,844 physicians and surgeons resident in North Carolina in various stages of training, in the prime of professional activity, in the slowdown preceding retirement, and in retirement.

TABLE 3

Total physicians and surgeons	4, 844
White physicians and surgeons	4, 703
Negro physicians and surgeons	141
Total population per doctor	941
White population per white doctor	725
Negro population per Negro doctor	7, 915
Total members of State medical society	3, 248
White members of the State medical society	3, 244
Negro members of the State medical society	4
Total number local medical societies	76
Local medical societies having Negro members	3
Local medical societies not having Negro members	73
Total members Old North State Medical Society	131
Total board certified physicians and surgeons	1, 234
White board certified physicians and surgeons	1, 232
Negro board certified physicians and surgeons	2

In 1942 there were 170 Negro doctors, 1 per 5,772 Negro population.[9] Thus, the number of Negro doctors has been falling both in absolute

[9] Mayo, *Negro Hospital and Medical Care Facilities in North Carolina* 6 (Department of Rural Sociology, North Carolina State College, April 1945).

number and relative to Negro population. A whole treatise would be required to explain this two-decade setback, more especially since the State as a whole has moved forward from 1942 when it had only 2,871 doctors—1 for 1,244 residents, as against 1 for 941 in 1961.

Until recent years, there was a lack of medical training available to Negroes inside the State. The old Leonard Medical School in Raleigh has long been closed and its Negro graduates have grown old, retired, or died. Negroes were prohibited from entering other medical schools in the State, and were actually induced by the State to go elsewhere for such training. G.S. 116–100 and G.S. 131–124. In 1945, the general assembly directed the medical care commission to "make careful investigation of the methods for providing necessary medical training for Negro students." Those North Carolina Negro students who did go elsewhere to train, with or without State aid, spent many years in schooling and apprenticeship in a more congenial professional atmosphere. It is not remarkable that so few of them returned to practice in North Carolina, nor that few, if any, newcomers were attracted from other States.

As to present training facilities, there are, for example, only two hospitals with approved internship and residency training programs in surgery, and none in any other specialty, that are open to Negroes. The two hospitals with approved training in surgery are Lincoln at Durham and Kate B. Reynolds at Winston-Salem. In addition, the Duke, Wake Forest, and the University of North Carolina Medical Schools are now open to all qualified students regardless of race. The University of North Carolina has thus far admitted six Negroes to its school of medicine and has graduated three.

The North Carolina Dental Society has no Negro members. The Old North State Dental Society is an organization for Negroes. The former is alined with the American Dental Association, the latter with the National Dental Society. Negro dentists, like Negro doctors, are also awash in the tides of professional affairs in North Carolina.

TABLE 4

Total licensed dentists	1,374
White licensed dentists	1,289
Negro licensed dentists	85
Total population per dentist	3,316
White population per white dentist	2,637
Negro population per Negro dentist	13,129

By act of the 1961 North Carolina General Assembly qualified dentists shall be elected to the State board of dental examiners without regard to race and all duly licensed dentists, Negro as well as white, shall have

the privilege of voting in such elections. G.S. 90–22. This changed the previous requirement that dental examiners be chosen by and only from members of the North Carolina Dental Society.

The State board of medical examiners consists of seven members of the Medical Society of the State of North Carolina, appointed by the society. This law was enacted in 1858, now G.S. 90–3.

The State board of health has nine members. Five are named by the Governor and four by the Medical Society of the State of North Carolina. The Governor's appointees must include a licensed dentist, a licensed pharmacist, a licensed veterinarian, and a reputable dairyman. G.S. 130–4.

The medical care commission is composed of 20 members, 3 of whom are nominated by the Medical Society of the State of North Carolina, and 1 by the North Carolina Dental Society. G.S. 131–117.

The mental health council must include one representative each of the Medical Society of the State of North Carolina and the North Carolina Dental Association. G.S. 35–61. In the program for prevention and cure of cancer, the State board of health must consult "the Cancer Committee of the North Carolina Medical Society, which shall consist of one physician from each congressional district." G.S. 130–186.

It is apparent that in the past, the General Assembly of North Carolina, in enacting statutes in respect to licensing doctors and dentists, in the establishment of the public health service and in the supervision of the construction and operation of hospitals in the State, has recognized the Medical Society of the State of North Carolina and the North Carolina Dental Society as representative of the medical and dental professions in the State and has delegated to those societies significant appointment powers. To the extent that Negroes have not been members of these two societies, they have not been represented in the exercise of these powers.

There has never been a Negro member of the State board of health, the State board of medical examiners, the State board of dental examiners, the mental health council, or the cancer committee.

NURSES

Membership in the North Carolina State Nurses Association, component of the American Nurses Association, has been open to all since 1949. Indeed, it was among the first of the State nurses organizations to integrate. This policy of open membership has limited the locations where the association can meet; but, in all other respects, it has made for strong, vigorous, and unified attack upon the problems confronting the nursing profession.

TABLE 5

Total registered nurses	12,269
White registered nurses	11,633
Negro registered nurses	636
Total population per nurse	371
White population per white nurse	292
Negro population per Negro nurse	1,758

Listed as "not working" are 1,913 white nurses and 46 Negro nurses. Negro nurses thus constitute approximately 5 percent of the total number of licensed or registered nurses.

Just as Negro hospitals suffer from inadequate facilities and financing, so do schools for training Negro nurses. Inferior schools turn out substandard graduates. Some of these in turn become teachers and thus the cycle continues.

Some of the State vocational education programs offer courses in practical nursing. For example, in Charlotte's Central Industrial Education Center, last year 22 Negro students were enrolled in such a course. Asked why these students were segregated from white nursing students, the director stated that nursing classes are broken down by hospital affiliation. "They're separated by hospitals, not by the school here."

GLARING NEGLECT

Glaring neglect, willfully perpetrated, cannot be documented. Of questionable decisions there were more than a few, with regard to Negro and white alike. The existence of segregation policies undoubtedly contributed to the making of these errors in judgment.

INDIANS

North Carolina had, in 1960, 38,129 Indians among its population. Indians occupy an in-between position racially. Some disparity on account of race persists, but not as much as with the Negro.

We are of the opinion that, in health and medical matters, the Indians insist upon and usually get accommodations provided for white. However, we have not made a thorough investigation of the availability of publicly sponsored medical and health care to Indians as such. The Indian population shows a substantial increase from 1950 to 1960.

The U.S. Senate Subcommittee on Constitutional Rights, under the chairmanship of Senator Sam Ervin, has announced a special study of the constitutional rights of Indians. This will no doubt produce more

accurate information than presently available on whether any Indians in North Carolina are denied equal protection of the laws, not only in respect to medical care, but also in the areas of voting, public education, housing, and employment.

CONCLUSIONS

1. Although the health condition of all of our citizens has greatly improved in recent years, there still remains a substantial difference between the health of whites and nonwhites in North Carolina.

2. This substantial difference in the health of whites and nonwhites is caused by many factors, including education, employment, income, and housing, and it would therefore be incorrect to conclude that these health differences have been caused solely or even primarily by discrimination in our health laws or their application.

3. There have been no complaints that doctors, dentists, nurses, hospital administrators, or other persons engaged in providing medical care in North Carolina, either government sponsored or private medical care, have personally given less attention or poorer care to nonwhites than to whites; rather the complaints have been that the medical care available for nonwhites has been limited because facilities available to nonwhites were inferior to those available to whites, and this limitaton of facilities has limited the medical care that could actually be provided for those in need.

4. Racial segregation in medical-care facilities tends to promote inequality of facilities and personnel available in time and place of need.

5. Except for veterans and military hospitals, racial segregation, in varying degrees, is widespread in government owned and supervised medical facilities in North Carolina.

6. Except in mental institutions, such racial segregation in government owned and supervised medical facilities in North Carolina is not required by statute, but rather by the policies adopted and followed by the governing authorities of these facilities.

7. The governing authorities of government owned and supervised facilities are agents of the State and their action is State action.

8. Racial segregation required by the policies of the governing authorities of these facilities is no less compulsory upon personnel and patients than if required by statute.

9. No statute has been found, not even the Federal Hill-Burton Act, which expressly and without exception forbids segregation. This should not be taken to mean, however, that constitutional principles which have invalidated compulsory segregation in other government owned and

supervised institutions and facilities do not also apply to government owned and supervised medical facilities.

10. Are there North Carolinians who are deprived of equal protection of the laws with regard to medical care because of their race, color, religion, or national origin? In the light of the foregoing conclusions the answer is, "Yes."

IX. Compulsory Segregation

> Every invasion of the rights of any citizen, no matter how humble he may be, weakens by so much the bulwark of protection around the life, the rights and the security of every citizen.
>
> —Gov. O. Max Gardner, 1930.

The Committee has examined the General Statutes of North Carolina, the reported cases, and the published ordinances of the principal cities in the State in order to locate the statutes and ordinances which expressly require segregation of citizens by race or color. In addition, each city or town attorney was asked to make a similar search among the records of his particular city or town. Replies were received from 137 out of approximately 290 such towns and cities.

Insofar as can be determined, none of the smaller towns enacted any compulsory segregation ordinances; only the larger cities and the State government did so. Most of these regulations compelling citizens to segregate according to their color or race came after 1898, more than 33 years after the Civil War. The number of such regulations and the variety of the subjects with which they dealt (e.g., housing, amusements, insurance, travel, employment facilities, restaurants, the dead) increased, rather than decreased, during the first part of the 20th century. They undertook to compel segregation not only in public or government property and activities, but also in private property and private associations. In recent years, some of these regulations have been repealed.

GOVERNMENT FACILITIES

Education

The statutes requiring segregation in public schools, originating in 1868, were repealed in 1955. Those requiring segregation in mental institutions, originating in 1875 are, for the most part, still on the books.

G.S. 116–138 to 116–142 provides for the "Colored Orphanage of North Carolina." It originated in the laws of 1887.

G.S. 116–109 provides for admission of white and colored children in separate departments at the State School for the Blind and the Deaf at Raleigh. G.S. 16–120 and 16–124 limit admissions to the North Carolina School for the Deaf at Morganton to white children. The first separation of colored children in this category was probably made by the laws of 1872–73, which set aside a lot owned by the State, probably adjacent to the white institution in Raleigh, and appropriated money for an Institution for the Colored Deaf and Dumb and Blind.

Prisons and training schools

G.S. 148–43, originating in 1909, provides that "White and Colored Prisoners shall not be confined or shackled together in the same room of any building or tent, either in the State prison or at any State or County convict camp, during the eating or sleeping hours, and at all other times the separation of the two races shall be as complete as practicable." Section 148–44, originating in 1933, requires segregation as to race, sex, and age.

G.S. 153–51, originating in 1795, requires that each county must have a common jail with five separate apartments, for white male, white female, colored male, colored female, "and one for other prisoners." By G.S. 71–2, the Cherokee Indians of Robeson County and the Indians of Person County "shall be entitled to the following rights and privileges: . . . in the common jails of said counties, and in the homes for the aged and infirm, separate cells, wards or apartments." This act originated in 1911.

G.S. 134–79 to 134–84 (laws of 1921) creates the Morrison Training School for delinquent "Negro" boys.

G.S. 134–84.1 to 134–84.9 (laws of 1943) creates the State Training School for Negro Girls.

National Guard

G.S. 127–6 provides that "The White and Colored militia shall be separately enrolled, and shall never be compelled to serve in the same organization. No organization of Colored troops shall be permitted where White troops are available, and while permitted to be organized, colored troops shall be under command of white officers."

At least as early as 1833 the requirement was "No captain or other militia officer shall enroll any free person of color, except for musicians." Revised Statutes 1833, ch. 73, sec. 4, Revised Code 1854, ch. 70, sec. 5. In 1868 and 1876 the first sentence of the present law was enacted, probably as a part of a reorganization of the militia statutes, forbidding compulsory service in the same company for the militia, and the same regi-

ment for the State guard. Laws 1868, ch. 22, sec. 9. Laws 1876–77, ch. 272, sec. 1. Code of North Carolina, 1883, secs. 3163, 3256. Compulsory service in the same brigade was forbidden by the Militia Act of 1893. Laws 1893, ch. 374, sec. 2. "Brigade" was replaced by "organization" in the militia amendments of 1899 and the last sentence was added to provide that colored troops should not be organized where white troops were available. Laws 1899, ch. 390, sec. 1.

Thus in 1899, the segregation of colored troops was made complete. After that no colored troops were to be organized except in separate organizations and under white officers.

Separate tax records

G.S. 105–323 (laws of 1939) requires that separate tax books be kept for white, Negro, Indian, and corporate taxpayers. This means that Indians, for instance, in declaring property ask for the Indian book. Guilford County was exempted from this section in 1953. Laws 1953, ch. 690. The racial breakdown was dropped from the annual "Statistics of Taxation" published after 1956. Since then at least 10 counties have ceased to observe the requirement. The usual reason given for ignoring the statutory requirement is that, with the increased use of business machines in taxwork, the separate records are unnecessary. Some business machines are capable however of furnishing racial statistics when required. In agricultural counties, where the names of whites and nonwhites are often identical, some form of racial identification is considered desirable as a matter of administrative convenience. The State board of assessment and the State department of tax research have made no effort to enforce the separate record requirement. This suggests that calls for statistical information of this kind have dropped off to the point where the enforcement of compliance would not be worth the effort.

Police

Pursuant to its charter authority to appoint special police officers in designated areas (laws 1939, ch. 366, sec. 66), the Charlotte code designates in article I, section 5, the metes and bounds of the area within which its Negro police have authority.

Municipal cemeteries

G.S. 65–37 authorizes any municipality to take possession of existing cemeteries under certain specified conditions; and G.S. 65–38 (laws of 1947, ch. 821, sec. 2) provides that "In the event that said property

has been heretofore used exclusively for the burial of members of the Negro race, then said cemetery or burial ground so established shall remain and be established as a burial ground for the Negro race. In the event said property has been heretofore used exclusively for the burial of members of the White race, then said cemetery or burial ground so established shall remain and be established as a burial ground for the White race."

The following provision was added to the Greensboro City Charter by ch. 62, private laws of North Carolina (1931):

> Sec. 83. The said city may establish and maintain separate cemeteries for white persons and for Negro persons, and in order so to do, the City Council may authorize and direct the removal of dead bodies from one city cemetery to another city cemetery.

The Charlotte City Code, ch. 7, entitled Cemeteries, provides:

> Sec. 7–9. Nothing contained in this chapter shall be construed to authorize or permit the purchase of space in any city cemetery by a white person in the portion set aside for the burial of colored persons, or the purchase by a colored person of space set aside for the burial of white persons. (Appears also in 1946 Code.)
>
> Sec. 7–56. The lands of the City of Charlotte on Albemarle Road used for cemetery purposes shall be known as Evergreen Cemetery and shall not be used for the burial of members of the colored race. (Adopted Nov. 15, 1946.)
>
> Sec. 7–63. The lands of the City of Charlotte on North Summit Avenue used for cemetery purposes shall be known as North Pinewood Cemetery and shall not be used for the burial of members of the white race. (Adopted June 11, 1947.)

Libraries

The 1901 statute requiring a separate reading room for colored persons in the State library was omitted in the 1955 revision of G.S. 125–10.

Chapter 37, of the 1923 private laws of North Carolina contained the following provisions with reference to Greensboro:

> Section 47. Separate libraries to be provided for colored people. That the Council may establish or continue separate libraries for the use and benefit of the white and colored races of said city, and may appropriate from the public funds such amounts as may be necessary for the support and maintenance of the same. One of the two libraries shall be known and designated as "Greensboro Public Library for the Colored Race."

SECTION 48. *Managers.* Each of said Libraries shall have a separate Board of Managers, to be appointed by the Council for such terms as the council may determine.

These sections were repealed when a revised charter for Greensboro was enacted by ch. 1137, session laws of 1959.

Segregation is not practiced in the operation of the Greensboro Public Library and neither is it practiced in the city libraries of some other cities in the State. This open use policy has been in effect for several years in some of these cities and no adverse situations have arisen.

About 68 libraries in the State receive Federal funds under the Library Services Act in 1956. In reply to inquiries of the committee, most of these libraries advised that their facilities served all races. One pointed out that "this library has served Negroes since 1942." In reply to a question as to the segregation of facilities, two librarians replied that there are "no public restrooms for anyone." Sixteen of these libraries reported separate branches for whites and Negroes and separate bookmobiles for each race. One librarian stated: "Main library is so crowded now that impossible to extend use to Negroes. Negro branch actually larger than main library. White population in county 79 percent—Negro, 21 percent. All library income divided accordingly." Another librarian stated that there were separate branches for whites and Negoes "in city organized this way, but no one has turned away either." Another reply: "Negroes are not restricted from using white library if they wish and several have, on occasion. Provision is made to serve both races if they need the bookmobile, but no Negroes come." Another librarian wrote the committee, "We do not receive Federal funds; but we sure need it."

Altogether there are approximately 300 public libraries in North Carolina. A separate North Carolina Negro Library Association was organized in 1934, but was disbanded in 1954 when the North Carolina Library Association voted 255–107 to admit Negroes.

Dr. Christopher Crittenden, director of the North Carolina Department of Archives and History wrote the committee:

> All the services rendered to the public by this Department are on a completely impartial basis insofar as race is concerned. Our Search Room is unsegregated, we supply information and distribute publications without regard to race, and the same is true of our museum, historic sites, and all other services and facilities. We have published in *The North Carolina Historical Review* several articles by Negroes. One of these in 1959 won the R. D. W. Connor Award for the best article published in that journal during the year. The author, Dr. Frenise A. Logan, of the Agriculture and Technical College in Greensboro, was entertained at a luncheon at the Hotel

Sir Walter in Raleigh where he received that Award given by the Historical Society of North Carolina through the North Carolina Literary and Historical Association.

Twenty years ago, more or less, another Negro, Mr. J. Saunders Redding, won the Mayflower Award, which at that time was given for the best original literary work by a North Carolinian during the previous twelve months. The Award was announced at the annual meeting of the Literary and Historical Association, also in the Hotel Sir Walter.

Rural electrification

Every electric membership corporation organized under G.S. 117–6 to 117–27 is "a public agency" and "political subdivision of the state." G.S. 117–19. The Committee received a complaint that one such corporation practiced segregation at its annual membership meeting in 1961 in the public high school. "An electric wire was stretched down the center of the auditorium. Negroes were seated on the west side and whites on the east."

Recreation

Several of the cities in the State have at one time or another maintained separate public swimming pools, by city ordinances designated for the exclusive use of white or colored persons. The experience of Greensboro which sold its two swimming pools is set out in *Tonkins* v. *City of Greensboro*, 175 F. Supp. 476 (1959), 276 F. 2d, 890 (1960). Charlotte desegregated its public swimming pools in 1960, Winston-Salem, its Reynolds Park pool in 1962. In August 1962, after four colored youths swam in Raleigh's "white" Pullen Park pool, the city council closed both it and the "colored" Chavis Park pool.

Greensboro also owned a golf course. Part of the land was owned by the city and another part by the Greensboro City Board of Education. The course was leased to the Gillespie Park Golf Club, Inc. Certain Negro citizens went to the golf course, deposited the fee required to play golf on the course, and proceeded to play. They were arrested and charged with trespassing. In December 1956, they were found guilty in the Superior Court of Guilford County, and each was given a 30-day jail sentence. On appeal, the State Supreme Court reversed because of an error in the warrant. In February 1958, the defendants were again convicted and this time sentenced to 15 days in jail. On appeal, the Supreme Court found no error and the Supreme Court of the United States refused to review the case. In the opinion of the

North Carolina Supreme Court, Justice Rodman stated that "Separation of the races in the use of public property cannot be required." *State* v. *Cooke,* 248 N.C. 485 (1958), appeal dismissed 364 U.S. 177 (1960). While the trespass cases were being tried, a civil suit was brought in the U.S. district court to test the validity of the lease to the golf club. Judge Johnson J. Hayes, U.S. district judge, decided that the city had no right to lease this property to a club which prohibited citizens of the city from playing on the course because of their race or color. *Simkins* v. *The City of Greensboro,* 149 F. Supp. 562 (1957), *affirmed* 246 F. 2d 425 (1957). The ruling of Judge Hayes and of the U.S. Court of Appeals was not introduced in evidence in the trespass cases and therefore was not considered by the U.S. Supreme Court when that court dismissed the appeal of the trespass conviction. *Wolfe* v. *North Carolina,* 364 U.S. 177 (1960). On November 11, 1960, Gov. Luther Hodges commuted all of the jail penalties upon the payment of the court costs, which by then amounted to $7,000.

In the summer of 1961, Dr. George Simkins, a Negro dentist and one of the defendants in the golf trespass case, won the citywide tennis championship sponsored by the Department of Parks and Recreation of the City of Greensboro. His opponent in the finals was Claude Kitchen Josey, the assistant solicitor who had prosecuted him in the golf trespass case.

The principal cities in the State own and operate coliseums and auditoriums and these are unsegregated and are regularly used by both white and colored persons without incident. Complaints have been made that a city-owned, but privately operated, skating rink in Winston-Salem is not open to use by Negroes, and that lessees of city-owned movie theaters in High Point and Durham require racial segregation in seating.

In March 1962, the lessee of the Durham theater obtained in Durham County Superior Court a temporary restraining order against 34 persons engaged in antisegregation demonstrations at the theater, and announced it would seek $5,000 actual and $20,000 punitive damages against the demonstrators. In July 1962, 8 Negroes sued the city of Durham and its lessee, alleging they were denied admittance to the main auditorium of the theater. The complaint asks that the defendants be enjoined from "continuing to enforce or permit to be enforced any policy or practice of racial segregation or exclusion against Negroes in the use of the Durham theater." *Edwards* v. *City of Durham and Abercrombie Enterprises, Inc.,* USDC, Middle District.

Churches in the Raleigh area filed a complaint with the Committee that in 1959 they were denied, by State officials, use of Umstead State Park for an interracial day camp.

In *Berry* v. *Durham,* 186 N.C. 421 (1923), the city of Durham contended that it was without authority to accept a gift of land to be used as "a public park for the white people of Durham," and not for the

inhabitants of the city generally. The question arose when the city employees, while extending a street to the donated tract, wrongfully removed surface soil from the plaintiff's property. The city insisted that it could not be liable to the plaintiff, because the employees of the city were outside their authority in working on this street which leads outside the city limits and to the segregated park in question. The Supreme Court of North Carolina upheld the judgment in favor of the plaintiff and against the city. The Supreme Court said at that time:

> We see nothing in the record to show that there is any race discrimination wrought by the acceptance of this deed or donation in its present form. So far as appears, the city government may have made ample and adequate provisions for parks and playgrounds for the colored race, and in any event the matter must be left to the sound legal discretion of the governing authorities, to be exercised according to the needs and requirements of either race, and without discrimination between them. 186 N.C. 421, 426.

The court indicated that if it should turn out that the city authorities were to make "unjust discriminations" between the races in the "facilities afforded, it is open to the parties who may be interested in the question, by proper action, to correct the abuse and enforce compliance with the law."

The court recognized the authority of the city "to acquire and regulate public and quasi-public facilities so as to make reasonable provisions for separation of the races without *undue* discrimination between them." [Emphasis added.]

According to *Atkins* v. *Durham*, 210 N.C. 295, Durham had in 1935 "many parks and playgrounds, among them 'Longmeadow Park', a gift to the City of Durham 'for the white people of Durham County' and 'Hillside Park' for the colored people of Durham County."

In Charlotte in 1943 white citizens sued to enjoin the city from maintaining a park for Negroes, alleging it would be "a nuisance." The injunction was denied. *Dudley* v. *Charlotte*, 223 N.C. 638 (1943). The court stated: "There are now in the City for the use of white persons ten parks, and no public park or recreation facilities for Negroes, except a playground at a Negro school in the section known as 'Cherry'." Later Negroes petitioned the city to use another park on land conveyed to the city "for use by the white race only" with a reverter in the event of any other use. The city had agreed to the restricted use by city ordinance in 1929. Other property had also been accepted by the city "for use of the white race only" but without a reverter clause in the deed. The city park commission asked the court what to do. The North Carolina Supreme Court held that the first property would revert by operation of law to private ownership if Negroes were admitted, but that the second property would not. *Charlotte Park and*

Recreation Comm. v. *Barringer,* 242 N.C. 311 (1955) *cert. denied,* 350 U.S. 983 (1956). Later the owners of the reversionary interest sold it to the city which then admitted all. *Leeper* v. *Park and Recreation Comm.,* Superior Court of Mecklenburg County, 1957, 2 R.R.L.R. 411.

On October 17, 1961, Robert W. Scott, chairman of the State parks committee of the State board of conservation and development reported that the North Carolina parks now include over "36,000 acres of land and water located in parks conveniently situated from the mountains to the sea." Hargrove Bowles, the director of the North Carolina Department of Conservation and Development, stated in September 1961 that the State would not interfere with the use of any State parks by Negro citizens. "We suggest to them that they consider the fact that North Carolina has separate park facilities for both races, but if they still want to go in, we do nothing to hinder them."

PRIVATE FACILITIES

The second broad class of statutes and ordinances which were enacted in North Carolina from time to time undertook to use the police power of the State to compel private segregation; that is, separation of the races, not in the use of government provided facilities, but in private pursuits, such as buying private residences or working at private jobs, or traveling about on privately owned buses, streetcars, or railroads, or operating a mutual insurance society or being buried in a cemetery.

Housing

Ordinances fixing separate sections for white and colored residences like those of Winston (1912) and Winston-Salem (1930), Greensboro (1914 repealed in 1929), and Asheville (1934 and still on the books), and the North Carolina Supreme Court decisions of 1914 and 1940 holding such ordinances invalid, are set out in the previous chapter on housing.

Travel

The first use of governmental power to force segregation in transportation in North Carolina came in 1899, 3 years after the U.S. Supreme Court gave the green light to such legislation in *Plessy* v. *Ferguson,* 163 U.S. 537, 41 L. Ed. 256 (1896).

The situation prior to that time is revealed in *Britton* v. *Atlanta and Charlotte Railway,* 88 N.C. 536 (1883).

The plaintiff in that case, a colored woman, sought damages from the railroad for injuries she sustained while traveling on its train. She had been assaulted by a stranger and forcibly ejected from the car in which she had been seated—it being the "smoking car," which had been provided for the white male passengers. The Supreme Court of North Carolina held that she was entitled to recover for her injuries by reason of the negligence of the railroad's employees in not protecting her from abuse by the white passengers.

The case for the plaintiff was stated as follows: [1]

> Having purchased a ticket at Greenville, South Carolina, she, in company with a man and woman belonging to her race, entered the defendant's train and occupied seats in the car in question. No one pointed out to them the cars intended to be occupied by the colored passengers, nor did she know that separate cars had been provided for the two races, or of the regulation of the company requiring it to be done. Before the train left Greenville, some one, a white person, not in authority, began to cast reflections upon the party, saying that "d - d niggers had no business in there," and when under way, others of the white passengers cursed them for being in the car, and declared that they didn't want "niggers" in that car; and for the purpose of annoying them sang vulgar songs and whooped and hallooed at the top of their voices. The man who accompanied the plaintiff, and whose name was Culp, spoke to the conductor in charge of the train about the conduct of the other passengers, and complained of it.
>
> The conductor accepted the tickets of the three, and told them they might sit in that car, but as it was an excursion train he could not control the conduct of the other passengers, and they might expect rudeness. Whenever the conductor was present, the misbehavior would cease, but as soon as he left the car it was resumed.
>
> He was appealed to as many as four times to protect them from insult, but each time said he could not help it. While the train was stopped at King's Mountain station, a white man, whom none of the party knew, ordered them out of the car, when Culp asked to see the conductor. The man went out, soon others came in and said to Culp, "get up and go out of here." He again asked to see the conductor and retained his seat, whereupon he was seized, beaten, and finally ejected from the car. The same persons then seized hold of the plaintiff, beat and badly bruised her, and finally put her and her companion out of the car, and threw their baggage upon the platform.

[1] 88 N.C. at 537–38 (1883).

The plaintiff then went into another coach, which was filled with colored people, every seat being occupied so that she had to stand for sometime after the starting of the train, when some one got up and gave her a seat.

The case for the defendant as stated by the court was: [2]

The instructions given by the company to the conductor were to advise such colored passengers as he might find in the coaches set apart for whites to go to the others, but if they declined to do so, to allow them to remain where they were, so long as they conducted themselves properly.

At some point before reaching King's Mountain, the colored man, Culp, in the presence of the plaintiff, complained to the conductor of the rudeness of some of the white passengers towards himself and his companions, and of the indecent language used in their hearing, when he was again told that he would find a pleasanter seat if he would go into the forward coaches, in which, at that time, there was a number of vacant seats.

The white persons in the coach, who were known to the conductor to be "wild young men from Atlanta, on a spree," also complained of the presence of these colored persons in the coach, and inquired of that officer if he did not mean to put them off?

At another time, the party complained to the conductor of being cursed and insulted by the others, when he said to them, that while he would not require them to go into the other car, he would still advise them as a friend to do so, and expressed some surprise at their unwillingness to do so, whereupon Culp said he desired to go, but that the females under his charge were unwilling.

The behavior of the plaintiff and her companions while in the car was entirely becoming, and their dress and appearance decent.

The train stopped at King's Mountain at eight o'clock P.M., and while there, one Ramseur, who was neither a passenger nor employee on the train, entered the smoking car, for the purpose of seating some white women who came in with him. The seats being filled, and seeing the two colored women there, he asked for their seats, which they declined to surrender. Some one in the crowd proposed to put them out, to which Ramseur assented and seized hold of the plaintiff. Thereupon Culp cried out, "don't strike that lady," when Ramseur struck him over the head with a

[2] *Id.* at 539–40.

stick, and then, with the help of some of the white passengers, ejected all three from the car.

The verdict of the jury was for the railroad; the plaintiff appealed, and the North Carolina Supreme Court in an unanimous opinion reversed and ordered a new trial.

The court stated: [3]

> The evidence wholly fails to show that the defendant had, on this occasion, established any fixed or certain rule in reference to the matter. It is true, that the handbills, by which the time and the terms of the excursion were published, announced that there would be "separate cars for white and colored," but whether this was one of the acts of the advertiser, resorted to in order to render the excursion popular with the better paying class of citizens, or whether it was intended to be a regulation for the government of the conduct of all parties, is left altogether uncertain. In the absence of all other proof upon the point, the court might and probably would put the latter construction upon it; but it is impossible to do so when the defendant shows, out of the mouth of its own witness and officer, that the real instruction given to the conductor of the train was, not to enforce it as a law of the company's making, but simply to give advice upon the subject, and then leave it to each individual to determine his or her own course. . . .
>
> When the plaintiff and her friends took seats in the coach in question, they did so in the exercise of a right and a discretion expressly left to them by the defendant's own regulation, and were therefore clothed with every privilege that appertained to any other passenger in the coach, and were entitled as fully as any other to be protected from injuries arising, as well as from the neglect of the company's servants as from the unprovoked assaults of their fellow-passengers; and more especially was this so, after the conductor had been appealed to, and assured them of their right to the seats, even though he did offer the advice which he had been instructed to give them. So that, the right of the plaintiff to recover in this action depends, as we conceive, upon no question connected with her color or with her presence in any particular coach in the defendant's train, but upon the general law regulating the duties and responsibility of the carriers of passengers in all such cases. . . .
>
> Tested by this rule, and conceding that the facts of the case were as insisted upon by the defendant, and as proved to be by its own witnesses, the conduct of the defendant's servants, and especially of its conductor, was grossly and unpardonably negligent. He had

[3] *Id.* at 543–46.

knowledge of the reckless character of those who occupied the coach with the plaintiff; and while he may not have had positive premonition of threats towards her, he was fully aware of the dissatisfaction to which her presence there, with her companions, had given rise, and of the desire for their expulsion, which had been openly expressed, as well as of the fact that ribald songs and coarse and insulting language had been indulged in for the very purpose of vexing them and rendering their situation intolerable . . .

His dalliance, too, in going to her relief when informed of the imminency of the outrage upon her rights, manifested such an indifference on his part as was inconsistent with her claims and his duty . . .

But above all this, the plaintiff had, as we have seen, acquired an established right to the seat which she occupied upon entering the defendant's train. She held it by the same tenure that every other passenger upon the train held his seat, and no one had the right either to call upon her to surrender it or to eject her from it by force; and upon being notified that her ejection had taken place, the first duty of the officer was to see her restored to it; and not until this was done, if demanded by her, was his whole duty, or that of the defendant, to the plaintiff, fully discharged.

It was not until 15 years later, after the "White Supremacy" political campaign of 1898 that the first Jim Crow Car Statute was enacted in North Carolina.

Chapter 384 of the laws of 1899, now G.S. 60–94 to 60–97 was entitled "An act to promote the comfort of travelers on railroad trains, and for other purposes." Section 1 read:

That all railroad companies and steamboat companies engaged as common carriers in the transportation of passengers for hire in the state of North Carolina other than street railways shall provide separate but equal accommodations for the white and colored races on all passenger trains and steamboats carrying passengers. Such accommodations may be furnished by railroad companies either by separate passenger cars or by compartments in passenger cars. . . .

In addition to the exemption of street railways the remainder of the statute provided exceptions for relief trains, Pullman or sleeping cars, express trains not stopping at all stations, branch lines and narrow guaged railways. It also excepted servants in attendance and officers accompanying prisoners. The railroads opposed the bill according to the Raleigh News and Observer of January 25, 1899.

Chapter 213 of the 1901 laws added an exception for trains carrying both freight and passengers. Chapter 270 of the 1935 law, now G.S. 60–98, allowed the utilities commission to except trains with only one passenger car.

This statute has never been enforced by the North Carolina Supreme Court. It has however been cited in suits by white passengers for damages because they were put in a colored car. *Huff* v. *Norfolk Southern Railroad Company,* 171 N.C. 203, 88 S.E. 344 (1916), *Merritt* v. *Atlantic Coast Line Railroad,* 152 N.C. 281, 67 S.E. 579 (1910). In *Huff* the court stated, "it seems to be the trend of opinion and the decided intimation of the Supreme Court of the United States on the subject that state legislation of this character may not extend to a case of interstate traffic."

In the revision of 1905, a codification of all North Carolina laws, the revisers added a clause to the foregoing railroad segregation statute to require separate waiting rooms. There is no other authority for this clause, which has been repeated in subsequent codifications. Revision of 1908, sec. 2619, C.S. sec. 3494, G.S. 60–94. However, the utilities commission is directed by G.S. 62–44 and G.S. 62–127.71 to require separate waiting rooms. This provision was part of the act setting up the corporation commission in 1899. Laws 1899, ch. 164, sec. 5.2(14). Some cities, like Thomasville, adopted ordinances requiring segregation in "railroad waiting rooms." The Thomasville ordinance has been repealed.

The familiar white-from-the-front, colored-from-the-rear statute, now G.S. 60–135 to 60–137, was enacted for streetcars by chapter 850 of the laws of 1907. In addition to provisions against spitting, cursing, and riding on the running board, both company and passenger were put under a duty to comply with the seating order. Failure to comply was punishable as a misdemeanor and the conductors were given police power and the right to eject.

When motorbuses began to do business in North Carolina there was no statutory requirement of segregation on buses. The corporation commission (now the utilities commission) adopted, on its own, a regulation to require bus segregation. In 1930, the North Carolina Commission on Interracial Cooperation petitioned the corporation commission to end this enforced segregation on motorbuses. The supreme court sustained the bus segregation policy of the commission. *Corporation Commission* v. *N.C. Commission,* 198 N.C. 317, 151 S.E. 648 (1930).

In the opinion by Judge Heriot Clarkson the philosophy of enforced segregation is full blown, in marked contrast to the language of Chief Justice Walter Clark 16 years earlier in the housing segregation case, *State v. Darnell,* 66 N.C. 300 (1914), as set out in the previous chapter on housing. Here are passages from the 1930 bus segregation case:

It has long been the settled policy of this state, promulgated through the legislative branch of the government, to have separation or segregation of the white and Negro races with equal accommodations, in the public institutions of the state, and by public service corporations. Separate schools for the white race and Negro race; separate asylums and other institutions for the afflicted Negroes in the State, separate reformatories, etc.

In the Southern states there was a strong anti-slavery sentiment . . . Gen. Robert E. Lee, the Southern Chieftain, was an open abolitionist, and freed his personal slaves before 1861. . . .

He was a wealthy planter and showed how well a benevolent, Christian gentleman could care for two hundred Negroes. The slaves seemed comfortable and happy, they sang their Negro songs with great glee. . . .

In fact, the best friends that the Negro has are his white neighbors. The Negro has been in many respects a chosen people—brought here, the land of opportunity, among civilized people . . . The burden imposed not sought has been on the white people of this State to civilize and Christianize them. The trust has been and is being faithfully performed . . . The best element of Negroes in this State are in full accord with law enforcement and the punishment of the Negro who would overstep the bounds of race and be guilty of race and kindred crimes. The judgment is affirmed.

In 1933 the provision of the streetcar statute was specifically made applicable to motorbuses. Chapter 489, now G.S. 60–139.

State v. *Harris,* 213 N.C. 758, 197 S.E. 594 (1938), was the first case presented to the court under this statute. A Negro woman entered a bus and took the last seat before the "long seat" at the extreme rear. Subsequently, the bus filled with people to the point that only the seat next to her and the long seat were vacant. A white man asked that she move to the long seat and she refused but offered to debark if her fare was returned. She was convicted of violating the act, but on an appeal to the North Carolina Supreme Court her conviction was reversed because there was insufficient evidence that she had intended to violate the act. To the same effect is *State* v. *Brown,* 225 N.C. 22, 33 S.E. 2d 121 (1945). Later in a civil suit a Negro who had been convicted of violating this act sought damages for false imprisonment and malicious prosecution. Recovery was denied. *Pridgen* v. *Carolina Coach Co.,* 229 N.C. 46, 47 S.E. 2d 609 (1948). Although *Morgan* v. *Virginia,* 328 U.S. 373 (1946) had already held that compulsory segregation in interstate commerce was an unlawful restraint on commerce, the North Carolina Supreme Court said this did not preclude reasonable

rules by carriers as to seating arrangements. For a criticism of the bus segregation act see 17 N.C. L. Rev. 375 (1939).

The first conviction affirmed by the North Carolina Supreme Court came in 1949. In *State* v. *Johnson,* 229 N.C. 701, 51 S.E. 2d 186 (1949) two white persons and two Negroes persisted in sitting together and were tried and convicted of violating this bus statute.

In *State of North Carolina* v. *Jackson,* 135 F. Supp. 682 (D.C.M.D. N.C. 1955), the defendant, who had been charged with violating the North Carolina bus segregation statute, sought to remove the case to the Federal court under the Civil Rights Removal Section, 28 U.S.C. 1446(c), on the assumption that the State court would decide in accordance with the *Johnson* case above, but the U.S. district judge remanded the case to the State court for further action. There is no published record of the final disposition of this case. In *Williams* v. *Carolina Coach Company,* 111 F. Supp. 329 (D.C.E.D. Va. 1952), an evicted colored passenger recovered civil damages from the bus company even though he had refused to observe the North Carolina bus segregation statute.

Negroes have recovered damages for mishandling by transportation employees. In *Harris* v. *Queen City Coach Co.,* 220 N.C. 67 (1941), a preacher who missed his sermon because he was denied the last seat on a bus recovered $200 actual and $600 punitive damages. The court reversed on inadequate showing of malice for punitive damages. In *Harrison* v. *Norfolk Southern R.R.,* 184 N.C. 86 (1922), the court affirmed a recovery of $1,000 for rough and rude handling by a conductor. For a colorful story of pistol firing on an excursion train from Greensboro involving the determination of whether it was contributory negligence for a white person to enter the colored coaches, see *Stanley* v. *Southern R.R.,* 160 N.C. 323 (1912).

Winston-Salem requires segregation in taxicabs. The following ordinance was adopted November 2, 1948:

> SECTION 45–65 (City Code): Segregation of White and Colored Passengers: White and Colored passengers shall not occupy the same compartment in any taxicab.

A similar ordinance appeared in the Charlotte Code of 1946, but was deleted in the 1961 code.

Employment. toilet facilities

G.S. 95–48 passed in 1913 (ch. 83), provides that "All persons and corporations employing males and females in any manufacturing industry, or other business employing more than two males and females in towns and cities having a population of one thousand persons or more, and where such employees are required to do indoor work chiefly, shall provide and keep in a cleanly condition separate and distinct toilet rooms

for such employees, said toilets to be lettered and marked in a distinct manner, so as to furnish separate facilities for white males, white females, colored males and colored females." The sections that follow G.S. 95–48 require these toilets to be located "in separate parts of their buildings or grounds" and make violation a misdemeanor and require enforcement by police, sheriffs, and the department of labor. It is interesting to note that this section does not apply to Sampson, Harnett, Lee, Johnson, Northampton, and four western counties. Public laws 1913 ch. 83, sec. 6. No case based on it has ever reached the North Carolina Supreme Court.

Abattoirs, frozen food locker plants, and all food-handling establishments must obtain a permit from, and pass regular inspections by, the State board of health. G.S. 130–167 (1937) and G.S. 72–46 (1941). The inspectors use official State forms which allow 10 to 20 points (out of 90 to 135 points in one category and out of 1,000 points total for the test) if the concern has toilet, lavatory, and dressing room "facilities adequate for each sex and race."

While this requirement may not often mean the difference between passing or not, it does affect the ultimate grade. Furthermore, the inspector, employer, and employees are thus regularly reminded of what appears to be a requirement of State law for racially segregated facilities.

To avoid the dilemma of building and maintaining duplicate facilities on the one hand, or accepting a lower rating on the other, some employers would elect to employ only persons of one race, excluding all others.

Fraternal orders and societies

G.S. 58–267, in the chapter on insurance, provides that "No fraternal order or society or beneficiary association shall be authorized to do business in this state under the provisions of this article, whether incorporated under the laws of this or any other state, province, or territory, which associates with, or seeks in this State to associate with, as members of the same lodge, fraternity, society, association, the white and colored races with the objects and purposes provided in this article." The segregation provision was added by public laws 1913, ch. 46.

Marriage

The constitution of North Carolina (art. XIV, sec. 8, 1875): "All marriages between a white person and a Negro, or between a white person and a person of Negro descent to the third generation, inclusive, are hereby forever prohibited."

G.S. 14–181 (laws 1834, ch. 24; laws 1838–9, ch. 24). "All marriages between a white person and a Negro, or between a White person and a person of Negro descent to the third generation inclusive are forever prohibited and shall be void. Any person violating this section shall be guilty of an infamous crime, and shall be punished by imprisonment in the county jail or State's prison for not less than four months nor more than ten years, and may also be fined, in the discretion of the court." The statute was most recently applied in *State* v. *Miller,* 224 N.C. 228, 29 S.E. 2d 751 (1944).

G.S. 51–3. "All marriages between a white person and Negro, or between a white person and person of Negro descent to the third generation, inclusive, or between a Cherokee Indian of Robeson County and a Negro, or between a Cherokee Indian of Robeson County and a person of Negro descent to the third generation inclusive . . . shall be void . . ." The antecedent of this section is chapter 68, Revised Code (1854). See also chapter 107, Revised Code (1854) concerning slaves and free Negroes. Until 1961 G.S. 51–3 was also applicable to marriages between white persons and Indians and persons of Indian descent. The laws 1961, chs. 186, 384, repealed the language invalidating white-Indian marriages.

Restaurants, hotels, and motels

No restaurant, cafe, food or drink stand, hotel, motel, tourist home, or any other place where food or drink is prepared, handled, or served for pay, or where lodging accommodations are provided can operate without a permit from, and inspection by, the State board of health. G.S. 72–46 (1941). Such places are graded A, B, or C and the grade card must be displayed in a conspicuous place. Violations incur fines or imprisonment. Threatened violations of the statute or of board regulations may be enjoined.

The inspectors' official State form (form 451, revised July 1958) allows 10 points (out of 90 in the category or 1,000 total for the test) if the toilet facilities are "adequate for each sex and race."

During the lunch counter "sit ins" some restaurant owners stated that they could not serve Negroes because they could not afford to install two additional toilets and they were under the impression that the State required that they provide separate restrooms "for each sex and race." They got this impression from the above inspection report form of the State board of health. There is nothing in the public health laws which requires or authorizes such an item on the health inspection form. Some local health officials, when asked about the use of this criterion in rating restaurants, stated that they had no discretion in the matter.

Many lunch-counter operators have since begun serving Negroes on the same basis as whites and in the absence of four separate toilets.

Chapter 13, section 42 of the Durham ordinances requires segregation in restaurants:

> In all licensed restaurants, public eating places and "weenie shops" where persons of the white and colored races are permitted to be served with and eat food there shall be provided separate rooms for the separate accommodations of each race. The partition between such rooms shall be of wood, plaster or brick or like material and shall reach from floor to ceiling. Any person violating this section shall, upon conviction, pay a fine of ten dollars and each day's violation shall constitute a separate offense. (Code 1947, ch. 13, sec. 42, Code 1940, ch. 40, sec. 8.)

In connection with the above provision, the Durham City Attorney on December 14, 1961, advised that a revision and recodification is now in process.

> When this particular section was reached the City Council informally indicated that this section should be omitted from the recodification. If the City Council formally votes to omit this section in the final recodification that will have the effect of repealing it. You are further advised, however, that no official action with reference to it has yet been taken by the City Council and since the indication to which I referred was made two or three new members of the Council have been elected. I have no idea what the Council will ultimately and officially do about this, but I am merely stating what has transpired with reference to this section up to this time.

State v. *Clyburn*, 247 N.C. 455 (1958) affirmed the trespass conviction of a Negro minister in Durham who asked to be served in the white section of an ice cream parlor, and refused to be served in the colored section. Although this case arose in Durham, no reference was made to the above Durham ordinance.

In affirming trespass convictions growing out of the 1960 dimestore lunch counter "sit ins", the North Carolina Supreme Court has stated that a merchant may choose his customers and prosecute those who refuse to leave his premises when asked. *State* v. *Avent*, 253 N.C. 580, 118 S.E. 2d 47 (1961); *State* v. *Williams*, 253 N.C. 804, 117 S.E. 2d 824 (1961); *State* v. *Fox*, 254 N.C. 97, 118 S.E. 2d 58 (1961). These three cases are pending in the U.S. Supreme Court.

The North Carolina Supreme Court held that these lunchcounter operators were not innkeepers and therefore not subject to the same duties and responsibilities of innkeepers. *State* v. *Mathews*, 19 N.C. 406 (1837), stated the common law rule:

> All and every one of the citizens, have a right to demand entertainment of a public inn-keeper, if they behave themselves, and are willing and able to pay for their fare. (19 N.C. 406, 407.)

In 1890 the court said that innkeepers are not required to accept guests "so objectionable to the patrons of the house, on account of the race to which they belong, that it would injure the business to admit them to all portions of the house." *State* v. *Steele,* 106 N.C. 766, 782. This case was subsequently construed to mean that "inn-keepers may assign them (white and colored guests) separate apartments, provided they furnish equal accommodations to both." *McMillan* v. *School Comm.,* 107 N.C. 609, 614 (1890). These statements were dicta in each case. For a detailed analysis of the lunch counter "sit ins," see "Dime Store Demonstrations: Events and Legal Problems of the First Sixty Days", by Daniel H. Pollitt, Duke L.J. 315 (1960).

In the summer of 1962 several demonstrations were made by Negroes seeking accommodations and service at highway restaurants and motels. In some instances official signs on the highway directed travelers to food and lodging at these particular restaurants and motels. Many of the demonstrators were arrested for trespass. Some lower court convictions are on appeal. In view of the N.C. Supreme Court's observation that the dimestore merchants were not innkeepers (even though their lunch counters might be restaurants), and not bound by the duties of innkeepers, the trespass convictions in those cases would not necessarily be precedents binding upon the courts in all of these latest cases. The earlier North Carolina innkeeper decisions, on the other hand, require the innkeeper to serve "all and everyone of the citizens . . . if they behave themselves, and are willing and able to pay for their fare." While the language of the 1890 cases would permit the innkeeper to furnish separate but equal accommodations for white and colored guests, it was not suggested that the innkeeper could, solely on account of a patron's race, turn him away and refuse to serve him at all. No doubt many innkeepers in the recent past followed such a practice in totally excluding Negroes, but this practice does not find support in the North Carolina decisions on the legal duties or rights of innkeepers who, under our common law, had a special duty to meet the needs of all travelers on the highways. Some hotels, motels and restaurants in North Carolina have for a number of years and without publicity served colored as well as white persons.

Amusement

The 1961 Charlotte Code, ch. 11, sec. 1–2(b) provides:

> Hereafter, any person applying for a license to operate and keep open any pool or billiard room, bowling alley, or any other public

place where games or sports of any kind are played or participated in by the patrons of such places, shall state in the application for such license whether it is desired to operate such place for the accommodation of the white race, or for the accommodation of the colored race, and the license shall allow the operation of such place only for the accommodation of the persons of the race so designated; provided, that where the owner or operator of such place proposes to maintain distinct and separate rooms or places of play for persons of the white race and persons of the colored or negro race, he shall so state in the application and the license shall be granted allowing same. (Also in 1946 Code.)

The 1961 Charlotte Code also provides, ch. 13, sec. 13–11:

It shall be unlawful for any person to erect or maintain any such carnival at any place in the city, even though more than one thousand feet from any building or house used or occupied as a residence, unless upon the lot which is to be used for such purposes, there shall be ample and adequate toilet facilities for both the white and colored races; and such toilets shall be constructed in accordance with the building code of the city and be connected directly to the sewage system of the city. (Also in 1946 Code.)

Sec. 13–15 of the Charlotte Code of 1961 provides:

(a) No person shall give a public exhibition, illustration, display, imitation, reproduction or moving picture, either on canvas or otherwise, of any prize fight, sparring match, or glove or fist contest wherein the contestants were or are persons of different races. (1914 Code to present.)

In Wilmington an ordinance required a 7-foot partition in places of amusement.

Every person owning, keeping, maintaining or operating a . . . bowling alley, or other place of amusement in which members of both the white and colored race are allowed to play . . . shall provide separate accommodations, divided by substantial partitions at least seven feet high . . . It shall be unlawful for any member of the white race to play or loiter in the colored section of such place or for any member of the colored race to play or loiter in the section set apart for Whites. (Code ch. 15, sec. 29, R. O. 1922, sec. 222.)

Salisbury is one of the older as well as larger cities in the State. J. W. Ellis, city attorney, furnished the Committee with the following excerpts from the 1849 Minute Book of the commissioners of Salisbury:

XVIII. If *any free person* of colour be found by any patrol in the night time or on the Sabbath Day in any other kitchen or outhouse than their own in the company of or associating with any slave or slaves he shall by such patrol be carried before the Intendent of Police and, upon conviction, be fined not more than $10. On failure to pay fine, then to receive 39 lashes. Not applicable if owner of slave consented to such association.

XXII. That in future if any slave shall be found in any diner or grog shop within the limits of this town either in the day or night-time without having in his possession a written permission from his or her owner stating that he or she was sent upon some special errand, the slave so found for every offense shall be liable to 15 lashes to be well laid on his back at the public whipping post . . . .

XXIII. That no slave *or free Negroes* shall smoke a pipe or segar (sic) in any street, lane, alley, or open space in Salisbury or walk with a cane, club or other stick (except such as are infirm or blind) or carry about him any weapon under penalty of two dollars if a free Negro and not less than 5 nor more than 39 lashes if a slave.

XXIV. That no slave *or free Negroes* shall be guilty *of whooping or hollowing* anywhere in the town or making any clamerous noise or singing or speaking aloud any indecent song or language or any indecent or impudent conduct under penalty of $5 if a free Negro and not less than ten nor more than 39 lashes if a slave.

The city's records of ordinances in effect in 1877 show no segregation ordinances. Therefore, concludes Mr. Ellis, the above ordinances "must have been repealed at sometime between 1849 and 1877. The first printed code of the Town was published in 1914 and the second and last one in 1956. No segregation ordinances of any kind or nature appear in either of them."

Commissioners of Washington v. *Frank and John* affirms a conviction of two slaves under ordinances No. 5 of the town of Washington: [4]

The Commission for the Town of Washington do hereby prohibit and forbid all disorderly shouting and dancing, and all disorderly and tumultuous assemblies on the part of *slaves and free Negroes* in the streets, market and other public places in said town by day and by night. *Any white person or free person of color*, violating this ordinance, shall . . . pay . . . ten dollars, and any slave violating said ordinance . . . thirty-nine lashes . . . [Emphasis added.]

[4] 46 N.C. 436, 437 (1854).

Dead bodies

In 1903 the legislature passed a statute to segregate cadavers used in research. Chapter 666 provided that the "body of no white person shall be delivered to any school for the colored race." This statute was later rewritten and revised. G.S. 90–212 now provides for the delivery of certain bodies (otherwise unclaimed) to "the white and Negro funeral homes in Raleigh" according to the race of the deceased.

Cemeteries

Section 7–19 of the 1940 Lumberton Code states simply, "Lots in Meadowbrook cemetery shall be sold only to persons of the White race."

The Burlington Code, Section 8–1 provides:

> The Pinehill Cemetery shall be used exclusively for the burial of white persons, and the Colored Cemetery near Ross Street and Rauhut Street shall be used exclusively for the burial of colored persons.

This ordinance has been carried in the Burlington City Code for more than 30 years, but the date of original enactment is unknown to the city attorney.

Section 6–42 of the Winston-Salem Code requires cemetery segregation:

> *Sec. 6–42: Segregation of Races*
> No interment of any body or the cremated ruins of any body, other than that of a human being of the white or colored race shall be permitted except in cemeteries provided for these races. The burden of proof to show that the deceased was of the white or colored race shall rest upon the lot owner only.
>
> This ordinance was adopted December 12, 1944.

CONCLUSIONS

From the foregoing survey it appears that:

1. North Carolina statutes and ordinances requiring segregation were never as extensive as in some of its sister States. For example, there was never any statutory requirement that there be separate entrances for the races at State hospitals, colored nurses for colored patients, separate booths for white and colored telephone patrons, separate en-

trances, exits, ticket windows, and sellers for a circus or tent shows "or any other indoor or outdoor place" in the language of one city ordinance. Although the North Carolina requirement of separate toilet facilities in certain employments may have discouraged employment of Negroes, North Carolina never went so far as to prohibit textile factories from permitting laborers of different races from working together in the same room or using the same entrances, pay windows, exits, doorways, stairways, or windows at the same time or the same laboratories, toilets, drinking water buckets, pails, dippers, paper cups, or glasses at any time, as provided in one code in 1915. Nevertheless, the above survey does show a wide range of activities which our State and some of our cities undertook to regulate by requiring segregation.

2. There is a discernible trend in North Carolina in the direction of repealing segregation statutes. In addition to the examples already noted in this report, the statutes authorizing a "Negro" agricultural and technical college (G.S. 116–92), "Negro" normal schools (G.S. 116–101), and the North Carolina College for "Negroes" at Durham (G.S. 16–99), have all been repealed and regrouped with other statutes which omit racial classification. The Firemen's Relief Fund Act expressly prohibits discrimination on account of color in the payment of benefits (G.S. 118–11). This statute originated in 1905 and reads: "In as much as there are in any number of the towns and cities of this State fire companies composed exclusively of colored men, it is expressly provided that the local boards of trustees shall make no discrimination on account of color in the payment of benefits."

3. The late dates on many of the foregoing statutes and ordinances indicate that:

> Things have not always been the same in the South. In a time when the Negroes formed a much larger proportion of the population than they did later, when slavery was a live memory in the minds of both races, and when the memory of the hardships and bitterness of Reconstruction was still fresh, the race policies accepted and pursued in the South were sometimes milder than they became later. The policies of *proscription*, *segregation* and *disfranchisement* that are often described as the immutable 'folkways' of the South, impervious alike to legislative reform and armed intervention, are of a more recent origin. The effort to justify them as a consequence of Reconstruction and a necessity of the times is embarrassed by the fact that they did not originate in those times. And the belief that they are immutable and unchangeable is not supported by history.[5]

[5] Woodward, *The Strange Career of Jim Crow* 47 (1957).

4. These segregation statutes and ordinances reflect the spirit of a time when it was thought that the force of government could be used to compel separation and ostracism. For the most part, these statutes, especially those compelling private segregation, have their origin in partisan politics and were promoted by advocates of disfranchisement and the sociological theory of total segregation and proscription. Many were enacted after the Negro had been disfranchised in 1900. The statutes and ordinances that fall within this description cannot really be said to represent the will of all the people of the State.

5. The proliferation of such compulsory segregation statutes and ordinances after 1898 represents an increase in dependence upon governmental intervention and the use of the force of the police power of the State to compel Negroes and whites to keep their supposed place, even in private life. This not only violated the principle that the government in its dealings with its citizens should not take any action on the basis of race or color, but it violated the fundamental principle of allowing our citizens freely to choose their associations in all aspects of life, both public and private. The notion that the State must use its police power to force segregation is repugnant to the view that the members of the different races in North Carolina would naturally choose to associate with members of their own race.

6. These statutes, under the conditions of today, are unnecessary as well as unconstitutional. Their existence on the statute books is an invitation to misunderstanding, confusion, and violence. They should be repealed. It is not that a Negro is about to be prosecuted for using white facilities, or that some employer or other person is going to be prosecuted for not providing separate facilities. Rather, the danger is that so long as these compulsory statutes are on the books, some private citizens are more than likely to take it upon themselves to try to enforce segregation. Assaults and affrays, with each of the participants thinking that he is in the right, may follow, and when the policeman is called, he, too, is likely to be mistaken as to where his duty lies. Neither private citizens, nor law enforcement officers ought to be misled by these dead letters. It should not be necessary to wait for the courts in individual lawsuits to rule them invalid; they ought to be removed from the books by the same agents of the State that put them there: the legislature and the city councils.

Afterword: Some Unexamined Areas

> The progress of the state both socially and economically will be determined by the extent to which its human resources are trained to make the best use of its natural resources.
>
> —John W. Clark, president, State College Alumni, 1946.

> So, then, to every man his chance—to every man regardless of his birth, his shining, golden opportunity—to every man the right to live, to work, to be himself, and to become whatever thing his manhood and his vision can combine to make him—this, seeker, is the promise of America.
>
> —Thomas Wolfe, *You Can't Go Home Again,* 1941.

Among the areas about which the Committee has received some complaints and suggestions for inquiry are the following:

Education—Are any of our citizens, on account of race or color, denied access to colleges supported by the state? The rule prohibiting racial segregation in public schools was held applicable to State schools of higher education in *Frasier* v. *UNC Trustees,* 134 F. Supp. 589 (1955). Do all schools receiving Federal grants admit Indians and Negroes? Are land-grant funds as readily available for education of students at A & T College in Greensboro as for those at State College in Raleigh? A State statute of 1907 required that all congressional appropriations "for the benefit of colleges of agricultural and mechanical arts shall be divided between the white and colored institutions in this state in the ratio of the white population to the colored, as ascertained by the preceding national census." (G.S. 116–29) In connection with the new program for establishing, with State support, many community colleges, are duplicate facilities to be established in order to provide accommodations for white and colored students? See *Wynn v. Trustees of Charlotte Community College System,* 255 N.C. 594 (1961). What is the connection between State teacher training and the quality of teaching in the public schools? The State Board of Education has recently been testing teachers and teacher candidates. Do Negroes and white children have equal access to good teachers? What is the record of achievement of white and nonwhite children in the public schools? What differences, if any, have been observed in this matter in those schools which have desegregated? Has desegregation in any school affected the achievement of pupils in other schools, still segregated, in the same community? Do white and nonwhite school teachers in the same areas have opportunities to cooperate and compete with each other? Are

white and nonwhite children more nearly equal in school ability at the first grade level than in higher grades, after several years of exposure to our schools? This question has been studied elsewhere but not in North Carolina, although there is some evidence as to the situation in North Carolina's segregated schools prior to 1954 in the brief of the Attorney General of North Carolina filed in the Supreme Court of the United States in the *Brown* desegregation case.

Employment—What is the record of employment by State and county agencies of graduates of State institutions? What is the government policy in agriculture in North Carolina, including employment of nonwhite agricultural agents? What differences, if any, on account of color or race, exist in the State programs designed to train and serve the men and women in North Carolina engaged in agriculture, the second principal occupation in the state? What is the record of employment by (1) the Federal government in North Carolina, (2) contractors holding Federal contracts as of 1963, two years after the inauguration of the President's equal opportunity program, and (3) public utilities such as telephone, gas, electric, water, railroad, bus and airline companies, operating under exclusive governmental franchises? Where are the State's untrained and unskilled laborers located, county by county, as may be revealed by an analysis of the 1960 census of employment? Is there any connection between this data and government action in the operation of the public schools, vocational and industrial training programs, enforcement of school attendance laws, and the participation of whites and nonwhites in voting and the administration of justice? Is there any connection between the location and extent of untrained and unskilled labor and the status of health and housing in each of our counties? Does the ratio between white and nonwhite personal income in any county correspond with the participation by whites and nonwhites in voting and the administration of justice, or their achievement in the public schools, or their employment by governmental agencies, in those same counties?

As indicated at the outset of this report, the conditions in the various areas which have been under study by the Committee since 1959 have changed and will continue to change and new questions of equal protection of the laws will arise. The present report is not an end but a beginning of a systematic study by North Carolinians, for North Carolinians, of the way in which our laws are applied not "with an evil eye and an unseen hand", but fairly and openly to all of our citizens regardless of an accident of birth in order that, in the language in the Mecklenburg Resolves of 1776, we may enjoy "a free government under the authority of the people of the State of North Carolina and that the government be a simple democracy or as near to it as possible" . . . or that, in the language of our present State constitution, "liberty and free government may be recognized and established."

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Appendices

APPENDIX 1.—*Distribution of State agencies by types of services rendered, North Carolina, 1961*

	Percent of agencies			*Number of agencies*		
	All	*Without Negro personnel*	*With Negro personnel*	*All*	*Without Negro personnel*	*With Negro personnel*
Agencies reporting	100.0	100.0	100.0	84	33	51
Education (and training)	19.0	15.2	21.6	16	5	11
Health and hospitals	10.7	3.0	15.7	9	1	8
Public welfare	3.6	.....	5.9	3	.....	3
Highway (and public works)	1.2	.....	2.0	1	.....	1
Public safety (police)	8.3	6.1	9.8	7	2	5
Agricultural (and agricultural resources)	1.2	.....	2.0	1	.....	1
Labor (department) and employment security	3.6	6.1	2.0	3	2	1
Commerce, ind. development, and housing	2.4	3.0	2.0	2	1	1
Natural resources (conservation and development)	2.4	3.0	2.0	2	1	1
Financial, fiscal, and general control (of State affairs)	26.2	45.4	13.7	22	15	7
Independent agencies—commissioner	11.9	15.2	9.8	10	5	5
Other State government agencies, departments, etc.	9.5	3.0	13.7	8	1	7

APPENDIX 2.—*Distribution and rank of State agencies employing Negro personnel by main occupational level, 1961*

	Agencies employing (1 or more) Negroes					
	Total employees			*Negro employees*		
	Number	*Percent*[1]	*Rank*	*Number*	*Percent*[1]	*Rank*
Agencies reporting	45	.....	...	48	.....	....
Unskilled	20	43.5	8	21	43.7	3
Service	34	73.9	4	41	85.4	1
Semiskilled	28	60.9	6	23	47.9	2
Skilled	31	67.4	5	20	41.7	4
Clerical and sales	38	82.6	1	17	35.4	6
Managerial and supervisory	36	78.3	3	15	31.2	7
Professional	37	80.4	2	19	39.6	5
Technician	21	45.6	7	11	22.9	8

[1] Percentage figures total more than 100 percent because agencies may have more than 1 occupational level.

APPENDIX 3.—*Merit system examinations Apr. 1, 1961, through Mar. 31, 1962*

Position	*Applicants tested*			*Number and percentage passing and placed on register*			*Average raw score*		
	Total	*White*	*Negro*	*Total*	*White*	*Negro*	*Total*	*White*	*Negro*
Interviewer I, sanitarian I, and public welfare worker I	1,272	1,036	236	815 (64%)	761 (73%)	54 (23%)	60 (100 questions in exam)	63	45
Intermittent interviewer I	192	156	36	126 (66%)	116 (74%)	10 (28%)	50 (85 questions in exam)	52	37
Public health nurse I	72	68	4	65 (90%)	63 (93%)	2 (50%)	78 (125 questions in exam)	78	68
Laboratory technician II	10	7	3	6 (60%)	4 (57%)	2 (67%)	52 (125 questions in exam)	53	49
HEALTH									
Health education assistant	3	1	2	3 (100%)	1 (100%)	2 (100%)	98 (150 questions in exam)	106	95
Public health nurse II	36	31	5	27 (75%)	26 (84%)	1 (20%)	106 (150 questions in exam)	110	80
Public health nurse III	7	5	2	6 (86%)	5 (100%)	1 (50%)	103 (150 questions in exam)	109	88
Second examination	7	6	1	6 (86%)	6 (100%)	0	92 (160 questions in exam)	96	69
Sanitarian aide	9	8	1	7 (78%)	7 (88%)	0	62 (90 questions in exam)	65	40
Second examination	10	9	1	8 (80%)	8 (89%)	0	63 (100 questions in exam)	66	38
Senior public health educator	1	0	1	0	0	1 (100%)	124 (180 questions in exam)	0	124

WELFARE									
Child welfare caseworker I or caseworker I	11	10	1	10 (91%)	10 (100%)	0	109	113	79 (150 questions in exam)
Child welfare caseworker II or caseworker II	11	10	1	10 (91%)	10 (100%)	0	114	116	100 (155 questions in exam)
Casework supervisor	7	6	1	5 (86%)	5 (83%)	1 (100%)	124	125	116 (170 questions in exam)
Senior casework supervisor	2	1	1	2 (100%)	1 (100%)	1 (100%)	125	125	124 (180 questions in exam)
CIVIL DEFENSE									
Public information officer, CDA	10	9	1	10 (100%)	9 (100%)	1 (100%)	89	88	100 (130 questions in exam)
Women's activities officer, CDA	8	7	1	7 (88%)	7 (100%)	0	89	91	74 (130 questions in exam)

APPENDIX 3.—*Merit system examinations Apr. 1, 1961, through Mar. 31, 1962*—Continued

Position	Applicants tested			Number and percentage passing and placed on register			Average total stanines on written section			Average typing speed (net words per minute)			Average number errors in transcription of dictated material		
	Total	White	Negro	Total	White	Negro	Total	White	Negro	Total	White	Negro	Total	White	Negro
Typist I	1,314	1,291	23	589 (45%)	584 (45%)	5 (22%)	22	22	18	30	30	22	...	...	....
Typist II	723	713	10	288 (40%)	287 (40%)	1 (10%)	19	19	7	37	37	17	...	...	....
Stenographer I	477	472	5	274 (57%)	274 (58%)	0	26	26	17	38	39	30	32	32	51
Stenographer II	419	417	2	257 (61%)	257 (62%)	0	23	23	16	45	45	46	25	24	109
Clerk I	1,223	1,207	16	914 (75%)	906 (75%)	8 (50%)	21	21	19	...	...	...	...	...	....
Clerk II	643	636	7	372 (58%)	371 (58%)	1 (14%)	18	18	13	...	...	...	...	...	....
Claims examiner I	162	159	3	97 (60%)	97 (61%)	0	19	19	8	...	...	...	...	...	....
Stenographer III	13	12	1	10 (77%)	10 (83%)	0	119 (160 questions in exam)	121	96	51	53	29	23	20	64
Second form of exam.	7	7	0	5 (71%)	5 (71%)	.....	102 (135 questions in exam)	102	...	48	48	...	13	13	....
Typist III	13	13	0	11 (85%)	11 (85%)	.....	105 (150 questions in exam)	105	...	43	43	...	...	...	....

Second form of exam.	13	12	1	5 (39%)	5 (42%)	0	81 81 85 (120 questions in exam)	45	45	(1)	...	...	....
Clerk IV.....	9	8	1	7 (78%)	6 (75%)	1 (100%)	93 91 11 (130 questions in exam)	3...	...	...	...	...	....
Clerk III.....	26	25	1	14 (54%)	13 (52%)	1 (100%)	84 83 103 (120 questions in exam)	...	...	...	...	...	....
Research analyst I	7	6	1	5 (71%)	4 (67%)	1 (100%)	93 93 90 (150 questions in exam)	...	...	...	...	...	....
Accountant I....	20	19	1	5 (25%)	5 (26%)	0	59 59 53 (120 questions in exam)	...	...	...	...	...	....
Accounting clerk III	20	19	1	13 (65%)	12 (63%)	1 (100%)	83 82 99 (125 questions in exam)	...	...	...	...	...	....
Accounting clerk II	28	27	1	21 (75%)	20 (74%)	1 (100%)	81 81 97 (120 questions in exam)	...	...	...	...	...	....

[1] Did not try.

APPENDIX 4.—*Merit system examinations, Apr. 1, 1961–Mar. 31, 1962—Classes in which there were no Negro applicants*

CLERICAL

Addressing equipment operator
Data procesor I, II, III
Bookkeeping machine operator, I, II
Switchboard operator
Key punch operator II, III
Research analyst II
Research assistant
Accounting clerk, I, IV

WELFARE

County director of public welfare, I, II, III
Child welfare institutions supervisor
Senior child welfare caseworker or senior caseworker
Statistician (PW)

MEDICAL CARE COMMISSION

Hospital analyst
Assistant hospital analyst

EMPLOYMENT SECURITY COMMISSION

Tax auditor
Employment counselor
Public information officer III

STATE COMMISSION FOR THE BLIND

Business enterprises representative

CIVIL DEFENSE

Administrative officer—area director, CDA
Administrative assistant, CDA, I
Assistant director of civil defense
Civil defense officer, welfare
Food supply officer, CDA
Radio operator
Training officer, CDA

HEALTH

Administrative assistant (LHO)
Clinic nurse
Clinical psychologist I, II, III
Junior photofluorographic operator
Junior sanitarian
Public health laboratory technician
Public health nursing supervisor I, II
Psychiatric social worker I, II, III
Bacteriologist I
Bedding inspector
Biostatistician
Electrocardiographic technician
Industrial hygiene associate
Mobile X-ray technician I, aide
Nutritionist I, II
Public health dietitian
Physical therapist I
Physical therapy supervisor
Puppeteer
Sanitarian II (local), III
Sanitary engineer I, III
Public health nursing consultant
Personnel assistant III

APPENDIX 5.—*Negro applicants from 1 college tested by merit system May 9, 1962*

	Number of applicants	*Number and percentage of applicants passing*	*Average stanines on written section*	*Average net typing speed*	*Average number of errors in dictated material*
Clerk I	7	3 (43%)	24	.....	.....
Clerk II	7	3 (43%)	17	.....	.....
Claims examiner I	1	1 (100%)	23	.....	.....
Typist I	19	6 (32%)	18	30	.....
Typist II	11	2 (18%)	16	40	.....
Stenographer I	19	3 (16%)	20	36	68
Stenographer II	13	1 (8%)	16	39	65

Total number of individuals included—26.
Total number of individuals passing 1 or more examinations—7.

APPENDIX 6.—*State and local public school employees and other State employees as of May 31, 1962* [1]

	White	*Negro*	*Percent Negro*	*Other*	*Total*
I. Full-time, State-paid:					
State employees (other than public school)	29, 534	5, 466	15. 6	....	[2] 35, 000
Public school employees:					
Superintendents (173) and assistant superintendents (47)	220	.....	0	....	220
Teachers, principals, and supervisors	28, 614	11, 281	28	....	39, 895
Janitors and maids	698	3, 508	84	....	4, 206
Clerical workers	1, 362	350	20	....	1, 712
Mechanics for school buses	504	50	9	....	554
Property cost clerks	118	.....	0	....	118
II. Part-time, State-paid—Public school employees: Schoolbus drivers ($30 per month) (90 percent students)	6, 027	2, 526	.....	....	8, 553
III. Not State paid (local)—Public school employees:					
School lunch personnel	5, 625	3, 193	.....	....	8, 818
Attendance officers	68	7	.....	....	75
IV. Totals	72, 770	26, 381	.....	....	99, 151
Percentage	73. 4	26. 6	.....	....	100. 0

[1] Data released July 30, 1962, by Walter E. Fuller, State personnel director.
[2] Approximately.

APPENDIX 7.—*Occupational distribution of Negro personnel in contracting companies*

Main occupational level	*Firms with 1 or more Negro employees*		
	Number	*Percent* [1]	*Rank based on order*
Unskilled	67	63.2	1
Service	58	54.7	2
Semiskilled, production	36	34.0	5
Semiskilled, other	46	43.4	3
Skilled	44	41.5	4
Clerical and stenographic	6	5.7	6
Sales	2	1.9	10
Supervisory	5	4.7	7
Technicians, technical assistants, etc	3	2.8	8–9
Professional (above college level)	3	2.8	8–9
Number of firms reporting	106	.....	.....

[1] Percentages will total more than 100 percent since some firms employ persons at more than 1 occupational level.

APPENDIX 8.—*Judgment of Government contractors as to quality of performance of Negro employees as compared with whites at similar occupational levels*

Selected standards	*Percent of firms*				*Number of firms*		*Percent of answers based on personnel records*
	Same	*Better*	*Worse*	*Don't know*	*Reporting*	*With personnel records*	
Job efficiency	78.0	1.0	13.0	8.0	100	6	6.00
Absenteeism	52.0	5.1	36.7	6.1	98	18	19.38
Quitting	56.8	7.4	28.4	7.4	95	17	17.89
Tardiness	68.4	3.2	21.0	7.4	95	12	12.63
Deportment	78.9	4.2	8.4	8.4	95	7	7.36
Responsibility	60.4	1.0	25.0	13.5	96	5	5.20

APPENDIX 9.—*Percentage high school population enrolled in schools accredited or approved by Southern Association*

County	*White*	*Negro*
Alamance	63	37
Alexander	None	None
*Alleghany	None	None
Anson	39	None
Ashe	None	None
Avery	None	None
Beaufort	42	None
Bertie	None	None
Bladen	None	43
Brunswick	None	None
Buncombe	36	100
Burke	21	None
Cabarrus	65	100
Caldwell	18	100
Camden	None	None
Carteret	34	None
Caswell	None	100
Catawba	39	40
Chatham	None	None
Cherokee	None	None
Chowan	100	100
*Clay	None	None
Cleveland	43	None
Columbus	None	31
Craven	53	None
Cumberland	29	35
Currituck	None	None
Dare	None	None
Davidson	48	100
Davie	None	None
Duplin	None	None
Durham	86	76
Edgecombe	44	None
Forsyth	88	69
Franklin	None	None
Gaston	33	60
Gates	None	None
*Graham	None	None
Granville	None	38
Greene	None	None
Guilford	42	67
Halifax	42	None
Harnett	None	None
Haywood	27	None
Henderson	36	None
Hertford	None	None
Hoke	None	None
Hyde	None	None
Iredell	32	100
Jackson	23	None

See footnote at end of table.

APPENDIX 9.—*Percentage high school population enrolled in schools accredited or approved by Southern Association*—Continued

County	*White*	*Negro*
Johnston	9	30
Jones	None	None
Lee	46	100
Lenoir	42	37
Lincoln	None	None
Macon	None	None
*Madison	None	None
Martin	64	None
McDowell	None	None
Mecklenburg	68	21
*Mitchell	44	None
Montgomery	None	None
Moore	31	None
Nash	27	36
New Hanover	100	60
Northampton	None	None
Onslow	33	100
Orange	36	33
Pamlico	None	None
Pasquotank	62	100
Pender	None	None
Perquimans	None	None
Person	None	None
Pitt	54	20
Polk	None	None
Randolph	32	None
Richmond	76	None
Robeson	48	10
Rockingham	55	82
Rowan	37	54
Rutherford	53	100
Sampson	None	None
Scotland	71	None
Stanly	29	62
Stokes	None	None
Surry	45	None
*Swain	None	None
*Transylvania	None	None
Tyrrell	None	None
Union	15	None
Vance	61	76
Wake	50	45
Warren	None	None
Washington	None	None
Watauga	48	None
Wayne	30	45
Wilkes	39	None
Wilson	45	47
Yadkin	None	None
*Yancey	None	None

* No Negro enrolled in any public high school, Sept. 1960.

APPENDIX 10.—*Percentage and condition of occupied housing units with nonwhite household heads*

	Percentage of total in each city	*Percentage of nonwhite dwellings in each category*		
		Sound	*Deteriorating*	*Dilapidated*
Albemarle	11.0	5.9	37.6	46.8
Asheville	17.3	10.8	35.1	41.8
Burlington	7.9	4.5	20.4	48.2
Charlotte	24.5	16.4	53.0	76.3
Concord	18.6	7.7	40.9	42.4
Durham	33.6	24.9	55.5	79.2
Elizabeth City	32.6	18.8	55.4	85.4
Fayetteville	30.9	22.1	47.0	73.1
Gastonia	16.7	10.3	25.2	38.6
Goldsboro	37.1	23.5	55.0	84.4
Greensboro	22.5	17.3	48.3	62.4
Greenville	34.5	18.4	64.0	91.7
Henderson	37.2	28.5	56.9	86.1
Hickory	11.9	7.7	18.3	48.3
High Point	15.6	10.4	25.4	54.5
Kannapolis	9.7	7.6	20.9	31.3
Kinston	36.9	25.4	60.1	63.5
Lenoir	15.4	7.4	31.6	53.4
Lexington	15.1	7.6	33.2	58.7
Lumberton	25.9	15.7	35.6	59.0
Monroe	25.0	13.3	41.4	69.4
New Bern	38.4	25.4	54.5	82.1
Raleigh	21.0	14.7	47.2	71.0
Reidsville	30.3	22.0	57.4	63.0
Rocky Mount	32.0	22.5	58.2	68.6
Salisbury	24.4	13.5	43.0	83.2
Sanford	18.1	10.1	48.5	55.2
Shelby	18.2	10.3	34.1	72.5
Statesville	18.3	12.4	33.2	64.2
Thomasville	18.1	13.4	24.6	53.5
Wilmington	34.0	22.2	56.6	77.3
Wilson	35.2	23.6	66.0	81.6
Winston-Salem	35.1	26.7	61.1	80.3

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APPENDIX 11.—*Public housing administration aided housing units in North Carolina—for low-income families—Oct. 15, 1961*

Housing authorities	*Percent of nonwhite households in city—1960*	*Units in management*			*Units in development*				*Units programed*				
		Total	*White*	*Negro*	*Percent for Negro*	*Total*	*White*	*Negro*	*Percent for Negro*	*Total*	*White*	*Negro*	*Percent for Negro*
Asheville	17	592	262	330	56	.....	...	.....	.....	...	...	...	.....
Charlotte	25	1, 420	568	852	60	.....	...	.....	.....	...	...	...	.....
Concord	19	152	46	106	70	.....	...	.....	.....	...	...	...	.....
Durham	34	600	240	360	60	270	38	232	86	380	115	260	68
E. Carolina Reg	.....	300	240	60	20	.....	...	.....	.....	...	...	...	.....
Clinton	38	70	35	35	.....	.....	...	.....	.....	...	...	...	.....
Havelock	1	50	50	.....	.....	.....	...	.....	.....	...	...	...	.....
Morehead City	15	90	65	25	.....	.....	...	.....	.....	...	...	...	.....
Wayne County	.....	90	90	.....	.....	.....	...	.....	.....	...	...	...	.....
Fayetteville	31	512	236	276	54	.....	...	.....	.....	...	...	...	.....
Goldsboro	37	600	253	347	58	225	75	150	67	...	...	...	.....
Greensboro	23	1, 036	400	636	61	.....	...	.....	.....	450	30	420	93
Greenville	35	.....	.....	.....	.....	.....	...	.....	.....	225	...	...	.....
High Point	16	450	250	200	44	.....	...	.....	.....	...	...	...	.....
Kinston	37	644	224	420	65	.....	...	.....	.....	...	...	...	.....
Laurinburg	35	127	60	67	53	73	20	53	72	...	...	...	.....
Lumberton	26	125	30	95	76	.....	...	.....	.....	...	...	...	.....
Mooresville	15	.....	.....	.....	.....	.....	...	.....	.....	[1] 80	...	...	.....
Mt. Airy	4	.....	.....	.....	.....	.....	...	.....	.....	150	110	40	27
Murphy	2	.....	.....	.....	.....	.....	...	.....	.....	125	125	...	.....
New Bern	38	579	218	361	62	.....	...	.....	.....	125	...	...	.....
Raleigh	21	912	317	595	65	.....	...	.....	.....	...	...	...	.....
Rocky Mount	32	520	210	310	60	.....	...	.....	.....	...	...	...	.....
Salisbury	24	180	60	120	67	60	10	50	83	...	...	...	.....

Tarboro	27	100	50	50	50	.....	...	.....	.....	...	...	...	.....
Wake County	.....	.....	.....	.....	.....	112	46	66	59	...	...	...	.....
Apex	24	.....	.....	.....	.....	10	0	10	.....	...	...	...	.....
Wake Forest	21	.....	.....	.....	.....	52	26	26	.....	...	...	...	.....
Windell	6	.....	.....	.....	.....	18	8	10	.....	...	...	...	.....
Zebulon	22	.....	.....	.....	.....	32	12	20	.....	...	...	...	.....
Wilmington	34	1,078	366	712	66	.....	...	.....	.....	...	...	...	.....
Wilson	35	.....	.....	.....	.....	233	90	143	61	400	150	250	63
Winston-Salem	35	1,245	240	1,005	81	293	0	293	100	...	...	...	.....
Totals	.....	11,172	4,270	6,902	62	1,266	279	987	78	...	...	...	.....

[1] Most will be Negro.

APPENDIX 12.—*Number of white and nonwhite members on housing policy making boards by city*

City	City council		Housing authority		Planning board		Board of adjustment		Redevelopment commission		Citizens advisory committee	
	White	Nonwhite	White	Nonwhite	White	Nonwhite	White	Nonwhite	White	Nonwhite	White	Nonwhite
Asheville	7	0	5	0	9	1	5	0	4	1	23	1
Charlotte	8	0	5	0	10	0	10	0	5	0	10	2
Durham	11	1	4	1	4	1	4	1	4	1	23	22
Greensboro	6	1	4	1	8	1	4	1	4	1	26	7
Greenville	5	0			8	0	5	0			3	2
Laurinburg	5	0	4	1	5	0	5	0	4	1	15	15
Mooresville	6	0	4	1	5	0	5	0	5	0	17	2
Raleigh	6	1	5	0	8	0	5	0	4	1	4	1
Wilmington	5	0			5	0	7	0	5	0		
Winston-Salem	7	1	4	1	8	1	4	1	4	1		3
Totals	66	4	35	5	70	4	53	3	39	6	121	55

APPENDIX 13.—*Staff employees*

City	*City planning department*		*Housing authority*		*Redevelopment commission*	
	White	*Nonwhite*	*White*	*Nonwhite*	*White*	*Nonwhite*
Asheville	3	0	2	3	1	0
Charlotte	8	0	7	6	5	2
Durham	2	0	5	3	2	0
Greensboro	6	0	6	5	5	2
Raleigh	3	0	0	0	1	0
Winston-Salem	6	0	0	0	1	0

According to Mr. Robert Barkley, Greensboro Redevelopment Commission, the above table:

> . . . implies that Redevelopment Commissions have not employed additional Negro personnel because of racial prejudice. This certainly in not the case for Greensboro. We have had great difficulty in obtaining qualified Negro personnel with experience in urban renewal. There seems to be little interest among the Negro colleges in training people for this work. A Housing and Urban Renewal Clinic was held at A & T College last year; practically no students attended this conference. . . .

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