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pay the purchase price. If he refuses to do so the land may be sold to satisfy the vendor's so-called "lien", and execution issue for any unsatisifed balance of the purchase price remaining after the sale of the land.[24]

CONCLUSION

The seller in a land contract ordinarily has neither full possession of the land, the purchase money, nor complete title to the land, since while the contract is in force there is outstanding against it the purchaser's right, upon performance of the terms, to have title to the land. If the purchaser should fail to perform and the seller is driven to an action for damages, the contract takes on the characteristics of an option; the option price being determined by the measure of damages. Thus, without the remedy of specific performance, the seller is bound and the purchaser has the option of performing the contract or breaching and suffering damages at law. Specific performance is a necessary remedy for the seller if he is to rely upon the contract. As a matter of public policy specific performance must be granted the seller in order to afford him some security in land sale contracts. Otherwise business endeavors will be hindered as the seller will have nothing more to rely upon than the good faith of the purchaser. In the many different modes of proceedings and doctrines available to enforce the contract, the court has the control. The court may enlarge or limit a remedy or may alter it to the tune of the facts of a case. This author suggests that the court should not deny the remedy of specific performance, or so insult it with conditions and restrictions as to materially impair the value of the equity.

MICHAEL F. EASLEY

Benign Discrimination in Employment Viewed as Protection of the Restitution Interest of Minority Persons

In recent years federal courts have rendered some very controversial decisions in cases involving employment discrimination against minority persons.[1] In these cases the courts have attempted to compensate minority persons for the loss of jobs and positions which they are presumed to have suffered as a result of impermissible racial discrimination in em-

24. Lutz v. Dutmer, 286 Mich. 467, 282 N.W. 431 (1938).

1. As used herein the term "minority person" refers to persons who are Black, Spanish—surnamed, Oriental and American Indian.

ployment practiced against them. The process used by the courts for compensating minortiy persons for jobs and positions which they are presumed to have lost as the result of employment discrimination is referred to herein as the protection of the restitution interest of minority persons.[2] In this comment three cases will be analyzed from the perspective that the cases illustrate the effort made by some federal courts to protect the restitution interest of minority persons. The cases which will be analyzed from this perspective are *Carter v. Gallagher*,[3] *Afro American Patrolmens League v. Duck*[4] and *Patterson v. Newspaper and Mail Deliverers Union of New York and Vicinity*.[5] These three cases will be referred to collectively herein as the principal cases. Introductory digests of the principal cases follow.

CARTER

In *Carter v. Gallagher* five black plaintiffs brought a class action suit against certain local officials of the Minneapolis Fire Department alleging discrimination against minority persons in the hiring practices of the fire department. This suit was predicated on the equal protection clause of the fourteenth amendment and the Civil Rights Act of 1870.[6] The district court found that the defendants in *Carter* had in fact practiced racial discrimination in employment against minority persons.[7] The court noted that of the 535 men hired by the Minneapolis Fire Department none were Black, Indian, or Mexican American.[8] Significantly, the Eighth Circuit Court of Appeals states that the all-white fire department was the result of past discriminatory hiring practices and procedures.[9] Hence, in *Carter*, the Court of Appeals recognizes that minority persons were denied jobs and positions because of the impermissible racial discrimination in employment that has been practiced against them.

AFRO

In *Afro American Patrolmens League v. Duck*, two individuals and an organization of police officers brought a class action suit against certain officials of the Toledo Police Department. In this suit the plaintiffs alleged that certain discriminatory elements were present in the practices followed by the police department in promoting to command

2. 66 Am. Jur. 2d *Restitution and Implied Contracts* § 1 (1973).
3. 452 F.2d 315 (8th Cir. 1971).
4. 503 F.2d 294 (6th Cir. 1974).
5. 514 F.2d 767 (2nd Cir. 1975).
6. 42 U.S.C. § 1981 (1970).
7. See 452 F.2d at 318 where it is stated that the proceedings of the court which decided *Carter* are unreported. However, a recounting of the proceedings of the trial court may be found at the source cited by this footnote.
8. 452 F.2d at 323.
9. *Id.*

positions.[10] Plaintiffs based their action on the thirteenth amendment, the fourteenth amendment, provisions of the Civil Rights Acts of 1870[11] and 1871[12] and provisions of Title VII of the Civil Rights Act of 1964.[13] In *Afro* the district court found that the defendants had in fact practiced racial discrimination in promoting to command positions against the plaintiffs and other members of the class on whose behalf the suit was brought.[14] Furthermore, in sustaining the opinion of the district court that the defendants had practiced racial discrimination in promotion against the plaintiffs in *Afro*, the Sixth Circuit Court of Appeals comments on ". . . an imbalance in favor of white police officers because of past discrimination in hiring. . . ."[15] Consequently, the Sixth Circuit Court of Appeals takes cognizance of the fact that minority persons have been denied positions with the Toledo Police Department because of the impermissible racial discrimination practiced against minority persons.

PATTERSON

The case of *Patterson v. Newspaper and Mail Deliverers Union of New York and Vicinity*[16] was brought initially as a consolidated action. A private class suit and a suit by the Equal Employment Opportunity Commission were brought against the Newspapers and Mail Deliverers Union of New York and Vicinity ("the Union" herein), the New York Times, the New York Daily News, the New York Post, and approximately fifty other news distributors and publishers within the Union's jurisdiction. This action was brought under provisions of Title VII of the Civil Rights Act of 1964.[17] A finding by the district court that the defendants in the consolidated actions practiced racial discrimination in employment against the persons on whose behalf the suit was brought was precluded; such finding was precluded because the parties agreed to a settlement of the case. However, the district court made the conclusion that based on the evidence "It is abundantly clear that the nepotistic policy of the Union prior to 1952 resulted in discrimination against minorities."[18] Significantly, the settlement agreement in the consolidated class suits ". . . establishes a minority hiring goal of 25%, specifies a

10. The term "command positions" refers to the positions of sergeant, lieutenant, and captain in the promotion hierarchy of the Toledo Police Department.
11. 42 U.S.C. § 1981 (1970).
12. 42 U.S.C. § 1983 (1970).
13. 42 U.S.C. § 2000d et. seq. (1970).
14. Afro American Patrolmen's League v. Duck, 366 F. Supp. 1095 (N.D. Ohio 1973).
15. 503 F. Supp. at 301.
16. 384 F. Supp. 385, 387 (S.D.N.Y. 1974).
17. 42 U.S.C. § 2000(e) et seq. (1970).
18. 384 F. Supp. at 389.

procedure for attaining the goal and provides for back pay to minority workers."[19] These provisions of the settlement were approved by the district court. Hence, the district court acknowledges that minority persons involved in the class suits have suffered not only a loss of jobs and positions but also a loss of money as a result of impermissible racial discrimination in employment practiced against minority persons by the defendants in the consolidated actions.

UNJUST ENRICHMENT

In each of the foregoing digests of the principal cases, three points are to be noted. First, constitutional and statutory provisions were involved in each case. Second, in each case these constitutional and statutory provisions were violated. Third, in each case, minority persons lost jobs and positions as a result of the violations of the constitutional and statutory provisions. In conjunction, the writers of the Restatement of Restitution refer to the concept of restitution in the following manner: "A person who has been 'unjustly enriched' at the expense of another is required to make restitution to the other."[20] Note that the Restatement of Restitution refers to the concept of restitution in terms of a *person* being unjustly enriched whereas the courts involved in the principal cases proceeded on the theory that a *class* of persons had been unjustly enriched at the expense of another class of persons.

Unjust enrichment is regarded as a prerequisite for the remedy of restitution.[21] Ordinarily, three conditions should exist before unjust enrichment can be said to have occurred. First, a legal duty *should* exist;[22] second, the legal duty *should* have been breached;[23] and third, a benefit *must* have been conferred as a result of the breach of the legal duty.[24]

The foregoing three conditions gave rise to the principal cases. The legal duties existent in the principal cases originated from the constitu-

19. *Id.*

20. RESTATEMENT OF RESTITUTION § 1 (1937).

21. 66 Am. Jur. 2d *Restitution and Implied Contracts* § 3 (1973).

22. *Id.* at § 2.

23. It is stated that ordinarily a duty *should* exist and that the duty *should* have been breached because cases may be found where though no duty as such exists, the court will require the party on whom a benefit has been conferred to compensate the person who bestowed the benefit upon him. See generally 66 Am. Jur. 2d *Restitution and Implied Contracts* § 2 (1973); Bicknell v. Garrett, 1 Wash.2d 564, 96 P.2d 592, 126 A.L.R. 258 (1939).

24. 66 Am. Jur. 2d *Restitution and Implied Contracts* § 2 (1973). "The law will not imply a contract to do a thing merely because a statute imposes a duty to do that thing. . . . There must always be the fact of a consideration outside of and in addition to the statute or the rule of law; and the promise is implied from the consideration rather than the statute."

tional and statutory provisions involved; the breach of the legal duties occurred from the impermissible racial discrimination in employment practiced against minority persons; and the benefits conferred were the jobs and positions which minority persons lost to nonminority persons in consequence of the impermissible racial discrimination in employment practiced against minority persons.

Confronted with the situations of unjust enrichment described above, the district courts in the principal cases sought to force the class of non-minority persons to make restitution of the benefits which that class had wrongfully received; that is, to protect the restitution interest of minority persons. In seeking to force non-minority persons to make restitution of these benefits the district courts proceeded on the following proposition:

> Had racial discrimination in employment not been practiced against minority persons by the particular employer, the number of minority persons which would be presently employed on the particular employer's job is a number which is representative of the total minority population in the area from which the particular employer draws his work force.[25]

In *Southern Builders Association v. Ogilvie*,[26] the court not only sanctioned utilization of the foregoing proposition but the court also gave an eloquent explanation as to why the proposition must be utilized. The court stated:

> There is no doubt that there is a need to eradicate these past evil effects, and prevent the continuation in the future of these discriminatory practices. Inasmuch as such practices have continued for decades, there is no infallible and certain formula which will erase decades of history and alter a distasteful set of circumstances into a utopian atmosphere. Discriminatory practices have taken place and something must be done to rectify the situation. Such practices must be eliminated by responsible and responsive governmental agencies acting pursuant to the best interests of the community. Basic self interests of the individual must be balanced with social interests, and

25. This proposition is an inference supported by numerous statements, conclusions and findings made by the courts in the principal cases. For example, in *Carter*, it was found that the Minneapolis Fire Department hired 535 men in a city with a total minority population of 6.44% and that none of the men hired by the fire department were minorities. The Eighth Circuit Court of Appeals subsequently speaks of partially remedying this situation in terms of achieving ". . . a fair approximation of minority *representation* consistent with the population mix." See 452 F.2d at 330. In *Afro*, the Sixth Circuit Court of Appeals states: "The percentage of black patrolmen eligible under the most recent examination for promotion to line sergeant was significantly smaller than the minority *representation* on the force as a whole. See 503 F.2d at 300. In *Patterson*, it was found that the minority population of the relevant part of the work force was 30%. In accordance with the proposition under consideration, a goal of 25% employment of minority persons was set. See 514 F.2d 772.

26. 327 F. Supp. 1154 (1971).

in circumstances where blacks have been discriminated against for years, there is no alternative but to require that certain minorities be taken into consideration with respect to the specific minority percentage of the population in a given area in order to provide a starting point for equal employment opportunities.[27]

The Indefinite Standard

The proposition that had the employers in the principal cases not discriminated against minority persons, "a representative number of minority persons" would be presently employed by the employers in the principal cases was used as a standard by the district courts in those cases. The proposition was used by the courts as the standard by which the loss in jobs and positions suffered by minority persons was measured. Obviously, the standard is indefinite to say the least. This indefiniteness is exemplified by the phrase used in statement of the standard "a representative number of minority persons." But just what is "a representative number of minority persons?" In *Southern Builders Association v. Ogilvie* it is suggested why the standard is indefinite. The court states that under circumstances where employment discrimination has been practiced against minority persons for decades ". . . there is no infallible and certain formula which will erase decades of history . . . ."[28] Thus, the court suggests that the indefinite standard must be used until a more definite standard has been found. Apparently the courts will, of practical necessity, define "a representative number of minority persons" on a case by case basis.

A Real Dilemma

The courts encounter an interesting problem in seeking to implement the indefinite standard; that is, to place a "representative number" of minority persons on jobs and in positions. This problem is exemplified by the several corrective remedies ordered in *Carter*. As was stated in *Carter*, the district court found that minority persons had lost jobs and positions as a result of impermissible racial discrimination which had been practiced against them. In order to remedy this situation, the district court ordered that absolute preference in job employment be given twenty (20) minority persons who met the qualifications for the position under the revised racial-discrimination-free standards ordered by the court's decree.[29] This meant that the first twenty minority persons who simply *met* the standards under the court-ordered revised racial-discrimination-free qualification tests would be hired immediately.

27. *Id.* at 1159.
28. *Id.*
29. 452 F.2d at 327.

It follows that some non-minority persons who earned ratings comparable or higher than those scored by minority persons on the revised tests were forced to wait until the twenty minority persons were hired before such nonminority persons could be hired.

The portion of the district court's decree providing that absolute preference be given twenty minority persons was appealed. Thereupon, a panel of the Eighth Circuit Court of Appeals rendered a decision reversing that portion of the district court's decree pertaining to absolute preference for minority persons. The panel of judges held ". . . such minority preference order violates the fourteenth amendment in that it discriminates against white applicants whose qualifications are found to be superior to those of minority applicants on the basis of approved and acceptable job related tests and standards, and who, but for the minority preference requirement would be entitled to priority in employment."[30] Thus, the panel of judges reversed the district court's order that absolute preference be given twenty minority persons and ordered that no preference be given any minority persons. The panel of judges, in effect, refused to protect the restitution interest of minority persons.

Finally, the panel decision of the Eight Circuit Court of Appeals was reconsidered and modified by the Eighth Circuit Court of Appeals, sitting *en banc*. The modification took the form of a compromise of the opinions of the district court and the panel of the appellate court; that is, the Eighth Circuit Court of Appeals, sitting *en banc*, ordered that limited preference be given twenty minority persons. Accordingly, it was ordered that instead of giving absolute preference to twenty minority persons ". . . one out of every three persons hired by the fire department would be a minority individual until at least twenty persons have been so hired."[31]

Thus, after the vacillation of the district court and the Eighth Circuit Court of Appeals, sitting as a panel, the Eighth Circuit Court of Appeals, sitting *en banc*, employed the balancing of interests formula; that is, the limited preference for minority persons remedy. The court employed this remedy with reservation. It acknowledged that in employing the balancing of interests remedy it was, in practical effect, violating the fourteenth amendment rights of some white job applicants who received ratings equal to and superior to the ratings received by minority persons on revised racial-discrimination-free tests.[32] However, the court went further, citing *Louisiana v. United States*[33] to acknowledge the legitimacy of erasing the past effects of racially discriminatory practices.

30. *Id.*
31. *Id.* at 331.
32. *Id.* at 330.
33. 380 U.S. 145 (1964).

The violation of the constitutional rights of any individual or group of individuals is a drastic measure. This seems especially true when the violation of constitutional rights is sanctioned by a court. It should be considered though that the court in *Carter* was caught on the horns of a dilemma. Had the court refused to protect the restitution interest of minority persons, it would have sanctioned past violations of the constitutional rights of minority persons and encouraged future violations of the constitutional rights of minority persons. Yet, in protecting the restitution interest of minority persons, the court was forced to sanction some violation of the constitutional rights of non-minority persons. The court alludes to this dilemma where it states that its limited preference remedy is an attempt "To accommodate these conflicting interests. . . ."[34]

Quota or Not

In *Carter* the Eighth Circuit Court of Appeals, sitting *en banc* ordered that one of every three persons hired by the Minneapolis Fire Department be a minority person until twenty minority persons were hired. The court then characterized this provision for the hiring of one minority person in every three persons hired as a "mathematical ratio" in contradistinction to a "quota system". In the court's explanation of its "mathematical ratio": ". . . such a procedure does not constitute a 'quota system' because as soon as the trial court's order is implemented all hiring will be on a nondiscriminatory basis . . . ."[35] The trial court's order referred to, evidently, is the trial court's order as modified by the order of the Eighth Circuit Court of Appeals that limited rather than absolute preference be given twenty minority persons. In supporting its order providing for a "mathematical ratio", as contradistinguished to a "quota system" the Eighth Circuit Court of Appeals cited *Swann v. Charlotte-Mecklenburg Board of Education*[36] and noted: "It has now been established by the Supreme Court that the use of 'mathematical ratios' as a starting point in the process of shaping a remedy is not unconstitutional and is within the remedial discretion of the District Court."[37]

The Eighth Circuit Court of Appeals' contradistinction of a "mathematical ratio" to a "quota system" is more than just a play on words. Here the court is suggesting a distinction between what it characterizes as a "mathematical ratio" and a "quota system".[38] The court further

34. 452 F.2d at 330.
35. *Id.*
36. 401 U.S. 1 (1971).
37. 452 F.2d at 331.
38. *But see* Bridgeport v. Commission, 354 F. Supp. 778, 798 (Conn. 1973), where the court suggests that such distinctions are illusory.

suggests that because the utilization of the "mathematical ratio" will be terminated when the trial court's order is implemented, the mathematical ratio is not a "quota system". Assuming this interpretation of the distinction between a "mathematical ratio" and a "quota system" is correct, it would seem to follow that were the utilization of the court's "mathematical ratio" not terminated upon implementation of the trial court's order, but rather continued indefinitely [39] or permanently, then such continued utilization of the "mathematical ratio" would constitute a "quota system".

One further statement made by the Eighth Circuit Court of Appeals supports the interpretation, discussed above. The court made the statement ". . . we think some reasonable ratio for hiring minority persons who can qualify under the revised qualification standards is in order for a limited period of time or until there is a fair approximation of minority representation consistent with the population mix in the area."[40]

Two phrases used in the foregoing statement are significant. The first phrase is "for a limited period of time". Placing this phrase in the context within which the court used it results in the statement: We [the court] think the "mathematical ratio" may be used for a limited period of time. It follows then that since the "mathematical ratio" will be utilized only for a limited period of time, the ratio will not be used indefinitely or permanently. Further, since the "mathematical ratio" will not be used permanently, the court's "mathematical ratio" does not constitute a "quota system". The Eighth Circuit Court of Appeals' usage of this phrase supports the interpretation given above of that court's suggested distinction between a "mathematical ratio" and a "quota system".

The second phrase used in the statement made by the Eighth Circuit Court of Appeals, stated above, is used in the alternative. So used, the phrase is ". . . or until there is a fair approximation of minority representation consistent with the population mix in the area."[41] Placing this phrase in the context in which the court used it results in the statement: The mathematical ratio may be used ". . . for a limited period of time or until there is a fair approximation of minority representation consistent with the population mix in the area."[42] The word "until" is the significant word in this second alternative phrase because it signals the qualification of time. In the statement made by the Eighth

39. "Indefinite" as used above refers to a situation where a court may have ordered the utilization of a "mathematical ratio", but failed to set any standard by which the time for termination of the utilization of the "mathematical ratio" might be reasonably ascertained.

40. 452 F.2d at 330.

41. *Id.*

42. *Id.*

Circuit Court of Appeals, the word "until" is used in conjunction with the achievement of a goal. That goal is the existence of a fair approximation of minority representation consistent with the population mix in the area. The achievement of this goal then is the measure by which the court qualifies the time in which the "mathematical ratio" may be utilized. Once the goal is achieved, utilization of the mathematical ratio will be terminated. Here again then, language is used by the Eighth Circuit Court of Appeals to suggest that since the "mathematical ratio" is to be utilized only for a short period of time, it is acceptable whereas the utilization of the "mathematical ratio" would be unacceptable to the court as constituting a "quota system" were the ratio used for an indefinite period of time or permanently.

While the appellate court in *Carter* is careful to contradistinguish its "mathematical ratio" from a "quota system", in *Patterson*, the Second Circuit Court of Appeals shows no reservation at characterizing the mathematical ratio being considered by that court as a "quota". In *Patterson*, the district court had ordered utilization of the mathematical ratio. The district court specified that one of every two persons promoted to a higher job status be a minority person until 25% of the employees hired were minority persons.[43] The district court issued this order on the basis of the settlement reached by the parties in *Patterson*; the "mathematical ratio," discussed above, was one provision of this settlement. An intervenor appealed the district court's approval of the settlement. In affirming the district court's approval of the settlement, the Second Circuit Court of Appeals cited *Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission*[44] and noted that in *Bridgeport*, it had upheld the imposition of racial hiring quotas. Consequently, there apparently exists a difference of opinion between the Eighth Circuit and the Second Circuit as to whether the term "quota" should be used to characterize the "mathematical ratios" implemented by those courts for hiring and promotion of minority persons.

There seems to be a point of reconcilement in the apparent difference of opinion, discussed above. As was established earlier, the court, in *Carter*, indicated that it considered the term "quota system" to denote an allotment of job vacancies by an employer to be continued either for an indefinite period of time or permanently, there being a court requirement that the job vacancies so alloted be filled only by minority persons. According to this denotation of "quota system", an employer would be either indefinitely or permanently required to keep enough minority persons employed such that the percentage of minority persons hired by the particular employer at any given time would correspond to the

43. 384 F. Supp. at 590.
44. 482 F.2d 1333 (2nd Cir. 1973).

percentage of minority persons inhabiting the area from which the particular employer draws his work force. If the appellate court in *Patterson* applied the foregoing denotation to the term "quota" when it stated that "hiring quotas" might be utilized to remedy the past effects of racial discrimination in employment, then that court would have contemplated that the "mathematical ratio" being considered by it be utilized for an indefinite period of time or permanently. There is indication, however, that the Second Circuit Court of Appeals did not contemplate that the "mathematical ratio" being considered by it be used either indefinitely or permanently. For instance, in *Patterson* the Second Circuit Court of Appeals was sanctioning a "mathematical ratio" which was to last only for a period of five years, not indefinitely or permanently. Also, as mentioned earlier, in sanctioning the use of what it characterized as a "hiring quota" the Court of Appeals noted that it had upheld the use of the "hiring quota" in *Bridgeport*. But in *Bridgeport*, the utilization of the "mathematical ratio" was to be terminated once the goal of approximately 15 percent black and Puerto Rican representation in the various ranks of the Bridgeport Police Department was achieved.[45] Thus, in *Bridgeport*, utilization of the "mathematical ratio" was not to be indefinite or permanent in duration.

The point of reconcilement in the apparent difference of opinion between the Eighth Circuit and the Second Circuit as to whether the term "quota" should be used to characterize the "mathematical ratios" sanctioned by both those courts is that both courts sanctioned the utilization of "mathematical ratios" only for a definite or limited period of time—not indefinitely or permanently. Accordingly, the Second Circuit Court of Appeals actually sanctioned the use of a "mathematical ratio" and not a "quota system", at least, not according to the denotation the Eighth Circuit Court of Appeals applied to the term "quota system".

The utilization of the "mathematical ratio" is probably the most controversial procedure used by the federal courts in their effort to protect the restitution interest of minority persons; that is, to compensate minority persons for the jobs and positions they are presumed to have lost in consequence of the racial discrimination in employment practiced against minority persons. Some courts, like the appellate court sitting *en banc* in *Carter*, utilize the "mathematical ratio" only with the greatest reservation. Such courts apparently take the position that the "mathematical ratio" is inherently discriminatory within itself.[46] Indeed, it does seem ironic that a court would have to consider implementing a form of

45. 354 F. Supp. at 798.

46. See the concurring opinion of Justice Feinberg (514 F.2d at 776) where he uses the term "racial quota" as synonymous with "mathematical ratio" and states: "A racial quota is inherently obnoxious, no matter what the beneficent purpose. Such a quota is demeaning and devisive. At best it is a lesser evil. It should not be encouraged."

racial discrimination in an effort to eliminate the past effects of racial discrimination. But as noted earlier, the Supreme Court has sanctioned as constitutional the utilization of the "mathematical ratio" as "a starting point in shaping a remedy" for the past effects of racial discrimination.[47]

CONCLUSION

The decisions rendered in the principal cases and the reasoning used by the courts in arriving at those decisions are reflective of a recently developed trend. That trend is the utilization by both the federal district and appellate courts of the controversial procedures described above to erase the past evil effects of racial discrimination in employment. Currently, many cases similar to the principal cases are being brought before the federal district and appellate courts for adjudication. Significantly, the federal district and appellate courts are using the procedures described in *Carter, Afro* and *Patterson* in arriving at decisions similar to those rendered in the principal cases. Several very recently decided cases provide some indication that the trend has become well-established and will continue for some time to come.[48]

JACK H. GLYMPH

The North Carolina Administrative Procedure Act— Its Effect on the North Carolina Board of Law Examiners

INTRODUCTION

On February 1, 1976, the North Carolina Administrative Procedure Act[1] will go into effect. It is perhaps one of the least known and possibly one of the most important enactments of this type in recent years. The impact of this act on state government has not been determined. It will take many years of judicial and legislative action to understand how broad this act will be. However, the preliminary efforts alone being directed toward its implementation have indicated a substantial effect on state agencies.[2]

47. Swann v. Charlotte-Mecklenburg Bd. of Educ., *supra* note 36.

48. Barnett v. W.T. Grant Co., 518 F.2d 543 (4th Cir. 1975); U.S. v. T.I.M.E. D.C., Inc., 517 F.2d 299 (5th Cir. 1975); Stevenson v. International Paper Co., 516 F.2d 103 (5th Cir. 1975); Dozier v. Chupk, 395 F. Supp. 836 (S.D. Ohio 1975); Officers for Justice v. Civil Service Comm'n San Fran., 395 F. Supp. 378 (N.D. Calif. 1975).

1. As used in this article, the statute referred to as the "North Carolina Administrative Procedure Act," is N.C. Gen. Stat. § 150A-1 to -64 (Supp. 1974), referred to in the text as the N.C.A.P.A.

2. This author was employed by the office of the Secretary of Administration to