

POPULAR GOVERNMENT

INSTITUTE OF GOVERNMENT □ THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL



Summer 1988

A Life in Public Health AIDS and Employee Rights
Infant Mortality Strategic Planning for Communities
Council-Manager Relations Voting Rights Act Update
Effective Planning by Governing Boards

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The Cover: Greensboro is one North Carolina community that has taken the long-range perspective of strategic planning. For details, see the article on pages 21-26. Photograph by Robert C. Cavin.

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COURTESY ANN BELL



Something to Compliment *Ann Bell's Life in Public Health*

Anne M. Dellinger

What government can do today rests on what those before us accomplished. That fact was confirmed recently when Annie Smith Bell, a North Carolina public health nurse for thirty-four years, agreed to reminisce about her service. The information and quotations in this article were taken from the author's interview with Mrs. Bell on February 12, 1988, in Chapel Hill.

Ann Bell came to public health nursing almost by accident but stayed to build a long and fruitful career. As a new nursing graduate, she had tried hospital work—and met her future husband among her first patients. But soon an unpleasant incident suggested the wisdom of moving on. Ann came upon a doctor tipping from the hospital's alcohol cabinet, and as she recalls, "He decided he was going to get rid of me." Reading in the paper that the health department needed a nurse, she landed the job, gave notice at the hospital, and two weeks later, without a day off, started her life's work.

In September of 1949 public health in Randolph County consisted of a few rooms in Asheboro located in the courthouse basement and staffed by a director, a nurse, and a sanitarian. Ann's starting salary of \$180.00 a month bettered the hospital's by \$10.00—"Ten dollars meant a lot in those days." It did not provide for retirement, however! Moreover, the nurses furnished their own cars, reimbursed at four cents a mile, and worked a half day on Saturdays.

She and her colleague, Lucy Davis, divided the county between them, north and south. Most days they worked alone, but sometimes they came

together as a team. One special program she remembered vividly: "Our rural immunization clinics we affectionately called 'our summertime goodwill tours.' The county was predominately rural, and the people had difficulty getting to the health department, so we took the immunization to them. Schedules were posted in the country stores, and announcements were made in churches and at any public gathering. We would leave the health department at 7:30 A.M. with our vaccines, which included typhoid, diphtheria, whooping cough, and smallpox. We made our stops at designated places, such as schools, churches, country stores, and even at crossroads, under the trees. The people would come early and socialize while waiting for the nurses. Usually we made five to ten stops each day and gave as many as fifty immunizations at each stop. One of us kept the records, consisting of a list of the name, age, and immunization given. The other nurse would give the injection. Needles were sterilized in boiling water over an alcohol burner. These rural clinics were held for four weeks each summer until 1952 or 1953.

"We had regular immunization clinics at the health department. Later we established outlying clinics in some of the thickly populated areas. I started two of these clinics—one at the fire department in Archdale and another in the town hall in Liberty. At these two clinics I worked alone. I would write the record, jump up, wash my hands, give the injections, come back, and start over. I gave ninety immunizations all by myself at Liberty one afternoon. Finally, someone volunteered to help. She'd fill out the child's name, birthday, and

The author is an Institute of Government faculty member who specializes in health law.

parents' names; then I would put down the type of immunization that I gave."

The nurses worked closely with other health department staff: "Every spring or summer we'd have rabies clinics all over the county. The sanitarian would work with the veterinarian to set up the clinics, and then the nurses would take posters as we went about all over our districts, tacking them up at crossroads and in stores—anywhere in the county we felt people would see them."

They visited children who had had polio, the disease that devastated North Carolina, taking Ann's husband in 1956. Hot wet packs were applied to withered limbs in an effort to restore function.



Once, in the midst of treating a child in this way, Lucy predicted, "Bell, before we die we'll see a vaccine for polio." Ann recalls: "I said, 'Lucy, you're crazy.' But when that day came, it was one of the most wonderful I encountered in public health."

Though tending people of all ages, her concern was never far from children, and she counts the successes there among her best memories: "If we found children in school who didn't have clothes to wear to keep them warm, we went to the church or civic group and got clothes and food for the family if they were hungry. [Some schools] didn't

have a cafeteria either, and we started a soup program so the children would have a hot meal every day. The women in the community would furnish vegetable soup and crackers, and we heated it at school."

Often a child's handicap was first noticed at school, and school screening could lead to useful contacts with whole families. Ann once met five children (three boys and two girls) who needed help: "The teacher called me in to see a first grader. 'Mrs. Bell, look at Jimmy here. He's got one eye looking at the other and says there's more at home like him.' I asked if I could take Jimmy home that afternoon. When I met his mother, she was holding a baby with crossed eyes, and three more little ones were standing 'round her. I worked with the Lions Club in Archdale, and we got all five kids under medical supervision, and each child had successful surgery. Another little boy I'd taken to eye clinic was fitted with glasses. When the glasses came, he didn't want to put them on. You remember those ugly pink frames that all eye-clinic patients received. I convinced him to try them on, and when he did, he looked down, then up at me with a big smile and said, 'Mrs. Bell, the grass is green!' The glasses had corrected his visual problem."

The nurses' interest in a family might strike parents as bad news at first, but they usually came around: "When I was in my second or third year of public health, I was making a follow-up visit from Union School in a very, very rural community, down between Seagrove and Black Ankle. The road was impassable, so I got out and walked. It was a rainy day, I had on boots and a long raincoat. I got practically up to this house, and five black, skinny, scrawny hounds came out snarling and barking, and I froze. I could not move. Finally, a woman came to the back door with snuff dripping down both sides of her mouth and yelled at me, 'What you want?' I said, 'I want you to call these dogs. I need to talk to you.' She took the dogs back, and you know, we became real good friends! And we got her little girl to the eye clinic.

"Another time I sent a note home with the mill president's daughter telling her parents she needed to be seen by an eye specialist. Her daddy got mad. He sent her to a specialist, who confirmed what I said. Then he called me. 'I've

been saying bad things about you, Mrs. Bell. Like, *That nurse ought to mind her own business, and She doesn't know what she's doing.* Even though you didn't hear them, I've been saying them. I was wrong, though, and I'm calling to apologize."

"I went far back into the country once to treat a child for head lice. We used DDT powder then, sprinkled it on their heads. I did manage to treat the child—but had to do it standing on the front porch with her dad holding a gun on me the whole time! Convincing people to take immunization took special efforts. Lots of people didn't believe in it, thought God alone should take care of their children. We had to take some peo-



ple to court to enforce the law requiring children to be immunized against diphtheria, whooping cough, and smallpox before entering school."

Handicapped children could be a heavy burden in rural communities with few services and no residential facilities. Ann worried for the future of one particular family: "The girl was mentally retarded. She was about thirty years old and had the mentality of a five- or six-year-old. She had older brothers, and they had friends. I asked her mother, 'What would happen to your daughter if you were to die?' And she said, 'I don't know. They'll look after her.' I said, 'Well,

I don't know. She might get pregnant. You know she can't look after a baby.' She said, 'That [welfare] case worker has been here trying to get me to have her operated on, and I ain't going to. I just don't want her to be operated on.' I said, 'It's your decision. But, if something should happen to you and she should get pregnant, she couldn't blame me.' I left her, and two weeks later the mother wrote me a note and told me that she wanted me to send the case worker to see her. The sterilization was done, and the mother had a fatal heart attack only two months later."

Then, as now, premature births contributed significantly to North Carolina's



high infant mortality rate. Public health nurses were called on to help these littlest ones, bringing them from small hospitals to the state's most sophisticated medical centers. The nurses did their best in quite difficult circumstances: "In the early '50s the legislature decided that many premature babies could be saved if we had premature centers in the teaching hospitals. We had centers at Rex, Duke, and Baptist. The state furnished incubators and little, tiny oxygen tanks, and the nurses would take turns transporting premature babies in our own cars to the centers when the doctors who delivered

them wanted them transferred. We weren't told of the dangers of a child receiving too much oxygen. I know of two children I transported who are blind. If I'd let it, it would worry me. But I was doing my job, and the children are living. It was exciting to take those babies, and even more exciting to follow their case after they returned home."

With public health's strong emphasis on prevention, it was natural for Ann to see herself as an educator and to use time with patients and families as an opportunity for "planting the seed" of better habits. To make this point she borrows the words of a visiting professor at The University of North Carolina at Chapel Hill's School of Public Health, where she earned a public health nursing certificate in 1951: "Dr. Applewhite² was discussing public health in class, and one of the health educators raised her hand and asked, 'Where does the health educator fit into this part of the program?' He stood up there and scratched his little, white head and said, 'Lady, I'd hate to think that there was anybody in this room that's not a health educator. We're all in health education. And we've got to hitch up early and plow late to keep things going.'" Dr. Applewhite's injunction is as valid today as it was then.

Although people usually welcomed the nurse's attention, there were notable exceptions. When contagious disease broke out, Ann became the representative of the law: "Quarantine signs had to be posted saying the family couldn't have visitors and wasn't supposed to visit anyone else's home for so many days. Many times we'd post the sign, and the family wouldn't cooperate."

Also the sexually transmitted diseases were special problems to patients and their sex partners: "Anyone who tested positive at the health department for syphilis or gonorrhea or anyone whose name the military sent us was interviewed for contacts and treated. Special effort was made to locate contacts. One section of the county with a lot of venereal disease cases knew me pretty well. They'd say, 'Here comes that police woman in the navy blue coat.' And no matter who you asked for, nobody knew them.

"Tuberculosis was also a serious problem. Cases were diagnosed by X-ray and sputum tests. Many times I had to take people with active cases of this

disease to the sanitarium for hospitalization and follow-up treatment. After a case was diagnosed, all close contacts had to have chest X-rays and tuberculin tests. It was not easy to get people who felt good to agree to have these tests made. Sometimes we had to invoke the law, which stated that all people with cases of active tuberculosis had to be hospitalized for treatment. Uncooperative patients would receive their treatment at the prison unit of the State Sanitarium."

Perhaps those experiences prepared her in some measure for the last phase of her public health work. Ann and her son left Randolph County for Guilford



County in 1967. For several years she continued to work as a district nurse, but in 1974 a surprising new assignment presented itself. Ann Bell became the county's—and the state's—first jail nurse: "The first day I went back to work [after a vacation], I was met by Dr. Morrow.³ She said, 'The county commissioners have asked me to assign a nurse to the jail, and you're it.' I said, 'What?' She said, 'Wouldn't you be interested in doing that?' I said, 'Well, I'll give it a try.' They assured me that if I didn't get any job satisfaction in it, I could have my old district back. And every day I swore I wasn't going back to the jail the next

day, but I always did. As the first jail nurse in the state, I didn't have any rules set, any guidelines, anything. The doctor that I worked with and I kept what we called our 'log. Just a journal where he'd make entries when he went to see any of the inmates. He'd write down their names, their complaints, and prescribe medication or a treatment that I would be responsible for securing for them. Finally we decided that we had to have guidelines. So we sat down and wrote them ourselves."

Lack of guidance was not the only difficulty. The first hurdle was suspicion from sheriff's department employees: "All the jailers and people that were

said because I'd been betrayed so many times. They'd fake fainting, heart attacks. That adds another whole dimension to health care when a patient tries to fake it."

Inmates also threatened legal action and sometimes followed through. Twice Ann defended her professional competence in court. Once her records proved that an inmate had not even mentioned the condition he claimed was untreated. A second man "said he didn't know what he was signing when he signed some paper because we had him too heavily sedated. I had to go to court and testify that no sedative had been ordered for him. Later we found out that

executed. I called to the deputy, and he came back in and stayed with me and the inmate while I was giving the treatment."

Asked why she chose to spend nine years in this setting, Ann speaks of needs: "Seeing people get just some little bit of care, medical supervision, that they didn't get on the outside is satisfying. . . . I sent some to the hospital who I thought were really having heart attacks, and one of them was. . . . People in jail feel that nobody cares. They've lost all contact with a caring population, and seeing one person whom they feel cares means a lot to them. They would sometimes fake illnesses just so they could be brought down to the sick room—the place where I had my office. And I'd know they were faking, but I'd see them and talk to them just as though they were sincere in what they were saying. They needed something from you even if it wasn't medical care."

It is clear to an observer that Ann Bell's extraordinary ability to care—and to learn how best to care—permeated her career in public health. She drew from the lives and work of others to shape her behavior and form her philosophy. A fondly recalled mentor is Dr. George Sumner,⁴ the first health director for whom she worked. Dr. Sumner tried and finally succeeded in tempering her crusader's instinct into nonjudgmental compassion. Ann says he told her: "Bell, you're in for a lot of heartache. You're not going to change certain people. They were here long before you came. Who are we to try to change them? We try to plant some good seed with the children; maybe it'll mature when they have families. And don't you criticize people until you've walked in their shoes." Sometimes the same message was lighter: "Once when I came to him, I was mad; I was angry because this woman was going to have her tenth baby. I said, 'Dr. Sumner, what in the world are we going to do? We need to do something about that woman.' He looked at me, started laughing, and said, 'Bell, here you go judging people. Put yourself in their place. The only fun that man and woman ever have is what they have under the kivers!'"

Through the years she absorbed the advice and used it. For instance, she says: "The cooperation of schools with the health department's nurse depended on the nurse. I went into the



connected with running the jail were skeptical. They felt like I was being sent to spy, and it wasn't until they started calling me 'Ma Bell' that I realized I had been accepted."

Another hurdle, not overcome during Ann's decade at the jail, was the need she saw for twenty-four-hour nursing service there. It was hard, too, to accept that often inmates were not to be believed. "When people are in jail—guilty or not guilty—it's a time in their lives when they're the hardest to deal with. I would believe everything they'd tell me when I first started, but after nine years, I didn't believe anything the inmates

his brother had sneaked Valium into him, and that's the reason that he was heavily sedated."

Worst of all were the times she felt physical fear: "I was never left alone with inmates. That was one of the requirements—a deputy had to be left with me at all times when I was seeing inmates. One day a deputy started to step out of the room, leaving me alone with the only person I have ever actually been afraid to be alone with. He had been arrested for the rape and murder of two elderly women in Guilford County. He was later tried, found guilty, and is now on death row waiting to be



COURTESY ANN BELL



COURTESY NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY

Left: The Class of 1948 on graduation day, Baptist Hospital, Winston-Salem. Right: March of Dimes campaigns helped fund research to develop the polio vaccine that Ann Bell's colleague foretold. (*The News and Observer*, 17 January 1942)

schools as a resource person. I didn't go in to try to tell the principal what he had to do and what we were going to do. I went in and asked if there were any way I could help him. You have to do that in anything. Dr. Sumner taught me that nine times out of ten you can guide people into thinking the way you want them to think. I know. I worked it on Dr. Sumner himself many times."

A conversation with a hospital psychiatrist in her later years in Randolph County revealed to Ann how thoroughly she was mastering the art of public health nursing. She was making home visits to discharged mental patients living in the county. The medical staff at Butner, where they had been hospitalized, also visited. For one doctor, the change of environment was disturbing. He emerged shaken from his first attempt. "How do you do it—go in these homes and treat people?" he asked. "I've never felt at so much of a loss. Scared to death, in fact." Ann's surprised reply then was: "I don't know. It just comes natural. You go in as one of them." Today she adds, "That may be the most significant difference between public health and the private physician or hospital mode of treatment—the patient's in control."

From another teacher Ann learned to pause in her medical routine to establish human bonds with patients, for their own sake and in order to strengthen the professional bond: "I remember what Margaret Blee⁵ told us. She told our class, 'I don't care what kind of home

visit you're making, you can find something beautiful about a home—something to compliment. Even if it's just a flower in the yard or pretty trees nearby.'"

Ann also took strength from special patients and their family members: "A

COURTESY ANN BELL



Staff of the Randolph County Health Department, 1956. Ann Bell stands fourth from the right.

woman whose husband I was visiting—he died of his condition, and they had two month-old twins, a mentally retarded oldest child, and three more in between. I have followed her closely through the years. All of her children who could finish high school did and went to college. They've all graduated from college and, except the retarded one at home with her, established homes of their own." And she drew on her religious faith, especially in the rare and precious instances when it seems to her that God marked the path rather clearly. Foremost was this strange experience: "There was a woman I considered a friend. I'd met her through some community activities and occasionally I'd stop by and see her. One day I was in the community, so I stopped by, blew my horn, and she came to the door in a little bit and asked me in. About two weeks later I went back, and she said, 'Mrs. Bell, I want to know something. Why did you come by the other day?' I said I didn't know. She had been very depressed. 'You won't believe what I'm fixing to tell you,' she said, 'but it's the truth. I had my husband's gun up at my head getting ready to pull the trigger when I heard your horn blow. I saw you, and I knew I couldn't do it.' I said, 'We'll put it this way. God directs me. He directed me to your house that day.'" Ann adds to that account, "There have been several times that I have felt the pull to go places and realized when I got there what it was pulling me."

At this point her professional nursing work appears to be over. Though she is licensed, Ann Bell no longer practices. It is time for her to assess her career: "The satisfaction came from knowing that I was doing something to contribute to the better health of the individual in the community. The frustration was the lack of concern of the people who should have had concern. I had a doctor say one time that I was wasting taxpayers' money because I was working at the health department. Of course, all doctors were not like that. Then, too, some parents were unwilling to do things to improve the health of their child or to try to see that things got done. They were content to let the children continue the way they were living—could see no way improvements could be made."

Would she choose public health nursing again? Perhaps not: "It's a compli-

ANNIE SMITH BELL

Born: January 9, 1921, in Meadow Township, Johnston County, North Carolina.

Educated: Meadow High School (valedictorian); three-year diploma program, Baptist Hospital, Winston-Salem, 1948; certificate in public health nursing, The University of North Carolina at Chapel Hill, 1951.

Married: A. Fleming Bell, 1949; widowed, 1956.

Employed: Randolph County Health Department, 1949-1967; Guilford County Health Department, 1967-1983.



Ann Bell, 1955

COURTESY ANN BELL

ated field at present. I guess it always was. Prevention is always harder than treatment. . . . The public health nurse will always have a place. But knowing what I know now, I don't think I'd [even] go into nursing. A nurse today has to be master of many skills (secretary, electrician, mechanic, know computers—to name a few) in addition to nursing. To me, nursing is the laying-on-of-hands, the contact you have with the patient."

She wonders whether nurses have the time to get close to people and how many have the independence she enjoyed. Cutting health costs by pressing patients for reimbursement is a modern requirement she deplors. But above all, Ann mourns the passing of the nurse as a generalized public health practitioner: "In this day of specialization there's a school health nurse who comes to visit about Johnny who is in school; a mater-

nity or family planning nurse who comes about a new baby on the way; a child health nurse who comes to see about the preschool child; then Grandma might be sick and living in the family with them, so there's a nurse who comes to see her. Maybe a mental health nurse is also coming to see somebody in the family." That's confusing, she believes, and unfortunate. Though she does not say it herself, many who knew her would say that Ann Bell was all of these.

1 Randolph County did not provide retirement benefits for county employees until 1973.

2 C. C. Applewhite M.D. then director of the Local Health Division of the State Board of Health.

3 Sarah T. Morrow M.D. Guilford County health director and later (1977-1984) state secretary of human resources.

4 George Herbert Sumner M.D. Randolph County health director from 1927 to 1953.

5 Margaret Blee, professor of Public Health Nursing, UNC-CH from 1941 to 1962.

Infant Mortality in North Carolina

Richard R. Nugent

There is no family event more poignant and painful than the loss of an infant. In 1986 1,049 North Carolina babies died before their first birthday. That number represents an infant mortality rate (IMR) of 11.6 per thousand live births.¹

For these families, the events were tragic. For all North Carolinians, they are of great importance because this state's IMR is so high compared to other states. In 1986 only five of forty-nine other states had worse rates.²

Within North Carolina, infant mortality rates are not uniform among races and counties. In 1986 nonwhites suffered an IMR of 16.6 per thousand, compared to 9.2 for whites. When statistics for 1982 to 1986 are combined, five-year IMR for the counties varied from a low of 4.4 to a high of 20.4 per thousand live births. These comparisons are shown in Figure 1.

These problems have been known for many years. North Carolina, in cooperation with local government and health care providers, has been making many efforts to reduce infant deaths. Those efforts have been successful so far. Infant mortality rates for the state have declined fairly steadily since 1975, as depicted in Figure 2. But some European countries have rates as low as 6 per thousand, and our state's rate must improve dramatically for us to catch up.³

Causes of Infant Mortality

Why do North Carolina infants die? The answers are multiple, complex, and to a large degree embedded in social problems. Medical problems, especial-

ly prematurity, are the most immediate causes. Yet these causes result, at least in part, from lack of prenatal care, poor nutrition, stressful lifestyles, inadequate education, and poverty. Age is another important factor: adolescent mothers suffer all of these problems with greater frequency than older mothers.

Prematurity and medical conditions

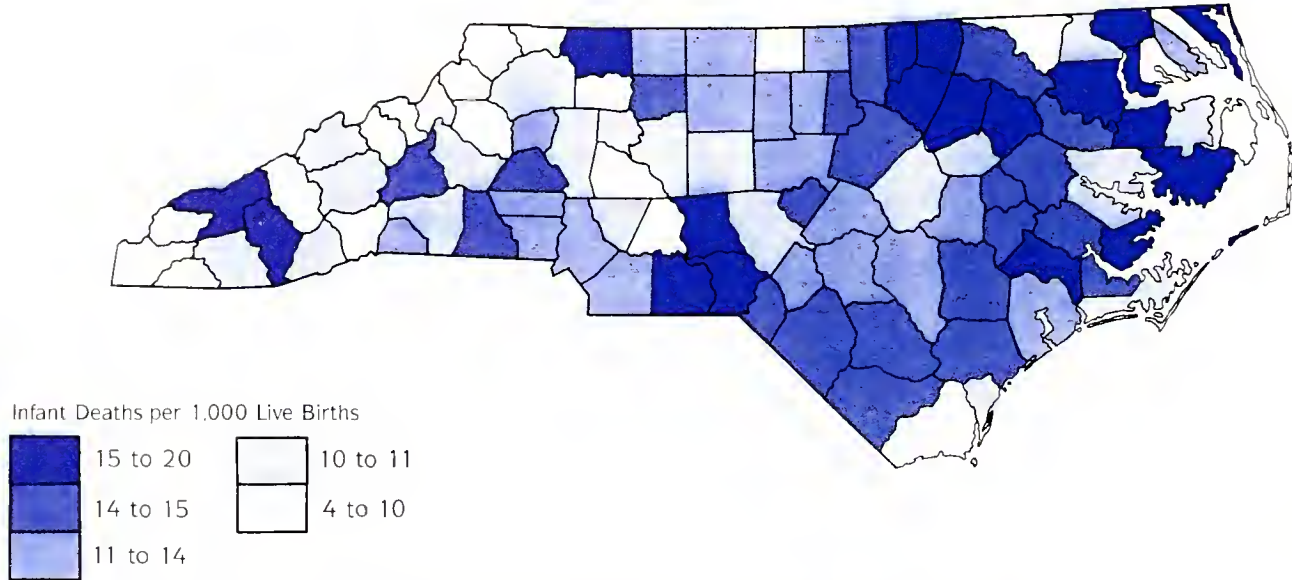
Prematurity is the most important single cause of infant death. Babies are considered premature if they are born too small (weighing less than 5½ pounds or 2,500 grams), born too soon (delivered more than three weeks before their due date), or both. In North Carolina in 1986 7,142 newborns weighed less than 2,500 grams, for a low birth weight rate of 7.9 percent.⁴ North Carolina ranks high among states for this statistic, too. Babies who are born too small suffer very high infant death rates. In 1985 the infant mortality rate for low-birth-weight babies was eight times that for all newborns.⁵

Another way to identify prematurity is by medical diagnosis. For example, infants who suffer from hyaline membrane disease or respiratory distress syndrome do so because they are premature. Many other medical conditions also result from prematurity. A careful review of North Carolina's infant deaths by Dolfuss and Cross revealed that half (51 percent) had a diagnosis indicating prematurity.⁶

It is a matter of concern that North Carolina's low birth weight rate has not declined since 1978. In fact the percentage of newborns with extremely low

The author is a medical consultant in the Maternal and Child Health Branch of the Division of Health Services, Department of Human Resources.

Figure 1
North Carolina Infant Mortality Rates by County
1982-1986



Source: State Center for Health Statistics, Division of Health Services, Department of Human Resources.

weights (under 2 pounds or 1,000 grams) appears to have increased in recent years. Figure 3 shows these trends.

Lack of prenatal care

It has long been known that mothers with less prenatal care suffer higher infant death rates. A good statistical measure of quantity of prenatal care is the Kessner Index. This index groups births into three categories of quantity of care: adequate, intermediate, and inadequate. *Adequate* means that the mother began medically supervised prenatal care in the first trimester of pregnancy and made all the visits recommended by the American College of Obstetricians and Gynecologists (ACOG) for the duration of her pregnancy. *Inadequate* means there was no care at all, the care did not begin until the last trimester of pregnancy, or the number of visits was less than half of that recommended by the ACOG. *Intermediate* applies to the remainder.

In 1986 mothers with adequate prenatal care had an infant mortality rate of 8.9 per thousand, while those with less-than-adequate care had a rate of 16.4.⁷ Mothers with *no* prenatal care had an even higher infant death rate. Furthermore the percentage of all North

Carolina births with inadequate and no care is increasing. Figure 4 shows these trends.

Poor nutrition

There is growing evidence to suggest that nutritionally depleted women who become pregnant may have reduced chances of delivering a healthy baby. Nutritional risk factors that may have an impact on infant health include poor maternal weight gain, low prepregnancy weight, nutritional anemia, alcohol consumption, and poor intake of certain vitamins. A poorly nourished woman entering pregnancy benefits from supplemental foods by replenishing her body's own nutritional stores, and the unborn baby benefits, in turn, by the added nourishment it receives.

The Special Supplemental Food Program for Women, Infants and Children (WIC) is a federally funded nutrition program administered through the North Carolina Department of Human Resources, Division of Health Services. WIC is designed to provide nourishing foods and nutrition education to low-income, nutritionally at-risk women, infants, and children. Evaluations of this federal program have demonstrated that women who participate in it have

increased intake of certain key nutrients, are able to reverse poor weight gains, have longer pregnancies, and have infants with higher birth weights and greater head circumference than their non-WIC counterparts. Additionally, participation in WIC has been associated with a 33 percent reduction in late fetal deaths as well as reductions in neonatal mortality rate.⁸

In North Carolina, babies of WIC mothers have a low birth weight rate of 7.5 percent, compared to the overall state rate of 7.9 percent.⁹ This lower rate is particularly impressive, given the fact that WIC participants live in poverty and have other factors predisposing them to premature delivery. However, funding limitations allow only 48 percent of North Carolina's eligible prenatal population to actually participate in the program.

Stressful lifestyles

Papiernik and others in France studied many factors about lifestyle that they found to be associated with low-weight birth. Some of these factors were related to employment. Long commutes to work and jobs requiring long periods of standing or use of vibrating machinery showed associations with

premature birth, especially among women who had a previous low-weight birth.¹⁰ Other studies have emphasized the problem of cigarette smoking. North Carolina's WIC program has documented that women who smoke give birth to low-weight babies more frequently than those who do not smoke—even when age, race, and prepregnancy weight are taken into consideration.¹¹ Still other studies have indicated that alcohol consumption and major life-change events (such as deaths in the family, moving, and sudden unemployment) are also associated with infant death.

Adolescent pregnancy

In 1985 North Carolina's adolescents under the age of eighteen contributed 6.1 percent of all births, but these births accounted for a disproportionate 9.7 percent of all infant deaths.¹² North Carolina's adolescent pregnancy rate per thousand for girls fifteen to nineteen, which was 92.3 in 1982,¹³ rose to 95.3 in 1984,¹⁴ and has declined only slightly to 94.0 in 1986.¹⁵

North Carolina Services and Programs

Because the problem is one of multiple causes, the state has developed an extensive network of services to address it. Cooperation among federal, state, and local sources of funding and between public and private health care providers has enabled many pregnant women and infants in poverty to receive basic and special services. Each of these programs offers not only funding but also consultation, technical assistance, and professional education to maintain quality of care.

A number of public health programs address the health of women in their reproductive years and assist providers in serving indigent clients. The Family Planning Program supports clinics, and WIC provides nutrition education and supplemental foods in all North Carolina counties. The Maternal Health Program supports prenatal clinics in ninety-one counties and public health nursing care to individual pregnant women in the remainder. The Perinatal Care Program subsidizes eighteen of a network of

Figure 2
Total Infant Mortality Rates for North Carolina
1975-1986

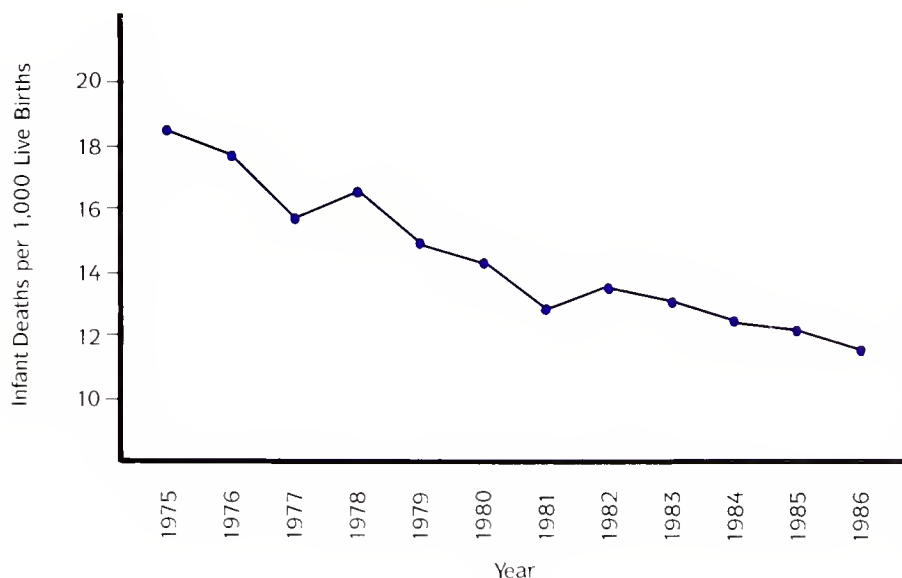


Figure 3
Percentage of North Carolina Births by Birth Weight
1975-1986

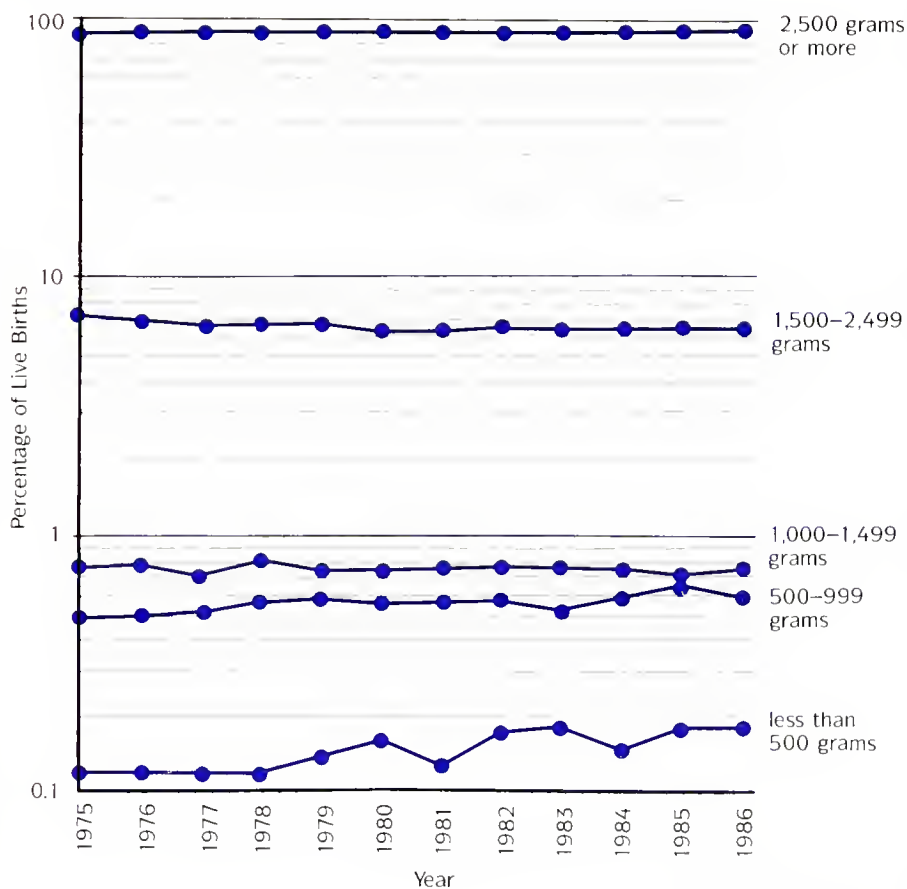
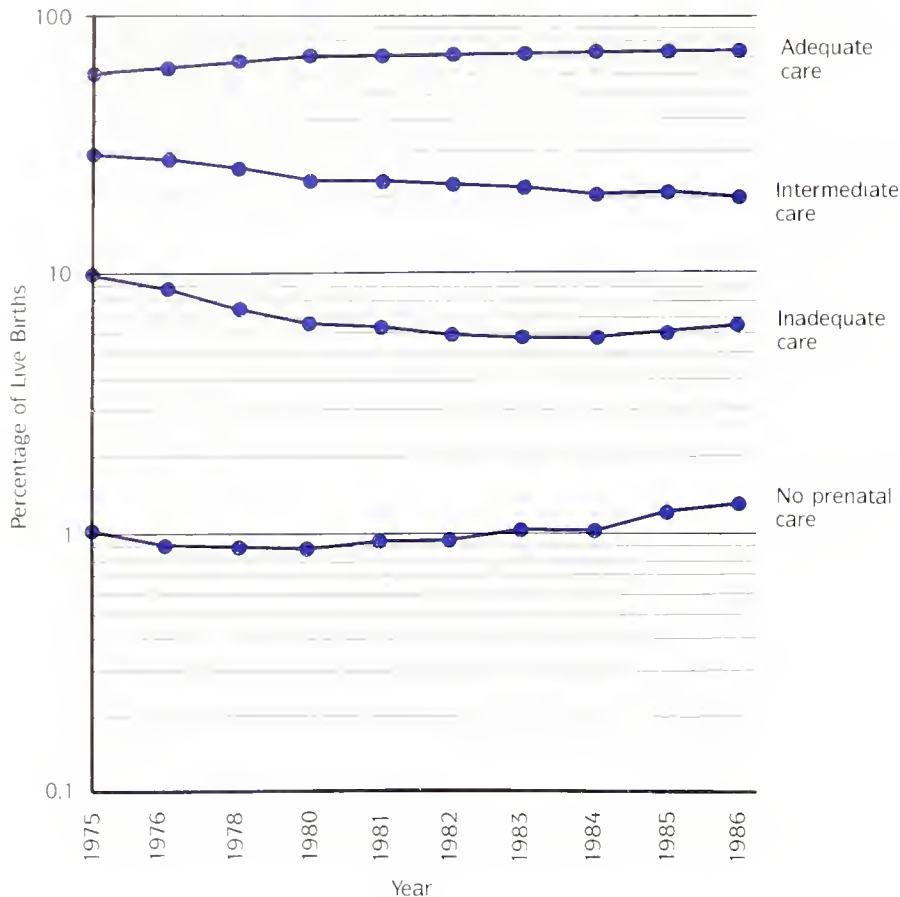


Figure 4
Percentage of North Carolina Births by Adequacy of Prenatal Care
1975-1986



twenty-one high-risk maternity clinics organized to provide special medical, nutritional, and psychosocial care to poor pregnant women with medical complications. This program, until recently, also funded a network of level-III hospitals to provide obstetrical and neonatal intensive care to mothers and infants in need (Level III hospitals are major medical centers giving intensive perinatal care.)

Regarding services to children, the Child Health Program supports pediatric and well-child clinics in health departments in all counties. The High Priority Infant Program supports health departments in working with local hospitals to identify newborns at risk for developmental delay and to follow them closely to ensure early referral to the Developmental Evaluation Centers for careful assessment when needed. There are eighteen such centers well distributed across the state to diagnose and serve infants and young children with developmental delays. The Children's

Special Health Services Program subsidizes specialty clinics and reimburses hospitals to serve poor children with chronic remediable disease. And the Sudden Infant Death Syndrome Program supports health departments in all North Carolina counties to provide counseling and emotional support to families who have experienced a sudden infant death.

Specific initiatives to address certain aspects of infant mortality have also been instituted. *Adolescent pregnancy prevention* initiatives began in the early 1980s. Family planning clinics provide enhanced outreach to teens in need as part of the basic service, and recent appropriations by the General Assembly to support these efforts have been rewarded by big increases in the number of teens served. In addition thirty-four new special projects have been funded by the General Assembly to help communities develop education and community coordination strategies to prevent adolescent pregnancy.

Lifestyle change initiatives in recent years have included a special attempt to develop health promotion services for women before conception, with projects in family-planning clinics in fifteen counties. In these projects clients are given a questionnaire to help them identify lifestyle risk factors that will reduce their chances of delivering a healthy baby. Factors identified are then discussed with the client, and, if necessary, she is referred to services that would support her in making the lifestyle changes. The bulk of referrals made involve nutritional problems such as being underweight or overweight, smoking, alcohol use, and chronic illness like high blood pressure and diabetes.

Recruitment to prenatal care has been enhanced in recent years by several initiatives. For example, the teen pregnancy appropriation mentioned above also provided funds for prenatal care to serve poor mothers of any age. Health departments were encouraged to provide prenatal care at times and places more convenient to patients and to increase their overall recruitment efforts. More recently begun, however, is a Medicaid program called Baby Love, which is described below.

In 1983 a group of the leading obstetricians and neonatologists recommended that *prematurity prevention* become a new focus in obstetrics.¹⁶ New medical care methods have been developed to prevent preterm birth.¹⁷ Mothers at risk receive education and support to reduce risk factors, many of which are related to lifestyle. But in addition the mothers are given special instruction in identifying the early signs and symptoms of premature labor. If preterm labor is discovered early enough, some mothers can be treated to forestall it and can carry the pregnancy on to term. The federal Maternal and Child Health (MCH) Set Aside grant program funded a special project at Bowman Gray Medical School in the northwestern North Carolina perinatal region. This project has been successful in reducing the low birth weight rate among its client's births, compared to other births in the same region.¹⁸ By 1985, with additional appropriations from the General Assembly, nearly all counties had begun actively conducting risk screening for preterm labor and providing special patient education

where staff resources permitted. Health departments were also given new funds to reimburse doctors and hospitals for care in prematurity prevention.

Nutritional initiatives include improved financing arrangements and other strategies. The North Carolina WIC program has submitted a proposal to Medicaid requesting reimbursement for WIC services to Medicaid clients. Under this proposal, comprehensive nutrition counseling would be provided to high-risk pregnant women and reimbursed by Medicaid. Currently there is federal legislation under consideration in this area of policy. Another approach is to contain the program's food purchase costs. In the past six years, the cost of the infant food package has risen by 24 percent, while that for mothers and children has risen only 6 percent. The Division of Health Services is now negotiating with formula manufacturers to obtain a rebate on each can of formula, which would save an estimated \$5 million annually in food purchase costs. That savings would allow an additional 10,000 eligible women and infants to be served each month. Other strategies include enhanced outreach to adolescents and older pregnant women, greater coordination of WIC and MCH clinic services, and the development of clinical care guidelines for nutritional management of at-risk patients. Additionally, the role of nutrition in the preconception health program has been initiated.

Medicaid initiatives are among the most striking efforts to come about in recent years. These changes are included in a new set of services called Baby Love. First, the Medicaid program, whose former income eligibility limit was below 50 percent of poverty, expanded its coverage of pregnant women and infants to include families with incomes up to 100 percent of poverty, or about \$11,000 for a family of four. As a result, North Carolina counties are now seeing increases in the number of pregnant women covered by Medicaid. Second, Medicaid increased its physicians' fees, especially for obstetrical services, in recognition of the current problems caused by medical malpractice insurance cost increases. Third, Medicaid introduced a modification of its payment policies, called presumptive eligibility, which allows reimbursement for early prenatal care visits during the period of

a patient's application for Medicaid certification. Fourth, Medicaid has begun to reimburse for a newly emphasized service called maternity care coordination. The role of the maternity care coordinator was articulated by the Division of Medical Assistance of the Department of Human Resources, with assistance by the Division of Health Services.¹⁹ The coordinator works closely with all other local human service agencies to recruit clients, assesses the pregnant patient's need for social and supportive services in addition to prenatal care, and follows the patient to ensure that all needed services are obtained. The coordinator's chief task is to act as the client's advocate in getting certified for Medicaid or in obtaining prenatal care, transportation, or any of a variety of other needs. The coordinator also keeps records of client needs, both met and unmet, and reports on barriers experienced. By March of 1988, ninety counties were preparing to offer or were offering maternity care coordination services.

Additional Factors

If so many new efforts to decrease infant mortality have been undertaken, why are some of North Carolina's trends worsening? It is difficult to discuss all of the possible reasons that contribute, but certainly among them are general socioeconomic changes, reduced availability of health services, and limited resources.

Economic conditions are such that many businesses are focusing on operating as efficiently as possible. In some communities and for some industries, this has resulted in increasing proportions of the labor force working in part-time jobs, thus reducing the availability of health benefits. Meanwhile, health care costs have continued to increase, at least in part because of sharply increasing costs of insurance. Concerns about the national deficit have led to budget reductions—or at least containment of budget growth—which in turn has curtailed the capacity of publicly funded health services to meet the increasing demand. Thus, with less third-party coverage, the increasing cost of health care, and limited services available through the public sector, people

are becoming more reluctant to seek health care they cannot afford.

At the same time increasing medical malpractice insurance costs and litigation have reduced the availability of services, especially in obstetrics. The North Carolina Academy of Family Physicians has surveyed its membership several times in recent years and documented that many family practitioners, especially in rural areas, have withdrawn from obstetrics because of the very high cost of insuring an obstetrical practice. Obstetricians have also surveyed their colleagues and have documented that obstetrician-gynecologists have reduced their practice of obstetrics. The Division of Health Services has surveyed local health departments and documented that physicians have withdrawn from participation in health department prenatal clinics. Preliminary analysis reveals that physicians withdrew from prenatal clinics in thirty-seven counties between 1985 and 1986 alone. Despite this trend, the number of pregnant women depending on the health department clinic system has increased in recent years—from 21,919 in 1985 to 28,844 in 1987.²⁰ Besides physicians, North Carolina has very few alternative providers of obstetrical care. Nurse midwives actively practicing in the state at this time number no more than thirty-two, and there has been no concomitant increase in public health nursing and other staff to meet these increases. It is not surprising that many prenatal clinic staffs are feeling overwhelmed.

With respect to nutritional services, efforts to target WIC and nutrition benefits to poor, pregnant women are continuing. But despite these efforts, over 50 percent of the eligible population is not currently participating—perhaps because many women, especially the "working poor" and those who get care in the private sector, are not aware of their potential eligibility for WIC services. Of those women who do participate, many do not begin early when program benefits are the greatest. Late participation lessens the impact of supplemental foods and nutrition counseling on infant health. Finally, the modest increases in federal funding of WIC have not kept pace with the increasing needs of North Carolina's poor. Growth of the program has been restricted, and local agency staff, like prenatal staff, are over-

whelmed. In fact many are serving more clients than the recommended staffing patterns suggest.

With respect to the need for families to know about the effects of smoking, work-site factors, alcohol, and teen pregnancy, our ability to conduct proper health education is limited by available resources and by the fact that until recently we have relied on clinic staff to conduct the bulk of this educational effort.

Given these stresses in the health care system, it is clear that efforts must be pursued in many areas to continue our declines in infant mortality. Because there are so many avenues of attack, it has never been more necessary than now to plan and coordinate North Carolina's endeavors. Toward this end, Governor James G. Martin has asked David Flaherty, secretary of the Department of Human Resources, to develop a statewide task force on infant mortality. This group is to be made up of leaders from government, industry, health care, education, churches, and other important community organizations in-

terested in the health of mothers and infants. It is hoped that this task force can recommend a comprehensive plan of action that will bring together broad forces in this state to work on the problem.

1 State Center for Health Statistics, Division of Health Services, Department of Human Resources, *Vital Statistics 1986, Volume 1* (Raleigh, 1986), 2-1. All IMR figures cited for North Carolina were taken from this source.

2 Metropolitan Life and Affiliated Companies, "Infant Mortality 1986, National and International Differences," *Statistical Bulletin* 69 (April-June): 4.

3 Metropolitan Life and Affiliated Companies, "Infant Mortality 1986, National and International Differences," *Statistical Bulletin* 69 (April-June): 3.

4 State Center for Health Statistics, *Vital Statistics 1986, Volume 1* (Raleigh, 1986).

5 This statistic was provided by the State Center for Health Statistics at special request.

6 Catherine Dollfus and Alan Cross, report of the Task Force on Infant Mortality and Morbidity to the North Carolina Institute of Medicine, July 1987.

7 This statistic was provided by the State Center for Health Statistics at special request.

8 David Rush, "National WIC Evaluation," *Public Health Currents* 26, no. 4 (1986).

9 This statistic was provided by Janice Le Beuf, nutrition consultant for the Nutrition and Dietary Services Branch, Division of Health Services, Department of Human Resources.

10. Emile Papiernik and M. Kaminsky, "Multifactorial Study of the Risk of Prematurity at 32 Weeks Gestation. I. Study of Predictive Characteristics," *Journal of Perinatal Medicine* 2 (1974): 30.

11. This statistic was provided by Janice Le Beuf, nutrition consultant for the Nutrition and Dietary Services Branch, Division of Health Services, Department of Human Resources.

12. This statistic was provided by the State Center for Health Statistics at special request.

13. State Center for Health Statistics, *North Carolina Reported Abortions 1982* (Raleigh, January 1984), 2-10.

14. State Center for Health Statistics, *North Carolina Reported Abortions 1984* (Raleigh, October 1985), 2-8.

15. State Center for Health Statistics, *North Carolina Reported Abortions 1986* (Raleigh, November 1987), 2-8.

16. Robert C. Cefalo, *A Precipitous Preterm Labor* (Raleigh, NC, Maternal and Child Care Section, Division of Health Services, Department of Human Resources, 1983).

17. Marie Herron et al., "Evaluation of a Preterm Birth Prevention Program. Preliminary Report," *Clinical OB/GYN* 23 (March 1980).

18. P. Meis et al., "Regional Program for the Prevention of Premature Births in Northwestern North Carolina," *American Journal of Obstetrics and Gynecology* 157, no. 3 (September 1987): 550.

19. Baby Love Medical Assistance Program, North Carolina Division of Medical Assistance, Department of Human Resources, *Operational Manual for Maternity Care Coordinators* (Raleigh, October 1987).

20. Health Services Information System, State Center for Health Statistics, Patient Characteristics Report for Calendar Year 1987.

Geographic Information Systems Conference

The second North Carolina Geographic Information Systems Conference, sponsored by Triangle J Council of Governments, will be held in Raleigh on January 12 and 13, 1989. The theme of the conference is "Coordinating GIS Activities for Practical Decision Making."

An opening session on "What Is a Geographic Information System?" will be followed by concurrent sessions on seven application tracks:

- Natural Resources
- Utilities
- Land Records Management
- Transportation
- Public Administration—Routing
- Public Administration—Allocation
- Local Government Planning

Each of these sessions will include an in-depth review of the topic, with presentations by national experts, case



histories of successful applications, panel discussions, and question-and-answer periods. Vendor exhibits and tours of operational geographic information systems will also be available.

Speakers for the program will include Eric Anderson, United States Geological Survey; John Antenucci, PlanGraphics, Inc.; David Cowen, University of South Carolina; Jack Dangermond, Environmental Systems Research Institute; Harry Christie, Burnaby, British Columbia; Terry Keating, Kork Systems; Doug Seaborn, GeoVi-

sion Corp.; and Roger Tomlinson, Tomlinson Associates.

Cosponsoring the conference with Triangle J are the North Carolina Department of Natural Resources and Community Development, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the North Carolina chapter of the American Planning Association, the North Carolina Property Mappers Association, the North Carolina Local Government Information Systems Association, the North Carolina Department of Transportation, and the Institute of Government of The University of North Carolina at Chapel Hill.

For more information, write to Triangle J Council of Governments, 100 Park Drive, P.O. Box 12276, Research Triangle Park, NC 27709, or call (919) 549-0551.

North Carolina Local Government after *Gingles*

Michael Crowell

Pitt County has gone from six commissioners to nine, some elected from regular districts and some from consolidated districts. The small town of Enfield has been divided into two districts, one mostly black and one mostly white, divided by the railroad track. The majority vote requirement no longer applies to primaries for the Lenoir County Board of Commissioners; a 40 percent plurality is sufficient to avoid a runoff. Duplin County made its own county census to aid in drawing districts. Granville County has been ordered to use, and is appealing, "limited voting" for its commissioners—no matter how many seats are up, each voter may cast only two votes.

Those are just some examples of the impact of the Voting Rights Act in North Carolina in the last several years. Mainly they are the result of changes Congress made in the act in 1982 and the subsequent landmark case from North Carolina, *Thornburg v. Gingles*.¹

"The Voting Rights Act in North Carolina—1984," a previous article published in this magazine,² described the history of the Voting Rights Act and previewed much of what has been taking place recently. This article reports the developments of the last four years and suggests what might be expected through the early 1990s.

taxes, and party primaries restricted to white voters. Only a fraction of voting-age blacks were registered to vote. In North Carolina the situation was not as bad as in the Deep South, but still only about a third of eligible black voters were registered.

As the centerpiece of his civil rights program, President Lyndon B. Johnson persuaded Congress in 1965 to pass the Voting Rights Act. There are two main parts to the act, Section 2³ and Section 5.⁴ Section 2 is a nationwide ban on discriminatory election practices, and the 1982 amendments to that section are the source of the recent wave of challenges to at-large elections.

The other main provision, Section 5, was originally enacted as a temporary measure to keep certain suspect jurisdictions, almost all in the South, from adopting new discriminatory practices as the old ones were removed through Section 2. State and local governments governed by Section 5 were obligated to submit changes in election procedures to the United States Justice Department for approval before putting them into effect. This preclearance procedure has been extended several times by Congress and broadened to cover some minorities other than blacks—particularly Hispanics and American Indians whose native language is not English.

Background on the Voting Rights Act

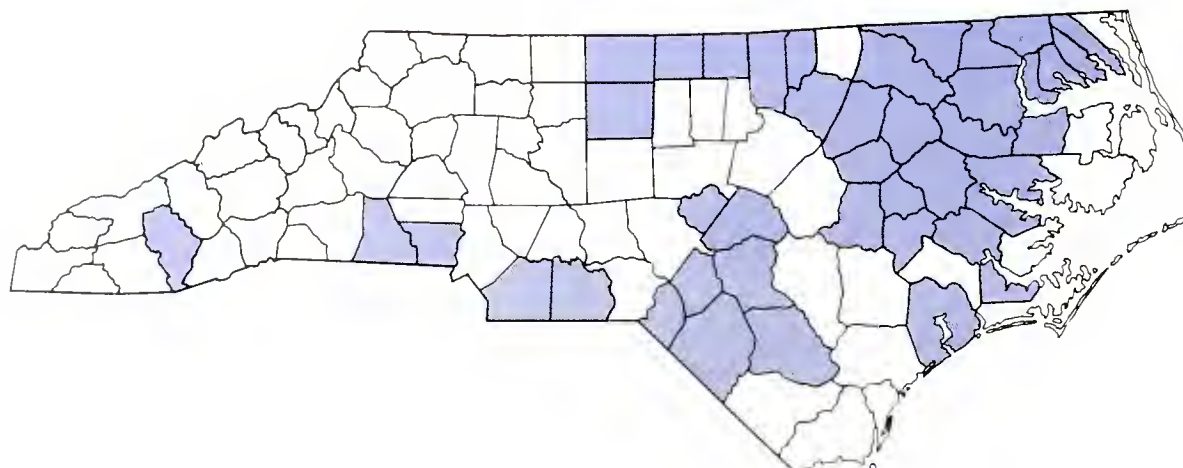
Before 1965, black voter registration had been suppressed through violence and the use of discriminatory election procedures such as literacy tests, poll

Section 5

When first enacted, Section 5 applied to states and counties that had used literacy tests for voting before they were outlawed by Congress and that had fewer than 50 percent of the eligible voters

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Figure 1
Counties Subject to Section 5 Preclearance Provisions



registered or voting in the 1964 presidential election. The basic premise was that discrimination was more likely to occur in such jurisdictions. While most of the Deep South states were covered, only forty counties in North Carolina met that test (see Figure 1).

The requirements of Section 5, while extraordinarily broad in their impact, are simple enough: no change may be made with respect to elections in a covered county until it has been submitted to and precleared by the United States Justice Department or the United States District Court for the District of Columbia. This rule applies to all changes since November 1, 1964. A change will be cleared unless it makes it harder for black citizens to vote or be elected.

Little attention was paid to Section 5 in the early years of the Voting Rights Act. The Justice Department did not issue regulations until 1971. Few submissions were made by any of the covered jurisdictions, and none were received from North Carolina until 1970. At first it was thought that only changes directly affecting the ability of black citizens to register and vote had to be submitted for preclearance. Then the Justice Department and courts began requiring preclearance of changes indirectly affecting voting strength—city annexations, introduction of staggered terms, alterations of election districts, and the like. Numerous changes were made in North Carolina's covered counties from 1965 through the early 1970s without anyone realizing they were subject to

preclearance. Only in the 1980s have many of those earlier changes come to light.

The neglect of Section 5 in North Carolina was partly caused by an absence of clear responsibility. Because only forty counties are covered, no state office has taken charge of overseeing compliance. Not until 1985 did the General Assembly specify which local officers must submit changes.

The uncleared changes of years past now are coming back to haunt the forty covered counties. Even if a change has been used for a number of years—for instance, a 1968 change from two-year to four-year terms for the county commissioners—its future use will be enjoined by a federal court if it has not been precleared under Section 5. Often the result is postponement of an upcoming election while the preclearance question is resolved. If the Justice Department objects to the change, the usual resolution is to go back to the previous election practice.

For example, assume that a county school board changed to staggered terms in 1970, but that local act was never submitted for preclearance. When the omission is discovered in 1988, the staggered-term act is submitted to the Justice Department and draws an objection. (Staggering generally makes single-shot voting by black voters—casting a vote only for the black candidate rather than also giving votes to white opponents—less effective.) The Justice Department's objection means that all

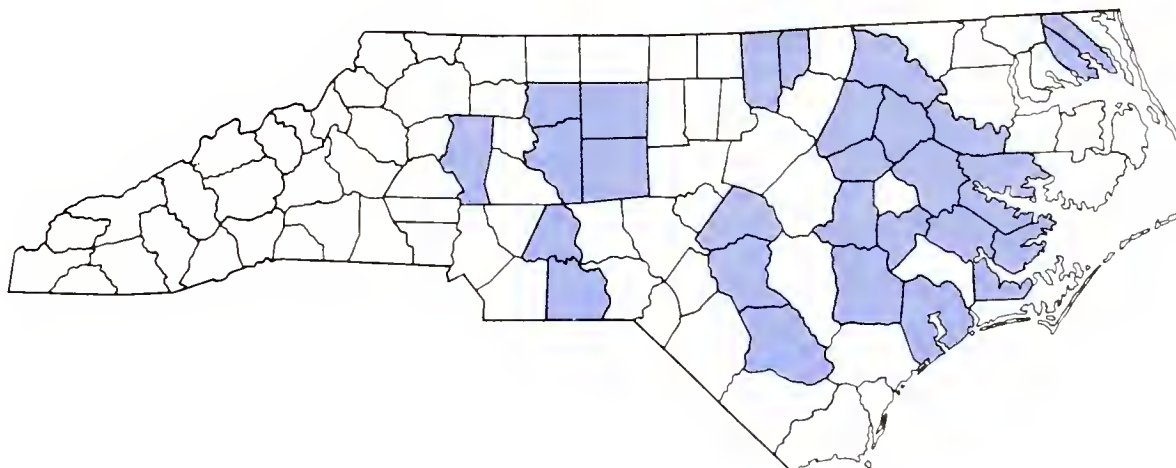
board members must be elected at the same time. To accomplish this, a special election will be needed to elect an entirely new board, with some incumbent members having their terms cut short.

The disruption of elections because of Section 5 has increased in the last several years as the Justice Department has begun to independently search for changes that were not cleared. In 1986, for example, a number of county school boards were notified that changes from the 1960s and 1970s had not been submitted. When they did not respond, the Justice Department sued twenty-two county boards. At issue were such changes as staggered terms, increases in the board size, going from an appointed to an elected board, establishment of residency districts, and exclusion of city school unit residents from voting for the county board. Most of the changes were cleared once the counties submitted them to resolve the lawsuit. A few were prohibited, and several county school boards' lawful method of election is still up in the air as a result.

Section 2

Section 2, the general nationwide ban on discrimination in elections, was used initially to eliminate practices that directly affected the rights of blacks to register and vote. Then in the 1970s civil rights attorneys began to use it to attack election systems. The favorite targets were

Figure 2
Counties in Which One or More Local Boards Has Already Changed
Its Method of Election because of the Voting Rights Act



at-large elections in cities and counties with a significant black population. In a city that is 40 percent black, if all five city council seats are elected at-large by all voters of the city, whites can control all five seats. By dividing the city into districts, however, and giving one or two of those districts black majorities, black voters can control the elections for some seats. This was the result sought in the use of Section 2 to challenge at-large elections.

In 1980 the United States Supreme Court dealt a serious setback to this use of Section 2. In *Mobile v. Bolden*,⁵ a lawsuit concerning at-large elections for the Mobile, Alabama, city council, the court held that Section 2 required proof that the election plan had been adopted for the purpose of discrimination. Proving intent for an election scheme adopted many years before, in some instances over a century earlier, would be impossible in many cases.

Congress responded in 1982 by amending Section 2 to eliminate the intent requirement. Instead, Congress decided, it would be sufficient to show that the election practice under attack had the *effect* of discriminating. Section 2 was given a new life, and the impact soon was felt in North Carolina. (See Figure 2 for the counties that have been affected to date.)

The first major test of the amended Section 2 came in a challenge to North Carolina's multimember legislative districts, the *Gingles* case. The plaintiffs were attempting to have a number of large

state House and Senate districts divided into single-member districts, some of which would have black majorities. The plaintiffs' success, both in the federal district court and on appeal to the United States Supreme Court, was overwhelming.

Following Congress' dictate to evaluate the challenged election plan in light of all related circumstances, the district court found a long history of discrimination against blacks in registration and voting, in employment, in education, in health care, and in other aspects of life, all of which affected their present ability to participate effectively in politics. When combined with the failure of black candidates to win election and with the evidence that voting generally followed racial lines, that history convinced the district court that the use of multimember legislative districts in areas with significant black populations had a discriminatory effect. The court ordered those districts split into single-member districts.

The Supreme Court unanimously upheld the decision. In doing so, the justices explained the kind of proof needed for a successful Section 2 claim against at-large elections. At the heart of such a case, the Supreme Court said, are these issues: (1) the success, or lack of success, black candidates have had under at-large elections; (2) whether voting generally follows racial lines; and (3) whether blacks constitute a sufficiently large segment of the population and are located so that they could con-

stitute a majority in some districts if single-member districts were used.

While Section 2 is concerned with the ability of black voters to elect candidates of their choice, the Supreme Court recognized that the success of black candidates often is the best measure of black voting strength. As such, it is the most obvious indicator of whether an election scheme has a discriminatory effect.

The significance of polarized voting—voting along racial lines—is twofold. Polarized voting by whites shows discrimination in that black voters cannot count on white help to elect candidates of their choice. Therefore at-large elections need to be replaced with an election method in which black voters can elect candidates on their own. But plaintiffs also must prove polarized voting by black voters. Proving that black voters generally stick together shows that if a district has a majority of black voters, they will be sufficiently unified to elect candidates.

The last important issue is whether blacks constitute a sufficiently large and geographically compact unit to be an effective voting majority in a single-member district. It does no good to divide a county into five districts for electing commissioners if none of those districts has a black voting majority. Otherwise, it would be better to keep at-large elections so that black voters might elect candidates through single-shot voting. Generally, to have an effective black voting majority, the total population of the district must be about

65 percent black. Because the black population has a greater percentage of people under age eighteen than the white population, and because voter registration for blacks still lags behind whites, a 65 percent black district will have a lower percentage of black voters.

The typical Section 2 case

The facts and law of the *Gingles* case are easily transferable to many local boards in North Carolina. The classic Section 2 violation might be described as follows: Alpha County, a fictitious North Carolina county, is 40 percent black. It has a five-member board of commissioners elected at-large, though the members are required to live in particular townships. Commissioners serve four-year staggered terms. Although several have run in recent years, no black candidates have been elected to the board. The black population is located so that two black-voting-majority districts could be drawn if the county were divided into five districts.

It is not necessary to know any more to advise the Alpha County Board of Commissioners not to fight a Section 2 lawsuit. Although there are other facts that would have to be established in court, such as polarized voting, the record in *Gingles* shows that plaintiffs will be able to develop such proof. The facts already known—the size and location of the black population and the history of no blacks being elected—are devastating to a defense of the present election method.

There are a couple of good reasons for the Alpha County commissioners to consider moving voluntarily to district elections. One is to avoid the substantial expense that can result from fighting and losing a Section 2 lawsuit. For Alpha, such a suit is inevitable. This kind of litigation is complicated and time consuming, and a losing county will end up paying not only its own attorneys but also the attorneys' fees for the plaintiffs. In one county in North Carolina that sum reached several hundred thousand dollars.

The other reason to voluntarily draw districts is the increased control it provides over the boundaries of the districts. While it usually will be clear from the beginning where the predominately black districts are to be located, there

may be many choices concerning the remaining districts. There also will be choices about the number of districts and the treatment of incumbents whose terms are not due to expire for several more years. Although the Alpha County commissioners may be unhappy about having to make any change at all, they probably will be a little less unhappy if they do the districting themselves.

Problems in districting

Even if the Alpha County commissioners accept their fate and voluntarily divide the county into districts, they will face several obstacles. The first is a shortage of people to assist them. It helps to have a lawyer who is familiar with Section 2 and districting, but there are only a handful of attorneys in the state who have that expertise. None of them works for free. There also is a scarcity of technicians familiar with census data and districting. The few private consultants who do that work are about as expensive as the lawyers. Among public institutions, only the Regional Development Institute at East Carolina University has begun to provide this service.

Once the consultants are on board, probably the first advice they will give is that the data they have to work with is not good enough. Many counties faced with Section 2 problems have no sizeable urban areas and were divided into only a few census enumeration districts in 1980. That means the 1980 census data will show the black-white population breakdown only for rather large areas of the county, giving few building blocks for districting. The solution may be to go back to the Census Bureau for more precise data, causing a delay of months and costing more money, or to send county employees out to make their own census of some parts of the county.

Another set of problems will be more difficult to overcome. First among them is convincing the Alpha County commissioners that Section 2 means what has been said here. Their recollection will be that the Voting Rights Act concerned allowing blacks to register and vote, a problem they thought had been resolved. The commissioners will find it hard to comprehend that a federal court can override the results of countywide

elections and order them out of office to make room for black candidates.

Even if the commissioners initially accept the advice about Section 2, they will turn skeptical at least once more before the matter is finally resolved. Someone will report that Beta County, which appears to be comparable, was able to get by with drawing only one black district and electing half its commissioners at-large. Not knowing the full story of Beta, the commissioners may begin to doubt that they need to go to districts at all. Someone else will suggest that the "responsible" black leaders in the county do not support the lawsuit. Perhaps some commissioners will decide it is in their political interest to urge fighting the lawsuit all the way to the Supreme Court, even though they know how futile that would be. One way or another, the early, abstract decision to comply with Section 2 will become very difficult to finally execute.

Compounding the difficulty will be the inevitable conflicts that develop between incumbent board members. Keep in mind that the basic purpose of Section 2 is to develop a new election plan that keeps some of the present commissioners from getting reelected in order to replace them with new commissioners elected by black voters. At some point this necessarily will put Alpha's commissioners in competition with each other. One common way to reduce the conflict is to increase the size of the board. The typical five-member board of commissioners in North Carolina is giving way to the seven-member board as new seats are added to make room for black commissioners. Most often, however, an increase simply reduces the number of conflicts among incumbents rather than eliminating the problem altogether. It may also be possible to reduce the conflicts through creative transition provisions for changing from the present method of election to the new one. Sometimes, as part of a negotiated settlement, a board will retain an extra member or two until terms expire.

The conflict may not be limited to members of the same board. When a Section 2 lawsuit is threatened, the challenge may be to the county school board as well as the commissioners. If so, there will be considerable pressure to use the same district lines for both

boards. Otherwise, voters will become confused and election officials will have serious administrative troubles. But using the same lines means satisfying two sets of elected officials.

Another potential problem is preclearance from the Justice Department. Many local boards facing Section 2 problems are in counties covered by Section 5. Any new election plan must be submitted for preclearance. Despite the inclusion of local black citizens in the development of a plan—an essential element of any districting effort—and black support for the end product, Justice Department approval will be agonizingly slow. It is especially painful to wait when the new election plan has been negotiated under the pressure of an upcoming election and everyone wants to avoid the expense of having to reschedule. To avoid this problem, never underestimate the amount of time it will take to resolve a Section 2 problem. Some boards go from start to finish in a matter of three months, others take two years.

Variations on the theme

The Alpha County situation described above is the garden-variety, clear-cut Section 2 violation. But the facts will be different for every local board. Sometimes one or two black candidates will have been elected in the past. In some counties and cities the black population will not be numerous enough for districts to be drawn. Or the black population will be too dispersed to create districts with effective black voting majorities.

The result of these differences may be that the violation of Section 2 is doubtful. Even if there is a violation, the remedy may be an election plan other than single-member districts. It may be that simply eliminating staggered terms and thereby increasing the effectiveness of single-shot voting by black voters will provide a sufficient remedy. Sometimes eliminating residency districts can have the same effect. When single-member districts do not work, it may be possible to develop a combination of single-member and dual-member districts that meets the requirements of Section 2. Eliminating the majority-vote requirement for the first primary can improve the chances of black candidates.

Whether a Section 2 violation exists, and what kinds of solutions are available, will differ from place to place. As more and more local governments are facing the issue, and sometimes responding imaginatively, the face of local government in North Carolina is showing more variety. There will be less uniformity in the way boards of county commissioners, school boards, and city councils are elected. Unfortunately, a side effect may be more confusion for voters. While single-member districts allow closer contact with candidates for active and alert voters, more casual voters often have trouble recalling which seat they get to vote for.

The Future

The first wave of Section 2 now has passed over North Carolina. The most obvious targets among boards of county commissioners and school boards have been hit. The next wave will differ in several respects. First, as already mentioned, the violation of Section 2 may not be so clear-cut. Also, the next wave will involve governing boards for smaller jurisdictions. Many of the big-county boards of commissioners and school boards have already dealt with Section 2; now it is the smaller, more rural counties' turn. Likewise, more city councils are likely to be challenged, for at-large elections still predominate in the state's smaller towns. Finally, where there is a violation, the remedy will not be as certain. Many of the local governments yet to be challenged will not have a sufficiently large black population to create districts, or the jurisdiction as a whole will be so small or thinly populated that districts will not work well.

Plaintiffs' attorneys already are seeking new remedies. Granville County may be a good example of what other local boards can expect. The county is just over 40 percent black, but with at-large elections, no black candidates have been elected to the five seats on the board of commissioners. The county chose not to fight the Section 2 lawsuit and prepared a districting plan. Even with expanding the board to seven members, however, only one district had a clear black voting majority. A second district had a slight black majority. The plaintiffs agreed that no better job

could be done to create majority black districts.

Nevertheless, dissatisfied that the districting plan would not give them a chance to elect commissioners in numbers close to their share of the population, the plaintiffs asked the federal judge to order "limited voting" instead. They asked for a seven-member board, to be elected as a group at the same time, with each voter limited to three votes. Plaintiffs predicted that under this scheme black voters could elect three of the seven commissioners. The judge mostly agreed, but he staggered the terms. Under his order, four commissioners will be elected on one schedule and three on another. In each election, though, each voter will be limited to two votes.⁶

The Granville County case is the first time limited voting has been imposed as a remedy in a Section 2 case over the local government's objection. It has been part of a negotiated settlement in several other lawsuits. Cases are pending in Alabama and Mississippi in which the plaintiffs are seeking the same remedy.

Granville County has appealed the limited voting order to the United States Court of Appeals for the Fourth Circuit. One of the county's main arguments is that this remedy amounts to court-ordered proportional representation for black citizens. When Section 2 was amended in 1982, a proviso was added specifying that the Voting Rights Act does *not* require proportional representation. The county's districting plan is not alleged to have any discriminatory feature other than its failure to provide black voters with seats equal to their share of the population. Despite the language of Section 2, some people read *Gingles* as requiring that the replacement election plan come as close as possible to giving black citizens proportionate representation. The Granville County case may help resolve the apparent inconsistency. It certainly will help establish the extent of federal district courts' power to order remedies other than single-member districts.

In looking ahead, one other prediction might be made safely. The 1990 census will cause many problems for local governments in North Carolina. Election districts must be redrawn after each census to see that they remain nearly

equal in population. While this decennial redistricting always creates headaches for the General Assembly, most local governments have been unaffected because few have used election districts. Now, with new districts created to comply with the Voting Rights Act, many local governments will be facing the difficulties of redistricting for the first time. Unfortunately, as discussed above, there are few people available to help them.

What might also be expected in connection with redistricting after the 1990 census is a logjam at the Justice Department for preclearance. New census data will be available in 1991, and plans will be drawn for implementation in the 1992 elections. But redistricting plans are among the most difficult submissions for the Justice Department to evaluate under Section 5. In late 1991 it will be receiving a number of new plans at the same time, more so than at any time in the past. No one should expect a quick turnaround.

Conclusion

The Voting Rights Act is having its greatest impact on North Carolina local government more than two decades after its enactment. Barriers to voting by black citizens have long since been eliminated. Now those same citizens are seeking their fair share of the seats on boards of county commissioners, school boards, and city councils. They have been aided significantly in that quest by Congress' 1982 amendments to Section 2 and the Supreme Court's construction of those amendments in the 1986 *Gingles* decision. In some instances they also have been aided by the failure of local governments to understand and comply with the Section 5 preclearance provisions in the 1960s and 1970s.

Many clear-cut violations of Section 2 have already been resolved, resulting in changes from at-large to district elections. At issue next will be how far Section 2 goes toward requiring proportional representation of minorities. One case from North Carolina—the Section 2 lawsuit against the Granville County Board of Commissioners—may be particularly important in determining how far the federal courts will go to ensure minority representation.

1 478 US 30 (1986). The district court opinion, discussed below, is *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984).

2 Michael Crowell, *Popular Government* 50 (Summer 1984): 1-9.

3 42 USC § 1973.

4 42 USC § 1973c.

5 446 U.S. 55 (1980).

6 *McGhee v. Granville County*, No. 87-29-CIV-5 (E.D.N.C., Feb. 5, 1988).



John Sanders Receives Thomas Jefferson Award

John L. Sanders, director of the Institute of Government, has received one of the top honors awarded by The University of North Carolina at Chapel Hill. In a ceremony in April, former Chancellor Christopher C. Fordham III awarded Sanders the 1988 Thomas Jefferson Award. The award is presented annually to a member of the university community who best exemplifies the ideals of Jefferson through personal influence and performance of duty in teaching, writing, and scholarship. Sanders was cited for his many contributions to the people of North Carolina through his scholarship on state government and higher education, his leadership as director of the Institute of Government, his service to the university, and his work on the history and preservation of North Carolina's State Capitol.

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Strategic Planning *Three North Carolina Communities*

**Kurt Jenne, J. Thomas
Lundy, Ed Kitchen, and
John M. Link**

Since 1985 officials in many cities and counties in North Carolina have examined a process called strategic planning to determine whether it would help them to achieve the visions that they have for their communities. An article in the Spring 1986 issue of *Popular Government* outlined the process of strategic planning and offered some criteria to help determine whether strategic planning would be helpful.¹ In 1987 the Institute of Government sponsored a workshop for community planning teams—elected officials, chamber members, and business leaders from each jurisdiction that participated—to evaluate more fully the utility of strategic planning for their needs. Currently, three strategic planning efforts stand out as models for a successful effort: Catawba County's *Foresight*, Greensboro *Visions*, and Stanly County's *Horizons*. The following pages contain a brief account of each of these efforts by a person who was intimately involved in his jurisdiction's strategic planning process.

Kurt Jenne, who wrote the introduction, is an Institute of Government faculty member specializing in city and county planning and management. J. Thomas Lundy, who wrote the section on Foresight, is county manager of Catawba County. Ed Kitchen, who wrote the section on Greensboro Visions, is assistant city manager of Greensboro and project director for Greensboro Visions. John M. Link, who wrote the section on Horizons, was county manager of Stanly County during the Horizons project; he is now county manager of Orange County.

Strategic planning has been used successfully by businesses for the last twenty years. Many local governments think it is suited to today's conditions in the public sector. Local governments are becoming very sensitive to their roles in a changing social and economic system. The long period of economic expansion and stability that we enjoyed after World War II has been replaced by a series of fundamental changes, shocks, and realignments of power. These have left many local governments without the benefit of ever-expanding resource bases and wondering what they must do to survive and prosper in the years

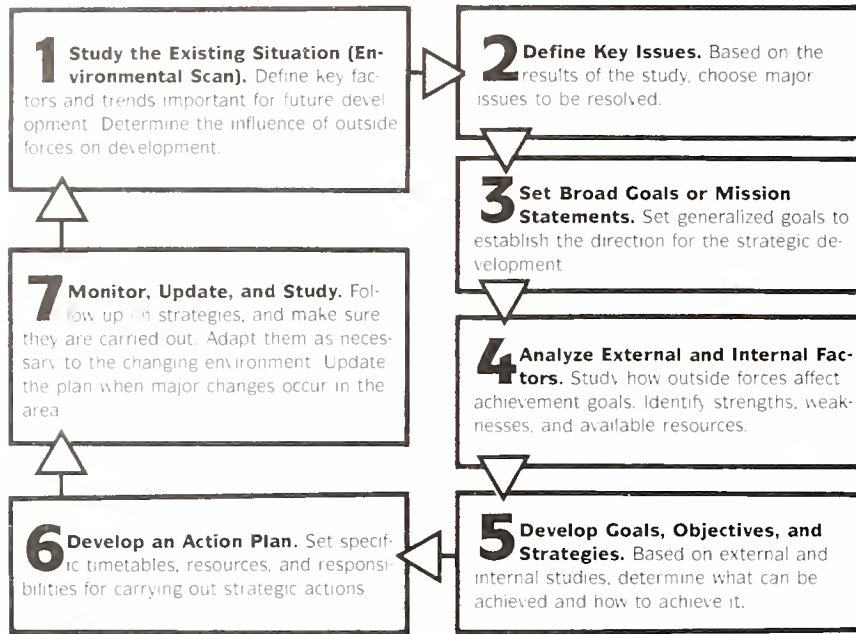
to come. Similar to firms in a competitive market, local governments are having to sharpen the focus of their underlying values and purposes and to take decisive action on the basis of them. Each of these jurisdictions undertook strategic planning out of a strong commitment to taking charge of its own future.

Strategic planning is designed for a risky, demanding environment where hard choices must be made about what should be done and where results, not just good intentions, define success. Applied to local government, it consists of taking stock of how major social and economic trends within and outside of the community will affect the future, deciding on the most important issues and goals, and then laying out specific, feasible steps to reach those goals. The four most important features of strategic planning are:

- It looks outward at trends that are beyond the community's control but that will shape its destiny.
- It focuses on a few critical issues and goals that are more important to the community's future than any others instead of undertaking the hopeless task of trying to deal with everything at once.
- It is realistic about what resources are available to achieve goals and who controls them.
- It is action-oriented, showing clearly what steps must be taken to achieve the goals, who must take them, by when, how much it will cost, and who will pay.

Catawba County, Greensboro, and Stanly County each undertook strategic

Figure 1
The Major Components of Strategic Planning



Source: Taken from Long Range Ideas That Produce Strategic Planning. *Foresight: The Dynamics of Excellence* (1987), 2.

planning as a means of ensuring continued strength and prosperity in an ever-changing environment. No two of them did it exactly the same way. Each modified the general process described in Figure 1 to suit its own needs and resources. Each was successful in its own way and each experienced some of the difficulties to be expected from trying something new. These brief accounts of successes and difficulties might help other communities that are involved in or are considering becoming involved in their own strategic planning process.

Foresight

Catawba County Planning Its Economic Future

In April, 1985, the board of commissioners authorized the creation of a long-range, strategic planning effort, called Foresight: Catawba County's Continuing Search for Economic Excellence. The process was conceived as a joint venture between the public and the private sectors and drew its strength from every segment of the county's population. The board of commissioners organized and funded the strategic

planning process but decided that the private sector would carry it forward, free from intervention or oversight by the county government.

In August of 1985 the board formally appointed a twenty-member steering committee composed primarily of chief executive officers of major corporations in the county. The twenty members were chosen for three reasons: (1) they understood the concept of long-range (five to twenty years) strategic planning; (2) they were willing to commit their time without pay for a two- to four-year period; and (3) they were "movers and shakers," able to influence or mobilize the resources of the community to ensure that the emerging strategies would be acted upon.

The county contracted with the Western Piedmont Council of Governments (WPCOG) to staff the entire effort. WPCOG was chosen because of its familiarity with the local area, its research capability, and its access. The county required that WPCOG contract with Public Technology, Inc. (PTI), a national firm experienced in strategic planning, so that Catawba's planning could benefit from the efforts of other communities around the country. The Foresight committee, assisted by PTI and WPCOG, agreed on a process like that illustrated in Figure 1.

Three features governed the steering committee's work. First, the scope of their study was focused on the long-term economic vitality of Catawba County. They were not charged with preparing a list of items for the county government to address. Second, the committee was limited to discussing four issues, a manageable number. And third, the committee was allowed to appoint its own task forces to examine each of the major issues, with the requirement that those task forces represent the various segments of Catawba County.

Selection of a champion as chairperson was a critical step, and we selected a person with stature in the community, enthusiasm for the project, and a willingness to devote a great deal of energy to the process. The chairperson was willing to lead the process but did not try to control it.

The work begins

The steering committee began work in September, 1985. An eighty-page environmental scan was prepared and reviewed, which allowed each member of the committee to start from a common base of information about Catawba County and its competition. By November of that year, four issues—education, transportation, jobs and business creation, and government services—had been culled from a list of ten possible topics to study. Mission statements for each of the four issues were developed, and in December eighty task force members were appointed by the committee to represent the county geographically, racially, by professional group, and by business occupation.

Between January and July of 1986, the task forces heard experts and leaders in particular topic areas and visited some program sites. The task forces then developed fifty-eight strategies and recommended them to the steering committee in October of 1986. The recommendations identified key implementers for each of the strategies. The implementers included the chamber of commerce, the board of commissioners, the three school boards, the municipalities, the Industrial Development Commission, the county planning board, the Metropolitan Planning Organization, the League of Women

Voters, the political parties, and the Hickory Airport. Of the fifty-eight strategies, only four would be the responsibility of the board of commissioners. This was the first major indication of the process's success—it was to be a total community project instead of a project of county government.

Up until that time the steering committee had used its wisdom in guiding the selection of the issues and the formation of the task forces. It had worked for over a year and was ready to use its influence to mobilize the community and its resources. Between October of 1986 and January of 1987, the committee began meeting with the key implementers. Those meetings were very successful, and in February, 1987, the Foresight committee released its final report.

In that report the committee's twenty members *unanimously* asked that they be authorized to continue for the next eighteen to twenty-four months to ensure that the strategies they had developed would be implemented and monitored in the community. This was the second major indication of the process's success—the private sector had assumed ownership of the strategies and was committed to carrying them out. The board of commissioners gratefully acknowledged this request, authorized the group to continue, and agreed to fund a contract for continuing staff support.

Results

The Foresight process is now a little over a year into the implementation of some of the strategies. Its success to date has exceeded our expectations. Some of the tangible results that have been seen the first year include:

- Both political parties have agreed to work together to have someone from Catawba County appointed to the State Board of Transportation.
- Several of Catawba's most critical road projects were included in the most recent North Carolina Transportation Improvement Program.
- The chamber of commerce developed its 1987 and 1988 work plans using Foresight's recommendations.
- The Catawba County government made a major financial commit-

ment to increase the salaries of teachers and to fund additional teaching positions. Teacher supplements were increased from 3 to 5 percent, putting Catawba's systems in the top 10 percent in the state. In addition twenty teaching positions were added in art, guidance, music, and foreign language.

- The three boards of education have given their support to the Foresight committee strategies. They have joined in a compact with the county to achieve a level of performance in certain areas that is equal to that of the top 10 percent of the state's systems over the next five years. If they are successful, the county will increase resources to the level enjoyed in those areas by the state's top systems.
- A private, nonprofit organization called the Council for Educational Excellence has been established to increase citizen awareness of the link between quality education and economic growth.
- A Joint Services Committee, composed equally of public- and private-sector members, has been established to ensure that strong local government cooperation exists and to explore how services can be consolidated.
- The chamber of commerce is raising funds from the private sector to establish a business incubator and has established a Venture Capital Program to assist new businesses and to keep the county's strong, entrepreneurial spirit alive.
- The state, the City of Hickory, and Catawba and Burke counties have jointly funded major improvements to the Hickory Regional Airport.
- The county and its municipalities have updated subdivision and zoning regulations to make them more compatible.

Some of the intangible benefits that Catawba County has reaped from the Foresight process are involvement in community planning by top business leadership, a growing sense of community cooperation, the active participation of over 100 emerging community leaders representing a cross section of the county, and an awareness by the public of potential opportunities and problems, accompanied by a belief that

the county can chart its own future instead of merely reacting to it.

Guidelines

Strategic planning is a very important tool for local communities to use. It can work well if certain guidelines are followed and certain pitfalls are avoided. The process must include:

- Governing boards committed to long-range planning.
- A private sector committed to the economic development of the area.
- An agenda focused on specific goals and limited to a manageable number of issues.
- The appointment of "movers and shakers" to the steering committee.
- The active involvement of the mass media.
- The employment of professional expertise to direct the process.
- Continuation of the process through the implementation and monitoring stages.

Some of the major pitfalls to be avoided include:

- Underfunding.
- Not allowing sufficient time.
- Waiting to start the process until you have a problem.
- Too much reliance by the steering committee on staff. The committee has to take ownership of the process.
- Focusing on problems that are already being acted on through other efforts or programs.
- Underestimating the availability of excellent resources in the community.
- Skimping on research in establishing a common base of information.

Strategic planning, though potentially effective, is not a cure-all for problems of a community and may not succeed if viewed that way. It is, however, a tool that can be of great help to your community. If your effort is focused and organized correctly, it can broaden the planning process to include resources in your community that normally are not tapped by those of us in the public sector, and it can lead to consensus building and a strong agenda to ensure that your community's future is the one that it wants.



Building Community Consensus

Greensboro, like a number of other communities around the country in recent years, is applying strategic planning techniques to community issues. The effort, called Greensboro Visions, is designed to identify a small number of issues most important to the area's future vitality and then to take action to ensure the best possible future regarding those issues. Deciding what things are most important, what should be done about those things, and getting something done is the essence of strategic planning.

The principal steps in the strategic planning process are well documented from private and, more recently, public experiences. At the time of this writing, we are in the strategy development stage and have carefully followed all the basic steps to this point. By the time this article is published, we should be in the implementation stage and beginning to see the real outcome of our efforts.

I strongly recommend that any community adhere to the discipline of the process and follow all the recommended steps. This is essential unless you want a "shelf document" that makes for good reading but little action. But even more important than following all the standard steps may be taking time at the beginning to identify what is unique about your community and needs extra attention to make the effort successful. In Greensboro we felt from the beginning that broad-based community participation was absolutely essential for success. Throughout the process, from the organization phase to the present, we have kept participation and a sense of openness foremost in our minds. This has not been easy and has frustrated leaders and staff at times. But sticking to that theme has already paid off. And we continue to believe that our ability to continue that climate of participation and openness will ultimately

determine the outcome of this process. The rest of my comments will focus on actions we took to ensure participation and a broad-based sense of ownership for the plan.

Why did we think broad-based participation was so important? First, the community had experienced some difficulty in recent years in building broad support for bond issues involving major capital improvements. A very conservative climate for public expenditures had developed, which made local elected officials reluctant to place major issues on the ballot and had led to the defeat of several specific issues that did go to a vote. This conservative climate existed despite the fact that our level of debt service was considerably below other major communities in the state and the Southeast. Second, governing bodies had been elected at-large in Greensboro and Guilford County until the 1980s. A switch to district forms of representation came only after some heated battles that divided the community along racial and geographic lines to a significant extent. Third, the unique circumstances of the civil rights movement in Greensboro historically had intensified the polarization that often occurs between the black and white communities within an area. Finally, because of its economic base, Greensboro has a very diverse socio-economic makeup, and its population is somewhat transient.

What did we do, then, to overcome these potential blockages and to build a community consensus to accomplish the most important things? I will briefly review some key activities we included in each of the steps completed to date and will comment on our plans for the rest.

Organization

Our first key action was to ensure a true partnership of public and private sponsors. This meant obtaining endorsements *and* funding from both sectors. We succeeded here by gaining both types of commitments from the city council, the chamber of commerce, the Development Corporation (a private organization interested in the future growth and development of Greensboro), and the county commissioners. To give the process a sense of openness

and some distance from the existing power structures, we decided to appoint a sixteen-member executive committee to sit as an independent board of directors. Given our participatory theme, that group had to be representative of the community. It had to include proven leaders who were plugged into but not overly identified with existing power structures and who were open-minded and visionary thinkers. The final group selected included nine business executives, the city and county managers, an attorney, a university professor, a neighborhood activist, a community volunteer, and a representative from the public school administration. These members included three women and three blacks.

The executive committee's first step to further participation was to host a briefing and reception for over 150 representatives of a variety of community groups and organizations. This event, covered by the media, broadened the base of participation and allowed people to be a part of the process at the outset. In addition the committee initiated a speakers bureau, monthly newsletters, and a variety of polished (but not flashy) publications.

Scanning the environment

As the first tangible product of the process, we knew that the scan had to be a solid analytical document. It had to thoroughly address external influences on the community, compare Greensboro to other areas, and objectively assess the community's strengths and weaknesses. But in keeping with our participation theme, we did more than a solid analysis.

During production of the scan, we surveyed 100 community organizations (public and private), seeking their input on positive and negative aspects of life in Greensboro and on what they considered to be the most critical issues. The executive committee also held one-on-one meetings with over fifty of the most influential citizens from all walks of life. The representativeness of the committee allowed us to match individuals with members who would have automatic access and credibility.

Once the scan was completed and published, it was shared throughout the community for reaction and further in-

put. In addition to briefings for the sponsors and a variety of organizations and groups, a series of seven forums, open to the public and held in different geographic areas, were held to educate the community and to solicit reaction and ideas. The forums were heavily publicized in the media (including purchased newspaper ads), and over 500 people attended. Further, a live public forum was aired over the local television station, and Visions participants appeared on several television interview shows. As one last step, six local banks distributed postcards in their July bank statements to over 100,000 citizens, inviting them to return the cards with their thoughts on the issues.

Selecting and defining the issues

The objective data in the scan led to some fairly clear issues that were critical for Greensboro. A disinterested observer could probably have seen that transportation, economic development efforts, public education, land-use planning, and housing needed strategic attention. Fortunately, the people thought so, too. And to the surprise of some, the views about what was most critical were largely consistent across divergent groups. Issues like jobs, good roads, better schools, affordable housing, and improved planning were on the minds of nearly everyone—and the data backed these perceptions up.

I cannot prove this, but I truly believe that our tremendous efforts to share the scan with the community helped to focus people's perceptions. Perhaps the most tangible evidence of community consensus was the fact that the issues selected for strategic planning became the key issues of the city council elections last fall. Two of the issues—transportation and housing—have been formally adopted as top priorities by the city council for fiscal year 1988–1989.

Strategy development

Following selection of the issues, the executive committee appointed task forces to analyze each issue further and to develop specific strategies and action plans to move us in the desired direction. Following the participation theme once again, the group went through an

elaborate process of selecting the membership. A chair and vice-chair plus twenty-five to thirty members were selected for each issue. The number of participants ensured that all key groups had a representative somewhere in the process. Particular attention was paid to groups that previously had felt left out of the decision-making process (some of whom had been active in defeat of bond issues).

In all, 150 to 175 people—from all walks of life—have been *directly* involved in the process. Over 400 people actually expressed strong interest in serving, and those not appointed have been given an opportunity to serve on a special advisory group to review recommendations and help to educate and sell the community on the final plan.

Implementation

The strategies and action plans are still being developed, and whether implementation will be successful remains to be seen. As I said earlier, our participatory approach actually focused the community on *what* the agenda for our future should be. We believe this approach will ultimately allow us to accomplish the most important things.

Our plans call for a massive community education effort concerning the proposed strategies and actions that relies and expands on our previous successes at carefully involving people. This may involve different techniques for general objectives, such as making *Visions* a household word and for specific objectives like support of a major bond issue for roads. Whatever the technique, its overriding aim will be to forge a community consensus. Otherwise, in Greensboro it will not happen.



The Stanly Experience

In January, 1985, the Stanly County commissioners determined that the county had reached a plateau of accomplishment. Major community projects such as the ten-year capital pro-

gram for schools and the county water system had been completed. A new, active focus on the future was required. The board believed that both the private and public sectors in the county should take an active, rather than reactive, stance in addressing the county's critical issues, and community leaders agreed that if Stanly County did not become more assertive, the community would be left behind in regional competition.

In visiting the seven municipalities in the county through a series of "town meetings," the commissioners learned that community needs were diverse. From these meetings, there was a consensus that the county needed a public-private, problem-solving process by which to establish priorities that the county as a whole could agree upon and work with in the next five years.

As an initial step, the idea of developing a strategic planning process was discussed and tentatively agreed to during the 1985–1986 budget deliberations. During the summer the board of commissioners had two special meetings to discuss the pros and cons of using strategic planning to examine the critical issues facing the county. With the help of an outside consultant, the board focused on the following major points:

- Should the governing body be the initiating force—or should the chamber of commerce or other broad-based community organization be the catalyst? The consultant warned the commissioners that strategic planning would force a self-examination of the county, with some findings and issues not politically palatable. Therefore the board needed to consider its role carefully. The county commissioners decided that they were the appropriate group to begin the strategic planning process.
- Would the process be worth the cost? Strategic planning would cost time, money, and staff resources, including the use of consultants.
- Was the necessary leadership available? Strong, sustained, energetic leadership for the steering committee and task forces was considered critical to any successful strategic planning effort.
- What kind of unifying theme could provide inspiration for such a plan?

Stanly County chose the theme *Horizons—Looking to the Future*.

In January of 1986, almost a year after the first discussion, the board of commissioners authorized the Horizons project. I do not suggest that it must take a year to make a decision to pursue strategic planning, but I do recommend that the initiating organization spend sufficient time examining the ramifications.

The process begins

After reaching this decision, the board selected Centralina Council of Governments and Public Technologies, Inc. (PTI) to assist in the process. Given the limited staff time available to spend on the project, it was essential to obtain adequate consulting services. Insufficient staff resources can stall, if not kill, a strategic planning effort.

Working with a management team comprising consultants, central management, and planning staff, the county commissioners spent many hours selecting chairpersons and members of the steering committee and task forces. The commissioners took care to include all regions and interest groups. The steering committee and each task force averaged twenty-five members. The diversity of topics discussed during earlier task force meetings indicated that the concerns of each segment of the county's population were being shared.

After the selection of participants was completed, the consultants presented an environmental scan to the steering committee. This scan provided an objective, statistical overview of various trends in Stanly County. We found that the steering committee (and task forces) questioned the validity of some of the data in the environmental scan. Upon reflection, we decided that negative reactions to parts of the scan were natural, given that some of the data confronted participants with the reality of conditions that were counter to public opinion. As an example, there was considerable discussion about data indicating that the county's economy relied heavily on manufacturing jobs. The community, however, had thought that greater diversity in the economy had been achieved.

Despite these questions about data validity, the environmental scan became

the principle working document for the steering committee as it deliberated and finally achieved consensus on the four most critical issues facing the county: economic development, education, infrastructure, and community image/quality of life. A task force was then selected for each issue.

Task force process

Adequate time to do its work and development as a group are critical for task force success. The task force must work at its own pace, with time to expose "hidden agendas" and to develop common themes. Staff resources were particularly important in providing each task force with additional information pertinent to its issue and scheduling speakers for future meetings. In Stanly County we underestimated the amount of staff time that would be required for the mechanics of the process: scheduling and rescheduling meetings, preparing minutes, and writing drafts of task force reports. We also discovered that unless you avoid summer months for scheduling key meetings, you conflict with vacations and test the dedication and resolve of your task force members.

Because of limited staff resources, we decided to start our work with two task forces instead of beginning all four at the same time. Although our rationale was sound, we discovered that staggering the task forces prolongs the final completion of the project and may diminish the ability of staff to respond uniformly to each task force.

The task forces needed an average of six months to complete their work. The reason for this was twofold. First, sufficient time must be provided for deliberation prior to developing the final recommendations. Once the task forces have finished drafts of their reports, it is important that the reports be shared with the steering committee—and that each task force become aware of the recommendations of the other task forces. We discovered that interdependencies will emerge from the issues that are addressed. As a result, participants will be confronted by the complexity and interaction of issues and will develop an appreciation of the need to address major issues cooperatively.

Second, the task forces must have time to fine-tune their reports. In the Horizons case the final recommenda-

tions of each task force required several drafts before they were presented to the steering committee for consideration. The recommended strategies of implementation must be specific and state quantifiable results to be achieved, a timetable for each strategy, and the resources—both staff and money—that will be required.

After the steering committee received the final reports, joint meetings were conducted to reach consensus on setting priorities and identifying the steps necessary to gain commitment from key implementers. Teams comprising steering committee and task force members then visited all of the major implementers to confirm their support for the strategies. It is crucial to gain commitment while energy and enthusiasm is high. Unnecessary delays or retrenchment by implementers will produce disillusionment on the part of strategic planning participants and the public.

Outcome

Through self-examination and confronting the reality of our environment, the county leadership identified critical issues and the strategies necessary for Stanly County to improve as a community. This is what we expected the strategic planning to do. For there to be real success, however, the implementation of recommended strategies must be completed. We have found that transferring ideas into practice requires a level of dedication and energy that we might have underestimated at the beginning. In this kind of process, one cannot emphasize enough the need for community commitment, time, resources (people and money), and energy. The participants must be aware of and dedicated to these requirements.

Although two years have already elapsed since the inception of Horizons, the process is really only beginning. Its greatest impact is yet to be realized as the people of Stanly County work together to solve the critical problems highlighted in the study. Once those problems are resolved, however, others will take their place, and Stanly County will be prepared to initiate the strategic planning process all over again.

1 Kurt Jenne "Strategic Planning, Taking Charge of the Future" *Popular Government* 51 (Spring 1986), 36-43.

Council-Manager Relations and the Performance of Governing Boards

James H. Svara

Effective local government requires the combined efforts of elected officials and administrative staff. In the council-manager governments used in most cities and counties in North Carolina, there is a blending of elected and professional leadership. Council or commission members speak for their constituents to set the direction for the jurisdiction and to oversee governmental performance. The manager applies his or her training and experience to advise the governing board and direct the work of staff. The governing board and the manager cannot work in isolation from each other. Indeed, how well they work together is as important to the success of local government as how well they perform their separate responsibilities.

This article takes stock of the relationships among officials and examines how well governing board members are filling their roles. Information presented is derived from a survey of city and county managers conducted in 1987. It is important to bear in mind that the data reflect the opinions of city and county managers about elected officials, not the responses of the elected officials themselves. All the cities and counties represented in the survey use the council-manager or county commission-manager form of government.

Five questions are examined. First, what is the condition of the relationship between the governing board and the manager and staff? Second, how well do governing board members fill their diverse roles? Third, in what areas does the governing board do too much or too little—that is, what are the actual and preferred contributions of elected officials from the manager's perspective?

While addressing this question, we will also explore how council members in cities of different sizes vary in their contributions. Fourth, is there conflict between the governing board and the manager in handling the activities of local government? Finally, what is the overall effectiveness of the governing boards, and what areas require more effort to improve effectiveness?

Governing Board-Manager Relations

In council-manager governments there is a favorable climate for cooperative relationships between elected officials and staff. There is no separation of powers that causes the governing board and manager to struggle for control. Several measures of the interactions between governing boards and managers, presented in Table 1, indicate that this potential for cooperation is being realized in most of the cities and counties whose managers responded to the 1987 survey. Virtually all managers reported that they have a good working relationship with the governing board. Also most managers—over 80 percent—think that the governing board effectively draws on the expertise of professional staff. They are making good use of the advice and assistance that trained staff can offer. Elected officials are not, however, taking advantage of staff. Most managers think that the governing board members refrain from making excessive demands for reports and information.

Most managers also feel that the governing board members have good relationships with each other and that

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Table 1
Relationships among Officials in Cities and Counties with Council-Manager Form of Government

	Percentage of Managers Agreeing	
	Cities	Counties
The council and manager have a good working relationship.	92.3	96.5
The council effectively draws on the expertise of professional staff.	83.1	80.7
The council makes excessive demands for reports and information.	16.9	15.8
The council members have a good working relationship with each other.	78.6	80.7
The mayor chairperson and council have a good working relationship.	80.1	84.2
How would you assess the overall working relationship among officials in your city or county?		
	Cities	Counties
Very positive	38.9	31.6
Good	29.8	42.1
OK but could be improved	29.0	22.8
Poor	2.3	3.5
Very poor	0	0
Total	100.0	100.0

Table 2
Governing Board Roles in Council-Manager Cities and Counties

	Percentage of Managers Agreeing	
	Cities	Counties
<i>Representational Role</i>		
Council members devote too much time to providing citizen services.	32.5	29.1
Council members encourage citizens to refer complaints directly to staff rather than going through council members.	63.3	47.3
Council members try to get special services and benefits for their constituents.	35.9	47.3
<i>Governance Role</i>		
The council provides sufficient direction and overall leadership to government.	70.8	81.1
The council has difficulty making clear decisions.	46.1	42.1
The council focuses too much on short-term problems and gives too little attention to long-term concerns.	66.3	71.9
The council is more a reviewing and vetoing agency rather than a leader in policy making.	63.9	50.9
The council does not have enough time to deal effectively with important policy issues.	36.9	39.3
The council deals with too many administrative matters and not enough policy issues.	36.9	47.3
The council understands its role in administration.	69.3	54.4
The council is too involved in administrative activities.	25.4	35.1
<i>Supervisory Role</i>		
The council's appraisal of the manager's performance is satisfactory in depth and frequency.	59.0	49.1

the mayor or chair works well with the rest of the board. The overall relationship among all officials in most of these local governments is positive. It is rated good or very good in 69 percent of the cities and in 74 percent of the counties. In roughly a quarter of the jurisdictions—slightly higher in cities—the relationship is satisfactory but could be improved. A negative pattern of relationships is rare, occurring in 2 percent of cities and in 4 percent of counties.

Governing Board Roles

When local governments have an elected board and an appointed executive, the governing board is expected to fill three distinct roles. First, the members link government to the public through their basic representational role. Second, the governing board fills certain governance roles: it sets goals, is ultimately responsible for all policy, and oversees policy implementation and service delivery. Third, the governing board also fills the supervisory role of appointing the manager and evaluating his or her performance.

The job of governing board membership is very challenging. It is difficult to fill these diverse representational, governance, and supervisory roles equally well and to prevent performance in one role from interfering with that in another. For example, governing board members face a dilemma when their constituents favor one position and the long-term needs of the community require an opposite position. In such a case the perspective of the governing board member as a representative is at odds with that as a governor. Acting as an ombudsman in response to citizen complaints—an aspect of the representational role—presents governing board members with a choice: do they become directly involved in administration or pass on the complaint and leave the manager and staff free to handle it with a follow-up report to the board? Some aspects of these roles are inherently difficult to perform. For example, clear goal setting and constructive performance appraisal of the manager are difficult tasks in any organization.

Table 2 presents a number of indica-

tors of how the governing board roles are being performed. With regard to the representational role, there may be pressures on elected officials to spend much of their time responding to citizen requests for services. Most city and county managers do not agree that the members of the governing board devote too much time to providing citizen services, but approximately 30 percent feel that this is the case. In most cities—over 60 percent—the council members encourage citizens to refer complaints directly to staff, but in 37 percent of the cities and in 53 percent of the counties, governing board members are more likely to carry the complaints forward themselves. It is not uncommon for governing board members to try to get special services and benefits for their constituents: it happens in over a third of the cities and in almost half of the counties.

When the governing board's performance of its governance role is examined, the results are mixed. The good news is that 71 percent of the city managers and 81 percent of the county managers think

that the governing board provides sufficient direction and overall leadership. There are, however, a number of indicators of shortcomings as well. Despite good provision of overall direction, two out of three governing boards focus excessively on short-term problems and neglect long-term concerns. Most governing boards—64 percent in cities and 51 percent in counties—are viewed more as a reviewing and vetoing agency than as the leader in policy making. Over 40 percent of the governing boards have difficulty making clear decisions, and over a third do not have sufficient time to deal effectively with important policy issues.

Governing boards have important contributions to make to the administrative dimension of the governmental process, particularly their oversight of implementation and evaluation of the effectiveness of policies. According to the survey, however, some governing boards deal with too many administrative matters and not enough policy issues, are too involved in administrative activities, and do not understand their role in administration.

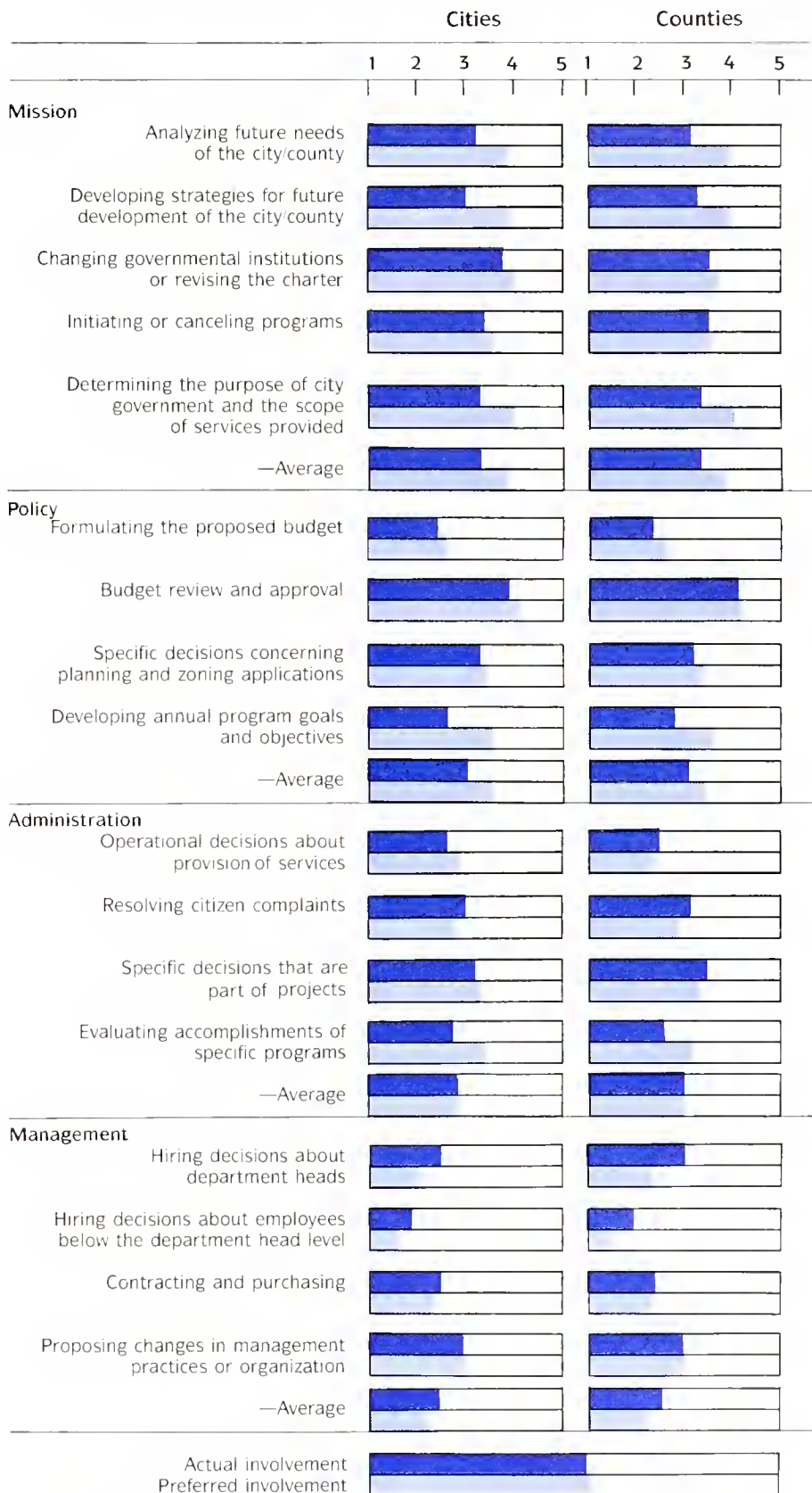
Finally, about 40 percent of the city councils and 50 percent of the county commissions do not provide evaluation of the manager's performance that is satisfactory in depth and frequency in the opinion of the manager. Although the opportunity for the governing board periodically to evaluate the executive officer is a unique feature of the council-manager form of government, adequate feedback is not being provided in many cities and counties. Managers would like to have a more thorough review of how they are doing their job.

Actual and Preferred Contributions

The governmental process consists of decisions in four dimensions: mission (setting the goals and purpose of government), policy (determining programs and plans to accomplish goals), administration (implementing programs and delivering services), and management (controlling the human and material resources of the organization).

Earlier research in the large cities in North Carolina indicated that the level of a council's contributions to the formulation of its local government's mission was high, while the level of its

Figure 1
Governing Board Involvement Ratings for Specific Activities



Interpretation of points on involvement scale: 1 = very low—not involved, 2 = low—minimum review or reaction; 3 = moderate—advising or reviewing; 4 = high—leading, guiding, or pressuring; 5 = very high—handle entirely

Figure 2
Level of Involvement of Governing Board
in Cities (by Size of Unit) and Counties

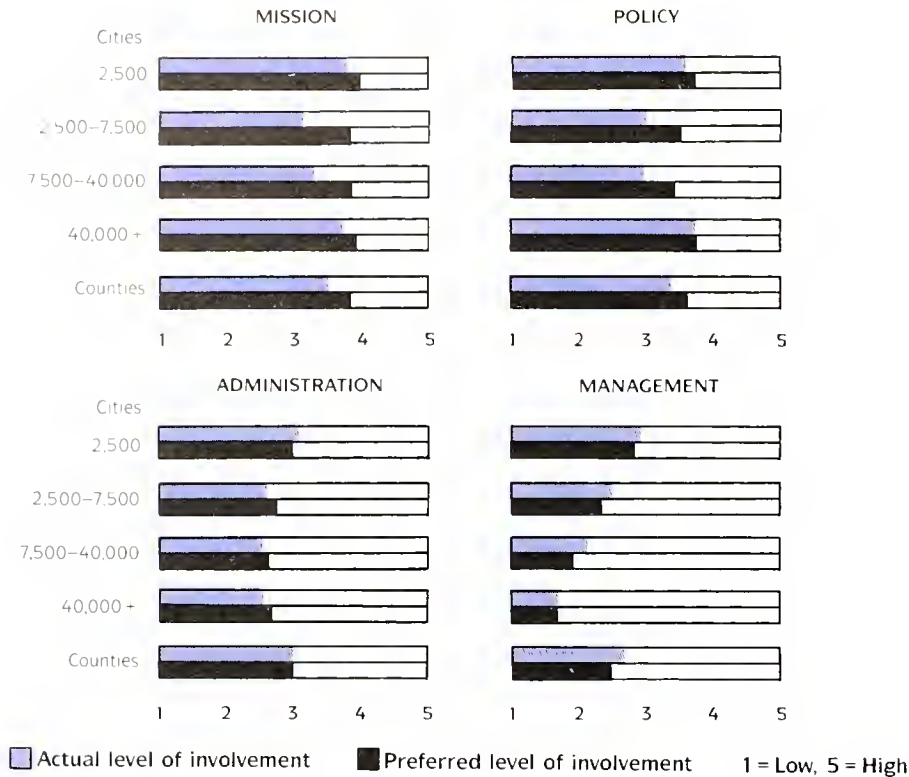
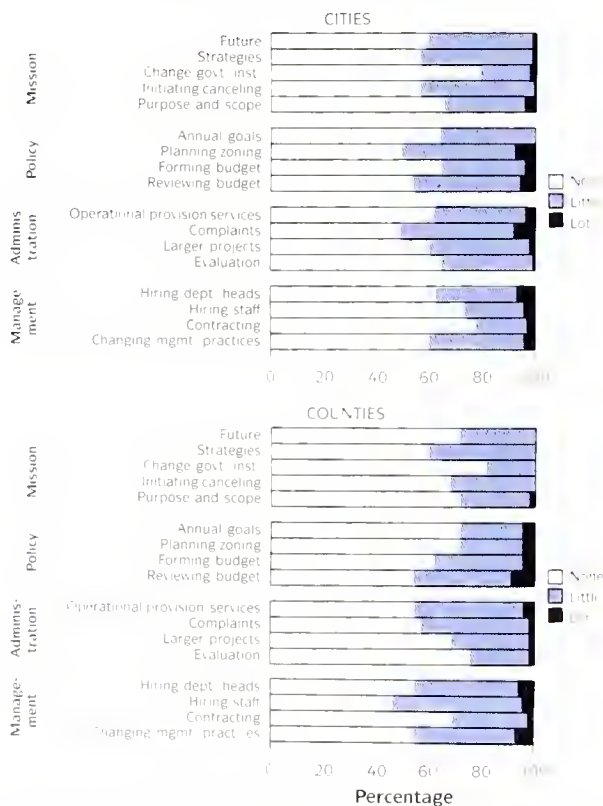


Figure 3
Amount of Conflict in Decision Making



Note: Respondents were asked whether there had been any disagreement or conflict between the governing board and the manager about who should handle each activity. If yes, was there a little or a lot

involvement in management was low.² The level of contributions to policy was greater than to administration, but both fell in between the levels of involvement found in the areas of mission and management.

The 1987 survey permits a more detailed analysis of the governing board's involvement—the initiative it displays and the contributions it makes—in many activities in cities and counties of all sizes. The pattern indicated by the previous research was confirmed for both cities and counties, as indicated in Figure 1. When the activities are grouped by category and the level of involvement is averaged, involvement is highest in mission, lower in policy, even lower in administration, and lowest in management. These levels of overall involvement are virtually identical in cities and counties. In separate ratings of the *desired* level of involvement, the managers indicated that they would prefer the governing board to be much more active in mission and somewhat more involved in policy. In general the governing board should continue its level of activity in administration but be slightly less involved in management.

Mission. According to the managers, council members are highly involved in making constitutional changes, that is, in revising the charter or altering the structure of government. They are active in initiating and canceling programs and in determining the purpose and scope of city government. Acting as reviewers of proposals, they are slightly less involved in analyzing trends and developing strategies for the future. Managers in both cities and counties would prefer that the governing boards take a substantially larger part in determining the purpose and scope of government, analyzing future needs, and developing strategies for the future.

Policy. There is very high involvement in budget review—the highest reported for any of the activities—high involvement in planning and zoning decisions, and moderate to low involvement in the more technical matters of budget formulation and setting program goals, which are handled by staff. Governing board members should, in the managers' opinion, contribute more to developing annual program goals and objectives.

Administration. There is moderate involvement in certain activities, such as investigating citizen complaints and

making project decisions (for example, site selection), and lower involvement in operational choices about service provision. Governing board members are less involved in evaluating programs—in reaching an overall assessment of program impact—than they are in handling specific citizen complaints. They should, in the managers' opinion, contribute more to evaluating programs and be much less involved in investigating citizen complaints.

Management. Finally, the governing board is moderately active in changing management practices, for example, reorganizing the staff or instituting a new budgeting system. Hiring department heads (except in counties) and contracting and purchasing have moderately low governing board involvement, whereas hiring other staff has very low involvement. The only major difference between cities and counties with regard to the actual level of involvement is the county commissions' greater participation in hiring department heads, which typically requires commission approval in county governments. All managers would prefer that the council be less involved in hiring decisions.

A comparison of activities across the dimensions gives an indication of what governing board members currently emphasize. They are more involved in specific planning and zoning decisions than they are in analyzing the future needs of their communities and forming strategies for development. They devote more attention to decisions needed to implement projects than they do to developing annual program goals and objectives. Governing boards display less initiative and are more reactive to staff recommendations regarding the long-term future of the community and the goals of programs. They take a larger part and display more initiative in current controversies and concrete short-range decisions.

To some extent, governing boards behave differently depending on the size of the city. As indicated in Figure 2, the actual level of governing board involvement in mission and policy is highest in the smallest cities (under 2,500) and the largest cities (over 40,000). Presumably, the councils in the smallest cities take a larger role because of the small scale and the close, personal relationships in these towns. In the largest cities, the councils may include more activists who

have policy concerns. In the cities in the middle population range, governing board members are more likely to adopt a reviewing and advising role and are somewhat less likely to initiate activities than their counterparts in the other cities. The smallest cities have more council involvement in administration than the others. In management there is a clear, negative relationship between city size and governing board involvement across all cities—the smaller the city, the more active the governing board is regarding hiring and contracting. In the largest cities, the governing board is least involved in these areas, even though they are more active in mission and policy than governing boards in smaller cities.

There are few differences in county decision-making patterns related to size, and thus the ratings by county size have been left out of Figure 2.³ The commissioners' role in planning and zoning and in the policy category in general was positively related to population size: there was higher involvement in larger counties. But the commissioners' role in service decisions, hiring, and the management category generally increased as the county population declined.

In sum there are some areas in which managers would like to see change in the involvement of the governing board. Generally, however, they expressed acceptance of the current level of the governing board's contributions. This is as true in counties as in cities, and in smaller jurisdictions as well as larger. The managers in small cities and in counties accept a larger role for the governing board in management than is the case in larger jurisdictions, although they would prefer less governing board participation than is currently practiced. Furthermore, insofar as change is desired, managers generally prefer the governing board to be doing more rather than less, except in complaint handling and in the management category in general.

Conflict in Handling Activities

These same activities can be examined to determine which produce conflict between governing boards and managers. Even though officials and managers normally relate positively,

they may have trouble dealing with certain kinds of tasks or decisions. The results of the survey indicate that it is rare for the governments to experience a high level of conflict over who should handle any of the activities: in only one case do as many as 10 percent of the managers report a "lot" of conflict. There is often, however, a "little."

The breakdown for cities and counties is presented in Figure 3. Over half the city managers report a little or a lot of conflict in planning and zoning decisions and in handling citizen complaints. In addition, over 40 percent indicate that developing strategies for development, initiating and canceling programs, reviewing the budget, and changing management practices or organization can produce some conflict. In over 50 percent of the counties, hiring staff other than department heads produces some conflict, and in over 40 percent, development strategies, reviewing the budget, operational decisions about the provision of services, citizen complaints, hiring department heads, and changing management create some conflict.

In the cities the likelihood of conflict is greater in policy and administrative decisions, where there is extensive sharing of responsibility between the governing board and the manager, than in mission and management, where responsibility is more clearly assigned. In counties the most conflict occurs in management decisions, where commissioners continue to play a greater role in personnel matters. Counties also have more conflict than cities over formulating the budget and the highest percentage of high conflict in reviewing the budget. It may be that conflict occurs because certain boards and officials seek to communicate directly with the commissioner rather than going through the manager. It should be reiterated, however, that we are dealing with relative differences among areas in which there is a little conflict, and only rarely a lot, versus areas in which there is no perceived conflict. Relations are essentially positive as officials share or divide responsibility for handling the activities of government.

Effectiveness of Governing Boards

One additional perspective on governing board performance is provided in

Table 3
Managers' Assessment of Effectiveness of Council Performance

	Cities			Counties		
	Low	Medium	High	Low	Medium	High
Clearly formulate the mission of city county government	32	50	19	28	63	9
Develop clear goals, objectives, and service priorities	36	47	18	35	54	11
Provide oversight and assessment of policy implementation and service delivery	27	57	16	16	67	16
Periodically appraise the performance of the manager and city county government as a whole	35	43	22	40	47	12

Table 3. Governing boards were rated by their managers on a key performance indicator drawn from each of the four dimensions of the governmental process. On all the measures, more or less half of the governing boards were rated medium in performance. Of the remaining half, boards were more likely to be rated low than high. According to the survey, one in three or four city governing boards is operating at a low level of effectiveness, depending on the measure, while only one in five is excelling. In general, county commissions are even less likely to demonstrate a high level of performance. The greatest strength in counties is perceived to be administrative oversight, whereas the weakest area is managerial review. Perhaps the generally greater involvement of commissioners in administration provides more opportunities for oversight, but they have not yet created a process for systematic evaluation of the manager.

The findings of this survey suggest areas that the governing board should address in order to lessen weaknesses in its performance and enhance its positive contributions. However, the problems that some governing boards experience should not overshadow the many governing boards—a majority on most measures in Tables 2 and 3—that are performing well. Neither should the commentary be interpreted as making light of the difficulty that governing board members face in attempting to balance an array of complex roles when faced with local issues and problems of increasing difficulty. The governing board needs to find ways to strengthen its performance, however, if it is to expand its contributions to the governmental process.⁴

Apart from the voters, there is no force outside the board that can pressure it into making changes. Governing board members must take it upon themselves to look critically at their individual and collective roles and to seek constructive changes. They are not alone, however, in their efforts to meet the responsibilities of the office. To a greater extent than is the case in other forms of city government, the council can draw upon the assistance of the executive and staff. The findings of this survey, particularly the managers' preferences regarding the involvement of the governing board indicate that managers are supportive of expanded contributions from elected officials.

Summary

The council-manager form of government combines the leadership of elected officials and administrators. The council or commission is in control of the government and accountable to the citizens for its performance, but there is considerable sharing of responsibilities in the functioning of government. For a city or county to perform well, there must be positive contributions from both sets of officials and a constructive working relationship among them. Roles in this form of government are complementary rather than adversarial.

Elected officials and managers in North Carolina generally achieve cooperation in their interactions with each other. There is widespread respect for the value of professional management among governing board members. For their part, managers and staff respect the authority of governing boards and seek to act in ways that are consistent with the intent of elected officials and to provide them the informa-

tion and assistance they need to fill their positions.

The positive relationships mask, however, some shortcomings in the performance of elected officials. For instance, the emphasis of some governing boards on service provision—particularly special benefits for constituents—and their direct involvement in handling complaints create the potential for duplication of function and tension between elected officials and staff. Furthermore, if governing boards are reactive, lack initiative, and have difficulty making decisions, then democratic leadership in local government is weakened.

The council-manager form blends democracy and professionalism to create government that is responsive and accountable to the people and that incorporates expertise, competence, and responsibility to promote the public interest. Although this mixture is difficult to maintain—one or the other can be easily undermined—the two elements can and should be mutually reinforcing. Governing board members and managers need to engage in a dialogue about the strengths and weaknesses of their relationship and what they can do to help each other more.

1. The questionnaire was mailed in July 1987 to all cities and counties in North Carolina with a manager or administrator. When jurisdictions with a vacancy in the position were omitted, there were 216 cities and 94 counties surveyed. Responses were received from 131 cities and 58 counties for a response rate of 61 and 62 percent, respectively.

2. Contributions of the City Council to Effective Governance. *Popular Government* 51 (Spring 1986), 1–8.

3. The smaller amount of variation may be attributed to the greater size and complexity of even the smallest counties. The smallest county from which a response was received had a population of 7,200 and there were only two under 10,000. The smallest city had a year-round population of 26 and there were fourteen cities under 1,000. Over three fourths of the cities were under 10,000.

4. For an approach to strengthening the council's contribution to planning, see the article by Kurt Jenne, "From Vision to Reality: Effective Planning by the Governing Board," on pages 33–38 of this issue.

Acknowledgment. Portions of this article appeared in "The Complementary Roles of Officials in Council-Manager Cities," *Municipal Yearbook* 1988 (Washington, DC: International City Management Association, 1988), 23–34. I received helpful advice on revising the manager survey from a committee of the North Carolina City and County Management Association composed of Wendell White (chair), James Baugh, Dee Freeman, Marvin Hoffman, Sonna Loewenthal, Matt Matteson, Steve Stewart, and ex officio members Terry Henderson and Kurt Jenne. MPA degree candidates and graduate assistants Dona McNeill and Joseph Koury have worked on the survey and along with Joyce Massey-Smith, coded and entered the data.

From Vision to Reality

Effective Planning

by the Governing Board

Kurt Jenne

Most commissioners, mayors, and council members could describe quickly and clearly what they would like to see their governing boards achieve by the time they left office. Yet, based on past experience, many of those same officials will leave office disappointed and frustrated that they could not accomplish what they had hoped for. Some will be disappointed because they could not overcome active opposition to their own ideas; but many more will feel powerless because they and their fellow board members worked long and hard without realizing even the goals they all agreed on.

Good intentions will not guarantee good results. The challenge for an elected board, like any other corporate body, is to create a shared vision and to translate it into reality by some kind of focused, organized action. The most effective organizations define the results they seek, develop plans to accomplish them, and then tailor their everyday actions and decisions to be consistent with those plans. Those that do not, find themselves captivated by current events, unable to separate important business from business that is just urgent, and unable to gain the initiative so essential to achieving what they want for the future.

The purpose of this article is to describe a planning process that might help the governing board, in partnership with the manager and staff, to achieve the results it wants. It includes some of the things a board might do to make each step of the process work and reviews the roles that elected officials and administrators might assume in various stages of the process. This planning

process will not guarantee good results either; but if it is woven into a fabric of competent administration, teamwork, and communication among elected officials, manager, and staff, it could help the governing board to take actions that support its most important purposes.

A Planning Process

Planning is a process for making decisions now about what to do in the future. In order to do that, an organization has to see two futures: the one that the organization would like to occur, and the one that would occur if the organization simply allowed events to take their natural course. If those two futures are different, then the organization has to decide what it should do to realize the future that it wants, and then it must take the necessary action to make that happen. A process to accomplish this has six basic steps:

- (1) *Creating a vision:* This includes articulating fundamental beliefs about the mission of local government—what it should be and what it should do—and using them to form a picture of the community's ideal future.
- (2) *Agreeing on key issues:* This includes deciding on which issues are critical to realizing the vision and what specific goals will help to realize it.
- (3) *Developing program strategies:* This consists of deciding what kinds of things the city or county should do to achieve its goals most effectively. These general strategies might depend on participation by institutions outside of city or county government.

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- (4) *Developing budgets.* This involves deciding how much can be done each year and how resources should be allocated among all of the functions of government, including those activities that are important parts of program strategies.
- (5) *Implementing.* This consists of organizing, scheduling, and carrying out budgeted activities completely, on time, and within budget.
- (6) *Evaluating.* This includes determining whether implementation is moving the city or county toward the board's vision and, if not, whether changes should be made in what is being done.

Putting the Process into Practice

A board can use this six-step planning process to define and carry out a long-range agenda for the community. Although shortcuts are sometimes practical or necessary, the board is more likely to be effective in turning its vision into reality if it goes through all six steps in some form.

Creating a vision

The power of an idea is tremendous. Ideas are what drive members of the board to seek election and to serve long, hard hours throughout their terms in office. But the governing board does its work as a corporate body, so the ideas that each member brings to his or her service on the board will be most effective when they are shared by other members. It is human nature for each member to act and vote according to his or her beliefs and vision for the community. For example, if a member of the board believes that trees and natural beauty are more valuable than the convenience of getting around easily by automobile and envisions a town with lush greenery, he or she would probably tend to vote against street widenings in town. If the governing body knows which beliefs and parts of a vision members hold in common, it can determine what kind of initiatives are likely to have the support of the full board. If it knows which individual beliefs and parts of the vision are in conflict, it can work to resolve them, or it can at least use them

to understand the rationale behind individual members' positions when they conflict.

Thus the first step of the planning process is to understand the beliefs that will drive the actions of individual board members and to see if the board has some common vision for the future. Beliefs are expressions of what members expect the future to hold ("I believe there will always be recurring energy shortages"), their values ("I believe that open space and greenery is an essential, not an amenity"), and their assumptions about the present ("I believe that citizens are willing to pay the cost of having a pleasing environment beyond their own neighborhoods"). Each member's vision describes the ideal community in his or her eyes and is determined largely by beliefs ("I would like to see compact, energy-efficient urban centers surrounded by expanses of undisturbed countryside preserved permanently for public enjoyment"). A system of *common* beliefs and *corporate* vision can provide a beacon on which the board can orient its plans and actions. It can also provide a set of reference points against which the board can measure the effectiveness and the consistency of what it does.

It is very tempting to omit this first step. By the time members reach office, they often have already translated their own personal beliefs and vision into specific positions (such as widening certain roads) that they are prepared to promote or to which they have already committed themselves publicly. Also some people are uncomfortable sharing their fundamental beliefs in a give-and-take discussion, and some become frustrated over the time and hard work required to articulate and sharpen beliefs and visions so that they are clear to others on the board. Despite these difficulties, if the governing board can establish a common set of beliefs and a vision of what it wants to achieve, the rest of its work can become easier because the board can be clearer and more focused in its day-to-day discussions of how to achieve the results it seeks.

This first step of the planning process is often conducted in a retreat setting with the manager and a skilled facilitator. Two days in a retreat setting is probably needed to develop and discuss thoroughly the basic beliefs and visions

represented on the board. Certainly many governing boards take less time to do this—many devote as little as a half day. These abbreviated discussions are valuable, but usually they do not permit full exploration of everyone's ideas. Regardless of the amount of time spent, many boards have found it useful to publish what they agree on at this stage, both for their own use and to publicize it as an important foundation of the board's future work.

Agreeing on key issues

Once the board has clarified the underlying beliefs and vision that will motivate it in its work, it is in a position to examine the current situation of the community. The purpose of this step is to choose the several issues that are most critical to realizing the board's vision for the community's future and on which the board might focus its energy and resources. For example, to realize a vision of a county with great expanses of undisturbed countryside in a rapidly-developing area like the Research Triangle, control of rural land conversion would be a critical issue.

The board might start this step by "scanning" aspects of the environment, such as the economy, housing, transportation, education, quality of life, and the city's or the county's long-range fiscal prospects. In each case it might look at local, state, and national trends that would affect the community in the future. For example, a falling elementary school population in a county over the last three years might suggest lower capital requirements to maintain excellence in education; but if nationwide a population bulge were moving through the pre-school ages, school facilities' needs might soon emerge as a critical issue.

The key to effective scanning is to gather enough information to decide whether an issue is important, but to gather no more than is needed to do that. There is usually a wealth of data that have been collected over time by the city or county, by businesses, and by other governmental agencies at the regional, state, and national levels. The board only needs to know enough about an issue to decide whether it will upset the board's fundamental vision for the community if events are allowed to

take their own course. Exhaustive and detailed data seldom are needed to do that. In fact, too much information can cloud issues rather than clarify them. It is more helpful to distill information as much as possible in order to highlight issues and to provide sharp focus for discussion and debate. At this stage trends, not details, are important to the board.

If an issue appears to be important, the board should also consider what the city's or the county's capacity is to do something about it. It should consider legal opportunities and constraints and the capacity of existing governmental staffs and other resources to provide the quantity and quality of work that might be necessary. For example, if explosive growth is threatening the vision of remaining a friendly, small town and the town has no full-time staff to manage development, it might either have to commit to building up its staff or abandon that part of its vision.

A board usually finds that almost every issue it examines is compelling in some way, but unless it resolves to concentrate its efforts on a few issues, it is likely to dissipate energy and resources, possibly without making a discernable difference anywhere. Achieving visible results in a few important areas can benefit the community far more than working on many desirable things or addressing many issues without much concrete effect.

The board can decide what it needs to accomplish for each critical issue and set some specific goals. This is not a repeat of the first step: the initial vision the board develops is very long-range, general, and not necessarily realistic. In this step the board sets realistic goals in each critical area against which progress can be measured. The City of Wilmington calls these goals "break-through objectives"—objectives that resolve issues or problems that prevent the city from achieving its vision. For example, if part of a board's vision for a rapidly growing city were to accommodate citizens of all income levels, and if accelerating real estate prices made housing harder to obtain for all but the affluent, then affordable housing would be a critical issue, and the board might establish a goal to increase the supply of decent, affordable rental housing for low- and moderate-income persons by a certain amount in the next few years.

Developing program strategies

Once the board has chosen critical issues and established working goals for them, it is in a position to think about *how* the goals might be achieved. It does this by devising strategies—coherent combinations of programs and actions that together might bring about a desired result. The board does not necessarily have to design entirely new strategies; many of the operating programs already in place might be used to reach its goals. If so, the board might modify or put new emphasis on existing programs instead of creating new ones out of whole cloth. For example, a city might examine how it could use its existing public housing authority, its Community Development Block Grant Program, and current development code incentives to help to achieve the housing goal above. Nevertheless, the board should approach the task of developing strategies with open minds. This can be hard when there are already programs in place to deal with a critical goal because an idea that immediately comes to mind is simply to step up current efforts—expand capacity or hire more staff—instead of seeking the best solution available.

Before the board locks itself into an existing strategy, it might try brainstorming to see how many alternatives it could think of, including ones that sound impractical. In the case of the landfill replacement, it might think of simple incineration, incineration with steam generation, partial recovery and recycling, total recycling, and contract land-filling in other counties, or even in other states. The more creative and uninhibited the board can be, the more possibilities it will be likely to consider. Welcoming unusual ideas can help to keep the ideas flowing freely. It is also helpful if the board defers any debate or even reaction to an idea until the board is satisfied that it has thought of everything possible. The aim here is to generate as many alternative ways of achieving the goal as anyone can think of and to avoid cutting off or even discounting serious consideration of any alternative until all of them can be evaluated together.

If the board can develop alternative strategies for a given goal, the list of beliefs that it articulated earlier pays a

handsome dividend: the beliefs and vision provide important criteria by which the board can evaluate each alternative. For example, all of the alternatives listed above might achieve the goal of providing additional solid waste disposal capacity three years hence, so the board must use other criteria to decide which method would be best. To use an earlier example, if the board evaluated alternative methods of disposal on the basis of a common belief that there would be recurring energy crises and a goal of minimizing the county's vulnerability, it might lean toward steam generation. The board will invariably apply other criteria as well. These include political feasibility, legal feasibility, administrative simplicity, total cost, timing of costs, and others.

The board needs one more thing before it can evaluate alternative strategies. It must decide which criteria are most important. Otherwise, toting up pluses and minuses might not help to make a decision. For example, if a new landfill were administratively simple but politically damaging, and if out-of-state landfiling were administratively complex but politically desirable, each strategy would have one positive and one negative feature. The choice would not be clear unless members agreed that one of the criteria were more important than the other. If political approval by citizens were more important than administrative simplicity, then the choice would be clear. The relative importance of criteria should be reviewed for each strategy choice because they might vary according to the issue. For example, financial risk might be the most important consideration on an issue that holds the possibility of fiscal problems, whereas political acceptability might be most important on an issue on which people hold strong feelings but where there is little financial consequence.

The informal work session is a suitable setting to developing program strategies. The board might anticipate holding more than one session unless the issues and options are very simple. There might need to be one or more exchanges between board and staff concerning ideas, analyses, alternatives, and decisions, and the time between work sessions could be used to collect and prepare information, analyze, and digest presentations to the board.

Developing budgets

Every city council and board of county commissioners in North Carolina already prepares a budget every year. If the governing board completes the first three steps of the planning process as described above, it has defined the areas where it might concentrate its attention most productively in its review of the budget: the program strategies designed to achieve the goals it has set for dealing with the critical issues. For example, if a city wanted to increase the presence of patrol officers (strategy) to make its downtown more inviting after dark (goal) to citizens who currently fear for their safety (critical issue) and eventually restore vitality to the city center (vision), then an unusually careful examination of the *police* budget might be one of the most effective uses of the time that the board had to spend reviewing the budget.

The board faces a hard decision in the budgeting step: can the resources be provided to do what is necessary to achieve the goals? It is helpful for the board to give guidance to the manager before the administration begins its preparation of a proposed budget. The manager should give the board as clear a financial projection as possible, including alternative sources and levels of revenue. In turn, it helps the administration to prepare a reasonable budget recommendation if the board can say which program strategies seem to be feasible and under what conditions. If they are not feasible under current revenue projections, then two other options can be considered: proportionate reductions in other programs and revenue enhancement from tax increases or other sources.

Many of the board's program strategies might involve more than one department. If so, it is helpful for the administration to construct the proposed budget so that it shows who has responsibility for various components of each strategy and how all of the departmental components fit together. The program budget format now used by many cities and counties is well suited to clarifying the relationship between program strategies and departmental allocations.² Projects from the capital improvement program might also be part of program strategies.

Most of the board's program strate-

gies will probably involve more than one year's effort to achieve the desired goals. Consequently, some local governments have experimented with multiyear budgets so that budgeted activities can be considered in a form more realistic than a twelve-month slice spanning just the upcoming fiscal year. This approach can be particularly useful for examining new programs where small start-up costs in the initial year of the program might blossom into much larger financial commitments in later years. Multiyear budgets can be handled like capital improvement programs, in which the board, after review of the whole package, adopts the first year and sees the second and subsequent years again when it reviews the next year's budget.³

Implementing

Once the governing board has approved the operating budget and capital improvement program, the administration will assume significant responsibility for implementation. However, there will be specific activities that the board itself will have to accomplish to exert leadership and to maintain community support for its strategies.

Soon after adopting the budget, the board can review the tasks it will have to complete and schedule them, working backward from deadlines. For example, if the board has approved a major capital improvement initiative about which it wants to educate the public before a referendum in the fall, it would start with the election date and work backward to decide when members should be making presentations, when special events should be held, when material has to be prepared, and when the board will have to take the actions required by the General Statutes to hold the election.

During the year the elected board is deluged by many demands on its time and energy to deal with items that are unrelated to the achievement of its major goals. If it commits the important items to its calendar first, then the ad hoc items can be arranged as time allows. If it does not schedule important activities far in advance, then the ad hoc activities can drive its schedule, and the important items might be delayed or, worse, might not be done at all.

Evaluation

Evaluation is important to obtain the best results from any endeavor. To evaluate properly, the board needs to know what results to expect at various stages of its plan, from the beginning of implementation to the end of the planning horizon when it hopes to see something in the community change because of its efforts. Then it can be vigilant to see that those results come about. Just as the board developed its plan at three levels—goals, strategies, and budgeted activities—so can it evaluate progress at all three levels.

The easiest and most concrete level of evaluation is to monitor progress on budgeted activities to see that they are being carried out as expected by the persons and departments who are responsible for them—for example, whether revised development ordinances were recommended, approved, and put in place on time by the planning department. Many boards review progress on budgeted activities with the manager every ninety days.

At the next level the board can evaluate whether the combinations of budgeted activities are working together as well-coordinated, well-managed components of important program strategies—for example, whether open-space ordinances and open-space acquisition together have increased the amount of open space actually usable. This level of performance is usually harder to evaluate clearly. However, it might be done annually before the next budget cycle and might be considered in the board's annual evaluation of the manager's performance.

Finally, the board can seek data and information to indicate whether the programs and strategies are having the desired effect in the community—for example, whether revised development ordinances, active land acquisition by the county, and other measures have actually made the vision of undeveloped countryside a reality in the county. This is the hardest level of achievement to evaluate, but it is the ultimate test of success. One of the reasons it is harder to evaluate is that the end results probably only become evident over many years. For example, a set of programs aimed at improving rural housing conditions or moving traffic capacity ahead of growing demands might take years or more

to get started and several more years to have any effect on the problem. Nevertheless, regular evaluation of activities for the previous ninety days and annual assessments of strategy success can help the board to stay on top of the activities and programs that are the building blocks by which it seeks to achieve its goals. If they are successfully carried out, it might be possible to assume that progress will be made toward achieving the goals.

Roles in the Planning Process

Partnership in city hall and in the courthouse is important for successful governance and administration. The elected official, the manager, the administrator, the supervisor, and the first-level worker each brings special skills and perspectives to the endeavor of local government. The relationship works best with a combination of collaboration and division of labor where everyone understands each other's role and responsibilities and where each has reasonable expectations of the others involved in the process.

The old maxim that strictly divides policy and administration, with the governing board making policy and the administration carrying it out, has never provided satisfactory role guidance to anyone actually working in local government. Neither does it offer reasonable guidance to the interaction among board, manager, and staff in the planning process. James H. Svara's research on the roles of councils and managers in effective governance has provided a more helpful description of the general relationship between board and manager. Svara suggests that the board and the manager are both involved in policy and administration at every level but that their shares of responsibility and initiative vary.⁴ The board takes primary responsibility for setting the overall direction of government, but the manager assists as a close working partner with the board. Both share responsibility for formulating programs and budgets, with initiative varying by kinds of issues, local culture, and individual preferences. Finally, the manager takes most of the responsibility for administration, but the board exercises general direction and redirection as necessary.

The cooperative roles in this planning process for the governing board, the manager, and the administration are consistent with both the North Carolina General Statutes' and the International City Management Association Code of Ethics' prescriptions for the manager's responsibilities. They are also consistent with one of the significant findings in Svara's research: elected officials and managers who were interviewed *both* wanted the elected board to take a more prominent role in framing the basic mission and direction of the city or county than they felt it did in practice.⁵ Nobody but the governing board can formulate the *beliefs and vision* that will frame the overall direction that governance takes in the community, but the manager can assist. The manager can help the board to articulate and refine its vision and, through participation in this initial step, gain a thorough understanding of that vision and become an integral part of the policy team.

Involving staff in the *issue analysis* takes advantage of administrators' access to the most thorough and up-to-date information related to most aspects of local government. Also the administration often can provide a valuable institutional memory to illuminate the board's consideration of issues beyond its review of the data. It would be hard to suggest exactly how much the board might be influenced in its choice of important issues by the staff and the manager. That would depend on many factors such as experience of the board, experience of the staff, and degree of knowledge and trust among the individuals involved.

The manager and staff are in a position to take the initiative in the formulation of *program strategies* and the recommendation of *budgets*. Their technical, administrative, and managerial skills and their detailed knowledge of their functional areas make them qualified to recommend how to go about achieving results that the board seeks. The board still has an important role in these two steps, however. First, it certainly can contribute to the initial ideas or alternatives that are considered. Second, the board is ultimately responsible for judging whether the staff has successfully analyzed and recommended programs and budgets that will serve the board's purposes.

Both board and administration have significant but distinct roles to play in *im-*

plementation. The board is concerned foremost with exerting leadership—sustaining the support from citizens and other institutions in the community that is necessary to carry out program strategies. At the same time the administration will be responsible for carrying out budgeted activities that make up the program strategies. Still, the board retains the responsibility for redirecting budgeted activities that fail to contribute to the success of strategies or that have unintended and undesirable side effects.

Finally, it is up to the board to *evaluate* success in realizing its vision. Of course, routine evaluation of activities and progress toward goals should take place at every level in the organization. Nevertheless, the body that established the goals to be sought is the body that ultimately must satisfy itself that they are being attained. Moreover, regular evaluation by the board, like the establishment of overall direction and clear goals, tends to provide valuable guidance to the administration on a continuing basis.

Time and Timing

The planning process described here constitutes a significant workload for the board. How much time might it take? How can a governing board, whose regular agenda is already overloaded, find the time that would be needed? How long the process could take, measured by the calendar, might vary quite a lot depending on how often the board can meet during the process, how many other people the board has involved, how complex the issues are, and how much homogeneity there is among board members' beliefs and visions for the future.

Table 1 presents a schedule that might be feasible for a *first-time* effort with moderate-to-heavy commitment of meeting time by the board. This schedule is for the *elected officials' deliberation* and direct involvement. For example, staff or a board-appointed committee could start to collect and analyze data about trends and issues before the elected board met to develop its vision and could present the material when the board members were ready to discuss issues.⁶ Also, between March and May, the administration needs time to devel-

Table 1
Possible Governing Board Planning Schedule

STEP	CALENDAR TIME	COULD BE DONE DURING
Vision	1 month	December
Issues goals	1½ months	January and February
Program strategies	1½ months	February and March
Budget	1½ months	May through June

op, assemble, and refine budget recommendations for the board to consider and decide upon before June 30. Of course, implementation would span each twelve-month fiscal year, and evaluation might be done by report every three months, with an annual review in March before budget preparation for the following year begins.

The whole process need not be repeated in the second year. The annual evaluation before the second year's budget is prepared allows the board to consider adjustments or changes in program strategies, to reevaluate its current situation, and to provide general guidance to the manager for the approaching fiscal year and beyond. The calendar schedule suggested here would enable a board to start the full process after each municipal election. Having newly-elected members take part in formulating goals right after they took office would help to bring the new board together quickly and give each member responsibility for planning and implementation throughout each two-year term. However, it would thrust inexperienced officials into the process without any time to adapt to their new roles. Going through the full process in the off-election year would give new officials a full year to learn the job, but one group of elected officials would set the agenda for most of a following group's term. As a practical matter, that would make continuity in each long-range agenda uncertain.

The only way to find the time for planning is to make time for it. One way to do that is to reduce distractions by supporting the manager to develop a first-rate administrative structure. An administration that is adequately staffed, well trained, and highly motivated can prevent many problems that might otherwise come to the board and can

solve others before they escalate to become the board's concern. The board can also examine its average agenda and ask itself how much of what is on each agenda reasonably could be delegated to staff or to committees. An opportune time to consider this might be after the board has chosen its priority issues so that it can see how much of its regular work has actually been devoted to the matters it has decided are most important for its attention.

Giving calendar priority to the planning process also can make time available. Once the governing board decides to embark on a systematic planning process, it might agree on the procedure it intends to use and reserve calendar time for the steps that have to be taken. The manager and the board can block in mandated or uncontrollable events like elections, budget deadlines, and regularly scheduled meetings and then schedule the time it needs to do the planning. If the board gives its planning this kind of priority, then as the continuous flow of urgent matters vies for that time, the board can ask in each case whether the matter is urgent and more important than its planning or simply urgent.

Conclusion

The board that cannot commit the time suggested above to develop an adequate plan for the future could abbreviate any of the steps that have been described. Each board must decide for itself how much additional knowledge, insight, and understanding it can gain by additional discussion or collection of data. Many elected boards use a two-day retreat to talk about vision and to develop goals; then later they talk about strategies in a pre-budget workshop

with the manager and staff. The critical feature of even the most abbreviated process is that the vision of the elected board is expressed so that it can be translated systematically into budgeted activities and used to make day-to-day decisions.

Planning and acting on the basis of a long-range vision is hard to do. It is hard to find agreement among all of the members who come to the board with individual beliefs and visions for the future of the community. It is hard to find agreement over time as members come and go from the board every two years. It is hard to make judgments in the face of an uncertain future—judgments about what will happen, how it will affect the community, what is important to do, and how it can be done effectively. Finally, it is hard to make the time to consider important matters of the future when the board is barraged by so many urgent matters of the present. But if making that time provides direction and allows the board and the administration to govern and manage effectively, then it might be some of the best time that officials will spend in office.

1. For a discussion of retreats see Kurt Jenne 'Governing Board Retreats' *Popular Government* 53 (Winter 1988): 20-26.

2. Past efforts to construct budget documents according to program strategies that cut across departmental lines have not been successful, because they did not provide adequate control and accountability by the responsible departments. What is suggested here is simply that the connection be made clear—that it be shown which activities in which departments collectively make up the program strategies.

3. Two cities in North Carolina, Charlotte and Wilmington, are experimenting with the use of a two-year horizon in the budget process. In each case only the first year is adopted. Several cities and counties include up to five years of expenditure and revenue forecasts in the budget process, however these are projections of current programs and are not forecast on the basis of planned initiatives.

4. James H. Svava 'Contributions of the City Council to Effective Governance' *Popular Government* 51 (Spring 1986): 1-8. The article was based on five large cities in North Carolina. Professor Svava has since extended the study to include a total of 131 cities and 58 counties in the state.

5. James H. Svava 'The Complementary Roles of Officials in Council-Manager Government' *Municipal Yearbook*, 1988 (Washington DC: International City Management Association, 1988), and 'Council-Manager Relations and the Performance of Governing Boards' *Popular Government* 54 (Summer 1988): 27-32.

6. For example, in Wilmington a Foresight Committee prepared a Strategic Issues Analysis for the city council to review in advance of developing its program strategies and budgets for the 1987-1988 and 1988-1989 fiscal years.

AIDS in the Workplace

Stephen Allred

An applicant for employment in a North Carolina municipality voluntarily discloses to the personnel specialist conducting the interview that he was tested for AIDS and was found to be HIV positive. The personnel specialist makes no direct response but notes the fact on the application. One week later the applicant is notified that another person was hired. The applicant believes he was not hired because he disclosed the fact that he was HIV positive. May the applicant challenge the city's refusal to hire him?

A police officer arrives at the scene of an automobile accident but, recognizing the injured driver as someone rumored to be homosexual, refuses to take steps to stop the driver's profuse bleeding for fear of contracting AIDS. May he lawfully do so?

A county clerical employee learns that a coworker who recently returned from extended sick leave suffers from AIDS-related complex (ARC). She refuses to work in the same room with the employee. Is this insubordination and therefore legal grounds for dismissal?

Cases like these may soon confront North Carolina public employers. The incidence of AIDS in North Carolina is significant and increasing. As of May, 1988, 526 AIDS cases had been reported in the state. And although North Carolina is, in relative terms, a low-incidence state (while tenth in population, it ranks twentieth in number of AIDS cases),¹ by 1991 the state is expected to have over 500 living AIDS patients. When one considers that, according to the Centers for Disease Control, for every person with AIDS, there may be ten with ARC and a hundred with the AIDS virus, the scope of the AIDS epidemic becomes

alarmingly clear. The almost inescapable conclusion is that virtually every employer, sooner or later, will have an employee affected in some way.

How have the courts and administrative authorities responded to the challenges presented by AIDS in the workplace? This article examines the decisions rendered by various administrative bodies, state courts, and federal courts so far and discusses the implications of these decisions for a North Carolina public employer.

Administrative Rulings

Various state and federal boards, commissions, and departments as well as arbitrators have been called upon to render opinions concerning personnel actions (usually terminations) involving employees or client groups with AIDS. The following is a brief review of those opinions.

In *AFSCME v. State of Minnesota, Department of Corrections*,² an arbitrator reviewed the discharge of a prison guard who refused to conduct a pat down search of prisoners whom the guard suspected had AIDS. The prison officials had fired the guard because he refused to pat down the inmates unless the prison allowed him to wear gloves. Later, however, the prison changed its policy to accommodate the concerns of other guards and allowed them to wear gloves while conducting such searches.

The arbitrator held that the discharge of the guard was inappropriate and ordered the guard reinstated to his former position. The arbitrator overturned the discharge for two reasons. First, the employer changed its policy regarding the wearing of gloves during pat down

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searches, and thus the prison would have suffered no detriment if the guard had later been granted permission to do so. Second, and more important, the employer was at least partially responsible for the guard's fear of contracting the disease because the prison had previously circulated a memorandum to all employees about AIDS that warned against sharing cigarettes and advised employees to wash their hands and use "good hygiene." The memorandum further stated, "No one really knows all the ways AIDS is transmitted, so be careful."

In another ruling, *Shuttleworth v. Broward County Office of Budget and Management*,³ a county employee disclosed to his supervisor that he had AIDS, and the county fired him. The Florida Commission on Human Relations rejected the county's contention that the employee posed a danger to his coworkers and that his dismissal was a "business necessity" because the commission found no evidence that AIDS could be transmit-

ted by casual contact in the workplace. In a related development the federal District Court for the Southern District of Florida rejected the county's summary judgment motion⁴ and allowed the employee to proceed with his action under Section 504 of the Rehabilitation Act of 1973. (A discussion of Section 504 litigation appears below.) On December 5, 1986, the parties reached an out-of-court settlement in which the county agreed to reinstate the employee and pay damages of \$190,000.

A third ruling, *Racine Education Association v. Racine Unified School District*,⁵ struck down a school district policy barring teachers with AIDS from working in school (either in the classroom or in other settings) as a violation of the Wisconsin antidiscrimination laws. The Wisconsin Department of Industry, Labor and Human Relations rejected the argument that the school district policy was justifiable because it was designed to protect the health and safety of students

and teachers alike. According to the opinion, "the best available medical information at the current time indicates that AIDS is a blood-borne, sexually transmitted disease, which is not spread by casual contact."⁶ As such, the policy went too far in banning teachers with AIDS from employment.

Other administrative authorities have reached similar results. For example, in *Bernales v. City and County of San Francisco*,⁷ the California state labor commissioner ruled that the safety of four nurses was not jeopardized by a hospital's refusal to permit them to wear protective clothing when treating AIDS patients. And in a case involving Charlotte Memorial Hospital,⁸ the United States Department of Health and Human Services, Office of Civil Rights, ruled that a hospital's dismissal of an employee with AIDS was impermissibly motivated by fear of contagion in violation of Section 504 of the Rehabilitation Act of 1973. The Rehabilita-

An AIDS Primer

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The literature on AIDS is filled with confusing technical terms and jargon. This primer defines some of those terms and provides some basic information about AIDS. Readers are encouraged, however, to seek more information. *AIDS and the Law: A Guide for the Public*, reviewed in this issue of *Popular Government* (see page 45), is an excellent place to begin learning more.

AIDS Acquired immunodeficiency syndrome. AIDS is a condition caused by an infection of the human immune system—the system in the body responsible for fighting disease and infection. The AIDS-causing human immunodeficiency virus (HIV) weakens the immune system and makes those infected likely to contract a number of infections and diseases that healthy individuals are able to fight off naturally. These infections and diseases are often called opportunistic because they take advantage of the opportunity offered by the weakened immune system to establish themselves in the victim.

AIDS does not have a unique set of symptoms. Rather, the term AIDS is a label applied to a fatal combination of different diseases and conditions that develop as a result of the AIDS virus's attack on the immune system. The federal Centers for Disease Control defines cases of AIDS based on specified combinations of laboratory test results, diagnoses of opportunistic infections, and the presence of some other symptoms.

AIDS dementia A result of HIV attacking the brain. Dementia is a general deterioration of mental functioning. Symptoms of AIDS dementia are sometimes compared to those of Alzheimer's disease.

AIDS test The AIDS test does not test for the condition AIDS. Neither does it test for the AIDS virus. Instead, the test in use today finds out whether the body has manufactured the antibodies that it uses to fight AIDS virus infection. The body typically requires between six weeks and fourteen months to produce those antibodies. Therefore one may be infected with the AIDS virus and be able to transmit it to others but still test negative on the current AIDS test.

The AIDS test is really two different tests. One is the enzyme-linked immunosorbent assay, or ELISA. The other is the western blot. These two tests are used together to ensure accuracy. If only a single ELISA test were used on an ordinary group of people, as many as one half of the positive results would be wrong.

Proper testing procedures call for an individual to have an ELISA test first. If that test is positive, another ELISA should be administered. If the second ELISA is positive, a western blot should be administered to confirm the result. If the western blot is positive, one may properly be called **seropositive**, **HIV positive**, or may be said to have **seroconverted**. Under North Carolina rules governing laboratories that perform the test for the AIDS virus, final positive test results may not be released until this three-part testing procedure is completed.

Researchers are daily acquiring new knowledge about AIDS. Recent studies indicate that the AIDS virus may on uncommon occasions conceal itself within cells in the body for at least as long as forty-two months. In this "dormant" state the AIDS virus does not stimulate the body to produce antibodies. Therefore the AIDS test in common use today will not detect the infection. A new test has been developed, however, that tests for the virus itself instead of for antibodies to the virus. This test, the polymerase chain reaction (known as PCR), is not in widespread use outside of research laboratories.

AIDS virus Another name for the human immunodeficiency virus.

tion Act is discussed below in the section on federal courts.

AIDS and State Law

Three cases decided by state courts interpreting state antidiscrimination statutes have held that AIDS is a handicapping condition. In *People v. 49 W. 12th Street Tenants Corp.*⁹ the New York Supreme Court ruled that AIDS is a disability under New York Human Rights Law. Similarly the Massachusetts Supreme Court held in *Cronan v. New England Telephone Co.*¹⁰ that AIDS constitutes a disability under the Massachusetts antidiscrimination statute. And in *California Department of Fair Employment & Housing v. Raytheon*¹¹ an employee with AIDS who took sick leave and later attempted to return to work was then dismissed by his employer. The California Superior Court held that the company violated state law by discriminating against a handicapped employee and

ruled that he was entitled to back pay plus interest. These results are not surprising, given the similar rulings by administrative agencies noted above and the broad definition of *handicapping condition* found in the various state statutes.

Legislation comparable to that examined by the New York and Massachusetts courts is found in the North Carolina General Statutes (G.S.) at Chapter 168A, the Handicapped Persons Protection Act. The act applies to employers with fifteen or more full-time employees within the state and prohibits, in part, discrimination in employment against handicapped persons. Handicapped persons are defined at G.S. 168A-3(4) as: "any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment."

The act requires employers to make a reasonable accommodation for other-

wise qualified handicapped persons. As of this writing, no decisions applying this act to a person with AIDS have been rendered by the North Carolina courts; however, one case is now pending in Wake County Superior Court.

The case, *Burgess v. Your House of Raleigh, Inc.*¹² involves a challenge by a former restaurant cook who alleges he was fired after his employer discovered he had tested HIV positive. The former employee, Burgess, contends that his firing violated G.S. 168A, which prohibits discrimination against "otherwise qualified" handicapped employees.

The court will be asked to determine whether the definition of a handicapped person noted above includes someone who is HIV positive. In this regard, it is interesting to note that the General Statutes definition of a handicapped person is identical to that found at Section 504 of the Rehabilitation Act of 1973, which has been construed by a number of courts to include persons with AIDS.

known as **HIV**. Although no one can say for sure, experts believe a person infected with HIV remains able to transmit the virus to others for the rest of his or her life.

ARC AIDS-related complex. Individuals with AIDS-related complex suffer the same infection of the immune system as those with **AIDS**, but they are not sick enough to be classified as having **AIDS**. ARC sufferers may experience a variety of symptoms, including recurrent fevers, lethargy, night sweats, unexplained weight loss, persistent diarrhea, and chronic swollen glands.

Asymptomatic The term used to describe one who is **HIV** positive but has none of the symptoms associated with the onset of **ARC** or **AIDS**.

AZT Zidovudine, formerly called azidothymidine, BW A509U, and Compound S, is the first and only drug approved by the United States Food and Drug Administration for the treatment of **AIDS** and advanced **ARC**. It is manufactured by Burroughs Wellcome and sold under the brand name Retrovir.

Over 20,000 people are currently taking zidovudine. The drug is not a cure for **AIDS**, but it does slow the progress of the disease. Unfortunately there is no evidence that taking zidovudine reduces one's ability to transmit **HIV**.

Blood and body-fluid precautions Health care workers, police, emergency medical technicians, jailors, and anyone else who comes in contact with human blood, semen, vaginal or cervical secretions, or other bodily fluids or excretions should take precautions to protect themselves from the diseases, including **AIDS**, that may be transmitted by those fluids. These precautions are called blood and body-fluid precautions. If you want to know about the appropriate precautions for a particular situation, begin your research by contacting your local health department.

Casual contact Fortunately for all of us, **AIDS** is difficult to transmit. Experts usually convey this idea by saying that the **AIDS virus** cannot be transmitted by casual contact, that is, by the ordinary day-to-day

contact that we have with strangers, friends, and family members.

The **AIDS virus** can be spread through contact with the blood or semen, and probably by contact with the vaginal or cervical fluids of an infected person. (The **AIDS virus** has been found in other bodily fluids such as tears and saliva, but contact with those fluids does not pose a measurable risk of infection.) Not all contact with blood or bodily fluids is dangerous—your skin protects you from the virus. The virus must have a way into the body such as an open sore, a puncture with a needle, or contact with the mucous tissues of the sexual organs, rectum, eyes, or mouth.

High-risk group Individuals who are members of high-risk groups are statistically more likely to be infected with the **AIDS virus**. Those groups include male homosexuals and bisexuals, hemophiliacs, the female sexual partners of the foregoing groups, and all those who take illegal drugs by injection. Also, a pregnant woman infected with the **AIDS virus** has a one-in-two chance of passing the infection to her child.

HIV Human immunodeficiency virus, previously called LAV (lymphadenopathy-associated virus) and HTLV-III (human t-cell lymphotropic virus type III). Scientists believe that **HIV** is the cause of **AIDS**. The virus causes **AIDS** by attacking the immune system, crippling the infected individual's natural ability to fight off disease. The virus may also attack the brain, resulting in **AIDS dementia**.

HIV positive Describes one in whom the **AIDS test** has disclosed the presence of the antibodies to **HIV**. Such a person may also be called **seropositive**. An **HIV-positive** or **seropositive** individual has been infected by the **AIDS virus** and is presumed capable of transmitting the virus to others. However, because the body takes time to produce antibodies to **HIV** and because **HIV** may conceal itself in the body, one who is infected and capable of transmitting the disease may, nevertheless, test negative on the **AIDS test**.

Seroconvert One who, after exposure to the **AIDS virus**, tests positive for **AIDS virus** antibodies is said to have seroconverted.

Seropositive Has the same meaning as **HIV positive**.

How the court will rule remains to be seen, but it is likely that the court will be asked to consider the decisions of the federal courts concerning AIDS in the workplace.

AIDS and Federal Law

The greatest source of protection for employees with AIDS who suffer adverse employment decisions would appear to be the Rehabilitation Act of 1973.¹³ The act has been applied to a variety of cases involving AIDS in the workplace. It covers employers, public and private, who receive at least \$2,500 in federal funds annually. Section 504 of the act states that no otherwise qualified handicapped person will, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives federal financial assistance. The act defines handicapped persons in exactly the same way as they are defined under the North Carolina General Statutes (indeed, the General Statutes definition was taken from Section 706(7) of the Rehabilitation Act of 1973).

The most important case interpreting the act is one that did not involve AIDS at all. In *School Board of Nassau County v. Arline*¹⁴ the United States Supreme Court held that contagious diseases are a "handicapping condition" under Section 504. Although the Court's decision involved a school teacher with tuberculosis and not AIDS, the rationale of the opinion strongly supports the argument that AIDS is a disability under the act.

The plaintiff in *Arline* was discharged from her job as an elementary school teacher following a recurrence of tuberculosis. She brought suit against the school board, claiming that her condition was a handicap as defined by the act: "The term handicapped individual means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment." The Supreme Court found that *Arline* was a handicapped individual because she had previously been hospitalized for tuberculosis and therefore had a "record of impairment" within the meaning of the act.

The Court noted that although *Arline* fit within the broad definition of a handi-

capped individual, the act only protects persons who are both handicapped and otherwise qualified. An otherwise qualified handicapped person is one who can perform the essential functions of the job in spite of the handicap. When the individual cannot perform these functions, the court must also consider whether, with reasonable accommodation, the employer could overcome the effects of the person's handicap. The Court further stated that a person who poses a significant risk of communicating an infectious disease to others in the workplace is not otherwise qualified if reasonable accommodation by the employer will not eliminate that risk.

The determination of whether a person handicapped by a contagious disease is otherwise qualified, under the *Arline* decision, must be based on an individualized inquiry by the reviewing court. The inquiry must rely on reasonable medical judgments about (1) how the disease is transmitted, (2) how long the carrier will be infectious, (3) the potential harm to third parties, and (4) the probabilities that the disease will be transmitted and will cause varying degrees of harm. The reviewing court should normally defer to the reasonable judgment of public health officials (for example, the Centers for Disease Control) in making these inquiries.

The Court declined to reach the questions of whether an asymptomatic carrier of a contagious disease, such as AIDS, could be considered to have a physical impairment and whether such a person, solely on the basis of contagiousness, could be considered a handicapped individual under the act. It is significant to note, however, that the Court cited congressional action that amended the definition of *handicapped individual* to include those who are "regarded as impaired." According to the Court, "Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment. Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness."¹⁵

Since the *Arline* ruling, a number of lower federal courts have considered the question of AIDS as a handicapping condition. In *Thomas v. Atascadero Unified School District*¹⁶ the court held that AIDS is a protected disability under Section

504 of the Rehabilitation Act of 1973. This case did not involve an employee, but a child with AIDS who was barred from kindergarten after he bit a classmate. Following the incident, the school board voted to exclude the child from classes until early 1987. The court granted a request for temporary relief (termed a *preliminary injunction motion*) to reinstate the AIDS victim, noting that the school district failed to establish that the child's behavior posed any risk of communicability. The court also held that the Rehabilitation Act requires the school district to reasonably accommodate the child's disability and that the reasonable accommodation in this case was to place him in a regular classroom setting. The decision placed the burden of proving a danger of transmission on the school district, rather than requiring the individual claiming discrimination to prove that no danger exists. A similar result had been reached earlier in *District 27 Community School Board v. Board of Education of City of New York*,¹⁷ and was reached following *Arline* in *Ray v. School District of DeSoto County*.¹⁸

An important federal case involving AIDS in the workplace is *Chalk v. United States District Court Central District of California and Orange County Superintendent of Schools*.¹⁹ Chalk was a certified teacher of hearing-impaired children in the Orange County, California, school system. Early in 1987 Chalk was hospitalized with pneumonia and diagnosed as having AIDS. Within eight weeks of treatment for pneumonia, Chalk's physician found him fit to return to teaching duties. However, the school system placed him on administrative leave with pay for the remainder of the school year. Chalk met with school officials in early August 1987 to discuss his return to teaching duties but was instead offered an administrative position at the same rate of pay and benefits and informed that if he insisted on returning to the classroom, the school would file an action against him.

Chalk refused the offer and brought suit against the school system under the Rehabilitation Act of 1973, seeking an order (in the form of a preliminary injunction) that the school system reinstate him to classroom duties pending trial. Chalk argued that his handicap, AIDS, did not prevent him from being otherwise qualified to continue performing his duties as a classroom teacher. The district court denied

Chalk's preliminary injunction request, noting that while it was unlikely that AIDS could be transmitted in a classroom setting, there was no "complete certainty" that all danger was eliminated.

The Ninth Circuit Court of Appeals reversed the lower court's determination that Chalk posed a risk, however slight, to the students and held that Chalk was an "otherwise qualified" handicapped individual with a right to return to his teaching duties. The court relied on *School Board of Nassau County v. Arline* for the proposition that an employee with a contagious disease is included within the Rehabilitation Act's definition of a handicapped individual. The court also found that Chalk was "otherwise qualified" because he was physically and mentally able to teach and there was no evidence to demonstrate any appreciable risk of AIDS transmission in the normal classroom setting. The court noted that the lower court's requirement that Chalk prove with complete certainty that there was no risk to students was an impossible burden to meet, for little in science can be proved with complete certainty. Furthermore the act does not impose such a test. Chalk was thus ordered reinstated to his former duties as a teacher.

What of the employee who refuses to work with a coworker for fear of contagion of AIDS? Although no court decision has addressed the question thus far,²⁰ the United States Office of Personnel Management, in regulations recently published addressing AIDS in federal employment,²¹ states:

There may be situations where fellow employees express reluctance or threaten refusal to work with HIV-infected employees. Such reluctance is often based on misinformation or lack of information about the transmission of HIV. There is, however, no known risk of transmission of HIV through normal workplace contacts. . . . [W]here management determines that an employee's unwarranted threat or refusal to work with an HIV-infected employee is impeding or disrupting the organization's work, it should consider appropriate corrective or disciplinary action against the threatening or disrupting employee(s).

Similar regulations governing employees covered by the State Personnel Act have recently been promulgated by the North Carolina State Personnel Commission.²² Like their federal counterparts, these regulations provide that

employees, including local government employees in the competitive service and thus covered by the act, may be disciplined for refusing to work with clients or other employees who have AIDS, provided sufficient precautions to prevent infection have been taken.

Disciplinary measures against employees who refuse to discharge their duties for fear of contagion from a coworker would also appear supportable by analogous case law developed under the National Labor Relations Act. The act prohibits discipline or discharge of an employee who refuses to work "in good faith because of abnormally dangerous conditions for work at the place of employment."²³ For an employee's refusal to be upheld, however, the condition must in fact be abnormally dangerous, and the employee must establish "ascertainable objective evidence supporting [the] conclusion that an abnormally dangerous condition for work [exists]."²⁴ Petitioning one's employer to commit an illegal act—including prohibited discrimination under state or federal law—is not protected.²⁵ Similarly, the Occupational Safety and Health Act and its implementing regulations permit an employee to refuse to work where a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time to eliminate the danger through resort to regular agency channels.²⁶ Again, however, the refusal to work is not protected where no such danger exists; indeed, the employee may be fired for such conduct.²⁷ Thus, unless an employee could show that the presence of a coworker with AIDS in the workplace posed an abnormally dangerous condition—an unlikely result, given the present state of knowledge about AIDS and the rulings noted above—the employee's refusal to discharge his duties would be insubordination.

Decision Implications

What can we learn from these decisions? First, the AFSCME and *Bernales* administrative rulings underscore the importance of properly educating employees as to the nature of the disease and the ways by which it can be communicated. In the AFSCME case, for ex-

ample, if the prison had accurately informed the guard about the transmission of AIDS, the discipline for refusal to pat down the prisoners would probably have been upheld. Second, it would appear from these decisions that an employer who dismisses an employee with AIDS because of fear of contagion acts at his own peril and may violate applicable state and federal statutes. Third, it has consistently been the case thus far that state antidiscrimination laws have been interpreted by administrative agencies and state courts to prohibit dismissal of an employee merely because he or she has AIDS. Fourth, the federal courts have, at a minimum, held that contagious diseases may be handicapping conditions under the Rehabilitation Act of 1973. Further, each federal court squarely faced with the issue has held that a person with AIDS meets the definition of a handicapped individual under the act. An employer thus must consider carefully whether a personnel decision adversely affecting an employee with AIDS could successfully be challenged in federal court under the Rehabilitation Act.

Returning to the three hypothetical cases posed at the beginning of the article, what are the probable results?

In the first case, the applicant who disclosed that he was HIV positive was denied employment. The applicant could file a challenge under either G.S. 168A or the Rehabilitation Act of 1973, claiming that he was either handicapped or "perceived as handicapped" under the broad definition contained in both acts. The applicant could note that at least one court has held that a person who is HIV positive may invoke the protections of the Rehabilitation Act.²⁸ The applicant could further argue that he was "otherwise qualified," in that merely being HIV positive does not result in any limitations on physical or mental abilities.²⁹ Under the approach required by *Arline*, the applicant could then argue that, relying on current medical knowledge, the virtually nonexistent risk of transmission of AIDS at the work-site made the duty to accommodate his handicap an easy one. Assuming the employer cannot articulate a legitimate, nondiscriminatory basis for refusing to hire the applicant (such as that another applicant had superior credentials and experience), the applicant may win his case. In any event, it would appear from

the cases discussed above that the city may not legally refuse to hire the applicant simply because he is HIV positive.

The second case presents a more difficult question. Recall that the police officer in this case refused to help an accident victim for fear of contracting AIDS. Is the officer's refusal excused because of the presence of an "abnormally dangerous working condition"? If the officer had been furnished appropriate protective clothing, including gloves and face protection, probably not. The officer in this case was refusing to administer assistance to someone who was rumored to be homosexual, not someone who was known to have AIDS. Even if the person were a known AIDS victim, the refusal to help the victim is probably not excused, provided appropriate precautions could have been taken. By analogy, the Centers for Disease Control has prescribed rules and guidance for health care workers who deal with AIDS patients, which instruct the workers to perform their duties with appropriate control measures. Nonetheless, the answer to this case is by no means clear; whether a court would excuse the officer's refusal to assist the victim remains to be seen.

Finally, the third case concerns an employee who refused to share an office with a AIDS-infected coworker. Given the decisions noted above, all of which hold that the risk of transmission of AIDS by casual contact in a normal office setting is virtually nonexistent, the employee in this case is insubordinate. Unlike the police officer in the second case, no persuasive argument can be made that an abnormally dangerous working condition exists.

Conclusion

Although the administrative authorities and courts have begun to wrestle with the issues of AIDS in the workplace, many questions remain unanswered. A public employer may, however, obtain some guidance from those decisions already rendered. At a minimum, North Carolina cities and counties should begin to consider these types of problems described in this article so that when the issues arise, they may be dealt with in a calm and well-considered manner.

Guilford County's Response to AIDS in the Workplace

In November of 1987 the Guilford County commissioners accepted the recommendation of a county task force appointed to examine the issue of AIDS in the workplace and unanimously adopted a policy aimed at protecting county employees from contracting the disease and prohibiting discrimination against those afflicted with it. The task force was chaired by Carolyn Schmidt, a registered nurse and staff member of the Guilford County employee wellness program, and included representatives from all major county departments. Also serving were Guilford County Health Director Dr. Joseph L. Holliday and County Personnel Director Karl Munson. The task force spent five months developing the policy and continues to develop training materials for implementing it among county employees.

The Guilford County policy states that persons with AIDS, including county employees, applicants for employment, and citizens, will be treated the same as anyone else with a life-threatening condition. Specifically the policy (1) bars county departments and vendors from testing individuals for AIDS in the absence of "compelling medical and/or public health reasons"; (2) provides that employee health benefits will be extended to cover persons with AIDS or ARC; (3) prohibits discrimination against applicants and employees in hiring, firing, or other conditions of employment because the person has AIDS or any related condition (including perception that the person is at risk for contracting AIDS or associates with persons at risk); and (4) mandates AIDS training for all county employees.

The policy is one of the few enacted thus far by a North Carolina public employer. Alice Burkholder, a task force member and Guilford County employee, stated: "One of the most positive things about our approach is that we have been proactive rather than simply waiting to see what will happen. We believe it lends objectivity to the process of policy development to act in an atmosphere free from the emotions that may take over when you already have employees with AIDS to consider."

1. The number of reported cases somewhat understates the actual number of people with AIDS in the state as North Carolina's medical centers are treating cases that belong, for reporting purposes to other states. Duke University Medical Center, for example is treating sixty children with AIDS from a number of states. "Children who have AIDS," *News and Observer* 2 May 1988, p. 1D col. 3.

2. 85 Lab. Arb. (BNA) 1185 (1985).

3. No. 85-0624 (Fla. Comm'n on Human Relations, April 7, 1986).

4. 649 F. Supp. 35 (S.D. Fla. 1986). Summary judgment is a decision for the moving party before trial when the court determines that he or she is entitled to judgment as a matter of law.

5. No. 8650279 (Wisc. Dept. of Industry, Lab. and Human Rel. April 30, 1986).

6. *Id.* slip op. at 5.

7. 23 Gov't Empl. Rel. Rep. 1402 (1985).

8. No. 04-84-3096 (Dept. of Health & Human Services Office for Civil Rights, Aug. 5, 1986).

9. No. 4350483 (NY Sup. Ct. Dec. 20, 1983).

10. No. 80332 (Mass. Super. Ct. Aug. 15, 1986).

11. 46 Fair Empl. Prac. Cas. (BNA) 1089 (Cal. Super. Ct. 1988).

12. Civil Docket No. 88 CV 3991 (Wake Co. Super. Ct., April 20, 1988).

13. 29 U.S.C. § 794.

14. ___ U.S. ___ 107 S. Ct. 1123 (1987).

15. 55 U.S.L.W. at 4248.

16. 662 F. Supp. 376 (C.D. Cal. 1987).

17. 130 Misc. 2d 398, 502 N.Y.S.2d 325 (NY Sup. Ct. 1986).

18. 666 F. Supp. 1524 (M.D. Fla. 1987).

19. 840 F.2d 701 (9th Cir. 1988).

20. *But see* Stepp v. Indiana Employment Security Div. 3 IER Cases 133 (Ind. Ct. App. 1988) (employee dismissed for failure to conduct tests of AIDS-infected body fluids upheld where court found adequate precautions were taken in laboratory); Vinokurov v. Mt. Sinai Hospital of Greater Miami, No. 88-3158U (Fla. Dep't of Labor and Employment Security Unemployment Compensation Appeals Bureau April 1, 1988) (denial of unemployment compensation upheld where employee left job as research technologist for fear of contracting AIDS through carelessness of coworkers).

21. 26 Gov't Empl. Rel. Rep. 486 (March 28, 1988).

22. N.C. Admin. Code tit. 25, r. 1C.0202(f), effective July 1, 1988.

23. 29 U.S.C. § 143, Section 502.

24. Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974).

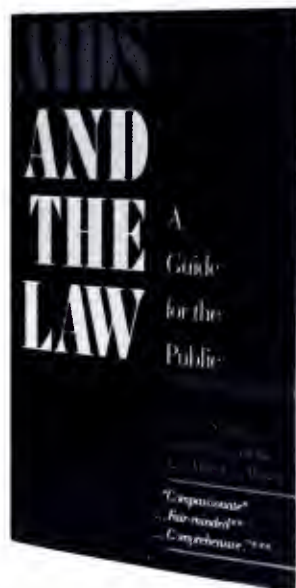
25. Quaker City Motor Parts Co. v. Interstate Motor Freight System, 148 F. Supp. 226 (D. Pa. 1957).

26. 29 U.S.C. § 660(c)(1) and 29 C.F.R. § 1977.12(b)(2).

27. *See e.g.* Marshall v. Babcock and Wilcox Co. 7 OSH Cas. (BNA) 2021 (E.D. Mich. 1979).

28. Ray v. School Dist. of DeSoto County, 666 F. Supp. 1524 (M.D. Fla. 1987).

29. *Chalk, supra* 840 F.2d at 706.



AIDS and the Law: A Guide for the Public

a review by
Jeffrey S. Koeze

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In the preface to *AIDS and the Law: A Guide for the Public*,¹ Harlon L. Dalton presents us with a choice: "Like it or not, we must decide what kind of society we will be: mean-spirited, shortsighted and judgmental; or compassionate, clear-headed and accepting." In responding to the spread of acquired immunodeficiency syndrome (AIDS), our society has all too often been the former. Rather than offering care and compassion to those suffering from or likely to develop this debilitating and fatal disease, we frequently have abandoned and isolated family members and friends, fired employees, and refused to care for those in desperate need. In the ongoing conflict between the uninfected population and those infected or suspected of being infected with the AIDS-causing virus, both sides have called upon lawyers and the legal system to resolve their many disputes.

AIDS and the Law is a comprehensive and comprehensible survey of how the legal system has responded to the challenge of AIDS. The book begins with a brief primer on law and the legal system, followed by a thorough discussion of the current medical understanding of AIDS. This basic legal and medical information lays the foundation for the bulk of the book, a discussion of the complicated legal issues surrounding AIDS. Chapters, written by different authors, address topics such as AIDS in schools, prisons, and the military; discrimination against persons with AIDS in housing, medical care, insurance, and the workplace; and AIDS in the black, lesbian, and gay communities.

The legal and medical discussions are presented in clear, straightforward language. Although chapter one, "The AIDS Epidemic: Discovery of a New Disease," sent me to the dictionary more than once to look up terms like *antigenic*, for the most part the editors were successful in weeding out obscure legal and medical terminology. Most medical terms that were not eliminated are defined in a brief glossary.

Dalton notes in the preface the editors' ambition to present complicated medical and legal discussions in "plain English" without sacrificing "precision or sophistication." This ambition is realized: though accessible to readers without medical or legal training, the book does not oversimplify medical issues or gloss over difficult legal arguments. Both general readers and those with considerable experience and expertise in this field will find *AIDS and the Law* to be an insightful reference to a broad range of legal issues.

The usefulness of any book on AIDS is reduced with time by the rapid rate of change in both the medicine and law of AIDS. That change made small parts of *AIDS and the Law* dated almost the day the book was published. One small example will illustrate this. The first chapter reports that 25 percent of individuals who have tested positive for the AIDS-causing human immunodeficiency virus (HIV) will eventually develop AIDS. More recent research indicates that within six years of infection, 50 percent of those infected develop AIDS and that another 25 percent develop the condition called AIDS-related complex.

Despite this unavoidable drawback, *AIDS and the Law* is a useful resource for anyone concerned with AIDS legal issues. In particular, the book is a first-rate guide for policy makers who must keep abreast of the continued growth of legal protection for persons with HIV infection. The authors of the book are among those pushing for such protection, and they consistently advocate safeguarding the social, economic, and privacy interests of persons with AIDS. The book forcefully argues against compulsory testing for HIV infection; against discrimination in housing, schools, access to medical care, and the workplace; and for strict confidentiality of information about whether one is or may become sick with AIDS.

The emphasis on individual rights exposes the book to a charge of lack of objectivity. However, advocates for those rights have, in fact, been increasingly successful in legislatures and the courts as medical research has shown that protecting the interests of persons infected with HIV does not hinder the efforts to control AIDS. For example, although political fringe groups still advocate isolation and quarantine, serious discussion of restricting the freedom of the infected to live and move in the community has died down as medical research has consistently shown that the AIDS-causing virus cannot be transmitted by nonsexual, everyday contact with infected persons. Recent changes in North Carolina law have made it most unlikely that a person with AIDS or one infected with HIV could legally be isolated. Similarly, scientific evidence that HIV is hard to transmit has led to increasingly successful legal attacks on discrimination in schools, housing, access to medical care, and the workplace as the asserted public health justifications for such discrimination have been shown to be without foundation.

Many AIDS legal questions remain unanswered, but the law has begun, in its own slow and incremental fashion, to respond. *AIDS and the Law* is the best book available that deals with a full range of AIDS legal topics. It documents in a clear and thoughtful manner continuing legal developments and shows where legal pressure may be applied in the future.

1. Edited by Harlon L. Dalton, Scott Burris, and the Yale AIDS Law Project (New Haven, Conn.: Yale University Press, 1987), \$7.95.

Around the State

May a City or County Offer Rewards?

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Occasionally a crime occurs that so offends the community that the city or county government considers offering a reward for information leading to the arrest and conviction of the criminal. Such circumstances then raise the question of whether a local government may, under North Carolina law, offer such a reward. The answer appears to be no.

In 1936 the police chief of Scotland Neck was murdered, and the town responded by offering a reward of \$500.00 for information leading to the arrest and conviction of the murderers. A Mr. Madry claimed to have earned the reward and applied to the town for payment. When the town refused, he sued, arguing that the town was under a contractual duty to pay him. The town claimed that it had no legal power to offer a reward, and in 1938 the North Carolina Supreme Court agreed. The town had no statutory authority to offer rewards. [*Madry v. Town of Scotland Neck*, 214 N.C. 461 (1938)]

The court began by noting that there was legislation expressly permitting the governor to offer rewards. The absence of such specific authority for cities and towns implied that they could not. Furthermore, the court argued, the duty to apprehend and prosecute felons was imposed on the state and on counties, not on cities, and therefore the power to offer rewards could not be inferred from the town's general authority to maintain a police department. If a town was to offer rewards, it needed specific statutory authority.

No appellate case has considered the matter since *Madry*, but a review of the laws affecting cities and counties suggests that the outcome would be the same today.

Cities. The basic legal framework has not changed since 1938. While G.S. 15-53 and 15-53.1 permit the governor

to offer rewards for the apprehension of felons or for information leading to the arrest or conviction of felons, as their predecessor statutes did in 1938, no statute permits cities to offer rewards. Furthermore, cities have no greater responsibility for enforcement of the criminal laws today than they did fifty years ago. Therefore, the conclusion must be that there is no general law authority for cities to offer rewards.

Counties. One possible implication of the *Madry* opinion was that counties may have been able to offer rewards, even though cities could not. The plaintiff had argued that the city's general authority to provide law enforcement included, implicitly, the authority to offer rewards. The court rejected the argument by denying that *cities*—as opposed to *counties* and the state—had any duty to enforce the criminal laws. It might be concluded from the court's discussion that counties, because they apparently did have some sort of duty to enforce the criminal laws, could offer rewards. (Because the reward in question had been offered by a city, the authority of counties to offer rewards was not before the court.) Other parts of the opinion, however, and statutory developments since 1933 suggest that counties have no greater general authority to offer rewards than do cities.

First, it is not clear that the responsibility to enforce the criminal laws was itself sufficient to permit the offering of rewards. The state carried primary responsibility for law enforcement, yet the court laid some stress on the specific statutory authorization for the governor to offer rewards. Thus some express statutory permission might be necessary for any public officer or agency to offer rewards, regardless of that officer's or agency's responsibility for law enforcement.

Second, it is not clear just what the court meant when it accorded counties a greater role than cities in enforcement of the criminal law. Sheriffs and their deputies enjoyed a broader, geographical power of arrest than did city police officers, but that was solely because counties were larger than cities. There were no crimes for which only county law enforcement officers could make arrests. Perhaps the court was referring to the counties' financial role in supporting the court system. If so, that role is much less today than it was fifty years ago. At that time, for example, counties paid the salaries of clerks of court, an expense that today is borne by the state. Furthermore, if this was the county role meant by the court, the role focuses on a part of the criminal process that occurs at a later stage than one in which a reward would be most useful. It does not seem to support an implied authority to offer rewards.

Finally, unlike cities, counties are not completely without statutory authority to offer rewards. G.S. 153A-446 permits a board of county commissioners to offer small rewards for information about persons damaging county property. This statute is a classic example of the exception proving the rule. If counties enjoyed implicit authority to offer rewards, this specific statute would not have been necessary. Therefore it appears that counties, save for the minor exception of G.S. 153A-446, have no greater authority to offer rewards than do cities.

Thus, if a local government wishes to offer a reward for information leading to the arrest and conviction of a suspected criminal, it will need express legislative authority either in the form of local legislation or an amendment to the General Statutes.

Fordham's Tenure As Chancellor of UNC-CH Highlighted by Public School Programs

Ann C. Clontz

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Christopher C. Fordham III, chancellor of The University of North Carolina at Chapel Hill since 1980, retired on June 30, 1988. A hallmark of Fordham's administration was his emphasis on the close relationship between the public schools and the university. During his tenure, Fordham was instrumental in initiating four programs intended to strengthen the public schools through special training for teachers and school administrators.

Lyndhurst Fellowships

In 1982 UNC-CH began to experiment with a different method of preparing public school teachers. The Lyndhurst Fellowship in Teaching Program, funded by the Lyndhurst Foundation of Chattanooga, Tennessee, was a joint effort of the College of Arts and Sciences, the School of Education, and area secondary schools. The purpose of the program, which ended in June of 1988, was to train people who wanted to teach in the public schools but who had not majored in education as undergraduates. Over 100 graduates with degrees in mathematics, the biological and physical sciences, English, and the social sciences were accepted into the twelve-month program, at the end of which they received the Master of Arts in Teaching degree and a North Carolina teaching certificate. Lyndhurst Fellows, who were selected for their outstanding undergraduate records and their potential for excellence in teaching, received an attractive stipend, which does not have to be returned if the fellow teaches for three years in the public school system.

Mathematics and Science

The Mathematics and Science Education Network was created in 1984 to im-

prove the skills of mathematics and science teachers in junior and senior high schools. A number of these teachers are not certified for the courses they teach. Others need to improve their instructional skills and increase their knowledge of the fields they are teaching.

Through ten centers located at universities across the state, the network offers graduate and undergraduate level courses, specialized courses and workshops, seminars, fellowships, and summer institutes. Over 8,000 teachers from the junior, middle, and high schools have participated in network activities. Currently the network is considering expanding in-service training programs for the elementary mathematics and science teachers in the state.

In 1987, assisted by a grant from the chancellor's office, the network began at four training centers an innovative program intended to increase the number of minorities and females preparing for careers in science, mathematics, and engineering. Female and minority students who express interest in or demonstrate potential for success in these fields are invited to join the Pre-College Program. Beginning at grade six, students participate in special classes and activities such as tutoring, counseling, touring industrial plants, and attending summer enrichment courses. Their parents are invited to attend seminars and workshops designed for them.

Mellon-Babcock-Reynolds

In response to the many reports calling for public school reforms and for students entering college to be better prepared, the College of Arts and Sciences designed a program for university faculty members to work with public high school teachers in workshops and internships on the university cam-

pus. Funding was provided by the Andrew W. Mellon, Z. Smith Reynolds, and Mary Reynolds Babcock foundations.

When the program began in 1984, it focused on teachers of English, French, and Spanish. Summer workshops and year-long internships provided them with techniques, skills, and knowledge to teach writing and foreign languages more effectively. In 1987 the program was expanded to include teachers of Latin, history, and the social sciences.

The program will run through 1990. Total funding of \$.5 million will provide internships for thirty-seven teachers and summer workshops for several hundred more. The exact number of public school teachers reached through the Mellon-Babcock-Reynolds program will be difficult to determine, for each teacher attending a summer workshop is asked to present a similar program for colleagues in his or her school district.

Principals' Executive Program

When the Principals' Executive Program (PEP) began in 1984, Chancellor Fordham described the program as signaling "a new era of more productive collaboration between the University and the public schools." The validity of that statement is clear from the number of school administrators who have completed the twenty-day residential program administered by the Institute of Government. A total of 549 public school administrators (516 principals and 33 superintendents) graduated from the program as of June 30, 1988, and 140 principals will enroll in the 1989 programs. Of the state's 140 school districts, 137 have been represented. All costs except transportation are paid by the Institute with funds appropriated by the General Assembly.

PEP is designed for principals who want to develop their managerial skills

and increase their ability to make their schools more effective. The curriculum focuses on the major aspects of school management—leadership, personnel management, personal health and development, communication, motivation, curriculum, and legal issues.

Most of the sixty faculty members who teach in the PEP curriculum come from the College of Arts and Sciences, the schools of Business Administration and Education, and the Institute of Government at UNC-CH. Other PEP

faculty members are private consultants or public educators who come from other institutions of higher education and the State Department of Public Instruction.

The program is intensive, with extensive reading and writing assignments. Each participant is required to develop a School Improvement Project and implement it in his or her school. Additional programs, such as update conferences, have been developed to support the principals after they graduate.

changes can be made easily. Figure 1 shows how a report might be formatted.

The second and third columns of the sample report show the project and contractor for each, grouped by the funding source. The fourth and fifth columns indicate the construction progress by presenting for comparison the percentage of construction completed and the percentage of the scheduled time used. The sixth and seventh columns show the original and current estimated completion dates. The eighth column shows the estimated cost of the project and the date on which that estimate was effective. This column can also show any change orders that affect the cost (see item four in the sample). The last column refers to special notes, placed at the bottom of each page, regarding individual projects.

Pertinent parts of the report can be sent to each of the contractors, the engineer, suppliers, and the bonding company in advance of the regularly scheduled public meeting, so that they can be prepared to answer any questions that might arise. Some units have found that the report, by prompting questions and comments from board members and managers during public meetings, deters contractors from allowing a project to fall behind schedule. It may be easier to complete a job on time than to try to answer questions about why the job is not on schedule, especially when the questions are asked in a public meeting.

Monitoring Construction Projects

S. Grady Fullerton
Institute of Government

It is axiomatic in the construction industry that the longer it takes to complete a project, the more the project will cost. Cash reserved for construction projects but not yet disbursed can be invested in short-term, interest-bearing securities, but money that has been spent on a capital project provides no benefits or return until the project is completed. It is essential, therefore, that capital construction projects be managed carefully and that their progress be monitored closely. Board members and managers can maintain oversight of construction projects better if they are routinely furnished a monthly or quarterly progress report on the status of each construction project.

A capital project construction report is used for this purpose by some units around the nation. This report, prepared jointly by the finance officer and project engineers, presents in a succinct manner the pertinent information that elected and appointed officials can use to determine quickly whether a particular project needs additional attention. It serves as a means by which all interested parties—the governing board, professional managers, general contractors, sub-contractors, suppliers, and bonding companies—can be alerted to delays and potential problems that might cause delays.

A capital project construction report can be designed to provide information pertaining to the following questions: What projects are under construction? What sources of funds are being used to pay for each project? Is each project on time? Is each project being completed within the contract price? What are the major problems associated with each project?

The report can be written by filling in a form designed for the purpose. Perhaps the best method, however, is to use a computer wordprocessing or spreadsheet program so that the projects can be added and deleted and

Figure 1
Example of a Capital Project Construction Report

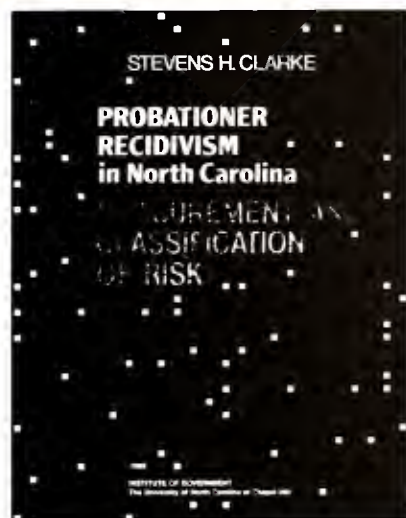
Any City/County, North Carolina
Capital Projects Construction Report
June 30, 1988

Exhibit A
No. 00001

Item	Project	Contractor	Construction Progress		Estimated Completion Date		Current Price	Remarks
			\$ Comp.	Time Used	Original	Current		
<u>General Fund Projects</u>								
1.	Park Plaza--Engineering and Design	21st Century Designers, Inc. 88-0001	45%	50%	01-04-89	01-04-89	01-04-88 \$ 200,000	
<u>General Obligation Bond Funds</u>								
2.	Central Fire Station--Construction	Blount Bros. Construction Co., 88-0009	10%	8%	05-01-89	05-01-89	05-01-88 \$3,500,000	
3.	Asheboro Street--Paving	Bialock Paving Contractors, Inc. 85-0034	65%	74%	05-23-89	05-23-89	12-17-85 \$2,000,000	
4.	Westside Library--Construction	Jetco Contractors, Inc. 87-0001	45%	74%	01-01-89	04-01-89	01-01-87 \$5,298,755 Change Order 12-11-87 \$ 250,000 Total \$5,548,755 *****	Note 1.

Note 1. Contractor appointed a new foreman September 1, 1987. Gains have been made toward an earlier completion.

Off the Press



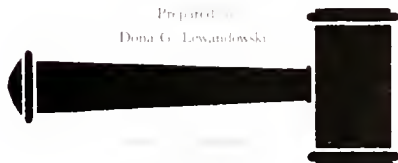
PROBATIONER RECIDIVISM in North Carolina

Stevens H. Clarke

For most convicted criminals, probation is the most commonly used alternative to imprisonment. This report presents a study of the recidivism (repeated crime) of 21,789 adult probationers in North Carolina over a period averaging three years. After a description of recidivism rates, the report compares various ways of assessing probationers' risks of recidivism, including the present system used by the Department of Correction and new techniques developed from the study. The report also discusses various strategies for classifying probationers in order to use available prison and probation resources most efficiently. [88.19]

Punishment Chart
for North Carolina Crimes

Prepared by
Dona G. Lewandowski



Punishment Chart for North Carolina Crimes

Dona Lewandowski

The sixth edition of the *Punishment Chart* lists those crimes (with the exception of motor vehicle offenses) that appear most frequently on district and superior court criminal dockets. The chart sets out the statutory reference for each offense as well as relevant information about the minimum, maximum, and presumptive sentences, when applicable. The publication also includes changes made by the 1987 General Assembly. \$6.00 [88.09]

Property Tax
Collection in
North Carolina

William A. Campbell

Property Tax Collection in North Carolina Third Edition

William A. Campbell

This comprehensive treatment of property tax collection law and practice in North Carolina is designed to assist city and county tax collectors, attorneys, and finance officers with all aspects of tax collection. The book covers in detail tax collection records, the property tax lien, interest, and penalties. It includes step-by-step discussions of procedures (with forms) for use in enforced collection remedies—levy, garnishment, and sale of tax liens. Many special collection problems, such as joint tenancies, partnerships, and bankruptcies, are also discussed. \$10.00 [88.10]

Orders and inquiries should be sent to the Publications Office, Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330. Please include a check or purchase order for the amount of the order plus 5 percent sales tax. A complete publications catalog is available from the Publications Office on request, (919) 966-4119.

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