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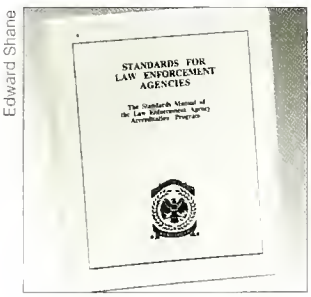
Feature Articles

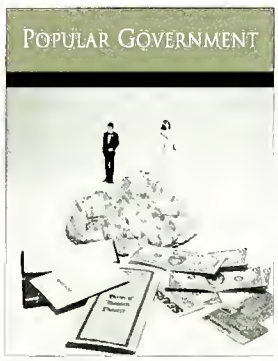
Edward Shane

Page 2



Edward Shane

Page 14



On the cover A crumbled wedding cake, credit cards, a bank book, money, a divorce decree—these are icons of a marriage gone sour. Among the major issues to be settled in a divorce is whether one spouse should pay alimony to the other. North Carolina's General Assembly revised the applicable law in October 1995, diminishing the role of fault in alimony awards. Photo by Edward Shane.

The Diminishing North Carolina

Cheryl Daniels Howell

Fred and Jane have been married for twenty-two years. Fred is a managing partner of one of the state's largest law firms. Jane is a homemaker. Early in their marriage, Jane quit her job as a schoolteacher to stay at home and raise the couple's two children, who are now in college. Fred's position has often required Jane to entertain Fred's clients and colleagues and to attend social events with Fred.

Throughout the marriage, Fred has worked hard to get to the top of his field. He has always prided himself on being at work by 6:30 A.M. and not leaving until after 8:00 P.M. He works on Saturdays at the office and spends Sundays on the golf course. Fred is often gone from home for weeks at a time working on clients' legal problems.

Fred left the details of rearing the children to Jane. Both children were extremely rebellious, staying out late and skipping school. Fred was rarely around to help discipline them. Several years ago, when Jane's mother suffered an

Role of Fault in Alimony Awards

extended illness that eventually caused her death, Fred offered no support to Jane. He did not even attend the funeral.

Two weeks ago, Jane packed her bags and moved in with a close friend. She knows that she cannot support herself, so she has decided to seek alimony. Fred says that he is not about to support a wife who has abandoned him and their home.

Should Fred be required to pay alimony to Jane? Should it matter that she left him? Should it matter that he was not a good husband and father? What if neither Fred nor Jane had done anything wrong, but they agreed that they did not want to live together any longer?

This article discusses the law of alimony in North Carolina with particular emphasis on the changes made by the 1995 General Assembly regarding the role of fault in alimony determinations.

The author is an Institute of Government faculty member who specializes in judicial education and family law.

What Role Should Marital Fault Play in Alimony Law?

The question of what role, if any, marital fault or misconduct should play in the determination of rights and responsibilities after the breakup of a marriage is one with which courts and legislatures around the country have struggled for decades.

Traditionally, a spouse's right to a divorce depended on a determination that the other spouse had committed some type of marital misconduct, such as adultery, abandonment, or cruelty, and that the spouse seeking the divorce was innocent of similar misconduct. A guilty spouse or one unable to prove that the other was guilty simply had no right to a divorce. If neither had committed an act of misconduct, but both agreed that the marriage should end, the law would not allow a divorce.[1]

As societal attitudes about divorce became more liberal, however, the public began to demand less restrictive divorce laws. State legislatures responded by enacting what have been termed "no-fault" divorce statutes.[2] Today all states allow divorce without regard to fault.[3] Except in cases involving an "incurably insane" spouse,[4] the only ground for absolute divorce in North Carolina is that the spouses have lived apart for a full year.[5] The reasons for the parties' separation are not relevant.[6]

Alimony (sometimes called "spousal support") was also traditionally fault based. Until the early 1970s, the alimony law of most states was premised on the absolute legal obligation of a husband to support his wife and the belief that a husband should not be relieved of this duty after divorce if the marriage failed because of his conduct.[7] Therefore alimony was awarded only to wives who could show that their husbands had committed one of the acts specified in the state's alimony statute. In general, the grounds for alimony were the same as those for divorce, such as adultery, abandonment, and cruelty.

"Alimony" comes from the Latin word "alimonia," meaning sustenance. Alimony is defined as ". . . [a]llowances which [a] husband or wife by court order pays [the] other spouse for maintenance while they are separated, or after they are divorced . . . ."

—*Black's Law Dictionary*, 6th ed. (1990).

The no-fault movement that led to the alteration of divorce laws across the country in the 1970s influenced similar changes in the alimony laws of many states. State legislators removed fault considerations and allowed alimony determinations to be made primarily on the basis of economic considerations. Now most states allow a court to enter an order for alimony if one spouse shows a need for support and the other spouse has the ability to pay support, regardless of whether either spouse is at fault in the breakup of the marriage.[8]

Until October 1, 1995, however, North Carolina alimony law was based entirely on marital fault.[9] For example, under North Carolina law before October 1995, to receive alimony from Fred, Jane would have had to show not only that she needed support, but that Fred's conduct during the marriage had been wrongful and had caused the breakup of the marriage. She would not have been entitled to any alimony if she could not have proven that Fred's conduct had forced her to leave their home, or if she and Fred had agreed to separate. Further, even if she had convinced a judge or a jury that Fred was at fault, if she had also been found guilty of misconduct, a judge could have reduced or entirely eliminated the amount of alimony that Fred would have been required to pay.

Although North Carolina courts insisted that the purpose of alimony was not to punish a spouse found to be responsible for the failure of a marriage,[10] the North Carolina Supreme Court held that sound public policy required the spouse at fault to bear the burden of the financial hardship caused by the breakup of the marriage. In the case of *Williams v. Williams*, the court explained:

> . . . [D]issolution of the family as an economic unit works hardships on both parties. Assets used to maintain one household do not stretch so far when maintaining two. In such cases, the burden of contending with diminished assets should, in all fairness, fall on the party primarily responsible for the breakup of the economic unit.[11]

Critics of North Carolina's alimony law, however, asserted that the law's inflexible requirement that marital fault be established was outdated and inequitable. They also maintained that an inordinate amount of court time was being devoted to the unproductive, contentious, and often impossible task of sorting out who had actually caused a marriage to fail.

In response the 1995 General Assembly significantly shifted the focus of North Carolina's alimony law.[12] The revised law represents a compromise be-

tween those who feel that fault should remain a central factor in alimony cases and those who feel that courts should have more flexibility to deal with the circumstances of each case. For cases filed on or after October 1, 1995,[13] a judge deciding whether an award of alimony is equitable may still consider the marital misconduct of either spouse. However, misconduct is now only one of many factors to be considered. A showing of misconduct on the part of the spouse from whom support is sought is no longer an absolute prerequisite to an alimony award.

Who Is Entitled to Alimony?

In North Carolina a spouse must be a "dependent spouse" to be entitled to alimony. That is, he or she must need support from the other spouse to maintain the standard of living established during the marriage.[14] Conversely, the spouse from whom alimony is sought must be a "supporting spouse," defined simply as one on whom the other depends for support.[15]

Until October 1, 1995, the law also required the dependent spouse to prove that the supporting spouse had committed one of ten acts.[16] However, if the supporting spouse could show that the dependent spouse had forgiven the supporting spouse for the misconduct, the forgiven conduct could not be a ground for alimony.[17]

The law further provided that if the dependent spouse also committed any of the ten acts, with the exception of adultery, the trial judge could deny the dependent spouse's claim for alimony or reduce the amount of alimony ordered to be paid.[18] If the dependent spouse had committed adultery, however, the former law completely barred the alimony claim of the dependent spouse, regardless of the conduct of the supporting spouse.[19]

Opponents of the former law argued that more often than not, both parties to a failed marriage had committed one or more acts of misconduct. Further, they contended that the focus on fault often caused the financial burden of a divorce to fall on the dependent spouse, who by definition was less able to live with that burden. In many cases, Jane and Fred's among them, the dependent spouse had left a job during the marriage to become a homemaker and rear children. If a dependent spouse like Jane had committed an act of misconduct, or was unable or unwilling to prove in court that the supporting spouse had committed such an act, a separation could leave the dependent spouse totally without a means of support.

The alimony law as amended in 1995 no longer requires the dependent spouse to prove that the supporting spouse committed one of the ten listed acts. Instead, except in cases where one spouse has committed adultery, a judge must award alimony to a dependent spouse when the court finds that such an award is equitable after considering "all relevant factors." The statute specifically sets forth the following factors:[20]

1. The marital misconduct of either spouse . . . ;
2. The relative earnings and earning capacities of the spouses;
3. The ages and the physical, mental, and emotional conditions of the spouses;
4. The amount and sources of earned and unearned income of both spouses including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;
5. The length of the marriage;
6. The contribution by one spouse to the education, training, or increased earning power of the other spouse;
7. The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as custodian of a minor child;
8. The standard of living of the spouses established during the marriage;
9. The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;
10. The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;
11. The property brought to the marriage by either spouse;
12. The contribution of a spouse as a homemaker;
13. The relative needs of the spouses;
14. The federal, State, and local tax ramifications of the alimony award;[21]
15. Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.

The listed factors in the revised law require a judge to determine the specific financial consequences of the marital breakup for both spouses before deciding whether to award alimony. The new law rejects the policy that the economic burden of a failed marriage should always fall on the guilty party, or at least it recognizes that the old law was not successful in carrying out that policy. Instead, the new law gives the

Who Is a Dependent Spouse?

Before considering whether alimony is equitable, a judge must determine that the party seeking support is a dependent spouse and that the party from whom support is sought is a supporting spouse.

The new law does not change the definitions of dependent spouse and supporting spouse. A "dependent spouse" is "a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or who is substantially in need of maintenance and support from the other spouse."[1] A "supporting spouse" is "a spouse, whether husband or wife, upon whom the other spouse is substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support."[2]

Parties in alimony cases usually do not argue about whether the spouse from whom support is being sought meets the definition of supporting spouse. In general, that status is established if the spouse seeking support shows that the other spouse has the ability to pay the support requested without becoming impoverished.[3]

However, parties in alimony cases often litigate the issue of whether the party seeking support is a dependent spouse within the meaning of the statute. This is due in part to the fact that North Carolina courts have adopted a broad definition of "dependent" and have held that because there is no "precise mathematical equation for determining which spouse is dependent," the issue of dependency must be determined on a case-by-case basis.[4]

To prove dependency, a spouse seeking support does not need to show a lack of income or property, an inability to exist without financial support from the supporting spouse, or impoverishment. North Carolina courts have held that the purpose of alimony is not simply to allow a former spouse to maintain a basic level of subsistence. Instead, the purpose is to allow the dependent spouse, as much as possible, to maintain the standard of living that the parties maintained during their marriage.[5]

Therefore, in deciding whether a spouse is dependent, a court must determine whether that spouse has the ability to sustain from her or his own means the standard of living that the couple enjoyed during the last several years of the marriage. To make this determination, a court must evaluate evidence such as the expenses of the couple before their separation, the expenses and the income of each spouse at the time of trial, the financial worth of each spouse at the time of trial, the length of the marriage, the prospective earning capacity of each spouse, the health and the education of each spouse, and the financial contributions of each spouse during the marriage. A spouse is dependent if this evidence shows that the spouse does not have the ability to pay all of his or her expenses at the time of trial and that the expenses are reasonable in light of the couple's accustomed standard of living before the separation.[6]

What constitutes reasonable expenses will vary from case to case. Obviously, the reasonable spending habits of a couple who had a joint annual income of $100,000 per year will be different from those of a couple who had a joint annual income of $25,000. Also, families with similar incomes often have very different lifestyles. Therefore a court cannot decide that one spouse is dependent simply because she or he has a lower income than the other spouse.[7] Although the relative incomes of the spouses are important, the court must consider all the relevant factors to determine whether a spouse actually needs additional income in light of his or her individual circumstances before and after the separation.[8]

Similarly, the fact that a spouse has a significant income or owns a significant amount of property does not necessarily prevent her or him from being considered dependent. The courts have ruled that a spouse is not required to deplete a life savings for his or her

judge the discretion to decide what effect, if any, the fault or the misconduct of either party should have on the decision.

Marital misconduct is defined in the new law to include all the acts listed as grounds for alimony under the old law.[22] One significant change from the old law is that the court may consider only acts committed on or before the date of separation.[23] Therefore adultery committed after separation is no longer a factor, nor is the supporting spouse's failure to

own support or for the support of the other spouse. In the case of *Williams v. Williams*, the court explained:

> We do not think . . . that a spouse seeking alimony who has an estate sufficient to maintain that spouse in the manner to which he or she is accustomed, *through estate depletion*, is disqualified as a dependent spouse. Such an emphasis would be incongruous with [the] statutory emphasis on "earnings," "earning capacity," and "accustomed standard of living." It would also be inconsistent with plain common sense. If the spouse seeking alimony is denied alimony because he or she has an estate which can be spent away to maintain his or her standard of living, that spouse may soon have no earnings or earning capacity and therefore no way to maintain *any* standard of living.
>
> . . . We think that this is equally true in giving consideration to the estate of the supporting spouse. Obviously, a determination that one spouse is the supporting spouse because he or she can maintain the dependent spouse at the standard of living to which they were accustomed through estate depletion could soon lead to inability to provide for either party.[9]

Therefore the courts are concerned primarily with how much monthly income is generated by the estate of the spouse claiming to be dependent and whether that income is sufficient to meet the expenses required to maintain that spouse's accustomed standard of living. For example, in the *Williams* case, the spouse seeking support was found to be dependent, even though she had a net worth of $761,975 at the time of trial. Her monthly income from interest and dividends was approximately $1,833, but her reasonable monthly expenses were in excess of $3,500. Applying the same principle in *Lemons v. Lemons*,[10] the court held that the spouse seeking support was not dependent, because her monthly income was more than she needed to meet her reasonable monthly expenses.

In the case of Jane and Fred (see the main article), Jane is clearly a dependent spouse. Although Fred could argue that she has the ability to find employment as a schoolteacher, her income from teaching would probably not be sufficient to support the lifestyle that she enjoyed while living with Fred.

Notes

1. G.S. 50-16.1A(2).

2. G.S. 50-15.1A(5). Until 1981 the definition of supporting spouse stated, "A husband is deemed to be the supporting spouse unless he is incapable of supporting his wife." G.S. 50-16.1(4) (amended in 1981, repealed on Oct. 1, 1995). That sentence was deleted in 1981, so there is no longer a presumption that the husband is the supporting spouse.

3. *See* Williams v. Williams, 299 N.C. 174, 261 S.E.2d 849 (1980). *But see* Long v. Long, 71 N.C. App. 405, 322 S.E.2d 427 (1984) (holding that the language of the statute indicates that the issue is not whether the spouse from whom support is being sought has the ability to pay, but whether the spouse seeking alimony is dependent).

4. *Williams*, 299 N.C. at 186, 261 S.E.2d at 858.

5. *Williams*, 299 N.C. at 186, 261 S.E.2d at 858; Knott v. Knott, 52 N.C. App. 543, 279 S.E.2d 72 (1981).

6. G.S. 50-16A-1A(2). *See Williams*, 299 N.C. at 174, 261 S.E.2d at 849; Hunt v. Hunt, 112 N.C. App. 722, 436 S.E.2d 856 (1993); Talent v. Talent, 76 N.C. App. 545, 334 S.E.2d 256 (1985).

7. See *Hunt*, 112 N.C. App. at 722, 436 S.E.2d at 856. *See also* Manning v. Manning, 20 N.C. App. 149, 201 S.E.2d 46 (1973) (holding that findings by the court that the spouse seeking support was unemployed and had no income were not sufficient to establish dependency without other findings about her reasonable needs based on her accustomed standard of living and her ability or inability to meet those needs on her own).

8. See, e.g., *Knott*, 52 N.C. App. at 543, 279 S.E.2d at 72, in which the court held that a spouse seeking support was dependent even though her monthly income exceeded her monthly expenses at the time of trial, because those expenses were less than the expenses required to maintain the standard of living she had enjoyed during the marriage.

9. *Williams*, 299 N.C. at 183–84, 261 S.E.2d at 856. *See also* Beaman v. Beaman, 77 N.C. App. 717, 722, 336 S.E.2d 129, 132 (1985) (holding that "[o]rdinarily, the parties will not be required to deplete their estates to pay alimony or to meet personal expenses").

10. Lemons v. Lemons, 22 N.C. App. 303, 206 S.E.2d 327 (1974).

support the dependent spouse after separation.[24]

Now, in most cases, the marital misconduct of either or both spouses is just one of numerous factors that the court must consider in deciding whether to award alimony to a dependent spouse. When one party has engaged in sexual misconduct, however, fault continues to be a determinative factor.

The new alimony law replaces the term "adultery" with the term "illicit sexual behavior."[25] If a dependent

—continued on page 10

What Is the Procedure for Obtaining Alimony?

The law encourages spouses to decide between themselves whether one should pay alimony to the other if they separate, and if so, how much. Spouses may sign formal agreements either before a marriage or after a separation.[1] Such agreements may provide that no alimony be paid or that alimony be paid in a specified amount for a certain period. The courts will enforce premarital or separation agreements that are made and executed in accordance with the law.

If the parties do not resolve the issue of alimony in a premarital or separation agreement, a spouse seeking support may file a lawsuit in a county where either spouse resides asking the court to enter an order requiring the supporting spouse to pay alimony.[2] A claim for alimony may be filed as a separate lawsuit or as part of an action seeking an absolute divorce or a divorce from bed and board.[3] However, a claim for alimony may not be made after a court has entered a judgment granting an absolute divorce. Although the court need not actually decide the question of alimony before it enters a divorce decree, a party loses the right to seek alimony if he or she does not make a formal request for it before the court grants a divorce.[4]

Requests for alimony are often taken to court with other claims arising from the breakup of a marriage. Generally, the court hears and decides each claim in separate trials rather than hearing them all in one trial. It may decide a claim for alimony before or after it enters an absolute divorce or before or after it decides other issues such as child custody, child support, and equitable distribution. However, because equitable distribution divides marital property between the spouses, an equitable distribution judgment often has a significant effect on the financial circumstances of each spouse. Therefore when a court determines alimony before it decides equitable distribution, it may need to reconsider the issues of dependency and amount of alimony after it makes the property distribution.[5]

Alimony claims are heard by a district court judge, who listens to evidence from both spouses. The judge determines whether the spouse seeking support is dependent, whether the other spouse is supporting, whether the alimony is equitable under the circumstances, and how much alimony the supporting spouse should pay. However, either spouse may ask that a jury decide whether one or the other party committed an act of marital misconduct, including illicit sexual behavior.[6] If neither party asks for a jury, the judge also decides issues of marital misconduct.

A party who feels that a judge's decision is not in accordance with the law may appeal to the North Carolina Court of Appeals. However, unless the appellate court specifically states otherwise, the dependent spouse may enforce the alimony order of the district court judge while the appeal is being heard.[7]

Postseparation Support

It often takes a long time for a court to hear and decide an alimony claim, especially when the parties have complicated financial circumstances or when they request a jury trial on issues of marital misconduct. A party seeking support, however, often requires immediate financial assistance after a separation. The law as amended in 1995 contains a procedure for temporary alimony called "postseparation support," support that a supporting spouse must pay to a dependent spouse until the earlier of (1) a date specified by the court or (2) the date of an order awarding or denying alimony.[8]

Before October 1, 1995, the law allowed a dependent spouse to ask the court for an order of "alimony *pendente lite*" (also called "temporary alimony") if the dependent spouse showed that she or he could probably prove at trial that the supporting spouse had committed one of the acts defined as fault.[9] However, a dependent spouse was barred from receiving temporary alimony if he or she had committed adultery either before or after the spouses separated.[10]

The new law allows a court to award postseparation support based only on the demonstrated economic need of the dependent spouse and a determination that the supporting spouse has the ability to pay.[11] Although the court may consider the marital misconduct of either spouse, it may order postseparation support without regard to the misconduct if the parties do not offer evidence of it or if the judge decides that because of the other circumstances involved, marital miscon-

duct should not influence the court's decision. Significantly, adultery by the dependent spouse is not an automatic bar to postseparation support.

Attorney's Fees

If a dependent spouse is entitled to postseparation support or alimony, the court may order the supporting spouse to pay reasonable attorney's fees incurred by her or him in seeking postseparation support or alimony.[12] A judge may order the payment of attorney's fees to ensure that a dependent spouse can obtain legal representation allowing her or him to meet the supporting spouse at trial on substantially equal terms.[13] The amount of fees awarded is based on a number of factors including, but not limited to, each party's ability to pay the attorney's fees, the nature and the scope of the legal services rendered to the dependent spouse, and the skill, the time, and the labor expended by the attorney representing the dependent spouse.[14]

Notes

1. The Uniform Premarital Agreement Act, G.S. 52B-1 through -12, relates to agreements made before marriage. No specific statute sets out the law relating to separation agreements, but numerous court decisions deal with the interpretation and the enforcement of such agreements. See generally Robert E. Lee, *North Carolina Family Law*, 4th ed. (Charlottesville, Va.: Michie Company, 1980), vol. 2, §§ 148–49, and Supp. 1995 (hereinafter Lee, *Family Law*, vol. 2) for a discussion of separation agreements in the context of alimony.

2. G.S. 7A-240 provides that both district and superior courts in North Carolina have subject matter jurisdiction to hear alimony cases, but G.S. 7A-244 specifies that district court is the proper court to hear such claims. G.S. 1-82 and 50-3 set out the rules about the county in which the action should be brought.

North Carolina courts must have "personal jurisdiction" over a defendant in an alimony case. This means that the defendant must live in this state, be served with process in this state, or have sufficient "minimum contacts" with the state to justify requiring her or him to defend the suit in North Carolina. *See* Surratt v. Surratt, 263 N.C. 466, 139 S.E.2d 720 (1965).

3. G.S. 50-16.1A(1). A "divorce from bed and board" is nothing more than a court-sanctioned separation. *See* G.S. 50-7. It does not divorce the parties. Schlagel v. Schlagel, 253 N.C. 787, 117 S.E.2d 790 (1961); Triplett v. Triplett, 38 N.C. App. 364, 248 S.E.2d 69 (1978).

4. G.S. 50-11.

5. G.S. 50-16.3A(a) provides that a court may hear and decide an alimony claim before it determines equitable distribution. However, the law of equitable distribution provides that a judge may not consider either alimony or child support when allocating marital property. G.S. 50-20(f). Therefore the appellate courts have stated that it is better procedure for a court to hear alimony after the parties' property rights are determined by the law of equitable distribution. *See* Soares v. Soares, 86 N.C. App. 369, 357 S.E.2d 418 (1987); Talent v. Talent, 76 N.C. App. 545, 334 S.E.2d 256 (1985).

6. G.S. 50-16.3A(d).

7. G.S. 50-16.7(j). For methods of enforcing alimony orders, see G.S. 50-16.7.

8. G.S. 50-16.1A(4).

9. Editor's note at G.S. 50-16.3, setting forth law repealed October 1, 1995 (see the explanation at note 13 in the main article). The law of alimony *pendente lite* actually required that the dependent spouse show that he or she "appeared to be entitled to the relief requested in the complaint," which could have been a divorce or a divorce from bed and board, as well as alimony. However, most cases involved claims for permanent alimony. Therefore most parties seeking alimony *pendente lite* were required to show that the supporting spouse probably committed one of the acts required for alimony.

If a dependent spouse received alimony *pendente lite*, but the court decided at the alimony trial that the supporting spouse had not committed one of the required acts, the judge had the authority to order the dependent spouse to repay all alimony *pendente lite* to the supporting spouse. Editor's note at G.S. 50-16.11, setting forth law repealed October 1, 1995. On the other hand, if the court refused to order alimony *pendente lite*, but it later found the dependent spouse to be entitled to alimony, it could order that the supporting spouse pay additional support for each month since the alimony *pendente lite* was denied.

10. Editor's note at G.S. 50-16.6(a), setting forth law repealed October 1, 1995.

11. G.S. 50-16.2A.

12. G.S. 50-16.4.

13. *See* Hudson v. Hudson, 299 N.C. 465, 263 S.E.2d 719 (1980); Stanback v. Stanback, 270 N.C. 497, 155 S.E.2d 221 (1967).

14. Perkins v. Perkins, 85 N.C. App. 660, 355 S.E.2d 848, *cert. denied*, 320 N.C. 633, 360 S.E.2d 92 (1987).

—continued from page 7

spouse has committed an act of illicit sexual behavior on or before the date of separation, if the supporting spouse has not forgiven that behavior,[26] and if the supporting spouse has not engaged in illicit sexual behavior, then the dependent spouse is barred from receiving alimony regardless of any other acts of misconduct by the supporting spouse. On the other hand, if the supporting spouse has committed an act of illicit sexual behavior on or before the date of separation, if the dependent spouse has not forgiven that behavior, and if the dependent spouse has not committed an act of illicit sexual behavior, then a judge must award alimony to the dependent spouse regardless of all other circumstances in the case. If the court finds that both spouses committed acts of illicit sexual behavior that were not forgiven, the judge has the discretion to award or deny alimony based on all the circumstances in the case.[27]

In the case of Jane and Fred, Jane would not have been entitled to alimony under the old law unless she had been able to convince a court that Fred's work habits and lack of attention to family matters constituted one of the listed fault grounds, such as indignities or perhaps constructive abandonment. Under the new law, however, Jane's inability to support herself because of the parties' joint decision that Jane should be a homemaker rather than a schoolteacher would allow a judge to award alimony to Jane, even though she left Fred.

How Much Alimony Must Be Paid?

Once a judge decides that a dependent spouse is entitled to alimony, the judge must determine how much alimony the supporting spouse should pay and for how long.

The old alimony law stated that a court should award alimony in an amount that "the circumstances render necessary, having due regard to the estates, earnings, earning capacity, condition, accustomed standard of living of the parties, and other facts of the particular case."[28] The old law also provided that the fact "that the dependent spouse had committed an act or acts which would be grounds for alimony if such spouse was a supporting spouse shall be grounds for disallowance of alimony or reduction in the amount of alimony."[29]

The new alimony law provides that "[t]he court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term. In determining the amount, duration, and manner of payment, the court shall consider all relevant factors, including [the fifteen statutory factors that must be considered when determining whether an award of alimony is equitable]."[30] As noted earlier, the court may still consider the marital misconduct of either spouse, but it has the discretion to decide what effect the misconduct should have on the amount of alimony.

The new statute provides much more specific guidance than the old one regarding the particular circumstances that a judge must consider in deciding the amount of alimony. However, the court must still set alimony in an amount necessary to allow the dependent spouse to maintain her or his accustomed standard of living, consistent with the supporting spouse's ability to pay and "fairness and justice" to both parties.[31] So, in addition to considering the financial assets and liabilities of both spouses at the time of the marriage and at the time of trial, the court must weigh such factors as the age and the health of each spouse, the duration of the marriage, the property brought to the marriage by each spouse, the contribution of one to the earning power of the other, and the distribution of responsibility for caring for the children of the marriage.

Although all the financial circumstances of the spouses must be considered, the amount of alimony awarded may not exceed the supporting spouse's ability to pay or leave the supporting spouse unable to provide for his or her own needs.[32] Nevertheless, courts have the flexibility to set alimony in an amount that reflects the supporting spouse's earning capacity rather than her or his actual income if there is evidence that the supporting spouse is deliberately suppressing income in bad faith or in an attempt to avoid support responsibilities.[33]

How Is Alimony Paid?

The amount of alimony may reflect assets of the supporting spouse other than monthly income. Thus a judge may order a supporting spouse to make a lump-sum cash payment, either alone or in combination with monthly payments, or to transfer possession of property to the dependent spouse.[34]

For example, the court may order a supporting spouse to make a lump-sum payment to discharge a

debt for which the dependent spouse is responsible. Similarly, the court may order a supporting spouse to transfer possession of the marital home to the dependent spouse or to convey title to an automobile to him or her. If necessary, the court may also order the supporting spouse to make payments on debts related to any property transferred to the dependent spouse, such as the home mortgage or the car loan.

How Long Is Alimony Paid?

A court may order that alimony be one lump-sum payment, periodic payments for an indefinite or limited period, or a combination of the two. For example, if a court finds that a dependent spouse could obtain employment generating sufficient income to meet her or his reasonable needs, the court may order that alimony payments continue only for the length of time necessary for the dependent spouse to become financially independent.[35] Similarly, if a spouse's dependency is due to expenses related to the care of minor children, the court may order that alimony payments end when the children become adults and leave home.[36]

Alimony payments cease on the death of either spouse, the reconciliation of the parties, or the remarriage or the cohabitation of the dependent spouse. The law defines "cohabitation" as "the act of two adults dwelling together continuously and habitually in a private heterosexual relationship, even if their relationship is not solemnized by marriage, or a private homosexual relationship."[37] The law also continues to allow a court to modify alimony awards if the parties' circumstances change sufficiently after the trial to justify increasing, decreasing, or terminating entirely the amount originally ordered by the court.[38]

Conclusion

Whether a particular spouse is entitled to alimony under North Carolina law and, if so, how much and for how long, necessarily depends on a wide variety of factors. With the 1995 General Assembly's removal of fault as the primary consideration in alimony cases, the judicial response to a spouse's request for support has become even less predictable. However, the new law affords judges much-needed flexibility to address the individual circumstances of each case. Thus it promises a greater degree of equity.

Notes

1. See Robert E. Lee, *North Carolina Family Law*, 4th ed. (Charlottesville, Va.: Michie Company, 1979), vol. 1, §§ 38–40 (hereinafter Lee, *Family Law*, vol. 1), for a thorough discussion of the history of divorce in North Carolina and the United States with a particular emphasis on the role of fault.

2. In 1970 California removed fault as a prerequisite to an absolute divorce. Lee, *Family Law*, vol. 1, § 39.1. By 1980 forty-eight states allowed divorce based on such grounds as "irreconcilable differences" or separation rather than fault. Lee, *Family Law*, vol. 1, § 39.1. (Supp. 1989).

3. American Law Institute, introduction to *Principles of the Law of Family Dissolution* (Tentative Draft No. 1) (Philadelphia: the Institute, March 15, 1995) (hereinafter American Law Institute, introduction).

4. N.C. Gen. Stat. [hereinafter G.S.] § 50-5.1 sets out the exclusive method of obtaining a divorce from an insane spouse.

5. G.S. 50-6.

6. *See* Morris v. Morris, 45 N.C. App. 69, 262 S.E.2d 359 (1980). However, not until 1983 did North Carolina repeal the last fault-based divorce statute. Lee, *Family Law*, vol. 1, § 76, and Supp. 1989, § 38.

In 1981 North Carolina adopted an equitable distribution statute, G.S. 50-20 through -21, which provides for the distribution of property between former spouses after divorce without regard to who or what caused the marriage to fail. *See* Smith v. Smith, 314 N.C. 80, 331 S.E.2d 682 (1985).

7. *See generally* American Law Institute, introduction.

8. *See generally* American Law Institute, introduction.

9. See Lee, *Family Law*, vol. 1, § 140, for a discussion of the history of alimony in North Carolina.

10. *See* Williams v. Williams, 299 N.C. 174, 261 S.E.2d 849 (1980); Lemons v. Lemons, 22 N.C. App. 303, 206 S.E.2d 327 (1974).

11. *Williams*, 299 N.C. at 188, 261 S.E.2d at 858–59.

12. North Carolina alimony law was rewritten by 1995 N.C. Sess. Laws ch. 319.

13. The new law, which became effective October 1, 1995, applies to civil actions filed on or after that date. The statute specifies that the new law does not "apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995." Because the old law continues to apply to cases pending in the courts on October 1, 1995, the editor's notes to the new law in the North Carolina General Statutes set out the old law verbatim for ease of reference.

14. G.S. 50-16.1A.

15. G.S. 50-16.1A. The definitions of dependent spouse and supporting spouse are discussed further in "Who Is a Dependent Spouse?" pp. 6–7.

16. Editor's note at G.S. 50-16.2, setting forth law repealed October 1, 1995. The grounds were as follows:

a. The supporting spouse had committed adultery. The appellate courts interpreted this to include adultery committed after the parties had separated. Adams v. Adams, 92 N.C. App. 274, 374 S.E.2d 450 (1988).

b. The supporting spouse had committed a criminal act resulting in the parties' involuntary separation.

c. The supporting spouse had engaged in an unnatural or abnormal sex act with another person or with a beast.

d. The supporting spouse had abandoned the dependent spouse. The appellate courts interpreted abandonment to mean that the supporting spouse had moved out of the marital home without justification, without the consent of the dependent spouse, and without the intent of coming back. *See* Panhorst v. Panhorst, 277 N.C. 664, 178 S.E.2d 387 (1971). The only way that a supporting spouse could prove that he or she had been "justified" in leaving the other spouse was by showing that the conduct of the other spouse had been such that the supporting spouse could not continue the marital relationship with "safety, health and self-respect." *See* Caddell v. Caddell, 236 N.C. 686, 73 S.E.2d 923 (1953).

A dependent spouse who had moved out of the marital residence nevertheless could prove "constructive" abandonment by the supporting spouse if the dependent spouse could show that he or she had been forced to leave because of the intentional mental or physical cruelty of the supporting spouse. *See, e.g., Panhorst*, 277 N.C. at 664, 178 S.E.2d at 387; Ellinworth v. Ellinworth, 88 N.C. App. 119, 362 S.E.2d 584 (1987); Powell v. Powell, 25 N.C. App. 695, 214 S.E.2d 808 (1975).

e. The supporting spouse had maliciously turned the dependent spouse out of doors, meaning that the supporting spouse had literally forced the dependent spouse to leave the marital home.

f. The supporting spouse had endangered the life of the dependent spouse by cruel and barbarous treatment, which could be physical abuse, emotional abuse, or the threat of either. Lee, *Family Law*, vol. 1, § 81.

g. The supporting spouse, without provocation by the dependent spouse, had intentionally inflicted indignities on the dependent spouse sufficient to render the condition of the dependent spouse intolerable and her or his life burdensome. There was no definitive rule about what type of conduct constituted indignities, so the courts were left to decide on the particular facts of each case. However, it was clear that the conduct must have continued over time. *See* Traywick v. Traywick, 28 N.C. App. 291, 221 S.E.2d 85 (1986).

h. The supporting spouse was a spendthrift, meaning that the supporting spouse had spent money profusely and improvidently or had been excessively wasteful. *See* Skamarak v. Skamarak, 81 N.C. App. 125, 343 S.E.2d 559 (1986); Odom v. Odom, 47 N.C. App. 486, 267 S.E.2d 420, *rev. denied*, 301 N.C. 94, 273 S.E.2d 300 (1980).

i. The supporting spouse had abused alcohol or drugs to an extent that rendered the dependent spouse's life intolerable or unduly burdensome.

j. The supporting spouse had willfully failed to provide the dependent spouse with necessary subsistence according to the means of the supporting spouse. The courts held that proof of a supporting spouse's failure to provide adequately for a dependent spouse either before or after the parties separated would establish this ground. Brown v. Brown, 104 N.C. App. 547, 410 S.E.2d 223 (1991), *cert. denied*, 331 N.C. 383, 417 S.E.2d 789 (1992).

17. Such forgiveness, called "condonation" in the law of alimony, is described as a type of conditional forgiveness. That is, the spouse forgives the misconduct only on the condition that the other spouse not repeat it. If the other spouse repeats the conduct after the forgiveness, the original act of misconduct is no longer condoned, and it can be the ground for an award of alimony. *See* Robert E. Lee, *North Carolina Family Law*, 4th ed. (Charlottesville, Va.: Michie Company, 1980), vol. 2, § 135.1 at 153 (hereinafter Lee, *Family Law*, vol. 2).

18. Editor's note at G.S. 50-16.5, setting forth law repealed October 1, 1995.

19. Editor's note at G.S. 50-16.6(a), setting forth law repealed October 1, 1995.

20. G.S. 50-16.3A.

21. In general, alimony is taxable to the spouse who receives the payments and deductible by the spouse who makes the payments.

22. Editor's note at G.S. 50-16.2, setting forth law repealed October 1, 1995.

23. G.S. 50-16.1A(3).

24. G.S. 50-16.3A(b)(1) provides that a court may consider evidence of marital misconduct occurring after separation only as corroborating evidence of marital misconduct during the marriage.

25. G.S. 50-16.3A(a) defines the term "illicit sexual behavior" as "acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S. 14-27.1(4), voluntarily engaged in by a spouse with someone other than the other spouse."

26. G.S. 50-16.3A(a) states that the court shall not consider any act of illicit marital misconduct by either party that has been condoned (that is, forgiven) by the other party. *See* Lee, *Family Law*, vol. 2, § 135.1 at 153.

27. G.S. 50-16.3A(a).

28. Editor's note at G.S. 50-16.5, setting forth law repealed October 1, 1995.

29. Editor's note at G.S. 50-16.5, setting forth law repealed October 1, 1995. See note 16 for a list of those fault grounds.

30. G.S. 50-16.3A(b). For a list of the factors, see the text accompanying notes 20–21.

31. See Lee, *Family Law*, vol. 2, § 139, and Supp. 1995, § 139, for a discussion of setting the amount of alimony under the old law.

32. *See* Taylor v. Taylor, 46 N.C. App. 438, 265 S.E.2d 626 (1980) (holding that a judge must consider the supporting spouse's own inability to maintain the station in life to which he or she was accustomed).

33. *See* Bowes v. Bowes, 287 N.C. 163, 214 S.E.2d 40 (1975); Conrad v. Conrad, 252 N.C. 412, 113 S.E.2d 912

(1960). Without evidence of the spouse's actual bad faith, the court may not base an alimony award on earning capacity. For example, in Wachacha v. Wachacha, 38 N.C. App. 504, 248 S.E.2d 373 (1978), the court refused to use the supporting spouse's earning capacity, even though he had voluntarily left a well-paying job to return to school full-time and, on failing several classes, had left school but taken a job that paid much less than his earlier one. The court said that without specific evidence to show that the supporting spouse was motivated by a desire to avoid his support obligations, a judge must base alimony decisions on the supporting spouse's actual income. *But see* Bennett v. Bennett, 21 N.C. App. 390, 204 S.E.2d 554 (1974) (holding that there was sufficient evidence of bad faith in a spouse's decision to leave one job for another that paid much less, when he had actually stated that he was changing jobs to avoid paying support).

The court may also consider the earning capacity of the spouse seeking support if there is evidence that she or he is intentionally depressing income. *See* Beaman v. Beaman, 77 N.C. App. 717, 336 S.E.2d 129 (1985).

34. G.S. 50-16.7(a). This statute states that the court may transfer *possession* of both real and personal property but may not transfer *title* to real property. However, the statute allows a court to grant a security interest in real property to a dependent spouse to secure the payment of alimony.

35. Such short-term awards, often referred to as "rehabilitative alimony," enable a spouse who has foregone economic opportunities during the marriage to acquire the skills necessary to become viable in the marketplace and obtain employment. Before the enactment of the new alimony law, North Carolina did not recognize the concept of rehabilitative alimony. Hunt v. Hunt, 112 N.C. App. 722, 730, 436 S.E.2d 856, 861 (1993).

36. *See* Fink v. Fink, 120 N.C. App. 412, 462 S.E.2d 844 (1995) (clarifying that child care expenses of a custodial spouse should be considered when determining whether that spouse is dependent for purposes of alimony).

37. G.S. 50-16.9(b).

38. G.S. 50-16.9(a). The courts have held that there must be a substantial change of material circumstances relating to the health or the financial circumstances of the parties before an alimony order may be modified. *See* Patton v. Patton, 88 N.C. App. 715, 364 S.E.2d 700 (1988).

Should a Law Enforcement Agency Seek National Accreditation?

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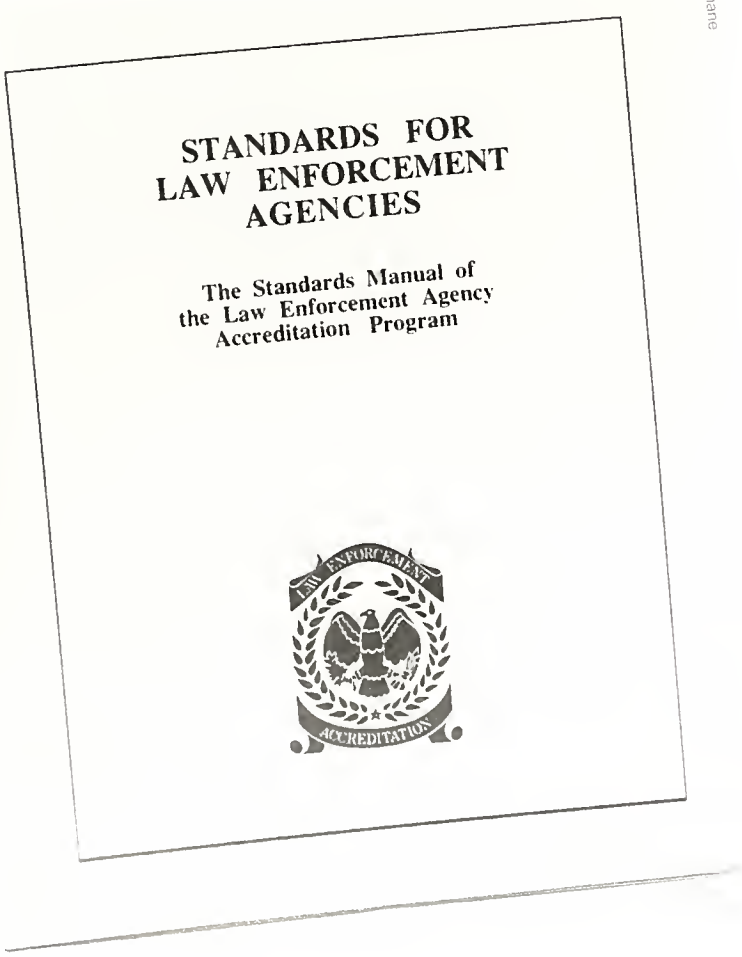

Edward Shane

On a bitter cold Christmas Eve night in 1987, plainclothes detectives and uniformed officers surrounded a house in rural Georgia to capture a rapist who had terrorized the community. The plainclothes detectives stationed themselves at the front, and the uniformed officers waited at the back in case the suspect tried to escape. As the detectives forced an entry at the front, the eighty-four-year-old man who occupied the house woke up, convinced that someone was breaking in. He grabbed a handgun from the dresser and fired at the intruders but missed. The police returned fire and killed him.

This tragic case of mistaken identity resulted in a grand jury investigation and a catastrophic loss of public credibility and trust by the police department. Both the city manager and the police chief lost their jobs in the wake of the disaster. The subsequent investigation and management study revealed that the department had no written policies or procedures governing this and similar types of situations. The event led the Gainesville, Georgia, Police Department to seek national accreditation, which requires the establishment of stringent policies that might have helped avert this calamity.[1]

This article offers information to assist managers and elected officials in deciding whether or not to put

national accreditation on their agendas. It discusses exactly what accreditation is, what organization accredits, what benefits accredited police departments have realized, what the drawbacks might be, and why some departments have decided that it is not for them.

Currently 380 law enforcement agencies in the United States and Canada are accredited. Among the largest are the Pennsylvania and Illinois state police. The smallest is the South Jordan, Utah, Police Department with nine officers.[2] North Carolina is home to sixteen accredited law enforcement agencies. In chronological order of accreditation beginning in 1986, they are Greensboro, Wilson, Burlington, Salisbury, Fayetteville, Gaston County, Durham, Cary, Garner, Jacksonville, Raleigh, Asheville, Greenville, and Albemarle police departments, the State Bureau of Investigation, and The University of North Carolina at Chapel Hill, Department of Public Safety. Several more agencies are seeking accreditation, and some are considering it, including the North Carolina Highway Patrol.[3]

Webster's New World Dictionary defines "accredit" as "to certify as coming up to a set standard."[4] Law enforcement borrowed the idea of accreditation from educational and medical institutions to bring more credibility to the profession.

The Accrediting Organization

In 1979 the four major law enforcement organizations—the International Association of Chiefs of Police, the Police Executive Research Forum, the National Organization of Black Law Enforcement Executives, and the National Sheriffs' Association—created the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), a private, nonprofit corporation. These organizations continue to advise CALEA and its board.[5]

CALEA was formed for two reasons: (1) to develop a set of law enforcement standards and (2) to establish and administer an accreditation process through which law enforcement agencies could demonstrate that they meet professionally recognized criteria for excellence in management and service delivery. It is composed of twenty-one members: eleven law enforcement professionals and ten representatives of the public and private sectors, including judges, elected officials, and corporate executives. It meets three times annually to accredit and reaccredit agencies and to guide its own operations. Fees paid by law enforcement agencies defray CALEA's major operating costs. It derives its authority solely from the voluntary participation of law enforcement agencies in the accreditation program.[6]

The Standards

Accreditation standards cover every aspect of law enforcement operations, and to be accredited, services and agencies must meet 100 percent of mandatory standards and 80 percent of optional standards. Mandatory standards deal with issues in which liability is a substantial risk, such as training, police pursuit, and personnel. The number of standards overall went from 897 in 1993 to 436 in 1994 after a task force composed of accreditation managers and chiefs worked to update them and reduce the number. The number of mandatory standards ranges from 319 for agencies with fewer than 25 authorized full-time employees to 340 for agencies with over 1,000.

The standards address six major topics: (1) the agency's role, responsibilities, and relationships with other agencies; (2) organization, management, and administration; (3) personnel administration; (4) law enforcement operations, operational support, and traffic law enforcement; (5) prisoner and court-related services; and (6) auxiliary and technical services.[7] According to CALEA, "the standards help law enforcement agencies (1) strengthen crime prevention and control capabilities; (2) formalize essential management procedures; (3) establish fair and nondiscriminatory personnel practices; (4) improve service delivery; (5) solidify interagency cooperation and coordination; and (6) boost citizen and staff confidence in the agency."[8]

An example of a mandatory standard, and one that might have saved the Gainesville, Georgia, Police Department some heartache, is standard 43.1.6, relating to high-risk arrest and raid situations. Among other things, it calls for written procedures governing "high-risk entry, authorization for the raid and use of force, close supervision, making contact with the suspect(s) and designating a single person as supervisor and coordinator."[9] Such procedures might confirm addresses and identities so as to prevent tragedies.

Other standards have proved helpful in shaping an agency's planning for special events, from a presidential visit to a natural disaster. Each agency tailors its plan to its specific needs and jurisdiction, but the standards provide a checklist that covers a wide variety of

contingencies, such as mass arrests, evacuation routes, rumor control, and requests for federal assistance.[7]

The Accreditation Process

Accreditation is a five-part process for a law enforcement agency: (1) application, (2) approval of eligibility, (3) self-assessment, (4) on-site assessment, and (5) appearance before CALEA at an annual meeting.

After an agency applies for accreditation, CALEA staff determine whether the agency is eligible to participate. Law enforcement agencies must be either (1) legally constituted governmental entities with (a) a mandated responsibility to enforce laws and (b) personnel with general or special law enforcement powers; or (2) other law enforcement entities, such as private agencies with mandated police powers (whose eligibility is determined on a case-by-case basis by CALEA). After acceptance as an applicant, the agency enters the self-assessment phase, which usually takes eighteen to twenty-four months. During self-assessment, the agency examines its policies, acts to comply with CALEA's standards, and gathers proofs of compliance for later verification by the on-site assessment team.[11]

During the on-site assessment, a team of trained assessors verifies compliance by examining files, interviewing personnel, and observing operations. It also conducts a public hearing to elicit community members' comments.

The lead assessor then writes a report of the team's findings, which is forwarded through CALEA staff to the board of commissioners for consideration. During hearings at its annual meetings, CALEA evaluates the reports and either awards or defers accreditation.[12] In cases in which CALEA defers accreditation, it usually charges the agency with correcting certain conditions that were deemed to be deficient during the on-site assessment.

The period of accreditation is three years. During this time, the agency must submit annual reports that document continuing compliance with applicable standards.[13]

Costs

The initial, nonrefundable application fee is $250, which is credited toward the agency's accreditation fee.[14] CALEA's accreditation fees are determined by the size of the agency. (See Table 1 for the current fee schedule for initial accreditation, adopted in March 1993 by CALEA.) Before the on-site assessment, CALEA bills the agency for its estimated cost plus a 25 percent administrative fee.[15] Reaccreditation fees are approximately half the initial accreditation fees.

Agencies cite varying costs associated with accreditation in addition to the fees. The Administrative Officers Management Program (AOMP) at North Carolina State University surveyed accredited agencies in spring 1994 to determine what, if any, benefits they perceived from accreditation. Participants were asked whether "the total costs associated with achieving compliance with accreditation standards were justified by the benefits."[16] Seventy-one percent of the respondents answered that the costs were justified in terms of the benefits that they received. However, most of this 71 percent either did not know the costs associated with the process, admittedly did not keep track of the costs, or simply did not provide the information when surveyed.[17] Among the neutral or positive comments were these:[18]

- "The expenses benefited our department. The personnel costs would have been incurred regardless of accreditation."
- "It is hard to define cost. We didn't hire additional personnel. It took five years and the bulk of cost was in material, etc."
- "In real dollars we did not spend any more money by being accredited than we would otherwise. CALEA fees . . . are more than offset by liability insurance savings."

On the other hand, one respondent commented, "We dropped out of the reaccreditation process in large measure because the cost-benefit ratio was not in our favor."[19]

Chief Darrell Stephens of the St. Petersburg, Florida, Police Department has a unique perspective on accreditation and CALEA. Before his appointment, he was executive director of the Police Executive Research Forum. St. Petersburg has been reaccredited twice (accredited three times). On the matter of cost, Chief Stephens commented, "I believe CALEA missed the mark in not helping smaller agencies to get accredited. Grants [which are now being offered to small departments by CALEA] might be helpful, but the biggest expense is not in the fees, but in the manpower it takes to bring accreditation about."[20]

Pros and Cons

The AOMP survey referred to earlier questioned staff in seventy-one accredited law enforcement agencies. Within each agency, to capture the range of opinions, the surveyors targeted the chief executive officer (CEO), the person who had been designated as the accreditation manager, and two first-line supervisors. The surveyors found that most respondents believed accreditation by CALEA to benefit their agency. A closer analysis of the replies by the job function of the respondent, however, revealed that a significant number of first-line supervisors were somewhat less enthusiastic than department administrators.[21]

CEOs who have been involved in the process are generally positive. Chief Ron Wood, formerly chief of the Greeley, Colorado, Police Department and most recently chief in Federal Way, Washington, has been able to view accreditation from several perspectives. He was the accreditation manager in Greeley, then the chief of police when the department went through reaccreditation. He has served as a team leader of on-site assessments for CALEA and was appointed a commissioner in 1993. He has seen the process undergo substantial changes reflecting the changing needs of law enforcement. Said Chief Wood: "I believe that as the process [accreditation] becomes more used, it will serve to increase professionalism and to make departments more responsive to their communities." Federal Way, a suburb of Tacoma, recently incorporated, and Wood was hired as its first officer and chief. Charged with building a police department from the ground up, he plans to use accreditation as a basis for doing this.[22]

Major Ron Ford, the accreditation manager of the Garner, North Carolina, Police Department and the president of the North Carolina Law Enforcement Accreditation Network, cited the benefits of accreditation to his agency: "I feel accreditation assures a CEO that his or her department is sound internally. The process requires a department to take a critical look at every operational and administrative aspect. This continuous review will provide an agency with state-of-the-art directives that are under constant review by the law enforcement community.[23]

Another benefit of accreditation is "increased professionalism." One respondent to the AOMP survey stated, "To me accreditation is similar to having a college degree for your department." Also a plus is that accreditation is "viewed favorably by the governing body and by the public." For example, an AOMP survey respondent commented, "My city is comprised of upper-middle-class residents who had always felt we were a professional department. . . . The citizens do not really understand what accreditation is. They just see the end product—our service to them."[24]

Table 1
Schedule of Fees for Initial Accreditation

No. of Authorized Full-Time Employees	Lump-Sum Payment ($)	Payment in Two Installments ($)
1–24	4,675	4,910 (2,455 × 2)
25–199	7,650	8,030 (4,015 × 2)
200–999	13,325	12,940 (6,470 × 2)
1,000 up	16,150	16,960 (8,480 × 2)

Source: From *Accreditation Program Overview: Answers to Frequently Asked Questions about the Benefits, Fees, Accreditation Process, Standards, and Commission History* [Pamphlet] (Fairfax, Va.: Commission on Accreditation for Law Enforcement Agencies, 1995), 6.

Chief Charles Hinman of the Greenville, North Carolina, Police Department was a deputy chief of the Newport News, Virginia, Police Department when it received its initial accreditation and later its reaccreditation. "I believe the positive things that occurred [in Newport News] wouldn't have happened without accreditation," Hinman said. "We were able to turn a 'yesterday' operation into a 'today' operation. Those agencies that have been accredited to date are the most innovative in the country. Accreditation is a way for departments to be on the cutting edge. I am committed to the process because I believe it results in a better, more professional police department."[25]

Chief Sylvester Daughtry of the Greensboro, North Carolina, Police Department is the current chair of the CALEA Board of Commissioners and has served as a commissioner since 1990. He stated, "Accreditation is a process that I have had a great deal of confidence and faith in for many years. We realize that this is an excellent way of having accountability to the public we serve. Although it is a voluntary process and is achievable, it is not easy: it requires boldness on the part of the agency pursuing it. Interest in accreditation is growing in our communities across the state, and that speaks well to our commitment to professionalism."[26]

The benefits of accreditation discussed to this point—for example, civic pride, professionalism, and presumably, higher agency morale—are somewhat nebulous. Kathy Koechling of the Employee Services Division of the Durham, North Carolina, Police

Accreditation Versus Community-Oriented Policing

Currently some law enforcement professionals are asking whether accreditation and community-oriented policing are compatible. "Community-oriented policing" has become a catchphrase for a wide range of philosophies aimed at bringing the police and the community into a closer working relationship to reduce crime and make neighborhoods safer.[1] Essentially, it rests on five principles:[2]

1. It is based on a set of values within the organization and the community.
2. There is a commitment to problem solving.
3. There is a strong focus on neighborhoods. Beats are smaller than beats normally are in cities, and officers are permanently assigned to the same areas.
4. Officers are empowered to solve problems, and citizens are empowered to assist in solving problems.
5. There is less dependence on 911. Police response times are considered important only for emergencies.

Some practitioners argue that the accreditation standards are too inflexible to allow a department to practice problem solving and community-oriented policing fully. Gary Cordner of Eastern Kentucky University and Gerald Williams of Sam Houston State University are studying the matter under a grant from the National Institute of Justice. Williams is not ready to comment on the issue because the results are not in. It is interesting to note, however, that two agencies in Colorado (Arvada and Aurora) were accredited under his leadership and that during his tenure as the chief of police in Aurora, a city of more than 200,000 people, he began a strong, departmentwide community-oriented policing program. Regarding that experience, he commented, "While the standards were not a panacea, they were a good template to measure our policy against. The two initiatives [community-oriented policing and accreditation] were not in conflict and seemed to work together. Aurora became accredited under the second-edition standards, and the impact might be different if done today."[3] Williams and Cordner are paying particular attention in their study to the departments that have adopted the new (third-edition) standards and to the effect of the new standards on community-oriented policing.

Richard Kitterman, the executive director of the commission, commented that community-oriented policing and accreditation were not at all incompatible: "If you truly understand the standards," he said, "you see that they show the agency generically what to do but not how to do it." Some critics argue that community-oriented policing empowers a line officer to solve problems and that accreditation requires too much structure within an agency for a line officer to be effective at this. On this point, Kitterman commented, "I don't care how empowered an officer is, he or she is still working within a framework within an organization that is trying to protect the officer. This framework includes the confines of a personnel administration within a local government, and that's going to exist whether the agency is accredited or not."[4]

The Garner, North Carolina, Police Department was accredited in March 1994. Chief Tom Moss stated, "Accreditation was good for my agency. It provides a new chief with a critical blueprint for reorganization." Asked how it affected community-oriented policing, he responded, "I believe accreditation is an excellent forum to move into community-oriented policing. It's made our organization healthy from the inside out. Now we're ready to move forward. I've been researching community-oriented policing for several years, and I haven't seen anything that will hurt us in our efforts in community policing."[5]

Darrell Stephens, now in St. Petersburg, Florida, served as the chief of police in Newport News, Virginia, when that city's police department first became accredited in the mid-1980s. At the same time, he was implementing community-oriented policing that became a model for the rest of the country. According to Chief Stephens, "There's no conflict at all between community policing and accreditation. I have worked with many departments that are accredited and that have community-oriented policing and have never observed any problem."[6]

Although Chief Stephens did not see accreditation getting in the way of community-oriented policing, he observed, "CALEA doesn't acknowledge community-

oriented policing as a philosophy, and it should. I have reviewed the changes [in the standards], and I don't see anything that is substantially changed. The Standards Review Committee basically took the standards [and] reworked them but left the essence unchanged. The world has changed and continues to change. [Accreditation] has cast policing in the 1980s light and ignored philosophical issues. One way to review the standards objectively is to consider bringing together members of the community and asking them to look at the standards and what they mean to them in terms of service delivery."[7]

Chief Harry Dolan of the Lumberton, North Carolina, Police Department has instituted community-oriented policing in that agency and lectures nationally on the subject. He has chosen not to pursue accreditation for the present. Nonetheless, he said, "I think we need both. . . . The problem is bringing congruence to the traditional police response and the proactive approach. I'm not convinced that the standards are flexible enough. Accreditation is based on the traditional structure of a department where it's divided into Patrol, Investigations, and Support Services. Community policing calls for the team approach and mixing and matching divisions. Accreditation provides structure but not enough flexibility. This is the challenge for CALEA in the future."[8]

Notes

1. Jacob R. Clark, "Does Community Policing Add Up?" *Law Enforcement News* (published by John Jay College of Criminal Justice, City University of New York) 20, no. 399 (April 15, 1994): 1, 8.

2. Clark, "Does Community Policing Add Up?"

3. Gerald Williams, Sam Houston State University, telephone interview, Feb. 13, 1996.

4. Richard Kitterman, executive director, Commission on Accreditation for Law Enforcement Agencies, telephone interview, June 24, 1994.

5. Chief Tom Moss, Garner, N.C., Police Department, telephone interviews, June 24, 1994, and Feb. 13, 1996.

6. Chief Darrell Stephens, St. Petersburg, Fla., Police Department, telephone interview, June 28, 1994.

7. Stephens, telephone interview.

8. "AOMP Survey" (see n. 16 at the end of the main article), 15.

Department pointed to several tangible benefits: "Accreditation requires an annual review of the pay system. Our city only requires it every three years. By reviewing it on an annual basis, we have been able to obtain raises for our personnel before the rest of the city." In addition, Koechling reported, "Our record keeping is much better. Agency actions can be defended a lot better as a result of personnel, training, and other records being kept up to date. Our general orders are current because accreditation forces us to revisit them annually. It also forces us to follow employment law—not that we wouldn't, but we might not be aware of a particular law that would have already been addressed through the standards."[27]

Not all CEOs conclude that accreditation is beneficial. Chief Tom Koby of the Boulder, Colorado, Police Department halted the accreditation process when he took over in 1991. Before moving to Boulder, he was an assistant chief in the Houston, Texas, Police Department when it became accredited. "I believe that accreditation is a phenomenon whose time has come and gone," Chief Koby commented. "After going through all that it took for Houston to become accredited, I could not see where we had improved substantially as a result of the process." He went on to say that although he was not "anti-accreditation," he thought that a department could spend its time and money better on different methods of determining and improving the quality of service that it delivered.[28]

Russ Pomerenke, the accreditation manager of the Gainesville, Georgia, Police Department, acknowledged that "perhaps accreditation is not for every department." However, he continued, "many places are a disaster waiting to happen. It did in Gainesville. I'm sure adhering to CALEA standards would have prevented this. We're a much better department for going through the process."[29]

Agencies considering accreditation should pay site visits to accredited agencies, discuss the pros and the cons with department members, weigh the costs and the benefits, then decide whether or not to pursue it.[30]

Notes

1. Russell J. Pomerenke, "Organizational Change: Would You Prefer to Be Voluntarily Proactive or Involuntarily Reactive?" Unpublished paper, Gainesville, Ga., Police Department, March 18, 1993.

2. Richard Kitterman, executive director, Commission on Accreditation for Law Enforcement Agencies, telephone interview, Feb. 15, 1996.

3. Major Ron Ford, Garner, N.C., Police Department, telephone interview, Feb. 14, 1996.

4. *Webster's New World Dictionary*, 3d ed., s.v. "accredit."

5. *Accreditation Program Overview: Answers to Frequently Asked Questions about the Benefits, Fees, Accreditation Process, Standards, and Commission History* [Pamphlet] (Fairfax, Va.: Commission on Accreditation for Law Enforcement Agencies, 1995), 5.

6. *Accreditation Program Overview*.

7. *Accreditation Program Overview*.

8. *Accreditation Program Overview*, 2.

9. *Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program 1994*, 3d ed. (Fairfax, Va.: Commission on Accreditation for Law Enforcement Agencies, 1994), chap. 43, p. 43-2, chap. 46, p. 46-3.

10. *Standards*.

11. *Accreditation Program Overview*.

12. *Accreditation Program Overview*.

13. *Accreditation Program Overview*.

14. *Accreditation Program Overview*.

15. *Accreditation Program Overview*.

16. Lt. Mary Brisbon, Virginia State Capital Police; Lt. Michael Gauldin, Burlington, N.C., Police; Sgt. Terry Callicut, Greensboro, N.C., Police Department; Sgt. Michael Frye, Guilford County, N.C., Sheriff's Department; Sgt. Allen Johnson, North Carolina Highway Patrol; Sgt. Zora Lykken, Annapolis, Md., Police Department; and Sgt. Chuck Mason, Roanoke County, N.C., Police Department, "Accreditation Survey," 17 (hereinafter cited as "AOMP Survey"), presented at 11th Annual Administrative Officers Management Program, North Carolina State University, March 1994.

17. "AOMP Survey."

18. "AOMP Survey," 15.

19. "AOMP Survey," 16.

20. Chief Darrell Stephens, St. Petersburg, Fla., Police Department, telephone interview, June 28, 1994.

21. "AOMP Survey."

22. Chief Ron Wood, Greeley, Colo., Police Department, telephone interviews, June 24, 1994, and Feb. 12, 1996.

23. Ford, telephone interviews.

24. "AOMP Survey."

25. Chief Charles Hinman, Greenville, N.C., Police Department, telephone interview, June 28, 1994.

26. Chief Sylvester Daughtry, Greensboro, N.C., Police Department, telephone interview, Feb. 12, 1996.

27. Kathy Koechling, management assistant, Career Development, Durham, N.C., Police Department, telephone interview, June 27, 1994.

28. Chief Tom Koby, Boulder, Colo., Police Department, telephone interview, Feb. 3, 1994.

29. Russell J. Pomerenke, accreditation manager, Gainesville, Ga., Police Department, telephone interview, June 28, 1994.

30. For more information about the accreditation process, contact the accreditation manager at any of the departments listed in North Carolina, or write to the Commission on Accreditation for Law Enforcement Agencies, 10306 Eaton Place, Suite 320, Fairfax, VA 22030.

City and County Clerks

What They Do and How They Do It

A. Fleming Bell, II

You see, municipal [and county] clerks are leaders, often unrecognized, unpraised, and underpaid. Please know that all you do has great value, helps determine the quality of local government in the present, affects the direction of the future, and keeps a record of the past.[1]

The position of clerk is one of the oldest in local government, dating at least to biblical times. For example, the book of Acts in the Christian New Testament records that when a conflict arose between the people of Ephesus and the missionary Paul and his companions, the town clerk quieted the crowd and prevented a riot.[2]

The term "clerk" has long been associated with the written word. Indeed, an archaic definition of a clerk is a person who can read, or read and write, or a learned person, scholar, or person of letters. "Clerk" can also mean cleric or clergyman; during the Middle Ages, the clergy were among the few literate people in many European communities.

Those who can read and write can keep records for their fellow citizens; so it is that modern-day clerks are official record keepers for their cities and counties. Each city and county in North Carolina must have a clerk for its governing board,[3] and the most important local government records maintained by the clerk, such as minutes of governing board meetings, must be kept permanently for the use of future generations.[4]

Some cities and counties also have deputy or assistant clerks. City councils are specifically authorized by statute to provide for such a deputy, who may perform any of the powers and duties of the clerk that the council specifies.[5] Boards of county commissioners may create the position of deputy or assistant clerk to the board of commissioners, relying on their general authority to create offices and positions of county government.[6]

Local government clerks and their deputies have a variety of duties in addition to creating and maintaining records. This article discusses the diverse responsibilities of clerks.[7] It also offers information about the specific legal requirements that clerks must follow as custodians of municipal and county records.[8]

Appointment

The appointment procedures for municipal and county clerks are somewhat different. In each case, however, the clerk works directly with the local governing board.

The municipal clerk generally works directly for the city council, keeping the city's records, giving notices of meetings, and performing various other functions as the council requires. In mayor-council cities, the clerk is almost always appointed by the council. In council-manager cities, situations vary. The charters of some of these cities provide for appointment by the council. The charters of other council-manager cities have been revised in recent years to specify appointment by the manager.

In the absence of a charter provision in a council-manager city, the manager will probably appoint the clerk, although the clerk will still perform duties for the council. Section 160A-148(1) of the North Carolina General Statutes (G.S.) specifies that the man-

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Karen Tam

Following a practice that may be the wave of the future, Beverly Blythe, clerk to the Board of Commissioners of Orange County (N.C.), drafts minutes of the board's meeting on a laptop computer.

ager is to appoint and to suspend or remove, in accordance with any council-adopted general personnel rules, regulations, policies, or ordinances, all nonelected city officers and employees "whose appointment or removal is not otherwise provided for by law, except the city attorney." G.S. 160A-171 states, "There shall be a city clerk," but it does not specify how the clerk is to be appointed, so the provision for appointment by the manager probably applies. However, both G.S. 160A-171 and G.S. 160A-172, which deals with deputy clerks, state that these officials are to perform duties required (G.S. 160A-171) or specified (G.S. 160A-172) by the *council*.

The board of county commissioners must appoint or designate a clerk to the board, who serves as such at the board's pleasure. The clerk performs any duties required by law or the board.[9] Although any county officer or employee may be designated as clerk,[10] most counties have created a separate position with these responsibilities.

Record Keeping and Notice Giving

Minutes

One of the clerk's most important statutory duties is to prepare the minutes of governing board meetings and maintain them in a set of minute books.[11] The powers of a city or a county are exercised by the city council or the board of county commissioners, and the minutes of the governing board's meetings are the official record of what it does.

The minutes prepared by the clerk must be "full and accurate,"[12] for they are the legal evidence of what the governing board has said and done. The board "speaks" only through its minutes, and their contents may not be altered nor their meaning explained by other evidence.[13]

"Full and accurate" does not generally mean, however, that the clerk must make a verbatim transcript of a meeting's proceedings. Rather, the minutes must record the results of each vote taken by the governing board,[14] and they should also show the existence of any condition that is required before a particular action may validly be taken.[15] The clerk should record the full text of each motion, including the full text of all ordinances and resolutions passed by the board. This permanent, unchanging record of board actions can be extremely important in later years to supplement and back up information sources that are frequently revised, such as ordinance books and codes of ordinances.

The clerk must attend to other important details in preparing the minutes. The minutes should state that the meeting was legally convened and show that a quorum was present at all times during the meeting. They should note the late arrival and the early departure of members (including whether someone leaving was excused by the remaining members). They must also include a list of the members who voted each way on a particular question (the "ayes and noes") if any member so requests.[16]

The minutes should show as well that any other legally required conditions for taking action were met—for example, that a properly advertised public hearing on a proposed rezoning was held or that an ordinance received a sufficient number of votes to be adopted finally on first reading. As another example, if the board awards a formally bid contract, the minutes must include a list of the bids received.[17]

Minutes of Closed Sessions

The law permits public bodies to hold closed sessions for certain specified purposes.[18] Like other minutes, the minutes of these sessions must be "full and accurate,"[19] recording any actions taken and the existence of the conditions needed to take particular actions. If the clerk does not attend the closed session,

he or she should designate someone who does attend to record any actions that may be taken.

If a public body takes no action in a closed session,[20] the minutes need show only that the closed session took place. The clerk should record in the governing board's public minutes the motion to go into the closed session, including the information required by the open meetings law,[21] and the fact that the board came out of the session. In such a case, the closed-session minutes need indicate only that "discussion" took place.[22]

A city council or a board of county commissioners may seal the minutes of a closed session for as long as necessary to avoid frustrating the purpose of the session.[23] A recorded vote to seal the minutes is advisable. Many clerks maintain sealed closed-session minutes in a separate minutes book.

A Circumstance Requiring a Verbatim Transcript

As noted earlier, the clerk generally does not need to include in the minutes a verbatim transcript or even a summary of the discussion that took place at a governing board meeting. Indeed, including a detailed record of comments may well be counterproductive; the board may find itself spending an excessive amount of time at its next meeting discussing the details of this record.

A verbatim transcript of council proceedings may be required in one limited circumstance, however. When the governing board is sitting as a quasi-judicial body—for example, when it is considering issuance of a special-use permit under a zoning ordinance—it must act somewhat like a court, and the clerk must prepare a full transcript of the proceedings if one of the parties appearing before the board so requests.

Audio or Video Recordings

The law does not require the clerk to make an audio or video recording of city or county governing board meetings. (Persons attending the meeting may make their own recordings if they desire.) If the clerk or another local government official does make a tape, she or he may dispose of it after the minutes of that meeting are approved. Should the city or county attorney or the governing board wish the clerk to retain meeting tapes for a longer period, the board should establish a clear, uniform policy for the clerk's guidance. The city's or county's tape of a meeting is a public record available for public inspection and copying, just like the minutes.

Approval of the Minutes

The clerk generally sends draft copies of governing board minutes, except minutes of closed sessions, to the board members several days before the meeting at which the board will consider the minutes for approval. The circulated draft minutes are a public record that must also be made available for public inspection.

Governing board members should carefully review the minutes and bring their suggested changes and corrections to the meeting for consideration by the full board. Although the clerk prepares the draft minutes for the governing board, the board itself, acting as a body, must finally determine what the minutes will include. The minutes do not become the official record of the board's actions until it approves them.

A governing board may handle approval of closed-session minutes in one of several ways, depending on the situation and the preferences of the clerk and the board:

1. If the minutes show only that the board held a closed session and that discussion occurred (again, this is all that is required unless the board took an action in the closed session), the board may approve the minutes in an open session.
2. If the board took an action in the closed session, the minutes of that action will probably be fairly short. An easy way to handle their approval is to prepare them on the spot and have the board vote to approve them before the closed session ends.
3. The board might also approve the minutes in a later closed session. In this case, the motion to go into the closed session should state as one of the session's purposes, "to prevent the disclosure of information that is made privileged or confidential by G.S. 143-318.10(e)."[24]
4. Finally, the board might approve in an open session the minutes of a closed session in which it took an action. However, this might pose a risk of disclosure of the minutes' contents, especially if a board member wants to amend them.

The governing board may correct minutes that it has already approved if it later finds that they are incorrect.[25] In such a case, the clerk should note the correction in the minutes of the meeting at which the correction is made, with an appropriate notation and cross-reference at the place in the minutes book where the provision being corrected appears.

Meetings of Other Public Bodies

The open meetings law requires that "full and accurate" minutes also be kept of the meetings of other "public bodies" that are part of municipal or county government. Included are all boards, committees, and other bodies of the city or the county that perform legislative, policy-making, quasi-judicial, administrative, or advisory functions. The governing board, generally with the clerk's help, should establish procedures to ensure that the minutes of all public bodies under its direction are properly recorded and maintained. The minutes of these various public bodies may be kept either in written form or, at the option of the public body, in the form of sound or video-and-sound recordings.[26]

Ordinance Book

Among the other records of governing board actions maintained by the clerk is the ordinance book. The clerk must file each city or county ordinance in an appropriately indexed ordinance book, with the exception of certain kinds of ordinances discussed in the next paragraph. This book, separate from the minutes book, is maintained for public inspection in the clerk's office. If the city or the county has adopted and issued a code of ordinances, it must index its ordinances and keep them in an ordinance book only until it codifies them.

The law pertaining to counties provides that the ordinance book need not include transitory ordinances and certain technical regulations adopted in ordinances by reference, although the law does require a cross-reference to the minutes book (at least for transitory ordinances).[27] The same rules may apply to cities; the municipal statutes are not as clear as the county statutes on this matter.[28] If the governing board does adopt technical regulations in an ordinance by reference, the clerk must maintain an official copy of the adopted items in his or her office for public inspection.[29]

Code of Ordinances

Every city with a population of 5,000 or more must adopt and issue a bound or loose-leaf code of its ordinances. Also, it must update the code at least annually unless there have been no changes. It may reproduce the code by any method that gives legible and permanent copies. Counties and smaller cities may adopt and issue such a code if they choose to do so.[30] A private code-publishing company or the local government's attorney may prepare the code in consultation with the clerk.

A city or a county may include separate sections in a code for general ordinances and for technical ordinances, or they may issue the latter as separate books or pamphlets. Examples of technical ordinances are those pertaining to building construction; installation of plumbing, electric wiring, or cooling and heating equipment; zoning; subdivision control; privilege license taxes; the use of public utilities, buildings, or facilities operated by the city or the county; and similar ordinances designated as technical by the governing board.

The governing board may omit from the code classes of ordinances that it designates as having limited interest or transitory value (for example, the annual budget ordinance), but the code should clearly describe the classes of ordinances that have been left out. The board may also provide that certain ordinances pertaining to zoning district boundaries and, for cities, traffic regulations, be maintained on official map books in the clerk's office or in some other local government office generally accessible to the public. City traffic ordinances and city ordinances establishing rates and fees may be codified by entry on official lists or schedules maintained in the clerk's office.

One reason that clerks maintain ordinance books and codes is to make the city's or county's laws readily accessible to its citizens. Accordingly ordinances may not be enforced or admitted into evidence in court unless they are properly filed and indexed or codified. The law presumes, however, that a city or a county has followed the proper procedure unless someone proves to the contrary.[31]

Other Records

The city clerk is the custodian of all city records,[32] not just those previously described. This means that the clerk is in overall charge of municipal record-keeping, even if some records are maintained and used primarily in other city offices where the person in charge of the particular office is their immediate custodian.[33] Financial, personnel, and tax records, for example, may be kept in other city departments, but legally they are also the city clerk's responsibility.

Local Government Records: Maintenance and Access

City and county clerks and other local government records custodians maintain a wide variety of public records. Some of the preservation and access requirements for these records are set out in the main body of the public records law, North Carolina General Statutes (G.S.) Chapter 132.

G.S. 132-1 defines "public record" very broadly as "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions." The last phrase includes "every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government."

The phrase "made or received pursuant to law or ordinance in connection with the transaction of public business" should also be given a broad interpretation. It appears to mean that public records include not only records that are required by law to be made or received but also records that are simply kept in a public office by public officials in carrying out lawful duties. Thus practically all documentary material in local government offices is covered by the public records law and its requirements for preservation of and access to records. These two topics are considered in turn.

Safekeeping, Retention, and Disposition

The public official in charge of an office having public records is ordinarily the custodian of those records (G.S. 132-2), although more specific rules may apply in certain cases. For example, as explained in the main article, the city clerk is the custodian of *all* city records, regardless of where they are housed or who their immediate custodian might be (G.S. 160A-171). The records custodian, whether the clerk or another public official, is responsible for following the general safekeeping requirements of G.S. 132-7: "Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used." The clerk or other custodian is responsible for supervising the use of records and ensuring that they are not lost or damaged.

These custodial responsibilities should be carried out under the direction and with the approval of the governing board, which is ultimately responsible for the city's or county's records. It is often helpful for the board to adopt standard procedures concerning matters such as the time and the manner of access to records and the procedures for copying them. As discussed later, such rules should be designed only to safeguard the records and to minimize the disruption of public offices. They should not unduly restrict public use and copying of records, except in specific instances when restrictions on access are allowed.

City or county records may be disposed of only in accordance with schedules for records retention and disposition, published separately for cities and for counties by the North Carolina Department of Cultural Resources, the state agency with overall responsibility for public records (see Additional Resources). The schedules set out the minimum amounts of time that various records must be kept. Records that must be retained permanently are kept in the city or the county or sent to the state archives in Raleigh. Other records may be destroyed with the governing board's permission

—continued on next page

The clerk to the board of county commissioners and the board itself are also generally the custodians of many county records besides minutes and ordinances. Board resolutions, contracts, governing board correspondence, signed oaths of office, copies of legal and other notices, and a variety of miscellaneous documents (for example, commissioners' travel records and applications from citizens to be appointed to various county boards) are all to be maintained in the county clerk's office or under the clerk's guidance.

The records custodian, whether the clerk or another official, has primary responsibility for ensuring that local government records are kept safely, are accessible for use by the public and city or county of-

according to the timetables in the schedules, once the board has agreed with the Department of Cultural Resources that it will follow the appropriate schedules.

By agreeing to the schedules, local governments receive blanket permission to dispose of their records at the specified times, rather than having to seek the department's permission whenever they want to throw anything away. The department sometimes approves variations from the schedules at the request of a particular city or county.

The clerk should record in the minutes a governing board's vote to permit the destruction of specific records in accordance with the schedules and should keep a permanent list of the records destroyed in the minutes or elsewhere. Preservation and destruction are the only legal options available for public records. They may not be given to private individuals, local historical societies, or other groups that request them.

On request, the Department of Cultural Resources' Division of Archives and History will microfilm the city and county records that must be kept permanently—most notably, the minutes of governing board meetings—at no charge. The division stores a security copy of the microfilm so that it can replace the local records if they are ever damaged or destroyed. Many city and county clerks regularly send copies of governing board minutes to Raleigh for this security microfilming.

Access for Inspection and Copying

Most of the records of cities and counties, whether maintained in the clerk's office or elsewhere, must be made available for public inspection. However, some records are exempt from inspection because of a specific statute. Examples of statutory exemptions are those for most municipal and county personnel records (G.S. 160A-168 and 153A-98, respectively), those for certain attorney-client records (G.S. 132-1.1), those for certain law enforcement records (G.S. 132-1.4), and those for specified records concerning industrial development (G.S. 132-6 and -9).

Unless a record is exempt from disclosure, it must be made available for inspection and examination "at reasonable times and under reasonable supervision by any person" [G.S. 132-6(a)], not just by local residents or those with a special interest in the record. The use that a person plans to make of city or county records is irrelevant to his or her right of inspection [G.S. 132-6(b)], with two exceptions: (1) a person obtaining geographic information systems records may be required to agree in writing not to resell or otherwise use them for trade or commercial purposes (G.S. 132-10), and (2) specified lists of recipients of public assistance may not be used for commercial or political purposes [G.S. 108A-80(b) and (c)].

Making public records available for inspection is an important legal duty of custodians of records. Generally no fee should be charged for the right of inspection.

Adequate space for inspection should be provided, and inspection should generally be allowed during most hours for which the office is open. The originals of the public records must usually be made available.[1]

The right of access is a right to make reasonable requests to inspect the particular records maintained by the clerk or another records custodian. The person requesting the records may not require creation or compilation of a record that does not exist [G.S. 132-6.2(e)]. Thus the custodian is not required to sort or tabulate individual paper or computer files to place them in an order more usable by the person requesting them. Nor is he or she required to make a transcript of a tape recording just because the person requesting the tape would like to have its information in written form. If the custodian voluntarily elects to create or compile a record as a service to a person requesting it, she or he may negotiate a reasonable charge for doing so [G.S. 132-6.2(e)].

Clerks and other records custodians are required to

ficials (except as restricted by law), and are disposed of in accordance with the appropriate schedule of records retention and disposition promulgated by the North Carolina Department of Cultural Resources, Division of Archives and History.[34] For general rules on this subject, see "Local Government Records: Maintenance and Access," pp. 25–27.

Notices

The clerk is usually responsible for giving notice of governing board meetings and for giving a variety of other public notices. (City clerks are required by statute to give notice of council meetings.) Clerks give notice of the regular meetings of all public bodies that are part

make copies of records when requested, as well as to make the records available for inspection. Copies must generally be furnished "as promptly as possible" [G.S. 132-6(a)].[2] If the records requested contain confidential as well as public information, the custodian must separate the two [G.S. 132-6(c)]. The person requesting copies may elect to obtain them in any medium (for example, computer disk or paper copy) in which the local government is capable of providing them [G.S. 132-6.2(a)].

Fees for copies of public records usually may not exceed the actual cost to the city or the county of making the copy. In general, personnel and other costs that the unit would have incurred had the copying request not been made may not be recovered [G.S. 132-6.2(b)], although there are exceptions for certain requests that involve extra work.[3] Fee schedules should be uniform and established in advance.

As noted earlier, reasonable regulations to protect the records and to minimize disruption of public offices are permissible as long as the rights of access, inspection, and copying are not unduly limited. For example, local governments need not respond to requests for copies of records outside their usual business hours [G.S. 132-6.2(d)]. Like fee schedules, such regulations should be established in advance by the local governing board, or in appropriate cases by the clerk or another records custodian, perhaps pursuant to policies established by the board. Persons desiring access to the local government's records should be informed of the rules. Ad hoc rule making should be avoided to prevent arbitrary and unreasonable limitations on the rights of access, inspection, and copying.

The law establishes special rules for electronic data-processing records. These include requirements for indexing computer databases [G.S. 132-6.1(b)] and for purchasing data-processing systems that do not impair or impede the accessibility of public records [G.S. 132-6.1(a)], and provisions governing the way in which copies of computer databases are to be supplied [G.S. 132-6.2(c)].

Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may seek a court order compelling disclosure or copying [G.S. 132-9(a)]. If the records have been withheld without substantial justification, the city or the county may in some cases be required to pay the person's attorneys' fees [G.S. 132-9(c)]. On the other hand, an attorney's fee may be assessed against the person bringing the action if the court determines that the legal action was frivolous or was brought in bad faith [G.S. 132-9(d)].

Additional Resources

Lawrence, David M. *Interpreting North Carolina's Public Records Law*. Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1987 (2d ed. forthcoming 1997).

North Carolina Department of Cultural Resources, Division of Archives and History. *Municipal Records Retention and Disposition Schedule*. Raleigh, N.C.: the Division, June 1984.

North Carolina Department of Cultural Resources, Division of Archives and History. *Records Disposition Schedule*. Raleigh, N.C.: the Division, July 1982, May 1991. This series of schedules, which also deals with records retention, applies to various county departments.

Notes

1. Inspection or copying of records that, because of age or condition, could be damaged during inspection or copying may be subjected to reasonable restrictions intended to preserve the records. G.S. 132-6(f).

2. In the case of computer databases, the law provides that (1) persons may be required to make or submit requests for copies in writing and (2) the records custodian is to respond to all such requests "as promptly as possible." If the request is granted, the copies are to be provided "as soon as reasonably possible." G.S. 132-6.2(c). It is unclear whether the latter phrase means something different from "as promptly as possible."

3. *See* G.S. 132-6.2(b) and -6(c). The latter statute establishes a timetable for cities and counties to assume the cost of separating confidential from nonconfidential information.

of city or county government through regular meeting schedules, which the city or county clerk's office must by law keep on file.[35] The clerk often handles the posting and the distribution of special meeting notices as well, and frequently oversees the legal advertisements required for public hearings, bid solicitations, bond orders, and other matters.

Other Statutory Duties

Clerks have specific statutory responsibilities besides those related to record keeping and notice giving. For example, the clerk is one of the few local government officials who may administer oaths of office.[36] (The clerk should also take such an oath.)

City clerks are responsible as well for enforcing within the municipal limits the state's law regulating all going-out-of-business and distress sales.[37] This task can be very difficult. The clerk must deal with the false advertising claims of merchants who are not really going out of business, and he or she must ensure that unhappy failing merchants comply with what they may well regard as intrusive state requirements.

General Assistance to the Governing Board

Research and General Assistance

As well as the responsibilities previously outlined, clerks must perform other duties "that may be required by law or the [governing board]."[38] The board as a whole or individual board members frequently call on the clerk to find answers to questions. They may ask the clerk to learn how others have solved a particular problem, to find sample ordinances for the unit's attorney, or to search the minutes for information about the actions of a previous board. Individual members also look to the clerk for help in arranging official appointments and making official travel plans.

Acting as a researcher and an information provider is both a rewarding and a difficult part of the clerk's responsibilities. Governing board members can help the clerk serve them more effectively by remembering the limits of the clerk's role. For example, a professional clerk generally does research and provides information for the benefit of the entire board. A board member's seeking assistance from the clerk to win a squabble with another board member is inappropriate. Also, although clerks expect to make travel arrangements and perform other official tasks for individual board members, the members should expect to share the clerk's time and energy.

Agendas and Preparations for Meetings

One of the most important services that the clerk provides to the governing board is assistance with preparations for meetings. The clerk is often involved in preparing the tentative agenda for board meetings and in compiling background information for the board's agenda packet. He or she may also arrange for taping of meetings and may set up other audiovisual equipment and the meeting room.

Clear procedures for handling these matters can serve both the board members and the clerk. The governing board should establish and enforce a realistic schedule for placing items on the agenda that allows adequate time to compile and duplicate background materials, and it should clearly state any preferences concerning the order of items on the agenda. It should support the clerk in complying with public and press requests for information about upcoming meetings and for access to tapes and other records of prior meetings. (See "Local Government Records: Maintenance and Access," pp. 25–27.)

Information Source

The clerk is sometimes described as "the hub of the wheel" in local government because of the central role that she or he plays in the governmental communication network.[39] Clerks provide information daily to governing board members, local government employees, citizens, and the press. Two North Carolina clerks made the following comments about their position:

> Your description of a clerk as the hub of the wheel is much the way I think of my position here. The clerk is the hub and serves as one of the major sources of information on board actions. I communicate daily with the commissioners, the county manager, and the county attorney. I interact frequently with the planning director, other department heads, other government employees, and the press. The clerk also serves as a link between citizens and government. One of my primary functions is to provide information.
>
> —A clerk to a board of county commissioners[40]

> Basically my office is an information office. I am in the center of things because as clerk I am usually more accessible than the mayor, council members, and other city officials. I have immediate access to information because I am on the front line in the city council meetings. I communicate daily with the mayor, the city manager, and various department heads, depending on what is going on. My office has quite a bit of contact with the newspapers, and we get anywhere from fifteen to twenty calls a day from the general public.
>
> —A clerk in a medium-size city[41]

Dealing with such a wide variety of information requests requires tact, judgment, empathy, organizational skills, energy, and a good sense of humor. Although the clerk works *for the governing board*, he or she truly provides *public* service, from helping the press understand the meaning of a complicated motion, to assisting a citizen in finding the correct person to help with a complaint, to keeping department heads advised

of board actions and keeping board members informed of administration proposals. As local government becomes larger and more complicated, the clerk's role as a professional, dispassionate provider of information to citizens, government officials, and the media becomes more and more important.

Combination of the Clerk's Position with Other Jobs

Many municipal and county clerks perform still other tasks. City clerks are often tax collectors or finance officers for their local governments. Some also serve as purchasing agents, personnel directors, or managers. County clerks are occasionally assistant managers or assistants to the manager. Some may combine the duties of clerk with those of manager, finance officer, or another county official.[42] In North Carolina's smallest cities, the clerk may be the only administrative official and have to function in every role, from substitute operator of the waste treatment plant to zoning administrator.

Wearing many hats can be both stressful and invigorating for a clerk. Giving clerks appropriate authority can help them perform well the varied duties of their office or combine their position effectively with other roles. Adequate financial rewards are also important. Historically and currently, the salary for the clerk's position often has not been commensurate with the broad responsibilities involved.

Professionalism and Continuing Education

Municipal and county clerks have two of the most active professional associations of public officials in North Carolina. The North Carolina Association of Municipal Clerks and the North Carolina Association of County Clerks to the Boards of County Commissioners are dedicated to improving the professional competency of clerks through regular regional and statewide educational opportunities and through a nationally recognized certification program. To quote from a brochure published by the county organization, such professional associations provide clerks with "opportunities to exchange ideas and techniques relating to their jobs," making them "better able to create and improve efficiency in their individual offices."[43] Both associations operate mentor programs to provide guidance for new clerks, and the municipal association gives clerks a chance to work with other municipal officials through permanent representation on the Board of Directors of the North Carolina League of Municipalities. Both organizations also publish reference guides to assist clerks in their day-to-day work, and both have home pages on the World Wide Web, where clerks can exchange ideas and information.[44]

Notes

1. Corinne Webb Geer, CMC, a former clerk and a past president of the North Carolina Association of Municipal Clerks, letter to the municipal clerks of North Carolina, Dec. 1995.

2. Acts 19: 23–41.

3. *See* N.C. Gen. Stat. (hereinafter G.S.) §§ 160A-171 and 153A-111, respectively.

4. North Carolina Department of Cultural Resources, Division of Archives and History, *Municipal Records Retention and Disposition Schedule* (Raleigh, N.C.: the Division, June 1984); and North Carolina Department of Cultural Resources, Division of Archives and History, *Records Disposition Schedule* (Raleigh, N.C.: the Division, May 1991) (applicable to county administrative, financial, legal, and personnel offices).

5. G.S. 160A-172.

6. G.S. 153A-76.

7. The article is based on "The City Clerk and City Records," in *Municipal Government in North Carolina*, 2d ed., ed. David M. Lawrence and Warren Jake Wicker (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1996), 105–18; and "The Clerk to the Board and County Records," in materials published for the School for County Commissioners, 1994 (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1994), 3-33 to 3-38; both by A. Fleming Bell, II.

8. Additional information about city and county clerks may be found in an earlier *Popular Government* article, "The Hub of the Wheel," by Carolyn Lloyd (Spring 1990), 36–43, which is based on interviews with several clerks.

9. G.S. 153A-111.

10. G.S. 153A-111.

11. *See* G.S. 160A-171 (requiring the city clerk to "keep a journal of the proceedings of the council"); G.S. 160A-72 (requiring that "full and accurate minutes of the council proceedings" be kept); G.S. 153A-42 (requiring the clerk to a board of commissioners "to keep full and accurate minutes of the proceedings of the board of commissioners"); and G.S. 143-318.10(e) (part of the open meetings law, requiring public bodies to keep full and accurate minutes of their official meetings but allowing the sealing of minutes of closed sessions in certain instances).

12. G.S. 160A-72, 153A-42, and 143-318.10(e).

13. *See* Norfolk S. R.R. v. Reid, 187 N.C. 320, 326, 121 S.E. 534, 537 (1924) (minutes of county commissioners).

14. *See, e.g.*, G.S. 160A-72.

15. For a discussion of the meaning of "full and accurate

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minutes," see Maready v. City of Winston-Salem, 342 N.C. 708, 732–34, 467 S.E.2d 615, 630–31 (1996).

16. G.S. 160A-72 and 153A-42.

17. G.S. 143-129(b).

18. G.S. 143-318.11(a).

19. G.S. 143-318.10(e).

20. The law allows boards to take only a few types of action in a closed session. One must examine the specific statutory provision authorizing the particular closed session to determine whether an action is allowed. *See* G.S. 143-318.11(a). Closed sessions and permitted actions are discussed in detail in David M. Lawrence, *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*, 4th ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1994), 17–27.

21. G.S. 143-318.11(c).

22. Maready v. City of Winston-Salem, 342 N.C. 708, 732–34, 467 S.E.2d 615, 630–31 (1996).

23. G.S. 143-318.10(e).

24. Under G.S. 143-318.11(a)(1), a closed session may be held to prevent the disclosure of information that is privileged or confidential pursuant to North Carolina law. However, G.S. 143-318.11(c) requires that a motion to close a meeting based on this provision state the name or cite the location of the law that renders the information to be discussed privileged or confidential. In the case of closed-session minutes, this statute is G.S. 143-318.10(e), which allows them to be withheld from public inspection as long as public inspection would frustrate the purpose of the closed session.

25. Norfolk S. R.R. v. Reid, 187 N.C. 320, 326–27, 121 S.E. 534, 537–38 (1924).

26. G.S. 143-318.10(e).

27. *See* G.S. 153A-47 and -48.

28. *See* G.S. 160A-76(b) and -78.

29. G.S. 160A-76(b) and 153A-47.

30. The rules governing ordinance books and codes are found in G.S. 160A-76 through -78 (cities) and G.S. 153A-46 through -49 (counties).

31. G.S. 160A-79(d) and 153A-50.

32. G.S. 160A-171.

33. See G.S. 132-2, which provides that the person in charge of an office having public records is the custodian of those records.

34. See publications cited in note 4.

35. G.S. 143-318.12(a).

36. G.S. 11-7.1(a)(7).

37. G.S. 66-77(a).

38. G.S. 160A-171 and 153A-111.

39. Lloyd, "The Hub," 36–43.

40. Lloyd, "The Hub," 38.

41. Lloyd, "The Hub," 38.

42. A. Fleming Bell, II, "Facts about North Carolina's Clerks," *Popular Government* 55 (Spring 1990): 43. This article includes information about the percentages of clerks performing various other duties.

43. North Carolina Association of County Clerks to the Boards of County Commissioners, Brochure for 1994 Clerks' Conference, Winston-Salem, N.C., March 24–26, 1994.

44. The home pages can be reached through Clerk-Net at http://ncinfo.iog.unc.edu/clerks/.

What Do North Carolinians Think of Their Court System?

Michael Crowell

To many people around the country, North Carolina's judicial system is a model. Thirty years ago, the state eliminated justices of the peace and about 1,400 local courts with varying jurisdictions and procedures. It put in place a new statewide district court system and established the Administrative Office of the Courts to support the system. It also provided state funding for all court officials and district attorneys. Later the state created the North Carolina Court of Appeals. Other states are still struggling with such reforms in the 1990s. Meanwhile, North Carolina courts have generally operated efficiently at a relatively low cost to taxpayers and with no real scandals.

So what do North Carolinians think of their judicial system? To find out, the Commission on the Future of Justice and the Courts in North Carolina (the Futures Commission) conducted focus groups and a statewide telephone poll in fall 1995.[1] The focus groups and the poll were part of a two-year study that the commission has undertaken with impetus from the state's judicial and executive branches (see "The Futures Commission," p. 32).

The Findings

What the Futures Commission learned is discouraging. First, citizens are woefully uninformed about the state courts. Second, despite North Carolina's generally high performance in comparison with other jurisdictions, the public is largely dissatisfied. Third, citizens with direct experience in the courts are more critical of the system than those who have not had such contact.

Little Knowledge of State Courts

The participants in the ten focus groups were asked to estimate the number of cases filed in state courts each year. No one came within two million of the correct number. In a state of seven million people, about two and a half million cases—including all infractions and minor traffic misdemeanors—are filed each year, and roughly the same number are resolved. Most people, however, think the courts deal with only a tenth of that volume. Ordinary citizens should not be expected to be familiar with court statistics. Still, the extent to which they underestimated the courts' workload shows a serious misunderstanding of the nature of the judiciary's business. At the same time, they thought that the courts receive about 18 to 20 percent of the state budget, when in fact the proportion is under 3 percent.

In the statewide poll, people were asked whether various court officials are elected or appointed. Only 40 percent answered correctly that the justices of the North Carolina Supreme Court are elected. About the same percentage incorrectly thought that magistrates are chosen by the voters. When asked whether they had voted in the 1994 general election, 60 percent said yes. Only about half of that 60 percent remembered voting for judges, however, and three-quarters of those could not name any individual judge. On hearing these results, one Futures Commission member called the system of electing judges "a time bomb waiting to go off." With the electorate so ill informed about judicial candidates, North Carolina is fortunate that very few scoundrels or incompetents have run for office.

The author, a partner in the Raleigh law firm of Tharrington Smith, is serving as the executive director of the Futures Commission. He is a former Institute of Government faculty member.

The Futures Commission

The Commission for the Future of Justice and the Courts in North Carolina (the Futures Commission), appointed by Chief Justice James Exum in 1994 and funded by the Governor's Crime Commission and the Z. Smith Reynolds Foundation, is conducting a two-year study of the state court system. The study is intended to be the most comprehensive review of the judicial system since the current General Court of Justice was established in the 1960s.

The commission's twenty-seven members were appointed by Exum and his successor, the current chief justice, Burley B. Mitchell, Jr. The chair is John G. Medlin, Jr., who is also the chair of Wachovia Corporation. The vice-chairs are Wake Forest University law professor and former chief justice Rhoda Billings and retired superior court judge Robert A. Collier, Jr. The other members, hailing from all sections of the state, include business executives, newspaper publishers, lawyers, a police chief, legislators, law professors, and a former congressman. Although Exum intentionally omitted any sitting judges, clerks, or other court officials, the commission has received invaluable assistance from many of them as advisory members.

The Futures Commission and its several committees meet monthly. The final report is due in fall 1996. In late spring 1996, the commission plans to publicize tentative recommendations and hold public hearings. Some areas that the recommendations are likely to address are the method of selecting judges and other court officials, procedures for case management, reorganization of the trial courts, realignment of districts, funding, enhanced use of technology, and alternative dispute resolution.

For further information, contact the Futures Commission at P.O. Drawer 1469, Raleigh, NC 27602, telephone (919) 715-4791, fax (919) 715-4797.

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General Dissatisfaction

Only 35 percent of the citizens polled gave the state court system a favorable rating, not much more than the 33 percent who gave it an unfavorable rating. When the pollsters asked citizens about their *local* courts, the favorable ratings went up to 50 percent, but the courts ranked behind all the other institutions or organizations about which the pollsters asked the same question. Law enforcement ranked highest (68 percent), followed by public schools (66 percent) and the news media (65 percent). Among the other institutions, local government (59 percent) and even the General Assembly (51 percent) fared better than the courts.

The public held even stronger, more negative opinions about particular aspects of court operation. Not

surprising, in light of the general public concern about crime, was the 55 percent of respondents who thought that the courts had an "extremely or very serious problem" with leniency for criminals. Also not surprising was the 50 percent who thought that the time from arrest to trial of felonies was an extremely or very serious problem. More disturbing, though, was the 52 percent who thought that the courts had an extremely or very serious problem with treating people differently based on their wealth. Another 20 percent thought that such differential treatment was a "moderately serious problem." Thus nearly three-fourths of the people polled believed that the courts worked better for those with lots of money than for those with little of it. Unfortunately, many judges and lawyers would agree.

Generally, judges rate better in the public eye than the court system as a whole does. Forty-four percent gave favorable ratings to trial judges, not too far behind county commissioners (49 percent) and district attorneys (also 49 percent), though considerably behind sheriffs (66 percent). State supreme court justices did worse, with only a 35 percent favorable rating. More troubling was the opinion of 27 percent of the population that the courts had an extremely or very serious problem with bias of judges, and another 15 percent that the courts had a moderately serious problem with bias of judges. Although these percentages were much lower than those for other kinds of problems, they still mean that more than two-fifths of the state's citizens believe that judges are biased.

Greater Dissatisfaction among People Who Have Been in Court

Just over half the citizens in the statewide telephone poll had been to court as a party in a traffic, domestic, small claims, or civil case, and 20 percent had served on a jury. Generally, the respondents with that direct contact were more likely than those without such experience to have an unfavorable overall impression of the courts, to believe that treating people differently according to wealth was a very serious problem, and to believe that judges were biased.

As might be expected, people with experience in domestic cases were the most dissatisfied. For example, only 23 percent of the respondents who had had no direct contact with the courts held an unfavorable view of the state court system, but 46 percent of those who had been in domestic cases held such a view. Likewise, only 19 percent of those with no contact thought that bias of judges was a very serious problem, but 37 percent whose contact had occurred in domestic cases thought so, as did 36 percent who had been to court as witnesses. The same groups, though, expressed higher-than-average dissatisfaction with other governmental institutions.

Conclusions

What does one make of these results? Whether they deserve it or not, the courts have been caught in the increasingly widespread public dissatisfaction with government generally. Surveys in other states have produced similar results. Indeed, the judiciary may suffer more than other governmental institutions because the courts devote less time to public information than almost any other agency. The dissatisfaction is not just with judges or the courts; it is with the entire legal system, particularly with the handling of criminal cases. The public does not understand and does not make clear distinctions among the roles played by law enforcement officers, judges, prosecutors, private lawyers, clerks, and other personnel. One also doubts that members of the public in North Carolina understand the differences between this state's courts and what they see reported on television from other states.

The silver lining in the cloud of public dissatisfaction may be a willingness to consider change and to support alternatives to the traditional trial method of deciding cases. Every change suggested to respondents in the telephone poll received at least 50 percent support. For example, 84 percent favored establishment of a family court, 71 percent would require mediation before trial in domestic cases, and 65 percent would require arbitration or mediation in all civil cases. Smaller majorities favored juries of fewer than twelve members. Fifty percent supported, and only 36 percent opposed, the appointment of judges. Considering the general lack of knowledge about the courts, one should not make too much of the support expressed for particular changes. Still, the poll shows an open-minded public willing to experiment with new ways of resolving disputes.

Notes

1. Wilkerson & Associates of Louisville, Kentucky, conducted the focus groups and the poll. There were ten focus groups, held in Asheville, Charlotte, Greenville, and Raleigh. The poll contacted 805 adult residents in all sections of the state. The margin of error on the poll was 2.9 percent at a 90 percent level of confidence. ▨

Performance/Program Budgeting in North Carolina State Government

Roger L. Hart

Performance/program budgeting is a method of public budgeting that holds agencies accountable for producing outcomes and organizes appropriation requests by those outcomes rather than by governmental units. North Carolina state government has taken steps to implement performance/program budgeting. Although this unfinished project has significant potential, it has met obstacles and its future is uncertain. This article notes the origins and the purposes of performance/program budgeting as undertaken in North Carolina state government in 1994 and 1995. The article also analyzes that reform's course, achievements, and problems.[1]

The author is a former planning analyst in the Office of State Planning, Raleigh. He received an MPA from UNC–CH in 1994.

Origins

Performance/program budgeting[2] assumes that governmental budgeting can be a rational process. Local governments across the United States began to try performance budgeting in the 1950s, with mixed success. More recently some local governments have achieved better results from it, including, in North Carolina, Greensboro, Catawba County, and Topsail Beach. Defense Secretary Robert McNamara advocated program budgeting in the federal government in the 1960s, believing that it would make the government more efficient. The failure of the Johnson administration's planning-programming-budgeting system (PPBS) has been attributed both to the speed of its implementation and to fundamental flaws in the concept. State governments also tried PPBS, with mixed results, and several, including Oregon and Texas, have tried some combination of performance and program budgeting in the 1990s. Attention to goals and performance measures, which is a hallmark of performance/program budgeting, is evident in many other states as well.

In North Carolina the General Assembly's Government Performance Audit Committee gave impetus to performance/program budgeting in 1993 by recommending[3]

- strategic program planning across departmental lines,
- outcome measures to evaluate program results, and
- a budget focused on results rather than inputs.

The committee's recommendations have helped legitimize the effort made since 1993 to implement performance/program budgeting.

North Carolina has used traditional line-item budgeting for decades. The method dates from the turn of the century, when progressive reformers in many states sought to curb misuse and outright theft of

public funds by corrupt officials. Reformers designed a system focused on control, with every penny designated for a specific purpose, from salaries to postage. Traditional line-item budgets were a useful advance in their day.

Today, some believe, control is no longer enough; the public also demands government that returns obvious value for taxpayers' money. In this view, government managers need encouragement to be bold leaders in delivering better services more effectively and at less cost. Traditional budgeting may stifle flexibility and enterprise. It also ignores results, as though a company did not bother to keep track of profits and losses.

Purposes

North Carolina's performance/program budgeting is intended to remedy those perceived defects of traditional budgets. Its advocates have two driving purposes:

1. *To define desired outcomes and be accountable for results.* The new budget tells the General Assembly and the public what outcomes they can expect for the funds requested. Managers have set performance objectives and designed yardsticks to measure how well they do in meeting those objectives. This focus on results is intended to motivate managers to change strategies if necessary and to demonstrate to legislators where their appropriations are doing the most good.
2. *To link policy and budgeting.* The performance/program budget organizes the state's activities primarily by purpose and outcome, rather than by organizational unit. This means that budget funds and the activities for which they pay appear with other funds having similar purposes, regardless of what agency or unit spends the money. Thus, for example, whereas the old budget makes clear how much the Department of Commerce spends on office supplies, the new budget shows what the state spends on promoting industrial expansion in North Carolina.

In identifying objectives and defining measures of program effectiveness, performance/program budgeting differs from the customary description of activities and measurement of inputs and outputs. For example, the state previously measured its efforts to recruit industry to locate in North Carolina by the size of its advertising campaign budget, the number of recruitment projects, and the announced addition of jobs. The new approach includes outcome measures such as the success rate of the recruitment projects (the percentage of firms solicited that actually invest in the state) and the number of jobs produced by the state's efforts.

Like lawmakers in most states, North Carolina legislators have usually approached the governor's proposed budget in piecemeal fashion. That is, they have examined object-level budget lines carefully but without reference to policy goals, results, or program context. Committees sometimes appear to have made cuts by deciding too quickly what seemed least essential or most wasteful, without asking what the effect on service delivery would be. The idea of performance/program budgeting is to invite the General Assembly to discuss, clarify, revise, and ratify the goals and the purposes of the executive branch, instead of merely funding or trimming them. By design, the new budget links budgeting to policy so that legislators can make budget decisions in a clear policy context.

The proponents of performance/program budgeting hoped that the performance/program budget would influence the behavior of state agency personnel as well as that of legislators. They described it as a potentially useful management tool, especially the objectives and the outcome measures. Indeed, early on, the executive branch staff implementing the new system invited agency representatives to participate fully in the development of objectives, strategies, and performance measures so that agencies would regard the performance/program budget as their own, not something imposed on them.

Performance/Program Budgeting in Practice

In January 1995 Governor Jim Hunt sent the General Assembly two kinds of budgets for the biennium beginning July 1, 1995: (1) a line-item budget for all of state government and (2) a performance/program budget for six program areas—correction; economic development and commerce; environment; health and safety; justice; and social and economic well-being. (The remaining four areas, cultural resources, education, general government, and transportation, were not included in this round because of staffing limitations and because of expected difficulties that were better faced after the experience of one more budget cycle.) Each budget fund in the performance/program budget also appeared in the traditional budget identified by

the same code, and the amount requested for a budget fund appearing in both documents was the same.

Apart from the amount requested for each fund, however, the two budget formats were quite different. Within each large program area, the performance/program budget grouped state activities into programs and subprograms by purpose and outcome, and detailed the objectives, the strategies, and the activities related to those outcomes. Activities by different agencies that aimed for the same outcomes appeared together. In the traditional budget, by contrast, budget funds appeared by department, accompanied by brief statements of purpose and sets of statistics that measured inputs, workload, and outputs.

The traditional budget offered much information about the objects of appropriations—repairs and maintenance, data-processing equipment, hospital insurance contributions for employees, and the like. There might be dozens of lines for spending requirements and receipts within one budget fund. In contrast, the performance/program budget broke each budget fund down only into broad object categories—typically, personal services, operating expenses, equipment, state aid, and reserves. One intention of the performance/program budget was to give managers more flexibility to shift money around within a budget fund, even as it held them more accountable for results.

Achievements

The process of creating the performance/program budget produced some results before publication of the document, results that may accumulate in future years if the process continues. In some instances, interagency discussions prodded government managers to think more of results and less of their organization's internal procedures, and to remember that the best results often come from cooperation among agencies. Measuring outcomes may remind management to focus on effectiveness. In addition, measures of activity levels may encourage efficiency.

In the best discussions, state employees acknowledged that state activities had different kinds of outcomes, ranging from immediate and specific results to a general effect on the welfare of the state's people. Such discussions may be an antidote to "goal displacement," public agencies' well-known tendency to forget their original, external goals and focus instead on the immediate, daily process and internal rules. In one instance the performance/program budgeting process prompted the Division of Solid Waste to change the way in which it proposed to measure achievement of increased composting of waste, from the composting capacity officially permitted to the amount of waste actually composted. That change required collection of new data on the amount of waste composted, and the division decided to begin collecting those data. Remembering the larger goals toward which they are working is useful for public officials. If performance/program budgeting reminds them of those goals, that is a benefit. How well the method identifies the most effective strategies for achieving the objectives to which managers have committed themselves, remains to be seen, however.

Problems

Any attempt to recast a state's budget is certain to encounter resistance. Budgeting decides who gets resources, and there are always vested interests in an established process. Moreover, organizations tend to see change as a threat or an inconvenience. The following problems represent a checklist of obstacles to be skirted or removed if performance/program budgeting is to reach its full potential.

Initial Hurdles

An initial hurdle was to establish a common language and set of concepts. Because the key concepts (see Table 1) are expressed in words with broad meanings and because some of the same words had been used recently in state planning and budgeting in rather different ways, participants in the budgeting process had to agree on precise meanings to communicate with one another. As the circle widened, new participants were sometimes confused.

Another obstacle at the beginning was understandable skepticism among state workers about the viability of performance/program budgeting and the wisdom of spending time and effort on a project that might eventually collapse. Several important legislators had indicated a degree of support for the method, but some of them lost in the 1994 general election. There were, as well, good reasons to wonder whether the state's most powerful political leaders were friendly to performance/program budgeting. Still, most state managers and workers dutifully fell in line and tried to make it work.

Table 1
Key Performance/Program Budgeting Concepts Used by the Office of State Planning

Concept	Example	Analogy
Goal	Avoid and reduce pollution	Star to navigate by
Program	Preserve and enhance water quality	
Outcome	Clean ground water	Place state wants to reach
Objective	Reduce by 20% the number of violations of ground water standards at permitted nondischarge facilities	Milepost on journey
Strategy	Remediate through nondischarge permits	Road to get to milepost
Activity	Evaluate soil-remediation permit applications	Vehicle to move state along road

Institutional Problems

Two offices attached to the Governor's Office—the Office of State Planning (Planning Office) and the Office of State Budget and Management (Budget Office)—shared responsibility for drawing up the performance/program budget. The two offices have quite different organizational cultures, as would be expected from their functions and expertise. Thus they approached performance/program budgeting in different ways. The Planning Office staff tended to be imaginative and optimistic, defining performance/program budgeting concepts and emphasizing potential benefits. They had little or no experience in the budgeting process, however. Staff of the Budget Office valued order, coherence, and completeness. Hearing agency personnel complain about the extra work entailed by a new budgeting system, some Budget Office staff were concerned about the effort involved in the change and skeptical about the promised benefits. Perhaps more important, Budget Office staff had to compile the line-item budget while working on the new format, and they naturally tended to give priority to their customary work. Despite these differences, staff of the two offices worked together reasonably well, although agency personnel complained about lack of coordination.

Another institutional problem was that some departmental planning and budgeting offices—chronically understaffed because of legislative resistance to spending money on administration—became bottlenecks in communicating with agency managers. Those small coordinating offices were sometimes busy collecting agency information for the traditional line-item budget at the same time that they tried to get their agencies to contribute to the performance/program budget. Coordination with and within departments was less effective than it should have been.

As noted earlier, one of performance/program budgeting's basic concepts is classification of activities by purpose and outcome, rather than by agency. Departing from organizational lines in presenting the budget encountered resistance. This may have stemmed from anxiety that showing various agencies as serving one purpose, or showing one agency as serving several purposes, might imply a need to reorganize or to eliminate apparent duplication.

Splitting of Funds

For the current cycle, performance/program budgeting left the structure of budget funds (sums of money for appropriation and accounting) largely intact. That structure often got in the way of the new organization of activities by outcome, however, because a budget fund might serve diverse outcomes, yet be difficult to split. A good example is the budget fund that pays enforcement officers of the Wildlife Resources Commission, who simultaneously enforce regulations for boating safety and requirements for fishing licenses. Regulation of boating safety is in the program area of health and safety, regulation of hunting and fishing in the program area of environment. On the one hand, showing the budget fund in only one program area (the money may be counted only once in the budget) fails to describe the fund adequately in terms of outcomes. On the other hand, paying the wildlife enforcement officers from two budget funds would be cumbersome, requiring daily time sheets for each employee and interfund transfers if they did not divide their time as anticipated. In this case, the budget fund remained unsplit. Other agen-

cies had to make similar difficult choices between administrative efficiency and receiving full credit in the performance/program budget for their accomplishments. Most of them opted for convenience and flexibility, even when splitting employees' time would not be necessary. They thereby demonstrated that they valued budgetary flexibility, which performance/program budgeting promotes in general but undermines in these fund-splitting situations. Some agency managers may have decided not to split funds because they wished to avoid drawing lines through their organizations that might suggest detaching pieces.

Difficulties in Identifying Objectives

Agencies had several difficulties in identifying objectives. First, some were initially reluctant to link objectives to true outcomes, preferring to aim at higher levels of activity. For example, a few agencies wanted to call a new policy or a study an outcome, as though either one were an end in itself. Others tended to define objectives in terms of compliance with regulations, ignoring the possibility that the regulations themselves might be misguided or ineffective.

Second, some agencies were nervous about accountability for meeting objectives, especially if several agencies with a common outcome tried to establish a joint objective. They tended to ask who would get the blame in case of failure to attain it. In a few cases, agencies' insistence that their clients were different from other agencies' clients led to defining different measures for the achievement of an interagency objective. This satisfied the agencies but nullified the idea of one, clear indicator of whether an objective had been met.

Third, agencies wanted objectives to be more closely related to their activities than to the outcomes because the latter are riskier, although more meaningful in terms of results. For example, the Department of Transportation checks on service stations that inspect cars for polluting emissions. An objective close to the outcome may be a target amount of air pollution due to automobiles, not entirely under the department's control. An objective close to the activity may be a target number of service stations conducting proper inspections, which may have only limited effect in achieving the outcome of clean air.

Fourth, when agencies began defining outcome measures, several weeks after discussing objectives, they realized that they needed to revise their objectives. That was less an obstacle than a recognition that objectives and measures were so close that they should be considered together.

For some purposes and activities in state government, outcome measures are difficult to define or expensive to implement. Some activities may have more symbolic than practical value. Others may serve vaguely defined customers or unclear purposes. Still others may necessitate new surveys to determine the effect of programs on clients or to gauge clients' satisfaction with services—which would require putting more time and money into data collection, changing methods of data collection, or both. Agencies must balance the cost of data collection against the benefits of it. For example, the zoo might decide that measuring an outcome such as changes in visitors' level of information would be too expensive, so it might use as a proxy an activity level such as a count of its visitors. The performance/program budgeting documents sent to the legislature in 1995 lacked many outcome measures for all these reasons.

Other Complicating Factors

Certain agencies had misgivings about performance/program budgeting that went beyond cost-benefit issues. For example, the large education establishment—the Department of Public Instruction, the community college system, and the multicampus University of North Carolina—was aware of many past attempts to measure educational outcomes and skeptical that the essence—or the outcome—of education could be quantified. Teachers have tended to see links between test results and funding levels as harmful to students, not to mention the interests of the education institutions themselves. Education makes up more than half of North Carolina's state budget, and educators may well have used their many contacts in Raleigh to deflect application of performance/program budgeting to them.

State departments have produced department plans for several years and did so again while they were helping shape the performance/program budget. In most instances, the two efforts were not coordinated, however, and agencies saw them as duplicative of or irrelevant to each other. Department plans include only high-priority agency activities, and they do not contain budgetary data (other than budget fund numbers). They also include many process-oriented objectives, such as increasing the number of clients

served, rather than outcome-oriented objectives, such as improving the clients' welfare in a measurable way. If the department plans and the performance/program budget had been linked effectively, both might have benefited. The plans might have been more disciplined by budgetary boundaries and less constrained by goal displacement, while performance/program budgeting might have better reflected—and influenced—line managers' actual goals.

Another complicating factor in the new process was the existence of several state boards and commissions that functioned as policy makers for or policy advisers to the governor or to departments. Some commissions had been separately charged with developing goals and ways to measure results and were not directly involved in performance/program budgeting. Differing origins, time horizons, and timing among the commissions and the performance/program budgeting process created competition for the time and the attention of agency staff. Bringing those boards and commissions into the performance/program budgeting process without compromising it has been difficult.

A More Fundamental Flaw

Finally, the performance/program budget sent to the General Assembly in 1995 had a more fundamental flaw: the new budget's advocates said that they wanted policy goals to shape the legislature's discussion of the budget, but the executive branch itself failed to compile the budget in a policy context. The Planning Office presented the policy context in a clear, comprehensive, and well-organized way. The Budget Office, however, inserted the traditional budget's appropriation requests, developed outside the performance/program budgeting policy context, into the performance/program budget because the funding levels in the two formats had to agree.

There is always an indirect link between policy and budget figures because the "continuation" budget is supposed to present the amounts of money needed to continue agencies' functioning at their present level. The performance/program budget presumably describes agency activities at the current level, along with their outcomes and objectives. Therefore the appropriation requests taken from the line-item budget should be appropriate to the activities described in the new budget.

The fact remains, however, that appropriation requests in the performance/program budget were not the result of determining needs, defining purposes and expected outcomes, committing to objectives, devising strategies, and then asking how much it would cost to use those strategies to achieve the objectives. Instead, the figures were determined separately by the old incremental method: tinkering with the previous budget. Overcoming this defect would require much effort and a decision to give performance/program budgeting priority over the traditional line-item budget.

Performance/Program Budgeting in the 1995 Legislative Session

Despite the possibility of the General Assembly's capitalizing on the wealth of new information in the performance/program budget to make budgetary decisions in a context of policy, legislators used the new budget rather little in their 1995 session. An initial signal of this result was the legislature's continued use of its traditional structure of appropriations subcommittees, which divide up the budget by departments rather than by broad program areas. Institutionally, that is, the legislature remained aligned with the old budget format and presumably found consideration of the new one awkward because program areas crossed subcommittee lines.

Budget hearings in 1995 were traditional in substance as well as in organization. They included numerous questions about line-item details and little expression of concern about the policy implications of budget cuts. Legislators were disappointed that many performance data were yet uncollected and many performance measures yet undeveloped. Some members clearly saw the potential of performance/program budgeting. For example, through the process, a joint budget subcommittee discovered that several agencies were conducting activities in environmental education, and a few legislators wanted to cut back those activities. In general, however, the performance/program budget's effect on legislative deliberations was insignificant. The focus of appropriations hearings continued to be inputs, not results. Long discussions about $50,000 items were not uncommon, but they seldom included questions about outcomes. Possible reasons for the legislative focus on details, rather than on the need for and the outcomes and the purposes of programs, include the habit of incremental line-item budgeting, the governor's last-minute proposals

in 1995 for cuts in his own budget, the emphasis by some legislative staff on marginal cuts and additions made in previous sessions, unfamiliarity with the performance/program budgeting format, and the size and the complexity of a budget to be reviewed in a short time.

Aside from legislators' informal reaction during budget hearings, the General Assembly responded formally and negatively to performance/program budgeting in two statutes enacted in 1995. One new law[4] provides for the continuation of line-item budgeting, forbids the expansion of performance/program budgeting into the remaining four program areas, and requires a report from the Budget Office on whether performance/program budgeting is effective. The other statute[5] bans the use of state funds to expand performance/program budgeting into the four remaining areas without specific legislative authorization. Later, legislative leaders reportedly gave the executive branch informal approval to continue planning for extension of performance/program budgeting into the four new areas. Perhaps they did so to leave the General Assembly's options open. Future legislative attitudes toward performance/program budgeting may depend in part on the 1996 elections.

Conclusion

When agency managers saw the new performance/program budget in its published form, some gained appreciation for its benefits: linking of funding to policy and outcomes, presentation by program area, and flexibility tied to accountability. Whether North Carolina's government seriously tries performance/program budgeting, however, depends not on agency managers but on the General Assembly. Performance/program budgeting's architects had hoped that legislators would give up some control over line items, yielding some flexibility to agencies, in exchange for participation in forging the policy goals and objectives that were to be the basis of the funding levels in performance/program budgeting. The legislature gave little indication in 1995, however, that it would make full use of performance/program budgeting or even allow the innovation to go forward as a budgeting system. Although performance/program budgeting might also have value as an executive-branch management tool apart from the budget process, that too remains to be demonstrated.

Notes

1. The author thanks Jeffrey P. Brown and Joseph S. Ferrell for their assistance. All views expressed in this article are those of the author.

2. Performance/program budgeting combines elements of two reforms: "performance budgeting," which sets performance standards, allocates resources to meet them, and defines measures to determine whether they are met; and "program budgeting," which shows the cost of achieving purposes rather than that of running agencies.

3. *Our State, Our Future: The Report of the North Carolina Government Performance Audit Committee* (Raleigh, N.C.: the Committee, 1993), 35–37.

4. 1995 N.C. Sess. Laws ch. 324, § 10(a).

5. 1995 N.C. Sess. Laws ch. 507, § 6.5.

Special Series: Local Government on the Internet

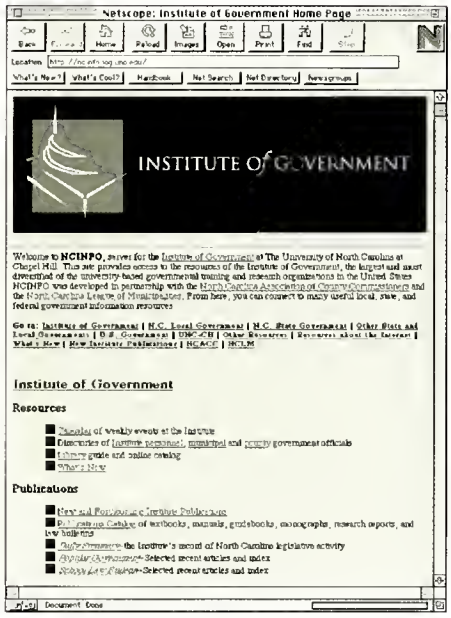
Part Four: How to Evaluate Internet Resources

Patricia A. Langelier

Part One of this special series (see the Summer 1995 issue of Popular Government*) explained some basics about the Internet—what you can get, how to get on, and how to get around—and included a glossary of basic Internet terminology. It also introduced many readers to NCINFO, a comprehensive site for North Carolina state and local government resources on the Internet at the following Web and gopher addresses:* **http://ncinfo.iog.unc.edu** *and* **ncinfo.iog.unc.edu**. *It is a joint project of the Institute of Government, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities.*

Part Two (Fall 1995) took a closer look at an Internet feature known as electronic mailing lists (or listservs), explaining how to participate in them and describing some mailing lists set up by the Institute to facilitate communication among local government officials.

Part Three (Winter/Spring 1996) explained how local governments were using World Wide Web home pages on the Internet to improve communication among elected officials and agency personnel, to provide government information and services, to promote economic development, and to encourage citizen participation in public affairs.



NCINFO home page

[Any of the articles in this special series can be accessed on NCINFO. To purchase a copy of one of these earlier issues of Popular Government *or to obtain a photocopy of a particular article, contact the Institute's Publications Sales Office at (919) 966-4119.]*

Part Four of this special series on local government on the Internet examines the characteristics that make an Internet site worth using. It provides guidelines for judging new sites and suggests some starting points for research.

What the Internet Is Good For

News and Quick References

Getting the latest news and weather reports when you want them is one of the greatest attractions of the Internet. CNN, C-SPAN, PBS Online NewsHour, and many other news organizations provide up-to-the-minute headline news, sports, business news, economic data, and weather reports throughout the day (and night). The Internet is also a good place to find facts and figures in hundreds of quick-reference sources such as dictionaries, encyclopedias, thesauri, books of quotations, atlases, gazetteers, and postal information manuals. No source beats the Internet as a starting point for directories—for example, of ZIP codes, toll-free telephone numbers, e-mail addresses, law schools, law firms, and colleges and universities. Further, the Internet is a good beginning spot for finding factual information about organizations, associations, state and federal agencies, local governments, and colleges and universities, and for searching the online catalogs of libraries.

Preliminary Research

The Internet may be helpful in library research, enabling you to gather preliminary information and perhaps reducing the amount of time you might spend in a library. By searching an online catalog via the Internet, you can find out whether a library has what you are looking for, go prepared with call numbers, and, with some catalogs, know that the resource is not checked out. Only two North Carolina public libraries (Charlotte's Web and the Rockingham County Public Library) provide access to their catalogs on the Internet, but many North Carolina university libraries do. Note, however, that

The author is the Institute of Government librarian and former project manager for NCINFO.

Glossary

Note: This glossary covers only terms introduced in Part Four that may be unfamiliar to readers. See Part One (Summer 1995) for basic terms.

Friendly link – A link that indicates the size and the type of the file to which the user will connect if he or she selects the link. The link may be to a large file, an image, a sound clip, or a video. Users may choose not to access a file if it is too large for their computer to manage or if they lack the equipment or the software required to view or hear the file.

FTP (file transfer protocol) – A protocol that allows a user at one Internet site to access, and transfer files to and from, another Internet site. Many Internet sites have established publicly accessible repositories of materials that can be obtained using FTP.

Metaguide (also called "meta-index") – An electronic resource that tries to provide links to all relevant sites on a subject. It may also provide extensive information about a subject.

Newsgroups – Publicly accessible bulletin boards organized by topic. Internet users can read messages sent by others and contribute their own messages to a discussion.

Scope note – An introductory statement or section that ideally explains what a site includes and excludes, whether it is selective or comprehensive, what level of information it provides (for example, introductory or advanced), what type of information (for example, fact or opinion), for what audience the site is intended (for example, students, professionals, or general users), and how the information at the site is structured or arranged.

Search engine – An Internet tool that enables users to search for and retrieve information from the Internet by typing a keyword, a name, or a phrase on an electronic-search request form. The search engine hunts through a database and displays a list of results—links to individual sites that contain the words typed by the user.

many North Carolina libraries do not list all their holdings in their online catalog. Pre-1970 books and federal, state, and local government documents may not be included. If you do not see what you are looking for online, check the card catalog or ask the staff.

What the Internet Is Not Good For

Authoritative Information

For information that must be highly reliable—legal or medical data, for example—the Internet is not the best source. As strong as the Internet tradition is for sharing the latest technological advances and academic research, there has not been a rush to give away authoritative information that is costly to prepare and profitable for publishers to sell. Most of the expensive, commercially published sources for lawyers, such as Westlaw and LEXIS, are available via the Internet only through paid subscriptions.

Comprehensive Research

Nor is the Internet the place to go for comprehensive research. Fishing expeditions will turn up some sources that are useful, and more that are interesting, but don't count on locating nearly everything on any topic. If you are lucky, you will discover a number of relevant sources, but you will not find all that there is to know about a subject. A printed or CD-ROM source may be a necessary supplement. For example, the texts of current North Carolina bills are on the Internet, but the North Carolina General Statutes are not. More dangerous for researchers, an out-of-date (1993) version of the North Carolina Administrative Code is available on the Internet. For current and reliable information, it is necessary to use the print edition or one of several CD-ROM products. Don't hesitate to ask librarians for guidance on finding the best source of information, in whatever format it exists.

How to Evaluate Useful Internet Sites

At one time an Internet site might have been the only source of information on a particular topic. Some early Internet resources were unique: either nothing like them existed in print (e-mail directories, for example), or they were the only resources that provided such information (electronic journals, for example). That time has long since passed. It is now possible to find something on the Internet on almost any topic imaginable, and keeping up with all the resources available on most topics is challenging even for constant Internet users. The profusion of Internet sites is both a delight and a problem.

For most users, finding useful information without investing a significant amount of time is becoming increasingly difficult. In fact, Internet fans complain that it often takes too long to track down needed information from a reliable source. In an October 1994 article in *Computer-Mediated Communication Magazine*, writer John December describes "saturation": there is so much information to choose from that few users are able to select the best resources. December also points to a "pollution" problem resulting from Web information that is so "redundant, erroneous, or poorly maintained . . . that [it] can obscure other information."[1] Although some users may not pay a per-minute charge to access the Internet, their time is valuable. The next section, on at-a-glance features, will help you locate authoritative and relevant Internet resources quickly. The sections following it, on content and accessibility, purpose, graphic appeal, and navigation, will assist you in evaluating sites more thoroughly.

At-a-Glance Features of Good Internet Sites

Reliable information is most likely to come from "good" Internet sites. A good site is one on which you can depend for timely, current, accurate, and relatively complete information. Just as with printed materials, there are cues to indicate an authoritative Internet resource. Certain features make a site easy to use and enable users to judge its value as an information resource:

1. Intelligent organization of the information on a Web site is the most obvious sign of value. It indicates that the information provider knows enough about the topic to arrange the information in a logical way (for example, chronologically, geographically, or hierarchically, depending on the type of information).
2. Another sign of value is a "scope note," an introductory statement or section that explains what the site includes and excludes. The note should indicate whether the source is selective or comprehensive. Also, much as a book's preface does, the scope note should describe the level of information provided (for example, introductory or advanced) and the type (for example, fact or opinion). It should indicate as well the site's intended audience (for example, students, professionals, or general users). An explanation of how the information is structured or arranged is also helpful, enabling users to find information quickly.
3. Good sites indicate a time span for the material covered and include a statement of when they put the information online or last modified it, enabling users to determine the currency of the information. For time-sensitive information such as stock reports or weather forecasts, the site should give the exact time that information was posted and, if applicable, the frequency with which it is updated. For example, many Web sites provide the full text of federal documents, but not all provide the latest editions. Some may not even state which editions they are providing. Good sites also replace or remove outdated information. Few sites now offer both earlier editions of annual publications and the most current one. It remains to be seen how many sites will assume the responsibility of keeping online older editions that have historical or research value.
4. Another feature of a good site is a disclaimer. It may alert users that some information at the site is from other sites or other sources entirely. Alternatively the disclaimer may notify users that the site makes efforts to keep information accurate and current but does not guarantee it to be so at all times.
5. Good sites list the telephone number, the e-mail address, and the name of the person responsible for the information on particular pages, enabling users to report problems, ask questions, and critique the site. Providing an electronic form for sending e-mail to the contact person is even more helpful. A well-managed site responds to inquiries in a timely manner.
6. Indexes at a site may save a user time in locating desired information, especially at a site that deals extensively with a variety of topics. Online instructions that explain how to search the index effectively are also valuable. "What's New" is another helpful feature of good Internet sites, so users do not waste time browsing to see whether changes have been made or new features added.

State and Local Government on the Net (**http://www.webcom.com/~piper/state/states.html**) is an exemplary site that incorporates many of these features. It provides a Frequently Asked Questions (FAQ) document that explains the site's purpose, the frequency of its updating, the criteria it uses to include or exclude other sites, a way to find out when significant changes are made to the pages, the search mechanism, and the procedure for users to follow if they want to e-mail questions.

Content and Accessibility

Content is the most important factor in deciding whether a site has any value for your purpose. Is the information relevant, factual, objective, and ample? Is the scope note accurate? Evaluate the content of Internet resources with the same analytical methods that you would use for printed material, judging the source, the year of publication, the author, the intended audience, the objectivity of the reasoning, the coverage, the references, and the writing style.[2] Check the site's coverage of a topic that you know well. How accurate and complete is it? What is the geographic coverage?

Is biographical information provided for the author? What are the author's credentials and professional or institutional affiliation? What is the author's point of view? Is the publisher known for producing quality material? Serious researchers demand substantiation in footnotes. Is documentation provided? Is a source cited? Is explanatory material provided for statistical tables? Is a copyright statement included? Copyright law applies to material in electronic format. Good sites abide by

Internet Search Engines

When you are researching an unfamiliar topic or looking for more Internet resources on a subject, you can use search engines to help identify relevant sites. A "search engine" is an Internet tool that enables users to search for and retrieve information from the Internet by typing a keyword, a name, or a phrase on an electronic-search request form. The search engine hunts through a database and displays a list of results—links to individual sites that contain the words typed by the user. Powerful search engines enable you to narrow your request by date and limit your retrieval to a particular type of resource [for example, the World Wide Web, FTP sites, or newsgroups (see Glossary)]. The best search engines work quickly and are capable of finding the most resources that match your query, but no search engine can retrieve only relevant, current, accurate, and complete resources.

Browsers, such as Netscape, usually provide search engines and often include pointers to other Internet search engines. Netscape's directory of search engines can be found at **http://home.netscape.com/home/internet-search.html**. Compare search results for different search engines to find one that works well for your subject interests. To learn how to search efficiently and effectively, it is advisable to read the online help files that explain how to search. Another way to save time and effort is to count on human experts to guide you to the most useful resources online and off. Experienced librarians can guide you to the best information or provide the information itself.

Magellan

http://www.mckinley.com

One of the few search engines that attempts to evaluate the quality of Internet sites is Magellan. It reviews and rates sites for depth, relevance, ease of access and exploration, and "net appeal"—the extent to which a site is innovative, thought-provoking, or "cool." Magellan and other sites that review Web pages do not attempt to evaluate the quality of the information provided by the site.

AltaVista

http://altavista.digital.com

AltaVista is a powerful tool for finding Internet resources, but as with all search engines, it requires time and attention to get worthwhile results. AltaVista provides an advanced query form that allows you to use Boolean logic, search for phrases, and restrict your results by date.

SavvySearch

http://guaraldi.cs.colostate.edu:2000/

SavvySearch is another notable search engine. It searches several other search engines simultaneously, including Open Text, Yahoo (see the next heading), Lycos, and WebCrawler.

Yahoo

http://www.yahoo.com/

Title, subject, and keyword searching are available when you use Yahoo. Moreover, when you search for a keyword or a title, it allows you to restrict your search by subject category—a big plus.

All-In-One

http://www.albany.net/allinone/

All-In-One is a search engine worth knowing about. It provides search tools within categories such as World Wide Web, software, people, news/weather, publications/literature, and desk reference. If you select the category news/weather, you will be presented with a screen that lists a dozen searchable resources. You can find a specific news item by typing a keyword or a phrase, or you can locate a weather forecast for a particular area by typing the name of a city or a state.

copyright law and request that users respect their copyright.

Is the information accurate and reliable? Misspelled words, typographical errors, and other obvious mistakes are signs of carelessly edited sites. If a site does not bother with correct spelling, grammar, and punctuation, it may not be careful about proofreading important textual and statistical information. A benefit of Web sites that are affiliated with a recognized institution is the review process often associated with the institution. Many universities and government agencies have guidelines that ensure the quality of the information provided on their Web sites.

Does the site provide local information? Except for metaguides and search engines (see "Internet Guides to the Best Web Resources," pp. 46–48, and "Internet Search Engines," above), whose sole purpose is to link to other resources, a good site should offer its own material. Web sites belonging to academic institutions should also point to appropriate resources that may be available only in print or other formats. Does a site supplement its own resources by pointing to other sites for

more information? Good sites anticipate the related information needs of target audiences and point them to other relevant sites. Is the site selective or inclusive in providing access to external links? A site's scope note should indicate its policy. A selective site that points to the best resources on a topic is preferable to one that does not. Does a site indicate which of the links are more useful? Does it annotate the links to indicate the source of the information and the strengths of each source? University libraries often point to the best sources for information on a topic because subject specialists identify and evaluate other sites before listing them on the library's site.

Is the site easily accessible? Is it available twenty-four hours a day, seven days a week, all year round? A server that receives a lot of traffic must devote resources to make it accessible, or users will be unable to connect to it. Is it a stable source of information? How long has it been available? Is it likely to be there the next time you need to refer to it? The chances of finding a resource again are greater if the site is supported by an organization, such as a university, than if the site is the work of an individual.

Purpose of the Site

Service

Ask yourself why the information is being provided. Who is the intended audience (for example, researchers or general users)? Service to a particular audience is one reason that Internet sites are created. An example is a college or university site, which can provide extensive information about courses, academic requirements, admissions, and so forth to enrolled students, potential students, and faculty. Such a site can also save the institution some printing, telephone, and postage costs and make it known to a worldwide audience. The NCINFO site (**http://ncinfo.iog.unc.edu**) was developed for state and local government officials for several related purposes: (1) to provide information about the Institute of Government, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities; (2) to save time and money for users by organizing and making accessible the most valuable information resources available on the Internet; and (3) to encourage users to learn more about the Internet and use it to conduct business, exchange ideas and solutions, and collaborate with other government personnel in North Carolina and across the United States. (For more information, see "Internet Guides to the Best Web Resources," pp. 46–48.)

Sales and Marketing

Sales and marketing are other reasons for creating a Web site. Businesses seek to cultivate an audience for a commercial product. Often they provide useful, free information and pointers to related Web sites. A Web site can expand awareness of a business or a product and be a low-cost public relations tool. Many sites request that users register before using the site; some may even provide access to more information if you register. Sites may do this for administrative purposes or to collect e-mail addresses for other uses, such as direct-mail advertising.

Individuals and professional firms may also use the Web to promote themselves or an event or a program. In addition, governments are finding the Internet to be an inexpensive way of promoting economic development and tourism. Bear in mind the likely reasons for providing information when you are evaluating a site's worth.

Graphic Appeal

Presentation of material is also an important factor. Good sites are well designed, without unnecessary graphics. The thematic or subject arrangement is clear, making the information easy to find and read. Sites with too many graphic images are slow to load and navigate. Many users reach the Internet through dial-up access, so it is helpful if sites provide a home page

—continued on page 48

Suggested Reading

Engle, Michael. *How to Evaluate the Sources You Find.* Ithaca, N.Y.: Cornell University Library, Reference Services Division, Nov. 27, 1995. [**http://urislib.library.cornell.edu/evaluate.html**] (Jan. 16, 1996).

This resource includes a library research guide called "How to Critically Analyze Information Resources," which is as applicable to electronic documents as it is to books, articles, or other media resources.

Lynch, Patrick J. *Web Style Manual.* New Haven, Conn.: Yale Center for Advanced Instructional Design, 1995. [**http://info.med.yale.edu/caim/StyleManual_Top.HTML**] (March 28, 1996).

This excellent, practical resource covers graphic design, user-interface design, information design, and editorial skills for the creation of electronic documents.

National Aeronautics and Space Administration, Network Applications and Information Center. *Suggestions for Web Pages.* Moffett Field, Calif.: NASA, Oct. 1994. [**http://naic.nasa.gov/naic/pages.html**] (Jan. 13, 1996).

Suggestions for Web Pages provides practical guidelines for Web site developers and includes templates and examples of disclaimers. You will also find *Suggestions for Information Providers* at this site.

Internet Guides to the Best Web Resources

Electronic Guides

University of Michigan, Clearinghouse for Subject-Oriented Internet Resource Guides

http://www.lib.umich.edu/chhome.html

This clearinghouse is an excellent place to find critical guides to electronic resources on a variety of topics. Prepared by subject experts, the guides include a wealth of information about the best resources available on the Internet, describing for each resource listed its content, intended audience, frequency of updating, features, access instructions, and performance as a server (whether it is frequently busy or down). The guides also evaluate the quality of the resource, its usability (graphic appeal, layout, and organization of the information), and the authority of the resource's authors. The clearinghouse has begun to rate the level of quality of the guides themselves using the same criteria that it has used for the Internet resources.

The Legal List: Fall 1995 Internet Desk Reference: Law-Related Resources on the Internet and Elsewhere

ftp://ftp.lcp.com/pub/LegalList/legallist.txt

http://www.lcp.com/The-Legal-List/TLL-home.html

This guide, pepared by Erik J. Heels, is another outstanding one. Updated at least semiannually, it is available both in hard copy and on the Internet. The print version may be purchased from Lawyers Cooperative Publishing (Rochester, N.Y., 1995) or downloaded by anonymous FTP (see Glossary). Users may subscribe to periodic updates of the *Legal List* by sending an e-mail message to listserv@lcp.com. Include the words subscribe legal-list <*your name*> in the body of the message.

Evaluating Internet sites takes time. Luckily, resources are available—electronic guides, books, metaguides, and more—to help you choose the best sites for your purpose and particular topics. There are at least two advantages to using online guides: they are available at no cost; and they are usually updated periodically, so they may be more current than a printed source. The best online guides are selective, containing pointers to only the best resources.

Books about the Internet

Books too can help you identify good Internet resources. Many broad subject guides are available for general audiences, and more specialized subject guides have been published for professional users. A book's preface and introduction should make its selection criteria clear. Evaluate the published guides to find a selective, annotated resource that matches your needs.

***The Lawyer's Guide to the Internet* by G. Burgess Allison** (Chicago: American Bar Association, Section of Law Practice Management, 1995)

This is an outstanding practical and technical guide to the Internet and its workings. The guide also lists and recommends the best, most current Internet legal resources and explains how to gain access to them. Allison updates the information in his book and provides other Internet and computer news in his online column "Technology Update" at http://www.abanet.org/lpm/magazine/tu_index.html/.

Other Notable Sites

A few other notable sites that provide extensive information about a single topic are listed here to help you find information that you are likely to need, and to provide examples of good Internet sites.

House of Representatives Web Server

gopher://gopher.house.gov

http://www.house.gov/Index.html

The House of Representatives Web server is a well-organized, easy-to-use site, especially for federal legal resources. It is one of two sites that provide the full text of pending legislation and congressional testimony (the other is the Library of Congress's Thomas at http://thomas.loc.gov). The House site includes information about legislative process; schedule; member directory documents, listing name, address, and telephone number; organization and operations (House rules and manual); members', committees', and party organizations' published information; laws (including a searchable version of the United States Code at http://www.pls.com:8001/his/usc.html); law library (including book reviews); visitor information (how to visit the House, Capitol tour guide services, and maps of Capitol Hill, Washington, D.C., and the Metro subway system); educational resources (*How Our Laws Are Made* and other documents including the Constitution of the United States); and a searchable version of the Code of Federal Regulations at http://www.pls.com:8001/his/cfr.html.

Metaguides

"Metaguides" (also called "meta-indexes") try to provide links to all relevant sites on a subject. A metaguide may also provide extensive information about a subject. The best of the legal metaguides in the list that follows keep up with new and changed sites and provide links in a logical, well-organized arrangement. If you need to find state and federal legal information, you may want to explore these sites and bookmark your favorites.

The Legal Information Institute at Cornell Law School

http://www.law.cornell.edu

The Legal Information Institute (LII) groups legal topics by subject. LII's home page is one of the oldest and best Internet sites and one of the easiest sources to use for finding new Supreme Court decisions. This site also has the complete Uniform Commercial Code, recent laws of interest from state legislatures, and much more.

Indiana University—The WWW Virtual Library—Law

http://www.law.indiana.edu/law/v-lib/lawindex.html

This site has extensive, well-organized legal resources. Search for material by legal topic (constitutional law, copyright, etc.) or by type of source (treaty, legislation, etc.). Connect to other legal metaguides, or browse an alphabetical list of resources and listings of law schools, libraries, and law firms.

Meta-Index for Legal Research

http://www.gsu.edu/~lawadmn/lawform.html

This resource provides free, searchable indexes for legal research on the World Wide Web. Both specifically legal and generic indexes are included, enabling you to search for judicial opinions, legislation, federal regulation, other legal sources, and people in law. It can be used in lieu of Westlaw and LEXIS/NEXIS for locating the text of a specific case, regulation, law, or other document for many jurisdictions, but don't expect to obtain complete, reliable results from a subject search. No law-related Internet resource is as sophisticated in searching capabilities or as comprehensive as the fee-based legal databases are.

State and Local Government on the Net

http://www.webcom.com/~piper/state/states.html

State and Local Government on the Net provides pointers to state government home pages. This site divides the entries by branch of government, making it easy to find state legislative resources. Access it from NCINFO (see the later heading) or go directly to the site at the address listed.

North Carolina Periodicals Index

http://fringe.lib.ecu.edu/Periodicals/NCmags.html

The *North Carolina Periodicals Index* provides access to titles of articles in North Carolina periodicals. Produced by the Joyner Library at East Carolina University, it includes most titles published after December 1991 and some indexing of earlier articles. An abstract, in some cases simply a sentence or a phrase that reflects the content of the article, accompanies each entry.

NCINFO

http://ncinfo.iog.unc.edu/

NCINFO is devoted to information resources about North Carolina state and local government. Through it you can read selected new articles from *Popular Government* and *School Law Bulletin*, search an online version of the Institute's catalog of publications, locate research surveys from the league and the association, identify job listings in state and local government, obtain statistical data from the North Carolina Office of State Planning and the United States Bureau of the Census, find information about legislators, follow the status of bills before the General Assembly, and read recent decisions of the North Carolina and United States appellate courts. Specialized resources for North Carolina officials such as planners, city and county clerks, purchasing officials, and information system specialists are also provided on NCINFO Web pages. Further, NCINFO contains links to other resources relevant for anyone interested in local, state, and federal government.

For links to external resources, NCINFO's goal is to point to current, stable, well-maintained collections of accurate information on topics of interest to anyone concerned with state and local government. The collections may cover a specialized subject (for example, management resources) or provide a comprehensive collection on a broad topic (for example, Federal Web Locator). The preference at NCINFO is to point to existing collections of resources rather than to provide links to individual resources. NCINFO attempts to annotate the Web sites that it includes so that users know the source of the information. If appli-

—continued on next page

cable, NCINFO describes the arrangement of the information.

NCINFO welcomes your input on the sites available through NCINFO and encourages you to recommend sites that you think are valuable for your work in local or state government. Forward your recommendations to the NCINFO e-mail address: **ioghclp@ncinfo.iog.unc.edu**. Please provide the name of the Internet resource, its Internet address, the resource's institutional affiliation, a brief description of the resource, and the reason that you think it is valuable.

U.S. Census Data at Lawrence Berkeley National Laboratory

gopher://infolib.berkeley.edu:70/11/resdbs/gove/us/census/censdata

http://cedr.lbl.gov/mdocs/LBL_census.html

The United States Census Data at Lawrence Berkeley National Laboratory is an excellent resource for United States Census data. It includes nationwide data from the 1970, 1980, and 1990 censuses as well as links to other Internet data servers. Its gopher site is another useful resource, especially for the electronic version of well-known statistical resources such as the *County and City Data Book* or *County Business Patterns*. The information resources available on the gopher are extensive, ranging from 1790 to recent population estimates. For example, it contains population totals for every North Carolina county from the 1900 through the 1990 decennial census, as well as population estimates for other years. Documentation is provided to explain the data, the source of the data, and the date of the data. In some cases a telephone number is given.

—*continued from page 45*

that appears quickly. Sites can reduce processing time by providing a text version as an alternative to a graphic layout. Sites designed for a browser such as Netscape should be easy to read and visually appealing on other browsers. Good sites test the effect of their design decisions on multiple platforms so that a Web page looks right on a Mac, a PC, or a Unix workstation. Also, they provide a simple way to capture, download, and print information. A beautiful map of a town posted on the Internet for anyone to see on his or her computer screen is appealing to virtual visitors, but a map that can be printed on a standard laser printer has much greater value for people planning a trip.

Navigation

Ease of navigation of a site is another indication of quality. All Web pages at a good site are designed in a consistent manner, with certain elements of information appearing in the same place from page to page. Each page should bear a title, a date of last revision, the name of a contact person, an institutional affiliation, and buttons that allow users to move easily from page to page, or to return to the home page. Good Web developers exercise care in deciding the length and the structure of Web documents so that users can move through them without wasting time or getting confused. A site that contains broken links or links to empty subdirectories is not well maintained. Good sites review and update regularly to ensure that the information and the links are fresh. Does the site provide what the folks at the National Aeronautics and Space Administration call "friendly" links?[3] A friendly link indicates the size and the type of the file to which the user will connect if he or she selects the link. The link may be to a large file, an image, a sound clip, or a video. Users may choose not to access a file if it is too large for their computer to manage or if they lack the equipment or the software required to view or hear the file.

Conclusion

Learning to use the Internet efficiently and effectively takes time. There are thousands of sites on the Internet, and among the thousands, you will find trash, trivia, toys, and treasures. The treasures make using the Internet worth the time, the money, and the effort because they provide more current information than can be found in any printed source. To get the greatest benefit from using the Internet, learn how to recognize sites that provide timely, current, accurate, and complete information. If you familiarize yourself with a few great sites like the ones mentioned in this article, they will answer a great number of your questions.

Part Five of this series will explain why the Institute of Government has begun creating client-specific home pages available through NCINFO, the Web site at the Institute, and how these home pages—such as those for purchasing officials and for city and county clerks—are building problem-solving capacity at the local level.

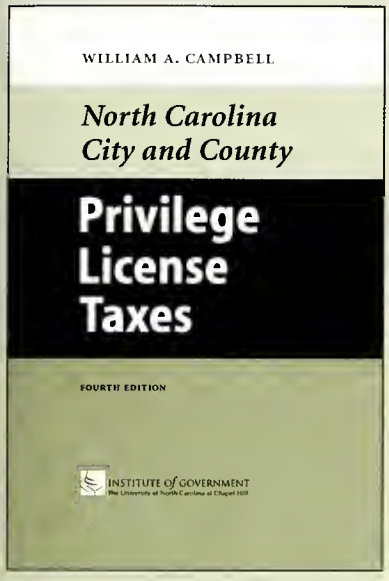
Notes

1. John December, "Challenges for Web Information Providers," *Computer-Mediated Communication Magazine* 1, no. 6 (Oct. 1, 1994): 9, [http://sunsite.unc.edu/cmc/mag/1994/oct/webip.html] (Jan. 16, 1996).

2. Michael Engle, *How to Evaluate the Sources You Find* (Ithaca, N.Y.: Cornell University Library, Reference Services Division, Nov. 27, 1995), [http://urislib.library.cornell.edu/evaluate.html] (Jan. 16, 1996).

3. National Aeronautics and Space Administration, Network Applications and Information Center, *Suggestions for Web Pages* (Moffett Field, Calif.: NASA, Oct. 1994), [http://naic.nasa.gov/naic/pages.html] (Jan. 13, 1996).

Off the Press



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. . . and at the same time
to preserve the form and spirit of
popular government . . .

—James Madison
The Federalist, No. 10