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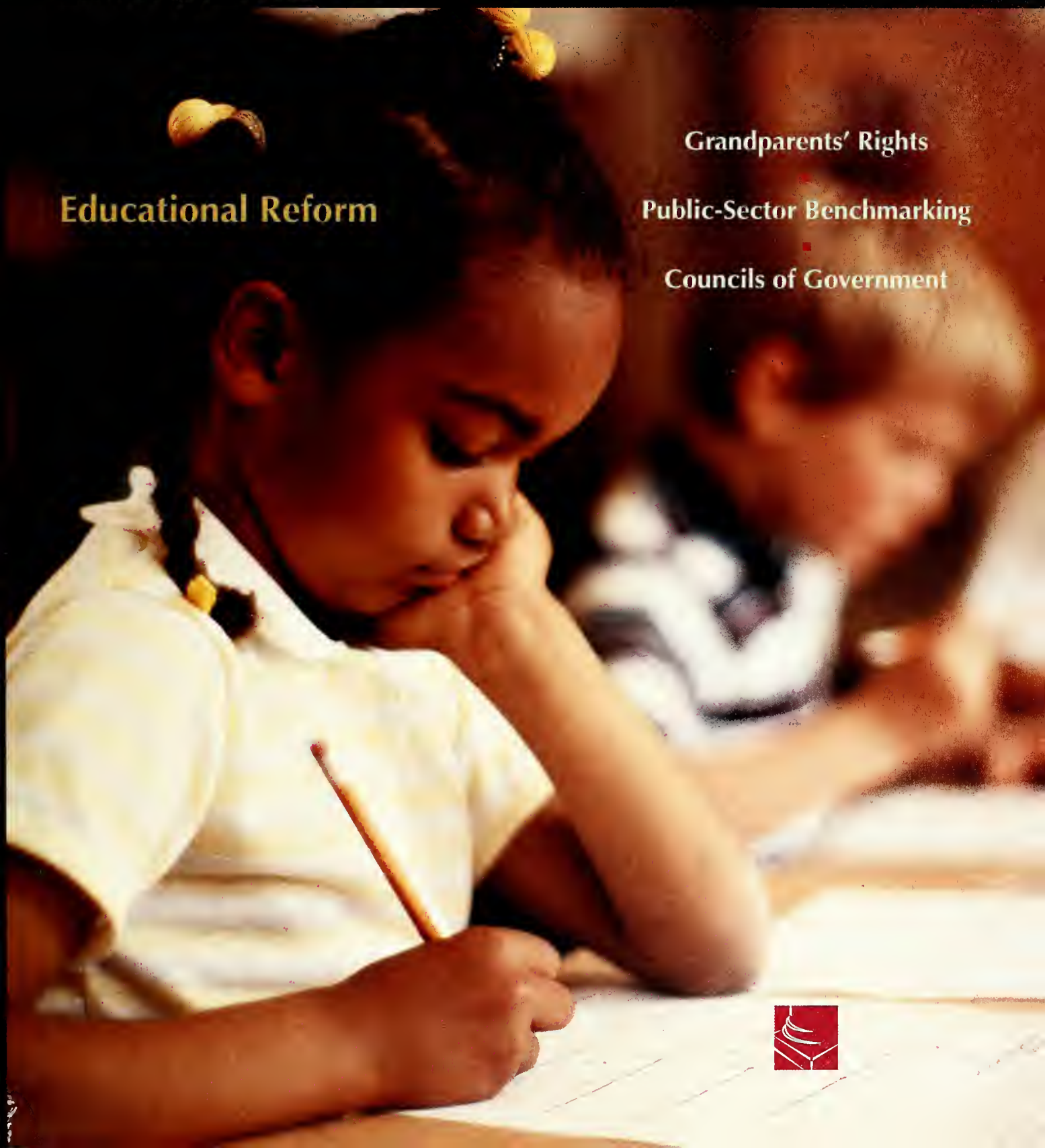

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Spring 1998 Volume 63, Number 3

INSTITUTE of GOVERNMENT The University of North Carolina at Chapel Hill

Feature Articles

© Roy Gumpel/Liaison International

Page 2

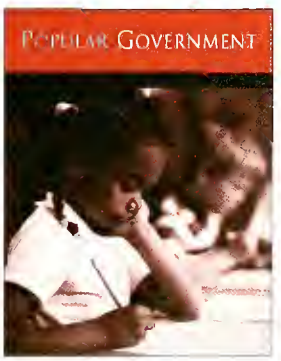
Steve Exum

Page 13

Jeff Parker

Page 21

Departments



On the cover Public education in North Carolina may change dramatically in the coming decades as lower courts interpret a recent state supreme court decision promising every child "the opportunity to receive a sound basic education." Photograph © SuperStock, Inc. All rights reserved.

Leandro v. State— A New Era in Educational Reform?

John Charles Boger

In July 1997, while many North Carolinians were packing their bags for summer vacations, the North Carolina Supreme Court quietly issued a path-breaking education decision in *Leandro v. State of North Carolina*,[1] announcing that the state constitution promises every North Carolina child the "opportunity to receive a sound basic education." The court has entrusted the lower state courts with the initial responsibility of clarifying the details of this new right, although it has offered some general guidelines about the content.

Leandro imposes a new educational duty on the state and opens state courts to legal challenges from parents or schoolchildren who believe that the state is failing to meet that duty. Simultaneously, however, *Leandro* rejects the argument that school districts throughout North Carolina should be funded at substantially equal levels and offer substantially equal educational opportunities. This article addresses the potential significance of *Leandro*'s two principal holdings for the state, for local school districts, and for

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thousands of parents and children who may be affected in the coming decades.

Leandro has been described as a "school funding" lawsuit.[2] The label associates it with a reform movement launched some twenty-five years ago to challenge how most states funded their public elementary and secondary schools. Yet *Leandro* raises questions beyond whether North Carolina must revise its system of school finance. For reasons explored later, the plaintiffs' legal theories and the supreme court's broad holding may anchor an array of school improvement and reform efforts for a generation.

Origins of the Movement to Reform School Finance

The campaign to reform states' methods of school finance emerged in the late 1960s with thoughtful criticisms of the prevalent practice of raising monies for public education through "*ad valorem* property taxation" (taxation according to the value of property).[3] Then, as now, most states were using general state revenues to provide a significant portion of the funding for public schools—typically distributed on a per-pupil basis.[4] However, most also permitted (or required) local school districts to raise anywhere from 25 to 75 percent of total school funds from locally imposed *ad valorem* taxes on real property within the school district.[5] Critics set out to demonstrate that, in practice, this apparently benign funding mechanism led to unacceptably large inequities in school funding across the districts in a state. Their charge was that the uneven pattern of residential and commercial growth in each state inevitably led to wide differences in local tax revenues, as the Supreme Court of the United States later observed in a Texas case:

> Until recent times, Texas was a predominantly rural State and its population and property wealth were spread relatively evenly across the State. Sizable differences in the value of assessable property between local school districts became increasingly evident as the State became more industrialized and as rural-to-urban population shifts became more pronounced. The location of commercial and industrial property began to play a significant role in determining the amount of tax resources available to each school district. The growing disparities in population and taxable property between districts were responsible in part for increasingly notable differences in levels of local expenditure for education.[6]

Differences between "low wealth" districts (those poor in taxable property) and their "high wealth" neighbors, critics charged, led to remarkable disparities in the overall revenue per student available for public education. Indeed, even when low-wealth districts adopted local property tax rates far higher than those of their high-wealth neighbors, they often fell farther and farther behind.[7]

Thoughtful analysts contended that such disparities violated the promise of equal protection of the laws, contained in both the federal constitution and the constitutions of many states. Relying on such analyses, reformers set out to challenge the disparities in the courts, arguing that any local school districts willing to exert equal "tax effort" (willing to tax themselves at a particular rate) should receive equal tax dollars, irrespective of their district's overall property wealth. This campaign met with initial success in *Serrano v. Priest*,[8] a celebrated case in which the California Supreme Court accepted the reformers' arguments under the Equal Protection Clause of both the federal and the state constitution.

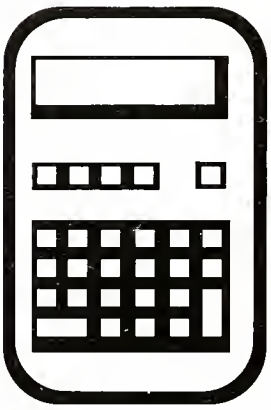
However, when reformers moved confidently into the federal courts to challenge the school finance system of Texas, they suffered one of the most striking civil rights setbacks of the 1970s. In a five-to-four decision in *San Antonio Independent School District v. Rodriguez*,[9] the United States Supreme Court rejected the plaintiffs' contentions. The federal constitution, the Court observed, contained no assurances of special protection for public education under the Equal Protection Clause.[10] Nor did the Fourteenth Amendment, in the Court's view, afford any special protection for low-wealth districts, especially in the absence of any showing that the schoolchildren in those districts had been "absolutely deprived" of "basic minimal skills."[11]

The Turn to State Courts and Constitutions

The *Rodriguez* decision seemed to signal the end of school finance litigation. Yet soon thereafter, in a handful of cases—and eventually in two dozen others over the succeeding twenty years—school finance reformers turned to state courts. Although the federal constitution contains no express guarantee of educational rights, nearly every state constitution does. Reformers

based their new lawsuits either on education clauses in state constitutions or on other state-based equality theories.[12] The plaintiffs in *Robinson v. Cahill (I)*,[13] for example, sought relief under New Jersey's constitutional mandate of a "thorough and efficient" system of public schools.

A number of difficult issues began to emerge in these cases, however. Theoretically, state courts could direct state legislatures to abandon local property taxation altogether and raise education revenues solely through statewide taxes, to be distributed to each school district on a per-pupil basis. Few state courts, though, were willing to forgo their states' traditional and fiscally effective reliance on property taxation.[14] And even fewer were inclined to impose spending ceilings on wealthy districts, forbidding school boards and county commissioners to supplement state revenue with local tax dollars.[15]



Furthermore, as education experts looked closely at local school needs, they realized that dollar-for-dollar equality would not purchase identical educational resources. Urban districts, for example, are often saddled with "municipal overburdens": a dollar simply buys less land, fewer bricks, and less insurance coverage on an urban street corner than it does in a rural community, and there are greater demands for public health, welfare, and police services in such districts. These experts began to stress the need, not for equal dollars, but for equal "inputs" to each school. In other words, each district should receive the same number of teachers per student, the same quality of school facilities, and the same number of books or computers per student—goals that might necessitate *different* expenditures for various locations.

Other observers responded that the challenge was even more complex. Some school districts might enroll disproportionately high percentages of children with special needs—for example, children who speak English as a second language and therefore require bilingual teachers and materials. Other districts might enroll unusually large numbers of children with slower physical or mental development, who might need special instruction, nurse's aides, and social workers. To provide the same educational inputs in each district might be irrational because student populations across districts might have very different educational needs. The notion of what "equality" is and requires came under increasing scrutiny.[16]

In a series of major decisions in the late 1980s and early 1990s—among them, *Abbott v. Burke* in New Jersey[17] and *Rose v. Council for Better Education, Inc.* in Kentucky[18]—state supreme courts began to interpret their education clauses to require not educational "equality" but educational "adequacy." An adequate education was to be judged not by a district's educational inputs (per-pupil expenditures or educational resources) but by its educational outputs (each school's substantive offerings or the actual performance of a district's schoolchildren). In most of these decisions, the courts aimed to create a substantial educational "floor" that could be assured to all children within their state, irrespective of costs or of differences that might remain at the high end.

North Carolina's Approach to School Finance

North Carolina has long been proud of its system of public education. In 1776 it was one of only two states whose constitutions called for a system of public education:

> [A] school or schools shall be established by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and, all useful learning shall be duly encouraged and promoted in one or more universities.[19]

In 1838 the General Assembly established a Literary Fund, making North Carolina only the second state in the nation to provide a statewide fund for public education.[20] At the dawn of the twentieth century, the state inaugurated "perhaps the nation's first significant equalizing [educational] grant program,"[21] distributing the initial appropriation of $100,000 to school districts statewide on a per-pupil basis. Soon the state doubled that amount, with almost 50 percent of the funds going to districts on the basis of need.[22] State contributions to the program increased for the next thirty years. During the Great Depression, with many school districts teetering on the brink of bankruptcy, the state assumed complete responsibility for the operating expenses of every school district in North Carolina.[23] In his 1934 biennial report, the state superintendent of public instruction noted, "By abolishing the district as a unit of school support, a child's education is no longer directly dependent on the wealth of the community itself."[24]

In 1984 the General Assembly adopted a comprehensive Basic Education Program (BEP) that reflects

"the policy of the State . . . to provide from State revenue sources the instructional expenses for current operations of the public school system as defined in the standard course of study."[25] Under the BEP legislation, schools must offer certain academic subjects. Also, the State Board of Education must develop standards for educational inputs, such as class size, staffing ratios, instructional materials, support services, and facilities, and educational outputs, such as student achievement and promotion.[26] Pursuant to the legislation, the board has promulgated standards and criteria in each of these areas.[27]

In the late 1980s, however, reformers charged that the BEP had several crucial gaps. First, they observed, the provisions pertaining to state funding addressed only local operating needs. With certain exceptions[28] the BEP does not make any financial provision for state support of the capital needs of school districts—new buildings, new classrooms, and renovations. This is not mere legislative oversight; the law expressly states that "the facilities requirements for a public education system will be met by county governments."[29] Plainly, many low-wealth districts lack sufficient funds to meet their capital needs. Indeed, in 1993, State Superintendent Bobby Etheridge estimated that North Carolina's school districts would require $5.6 billion to fulfill those needs, and the State Department of Public Instruction estimated that in the five *Leandro* plaintiff districts the cost of needed facilities was more than $280 million.[30]

Second, critics maintained, the BEP made little special financial provision for school districts with unusually high proportions of children with great educational needs. The BEP itself acknowledges that such districts need special services. Yet its formula for state funding contains no adjustment for a district's percentage of students with special needs.

Third and most important, critics argued, the BEP, which was designed to provide the minimum educational program needed by every North Carolina child, had never been fully funded by the General Assembly. Indeed, it has lagged hundreds of millions of dollars behind the levels projected as necessary to meet all district operating needs. In the absence of funds from the General Assembly, local districts currently rely on *ad valorem* taxation to raise some 25 percent of their operating expenses.[31] Recognizing that low-wealth districts have difficulty in raising sufficient local funds to meet basic BEP standards, the General Assembly established the Low Wealth Supplemental Funding Program in 1991.[32] Yet, although the state's low-wealth districts needed an estimated $200 million in the 1992–93 school year to meet BEP goals, for example, the General Assembly allocated only $9 million in supplemental funding that year.[33] The legislature did allocate significant additional capital funds in subsequent years, but the pattern of underfunding has continued.

Origins of the *Leandro* Litigation

The *Leandro* lawsuit took shape in the early 1990s as interested groups began to voice concern about the sharp fiscal disparities among school districts in North Carolina.[34] Both official and unofficial accounts at the time documented the plight of property-poor districts. Bertie County, for example, with a high school built for 600 students, was struggling to accommodate 1,200 students using house trailers.[35] Beyond reports of decrepit, leaking buildings were stories of schools struggling without basic resources such as textbooks, supplies, adequate libraries, or simple laboratory equipment. Still other schools were forced to limit their offerings, forgoing advanced placement classes, foreign language and higher mathematics instruction, as well as music, art, and drama courses.[36]

The plaintiffs who eventually came forward in the *Leandro* case represent an unusual alliance: two parents and two schoolchildren from each of five low-wealth counties—Cumberland, Halifax, Hoke, Robeson, and Vance—and the school boards of those counties.[37] Their complaint, filed in May 1994, told of the physical deterioration in their schools: "peeling paint, cracked plaster, and rusting exposed pipes. . . . erratic heating and air conditioning systems and outdated electrical systems. . . . [s]ome [with] no sewer connections and problematic waste water disposal."[38] The litany of problems included a lack of basic supplies and essential teaching equipment, not only scientific equipment such as "microscopes, charts, models, lab stations, measuring devices, sinks, and safety equipment," but also the rudiments of instruction, such as "adequate blackboards, desks and textbooks."[39]

Of equal or more serious import, the plaintiff school districts stressed, they were often unable to attract high-quality teachers because they could not offer salaries that competed with those of wealthier school districts. For example, they pointed out, "the average salary supplement in 1993–94 for teachers in

Chapel Hill School District was $3,310, while that in Halifax was $208."[40] Also, they stated, the funding disparities kept them from hiring many additional teachers with local funds. Again they gave an example: in 1992–93 Chapel Hill had sufficient local funds to hire eighty-six extra teachers, while Robeson County (whose student population is over three times as large) could afford to hire only two extra teachers.[41]

The *Leandro* plaintiffs alleged that these fiscal deficiencies had led directly to diminished academic performance by their students, whether measured by end-of-year state proficiency tests,[42] Scholastic Aptitude Tests for college admissions, or the need for remedial college course work among local students who gained entry to North Carolina's public colleges and universities.[43]

Having set forth this factual account of their circumstances, the *Leandro* plaintiffs drew on various provisions in the state constitution to contend, alternatively, that the documented disparities deprived children in their districts of an *equal* education, an *adequate* education, or even a *minimum* education. Their complaint relied chiefly on two provisions of the North Carolina Constitution that appear to make several educational commitments to the state's citizens:

> Article I, Section 15
> The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.
>
> Article IX, Section 2(1)
> The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students.

This promising language was far from an assured source of relief, however. A school finance lawsuit filed in Robeson County in 1987, *Britt v. North Carolina State Board of Education*, had relied on the same phrases, and the North Carolina Court of Appeals had rejected the plaintiffs' interpretation of them.[44] In fact, the court in *Britt* had interpreted the two provisions to offer little more than bare access to some school, no matter how substantively inferior. North Carolina's education right, the court of appeals held, was limited to one of equal access to education, and it did not embrace a qualitative standard.[45]

Soon after the *Leandro* plaintiffs filed their suit, six parents and schoolchildren and six school boards from large, urbanized districts in the state—Asheville, Buncombe County, Charlotte-Mecklenburg, Durham, Wake, and Winston-Salem/Forsyth—joined the lawsuit as "plaintiff intervenors" (parties with full status to participate in the case). They brought to the lawsuit the perspective of "property rich" school districts that nonetheless suffered under many of the special burdens described earlier in this article—higher-than-average educational costs and disproportionate numbers of children with limited English proficiency and other special needs. The intervenors agreed with the original plaintiffs that the state should allocate more of its monies to North Carolina's schoolchildren, but they urged that property-poor districts not be granted funds at the expense of urban districts that were struggling to meet pressing educational demands.[46] Indeed, they alleged that the distribution of funds exclusively to poor rural districts under the Low Wealth Supplemental Funding Program was "arbitrary and irrational" in light of their own need for additional funds.

The twin defendants in *Leandro*, the State of North Carolina and the State Board of Education, moved for dismissal of the lawsuit without a trial, relying on both (1) the holding in *Britt* that the North Carolina Constitution does not guarantee any substantive standard of educational quality and (2) the argument that school finance and educational standards present "nonjusticiable political questions"—matters to be debated and resolved exclusively by the General Assembly, without interference from the judicial branch. The superior court rejected the motion, however, and ordered the state to prepare for trial. Instead, the state appealed. It met with a friendly reception in the North Carolina Court of Appeals. In March 1996 Chief Justice Gerald Arnold, writing for the court, agreed that the *Leandro* lawsuit should be dismissed, reaffirming the court's own earlier reasoning in *Britt*.[47]

The North Carolina Supreme Court, however, decided that it should review the lower courts' handiwork. It accepted written briefs from the parties, heard oral argument in fall 1996, and pondered the matter for nine months before announcing its decision in July 1997.

The Supreme Court's Holding

In an opinion written by Chief Justice Burley Mitchell, the supreme court held that North Carolina children do possess something more substantial than

the bare "right of access" to public schooling suggested by the court of appeals in *Britt*. Indeed, they may claim a substantive right to "some minimum standard of quality." The court described this standard as "a sound basic education." But the court expressly declined to interpret the standard to mean that every child may claim "a right to equal educational opportunities" or that every school district may claim a right to equal funding. The court thus rejected an "equality" approach to school finance reform: the North Carolina Constitution, the court held, does not "require substantially equal funding or educational advantages in all school districts."[48]

Instead, the court pursued an "adequacy" approach, reasoning that, under the North Carolina Constitution, each child is entitled to an opportunity to receive certain substantive educational benefits. Drawing on the pioneering decision of the Kentucky Supreme Court in *Rose*,[49] the North Carolina Supreme Court specified four constitutionally indispensable requisites of a sound basic education:

> (1) sufficient ability to read, write and speak the English language and a knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in formal education or gainful employment in contemporary society.[50]

The court did not designate these requisites mere goals. Rather, it pointedly declared that each child's right implies a corresponding duty of the General Assembly to "provid[e] the children of every school district with access to a sound basic education."[51] The court acknowledged that "the administration of the public schools of the state is best left to the legislative and executive branches of government" and that "the courts of the state must grant every reasonable deference to the legislative and executive branches"[52] (for further discussion of this point, see "The Evidentiary Burden," page 9). However, it made clear its determination to safeguard the new right:

> [L]ike the other branches of government, the judicial branch has its duty under the North Carolina Constitution. If on remand of this case to the trial court, that court makes findings and conclusions from competent evidence to the effect that defendants in this case are denying children of the state a sound basic education . . . it will then be the duty of the court to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches of government.[53]

Implications of *Leandro*

Does *Leandro* promise real changes for children in low-wealth counties like Halifax and Robeson or for school boards in high-wealth but educationally burdened districts like Charlotte-Mecklenburg? *Leandro* itself provides no final answers. Although the supreme court's decision saved the *Leandro* lawsuit from dismissal, it did not resolve the case. Rather, it returned the case to the superior court for a full trial on the merits.

Yet the plaintiffs already have won a considerable victory on one of their two principal contentions: that North Carolina's children have substantive educational rights that the General Assembly must honor and the judicial branch will protect if necessary. To this extent, *Leandro* has permanently altered the landscape of educational policy in this state.

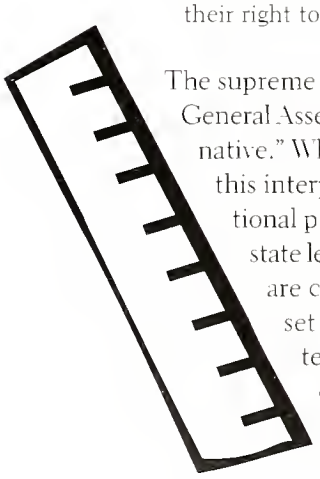
On the other hand, *Leandro* represents a major defeat for wholesale reform of school finance, for an end to reliance on local *ad valorem* property taxation, and for the cause of substantial equality among all North Carolina school districts. It was on this last point that the one dissenting justice, Robert Orr, made a stand. With considerable passion he argued that Article IX, Section 2(1)—which, as noted earlier, promises "a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students"—means just what it says, and that "students residing in a poorer district are still entitled to substantially equal educational opportunities as students in wealthier districts."[54] The majority rejected this argument, looking to other provisions of the North Carolina Constitution, as well as to considerations of practicality.[55]

Standard of Review of Future *Leandro* Claims

As the *Leandro* lawsuit goes back to trial, the immediate question for the superior court is what standard to employ in determining whether Cumberland, Halifax, Vance, or any other school district is offering a sound basic education. Although the supreme court set forth four broad requisites for such an education, it declined to give further details about those requisites or to prescribe any single measurement for assessing whether a particular district's educational program satisfies the requisites. Instead, the court tentatively put forward three very different alternatives as measures: legislative goals and standards for education, standardized achievement tests, and state expenditures.

Legislative goals and standards for education. The first of these three measures appears to invite the superior court to assess a school district's program by reference to the BEP (or a legislative alternative):

> Educational goals and standards adopted by the legislature are factors which may be considered on remand to the trial court for its determination as to whether any of the state's children are being denied their right to a sound basic education.[56]



The supreme court carefully noted, however, that the General Assembly's standards should "not be determinative." What did the supreme court mean? I offer this interpretation: If (1) a school district's educational program can be shown to comply (2) with state legislative and regulatory standards (3) that are consistent with the four major requisites set forth in *Leandro*, then that district's system is presumptively constitutional. However, if a district's program does not meet state standards or if the General Assembly's standards do not adequately address each of the four *Leandro* requisites, the judicial branch will exercise its authority to declare unconstitutional the substandard education being provided in the district, the program prescribed by the General Assembly, or both.

In other words, this measure appears to contemplate (1) a set of statewide, legislatively prescribed educational standards that are responsive to each of the four *Leandro* requisites and (2) district-by-district compliance with those standards. Under this alternative the *Leandro* plaintiffs might argue that the BEP is inadequate on its face because it does not address one or more of the *Leandro* requisites or that the BEP is perfectly adequate but the state has not given their district the financial means to attain the BEP standard.

Note that the four *Leandro* requisites have a qualitative dimension as well: They demand not merely various curricular subjects but an educational program that ensures satisfactory student progress toward mastery of those subjects—that is, not just educational inputs but also educational outputs. Specifically the court reiterated that North Carolina's sound basic education must be sufficient "to enable the student to function in a complex and rapidly changing society" and "to successfully engage in post-secondary education or vocational training." These phrases suggest that if courses in advanced science, higher mathematics, or foreign language are essential to gain entry to the state's colleges or universities or to secure employment in local high-tech industries, all school districts—including those now too property poor to offer such subjects or training—are henceforth under a duty to provide them. In addition, the court's language implies that students must be sufficiently well educated not merely to gain entrance to the state's public colleges and universities and employment markets but to succeed in them. Thus a district whose program otherwise meets all BEP standards might be found in violation of *Leandro* if a disproportionate number of its students regularly need remedial course work or drop out of college for academic failure—in other words, if its students do not "successfully engage in post-secondary education."

Standardized achievement tests. A skeptical reader might think that my view interprets the supreme court's emphasis on educational outcomes too broadly. Yet the court's second alternative measure relies even more explicitly on indicators of output:

> Another factor which may properly be considered in this determination is the level of performance of the children of the state and its various districts on standard achievement tests. . . . In fact, such "output" measurements may be more reliable than measurements of "input" such as per-pupil funding or general educational funding provided by the state.[57]

Under this measure, parents of children in low-performing schools might sue to prod state and local officials into devising and implementing educational methods that would improve the chronically low performance of their own and other children in the district.[58]

State expenditures. The third measure proposed by the supreme court seems the most traditional in school finance terms, for it looks to "the level of the

The Evidentiary Burden: A "Clear Showing"

The North Carolina Supreme Court has carefully placed one additional evidentiary hurdle in the path of North Carolina parents and children who seek a favorable judicial outcome under the *Leandro* ruling. In stressing that "the courts of the state must grant every reasonable deference to the legislative and executive branches when considering whether they have established . . . a sound basic education," the court stated that only "[a] *clear showing to the contrary* . . . will justify a judicial intrusion" (emphasis added).[1]

Obviously the court is not encouraging a stampede to litigation by every parent who feels that his or her child's education is constitutionally inadequate; the "clear showing" rule will provide the state trial courts with a formidable tool to reject weak or unsubstantial claims. Yet in school districts like those of the *Leandro* plaintiffs, making a clear showing should be relatively straightforward and easy under any of the alternative *Leandro* measures. The state's own official educational data demonstrate that (1) these districts have not been able to meet the standards and criteria of the BEP, (2) their schoolchildren are performing at levels dismally below the statewide medians on standardized achievement tests, and (3) their spending levels are far too low for them to provide a sound basic education without state assistance.

Perhaps the true significance of the clear-showing test will emerge when parents and children from high-wealth districts such as Asheville and Wake County seek relief. Will they be able to overcome the "deference to the legislative and executive branches" that the *Leandro* opinion commands? They are not likely to possess the statistical data showing districtwide educational distress or student failure, on which the plaintiffs in the low-wealth counties will be able to rely. On the other hand, *Leandro* has created for every North Carolina child a personal right to a sound basic education. Therefore, even in a high-wealth district where most students are receiving such an education, parents of children with special needs might make a clear showing that, for example, the bilingual educational opportunities, or the special educational services, or the gifted and talented programs in that district do not meet minimal constitutional standards.

Indeed, it is for this reason that *Leandro* seems so potentially far-reaching. The decision separates students' rights from the narrower question of school financing mechanisms. Further, it invites parents, the school system, the General Assembly, and ultimately the state courts to ensure that each child receive a sound basic education and that state or local impediments to that goal be removed.

Notes

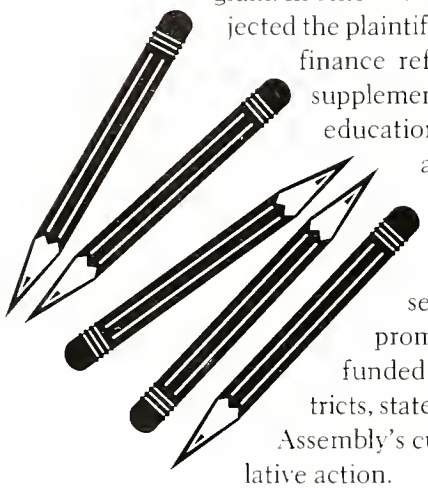
1. *Leandro*, 346 N.C. at 357, 488 S.E.2d at 261.

state's general educational expenditures and per-pupil expenditures."[59] Yet the tenor of the court's opinion forecloses the possibility that this standard encourages district-by-district comparisons, much less requires full equality in school funding.[60] Rather, the court seems to be inviting superior courts to assess a district's program in light of the state's overall level of educational spending—perhaps with an eye to directing the General Assembly to increase its financial commitment to the public schools if achievement of a sound basic education seems remote at current levels of funding.

The supreme court appears to view this measure with considerable skepticism, however. Scholarly evidence, the court noted, suggests that "'substantial increases in funding produce only modest gains in most schools,'"[61] and fashioning any statewide financing system is complex. For those reasons the court instructed lower courts "not [to] rely upon the single factor of school funding levels in determining whether a state is failing in its constitutional obligation to provide a sound basic education to its children."[62] Indeed, the court stated that factors beyond those it set forth in the *Leandro* opinion may be relevant in resolving a plaintiff's claim, and the court implied that some of the factors it discussed may not have weight in all cases.

How the lower courts resolve these questions about the pertinent *Leandro* standards may well determine how profound *Leandro*'s effect will be in practice. Interpreted loosely, *Leandro* might become little more than a warning shot across the bow of the General Assembly, a well-meaning plea for the legislature to take its educational responsibilities more seriously.

Interpreted with appropriate judicial seriousness, however, *Leandro* should impel the General Assembly—independently of any further litigation—to reflect on the adequacy of the BEP in today's "complex and rapidly changing society," to fulfill its earlier promise to fund the BEP fully, and to provide sufficient tax dollars for a meaningful Low Wealth Supplemental Funding Program. In other words, although the *Leandro* court rejected the plaintiffs' plea for straightforward school finance reform and declined to end local supplemental funding, it has placed weighty educational responsibilities on the state and given individual parents new authority to go to court to demand fulfillment of those responsibilities. If the General Assembly does not turn its attention promptly to the plight of inadequately funded and underperforming school districts, state courts may preempt the General Assembly's customary role and mandate legislative action.



Eligibility to Claim Benefits

One additional question that has emerged in *Leandro* is who may claim the benefits promised by the supreme court. As noted earlier, the plaintiffs in *Leandro* are parents, schoolchildren, and school boards from five low-wealth districts, and the plaintiff intervenors are parents, schoolchildren, and school boards from six high-wealth districts. On the return of the case to the superior court for further proceedings, the state moved for dismissal of the school boards, reasoning that

> [t]he constitutional right to the opportunity for a "sound basic education" established by the supreme court in this case belongs solely to children attending the public schools. That right does not belong to the . . . school boards. Indeed, those boards have the duty to protect that right for all students enrolled in their local schools.[63]

The superior court denied the state's motion but left open the prospect of revisiting the issue later in the litigation.[64] There is some plausibility in the state's position. Individuals, not government bodies, normally possess constitutional rights, and no school board can logically claim a right to a sound basic education. Yet the boards in both the low-wealth and the high-wealth districts can plausibly contend that they cannot carry out *Leandro*'s mandate to deliver constitutionally adequate education to North Carolina schoolchildren without additional assistance from the General Assembly or the State Board of Education. Moreover, given that school boards risk administrative takeover of low-performing schools within their district if their students perform poorly on end-of-year state tests, they have an immediate institutional interest in ensuring that all children receive a sound basic education. Yet that may depend on factors over which they have little control, such as financial resources.

All these questions await resolution in *Leandro* and others cases sure to be engendered by the announcement of this important new right.

Notes

1. Leandro v. State of North Carolina, 346 N.C. 336, 488 S.E.2d 249 (1997). I submitted an *amicus curiae* brief to the North Carolina Supreme Court in the *Leandro* case, as co-counsel for the North Carolina Civil Liberties Union. The views expressed in this article are solely mine and do not represent the views of the North Carolina Civil Liberties Union, the UNC-CH School of Law, or any other organization.

2. *See, e.g.*, "No Reason to Wait," *News & Observer* (Raleigh, N.C.), Aug. 5, 1997, p. A8; Tim Simmons, "Poorer School Districts Unable to Catch Up," *News & Observer* (Raleigh, N.C.), July 22, 1997, p. A3; Tim Simmons and Joseph Neff, "School Equity Loses in State Court," *News & Observer* (Raleigh, N.C.), March 20, 1996, p. A1.

3. Charles Benson, *The Cheerful Prospect: A Statement on the Future of Public Education* (Boston: Houghton Mifflin, 1965); John E. Coons, William H. Clune III, and Stephen D. Sugarman, *Private Wealth and Public Education* (Cambridge: Harvard University Press, Belknap Press, 1970); Francis Keppel, *The Necessary Revolution in American Education* (New York: Harper & Row, 1966); Arthur E. Wise, *Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity* (Chicago: University of Chicago Press, 1968); John Silard and Sharon White, "Intrastate Inequalities in Public Education: The Case for Judicial Relief under the Equal Protection Clause," *Wisconsin Law Review* 1970, no. 1: 7–34.

4. Silard and White, "Intrastate Inequalities," 8–9.

5. A brief but useful history of various federal funding programs for public education appears in Richard A. Rossmiller, "Federal Funds: A Shifting Balance?" in *The Impacts of Litigation and Legislation on Public School Finance: Adequacy, Equity, and Excellence*, ed. Julie K. Underwood and Deborah A. Verstegen (New York: Ballinger Publishing Co., 1990), 3–25; *see also* Title I of the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27, 27–36 (1965), *codified as* 20 U.S.C. §§ 236–41 (1976), *now appearing as* ch. 1 of the Education Consolidation & Improvement Act of 1981, 20 U.S.C. § 3801 (1982).

6. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 7–8 (1973).

7. For example, a school district with $200 million in taxable property would generate $1 million a year in school revenues by taxing itself at the rate of $ .50 per $100 of assessable real property. To generate the same total revenue, a district with only $50 million in taxable property would have to tax itself at four times that rate—$2.00 per $100 of property.

8. Serrano v. Priest, 487 P.2d 1241 (Cal. 1971).

9. *Rodriguez*, 411 U.S. at 1.

10. *Rodriguez*, 411 U.S. at 33–34.

11. *Rodriguez*, 411 U.S. at 36–37.

12. Molly McUsic, "The Use of Education Clauses in Litigation," *Harvard Journal of Legislation* 28 (1991): 309–11; Gerald Ratner, "A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills," *Texas Law Review* 63 (1985): 787, 814 n. 138.

13. Robinson v. Cahill (I), 303 A.2d 273 (N.J. 1973).

14. McUsic recently suggested why taxpayers may support locally imposed taxes for education more willingly than they support taxes for education imposed statewide. *See* Molly S. McUsic, "The Ghost of Lochner: Modern Takings Doctrine and Its Impact on Economic Legislation," *Boston University Law Review* 76 (1997): 605–67.

15. *See, e.g.*, *Leandro*, 346 N.C. at 349–50, 488 S.E.2d at 256.

16. *See* Julie K. Underwood and William E. Sparkman, "School Finance Litigation: A New Wave of Reform," *Harvard Journal of Law and Public Policy* 14 (1991): 517–74.

17. Abbott v. Burke, 575 A.2d 359 (N.J. 1990).

18. Rose v. Council for Better Education, Inc., 790 S.W.2d 205 (Ky. 1989).

19. N.C. Const. of 1776, art. XLI.

20. Charles D. Liner, "Financing of North Carolina's Public Schools," *School Law Bulletin* 18 (Summer 1987): 30–31.

21. Liner, "Financing," 31.

22. William Plemmons, The Development of State Administration of Public Education in North Carolina (1943) (unpublished Ph.D. dissertation, The University of North Carolina at Chapel Hill), 9–10.

23. The funding covered operating expenses for a six-month school term. Capital expenditures were not covered. 1931 N.C. Pub. Laws ch. 430; 1933 N.C. Pub. Laws ch. 562.

24. State Superintendent of Public Instruction, *Biennial Report, 1932–34* (Raleigh, N.C.), 15–16.

25. N.C. Gen. Stat. [hereinafter G.S.] § 115C-408(b).

26. G.S. 115C-81(a1), (b).

27. North Carolina State Board of Education, *The Basic Education Program for North Carolina's Public Schools* (Raleigh, N.C.: Feb. 1988).

28. The state has a Critical School Facility Needs Fund and a Public School Building Capital Fund under G.S. 115C-489.1 through -489.2 and G.S. 115C-546.1 through -546.2.

29. G.S. 115C-408(b).

30. Amended Complaint, *Leandro v. State of North Carolina*, No. 94 CVS 520 (Super. Ct., Halifax Co. filed Sept. 28, 1994) [hereinafter *Leandro* Complaint], at 15, ¶ 56; 16, ¶ 57. Liner has shown that North Carolina spent more than $3 billion on school construction and other capital needs between 1981 and 1993, so local districts clearly were not abandoned by the state. Nonetheless, the 1993 estimate of total school construction needs stood at $5.6 billion. Charles D. Liner, "School Construction Spending in North Carolina," *School Law Bulletin* 26 (Winter 1995): 1–15.

31. North Carolina Department of Public Instruction, *North Carolina Public School Statistical Profile 1990* (Raleigh, N.C.), 1–41.

32. Supplemental Funding Act, 1991 N.C. Sess. Laws ch. 689, § 201.2(a).

33. *Leandro* Complaint at 14.

34. *See* Atlantic Center for Research in Education, *No Other Choice: Inequities in School Funding in North Carolina* (Raleigh, N.C.: Grassroots Press, 1988); North Carolina Civil Liberties Union, *A Right Denied: Educational Inequality in North Carolina's Schools* (New York: American Civil Liberties Union, 1991); Public School Forum of North Carolina, *Local School Finance in North Carolina: A Status Report* (Raleigh, N.C.: the Forum, 1990); Ran Coble, "Presentation to the 1990 Summer Institute for North Carolina School Administrators" (Chapel Hill, N.C.: July 17, 1990); Liner, "Financing"; *see also* "Rich School, Poor School," *North Carolina Independent*, March 26, 1987, 11–15.

35. "Rich School, Poor School," 13.

36. "Rich School, Poor School," 13.

37. *Leandro* Complaint at 2–5.

38. *Leandro* Complaint at 17.

39. *Leandro* Complaint at 18.

40. *Leandro* Complaint at 19.

41. *Leandro* Complaint at 20.

42. For example, the plaintiffs noted as follows:

> [I]n the Halifax County system in 1993, the percentages of secondary school students failing to demonstrate proficiency in end-of-course tests were: for physical science, 79 percent; for biology, 90 percent; for chemistry, 86 percent; for physics, 79 percent; for algebra I, 88 percent; for geometry, 82 percent; for algebra II, 90 percent; for economic, legal, and political systems, 83 percent; for U.S. history, 89 percent; and [for] English I, 82 percent.

Leandro Complaint at 21–22.

43. For example, the plaintiffs reported the following:

> [T]he percentage of U.N.C. freshmen for all N.C. public schools recommended for remedial English was 8.09 percent. The number for Halifax [School District] freshmen was 21.9 percent; for Cumberland, 16.9 percent; and for Hoke, 23.3 percent.

Leandro Complaint at 23.

44. Britt v. North Carolina State Board of Education, 86 N.C. App. 282, 357 S.E.2d 432, *disc. rev. denied and appeal dismissed*, 320 N.C. 790, 361 S.E.2d 71 (1987).

45. *Britt*, 86 N.C. App. at 289, 357 S.E.2d at 436.

46. Plaintiff-Intervenors' Complaint, *Leandro v. State of North Carolina*, No. 94 CVS 520 (Super. Ct., Halifax Co. filed Oct. 17, 1994).

47. *Leandro*, 122 N.C. App. 1, 468 S.E.2d 543 (1996).

48. *Leandro*, 346 N.C. at 349, 488 S.E.2d at 256.

49. *Rose*, 790 S.W.2d 186, 212 (Ky. 1989). The *Rose* court held that the "efficient" system of common schools guaranteed by the Kentucky constitution included the following:

> (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

50. *Leandro*, 346 N.C. at 347, 488 S.E.2d at 255.

51. *Leandro*, 346 N.C. at 353, 488 S.E.2d at 258.

52. *Leandro*, 346 N.C. at 357, 488 S.E.2d at 261.

53. *Leandro*, 346 N.C. at 357, 488 S.E.2d at 261.

54. *Leandro*, 346 N.C. at 359–60, 488 S.E.2d at 262.

55. In essence the *Leandro* majority reasoned as follows: Article IX, Section 2(2), of the state constitution expressly declares that the General Assembly "may assign to units of local government such responsibility for the financial support of the free public schools as they may deem appropriate." Further, it "expressly provides that local governments may add to or supplement their school programs as much as they wish." So the constitution's framers must have contemplated that different districts would spend different amounts on public education, leading to substantial disparities. Such disparities are therefore constitutionally permissible. *Leandro*, 346 N.C. at 349, 488 S.E.2d at 256.

56. *Leandro*, 346 N.C. at 355, 488 S.E.2d at 259.

57. *Leandro*, 346 N.C. at 355, 488 S.E.2d at 259.

58. In fact, the ABC's of Education Act and the new Excellent Schools Act, which impose sanctions on principals and teachers who do not "meet the minimum growth standards," including attainment of goals for raising students' test scores, might become crucial levers to lift sagging scores in some districts. *See* G.S. 115C-105.20 through -105.40, -325q.

In *Leandro*, however, the supreme court itself asked whether output standards were appropriate in light of the national debate over the "value of standardized tests." *Leandro*, 346 N.C. at 355, 488 S.E.2d at 260. In addition, a large body of scholarly literature suggests that factors beyond the control of school authorities, such as the socioeconomic background of schoolchildren and their families, may have a major effect on student performance. *See, e.g.*, James S. Coleman et al., *Equality of Educational Opportunity* (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1966); Frederick Mosteller and Daniel P. Moynihan, eds., *On Equality of Educational Opportunity* (New York: Vintage Books, 1972).

59. *Leandro*, 346 N.C. at 355, 488 S.E.2d at 260.

60. As noted earlier, this is the point on which Justice Orr disagrees with the majority. He reads the "equal opportunities" language of Article IX, Section 2(1), of the North Carolina Constitution as obligating the state to provide "substantial equality" in educational opportunities for every child in every school district. *Leandro*, 346 N.C. at 361, 488 S.E.2d at 263.

61. *Leandro*, 346 N.C. at 356, 488 S.E.2d at 260, quoting William H. Clune, "New Answers to Hard Questions Posed by *Rodriguez*," *Connecticut Law Review* 24 (1992): 726.

62. *Leandro*, 346 N.C. at 357, 488 S.E.2d at 260.

63. Defendants' Motion to Dismiss, *Leandro*, No. 95 CVS 1158 (Super. Ct., Wake Co. filed Oct. 10, 1997), at 1.

64. Order, *Leandro*, No. 95 CVS 1158 (Super. Ct., Wake Co. filed Nov. 24, 1997).

Visitation Rights of Grandparents in North Carolina

S. Exum

Cheryl Daniels Howell

The relationship between Molly and her parents has been strained since the day she decided to marry Joe. Molly's parents do not agree with Joe's outlook on life, particularly his attitude that a steady job is much more trouble than it is worth. After Molly and Joe were married, they had little contact with Molly's parents until their children were born. Then Molly's parents, who lived nearby, spent a lot of time with the children because Molly and Joe could not afford child care and because Molly's parents enjoyed looking after the children.

As the children grew older, however, arguments between Molly's parents and Joe became increasingly frequent. Joe thinks that children should rarely, if ever, be disciplined. Molly's parents, on the other hand, believe that sparing the rod will spoil the child. After one particularly unpleasant disagreement about discipline, which took place in front of the children, Molly told her parents that they would no longer be allowed to spend time with the children.

Both the grandparents and the children are upset about Molly's decision, but Molly sincerely believes that continuing to expose the children to the conflict between their father and her parents would be harmful to them. The grandparents want to ask the court to force Molly and Joe to allow them to see the children.

Should a court have the legal authority to order Molly and Joe to allow the children to spend time with the grandparents? Or should the law protect Molly and Joe's authority to decide with whom their children spend time, free from governmental (that is, judicial) interference? If a court hears the grandparents' suit, what weight must it give to the wishes of the parents?

This article reviews the current national trend toward giving grandparents expanded legal rights of visitation with minor grandchildren, and it examines the present state of the law on this issue in North Carolina. The article summarizes the protected legal status of parents in North Carolina when a nonparent seeks custody of or visitation with their minor children, and then discusses the exception to this status created by the current North Carolina statutes on visitation by grandparents. Finally, the article reviews a recent

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recommendation from a legislative study commission that the rights of grandparents in North Carolina be expanded.

National Trend in Grandparents' Rights

Until the 1970s state legislatures had never addressed the issue of grandparents' rights to visit minor grandchildren. Further, courts refused to order parents[4] to allow visitation. As one North Carolina court explained,

> The fact that . . . grandparents love [a] child is no cause to give them a *legally enforceable right* to have the child visit with them one weekend a month, or any other time. It is surely to be desired that [a] child will be able to enjoy the love and affection of her grandparents and that they in turn will be able to enjoy the love and affection of the child. But this desire does not justify interfering with the proper and normal parent-child relationship.[5]

The reasons for this judicial policy have been summarized as follows:

> "(1) Ordinarily, the parent's obligation to allow the grandparents visitation is a moral one, not a legal one, (2) judicial enforcement of a grandparent's visitation rights would divide parental authority, thereby hindering it, (3) the best interests of the child are not furthered by forcing the child into the center of conflict between the parent and the grandparents, (4) where there is conflict between the grandparent and parent, the parent alone should be the judge without having to account to any one for his motives in denying visitation, and (5) the ties of nature are the only efficacious means of restoring normal family relations and not the coercive measures which follow judicial intervention."[6]

However, in the 1970s and 1980s, legislatures in all fifty states enacted statutes that in limited circumstances allow grandparents to petition for court-ordered visitation.[7] In 1983 Congress responded to this national trend by calling for the adoption of a uniform state act granting visitation rights to grandparents.[8] To date, however, no such act has been created.

Commentators vary in their opinions about the reasons for the public interest in expanding grandparents' legal rights. Most point to the changing nature of American families over the past twenty years, largely due to more children living in single-parent homes, more stepfamilies, and the growing estrangement of extended families. In the face of such trends, some commentators argue that the public views governmental support of relationships between grandparents and grandchildren as an effective method of promoting traditional family values and providing additional, stable adult support for children.[9] Other commentators contend that grandparent visitation statutes are primarily the result of the growing number of grandparents in the country and their increased political activity on both a state and a national level.[10]

Grandparent visitation statutes differ significantly from state to state. However, all of them allow courts to impose visitation on objecting parents only when a judge determines that the visitation is in the grandchild's best interest. Further, most allow courts to order visitation only when there has been a disruption in the nuclear family—through divorce, separation, or death, for example—or when visitation is necessary to protect a child from physical or emotional harm.[11] So, in the example introduced at the beginning of this article, in most states Molly's parents would not have the right to seek court-ordered visitation because Molly and Joe are an intact family unit. However, if Molly died or she and Joe divorced, in most states Molly's parents could seek court-ordered visitation.[12]

In the late 1980s, grandparent organizations and others began to lobby state legislatures across the country to expand grandparents' rights.[13] To date, at least seventeen states have enacted statutes that contain no restriction on the circumstances under which grandparents are eligible for visitation, apparently allowing it even when parents are an intact family unit.[14] Such statutes would allow Molly's parents to seek a court review of Molly's decision, even though Molly and Joe are married, live together, and agree that the grandparents should not spend time with the children. A court in a state with this kind of statute could order Molly and Joe to allow visitation if, in the judge's opinion, such visitation would promote the grandchildren's best interest.

Courts in states with expanded statutes are struggling to balance parents' constitutionally protected rights to control with whom their children associate, against society's interest in encouraging and supporting the relationship between grandparents and grandchildren. Some state appellate courts have found the expanded statutes to be an unconstitutional infringement on parents' rights.[15] Other state appellate courts, however, have found the intrusion into the intact family unit to be minimal and justified by the public interest in promoting extended familial relationships.[16]

Parental Rights in North Carolina

Broad language in the North Carolina General Statutes seems to allow any person to petition a North Carolina court for custody of or visitation with a minor child on making an allegation that such custody or visitation is in the child's best interest. Section 50-13.1(a) of the North Carolina General Statutes (G.S.) states that "[a]ny parent, relative, or other person, agency, organization or institution claiming the right to custody of [or visitation with][14] a minor child may institute an action or proceeding for the custody [or visitation] of such child, as hereinafter provided," and G.S. 50-13.2 mandates that courts enter such custody and visitation orders as "will best promote the interest and welfare of the child." Similarly, numerous North Carolina appellate court opinions have held that, in awarding custody or visitation rights, judges have broad discretion to determine the environment that will "best encourage full development of a child's physical, mental, emotional, moral and spiritual faculties."[15]

However, North Carolina law also recognizes that "parents have the natural and legal right to the custody, companionship, control and bringing up of their . . . children, and the same being a natural and substantive right may not be interfered with by action of courts"[16] in the absence of "substantial and sufficient reasons."[17] According to the North Carolina Supreme Court, both the Constitution of the United States and the Constitution of North Carolina protect a parent's right to the companionship, the custody, the care, and the control of his or her child, including the right to control with whom the child associates.[18] This parental right is the counterpart to the responsibilities that society places on parents for the care of their children and is based on a presumption that parents will act in their children's best interest.[19]

The North Carolina Supreme Court recently clarified the relationship between these apparently conflicting legal principles. In *Price v. Howard*,[20] the court held that, because of the constitutional protections afforded to parents, persons other than a child's parents are not entitled to court-ordered custody of or visitation with a minor child unless the parents are unfit, have neglected the child's welfare, or have otherwise "acted in a manner inconsistent with the constitutionally-protected status of parents."[21] According to the court in *Price*, proof of such parental unfitness or misconduct establishes the substantial and sufficient reasons constitutionally necessary to justify court interference with parental rights. Without such proof, however, courts may not substitute the discretion of a judge for that of a parent regarding with whom a child should reside or visit.[22]

North Carolina law, however, does not clearly define when a parent is unfit or what parental actions represent conduct inconsistent with the constitutionally protected status of parents. The supreme court stated in *Price* that judges must make such determinations case by case.[23] Although proof of a parent's physical or emotional abuse, abandonment, or inability to provide necessary care for a child is clearly sufficient cause to waive the parent's constitutional protections, less extreme behavior must be considered in light of all other facts in a particular case. For example, in *Price* the court held that the mother may have waived her protected status by allowing her child to live with a third party for an extended period without making clear that she intended the living arrangement to be temporary.[24]

Proof of parental unfitness or misconduct allows a grandparent or another nonparent to petition the court for custody or visitation.[25] However, such proof does not give the petitioning party the *right* to custody or visitation. Rather, once proof is established, a judge may determine whether custody or visitation will serve the child's best interest.[26]

North Carolina appellate courts have held that parents' protected status allows them to deny a grandparent access to a grandchild.[27] In Molly and Joe's case, there has been no allegation that they are unfit, have neglected the children, or have otherwise acted in a manner inconsistent with their protected status. Therefore Molly's parents would not be entitled to custody of or visitation with the grandchildren.

Significantly, North Carolina courts also have held that single parents enjoy the same protected status as married parents. Accordingly the appellate courts have denied grandparents visitation rights when there was no allegation that a single parent had acted in a manner inconsistent with his or her protected status.[28]

North Carolina's Grandparent Visitation Statutes

The North Carolina Supreme Court has recognized that the state's grandparent visitation statutes create exceptions to the protected status of parents.[29] North Carolina has three such statutes: G.S. 50-13.2(b1) and G.S. 50-13.5(j), enacted in 1981,[30] and G.S. 50-13.2A, enacted in 1985.[31] Like those in most

other states, North Carolina's statutes make grandparents eligible for visitation only when there has been a disruption of the nuclear family.[32]

G.S. 50-13.2(b1) allows a court to order visitation rights for grandparents as part of any other child custody order, in such cases "as the court, in its discretion, deems appropriate." The statute does not allow grandparents to initiate a court action for custody or visitation, though. Rather, it allows them to intervene in a pending custody case between parents to ask for visitation rights.[33] So, if Molly and Joe separated and one or both of them asked a court to decide which parent should have custody of the children, Molly's parents could intervene.

G.S. 50-13.5(j) allows grandparents to ask for custody or visitation rights at any time after a court has made a custody determination. So, if Molly's parents decided not to intervene in the initial custody case but then found that they needed court assistance to visit with the grandchildren, they could petition the court to reopen the case. If the court did so, it could consider entering an additional order for grandparent custody or visitation. However, because the order settling custody between Molly and Joe would be considered final, the court could not reopen the case unless Molly's parents could show that there had been a substantial change of circumstances affecting the welfare of the children since the original order was entered.[34]

Finally, G.S. 50-13.2A allows grandparents to petition for access after a child has been adopted by a stepparent or another relative if the grandparents can show that "a substantial relationship exists between the grandparent and child." Generally, adoption of a child severs all legal ties between the child and the biological family. All three grandparent statutes specify that "[u]nder no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights." However, G.S. 50-13.2A creates an exception when only one parent has given up parental rights, that parent's role has been legally assumed by a stepparent or another relative, and the grandparents have enjoyed a substantial relationship with the child in the past.[35] Unlike the situation in which both parents have given up parental rights and all biological family ties have been severed, this situation involves only one parent giving up his or her rights. Thus biological ties remain, and the state retains an interest in protecting a child's extended familial relationships.[36]

G.S. 50-13.2A would allow Molly's or Joe's parents to petition for court-ordered visitation if either Molly or Joe remarried and one of the new spouses adopted the children. This would be true even if there had never been a custody action between Molly and Joe.[37] Again, the court could order visitation if the judge determined that it would be in the children's best interest.

Interestingly the North Carolina statutes do not specifically provide for visitation when one parent dies, and North Carolina appellate courts have not directly addressed the issue.[38] So, for example, it is uncertain whether Molly's parents would have a right to visitation if Molly died and Joe had sole custody of the children.[39]

As noted earlier, the three North Carolina statutes give grandparents the legal *right to petition a court* for visitation rights;[40] they do not give grandparents a legal *right to court-ordered visitation*. The focus is not on a grandparent's entitlement to contact with grandchildren but on protection of a child's interest in the perceived benefits of extended familial relationships. Visitation may not be granted pursuant to these statutes unless grandparents show a judge that (1) they are fit and proper persons to visit with the child[41] and (2) the visitation will serve the child's best interest.

Trial judges have much discretion in determining whether grandparent visitation is in a child's best interest. The law requires that they weigh all the facts to decide whether visitation will promote the child's physical, emotional, and psychological well-being.[42] A judge may consider the wishes of the grandchild if he or she is of suitable age; however, the child's wishes are not controlling.[43] Except in cases involving adoption by a stepparent or another relative,[44] a grandparent in North Carolina need not prove a substantial existing relationship with a grandchild before the court may order visitation. However, such a relationship will be a significant factor in a determination of the child's best interest.

North Carolina appellate courts have not yet addressed the question of how to afford grandparents the visitation rights allowed by these three statutes while recognizing and protecting the constitutional rights of parents discussed earlier. However, the protected status of parents seems to require that, in making a best-interest determination in a grandparent visitation case, judges presume that parents act in their children's best interest.[45] Applying such a presumption, judges would probably give considerable weight to the parents' wishes.[46]

Recommendation of the Study Commission

In 1995 the North Carolina General Assembly authorized the Legislative Research Commission to study whether grandparents should be allowed to petition for visitation against parents living as an intact family unit.[47] In its report to the General Assembly in January 1997, the Legislative Study Commission on Grandparent Visitation recommended expansion of the rights of grandparents. Finding that "relationships between grandparents and grandchildren are valuable and should be encouraged," the commission proposed legislation that would allow grandparents to petition at any time for visitation by alleging only that the visitation would be in the grandchild's best interest.[48]

The commission's report acknowledges that appellate courts in other states have found such legislation to be an unconstitutional infringement on parents' rights. For that reason the proposed legislation contains added protections for parents living as an intact family. It would allow a court to order visitation over the objection of parents who are married and living together only when

> (1) either there is a preexisting relationship between the grandparent and grandchild that has engendered a bond, or . . . the grandparent has made a substantial effort to establish a bond, such that visitation is in the best interest of the grandchild, and (2) that the amount and circumstances of the visitation awarded will not substantially interfere with the right of the parents to exercise parental authority.[49]

Further, when the parents are married, live together, and agree that the grandparents should not visit the child, there is a presumption that grandparent visitation is not in the child's best interest. Grandparents in such cases would have an increased burden of proving with "clear and convincing evidence" that visitation is necessary to protect the child's best interest.[50]

Like the present law, the proposed statute focuses on protecting a child's interest rather than on establishing a grandparent's right to visit the child. Nonetheless, the proposed statute would likely be challenged because of its effect on all parents' authority to decide with whom their children spend time. It directly contradicts the currently recognized constitutional rights of parents because it does not require that parents first be shown to be unfit or to have engaged in misconduct.[51] Instead, it substitutes the discretion of a judge for that of the child's parents regarding the propriety of contact with grandparents.

Courts in other states have reached differing conclusions about whether the substitution of a judge's discretion for that of the parents under these circumstances violates the Constitution of the United States. Most have agreed that (1) parents have a constitutionally protected fundamental right to rear children free from unwarranted governmental interference; (2) in general, relationships between grandparents and grandchildren are beneficial to children and should be encouraged; and (3) to protect a child's health or safety, a state may enact laws that interfere with parental discretion. However, courts have significantly disagreed over whether a state may interfere with parental rights to promote a relationship that may benefit a child but is not necessary to protect the child's health or safety.[52]

Generally speaking, among the courts that have found expanded statutes unconstitutional, the reasoning is that, to pass a law limiting parental discretion, a state must have a compelling interest to protect.[53] Whereas laws such as those prohibiting parents from physically or emotionally harming a child, requiring children to wear restraints while riding in a car, and requiring children to attend school clearly promote the compelling state interest of protecting the health and safety of children, no such interest is served when a law merely benefits children. According to these courts, allowing a judge to order grandparent visitation over the objection of a child's parents in an intact family is analogous to allowing a court to take a child from poor parents and place him or her with more affluent caregivers. In either situation a judge could reasonably determine that the child would benefit from the court's order.[54]

The courts that have found the statutes constitutional reason that court-ordered visitation is not a significant intrusion into the fundamental rights of parents, so states are not required to demonstrate a compelling interest.[55] Concluding that visitation privileges intrude far less on parental autonomy than, for example, orders involving custody or termination of parental rights, these courts have held that states can justify imposing visitation over the objection of parents by simply showing a "legitimate state purpose" accomplished by the grandparent visitation statutes. Promoting the generally beneficial relationship between grandparents and grandchildren is a legitimate state goal as long as the statute requires a judge to determine that visitation in an individual case will serve the child's best interest.

Generally the Supreme Court of the United States

resolves conflicts between states on issues of constitutional law. However, it has traditionally deferred to state courts on issues of child custody and visitation.[56] Therefore, if the North Carolina General Assembly enacts legislation allowing grandparent visitation in intact families, the North Carolina Supreme Court will likely make the conclusive determination of the law's constitutionality.

Conclusion

Grandparents in North Carolina currently have very limited rights with regard to custody of and visitation with grandchildren. The recent recommendation of the Legislative Study Commission on Grandparent Visitation reflects public interest in expanding these rights. In light of the North Carolina Supreme Court's opinions reaffirming parents' rights under both the state and the federal constitution, an expanded grandparent visitation statute almost certainly would face a constitutional challenge.

Notes

1. Throughout this article the term "parent" includes both a biological and an adoptive parent.

2. Thomas v. Pickard, 18 N.C. App. 1, 5, 195 S.E.2d 339, 342 (1973).

3. Catherine Bostock, "Does the Expansion of Grandparent Visitation Rights Promote the Best Interests of the Child? A Survey of Grandparent Visitation Laws in the Fifty States," *Columbia Journal of Law and Social Problems* 27 (1994): 326, quoting Henry J. Foster and Doris J. Freed, "Grandparent Visitation: Vagaries and Vicissitudes," *Journal of Divorce* 5 (1982): 81–82. The authors note that most jurisdictions recognized equitable exceptions to this rule and would, for example, order visitation when the child had previously resided with the grandparent for a long period or when the parent had been shown to be unfit.

4. *See* Bostock, "Survey," 319, n. 3, for a listing of all fifty statutes.

5. S. Con. Res. 40, 98th Cong., 1st Sess., 129 *Congressional Record* 13,487 (1983) (enacted) ("A concurrent resolution expressing the sense of Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation or death) of the marriage of such grandchildren's parents, and for other purposes"). There have been other occasions on which Congress has expressed support for a uniform act addressing visitation by grandparents. *See* Anne Marie Jackson, "The Coming of Age of Grandparent Visitation Rights," *American University Law Review* 43 (1994): 566, for a discussion of congressional action on this issue and a strong recommendation that a uniform act be enacted, 566 nn. 71–72.

6. *See, e.g.*, Jackson, "The Coming of Age"; Note, "Constitutional Questions Regarding Grandparent Visitation and Due Process Standards," *Missouri Law Review* 60 (1995): 195–219.

7. *See, e.g.*, Bostock, "Survey"; Edward M. Burns, "Grandparent Visitation Rights: Is It Time for the Pendulum to Fall?" *Family Law Quarterly* 25 (Spring 1991): 59–81.

8. At least seventeen state statutes clearly allow visitation when there has been no disruption in the nuclear family. Those statutes are identified in note 11. Statutes in the rest of the states require some type of disruption before grandparents may ask a court to force visitation on objecting parents. *See* Bostock, "Survey," 333, n. 75 (stating that disruption may be the death of a parent, the separation or the divorce of the parents, a custody or visitation suit regarding the child, a child born out of wedlock, or the adoption, the dependency, or the delinquency of the child).

9. Most states also would allow Joe's parents to visit if Molly died. However, according to Bostock, "Survey," 342, at least fourteen states allow grandparents to visit only when their own child has died. Those states are California, Cal. Fam. Code § 3102 (West 1994); Colorado, Colo. Rev. Stat. Ann. § 19-1-117(1)(c) (West 1990 & Supp. 1993); Georgia, Ga. Code Ann. § 19-7-3(a) (Supp. 1993); Iowa, Iowa Code Ann. § 598.35(3) (West 1981 & Supp. 1994); Louisiana, La. Rev. Stat. Ann. § 9:344 (West 1993); Michigan, Mich. Comp. Laws Ann. § 722.27(b) (West 1993); Minnesota, Minn. Stat. Ann. § 257.022 (West 1992 & Supp. 1994); Mississippi, Miss. Code Ann. § 93-16-3 (Supp. 1993); Ohio, Ohio Rev. Code Ann. § 3109.11 (Baldwin 1992); Pennsylvania, 23 Pa. Cons. Stat. Ann. §§ 5311–5314 (1991 & Supp. 1993); Rhode Island, R.I. Gen. Laws § 15-5-24.1 (1988); Texas, Tex. Fam. Code Ann. § 14.03(e)(1), (5) (West 1986 & Supp. 1994); West Virginia, W. Va. Code § 48-2B-1 through -2B-9 (1992 & Supp. 1993); and Wyoming, Wyo. Stat. § 20-2-113(c) (1987 & Supp. 1993).

Interestingly, North Carolina law is not clear about the right of a grandparent to visitation when a parent has died. See the text accompanying notes 38–39.

10. *See* Bostock, "Survey," 341–48.

11. Conn. Gen. Stat. Ann. § 46B-59 (West 1986); Fla. Stat. Ann. § 752.01(1)(e) (West 1986 & Supp. 1994) (statute held unconstitutional; see note 53); Idaho Code § 32-1008 (1983); Kan. Stat. Ann. § 38-129 (1986); Ky. Rev. Stat. Ann. § 405.021 (Bobbs-Merrill 1984); Md. Code Ann., Fam. Law § 9-102 (1984 & Supp. 1993); Miss. Code Ann. § 93-16-3(2) (Supp. 1993); Mo. Ann. Stat. § 452.402(1)(3) (Vernon 1986 & Supp. 1993); Mont. Code Ann. § 40-9-102 (1993); N.J. Stat. Ann. § 9:2-7.1 (West 1993); N.Y. Dom. Rel. Law § 72 (McKinney 1986 & Supp. 1994); N.D. Cent. Code § 14-09-05.1 (1991 & Supp. 1993); Okla. Stat. Ann. tit. 10, § 5 (A)(1) (West 1987 & Supp. 1994); Or. Rev. Stat. § 109.121(1)(a) (1993); R.I. Gen. Laws § 15-5-24.3 (1988 & Supp. 1993); Tenn. Code Ann. § 36-6-301 (1991) (statute held unconstitutional; see note 53); Wis. Stat. Ann. § 767.245 (West 1993).

12. See the text accompanying notes 53–54.

13. See the text accompanying note 55.

14. G.S. 50-13.1(a) was amended in 1989 to specify that "[u]nless a contrary intent is clear, the word custody shall be deemed to include custody or visitation or both." 1989 N.C. Sess. Laws ch. 547, § 2.

15. *See In re* Pearl, 305 N.C. 640, 290 S.E.2d 664 (1982); Tucker v. Tucker, 288 N.C. 81, 216 S.E.2d 1 (1975). Before 1994 the North Carolina Court of Appeals issued several opinions indicating that these statutes should be read literally to allow any person to bring an action for custody of or visitation with any child by simply making the allegation that the custody or the visitation would be in the child's best interest. *See, e.g., In re* Rooker, 43 N.C. App. 397, 258 S.E.2d 828 (1979); Ray v. Ray, 103 N.C. App. 790, 407 S.E.2d 592 (1991). These cases were, in effect although not explicitly, overruled by Petersen v. Rogers, 337 N.C. 397, 445 S.E.2d 901 (1994), and Price v. Howard, 346 N.C. 68, 484 S.E.2d 528 (1997), discussed in the text accompanying notes 18–26.

16. Spitzer v. Lewark, 259 N.C. 50, 53–54, 129 S.E.2d 620, 623 (1963).

17. *Spitzer*, 259 N.C. at 54, 129 S.E.2d at 623. *See also* James v. Pretlow, 242 N.C. 102, 105, 86 S.E.2d 759, 761 (1955) (holding that reason to interfere with parental rights must be "real, cogent, weighty, strong, powerful, serious or grave").

18. *Petersen*, 337 N.C. at 406, 445 S.E.2d at 905–06 (1994); McIntyre v. McIntyre, 341 N.C. 629, 461 S.E.2d 745 (1995); *Price*, 346 N.C. at 68, 484 S.E.2d at 528. *Price* contains a particularly extensive discussion of the state and federal constitutional rights of parents.

19. *Price*, 346 N.C. at 79, 484 S.E.2d at 534.

20. *Price*, 346 N.C. at 68, 484 S.E.2d at 528. *See also Petersen*, 341 N.C. at 397, 445 S.E.2d at 901.

21. *Price*, 346 N.C. at 79, 484 S.E.2d at 534; *Petersen*, 341 N.C. at 406, 461 S.E.2d at 905.

22. *Price*, 346 N.C. at 79, 484 S.E.2d at 534. The court held that a judge may not make a determination that third-party custody or visitation is or is not in a child's best interest until the parents waive their constitutionally protected status by being unfit or being shown to have acted in a manner inconsistent with their protected status.

23. *Price*, 346 N.C. at 79, 484 S.E.2d at 534–35.

24. The court in *Price* acknowledged that there may be circumstances in which a parent has compelling reasons to leave a child in the care of another person. As an example, the court pointed to the situation in which a parent becomes ill and another person cares for the child during the parent's illness. Under such circumstances, according to the court, a parent would not lose his or her protected status. *Price*, 346 N.C. at 79–83, 484 S.E.2d at 535–37.

25. *See* Sharp v. Sharp, 124 N.C. App. 357, 477 S.E.2d 258 (1996) (holding that grandparents have right to seek custody when they allege that parents are unfit).

26. *Price*, 346 N.C. at 79, 484 S.E.2d at 534. See the text accompanying notes 37–41 for a discussion of the best-interest determination made by judges.

27. *Sharp*, 124 N.C. App. at 357, 477 S.E.2d at 258; *McIntyre*, 341 N.C. at 629, 461 S.E.2d at 745.

28. *Sharp*, 124 N.C. at 357, 477 S.E.2d at 258; Fisher v. Fisher, 124 N.C. App. 442, 477 S.E.2d 251 (1996).

29. *McIntyre*, 341 N.C. at 629, 461 S.E.2d at 745. The court in *McIntyre* did not address the constitutionality of the North Carolina grandparent statutes.

30. 1981 N.C. Sess. Laws ch. 735.

31. 1985 N.C. Sess. Laws ch. 575.

32. *See also McIntyre*, 341 N.C. at 629, 461 S.E.2d at 745 (holding that grandparent visitation rights are limited to those provided by these three statutes).

33. Moore v. Moore, 89 N.C. App. 351, 365 S.E.2d 662 (1988); Thomas v. Pickard, 18 N.C. App. 1, 195 S.E.2d 339 (1973).

34. G.S. 50-13.7. The "substantial change of circumstances" test may be met by showing that the grandparents were able to visit the children before the earlier custody order but have since been denied access. *See* Hedrick v. Hedrick, 90 N.C. App. 151, 368 S.E.2d 14 (1988).

35. G.S. 50-13.2A specifies that, in cases of adoption by a stepparent or another relative, grandparents may institute visitation actions. The other two grandparent statutes also apply to grandparents of children adopted by stepparents or other relatives. *See* G.S. 50-13.2(b1), -13.5(j).

36. *Hedrick*, 90 N.C. App. at 158, 368 S.E.2d at 19.

37. Molly's parents could actually intervene in the adoption proceeding to request a visitation order. *Hedrick*, 90 N.C. App. at 158, 368 S.E.2d at 19.

38. *But see McIntyre*, 341 N.C. at 629, 461 S.E.2d at 745 [stating that court has jurisdiction to determine custody when "the parent is unfit, has abandoned or neglected the child, *or has died*" (emphasis added)].

39. In *McIntyre*, 341 N.C. at 629, 461 S.E.2d at 745, the court held that grandparent visitation rights were limited to those specifically set out in the grandparent visitation statutes. Because the statutes do not mention death of a parent, it is arguable that the doctrine of parental preference bars a grandparent from seeking visitation when one parent has died and the child resides with the remaining parent. *See Fisher*, 124 N.C. App. at 442, 477 S.E.2d at 251; *Sharp*, 124 N.C. App. at 357, 477 S.E.2d at 258 (both holding that parental preference doctrine protects rights of single parents as well as married parents).

40. In some North Carolina counties, grandparents filing a petition for visitation will be required to participate in mediation. G.S. 50-13.1(b) requires that, in cases filed in districts with a mediation program, parties to a dispute involving child custody or visitation meet with a qualified, professional mediator in an attempt to resolve the case without resorting to an adversarial court proceeding. As of January 1997, seventeen of the thirty-nine district court districts in North Carolina had a child custody mediation program. The North Carolina Administrative Office of the Courts expects that all districts will have a mediation program by the year 2000.

41. *Hedrick*, 90 N.C. App. at 154, 368 S.E.2d at 16, citing Montgomery v. Montgomery, 32 N.C. App. 154, 231 S.E.2d 26 (1977).

42. *See* Phelps v. Phelps, 337 N.C. 344, 354–55, 466 S.E.2d 17, 23, *reh'g denied*, 337 N.C. 807, 449 S.E.2d 750 (1994).

43. Reynolds v. Reynolds, 109 N.C. App. 110, 426 S.E.2d 102 (1993); Hinkle v. Hinkle, 266 N.C. 189, 146 S.E.2d 73 (1966).

44. *See* G.S. 50-13.2A and the text accompanying note 35.

45. *In re* Hughes, 254 N.C. 434, 436, 119 S.E.2d 189, 191 (1961), cited with approval in *Price*, 346 N.C. at 68, 484 S.E.2d at 528, and *Petersen*, 337 N.C. at 397, 445 S.E.2d at 901; *In re* Jones, 14 N.C. App. 334, 337–39, 188 S.E.2d 580, 582–83 (1972).

46. In *Petersen*, 337 N.C. at 397, 445 S.E.2d at 901, the supreme court held that, in the absence of a finding that parents are unfit or have neglected their children's welfare, parents have an absolute constitutional right to determine with whom their children associate. The court did not discuss the effect of the grandparent visitation statutes on this parental right. However, *Petersen* and other recent decisions by the supreme court—*see, e.g.*, *Price*, 346 N.C. at 68, 484 S.E.2d at 528, and *McIntyre*, 341 N.C. at 629, 461 S.E.2d at 745—firmly establish that parents have protected status under North Carolina law. This status must be recognized in any best-interest determination made by a trial judge.

47. The study of grandparents' visitation rights by the Legislative Research Commission was authorized by 1995 N.C. Sess. Laws ch. 542, pt. II. The report of the commission (hereinafter Legislative Research Commission Report) was presented to the members of the 1997 General Assembly on January 3, 1997.

48. The legislation proposed by the study commission was introduced during the 1997 session of the North Carolina General Assembly as Senate Bill 44 and House Bill 82. However, neither the Senate nor the House acted on the legislation. The legislation must be reintroduced before it can be considered again.

49. Senate Bill 44 and House Bill 82, both contained in Legislative Research Commission Report.

50. Senate Bill 44 and House Bill 82.

51. See the text accompanying notes 14–28.

52. For an extended analysis of the constitutional issues raised by grandparent visitation statutes, *see* Jackson, "The Coming of Age"; Samuel V. Schoonmaker III, William Narwold, Roberta Hatch, and Karen Goldwaite, "Constitutional Issues Raised by Third-Party Access to Children," *Family Law Quarterly* 25 (Spring 1991): 95–115; Note, "Constitutional Questions."

53. *See, e.g.*, Beagle v. Beagle, 678 So.2d 1271 (Fla. 1996); Brooks v. Parkerson, 454 S.E.2d 769 (Ga. 1995); Hawk v. Hawk, 855 S.W.2d 573 (Tenn. 1993).

54. *See* King v. King, 828 S.W.2d 630, 633–35, *cert. denied*, 506 U.S. 941, 113 S. Ct. 378, 121 L. Ed. 2d 289 (1992), Lambert, J., dissenting.

55. *See, e.g.*, Herndon v. Tuhey, 857 S.W.2d 201 (Mo. 1993); *King*, 828 S.W.2d at 630; Spradling v. Harris, 778 P.2d 365 (Kan. Ct. App. 1989); Francis E. v. Peter E., 125 Misc. 2d 164, 479 N.Y.S.2d 319 (1984).

56. Jackson, "The Coming of Age," 565.

Regional Councils as Linchpins in North Carolina

James H. Svara

When counties along the Catawba River came together to monitor the quality of water in a river they all shared, regional councils helped identify the need and foster the partnership. This happens often in North Carolina. Regional councils are long-established organizations created to foster regionalism in the state. Their purposes, however, are not well understood, in part because their activities and funding have changed over time. In the nineties some citizens and elected officials question their relevance. Also, there is confusion about who "owns" them. To address the increasing array of issues with a regional dimension, North Carolinians should understand the roles that regional councils can and do play. This article describes the findings of a recent review of their activities, budgets, and staffs.[1]

The key finding is that regional councils are making an important—indeed a unique—contribution to dealing with regional issues in North Carolina. They are agents of their constituent city and county governments, but they also serve important purposes for higher levels of government. At their best they are linchpins, connecting local governments and citizen groups in regional initiatives. Some tension arises over their purposes, however, because federal and state governments are their primary sources of funding and most of that funding is not available to support their core functions of promoting regional cooperation and providing services to local governments.

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Background

North Carolina has never explicitly set regional goals or clearly defined the working relationships of organizations that deal with regional affairs. Currently three major actors receive recognition and some funding from the state: (1) regional councils in eighteen designated planning regions, each region identified by a letter of the alphabet—A through R—extending from west to east across the state (see Figure 1); (2) separate economic development partnerships in seven large regions; and (3) the staff in field offices of the Division of Community Assistance.[2] The regional councils originated in 1970, when Governor Robert Scott created a statewide system of multicounty planning agencies. Over the next several years, under the administrations of Scott and his successor, Governor James Holshouser, these agencies gradually became "lead regional organizations" (LROs), responsible for consolidating special-purpose and multipurpose planning activities, encouraging coordination of intergovernmental programs, and, when appropriate, administering some governmental services. In 1978 Governor James B. Hunt conferred on all LROs the powers and the duties of councils of government,[3] even though five were originally organized as economic development commissions. For simplicity this article uses the term "regional council" to refer to all these organizations.

Activities

Regional councils typically perform eight major functions: serving as a regional forum; doing regional planning; providing service and assistance to local

Figure 1
Regional Councils in North Carolina

governments; maintaining data centers; fostering cooperative ventures; promoting environmental protection; encouraging economic development; and administering federal and state programs. Of these, only planning and intergovernmental program administration are directly linked to the purposes for creating regional councils (along with economic development for the five regions started for this purpose). The other functions have emerged as regional councils have worked with member governments. In a sense the wide range of functions also reflects an effort to replace federal funding and authority that ended during the Reagan administration.[4]

The effect of those changes should not be overestimated, however. Regional councils always have had the primary purpose of serving as agents of member governments. They have developed services to respond to those governments and to deal with important regional issues.

Most regional councils do similar work, although the types and the levels of activities vary across the state. As noted earlier, there are no explicit state goals for regions, but extensive interaction among regional councils in North Carolina has fostered a common view of the issues that require attention. The regional council directors meet regularly to share information, and the Joint Regional Forum meets twice a year. The forum consists of an equal number of regional council board members from cities and counties, selected by the North Carolina League of Municipalities and the North Carolina Association of County Commissioners.

The following review of performance data from the 1993–94 fiscal year indicates that the regional councils in North Carolina have a generally positive record in fulfilling their functions.

Serving as a Regional Forum

In the review, serving as a regional forum was the most commonly mentioned activity of regional councils. These organizations are unique in offering officials from all jurisdictions—and occasionally citizens—an opportunity to come together to discover and discuss a wide range of common regional issues. Local officials praise most regional councils for providing such an opportunity.[5] Increased understanding of relationships grows out of the meetings, as well as identification of problems that require attention and programs that should be undertaken within the region.

The review, however, revealed three areas of dissatisfaction regarding this role. First, sometimes discussions occur but no action follows. A related concern is councils' reluctance to take up controversial issues that will offend member governments.

Second, in some regions, local officials think that the boundaries of the state-designated planning region do not correspond with the "real" boundaries. That is, the designated region is not an area of extensive interaction and interdependence. In one case, for example,

it does not include the entire metropolitan area of a multicity complex in its boundaries. In another instance, some of the designated region's counties do not see themselves as regionally linked. In a third case, the regional council boundaries do not match those of other state-designated regions or of "natural" regions. In such circumstances the value of the council as a regional forum is lowered unless officials take steps to include participants from outside the regional council boundaries. As reported later in "Fostering Cooperative Ventures" (see page 24), a number of regional councils are undertaking projects that involve cooperation across regional lines.

Third, the council's role as a forum is weakened if a substantial number of jurisdictions in the region are not members. In 1996 there were 515 local governments that were members of regional councils and 100 that were not because they did not deem membership worthwhile or they were not interested in regional affairs. Thirteen regional councils had participation from all their governments or from governments that represented virtually all the people living in the region. Five of the regions accounted for 60 percent of the nonmembers.

Doing Regional Planning

Regional councils are substantially involved in planning for use of land and water and for creation of infrastructure. In addition, they have a planning role in connection with federal and state programs they administer. Generally they carry out planning for portions of the region or for specific jurisdictions, rather than for the whole region, and the scope of planning is partial rather than comprehensive.[6]

In 1993–94, only four councils (those in Regions B, E, F, and J) were working toward policy goals. Examples were to form a strategy for achieving a comprehensive, interconnected, regionwide water supply (Region E) and to create a guide for how the region should develop (Region J). Five other councils (in Regions A, I, K, N, and Q) had identified priorities for their activities—for example, job creation or regional environmental scanning—or planned to conduct a goal-setting project (the council in Region L). Following are examples of three recent regional planning efforts:

- Regional Vision '95
  In Region B a thirty-member public-private steering committee established goals for education, land use/growth management, infrastructure, environmental protection, and economic development. Task forces for each area involved more than 100 people overall. In 1993 the steering committee adopted an action plan and established an Action Plan Task Force to implement thirteen strategic initiatives.

- Our Region Tomorrow
  The Centralina Council of Governments (in Region F), the Western Piedmont Council of Governments (in Region E), and the Catawba Regional Planning Council in South Carolina identified long-term strategic issues that other regional efforts in greater Charlotte were not addressing. A steering committee of representatives from fourteen counties in North Carolina and four in South Carolina met during fall 1994 to do strategic planning. It chose three areas for study and action planning: preparation of a workforce; planning, funding, and implementation of infrastructure; and cohesiveness and collaborative action among jurisdictions.

- World-Class Region Conference and Greater Triangle Regional Council
  The Triangle J Council of Governments has planned and supported two related projects. In 1992 it sponsored a World-Class Region Conference. First, as part of a planning process, it assembled a wide range of citizens, organizational leaders, and government officials to identify regional goals. The planning culminated in an all-day conference attended by more than 900 persons. The conference endorsed the establishment of an ongoing mechanism for bringing together leaders from the public, private, and university sectors to supplement the work of the Triangle J Council. Subsequently the Triangle J Council provided staff support to a task force that designed the Greater Triangle Regional Council and now has a contract to staff it. The Greater Triangle Regional Council has undertaken initiatives in regional wastewater treatment, solid waste disposal, and identification of a preferred approach to development of the Triangle region.

Planning at the regional level and coalescing of support for regional goals are less well developed functions of regional councils than serving as a forum and fostering cooperative activities. The examples, however,

indicate what is possible in setting goals for a region and beyond.

Providing Service and Assistance

Providing service and assistance to member governments and other organizations has become a major activity of regional councils and one of the most important sources of local government support in many regions. Regional councils served more than 630 governments and other organizations in 1993–94, providing about 77,000 person hours of help, or the equivalent of more than thirty-eight people working full-time. Approximately 500 of the projects involving service and assistance required more than 16 person hours to complete. The total hours of assistance per region varied widely, from a high of 23,000 in one (E) to fewer than 1,000 hours in five (H, J, M, P, and R).

Regional councils conducted more than half of the projects without charge (although these projects represented just over one-third of the hours of assistance). All regional councils provide at least some free assistance, particularly in helping governments seek grants.

In 1993–94, services conducted for a fee produced revenues exceeding $1.7 million. The councils of two regions, E and F, together accounted for almost $1.1 million in fees. Other regions with contract or fee income exceeding $40,000 were B ($106,300), C ($115,720), G ($77,326), J ($52,000), O ($42,199), and Q ($57,835). Regions A, H, M, P, and R each raised less than $4,000 in fees.

Major areas in which the councils provided service and assistance were management and general government (140 cases), community/economic development and housing (114 cases), water (60 cases), planning (50 cases), and criminal justice (41 cases).

Maintaining Data Centers

Regional councils provide demographic and economic information about the region to governments, nonprofit organizations, businesses, and citizens. In 1996 eleven regional councils also had geographic information system (GIS) capacity and offered such GIS assistance to local governments as mapping infrastructure, recording building permits by geographic area, and graphically displaying zoning classifications. The regions most actively involved in GIS (one or more full-time-equivalent staff) are E, F, G, J, and Q. Those moderately involved (staff devoting one day per week or more, but not full-time)—are C, D, I, K, and N. Across the regions, 9.4 full-time-equivalent staff engage in GIS work, up from 7.3 in 1994. Six councils—those in Regions B, E, F, J, K, and Q—provide GIS services on a fee basis. (Although the council in Region B does provide GIS services, neither "involvement" category includes it because its GIS activity is not at either level.)

Fostering Cooperative Ventures

Regional councils have a substantial track record of fostering cooperative activity, ranging from helping two jurisdictions work together on a treatment plant to involving all counties and/or municipalities in the region in joint projects. Regional councils reported more than 100 such projects in 1993–94. In many instances the councils work with counties outside their own region and with other regional councils. Examples of cross-regional activities are the Western NC Housing Partnership (Regions A, B, C, D, E, and I), the I-26 Corridor Association (seventeen counties organized by Region B), various efforts to monitor the water quality of the Catawba River (Regions C, E, and F and counties in South Carolina), a project to monitor the Yadkin River (Regions E, F, G, H, and I), the Triad Land Use and Transportation Project (Triad cities and counties and Region G), Emergency Medical Dispatch (Regions J and L), the Cape Fear River Assembly (Region M with counties in G, H, J, and O), the Roanoke-Chowan Narcotics Task Force (Region Q with one county each in L and R), and the Water Quality Task Force (Region R and four other counties).

Promoting Environmental Protection

Regional councils take on a wide variety of projects that deal with environmental protection and coordinated use of natural resources, some of which overlap with planning activities and cooperative projects previously discussed. As a group, environmental concerns are the regional issue that councils most often address. Water quality and solid waste are common targets of regional efforts across the state. Regional councils reported seventy-five projects and activities related to environmental protection during 1993–94. Examples included recycling and solid waste disposal; water supply and quality and wastewater treatment; watershed protection; air quality; and river, lake, sound, and ocean protection.

Table 1
Federal and State Programs Administered by Regional Councils, 1996

Regional Council	Aging	Emergency Medical Services	Job Training Partnership Act	Senior Employ-ment[a]	Small Bus. Adm. Sec. 504[b]	Economic Devel. Adm.	Appalachian Reg. Commission Adm. Funds	Farmers Home Adm. Housing	Land & Water Cons. Fund	HUD Housing Assistance
A	■	■	■	■		■	■	■	■	
B	■	■		■		■	■		■	
C	■	■	■	■	■	■[c]	■	■	■	■
D	■	■	■		■	■	■		■	
E	■	■	■[d]		■		■	■		■
F	■	■	■[d]	■	■					
G	■	■								
H	■	■	■	■						
I	■	■	■[e]		■		■			■
J	■	■		■						
K	■	■	■		■	■				
L	■	■	■	■						
M	■	■	■[e]		■					
N	■	■		■				■	■	
O	■	■	■							
P	■	■		■	■	■				
Q	■	■	■	■		■		■		
R	■	■	■	■	■	■		■		
Total	18	18	13	11	9	8	6	6	5	3

a. A program authorized under the Older Americans Act that provides employment opportunities for senior citizens.

b. A program that designates entities to package and service Small Business Administration loans.

c. Eligible to receive Economic Development Administration funds but not a designated Economic Development District.

d. Does not include all counties in the regional council.

e. Does not include all counties in the regional council but does include counties outside the regional council boundaries.

Encouraging Economic Development

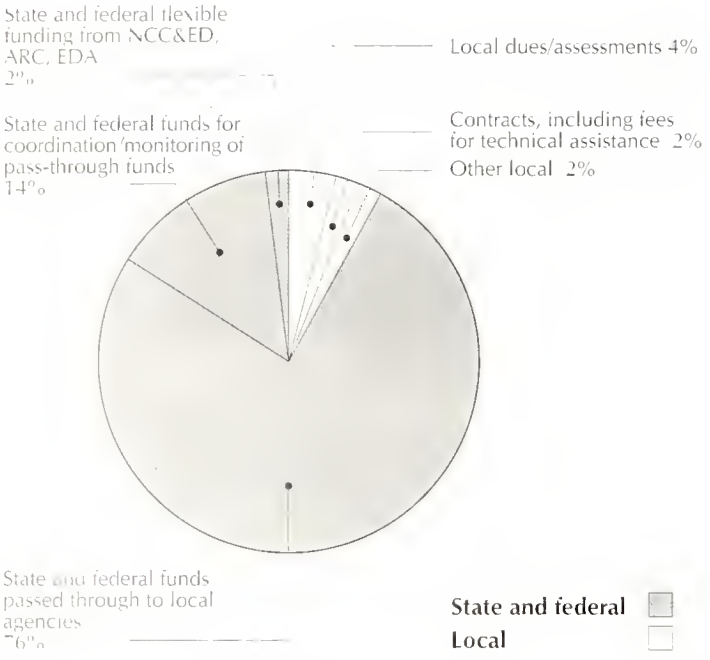
The councils also try to improve the economy of their region, through the projects already mentioned and others such as industrial site planning, tourism promotion, and loan programs. The review identified more than fifty activities supporting economic development—for example, helping Haywood County, Clyde, and Waynesville cooperate on natural gas service (Region A); promoting regional telephone service (Region J); conducting a study to create a center that will "incubate" new small businesses in Cumberland County (Region M); and helping plan a project to revitalize downtown Wilmington (Region O).

There were varying levels of cooperation and direct interaction between the economic development commissions and regional councils in 1995. The closest interaction was in the Western Economic Development Commission (now Advantage West), which links the four western councils (Regions A–D) to local governments. A different type of interaction was a contract to the Piedmont Triad Council of Governments to provide data services and support to the Triad Partnership (an economic development commission).

Administering Federal and State Programs

Regional councils administer a number of federal and state programs. The state has assigned some of these programs to all regional councils. In other cases a council has asked for the assignment or is eligible for it because of location. For the array of programs administered, see Table 1. All regional councils administer aging programs (funded by the federal Older Americans Act) and emergency medical services. Thirteen receive grants for employment training under the federal Job Training Partnership Act, although in four instances the grant does not cover all the counties in the region.

Figure 2
Sources of Revenues for Regional Councils, 1993–94



Administering federal and state programs has funding and staffing implications for the regional councils. These are explored next under "Budgets" and "Staffing."

Budgets

An examination of the sources and the uses of regional councils' financial resources illuminates their functions and activities.

Federal and State Funding

Regional councils receive the bulk of their funds from federal and state sources—92 percent of about $103 million in 1993–94. The sources of greatest funding are the federal Job Training Partnership and Older Americans acts, followed by the Department of Housing and Urban Development, which gives assistance for specific housing units (though in only three regions).

The total amount and the relative sizes of these revenue sources are misleading, however, because the bulk of the federal funds is not available for use by the regional council itself (see Figure 2). Approximately 76 percent of all regional council revenues is passed through to local governments or other agencies to provide services for target populations—the elderly, persons who need job training, recipients of low-income housing assistance, and so on. An additional 14 percent is devoted to the council for planning, coordinating, and monitoring the funds passed through to other agencies.

Only a small part of the funding from outside sources—approximately 2 percent of all revenues—is relatively unrestricted. Along with local sources, these revenues support regional ventures and service and assistance to local governments. Although the total budgets of regional councils are often large, the amount of flexible funds is quite limited and is a better indicator of the capability of regional councils to respond to regional and member government concerns beyond those addressed by the federal and state programs the councils administer. The flexibility comes from North Carolina Economic and Community Development funds, available to all councils; Economic Development Administration funds, available to eight councils; and Appalachian Regional Commission funds, available to six councils in the west. For eight councils (those in Regions F, G, H, J, L, M, N, and O), the flexible amount is limited to North Carolina Economic and Community Development funds, approximately $48,000 per region in 1993–94. In other southeastern states, the level of direct state support for regionally initiated activities is higher. For example, Virginia supports the work of regional councils with a general appropriation of $1.7 million, twice the amount provided by North Carolina.

Local Funding

Across all regions, local funding averages 8 percent of the total, or almost $8 million. It ranges, however, from 3 percent to 22 percent. The largest amount of local funding is from dues, which account for more than $2.5 million, or almost one-third. Dues range from 17 cents per capita to 65 cents.[7] In addition, contracts raise more than $2 million in local funding.

Staffing

Outside funding not only augments budgets but increases the size of the regional council staffs: the direct funds pay for people to administer the programs, and the indirect funds help cover the salaries of staff who provide administrative support to the pro-

gram operators. For a breakdown of staff by source of funding, see Table 2. The salaries of more than 80 percent of regional council staff come from federal and state funds. These staff must spend their time on the program from which they are paid, so they are not available for other regional council activities. Staff paid from local funds, on the other hand, may work on locally initiated activities. There is wide variation in the number and the proportion of staff hired from local funds. The average proportion is 16 percent, but the range is 0 to 49.

Table 2
Regional Council Staff by Source of Funding

Source of Funds	Staff	
	Number	Percent
Local	77	15.8
Federal and state, direct (for staff employed to plan, coordinate, and monitor activities)	347	71.1
Federal and state, indirect (for staff employed to provide administrative support)	64	13.1
	488	100.0

Summary and Recommendations

Regional councils have evolved from organizations largely confined to planning and administering intergovernmental programs—the basic LRO functions—to organizations that serve their member governments and promote intergovernmental cooperation in a wider variety of ways. As a result of local conditions and variations in capacity, there are differences in the range of programs they undertake. Still, some general characteristics of councils can be identified and some conclusions can be drawn from the data on activities, budgets, and staffing and from assessments offered in meetings with local officials around the state:

- Regional councils have a high level of accomplishment despite limited and inflexible resources. The councils provide services, data, and, in most cases, GIS assistance that augment the limited staff resources of local governments. This support helps local governments secure grants. Regional councils have fostered significant cooperative activity and focused attention on environmental concerns across jurisdictions. Further, they have supported local development activities both directly and indirectly.
- The whole of regional council activity is greater than the sum of its parts. Regional councils link and build on specific activities to create a regional consciousness and a sense of shared regional interests.
- Despite receiving most of their funding from outside sources, regional councils are generally viewed as locally oriented organizations that respond to member governments.
- In recent years regional councils have devoted more attention to assisting local governments individually than to planning for the region. Still, they have a substantial base of information, considerable experience with cooperative ventures, and a record of involvement with local planning that would support regional planning.

The budget and staffing patterns of regional councils contain the potential for tension between their role as organizations of and for local governments, intended to address locally defined regional concerns, and their role as externally funded agencies, responsible for administering programs. Their amount of flexible funding is relatively small. Consequently their capacity to initiate regional projects and regional planning is limited. Also, changing funding patterns and shifting priorities have altered the original purpose of the councils, which was to serve as regional planning agencies.

Regional councils continue to be important vehicles for regional action. Their importance derives from three factors. First, unlike other regional organizations, they are *continuous*, with a long record of accomplishment. Second, they are *comprehensive* in scope, with a broad range of concerns and a commitment to finding linkages among their functions. Third, their staffs are uniquely *knowledgeable* about their region, having extensive data on and experience with its conditions, problems, resources, and governments.

As noted earlier, the regional councils are called LROs, for lead regional organizations, but they are actually "linchpin regional organizations." Regional councils are not in charge, but they are unique in their capacity to tie together the activities of a variety of groups within their region and across regional boundaries. Collectively they form a network for comprehensive action to attain regional goals directly, and indirectly by supporting other state activities that benefit regions.

The distinctive value of regional councils lies in their integration of various locally initiated and state-

assigned purposes. They are not ideally suited to handle all regional issues. For example, economic promotion is better handled over a larger geographic area. The advantages of regional councils are their moderate size, closeness to member governments, local control, governmental base, and fiscal accountability. Among the numerous regional organizations in North Carolina, they stand out as the organizations that handle a broad range of concerns central to the state's regions. They are the building blocks of a state system of regions and a source of assistance and coordination for other regional bodies. Their jurisdictions are large enough to be the catchment areas for significant problems but small enough for meaningful participation from member governments.

To realize their potential fully, some regional councils should develop stronger ties to local governments. Also, the councils should communicate better with one another and improve their capacity to work together on problems that do not match regional council boundaries.

Further, the state should allocate more financial support to regional councils, enabling them to take on more regionally initiated projects. It also should give them a clearer mandate as part of a broad state policy on regionalism.

It is time to rediscover regional councils and recognize their accomplishments and promise. They can do even more to promote orderly growth and development, share benefits and costs across jurisdictions, overcome jurisdictional barriers, and encourage cooperative action to address common problems.

Notes

1. The Working Group on Regions and Regionalism, cochaired by Jonathan Howes, secretary of the Department of Environment, Health, and Natural Resources, and Wayne McDevitt, senior adviser to the government, commissioned me to do the review. I gathered information through surveys covering the 1993–94 fiscal year, meetings with local and state officials between October 1994 and May 1995, and a short supplemental mail survey in September 1996. I then prepared a report (hereinafter referred to as "Report to Working Group"), which I presented to the Working Group on November 1, 1996. The information in this article is drawn from the report. The conclusions expressed are my own and do not necessarily reflect the views of the Working Group.

2. The Division of Community Assistance provides technical assistance to improve the economic and community development status of local governments and other organizations. Specific types of assistance include strategic planning, growth management, appearance and image improvement, downtown revitalization, and natural resource conservation. The division has a staff of thirty-one professional and support personnel in seven regional offices, and a state-funded annual budget of $1.8 million. The division's regional offices typically work with more than 300 local governments each year, at no charge.

3. The powers and the duties of councils of government are set out in Section 160A-475 of the North Carolina General Statutes.

4. The funding was for planning, and the authority was to review and comment on federal grant requests from local governments in their regions.

5. Report to Working Group, 37.

6. A study in Virginia came to a similar conclusion. Although Virginia's regional councils, known as Planning District Commissions, were created to identify and address cross-jurisdictional problems through planning, they often do not place much emphasis on regional planning and a comprehensive view of regional needs. None have up-to-date comprehensive plans, and many typically do not engage in strategic planning. Joint Legislative Audit and Review Commission of the Virginia General Assembly, *Review of Regional Planning District Commissions in Virginia*, Senate Document No. 15 (Richmond: Commonwealth of Virginia, 1995).

7. In five of the regions, the assessment of county governments is based on the population in unincorporated areas only.

Raising the Performance Bar . . . Locally

David N. Ammons

Jeff Parker

Citizens care about local government services. Modest attendance figures at public hearings belie that fact, as do complaint and commendation records revealing that the typical citizen refrains from expressing either praise or complaints about local government offerings most of the time. Nevertheless, citizens really do care about service quality and cost. In fact, when sufficiently concerned or provoked, they have been known to express themselves vociferously.

Almost two decades ago, the disgruntled voters of California clamped down hard on the spending habits of local governments in that state by approving Proposition 13 and thereby restricting property tax revenues. A few years later, their Massachusetts counterparts similarly imposed strict revenue limitations through a measure called Proposition 2½. Eighteen winters ago, severe Chicago storms blanketed that city's downtown with mountains of snow that were removed too slowly to suit a majority of voters, costing the mayor his job. Six years ago, the voters of Indianapolis responded to a mayoral candidate's promise to provide better, lower cost services through competition and privatization by electing that candidate, then by reelecting him by more than a three-to-two margin to continue the job four years later.

A relative calm typically prevails in relations between citizens and their government, a calm that only occasionally is disrupted by bursts of citizen anger. Yet citizens do care about local government services and the resources extracted to support those services. Instances of citizen ire in communities across the nation—incidents that often are less dramatic than those cited above or that, because they have affected fewer people or occurred in a smaller media market, have been less publicized—demonstrate that the public can be awakened from quiet acquiescence by unacceptable performance or wasteful habits.

Local officials sometimes are tempted to flatter themselves by assuming that poorly attended public hearings and the absence of uprisings reflect citizen satisfaction with the status quo. That may not be the case at all. Citizens who fall in the broad midsection of the satisfaction continuum, into the wide expanse that lies between "satisfied customer" and "vocal critic," undergird a mood of tolerance rather than one of satisfaction or dissatisfaction. Poor attendance and the absence of overt animosity can camouflage a generally unfavorable citizen attitude that simply has not

The author is an Institute of Government faculty member who specializes in improvement of productivity in local government. This article is reprinted, with minor adaptations and with permission, from *Public Management* 79 (Sept. 1997): 10–16 (copyright 1997 by ICMA).

yet reached the boiling point. Hard evidence, either from personal experience or from other sources, can nudge some citizens out of their merely tolerant moods till they become fans or foes of local government. A nudge in the direction of "satisfied customer" is much to be preferred by local officials. This article offers suggestions on the use of performance measurement and benchmarking for improving local government operations, reporting performance to citizens, and providing that favorable nudge.

A Role for Performance Measurement and Benchmarks

A big part of the service delivery challenge to local governments is providing desired services at affordable costs. The other part of the challenge lies in reassuring local taxpayers that their resources have been well spent. Good performance measures and the appropriate use of benchmarks can help on both counts.

Admittedly, performance measures are merely tools. They are limited in what they can do. At best, they can gauge conditions, identify operational strengths and weaknesses, and inform officials about program effectiveness and the success or failure of performance improvement initiatives. They only inform; they do not prescribe solutions, a role that still belongs to managers and analysts. When properly developed, monitored, and reported, however, performance measures *can* influence the effectiveness and efficiency of government operations; they *can* contribute to improved management; they *can* offer systematic evidence in defense of worthwhile public operations that find themselves under attack; and *they can influence the public's perception of its local government.*

Unfortunately, most of the benefits of performance measurement will elude local governments that continue to limit their systems by measuring only resource inputs (dollars spent, number of persons employed, or staff hours devoted to a given activity) and workload (calls received, applications processed, arrests made, tons of asphalt laid, or other raw counts of output). Although measures of input and workload are important and should be collected, input is a poor measure of *performance*, and neither type of measure addresses the efficiency with which services are delivered, their quality, or their effectiveness. Thus these measures have little managerial or policy value. For much the same reason, they hold little interest for the general public and offer little promise for nurturing public approval.

Measures of efficiency (unit costs, units per $1,000, or units per labor hour) and measures of quality or effectiveness (the library's title-fill rate or circulation per capita, the police department's clearance rate, and the fire department's success at limiting fire spread) are measures that have considerable managerial and policy value. They allow local performance to be placed in a qualitative context, to be compared with relevant standards or the performance of others, and to be evaluated on a basis other than how much was spent, how many employees were involved and for how long, and how much activity took place.

Placing local performance in a qualitative context raises the stakes of performance measurement and, especially where comparison with standards or other jurisdictions is involved, puts community pride at risk. By doing so, it makes performance measurement more interesting to the local media and to citizens in general. Crossing this threshold not only provides more valuable information for managing operations effectively, but also allows local officials to begin systematically cultivating and nurturing positive public perceptions of local government operations.

Several local and state governments that are intent on gauging performance, establishing targets for performance improvement, engaging citizen interest, and enlisting citizen cooperation have adopted the term "benchmark" and applied that label to performance targets established by various means. Tracking progress toward achieving these benchmarks has proven to be a method of reporting performance statistics that is popular both with the media and with the public.

Three Types of Benchmarking in the Public Sector

Benchmarking captured the attention of the corporate world when Xerox, a pioneer in application of the benchmarking process, demonstrated that it could successfully adapt warehousing and distribution tactics it learned from L.L. Bean, acknowledged to be a world-class performer in that arena. Xerox had discovered an area of weakness in its own system, identified a company that it considered the best in the business at that particular process, and, through the cooperation of its benchmarking partner, found ways to improve its own operation. The significance of the Xerox/L.L. Bean experience and those of other benchmarking pioneers was profound.

The practice of benchmarking spread rapidly in corporate America, and by 1991, the prestigious Malcolm Baldrige Award had folded into its criteria the demonstration of world-class or best-in-class status for award recipients, effectively requiring applicants to benchmark their key processes. For the public sector, the benchmarking experience of corporations was important, but rarely has it served as a precise model. A few local governments have adopted the corporate model in whole or in part, but many have adopted the "benchmarking" label and attached it to somewhat different processes.

For many public-sector officials, a development of greater significance than the adoption of particular steps from corporate-style benchmarking was the discovery that corporations in one industry were finding relevant comparisons and important lessons from benchmarking partners in entirely different industries. After all, many local governments for years had resisted interjurisdictional comparisons simply by claiming that each city or county was unique. Clearly, each *was* unique; but it was becoming evident that few were so individual as to negate completely the relevance and benefits of comparison.

In the public sector, benchmarking has taken three forms:

- Corporate-style benchmarking
- Targets as benchmarks
- Comparison of performance statistics as benchmarks

Some local governments (for example, Arlington, Texas; Reno, Nevada; and Salt Lake City, Utah) have adopted essential elements of the corporate model (see Figure 1).[1] Accordingly, they have focused narrowly on one or two key processes, identified suitable benchmarking partners considered to be outstanding performers in those processes, analyzed their own and their partners' processes in detail, and adapted preferred practices for their own use. More public sector units, however, have opted for the second or third versions of benchmarking.

Perhaps the most familiar of all benchmarking projects in the public sector has been the initiative known as Oregon Benchmarks, an example of the "targets as benchmarks" approach. The Oregon Progress Board was created in 1989 by the Oregon legislature to help define a strategic vision for that state and to monitor progress toward achieving the state's goals. As a central part of its effort, the board established a set of benchmarks or targets focusing on student achievement, housing affordability, teen pregnancy, air quality, and an array of other concerns, thereby bringing attention to those problems, creating a mechanism for gauging progress, and garnering national acclaim. Several local governments in Oregon have followed the Progress Board's lead and have set local benchmarks in pursuit of the state's objectives and their own.

Figure 1
Corporate-Style Benchmarking in the Public Sector

1. Decide what to benchmark.
2. Study processes in your organization.
3. Identify benchmarking partners.
4. Gather information.
5. Analyze the information.
6. Implement for effect.
7. Monitor results and take further action as needed.

Source: From *Benchmarking Best Practices,* Module 2 of *Results-Oriented Government,* a public service curriculum developed by the Southern Growth Policies Board and the Southern Consortium of University Public Service Organizations (Research Triangle Park, N.C.: Southern Growth Policies Board, 1997), 5. © 1997 by Southern Growth Policies Board. Reprinted with permission.

Other states, including Minnesota and Florida, and several communities, like Jacksonville and Seattle, have pursued a similar course. Although extremely valuable in their own right, efforts of this second type differ substantially from the corporate form of benchmarking. Where corporate-style benchmarking focuses narrowly on a key process, the targeting approach typified by Oregon Benchmarks has a broad focus that touches on a wide array of concerns and is apt to concentrate primarily on results or conditions, often with little attention to the details of the processes that contribute to those results or conditions. Targets, or benchmarks, often are set arbitrarily, only rarely being tied to statistical norms or to the performance of best-in-class counterparts. In many ways, the targeting approach is more akin to strategic planning than to corporate-style benchmarking.

The third approach—the comparison of performance statistics as benchmarks—blends elements of the other two methods. More broadly focused than corporate-style benchmarking, the third approach nevertheless adopts the corporate practice of identifying other outstanding performers and comparing the locality's performance with theirs, rather than following the second approach's practice of establishing "benchmarks" arbitrarily. Like the targeting approach,

Figure 2
Prompt Responses to Requests for Building/Construction Inspections by Selected Cities

Fort Collins, Colorado
Actual: 3.5-hour average response time; 100% completed on day requested (1991)

Hurst, Texas
Target: Within 4 hours of notice
Actual: 95% within 4 hours (1990)

Oak Ridge, Tennessee
Target: 95% within 4 hours of request
Actual: 95% within 4 hours; 75% within 2 hours of request

Raleigh, North Carolina
Actual: 95% on date requested (1991)

Chandler, Arizona
Target: Within 24 hours of request
Actual: 100% within 24 hours (1991)

Orlando, Florida
Actual: 100% within 24 hours (1991)

Fayetteville, Arkansas
Actual: 98% within 8 work hours of request (1991)

Long Beach, California
Target: At least 98% within 24 hours of request
Actual: 98.6% (1991); 98.4% (1992)

Winston-Salem, North Carolina
Actual: 100% within 1 day of request (1991); 97% (1992)

Portland, Oregon
Target: At least 95% within 24 hours of request for commercial, combination, and emergency housing inspections; 95% of nonemergency housing inspections within 5 days

Oakland, California
Actual: Next-day inspections available: 87% (1990); 80% (1991); 85% (1992)

Phoenix, Arizona
Target: At least 80% within 1 day of request

Burbank, California
Target: Within 48 hours of request
Actual: Most within 24 hours of request

Gresham, Oregon
Target: 95% within 48 hours of request

Savannah, Georgia
Actual: 95% within 2 workdays of request; 100% within 3 workdays (1988–1993)

Source: Excerpted from David N. Ammons, *Municipal Benchmarks: Assessing Local Performance and Establishing Community Standards* (Thousand Oaks, Calif.: Sage Publications, 1996), 56. © 1996 by Sage Publications. Reprinted with permission.

however, the third style of benchmarking focuses primarily on indicators of results, efficiency, and process proficiency rather than concentrating extensively on process details.

Different Tools for Different Tasks

Each of the three benchmarking approaches has value. Each is more valuable in some circumstances and for some purposes than are the others. The corporate-style approach is generally more useful for a unit that is intent on reengineering. Its process orientation, its emphasis on best practices, and its depth of inquiry are qualities consistent with the information needs of process reengineering.

The establishment of ambitious targets, as set by the Oregon Progress Board, often features direct citizen involvement, a broad focus on a range of important issues or conditions, high-profile visibility, and the potential for considerable media attention. This second form of benchmarking often addresses quality-of-life issues broadly, rather than focusing strictly on services controlled by the government. Although this focus on broad, societal issues limits the value of this version as a management tool for government administrators, in the view of many citizens, this very feature increases its value as a planning tool for what counts most—quality of life, whether or not it is connected directly or fully to governmental policies and programs.

The third approach offers greater breadth than corporate-style benchmarking and for that reason is more attractive to governments that want a relatively quick assessment of their performance on several fronts. Its benchmarks are not arbitrarily established targets but are tied to the actual records of leading performers or to performance standards or targets deemed reasonable by other units, making these benchmarks much less vulnerable to the charge that they are unattainable. Figure 2, for example, shows the targets and actual performance of several local governments in responding promptly to requests for building inspections. These benchmarks could be considered when setting any local government's own performance expectations.

Which approach to benchmarking is best? The answer depends on the problem being addressed or the purposes for which benchmarking is undertaken. If the purposes are to identify operational strengths and weaknesses, to gauge the effects of operational changes, to place local performance in a meaningful

context that is likely to draw media attention, and to assure the public that "someone is minding the store," the third approach may be the best choice.

Effective Use of Comparative Performance Data

The standard rationale for performance measurement for more than half a century has noted the value of performance measures to three groups: managers and administrators, governing bodies, and citizens. Primary emphasis on the value of measurement has centered on its potential usefulness to the first two of these three groups. The argument seems compelling, yet many local governments have embarked on performance measurement in only the most rudimentary way, if at all.

What has been missing? The most glaring weakness of most performance measurement systems has been the absence of the kinds of measures that hold real value for policy and management decisions. Knowing that the code compliance department in San Antonio employed thirty-six code enforcement officers, received 45,064 code complaints, and spent $2.5 million in 1994–95 provides few insights for managers or other decision makers. Moreover, such input and workload statistics typically are of no interest at all to the local media or citizens.

Making performance information interesting, relevant . . . and relative. Although valuable as ingredients in higher-order measures of efficiency and effectiveness, workload measures in their raw form have two purposes: (1) to demonstrate patterns of demand and (2) to impress an audience with the scale of an activity or the busyness of the persons involved. Local governments that go no farther than the collecting and reporting of raw workload statistics, however, fall short of realizing performance measurement's primary value. Their systems fail to give management officials, governing bodies, and citizens the most meaningful and *interesting* information that can be offered, and they fail to address performance accountability in a truly serious way.

To be of real value, performance measures must address service efficiency, quality, and effectiveness. San Antonio's code compliance department, for instance, supplements input and workload statistics with measures of efficiency and effectiveness. In 1994–95, code enforcement officers averaged fifty-five inspections apiece per week; the average cost of cleaning a vacant lot was $135; complaints received an average of 1.72 inspections each; 68 percent of all complaints received an initial response within seven days; and the department achieved a voluntary compliance rate of 79 percent on enforcement actions. Measures such as these offer substantial policy and management value.

To be most relevant to decision makers and *interesting to the public*, performance measures must be placed in context. They must gauge service efficiency, quality, and effectiveness relative to some meaningful peg—for example, to their own performance in previous years or, better still, to relevant standards or the performance targets or results of highly regarded counterparts in local government.

Finding that the voluntary compliance rate on local code enforcement actions was 79 percent may influence departmental officials' decisions regarding that program, but it is unlikely to generate much attention or interest among members of the governing body or the general public. Knowing that San Antonio's rate fell below compliance rates reported recently by Denton (90 percent) and Lubbock (88 percent), Texas; Greenville, South Carolina (88 percent); Peoria, Arizona (85 percent); and Charlotte, North Carolina (84 percent)—yet ahead of several other respected jurisdictions—may on the other hand enhance the likelihood that this performance information will be used. That is, it may prompt the public and, perhaps consequently, the governing body to express the desire that San Antonio's performance standing be maintained or improved.

Minimizing the "cringe factor." Many local officials have cringed at the thought of interjurisdictional comparisons, contending that the unique qualities of each unit render comparison irrelevant. That argument has lost much of its credibility in the wake of highly publicized successes in the private sector by benchmarking partners from entirely different industries. If Xerox can usefully compare its operations with those of L.L. Bean, then a local government's distinctness from others in the same "industry" is unlikely to render performance comparison meaningless.

Local officials would be well advised to face this fact: *interjurisdictional comparisons will be made.* Those comparisons can be anecdotal, pseudo-systematic (for example, "quick and dirty" studies that often sacrifice precision, consistency, and validity for simplicity and speed), or systematic. The first two types—anecdotal and pseudo-systematic comparisons—rank highest on the cringe-factor scale.

Confronted by a citizen or reporter comparing a local incident with the "way things work" elsewhere,

Benchmarking, Carolina Style

Twenty-one cities and towns and fourteen counties in North Carolina are engaged in a large-scale benchmarking effort, the North Carolina Local Government Performance Measurement Project.[1] The cities are studying police operations, solid waste services, and streets; and the counties, child protective services, emergency medical services, inspections, and jails.

The project is a solid example of use of performance statistics as benchmarks, one of three types of public-sector benchmarking discussed in the accompanying article (see page 31). Unlike corporate-style benchmarking, which focuses on a single key process, the North Carolina project spans multiple services, with an eye to performance results and costs. And unlike use of targets as benchmarks, in which targets sometimes are set arbitrarily, the benchmarks in the North Carolina project are grounded in the actual experience of the participating units.

The seven largest cities in the project got activities under way first, and they have completed their initial cycle. As performance statistics began to be available, they started comparing operations. Soon they initiated a search for "best practices" among performance leaders in various services. Already some have begun to make operational changes triggered by the project.

Large counties and medium-size and smaller units are still moving through the first cycle and hoping to achieve comparable results. The participants' experiences and overall results have been sufficiently positive to prompt discussions about continuation of the project for at least another five years.

The project is sponsored by the Institute of Government, the North Carolina Local Government Budget Association, and the participating communities. It has been supported by the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and the Local Government Commission. Participating cities and towns are Asheville, Carrboro, Cary, Chapel Hill, Durham, Garner, Gastonia, Greensboro, Hickory, Lenoir, Morganton, Nags Head, Oxford, Raleigh, Roanoke Rapids, Rocky Mount, Salisbury, Shelby, Wilmington, Wilson, and Winston-Salem. Participating counties are Buncombe, Catawba, Chatham, Cleveland, Davie, Durham, Forsyth, Guilford, Johnston, Mecklenburg, Moore, Orange, Person, and Wake.

Notes

1. *See* Paula K. Few and A. John Vogt, "Measuring the Performance of Local Governments," *Popular Government* 62 (Winter 1997): 41–54.

government officials without a more systematic basis of comparison can only hope they have a favorable anecdote that will counterbalance the unfavorable story. Rarely are such encounters comfortable or satisfying.

Pseudo-systematic comparisons can produce similar levels of discomfort for local officials. Simplistic comparisons of the per capita expenditures of several local governments are a common example. Typically, these comparisons, which are hastily calculated using the "bottom lines" of local government budget documents, purport to show the relative efficiency levels among the units included. But often they ignore important scope and quality-of-service differences. Official refutations of alleged inefficiencies rarely receive the press treatment accorded the initial story.

The media and the public are interested in local government performance. Left to their own devices, they are likely to turn to one or both of the first two types of comparison. They are unlikely to have the ability or the patience to do a more systematic interjurisdictional comparison or otherwise to develop for themselves a fair and meaningful context in which to assess their local government's performance. If a local government wants fairer media treatment, it may have to invest in improved performance reporting and to become willing to point reporters toward relevant comparisons and a proper context for rendering judgment.

A local government's decision to upgrade its performance measurement system, to improve its performance reporting efforts, and to provide a relevant context for a more systematic assessment of local performance will not relieve local officials of having to explain performance deficiencies. By seizing the initiative, however, local officials can frame the discussion around the most important dimensions of performance; they can include performance dimensions that highlight local successes; and they can foster rather than fight the desire of the media and citizens for meaningful comparisons, even as they

minimize the unfairness and counterproductive accusations often bred by anecdotal reports and pseudo-systematic studies.

Sources of comparative performance information. In the past, comparative performance information for local governments was difficult to secure. Today that condition is beginning to change. Multijurisdictional performance measurement projects sponsored by ICMA and The Innovation Groups are major undertakings on a national scale that promise reliable comparative performance information. In North Carolina, a systematic performance measurement and cost accounting project coordinated by the Institute of Government provides comparative information on thirty-five participating cities and counties in this state (see "Benchmarking, Carolina Style," page 34).

Recommended standards of performance have been developed by several professional associations; others have compiled national performance statistics, offering norms that some jurisdictions may choose to adopt as local standards.[2] Additionally, local governments committed to performance measurement increasingly are reporting indicators of efficiency, quality, and effectiveness that can serve comparative purposes. Although the task of locating performance standards recommended by various associations and tabulating performance data from individual jurisdictions can be a time-consuming endeavor, much of this information has been compiled in the 1996 book *Municipal Benchmarks: Assessing Local Performance and Establishing Community Standards*.[3]

Advantages of Performance Data Comparison

Comparing local performance with benchmarks from outside the organization offers several advantages. Perhaps first and foremost, comparisons often open the eyes of local officials to performance deficiencies and even to comparative performance strengths they previously did not see. As a result, more analytic attention may be directed toward units otherwise accepted inappropriately as "average" or even "above average," and overdue praise can be directed toward unheralded high-achievers.

In addition, comparison with outside benchmarks heightens attention on service delivery issues simply by making performance data more interesting. Greater attention by the media and public is almost certain to elicit increased attention by governing bodies and, in turn, an enhanced tendency to act on performance information. Moreover, heightened attention also may lead to a better appreciation of basic service delivery and may thereby inspire improved performance. The "continuous improvement" philosophy espoused by many organizations implies the constant raising of the performance bar. As the organization leaps over the bar at one level, the bar is raised slightly higher and higher, producing performance that gets better and better.

Local government officials who take the initiative in making effective performance data comparisons can influence the choice of the performance bars to be used. Rather than waiting to be confronted by the next reporter or citizen group concerned over the community's standing on a flawed comparison of per capita expenditures or raw workload statistics, local officials can focus public attention on meaningful measures of performance quality and effectiveness, pointing with pride to areas of strength and documenting the need for improvement in others. By this means, local officials can identify the most appropriate or most pressing performance bars themselves, rather than wait for others to dictate choices and terms. When citizens agree with officials on the importance of key performance dimensions, heightened attention and citizen feedback will reinforce the improvement process. The performance bar will be raised in such instances, not by a standard imposed from outside but by local initiatives focusing on those elements of service deemed most important locally.

Notes

1. *See*, for example, Patricia Keehley, Steven Medlin, Sue MacBride, and Laura Longmire, *Benchmarking for Best Practices in the Public Sector* (San Francisco: Jossey-Bass, 1997).

2. For example, recommended standards have been established by the International Association of Assessing Officers, the American Water Works Association, the National Recreation and Park Association, and the Humane Society of the United States. Excellent statistics are reported by the Public Library Association and the American Public Power Association.

3. David N. Ammons, *Municipal Benchmarks: Assessing Local Performance and Establishing Community Standards* (Thousand Oaks, Calif.: Sage Publications, 1996).

A Celebration of Service

On November 15, 1997, more than 300 clients, friends, supporters, and employees gathered at the Joseph Palmer Knapp Building for "A Celebration of Service." The event highlighted the Institute's accomplishments and new projects, including renovation and expansion of the Knapp Building, the Institute's longtime home.

In a special tribute, Institute Director Michael R. Smith and others honored former director John L. Sanders. As a part of this tribute, a portrait of Sanders by Greenville artist Sarah Blakeslee was unveiled.

In addition to Smith, speakers were UNC President Molly Corbett Broad, UNC–CH Board of Trustees Chairman Richard Y. Stevens, UNC–CH Provost Richard J. Richardson, and Institute faculty member William Campbell. Honored guests included Gladys Hall Coates, wife of the late Albert Coates, Institute founder.

"This event marks a time of meaningful and responsive change at the Institute," said Smith. Recent initiatives include addition of the Master of Public Administration Program, a new Office of Development, a performance measurement study for local governments, a statewide needs assessment of technology, and an expanding role in civic education.

"We were pleased to see friends, former faculty, and former staff coming back," said Ann Simpson, associate director for development. "We plan regular communication to keep people in touch, especially as renovation and expansion of the Knapp Building go forward."

—Jennifer Hobbs

▼ **Several of the featured speakers: Institute Director Michael Smith, UNC President Molly Corbett Broad, and Board of Trustees Chairman Richard Stevens.**

Karen Tam

Karen Tam

▲ **Representative George W. Miller, Jr. (left), William Friday (center left), and Gladys Hall Coates (seated) congratulate John and Ann Beal Sanders.**

▲ **Former Institute Director Henr Lewis recalls milestones in the life of the Institute.**

Karen Tam

▲ Representative George W. Miller, Jr. (right) and Senator Eleanor Kinnaird join John Sanders beside his newly unveiled portrait.

Karen Tam

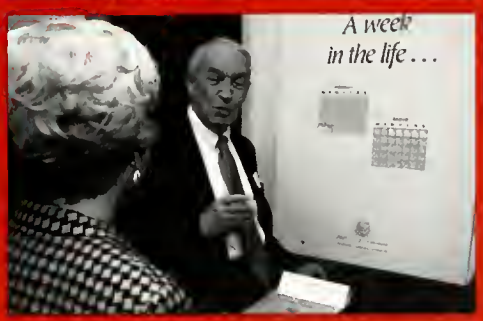
▲ Terry Kale (right foreground) answers questions at an exhibit of NCINFO, the Institute's Web site. NCINFO serves as a gateway to the home pages of more than 110 North Carolina cities and towns, and 60 counties.

▼ John Sanders and wife, Ann Beal Sanders, appreciate a lighter moment during the special tribute to Sanders and his work.

Students demonstrate the new computer laboratory of the Master of Public Administration Program. ▶

M Sa

Former faculty member George Esser checks out a recent "week in the life" of the Institute at the history exhibit. ▶



Karen Tam

Karen Tam

▲ Gladys Hall Coates, wife of Institute founder, the late Albert Coates, and longtime supporter of the Institute and UNC-CH.

◀ Jake Wicker, faculty member since 1955, talks with Sylvia Butterworth (left), finance officer for the Town of Southport, and Virginia "Ginny" Lawler (right), former Institute librarian.

Guide to Pronouncing County Names

John L. Sanders

The author is a former director of the Institute of Government.

The proper—that is, the customary local—pronunciation of the names of some North Carolina counties is often a puzzlement to native as well as to newcomer. The very spelling of some county names makes their pronunciation baffling—Cabarrus, for example. In other instances, the spelling suggests a pronunciation, but it is one with which local practice does not agree—Robeson, for example. And in yet other cases, the emphasis in pronunciation is put on a different syllable from the one that seems normal—Bertie, for instance.

The following list has been compiled to provide a ready guide to customary county name pronunciations. The advice of readers on how the guide might be improved would be welcome. (It is recognized that there are local variations that differ from those shown here—some Iredell County residents call their home "ARE-dell," for example—but no attempt has been made to list them here.)

North Carolina Counties: Pronunciations

Alamance	AL-a-mance	Cumberland	KUM-bur-lund	Johnston	JOHN-stun	Randolph	RAN-dolf
Alexander	Al-x-ANDER	Currituck	KURR-i-tuck	Jones		Richmond	RICH-mund
Alleghany	Al-i-GAINY	Dare		Lee		Robeson	ROBB-i-son
Anson	AN-sun	Davidson	DAVE-id-sun	Lenoir	Le-NOR	Rockingham	ROCK-ing-ham
Ashe		Davie	DA-vee	Lincoln	LINK-un	Rowan	Roe-ANN
Avery	A-vur-ee	Duplin	DOO-plen	Macon	MA-kon	Rutherford	RUTH-er-furd
Beaufort	BO-furt	Durham	DERR-um	Madison	MAD-i-sun	Sampson	SAMP-sun
Bertie	Ber-TEE	Edgecombe	EDGE-cum	Martin	MAR-tin	Scotland	SCOT-lund
Bladen	BLA-den	Forsyth	For-SYTH	McDowell	Mc-DOW-well	Stanly	STAN-lee
Brunswick	BRUNS-wick	Franklin	FRANK-lin	Mecklenburg	MECK-len-burg	Stokes	STOAKS
Buncombe	BUNK-um	Gaston	GASS-ton	Mitchell	MIT-chull	Surry	SURR-ee
Burke		Gates		Montgomery	Mont-GOM-er-ee	Swain	SWANE
Cabarrus	Ka-BARE-us	Graham	GRAY-um	Moore	MORE	Transylvania	Tran-syl-VANE-i-a
Caldwell	CAH'LD-well	Granville	GRAN-vill	Nash		Tyrrell	TEER-il
Camden	KAM-den	Greene		New Hanover	New HAN-o-ver	Union	
Carteret	KAR-ter-et	Guilford	GILL-furd	Northampton	Nor-THAMP-ton	Vance	
Caswell	KAS-well	Halifax	HAL-i-fax	Onslow	ONNS-lo	Wake	
Catawba	Ka-TAW-ba	Harnett	HAR-nit	Orange		Warren	WAR-en
Chatham	CHAT-um	Haywood	HAY-wood	Pamlico	PAM-li-co	Washington	
Cherokee	CHER-o-kee	Henderson		Pasquotank	PAS-quo-tank	Watauga	Wa-TAW-ga
Chowan	Cho-WONN	Hertford	HERT-furd	Pender	PEN-der	Wayne	WAIN
Clay		Hoke	HOAK	Perquimans	Per-QUIM-ans	Wilkes	WILX
Cleveland	KLEVE-land	Hyde	HIDE	Person	PER-sun	Wilson	WILL-sun
Columbus	Ko-LUM-bus	Iredell	IRE-dell	Pitt		Yadkin	YAD-kin
Craven	KRA-ven	Jackson	JACK-sun	Polk		Yancey	YANT-see

At the Institute


UNC News Services

Joseph E. Hunt


Karen Tam

John B. Stephens


Univ. Wisconsin News Service

Michael L. Williamson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Cary M. Grant

Hunt and Stephens Receive Awards

Joseph E. Hunt, an Institute of Government faculty member specializing in property tax appraisal and assessment administration, received the Donehoo Essay Award in September 1997 from the International Association of Assessing Officers (IAAO). The award, recognizing Hunt's recent article on hotel appraisal, was presented at IAAO's annual conference in Toronto.

"Assessors need more information on hotel tax assessment in order to defend the growing number of appeals from hotel owners," Hunt explained. "I decided to take a highly technical subject and put it in understandable language."

The article, which appeared in the March/April 1997 issue of IAAO's *Assessment Journal*, was chosen from twenty-five entries.

Hunt, a certified assessment evaluator (CAE) and a member of the Appraisal Institute (MAI), was president of IAAO in 1990–91. During his thirty years of involvement with the organization, he has served on numerous national committees and has received several awards.

Another recent award winner is John B. Stephens, a faculty member specializing in public dispute resolution. Stephens received a $5,000 Junior Faculty Development Award from UNC-CH's Committee on Faculty Research and Study Leaves.

Stephens will use the "largest chunk" of the money in his course on dispute resolution and consensus building in public affairs, offered this spring in the Master of Public Administration Program. The money will support sixteen hours of training in conflict resolution skills, to be provided by staff of the Orange County Dispute Settlement Center.

The grant also will allow Stephens to attend a two-day workshop sponsored by the National Multicultural Institute on models for effective dialogue between people of different cultures.

"Our clients are looking for ways to encourage productive dialogue with a growing Hispanic population," Stephens said.

"They also want to ease tensions between retirees—many from the Northeast and the Midwest—and young and middle-aged workers," he continued. "These groups have different ideas about what services cities and counties should provide." —*Jennifer Hobbs*

Williamson Takes Leave, Joins DENR

Michael L. Williamson, former director of the Governor's Office of Quality Improvement and member of the Institute's management faculty since 1994, began a two-year leave of absence in September to become chief of staff for the North Carolina Department of Environment and Natural Resources (DENR). In his new position, Williamson has direct responsibility for improving DENR's management processes, leadership development, and overall effectiveness.

"I see this department as a laboratory for demonstrating many of the best practices that we have been teaching and recommending to governments for years," Williamson said. He will use practices gathered from cutting-edge organizations in the public and private sectors, such as strategic planning, total quality management, organizational development, and performance measurement.

In just three months, using information provided by customers, major stakeholders, and employees, he has mapped out the direction the department will take. The result is a new mission statement, with an emphasis on leadership and advocacy.

"As a result of strategic planning, we're beginning to have much more open dialogue both inside and outside the department about what our purpose is and where we should go as an organization," Williamson observed.

Soon after beginning his new job, Williamson collaborated with other Institute faculty to explore how DENR should address various issues, from law to dispute resolution to performance measurement.

Williamson also chairs the Governor's Management Improvement Council, which has worked to improve a number of functions, including purchasing processes and customer service across state agencies.

"I'm excited to have the opportunity to contribute on the Institute's behalf to improvement of North Carolina's

environment and natural resources," Williamson said. "I look forward to sharing lessons learned here with other governmental units when I resume my faculty position."

"I'm pleased that Michael could take a leave of absence to help DENR and Secretary [Wayne] McDevitt during an especially important time in the department's history," said Institute Director Michael R. Smith. "He has an excellent understanding of public organizations and the complicated process for improving them."—*Jennifer Hobbs*

Grant Leaves IOG for Private Sector

For more than four years, faculty member Cary M. Grant helped Institute of Government clients with questions on employee relations, employment discrimination law, workers' compensation, and diversity in the workplace. Last fall, Grant left the Institute to become a human resources consultant at GlaxoWellcome, the nation's leading pharmaceutical company, based in Research Triangle Park, North Carolina.

"My new job involves more hands-on implementation of a diversity initiative, from inside an organization," Grant said. "It will broaden my expertise."

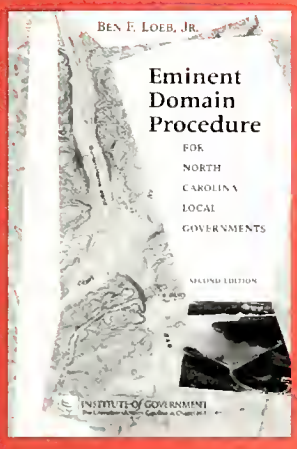
While he was at the Institute, Grant consulted and wrote about the differences in application of the federal Americans with Disabilities Act, the North Carolina Workers' Compensation Act, and the federal Family and Medical Leave Act (*Popular Government*, Fall 1995). He also taught sessions on managing diversity and on disability laws for various Institute schools and conferences. Plans are in the works for him to teach at the Institute in an adjunct capacity.

In his new position, Grant consults with management to "evaluate various processes and policies within the organization to ensure that its environment is all-inclusive and optimal for all employees." Further, he is refining training in diversity awareness for the company's 8,900 employees.

Grant brought some personal lessons from the Institute. "I took note of the collegiality among faculty and staff, and their dedication to service," Grant said. "I can apply those same qualities here."

"Cary did a wonderful job for us, and we're all sorry to see him leave," said Michael R. Smith, the Institute's director. "He is an excellent lawyer, and he was a terrific colleague. GlaxoWellcome is fortunate to have him, and we wish him every success." —*Jennifer Hobbs*

Off the Press



Eminent Domain Procedure for North Carolina Local Governments

Second edition, 1998

Ben F. Loeb, Jr.

$23.00*

Summarizes North Carolina General Statutes Chapter 40A, relating to condemnation procedures for cities, counties, private companies, and other listed public condemnors. Reproduces a set of forms prepared by the North Carolina Bar Association and includes the entire text of G.S. Chapter 40A.

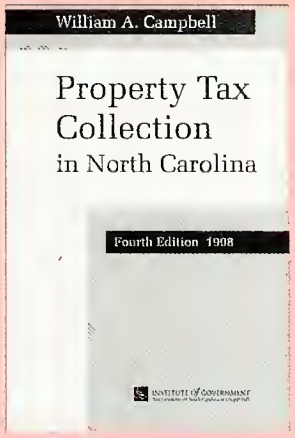
Property Tax Collection in North Carolina

Fourth edition, 1998

William A. Campbell

$34.00*

A comprehensive treatment of property tax collection law and practice in North Carolina. Collection remedies against personal property are discussed as well as the tax lien on real property, the priorities of the lien, and use of the lien to collect taxes. Also covers special collection problems such as bankruptcy. Includes an index and a table of cases. This book replaces the third edition, published in 1988, and the 1992 supplement.

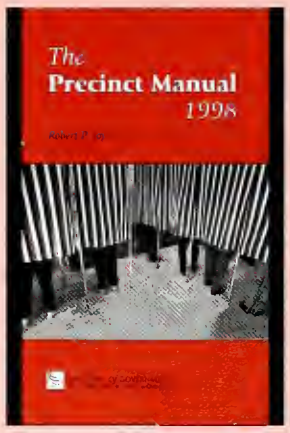


The Precinct Manual 1998

Robert P. Joyce

$8.00*

Published every two years, this book is a basic introduction to the law governing administration of elections. Used by precinct registrars and judges, it explains North Carolina law on registering voters, conducting elections, counting ballots, and other matters of concern to precinct officials.



Administrative and Financial Laws for Local Government in North Carolina

1997 edition

Published by the Michie Company

$60.00*

An indexed compilation of laws, excerpted from the North Carolina General Statutes, that identify the basic legal requirements under which local governments must operate. Includes changes enacted by the 1997 session of the General Assembly.

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

—James Madison
The Federalist, No. 10